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Overview

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Act on Significant Market Power in the Sale of Agricultural and Food Products and Abuse thereof

Renewed controversy surrounding the implications of the Act on Significant Market Power in the Sale of Agricultural and Food Products and Abuse thereof (the Act) arose during the last year. Debate rages about how significant market power affects vertical relations along the food supply chain and whether they are particular enough to merit singling out by targeted legislation.

In October 2013, the Czech Office for the Protection of Competition (the Office) imposed on Kaufland, the second-largest food retailer in the Czech Republic, the first substantive fine under the 2010 Act on Significant Market Power for the Sale of Agricultural and Food Products and the Abuse thereof. The 22.6 million koruna fine is large by the Office's standards even though it represents less than 0.5 per cent of Kaufland's turnover, relative to a maximum of 10 per cent under the Act. The Act, which aims to protect agricultural producers' and small suppliers' bargaining position relative to the large retailers, has been the subject of considerable controversy and the Office's first substantive enforcement action signals an important, and perhaps unexpected, shift in stance. The Office's 260-paragraph detailed reasoned Decision certainly merits close scrutiny by anyone involved in the Czech food supply chain and may well form the basis for private actions for damages in the near future.

Merger control

In June, the Office imposed structural remedies in the concentration between retail chains Ahold and Spar and real estate firm Imobilia after finding that the two retail chains possessed significantly greater than 40 per cent market share in some of the relevant markets where they operated. The agreed conditions included commitments to sell several stores in four regions where the Office considers that the merging undertakings are subject to low competition pressure from competitors holding significantly lower market shares or number of stores. Interestingly, the Office also looked at possible concerns related to merging parties' increase in purchasing power. The Office concluded that no substantial lessening of competition would occur at this level due to significant competition from wholesalers such as cash and carry's.

Antitrust

Also in June, the Office fined the Chamber of Veterinarians for including provisions in its Professional Code that significantly restricted competition among its members in the relevant market of veterinary medical and preventive activities. The four offending provisions were:

- to allow veterinarians to offer surgeries, unless previously requested by a breeder, that would be likely to have a 'market sharing' effect;
- not permit the participation of veterinarians in award procedures, which would lead to a decrease of price competition among veterinarians; and
- two other anti-competitive provisions to further prevent mutual competition for customers.

These anti-competitive provisions were assessed as forbidden and invalid, and their implementation was prohibited. The Office imposed a fine of 0.5 million koruna for the competition infringement. However, as the Chamber confessed its conduct, the Office used the settlement procedure and the fine was decreased by 20 per cent to a final amount of 399,600 koruna.

Challenges

The Czech Office for the Protection of Competition continued its good record of its Decisions emerging mostly unscathed from appellant courts. In one recent case, the market definition adopted by the office was challenged. The Office had conducted an involved assessment of market boundaries using econometric techniques. In September 2013, the Supreme Administrative Court upheld the Office's 5.15 million koruna fine to Student Agency in 2011 for abuse of dominant position in the form of predatory pricing. The relevant market that was upheld was the market of public passenger bus transportation on the Prague–Brno bus.

In December 2013, the Office's fine of 802,000 koruna on pet food distributor CANDY was confirmed at the second instance. Pet food was distributed by online direct sales to end consumers, through retailers and by wholesale dealers – its registered distributors. CANDY breached the Act on the Protection of Competition by concluding prohibited agreements on resale price maintenance (minimum level of prices was set) with its distributors and online sellers in the period of January 2010 – September 2012. The Office further assessed that the conduct of CANDY had a negative impact on competition and on end consumers as during the investigated period the price level of pet food was increased (in several cases by more than 20 per cent) and the number of e-shops selling CANDY's products decreased.

A possible future case

It has been reported in the media that Vodafone's wireless operations in the Czech Republic have filed an antitrust complaint regarding a network sharing deal inked between two of its largest rivals, but the Competition Office has not formerly announced an investigation of these claims. Telefonica O2 and T-Mobile's 4G LTE agreement will allegedly allow access to each other's networks across the nation by the end of the year, except in Prague and Brno. Vodafone decried the partnership that left the company to develop its own 4G network alone. The Office, if called upon to rule on this matter, will have to assess whether the network sharing agreement might have an effect of harming competition.

Other

One of the year's highlights for the competition law and economics communities in the Czech Republic was the St Martin Conference, held in November. This year's programme included panels on private enforcement and recodification, resale price maintenance, petrol and motor fuel markets, and bid rigging.

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Paula Ramada is a partner at London Economics in charge of competition.

Paula leads the firm's engagements with international law firms, providing assistance in assessing and quantifying cartel damages. These cases reflect the emerging trend for private actions following on from European Commission cartel decisions. The work that Paula leads at London Economics is at the forefront of this challenging and growing area of applied economics. London Economics' engagements have included the following cartels: *Marine Hoses*; *Elevators and Escalators*; *Gas Insulated Switchgears*; *Car Glass*; and *Air Cargo*. Paula has also worked with the financial services area of LE to develop a methodology to assess damages in the *Libor* and *Euribor* rate-setting cases.

Paula's other antitrust work has considered issues of market definition, joint dominance and abuse of dominance in a wide range of sectors including water, electricity, telecoms and financial sector. Paula has also led a number of studies on the economic impact of hard-core cartels and on the relative effectiveness of different penalty regimes.

Paula has, on three different occasions, worked on secondment at the UK Competition Commission, where she was the lead economist in two merger investigations, and in the first appeal to the Competition Commission under the rules of the gas market Uniform Network Code.

Prior to joining London Economics, Paula was a visiting professor at London Business School and, before that, an assistant professor of economics at Northwestern University in the United States. Paula completed her PhD in economics at MIT, specialising in microeconomics and finance.

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London Economics is a leading European economics consultancy specialising in all aspects of competition work, including antitrust, merger review, dominance, litigation support, state aid, intellectual property, damages estimation and regulatory economics. Based in London, London Economics also has offices in Cardiff, Dublin, Brussels and Budapest, and associated offices in Paris and Valetta. London Economics is part of the Indecon International Economic Consultancy Group (headquartered in Dublin).

Ever since its formation in 1986, London Economics has worked with a range of national competition authorities, legal practices and other clients in over 80 countries. Recent assignments have included advising the European Commission's Competition Directorate, as well as national competition authorities, regulatory authorities and the private sector in the UK, continental Europe, Hong Kong and Malta.

Based on a thorough understanding of the economic forces driving markets, industries and company decision-making processes within specific institutional, legal and regulatory environments, London Economics brings the powerful tools of economic and econometric analysis to bear on problems faced by companies, competition bodies, regulators and policy makers in a rigorous and practical way that is focused on the needs of the client. London Economics is strengthening its presence in the New Member States and Accession States of the EU and aims to continue providing clients with high quality expert assistance in competition and state aid cases, regulatory issues, and contractual and trade disputes as the demand for economics-based advice continues to increase.

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