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Even before the adoption of the new EU-damages directive, it was common practice in Denmark that an infringement decision by the Danish competition authorities could not be re-litigated in subsequent damages actions and that the alleged infringer's only possibility of avoiding liability in a damages case was to have the infringement decision overturned by the civil courts in an appeals process. However, this may not prove an easy task considering that competition law cases are often comprehensive and complex cases where the application of the competition rules leaves a significant margin of discretion when competition authorities assess cases. This is a challenge to be reviewed in-depth. And, as many practitioners will recognize, the competition authority often has the upper hand. Since they are "the specialist regulator", there is undoubtedly an understanding by the courts that their assessment "must be" correct. As such, the burden of proving that the authority's decision is incorrect lies heavily with the alleged infringer. But, how does one then prove that the infringement decision should be reversed? Recent court cases in Denmark may have paved the way for a more thorough judicial review by allowing for independent experts to review and assess factual matters.

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