

## **BILL ON THE INTRODUCTION OF FEES ON MERGER APPLICATIONS**

13 March 2013, the Danish Ministry of Business and Growth introduced a bill on the introduction of fees on merger applications.

The bill is introduced due to the fact that the number of mergers filed after the reduction of the thresholds in 2010 has increased from approximately 10 applications annually to now more than 30 applications per year.

In addition to this, the so-called globalisation reserve, which has so far funded the Danish merger control with a grant of DKK 11 million a year (2013 level), expired at the end of 2012. In connection with the adoption of the Finance Act 2013, it was therefore agreed that merger control is henceforth to be funded by payment of fees on merger applications.

### **Contents of the Bill**

The duty of registration rules include mergers where the participating companies together have a combined annual turnover in Denmark of at least DKK 900 million, and where a minimum of two of the undertakings individually have a total annual turnover in Denmark of at least DKK 100 million.

Under the existing rules, fees are waived for the merger applications submitted to the Danish Competition and Consumer Authority.

Under the bill, the current rules are changed so that future fees for a simplified merger application will be DKK 50,000, with an additional 0.015 per cent of the participating companies' overall turnover in Denmark for a normal merger application. However, the amount may never exceed DKK 1.5 million.

The rationale behind the difference in fees for the simplified and the normal merger application is that less information is submitted to the Competition and Consumer Authority when using a simplified merger application than when using the normal application.

The bill also implies that the deadline for the Competition and Consumer Authority's decision on whether a merger may be approved, including whether it may be approved under the simplified procedures, will only begin to run when the Competition and Consumer Authority, in addition to a complete application, has proof of payment of the appropriate fee.

Should the European Commission decide to refer a merger for review in Denmark, candidates must submit an application to the Competition and Consumer Authority. A notification fee must therefore also be paid in such cases.

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If the companies decide not to complete the merger after the application has been submitted, the fee will generally be lost. However, this does not apply if the transaction turns out not to be subject to registration, if an application is withdrawn before the application is complete, if an application is withdrawn before a decision on approval is made, or if the merger is rejected and the revocation is due to a another Danish authority having refused permission of the merger.

The fee is also not reimbursed if the merger is prohibited or if the Competition and Consumer Authority under the rules of the EC Merger Control Regulation decides to refer a merger application to the European Commission.

Failure to pay the fee will imply that the merger application will be deemed to have lapsed. If the bill is implemented, the amendment of the Competition Act will enter into force 1 August 2013.

## **Our Assessment**

As the bill is based on a decision in the Finance Act 2013, it is our expectation that the bill will largely be adopted as presented. Therefore, the amendment will imply increased costs for companies at future merger applications.

If you have any questions or require additional information or an extended review, please contact partner Nicolai Hesgaard ([nhe@mwblaw.dk](mailto:nhe@mwblaw.dk)) or attorney Pernille Nørkær ([pno@mwblaw.dk](mailto:pno@mwblaw.dk)).

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