

**In case of any discrepancy between the original Danish text and the English translation of this Act, the Danish text shall prevail.**

**The Danish Competition Act**  
**(Consolidation Act No. 360 of 4 March 2021)**

**Chapter 1**

*The purpose of this Act, its area of use and definitions*

1. The purpose of this Act is to promote efficient resource allocation in society through workable competition for the benefit of undertakings and consumers.
  
2. (1) This Act shall apply to any form of commercial activity as well as aid from public funds granted to commercial activity.  
(2) The provisions of Chapter 2 and 3 of this Act shall not apply where an anti-competitive practice is a direct or necessary consequence of public regulation. An anti-competitive practice established by a local council shall only be considered a direct or necessary consequence of public regulation in so far as the practice is necessary to allow the local council to carry out the tasks assigned to it in accordance with current legislation.  
(3) Decisions made by the executive committee of a local authority partnership, cf. Section 60 of the Local Government Act, shall be considered equivalent to decisions made by a local council as referred to in subsection 2 above.  
(4) A decision about the extent to which subsection (2) applies to an anti-competitive practice shall be made by the minister responsible for the regulation concerned. If the Competition and Consumer Authority requests the relevant minister to determine whether an anti-competitive practice is covered by subsection (2), the minister must reach a decision no later than four weeks after having received the request from the Authority. The Competition and Consumer Authority may extend the deadline.  
(5) If the Competition and Consumer Authority finds a public regulation or an aid scheme likely to restrain competition or otherwise likely to impede efficient allocation of society's resources, the Authority may deliver a reasoned opinion to the relevant minister and to the Minister for Industry, Business and Financial Affairs, pointing out its potentially adverse effects on competition, and

present recommendations for promoting competition in the area concerned. After negotiating with the Minister for Industry, Business and Financial Affairs, the relevant minister replies to the Competition and Consumer Authority no later than four months after receiving the Authority's statement. The Competition and Consumer Authority may extend the deadline.

(6) When an anti-competitive agreement, a decision made by an association of undertakings, a concerted practice between undertakings or an abuse of a dominant position may affect trade between the Member States of the European Union, this Act covers the application of Articles 101 or 102 TFEU on a stand-alone basis or the parallel application of national competition law to the same case. Chapter 5-8 also apply to such agreements etc. or to such conduct.

**3.** This Act shall not apply to wage- and working conditions. For the purposes of its work the Competition and Consumer Authority may, however, request information from organisations and undertakings concerning wage- and working conditions.

**4.** (Repealed)

**5.** (1) The provisions of Chapter 2 of this Act shall not apply to agreements, decisions and concerted practices within the same undertaking or group of undertakings.

(2) The Minister for Industry, Business and Financial Affairs shall lay down specific rules on the application of subsection 1, after consultation with the Competition and Consumer Authority, including rules on how to define agreements etc. within the same undertaking or group of undertakings.

**5 a.** (1) The definition of the relevant market under this Act shall be based on examinations of demand and supply substitutability and of potential competition. Potential competition must be examined when the position of the undertakings operating on the relevant market has been documented and this position gives rise to doubt as to whether this Act has been infringed.

i) National competition authority: An authority designated by a Member State pursuant to Article 35 of Regulation (EC) No 1/2003 as being responsible for the application of Articles 101 and 102 TFEU.

ii) National administrative competition authority: An administrative authority designated by a Member State to carry out all or some of the functions of a national competition authority.

iii) National competition law: Provisions of national law that predominantly pursue the same objective as Articles 101 and 102 TFEU and that are applied to the same case and in parallel to EU competition law pursuant to Article 3(1) of Regulation (EC) No. 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, as well as provisions of national law that predominantly pursue the same objective as Articles 101 and 102 TFEU and that are applied on a stand-alone basis as regards Article 31(3) and (4) of Directive of The European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, excluding provisions of national law which impose criminal penalties on natural person.

iv) Review court: A national court that is empowered by ordinary means of appeal to review decisions of a national competition authority or to review judgments pronouncing on those decisions, irrespective of whether that court itself has the power to find an infringement of competition law.

v) Enforcement proceedings: The proceedings before a competition authority for the application of Articles 101 or 102 TFEU, until that competition authority has closed such proceedings by taking a decision referred to in Articles 10, 12 or 13 of Directive of The European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, in the case of a national competition authority, or by taking a decision referred to in Articles 7, 9 or 10 of Regulation (EC) No 1/2003 in the case of the Commission, or as long as the competition authority has not concluded that there are no grounds for further action on its part.

vi) Cartel: An agreement or concerted practice between two or more competitors aimed at coordinating their competitive behavior on the market or influencing the relevant parameters of competition through practices such as, but not limited to, the fixing or coordination of purchase or selling prices or other trading conditions, including in relation to intellectual property rights, the allocation of production or sales quotas, the sharing of markets and customers, including bid-rigging, restrictions of imports or exports or anti-competitive actions against other competitors.

vii) Applicant authority: A national competition authority which makes a request for mutual assistance as referred to in Articles 24, 25, 26, 27 or 28 of Directive of The European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market.

viii) Requested authority: A national competition authority which receives a request for mutual assistance and in the case of a request for assistance as referred to in Articles 25, 26, 27 or 28 of Directive of The European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market the competent public body which has principal responsibility for the enforcement of such decisions under national laws, regulations and administrative practice.

## **Chapter 2**

### *Prohibition against certain anti-competitive agreements*

6. (1) It is be prohibited for undertakings etc. to enter into agreements that have restriction of competition as their direct or indirect object or effect.

(2) Agreements covered by subsection 1 may, in particular, be agreements made to

i) fix purchase or selling prices or other trading conditions,

ii) limit or control production, sales, technical development or investments,

iii) share markets or sources of supply,

iv) apply dissimilar conditions to equivalent transactions with trading partners, thereby placing them at a competitive disadvantage,

v) make the conclusion of contracts subject to acceptance by the other contracting party of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts,

vi) coordinate the competitive practices of two or more undertakings through the establishment of a joint venture, or

vii) determine binding resale prices or in other ways seek to induce one or more trading partners not to deviate from recommended resale prices.

(3) Subsection 1 shall furthermore apply to decisions made by an association of undertakings and to concerted practices between undertakings.

(4) The Competition and Consumer Authority may issue orders to put an end to infringements of subsection 1, cf. Section 16. In order to meet the concerns that the Danish Competition and Consumer Authority may have in relation to subsection 1, the Authority may, furthermore, decide that commitments made by an undertaking shall be binding, cf. Section 16a (1).

(5) Agreements and decisions that are prohibited under subsections 1 – 3 shall be void, unless they are exempted according to Section 7, exempted according to Section 8 or Section 10, or covered by a declaration according to Section 9.

7. (1) The prohibition set out in Section 6(1) does not apply to agreements between undertakings, decisions made by an association of undertakings and concerted practices between undertakings, cf., however, subsections 2-5, in case

i) the aggregate market share held by the parties to the agreement does not exceed 10 percent on any relevant market affected by the agreement, when the agreement has been entered into between undertakings which are actual or potential competitors on any of these markets (agreements between competitors), or

ii) the market share held by each of the parties to the agreement does not exceed 15 percent on any relevant market affected by the agreement, when the agreement has been entered into between undertakings which are not actual or potential competitors on any of these markets (agreements between non-competitors).

(2) In cases where it is difficult to classify the agreement, the decision or the concerted practices as covered by subsection 1 (i) or (ii), the 10 percent threshold in subsection 1 (i) shall apply.

(3) The exceptions in subsection 1 shall not apply if the object of the agreement, the decision or the concerted practices is to restrict competition.

(4) The prohibition in Section 6(1) shall, irrespective of subsection 1 above, apply to an agreement between undertakings, a decision made by an association of undertakings and concerted practices between undertakings if this agreement etc., together with other similar agreements etc., restricts competition.

(5) The exceptions in subsection 1 shall apply, even if the market shares of the parties to the agreement exceed the thresholds during two successive calendar years.

(6) The Minister for Industry, Business and Financial Affairs shall, after consultation with the Competition and Consumer Authority, lay down rules on the calculation of the turnover or other matters that are relevant for the calculation of the market shares according to this Act, including rules on minor excesses of the mentioned thresholds.

8. (1) The prohibition set out in Section 6(1) above shall not apply if an agreement between undertakings, a decision made by an association of undertakings or concerted practices between undertakings

i) contributes to improving the efficiency of the production or distribution of goods or services, or to promoting technical or economic progress,

ii) allows consumers a fair share of the resulting benefits,

iii) does not impose on the undertakings restrictions that are not indispensable to attain these objectives, and

iv) does not afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products or services in question.

(2) The Competition and Consumer Authority may, upon notification, exempt an agreement between undertakings, a decision within an association of undertakings or a concerted practice between undertakings from the prohibition in Section 6(1) if the Authority finds the conditions set out in subsection (1) have been complied with. The notification of such an agreement etc., including an application for exemption under subsection (1), may be submitted to the Competition and Consumer Authority. The Authority shall lay down specific rules on notification, including rules on the use of special notification forms, and on the submission of a non-confidential version of a notification.

(3) Decisions made under subsection (2) shall specify the period for which the exemption is effective. Exemptions may be granted on specific terms.

(4) The Competition and Consumer Authority may, upon notification, extend an exemption when the Authority finds that the conditions in subsection (1) are still satisfied. Subsection (3) shall apply correspondingly.

(5) The Competition and Consumer Authority may refrain from considering a notification under subsection (2) or (4), if the agreement etc. may appreciably affect trade between the Member States of the European Union.

(6) The Competition and Consumer Authority may alter or revoke a decision made under subsection (2) or (4) if

i) the facts of the situation have changed in any respect that was important for the decision,

ii) the parties to the agreement etc. fail to comply with the terms imposed, or

iii) the decision has been based on incorrect or misleading information from the parties to the agreement etc.

**9.** (1) The Competition and Consumer Authority may declare, upon notification from an undertaking or association of undertakings, that according to the facts in its possession, an agreement, decision or concerted practice shall be outside the scope of the prohibition set out in Section 6(1), and that, accordingly, it has no grounds for issuing an order under Section 6(4). The Authority shall lay down specific rules on notification, including rules on the use of special notification forms, and on the submission of a non-confidential version of a notification.

(2) The Competition and Consumer Authority may refrain from processing a notification under subsection (1), if an agreement etc. may appreciably affect trade between the Member States of the European Union.

**10.** (1) The Minister for Industry, Business and Financial Affairs shall, after consultation with the Competition and Consumer Authority, lay down rules on the granting of block exemptions from the prohibition in Section 6(1) for groups of agreements, decisions and concerted practices that satisfy the conditions in Section 8(1).

(2) Where agreements, decisions by an association of undertakings or concerted practices that are comprised by a block exemption issued under subsection (1) above have impact on a concrete case which is incompatible with the conditions in Section 8(1), the Competition and Consumer Authority may revoke such a block exemption for the undertakings etc. that have entered into the agreement etc.

## **Chapter 2 a**

### *Trading terms of dominant undertakings*

**§ 10 a.** (1) The Competition and Consumer Authority may order a dominant undertaking to submit its general trading terms if

i) a competitor has filed a not unfounded complaint,

ii) special conditions prevail on the market and

iii) the Competition and Consumer Authority, due to these conditions, sees a special need to acquire insight into the ways in which the dominant undertaking fixes its prices, discounts, etc.

The order may exclusively comprise the trading terms for the markets with which the complaint is concerned.

(2) Orders issued under subsection (1) shall apply for two years from the date when the decision is final.

(3) “Trading terms” shall mean the basis applied at any time by an undertaking to generally fix its prices, discounts, marketing contributions and free services, and the terms and conditions on which the undertaking will grant these financial benefits to its trading partners.

(4) Undertakings that have submitted their trading terms under subsection (1) above may ask the Competition and Consumer Authority for an assessment of these terms. The Competition and Consumer Authority shall make its decision within six months. This time limit will run from the date when the Competition and Consumer Authority receives from the undertaking the information that is necessary to make an assessment of its trading terms. If no decision has been made by the Competition and Consumer Authority within this time limit, the trading terms shall be considered as approved.

(5) The Competition and Consumer Authority may refrain from making a decision in case such a decision may have implications for whether one or more undertakings abuse a dominant position in the common market or an essential part thereof, and trade between the Member States of the European Union may be appreciably affected thereby.

(6) If the trading terms are contrary to Section 11(1) or administered in contravention of Section 11(1), the Competition and Consumer Authority may order revocation or alteration of one or more provisions in the trading terms. If the trading terms are prepared in such a manner that the Competition and Consumer Authority will have an inadequate basis for assessing whether they are contrary to Section 11(1), the Competition and Consumer Authority may order that one or more of the terms must be further specified.

(7) If a dominant undertaking against which an order under subsection (1) has been issued deals with trading partners on the Danish market using prices, discounts, financial benefits or other terms that are not shown in or deviate to a not insignificant extent from the trading terms submitted to the Competition and Consumer Authority, this will be taken into account in connection with the general presentation of evidence in proceedings under Section 11.

(8) The provision in subsection (7) shall also apply if a dominant undertaking breaches an order issued under subsection (6). This shall not apply, however, if a complaint against the order is granted suspensive effect, cf. Section 19 subsection (4).

### **Chapter 3**

#### *Abuse of a dominant position*

**11.** (1) Any abuse by one or more undertakings etc. of a dominant position is prohibited.

(2) The Competition and Consumer Authority must declare, upon request, whether one or more undertakings hold a dominant position, cf., however, subsection (7). If the Competition and Consumer Authority declares that an undertaking does not hold a dominant position, this declaration shall be binding until revoked by the Competition and Consumer Authority.

(3) Abuse as set out in subsection (1) may, for example, consist of

- i) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions,
- ii) limiting production, sales or technical development to the prejudice of consumers,
- iii) applying dissimilar conditions to equivalent transactions with trading partners, thereby placing them at a competitive disadvantage, or
- iv) making the conclusion of contracts subject to acceptance by the other contracting party of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

(4) The Competition and Consumer Authority may issue orders to put an end to infringements of subsection (1), cf. Section 16. Acting upon any concerns it may have in relation to subsection (1), the Competition and Consumer Authority may, furthermore, decide that commitments made by an undertaking shall be binding, cf. Section 16a (1).

(5) The Competition and Consumer Authority may declare, upon notification from one or more undertakings, that based on the facts in its possession, a certain form of conduct shall not fall under the prohibition in subsection (1) and that, accordingly, it has no grounds for issuing an order under subsection (4).

(6) The Competition and Consumer Authority may lay down specific rules on the material that has to be submitted for a decision under subsection (2) or (5), including the submission of a non-confidential version of a request or a notification.

(7) The Competition and Consumer Authority may refrain from making a decision under subsection (2) or (5), in case such a decision may have implications for whether one or more undertakings abuse a dominant position in the common market or an essential part thereof, and trade between the Member States of the European Union may be appreciably affected thereby.

### **Chapter 3 a**

#### *Aid that distorts competition*

**11 a.** (1) The Competition and Consumer Authority may issue orders for the termination or repayment of aid granted from public funds to support certain forms of commercial activity.

(2) An order under subsection (1) may be issued in case

- i) the direct or indirect object or effect of the aid is distortion of competition, and
- ii) the aid is not lawful according to public regulation.

(3) The decision of whether granted aid is lawful according to public regulation shall be made by the relevant minister or the relevant municipal supervisory authority unless otherwise provided by other legislation. Decisions as to the lawfulness of granted aid according to public regulation shall be made no later than four weeks after receipt of a request from the Competition and Consumer Authority. The Authority may extend the time limit.

(4) An order for repayment of aid under subsection (1) may be issued to private undertakings, self-governing institutions and corporate undertakings owned fully or partly by public authorities. The Minister for Industry, Business and Financial Affairs may lay down specific rules to the effect that orders for repayment of aid under subsection (1) may also be issued to certain quasi-corporate undertakings owned fully or partly by public authorities.

(5) The Competition and Consumer Authority's powers to order repayment of public aid under subsection (1) above shall be barred by limitation five years after the aid was paid out. The Competition and Consumer Authority shall determine the interest to be paid in connection with orders for repayment of unlawful aid according to subsection (1) above. Interest shall be paid at the interest rate fixed at any time under the European Union's state aid rules to be applied in the repayment of state aid. The Competition and Consumer Authority may stipulate that compound interest shall accrue from the date when unlawful aid was first made available to the recipient and until the date when the aid has been repaid. The sum of interest which has accrued the preceding year shall accrue interest each subsequent year.

(6) The Competition and Consumer Authority may, upon notification, declare that, based on the conditions known to it, certain grants of public aid are not covered by subsection (2)(i) and that, accordingly, the Authority has no grounds for issuing an order under subsection (1). The Authority may lay down specific rules on notification, including rules on the use of special notification forms.

(7) The Competition and Consumer Authority may refrain from dealing with a case under subsections (1)-(6) if the aid scheme may affect trade between the Member States of the European Union.

(8) An order that aid shall be terminated, cf. subsection (1), may be issued regardless of when the decision granting the aid was made.

(9) Aid which, pursuant to subsection (1), is ordered to be repaid shall be paid to the state treasury.

**11 b.** (1) The Competition and Consumer Authority may investigate the extent to which a public authority offers private providers of services covered by the Free Choice program a settlement price fixed in accordance with the rules established in other legislation on the Free Choice program, cf. subsection (5).

(2) If the settlement price referred to in subsection (1) is lower or estimated to be lower than the price which the public authority should have used according to the relevant provisions on Free Choice, the Competition and Consumer Authority may issue an order addressed to the public authority to the effect that the public authority shall

i) stop calculating and stipulating settlement prices that are contrary to the Free Choice rules,

ii) use specified bases of calculation, calculation methods or settlement prices in respect of private providers of Free Choice services and

iii) ensure post-payment of an amount to private suppliers of Free Choice services corresponding to the difference between the settlement price that the authority has used and the settlement price that the authority should have used in accordance with paragraph (i).

(3) Unless otherwise specified in the provisions on the Free Choice program in question, the order to ensure post-payment may not relate to payments that were made more than one year prior to the date on which the Competition and Consumer Authority launched an investigation into the conditions of the public authority in question.

(4) The Competition and Consumer Authority may refrain from dealing with a case under subsections (1)-(3) if the scheme may affect trade between the Member States of the European Union.

(5) The Minister for Industry, Business and Financial Affairs shall, after negotiation with the relevant minister, lay down rules to specify the Free Choice programs that are covered by competence of the Competition and Consumer Authority.

**11 c.** The Minister for Industry, Business and Financial Affairs may lay down rules on the implementation of the Commission Directive on the transparency of financial relations between Member States and public undertakings and on financial transparency within certain undertakings.

## **Chapter 4**

### *Merger control*

**12.** (1) The provisions of Chapter 4 of the Act shall apply to mergers where

- i) the aggregate annual turnover in Denmark of all undertakings involved is at least DKK 900 million and the aggregate annual turnover in Denmark of each of at least two of the undertakings concerned is at least DKK 100 million,
- ii) the aggregate annual turnover in Denmark of at least one of the undertakings involved is at least DKK 3.8 billion and the aggregate annual worldwide turnover of at least one of the other undertakings concerned is at least DKK 3.8 billion, or
- iii) the Business Authority in accordance with the Act on electronic communications networks and services has referred a merger between two or more commercial providers of electronic communications networks in Denmark to the Competition and Consumer Authority.

(2) Where a merger is a result of the acquisition of parts of one or more undertakings, the calculation of the turnover referred to in subsection (1) shall only comprise the share of the turnover of the seller or sellers that relates to the assets acquired.

(3) However, two or more acquisitions as referred to in subsection (2), which take place within a two-year period between the same persons or undertakings, shall be treated as one and the same merger arising on the date of the last transaction.

(4) The Minister for Industry, Business and Financial Affairs shall, after consultation with the Competition and Consumer Authority, lay down specific rules on the calculation of the turnover under subsection (1), including rules prescribing that the mentioned turnover thresholds shall be calculated on the basis of other assets in the case of financial institutions.

(5) Even if the aggregate turnover of the undertakings involved is lower than the thresholds referred to in subsection (1) above, the provisions of this chapter of the Act shall apply to a merger which the European Commission refers to Denmark according to the EU Merger Regulation.

**12 a.** (1) For the purpose of this Act, a merger shall mean:

i) two or more previously independent undertakings amalgamating into one undertaking, or  
ii) one or more persons who already control at least one undertaking, or one or more undertakings - by an agreement to purchase shares or assets or by any other means - acquiring direct or indirect control of the entirety of or parts of one or more other undertakings.

(2) The establishment of a joint venture that will perform on a permanent basis all the functions of an independent business entity shall constitute a merger within the meaning of subsection (1)(ii).

(3) For the purpose of this Act, control of an undertaking is obtained through rights or agreements or in other ways which will, either separately or in combination, make it possible to exert decisive influence on the operations of the undertaking.

(4) A merger shall not be deemed to arise under subsection (1) in the following cases:

i) where credit institutions, other financial undertakings or insurance companies whose normal activity includes transactions and dealing in securities for their own account or for the account of others are temporarily in possession of interests which they have acquired in an undertaking with a view to reselling these, provided always that they do not exercise the voting rights attached to these interests for the purpose of determining the competitive conduct of that undertaking or exercise these voting rights exclusively with the aim of preparing the disposal of all or part of that undertaking or its assets or shares held and that the disposal takes place within one year of the date of acquisition,

ii) where control is acquired by a professional who has powers under current insolvency legislation to deal with and dispose of the undertaking, or

iii) where the transactions referred to in subsection (1)(ii), above are carried out by holding companies as defined in the Annual Accounts Directive, subject to the restriction, however, that the voting rights attached to the shares in their possession, especially in relation to the appointment of members of the management and supervisory bodies of the undertakings in which the shares are held, are only exercised to retain the full value of these investments and not to determine directly or indirectly the competitive conduct of these undertakings.

(5) The Competition and Consumer Authority may, upon request, extend the time limit set out in subsection (4)(i), where the credit institute or financial undertaking, or insurance company is able to substantiate that the disposal was not reasonably possible within the period required.

**12 b.** (1) A merger covered by this Act shall be notified to the Competition and Consumer Authority after a merger agreement has been concluded, a takeover bid has been published or a controlling interest has been acquired and before the merger is carried out.

(2) The Competition and Consumer Authority may publish a notice to announce that it has received notification of a merger. The notice published shall include the names of the parties to the merger, the nature of the merger and the economic sectors involved.

(3) The Minister for Industry, Business and Financial Affairs shall, after consultation with the Competition and Consumer Authority, lay down rules on the notification of mergers, including rules on the use of special notification forms, and on the submission of a non-confidential version of a merger notification.

**12 c.** (1) The Competition and Consumer Authority shall decide whether to approve or prohibit a merger.

(2) A merger that will not significantly impede effective competition, in particular due to the creation or strengthening of a dominant position, shall be approved. A merger that will significantly impede effective competition, in particular due to the creation or strengthening of a dominant position, shall be prohibited.

(3) To the extent that the formation of a joint venture that will constitute a merger under Section 12a (2) above also has as its object or effect the coordination of the competitive conduct of undertakings that remain independent, such coordination shall be assessed in accordance with the criteria laid down in Sections 6(1) and 8(1) of this Act or Article 101(1) and (3) TFEU in order to establish whether the transaction shall be approved.

(4) When making the assessment under subsection (3), the Competition and Consumer Authority shall, in particular, take into account:

i) whether two or more founding undertakings have retained significant activities in the same market as the established joint venture or in a market which is downstream or upstream from that of the joint venture or in a related market closely associated with this market, and

ii) whether the coordination that is the direct consequence of the establishment of the joint venture in question provides a possibility for the undertakings involved to eliminate competition in respect of a substantial part of the products or services in question.

(5) A merger that is subject to the provisions of this Act shall not be carried through until it has been notified to and approved by the Competition and Consumer Authority under subsection (1)

above. This shall not prevent the implementation of a public takeover bid or a series of transactions in securities, including securities that can be converted to other securities that can be traded in a market such as a stock exchange, whereby control is acquired from different sellers, cf. Section 12a, provided that the merger is notified immediately to the Competition and Consumer Authority and the acquirer does not exercise the voting rights attached to the securities in question or only does so to maintain the full value of his investment and on the basis of an exemption granted by the Competition and Consumer Authority according to subsection (6) below.

(6) The Competition and Consumer Authority may grant an exemption from the provision set out in subsection (5) and in that connection make it subject to certain conditions or it may issue an order for the purpose of ensuring effective competition.

(7) The Competition and Consumer Authority may grant approval of a merger, based on a simplified procedure, if the Authority, based on the information submitted, finds that the merger will not give rise to any objections on the part of the Authority.

**12 d.** (1) It shall be decided, no later than 25 working days after a complete notification has been received, cf., however, Section 12h(5), third sentence, whether a merger shall be approved, and whether the merger may be approved on the basis of a simplified procedure. The time limit referred to in first sentence may be extended by up to 35 working days in case one or more of the undertakings involved offer commitments, including revised commitments. It shall be decided whether a further investigation of the merger shall be initiated within the time limit referred to in first or second sentence.

(2) If the Competition and Consumer Authority initiates a further investigation of a merger, cf. subsection (1), third sentence, then it shall be decided within 90 working days after the decision to initiate a further investigation whether to approve or prohibit the merger.

(3) The time limit referred to in subsection (2) above shall be extended by 20 working days in case one or more of the undertakings involved offer commitments, including revised commitments, and 70 working days or more have elapsed from the decision according to subsection (1), third sentence, to initiate a further investigation of the merger.

(4) The time limit set out in subsection (2) above may furthermore be extended upon a decision of the Competition and Consumer Authority provided that the undertaking or undertakings that has or have filed the notification has or have requested or consented to the extension. An extension may not exceed 20 working days.

(5) The Competition and Consumer Authority must receive commitments not more than 90 working days from the date on which the decision according to subsection (1), third sentence, to initiate a further investigation of the merger was taken, cf., however, subsection (9) below. The Competition and Consumer Authority may in exceptional cases assess amendments to commitments that are received after the expiry of the 90 working days.

(6) If no decision has been made within the time limits provided by subsections (1)-(4) above, this shall be considered to be a decision to approve the merger, cf., however, subsections (7)-(9).

(7) If an undertaking involved submits an appeal to the Competition Appeals Tribunal against the procedure in a merger in which a decision under Section 12c (1) or (3) has not yet been made, the time limits in subsections (1)-(4) shall not take effect until the Competition Appeals Tribunal has made a decision regarding the appeal.

(8) If an undertaking submits an appeal with the Competition Appeals Tribunal against the requirement for submission of a full notification, cf. Section 12h(4), the time limits in subsections (1)-(4) shall not take effect until the Competition Appeals Tribunal has made a decision regarding the appeal.

(9) The time limits set by subsections (1)-(5) shall exceptionally be suspended where, owing to circumstances for which one of the undertakings involved in the concentration is responsible, the Competition and Consumer Authority has had to request information by a decision pursuant to Section 17, and the requested information is not received within the time-limit laid down by the Competition and Consumer Authority. The time limit are discontinued until the Authority has received the requested information. If an undertaking submits an appeal before the courts against the request for information, the time limits in subsections (1)-(5) shall not take effect until a final judgment has been handed down.

**12 e.** (1) The Competition and Consumer Authority may attach conditions to its approval of a merger under Section 12c(2) or issue orders to ensure, for example, that the undertakings involved comply with the commitments they have accepted vis-à-vis the Competition and Consumer Authority to eliminate any anti-competitive effects of the merger.

(2) Such conditions or orders may require that the undertakings involved must

- i) dispose of an undertaking, parts of an undertaking, assets or other proprietary interests,
- ii) grant third party access, or
- iii) take other measures capable of promoting effective competition.

(3) The Competition and Consumer Authority may, after its approval of a merger, issue the orders that are necessary to ensure due and correct fulfilment of the commitments made to the Authority by the undertakings involved according to subsection (1) above.

**12 f.** (1) The Competition and Consumer Authority may revoke its approval of a merger, when

i) its approval is based to a substantial extent on incorrect or misleading information, for which one or more of the undertakings concerned are responsible, or

ii) the undertakings concerned fail to comply with conditions or orders imposed under Section 12e (1).

(2) In case the Competition and Consumer Authority is made aware of the fact that an undertaking concerned, as part of the assessment of a merger notified according to the simplified procedure, has submitted incorrect or misleading information, the Authority may revoke its approval under Section 12c (7) and demand that within two weeks the undertakings concerned submit a full notification, cf. subsection (3), however. The Competition and Consumer Authority's assessment is subject to the time limits set out in Section 12d.

(3) However, a full notification shall not be submitted, if, at the time when the Competition and Consumer Authority revokes its approval, the undertakings involved have not taken any initiatives to implement the merger or if they have taken initiatives to implement the merger, but inform the Competition and Consumer Authority within two weeks that the merger will not be implemented.

**12 g.** The Competition and Consumer Authority may, when making a decision under Section 12c(1) to prohibit a merger that has already been carried through, issue an order that requires separation of the undertakings or assets that have been taken over or merged or cessation of joint control or any other measure capable of restoring effective competition.

**12 h.** (1) A merger may be notified by means of either a simplified or a full notification.

(2) A fee of DKK 50,000 is payable for a simplified notification.

(3) A fee of 0.015 per cent of the aggregate annual turnover in Denmark of the undertakings involved, but not exceeding DKK 1,500,000, is payable for a full notification.

(4) If during the assessment of a simplified notification it appears that a full notification is necessary for the purpose of assessment, such full notification together with evidence of payment of a fee

calculated in accordance with subsection (3) less an already paid fee according to subsection (2) shall be submitted to the Competition and Consumer Authority.

(5) The fees according to subsections (2)-(4) shall be paid to the Competition and Consumer Authority at the time of the notification. Documentation of the payment shall be enclosed with the notification. The time limit in Section 12d (1) shall run from the day on which the Authority has received a full notification together with documentation of the payment of the fee.

(6) If the fee according to subsection (2) or (3) is not paid on demand, a notification of a merger shall be deemed not to have taken place. The notification of a merger shall be deemed to be repealed if, cf. subsection (4), the fee is not paid on demand or a full notification is not submitted despite a reminder.

(7) An already paid fee according to subsections (2)-(4) shall not be refunded unless

i) there was no duty to notify the transaction,

ii) the notification is withdrawn before the notification is complete,

iii) the notification is withdrawn before a decision according to Section 12c (1) or (7) has been made and the withdrawal is the result of another Danish authority's refusal of permission for the undertakings involved to merge, or

iv) the Business Authority was unfounded in referring the merger to the Competition and Consumer Authority, cf. Section 12(1)(iii).

## **Chapter 5**

### *Access to documents*

**13.** (1) The Act on Public Access to Documents in Public Files shall not apply to cases and investigations under this Act other than cases concerning the definition of rules under Section 5(2), Section 7 (6), Section 8(2), third sentence, Section 9(1), second sentence, Section 10(1), Section 11(6), Section 11a(4), second sentence, and (6), second sentence, Section 11c, Section 12(4), Section 12b(3), Section 14(7), Section 15b (1)-(2) and (4), first sentence, Section 18(8), second sentence, Section 18c(4) and Section 21(3). However, undertakings have a right of access to file in respect of information concerning themselves in cases where a decision has been or will be adopted, cf. Section 8 of Access to Public Administration Files Act, with the exception, however, of information in respect of another undertaking's technical matters, production methods, operating and business secrets or other confidential information. Furthermore, Section 13 and 15 of the

Access to Public Administration Files Act shall apply to such cases. If information collected in accordance with this Act is passed on to another administrative authority, first and second sentence shall also apply.

(2) The Competition and Consumer Authority shall publish:

i) decisions made by the said authority according to Section 2(4), first sentence, and Section 11a(3), first sentence, as well as the Competition and Consumer Authority's reasoned opinions and the relevant minister's responses according to Section 2(5),

ii) the Competition Council's decisions made in accordance with this Act,

iii) the Competition and Consumer Authority's decisions made in accordance with this Act or a summary of such decisions, unless the decision is neither found to be of importance for the understanding of the Competition Act nor otherwise found to be of public interest,

iv) judgements, settlements of fines or a summary thereof, where an undertaking etc. is imposed a civil fine, cf. Section 23(1)-(3), or accepts an administrative notice of a fine, cf. Section 23j(1), or where a natural person is imposed a fine or a prison sentence, cf. Section 23(4) and (6), or accepts an administrative notice of a fine, cf. Section 832(1) of the Administration of Justice Act.

v) Orders made by the Competition Appeals Tribunal,

iv) judgments passed in legal proceedings where the Competition and Consumer Authority, the Competition Council or the Competition Appeals Tribunal is a party,

vii) judgments which the Authority has obtained from the courts or of which it has requested copies according to Section 20(4) where such judgments concern the application of this Act or Articles 101 and 102 TFEU.

(3) The Competition and Consumer Authority may also publish information concerning the Authority's activities in the area of competition.

(4) Publication of information according to subsections (2) and (3) shall not include information on technical matters, including information on research, production methods, products and operating and business secrets, where such information is of substantial financial importance to the person or undertaking concerned. Nor shall customer related information from undertakings, which fall under the jurisdiction of the Financial Supervisory Authority, be disclosed.

(5) Any party who is required to submit information to the Competition Council may file an application to the President of the Council requesting that information that may not be disclosed or made available to the public pursuant to subsection (4) may not be disclosed to the members of the

Council either. The President shall make the final decision as to the extent to and form in which the information should be disclosed.

**13 a.** In cases and investigations under this Act, Articles 13-15 concerning information and access to personal data in the General Data Protection Regulation shall not apply.

## **Chapter 6**

### *The Competition and Consumer Authority. Organization and powers*

**14.** (1) The Minister for Industry, Business and Financial Affairs appoints the Competition Council and the Director General of the Competition and Consumer Authority. The Director General is appointed after consultation of the Council.

(2) The Competition Council has 7 members and is composed of

- i) 4 members with insight into competition matters or other appropriate academic background,
- ii) 2 members with experience from business management, and
- iii) 1 member with specialized knowledge of consumer affairs.

(3) The Minister for Industry, Business and Financial Affairs appoints the members of the Competition Council for a term of up to 4 years. The members are eligible for reappointment. The Minister for Industry, Business and Financial Affairs appoints 1 President and 1 Vice-President among the members appointed in accordance with subsection (2)(i) above.

(4) The Minister for Industry, Business and Financial Affairs appoints up to 4 permanent deputies for the members of the Competition Council for a term of up to 4 years. The deputies are eligible for reappointment.

(5) Members of the Competition Council and their substitutes are appointed by virtue of their personal and professional qualities without being subject to instructional powers from any authority, organization etc.

(6) The Minister for Industry, Business and Financial Affairs appoints an advisory committee composed of up to 10 members who as a group possess a comprehensive knowledge of private and public undertakings as well as legal, economic, financial and consumer matters. The Minister for Industry, Business and Financial Affairs appoints the members of the committee for a period of up to 4 years on proposal from business- and interest organizations. The members are eligible for reappointment.

(7) The Competition Council lays down its own rules of procedure, subject to approval by the Minister for Industry, Business and Financial Affairs.

**14 a.** (1) Members of the Competition Council, their substitutes and the Director General and employees of the Competition and Consumer Authority enforce Articles 101 and 102 TFEU, this Act and regulations issued pursuant thereto and carry out the tasks assigned to them pursuant to this regulation, independently of political or other external influence and do not seek nor take any instructions from the Government or any public or private entity.

(2) The persons referred to in subsection (1) may only have other employment to the extent that it is compatible with the performance of the duties attached to their position, and they shall refrain from in subsequent employment, salaried or unsalaried, to handle pending cases in which the Competition and Consumer Authority have issued a preliminary statement of objections, cf. Section 15a(3), cases concerning mergers, cf. Chapter 4, cases about leniency, cf. Sections 23d-23i, appeal cases and legal proceedings concerning decisions according to this Act and cases concerning access to file in all such cases, that they have dealt with during their work in the Competition Council or employment in the Competition and Consumer Authority.

**14 b.** By the end of the financial year, The Competition and Consumer Authority prepares a report for the Minister for Industry, Business and Financial Affairs on the activities of the past year, including appointment and dismissals of members of the Competition Council and the Director General of the Authority, the amount of allocated resources and changes in that amount compared to previous years. The report is published.

**15.** (1) The Competition and Consumer Authority makes decisions according to this Act and rules adopted pursuant thereto with the exception of rules adopted pursuant to Section 11c. The Competition and Consumer Authority may open cases on its own initiative, upon notification, on the basis of a complaint or as a result of a referral from the European Commission or other competition authorities in the European Union. The Authority decides if a case provides sufficient grounds to initiate an investigation or to make a decision, in particular whether the case processing should be temporarily halted or permanently stopped. The Council may also decide not to deal with a case where companies have previously given commitments pursuant to Section 16a (1).

- (2) The Business and Consumer Authority produces analyses on its own initiative or upon request from the Minister for Industry, Business and Financial Affairs.
- (3) The Competition Council has the overall responsibility for the Competition and Consumer Authority's administration of this Act and rules issued in pursuance hereof. In addition, the council makes decisions in cases of principle or particularly great importance. Finally, the council approves analyses regarding competition matters which have either been initiated at Authority's initiative or at the initiative of the Minister for Industry, Business and Financial Affairs in cases where the Minister at the same time has decided that the council must approve the analysis.
- (4) The Competition Council may delegate its power to make decisions under subsection 3, 2<sup>nd</sup> sentence, to the Competition and Consumer Authority.
- (5) The Competition and Consumer Authority and the Competition Council process an enforcement case within reasonable time.
- (6) The advisory committee advises the Competition Council on the need for guidelines and analyses as well as on possible measures to prevent infringements of this Act and can draw the Council's attention to particular competition concerns in a market.

**15 a.** (1) Under the Public Administration Act, the right of access to file for the parties in cases involving the application of Articles 101 and 102 TFEU or the EU Merger Regulation only covers that part of the correspondence and the exchange of documents between the European Commission and the competition authorities of the Member States or between the competition authorities of the Member States among themselves, which contain information about the factual circumstances of the case which are of substantial importance for the decision of the case.

(2) The right of access to file for the parties as prescribed by the Public Administration Act and the right to personal access, cf. Section 13(1), 2<sup>nd</sup> sentence, in information from an application for leniency may be limited to the extent that the interest in being able to use the information is not deemed to be justified by the person concerned's right to defence.

(3) In cases in which orders are issued or where commitment are made binding, the Competition and Consumer Authority shall issue a preliminary statement of objections and a statement of objections. The deadline for the issuing of a statement by the parties regarding a preliminary statement of objections is two weeks. If an order is issued in accordance with Section 6(4), Section 10a (1) and (6), Section 11(4), Section 11a(1) or Section 11b(2), the deadline for the parties to issue a statement to a statement of objections is six weeks. In the cases mentioned in the third sentence

above, where an additional party hearing must be carried out in accordance with the Public Administration Act, the deadline for issuing a statement is three weeks, unless the case has already been submitted to the Competition Council. The 1<sup>st</sup> – 4<sup>th</sup> sentences do not apply in cases in which a decision is made pursuant to Chapter 4 of this Act.

**15 b.** (1) The Minister for Industry, Business and Financial Affairs may lay down specific rules to the effect that written communication to and from the authorities regarding matters that are covered by this Act or by rules issued pursuant to this Act shall take place digitally.

(2) The Minister for Industry, Business and Financial Affairs may lay down specific rules on digital communication, including the use of specific IT systems, special digital formats and digital signatures etc.

(3) A digital message must be regarded as having arrived when it is available to the addressee of the message.

(4) The Minister for Industry, Business and Financial Affairs may lay down rules to the effect that the authorities may issue decisions and other documents in accordance with this Act or rules issued pursuant to this Act without signatures, with mechanically or similarly reproduced signatures, or using a technique that ensures the unambiguous identification of the person who has issued the decision or document. Such decisions and documents shall be equated with decisions and documents with a personal signature.

**15 c.** The Competition and Consumer Authority can handle cases and make decisions in English if so requested by the parties to whom a decision is addressed and the regard for the parties to the case does not decisively make the use of English inadvisable. If the Competition and Consumer Authority has made a decision in English, there must be a Danish summary thereof.

**15 d.** (1) The Competition and Consumer Authority may carry out investigations of a specific business sector or certain types of agreements in different sectors (sector inquiries) in order to gain an insight into the competition situation in the sector or sectors concerned.

(2) The provisions of Sections 17 and 18 of this Act apply correspondingly to the Competition and Consumer Authority's investigations under subsection (1) above.

(3) The Competition and Consumer Authority may subject to the limitations in Section 13(4) publish the results of investigations carried out according to subsection (1) above.

**15 e.** The Competition and Consumer Authority may publish documents that are included in the case proceedings and for which third-party comments are required. Section 13(4) shall also apply on publication.

**16. (1)** The orders which the Competition and Consumer Authority may issue under Section 6(4), 1<sup>st</sup> sentence, or Section 11(4), 1<sup>st</sup> sentence, or with reference to Article 101 or 102 TFEU, with a view to put an end to an infringement may include behavioral as well as structural orders, that e.g. can consist of:

- i) to terminate agreements, resolutions, business conditions etc. in full or in part.
- ii) not to exceed stated prices or profits, or to calculate prices or profits according to specified calculation rules.
- iii) for one or more of the undertakings concerned to sell to specified buyers on the conditions usually applied by the undertaking in comparable sales. However, the company can always demand cash payment or adequate security.
- iv) to grant access to an infrastructure facility which is necessary to be able to provide a product or service.
- v) functional separation of activities or employees in an undertaking.
- vi) disposal of an undertaking's assets or proprietary interests.
- vii) disposal of an undertaking or parts thereof.

(2) An order pursuant to subsection (1) above must be proportionate to the infringement and be necessary to effectively bring the infringement to an end. When choosing between two equally effective orders, the Competition and Consumer Authority must, in accordance with the principle of proportionality, choose the one that is least intrusive for an undertaking.

(3) The Competition and Consumer Authority may issue orders that are required to ensure the timely and correct execution of the orders that the Authority has issued under subsection (1).

(4) The Competition and Consumer Authority may determine that there has previously been a violation of this Act or of Articles 101 or 102 TFEU.

**16 a. (1)** In enforcement proceedings initiated with a view to bringing an end to an infringement of Section 6 or 11 of this Act or Articles 101 or 102 TFEU, the Competition and Consumer Authority may, after consulting relevant market participants, make commitments, that an undertaking or an

association of undertakings has submitted, binding, if the commitments meet the Competition and Consumer Authority's concerns. The decision may apply for a specific period and shall conclude that there are no longer grounds for actions by the Competition and Consumer Authority.

(2) The Competition and Consumer Authority monitors the implementation of commitments which, pursuant to subsection (1) above, has been made binding.

(3) The Competition and Consumer Authority may issue orders necessary to ensure timely and correct fulfilment of the binding commitments, cf. subsection (1) above.

(4) The Competition and Consumer Authority may revoke a decision under subsection (1) if

i) the factual circumstances have changed in any respect that was important for the decision,

ii) the conduct of the parties to an agreement etc. is contrary to the commitments made, or

iii) the decision has been based on incorrect or misleading information from the parties to the agreement etc.

**16 b.** In cases of urgency due to the risk of serious harm to competition the Competition and Consumer Authority may on the basis of a prima facie finding of infringement of Section 6 or 11 of this Act or Articles 101 or 102 TFEU decide to issue interim measures to an undertaking or an association of undertakings. The decision must be proportionate to the infringement and apply either for a specified period of time, which can be extended, to the extent necessary and appropriate, or until the Competition and Consumer Authority has decided whether there is an infringement or commitments have been made binding, cf. Section 16a(1).

**17. (1)** The Competition and Consumer Authority may demand all information, including accounts, accounting records, transcripts of books, other business documents and electronic data, that the person concerned has access to, and which the authority deems necessary to carry out its tasks under this Act or to decide whether the provisions of this Act and of Articles 101 or 102 TFEU shall apply to a certain situation. The Competition and Consumer Authority sets a reasonable deadline within which the authority must have received the required information. The Competition and Consumer Authority's requirements for information must be proportionate to the purpose and must not lead to the recipient of the request for information being forced to confess to a breach of this Act or of Articles 101 or 102 TFEU.

(2) The duty to provide information pursuant to subsection (1) is incumbent on an undertaking, an association of undertakings and any other legal or natural person.

(3) With a view to the application of Articles 101 and 102 TFEU or Articles 53 or 54 of the EEA Agreement, the information referred to in subsection (1) may also be demanded for use by the Competition and Consumer Authority's assistance to the European Commission and other competition authorities of the European Union or the EEA area.

(4) The information referred to in subsection (1) may also be demanded for the use of the Competition and Consumer Authority's assistance to the competition authorities in Sweden, Norway, Iceland, Finland, Greenland and the Faroe Islands with a view to these authorities' application of national competition rules.

**17 a.** The Competition and Consumer Authority may summon any representative of an undertaking or an association of undertakings or any representative of other legal persons and any natural person to participate in and answer questions during an interview when such a representative or natural person may be in possession of information that is relevant to the application of Section 6 or 11 of this Act or Articles 101 or 102 TFEU.

**17 b.** Section 10 of the Act on Legal Safeguards in the Administration's application of coercive measures and information obligations does not apply to requirements for undertakings or associations of undertakings for information pursuant to Section 17, the conduct of an interview pursuant to Section 17 a or the submission of an oral explanation pursuant to Section 18(1), 3<sup>rd</sup> sentence. Those concerned are obliged to provide information in accordance with the aforementioned provisions, to the extent this is compatible with the prohibition against self-incrimination under EU law.

**17 c.** Evidence which may be included in the assessment of whether this Act or Article 101 or 102 TFEU has been infringed, includes documents, oral statements, electronic messages, recordings and all other objects containing information, irrespective of the form it takes and the medium on which information is stored.

**18.** (1) Representatives of the Competition and Consumer Authority and other accompanying persons authorized or appointed by the authority for this purpose, may, for the purpose of their activities, conduct unannounced inspections, which will give the Authority access to the premises, land and means of transportation of an undertaking or association of undertakings for the purpose of

gaining insight into and making copies of information which is accessible to the entity subject to the inspection, including accounts, accounting records, books and other business documents, regardless of the medium on which the information is stored. The undertaking and the association of undertakings are obliged to submit to an inspection, and Section 9 of the Act on Legal Safeguards in the Administration's application of coercive measures and duties to supply information does not apply. In connection with an inspection, the Competition and Consumer Authority may demand explanations from any representative or member of staff of the undertaking or association of undertakings on facts or documents relating to the subject matter and purpose of the inspection and record their answers. The Competition and Consumer Authority may also demand that persons included in the scope of the investigations show the contents of their pockets, bags, etc. to enable the Authority to obtain knowledge of such content and, if necessary, take copies thereof.

(2) If the information of an undertaking or an association is stored or processed by an external data processor, the Competition and Consumer Authority is entitled to be given access to the premises of the external data processor to gain insight into and make copies of the information stored on the site according to subsection (1). Access requires that it is not possible for the Competition and Consumer Authority to gain access to the information concerned directly from the undertaking or association that is the subject of the inspection.

(3) The Competition and Consumer Authority's inspections may only be carried out on the basis of a previously obtained court order and against due proof of the investigators' identity.

(4) The Competition and Consumer Authority may obtain a copy of the data content from electronic media covered by the inspection for subsequent review of the copy at the Authority's premises or at other designated premises. The data obtained must be sealed or otherwise protected against reading before the inspection is finished. The undertaking which is the subject of an inspection may demand that it itself or a representative appointed by the undertaking shall be present when the data obtained are made available for reading and during the Authority's review of the material obtained. The Competition and Consumer Authority has a duty to provide a copy of the information that the Authority may have extracted from the data obtained from the undertaking which is the target of the investigation no later than 40 working days after the completion of the inspection. When the review of the data obtained has been completed, the data shall be secured against reading. The data obtained shall be deleted if, in the Authority's assessment, the material does not contain evidence of any infringement of the competition rules. If the Competition and

Consumer Authority decides to proceed with the case, the data obtained shall be deleted when the case has been finally decided.

(5) If the conditions of the undertaking or association make it impossible for the Competition and Consumer Authority to get access to or make copies of the relevant information cf. subsections (1), (2) and (4) on the day when the inspection is carried out, the Competition and Consumer Authority is entitled to seal off the relevant business premises and information for up to three working days thereafter.

(6) The Competition and Consumer Authority is entitled on the same conditions as in subsection (5) above to take the information or the medium on which it is stored away for copying. The material which the Competition and Consumer Authority has removed must be returned to the undertaking or association together with a set of copies of the information the Authority has extracted for its further examinations, no later than three working days after the day of the inspection.

(7) In special cases, the deadlines in subsections (4), (5) and (6) may be extended.

(8) The police shall provide assistance when the Competition and Consumer Authority exercises the powers assigned to it under subsections (1), (2) and (4)-(6). The Minister for Industry, Business and Financial Affairs may, in agreement with the Minister of Justice, lay down specific rules in this regard.

(9) The Competition and Consumer Authority may conduct inspections to grant assistance to the European Commission and other competition authorities of the European Union or the EEA area in connection with these authorities' application of Articles 101 and 102 TFEU or Articles 53 or 54 of the EEA Agreement. The provisions of subsections (1)-(8) above shall apply correspondingly.

(10) The Competition and Consumer Authority may conduct inspections to grant assistance to the competition authorities in Sweden, Norway, Iceland, Finland, Greenland and the Faroe Islands in connection with these authorities' application of national competition rules. Sections (1)-(8) above apply to such inspections.

**18 a.** (1) The Competition and Consumer Authority may, if reasonable suspicion exists that the information in Section 18(1), first sentence, which relates to the subject matter of the inspection and which may be relevant as evidence of an infringement of Section 6 or 11 of this Act or Article 101 or 102 TFEU, are stored in other premises, on other grounds or in other means of transport than those listed in Section 18(1), first sentence, including private homes belonging to the directors,

managers and employees of the undertakings or associations of undertakings in question, conduct unannounced inspections in such other premises etc. cf. however subsection (3) below.

(2) The Competition and Consumer Authority may not, during an inspection pursuant to subsection (1), require oral statements, but apart therefrom, the provisions of Section 18(1), (3), (4) and (6-10), apply correspondingly to such inspections.

(3) If there are reasonable grounds for suspecting that a natural person who has access to a location covered by subsection (1) above, has contributed to an infringement by an undertaking or an association of undertakings as mentioned in subsection (1) above, and if the requirements in Section 794 of the Administration of Justice Act are also met, the police conduct a search in accordance with Section 794 of the Administration of Justice Act. The search is to be carried out in the presence of the Competition and Consumer Authority.

**18 b.** (1) The Competition and Consumer Authority may, on behalf of a national competition authority in the European Union and in the name of this competition authority, require information pursuant to Section 17 of this Act, conduct interviews pursuant to Section 17a of this Act and conduct inspections pursuant to Section 18(1)-(8), 18a(1) and (2).

(2) Representatives of another national competition authority in the European Union and other accompanying persons authorized or designated by that authority shall, under the supervision of representatives of the Competition and Consumer Authority, participate in and actively assist the Authority during an interview or inspection pursuant to subsection (1) above, with the object of establishing an infringement of Articles 101 or 102 TFEU.

**18 c.** (1) Exchange of information obtained pursuant to Section 18b(1) can take place pursuant to Article 12 of Regulation (EC) No. 1/2003 on the implementation of the competition rules in Articles 81 and 82 and must meet the security conditions for this.

(2) The Competition and Consumer Authority's exchange of received leniency applications with another national competition authority in the European Union can only take place

i) with the consent of the applicant, or

ii) when the other national competition authority has also received a leniency application from the same applicant for the same infringement, provided that at the time the application is disclosed, it is not possible for the applicant to withdraw the information provided by the person concerned to the other national competition authority in connection with the application in question.

(3) The Competition and Consumer Authority may, subject to reciprocity, pass on to competition authorities other than national competition authorities in the European Union, information which is subject to the Competition and Consumer Authority's duty of confidentiality and which is necessary to promote the enforcement of these authorities' competition legislation, with a view to fulfill Denmark's bilateral or multilateral obligations.

(4) The Minister for Industry, Business and Financial Affairs may lay down detailed rules on the Competition and Consumer Authority's disclosure of information to foreign authorities that is covered by the Authority's duty of confidentiality.

**18 d.** (1) Requests for assistance pursuant to Articles 25 and 26 of the European Parliament and the Council's Directive to strengthening the national competition authorities' prerequisites for enforcing the competition rules effectively and ensuring a well-functioning internal market are complied with in accordance with Danish law and the rules in Articles 27 and 28 of the Directive.

(2) The Competition and Consumer Authority may submit requests for assistance in accordance with Articles 25 and 26 of the Directive.

(3) The Competition and Consumer Authority may receive requests for assistance pursuant to Article 25 (a) and (b) of the Directive, and the debt recovery authority may receive requests for assistance pursuant to Article 25 (c) and Article 26 of the Directive.

(4) The Minister for Industry, Business and Financial Affairs may, after consultation with the Minister for Taxation, lay down detailed rules on the implementation of Articles 25-27 of the Directive.

## **Chapter 7**

### *Appeals*

**19.** (1) Decisions according to Section 2(1) and (6), Section 3, first sentence, Section 5(1), Section 6(1), Section 6(4), first sentence, Section 7(1)-(4), Section 8(2), first sentence, and subsection (3), second sentence, and subsections (4) and (6), Section 9(1), first sentence, Section 10(2), Section 10a(1) and (6), Section 11(1) and (2), Section 11(4), first sentence, Section 11(5), Section 11a(1) and (6), first sentence, Section 11b(2), Section 12a(5), Section 12b(1), Section 12c(1), first sentence, Section 12c(2), (3), (6) and (7), Section 12d(6), Section 12e(1) and (3), Section 12f, subsections (1) and (2), Section 12g, Section 12h(4), Section 13(4), Section 16 and Section 16a(3)

and (4), may be appealed to the Competition Appeals Tribunal. Furthermore, decisions on the EU legal prohibition against self-incrimination, cf. Section 17b, second sentence, decisions on the prohibition against self-incrimination, cf. Section 10 of the Act on Legal Security in the Administration's application of coercive interventions and disclosure obligations, and decisions on the protection of the confidentiality of correspondence between an undertaking and its external lawyer be appealed to the Competition Appeals Tribunal by the person against whom the decision is addressed.

(2) An appeal according to subsection (1), first sentence, may be submitted by:

i) the party to whom the decision is directed.

ii) another party who has an individual and substantial interest in the case. This does, however, not apply to decisions made by the Competition and Consumer Authority according to Section 12a(5), Section 12b(1), Section 12c(1) (2), (3), (6) and (7), Section 12d(6), Section 12e(1) and (3), Section 12f, subsections (1) and (2), Section 12g, Section 12h(4) and Section 16a(3) and (4) of this Act.

(3) Decisions according to Section 15(1), third and fourth sentence, cannot be appealed to the Competition Appeals Tribunal.

(4) An appeal against a decision under Section 13(4) has suspensive effect. An appeal against other decisions may be granted suspensive effect by the Competition and Consumer Authority or the Competition Appeals Tribunal.

(5) The Competition Appeals Tribunal may handle cases and make decisions in English if so requested by the addressees of the decision and consideration for the parties to the case does not decisively make the use of English inadvisable. If the Competition Appeals Tribunal has made a decision in English, there must be a Danish summary thereof. If the Competition and Consumer Authority has processed a case in English or made a decision in English cf. Section 15c, these documents are used as the basis of the Tribunal's processing of the appeal in question, regardless of whether the Tribunal's processing and decision are conducted or made in English.

(6) The person against whom an interim measure is directed, cf. Section 16b, may, no later than 4 weeks after the decision has been notified to the person in question, appeal to the Competition Appeals Tribunal regarding the legality and proportionality of the interim measure. The Competition Appeals Tribunal processes the complaint according to an accelerated procedure.

**20.** (1) Decisions made by the Competition and Consumer Authority under this Act may not be appealed to an administrative authority other than the Competition Appeals Tribunal. The

Competition and Consumer Authority's formal decisions may not be brought before the courts before the Appeals Tribunal has made its decision.

(2) Appeals to the Competition Appeals Tribunal can be submitted no later than eight weeks after the decision has been communicated to the party concerned. When special reasons so warrant, the Competition Appeals Tribunal can disregard exceeding of the appeal deadline.

(3) Decisions made by the Competition Appeals Tribunal or decisions on substance made by the Competition and Consumer Authority may be brought before the courts no later than 8 weeks after the decision has been notified to the person concerned. If the appeal does not take place within the deadline, the decision is final, cf. however subsection (2) above, first sentence, and Section 24a(1).

(4) Copies of judgments passed by a court concerning the application of this Act or Articles 101 and 102 TFEU shall be submitted to the Competition and Consumer Authority by the court, however, in criminal cases by the State Prosecutor for Serious Economic Crime. The Competition and Consumer Authority shall inform the European Commission of judgments concerning Articles 101 and 102 TFEU.

**21.** (1) The Competition Appeals Tribunal shall consist of a President, who shall be a Supreme Court Judge, and four other members, of whom two members must have legal expertise and two members shall have economic expertise. The President may, in case of his own absence, authorize one of the members with legal expertise to take his place.

(2) The President and the members shall be appointed by the Minister for Industry, Business and Financial Affairs. They shall be independent of commercial interests. Their appointment shall cease by the end of the month in which they will be 70 years old. The President or a member can, however, finish the processing of cases being processed by the Competition Appeals Tribunal on expiry of the term of the person concerned.

(3) The Minister for Industry, Business and Financial Affairs shall lay down rules on the activity of the Appeals Tribunal, including rules on the fees chargeable for bringing decisions before the Appeals Tribunal.

**21 a.** (1) Information from a leniency application, which has been obtained under the right to access to information for the parties as prescribed by the Public Administration Act and the right to personal access, cf. Section 13(1), second sentence, in the Competition and Consumer Authority's enforcement case, may only be applied in a case before the courts, when it is necessary for the

person in question's right to defence in a case that is directly related to the case for which insight has been given in, and only when the case before the courts of law concerns

i) the distribution of a fine between cartel participants which has been imposed on them by joint and several liability, or

ii) review of a decision made by the Competition and Consumer Authority on infringement of Section 6 or 11 of this Act or Articles 101 or 102 TFEU.

(2) The following categories of information from the Competition and Consumer Authority's enforcement case, which has been obtained under the right to access to information for the parties as prescribed by the Public Administration Act and the right to personal access, cf. Section 13(1), second sentence, may not be used by the person in question in a case before the courts of law until the Authority has decided for all parties who are subject to the investigation in the enforcement case that Section 6 or 11 of this Act or Articles 101 or 102 TFEU has been infringed, and possibly issued an order pursuant to Section 16, or that companies' commitments are made binding, cf. Section 16a(1), or that the case is otherwise closed:

i) information prepared by other natural or legal persons specifically for the purpose of the Competition and Consumer Authority's enforcement case.

ii) information that the Competition and Consumer Authority has prepared and sent to the parties in connection with the Authority's processing of the enforcement case.

(3) The court may request the Competition and Consumer Authority for comments on whether a piece of information is covered by subsection (1) and (2) above.

## **Chapter 8**

### *Penalty and leniency provisions*

**22.** (1) Daily or weekly periodic penalty payments may be imposed on undertakings, business associations or any other legal person who fails

i) to provide, including within the set deadline, complete and correct information in response to a request for information pursuant to Section 17,

ii) to participate in or answer questions during an interview, cf. Section 17a,

iii) to submit to an inspection, cf. Section 18,

iv) to comply with a decision to bring an infringement of Section 6 or 11 of this Act or Articles 101 or 102 TFEU to an end,

- v) comply with conditions imposed or an order issued under this Act, or
- vi) fulfil a commitment that has been made binding according to Section 16a (1).

(2) Daily or weekly periodic penalty payments may be imposed on a natural person who fails

i) to provide, including within the set deadline, complete and correct information in response to a request for information pursuant to Section 17 or

ii) to participate in or answer questions during an interview, cf. section 17 a.

(3) The size of a periodic penalty payment to an undertaking, an association of undertakings or any other legal entity can amount to up to 5 percent of the concerned party's average total daily turnover worldwide in the previous financial per day and is calculated from the date specified in the decision to impose periodic penalty payments.

**23. (1)** An undertaking, an association of undertakings or any other legal entity may be subject to a civil fine if the party concerned intentionally or negligently

i) infringes Section 6(1),

ii) infringes Section 11(1),

iii) fails to comply with an order issued according to Section 6(4), first sentence, or Section 11(4), first sentence, cf. Section 16(1), or fails to comply with an order issued according to Section 16(3),

iv) fails to comply with a commitment that has been made binding according to Section 16 a (1),

v) fails to comply with an order issued according to Section 16 a (3),

vi) fails to comply with an order issued according to Section 16 b,

vii) supplies incorrect, incomplete or misleading information in response to a request for information according to Section 17(1), or fails to provide the information within the specified deadline,

viii) fails to participate in or answer questions during an interview, cf. Section 17a,

ix) fails to comply with an inspection, cf. Section 18,

x) in response to a question posed during an inspection, cf. Section 18(1), third sentence, gives an incorrect or misleading answer or fails or refuses to provide a complete answer,

xi) has broken the sealing made by the Competition and Consumer Authority pursuant to section 18(5), or

xii) infringes Article 101 or Article 102 TFEU, cf. Section 2(6) of this Act.

(2) An undertaking, an association of undertakings or any other legal entity may be subject to a civil fine if the party concerned intentionally or with gross negligence

i) fails to comply with a condition attached to a decision under Section 8(3), second sentence, or subsection (4), second sentence,

ii) fails to comply with an order issued according to Section 10a (1) or (6),

iii) fails to comply with an order issued according to Section 11a (1) or Section 11b (2),

v) implements a merger despite the prohibition against implementation, cf. Section 12c (2), second sentence, or infringes the prohibition against implementation of a merger prior to a clearance, cf. Section 12c (5), first sentence, fails to comply with a condition imposed or an order issued according to Section 12c (6) or Section 12e (1) or (3) or fails to comply with an order issued according to Section 12g, or

vi) provides incorrect, incomplete or misleading information to the Competition and Consumer Authority or the Competition Appeals Tribunal or conceals matters of importance for the case or sector inquiry according to Section 15d for which the information is obtained without the matter being covered by subsection (1) above, number 7 or 10.

(3) When an undertaking, an association of undertakings or any other legal person that has been imposed a periodic penalty payment pursuant to Section 22 has fulfilled the obligation in question without the periodic penalty payment being paid or recovered in its entirety, the undertaking, the association of undertakings or any other legal entity may be imposed a civil fine corresponding to the unpaid part of the periodic penalty payment.

(4) A natural person may be punished with a fine for contributing intentionally or with gross negligence to an undertaking's or an association of undertakings' infringement of Section 6 or 11 of this Act or Article 101 or 102 TFEU, cf. Section 2(6) of this Act. The punishment may increase to imprisonment for up to one year and six months, if the person has contributed to an undertaking or an association of undertakings having entered into a cartel agreement in contravention of Section 6(1) of this Act or Article 101(1) TFEU, cf. third sentence, and if the infringement is intentional and of grave nature, especially due to the extent of the infringement or its potentially damaging effects.

A cartel agreement under second sentence means an agreement, concerted practice or decision between undertakings, operating at the same level of trade, on

- i) prices, profits etc. for the sale or resale of goods or services,
- ii) restrictions on production or sales,
- iii) sharing of markets or customers, or
- iv) coordination of bids.

(5) Subsection (1)(i), above shall not apply from the date when an agreement etc. has been notified to the Competition and Consumer Authority according to Section 8(2) or (4) above and until the Authority has communicated its decision according to Section 8(2), (4) or (5).

(6) A natural person can be punished with a fine for intentionally or with gross negligence

- i) in subsequent employment, paid or unpaid, to have dealt with pending cases in which the Competition and Consumer Authority have issued a preliminary statement of objections, cf. Section 15a(3), cases concerning mergers, cf. chapter 4, cases about leniency, cf. Sections 23d-23i, appeal cases- and court cases regarding decisions pursuant to this Act and cases regarding access to all such cases that the person has dealt with during his work in the Competition Council or employment in the Competition and Consumer Authority, cf. Section 14a(2) of this Act.
- ii) to have provided incorrect, incomplete or misleading information in response to a request for information pursuant to Section 17(1), or to have failed to provide the information within the stipulated time limit,
- iii) to have failed to participate in or answer questions during an interview, cf. Section 17a, or
- iv) to have provided incorrect, incomplete or misleading information to the Competition and Consumer Authority or the Competition Appeals Tribunal or concealed matters of importance for the case or sector inquiry to Section 15d, for which the information is obtained without the matter being covered by no. 2 above.

**23 a.** (1) An undertaking may be held liable and responsible for civil fines imposed on another undertaking within the same economic entity for infringements of Section 6 or 11 of this Act or Articles 101 or 102 TFEU.

(2) If an association of undertakings is not solvent and therefore cannot pay a fine imposed on it for infringement of Section 6 or 11 of this Act or Articles 101 or 102 TFEU, measured on the basis of the turnover of the member undertakings, the association must, within a time limit fixed by the Competition and Consumer Authority, call for contributions from the member undertakings to payment of the fine.

(3) If the member undertakings have not fully fulfilled the obligation to pay the contributions pursuant to subsection (2) above within the time limit, the Competition and Consumer Authority may collect the outstanding amount directly from any of the undertakings whose representatives were members of the association's decision-making bodies when the infringement was committed.

(4) After the Competition and Consumer Authority has required payment in accordance with subsection (3) above, the authority may also, where necessary to ensure full payment of the fine, require payment of the outstanding amount from any member of the association that was active in the market in which the infringement took place. However, payment shall not be required from member undertakings that show that they did not implement the association's infringing decision and either were not aware of its existence or have actively distanced themselves from it before the Competition and Consumer Authority's investigation was initiated.

**23 b.** (1) When determining the amount of civil fines to undertakings, associations of undertakings or any other legal entity or fines on natural persons for infringements of this Act or of Article 101 or 102 TFEU, the gravity and duration of the infringement shall be taken into account. When determining the amount of civil fines to undertakings, associations of undertakings or any other legal entity, the total global turnover of the undertaking etc. in the financial year preceding the decision must also be taken into account. Furthermore, compensation paid as a result of a consensual settlement may be taken into account, cf. the Act on actions for damages concerning infringements of competition law. The fines must be effective, proportionate and dissuasive.

(2) When determining the amount of a civil fine to an undertaking, an association of undertakings or any other legal entity, in general it must be considered as an aggravating circumstance that the undertaking etc. for example

- i) after a previous decision finding that the undertaking etc. has infringed this Act or Article 101 or 102 TFEU, proceeds with the same infringement or commits a similar infringement,
- ii) has played a leading role or has encouraged the infringement or
- iii) has subjected another undertaking to retaliatory measures in order to compel it to respect an anti-competitive agreement or conduct in contravention to Section 6 or 11 of this Act or Articles 101 or 102 TFEU.

(3) When determining the amount of a civil fine to an undertaking, an association of undertakings or any other legal entity, in general it must be considered as a mitigating circumstance that the undertaking etc. for example

- i) has played only a passive role in connection with the infringement,
- ii) has not complied with an illegal agreement, a decision or a concerted practice pursuant to Section 6 of this Act or Article 101 TFEU,

iii) through an internal policy of compliance with the competition rules has constantly made an active effort to ensure that all employees of the undertaking comply with this Act, or  
iv) has contributed to the detection of the case outside the scope for leniency in Section 23 d or 23 e being met.

(4) The maximum amount of a civil fine to an undertaking, an association of undertakings or any other legal entity is 10 percent of the party in question's total worldwide turnover in the financial year preceding the decision. If the undertaking etc. is a part of a group, the maximum amount of the fine is 10 percent of the total worldwide turnover of the group in question in the financial year preceding the decision.

(5) If an infringement committed by an association of undertakings regards the members' activities, the maximum amount of the fine is 10 percent of the sum of the total worldwide turnover of each of the members active in the market affected by the infringement committed by the association. If one of the members in question is part of a group, the total worldwide turnover for the group in question is included in the sum according to the first sentence instead of the member's own turnover.

However, the individual member's financial responsibility in connection with the payment of the fine may not exceed the maximum amount determined in accordance with subsection (4) above.

**23 c.** (1) The limitation period is 5 years for the imposition of a civil fine on an undertaking, an association of undertakings or any other legal person for an infringement of this Act or of Articles 101 or 102 TFEU. If the limitation is suspended, cf. subsection (3) and (4) below, a new limitation period runs. Limitation occurs no later than 10 years after the date of commencement in accordance with subsection (2) below.

(2) The limitation period for a civil fine is calculated from the day on which the infringement or omission ceased.

(3) The limitation period for a civil fine is suspended from the day on which at least one undertaking in an enforcement case is notified of the first formal investigative step by the Competition and Consumer Authority, by a national competition authority in another Member State of the European Union or by the Commission handling an enforcement case on the same agreement, the same decision within an association of undertakings or the same concerted practice or other conduct prohibited by this Act or by Articles 101 or 102 TFEU. The suspension applies to all undertakings etc. that have participated in the infringement.

- (4) The suspension of the limitation period for a civil fine shall end on the day on which the enforcement case is closed by a final decision deciding that this Act or Articles 101 or 102 TFEU have been infringed, commitments by undertakings or business associations have been made binding or an undertaking, an association of undertakings or any another legal person has been fined or when it has been decided or a decision has been made that the case will not be pursued further.
- (5) The period of limitation for penalties consisting of a fine for a natural person is five years.

**23 d.** (1) An undertaking which acts in breach of Section 6 of this Act or Article 101(1) TFEU by participating in a cartel shall upon application be granted immunity from the fine that the undertaking would otherwise had been imposed for its participation in the cartel, if the applicant fulfills the requirements in subsection (2) and (3).

(2) The applicant must be the first to submit documentation which

- i) at the time when the Competition and Consumer Authority receives the application, enables the authority to conduct an inspection in connection with the cartel, provided that the Authority is not already in possession of sufficient documentation which enables the Authority to conduct such an inspection, or that the Authority has not already conducted such an inspection, or
- ii) in the view of the Competition and Consumer Authority is sufficient to find an infringement covered by the leniency programme, provided that the Authority does not already have in its possession sufficient evidence to find such an infringement and that no other applicant has previously qualified for immunity from fines under subsection (1)(i) in relation to the cartel.

(3) Immunity shall be granted only if the applicant

- i) discloses its participation in a cartel,
- ii) has ended its involvement in the cartel at the latest immediately following the submission of the leniency application, except for the activities that would in the Competition and Consumer Authority's view be necessary to preserve the integrity of the investigation,
- iii) during the contemplation of submitting a leniency application to the Competition and Consumer Authority has not
  - (a) destroyed, falsified or concealed evidence relating to the cartel or
  - (b) disclosed the contemplation of submitting the application or any of its contents to anybody other than to competition authorities in the European Union, in the EEA or in third countries,
- iv) has not taken steps to coerce other undertakings to join the cartel or to remain in it and

v) cooperates genuinely, fully, on a continuous basis and expeditiously with the Competition and Consumer Authority from the time the application is submitted until the enforcement proceedings against all the parties covered by the investigation are finally closed, or the case is otherwise terminated.

(4) The cooperation according to subsection (3)(v), implies that the applicant meets the following requirements:

i) The applicant provides the Competition and Consumer Authority promptly with all relevant information and documentation relating to the cartel that is accessible to the applicant or which the applicant comes into possession of, including the following:

(a) The name and address of the applicant.

(b) The names of all other undertakings that participate or have participated in the cartel.

(c) A detailed description of the cartel, including the affected products and affected territories and the duration and the nature of the cartel conduct.

(d) Information on any past or possible future leniency applications made to any other competition authorities in the European Union, in the EEA or in third countries in relation to the cartel.

ii) The applicant remains at the disposal of the Competition and Consumer Authority to answer any request that may contribute to the establishment of facts.

iii) The applicant makes directors, managers, and other members of staff available for interviews with the Competition and Consumer Authority and makes reasonable efforts to make former directors, managers, and other members of staff available for interviews with the Competition and Consumer Authority.

iv) The applicant does not destroy, falsify or conceal relevant information or documentation.

v) The applicant does not disclose the submission of the leniency application or any of its contents before the Competition and Consumer Authority has issued a statement of objections in the enforcement proceedings, unless otherwise agreed.

**23 e.** (1) If an application for immunity does not meet the requirements set out in Section 23 d(2), the application shall be regarded as an application for reduction of the fine as set out in subsection (2)-(4) below.

(2) An undertaking which infringes Section 6 of this Act or Article 101(1) TFEU by participating in a cartel shall be granted a reduction of the fine which the undertaking would otherwise have been imposed for its participation in the cartel, if the applicant submits documentation related to the

cartel which represents significant added value compared to the documentation which is already in the possession of the Competition and Consumer Authority at the time of the application, and the applicant meets the requirements specified in Section 23(3) and (4).

(3) If the applicant submits compelling documentation which the Competition and Consumer Authority uses to prove additional facts in which lead to an increase in fines being imposed on the participants in the cartel compared to the fines that would otherwise have been imposed, such additional facts shall not be taken into account when determining a potential fine to the applicant.

(4) The reduction of the fine for the first applicant which meets the requirements set out in subsection (2) amounts to 50 percent of the fine that the applicant would otherwise have been imposed for its participation in the cartel. The second applicant which meets the requirements of subsection (2) above shall be granted a reduction of the fine of 30 percent. For subsequent applicants which satisfy the requirements of subsection (2) above, the reduction of the fine amounts to up to 20 percent.

**23 f.** (1) A preliminary application for leniency may be submitted in order for the applicant to be granted a place in the queue for leniency.

(2) A preliminary application for leniency shall consist of the information about the cartel that is available to the applicant at the time the preliminary application is submitted. The information can e.g. concern the following:

i) The name and address of the applicant.

ii) The basis for the concern which led to the application.

iii) The names of all other undertakings that participate or have participated in the cartel.

iv) The affected products and territories.

v) The duration and the nature of the cartel conduct.

vi) Information on any past or possible future leniency applications made to any other competition authorities in the European Union, in the EEA or in third countries in relation to the cartel.

(3) A preliminary application must be completed within the time limit set by the Competition and Consumer Authority. The Competition and Consumer Authority sets the time limit so that the applicant can gather the necessary information and documentation to fulfill the conditions for either immunity or reduction of the fine. If the preliminary application is completed within the time limit, the application is deemed to have been submitted at the time of the submission of the preliminary application.

(4) The Competition and Consumer Authority has discretion whether to grant or reject an application pursuant to subsection (1).

**23 g.** (1) A summary application for leniency may be submitted if the applicant has applied to the European Commission for leniency by submitting either a preliminary or a full application in relation to the same cartel, provided that such application covers more than three Member States of the European Union as affected territories.

(2) A summary application shall consist of a short description of the following:

i) The name and address of the applicant.

ii) The names of the other participants in the cartel.

iii) The affected products and territories.

iv) The duration and the nature of the cartel conduct.

v) The Member States of the European Union where the evidence of the cartel is likely to be located.

vi) Information on any past or possible future leniency applications made to any other competition authority in the European Union, in the EEA area or in third countries in relation to the cartel.

(3) When the European Commission receives a full application and the Competition and Consumer Authority receives a summary application in relation to the same cartel, the Commission shall be the main interlocutor of the applicant, in the period before clarity has been gained as to whether the Commission intends to pursue the case in whole or in part, in particular in providing instructions to the applicant on the conduct of any further internal investigations. The Competition and Consumer Authority may only request the applicant to provide specific clarifications regarding the items set out in subsection (2), before the Authority requires the submission of a full leniency application pursuant to subsection (5).

(4) When the Competition and Consumer Authority receives a summary application, the Authority verifies whether, at the time of receipt of the summary application, it has already received a summary or full application for leniency from another applicant in relation to the same cartel. If the Competition and Consumer Authority has not received such an application from another applicant and considers the summary application to fulfil the requirements in subsection (2), the Authority shall inform the applicant accordingly.

(5) A full application may be submitted to the Competition and Consumer Authority once the Commission has informed the Authority that the Commission does not intend to pursue the case in

whole or in part. Only in exceptional circumstances, when strictly necessary for case delineation or case allocation, may the Competition and Consumer Authority request the applicant to submit a full application before the Commission has informed the Authority that it does not intend to pursue the case in full or in part. The Competition and Consumer Authority may specify a reasonable period within which the applicant is to submit the full application together with the corresponding information and documentation. This is without prejudice to the right of the applicant to voluntarily submit a full application at an earlier stage.

(6) An applicant which submits a full application in accordance with subsection (5) above within the period specified by the Competition and Consumer Authority, is deemed to have submitted the full application at the time the summary application was received, provided that the summary application covers the same affected products and territories as well as the same duration of the cartel as in the leniency application submitted to the Commission, which may have been updated.

**23 h.** (1) A leniency application, including a preliminary application pursuant to Section 23 for a summary application pursuant to Section 23 g, may be submitted in writing or orally to the Competition and Consumer Authority. The application can be submitted in Danish or in English. As per agreement between the Competition and Consumer Authority and the applicant, the application may also be submitted in another of the official languages of the European Union.

(2) An application filed under subsection (1) shall be considered according to the following procedure:

- i) If requested by the applicant, the Competition and Consumer Authority acknowledges in writing the receipt of a leniency application, stating the date and time of receipt.
- ii) The Competition and Consumer Authority issues a conditional assurance that contains a statement of whether the requirements in Section 23 d(2) and (3), or Section 23 e(2), are satisfied, and stating whether there is reason to reject the application because the requirements in Section 23 d(3) and (4), are not satisfied.
- iii) When the enforcement proceedings have been finally closed against all the other parties which have been involved in the cartel, the Competition and Consumer Authority will inform the applicant in writing whether the requirements in Section 23 d(3) and (4), are satisfied, and if so, whether immunity or reduction of the fine can be granted in accordance with the conditional assurance given to the applicant in accordance with point (ii) above.

(3) Different undertakings cannot submit a joint application for leniency, unless the applicants are associated members of a group of companies and the application specifies the companies that it is intended to comprise.

**23 i.** (1) An application for leniency from an undertaking shall automatically cover current and former board members, senior managers and other employees.

(2) A natural person who is covered by an application pursuant to subsection (1) obtains withdrawal of charges and a possible separate claim for confiscation if the following conditions are met:

i) The undertaking's application meets the requirements in Section 23 d(2) and 23 d(3)(i).

ii) The natural person in question individually meets the requirements in Section 23 d(3)(v), cf. Section 23 d(4).

iii) The undertaking's application predates the time when the natural person has by the Competition and Consumer Authority or the State Prosecutor for Serious Economic and International Crime been made aware of the case to which the application relates.

(3) If an undertaking's application for immunity does not meet the conditions hereof, a natural person who is covered by an application in accordance with subsection (1) above, obtains reduction of a fine, if the undertaking's application meets the conditions for this in Section 23 e(2), and the natural person individually meets the condition in Section 23 d(3)(v), cf. Section 23 d(4). Section 23 e(3) and (4) shall apply correspondingly. A possible separate claim for confiscation is reduced by the same percentages as mentioned in Section 23 e(4) of this Act.

(4) A natural person may submit an individual application for leniency. A natural person obtains a withdrawal of charges and a possible separate claim for confiscation if the person in question meets the conditions in Section 23 d(2)-(4). If the conditions for withdrawal of charges are not met, the person in question obtains a reduction of the fine and reduction of a possible separate claim for confiscation, if the person in question individually meets the conditions in Section 23 e(2) of this Act. Section 23 e(3) and (4) shall apply correspondingly.

(5) The provisions of Sections 23 f and 23 h(1) and (2)(i), shall apply correspondingly to applications pursuant to subsection (1) and (4) above. Furthermore, Section 23 h(2)(ii) applies correspondingly, as the State Prosecutor for Serious Economic and International Crime must, however, before a conditional assurance is issued to a natural person, agree that the conditions for this are fulfilled.

(6) When the case has been finally examined and assessed, the State Prosecutor for Serious Economic and International Crime grant a withdrawal of charges to natural persons covered by subsection (1) or (4) above, provided that the conditions for this are met.

**23 j.** (1) In cases concerning an undertaking's or an association of undertakings' infringement of this Act or Article 101 or 102 TFEU, the Competition and Consumer Authority may issue an administrative notice of a fine, indicating that the case may be settled without a trial if the offender admits being guilty and declares willing to pay a civil fine as stated in the administrative notice of a fine within the specified time limit.

(2) A fine according to subsection (1) above shall consist of

- i) the name, address and company registration number of the undertaking or association of undertakings to which the administrative notice of a fine is addressed, and
- ii) information on the matter to which the civil fine relates.

(3) Information pursuant to subsection (2)(ii) above, shall include the following:

- i) The legal basis for imposing the civil fine.
- ii) A short description of the infringement of the Competition Act or Article 101 or 102 TFEU which gives rise to the issuance of the administrative notice of a fine, stating the time, the place, the object, the method of execution and other details necessary for a sufficient and clear description.
- iii) Any mitigating or aggravating circumstances, cf. Section 23 b(2) and (3).
- iv) If the civil fine is accepted, further proceedings shall be repealed.

## **Chapter 9**

### *Process of cases concerning the imposition of civil fines*

**24.** (1) The rules in this chapter apply to cases regarding civil fines, cf. Section 23(1)-(3) of this Act.

(2) The case is dealt with in civil proceedings.

(3) The court is not bound by the parties' claims about the amount of the civil fine.

**24 a.** (1) The case can be brought before the court by the Competition and Consumer Authority when the decision on infringement of the competition rules has been reviewed by the Competition Appeals Tribunal.

(2) If the person against whom the decision is addressed brings the decision of the Competition and Consumer Authority or the Competition Appeals Tribunal before the court, cf. Section 20(3) of this Act, the issue of the imposition of a civil fine is decided in this case.

(3) Regardless of subsection (1) above, the case may be brought before the court by the Competition and Consumer Authority when the deadline for appealing to the Competition Appeals Tribunal or for bringing a case before the courts has expired, without an appeal to either the Competition Appeals Tribunal or the courts having taken place, cf. Section 20(2), first sentence, and (3) of this Act, or if the case concerns a civil fine pursuant to Section 23(3) of this Act.

**24 b.** (1) A third party who may be held criminally liable for the infringement to which the case relates may not intervene as a party to the case pursuant to Section 251 of the Administration of Justice Act.

(2) A third party who may be held criminally liable for the infringement to which the case relates may intervene in the proceedings in order to safeguard its interests, whether or not the party in question supports one of the parties in the case. The Administration of Justice Act Section 252(3) and (4) apply accordingly. Upon request, the court assigns an attorney for the party in question. The same applies to fees and reimbursement for expenses to the assigned attorney as in cases where free process has been granted, cf. chapter 31 of the Administration of Justice Act.

**24 c.** (1) A civil fine must be paid to the Competition and Consumer Authority.

(2) The Competition and Consumer Authority may, at the request of the convicted party, allow extension of payment or payment by instalments of a civil fine.

(3) If a civil fine is not paid, it is collected by the debt collection authority.

(4) The debt collection authority may allow extension of payment or payment by instalments of civil fines.

(5) A civil fine accrues to the treasury.

(6) After negotiation with the Minister for Taxation, the Minister for Industry, Business and Financial Affairs can lay down provisions on the collection and recovery of civil fines, including the administrative processing of cases concerning extension of payment or payment by instalments of civil fines.

**Chapter 9 a**  
*(Repealed)*

**Chapter 9 b**  
*(Repealed)*

**Chapter 10**  
*Commencement and interim provisions etc.*

27. (1) This Act shall enter into force on 1 January 1998. However, the provisions of Sections 14(3) and 15 shall enter into force on 1 July 1997.

(2) The entry into force of this Act shall mean the repeal of the Competition Act, i.e. Consolidation Act No. 114 of 10 March 1993, and the Act on Control of Compliance with the Regulations of the European Economic Community on Monopolies and Restrictive Practices, i.e. Consolidation Act No. 449 of 10 June 1991. An approval granted under Section 14(1) of the Competition Act, i.e. Consolidation Act No. 114 of 10 March 1993, shall remain in force until the Competition Council may decide to withdraw the approval, but cf. subsection (6) below. Such a decision shall be made according to the rules then in force.

(3) Proceedings conducted under the Competition Act, i.e. Consolidation Act No. 114 of 10 March 1993, which have not been completed at the date when this Act enters into force shall lapse. However, this does not apply to complaints and cases pending before the Competition Appeals Tribunal.

(4) Anti-competitive agreements, decisions and concerted practices which are in existence on the date when this Act enters into force and come under the prohibition set out in Section 6(1), may, if an application for exemption under Section 8 is submitted before 1 July 1998, be maintained for up to three months after the Competition Council has made its decision in the case, even if the Council rejects the application. The Competition Council may extend the three-month time limit.

(5) The administrative rules that are applicable in accordance with Section 7, no. 2, of the Competition Act cf. Consolidated Act no. 114 of 10 March 1993, remain in effect until any new rules become applicable in accordance with Section 5(3) in the Danish Price Marking and Display Act, as stated in Section 28 paragraph (i)/of this Act. The Administration of the existing applicable rules shall, as mentioned in paragraph (i), be transferred to the Competition and Consumer

Authority. Intentional or grossly negligent violations of the existing rules shall be punishable by a fine as mentioned in paragraph (i). Criminal liability may be imposed on companies etc. (legal persons) under the provisions of chapter 5 of the Criminal Code.

(6) Irrespective of the provisions of subsection (2), second and third sentence, above, chapter 2 of this Act shall apply to agreements and concerted practices between undertakings as well as decisions made in an association of undertakings concerning fixed resale prices for the retail sale of books.

**28.** (Repealed)

**29.** This Act shall not extend to the Faroe Islands and Greenland.

The specific provisions on the entry into force of some of the Sections in Act No. 1541 of 13 December 2016, Act No. 1545 of 19 December 2017, and Act No. 207 of 15 February 2021 are omitted.