

## Executive summary and overview of the national report for Denmark

<b>Section I – Summary of findings</b>		
<p>There is no special legislation concerning damages for breach of EC or national competition law in Denmark, and as such actions for such damages reflect general practice concerning liability in tort and liability in contract while the procedural rules are identical to those used in other fields of Danish law.</p> <p>There have been only very few court cases concerning actions for damages for breach of competition law, and these court cases are of a very recent date. A few major cases are pending which will bring further clarification in the area.</p> <p>There is no distinction between claims based on EC competition law or on national competition law. There are no specialised courts for bringing competition-based damage actions.</p> <p>There is no possibility of class actions or collective claims. If a plurality of consumers has uniform claims for damages, the Consumer Ombudsman may, upon request, recover the claims collectively. This procedure has not been used in practice and it only applies to claims based on the Marketing Practices Act ("markedsføringsloven") as opposed to other laws, such as competition rules.</p> <p>The injured party's loss is in principle to be compensated in full (principle of restitution) and both direct losses and consequential losses may in principle be fully recoverable. The loss can only be compensated in money.</p> <p>Damages will require proof of fault, the size of the loss, the causality and the foreseeability of the damages.</p> <p>The measure of damage is furthermore based on the principle that the injured party may not obtain any enrichment and the injured party is under a duty to mitigate his loss. Further damages may be reduced because of own fault.</p> <p>There are no territorial restrictions concerning damages, and damages may in principle be awarded for injury suffered worldwide provided the Danish courts have jurisdiction.</p> <p>The courts do not use any specific economic or other models to calculate damage.</p> <p>In practice the courts' calculation of damages depends on the parties' claims, and often on a rough estimate of the loss incurred by the plaintiff.</p> <p>In general, compared to other countries it is the general opinion that Danish courts' estimate of plaintiffs' losses typically results in relatively small damages to the plaintiffs.</p> <p>A court case in first instance takes between 9 months and 2 years, while a court case through two instances takes between 2 and 3 years. It is, however, not uncommon that court cases through two instances last longer. In general, it is not possible to accelerate proceedings. However, in practice the time schedule for the proceedings will of course depend on the parties, for example whether they demand expert statements, move for an adjournment etc.</p> <p>By Act No 215 of 31 March 2004, amending the Administration of Justice Act with effect from 1 July 2004 the right of access to documents in the courts is extended. According to the amendments, anybody can as main rule obtain a copy of a judgement without demonstrating a particular interest.</p> <p>There are several possible options to facilitate actions claiming damages: Court fees could be reduced. Moreover, the Competition Appeal Board or a similar body could be made competent to settle damages claims. In addition, the authorities could facilitate private enforcement by publishing guidelines and introducing a system of legal aid or public support. Further, private enforcement could be facilitated by allowing class actions or by extending the Consumer Ombudsman's authority. Finally, a European regulation could be introduced.</p>		
<b>Section II – status quo and forthcoming reforms – action for damages</b>		
<b>A. Legal Basis</b>		
(i)	Is there an explicit statutory basis?	No.
(ii)	Is this statutory basis different from other actions for damages?	No, see question A (i).
(iii)	Is there a distinction between EC and national law in this regard?	No, see question A (i).

B. Competent court	
(i) Which courts are competent?	The ordinary courts (the City Courts, two High Courts, the Supreme Court and the Maritime and Commercial Court).
(ii) Are there specialised courts for private enforcement of competition rules?	No.
C. Standing	
(i) Limitations on standing of natural or legal persons, including those from other jurisdictions?	The plaintiff must have the necessary legal interest in the decision.
(ii) What are the connecting factor(s) required with the jurisdiction in order for an action to be admissible?	Between Denmark and non EU Member States: Domicile, business or business activity, the place of performance of an obligation (contractual matters), the place where a harmful act occurred (torts), the domicile of consumers (subject to certain conditions), property.
(iii) Is there a possibility of collective claims, class actions, actions by representative bodies or any other form of public interest litigation?	There is no possibility of private parties filing collective claims or class actions. The Consumer Ombudsman has some competences. Actions by representative bodies are accepted if they have the necessary legal interest in the decision.
D. Procedural and substantive conditions	
(i) What forms of compensation are available?	The loss can only be compensated in money. In principle the party's loss is to be compensated in full.
(ii) What are the other forms of civil law liability (if any)?	A person can according to criminal law be sentenced not to act as director or manager of limited companies.
(iii) Does the infringement have to imply fault?	As a main rule yes.
(iv) If so, is fault based on objective criteria?	Intent or negligence
(v) Is bad faith (intent) required?	No.
(vi) Can negligence be taken into account?	Yes.
E. Rules of evidence	
a. General	
(i) Burden of proof and identity of the party on which it rests?	As a general rule it is for the injured party to prove his case.
(ii) Standard of proof	The judge has a freedom to assess evidence without regard to statutory provisions. A high but not a "beyond doubt" degree of probability is generally required to prove a basis for civil liability.
(iii) Limitations concerning form of evidence	Generally very few. Unilateral expert reports may, depending on the content, be refused or have limited evidential value.

(iv)	Rules on (pre-trial or other) discovery within and outside the jurisdiction of the court vis-à-vis parties	Yes, but the effect of refusing to provide documents is only procedural; the discovery order is not physically enforced
(v)	Rules on (pre-trial or other) discovery within and outside the jurisdiction of the court vis-à-vis third parties	Yes
(vi)	Rules on (pre-trial or other) discovery within and outside the jurisdiction of the court vis-à-vis competition authorities (national, foreign, Commission)	The general rules concerning discovery vis-à-vis third persons apply.
b. Proving the infringement		
(i)	Is expert evidence admissible?	Yes. Unilateral expert reports may, depending on the content, be refused or have limited evidential value.
(ii)	To what extent, if any, is cross examination permissible?	Cross-examination is permissible, both of parties and witnesses.
(iii)	Under which conditions does a statement and/or decision by a national competition authority, a national court, an authority from another EU Member State have evidential value?	Normally Danish courts will give "full consideration" to such statements and decisions and as such they will have evidential value. A party may seek to prove the statement or the decision to be wrong. In some cases a decision may be binding for procedural reasons (like res judicata).
c. Proving damage		
(i)	Are there any specific rules for evidence of damage?	No.
d. Proving causation		
(i)	Which level of causation must be proven: direct or indirect?	Danish law does not distinguish between direct and indirect causation. A very remote causation connection could be insufficient due to the condition that any damages shall be foreseeable.
F. Grounds of justification		
(i)	Are there grounds of justification?	In general no.
(ii)	Is the 'passing on' defence taken into account?	Yes.
(iii)	Are 'indirect purchaser' issues taken into account?	In principle yes.
(iv)	Is it relevant that plaintiff is (partly) responsible for the infringement (contributory negligence leading to apportionment of damages) or has benefited from the infringement?	Yes.
G. Damages		

<b>a. Calculation of damages</b>	
(i) What economic or other models are used by courts to calculate damage?	No specific economic model is used.
(ii) Are damages awarded for injury suffered on the national territory or more widely (EC or otherwise)?	Damages may in principle be awarded for injury suffered worldwide.
(iii) Are ex ante (time of injury) or ex post (time of trial) estimates used?	Damages become due when the damage takes place or at the time the damage can be estimated.
(iv) Are there maximum limits to damages?	No, not as regard property damage.
(v) Are damages assessed on the basis of profit made by the defendant or on the basis of injury suffered by the plaintiff?	Injury suffered by the plaintiff.
(vi) Are punitive or exemplary damages available?	No.
(vii) Are fines imposed by competition authorities taken into account when settling damages?	No.
<b>b. Interest</b>	
(i) Is interest awarded from the date the infringement occurred the date of the judgment or the date of a decision by a competition authority?	Most often from the date the plaintiff institutes legal proceedings.
(ii) What are the criteria to determine the levels of interest?	Interest is by law determined to be equal to the Danish National Bank's official lending rate + 7 %, unless the parties have agreed differently.
(iii) Is compound interest included?	Generally not.
<b>H. Timing</b>	
(i) What is the time limit in which to institute proceedings?	Claims for liability in tort are statute barred after 5 years, unless the claim is based on a serious crime for which a penalty has been imposed. In such cases claims are statute barred after 20 years. It is undecided how Danish and EU competition law fines will be considered in this respect and whether equal treatment applies. Passivity may, depending upon the circumstances, lead to a claim being barred prior to 5 years.
(ii) On average, how long do proceedings take?	One instance cases: between 9 months and 2 years. Two instance cases: between 2-3 years or longer.
(iii) It is possible to accelerate proceedings?	Generally not.
(iv) How many judges sit in actions for damages cases?	Depends on the jurisdiction. In a first instance case normally 1 city court judge or 3 high court judges.
(v) How transparent is the procedure?	Written pleadings and documents are not accessible to the general public. Oral hearings are normally public.

<b>I. Legal costs</b>	
(i) Are Court fees paid up front?	Yes.
(ii) Who bears the legal costs?	The court's decision. Generally the party who loses the case.
(iii) Are contingency fees permissible?	No. "No win no fee" is however allowed (and therefore conditional fee agreements and uplift fees are permissible (as long as the fees are reasonable)).
(iv) Are contingency fees generally available for private enforcement of EC competition law?	No, see previous question.
(v) Can the plaintiff/defendant recover costs?	Yes, according to the court's decision.
(vi) What are the different types of litigation costs?	Court fees, legal fees, fees to economic experts, fees to surveyor experts.
(vii) Are there any national rules for taxation of costs?	The courts use standard guidelines and tables for taxation of costs based on the value of the case. If a party is dissatisfied with a decision on costs, this decision may if costs exceed DKK 10,000 be appealed separately and be litigated in the appeal court.
(viii) Is any form of legal aid insurance available?	Only by private, commercial insurance.
(ix) What are the likely average costs in an action brought by a third party in respect of a hard-core violation of competition law?	A rough estimate of one instance costs could be anything from around DKK 50,000 to more than DKK 300,000. In cases with a value up to DKK 1 million, the costs would seldom exceed DKK 100,000.
<b>J. General</b>	
(i) Are some of the answers to the previous questions specific to the private enforcement of competition rules?	No.
(ii) If the answer to the previous question is yes, in what way do they differ from general private enforcement rules?	
(iii) EC competition rules are regarded as being of public policy. Does that influence any answers given?	No.
(iv) Are there any differences according to whether defendant is public authority or natural or legal person?	No.
(v) What are the key differences, if any, from region to region <u>within</u> the Member State as regards damages actions for breach of national or EC competition rules?	No differences.
(vi) Is there any interaction between leniency programmes and actions for claims for damages under competition rules?	No case law. Some interaction can be foreseen from the fact that a defendant has chosen to benefit from a leniency programme and therefore subsequently may have difficulties in contesting admitted facts.

(vii) Please mention any other major issues relevant to the private enforcement of EC competition law in your jurisdiction	The Danish administrative complaint system concerning competition law is fairly cheap and efficient but does not comprise damages claims
(viii) Please provide statistics about the number of cases based upon the violation of EC competition rules in which the issue of damages was decided upon	3 judgements. There are a few pending cases of which at least one (the pre-insulated pipes cartel damages case) may clarify many of the matters raised in the report
<b>Section III: Means to facilitate private enforcement of Articles 81 and 82 EC</b>	
(i) Which of the above elements of claims for damages as applied in each Member State and accession country provide scope for facilitating the private enforcement of Articles 81 and 82 EC?	The costs and the time involved in proceedings. The lack of possibility of class actions The lack of general knowledge of and jurisprudence concerning competition law based damages actions
(ii) How could that be achieved?	Court fees could be reduced. The Competition Appeal Board could become competent in solving damages claims. Class actions could be allowed. Legal aid or public support could be introduced More information could be provided in the area, for example guidelines A European regulation could be adopted.
(iii) Are alternative means of dispute resolution available?	Arbitration or mediation as well as private settlement negotiations.
(iv) If so, to what extent are they successful?	There are no available statistics, but there are examples of successful settlements.