



St. Gallen, 17 April 2020

Press Release

regarding judgment B-823/2016 of 2 April 2020

Sanction imposed on Musik Hug economically viable

In the light of price agreements relating to the sale of grand and upright pianos, the Competition Commission imposed a fine on Musik Hug AG of CHF 445,000. The Federal Administrative Court judges the sanction to be proportionate and dismisses the music company's appeal.

The building surveyor's office (Hochbauamt) of the canton of Zurich intended to purchase grand and upright pianos for Zurich University of the Arts (ZHdK) in April 2012. In the context of this public tender, it discovered indications for a price agreement between the suppliers La Bottega del Pianoforte SA (in short: Bottega), Steinway & Sons and Musik Hug AG and informed the Secretariat of the Competition Commission (COMCO). The commission then initiated proceedings and finally ordered Musik Hug AG to pay a fine of CHF 445,000 for its involvement in agreements affecting competition in violation of the Cartel Act.

Musik Hug AG was not the first notifying party

The company submitted an appeal to the Federal Administrative Court (FAC) against this sanction. Musik Hug AG, in the meantime taken over by Musikpunkt Holding AG, claimed it was not in a financial position to bear the costs of any sanction and therefore the sanction should be reduced to CHF 0. The FAC points out, however, that a complete immunity from a sanction can only be granted under certain conditions – in particular in case of assisting in the investigation as the first notifying party. Although Musik Hug AG handed in a voluntary report to COMCO, this happened only after Bottega had already taken this step and therefore became entitled to benefit from the leniency arrangement. The FAC confirms this decision by COMCO and states that Musik Hug AG was rightly denied full immunity from sanctions.

It was ultimately a case of determining whether Musik Hug AG was in a financial position to bear the fine. For example, an antitrust sanction should neither lead to the bankruptcy of a company nor impair its competitiveness. As part of a proportionality test, the Court states that COMCO was aware of the financial situation of the appellant when making its decision. For example, in the course of the proceedings, it had already reduced the sanction from the original sum of CHF 1.3 million or so to CHF 445,000 as stated above due to the financial situation of Musik Hug AG.

COMCO's financial analysis is conclusive

Furthermore, the FAC states that Musik Hug AG did not specify throughout the proceedings that fines of this amount would lead to a market exit on its part. On the contrary, it made a provision of CHF 500,000 for costs arising from legal disputes. In the opinion of the Court, COMCO's financial analysis therefore is transparent and conclusive. Considering the sufficient capitalisation and predicted liquidity of Musik Hug AG at the time of the ruling in 2015, the sanction is therefore proportionate. Even the acquisition by Musikpunkt Holding AG in 2017 does not alter this.

The Federal Administrative Court therefore dismisses Musik Hug AG's appeal. A sanction under the Cartel Act is assessed on the basis of the duration and the seriousness of the unlawful conduct. However, it should also exert pressure on the company, within the limits of what it can bear financially, to refrain from future conduct violating competition law. According to the FAC, these criteria have been fulfilled. The imposed fine of CHF 445,000 raises no objections. The Court sees no reason for immunity from the sanction.

This judgment may be appealed to the Federal Supreme Court.

Contact

Rocco R. Maglio

Press secretary

+41 (0)58 465 29 86

+41 (0)79 619 04 83

medien@bvger.admin.ch

Andreas Notter

Head of communication

+41 (0)58 468 60 58

+41 (0)79 460 65 53

medien@bvger.admin.ch

About the Federal Administrative Court

Located in St. Gallen, the Federal Administrative Court (FAC) was established in 2007. With its staff of 355 employees (300.8 FTE) and its 74 judges (66.25 FTE) it is the largest federal court in Switzerland. The Federal Administrative Court has jurisdiction to hear appeals against decisions rendered by Swiss federal authorities. In specific matters, the FAC may grant review on decisions rendered by cantonal authorities. Recourse actions are also reviewed by the Court. The FAC is composed of six divisions. It renders an average of 7,500 judgments every year.