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THE DANISH COMPETITION AUTHORITIES ASSESSMENT OF MINIORITY SHAREHOLDINGS AND CROSS-OWNERSHIP BETWEEN COMPETITORS

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Introduction

The Danish Competition Authority has recently published an article regarding cross-ownership of companies in Denmark, which illustrates the Danish Competition Authority's continued focus on the effects of cross-ownership and its adverse effects on competition on the market. The article refers to empirical studies made in the US which show that horizontal cross-ownership in specified industries has caused significantly increased prices for the consumers and a diminished range of products on the relevant market. Although the possible competitional challenges caused by cross-ownership is recognized, the Danish Competition Authority does not recommend any changes to the existing regulation.

The Danish Competition Authority defines horizontal cross-ownership as two competing companies with mutual relations through its ownership, e.g. because they have the same owner in the form of a natural or legal person or owe shares in each other. Vertical cross-ownership is defined as two companies that are in a customer and supplier relationship having the same owner in the form of a natural or legal person.

The Danish Competition Authority illustrates the extent of cross-ownership in Denmark, including the degree of cross-ownership divided into industries. According to the article, trading, industry and energy supply are the industries with the highest concentration of cross-ownership, with the market for wholesale trade of beer, mineral water, and fruit and green juices having the ultimately highest concentration of cross-ownership.

In addition to the analysis on cross-ownership in Denmark, the article accounts for a method to measure the degree of horizontal cross-ownership in an industry; the modified index for market concentration (MHHI). Compared with the typically used Herfindahl-Hirchman index (HHI), which is used to measure the market concentration on a relevant market, the MHHI index is more complex. MHHI is an indicator of the market concentration taking cross-ownership into consideration. The higher the concentration is on a market, the higher the risk that a horizontal cross-ownership may impede the effective competition. In general, the MHHI is considered as high when it is above 400.

As regards the effects of cross-ownership, the article illustrates how cross-ownership can have an adverse effect on the competition on a market. It illustrates that the higher the concentration is on a market, the higher risk that cross-ownership may impede the effective competition on the market, for example as the companies will compete less intensively by raising their prices of the product or reduce their range on products, both risks that might end up affecting the consumers negatively.

The Competition Authority does not submit any recommendations.

Will Cross-ownership have an Effect on the Assessment of Mergers in the Future?

Previously, the Danish Competition Authority has accounted for how an acquisition of minority shareholdings can impede the effective competition on a market, especially focusing on the adverse effects when competitors owe minority shareholdings in each other.

However, under the Danish merger control regime mergers are subject to merger control only when a merger entails change of control and the companies’ turnovers exceed certain threshold values.

Neither the Danish nor the EU merger control regime regulates the acquisition of minority shareholdings.

In Denmark, the Danish Competition Authority may only take action against non-controlling minority shareholdings if is it deemed that there has been an infringement of the prohibition on anti-competitive agreements or the prohibition on abuse of a dominant positions. For this reason, it requires an individual assessment to determine whether an acquisition of a minority will infringe the prohibition on anti-competitive agreements, and an acquisition of a minority stake and/or the resulting behavior of such acquisition must constitute abuse before the Danish Competition Authority can intervene.

The analysis from the Danish Competition Authority could indicate that in the future, the Danish Competition Authority would be more aware when assessing a merger of two companies which are in an industry with a high concentration of horizontal cross-ownership. However, there is no clear conclusion as to whether the Danish Competition Authority is actually looking into changing their practice for the assessment of mergers.

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If you have any questions or require further information regarding any of the above, please do not hesitate to contact us:

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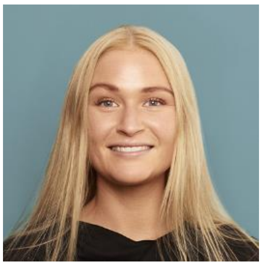

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