



**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.

## 1. Information on the law relating to cartels

<b>A. Law(s) covering cartels:</b>	Consolidated Competition Act no. 1027 of 21 August 2007 Homepage adress: <a href="http://www.ks.dk">www.ks.dk</a> Languages: Danish, English Procedural rules for criminal cartel cases: Consolidated Administration of Justice Act Web: <a href="http://www.retsinfo.dk">www.retsinfo.dk</a> Language: Danish
<b>B. Implementing regulation(s) (if any):</b>	None
<b>C. Interpretative guideline(s) (if any):</b>	None
<b>D. Other relevant materials (if any):</b>	The DCA's homepage ( <a href="http://www.ks.dk">www.ks.dk</a> .) contains information on decisions in cartel cases. Language: Danish

## 2. Scope and nature of prohibition on cartels

<b>A. Does your law or case law define the term</b>	Neither the Danish Competition Act nor the case law of the courts explicitly defines the term "cartel". Section 6 of the
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<p><b>“cartel”?</b></p> <p><b>If not, please indicate the term you use instead.</b></p>	<p>Danish Competition Act, containing the prohibition of cartel activity, uses the term "agreement or 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.</p>
<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>	<p>When setting fines in antitrust cases, the Danish courts apply the principles set out in the Commission's guidelines from 1998 on the method of setting fines. The basic amount of a fine depends thus on the gravity of the infringement meaning that hard-core cartels (e.g. price fixing, bid rigging etc.) are subject to a higher basic amount when a fine is calculated, than other types of anti-competitive agreements.</p> <p>Furthermore, section 7, 2 of the Danish Competition Act, generally forbids agreements on price fixing and bid rigging. See further point 2C below.</p>
<p><b>C. Scope of the prohibition of hardcore cartels: [including any exceptions, exclusions and defences e.g. for particular industries or sectors.]</b></p>	<p>According to section 7 of the Danish Competition Act, agreements (including cartels) of minor importance are not prohibited, unless:</p> <ul style="list-style-type: none"> <li>i. undertakings or associations of undertakings agree, coordinate or determine prices, profits etc. for the sale or resale of goods or services;</li> <li>ii. two or more undertakings agree etc. to carry out or seek to carry out a preceding regulation of tenders, fix or seek to fix the conditions for the opening of tenders, undertake or seek to arrange elimination of tenders, commit themselves to preceding notification of tenders or otherwise commit themselves to cooperate before submitting tenders;</li> <li>iii. the agreement combined with other similar agreements, restricts competition</li> </ul> <p>An agreement is considered to be of minor importance if the undertakings concerned have</p> <ul style="list-style-type: none"> <li>- an aggregate annual turnover of less than DKK 1 billion and an aggregate share of less than 10 per cent of the product or service market concerned, or</li> <li>- an aggregate annual turnover of less than DKK 150 million</li> </ul> <p>According to section 8 of the Danish Competition Act, an agreement can be granted an individual exemption provided that it satisfies conditions similar to the ones set out in article 81 (3) of the EC Treaty. However, it is very unlikely that the Competition Council will grant exemptions to cartel agreements.</p>
<p><b>D. Is participation in a hardcore cartel illegal <i>per se</i>?</b></p>	<p>In administrative proceedings, participation in a hard-core cartel is <i>per se</i> illegal as a principal rule. However, cartels of minor importance are not always considered illegal (see point 2 C above)</p> <p>Criminal liability is only to impose if the undertakings have acted with intent or gross negligence (section 23 of the Danish</p>

<sup>1</sup> Some jurisdictions regard these types of cartels – and possibly some others – as particularly serious violations. It is common to refer these types of cartels as “hardcore cartels”. Hereinafter this terminology is used.

	<p>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 or criminal offence, or a combination of these?</b>	A combination of all three.

### 3. Investigating institution(s)

<b>A. Name of the agency, which investigates cartels:</b>	<p>Konkurrencestyrelsen/Danish Competition Authority (administrative procedures)</p> <p>On behalf of the Danish Competition Council, the Danish Competition Authority carries out the preliminary investigations in cartel cases, for example requests for information and dawn raids.</p> <p>On the basis of the investigations the Danish Competition 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 Crime with the purpose of bringing criminal proceedings. The Public Prosecutor for Serious Economic Crime</li> </ul> <p>(criminal investigations)</p>
<b>B. Contact details of the agency:</b>	<p>Konkurrencestyrelsen/Danish Competition Authority</p> <p>Address: Nyropsgade 30, DK 1780 Copenhagen V,</p> <p>Mail: ks@ks.dk</p> <p>Telephone: +45 7226 8000</p> <p>Fax: +45 3332 6144</p> <p>Website: www.ks.dk</p> <p>The Public Prosecutor for Serious Economic Crime</p> <p>Bryggervangen 55, 3</p> <p>Postbox 809</p> <p>2100 København Ø</p> <p>Phone: +45 3525 9500</p> <p>Fax: +45 4515 0119</p> <p>mail: saоек@ankl.dk</p>
<b>C. Information point for potential complainants:</b>	See point 3/B above

<b>D. Contact point where complaints can be lodged:</b>	See point 3/B above
<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>	No

#### 4. Decision-making institution(s)<sup>2</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 Director General of the Danish Competition Authority makes an assessment whether to hand over the case to the Public Prosecutor for Serious Economic Crime (section 6 of Executive Order no. 479/2005).</p> <p>The Public Prosecutor for Serious Economic Crime decides whether there is enough evidence to bring the case before the courts. Ultimately, the courts take the decision to impose a fine on the undertakings.</p>
<b>B. Contact details of the agency:</b>	See point 3/B above
<b>C. Contact point for questions and consultations:</b>	See point 3/B above
<b>D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.</b>	See point 4/A.
<b>E. What is the role of the investigating agency if cartel cases belong under criminal</b>	See point 4/A.

<sup>2</sup> Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

proceedings?	
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## 5. Handling complaints and initiation of proceedings

<b>A. Basis for initiating investigations in cartel cases: [complaint, ex officio, leniency application, notification, etc.]</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: [e.g. is legitimate interest required, or is standing to make a complaint limited to certain categories of complainant?]</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 14 of the Danish Competition Act, the Danish Competition 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 14 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>3</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.
<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>	No
<b>C. Who is eligible for full leniency [only for the first one to come forward or for more participants in the cartel]?</b>	Only the first one to come forward is eligible for full leniency.
<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>  <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>	No, but the applicant must cooperate and bring new knowledge to the agency. So the sooner the better.
<b>E. Who can be a beneficiary of the leniency program (individual / businesses)?</b>	Both individuals and businesses can be a beneficiary of the leniency programme.
<b>F. What are the conditions of availability of full leniency:</b>	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). The applicant shall cooperate with the authorities throughout the procedure. The applicant shall have

<sup>3</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.

	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.
<b>G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment):</b>	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 benefit 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.
<b>H. Obligations for the beneficiary after the leniency application has been accepted:</b>	<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. 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>
<b>I. Are there formal requirements to make a leniency application?</b>	No, the applicant can contact the DCA's leniency officers by e-mail to leniency@ks.dk or in person. The application is first fulfilled when the DCA has got valuable information about the cartel from the applicant.
<b>J. Are there distinct procedural steps within the leniency program?</b>	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.
<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>	See section J.
<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</b>	Section 23a in the Competition Act is the legal basis for the power to grant leniency. The granting of leniency is a formal decision. Two leniency officers decide about the leniency applications.

<b>within the agency decides about leniency applications?</b>	
<b>M. Does your legislation have a marker system? If yes, please describe it.</b>	No.
<b>N. Does the system provide for any extra credit<sup>4</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 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>	Konkurrencestyrelsen (DCA), Nyropsgade 30, DK-1780 Copenhagen V or <a href="mailto:leniency@ks.dk">leniency@ks.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>	Yes, if the applicant does not fulfil the obligations, see section H. The applicant cannot appeal such a decision, but he can address the question in the court-case.
<b>S. Does your policy allow for "affirmative leniency", that is the possibility of the agency approaching potential leniency applicants?</b>	No.

## 7. Investigative powers of the enforcing institution(s)<sup>5</sup>

<b>A. Briefly describe the</b>	The enforcing agency has the power to
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<sup>4</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.

<sup>5</sup> "Enforcing institutions" may mean either the investigating or the decision-making institution or both.

<p><b>investigative measures available to the enforcing agency such as requests for information, searches/raids<sup>6</sup>, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.</b></p>	<p>- make requests for information (section 17 of the Danish Competition Act)</p> <p>- make searches/raids - requires a court warrant (Section 18 of the Danish Competition Act)</p> <p>The agency can make electronic or computer searches during a raid.</p>
<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></p>	<p>Under national law private locations cannot yet be searched.</p>
<p><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></p>	<p>Probably, the agency is investigating its possibilities.</p>
<p><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></p>	<p>No.</p>

## 8. Procedural rights of businesses / individuals

<p><b>A. Key rights of defence in cartel cases:</b></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 Danish Public Administration Act and section 15 a 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 (No. 442/2004).</p>
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<sup>6</sup> “Searches/raids” means all types of search, raid or inspection measures.

	Protection of legal privilege in accordance with the principle of legal privilege under EC law.
<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?</b>	<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>

## 9. Limitation periods and deadlines

<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 in the merits of the case must be made?</b>	In order to impose criminal sanctions a decision on the merits of a case must be made within 5 years after the termination of the infringement in question (section 23(4) of the Danish Competition Act).
<b>B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision in the merits?</b>	None.
<b>C. What are the deadlines, statutory or otherwise (if any) to challenge the commencement or completion of an investigation or a decision regarding sanctions?</b>	<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 Competition Appeals Tribunal must be challenged within eight weeks.</p>

## 10. Types of decisions

<b>A. Please list which types of decisions on the merits of the case can be made in cartel cases under the laws listed</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> </ul>
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<b>under Section 1.</b>	- a commitment decision. Only the courts can impose fines.
<b>B. Please list which types of decisions on the merits of the case can be made in hardcore cartel cases under the laws listed under Section 1 (if different from those listed under 10/A).</b>	The same as under 10 A
<b>C. Can interim measures<sup>7</sup> be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both<sup>8</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

## 11. Sanctions for procedural breaches (non-compliance with procedural obligations)<sup>9</sup>

<b>A. Grounds for the imposition of procedural sanctions / fines:</b>	<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> </ul>
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<sup>7</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>8</sup> Only for agencies which answered “yes” to question 2.C. above

<sup>9</sup> In some jurisdictions non-compliance with procedural obligations (e.g. late provision of requested information, false or incomplete provision of information, lack of notice, lack of disclosure, obstruction of justice, destruction of evidence, challenging the validity of documents authorizing investigative measures, etc.) can be sanctioned.

	- 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.
<b>B. Type and nature of the sanction (civil, administrative, criminal, combined):</b>	The sanctions under section 22 are administrative, daily or weekly penalty payments. The sanctions under section 23 are criminal fines.
<b>C. On whom can procedural sanctions be imposed?</b>	On any person/undertaking, that (cf. 11 A above) fails to submit information, comply with a condition or fulfil an obligation under section 22 or who fails to comply with a request of information or supplies, the Competition Authority, the Competition Council or the Competition Appeals Tribunal with incorrect or misleading information (cf point 11 A above).
<b>D. Criteria for determining the sanction / fine:</b>	N/A
<b>E. Are there maximum and / or minimum sanctions / fines?</b>	No maximum/minimum of fines imposed under section 23. A weekly penalty payment according to section 22 usually lies in the range of approx. 700-1.350 EUROS.

## 12. Sanctions on the merits of the case

<b>A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined):</b>  <b>On whom can sanctions be imposed?</b>	Decisions made by the Competition Council/The DCA are administrative sanctions, while courts imposed fines as criminal sanctions.  The Competition Council/The DCA addresses decisions to undertakings or associations of undertaking. Courts can impose fines on undertakings, associations of undertakings and persons.
<b>B. Criteria for determining the sanction / fine: [e.g.: gravity, duration of the violation, benefit gained from the violation]</b>	The criteria for determining the fines are gravity, duration, turnover, aggravating and attenuating circumstances.  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.  When setting a fine, the basic amounts, that are set out on the basis of the gravity, are:  Less serious infringement: 1.320 EUROS to 52.816 EUROS Serious infringements: 52.816 EUROS to 2.021.563 EUROS Very serious infringements: 2.021.563 EUROS and above  The basis amount can be raised or reduced on the basis of the duration, turnover, aggravating and attenuating circumstances.
<b>C. Are there maximum and /</b>	There are no absolute minimum or maximum fines.

<b>or minimum sanctions / fines?</b>	
<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 sanction, 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 procedure, 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>

### 13. Possibilities of appeal

<b>A. Does your law provide for an appeal from 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>	<p>Yes</p> <p>The grounds can be both questions of law or fact and breaches of procedural requirements.</p> <p>A decision to submit a case for public prosecution cannot be appealed.</p>
<b>B. Before which court or agency should such a challenge be made? [if the answer to question 13/A is affirmative]</b>	<p>Decisions made by the Competition Council can be challenged before the Competition Appeals Tribunal.</p> <p>Decisions made by the Competition Appeals Tribunal can be brought before the courts.</p> <p>Decisions in criminal proceedings can be challenged before the High Court or the Supreme Court.</p>