
Agreement on customer allocation between media agencies was illegal

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On 12 June 2018, the Danish Competition Appeals Tribunal upheld the Danish Competition Council's decision that Mediacycenter Danmark A/S and MPE Distribution ApS had infringed the prohibition against anti-competitive agreements by having concluded what was deemed to be a customer allocation agreement.

Decision of 12 June 2018 by the Danish Competition Appeals Tribunal – Mediacycenter Danmark A/S vs. the Danish Competition Council
By Thomas Andersen, Economist, and Anders Petersen, Senior Intern

Background and the Council's decision

In its decision of 30 August 2017, the Danish Competition Council examined a cooperation agreement entered into between Mediacycenter Danmark and MPE Distribution. Under the agreement, the parties would make joint purchases and resale, and the purchasing would be done through Mediacycenter Danmark, who would negotiate and enter into agreements with distributors on behalf of both parties. It was also agreed that MPE Distribution was not to approach Mediacycenter's customers. On this basis, the Danish Competition Council considered the arrangement to be a customer allocation agreement violating competition law.

The Competition Appeal Tribunal's ruling

Mediacycenter Danmark argued that the agreement between Mediacycenter Danmark and MPE Distribution was a vertical distribution agreement because the two were active at different levels of the supply chain. The Danish Competition Council argued that it did not matter if there was a vertical aspect involved because, in the Council's opinion, the relationship was primarily a horizontal one. This would be the first matter for assessment.

The Danish Competition Appeals Tribunal found the agreement to be horizontal in nature because both companies were catering to the same group of customers. It was held to be of no significance in this respect that Mediacycenter Danmark was negotiating the purchases on behalf of both parties. The Appeals Tribunal therefore found that the cooperation agreement was intended to restrict competition and therefore constituted an unlawful allocating of customers. Consequently, Mediacycenter Danmark was found to have violated section 6(1) of the Danish Competition Act, and the Appeals Tribunal therefore upheld the Council's decision.

The Council has subsequently decided to submit the case to the State Prosecutor for Serious Economic and International Crime for the purpose of assessing criminal liability (if any).

[Read the Competition Appeals Tribunal's decision and the Competition and Consumer Authority's press release](#)
(in Danish).

[Read the Competition Council's decision of 30 August 2017](#) (in Danish).

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See also our previous announcement of the Council's decision in the matter:
[The Danish Competition Council: Illegal agreement on customer allocation between media agencies](#)