

THE DANISH COMPETITION AND CONSUMER AUTHORITY ISSUES A DKK. 3.6M FINE FOR INFRINGEMENT OF THE DANISH COMPETITION ACT

Introduction

An international distributor of cameras and optic equipment (the "Company") has agreed to pay a fine of DKK 3.6m (EUR 484,000) for infringement of the Danish Competition Act by using a so-called kickback pricing system.

The Case in brief

During an inspection at the premises of the Company, the Danish Competition and Consumer Authority became aware that the Company had used a so-called kickback pricing system. The objective of the system was to ensure that the resellers did not sell certain camera models at a lower price than the price determined by the Company. The system worked in such a way that the employees of the Company making deals with a number of resellers, on which the resellers profit, depended on the price at which the cameras were sold. The Company paid a cash amount in return to the resellers if they were able to document that the cameras were sold at no less than the price determined by the company.

The use of the kickback pricing system continued for a period of approximately two years until 1 March 2013.

The Infringement

In accordance with the Danish Competition Act, companies are not allowed to enter into agreements which are directly or indirectly intended to limit competition. Anti-competitive agreements may consist in determining sales prices or by determining resale price maintenance. In addition, there is a ban against agreements obligating any company's trading partners to not deviate from the recommended resale prices.

In March 2013, the Danish Competition Act was amended so that the penalties for infringements of the Danish Competition Act were increased substantially. That included new guidelines on the assessment of fines. In accordance with the explanatory notes of the Danish Competition Act, the basic penalty amount for a serious infringement of the Danish Competition Act should be in the amounts of DKK 4m and up to DKK 20m. Any infringement of a duration of one to five years results in an increase of up to

50% of the basic penalty amount. Furthermore the company's turnover is to be taken in to account when determining the amount of the fine.

In the present case, the Danish Competition and Consumer Authority found that the Company were to be fined DKK 3.6m for using the kick back pricing system, which in the assessment of the Danish Competition and Consumer Authority was comparable to agreements regarding resale price maintenance due to the effect of the system.

In determining the amount of the fine, the Danish Competition and Consumer Authority took into account the gravity and the duration of the infringement as well as the Company's turnover. Agreements regarding resale price maintenance are generally considered to be serious infringements which, in principle, are fined in the order of DKK 4m-20m. The fact that the Company collaborated with the Danish Competition and Consumer Authority has presumably constituted mitigating circumstances.

Our Comments

The decision illustrates that the level of fines still follows the significantly higher level stipulated in 2013. Furthermore, the decision confirms the matters to which the Danish Competition and Consumer Authority attaches significance when fixing penalties for infringement of the Danish Competition Act, and the decision underlines the importance of collaborating with the Danish Competition and Consumer Authority in the event of infringement.

Any company is generally liable for the actions of its employees and can be made criminally liable for measures taken by the company's employees. Consequently, infringements of the Danish Competition Act can have serious consequences for a company.

It is our recommendation that the management of any company continuously ensures that employees responsible for the company's sales and sales work are aware of the content of these rules.

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