# Below-threshold mergers

## Guidelines

September 2024

Danish Competition and Consumer Authority

**Below-threshold mergers**

**The Danish Competition and Consumer Authority**
Carl Jacobsens Vej 35
2500 Valby, Denmark
Tel.: +45 41 71 50 00
E-mail: kfst@kfst.dk

Online ISBN 978-87-7029-840-7

The guidelines were prepared by
**The Competition Council**
The Danish Competition and Consumer Authority

September 2024

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# Chapter 1
# **Introduction**

Merger control shall ensure that mergers are not implemented in such a manner as to significantly impede effective competition to the detriment of other market players, including suppliers, competitors, customers and consumers.

The rules on merger control mean that all mergers of a certain size must be notified to the Danish Competition and Consumer Authority ("The DCCA"). This means that mergers where the merging parties' turnover *exceeds* the ordinary turnover thresholds may[1] not be implemented until they have been assessed and approved by the DCCA[2]. In principle, it is the turnover of the undertakings involved that determines whether a merger must be notified to and assessed by the DCCA.

Mergers where the merging parties' turnover is *below* the ordinary turnover thresholds do not need be notified to the DCCA, nor shall merging parties in such mergers be obliged to inform the DCCA of the merger. However, the DCCA may, in special cases, require certain below-threshold mergers to be notified and therefore subject those mergers to merger control. The DCCA is not obliged to require mergers to be notified, nor is it obliged to assess whether such mergers can be approved.

The possibility of requiring undertakings to notify below-threshold mergers should be seen as a supplement to the general rules on merger control and is intended only to be used exceptionally and in special cases where there is a risk that a below-threshold merger could significantly restrict effective competition. It is expected that there will be very few - probably around 1-2 mergers - a year. The mergers requiring notification will likely require in-depth investigations, as in such cases there is a risk that they will significantly impeding effective competition in Denmark.

These guidelines on below-threshold mergers, which supplement the existing rules on merger control, aim to describe the detailed process for mergers where there is a likelihood of them requiring notification.

The rules for above-threshold mergers and the process for filing merger notifications are described in the Merger Guidelines, Guidelines to the Executive Order on Notification of Mergers and on Merger Fees and the Guidelines to the Executive Order on Calculation of Turnover. These guidelines are available at www.kfst.dk.

[1] "Ordinary turnover thresholds" refer to the turnover thresholds in Section 12(1)(1) and (2) of the Danish Competition Act.

[2] When reference is made in the following to "the Danish Competition and Consumer Authority" and "the DCCA", it includes both the DCCA and the Danish Competition Council. The Danish Competition Council has overall responsibility for the DCCA's administration of the Danish Competition Act and regulations issued pursuant thereto, and also makes decisions in cases of principle or particular significance, cf. Section 15(3) of the Danish Competition Act.

# Chapter 2
# Conditions and deadlines for application of the rules

## 2.1 Conditions for requiring notification of below-threshold mergers

Undertakings are obliged to notify mergers to the Danish Competition and Consumer Authority if the merging parties' turnover exceeds the ordinary turnover thresholds[3]. Conversely, undertakings are not obliged to notify or inform the DCCA of mergers where the parties' turnover is below the ordinary turnover thresholds.

However, in special cases, the DCCA may require notification of below-threshold mergers and thus subjecting them to merger control, cf. Section 12(6) of the Danish Competition Act, if the following conditions are met:

i) the aggregated annual turnover in Denmark of the undertakings involved is at least DKK 50 million (the "quantitative condition"), and
ii) the DCCA assesses that there is a risk that the merger significantly impedes effective competition, in particular as a result of creating or strengthening a dominant position (the "qualitative condition").

As a general principle, the DCCA may not require notification of mergers later than three months after a merger agreement has been entered into, a takeover bid has been published or a controlling interest has been acquired. The three months are calculated from the earliest of these dates. This principle also applies if the DCCA has not been made aware of a merger.

However, in exceptional circumstances, notification of a merger may be required within six months of its completion, see Section 2.4.

When a merger is made known to the DCCA, the DCCA has 15 working days to decide that the merger requires notification. A merger is said to have been made known to the DCCA when the DCCA has received relevant and sufficient information to be able to assess whether a merger can and must be notified. See Section 3.2 for more information.

Even if the DCCA has been informed about the merger or the merger is made known to the DCCA, the DCCA may decide not to require a merger to be notified. See Section 2.5 for more information.

## 2.2 The quantitative condition

The first condition for the Danish Competition and Consumer Authority to be able to require a merger to be notified in accordance with Section 12(6) is that the aggregated annual turnover in Denmark of the undertakings involved is at least DKK 50 million.

[3] "Ordinary turnover thresholds" refer to the turnover thresholds in Section 12(1)(1) and (2) of the Danish Competition Act.

The condition thus covers both mergers, i) where one or more merging parties have a turnover of more than DKK 50 million, and mergers, ii) where none of the merging parties has a turnover of more than DKK 50 million, but where the sum of the parties' turnover is DKK 50 million or more. See Section Box **3.4** below for examples where the quantitative condition will be met.

The turnover of the undertakings involved in relation to the condition under Section 12(6) is calculated in the same manner as for the turnover thresholds in Section 12(1)(1) and (2) of the Danish Competition Act. The general rules and principles for e.g. (i) calculation of group turnover, (ii) identification of Danish turnover and (iii) time of calculation of turnover therefore apply. More detailed information can be found in Executive Order No. 1286 of 26 November 2019 on the Calculation of Turnover in the Danish Competition Act and the associated guidelines, which can be found on the DCCA's website www.kfst.dk.

The quantitative condition must make it possible for the undertakings themselves to assess whether the DCCA will be able to require their transaction notified in accordance with the provision in Section 12(6). In addition, the condition must ensure that mergers which are presumed to have limited or no competitive advantage in a market are not notifiable. This could, for example, concern mergers involving only small, local players without market power.

### 2.3 The qualitative condition

The second condition where the Danish Competition and Consumer Authority may require a merger to be notified in accordance with Section 12(6) is when the DCCA assesses that there is a risk that the merger significantly impedes effective competition, in particular as a result of creating or strengthening a dominant position.

The assessment of whether there is a risk of the merger significantly impeding competition is much the same as the assessment the DCCA must make in all mergers that must be notified. Section 12c (2) of the Danish Competition Act states that the DCCA shall make an assessment of whether a merger significantly impedes effective competition. However, the qualitative condition in Section 12(6) differs from Section 12c (2) since the aforementioned condition is met, even if, based on the present situation, the DCCA assesses that there is a *risk* that the merger will significantly impede effective competition.

The qualitative condition may, for example, be met in cases of mergers where:

» The undertaking gains significant market power after the merger in a concentrated market with, for example, high entry barriers, where entry by new undertakings is limited
» The turnover of at least one of the undertakings involved does not reflect the current or future competitive potential of the undertaking.[4]

The above situations are described in more detail in Box 2.1.

[4] Folketingstidende 2023-24, Appendix A, L 121 as submitted.

Box 2.1
**Examples of mergers that could potentially significantly impede effective competition**

The qualitative condition could be met if an undertaking acquires significant market power following a merger, for example:

» a merger resulting in the creation or strengthening of a dominant position.
» a merger which weakens the ability or incentive of competitors to compete, including by making it more difficult for them to enter the market or expand, or by foreclosing their access to supplies or markets.
» a merger in an oligopolistic market which may entail a risk of coordinated effects, or conglomerate mergers which may entail a risk of, for example, the bundling of products.

The qualitative condition could also be met in a merger where the turnover of at least one of the undertakings involved does not reflect the competitive potential of the undertaking, for example:

» a merger where one of the undertakings involved is a start-up or a new undertaking in the market with significant competitive potential but which does not yet generate significant revenue, for example in the digital field.
» a merger in which a market player who has, or is likely to have, a major impact on competition in the market is removed from the market.
» a merger where the merger results in the removal of a significant new or future competitor or the acquisition of an important innovative smaller undertaking.
» a merger, for example in industries where innovation and development are an important competitive parameter and where an undertaking involved is an important innovative undertaking, or where an undertaking involved carries out potentially important research which may have a central impact on competition.
» a merger where an undertaking involved is new and has access to assets of competitive advantage (for example raw materials, infrastructure, data or intellectual property rights), or provides products or services that constitute important input or components in other industries.

*cf. Folketingstidende 2023-24, Appendix A, L 121 as submitted.*

A list of the information that the DCCA will typically need for assessing whether the qualitative condition is met can be found in Box 3.1.

## 2.4 Deadlines for when the Danish Competition and Consumer Authority may require a merger to be notified

The Danish Competition and Consumer Authority may only require a merger to be notified within certain specified deadlines.

There are three deadlines that are relevant:

» The deadline related to conclusion of the merger agreement ("three-month deadline")
» The deadline related to the completion of the merger ("six-month deadline")
» The deadline related to the time when the merger is made known to the Danish Competition and Consumer Authority ("the deadline of 15 working days").

The deadlines and how they operate are explained in more detail below. See Section 3.4 below for examples of application of the deadlines.

**Three-month deadline**
Unless there are special circumstances, the Danish Competition and Consumer Authority may not require below-threshold mergers to be notified later than three months after:

» a merger agreement has been entered into
» a takeover bid has been published

» a controlling interest is acquired.[5]

The three-month deadline is calculated from the earliest of these dates.

The above also applies in cases where a new or revised merger agreement replaces a previously concluded merger agreement and where the changes have, for example, an impact on the object of the merger or the control structure. In this case, the three-month deadline starts to run again.

The three-month deadline also applies even if the parties have not informed the DCCA of a merger or if the DCCA otherwise has been informed about the merger. The deadline is calculated in whole *months*. This means the same date in the month three months from when a merger agreement is entered into, a takeover offer is published or a controlling interest is acquired.

However, if there are special circumstances, the DCCA may require a merger to be notified after expiry of the three months, cf. more details below.

**Six-month deadline**
In special circumstances, the DCCA may require mergers to be notified no later than six months after their completion.[6]

The Danish Competition and Consumer Authority assesses whether special circumstances exist in the individual case. Special circumstances exist, for example, if the DCCA is prevented from becoming aware of a merger or from being able to determine whether a merger is a merger according to the Danish Competition Act, which may require notification, cf. also Box 2.2.

[5] Cf. Section 12(6)(4) of the Danish Competition Act.
[6] Cf. Section 12(6)(6) of the Danish Competition Act.

Box 2.2
**Examples of special circumstances**

Special circumstances may exist, for example, if:

» The DCCA has requested information from a merging party to enable the DCCA to assess whether the merger can be notified, but where the undertaking has not responded to this request within the set deadline.
» Notification from merging parties or a market player is sent to the DCCA just before expiry of the three-month deadline, and the DCCA is therefore not able to decide within the three-month deadline whether notification of the merger is required.
» The merging parties have kept the merger agreement confidential, including in order to prevent the DCCA from becoming aware of the merger.

For example, the merging parties cannot be said to have kept a merger agreement confidential if:

» one or both merging parties have published a press release on their website concerning conclusion of the merger agreement.
» the merging parties have notified the merger to one or more other national competition authorities in the EU, before or immediately after conclusion of the merger agreement etc.
» the merging parties have notified their partners, customers, suppliers, etc. of the merger upon conclusion of the merger agreement, so that the market players have the opportunity to bring the merger to the attention of the DCCA.

The six-month deadline is calculated in the same way as the three-month deadline in whole *months*.

**Deadline of 15 working days**
The Danish Competition and Consumer Authority must, no later than 15 working days after the merger is made known to the DCCA, decide whether the DCCA will require notification of the merger, cf. Section 12(6)(3) of the Danish Competition Act. If the DCCA decides that the merger requires notification, the DCCA will make a decision within 15 working days. If the DCCA does not decide to require notification of the merger within 15 working days, the DCCA will no longer be able to require notification of the merger.

Therefore, the DCCA may, within the aforementioned three-month period, request the merging parties to send the DCCA information about the merger, which enables the DCCA to assess whether a merger requires notification. Once the DCCA considers the information sufficient to make this assessment, the merger is made known to the DCCA.

Merging parties may also choose to submit relevant information without being requested to do so by the DCCA. This may be relevant if the merging parties suspect that the merger may give rise to competition concerns, cf. Box 2.1 above. The merging parties are encouraged to enter into a dialogue with the DCCA about the merger and any relevant information before the parties submit information.

The deadline of 15 working days is calculated in *working days,* i.e. Monday to Friday, excluding public holidays, Christmas Eve and New Year's Eve. The deadline is calculated in the same way as the deadlines under Section 12d (1)-(4) of the Danish Competition Act, i.e. at the end of the day.

However, the deadline of 15 working days may not start to run until a merger agreement has been entered into, a takeover bid has been published or a controlling interest has been acquired, i.e. before the three-month deadline has started to run. Furthermore, the deadline of 15 working days may not end after expiry of the three-month deadline, unless there are special circumstances.

## 2.5 The Danish Competition and Consumer Authority's priority access

Even if the Danish Competition and Consumer Authority has received relevant and sufficient information to assess whether a merger requires notification and the conditions for requiring the merger to be notified are met, the DCCA is not obliged to require the merger to be notified. This is because the DCCA has priority access, cf. further details below. Section 12(6) of the Danish Competition Act must be seen as a supplement to the general rules on merger control and is only intended to be used in exceptional and special cases.

In addition, Section 15(1)(3) of the Danish Competition Act states that it is the DCCA that decides whether there is sufficient cause to investigate or make a decision in a case, including whether the case processing should be temporarily halted or permanently stopped.

The DCCA is therefore not obliged to require a merger to be notified, either on the basis of a request or of its own motion, and may decide not to investigate or make a decision in such a case.

The DCCA will normally not consider mergers to be at risk of significantly impeding effective competition, if they preliminary meet the criteria for simplified notification in Section 3(1)(3) and (4) of Executive Order No. 690 of 25 May 2020 on the Notification of Mergers, i.e. where the undertakings involved have no or limited horizontal connections or vertical connections. Therefore, it is not these types of mergers which will principally fall under Section 12(6) of the Danish Competition Act or which the DCCA will prioritise.

If the DCCA prioritises the investigation of a merger in accordance with Section 12(6) of the Danish Competition Act, the DCCA will have to assess whether the conditions are met. The DCCA will therefore, among other things, make a specific assessment of whether there is a risk that the merger in question could significantly impede effective competition, in particular as a result of creating or strengthening a dominant position.

# Chapter 3
# Case processing

As previously stated, undertakings are not obliged to inform the Danish Competition and Consumer Authority of a below-threshold merger.

However, there may be cases where undertakings are in doubt as to whether the DCCA will potentially require a merger to be notified. In such cases, undertakings may contact the DCCA (possibly confidential) for guidance on the rules for notifying below-threshold mergers and on the DCCA's respective processes, or otherwise inform the DCCA of a merger. This is preferably done early in the three-month period, i.e. immediately after a merger agreement has been concluded, a takeover bid has been published or a controlling interest has been acquired, so that the DCCA has the opportunity to respond to the request within the deadline.

Undertakings planning to merge or have merged will, upon contacting the DCCA, be able to obtain an immediate statement of whether the merger is one which the DCCA will require notification of in accordance with Section 12(6) of the Danish Competition Act.[7] Merging parties also have the option to contacting the DCCA confidentially. This means that merging parties can inform the DCCA of a merger before it is publicly known.

The DCCA may also of its own motion, for example via media coverage, become aware of mergers which may meet the notification requirement criteria pursuant to the provision in Section 12(6). In such cases, the DCCA will initiate contact with the merged undertakings and possibly also relevant market players.

## 3.1 Obtaining information

The Danish Competition and Consumer Authority will be able to obtain the relevant information pursuant to Section 17 of the Danish Competition Act that the DCCA may need to assess whether the DCCA requires notification of a merger in accordance with Section 12(6) of the Danish Competition Act. Such information may be obtained both from merging parties or third parties, all of whom are obliged to respond and provide the requested information. In cases where the DCCA obtains information from merging or third parties, a deadline will be set for responding and submitting the requested information.

The DCCA may impose daily or weekly fines on undertakings, association of undertakings or any other legal person who fails to submit a response, including within the specified deadline, provide complete and correct information in response to a request for information pursuant to Section 17, cf. Section 22(1) of the Competition Act.

[7] Folketingstidende 2023-24, Appendix A, L 121 as submitted.

## 3.2 "Made known"

The Danish Competition and Consumer Authority may request relevant and sufficient information from merging parties or third parties to be able to assess whether the conditions for requiring a merger to be notified are met. When the DCCA assesses that the information is sufficient, the merger is made known to the DCCA.

Undertakings will also be able to submit information to the DCCA themselves, for example by sending a short briefing paper to the DCCA with information relevant to the specific merger. However, the DCCA encourages undertakings to enter into a dialogue with the DCCA before the undertakings send information to the DCCA. This is because the information that is relevant and sufficient for the Danish Competition Authority to be able to assess whether the conditions in Section 12(6) of the Danish Competition Act are met depends on the specific merger and a specific assessment in each individual case. In some cases, the DCCA's prior knowledge of the industry may mean, for example, that only a small amount of information about the undertakings is sufficient to ensure the merger is made known to the DCCA. However, in other cases the DCCA may require more information to ensure a merger is made known to the DCCA. Also, there may be industry-specific circumstances which mean that certain information is relevant for mergers in one industry, but not for mergers in another industry. It is the DCCA that assesses whether the DCCA has received relevant and sufficient information for a merger is made known to the DCCA.

Box 3.1 shows examples of information that the DCCA will typically need in order for a merger to be made known to the DCCA and therefore, for the DCCA to be able to make an assessment of whether the conditions for requiring a merger to be notified are met.

Box 3.1
**Information that may be relevant for a merger to be made known to the DCCA and that the DCCA may need to assess whether a merger requires notification**

General information about the merger

- a brief description of the merging parties and their ownership and control structure before and after the merger.
- a brief description of the merger, the value of the merger and the rationale behind the merger.
- information on the date of completion of the merger and the planned timing.
- whether the transaction is a merger within the meaning of the Danish Competition Act.
- the merging parties' turnover in Denmark, the EU and worldwide in the latest audited accounts.
- whether the merger is notifiable in other jurisdictions.

Information about the merging parties' activities etc.

- a description of horizontal and/or vertical connections between the merging parties' activities, customers and suppliers.
- a description of the competitive situation of the activities where the merging parties have horizontal and/or vertical connected activities.
- whether there is trade between the parties.
- whether the merging parties' turnover from the activities where there are vertical and/or horizontal overlaps between the merging parties reflects their current or potential competitive potential.
- the merging parties' closest competitors within the activities where there are horizontal and/or vertical overlaps.
- whether the merging parties have granted or have been granted licences for patents, know-how and other rights.
- whether any of the merging parties has special access to raw materials, necessary infrastructure, data or suchlike.
- estimates/approximations of the market shares of the merging parties or other descriptions indicating the market power of the merging parties.

*The description of the merging parties' activities can be based on previous market definitions.*

Transaction documents
» a copy of the merger or acquisition agreement (or any other document) showing that a merger agreement has been concluded.

After receiving information, the DCCA may request additional information from merging parties or third parties that is relevant to the DCCA's assessment of whether the conditions in Section 12(6) of the Competition Act are met.

When the DCCA has received sufficient information and therefore the merger is made known to the DCCA, the DCCA's deadline of 15 working days to require the merger to be notified starts to run. The deadline runs from when the DCCA has received sufficient information and not from when the DCCA acknowledges receiving the information.

## 3.3 The parties' rights if the Danish Competition and Consumer Authority requires a merger to be notified

If a merger is made known to the Danish Competition and Consumer Authority and the DCCA assesses that the conditions for requiring a merger to be notified are met, the DCCA must, within 15 working days, require the merger to be notified if the DCCA decides to prioritise the case.

If the DCCA has received relevant and sufficient information to assess whether notification of a merger may be required and the DCCA assesses that notification of the merger is not required, the parties will be informed. The DCCA will endeavour to weigh up the decision as early in the process as possible.

In situations where the DCCA has received relevant and sufficient information and immediately plans to require the merger to be notified, the DCCA will notify the merging parties of this as well as the date when the deadline of 15 working days expires.

If, based on the present situation, the DCCA assesses that the conditions in Section 12(6) of the Danish Competition Act are met and, at the same time, the DCCA prioritise to process the merger, the DCCA will issue a decision directed at the merging parties, imposing an obligation on the merging parties to notify the merger.

In cases pursuant to Section 12(6) of the Danish Competition Act, where merging parties become addressees of a decision that imposes an obligation to notify a merger, the merging parties will be subject to the rules of the Danish Public Administration Act on a party's right to access to documents, consultation of parties involved etc. This means, among other things, that the merging parties will be consulted in accordance with the rules in Section 19 of the Danish Public Administration Act before the decision is made. The merging parties will be consulted if the case contains factual information to the detriment of the parties and which is of significant importance regarding the DCCA's decision and which the parties are not already aware of. In such cases, the consultation period will be kept very short considering the DCCA's deadline of 15 working days.

The DCCA's decision that a merger must be notified in accordance with the rules in Section 12(6) of the Danish Competition Act may be appealed before the courts. Any decision on prohibition in the subsequent merger control process may also be brought before the courts or brought before the Danish Competition Appeals Tribunal, cf. Section 19(1)(1) of the Danish Competition Act.

## 3.4 Examples of the process in cases where the Danish Competition and Consumer Authority may require a merger to be notified

The following describes three fictitious examples of mergers that are below the ordinary turnover thresholds and which the DCCA may potentially require notification of. The examples are based on mergers where both the quantitative and qualitative condition are met. The examples also show how the three-month deadline and the deadline of 15 working days respectively can come into play, as well as how the six-month deadline can, in exceptional cases, come into play.

Box 3.2
**Example 1 - Merger between undertakings with different levels of turnover, entailing a risk that the merged undertaking will foreclose important input from competitors**

Undertaking A, with a turnover of DKK 1 billion, has acquired and gained control of Undertaking B with a turnover of DKK 80 million. Undertaking A is the market's largest retailer of online advertisements. Undertaking A and the undertaking's competitors use collected data to target the advertisements at customers. Prior to the merger Undertaking A uses its own collected data. Undertaking B collects data about some specific customers through its own app that it sells to several competitors and Undertaking A. It will take many years for other players to collect as much and as detailed data as Undertaking B possesses.

The merger entails a preliminary risk that Undertaking A will be able to foreclose its current or potential competitors for in the sale of online advertisements by preventing them from using Undertaking B's data. Therefore, there is a risk that more advertisers will choose to buy Undertaking A's online advertisements, which could potentially harm the competition for online advertisements as well as the consumers.

The merging parties signed a merger agreement on 2 September 2024.

One week later, the merging parties issue a press release about the merger on their websites, which is why the merger is now publicly known. The three-month deadline therefore starts to run, and the DCCA may require the merger to be notified by 2 December 2024 at the latest, if it meets the conditions for this.

The merger meets the quantitative criterion and the merging parties suspect that the merger could possibly also meet the qualitative criterion. On 9 September 2024, the merging parties decide to send the press release and a short briefing paper to the DCCA with information that the merging parties deem relevant in the specific case.

Based on the merging parties' inquiry, the DCCA has a number of follow-up questions for the merging parties. The merging parties send the answers to the questions to the DCCA on 1 October 2024, such that on 1 October 2024 the DCCA has the relevant and sufficient information to be able to assess whether the conditions for requiring the merger to be notified are met. The DCCA informs the merging parties as soon as possible that the merger is made known to the DCCA and that the deadline of 15 working days runs from 1 October 2024.

No later than 15 working days thereafter, i.e. by 22 October 2024, the DCCA must require the merger to be notified if the conditions for this are met and the DCCA otherwise prioritises to require the merger to be notified. After this date, the DCCA may no longer require the merger to be notified - even if the three-month deadline does not expire until 2 December 2024.

In this specific example, the six-month deadline does not apply.

The timeline for this example is illustrated below:


Symbols highlighted in red indicate that a deadline has started to run. In this example, the three-month deadline and the deadline of fifteen days have started to run. The symbol highlighted in grey indicates the expiry of the three-month deadline, which is not relevant in this example.

Box 3.3

**Example 2 - Merger between undertakings with horizontal connections entailing a risk that the merged undertaking will create a dominant position in the market**

Undertaking A, with a turnover of DKK 35 million, has acquired and gained control of Undertaking B with a turnover of DKK 15 million. Undertaking A and Undertaking B sell specialised IT solutions. The merging parties signed a merger agreement on 2 September 2024. Since, in this example, there are only three retailers in Denmark and Undertaking A and Undertaking B are the largest in the market, the merger entails a risk that Undertaking A will create a dominant position in the market, which will enable Undertaking A to impede competition.

Based on this, the merging parties decide to keep the merger confidential and therefore not issue a public press release about the merger, nor inform partners or the DCCA about the merger.

The merging parties complete the merger on 2 December 2024, i.e. on the date on which the three-month deadline expires. The final player on the market then realises that there is now only one competitor on the market, hence this market player informs the DCCA about the merger.

The DCCA then contacts the merging parties and requests them to submit certain information which is needed for the DCCA to be able to assess whether the merger may require notification. Since the merging parties have deliberately not informed others about the merger agreement in order to avoid the merger coming to the DCCA's attention, special circumstances exist, which means the six-month deadline applies. As the six-month deadline runs from the completion of the merger on 2 December 2024, the DCCA may request notification of the merger by 2 June 2025 at the latest.

On 3 January 2025, the merging parties send the relevant and sufficient information needed for the DCCA to be able to assess whether the conditions for requiring the merger to be notified have been met. The DCCA informs the merging parties as soon as possible that the merger is made known to the DCCA and that the deadline of 15 working days runs from 3 January 2025.

No later than 15 working days thereafter, i.e. by 24 January 2025, the DCCA must require the merger to be notified if the conditions for this are met and the DCCA otherwise prioritises the requirement for the merger to be notified. After this date, the DCCA may no longer require the merger to be notified - even if the six-month deadline does not expire until 2 June 2025.

The timeline for this example is illustrated below:


Symbols highlighted in red indicate that a deadline has started to run. In this example, all three deadlines have started to run. The symbol highlighted in grey indicates the expiry of the six-month deadline, which is not relevant in this example.

Box 3.4

**Example 3 - Merger between undertakings as part of establishing a joint venture, entailing a risk that the joint venture will reduce competition and product range on the market**

Undertaking A and Undertaking B each have a turnover of DKK 400 million and each offer their own TV channel in competition with each other and other providers. TV channels are generally dependent on having to offer popular content in order to generate customer demand, but popular content is expensive to access. Undertaking A has acquired a significant share of the market's popular rights and Undertaking B has the market's strongest brand. Undertaking A and Undertaking B have agreed to establish a new joint TV channel to compete with the other TV channels in the market. Both undertakings will transfer their most important rights to the new independently operating joint venture, making the TV channel indispensable for customers. There is a risk that the owners will compete less intensely with each other after the merger and that the merger will reduce the range of TV channels on the market. The merger agreement is entered into on 2 September 2024. The three-month deadline therefore starts to run, and the DCCA may require the merger to be notified by 2 December 2024 at the latest, if it meets the conditions for this.

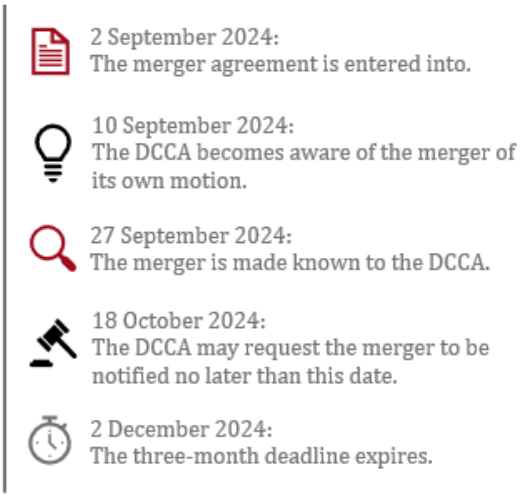
After the merging parties have issued a public press release on their respective websites, the DCCA is aware of the merger of its own motion on 10 September 2024. Shortly thereafter, the DCCA contacts the merging parties and requests them to submit relevant information about the merger based on the information stated in Box 3.1 of these guidelines in order for the merger to be made known to the DCCA.

On 27 September 2024, the merging parties send the requested information. In this specific case, this information is relevant and sufficient for the merger to be made known to the DCCA. The DCCA informs the merging parties as soon as possible that the merger is made known to the DCCA and that the deadline of 15 working days runs from 27 September 2024.

No later than 15 working days thereafter, i.e. by 18 October 2024, the DCCA must require the merger to be notified if the conditions for this are met and the DCCA otherwise prioritises the requirement for the merger to be notified. After this date, the DCCA may no longer require the merger to be notified - even if the three-month deadline does not expire until 2 December 2024.

In this specific example, the six-month deadline does not apply.

The timeline for this example is illustrated below:




Symbols highlighted in red indicate that a deadline has started to run. In this example, this is the three-month deadline and the deadline of 15 working days respectively.

# Chapter 4
# Consequences of requiring notification of a merger

## 4.1 Obligation to notify

If the Danish Competition and Consumer Authority requires a merger to be notified pursuant to the rules in Section 12(6) of the Danish Competition Act, the merging parties are obliged to notify the merger, cf. Section 12b (1) of the Danish Competition Act.

The obligation to notify a merger lies with the undertakings involved, cf. Section 1(1) of Executive Order No. 690 of 25 May 2020 on the Notification of Mergers. If the DCCA has required a merger to be notified and the undertakings involved fail to submit such a notification, these undertakings may be subject to a fine, cf. Section 23(2)(4) of the Danish Competition Act.

## 4.2 Notification of a merger

If a merger requires notification in accordance with Section 12(6) of the Danish Competition Act, it must be notified as a full notification. This also applies even if the merger has been completed at the time when the Danish Competition and Consumer Authority requires the merger to be notified.

The existing rules on merger control in Chapter 4 of the Danish Competition Act will apply, including the rules on deadlines for the DCCA's treatment of mergers (Section 12d) and the rules on payment of notification fees (Section 12h). The DCCA refers to the Executive Order on the Notification of Mergers (including Appendix 1 with information on the notification form) and the DCCA's Guidelines to the Executive Order on Notification of Mergers and on Merger Fees.

Even if a merger has been completed when notification is required, the DCCA will have to decide whether the merger can be approved or prohibited pursuant to Section 12c of the Danish Competition Act.

If the DCCA's investigations show that a merger must be prohibited, the merging parties have the option to make commitments, as is the case with mergers that have not been completed before they are notified to the DCCA.

If the merging parties do not wish to make commitments that remove the adverse effects of a merger, the DCCA may prohibit the merger. In such cases, the DCCA may, for example, issue an order to split up the acquired or merged undertakings or assets, or terminate the joint control or any other measure capable of restoring effective competition.

## 4.3 Deadline for filing notification

The Danish Competition and Consumer Authority may set a deadline for when the parties must notify a merger that the DCCA requires to be notified pursuant to Section 12(6) of the Danish Competition Act.

In particular, the DCCA will set deadlines in cases where a merger has already been completed at the time when the DCCA requires the merger to be notified. This is because the merger could potentially have adverse effects on the market, which merger control must ensure against. The length of the deadline is determined according to the specific circumstances of

the case, including the potential adverse effects, for example seven working days after notification of the merger is required.

## 4.4 Prohibition of pre-implementation

Above-threshold mergers that must be notified to the Danish Competition and Consumer Authority may not be implemented, either before it has been notified or before the DCCA or the Danish Competition Council has approved it. This is called the pre-implementation prohibition.

In principle, *no* pre-implementation prohibition applies to below-threshold mergers.

However, in the special situation where the DCCA may require a below-threshold merger to be notified and the merger has not already been completed, a pre-implementation prohibition will apply. In this situation, the parties may not implement the merger until the DCCA has approved it. If the merger is implemented before it has been approved, it will be subject to a fine, cf. Section 23(2)(5) of the Danish Competition Act.

If the parties have already completed the merger when the DCCA decides that the merger requires notification, the merger must be notified regardless of whether it has already been completed. As stated in Section 4.3, the DCCA may set a deadline for filing notification of the merger.

As long as the DCCA has not decided whether a below-threshold merger must be notified, it may be implemented without it being in breach of the pre-implementation prohibition.

It is not a requirement that the merging parties suspend implementation of a merger that has been completed while the DCCA investigates whether the merger requires notification. However, by suspending implementation, the merging parties can minimize any adverse effects, for example by having to split up the undertaking/assets again, if the DCCA requires the merger to be notified and the DCCA's investigations reveal that the merger must be prohibited, cf. Section 4.2 above.

# Chapter 5
# Reference to relevant regulations, links, etc.

More detailed information relevant to the notification and treatment of mergers can be found at the following locations on either the Danish Competition and Consumer Authority's website (www.kfst.dk) or the Commission's website (www.ec.europa.eu/competition):

» Chapter 4 of the Danish Competition Act, cf. Executive Order No. 360 of 4 March 2021, as amended by Act No. 638 of 12 June 2024.

» Executive Order No. 690 of 25 May 2020 on the Notification of Mergers.

» The Danish Competition and Consumer Authority's Guidelines to the Executive Order on Notification of Mergers and on Merger Fees.

» Executive Order No. 1286 of 26 November 2019 on the Calculation of Turnover in the Danish Competition Act.

» The Danish Competition and Consumer Authority's guidelines to Executive Order No. 1286 of 26 November 2019 on the Calculation of Turnover in the Danish Competition Act.

» Council Regulation (EC) No. 139/2004 of 20 January 2004 on the control of concentrations between undertakings (EU Merger Regulation).

» Commission Implementing Regulation (EU) 2023/914 of 20 April 2023 implementing Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings and repealing Commission Regulation (EC) No. 802/2004.

» Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings (2008/C 95/01), 16 April 2008.

» Commission Notice on Case Referral in respect of concentrations (2005/C 56/02), 5 March 2005.

» Commission guidelines on the application of the referral mechanism, provided for in Article 22 of the Merger Regulation, to certain categories of cases (2021/C 113/01), 31 March 2021.

» Commission Notice on the definition of the relevant market for the purposes of Union competition law (C/2024/1645), 22 February 2024.

» Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2004/C 31/05), 5 February 2004.

» Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2008/C 265/06), 18 October 2008.

» Commission Notice on remedies acceptable under Council Regulation (EC) No. 139/2004 and Commission Regulation (EC) No. 802/2004, (2008/C 267/01), 22 October 2008.

» Commission Notice on restrictions directly linked to and necessary to concentrations (2005/C 56/24), 5 March 2005.

» Commission Notice on a simplified treatment for certain concentrations under Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings (2023/C 160/01) of 5 May 2023.