

Unclassified

DAF/COMP/AR(2016)3

Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

25-May-2016

English - Or. English

Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE

DAF/COMP/AR(2016)3
Unclassified

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN DENMARK

-- 2015 --

15 -17 June 2016

This report is submitted by Denmark to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held 15 – 17 June.

JT03396540

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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN DENMARK 2015¹

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

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

1. On 1 July 2015, the Danish Competition and Consumer Authority (the DCCA) received the power to review mergers between two or more commercial providers of electronic communications networks in Denmark provided that the undertakings jointly have a total turnover in Denmark of at least DKK 900 million and provided that the merger is referred to the DCCA from the Danish Business Authority. This is an exception to the general conditions for Danish merger review where at least two of the undertakings involved in the merger must have a total annual turnover in Denmark of at least DKK 100 million.

1.2 Other relevant measures, including new guidelines

2. The DCCA has made the following guidelines in 2015:

- Guidance for companies on competition law

3. The DCCA has issued a set of compliance guidelines as a tool for companies to get the competition rules incorporated in everyday life. The objective is to assist in creating a compliance culture within Danish companies.

4. The guidelines provide examples of how companies can comply with competition rules in practice. Among other things the guidelines contain information about the importance of complying with the competition rules, ways for companies to identify areas that they should focus on, tools companies can work with in order to stay on safe ground, and ways for companies to make compliance work more effectively.

5. In addition to the guidelines, the DCCA has prepared a mini guide targeted smaller companies.

- Guidelines on fighting collusion

6. In line with the OECD's 2012 recommendation on Fighting Bid rigging in Public Procurement the DCCA has issued guidelines to public authorities, organisations and companies.

7. The guidelines contain a checklist outlining signs indicating a cartel that a company inviting a tender shall be aware of. Such signs include; suspicious patterns in the bids, lack of bids, pro forma bids, identical errors or calculations, knowledge of confidential information, and suspicious statements from the bidders.

In addition to the checklist the guidelines inform companies inviting a tender about possible actions if they identify signs indicating a cartel.

1.3 Government proposals for new legislation

- Implementation of the Damages Directive

¹ Dato: 17. maj 2016, Sag: JUS-16/03485-1/LOM

8. The Danish Ministry for Business and Growth together with the Ministry of Justice, is in the process of drafting a bill to implement the Directive 2014/104/EU on Antitrust Damages Actions. It will be a new general law.

2. Enforcement of competition laws and policies

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

9. In Denmark, principal and major cases are decided by the Competition Council. In 2015, the Competition Council decided on 6 cases. Of the 6 cases 3 concerned anti-competitive agreements and 3 cases concerned mergers. 5 cases were referred to the Public Prosecutor, and 15 companies have accepted fines.

Decisions, judgments, acceptances of fines and cases referred in 2015

	Overall	With direct effect
Competition Council decisions	6	4
Anti-competitive agreements	3	2
Abuse of a dominant position	0	0
Mergers	3	2
Courts judgments		N/A
Acceptances of Fines	15	
Cases referred to the Public Prosecutor	5	N/A

- The Danish Construction Cartel

10. From 2005 to 2010 there was a cartel among a large number of companies in the construction industry. The cartel is one of the largest cartels ever seen in Denmark, and a total of 28 undertakings have been charged by the Public Prosecutor for coordinating prices in violation of Section 6 of the Danish Competition Act and TFEU Article 101.

11. So far, 23 companies have paid fines for the total of DKK 30.6 million [USD 4.653.885,52]. The largest fine amounted to DKK 10 million [USD 1.520.877,62]. 3 cases have been tried before the court, and 1 company has appealed the decision to the High court. 2 cases have yet to be decided before the court.

- Illegal consortia agreement between two road contractors

12. In June 2015, the Danish Competition Council decided that the two largest operators on the Danish market for road marking had infringed Section 6 of the Danish Competition Act and Article 101 of the TFEU by submitting, through a consortia agreement, a joint bid on a public tender published by the Danish Road Directorate. The Danish Competition Council found that the two operators had the capacity to participate in the tender individually. Therefore, it had not been necessary for the operators to form a consortium to participate in the tender. Consequently, the consortium had restricted competition in the bidding process. The Danish Competition Council ordered the undertakings to end the infringement immediately and to refrain in the future from any action having the same and similar object or effect. The decision was upheld by the Competition Appeal Tribunal in April 2016.

- Case against a chain between independent building surveyors

13. In December 2015, the Danish Competition Council decided a case against Botjek A/S. Botjek A/S is a management company for the Botjek chain consisting of 23 independent building surveyors

(“Botjek-partners”) specializing in producing building condition reports, reports on the conditions of electrical installations and Energy Performance Certificats (EPC)). Following an inspection at Botjek the DCCA found material showing that Botjek A/S had assigned a geographical area of Denmark to each of the Botjek-partners.

14. The Danish Competition Council had concerns that this behavior might constitute an agreement to share the market between the Botjek-partners in violation of section 6 of the Danish Competition Act.

15. Botjek A/S proposed commitments in order to address the Danish Competition Council’s concerns. The Competition Council concluded that the commitments proposed by Botjek A/S ensured that members of the Botjek chain were free to compete with each other and ordered Botjek A/S’ commitments to be binding.

- Investigation into online booking portals ceased

16. In August 2015, the DCCA decided to cease its investigation into the use of MFN-clauses (most favoured nation/ parity clauses) by hotel booking platforms, such as Expedia and Hotels.com. The investigation began in the Spring of 2015. During this period, several other competition authorities likewise investigated online booking platforms, among others Italy, France and Sweden.

17. The clauses were used by the hotel booking platforms in their deals with individual hotels in order to prevent the hotels from offering better prices to rival booking platforms or other costumers. The MFN-clause obligated the hotels to offer the same or better prices on the hotel booking platform as it did through other sales channels.

18. During the DCCA’s investigations the booking companies offered commitments on amendments of its general MFN-clauses used within the EU, to the Italian, French and Swedish competition authorities.

19. The amended MFN-clauses solved the immediate competition concerns and the DCCA no longer found a need to proceed with its own investigation.

2.2.1 *Summary of significant merger cases*

- Approval of merger between Danish Agro and Hedegaard Agro

20. In June 2015, The Competition Council approved the merger between Danish Agro and Hedegaard Agro. Before the merger Danish Agro held more than 50 per cent of the shares in Dan Agro which owns Hedegaard Agro. However, due to a voting ceiling in the company’s articles of association Danish Agro did not have control over Dan Agro.

21. As a consequence of the merger, the market for poultry feed, which is already characterized by consisting of few, large companies, would lose an independent competitor. The commitment of Danish Agro to divest two of its production facilities made it possible for other suppliers of agricultural inputs to either enter the market or to expand. Danish Agro provided a total of nine binding commitments. The Competition Council assessed that the commitments would accommodate the competition concerns raised by the merger and approved the merger.

- Approval of merger between Discovery and Nordic Television

22. In May 2015, The Competition Council approved the merger between Discovery and Nordic Television.

23. Discovery is the third largest player on the TV market in Denmark, and already before the merger, the owner of 12 TV channels, including Kanal 4, Kanal 5, 6'eren and Eurosport 1 and 2. The company holds, among others, the right to broad-cast football matches from the English Premier League and had at the time recently acquired a package with Danish Superliga matches for the coming six seasons. Nordic Television held the rights to broadcast matches from the Superliga, La Liga, Serie A and Europa League, but all these rights expired by the end of June 2015. The Competition Council assessed that Nordic Television in all probability would exit the market if the merger was not carried out. Discovery would then instead place its newly purchased Superliga rights on its existing channels, and raise the prices. On these grounds, the Danish Competition Council concluded that the merger would not significantly impede effective competition on the relevant markets and approved the merger.

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

3.1 Proposal to the Minister of Health on amending the Law on specialist practitioners

24. The DCCA has dealt with a case where the specialist practitioners' trade association encouraged its members to limit the number of treatments, in order to avoid a reduction in payments from the relevant public authorities.

25. The DCCA found that the activities by the specialist practitioners, to co-ordinate and restrict the number of treatments, constituted an infringement of section 6 of the Danish Competition Act.

26. In this case the Minister of Health estimated that the practice was a direct or necessary consequence of public regulation and the DCCA was therefore ineligible to intervene according to section 2(5) of the Danish Competition Act. Section 2(5) of the act provides that if a restriction on competition is imposed by law, the Competition Act does not apply. It is the resort minister who decides whether a restriction is imposed by law.

27. On this basis the Competition Council proposed an amendment to the Law on Specialist Practitioners to the Minister of Health.

28. In October 2015 the Minister of Health answered and acknowledged in a response to the Competition Council the need for taking competition into consideration in the regulation of medical specialists.

4. Resources of competition authorities

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

4.1.1 Annual budget (in your currency and USD):

29. In 2015 the DCCA's competition related budget was DKK 86,9 million, USD 12,2 million*. In 2014 DKK 69,9 million, USD 11,7 million*.

* The amount in dollars is calculated using the exchange rate in December of 2014 and 2015. The amount used in the Danish currency (DKK) grew by 23% from 2014 to 2015, but due to a higher exchange rate, the amount in UDS only increased slightly.

4.1.2 *Number of employees (person-years):***Employees occupied with competition law in 2014 and 2015**

	2014	2015
Total	72	87
Economists	25	27
Lawyers	35	43
Other professionals	10	14
Support staff	2	3
Applied to:		
Enforcement against anticompetitive practices	41,5	42
Merger review and enforcement	7,5	12
Advocacy efforts	23	33

*Including staff servicing Ministry of Business and Growth

4.2 *Period covered by the above information:*

30. The information above covers the period 2014 and 2015.

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

- Study on the competition on public procurement through central framework agreements

31. The study investigates whether there is effective competition between enterprises when they sell their products to public customers through central framework agreements, and whether it is easy for customers using central framework agreements to purchase good and useful products at a low price. If that is the case, central framework agreements can contribute to effective public procurement and to supporting well-functioning markets.

32. To form an overall picture of the competitive situation, the DCCA has chosen to analyze all markets with central framework agreements collectively rather than examining individual markets in this study.

33. In summary, the study findings seem not to give a direct indication that central framework agreements will have an impact on market structures in the long term when analyzed across the agreements examined. No in-depth analyses have been made of the individual agreements to analyze the potential impact on the market structures of individual markets. In order to shed light on the impact on individual markets, the DCCA has obtained revenue data from Statistics Denmark for the suppliers under the central framework agreements established by the SKI and the Central Procurement Programme. Furthermore, the study indicates that, in most cases, there was a basis for effective competition for contracts under the central framework agreements analyzed. However, the study shows that competition for some agreements may have been weakened. The DCCA believes that the framework agreements would contribute to supporting well-functioning markets to a much higher extent if competition for contracts under the framework agreements became more effective, e.g. by providing a greater certainty of revenue.

34. In the study it is recommended that providers of central framework agreements:

1. Ensure that suppliers will generate a certain revenue from the contract under the agreement
 2. Create standardisation at the level which creates volume-based economies of scale and makes it attractive to tender for a contract and at the same time with an assortment width and volume which do not prevent enterprises from submitting tenders (on their own). This may lead to the use of lots. And make standardization across a group of end users with uniform demands, e.g. a sector-specific or an institution-specific group of end users.
 3. Use mini-competitions with prudence and make it easier for purchasers to purchase through mini-competitions.
- Study on the market for short term credit

35. The purpose of the study was to provide an overview of the market including the supply and demand side.

36. The study includes an analysis of the competitive conditions on the market for short term credit. The study recommends among others a 48-hour cool-off period after which consumers have to confirm the loan again before receiving the loan.

- Report on the public subsidies on the fitness and dance area

37. The Danish Competition and Consumer Authority (DCCA) published a study of the public subsidies' impact on the competition in the fitness and dance area. The object of the study was to assess whether the DCCA should make an in-depth analysis of the competitive conditions in the area.

38. The study investigates whether or not public subsidies lead to distortion of competition between the Danish fitness and dance associations and the commercial players in the area. To assess this, Copenhagen Economics investigated the extent of the public subsidies to the associations, the geographical overlap and the user and product overlap between the fitness and dance associations and commercial players. Copenhagen Economics made a report based on the study. It was published in October 2015.

39. The report concludes that the risk of distortion of competition on a national level is limited. This is due to the limited size of the subsidies given to fitness and dance associations.

40. At a local level, the report concludes that there is a risk of local distortion of competition in the fitness area. This is due to the size of the geographic overlap and user overlap between fitness associations and commercial fitness centers. The risk particularly relates to smaller, commercial fitness centers, which are usually located in the smaller towns.

41. The report furthermore concludes that there is only a moderate risk of local distortion of competition in the dance area. This is due to the limited user and product overlap between dance associations and commercial dance studios. The risk particularly relates to those of the commercial dance studios that have a geographical overlap with associations under the Danish Dance Sport Federation.

42. The report emphasizes that a specific assessment of whether competition is distorted should be done on a case-by-case basis.

- Study on the economic effects of a free choice of TV distributor

43. Today, 650,000 Danish households in housing associations pay for a TV solution that their association has chosen for them. This restricts the households' free choice of TV distributor and also implies less competition in this part of the TV market.

44. In April 2015 the Danish Competition and Consumer Authority published an analysis of the economic consequences of a free choice of TV distributor for the 650,000 households. The analysis shows that a free choice of TV distributor will result in an estimated net gain for these households of 68 million DKK. The gain reflects that a small group of households can achieve a large gain, while the majority may suffer a marginal loss.