

Courtesy translation

Danish Ministry for Economic and Business Affairs

Commissioner Neelie Kroos
European Commission
Directorate-General for Competition
Unit A 1 – Antitrust policy and strategic support
Review of damages actions for breach of the EC antitrust rules
B-1049 Brussels

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The Commission's Green Paper on damages actions for breach of the EC antitrust rules, COM (2005) 672 final

In December 2005 the Commission published a Green Paper on damages actions for breach of the EC antitrust rules, inviting for comments before 21 April 2006.

The Danish Government has the following comments to the Green Paper:

In general, Denmark agrees with the Commission that substantial obstacles may exist for those who have suffered a loss in order to be compensated by a company which has violated the EC antitrust rules. As a consequence, there might be a need for considering whether to institute initiatives to facilitate the task of receiving compensation for those who have suffered a loss. In its Green Paper and Staff Working Paper, the Commission has conducted thorough analysis of the major obstacles related to actions for damages. At the same time, the Commission has launched a series of options providing the basis of a broad-based debate on whether and, if so, how to introduce initiatives in this field.

However, the Danish Government finds it important that such initiatives are well-balanced to avoid, in connection with these initiatives, to create new rules of procedure and compensation rules within the scope of competition law differing substantially from what applies to general law of torts and law of procedure. Furthermore, the Danish Government finds that the Commission, among numerous proposals, should pick out a few but essential focus areas of substantial impact in order to provide a better chance of receiving compensation for those who have suffered a loss.

For the claimants, the Danish Government endorses that access to relevant evidence from the administrative authorities (option 1-10) is of crucial importance in order to claim compensation. Therefore, it will be appropriate to investigate whether the present rules are adequate or whether there is a need of mutual initiatives within this field.

As for Denmark, the Administration of Justice Act already today contains rules making it possible for a court to order the other party or a third party to disclose documents that a party will invoke or that may be of relevance

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to a case, with the exclusion of business secrets. The Administration of Justice Act also contains options of sanctions in case of the other party or a third party not complying with such a court order.

Regarding option 8, concerning the binding nature of a decision from a competition authority, it will undoubtedly facilitate actions for damages if a decision adopted by a competition authority (Danish or foreign) of an infringement of Articles 81 and 82 are binding on the courts. To a certain extent, Denmark has opened up this possibility, as a decision adopted by the Competition Appeals Tribunal, not being brought before the ordinary courts, is final. If a decision adopted by a competition authority must be binding on a court, a relevant provision should be limited to the cases of a competition authority having found evidence of an infringement and in which the offender is identical with the defendant in an action for damages. If necessary, such a provision needs detailed evaluation and formulation taking adequate precautions to international and national principles concerning access to review by the courts.

With reference to options 18-20, the Danish Government supports the publication of Commission guidelines on the quantification of damages, provided that damages are awarded according to common principles of damages (compensatory damages).

With reference to options 25-26, the Danish Government supports the facilitation for final consumers and for purchasers with comparatively small claims to bring actions for damages for breach of antitrust law before the courts.

In that context, it should be pointed out that the Danish Retsplejeråd in its report No. 1486/2005 has proposed new rules regarding collective actions. The Danish Government is at present considering how to pursue this proposal.

The Danish Government has not commented on options 11-13, 14-17, 21-24, 27, 28-30, 31-34 and 35-36 in the Green Paper. If the Commission continues working with these proposals, they should be considered carefully, since certain of the options appear to be rather far-reaching.

Yours sincerely

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