Kluwer Competition Law Blog

Main Developments in Competition Law and Policy 2024 – Denmark

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In Denmark, the Danish Competition Council is the principal enforcer of competition law, with the Danish Competition and Consumer Authority acting as the day-to-day caretaker and rendering decisions in (minor) cases. Decisions made by either the Competition and Consumer Authority or the Competition Council may be appealed to the Danish Competition Appeals Board or the judiciary and, after amendments in 2021 implementing the ECN+ directive, an initial appeal to the former is no longer mandatory. Instead, if considered beneficial, the parties may challenge decisions directly before the civil courts, usually the Danish Maritime and Commercial High Court, with subsequent appeal possibilities. Private enforcement actions and some criminal cases will typically also be advanced here, whereas criminal cases against individuals will be brought before the local courts.

National competition law mirrors Articles 101 and 102 TFEU and the EU Merger Regulation (save for the lower turnover thresholds in Denmark), making it immaterial for the outcome whether a case is advanced under both EU and national competition law or only the latter. In terms of finalizing a case or investigation, different options are available, presuming the case is not closed informally. In addition to ordering infringements stopped, the Competition and Consumer Authority may accept commitments, impose fines in undisputed cases, award leniency, including immunity, in exchange for cooperation and prosecute the case before a court if fines on undertakings are warranted. However, only the criminal prosecutor may impose fines (or imprisonment) on natural persons. If the case raises concerns insufficient to warrant formal investigations, the Authority may issue a caution letter outlining its grievances but not naming the object of such grievances. As for mergers, these may be cleared, prohibited, or approved subject to commitments as known under the EU Merger Regulation.

Most of these options were explored in 2024, yielding several interesting cases presented below. For the sake of brevity, only references to Articles 101 and 102 TFEU are applied, but these also include the national equivalents unless specified. Finally, it is noted that the Danish Competition Act was amended in 2024, allowing the Competition and Consumer Authority to call in all mergers regardless of turnover and raising the fines. A few comments will also be offered on this below.

Article 101 and horizontal agreements

In 2024, Danish case law offered as usual a couple of notable Article 101 cases involving horizontal agreements, including cases from previous years reaching the courts. Below, these are detailed further, with links to the underlying decisions.

Murder on the Dance Floor – round III – now with a facilitator

In 2021, the Danish Competition and Consumer Authority fined 22 nightclubs for being part of a market-sharing agreement. As part of a (legitimate) cooperation agreement centred on the joint procurement of goods and services and staff training, the nightclubs had accepted not to open establishments near each other. The Danish Competition and Consumer Authority labelled this as market sharing and thus anti-competitive by object.

Initially, only short summaries were published, leaving issues open. In October 2023, however, a formal decision was rendered directed at the consultancy company ECIT Account A/S. Further to providing book-keeping and managerial services to the 22 nightclubs, the company also managed the cooperation, including the understanding of non-establishment. Notwithstanding being active in a different segment of the economy, ECIT Account A/S was included in the infringement as a cartel facilitator. This concept allows for the inclusion of undertakings playing a leading role without being a direct member. However, as ECIT Account A/S managed the (alleged) cartels, the case may have stressed the concept slightly.

In January 2025, the Maritime and Commercial High Court confirmed the decision and imposed a fine of DKK 20 million (EUR 2,68 million). It is unknown if the parties will appeal.

Dual distribution and the matter of a by object infringement

Another notable Article 101 case finally closed in 2024 involved information exchange and dual distribution. Dual distribution emerges when the traditional vertical relationship between a wholesaler and its retailers is given a horizontal twist, e.g., if the wholesaler engages in direct sales and thus competes downstream with its retailers.

In 2020, the Competition Council reacted against HUGO BOSS, a producer of men’s fashion clothes, for forwarding information on future retail campaigns, including sales and future prices, to two of its Danish retailers (Kauffmann and Ginsborg). These actions added a horizontal element to the vertical agreements. In two separate decisions (available here and here), this was identified as a concerted practice entailing a horizontal exchange of sensitive information considered anti-competitive by object absolving the Competition Council from any obligation to prove anti-competitive effects.

HUGO BOSS and Kauffman (but not Ginsborg) lodged an appeal against the decision and, in 2024, the Maritime and Commercial High Court closed the case by upholding the findings of the Competition Council. In a 142-page ruling, the Court found that Hugo Boss, between 2014 and 2018, had acted outside the available window for legal communication with its retailers by sharing details on its planned retail campaigns, including prices. By virtue of this, the Court had no problem rebutting the actions as vertical and outside the Vertical Block Exemption and anti-competitive by object. The latter, just as the information, had strategic commercial value and was

not publicly available. Finally, the Court identified one single and continuous infringement regardless of the fact that up to a year had passed between some of the incriminating emails.

In the specific case, the parties (Hugo Boss and the retailers) had shuffled emails back and forth on future campaigns and, during the witness deposition, one even admitted how this had involved issues usually not shared. In light of this, the ruling appears correct. Initially, the parties had indicated that an appeal would be lodged against the decision, but, eventually, the parties decided differently.

In August, Hugo Boss accepted a fine of DKK 12 million (EUR 1.61 million), and two leading individuals accepted personal fines of DKK 120,000 (EUR 16,091). Kauffman had already in 2021 accepted a fine of DKK 3.7 million (EUR 496.151), and Ginsborg was granted immunity under the leniency system, closing the case. Unless someone files a claim for compensation, the case is closed.

Procurement of reserve capacities and the forming of an electricity cartel

In 2023, the Competition Council condemned a price cartel involving 49 electricity generators and a trading company (Effekthandel). These had pooled their wholesale reserve capacity sales in Western Denmark to inflate the wholesale price.

Reserve capacity is procured by the Transmission System Operator (TSO) when confronted with unexpected imbalances between supply and demand in the electricity system. Based on evidence collected during inspections in May 2021, the Danish Danish Competition and Consumer Authority held the arrangement anti-competitive by object akin to a price cartel in October 2023. While some challenged this directly before the Court, others wanted to lodge an administrative appeal first. In October 2024, the Competition Appeals Tribunal rejected the appeal, and it must be assumed that these undertakings will now seek to challenge the original decision before the Courts.

Parallel to the undertakings' attempt to have the original decision overturned, it is expected that the Danish Danish Competition and Consumer Authority will seek to have fines imposed upon the undertakings involved. Moreover, in parallel with this, individual criminal punishment is likely to also be requested in respect of leading individuals once the cases against the undertakings have been completed. Following the implementation of the NCA+ Directive, Denmark operates with a two-tier system, whereby the criminal case against undertakings is brought as a civil case and must be completed before criminal prosecution may be commenced against individuals. This may include imprisonment.

The Hübsch case – when casual discussions on housing interiors take a twist

Following a dawn raid in 2021, the Competition Council rendered a decision in March 2024 identifying an illegal understanding between two suppliers of housing interiors (Hübsch A/S and Broste Copenhagen A/S).

Specifically, the two undertakings shared sensitive information by way of emails, texts and (allegedly) phone conversations, allowing them to act in concert on introducing a Covid-19

surcharge and price hikes. No formal agreement was reached, but the Competition Council moved forward, relying on the notion of concerted practice, as it was established how they had communicated and subsequently acted in concert. Hübsch A/S's position was that these discussions did not include any price-sensitive issues, making them unrelated to the subsequent price increases, and had been initiated by Broste Copenhagen A/S.

Hübsch A/S (and not Broste Copenhagen A/S) is challenging the case before the Danish Competition Appeals Board. Further to disputing any anti-competitive understanding, Hübsch A/S also submits that the evidence relied upon should be excluded. Initially, the Competition and Consumer Authority opened the case and conducted dawn raids, seeking proof of vertical price maintenance clauses. The warrant, therefore, only referred to this, making it problematic (according to Hübsch A/S) that evidence of a potential horizontal price cartel emerged. It remains unknown whether the Appeals Board may review this as the Act governing its operation does not refer explicitly to the matter. 2025 will bring clarity in that respect.

In contrast to Hübsch A/S, Broste Copenhagen A/S did not dispute the infringement, agreeing to pay a fine of DKK 1.5 million (EUR 201,118). This included a significant discount for cooperation during the investigation and taking steps to avoid further infringements.

The Clear Channel Danmark case closed subject to payment of a fine

In 2018, the Competition Council identified and condemned an illegal price agreement between two outdoor advertising companies (Clear Channel Danmark and AFA JCDecaux). The price coordination covered two periods involving **i**) September 2008 to December 2010 and **ii**) January 2011 to April 2015, in which case an actual (written) agreement covered only the first period. However, according to the Council, the parties tacitly renewed this agreement following its lapse in December 2010, thus engaging in concerted practices for the second period. Moreover, it was of no significance that the parties had often failed to respect their mutual understanding.

While initially managing to have the second period overturned on appeal, the High Court ruled differently in 2023, upholding the Competition Council's original findings. In April 2024, Clear Channel Danmark agreed to a fine of DKK 6 million (EUR 804,473), closing the case on its part. In contrast, it is understood that AFA JCDecaux has requested the Courts to assess its part of the infringement, meaning that the Courts will now decide whether fines are justified and, if so, the appropriate level of such fines.

The Autobutler decision – case closed by a fine of DKK 7 million

Autobutler is an online platform connecting car owners with auto workshops, allowing car owners to receive quotations for all types of auto repairs and service checks. Based on collected evidence, the Danish Competition Council concluded in June 2023 that prices had been coordinated between the participating workshops, not in general, but for nine services, including various standard service checks. According to Autobutler, this was part of short-term campaigns, but the Danish Competition Council did not accept this. Neither did it accept, as suggested by Autobutler, that the alleged price coordination only entailed a maximum price which the workshop could underbid, but not exceed. Finally, the Council rebutted that the policy had resulted in lower retail pricing, making

an exemption under Article 101(3) available.

Only the platform, aka Autobutler, was included as the Council found that this had been instrumental in bringing the coordination about. In reaching its conclusion, the Council found that the platform had concluded bilateral agreements with the auto workshops, allowing these to offer services using the platform. The platform then used this arrangement to secure a coordinated minimum price in a manner that, as a minimum, qualified as consorted practice.

Initially, Autobutler challenged the decision before the Maritime and Commercial High Court, whereas the Danish Competition and Consumer Authority sought fines imposed in addition to defending its decision. This makes the case the first to be advanced under the new system, in which cases are advanced as civil criminal cases, and the Danish Competition and Consumer Authority is in the driver's seat as the "prosecutor". However, in December 2024, a settlement was reached involving a fine of DKK 7 million (EUR 938,174). This brought a close to the case.

An organised boycott is usually a hardcore cartel

In November 2024, the Danish Competition and Consumer Authority issued a caution letter to an unspecified marketplace in the financial sector for having (allegedly) engaged in a horizontal boycott.

Based on evidence collected during a dawn raid in May 2023, the Authority had reasons to believe that an unspecified industrial organisation, in concert with some of its members, had implemented a new membership policy, including fees, directed at excluding specific undertakings from the marketplace.

Rather than rendering a formal decision, the Danish Competition and Consumer Authority issued a caution letter outlining its grievances and the obligations under Article 101. Neither names nor details are provided in the brief letter, and it must be assumed that the evidence available did not allow the Authority to proceed with a formal investigation. Usually, an organised horizontal boycott is a hardcore infringement of Article 101 warranting a formal decision and often also fines.

Sometimes, horizontal price agreements do not warrant sanctions

In June 2024, the Danish Competition and Consumer Authority issued a caution letter to some unspecified concert venues for their (alleged) price collusion.

Based on evidence collected during a dawn raid in 2023, the Authority had reasons to believe that the venues had shared sensitive information on ticket prices and renumerations of performing artists. The letter offers very little information, but based on press coverage, it is understood that the concert venues were small, local and mostly municipality-financed establishments that do not operate for profit and often rely on unpaid volunteers.

Rather than rendering a formal decision, the Danish Competition and Consumer Authority issued a caution letter outlining its grievances and the obligations under Article 101. Neither names nor details are provided in the brief letter, and it must be assumed that the evidence did not allow the

Authority either to proceed with a formal investigation or, in the alternative, it was not entirely clear to which extent the venues' activities qualified as undertakings subject to Article 101.

Article 101 and vertical agreements

The year 2024 did not offer any new cases about vertical arrangements infringing Article 101 TFEU, which is somewhat unusual. However, an old case was closed, and a caution letter was issued to an online platform. Both cases offer clues as to how to read the Vertical Block Exemption.

DG COMP files a written submission outlining its position on passive sales restrictions

In 2013, the Danish Competition Council decided that Deutz AG, a German train manufacturer, had infringed Article 101 by preventing passive sales and parallel import of spare parts for Deutz train engines. Moreover, Article 102 had been infringed by a de facto refusal to supply spare parts. The Article 102 part will be commented on subsequently below.

On appeal, the Danish High Court (2023) overturned the decision for failing to provide a proper market definition and substantiate an alleged mutual understanding between Deutz and its official Danish distributor on preventing passive sales into Denmark. According to the High Court, Deutz AG had unilaterally decided to waive its right to supply directly, which was not incompatible with Article 4, para b of Regulation 330/2010 (the former Vertical Block Exemption), However, this was overruled by the Danish Supreme Court in December 2024, as the Court found that the Danish Competition Council enjoyed a margin of appreciation subject to a more limited judicial review. The market definition was, therefore, not incorrect, as held by the High Court, making Regulation 330/2010 inapplicable due to Deutz's 100% market share. Moreover, DG COMP had filed a written submission on passive sales restrictions under Article 4, para b of Regulation 330/2010, cautioning against a possible narrowing of Article 4, para b. However, the brief did not influence the outcome of the case before the Danish Supreme Court, as this reached its conclusion regarding Article 101 by identifying a mutual understanding directed at restricting passive sales. As this was anti-competitive by object and clearly not covered by the block exemption, Article 101 had been infringed.

Notwithstanding that the written submission did not influence the case, it is notable. The written submission is the first one in a Danish case and indicates how DG COMP reads Article 4, para b of Regulation 330/2010. Regulation 330/2010 has been replaced by Regulation 2022/720, but Article 4, para b has been re-enacted, and DG COMP refers to this in its written submission, making the comments forward-looking.

In its written submission, DG COMP explained how the Danish High Court had made a mistake by confining itself to the direct wording of article 4, para b, and the direct arrangement between the parties to the distribution agreement. This resulted in a problematic circumvention of Article 4, para b, where the supplier undertook to restrict passive sales of other distributors but not the direct contract party. This was not the intention when drafting and adopting the block exemption. Accordingly, DG COMP subscribes to a broad reading of passive sales restrictions, making any arrangement directed at this outside Regulation 2022/720 an object restriction. In contrast, the

Danish High Court had applied a more textual reading and, while ruling differently, the Supreme Court did not distance itself from this directly.

The Supreme Court ruling closes the case unless some victims seek compensation.

The use of price parity clauses

In November 2024, the Danish Competition and Consumer Authority issued a caution letter to an unspecified online platform for using parity clauses in defiance of Article 101.

Parity clauses may be a) narrow, regulating the undertaking's direct sales of the covered products, or b) wide, regulating sales over competing platforms or channels. In contrast to narrow, wide parity clauses are precluded from the Vertical Block Exemption (Regulation 2022/720), see Article 5(1), para d, if the benefiter is an online platform. Moreover, the Vertical Guidelines, recital 360, single out wide retail parity clauses as particularly problematic.

According to the Danish Competition and Consumer Authority, the parity clauses in the case at hand were both wide and narrow and even included retail sales. They, therefore, fell short of the Vertical Block Exemption and most likely also infringed Article 101. However, no formal decision was rendered on the matter, and while the first part is undeniably correct, the latter may be accepted only following a substantial analysis. Therefore, it must be assumed that the Danish Competition and Consumer Authority was unwilling to perform the analysis required to allow the case to proceed, preferring to close it by way of a caution letter.

Abusive behaviour

The year 2024 did not offer any new case on abusive behaviour under Article 102, but the Danish Supreme Court upheld the ruling in an old case. In this case, the Court even limited the legal review of an NCA decision to situations of significant mistakes. Moreover, an interesting case about excessive pricing may be underway.

Only a limited legal review is available in Article 102 cases

In 2013, the Danish Competition Council decided that Deutz AG, a German train manufacturer, had infringed Article 101 by preventing passive sales and parallel import of spare parts for Deutz train engines. Moreover, Article 102 had been infringed by a de facto refusal to supply spare parts.

On appeal, the Danish High Court (2023) overturned the decision for failing to provide a proper market definition, substantiating Deutz as dominant. However, this was overruled by the Danish Supreme Court in December 2024, as the Court found that the NCA enjoyed a margin of appreciation subject to a more limited legal review. The market definition was, therefore, not incorrect, as held by the High Court, making it correct when the Competition Council in 2013 identified Deutz as having a market share of 100%.

The Supreme Court ruling closes the case unless some victims seek compensation.

Case on excessive pricing for ferry services underway

An Article 102 case on potentially exploitative charges for using the ferry connection between Rødby, Denmark, and Puttgarden, Germany, has been opened.

Little is known, but the ferry operator involved had received a Statement of Objection (2020), indicating it as potentially dominant. Moreover, a market study was performed by the Danish Competition and Consumer Authority in 2021 to define the relevant market. In this study, 1,742 customers replied to questions on their reliance on the operator between 2019 and 2021. The operator wanted access to the raw data, claiming the analysis to be manifestly flawed, but the Authority wanted to provide aggregate data only. This decision was confirmed by the Competition Appeals Board in 2022 and, usually, the Appeals Board award would be published, including the operator's name. However, the operator opposed the latter, but neither the Competition and Consumer Authority (2022) nor the Competition Appeals Board (2023) agreed. The operator challenged the publication matter before the Maritime and Commercial High Court, which, however, rejected the claim in September 2024.

As already indicated, very little is known about the underlying case. However, the case appears to involve excessive prices. This is itself unusual. Compounding this further, the operator is not a monopolist, as alternatives remain available. Usually, excessive pricing cases are confined to undertakings benefiting from special (legal) rights or, in other ways, being in a privileged position. This does not invalidate the case, but it does suggest an unusual case whose result we should be looking forward to.

Final curtain on the Totalkredit-mortgage credit cooperation

In September 2024, the Danish Competition Council accepted commitments from Nykredit on the Totalkredit-mortgage credit cooperation. Under the terms of the cooperation agreement, the affiliated banks cannot leave without forfeiting already-earned bonuses and payments. Therefore, the Danish Competition and Consumer Authority had concerns, more specifically, that the arrangements tied up a large portion of the market as Nykredit (including Totalkredit) had market shares above 50 %.

Totakredit was originally an independent mortgage credit cooperation, but it was acquired by Nykedit in 2003. The acquisition was cleared by the Danish Competition Council subject to remedies. Nykredit's position, therefore, appears to be that the extent the Totalkredit-mortgage credit cooperation is, or was, problematic, this was addressed during the merger approval. Moreover, in the subsequent years, adjustments were made, sometimes after legal disputes between Nykredit and the Danish Competition and Consumer Authority on the proper reading of the original commitments.

In September 2024, a renewed commitment agreement was reached. This time to close an Article 102 investigation into Totalkredit-mortgage credit cooperation. Under the commitment agreement, the affiliated banks can freely leave the Totalkredit-mortgage credit cooperation without forfeiting already-earned bonuses and payments. Moreover, they can henceforth distribute mortgage credit from competing mortgage institutions, provided these are not affiliated with a bank. Currently,

there are no mortgage institutions not affiliated with a bank when it comes to private consumers, but the first commitment will, in principle, open the market.

In principle, the commitment agreement should bring closure to a long-lasting Nykredit-saga. However, in December 2024, Nykredit launched a bid to acquire one of the banks in the Totalkredit-mortgage credit cooperation (Spar Nord), which might result in an adjustment to ensure approval of the acquisition.

Merger control

The Danish Competition Council has primary responsibility for the Danish control of mergers exceeding the turnover thresholds, i.e. approval (in some cases with commitments to solve competition concerns identified by the Authority) or prohibition. The Competition Council is supported by the Competition and Consumer Authority handling cases and approving mergers processed under the simplified procedure.

On 1 July 2024, new amendments to the Danish Competition Act came into force, including amendments introducing new rules on merger control, i.e. in the shape of a so-called “call-in option”. This new call-in option allows the Danish Competition and Consumer Authority to demand the notification of a merger even though the annual turnovers of the participating undertakings are below the thresholds. For the Danish Competition and Consumer Authority to demand notification of a merger of undertakings whose annual turnovers are below the relevant thresholds triggering filing obligations to the Danish Competition and `, the two following cumulative conditions must be met:

- The combined annual turnover of the participating undertakings in Denmark amounts to at least DKK 50 million, and
- The Danish Competition and Consumer Authority assesses that a risk exists that the merger will impede effective competition appreciably, particularly as a result of the creation or strengthening of a dominant position.

According to these new rules, the Danish Competition and Consumer Authority must demand the notification of a merger within 15 working days after the Authority has been informed of the merger. In any case, the Authority cannot demand a merger to be notified later than three months after a merger agreement has been entered into, a takeover bid has been published or a controlling interest has been acquired (calculated from the earliest of these dates). However, if “special circumstances” exist, the Authority may still demand that a merger be notified up to six months after completion of such merger. According to the explanatory notes to the bill, special circumstances may inter alia include situations where the merging parties have kept the merger agreement secret.

In 2024, 71 mergers were screened by the Danish competition authorities. Of the 71 mergers, 66 were notified in 2024, and five of the mergers were notified in 2023 but considered final in 2024. 62 mergers were approved by the Danish Competition Council or the Danish Competition and Consumer Authority in 2024, two of the mergers were approved in Phase II, and nine of the notified mergers were still being processed by the authorities at the end of the year, one of which is included in Phase II.

The latter Phase II merger involves the Danish grocery chain Salling Group A/S's acquisition of 35 retail store properties from Coop Danmark A/S. The Phase II investigation was opened on 7 January 2025 which means that the Danish Competition Council must make its decision in the case no later than on 7 April 2025.

The 71 mergers screened in 2024 represent a small decrease in mergers from 2023 where 75 mergers were screened by the Danish competition authorities.

Moreover, the general impression is still that the pre-notification phase of merger control (the phase of communication between the representatives of the undertakings and the Authority ahead of making the final notification) is somewhat affected by the high caseload leading to longer overall case handling. However, it has been the practice of the Danish Competition and Consumer Authority to handle much of the case work in the pre-notification phase, leading to a longer pre-notification phase, but a shorter phase after the final notification.

Only two of the mergers approved in 2024 had been extended to a Phase II investigation. These two mergers will be further described below with links to the relevant decisions.

Norlys's acquisition of Telia Company AB's Danish activities

On 28 February 2024, the Danish Competition Council approved Norlys's acquisition of Telia Company AB's Danish activities "Telia DK". Telia DK is part of the Swedish/Finnish-owned company Telia Company AB. The company's business includes wholesale and retail sales of mobile telephony as well as retail sales of fixed network broadband and TV solutions. Norlys consists of the Danish company Norlys A.m.b.a. and several underlying companies. Norlys owns fibre infrastructure and provides products to wholesale markets for fixed broadband solutions.

The transaction included Norlys's acquisition of the sole control of Telia DK. The transaction was notified to the Danish Competition and Consumer Authority on 2 October 2023, and the notification was considered complete on 13 November 2023.

On 18 December 2023, a Phase II investigation was opened as the Danish Competition and Consumer Authority had initially identified competition concerns. The Authority was concerned that Norlys's potential sale of mobile telephony as well would make it more attractive for Norlys to use its strong position in fibre infrastructure to limit competition in broadband sales.

However, the in-depth investigation in Phase II showed that the transaction would not appreciably harm the affected competition as, i.a., i) Norlys committed to providing external service providers with access to its entire fibre network in Denmark on fair and non-discriminatory terms, ii) the market for retail electricity sales in Denmark is characterised by low entry barriers, allowing competitors to enter the market through acquisitions, new establishments or cooperation agreements, and iii) Norlys's market shares in the relevant markets were not significant enough to foreclose competition.

The Danish Competition Council concluded that the commitments provided by Norlys would ensure that the transaction would not significantly impede effective competition. The approval of the transaction was conditional upon the implementation and fulfilment of the commitments.

Additionally, the Danish Competition Council noted that Norlys's market share in the retail market for broadband connections to private customers and small undertakings was estimated at between 20-30%, whereas its share of the market for retail sales of electricity to private customers and small and medium-sized undertakings was between 10-20%. These relatively modest market shares further supported the conclusion that Norlys would not be able to use its market position to foreclose competition.

Kingspan Insulation ApS's acquisition of TreeTops Holding ApS

Kingspan Insulation ApS's acquisition of TreeTops Holding ApS was notified to the Danish Competition and Consumer Authority on 13 December 2023, and the notification was considered complete on the same day. The transaction involved Kingspan Insulation ApS acquiring sole control of TreeTops Holding ApS and its subsidiaries, TreeTops AB and TreeTops Trading A/S. The Danish Competition and Consumer Authority opened a Phase II investigation on 22 January 2024 due to potential competition concerns that the merger would lead to price increases and limit the range of products in this particular market.

The acquisition was approved 24 April 2024. The approval was based on the assessment that the commitments provided by Kingspan would address the competition concerns identified during the investigation. Specifically, Kingspan committed to divesting TreeTops's business within the sale of wood wool panels for suspended ceilings, which would eliminate the horizontal overlap between the parties' activities in this market.

The Danish Competition and Consumer Authority's investigation revealed that the transaction could significantly impede effective competition in the market for the distribution of wood wool panels for suspended ceilings in Denmark. Before the merger, Kingspan, through its subsidiary Troldtekt A/S, held a market share of at least 70-80%, whereas TreeTops held a market share of 5-10%. Post-merger, Kingspan would have a combined market share of 75-90%. The Authority was concerned that this would lead to higher prices and reduced competition, as the combined entity would have significant market power.

To address these concerns, Kingspan proposed a commitment to divest TreeTops's business relating to the sale of wood wool panels for suspended ceilings. This divestment would include existing customer contracts, contact information, orders relating to future deliveries and historical data on previous purchases. Additionally, Kingspan agreed to grant a 10-year licence to use the Fibrotech trademark to the buyer of the divested business. The Danish Competition and Consumer Authority conducted a market test of the proposed commitments and found that the divested business could be operated as a viable and competitive entity by a suitable buyer.

Kingspan nominated DEPO Holding ApS as the buyer of the divested business. DEPO Holding ApS, owned and operated by Dennis Povlsen, was deemed a suitable buyer by the Danish Competition and Consumer Authority.

The Danish Competition and Consumer Authority concluded that the commitments provided by Kingspan would effectively address the competition concerns raised by the merger. The divestment of TreeTops's business within the sale of wood wool panels for suspended ceilings would remove the horizontal overlap between the parties and, according to the Danish Competition Council, ensure that the transaction would not significantly impede effective competition.

Public enforcement, including punishment for infringements

As for 2024, two cases concerning public enforcement merit comments. The first pertained to the requirement of initiating inspections (dawn raids), as the matter in 2024 was logged before the Danish Supreme Court. The second involved the publication of information on a pending investigation.

Out of scope during a dawn raid – the ØnskeBørn inspection ruling

In November 2020, the Danish Competition and Consumer Authority initiated an inspection at the volunteer retail chain *ØnskeBørn*, leading to the finding of an infringement in 2023, not pertaining to illegal vertical price steering politics as outlined in the request for a warrant and as authorised by such, but pertaining to horizontal price coordination.

ØnskeBørn is a voluntary retail chain with 26 independent shops and 20 owners specialszing in toddler accessories, and ØnskeBørn's position was that the evidence collected was out of scope and had to be excluded from the case, but the Competition and Consumer Authority disagreed. A case on the matter was brought before the Maritime and Commercial High Court.

In its ruling made in September 2023, the Maritime and Commercial High Court rejected ØnskeBørn's claim and, prior to this, the Court had also rejected to suspend the case pending clarification of the out-of-scope issue. In its ruling, the Court found that a) sufficient evidence had been available to justify an inspection, and b) that it was irrelevant that this had indicated an illegal vertical RPM policy and not the horizontal price coordination uncovered later. An inspection was initiated at an early stage where the available evidence was, by definition, limited and fragmented. Still, the Court found that it had the power to review the matter. ØnskeBørn had not challenged the original warrant authorising the inspection and, thus, the Danish Competition and Consumer Authority argued that the matter could not be reviewed, but the Court did not accept this.

In February 2024, special permission was granted to bring the case before the Danish Supreme Court. In December 2024, the Supreme Court rejected a request to refer questions to the European Court of Justice on "out of scope" in EU competition law. Expectations are that the case will move forward in 2025.

Publication of the identity of an undertaking subject to a pending investigation

An Article 102 case on potentially exploitative charges for using the ferry connection between Rødby, Denmark, and Puttgarden, Germany, has been opened.

The Article 102 element is elaborated on in detail above. However, the matter of publication also warrants a few comments, as the operator challenged being identified. Usually, awards from the Appeals Board are published, including the operator's name. However, the operator opposed the latter, but neither the Competition and Consumer Authority (2022), the Competition Appeals Board (2023) nor the Maritime and Commercial High Court (2024) agreed thereto.

The case illustrates that only commercially sensitive data may be deleted in Danish competition law, and this does not include the name of the undertaking subject to a pending Article 102 investigation.

Private enforcement, including compensation

In 2024, no material cases were advanced regarding private competition law enforcement.

Legislative reforms in 2024

In 2024, the Danish Parliament adopted an overhaul of the existing rules, which took effect on 1 July 2024. Below is an outline of the three main reforms.

First and foremost, the reform empowers the Danish Competition and Consumer Authority to call in mergers that do not meet the turnover thresholds to carry out a full review. As detailed above in Chapter 4, only mergers with a combined Danish turnover exceeding DKK 900 million and two parties with a minimum turnover in Denmark of DKK 100 are usually subject to a notification obligation. The reform introduces a discretionary call-in option that may be used in respect of transactions not meeting the thresholds, provided that the Danish turnover exceeds DKK 50 million. This threshold may be met combined or by the buyer alone. The option is directed at preventing so-called “killer acquisitions”, in which a dominant undertaking, typically in the tech or pharma industry, acquires nascent competitors pre-emptively. Such rules already exist in the telecommunications sector and are now extended to the entire economy. According to the preparatory work, the Danish Competition and Consumer Authority expects to use the option once or twice on an annual basis as a maximum.

Secondly, the reform introduces a new market investigation tool inspired by the powers vested in the UK and German enforcers. Under this rule, enforcers may open an investigation, not to identify infringements of Articles 101 or 102, as usual, but to identify structural or behavioural impediments to competition that may then be ordered remedied. Essentially, the provision allows the Danish Competition and Consumer Authority to pursue cases without identifying an anti-competitive agreement covered by Article 101 or a dominant position covered by Article 102. The Authority needs to seek prior approval from the Competition Council and, thus, the tool is not intended to replace a traditional infringement case. Here, the Council will not be involved until much later, and it must be assumed that only persistent and well-documented competition problems in a sector may warrant the opening of a case under the proposed tool. Regardless, the new tool does appear to vest very far-reaching powers in the Danish Competition and Consumer Authority, and it will be interesting to see how such powers will be administered.

Thirdly, the reform significantly increases the levels of fines. Under the former system, fines were calculated using standard principles linked to the infringement with a maximum of 10% of global turnover. From now on, fines will be calculated using the same principle as in the DG COMP case. This involves levying a basic fine of 0- 30 % of the turnover in the market where the infringement occurs. This is then to be multiplied by the number of years in which the infringement has taken place, including adjustments. If pertaining to hardcore restriction, the adjustment may, e.g., be 15-25%, and a further adjustment may be justified if the turnover of the undertaking outside the

affected market is very high or if the infringement was very profitable. However, a maximum of 10% will still apply. Moreover, the principle does not apply to procedural infringements or to natural persons. In Denmark, unlike in the EU, the latter may be punished by way of fines or imprisonment.

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