

Consolidated Competition Act N° 539

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28 June 2002

(Act No. 384 of 10 June 1997 as amended by Act No. 416 of 31 May 2000 and Act No. 426 of 6 June 2002). (Courtesy translation. Only the Danish text is authentic.)

Part 1. Purpose and scope ➡

1. The purpose of this Act is to promote efficient resource allocation by means of workable competition.

2.-

1. This Act shall apply to any business activity and to aid from the public funds granted to business activities.

2. The provisions in parts 2 and 3 of this Act shall not apply if an anti-competitive practice is a direct or necessary consequence of public regulation. An anti-competitive practice determined by a local government shall only be considered a direct or necessary consequence of public regulation in so far as the anti-competitive practice is indispensable for fulfilling the statutory responsibilities assigned to the local government.

3. Decisions made by the board of a municipal partnership, cf. section 60 of the Local Government Act, are comparable to decisions made by the local government, cf. subsection (2).

4. Questions whether an anti-competitive practice is compatible with subsection (2) shall be determined by the minister, who is responsible for the regulation concerned. If the Competition Council asks the relevant minister to determine whether an anti-competitive practice is covered by subsection (2), the minister must reach a decision not later than four weeks after receipt of the Council's inquiry. The Competition Council may prolong this deadline.

5. If the Competition Council finds that a public regulation or an aid scheme is likely to cause harmful effects on competition, or otherwise is likely to impede an efficient resource allocation, the Council may give a substantiated statement, which points out potentially detrimental effects on competition, and make recommendations for promotion of competition in the area concerned. Having consulted the Minister for Economic and Business Affairs, the relevant minister is obliged to respond to the Competition Council's statement not later than four months after receipt of the statement. The Competition Council may prolong this deadline.
6. (Repealed).

3. This Act shall not apply to wages and labour relations. In carrying out its duties, the Competition Council may, however, request information from organisations and undertakings concerning wages and labour relations.

4. The provisions of part 2 of this Act shall not apply to anti-competitive agreements, decisions and concerted practices which have been granted an exemption under the EC Treaty, or which satisfy the requirements provided by a Regulation on exemption or exception of certain categories of agreements etc.

5.-

1. The provisions of part 2 of this Act shall not apply to agreements, decisions and concerted practices within the same undertaking or group.
2. Having consulted the Competition Council, the Minister for Economic and Business Affairs shall lay down rules on the application of subsection (1), including rules on how agreements etc. within the same undertaking or group shall be defined.

5a.-

1. Under this Act, the definition of the relevant market shall be based on examination of demand substitutability, supply substitutability and potential competition. The potential competition must be examined, once the position of the undertakings concerned has been ascertained and this position raises doubts as to its compatibility with this Act.
2. The Competition Council may make use of external expertise in its appraisal pursuant to subsection (1).

Part 2. Prohibition against certain anti-competitive agreements ➔

6.-

1. Any conclusion of agreements between undertakings etc., which have as their direct or indirect object or effect the restriction of competition shall be prohibited.
2. Agreements under subsection (1) may, for instance, be such agreements which
 - i.

- fix purchase or selling prices or any other trading conditions,
 - ii. limit or control production, markets, technical development, or investment,
 - iii. share markets or sources of supply,
 - iv. apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage,
 - v. make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts, or
 - vi. co-ordinate the competitive practices by two or more undertakings through the establishment of a joint venture.
3. Subsection (1) shall apply correspondingly to decisions made by an association of undertakings and to concerted practices between undertakings.
4. The Competition Council may issue orders for the termination of infringements of subsection (1).
5. Any agreements and decisions prohibited under subsections (1)-(3) shall be void, unless exception is made under section 7, exemption is granted under section 8 or section 10, or a negative clearance is given under section 9.
- 7.-
1. The prohibition of section 6 (1) shall not apply to agreements between undertakings, decisions made by an association of undertakings, and concerted practices between undertakings, provided that the undertakings concerned have
- i. an aggregate annual turnover of less than DKK 1 billion and an aggregate share of less than 10 per cent of the product or service market concerned, cf., however, subsections (2)-(4), or
 - ii. an aggregate annual turnover of less than DKK 150 million, cf., however, subsections (2)-(4).
2. The exceptions in subsection (1), shall not apply in cases where
- i. undertakings or an association of undertakings agree, co-ordinate or determine prices, profits etc. for the sale or resale of goods or services, or
 - ii. two or more undertakings by agreement or otherwise carry out or seek to carry out a preceding regulation of tenders, fix or seek to fix the conditions for the opening of tenders, undertake or seek to arrange elimination of tenders, commit themselves to preceding notification of tenders or otherwise commit themselves to co-operate before submitting tenders.

3. Notwithstanding subsection (1), the prohibition entailed in section 6 (1), applies to an agreement between undertakings, a decision made by an association of undertakings, and a concerted practice between undertakings, if this agreement etc. together with other similar agreements etc. restricts competition.
 4. Having consulted the Competition Council, the Minister for Economic and Business Affairs shall lay down rules on the calculation of turnover under subsection (1), including rules to the effect that the mentioned turnover thresholds shall be calculated on the basis of other values for financial undertakings.
 5. The exception of subsection (1) shall apply even if the undertakings exceed the mentioned thresholds in two consecutive years. Having consulted the Competition Council, the Minister for Economic and Business Affairs shall lay down rules in that respect, including rules on minor transgressions of the mentioned thresholds.
- 8.-
1. Upon notification, the Competition Council may exempt agreements between undertakings, decisions made by an association of undertakings, and concerted practices between undertakings from the prohibition of section 6 (1), provided that the Competition Council considers that they
 - i. contribute to improving the efficiency of production or distribution of goods or services etc. or to promoting technical or economic progress,
 - ii. allow the consumers a fair share of the resulting benefits,
 - iii. do not impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives, and
 - iv. do not afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products or services etc. in question.
 2. Notification of such agreement etc. with application for exemption under subsection (1) shall be submitted to the Competition Authority. The Competition Council shall lay down rules on notification, including rules on the use of specific notification forms.
 3. Decisions made in pursuance of subsection (1) shall specify the period in which the exemption is effective. The date from which the exemption takes effect cannot be earlier than the date of notification. Exemption can be granted on specified conditions.
 4. Upon notification, the Competition Council may renew the exemption, provided that the Competition Council considers that the requirements of subsection (1) continue to be satisfied. Subsection (3) shall apply correspondingly.
 5. The Competition Council may amend or revoke a decision under subsection (1) and (4) if
 - i. there has been a change in any of the facts which were basic to the making of the decision,

- ii. the parties of the agreement etc. commit a breach of any condition attached to the decision, or
- iii. the decision is based on incorrect or misleading information from the parties of the agreement etc.

9. Upon notification by an undertaking or association of undertakings, the Competition Council may certify that, on the basis of the facts in its possession, an agreement, decision or concerted practice shall not come under the prohibition of section 6 (1), and that, accordingly, there shall be no grounds for issuing an order in pursuance of section 6 (4). The Competition Council shall lay down rules on notification, including rules on the use of specific notification forms.

10. Having consulted the Competition Council, the Minister for Economic and Business Affairs shall lay down rules on the granting of exemption from the prohibition of section 6 (1) to certain categories of agreements, decisions and concerted practices which satisfy the requirements of section 8 (1).

Part 3. Abuse of a dominant position ➔

11.-

1. Any abuse by one or more undertakings etc. of a dominant position is prohibited.
2. Upon request the Competition Council must declare, whether one or more undertakings have a dominant position, cf. subsection (1). If the Competition Council declares that an undertaking does not have a dominant position, this decision is binding, until revoked by the Competition Council.
3. Abuse under subsection (1) may, for instance, consist in
 - i. directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions,
 - ii. limiting production, markets or technical development to the prejudice of consumers,
 - iii. applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage, or
 - iv. making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
4. The Competition Council may issue orders for the termination of infringements of subsection (1).
5. Upon notification by one or more undertakings, the Competition Council may certify that, on the facts in its possession, a certain course of conduct shall not come under

the prohibition of subsection (1), and that, accordingly, there shall be no grounds for issuing an order in pursuance of subsection (4).

6. The Competition Council may lay down further rules on the material required to make a decision pursuant to subsections (2) or (5).

Part 3 a. Aid which distorts competition ➔

11a.-

1. The Competition Council may issue orders for the termination or repayment of aid granted from the public funds, which has been granted to the benefit of specific forms of business activities.
2. An order pursuant to subsection (1) may be issued, when the aid
 - i. directly or indirectly has as its object or effect the distortion of competition, and
 - ii. is not legitimate according to public regulation.
3. The minister in question or the relevant Supervisory Board makes the decision regarding the legitimacy of aid granted according to public regulation, unless otherwise provided for by law. Such decisions must be made not later than four weeks after receipt of the Competition Council's inquiry. The Competition Council may prolong this deadline.
4. An order for repayment of aid pursuant to subsection (1) may be issued to private undertakings, to private foundations and to corporate undertakings which are wholly or partly owned by the public. The Minister for Economic and Business Affairs may lay down further rules to the effect that orders for repayment of aid may also be issued to specific corporate undertakings, which are wholly or partly owned by the public.
5. The Competition Council's powers pursuant to subsection (1) to order repayment of aid becomes statute-barred five years after payment. In accordance with the Act on Calculation of Interest, the Competition Council fixes the amount of interest accrued in connection with a repayment order pursuant to subsection (1), including rules that the interest due may be calculated from the time of payment of the distortive aid.
6. Upon notification, the Competition Council may declare that on the basis of the facts in its possession, the public aid is not covered by subsection (2) i) and accordingly, there are no grounds for issuing an order pursuant to subsection (1). The Council may lay down further rules on notification, including rules on the use of specific notification forms.

Part 4. Merger control ➔

12.-

1. The provisions entailed in part 4 of this Act apply to mergers, where
 - i. the combined aggregate turnover in Denmark of all the undertakings concerned is more than DKK 3.8 billion and the aggregate turnover in Denmark of each of at least two of the undertakings concerned is more than DKK 300 million, or
 - ii. the aggregate turnover in Denmark of at least one of the undertakings concerned is more than DKK 3.8 billion and the aggregate world-wide turnover of at least one of the other undertakings concerned is more than DKK 3.8 billion.
2. Where a merger consists in the acquisition of parts of one or more undertakings, only the turnover relating to the parts, which are the subject of the transaction, shall be taken into account with regard to the seller or sellers.
3. However, two or more transactions within the meaning of subsection (2) which take place within a two-year period between the same persons or undertakings shall be treated as one and the same merger arising on the date of the last transaction.
4. Having consulted the Competition Council, the Minister for Economic and Business Affairs shall lay down rules on the calculation of turnover in subsection (1), including rules to the effect that the turnover thresholds for financial institutions shall be based on other values.
5. The provisions in part 4 of this Act are not applicable to mergers, which are subject to the Merger Control Regulation, unless the European Commission refers the case to the Competition Council.

12a.-

1. Under this Act, a merger shall be deemed to arise where:
 - i. two or more previously independent undertakings merge, or
 - ii. one or more persons already controlling at least one undertaking, or one or more undertakings acquire, whether by purchase of securities or assets, by contract or by any other means, direct or indirect control of the whole or parts of one or more other undertakings.
2. The creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity shall constitute a merger within the meaning of subsection (1) (ii).
3. For the purposes of this Act, control shall be constituted by rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking.
4. A merger shall not be deemed to arise under subsection (1) where:
 - i.

Credit institutions or other financial institutions or insurance companies, the normal activities of which include transactions and dealing in securities for their own account or for the account of others, hold on a temporary basis securities which they have acquired in an undertaking with a view to reselling them, provided that they do not exercise voting rights in respect of those securities with a view to determining the competitive behaviour of that undertaking or provided that they exercise such voting rights only with a view to preparing the disposal of all or part of that undertaking or of its assets or the disposal of those securities and that any such disposal takes place within one year of the date of acquisition;

- ii. Control is acquired by an office-holder according to the Insolvency Act or analogous proceedings, or
 - iii. The operations referred to in subsection (1) (ii) are carried out by the financial holding companies as defined in the Council Directive on the annual accounts of certain types of companies, provided, however, that the voting rights in respect of the holding are exercised, in particular in relation to the appointment of members of the management and supervisory bodies of the undertakings in which they have holdings, only to maintain the full value of those investments and not to determine directly or indirectly the competitive conduct of those undertakings.
5. Upon request the Competition Council may extend the period in subsection (4) (i) where such institutions or companies can show that the disposal was not reasonably possible within the period set.

12b.-

1. A merger covered by this Act shall be notified to the Competition Authority not more than one week after the conclusion of the agreement, or the announcement of the public bid, or the acquisition of a controlling interest. That week shall begin when the first of those events in sentence one occurs.
2. The Competition Authority may publish a notice to the effect that a merger has been notified to it. The notice indicates the names of the parties, the nature of the merger and the economic sectors involved.
3. Having consulted the Competition Council, the Minister for Economic and Business Affairs shall lay down rules on the notification of mergers, including rules on the use of specific notification forms.

12c.-

1. The Competition Council decides whether a merger, which is subject to an obligation to notify pursuant to section 12 b (1), or which has been referred to the Competition Council by the European Commission, cf. section 12 (5), may be approved or prohibited.
2. A merger, whereby one or more undertakings do not create or strengthen a dominant position as a result of which effective competition would be significantly impeded, shall be approved.

3. To the extent that the creation of a joint venture constituting a merger pursuant to section 12 a (2), also has as its object or effect the co-ordination of the competitive behaviour of undertakings that remain independent, such co-ordination shall be appraised in accordance with the criteria laid down in section 6 (1) and section 8 (1), with a view to establishing whether or not the transaction may be approved.
 4. When making the appraisal under subsection (3), the Competition Council shall, in particular, take into account:
 - i. whether two or more parent companies retain to a significant extent activities in the same market as the joint venture or in a market which is downstream or upstream from that of the joint venture or in a neighbouring market closely related to this market, and
 - ii. whether the co-ordination which is the direct consequence of the creation of the joint venture affords the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products or services in question.
 5. A merger, as defined in this Act, shall not be put into effect until it has been approved by the Competition Council pursuant to subsection (1). This shall not prevent the implementation of a public bid which has been notified to the Competition Authority in accordance with section 12 b (1), provided the acquirer does not exercise the voting rights attached to the securities in question or does so only to maintain the full value of those investments and on the basis of a derogation granted by the Competition Council, cf. subsection (6).
 6. The Competition Council may, on request, grant derogation from the obligations imposed in subsection (5) and such derogation may be made subject to conditions and obligations in order to ensure conditions of effective competition.
 7. If it is evident from information already in the possession of the Competition Authority or from information submitted by an undertaking that a planned merger may be authorised without conditions or obligations, the Competition Council can approve the merger, cf. subsections (2) and (3), without publication of the fact that a merger has been notified to or approved by the Council. At the time of approval the Competition Council sets a date for publication of its decision.
 8. If the Competition Council informs the undertakings concerned that a planned merger cannot obtain an approval pursuant to the procedure laid down in subsection (7), the undertaking may withdraw its notification or request that a decision not be made pursuant to the other provisions in part 4, until the obligation to notify according to section 12 b (1), has come into effect.
- 12d.-
1. Within four weeks after receipt of a complete notification pursuant to section 12 b (1) or section 12 (5), the Competition Council must decide whether to approve or initiate a separate investigation hereof.
 2. If the Competition Council has decided to initiate a separate investigation pursuant to subsection (1), a decision whether to approve or prohibit a merger must be reached

within three months after receipt of a complete notification.

3. Where the Competition Council has not taken a decision in accordance with the deadlines laid down in subsections (1) and (2), the merger shall be deemed to have been approved. In exceptional cases, the Competition Council may suspend the periods set out in subsections (1) and (2), including with a view to obtaining further information, cf. section 17.

12e.-

1. The Competition Council may attach to its approval pursuant to section 12 c (2), conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Competition Council with a view to eliminating the detrimental effects of the merger.
2. Conditions and obligations may i.a. imply that the undertakings concerned
 - i. dispose of an undertaking or parts of an undertaking, assets or other proprietary interests
 - ii. grant third-party access, or
 - iii. take other measures which may further an effective competition.

12f. The Competition Council may revoke its approval of a merger, where

- i. its approval is to a substantial extent based on incorrect information for which one or more of the undertakings concerned are responsible, or
- ii. the undertakings concerned fail to comply with a condition or obligation pursuant to section 12 e (1).

12g. Where a merger has already been implemented, the Competition Council may, in a decision pursuant to section 12 c (1), require the undertakings or assets brought together to be separated or the cessation of joint control or any other action that may be appropriate in order to restore conditions of effective competition.

Part 5. Access to files ➡

13.-

1. The Act on Access to Administrative Files shall not apply to cases under this Act, except for cases concerning the issuing of rules under section 5 (2), section 7 (4) and (5), second sentence, section 8 (2), second sentence, section 9, second sentence, section 10, section 11 (6), section 11 a (4), second sentence and (6), second sentence, section 12 (4), section 12 b (3), section 14 (3), section 18 (5), second sentence, section 18 a (3) and section 21 (3). However, sections 4 (2) and section 6 in

the Act on Access to Administrative Files shall apply equally to cases covered by this Act. Sentences one and two are also applicable if information obtained under this Act has been divulged to another administrative authority.

2. Decisions made by an authority pursuant to section 2 (4), first sentence, and section 11 a (3), first sentence, recommendations made by the Competition Council and responses to such recommendations by the relevant minister pursuant to section 2 (5), and the Competition Council's decisions made under this Act shall be published. Furthermore, decisions made by the Competition Authority on behalf of the Competition Council shall be published, unless such decision is considered to be of no importance for the understanding of the application of the Competition Act, or otherwise considered to be of no interest to the public.
3. The Competition Council may publish information concerning its activities as well as general market reviews.
4. Disclosure of information under subsections (2) and (3) shall not apply to information on technical matters, including information on research, production methods, products and operational and business secrets, provided that such information is of substantial economic importance for the person or undertaking concerned. Nor shall customerrelated information from undertakings, which are under the jurisdiction of the Financial Supervisory Authority, be disclosed.
5. Any party, required to submit information to the Competition Council may make a request to the Chairman of the Council that such information, which is not to be disclosed pursuant to subsection (4), shall not be given to the members of the Council either. The Chairman makes the final decision as to which extent and in which manner the information should be given.

Part 6. The Competition Authority. Organisation and powers ➔

14.-

1. The enforcement of this Act and any subordinate rules issued under this Act shall come under the jurisdiction of the Competition Council, cf., however, section 2 (4), first sentence, and section 11 a (3), first sentence. The Competition Council may take up cases on its own initiative, upon notification or complaint, or cases, which are referred to it by the European Commission. The Competition Council decides whether a complaint gives sufficient grounds for investigation. The Competition Council may also decide not to take up cases, if the European Commission under the EU competition rules is already assessing the same case.
2. The Competition Authority is the secretariat of the Competition Council with respect to cases under this Act and shall attend to the day-to-day enforcement of the Act on behalf of the Competition Council.
3. The Minister for Economic and Business Affairs shall lay down rules of procedure for the Competition Council as well as rules on the activities of the Competition Council and the Competition Authority, including rules on dismissal of Council members or their deputies, on the recommendation of the Chairman of the Competition Council, before the expiry of a period.

15.-

1. The Competition Council shall consist of a Chairman and 18 members. The King shall appoint the Chairman for a period of up to 4 years. The Minister for Economic and Business Affairs shall appoint the other members for a period of up to 4 years. The Competition Council shall cover a comprehensive knowledge of public as well as private business activity, including experience in legal, economic, financial and consumer-related matters. The Chairman and eight of the members shall be independent of commercial and consumer-related interests. One of these members shall have a special insight into governmental business activity. According to further directions by the Minister for Economic and Business Affairs, seven members shall be appointed on the recommendation of trade organisations, one member shall be appointed on the recommendation of consumer organisations, and two members with special insight into public business activity shall be appointed on the recommendation of the municipal organisations.
2. The Minister for Economic and Business Affairs shall appoint permanent deputies for the members of the Competition Council.

15a. In cases where a hearing of the parties involved must be made according to the Act on Public Administration, the parties must have access to the entire draft decision. The deadline for making a statement regarding the draft decision is at least three weeks, unless other deadlines apply according to the Act on Public Administration, or the decision is made pursuant to the provisions in part 4 of this Act.

15b. The Minister for Economic and Business Affairs may lay down further rules on the use of electronic communication to and from the Competition Council, the Competition Authority and the Competition Appeals Tribunal, including rules on the use of digital signature.

16.-

1. The orders which the Competition Council may issue under section 6 (4) and section 11 (4), in order to bring the detrimental effects of an anti-competitive practice to an end, can i.a. imply:
 - i. Total or partial termination of agreements, decisions, trading conditions etc.
 - ii. That given prices or profits shall not be exceeded, or that the calculation of prices and profits shall be subject to the observance of specified calculation rules.
 - iii. Obligation for one or more of the undertakings concerned to sell to specified buyers on the conditions usually applied by the undertaking to equivalent sales. The undertaking is, however, always entitled to demand payment in cash or adequate security.
 - iv. That access shall be granted to an infrastructure facility which is essential in order to market a product or service.
2. Orders under subsection (1), subparagraph 2), may be issued for a period of up to one year at a time.

17. The Competition Council may request any information, including accounts, accounting records, copies from the books, other business records and electronic data, which are considered necessary for its activities or for deciding whether the provisions of this Act shall apply to a certain matter.

18.-

1. The Competition Authority may, for the use of the Competition Council's activities, carry out investigations, which imply that the Competition Authority is granted access to the premises and means of transport of an undertaking or association with the purpose of becoming acquainted with and making copies of any information on the spot, including accounts, accounting records, books and other business records, irrespective of the information medium. In connection with the investigation the Competition Authority may ask for oral explanations.
2. If the information of an undertaking or an association is stored with or processed by an external data processor, the Competition Authority is entitled to get access to the premises of the external data processor with the purpose of becoming acquainted with and making copies of the information on the spot, cf. subsection (1). It is a prerequisite for access that is not possible for the Competition Authority to obtain the information concerned directly from the undertaking or association, which is the object of the investigation.
3. The Competition Authority's investigations are subject to a previously obtained court order and to due proof of identity.
4. If conditions of the undertaking or association make it impossible for the Competition Authority to get access to or make copies of the relevant information on the day of the investigation, cf. subsections (1) and (2), the Competition Authority is entitled to seize the documents or the medium, where the information is stored, with the purpose of making copies. Documents etc., which the Competition Authority has seized, must be returned to the undertaking or association together with a set of the copies, which the Competition Authority has made for the use of its further examination, not later than three workdays after the day of the investigation. This deadline may be prolonged if it has been technically impossible to get access to information stored in a seized medium.
5. The police shall give assistance to the Competition Authority in exercising the powers assigned to it under subsections (1) and (2). The Minister for Economic and Business Affairs may, if so agreed with the Minister for Justice, lay down rules in that respect.

18a.-

1. Subject to reciprocity, the Competition Authority may divulge information covered by the rules of professional secrecy to other countries' competition authorities, if such information is necessary to improve the enforcement of the competition rules of those countries, including the fulfilment of any bilateral or multilateral agreement entered into by the Kingdom of Denmark.
2. When divulging information pursuant to subsection (1), the Competition Authority must make the divulgement subject to the following conditions:

- i. the addressee must have a similar obligation of professional secrecy,
 - ii. the information divulged may exclusively be used for the purposes set forth in a bilateral or multilateral agreement, if the divulgement takes place according to such agreement, or
 - iii. the information divulged may only be passed on with the express consent of the Competition Authority and only for the purpose covered by the consent.
3. The Minister for Economic and Business Affairs may lay down further rules on the divulgement of information to foreign authorities covered by the Competition Authority's professional secrecy.

Part 7. Appeal ➔

19.-

1. Decisions made by the Competition Council under section 2 (1), section (3), first sentence, section 5 (1), section 6 (1) and (4), section 7 (1)-(3), section 8 (1) and (3)-(5), section 9, section 11(1)-(2) and (4)-(5), section 11 a (1) and (6), first sentence, section 12 a (5), section 12 b (1), first sentence, section 12 c (1)-(3) and (6), section 12 d (3), first sentence, section 12 e (1), section 12 f, section 12 g, section 13 (4), section 16, section 23 a (2), cf. (1) and section 27 (4), second sentence, of this Act, may be brought before the Competition Appeals Tribunal.
2. Appeal under subsection (1) may be lodged by
 - i. the party to whom the decision is directed, and
 - ii. other parties who have an individual and substantial interest in the case. This does not apply, however, to decisions made by the Competition Council pursuant to section 12 a (5), section 12 b (1), first sentence, section 12 c (1)-(3) and (6), section 12 d (3), first sentence, section 12 e (1), section 12 f and section 12 g.
3. Decision under section 14 (1) to reject assessment of a complaint cannot be brought before the Competition Appeals Tribunal.
4. Appeal against a decision under Section 13 (4) shall have suspensive effect. Appeal against other decisions may be accorded suspensive effect by the Competition Council or the Competition Appeals Tribunal.

20.-

1. Decisions made by the Competition Council under this Act cannot be brought before any other administrative authority than the Competition Appeals Tribunal and cannot be brought before the courts of law until the Appeals Tribunal has made its decision.
- 2.

Appeal can be lodged with the Competition Appeals Tribunal within four weeks after the decision having been communicated to the party concerned. If justified by weighty reasons the Appeals Tribunal may disregard an exceeding of the time limit.

3. Decision made by the Competition Appeals Tribunal can be brought before the courts of law within eight weeks after the decision having been communicated to the party concerned. If the time limit is exceeded, the decision of the Appeals Tribunal shall be final.

21.-

1. The Competition Appeals Tribunal shall consist of a Chairman, who shall be qualified for the post as a Supreme Court Judge, and two other members, who shall be proficient in economics and law, respectively.
2. The Chairman and the members shall be appointed by the Minister for Economic and Business Affairs. They shall be independent of commercial interests. Their appointment shall cease by the end of the month in which they attain the age of 70.
3. The Minister for Economic and Business Affairs shall lay down rules on the activities of the Appeals Tribunal, including rules on the fees chargeable for bringing decisions before the Appeals Tribunal.

Part 8. Penalty provisions ➔

22. If a party neglects to submit such information which the Competition Council may request under this Act or fails to comply with a condition or an order issued under this Act, the Competition Council may, as a coercive measure, impose on the party concerned daily or weekly penalty payments, which can be recovered by distraint.

23.-

1. Unless subject to higher penalty by other law, fines shall be imposed on any party, who intentionally or by gross negligence
 - i. infringes section 6 (1),
 - ii. infringes a condition attached to a decision made pursuant to section 8 (3), third sentence,
 - iii. in the period from 1 October 2000 until 30 June 2002 infringes section 11 (1), provided that the undertaking within the preceding five years has been given an order concerning an equivalent abuse of a dominant position, cf. section 11 (1),
 - iv. after 1 July 2002 infringes section 11 (1),
 - v. neglects to notify a merger pursuant to section 12 b (1),
 - vi. implements a merger despite a decision to prohibit it pursuant to section 12 c

- (1), infringes the prohibition on implementing a merger before having obtained an approval pursuant to section 12 c (5), first sentence, infringes a condition or obligation attached to a decision pursuant to section 12 c (6) or section 12 e (1), or infringes an order pursuant to section 12 g.
- vii. fails to comply with an order issued under section 6 (4), section 11 (4), cf. section 16, or section 11 a (1).
 - viii. fails to comply with a request made pursuant to section 17,
 - ix. supplies, the Competition Authority the Competition Council or the Competition Appeals Tribunal with incorrect or misleading information or conceals matters of importance for the case in question, or
 - x. infringes the prohibition in Articles 81 (1) or 82 of the EC Treaty, cf. section 23 a (1).
2. Subsection (1), subparagraph 1), shall not apply as from the date when an agreement etc. has been notified to the Competition Authority pursuant to section 8 (2) and until the Competition Council has communicated its decision pursuant to section 8 (1).
3. Penalty may be imposed on companies etc. (legal persons) pursuant to the provisions of part 5 of the Penal Code. When meting out the penalty under subsections (1) and (2), the level of the fine shall be fixed in consideration of the general rules of Part 10 of the Penal Code as well as the turnover obtained by the legal person in question during the last year before the pronouncement of sentence or the issue of a ticket fine.
4. The limitation period for imposing a penalty is five years.

Part 9. EU competition rules ➔

23a.-

- 1. The Competition Council acts as the competent national authority with a view to enforcing Articles 81 and 82 of the EC Treaty and in accordance with Regulations and Directives issued under Articles 83 and 84 of the EC Treaty. Articles 81(1) and 82 of the EC Treaty shall be applicable to agreements etc. and to abuse of a dominant position, which affect trade between Member States.
 - 2. The provisions in parts 2, 3, 5, 6, 7 and 8 of this Act are similarly applicable to the executive powers assigned to the Competition Council, cf. subsection 1, to the extent that Regulations or Directives pursuant to Article 83 of the EC Treaty do not prevent this.
 - 3. The Competition Authority informs the European Commission prior to making a decision pursuant to subsection (1).
24. The assistance, which the competent authorities of the member states shall render the European Commission pursuant to the European Community Regulations on monopolies and restrictive practices, shall in Denmark be rendered by the Competition Authority.

25.-

1. If the European Commission requests the Competition Authority to undertake an investigation under Article 13 of Regulation No. 17/ 62, Article 20 of Regulation No. 1017/68, Article 17 of Regulation No. 4056/86, Article 10 of Regulation No. 3975/87, or Article 12 of Regulation No. 4064/89, the Competition Authority may, after obtaining a court order and on due proof of identity, at the premises of undertakings or an association of undertakings
 - i. examine the books and other business records,
 - ii. take copies of or extracts from the books and business records,
 - iii. ask for oral explanations on the spot, and
 - iv. enter any premises, land and means of transport of the undertakings.
2. In carrying out such investigation, a written authorisation from the Competition Authority shall be produced. The authorisation shall include information on the European Commission's request and shall specify the subject matter and purpose of the investigation.
3. The undertakings or the association shall be under an obligation to submit to the investigation if it is carried out on the basis of a decision made by the European Commission.

26. The provisions of section 25 shall apply correspondingly when the Competition Authority assists the European Commission in carrying out investigations under Article 14 of Regulation No. 17/62, Article 21 of Regulation No. 1017/68, Article 18 of Regulation No. 4056/86, Article 11 of Regulation No. 3975/87, or Article 13 of Regulation No. 4064/89.

Part 10. Commencement and transitional provisions ➔

27.-

1. This Act shall come into force on 1 January 1998, apart from the provisions of section 14 (3) and section 15, which shall come into force on 1 July 1997.
2. As from the date when this Act comes into force, the Competition Act 1989, cf. consolidated Statute No. 114 of 10 March 1993, and the Act on Control of Compliance with the European Economic Community's Regulations on Monopolies and Restrictive Practices 1972, cf. consolidated Statute No. 449 of 10 June 1991, shall be repealed. An approval granted under section 14 (1) of the Competition Act 1989, cf. consolidated Statute No. 114 of 10 March 1993, shall remain valid, until the Competition Council may decide to withdraw the approval. Such decision shall be made according to the rules then in force.
3. Cases under the Competition Act 1989, cf. consolidated Statute No. 114 of 10 March 1993, which have not been settled at the date when this Act comes into force, shall be

discontinued, except for cases based on complaints and cases pending with the Competition Appeals Tribunal.

4. Anti-competitive agreements, decisions and concerted practices which exist at the date when this Act comes into force, and which come under the prohibition of section 6 (1), may, if an application for exemption under section 8 is submitted before 1 July 1998, be maintained up to three months after the Competition Council has made its decision on the case, even though the application for exemption is refused. The Competition Council may extend the time limit of three months.
5. (Repealed.)
6. The subordinate rules which are laid down pursuant to section 7 (2) of the Competition Act 1989, cf. consolidated Statute No. 114 of 10 March 1993, shall remain in force until new rules be issued under section 4 (3) of the Price Marking and Display Act, as drawn up in section 28, subparagraph 1, of this Act. The enforcement of existing rules, as referred to in the 1st sentence of this subsection, shall be assigned to the National Consumer Agency. Intentional or grossly negligent infringement of existing rules, as referred to in the 1st sentence of this subsection, shall be punishable by a fine. Penalty may be imposed on companies etc. (legal persons) pursuant to the provisions of part 5 of the Penal Code.

28. The Price Marking and Display Act 1977, cf. consolidated Statute No. 456 of 17 June 1991, as amended by Statute No. 429 of 1 June 1994, shall be amended as follows:

- ii. In section 4 shall be inserted as subsection (3): “(3) In product and service markets where it is considered to be of special importance as price guidance to the consumers, the National Consumer Agency may lay down rules on invoicing and other documentation of the price calculation.”
- iii. After section 9 shall be inserted: “10. In product and service markets of special importance to the consumers the National Consumer Agency may carry out and publish comparative investigations of prices, discounts and bonuses etc.”

29. This Act shall not extend to the Faroe Islands and Greenland.

Act No. 426 of 6 June 2002 contains the following section on commencement:

2. This Act shall come into force on 1 August 2002.