

• **Denmark: The Competition Council finds Refusal to Supply and Restrictions to Parallel Trade in Railway Spare Parts Sector**

On 12 June 2013, the Danish Competition Council (DCC) ruled that Deutz AG (Deutz) and Diesel Motor Nordic A/S (Diesel Motor Nordic) have infringed the Danish and European competition rules (Articles 101 and 102 TFEU).

According to the decision, Deutz abused its dominant position by preventing the supply of spare parts for the IC3-trains, owned by the Danish State Railways, DSB, outside of its exclusive dealership network. The spare parts were to be used in the renovation of 404 Deutz engines.

The DCC also found that Deutz prevented parallel imports of spare parts for the IC3-trains in an agreement with its distributor in Denmark, Diesel Motor Nordic. The latter, a Danish-Swedish company, was also found to have infringed the competition rules by participating in the anticompetitive agreement with Deutz.

In 2010, DSB attempted to reach an agreement regarding renovation of the 404 Deutz engines with Deutz and Diesel Motor Nordic, but could not accept the price and conditions offered. Instead, DSB entered into an agreement with a consortium of four smaller companies. However, the consortium could not meet the terms of the agreement with DSB, because Deutz had blocked the delivery of spare parts, which could only be sourced through Deutz. Only in a few cases, the consortium managed to obtain spare parts for DSB; partly by ordering a few parts at a time and partly by withholding information about where the spare parts would be used.

Consequently, DSB could not use the competitive benefits of parallel trade in Europe and had to buy the spare parts at a higher price – some of these from the Danish Deutz distributor, Diesel Motor Nordic. DSB has stated that the process has contributed to the breakdown of some of the engines in the IC3 trains, because they were not serviced in time.

In this case, the DCC has benefited from good cooperation with the competition authorities in Germany, Sweden and the Netherlands. As a part of this cooperation, the DCC took part in inspections carried out in those countries and the evidence found contributed to establishing the infringement.

The DCC has ordered Deutz and Diesel Motor Nordic to stop the anticompetitive behaviour and to refrain from behaviour, which has the same or similar anticompetitive effect. In addition that the DCC has ordered Deutz to inform its network of independent dealers of the decision.

See decision in Danish and the English summary

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