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**Market Studies and other Market Analysis Tools for Competition Authorities – Note by
Denmark**

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1. Introduction

1. In 2024, the Danish Competition Act was amended in order to permit the Danish Competition and Consumer Authority (DCCA) to use market investigations.
2. This new market investigation tool allows the DCCA to act in certain cases even if there is no infringement of section 6 and 11 of the Danish Competition Act or TFEU Articles 101 and 102.
3. Thus, the market investigation tool allows the DCCA and its board, the Competition Council, to investigate behaviour or structures in one or more sectors, and if the Competition Council concludes that there is “behaviour or structures that clearly impair effective competition” to the detriment of consumers or other undertakings, the Competition Council can issue behavioural remedies to remedy the identified impairment and to promote competition.
4. The market investigation tool is a supplement to the enforcement and intervention tools already available to the DCCA. The amendment entered into force on 1 July 2024. The DCCA initiated its first market investigation case in June 2025.
5. In the following is described: (i) the reason for introduction of the market investigation tool, (ii) the legal test, (iii) the process – transparency, rights of the parties, time limit etc., (iv) the wording of the investigation tool, and (v) the use of the market investigation tool in practice.

2. The reason for introduction of the market investigation tool

6. The market investigation tool was introduced with the overall objective of ensuring more effective competition and thereby enhancing growth and competitiveness to the benefit of both undertakings and consumers.
7. Prior to the amendment, there were signs that competition in Denmark had generally worsened since 2000. For example, there were indications that market concentrations and undertakings’ profit margins had increased.
8. In addition, new technologies and business models are changing the competitive conditions. Increased digitalization means that undertakings with access to large volumes of high-quality data may have a competitive advantage that new, innovative market participants may find it difficult to challenge. Comprehensive access to data and automated analytical tools sometimes allows undertakings to more closely monitor and adapt to their competitors’ conduct – e.g. by setting higher prices or otherwise engaging in anti-competitive behaviour.
9. These changed competitive conditions made it important for the Danish government to strengthen the DCCA’s powers by giving an additional tool to address these developments.

3. The legal test

10. In order to decide whether to initiate a market investigation, the Competition Council must assess and conclude that there are “signs that there are conditions that impair the effective competition in the sector or sectors concerned”.

11. If it is decided to initiate a market investigation, the DCCA and the Competition Council will use the market investigation to assess and decide whether the investigated “behaviour or structures in one or more business sectors clearly impair the effective competition” to the detriment of consumers or other undertakings. If so, the Competition Council can issue behavioural remedies to address the identified impairment and to promote competition. In Denmark, the market investigation tool does not allow for structural remedies.

12. The legal test – behaviour or structures that “clearly impair the effective competition” – requires documentation that the impairment of competition is clear and has such significantly harmful effects that it can justify the issuing of a behavioural remedy. This can be due to an established significant harmful effect, or that it at least is rendered probable that such harmful effects will occur as a consequence of the impairment of competition.

13. If this legal test is met, the Competition Council also has to assess and decide which behavioural remedies can be used “to remedy the identified impairment and promote effective competition conditions in the sector or sectors concerned”. Thus, the Competition Council can only issue a behavioural remedy that is both necessary, reasonable, and proportionate.

14. To ensure this assessment, it is a requirement that not only the parties but also other relevant market participants, as well as relevant sector-specific authorities, shall be heard. The purpose is to ensure that the possible remedies or commitments will address the identified problem and that there are no other considerations to take into account.

15. If a specific-sector authority states that the behaviour in question is a direct and necessary consequence of law, the DCCA will not be able to issue behavioural remedies to one or more undertakings. If a sector-specific authority expresses that there are strong arguments against a remedy, such an expression shall be given significant weight in the assessment.

16. Thus, a decision to impose a remedy requires that the following conditions are met:

- that the investigated behaviour or structure “clearly impair the effective competition”,
- that the chosen remedy can address the identified harmful effect,
- that the chosen remedy imposed on the undertaking in question is reasonable, necessary and proportionate in order to secure effective competition, and
- that the assessment has been tested on not only the parties but also on other relevant market participants as well as relevant sector-specific authorities

17. The parties may offer commitments to address the identified behaviour that may clearly impair effective competition. If so, the Competition Council may decide to make such commitments binding. In such a case, there is not the same requirement to document that the behaviour clearly impair effective competition.

4. The process – transparency, rights of the parties, time limit etc.

18. The market investigation model is drafted with the intention to ensure transparency and protect legal certainty as far as possible.

19. Before the Competition Council decides to initiate a market investigation, there must be a thorough and transparent process involving the notification and consultation of relevant market participants and relevant sector-specific authorities. This includes a public consultation regarding the draft decision, which will specify the relevant market, the relevant parties and other market participants and authorities, the behaviour/structures in question, and the background.

20. When the Competition Council has decided to initiate a market investigation, the decision will be published, making the scope of the investigation public. Furthermore, the relevant market participants who are expected to be parties of the investigation are informed directly. Similarly, other relevant market participants and sector specific authorities are informed directly.

21. During the market investigation, the DCCA will collect the necessary information to determine whether there is *behaviour or structures that clearly impair effective competition* or not.

22. If the DCCA assesses that there is *behaviour or structures that clearly impair effective competition* behaviour and the DCCA considers issuing behavioural remedies, the DCCA will initiate a hearing.

23. Thus, the relevant parties have the right to be heard about both the assessment of “clearly impair effective competition” and the proposed remedy. The DCCA shall send a draft decision to the parties, who have the right to a six-week consultation period. In addition to the right to be heard, the relevant parties also have the right of access to the case file during the case.

24. Additionally, other relevant market participants as well as sector-specific authorities will also be heard about the assessment of whether behaviour or structures clearly impair effective competition, as well as possible remedies/commitments. This hearing is intended to ensure that the possible remedies/commitments can remedy the identified impairment of competition and promote effective competition and that there are no other considerations to take into account.

25. It should be noted, if the behaviour in question is a direct and necessary consequence of law, the DCCA will not be able to issue remedies. Furthermore, if a sector-specific authority expresses that there are strong arguments against a remedy, such an expression shall be treated with significant weight in the assessment.

26. There is a statutory time limit of two years to carry out and complete a market investigation, with a possible extension of six months. This is a relatively tight time limit. It is assumed that the DCCA often possesses qualified knowledge of the market conditions before initiating a market investigation, for example through a prior market study, a merger or an infringement case.

27. When a market investigation is closed, the DCCA will publish either (i) the decision to issue behavioural remedies, (ii) the decision to make commitments binding, or (iii) a notice of closure without intervention.

28. The relevant parties have the right to appeal a decision to impose behavioural remedies to the Competition Appeals Tribunal with suspensive effect. Furthermore, they can also appeal directly to the Danish Maritime and Commercial High Court.

29. If the relevant parties fail to comply with a decision to impose remedies, the DCCA may impose sanctions. However, the relevant parties cannot be sanctioned for a lack of competition, since no infringement of the competition rules is established.

5. The wording of the investigation tool

30. The paragraph which allows the DCCA to initiate a market investigation has the following wording:

“15f. (1) The Competition and Consumer Authority may, upon approval of the Competition Council, initiate a market investigation of behaviour or structures in one or more business sectors if the Competition Council finds that there are signs that there are conditions that impair the effective competition in the sector or sectors concerned.

(2) Before the Competition Council makes its decision pursuant to subsection (1), the Competition and Consumer Authority conducts a public consultation on the Authority’s draft decision to initiate a market investigation.

(3) If pursuant to subsection (1) the Competition Council decides that the Competition and Consumer Authority shall initiate a market investigation, the Competition and Consumer Authority publishes that the market investigation is to be initiated, with a description of what is covered thereof.

(4) If the Competition and Consumer Authority assesses, as part of the completion of the market investigation, that behaviour or structures in one or more business sectors clearly impair the effective competition, the Authority may, after consultation of relevant market participants and relevant authorities, issue a behavioural order to an undertaking, an association of undertakings or any other legal person to remedy the identified impairment and promote effective competition conditions in the sector or sectors concerned. An order may apply for a specific period or without time limitations. Section 16(3) shall apply correspondingly.

(5) An order pursuant to subsection (4) must be reasonable, necessary and proportionate to ensure the effective competition.

(6) If the Competition and Consumer Authority assesses that behaviour or structures in one or more business sectors impair the effective competition in the sector or sectors concerned, the Competition and Consumer Authority may, after consultation of relevant market participants and relevant authorities, decide to make commitments that an undertaking, an association of undertakings or any other legal person has submitted binding if the Authority assesses that the commitments can remedy the impairment and promote effective competition conditions in the business sector or business sectors concerned. Decisions pursuant to first sentence may apply for a specific period and shall conclude that there are no longer grounds for an order being issued by the Competition and Consumer Authority pursuant to subsection (4). Section 16a(2)-(4) shall apply correspondingly. (7) If an order is issued in the course of a market investigation pursuant to subsection (4) or commitments are made binding pursuant to subsection (6), the Consumer and Competition Authority shall issue an informative notice to the undertakings, associations of undertakings or any other legal persons who are parties. The Competition and Consumer Authority may publish draft decisions on orders pursuant to subsection (4) and draft decisions about making

commitments binding pursuant to subsection (6). Section 13(4) shall apply correspondingly on the publication pursuant to second sentence. Before the Competition and Consumer Authority issues an order pursuant to subsection (4) or make commitments binding pursuant to subsection (6), the Competition and Consumer Authority shall send a draft decision to the parties. The deadlines pursuant to section 15a(3), third and fourth sentence, for the parties' submission of comments shall apply correspondingly.

(8) No later than 2 years after publication of the Competition Council's approval that the Competition and Consumer Authority initiates a market investigation, cf. subsection (3), the Competition and Consumer Authority shall make its decision on an order pursuant to subsection (4) or decision to make commitments binding pursuant to subsection (6) or publish that the market investigation is closed. The Competition and Consumer Authority may decide to extend the time limit by up to 6 months and, if so, publishes the decision on that matter.

(9) Sections 17 and 18 apply correspondingly on the Competition and Consumer Authority's investigations pursuant to subsection (1)."

6. The use of the market investigation tool in practice

31. The market investigation tool entered into force on 1 July 2024 and the DCCA initiated its first market investigation in June 2025.

32. This first market investigation case concerns the market for non-life insurance for private individuals (i.e. home insurance, contents insurance, travel insurance, and car insurance). The market investigation focuses on insurance companies' setting of premiums, especially their practices of index-linking insurance premiums, as well as the fact that these price increases are not notified to consumers. About 25 insurance companies are parties in the case.

33. Prior to the public hearing and the decision to initiate the market investigation the DCCA had obtained knowledge of the competition on the market through a market survey, i.e. the Competition Council's analysis published in April 2025 regarding "Competition in the Market for Non-Life Insurance for Private Individuals". This analysis showed that the sector of non-life insurance companies has a norm for annual price adjustments using index-linking insurance premiums – typically index-linking to the high index based on the wage developments in the private sector. The analysis also showed that the return on equity for shareholder-owned insurance companies is at a somewhat higher level than the estimate of what might be expected under effective competition.

34. It is the DCCA's theory that this norm reduces uncertainty about competitors' pricing strategies. Furthermore, that customers do not necessarily react to the price increases, as the increases are set out in the contract and are not separately notified.

35. *Phase one* in the process was to consider whether the market investigation was necessary and should be initiated. This phase comprised internal as well as the required public consultation.

36. *Phase two* began when the Competition Council decided to initiate the market investigation case. This phase is being used to gather further necessary information in order to assess whether there is a clear impairment of the effective competition. If this is the case, it will be further considered what possible behavioural order can be used to remedy such an identified impairment and promote competition. The case is still in this phase.

37. If the DCCA and the Competition Council then assess that there is a clear impairment of the effective competition and that it is possible to issue a behavioural order that can remedy the identified impairment and promote competition, the DCCA and the Competition Council will initiate a consultation of the parties as well as other market participants and sector-specific authorities. This can be called *phase three* and it will expire when the time limit of two years expires.

38. The DCCA expects that the main *advantages* of this new tool are that it provides the opportunity to intervene in certain cases where the classic enforcement tools cannot be used but where the competition nevertheless is not functioning, and where it at the same time cannot be expected that the problem will be solved through future competition. Thus, the DCCA expects that the new tool can be especially relevant if the competition in a sector is not functioning on the supplier side, and at the same time the buyers or consumers are unable to exert the necessary competitive pressure.

39. The DCCA expects that the main *challenges* of using this new tool is: (i) that it due to a new legal test requires a new type of assessment and that there is currently no precedent to refer to, (ii) that it requires a potential difficult proportionality assessment, and (iii) that consideration must be given to the fact that it can only be used to impose orders on existing market participants, and not possible future market participants.