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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN DENMARK

-- 2013 --

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This report is submitted by Denmark to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 18-19 June 2014.

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

1.1 Summary of new legal provisions of competition law

1. On 1st March, 2013, essential amendments of the Danish Competition Act came into force:

- The possibility of imprisonment for up to 18 months for participation in a cartel, provided the infringement is committed intentionally and is of grave nature, especially due to the extent of the infringement or its potentially damaging effects. Under particularly aggravating circumstances, a sanction of up to 6 years imprisonment may be imposed.
- The leniency rules are also applicable to imprisonment, however, only for the first applicant who can obtain withdrawal of the charge.
- Considerable increase in the level of fines to be imposed on natural persons and undertakings.

2. In the beginning of 2013, the DCCA launched a huge awareness campaign (i.a. on television) in order to inform natural persons and undertakings about the tighter sanctions for infringements. Particularly, the possibility of imprisonment has already had an appreciable deterrent effect and has intensified the awareness of the Danish Competition Act.

3. The Danish Parliament adopted changes to the Danish Competition Act, introducing from 1st August 2013 merger fees payable for merger notifications submitted to the Danish Competition and Consumer Authority (DCCA).

4. The fee for a simplified notification is DKK 50,000 (Euro 6,700). For a full notification the fee is 0,015 per cent of the aggregate annual turnover in Denmark of the undertakings involved, subject to a maximum of DKK 1,500,000 (Euro 200,000).

1.2 Other relevant measures, including guidelines

5. January 2013, the DCCA launched its new strategy “Clear effect in the markets” setting a direction for the DCCA’s work until 2016. The DCCA’s resources are to be used where they have the biggest impact. As part of the new strategy, a new part-time position as chief economist was established. The Chief Economist is responsible for the use of economic methods in competition cases and market analysis. The Chief Economist is also responsible for the overall development of economic methodology.

6. The DCCA published guidelines on the proceedings in competition cases handled by the DCCA and the Danish Competition Council. The guidelines contain relevant information for the parties and for a complainant.

2. Enforcement of competition laws and policies

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

2.1.1 Summary of activities of competition authorities and courts

7. The DCCA decided approximately 126 cases in 2013.

8. Principal and major cases are decided by the Competition Council. In 2013, the Competition Council decided 11 cases. Of the 11 cases, five concerned anti-competitive agreements; two cases

concerned abuse of a dominant position; two cases concerned both anti-competitive agreements and abuse of a dominant position, and two cases concerned mergers.

9. In 2013, Danish courts imposed fines in one case involving price agreements between three driving schools. In six cases concerning infringements of the Danish Competition Act, the undertakings involved accepted the fines that were presented to them by either the DCCA or the Public Prosecutor.

10. The DCCA referred 12 cases to the Public Prosecutor for criminal prosecution.

Table 1: Decisions, judgments, acceptances of fines and cases referred in 2013

	Overall	With direct effect
Competition		
Council decisions	11	10
Anti-competitive agreements	5	5
Abuse of a dominant position	2	2
Anti-competitive Agreements and Abuse of a dominant position	2	2
Mergers	2	1
Courts judgments	1	-
Acceptances of fines	6	-
Cases referred to the Public Prosecutor	12	-

2.1.2 Description of significant cases, including those with international implications

2.1.2.1 Anti-Competitive Ethical Rules of the Danish Veterinary Association

11. On May 29, 2013, the Danish Competition Council ordered the Danish Veterinary Association (DVA) to revoke some anti-competitive ethical rules. These rules i.a. prevented the veterinary surgeons from trying to attract customers, who had been referred to the clinic for special treatment of their animals, and they restricted the customers' own free choice of veterinary surgeon.

12. Investigations during the case showed that customers, who had once been referred to a clinic by another veterinary surgeon, would not be accepted as ordinary customers of that clinic. According to some of the clinics, the restriction was based on competitive considerations and collegial loyalty.

13. Other rules prevented the members of the association from establishing a clinic within a range of 15 km from a deceased colleague's clinic before the deceased colleague's practice had been sold (with a maximum of 6 months).

14. More than 90 per cent of all veterinarians in Denmark are members of the DVA, and the DVA had argued that the rules in question were justified, as they aimed at ensuring the best possible treatment of animals and at protecting veterinarians in geographically outlying areas.

15. However, the ethical rules of the DVA as well as public regulation contained other rules to pursue these aims, and the Competition Council found that the claim that restrictive rules were justified because they aimed at ensuring fair conditions of competition on the market was by nature unfounded and should be discarded. Based on the content of the rules and the objective aims pursued by them as well as the context in which they were applied and the actual conduct and behavior of the parties on the market, the Competition Council found that the rules had as their object and effect to restrict competition on the Danish veterinarian market.

16. The Competition Council stated that the rules constituted a violation of the prohibition against anti-competitive agreements and ordered the DVA to revoke the rules and to abstain from readopting or enforcing rules with the same or similar purpose or effect as the rules in question.

17. On appeal by the DVA, the Competition Council's decision was upheld by the Competition Appeals Tribunal in December 2013.

2.1.2.2 Abuse of a dominant position by the German engine manufacturer Deutz

18. In 2010, the Danish State Railways, DSB, attempted to reach an agreement with Deutz and its Danish distributor, Diesel Motor Nordic A/S (DMN) regarding the renovation of the engines in DSB's 404 trains. Deutz had originally produced the engines used in the trains. DSB could, however, not accept the price and conditions offered and entered instead into an agreement with a consortium of four smaller companies.

19. The consortium could not meet the terms of the agreement with DSB, because Deutz had refused to supply spare parts to the trains and prevented parallel imports of spare parts, following an agreement with DMN. The spare parts could only be sourced through Deutz. In a few cases the consortium managed to obtain spare parts for DSB; partly by ordering few parts at a time and partly by lying about the destination of the ordered spare parts.

20. Consequently, DSB had to buy the spare parts at a higher price from DMN. DSB stated that the process has contributed to the breakdown of some of the engines in the trains, because they were not serviced in time.

21. On June 12, 2013, the Danish Competition Council found that Deutz had infringed the prohibition against abuse of a dominant position in the Danish Competition Act and the EU Treaty by refusing to deliver the spare parts and by preventing its distributors from fulfilling orders to the Danish market. Furthermore, Deutz and DMN had infringed the prohibition against anti-competitive agreements in the Danish Competition Act and the EU Treaty by entering into an agreement with the purpose of preventing parallel imports of spare parts. Deutz and DMN were ordered to cease the anti-competitive practices.

22. Upon appeal, the Competition Council's decision was upheld by the Appeals Tribunal in December 2013. Following this ruling, the DCCA has referred the case to the Public Prosecutor for the purpose of instituting criminal proceedings against Deutz and DMN.

2.1.2.3 Price fixing between three Danish driving schools

23. September 2013, three driving schools were each fined DKK 25.000 (Euro 3.333) for having infringed the prohibition against anti-competitive agreements in the Danish Competition Act. The three driving schools had fixed prices on driving lessons. The price fixing agreement was announced in the form of an advertisement in a local Danish newspaper during six weeks.

2.1.2.4 Fines for resale price maintenance

24. In the first half of 2013, three larger Danish undertakings were fined for resale price maintenance (the fines were levied before the fine level was raised March 2013):

25. Georg Jensen: A fine of DKK 1 million (Euro 134.000) to Georg Jensen A/S for resale price maintenance. In several cases the undertaking's sellers demanded that the retailer should use Georg Jensen's recommended resale prices as minimum resale prices to consumers.

26. Unilever Denmark: A fine of DKK 1.5 million (Euro 201.000). Unilever Denmark had entered into an agreement with two large Danish supermarket chains not to sell ice cream below the retail price. The case concerned only ice creams intended for individual sale to consumers.

27. BSH Hvidevarer: A fine of DKK 1.5 million (Euro 201.000) to BSH Hvidevarer A/S, which is among the largest supplier of consumer appliances on the Danish market, distributing brands such as Bosch and Siemens. BSH Hvidevarer had agreed with a number of retailers that they had to follow a specific price list. Moreover, BSH Hvidevarer contributed to prevent a German wholesaler from selling the products more cheaply to Danish retailers.

2.2 *Mergers and acquisitions*

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

28. In 2013, the DCCA dealt with 41 merger notifications. 34 of the mergers filed were treated under the simplified procedure for approval. The remaining seven mergers were all approved; one, however, with remedies.

2.2.2 *Summary of significant cases*

2.2.2.1 Approval with remedies of Vilomix Holding A/S' acquisition of A/S Hatting-KS

29. Vilomix Holding A/S, controlled by Danish Agro, produced mineral mixture, vitamins and premix and sold through its subsidiaries veterinary drugs to production animals and package goods to farmers.

30. Hatting-KS, owned by Danish Crown A/S and Tican A/S, produced and sold pig semen and package goods to farmers. Its subsidiary Hatting-Vet sold veterinary drugs to production animals.

31. Vilomix and Hatting-KS were both active on the separate retail markets for (i) veterinary drugs to production animals and (ii) package goods to farmers. Hatting-KS was also active on the market for production and sale of pig semen.

32. The DCCA had concerns that the acquisition could significantly impede effective competition in the market for retail sale of veterinary drugs to production animals. Hatting-Vet had a significant role in

the market for retail sale of veterinary drugs to production animals; Hatting-Vet had within three years obtained a market share of 15 percentage and competed aggressively on prices.

33. In order to address the DCCA's concerns, Vilomix submitted a commitment to sell Hatting-Vet and not to acquire Hatting-Vet or a part of it for a period of 10 years.

2.2.2.2 JYSK Holding's acquisition of the sole control with IDdesign

34. JYSK Holding A/S owned two furniture retail chains JYSK and Bolia. JYSK had 95 stores in Denmark and abroad. Bolia had 7 stores.

35. IDdesign A/S owned the two furniture retail chains IDEmøbler and ILVA. IDEmøbler was nationwide and had 34 stores, while ILVA had 6 stores.

36. Both JYSK and IDdesign were active on the separate retail markets for (i) furniture, (ii) beds and mattresses, (iii) garden furniture, (iv) furniture fabrics and accessories, and (v) lighting. However, given the individual and combined market shares of the parties, only the markets for (i) furniture, (ii) beds and mattresses and (iii) garden furniture could possibly give rise to concerns.

37. Based on analyses of market shares and HHI, illustrative price rises and potential competition, the DCCA found that JYSK Holding's acquisition of IDdesign would not significantly impede effective competition in the markets affected by the acquisition compared to the counterfactual scenario, which most likely was bankruptcy of IDdesign.

38. Although the acquisition could increase concentration in the market, the analyses showed that the counterfactual scenario – bankruptcy and market exit for IDdesign – would be more harmful to competition than the merger.

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

39. During 2013, the DCCA participated in various committees to represent views on competition issues.

40. The General Director of the DCCA participated in the Danish Productivity Commission, appointed by the Government. The commission had as its task to identify and recommend ways to improve productivity in both the private and the public sector.

41. The DCCA was chairing and secretariat to the Public Procurement Act Committee, appointed for the purpose of drafting a bill for the Danish Public Procurement Act based on the new EU Public Procurement Directive.

4. **Resources of competition authorities**

4.1 *Resources overall*

4.1.1 *Annual budget (DKK and Euro)*

42. In 2013, the DCCA's competition related budget for 2013 was DKK 72 million (Euro 9.7 million), inclusive overhead.

4.1.2 *Number of employees (person-years)*

43. In 2013, 70.5 employees were occupied with enforcing competition law in the DCCA. In 2012, the number was 69.

Table 2: Employees occupied with competition law in 2012 and 2013

	2012	2013
Total	69	70.5
Economists	27	26
Lawyers	27	30
Other professionals	12	12
Support staff	3	2.5
Applied to:		
Enforcement against anticompetitive practices	30	36.8
Merger review and enforcement	14	14.9
Advocacy efforts*	22	16.3

* Including staff servicing the Ministry of Business and Growth

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

5.1 *State of public competition 2013*

44. The DCCA conducted an analysis on the state of public competition in 2013, which offers an insight in, to what degree the public authorities puts public assignments on the market and in that way create competition on public purchases.

45. The report concludes that public authorities purchased goods and services from private companies for a total of DKK 300 billion in 2012 and of these were DKK 97.6 billion made subject to tenders. While the Danish state and municipalities create competition on a large part of assignments, the Danish regions puts public assignments on the market to a lesser extent.

46. The number of assignments which are made subject for tenders varies greatly between the municipalities. Where some create competition on more than 30 per cent of the assignments, others subject less than 20 per cent to competition. This indicates a considerable potential for creating competition on more assignments in some municipalities.

47. Furthermore, the report concludes that the Danish public authorities completed 2.453 EU-tenders in 2012, which is a 50 per cent increase since 2010. The Danish public authorities complete approximately as many EU-supplies as Sweden and Finland when the population size is taken into account.

48. In 2013, the DCCA has given efforts to guidance on the legal aspects of public purchases in order to create more clarity about the rules.

5.2 *Barriers to public-private partnerships in municipal and regional public works contracts*

49. The area of focus for this report was the barriers for public-private partnerships (PPP) experienced by the Danish municipalities and regions. In the fall of 2013, the DCCA was aware of 20 Danish contracted PPP projects. In addition there are five projects in tender as well as several in preliminary stages. The number of PPP projects and the attention on the area has grown rapidly in the last years.

50. Municipalities and regions do however experience a number of barriers when entering into PPP projects. The barriers contribute to municipalities and regions opting out of the PPP model in public work contracts.

51. The report concludes that 72 per cent of Danish municipalities and regions consider using the PPP model for public works contracts. But only around 20 per cent of the municipalities and regions have established one. Furthermore the report identifies a number of internal and external barriers.

52. Barriers in internal conditions are ascribed to the municipalities' and regions' expectation to or experience with PPP and the main barriers here are described as the PPP process being time-consuming and resource-intensive. Barriers in external conditions are mostly present in the market for construction services and financial services and the main experienced barriers in this area are the price on private financing being too expensive and the competition in the market of suppliers being too lax.

53. Finally, the report concludes that the assessment of PPP by municipalities and regions depends on whether they have already gained experiences from a PPP or whether they are just considering establishing a PPP project.

5.3 *The markets of private chiropractors and physiotherapists*

54. The regulation of the chiropractor and physiotherapist markets is intended to support a number of societal considerations, including considerations of health policy targets, considerations of public expenditure control in this sector and considerations of ensuring high consumer welfare.

55. The report concludes that the current regulation of the practice sector on the chiropractor and physiotherapist markets prevents efficient and equal competition between enterprises. The regulation impairs the healthcare providers' incentive to develop and offer high-quality services at low rates and to operate their practices more productively.

56. Furthermore the report finds that particularly the restriction of numbers, the capacity restriction, the fee system and, to some degree, the ownership provisions impair (i) the incentive to improve productivity to the benefit of the consumers and society, (ii) the potential for operating the practices efficiently and (iii) the potential for the more productive and efficient practices to grow at the expense of those less productive and efficient. The report also concludes that there is a large potential for more chiropractic treatment and physiotherapy for the same money.

57. Finally the report concludes that consumers experience good service, short waiting times and accessibility among chiropractors and physiotherapists.

5.4 *The liberalizing of the book market – an evaluation in the eye of the consumer*

58. Since 2000 the Danish book market has been deregulated and in 2011 the market was entirely liberalized. This report evaluates the effects on the market in the period 2000-2012 and concludes that from a consumer perspective the market is on an overall basis well-functioning. The most sought-out books have

become more available and the sale of fiction and non-fiction books has gone up while the price has gone down. However, the opposite have happened to children and youth books.

59. The report notes that consumers have experienced an increase in the number of available books as well as in the number of interesting books in the last 3-5 years.

60. The report estimates the consumer advantages of the liberalization to DKK 319 million. Because of a number of different changes on the book market simultaneously with the liberalization, the consumer advantage has a significant uncertainty to it which means that the positive development on the book market cannot solely be ascribed to the liberalization.

5.5 Parcel distribution to consumers

61. This report examines the market of distribution of goods bought online which is growing fast. Since 2007 the trade from e-commerce in Denmark has grown 17 per cent annually and in 2012 more than 3 million Danes traded for more than DKK 55 billion online.

62. The report concludes that the Danish list prices for the distribution of parcels of 1-2 kg are 10-36 per cent higher than abroad, when adjusted for VAT differences. At the same time the list price in 2011 for a priority domestic letter product of 1 kg and a domestic parcel product of 2 kg was 17 per cent and 14 per cent, respectively, higher in Denmark than the average prices in the EU9 countries and Norway.

63. Furthermore for a small Danish e-tailer selling some of the most frequently bought goods, the average list prices for distribution are about 14 per cent higher than the average list prices for corresponding e-tailers abroad.

64. Finally the report concludes that even though the competition for parcel distribution has increased in recent years, Denmark has relatively few businesses offering parcel distribution compared with France, Germany and Sweden and that 54 per cent of the e-tailers only use one distributor, frequently the incumbent operator.

5.6 SME-participation in public procurement

65. This report examines to what extent SMEs participate when the Danish public sector contracts out publicly provided services. In addition to this, the report looks into what barriers that limits SME participation and also what kind of initiatives that can reduce such barriers.

66. The report concludes that SMEs participate in two thirds of the public tasks in which there was a call for a tender. The rate of SME participation is considered quite high. However, the report highlights a list of barriers, which potentially limits the SMEs participation in the competition. The barriers are summarized as (i) resource demanding procurement processes, (ii) complex and inflexible procurements with unnecessarily high requirements, and (iii) the need for more knowledge about public procurement rules.

67. In order to promote SME participation in the competition for publicly provided services, the DCCA recommends among other things (I) enhancing the use of e-procurement, (II) increased use of functional requirements, (III) further development of that part of the DCCA's homepage "udbud.dk", where calls for a tender from all contracting authorities are published, and (IV) guidance to contracting authorities on how to carry out market research.

5.7 *Competition in the Danish retail banking market*

68. This report examines the competition in the Danish retail banking market and it is the DCCA's opinion that there is room for improvement of price competition. Banks are not sufficiently challenged on prices – neither by other banks nor by the consumers. Only few consumers are active on the retail banking market. When purchasing a loan from the bank, nearly four out of five Danish consumers only contact one bank to get an offer. Nevertheless, three out of four consumers are sure that they got the best deal. Furthermore, most consumers do not negotiate prices or terms with the bank before accepting the offer on a loan.

69. In order to increase consumer activity and price competition on the Danish retail banking market, the DCCA recommends among other things that (i) consumers search the market, compare offers and explore the possibility of doing business with more than one bank, (ii) banks develop standard outlines that includes the cost of customers' banking transactions in a simple manner to emphasize the most important messages at the top of the document, (iii) banks extend their opening hours, and (iv) a line of initiatives are implemented, which make it easier for the consumers to be more active on the retail banking market.

5.8 *Improved competitive condition on the extraction of raw materials at sea*

70. This report analyses the regulation on extracting raw materials at sea and presents initiatives to improve the competitive conditions. The report is a joint work between the DCCA and the Danish Nature Agency.

71. The two most important types of extraction areas are auction areas with exclusive rights and common areas with free access. There have been only a few bids on the auctions and the industry has noted that it is both hazardous to bid and that the exclusive period is too short.

72. Against this backdrop, the report recommends that (i) the extractors have to register a specific field/area rather than an area of waters to achieve more transparency on, what is being auctioned, (ii) the extractors are obligated to bid on the registered areas and thus have to put up collateral already when showing an interest, (iii) the winner of the auction is he who makes the highest bid per square meter, and not the highest bid per square meter times amount as has been the procedure so far. This is to create easier access for smaller firms, and (iv) the exclusive rights period is increased from 5 years to 8-10 years.

5.9 *Knowledge base on behavioural economics*

73. This short theoretical analysis focuses on the knowledge base of behavioural economics. Behavioural economics complements the classical economic theory and uses insight from empirical observations and the world of psychology to adjust the economic theory, so it takes into account some of the observable patterns of behaviour. The paper concludes that the combination of classical economic theory and behavioural economics creates the foundation for a better understanding of actual behaviour and political initiatives.

74. The DCCA will use behavioural economics to a greater extent in their analytical work.

5.10 *Analysis of 21 'green' brands*

75. This report aims to provide a qualified evaluation of the 20-25 most common 'green brands' on the Danish market, as well as work out inspirational proposals for the Ministry of Business and Growth and Ministry of the Environment to use in their ongoing work.

76. The report concludes among other that (i) the knowledge among consumers is limited to only a few brands, (ii) several brands are overlapping, (iii) both the environmental and ecological brand of the European Union are fairly unknown among consumers, and (iv) consumers find the brands most trustworthy if it's represented by a public authority followed by nongovernmental organizations.

77. Against this backdrop, the report proposes to (I) develop a simple brand guidance for businesses to create credibility in their brands, (II) work towards synchronizing the national and Nordic brands with the environmental brand 'Blomsten' from the EU, and (III) propagate and inform about the green brands of the European Union.