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The 3 of May 2007

### **Part 1**

#### **Purpose and scope of the Act**

**1.** The purpose of this Act is to promote socially efficient resource allocation through workable competition for the benefit of undertakings and consumers.

**2.** <sup>1)</sup> This act shall apply to any form of commercial activity as well as aid from public funds granted to commercial activity.

**(2)** The provisions of Parts 2 and 3 of this Act shall not apply where an anti-competitive practices a direct or necessary consequence of public regulation. An anti-competitive practice established by a local council shall only be considered a direct or necessary consequence of public regulation in so far as the practice is necessary to allow the local council to carry through the tasks assigned to it under current legislation.

**(3)** <sup>1)</sup> Decisions made by the executive committee of a local authority partnership cf. Section 51 of The Local Government Act, shall be considered equivalent to decisions made by a local council as referred to in subsection (2) above.

**(4)** <sup>1)</sup> A question of whether an anti-competitive act or practice will be covered by subsection (2) above shall be resolved by the minister responsible for the regulation concerned. Where the Competition Council requests the relevant minister to determine whether an anti- competitive

practice is covered by subsection (2), the minister must reach a decision not later than 4 (four) weeks after having received the request from the Council.

(5) If the Competition Council finds an aid scheme or public regulation likely to restrain competition or otherwise likely to impede efficient allocation of society's resources, the Council may deliver a reasoned opinion to the relevant minister and to the Minister for Business Affairs, pointing out its potentially adverse effects on competition and presenting recommendations for promoting competition in the area concerned. The relevant minister, who shall consult with The Minister for Business Affairs, is obliged to respond to the Competition Council's opinion not later than 4 (four) months after his receipt of the opinion submitted. The Competition Council may extend this time limit.

(6) <sup>1)</sup> If an industry works fully, partly or in certain ways under cover of public monopoly or other protection against competition, the Competition Council has the authority to demand that the bookkeeping will be separated between the part of the operations, that are under cover of monopoly or other protection, and on the other hand that part of the operations, that works under open competition.

3. This Act shall not apply to pay and working conditions. For the purpose of its ongoing work the Competition Council may, however, demand information from organisations and undertakings concerning pay and working conditions.

4. The provisions of Part 2 of this Act shall not apply to agreements, decisions and concerted practices within the same undertaking or group of undertakings.

(2) The Minister for Business Affairs shall lay down specific rules on the application of subsection (1), after consultation with the Competition Council, including rules on how to define agreements etc. within the same undertaking or group of undertakings.

5. The definition of the relevant market under this Act shall be based on examinations of demand and supply substitutability and potential competition. The potential competition must be examined when the position of the undertakings operating on the relevant market has been documented and this position gives rise to doubt as to whether this Act has been infringed.

(2) The Competition Council may draw on external expertise in making its assessment under subsection (1) above.

## **Part 2**

### **Prohibition against certain anti-competitive agreements**

**6. - (1)** It shall be prohibited for undertakings etc. to enter into agreements that have restriction of competition as their direct or indirect object or consequence.

**(2)** Agreements covered by subsection (1) may, in particular, be agreements made to:

- i) fix purchase or selling prices or other trading conditions;
- ii) limit or control production, sales, technical development or investments;
- iii) share markets or sources of supply;
- iv) apply dissimilar conditions to equivalent transactions with trading partners, thereby placing them at a competitive disadvantage; or
- v) <sup>1)</sup> make the conclusion of contracts subject to acceptance by the other contracting party of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts;
- vi) coordinate the competitive practices of two or more undertakings through the establishment of a joint venture; or
- vii) determine binding resale prices or in other ways seek to induce one or more trading partners not to deviate from recommended resale prices.

**(3)** <sup>1)</sup> Subsection (1) shall furthermore apply to decisions made by an association of undertakings and to concerted practices between undertakings.

**(4)** <sup>1)</sup> The Competition Council may issue orders to put an end to infringements of subsection (1), cf. Section 22. Acting upon any concerns it may have in relation to subsection (1), the Competition Council may decide that commitments made by an undertaking shall be binding, cf. Section 23.

**(5)** <sup>1)</sup> Agreements and decisions that are prohibited under subsections (1) – (3) shall be void, unless otherwise excepted under Section 7, exempted under Section 8 or Section 10, or comprised by a declaration under Section 9.

**7. – (1)** <sup>1)</sup> The prohibition set out in Section 6 (1) above shall not apply to agreements between undertakings, decisions made by an association of undertakings or concerted practices between undertakings, in case the undertakings involved have

- i) an aggregate annual turnover of less than DKK 6,5 million and an aggregate share of less than 10 percent of the product or service market concerned, cf. however subsections (2) – (4); or
- ii) an aggregate annual turnover of less than DKK 1 million, cf. subsections (2) – (4).

**(2)** <sup>1)</sup> The exceptions in subsection (1) above shall not apply in cases where undertakings or an association of undertakings agree, coordinate or decide on

- i) prices, profits etc. for the sale or resale of goods or services
- ii) restrictions on production or sales or
- iii) sharing of markets or consumers, or
- iv) fixing bids prior to their tendering, fixing conditions for the opening of bids, deferring bids, prior notification of bids, or any other form of bid rigging.

**(3)** The prohibition set out in Section 6 (1) shall, irrespective of subsection (1) above, apply to an agreement between undertakings, a decision made by an association of undertakings and concerted practices between undertakings if, together with other similar agreements etc., the agreement etc. will restrict competition.

**(4)** The Minister for Business affairs shall, after consultation with the Competition Council, lay down specific rules on the calculation of turnover under subsection (1), including rules to the effect that, in the case of financial undertakings, the mentioned turnover thresholds shall be calculated on the basis of other assets.

**(5)** The exceptions set out in subsection (1) shall apply even if the undertakings exceed the above thresholds for two consecutive years. The Minister for Business Affairs shall, after consultation with the Competition Council, lay down specific rules in that respect, including rules on minor transgressions of the mentioned thresholds.

**8.** <sup>1)</sup> The prohibition set out in Section 6 (1) above shall not apply if agreements between undertakings, decisions made by an association of undertakings or concerted practices between undertakings:

- i) contribute to improving the efficiency of the production or distribution of goods or services or to promoting technical or economic progress;
- ii) provide consumers with a fair share of the resulting benefits;
- iii) do not impose on the undertakings restrictions that are not necessary to attain these objectives;

and

iv) do not afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products or services in question.

**(2)** <sup>1)</sup> The Competition Council may, upon notification, exempt an agreement between undertakings, a decision within an association of undertakings or a concerted practice between undertakings from the prohibition in Section 6 (1) if the Council finds the conditions set out in subsection (1) above satisfied. The notification of such an agreement etc., including an application for exemption under subsection 6 (1), may be submitted to the Competition Authority. The Competition Council shall lay down specific rules on notification, including rules on the use of special notification forms.

**(3)** <sup>1)</sup> Decisions under subsection (2) and (4) shall specify the period for which the exemption is effective. Exemptions may be granted on specific terms.

**(4)** <sup>1)</sup> The Competition Council may, upon notification, extend an exemption where the Council finds that the conditions in 8 (1) are still satisfied.

**(5)** <sup>1)</sup> The Competition Council may alter or revoke a decision made under subsection (2) or (4) if:

- i) the facts of the situation have changed in any respect that was important for the decision;
- ii) the parties to the agreement etc. fail to comply with terms imposed; or
- iii) the decision has been based on incorrect or misleading information from the parties to the agreement etc.

**9.** <sup>1)</sup> The Competition Council may declare, upon notification from an undertaking or association of undertakings, that according to the facts in its possession, an agreement, decision or concerted practice shall be outside the scope of the prohibition set out in Section 6 (1), and that, accordingly, it has no grounds for issuing an order under Section 6 (4). The Competition Council shall lay down specific rules on notification, including rules on the use of special notification forms.

**(2)** <sup>1)</sup> (Repealed)

**(3)** <sup>1)</sup> (Repealed)

**(4)** <sup>1)</sup> (Repealed)

**10.** <sup>1)</sup> The Minister of Business Affairs shall, after consultation with the Competition Council, lay down rules on the granting of block exemption from the prohibition in Section 6 (1) for groups of agreements, decisions and concerted practices that satisfy the conditions in Section 8 (1) above.

(2)<sup>1)</sup> Where agreements, decisions by an association of undertakings or concerted practices that are comprised by a block exemption issued under subsection (1) above have impact on a concrete case which is incompatible with the conditions in Section 8 (1), the Competition Council may revoke such a block exemption for the undertakings etc.. that have entered into the agreement etc.

### **Part 3**

#### **Abuse of a dominant position**

**11.** Any abuse by one or more undertakings etc. of a dominant position is prohibited.

(2) The Competition Council must declare, upon request, whether one or more undertakings hold a dominant position, cf. however subsection (7). If the Competition Council declares that an undertaking does not hold a dominant position, this declaration shall be binding until revoked by the Competition Council.

(3) Abuse as set out in subsection (1) may, for instance, consist in

- i) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- ii) limiting production, sales or technical development to the prejudice of consumers;
- iii) applying dissimilar conditions to equivalent transactions with trading partners, thereby placing them at a competitive disadvantage; or
- iv) making the conclusion of contracts conditional upon acceptance by the other contracting party of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

(4)<sup>1)</sup> The Competition Council may issue orders to bring infringements of the prohibition in subsection (1) to an end according to Section 22. Acting upon possible concerns it may have in relation to subsection (1), the Competition Council may, furthermore, order that commitments made by an undertaking shall be binding according to Section 23.

(5) The Competition Council may declare, upon notification from one or more undertakings, that on the facts in its possession a certain form of conduct shall not fall under the prohibition in subsection (1) and that, accordingly, it has no grounds for issuing an order under subsection (4).

(6) The Competition Council may lay down specific rules on the material that has to be submitted for a decision under subsection (2) or (5).

## **Part 4**

### **Aid that distorts competition**

**12.** The Competition Council may issue orders for the termination or repayment of aid granted from public funds to support certain forms of commercial activity.

**(2)** An order under subsection (1) may be issued in case

- i) the direct or indirect object or effect of the aid is distortion of competition; and
- ii) the aid is not lawful according to public regulation.

**(3)** The decision of whether granted aid is lawful according to public regulation shall be made by the relevant minister or the relevant municipal supervisory authority unless otherwise provided by other legislation. Decisions as to the lawfulness of granted aid according to public regulation shall be made not later than 4 (four) weeks after receipt of a request from the Competition Council. The Competition Council may extend this time limit.

**(4)**<sup>1)</sup> An order for repayment of aid under subsection (1) may be issued to private undertakings, self-governing institutions and corporate undertakings owned fully or partly by public authorities. The Minister for Business Affairs may lay down specific rules to the effect that orders for repayment of aid under subsection (1) may also be issued to certain quasi-corporate undertakings owned fully or partly by public authorities.

**(5)** The Competition Council's powers to order repayment of public aid under subsection (1) above shall be barred by limitation five years after the aid was paid out. The Competition Council determines the interest to be paid in connection with orders for repayment of unlawful aid according to The Act of Interests.

**(6)** The Competition Council may, upon notification, declare that, based on the conditions known to it, certain grants of public aid are not covered by subsection (2) (i) and that, accordingly, the Council has no grounds for issuing an order under subsection (1). The Council may lay down specific rules on notification, including rules on the use of special notification forms.

## **Part 4**

### **Merger control**

**13.** <sup>1)</sup> The provisions of Part 4 of the Act shall apply to mergers where

- i) two or more previously independent undertakings merge into one undertaking; or

ii) one or more persons who already control at least one undertaking, or one or more undertakings - by an agreement to purchase shares or assets or by any other means- acquiring direct or indirect control of the entirety of or parts of one or more other undertakings.

**(2)** The creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity shall constitute a concentration within the meaning of subsection (1) (ii).

**(3)** For the purpose of this Act, control of an undertaking is obtained through rights or agreements or in other ways which will, either separately or in combination, make it possible to exert decisive influence on the operations of the undertaking.

**(4)** A merger shall not be deemed to arise under subsection (1) in the following cases:

- i) credit institutions, other financial undertakings or insurance companies whose normal activity includes transactions and dealing in securities for their own account or for the account of others are temporarily in possession of interests which they have acquired in an undertaking with a view to reselling these, provided always that they do not exercise the voting rights attached to these interests for the purpose of determining the competitive conduct of that undertaking, or
- ii) where control is acquired by a professional who has powers under current insolvency legislation etc.

**14.** <sup>1)</sup> The provisions of Part 4 of this Act shall apply to mergers where

i) the aggregate annual turnover in The Faroe Islands of all undertakings involved is more than DKK 75 million and the aggregate annual turnover in The Faroe Islands of each of at least two of the undertakings concerned is more than DKK 15 million, or

ii) the aggregate annual turnover of at least one of the undertakings involved is more than DKK 75 million and the aggregate annual world-wide turnover of at least one of the other undertakings concerned is more than DKK 75 million.

**(2)** <sup>1)</sup> Where a merger is a result of the acquisition of parts of one or more undertakings, the calculation of the turnover referred to in subsection (1) shall only comprise the share of the turnover of the seller(s) that relates to the assets acquired.

**(3)** <sup>1)</sup> However, two or more acquisitions as referred to in subsection (2), which take place within a two-year period between the same persons or undertakings, shall be treated as one and the same merger arising on the date of the last transaction.

**(4)** <sup>1)</sup> The Minister for Business Affairs lays down specific rules on the calculation of the turnover



under subsection (1), including rules prescribing that the mentioned turnover thresholds shall be calculated on the basis of other assets in the case of financial institutions.

**15.** <sup>1)</sup> The Competition Council shall decide whether to approve or prohibit a merger, cf. however subsection (5) below.

**(2)** <sup>1)</sup> A merger that will not significantly impede effective competition, in particular due to the creation or strengthening of a dominant position, shall be approved. A merger that will significantly impede effective competition, in particular due to the creation or strengthening of a dominant position, shall be prohibited.

**(3)** <sup>1)</sup> To the extent that the formation of a joint venture that will constitute a merger under Section 13 (2) above also has as its object or effect the coordination of the competitive conduct of undertakings that remain independent, such coordination shall be assessed in accordance with the criteria laid down in Sections 6 (1) and 8 (1) of this Act in order to establish whether the transaction shall be approved.

**(4)** <sup>1)</sup> When making the assessment under subsection (3), the Competition Council shall, in particular, take into account:

- i) whether two or more founding undertakings have retained significant activities in the same market as the established joint venture or in a market which is downstream or upstream from that joint venture or in a related market closely associated with this market; and
- ii) whether the coordination that is the direct consequence of the establishment of the joint venture provides a possibility for the undertakings involved to eliminate competition in respect of a substantial part of the products or services in question.

**(5)** <sup>1)</sup> Irrespective of subsection (1) above, the Competition Authority may grant approval of a merger, based on a simplified procedure if the Authority based on the information submitted finds that the merger will not give rise to any objections on the part of the Authority.

**(6)** <sup>1)</sup> A merger covered by this Act can not be implemented before The Competition Council has approved the merger unless a dispensation has been given on before hand. The Competition Council may impose conditions and instructions, when dispensations are given in order to ensure an effective competition.

**16.** <sup>1)</sup> A merger under Section 13 shall be reported to The Competition Council no later than 1 (one) week after the merger contract has been concluded, or when a certain person has been given power of the concern. The time- limit is 1 (one) week from the above mentioned has taken place and before the merger is completed.

**(2)** <sup>1)</sup> The Competition Authority may publish a notice to announce that it has received notification of a merger. The notice published shall include the names of the parties to the merger, the nature of the merger and the economic sectors involved.

**(3)** <sup>1)</sup> The Competition Council lays down rules on the notification of mergers, including rules on the use of special notification forms.

**17.** <sup>1)</sup> It shall be decided, not later than 30 weekdays after a complete notification has been received, whether a merger shall be approved, and whether the merger may be approved on the basis of a simplified procedure. Within the same limit it shall be decided whether a further investigation of the merger shall be initiated.

**(2)** <sup>1)</sup> A decision on whether to approve or prohibit a merger shall be decided within 90 weekdays after the notification under (1) has been given to the informer, cf. however (4) – (5).

**(3)** <sup>1)</sup> The time limit referred to in subsection (2) above shall be extended by up to 20 weekdays in case one or more of the undertakings involved propose new or revised commitments. The time limit may only be extended if, at the time when the commitments are proposed, there are less than 20 weekdays left until a decision should have been made under subsection (2) above, thus, providing that a total period of 20 weekdays is available for the assessment of the merger in light of the new or revised commitments.

**(4)** <sup>1)</sup> The time limit set out in subsection (2) above may furthermore be extended upon a decision of the Competition Council provided that the undertaking(s) that has / have files the notification has / have requested or consented to the extension. An extension may not exceed 20 weekdays.

**(5)** <sup>1)</sup> If no decision has been made within the time limits provided by subsections (1) – (4) above, this shall be considered to be a decision to approve the merger.

**18.** <sup>1)</sup> The Competition Council may attach conditions to its approval of a merger under Section 15 (2), first sentence, or issue orders to ensure, for example, that the undertakings involved comply with the commitments they have accepted

**(2)** <sup>1)</sup> The Competition Council may, after its approval of a merger, issue the orders that are

necessary to ensure due and correct fulfilment of the commitments made to the Council by the undertakings involved.

**18 a.** <sup>1)</sup> The Competition Council may revoke its approval of a merger, where its approval is based to a substantial extent on incorrect or misleading information, for which one or more of the undertakings concerned are responsible.

**(2)** <sup>1)</sup> The Competition Council may revoke its approval of a merger, where the undertakings concerned fail to comply with conditions or orders imposed under Section 18, (1) and (2).

**(3)** <sup>1)</sup> In case The Competition Council is made aware of the fact that an undertaking concerned, as a part of the assessment of a merger notified according to the simplified procedure, has submitted incorrect or misleading information, the Council may revoke its approval under Section 15 (5) and demand that within two weeks the undertakings concerned submit a full notification.

**18 b.** <sup>1)</sup> The Competition Council may if a merger is made without the necessary approval, issue an order that requires separation of the undertakings or assets that have been taken over or merged or cessation of joint control as well as The Competition Council may use other measures capable of restoring effective competition.

## **Part 6**

### **Access to documents etc.**

**19.** <sup>1)</sup> The Act on Public Access to Documents in Public Files shall not apply to cases and investigations under this Act other than cases concerning the definition of rules under Section 4 (2), Section 7 (4) and (5), second sentence, 8 (2) third sentence, Section 9 (1), second sentence, Section 10 (1), Section 11 (6), Section 12 (4), second sentence and (6), second sentence, Section 14 (4), Section 15 (2), Section 16 (3), Section 20 (4), Section 25 (15), second sentence and Section 26 (3). However, Section 4 (2) and Section 6 of the Act on Public Access to Documents in Public Files shall also apply to cases covered by this Act. In addition sentences one and two are applicable if information obtained under this Act has been disclosed to another administrative authority.

**(2)** The Competition Authority shall publish:

i) Decisions made by the said authority according to Section 2 (4) and Section 12 (3) as well as the Competition Council's reasoned opinions and the relevant minister's responses according to Section 2 (5),

- ii) The Competition Council's decisions made under this Act,
- iii) The Competition Authority's decisions made on behalf of the Competition Council or a summary of such decision is neither found to be of importance for the understanding of the Competition Act nor otherwise found to be of public interest,
- iv) Judgements, settlements of fines or a summary thereof, where subject to a fine is imposed on or accepted by an undertaking,
- v) Orders made by the Competition Appeals Tribunal (vinnukærunevndin í kappingarmálum)
- vi) Judgements passed in lawsuits, to which the Competition Authority, the Competition Council or the Competition Appeals Tribunal is a party.

(3) The Competition Council may publish information concerning its activity as well as general reports.

(4) Publication of information according to subsections (2) and (3) shall not include information on technical matters, including information on research, production methods, products and operating and business secrets, where such information is of substantial financial importance to the person or undertaking concerned. Nor shall customer-related information from undertakings, which fall under the jurisdiction of the Financial Supervisory Authority, be disclosed.

(5) Any party who is required to submit information to the Competition Council may file an application to the Chairman of the Council requesting that information which may not be disclosed or made available to the public pursuant to subsection (4) may not be disclosed to the members of the Council either. The Chairman shall make the final decision as to the extent and form in which the information should be disclosed.

## **Part 7**

### **The Competition Authority, organisation and powers**

**20.** The enforcement of this Act and the subordinate rules issued under this Act shall be the responsibility of the Competition Council. The Competition Council may consider cases on its own initiative, upon notification or complaint, or as a result of a referral from other competition authorities, cf. Section 26 about the handing over of information to other countries. The Competition Council shall decide whether there are sufficient grounds to initiate an investigation or make a decision in a case, including whether the consideration of a case should be suspended or

discontinued. The Competition Council may also decide not to consider cases in which undertakings have previously given commitments under Section 23.

(2) The Competition Authority serves as secretariat to the Competition Council in respect of cases under this Act and handles the day-to-day administration of the Act on behalf of the Competition Council.

(3) The Competition Council is composed of a Chairman and 4 members. The Minister for Business Affairs shall appoint the Chairman and the members for a term of up to 4 (four) years. The Minister for Business Affairs shall appoint permanent deputies for the member of the Competition Council. The Council shall have comprehensive into public as well as private enterprise activity, including expertise in legal, economic, financial and consumer-related matters. The Chairman and two of the members shall be independent of commercial and consumer interests.

(4) The Minister for Competition Affairs decides the order of business for the Competition Council and determines the agenda for the Competition Council's activity.

21. <sup>2)</sup> The Minister for Business Affairs may lay down specific rules on the use of electronic communication to and from the Competition Council, the Competition Authority and the Competition Appeals Tribunal, including rules on the use of digital signatures.

22. The orders which the Competition Council may issue under Section 6 (4) and 11 (4) in order to eliminate the adverse effects of anti-competitive activity may include;

- i) <sup>1)</sup> an order for the termination of agreements, decisions, trading conditions etc. in full or in partly;
- ii) a demand that stated prices or profits shall be subject to specified calculation rules;
- iii) an obligation for one or more of the undertakings concerned to sell to specified buyers on the conditions usually applied by the undertaking in corresponding sales. The undertaking is, however, always entitled to demand cash payment or adequate security;
- iv) An order to grant access to an infrastructure facility which is necessary for the marketing of a product or adequate security.

23. <sup>1)</sup> The Council may order commitments (remedies) made by undertakings which accommodate the concerns of the Competition Council in relation to Section 6 (1) and Section 11 (1) to be binding on the undertakings. A commitment may be limited in time.

(2) <sup>1)</sup> The Competition Council may, after having caused a commitment to be binding in accordance with subsection (1) above, issue the orders necessary to ensure timely and correct fulfilment of the

commitments made.

**(3)**<sup>1)</sup> The Competition Council may revoke a decision under subsection (1), if

- i) The actual conditions have changed on a point of importance for the decision;
- ii) The conduct of the parties to an agreement etc. is contrary to the commitments made; or

**24.** The Competition Council may demand all the information, including accounts, accounting records, transcripts of books, other business documents and electronic data, that it believes necessary for its activity or for deciding whether the provisions of this Act shall apply to a certain situation.

**(2)** The Competition Council may demand for the use of its activity information and documents from other authorities such as the Tax and Customs Authorities, free of their professional secrecy.

**24 a.**<sup>1)</sup> The Competition Authority may investigate a branch of industry or certain agreements within different branches of industry with the purpose of knowledge to or insight in to the competitive conditions within the certain branch of industry or the certain branches of industries.

**(2)**<sup>1)</sup> The provisions of Section 24, (1) and (2) and Section 25 are also applicable for investigations according to (1).

**(3)**<sup>1)</sup> The Competition Authority may publish an investigation, but with the limitations mentioned in Section 19, (4).

**25.** For the use of the Competition Council's activity, the Competition Authority may conduct control investigations, which will give the Competition Authority access to the premises and means of transport of an undertaking or association for the purpose of gaining insight into and making copies of information kept on the site, including accounts, accounting records, books and other business documents, regardless of the information medium used.

**(2)** In connections with control investigations, the Competition Council may request oral statements and demand that persons who are comprised by the investigations show the contents of their pockets, bags, etc. to enable the Competition Authority to obtain knowledge of such contents and, if necessary, take copies thereof.

**(3)** If the information of an undertaking or an association is stored or processed by an external data processor, the Competition Authority is entitled to be given access to the premises of the external data processor to gain insight into and make copies of the information stored on the site according to subsection (1). It shall be a precondition for such access that it is not possible for the Competition Authority to obtain the information concerned directly from the undertaking or association that is

the target of the control investigation.

**(4)** The Competition Authority's investigations may only be carried out on the basis of a previously obtained court order and against due proof of the investigators' identity.

**(5)**<sup>1)</sup> The Competition Authority may take identical electronic copies (mirror images) of the data content of electronic media comprised by the control investigation, and may take the copied material away for subsequent review.

**(6)**<sup>1)</sup> The mirrored material must be sealed when the Competition Authority leaves the premises of the undertaking or the association.

**(7)**<sup>1)</sup> The party who is the target of a control investigation may demand that the party or a representative appointed by the party shall be present when the seal is broken and during the Authority's review of the mirrored material.

**(8)**<sup>1)</sup> The Competition Authority is obliged, not later than 25 weekdays after the control investigation, to deliver to the party who is target of the investigation, a set of copies of the information that the Authority may have extracted from the mirrored material.

**(9)**<sup>1)</sup> When the review of the mirrored material has been completed, the mirrored material shall be stored in sealed condition.

**(10)**<sup>1)</sup> The mirrored material shall be deleted if in the Authority's assessment it does not contain evidence of any infringement of the competition rules.

**(11)**<sup>1)</sup> If the authority decides to proceed with the case, the mirrored material shall be deleted when the case has been finally decided.

**(12)**<sup>1)</sup> If the conditions of the undertaking or association make it impossible for the Competition Authority to get access to or make copies of the relevant information as referred to in subsection (1) and (2) on the day when the control investigation is carried through, the Competition Authority is entitled to seal off the relevant business premises and information for up to 3 (three) weekdays thereafter.

**(13)**<sup>1)</sup> The Competition Authority is entitled on the same conditions as in subsection (12) above to take information or the medium on which it is stored away for copying. The material which the Competition Authority has removed must be returned to the undertaking or association together with a set of copies of the information the Competition Authority has extracted for its further examinations, not later than 3 (three) weekdays after the day of the inspection.

**(14)**<sup>1)</sup> In special cases, the time limits in subsection (8), (12) and (13) may be extended.

(15)<sup>1)</sup> The police shall provide assistance when the Competition Authority exercises the powers assigned to it under subsection (1) – (3), (5), (12) and (13). The Minister for Business Affairs may by agreement with the Police Authority lay down specific rules on such assistance.

26. The Competition Authority may, disclose information covered by the Authority's duty of secrecy to the competition authorities of other countries, if such information is necessary to assist the enforcement of the competition rules of those countries, and if the Authority thereby fulfils bilateral or multilateral obligations.

(2) If such information is disclosed under subsection (1), the Competition Authority shall make the disclosure subject to the following conditions:

- i) The recipient must be under a similar obligation of secrecy;
- ii) The information disclosed may exclusively be used for the purposes set forth in a bilateral or multilateral agreement where the disclosure takes place according to such an agreement; and
- iii) The information disclosed may only be passed on with the express consent of the Competition Authority and only for the purposes covered by the consent.

(3) The Minister for Business Affairs may lay down specific rules on the Competition Authority's disclosure to foreign authorities of information covered by the Competition Authority's duty of secrecy.

## **Part 7 Appeals**

27.<sup>2) 1)</sup> Decisions according to Section 1 (2), Section 3, first sentence, Section 4, Section 6 (1) and (4), first sentence, Section 7 (1) - (3), Section 8 (2) and subsection (4), second sentence and subsection (5) – (6), Section 9 (1), first sentence, Section 10 (2), Section 11 (1) and (2), subsection (4), first sentence, and subsection (5), Section 12 (1) – (6), first sentence, Section 15 (1) – (3), Section 16 (1), Section 17 (5), Section 18 (1) – (5) and subsection (7), Section 19 (4), Section 22 and Section 23 (2) – (3) may be appealed to the Competition Appeals Tribunal.

(2)<sup>1)</sup> An appeal may only be lodged by

- i) The party to whom the decision is directed; and



ii) Other parties who have an individual and substantial interest in the case. This does, however, not apply to decisions made by the Competition Council according to Section 15 (1) - (3), Section 16 (1), Section 17 (5), Section 18 (1) – (5) and (7) and Section 23, (2) and (3).

(3)<sup>2)</sup> Decisions according to Section 20 (1) can not be brought before the Competition Appeals Tribunal for appeal.

(4)<sup>2)</sup> An appeal against a decision under Section 19 (4) will act as a way of proceedings. An appeal against other decisions may be granted a stay of proceedings by the Competition Appeals Tribunal.

(5)<sup>2)</sup> The Competition Appeals Tribunal shall take decision in the matter not later than six weeks after the matter has been brought before the Tribunal.

28.<sup>2)</sup> Decisions made by the Competition Council under this Act may not be brought before any other administrative authority other than the Competition Appeals Tribunal and may not be brought before the courts of law until the Appeals Tribunal has made its decision.

(2)<sup>2)</sup> Decisions shall be lodged with the Competition Appeals Tribunal within 4 (four) weeks after a decision has been communicated to the party concerned. If the time limit is exceeded the Appeals Tribunal may disregard this where special reasons justify it.

(3)<sup>2)</sup> Decisions made by the Competition Appeals Tribunal may be brought before the courts of law within 8 (eight) weeks after the decision has been communicated to the party concerned. If this time limit is exceeded, the decision of the Appeals Tribunal shall be final.

29.<sup>2)</sup> (Repealed)

## **Part 9**

### **Penalty and leniency provisions**

30.<sup>1)</sup> The Competition Authority may impose daily or weekly payments on any party who fails to submit information demanded by the Competition Council or the Competition Authority under this Act or who fails to comply with conditions or an order issued under this Act or fulfil a commitment which has been made binding according to Section 23 (1).

(1) A fine imposed according to subsection (1) may be recovered by distress together with the costs of the collection of debt. The Faroese Tax and Customs Authorities carry out the distress according to subsection (2) in the fiscal legislation on collection of taxes.

31.<sup>2) 1)</sup> Provided that a more severe penalty is not applicable under other legislation, a party shall be punished with a fine if, intentionally or with gross negligence, that party

i) Infringes Section 6 (1);

- ii) Fails to comply with a condition attached to a decision under Section 8 (3), second sentence, or Section 4, second sentence;
- iii) Infringes Section 11 (1);
- iv) Fails to comply with an order issued according to Section 12 (1);
- v) Fails to notify a merger under Section 16 (1) or fails to submit a full notification before the expiry of the time limit referred to in Section 18 a (3);
- vi) Implements a merger despite the prohibition against implementation, cf. Section 15 (2), second sentence, or infringes the prohibition against implementation of a merger prior to a clearance, cf. Section 15 (2), first sentence, and without permission given, cf. Section 15 (2), first sentence, fails to comply with a condition imposed or an order issued, cf. Section 15 (6), does not fulfil the conditions or commandments given, cf. Section 18 (1) – (2), or does not follow the orders given, cf. Section 18 b.
- vii) Fails to comply with an order that has been made binding according to Section 6 (4), first sentence, or Section 11 (4), first sentence, cf. Section 22;
- viii) Fails to comply with a commitment that has been made binding according to Section 23,
- ix) Fails to comply with an order issued according to Section 23 (2),
- x) Fails to comply with a requirement according to Section 24, (1) – (2),
- xi) Provides incorrect or misleading information to the Competition Authority, the Competition Council or the Competition Appeals Tribunal or conceal matters of importance for the case or sector inquiry according to Section 24 a for which the information is obtained.

(2) <sup>1)</sup> Subsection (1) (i) above shall not apply from the date when an agreement has been notified to the Competition Council according to Section 8 (2) or (4) above and until the Council has communicated its decision according to Section 8 (2) or (4).

(3) Criminal liability may be imposed on companies etc. (legal persons) under the provisions of Part 5 of the Criminal Code.

(4) Economic profit achieved by breach of subsection (1) and (2) will be confiscated according to Part 9 of The Criminal Code. If it is not possible to confiscate the profit, the determination of a penalty must consider the value of an achieved or an intended economic profit.

(5) The period of limitation for claiming criminal liability is 5 (five) years.

**32.** This Act shall enter into force on the 1 of January 2008.

(2) The entry into force of this Act shall mean the repeal of the Competition Act no. 83 of the 6 of June 1997.

(3) Anti- competitive agreements, decisions and concerted practices which are in existence at the date when this Act enters into force and come under the prohibition set out in Section 6 (1), may, if an application for exemption under Section 8 is submitted before the 1 of June 1998, be maintained for up to three months after the Competition Council has made its decision in the case, even if the Council rejects the application. The Competition Council may extend the three month time limit.

(4)<sup>2)</sup> Proceedings conducted under the Competition Act, i.e. Competition Act no. 83 of the 6 of June 1997 as corrected with Act no. 81 of the 3 of December 1998, that have not been completed at the date when this Act enters into force shall lapse, except for complaints and cases pending before the Competition Appeals Tribunal.

(5) The announcements, articles and rules that are in force under the provisions of the Competition Act no. 83 from the 6 of June 1997 are in force until they are invalidated or until they are replaced by other announcements, articles or rules.

Tórshavn, the 3 of May 2007

**Jóannes Eidesgaard (sign.)**  
the Leader of the Faroese Government

/ Bjarni Djurholm (sign.)

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### **Final annotations**

<sup>1)</sup> As corrected with Act no. 35 from 27. April 2012.

<sup>2)</sup> As corrected with Act no. 18 from 8 of May 2008, where Section 19 is as followed : “Subsection (1). This Act enters into force the day after it is announced. Subsection (2). Appeals that are lodged, when this Act enters into force, will be tried before the Appeal Authorities according to the Acts in force prior to this Act.”