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Denmark[*1]

Denmark is located in Northern Europe, bordering the Baltic Sea and the North Sea, on a peninsula north of Germany (Jutland); the country also includes two major islands (Sjaelland and Fyn). Once the seat of Viking raiders, and later a major, north European power; Denmark has evolved into a modern, prosperous nation, participating in the general, political and economic integration of Europe. It joined NATO in 1949 and the EEC (now the EU) in 1973.

However, the country has opted out of certain elements of the EU's Maastricht Treaty, including the European Economic and Monetary Union (EMU), European defence cooperation, and issues concerning certain justice and home affairs.

PROFILE	
Population:	5.4 million***
GDP (Current US$):	211.9 billion***
Per Capita Income: (Current US$)	33,570 (Atlas method)*** 30,940 (at PPP.)**
Surface Area:	43,090 sq. km
Life Expectancy:	76.6 years**
Literacy (%):	100 (of ages 15 and above)
HDI Rank:	17***

Sources:
- World Development Indicators Database, World Bank, 2004
- Human Development Report Statistics, UNDP, 2004

(**) For the year 2002
(***) For the year 2003

Economy

Denmark is the fifth richest country in the world in terms of income per person, according to the World Bank report of 2002. Denmark has evolved since the Second World War, from an agricultural economy into a modern industrial economy with a wide range of products and a prominent service sector.

The Danish economy remained primarily agricultural until the 1930s. Since 1950s, the relative importance of the agricultural sector has steadily declined in line with the diversification of the economy and the growth of the manufacturing and service sectors. By 2001, the agricultural output had shrunk to a mere 2.8 percent of GDP. However, the sector is still important in terms of its net foreign currency earning capacity, its effect on employment in adjacent sectors, and its importance in supplying foodstuffs domestically.

The economy leans heavily towards services, which accounted for 74 percent of GDP in 2001, a slightly higher percentage than the average for most developed countries. Industry, including construction, accounts for just less than one-quarter of output, a proportion that has remained broadly unchanged over the past decade. These contributions to GDP are largely reflected in employment, with services accounting for almost 73 percent of total employment, industry for 25 percent and agriculture just 1.6 percent in 2001.

One feature that Denmark shares with most of the other Nordic economies is its high level of state expenditure to total economic activity, which is now among the highest in the world. This is most clearly evident in the importance of the public sector in terms of total employment, which is considerably higher than the OECD average, as are government purchases of goods and services, which accounted for 25.1 percent of GDP in 2001.

Traditionally, Denmark has large companies in the shipping, trade and brewery sectors. In addition, mergers in recent years have led to the emergence of large banks and bigger companies in the engineering, pharmaceutical, agricultural machinery, tourism and food industries. At the same time, the basic structure of the economy, dominated by SMEs, has remained largely intact.

* Original paper done by Nupur Anchila of CUTS in October 2004. Revised in April 2006
1 Comments received from Ole Skotner and Thomas Herping Nielsen, Danish Competition Council

The Danish private sector is characterised by many SMEs. Firms with less than 50 employees account for about half of total employment, and only 12 percent of the labour force work in companies with more than 500 employees. Self-employment constitutes eight percent of total employment. A special feature of the Danish economy is the very high participation and employment rates for women.

The general policy stance of the Danish government emphasises the importance of free trade for Denmark's economy. Membership in the EU increasingly influences policies in Denmark, and the government of Denmark has worked to co-ordinate its decision making process with the European decision-making process.

Competition Evolution and Environment

Denmark's approach to competition law has been cautious from the outset. The first proposal for a law, from 1919, recommended only provisional steps, because it was not clear that anything permanent was needed. In 1929, an Act to protect the liberty of trade and the freedom to work, prohibited agreements that barred entry; providing strong sanctions, including even imprisonment. However, it was aimed mostly at labour, not business, and was repealed in 1937. More representative of the Danish approach to business regulation was the *Act on Price Agreements*, in 1937, which was founded on a principle of tolerance, if not outright sympathy, for horizontal combinations.

In 1937, the foundation of the current regime was laid. Agreements were to be notified to the Price Control Council, whose first step, in the event of a competition problem, was to seek to negotiate a resolution before resorting to an order to cease and desist or to regulate prices and margins directly. The Monopolies Act of 1955 built on the 1937 law, establishing a Monopolies Control Council, supported by a Directorate, as the successor to the Price Control Council. The 1955 Act gave this new Council some new enforcement powers and it also stiffened the substantive rules by prohibiting resale price maintenance. The Monopolies Act was still based on the 'control of abuse' principle. Companies were to notify the authorities when they entered some kinds of agreements or achieved a dominant position in the market. If there were competition problems, the authorities would negotiate with the companies to find resolutions and issue orders to cease and desist if negotiations failed.

When the 1990 Act changed the policy focus from 'monopoly' to 'competition', the Monopolies Control Council was transformed into the Competition Council. The new theme was transparency, but application was still premised on negotiating resolutions, and the renamed Council retained powers to regulate prices.

The 1998 Act represents the most significant change in Danish competition law since 1937. The new Act is based on the prohibition principle and departs from the former system of control. The OECD country review of Denmark from 1993 was one of the major triggers, which led to the adoption of new Danish competition legislation. The Competition Act was based on the so-called 'one-stop-shop' principle in relation to the EU competition rules, i.e. cases will be treated by one authority only to ease the administrative burden on the business community.

Box 69.1: Cartel in Electric Wiring Service

The largest cartel disclosed on the Danish Market, is the bid-rigging cartel in the electric wiring service in 1998. A major breakthrough in the disclosure of this cartel came about when the first four companies in the sector chose to cooperate with the Competition Authority. The companies submitted written material, which documented that many companies in the sector systematically had coordinated their bids for assignments of electricity wiring services.

The cartel comprised more than 800 electricians. The authority believes that the electricity cartel had led to increased prices for electricity work in the amount of an average of 20 percent for coordinated tender work, and 10 percent for other electricity work because of a certain 'rub-off effect'. The average price increase was thus 12 percent.

The criminal prosecution of companies in the electricity cartel was brought to an end in 2003. 204 companies were fined a total of DKK 25.6 million in this group action.

Source: Annual Reports of Danish Competition Authority, 2001, 2002 & 2003

Since the Act came into force in 1998, it has been amended twice, once in 2000, and the second time in 2002.

The first amendment introduced merger control in Denmark as from October 01, 2000. The rules on merger control are, to a large extent, based on the same rules as EU merger control rules. The amendments included *inter alia* the following elements:

- Introduction of a merger control provision;
- Possibility to sanction first time infringements of the prohibitions on abuse of a dominant position;
- Possibility to apply Articles 81 and 82 EC in matters, which affect trade among the EU Member States;
- Exchange of information with other competition authorities; and
- Termination or repayment of aid granted from public funds.

As a supplement to the general obligations on public authorities deriving from the EU public procurement directives, a new Act on competitive tendering in the construction sector entered into force on October 01, 2001. The Act regulates the conclusion of works contracts below the EU threshold and aims at strengthening competition in the construction sector. The Act has been technically revised and the new version came into force in September 2005.

In the light of several cartel cases, year 2001 saw political initiatives to tighten the Competition Act and the second amendment to the Act came into force on August 01, 2002. These primarily dealt with rules on dawn raids and the level of fines.

The 2002 change of the Danish Competition Act brought the legislation up to date by, among other things, increasing the level of penalties and improving the possibilities for the Competition Council to render opinions in respect of anticompetitive practice being a direct or necessary consequence of public regulation. On the legislation front, year 2003 was used to prepare for the larger changes that were to take place in relation to the modernised European Competition Rules.

The modernised EU rules came into force on May 01, 2004, and that meant, among other things, that companies can no longer report agreements to the Commission. This reform did not change basic European competition legislation, but merely the rules of procedure governing the use of such legislation. Nevertheless, the reform is expected to have a major impact on how competition rules are implemented in practice. The objective is that the authorities work more efficiently for the benefit of companies and consumers all over Europe.

With the introduction of these new rules, companies will no longer be able to report their agreements to the Commission but are required to assess their agreements themselves. The practice of the last 30 years will prove useful, but the role of the Competition Council has also changed, playing an even greater part in guiding and advising companies. This actually means that, for companies, the route to advice will become shorter than it was.

Prior to the 2002 amendment to the Act, there had been some discussion as to whether the prohibition of anticompetitive agreements covered the formation of joint ventures between competitors. Due to these discussions, Section 6 of the Act prohibiting anticompetitive agreements has been clarified. Thus, it is now clear that an agreement on the formation of a joint venture is covered by the prohibition of anticompetitive agreements, in Section 6 of the Act, if the agreement results in the co-ordination of the competitive behaviour between undertakings remaining independent. This clarification means that the rules on joint ventures are now fully in line with the rules applying under the EU regime.

On December 16, 2004 the Folketing (Danish Parliament) adopted a number of amendments to the Danish Competition Act. Among other things, this was a result of new provisions for the application of EU competition rules that entered into force on May 01, 2004. Although its provisions are immediately applicable in Denmark, the revision provided a basis for amending the Competition Act to ensure that the rules were transparent and that the Danish rules did not differ materially from EU rules.

In addition, the Danish Competition Council was given a wider scope to take action against dominant enterprises whose behaviour impedes effective competition. Finally, the Act was amended in a number of areas in order to define and clarify the legal situation as much as possible. The Act entered into force on February 01, 2005.

Highlights of the new Competition Act

- In special cases, the Competition Council is empowered to order dominant enterprises to prepare and submit written trading conditions;
- The prohibition against binding resale prices is emphasised to make it clear that it also applies in single cases of price control where the management is unaware of the issue. Discounts to retailers who agree to observe fixed prices are also prohibited;
- The merger criterion is amended to give the authority a wider scope to impose requirements in connection with mergers that threaten to impede effective competition, even though the mergers do not comprise the largest enterprise in the market (i.e. the so called SIEC criteria);
- Similar to the EC, the Competition Council is empowered to settle competition issues by accepting binding commitments from the enterprises;
- Moreover, the competition authority is empowered to issue orders to ensure that an enterprise observes the commitments made to the competition authority in a timely and proper manner;
- The existing notification system is modernised so that enterprises may claim exemption from the Competition Act without prior application;
- It is emphasised that the Act warrants publication of judgments and fixed-penalty notices for infringement of the Competition Act;
- The Competition Appeal Tribunal has been enlarged from three to five members; and
- It will be possible to handle cases in English language, wholly or partly.

Box 69.2: The Building Fairs of the Timber Merchants

The Competition Authority ordered the Federation of Timber Merchants (TUN) to stop making anticompetitive demands on the exhibitors at the building fairs of the federation.

In connection with the trade fair 'Byggeri 2002', and earlier fairs in 2000 and 1998, only suppliers that sold their products through the timber merchants, and only to a limited extent, who dealt directly with contractors and builders, were allowed to participate.

Almost all timber merchants in Denmark are members of TUN. All builders and contractors deal with timber merchants. This means that the trade fairs of TUN represented an important opportunity for the building material suppliers to participate in the trade fairs; dependent on the extent to which they were dealing directly with contractors and builders, constituted harmful anticompetitive behaviour.

Source: Annual Report on Competition Law and Policy in Denmark 2002

Sectoral Regulation

Energy Sector

The Danish Energy Authority (Agency) is a key institution for development and implementation of energy legislation and policy. The agency was founded in 1976 to implement the objectives of Denmark's first energy plan. As of 18 February 2005, it is under the Ministry of Transport and Energy. The Agency is responsible for the whole chain of tasks linked to the production of energy and its transportation through pipelines to the stage where oil, natural gas, heat, electricity etc. are utilised for energy services by the consumer. It is the task of the Danish Energy Agency to ensure security of supply and the responsible development of energy in Denmark from the perspectives of the economy, the environment and security.

Following introduction of competition into the electricity and gas industries in 1998 and 1999, respectively, an Energy Regulatory Authority (*Energitilsynet*) was established as the supervisory and appeals body in the energy sector. The Authority was established on January 01, 2000, replacing the former Electricity Price Committee and the Gas & Heating Price Committee.

The regulator, Danish Energy Regulatory Authority (DERA) supervises network tariffs and electricity, heat and natural gas prices for various consumer groups. The Authority is served by a secretariat, which is made available by the Competition Authority and the Energy Agency.

The Authority's principal task is to regulate the monopoly companies in the energy sector. This includes the grid and transmission companies, the companies with supply obligations in electricity and gas as well as the district heating companies. The Authority works to ensure that grid owners do not derive unreasonable advantages from their natural monopoly status and that all consumers forced to obtain energy from those companies enjoy fair, uniform and transparent prices and conditions of supply.

The decisions made by DERA may be appealed to the Energy Board of Appeal.

Telecommunications Sector

Liberalisation of the Danish telecommunications market began as early as the 1980s. In November 1995, the Danish Parliament reached to a decision aiming at the completion of the liberalisation process for services and infrastructure 18 months ahead of the 1998 European target. A number of legislative instruments were enacted, following a memorandum from the Ministry of Research entitled 'best and cheapest by way of real competition'. These sector-specific regulations were meant to encourage competition and ensure consumer protection.

In 1991, Denmark's National Telecom Agency (NTA) or Telestyrelsen was established. A government agency under the Ministry of Information Technology and Research (MITR), its mandate has been considerably extended since that time. The *June 1997 Act on the National Telecom Agency* sets out the NTA's responsibilities. These include: supervising and making decisions in relation to the application of telecommunication sector legislation; advising the Ministry of Information Technology and Research on telecommunication issues, ensuring an ongoing review of existing legislation; and collecting and publishing telecommunication statistics in order to ensure a competitive environment.

In 2002, the *1997 Act* was made a part of general Act on competition policy and consumer issues.

Furthermore, in relation with the *2002 Finance Act*, a new National IT and Telecom Agency replaced the former National Telecom Agency and State Information Service. This new Agency is under the Ministry for Science, Technology and Innovation, which was created in November 2001, as an extension of the former MITR. The new Ministry is responsible for research and education (universities), industrial research, and national technology and innovation policy. The principal mandate of the new regulatory agency is to 'develop and implement initiatives within key areas of the governments IT and policy strategy – a strategy aiming to ensure an optimal framework for IT and telecommunications and conditions enabling citizens, businesses, and the public sector to realise the network society'.

The National IT and Telecom Agency's tasks cover a wide field, contributing, on one hand, to ensuring a sufficiently advanced and developed telecommunications infrastructure as a basic condition for developing the network society, and, on the other, to ensuring consumer protection, promoting IT security, production of coordinated information about the public sector, stimulation of useful content on the network, effective public communication, and IT usage in the public sector.

Being an integral part of the Ministry of Science, Technology and Innovation, the National IT and Telecom Agency participates actively in efforts in all relevant areas. This is undertaken via regulation and through a close dialogue with the industry for the purpose of facilitating and ensuring the development of a well-working telecommunications market with free and real competition. Also included are activities to ensure efficient spectrum management and adequate consumer protection. The Agency also occupies a central coordinating role in relation to public use of IT, development of new digital content services and service offerings, exchange of data between authorities, etc. Finally, the Agency plays an important part in relation to strengthening efforts in the IT security area.

Interface between Competition Authority and Sectoral Regulators

Regulation of the telecommunications area in regard to competition law is handled by the National IT and Telecom Agency and the Competition Council by using the principle of 'one-stop-shopping'. Cooperation between the National IT and Telecom Agency and the Competition Authority aims to ensure effective surveillance of competition in the Danish telecommunications sector, and close cooperation between the authorities is a precondition for the principle of "one-stop shopping".

Cooperation between the National IT and Telecom Agency and the Competition Authority is based on the rules of telecommunications legislation under which binding opinions may be requested from the Competition Authority/Competition Council. The legislation on telecommunications lays down a number of procedures for cooperation between the National IT and Telecom Agency and the Competition Authority in several different areas. The Competition Authority is to give binding opinions on:

- the interconnection agreements submitted by the National IT and Telecom Agency, as to whether terms included in the agreements constitute a violation of the Competition Act;
- the universal service obligation (USO), the proposed maximum prices as submitted by the USO provider; and
- accounting supervision (e.g. in relation to cross-subsidisation).

Furthermore, there is current cooperation on pending cases between the National IT and Telecom Agency and the Competition Authority. Experience shows that especially complaints relating to competitive conditions in the telecommunications area will often be addressed to the National IT and Telecom Agency and the Competition Authority in parallel. In such cases, both authorities will of course be informed of the case. With a view to ensuring the principle of 'one-stop shopping', current coordination between the authorities is undertaken in order to ensure proper anchoring of cases.

In addition, efforts are made on a current basis to ensure:

- mutual information about decisions that may be of mutual interest,
- mutual information about agreements in the telecommunications area bearing on competition law, and
- mutual information about EU cases that are of mutual interest.

Box 69.3: Illegal Price Coordination Identified

The Competition Council ordered Wewers Belægningssten and Ikast Betonvarefabrik to terminate their illegal price coordination.

Danish Competition Authority carried out unexpected inspections of both enterprises in May 2003. During its inspections the Authority found evidence that the two companies were exchanging price lists with a view to raising the prices of products manufactured by both the companies.

Wewers Belægningssten was a joint venture controlled by Ikast Betonvarefabrik and Wewers Teglværker. The circumstance that one enterprise partly owned another enterprise did not make it legal to harmonise prices.

Source: *Annual Report on Competition Law and Policy in Denmark 2004*

Consumer Protection

The main objectives of Danish consumer policy are:

- consumer protection – legal rights against unfair practices, food and product safety;
- providing factual information to allow consumers to make informed choices;
- providing a complaints redressal system so that consumers can obtain redress;
- fostering cooperation between consumer and business to solve problems without the need for legislation; and
- ensuring consumer's freedom of choice.

There are various Government and non-Government consumer organisations, in place, to handle consumer cases. The Danish Ministry of Economic and Business Affairs has overall responsibility for consumer policy. It delegates all but new policy issues to the National Consumer Agency.

The principal aims of the Agency are to create a foundation for a coordinated and active contribution in the field of consumer affairs and to contribute to the creation and maintenance of a high level of consumer protection as regards quality, safety, health and financial and legal rights by means of mediation and the exercise of influence.

The consumer policy is governed and regulated by the following Acts:

- *Danish Marketing Practices Act;*
- *Danish Price Marking and Display Act;*
- *Act on Product Safety;*
- *Act on Consumer Complaints Board;*
- *Act on Travel Guarantee Fund;*
- *Act on Action for Injunctions for the Protection of Consumers' Interests; and*
- *Act on Certain Payment Instruments.*

A Consumer Ombudsman is present to primarily enforce consumer legislation. There is no local enforcement system. In case of civil law disputes, the consumer can file a complaint at the Consumers Complaint Board. These enforcement activities are supplemented by strong media interest in consumer matters.

The Danish Consumer Agency and the Danish Competition Authority are both agencies under the same Danish Ministry. While both recognise the close link between consumer and competition policy, on the whole, the two live separate lives.

Concluding Observations and Future Scenario

It is the impression of the Authority that competition in the Danish markets has not yet reached the level of comparable Member States (of the EU). According to the Authority, there has been insufficient market share mobility since the beginning of the 1990s, and consumer prices are since believed to be about four percent higher, on average, than the price level in comparable Member States. However, many Danish observers hold that there is no strong evidence supporting that view.

Enforcement of the Competition Act has tightened considerably in the last couple of years and the expressed intention of the Authority is clearly to pursue its hard line, vigorously, in the coming years. The Authority, nevertheless, takes a case-by-case approach.

Suggested Readings

1. Background Report on 'The Role of Competition Policy in Regulatory Reform', *1999*
2. Annual Report (1999, 2000, 2001, 2002 & 2003) of the Danish Competition Authority