



NEWLY AMENDED DANISH COMPETITION ACT STRENGTHENS THE DANISH COMPETITION AND CONSUMER AUTHORITY’S OPTIONS TO INVESTIGATE ALLEGED INFRINGEMENTS OF THE ACT AND INTRODUCES A NEW REGIME FOR ISSUING CIVIL FINES

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Introduction

The new Competition Act is the result of the implementation of the European ECN+ Directive (the “Directive”). The general purpose of the Directive is to strengthen national competition authorities’ possibility to enforce EUF, Article 101 on the prohibition against restrictive practices and Article 102 on the prohibition against fraudulent use of a dominant position.

The Directive sets out minimum requirements to the national authorities’ possibility to enforce Articles 101 and 102. During the legislative process, the proposal has been through

consultation procedures and has been subject to objections from the market, especially due to concerns about the legal rights of the companies.

In addition to introducing minimum requirements in accordance with the Directive, the Act has also undergone a general update. Below are some of the main amendments to the new Competition Act.

Implementation of a Civil Fine System

Until now, all cases related to competition law infringements and potential fining of a company have been handled as criminal cases. Another baseline assumption has been that decisions made by the Competition and Consumer Authority (the “Competition Authority”) may not be handled by the courts before the case has been reviewed by the Competition Council.

Furthermore, for civil cases in which competition law is highly relevant, such claims are to be handled by the Maritime and Commercial Court, except if otherwise agreed among the parties. Criminal cases regarding competition law infringements are currently handled by The Public Prosecutor for Special Economic and Public Crime (“SØIK”).

One significant change to the current regime is that the parties may decide whether they wish to have the case reviewed by the Competition Council or taken directly to the courts.

Further, under the new regime the Competition Authority may bring claims against companies and groups of companies to the courts as a civil case in order to be able to issue civil fines. Criminal cases will remain under the authority of SØIK.

The change implies that the Competition Authority may bring cases on competition law infringements before the Danish courts, which means that any company may be imposed civil fines by the court within the frame of civil law and under observation of the legal rights according to civil and EU law.

As this change of procedures will lead to new procedures in the Competition Authority, the Competition Authority has established a new division named the Office of Competition Law, Investigations and Litigation (in Danish: “Center for Konkurrencejura, Efterforskning og Proces”) to handle such new matters.

There is no intention to change the size of the fines.

Extension of the Competition Authority’s Powers

Under the new regime, the Competition Authority will have extended power and authority to investigate possible competition law infringements.

The new rules provide that the Competition Authority may require information and documentation, and for individuals to participate in interviews. Under certain circumstances, the Competition Authority may perform dawn raids. The possibility to perform a dawn raids, however, only applies to companies. Accordingly, if the subject of the investigation is a natural person, SØIK will remain the only authority with the power to search their private home.

Additional Amendments

In addition to the above, parent companies are potentially more at risk to be considered liable for infringements committed by a subsidiary, such as the subsidiary's infringement of Articles 101 and 102, provided that the parent company and the subsidiary are considered as one financial unit.

To ensure that the Competition Authority acts independently, the new regime sets up regulation for employees of the Competition Authority and members of the Competition Council, meaning that such employees or members are prevented from changing positions so as to continue to engage in the same matter, e.g. as a legal representative, if such change of position implies a risk of a conflict of interest. Violations of this provision may be fined.

The amended Act will come into force 4 February 2021.

Our Comments

The amendments constitute comprehensive procedural changes to the procedures as they have been known thus far.

The new regime implies that the Competition Authority will no longer need to involve the police to issue fines as the Competition Authority will be able to take the infringing company directly to court.

Part of the intention of this new process is to make it more effective and to avoid involving more authorities than necessary. It is, however, unclear if this will be the case.

The new rules mean that civil cases and criminal cases will be handled according to two different respective procedures. Criminal cases will likely have to await the results of any relevant civil case, which could lead to a prolongation of the duration of such cases.

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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