

Press release Delphi

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Delphi wins important competition law case against the Swedish Competition Authority in the Patent and Market Court of Appeal regarding alleged refusal to deal

Delphi has represented Svenska Förpacknings- och Tidningsinsamlingen AB (FTI) in a competition law case in the Svea Court of Appeal, the Patent and Market Court of Appeal regarding an alleged refusal to deal by the Swedish Competition Authority. FTI provides a recycling system for packaging and newspapers in Sweden.

Today, the court issued its decision, in which it held that that the Swedish Competition Authority was not entitled to order FTI to withdraw its termination of the agreement with its competitor TMRresponsability AB (TMR) regarding the resale of FTI's packaging waste collection services for plastic, metal and paper to packaging manufacturers.

FTI terminated the agreement with TMR in 2016, a contract which had been in force since 2012. TMR thereafter filed a complaint to the Swedish Competition Authority and in February 2018 the Authority decided to order FTI to, under penalty of a fine, withdraw its termination of the agreement.

The Swedish Competition Authority's decision was appealed by FTI, firstly to the Stockholm District Court, the Patent and Market Court, and subsequently to the Svea Court of Appeal, the Patent and Market Court of Appeal, which now has judged in favor of FTI. The case was the first of its kind, regarding an order by the Authority, adjudicated by the Patent and Market Court of Appeal. The case concerned matters of great constitutive importance with regards to competition law in relation to alleged abuse of a dominant position concerning an alleged refusal to deal.

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The Court held that the Bronner-criteria established by the European Court of Justice shall be applied both in relation to new and existing customers. It further found that it was possible for a competitor to set up a parallel recycling system and thus there was no abuse of a dominant position as alleged by the Competition Authority. Thus, FTI has no obligation to provide TMR access to its recycling system. The Court therefore annulled the Competition Authority's decision. The Court's decision may not be appealed.

FTI has been represented by Elisabeth Eklund, Simon Arvmyren and Karin Roberts at Advokatfirman Delphi.

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