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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN DENMARK

-- 2005 --

This report is submitted by the Danish Delegation to the Competition Committee FOR DISCUSSION at its forthcoming meeting, to be held on 8-9 June 2006.

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TABLE OF CONTENTS

1.	Changes to competition laws and policies, proposed or adopted	3
2.	Enforcement of competition law and policies	4
3.	The role of competition authorities in the formulation and implementation of other policies	6
4.	Resources of the Competition Authority	8
5.	References to new reports on competition policy	8

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

Summary of new legal provisions of competition law and related legislation

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

2. In addition, the Danish Competition Council was given a wider scope to take action against dominant enterprises whose behaviour impedes effective competition. Finally, the Act was amended in a number of areas in order to define and clarify the legal situation as much as possible.

3. 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 emphasised to make it clear that it also applies in single cases of price control where the management is unaware of the issue. Discounts to retailers who agree to observe fixed prices are also prohibited. The merger criterion is amended to give the authorities a wider scope to impose requirements in connection with mergers that threaten to impede effective competition, even though the mergers do not comprise the largest enterprise in the market (i.e. the so called SIEC criteria).
- Like the European Commission, the Competition Council will be empowered to settle competition issues by accepting binding commitments from 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 emphasised that the Act warrants publication of judgments and fixed-penalty notices for infringement of the Competition Act.
- The Competition Appeal Tribunal will be enlarged from 3 to 5 members.
- It will be possible to handle cases in English, wholly or partly.

4. A ministry working group has been set down to investigate the possibilities of making further amendments, enforcing the Competition Act. Some of the major issues the working group will focus on are how to incorporate an efficient leniency system, as well as how the competition authority's investigative tools can be improved. The ministry working group has to make its recommendations to the government by summer 2006, so a legal proposal can be put before the parliament at the end of 2006.

2. Enforcement of competition law and policies

a) *Enforcement statistics*

5. The Competition Council decided 31 major cases in 2005. The Competition Authority made 52 decisions in important cases with subsequent publication. In 2004, the authority also concluded about 567 minor cases, mainly concerning access to documents, questions from citizens, etc.

6. Decisions of the council and the authority can be appealed to the Competition Appeal Tribunal. 7 cases were decided in 2005. Of these, 2 were overruled or referred back. Decisions of the can be brought before the courts. In 2005 the court system decided 2 cases in relation to decisions from the competition Council, appealed to the Appeals Tribunal – both cases were decided in favour of the Competition Council.

	01.01.05 – 31.12.05
Cases appealed	7
Competition Council decisions upheld or appeals withdrawn	5
Competition Council decisions overruled or referred back	2

7. On April 1st 2006, 7 cases were pending before the Appeals Tribunal.

b) *Significant cases*

Decisions

8. The Competition Council decides on major cases and test cases. The Competition Authority manages 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.

Anti-competitive agreements

Illegal agreement between Danish Inns and Hotels

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

10. 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 could lead to expulsion from Danish Inns and Hotels.

11. 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.

Abuse of dominance

Marketing fees not to be spent on discrimination

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

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

14. Through 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 seen as a whole. This means 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.

15. 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.

Toyota's abuse of dominant position

16. The Competition Council decided that Toyota abused its dominant position by making it difficult, in a variety of ways, to be a Toyota service mechanic.

17. The Competition Council found that Toyota's conduct of business in principle could be used to squeeze unwanted service mechanics out of the market, even though they meet all the demands of being authorised Toyota service mechanics. Thus, the number of operators might be limited and controlled to the disadvantage of competition.

18. Among other things, Toyota had set out one-sided demands to their service mechanics in relation to disputes on trade mark law and law of torts, and threatened to terminate or cancel the repair contracts, if the demands were not fulfilled. In this way, Toyota had tried to force service mechanics to accept compensation claims, without allowing for these demands to be settled by arbitration or by an impartial third party.

19. Moreover, Toyota had discriminated in favour of Toyota garages selling both new cars and offering repair jobs, and the garages exclusively offering repair jobs.

20. Garages exclusively offering repair jobs were not allowed to lease cars at Toyota Financial Services on equal, favourable terms as the garages selling new cars. Also, the guidelines set for the garages displaying signs were enforced differently between the two parties.

21. The Competition Council ordered Toyota Denmark A/S to cease this practise. Toyota appealed this decision to the Appeals Tribunal, where the case is pending.

Mergers and acquisitions

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

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

Svenska Lantmännen's (Swedish Farmers' Organisation) acquires the shares in *Spira-koncernen* (Spira-organisation)

24. 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 matter of merger which must be registered in Denmark.

25. 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.

26. 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.

27. Svenska Lantmännen and SweChick were therefore 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.

3. The role of competition authorities in the formulation and implementation of other policies

28. 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 seen as a supplement to the EC state aid rules. This means that 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.

29. In principle, the Danish Competition Act seeks to achieve the greatest possible equality between private and public business activities. If anti-competitive practice is a direct or necessary consequence of a public regulation, the provisions of the Act do not apply. The assessment of this - which entails putting other legislation above the Competition Act - can only be made by the relevant minister who is answerable to the Danish Parliament. The minister responsible and the Minister of Economic and Business Affairs must motivate governmental restrictions on competition questioned by the Competition Authority.

The Transport Industry's Training Council receives illegal support

30. 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.

31. 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 re-education in the

transportation sector. Normally, this is done in close co-operation with institutions offering labour market training courses.

32. 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.

33. 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.

34. 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.

35. The Competition Council recommends increased competition in the pharmacy sector

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

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

38. On these grounds the Council proposed the following reorganisation:

- 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 price ceiling.
- Option of inviting tenders for the running of pharmacies receiving economical support.

39. With this reorganisation the Danish pharmacy sector would be even more development oriented and efficient without giving in on the safety of the consumers

4. Resources of the Competition Authority

4.1 Total resources

Annual budget 2005: DKK 93.8 million = EURO 12.5 million

	Competition Authority (in total)	Employees occupied with competition law
<i>Economists</i>	51	31
Lawyers	41	21
Other professionals	20	8
Support staff	31	9
Total	143	79

- 64 person-years, which are not allocated to administration of the Competition Act, are allocated to the following:
- 17 person-years: public procurement, state aid and credit card regulation
- 39 person-years: energy price regulation
- 8 person years: ministerial affairs

4.2 Period

40. The employee information is as of April 1st 2006.

5. References to new reports on competition policy

41. A major part of the development work of the Authority takes place in projects that analyse fundamental problems in the various fields of the Authority. 12–14 full-time equivalents are currently set aside for projects. This approach to the cases has led to a more efficient utilisation of resources, as the project results provide the Authority with a better basis for its day-to-day case work. The project results are published in separate reports or in the annual Competition Report.

42. In 2004, 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

43. The Competition Report, which is published annually, describes relevant competition/political problems illustrated by both Danish and international examples. Subjects selected are those of significance to the quality and understanding of the work of the Competition Authority, plus theoretical and practical circles of problems for the framework conditions of trade and industry. The first Competition Report was published in December 1997. The Competition Report 2006 is the eighth report published.