COUNTRY STUDIES

Denmark – Updated Report

2004

Introduction

This Report examines the state of competition policy in Denmark in 2004. It focuses particular attention on developments since the 1999 “Report on the Role of Competition Policy in Regulatory Reform”, prepared as part of a larger OECD study of regulatory reform in Denmark.

Overview

Related Topics

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DENMARK - REPORT ON COMPETITION LAW AND INSTITUTIONS (2004)

The attached report updates information on the current state of competition policy in Denmark. It was edited after the Competition Committee discussion (Item VII) in October 2004, which compared experiences in ten countries. It is circulated FOR INFORMATION.

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UPDATED REPORT ON COMPETITION LAW AND INSTITUTIONS (2004)

DENMARK

1. This Report follows up on developments since the 2000 OECD background report on the role of competition policy in regulatory reform in Denmark ("2000 Report"). The report will focus on progress in implementing its recommendations and other important developments since then. Key recommendations identified in the 2000 Report included more effective sanctions against horizontal agreements, better harmonization with EU competition rules, streamlining of competition policy institutions, and the speeding up of the introduction of competition into network industries. This follow-up report follows the same outline as the 2000 Report, dealing with substantive law, institutions, enforcement, coverage and policy issues. The recommendations of the 2000 Report and developments related to their implementation since then are highlighted.

2. Progress has been made, especially in terms of some adjustment to the level of fines for antitrust offences and complete harmonization with EU competition rules. Danish competition rules now include merger control, the immunity for fines for first-time abuse of a dominant position has been removed, and Articles 81 and 82 of the EC Treaty now apply directly. The Danish Competition Act was amended in 2000 and again in 2002. A new amendment is planned for the autumn of 2004.

3. Streamlining of competition policy institutions is still called for. The Competition Council could be a better decision maker, especially in merger cases, if it were slimmed down and made more professional. A specialized court could replace the Competition Appeals Tribunal. Alternatively, including more members could increase the expertise of the Tribunal. Private litigation could be encouraged by making the publication of the identity of offenders compulsory and by allowing class actions. There is still a need to speed up the introduction of competition in network industries, especially in railways, gas, and postal services.

Substantive law

4. The first of two fundamental rules of the DCA prohibits "agreements betweens undertakings … which have as their direct or indirect object or effect the restriction of competition" (Sec. 6). The listed examples of illegal agreements are copied from Art. 81 EC as are the possibility and conditions for exemptions (Sec. 8). The rules apply both to horizontal and vertical agreements. They essentially endow the Competition Authority with the same tools vis-à-vis restrictive agreements as those of the European Commission.

Box 1. EU harmonization

Complete the task of bringing Danish domestic law into line with the EU model

Already at the time of writing the 2000 Report, Denmark was taking steps to bring the domestic competition law into line with the EU model. This entailed providing for first-time abuses of dominance, merger control, and direct applicability of Articles 81 and 82 EC. In addition, the 2000 report recommended that the Danish competition regime should provide for powers of supervision over "public services" analogous to Article 86.

The 1998 Danish Competition Act (DCA) was first amended in 2000 and then again in 2002. The DCA now contains rules equivalent to Articles 81 EC and 82 EC, and since 2000 also a version of EU merger rules. In terms of substantive law, harmonization with EU rules is now complete. Since 1 May 2004, EU rules can be applied directly by Danish authorities and courts.

Although Denmark has not adopted an analogue to Article 86, it did take the unusual step in 2000 of including state aid in the coverage of the DCA. The Competition Council has the power to order termination or repayment of illegitimate aid.

5. The first of two fundamental rules of the DCA prohibits "agreements betweens undertakings etc., which have as their direct or indirect object or effect the restriction of competition" (Sec. 6). The listed examples of illegal agreements are copied from Art. 81 EC as are the possibility and conditions for exemptions (Sec. 8). The rules apply both to horizontal and vertical agreements. They essentially endow the Competition Authority with the same tools vis-à-vis restrictive agreements as those of the EC Commission.

6. Denmark has also implemented equivalents of block exemptions found in the EU system, viz. the block exemptions for vertical agreements (EC Regulation 2790/1999), for specialisation agreements (EC Regulation 2658/2000), for R&D agreements (EC Regulation 2659/2000), for vertical agreements and concerted practices in motor vehicle distribution (EC Regulation 1400/2002) and for agreements in the insurance sector (EC Regulation 358/2003).

7. Denmark has a special block exemption regulation for horizontal agreements and chains in the retail sector (No. 352 of 15 May 2000) that does not have an equivalent among EU block exemptions. Horizontal, co-operative agreements through retail chains are exempted from the general ban on restrictive agreements, if the firms do not possess more than 25 per cent of the total Danish sales in the retail segment and provided that the agreements do not restrict the individual members of the chain too much (for example by imposing resale price maintenance). Thus, agreements might be permitted about such topics as a range of goods to be on display, advertisements and recommended maximum prices, or the location of new stores.

8. The second of the two fundamental rules of the DCA prohibits "any abuse by one or more undertakings … of a dominant position" (Sec. 11). The listed examples of abuses are copied from Art. 82 EC. The 2000 amendment of the act removed the "right of first offence" that had allowed a dominant firm one free incidence of abuse. This is in line with the recommendation of the 2000 Report.

9. The 2000 amendment of the DCA introduced merger control. A merger falls under the Danish rules if the combined turnover in Denmark of the firms involved exceeds DKK 3.8 billion (EUR 500 million) and the turnover of each of at least two of them is more than DKK 300 million (EUR 40 million), or if the turnover in Denmark of at least one of the firms involved is more than EUR 500 million and the world-wide turnover of another firm involved is also more than EUR 500 million (Sec. 12). These thresholds were chosen to coincide with those that apply in Germany, an economy roughly 15 times the size of the Danish economy. The thresholds exceed those that apply in e.g. the Netherlands, Spain, France and Sweden. In this sense, Danish merger control could be perceived as relatively lenient.

10. Danish merger control was modelled on then-existing EU rules: "A merger, whereby one or more undertakings do not create or strengthen a dominant position as a result of which effective competition would be significantly impeded, shall be approved" (Sec. 12c). Exempting financial institutions' and insurance companies' temporary holdings of securities, the law defines a merger as a merger, an acquisition or a joint venture "performing on a lasting basis all the functions of an autonomous economic

entity" (Sec. 12a). It sets up time limits for notification of the Authority and allows the Authority to make the notification public (Sec. 12b). Upon a complete notification, the Competition Council must decide within four weeks whether to accept the merger or initiate a separate (phase II) investigation. In case of a phase II investigation, the final decision must be reached within three months after the complete notification (Sec. 12d). The Competition Council may condition approval on a set of remedies, including divestment and third-party access (Sec. 12e) and may revoke its approval if it turned out to be based on incorrect information given by the involved firms or if these do not abide by the remedies.

11. A novelty in Danish competition rules was the inclusion in 2000 of state aid in the coverage of the DCA. The Competition Council may "issue orders for the termination or repayment of aid granted from the public funds, which has been granted to the benefit of specific forms of business activities" (Sec 11.a). The effective scope of this power is undermined, though, because it is the relevant minister or supervisory board that decide whether aid is legitimate or not. More generally, "If the Competition Council finds that a public regulation or an aid scheme is likely to cause harmful effects on competition, or otherwise is likely to impede an efficient resource allocation, the Council may give a substantiated statement, which points out potentially detrimental effects on competition, and make recommendations for promotion of competition in the area concerned. Having consulted the Minister for Economic and Business Affairs, the relevant minister is obliged to respond to the Competition Council's statement not later than four months after receipt of the statement. The Competition Council may prolong this deadline" (Sec. 2(5)).

12. The revised DCA added Section 5a on the delineation of the relevant market. The section reads: "Under this Act, the definition of the relevant market is based on examination of substitution in demand and supply as well as potential competition. Potential competition must be examined once the position on the relevant market of the undertakings concerned has been ascertained and this position raises doubts as to its compatibility with the act." This rule is unremarkable, to the extent it calls for the kind of analysis of actual market conditions that would be expected of any competent competition enforcement agency. The instruction to examine potential competition could be read as an admonition to the Authority to look for ways to avoid finding violations, though that may not have been the legislature's intention. The explanatory note to this amendment says it is not intended to define separate markets for products of similar functionality that differ only in aspects of design or prestige, and the new provision has not been invoked in an actual case since its adoption.

Institutions

13. Competition policy in Denmark has been subject to a richer set of decision makers in the past four years than ever before. The traditional channel of Authority, Council, and Tribunal has been complemented with new institutions such as the Public Prosecutor for Serious Economic Crime, city or county courts, high courts as well as some private litigation for damages at the Maritime and Commercial Court. As priorities and enforcement approaches are changing, there are likely to be uncertainties about the basis for division of labour among all of them.

14. The Danish Competition Authority is the central antitrust institution in Denmark, endowed with a staff of around 125. Of these, about 70 deal with competition law enforcement, while the other staff is responsible for energy regulation, public procurement and state aids. The professional staff is split evenly between lawyers and economists. Depending on the nature of the case, the Authority may decide the case on its own or refer the case to either the Competition Council or the Special Prosecutor for Serious Economic Crime. The Authority decides the case on its own when it is a routine case, but it refers more complicated cases to the Competition Council and criminal cases to the Special Prosecutor when it wants to try it at a court and if it thinks that a fine is in order.

Box 2. Streamlining of competition policy institutions (A)

To improve the coherence of competition policy, move the Council's secretariat (the Authority) out of the Ministry of Business and Industry to someplace more neutral and responsive only to the Council.

There has been no attempt to implement this suggestion. The Authority is still an agency under the Ministry and serves the Minister as much as the Council. As an alternative to streamlining functions, while recognising that only a court can impose financial sanctions in Denmark, the 2000 Report suggested that the functions of the Authority and the Council might be combined in a single administrative body that would prepare cases for presentation to a court. This too has not been pursued.

15. The Competition Council has the power to issue orders against infringements, to grant (or revoke) individual exemptions, to approve or turn down mergers, and to certify that conduct is not anti-competitive (based on the available evidence). The Council has nineteen members, nine of whom (including the chair) are to be independent of commercial or consumer interests. The remaining majority represents interest groups. All members work only part-time on the cases, meeting on average once every month for around five hours. Mergers are typically dealt with by the director of the Authority, who keeps the chairman of the Council advised of developments in negotiations with the parties. Members are only involved in the decision making a few days before the decision has to be made. This procedure is in place to ensure the confidentiality of the data and the negotiations. But it may be expected that the Council will be reluctant to reject an agreement that has been negotiated. The Council may not be well suited to deal with merger decisions.

Box 3. More workable Competition Council

The Competition Council could be made more workable. One way would simply be reducing its size. Another would be to reduce or eliminate the "representation" ties to other institutions.

The 2000 Report recommended that the Competition Council be reduced in size in order to make it more effective in law enforcement and application. The explicit designation of interest group representatives made it appear that decisions are reached by balancing of interests and even bargaining about case outcomes, and this may undermine the Council's reputation for impartiality and expertise.

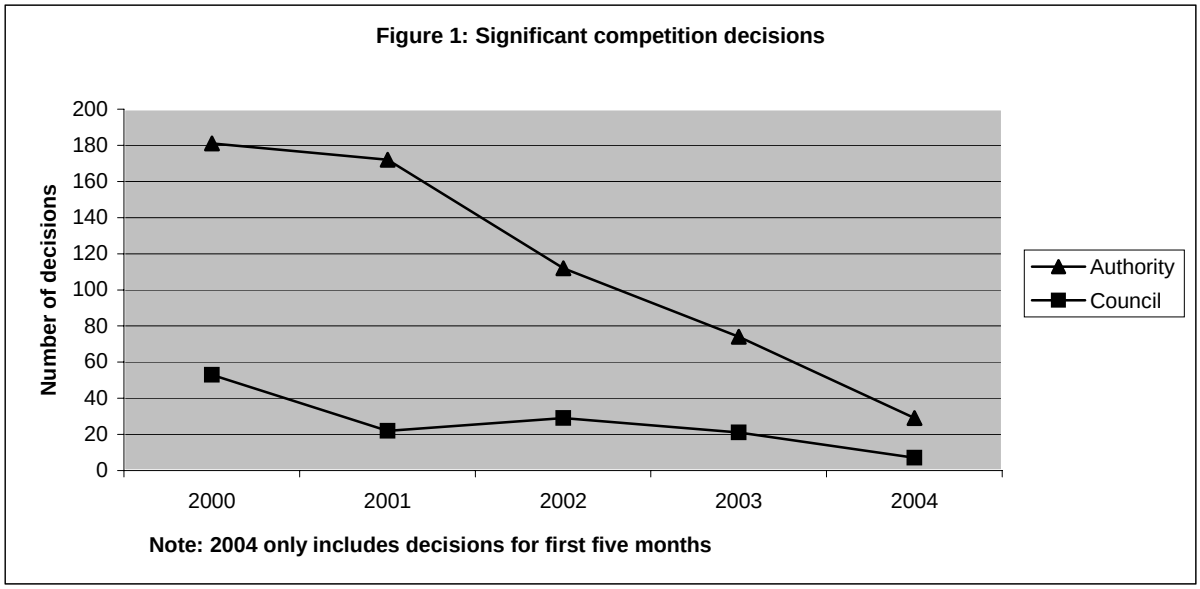
Nothing has happened to assuage this problem of unwieldy decision-making. To the contrary, recent developments have exacerbated the problem.

First, members of the Council have noted that some other members act increasingly as interest group representatives rather than as personally appointed industry experts. References are heard to "my hinterland" and it appears that some members share Council material with members of their organizations before Council meetings.

Second, the introduction of merger control has demonstrated that the Competition Council deals with such cases only with difficulty. These cases are subject to strict deadlines, huge amounts of confidential information and on-going negotiations. Accordingly, it is primarily the director and a select task force of the Authority and the chairman of the Council who deal with merger cases until the very last moment. The Council, which in principle makes the decision, typically receives a substantial amount of material only shortly before the meeting (one or two days, sometimes less). The Council is often presented with a *fait accompli*, in that the negotiations between the Authority and the Chairman are over. Rejection of the agreed remedies would undermine the bargaining position of the Authority in future cases and might lead to a conflict with the (stricter than EU) deadlines. Nonetheless, the Council did reject a negotiated agreement on one occasion, and in other cases it has tried to set out general directions about future negotiations.

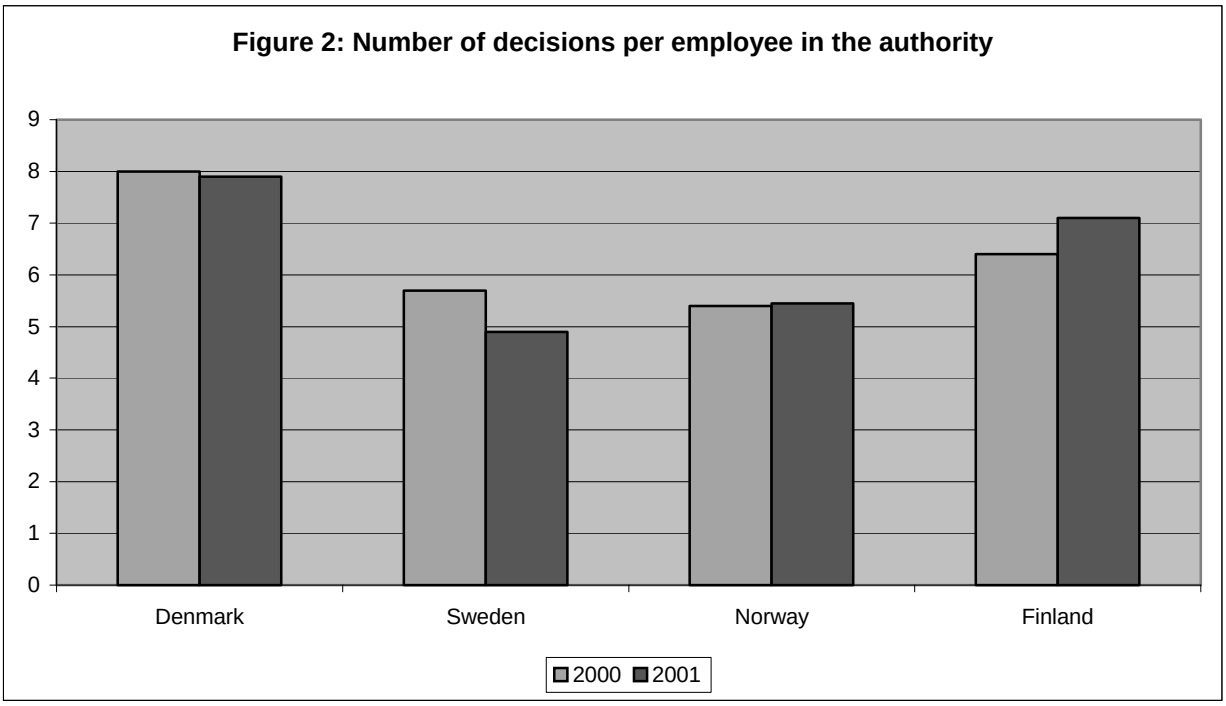
16. The Competition Authority has decided on average 126 significant cases per year since 2000 and the Council on average 29 cases per year. The development in the number of significant cases is shown in

Figure 1. The number of cases has dropped dramatically since the bulge of 2000/2001, which was mainly due to notified agreements relating to the transition to the 1998 DCA. It would seem that the Council is approaching a steady state of determining an average of two cases per meeting while the Authority is determining around five significant cases per month.



17. In 2000/2001 employees of the Authority decided an average of 8 cases while their Swedish, Norwegian and Finnish colleagues decided 5-7 cases on average (Danish Competition Authority (2004a)). This shows that the productivity of the Danish authority is at the same level or better than comparable economies to the extent that competition cases are comparable. See Figure 2.

Figure 2: Number of decisions per employee in the authority



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Source: Danish Competition Authority (2004a, p. 39).

18. Firms may appeal certain decisions taken by the Authority or by the Council to the Competition Appeals Tribunal. The Tribunal has three members, two lawyers and an economist. The chairman of the Tribunal is a justice of the Supreme Court. The Tribunal adopts a very legalistic approach to competition policy and essentially decides the cases on the basis of oral or written material. Following a parliamentary hearing in 2003 that focused on ways to improve case handling, the Tribunal has tried to explain its decisions better.

Box 4. Streamlining of competition policy institutions (B)

Eliminate the additional step of the Competition Appeals Tribunal.

The 2000 Report noted that, while the Tribunal may represent a particular level of expertise, it is unclear why more expertise is needed after a matter has already been through two other presumably expert bodies. A function similar to the Tribunal's, of specialized law-based review in these cases could be accomplished by sending appeals in competition cases to a specialized true court, such as the Commercial and Maritime Court.

The Danish government has proposed to increase the number of members of the Tribunal from three to five. In addition to the two lawyers and one economist, these would include an additional lawyer and an extra economist. This is probably intended to give the Tribunal a broader expertise base with the intention of reducing the variance in its decisions. This alternative to more fundamental restructuring may increase the average quality and overcome some decision-making peculiarities. (see, e.g., box 6).

19. The Tribunal may uphold or reverse the case or send it back for renewed consideration in the Authority or in the Council. It may in principle demand that more evidence is provided, but this option is very rarely implemented. It may also happen that the firms withdraw the appeal either because they find that they have a bad case or because the Authority or the Council decided to adjust the decision. Tables 1 and 2 below give an overview of the decisions of the Tribunal. A yearly average of 12 Council cases and 4-5 Authority cases are brought before the Tribunal. That is, about a third of the Council's decisions are

appealed, and 14 per cent of them are rejected on appeal. Only a handful of the Authority's more routine decisions are appeals, and only 1.4 per cent of them are rejected on appeal.

Table 1. Competition Council cases at the Competition Appeals Tribunal

	Reversed or sent back	Withdrawn	Upheld	Total	Rejection rate (%)	Rejections in proportion to total number of cases (%)
2000	4	6	4	14	29	7.5
2001	8	2	5	15	67	45.5
2002	2	2	3	7	43	10.3
2003	4	5	4	13	31	19.0
2004*)	0	1	3	4	0	0.0
Total	**18**	**16**	**19**	**53**	**34**	**13.6**

*) Until 3 June 2004.
Source: www.ks.dk/presserum/faq/anke/

Table 2. Competition Authority cases at the Competition Appeals Tribunal

	Reversed or sent back	Withdrawn	Upheld	Total	Rejection rate (%)	Rejections in proportion to total number of cases (%)
2000	1	1	0	2	50	0.6
2001	3	2	3	8	38	1.8
2002	3	0	3	6	50	2.7
2003	0	0	2	2	0	0.0
2004*)	1	0	2	3	33	3.4
Total	**8**	**3**	**10**	**21**	**38**	**1.4**

*) Until 3 June 2004.
Source: www.ks.dk/presserum/faq/anke/

20. This pattern of more reversals of Council cases than of cases decided by the Authority is natural as the Council decides on more complex, borderline cases. The Tribunal reverses roughly one third of the cases that are appealed. This number is in general not too large considering the relatively short history of prohibition-based Danish competition law. It happens on rare occasions that decisions by the Tribunal are appealed to the high courts. It does appear, however, that the Tribunal's decisions have a bias in favour of cooperatives (see box 5).

21. MACROBUTTONThe Competition Appeals Tribunal is considered efficient by some and an unwarranted hybrid between a real court and an administrative body by others. Those in favour of the Tribunal see it as a low-cost, fast decision maker that prevents long and drawn out court cases. The fact that it is a justice of the Supreme Court that presides implies that few firms and lawyers are tempted to call the Tribunal's decisions into question. Those that are against the Tribunal as an antitrust institution sees it as a black box for inexplicable decisions that do not contribute to a better understanding of the developing practice.

Box 5. Dairy sector, cooperatives and the Tribunal's role

The 1993 OECD economic survey of Denmark identified fresh milk products as a set of markets with competition problems due to horizontal concentration. In 1999 the two big dairy cooperatives merged to form a dominant Danish dairy, MD Foods. A subsequent merger in 2001 with Swedish cooperative dairy Arla resulting in Arla Foods eliminated a potential Swedish competitor. Through these mergers Arla Food obtained a market share of conventional milk of more than 95 per cent and more

than 80 per cent of organic milk. The Competition Council tried to address the two mergers before merger control was officially a part of the toolbox. The CC negotiated commitments from Arla to sell certain dairy capacity, to allow third-party access to its distribution and to sell to/buy from competitors.

In the first merger, MD Foods agreed that it would shorten the notice suppliers/owners would have to give to exit the cooperative from 12-24 months to 4-16 months. After the merger MD Foods alleged that this remedy was only pertinent to conventional milk, not organic milk. Organic milk suppliers would have to give a notice of between 13 and 25 months. On 28 November 2001 the Competition Council decided that this longer notice for organic milk suppliers was anti-competitive and ordered Arla Foods to cease and desist. Arla appealed to the Tribunal. The Tribunal reversed the Council's decision, claiming that it had not provided sufficient evidence that the agreements were anticompetitive.

In a parallel case, three organic suppliers of milk complained that they had been asked to pay significant fees to re-enter Arla when their attempt to supply a small rival, an organic dairy, failed. Arla claimed that this was the price for gaining access to the cooperative's capital, but the suppliers argued that this was not balanced since they did not receive their share of the capital when they exited. The Council decided that "access fees" that exceeded the cost of providing "access" amounted to abuse of a dominant position and ordered Arla to cease and desist. Arla appealed to the Tribunal, which reversed the decision, claiming that the Council had not provided sufficient evidence that the practice constituted an abuse. The organic producers have appealed the Tribunal's decision and the case is pending in High Court.

These cases are two examples from a series of cases in which the Tribunal has reversed the Council's decisions regarding cooperatives. The Tribunal seems to put the "the fundamental rule of equality before cooperative law" above the competition legislation. This "co-operative doctrine" is unwarranted in so far as Denmark has no separate law on cooperatives and may have far-reaching effects due to the relatively large number of cooperatives in Denmark. Because the Tribunal's rulings are short and perfunctory it is also difficult to extract a coherent principle of decision from these cases. (Blomgren-Hansen and Møllgaard, 2004).

22. The Public Prosecutor for Serious Economic Crime is in charge of taking competition cases to court. It receives the cases from the Authority but re-investigates the case and decides whether to proceed to court or not. The Prosecutor's office is staffed with 100 people of which 25-30 are prosecutors (lawyers) and 60 are investigators (policemen). The Prosecutor works under the aegis of the Ministry of Justice. It has investigated white-collar crimes since 1973 and has been involved in competition cases since 2000. The Danish penal code sets a higher standard of proof for criminal cases, and all criminal cases must be handled by a central State Prosecutor. Because the DCA cannot prosecute, criminal cases are investigated twice, first by DCA and then by the State Prosecutor. The cooperation with the Authority mostly works smoothly, although disagreements about whether to take a case to court have surfaced occasionally.

23. The Prosecutor has been involved in 21 cases under the 1998 DCA until the end of 2003. These cases have been of various degrees of complexity, involved a different number of firms and had a variety of outcomes. Table 3 summarizes these twenty-one cases. Eight cases involve horizontal coordination, ten involve resale price maintenance (RPM) and the remaining three involve exclusivity. By comparison with other countries with somewhat similar systems, the number of cases taken to the Prosecutor appears reasonable. But many of the cases involve less significant vertical restraints, and only one case of horizontal coordination has been successfully prosecuted (see below). Thus there appears to be room for improvement.

24. The Prosecutor's biggest case to date is the electricians' cartel that involved 360 firms of very different sizes. The fines total a maximum of DKK 28 million (EUR 4 million). See Box 6.

Box 6. The electricians' cartel

Bid rigging among electricians was the first criminal case to be determined according to the 1998 DCA. The Competition Authority initiated the cases in late 1998 with a large dawn raid, following revelations in the business press. A number of firms decided to co-operate with the authority early on by making full confessions. The Authority eventually notified the Public

Prosecutor for Serious Economic Crime of 360 electricians for ridding bids in more than 700 tenders taking place in 1998.

Some firms were charged with participation in more than 200 tenders, others only with participation in a single tender. Firms and tenders were geographically dispersed across Denmark.

The Prosecutor established a task force of twelve investigating policemen who carried out a large number of interrogations. Then four cases were tried in court, and all led to convictions of the firms involved. The fines were determined according to the number of tenders the firms had been involved in and the revenues they obtained from these. The Prosecutor stated that "it would not speak against a reduction in the level of the fines of ten, fifteen or twenty per cent to firms that co-operated under the investigation." The courts accepted this leniency-type argument and determined the fines accordingly. (Thiesen, Ponikowski & Folker, 2002).

The fines of the first four trial cases were between DKK 90,450 (EUR 12 200) and DKK 1,182,800 (EUR 160 000). Following this, some of the other firms were presented with fines of up to DKK 3 million (EUR 400 000) determined out-of-court. In some cases, the Prosecutor has decided not to charge the firm. Some firms have not been willing to accept the fine determined by the Prosecutor. These cases will probably lead to new court cases.

Table 3: Criminal antitrust cases 2000-20034

Type of offence	Industry	Number of companies involved	Status
Bid rigging	Electricians	360	Various
	Hand made shoes	17	No charge
	Roofing	2	No charge
Exclusivity	Lotto	1	Conviction
	Ferry traffic	2	Plea agreement
	Real estate advertising	1	Plea agreement
Horizontal agreement	Children's equipment	1	No charge
	Driving schools	1	Acquittal
	Ferry traffic	2	Under investigation
	Glazier	1	Under investigation
	Auto scrap	1	Under investigation
RPM	Fishing tools	1	Plea agreement
	Designer clothes	1	Acquittal
	Sports clothes	1	Plea agreement
	Consumer electronics	4	Under investigation
	Optician	1	Plea agreement
	Mobile phones	1	Under investigation
	Mobile phones	1	Under investigation
	Sewing machines	1	Under investigation
	Watches	1	Under investigation
	Watches	1	Under investigation
Total	-	**401**	-

Enforcement process

25. The Authority and the Council may only issue orders for the termination of infringements of the two fundamental competition rules. In order to fine the firms that engage in malpractice, the Authority must hand the case over to the Special Prosecutor for Serious Economic Crime who then will determine whether to initiate a court case. The criteria for using criminal sanctions rather than orders to cease and desist are not clear. It is the Authority that decides on what cases to send to the Prosecutor and what cases to let the Council determine. The Authority essentially trades off speed of decisions against the standard of the proof when deciding which road to take.

26. For example, in the cases of the dairy sector (see box 5) involving restrictive agreements and abuse of dominance, the Authority could presumably have decided to take the cases to court since it found

that, respectively, Sections 6 and 11 of the DCA had been violated. Then it would first have to convince the Prosecutor that the case merited treatment by the courts, the Prosecutor would then have to re-investigate the case and finally a lengthy court case would follow. The Authority decided to let the Council determine the case. The Council rarely asks the Authority to re-investigate the cases and arrives at a decision typically a couple of weeks after the Authority has concluded its own investigation. On these occasions, the Tribunal reversed the decisions, essentially claiming that the Council did not carry the burden of proof. While it might be argued that these reversals were unwarranted (see again box 5), the generally lower standard of proof accepted by the Council may have convinced the Authority to follow this avenue rather than the more cumbersome criminal route. In sum, there may be faults on both the side of the Authority/Council (lack of legal precision) and the Tribunal (overly legalistic approach), but the net result is less acute application of competition policy in certain sectors.

27. In merger cases, the Competition Council has the authority to approve or reject a merger. So far, all mergers have been approved in the end. Some have had conditions attached, typically involving structural remedies (e.g. divestitures of slaughter houses, dairies (see box 5), or virtual electricity (see box 9) and/or behavioural remedies. The pro-competitive effects of proposed remedies and their relationship to the antitrust issues involved in the merger must be clear. To examine how well this has been done, the DCA recently published an assessment of the remedies applied in merger decisions to date. The effective scope of the merger control power remains unclear and untested, to the extent that no merger has yet been rejected.

28. The Authority screens industries to find signs of anticompetitive behaviour. This is done using a variety of indicators, including presence of sector regulation, four-firm concentration ratios, import penetration, entry rates, mobility of market shares, productivity, wage premium, relative profitability, and international price comparisons. In addition, it receives complaints from firms and hints from the business press. The latter has been especially active in relation to resale price maintenance, which has received more media coverage than any other malpractice. Dawn raids have on several occasions followed such complaints and media revelations.

Box 7. Effective sanctions against anti-competitive horizontal agreements

Ensure that effective sanctions are available, and applied, against anti-competitive horizontal agreements.

So far only one set of anti-competitive horizontal agreements has been prosecuted, viz. the electricians' cartel mentioned in Box 6. The largest fine was around DKK 3 million, or EUR 400 000. The total fine for the 360 firms was around EUR 4 million. This may not have been enough to deter such behaviour in the future. However, the fines were issued according to the DCA of 1998.

When the Danish Competition Act was changed in 2002, the most important change had to do with the fining level. In this revision, Parliament foresaw an increase of the fining level to approach the EU levels of up to 10 per cent of turnover, but also noted that full harmonization was not intended since the relevant market would typically be smaller in Danish cases than in EU cases.

The Prosecutor has interpreted the new rules as meaning that minor infringements should result in fines of up to EUR 53 333 (up from EUR 13 333), that serious infringements should result in fines up to EUR 2 000 000 (up from EUR 67 295) and that very serious infringements should lead to fines of more than EUR 2 000 000; although no maximum is set, presumably these fines would be substantially less than the EU maximum of ten per cent of revenues (see Table 3). The courts have not yet had an occasion to implement the new set of fines.

29. The 2002 change concerning setting fines is phrased as follows: "Penalty may be imposed on companies etc. (legal persons) pursuant to the provisions of part 5 of the Penal Code. When meting out the

penalty under subsections (1) and (2), the level of the fine shall be determined taking into consideration the general rules of part 10 of the Penal Code as well as the turnover obtained by the legal person in question during the last year before the passing of the sentence or the issuing of the fine." The reference to the turnover is new. The basic level of fines, before and after the change is shown in Table 3.

Table 4: The Danish Fining Level

Gravity of offence	1997-2002	2002-
Minor infringement	< DKK 100 000	< DKK 400 000
	(< EUR 13 460)	(< EUR 53 835)
Serious infringement	DKK 100 000 –500 000	DKK 400 000 – 15 000 000
	(EUR 13 560 – 67 295)	(EUR 53 835 – 2 018 842)
Very serious infringement	> DKK 500 000	> DKK 15 000 000
	(> EUR 67 295)	(>EUR 2 018 842)

Source: Public Prosecutor for Serious Economic Crime

30. Private initiatives have so far been rare in Danish competition policy. Some of the victims of the electricians' cartel (see box 6) have considered suing the members for damages. This process has been slowed down since the Prosecutor has been reluctant to publish the names of the firms that have been involved in the cartel but have agreed to fines out of court, citing the Act on Public Information. Following a public debate, the Prosecutor established an arrangement whereby victims could approach the Prosecutor to learn about the cases determined out of court. (Thiesen, Ponikowski & Folker, 2002). Victims cannot sue unless they know they have been subject to a violation. The tenders that were subject to bid rigging and the participants in the bidding rings should be made public information, regardless of whether the case is determined in or out of court.

31. In 2002, the Maritime and Commercial Court arrived at the first judgment regarding damages in relation to the DCA in three combined cases. The plaintiff was a distributor of white goods, EKKO, who had originally (March 1998) complained about the behaviour of a number of wholesalers, arguing that their delivery conditions discriminated against EKKO. The Council decided in October 1999 that the coordinated practice of the trade association was a violation of the DCA and ordered it to cease and desist. EKKO then sued three of the members for damages in three combined trial cases and won the case receiving a total of DKK 235 735 (EUR 31 727). This ruling paved the way for a number of similar cases that have been filed and are pending.

32. A related development regards a private suit for damages by a number of municipalities relating to the district heating pipe cartel that was unravelled by the EU Commission in 1998 (Official Journal: L 24 - 30/01/1999). The case will be determined by a Danish high court during the winter 2004/5. EU rules require identification of offenders, thus facilitating private suits for damages.

33. Besides lack of knowledge about the offenders, another reason for the lack of private litigation in Denmark is probably that class actions are not possible, although there is some possibility of combining cases. Plaintiffs have no recourse if their expected legal costs will exceed the damages likely to be rewarded. That lawsuits for damages have not (yet) followed the revelation of the electricians' cartel can probably be ascribed to the relatively small damage suffered by most individual plaintiffs. The introduction of class actions is currently being debated in Denmark both in relation to competition policy but also as part of a larger revision of the penal system.

34. Leniency instruments are also subject of current debate. Leniency type arguments were employed by the Prosecutor and by courts when fines where meted out in the electrician's cartel. The courts accepted a reduction in fines of 10-20 percent if the firms had cooperated with the investigators. At present, leniency instruments are not an effective part of the competition toolbox and the leniency tools are accordingly very

blunt. The explanatory notes to the Danish competition law of 2002 allow the use of leniency in competition cases, and the criteria applied are similar to those used by the European Commission. But the division of responsibilities between the Authority and the Prosecutor prevents the leniency tool from being effective. The Competition Authority, which is the principal enforcement body and thus the first point of contact for a would-be whistle-blower, does not have the authority to make a commitment about lenient treatment. The Authority can only recommend to the Prosecutor. After a matter is referred for prosecution, the Special Prosecutor can negotiate a deal with a "whistle-blowing" firm and recommend (or, more precisely, "not speak against") a reduction of fines by the courts. The judge may ignore this advice, but so far the courts have followed the Special Prosecutor's recommendations and have not reduced the "rebates". The uncertainties may reduce defendants' incentives to cooperate. In addition, a reduction of the fine of only 10-20 per cent is also low by international standards, especially if it is the "payment" for crucial evidence.

Coverage of competition law and policy: sector and network industry issues

35. The coverage of competition policy has been extended to include state aid. Still, the power of other regulators or ministries to immunise anti-competitive conduct remains substantial. The prohibitions against anticompetitive agreements and abuse of dominance do not apply "if an anti-competitive practice is a direct or necessary consequence of public regulation." It is the relevant minister who determines whether an anti-competitive practice is "a direct or necessary consequence of public regulation." If the Council asks the relevant minister to clarify whether an anti-competitive practice is a "necessary evil", (s)he must answer the Council within four weeks, and hence cannot just ignore it.

36. This judgment by the relevant minister as to the appropriateness of his or her policy or regulation seems to be unduly political. It would increase the leverage of this competition policy instrument if it were an independent arbitrating body that would take this decision. Politicians could obviously overrule a decision taken by such an arbitrating body through new legislation but it would increase the visibility of anticompetitive regulation and put more pressure on politicians to remove unwarranted obstacles to competition.

37. The introduction of state aid rules in Danish competition policy is accompanied by a change of focus of competition policy towards infrastructure, regulated industries, the conduct of the public sector in the market place, and openness, in addition to the traditional focus areas, competition rules and enforcement against private business misconduct. The new focus areas require an effort and a positive attitude from other authorities and regulators, see Danish Competition Authority (2004a). In a country like Denmark where regulation and the public sector permeate the economy this change of focus may well be more productive.

38. Infrastructures have in general been liberalized or deregulated in recent years. The Authority has initiated a program to measure and follow the liberalization effort in order to benchmark the different infrastructures against each other so that best practices from one infrastructure may inspire developments in other sectors. The benchmarking exercise involves judgments regarding five indicators of liberalization: the degree of independence between regulator and infrastructure firms, the degree to which monopolization has been limited to the essential infrastructure, the ease of third party access (TPA), the extent of third party access, the existence of technical barriers, and the degree of internationalization (the extent of the single European market). The Danish Competition Authority (2004a) has in this way benchmarked six different infrastructures and found that they may be ordered as follows in decreasing degree of liberalization: telecommunications, television, electricity, postal services, gas, and railways. This exercise is useful to the extent that it convinces politicians and regulators that more has to be done to promote liberalization and competition in different infrastructures and to the extent that lessons learned in one

sector is useful for other sectors. It may also provoke public debate and increased media coverage and thus promote the competition culture in infrastructures.

39. In the Authority's benchmarking, telecommunications receives a score of 12 points out of a maximum of 15. The Authority finds that the regulator is entirely independent of the industry and that monopolization is limited by the possibility of competition in all areas, including the network. But the network is only separated from the provision of telecoms services in terms of accounting, not ownership, and third party access may have been prone to margin squeezes, see box 8. There are technical barriers, where the incumbent TDC has exclusive rights to carry out services that competitors need. Finally, there is a limit to internationalization in that consumers cannot buy telecoms services directly abroad (only via subsidiaries of foreign firms in Denmark.

Box 8. Margin squeeze in telecommunications

On its meeting on 28 April 2004, the Competition Council decided that the incumbent telecommunications provider, TDC, had abused its dominance by applying discriminatory loyalty discounts when selling to resellers and by exercising a margin squeeze, viz. by raising the wholesale price and/or lowering the retail price so that resellers' profits were squeezed. The decision followed a complaint by Song Networks. Song sells fixed net telephony to the business segment.

The Council found that TDC had sold its PlusNet service at retail prices that would not cover its total costs including risk and a normal profit. TDC was found to set the wholesale price above the retail price. The wholesale price for terminating a call with TDC is more than DKK 1 while the retail price would be only DKK 0.5-0.6. The Council ordered TDC to cease and desist these practices. TDC has appealed to the Competition Appeals Tribunal.

The case is interesting also because while retail prices are subject to competition legislation, wholesale prices are the responsibility of the Telecommunications Agency. The decision could hence be seen as an implicit critique of the telecommunications regulator. The Tribunal is likely to decide whether the Council had jurisdiction.

40. The Authority's benchmarking assigns 10 of 15 points to electricity (so electricity reform is perceived as less advanced than telecommunications). The Energy Regulatory Authority is perceived as completely independent. Firms under public service obligations have ownership in common with distributors. TPA is regulated. Technical barriers exist to the extent that a certain expertise and knowledge of consumers' consumption profiles is necessary in order to compete. The major problem is perceived to be lack of interconnection capacity with international markets (Norway, Sweden and Germany). This creates bottlenecks and allows incumbent generators market power, see box 9.

41. In Denmark, the Electricity Supply Act of 2 June 1999 (with later amendments of 1999 and 2000) implemented the EU electricity directive on energy liberalization (Council Directive 96/92 concerning common rules for the internal market in electricity) and led to the introduction of competition between power generators. These developments rendered regulation of the power market through competition law feasible and necessary. Full market opening was achieved by 1 January 2003 essentially allowing all customers to choose their electricity supplier. At present, only very few households have used this option, probably because only a fraction of their electricity bill is subject to competition. The major part of the bill consists of transmission tariffs and taxes.

42. At the end of March 2004, Parliament arrived at a set of agreements on future energy policies. The national electricity grid was nationalized, transferring ownership from distributing companies. The new grid company will ensure TPA on non-discriminatory conditions. The ownership structures were "clarified" so that distributing companies could dispose of all their capital, eliminating the distinction between "free" and "fixed" capital. Previously, part of the capital was restricted (fixed in the sense that it resided with the companies but was allegedly owned by the customers) making mergers and takeovers

difficult. The electricity from windmills should be sold under market conditions, a number of offshore wind farms were decided; and windmills in unfavourable locations would be replaced by the construction of new windmills in other places.

Box 9. Competition policy in electricity

The electricity sector has been the subject of several cases in recent years. Much like EU policies, Danish competition policy seems to be tailored to give the industry time and flexibility to reform (see Faull & Nikpay, 1999, chapter 10).

The Danish Competition Authority investigated the behaviour on the electricity spot markets in 2000 and 2001 of the two major Danish power generators, Elsam (West Denmark) and E2 (East Denmark). East Denmark and West Denmark are not interconnected. At its meeting on 26 March 2002, the Competition Council decided that these two companies hold dominant positions on their respective relevant markets. The markets are defined narrowly when interconnections with Sweden and/or Norway are congested. The Authority's analysis showed that the two firms raised prices in these periods. A number of electricity traders complained about this behaviour. However, the Authority "has not shown that the companies' behaviour amounted to abuse of their dominant positions." (Danish Competition Authority, 2003) The Authority is satisfied that the two generators have agreed to change behaviour in the future. The settlement bound Elsam and E2 to follow specific pricing policies during periods in which they could dominate the market and to operate as market makers, thereby making the markets for wholesale electricity thicker, i.e. more liquid. This was the first time the Council applied a "negotiation" procedure to a non-merger case. The soft approach was probably due to the fact that during the time of the alleged abuse, the Competition Act exempted first-time abuse from fines. Moreover, it has never happened that a firm has been successfully charged with excessive pricing under EU competition rules. (Møllgaard and Nielsen, 2004).

On 24 March 2004, the Council allowed Elsam, the major power generator of West Denmark, to acquire NESA, the largest distributor in East Denmark. NESA owns 36 per cent of the shares of Energi E2, the major power generator of East Denmark. Elsam agreed to a number of remedies for this merger to go through. It was vital to Elsam that it would not have to sell the E2 shares and in fact this was not a condition for the merger. Instead Elsam would have to sell a significant amount of virtual generating capacity (600 MW) in a series of auctions. The idea would be that the buyers of this capacity would compete with Elsam on the Danish market. This type of remedy has been used occasionally elsewhere, by the EC and the Dutch and Belgian competition authorities. It is yet to be determined how the auction will be accomplished and whether this will actually exert a competitive pressure on Elsam. In addition, Elsam would agree to sell off its own and NESA's decentralised power plants fuelled by gas with a combined capacity of 230 MW. Elsam would also ensure the establishment of a 600 MW interconnection across the Great Belt connecting East and West Denmark. In principle this would mean both that the divested capacity would influence competition on both markets and that the number of hours for which there are bottlenecks with Norway and Sweden would be reduced. However, it is not clear what it means to "ensure the establishment of an interconnection" across the Great Belt. Apparently it does not entail financing, and the establishment has to be approved by transmission systems operators. Furthermore, Parliament has decided to commission independent studies of the costs and benefits of an interconnection. Finally, it was decided that competitors of NESA would get access to its customers' consumption profiles thus enabling the rivals to offer competitive deals. (Danish Competition Authority, 2004b)

It would seem that two of the remedies have doubtful and uncertain effects. Considering that the Electricity Supply Act does not allow a generator to own more than fifteen per cent of a distributor, it would seem that the Elsam/NESA merger was approved against all odds. However, in terms of competition law questions have been raised as to whether the Council had a case at all, since the two generators are not at present competing whence the merger does not establish or strengthen a dominant position.43. The Authority's benchmarking also assigns 10 of 15 points to television broadcasting. The regulation is split between three authorities: the Competition Authority, the telecoms regulator and the Ministry of Culture. The Ministry defines public service obligations and owns the two broadcasters entrusted with PSOs. Some regulations concern nationwide broadcasting of significant events (e.g. football championships) and since not all broadcasters meet the definition of nationwide broadcasting this give the two publicly owned broadcasters with exclusive rights to aerial broadcasting a competitive edge. TPA on cable TV is as of yet unused. There are few technical barriers, although different satellite broadcasters use different decoders. There is a vast supply of foreign channels but the Minister of Culture seems to favour a domestic-based privatization of TV2.

44. The benchmarking assigns 9 of 15 points to postal services. Regulation is split between the Road Safety and Transport Agency and the Ministry of Transport. The former is relatively independent of the latter in spite of being its agency. The Ministry owns Post Denmark, which still holds a monopoly for letters below 100 grams. Competition on the 50-100 gram segment is not envisioned until 2005/6. Post

Denmark receives a subsidy for distribution of certain magazines and is the subject of a state aid investigation. The segments that are subjected to competition are only separated from the monopoly segments in accounting terms. There is no TPA to mail boxes or PO boxes. Postal services require access to address lists and this may amount to a technical barrier. Postal services are fairly internationalized although tariffs have not been fully integrated in that the postage depends on the destination country.

45. Benchmarking of gas also leads to 9 points. The Energy Regulatory Authority is perceived as completely independent. Firms under public service obligations have ownership in common with distributors. Concessions are very long term. TPA is regulated. The price for transmission includes a premium for emergency supply making transport unduly expensive. Technical barriers exist to the extent that a certain expertise and knowledge of consumers' consumption profiles is necessary in order to compete. The internal market for gas is not working well: tariffs are compounded when gas is transported through several countries. This restricts the number of suppliers.

46. The Authority's benchmarking of railroads leads to only 7 points, less than half the maximum. The regulators are the Ministry of Transport and a recently established National Rail Authority (1 July 2003). The latter is perceived as fairly independent. The Ministry on the other hand owns DSB, the railroad incumbent. Public tenders are not used to the maximum extent, both regarding maintenance of the rails and the rail services. TPA is in principle completed regarding rails, vehicles, stations and mandatory education. The degree of standardization is low, creating major barriers to entry, especially for foreign suppliers. Apart from this there are no restrictions on foreign investments and tariffs have been harmonized to some extent.

Box 10. Competition in network industries

Accelerate the introduction of competition into network industries, particularly transport and electric power.

There has been some progress but also some setbacks. Telecommunications is fairly competitive and electric power has been liberalized. The net effect of competition policy on the introduction of competition into the electric power industry remains to be seen, given that the Council allowed the merger of Elsam and NESA aligning the interests of the two major electricity generators, cf. box 9, while imposing conditions to make some capacity available to competitors.

Much remains to be done especially in railways and postal services but also in gas and broadcasting.

47. In terms of traditional competition policy, the Authority has identified 56 industries with signs of weak competition e.g. due to high prices net of taxes and/or high concentration. This number is down from 60 in 2003 and 64 in 2001 (Danish Competition Authority, 2004a) but part of the decline is due to the use of more disaggregate price data from Eurostat and the introduction of a triviality limit, of a combined industry turnover of DKK 500 million (EUR 67 million) and 600 employees. Compared with EU9, the ten most expensive consumer goods industries are: spare parts for automobiles; education and child care; personal care; soft drinks; insurance; books, newspapers and magazines; fuel oil; public transport; alcoholic beverages; and vegetables. These industries all charge net prices that are 15-21% higher than EU9 prices. Investment goods are also very expensive. Residential construction is thus 35% more expensive and transport equipment 34% more expensive than EU9. Net prices are on average 4% higher than net prices in EU9. It is not clear how this exercise in classification motivates the Authority's enforcement agenda and priorities.

Advocacy and policy studies

48. The annual reports of the Competition Authority have increasingly targeted anti-competitive effects of other regulation. The Ministry of Economics and Business, the Ministry of Finance and the Competition Authority have investigated the possibilities of removing anticompetitive rules in a number of areas. However, it would seem that they have ignored the two areas where these rules are especially significant and ubiquitous, viz. the Planning Act (determining the possibilities of opening new shops and stores) and the Opening Hours Act (determining when shops and stores may be open). These two pieces of legislation seriously restrict the possibilities of non-price competition in ways that undoubtedly also affect price competition. It is very important to include these important areas in future reforms.

49. The areas in which recommendations have been made involve subjecting attorneys to competition both in terms of advertising of legal services (now only allowed for attorneys) and in terms of their exclusive right to conduct civil cases. Further, for real estate agencies a liberalization of the rules on ownership is being considered. Presently, the only allowed owners are registered realtors, attorneys and certain financial institutions. This amounts to a barrier to entry that has kept big foreign realtors out of the Danish market for a long time. For registered land surveyors it is proposed that private surveyors are allowed to carry out registry services in the municipalities of Copenhagen and Frederiksberg. At present, these municipalities have a monopoly for such services. In addition a reform of ownership of surveyors is being proposed. Finally, it is proposed that all dentists must give a written estimate of the cost to the client, when the treatment costs more than DKK 2500 (EUR 340), and that the transparency of prices is increased through publication of price lists in the waiting room and on the World Wide Web.

50. In postal services, new legislation means that the monopoly of incumbent Post Denmark is reduced to cover only letters until 50 grams already in 2005. Parliament has also recently agreed to reform the energy sector, transferring the transmission systems of electricity and gas to a common, state-owned TSO. In the waste sector, proposals for the introduction of competition into combustion and storage are due by the end of 2004. In relation to water supply and sewage, a working party is investigating the possibility of enhancing transparency and efficiency with a view to supply safety as well as environmental and health concerns. Finally, a reform of Danish harbours is being considered to improve competition between these and/or their competitiveness.

Conclusions and recommendations

51. The revisions of the Danish Competition Act have achieved harmonization with EU rules. There is no need for further revisions of the substantive rules. Denmark might consider **change of the dominance test used in merger control to match the new substantive test of the EU:** "A concentration which would significantly impede effective competition, in particular by the creation or strengthening of a dominant position, shall be prohibited." This would allow Danish merger control to target mergers that do not create a dominant position but have anti-competitive effects nonetheless. The Danish Government's October 2004 proposal to Parliament included harmonisation of this substantive merger test. In addition, a downward revision of the very high thresholds for mergers in Denmark to fall under the DCA might be considered. This would allow for more complete merger control and possibly lead to increased credibility of this important policy area.

52. The Danish Competition Authority has been the prime mover in the emerging competition practice, supported by the Competition Council. The Competition Appeals Tribunal, on the other hand, is still a reactive body with no clear role in competition policy. The Tribunal's short and perfunctory reversals have led to a sense of lack of direction in Danish competition policy.

53. The Authority seems genuinely committed to changing the Danish competition culture. It has increased the general awareness of competition issues in society in general and in the business community in particular. This has been achieved through high-profile media coverage, not least in connection with the electricians' cartel. However, many antitrust issues persist. Prices remain unusually high in Denmark in non-traded sectors. The Tribunal has quashed the Council's pro-competitive decisions in the dairy sector. Competition problems remain in the construction sector and in building materials.

54. **Competition institutions could be streamlined.** First, the **Competition Council could be made more workable**, e.g. by reducing its size and expecting members to spend more time on competition issues. Its size could be reduced eliminating members that represent other institutions and organizations. This recommendation is especially important following the introduction of merger control since tight deadlines and sensitive information make the Council an unwieldy decision maker. Five to seven independent competition commissioners who would spend more time on competition policy could be an alternative to consider.

55. Second, **a true court could replace the Competition Appeals Tribunal.** This would mirror the EU system under which Commission decisions may be appealed to the Court of First Instance. In turn, this would probably professionalize both the decisions of the appeals instance and the decisions taken by Council or Authority, since it would be more obvious that the standard of proof would be that of the court system. Alternatively, it might be worth increasing the number of members of the Tribunal. This would probably lead to decisions that would be more reasoned and contribute better to the development of sound competition practice.

56. **Private litigation could be encouraged.** There are several obstacles to private litigation at present. The most obvious is the lack of transparency regarding the identity of competition law offenders. The publication of all offenders' identity and the cases in which they have been involved should be mandatory. Secondly, by allowing class actions the costs and benefits of a lawsuit for damages would be better balanced.

57. **An independent body should decide on the appropriateness of state aid.** Today the relevant minister makes this judgment. This renders the decision unduly political.

58. **Advocacy should address the anti-competitive effects of the planning act and the opening hours act.** While the proposed initiatives are welcome, it seems that politicians and the Competition Authority are beating around the bush.

BIBLIOGRAPHY

Blomgren-Hansen, Niels and Peter Møllgaard (2004) "Kampen om mælken: Konkurrenceråd vs. monopol og ankenævn" (The battle for the milk – Competition Council v. Monopoly and Appeals Tribunal), *Økonomi og Politik* 77(2): 18-34.

Danish Competition Authority (2003) "Elsam og Energi E2 afgiver tilsagn så konkurrencen fremmes" (Elsam and Energi E2 make concessions to improve competition) *Press Release*, 26 March

Danish Competition Authority (2004a), *Konkurrenceredegørelse 2004 (Annual Report on Competion Policy)*, Copenhagen: June.

Danish Competition Authority (2004b) *Fusionen mellem Elsam og NESA* (*The merger between Elsam and NESA*), Copenhagen: March; www.ks.dk/konkurrence/afgoerelser/2004/R2403/elsam/

Faull, Jonathan and and Ali Nikpay (1999) *The EC Law of Competition*, Oxford University Press.

Møllgaard, Peter and Claus Kastberg Nielsen (2004) "The Competition Law and Economics of Electricity Market Regulation", *European Competition Law Review* 25(1): 37-43.

Thiesen, Henning; Sonja Ponikowski and Hans Jakob P. Folker (2002) "Den strafferetlige behandling af konkurrencelovsovertrædelser" (Competition offences in a criminal law treatment), Annual report 2001-02 from the Director General of Public Prosecution: 111-123.