

Unclassified**English - Or. English****18 November 2020****DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE****Global Forum on Competition****USING MARKET STUDIES TO TACKLE EMERGING COMPETITION
ISSUES – Contribution from Denmark****- Session IV -**

10 December 2020

This contribution is submitted by Denmark under Session IV of the Global Forum on Competition to be held on 7-10 December 2020.

More documentation related to this discussion can be found at: oe.cd/mktcomp.

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JT03468658

Using market studies to tackle emerging competition issues

- Contribution from Denmark* -

1. What types of emerging competition issues of a structural or regulatory nature does your competition authority face?

1. The majority of the competition issues that the Danish Competition and Consumer Authority (DCCA) faces and handles in market studies and through non-enforcement tools are well-known and includes competition issues in the health care sector, in the financial sector, in the payment area and among liberal professions (e.g. the legal profession).
2. That said, the DCCA also faces a number of *emerging* competition issues. Particularly two types are relevant to highlight:
 1. Emerging competition issues caused by narrow oligopolies in financial markets. For example, a market study conducted by the DCCA in 2017 on “Competition in the market for mortgage loans” showed difficult conditions for competition in the market. The market is concentrated, with high entry barriers and consumers rarely switching between suppliers.
 2. Emerging competition issues caused by the use of new, digital technology and digital platforms, such as the significance of network effects (including tipping points), access to data and multi homing. Furthermore, the DCCA has in two shorter analytical articles looked into issues concerning price algorithms and price matching in order to obtain insights into their prevalence, mechanisms, effects on competition and consumer behavior and welfare.
3. Since the emerging competition issues from digital technologies have an impact on the economy as a whole, digital issues are also relevant when the DCCA conducts market studies in more traditional markets and sectors.

2. What non-enforcement tools has your competition authority used (or is considering using) to tackle them?

4. As part of tackling the emerging competition issues caused by digital technologies the Danish government has funded and the DCCA has established a separate division dedicated to these issues (the so-called Digital Platforms Division). The tasks covered by the Digital Platforms Division in relation to digital platforms include:
 - Enforcement of competition rules in relation to digital platforms
 - Competition analyses of digital platforms
 - Initiatives targeted Danish companies and other stakeholders

* This document was prepared by the Danish Competition and Consumer Authority’s (DCCA’s) answers to the questions put forward by the Secretariat in the call for contribution for the session “Using market studies to tackle emerging competition issues”.

- Analyses concerning big data, machine learning, artificial intelligence, algorithms and their use
 - Enforcement of rules that address fairness and transparency for businesses in platform-to-business relations (P2B law implementing the European P2B-directive).
5. Besides the new Digital Platforms Division, the DCCA uses the following non-enforcement tools to tackle competition issues – both emerging and well-known issues:
- Major in-depth market studies
 - Shorter analytical articles
 - Inter-ministerial task force analysis
 - Political follow-up analysis
 - Podcasts
 - Conferences
 - SoMe
6. In the past five years, the DCCA has completed two major market studies of the financial markets¹ and has published/is expecting to publish five shorter analytical articles on this issue.
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8. Furthermore, the DCCA has completed two studies on competition and digital platforms² and has published the following five shorter analytical articles on the subject:
1. “Improving the effectiveness of terms and conditions in online trade”, June 2018
 2. “Price matching and price guaranties can lead to higher prices”, August 2018
 3. “Digital Platforms – an introduction”, 2019
 4. “Consumers benefit from simplified information disclosure”, July 2020
 5. “Price Algorithms”, forthcoming November 2020 (expected)
9. The aim of the publications is both to make the public aware of the special features of the emerging competitions problems and to advocate for pro-competitive regulatory reform.
10. The main trade-off when deciding which tools to use concern the tools’ expected impact on the competition issue versus the expected amount of resources used on, e.g. a major market study.

¹ DCCA, “Competition in the market for mortgage loans, August 2017 and DCCA, “Competition in the market for pensions”, August 2019.

² Nordic competition authorities, “Digital platforms and the potential changes to competition law at the European level. The view of the Nordic competition authorities, September 2020; DCCA, “Competition in markets with digital platforms”, forthcoming in 2020.

3. What does your competition authority consider the key strengths and limitations of the market study tool are relative to other tools to tackle emerging competition issues?

11. DCCA considers the key limitation of the market study tool to be that it does not give the DCCA the power to oblige the relevant authorities to act and implement a recommendation from a market study.
12. Additionally, in a young market it can be hard to conduct a market study because the empirical knowledge about the market is usually limited. If this is the case, the market study and its conclusions will be based more on theory rather than empirical evidence.
13. The DCCA considers the key strength of the market study tool (major in-depth market studies) to be that it helps the DCCA creating better-functioning markets where competition problems are not caused by violation of the competition law.
14. Besides that, a market study can be a fast way to understand a digital market and put forward recommendations.

4. When does your competition authority consider market studies might be the most appropriate tool to tackle such issues?

15. The DCCA considers a market study to be the most appropriate tool when:
 - The competition problems in a market are not expected to be caused by violation of the competition law.
 - The competition issues are expected to be of a structural or regulatory nature.
 - The DCCA expects to be able to put forward recommendations that will have an impact on the market.
 - The DCCA needs more knowledge about the specific market

5. What are the key lessons learnt by your competition authority on the use of market studies to tackle emerging competition issues and how could the use of market studies be improved?

16. Key lessons learnt on the use of market studies to tackle emerging competition issues include:
 - Major in-depth market studies are necessary for the DCCA in order to obtain sufficient knowledge and insights into a market so as to be able to put forward recommendations about any change that would improve the function of the market; and
 - A market study does not in itself lead to change in a market, but is usually a first step towards a change that may in the long run contribute to a better-functioning market.
 - After a market study is published, it is typically subject to political action following up on the recommendations put forward in it.

- The DCCA's experiences suggest that the follow-up process can be long and time consuming, and often at least as long as the market-study process itself.
17. An element that would likely improve the use of market studies is to increase the use of alternative data sources, e.g. scraping, which would make it possible to identify current issues with data coverage that is completely up to date. This is considered especially important in new markets.