

Rating Enforcement – *Global Competition Review* has published its 12th annual survey of the world's leading competition authorities.

Denmark's Competition and Consumer Authority falls to two-and-a-half stars, after another year of low enforcement. Only one cartel sanction was imposed, no abuse fines were issued and the authority lost a long-running case against Post Danmark. But it is hoped that increased sanctions introduced in 2013 will give a boost to the leniency programme and improve enforcement in general.

- The European Commission's DG Competition maintains its five-star rating with a strong year, including an impressive €1.9 billion in cartel fines.
- The US Federal Trade Commission has a very successful year, making excellent progress in its battle against so-called reverse-payment settlements to retain its position as a five-star agency.
- Brazil's Administrative Council for Economic Defence rises to four stars after performing impressively while juggling the significant administrative shake-up of merging three agencies into one.
- In its final year as a distinct competition agency, the Netherlands Competition Authority maintains its high standards as a four-star enforcer. Next year it will become the Authority for Competition and Markets.
- Korea's Fair Trade Commission drops to three-and-a-half stars after a decrease in the pace of enforcement and questions about the agency's priorities.
- Greece's Competition Commission and Ireland's Competition Authority are both promoted to three stars, for making distinct improvements to their competition enforcement regimes, despite the challenging economic environments in which they're working.
- Denmark's Competition & Consumer Authority is knocked back to two-and-a-half stars after another year of low enforcement.

Rating Enforcement provides informed comment and analysis of each authority's successes – and failures – in 2012. This is based on detailed information supplied to GCR by the authorities, as well as the views of specialists in each jurisdiction. We also consult our extensive coverage of worldwide competition enforcement throughout the year.

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If you are interested in purchasing a licensed PDF of your authority's full entry, or a printed copy of the complete survey, please contact Nadine Radcliffe at nadine.radcliffe@globalcompetitionreview.com, or call +44 20 7467 0179.

DENMARK



↓ FALLING

COMPETITION AND CONSUMER AUTHORITY

2012 was a “wait and see” year for Denmark’s Competition and Consumer Authority, as the agency anticipated changes to the Competition Act that promised to give enforcement more bite. The bill, which came into force in March 2013, increases the minimum fine for a cartel violation by 10 per cent and introduces prison sentences for cartelists.

The bill was a success for the authority, which has long campaigned for the improvements. Work towards the reform was a major priority in 2012; enforcement levels, meanwhile, remained low. The public prosecutor for serious economic crime imposed just one cartel sanction, fining two environmental laboratories and their respective directors 525,000 kroner (€70,440) for rigging bids in the sale of laboratory equipment.

No fines were issued for restrictive practices. The authority lost a long-running case against Post Danmark when the European Court of Justice dismissed the authority’s decision that the incumbent postal operator had abused its dominant position for the distribution of unaddressed mail, citing “legal deficiencies” in the original decision. The agency was also forced to abandon a high-profile abuse investigation against Copenhagen Airport, prompted by the airport’s refusal to let a plot of land. The Ministry of Transport intervened after the authority had issued statements on its theory of harm, ruling that the investigation was incompatible with aviation legislation. “To be overruled at such a late stage of the investigation was quite a blow for the authority,” says one source, who adds that they had been “quite impressed” by the volume and quality of the authority’s initial work on the case up to that point.

One source says it is “remarkable” that the authority made “almost no decisions in 2012”. “It is caught in a dilemma between wanting to be more active but lacking the time and the opportunities to prove itself,” they say.

Investigations take a long time to reach fruition. An average cartel investigation lasts between one and two years, while an abuse of dominance investigation typically takes between 20 and 24 months. The authority referred six cartel cases to the public prosecutor last year but none reached a decision stage. “If you have a client in major difficulty, this sort of time-frame is very difficult to explain,” says one source.

Some lawyers feel the length of the process is due to the authority paying more attention to the quality of its decisions,

however. “Also timing is still an issue, the quality of legal and economic analysis has gradually improved over the last few years,” says one.

The authority of course bears limited responsibility for low fine levels. Referrals to the public prosecutor are not made public, and some lawyers suggest there is a disjunction between the cases the authority wishes to pursue and those taken on by the decision-making body. The prosecutor, suggests one, is “reluctant” to take on certain cases and tends to “shy away” from complex dominance cases. “It prefers to stick to retail price maintenance cases, generating small, reliable sanctions,” they say. “This is a problem for the authority, which would prefer to make a splash with bigger fines.” Another feels the authority last year spent “a lot of energy” on cases that were ultimately rejected by the prosecuting body.

On the merger side, lawyers are more positive, saying merger notification thresholds introduced in 2010 are working well, although some say the new simplified procedure for “non-problematic” mergers still requires a lot of information. Most practitioners feel the authority deals with straightforward mergers efficiently despite being stretched – a single case handler is often dealing with three or four reviews at the same time. Two mergers last year were subject to in-depth review and commitments. The *Pernod/Arcus* merger, in which Arcus-Gruppen offered to divest Pernod Ricard’s Brøndums aquavit label, marked the authority’s first use of divestment ratios in a merger analysis. This, says one lawyer, is part of a general improvement of the authority’s merger analysis: “They have gone from using a very formalistic approach to focusing an effects-based analysis.”

The authority is under-resourced. It was one of the few agencies that took a budget cut in 2012, and almost a quarter of staff were newcomers last year. Lawyers say this affects the quality of the agency’s work because experience levels vary. “Many of the younger staff are uncertain and need to check with their boss before making even the smallest decision,” says one lawyer.

It remains to be seen how this understaffed authority will cope with the cases that emerge from changes in the law. Hopefully, the bill will make enforcing easier – the increased sanctions are hoped to finally kick-start a leniency programme that only generated one application last year, and is blamed by many for keeping Denmark’s enforcement levels low.



Head of agency: Agnete Gersing
Previous employment: Deputy permanent secretary in the prime minister's office
Mandate expires: 2014
Budget: €11.5 million
Amount spent on salary: €7.6 million
Percentage of budget spent on salary: 66%
Total staff: 239
Staff working on competition enforcement: 69
Percentage focused on competition: 29%
Non-administrative staff: 66
Percentage who are lawyers: 41%
Percentage who are economists: 41%
Percentage who are others: 18%
Other areas of focus: General assistance to the minister of business and growth, preparation of new legislation, competition and consumer analysis
Average age of staff: 38
Male/female: 37%/63%
Average tenure: 7 years
No. of staff who left: 12
No. of staff who retired: 0
No. of staff who remained in civil service: N/A
No. of staff who joined from the civil service: N/A
No. of staff who joined in 2012: 15
No. who have spent at least 5 years in private practice: N/A
Percentage of staff who left: 18%
Percentage who retired: 0%
Percentage who remained in civil service: N/A
Percentage who joined from civil service: N/A
Percentage who joined in 2012: 23%
Stand-alone bureau of economics: Yes
No. with PhDs in economics: 1
Name of chief economist: Thomas Rønde

Priorities

No. of staff working on mergers: 13
No. of staff working on anti-cartel: 17
No. of staff working on dominance-related issues: 12
No. of staff working on other areas: 24
Percentage of staff working on mergers: 20%
Percentage of staff working on anti-cartel: 26%
Percentage of staff working on dominance-related issues: 18%
Percentage of staff working on other areas: 36%
Sectoral priorities in 2012: Telecommunications, retail, media, freight, pharmacies and pharmaceutical products
Sectoral priorities for 2013: Construction, electricity, payment instruments, postal services, retail bank sector, telecommunications, TV market, private practitioners in the health sector, pharmaceuticals, fast-moving consumer goods
Performance assessment: N/A

Mergers

No. of mergers filed: 36
No. of mergers that led to in-depth review: 2
No. of filed mergers challenged: 2
No. of challenged mergers blocked: 0
No. of challenged mergers resolved with remedies: 2
No. of challenged mergers abandoned by parties: 0
Percentage of filed mergers that led to in-depth review: 6%
Percentage of filed mergers challenged: 6%
Percentage of challenged mergers blocked: 0%
Percentage of challenged mergers resolved with remedies: 100%
Percentage of challenged mergers abandoned by parties: 0%

Anti-cartel

No. of leniency applications
First-in 1 (summary application)
Total: 1
No. of dawn raids: 6
No. of cartel decisions: 0 (1 taken by the court)
No. of cartel decisions concluded with fines: 1
Total fines in 2012: €73,800
Average fine per cartel: €67,000
Average length of cartel investigation: 5 months
Fines collected by: The Public Prosecutor for Serious Economic Crime
Fines go to: The Treasury

Criminal enforcement

Criminal enforcement track: Yes (imprisonment introduced in March 2013)
Offences punishable by imprisonment: Cartels
Maximum sentences: N/A
Individual sentences imposed: N/A
Longest prison sentence: N/A
2012 prison time: N/A

Abuse of dominance

Highest no. of abuse of dominance cases under way in 2012: 7
No. of abuse of dominance investigations launched in 2012: 2
No. rolled over: 5
No. of files closed: 2
Average length of investigation: 27 months
Longest-running investigation: Approximately three years
Explanation for its duration: It is a complex case with more than one party, and it also involves an article 101 assessment. Furthermore, the case has cross-border effects and has implied cooperation with both the German and the Swedish competition authorities.

Organisational change

Structural change: No
Leadership change: No
New powers: On 19 December 2012, a revised competition act was adopted. The amendments came into force on 1 March 2013

Budget change: Costs used in the competition area changed from €12.1 million in 2011 to €10.6 million in 2012. The change was necessary to adapt to a declining appropriation.

Priority setting

Setting goals and priorities

Determined in January each year in close cooperation between management and heads of units. The annual goals and priorities are based on the agency's overall strategy.

Allocation of resources

The individual head of units are in charge of preliminary screening of new competition cases and preparing a prioritised list of cases. Larger cases are discussed at regular strategy meetings with head of units and the general management, and they need the approval of the general management before an in-depth investigation starts. Pending competition cases are discussed on a monthly meeting, where they are moved up or down on the prioritisation list.

Long-term strategy and training

Evaluation methods

Overall, the priorities and goals set out in the management contract with the individual units are evaluated in January. The fulfilment of the management contracts are linked to a financial bonus awarded to the individual units.

Ensuring stability

The authority uses a number of tools to ensure stability and institutional memory. In all larger competition cases, the legal secretariat and market analysis and economics division implements peer review.

How do you rate yourself?

The Danish Competition and Consumer Authority rates itself among the better-performing authorities in Europe.

Results

Key achievements

In 2012, a committee on the Danish Competition Act appointed by the government in 2009 finished its work and submitted a report recommending, among other things, a strengthening of the sanctions for infringing the competition rules. Most importantly, a majority of the committee recommended that prison sentences be introduced in the Danish Competition Act for involvement in cartel cases. Moreover, a majority of the committee recommended a significant increase in the level of fines for infringements of the Competition Act. The committee also recommended changes in the procedures for competition cases and a strengthening of the information and guidance initiatives of the Danish Competition and Consumer Authority.

Appeals success

Two decisions of the Competition Council were reviewed by the Competition Appeals Tribunal in 2012. One of the cases was entirely upheld; the other case was partly upheld.