

The efforts of Danish enterprises in complying with competition and consumer legislation

Summary and main conclusions

The purpose of the Danish Competition Act (*konkurrenceloven*) and Danish consumer legislation¹ is to prevent the restriction of efficient competition, to create a level playing field for enterprises and to protect consumers. When the competition is efficient and consumers are protected and confident, it creates value for enterprises, welfare for consumers and growth for society. It is therefore important that enterprises comply with the competition and consumer legislation.

The Danish Competition and Consumer Authority has interviewed a representative sample of just over 1,800 Danish enterprises about their efforts to comply with the competition and consumer legislation. The questions concerned the enterprises'

- » motivation to comply
- » measures to ensure compliance
- » culture to ensure compliance
- » knowledge of legislation
- » understanding of legislation
- » perception of compliance

The enterprises are motivated by several factors. Just over nine out of ten enterprises state that ethics is a factor in their compliance with the rules. Additionally, 58 per cent of enterprises state that commercial benefit is a factor in their compliance with the consumer legislation. The same applies to 52 per cent of enterprises regarding the Competition Act. Finally, 49 per cent of enterprises state that they get more satisfied employees when complying with the consumer legislation. As regards the Competition Act, this applies to 28 per cent.

Various factors deter the enterprises from breaking the law. Especially the risk of a customer backlash and a resulting loss of earnings. As to breaching the consumer legislation, this is reflected in the responses given by the enterprises, according to which they pay particular attention to legislative compliance so as to avoid having dissatisfied customers, negative media attention (bad publicity) and harming their reputation in the industry. Regarding the Competition Act, the enterprises state that the principal deterrent to breaking the law is the risk of damaging the reputation of the enterprise and its employees.

1 The term consumer legislation is used in the report as a blanket term for the Marketing Practices Act (*markedsføringsloven*) and E-Commerce Act (*e-handelsloven*), which fall within the remit of the Danish Competition and Consumer Authority, and selected legislation within the remit of the Danish Ministry of Justice (the Danish Sale of Goods Act (*købeloven*), the Act on Certain Consumer Contracts (*forbrugeraftaleloven*) and the Statutory Limitation Act (*forældelsesloven*)).

Additionally, the enterprises are deterred from breaching the competition and consumer legislation by the risk of being fined by the authorities or facing civil proceedings/claims for damages.

Seventy-one per cent of enterprises have initiated measures to ensure compliance with the consumer legislation. As regards the Competition Act, this applies to 41 per cent. Most enterprises use external advisers. In addition, they use methods such as fixed routines and control mechanisms to ensure that new initiatives comply with legislative provisions, they hire compliance officers or educate their employees in the rules.

Regarding compliance with the Competition Act, 59 per cent of enterprises state that they do not use any of the methods mentioned, but rely solely on their common sense. The same applies to 29 per cent of enterprises regarding consumer legislation. Thus, the efforts to comply with consumer legislation are more scheduled and structured than the efforts to comply with the Competition Act. Particularly the small enterprises tend to rely on common sense. The large enterprises tend to make more use of specific methods to ensure compliance and therefore also have a more formal and systematic approach to ensuring compliance.

The reason why more enterprises have initiated measures to ensure compliance with consumer legislation than with the Competition Act may be that central parts of the consumer legislation have existed for longer than the Competition Act and that the enterprises have therefore had more time to establish methods to ensure compliance with the consumer legislation. Another reason for the difference may be that the response of consumers, media and authorities to breaches or merely potential breaches of consumer legislation is more rapid as the breaches are more visible in the market.

The culture of an enterprise may be of significance to its legislative compliance. Forty-four per cent of enterprises have no framework or only a limited framework for how to address their compliance obligations as regards the Competition Act. The same applies to 14 per cent of enterprises regarding consumer legislation. This accords with the fact that 59 per cent of enterprises rely on common sense as regards the Competition Act, whereas 29 per cent do so concerning consumer legislation. At the same time, these figures support the point made that the efforts to comply with consumer legislation are more scheduled and structured than the efforts to comply with the Competition Act.

The enterprises' legislative knowledge may also affect their legislative compliance. Fifty-three per cent of enterprises respond that they have a very good or fair knowledge of the consumer legislation, including the marketing rules. As regards the Competition Act, this figure is 31 per cent. The reason for the difference in their perceived knowledge of the legislation in the two fields may be that the consumer legislation has existed for more years than the Competition Act, which was introduced in 1998 in its present form with a principle of prohibition. Another reason may be that the enterprises are in contact with the consumer legislation more frequently than with the Competition Act.

The enterprises' legislative understanding may be of significance to their compliance. Regarding consumer legislation, the enterprises were asked how they may market their products to the consumers and were questioned about certain provisions of the Sale of Goods Act, the Statutory Limitation Act and the Consumer Contracts Act.

Seventy-nine per cent of the enterprises responded correctly that the limitation period of goods is two years, while 78 per cent responded correctly that the price to be stated for a product or a service is the total price including VAT and other costs. By contrast, only 12 per cent responded correctly that a product or service must have been marketed for six weeks at the same price before the price can be reduced and the enterprise can advertise prices as lowered.

Concerning the Competition Act, the questions to the enterprises included five questions about various types of agreements restricting competition, including cartels. Eighty-seven per cent of enterprises responded correctly that they may not agree prices and conditions for products or services with their competitors, and 84 per cent responded correctly that they and their competitors may not share the customers in the market among them. Finally, 83 per cent responded correctly that they may not agree with their competitors to limit the sale of their products or services in the market. The enterprises show a lesser understanding of the rule that a supplier may not impose resale price maintenance on its dealers and that competing enterprises may not coordinate their bids in tender procedures.

It is not possible to come to any conclusion about the actual legislative compliance of the enterprises based on their understanding of the questions. Each rule may be of different relevance to the individual enterprises. The fact that the rules are of less relevance to some enterprises may therefore mean that the enterprises have not developed a correct understanding of the rules.

The enterprises have a higher perceived knowledge of the consumer legislation than of the Competition Act, but the enterprises more frequently responded incorrectly to the questions about their understanding of specific consumer legislation issues than they did to Competition Act questions. The reason may be that the questions about the Competition Act solely concerned agreements restricting competition, including cartels, whereas the consumer legislation questions dealt with several different, and typically more detailed, aspects of the legislation.

According to themselves, most Danish enterprises comply with the competition and consumer legislation. By their own assessment, 97 per cent of enterprises comply with the Competition Act. By their own assessment, 93 per cent of enterprises comply fully or largely with the consumer legislation.

However, the enterprises believe that other enterprises break the rules. Forty-three per cent of enterprises believe that enterprises in their industry are currently breaching the Competition Act by participating in cartels. Within the past five years, 16 per cent of enterprises have experienced illegal price agreements. Almost 20 per cent of enterprises think that enterprises in their industry often or very often fail to comply with the consumer legislation.

The enterprises thus differ greatly in how they perceive their own compliance and the industry's compliance. However, based on the analysis it is not possible to draw a specific conclusion about the level of compliance, that is, how many enterprises break the law or how often they do so. Nor is it possible to conclude whether there are more breaches in one legal field than in the other.

The enterprises assess that it has negative consequences for them when other enterprises break the law. To give an example, 36 per cent of enterprises have lost customers as a consequence of their competitors' breaches of the Competition Act. The same applies to 6 per cent of enterprises when it comes to breaches of the consumer legislation. It is difficult to explain the difference between the two fields. The enterprises also assess that breaches of the competition and consumer legislation damage the reputation of their industry and lower the quality of the products and services in the market.

Box 1.1

Main conclusions

Motivation for complying with the legislation

- » Nine of ten enterprises state that ethics is a factor in their compliance with the rules.
- » Fifty-eight per cent of enterprises state that commercial benefit is a factor in their compliance with the consumer legislation. The same applies to 52 per cent of enterprises regarding the Competition Act.
- » Forty-nine per cent of enterprises find that compliance with the consumer legislation results in more satisfied employees, while the same applies to 28 per cent regarding the Competition Act.
- » The enterprises state that they pay particular attention to compliance with consumer legislation so as to avoid having dissatisfied customers and negative media attention (bad publicity) and harming their reputation in the industry.
- » The enterprises state that they pay particular attention to compliance with the Competition Act so as to avoid damaging the reputation of the enterprise and its employees.
- » Additionally, the enterprises state that they are deterred from breaching the competition and consumer legislation by the risk of being fined by the authorities or facing civil proceedings/claims for damages.

Measures to ensure legislative compliance

- » Seventy-one per cent of enterprises use internal routines and control mechanisms to ensure compliance with consumer legislation. The same applies to 41 per cent of enterprises as regards the Competition Act.
- » Fifty-nine per cent of enterprises state that they do not use any of the methods mentioned, but rely solely on their common sense to ensure compliance with the Competition Act. This applies to 29 per cent of enterprises regarding consumer legislation.

Culture with regard to ensuring compliance with the legislation

- » Forty-four per cent of enterprises have no framework or only a limited framework for how to ensure compliance with the Competition Act. The same applies to 14 per cent of enterprises regarding consumer legislation.

Legislative knowledge

- » Fifty-three per cent of enterprises respond that they have a very good or fair knowledge of the consumer legislation, including the marketing rules. As regards the Competition Act, this figure is 31 per cent.

Legislative understanding

- » Regarding the enterprises' understanding of the consumer legislation, 79 per cent of enterprises responded correctly that the limitation period of goods is two years, while 78 per cent responded correctly that the price to be stated for a product or service is the total price including VAT and other costs.
- » Only 12 per cent responded correctly that a product or service must have been marketed for six weeks at the same price before the price can be reduced and the enterprise can advertise prices as lowered.
- » Concerning the enterprises' understanding of the Competition Act, 87 per cent of enterprises responded correctly to the question on price agreements, 84 per cent to the question on market sharing and 83 per cent to the question on volume restrictions. The understanding of resale price maintenance and coordination of bids in tender procedures is lower.

Assessment of legislative compliance

- » By their own assessment, 97 per cent of enterprises comply with the Competition Act. By their own assessment, 93 per cent of enterprises comply fully or largely with the consumer legislation.
- » Forty-three per cent of enterprises believe that enterprises in their industry are currently breaching the Competition Act by participating in cartels.
- » Almost 20 per cent of enterprises think that enterprises in their industry often or very often fail to comply with the consumer legislation.