

ICN MERGER NOTIFICATION AND PROCEDURES TEMPLATE

Merger Working Group

Danish Competition and Consumer Authority

22 March 2021

IMPORTANT NOTE: This template is intended to provide background on ICN jurisdiction's merger notification and review procedures.

Reading the template is not a substitute for consulting the referenced statutes and regulations.

[Please include, where applicable, any references to relevant statutory provisions, regulations, or policies as well as references to publicly accessible sources, if any.]¹

1. Merger notification and review materials [references to publicly accessible sources (homepage address) and indication of the languages in which these materials are available]
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Statutory Laws

A. Notification provisions	<p>The notification provisions are regulated in the Danish Competition Act, part 4, section 12 b (1) of Act No. 360 of 4 March 2020. Link (in Danish): https://www.retsinformation.dk/eli/ta/2021/360</p> <p>For more information and guidance please go to the the Danish Competition and Consumer Authority's Merger Guidance (in Danish): https://www.kfst.dk/media/patduue2/20200915-fusionskontrol-vejledning.pdf</p> <p>Also see the Danish Competition Act (in English): https://www.en.kfst.dk/media/50102/engelsk-oversaettelse-af-lovbkg-155-2018.pdf</p>
B. Substantive merger review	<p>The Danish Competition Act, Part 4.</p>

¹ Editor's note: all the comments in [square brackets] are intended to assist the agency when answering this template but will be removed once the completed template is made public.

Provisions	
C. Implementing regulations	<p>The implementing regulations are found in the Danish Executive Order on the Notification of Mergers. For more information please go to: https://www.en.kfst.dk/media/5kehjuv4/engelsk-overs%C3%A6ttelse-af-lovbkg-690-of-250520.pdf</p>
D. Notification forms or information requirements	<p>Notifications must be submitted in a Danish or English version. Notification to the Competition and Consumer Authority may be submitted electronically. In that case an electronic signature may replace the personal signature required on the full and simplified notification of a merger respectively, cf. Danish Executive Order on the Notification of Merger, Annexes 1 and 2. Accompanying documents may be attached in copy.</p> <p>Annex 1 (full notification): https://www.en.kfst.dk/media/qudls0wr/annex-1-information-for-full-notification-of-mergers-250520.pdf Annex 2 (simplified notification): https://www.en.kfst.dk/media/i0xppob4/annex-2-information-for-simplified-notification-of-mergers-250520.pdf</p>
Interpretative Guidelines and Notices	
E. Guidance on Merger Notification Process [e.g., information on calculation of thresholds, etc.]	<p>The Danish Competition and Consumer Authority has guidance on the following subjects:</p> <p>Merger control (in Danish): https://www.kfst.dk/media/patduue2/20200915-fusionskontrol-vejledning.pdf Guidance about the calculation of turnover in the Competition Act (in Danish): https://www.kfst.dk/media/55827/opdateret-vejledning-om-omsaetningsbekendtgoerelsen.pdf Guidance about merger notifications and fees (in Danish): https://www.kfst.dk/media/zwmlcyrw/20200624-opdateret-vejledning-om-fusionsanmeldelser-og-gebyrer-2020-final-a.pdf Remedies (in Danish): https://www.kfst.dk/media/bj4heini/20200806-vejledning-om-tilsagn-i-fusionsager.pdf</p>

F. Guidance on Substantive Assessment in Merger Review [Please include reference separately, if applicable]	See question 1E.
G. Has your agency published guidelines or directives on notification of mergers involving specific sectors (e.g., digital economy)? [If affirmative, please provide references and languages available]	No.
H. Other relevant notices, policy statements, interpretations, rules, or guidance on aspects of merger review or the agency's decision-making process	N/A

2. Agency (or Agencies) responsible for merger enforcement.	
A. Name of the Agency which reviews mergers. If there is more than one agency, please describe the allocation of responsibilities.	The Competition Council (Konkurrencerådet) and the Competition and Consumer Authority (Konkurrence- og Forbrugerstyrelsen). The Competition and Consumer Authority, together with the Danish Competition Council, constitutes an independent competition authority. The Competition Council makes decisions in antitrust and merger cases of principle or particular great importance. The Council can delegate the decision competence to the Authority e.g. if there has been established clear and unambiguous case law.
B. Contact details of the agency [address and telephone including the country code, email, website address and languages available on the website]	Danish Competition and Consumer Authority Carl Jacobsens Vej 35 2500 Valby Denmark Phone: +45 41 71 50 00 E-mail: kfst@kfst.dk

C. Is agency staff available for jurisdiction/filing guidance? [If yes, please provide contact points for questions on merger filing requirements and/or consultations]	Yes, contact to the right persons can be provided through: Phone: +45 41 71 50 00 E-mail: kfst@kfst.dk
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3. Covered transactions	
A. Thorough definition of potentially covered transactions [i.e., share acquisitions, asset acquisitions, mergers, de-mergers, consolidations, consortia, amalgamations, joint ventures or other forms of contractual relationships, such as partnerships and alliance agreements]	Transactions where i) two or more previously independent undertakings merge, or ii) where one or more persons already controlling at least one undertaking, or one or more undertakings acquire, whether by purchase of securities or assets, by contract or by any other means, direct or indirect control of the whole or parts of one or more other undertakings. See the Danish Competition Act, section 12 a. Link: https://www.en.kfst.dk/media/5kehjuv4/engelsk-overs%C3%A6ttelse-af-lovbkg-690-of-250520.pdf
B. What is the geographic scope of transactions covered?	See question 4A.
C. If change of control is a determining factor, how is control defined and interpreted in practice?	Control is constituted by rights, contracts or any other means which either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking.
D. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels? Are acquisitions of assets ever covered? If so, do the assets have to form a free-standing business or can the combination of the assets with the business of the acquirer be considered in order to have jurisdiction? Does the authority have jurisdiction over “bare” asset purchases, e.g. where the assets purchased do not relate to the acquirer’s existing business?	Partial stock acquisitions / minority shareholdings are covered to the extent that there is a change in control.

4. Thresholds for notification	
A. What are the general thresholds for notification? [If the thresholds are subject to adjustment, state on what basis and how frequently (e.g., for inflation, annually)]	Turnover requirement: i) combined aggregate turnover in Denmark of all the undertakings concerned is more than DKK 900 million and the aggregate turnover in Denmark of each of at least two of the undertakings is more than DKK 100 million, or ii) the aggregate turnover in Denmark of at least one of the undertakings concerned is more than DKK 3.8 billion and the aggregate world-wide turnover of at least one of the other undertakings concerned is more the than DKK 3.8 billion. or iii) the Business Authority in accordance with the Act on electronic communications networks and services has referred a merger between two or more commercial providers of electronic communications networks in Denmark to the Competition and Consumer Authority.
B. To which entities do the merger notification thresholds apply, i.e., which entities are included in determining relevant undertakings/firms for threshold purposes? If based on control, how is control determined?	When determining relevant undertakings for threshold purposes, the turnover of all associated undertakings (excluding intra-group operations) is considered, including its subsidiaries, parent companies and any other undertakings in which these undertakings have the power, individually or jointly, to exercise controlling interest. See the Danish Executive Order on Calculation of Turnover. Link (in English): https://www.en.kfst.dk/media/Oxbe14cb/opdateret-engelsk-overs%C3%A6ttelse-af-oms%C3%A6tningensbekendtg%C3%B8relsen.pdf Link (in Danish): https://www.retsinformation.dk/eli/lta/2019/1286
C. How is the nexus to the jurisdiction determined (e.g., sales or assets in the jurisdiction)? If based on an “effects doctrine”, please describe how this is applied in practice. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?”	The nexus to the jurisdiction is determined by the sales of the undertakings concerned. There is no requirement of local presence in Denmark.

D. Can a single party trigger the notification threshold (e.g., one party's sales, assets, or market share)?	See above 4A.
E. Are any sectors excluded from notification requirements? If so, which sectors? To what period(s) of time do the thresholds relate (e.g., most recent calendar year, fiscal year; for assets-based tests, calendar year-end, fiscal year-end, other)?	No.
F. Are there special threshold calculations for specific sectors (e.g., banking, airlines, media, digital markets) or specific types of transactions (e.g., joint ventures, partnerships, financial investments)? If yes, for which sectors and types of transactions?	There are specific methods of turnover calculation for insurance companies (turnover is replaced by the value of the gross premiums written), credit institutions and other financial undertakings (turnover is replaced by net ordinary operating income). There are also specific rules in relation to commercial and savings banks, mortgage-credit institutes and mortgagecredit groups, investment companies as well as for public authorities.
G. Are there special rules or exceptions/exemptions regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign (foreign-to-foreign transactions)? [Describe the methodology for identifying and calculating any values necessary to determine if notification is required, including the value of the transaction, the relevant sales or turnover, and/or the relevant assets]	No.
H. Does the agency have the authority to review transactions that fall below the thresholds or otherwise do not meet notification requirements? If so, what is the procedure to initiate a review? [Describe methodology for calculating exchange rates]	No.
I. Are current notification criteria catching relevant transactions related to digital markets?	N/A

Calculation Guidance and related issues

<p>J. If thresholds are based on any of the following values, please describe how they are identified and calculated to determine if notification is required:</p> <ul style="list-style-type: none"> i) the value of the transaction; ii) the relevant sales or turnover; iii) the relevant assets; iv) market shares; v) other (please describe). 	<p>See the Danish Executive Order on Calculation of Turnover. Link (in English): https://www.en.kfst.dk/media/0xbe14cb/opdateret-engelsk-overs%C3%A6ttelse-af-oms%C3%A6tningensbekendtg%C3%B8relsen.pdf Link (in Danish): https://www.retsinformation.dk/eli/lta/2019/1286</p>
<p>K. Which entities are included in determining relevant investment funds for threshold purposes? If based on control, is the definition of control in these cases any different from the definition of control in general (question 3C)? If yes, how?</p>	<p>No, the definition of control is not different from question 3C.</p>
<p>L. In case an investment fund is part of a transaction, are its controllers required to present turnover information related to other funds under same manager (general partner) control? Are those other funds considered as part of the transaction for turnover purposes?</p>	<p>Yes, see the Danish Executive Order on Calculation of Turnover. Link (in English): https://www.en.kfst.dk/media/0xbe14cb/opdateret-engelsk-overs%C3%A6ttelse-af-oms%C3%A6tningensbekendtg%C3%B8relsen.pdf Link (in Danish): https://www.retsinformation.dk/eli/lta/2019/1286</p>
<p>M. Describe the methodology applied for currency conversion [e.g. which exchange rates are used].</p>	<p>Turnover in foreign currency is converted to Danish kroner (DKK) at Danmarks Nationalbank's average exchange rate in the company's most recent financial year, cf. the Danish Executive Order on Calculation of Turnover, section 1, subsection 2. Link (in English): https://www.en.kfst.dk/media/0xbe14cb/opdateret-engelsk-overs%C3%A6ttelse-af-oms%C3%A6tningensbekendtg%C3%B8relsen.pdf Link (in Danish): https://www.retsinformation.dk/eli/lta/2019/1286</p>
<p>5. Pre-notification</p>	

<p>A. If applicable, please describe the pre-notification procedure and whether it can be mandatory or not [e.g., time limits, type of guidance given, etc.].</p>	<p>The assessment of notified mergers is subject to short time limits. The time limits start to run as soon as the merger notification is complete. It will be possible to clarify several issues in relation to not only the notification requirements, but also the merger assessment before the merger is notified. These clarifications expedite the assessment of the merger. The Competition and Consumer Authority therefore recommends that parties to a merger contact the Authority well in advance of their submission of a merger notification. Prenotification discussions between the Competition and Consumer Authority and the parties to the merger are not mandatory. Although the undertakings and their advisors find that a merger will not lead to a restriction of competition it is still recommended that they prior to the notification of the merger contact the Competition and Consumer Authority. The discussions taking place in this phase are confidential. Unless the parties to a merger specifically grant their permission or the proposed merger is already known to the public, the Competition and Consumer Authority will not initiate market investigations or the like before the merger is notified.</p> <p>For more information see the guidance on merger control (in Danish): https://www.kfst.dk/media/patduue2/20200915-fusionskontrol-vejledning.pdf</p>
<p>B. If applicable, what information or documents are the parties required to submit to the agency during pre-notification?</p>	<p>No requirement – see the Danish Executive Order on Notification of Mergers. Link (in English): https://www.en.kfst.dk/media/5kehjuv4/engelsk-overs%C3%A6ttelse-af-lovbkg-690-of-250520.pdf Link (in Danish): https://www.retsinformation.dk/eli/ta/2020/690</p>
<p>6. Notification requirements and timing of notification</p>	
<p>A. Is notification mandatory? [Please describe if notification is mandatory in pre-notification phase, post-merger or voluntary]</p>	<p>Yes, cf. the Danish Competition Act, section 12 b (1).</p>

B. If parties can make a voluntary merger filing when may they do so?	N/A
C. What is the earliest that a transaction can be notified (e.g., is a definitive agreement required; if so, when is an agreement considered definitive?)	The earliest that a transaction will be notified is normally after a merger agreement has been concluded, a takeover bid has been published or a controlling interest has been acquired and before the merger is carried through, cf. the Danish Competition Act, section 12 b (1). An agreement is concluded when the agreement is binding on both parties.
D. When must notification be made? If there is a triggering event, describe the triggering event (e.g., definitive agreement) and the deadline following the event. Do the deadline and triggering event depend on the structure of the transaction? Are there special rules for public takeover bids?	A merger covered by the Danish Competition Act, section 12 shall be notified to the Competition and Consumer Authority after: - a merger agreement has been concluded, - a takeover bid has been published or - a controlling interest has been acquired. Cf. the Danish Competition Act, section 12 b (1).
E. If there is a notification deadline, can parties request an extension for the notification deadline? If yes, please describe the procedure and whether there is a maximum length of time for the extension.	N/A

7. Simplified Procedures	
A. Describe any special procedures for notifying transactions that do not raise competition concerns (e.g., short form, simplified procedures, advanced ruling certificates, discretion to waive certain information requirements, etc.).	The parties can file a simplified notification if the conditions for a simplified notification are met. A simplified notification will require less information than a full notification. The Danish Competition and Consumer Authority will review a simplified merger notification on the basis of a simplified case processing if the Authority finds that the merger on the basis of the available information does not give rise to objections. The simplified case processing provides a faster and more flexible processing of unproblematic mergers.

	<p>For more information see the guidance on merger control (in Danish): https://www.kfst.dk/media/patduue2/20200915-fusionskontrol-vejledning.pdf and Executive Order on the Notification of Mergers, Annex 2 – for information for simplified notification of mergers: https://www.en.kfst.dk/media/i0xppob4/annex-2-information-for-simplified-notification-of-mergers-250520.pdf</p>
<p>B. Describe the criteria adopted to consider a transaction under the simplified procedure.</p>	<p>The criteria follow from the Executive Order on the Notification of Mergers, section 3. When filing a simplified notification of a merger the parties will use Annex 2 in the Executive Order on the Notification of Mergers. The notification must include a non-confidential version of the notification and include the information and documents specified in the notification form for simplified notification.</p> <p>For more information, see the Executive Order on the Notification of Mergers. Link (in English): https://www.en.kfst.dk/media/5kehjuv4/engelsk-overs%C3%A6ttelse-af-lovbkg-690-of-250520.pdf Link (in Danish): https://www.retsinformation.dk/eli/lt/2020/690 and Executive Order on the Notification of Mergers, Annex 2: https://www.en.kfst.dk/media/i0xppob4/annex-2-information-for-simplified-notification-of-mergers-250520.pdf</p>

8. Information and documents to be submitted with a notification	
<p>A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents, internal documents).</p>	<p>a) Copies of the most recently audited annual financial statements and annual reports for each of the merging parties. b) Copies of the final or most recent versions of all documents concerning the merger.</p>

	<p>c) Copies of all analyses, reports, studies and similar documents produced by or for a member of the Executive Board or the Board of Directors or any other person who exercises, has been appointed or intrusted similar functions.</p> <p>d) Group overviews for each of the merging parties.</p> <p>e) A separate non-confidential version of the notification.</p> <p>f) Documentation for payment of the fee, cf. the Danish Competition Act, section 12 h (e.g. a copy of the bank transfer to the Competition and Consumer Authority's bank account).</p> <p>For more information see the Executive Order on the Notification of Mergers, Annex 1 (full notification): https://www.en.kfst.dk/media/qudls0wr/annex-1-information-for-full-notification-of-mergers-250520.pdf or Annex 2 (simplified notification): https://www.en.kfst.dk/media/i0xppob4/annex-2-information-for-simplified-notification-of-mergers-250520.pdf</p>
<p>B. Is there a distinction between tangible and intangible (e.g., customer portfolio, data on consumers, etc.) assets in the description of the transaction? [In respect to digital markets, state if the agency considers the amount of user data the companies have, and which will be passed on in the transaction]</p>	<p>There is no distinction between tangible and intangible assets.</p>
<p>C. Are documents proving the efficiencies of the transaction required? [If applicable, please provide the type of documents normally required]</p>	<p>See the Danish Executive Order on Notification of Mergers. Link (in English): https://www.en.kfst.dk/media/5kehjuv4/engelsk-overs%C3%A6ttelse-af-lovbkg-690-of-250520.pdf and https://www.en.kfst.dk/media/qudls0wr/annex-1-information-for-full-notification-of-mergers-250520.pdf Link (in Danish): https://www.retsinformation.dk/eli/lt/2020/690</p>

D. What information is required in case the target company is experiencing financial insolvency?	Same information as in question 8A. The Danish Competition and Consumer Authority will ask for further information if a failing firm defence is assessed.
E. Is there a specific procedure for obtaining information from target companies in the case of hostile/ unsolicited bids?	N/A
F. Are there any document legalization requirements (e.g., notarization or apostille)? What documents must be legalized?	A signed declaration must be submitted in which the notifying party declares: <ul style="list-style-type: none"> • that the information stated in this notification is correct; • that complete copies of the documents required in Annex 1 or Annex 2 are enclosed; and • that all statements have been made in good faith
G. What are the agency's rules and practice regarding exemptions from information requirements (e.g., information submitted or document legalization) for transactions in which the acquiring and acquired parties are foreign (foreign-to-foreign transaction)?	Same information requirements apply for all parties.
H. Can the agency require third parties to submit information during the review process? Can third parties voluntarily submit information or otherwise contact the agency to intervene?	Yes, cf. the Danish Competition Act, sections 17 and 12 b (2).
I. Are parties allowed to submit information beyond what is required in the initial filing voluntarily (e.g., to help narrow or resolve potential competitive concerns)?	Yes.
J. Are there different forms for different types of transactions or sectors?	No.

<p>K. With respect to investment funds:</p> <p>i) Is it requested that an investment fund taking part in a transaction provide a statement that its controllers do not manage any other investment funds in the same relevant market?</p> <p>ii) Should an investment fund be controlled by an entity that is also responsible for other funds in the same relevant market, are such funds considered part of the transaction? Is it requested that the controlling entity provide market information (e.g., market share) related to the other funds it manages and which are in the same relevant market?</p> <p>iii) Should there be no classic concentration, is there any sort of exemption regarding presenting certain information requested in the form?</p>	<p>For each of the merger parties, a list of all companies belonging to the same group is given. There is no distinction with respect to Investments Funds. For more information, see the Danish Executive Order on Notification of Merger.</p> <p>Link (in English): https://www.en.kfst.dk/media/5kehjuv4/engelsk-overs%C3%A6ttelse-af-lovbkg-690-of-250520.pdf</p> <p>Link (in Danish): https://www.retsinformation.dk/eli/ta/2020/690</p>
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<p>9. Translation</p>	
<p>A. In what language(s) can the notification forms be submitted?</p>	<p>The notification form must be submitted in Danish or in English.</p>
<p>B. Describe any requirements to submit translations of documents:</p> <p>i) with the initial notification; and</p> <p>ii) later in response to requests for information.</p> <p>In addition:</p>	<p>All documents must be in Danish. However, if agreed with the Danish Competition and Consumer Authority some documents may be in English. In some cases selected excerpts may be acceptable in lieu of complete documents.</p>

<p>iii) what are the categories or types of documents for which translation is required;</p> <p>iv) what are the requirements for certification of the translation;</p> <p>v) which language(s) is/are accepted; and</p> <p>vi) are summaries or excerpts accepted in lieu of complete translations and in which languages are summaries accepted?</p>	
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<p>10. Review Periods</p>	
<p>A. Describe any applicable review periods following notification.</p>	<p>The Danish Competition and Consumer Authority must inform the parties on whether the notification is complete or ask for further information, within ten business days after receipt of the notification. Within 25 business days (Phase I) after receipt of a complete notification, the Competition Council must decide whether to approve a merger or initiate an in-depth investigation. If the Competition Council has decided to initiate an in-depth investigation, a decision whether to approve or prohibit a merger must be reached within an additional 90 business days (Phase II) after receipt of a complete notification. A merger must not be put into effect until it has been approved by the Competition Council or the Danish Competition and Consumer Authority.</p>
<p>B. Are there different rules for public tenders (e.g., open market stock purchases or hostile bids)?</p>	<p>Public bids may be implemented if they have been notified to the Competition and Consumer Authority, provided the acquirer does not exercise the voting rights attached to the securities in question or does so only to maintain the full value of those investments and on the basis of a derogation granted by the Competition and Consumer Authority. Cf. the Danish Competition Act, section 12 c (5).</p>
<p>C. What are the procedures for an extension of the review periods, if any? Do requests for additional information suspend or re-start the review period?</p>	<p>If one or more of the participating companies propose remedies in Phase I the review period can be extended by 10 business days, cf. the Danish Competition Act, section 12 d (1). If one or more of the participating companies propose remedies in Phase II the</p>

	<p>review period can be extended by 20 business days, cf. the Danish Competition Act, section 12 d (3).</p> <p>The review period can also be extend by a maximum of 20 business days after the decision by the Danish Competition and Consumer Authority, cf. the Danish Competition Act, section 12 d (4).</p> <p>The Danish Competition and Consumer Authority may also temporarily suspend the deadlines if the Authority has requested information from the parties for the purpose of assessing the merger, and the parties have not submitted the information within a time limit set by the Authority.</p>
D. Is there a statutory or other maximum duration for extensions?	See question 10C - If no decision is taken within the time limits in Phase I or Phase II, it implies that the merger must be considered approved.
E. Does the agency have the authority to suspend review periods? Does suspending a review period require the parties' consent?	Yes, the Competition and Consumer Authority can suspend the review periods if the Authority needs further information from the parties than those stated in the notification in order to be able to assess the effects of the notified merger, cf. question 10C and the Danish Competition Act, section 12 d (9).
F. What are the time periods for accelerated review of non-problematic transactions, if any?	See question 10A.
G. If remedies are offered, do they impact the timing of the review?	If one or more of the participating companies propose remedies in Phase I the review period can be extended by 10 business days, cf. the Danish Competition Act, section 12 d (1). If one or more of the participating companies propose remedies in Phase II the review period can be extended by 20 business days, cf. the Danish Competition Act, section 12 d (3).

	For more information see the guidance for merger control (in Danish): https://www.kfst.dk/media/patduue2/20200915-fusionskontrol-vejledning.pdf
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11. Waiting periods / suspension obligations	
A. Describe any waiting periods/suspension obligations following notification (e.g., full suspension from implementation, restrictions on adopting specific measures) during any initial review period and/or further review period.	In principle, a concentration cannot be put into effect until it has been approved by the Competition Council. However, public bids or transactions in securities may be implemented, if the concentration is reported to the Competition and Consumer Authority and the acquirer does not exercise the voting right attached to the securities in question, or does it only to maintain the full value of his investment and on the basis of a derogation granted by the Competition Council (see below).
B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?	Yes, the Competition Council may, on request of the parties, grant derogation from these obligations. Such derogation may be made subject to conditions and obligations in order to ensure conditions of effective competition.
C. Are the applicable waiting periods/suspension obligations limited to aspects of the transaction that occur within the agency's jurisdiction (e.g., acquisition or merger of local undertakings/business units)? If not, to what extent can the parties implement the transaction outside the agency's jurisdiction prior to clearance (e.g., through derogation from suspension, hold separate arrangements)?	The above-mentioned obligations are applicable to all notifiable concentrations.
D. Are parties allowed to close the transaction if no decision is issued within the statutory period?	Yes.
E. Describe any provisions or procedures available to the enforcement agency, the parties and/or third parties to extend the waiting period/suspension obligation.	See question 10C. The Danish Competition and Consumer Authority may also temporarily suspend the deadlines if the Authority has requested information from the parties for the purpose

	of assessing the merger, and the parties have not submitted the information within a time limit set by the authority.
F. Describe any procedures for obtaining early termination of the applicable waiting period/suspension obligation, and the criteria and timetable for deciding whether to grant early termination.	A concentration will be approved in Phase I (within 25 business days) if it does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded. Failing this, the concentration will be assessed under a Phase II investigation (additional 90 business days).
G. Describe any provisions or procedures allowing the parties to close the transaction at their own risk before waiting periods expire or clearance is granted (e.g., allowing the transaction to close if no "irreversible measures" are taken).	A public bid that has been notified to the Danish Competition and Consumer Authority may be implemented, if the acquirer does not exercise the voting rights attached to the securities in question, cf. the Danish Competition Act, section 12 c (5).

12. Responsibility for notification / representation	
A. Who is responsible for notifying – the acquiring company(ies), acquired company(ies), or both? Does each party have to make its own filing?	Only one notification has to be submitted per merger. It is the nature of the merger that determines which of the parties who is responsible for submitting the notification. For more information see the Danish Executive Order on Notification of Mergers. Link (in English): https://www.en.kfst.dk/media/5kehjuv4/engelsk-overs%C3%A6ttelse-af-lovbkg-690-of-250520.pdf Link (in Danish): https://www.retsinformation.dk/eli/Ita/2020/690
B. Do different rules apply to public tenders (e.g., open market stock purchases or hostile bids)?	No.
C. Are there any rules as to who can represent the notifying parties (e.g., must a lawyer representing the parties be a member of a local bar)?	No.

<p>D. How does the validity of the representation need to be attested (e.g., power of attorney)? Are there special rules for foreign representatives or firms? Must a power of attorney be notarized, legalized, or apostilled?</p>	<p>There are no specific requirements.</p>
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<p>13. Filing fees</p>	
<p>A. Are any filing fees assessed for notification? If so, in what amount and how is the amount determined (e.g., flat fee, fees for services, tiered fees based on complexity, tiered fees based on size of transaction)? [Please provide the amount in local currency and in USD as of December 31st, 2020]</p>	<p>The fee amounts to DKK 50,000 (approx. 8,237 USD) for simplified notifications and 0.015 per cent of the parties' turnover in Denmark for full notifications. However, the filing fee is capped at a maximum of DKK 1.5 million (approx. 247,117 USD). Cf. the Danish Competition Act, section 12 h.</p>
<p>B. Who is responsible for payment?</p>	<p>The notifying party.</p>
<p>C. When is payment required?</p>	<p>Payment is required to the Danish Competition and Consumer Authority no later than upon filing of the notification and documentation of payment of the notification fee must be enclosed with the notification</p>
<p>D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?</p>	<p>When submitting the notification, the notifying party must transfer the fee to the Danish Competition and Consumer Authority's account and enclose documentation verifying that the fee has been paid (e.g. a copy of a bank transfer to the Competition and Consumer Authority's account). In the case of a full notification, the fee that has been calculated must also be stated in the notification. Cf. Executive Order on the Notification of Mergers, Annex 1 https://www.en.kfst.dk/media/qudls0wr/annex-1-information-for-full-notification-of-mergers-250520.pdf or Annex 2 https://www.en.kfst.dk/media/i0xppob4/annex-2-information-for-simplified-notification-of-mergers-250520.pdf</p>

14. Process for substantive analysis and decisions [Please give a brief summary and provide information on relevant Guidance papers]	
<p>A. What are the key procedural stages in the substantive assessment (e.g., screening mergers, consulting third parties)?</p>	<p>In practice, the first step in the assessment of a merger notification will be the Competition and Consumer Authority's definition of the relevant market and estimation of the market shares held by the undertakings concerned. This will be the first indicator of whether a proposed merger may restrict competition. In addition to the market shares the Competition and Consumer Authority will also have to take in to account the strength of both actual and potential competitors and barriers to entry. The need for further investigations of mergers (i.e. phase II investigations) will depend on the outcome of the Competition and Consumer Authority's preliminary assessment. The further investigation will often require an extensive involvement of third parties. The involvement of third parties can take place in both phases of the review.</p> <p>For more information please go to merger guidelines (in Danish): https://www.kfst.dk/media/patduue2/20200915-fusionskontrol-vejledning.pdf</p>
<p>B. What merger test does the agency apply (e.g., dominance test or substantial lessening of competition test)?</p>	<p>The substantive test to be applied by the Competition Council is whether the concentration significantly impedes effective competition (SIEC), in particular as a result of the creation or strengthening of a dominant position. Unless this is the case, the concentration must be approved. The Danish Competition and Consumer Authority also follows the European Commission's guidelines and case law. For more information see the Danish merger guidelines and the European Commission's guidelines on the assessment of horizontal and non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52004XC0205%2802%29 https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52008XC1018%2803%29</p>

	Merger guidelines (in Danish): https://www.kfst.dk/media/patduue2/20200915-fusionskontrol-vejledning.pdf
C. What theories of harm does the agency consider in practice?	<p>The Danish Competition and Consumer Authority and the Competition Council follows the European Commission's practice with regard to the applicable 'theories of harm' and the Authority follows the same principles as in the European Commission's guidelines on the assessment of horizontal and non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings.</p> <p>Link (Guidelines on the assessment of horizontal mergers): https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52004XC0205%2802%29</p> <p>Link (Guidelines on the assessment of non-horizontal mergers): https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52008XC1018%2803%29</p>
D. What are the key stages in the substantive analysis? Does this differ depending on the type of transaction (e.g., joint venture)?	See question 14B and 14C. The Danish Competition and Consumer Authority uses the same analysis as the European Commission.
E. Are non-competition issues ever considered (in practice or by law) by the agency? If so, can they override or displace a finding based on competition issues?	No.
F. What are the possible outcomes of the review (e.g., unconditional/conditional clearance, prohibition, etc.)?	Possible outcomes are approval, approval with remedies/conditional clearance and prohibition.

<p>G. What types of remedies does the agency accept? Is there a preference on any particular type of remedies? How is the process initiated and conducted?</p>	<p>The Danish Competition and Consumer Authority accepts structural and behavioral remedies depending on the facts of the case and whether the proposed remedies are considered effective. A research from the Danish Competition and Consumer Authority shows that structural remedies are most effective and therefore preferable. For more information see (in Danish): https://www.kfst.dk/vejledninger/kfst/dansk/2020/20200806-tilsagn-i-fusionsager/</p>
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<p>15. Confidentiality</p>	
<p>A. To what extent, if any, does the agency make public the fact that a premerger notification filing was made or the contents of the notification? If applicable, when is this disclosure made?</p>	<p>The Danish Competition and Consumer Authority may make the fact that it has received a notification public, cf. the Danish Competition Act, section 12 b (2). The Authority does not publish the content of the entire notification.</p>
<p>B. Do notifying parties have access to the agency's file? If so, under what circumstances can the right of access be exercised?</p>	<p>The parties have right of access to the Danish Competition and Consumer Authority's documents. Such right can be exercised during and after the case handling upon request from the parties, cf. the Danish Competition Act, section 15 a.</p>
<p>C. Can third parties or other government agencies obtain access to notification materials and any other information provided by the parties (including confidential and non-confidential information)? If so, under what circumstances?</p>	<p>No, but the Danish Competition and Consumer Authority may share documents and a non-confidential version of the notification with third parties if a third party's comments is required for the assessment of the merger, cf. the Danish Competition Act, section 15 e.</p>
<p>D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.</p>	<p>Notification materials will always be kept confidential. If the concentration has not yet been made public the fact of notification may also be kept confidential upon the parties' request.</p>

<p>E. Can the agency deny a party's claim that certain information contained in notification materials is confidential? Are there procedures to challenge a decision that information is not confidential? If so, please describe.</p>	<p>Yes, the Danish Competition and Consumer Authority can deny a party's claim that certain information contained in the notification is confidential, but this decision will be based on a specific assessment. The Authority is obliged to follow the guidelines of confidentiality in the Danish Competition Act, section 13.</p> <p>Decisions according to the Danish Competition Act, section 13 (4) may be appealed to the Competition Appeals Tribunal.</p>
<p>F. Does the agency have procedures to provide public and non-public versions of agency orders, decisions, and court filings? If so, what steps are taken to prevent or limit public disclosure of information designated as confidential that is contained in these documents?</p>	<p>The Danish Competition and Consumer Authority publishes a non-confidential version of the decision. Business secrets concerning the parties and any third parties will be kept confidential, cf. the Danish Competition Act, section 13 (4). Parties are able to comment on the confidentiality of any information that the Authority plans to make public.</p>

<p>16. Transparency</p>	
<p>A. Does the agency publish an annual report with information about mergers? Please provide the web address if available.</p>	<p>The Danish Competition and Consumer Authority publishes information about merger cases on its website. A list of ongoing and past merger cases can be found via this link (in Danish):</p> <p>https://www.kfst.dk/konkurrenceforhold/liste-over-fusionssager/</p>
<p>B. Does the agency publish press releases related to merger policy or investigations/reviews? If so, how can these be accessed (if available online, please provide a link)? How often are they published (e.g., for each decision)?</p>	<p>The Danish Competition and Consumer Authority will make a public statement about the fact that a merger has been notified and invite comments from third parties. The statement includes information on the identity of the parties, the nature of the concentration and the affected industries.</p> <p>All merger decisions are published on the Danish Competition and Consumer Authority's website. In some cases the Authority issues separate press releases, e.g. in cases where remedies are accepted. Pre-merger notification consultations take place secretly. Confidential information is always omitted in public versions of decisions.</p> <p>The decisions from the Danish Competition and Consumer Authority can be found via this link:</p> <p>https://www.en.kfst.dk/competition/decisions/</p>

C. Does the agency publish decisions on why it challenged, blocked, or cleared a transaction? If available online, provide a link. If not available online, describe how one can obtain a copy of decisions.	Yes, the Danish Competition and Consumer Authority publishes a non-confidential version of the decision with information about why a transaction has been challenged, blocked, or cleared. See question 16B.
E. Does the agency publish statistics or the number of annual notifications received, clearances, prohibitions, etc.? [if applicable, please provide a link for these figures]	No, but you can find the statistics in the overview of ongoing and past merger cases. See question 16A.

17. Cooperation	
A. Is the agency able to exchange information or documents with international counterparts?	Yes, the Danish Competition and Consumer Authority has a co-operation agreement with Sweden, Norway, Finland and Iceland. For more information see this link: https://www.retsinformation.dk/eli/ltc/2019/9. Besides that the Authority do not have a model waiver, but in in some scenarios the Authority has used the ICN's model waiver.
B. Is the agency or government a party to any agreements that permit the exchange of information with foreign competition authorities? If so, with which foreign authorities? Are the agreements publicly available?	See question 17A. The Danish Competition and Consumer Authority does not have co-operation agreements with other countries than the Nordic countries, and the exchange of confidential information with competition authorities will therefore require the consent of the merging parties.
C. Does the agency need consent from the parties who submitted confidential information to share such information with foreign competition authorities? If the agency has a model waiver, please provide a link to it here, or state whether the agency accepts the ICN's model waiver of confidentiality in merger investigations form.	The Danish Competition and Consumer Authority accepts the ICN's model waiver. See question 17A and 17B.

<p>D. Is the agency able to exchange information or documents with other domestic regulators?</p>	<p>It depends on a specific assessment, which must be made in accordance with the Public Administration Act, section 28. See the Public Administration Act (in Danish) here: https://www.retsinformation.dk/eli/lta/2014/433</p>
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<p>18.Sanctions/penalties</p>	
<p>A. What are the sanctions/penalties for:</p> <ul style="list-style-type: none"> i) failure to file a notification; ii) incorrect/misleading information in a notification; iii) failure to comply with information requests; iv) failure to observe a waiting period/suspension obligation; v) breach of interim measures; vi) failure to observe or delay in implementation of remedies; vii) implementation of transaction despite the prohibition from the agency? 	<p>Failing to file a notification and failing to observe the mandatory waiting periods, submission of incorrect/misleading information and unlawful implementation of a concentration prior to clearance may be punishable by fine.</p>
<p>B. Which party/ies (including natural persons) are potentially liable for each of A(i)-(vii)?</p>	<p>It will be a case-by-case assessment.</p>
<p>C. Can the agency impose/order these sanctions/penalties directly, or is it required to bring judicial action against the infringing party? If the latter, please describe the procedure and indicate how long this procedure can take.</p>	<p>The Danish Competition Authority has the authority to impose daily or weekly penalty payments on any party who e.g. fails to submit information demanded by the Competition and Consumer Authority under this Act; Cf. the Danish Competition Act, section 22. Only the courts have the authority to impose sanctions. The Danish Competition and Consumer Authority would take the decision whether to bring judicial action before the courts. Cf. the Danish Competition Act, section 23 (1)-(3) and section 24 a. Link (in Danish): https://www.retsinformation.dk/eli/lta/2021/360</p>

<p>D. Are there any recent or significant fining decisions?</p>	<p>On 16 November 2017, the High Court in Denmark imposed sanctions for procedural infringements in the case METRO Cash & Carry Danmark ApS / Euro Cater A/S. Link: https://www.en.kfst.dk/nyheder/kfst/english/judgements/20171116-denmark-metro-cash-carry-danmark-a-s-denmark-sentenced-to-pay-a-fine-of-dkk-50-000-for-withholding-information-in-a-merger-case/</p> <p>On 21 and 22 June 2018, the energy companies SEAS-NVE Holding A/S and Syd Energi Holding A/S each accepted fines for not notifying a merger to the Danish Competition and Consumer Authority. Link: https://www.en.kfst.dk/nyheder/kfst/english/judgements/20180704-seas-nve-holding-a-s-and-syd-energi-holding-a-s-accept-fines-for-not-notifying-a-merger-and-pre-implementation/</p> <p>On 26 June 2019, Circle K Denmark A/S accepted a fine for not notifying a merger to the Danish Competition and Consumer Authority. Link: https://www.en.kfst.dk/nyheder/kfst/english/judgements/20190626-company-accepts-fine-for-not-notifying-a-merger/</p>
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<p>19. Independence</p>	
<p>A. Is there possibility for any ministry or a cabinet of ministries to abrogate, challenge or change merger decisions issued by the agency or by a court? If yes, to which merger decisions does this apply (e.g., any decision, prohibitions, clearances, remedies)?</p>	<p>No.</p>
<p>B. What are the grounds for such ministerial intervention?</p>	<p>N/A</p>

C. Please provide any description or guidance regarding the ministerial intervention process and procedures [If applicable]	N/A

20. Administrative and judicial processes/review	
A. Describe the timetable for judicial and administrative review related to merger transactions.	N/A
B. Describe the procedures for protecting confidential information used in judicial proceedings or in an appeal/review of an agency decision.	The Danish Competition and Consumer Authority follows the same procedures for protecting confidential information as described in the Danish Competition Act, section 15.
C. Are there any limitations on the time during which an appeal may be filed?	Within four weeks, cf. the Danish Competition Act, section 13 (2).

21. Additional filings	
A. Are any additional filings/clearances required for some types of transactions (e.g., sectoral or securities regulators or national security or foreign investment review)?	Undertakings operating within the financial sector (banking and insurance companies) have to get approval from the Danish Financial Supervisory Authority (Finanstilsynet), cf. Financial Business Act, Act No. 937 of 6 July 2019 (Lov om finansiel virksomhed). Undertakings operating within the utility sector (electricity, natural gas and district heating) also have to get approval from the Danish Utility Regulator (Forsyningstilsynet), cf. Utility Regulator Act, Act No. 690 of 8 June 2018 (Lov om forsyningstilsynet). Other filings/clearances may be necessary.

22. Closing Deadlines	
A. When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized? If yes, can the parties obtain an extension of the deadline to close?	No.
22. Post Merger review of transactions	
A. Can the agency reopen an investigation of a transaction that it previously cleared or allowed to proceed with conditions? If so, are there any limitations, including a time limit on this authority?	The Danish Competition and Consumer Authority may revoke its approval of a merger, when i) its approval is based to a substantial extent on incorrect or misleading information, for which one or more of the undertakings concerned are responsible; or ii) the undertakings concerned fail to comply with conditions or orders imposed under section 12 e (1). Cf. the Danish Competition Act, section 12 f (1). See also section 12 f (2).
B. Does the agency publish studies regarding ex-post analysis of reportable transactions which have been cleared by the agency? Are these studies publicly available? How does the agency obtain data for carrying out these studies?	Yes, the Danish Competition and Consumer Authority released an ex-post analysis of remedies in merger cases in August 2020. The studies can be found via this link (in Danish): https://www.kfst.dk/analyser/kfst/publikationer/dansk/2020/20200806-ex-post-analyse-af-tilsagn-i-fusionsager/