

Dansk Forening for Konkurrenceret / Danish Competition Law Society
29 October 2009
Programme

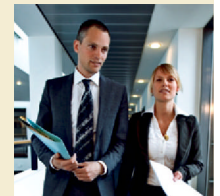
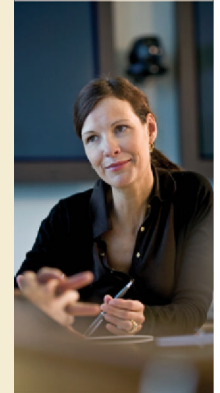


- 08.30 - 09.00: Morning coffee / refreshments
- 09.00 - 09.05: Welcome and introduction, **Karen Dyekjær**, Chairman of the Danish Competition Law Society and Partner, Plesner
- 09.05 - 09.20: Recent fines in Denmark and the EU, **Jacob Borum**, Attorney, Plesner
- 09.20 - 10.00: A strengthened competition regime - the OFT experience, **Phillip Collins**, Chairman, Office of Fair Trading:
- 10.00 - 10.30: Enforcement of the Swedish competition law - with a special view on sanctions, **Charlotte Zackari**, Head of Legal Department, Swedish Competition Authority
- 10.30 - 10.45: Coffee break
- 10.45 - 11.15: Challenges in the sanction system of the EU Court, **Bo Vesterdorf**, Senior Consultant, Plesner and former president of the Court of First Instance
- 11.15 - 11.45: Overview of current status of private damage actions in the UK, **Mark Hoskins**, Barrister Q.C.
- 11.45 - 12.30: Panel discussion with the speakers and **Kim Sparlund**, vice chairman, Danish Competition Authority - "the three tracks": the administrative procedure / the criminal procedure / the civil procedure

Recent fines in Denmark and the EU

Jacob Borum, advokat

Danish Competition Law Society - 29 October 2009



Outline



1. Recent fines in **Denmark**

- Guidelines
- Court imposed fines
- Settlements

2. Recent fines in the **EU**

- 2006 Guidelines
- Fines imposed under the 2006 guidelines
- Limit reached?

Guidelines on the level of fines



- Pursuant to the preparatory works, fines should be set in accordance with the following guidelines:
 1. The gravity of the infringement
 - Less serious infringements: up to DKK 400.000 (EUR 55.000)
 - Serious infringements: DKK 400.000 – DKK 15 million (EUR 2 million)
 - Very serious infringements: DKK 15 million and above
 2. The duration of the infringement
 - Short infringements: less than 1 year
 - Medium-length infringements: 1-5 years
 - Long termed infringements: 5 years and above (increase of up to 10 %)
 3. The annual turnover of the entity

Court imposed fines - Companies



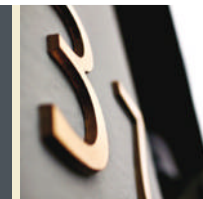
- 24 September 2009: Dansk Juletræsdyrkerforening (trade organisation) - **DKK 400.000**
 - 20 February 2009: Dansk Juletræsdyrkerforening – DKK 200.000
- 8 September 2009: Danske Busvognmænd (trade organisation) – **DKK 400.000**
 - 6 April 2009: Danske Busvognmænd – DKK 1.000.000
- 28 November 2007: Telemobilia ApS – **DKK 125.000**
- 4 October 2007 Danske Kroer & Hoteller (trade organisation) – **DKK 400.000**
- 10 February 2006: Arla Foods – **DKK 5.000.000** (abuse of dominance)

Court imposed fines - Individuals



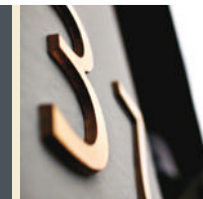
- 24 September 2009: Dansk Juletræsdyrkerforening – CEO, **DKK 15.000**
 - 20 February 2009: Dansk Juletræsdyrkerforening – CEO, DKK 15.000
- 8 September 2009: Danske Busvognmænd – CEO and vice CEO, both **DKK 15.000**
 - 6 April 2009: Danske Busvognmænd – CEO and vice CEO, respectively DKK 35.000 and 25.000
- 28 November 2007: Telemobilia ApS – CEO, **DKK 10.000**
- 4 October 2007 Danske Kroer & Hoteller – CEO and CoB, both **DKK 10.000**
- 1 December 2005: Swatch Group Nordic – Country Manager, **DKK 10.000**

Settlements (bødevedtagelser) - Companies



- 19 December 2008: Valsemøllen A/S – **DKK 1 million**
- 15 April 2008: Lokalbankerne – **DKK 4 million**
- 20 February 2008: Nautisk Udstyr ApS – **DKK 400.000**
- 23 July 2007: Jockerprice ApS – **DKK 125.000**
- 6 February 2007: Hempel A/S – **DKK 2 million**

Settlements (bødevedtagelser) - Individuals



- 19 December 2008: Valsemøllen A/S – CEO, **DKK 100.000**
- 20 February 2008: Nautisk Udstyr ApS – CEO and CoB, both **DKK 25.000**
- 16 November 2007: Aircom Erhverv A/S – CEO, **DKK 25.000**
- 28 September 2007: Jockerprice ApS – CEO, **DKK 25.000**

Comments

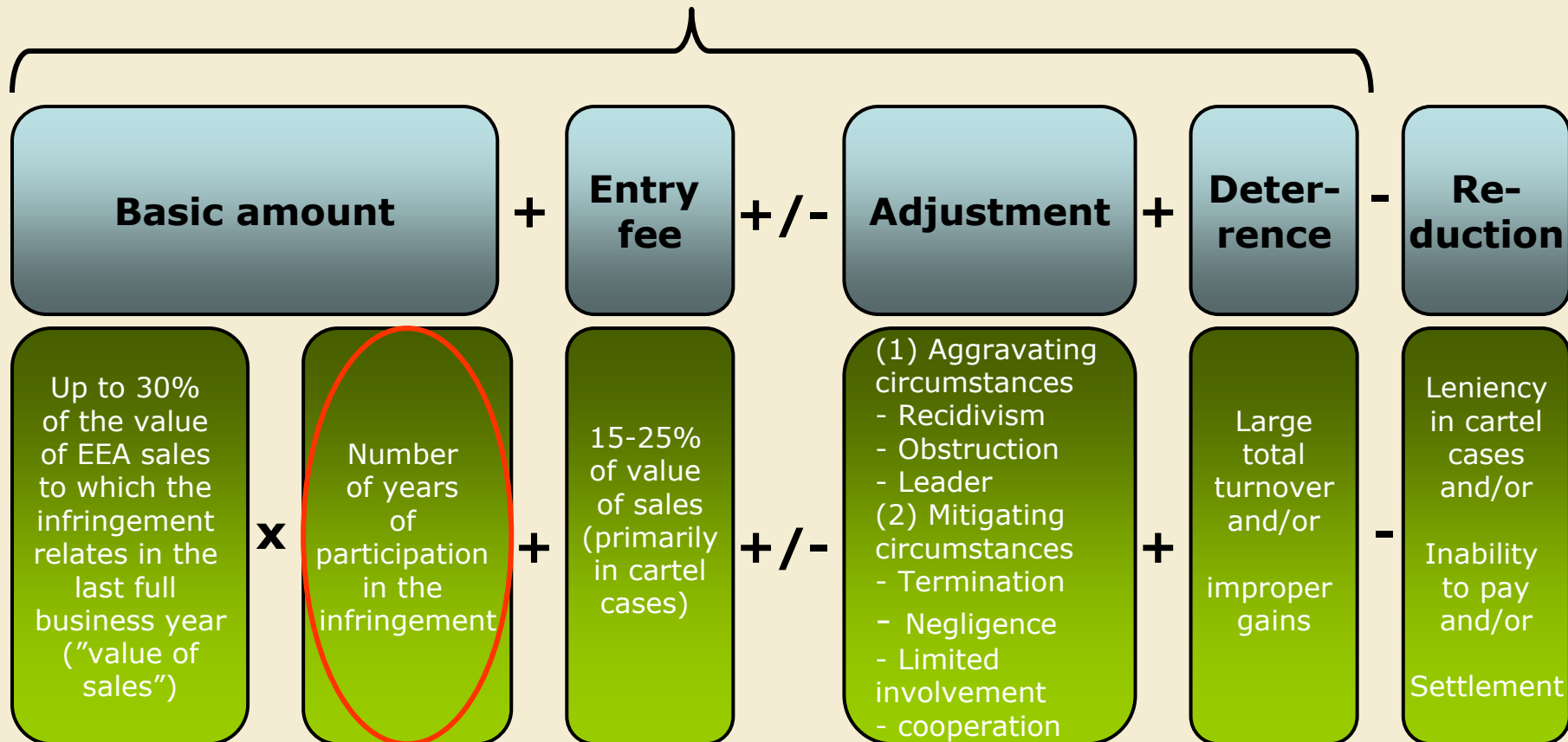


- Court imposed fines– individuals
 - The Public Prosecutor has advocated fines on individuals based on the individual's gross salary
 - Courts appear to reject salary based fines
 - DKK 15.000 (flat fee)?
- Settlement – individuals
 - End of salary based settlements?
 - DKK 25.000 (flat fee)?

Commission's 2006 Guidelines on fines



Statutory maximum: 10% of total global turnover in last business year



Fines under the 2006 Guidelines (1)



- Power Transformers (2009 – art. 81): Ca. **EUR 68 mio.**
 - Calcium Carbide (2009 – art. 81): Ca. **EUR 61 mio.**
 - E.ON/GDF Suez (2009 – art. 81): **EUR 1,106 mio.**
 - Intel (2009 – art. 82): **EUR 1,060 mio.**
 - Marine Hoses (2009 – art. 81): Ca. **EUR 132 mio.**
-
- Car Glass (2008 – art. 81): Ca. **EUR 1,384 mio.**
 - Bananas (2008 – art. 81): Ca. **EUR 60 mio.**
 - Candle Waxes (2008 – art. 81): Ca. **EUR 676 mio.**
 - Aluminium Fluoride (2008 – art. 81): Ca. **EUR 5 mio.**
 - Sodium Chlorate (2008 – art. 81): Ca. **EUR 79 mio.**
 - International Removal Services (2008 – art. 81): Ca. **EUR 33 mio.**
 - Synthetic Rubber (2008 – art. 81): Ca. **EUR 34 mio.**
-
- Chloroprene Rubber (2007 – art. 81): Ca. **EUR 248 mio.**
 - Flat Glass (2007 – art. 81): Ca. **EUR 487 mio.**
 - Professional Videotapes (2007 – art. 81): Ca. **EUR 75 mio.**

Fines under the 2006 Guidelines (2)



- 66 fines in 15 decisions – 8 companies received immunity
- Largest fine to a single company: Intel (2009 – art. 82): EUR 1,060 million.
- Smallest fine to a single company: Mozer in International Removal Services (2008 – art. 81): EUR 1,500
- Total amount of fines in the 15 decisions: Ca. EUR 5,507 million.
- Average fine: Ca. EUR 83.4 million
- 35 of the 66 fines have been appealed to the CFI (in relation to 5 fines, the deadline for appealing the decision has not expired). No judgment yet in any of the appeals.

Limit reached?



- **Hitting the ceiling...**
 - At least 8 fines have been capped at the statutory maximum of 10% of total global sales
- **First company fined into bankruptcy?**
 - European cartel fines questioned
 - *Increasingly tough penalties imposed by European competition regulators on cartel offenders were thrown into the spotlight on Friday when one of the largest chemicals manufacturers in Slovakia filed for protection from its creditors just weeks after being slapped with a €19.5m (\$28.7m) fine by the European Commission... (Financial Times, 19 September 2009)*
 - Calcium Carbide cartel
 - Inability to pay is a ground for reducing a fine



Jacob Borum

JAB@plesner.com

TEL: +45 33 12 11 33

DIR: +45 36 94 14 39

MOBILE: +45 29 99 30 03