DANISH COMPETITION AUTHORITY

Annual Report 2005

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Preface

The Annual Report 2005 gives an outline of the Authority's activities and cases in the past year.

In many respects, 2005 was an eventful year. First, a number of amendments to the Danish Competition Act entered into force. Thus, the Danish legislation was aligned with the modernized EU rules both in regard to merger control as well as the rules laid down in Articles 81 and 82.

Second, the new Public Procurement Directives entered into force in Danish law on 1 January 2005. As a result, the Authority has performed a major task in advocating the new rules, as well as dealing with inquiries from affected authorities and private entities.

2006 also appears to be an exiting year. Among other things, a ministerial working group has been established in order to investigate, among other things, how leniency can be incorporated in Danish competition legislation.

Finn Lauritzen
Copenhagen, April 2006

Content

1 Company profile

The Danish Competition Authority is an independent authority 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 cooperation with the Directorate General for Competition of the European Commission.

1.1 Strategy

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 together with competition for public procurements.

The Authority aims at being one of the most effective, competent and serviceminded competition authorities among the OECD countries.

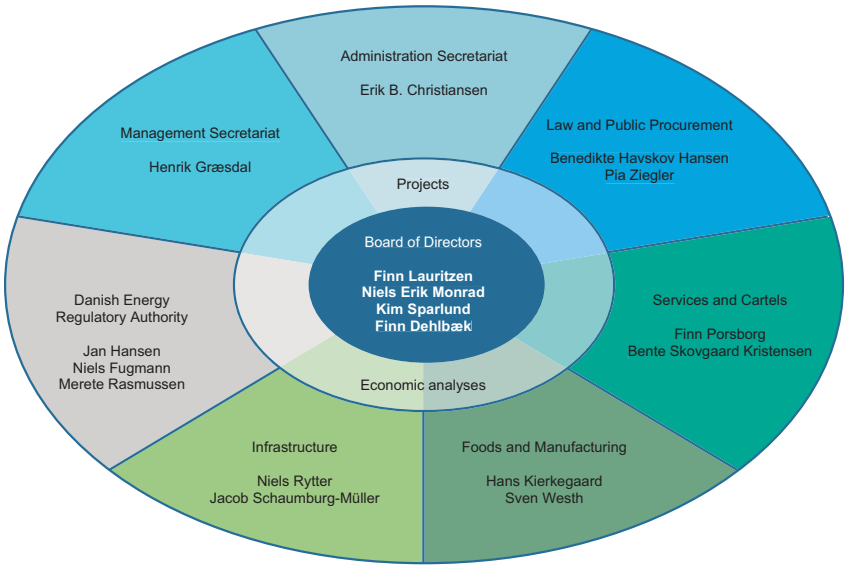
The Authority has set two specific goals to intensify competition in Denmark:

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

As in many other countries and in the EU, the Danish Competition Act is 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 Organization

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 organization that stimulates teamwork, cross-sectional cooperation and internal mobility. The results of this organization structure have increased productivity, development capacity and employee satisfaction.

The Authority currently employs 143 persons, of whom 70 work with competition cases, 33 work with energy regulation, 14 work with public procurement state aid and payment card regulation and 22 work with administrative tasks, information and ministerial affairs.

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 administration of the Council and the Authority are not influenced by the Ministry or the Minister, but are subject to appeal before the Competition Appeals Tribunal and subsequently to the ordinary courts.

2 Promotion of competition

2.1 Amendments to the Danish Competition Act

On 1 February 2005 a number of amendments to the Danish Competition Act entered into force. Among other things, the amendments were a result of new provisions for the application of the EU competition rules that entered into force in 2004.

In addition, the Danish Competition Council was given a wider scope to take action against dominant enterprises with anti-competitive behavior. Finally, the Act was amended in a number of areas in order to define and clarify the legal situation, to the extent possible.

Highlights of the new Competition Act:

- In special cases, the Competition Council will be empowered to order dominant enterprises to prepare and submit written trading conditions.
- The prohibition against binding resale prices is emphasized to make it clear that it also applies in individual cases of price control where the management is unaware of the issue. Discounts to retailers who agree to observe fixed prices are prohibited, as well.
- The merger criterion is amended to give the authorities a wider scope to impose requirements in connection with mergers threatening to impede effective competition, even though the mergers do not comprise the largest enterprise in the market (i.e. the so-called SIEC criteria).
- As the European Commission, the Competition Council will be empowered to settle competition issues by accepting binding commitments by the enterprises.
- Moreover, the competition authorities will be empowered to issue orders to ensure that an enterprise observes the commitments made to the competition authorities in a timely and proper manner.
- The existing notification system is modernised so that enterprises may claim exemption from the Competition Act without prior application.
- It is emphasized that the Act warrants publication of judgments and fixed penalty notices for infringements of the Competition Act.
- The Competition Appeals Tribunal will be enlarged from 3 to 5 members.
- It will be possible to handle cases in English, wholly or partly.

2.2 Punishable infringements of the Competition Act

Cartels represent one of the most obstructive types of anti-competitive behaviour. Investigation and inquiry into such activities are therefore given top 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.

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

Watch wholesaler fined 200,000 DKK also including a personal penalty to the manager

On 1 December 2005 the Swatch Group was fined 200,000 DKK by The High Court of Eastern Denmark. The company was convicted of having entered into agreements with retailers, forbidding them to sell watches at a discount. Such agreements on fixed prices are illegal according to The Competition Act.

Aside from the fine being imposed upon the Swatch Group, the company manager was personally fined 10,000 DKK by The High Court on the grounds that the manager himself took active part in the infringement of the law. This is the first time that a personal criminal liability has been applied to in relation to violation of The Competition Act.

This is the last case which is expected to be settled according to the penalty guidelines in the former Competition Act. The revised Competition Act has significantly severer penalties.

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 decided 31 cases in 2005. The Competition Authority made 52 decisions in important cases with subsequent publication. Due to fewer notifications, there is a decrease in the number of agreements since 2002. However, the workload has not been reduced, since cases are getting more complex having conflicting parties. In 2005, the Authority also concluded about 567 minor cases, mainly concerning access to documents, questions from citizens, etc.

Production figures, Competition 2003-2005

	2003	2004	2005
Council decisions	21	13	31
Authority decisions	74	68	52
Concluded cases, total	769	710	567

Decisions by the Council and the Authority can be appealed to the Competition Appeals Tribunal. 7 cases were decided by the Tribunal in 2005. Of these, two were overruled or referred back. Decisions by the Appeals Tribunal can be brought before the courts. In 2005 the court system decided 2 cases in relation to decisions by the Competition Council appealed to the Appeals Tribunal - both cases were decided in favour of the Competition Council.

Average duration of case handling, Competition 2002-2005 (months)

Council decisions			
2002	**2003**	**2004**	**2005**
10.0	11.6	12.0	15.6
Authority decisions			
2002	**2003**	**2004**	**2005**
5.8	5.6	4.7	4.2

Some of the major cases decided by the Council in 2005 are described below.

2.4 Anti-competitive agreements

Danish Inns and Hotels violates the Competition Act

Danish Inns and Hotels violated the Competition Act by demanding their members to observe a fixed price floor for accommodation.

According to the guidelines of Danish Inns and Hotels, the members were not allowed to rent out rooms below a price floor set by the Danish Inns and Hotels. Neither were the members allowed to advertise nor display with room tariffs below the fixed price floor. If the members failed to comply with these demands, it might lead to expulsion from Danish Inns and Hotels.

The articles of association entailed that members of Danish Inns and Hotels were unable to compete on the price of accommodation. In other words, it was a cartel case. As a consequence, the Competition Council ordered Danish Inns and Hotels to revoke these demands on minimum prices. The case was also referred to the Public Prosecutor for Serious Economic Crime for criminal investigation.

2.5 Abuse of dominance

Marketing fees not to be spent on discrimination

For the first time The Competition Council evaluated a dominant company's use of marketing fees and campaign support aimed at retail chains.

It has been common practise that dominant companies must not discriminate between their customers when giving discounts.

In this case, the Competition Council stated that dominant suppliers, as well, have an obligation not to discriminate their customers in relation to discounts, marketing fees and campaign support. This implies that customers with equal characteristics should gain fairly equal grants, irrespective of it being done through discounts, marketing fees or campaign support. Discrimination requires documentary proof of cost factors or the like, providing reasons for the differences.

During the process, the company (Arla Foods) provided documentation that the retail chains, to a certain extent, impose different distribution costs upon Arla. Considering this, the Council concluded that Arla did not discriminate their customers.

Mazda Motor abused its dominant position

Mazda Motor Denmark abused its dominant position by making inspection visits at the spare parts stores at the authorized repair facilities.

Mazda had informed their customers that they intended to make inspection visits without prior notice requiring access to all parts of the customer's store, not least to the spare parts store.

If the individual repair facility refused to give access to the Mazda inspectors, it could result in Mazda ceasing to deliver spare parts to the repair facility in question.

The terms entailed that the authorised dealers would be more reluctant to buy original Mazda spare parts from Mazda competitors (through parallel import) and from buying so-called 'non-original spare parts'. Other spare part wholesale dealers would subsequently experience increasing difficulties in selling their products, even though they could deliver at equal quality and lower prices.

Against this background the Council found that Mazda imposed unreasonable terms of business on their customers, contrary to the Competition Act. Thus, the Council ordered Mazda to change these terms in its terms of business.

2.6 Mergers and acquisitions

Merger control was incorporated in the Danish Competition Act in 2000. In 2005, the Competition Authority handled 11 merger cases.

The threshold value for mergers in Denmark is 3.8 billion DKK. The Competition Act includes a special provision on mergers not to be found in any other country. According to this provision, the parties may obtain a preliminary approval, which is not published until later, at an agreed time. This provision may in some negotiations be expedient for the parties - and is naturally only applied in cases where it is quite evident that the merger shall have no impact on competition.

Svenska Lantmännen's (Swedish Farmers' Organization) acquires the shares in Spira-koncernen (Spira-organization)

The Competition Council approved that Svenska Lantmännen's (SvL) acquired the shares in Spira-koncernen. SvL is active within the chemicals and feeds trade etc. in Sweden, Denmark and a number of other countries. Spira supplies and sells poultry meat in Sweden through the wholly-owned subsidiary Kronfågel and in Denmark through Danpo. The ownership of Danpo, combined with SvL's trading turnover, confirmed that it was a merger which must be registered in Denmark.

The Competition Council found that the merger did not present a problem in the main areas affected by the merger in Denmark, that is to say the selling of chicken products for the retail trade and the selling of chicken products for catering and for the processing industry.

However, the suppliers of chicken products may be affected by the merger, because SvL's subsidiary SweChick is very powerful in the area of supplying of parental animals to hatcheries. These deliveries are necessary for Danpo's competitors enabling them to breed chickens.

Therefore, Svenska Lantmännen and SweChick were committed to deliver parental animals on equal and non-discriminating terms to all Danish hatcheries that might consider. On these grounds The Competition Council approved the merger.

2.7 Other decicions

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 considered a supplement to the EC state aid rules. As a result, the Competition Council can 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 strives to achieve the greatest equality possible between private and public business activities. If anti-competitive practice is a direct or necessary consequence of public regulation, the provisions of the Act do not apply. The assessment of this - which entails putting alternative legislation above the Competition Act - can only be made by the relevant minister 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.

The Transport Industry's Training Council receives illegal support

The Competition Council ordered the cease of an illegal, indirect support to the Transport Industry's Training Council. The support by TUR Publishing was carried out exclusively by the use of training material free of charge by The Ministry of Education.

TUR's secretariat and publishing company is a joint ownership by employers' associations and trade unions within the transportation area. They develop training material for reeducation in the transportation sector. Normally, this is done in close cooperation with institutions offering labour market training courses.

TUR receives legal support from The Ministry of Education in order to develop training material for driver's license training. The Ministry of Education owns the material. As the sole publisher, TUR Publishing was allowed to use the material free of charge. Other publishers had not yet gained access to the material. Thus, TUR Publishing had a competitive advantage compared to the private publishers.

The Council found that TUR Publisher's right of use of the training material, developed by TUR for The Ministry of Education, represented an indirect, selective support to the publishing company inconsistent with the Competition Act.

The Ministry of Education informed that it would make the material available to everybody on the internet, as soon as possible. The Council found that this would stop the illegal support. Subsequently, the Council found no reason for repaying of the support if the enforcement order was complied with within 3 months.

The Competition Council recommends increased competition in the pharmacy sector

The Competition Council recommended The Minister of Internal Affairs and The Minister of Health to partly deregulate the pharmacy sector.

In relation to the Competition Report 2005 the Competition Authority conducted an analysis of the Danish pharmacy sector. The analysis showed that public regulation is anti-competitive within the scope of distribution of medicinal products in Denmark.

On these grounds the Council proposed the following reorganization:

- Improved capabilities for establishing and owning pharmacies.
- The pharmacies must be allowed to broaden their range of products.
- More permissive opening hours in accordance with the ordinary retail trade.
- Option of establishing 'pure' internet pharmacies.
- Option of pharmacies being able to compete on price by introducing a price ceiling.
- Option of inviting tenders for the running of pharmacies receiving financial support.

Through this reorganization, the Danish pharmacy sector would be still more development oriented and efficient without giving in on the safety of the consumers

2.8 User satisfaction

The Competition Authority has a wide range of tasks. Regulatory tasks include some not directly requested by the customers, e.g. cases of the Authority or the Council making decisions entailing obligations or conducting unannounced inspections of selected enterprises. However, this does not prevent the Authority from aiming at a high degree of customer satisfaction.

Via interviews with most of its customers, the Competition Authority has measured customer satisfaction since 1998. Customers include enterprises, lawyers and other authorities whose cases have been handled by the Authority.

The Authority is pleased to note that satisfaction in the competition area stabilised in 2005. However, the Authority strives to increase the satisfaction in e.g. the area of sector knowledge.

User survey, Competition (2003-2005)

	Positive/very positive replies – per cent		
	2003	**2004**	**2005**
Duration of case handling	69	61	60
Reasoning sufficient	74	71	68
Information before decision	76	78	72
Getting in touch by phone	91	92	91
Returning calls	93	92	94
Service level in general	84	92	88
Intelligibility of letters	96	90	93
Legal competence	75	75	81
Economic competence	68	77	75
Sector knowledge	65	64	58
Explain of the Competition Act	84	76	84
Presentation of facts	77	74	7

3 Public procurement and state aid

The purpose of EU public procurement legislation is to create cross-border competition within the European Union. The aim is to ensure suppliers from all EU member states equal access to bidding for public contracts. This promotes cross-border competition and leads to procurement on the best terms possible.

In 2005, the work of the Danish Competition Authority within the field of public procurement was dominated by the new Directives which entered into force in Denmark on 1 January 2005.

The first year with the new Directives

Denmark was the first of the EU member states to implement the two Procurement Directives (2004/17 and 2004/18) which entered into force on 1 January 2005. For the past year, the Danish Competition Authority has received several inquiries regarding the new rules. Through the operation of the daily hotline, the Authority has obtained an overview of which of the new rules present the greatest challenges for the affected authorities and private entities and in which areas the need for new guidance is present.

Some of the main areas causing difficulties in Denmark concern the rules regulating the selection of candidates and the award of contracts due to the changes made to the rules. New practice by the courts has to be incorporated. Another difficult area relates to the calculation of the contract value in regard to the thresholds in the Directives. In order to give the contracting authorities better insight into the rules, the Danish Competition Authority published a guide regarding the thresholds and the calculation of contract values. Among other things, the publication seeks to give answers to the following issues:

- Which thresholds are relevant to which contracts?
- How is the value of a contract calculated?
- When are purchases made from central purchasing bodies included?
- How and when can framework agreements be used?

The new Act on Tendering Procedures for work contracts

A new Act on Tendering Procedures for Work Contracts below EU thresholds (Tilbudsloven) was adopted in the spring of 2005 and entered into force on 1 September 2005. As its predecessor, the new Act is based on the principles of the Directives and on the basic principles of the EU Treaty. However, the Danish Act on Tendering Procedures offers more flexible procurement methods than those in the Directive, especially regarding the use of the negotiated procedure or negotiation within other procedures.

The most significant changes made are:

- When the contracting authority uses the possibility of "direct procurement" (underhåndsbud) and wishes to invite the maximum amount of tenders (4), one of the invited tenderers must be from outside the local region
- The threshold for using the "direct procurement" (underhåndsbud) is raised from 2,000,000 DKK to 3,000,000 DKK

The aim of the new Act is a simplification of the rules of public procurement below the EU thresholds.

In November 2005 the Danish Competition Authority published new guidelines to the new Act on tendering procedures for work contracts below EU thresholds. The new publication addresses issues such as:

- The obligation to ensure equal treatment of tenderers
- Transparency
- Public and limited tendering procedures
- Framework agreements
- The tendering material
- The award of contracts
- Notices and grounds for the award

Complaint cases and informative statements

Whenever a tenderer has reason to believe that a contracting authority runs counter to public procurement legislation, a complaint can be submitted to the Competition Authority.

In order to submit such a complaint, the tenderer is offered an easily accessible, rapid and inexpensive way of dealing with the procurement problems. On receipt of a complaint, the Competition Authority contacts the contracting authority in question, examines the case and presents solutions for potential violations. In most cases, this results in the infringements being remedied and the contracting authorities complying with the rules.

However, the Competition Authority does not deal with cases where a contract has already been signed, nor does it deal with claims for damages.

In 2005, the Competition Authority received a total of 39 complaints. In 14 of these cases the Authority expressed criticism of the contracting authority.

In addition to the informal problem solving system, the Competition Authority is responding promptly to procurement questions submitted by the contracting authorities, tenderers and advisors via a telephone hotline service. Written informative statements are limited to questions of general interest concerning law interpretation.

Average duration of case handling, Procurement 2002-2005 (months)

Complaint cases			
2002	**2003**	**2004**	**2005**
2.7	1.7	4.1	2.0
Informative statements			
2002	**2003**	**2004**	**2005**
2.4	0.9	1.1	1.1

The Public Procurement Network (PPN)

In 2005 the cooperation within the PPN has been reinforced. All members have shown interest in using the network for exchanging experiences, and especially the "new" EU member states have found an easy way of making contact with colleagues in other countries. PPN has launched common projects. In this context, the Danish Competition Authority has developed an electronic guide of central purchasing bodies across Europe. The guide can be found at http://www.ks.dk/english/procurement/guide/

3.1 State aid

In 2005, the Commission launched its State Aid Action Plan - a roadmap for state aid reform 2005 - 2009 (SAAP). With the appointment of the new Commissioner Mrs. Neelie Kroes and her announcement that the Commission's future focus will revolve around the state aid rules making them as efficient as the rules in Articles 81 and 82, the SAAP was a highly anticipated document.

To make the state aid rules as efficient as Articles 81 and 82 would indeed require a reform of the current state aid rules. Thus, expectations were high when the document was finally presented in the summer of 2005. The high expectations, however, were not met entirely. From a Danish point of view, the plan did not qualify as a true reform. The traditional approach to state aid was preserved and the apparent lack of an economic approach proved disappointing. However, the SAAP, nevertheless, is one of the most important documents on the state aid scene in recent times.

The Lisbon Agenda mandates less and better targeted state aid, which Denmark supports entirely. Denmark believes that state aid should always be the last option and that it should be used only where a clearly defined market failure exists - such as the environment.

Distortion of competition is the reason for having state aid rules. However, in some cases the potential gain of state aid can justify the distortion, as with de minimis aid. There has to exist a reasonable equilibrium to justify aid, but determining whether the equilibrium exists, is not an easy task. Other barriers of trade are often based on toll or measures of equivalent effect being imposed on certain goods. In this situation, it is rather simple to determine the distortion on competition. However, the problem concerning state aid is that existing methods to analyse the effect of an aid are entirely based on an ex post analysis. Consequently, state aid has to be given in order to measure its effect on competition and then the distortion may very well have occurred. The Danish Competition Authority has subsequently decided to explore the possibilities of developing a method of ex ante analysis of the economic effects of competition. The hope is once to be able to develop certain criterias that can be taken into account prior to an aid being granted.

New rules on state aid and modernization of state aid control

As a consequence of the SAAP, many new rules and changes to existing rules are to be expected in the future. An important occurrence in 2005 was the Commission's follow up on case C-280/00, Altmark Trans. In November 2005, the Commission presented a set of 3 documents: a decision, a framework and a directive. The decision exempts aid to certain sectors and aid awarded for the delivery of services of general economic interest under a certain threshold. The Danish view-point is that state aid for services of general economic interest and aid for services of general interest will be one of the main revelations in recent state aid policies in the future. Many issues shall still have to be examined in order to reveal the true nature of these kinds of services and their relation to state aid.

With the publication of the three documents, status quo on services of general economic interest can be summarized as follows:

- There will not be state aid in a specific payment if conditions in the Altmark Trans case are met. Therefore, payments for such services of general economic interest do not have to be notified to the Commission.
- If the payment for a service of general economic interest does not fulfil the conditions in the Altmark Trans case, the payment can be compatible with the common market if the conditions in the new decision are met. Such compatible payment does not have to be notified to the Commission.
- If the company is not eligible for aid under the decision, the aid has to be notified to the Commission. The Commission can declare the aid compatible, but it is a condition that the requirements in the framework are met.

The Commission also issued new rules, decisions and guidelines on airports, regional aid and short term export credit.

The Commission will continue to review its state aid instruments to simplify and clarify them, and to remove possible conflicts between the different texts. At present, priority is given to the review of the existing block exemptions and to simplify and consolidate the rules. It is the plan that there will be a general block exemption including risk capital and aid related to innovation activities, research and development, environment and regional aid besides the areas already covered by block exemptions - training, employment and small and medium sized enterprises.

Production figures, Procurement and state aid 2002-2005

	2002	2003	2004	2005
Complaint cases, procurement	37	42	32	38
Informative statements, procurement	78	186	169	181
Informative statements, state aid	29	41	30	54
Procurement problems abroad	2	3	3	2
Concluded cases, total	147	271	234	2750

4 Energy regulation

The Danish Energy Regulatory Authority (DERA) is an authority independent of any sector interests and makes decisions independent of the Minister. The seven members of DERA are appointed by the Danish Minister for Transport and Energy for a term of four years - the present term expires end 2007. The members represent expertise in legal, technical, economic, environmental and consumer matters. The Danish Competition Authority (DCA) functions as secretariat for DERA.

The overall work of DERA involves supervising the monopoly companies in the energy sector. The Authority must help to ensure that consumers - households and enterprises - are charged with reasonable and transparent prices within reasonable, uniform and transparent terms of supply.

DERA regulates the district heating sector (prices etc.) and the infrastructure of the electricity and gas sectors as well as access to this infrastructure. For supply obligation electricity companies, the Authority is also responsible for price control, partly on the basis of requirements for security of supply. Furthermore, the Authority carries out benchmarking of the regulated grid enterprises.

If it is a matter of transparency, DERA regulations can also apply for areas subject to competition, e.g. publication of prices and terms.

Average duration of case handling, Energy 2002-2005 (months)

DERA decisions			
2002	**2003**	**2004**	**2005**
8.9	5.8	7.7	7.8
Authority decisions			
2002	**2003**	**2004**	**2005**
6.8	3.7	4.3	4.2

DERA's competence is laid down in the three energy supply acts - the Electricity Supply Act, the Natural Gas Supply Act and the District Heating Supply Act - as well as the energinet.dk Act.

The DCA prepares cases for decision by the Authority and makes decisions in accordance with the practices and guidelines stipulated by DERA.

Production figures, Energy 2002-2005

	2002	**2003**	**2004**	**2005**
DERA decisions	45	57	57	54
Authority decisions	33	24	24	21
Concluded cases, total	879	714	873	797

4.1 Tasks within individual sectors

The electricity sector

The Electricity Supply Act is the foundation for regulation of the electricity sector. The Act lays down the framework of how to achieve consumer protection, environmental concerns and security of supply in the liberalised electricity market. The key focus of the Act is to promote efficiency in the electricity sector, by partly using benchmarking. The sector comprises about 130 enterprises.

Liberalisation of the sector has necessitated a new company structure in the sector. Today, therefore, enterprises are divided into companies for power generation, grid, system operation, transmission, and trade. At the same time, a number of new players have appeared on the market.

DERA's responsibilities are limited to the parts of the sector where electricity supply companies have been granted a monopoly. These are grid and transmission companies. Grid companies are subject to special regulations. If a company is part of a larger group, the company must be separated as an independent unit in order to apply appropriately to regulation. Regulation covers regulation of the companies' prices and thus their income, control of their new investments and measures to ensure open access of generator companies to the grid. The regulation covers both the distribution grids and the regional transmission grids.

Finally, DERA's responsibilities also include suppliers of electricity with a supply obligation to deliver electricity to customers not using the open market, households and smaller enterprises. These suppliers are subject to maximum prices, calculated on the basis of the market prices. The regulation is described in greater detail under activities in 2005.

The natural gas sector

The Natural Gas Supply Act is the foundation for regulation of the natural gas sector. Regulation covers transmission, storage and the distribution companies. There are only few companies in the individual submarkets. The sector accounts for a total of ten companies.

DERA supervises that the companies supply gas at reasonable prices and on reasonable terms. This applies for enterprises which have been granted a supply obligation to supply customers who do not want to change to a new supplier of gas. The Authority also supervises access to the transmission grid and sees that access to gas storage facilities is granted at reasonable prices and on reasonable terms.

Finally, the natural gas distribution companies are regulated. Since early 2005, the companies have been subject to revenue framework regulation, which puts a ceiling on the companies' income. The companies are also subject to efficiency requirements encourageing the companies to be more efficient through consequentially lower distribution prices.

The district heating sector

The district heating sector is separate from the other two sectors. The liberalisation which has taken place in the natural gas and the electricity sectors has not taken place in the heating area. It is uneconomical to transport district heating over long distances. Since most of the transmission grid is not interconnected, it is difficult to create a market. Thus, the district heating sector is comprised by a large number of local monopolies. The sector comprises about 600 enterprises.

DERA ensures that supplies are provided at reasonable and transparent prices and on reasonable terms. According to the District Heating Supply Act, district heating must be sold at the cost of production and distribution, the "non-profit" principle. In this context, DERA decides the necessary costs to be included in heating prices.

Energinet.dk

In 2005 the state-owned company energinet.dk was formed as a result of the energy-policy agreement in 2004 by the merging of Eltra, Elkraft System, Elkraft Transmission and Gastra. At the same time, two subsidiary companies were established: Eltransmission.dk A/S and Gastransmission.dk A/S. The merger took place retrospectively from 1 January 2005.

Energinet.dk has an overall responsibility for the electricity and gas system in Denmark. The company is supposed to contribute to organising the energy market to intensify competition to the benefit of society and the consumers. The company owns the overall gas transmission grid and the electricity grid. Some of the foreign activities of the company are subject to supervision by authorities in countries outside of Denmark.

In accordance with the special regulations for energinet.dk, DERA supervises some of the company's activities.

4.2 New legislation

In 2005 the Authority issued two new executive orders, one concerning publication by electricity supply companies of prices, tariffs, discounts and terms, and a second concerning publication by natural gas companies of prices, tariffs, discounts and terms (executive orders nos. 770 and 771 of 8 August 2005).

In 2005, too, an executive order was issued concerning revenue framework regulation and opening balances for natural gas distribution companies (executive order no. 38 of 14 January 2005).

4.3 Activities in 2005

New regulations for price control for the supply obligation area

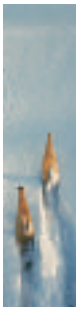
On 1 January 2005 an amendment to the provisions in the Electricity Supply Act on DERA's regulation of the price of supply obligation electricity entered into force. This replaced the ex-post efficiency regulation by a price control. The prices for supply obligation electricity apply for a quarter-year at a time and the suppliers of electricity with a supply obligation must notify these to DERA before the prices enter into force. Customers buying supply obligation electricity are primarily private households and smaller enterprises.

When companies report their prices, DERA is required to check that the prices do not exceed the market price level for corresponding consumer segments and terms of supply. If the prices reported are above the market price, the Authority must immediately order the companies in question to reduce their prices.

The market for supply obligation electricity

The prices notified for supply obligation electricity cannot be considered an expression of a competitive price level in the market. There are several reasons for this:

- in reality, the individual suppliers of supply obligation electricity are local/regional monopolies within their area,
- customers are highly immobile because of insignificantly financial benefits from changing supplier,
- electricity taxes conceal the price signals from the market,
- it is difficult for customers to obtain information about the market as it is difficult to compare different electricity products, i.e. products of different terms and supply times,
- lack of knowledge of suppliers - see the topical theme articles,
- and there are considerable barriers to new suppliers entering the market, for example it is difficult to establish a profitable customer base.



In order to conduct the price control required by the Authority, the DCA has therefore developed a method to provide a real indicator of the price level in a competitive market.

The market price model

The market price model is based on the prices offered by various suppliers to consumers outside their local market. These prices are available to DERA on the website: elpristavlen.dk.

On the basis of the prices on elpristavlen.dk, each quarter-year, DERA identifies the supplement (mark-up or gross margin) included in the consumer prices displayed on the website, i.e. the difference between the wholesale price of electricity and the prices on the elpristavlen.dk website. If the prices notified by the supply obligation companies contain a higher supplement, the Authority subsequently orders the companies to reduce the prices.

Appeals

On behalf of a number of suppliers of electricity, the Association of Danish Energy Companies has appealed against price control by DERA to the Energy Board of Appeal on the grounds that the Authority's method of

identifying the price level for the market has no statutory authorisation. Furthermore, a major complaint relates to the fact that control is too rigid and thus detrimental to a well functioning market. The Energy Board of Appeal has yet to decide on the matter.

Publication of prices on websites

DERA has laid down procedures for electricity supply companies publishing prices, tariffs, discounts and terms. The rules entered into force on 1 September 2005.

The rules are meant to help consumers understand prices and terms of different suppliers. Therefore, consumers are in a better position to exploit their right of free choice of supplier. Subsequently, there are requirements for electricity supply companies to publish their standard prices and terms on their own websites.

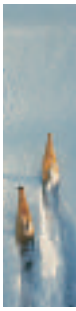
Electricity supply companies must also report their prices to the consumer portals on the Internet designated by the Authority. The Association of Danish Energy Companies' portal www.elpristavlen.dk is currently the portal designated. On this portal (primarily) private consumers can compare the prices of different suppliers.

New charge rates for all three energy sectors

DERA has laid down charges for reminders, enforcement proceedings, disconnection etc., applicable until the end of 2006. The charges apply for all three supply areas so that consumers are exposed to uniform charges, irrespective of whether they are within electricity, natural gas or district heating.

The charges will lead to simpler regulation and help ease administration for companies.

When notifying terms and prices under the three supply acts, companies must state whether they apply the recommended rates. DERA recommends that companies apply the new charges so that a charge in accordance with the standard charges will be deemed reasonable according to the energy supply acts.

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5 Projects and reports

A major part of the development work of the Authority takes place in projects analysing 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 stronger basis for its day-to-day case work. The project results are published in separate reports or in the Annual Competition Report.

In 2005, 14 projects were concluded:
Competition Report 2005
Annual Report 2004
Nordic benchmark 2005
State aid
The Nordic food market
Growth in the Danish harbours
Building materials
Competition indicators on infrastructure
Music, movies and games
Distribution of medicine
Free chains and capital chains
Benchmark of public market exposure
New competition law
Charges

The Competition Report, which is published annually, describes relevant competition and political problems illustrated by both Danish and international examples. The subjects chosen are those of significance to the quality and understanding of the work of the Competition Authority, as well as theoretical and practical problems for the framework conditions of trade and industry. The first Competition Report was published in December 1997. The Competition Report 2005 is the eighth report published in a series.

The Competition Authority also publishes "Competition in Denmark (Annual Report)", which takes stock of the objectives, results and organization of the Authority. Besides, it contains an analysis of the results achieved by the Authority within the scope of competition, energy, procurement, state aid, etc.

Key figures

	2002	2003	2004*	2005
Cases, total	1950	2337	3064	3280
Increase in productivity	3.4%	9.4%	30.4%	2.3%

* The definition of cases changed in 2004, thus, the cases cannot be compared directly.

Staff	**Year-end 2005**
Board of Directors	4
Competition	70
Public procurement, state aid and payment cards	14
Energy regulation	33
Administration, information and ministry affairs	22
Total	143

Financial statement	**Expenditure 2003** *DKK million*
Competition	36.6
Procurement and state aid	7.3
Energy	19.5
Assistance	18.3
General management and administration	12.1
Total	93.8

6 Consolidated Competition Act

Consolidated Act No. 785 of 8. August 2005

Promulgation of the Act on Competition, cf. Consolidated Act No. 539 of 28 June 2002, as amended by Act No. 381 of 28 May 2003, Act No. 1461 of 22 December 2004, Act No. 431 of 6 June 2005 and Act No. 601 of 24 June 2005. The promulgated wording of the Act shall not be fully effective until 1 January 2007, cf. section 85 of Act No. 431 of 6 June 2005 and section 5 of Act No. 601 of 24 June 2005 reproduced at the end of this Consolidated Act.

Part 1 Purpose and scope of the Act

1. The purpose of this Act is to promote efficient public resource allocation by means of workable competition for the benefit of companies and consumers.

2. - *(1)* This Act shall apply to any business activity and to aid from the public funds granted to business activities.

(2) The provisions in parts 2 and 3 of this Act shall not apply if an anti-competitive practice is a direct or necessary consequence of public regulation. An anti-competitive practice determined by a local government shall only be considered a direct or necessary consequence of public regulation in so far as the anti-competitive practice is indispensable for fulfilling the statutory responsibilities assigned to the local government.

(3) Decisions made by the board of a municipal partnership, cf. section 60 of the Local Government Act, are comparable to decisions made by the local government, cf. subsection 2.

(4) Questions whether an anti-competitive practice is compatible with subsection 2 shall be determined by the minister who is responsible for the regulation concerned. If the Competition Council requests the relevant minister to determine whether an anti-competitive practice is covered by subsection 2, the minister must reach a decision not later than 4 (four) weeks after receipt of the Council's enquiry. The Competition Council may extend this deadline.

(5) If the Competition Council finds that a public regulation or an aid scheme is likely to be detrimental to competition, or otherwise likely to impede an efficient public resource allocation, the Council may deliver a reasoned opinion to the minister and to the Minister for Economic and Business Affairs stating potentially detrimental effects on competition, and make recommendations for promotion of competition in the area concerned. Having consulted the Minister for Economic and Business Affairs, the relevant minister is obliged to respond to the Competition Council's opinion not later than 4 (four) months after receipt of the opinion submitted. The Competition Council may extend this deadline.

(6) (Repealed).

3. This Act shall not apply to pay conditions and labour relations. In carrying out its duties, the Competition Council may, however, to assist in its work, request information from organisations and undertakings concerning pay conditions and labour relations.

4. (Repealed)

5. - *(1)* The provisions of part 2 of this Act shall not apply to agreements, decisions and concerted practices within the same undertaking or group.

(2) Having consulted the Competition Council, the Minister for Economic and Business Affairs shall lay down rules on the application of subsection 1, including rules on how agreements etc. within the same undertaking or group shall be defined.

5a. - *(1)* Under this Act, the definition of the relevant market shall be based on examination of demand substitutability, supply substitutability and potential competition. The potential competition must be examined, once the position of the undertakings concerned has been ascertained and this position raises doubts as to whether this Act has been violated.

(2) The Competition Council may make use of external expertise in its appraisal under subsection 1.

Part 2 Prohibition against certain anti-competitive agreements

6. - *(1)* Any conclusions of agreements between undertakings etc., which have as their direct or indirect object or effect to restrict competition shall be prohibited.

(2) Agreements under subsection 1 may, for instance, be such agreements which

i. fix purchase or selling prices or any other trading conditions;

ii. limit or control production, markets, technical development, or investments;

iii. share markets or sources of supply;

iv. apply dissimilar conditions to equivalent transactions with trading parties, thereby placing them at a competitive disadvantage;

v. make 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;

vi. co-ordinate the competitive practices by two or more undertakings through the establishment of a joint venture; or

vii. determine binding resale prices or in other ways try to make one or more trading partners not to deviate from recommended resale prices.

(3) Subsection 1 shall apply correspondingly to decisions made by an association of undertakings and to concerted practices between undertakings.

(4) The Competition Council may issue orders for the termination of infringements of subsection 1, cf. section 16. In order to meet the concerns harboured by the Competition Council in relation to subsection 1, the Council may, furthermore, make commitments, provided by the undertaking, binding, cf. section 16a (1).

(5) Any agreements and decisions prohibited under subsections 1-3 shall be void, unless otherwise excepted under section 7, exempted under sections 8 or 10, or comprised by a declaration under section 9.

7. - *(1)* The above prohibition under section 6 (1) shall not apply to agreements between undertakings, decisions made by an association of undertakings, or concerted practices between undertakings, provided that the undertakings concerned have

i. an aggregate annual turnover of less than DKK 1bn and an aggregate share of less than 10 per cent of the product or service market concerned, cf. subsections 2-4; or

ii. an aggregate annual turnover of less than DKK 150m, cf. subsections 2-4.

(2) The exceptions in subsection 1 shall not apply in cases where

i. undertakings or associations of undertakings agree, coordinate or determine prices, profits etc. for the sale or resale of goods or services; or

ii. two or more undertakings agree etc. to carry out or seek to carry out a preceding regulation of tenders, fix or seek to fix the conditions for the opening of tenders, undertake or seek to arrange elimination of tenders, commit themselves to preceding notification of tenders or otherwise commit themselves to cooperate before submitting tenders.

(3) Notwithstanding subsection 1, the prohibition entailed in section 6 (1), applies to an agreement between undertakings, a decision made by an association of undertakings, and a concerted practice between undertakings if the agreement etc., together with other similar agreements etc., restricts competition.

(4) Having consulted the Competition Council, the Minister for Economic and Business Affairs shall lay down further rules on the calculation of turnover under subsection 1, including rules to the effect that the mentioned turnover thresholds shall be calculated on the basis of other values for financial undertakings.

(5) The exception of subsection 1 shall apply even if the undertakings exceed the above thresholds in two consecutive years. Having consulted the Competition Council, the Minister for Economic and Business Affairs shall lay down further rules in that respect, including rules on minor transgressions of the mentioned thresholds.

8. - *(1)* The above prohibition under section 6 (1) shall not apply if an agreement between undertakings, decisions made by an association of undertakings, or concerted practices between undertakings

i. contribute to improving the efficiency of production or distribution of goods or services or to promoting technical or economic progress;

ii. allow the consumers a fair share of the resulting benefits;

iii. do not impose on the undertakings restrictions which are not indispensable to the attainment of these objectives; and

iv. do not afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products or services in question.

(2) After notification the Competition Council can exempt an agreement between undertakings, a decision within an association of undertakings or a concerted practice between undertakings from the prohibition under section 6 (1) if the Council finds that the provisions under subsection 1 are satisfied. Notification of the agreement in question etc., including also an application for exemption under subsection 1, shall be submitted to the Competition Authority. The Competition Council shall lay down further rules on notification, including rules on the use of specific notification forms.

(3) Decisions made under subsection 2 shall specify the period in which the exemption is effective. Exemption can be granted on specific terms.

(4) Upon notification, the Competition Council may extend the term for exemption provided always that the Competition Council finds that the provisions under subsection 1 still apply. Subsection 3 shall apply corre-spondingly.

(5) The Competition Council may refrain from considering a notification under subsections 2 or 4, if the agreement etc. will appreciable affect the trade between the EU member states.

(6) The Competition Council may amend or revoke a decision under subsections 2 or 4 if

i. the facts have changed in any respect forming the basis of the decision;

ii. the parties to the agreement fail to meet the terms and conditions made; or

iii. the decision is based on incorrect or misleading information from the parties to the agreement etc.

9. - *(1)* Upon notification by an undertaking or association of undertakings, the Competition Council may certify that, on the basis of the facts in its possession, an agreement, decision or concerted practice shall be outside the scope of the prohibition under section 6 (1), and that, accordingly, there shall be no grounds for issuing an order under section 6 (4). The Competition Council shall lay down rules on notification, including rules on the use of specific notification forms.

(2) The Competition Council may refrain from considering a notification under subsection 1 if an agreement etc. will appreciable affect the trade between the EU member states.

10. - *(1)* Having consulted the Competition Council, the Minister for Economic and Business Affairs shall lay down rules on granting exemption from the prohibition under section 6 (1) to categories of agreements, decisions and concerted practices which satisfy the provisions under section 8 (1).

(2) Where agreements, decisions within an association of undertakings or a concerted practice are comprised by a category of exemption issued under subsection 1 have effect in a concrete case which is incompatible with the provisions under section 8 (1), the Competition Council may revoke the above category of exemption for the undertakings etc. that have entered into this agreement etc.

Part 2 a Trading terms of dominant undertakings

10 a. - *(1)* The Competition Council may order a dominant undertaking to submit its general trading terms to the Competition Authority if

i. there is a not unfounded complaint from a com-petitor;

ii. special market conditions prevail;

iii. due to these conditions there is a special need for the Competition Authority to acquire insight into how the dominant undertaking fixes its prices discounts etc.

The order shall only cover trading terms for the markets covered by the complaint.

(2) Orders under subsection 1 shall only apply for 2 (two) years from the time when the decision is final.

(3) "Trading terms" means the basis in force at any time on which an undertaking in general fixes its prices, discounts, marketing contributions and free services and the terms and conditions on which the company will grant financial benefits in relation to its trading partners.

(4) Undertakings which have submitted trading terms under subsection 1 may request that the Competition Council makes an assessment of such terms and conditions. The Competition Council shall make its decision within 6 (six) months. This time-limit will start when the Competition Authority has received the information from the undertaking which is necessary to make an assessment of the trading terms. If no decision has been made by the Competition Council within this time-limit, the trading terms shall be deemed to constitute an approval.

(5) The Competition Council may refrain from making a decision if the decision may be of importance to one or more undertakings abusing a dominant position on a common market or an essential part hereof and if the trading between member countries of the EU may be appreciable influenced hereby.

(6) If the trading terms are deemed to constitute an infringement of section 11 (1) or are administered in contravention of section 11 (1), the Competition Council may order that one or more of the stipulations of the trading terms be revoked or amended. If the trading terms are prepared in such a manner that the Competition Council has an insufficient basis for decision in order to assess whether the trading terms constitute an infringement of section 11 (1), the Competition Council may order that one or more of the terms be clarified.

(7) If a dominant undertaking, which is issued an order under subsection 1, uses prices, discounts, financial benefits or other terms in relation to trading partners on the Danish market, which to large extent deviate from or do not appear from the trading terms submitted to the Competition Authority, importance can be attached to such factors in relation to general production of evidence in a case under section 11.

(8) The provisions under subsection 7 shall also apply if a dominant undertaking acts in contravention of an order under subsection 6. This shall not apply, however, where a complaint against the order acts as a stay of execution pending the outcome of the complaint, cf. section 19 (4).

Part 3 Abuse of a dominant position

11. - *(1)* Any abuse by one or more undertakings etc. of a dominant position is prohibited.

(2) Upon request the Competition Council must de-clare, whether one or more undertakings have a dominant position, cf. subsection 7. If the Competition Council declares that an undertaking does not have a dominant position, this decision shall be binding until revoked by the Competition Council.

(3) Such abuse under subsection 1 may, for instance, consist in

i. directly or indirectly imposing unfair purchase or sales prices or other unfair trading conditions;

ii. limiting production, markets or technical development to the prejudice of consumers;

iii. applying dissimilar conditions to equivalent transactions with trading parties, thereby placing them at a competitive disadvantage; or

iv. 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.

(4) The Competition Council may issue orders for the termination of infringements of subsection 1, cf. section 16. In order to meet the concerns harboured by the Competition Council in relation to subsection 1, the Council may, furthermore, make commitments provided by the undertaking binding, cf. section 16 a (1).

(5) Upon notification by one or more undertakings, the Competition Council may declare that, on the facts in its possession, a certain course of conduct shall not come under the prohibition of subsection 1, and that, accordingly, there shall be no grounds for issuing an order under subsection 4.

(6) The Competition Council may lay down further rules on the material required to make a decision under subsections 2 or 5.

(7) The Competition Council may refrain from making a decision under subsection 2 or 5 if the decision may contribute to the effect that one or more undertakings will abuse a dominant position on the common market or an essential part hereof, and the trade between the EU member states may be influenced significantly by this.

Part 3a Aid which distorts competition

11a. - *(1)* The Competition Council may issue orders for the termination or repayment of aid granted from the public funds, which have been granted to the benefit of specific forms of business activities.

(2) An order under subsection 1 may be issued, when the aid

i. directly or indirectly has as its object or effect to distort competition; and

ii. is not legitimate according to public regulation.

(3) The decision regarding the legitimacy of aid granted according to public regulation is made by the minister in question or the relevant municipal supervisory authority unless otherwise provided by law. Decisions as to the legitimacy of aid granted under public regulation shall be made not later than 4 (four) weeks after receipt of the Competition Council's request. The Competition Council may extend this deadline.

(4) An order for repayment of aid under subsection 1 may be issued to private undertakings, self-governing institutions and corporate undertakings which are owned by the public in full or in part. The Minister for Economic and Business Affairs may lay down further rules to the effect that orders under subsection 1 for repayment of aid may also be issued to specific corporate undertakings owned by the public in full or in part.

(5) The Competition Council's powers to order repayment of aid under subsection 1 shall be statutebarred 5 (five) years after the aid is paid out. In accordance with the Act on Calculation of Interest, the Competition Council fixes the amount of interest accrued in connection with a repayment order under subsection 1, including rules that the interest due may be calculated from the time of payment of the distortive aid.

(6) Upon notification, the Competition Council may declare that on the basis of the facts in its possession, the public aid is not covered by subsection 2, paragraph 1 and accordingly, there are no grounds for issuing an order under subsection 1. The Council may lay down further rules on notification, including rules on the use of specific notification forms.

Part 4 Merger control

12. - *(1)* The provisions entailed in part 4 of this Act apply to mergers, where

i. the combined aggregate annual turnover in Denmark of all the undertakings concerned is more than DKK 3.8 bn and the aggregate turnover in Denmark of each of at least two of the undertakings concerned is more than DKK 300m; or

ii. the aggregate annual turnover in Denmark of at least one of the undertakings concerned is more than DKK 3.8 bn and the aggregate annual worldwide turnover of at least one of the other undertakings concerned is more than DKK 3.8 bn.

(2) Where a merger consists in the acquisition of parts of one or more undertakings, only the turnover relating to the parts, which are subject to of the transaction, shall be taken into account with regard to the seller or sellers.

(3) However, two or more transactions, as defined in subsection 2, which take place within a 2-year period between the same persons or undertakings shall be treated as one and the same merger arising on the date of the last transaction.

(4) Having consulted the Competition Council, the Minister for Economic and Business Affairs shall lay down further rules on the calculation of turnover under subsection 1, including rules to the effect that the turnover thresholds for financial institutions shall be based on other values.

(5) The provisions in part 4 of this Act shall not apply to mergers subject to the Merger Control Regulation unless the European Commission refers the merger to the Competition Council.

12a. - *(1)* Under this Act, a merger means:

i. two or more previously independent undertakings merging to become one undertaking; or

ii. one or more persons already controlling at least one undertaking, or one or more undertakings acquiring, whether by purchase of securities or assets, by contract or by any other means, direct or indirect control of one or more other undertakings in full or in part. (2) The establishment of a joint venture performing on a lasting basis all the functions of an autono-mous economic entity shall be deemed to constitute a merger within the meaning of subsection 1, paragraph 2.

(3) For the purpose of this Act, control shall be constituted by rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of having decisive influence on an undertaking.

(4) A merger shall not be deemed to arise under subsection 1 where:

i. Credit institutions or other financial institutions or insurance companies, the normal activities of which include transactions and dealing in securities for their own account or for the account of others, hold on a temporary basis securities which they have acquired in an undertaking with a view to reselling these, provided always that they do not exercise voting rights in respect of those securities with a view to determining the competitive conduct of that undertaking or provided always that they exercise such voting rights only with a view to preparing the disposal of all or part of that undertaking or of its assets or the disposal of those securities and that any such disposal takes place within 1 (one) year of the date of acquisition;

ii. Control is acquired by an office-holder according to the Insolvency Act or analogous proceedings who can dispose of the undertaking; or

iii. The transactions referred to in subsection 1, paragraph 2 are carried out by the financial holding companies as defined in the Council Directive on the annual accounts of certain types of companies, provided, however, that the voting rights in respect of the holding are exercised, in particular in relation to the appointment of members of the management and supervisory bodies of the undertakings in which they have holdings, only to maintain the full value of those investments and not to determine directly or indirectly the competitive conduct of these undertakings.

(5) Upon request the Competition Council may extend the period in subsection 4, paragraph 1 where the credit institute or the financial undertaking or the insurance company can substantiate that the disposal was not reasonably possible within the period set.

12b. - *(1)* A merger covered by this Act shall be notified to the Competition Authority after entering into a merger agreement, publication of takeover offer or acquisition of a controlling share and before it is implemented.

(2) The Competition Authority may publish a notice to the effect that a merger has been notified to the Competition Authority. The notice shall specify the names of the parties to the merger, the nature of the merger and the economic sectors involved.

(3) Having consulted the Competition Council, the Minister for Economic and Business Affairs shall lay down rules on the notification of mergers, including rules on the use of specific notification forms.

12c. - *(1)* The Competition Council shall decide whether a merger, which is subject to an obligation to give notice under section 12 b (1), or which has been referred to the Competition Council by the European Commission, cf. section 12 (5), may be approved or prohibited.

(2) A merger which would not significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position, shall be approved. A merger impeding effective competition significantly, particularly as a result of creation or strengthening of dominant position, shall be prohibited.

(3) To the extent that the establishment of a joint venture constituting a merger under section 12 a (2), also has as its object or effect the coordination of the competitive behaviour of undertakings that remain independent, such coordination shall be assessed in accordance with the criteria laid down in sections 6 (1) and 8 (1), in order to establish whether the transaction can be approved.

(4) When making the assessment under subsection 3, the Competition Council shall, in particular, take into account:

i. whether two or more parent companies retain to a significant extent activities in the same market as the joint venture or in a market which is downstream or upstream from that of the joint venture or in a neighbouring market closely related to this market; and

ii. whether the coordination which is the direct consequence of the establishment of the joint venture affords the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products or services in question.

(5) A merger, as defined in this Act, shall not be put into effect neither until it has been notified nor until it has been approved by the Competition Council under subsection 1. This shall not prevent the implementation of a public bid or a series of transactions in securities which can be negotiated on a market as well as a stock exchange whereby different sellers acquire control, cf. 12 a, if the merger is reported to the Competition Authority and the acquirer does not exercise the voting right attached to the securities in question or only does it to maintain the full value of his investment and on the basis of a derogation granted by the Competition Council, cf. subsection 6.

(6) The Competition Council may, on request, grant derogation from the obligations imposed in subsection 5 and such derogation may be made subject to conditions and obligations in order to ensure conditions of effective competition.

(7) If it is evident from information already in the possession of the Competition Authority or from information submitted by an undertaking that a planned merger may be authorised without conditions or obligations, the Competition Council can approve the merger, cf. subsections 2 and 3, without publication of the fact that a merger has been notified to or approved by the Council. At the time of approval the Competition Council sets a date for publication of its decision.

(8) If the Competition Council informs the undertakings concerned that a planned merger cannot obtain approval under the procedure laid down in subsection 7, the undertaking may withdraw its notification or request that a decision not be made under the other provisions in part 4, until the obligation to notify according to section 12 b (1) has come into effect.

12d. - *(1)* Within 4 (four) weeks after receipt of a complete notification under section 12 b (1) or section 12 (5), the Competition Council must decide whether to approve a merger or to initiate a separate investigation hereof.

(2) If the Competition Council has decided to initiate a separate investigation of a merger under subsection 1, a decision whether to approve or prohibit a merger under section 12c (1) must be reached within 3 (three) months after receipt of a complete notification.

(3) If the Competition Council has not made a decision in accordance with the deadlines laid down in subsections 1 and 2, the merger shall be deemed to be approved. In exceptional cases, the Competition Council may suspend the periods set out in subsections 1 and 2, including with a view to obtain further information, cf. section 17.

12e. - *(1)* Under section 12 c (2) the Competition Council may attach terms and conditions and orders to its approval in order to ensure that the undertakings involved comply with the commitments they have entered into vis-à-vis the Competition Council with a view to eliminating the detrimental effects of the merger.

(2) Such terms and conditions and orders may e.g. imply that the undertakings concerned

i. dispose of an undertaking or parts of an undertaking, assets or other proprietary interests;

ii. grant third-party access; or

iii. take other measures which may further effective competition.

(3) After approval of a merger, the Competition Council may issue orders necessary to ensure due and correct fulfilment of the obligations given to the Council by the companies concerned, cf. subsection 1.

12f. The Competition Council may revoke its approval of a merger, where

i. its approval is to a substantial extent based on incorrect or misleading information for which one or more of the undertakings concerned are responsible; or

ii. the undertakings concerned fail to comply with a condition or obligation under section 12 e (1).

12g. Where a merger has already been implemented, the Competition Council may, in a decision under section 12 c (1), require the undertak-ings or assets brought together to be separated or the cessation of joint control or any other action that may be appropriate in order to restore condi-tions of effective competition.

Part 5 Access to documents

13. - *(1)* The Act on Public Access to Documents in Public Files shall not apply to cases under this Act, except for cases concerning the issuing of rules under section 5 (2), section 7 (4) and (5), second sentence, section 8 (2), third sentence, section 9, (1) second sentence, section 10 (1), section 11 (6), section 11a (4), second sentence and (6), second sentence, section 12 (4), section 12b (3), section 14 (3), section 18 (7), second sentence, section 18a (3) and section 21 (3). However, sections 4 (2) and 6 of the Act on Public Access to Documents in Public Files shall apply equally to cases covered by this Act. Sentences one and two are also applicable if information obtained under this Act has been divulged to another administrative authority.

(7) If it is evident from information already in the possession of the Competition Authority or from information submitted by an undertaking that a planned merger may be authorised without conditions or obligations, the Competition Council can approve the merger, cf. subsections 2 and 3, without publication of the fact that a merger has been notified to or approved by the Council. At the time of approval the Competition Council sets a date for publication of its decision.

(8) If the Competition Council informs the undertakings concerned that a planned merger cannot obtain approval under the procedure laid down in subsection 7, the undertaking may withdraw its notification or request that a decision not be made under the other provisions in part 4, until the obligation to notify according to section 12 b (1) has come into effect.

12d. - *(1)* Within 4 (four) weeks after receipt of a complete notification under section 12 b (1) or section 12 (5), the Competition Council must decide whether to approve a merger or to initiate a separate investigation hereof.

(2) If the Competition Council has decided to initiate a separate investigation of a merger under subsection 1, a decision whether to approve or prohibit a merger under section 12c (1) must be reached within 3 (three) months after receipt of a complete notification.

(3) If the Competition Council has not made a decision in accordance with the deadlines laid down in subsections 1 and 2, the merger shall be deemed to be approved. In exceptional cases, the Competition Council may suspend the periods set out in subsections 1 and 2, including with a view to obtain further information, cf. section 17.

12e. - *(1)* Under section 12 c (2) the Competition Council may attach terms and conditions and orders to its approval in order to ensure that the undertakings involved comply with the commitments they have entered into vis-à-vis the Competition Council with a view to eliminating the detrimental effects of the merger.

(2) Such terms and conditions and orders may e.g. imply that the undertakings concerned

i. dispose of an undertaking or parts of an undertaking, assets or other proprietary interests;

ii. grant third-party access; or

iii. take other measures which may further effective competition.

(3) After approval of a merger, the Competition Council may issue orders necessary to ensure due and correct fulfilment of the obligations given to the Council by the companies concerned, cf. subsection 1.

12f. The Competition Council may revoke its approval of a merger, where

i. its approval is to a substantial extent based on incorrect or misleading information for which one or more of the undertakings concerned are responsible; or

ii. the undertakings concerned fail to comply with a condition or obligation under section 12 e (1).

12g. Where a merger has already been implemented, the Competition Council may, in a decision under section 12 c (1), require the undertak-ings or assets brought together to be separated or the cessation of joint control or any other action that may be appropriate in order to restore condi-tions of effective competition.

Part 5 Access to documents

13. - *(1)* The Act on Public Access to Documents in Public Files shall not apply to cases under this Act, except for cases concerning the issuing of rules under section 5 (2), section 7 (4) and (5), second sentence, section 8 (2), third sentence, section 9, (1) second sentence, section 10 (1), section 11 (6), section 11a (4), second sentence and (6), second sentence, section 12 (4), section 12b (3), section 14 (3), section 18 (7), second sentence, section 18a (3) and section 21 (3). However, sections 4 (2) and 6 of the Act on Public Access to Documents in Public Files shall apply equally to cases covered by this Act. Sentences one and two are also applicable if information obtained under this Act has been divulged to another administrative authority.

(2) Decisions made by an authority under section 2 (4), first sentence, and section 11a (3), first sentence, recommendations made by the Competition Council and responses to such recommendations by the relevant minister under section 2 (5), and the Competition Council's decisions made under this Act shall be published. Furthermore, decisions made by the Competition Authority on behalf of the Competition Council shall be published, unless such decision is considered to be of no importance for the understanding of the application of the Competition Act, or otherwise considered to be of no interest to the public. In cases where a fine is imposed or accepted under section 23, the decision, acceptance of the fine or a summary thereof shall be published.

(3) The Competition Council may publish information concerning its activities as well as general reviews.

(4) Disclosure of information under subsections 2 and 3 shall not apply to information on technical matters, including information on research, production methods, products and operational and business secrets, provided always that such information is of substantial economic importance for the person or undertaking concerned. Nor shall customerrelated information from undertakings, which falls under the jurisdiction of the Financial Supervisory Authority, be disclosed.

(5) Any party, required to submit information to the Competition Council may make a request to the Chairman of the Council that such information, which is not to be disclosed or made publicly accessible under subsection 4, shall not be given to the members of the Council. The Chairman shall make the final decision as to which extent and in which manner the information should be given.

Part 6 The Competition Authority, Organisation and powers

14. - *(1)* The enforcement of this Act and any subordinate rules issued under this Act shall come under the jurisdiction of the Competition Council, cf. sections 2 (4), first sentence, and 11a (3), first sentence. The Competition Council may review cases on its own initiative, upon notification or complaint, or cases, which are referred to it by the European Commission or other EU competition authorities. The Competition Council decides whether a complaint gives sufficient grounds for investigation and decisions including whether the administration of a case shall be suspended temporarily or finally. The Competition Council may also decide not to review cases where undertakings have previously committed themselves under section 16a (1).
(2) The Competition Authority is the secretariat of the Competition Council with respect to cases under this Act and handles the day-to-day enforcement of the Act on behalf of the Competition Council.

(3) The Minister for Economic and Business Affairs shall lay down rules of procedure for the Competition Council as well as rules on the activities of the Competition Council and the Competition Authority, including rules on dismissal of Council members or their deputies, on the recommendation of the Chairman of the Competition Council, before the expiry of a period.

15. - *(1)* The Competition Council is composed of a Chairman and 17 members. The King shall appoint the Chairman for a term of up to 4 (four) years. The Minister for Economic and Business Affairs shall appoint the other members for a term of up to 4 (four) years. The Competition Council shall have comprehensive knowledge of public as well as private business activity, including experience in legal, economic, financial and consumer-related matters. The Chairman and 8 (eight) of the members shall be independent of commercial and consumerrelated interests. One of these members shall have a special insight into governmental business activity. According to further directions by the Minister for Economic and Business Affairs, 7 (seven) members shall be appointed on the recommendation of trade organisations, 1 (one) member shall be appointed on the recommendation of consumer organisations, and 2 (two) members with special insight into public business activity shall be appointed on the recommendation of the National Association of Local Authorities in Denmark (Kommunernes Landsforening).

(2) The Minister for Economic and Business Affairs shall appoint permanent deputies for the members of the Competition Council.

15a. - *(1)* The right of access to information as an involved party under the Public Administration Act only comprises the part of the correspondence and the exchange of documents between the European Commission and the competition authorities of the member states or between the competition authorities of the member states, which contains information about the actual matters of facts of the case that are of essential importance to the decision of the case.

(2) In cases where a consultation procedure is carried out under the Public Administration Act, the parties must have access to the entire draft decision. The deadline for making a statement regarding the draft decision is at least 3 (three) weeks, unless other deadlines apply according to the Public Administration Act, or the decision is made under the provisions in part 4 of this Act.

15b. The Minister for Economic and Business Affairs may lay down further rules on the use of electronic communication to and from the Competition Council, the Competition Authority and the Competition Appeals Tribunal, including rules on the use of digital signature.

15c. The Competition Council can administer cases and make decisions in English if requested by the addressees of the decision and considerations for the parties to the case do not form a decisive argument against using English. If the Competition Council has made a decision in English, a Danish summary hereof shall be available.

16. - *(1)* The orders which the Competition Council may issue under section 6 (4) and section 11 (4), first sentence, or with reference to Article 81 or Ar-ticle 82 of the EC Treaty, cf. section 23a (1), in order to bring the detrimental effects of an anticompetitive practice to an end, can e.g. imply:

i. termination of agreements, decisions, trading conditions etc. in full or in part;

ii. that given prices or profits shall not be exceeded, or that the calculation of prices and profits shall be made subject to specified calculation rules;

iii. obligation for one or more of the undertakings concerned to sell to specified buyers on the conditions usually applied by the undertaking to equivalent sales. The undertaking is, however, always entitled to demand payment in cash or adequate security;

iv. that access shall be granted to an infrastructure facility which is essential in order to market a product or service.

(2) (Repealed)

16a. - *(1)* Obligations provided by undertakings which can meet the concerns of the Competition Council in relation to section 6 (1), section 11 (1) or Article 81 or 82 of the EC Treaty, cf. section 23a (1) can be made binding on the undertaking by the Council. An obligation can be limited in time.

(2) After an obligation has been made binding, cf. subsection 1, the Competition Council can issue orders which are necessary to ensure timely and correct fulfilment of the obligations made.

(3) The Competition Council may revoke a decision under subsection 1 if

i. the actual conditions have changed on a count essential for the decision;

ii. the participant of the agreement etc. act in contravention of obligations submitted; or

iii. the decision was made on the basis of false or misleading information from the parties to the agreement etc.

17. - *(1)* The Competition Council may request any information, including accounts, accounting records, copies from the books, other business records and electronic data, which are considered necessary for its business or for deciding whether the provisions of this Act shall apply to a certain matter.

(2) With a view to applying Articles 81 and 82 of the EC Treaty or Article 53 or 54 of the EEA Agreement, the information stated in subsection 1 can also be required for use in the Competition Authority's assistance to the European Commission and other competition authorities within the EU or the EEA area.

18. - *(1)* The Competition Authority may, for the use of the Competition Council's business, conduct investigations, which imply that the Competition Authority is granted access to the premises and means of transport of an undertaking or association with the purpose of becoming acquainted with and making copies of any information on the site, including accounts, accounting records, books and other business records, regardless of information medium. In connection with the investigation the Competition Authority may require oral explanations.

(2) If the information of an undertaking or an association is stored with or processed by an external data processor, the Competition Authority is entitled to be given access to the premises of the external data processor to become acquainted with and make copies of the information on the site, cf. subsection 1. It is a precondition for such access that is not possible for the Competition Authority to obtain the information concerned directly from the undertaking or association being the object of the investigation.

(3) The Competition Authority's investigations require a court order and due proof of identity.

(4) If matters relating to the undertaking or association make it impossible for the Competition Authority to be given access to or make copies of the relevant information on the day of the investigation, cf. subsections 1 and 2, the Competition Authority is entitled to seal off the relevant premises of the business and the information for up to 72 hours.

(5) Under the same provisions of subsection 4, the Competition Authority is entitled to seize the documents or the medium, where the information is stored, in order to make copies thereof. Any material which the Competition Authority has seized must be returned to the undertaking or association together with a set of the copies that the Competition Authority has made for its further examination, not later than 3 (three) workdays after the day of the investigation.

(6) In special cases the deadlines of subsections 4 and 5 may be extended.

(7) The police shall grant assistance to the Competition Authority in exercising the powers assigned to it under subsections 1 and 2 and subsections 4 and 5. The Minister for Economic and Business Affairs may, if so agreed with the Minister for Justice, lay down rules in that respect.

(8) The Competition Authority may conduct investigations in order to grant assistance to the European Commission or other competition authorities within the EU in connection with the authorities' application of Articles 81 and 82. The provisions of subsections 1-7 shall apply correspondingly.

18a. - *(1)* Subject to reciprocity, the Competition Authority may divulge information covered by the rules of professional secrecy to other countries' competition authorities if such information is necessary to improve the enforcement of the competition rules of those countries, including the fulfilment of any bilateral or multilateral agreement entered into by the Kingdom of Denmark.

(2) If such information is divulged under subsection 1, the Competition Authority shall make the divulgement subject to the following conditions:

i. the addressee must have a similar obligation of professional secrecy;
ii. the information divulged may exclusively be used for the purposes set forth in a bilateral or multilateral agreement if the divulgement takes place according to such agreement; and

iii. the information divulged may only be passed on with the express consent of the Competition Authority and only for the purpose covered by the consent.

(3) The Minister for Economic and Business Affairs may lay down further rules on the divulgement of information to foreign authorities covered by the Competition Authority's professional secrecy.

Part 7 Appeal

19. - *(1)* Decisions made by the Competition Council under section 2 (1), section 3, first sentence, section 5 (1), section 6 (1), section 7 (1)-(3), section 8 (2), first sentence, (3), second sentence, (4) and (6), section 9 (1), section 10 (2), section 10a (1) and (6), section 11 (1)-(2) and (5), section 11a (1) and (6), first sentence, section 12a (5), section 12b (1), section 12c (1)-(3) and (6), section 12d (3), first sentence, section 12e (1) and (3), section 12f, section 12g, section 13 (4), section 16, section 16a (2) and (3), section 23a (2), cf. (1) and section 27 (4), second sentence, of this Act, may be brought before the Competition Appeals Tribunal for appeal.

(2) Appeal under subsection 1 may be instituted by

i. the party to whom the decision is directed; and

ii. other parties who have an individual and substantial interest in the case. This does not apply, however, to decisions made by the Competition Council under section 12a (5), section 12b (1), section 12c (1)-(3) and (6), section 12d (3), first sentence, section 12e (1) and (3), section 12f, section 12g and section 16a (2) and (3).

(3) Decisions under section 14 (1) cannot be brought before the Competition Appeals Tribunal for appeal.

(4) The appeal against a decision under section 13 (4) will act as a stay of proceedings. Appeal against other decisions can be granted a stay of proceedings by the Competition Council or the Competition Appeals Tribunal.

(5) The Competition Appeals Tribunal can proceed cases and make decisions in English if so requested by the addressees of the decision and considerations for the parties to the case do not form a decisive argument against using English. If the Competition Appeals Tribunal has made a decision in English, a Danish summary hereof shall be available. If the Competition Council, cf. section 15c, has made a decision in English, these documents shall form the basis of the Tribunal's administration of the case in question regardless of whether the Tribunal's case administration and decision are made in English.

20. - *(1)* Decisions made by the Competition Council under this Act cannot be brought before any other administrative authority than the Competition Appeals Tribunal and cannot be brought before the courts of law until the Appeals Tribunal has made its decision.

(2) Appeals can be lodged with the Competition Appeals Tribunal within 4 (four) weeks after the decision has been communicated to the party concerned. If justified by weighty reasons the Appeals Tribunal may disregard that the timelimit be exceeded.

(3) Decisions made by the Competition Appeals Tribunal can be brought before the courts of law within 8 (eight) weeks after the decision has been communicated to the party concerned. If the time limit is exceeded, the decision of the Appeals Tribunal shall be final.

(4) Copies of judgments passed under application of the present Act or Articles 81 and 82 of the EC Treaty shall be submitted to the Competition Board by the court, though in criminal cases by the CPS, to inform the European Commission about judgments relating to Articles 81 and 82 of the EC Treaty.

21. - *(1)* The Competition Appeals Tribunal consists of a Chairman, who shall be qualified for the post as a Supreme Court Judge, and 4 (four) other members of which 2 (two) shall be legal experts and 2 (two) economic experts, respectively.

(2) The Chairman and the members shall be appointed by the Minister for Economic and Business Affairs. They shall be independent of commercial interests. Their appointment shall cease by the end of the month in which they will be 70 years old.

(3) The Minister for Economic and Business Affairs shall lay down rules on the activities of the Appeals Tribunal, including rules on the fees chargeable for bringing decisions before the Appeals Tribunal.

Part 8 Penalty provisions

22. - *(1)* If a party fails to

i. submit such information which the Competition Council may request under this Act;

ii. comply with a condition or an order issued under this Act; or

iii. fulfil an obligation made binding, cf. section 16a (1)

the Minister for Minister for Economic and Business Affairs, or any authority authorised for this by the Minister, may, as a coercive measure impose on the party concerned daily or weekly penalty payments.

(2) Penalty payments imposed under subsection 1 can be recovered by distraint, deduction from wages etc. under the Act on Withholding Tax.

(3) The collection authority may waive claims under subsection 1 in conformity with the provisions of the Act on Collection of Public Debts.

23. - *(1)* Unless subject to higher penalty by other law, fines shall be imposed on any party, who intentionally or by gross negligence

i. infringes section 6 (1);

ii. infringes or fails to fulfil a condition attached to a decision made under section 8 (3), second sentence, or subsection (4), second sentence;

iii. violates or fails to fulfil a condition under section 10a (1) or (6);

iv. violates section 11 (1),

v. violates or fails to fulfil a condition under section 11a (1);

vi. fails to notify a merger under section 12b (1);

vii. conducts a merger despite a decision not to do so under section 12c (2), infringes the prohibition on conducting a merger before having obtained an approval under section 12c (5), first sentence, infringes a condition or obligation attached to a decision under section 12c (6) or section 12e (1), or (3), or infringes or fails to comply with an order under section 12g;

viii. infringes or fails to comply with an order issued under section 16;

ix. infringes or fails to comply with an obligation made binding under section 16a (1);

x. infringes or fails to comply with an order under section 16a (2);
xi. fails to comply with a request made under section 17;

xii. supplies, the Competition Authority, the Competition Council or the Competition Appeals Tribunal with incorrect or misleading information or conceals matters of importance for the case in question for which the information was collected; or

xiii. infringes the prohibition in Articles 81 (1) or 82 of the EC Treaty, cf. section 23 a (1).

(2) Subsection 1, paragraph 1, shall not apply as from the date when an agreement etc. has been notified to the Competition Authority under section 8 (2) or (4) and until the Competition Council has communicated its decision under section 8 (2), (4) or (5).

(3) Penalty may be imposed on companies etc. (legal persons) under the provisions of part 5 of the Penal Code. When assessing the penalty under subsections 1 and 2, the penalty limit of the fine shall be fixed in consideration of the general rules of Part 10 of the Penal Code as well as the turnover obtained by the legal person in question during the last year before the judgment is obtained or a fine is imposed.

(4) The limitation period for imposing a penalty is 5 (five) years.

Part 9 EU competition rules

23a. - *(1)* Cases under Articles 81 and 82 of the EC Treaty, including cases involving parallel application of sections 6 and 11 of this Act, can be administered by the national competition authority if the case has ties to the Kingdom of Denmark. Ties to Denmark exists if agreements, decisions within an association, concerted practice between undertakings or the conduct of an undertaking have detrimental effects on the competition on the Danish market, or if an undertaking located in Denmark has entered into an agreement etc. which has a detrimental effect on the competition within the EU.

(2) The provisions in parts 5-8 of this Act are also applicable to the executive powers assigned to the Competition Council, cf. subsection 1, to the extent that Regulations or Directives under Article 83 of the EC Treaty do not prevent this.

(3) The assistance granted to the European Commission and other member states under Article 83 of the Treaty is granted by the Competition Authority.

24.-26. (Repealed)

Part 10 Commencement and transitional provisions

27. - *(1)* This Act shall come into force on 1 January 1998, notwithstanding the provisions of section 14 (3) and section 15, which shall come into force on 1 July 1997.

(2) As from the date when this Act comes into force, the Competition Act, cf. Consolidated Act No. 114 of 10 March 1993, and the Act on Control of Compliance with the European Economic Community's Regulations on Monopolies and Restrictive Practices, cf. Consolidated Act No. 449 of 10 June 1991, shall be repealed. An approval granted under section 14 (1) of the Competition Act, cf. Consolidated Act No. 114 of 10 March 1993, shall remain valid, until the Competition Council may decide to withdraw the approval. Such decision shall be made according to the rules then in force.

(3) Cases under the Competition Act, cf. Consolidated Act No. 114 of 10 March 1993, which have not been settled at the date when this Act comes into force, shall be discontinued, except for cases based on complaints and cases pending with the Competition Appeals Tribunal.

(4) Anti-competitive agreements, decisions and concerted practices which exist at the date when this Act comes into force, and which come under the prohibition of section 6 (1), may, if an application for exemption under section 8 is submitted before 1 July 1998, be maintained for up to 3 (three) months after the Competition Council has made its decision in the case, even though the application for exemption is refused. The Competition Council may extend the time limit of 3 (three) months.

(5) (Repealed.)

(6) The subordinate rules which are laid down under section 7 (2) of the Competition Act, cf. Consolidated Act No. 114 of 10 March 1993, shall remain in force until new rules be issued under section 4 (3) of the Price Marking and Display Act, as drawn up in section 28, paragraph 1, of this Act. The enforcement of existing rules, as referred to in the first sentence of this subsection, shall be assigned to the National Consumer Agency. Intentional or grossly negligent infringement of existing rules, as referred to in the first sentence of this subsection, shall be punishable by a fine. Penalty may be imposed on companies etc. (legal persons) under the provisions of part 5 of the Penal Code.

28. The Price Marking and Display Act, cf. Consolidated Act No. 456 of 17 June 1991, as amended by Act No. 429 of 1 June 1994, shall be amended as follows:

1) In section 4 the following shall be inserted as subsection 3:

"(3) In product and service markets where it is considered to be of special importance as price guidance to the consumers, the National Consumer Agency may lay down rules on invoicing and other documentation of the price calculation."

2) After section 9 the following shall be inserted:

"10. In product and service markets of special importance to the consumers, the National Consumer Agency may carry out and publish comparative investigations of prices, discounts and bonuses etc."

29. This Act shall not apply to the Faroe Islands and Greenland.

Act No. 431 of 6 June 2005, amending section 22 (2) and (3), contains the following section on commencement:
85

(1) This Act shall come into force on 1 November 2005, cf. subsection 2.

(2) Section 52 (viii) has effect on the information communicated by bodies under duties of deduction to individual qualifying for income taxed at source (A-income) on 1 September 2005 and later.

Act No. 601 of 24 June 2005, as amended by section 15 (1), contains the following section on commencement:
5

This Act shall come into force on 1 January 2007.

The Ministry of Economic and Business Affairs, this 8th day of August 2005

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