DENMARK

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1. Relevant legislation

The merger control provisions are contained in Part four of the Danish Competition Act and in Executive Order on the Notification of Mergers.

Turnover is calculated in a accordance with Executive Order on the calculation of turnover in the Competition Act.

2. Authority

The Danish Competition and Consumer Authority (the DCCA).

The DCCA's website: https://www.en.kfst.dk/

3. Types of transactions caught

According to Section 12a of the Competition Act, the following constitutes a merger:

- When two or more previously independent undertakings merge into one undertaking.
- When one or more persons who already control at least one undertaking, or one or more undertakings – by an agreement to purchase shares or assets or by any other means – acquire direct or indirect control of the entirety of or parts of one or more other undertakings.

Fundamental to the determination of whether a merger constitutes a merger as defined by the Competition Act is whether or not there will be a permanent change of control or a permanent transfer of control of an undertaking.

4. Thresholds

A merger must be notified if one of the following three thresholds are exceeded:

- The participating companies have a combined aggregated annual turnover in Denmark, which exceeds DKK 900 million, and at least two of the participating companies have an aggregated annual turnover in Denmark, which exceeds DKK 100 million.
- At least one of the participating companies have an aggregated annual turnover in Denmark, which exceeds DKK 3.8 billion, and at least one of the other participating companies have an aggregated annual worldwide turnover, which exceeds DKK 3.8 million.
- Referred mergers from the Danish Business Authority between two or more telecom companies under the sector thresholds.

5. Exceptions

Exemptions from the merger definition:

- The acquisition of securities for resale by financial institutions, where the securities are sold within one year from their acquisition and where they are acquired as part of the institutions' normal activities.
- Transactions by which a trustee of an insolvent undertaking acquires control of an undertaking.
- The transfer of control to financial holding companies where the holding company only exercises the voting rights in order to preserve the full value of its investment.

6. Notifying party(-ies)

A merger must be notified by one or more of the undertakings concerned, depending on the character of the merger:

- Where a party acquires sole control of the entirety or of certain parts of an undertaking, the merger must be notified by the undertaking that acquires sole control.
- In case of acquisition of joint control the notification must be filed jointly by the undertakings which acquire control of the entirety or of parts of an undertaking.
- When two or more undertakings are merged into one undertaking, the notification must be filed by these merging undertakings.

7. Submission deadline

A merger must be notified to the DCCA either (depending on the type of transaction):

- When the undertakings have entered into a binding merger agreement.
- When a take-over bid or an exchange offer has been published.
- When control has been acquired (through other means than the result of control acquired through an agreement; for example acquiring control through inheritance).

And before the merger has been implemented.

8. Filing fee

The fee for a simplified notification amounts DKK 50,000.

The fee for a full notification amounts 0,015 % of the aggregate annual turnover in Denmark of the undertakings involved, however maximum DKK 1,500,000.

9. Proceedings timetable

The assessment of a merger notification is divided into two phases: Phase I and Phase II.

Phase I:

Phase I is 25 business days and begins to run when:

- The notification is complete, and
- The DCCA has received documentation of payment of the notification fee.

Both conditions must be met.

Phase II

If the Competition and Consumer Authority's investigations in Phase I warrants further in-depth investigations of the market, including assessments of any remedy commitments proposed by the parties, and these investigations cannot be concluded in Phase I, then the merger will be subject to a Phase II investigation.

The investigation and assessment in Phase II are subject to a 90 business day time-limit.

This deadline of 90 business days may be extended by up to 20 business days if - at the time the remedy commitments are submitted - there are less than 20 business days remaining until a decision must be taken and so that there is a total of 20 business days to assess the merger in light of the new or revised remedy commitments.

Appeal

According to section 12c (1) and (2) of the Danish Competition Act, mergers that will significantly impede effective competition, in particular due to the creation or strengthening of a dominant position, shall be prohibited or handled through commitments by The Danish Competition and Consumer Authority. Furthermore, decisions according to the above sections may be appealed to the Competition Appeals Tribunal within eight weeks after the parties concerned had been notified about the decision, cf. section 19(1) and section 20(2) of the Danish Competition Act. However, in exceptional cases the time limit may be extended, cf. section 20(2), second sentence of the Danish Competition Act.

Additionally, the decision of the Competition Appeals Tribunal may be brought before the courts no later than eight weeks after the party in question has been notified about the decision. If submission is not made within the time limit, the decision by the Competition Appeals Tribunal is final, cf. section 20(3) of the Danish Competition Act.

Processing times for appeals

Authority	Current processing times
The Competition Appeals Tribunal	21,4 months (March 2022)
The Maritime and Commercial High Court	16 months (2021)
The High Courts	10,2 months (2021)
The Supreme Court ***(Only with permission from the Appeals Permission Board)***	10,8 months (2021)

10. Availability of pre-notification/informal consultation

The DCCA generally recommends that parties to a merger contact the authority well in advance of their submission of a merger notification. However, pre-notification discussions between the DCCA and the parties to the merger are not mandatory.

The DCCA recommends that the discussions be initiated by the parties' or their advisors' informal contact to the authority. This informal contact may be initiated either by telephone or by e-mail to kfst@kfst.dk. If for reasons of confidentiality the parties do not wish to disclose

the names of the merging undertakings, they may, in the e-mail or over the telephone, state which sector the merger concerns.

11. Test for clearance/prohibition

If the DCCA finds that the merger will restrict effective competition significantly, the Competition Council must prohibit the merger.

When the DCCA assesses whether a merger will restrict the effective competition significantly, it will inter alia consider whether the merger will create or strengthen a dominant position. However, a merger may also restrict the effective competition even if it does not create or strengthen a dominant position. It could also restrict competition by strengthening the likelihood of the undertakings tacitly coordinating their competitive behaviour.

When assessing a merger, the DCCA will apply the same tests as the European Commission. Thus, the Commission's merger practice and the merger relevant case law from the Court of Justice of the European Union will therefore be applied. I.e. the European Commission's guidelines on the assessment of horizontal mergers as well as non-horizontal mergers will also provide an important contribution to the interpretation of the DCCA's merger assessments.

12. Conditional clearance - remedies

If the DCCA finds that a merger will restrict the effective competition significantly, the Competition Council will not be able to approve it, unless the parties offer commitments that can remedy the identified problems.

If a merger may lead to competition problems, the DCCA recommends that the parties consider possible commitments at the earliest stage possible.

Both structural and behavioural commitments/remedies have been applied/accepted by the DCCA and the Competition Council.

13. Stand-still obligation

Mergers that are subject to the Danish Competition Act must not be implemented before they have been assessed and approved by the DCCA or by the Competition Council. However, after the approval there are no stand-still obligations.

14. Failure to notify/obtain clearance

A penalty will be imposed according to Section 23(2) of the Competition Act if:

- The parties to a merger fail to notify the DCCA of the merger.
- The parties to a merger fail to submit a full merger notification when demanded to do so by the Competition Council.
- A merger is implemented before the merger has been approved.

Please note that failure to notify the authorities of a merger covered by the Danish Competition Act is considered a severe violation, where the fine is set between DKK 4 and 20 million, as seen in the following case where two Danish utility companies were fined for not complying with the mandatory merger control: http://antitrust-alliance.org/utility-companies-face-fines-for-non-compliance-with-the-mandatory-merger-control/.