



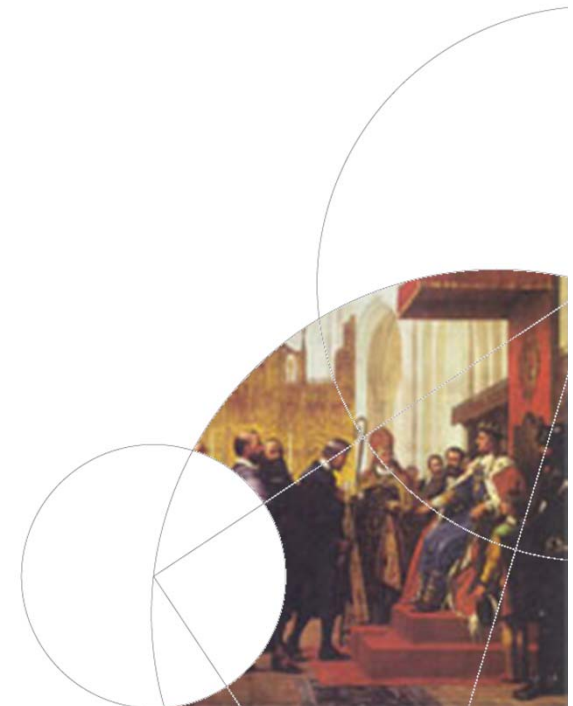
Faculty of Law



Denmark

Developments 2016-2017 since last meeting in Stockholm Oct 2016

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Outline

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2. Anticompetitive agreements and abuse of dominant position
3. Mergers
4. Aid that distorts competition
5. Reports and analyses
6. Amendments of the Danish Competition Law Act



General remarks – Statistics

- How many cases in Denmark in 2016-2017 since last meeting in October 2015 in Stockholm ?
 - Competition Council (appr. 5-6 bigger cases pr. year, 5 since last meeting)
 - Competition Appeal Tribunal (4 since last meeting, app. 3-6 pr. year)
 - The Competition Authority handles a lot of cases on its own (acc. the annual report from the Comp. Authority it handled 41 mergercases on its own in 2016, daily administration in other cases, minor/not principal); app. Same level of activity in 2017, but no annual report has been published yet)
 - General trend - more court cases the last couple of years (both civil and criminal)



Anti-competitive agreements

- 4 cases from the Competition Council on sec 6 in the Danish Competition Act (101 TEUF)
- 2 cases on price coordination
 - Naturgas – decision of 30. november 2016 on price coordination on service on natural gas boilers for private households (appealed to the Competition Appeal Tribunal)
 - Camping pas – decision of 30. May 2017, coordination with in trade organisation, customers must have a camping pas, issued by the organization
- 1 case on market sharing
 - MCD and MPE – decision of 29. august 2017, marketsharing in media buerau business
- 1 case on standardisation



Anti-competitive agreements

The case on standardisation – decision of 31 May 2017 in Tagpap (appealed)

- Complicated case – on standardisation of roofing felt - the CC did not attack the standardisation it self . The market for roofing felt is very concentrated- very few on the market
- It was the use of the standard by the trade organisation, the producers of roofing felt and an information council established by the industry that – all together – made the CC find a breach of sec 6 in the Danish Competition Law Act
- What is interesting here is – amongst other things – the reference to the Commission Guidelines on horizontal restrictions in the case, para 273 – this was found to be the case
 - Agreements that use a standard as part of a broader restrictive agreement aimed at excluding actual or potential competitors restrict competition by object. For instance, an agreement whereby a national association of manufacturers sets a standard and puts pressure on third parties not to market products that do not comply with the standard or where the producers of the incumbent product collude to exclude new technology from an already existing standard would fall into this category.



Anti-competitive agreements

- 4 cases from the Competition Appeal Tribunal
 - 1 case confirming the Competition Council's decision in HMN Natargas (price-coordination)
 - Competition Appeal Tribunal's decision of 13. July 2017, confirmation of the Competition Council's decision of 30. November 2016
 - 3 cases on different administrative law aspects of the cases
 - 2 cases on different questions on the right of access to documents
 - 1 case (Tagpap) on delaying effect of the Competition Council's decision – should Tagpap remove their standards while the Competition Appeal Tribunal deals with their complaint ? Yes, says the Competition Appeal Tribunal, the case is still pending
 - We have quite some cases on different matters of administrative law in competition law cases
 - Access to documents, who are entitled to appeal a case, delaying effect etc
 - Cases from the Competition Appeal Tribunal
 - Can be found here
<https://www.kfst.dk/konkurrenceforhold/afgoerelser/kendelser-fra-konkurrenceankenævnet/2017/>



Anti-competitive agreements

- No courtcases in Denmark in 2016 about anti-competitive agreements
- But pending cases
 - Last year we discussed consortia – the Danish case on a consortia in the road sector is pending before the Maritime and Commercial Court
 - And the debate about consortia is very much alive
 - About when competitors are competitors and have the capacity to make a bid on their own and when they are allow to form a consortia
 - New guidance from the Danish Competition Authority on consortia is in the making (expected January 2018)
 - Part of the debate on amendments of the Danish Competition Law



Anti-competitive agreements

- Cases on fines for engaging in cartels/anticompetitive agreements
 - Not so many as last year, where we had the big building cartel, that generated fines for more than 31 mio DKR to 24 companies from 2010 and until august 2016
 - A couple of cases on resale price maintenance (8,2 mio kr to Opel Denmark)
 - A case on coordination of offers in the building industry (1 mio kr)
 - A case on fines for withholding information in a merger case (50.000 kr), confirmed by the Østre Landsret 16. november 2017



Abuse of dominant position

- Even fewer cases
- One from the Competition Council on rebates in Post Danmark
 - Decision of 31 May 2017 on rebates
 - The last of the Post Danmark cases on rebates, concerning rebates in 2007-2008, following the guidelines from CJEU when calculating costs
- none from the Competition Appeal Tribunal
- no judgements from the courts on abuse in 2016/17



Mergers

- 2016-16 was a busy year for mergercontrol.
 - Lower thresholds in 2010 has generated more (and smaller) mergercases
 - Almost all of them is handled by the Competition authority
 - But the Competition Council has handled 4 merger cases
 - Børsen/JP Pol – newspapers
 - IMERCO – hardware stores
 - Boxer – distribution of television
 - Nykredit – amendment of commitment in an old mergercase



Mergers

- The merger on JP Politiken/Børsen
 - The merger was notified in early July 2016
 - The Competition Authority used many resources on the case during the fall 2016
 - In the end there was no decision – the parties withdraw the merger in January 2017 BUT after the Competition Council had expressed serious doubts as to whether the merger could be allowed
 - The concern from the CC was concentration on different relevant markets (advertising and the market for news)
 - And then JP/Pol bought 49,9 % of the shares in Børsen.....



Aid that distorts competition

- No cases since the last meeting in Stockholm in October 2016
 - Sec 11 of the Danish Competition Act

11 a.- (1) The Competition Council 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
 - Some very interesting cases in the pipeline



Reports/Analyses

- Reports 2016-17
 - October 2016 – report on competition on medicine prices
 - August 2017 – report on competition on housing mortgage
 - New trend – shorter articles from the Competition Authority
 - Article on shareholders and mergers (generated by the JP Pol/Børsen case and drawing on the previous COM(2014) 449 final on minority shareholders and mergers)
 - Article on Swedens experience on liberalisation of GP doctors
 - Article on dentists



Amendments of the Competition Act

Proposal for an amendment of the Competition Act (as of 1. January 2018)

- Different amendments of more technical rules in the mergercontrol
- De minimis – amendment of sec. 7 in the Danish Competition Act to the same model as known from the EU de Minimis notice





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Thank you !

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