

Summary of Commission Decision
of 2 October 2017
relating to a proceeding under Article 102 of the Treaty on the Functioning of the European Union
(Case AT.39813 — Baltic Rail)
(notified under document number C(2017) 6544)
(Only the English text is authentic)
(2017/C 383/08)

On 2 October 2017, the Commission adopted a decision relating to a proceeding under Article 102 of the Treaty on the Functioning of the European Union. In accordance with the provisions of Article 30 of Council Regulation (EC) No 1/2003 ⁽¹⁾, the Commission herewith publishes the names of the parties and the main content of the decision, including any penalties imposed, having regard to the legitimate interest of undertakings in the protection of their business secrets. The non-confidential version of the decision will be published in English on the website of the Directorate-General for Competition at: http://ec.europa.eu/competition/index_en.html

1. Introduction

1. The Commission found that the state-owned Lithuanian rail company, AB Lietuvos geležinkeliai ('LG'), abused its dominant position as the rail infrastructure manager in Lithuania by removing a track leading from Lithuania to the border with Latvia thus preventing a competing rail undertaking from Latvia to enter the Lithuanian market. The Commission imposed a fine on LG and ordered it to bring the infringement to an end.

2. Procedure

2. On 14 July 2010, the Commission received a complaint under Article 7 of Regulation (EC) No 1/2003 lodged by AB ORLEN Lietuva ('OL') against LG.
3. Between 8 and 10 March 2011, the Commission carried out inspections under Article 20(4) of Regulation (EC) No 1/2003 at the premises of LG.
4. On 6 March 2013, the Commission decided to initiate proceedings against LG within the meaning of Article 2(1) of Commission Regulation (EC) No 773/2004 ⁽²⁾ and Article 11(6) of Regulation (EC) No 1/2003.
5. On 5 January 2015, the Commission adopted a Statement of Objections against LG. The oral hearing took place on 27 May 2015.
6. On 23 October 2015 the Commission sent a Letter of Facts to LG to which it responded on 2 December 2015.

3. Facts

7. LG has a legal monopoly on the management of rail infrastructure in Lithuania.
8. The complainant, OL, owns a refinery in Lithuania near the border with Latvia. OL is dependent on rail for the transportation of its products from the refinery. The larger part of its production is transported to the Lithuanian seaport of Klaipėda for seaborne export. OL is an important customer of LG.
9. In 2008 OL was examining the possibility of switching to the Latvian seaports using the services of the Latvian rail company ('LDZ'). For that purpose OL's cargo would have been transported to Latvia on a 34 kilometre route from the refinery to the border. In September 2008 LG suspended traffic on a 19 kilometre section of the route ('Track') due to an alleged deformation on 40 metres ('Deformation'). In October 2008 LG dismantled entirely the 19 kilometres of the Track which was not rebuilt since.

⁽¹⁾ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1). With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and 102, respectively, of the Treaty on the Functioning of the European Union.

⁽²⁾ Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the Treaty (OJ L 123, 27.4.2004, p. 18).

4. Legal assessment

10. The Commission considered that by removing the Track entirely LG has had recourse to methods different from those which condition normal competition, where: LG was aware of OL's plans to switch to the Latvian seaports using LDZ's services; the removal of the Track by LG was done in great haste without securing the necessary funds and without taking any of the normal preparatory steps for its reconstruction; the removal of the Track was contrary to standard practice; LG took steps to convince the Lithuanian government not to rebuild the Track.
11. The Commission found that the Track allowed for the shortest and cheapest route from the refinery to a seaport. Because of its proximity to Latvia and to LDZ's logistical base, this route also presented a very favourable option for LDZ to enter the Lithuanian market.
12. The removal of the Track prejudiced LDZ's competitive position vis-à-vis LG and made its entry to the Lithuanian market significantly more difficult. After the removal of the track, rail transport from the refinery to a seaport (either in Lithuania or Latvia) must pass through much longer routes in the territory of Lithuania. This would necessitate LDZ to operate far from its logistical base in Latvia and make it dependent on the infrastructure services of its competitor, LG. In these circumstances LDZ faces significant commercial risks which it is less likely to take.
13. LG justified its actions by arguing that after the Deformation occurred, the renovation of the entire Track was necessary before traffic could have been resumed. According to LG the renovation required first removing the track entirely. The Commission considered however that these explanations were inconsistent with each other, at times simply contradicting one another and unconvincing. The Commission therefore considered that LG failed to show objective justification for the removal of the Track.

5. Fines

14. In light of the gravity and duration of this ongoing infringement, the Commission imposed on LG a fine of EUR 27 873 000.

6. Remedies

15. The Commission considered that there may be several possible structural or behavioural remedies that would either restore the competitive situation that existed before the removal of the track or eliminate the disadvantages facing potential competitors on the alternative routes to the seaports.
 16. The Commission ordered LG to bring the infringement to an end and to submit to it within three months from the date of notification of the decision a proposal for measures to that effect.
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