C/2025/2118

11.4.2025

Summary of Commission Decision

of 23 October 2024

relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union

(Case AT.40401 – Second-hand Rolling Stock)

(notified under document number C(2024) 7355)

(Only the English text is authentic)

(C/2025/2118)

On 23 October 2024, the Commission adopted a decision relating to a proceeding under Article 101 of the Treat 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.*

1. INTRODUCTION

(1) The Decision imposes a fine on České dráhy, a.s. ('ČD', Czechia) and Österreichische Bundesbahnen-Holding Aktiengesellschaft, ÖBB-Personenverkehr Aktiengesellschaft, and ÖBB-Technische Services-Gesellschaft mbH (collectively referred to as 'ÖBB', Austria) for infringing Article 101 TFEU.

(2) From 9 May 2012 to 21 January 2016, ÖBB and ČD (together 'the Parties') took part in an agreement and/or concerted practice aimed at impeding the market entry or expansion of their common competitor RegioJet a.s. ('RegioJet', Czechia) in the markets for the provision of domestic long-distance rail passenger transport services in Czechia as well as for the provision of international long-distance rail passenger transport services between Austria and Czechia on the Prague - Vienna route by preventing, hindering or restricting the access of RegioJet to ÖBB's used railway wagons for long-distance passenger transport.

2. CASE DESCRIPTION

2.1. Procedure

(3) Between 28 June and 1 July 2016, the Commission carried out inspections at the premises of ČD (in Prague) and of ÖBB (in Vienna).

(4) Subsequently, the Commission received an application from ÖBB for a reduction of fines under the 2006 Commission notice on immunity from fines and reduction of fines in cartel cases (the 'Leniency Notice').

(5) On 10 June 2022 the Commission adopted a Statement of Objections (SO). On 14 September 2022, ÖBB submitted its written reply to the SO. On 30 September 2022, ČD submitted its written reply to the SO. On 13 and 14 December 2022, both Parties exercised their right to be heard by participating at the Oral Hearing.

(6) The Advisory Committee on Restrictive Practices and Dominant Positions issued a favourable opinion on 18 October 2024.

[1] OJ L 1, 4.1.2003, p. 1. Regulation as amended by Regulation (EC) No 411/2004 (OJ L 68, 6.3.2004, p. 1).

2.2. **Summary of the infringement**

2.2.1. *Facts*

(7) The Decision finds that ČD and ÖBB collusively rigged sales procedures for used ÖBB railway passenger wagons to the detriment of RegioJet to distort competition on the long-distance rail passenger transport market in Czechia and on the international rail route between Prague and Vienna.

(8) The Parties' core business is the provision of rail passenger transport services in respectively Czechia and Austria as well as on international lines between the two countries, where the Parties offer joint services in cooperation (e.g., on the Prague-Vienna route). During the infringement period, RegioJet was an actual competitor of ČD in Czechia and a potential competitor of both Parties on the Prague-Vienna route.

(9) As a small new entrant with limited resources, RegioJet largely relied on used wagons for both its existing operations and potential further expansion. ÖBB represented an important source of those wagons, due to their technical compatibility with the railway networks in Austria and Czechia and the large numbers of available wagons of good quality and with modern features (air conditioning, suitability for higher speed, etc.).

(10) By agreeing to take measures to restrict RegioJet's access to ÖBB's used wagons, ČD and ÖBB pursued the broader objective of impeding the market entry or expansion of their common competitor RegioJet in the markets for the provision of domestic long-distance rail passenger transport services in Czechia as well as for the provision of international long-distance rail passenger transport services on the Prague - Vienna route.

(11) The infringement consisted of numerous anti-competitive actions that took place during the infringement period, such as:

(a) timing ÖBB's wagon sales in a way that would reduce the possibility of the wagons being sold to RegioJet;

(b) rigging wagon sales so that ČD instead of RegioJet would be able to obtain the wagons;

(c) exchanging information about the bids and degree of interest of other bidders; and

(d) in one case involving wagons that ČD was not planning to buy, agreeing on a suitable buyer (other than RegioJet).

(12) The Parties were aware that ÖBB's used wagons represented an important input for the new entrant RegioJet and that restricting RegioJet's access to ÖBB's wagons was at least capable of restricting RegioJet's expansion and therefore reducing its ability to compete with the Parties.

2.2.2. *Legal assessment*

(13) The Decision finds that the Parties' agreement and/or concerted practice constitutes a single and continuous infringement of Article 101(1) TFEU and a cartel according to point 1 of the Leniency Notice.

(14) From the content, the objectives as well as from the legal and economic context, the Decision concludes that the agreement and/or concerted practice at hand had as its object the restriction of competition pursuant to Article 101(1) TFEU.

2.3. **Remedies**

(15) The Decision applies the 2006 Fines Guidelines ([2]).

([2]) Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation 1/2003 (OJ C 210, 1.9.2006, p. 2).

2.3.1. *Basic amount of the fine*

(16) The basic amount for each Party to be fined is determined on the basis of the Value of Sales of goods or services to which the infringement relates and results from the application of a variable amount and an additional amount.

(17) For the determination of the Value of Sales, the Commission takes into account the Parties' revenues on the long-distance passenger transport markets, including both revenues from ticket sales and revenues related to Public Service Obligation contracts.

(18) The relevant geographic area to which the infringement relates consists of two parts: first, the international Prague-Vienna route, and second, the whole territory of Czechia. As to the first part of the relevant geographic area, each Party's revenue on this route is used as the basis for its respective Value of Sales. As to the second part of the relevant geographic area, ČD's revenues in Czechia are also taken as basis for the value of sales of ÖBB, each Party being attributed 50 % of ČD's revenues.

(19) For the variable amount and the additional amount, for both ÖBB and ČD a percentage of 15 % is applied respectively, due to the serious nature of the infringement.

(20) No mitigating or aggravating circumstances are considered, and no deterrence multiplier is applied.

2.3.2. *Application of the 10 % turnover limit and of the Leniency Notice*

(21) For both ÖBB and CD the fine stays well below 10 % of the worldwide turnover in 2023.

(22) In application of the Leniency Notice, the fine to be imposed on ÖBB was reduced by 45 %.

3. **CONCLUSION**

(23) For the abovementioned infringement the following fines are imposed:

(a) České dráhy, a.s.: EUR 31 940 000

(b) Österreichische Bundesbahnen-Holding Aktiengesellschaft, ÖBB Personenverkehr Aktiengesellschaft, and ÖBB-Technische Services Gesellschaft mbH, jointly and severally: EUR 16 712 000