

COMPETITION ECONOMICS HANDBOOK 2020

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Competition Economics Handbook 2020

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Global Competition Review is delighted to publish this thirteenth annual edition of the *Competition Economics Handbook*.

With economics at the centre of competition law, this handbook identifies the issues that antitrust economists are tackling today. The book's comprehensive format provides contact details for competition agencies' economists in over 70 jurisdictions. A Q&A format illustrates how the advisers are organised and their input into the regulation and enforcement process.

Much of the information has been provided by the agencies themselves and we are, as ever, grateful for all their cooperation.

The *Competition Economics Handbook 2020* is one of five special reports included in a *Global Competition Review* subscription each year, alongside four issues of the magazine, a survey on a four-year rotation (*Corporate Counsel* published in January 2019 and *40 Under 40*, to be published in January 2020) and two signature surveys, *Rating Enforcement* and *The GCR 100*.

We would like to thank all those who have worked on the research and production of this publication.

The information listed is correct as of October 2019.

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Overview

Henrik Ballebye Okholm and Torben Thorø Pedersen
Copenhagen Economics

For the past year, the Danish Competition and Consumer Authority (DCCA) has worked on several important cases concerning both anticompetitive agreements and abuse of dominance. At the top, the DCCA applied a merger simulation in the high-profile merger between the insurance companies Tryg and Alka.

In this article, we focus on some of the most notable cases from the past year. The following trends have been identified based on interviews with the DCCA and prominent competition lawyers from the following law firms: Accura, Bech-Bruun, Holst Advokater, Bruun & Hjejle, DLA Piper, Gorrissen Federspiel, Horten, Bird & Bird, Kammeradvokaten and Plesner.

Mergers: the DCCA uses estimated merger simulation for the first time

In the most recent large merger cases, the DCCA has continued a recent practice of applying more and more sophisticated economic analyses to assess the impact of a merger.

In November 2018, Tryg's acquisition of Alka was approved by the Danish Competition Council subject to remedies. Tryg was the second largest non-life insurance firm in Denmark, whereas Alka was a smaller rival established and owned by Danish labour unions and branding itself as a low-price private non-life insurance provider. The acquisition turned Tryg into the largest non-life insurance group in Denmark.

The case is remarkable because the DCCA devoted large resources to economic analyses of the risk of price increases. As a screening, the DCCA conducted both upward price pressure analysis and indicative price rise analysis. According to the DCCA, it revealed a risk of significant price increases.

To investigate this risk further, the DCCA applied two merger models. The first was a calibrated merger model. Here the price impact of the merger was simulated based on diversion ratios (calculated from switching data) and estimated gross margins based on average prices and constructed cost allocations. The DCCA had earlier used similar model back in 2002 and 2003. However, the model has not previously been applied in the non-life insurance market where many

customers are charged an individual price and where the concept of marginal cost is non-standard. The second model was a calibrated merger model. Here the demand functions were estimated with large data set collected from the parties and the largest competitors. The DCCA had never used estimated merger model before.

The DCCA estimated a market-wise price increase just below 1 per cent, which the DCCA found, confirmed the risk of significant price increase. The conclusion was based almost solely on the results of the calibrated merger model. The reason was that the results of estimated merger model were unstable to changes in the level of data geographical aggregation.

During the hearing, Tryg argued that the estimated market-wise price increase was highly uncertain and could not be regarded as evidence of risk of a significant price increase. Tryg argued that the calibrated model was likely to suffer from the same geographical instability. Tryg also pointed to several sources of modelling uncertainty that were not captured by the sensitivity analysis.

During the case, data room access was – for the first time in Denmark – granted to the parties. This meant that, once the DCCA had performed the initial simulations, the parties' economic advisors were granted access to confidential versions of the models and the data. Within the data room, the economists had the opportunity to suggest and have alternative simulations performed. This was much appreciated by the parties and will hopefully be an opportunity in mergers in the future.

Anticompetitive agreements: multiple decisions by the Competition Council and the Appeals Tribunal

The area of anticompetitive agreements has also saw attention during the past year.

In December 2018, the Council found that two outdoor media companies had agreed to common discounts in violation of the Danish Competition Act. The case has been appealed to the Appeals Tribunal.

In September 2018, the Appeals Tribunal remitted a case regarding the Danish roofing felt market to Danish Competition Council. The Council had found

two Danish manufacturers of roofing felt and two industry associations had entered into an agreement or concerted practice with the aim to foreclose actual and potential competitors and limit product supply via an industry standard.

The Tribunal found that the Council's analysis of the economic and legal context was insufficient and that it had not demonstrated with the requisite certainty that there is a by object infringement.

As part of the case before the Tribunal, the parties presented several expert reports, including a report by Copenhagen Economics.

The DCCA has not yet made public whether they are still working on the case.

Abuse of dominance: first Danish excessive pricing case in the pharma sector

Within abuse of dominance, two cases have drawn a lot of attention the past year.

In October 2018, the large *Ørsted* case (originally the *Elsam* case) came to an end. The case regarded Ørsted's alleged excessive pricing at the Western Danish wholesale electricity market in 2005 and the

first half of 2006. In May 2018, the DCCA lost the case in the Danish High Court. Hereafter, most lawyers expected the case to go to the Supreme Court, but in October 2018, the Appeals Permission Board rejected the DCCA's appeal to the Supreme Court. This ended the case and presumably also the approximately 5 billion kroner follow-on damage case.

Another excessive pricing case in the pharma sector is, however, still pending in the court system.

In January 2018, the Competition Council found that CD Pharma had abused its dominant position by charging unfair prices for the drug Syntocinon.

The Council found that CD Pharma was dominant on the Danish market for sale of oxytocin at least from 1 April 2014 to 31 March 2015, but also from 1 April 2015 to 31 March 2016. It also found that it was an abuse of this dominance when CD Pharma increased the price on Syntocinon from approximately €6 to €127 between 28 April 2014 and 27 October 2014.

In November 2018, the Appeals Tribunal upheld the decision. CD Pharma has appealed the decision to the Maritime and Commercial Court where the case is pending.

DENMARK



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Dr Henrik Ballebye Okholm is partner at Copenhagen Economics A/S. He has a PhD in agricultural economics from The Royal Veterinary and Agricultural University from 2002. Dr Okholm is an expert in applied microeconomics, especially industrial organisation, contract theory and the economics of cooperatives.

Dr Okholm now uses his expertise on projects regarding competition and regulation. He has been project leader on several projects regarding competition and regulation in many different industries, including the postal sector, professional services, telecommunication, electricity, retailing and the food industry. He has, among others, helped the Danish Bar and Law Society and Association of Danish Law Firms with an assessment of competition and productivity in the Danish legal profession in response to regulative scrutiny.

Henrik is appointed expert assessor at the Danish Maritime and Commercial Court and is listed in *Who's Who Legal: Competition Economists*.

Torben Thorø Pedersen works as a managing economist and helps clients primarily within the fields of competition economics and electricity markets. He has extensive experience with competition economics, having worked on a broad range of competition cases, especially mergers and abuse of dominance cases.

Since 2015, Torben has been an assessor at the Danish Maritime and Commercial High Court, appointed by Dansk Industri. He has also appeared as an expert witness in arbitration cases. Prior to joining Copenhagen Economics, Torben worked for the Danish Competition Authority and for DONG Energy Bioenergy & Thermal Power.



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Copenhagen Economics is one of the leading economic consultancies in Europe. Founded in 2000, we currently employ more than 90 people operating from our offices in Copenhagen, Stockholm, Helsinki and Brussels. Based on established research methods and in-depth sector knowledge, we help our clients make better choices in their political and commercial reality. Our senior team provides pragmatic solutions founded in economics to law firms, private companies, regulators, and policy makers all over the world. We are particularly dedicated to 12 service areas, including competition, dispute support, digital economy, intellectual property valuation and transfer pricing, and postal and delivery. *Global Competition Review* lists Copenhagen Economics among the top 20 economic consultancies in the world and has done so since 2006.

