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Extract from Rigsrevisionen's report on

the processing of competition cases

submitted to the Public Accounts Committee



1849
147.281
237
1976
114.6
22.480
908

1. Introduction and conclusion

1.1. PURPOSE AND CONCLUSION

1. This report concerns the Danish competition authorities' processing of competition cases. Rigsrevisionen initiated the study in September 2017.

2. Strong competition promotes growth, productivity and consumer welfare in the form of lower prices, a broader range of goods to choose from and better product quality – all to the benefit of the consumers and the society in general. Compliance with the Competition Act is an essential prerequisite for strong competition. Providing information and guidance to companies on the provisions of the Competition Act is therefore an important task for the competition authorities. However, information and guidance cannot stand alone, but should be combined with the competition authorities' effective enforcement of the Competition Act to encourage compliance.

The Danish Competition and Consumer Authority (DCCA) and the State Prosecutor for Serious Economic and International Crime (SØIK) share the responsibility for enforcement of the Competition Act. The DCCA enforces civil law infringements of the Competition Act, for instance by issuing directions. The responsibility for criminal infringements that may lead to imprisonment or a fine are referred to SØIK. In addition to infringement cases, the DCCA assesses merger notifications to ensure that these do not lead to substantial lessening of effective competition.

It is essential that the DCCA and SØIK process competition cases efficiently. Competition cases often put a strain on the involved companies, because they are required to submit information to the authorities and because such cases may go on for a very long time. It is similarly important for the market as such that competition cases are processed efficiently, because infringements of the Competition Act may potentially affect all companies and consumers in the market.

3. The purpose of the study is to assess whether the DCCA and SØIK's management of competition cases has underpinned efficient processing. The study answers the following questions:

- Has the DCCA's management of infringements of the Competition Act underpinned efficient processing?
- Has SØIK's management of criminal competition cases underpinned efficient processing?
- Has the DCCA's management of mergers underpinned efficient processing?

THE DANISH COMPETITION COUNCIL

The board of the Danish Competition and Consumer Authority is the Danish Competition Council, which has the overall responsibility for the authority's management of the Competition Act. The council is composed of seven members who perform their duties independently of the Minister for Industry, Business and Financial Affairs.

CONCLUSION

It is Rigsrevisionen's assessment that the DCCA and SØIK's management of competition cases has not underpinned efficient processing to the extent required.

On average, it takes 33 months from the time the DCCA becomes aware of a potential infringement of the Competition Act until the Competition Council reaches a decision on the case. If a decision by the council is subsequently appealed to the Competition Appeals Tribunal, an average of additionally 10 months will pass, before the tribunal reaches a decision. Next, the Competition Council reports cases concerning criminal infringements to SØIK for criminal prosecution. It takes an average of 39 months from the time a case has been reported to SØIK until it has been settled either in court, with a fine, or has been closed. Overall, this means that cases that have been decided on by the Competition Council and then referred to SØIK for criminal prosecution can be expected to go on for an average of almost seven years. It should be noted, though, that decisions by the Competition Council may take effect immediately.

Rigsrevisionen notes that milestone plans developed for each individual case provide the basis for the DCCA's management of processing time, and that the milestone plans are, on average, exceeded by 55%. Against this background, Rigsrevisionen makes the assessment that the authority is not applying the milestone plans to the extent required to underpin efficient processing. The processing time for anti-competitive agreements, which make up the majority of cases, has increased from 13 months in the period from 2008 to 2011 to 23 months in the period from 2015 to June 2018. Part of the increase can be related to a law amendment made in 2015, but this does not account for the entire increase. Against this background, Rigsrevisionen finds that the authority should address the increasing processing time.

Rigsrevisionen notes that SØIK's processing time for cases settled in the period from 2015 to April 2018 was 38 months from the time a case was reported until SØIK decided whether or not to prosecute, i.e. approximately twice as long as SØIK's guiding target of 18 months. It is Rigsrevisionen's assessment that SØIK has not systematically applied its general guidelines for processing to underpin efficient handling of competition cases. For instance, SØIK is not to the extent required using time schedules and milestone plans to underpin efficient processing; instead these mainly serve as logs for recording past events. Rigsrevisionen notes that SØIK has implemented a new case management system in 2015, which, at this point, seems to have had a favourable impact on the processing time. Rigsrevisionen also assesses that the collaboration between SØIK and the DCCA has been satisfactory.

It is Rigsrevisionen's assessment that the DCCA's management has generally underpinned efficient processing of mergers. The authority observes the regulatory time limits as well as its own targets set for processing of mergers. The authority's processing of mergers includes a pre-notification stage that comes before a company's formal reporting of a merger. On average, the pre-notification stage accounts for 50-70% of the overall processing time, but this stage is not included in the regulatory time limits. As a result, the regulatory time limits set for the subsequent processing become less relevant for the effort to ensure efficient processing.

In the period from 2015 to June 2018, the Competition Council settled fewer cases concerning infringements of the Competition Act than before, albeit the number of settlements increased in 2017. According to the DCCA, the decrease in number of settled cases is, among other things, related to the fact that the authority has handled two major and very resource-demanding mergers. Processing of mergers is subject to regulatory time limits as well as the authority's internal deadlines, and both are met every year. On the other hand, the authority has not defined any general targets for the duration of infringement cases. It is Rigsrevisionen's assessment that this involves a risk that the cases are not prioritised by the authority, which may result in longer processing time and fewer settlements.