

Executive order on the calculation of turnover in the Competition Act
Executive Order No. order No. 808 of 14 August 2009

(Only the Danish text is authentic)

Pursuant to Sections 7(4) and (5) and Section 12(4) of the Competition Act, i.e. Consolidated Competition Act No. 1027 of 21 August 2007, 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 7-9.

(2) The aggregate turnover of an undertaking concerned, cf. section 7 (1) or section 12 (1) of the Competition Act, shall be calculated on the basis of audited accounts of the preceding financial year, cf., however, sections 7-9 below.

(3) Under section 7 (1) or the first part of section 12 (1) (i) of the Competition Act, the turnover shall be calculated by adding together the respective turnovers of the undertakings concerned.

(4) If part of one or more of the undertakings concerned has been divested after the end of the period for the preceding financial year, that part of the turnover which is ascribable to the divestiture shall be deducted from the turnover of the undertaking concerned. If an undertaking has acquired control of assets after the end of the preceding financial year, the turnover ascribable to such assets shall be added to the turnover of the undertaking concerned.

Group turnover

2.-(1) The turnover of an undertaking concerned shall also comprise the turnover of associated undertakings, cf. Section 3, and the turnover of joint ventures, cf. Section 4. An undertaking concerned or an associated undertaking may also be a central, municipal or regional authority, or a municipal partnership, cf. Section 9.

(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.

Associated undertaking

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

- 1) Subsidiaries, i.e. undertakings etc. in which an 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) Parent company, i.e. an undertaking etc. which has the rights or powers listed in 1) in an undertaking concerned.
 - 3) Subsidiaries of parent undertaking, i.e. undertakings etc. in which an undertaking as referred to in 2) has the rights or powers listed in 1).
 - 4) Joint venture, i.e. undertakings in which two or more undertakings referred to in 1)-3) jointly have the rights or powers listed in 1).
 - 5) Other undertakings which are subject to joint management etc. as referred to in Section 4 of executive order no. 1029 of 17 December 1997 on agreements made within the same undertaking or group, with the undertaking concerned or its associated undertakings, c.f. 1)-4).

Joint venture

4.-(1) Where two or more undertakings concerned either jointly, or one or more of the undertakings concerned together with a third party exercise joint control with another undertaking (joint venture), cf. Section 12a (1) (ii) of the Competition Act, the turnover of the joint venture shall be included in the turnover of each of the undertakings concerned in proportion to their interests in the joint venture. The joint venture's turnover is allocated according to the number of undertakings exercising joint control.

(2) When the undertaking concerned is a joint venture, the turnover from the joint venture includes the turnover in the undertakings etc., which exercise joint control with the joint venture, and their associated undertakings, c.f. 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.

Similar agreements

5.-(1) Where an undertaking concerned has made similar agreements with other undertakings, the turnover of these undertakings shall, pursuant to Section 7 (1) of the Competition Act, be included in the aggregate turnover.

(2) The aggregate turnover shall not include turnover derived from the sale of products and the provision of services between the undertakings as referred to in Subsection (1).

Trade associations etc.

6.-(1) Pursuant to Section 7 (1) of the Competition Act, the turnover of a trade association or another comparable association shall be calculated as the total turnover of the undertakings which are members of the association, and their associated undertakings, cf. Section 3, and joint ventures, cf. Section 4, with the addition of 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

7.-(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.

8.-(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.
- 2) Income from shares 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.

Central, local and regional authorities

9.-(1) For central authorities, turnover shall be replaced by the aggregate gross operational expenditure in the preceding accounting year of the ministerial province concerned, cf. »driftsposter« in the central government accounts.

(2) For a municipal or regional authority turnover shall be replaced the aggregate gross operational and investment expenditure in the preceding accounting year, cf. the principal Sections 1-2 and 4 of the municipal or regional authorities' accounts.

(3) Subection (2) shall apply equally to municipal partnerships as referred to in Section 60 of the Local Government Act. However, Subsection (2) shall not apply if the municipal partnership presents accounts under the Danish Company Accounts Act. In that case, Section 1 shall apply.

Turnover in Denmark

10.-(1) The turnover in Denmark, cf. Section 12 (1) of the Competition Act, shall comprise products sold and services provided to customers who are resident in Denmark at the time when the agreement was made.

(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 8, which are received by the branch or division of that institution established in Denmark.

Conversion of turnover into DKK

11. Turnover in foreign currency shall be converted into DKK on the basis of the average rate of exchange during the preceding accounting year of the undertaking concerned.

Exceeding the turnover and market-share thresholds

12.-(1) The exemption of Section 7 (1) of the Competition Act from the prohibition laid down in Section 6 (1) of the Act shall apply even if the undertakings concerned exceed the said turnover and market-share thresholds by not more than a tenth in two consecutive accounting years.

(2) The provision laid down in Subsection (1) shall not apply if the said turnover and market-share thresholds are exceeded as consequence of a merger, cf. Section 12a (1) of the Competition Act.

Commencement

13.-(1) This executive order shall come into force on 1 September 2009

(2) Executive order no. 895 of 21 September 2000 on calculation of turnover in the Competition Act shall be repealed.