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**Directorate for Financial and Enterprise Affairs COMPETITION COMMITTEE** 

#### ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN DENMARK

-- 2011 --

This report is submitted by Denmark to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 13-14 June 2012.

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## 1. Changes to competition laws and policies, proposed or adopted

## 1.1 Summary of new legal provisions of competition law and related legislation

- 1. 2011 saw no new legal provisions regarding the Danish competition rules.
- 2. Two markets took the final steps towards full liberalisation on 1 January 2011. In the postal market, Post Danmark's exclusive right regarding distribution of letters with a weight below 50 grams ended. In the book market, a gradual liberalisation process was completed when a trade agreement between publishers and booksellers expired.

### 1.2 Other relevant measures, including new guidelines

- 1.2.1 Government committee on the competition legislation.
- 3. In 2009, the government appointed a committee with a mandate to assess:
  - whether there is a need to strengthen the Danish Competition and Consumer Authority's information and guidance regarding the competition rules in order to ensure compliance and prevent breaches of the Competition Act,
  - whether the different administrative procedures in competition cases can be organized more effectively and with the least inconvenience possible for the involved undertakings, and
  - whether the possibility of prison sentences in cartel cases will strengthen the enforcement of the Competition Act
  - whether an increase in the level of fines will strengthen compliance with the Competition Act
- 4. The committee carried out a substantial part of its work during 2011 and submitted its report including its recommendations on 10 April 2012. The report contains several recommendations to strengthen compliance and enforcement of competition law in Denmark. The committee agreed that the information and counselling efforts of the Danish Competition and Consumer Authority (DCCA) should be strengthened, and that the dialogue between the Authority and companies in competition cases intensified. Consequently, the DCCA will increase the number of hearings undertaken in larger competition cases and work to intensify dialogue and co-operation with businesses.
- 5. A majority of committee members recommend that the level of fines for violation of the Competition Act should be raised significantly and to introduce prison sentences of up to six years in cartel cases.

### 2. Enforcement of competition laws and policies

# 2.1 Action against anticompetitive practices, including agreements and abuses of dominant positions

6. On behalf of the Danish Competition Council, the Danish Competition and Consumer Authority carries out the preliminary investigations in different competition cases, e.g. through dawn raids, interviews, and requests for information. On the basis of the investigations, the DCCA can decide either: a) to dismiss the case, b) in minor cases decide the case, c) in major cases to present the case to the Danish Competition Council, or d) to hand over the case to the Public Prosecutor for Serious Economic Crime for criminal enforcement. The Public Prosecutor decides if there is enough evidence to bring the case before the criminal courts.

- 7. The Danish Competition Council has the power to: a) note an infringement, b) make an order to bring the infringement to an end, or c) make a commitment decision. The Danish Competition Council has no power to impose fines. Fines for breaches of the Competition Act can only be imposed by the criminal courts.
- 8. Decisions made by the Danish Competition Council are administrative sanctions, while fines imposed by courts on behalf of the Public Prosecutor are criminal sanctions.
- 2.1.1 Summary of activities of competition authorities and courts
- 9. The DCCA made 108 decisions in 2011 and the Competition Council decided eight cases. Of the eight cases, one case concerned abuse of dominance, two concerned illegal agreements, three decisions concerned public aid, and two concerned mergers (one notified merger was approved with remedies, and in one case a commitment was revised).
- 10. All of the eight decisions by the Competition Council where assessed to have at direct effect on the market. A decision by the Competition Council is assessed to have a direct effect on the relevant market if the Competition Council makes an order to bring the infringement to an end, approves remedies, or prohibit mergers.

Table 1. Decisions by the Competition Council and Courts

	Overall	With direct effect
<b>Competition Council decisions</b>	8	8
Abuse of dominance	1	1
Illegal agreements	2	2
Public aid	3	3
Mergers	2	2
Approval of notified agreements	0	0
Cases handed over to the Public Prosecutor for Serious Economic Crime	5	-
Courts decisions on fines	3	-
Abuse of dominance	0	-
Illegal agreements	3	=

Note: A decision by the Competition Council is assessed to have a direct effect on the relevant market if the Competition Council makes an order to bring the infringement to an end, approves remedies, or prohibit mergers.

- 11. In 2011, Danish courts imposed fines in three cases. All of these concerned illegal agreements.
- 2.1.2 Description of significant cases, including those with international implications.
  - <u>Customer sharing in redistribution of unaddressed mail between Mediecenter Danmark A/S, and each of Mediabroker, Carat, IUM, and OMD</u>

On 25 May 2011, the Danish Competition Council (DCC) issued a decision concerning customer sharing agreements.

The case concerns four horizontal and separate, yet parallel, customer sharing agreements between Mediacenter Danmark A/S (MCD) and (1) Mediabroker A/S and GroupM (Mediabroker), (2) Carat Danmark A/S (Carat), (3) Initiative Universal Media A/S and MediaPrint ApS (IUM), and (4) OMD Danmark A/S (OMD) respectively, which were initiated in

2007. Mediabroker, Carat, IUM, and OMD are all media corporations and are all subsidiaries of international companies.

The three customer sharing agreements between MCD and each of Mediabroker, Carat and IUM involves inter alia, conditions setting out (1) a mutual ban on active sales to the parties' exclusive customers, (2) that MCD may only contact the other undertakings' customers subject to prior accept from the respective other media corporation, (3) surplus sharing in re-conflicted customers (i.e. when MCD or one of the media corporations obtains an order from the other party's exclusive customers), and (4) cool off periods; i.e. covenants not to compete on exclusive customers for a duration of 12 months after the expiry of the customer sharing agreement.

The fourth customer sharing agreement between MCD and OMD involves inter alia, conditions setting out (1) a ban on MCD's active sales to OMD's exclusive customers, (2) that MCD may only contact OMD's customers subject to prior accept from the respective other media corporation, and (3) cool off periods; i.e. covenants not to compete on OMD's customers for a duration of 12 months after the expiry of the customer sharing agreement.

The DCC finds that it is likely that there is a relevant market for redistribution of the distribution of unaddressed mail for the end users. The DCC bases its findings on (1) the fact that the end users demand distribution of unaddressed mail, (2) the fact that the parties as well as the distributors offer the (re-) distribution of unaddressed mail, and (3) the fact that the DCC previously has found that there is a market for distribution of unaddressed mail. When the DCC defined a market for distribution of unaddressed mail it was only the distributors themselves which sold this service to the end users. The DCC finds that there is still a market for distribution of unaddressed mail. However, in this case the DCC leaves open the definition of the relevant market as the DCC finds that the market is not broader than the market for distribution of unaddressed mail for end users.

The DCC concludes that MCD, Mediabroker, Carat, IUM and OMD have engaged in customer sharing agreements which restrict competition by object and thereby infringe section 6 of the Danish Competition Act and TEUF Article 101 (1). The decision also states that the information sharing between MCD and Mediabroker, Carat, IUM, and OMD respectively supports the customer sharing agreements. Moreover, the DCC has found that the conditions for an exemption according to TFEU Article 101(3) and section 8 of the Danish Competition Act are not fulfilled.

### • <u>CPH GO, Terms of use</u>

On 21 December 2011, the Danish Competition Council decided on a case concerning an airport's application of dissimilar conditions to equivalent transactions which had as object to restrict competition.

The case regards the Danish airport Københavns Lufthavne A/S (CPH) that has built a new low cost facility with six aircraft parking stands at Copenhagen Airport called CPH Go. The new facility is a cheaper and more efficient, but also a simpler alternative to the existing facilities at the airport. Operational advantages related to the airline carriers use of CPH Go, such as a turnaround time of maximum 30 minutes and a discount of 20 DKK (€ 2.7) per passenger on passenger charges, allows for a competitive advantage.

CPH had adopted access criteria for the use of CPH Go in the Terms of use for CPH Go and had adopted a provision regarding baggage handling. The Terms of use and the provision formally treated all carriers equally. However, in reality only certain carriers could obtain access to CPH Go because of the Terms of use and the provision regarding baggage handling.

The Competition Council found that three access criteria in the Terms of Use and the provision regarding baggage handling de facto limited the use of the facility, and that this limitation was not objectively justified. The three provisions implied that:

- Carriers with transfer passengers were not allowed to use CPH Go
- Baggage containers were not allowed in CPH Go
- Only aircrafts of a certain size were allowed to use CPH Go

The Competition Council also found it discriminatory that CPH had decided that baggage from passengers/airlines using CPH Go could only be handled at an (older) facility called BF2 that could not handle transfer baggage hereby effectively blocking transfer passengers/airlines from using CPH Go. On this basis, the Competition Council found that CPH applied dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage, infringing section 11 (3), (3) of the Danish Competition Act and TEUF Article 102, (2) (c).

The Competition Council ordered CPH to revoke the access criteria regarding transfer passengers and baggage containers. Regarding aircrafts, CPH must change the access criteria so that aircrafts of the ICAO type A, B or C are allowed in CPH Go. Finally, CPH must change the provision regarding baggage handling so that transfer baggage now can be handled in CPH Go as well.

### • Værløse bymidte (Centre of the town of Værløse), state aid

The Danish Competition Council decided on 21 December 2011 that State aid granted by the municipality of Furesø to a supermarket by renting out land on favourable terms restricts competition.

In 1979, Irma – a supermarket – leased a piece of land in Værløse Bymidte (Værløse centre) from the municipality of Værløse (now the municipality of Furesø, Zealand).

The lease contract contains a provision whereby from 1987 and onwards the rental fee of the land is made dependent of the turnover of the supermarket and makes it possible for the supermarket to get a lease refund by the end of each year.

Due to this provision in the contract, the supermarket has received a lease refund every year since 1987. As a consequence, except for a single year (1991), the supermarket has paid an annual rental fee of DKK 0. The land lease contract contains a clause that obliges the supermarket to use the building as a supermarket for a period of 45 years. The contract is irrevocable until 2025, and it does not provide a legal right for any of the parties to renegotiate the terms of the contract during this period.

In the course of the case, the Danish Competition and Consumer Authority hired two independent estate agents to assess the lease contract in question. The independent estate agents concluded, that the municipality had granted the supermarket more favourable lease terms than the terms usually applied on the marked in 1979.

On this basis, the Danish Competition Council decided that the municipality of Furesø has granted state aid restricting competition to the supermarket by renting out the land on more favourable terms than the terms usually applied on the marked in 1979.

The Danish Competition Council cannot order the termination or repayment of the state aid. This is due to the fact that the parties entered into the contract before the provisions in the Danish Competition Act concerning state aid entered into force in 2000.

## • <u>Dansk Transport og Logistik (DTL)</u>, freight transport association

On 15 December 2012, the Danish City Court in Copenhagen passed sentence upon a Danish freight transport association, Dansk Transport og Logistik (DTL) for infringing section 6 of the Danish Competition Act by publishing a calculation program for freight transport by road with specific forecast of cost development. Accordingly, the City Court fined DTL DKK 400.000 (€ 55.000).

The court found that the exchange of information by DTL had as its object to restrict competition by coordinating the conduct of the members and thereby possibly unify members' prices

In fixing the fine, the court took among other things into account the gravity of the infringement and the fact that DTL is a professional organization with many members.

## 2.2 Mergers and acquisitions

- 2.2.1 Statistics on number, size and type of mergers notified and/or controlled under competition laws;
- 12. On 1 October 2010, amendments to the Danish Competition Act came into force, introducing new merger rules. With the amendment, the merger thresholds were lowered, a possibility to review certain cases according to a simplified procedure was introduced, and the time limits for phase I and phase II were prolonged. In 2011, the DCCA has dealt with 34 merger notifications under the new rules. 32 of the merger filings were approved without remedies, one was approved with remedies, and one merger filing was later withdrawn by the notifying party.
- 13. Before the new rules came into force, the number of reviews was 10-12 per year. In 2011, the DCCA has dealt with 34 merger notifications under the new rules. 32 of the merger filings were approved without remedies, one was approved with remedies, and one merger filing was later withdrawn by the notifying party.
- 14. Of the 34 reviews, 30 where treated under the new simplified procedure for approval. This means that businesses gets answers to their notification faster, and that notification can be processed with fewer resources. One of the notifications where decided by the Danish Competition Council as the initial investigations raised some concerns. In addition, the Competition Council made at decision in a case concerning a revision of a commitment.

### 2.2.2 Summary of significant cases.

• Acquisition of Nordjysk Andels Grovvareforening A.m.b.a and a number of associated companies by Danish Agro A.m.b.a. approved, subject to commitments

On 23 February 2011, the Danish Competition Council approved Danish Agro's acquisition of Nordjysk Andel and acquisition of sole control of a number of associated companies, Scanfedt A/S, Scanola A/S, Dansk Vilomix A/S, Nordic Seed A/S, Nordic Seed International A/S, Baltic Agro Holding A/S and Dan Aller Holding A/S ("the mergers").

The approval is conditional upon a set of commitments ensuring competition between Danish Agro and the company's competitors in a number of agricultural input markets.

Danish Agro is the second largest supplier of inputs to farmers in Denmark. The company is active in the feeding stuff sector with the purchase of grain and sale of animal feed, seed grain, fertilizers etc. to farmers.

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Nordjysk Andel is also active in the supply of inputs to farmers in Denmark. The company is active in the feeding stuff sector with the purchase of grain and sale of animal feed, seed grain, fertilizers etc. to farmers.

Most of the associated companies are active in markets upstream of Danish Agro, i.e. with the production and supply of inputs to companies, active in the feeding stuff sector, such as feed ingredients and seed grain.

The Danish Competition Council found that the mergers raised competition concerns in a number of affected markets in the Danish feeding stuff sector. In particular, the Council was concerned that the mergers would lead to an increased risk of coordinated effects between Danish Agro and the only other large player in the retail market, DLG. This concern was mainly based on the high – and increasing – degree of concentration in the market and the increased symmetry between Danish Agro and DLG caused by the mergers.

Also, given the vertical link between Danish Agro and the associated companies, the Council found that the mergers would lead to a risk of input-foreclosure, as a number of the associated companies are active in the supply of inputs to Danish Agro and other companies active in the Danish feeding stuff sector.

In order to address the Council's concerns, Danish Agro submitted three commitments. The commitments consist in:

- The sale of a production facility located in Roust
- The sale of a production facility located in Nordenskov
- An obligation for the associated companies to supply other feeding stuff companies and other present types of customers on similar conditions as they supply Danish Agro and the members of the purchasing society DLA Agro

The Council concluded that the commitments were suitable to remove the competition concerns identified. The sale of the production facilities in Roust and Nordenskov will be monitored by a Trustee.

## 3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies

15. The Danish Competition Authority participates in various committees to represent views on competition issues, and all new legislation are send to the DCCA for comments before the legislation is introduced before the parliament. Furthermore, the DCCA screens the governments legislative program for possible competition distortion, see below.

## 3.1 Annual screening of competition distortions in the legislative programme

16. In an effort to identify competition distortions inherent in new legislation at an early stage, the DCCA performs a screening of the government's entire legislative program for the coming parliamentary year. The authority or agency responsible for the individual bills of proposal supplies the DCCA with a brief description of the bills and conducts an initial evaluation of the bills possible risk of distorting competition.

- 17. The DCCA conducts its own evaluation of the bills' possible distortive effects on competition. The bills are divided into three sections:
  - bills that **do not** contain competition distortions or limitations
  - bills that **may** contain competition distortions or limitations
  - bills that **do** most likely contain competition distortions or limitations
- 18. If a bill falls into category 2 or 3 the authority or agency responsible for the bills of proposal is supplied with the DCCA's description of the distortive parts of the proposal in order to make the necessary adjustments. The authority or agency will typically discuss the bill with the DCCA, and the DCCA will be asked for its opinion on the bill before it is introduced before the parliament.
- 19. Furthermore, the DCCA regularly contributes to inter-departmental working parties and other forums charged with analysing existing policy and making recommendations on new policy. In 2011, the DCCA took part in work on policy in for instance the following areas: the retail sector and regulation of pharmacies.

#### 4. Resources

- 20. In 2011, the DCCA used DKK 90.2 million on competition enforcement (€ 12.1 million). In 2010, the DCCA used DKK 67.0 million (€ 9.0 million). A part of the increase in the DCCA's resources from 2010 to 2011 is explained by an increase in funds for the Authority's work regarding competition in publicly provided services.
- 4.1.2 Number of employees (person-years):
- 21. In 2011, 71 employees were occupied with enforcing competition law in the DCCA. In 2010, the number was 74.

Table 2. Employees occupied with competition law in 2010 and 2011

	2010	2011
Total	74	71
Economists	27	30
Lawyers	28	26
Other professionals	14	10
Support staff	5	5
Applied to:		
Enforcement against anticompetitive practices	30	30
Merger review and enforcement	16	14
Advocacy efforts*	23	22

<sup>\*</sup> Including staff servicing the Ministry of Business and Growth

## 5. Summaries of or references to new reports and studies on competition policy issues

### 5.1 Competition and consumer report 2011

22. In 2011, the Authority published its first Competition and consumer report following the merger between the Competition Authority and the Consumer Authority in 2010.

- 23. The report highlights the interplay between competition and consumer behaviour. It takes stock of the intensity of competition and consumer conditions as well as compliance of both competition and consumer legislation. Moreover the report takes stock of competition in publicly-provided services.
- 5.1.1 The competitive situation and consumer conditions in Denmark
- 24. The chapter underlines that effective competition and good consumer conditions are important drivers for growth and the creation of new opportunities for consumers. Effective competition contributes to the dynamic development of the business sector and ensures that consumers have access to the best products at low prices. Good consumer conditions ensure that consumers can make safe purchases, businesses compete on a level playing field, and consumers can choose the products they prefer. This enhances market efficiency and increases wealth.
- 25. Consumer conditions in Denmark have improved over the years till the present year. Consumer conditions are measured with the ConsumerConditionIndex (CCI). CCI measures consumers' assessment of transparency, confidence, and conditions for complaining in a total of 49 markets. From 2010 to 2011, the overall CCI is unchanged.
- 26. There are signs of a slight improvement in competition intensity from 2000 to 2008 (2008 is the last year with data on the intensity of competition) measured by the competition index. However, there are indications that competition worsened a bit from 2007 to 2008. In 2009, Danish price levels were 12 per cent higher among seven comparable EU countries (EU7), when correcting the prices for differences in wealth, taxes and VAT (2009 is the last year with comparable data on prices). Service prices are 14 per cent higher than the average of the EU7-countries and goods prices are 5 per cent higher. This indicates that the degree of competition in Denmark especially in services is not as vigorous as in the other EU7-countries.
- 27. In April 2011, the Danish government entered into an agreement with a range of parties in the Danish Parliament to boost Danish productivity through increased competition in the construction sector, the private service sector, and the public sector.
- 28. Competent consumers are important for effective markets. Danish consumers have good prerequisites for exploiting the market possibilities compared to consumers in other European countries. Danish consumers have better basic proficiency in arithmetic, better access to the Internet and better knowledge of six out of seven specific parts of the consumer legislation. Furthermore, Danish consumers are more inclined to change supplier than consumers in other European countries.
- 29. Danish businesses have better knowledge about the consumer legislation than other businesses in the EU7-countries, Sweden, and UK. Knowledge about consumer legislation is an important prerequisite for a good interplay between consumers and businesses in the market.
- 5.1.2 Compliance with competition and consumer legislation
- 30. Strong competition and consumer legislation, effective enforcement, and preventive effort set out the framework for a sound interplay between consumers and businesses. This contributes to increasing market efficiency.
- 31. Within the last year, the competition law has been strengthened. Also consumer legislation has been strengthened in order to strengthen competition and generate a better framework for the interplay between consumers and businesses.

- 32. In 2010, the Competition Council's scope to intervene against harmful mergers was strengthened (see also section 2.2.1). The amendment brings the Danish merger rules on level with EU's competition legislation and the countries we normally compare us with. Furthermore, consumer conditions in Denmark were improved in the areas of travel guarantee from Danish providers of car rental and flight tickets in foreign countries, assessment of loan risk, and in the area of consumer rights when businesses do not follow decisions taken by Consumer Complaints Board (in such cases consumers can turn to the bailiff's court to ensure that businesses follow the decisions).
- 33. Breach of the competition legislation may have large economic consequences for consumers, businesses, and the society as a whole. Illegal cooperation between businesses in cartels does on average lead to overcharges of up to almost 50 per cent.
- 34. There are also costs for society and consumers when consumers experience scams. If the incidence of scams towards consumers is the same as in the UK, costs associated with scams towards Danish consumers are in the magnitude of DKK 2.6 billion a year. This is equivalent to DKK 7000-8000 per scam.
- 5.1.3 Competition in publicly provided services
- 35. Competition in publicly-provided services contributes to ensuring the cost efficient production of public services and may enhance innovation in public services.
- 36. The proportion of publicly-provided services subject to competition has increased in recent years, most notably in municipalities. Competition in publicly-provided services is measured by the value of services subject to competition relative to the value of services that is liable to competition. Thus tasks undertaken by public authorities are not included in the report.
- 37. In the municipalities, 25.7 per cent of publicly-provided services were subject to competition in 2010 up from 25.0 per cent in 2009. However, large differences exist between municipalities with respect to their use of private suppliers. The share of publicly-provided services exposed to competition is less than 20 per cent in some municipalities compared to more than 35 per cent in the group of municipalities that use competition the most. It is noteworthy that competition in welfare services is less wide-spread in comparison with competition in technical services (e.g. city development and road maintenance). This suggests that increased competition in publicly-provided services might lead to an even higher level of efficiency in the public sector.
- 38. The central government authorities also exposed an increasing share of services to competition. In 2010, 26.4 per cent of the value of services was subject to competition compared to 26.9 per cent in 2009. At the regional level around 20 per cent of the value of services was subject to competition in 2010. No figures are available for 2009 on the regional level.
- 39. In the area of welfare services, competition is also reflected in an increased use of free choice of supplier by the Danish citizens. In 2010, 33 per cent of users of domestic assistance in homecare (e.g. cleaning service) chose a private supplier. This is to be compared to 28 per cent in 2007.
- 40. Finally, in 2008-2009, 21 per cent of all public procurements were subject to EU tenders. This ranks Denmark close to the EU15-average.

## 5.2 Pro-competitive consumer behaviour

41. Active consumer promotes competition, growth and prosperity. As a joint competition and consumer agency The Danish Competition and Consumer Authority has a natural interest in activating

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consumers. In 2010, the Authority did a study on consumer behaviour in six Danish retail markets (banks, auto repair, groceries, real estate agents, consumer electronics and pensions), and a report was made public on 23 March 2011. The study consisted of three parts:

- A description and definition of "active consumers"
- A qualitative analysis with 10-13 personal interviews in each of the six markets
- A quantitative survey with 1,000 respondents in each of the six markets
- 42. Besides defining how consumers can contribute to competition and thereby to growth and prosperity, the study looks into three main areas in each of the six markets:
  - Consumer drivers (motivation) for being active
  - The tools that consumers use in their search for the best possible product at the lowest possible price
  - The barriers that hinder or reduce consumers ability or motivation to be active
- 43. The final report consists of a description of "active consumer behaviour" and six chapters describing the different drivers, tools and barriers in each market. Furthermore the market specific chapters suggest policy that can help reduce the barriers that consumers encounter.

### 5.3 Pay TV-market

- 44. On 3 November 2011, the DCCA published a report on the Danish pay TV-market. The Authority concludes that competition in the pay TV-market could be more intense, and that the consumers have very limited choice with respect to selecting the exact TV-channels they prefer. A consumer survey from 2009 showed that 90 per cent of the consumers pay for more TV-channels than they use, and that 23 per cent would prefer to pay more in order to get exactly their preferred TV-channels.
- 45. The Danish TV-market is characterized by distributors offering packages of TV-channels bundled in three packages of different size. Since the digitalization of the distribution networks, there is no technical reason not to offer these channels á la carte to the consumers. Two distributors have offered the consumers more choice, but several important TV-channels is missing in their concepts, and one of the distributors conditions the á la carte choice on the consumer buying an expensive basic-package with several pay TV-channels.
- 46. The DCCA concludes that the market players have no interest in introducing real á la carte choice since they run the risk of a reduced sale of TV-channels. If there is a political desire that real á la carte choice should be introduced in the Danish TV-market, it is therefore necessary to introduce regulation. The DCCA estimates that about 15 per cent of the households would shift from the packages to á la carte.

### 5.4 The Danish grocery market

- 47. A report on the Danish grocery market was published by the DCCA on 8 June 2011.
- 48. The Danish grocery market is characterized by high market concentration both amongst retailers and suppliers. In retail, the three largest grocery chains have a combined market share of 89 per cent. Foreign supermarket chains have a market share of 11 per cent and they are only present in the segment for discount stores. Among the suppliers there are only one to three major suppliers who account for the majority of the sales in the individual product categories (e.g. dairies, bread, soft drinks, beer, etc.).

- 49. The Danish grocery prices are the highest among the EU7 countries (Belgium, Denmark, Finland, France, Germany, Italy and The Netherlands). At the same time, the productivity in the sector is lower than in other Nordic countries.
- 50. The Danish retail sector for groceries is characterized by many small supermarkets situated close to each other and few hypermarkets. Such retail structure leads to lower productivity because smaller supermarkets cannot exploit the same economies of scale as large supermarkets.
- 51. An amendment to the Planning Act that allows for larger stores, including hypermarkets, can increase productivity in the market because of economies of scale. Permission to construct hypermarkets can make it more attractive for foreign players to enter the Danish market, which will increase competition in retailing and thereby contribute to further productivity increases.

## 5.5 The Nature and impact of hard core cartels (report submitted to the DCCA by London Economics)

- 52. On 1 February 2011, the DCCA published a report by London Economics on the nature and impact of hard core cartels. The report reviews economic theory on cartel behaviour and empirical evidence on the impact of cartels. It also compares sanctions to businesses and individuals that have participated in cartels.
- 53. In 50 per cent of cases, cartels charge overprices of 23 per cent or more, while the average over price is 46-49 per cent. In some instances, firms have increased prices by more than 200 per cent. On average, it takes between four and ten years before a cartel dissolves.
- 54. The report concludes that sanctions on individuals are relatively mild in Denmark. The level of fines in Denmark is relatively low compared to a number of other jurisdictions. Moreover, unlike the United States, Germany, and the United Kingdom, Denmark does not sanction cartel activity with imprisonment.

### 5.6 Retail distribution of electricity

- 55. In December 2011, the DCCA published an analysis of the Danish retail market for electricity. An average Danish household spends more than  $\in$  900 per year on electricity. In addition, it is expected that households on a large scale will substitute gas driven cars and heaters with electric cars and heat pumps during the next couple of decades. Consequently, electricity will constitute an increasing share of an average Danish household's total energy consumption.
- 56. Stronger competition will increase efficiency and promote innovation in the market. However, the Danish retail market is to a large extent characterised by weak competition and inert consumers. The present study concludes that there is a large potential for economic benefits through increased innovation, strengthened competition, and a more effective use of the resources in the electricity sector through energy savings and an adjustment of flexible electricity consumption to fluctuations in the wholesale electricity price.
- 57. A utilization of the potential for social benefits would probably profit both Danish consumers and companies. It would also help honour Denmark's ambitious climate goal of becoming independent of fossil fuels in 2050.
- 58. However, the regulation of the Danish retail market for electricity does not allow a utilization of the potentials for social benefits. Strong competition and active consumers are necessary in order to utilize the potential for economic benefits for society. Consequently, the Danish Competition and Consumer

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Authority has developed a number of recommendations in order to strengthen competition and secure a utilization of the potential for social benefits.

59. The recommendations are among other things expected to promote the development of technological products which automatically adjusts the flexible part of a household's electricity consumption e.g. dishwashing to a period with an abundant supply of wind generated electricity. These products will also be able to automatically cut all electricity consumption during the night, during vacation, etc. Approximately nine per cent of an average Danish household's electricity consumption is standby consumption that holds little if any utility for consumers.