

CEE: Competition Monthly Bulletin – September/October 2020

Stay informed about the latest developments in competition law in Central and Eastern Europe with Schönherr's multi-jurisdictional newsletter. Each issue offers insight into developments in merger control, anti-trust, as well as public and private enforcement in the region.



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Austria

Merger Control | Austria's cartel court has dismissed the request to rule on a dispute between media groups concerning voting rights

- ▶ The dispute is about how to interpret the agreements and consequent voting rights of German media group Funke WAZ in Austria's Krone-Verlag. Based on its interpretation, which would mean that it has sole control, Funke notified the acquisition to competition authorities earlier this year. Given the concentrated market, the competition authority sent the case to the cartel court for an in-depth review, finding that the deal raised complex questions, as business contracts between the parties were pending clarification processes before multiple courts.
- ▶ The court now said that it is not competent to hear disputes over voting rights. The dispute concerning shareholdings and voting rights is to be decided by the various pending court proceedings and the cartel court has no jurisdiction over it.

Abuse of dominance | Cartel court rejected claim against national broadcaster

- ▶ The cartel court reject the abuse of dominance claim by satellite television portal operator M7 Group against Österreichischer Rundfunk (ORF) and Österreichischer Rundfunksender (ORS), concerning a signal transmission fee dispute.
- ▶ M7 Group, which offers a platform in Austria that can be used for streaming satellite television programmes and offers packages, asked the court to order ORF and ORS to keep transmitting the applicant's encryption signal with the ORF image/audio signal and to offer necessary technical services. It also asked the court to prohibit ORF from charging a fee for transmission services higher than that set by the cartel court.
- ▶ Back in 2015 M7 Group made a deal with ORF and ORS that would allow customers to receive ORF HD channels with the appropriate satellite equipment. This contract was terminated in 2018 with effect from March 2019 and the parties then started discussing a new contract. But this contract would have included a new additional variable fee per customer per year, that would increase the previous fee.
- ▶ In February 2019 the parties reached an agreement before the court, fixing the conditions of the simulcrypt pact as of April 2019. This agreement also provided for the companies to obtain a court ruling on the disputed amount of the fee and then to reach an immediate agreement. But neither party initiated a procedure before the Vienna Commercial Court to set a fee until now.
- ▶ The case has the reference number 27 Kt 3/19x M7 Group S.A. v Österreichischer Rundfunk and Österreichischer Rundfunksender GmbH & Co KG before the Oberlandesgericht Wien.

Bulgaria

Merger control | CEZ's acquisition approved after reassessment of prohibition

- ▶ In a July 2020 decision, the Administrative Court of Sofia repealed a decision of the Commission for the Protection of Competition (the "CPC") by which the Bulgarian competition regulator prohibited the sale of CEZ's assets. Following the Supreme Court's decision, in August 2020 the CPCP reopened its in-depth review of the sale of CEZ's Bulgarian assets to Eurohold.

- ▶ Based on the collected data in the course of the in-depth investigation, the CPC concluded that in this case the merging of two large economic groups operating in the electricity and insurance sectors does not create or strengthen a dominant position of the affected markets in which the parties operate. This time the CPC unconditionally cleared the transaction. The CPC decision can be appealed within 14 days, starting from 30 October.

Abuse of dominance | CPC fined Kaufland BGN 343,000 for abuse of stronger bargaining position

- ▶ The CPC fined Kaufland Bulgaria BGN 343,417 (approx. EUR 175,000) for abuse of a stronger bargaining position. The file is at the request of the producer of alcohol "Keti-94" Ltd. - Plovdiv. The amount is 7 % of the net revenues of the retail chain from the sale of the products subject to the violation for 2019.
- ▶ This is the second case of the antitrust authority on the same matter from the same applicant. The CPC already ruled on it in 2016 and imposed a BGN 157,981 fine on Kaufland. The new proceedings are due to a decision of March 2019 of the Supreme Administrative Court, which annulled the 2016 decision of the CPC and returned the file to the commission to rule in accordance with the instructions given in the reasons. The Supreme Administrative Court reasoned the repeal by pointing to the lack of sufficient analysis by the CPC to apply the institute of stronger bargaining position.
- ▶ In its second review of the case the CPC reconfirmed its previous findings that Keti-94 Ltd. - Plovdiv was heavily dependent on Kaufland, since most of its revenues were generated through Kaufland's stores, but did not cover production and sales costs and made a loss. The CPC also established that by abusing its stronger bargaining position, Kaufland also violated the interests of consumers.
- ▶ The decision is subject to appeal before the Administrative Court – Sofia region within 14 days of its notification to the parties.

Czech Republic

Antitrust | Agency fines DIY garden equipment company for RPM

- ▶ According to the Czech Office for Protection of Competition (UOHS), the DIY company V-Garden was fined CZK 7.69m (EUR 0.29m) for resale price maintenance (RPM), as it asked resellers to sell garden equipment and garden machinery to end users for set prices between August 2017 and September 2019.
- ▶ Most sellers agreed to the conditions and increased their prices, as they needed to be higher than the wholesale prices.
- ▶ The RPM resulted in a distortion in competition in the garden equipment sector, as retailers could not set their own prices to compete with other retailers, ultimately to the detriment of consumers.
- ▶ Furthermore, the UOHS forbade all pricing agreements between V-Garden and its contractors and ordered the company to inform them that the agreements are illegal and invalid.

Merger control | Supreme Administrative Court backed Agency's gun-jumping decision

- ▶ In 2017, the Agency imposed a fine of CZK 4.9m (approx. EUR 188,000) on ARMEX Oil for implementing the merger with TRANSCARGO without prior notification to the Agency and obtaining the clearance decision. In June 2019, the Regional Court in Brno described the fine imposed as "disproportionate and inconsistent with the general idea of the adequacy and fairness of the sanction" and reduced it to CZK 1m (approx. CZK 38,000).

- ▶ The Supreme Administrative Court (SAC) has now rejected the conclusions of the Regional Court and has unequivocally stood for the imposition of a fine in the original amount. The SAC reminded that the fine was imposed at the level of 0.3 % of the maximum possible amount and the Regional Court completely omitted the fact that fines for anti-competitive behaviour are based on "the turnover criterion, i.e. the economic strength of the competitor, which is a very important aspect of proportionality and the resulting fairness of the fine". According to the SAC "a fine that does not hurt does not make sense".

Guidance | Agency's binding statement related to the second COVID-19 wave

- ▶ In a binding statement (similar to the one issued in May 2020) the Agency provided information on how it will proceed in dealing with requests for assessment of intended cooperation between competitors in the wake of the COVID-19 pandemic:
- ▶ The Agency recognises the necessity of cooperation between competitors in order to secure certain types of goods or services due to the unprecedented COVID-19 pandemic. Therefore, the society's interest in certain cooperation between competitors (which would be regarded as distorting competition under usual circumstances) for a limited period of time may outweigh the interest in protecting the liberal market environment. The agreements under which such cooperation will take place will not be considered prohibited agreements within the meaning of Article 101 TFEU (and the national equivalent), as long as they restrict competition as little as possible, enabling their intended objective to be ensured.
- ▶ The Agency also pointed out that where the object or effect of the cooperation between competitors is to distort competition, it is exempted from the cartel prohibition only if (i) it contributes to the improvement of the production or distribution of goods (or to the promotion of technical or economic development) and reserves a fair share of the benefits to consumers, (ii) it does not impose restrictions on competitors which are not necessary to achieve its objectives, (iii) it does not allow competitors to eliminate competition on a substantial part of the market for goods whose supply or purchase is the subject of the cooperation.
- ▶ The Agency is willing to assess until March 2021 whether the envisaged cooperation is indeed necessary to ensure the goods and services affected by the COVID-19 crisis and therefore cannot be regarded as anti-competitive. It also gives instructions on the content of such requests. The Agency warns that its binding statement should not be interpreted as a block-exemption and clarifies that the statement does not concern one-sided (abusive) behaviour of undertakings.

Hungary

Antitrust | Marketing firms investigated over market sharing

- ▶ The Hungarian Competition Authority ([HCA](#)) has opened proceedings against two marketing firms over suspected market-sharing. Star Network and 4KIDS are accused of sharing customers and exchanging sensitive information.
- ▶ Both companies offer online content management, including YouTube campaigns and influencer marketing.
- ▶ The HCA has six months to conduct a cartel probe, which can be extended twice if necessary, by a maximum of six months each time.

Unfair competition | TikTok investigated over consumer protection issues

- ▶ The HCA has opened a proceeding against TikTok for potential breaches of consumer protection laws. According to the HCA, TikTok might have failed to ensure that the information consumers received regarding its data policy and efforts to moderate certain ads on the platform were not up to the standards of Hungarian law. The HCA has also raised concerns regarding the lack of Hungarian-language information on the platform.
- ▶ The HCA has three months to conduct a consumer protection proceeding, which can be extended twice if necessary, by a maximum of two months each time.

Antitrust | Cement producers investigated over potential tacit collusion and abuse of dominance

- ▶ The HCA has opened an investigation against Duna-Dráva Cement Kft., LAFARGE Cement Magyarország Kft. and CRH Magyarország Kft. for potential collusion and abuse of dominance on the Hungarian cement market.
- ▶ According to the HCA, the delivery terms and prices of the players have shown significant similarities on the oligopolistic cement market in the last few years.
- ▶ The HCA has six months to conduct a probe, which can be extended twice if necessary, by a maximum of six months each time.

Unfair competition | HCA imposes obligations on Hungarian digital accommodation booking platform Szallas.hu

- ▶ The HCA established that messages designed to prompt consumers to use the services of Szallas.hu constitute a form of unlawful commercial practice. The psychological pressure asserted by these messages is an aggressive tool which harms the decision-making process of the consumers.
- ▶ Szallas.hu has acknowledged that the behaviour was unlawful and ceased its practices. This allowed the HCA to refrain from imposing a fine. Instead, the HCA imposed comprehensive compliance obligations on Szallas.hu, among others including a consumer education programme.
- ▶ The decision is similar to the HCA's recent booking.com decision, in which the Dutch undertaking received a significant fine (HUF 2.5bln, approx. EUR 7m) for its practices.

Antitrust | Top court confirms bid-rigging fines imposed on solar power firms

- ▶ After the HCA fined five solar power companies – Alter Energetikai Iroda Tudományos Szolgáltató Bt., Megújuló Energiapark Kutatóközpont Kft., Új Irány Energetika Kft., LKM.HU Service Kft. and Havrilla-Ép Építőipari Szolgáltató Kft (Havrilla) – HUF 81m (EUR 250,000) for manipulating bids in tenders for the implementation of solar power systems in April 2019, the country's top court, the Kúria, now confirmed total fines of HUF 37.22m (EUR 103,000) on two companies.
- ▶ Pursuant to the HCA, the companies had allocated 26 tenders as part of a Ministry of National Development programme in which companies and local governments could ask for EU money for energy developments.
- ▶ Maximum fines were imposed on the companies, but Havrilla received a 30 % penalty reduction, as it participated in the settlement procedure.

- ▶ The companies argued before the Kúria that the HCA failed to demonstrate their involvement in the agreement and that not enough evidence was brought forward to show that the agreement was supposed to help one company win the tender and market sharing. Referring to the presumption of innocence, the companies also said that the agency should have shown precise and consistent evidence of the infringement and that the decision also lacked an analysis of the effects of the cartel.
- ▶ In order to support the infringement findings, the HCA referred to the circumstances in which the bids were submitted, documents found on the appellant's server, e-mails, statements made by the parties and bidders, and statements by Havrilla, which all supported the agency's findings. The anti-competitive agreements were supported by enough evidence to form a logical chain.
- ▶ Furthermore, when criticising the agency's evidence the two companies failed to refute the infringement findings with concrete facts.

Merger control | Investigation into media merger abandoned after the parties abandon deal

- ▶ The HCA dropped its investigation into the proposed merger between Magyar RTL Televízió (M-RTL) and Central Digitális Média (CDM) after the parties decided to abandon the deal.
- ▶ As part of the deal, M-RTL would have acquired a 30 % controlling stake in CDM, which is active in the publishing of online magazines and news websites.
- ▶ Back in 2017 Hungary's Media and Communications Authority, the NMHH, refused to approve the deal. Since the parties could not obtain the approval of the NMHH, the HCA was obliged to block the merger in Phase II.
- ▶ This decision was then appealed, but the first instance court upheld the HCA's decision. Only in the second instance the Kúria annulled the HCA's decision and ordered the agency to carry out another probe.

Merger control | Hungary fines Heineken in relation to commitments

- ▶ The HCA has fined **Heineken** HUF 75m (EUR 200,000) for deviating from a 2015 commitments decision pledging to cut back on exclusive contracts, the authority announced on 21 October.
- ▶ Five years ago, the HCA closed a probe against Heineken, **Dreher** and **Borsodi** after the firms committed to reduce the amount of beer sold under exclusive agreements with bars and caterers.
- ▶ The brewers had committed to reduce the amount of beer they sell under such exclusivity terms by almost 20 % by the end of 2017. With the remedies, small, alternative breweries would have a chance to enter the previously blocked market.
- ▶ While officials confirmed in December last year that Dreher and Borsodi have both complied with the remedies, the HCA now concluded that Heineken had deviated from the methodology proposed by the brewers when making the reductions, with Heineken failing to submit the calculations and financial data necessary for the supervision of compliance in the form prescribed in the commitments decision.

Sector enquiry | HoReCa beverage supply

- ▶ The HCA has opened a sector inquiry into the HoReCa market regarding the supply of beverages over market entry barrier concerns.
- ▶ The HCA has learned that the hospitality sector is characterised by supply agreements that incentivise operators to purchase products exclusively from one supplier or from a limited number of players.

- ▶ According to the HCA, this tendency could lead to higher prices and less choice for consumers. Such agreements usually favour suppliers with a large portfolio and significant financial resources, and can hinder the entry of new, smaller players to the market. Moreover, these practices can be harmful to hospitality operators as well, since they restrict their switching options and increase their dependence, the item noted.
- ▶ Hungarian antitrust officials had previously probed the market for the supply of beer, and there is now an ongoing abuse of dominance probe into the supply of non-alcoholic beverages to the hospitality industry.

Poland

Antitrust | Agency opens antitrust investigation into e-commerce company Allegro

- ▶ The Polish Office of Competition and Consumer Protection ([UOKiK](#)) has opened a probe into e-commerce platform Allegro over potential antitrust rule breaches after it received complaints regarding Allegro's rules of cooperation with sellers.
- ▶ The UOKiK is trying to determine whether Allegro is gaining unjustified advantages at the expense of professional and incidental sellers.
- ▶ Therefore, the agency will specifically look at the conditions for charging and reimbursing fees and the rules for determining their amount.
- ▶ To determine whether prohibited clauses are being used, the UOKiK will also examine the company's actions from the consumer side.
- ▶ The investigation will examine changes to commission rules, which resulted in the commission covering the entire transaction of both the price and delivery costs paid for by the buyer.
- ▶ Those changes led to an increase in commissions charged and resulted in negative reactions from sellers as well as numerous complaints addressed to the UOKiK.
- ▶ The agency will determine whether the changes made to the payment mechanism violates competition law.
- ▶ It is also suspected that Allegro, the largest shopping platform in Poland, is trying to use this mechanism to increase the valuation of the company prior to its stock market listing.
- ▶ The agency will also examine the reimbursement rules for the collected commissions in situations where the buyer withdraws from a contract concluded through the online platform.
- ▶ Meanwhile Allegro has responded to the investigation stating that it is convinced that it will confirm the high standards of its activities. It will also fully comply with the UOKiK investigation.

Antitrust | Polish agency opens two forestry bid-rigging investigations

- ▶ Poland's competition agency has opened two bid-rigging investigations concerning public tenders for forestry services, the authority [announced](#) on 15 September.
- ▶ In one case, the Office of Competition and Consumer Protection (UOKiK) is investigating **Leśnik "T" Mariusz Czekieryło, Usługi Transportowo-Leśne "TRANS-MAR" Marek Stasiak** and **Usługi Wielobranżowe Józef Czekieryło**.

- ▶ The second case is against **Anna Włodarczyk Usługi Leśne, Ryszard Maksym Radosław Maksym Firma Usługowa** and Leśnik "T" Mariusz Czekieryło, the Polish-language item said.
- ▶ UOKiK President Tomasz Chróstny, quoted in the release, said the businesses are suspected of attempting to rig tenders launched by the Niedzwiady Forest District in Western Pomerania.
- ▶ According to Chróstny, the businesses whose bids were selected may have deliberately failed to provide necessary information, so their bids were discarded, forcing the Forest District authorities to select the next best, more expensive bid.
- ▶ The bidders may have also collaborated with each other at the bid submission phase, Chróstny said.
- ▶ According to the UOKiK, both tenders were cancelled after another, unnamed bidder, claimed the winning bidders rigged the process.

Antitrust | Polish authority fines railway sleepers producers for bid-rigging

- ▶ The Polish competition authority has fined six manufacturers of wooden railway sleepers more than PLN 13.5m (EUR 3m) for bid-rigging, the agency announced on 17 September.
- ▶ The Office of Competition and Consumer Protection (UOKiK) found that **Kolejowe Zakłady Nawierzchniowe** together with its subsidiaries **Trade-Port** and **Sleeper Treatment Plant in Czeremcha**, as well as **ThyssenKrupp GFT Polska, Track Tec** and **Sleeper Treatment Plant in Koźmin Wielkopolski**, breached competition rules.
- ▶ All the firms took part in a tender organised in 2014 and 2015 by **PKP PLK** for the supply of railway sleepers, which are wooden beams that support the rails, UOKiK said.
- ▶ The companies were the only ones in Poland who could have supplied this product to PKP, the agency added.
- ▶ The anti-competitive agreements were initiated by Track Tec and KZN Biezanów, which later persuaded other businesses to participate, the authority found.
- ▶ According to the release, the tender was divided into two tasks, and the companies agreed that ThyssenKrupp and KZN Biezanów would form a consortium and together with Track Tec would bid for both tasks, while the remaining firms would not participate in the tender.
- ▶ But the agreement was not implemented, as PKP cancelled the tender when it suspected bid-rigging, the UOKiK added.

Fines in detail:

- Track Tec from Warsaw: PLN 7.58m (EUR 1.7m)
- Kolejowe Zakłady Nawierzchniowe "Biezanów": PLN 2.95m (EUR 660,000)
- Sleeper Treatment Plant in Czeremcha: PLN 1.54m (EUR 340,000)
- Sleeper Treatment Plant in Koźmin Wielkopolski: PLN 1.31m (EUR 290,000)
- ThyssenKrupp GFT Polska: PLN 83,269 (EUR 18,600)
- TRADE-PORT from Katowice: PLN 4,484 (EUR 1,000)

Antitrust | Gazprom appeals record EUR 6.5bln billing fine

- ▶ Poland's competition agency has fined **Gazprom** and five other firms engaged in the construction of the Nord Stream 2 gas pipeline a record EUR 6.5bln for concluding agreements without the authority's consent, the agency announced on 7 October.
- ▶ Gazprom, **Engie Energy, Uniper, OMV, Shell** and **Wintershall** did not obtain the necessary approval from the Office of Competition and Consumer Protection (UOKiK) for a joint venture, but concluded a number of agreements on the financing and other authorisations for Nord Stream 2, which effectively confirmed their "significant and indispensable role in the entire project", the UOKiK said.
- ▶ Furthermore, by agreeing on a pledge on the shares of Nord Stream 2, the financing parties became "quasi" shareholders of that company. In the event of its default under the loan agreement, they would be entitled to take over the shares of the company constructing the gas pipeline. The advantages and obligations stemming from participation in the undertaking were clearly defined for all parties involved, according to the item.
- ▶ "In December 2015, when the establishment of the joint venture was first reported, the participants specified their 'intention to concentrate' that has remained a part of their plans ever since," UOKiK President Tomasz Chróstny said. "Each subsequent move was only an attempt to alter the form of their participation in the scheme. All entities were aware of the activities undertaken, as exactly the same economic operators had previously financed the establishment of the NS1 gas pipeline, enjoying the same shareholdings."
- ▶ Less than a year later, after the UOKiK raised serious concerns about the concentration, Gazprom signed agreements concerning the gas pipeline with the five European energy companies, the release said.
- ▶ According to those agreements, half of the total estimated EUR 9.5bln cost of constructing Nord Stream 2 was to be financed by those five corporations, each contributing EUR 950m, while the other half was to be covered by Gazprom.
- ▶ "The same entities which had previously applied for the approval based on the competition protection regulations in effect in Poland and failed to receive it became parties to the financing agreements," Chróstny added. "The level of their financial involvement remained similar, and the terms and conditions of financing were determined in a manner enabling them to take over the shares at a later stage of the project. All participants of the concentration scheme also share the same interest in implementing the project."
- ▶ The UOKiK found that the conduct was an attempt by the would-be shareholders of Nord Stream 2 to work around the requirement to obtain the necessary approval to establish a company financing the construction of the gas pipeline.
- ▶ "If the project were solely of a financial nature, then Gazprom could easily obtain financing from the Government of the Russian Federation or from commercial banks," Chróstny noted. "But none of the fellow participants had financial activities as their core activity; they were all competitors of Gazprom."
- ▶ "The fact that a joint venture is financed by participants of the gas market and not by financial institutions proves that all the entities involved share the same economic interests," he said.
- ▶ When evaluating the gravity of the conduct, the UOKiK found that the parties never gave up their intention to push forward with the project (they just chose another form) and that the companies involved acted knowingly.

- ▶ The completion of the project is a breach of competition rules, resulting in an increased dependence of gas recipients on Gazprom in the internal market, the agency added.
- ▶ According to the authority, such a situation could result in the introduction of territorial restrictions affecting the deliveries of natural gas and a hike in gas prices for Polish end customers. Gazprom's negotiating position as the consortium leader would also strengthen both in Poland and other EU Member States, the item added.
- ▶ The sanction imposed is an unprecedented maximum penalty of 10 % of their annual revenues, the agency said.
- ▶ UOKiK also ordered the companies to terminate all financing agreements related to Nord Stream 2 within 30 days after receiving the decision, which will reinstate the state of competition prior to the concentration, it said.
- ▶ "The launch of NS2 will threaten the continuity of natural gas supplies to Poland," Chrósty emphasised. "An increase in the price of the product is also highly likely, with the said increase being borne by Polish consumers. It also poses a threat to Europe's energy security."

Fines in detail:

- Gazprom – EUR 6.45bn (PLN 29bn)
- Engie – EUR 12.3m (PLN 55.5m)
- Uniper – EUR 6.6m (PLN 29.9m)
- OMV – EUR 19.5m (PLN 87.7m)
- Shell – EUR 6.7m (PLN 30.2m)
- Wintershall – EUR 6.8m (PLN 30.8m)

Antitrust | Gazprom appeals fine for failing to provide information in pipeline probe

- ▶ After the UOKiK fined Gazprom PLN 213m (EUR 48m) for withholding information in a probe concerning a joint venture (JV) to build and operate the Nord Stream 2 gas pipeline, the Russian gas company now announced that it appealed the fine.
- ▶ According to Gazprom's statement on 31 July, the company received the official notice from the UOKiK about the fine and appealed it on 24 August.
- ▶ Several companies tried to get approval from the UOKiK to set up a JV to build and operate Nord Stream 2, but the agency expressed concerns that the concentration could restrict competition.
- ▶ The companies were not allowed to implement the JV, as they withdrew their application.
- ▶ In May 2018 the UOKiK opened an investigation into Gazprom, Engie, Uniper, OMV, Shell and Wintershall as the agency suspected that the companies set up the JV without consent.

Antitrust | Polish agency closes marketing association probe with commitments

- ▶ Poland's competition authority ("OCCP") has closed an inquiry into the marketing association **Stowarzyszenie Komunikacji Marketingowej SAR** (SKM SAR) with commitments, the authority announced on 13 October.
- ▶ SKM SAR comprises more than 120 marketing agencies providing promotional and advertising services.
- ▶ In December 2019, the OCCP opened an investigation into whether SKM SAR encouraged branding agencies to resign from participation in specific tenders and organised exchanges of information that could restrict competition.
- ▶ Marketing agencies are often asked to submit an initial vision for a project in a tender
- ▶ The association obliged branding agencies to resign from tenders in which no remuneration was due for a creative process, such as the presentation of a poster or packaging design – the so-called "rejection fee".
- ▶ This deprived members of their independence in making decisions and limited their freedom, UOKiK President Tomasz Chróstny was quoted as saying.
- ▶ The association also initiated exchanges of information through a special electronic platform where marketing agencies posted information about which tenders they intended to take part in. If the same tender was notified by several agencies, they would be assigned a common "bidding room".
- ▶ In response to the inquiry, SKM SAR withdrew from the questioned practices and undertook to remove their effects. The association committed to several further measures within specified deadlines:
- ▶ Emphasis will be put that participating in tenders is the individual decision of each participant.
- ▶ Members, or other entities, will not be provided with tools increasing the transparency of information regarding tenders or competition procedures, beyond that resulting from publicly available sources
- ▶ In addition, none of the members of SKM SAR will be able to refer to any document of the organisation indicating the mandatory use of the rejection fee.

Merger control | Polish agency fines gas distributors for gun-jumping and information delay

- ▶ Poland's competition authority has fined liquefied gas (LPG) distributor **Amerigas Polska** PLN 730,000 (EUR 160,000) for failing to notify a takeover, the agency announced on 22 September.
- ▶ At the same time, the Office of Competition and Consumer Protection (UOKiK) imposed a PLN 120,000 (EUR 26,800) penalty on **Linde Gaz Polska** for lack of cooperation following an information request in the context of merger market research.
- ▶ Amerigas Polska took over control of **Centrum Dystrybucji Gazu** (CDG) without the consent of the UOKiK, even though it was obliged to obtain it, the release said. CDG is a Gdynia-based distributor of LPG gas in cylinders.

- ▶ The companies entered into a pledge agreement which guaranteed AmeriGas additional rights, thanks to which the company could influence key decisions regarding the management of CDG, the UOKiK said.
- ▶ Under Polish law, concluding a pledge agreement on shares does not require the consent of the UOKiK, provided that the entrepreneur does not exercise the rights attached to these shares (except for the right to sell them), according to the release.
- ▶ However, AmeriGas exercised these rights, for example by blocking the sale of an organised part of the assets of CDG, which was afterwards partially acquired by AmeriGas, the Polish-language item said.
- ▶ AmeriGas did not notify the UOKiK of the transaction and the agency learned about it from other sources, UOKiK President Tomasz Chróstny said in the release.
- ▶ The company was aware of the existence of such an obligation, because in another case it applied for regulatory consent, Chróstny continued.
- ▶ He added that, in his opinion, the company acted intentionally from the beginning, thus breaking the applicable laws protecting competition on the market.
- ▶ Chróstny said that in this case he did not find any mitigating circumstances and decided to impose a financial penalty.
- ▶ The UOKiK also stated that it fined Linde Gaz Polska PLN 120,000 for lack of cooperation after the Krakow-based industrial gas supplier did not provide information requested by the agency.
- ▶ When assessing a notified transaction on the liquid carbon dioxide market, the UOKiK decided to conduct market research and sent queries to all businesses operating in the field.
- ▶ In accordance with the law, they are obliged to provide all necessary information and documents, otherwise they face a financial sanction.
- ▶ Linde Gaz did not reply within the set deadline, however, and the reply was received by the Office two months later, the agency added.

Antitrust | Polish agency to examine practices of TV broadcasters

- ▶ Poland's competition agency will examine whether the bundled sale of TV channels by broadcasters limits competition and allows them to leverage a dominant position on the advertising market, the authority announced on 17 September.
- ▶ The Office of Competition and Consumer Protection (UOKiK) said the move is in response to numerous complaints from TV operators, who say they are forced to purchase bundled TV channels even if they are not interested in some of the content.
- ▶ The option to purchase individual channels is either unavailable or uneconomical, the UOKiK said, citing the complaints. The arrangement may mean that clients of cable TV operators and digital platforms are unable to choose the content they pay for, the Polish-language release said.
- ▶ "Many consumers, TV viewers, have a problem with access to their favourite channels; they need to buy them bundled with other channels that are of no interest to them," UOKiK President Tomasz Chróstny said. "Bundled channels may also be forced upon cable TV operators, with the cost being passed on to consumers. One of the goals of this probe is to investigate whether the cause lies at a

higher level, i.e. the way broadcasters sell channels to TV operators in order to artificially generate advertising time."

- ▶ The investigation is being launched to examine business practices rather than specific companies, the UOKiK said.
- ▶ However, if the probe shows that broadcasters are breaking the law, they will face investigation and are liable to fines equivalent to 10 % of their annual turnover, the agency added.

Romania

Antitrust | Authority fines five construction companies for collusion

- ▶ Romania's competition authority ("RCC") imposed a total fine of RON 2.23m (EUR 470,000) on five construction companies for rigging bids to upgrade the streets in the city of Pitesti.
- ▶ The implicated companies set up a consortium to submit a joint bid during a public tender for renovating five segments of streets. However, the consortium was in fact a cover for the companies' agreement not to compete against each other.
- ▶ The probe was opened in 2018, following the complaint of the contracting agency, the **Pitesti Public Real Estate Management Division**, which annulled the tender.
- ▶ **Fines in detail:**
 - Construct Steel Market – RON 165,485
 - Constructii Drumuri si Lucrari de Arta – RON 187,969
 - Comesad Drumuri – RON 865,947
 - General Trust Arges – RON 649,623
 - Selca – RON 368,066
- ▶ Constructii Drumuri si Lucrari de Arta, General Trust Arges and Selca received reductions in their fines for admitting their involvement in the cartel, the RCC noted.

Antitrust | Several companies challenge inclusion on authority's collusion blacklist

- ▶ The RCC introduced a blacklist in August listing 35 companies that were sanctioned for collusion in the last three years. This should help procurement authorities to determine whether a company is trustworthy and can participate in a tender.
- ▶ Several of the affected companies have objected to the list for legal and business reasons, for example because the RCC's decision on the behaviour is still under appeal.
- ▶ The RCC took notice of some of these objections and removed, in an updated iteration of the list, some of the companies that criticised the measure, but only for arguments relating to the fact that the sanctioning decision had been issued more than three years earlier (i.e. the "rehabilitation" term).
- ▶ There have been no court challenges against the list to date.

Antitrust | High Court backs annulment of lottery fine

- ▶ The Romanian High Court of Cassation announced that it backed the annulment of the RON 5.54m (EUR 1.23m) fine which was imposed on Intralot Integrated Lottery Systems and Services as it restricted competition in video lottery terminals (VLTs).
- ▶ This ruling confirms an earlier decision by the Bucharest Court of Appeal, which also upheld Intralot's appeal in February 2017.
- ▶ Compania Nationala Loteria Romana, Intralot Integrated Lottery Systems and Services, Intracom Holdings and Lotrom were fined by the RCC in January 2014, as they implemented non-compete clauses when operating VLTs in Romania.
- ▶ Compania Nationala Loteria Romana's challenge against the RON 9m fine imposed on it by the RCC was upheld by the Bucharest Court of Appeal in June 2020.
- ▶ The non-compete clause stipulated that between 2003 and 2013 Loteria Romana was prohibited from cooperating with other companies to develop similar or new VLT programmes while a contract with the gaming technology companies was in force.
- ▶ According to Romania's Gambling Act, Loteria Romana is the country's exclusive provider for VLT services. Due to a 1992 contract, which was renewed in 2000, Intracom, which controls Intralot and Lotrom, had been supplying and upgrading technology and terminals for Loteria since then.
- ▶ But non-compete provisions that were agreed and implemented by the VLT maker and the Romanian state lottery breached antitrust rules, as they restricted competition in the country's market for the production, sale and use of VLTs.

Comments: *The probe was initiated by the RCC in April 2012.*

Sector enquiry | Romanian agency reviewing impact of accounting, medical services HR rules

- ▶ Romania's competition authority (RCC) is assessing the antitrust impact of human resources laws requiring only professionals to own or run accounting and medical services firms that are qualified in the respective fields, the agency [announced](#) on 19 October.

The RCC will specifically question how these legal obligations may exceed the principles of proportionality and necessity and how they may hinder access to the respective markets, the Romanian-language item said.

- ▶ "It is important for us to make the difference between basic quality-of-service regulations and over-regulatory laws which upset markets and, implicitly, consumers," said RCC chairman Bogdan Chiritoiu.

Antitrust | Introduction of a 20 % overcharge presumption in private damages cases

- ▶ After the previous legislation implementing the EU Damages Directive had been declared unconstitutional in full by the Romanian Constitutional Court, Romania passed a new legislation to implement the same. This new legislation sets out a presumption of a 20 % overcharge applicable to cartel cases.
- ▶ Moreover, possible claimants can now rely on the evidence gathered by the Romanian competition authority (RCC) instead of trying to unearth evidence themselves.

- ▶ Interestingly, the implementation also includes a presumption of damage by abuses of dominance, but not including a presumption of the actual amount.
- ▶ Besides the Damages Directive, the governmental ordinance implements EU fining policies for violations of competition laws, which is part of the ECN+ Directive. More specifically, the RCC will start implementing the EU competition rule of penalising non-resident firms for competition violations up to 10 % of their global turnover.
- ▶ However, to avoid the risk of imposing disproportionate, exaggerated fines, the RCC will only gear to the worldwide turnover of 0.5 % of the non-resident firm's turnover being in Romania, before a fine is considered.
- ▶ The reason for the considerable delay in the implementation of the Damages Directive lies in constitutional challenges to amendments made to the competition law. These were ultimately dismissed by the court in September, paving the way for the implementation measures entering into effect now.

Slovenia

Antitrust | Agency investigates potential collusion among four LPG providers

- ▶ The Slovenian Competition Protection Agency initiated an investigation into a potential restrictive agreement or concerted practice among four energy companies Butan plin, d.d., INA Slovenija, d.o.o., Istrabenz plini d.o.o. and Plinarna Maribor d.o.o.
- ▶ It has reasons to believe that these companies have agreed not to accept the returns of any liquefied petroleum gas (LPG) cylinders, over which the other companies have proprietary rights, with an aim to share the market and allocate customers among themselves.
- ▶ The Agency finds it problematic that the cylinders are handed over to the consumers against payment of a refundable deposit for which the consumers are issued a deposit certificate. Upon return of the companies' cylinder, the full deposit is only refunded if the consumer presents a valid deposit certificate.
- ▶ In the Agency's view such certificates inevitably get lost, and therefore the consumers can no longer return the cylinder and get their full deposit refunded. Consequently, the Agency believes consumers may be reluctant to change their LPG provider. According to the Agency, it is likely that this was the parties' objective, which indicates the intention of market sharing.
- ▶ More details regarding potential infringements have yet to emerge and the Agency is currently asking all interested parties to forward any relevant information they may have.

Legislation | Bill to merge major regulators

- ▶ The Government has adopted a legislative proposal that would merge eight major independent regulators into two agencies. The Competition Protection Agency is one of the six agencies intended to be merged into a new agency for market and consumers alongside the Energy Agency, the Agency for Communication Networks and Services, the Traffic Safety Agency, the Civil Aviation Agency and the Agency for Railway Transport. The Agency for Insurance Supervision would together with the Securities Market Agency form a new agency for financial markets.
- ▶ The proposal has been met with strong opposition from regulators and opposition parties, mainly due to concerns that the change would substantially reduce the agencies' independence and public oversight. The EU Commission, which is closely following the planned merger, has already stressed the

importance of the independence of national regulatory authorities and said that EU law protects the mandates of the heads of such bodies, with mergers not deemed a sufficient reason for early termination.

- ▶ Equally concerning is that the regulators were not previously briefed about the bill and were not involved or consulted in the drafting process. The Competition Protection Agency already commented that the law is incompatible with Directive 1/2019 of 11 December 2018 to empower the competition authorities of the Member States to enforce the competition rules more effectively and to ensure the proper functioning of the internal market. The bill is currently being discussed in Parliament.

Serbia

Antitrust | Serbian Competition Authority opens an investigation into potential RPM practice in the consumer electronics market

- ▶ The Commission for Protection of Competition (CPC) opened an investigation and conducted dawn raids at the premises of the importers and wholesalers of consumer electronics for possible anti-competitive agreements.
- ▶ The CPC is investigating the companies Roaming Electronics, Tehnomanij, Comtrade Distribution and SF1 Coffee.
- ▶ According to Eurostat data for 2019, the prices for consumer electronics in Serbia were 13 % higher than the EU average. For some categories the prices were even 33 – 39 % higher than in Hungary, taking into account that the VAT in Serbia is lower. The CPC carried out an analysis and found that retail outlets and online shops sold consumer electronics at identical or nearly identical prices. Based on a preliminary assessment, the CPC believes that importers and wholesalers imposed price restrictions on retailers.

Merger control | Serbian Competition Authority opens a gun-jumping investigation in the pharmacy sector

- ▶ The Commission for Protection of Competition (CPC) is investigating whether Pharmacy Janković has breached the obligation to notify the acquisition of control over a pharmacy chain in the town of Zrenjanin.
- ▶ Zrenjanin granted a concession to Pharmacy Janković to finance, revitalise, manage and run pharmaceutical operations for 15 years. Through this public-private partnership, Pharmacy Janković will control pharmacies in 32 locations owned by town of Zrenjanin. The CPC will assess whether the parties breached the duty to notify this transaction.

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