



Denmark

Global merger control handbook – update

APRIL 2020

Merger control legislation updates since 1 July 2018

Amendments to the Executive Order on the Calculation of Turnover in the Competition Act entered into force on the 1 January 2020 (Executive Order No. 1286 of 26 November 2019). The new Executive Order provides some minor amendments to bring the Executive Order in line with the EC Merger Regulation. The main change relates to the calculation of turnover for state-owned companies, regions and municipalities. The turnover for these must include the turnover of all companies under the same public authority's decision-making power.

Landmark merger control cases since 1 July 2018

The following four cases are interesting: two cases have required remedies; one case has set limits for investigations under the simplified procedure; and in one case a company was fined for not notifying a merger.

The first case regards Tryg's acquisition of Alka (horizontal merger in the insurance sector). The competition authority approved the transaction based on behavioral remedies, which is unusual as the trend is to apply structural remedies. The second case regards Global Connect's acquisition of Nianet (horizontal merger in the IT sector, hosting and data warehouse). The competition authority requested structural remedies to handle an impact on a local market in Denmark. The local area delineated was a city in the western part of Denmark. The two cases show (1) that behavioral remedies are still a feasible way of meeting the competition authority's theory of harm, and (2) the competition authority does prioritize local effects and the authority is prepared to address very narrow geographical markets.

The third case was a court case regarding Dansk Supermarked's acquisition of Wupti.com. The merger was notified under the simplified procedure, but the Danish Competition and Consumer Authority requested a full merger notification as they needed

to conduct a minor market investigation. This increased the notification fee from DKK 50,000 (EUR 6,500) to DKK 1.5 million (EUR 200,000). Dansk Supermarked appealed the decision to require a full merger notification, claiming that the marked investigation was so minor that it could have been carried out under the simplified procedure. The High Court of Western Denmark upheld the authority's decision to require a full notification on the ground that the authority is not allowed to carry out a market investigation under the simplified procedure. If the authority needs to carry out any market investigation – regardless of size – the authority must require a full merger notification; hence, the high fee is payable.

The fourth case regards Circle K's acquisition of Shell Denmark service stations. The merger was approved by the European Commission, but afterwards Circle K terminated lease contracts with 12 former Shell service station lessees and acquired the lessees' activities (hereunder employees and goodwill). This constituted a separate transaction notifiable to the Danish Competition and Consumer Authority. However, Circle K failed to notify this transaction before it was implemented. Circle K agreed to pay a fine of DKK 6m (EUR 0,8m) for not notifying the acquisition.

Web link to the national competition authority

Competition Authority: www.kfst.dk

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