

# Competition Report 2006

## Chapter 2: The Intensity of Competition in Denmark

Competition in Denmark has grown more intense. This contributes to lower prices and products of higher quality to the benefit of the Danish consumers.

As a result, among other things, the number of industries suffering from competition problems has decreased from 53 to 48. In addition, the anti-competitive regulation is reduced in several industries. Finally, there are indications showing that Denmark, to a larger extent than previously, exploits its foreign trade potential. This exposes the Danish companies to intensified competition abroad.

Still, the Danish prices are higher than in the rest of the EU countries that we generally compare ourselves with. The goods prices are, however, only 1 percent higher than in the selected EU countries. The services in Denmark – especially including financial services – are, however, 8 percent more costly. Competition in the public sector can improve. This applies to the extent of public procurement as well as the dissemination of free choice arrangements. In previous years, Denmark has held a relatively good ranking within the field of public procurement, but the Danish ranking has recently dropped due to an increased use of public procurement in other countries.

Compared to the other OECD countries, today, Denmark is ranked in the upper end as regards the intensity of competition. Denmark has previously been in the lower end. The table shows the development in recent years.

**Table: State of the competition strategy in recent years.**

	Improvements in recent years	Compared to the average EU standard
Competition law	↑	↓
Enforcement	↔	↑
Infrastructure	↑	↔
Public regulation	↑	↑
Public procurement	↑	↓
Free choice	↑	↔
Globalization	↑	↔
No. of industries with competition problems	↑	n. a.
Prices	↔	↓

Note: ↑, ↓ and ↔ in the first column indicate progress, decline, and status quo respectively, and in the second column above, below, and on level with the EU average respectively.

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## Chapter 3: Financial Services and Investment funds

Competition on sale of investment funds is not fierce enough

Investment funds and banks often appear as a unity. Furthermore, banks dominate the sale of investment fund certificates. Poor competition implies that investor has fewer investment funds to choose from. In addition, consumers sometimes buy expensive or unattractive funds – for instance bond divisions.

Lack of competition also results in non-transparent and high commissions from investment funds to the banks. Total costs in investment funds amount to more than a quarter of average return – or a total of 4-5 billion DKK a year. Investors do not benefit sufficiently from competition or efficiency improvements by the funds. In order to enhance competition on distribution of investment fund certificates, it is recommended:

- That other financial businesses than banks – for instance pension funds or insurance companies – start selling investment fund certificates.
- That the very investment funds start selling certificates through the internet.

Total costs in investment funds are non transparent to investor. This makes heavy demands on the individual customer. It also makes heavy demands on the banking advisor for giving the customer adequate information at the moment of sale. To improve transparency on costs, it is recommended:

- To develop a key indicator for investment funds including all costs. The indicator should be equivalent to the so-called 'ÅOP' being used for bank loans.

Furthermore, competition from foreign investment funds will be improved if administrative burdens are reduced. Thereby, Danish regulation will be more equivalent to foreign regulation. Thus, it will be easier for the 2000 interested foreign investment funds to provide their services in Denmark.

The chapter also examines competition between banks in general. The market is highly concentrated and market shares only shift to a lesser degree. To improve competition from foreign banks, the following is recommended:

- A harmonization of VAT regulation and EU rules on investor guarantee schemes. Thereby, differences in regulation do not hamper an internal financial market.

Finally, the chapter examines the option of improving efficiency as well as competition in the securities trading market.

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## Chapter 4: Non-life Insurance

### Openings for more moderate premiums?

The chapter analyses competition in the non-life insurance sector for consumers.

The market represents an annual volume of 26 billion DKK. Four large companies cover two-thirds of the total market.

From 2000-2004 the premiums have risen substantially – 24 per cent. At the same time, the costs have been declining – 9 per cent, while the expenses, directly connected to damages, have risen only 5 per cent. The Danish premiums (2003-2004) are 8 per cent above the EU9-average.

Comparisons show that consumers could save thousands of DKK by just moving their insurance contracts from one insurance company to another. Nevertheless, consumers are reluctant to change. Further the insurance companies adjust the premiums automatically using an indexation scheme.

- For this reason, it is recommended that the insurance companies change their usual policy of applying an automatic, annual indexation fee to the insurance premiums.

This implies that the insurance companies, in the future, will have to stress specifically to their customers when, why and how much premiums are being regulated. At the same time, all automatic adjustments of premiums should move in step with a price index rather than with a wage index. The companies are also being urged to reconsider the practise followed until now i.e. of including expenses and profit in the indexation.

- Moreover, it is recommended to adjust the stamp duty on non-life insurance contracts in order to obtain, that consumers moving their insurance contracts from one company to another can avoid this additional duty.

There should be no stamp duty for consumers moving their insurance contracts from one company to another, provided that the contract sums and conditions are identical. Today, the stamp duty has the effect of an additional tax on consumers changing from one company to another.

- In order to improve consumer mobility, it is recommended that the insurance sector funds the establishment of a rating system with the purpose of facilitating comparisons between the companies regarding performance and products.

The insurance companies have already taken the first step to modernize 'Forsik-ringsluppen' – an internet portal comparing premiums and insurance coverages.

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## Chapter 5: Health Professions

Reorganization of regulation of the private professions in the prime health care sector may generate more health for the same amount of money.

The Danish Competition Authority has examined the public regulation of the private health practices in Denmark. The analyses indicate that it is possible to gain social benefits from reorganization of the regulation. Part of this implies improved competitive conditions.

Today, the main part of the revenue base from the general physician practices are visitation fees from the public. In this chapter it is recommended:

- That a greater part of the total fee should consist of fixed subsidies per subscribing patient.
- That a greater part of the total fee should be dependent on the individual performance of the physician in relation to specific indicators for treatment of patients with chronic diseases.

Such a reorganization will increase incentives to competition for the patients and generate a structural development towards more efficient practices. Focus on performance in the prime health sector will contribute to quality assurance improving quality of life for the patients besides saving money in the hospital sector. As the services are free of charge, there is still a need of regulation of the number of practising physicians.

With regard to services performed by practising physiotherapists, chiropodists, psychologists and chiropractors, it is suggested:

- That it is worth considering replacing the present quantity regulation with free access taking due account of objective criteria.
- That fixed prices should be replaced by maximum prices.

In these fields, there is typically partly co-payment of patients, and access to most treatments with public subsidy is contingent upon referral by a physician. Thus, there are improved capabilities for market mechanisms to regulate demand and supply. Still, it has to be ensured that objectives for spending policy are observed. The reorganization will attain more equality in the trading conditions as well as being competition-promoting.

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## Chapter 6: Green Assignments

**There is big money to be saved by inviting tenders for green assignments from an increased number of landscape gardeners.**

The chapter focuses on the market for green assignments. Green assignments are e.g. planning of gardens, parks and sports facilities or assignments such as shearing, cutting, fertilization and cleaning services of green areas.

The Danish Competition Authority's examination of prices on standard assignments shows a substantial price variation in performance of green assignments. The substantial price variation applies to the municipalities and to the private landscape gardeners. However, according to the examination, the municipalities are, on the average, cheaper than the private companies. The most expensive municipalities, however, are significantly more expensive than the cheapest private landscape gardeners.

The great price diversification indicates that the market is not transparent and not well-functioning. In the chapter it is recommended:

- that both public buyers, private companies and households must be alert and invite several tenders before choosing a landscape gardener to perform green assignments.

To enhance competition on green assignments in the municipalities and to enhance transparency and efficiency in these areas, it is advisable for the municipalities:

- to publish key figures on quality and efficiency in the green areas,
- to continue to invite tenders for an increased number of green assignments and comply with the rules in the state tender circular so that all assignments suitable for tendering are being exposed to competition
- and to split tenders into minor parts making it possible for minor private landscape gardeners to submit a tender.

Intensified focus on green assignments in the municipalities as well as intensified competition in the tendering process will enhance competition between the private landscape gardeners. To support this development, it is likewise recommended:

- that the small and medium-sized private landscape gardeners merge in order to solve major assignments which they are unable to cope with individually.

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## Chapter 7: Television

### **Improving competition in the Danish television market**

The Danish Competition Authority has made an enquiry into the competition in the Danish market for television. In some areas competition is not sufficiently intense. The chapter points out some of these areas and makes recommendations that may increase competition in the television market.

First and foremost, the enquiry reveals a lack of competition in the market for television and media rights. The enquiry looks into sports rights, where rights only infrequently move between different television channels. One of the reasons is that many agreements contain extended periods of exclusivity and are automatically extended beyond their original duration. The rights

are not offered on the market with consequences for existing and new companies in the market. This may apply to other kinds of television rights and there are reasons to look into these agreements.

Secondly, DR – the only public service broadcaster financed by means of a license fee – has a large influence on both the television market and on the broader media market. As a public service broadcaster, DR is an important cultural institution in Denmark. However, DR is also a commercial undertaking and it is important that DR is exercising its commercial activities on an equal footing with commercial companies. Therefore, the Danish Competition Authority suggests the following important changes in the framework for DR's activities:

- A clearer definition of the public service obligations than today
- A clear and explicit separation of DR's public service activities from its commercial activities removing the risk of distorting competition
- Making the license fee technologically neutral e.g. by replacing the license fee with financing through the general public budget
- Removing or changing the must carry requirement in the Danish radio- and television broadcasting Act, making the must carry requirement conditional upon the public service broadcasters providing their signals to all distributors
- Offering frequencies for digital terrestrial television (DTT) to one commercial undertaking following analogue switch-over in 2009. DR and TV2 (the two public service broadcasters) must be integral parts of this DTT platform as is currently the case in the existing cable television platforms

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## Chapter 8: Pesticides

This chapter examines the pesticide market in Denmark. The use of pesticides makes a significant contribution to increased agricultural productivity, but extensive crop spraying may, simultaneously, cause damages to health and environment. Therefore, the use of pesticides is subject to strict public regulation, including high taxes and compulsory marketing licences.

Pesticides represent a significant cost to farmers, and it is important to ensure the supply at competitive terms. High prices contribute to lowering of demand, but the amount of pesticides used depends on a wide range of factors such as weather conditions and the occurrence of insect pests, fungi etc. during the season.

With the current tax structure, each package with pesticides shall have a special label indicating the maximum retail price. This labelling is administratively burdensome and inflexible and puts a restraint on price competition. Therefore, it is recommended to abolish the labels and instead let the maximum retail price appear from price lists available at the point of sale. In this way, it is easier to change sales prices during the season, while it will still be possible to uphold the current level of supervision with the tax payments.

In order to market pesticides in Denmark, a licence, issued by the Danish Environmental Protection Agency, is required. This licence is valid for a period of – 10 years at most - after which it must be re-evaluated. Incumbent licensees may continue marketing and sale. It is, however, until this re-evaluation is completed, not possible to obtain a new marketing licence for products based on active substances, as long as the licence for products with this active substance is being re-evaluated. This causes a barrier to entry market access and reduces the competitive pressure on those actors already operating in the market. It will be advantageous to change practice during the re-evaluation period, and make it possible for other producers and importers to enter the market on the same conditions as the existing suppliers.

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## Chapter 9: Abuse of a Dominant Position

In December 2005 the European Commission published a discussion paper setting out a possible interpretation of the prohibition of exclusionary abuses of a dominant position. Such abuses are for instance predatory pricing and fidelity rebates.

In its paper, the Commission is moving towards a more effect based analytical approach. The decisive question is whether the relevant behaviour has or is likely to have detrimental effects on competition. Moreover, the Commission is suggesting an opportunity for the undertakings to defend their behaviour on the basis of efficiency considerations.

The main advantages of the analysis set out in the Commission's paper are:

- The effect based analysis implies that all decisions will have to be based on specific investigations of the detrimental effects on competition of a given behaviour. This will hopefully lead to even better decisions in this field.
- Increased convergence of the competition rules globally as well as within the EU.
- By taking efficiency considerations into account, the risk of prohibiting behaviour that is beneficial to society is reduced.
- Finally, it is expected that the companies will gain slightly more room to make use of certain commercial measures, e.g. rebates.
- The main disadvantages are:
- The suggestions will lead to more complicated cases and it will become more difficult for the companies to assess when violating the rules.
- It may become harder to prove gross negligence or intent in criminal cases. Furthermore, it may be more difficult for especially smaller companies to bring civil actions on the basis of exclusionary abuses.
- The length duration of procedures will be longer and there will be an increased need for the Danish Competition Authority to prioritize which cases to pursue.

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## Chapter 10: Entry of New Firms

The chapter examines the factors determining the entry of new firms in Denmark.

Entry of new firms is important for the economy. It creates new jobs and products and stimulates the development of new and better production methods. Additionally, entry of new firms enhances competition and thereby contributes to growth and prosperity to the benefit of consumers.

The analyses show that the entry rate in a given industry is affected positively by:

- The average level of education in the industry
- The intensity of product development and innovation in the industry
- The average level of earnings by incumbent firms in the industry
- The growth rate in the economy

The positive relationship between the level of education/innovation and the entry rate supports the Government's statement in its globalization strategy, which states that Denmark should concentrate on education as well as research and development in order to secure its future national competitiveness.

The fact that a high economic growth rate increases the entry rate, emphasizes the importance of a sustained growth oriented economic policy.

The analyses furthermore show that the entry rate in a given industry is affected negatively by:

- The degree of economies of scale in the industry

- The level of risk in the industry
- The concentration of firms in the industry

The negative relationship between the concentration rate and the entry rate stresses the need to monitor highly concentrated industries. The instruments are merger controls as well as the enforcement of the Danish competition law which prohibits anti-competitive behavior.

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## Chapter 11: Fines in International Competition Cases

The competition authorities in the 25 Member States and the EU Commission are now in a position to enforce the prohibition against anti-competitive agreements (Article 81) and the prohibition against abuse of a dominant position (Article 82). It can, however, be a niggling task, since the undertaking may have its registered office in one Member State, the effects of the infringement may take place in another Member State and the enforcing authority may be in a third Member State. The picture may be even more complex due to the fact that in several of the Member States it is for the competition authorities to impose fines, while in other Member States, including Denmark, that task is performed by the courts.

First, the chapter contains a description and an analysis of the rules applicable from the very moment criminal proceedings are instituted in Denmark against a Danish undertaking, respectively a foreign undertaking, and till the judgment may be enforced. Second, the chapter describes how the competition authority in another EU Member State and the Commission may institute legal proceedings against a Danish undertaking. Finally, the chapter describes the rules applicable in the EU, the object of which is to avoid an undertaking from being punished twice.

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