
Competition Law

13.09.2018

The Danish Competition Council accepts claim in the EY pre-implementation case

9.13.2018

In the pending "gun jumping" case before the Danish Maritime and Commercial High Court, the Danish Competition Council has now accepted EY's claim that the prohibition against pre-implementation, the so-called "gun jumping" prohibition, was not violated by the merger between EY and KPMG Denmark. The Council's acceptance is a consequence of the preliminary ruling issued by the Court of Justice of the European Union ("CJEU") on 31 May 2018, which clarified the criteria of the "gun jumping" prohibition.

By partner Jens Munk Plum and assistant attorney Emil Petri

The "gun jumping" case

The case concerns the question whether EY and KPMG Denmark infringed competition law when KPMG Denmark terminated their cooperation agreement with the international KPMG network before the merger between KPMG Denmark and EY had been approved by the Danish competition authorities.

The Danish Competition Council originally found that KPMG's termination of the agreement violated the "gun jumping" prohibition, their reason being that the termination was merger-specific and irreversible and could, in itself, potentially affect the Danish market for auditing services.

Preliminary ruling of the CJEU

EY subsequently brought the Competition Council's decision before the Maritime and Commercial High Court, which referred the case to the CJEU for a preliminary ruling. The Maritime and Commercial Court asked the CJEU to answer the question how to interpret the merger rules in the relevant situation, including the "gun jumping" prohibition.

The CJEU ruled that only transactions contributing to a change of control of the target enterprise are subject to the prohibition against implementation of a merger before it has been approved. Since KPMG Denmark's termination of the cooperation agreement did not contribute to a permanent change of control of the target enterprise, the termination did not, according to the CJEU, constitute an unlawful pre-implementation of the transaction. It was therefore of no importance whether the termination could potentially affect the market. Accordingly, the CJEU agreed with EY that the "gun jumping" prohibition had not been violated.

Read our previous newsletter about the decision:

[EY wins European Court of Justice action over alleged "gun jumping"](#)

The Competition Council's decision is expected to be repealed

In the light of the CJEU's ruling, the Competition Council has decided to accept EY's claim in the pending case before the Maritime and Commercial High Court. The

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Council's decision that EY and KPMG Denmark violated the "gun jumping" prohibition is therefore expected to be set aside.

Furthermore, the Council has announced that in future "gun jumping" cases the Council will observe the criteria set up by the CJEU.

Jens Munk Plum of Kromann Reumert and Gitte Holtsø of Plesner have been advising EY in the case.

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

German media group and its attorney heavily fined for illegal cooperation agreement

9.13.2018

The German competition authorities have fined DuMont media group for entering into an illegal market-sharing agreement with their competitor Bonner General-Anzeiger. A fine has also been imposed on the attorney advising DuMont on the drafting of the agreement.

By attorney Sonny Gaarslev and assistant attorney Emil Petri

In 2000, the two German media groups DuMont and Bonner General-Anzeiger entered into an agreement in which both parties undertook to phase out their presence in specific areas in the Bonn region. By dividing the region between them, DuMont and Bonner General-Anzeiger were able to eliminate the competition that had previously existed between them.

The German competition authorities found that the agreement served to phase out competition in the newspaper market in the Bonn region and therefore constituted an illegal restriction of competition.

In an attempt to hide the market sharing from the authorities, the illegal agreement had been executed and signed before a notary in Switzerland. Consequently, the authorities did not gain knowledge of the agreement until after the filing of a leniency application by Bonner General-Anzeiger. As a result of the application, the authorities initiated a dawn raid of DuMont's head offices and the law firm of the attorney who had been advising DuMont on the drafting of the illegal agreement.

Both DuMont and the attorney in question admitted to the accusations about the illegal market-sharing agreement with Bonner General-Anzeiger. They were subsequently ordered by the German competition authorities to pay a joint fine of EUR 16 million. Due to the leniency application, Bonner General-Anzeiger was not fined.

[Read the press release of the German competition authorities.](#)

Danish Competition Council: Teller abused its dominant position

9.13.2018

In the opinion of the Danish Competition Council, payment card service provider Teller has been abusing its dominant position. The reason was that in many of its main customer contracts, Teller had been granting the customers discounts and terms that could protect its position in the market against competitors.

By assistant attorney Emil Petri

In the period from 2012 to 2016, Teller had entered into contracts with some of its main customers, granting the customers considerable discounts if they, in turn, would use Teller to supply all or a considerable part of their demands for international payment card services. In the relevant period, Teller was a subsidiary of Nets and the largest provider of international payment card services in Denmark.

The Danish Competition Council has now concluded that Teller's conduct constituted abuse of its dominant position. In the opinion of the Competition Council, the discounts and the exclusivity clauses had the effect of creating loyalty, which could prevent competitors from attracting the relevant customers.

Since, in the opinion of the Competition Council, Teller had not been able to provide documentation justifying the discounts and the exclusivity clauses, the Council ordered Teller to cease the illegal conduct. In addition, the Council decided to submit the case to the State Prosecutor for Serious Economic and International Crime for prosecution.

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