

Huge damages settlement following landmark abuse of dominance decision

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On January 30 2019, the Danish Competition Council (the "**DCC**") found that ambulance services provider, Falck, had abused its dominant position under Article 102 TFEU. The DCC held that following a failed tender bid to the Region of Southern Denmark, the company devised a comprehensive internal and external communications' strategy to make it difficult for the winning bidder, BIOS, to effectively take over the ambulance services it had won ahead of Falck. Falck's behavior, according to the DCC, served to generate uncertainty and concern among all stakeholders about BIOS' ability to carry out the critical ambulance services and to effectively prevent BIOS from recruiting the necessary number of paramedics that were a scarce resource.

, the decision provides significant and novel elements in relation to the test to be applied on when denigration of a competitor is abusive under Article 102 TFEU.

Now, less than 5 months after the decision, Falck has settled with the injured parties.

€20 million to a range of claimants

According to its [press release](#), Falck has agreed to pay a total of DKK 152,5 million (approx. €20 million) in compensation to injured parties comprising the bankruptcy estate of BIOS Denmark, the Dutch owners of BIOS, Rabobank, and the Region of Southern Denmark.

(translated from Danish):

"For the Region of Southern Denmark, the settlement means that a large part of the Region's monetary claims are being covered through compensation from Falck. The Region of Southern Denmark has made a claim towards Falck of approximately DKK 120 million [approx. €16 million] which includes the salary claims for the employees that were transferred to the Region.

With the total monetary compensation, the Region can cover a substantial amount of the salary claims as well as other expenses that the Region has incurred in connection with the ambulance case and the bankruptcy [of BIOS Denmark]. In all, the Region of Southern Denmark is being compensated for just under three quarters of its expenses."

Further, potential exposure for Falck

accompanying the decision, the DCC said that it would be referring the case to the State Prosecutor for Serious Economic and International Crime, which may lead to the imposition of fines. This referral to the prosecutor was subject to the outcome of an appeal on the substantive decision. Falck ultimately decided, however, not to appeal the decision.