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New Decision on Restrictive Trade Agreements

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Introduction

30 December 2020, the City Court of Roskilde issued a DKK 400,000 fine to a Danish company as well a DKK 100,000 fine to a managing employee of the company for having entered into a restrictive trade agreement with a competitor. The decision demonstrates that making restrictive trade agreements constitutes a high reputational and financial risk for both companies and the individual members of the management.

Two Danish companies (in the following "COMPETITOR 1" and "COMPETITOR 2" and jointly the "Parties"), both active on the refrigeration engineering market and thus considered competitors, entered into an agreement on 29 November 2019, according to which the Parties agreed to act as subcontractors to each other and to mutually keep away from each other's customers. Specifically, COMPETITOR 1 accepted not to undertake any jobs for Super Køl A/S, and COMPETITOR 2 accepted not to undertake any jobs for Knudsen Køling A/S.

It was revealed during the case that the collaboration arose as COMPETITOR 1 needed employees and COMPETITOR 2 needed jobs. Therefore, the Parties agreed that COMPETITOR 2 should assist COMPETITOR 1 with a specific assignment for Knudsen Køling A/S. As a condition for COMPETITOR 1 engaging with COMPETITOR 2, however, COMPETITOR 1 required COMPETITOR 2 to enter into an agreement, according to which the Parties undertook a mutual obligation not to approach each other's customers, including Super Køl A/S og Knudsen Køling A/S, respectively.

The agreement came into force 23 November 2016 and was terminated by COMPETITOR 2 on 20 February 2017, in that after having discussed the matter with the Danish Competition and Consumer Authority COMPETITOR 2 became aware that the agreement constituted a breach of the Danish Competition Act, Sections 23(1) and 6(1).

The City Court stated that COMPETITOR 1 and the managing director of COMPETITOR 1 had been aware that the agreement did in fact imply a share and split of the market that could disrupt the free competition on the market. Accordingly, it was concluded that the agreement constituted a violation of the Danish Competition Act, Section 6.

On this basis, COMPETITOR 1 was fined DKK 400,000 in pursuance of the Danish Competition Act, Section 23(1), cf. Section 6(1). Further, the managing director was fined DKK 100,000 in pursuance of the Danish Competition Act, Section 23(1), cf. Section 6(1).

The court took into consideration that the agreement was entered into between competitors; that it was limiting the competition on the relevant market, which is considered as a serious breach of competition law; and that the agreement contained an agreed penalty in case one of the Parties engaged with a restricted customer. The court also took into consideration the turnover of COMPETITOR 1 and the fact that COMPETITOR 1 had been the leading party in entering into this agreement.

The ruling from the City Court confirms yet again that the court follows higher level of fine than previously, and that violations of the Competition Act can have significant financial consequences for the company as well as for the individuals involved in such violations.

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Agreements regarding the sharing of customers and markets are generally considered to be a serious violation of the Competition Act. There is no requirement for the Danish Competition and Consumer Authority to demonstrate the effect on competition. It is our recommendation that the company's managers constantly ensure that employees who are responsible for the company's sales and sales work are familiar with the content of these rules at all times.

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If you have any questions or require further information regarding any of the above, please do not hesitate to contact us:

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