



DANISH COMPETITION AUTHORITY



# Annual Report 2003



Annual Report 2003

The Danish Competition Authority  
Nyrupsgade 30  
1780 København V  
Denmark

Tel +45 72 26 80 00  
Fax +45 33 32 61 44

E-mail [ks@ks.dk](mailto:ks@ks.dk)  
[www.ks.dk](http://www.ks.dk)

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# Preface

Annual Report 2003 is the annual English report that gives an outline of the Authority's activities and cases in the past year.

A major feature of 2003 was the preparations for increased international co-operation in connection with the new EU rules coming into force on 1 May 2004. The new rules will result in close co-operation with the EU Commission as well as other national competition authorities.

These new rules will mean that the Competition Council and Authority, in co-operation with other national competition authorities, will deal with some of the cases that were previously dealt with by the Commission. The Authority looks forward to taking part in this new extended co-operation.

As a result of globalisation, companies tend to become ever larger and more alike. At the same time, there is an increase in companies' cross-border business partnerships. Unfortunately, this also provides greater opportunities for the formation of international cartels and other behaviour detrimental to competition.

Thus, the new EU rules will fulfil an increasing requirement for the national competition authorities to exchange information. As a consequence, the increased international co-operation will lead to more efficient competition and resource allocation, benefiting both the consumers and the companies in Europe.

Finn Lauritzen  
Copenhagen, April 2004



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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 to be one of the most effective, competent and service-minded competition authorities in the OECD area.

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 must converge to the average price level of the countries that Denmark is traditionally compared with.

The Danish Competition Act is – as it is 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

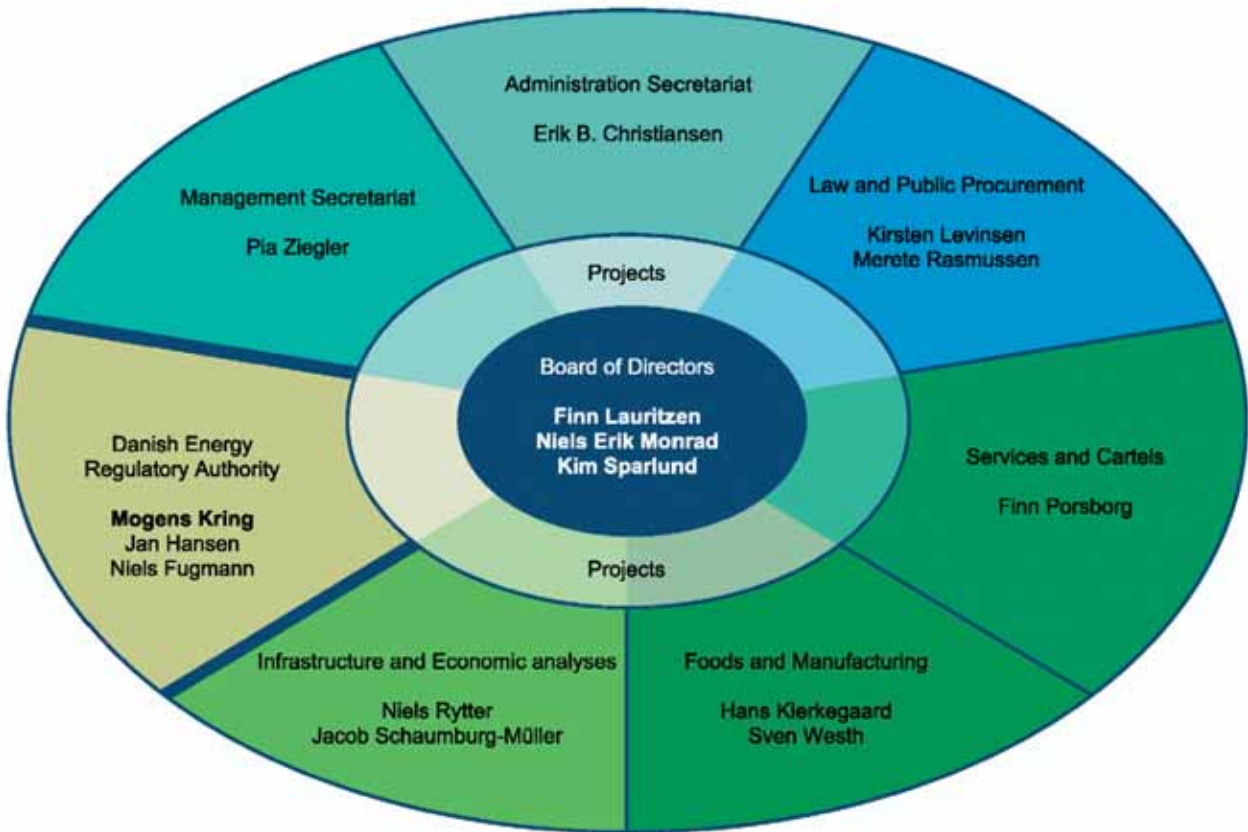
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The Authority comprises three competition units: a unit dealing with legal affairs and public procurement, a unit dealing with energy regulation, an administration secretariat and a management secretariat.

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 125 persons. 67 employees work with the Competition Act, 29 work with energy regulation, 13 work with procurement and legal and international affairs and 16 are administrative employees. The number of academic employees is 90.





### 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 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 handling of the Council and the Authority are not influenced by the ministry or the minister, but are subject to appeal before the Competition Appeal Tribunal and subsequently the ordinary courts.





## 2 Promotion of competition

2003 was a quiet year with respect to new legislation. The 2002 change of the Danish Competition Act brought the legislation up to date by, among other things, increasing the level of penalties and giving the courts the option to be lenient with co-operating companies. On the legislation front 2003 was used to prepare for the large changes that will take place in relation to the modernised European Competition Rules.

### 2.1 The modernised EU rules

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The modernised EU rules come into force on 1 May 2004, and that means, among other things, that companies can no longer report agreements to the Commission. This reform does not change the basic European competition rules but merely the rules of procedure governing the use of the competition rules. Nevertheless, the reform is expected to have a major impact on how the rules are implemented in practice. The objective is that the authorities work more efficiently for the benefit of companies and consumers all over Europe.

With the introduction of these new rules, companies will no longer be able to report their agreements to the Commission but are required to assess their agreements themselves. The practice of the last 30 years will prove useful, but the role of the Competition Authority will also change, playing an even greater part in guiding and advising companies. This actually means that for companies, the route to advice will become shorter than it presently is.

At the same time, the reform means that the Competition Authority and the other national competition authorities will be dealing with some of the cases that the Commission currently deals with. Seen from the point of view of companies, the advantage is that the national competition authority has presumably greater knowledge of and insight into local market conditions.

Conversely, it releases resources in the Commission to focus its efforts on the major infringements that have a crucial impact on the competitive conditions. The investigation of cartels will be intensified and the Commission will also spend more resources on significant mergers.

The plan is that the new EU rules are to become part of Danish legislation. The introduction of this new practice is undoubtedly one of the greatest challenges facing the Competition Authority in 2004.

### 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 handling 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 Reports for 2001 and 2002. The criminal prosecution of companies in the electricity cartel was practically brought to an end in 2003. As at 31 December 2003, 204 companies had been fined a total of DKK 25.6 million in this group action.



## Penalties in the electricity cartel

	Number of penalties
Penalties in excess of DKK 1,000,000	5
DKK 100,000–1,000,000	22
Penalties below DKK 100,000	177
Total as at 31 December 2003	204

## 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 2003, criminal prosecution of a ferry company, which had been reported to the Public Prosecutor for Serious Economic Crime by the Competition Authority, was finalised. A penalty of DKK 1,700,000 was imposed on the company for having made illegal exclusive agreements with bus companies.

## Higher penalties in the future

The penalties for infringement of the Danish Competition Act will be increased significantly in the future according to the 2002 change of the Act.

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 guidelines for the courts. When fixing the penalties, the courts also have to consider the particular company's ability to pay. Besides, the courts are to consider any 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 so-called compliance programme.

## 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 makes decisions in cases in accordance with practice or in accordance with the guidelines set by the Council.

The Competition Council decided 21 major cases in 2003. The Competition Authority made 74 decisions in important cases with subsequent publication. In 2003, the authority also concluded about 769 minor cases, mainly concerning access to documents, questions from citizens, etc.

## Production figures, competition cases 2000–2003

	2001	2002	2003
Council decisions	22	29	21
Authority decisions	233	166	74
Concluded cases, total	1012	720	769

Decisions of the council and the authority can be appealed to the Competition Appeal Tribunal. 15 cases were decided in 2003. Of these, 4 were overruled or referred back. Decisions of the Appeal Tribunal can be brought before the courts. In 2003, the court system made 3 rulings in relation to competition.

### Supreme Court judgement on the EU Commission's control investigations

In August 2001, the EU Commission decided to carry out a control investigation at a Danish company and its subsidiaries. The reason given was the Commission's suspicions that the company had participated in illegal cartel agreements. In accordance with this decision, the Competition Authority requested that the District Court ordered that representatives from the Authority and the Commission should be given access to carry out a control investigation at the company without notice. On the same day, the District Court made an order allowing the investigation, which was immediately initiated. The company appealed the order to the High Court, which dismissed the appeal, and the case was then brought before the Supreme Court. On 28 March 2003, the Supreme Court upheld the decision of the High Court. The company was unsatisfied, that the search warrant obliged the company to assist the authorities by handing over internal documents and supplying oral information. The Supreme Court affirmed that the Warrant was valid, and that the legal protection against self-incrimination had not been violated.

### High Court Judgement on binding resale prices

In 2002, the Copenhagen City Court ordered a company to pay a fine of DKK 200,000 for having breached the ban of the Danish Competition Act against fixing binding resale prices. The order was appealed to the High Court by both the company and the Public Prosecutor for Serious Economic Crime. In October 2003, the High Court acquitted the company. Thus, the High Court found that it had not been proved that the company had breached the ban of the Competition Act against fixing binding resale prices.

## 2.4 Anti-competitive agreements

### Arrangement agreements between Realkredit Danmark and estate agents

The Competition Council approved a number of arrangement agreements that Realkredit Danmark wanted to make with local estate agents in Denmark. The agreements concerned, among other things, the fixing of commission and sales targets when estate agents outside the Home chain arrange loans with Realkredit Danmark. The problem with the agreements was that the commission level could increase when an estate agent arranges several loans. This could result in a restraint on free competition.

However, the agreements did not conflict with the Competition Act, as they related to a modest part (a small percentage) of the market, and they did not prevent estate agents from arranging loans on behalf of other mortgage banks than Realkredit Danmark. All the same, the Competition Council decided that the commission fees should be published, as increased transparency in relation to these fees would promote the competition among the intermediary lenders. Realkredit Danmark appealed this part of the decision, but it was later upheld by the Competition Appeal Tribunal.

### Retailer terms for foreign booksellers

The Competition Council ordered two Danish book distributors, DBK-bogdistribution and Nordisk Bog Center, to change their retailer terms. The distributors were not permitted to demand that foreign booksellers observed the fixed prices if they sold the books to consumers in Denmark.

In Denmark, the book industry is permitted to have fixed prices on books during the calendar year in which they were published as well as the following calendar year. Thus, Danish publishing houses are permitted to set fixed prices on books that Danish booksellers are obliged to observe.

On behalf of the Danish publishing houses, DBK-bogdistribution had refused supplying books to a bookseller called Hamrelius in Malmö, Sweden, because the bookseller refused signing a document stating that he would observe the fixed prices if he sold books in Denmark. The industry feared that the fixed prices in Denmark could be bypassed, if the bookseller was permitted selling the books at free prices to the consumers in Denmark, e.g. via mail order or telephone sale. However, the bookseller in Malmö sold his books to, for instance, Danes in Sweden and not in Denmark. The Council assessed the retailer terms to be in contravention of the EU competition rules. Fixed book prices can only be enforced in relation to foreign booksellers, if the sale of the books to Danish consumers only takes place to bypass the fixed-price system on books in Denmark.

### Average duration of case handling, Competition 2000–2003 (months)

<i>Council decisions</i>			
<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>
11.9	6.3	10.0	11.6
<i>Authority decisions</i>			
<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>
3.3	5.4	5.8	5.6

## 2.5 Abuse of dominance

### TDC's price on broadband

The Competition Council decided on the evidence that TDC had not offered ADSL connections at prices below TDC's costs. Thus, TDC had not abused its dominant position on the market.

A number of TDC's competitors stated that TDC had dumped the prices, squeezing the competitors out of the market. For that reason, the Competition Authority investigated whether TDC offered ADSL at prices below the average total costs of the company.

The Authority's investigation showed that TDC had been conducting an aggressive price policy. However, TDC had covered all its costs, and with the aid of its aggressive price policy, TDC had succeeded in increasing its share of the ADSL market to 80% by extending its customer base, among other things. In this way, TDC had achieved economies of scale that its competitors were unable to match. This was the most important reason why TDC – unlike its competitors – had been able to offer ADSL at low prices while still recovering its costs.

## 2.6 Mergers and acquisitions

Merger control was incorporated in the Danish Competition Act in 2000. In 2003, the Competition Authority dealt with 11 merger cases. The largest merger case in 2003 was Nykredit's acquisition of Totalkredit creating the largest mortgage bank in Denmark.

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 country. 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.

## Nykredit's acquisition of Totalkredit

The Competition Council approved the merger between Nykredit and Totalkredit after significant changes had been made. The changes fell into three groups.

Firstly, the term of the agreement was halved. The parties had agreed that Nykredit should have more or less exclusive access to the 106 Totalkredit owners' distribution network for a period of at least 9 years. This was amended so that the most anti-competitive parts of the agreement had a term of only 4 years, whereas the parts of the agreement posing less restraint on free competition had a term of 6 years. In this way, both parties would have the opportunity of finding a more effective business partner after a few years, in the event that either or both of them wanted to.

Secondly, the changes brought about a commitment from Nykredit that a proportion of the efficiency gains from the merger would benefit the consumers directly. Nykredit's interest margin for new loans was lowered by more than 5% and a discount of DKK 600 was introduced for consumers applying for loans online.

Nykredit also introduced free registration of bonds. In total, the Nykredit's commitments facilitated annual savings for the consumers in excess of DKK 100 million. Thirdly, the transparency was increased in several ways. The arrangement commissions for mortgages would be published in future, and Nykredit would make it easier for the consumers to buy and sell bonds.

The Competition Council then decided that the positive impact of Nykredit's commitments compensated for the negative effects of the merger, and that competition had not suffered.

## 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 for 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.

### Request to the Minister of Environment and Energy regarding the returnable deposit scheme

In a request to the Minister of Environment and Energy, the Competition Council recommended that the regulation of the returnable deposit scheme and the recycle scheme for beer and soft drinks in non-returnable packaging was changed.

The Council argued that it was regrettable that the shares in Dansk Retursystem are owned by the major breweries. The company operates an infrastructure that is crucial for all suppliers of beer and soft drinks, and the ownership provides the shareholders with influence on the operation. As a consequence, the Council recommended to the Minister of Environment and Energy that the operation of the returnable deposit scheme and the recycle scheme was made independent of industry interests. This will become possible in 2008 when Dansk Retursystem's monopoly expires.

The collection of non-returnable packaging will again be put up for tender in spring 2004. The Council recommended that future tenders will prevent suppliers of beer and soft drinks from collecting from locations where they are not already permanent suppliers of beer or soft drinks.



In addition, the Competition Council recommended that initiatives were made to establish a common returnable deposit scheme and recycle scheme within the EU.

The Council further recommended reducing the administrative burden on importers etc. and introduce the possibility of exemption for new packaging to be used exclusively for restaurants and the like, creating the opportunity to test new types of beer.

## 2.8 User satisfaction

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

### User survey, Competition (2000-2003)

Year	<i>Positive/very positive replies – per cent</i>		
	2000	2002	2003
Duration of case handling	55	67	69
Reasoning sufficient	67	72	74
Information before decision	55	70	76
Getting in touch by phone	84	95	91
Returning calls	73	92	93
Service level in general	83	90	84
Intelligibility of letters	82	92	96
Legal competence	74	78	75
Economic competence	77	79	68
Sector knowledge	37	68	65
Explain Competition Act	67	88	84
Presentation of facts	67	87	77

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 2003, user satisfaction has increased in almost all areas, and the Authority strives to continue this development.





## 3 Public procurement and state aid

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

Also in 2003, the work of the Competition Authority within public procurement was dominated by international activities.

### Average duration of case handling 2000–2003, Procurement (months)

<i>Complaint cases</i>			
<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>
2.6	2.1	2.7	1.7
<i>Informative statements</i>			
<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>
1.6	1.5	2.4	0.9

### The legal package

The negotiations on a set of new Public Procurement Directives (the so-called legal package) continued throughout the year. After second reading in Parliament and Council, the proposals went into the conciliation procedure during the Italian Presidency. From the outset, about 50 proposals from Parliament were on the table. During the conciliation procedure especially the following questions showed to be of interest:

- Contracts below threshold,
- The possibility of taking social considerations into account when drawing up the technical specifications,
- The use of electronic signatures within e-procurement and
- A clarification of the use of the award criteria.

The Conciliation Committee reached a result in December and thus the way was paved for the adoption of the legal package.

### 3.1 Public Procurement Network

In January 2003, the Competition Authority hosted the first meeting of the newly established Public Procurement Network. The network comprises not only all the current EU Member States. Also all accessing countries, the candidate countries, the EEA and Switzerland have joined the network. The network has the full support of the European Commission.

The main functions are:

- To render practical assistance to companies which encounter barriers during a tender procedure in another country – the so-called cross-border cases.
- To exchange experiences and best practice within the performance of public procurement procedures.

The network works with a minimum of administrative costs. The participants meet once a year, whereas more regular contact is established via the Internet or in working parties on specific topics.

In 2003, the Competition Authority handled 4 cases for Danish companies via the PPN.

## The complaints systems

During the year attention has been drawn to the complaints systems in various ways.

The Commission is preparing a review of the Remedies Directives. The first step is to gather information and experiences from the Member States as to the functioning of the national systems. Supplementing the national efforts, the Commission has launched a public consultation on the subject.

At the same time Danish law, setting up the Complaints Board, has been through an evaluation in order to assess whether the law is fulfilling its purpose or not. The result of the evaluation showed no immediate need for changes to the complaints system.

Finally an infringement case against Denmark – deriving from the judgement by the European Court of Justice in the Alcatel case – has been closed with the issuing of a circular on simultaneous notification of all candidates and tenderers of the decision taken by the contracting authority when concluding a tender procedure.

## Tender procedures for public works contracts below threshold

The fairly new rules on tender procedures for public works contracts that do not exceed the EU threshold still give rise to discussion among the parties in the construction industry. Accordingly, the Competition Authority has launched a survey on the practical use of these rules. The purpose of the survey is to give a picture of whether there is a need for adjustments, new initiatives or potentially for further simplification of the rules. A further purpose is to ensure consistence with the forthcoming EU legislation.

The survey covers both the public and the private sectors and has been carried out by questionnaires and telephone interviews. The results will be presented in spring 2004.

A broad range of interested parties in the construction sector has been invited to comment on the survey.

## Case processing and information activities

An enterprise can launch a complaint to the Competition Authority if it has reason to believe that the public procurement rules have been violated in the course of a tender procedure. The Competition Authority only deals with cases where the contract has not yet been signed. In such a situation, the Competition Authority takes the opportunity of contacting the contracting authority in question and of examining the case in order to find solutions to the problems presented. Often this may mean that infringements can be remedied and the tender made to comply with the rules prior to the award of the contract.

In 2003, the Competition Authority received a total of 23 complaints.

On top of this informal problem solving system, the Competition Authority has upgraded its information activities on its homepage. In addition, the Competition Authority operates a telephone hotline where contracting authorities and enterprises can get quick answers to their questions.

## Production figures, procurement and state aid 2000–2003

	2000	2001	2002	2003
Complaint cases, procurement	33	22	37	23
Informative statements, procurement	105	77	78	79
Informative statements, state aid	35	24	29	41
Procurement problems abroad	9	8	2	0
Concluded cases, total	182	131	147	143

## 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 the state aid area is under the auspices of the Danish Competition Authority.

The Danish policy on state aid concentrates on state aid being used in the most efficient way, encouraging the desired objectives and avoiding unintended negative consequences, such as distortion of competition and/or a waste of public money.

It is the responsibility of the Authority to participate in the EU co-operation on matters relating to state aid. Thus, the Authority 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.

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 regarding EU regulation. The European Commission and the European Court of Justice make the final decision as to whether a given scheme constitutes state aid, and whether such an arrangement may be approved. The Authority can – within the provisions of the Danish Competition Act – investigate state aid that falls outside the EU definition of state-aid.

### New rules on state aid and modernising state aid control

During 2003 the Commission has come up with a series of changes in different areas. As regards research and development aid for small and medium-sized enterprises, the Commission launched in July 2003 a formal consultation of Member States and interested parties on a draft regulation to amend the rules on aid for SMEs in order to incorporate the new Community definition of an SME and to exempt aid for R&D from notification.

With regard to state aid procedures in the agricultural sector, the Commission has adopted a block exemption regulation for certain types of state aid up to certain levels, granted to small and medium-sized enterprises (SMEs). Due to the SME definition (up to 250 employees, €40 million turnover or a €27 million balance sheet) this would cover almost all farms and companies active in the agriculture sector.

The Commission will continue to review its state aid instruments to simplify and clarify them, and remove possible conflicts between the different texts. At present, priority is being given to reviewing the rules on rescue and restructuring aid for companies in difficulty, to look at the reform of the Community's regional aid rules after enlargement, to prepare new rules for shipbuilding, to simplify the rules on research and development for small and medium-sized enterprises, to clarify the area of services of general economic interest, and to review the state aid guidelines for the maritime and aviation sectors. Moreover, the Commission is currently preparing a significant impact test (SIT).



## Services of General Economic Interest (SGEI)

In July 2003, the Court of Justice delivered a judgement in the Altmark case. The judgement provides clarification on how Articles 87 and 88 of the EC Treaty apply to the public financing of undertakings responsible for services of general economic interest.

In its judgement, the Court states that “where a State measure must be regarded as compensation for the services provided by the recipient undertakings in order to discharge public service obligations, so that those undertakings do not enjoy a real financial advantage and the measure thus does not have the effect of putting them in a more favourable competitive position than the undertakings competing with them, such a measure is not caught by Article 87(1) of the Treaty.”

The judgment nominated four conditions to be fulfilled in order to escape classification as state aid. The conditions concern the definition of a public service, the parameters on the basis of which the compensation is calculated, the level of the compensation and the analysis of the costs.

The Commission will now draw up a document laying down the conditions governing their actual application by the Member States.





# 4 Energy regulation

The Danish Energy Regulatory Authority (DERA) is the supervisory body and board of appeal of the energy sector. 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.

DERA has the services of a secretariat staffed by employees who are made available by the Danish Competition Authority, and who work solely for DERA. DERA publishes its own, more extensive annual report, which is available from the DERA secretariat at [www.energitilsynet.dk](http://www.energitilsynet.dk).

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 complaints from consumers as regards the monopoly companies.
- Encouraging efficiency improvements to ensure that monopoly companies not exposed to pressure from competitors still feel obligated to improve efficiency.

## 4.1 Activities in 2003

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 relationships 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.

### Examples of activities in 2003

In 2003, the Authority was engaged in work to establish electricity companies' base capital and free shareholders' equity. Determining this is an important basis for regular adjustments to electricity prices. A second task demanding many resources has been the administration of the tool to control electricity companies' costs; the so-called revenue-framework system. Preparations to incorporate the new EU directives for electricity and gas in Danish legislation have also meant a lot of work for the Authority in 2003.

### The "Capital Issue"

When the Electricity Supply Act and the Executive Order governing revenue frameworks entered into force on 1 January 2000, the assets of the electricity sector were revalued. This revaluation took place because the legislation required the companies to follow the principles in the Danish Financial Statements Act, including establishing an opening balance sheet as at 1 January 2000.



The assets were worth billions of DKK and the job of DERA is to divide the revalued assets in the opening balance sheets of the electricity companies into a part belonging to the owners (free shareholders' equity), and a part for the benefit of consumers (base capital).

This is a complex and demanding task, and the Authority must decide on the amount of free shareholders' equity for a total of about 140 electricity companies.

By determining specific cases, in 2003 the Authority has established generally applicable principles to calculate the amount of free shareholders' equity. However, the electricity sector is not satisfied with the Authority's decisions. The sector has brought them before the Energy Board of Appeal (an independent external body) and announced that it may go to court. At the same time, the sector is also seeking a political solution.

## Revenue frameworks tightened

In the electricity area the Authority lays down the revenue framework for grid and transmission activities. The framework comprises a maximum amount which the company can demand each year. The main principle is that the company can keep all or part of the surplus amount as an efficiency profit, if costs for the year are less than the maximum amount. On the other hand - if revenues are higher than the revenue frameworks - the company must pay the excess charged to consumers through a reduction in electricity prices for the following period.

However, experience from 2000 and 2001 seems to indicate that companies do not charge the amount they are permitted to charge according to their revenue framework. An estimate based on preliminary calculations at the end of 2003 indicates that companies have charged DKK 3-4 billion less than they were permitted. On this basis it has been decided to tighten the revenue frameworks for the years to come. In 2003, DERA commenced discussions with the Danish Energy Authority on revising the frameworks.

## Full opening of the natural gas market

From 1 January 2004 all the approximately 300,000 Danish natural gas consumers will have a free choice of supplier. In 2003, DERA contributed to preparations for the full opening of the market. Amongst other things, DERA established the roles for the various market actors, and the procedures to be followed when a consumer wants to change supplier.

A much larger proportion of the price of natural gas is open to competition than is the case for electricity. But this does not include the whole price. Taxes also comprise a significant part of the price of natural gas, and all customers, irrespective of their choice of supplier, must pay for distribution by their local distribution company. On the other hand, as a main rule the supplier is responsible for buying natural gas, as well as transmission and storage.

In 2003, DERA also looked at the terms for using the natural gas grid and natural gas storage facilities. DERA wants to be involved in developing flexible and customer-oriented rules for transport of natural gas.

Finally, in 2003 DERA helped prepare economic regulation of the distribution companies in the sector. The necessary regulations remain, however, yet to be completed.





## 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 2003, 5 projects were concluded:

Competition Report 2003

Annual Report 2002

Report on Danish pilotage services

Municipal rent of sports centres

The merger between Nykredit and Totalkredit

The Competition Report, which is published annually, describes relevant competition/political problems illustrated by both Danish and international examples. 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 2004 is the seventh report published.

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.



## Key figures

	2000	2001	2002	2003
<b>Cases, total</b>	2012	1840	1950	2337
<b>Increase in productivity</b>	2.9%	6.3%	3.4%	9.4%

<b>Staff</b>	<b>year-end 2003</b>
Board of Directors	3
Competition	45
Legal Affairs and Public Procurement	13
Energy	29
Projects	13
Administration	16
Information and relations to the Ministry	6
<b>Total</b>	<b>125</b>

<b>Financial statement</b>	<b>Expenditure 2003</b> <i>DKK million (DKK 100 ≈ € 13.3)</i>
Competition	38.032
Procurement and state aid	4.991
Energy	21.462
Assistance	12.977
General management and administration	10.381
<b>Total</b>	<b>87.843</b>





**The Danish Competition Authority**

Nyrupsgade 30  
1780 København V  
Denmark

Tel +45 72 26 80 00  
Fax +45 33 32 61 44

E-mail [ks@ks.dk](mailto:ks@ks.dk)  
[www.ks.dk](http://www.ks.dk)

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