

Company knowledge of competition rules

July 2018



Chapter 1

Summary and main conclusions

The purpose of the Danish Competition Act is to ensure effective use of social resources through effective competition for the benefit of companies and consumers. Effective competition can ensure lower prices for consumers and support innovation and higher productivity because competition ensures, among other things, that the most efficient companies grow and gain market shares.

When companies violate the Danish Competition Act, this has a direct and noticeable impact on consumers as well as society. A review of empirical studies of price effects on cartels indicates that cartels mean an overpriced solution to the task of 10-50 per cent.¹ It is therefore important that the Competition Act is complied with.

The purpose of the analysis is to help provide a better insight into and knowledge about the behaviour of companies and their approach to complying with the Danish Competition Act. The analysis can help further strengthen the information and guidance efforts of the Danish Competition and Consumer Authority (KFST) and the enforcement of the Danish Competition Act. The analysis is based on a quantitative and qualitative interview survey, cf. Box 1.1 and Annex A.

Box 1.1 Analysis data basis

For the purpose of the analysis, the Danish Competition and Consumer Authority conducted two interview studies among Danish companies at the end of 2017: Epinion conducted a quantitative survey with telephone interviews of 1,195 companies, and Morpic conducted a qualitative survey with in-depth interviews of a total of 14 companies in the construction and IT industries, respectively. Epinion's quantitative survey is largely a repetition of a similar survey among Danish companies from 2012, which makes it possible to illustrate developments in Danish companies' knowledge etc. of the competition rules.

The analysis also includes conclusions from a Norwegian questionnaire survey from 2017 among 3,448 companies and two English surveys on corporate compliance, respectively (a quantitative survey among 1,201 companies from 2014 and a qualitative survey among 28 companies from 2015).

The analysis shows that well over a third of Danish companies estimate that other companies in their industry breach the Danish Competition Act by entering into cartels. In addition, the analysis shows that one in five Danish companies *has found* that competitors in their industry have violated the act in the last five years. This is slightly fewer than in 2012.

The vast majority of companies declare that they want to comply with the Danish Competition Act because it is considered to be *morally right*. The same situation is found in the UK, where the vast majority of companies declare that it is "*just the right thing to do ethically*". This is in

¹ London Economics (2011), *The Nature and Impact of Hardcore Cartels*, January 2011.

line with companies' declarations in the qualitative study that *laws in society must generally be kept*.

The companies in the Danish survey point out that the risk of gaining a *bad reputation* is a key factor in preventing them from *violating* the Danish Competition Act. The same situation is found in Norway, where most companies consider the risk of "*negative publicity*" as very important/important in ensuring that they do not violate competition law.

A company's breach of the Competition Act may be a deliberate act *based on* weighing up the expected gain versus the expectation of punishment for the act. However, it can also be an *unintentional* act resulting from a lack of knowledge of what is and is not allowed and/or a lack of awareness of which situations competition law applies to.

A company's expectation of punishment depends on the perceived risk of detection and possible sanctions etc. One in four companies reckons it is likely that the competition authorities will detect a breach of the Competition Act. Most companies also point out that the sanctions imposed for violating the regulations have a deterrent effect.

The competition authorities' enforcement of competition rules depends on tips and information from companies, e.g. through leniency procedures, among other things. However, the qualitative interview survey indicates that some companies are reluctant to provide information on possible breaches. For example, the majority of the seven interviewed companies in the construction industry (in the qualitative survey) indicated that they would not report a violation if they became aware of it because of the fear of revenge from those who had been reported, and since they are not 100 per cent sure that it is possible to file a report anonymously.

The penalty for violating the Danish Competition Act can be fines to the company and/or senior executives and, in extreme cases, imprisonment (in the case of cartels). Sentencing takes into account whether or not the violation is a conscious act. The analysis shows that 70 per cent of Danish companies know about fines, while only 40 per cent know that you can be sentenced to imprisonment for violating the Competition Act's provisions on cartels.

Most (two in three) companies responded correctly to at least five out of six questions about the act's prohibitions. Most companies are aware of the prohibition on price agreements and cartels. It also seems that Danish companies have better knowledge of prohibitions than English companies.

One in three companies believe that it knows something or a lot about competition law. Large companies generally estimate that they have better knowledge of the principles of competition law than smaller companies, and the analysis also shows that large companies keep better track of the act's prohibitions. There are a few – mainly large – companies that have implemented actual measures to comply with the Competition Act. Most companies state that they primarily use their common sense when navigating the competition rules.

Trade associations are often companies' natural source of information about the rules. Companies which obtain information about competition law primarily do so through their trade association. This applies to just 30 per cent of companies. In addition to trade associations, companies most often gain information through external legal assistance, the press and other sources. In general, the information and guidance efforts of the Danish Competition and Consumer Authority are targeted at the sources that companies use most. The analysis indicates that Danish companies are more likely to seek information about competition law than English companies.

The qualitative survey reveals that there is more frequent and more formalised contact between competitors in the construction industry than in the IT industry. In the survey, compa-

nies indicated, among other things, that they are usually unaware that contact and interaction with other companies are linked to a risk of violating the Competition Act.

The main conclusions of the report are summarised in Box 1.2.

Box 1.2
Main conclusions

Companies' assessment and experience of whether the Competition Act is complied with

- » 36 per cent of companies believe that other companies break the law by entering into cartels.
- » 48 per cent indicate that there are no violations in their industry.
- » Approximately, the same situation is found in Norway and the UK, where 29 per cent and 30 per cent of companies, respectively, estimate that there are violations in their industries.
- » In the last five years, 20 per cent of companies have found that competitors have breached competition law. In most cases, companies have found that competitors have agreed prices.
- » In the last five years, 73 per cent of companies have not found that competitors have breached competition law.
- » The proportion of companies which estimate that other companies in the industry break the law is slightly lower than in a similar survey from 2012 (43 per cent in 2012 and 36 per cent in 2017). The same applies to the proportion of companies which have found that competitors have violated the law (28 per cent in 2012 and 20 per cent in 2017).

Companies' knowledge and awareness of the rules of competition law

- » Two out of three companies know the majority of the Competition Act's prohibitions.
- » Most companies know about the prohibition on price agreements (84 per cent). Fewest companies know about the prohibition on the coordination of offers in tender situations (59 per cent).
- » Large companies have markedly better knowledge of the prohibitions of the Competition Act than smaller companies.
- » Knowledge of the prohibitions of the Competition Act seems to be better in Danish companies than English companies.
- » Just 40 per cent of Danish companies know about prison sentences for breaking the prohibition on cartels, 70 per cent know that there is a fine.
- » 31 per cent of companies claim that they know a lot or something about competition law. This is the same as in 2012. The figure is 59 per cent for larger companies.
- » The qualitative survey indicates that companies are usually unaware that contact with other companies is associated with a risk of violating the Competition Act.

Companies' reasons for complying with the Competition Act

- » The companies in the qualitative survey indicate that they are motivated to comply with the Competition Act because laws must generally be complied with.
- » 75 per cent of companies estimate that it is equally – or more – serious to violate competition law than commit other economic crimes.
- » Approx. 3/4 of companies indicate that it is morally right to comply with competition law. The same situation is found amongst English companies.
- » Among a number of specific factors, gaining a bad reputation is the one that prevents most companies from breaching competition law (80 per cent). Similar declarations are also made by Norwegian executives.
- » The majority highlight the Competition Act sanctions on fines and imprisonment as an important motivating factor for not violating competition law (79 per cent and 70 per cent of enterprises, respectively).
- » Almost one in four companies estimate that it is likely that violations of the Competition Act will be detected by the competition authorities. This is slightly fewer than in a similar survey from 2012.

Information channels, tools and measures for complying with the Competition Act

- » Trade associations are used by 28 per cent of Danish companies to obtain knowledge of competition law, and are therefore the most used information channel.
- » Compared to the UK, it is apparent that Danish companies are more likely to obtain information about competition law than English companies.
- » Few – primarily large – companies have taken measures to comply with competition law – 63 per cent of companies use common sense.

