

Only the Danish text is authentic. In case of any discrepancy between the original Danish text and the English translation of this Order, the Danish text shall prevail.

Executive order on the calculation of turnover in the Competition Act

Executive Order No. 1286 of 26 November 2019

Pursuant to sections 7 (6) and 12 (4) of the Competition Act, cf. Consolidation Act No. 155 of 1 March 2018, this order lays down the following provisions:

Turnover

1. (1) Under this executive order, »turnover« shall mean the net turnover derived from the sale of products and the provision of services falling within the undertakings' ordinary activities after deduction of value added tax and other taxes directly related to sales, cf., however, sections 6-8. If undertakings within the same group have turnover which shall be calculated under different rules in this executive order, the group turnover shall be calculated as the sum thereof.

(2) The turnover of an undertaking concerned, cf. section 12 (1) of the Competition Act, shall be calculated on the basis of audited accounts of the preceding financial year, cf., however, sections 6-8 below, for a 12-month period. In exceptional circumstances, other accounting material or another accounting period may be used.

(3) Under section 12 (1) of the Competition Act, the turnover shall be calculated by adding together the respective turnovers of the undertakings concerned.

(4) If, within the period or after the end of the period for the preceding financial year, an undertaking concerned has completed a partial divestment of its business or closure of part of its business, or such divestment or closure is a pre-condition for the merger, that part of the turnover which is ascribable thereto shall be deducted from the turnover of the undertaking concerned. The turnover for divestments or closures shall be deducted for the entire 12-month period, cf. subsection (2).

(5) If an undertaking concerned has acquired control of undertakings or assets, or such control will be acquired after the end of the preceding financial year, the turnover ascribable to such undertakings or assets shall be added to the turnover of the undertaking concerned. The turnover for acquisitions shall be added for the entire 12-month period, cf. subsection (2).

(6) Unless otherwise stated, turnover in this executive order shall be calculated in accordance with practice under Council Regulation (EC) No. 139/2004 of 20 January 2004 on the control of concentrations between undertakings.

Group turnover

2. (1) The turnover of an undertaking concerned shall also comprise the turnover of associated undertakings, cf. section 3, including the turnover of joint ventures, cf. section 4.

(2) The turnover of an undertaking concerned shall not include the turnover derived from the sale of products and the provision of services between the undertaking concerned and its associated undertakings or between the associated undertakings, cf., however, subsection (3).

(3) When an associated undertaking ceases to be associated to one of the undertakings concerned after the merger, the turnover derived from the sale of products and the provision of services to this associated undertaking shall be included in the turnover of the undertaking concerned or its associated undertakings, cf. section 3.

(4) For undertakings owned by the state or one or more regions or municipalities that do not have independent decision-making power, the turnover also includes turnover of other undertakings subject to the decision-making power of the same authority.

(5) For municipal communities, cf. the Local Government Act, which present annual accounts in accordance with the provisions of the Danish Financial Statements Act, subsection (1) applies.

Associated undertaking

3. (1) An »Associated undertaking« shall mean:

- 1) Undertakings in which the undertaking concerned, directly or indirectly,
 - (a) owns more than half the capital or business assets,
 - (b) has the power to exercise more than half the voting rights,
 - (c) has the power to appoint more than half the members of the supervisory board, the administrative board or bodies legally representing the undertakings, or
 - (d) has the right to manage the undertaking's affairs.
- 2) Undertakings which, directly or indirectly, have the rights or powers listed in 1) in an undertaking concerned.
- 3) Undertakings in which an undertaking as referred to in 2), directly or indirectly, has the rights or powers listed in 1).
- 4) Undertakings in which two or more undertakings as referred to in 1)-3) jointly have the rights or powers listed in 1).

Joint venture

4. (1) Where an undertaking concerned or a thereto associated undertaking, cf. section 3, exercises joint control over another undertaking (joint venture) together with one or more undertakings or persons, the turnover of the joint venture shall be included in the turnover of the undertaking concerned, cf. section 3, in proportion to its participation in the joint venture, cf. however subsection (4). The joint venture's turnover is allocated according to the number of undertakings or persons exercising joint control.

(2) When the undertaking concerned is a joint venture, the turnover from the joint venture includes the turnover in the undertakings, which exercise joint control over the joint venture, cf. section 3 (1), and their associated undertakings, cf. section 3.

(3) Turnover within the meaning of subsection (1) and (2) does not include the turnover derived from the sale of products and the provision of services between the joint venture and each of the undertakings concerned or an undertaking associated with any one of them, cf. section 3.

(4) Where change of control occurs in a joint venture, and one or more of the undertakings or persons, who have hitherto controlled the joint venture will also exercise control after the completion of the transaction, turnover from these undertakings or persons shall not be included in the turnover of the joint venture. Similarly, turnover from the joint venture shall not be included in the turnover of these undertakings or persons.

Associations of undertakings

5. (1) With the exception of calculating turnover in accordance with sections 12 (1) and 12 h (3) of the Competition Act, the turnover of an association of undertakings shall be calculated as the aggregate turnover of the undertakings which are members of the association and the associated undertakings of these undertakings, cf. section 3, and joint ventures, cf. section 4, plus the association's own turnover.

(2) The turnover of an association under subsection (1) shall not include the turnover derived from the sale of products and the provision of services between the members of the association and between the association and its members.

Financial undertakings

6. (1) For insurance undertakings, turnover shall be replaced by the value of the gross premiums written, including outgoing reinsurance premiums, and after deduction of taxes and parafiscal contributions or levies charged by reference to the amount of individual premiums or the total volume of premiums.

(2) Gross premiums written includes premiums related to new insurance contracts made during the accounting year and premiums related to contracts made in previous years which remain in force during the period taken into consideration.

(3) The value of the gross premiums written is calculated in conformity with the accounting regulation of the Danish FSA in force at the time in question.

7. (1) For credit institutions and other financial undertakings, turnover shall be replaced by the sum of the following income items, after deduction of value added tax and other taxes directly related to those items:

- 1) Interest income and similar income (gross interest income).
- 2) Income from securities etc.
- 3) Fees and commissions receivable.
- 4) Net profit on financial operations.
- 5) Other operating income.

(2) For credit institutions and other financial undertakings the items in subsection (1) are calculated in conformity with the accounting regulation of the Danish FSA in force at the time in question.

Turnover in Denmark

8. (1) The turnover in Denmark, cf. section 12 (1) of the Competition Act, shall comprise products sold and services provided to undertakings or consumers in Denmark.

(2) For credit institutions and other financial institutions the turnover in Denmark, cf. section 12(1) of the Competition Act, shall comprise the income items, as defined above, cf. section 7, which are received by the branch or division of that institution established in Denmark.

(3) For insurance undertakings the turnover in Denmark, cf. section 12(1) of the Competition Act, shall comprise the gross premiums, cf. section 6, which are received by the branch or division of that institution established in Denmark.

Conversion of turnover into DKK

9. Turnover in foreign currency shall be converted into DKK on the basis of Danmarks Nationalbank's average exchange rate during the preceding accounting year of the undertaking concerned, cf. section 1 (2).

Exceeding market share thresholds

10. (1) Section 7 (1) of the Competition Act shall apply even if the market shares for the undertakings concerned exceed the said market share thresholds by a maximum of two percentage points for two consecutive accounting years.

(2) The provision laid down in subsection (1) shall not apply if the said market share thresholds are exceeded as a consequence of a merger.

Commencement

11. (1) This executive order enters into force on 1 January 2020.

(2) Executive Order No. 808 of 14 August 2009 on calculation of turnover in the Competition Act is repealed.

Ministry of Industry, Business and Financial Affairs, 26 November 2019

Simon Kollerup
/Tine Rønne