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Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE

Annual Report on Competition Policy Developments in Denmark

-- 2023 --

This report is submitted by Denmark to the Competition Committee FOR INFORMATION.

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Denmark

1. Changes to competition laws and policies, proposed or adopted

1.1. Summary of new legal provisions of competition law and related legislation

1. National Act to conduct initial investigations into gatekeepers' possible non-compliance with the EU Digital Markets Act (the Danish DMA Act)
2. The EU Digital Markets Act (DMA) entered into force in May 2023. The first gatekeepers – to which the DMA's obligations apply – were designated in September 2023. The European Commission is the sole enforcer of the DMA, but it can call upon Member States' national competition authorities to assist with investigation activities (e.g. to collect information or carry out inspections). In such situations, the investigative powers for the national competition authority are enshrined directly in the DMA.
3. However, the DMA (art. 38(7)) also allow for Member States to equip their national competition authorities with powers to carry out initial investigations into gatekeepers' possible non-compliance with the DMA's obligations, on the Member States' national territories. The results of such investigations can then be submitted to the Commission and potentially form part of the Commission's case file, if it decides to upon a case against on the matter.
4. Denmark has utilised this opportunity, by way of Act no 1533 of 12 December 2023. The act grants the Danish Competition and Consumer Authority (DCCA) the legal basis for carrying such initial investigations, as well as endowing the DCCA with the powers to collect any information that are deemed necessary for the investigation.

1.2. Government proposals for new legislation

5. A Draft Bill introducing changes to the Danish Competition Act was published by the Danish Government in November 2023 to enable public consultation.
6. The first proposed change in the bill is the introduction of a market investigation tool. A market investigation tool will make it possible for the DCCA to issue behavioural remedies in situations where there is no infringement of TFEU art. 101 and 102 (and/or the the Danish equivalent of TFEU art. 101 and 102) but where the behaviour or structures in one or more sectors clearly impede effective competition. Behavioural remedies must according to the bill be necessary, fair and proportionate and may be appealed to the Competition Appeals Tribunal with suspensive effect or brought before the courts. The bill proposes a time limit of two years (with the possibility to prolong with six months) to carry out such an investigation.
7. The second proposal in the bill introduces a "call-in" option in merger cases, below the thresholds stated in the Danish Competition Act, but where the aggregate annual turnover in Denmark of all undertakings involved is at least DKK 50 million and where there is a risk that a merger will significantly impede effective competition, in particular due to the creation of or strengthening of a dominant position. The expected number of mergers to be called-in is no more than 1-2 mergers per year.
8. The third change to the Danish Competition Act concerns a proposed change to the principles for calculation of fines entailing that the DCCA when proposing a fine before

the courts will follow the current guidelines from the Europa Commission from 2006, where fines are calculated based on e.g. the value of sales.

9. The proposals for a “market investigation tool” and a “call-in” option are in line with what OECD recommended in its Economic Survey for Denmark, January 2024.

2. Enforcement of competition laws and policies

2.1. Action against anticompetitive practices, including agreements and abuses of dominant positions

2.1.1. Summary of significant cases before the Danish Competition Council (DCC)

Price coordination between members of an association of undertakings

10. On 29 March 2023, the DCC adopted a decision concerning ØnskeBørn A/S (Ønskebørn). In its decision, the DCC concluded that Ønskebørn (an association of undertakings) coordinated prices and the marketing of prices on the association’s private label products, exclusive products and non-exclusive products.

11. The DCC found that this coordination constituted an infringement of Section 6, Subsection 1, of the Danish Competition Act and TFEU Article 101(1). The DCC has ordered Ønskebørn to cease and desist the illegal behavior.

12. Ønskebørn is a Danish association of undertakings. Among other things, Ønskebørn negotiates purchasing agreements with suppliers of baby and children’s products on behalf of its members. Ønskebørn also sells baby and children’s products directly to retail customers via an online shop and distributes private label products to its members. The members of Ønskebørn are individual Danish retailers of baby and children’s products. The members own brick-and-mortar shops in Denmark. Some members have their own online shops as well. The members of Ønskebørn each own shares in Ønskebørn.

13. The DCC found that Ønskebørn and the past and current members of Ønskebørn had agreed on coordinating prices. In the period 6 October 2016 till 21 November 2018 Ønskebørn made announcements to its members concerning pricing and marketing of prices for the association’s private label and exclusive products. Ønskebørn made similar announcements on 6 April 2020 and 7 May 2020 regarding non-exclusive products. The coordination of both the prices and the marketing of prices was likely to reduce price competition among competing members of the association.

14. Based on the evidence in this case, the DCC found that Ønskebørn’s announcements regarding pricing and marketing of prices to the members of the association constituted an infringement of Section 6 of the Danish Competition Act and TFEU article 101.

15. This case is currently pending before the Maritime and Commercial High Court as Ønskebørn has decided to challenge the DCC’s decision.

Exit fee – Commitments

16. On 29 March 2023, the DCC accepted commitments from Bankdata reducing its exit fee from 5 times the yearly turnover to a maximum of 2.5 times the yearly turnover. The commitments will lead to a substantial reduction of the members’ switching costs.

17. Bankdata is a customer owned data center that provides complete IT solutions to its owners, at present 8 Danish banks.

18. Bankdata's Articles of association contained an obligation for members to pay up to 500 pct. of that members turnover with Bankdata upon exit. The DCC found that the obligation had been anticompetitive *by-effect* and infringed Section 6, Subsection 1, of the Danish Competition Act and TFEU Article 101(1).

Danish manufacturer of homeware fined for price coordination

19. On 19 April 2023, The DCC issued a fine of DKK 6 million to Broste Copenhagen for infringing the Danish Competition Act by coordinating prices with a competitor in January and July 2021, e.g. through a Covid-19 related freight surcharge.

20. The fine was reduced 20 % because of Broste Copenhagen's cooperation during the investigation of the case.

Digital platform's illegal price fixing

21. On the 28 June 2023, the DCC found that Autobutler's administration and execution of such campaigns was a *by-object* violation of the prohibition against certain anti-competitive agreements (Art. 101 TFEU), since it restricted the individual auto repair shops ability to compete on the pricing of their services.

22. The digital B2C platform Autobutler ApS connects auto repair shops with consumers who wish to purchase auto repair services. Consumers input their service request, e.g. an oil change or tire change, to which auto repair shops provide an offer. Consumers are then able to select the offer they prefer.

23. Autobutler engaged in marketing campaigns, whereby several independent auto repair shops offered the same price for specific auto repair services during limited time periods. Examples of service campaigns included air condition service, "car check" service, brake check or tire change.

24. The case was initiated based on a complaint from a private car owner (a consumer) who reported that he received ten (10) identical bids to his auto repair service request. The case concerned two *national* markets: i) the market for auto repair and maintenance services and ii) the market for online intermediation of auto repair and maintenance services via online portals.

25. Although the theory of harm centrally consists of the many bilateral agreements between Autobutler and the individual auto repair shops, the case focused solely on Autobutler's participation in those illegal agreements. The reasoning behind this was that it was Autobutler who initiated, administered and supported the execution of the agreements, as well as that a remedy towards Autobutler would alleviate the harm to competition.

26. The Autobutler case was the *fourth* case decided by the DCC, where a digital platform has been found to administer an illegal price-fixing agreement among sellers on the platform.

Margin squeeze – Commitments

27. On 28 June 2023, the DCC accepted commitments from Coloplast Danmark A/S on temporary changes to pricing behavior when selling ostomy products to Danish Municipalities.

28. Coloplast Danmark markets and sells medical devices such as ostomy products and catheters worldwide. Since 2019, Coloplast Danmark A/S started participating directly in municipal tenders whereas they had previously only made sales to wholesalers and hospitals. In order to participate in municipal tenders, Coloplast Danmark A/S entered into bidding consortiums with the wholesaler Abena.

29. It was the preliminary assessment of the DCC that Coloplast Danmark A/S' pricing behavior from 2020 to 2022 has led to a margin squeeze for the competing wholesalers in violation of Section 11 of the Danish Competition Act and TFEU Article 102. Given that a large share of the municipal contracts at the time of the decision were set to be re-tendered in the upcoming months, the conduct of Coloplast Danmark A/S could cause significant harm to the competition in the municipal market if allowed to continue.

30. In order to address the competition concerns of the DCC, Coloplast Danmark A/S offered temporary commitments. In brief, Coloplast Danmark A/S committed to either not bid in municipal tenders or to bid with prices that allowed for a positive margin for competing wholesalers when compared to the price offered to them.

Price coordination and bid rigging in the energy sector in West Denmark (DK1)

31. On 25 October 2023, the DCC decided that Effekthandel ApS ("Effekthandel"), 46 cogeneration plants and 3 power plants ("the 49 undertakings") had illegally engaged in price coordination and bid rigging in the daily auctions for mFRR in Western Denmark (DK1) in violation of Section 6 of the Danish Competition Act and TFEU Article 101. The 49 undertakings had entered into an agreement to leave their pricing in the auctions for mFRR to Effekthandel. Documentation showed that the agreement was made in order to raise the price levels on mFRR.

32. MFRR refers to manual reserves, which help to restore the frequency and power balance within the electricity system when activated by the Danish transmission system operator (TSO).

33. The evidence in the case shows that the 49 undertakings had participated in a pool scheme through individual and identical agreements with Effekthandel. By participating in the pool scheme, the 49 undertakings did not independently set the price of their own bids in the mFRR auction but instead left the pricing of the bids to Effekthandel.

34. The evidence further shows that Effekthandel in joint emails addressed to the 49 undertakings regularly informed the 49 undertakings about the coordinated behaviour of the pool scheme on the market for mFRR.

35. As part of the agreement, Effekthandel received commission from the 49 undertakings' earnings on mFRR. In turn, Effekthandel distributed the turnover on mFRR between the participating undertakings based on the amount of registered capacity from each individual member. Accordingly, it was not essential for each individual undertaking to sell its capacity in order to make a profit, as it received a payment from the pool scheme regardless of whether its bid won the auction.

36. The fact that the prices and bids were coordinated by Effekthandel and thus, that the 49 undertakings did not communicate directly about prices and bids, does not change the fact that they engaged in an illegal agreement, which restricts competition between competitors.

37. The conduct took place from September 2019 until at least August 2022.

Night club market sharing cartel

38. On the 25 October 2023, the DCC adopted a decision that consultancy firm ECIT Account A/S infringed Section 6 of the Danish Competition Act (the Danish equivalent of TFEU Article 101) by participating in the establishment and effectuation of a market sharing cartel comprised of a large number of night clubs and their jointly owned purchasing company. The infringement lasted for almost 16 years.

39. The decision shows that a consultancy firm is responsible for its contributions to a cartel even though it does not operate on the market affected by the cartel. In this regard, the contributions of a consultancy firm may distort competition no less than the contributions of other cartel participants.

40. As a consultant, ECIT Account has been a part of the illegal market sharing agreement where the night clubs had agreed not to open night clubs in each other's towns or within a certain range from one another. ECIT Account has, inter alia, participated by:

- having a leading role on the board of directors of the jointly owned purchasing company,
- drafting the market sharing agreement and stressing the need for the agreement, and
- actively participating in meetings where the market sharing agreement was discussed.

41. This case is one of several related cases concerning the night club market sharing cartel between 22 night clubs and their jointly owned purchasing company. These other companies have already accepted to pay fines for their participation in the infringement.

2.1.2. Summary of significant court cases*Alleged anti-competitive agreement and abuse of a dominant position*

42. On 27 February 2023, the Eastern high Court of Denmark ruled that the case be remitted to the DCCA due to the case not being sufficiently informed to support the claimed abuse of a dominant position.

43. The case concerned whether Deutz AG and the company's distributor in Denmark, Diesel Motor Nordic (DMN), in the summer of 2010 entered into an anticompetitive agreement in violation of TEUF 101. The aim of the alleged agreement was to obstruct the acquisition of certain spare parts, by a Danish competitor to DMN, needed by the competitor in order to fulfill a contract with the Danish National Rail Company (DSB) on the servicing of Diesel engines produced by Deutz.

44. The case also concerned whether Deutz AG abused an alleged dominant position in violation of TEUF 102 by making sure that the Danish DMN competitor could not buy the relevant spare parts from Deutz's global distribution network.

45. The DCCA has appealed the case to the Danish Supreme Court. The case is currently pending with judgement expected ultimo 2024.

2.2. Mergers and acquisitions**2.2.1. Statistics on number, size and type of mergers notified and/or controlled under competition laws;**

46. In 2023, the DCCA approved a total of 68 notified mergers. 63 of the mergers were processed under the simplified procedure. Of the remaining mergers, two were approved

in phase I and three were approved in phase II. Two mergers were approved with commitments offered by the merging parties – both in phase II. In addition, two merger notifications were withdrawn by the parties in phase 2 in 2023.

2.2.2. Summary of significant cases.

Abandonment of acquisition – Tires and tire service for commercial, construction and agricultural vehicles as well as lorries and passenger cars

47. On 10 August 2023 the DCCA announced that NDI Group had withdrawn its notification of a proposed acquisition of Euromaster Denmark.

48. The parties to the abandoned merger are active in the market for tire sales and service for commercial, construction and agricultural vehicles as well as lorries and passenger cars.

49. Prior to the abandonment of the merger, the The DCCA had carried out extensive market research, where customers and competitors had been consulted. A number of economic analyses had also been carried out. On this basis, the DCCA had informed the parties that the merger expectedly would give rise to anti-competitive concerns.

Rema 1000's purchase of Aldi

50. On 30 August 2023 the DCC approved Rema 1000 Danmark A/S' acquisition of 114 Aldi's stores, seven Aldi store projects, three distribution centers, five properties, a number of employees and operational inventory from Aldi Danmark ApS subject to remedies.

51. In order to obtain the approval, Rema 1000 committed to divesting three supermarkets in Bjerringbro, Hadsund, and Væggerløse. This ensured that the merger would not harm competition locally.

52. The divestment ensures that Rema 1000 will continue to have a significant competitor in all the local areas where the concentration has an effect. This means that customers will still have access to actual alternatives to Rema 1000.

53. The Danish Competition and Consumer Authority (DCCA) has had concerns about whether the merger could harm competition in the market for retail sale of daily consumer goods locally. Rema 1000's commitment to divest three stores removes the DCCA's concerns, and therefore the Competition Council approved the merger subject to the commitments offered by Rema 1000.

54. Afterwards, Lidl was approved by the Danish Competition Council as a suitable buyer of the three stores according to criteria set out in the commitments, and Lidl ended up taking over a total of 11 former Aldi grocery stores from Rema 1000.

Abandonment of acquisition – Office-supplies

55. On 1 November 2023 The DCCA announced that Lyreco had withdrawn its notification of a proposed acquisition of Lomax. The parties to the abandoned merger are active in the market for office-supplies.

56. Prior to the abandonment of the merger, the The DCCA had carried out extensive market research, where customers and competitors had been consulted. A number of economic analyses had also been carried out. On this basis, the DCCA had informed the parties that the merger expectedly would give rise to anti-competitive concerns.

Salling's acquisition of a number of Aldi stores.

57. On 29 November 2023 the DCC approved Salling Group A/S' acquisition of 13 Aldi stores and 8 of Aldi's store projects from Aldi Danmark ApS subject to remedies. The DCC had concerns about whether the merger would significantly harm competition in the market for retail sale of daily consumer goods locally.

58. Salling Group A/S committed to divest a store in Rødbyhavn and sublease a store in Stubbekøbing to one or more competitors. The commitment removed the DCCA's competitive concerns, and therefore the DCC approved the merger subject to the commitments offered by Salling Group A/S.

59. Salling Group A/S already entered into agreements for the sale and sublease of the two stores, and the DCC approved that Lidl was a suitable buyer of the store in Rødbyhavn, while Dagrofa was suitable to sublet the store in Stubbekøbing for the next six years.

3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies

3.1. Advocacy

60. The DCCA devotes many resources to its advocacy work in order to increase public and political awareness of the importance of supporting a high level of competition and well-functioning markets. As part of this work the DCCA conducts major competition analyses of markets and publishes articles on relevant topics. The DCCA also participates in the public debate and the development of relevant political initiatives.

3.2. Communication and knowledge

3.2.1. Press releases, general communication and social media

61. In 2023, the DCCA sent out 49 press releases regarding competition law, public procurement and other cases related to competition. The DCCA daily appeared in the media in form of articles and interviews.

62. Furthermore, the DCCA has continuously communicated on LinkedIn and Facebook, including posts about the DCCA's results and knowledge.

63. Since 2017, the DCCA has produced the podcast "Well-functioning markets". In 2023, the DCCA published five editorial episodes about public procurement and the Danish competition act, and six episodes with DCCA-articles read aloud.

64. In 2023, the DCCA published a new podcast called "Råd til forbrug" (Advise for consumers). The purpose of the podcast is, among other things, to make the consumers more active in order to strengthen competition. In 2023, 10 episodes were published.

65. In June 2023, the Competition Council published its annual report. The report describes the Competition Council's tasks and framework, and contains chapters on the coming year, the previous year and the resources of the Danish competition authorities.

3.2.2. *Articles and publications*¹

66. In 2023, the DCCA published a number of articles, presented below;

Companies' self-advertising on online search engines

67. Advertising via online search engines is today the largest single segment in the Danish advertising market. Companies choose which keywords they want their ads to appear under and typically pay when a consumer clicks on the ad result. Seven out of ten Danish companies that advertise via Google choose to advertise on searches for their own company name, known as self-advertising. This article shows, among other things, that Danish companies' expenses for self-advertising on Google's search engine mainly result in converting the free clicks that the company would have received without any ads into paid ad clicks.

The importance of advertisements for consumer behavior on online search engines

68. The Danish Competition and Consumer Authority has examined how the number of advertisements and the clarity of their labeling affect consumers. The analysis indicates that just over half of consumers actively seek to avoid clicking on advertisements. At the same time, less clear advertising labels lead to more consumers clicking on advertisements. Thus, less clear labeling results in time loss for consumers and higher advertising costs for businesses. Therefore, the analysis suggests that an increasing number of advertisements and unclear advertising labels lead to costs for consumers.

69. In addition to publishing the articles, the DCCA held a conference in September 2023 on the topic "Marketing on digital platforms". The DCCA presented the articles, as well as an article analyzing the consumer impacts of paid boosts on online hotel booking portals. Representatives from inter alia Google and Booking.com also participated by presenting their perspectives on the matters.

Competition effects in public procurement

70. The analysis shows that public procurers pay lower prices for the tasks offered when competition, measured by the number of bidders, is high. The results indicate that on average, there is a savings of 10-13 percent when there are four bids for a task compared to just one. At the same time, the analysis shows that the risk of receiving an "expensive" winning bid is reduced when there is more competition for the task. Thus, there are typically significant benefits to exposing competition and setting some frameworks for tenders that allow for obtaining many bids.

Pressure selling on digital platforms

71. This article describes the prevalence of pressure sales on digital platforms, Danes' attitudes towards pressure sales, and the effect that pressure sales have. Consumers often encounter information about limited supply, limited time, or particularly high demand when shopping on digital platforms. This can help consumers to act promptly, but it can also create purchase pressure, leading to less considered purchases and limiting consumers' search activity.

¹ Accidentally three articles relating to online advertisement that were not published in 2022 were included in the DCCA's 2022 report. As they were first published in 2023, they are included in this report.

*Do paid search results have a negative impact on competition and consumers?
Indications from analyses of booking platforms*

72. This article presents two studies of the ranking system of an online travel agency (OTA): a descriptive analysis of ranking boosts and a behavioral experiment that compares the effectiveness of price reductions to that of ranking boosts in terms of sales. In combination, the two analyses suggest that ranking boosts on OTAs are more attractive than discounts, and while consumers benefit directly from price reductions, it is unclear how they would benefit from ranking boosts. As such, encouraging companies to pay for ranking boosts rather than discounting prices may be detrimental to consumers.

Competition in the legal profession

73. New calculations of earnings in the legal industry confirm that competition in the sector is not functioning well. The profit margin in the industry has increased significantly since the 2000s and is high relative to other comparable industries. The largest law firms predominantly sell their services to corporate clients. The major players in the industry have gained market share over the years, leading to increased market concentration. Market share mobility remains low in the legal industry relative to other comparable industries.

Do Behaviourally Informed Pop-up Messages Curb Problematic Gambling Behaviour

74. This article outlines results from two large field experiments designed to test the effects of behaviourally informed information remedies. The article concludes that none of the interventions significantly reduced how much players spend, measured by turnover, on the platform.

Consumers and Companies Benefit from Transparent Green Marketing

75. This article outlines results from a study conducted to evaluate how well consumers understand different types of green claims, and how these claims affect willingness to pay. The study demonstrates that consumers are willing to pay more for “green” products but also, that this willingness is affected by trust and transparency in the market.

Market study of the market for charging of electric vehicles (EV)

76. In December 2023 the DCC published a competition analysis of the market for charging of electric vehicles. The analysis showed considerable challenges to competition. Concentration is very high, and switching costs are unreasonably high. The Danish charging market is characterized by a specific Danish reimbursement scheme whereby most consumers with an EV can have their electricity tax reimbursed if they purchase a *service agreement* on the private charging box. This system is unique to Denmark and has several undesirable consequences for competition. Firstly, it significantly complicates consumers' ability to understand the market and prices. At the same time, it has created the basis for bundling services for home charging and charging at publicly accessible charging stations, and additionally it has increased the switching costs for home and public charging.

4. Resources of competition authorities²

4.1. Resources overall (current numbers and change over previous year):

4.1.1. Annual budget (in your currency and USD): 80,2 million DKK/ 11,7 million USD

4.1.2. Number of employees (person-years):

- economists; 37
- lawyers; 51
- other professionals; 8
- support staff; 10
- all staff combined. 106

4.2. Human resources (person-years) applied to – Support staff is not included :

- Enforcement against anticompetitive practices³; 65
- Merger review and enforcement; 22
- Advocacy efforts. 9

4.3. Period covered by the above information: 2023

² If there is more than one authority, please give details for each. However, only Central Government competition authorities should be included, not State or provincial bodies. Local offices should be included where these are part of the central authority

³ Excluding unfair or misleading practices which fall under consumer protection provisions of the law, where these exist.