



24.10.2012

NOTICE TO MEMBERS

Subject: Petition 0161/2012 by Patrick Maeremans (Belgian), on distortion of competition in the courier sector in Belgium

1. Summary of petition

Petitioner complains about distortion of competition in the courier sector in Belgium. Larger transport companies that work with freight vehicles have the right to excise tax refunds and receive a discount on fuel via a special fuel card because they consume large quantities. As a small, independent courier, petitioner does not have these benefits and thus, finds himself in a disadvantageous competitive position. Petitioner is of the opinion that as a result of the current regulation, there is unfair competition and he makes a case for equal rules for all categories of couriers.

2. Admissibility

Declared admissible on 8 June 2012. Information requested from Commission under Rule 202(6).

3. Commission reply, received on 24 October 2012

The taxation of energy products and electricity and in particular of diesel is subject to harmonised rules laid down in Council Directive 2003/96/EC. Article 7 of this directive allows Member States to differentiate between "commercial" and "non-commercial" use of gas oil used as propellant under certain conditions. As regards the carriage of goods, the definition of "commercial" gas oil refers to "motor vehicles or articulated vehicle combinations intended exclusively for the carriage of goods by road and with a maximum permissible gross laden weight of not less than 7.5 tonnes". According to the information available to the Commission, Belgium applies a tax reduction of about 98 EUR per 1000 litres for commercial gas oil. The Belgian legislation does not appear to be in breach of EU law.

Transporters using diesel that has benefited from such reduction for the operation of motor vehicles that do not meet the said criteria infringe the national legislation adopted by Belgium in line with the Directive. In case such practices come to his attention, the petitioner should inform the competent Belgian authorities who are responsible for the control of the correct application of the national legislation.

Regarding the pricing policy of fuel suppliers, EU competition law does not generally prevent suppliers from applying to purchasers of larger volumes lower prices than to purchasers of smaller volumes. The sale of large volumes is likely to generate economies of scale, in which case even suppliers that have a dominant position on the market may resort to corresponding reductions. In the absence of more precise indications, the behaviour that the petitioner mentioned does not seem to fall within the scope of Article 101 or Article 102 TFEU.

Conclusion

The Commission finds that the differentiation made by the Belgian authorities between commercial and non-commercial use of gas oil used as propellant does not appear to violate EU law. The Commission also finds that, where fuel purchasers acquiring higher volumes enjoy lower prices than acquirers of smaller volumes, this is not in and of itself in breach of EU competition law.