

History of the case of FAKRO in the European Commission

Danish Velux company had a monopoly position in the roof window sector for at least 50 years. It took us several years to gain a considerable market share, position number two worldwide and the leading position in many countries, which has not been achieved so far by any other company in the world. Despite this fact, our main competitor has a huge, over twenty times greater capital advantage and another massive advantage thanks to economies of scale. This great capital is dedicated not only to the development and improvement of products, but also to get rid of us from the market. Such actions are legally forbidden in the European Union for companies having dominant position. But as you can see, big capital, strong lobbying of the Danish government and the current Commissioner for Competition who comes from Denmark tolerate a violation of law in this case.

For the first time, the European Commission examined the case of FAKRO at the request of the Polish Office of Competition and Consumer Protection in 2012 and we had no right of access to case records at that time. The Commission closed the case without justification, therefore we could not even appeal against this decision. For that reason we have filed a second official complaint to have the right to appeal to the European Court of Justice. Today, after the European Commission has not dealt with this case, we will definitely use this opportunity.

FAKRO collected and submitted more than 600 pages of the complaint itself, including supplements and 8 binders with specific evidence, indicating the abuse of a dominant position by Velux. We have thoroughly investigated all similar cases that the Commission has dealt with in the past. In these cases, the Commission unequivocally punished the guilty party and banned further use of unfair practices. All the more we are strongly disappointed that other standards apply to complaints from Polish companies.

This case is not only about FAKRO, but about equal chances of competing for all countries and economies from Central and Eastern Europe. The fact that the European Commission does not deal with this and similar cases confirms the existence of a systemic problem which has been widely described in the report developed by Polityka Insight entitled “ *(Un)Fair competition. Does EU competition law favour certain countries?* ” (more at www.pomysloprzyszlosci.org). Our example shows that EU competition law serves the richest EU countries. If such countries as Poland want to develop, there must be drastic changes in the area of equal opportunities for competing between entities coming from the new and old EU countries.

As long as the European Commission kept this case, we could not appeal to the Court of Justice or submit complaints in individual EU countries, but the current decision of the European Commission gives us opportunities to act more widely and we will certainly do so.