



**DANISH COMPETITION AUTHORITY**

A photograph of a long bridge spanning across a blue body of water. In the foreground, a large, weathered concrete pier supports the bridge. The bridge has a metal railing along its length. In the distance, a tall suspension tower is visible against a clear blue sky. The water is a deep blue, and the sky is a lighter blue with some faint clouds.

# Annual Report 2002



**DANISH COMPETITION AUTHORITY**

Annual Report 2002

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# Preface

2002 was a highly eventful year. The Danish Presidency succeeded in bringing about the most comprehensive amendment of the European Community Competition Rules ever. Also the Danish Competition Act was changed and now meets all international standards. The productivity of the Danish Competition Authority was high during the year. The Authority dealt with many competition cases and mergers, and the other fields of the Authority - public procurement, state aid and energy regulation - also saw great activity.

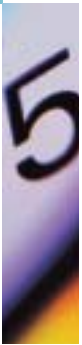
Several surveys were carried out, and some were published in the Competition Report 2002 issued in May.

As regards criminal prosecution, 2002 established a record that will hopefully never be broken: In the electricity cartel case, more than 250 fines were imposed on companies that had infringed the Competition Act.

This annual report provides a broad outline of these many activities and the work carried out by the Authority during the year.

In-house, the Competition Authority prepared itself for the future. The reform of the European Community Competition Rules will place heavy demands on our competencies. Accordingly, we focus on creating optimum interaction between continuous improvement of competencies, sharing of knowledge, organisational development and pay and staff policies. We want to be an efficient agency and help to ensure that competition in Denmark measures up to that abroad. Another aim is to be well prepared for the intensified international co-operation that we are about to see, and to be a good and reliable partner for competition authorities of other countries.

Finn Lauritzen  
Copenhagen, April 2003.



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# 1 Company profile

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

## 1.1 Strategy

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The Danish Competition Authority strongly supports the notion that competition encourages prosperity and innovation.

The Authority strives to create an effective market through competition in both the public and private sectors. The mission of the Competition Authority is to contribute to an effective market economy where competition ensures a wide range of goods and services at reasonable prices and with competition for public procurements.

The Authority aims at being one of the most effective, competent and service-minded competition authorities in the OECD countries.

The government has set two concrete goals to intensify competition in Denmark:

- During a decade the number of industries in Denmark with competition problems is to be halved.
- The average price level in Denmark is to be converged to the average price levels of the countries that Denmark is traditionally compared with.

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 an annual Competition Report (Konkurrenceredegørelse), which measures competition in Denmark, analyses the financial and legal situation, and describes major decisions of the year.

## 1.2 Organisation

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The Authority comprises five competition units, a unit dealing with public procurement, two units dealing with energy regulation, the secretariat of legal and international affairs, an administration secretariat and a management secretariat.

The Authority has developed a project and network organisation that stimulates teamwork, cross-sectional co-operation and internal mobility. The results of this organisation have increased productivity, development capacity and employee satisfaction.

The Authority currently employs 130 persons. 75 employees work with the Competition Act, 30 work with energy regulation, 10 work with procurement and state aid, and 15 are administrative employees. The number of academic employees is 98.

## Management group

Director:	Finn Lauritzen
Deputy directors:	Niels Erik Monrad Kim Sparlund
Heads of competition units:	
Food and manufacturing:	Hans Kierkegaard
Construction and media:	Sven Westh
Services:	Finn Porsborg
Infrastructure:	Niels Rytter
Energy, finance and state aid:	Jacob Schaumburg-Müller
Energy regulation unit:	Jan Hansen
Public procurement:	Merete Rasmussen
Secretariat of legal and international affairs:	Kirsten Levinsen
Administration secretariat:	Erik B. Christiansen
Management secretariat:	Pia Ziegler

### 1.3 The Competition Council

The Danish Competition Council is composed of a chairman and 18 members. The Council represents versatile knowledge of public and private enterprise, including legal, economic, financial and consumer-related issues.

The chairman and eight of the Council members must be independent of commercial and consumer interests. The Minister of Economic and Business Affairs appoints seven members on the recommendation of trade organisations, one member on the recommendation of consumer organisations and two members who are experts in public enterprise on the recommendation of the organisations of the local authorities.

The Competition Council decides on major cases and test cases on the basis of submissions made by the Competition Authority. The Council meets once a month. The Authority is responsible for the day-to-day management on behalf of the Council. The decisions and case administration of the Council and the Authority are not influenced by the Ministry or Minister, but are subject to appeal before the Competition Appeal Tribunal and subsequently the ordinary courts.





## 2 Promotion of competition

2002 was the year of reform. During the Danish Presidency of the European Union, the most fundamental amendment of the EU competition rules ever was adopted. The reform will influence the way in which competition rules are implemented all over Europe.

### 2.1 New Competition Act

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Also the Danish Competition Act was changed in 2002. This provided Denmark with legislation that is up to international standards.

The new Competition Act increases the level of penalties to the same level as in most other countries in the EU. In practice, the penalty level is expected to increase significantly following the new Act. At the same time, the Danish Competition Authority is to a larger extent allowed to request the Public Prosecutor for Serious Economic Crime (SØK) and the courts to be lenient with companies that have co-operated with the Authority on the unravelling of a case. The new Act will thus make it more attractive for cartel participants to co-operate with the Authority.

In the public area, 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. Now, this kind of assessment, which in reality puts other legislation above the Competition Act, can only be made by the relevant minister who is answerable to the Danish Parliament. The responsible minister and the Minister of Economic and Business Affairs must motivate governmental restrictions on competition questioned by the Danish Competition Authority.

### 2.2 Punishable infringements of the Competition Act

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#### Cartels

Cartels represent one of the most obstructive types of anti-competitive behaviour. Investigation and inquiry into such activities are therefore given a very high priority by the Competition Authority. Investigations into both cartels and other matters concerning punishable infringement of the Competition Act are generally based on information received by the Authority from companies and the public by way of complaints, inquiries, etc. However, the Authority also collects information as part of its general market monitoring and case administration work. In some cases, these efforts reveal illegal cartel activities, etc.

Up till now, the largest cartel disclosed on the Danish market, is the bid rigging cartel in the electric wiring service, mentioned in the Annual Report, 2001. Fines have been imposed on 256 companies. The case is expected to be finally settled during 2003.

#### Other punishable types of infringement

Not only actual cartel agreements infringe the Competition Act. Also other anti-competitive agreements and behaviour, e.g. binding prices and abuse of dominant position, have a significant, harmful impact on society and the consumers. Consequently, the Competition Authority also attaches great importance to clearing up of and investigation into such violations.

In 2002, criminal prosecution of a number of cases of this type earlier reported to the Public Prosecutor for Serious Economic Crime by the Competition Authority was finalised. Several companies were fined for infringement of the Competition Act involving fixing of binding prices, illegal exclusive clauses and non-competition clauses.

As regards fixing of *binding resale prices*, two penalties of DKK 500,000 and DKK 670,000, respectively, were imposed for fixing of binding resale prices of sports equipment/clothes and spectacle frames. A penalty of DKK 200,000 was also imposed by the City Court of Copenhagen for fixing of binding resale prices of clothes; however, this judgement was appealed to the High Court where the case is currently pending.

As regards *illegal non-competition clauses*, a penalty of DKK 50,000 was imposed; a penalty of DKK 360,000 owing to *illegal exclusive agreements* was imposed in connection with housing advertising.

### Higher penalties in the future

As mentioned, penalties for infringement of the Competition Act will be increased significantly in future. According to the rules applied so far, the maximum penalty amounted to approx. DKK 3 million as the penalties were to be fixed pursuant to Danish legal usage in connection with infringement of the general commercial law. In future, the principles applied by the European Commission will be applied, though at a lower level.

In connection with future fixing of penalties, the seriousness and duration of the infringement will be considered. Instances of infringement of the Competition Act are divided into three groups with the following basic amounts:

- Less serious infringement: from DKK 10,000 to DKK 400,000
- Serious infringement: from DKK 400,000 to DKK 15 million
- Very serious infringement: from DKK 15 million

The penalty levels are indicative to the courts. When fixing the penalties, the courts are also to consider the companies' ability to pay. Besides, the courts must take a position on aggravating or extenuating circumstances that may influence the penalty, for example, if a charged or accused party has played a particularly active role in a cartel, or a company has made and still makes an active effort to get all relevant employees to comply with the legislation through a compliance program.

## 2.3 Decisions

The Competition Council decides on major cases and test cases. The Competition Authority is in charge of the day-to-day administration of the Act and the preparation of cases to be submitted to the Council. 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 nine meetings and decided 29 cases in 2002. The Competition Authority made 166 decisions in important cases, though not test cases, with subsequent publication. In 2002, the Authority also concluded about 720 minor cases, mainly concerning access to documents, questions from citizens, etc.

### Production figures, competition cases 2000-2002

	2000	2001	2002
Council decisions	53	22	29
Authority decisions	215	233	166
Concluded cases, total	1144	1012	720

Decisions of the Council and the Authority can be appealed to the Competition Appeal Tribunal. 13 cases were decided in 2002. Of these, five were overruled or referred back. Decisions of the Appeal Tribunal can be brought before the courts. In 2002, two decisions were brought before the court system where the cases are still pending.

## 2.4 Anti-competitive agreements

### The building fairs of the timber merchants

The Competition Council ordered the Federation of Timber Merchants (TUN) to stop making anti-competitive demands of the exhibitors at the building fairs of the federation.

In connection with the trade fair “Byggeri 2002” and earlier fairs in 2000 and 1998, only suppliers that sold their products through the timber merchants and only to a limited extent dealt directly with contractors and builders were allowed to participate.

Almost all timber merchants in Denmark are members of TUN. All builders and contractors deal with the timber merchants. This means that the trade fairs of TUN represent an important opportunity for the building material suppliers to meet their final customers.

The Competition Council found that making the suppliers’ possibility to participate in the trade fairs dependent on the extent to which they were dealing directly with contractors and builders constituted harmful anti-competitive behaviour.

### Agreement between DR/TV2 and Team Danmark/DHF

The Competition Council approved the agreement between DR/TV2 on one side and Team Danmark/Dansk Håndboldforbund (DHF) on the other side concerning television, radio and Internet rights to handball matches played in Denmark. The agreement awarded DR and TV2 the exclusive rights to broadcast from most handball matches in Denmark until 1 May 2006.

Such long-lasting exclusive rights may impose competitive problems on other TV stations. However, the agreement did not include the rights to the European championship, the world championship and Champions League. Therefore, all TV stations were still able to tender for these attractive rights. Besides, the broadcasting rights to other sports competing with handball for TV viewers are currently distributed on the various TV stations in Denmark. It was therefore concluded that the agreement did not distort the competition for TV viewers among the TV stations.

Finally, the Council found that - in the specific case - DR’s and TV2’s agreement concerning joint acquisition of the rights did not put the stations in such a powerful position that they were able to get the rights at a lower price than if they had negotiated individually. The agreement did not prevent DR and TV2 from competing for viewers for the Danish handball matches.

### Average duration of case handling, Competition 2000-2002 (months)

<i>Council decisions</i>		
<b>2000</b>	<b>2001</b>	<b>2002</b>
11.9	6.3	10.0
<i>Authority decisions</i>		
<b>2000</b>	<b>2001</b>	<b>2002</b>
3.3	5.4	5.8

## 2.5 Abuse of dominance

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### Urban vs. MetroXpress

The Competition Council agreed with MetroXpress, a free newspaper, that Berlingske Gratisaviser abused its dominant position in the advertising market by selling advertisements in Urban, another free newspaper, at prices that did not cover the variable costs.

When a dominating company pursues such a price policy (predatory pricing), it indicates that it wants to eliminate competitors and then raise the prices. Under normal circumstances, the Competition Council would therefore have ordered the dominant company to sell at prices that reflect the real costs.

However, in this particular case, MetroXpress, which is owned by the Kinnevik Group, also sold advertisements at unnaturally low prices. Consequently, the Council found that Urban was to be allowed to “defend” its customer base and sell advertisements at prices that enabled the newspaper to compete with MetroXpress. Urban was, however, not allowed to undercut the advertisement prices of MetroXpress.

## 2.6 Mergers and acquisitions

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Merger control was incorporated in the Danish Competition Act in 2000. It is thus a relatively new area. In 2002, the Competition Authority treated 13 merger cases. The largest merger case in 2002 was the merger between Danish Crown and Steff-Houlberg.

The threshold value for mergers in Denmark is DKK 3.8 billion. The Competition Act includes a special provision on mergers not found in any other countries. According to this provision, 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 impact on competition.

### Merger between Danish Crown and Steff-Houlberg

The European Commission referred the merger between the Danish Crown and Steff-Houlberg slaughterhouses to The Competition Council. The Competition Council approved the merger. According to the agreement, the slaughterhouses had to undertake a number of commitments. If these commitments were not complied with, competition would be reduced significantly. The prices might then increase by 5-10 per cent and the range of products might decrease leading to fewer quality products on the Danish domestic market.

The commitments were grouped into four. Firstly, the individual supplier was given more options in that the co-operative members’ possibility of supplying part of their pig production to competitive slaughterhouses was extended. Also, an obligation to purchase from all Danish farmers, including non-members, was imposed on the slaughterhouses. At the same time, the minority protection was strengthened in the Danish Bacon & Meat Council (Danske Slagterier) and in the Pig Production Levy Fund (Svineafgiftsfonden).

Secondly, the parties had accepted to sell a production unit with a weekly slaughtering capacity of 10,000 pigs. This is twice the capacity that the European Commission made Danish Crown sell after the 1999 merger with Vestjyske Slagterier. It has now turned out that the divested slaughterhouse was unable to compete in the market; accordingly, the Competition Council requested that the new buyer was to be put in an especially favourable position. Competition in slaughtering was also ensured by requiring the slaughterhouses to slaughter under contract for others. Besides, if the slaughterhouses close down a production unit, they are no longer allowed to impose a restriction on the property preventing the buyers from running a slaughterhouse.

Thirdly, competition in the food-processing link was guaranteed. For a period of ten years, the food-processing industry will be guaranteed supplies at prices that cannot exceed the average export prices. Besides, the parties agreed to sell a food-processing company with a yearly capacity of 12,000 tons.

Fourthly, competition in the retail trade was guaranteed in that the slaughterhouses agreed to allow competitors access to their distribution system. This made it easier for competitors to reach the consumers with fresh pork.

Besides, the slaughterhouses were to guarantee that the hot-dog stands would continue to enjoy at least the same good terms as previously.

When combined, these four groups of commitments ensured that the position of the consumers and competitors was just as good as before the merger, in the opinion of the Competition Council.

## 2.7 Other decisions

The Competition Council may issue orders for the termination or repayment of aid granted from 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 public authorities sell or let land, commercial tenancies, etc. below market prices.

In principle, the Danish Competition Act seeks 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. The assessment of this - which entails putting other legislation above the Competition Act - can only be made by the relevant minister who is answerable to the Danish Parliament. The minister responsible and the Minister of Economic and Business Affairs must motivate governmental restrictions on competition questioned by the Competition Authority.

### Financial support from the Danish Labour Market Holiday Fund

In Denmark, the employers pay the employees' holiday allowance into an account managed by the Danish Labour Market Holiday Fund (AFF). Holiday allowance that is not withdrawn is allocated by the Fund to activities for the employees. In 2002, the Competition Council recommended to the Minister of Employment that the rules on payment of support from AFF should be changed to ensure that the support to holiday activities would not damage rental firms and restaurant keepers.

The Association of the Hotel, Restaurant and Tourism Industry in Denmark (HORESTA) had complained to the Competition Authority arguing that support from AFF to, for example, holiday centres had forced private holiday centres to close. AFF only supported funds, private foundations or similar, not least including Dansk Folkeferie, whereas private companies never received any support.

A large part of the support from AFF did not affect competition to any significant extent. This applied to support to adventure and activity projects without overnight accommodation, which generally attracts tourists and therefore benefits the entire local tourist industry. Support to setting up holiday facilities for disabled persons and other groups at risk did not cause any competitive problems either.

However, operational support to holiday centres with overnight accommodation distorts competition in relation to the private companies. Operational support is the most harmful type of support because it in a way protects the beneficiary against loss-making and thus reduces the beneficiary's incentive to improve operations in order to be competitive. On this basis, the Competition Council recommended that AFF should no longer provide operational support to holiday centres with overnight accommodation. Besides, the Competition Council recommended that so-called secondary activities (e.g. restaurants, cafeterias, accommodation, etc. for non-holiday purposes) should be separated financially and run on market terms.

AFF's support policy was legal pursuant to the Danish Holiday Act. Therefore, the Competition Council could not intervene directly in pursuance of the Competition Act. Instead, the Competition Council approached the Minister directly through a letter and presented a solution to the competition problems. The approach has resulted in new legislation that is in accordance with the recommendations of the Council.

## 2.8 User satisfaction

The Competition Authority has for some years measured the satisfaction of its "customers".

User survey, Competition (2000-2002)

Year	<i>Positive/very positive replies – per cent</i>	
	2000	2002
Duration of case handling	55	67
Reasoning sufficient	67	72
Information before decision	55	70
Getting in touch by phone	84	95
Returning calls	73	92
Service level in general	83	90
Intelligibility of letters	82	92
Legal competence	74	78
Economic competence	77	79
Sector knowledge	37	68
Explain Competition Act	67	88
Presentation of facts	64	87

It is the goal of the Competition Authority to be a competent and service orientated organisation. Therefore the authority has a consultancy company to monitor user satisfaction by making regular user surveys. From 2000 to 2002 the user satisfaction has increased in all areas and the authority strives to continue this development.





## 3 Public procurement and state aid

### 3.1 Public procurement

The purpose of the EU rules on public procurement is to create cross-border competition in public procurement within the EU. The aim is to ensure that suppliers from all EU Member States have equal access to bidding for public procurement contracts. This promotes cross-border competition and thus ensures public procurement on the best possible terms.

The work of the Competition Authority within public procurement was dominated by international activities in 2002.

During the Danish EU Presidency, the Competition Authority was responsible for the Council of Ministers' task force managing the negotiations on new Public Procurement Directives. Likewise, the Competition Authority also reported the results of the pilot project on public procurement to the European Commission. Finally, the Competition Authority launched a new networking initiative between European public procurement authorities.

#### Average duration of case handling 2000-2002, Procurement (months)

<i>Complaint cases</i>		
<b>2000</b>	<b>2001</b>	<b>2002</b>
2.6	2.1	2.7
<i>Informative statements</i>		
<b>2000</b>	<b>2001</b>	<b>2002</b>
1.6	1.5	2.4

#### Negotiations on new Public Procurement Directives

The negotiations on new Public Procurement Directives have been going on since the European Commission presented its proposal in the summer of 2000. The proposal involves an in-dept reform of the Public Procurement Directives in order to ensure that the rules can match future requirements. The reform is crucial because it will help the public sector to get maximum value for its money when purchases are made.

In 2002, the negotiations on an update of the rules progressed considerably. During the Spanish EU Presidency, the Council of Ministers reached political agreement on the Directive for the Public Sector. The aim for the Danish Presidency was to conclude the negotiations on the Utilities Directive. Also in this area, political agreement was reached already at the Council meeting in September.

#### Informal conflict resolution and a permanent public procurement network

In the summer of 2002, a pilot project on informal conflict resolution carried out during the past four years by several EU Member States, EEA countries and Switzerland was completed.

The project was initiated by Denmark in 1998 and originally comprised only six EU countries. At the completion in 2002, a total of 15 countries had joined the project.

The main purpose of the project was to develop methods for smooth and efficient resolution of problems that occur when a company submits a tender in another country. For this purpose, a network was established between the participating countries. The network ensures that cross-border tenders can be handled in an efficient and informal way. The pilot project attended to approx. 50 cases during the pilot stage.

The participating countries also benefited from the discussions on the implementation of the public procurement rules in the individual countries and the mutual exchange of experience that took place.

In September, the Competition Council submitted the results of the pilot project to Mr Bolkestein, Commissioner. The project was reported in four reports found at the web site of the Competition Authority ([www.ks.dk](http://www.ks.dk)).

At the conclusion of the project, the participating countries recommended that a permanent network between the European public procurement authorities should be established. The European Commission supports this idea.

The Competition Authority organised the first meeting of the new public procurement network early 2003. The new network will include up to 32 countries.

## New rules on tender procedures for public works contracts

In 2001, new rules on tender procedures for public works contracts that do not exceed the EU tender threshold entered into force. The new Danish regulatory framework (Act on Tender Procedures for Public Works Contracts and Executive Order on Tender Procedures for Public Works Contracts) basically helps to ensure competition in connection with public and publicly supported works contracts and to ensure that this competition takes place on fair and equal terms. As the bill was read by the Parliament, the building and construction industry maintained that the Executive Order on Tender Procedures for Public Works Contracts was too detailed and complicated to work with.

In January 2002, the Danish government launched a series of initiatives aimed at improving the competitiveness of Danish industry. In this connection, it was noted that the administrative burden of the building and construction industry could be eased. Therefore, efforts to make the rules of the Executive Order on Tender Procedures for Public Works Contracts simpler and more flexible were initiated. This resulted in a new Executive Order on Tender Procedures for Public Works Contracts that entered into force on 1 September 2002.

The simplification initiative consisted of three elements targeted towards the clients, the small contractors and the large contractors, respectively. The changes form a whole that improves the terms of the building industry. At the same time, the Competition Authority published a user's guide to both the Act and the Executive Order.

## Case processing

An undertaking can complain to the Danish Competition Authority of 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 Competition Authority is given the opportunity to contact the caller for tenders, examine the case and propose a solution to the problem. 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.

Under Danish law, once a contract has been signed, it is binding. For this reason, it is important for the undertakings to file a complaint with the Competition Authority stating the nature of the issue as early 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 2002, the Danish Competition Authority received a total of 37 complaints concerning tenders. In about one third of the cases, the Competition Authority did not find any reason to intervene against the caller for tenders. In the rest of the cases, one or more irregularities were found.

## Production figures, procurement and state aid 1999-2002

	1999	2000	2001	2002
Complaint cases, procurement	28	33	22	37
Informative statements, procurement	131	105	77	78
Informative statements, state aid	37	35	24	29
Procurement problems abroad	10	9	8	2
Concluded cases, total	206	182	131	147

### 3.2 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, namely 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.

In matters relating to state aid, participating in the EU co-operation is one of the Authority's responsibilities. The Authority thus takes part in negotiations within the EU on new measures in respect of state aid. An important part of the Authority'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 Authority also helps to prepare for EU Councils (particularly the Industry Council).

In addition to international work, the Authority plays a national advisory role. The State Aid Office offers advice to the Danish authorities on state aid issues and may provide recommendations; however, it cannot make decisions. It is up to the European Commission and the European Court of Justice to make the final decision as to whether a given scheme constitutes state aid, and whether such an arrangement may be approved.

#### An economic approach towards less and better state aid

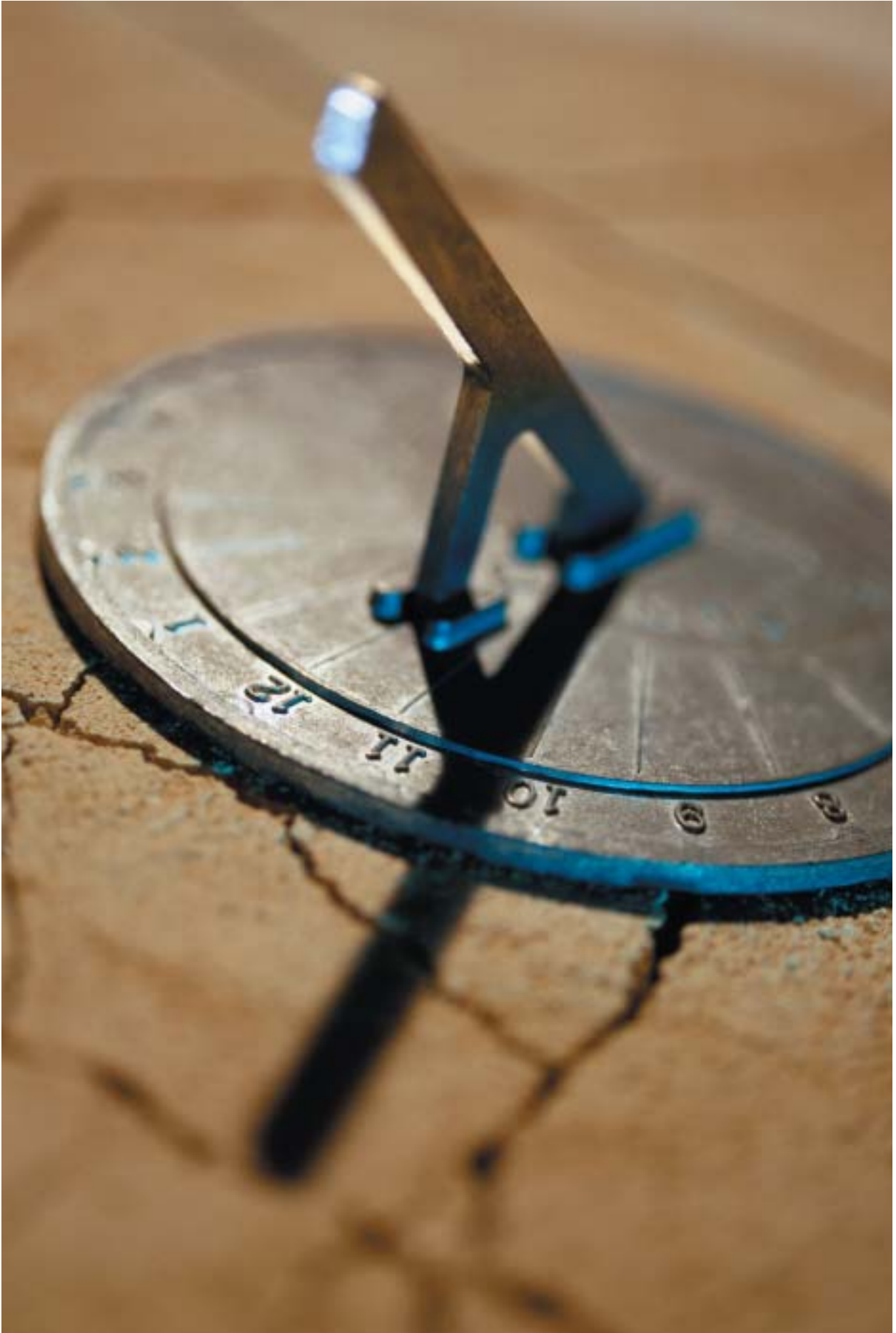
On 26 November 2002, the EU Competitiveness Council adopted the conclusions on an economic approach towards less and better state aid put forward by the Danish Presidency.

The conclusions point out preconditions for reducing and reorienting state aid. For example, it is necessary to carry out better economic analysis before granting aid and to require documentation for the long-term effects of aid.

Such analyses should point at possible detrimental effects of a given state aid scheme as well as an assessment of the scheme's suitability for solving the problem in question. This should lead to better aid schemes and force policy makers and planners to consider alternative regulatory steps other than state aid. In short, "less aid, but better aid".

The conclusions also put emphasis on the continuing efforts to increase transparency. Furthermore, the European Commission and the Member States are invited to exchange experience, starting in 2003. This is to take place through meetings and seminars on the efforts to reduce state aid, including the following indicative list of themes and subjects:

- development of statistical measures and indicators;
- national targets and results of efforts to reduce aid; and
- experience in using "ex-ante" and "ex-post" evaluations of aid.



## 4 Energy regulation

The Danish Energy Regulatory Authority is the supervisory body and board of appeal of 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 1 January 2000.

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 enjoy fair, uniform and transparent prices and conditions of supply.

The aim of the Authority is to enhance efficiency and reduce the consumers' energy expenses. The Authority's tasks can be summarised under four headings:

- Supervision of distribution prices and connection charges.
- Transparent prices and conditions of supply for the consumers.
- Hearing and resolving of complaints from consumers as regards the monopoly companies.
- Efficiency improving efforts to ensure that monopoly companies not exposed to pressure from competitors still feel obligated to improve efficiency.

### 4.1 Activities in 2002

The Authority hears cases of fundamental importance or of significant social or financial interest in the field of energy legislation.

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 related to 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.

#### Production figures, Energy 1999-2002

	1999	2000	2001	2002
Electricity cases	314	484	518	587
Gas and heat cases	145	158	162	171
Concluded cases, total	459	624	683	758

### 4.2 Electricity cases

#### Decision on assets in NESAs

The Energy Regulatory Authority decided on the principles that are to lead to a statement of the available capital and reserves in NESANET A/S. NESAs is Denmark's largest electricity company. The decision was fundamental and constitutes the first step in determining how to calculate the significant assets that are available to NESAs' owners.

The basis of the statement of the available capital and reserves is the assets found in the electricity companies before 1977 when the first Electricity Supply Act entered into force. The statement of these assets was not laid down in the first Electricity Supply Act in force from 1977 to 1999 nor in the current Electricity Supply Act. The Energy Regulatory Authority is to lay down the principles of stating these assets. In January, the Authority pointed out the problems with calculating the available capital and reserves to the Ministry of Economic and Business Affairs. The Minister therefore appointed a task force chaired by the Authority and with representatives from the Authority's secretariat and the attorney to the Government to analyse the problems pointed out by the Authority. The Authority took the recommendations of the task force into consideration.

The Authority decided that NESAs might state the value of the assets as at 1 January 1977 as the written-down historical costs. However, the Authority also declared itself willing to accept a statement based on the 1977 value if the company documents that adjustment is made for the technological obsolescence during the period from the actual time of acquisition.

The company's calculation of the writing-up of the book capital and reserves as at 1 January 1977 must be authenticated without any reservations by a state-authorized public accountant and must allow for deferred taxes related to the writing-up.

## Regulation of electricity companies with universal service obligations

The Energy Regulatory Authority determined how the profit of the electricity companies with universal service obligations was to be adjusted for 2001.

The electricity companies with universal service obligations in Denmark are to offer to supply electricity to the consumers. Until the full market opening on 1 January 2003, the companies had a monopoly of supplying electricity to the households. The task of the Authority is to approve the prices of the electricity companies with universal service obligations and to adjust the companies' profit at year-end.

Based on a reference price model, the Authority calculated a reference price for 2001 which makes up the Authority's proposal for the price of one kWh electricity in a company with universal service obligations that is operated efficiently. As the Authority sees it, companies with average sales prices below the reference price are efficient. Therefore, the profits of these companies do not need to be adjusted at year-end. Companies with prices exceeding the reference price are immediately considered inefficient.

In 2001, 16 of 50 companies with universal service obligations had prices that exceeded the reference price. The Authority fully compensated 8 of the 16 companies for increased electricity purchase costs. The other eight companies were faced with a subsequent total adjustment of DKK 2.3 million, corresponding to an average price reduction in 2001 of 2 per cent for the companies concerned.

The guidelines of the authority were in force until 1 January 2003. After this date, the electricity market was completely opened, and the companies with universal service obligations were exposed to competition.

### Average duration of case handling, Energy 2001-2002 (months)

	Complaint cases		Other cases	
	2001	2002	2001	2002
Decisions made by the Authority	4.8	8.9	3.2	5.1
Decisions made by the Secretariat	4.9	6.8	4.3	5.1

## Publication of price statistics

The Energy Regulatory Authority decided to publish new electricity price statistics prepared jointly by the Energy Regulatory Authority and the Competition Authority. The electricity price statistics are based on information from the web sites of the electricity companies. The purpose of the statistics is to provide a current overview of the price development and facilitate comparisons with other European countries. At the beginning of every month, the statistics are updated and published at the web site of the Energy Regulatory Authority.

These statistics reveal that the price paid by small consumers for electricity varies significantly between the various parts of Denmark. Adjusted for excise duties and contributions to environmentally friendly electricity production, the price of the most expensive company and the cheapest company differed by up to 30 per cent in 2001. Following the full market opening of 1 January 2003, all electricity consumers have a free choice of electricity supplier, which may enable them to reduce their electricity bill.

An average Danish household with an annual consumption of 4,000 kWh would be able to save about DKK 126, inclusive of VAT, if the household could have changed from the most expensive company to the cheapest company in 2001. The Authority continuously monitors the price development among the largest companies and every month publishes price statistics at its web site.

## 4.3 Natural gas cases

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### DONG was forced to lower its charges for transporting natural gas

The Energy Regulatory Authority decided that DONG had to lower its charges for transporting natural gas through its transmission system aligning the prices with the actual costs of DONG's activities. DONG is by far the largest natural gas supplier in Denmark.

The Authority's analysis showed that DONG's charges for use of the transmission system exceeded the costs by 11 per cent, inclusive of charges for emergency supplies.

DONG had notified the Authority of new charges for making its transmission system available to other natural gas suppliers. In continuation of the decision of the Authority, DONG was required to suggest lower charges to the Authority.

DONG is responsible for all natural gas supplies in Denmark; however, the objective of the energy reforms is to allow the customers to choose their supplier. If a customer chooses another supplier than DONG, DONG must make its pipe system available to the gas transport.

In 2002, only 14 large companies enjoyed 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.





## 5 Projects and reports

A major part of the development work of the Authority takes place in projects that analyse fundamental problems in the various fields of the Authority. 12-14 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 project results provide the Authority with a better basis for its day-to-day case work. The project results are published in separate reports or in the annual Competition Report.

In 2002, seven projects were concluded, and three were close to conclusion:

Competition Report 2002

Partnerships, procurement and tender

Efficiency and competition in water supply

Free and equal competition in the holiday market in Denmark

Liberalisation of the electricity markets

Media advertising

Competitive situation in the debit card market

Competitive airlines

Financial markets

E-business and the new economy

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 2003 is the sixth.

The Competition Authority also publishes “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 the public procurement area, four reports were published in 2002:

- Final report on the implementation of the pilot project on public procurement
- Report on the study on pre-contract problem-solving systems
- Experiences with solution of cross-border problems in public procurement procedures
- The application of the Public Procurement Directives in three specific sectors

## Key figures

<b>Productivity</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>
Cases, total	1322	2012	1840	1950
Increase in productivity	3.4 %	2.9 %	6.3 %	3.4 %

<b>Staff</b>	<b>year-end 2002</b>
Board of Directors	3
Competition	51
Procurement and state aid	10
Energy	30
Legal, EU and international	6
Projects	12
Administration	15
Information, relations to the Ministry and the Competition Council	6
<b>Total</b>	<b>133</b>

<b>Financial statement</b>	<b>Expenditure 2002</b>
	<i>DKK million (100 DKK ≈ 13,3 EURO)</i>
Competition	38,3
Procurement and state aid	5,0
Energy	17,8
Assistance	10,5
General management and administration	21,4
<b>Total</b>	<b>93,0</b>

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