

# Denmark



## FAIR TRADE COMMISSION

Denmark's Competition and Consumer Authority (DCCA) is an unusual agency and 2014 was a strange year for it. Unlike most enforcers in Europe and elsewhere, Denmark cannot issue fines, it has to forward cases to the public prosecutor. Meanwhile, a major competition reform in 2013 gave the authority enhanced powers that for the most part it cannot yet use. The authority's enforcement in 2014 should be seen in the context of these two factors. It did a solid but unspectacular job, the highlight of which was record fines imposed on a wide-ranging construction cartel. It should do more and better in coming years.

In many jurisdictions a fine of €1.3 million would be relatively small beer, but in Denmark it is the largest cartel fine on a single company to date (imposed by the public prosecutor to a criminal rather than civil standard of proof). It is the penalty imposed on a participant in a construction cartel involving more than 30 Copenhagen builders. So far the prosecutor has issued sanctions of €3.2 million on various conspirators – Denmark's largest total cartel punishment. "The authority is right to interpret this as a successful case," says one lawyer, though another mutters darkly that the enforcer was overly aggressive in categorising it as a "very serious" (ie, hard-core) infringement, the most severe type of cartel possible. Again, it is the first time the authority has used the "very serious" definition. The building cartelists will be relieved, however, that they were prosecuted under the old fining guidelines. Under the 2013 reforms, the fining levels will increase by up to 10 times and individuals liable for up to six years' imprisonment.

Nevertheless, Agnete Gersing, director general of the authority, sees the building cartel as a part of the narrative of the new era even if they are strictly subject to the old rules. "The case puts a strong emphasis on the serious impact for companies that negotiate prices with competitors," she said in November 2014. "It hopefully discourages potential cartelists given that they now both risk imprisonment and even bigger fines."

The message is clear. The Danish authority is determined to become tougher, both in its rules and attitude. Before long, expect another conspiracy to exceed the building fines and imprisonment. When someone finally goes behind bars, that will be the mark of the authority's true progress, says one competition lawyer.

Related to this tightening-up is the authority's apparently sincere and intense internal review. In 2014 Denmark went

further than most agencies – which generally pay lip service to the notion of performance assessment – and really thought about how it does business. In addition to a study on the effects of its enforcement, it did a series of interviews with stakeholders to ask their opinion. In response to criticism that heads of division were too distant from cases, the authority has already established a new, fourth division. The OECD is also conducting another, separate review.

The authority cares about its reputation and is working hard to change perceptions – arising from *Rating Enforcement* and elsewhere – that it is one of the weaker enforcers in Europe. Gersing is politically astute and media-savvy. Like her compatriot Magrethe Vestager in Brussels, she is an enthusiastic tweeter, although one old-school lawyer grumbles that she should spend less time on Twitter and more time enforcing.

Benjamin Franklin said nothing is certain besides death and taxes. He could have added "competition lawyers complaining that their enforcer brings too few big cases". In Denmark, these concerns have some merit. Building cartel aside, it's hard to pick out any really important cases – a couple of abuse of dominance commitments, one conditional merger, some gun jumping, but nothing to write home about. Lawyers complain that the authority makes a meal out of what should be simple merger filings and spends too much time on minor cases – such as investigations of regional driving schools and hairdressers – at the expense of more important matters. "It feels like no case is too small to be investigated," says one lawyer. Gersing responds by pointing out that 96 per cent of Danish companies have fewer than 20 employees, therefore, targeting small players sends an important message.

Generally, there is no great love or enthusiasm for the authority among Denmark's competition lawyers. They say the authority is willing to meet and discuss cases, but (often junior) staff are reluctant to give firm messages or guidance. This is something the authority acknowledged in its review of conversations with stakeholders and it has promised to give more support to junior team members. One lawyer talked about an "us and them" culture and it is interesting to see that Denmark has only six staff who have spent at least five years in private practice. This is fewer than Norway (12), Sweden (21), Latvia (14) and even Belgium and Finland (both seven), which have significantly fewer staff.



<b>Head of agency</b>	Agnete Gersing
<b>Previous employment</b>	Deputy permanent secretary in the prime minister's office
<b>Mandate expires</b>	July 2019
<b>Salary of head of agency</b>	€210,000
<b>Appointment of head of agency</b>	By the government
<b>Agency head reports to</b>	On specific cases, the authority reports to the Competition Council. Generally, the authority refers to the Ministry of Business and Growth.
<b>Budget</b>	€11.1 million
<b>Amount spent on salary</b>	€7.9 million
<b>Percentage of budget spent on salary</b>	71%
<b>Total staff</b>	259
<b>Staff working on competition enforcement</b>	86
<b>Percentage focused on competition</b>	33%
<b>Non-administrative staff</b>	84
<b>Percentage who are lawyers</b>	45%
<b>Percentage who are economists</b>	32%
<b>Percentage who are others</b>	12%
<b>Other areas of focus</b>	General assistance to the Minister for Business and Growth, preparing new legislation and competition and consumer analysis.
<b>Average age of staff</b>	38
<b>Male/Female</b>	48%/52%
<b>Average tenure</b>	7.3 years
<b>No. of staff who left</b>	6
<b>No. of staff who retired</b>	0
<b>No. of staff who remained in civil service</b>	N/A
<b>No. of staff who joined from the civil service</b>	4
<b>No. of staff who joined in 2014</b>	7
<b>Number who have spent at least 5 years in private practice</b>	6
<b>Percentage of staff who left</b>	7%
<b>Percentage who retired</b>	N/A
<b>Percentage who remained in civil service</b>	N/A
<b>Percentage who joined from civil service</b>	57%
<b>Percentage who joined in 2014</b>	8%
<b>Stand-alone bureau of economics</b>	Yes
<b>No. with PhDs in economics</b>	One
<b>Name of chief economist</b>	Thomas Rønde

## Priorities

N/A. The authority has no separate units

### Sectoral priorities in 2014

Construction, electricity, plumbing, payment services, health and pharmaceuticals

### Sectoral priorities for 2015

Same as for 2014

### Performance assessment

In 2014, the DCCA conducted a study of the effects of its enforcement. It estimates it has given direct consumer benefits in Denmark of around €176 million, plus indirect benefits, such as deterrence.

Also, the authority interviewed stakeholders and commissioned a third-party study. Stakeholders said the DCCA is a strong authority with highly qualified employees and excellent in mergers. Important points for improvement were: the need for smaller divisions so division heads can pay closer attention in cases, better responsiveness to alternative interpretations and more support for younger employees. The DCCA has already established a new division increased support for younger employees. The DCCA is still working on further improvements.

In addition hereto the OECD is undertaking a review of Denmark. As well as the DCCA specifically, the review will address wider policy issues that may affect competition in the market, such as potential regulatory barriers.

## Mergers

<b>No. of mergers filed</b>	35
<b>No. of mergers that led to in-depth review</b>	1
<b>No. of filed mergers challenged</b>	1
<b>No. of challenged mergers blocked</b>	0
<b>No. of challenged mergers resolved with remedies</b>	1
<b>No. of challenged mergers abandoned by parties</b>	0
<b>Percentage of filed mergers that led to in-depth review</b>	3%
<b>Percentage of filed mergers challenged</b>	3%
<b>Percentage of challenged mergers blocked</b>	0%
<b>Percentage of challenged mergers resolved with remedies</b>	100%
<b>Percentage of challenged mergers abandoned by parties</b>	0%
<b>Average length of an in-depth merger review</b>	105 days

## Anti-cartel

<b>No. of leniency applications</b>	Confidential
<b>No. of dawn raids</b>	5
<b>No. of cartel decisions</b>	17
<b>No. of cartel decisions concluded with fines</b>	13
<b>Total cartel fines in 2014</b>	€3.2 million
<b>Average fine per cartel</b>	€249,000
<b>Average length of cartel investigation</b>	47 months
<b>Fines collected by</b>	State prosecutor for serious economic and international crime and, in some circumstances, the authority
<b>Fines go to</b>	The Treasury

## Abuse of dominance

<b>Highest no. of abuse of dominance cases under way in 2014</b>	40
<b>No. of abuse of dominance investigations launched in 2014</b>	10
<b>No. rolled over</b>	25
<b>No. of files closed in 2014</b>	25
<b>Average length of investigation</b>	11 months
<b>Sum total of abuse of dominance fines</b>	0
<b>No. of abuse cases settled with behavioural conditions</b>	2
<b>Longest-running investigation</b>	20 months
<b>Explanation for its duration</b>	Several aspects of the case have to be further investigated

## Total fines

<b>Total fines</b>	€3.2 million
<b>Imposed for</b>	
Cartels	100%
Abuse of dominance	0%
Other	0%

## Criminal enforcement

<b>Criminal enforcement track</b>	Yes
<b>Offences punishable by imprisonment</b>	Cartel
<b>Individual sentences imposed</b>	No
<b>Longest prison sentence</b>	N/A
<b>2014 prison time</b>	N/A

## Organisational change

### Structural change

Extensive changes will come into force in 2015 relating to the size and structure of the Competition Council and a new advisory body.

### Leadership change

Niels Beier became deputy director general in November 2014

### New powers or responsibilities

In 2014, the government adopted important changes to the Competition Act involving a number of initiatives aimed at enhancing efficiency and independence of the DCCA in competition matters. One major change relates to the composition of the Competition Council: today, the Competition Council comprises 18 members of which nine are appointed, inter alia, by trade organisations. The new Competition Council will be a smaller, professional entity consisting of seven members with expertise in law, economics, consumer affairs and commerce. The Competition Council will continue to be politically independent and will have the overall responsibility for the administration of the Competition Act.

In addition to the new Competition Council, an advisory committee will be established consisting of, among others, representatives of trade organisations. The role of the advisory committee will be to give general advice to the Competition Council on needs for general guidance.

Further, amendments to the Competition Act increased the independence of the DCCA's competition analyses. Today, analyses carried out by the DCCA are formally subject to the approval of the minister of business and growth, although in practice they are to a large extent independent of the minister. In order to ensure that the DCCA can carry out analyses independently of political

interests, it will be for the new Competition Council to decide which analyses the DCCA will carry out and approve these. The minister will still have the possibility to ask the DCCA to carry out analyses subject to the approval of the minister.

<b>Budget change</b>	Increase of €1.7 million
----------------------	--------------------------

## Advocacy

<b>Percentage of budget dedicated to advocacy</b>	10%
<b>Stand-alone advocacy office</b>	No
<b>Appearances before congress/parliament</b>	0

### Other contact with lawmakers and government officials

More than 50 meetings with ministry officials, participation in 25 working groups, plus various other informal advocacy efforts

### Legal changes proposed/enacted

This year and next the Danish parliament is set to adopt new rules regarding telecoms mergers and on the implementation of the EU damages directive.

### Other results

The DCCA has played a significant role in the government growth plans in 2014. Several of the initiatives relevant to competition arose from the competition policy programme formulated by the DCCA in 2012. Also, the Danish Parliament adopted an act modernising licence agreements on electricity, plumbing and sewers.

## Priority setting

### Setting goals and priorities

Specific goals and priorities for each division are described in management contracts between the head of divisions and the Director General. The management contracts implement the overall strategic goals of the authority. In addition to management contracts, strategies are prepared for industries and markets where competition problems may exist. The purpose of these sectoral strategies is to target and prioritise the efforts by the DCCA to markets with the most severe competition problems.

An update and revision of the contracts are carried out in August each year. At this point, new goals for the rest of the year can be included. Finally all management contracts are evaluated in January the following year.

In addition, a general management contract for the authority is agreed with the Ministry of Business and Growth.

### Allocation of resources

In specific competition cases, the individual heads of divisions are in charge of a preliminary screening and preparing a prioritised list of cases. Larger new cases are discussed at regular strategy meetings with head of divisions and general management, and require the approval of general management before an in-depth investigation starts. Pending competition cases are discussed in a monthly meeting, where they are moved up or down on the prioritisation list. The authority uses a project management tool to manage large cases and projects. Each month the general management is presented with a status report on pending competition cases and analyses where progress, resources, risks and effects are discussed. Cases that do not follow the scheduled plan are discussed at meetings between the heads of divisions and at the directors' meeting.

## Long-term strategy and training

### Evaluation methods

Overall, the priorities and goals set out in the management contracts with the individual divisions are evaluated in January. The fulfilment of the management contracts is linked to a financial bonus awarded to each division. At meetings between heads of

divisions and deputy director generals lessons learned are discussed on a regular basis.

#### *Ensuring stability*

In all larger competition case there is a peer review to improve quality. For all concluded cases a document with lessons learned is prepared and shared. Furthermore, concluded cases are presented at monthly meetings where all competition case handlers are present. An electronic guidebook also contains specific information on all procedures and guidelines on "how to" handle competition cases.

### **Results**

#### *Key achievements*

2014 has been a good year for enforcement in Denmark. Seventeen anti-cartel decisions have been issued; 11 alone in the construction industry concerning cases of bid rigging in which the companies exchanged information on prices and other terms. The largest fine until now in a Danish cartel case was realised in 2014 – a fine of around €1.3 million for bid rigging.

The Competition Council in 2014 made 10 important decisions in competition matters with a distinct impact on the markets involved, especially in markets such as audit, pharmaceuticals and farming.

In May 2014 the Competition Council decided to approve a merger in the audit industry as EY was allowed to take over KPMG with commitments. Later the same year the Council had to make another decision regarding the same companies since they partially implemented their merger prior to merger control approval, which was a clear breach of the stand-still obligation.

The government has adopted important changes to the Competition Act involving a number of initiatives aimed at enhancing the efficiency and independence of the DCCA in competition matters. Further, the amendment brings increased independence to the DCCA's competition analyses since it will be for the new Competition Council to decide and approve which analyses the DCCA will carry out in the future.

2014 was also the year where we could finally bring an end to a long-lasting case concerning the duration of a behavioural remedy in merger cases. The case started in 2003, where two mortgage banks merged. The merger was cleared with remedies, of which one has been subject to the above mentioned case. In 2010 the Competition Council decided that remedies with no time limits are in fact unlimited. The case was brought all the way to the Supreme Court, which in 2014 confirmed the decision of the Competition Council.

#### *Appeals success*

One decision of the Competition Council and one decision by the authority (concerning access to files) were reviewed by the Competition Appeals Tribunal in 2014. Both cases were upheld entirely. One decision by the Competition Council was reviewed by the Supreme Court in 2014 and was also upheld.

### **How do you rate yourself?**

The Danish Competition and Consumer Authority has in 2014 delivered a focused and effective enforcement of the Danish Competition Act. The Competition Council (the DCCA's executive board) has in 2014 made 10 important decisions in competition matters with distinct impact on the markets involved especially in markets such as construction, pharmaceuticals and farming. The total sum of cartel fines in 2014 was approximately €3.2 million including the largest fine to date in a Danish cartel case. One company alone in the market for construction has accepted a fine of approximately €1.3 million for bid rigging, which is an important result, particularly from an advocacy perspective.

Further important market studies have been conducted in several areas. These include the retail sector, a number of reports on payment service, car inspections, train, competition in publicly provided services, guidelines concerning exchange of information within trade organisations and guidelines concerning consortia agreements.

The DCCA has played a significant role in the creation and design of the government's growth plans in 2014.

To assess the performance by the DCCA a study of the effects of the enforcement of the Danish Competition Act was conducted. It is estimated that the enforcement of the Competition Act has given direct consumer benefits of approximately €176 million on average over a three-year period. In addition to these direct effects there are substantial indirect effects from deterrence.

To continuously improve the performance, additional interviews with central external stakeholders were conducted in 2014 and an OECD review is in progress. These initiatives have already led to improvements, for example, the creation of another division handling competition cases.

The legislative changes adopted by the Danish parliament in 2014 giving DCCA a new Competition Council are an important improvement in the institutional set-up of the DCCA. The new Competition Council will be a smaller, professional entity with special competencies in law, economics, consumer affairs and commerce and can in the future publish and advocate analyses more effectively.

To strengthen enforcement further in the coming years an increase of 18 per cent in the budget for the authority has been agreed and additional staff recruited.

Advocacy efforts have high priority at the authority and there is much attention paid to external communication with advocacy effects. In independent brand studies of the authority it receives top scores and the impact is rated high.

Through effective enforcement, new improved measures and strong advocacy efforts the authority has successfully contributed to increased growth and competition in Denmark in 2014.