



**International  
Competition  
Network**

**ANTI-CARTEL  
ENFORCEMENT  
TEMPLATE**

**CARTELS WORKING GROUP  
Subgroup 2: Enforcement Techniques**

**Denmark  
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# ICN ANTI-CARTEL ENFORCEMENT TEMPLATE

## IMPORTANT NOTES:

This template is intended to provide information for the ICN member competition agencies about each other's legislation concerning (hardcore) cartels. At the same time the template supplies information for businesses participating in cartel activities about the rules applicable to them; moreover, it enables businesses which suffer from cartel activity to get information about the possibilities of lodging a complaint in one or more jurisdictions.

Reading the template is not a substitute for consulting the referenced statutes and regulations. This template should be a starting point only.

## 1. Information on the law relating to cartels

<b>A. Law(s) covering cartels:</b>	Consolidated Competition Act no. 155 of 1 March 2018 Homepage address: <a href="http://www.kfst.dk/">http://www.kfst.dk/</a> Languages: Danish, English Penal Code no. 1156 of 20 September 2018 Web: <a href="https://retsinformation.dk/">https://retsinformation.dk/</a> Language: Danish Procedural rules for criminal cartel cases: Consolidated Administration of Justice Act Web: <a href="https://retsinformation.dk/">https://retsinformation.dk/</a> Language: Danish
<b>B. Implementing regulation(s) (if any):</b>	None
<b>C. Interpretative guideline(s) (if any):</b>	The DCCA publish guidelines. The guidelines are written in Danish, but some of them exist in English as well. Web (Danish): <a href="https://www.kfst.dk/konkurrenceforhold/vejledninger/">https://www.kfst.dk/konkurrenceforhold/vejledninger/</a>

	<p>Web (English):  <a href="https://www.en.kfst.dk/competition/publications/">https://www.en.kfst.dk/competition/publications/</a></p>
<b>D. Other relevant materials (if any):</b>	<p>The DCCA's homepage at <a href="http://www.kfst.dk/">http://www.kfst.dk/</a> contains information on decisions in cartel cases.</p> <p>Language: Danish</p>

## 2. Scope and nature of prohibition on cartels

<b>A. Does your law or case law define the term “cartel”?</b>  <b>If not, please indicate the term you use instead.</b>	<p>Section 6 of the Danish Competition Act, containing the prohibition of cartel activity, uses the term “agreement of concerted practice between undertakings or associations of undertakings, which directly or indirectly has as its purpose or effect to restrict the competition”. This term is interpreted in accordance with the decisions of the European Commission and the case law of the European courts. Section 23 (3) specifies cartels, where imprisonment as sanction is possible.</p>
<b>B. Does your legislation or case law distinguish between very serious cartel behaviour (“hardcore cartels” – e.g.: price fixing, market sharing, bid rigging or production or sales quotas<sup>1</sup>) and other types of “cartels”?</b>	<p>Yes, see section 23(3), which specifies cartels, where imprisonment as sanction is possible (price fixing, market sharing, bid rigging or production or sales quotas)</p>
<b>C. Scope of the prohibition of hardcore cartels:</b>	<p>Please see 2.B.</p>
<b>D. Is participation in a hardcore cartel illegal <i>per se</i><sup>2</sup>?</b>	<p>In administrative proceedings, participation in a hard-core cartel is <i>per se</i> illegal as a principal rule.</p> <p>Criminal liability is only to impose if the undertakings have acted with the intent or gross negligence (section 23 of the Danish Competition Act).</p> <p>Civil liability (damages) is only to impose if the undertakings have acted with intent or negligence.</p>
<b>E. Is participation in a hardcore cartel a civil or administrative</b>	<p>A combination of all three.</p>

<sup>1</sup> In some jurisdictions these types of cartels – and possibly some others – are regarded as particularly serious violations. These types of cartels are generally referred to as “hardcore cartels”. Hereinafter this terminology is used.

<sup>2</sup> For the purposes of this template the notion of ‘*per se*’ covers both ‘*per se*’ and ‘*by object*’, as these terms are synonyms used in different jurisdictions.

or criminal offence, or a combination of these?

### 3. Investigating institution(s)

<b>A. Name of the agency, which investigates cartels:</b>	<p>Konkurrence- og Forbrugerstyrelsen/Danish Competition and Consumer Authority (administrative procedures)</p> <p>On behalf of the Danish Competition Council, The Danish Competition and Consumer Authority carries out the preliminary investigations into cartel cases, for example requests for information and dawn raids.</p> <p>On the basis of the investigations the Danish Competition and Consumer Authority may</p> <ul style="list-style-type: none"><li>- Decide to dismiss the case</li><li>- Decide to present the case to the Danish Competition Council</li><li>- Decide to hand over the case to the Public Prosecutor for Serious Economic and International Crime with the purpose of bringing criminal proceedings</li></ul>
<b>B. Contact details of the agency:</b>	<p>Konkurrence- og Forbrugerstyrelsen/Danish Competition and Consumer Authority</p> <p>Address: Carl Jacobsens Vej 35, 2500 Valby</p> <p>E-mail: <a href="mailto:kfst@kfst.dk">kfst@kfst.dk</a></p> <p>Telephone: +45 4171 5000</p> <p>Fax: +45 4171 5100</p> <p>Website: <a href="http://www.kfst.dk/">http://www.kfst.dk/</a></p> <p>The Public Prosecutor for Serious Economic and International Crime</p> <p>Address: Kampmannsgade 1, 1604 København V</p> <p>E-mail: <a href="mailto:saoek@ankl.dk">saoek@ankl.dk</a></p> <p>Telephone: +45 7268 9000</p> <p>Fax: +45 4515 0119</p> <p>Website: <a href="https://anklagemyndigheden.dk/da/statsadvokaten-for-saerlig-oekonomisk-og-international-kriminalitet">https://anklagemyndigheden.dk/da/statsadvokaten-for-saerlig-oekonomisk-og-international-kriminalitet</a></p>
<b>C. Information point for potential complainants:</b>	See point 3B above
<b>D. Contact point where complaints can be lodged:</b>	The Investigation and Cartel Division in DCCA receive complaints regarding potential infringements of the competition rules. It is possible to contact the division by phone or write anonymously through a whistleblower system. The whistleblower system is also available as an app.

	<p>For further information on this matter, see the links below.</p> <p>Web (Danish):  <a href="https://www.kfst.dk/konkurrenceforhold/karteller/kontakt/">https://www.kfst.dk/konkurrenceforhold/karteller/kontakt/</a></p> <p>Web (English): <a href="https://www.en.kfst.dk/competition/cartels/">https://www.en.kfst.dk/competition/cartels/</a></p>
<b>E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.</b>	<p>The Agency for Governmental IT Services as well as The Danish Tax Authorities may provide technical assistance only in relation to dawn raid procedures and data seizure.</p>

#### 4. Decision-making institution(s)<sup>3</sup> [to be filled in only if this is different from the investigating agency]

<b>A. Name of the agency making decisions in cartel cases:</b>	<p>The Danish Competition Council has the power to:</p> <ul style="list-style-type: none"> <li>- Make a finding of an infringement</li> <li>- Make an order to bring the infringement to an end</li> <li>- Make a commitment decision</li> </ul> <p>The Danish Competition Council has no power to impose fines.</p> <p>In order to impose a fine in a cartel case it is required, that the Danish Competition Council decides to hand over the case to the Public Prosecutor for Serious Economic and International Crime (section 3, point 7 of Executive Order no. 980/2015).</p> <p>The Public Prosecutor for Serious Economic and International Crime decides whether there is enough evidence to bring the case before the courts. Ultimately, the courts take the decision to impose a fine of the undertakings or physical persons as well as imprisonment sanctions in cartel cases.</p>
<b>B. Contact details of the agency:</b>	See point 3B above
<b>C. Contact point for questions and consultations:</b>	See point 3B above
<b>D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.</b>	See point 4A above
<b>E. What is the role of the investigating agency if cartel</b>	See point 4A above

<sup>3</sup> Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

cases belong under criminal proceedings?	
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## 5. Handling complaints and initiation of proceedings

<b>A. Basis for initiating investigations in cartel cases:</b>	Complaint, ex officio, notification and reference from the European Commission, reference from other Competition Authorities and leniency applications.
<b>B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)?</b>	No
<b>C. Legal requirements for lodging a complaint against a cartel:</b>	None
<b>D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect?</b>	According to section 15 of the Danish Competition Act, the Danish Competition and Consumer Authority has a wide discretion to decide whether to take action on a complaint that it receives.
<b>E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?</b>	Yes, a formal decision under section 15 of the Danish Competition Act must be made.
<b>F. Is there a time limit counted from the date of receipt of a complaint by the competition agency for taking the decision on whether to investigate or reject it?</b>	No

## 6. Leniency policy<sup>4</sup>

<b>A. What is the official name of your leniency policy (if any)?</b>	The Danish leniency policy has no official name. The policy is part of The Competition Act (section 23a). The Authority can only give leniency in cartel cases.
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<sup>4</sup> For the purposes of this template the notion of ‘leniency’ covers both full leniency and a reduction in the sanction or fines. Moreover, for the purposes of this template terms like ‘leniency’ ‘amnesty’ and ‘immunity’ are considered as synonyms.

<p><b>B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?</b></p>	<p>Yes</p>
<p><b>C. Who is eligible for full leniency?</b></p>	<p>Only the first one to come forward is eligible for full leniency.</p>
<p><b>D. Is eligibility for leniency dependent on the enforcing agency having either no knowledge of the cartel or insufficient knowledge of the cartel to initiate an investigation?</b></p> <p><b>In this context, is the date (the moment) at which participants in the cartel come forward with information (before or after the opening of an investigation) of any relevance for the outcome of leniency applications?</b></p>	<p>In accordance with the EC Model Leniency Programme (MLP)</p>
<p><b>E. Who can be a beneficiary of the leniency program (individual / businesses)?</b></p>	<p>Both individuals and businesses can be a beneficiary of the leniency programme.</p>
<p><b>F. What are the conditions of availability of full leniency:</b></p>	<p>The applicant must be the first to approach the authorities about the cartel. The applicant shall provide information about the cartel not previously in the possession of the authority. This information shall give the authorities occasion either to undertake an inspection, a search or inform the police, or to confirm that there has been an infringement of the Danish Competition Act in the form of a cartel (an inspection or search has already taken place).</p> <p>The applicant shall cooperate with the authorities throughout the procedure. The applicant shall have ended his participation in the cartel at the time of application for leniency. The applicant must not have taken steps to coerce one or more undertakings to join the cartel.</p>
<p><b>G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment):</b></p>	<p>The applicant is not the first in a particular cartel that approaches the authorities. The information that the applicant provides about the cartel must contain significant added value for the authorities as compared to the information already in the possession of the authorities. The applicant shall cooperate with the authorities throughout the procedure. The applicant shall have ended his participation in the cartel at the time of application for leniency. The applicant must not have taken steps to coerce one or more undertakings to join the cartel.</p>
<p><b>H. Obligations for the beneficiary after the leniency application has been</b></p>	<p>The beneficiary must have ceased to participate in the cartel when he submits the application for leniency. He must cooperate faithfully, fully and effectively throughout the case.</p>

<p><b>accepted:</b></p>	<p>He must present all information and all evidence about the cartel to which he has access to, is in possession of and by reasonable means can obtain. At any time, the beneficiary must give a prompt answer to questions from the authorities.</p> <p>The beneficiary must not give incorrect or misleading information, suppress factual details or distort the information given. He must not draw the attention of the other cartel participants to the fact that an application has been submitted (e.g. by approaching the other participants or through a press announcement). However, this applies only until the authorities have told the other cartel participants that they are investigating the cartel through an inspection or a search.</p>
<p><b>I. Are there formal requirements to make a leniency application?</b></p>	<p>No, the applicant can contact the DCCA's leniency officers by e-mail to <a href="mailto:stko@kfst.dk">stko@kfst.dk</a>, <a href="mailto:mwp@kfst.dk">mwp@kfst.dk</a> or <a href="mailto:avl@kfst.dk">avl@kfst.dk</a>. The leniency officers can also be contacted by telephone or in person. The application is not fulfilled until the DCCA has gotten valuable information about the cartel from the applicant.</p>
<p><b>J. Are there distinct procedural steps within the leniency program?</b></p>	<p>Yes, the authority that receives the application shall issue an acknowledgement of receipt. The competent authority shall issue a conditional assurance containing a statement of whether the application satisfies the requirements for leniency, and stating whether at this point there is reason to reject the application because the requirements are not satisfied. When a final examination and assessment has taken place, the competent authority shall indicate whether the applicant satisfies the requirements for leniency and, if so, grant leniency in accordance with the conditional assurance issued to the applicant.</p>
<p><b>K. At which time during the application process is the applicant given certainty with respect to its eligibility for leniency, and how is this done?</b></p>	<p>See section J.</p>
<p><b>L. What is the legal basis for the power to agree to grant leniency? Is leniency granted on the basis of an agreement or is it laid down in a (formal) decision? Who within the agency decides about leniency applications?</b></p>	<p>Section 23a in the Competition Act is the legal basis for the power to grant leniency. The granting of leniency is a formal decision. The leniency officers decide about the leniency applications.</p>
<p><b>M. Do you have a marker system? If yes, please describe it.</b></p>	<p>Yes, according to Section 23a (6) a preliminary application for leniency can be submitted. The preliminary application shall be finalized within the time limit determined by the competent authority. If the preliminary application is finalized within the time limit, the application is deemed to have been submitted at the date of submission of the preliminary application.</p>



<b>N. Does the system provide for any extra credit<sup>5</sup> for disclosing additional violations?</b>	No
<b>O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.</b>	No, but the agency will try to keep the identity confidential for as long as possible.
<b>P. Is there a possibility of appealing an agency's decision rejecting a leniency application?</b>	No, but the rejected applicant can raise the question in court.
<b>Q. Contact point where a leniency application can be lodged:</b>	Konkurrence- og Forbrugerstyrelsen (DCCA), Carl Jacobsens Vej 35, 2500 Valby or <a href="mailto:stko@kfst.dk">stko@kfst.dk</a> , <a href="mailto:mwp@kfst.dk">mwp@kfst.dk</a> or <a href="mailto:avl@kfst.dk">avl@kfst.dk</a>
<b>R. Does the policy address the possibility of leniency being revoked? If yes, describe the circumstances where revocation would occur. Can an appeal be made against a decision to revoke leniency?</b>	It is possible to revoke a leniency application. However, the case material which the applicant has provided to the DCCA will not be handed back but will remain in the possession of the authority and will contribute to the case handling in the authority.
<b>S. Does your policy allow for "affirmative leniency", that is the possibility of the agency approaching potential leniency applicants?</b>	No
<b>T. Does your authority have rules to protect leniency material from disclosure? If yes, please elaborate.</b>	Same rules apply as for access to file in general. However, the DCCA will go far in its efforts to exclude leniency material from disclosure.

## 7. Settlement

<b>A. Does your competition regime allow settlement?  If yes, please indicate its public availability!</b>	We allow settlements. However, in Denmark all penalties are criminal by nature. Therefore, settlement agreements are agreed to between the Public Prosecutor and the offender, and fines which are imposed in accordance with a settlement agreement are also criminal penalties.
<b>B. Which types of restrictive</b>	The settlement procedure may be applied to all kinds of

<sup>5</sup> Also known as: "leniency plus", "amnesty plus" or "immunity plus". This category covers situations where a leniency applicant, in order to get as lenient treatment as possible in a particular case, offers to reveal information about participation in another cartel distinct from the one which is the subject of its first leniency application.

<b>agreements are eligible for settlement?</b>	violation of the Competition Act.
<b>C. What is the reward of the settlement for the parties?</b>	The settlement procedure means that the case can be closed in a faster and smoother way than through court proceedings. Normally, the parties also get a reduction of the fine, but this depends of the concrete circumstances.
<b>D. May a reduction for settling be cumulated with a leniency reward?</b>	We have never had such a case, but in principle this could happen.
<b>E. List the criteria (if there is any) determining the cases which are suitable for settlement.</b>	–
<b>F. Describe briefly the system!</b>	<p>As mentioned above (section A) all penalties in Denmark are criminal by nature. It is the courts that impose fines and this happens after prosecution from The State Prosecutor for Serious Economic and International Crime (SEIC).</p> <p>The SEIC also has the power to impose fines, if the offender agrees to a settlement. Such fines are also criminal penalties.</p> <p>As an <u>exemption</u> The Danish Competition and Consumer Authority (DCCA) can issue an administrative notice of a fine in cases in which the maximum penalty is a fine. This can only be done with the consent of SEIC. In these situations, the case may be settled without a trial if the offender admits being guilty and is willing to pay the fine within a specified time limit. If the offender does not agree to pay the fine suggested by the DCCA, the case is handled by the Court in the first place.</p> <p>Although the term is “an administrative notice of a fine”, such fines are also criminal penalties. This is due to the fact, that the DCCA in these situations handles the case instead of (by delegation from) SEIC/the courts.</p> <p>With the exception of cases which result in an administrative notice of a fine, the DCCA hands over the case to the prosecution for criminal proceedings. When doing so, the DCCA recommends a level for the fine to the prosecution. However, it is for the courts to decide the final amount of the fine. When the case is handled by the court, it is no longer possible to decide the case by settlement.</p>
<b>F. Describe the procedural efficiencies of your settlement system!</b>	See section C.
<b>G. Does a settlement necessitate that the parties acknowledge their liability for the violation?</b>	Yes.
<b>H. Is there a possibility for settled parties to appeal a settlement decision at court?</b>	Yes, in principle. However, in practice this does not make any sense since the settlement procedure is the alternative to court proceedings. Therefore, if the parties cannot agree to a settlement (e.g. because they cannot acknowledge their guilt), the case will have to go court.

## 8. Commitment

<p><b>A. Does your competition regime allow the possibility of commitment?</b></p> <p><b>If yes, please indicate its public availability!</b></p>	<p>Yes, following section 16a of the Danish Competition Act.</p> <p>The Danish Competition Act:  <a href="https://www.retsinformation.dk/Forms/R0710.aspx?id=199825">https://www.retsinformation.dk/Forms/R0710.aspx?id=199825</a></p> <p>Guidance paper: Vejledning om Processor i konkurrencesager:  <a href="https://www.kfst.dk/media/53559/processor-i-konkurrencesager-vejledning-2018.pdf">https://www.kfst.dk/media/53559/processor-i-konkurrencesager-vejledning-2018.pdf</a></p>
<p><b>B. Which types of restrictive agreements are eligible for commitment?</b></p> <p><b>Are there commitments which are excluded from the commitment possibility?</b></p>	<p>In violation of section 6 or section 11 of the Danish Competition Act, the DCCA has an opportunity to assess whether a prohibition decision or a commitment decision will be the best option with regard to effective competition. The DCCA alone chooses the type of decision to be taken, - if the parties offer commitments.</p> <p>The DCCA will, in every case, make a specific assessment of whether the commitments would be a suitable solution.</p> <p>Not all cases are suitable for commitments pls. see below, section C.</p>
<p><b>C. List the criteria (if there are any) determining the cases which are suitable for commitment.</b></p>	<p>The DCCA will, in every case, make a specific assessment of whether the commitments would be a suitable solution. Cases completed by commitment will not subsequently be sent to the Public Prosecutor for Serious Economic and International Crime for the purpose of punishment. Therefore, not all cases are suitable to be concluded by commitment. The DCCA will only accept a commitment solution, if such an approach would be resource-saving for the Agency, and the case is not considered to be of a nature that it should be prosecuted, or that the case raises fundamental questions, that can appropriately be clarified. A serious infringement can never be subject to a commitment decision.</p>
<p><b>D. Describe, which types of commitments are available under your competition law!</b></p>	<p>The DCCA distinguish between structural and behavioural commitments.</p>
<p><b>E. Describe briefly the system!</b></p>	<p>The parties initiate commitment.</p> <p>It is important that the commitment is offered early in the process, i.e., before the DCCA has conducted any in-depth investigation. The commitment must also fully meet the DCCA's concerns.</p>
<p><b>I. Does a commitment decision necessitate that the parties acknowledge their liability for the violation?</b></p>	<p>No</p>
<p><b>J. Describe how your authority monitors the parties' compliance to the commitments.</b></p>	<p>By supervising and by statements from the company.</p> <p>At divestments, by the use of a trustee.</p>

<b>K. Is there a possibility for parties to appeal a commitment decision at court?</b>	Yes, in principle a decision can always be appealed to a higher court.
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## 9. Investigative powers of the enforcing institution(s)<sup>6</sup>

<b>A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids<sup>7</sup>, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.</b>	<p>The enforcing agency has the power to:</p> <ul style="list-style-type: none"> <li>- Make requests for information (section 17 of the Danish Competition Act)</li> <li>- Make searches/raids – requires a court warrant (section 18 of the Danish Competition Act)</li> </ul> <p>The agency can make digital acquisitions during a raid.</p>
<b>B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?</b>	Under national law private premises cannot be searched by the DCCA.
<b>C. May evidence not falling under the scope of the authorisation allowing the inspection be seized / used as evidence in another case? If yes, under which circumstances (e.g. is a post-search court warrant needed)?</b>	Probably, the agency is investigating its possibilities.
<b>D. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.</b>	No

<sup>6</sup> “Enforcing institutions” may mean either the investigating or the decision-making institution or both.

<sup>7</sup> “Searches/raids” means all types of search, raid or inspection measures.

## 10. Procedural rights of businesses / individuals

<p><b>A. Key rights of defence in cartel cases:</b></p> <p>Please indicate the relevant legal provisions.</p>	<p>Access to files according to part 4 of the Danish Public Administration Act.</p> <p>Right to consultation according to part 5 of the Public Administration Act and section 15a of the Danish Competition Act.</p> <p>Protection against self-incrimination – Danish law applies a general principle that builds on the principles stemming from the Convention for the Protection of Human Rights. The principle has been embodied in the Danish Act on Legal Security  <a href="https://www.retsinformation.dk/Forms/R0710.aspx?id=1834">https://www.retsinformation.dk/Forms/R0710.aspx?id=1834</a></p> <p>Protection of legal privilege in accordance with the principle of legal privilege under EC law.</p>
<p><b>B. Protection awarded to business secrets (competitively sensitive information): is there a difference depending on whether the information is provided under a compulsory legal order or provided under informal co-operation? Please indicate the relevant legal provisions.</b></p>	<p>Business secrets are protected (section 13 (4) of the Danish Competition Act).</p> <p>There is no difference in the protection of information provided under a compulsory legal order and the protection of information provided under informal co-operation.</p>

## 11. Limitation periods and deadlines

<p><b>A. What is the limitation period (if any) from the date of the termination of the infringement by which the investigation / proceedings must begin or a decision on the merits of the case must be made?</b></p>	<p>In order to impose fines a decision of the merits of a case must be made within 5 years after the termination of the infringement in question (section 23 (6) of the Danish Competition Act). The limitation periods for the imposition of imprisonment comply with the limitation periods in the Danish Penal Code.</p>
<p><b>B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision on the merits?</b></p>	<p>None</p>
<p><b>C. What are the deadlines, statutory or otherwise (if any) to challenge the commencement or completion of an</b></p>	<p>According to section 20 (2) of the Danish Competition Act a decision taken by the Danish Competition Council must be challenged within four weeks.</p> <p>According to section 20 (3) a decision made by the</p>

investigation or a decision regarding sanctions? (see also 15A)	Competition Appeals Tribunal must be challenged within eight weeks.
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## 12. Types of decisions

<b>A. List which types of decisions on the merits of the case can be made in cartel cases under the laws listed under Section 1.</b>	<p>The Competition Council can make the following types of decisions:</p> <ul style="list-style-type: none"> <li>- A finding of an infringement</li> <li>- An order to bring the infringement to an end and</li> <li>- A commitment decision</li> </ul> <p>Only the courts can impose fines and imprisonment.</p>
<b>B. List any other types of decisions on the merits of the case relevant particularly in hardcore cartel cases under the laws listed under Section 1 (if different from those listed under 12/A).</b>	<p>If the infringement is intentional and of serious nature the penalty may increase to imprisonment for 1 year and 6 months according to section 22 (3) of the Danish Competition Act.</p> <p>In particularly aggravating circumstances the penalty may increase to imprisonment for 6 years according to section 299c of the Danish Penal Code.</p>
<b>C. Can interim measures<sup>8</sup> be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both<sup>9</sup>.) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?</b>	No

## 13. Sanctions for procedural breaches (non-compliance with procedural obligations) in the course of investigations

<sup>8</sup> In some jurisdictions, in cases of urgency due to the risk of serious and irreparable damage to competition, either the investigator or the decision-making agency may order interim measures prior to taking a decision on the merits of the case [e.g.: by ordering the immediate termination of the infringement].

<sup>9</sup> Only for agencies which answered “yes” to question 2.B. above

<p><b>A. Grounds for the imposition of procedural sanctions / fines:</b></p>	<p>According to section 22 in the Competition Act penalty payments can be imposed on parties, who fail to:</p> <ul style="list-style-type: none"> <li>- Submit such information which the Competition Council may request under this Act, or</li> <li>- Comply with a condition or an order issued under this Act, or</li> <li>- Fulfil an obligation made binding</li> </ul> <p>According to section 23 in the Competition Act a fine may be imposed on any party, who:</p> <ul style="list-style-type: none"> <li>- Fails to comply with a request made under section 17 (request for information), or</li> <li>- Supplies, the Competition Authority, the Competition Council or the Competition Appeals Tribunal with incorrect or misleading information or conceals matters of importance for the case in question for which the information was collected.</li> </ul>
<p><b>B. Type and nature of the sanction (civil, administrative, criminal, combined; pecuniary or other):</b></p>	<p>The sanctions under section 22 are administrative daily or weekly penalty payments.</p> <p>The sanctions under section 23 are criminal fines.</p>
<p><b>C. On whom can procedural sanctions be imposed?</b></p>	<p>On any person/undertaking, that fails to submit information, comply with a condition or fulfil an obligation under section 22 or who fails to comply with a request for information or supplies, the Competition Authority, the Competition Council or the Competition Appeals Tribunal with incorrect or misleading information (cf. point 13A above).</p>
<p><b>D. Criteria for determining the sanction / fine:</b></p>	<p>N/A</p>
<p><b>E. Are there maximum and / or minimum sanctions / fines?</b></p>	<p>There is no statutory minimum og maximum of a fine which is issued according to Section 22. However, a weekly penalty payment according to Section 22 usually lies in the range of approx. 700-1.350 EUROS.</p>

## 14. Sanctions on the merits of the case

<p><b>A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined):</b></p> <p><b>On whom can sanctions be imposed?</b></p>	<p>Decisions made by the Competition Council/The DCCA are administrative sanctions, while fines imposed by the courts are criminal sanctions.</p> <p>The Competition Council/The DCCA addresses decisions to undertakings or associations of undertaking. Courts can impose fines on undertakings, associations of undertakings</p>
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	and persons.
<b>B. Criteria for determining the sanction / fine:</b>	<p>The criteria for determining the fines are gravity, duration, turnover, aggravating and mitigating circumstances.</p> <p>The determination follows the principles of the Commission's Guidelines from 1998 on the method of setting fines, although the lawmakers has stated that the amounts of the fines shall be set at a lower level, than the fines imposed by the European Commission.</p> <p>When setting a fine, the basic amounts, that are set out on the basis of the gravity, are:</p> <p>Less serious infringement: Up to 535.874 EUROS</p> <p>Serious infringement: From 535.874 EUROS to 2.679.372 EUROS</p> <p>Very serious infringement: From 2.679.372 EUROS and up</p> <p>Accordingly the personal fines are:</p> <p>Less serious infringement: 6.698 EUROS</p> <p>Serious infringement: 13.396 EUROS</p> <p>Very serious infringement: 26.793 EUROS</p> <p>The basic amounts can be raised or reduced on the basis of the duration, turnover, aggravating and mitigating circumstances.</p>
<b>C. Are there maximum and / or minimum sanctions / fines?</b>	10% of the global turnover for the group.
<b>D. Guideline(s) on calculation of fines:</b>	The Danish practice follows the principles set out in the Commission's Guidelines from 1998 on the method of setting fines.
<b>E. Does a challenge to a decision imposing a sanction / fine have an automatic suspensory effect on that sanction / fine? If it is necessary to apply for suspension, what are the criteria?</b>	<p>A challenge to a decision imposing a fine has an automatic suspensory effect on that decision, if the challenge has been made within the time limit, laid down in the general criminal procedural rules (normally 14 days from the pronouncement of the conviction).</p> <p>During the administrative procedures, the starting point is that a challenge to a decision has no automatic suspensory effect.</p> <p>However, it is possible for an undertaking to apply for suspension. There are no fixed criteria for such an application.</p> <p>The assessment of whether to grant a suspension or not depends on the specific facts of the case, but especially on the possible damaging effects that could be related to not suspending the decision.</p>



## 15. Possibilities of appeal

<b>A. Does your law provide for an appeal against a decision that there has been a violation of a prohibition of cartels? If yes, what are the grounds of appeal, such as questions of law or fact or breaches of procedural requirements?</b>	Yes The grounds can be both questions of law or fact and breaches of procedural requirements. A decision to submit a case for public prosecution cannot be appealed.
<b>B. Before which court or agency should such a challenge be made?</b>	Decisions made by the Competition Council can be challenged before the Competition Appeals Tribunal. Decisions made by the Competition Appeals Tribunal can be brought before the courts. Decisions in criminal proceedings can be challenged before the High Court or the Supreme Court.

**DCCA's final note: It is worth mentioning that a great variety of circumstances, acts and/or considerations can occur and those might not necessarily be considered in these responses. Consequently, this template is illustrative and for its nature it should not be considered as binding for any act of this institution, staff and authorities including investigations and Resolutions or Decisions issued and/or to be issued. Finally, nothing in this document should be understood as prejudging the analysis the DCCA and/or its staff and authorities could perform in specific cases or as an institutional statement.**

DCCA, January, 2019