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**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN DENMARK**

-- 2012 --

*This report is submitted by Denmark to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 19-20 June 2013.*

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## 1. Changes to competition laws and policies, proposed or adopted

### 1.1 *Summary of new legal provisions regarding the Danish competition rules*

1. In December 2012 the Government adopted a new Danish Competition Act. It amends the legal framework for sanctions as follows:

- Imprisonment for up to 18 months for participating in a cartel, provided the infringement is committed intentionally and is of a grave nature, particularly as a result of the extent of the infringement or its potentially damaging effects. Under particularly aggravating circumstances, a sanction of up to six years imprisonment may be imposed. Such circumstances could for instance be that the cartel has a substantial scope or substantial harmful effects.
- The leniency rules will also apply to imprisonment, however, only for the first applicant who can obtain withdrawal of the charge. For subsequent applicants it is for the courts to decide on a possible reduction of sentences in accordance with the general rules of the Danish Penal Code.
- Besides the introduction of imprisonment, the level of fines imposed on natural persons and undertakings has been increased considerably by increasing the basic amounts for the gravity of an infringement. The basic amounts work as guidance for the courts when they set the fines for infringements of the Competition Act.
- In relation to undertakings, the basic amount for a minor infringement can be up to DKK 4 000 000 (€ 536 500); the basic amount for a serious infringement is set between DKK 4 000 000 and DKK 20 000 000 (€ 2 700 000) and the basic amount for a very serious infringement is from DKK 20 000 000 and upwards.
- For natural persons, the basic amounts will be at least DKK 50 000 (€ 6 700), DKK 100 000 (€ 13 400) or DKK 200 000 (€ 26 800) depending on the nature of the infringement (minor, serious or very serious).

2. Furthermore, the new Competition Act introduces a number of key procedural changes among which the most important ones are:

- Interim measures: If, according to a preliminary assessment, an agreement or conduct is deemed to be in breach of Section 6(1), Section 11(1), or Article 101(1) or Article 102(1) TFEU, and if it is deemed that there is the risk of serious restriction of competition, unless quick action is taken, the Competition Council may issue an order which is intended to terminate the restricting effects of the agreement or conduct. The Competition Council's decision shall be brought before the Competition Appeals Tribunal within ten working days and needs to be upheld by the Tribunal in order to become effective.
- Introduction of a preliminary statement of objections at a very early stage in the proceedings and with a time limit of two weeks for the parties to reply. After the conclusion of the investigations, a statement of objections will be sent to the parties with a time limit of six weeks to reply. A third consultation of the parties may take place if the draft decision contains new information resulting in an assessment different from the one presented in the statement of objections.

## **1.2 Other relevant measures, including new guidelines**

3. The Danish Competition and Consumer Authority has published guidelines for municipal purchases through public procurement. Focus of the guidelines is on how the municipalities can avoid unnecessary transaction costs, how they can detect possible cartels and how they can challenge monopolies.

4. In 2012, the Danish Competition and Consumer Authority adopted a strategy with the prevention of competition law infringements as its purpose. The strategy contains a number of concrete initiatives which will be carried out during 2013 and 2014. Among other things, the Authority is carrying out an information campaign about the strengthening of the sanctions for infringement of the competition rules.

5. During 2012, the Danish Competition and Consumer Authority has worked out a new strategy. One of the objectives in the new strategy is visible effect in the markets. As part of the strategy the Authority has pointed out a number of trades and specific areas which the Authority will focus on in the coming years. The strategy was launched in the beginning of 2013 and will run until 2016.

## **2. Enforcement of competition laws and policies**

### **2.1 Action against anticompetitive practices, including agreements and abuses of dominant positions**

6. On behalf of the Danish Competition Council, the Danish Competition and Consumer Authority carries out the preliminary investigations in competition cases, e.g. through dawn raids, interviews, and requests for information. On the basis of the investigation, the Authority can decide either: a) to dismiss the case, b) in minor cases decide the case, c) in major and principal cases to present the case to the Danish Competition Council, or d) to hand over the case to the Public Prosecutor for Serious Economic and International Crime for criminal enforcement. Sanctions for infringement of the Danish Competition Act are imposed by the courts. It is the Public Prosecutor who decides whether there is sufficient evidence to bring a case before the courts.

7. The Danish Competition Council has the power to issue an order to bring the infringement to an end or to issue a commitment decision. The Danish Competition Council has no power to impose fines. Fines for breaches of the Competition Act can only be imposed by the courts.

#### **2.1.1 Summary of activities of competition authorities and courts**

8. The Danish Competition and Consumer Authority decided approximately 100 cases in 2012. Principal and major cases are decided by the Competition Council. In 2012, the Competition Council decided 10 cases. Of the 10 cases, four of them concerned the prohibition against anti-competitive agreements, one case concerned abuse of dominance (but the Council decided that there were not sufficient grounds to decide whether the company had infringed the prohibition against abuse of dominance), one case concerned both the prohibition against anti-competitive agreements and abuse of dominance, two decisions concerned the delivery of a reasoned opinion about a public regulation, and two decisions concerned mergers approved with remedies.

9. In 2012, Danish Courts imposed fines in 3 cases. One case concerned a cartel, another case concerned resale price maintenance, and the third case concerned failure to correct wrong information in a merger case. The Danish Competition and Consumer Authority handed over nine cases concerning infringements of the Danish competition rules to the Public Prosecutor for Serious Economic Crime in 2012.

**Table 1. Decisions by the Competition Council and the Courts**

	Overall	With direct effect
<b>Competition Council decisions</b>	10	7
Abuse of dominance	1	0
Anti-competitive agreements	4	4
Abuse of dominance/anti-competitive agreements	1	1
Mergers	2	2
Public regulation	2	0
<b>Cases handed over to the Public Prosecutor for Serious Economic Crime</b>	9	-
<b>Court decisions on fines</b>	3	-
Anti-competitive agreements	2	-
Wrong information	1	-

### 2.1.2 Description of significant cases, including those with international implications

- Anti-competitive Boycott Agreements in the Real Estate Business

On January 25, 2012, the Danish Competition Council decided a case in which more than 65 per cent of the Danish real estate business, including the trade association and the six largest cooperative chains of independent estate agents, had been involved in anti-competitive boycott agreements against one particular property search portal, Boliga.dk.

The Competition Council ordered the parties to terminate and to abstain from any future agreements, decisions or concerted practices which have as their direct or indirect object or effect the restriction of individual estate agents' rights to allow Bolige.dk (or other property search portals) to show photos of their clients' properties.

The parties challenged the Council's decision before the Competition Appeals Tribunal. The Tribunal upheld the decision.

As the case concerned a serious violation of Section 6 of the Danish Competition Act, the Danish Competition and Consumer Authority has submitted the case to the Public Prosecutor for Serious Economic and International Crime.

- Radio Access Network sharing agreement between Telia Denmark A/S and Telenor A/S

On February 29, 2012, the Danish Competition Council cleared a horizontal production agreement in the mobile telecommunications sector. The clearance was subject to conditions.

Telia Denmark and Telenor plan to implement a network sharing agreement via a joint venture, Newco, by which they will jointly own, control and develop the RAN-infrastructure (Radio Access Network) needed for their respective businesses. RAN is a component in the production of mobile telecommunications (mobile telephony and mobile broadband). The purpose of the

parties' agreement is to optimize their respective businesses by obtaining efficiency gains, i.e. cost reductions and the creation of a better network in terms of better coverage and technology.

The Danish Competition Council identified six issues which gave rise to competition concerns. Five of the issues were solved by commitments offered by the parties. Accordingly, there were no grounds for action according to TFEU article 101 (1) and Section 6 of the Danish Competition Act. The last issue met the criteria for individual exemption in TFEU article 101 (3) and Section 8 of the Danish Competition Act.

- Ritzau's News Service

On 27 June 2012, the Danish Competition Council adopted a commitment decision in order to address competition concerns in the Danish market for news services. The decision relates to the behaviour of the Danish news agency Ritzau Bureau A/S.

The preliminary investigations indicated that Ritzau had a dominant position in the national market for news services. The Competition Council was concerned that Ritzau had abused its position in this market by obliging its owners (the newspapers) to buy Ritzau's general news services and by entering into an agreement with the newspaper company MetroXpress Denmark A/S which could only be terminated by MetroXpress on payment of a termination fee.

In order to rapidly end the Competition Council's investigations, Ritzau offered commitments to meet the Council's concerns. Ritzau committed itself not to oblige its owners to buy its general news service as a condition of ownership. It also agreed to modify its agreement with MetroXpress, such that the contract could be terminated with a 12 months' notice and without payment of a fee. The commitments are binding for a period of five years.

- Two laboratories and their directors fined for bid-rigging

On 25 March 2011 a Danish City Court passed sentence upon two environmental laboratories and their directors for infringing Section 6 of the Danish Competition Act by co-ordinating their bids. The infringement consisted in two cases of bid-rigging within three weeks.

The laboratories were each fined DKK 500,000 (€ 66.600) and their directors were each fined DKK 25,000 (€ 3.300). The Danish High Court has confirmed the sentence of the City Court and stated that all defendants deliberately entered into an agreement which violated section 6 of the Danish Competition Act.

## **2.2 Mergers and acquisitions**

### *2.2.1 Statistics on number, size and type of mergers notified and/or controlled under competition laws*

10. In 2012, the Danish Competition and Consumer Authority has dealt with 36 merger notification. 33 of the merger filings were approved without remedies in phase one, two were approved with remedies, and one merger filing was withdrawn by the notifying parties.

11. Of the 33 cases which were approved without remedies, 29 were threatened under the simplified procedure for approval.

## 2.2.2 *Summary of significant cases*

- Arcus Gruppen's acquisition of Pernod Ricard Denmark

In September, 2012, the Danish Competition Council approved the acquisition by the Norwegian company Arcus-Gruppen Holding A/S of Pernod Richard Denmark A/S which owns a number of significant aquavit brands. The Competition Council approved the merger subject to Arcus' subsequent divestment of the aquavit brand Brøndums which accounts for around 15 per cent of the aggregate sales of aquavit in Denmark.

Before the merger, Pernod Richard dominated total sales of aquavit to Danish consumers. In terms of value, the company's own brands constituted 70-80 per cent of total sales of aquavit in Denmark. Arcus accounted for 10-20 per cent of total sales to Danish consumers, making it the second largest player. Altia Corporation was the next largest competitor with a share of only 0-5 per cent of sales. The merger would lead to a change in the Herfindahl-Hirschman Index (HHI) significantly exceeding the thresholds for establishing that a merger is likely to lead to competition problems. The HHI-level would rise from 6,000-7,000 to 8,000-9,000. The result would be further concentration in an already highly concentrated market. The Danish Competition Council applied diversion ratios as an element in determining whether the merger complied with competition law. The diversion ratios showed that a merger between the parties was likely to result in a price increase in all the relevant and affected markets.

Consequently, the Council found that, without the divestment, the merger would considerably have restricted competition in the relevant markets. The obligation to divest Brøndums removed these competition concerns.

## 3. **The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies**

### 3.1 *Participation in committees*

12. The Danish Competition Authority participates in various committees to represent views on competition issues. At present, the Danish Competition and Consumer Authority's general director is represented in the Danish Productivity Commission. This commission has as its task to identify and recommend ways to improve productivity in both the private and the public sector. Moreover, the Danish Competition and Consumer Authority is represented in a pharmacy committee which looks at ways to harmonize the pharmacy sector. Other committees which the authority is represented in concern among other things the dental sector, the transportation sector, the building sector and the energy sector.

13. It follows from Section 2 (5) in the Danish Competition Act that if the Competition Council finds an aid scheme or public regulation likely to restrain competition or otherwise likely to impede efficient allocation of society's resources, the Council may deliver a reasoned opinion to the relevant minister pointing out the potential adverse effects on competition on the regulation and presenting recommendations for promoting competition in the area concerned. The relevant minister shall respond to the Council's opinion no later than four months after the minister's receipt of the reasoned opinion.

### 3.2 *Reasoned opinions to relevant ministers*

14. In 2012, the Danish Competition Council has delivered two reasoned opinions; one to the Minister for Health and one to the Minister for Transportation.

- Opinion to the Minister for Health

The opinion to the Minister for Health concerned the pharmacy legislation. The Competition Council has recommended a number of ways to enhance competition and efficiency in the sector:

- Ownership of pharmacies should be possible for non-pharmacists and corporations
- No limits on the total number of pharmacies
- Substantial raise in the number of pharmacies that can be owned by the same owner
- Maximum prices instead of fixed prices on prescription and pharmacy only drugs
- Removal of the equalizations scheme
- Ensuring pharmacies in less populated areas through the use of tenders
- More liberal rules for the assortment and the opening hours in pharmacies
- Establishing an internet pharmacy should not be conditional upon ownership of a physical pharmacy and (internet) pharmacies should be allowed to send drugs free of delivery fees

The outcome of the reasoned opinion is a political debate on the subject.

- Opinion to the Minister for Transportation

The opinion to the Minister for Transportation concerned the aviation legislation. The case stemmed from a complaint about access to opening a competing airport terminal in Copenhagen. The Danish Competition and Consumer Authority analysed the possible effects of competition from an additional terminal. The analysis revealed that terminal competition would benefit both carriers and passengers who would have a larger range of choices and cheaper prices.

However, the Danish Traffic Authority determined that aviation legislation prevents the establishment of a passenger terminal owned and operated by a third party. Consequently, the Competition Council was prevented from applying the competition rules in the case.

The complainants have started legal proceedings against The Danish Traffic Authority claiming that their decision was illegal and should thus be declared void. The Danish Competition and Consumer Authority awaits the outcome of this case.

### ***3.3 Annual screening of competition distortions in the legislative programme***

15. In an effort to identify competition distortions inherent in new legislation at an early stage, the Danish Competition and Consumer Authority performs a screening of the government's entire legislative program for the coming parliamentary year. The authority or agency responsible for the individual bills supplies the Danish Competition and Consumer Authority with a brief description of the bills and conducts an initial evaluation of the bills possible risk of distorting competition.

16. The Danish Competition and Consumer Authority conducts its own evaluation of the bills' possible distortive effects on competition. The bills are divided into three categories:

- bills that **do not** contain competition distortions or limitations
- bills that **may** contain competition distortions or limitations
- bills that **do** most likely contain competition distortions or limitations

17. If a bill falls into category 2 or 3 the authority or agency responsible for the bills is supplied with the Danish Competition and Consumer Authority's description of the distortive parts of the proposal in order to make the necessary adjustments. The authority or agency will typically discuss the bill with the Danish Competition and Consumer Authority, and the Danish Competition and Consumer Authority will be asked for its opinion on the bill before it is introduced before the parliament.

18. Furthermore, the Danish Competition and Consumer Authority regularly contributes to inter-departmental working groups and other forums charged with analysing existing policy and making recommendations on new policy.

#### 4. Resources

19. In 2012, the DCCA used DDK 78.8 million inclusive overhead on competition enforcement (Euro 10.6 million). In 2011, the DCCA used DKK 90.2 million (Euro 12.1 million). The decrease in the DCCA's resources from 2011 to 2012 is explained by extraordinary costs in 2011 because of merger and relocation to new premises. The reason to the lower cost in 2012 is also that the Agency in 2012 has completed savings.

##### 4.1 Number of employees (person-Years)

20. In 2012, 69 employees were occupied with enforcing competition law in the DCCA. In 2011, the number was 71.

**Table 2. Employees occupied with competition law in 2011 end 2012**

	2011	2012
<b>Total</b>	71	69
Economists	30	27
Lawyers	26	27
Other professionals	10	12
Support staff	5	5
<b>Applied to:</b>		
Enforcement against anticompetitive practices	30	30
Merger review and enforcement	14	12
Advocacy efforts*	22	24

\*Including staff servicing the Ministry of Business and Growth

#### 5. Summaries of or references to new reports and studies on competition policy issues

##### 5.1 Mobile and Insurance Consumers' Switch of Service Providers

21. The Danish Competition and Consumer Authority conducted an analysis about what is important for consumers when switching providers in the mobile market and the insurance market. Despite their differences, the two markets affect almost all Danes and represent a substantial portion of consumer budgets. The mobile market also represents a market of high mobility, and the insurance market a market of low mobility.

22. The report concludes that the principal motivation for consumer to switch mobile and insurance providers is to save money and thus price advertising would inspire consumer into switching mobile and

insurance provider. However, consumers' lack of involvement in their insurances affects mobility and it makes it difficult for consumer to identify the right insurance providers.

23. The Danish Competition and Consumer Authority finds that transparency in both the mobile and the insurance market should be improved while providing consumers with a better basis for clarifying their own needs. Moreover, the Danish Competition and Consumer Authority recommends that consumers be encouraged to become more involved in their own insurance policies. An initiative that possibly would contribute to address the issue is that insurance brokers consider measures that make them more visible and attractive to consumers. They could, for example, offer 'no cure, no pay' services where consumers only pay if the broker finds a better insurance solution, or offer to split any gain from switching providers between the consumer and the broker.

## **5.2 *The efforts of Danish enterprises in complying with competition and consumer legislation***

24. In 2012, the Danish Competition and Consumer Authority published a report regarding Danish enterprises motivation, legal compliance, knowledge, understanding and perception of the Danish Competition Act and Danish consumer legislation. The Danish Competition and Consumer Authority has interviewed a sample of just over 1,800 Danish enterprises about their efforts to comply with the competition and consumer legislation.

25. The report concludes that 97 per cent of the enterprises comply with the Competition Act by their own assessment and 93 per cent of enterprises comply fully or largely with the consumer legislation also by their own assessment. 9 out of 10 of the interviewed Danish enterprises expressed that ethics is a factor in their compliance with the rules. However, the enterprises state that they pay particular attention to compliance with consumer legislation so as to avoid having dissatisfied customers and negative media attention (bad publicity) and harming their reputation in the industry.