



Main Conclusions

Competition Report 2007

1.1 INTRODUCTION

Efficient competition ensures that resources in society are directed to where they benefit the most and generate growth and innovation. It creates prosperity for the individual as well as for society. It is a part of the Government's globalization strategy that competition in Denmark should be on a level with that of the top-ranked OECD countries.

The aim is that Danish consumers gain access to a wide range of goods and services at the lowest possible prices for a given quality. The way to reach this goal is based on a solid competition culture between Danish companies and a public sector that exposes its activities to competition allowing its citizens to choose between various options and suppliers.

Competition Report 2007 contains various analyses of the Danish competitive situation. The 5 analytical chapters in this year's report are focused on:

- Intensity of competition in Denmark
 - what is the present status?
- The threshold values of Danish merger control
 - any need of a constriction?
- Liberalization of the postal sector
 - how to make competition efficient?
- Trade associations' exchange of information
 - what are the limits?
- Wholesale market for natural gas
 - how can the competitive situation be improved?

Box 1.1: Main Conclusions

Intensifying competition in Denmark

- The number of trades showing signs of severe competitive problems is reduced and constitutes at present 36 of 501 trades.
- On an average, Danish consumer prices are approximately 8 per cent higher than those of comparable EU countries, after adjustment of VAT, dues and differences in standard of living.
- If the price difference of 8 per cent was eliminated, an average Dane would save approximately 10,000 DKK on his/her purchases of goods and services.
- The size of the state's and the communities' EU tenders and outsourcing increased slightly from 2004-2005.

Threshold values in merger control

- The present limits, in terms of value, for a merger to be approved by the authorities, are very high. Therefore, there is a substantial risk that, in Denmark, mergers, which do not fall under the current rules and regulations of merger control, are concluded, even though it might cause serious competition problems.

Competition in the postal sector

- As a result of a complete liberalization of the postal sector, from 2009, the remaining parts of Post Danmark's exclusive rights will be repealed.
- From 2009, Post Danmark will gain greater freedom to set its postage rates, and thus, the economical burden of universal service obligations will be reduced significantly. In the first years after 2009, it is hardly necessary, to compensate Post Danmark separately for its universal service obligation.
- Competition on a level playing field is crucial for an efficient competition.

Trade associations' exchange of information

- All kinds of price recommendations, discounts etc. released by the trade associations, are illegal.
- Trade associations' release of information on future prices, and individual companies' future sales and production, are, as a main rule, illegal.
- Trade associations' release of historical prices, sales information and production information can be legal, providing that the information is sufficiently old and aggregated.

Wholesale market for natural gas

- A series of conditions with regard to access routes to and from Denmark and retail market structure limit competition in the natural gas market.
- In a long-term perspective, it can be an increasing barrier to competition that an operator with commercial activities in the natural gas sector is, at the same time, the owner and the system operator of the off-shore pipelines in the North Sea.

1.2 INTENSITY OF COMPETITION IN DENMARK

Analyses indicate that competition has improved in some trades, but that there are still competition problems in a substantial part of the economy.

The number of trades showing signs of significant competitive problems is steadily decreasing and now comprises 36 from a total of 501 trades. The government target is 32 in 2010. Trades showing signs of substantial competition problems are to be found in the financial sector and in the supply trades.

Even though the number of trades showing signs of significant competitive problems is decreasing, the development in consumer prices fails to indicate improved competition. The Danish prices are high. After deduction of VAT plus dues and adjustment for differences in standard of living, a Danish consumer still pays approximately 8 per cent more than citizens in comparable EU countries. If this price difference was eliminated, an average Dane would save approximately 10,000 DKK annually on his/her purchases of goods and services. Inadequate competition, e.g. from abroad, is presumably a substantial part of reason for the high Danish prices.

There are large variations in which products are expensive and cheap in Denmark, in relation to comparable EU countries. For instance, *health care, restaurants and hotels* as well as *bread and cereals products* are more expensive, while *fish and telecommunication* are cheaper.

The public sector constitutes a great part of the Danish economy. Therefore, public tenders and the citizens' options of free choice of suppliers are crucial elements to ensure an efficient competition. The development in public procurement published is moving in the right direction but is still on a relatively low level.

Competitive tendering of state- and community-provided services and the number of public procurements of goods and services put out to EU tender, increased a little from 2004-2005, but were still lower than average of those in the 15 'old' EU countries.

In 2006, 43 per cent of municipalities had free choice of suppliers in the elderly care sector within personal care and 74 per cent within practical help. The portion of citizens making use of free choice has doubled from 2004 to 2006, but the level

is still low. In 2006, 21 per cent of the citizens made use of a private supplier while only 4 per cent made use of personal care by a private supplier.

In order to keep focus on competition in the public sector, the Competition Authority will, as a new initiative, annually, until 2010, draw a sample of 5 communities to investigate the communities' transfer prices.

1.3 THRESHOLD VALUES IN MERGER CONTROL

Merger control is meant to ensure the competition authorities' ability to assess the impact of mergers on the efficient competition before a merger is concluded.

In EU countries, as a main rule, companies need only to notify mergers to the competition authorities providing that the turnover of the companies, participating in the merger, lies above certain limits, the so-called threshold values. Typically, it focuses around two limits. A limit for the combined annual turnover of the companies and a limit for the turnover of the individual company.

The analysis shows that there is a risk that mergers, falling outside merger control, will occur in Denmark, even though they might be harmful to competition. This is due to the fact that, in Denmark, the threshold values for the notification of mergers are very high.

The threshold values are higher compared to the countries that we generally compare ourselves with. The threshold value of the combined annual turnover is 3.8 billion DKK. It is the highest limit within EU. The threshold value for individual companies is 300 million DKK. This limit is higher than in Germany and higher than in other smaller EU countries such as Holland, Finland and Sweden. Only Italy and France with substantially larger economies have slightly higher limits.

In trades with a total turnover less than 6 billion DKK, mergers below the threshold values of 3.8 billion DKK, might occur between companies, creating market shares of 60 - 100 per cent, without the companies being assessed by the competition authorities. These trades comprise approximately half of the Danish gross domestic product.

Moreover, mergers, concluded by large dominant companies, consolidating their dominance by acquiring smaller companies with a turnover below 300 million DKK, will not apply to the notification rules. This, too, applies in cases of dominance taking place by continuous acquisitions of smaller companies.

The analysis consists of 13 case studies where mergers, falling outside merger control, have created or consolidated a dominant position in the relevant markets. The

conclusion is that there is a need for a broadening of the scope of Danish merger control rules.

It is recommended:

- To set up a committee producing a proposal for revised Danish merger control rules that ensure that mergers, reducing the efficient competition significantly, are submitted to merger control.

An option is to introduce lower threshold values. A 1 billion DKK threshold for the combined turnover and a threshold of 150 million DKK for the turnover of individual companies will result in Danish threshold values being on level with threshold values applied in most EU-countries.

An inevitable impact of expanding the notification obligation is an increased number of notifications. A large part of the notified mergers will be unproblematic from a competition point of view. These can be approved with a comparatively minor use of resources by the Competition Authority. A simplified notification procedure with fewer demands on information will ensure that the administrative burden imposed on most companies will be small.

1.4 COMPETITION IN THE POSTAL SECTOR

A proposal by the European Commission will liberalize competition in the postal market completely from 1 January 2009.

Free competition in the postal market from 2009 means a repeal of Post Danmark's monopoly status. It is most likely to reduce its earnings. On the other hand, an increased freedom of price setting of postage rates for mail delivery will increase Post Danmark's earnings. Therefore, the economical burden of the universal service obligation is expected to be reduced significantly.

In view of this analysis, it is estimated that it will not be necessary to independently compensate Post Danmark for its universal service obligation in the first years after 2009. The analysis indicates that the burden of the universal service obligation, estimated at approximately 700 million DKK in 2005, is likely to be reduced significantly after 2009. This is partly due to the fact that the benefits from higher prices, reflecting the costs, will appear faster than the negative impact in the form of market share losses, because of increased competition. Moreover, Post Danmark will continuously benefit from its size and national coverage.

In the long term, market conditions might change, among other things, as a result of the increased digitisation, and a need for reduction of or compensation for the universal service obligation might arise.

To ensure an efficient competition in the postal market, all companies in the postal sector need to compete on a level playing field. Therefore, to ensure quality and service for the consumers, a new set of ground rules must be established, ensuring that, at the same time, all operators gain access to compete on the postal market.

It is recommended:

- Equal access to post office boxes, providing access for all operators to each other's post office boxes on fair terms, e.g. regarding price.
- Equal access to address data, including data on permanent and temporary change of address.
- Equal ground rules for forwarding and returning mail, so that mail is returned or forwarded regardless of which operator that takes care of the service.
- An adjustment of the VAT rules making them competition neutral to all postal operators. However, this might require an amendment to the EU VAT Directive.

1.5 TRADE ASSOCIATIONS' EXCHANGE OF INFORMATION

Trade associations represent independent competitive companies releasing an assortment of information to their members.

It is based on a concrete assessment whether a trade association's exchange of information is legal. The chapter offers guidelines for the most important criteria that an actual exchange of information will be assessed upon. It gives examples of exchange of information which are, as a main rule, illegal, as a main rule, legal or in a grey zone.

The principle of prohibition was introduced in the Danish Competition Act in 1998, and since then, the Competition Council and the Competition Authority have taken action against trade associations' exchange of information in more than 50 cases.

All forms of recommendations on prices and discounts etc. from trade associations are illegal as they are anti-competitive. Release of information on future prices, sales and production is, as a main rule, illegal, too. However, release of historical information can be legal if the information is sufficiently old and aggregated.

The release of individual information about members might be harmful to competition and might be illegal. This applies for instance to the release of information on a company's sales in different areas. When a trade association releases

information, which usually is confidential, it creates transparency between members about the position and the strategies in the market of their competitors. This might result in a standardization and co-ordination of the behaviour of the members and might thus be anti-competitive.

Whether exchange of information is illegal, depends, in particular, on the kind of information, age, level of aggregation and market concentration as well as how information is released and to whom.

1.6 WHOLESALE MARKET FOR NATURAL GAS

Natural gas constitutes a little less than a quarter of the total Danish energy consumption. More operators and an increased trade in the wholesale market is a crucial precondition to promote development of a more competitive Danish market for natural gas which, in the end, might offer the consumers a wider range of products and lower prices.

In a European context, Denmark, in the natural gas field, has come a long way with regard to liberalization, and, in this area, the Danish gas market appears as one of the most well-functioning in Europe. The Danish wholesale market for natural gas, however, is characterized by a high market concentration with few operators and limited trade activity between them. Therefore, it is relevant to assess the options of intensifying the competitive environments.

The transport of gas takes place through pipelines. The off-shore pipelines in the North Sea constitute at present an important access route for gas transported to Denmark. DONG Energy owns and runs the off-shore pipelines. When production in the North Sea decreases, the off-shore pipelines might constitute a transportation system between the Danish and the Dutch market. Thus, the off-shore pipelines will be of significant importance for new gas operators in the Danish market. DONG Energy's ownership and operation of off-shore pipelines, however, might influence the number of operators in the wholesale market since users of the pipelines must provide DONG Energy with information on e.g. quantity transport and a transport schedule. This might work as a restraint on competitors' use of the off-shore pipelines. In that situation, competition might be improved, in the future, if DONG does not function as both owner and system operator.

Another option of transporting gas to and from Denmark is through the connection to North Germany. However, there are signs of capacity constraints at the Danish-German border (Ellund) as well as in the pipe connection between the Danish-German border and the remaining European market (the DEUDAN-con-

nection). At the same time, there are allocation problems because of the scarce capacity at Ellund and with the use of the DEUDAN-connection.

Apart from increased capacity in the transport system for natural gas to and from Denmark as well as a more practical use of capacity, technical and system related steps, which improves connectivity in North Europe, might contribute to enhance the competition on the gas market. Likewise, will a unification of tariffs and terms of gas trade as well as gas transport across the national markets.

Improved trade capabilities in the wholesale market for natural gas are a crucial precondition towards a more competitive market. Within Denmark there is a basis for an increased gas trade if a customer – e.g. a power plant – were able to return excess gas to the transmission network and sell the gas to other operators in the market. However, it is not possible according to the applicable rules for gas supply in the transmission network.

The introduction of an exchange for natural gas will support the gas trade. Improved conditions through increased capacity, better use of capacity, unification of rates and terms etc. will help attract an increased number of operators and thus lay the basis for establishing a market place for natural gas. As a result of the limited size of the Danish market, it would be natural to examine whether the Danish and the North German market can be covered by a mutual exchange for natural gas.

To promote development of a more competitive wholesale market for natural gas in Denmark, it is recommended:

- Introduction of auctions at the capacity allocation at Ellund at the Danish-German border.
- Investigation of capacity addition at Ellund.
- A more efficient use of capacity in DEUDAN, observing the pipe-in-pipe principle, e.g. through an independent system operator or a mutual IT solution between system operators in order to ensure an optimal use of free capacity.
- That Energinet.dk and the Danish Energy Regulatory Authority continue to support the international co-operation on inter-regionally connecting the markets and creating a unification of rates and terms of gas trade and gas transport.
- That Energinet.dk strives to establish internal entry points in the Danish transmission system.
- That Energinet.dk, as a result of restraints in the Danish market, investigates the possibility of connecting the Danish and the North German markets to a mutual exchange for natural gas.
- That one or several operators accept to act as market makers undertaking to announce bids and offers.

- That over time – if the off-shore pipelines change their function towards transport of gas between markets and are still an important access route for gas to Denmark – an independent owner of the off-shore pipelines or an independent party accepts to act as system operator in the off-shore pipelines.

Overall, the competition will be improved on the Danish wholesale market for natural gas if more operators gain access to the market, and if independent parties own and run the access routes for transport of gas to Denmark. Moreover, steps contributing to a virtual connection of the North European market will be competition-promoting. A well-functioning North European market for natural gas might be a step in the direction of implementing a single market for natural gas in Europe.

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