

## Topics in Merger Control—Experiences from a Recent Merger in the Danish Electricity Sector

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*The Danish Competition Authority (DCA) recently approved a merger between Denmark's two largest electricity companies—Elsam and NESA. This article focuses on some topics of general interest that this merger raises. One such issue is that the merger happened in a market where the product characteristics and the capacity constraints give a dominant producer the opportunity to make use of its position to increase both prices and profits. The merger also illustrates some difficulties in calculating the effect on competition when a merger makes the merged entity a minority owner of an important competitor. Furthermore, a longer time horizon than usual was used for the investigation of the competition effects of the merger.*

### I. INTRODUCTION

In March 2004, the Danish Competition Authority<sup>1</sup> (DCA) approved a merger between Denmark's two largest electricity companies—Elsam and NESA. The merger raised a number of difficult and interesting topics within the area of merger control.

The transaction was dependant on the City Council of Gentofte and Copenhagen County selling their shares (78.7 percent) in NESA to Elsam. In total, Elsam thereafter held more than 85 percent of the shares in NESA—more than enough to take formal control of NESA.

After an in-depth investigation, the merger was approved, conditional upon a package of remedies that was negotiated with the parties. The DCA found that the remedies were sufficient to neutralize the anti-competitive effects of the merger.

This article begins with a description of the firms, the merger, and the relevant market<sup>2</sup> (Sections II-III).

Thereafter, the attention turns to more general topics (Sections IV-VI). First, the article discusses the remedies under which the merger was conditionally approved. The next section discusses the grounds upon which the DCA concluded that the merger would have increased the potential for market abuse if it had been approved without remedies. Finally, the article discusses why the DCA applied a forward-looking approach—i.e. adopted a long time horizon—when it investigated the effects of the merger.

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<sup>1</sup> The Danish Competition Authority enforces the Danish Competition Act. Major cases are decided by the Danish Competition Council on the basis of submissions from the Danish Competition Authority. The decisions and case administration of the Council and the Authority are not influenced by the Ministry of Economics and Business Affairs or the Minister, but are subject to appeal before the Competition Appeal Tribunal and subsequently the ordinary courts. For more information, see <<http://www.ks.dk/english/competition>>.

<sup>2</sup> The full report from the Danish Competition Authority from March 2004, *Fusionen mellem Elsam og NESA*, can be found at the DCA's website: <<http://www.ks.dk/publikationer/konkurrence/2004>>. In the following the report will occasionally be referred to as DCA (2004). More English information about the merger can be found on the homepage, <<http://www.ks.dk/english/competition/national/2004/elsam>>.