

Competition Report 2005

Chapter 1: Competitive Environments

Major events in the competitive areas

The year 2004 were characterized by the recent collaboration between the competition authorities in the other EU countries and the Commission starting on the 1st of May 2004. Experiences of this new network have been favourable, although there are certain teething problems which the Competition Authority is trying to resolve.

The collaboration has offered increased knowledge sharing and a closer coordination of the efforts between the European competition authorities. In the major cases there is a constructive dialogue with the Commission on how to solve the problems in the best possible manner. This leads to a more effective and homogeneous enforcement of the competitive rules in Europe. The main challenge is to create a system for both companies and citizens to gain insight into which decisions are made by the authorities in the individual countries.

The Danish competition law was revised in 2004. The major revision is due to the fact, that the Competition Council has now the possibility of signing negotiated settlements with the companies. It provides a better platform for an increased dialogue between the companies and the authorities with the advantage of it being possible to resolve competitive problems which are technically and commercially difficult in nature.

With regard to the tender procedure, Denmark as the first country has completed the recent EU rules. The rules are more flexible allowing for a greater extent to complete restricted tenders in order to intensify competition for public assignments. The new rules will therefore contribute to ensure that the public gets better service for less money.

(Finn Lauritzen, Niels Erik Monrad, Kim Sparlund)

Chapter 2: Competition strategy 2010

Competition strategy

Competition has achieved improved conditions and has grown more intensively in a number of areas in Danish economy, but much work still needs to be done to achieve the goal of Danish economy being among the most competitive in the OECD.

Simultaneously with competition being improved in Denmark, the other OECD countries have intensified their competition. Intensified competition abroad benefits Danish economy, because the enhanced competitive situation leads to increasing growth at our trading partners who subsequently are able to take more Danish merchandise. But as competition improves abroad, progress in the competitive environment in relative terms will appear less apparent in Denmark.

The Competition Report 2004 launched six intermediate goals aimed at the competition policy strategy. The six intermediate goals – which are targeted for 2010 – are that the number of trade areas with competition problems are halved, the Danish net consumer prices will be no higher than those in the EU9 countries, public regulation should decrease competition in less areas, increased use of public restricted tenders and outsourcing in the public sector, liberty regarding choice of supplier in more public areas and Denmark's more powerful status in the globalization.

Analyses show stagnation in three out of the six intermediate goals, these relate to the competition strategy, improvement of 2 intermediate goals and recession in one.

The number of trade sections with competition problems is coherent with the target-setting. However, decreasing the Danish price level is a slow process. Prices in Denmark are still 6 per cent higher than average in the EU9. As to restricted tenders Denmark's ranking was in the upper end of the scale a few years ago, but is now below average.

As far as economical sincerity is concerned there is no traceable progress. The value of foreign investments in Denmark has fallen more than average in the EU from 2002 to 2003, and we utilize our import potential inadequately.

(Josephine Emilie Overgaard, Torben Thorø Pedersen)

Chapter 3: Infrastructures

Status of liberalization of infrastructure sectors

Chapter 3 sheds light on well-functioning infrastructures. This chapter analyses railways, airports, postal service, electricity, natural gas, district heating, telecommunications, TV distribution, water distribution networks, sewage treatment as well as waste for incineration and waste for landfills.

This chapter compares the quality of the regulatory framework across these sectors. Improved regulatory framework leads to increased competition, which again leads to increased efficiency and lower prices. Consequently, there is an economical profit by improving the regulatory framework.

In recent years some infrastructure sectors have undergone a process of liberalization and are today characterized by increased competition and low prices, and the era of state-owned monopolies seems far away. In other sectors, liberalization has not reached this far.

Among the infrastructures in question, airports and telecommunications have the best regulatory framework, whereas there is a great potential for improvement in the water distribution area and areas related to waste for incineration and waste for landfills. Generally speaking, there seems to be a significant potential of improvement in the Danish infrastructures.

Apart from making an assessment across the sectors, a comparison of Danish regulatory framework in relation to the situation in the 9 other selected European countries has been made. Denmark maintains the same average level as the other countries. Even though there has been focus on exposing Danish infrastructures to competition in recent years, equal focus can be observed in several other countries. But Denmark is placed in the upper end of the scale compared to the other countries, when it comes to the principles of separate ownership and responsibility for regulating the different infrastructures. On the basis of this analysis, this chapter presents several recommendations for changes of rules, regulation and organization.

(Helle Lange, Jesper Mølbæk)

Chapter 4: Competition for Public Services

Large potential for increased competition for public services

Chapter 4 investigates competition for public services. The public sector is just as important as the private sector as far as the objective to increase competition is concerned.

Using international comparisons, the chapter illustrates that Danish legislation basically provides the possibility to choose freely among alternative providers of welfare services. But alternative suppliers' actual ability to attract users is quite a different story. Waiting lists and lack of information about providers are the main reasons why users may not actually experience freedom of choice between different suppliers. Moreover, in some cases, private suppliers receive an inferior public compensation per user served compared to public suppliers providing similar services. Finally, private suppliers are in some cases excluded from providing certain welfare services.

Therefore, the Competition Authority suggests that suppliers of welfare services are subjected to compulsory publication of a given set of indicators for the quality of the service they provide. At the same time the Competition Council needs further authority to intervene against municipalities that contrary to legislation discriminate between public and private suppliers.

The chapter also points out that use of public procurement has hardly developed in recent years. Analyses carried out by the Competition Authority indicate that municipalities can increase their use of public procurement putting out to tender additional services worth at least DKK 14 billion (approx. EUR 1,8 billion). The Competition Authority therefore recommends that additional efforts are made to promote usage of public procurement. As a first step, increased supervision with municipalities may clarify whether municipalities do in fact comply with current legislation on public procurement. Another way to promote public procurement could be to compensate municipalities individually for a part of the costs related to usage of public procurement (e.g. contract and supervision costs). Such a compensation scheme should be paid for by the

municipalities themselves redistributing funds from municipalities with modest use of public procurement to municipalities with relatively intensive use of public procurement.

(Lau Nilausen, Pia Ziegler)

Chapter 5: Music, Films and Console Games

New internet markets could contribute to increased competition on markets for music, films and games

Analyses by the Danish Competition Authority indicate that competition is weak on the markets for music, DVD films and console games. There is only a limited price variation on newly released music, DVD films and console games in Danish retail stores. At the same time prices on music and films are higher than in other EEA countries. Furthermore, access to parallel import is restricted, because parallel import of music, films and console games to Denmark from countries outside the EEA is prohibited.

Technological development might help solve some of the competition problems. The analysis shows that it is possible to save money by buying music, games and films in European internet stores. Prices in Danish internet stores are only slightly lower than prices in conventional retail stores. Consequently, it is important that Danish consumers recognize the potential for saving money when buying from European internet stores.

Competition from the new digital markets might also contribute to increased competition. The music prices in Danish online stores are lower than CD prices in conventional retail stores and in internet stores. Prices in Danish online stores are, however, higher than prices in foreign online stores, for instance in other EU countries. Nevertheless, due to the fact that rights holders partition the online music markets into national markets, Danish consumers are not able to buy and download cheaper music from foreign online stores. A single market for online music would increase the pressure on the traditional retail market and lead to lower prices and increased music sale.

The Competition Authority will work for a single market for online sale of music securing Danish consumers access to online music from foreign internet stores.

Furthermore, it is important to obtain easier access to parallel import of compact discs, DVDs and games from countries outside the EEA.

(Sune Chabert Larsen, Vibeke Schiøler Sørensen)

Chapter 6: Pharmacies

Today there is no internal market for prescription drugs in the EU. Due to rigid public regulations and the harmful segmentation of the EU market by pharmaceutical industries drugs are more expensive in Denmark than in many other European countries. More competition can lead to lower prices, which will benefit both consumers and society.

The Danish Competition Authority (DCA) has conducted a study of the retail market for drugs in Denmark. DCA has adapted an economic model to assess the effects of different approaches to the challenges on this market. On the basis of the study and the results of the economic model, DCA has made a range of suggestions on how to improve competition on the Danish retail market for drugs without jeopardizing consumer safety or increasing consumption.

Consumers should be entitled to reimbursements from the National Health Insurance, not only when they buy drugs in Danish pharmacies, but also when the purchase is made in pharmacies in the rest of EU/EEC. However, the drugs must be approved to be sold in Denmark and the pharmacies must be linked to the electronic reporting systems of The Danish Medicines Agency.

The Danish pharmacies should be allowed to compete on retail prices. The current system of fixed prices on prescription drugs prevents this kind of competition. Therefore, the fixed prices should be replaced by maximum prices where pharmacies are free to set their prices below this "price ceiling". This way drugs can only become cheaper for the consumers. It should also be made easier for Danish pharmacies to import drugs and thereby profit from lower prices in other countries.

With few exceptions everyone should be allowed to set up and own a pharmacy provided that a pharmacist is responsible for the daily operations, compliance with rules and standards etc. In addition, it should be possible to sell such a pharmacy to the market price and thus allow remuneration for goodwill.

These suggestions will lead to more competition between pharmacies, increased investments and – not least a more businesslike attitude among pharmacies. This can contribute to better service and/or lower prices for the consumers.

A comprehensive description (in Danish) of the suggestions and the economic model are given at the Authority's home page: www.ks.dk/

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Chapter 7: An efficient distribution of building materials

Inefficient behaviour makes building materials more expensive.

Compared to other EU-countries, the costs of building are higher in Denmark. Recent years have seen initiatives to increase competition, but with no effect. This is why it is necessary to maintain the efforts.

The main distribution channels for building materials are wholesalers and lumber yards. Strong ties between the main manufacturers and wholesalers put existing trade patterns in a deadlock and prevent development of new, alternative sales and distribution channels.

Hence, The Competition Authority is prepared to intervene against dominant companies discriminating between various customers and distribution channels. This can be done by requiring dominant companies to write down and observe each and every term of sale. The authority is prepared to follow up on these initiatives by ordering companies to sell to any customer who meets the terms of sale.

If one looks at craftsmen's purchase of building materials, prices are blurred and opaque. Discounts are very high because they are calculated from high list prices. Craftsmen use the list prices when invoicing their customers. This gives them a clear preference for high discounts rather than low prices. The result is an artificially high price level for the consumer, who has to pay the list price.

Price competition works better among the do-it-yourself (DIY) centres. It is – among other things – due to the fact, that prices are more transparent to the consumers and to the emergence of new discount DIY centres. For that reason, consumers must be aware that they can purchase building materials themselves, instead of getting them from the craftsmen. Quite often this will be cheaper.

(Henrik Gommesen, Klaus Larsen)

Chapter 8: Voluntary Chains and the Competition

Simplifying competition regulation creates an increased competition climate

Chapter 8 examines the competition situation in the retail sectors between the voluntary chains on one side, which consist of self-employed independent companies, and capital chains with shops owned by the same company.

In recent years the voluntary chains have maintained a constant high market share and shown good results. Despite this, analysis relating to the existing regulation proves it to be beneficial to revoke the special Danish Block Exemption Regulation for horizontal agreements in the retail industry. Thus the voluntary chains in the future will be assessed according to the general competition rules. This will ease up on the voluntary chains and avoid spending too much time on complicated rules.

When the voluntary chains have greater freedom to make decisions on agreements concerning shop concepts, exposure of goods, number of shops, where to place shops, and marketing, they will have more favourable possibilities to compete with the capital chains. This will enhance the voluntary chains competition capacity vis-à-vis the capital chains, which also will be of advantage to the consumers.

At the same time the voluntary chains will be able to use their purchasing power to enter more advantageous purchasing agreements with their suppliers and provide a more consistent appearance to the consumers. The consumers will consequently have better chances of getting the same – hopefully good experience – no matter which shop they might visit.

Price agreements will continue to be illegal. Moreover, the individual member of a voluntary chain will still have the liberty to make certain dispositions himself in the shop he owns and bear the financial risk.

(Kristian Henriksen)

Chapter 9: Cost-of-Service, Incentive Regulation or the Free Market

Chapter 9 investigates the regulation of price-setting behaviour in Danish utility companies which have been granted the status of legal monopolies. Price regulation is widespread among utility companies, such as water supply, sewage treatment, waste disposal and heat supply. The companies in question are financed entirely by user fees which are expected to match the costs of the service provided. This means that within a number of years, revenues must be adjusted to cover the costs exactly eliminating any potential profits.

This cost-of-service principle does not incite efficiency. In fact, it may lead to increased costs and less innovation. Therefore, there is reason to consider whether some form of incentive regulation could be appropriate. Possible methods range from revenue and price caps to best practice and yardstick regulation.

The cost-of-service principle has been successfully abandoned in many utility sectors. However, experiences from the telecommunications and electricity markets demonstrate the difficulties involved in designing efficient incentive regulation. The indications are that complexity does not necessarily enhance the efficiency of incentive regulation – rather on the contrary. Therefore, incentive regulation should continually be revised in order to optimise the efficiency of the selected method of regulation.

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Chapter 10: Competition and Innovation

In order to promote growth and innovation companies may acquire exclusive rights to new knowledge through patents, trademarks and copyright. At a first glance, such exclusive rights appear to be in conflict with the principles of competition law.

Analyses in chapter 10 indicate, however, that this is not the case. The patent system does not reduce competition. On the contrary, patents may encourage the dissemination of inventions which could otherwise be kept secret.

However, there are situations in which patents are misused. The chapter therefore suggests improving the rules for attaining compulsory licenses. It also suggests that patents, which are part of standard, should be available to everyone on equal terms.

The chapter furthermore stresses that the circumstances under which companies may trade knowledge and exclusive rights should be improved. This will benefit Danish companies – both when selling and buying knowledge. And large companies trading or exchanging license rights should be required to give access to other companies on equal terms.

Finally, it may be necessary to look critically at the EU Commission's "technology transfer block exemption". The block exemption is so complex that only few use it – which in itself is a problem. It may be a good idea to repeal the block exemption and replace it by guidelines which stress that trade and licensing of knowledge is beneficial – so long as this trade is not used to restrain competition.

(Andreas Ring)

