

NEWS | 30 January 2025

## **Danish Supreme Court Rules Against Deutz AG for Restricting Parallel Trade**

The Danish Supreme Court found that Deutz AG, a German engine manufacturer, and Diesel Motor Nordic, its exclusive distributor in Denmark, violated Danish and EU competition law by restricting the sale of spare parts. In addition, it was found that Deutz AG had abused its dominant position by refusing to supply its spare parts.

In 2020, Deutz AG and Diesel Motor Nordic prevented the Danish company Fleco from buying Deutz AG's spare parts. Fleco was part of a consortium that had won a tender for the maintenance of 404 IC3 train diesel engines of the Danish national rail operator DSB. These engines were produced by Deutz AG, which required at least certain Deutz AG spare parts for their maintenance.

Deutz AG and Diesel Motor Nordic prevented Fleco from purchasing necessary spare parts through Deutz AG's dealer network. Case documentation showed that Deutz AG and Diesel Motor Nordic agreed that Deutz AG should prohibit its Dutch distributor from supplying Fleco. Consequently, Deutz AG obliged the Dutch distributor to withdraw its offer to Fleco. In addition, Deutz AG set up a system whereby all dealers who bought spare parts for train engines had to specify the engine number and country of destination. That way, Deutz AG could control and block Fleco's orders for IC3 engines from DSB.

Deutz AG's and Diesel Motor Nordic's refusal to grant Fleco access to Deutz AG's spare parts, led Fleco's to terminate the contract with DSB. After DSB signed a contract with Diesel Motor Nordic, Fleco contacted the Danish Competition and Consumer Authority.

### **Previous court instances**

Danish Competition Council. In its decision on the matter, the Danish Competition Council defined the relevant product markets as after-sales markets for "supply of unique spare parts for the TCD2015 engine" and "repair and maintenance of the TCD2015 engine". On that basis, the Council found that Deutz AG had a market share of 100% on the market for unique spare parts, as they could not be sourced elsewhere. The Council found that Deutz AG's behaviour constituted an abuse of dominance affecting Fleco in the maintenance market. The Council also found that Deutz AG and Diesel Motor Nordic had entered into an illegal anti-competitive agreement restricting parallel trade of Deutz AG's spare parts.

Danish Eastern High Court. The decision was upheld by the Danish Competition Appeal Board and the Danish Maritime and Commercial Court. However, the Danish Eastern High Court annulled the decision and referred the

case back to the Danish Competition Council for assessment. The Court found that the Council's analysis and investigation was not sufficient to conclude on the market definition. Further, the Court ruled that the vertical block exemption had been interpreted incorrectly. The Court stated that an agreement between a supplier and a buyer that requires the supplier to prohibit its other buyers from selling the supplier's goods into a certain territory or to a certain customer group can be block exempted.

## The Danish Supreme Court's decision of 3 December 2024

Unlike the Danish Eastern High Court, the Danish Supreme Court found no legal basis to set aside the Danish Competition Council's market definition. Further, the Danish Supreme Court concluded that an agreement between a supplier and a buyer that requires the supplier to prohibit other buyer's passive sales into the buyer's territory cannot qualify for the vertical block exemption.

Regarding the anti-competitive agreement, the Danish Supreme Court found that Deutz AG and Diesel Motor Nordic sought absolute territorial protection of Diesel Motor Nordic's exclusive territory. Therefore, the Danish Supreme Court ruled that the agreement was a restriction by object.

Thus, the Danish Supreme Court upheld the Danish Maritime and Commercial Court's judgment and ruled that Deutz AG and Diesel Motor Nordic had infringed Danish and European competition law. Both companies violated the prohibition on anti-competitive agreements and, in addition, Deutz AG abused its dominant position by refusing to supply spare parts.

The case has now been handed over to the Danish prosecutor for criminal prosecution, where the companies are at risk of being fined.

## Commentary

The judgement confirms that a market can be defined very narrowly if spare parts can only be sourced from the original engine manufacturer. This obviously leads to the establishment of high market shares, which triggers the application of the rules on abuse of dominance.

Furthermore, the judgment confirms that the vertical block exemption regulation does not exempt agreements restricting passive sales and parallel trade.

Read the case [here](#).