

The Danish Competition Authority

Annual report 2001

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Company profile

The Danish Competition Authority is an independent body under the Danish Ministry of Economic and Business Affairs. The Authority is responsible for issues relating to competition, energy regulation, public procurement and state aid. The Authority is the secretariat of the Competition Council and the Danish Energy Regulatory Authority. The Authority performs a number of tasks in co-operation with the competition authority of the European Commission, DG Comp.

Strategy

The Authority strives to create effective markets through competition – both in the public and in the private sector. The overall strategic objective of the Competition Authority is to contribute to a strong national economy in favour of businesses and consumers; an economy in which society's resources are used as efficiently as possible. In order to achieve this overall objective, the Authority's strategy emphasises three areas:

- to secure equal competition opportunities for all businesses
- to make sure that competition considerations are included in political decisions
- to contribute to efficiency and fair prices where competition is not possible

The Danish Competition Act is – like in many other countries and in the EU – based on the principle of prohibition. The act is “full-fledged”, i.e. based on the principle of prohibition and includes merger control. The Authority publishes the annual “Konkurrenceredegørelse“ (Competition Report) which measures competition in Denmark and contains important economic and legal analyses and describes major decisions of the year.

The Authority has set two concrete goals to intensify competition in Denmark; namely by the year 2010 to halve the number of industries in Denmark with competition problems and to bring the average price level in Denmark into line with the average price levels in the countries with which Denmark is traditionally compared.

Organisation

The Authority comprises 5 competition units, a unit dealing with public procurement and state aid, two units dealing with energy regulation, a secretariat for legal and international affairs, an administration secretariat and a management secretariat.

The Authority has developed a project and network organisation, increasing teamwork, cross-sectional co-operation and internal mobility. The results of this organisation have

Management Group – The Danish Competition Authority

Director: Finn Lauritzen
Deputy directors: Niels Erik Monrad and Kim Sparlund

Heads of competition units:
Food and finance: Hans Kierkegaard
Industrial sector: Sven Westh
Services: Finn Porsborg
Infrastructure: Niels Rytter
Energy: Jacob Schaumburg-Müller

Energy regulation unit: Jan Hansen
Public procurement and state aid: Merete Rasmussen
Secretariat for legal and international affairs: Kirsten Levinsen
Administration secretariat: Erik B. Christiansen
Management secretariat: Pia Ziegler

increased productivity, development capacity and employee satisfaction.

The employees of the Authority are appraised once a year by means of a special qualifications assessment system which forms the basis for pay determination and which is directly linked to the skills and competence development plans for the individual employees.

The Authority employs 130 persons. Of these, 80 work with the Competition Act, 30 work with energy regulation, 10 work with procurement and state aid and 10 are administrative employees. The number of academic employees is 90.

The Competition Council

The Competition Council consists of 18 members and a chairman and decides on major cases and test cases on the basis of submissions made by the Authority. The Competition Council meets once a month. The Authority administers the Competition Act on a day-to-day basis on behalf of the Council. The decisions and case handling of the Council and the Authority are not influenced by the Ministry/Minister, but are subject to appeals before the Competition Appeals Tribunal and then the ordinary courts.

1 Promotion of competition

In 2001, the Danish Competition Authority finalised the 1,070 cases, which were the agreements notified by the companies in 1998 after the transition from the control regime to the prohibition regime. Back then, the Authority set the target that decisions should be made on all the notified agreements by the end of 2001 and this target was thus fulfilled.

Of the 1,070 notified agreements, 58 per cent were approved without changes, while 26 per cent were approved on the condition that the agreements were changed so that they would be less anti-competitive. 16 per cent were prohibited, i.e. the parties either had to abandon the agreement or come back with a new agreement.

On 1 April 2001, Denmark concluded an agreement with Norway and Iceland regarding exchange of confidential information in competition cases. The agreement has been successfully applied to one case in which information from Norway led to a control investigation of the radio and television industry. The investigation resulted in penalty claims against several of the companies involved.

New competition act

In the light of e.g. the cartel cases, 2001 saw political initiatives to tighten the Competition Act and on 1st august 2002, the amended competition act entered into force. The act increases the level of penalties to the same level as in most other countries in the EU. In practice, the act is expected to entail a marked increase in the penalty level. At the same time, the Danish Competition Authority's possibilities of recommending SØK (the Public Prosecutor for Serious Economic Crime) and the courts to give a discount to companies which have co-operated with the Authority on the unravelling of the case will be increased. Up until now, the rules have stipulated that the discount cannot exceed 20 per cent but the bill proposes discounts in excess of 20 per cent. The new act will make it more attractive for the cartel participants to co-operate with the Authority.

In the public area, the act entails that municipalities and counties will no longer be able to exonerate themselves when a municipality, for instance, has made political decisions restricting competition and the municipality claims that the decision was necessary in order to comply with other legislation. In the future, this kind of assessment which entails putting other legislation above the Competition Act can only be made by the relevant minister who is answerable to the Danish Parliament. Governmental restrictions on competition, which are questioned by the Danish Competition Authority, must be motivated by the minister responsible and the Minister of Economic and Business Affairs.

In the third place, the act fills some gaps. The Competition Appeals Tribunal (the first appeals body) had interpreted the former act to mean that the restrictions on competition "included" in a joint venture were not comprised by the Competition Act – regardless of the contents of the restrictions. According to the act joint ventures will now be assessed according to the general rules on anti-competitive agreements. Furthermore, the rules on minimum amount were changed so that also local price co-operation agreements under the current minimum amount of DKK 150 million is comprised by the act. Finally, the Authority is now permitted to take along material, including computers, when it – due to circumstances controlled by the company - is not possible for the Authority to copy the material at the company's premises in connection with a control investigation.

Decisions

Decisions of major cases and test cases rest with the Competition Council. The Competition Authority is in charge of the day-to-day administration of the Act, the preparation of cases to be submitted to the Council and on behalf of the Council it decides cases in accordance with practice or in accordance with guidelines set out by the Council.

The Competition Council held 9 meetings and decided 22 cases in 2001. The Competition Authority made 233 decisions in important cases, though not test cases, with subsequent publication. In 2001, the Authority also concluded about 800 minor cases, mainly concerning access to documents, questions from citizens, etc

Production figures, competition cases 1998-2001

	1998	1999	2000	2001
Council decisions	62	58	71	22
Authority decisions	75	117	215	233
Concluded cases, total	367	628	1144	1012

Decisions of the Council and the Authority can be appealed to the Competition Appeals Tribunal. 23 cases were decided in 2001. Of these 11 cases were overruled or referred back. Decisions of the Appeals Tribunal can be brought before the courts. In 2001 no cases were brought before the court system.

Anti-competitive agreements

Under the Danish Competition Act, companies must prove that anti-competitive agreements imply such advantages that they should be exempted. To obtain exemption, an agreement must:

- improve the efficiency of production or distribution of goods or services, etc., or promote technical or economic progress;
- allow the consumers a fair share of the resulting benefits;
- not impose unnecessary restrictions on the companies; and
- not eliminate competition in significant parts of the market.

Agreement between DBU and TV2/DR regarding the television and radio rights to Denmark's international football matches

The Danish Competition Authority considered DBU's (the Danish Football Association) exclusive agreement with the two Danish public service stations DR (Radio Denmark) and TV2 regarding broadcasting on television of Denmark's international football matches. The agreement, which was concluded in 1996, gave DR (which is exclusively financed by licence fees) and TV2 (which is partly financed by licence fees and partly financed by commercials) an exclusive right for eight years to broadcast all Denmark's international football matches played in Denmark. The distribution of the rights between DR and TV2 is agreed between the television stations from year to year.

DR and TV2 are public service stations with a privileged position compared with the other television stations whose viewing area does not comprise the entire Danish population.

The problem was the long period of the agreement. The Danish Competition Authority is obliged to follow the EU practice which generally requires that exclusive rights to important sports events must have a significantly shorter period. Therefore, the agreement had to be shortened, i.e. terminated (as the agreement as mentioned was concluded in 1996). However, the Authority did not wish to prevent the conclusion of a new, two-year agreement, which covered the remaining period of the current agreement.

General conditions for agreements between cinemas and film distributors

The Danish Competition Authority decided that an agreement concluded by the FAFID (the Association of Danish Film Distributors) and DB (Danish Cinemas) had to be changed. The agreement comprised almost all film distributors and cinemas in Denmark.

According to the agreement, the cinemas were not allowed to lower the ticket prices, nor were they allowed to use free tickets or any other types of discounts without consulting the film distributors first. If a cinema competed on price against the wishes of the film distributor, the film distributor could e.g. refuse to deliver new films to the cinema. These provisions were revoked because they restricted the cinemas' possibilities of deciding themselves how they wished to compete for the customers.

In addition, the agreement included provisions, which made it possible for the film distributors to collectively punish the individual cinema, for instance, by stopping delivery of films if the cinema had financial difficulties. This possibility was also eliminated. It must be up to the individual film distributor to decide whether he wants to distribute films to a given cinema. However, FAFID will continue to be permitted to inform the individual film distributors about cinemas' failure to pay etc.

Cartels

Cartels constitute one of the most harmful anti-competitive behaviours. The fight against cartels is therefore given a very high priority in the competition authority. One part of the authority's work on cartels is market surveillance, where the authority investigates markets in order to find signs of anti-competitive behaviour. Another important source of information on cartels are the many inquiries and complaints, that the authority receives from companies, media, organisations or consumers. This information is often part of the authority's considerations on making a dawn-raid.

In 2001 the authority conducted dawn-raids at 16 companies. The industries concerned were the lock industry, the audio/video industry, the ferry industry and the mobile phone industry. The authority has also assisted the European Commission on a dawn raid in Denmark on one occasion in 2001.

The largest cartel ever discovered in Denmark is the electric wiring services cartel, which comprised more than 800 electricians and was discovered in 1998. 2001 saw the first court judgements in this cartel.

The cartel in electric wiring services

In the electricity cartel SØK (the Public Prosecutor for Serious Economic Crime) had in co-operation with the Authority selected four test cases with companies of different sizes. A memorandum prepared by SØK in co-operation with the Authority and the Chief Public Prosecutor was the basis for the penalty claims. This memorandum states that in pursuance of the 2000 Act, the penalties for a very seri-

ous breach of the law, which cartels are, will be from below DKK 100,000 (app. 13,300 EURO) for the smallest companies to well over DKK 3 million (app. 400,000 EURO) for the biggest.

These amounts are negligible compared with the amounts which the electricity cartel has cost the customers and society. It is difficult to assess the extent of the harmful effects. But the Authority believes that the electricity cartel has led to increased prices for electricity work in the

amount of an average of 20 per cent for co-ordinated tender work and 10 per cent for other electricity work because of a certain "rub-off effect". The average price effect is thus 12 per cent.

**Average duration of case handling
- all competition cases**

Council decisions

1999	2000	2001
	Months	
10,1	11,9	6,3

Authority decisions

1999	2000	2001
	Months	
3,0	3,3	5,4

However, only a very small part of this amount ended up as extra earnings in the companies – hardly more than an estimated 2-3 percentage units out of the 12 per cent. Another modest approximate 2 percentage units are increased wages and salaries which the industry would otherwise not have been able to afford, while the majority, i.e. at least 7 of the 12 per cent were "spent" on a lower productivity than the electricity industry would otherwise have had. In this connection, it is a striking fact that building as a whole in Denmark only has experienced minor productivity increases during the last 30-40 years, while the productivity in other industries has increased markedly. At the same time, there are indications that the electricity cartel existed for many years. This means that the total costs for society of the cartel's activities is just below DKK 2 billion (app. 270 million EURO) in 1998 alone and will amount to several billion Danish kroner over the years. The additional earnings for the companies involved have amounted to considerably less, but still presumably several hundreds of millions Danish kroner in 1998 alone and probably not less than DKK 1 billion through all the years. By way of comparison it may be mentioned that the total penalty sum will probably amount to approximately DKK 50 million.

Abuse of dominance

According to the Danish competition Act, it is prohibited to abuse a dominant position. The question of whether an undertaking is dominant is of course contingent upon the definition of the relevant market. Consequently, in some cases it might be difficult for an undertaking to assess whether or not the undertaking is dominant on the relevant market. Therefore a special provision has been included in the competition Act, whereby the Competition Council upon request must declare, whether one or more undertakings have a dominant position. If the Competition Council declares that an undertaking does not have a dominant position, this decision is binding, until revoked by the Competition Council.

According to the Danish competition Act, abuse may, for instance, consist in

- directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions,
- limiting production, markets or technical development to the prejudice of consumers,

- applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage, or
- making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Ruko's market behaviour

The Danish Competition Authority decided that the lock manufacturer Ruko A/S has abused its dominant position on the Danish market for locks.

The investigations of the Danish Competition Authority were i.a. based on materials gathered in connection with a dawn raid in February 2001. The material showed that it is difficult for foreign companies to gain a foothold on the Danish market for locks. This is i.a. due to the fact that developers and architects have a strong tradition of using a special Scandinavian standard for lock cases. Thus the use of locks not manufactured in Scandinavia is practically excluded.

Ruko has with a market share of more than 80 per cent a clearly dominant position on the Danish market for locks. Ruko has abused this position in three ways:

In the first place, the company's general discount system led to unequal treatment of the distributors. Particularly one distributor suffered. During recent years he had also sold a rival brand of locks. This distributor was granted lower discounts than the other distributors because the distributor did not also buy fittings, door handles etc. from Ruko.

In the second place, Ruko discriminated certain of its distributors. This was done by granting different discounts to distributors in the same situation in connection with major building projects. This provided the distributors with unequal opportunities in the competition.

Finally, Ruko prevented resale of the locks, which Ruko sells at special industry prices. The purpose was to segment the market. Thus the company's industrial customers could not resell the locks to other groups of customers.

Mergers and acquisitions

A new area for the Danish Competition Authority was the merger control, which began on 1 October 2000. With the relatively high threshold value - DKK 3.8 billion - the Authority only expected approximately 10 cases a year. In practice, in the first full year with merger control (2001), 15 mergers were notified. The largest merger case in 2001 was DONG's acquisition of Naturgas Sjælland, cf. below.

The Danish Competition Act has a special provision in so far as mergers are concerned which is not found in other countries. This is the provision to the effect that the parties may obtain a preliminary approval, which is not published until at a later, agreed time. This provision may in some negotiations be expedient for the parties – and is naturally only applied in cases where it is completely clear that the merger will have no effect on the competition. So far, the provision has only been applied five times.

DONG's acquisition of Naturgas Sjælland

In February, the Competition Council approved the merger between the state-owned natural gas Company DONG and the regional natural gas company Naturgas Sjælland. The approval was conditioned upon DONG's compliance with three remedies. Without these remedies, the merger would impair the competition in this sector.

In the first place, DONG offered the electricity generators to reduce the period of a number of agreements, which commit the generators to DONG. The agreements are reduced by almost 10 years so that they expire on 31 December 2009.

In the second place, DONG offered transportation services in the transmission network at published standard prices and terms. This would increase transparency and thus be an advantage – both to the customers allowed to buy gas abroad and the to foreign suppliers.

Finally, DONG gave customers and competitors the opportunity of "buying space" in the two natural gas storages, which DONG has in Denmark. This will provide increased flexibility in the trade in natural gas. At the same time, the customers would be able to buy gas from other suppliers than DONG during times with favourable prices.

It was the assessment of the Competition Council that the commitments in the long run would be able to increase the possibilities of a certain degree of competition in the natural gas sector. Correspondingly, DONG's acquisition of Naturgas Sjælland also had consequences in the long run. Without the merger, there would have been a certain degree of competition for the so-called "free customers", i.e. customers who are free to choose supplier. Therefore, there was a balance between the effects of the merger and the commitments.

Furthermore, the Competition Council recommended to the Minister of the Environment and Energy that the Danish market be opened to foreign suppliers (please see below under Influence on administration and legislation).

Other decisions

The Competition Council may issue orders for the termination or repayment of aid granted from the public funds, which has been granted to the benefit of specific forms of business activities, and which is not legitimate according to public regulation. This provision should be seen as a supplement to the EC state aid rules. This means that the Competition Council can now intervene if the aid is not legal pursuant to statutory regulation and if it distorts competition. This also applies if

User Survey, Competition, (2000)

	Positive/very positive replies	Negative/ very negative replies
	percent	percent
Duration of case handling	55	33
Reasoning sufficient	67	18
Information before decision	55	31
Getting in touch by phone	84	2
Returning calls	73	2
Service level in general	83	8
Intelligibility of letters	82	11
Legal competence	74	25
Economic competence	77	20
Sector knowledge	37	50
Explain competition act	67	17
Presentation of factual details	64	28

public authorities sell or let out land, commercial tenancies, etc. below market prices. The Competition Council considered in 2001 one case in relation to this provision.

Notification of public subsidies – the Municipality of Herning

The Danish Competition Authority decided that the Municipality of Herning's subsidy to Herning County Library in connection with the operation of the service ErhvervsService (business service) may distort competition.

ErhvervsService offers a broad selection of information to private companies, primarily by means of the Internet and advanced databases.

The municipal subsidies may distort competition in relation to other suppliers of similar services as the users of ErhvervsService only pay one third of the costs. However, the Municipality of Herning was not ordered to cease subsidising ErhvervsService. The Authority decided that no private companies were on the point of introducing a similar service. Therefore, there is a great risk that an order to cease subsidising the service would mean that ErhvervsService would be discontinued to the prejudice of the companies that use the service. But if a private company sometime in the future offers a rival service, the case will be re-opened in order to stop the subsidies.

The influence of the competition authority on other policies

In principle the Danish Competition Act attempts to achieve the greatest possible equality between private and public business activities. If anti-competitive practice is a direct or necessary consequence of a public regulation, the provisions of the Act do not apply. According to the Act, the public authority laying down the anti-competitive practice must itself assess whether the practice is a direct or necessary consequence of a public regulation.

The Competition Council may then approach the authority in question to point out the damaging effects of public regulations to competition.

As mentioned above, the new competition act tightens these rules.

In connection with the decision regarding DONG's acquisition of Naturgas Sjælland (please see above under Mergers and acquisitions), the Competition Council approached the Minister of the Environment and Energy.

The Council pointed out that a precondition for the existence of effective competition on the market for natural gas is that the part of the market for natural gas exposed to competition has a certain size. This is due to the fact that there are considerable establishment and transaction costs involved when a potential foreign competitor wants to enter the Danish market. A number of European countries have gone farther than Denmark in their liberalisation of the market for natural gas. Denmark is one of the few countries in the EU that has chosen only to comply with the minimum requirements of the EU. Therefore, the Competition Council recommended to the Minister of the Environment and Energy that the Danish market for natural gas be opened more than the 30-43 per cent which were a consequence of section 8 of the Danish Act on the Supply of Natural Gas.

It has now been announced that all gas purchasers must be able to choose their supplier freely from 2004. The big purchasers already have this right today but so far, no competitors of the state-owned natural gas Company DONG have accessed the Danish market.

Initiatives were also taken in other areas in which the Competition Council has previously made recommendations. For instance in connection with access to long distance bus services, including the access to receiving social contributions to transport of e.g. persons doing military service. In the tax area, a committee has been set up to consider a proposal for a more pro-competitive beer tax.

In the environmental area, there is no doubt that the almost 30-year old prohibition against cans which has now been revoked has restricted competition and contributed to the fact that e.g. soft drinks are more expensive in Denmark than in other countries. Even though foreign producers have had free access to selling bottled beer using Danish bottles, it was in practice a barrier that the producers had to tap beer and soft drinks using a kind of packaging which was normally not used.

In connection with the hearing of the amendment of the Danish Act on Packaging which formed the basis for the Dansk Retur System (DRS) (Danish deposit system), the Council pointed out a number of problems. The DRS was intended a monopoly, which could easily go beyond the initial 6-year period. The fees might be an unfair burden on small producers and importers, there was a risk of abuse of information about competitors' sale and marketing and finally DRS would in terms of finances have to be a so-called "self-financing" company as known from e.g. the electricity industry.

The objections led to an amendment of the bill so that new legislation will now be required to prolong DRS's exclusive right thus making the burden on the small producers and importers as lenient as possible. In addition to this certain restrictions were imposed with regard to the exchange of information regarding i.a. sales figures for the individual beer and soft drink brands.

2 Public procurement and state aid

Public Procurement

The purpose of EU's rules on public procurement is to create cross-border competition in public procurement within the EU. The object is to ensure that suppliers from all EU member states have equal access to bidding for public procurement contracts. This promotes cross-border competition, thus ensuring public procurement on the best possible terms.

The EU public procurement rules are facing a radical reform. Throughout 2001, new draft directives were considered by a working group under the EU Council of Ministers. Representing Danish interests, the Danish Competition Authority (DCA) took part in the negotiations.

In the first half of 2002, during Spain's EU presidency, political consensus was achieved in terms of the classical directive. During the Danish Presidency in the second half of 2002, efforts will be made to achieve a common position on both directives.

Average duration of case handling - procurement cases

Complaint cases

1999	2000	2001
	Months	
2,4	2,6	2,1

Informative statements

1999	2000	2001
	Months	
1,1	1,6	1,5

New act on tender procedures for public works contracts

The Danish parliament has adopted a new act on tender procedures for public works contracts¹. The act came into force on 1 September 2001. At the same time, the Danish Tender Act (*licitationsloven*) was abolished.

The Tender Act applied to both private and public builders and one of its provisions meant that private individuals were only permitted to ask for two bids ("negotiated tender procedure") when they wanted construction work done. Otherwise, an invitation for tenders would have to be issued.

The new Danish Tender Act only applies to public authorities and publicly subsidised construction projects.

Private builders can choose to follow the new Act.

Public authorities must comply with EU public procurement rules when construction work exceeds DKK 46.5 million which is the threshold for EU tenders. For this reason, public authorities are only required to adhere to the new Act when it initiates construction projects below this threshold.

Case processing

An undertaking can complain to the Danish Competition Authority about a tender if it has reason to believe that the public procurement rules have been violated. It is most expedient to complain before the tender procedure is completed, i.e. prior to the award and signing of the contract. The DCA is given the opportunity to contact the body inviting tenders, examine the case and propose a solution to

¹ Act no. 450 of 7 June 2001 on tender procedures for public works contracts (*lov om indhentning af tilbud i bygge- og anlægssektoren*).

the issue. This may mean that any defects can be remedied and the tender made to comply with the rules prior to the award of the contract. In a competitive market, it is of pivotal importance that all tenderers participate in a tender procedure on equal terms.

In Danish law, once the contract has been signed it is binding. For this reason, it is important for the undertakings to file a complaint with the DCA stating the nature of the issue as early on in the tender procedure as possible.

If the tender procedure is so advanced that the contract has already been signed, it is generally too late to reverse the outcome.

In 2001, the Danish Competition Authority received a total of 23 complaints concerning tenders. In about half the cases, the DCA did not find any reason to intervene against the body inviting tenders. In the rest of the cases, one or more irregularities were found. In all these cases, the body inviting tenders accepted the DCA's assessment and the irregularities were corrected. In some cases, the tender was cancelled and a new one was initiated.

Production figures, procurement and state aid cases 1998-2001

	1998	1999	2000	2001
Complaint cases, procurement	36	28	33	22
Informative statements, procurement	72	131	105	77
Informative statements, state aid	19	37	35	24
Procurement problems abroad	9	10	9	8
Concluded cases, total	136	206	182	131

State aid

State aid policy has many things in common with competition policy. Both state aid and restrictions on competition distort competition between companies and can result in considerable losses for society. State aid policy is covered by the competition rules of the EC Treaty and serves the same purpose as competition policy which is to ensure an efficient use of society's resources.

For this reason, it is natural to place the state aid area under the auspices of the Danish Competition Authority (DCA).

In matters relating to state aid, participating in the EU cooperation is one of the DCA's responsibilities. The DCA thus takes part in negotiations within the EU on new measures in respect of state aid. An important part of the DCA's work in this context is to ensure that Danish interests are safeguarded in the best possible way. When state aid is on the agenda, the DCA also helps prepare for EU Councils (particularly the Industry Council).

In addition to the international work, the DCA also has a national advisory capacity. This means that – if required – the DCA can provide advice to other authorities whenever there is doubt as to whether a scheme involves state aid.

For the purpose of providing advice, an advisory committee has also been set up and the members of this committee are called in on an ad hoc basis. Permanent committee members are representatives of

the Danish Ministry of Foreign Affairs and of the Ministry of Justice. Other ministries take part to the extent that they are affected by the issues on which the committee deliberates. Ministries or national agencies can always request that an issue be considered by the committee. The committee is chaired by the DCA, just as the DCA handles the committee's secretarial duties.

Furthermore, the DCA is in charge of the chairmanship and secretariat in the "interdepartmental state aid committee" in which most ministries have permanent representation. One reason for setting up this committee was to promote the exchange of experience in the area.

Restructuring and reducing state aid

Both within the framework of the European Union and in Denmark, we have seen an ever-increasing focus on state aid policy. Since 1996, the need to reduce the level of state aid has been stressed at a number of European Councils. At the Stockholm European Council in 2001 concrete targets for the restructuring and discontinuation of state aid were laid down for the first time.

The Danish approach centres particularly upon the increased use of competition analyses, increased transparency and streamlining of procedures.

New rules, etc. in 2001

The Commission continues to focus on creating a more transparent, coherent and efficient state aid policy. One instrument adopted by the Commission to achieve this end is the setting up of guidelines for scoring different types of state aid. In this section, the new framework and communications from 2001 are reviewed.

User Survey, Procurement and State aid (2000)

	Positive/very positive replies	Negative/ very negative replies
	percent	percent
Duration of case handling	71	20
Reasoning sufficient	65	23
Information before decision	62	14
Getting in touch by phone	90	8
Returning calls	63	4
Service level in general	84	10
Intelligibility of letters	64	16
Legal competence	77	20
Economic competence	89	11
Explain procurement and state aid rules	77	11
Presentation of factual details	79	8
Guidance	67	22

Framework

Multisectoral framework on regional aid for large investment projects

The Commission has revised the multisectoral framework on regional aid for large investment projects. The purpose of this revision is to create a far simpler instrument.

The framework contains a number of important changes, including the automatic and progressive reduction of the regional ceilings for large investment projects. The notification obligation for eligible

projects under EUR 100 million has been abolished. Aid to sectors with structural overcapacity has been prohibited.

Communications

Public service broadcasting

Public financing of public service broadcasting is generally considered to be state aid. State aid for public service undertakings must thus be examined by the Commission.

Aid for public service undertakings will normally be approved by the Commission if the public service obligation has been clearly defined, if no overcompensation is involved and if it is necessary to derogate from the rules on competition and state aid.

Risk capital

The Commission has expressed a general policy in favour of promoting risk capital in the Community. The communication has two purposes. Firstly, it provides guidance as to how the Commission will apply and treat state aid in respect of risk capital. Secondly, it provides new criteria under which the Commission may authorise measures.

In order to authorise risk capital measures, the Commission will require provision of evidence of market failure and examine whether the measure is proportionate thereto.

3 Energy regulation

The Danish Energy Regulatory Authority is the supervisory and appeals body in the energy sector. The Authority is served by a secretariat, which is made available by the Competition Authority and the Energy Agency. The Authority was set up as part of the liberalisation and legal reformation of the Danish electricity sector and commenced its activities on 1st January 2000.

In 1999, the Danish government and a broad majority of the Folketing reached an agreement on an overall reform of the electricity sector. The agreement was subsequently reflected in a new electricity supply act with effect from 1st January 2000. This act implements the EU electricity directive concerning common rules for electricity in the single market and creates a framework for consumer protection, environmental concerns and security of supply in the increasingly liberalised market.

The electricity reform and the new legislation led to the creation of a new structure in the electricity sector, a structure which ensures separation between companies in the monopoly and competition areas of the sector. As a result, production and trading companies now operate as normal commercial companies while the monopoly operations of the grid and transmission companies as well as those with supply obligations and those responsible for the system are governed by new price regulations. The latter are aimed at encouraging efficiencies while maintaining a high level of quality and security of supply.

As in most other EU member states, the Electricity Supply Act also set up a new supervisory and appeals body – the Danish Energy Regulatory Authority – to supervise the monopoly companies. The Authority is independent of the parties in the energy sector and is not subject to the Minister's powers of direction. The Authority replaces two earlier price control boards – covering electricity and gas and heating prices respectively – which were joint committees of representatives of the players in the market and thus did not fully meet the requirement for independence of the energy sector.

The political parties behind the electricity reform agreement have subsequently followed up the agreement with other agreements in the energy sphere. In 2000 came a broad follow-up agreement, which lays down the overall framework for the implementation of the EU natural gas directive and the development of the heating supply sector. This agreement led to a new Danish act governing the supply of natural gas as well as an amendment of the Heating Supply Act.

Both acts provide for the Energy Regulatory Authority – as in the electricity sector – to undertake the supervisory and appeals functions for gas and heating supply.

Since the Authority commenced its activities in January 2000, the Danish energy sector has seen marked and rapid development, influenced in particular by the liberalisation of the European electricity and gas markets. The Danish energy legislation is constantly being changed and tailored to the new, complex national and international framework.

The Authority's composition and responsibilities

The Authority consists of a chairman and six members, all appointed by the minister responsible for a period of 4 years. The Authority provide legal, financial, business, environmental and technical expertise.

The Authority's principal task is to regulate the monopoly companies in the energy sector. This includes the grid and transmission companies, the companies with supply obligations in electricity and gas as well as the district heating companies. The Authority must ensure that grid owners do not derive unreasonable advantages from their natural monopoly status and that all consumers forced to obtain energy from those companies enjoy fair, uniform and transparent prices and conditions of supply.

The specific tasks are described in the acts governing the electricity, gas and heating supply and may be summarised as four main areas:

- Supervision of distribution prices and connection charges, whether for local distribution grids or the large, cross-border transmission systems. If prices, terms, agreements etc. contravene the electricity, gas or heating legislation, the Authority is obviously obliged to intervene and order the necessary changes to be made.
- The creation of greater transparency for charges, tariffs, conditions of supply etc. in order to make it easier for consumers to compare such key information between one company and another.
- Hearing and resolving complaints from consumers – households as well as businesses, including energy companies.
- At the time of setting up the Authority it was also envisaged that the Authority, through a more forward-looking effort, would contribute to improving the efficiency of those companies which, unlike the production and trading companies, are not subject to competitive pressures. The aim is to help bring about a reduction of the consumers' energy costs. The efficiency improvements are to be achieved by the Authority comparing (benchmarking) the efficiency of grid and transmission companies and reporting individual efficiency requirements being implemented by individual companies.

The Authority's activities in 2001

The Authority hears cases of a fundamental importance or which are of significant social or financial interest in the field of energy legislation. In 2001 the Authority settled a total of 1024 cases.

A large proportion of the cases are brought in by consumers, particularly electricity consumers who are dissatisfied with charges, conditions of supply or other matters connected with their energy supply. Other cases are brought in by energy companies and may concern the interpretation of laws and regulations or the relationship with other companies. In addition, the Authority will take up cases of which it has become aware through notifications or the press. Finally, there are development-related cases and cases of a general, regulatory nature, such as efficiency improvements in the grid companies, international matters, consultations and ministerial cases.

Large cases of a fundamental nature take on average almost 7 months to deal with, while the average for routine cases is just under 3 months.

Production figures, energy cases 1998-2001

	1998	1999	2000	2001
Electricity cases	183	314	484	518
Gas and heat cases	101	145	158	162
Concluded cases, total	284	459	624	683

Cases determined by the Authority may be appealed to the Energy Appeals Authority. In 2001, 42 of the Authority's decisions were appealed, of which the Appeals Authority has so far determined 18 cases and in 2 cases altered or cancelled the Authority's decision.

Efficiency improvements by the monopoly companies in the electricity field

One of the significant results of the Authority's work last year is the establishment of individual efficiency requirements for the grid, transmission and supply-obligation companies.

Price control of the grid companies is based on the establishment of a revenue framework accompanied by a general efficiency requirement determined by the minister responsible as well as an individual efficiency requirement determined by the Authority. In 2000 the companies were regulated solely on the basis of the general efficiency requirement, which is set at 3 per cent.

The general part of price control, including the calculation of the revenue framework, is based on an executive order covering revenue frameworks, opening balances etc. for grid and transmission companies; it does not imply an actual decision by the Authority.

However, in 2001 the Authority established individual efficiency requirements for the twelve regional transmission companies in the country and all the grid companies with effect from 2002 and 2003. A total of 145 companies have been given efficiency requirements. The individual requirement, together with the general requirement, means that over the next two years the companies must reduce their costs by between 3 per cent and 14 per cent.

Prior to the announcement, the Authority, in the autumn of 2001, approved the method of comparison of the grid companies' ability to operate the grids cheaply as well as the principles of calculation of the individual efficiency requirements.

The comparison showed that there is a basis for savings in some of the grid and transmission companies, who have the possibility of reducing their costs through rationalisations, efficiency improvements, reorganisations etc. The individual efficiency requirements amount to a total of DKK 50.8 million in 2002 and DKK 116.6 million in 2003.

Similarly, the Authority carried out price control of the 42 supply-obligation companies in the country, i.e. the companies which are obliged to offer electricity to all consumers in their area of supply. Consequently, an upper limit for the prices and margins of those companies has now been established. The arrangement runs until 2003.

Determination of the grid companies' free equity capital

The so-called "capital cases", i.e. the division of the assets of the grid companies between consumers and owners, is of vital importance for the companies concerned, including the determination of electricity charges and the Authority's final approval thereof.

The free equity is part of the assets of the grid companies, generated up to 1977 when the first electricity supply act came into effect. The grid owners have the disposal of the free equity and are allowed to keep this capital if they sell the company or a share of it. Following the liberalisation of the electricity sector, the question of the size of the equity has become of vital interest to the grid companies.

However, the distinction between free and compulsory equity capital is not clearly defined in the legislation. Therefore, the Authority drew the attention of the minister responsible to the problem of the precise determination of free equity.

Subsequently, the minister set up a working party comprising representatives of the Government Attorney, the Authority's secretariat and the Danish Energy Agency to clarify the problem. Following the working party's report, the Authority was able to make the first major decision in the matter in March 2002. This concerned the principles involved in determining the assets of NESANET A/S.

The Authority's decision means that the freely disposable equity of the grid companies, following a method of documentation, is to be valued either at the written-down original cost or at the written-down replacement cost adjusted for technological progress.

Transfer of money from the transmission companies to the electricity generators

One significant decision affecting transmission companies is that, under the Electricity Generator Agreement DKK 900 million may be transferred from Eltra-Transmission to the electricity generators of Elsam and DKK 1.7 billion from ELKRAFT-Transmission to Energi E2 A/S. The Authority has found that this is certified and in accordance with the provisions of the legislation.

The aim of the Electricity Generator Agreement, implemented through an amendment of the electricity act, is the strengthening of the earning power and capital base of the electricity generators prior to the advent of the open electricity market. One of the elements of the agreement is enabling the electricity generators to acquire new capital in conjunction with a revaluation of the assets of the opening balances for transmission systems etc. at the transition from "stand-alone" regulation to the new market conditions. The electricity generators were thus to be secured payment for supplies to the "system-responsible" companies over the 4-year period 2000-2004.

Payment by the system-responsible companies for minimum production capacity

A further significant case concerns Denmark's two "system-responsible" companies in the electricity field: Eltra and Elkraft System.

As part of the Electricity Generator Agreement the electricity generators over a period of 4 years received payment for making a minimum production capacity available to the system-responsible companies. For one thing, this is of great importance for the security of supply.

Both Eltra and Elkraft Systems have entered into agreements with the electricity generator companies for payment for the maintenance of this minimum production capacity. These agreements were examined by the Energy Regulatory Authority in 2001. The Authority decided that, contrary to what was assumed in the agreements, the cost cannot legally be included in the charges for the system-responsible companies for a period of 10 years,

User survey, Energy, 2000

	Positive/very positive replies	Negative/ very negative replies
	percent	percent
Duration of case handling	83	17
Reasoning sufficient	91	7
Information before decision	75	25
Getting in touch by phone	82	8
Returning calls	55	4
Service level in general	83	4
Intelligibility of letters	76	15
Legal competence	82	18
Economic competence	85	15
Trade awareness	71	24
Explain the energy laws	51	16
Presentation of factual details	84	14

but must be included in the charges as the payments fall due. However, the cost for the initial 2 years of the agreement (2000 and 2001) may be considered accumulated unabsorbed costs and may be included in the charges for 2004 and 2005.

Subsequently, a bill has been introduced under which the system-responsible companies' costs for minimum capacity are to be included over a 10-year period. The bill aims to reduce the immediate increase in electricity prices caused by the minimum-capacity charges.

Transmission of natural gas

The Natural Gas Supply Act underwent significant changes in 2001. The new act means that – in accordance with the proposed amendment to the EU natural gas directive put forward by the Commission – the opening of the market can take place faster than anticipated in the previous act. In addition, the act will lead to separation of the companies operating under competition and monopoly, similar to the separation in the electricity market.

The new act also contains a new provision for regulated access (rather than negotiated access) to the transmission system. This means that the transport of gas must be offered at published standard prices approved by the Authority.

The new act will also lead to separation of the companies involved in different gas-related operations, i.e. between transmission, distribution and trading, similar to the separation in the electricity market.

Finally, determination or supervision of transmission charges are now the responsibility of the Authority, and the pricing principles are incorporated in the Natural Gas Supply Act.

The Authority's secretariat has for some considerable time been preparing a basis for decision on the fairness of the DONG Naturgas A/S transmission charges. The matter has been discussed with DONG.

The Authority's analysis shows that DONG's charges for use of the transmission system exceeds the cost by 11 per cent.

Accordingly, the Authority will propose that DONG reduces its transport charges to reflect the costs of DONG's operations.

Today only 14 major companies in Denmark enjoy a free choice of supplier but eventually all gas customers must be given that opportunity. The aim is to increase competition and thus ensure that the supply of natural gas becomes as cheap for the customers as possible. Therefore, it is important that the charge for gas transport on the DONG system – e.g. from the German border to companies in Denmark – does not prevent competition in the supply of natural gas to Danish customers.

As a follow-up, the Authority is now investigating the fairness of DONG's other terms for access to the company's transmission system.

4 Projects and reports

A major part of the development work of the Authority is made in projects where the Authority analyses fundamental problems in various fields of its responsibility. 14-15 full-time equivalents are currently set aside for projects. This approach to the cases has led to a more efficient utilisation of resources, as the Authority has a better basis for its day-to-day case handling by means of the project outcome. The outcome of projects is published either in separate reports or in the annual Competition Report.

In 2001, 8 projects were concluded, and 3 were close to conclusion.

Competition Report 2001

Cable TV
Well functioning Markets
Advertising
Selective sales
Information sharing
Auto repair
Public-private partnerships in 10 Municipalities
Financial markets
Electronic commerce
Air transport

At the start of 2002, 5 projects were under preparation:

Competition Report 2002

Competition in water supply
Liberalisation of the energy markets
The Danish holiday market
Partnerships, procurement and tender

The Competition Report 2002 – analytical chapters

Competition Policy
Competition intensity in Denmark
The Financial sector
Air transport
Television
Controls on Retail trade
Electronic commerce
State aid

The Competition report, which is published annually, describes relevant competition-political problems illustrated by examples in international as well as in Danish connections. Subjects selected are those of significance to the quality and understanding of the work of the Competition Authority, plus theoretical and practical circles of problems for the framework conditions of trade and industry. The first Competition Report was published in December 1997. The Competition Report 2002 was the fifth.

The Competition Authority also published “Competition in Denmark (Annual Report)”, which reports on the objectives, results and organisation of the Authority. Besides, it contains an analysis of the results, which the Authority has achieved in the field of competition, energy, procurement, state aid, etc.

In 2001, the Authority also published reports on:

- Building materials;
- Cross-frontier shopping;
- The Automobile sector.

Key figures

	<i>1998</i>	<i>1999</i>	<i>2000</i>	<i>2001</i>
Cases, total	804	1322	2012	1840
Increase in productivity	6,9 pct	3,4 pct	2,9 pct	6,3 pct

Staff

	<i>2001</i>
Board of Directors	3
Competition	51
Procurement and state aid	9
Energy	26
Legal, EU and international	6
Projects	15
Administration	19
Information, relations to the Ministry and the Competi- tion Council	6
Total	135

Financial statement

		<i>2001</i>	
	Expenditure	Revenue	Net expenditure
		<i>DKK Mio.</i>	
Competition	35,7	0,8	34,9
Procurement and state aid	4,9	-	4,9
Energy	13,0	15,5	-2,6
Assistance	14,6	-	14,6
General management and administration	13,0	-	13,0
Total	81,1	16,3	64,8