

INCREASED PENALTIES FOR VIOLATIONS OF THE DANISH COMPETITION ACT

On 19 December 2012, the Danish Parliament adopted the government's bill to change the Danish Competition Act. The adopted bill complies with the bill introduced on 26 October 2012 and mentioned [here](#).

The bill is intended to enhance competition in Denmark by imposing stricter penalties for violations of the Competition Act. The reason for the intensifications is that violations of the Competition Act have previously been sanctioned relatively mildly compared to other forms of white collar, despite the evident damaging effects on macroeconomics that competition law violations lead to.

The new rules introduce the possibility of an imprisonment sentence for up to six years for making antitrust agreements. In addition to the amendment to the Competition Act, a provision is enrolled into the Criminal Act, Section 299C regarding antitrust. In connection to the processing of the bills, the Ministry of Business and Growth has informed that in principle, the penalty may be up to nine years of imprisonment in particularly aggravating circumstances for several violations of the antitrust provisions in the Criminal Act, Sections 88 and 299C.

The intensifications are solely relevant for private persons, and they are expected to be applied only to the senior management seeing as they are often the ones who make decisions regarding antitrust. This way, the requirement of willful misconduct will be met.

Further, the new rules increase the starting point for fines for smaller infringements of the Competition Act from DKK 400.000 to DKK 4 million. For more serious infringements, the starting point for fines is increased from DKK 400.000-DKK 15 million to DKK 4 million-DKK 20 million, and for the most serious infringements, the starting point for fines is increased from DKK 15 million and upwards to DKK 20 million and upwards.

Further, new guidelines on how to set the fines for private persons have been published. Under the new rules, the starting point for fines is DKK 50.000 for less serious infringements, DKK 100.000 for serious infringements, and as a minimum DKK 200.000 for the most serious infringements.

As before, the gravity and duration must be taken into account when determining the fines. The new starting points for the fines apply to all violations of the Competition Act, including inter alia abusive conduct of market position by dominant firms and conclusion of vertical agreements on binding resale prices.

The amendment to the Competitions Act will enter into force the 1st of March 2013.

It is stated in the comments to the Act that infringements committed before 1 of March 2013 must be judged pursuant to the previous rules. Infringements committed before 1 of March 2013, but which continue to take place must be judged pursuant to the new rules.

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