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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN DENMARK

-- 2014 --

16-18 June 2015

This report is submitted by Denmark to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 16-18 June 2015.

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

1.1 Summary of new legal provisions of competition law and related legislation

1. In December 2014, the Danish Parliament adopted changes to the Competition Act involving a number of initiatives aimed at enhancing efficiency and independence of the DCCA in competition matters.

2. One major change relates to the composition of the Competition Council:

- Today, the Danish Competition Council consists of 18 members of which nine are appointed by the trade organisations.
- The new Competition Council will be a smaller, professional entity consisting of 7 members with expertise in law, economics, consumer affairs and management experience from business community. The Competition Council will continue to be politically independent and will have the overall responsibility for the administration of the Competition Act.
- In addition to the new Competition Council an advisory committee will be established consisting of, *inter alia*, representatives of the trade organisations. The advisory committee will provide input to the Competition Council but will have no authority concerning enforcement of the Competition Act.

3. Further, the amendment to the Competition Act brings increased independence to the DCCA's competition analyses:

- Today, analyses carried out by the DCCA are formally subject to the approval of the Minister of Business and Growth, albeit in practice they are to a large extent independent of the minister.
- In order to ensure that the DCCA can carry out analyses independently of political interests, it will be for the new Competition Council to decide which analyses the DCCA will carry out and to approve these.
- The minister will still have the possibility to ask the DCCA to carry out analyses subject to the approval of the minister.
- When analyses are published it will be stated whether the analysis has been commissioned by the Competition Council or by the minister.

1.2 Other relevant measures, including new guidelines

4. In June 2014, the DCCA published guidelines on consortia agreements. The guidelines list the overall criteria that the DCCA will make use of in an assessment of whether an agreement between companies concerning joint bidding on a tender constitute an infringement of the competition rules.

5. In September 2014, the DCCA published guidelines on exchange of information within trade organizations. The guidelines concern the unilateral information from the trade organization to its members as well as the exchange of information between the members. The guidelines explain existing case law from a practical point of view and are divided into different chapters focusing on subjects such as recommendations, calculation programs, forecasts, exchange of information and standard terms. The guidelines have been distributed to the majority of trade organizations in Denmark and the DCCA has given presentations on the guidelines to various trade organizations as well as competition law forums.

6. Finally, in the Fall 2014 the DCCA also worked on a pamphlet focusing on public authority initiatives that might risk infringing competition law. Such risks may arise where a public authority encourages agreements on a voluntary basis between companies belonging to the same sector and this leads to the direct or indirect sharing of commercial information between those companies. The pamphlet has been distributed to the majority of agencies and ministries in Denmark and the DCCA has given presentations on the areas of attention to public authorities.

2. Enforcement of competition laws and policies

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

7. In Denmark, principal and major cases are decided by the Competition Council. In 2014 the Competition Council decided 10 cases. Of the 10 cases 5 concerned anti-competitive agreements; 1 concerned abuse of dominance and 4 cases concerned mergers.

8. Fines for infringements of the competition rules are imposed by the courts. It is, however, possible both for the DCCA (under certain circumstances) and for the Public Prosecutor to present a fine to an undertaking and/or a person (typically one having had a leading role in a cartel). In 2014 12 persons and 20 undertakings accepted fines that were presented to them either by the DCCA or the Public Prosecutor.

9. The DCCA has referred 9 cases to the Public Prosecutor for criminal prosecution.

Table 1: Decisions, judgments, acceptances of fines and cases referred in 2014

	Overall	With direct effect
Competition Council decisions	10	8
Anti-competitive agreements	5	5
Abuse of a dominant position	1	1
Mergers	4	2
Courts judgments	0	N/A
Acceptances of Fines	32	32
Cases referred to the Public Prosecutor	9	N/A

2.1.1 Description of significant cases, including those with international implications.

- Danish Construction Cartel

After carrying out dawn raids in 2010, the DCCA notified the police about infringements in the construction industry. Police investigations led to charges of 28 companies, all of which are suspected of bid rigging. Until date (May 2015) cases against 17 of the companies have been settled with acceptances of fines. Furthermore, a number of personal fines have been accepted by leading employees in the companies. Until date the fines amounts in total to around DKK 27 million (app. € 3.600.000). One of these cases represents the largest fine until date imposed in a Danish competition case. The case concerns an infringement that took place from 2007 until 2009, and the company accepted to pay a fine of DKK 10 million (app. € 1.333.333).

- Margin squeeze at the payments market settled with commitments

In May 2014 the Competition Council settled a case with commitments from Nets. The case stemmed from an inspection conducted at Nets in 2012 based on a complaint. Nets is active on the upstream market for processing services and Teller (a Nets subsidiary) is active on a downstream for acquiring international payment cards. The DCCA's investigations centered on allegations of an illegal margin squeeze by Nets through pricing on the upstream market for

processing of payment card transactions through Nets' infrastructure (upstream) and Teller's pricing in the acquiring market (downstream). The DCCA also investigated alleged excessive pricing by Nets on upstream processing services to a number of the acquirers that are downstream competitors to Teller. Commitments were offered by Nets to introduce a new wholesale pricing model for front-end acquiring processing services which significantly reduce the average prices charged for such services for competitors of Nets subsidiary Teller. The commitments also provided all of Teller's customers with an extraordinary termination right from Nets services. The Competition Council accepted the commitments to address concerns about violations of Section 11 of the Competition Act and Article 102 TFEU.

- Fixed selling prices and shared markets of supply at the milking robot market

In June 2014 the Competition Council decided that a franchisor and four franchisees at the milking robot market had infringed Section 6 of the Competition Act and Article 101 TFEU. The Competition Council found that the companies had agreed to fix selling prices and share markets by agreeing not to make passive sales of the robotic milking systems and associated services, accessories and spare parts outside the area each franchisee was assigned.

- Agreement between medicine wholesalers

In November 2014 the Competition Council required the two largest distributors on the Danish wholesale medicine market to put an end to their coordination of fees and other trading conditions for the service they offered pharmacies and medicine manufacturers. The two distributors had restricted competition by agreeing a joint set of rules to all medicine manufacturers on the Danish market. The rules concerned, among other things, the prices for the handling of returned good from the pharmacies. As this market is highly regulated the agreement impaired the few remaining competition parameters between the market actors.

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 2014, the DCCA dealt with 35 merger notifications. 30 of the mergers filed were treated under the simplified procedure for approval. The re-remaining five mergers were all approved; one, however, with remedies.

2.2.2 Summary of significant merger cases

- Merger in the audit and tax counseling industry

In June 2014 the Competition Council approved a merger between KPMG Denmark and Ernst and Young. Both companies are active in the markets for audit services for large corporations and for tax counseling for large corporations. These markets are dominated by four big players, including KPMG and Ernst and Young. The services offered by the parties are regularly put out to tender, and the number of potential bidders, therefore, has a significant effect on the competition. The merger would decrease the number of players in the markets. In addition, coming EU legislation will likely reduce the number of potential bidders even further. Nevertheless, at the same time as the merger between KPMG Denmark and Ernst and Young was announced KPMG International established a new branch. To address the Competition Council's concerns, the parties offered commitments that would help the entry of KPMG International's new branch. The commitments entail that up to 200 former or current employees of KPMD and Ernest and Young will be released from some of their non-solicitation obligations and have their notice periods limited. As the competition Council assessed that the commitments would eliminate its concerns the merger was approved. As part of the notified merger, KPMG DK

terminated its co-operation with KPMG International. The Competition Council considered that the termination was a provisional step to carrying out the merger. In December 2014 the Competition Council decided that the termination of the co-operation agreement constituted a partial implementation of the merger prior to its approval and therefore a breach of the stand-still obligation in the Danish merger control rules.

3. Resources of competition authorities

3.1 Resources overall (current numbers and change over previous year):

3.1.1 Annual budget (in your currency and USD)

11. In 2014 the DCCA's competition related budget was DKK 69,9 million, USD 11,7 million. In 2013 DKK 72, 0 million, USD 13, 1 million (The amount in dollars is calculated using the exchange rate in December of 2013 and 2014).

3.1.2 Number of employees (person-years)

Table 2: Employees occupied with competition law in 2013 and 2014

	2013	2014
Total	70,5	72
Economists	26	25
Lawyers	30	35
Other professionals	12	10
Support staff	2,5	2
Applied to:		
Enforcement against anticompetitive practices	36.8	41,5
Merger review and enforcement	4.9	7,5
Advocacy efforts*	16.3	23,0

* Including staff servicing the Ministry of Business and Growth

3.2 Period covered by the above information

12. The information above covers the period 2013 and 2014.

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

- Effect analysis - An estimate of the consumer gains due to the efforts of the DCCA

In this report the effects of the work of the DCCA in terms of consumer gains is determined by using methods recommended by the OECD. It is estimated that the annual direct consumer gains from the work of the DCCA (excluding, however, certain parts of the DCCA) are around 2 billion DKK in the period 2011-2013. The deterrent effect of the work of the DCCA is not included in the total statement, but foreign empirical studies show that the deterrent effect can be about 12-40 times bigger than the direct effect. If the deterrent effect is taken into account, the gains in the competition area are up to about 45 billion DKK.

- Index for consumer conditions in 50 Danish markets

The focus of this report is the perceived consumer conditions in 50 Danish consumer markets measured by comparability, trust and switching activity. The five markets that get the best rating in the consumer condition index are 'cultural and entertainment services', 'fuel for vehicles', 'commercial sport services', 'dairy products' and 'entertainment goods'. Markets that have a

pleasurable character are generally getting the best rates although they often are more complex than simple product markets, such as the book market. The market for 'fuel for vehicles' is getting the best rating on comparability and is also the market that best meet consumer expectations. On the trust parameter, the market for 'cultural and entertainment services' gets the best rating. The five markets that get the lowest rating are 'meat and meat products', 'investment products, private pensions and securities', 'TV-subscriptions', 'internet provision' and 'mobile telephone services'. The last three markets have had the worst score in 2011, 2012 and 2013, and they also obtain some of the worst rates in other EU countries. The report also concludes that online shopping may contribute to greater transparency and that the majority of the consumers trust online shopping. In addition, the price of products is often lower on the internet, which also plays a significant role.

- Direct debit – advantages and disadvantages of regulation

This report examines the advantages and disadvantages connected to a possible regulation of a direct debit products in Denmark. Betalingsservice is by far the most common direct debit product in Denmark and through Betalingsservice. Nets is the central supplier of direct debit in Denmark. Furthermore, the DCCA's assess that the competition in the direct debit market is limited. The DCCA concludes that a possible regulation could be the introduction of regulation similar to the one that apply to debit cards. As an advantage the regulation can contribute to the prevention of unreasonable prices on direct debit products towards creditors which in the end may benefit the consumers in a market where the current competition level is limited. One of the disadvantages could be that the regulation may affect new entrants' assessment of profitability in relation to the development of new solutions, and hence lead to reduced innovation and limited supply of new products. Furthermore, the regulation could also decrease current agents' incentive to improve their efficiency as well as their interest in investing in quality improvements in existing products. Also, the regulation will not increase the competition in the market itself, but may instead contribute to maintain the existing market structure.

- Elimination of duty on fats

A duty on fat was implemented on October 1, 2011 and eliminated on January 1, 2013. In this report, the DCCA examines the effect on consumer prices in on 27 selected products of this temporary period with a duty on fats. The main conclusion of the analysis is that the duty on fats, in general, has not led to higher consumer prices on the 27 chosen products, which have been subject to the duty on fats. That means that the increases in consumer prices on the products covered by the duty on fats do not differ, in general, from the increases in consumer prices on products that have not been subject to the duty on fats. 6 out of the 27 examined products have been subject to a price increase substantially higher than the general increase in the food price index (5.5 pct.), and the consumer price index (2.5 pct.). For 3 of these products the consumer price increases can completely or mainly be attributed to the supplier link. For the remaining 3 products, the consumer price increases can completely or mainly be attributed to the retail industry.

- Payment Service 2014

Payment Service is one of the best known payment solutions in Denmark and is used by 95 pct. of all Danish households. Through Payment Service, Nets is the central supplier of direct debit in Denmark, which is a payment initiated by the creditor. The DCCA supervises part of the market for payment cards and is obliged to publish a status report every two years. In the period from 2003-2012 Nets has more than doubled their earnings before tax from Payment Service. Furthermore, the number of transactions has increased by approximately 40 pct. and the price per transaction has not fallen, even though the real costs have fallen by 10-30 pct. The biggest

expense in connection with Payment Service is Nets' payment to the banks. It has increased by more than 40-60 pct. in the period from 2003-2012.

- Liberalization of vehicle inspection

Since 2005, the Danish vehicle inspection has gradually been liberalized and the effect of this liberalization, seen through the eyes of the consumers, is evaluated in this report. The report concludes that the development has been positive for the consumer. As an example, the consumer prices have decreased by approximately 12 % in 2013, and the number of places for vehicle inspections has risen, which has reduced the transportation cost by a half. Furthermore, the consumers have experienced that parameters such as flexibility, service and waiting all have improved. In the report, the consumer benefits linked to the change in prices and transportation cost are estimated to approx. 133 million DKK in 2013. The analysis shows that the liberalization has led to increased flexibility, less waiting time and better consumer experience in general, and hence the consumer benefit is probably even higher than estimated.

- The market for payment cards

The aim of this report is to evaluate the development and current conditions on the market for payment cards. The Danes are among the consumers who use payment cards most often, and never before have so many payment cards been issued in Denmark. The most common payment card in Denmark is the Dankort, but also the use of international payment cards has risen. Many Danes have limited knowledge about rules for fees, and 3 out of 4 are not aware that businesses may charge a fee for payments with Dankort in the non-physical trading. The European Commission has put forward a proposal for a payments services directive and a regulation of interchange fees. The directive introduces, among other things a prohibition on passing on charges, while the regulation introduces a number of rules for interchange fees. The directive was passed in May 2015.

- Price cap for drinking water and waste water companies in 2014

Each year the secretariat of the Water Division determines the efficiency requirements and price caps for about 330 municipal or privately owned drinking water and waste water companies covered by the Water Sector Act. In 2014, there was an efficiency potential greater than 1 billion DKK, and from 2011-2014 the secretariat presented efficiency requirement to the operating costs of the companies of about 800 million DKK. From 2011-2014, the upper limit for the drinking water companies was decreased by 4 pct., and increased by 1 pct. for the waste water companies. This means that the drinking water companies have been able to lower the price and the waste water companies have been able to increase the price. From 2011-2013, the water prices for the consumers increased by 3 pct. in real prices when adjusted for a falling water consumption, and, in 2013, the consumers paid on average 24 DKK per m³ drinking water and about 37 DKK per m³ waste water, including VAT and taxes.

- German experience in connection with tenders of regional passenger trains

On behalf of the DCCA, Copenhagen Economics has analyzed the consequences of opening up for tender in the train services. The analysis is based on experiences from Germany, where the train service already is open for tender. It is concluded that, in Germany, they have achieved savings of an average of 26 pct. without a loss of quality. The passengers are at least as satisfied with the new suppliers' services and, in fact, more and more people are now traveling by train. Train lines that were closed, or about to be closed, are again open for service, and new services are being introduced. Furthermore, the German taxpayers are paying less than before since the State contribution to the train service has been reduced, without this leading to extraordinary increases in ticket prices.

- The future of retail

The aim of this report is to investigate whether the current framework conditions sufficiently supports the retail sector of the future and thereby allows for an increase in the competition and productivity in the sector. The report concludes, among other things, that the annual productivity growth in Denmark in the period 1995-2010 is lower than in countries such as the Netherlands, Sweden and Germany, and that the Danish consumer prices on groceries in 2010 is about 23 pct. higher than in comparable countries. After adjustment for various relevant parameters, the Danish prices on groceries are still 4-6 pct. higher than in comparable countries. As a number of smaller suppliers have complained that they face increased requirements from grocery chains it has been discussed whether trade between grocery chains and retail would benefit from regulation. However, the report concludes that the number of suppliers and the total operating margin of suppliers are virtually unchanged from 2001-2010. The Competition Act already applies to a wide range of conditions involved in the negotiations between the suppliers and the grocery chains. Further regulations could limit the possibility of the grocery chains to put pressure on the largest suppliers in the negotiations. Consequently, the DCCA concludes that trade between suppliers and retailers should not be further regulated. In conclusion, international experience shows that larger stores have a positive effect on productivity. Therefore, an easing of the Planning Zoning Act in regards to shop planning could potentially increase productivity in the retail trade.

- The state of public competition 2014

In 2014, the DCCA again conducted an analysis on the state of public competition. This analysis offers an insight into which public assignments that can be, and are being, competed for. The report shows that over the last couple of years, there has been a tendency towards an increase in public assignments that are exposed to competition, but that there still is a substantial potential to create competition for several public tasks. The state, regional and municipality assignments suitable for tender amount to a total value of 390 billion DKK. Out of these assignments a value of 100 billion DKK were exposed to competition in 2013.