

Rating Enforcement – *Global Competition Review* has published its 14th annual survey of the world's leading competition authorities.

Denmark's Competition and Consumer Authority earned two-and-a-half stars for its work in 2013. Enforcement is still slow and unpredictable and many observers question if it is bringing the right cases. The authority gained new powers in 2013, with prison sentences for convicted cartelists and a tenfold increase in the maximum fine.

Among other highlights:

- The UK's Competition Commission falls out of our five-star group in its final year as enforcer, after two of its highest-profile decisions were slashed on appeal.
- The US Department of Justice's antitrust division keeps its five-star rating after a series of court victories and the steady operation of perhaps the world's most efficient and feared cartel enforcer.
- The European Commission stays at five stars, having led the way in punishing the Libor rate-fixing ring and secured its long-sought private damages package in the EU Parliament.
- Korea's Fair Trade Commission returns to the four-star rankings after a successful change in leadership and a refocus on its core competition mission.
- The Netherlands Authority for Consumers and Markets falls to three-and-a-half stars after the latest in a series of quiet years that have seen relatively little enforcement activity.
- Mexico's new enforcer, the Federal Economic Competition Commission, moves up to a three-star ranking after a sparkling start to its enforcement regime.
- Norway's Competition Authority jumps to three-and-a-half stars after a year that saw brave and innovative casework and nomination as GCR's European Agency of the Year.
- Czech Republic's Office for the Protection of Competition drops to two-and-a-half stars after a year that saw no sanctions either for cartel behaviour or abuse of dominance.

Rating Enforcement provides informed comment and analysis of each authority's performance in 2013. This is based on detailed information supplied to GCR by the authorities, as well as the views of specialists in each jurisdiction and our own editorial research drawn from 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 Jivan Virdee at jivan.virdee@globalcompetitionreview.com, or call +44 20 7908 9228.

Denmark



COMPETITION AND CONSUMER AUTHORITY

Denmark's Competition and Consumer Authority says its greatest achievement in 2013 was winning new powers that promised to give its enforcement more bite. After extensive lobbying, amendments came into force in March introducing prison sentences for convicted cartelists and multiplying the maximum fines available by 10.

Since then, the authority and the private bar say the level of awareness and perhaps fear of the authority has increased. "The changes have had a significant impact on awareness of competition rules," says one lawyer, no doubt helped by a prominent publicity campaign from the authority, with television slots and newspaper ads depicting an imprisoned businessman – and also, much to the joy of Copenhagen's antitrust community, advising them to call their lawyers. Otherwise, the impact of the changes has been small. The authority did not use the powers in 2013, and observers still complain that serious competition cases are being overlooked.

As in previous years, respondents voiced two nagging criticisms of Denmark's enforcer again and again: its inactivity – it only concluded one cartel case in 2013 – and the cases it chooses. "It doesn't really crack cartels," says one lawyer. Instead, officials put a lot of time and effort into small matters, such as challenging rules governing undertakers and imposing paltry fines on village driving instructors and cleaners, observers say.

This is partly down to a mindset within the authority that is very geared towards results. "They say that wherever there is a violation, they have to look into it," says one lawyer, even if the violation has little, if any, impact. If they carry out a dawn raid and find even the faintest whiff of wrongdoing that could mean fines, officials will reportedly pursue the case to the bitter end. One case involving professional regulations has been going on for three-and-a-half years without even a statement of objections, moans one observer.

In numbers, last year looks unimpressive. It fined one cartel a measly €10,000 and did not achieve any fines for abuse of dominance, though it did close two cases with behavioural remedies. As with last year, the almost-redundant leniency programme came up several times in conversation. The authority would not disclose how many applications for immunity it received in 2013, but observers say the number is probably quite low, with the vast majority of cases still arising from complaints. However, the authority certainly hopes its beefed-up fining powers and risk of

prison sentences will make self-reporting a more attractive option for companies.

It is worth noting that in March 2014, Denmark struck its first leniency deal, granting immunity to an unnamed company that came clean over bid rigging on hospital hygiene contracts. It is still a small case, and the only other company involved got off without a fine after the public prosecutor declined to take the case further. Observers are still holding out for a leniency applicant to spark a big cartel case to judge the impact of the changes.

Some observers say the enforcer is reluctant to bring abuse of dominance cases because of the Supreme Court's decision in *Post Danmark*, which rejected much of the authority's thinking on price discrimination by a former incumbent. Since then, enforcement in the area has been low, and instead most unilateral conduct decisions punished resale price maintenance, which are easier cases to bring.

The authority's budget was cut by over €1 million last year, the result of declining appropriations. Practitioners say it shows in the introduction of filing fees for mergers and also in the staff training. Employees are described as "too junior" by some, while others complain that every time their clients go in they have to deal with an entire new set of faces. Twelve competition officials left the authority in 2013, while 13 joined.

It was not all doom and gloom last year, though. The authority won plaudits from some quarters for the way it reviews mergers, especially its use of econometrics. In 2013, it approved two mergers with remedies – in the beverage and furniture markets – in one case using diversion ratios to decide both the relevant market and the likely effect of the deal on competition, and in another providing sophisticated counterfactual analysis. Other observers, however, complain that the review is too slow by European standards and overly burdensome.

But perhaps the biggest questions remain over transparency. Multiple respondents complained that Denmark's authority went back on promises, changing its mind after discussions with management even after parties have been told a matter is settled. "They should be better at communicating to the party what is going on in the case. That's where frustration comes from," says one lawyer. None doubt that staff are taking their job seriously and working to improve. But all too often, they say, real enforcement is let down by their twisted priorities, a glacial pace and unpredictability.



Head of agency Agnete Gersing

Previous employment

Deputy permanent secretary in the prime minister's office

Mandate expires May 2016

Budget €9.7 million

Amount spent on salary €6.8 million

Percentage of budget spent on salary 70.1%

Total staff 221

Staff working on competition enforcement 71

Percentage focused on competition 32.1%

Non-administrative staff 68

Percentage who are lawyers 44.1%

Percentage who are economists 38.2%

Percentage who are other 17.6%

Other areas of focus

General assistance to the Ministry for Business and Growth; preparing new legislation; competition and consumer analysis

Average age of staff 36 years

Male/female 43%/57%

Average tenure 7.3 years

No. of staff who left 12

No. of staff who retired N/A

No. of staff who remained in civil service N/A

No. of staff who joined from the civil service 4

No. of staff who joined in 2013 13

No. who have spent at least 5 years in private practice 12

Percentage of staff who left 17.4%

Percentage who retired N/A

Percentage who remained in civil service N/A

Percentage who joined from civil service 30.8%

Percentage who joined in 2013 19.1%

Stand-alone bureau of economics Yes

No. with PhDs in economics 1

Chief economist Thomas Rønde

Priorities

No. of staff working on mergers 15

No. of staff working on anti-cartel 15

No. of staff working on dominance-related issues 22

No. of staff working on other areas 16

Percentage of staff working on mergers 22.1%

Percentage of staff working on anti-cartel/dominance related issues 22.1%

Percentage of staff working on other areas 23.5%

Sectoral priorities in 2013

Construction; electricity markets; payment instruments; postal services; retail bank sector; telecommunications; television market; private practitioners in the health sector; pharmaceuticals; fast-moving consumer goods.

Sectoral priorities for 2014 Same as 2013

Performance assessment N/A

Mergers

No. of mergers filed 41

No. of mergers that led to in-depth review 3

No. of filed mergers challenged 0

No. of challenged mergers blocked 0

No. of challenged mergers resolved with remedies 1

No. of challenged mergers abandoned by parties 0

Percentage of filed mergers that led to in-depth review 7.3%

Percentage of filed mergers challenged 0%

Percentage of challenged mergers blocked 0%

Percentage of challenged mergers resolved with remedies N/A

Percentage of challenged mergers abandoned by parties 0%

Average length of an in-depth merger review 3.5 months

Anti-cartel

No. of leniency applications

First-in N/A

Total N/A

No. of dawn raids 8

No. of cartel decisions 5

No. of cartel decisions concluded with fines 1

Total fines in 2013 €10 million

Average fine per cartel €10 million

Average length of cartel investigation 18 months

Fines collected by

State prosecutor for serious economic and international crime

Fines go to Danish treasury

Abuse of dominance

Highest no. of abuse of dominance cases under way in 2013 27

No. of abuse of dominance investigations launched in 2013 23

No. rolled over 14

How do you rate yourself?

The Danish Competition and Consumer Authority has in 2013 improved prevention measures importantly and has delivered a focused and effective enforcement of the Danish Competition Act. A most important achievement is the implementation of the possibility of imprisonment in cartel cases and the tenfold increase in the level of fines for companies and persons for infringements of the Competition Act. With these enforced measures the prevention of new cartel cases and cases of infringements of the Competition Act has taken up new improved standards in Denmark. It is the mission of the authority to ensure markets function well. A central strategic goal is to deliver decisions in competition matters and analysis that have distinct impact on the markets involved. This mission in 2013 was a success in markets such as markets for liberal professions, transport, pharmacies, media, feeding stuffs, broadband, construction, real estate and groceries. And through effectively handling 34 mergers in 2013 the Authority has contributed to the development of new

companies in Denmark. In 2013, the Authority continued its efforts and focus on identifying and prosecuting serious violations of the Competition Act and carried out 41 unannounced inspections. Further, the publication of analyses on the dysfunctions of markets such as the retail bank market for private customers, the market for transport of goods and the market for private chiropractors and physiotherapists has brought attention to customers on benefits possible through actively investigating prizes and products in purchases such as taking up new loans or having sent an item bought through the internet. Also decision makers have, through the analyses, been made aware of the need for adjustments in existing regulations in various markets and the authority will keep on pushing for adjustments were necessary. With new and improved measures, information campaigns and through effective enforcement the Authority has successfully contributed to increased growth and competition in Denmark in 2013.

No. of files closed	13
Average length of investigation	12 months
Sum total of abuse of dominance fines	0
No. of abuse cases settled with behavioural conditions	2
Longest-running investigation	32 months
Explanation for its duration	Case involved dawn raids and a vast amount of evidence, and concerns a highly regulated industry

Criminal enforcement

Criminal enforcement track	Yes
Offences punishable by imprisonment	Cartel offences (since March 2013)
Maximum sentences	6 years
Individual sentences imposed	No
Longest prison sentence	N/A
2013 prison time	None

Organisational change

Structural change	No
Leadership change	In September 2013, Bitten Thorgaard Sørensen took office as the new deputy director general with legal responsibility for large and strategically important competition cases.
Budget change	The authority's budget fell in 2013 from €10.6 million to €9.7 million. The change is a result of a declining appropriation.

Priority setting

Setting goals and priorities

The authority has an overall strategy for 2013–2016. In accordance with this strategy, annual goals and priorities of the authority are determined in January as a result of close cooperation between the general management and heads of divisions. Specific goals and priorities for each unit are described in annual management contracts between the head of divisions and the director general. In addition to the management contracts, strategies are prepared for industries and markets where competition problems may exist so

we can intensify our focus on and target the most serious competition problems. We update and revise the management contracts in August each year, at which point new goals for the autumn can be included. In addition, a general management contract for the authority is agreed with the Ministry of Business and Growth on the overall performance of the authority.

Allocation of resources

The individual heads of divisions 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 between heads of division and the general management, and they need the approval of the general management before an in-depth investigation is started up. Pending competition cases are discussed on a monthly meeting, where they are moved up or down on the prioritisation list. The authority makes use of a project management tool to manage large cases and projects. Each month the general management is presented a status report on pending competition cases and analyses. At this monthly presentation, progress, resources, dialogue with partners, and risks and effects of the cases are discussed. Cases not on the schedule are discussed at meetings between the heads of divisions and the general management.

Long-term strategy and training

Evaluation methods

The authority evaluates its performance in several ways. Overall, the priorities and goals set out in the management contracts with the individual units are evaluated in January. The fulfilment of management contracts are linked to a financial bonus awarded to each division. Heads of divisions and deputy director generals discuss their experience and lessons learned at regular meetings. For all concluded competition cases, we analyse lessons learned and share these internally.

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 to improve the quality. For all concluded cases, a document with lessons learned is prepared and shared among others on the intranet. Furthermore, concluded cases are presented at monthly meetings where all competition case handlers are present. Those who handled the case present the facts and lessons learned. The

Authority's intranet also contains specific information on a large number of procedures and guidelines on how to handle competition cases.

Results

Key achievements

In the authority's view, the introduction of imprisonment in cartel cases and the tenfold increase in the level of fines for companies and persons for infringements of the Competition Act is a key achievement in 2013. The changes came after an intense information campaign by the authority and have a very important preventive effect, and they have increased Danish companies' focus on competition law to a great extent.

Another key achievement by the authority in 2013 has been very effective enforcement of the Danish competition law. The Danish Competition Council has been able to decide on 11 cases based on the work of the authority. In 10 of these there is a direct effect on the markets for liberal professions. The Danish Competition Council has further dealt with 41 merger notifications

based on the work of the authority, 34 of which were approved after a simplified procedure. To raise focus on markets with dysfunctions, three important analyses have been published in 2013 that focused on the retail bank market for private customers, the market for transport of goods and the market for private chiropractors and physiotherapists. A fourth important analysis has been published to raise knowledge on the positive effects of the liberalisation of the book market. It is estimated that Danish consumers have an annual benefit of around €43 million due to the liberalisation of the market in 2000.

Appeals success

Two decisions by the Competition Council and one decision by the Competition and Consumer Authority (concerning access to the file) were reviewed by the Competition Appeals Tribunal in 2013. All three were entirely upheld. Two decisions by the Competition Council were reviewed by the courts in 2013. In both cases the court annulled the decision of the Competition Council.

Embargoed until Tuesday, 3 June 2014 09:30 GMT