

In case of any discrepancy between the original Danish text and the English translation of this Act, the Danish text shall prevail.

**The Danish Competition Act
(Consolidation Act No. 869 of 8 July 2015)**

The Competition Act, cf. Consolidated Act No. 700 of 18 June 2013, as amended by Section 1 in Act No. 1371 of 16 December 2014 and Section 3 in Act No. 741 of 1 June 2015, is hereby promulgated.

Part 1

The purpose of this Act and its area of use

1. The purpose of this Act is to promote efficient resource allocation in society through workable competition for the benefit of undertakings and consumers.

2.-(1) This Act shall apply to any form of commercial activity as well as aid from public funds granted to commercial activity.

(2) The provisions of Parts 2 and 3 of this Act shall not apply where an anti-competitive practice is a direct or necessary consequence of public regulation. An anti-competitive practice established by a local council shall only be considered a direct or necessary consequence of public regulation in so far as the practice is necessary to allow the local council to carry out the tasks assigned to it in accordance with current legislation.

(3) Decisions made by the executive committee of a local authority partnership, cf. Section 60 of the Local Government Act, shall be considered equivalent to decisions made by a local council as referred to in subsection (2) above.

(4) A decision about the extent to which an anti-competitive practice will be covered by subsection (2) above shall be made by the minister responsible for the regulation concerned. If the Competition and Consumer Authority requests the relevant minister to determine whether an anti-competitive practice is covered by subsection (2), the minister must reach a decision no later than four weeks after having received the request from the Authority. The Competition and Consumer Authority may extend the time limit.

(5) If the Competition and Consumer Authority finds a public regulation or an aid scheme likely to restrain competition or otherwise likely to impede efficient allocation of society's resources, the Authority may deliver a reasoned opinion to the relevant minister and to the Minister for Business and Growth, pointing out its potentially adverse effects on competition, and present recommendations for promoting competition in the area concerned. After negotiating with the Minister for Business and Growth, the relevant minister replies to the Competition and Consumer Authority no later than four months after receiving the Authority's statement. The Competition and Consumer Authority may extend the time limit.

(6) (Repealed).

3. This Act shall not apply to pay and working conditions. For the purposes of its on-going work the Competition and Consumer Authority may, however, demand information from organisations and undertakings concerning pay and working conditions.

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 of undertakings.

(2) The Minister for Business and Growth shall lay down specific rules on the application of subsection (1), after consultation with the Competition and Consumer Authority, including rules on how to define agreements etc. within the same undertaking or group of undertakings.

5 a.-(1) The definition of the relevant market under this Act shall be based on examinations of demand and supply substitutability, and potential competition. The potential competition must be examined when the position of the undertakings operating on the relevant market has been documented and this position gives rise to doubt as to whether this Act has been infringed.

(2) The Competition and Consumer Authority may draw on external expertise in making its assessment under subsection (1) above.

Part 2

Prohibition against certain anti-competitive agreements

6.-(1) It shall be prohibited for undertakings etc. to enter into agreements that have restriction of competition as their direct or indirect object or effect.

(2) Agreements covered by subsection (1) may, in particular, be agreements made to

- i) fix purchase or selling prices or other trading conditions;
- ii) limit or control production, sales, technical development or investments;
- iii) share markets or sources of supply
- iv) apply dissimilar conditions to equivalent transactions with trading partners, thereby placing them at a competitive disadvantage;
- v) make the conclusion of contracts subject to acceptance by the other contracting party of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts;
- vi) coordinate the competitive practices of two or more undertakings through the establishment of a joint venture; or
- vii) determine binding resale prices or in other ways seek to induce one or more trading partners not to deviate from recommended resale prices.

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

(4) The Competition and Consumer Authority may issue orders to put an end to infringements of subsection (1), cf. Section 16. Acting upon any concerns it may have in relation to subsection (1), the Competition and Consumer Authority may, furthermore, decide that commitments made by an undertaking shall be binding, cf. Section 16a(1).

(5) Agreements and decisions that are prohibited under subsections (1) – (3) shall be void, unless otherwise excepted under Section 7, exempted under Section 8 or Section 10, or comprised by a declaration under Section 9.

7.-(1) The prohibition set out in Section 6(1) above shall not apply to agreements between undertakings, decisions made by an association of undertakings or concerted practices between undertakings, in case the undertakings involved have

- i) an aggregate annual turnover of less than DKK 1 billion and an aggregate share of less than 10 per cent of the product or service market concerned, cf., however, subsections (2)-(4); or
- ii) an aggregate annual turnover of less than DKK 150 million, cf., however, subsections (2)-(4).

(2) The exceptions in subsection (1) shall not apply to cases in which undertakings or an association of undertakings agree, coordinate or decide on

- i) prices, profits etc. for the sale or resale of goods or services,
- ii) restrictions on production or sales,
- iii) sharing of markets or customers, or
- iv) fixing bids prior to their tendering, fixing conditions for the opening of bids, deferring bids, prior notification of bids, or any other form of bid rigging.

(3) The prohibition set out in Section 6(1) shall, irrespective of subsection (1) above, apply to an agreement between undertakings, a decision made by an association of undertakings and concerted practices between undertakings if, this agreement etc., together with other similar agreements etc., will restrict competition.

(4) The Minister for Business and Growth shall, after consultation with the Competition and Consumer Authority, lay down specific rules on the calculation of turnover under subsection (1), including rules to the effect that, in the case of financial undertakings, the mentioned turnover thresholds shall be calculated on the basis of other assets.

(5) The exception set out in subsection (1) shall apply even if the undertakings exceed the above thresholds for two consecutive years. The Minister for Business and Growth shall, after consultation with the Competition and Consumer Authority, lay down specific rules in that respect, including rules on minor transgressions of the mentioned thresholds.

8.-(1) The prohibition set out in Section 6(1) above shall not apply if an agreement between undertakings, a decisions made by an association of undertakings or concerted practices between undertakings

- i) contribute to improving the efficiency of the production or distribution of goods or services, or to promoting technical or economic progress;
- ii) provide consumers with a fair share of the resulting benefits;
- iii) do not impose on the undertakings restrictions that are not necessary to attain 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) The Competition and Consumer Authority may, upon notification, exempt an agreement between undertakings, a decision within an association of undertakings or a concerted practice between undertakings from the prohibition in Section 6(1) if the Authority finds the conditions set out in subsection (1) have been complied with. The notification of such an agreement etc., including an application for exemption under subsection (1), may be submitted to the Competition and Consumer Authority. The Authority shall lay down specific rules on notification, including rules on the use of special notification forms, and on the submission of a non-confidential version of a notification.

(3) Decisions made under subsection (2) shall specify the period for which the exemption is effective. Exemptions may be granted on specific terms.

(4) The Competition and Consumer Authority may, upon notification, extend an exemption when the Authority finds that the conditions in subsection (1) are still satisfied. Subsection

(3) shall apply correspondingly.

(5) The Competition and Consumer Authority may refrain from considering a notification under subsection (2) or (4), if the agreement etc. may appreciably affect trade between the Member States of the European Union.

(6) The Competition and Consumer Authority may alter or revoke a decision made under subsection (2) or (4) if

- i) the facts of the situation have changed in any respect that was important for the decision;
- ii) the parties to the agreement etc. fail to comply with the terms imposed; or
- iii) the decision has been based on incorrect or misleading information from the parties to the agreement etc.

9.(1) The Competition and Consumer Authority may declare, upon notification from an undertaking or association of undertakings, that according to the facts in its possession, an agreement, decision or concerted practice shall be outside the scope of the prohibition set out in Section 6(1), and that, accordingly, it has no grounds for issuing an order under Section 6(4). The Authority shall lay down specific rules on notification, including rules on the use of special notification forms, and on the submission of a non-confidential version of a notification.

(2) The Competition and Consumer Authority may refrain from considering a notification under subsection (1), if an agreement etc. may appreciably affect trade between the Member States of the European Union.

10.(1) The Minister for Business and Growth shall, after consultation with the Competition and Consumer Authority, lay down rules on the granting of block exemptions from the prohibition in Section 6(1) for groups of agreements, decisions and concerted practices that satisfy the conditions in Section 8(1).

(2) Where agreements, decisions by an association of undertakings or concerted practices that are comprised by a block exemption issued under subsection (1) above have impact on a concrete case which is incompatible with the conditions in Section 8(1), the Competition and Consumer Authority may revoke such a block exemption for the undertakings etc. that have entered into the agreement etc.

Part 2 a

Trading terms of dominant undertakings

10 a.(1) The Competition and Consumer Authority may order a dominant undertaking to submit its general trading terms if

- i) a competitor has filed a not unfounded complaint;
- ii) special conditions prevail on the market and
- iii) the Competition and Consumer Authority, due to these conditions, sees a special need to acquire insight into the ways in which the dominant undertaking fixes its prices, discounts, etc.

The order may exclusively comprise the trading terms for the markets with which the complaint is concerned.

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

(3) “Trading terms” shall mean the basis applied at any time by an undertaking to generally fix its prices, discounts, marketing contributions and free services, and the terms and conditions on which the undertaking will grant these financial benefits to its trading partners.

(4) Undertakings that have submitted their trading terms under subsection (1) above may ask the Competition and Consumer Authority for an assessment of these terms. The Competition and Consumer Authority shall make its decision within six months. This time limit will run from the date when the Competition and Consumer Authority receives from the undertaking the information that is necessary to make an assessment of its trading terms. If no decision has been made by the Competition and Consumer Authority within this time limit, the trading terms shall be considered as approved.

(5) The Competition and Consumer Authority may refrain from making a decision in case such a decision may have implications for whether one or more undertakings abuse a dominant position in the common market or an essential part thereof, and trade between the Member States of the European Union may be appreciably affected thereby.

(6) If the trading terms are contrary to Section 11(1) or administered in contravention of Section 11(1), the Competition and Consumer Authority may order revocation or alteration of one or more provisions in the trading terms. If the trading terms are prepared in such a manner that the Competition and Consumer Authority will have an inadequate basis for assessing whether they are contrary to Section 11(1), the Competition and Consumer Authority may order that one or more of the terms must be further specified.

(7) If a dominant undertaking against which an order under subsection (1) has been issued deals with trading partners on the Danish market using prices, discounts, financial benefits or other terms that are not shown in or deviate to a not insignificant extent from the trading terms submitted to the Competition and Consumer Authority, this will be taken into account in connection with the general presentation of evidence in proceedings under Section 11.

(8) The provision in subsection (7) shall also apply if a dominant undertaking breaches an order issued under subsection (6). This shall not apply, however, when under Section 19(4) a delaying effect has been granted pending the outcome of an appeal against the order.

Part 3

Abuse of a dominant position

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

(2) The Competition and Consumer Authority must declare, upon request, whether one or more undertakings hold a dominant position, cf., however, subsection (7). If the Competition and Consumer Authority declares that an undertaking does not hold a dominant position, this declaration shall be binding until revoked by the Competition and Consumer Authority.

(3) Abuse as set out in subsection (1) may, for example, consist of

- i) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- ii) limiting production, sales or technical development to the prejudice of consumers;
- iii) applying dissimilar conditions to equivalent transactions with trading partners, thereby placing them at a competitive disadvantage, or
- iv) making the conclusion of contracts subject to acceptance by the other contracting party of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

(4) The Competition and Consumer Authority may issue orders to put an end to infringements of subsection (1), cf. Section 16. Acting upon any concerns it may have in relation to subsection (1), the Competition and Consumer Authority may, furthermore, decide that commitments made by an undertaking shall be binding, cf. Section 16a(1).

(5) The Competition and Consumer Authority may declare, upon notification from one or more undertakings, that based on the facts in its possession, a certain form of conduct shall not fall under the prohibition in subsection (1) and that, accordingly, it has no grounds for issuing an order under subsection (4).

(6) The Competition and Consumer Authority may lay down specific rules on the material that has to be submitted for a decision under subsection (2) or (5), including the submission of a non-confidential version of a request or a notification.

(7) The Competition and Consumer Authority may refrain from making a decision under subsection (2) or (5), in case such a decision may have implications for whether one or more undertakings abuse a dominant position in the common market or an essential part thereof, and trade between the Member States of the European Union may be appreciably affected thereby.

Part 3 a

Aid that distorts competition

11 a.-(1) The Competition and Consumer Authority may issue orders for the termination or repayment of aid granted from public funds to support certain forms of commercial activity.

(2) An order under subsection (1) may be issued in case

- i) the direct or indirect object or effect of the aid is distortion of competition; and
- ii) the aid is not lawful according to public regulation.

(3) The decision of whether granted aid is lawful according to public regulation shall be made by the relevant minister or the relevant municipal supervisory authority unless otherwise provided by other legislation. Decisions as to the lawfulness of granted aid according to public regulation shall be made no later than four weeks after receipt of a request from the Competition and Consumer Authority. The Authority may extend the time limit.

(4) An order for repayment of aid under subsection (1) may be issued to private undertakings, self-governing institutions and corporate undertakings owned fully or partly by public authorities. The Minister for Business and Growth may lay down specific rules to the effect that orders for repayment of aid under subsection (1) may also be issued to certain quasi-corporate undertakings owned fully or partly by public authorities.

(5) The Competition and Consumer Authority's powers to order repayment of public aid under subsection (1) above shall be barred by limitation five years after the aid was paid out. The Competition and Consumer Authority shall determine the interest to be paid in connection with orders for repayment of unlawful aid according to subsection (1) above. Interest shall be paid at the interest rate fixed at any time under the European Union's state aid rules to be applied in the repayment of state aid. The Competition and Consumer Authority may stipulate that compound interest shall accrue from the date when unlawful aid was first made available to the recipient and until the date when the aid has been repaid. The sum of interest which has accrued the preceding year shall accrue interest each subsequent year.

(6) The Competition and Consumer Authority may, upon notification, declare that, based on the conditions known to it, certain grants of public aid are not covered by subsection (2)(i) and that, accordingly, the Authority has no grounds for issuing an order under subsection (1). The Authority may lay down specific rules on notification, including rules on the use of special notification forms.

(7) The Competition and Consumer Authority may refrain from dealing with a case under subsections (1)-(6) if the aid scheme may affect trade between the Member States of the European Union.

(8) An order that aid shall be terminated, cf. subsection (1), may be issued regardless of when the decision granting the aid was made.

(9) Aid which, pursuant to subsection (1), is ordered to be repaid shall be paid to the state treasury.

11 b.-(1) The Competition and Consumer Authority may investigate the extent to which a public authority offers private providers of services covered by the Free Choice programme a settlement price fixed in accordance with the rules established in other legislation on the Free Choice programme, cf. subsection (5).

(2) If the settlement price referred to in subsection (1) is lower or estimated to be lower than the price which the public authority should have used according to the relevant provisions on Free Choice, the Competition and Consumer Authority may issue an order addressed to the public authority to the effect that the public authority shall

- i) stop calculating and stipulating settlement prices that are contrary to the Free Choice rules,
- ii) use specified bases of calculation, calculation methods or settlement prices in respect of private providers of Free Choice services and
- iii) ensure post-payment of an amount to private suppliers of Free Choice services corresponding to the difference between the settlement price that the authority has used and the settlement price that the authority should have used in accordance with paragraph (i).

(3) Unless otherwise specified in the provisions on the Free Choice programme in question, the order to ensure post-payment may not relate to payments that were made more than one year prior to the date on which the Competition and Consumer Authority launched an investigation into the conditions of the public authority in question.

(4) The Competition and Consumer Authority may refrain from dealing with a case under subsections (1)-(3) if the scheme may affect trade between the Member States of the European Union.

(5) The Minister for Business and Growth shall, after negotiation with the relevant minister, lay down rules to specify the Free Choice programmes that fall within the Competition and Consumer Authority's field of competence.

11 c. The Minister for Business and Growth may lay down rules on the implementation of the Commission Directive on the transparency of financial relations between Member States and public undertakings and on financial transparency within certain undertakings.

Part 4

Merger control

12.-(1) The provisions of Part 4 of the Act shall apply to mergers where

- i) the aggregate annual turnover in Denmark of all undertakings involved is at least DKK 900 million and the aggregate annual turnover in Denmark of each of at least two of the undertakings concerned is at least DKK 100 million;
- ii) the aggregate annual turnover in Denmark of at least one of the undertakings involved is at least DKK 3.8 billion and the aggregate annual worldwide turnover of at least one of the other undertakings concerned is at least DKK 3.8 billion; or
- iii) the Business Authority in accordance with the Act on electronic communications networks and services has referred a merger between two or more commercial providers of electronic communications networks in Denmark to the Competition and Consumer Authority.

(2) Where a merger is a result of the acquisition of parts of one or more undertakings, the calculation of the turnover referred to in subsection (1) shall only comprise the share of the turnover of the seller or sellers that relates to the assets acquired.

(3) However, two or more acquisitions as referred to in subsection (2), which take place within a two-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) The Minister for Business and Growth shall, after consultation with the Competition and Consumer Authority, lay down specific rules on the calculation of the turnover under subsection (1), including rules prescribing that the mentioned turnover thresholds shall be calculated on the basis of other assets in the case of financial institutions.

(5) Even if the aggregate turnover of the undertakings involved is lower than the thresholds referred to in subsection (1) above, the provisions of this Part of the Act shall apply to a merger which the European Commission refers to Denmark according to the EU Merger Regulation.

12 a.-(1) For the purpose of this Act, a merger shall mean:

- i) two or more previously independent undertakings amalgamating into one undertaking; or
- ii) one or more persons who already control at least one undertaking, or one or more undertakings - by an agreement to purchase shares or assets or by any other means - acquiring direct or indirect control of the entirety of or parts of one or more other undertakings.

(2) The establishment of a joint venture that will perform on a permanent basis all the functions of an independent business entity shall constitute a merger within the meaning of subsection (1)(ii).

(3) For the purpose of this Act, control of an undertaking is obtained through rights or agreements or in other ways which will, either separately or in combination, make it possible to exert decisive influence on the operations of the undertaking.

(4) A merger shall not be deemed to arise under subsection (1) in the following cases:

- i) Where credit institutions, other financial undertakings or insurance companies whose normal activity includes transactions and dealing in securities for their own account or for the account of others are temporarily in possession of interests which they have acquired in an undertaking with a view to reselling these, provided always that they do not exercise

the voting rights attached to these interests for the purpose of determining the competitive conduct of that undertaking or exercise these voting rights exclusively with the aim of preparing the disposal of all or part of that undertaking or its assets or shares held and that the disposal takes place within one year of the date of acquisition;

ii) Where control is acquired by a professional who has powers under current insolvency legislation to deal with and dispose of the undertaking; or

iii) Where the transactions referred to in subsection (1)(ii), above are carried out by holding companies as defined in the Annual Accounts Directive, subject to the restriction, however, that the voting rights attached to the shares in their possession, especially in relation to the appointment of members of the management and supervisory bodies of the undertakings in which the shares are held, are only exercised to retain the full value of these investments and not to determine directly or indirectly the competitive conduct of these undertakings.

(5) The Competition and Consumer Authority may, upon request, extend the time limit set out in subsection (4)(i), where the credit institute or financial undertaking, or insurance company is able to substantiate that the disposal was not reasonably possible within the period required.

12 b.-(1) A merger covered by this Act shall be notified to the Competition and Consumer Authority after a merger agreement has been concluded, a takeover bid has been published or a controlling interest has been acquired and before the merger is carried out.

(2) The Competition and Consumer Authority may publish a notice to announce that it has received notification of a merger. The notice published shall include the names of the parties to the merger, the nature of the merger and the economic sectors involved.

(3) The Minister for Business and Growth shall, after consultation with the Competition and Consumer Authority, lay down rules on the notification of mergers, including rules on the use of special notification forms, and on the submission of a non-confidential version of a merger notification.

12 c.-(1) The Competition and Consumer Authority shall decide whether to approve or prohibit a merger.

(2) A merger that will not significantly impede effective competition, in particular due to the creation or strengthening of a dominant position, shall be approved. A merger that will significantly impede effective competition, in particular due to the creation or strengthening of a dominant position, shall be prohibited.

(3) To the extent that the formation of a joint venture that will constitute a merger under Section 12a(2) above also has as its object or effect the coordination of the competitive conduct of undertakings that remain independent, such coordination shall be assessed in accordance with the criteria laid down in Sections 6(1) and 8(1) of this Act or Article 101(1) and (3) TFEU in order to establish whether the transaction shall be approved.

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

- i) whether two or more founding undertakings have retained significant activities in the same market as the established joint venture or in a market which is downstream or upstream from that of the joint venture or in a related market closely associated with this market; and
- ii) whether the coordination that is the direct consequence of the establishment of the

joint venture in question provides a possibility for the undertakings involved to eliminate competition in respect of a substantial part of the products or services in question.

(5) A merger that is subject to the provisions of this Act shall not be carried through until it has been notified to and approved by the Competition and Consumer Authority under subsection (1) above. This shall not prevent the implementation of a public takeover bid or a series of transactions in securities, including securities that can be converted to other securities that can be traded in a market such as a stock exchange, whereby control is acquired from different sellers, cf. Section 12a, provided that the merger is notified immediately to the Competition and Consumer Authority and the acquirer does not exercise the voting rights attached to the securities in question or only does so to maintain the full value of his investment and on the basis of an exemption granted by the Competition and Consumer Authority according to subsection (6) below

(6) The Competition and Consumer Authority may grant an exemption from the provision set out in subsection (5) and in that connection make it subject to certain conditions or it may issue an order for the purpose of ensuring effective competition.

(7) The Competition and Consumer Authority may grant approval of a merger, based on a simplified procedure, if the Authority, based on the information submitted, finds that the merger will not give rise to any objections on the part of the Authority.

12 d.-(1) It shall be decided, no later than 25 weekdays after a complete notification has been received, cf., however, Section 12h(5), third sentence, whether a merger shall be approved, and whether the merger may be approved on the basis of a simplified procedure. The time limit referred to in subsection (1) above may be extended by up to 35 weekdays in case one or more of the undertakings involved propose commitments, including revised commitments. It shall be decided whether a further investigation of the merger shall be initiated within the time limit referred to in subsection (1) or (2).

(2) If the Competition and Consumer Authority initiates a further investigation of a merger, cf. subsection (1), third sentence, then it shall be decided within 90 weekdays after the decision to initiate a further investigation whether to approve or prohibit the merger.

(3) The time limit referred to in subsection (2) above shall be extended by up to 20 weekdays in case one or more of the undertakings involved propose commitments, including revised commitments. The time limit may only be extended if, at the time when the commitments are proposed, fewer than 20 weekdays remain until a decision should have been made under subsection (2) above, and the extension shall allow for a total of 20 weekdays for the assessment of the merger in light of the commitments.

(4) The time limit set out in subsection (2) above may furthermore be extended upon a decision of the Competition and Consumer Authority provided that the undertaking or undertakings that has or have filed the notification has or have requested or consented to the extension. An extension may not exceed 20 weekdays.

(5) If no decision has been made within the time limits provided by subsections (1)-(4) above, this shall be considered to be a decision to approve the merger, subject to subsection 6.

(6) If an undertaking involved lodges an appeal with the Danish Competition Appeals Tribunal against the procedure in a merger in which a decision under Section 12c (1) or (3) has not yet been made, the time limits in subsections (1)-(4) shall not take effect until the Competition Appeals Tribunal has made a decision regarding the appeal.

(7) If an undertaking lodges an appeal with the Danish Competition Appeals Tribunal against the requirement for submission of a full notification, cf. Section 12h(4), the time limits

in subsections (1)-(4) shall not take effect until the Competition Appeals Tribunal has made a decision regarding the appeal.

12 e.-(1) The Competition and Consumer Authority may attach conditions to its approval of a merger under Section 12c(2) or issue orders to ensure, for example, that the undertakings involved comply with the commitments they have accepted vis-à-vis the Competition and Consumer Authority to eliminate any anti-competitive effects of the merger.

(2) Such conditions or orders may require that the undertakings involved must

- i) dispose of an undertaking, parts of an undertaking, assets or other proprietary interests;
- ii) grant third party access; or
- iii) take other measures capable of promoting effective competition.

(3) The Competition and Consumer Authority may, after its approval of a merger, issue the orders that are necessary to ensure due and correct fulfilment of the commitments made to the Authority by the undertakings involved according to subsection (1) above.

12 f.-(1) The Competition and Consumer Authority may revoke its approval of a merger, when

- i) its approval is based to a substantial extent 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 conditions or orders imposed under Section 12e(1).

(2) In case the Competition and Consumer Authority is made aware of the fact that an undertaking concerned, as part of the assessment of a merger notified according to the simplified procedure, has submitted incorrect or misleading information, the Authority may revoke its approval under Section 12c(7) and demand that within two weeks the undertakings concerned submit a full notification, cf. subsection (3), however. The Competition and Consumer Authority's assessment is subject to the time limits set out in Section 12d.

(3) However, a full notification shall not be submitted, if, at the time when the Competition and Consumer Authority revokes its approval, the undertakings involved have not taken any initiatives to implement the merger or if they have taken initiatives to implement the merger, but inform the Competition and Consumer Authority within two weeks that the merger will not be implemented.

12 g. The Competition and Consumer Authority may, when making a decision under Section 12c(1) to prohibit a merger that has already been carried through, issue an order that requires separation of the undertakings or assets that have been taken over or merged or cessation of joint control or any other measure capable of restoring effective competition.

12 h.-(1) A merger may be notified by means of either a simplified or a full notification.

(2) A fee of DKK 50,000 is payable for a simplified notification.

(3) A fee of 0.015 per cent of the aggregate annual turnover in Denmark of the undertakings involved, but not exceeding DKK 1,500,000, is payable for a full notification.

(4) If during the assessment of a simplified notification it appears that a full notification is necessary for the purpose of assessment, such full notification together with evidence of payment of a fee calculated in accordance with subsection (3) less an already paid fee according to subsection (2) shall be submitted to the Competition and Consumer Authority.

(5) The fees according to subsections (2)-(4) shall be paid to the Competition and Consumer Authority at the time of the notification. Documentation of the payment shall be enclosed with the notification. The time limit in Section 12d(1) shall run from the day on which the Authority has received a full notification together with documentation of the payment of the fee.

(6) If the fee according to subsection (2) or (3) is not paid on demand, a notification of a merger shall be deemed not to have taken place. The notification of a merger shall be deemed to be repealed if, cf. subsection (4), the fee is not paid on demand or a full notification is not submitted despite a reminder.

(7) An already paid fee according to subsections (2)-(4) shall not be refunded unless

- i) there was no duty to notify the transaction;
- ii) the notification is withdrawn before the notification is complete;
- iii) the notification is withdrawn before a decision according to Section 12c(1) or (7) has been made and the withdrawal is the result of another Danish authority's refusal of permission for the undertakings involved to merge; or
- iv) the Business Authority was unfounded in referring the merger to the Competition and Consumer Authority, cf. Section 12(1)(iii).

Part 5

Access to documents

13. The Act on Public Access to Documents in Public Files shall not apply to cases and investigations under this Act other than cases concerning the definition 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 11c, Section 12(4), Section 12b(3), Section 14(5), Section 18(8), second sentence, Section 18a(3) and Section 21(3). However, Section 8 and Section 13 of the Act on Public Access to Documents in Public Files shall also apply to cases covered by this Act. In addition, sentences one and two are applicable if information obtained under this Act has been disclosed to another administrative authority.

(2) The Competition and Consumer Authority shall publish:

- i) Decisions made by the said authority according to Section 2(4), first sentence, and Section 11a(3), first sentence, as well as the Competition and Consumer Authority's reasoned opinions and the relevant minister's responses according to Section 2(5),
- ii) The Competition and Consumer Authority's decisions made under this Act,
- iii) The Competition and Consumer Authority's decisions made on behalf of the Competition and Consumer Authorityⁱ or a summary of such decisions, unless the decision is neither found to be of importance for the understanding of the Competition Act nor otherwise found to be of public interest,
- iv) Judgments, settlements of fines or a summary thereof, where, subject to Section 23, a fine or a prison sentence is imposed on or accepted by an undertaking,
- v) Orders made by the Competition Appeals Tribunal,
- vi) Judgments passed in lawsuits, to which the Competition and Consumer Authority, the Competition Council or the Competition Appeals Tribunal is a party,
- vii) Judgments which the Authority has obtained from the courts or of which it has requested copies according to Section 20(4) where such judgments concern the application of this Act or Articles 101 and 102 TFEU.

(3) The Competition and Consumer Authority may also publish information concerning the Authority's activities in the area of competition.

(4) Publication of information according to subsections (2) and (3) shall not include information on technical matters, including information on research, production methods, products and operating and business secrets, where such information is of substantial financial importance to the person or undertaking concerned. Nor shall customer-related information from undertakings, which fall under the jurisdiction of the Financial Supervisory Authority, be disclosed.

(5) Any party who is required to submit information to the Competition Council may file an application to the President of the Council requesting that information that may not be disclosed or made available to the public pursuant to subsection (4) may not be disclosed to the members of the Council either. The President shall make the final decision as to the extent to and form in which the information should be disclosed.

Part 6

The Competition and Consumer Authority. Organisation and powers

14.-(1) The Minister for Business and Growth appoints the Competition Council and the Director General of the Competition and Consumer Authority. The Director General is appointed after consultation of the Council.

(2) The Competition Council has 7 members and is composed of

- i) 4 members with insight into competition matters or other appropriate academic background,
- ii) 2 members with experience from business management, and
- iii) 1 member with specialized knowledge of consumer affairs.

(3) The Minister for Business and Growth appoints the members of the Competition Council for a term of up to 4 years. The members are eligible for reappointment. The Minister for Business and Growth appoints 1 President and 1 Vice-President among the members appointed in accordance with subsection (2)(i) above.

(4) The Minister for Business and Growth sets up a Consultative Group composed of up to 10 members who as a group possess broad knowledge of private and public undertakings as well as legal, economic, financial and consumer affairs. The Minister for Business and Growth appoints the members of the Group for a period of up to 4 years on proposal from socio-professional organisations. The members are eligible for reappointment.

(5) The Competition Council lays down its own rules of procedure, subject to approval by the Minister for Business and Growth.

15.-(1) The Competition and Consumer Authority takes decisions according to this Act and rules adopted pursuant thereto with the exception of rules adopted pursuant to Section 11c. The Competition and Consumer Authority may take up cases on its own initiative, upon notification, on the basis of a complaint or as a result of a referral from the EU-Commission or other competition authorities in the European Union. The Authority decides if a case provides sufficient grounds to initiate an investigation or to take a decision, in particular whether the case processing should be temporarily halted or definitively stopped. The Council may also decide not to process a case where businesses have already given commitments under Section 16a (1).

(2) The Business and Consumer Authority produces competition analyses on its own

initiative or upon request from the Minister for Business and Growth.

(3) The Competition Council has the overall responsibility for the Authority's administration of the Act and rules adopted pursuant thereto. In addition, the Council renders decisions in cases of principle or of particular importance. Finally, the Council approves competition analyses initiated on the initiative of the Authority.

(4) The Competition Council may delegate its power to take decisions under subsection 3, second sentence, to the Competition and Consumer Authority.

(5) The Consultative Group advises the Competition Council on the need for guidelines and analyses as well as on possible actions to prevent infringements of this Act and may direct the Council's attention to particular competition concerns in a market.

15 a.-(1) Under the Public Administration Act, the right to access to information for the parties to a case shall only comprise the part of the correspondence and 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 factual circumstances of a case that are of substantial importance for its decision.

(2) In cases in which an order is issued, or in which a commitment is made binding, the Competition and Consumer Authority shall issue a preliminary statement of objections and a statement of objections. The time limit for the issuing of a statement by the parties regarding a preliminary statement of objections is two weeks. If an order is issued in accordance with Section 6(4), Section 10a(1) and (6), Section 11(4), Section 11a(1) or Section 11b(2), the time limit for the parties to issue a statement of objections is six weeks. In the cases mentioned in the third sentence above, in which a party shall be heard further as required under the Public Administration Act, the time limit for issuing a statement shall be three weeks, unless the case has already been before the Competition Council. The first through fourth sentences shall not apply to cases in which a decision is made under the provisions of Part 4 of this Act.

15 b.-(1) The Minister for Business and Growth may lay down specific rules to the effect that written communication to and from the authorities regarding matters that are covered by this Act or by rules issued pursuant to this Act shall take place digitally.

(2) The Minister for Business and Growth may lay down specific rules on digital communication, including the use of specific IT systems, special digital formats and digital signatures etc.

(3) A digital message must be regarded as having arrived when it is available to the receiver of the message.

(4) The Minister for Business and Growth may lay down rules to the effect that the authorities may issue decisions and other documents in accordance with this Act or rules issued pursuant to this Act without signatures, with mechanically or similarly reproduced signatures, or using a technique that ensures the unambiguous identification of the person who has issued the decision or document. Such decisions and documents shall be equivalent to decisions and documents with personal signatures.

15 c. The Competition and Consumer Authority may process cases and make decisions in English if so requested by the parties to whom a decision is addressed and the regard for the parties to the case does not decisively make the use of English inadvisable. If the Competition and Consumer Authority has made a decision in English, a Danish summary of the decision

shall be available.

15 d.-(1) The Competition and Consumer Authority may carry out investigations of a specific business sector or certain types of agreements in different sectors (sector inquiries) in order to gain an insight into the competition situation in the sector or sectors concerned.

(2) The provisions of Sections 17 and 18 of this Act shall similarly be applicable to the Competition and Consumer Authority's investigations under subsection (1) above.

(3) The Competition and Consumer Authority may subject to the limitations in Section 13(4) publish the results of investigations carried out according to subsection (1) above.

15 e. The Competition and Consumer Authority may publish documents that are part of the case processing and for which a third party's comments are required. Section 13(4) shall also apply on publication.

16.-(1) The orders which the Competition and Consumer Authority may issue under Section 6(4), first sentence, or Section 11(4), first sentence, or with reference to Article 101 or 102 TFEU, cf. Section 24(1), with a view to put an end to infringements may include an obligation:

- i) to terminate agreements, decisions, trading conditions etc. in full or in part;
- ii) not to exceed stated prices or profits, or to calculate prices or profits according to specified calculation rules;
- iii) for one or more of the undertakings concerned to sell to specified buyers on the conditions usually applied by the undertaking in comparable sales. The undertaking is, however, always entitled to demand cash payment or adequate security;
- iv) to grant access to an infrastructure facility which is necessary for the marketing of a product or service.

(2) The Competition and Consumer Authority may issue orders that are required to ensure the timely and correct execution of the orders that the Authority has issued under subsection (1).

16 a.-(1) The Competition and Consumer Authority may order commitments (remedies) made by undertakings which meet the Authority's concerns in relation to Section 6(1), Section 11(1) or Article 101 or 102 TFEU, cf. Section 24(1), to be binding. A commitment may be limited in time.

(2) The Competition and Consumer Authority may issue orders necessary to ensure timely and correct fulfilment of the binding commitments, cf. subsection (1) above.

(3) The Competition and Consumer Authority may revoke a decision under subsection (1) if

- i) the facts of the situation have changed in any respect that was important for the decision;
- ii) the conduct of the parties to an agreement etc. is contrary to the commitments made; or
- iii) the decision has been based on incorrect or misleading information from the parties to the agreement etc.

17.-(1) The Competition and Consumer Authority may demand all the information, including accounts, accounting records, transcripts of books, other business documents and electronic data, which it deems necessary to carry out its tasks under this Act or to decide

whether the provisions of this Act shall apply to a certain situation.

(2) With a view to applying Articles 101 and 102 TFEU or Articles 53 or 54 of the EEA Agreement, the information referred to in subsection (1) may also be demanded for use in the Competition and Consumer Authority's assistance to the European Commission and other competition authorities of the European Union or the EEA area.

18. -(1) For the purpose of its activities, the Competition and Consumer Authority may conduct inspections, which will give the Authority access to the premises and means of transport of an undertaking or association for the purpose of gaining insight into and making copies of information kept on the site, including accounts, accounting records, books and other business documents, regardless of the information medium used. In connection with inspections, the Competition and Consumer Authority may request oral statements and demand that persons included in the scope of the investigations show the contents of their pockets, bags, etc. to enable the Competition and Consumer Authority to obtain knowledge of such contents and, if necessary, take copies thereof.

(2) If the information of an undertaking or an association is stored or processed by an external data processor, the Competition and Consumer Authority is entitled to be given access to the premises of the external data processor to gain insight into and make copies of the information stored on the site according to subsection (1). It shall be a precondition for such access that it is not possible for the Competition and Consumer Authority to obtain the information concerned directly from the undertaking or association that is the target of the inspection.

(3) The Competition and Consumer Authority's inspections may only be carried out on the basis of a previously obtained court order and against due proof of the investigators' identity.

(4) The Competition and Consumer Authority may obtain a copy of the data content from electronic media covered by the inspection for subsequent review of the copy. The data obtained must be sealed or otherwise protected against reading before the inspection is finished. The undertaking which is the target of an inspection may demand that itself or a representative appointed by the undertaking shall be present when the data obtained are made available for reading and during the Authority's review of the material obtained. The Competition and Consumer Authority is obligated, no later than 40 weekdays after the completion of the inspection, to deliver a copy of the information that the Authority may have extracted from the data obtained from the undertaking which is the target of the investigation. When the review of the data obtained has been completed, the data shall be secured against reading. The data obtained shall be deleted if, in the Authority's assessment, the material does not contain evidence of any infringement of the competition rules. If the Competition and Consumer Authority decides to proceed with the case, the data obtained shall be deleted when the case has been finally decided.

(5) If the conditions of the undertaking or association make it impossible for the Competition and Consumer Authority to get access to or make copies of the relevant information cf. subsections (1), (2) and (4) on the day when the inspection is carried out, the Competition and Consumer Authority is entitled to seal off the relevant business premises and information for up to three weekdays thereafter.

(6) The Competition and Consumer Authority is entitled on the same conditions as in subsection (5) above to take the information or the medium on which it is stored away for copying. The material which the Competition and Consumer Authority has removed must be returned to the undertaking or association together with a set of copies of the information the

Authority has extracted for its further examinations, no later than three weekdays after the day of the inspection.

(7) In special cases, the time limits in subsections (4), (5) and (6) may be extended.

(8) The police shall provide assistance when the Competition and Consumer Authority exercises the powers assigned to it under subsections (1), (2) and (4)-(6). The Minister for Business and Growth may, by agreement with the Minister of Justice, lay down specific rules on such assistance.

(9) The Competition and Consumer Authority may conduct inspections to grant assistance to the European Commission and other competition authorities of the European Union in connection with these authorities' application of Articles 101 and 102 TFEU. The provisions of subsections (1)-(8) above shall apply correspondingly.

18 a.-(1) The Competition and Consumer Authority may, subject to reciprocity, disclose information covered by the Competition and Consumer Authority's duty of confidentiality to other competition authorities, if such information is necessary to assist the enforcement of the competition rules by these authorities, and if the Authority thereby fulfils Denmark's bilateral or multilateral obligations.

(2) If such information is disclosed to authorities under subsection (1), the Competition and Consumer Authority shall make the disclosure subject to the following conditions:

- i) The recipient must be under a similar duty of confidentiality;
- ii) The information disclosed may exclusively be used for the purposes set forth in a bilateral or multilateral agreement where the disclosure takes place according to such an agreement; and
- iii) The information disclosed may only be divulged with the express consent of the Competition and Consumer Authority and only for the purposes covered by the consent.

(3) The Minister for Business and Growth may lay down specific rules on the Competition Authority's disclosure to foreign authorities of information covered by the Competition Authority's duty of secrecy.

18 b.-(1) If, according to a preliminary assessment, an agreement or conduct is deemed to be in breach of Section 6(1), Section 11(1), or Article 101(1) or Article 102(1) TFEU, and if it is deemed that there is the risk of serious restriction of competition, unless quick action is taken, the Competition and Consumer Authority may issue an order, cf. Section 16, with a view to terminate the restricting effects of the agreement or conduct.

(2) No later than 10 weekdays after having issued an order in accordance with subsection (1) the Competition and Consumer Authority shall bring the order before the Competition Appeals Tribunal in order to have it affirmed, subject to subsection (3). If it is not submitted before the time limit, the decision shall be repealed.

(3) An order under subsection (1) shall apply from the time of the Competition Appeals Tribunal's affirmation until the Competition and Consumer Authority has made a decision as to whether there is an infringement of the law, or until the Competition and Consumer Authority has made binding the commitments offered by the undertakings, cf. Section 16a(1). If, before the expiry of the time limit in subsection (2), a party waives the demand to have the Competition and Consumer Authority's decision brought before the Competition Appeals Tribunal, the order shall be applicable from the time the Authority receives that party's waiver.

Part 7

Appeals

19.-(1) Decisions according to Section 2(1), Section 3, first sentence, Section 5(1), Section 6(1), Section 6(4), first sentence, Section 7(1)-(3), Section 8(2), first sentence, and subsection (3), second sentence, and subsections (4) and (6), Section 9(1), first sentence, Section 10(2), Section 10a(1) and (6), Section 11(1) and (2), Section 11(4), first sentence, Section 11(5), Section 11a(1) and (6), first sentence, Section 11b(2), Section 12a(5), Section 12b(1), Section 12c(1), first sentence, Section 12c(2), (3), (6) and (7), Section 12d(5), Section 12e(1) and (3), Section 12f, Section 12g, Section 12h(4), Section 13(4), Section 16, Section 16a(2) and (3) and Section 24(2), cf. subsection (1), may be appealed to the Competition Appeals Tribunal.

(2) An appeal according to subsection (1) may be lodged by:

i) the party to whom the decision is directed.

ii) Another party who has an individual and substantial interest in the case. This does, however, not apply to decisions made by the Competition and Consumer Authority according to Section 12a(5), Section 12b(1), Section 12c(1) (2), (3), (6) and (7), Section 12d(5), Section 12e(1) and (3), Section 12f, Section 12g, Section 12h(4) and Section 16a(2) and (3) of this Act.

(3) Decisions according to Section 15(1), third and fourth sentence, cannot be appealed to the Competition Appeals Tribunal.

(4) An appeal against a decision under Section 13(4) shall stay the proceedings. An appeal against other decisions may be granted a stay of proceedings by the Competition and Consumer Authority or the Competition Appeals Tribunal.

(5) The Competition Appeals Tribunal may handle cases and make decisions in English if so requested by the addressees of the decision and the regard for the parties to the case does not decisively make the use of English inadvisable. If the Competition Appeals Tribunal has made a decision in English, a Danish summary of the decision shall be available. If the Competition and Consumer Authority has dealt with a case in English or made a decision in English under Section 15c, these documents shall be the basis of the Tribunal's hearing of the appeal regardless of whether the Tribunal's hearing and decision are conducted or made in English.

(6) The Competition Appeals Tribunal may deal with decisions that the Competition and Consumer Authority makes pursuant to Section 18b(1).

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

(2) Appeals shall be lodged with the Competition Appeals Tribunal within four weeks after a decision has been communicated to the party concerned. When special reasons so warrant, the Competition Appeals Tribunal can disregard exceeding of the appeal time limit.

(3) The decision of the Competition Appeals Tribunal may be brought before the courts no later than eight weeks after the party in question has been notified about the decision. If submission is not made within the time limit, the decision by the Competition Appeals Tribunal is final.

(4) Copies of judgments passed by a court concerning the application of this Act or Articles 101 and 102 TFEU shall be submitted to the Competition and Consumer Authority by the

court, however, in criminal cases by the State Prosecutor for Serious Economic Crime. The Competition and Consumer Authority shall inform the European Commission of judgments concerning Articles 101 and 102 TFEU.

21.-(1) The Competition Appeals Tribunal shall consist of a President, who shall be a Supreme Court Judge, and four other members, of whom two shall be legal experts while two shall be economic experts. The President may, in case of his own absence, authorise one of the members with legal expertise to replace the President.

(2) The President and the members shall be appointed by the Minister for Business and Growth. 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. The President or a member can, however, finish the processing of cases being processed by the Competition Appeals Tribunal on expiry of the term of the person concerned.

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

Part 8

Penalty and leniency provisions

22. The Minister for Business and Growth or an authority empowered by the Minister may impose daily or weekly penalty payments on any party who fails to

- i) submit information demanded by the Competition and Consumer Authority under this Act;
- ii) comply with conditions imposed or an order issued under this Act; or
- iii) fulfil a commitment that has been made binding according to Section 16a(1).

23.-(1) Unless a more severe penalty under subsection (3) or under other legislation is applicable, a party shall be punished with a fine if, intentionally or with gross negligence, that party

- i) infringes Section 6(1);
- ii) fails to comply with a condition attached to a decision under Section 8(3), second sentence, or subsection (4), second sentence;
- iii) fails to comply with an order issued according to Section 10a(1) or (6);
- iv) infringes Section 11(1);
- v) fails to comply with an order issued according to Section 11a(1) or Section 11b(2);
- vi) fails to notify a merger under Section 12b(1) or fails to submit a full notification before the expiry of the time limit referred to in Section 12f(2);
- vii) implements a merger despite the prohibition against implementation, cf. Section 12c(2), or infringes the prohibition against implementation of a merger prior to a clearance, cf. Section 12c(5), first sentence, fails to comply with a condition imposed or an order issued according to Section 12c(6) or Section 12e(1) or (3) or fails to comply with an order issued according to Section 12g;
- viii) fails to comply with an order issued according to Section 6(4), first sentence, or Section 11(4), first sentence, cf. Section 16;
- ix) fails to comply with a commitment that has been made binding according to Section 16a(1);

- x) fails to comply with an order issued according to Section 16a(2);
- xi) fails to comply with a requirement according to Section 17;
- xii) provides incorrect or misleading information to the Competition and Consumer Authority, the Competition Council or the Competition Appeals Tribunal or conceals matters of importance for the case or sector inquiry according to Section 15d for which the information is obtained;
- xiii) fails to comply with an order under Section 18b(1), or
- xiv) infringes Article 101(1) or Article 102 TFEU, cf. Section 24(1) of this Act.

(2) Subsection (1)(i), above shall not apply from the date when an agreement etc. has been notified to the Competition and Consumer Authority according to Section 8(2) or (4) above and until the Authority has communicated its decision according to Section 8(2), (4) or (5).

(3) The punishment for anyone who acts in breach of Section 6(1) of this Act or Article 101(1) TFEU, cf. Section 24(1), by entering into a cartel agreement, cf. second sentence, may increase to imprisonment for up to one year and six months if the breach is intentional and of a grave nature, especially due to the extent of the infringement or its potentially damaging effects. In this Act, a cartel agreement under first sentence shall mean an agreement, concerted practice or decision between undertakings, operating at the same level of trade, on

- i) prices, profits etc. for the sale or resale of goods or services,
- ii) restrictions on production or sales,
- iii) sharing of markets or customers, or
- ix) coordination of bids.

(4) Criminal liability may be imposed on companies etc. (legal persons) under the provisions of Part 5 of the Criminal Code.

(5) When meting out a penalty to be imposed in accordance with this Act, consideration shall be given to the gravity of the infringement and its duration. When meting out a penalty to be imposed on legal persons, consideration shall also be given to the legal person's turnover.

(6) The period of limitation for penalties consisting of a fine is five years.

23 a.-(1) Anyone who acts in breach of Section 6 of this Act or Article 101(1) TFEU by entering into a cartel agreement shall upon application be granted withdrawal of the charge that would otherwise have led to a fine or imprisonment being imposed for participating in the cartel, in case the applicant, as the first one, approaches the authorities about the cartel, submitting information that was not in the possession of the authorities at the time of the application, and who

- i) before the authorities have conducted an inspection or a search regarding the matter in question, gives the authorities specific grounds to initiate an inspection or conduct a search or inform the police of the matter in question; or
- ii) after the authorities have conducted an inspection or a search regarding the matter in question, enables the authorities to establish an infringement in the form of a cartel.

(2) Withdrawal of the charge shall be granted only if the applicant

- i) cooperates with the authorities throughout the entire course of the case;
- ii) brings his participation in the cartel to an end no later than by the time of application, and
- iii) has not coerced any other party into participating in the cartel.

(3) If an application for withdrawal of the charge does not meet the requirements set out in subsection (1)(i) or (ii), the application shall be treated as an application for reduction of

the penalty as set out in subsection (4).

(4) Anyone who acts in breach of Section 6 of this Act or Article 101(1) TFEU by entering into a cartel agreement shall be granted a reduction of the fine that would otherwise have been imposed for participation in the cartel, if the applicant

- i) submits information about the cartel that constitutes significant added value compared to the information already in the possession of the authorities, and
- ii) satisfies the requirements specified in subsection (2).

(5) The penalty reduction for the first applicant who satisfies the requirements set out in subsection (4) shall be 50 per cent of the fine that would otherwise have been imposed on the party concerned for participating in the cartel. The penalty reduction for the second applicant who satisfies the requirements of subsection (4) shall be 30 per cent. The penalty reduction for subsequent applicants who satisfy the requirements of subsection (4) shall be up to 20 per cent.

(6) Applications for leniency shall be submitted to the Competition and Consumer Authority. In cases where the State Prosecutor for Serious Economic and International Crime has charged persons or undertakings or initiated criminal investigations into an alleged infringement in the form of a cartel, an application for leniency may also be submitted to the State Prosecutor for Serious Economic and International Crime.

(7) An application filed under subsection (6) shall be considered according to the following procedure:

- i) the authority that receives the application as set out in subsection (6) shall issue an acknowledgement of receipt.
- ii) the competent authority, as referred to in subsection (8) below, shall issue a conditional assurance containing a statement of whether the requirements in subsections (1) or (4) are satisfied, and stating whether at this point there is reason to reject the application because the requirements in subsection (2) are not found satisfied.
- iii) when the case has been finally examined and assessed, the competent authority shall indicate, as set out in subsection (9), whether the applicant satisfies the requirements in subsection (2) and, if so, grant leniency in accordance with the conditional assurance issued to the applicant under paragraph ii).

(8) The conditional assurance shall be issued by the authority that received the application under subsection (6). Before the conditional assurance is issued under subsection (7)(ii), it shall have been discussed between the Competition and Consumer Authority and the State Prosecutor for Serious Economic and International Crime. A conditional assurance for withdrawal of the charge may only be issued if the authorities agree to do so.

(9) An assurance of withdrawal of the charge under subsection (7)(iii), shall be issued by the State Prosecutor for Serious Economic and International Crime after consultation with the Competition and Consumer Authority. An assurance of a penalty reduction under subsection (7)(iii), shall be issued by the authority that, in the case in question, issues an administrative notice of a fine or brings the case before the courts. Before an assurance of a penalty reduction may be issued, the other authority shall be consulted.

(10) Different undertakings cannot submit a joint application for leniency, unless the applicants are associated members of a group of companies and the application specifies the companies that it is intended to comprise.

(11) An application from an undertaking or an association shall automatically cover current and former board members, senior managers and other employees, provided that each person satisfies the requirements in subsection (2). When the case has been finally

examined and assessed, the competent authority as set out in subsection (9) shall indicate whether each party satisfies the requirements in subsection (2) and, if so, grant leniency in accordance with the conditional assurance issued to the undertaking or association under subsection (7)(ii).

23 b.-(1) In cases concerned with infringement of this Act in which the maximum penalty is a fine, the Competition and Consumer Authority may with the consent of the State Prosecutor for Serious Economic and International Crime, issue an administrative notice of a fine, indicating that the case may be settled without a trial if the offender admits being guilty and is willing to pay the fine within a specified time limit.

(2) The rules of the Administration of Justice Act setting requirements for the contents of an indictment and stipulating that anyone who has been charged has the right to remain silent shall apply correspondingly to the notice of a fine.

(3) If the fine is accepted, further proceedings shall be repealed.

Part 9

EU competition rules

24.-(1) Cases concerning infringement of Articles 101 and 102 TFEU, including cases involving parallel application of Sections 6 and 11 of this Act, may be dealt with by the national competition authorities if the case has a connection to Denmark. Connection to Denmark exists if agreements between undertakings, decisions within an association, concerted practices between undertakings or the conduct shown by an undertaking have anti-competitive effects on the Danish market, or if an undertaking located in Denmark is involved in an agreement etc. which has anti-competitive effects in the European Union.

(2) The provisions set out in Parts 5 - 8 of this Act are, in addition, applicable to the exercise of the powers assigned to the Competition and Consumer Authority under subsection (1) above, to the extent that it is compatible with regulations and directives issued under Article 103 TFEU.

(3) The assistance granted to the European Commission and other Member States pursuant to regulations and directives under Article 103 TFEU shall be provided by the Competition and Consumer Authority.

Part 9 a

Limitation in civil law

25.-(1) A creditor's claim for compensation as a result of failure to comply with the provisions of this Act or Articles 101 and 102 TFEU shall be subject to limitation according to the rules set out in the Time Limitation Act.

(2) Section 21(2) of the Time Limitation Act shall apply accordingly to claims as referred to in subsection (1) where the creditor has lodged a complaint with the Competition and Consumer Authority in a case concerned with violation of provisions as referred to in subsection (1) and the complaint is included in the Authority's consideration of the case.

(3) Where the case is brought before the Competition Appeals Board, Section 21(2) of the Time Limitation Act shall apply correspondingly to claims as referred to in subsection (1) where the creditor

i) has brought the case before the Competition Appeals Board or

ii) has joined the appeal proceedings as an intervener.

Part 9b

Class action

26. In case several persons have raised claims for damages due to infringements of this Act or Articles 101 and 102 TFEU, the Consumer Ombudsman may be appointed as a representative for the class for the purpose of the class action to recover these damages, cf. Part 23a of the Administration of Justice Act.

Part 10

Commencement and interim provisions etc.

27.-(1) This Act shall enter into force on 1 January 1998. However, the provisions of Sections 14(3) and 15 shall enter into force on 1 July 1997.

(2) The entry into force of this Act shall mean the repeal of the Competition Act, i.e. Consolidation Act No. 114 of 10 March 1993, and the Act on Control of Compliance with the Regulations of the European Economic Community on Monopolies and Restrictive Practices, i.e. Consolidation Act No. 449 of 10 June 1991. An approval granted under Section 14(1) of the Competition Act, i.e. Consolidation Act No. 114 of 10 March 1993, shall remain in force until the Competition Council may decide to withdraw the approval, but cf. subsection (6) below. Such a decision shall be made according to the rules then in force.

(3) Proceedings conducted under the Competition Act, i.e. Consolidation Act No. 114 of 10 March 1993, which have not been completed at the date when this Act enters into force shall lapse. However, this does not apply to complaints and cases pending before the Competition Appeals Tribunal.

(4) Anti-competitive agreements, decisions and concerted practices which are in existence on the date when this Act enters into force and come under the prohibition set out in Section 6(1), may, if an application for exemption under Section 8 is submitted before 1 July 1998, be maintained for up to three months after the Competition Council has made its decision in the case, even if the Council rejects the application. The Competition Council may extend the three-month time limit.

(5) The administrative rules that are applicable in accordance with Section 7(2) in the Competition Act cf. Consolidated Act no. 114 of 10 March 1993 remain in effect until any new rules become applicable in accordance with Section 5(3) in the Danish Price Marking and Display Act, as stated in Section 28 paragraph (i) of this Act. The Administration of the existing applicable rules shall, as mentioned in paragraph (i), be transferred to the Danish Competition and Consumer Authority. Intentional or grossly negligent violations of the existing rules shall be punishable by a fine as mentioned in paragraph (i). Criminal liability may be imposed on companies etc. (legal persons) under the provisions of Part 5 of the Criminal Code.

(6) Irrespective of the provisions of subsection (2), second and third sentence, above, Part 2 of this Act shall apply to agreements and concerted practices between undertakings as well as decisions made in an association of undertakings concerning fixed resale prices for the retail sale of books.

28. (Repealed).

29. This Act shall not extend to the Faeroe Islands and Greenland.

Act No. 1371 of 16 December 2014 contains the following provision on entry into force:

2.-(1) The Act shall enter into force on 1 July 2015.

(2) Section 1 (iv) does not apply to notifications of mergers submitted before the Act enters into force. Such notifications are subject to the previously applicable rules.ⁱⁱ

Act No. 741 of 1 June 2015 contains the following provision on entry into force:

(1) The Act shall enter into force on 1 July 2015, subject to subsection (2).

(2) (Omitted).

Official notes:

ⁱ Section 13(2)(iii) should properly read: The Competition and Consumer Authority's decisions made on behalf of the Competition Council. The error will be corrected at the earliest opportunity.

ⁱⁱ Section 1 (iv) amended Section 12d(i). The amendment means that the time limit of 25 weekdays referred to in Section 12d, subsection (1), first sentence, may be extended by up to 35 weekdays in case one or more of the undertakings involved propose commitments, including revised commitments.

Editorial notes:

Section 13 (2) (ii) should properly read: "The Competition Council's decisions made under this Act" and not: "The Competition and Consumer Authority's decisions made under this Act".

Section 13 (2) (iii) should properly read: "The Competition and Consumer Authority's decisions made under this Act" and not: "The Competition and Consumer Authority's decisions made on behalf of the Competition and Consumer Authority" etc. This will be corrected at the next amendment of the Competition Act.