

Government ownership and oversight

Discussion points

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**Pros and Cons of competition in the
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DANISH COMPETITION AUTHORITY

Reflection and discussion points

- The methodology - the impact of ownership
- The state owned enterprise vs. private company
- The European Union approach
- The definition of economic vs. non economic activity
- Incentives to effective Corporate Governance
- Perspectives: Measures to improve effectiveness of Corporate Governance and antitrust

The methodology – the impact of ownership

- Economic theory – neoclassic approach
- Conceptual differences between public and private ownership of companies
- Definition of the public owned company
- Incentives to the effective market operator
- Focus is on ownership – not on market participation
- No reflection concerning market imperfection / failures
- Focus on Corporate Governance and Antitrust

Claim: The state owned enterprise vs. private company - no incentive for being effective

- No profit motive
- No incentive to financial upside – or shareholder value
- Designed for political purposes
- Regulation / limitations based on public obligations
- Protected against competition
- Agent cost problem – no direct control

European Union approach

- Ownership not important
- Important point is market participation / economic activity
- State owned / public owned companies operating on pure market terms equal to private companies*
- EU Competition and State Aid rules apply equally to all undertakings doing economic activity
- ECJ: Stardust ruling, C-482/99
- Important not to mix up economic and non economic activity

The state owned enterprise vs. private company

Economic vs. non economic activity

European Court of Justice jurisprudence***

Economic activity

- Participation on competitive market
- Remuneration for good / service
- Revenue / profit / at least cover cost's
- Capitalisation principle

Non economic activity

- No market
- No remuneration
- No link between cost and fee
- Exclusive Public Competence: courts, police, military, education, welfare...
- Solidarity principle.

Incentives to effective corporate Governance

Managerial ownership and pay – Effective?

- Use of performance based salaries and stock options in financial sector?

Board oversight – not excluded in Danish SOE's, eg. SAS, DONG energy

The market for corporate control and Equity

- DK several SOE's Public Companies, SAS, DONG energy, TDC and traded
- Intention to go listed on stock exchange.

Debt

- EU state Aid rules, Private Economic Investor principle***
- No cross subsidisation

Market for managers Wide use of performance indicators and mobility public - private

Bankruptcy True, but also strategic systemic private companies – Banks – are rescued

Antitrust approach – predatory pricing

- Competition /state Aid rules cover economic activity, Pharmacies and Taxi
- In general difficult to lift burden of proof in predatory pricing – harmonize cost test

Perspectives – measures to improve effectiveness of Corporate Governance and antitrust

Improved external oversight

- Yes, EU transparency directive, state aid rules and private investor Principle

Improved internal corporate governance

- Yes, possible – but widespread in the EU

Corporatization of SOE's

- Agree, when economic activity, not relevant for all activities

Increase competition

- Yes, if competitive market and relevant activity

Privatisation

- Yes, but a cautious approach is recommended – private dominans?

Antitrust test

- Agree – but a simple and operational test – more experience / sharing of knowledge.

Other approaches

- Definition of economic activity, transparency and private economic investor principle

*** References

Economic vs. non economic activity

- Attorney-general Maduro, Fenin Case C-205/03
- C-41/90, C-475/99, C 205/03
- C-67/96: Albany, Brentjens and Drijvende Bokken
- C-159/91 and Poucet et Piestre judgement C-160/91
- Humbel case C-263/86
- Smit /Stichting Ziekendsfonds C-157/99

Transparency directive, 2006/111/EC

Private economic investor principle, the state acting as a normal market investor:

- Stardust ruling, ECJ, C-482/99

Thank you for your attention

Questions?

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