



CONCURRENCES NORDIC DINNER: IS THERE A PLACE FOR A MARKET INVESTIGATION TOOL IN THE NORDICS?

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KEY TAKEAWAYS



Jan Yngve Sand (Partner, RBB Economics, Oslo) moderated the discussion. The exchanges focused on the proposed introduction of Norway's new market investigation tool, its necessity and its broader implications in Europe. Key points regarding the tool include the authority's ability to initiate investigations in markets with limited competition, the potential for mandated remedies, and the possibility of appealing decisions. The public consultation has put into light some concerns, particularly regarding the procedural aspects and potential uncertainty

Tina Søreide

Director General, Norwegian Competition Authority, Bergen

Norwegian Competition Authority's case portfolio overview

- A reduction in the number of merger notifications received this year compared to the previous year is noted. The Authority's dedication to efficiency is emphasised, with 90% of notifications cleared within 25 days by September's end.
- There is a directed focus on specific markets, particularly those significantly influencing consumers, such as:
 - > The banking sector (e.g., Nordea's proposed acquisition of Danske Bank's private portfolio).
 - > The aviation sector (e.g., Norwegian intent to acquire Widerøe).
 - > The grocery sector.

Ingrained principles of the Authority

- Objectiveness and professionalism are intrinsic principles within the Authority's enforcement. Internal quality control and judicial review are integral components of the Authority's processes.
- Internal initiatives are taken to enhance enforcement efficiency, including settlements, sharper incentives for leniency and self-reporting promotion. Moreover, organisational upgrades are taken to foster more sophisticated analysis, including the establishment of a hub for data and digital analysis.

- The importance of competition authorities' independence is stressed, fostering a different competence compared to Parliamentary regulations.
- Close cooperation with Nordic countries has a positive impact on efficiency. A Nordic agreement is established allowing investigative teams to collaborate across borders.

Emerging challenges from the digital sector

- Innovative price coordination facilitated by big data and self-colluding algorithms is identified as a higher risk. Indeed, there is a competitive advantage derived from using and sharing information, particularly on digital platforms.
- The unexpected development of market dominance facilitated by digital platforms in the sales of goods and services is also acknowledged.
- In response to these challenges, it is imperative to ensure that competition control is robust and adaptive, with a focus on continuous improvement.

Global perspectives

- There is an increasing complexity and resource consumption of competition related matters across Europe. Particularly, a shift in market dynamics, where vertical mergers and new theories of harm gain significance is observed.
- The importance of moving beyond static price analysis and embracing theories of harm focused on future narratives is stressed. A dynamic market analysis to predict future developments is advocated for.

> Marie de Monjour drafted the following synthesis for Concurrences. The views expressed in this presentation are those of the speakers and do not necessarily represent those of the institutions to which they are affiliated.



Market investigation tools

- There is a need for structural reforms to address concentration issues and market failures, especially in the absence of mergers or suspected infringements. The UK is an example of a success of such tools, creating substantial consumer savings.
- Concerns are raised about potential unpredictability for firms with market power and the impact on innovation:
 - > There is a need to balance potential undesired consequences with the benefits of introducing such tools.
 - > This tool will be used in markets where it is obvious that it is needed.
 - > Appeal procedure and collaboration with companies around remedies can help appease the parties' concerns.
- It is clarified that the consideration of market investigation tools predates specific issues in the grocery sector, originating from discussions on challenges posed by digitalization.
- As this tool is resource-intensive, a dedicated separated unit, with analysts, economics and lawyers would be ideal, provided that the necessary resources are provided.

Jakob Hald

Director General, Danish Competition and Consumer Authority (DCCA), Copenhagen

Danish market challenges

- There is a concern of the erosion of competition in Denmark, evidenced by increasing market concentration and increasing levels of markups and profits.
- It is suggested that traditional tools may not be sufficient to reverse the trend. The market investigation tool has potential as a robust instrument.
- Digitalisation raises challenges such as emerging business models, automatic price setting, and the anticipated role of machine learning and artificial intelligence. Here, the market investigation tool can be an effective way to address those issues.

Implementing a market investigation tool in Denmark - The UK's takeaways

- There has been a discussion within the DCCA and with international counterparts, including the CMA.
- While being resource-intensive, the UK's successful implementation in various sectors (tech, energy, banking, airports) recommends the adoption of a market investigation tool in Denmark.
- The annual CMA's publication assessing the impact on consumer gains revealed findings indicating that the tool's benefits surpass those of merger control and traditional competition enforcement.
- The proposed tool, because of its flexibility, has the ability to adapt to target specific market failure once identified.
- The market investigation tool can address competition problems that characterise a whole market – not limited to behaviour of individual companies. Should be seen as an extension of the power to conduct market studies – not an extension of the power to enforce the prohibition articles of competition law.

Addressing professionals' concerns around the market investigation tool

- It is acknowledged that the tool represents a new and distinct challenge compared to traditional competition cases.
- There is a need to substantiate that specific conduct is genuinely harmful to competition, which weighs on regulatory authorities. A thorough effect type analysis is necessary.
- There is an intent to establish a predictable regime, providing a degree of anticipation for involved parties. Transparency is key (e.g., clarifying the initiation and target) in the market investigation procedure.
- Proportionality in remedy design is necessary. Collaborative development of remedies through a dialogue with companies, fostering a cooperative approach, is expected. Moreover, the importance of caution in implementing remedies is stressed, in order to avoid ineffective interventions that fail to enhance market dynamics.
- An appeal mechanism will be introduced, providing a safeguard for companies.