On 29 February 2012, the Danish Competition Council (DCC) decided that it had no grounds for action in a case concerning a horizontal production agreement between the mobile operators Telia Denmark and Telenor A/S. The decision is conditioned upon five commitments offered by the parties and made binding in the decision.

Telia Denmark and Telenor A/S plan to implement a network sharing agreement via a joint venture, Newco, by which they will jointly own, control and develop the RAN-infrastructure (Radio Access Network) needed for their respective mobile businesses. The RAN sharing agreement comprises the sharing of the physical RAN-infrastructure (masts and antennas), and frequency resources. The cooperation via the network sharing agreement concerns all mobile technologies (2G, 3G, LTE, and potentially LTE-advanced) and covers the entire Danish territory. The purpose of the parties’ agreement is to optimize their respective businesses by obtaining efficiency gains, i.e. cost reductions and the creation of a better network in terms of better coverage and technology.

The parties will not share the “intelligent” part of their respective mobile networks, the so-called core networks (a core network is the part of a mobile network that inter alia carries out the various computer-based mobile services and registers customer data: e.g. consumption of minutes, types of calls and subscriptions etc.). Moreover the parties will not share the main parts of their transmission cables. The parties will thus remain separate mobile operators on both the wholesale and retail markets.

The DCC concluded that the cooperation agreement may have an anti-competitive impact on the market for access to mobile antennas sites, the wholesale market for mobile telephony and mobile broadband, the retail market for mobile telephony and mobile broadband and finally on the market for purchase of frequency licenses. The DCC has left the final definitions of the markets open, since the assessment of the agreement does not change irrespective of the final market definitions.

The DCC has identified six issues which give rise to anti-competitive concerns. Five of these issues are solved by the commitments offered by the parties. The last issue meets the criteria for individual exemption pursuant to Article 101(3) TFEU and Section 8 of the Danish Competition Act. Accordingly, the DCC has no grounds for action according to Article 101(1) TFEU and Section 6 of the Danish Competition Act.

The commitments are the following:

Commitment 1: The parties will accept all requests from wholesale customers to buy mobile telephony and mobile broadband on customary and market conditions.

Commitment 2: The parties will pay the commonly owned joint venture for its supply of Radio Access-capacity according to a tariff structure that at all times reflects the underlying cost structure of the Radio Access network.

Commitment 3: In the future, the parties are obliged to buy frequency licenses in common (through the joint venture). This will avoid a situation where the parties buy spectrum separately and afterwards pool the obtained frequency resources in the joint venture, thus gaining access to an overall larger amount of spectrum.

Commitment 4: The parties are obliged to sell or let the antenna sites that prove to be superfluous to any interested player on the market.

Commitment 5: The parties adopt a set of limitations as to who can be appointed as member of the Board, as part of the Management and as employees of the joint venture, as well as to the information that may be exchanged within the joint venture and between the joint venture and the parties, etc. The joint venture shall at any time and upon request from the DCCA forward copies of the information exchanged within the Board or between employees in the joint venture and a party.

See Decision (in Danish) and Summary (in English)