

CEE: Competition Monthly Bulletin – July 2020

Stay informed about the latest developments in competition law in Central and Eastern Europe with Schoenherr'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.

Unfair Trade Practices Info Corner

To improve the position of SME in the food supply chain, the EU has adopted legislation that bans certain unfair trading practices ("UTP"). Corresponding national rules in Central and Eastern Europe are often significantly stricter than the EU counterparts, sometimes expanding the rules on unfair abuses of significant market power ("SMP") also to other industries. We help our clients navigate this patchwork and structure their contractual relationships accordingly. Should stakeholders take issue with the practices of our clients, we have significant experience in defending them before authorities and courts.

The [unfair trade practices info corner](#) on our website summarizes the main UTP acts and other acts aiming to curb the exercise of SMP, decisions, supplementing materials, as well as our insights and thoughts on this topic.

eu & competition CEE updates |
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Christoph Haid

Partner

+43 1 534 37 50119

c.haid@schoenherr.eu

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Austria

Agency filed findings of vertical pricing in musical instruments market to cartel court

- ▶ The BWB [announced](#) that it submitted its findings to the cartel court for enforcement, as it found that two musical instruments manufacturers took part in vertical price agreements with instrument retailers in online shops.
- ▶ The infringement also covered audio products, electronic instruments, related equipment and software in some cases.
- ▶ According to the BWB, the companies concluded those agreements in order to fix price levels and restrict price competition. All companies involved applied for leniency.

Supreme Court rejects abuse of dominance suit against broadcaster

- ▶ The Austrian Supreme Court dismissed an abuse of dominance suit, which was filed by an unnamed satellite services firm against a fellow broadcaster, as the judges concluded that no infringement can be established if the parties eventually reached a fair agreement.
- ▶ An EU-wide active satellite services provider sued an Austrian public broadcaster over alleged abuse of dominance, as it charged an unfair fee for satellite decoding devices. As the Austrian company held a 90 % market share for satellite platforms and decoding systems, the claimant was forced to sign an agreement, which set a fixed annual fee payable by the claimant.
- ▶ The defendant terminated the original contract in March 2019 and in the new contract it wanted nine times more for the same services, which would have made it impossible for the claimant to compete in the market efficiently
- ▶ Therefore, the company filed a suit before the Austrian cartel court, which dismissed its claims, as both companies had in the meantime concluded an agreement on a fair price, ruling out any abuse of dominance claims.
- ▶ The Supreme Court upheld this ruling, stating that no infringement of competition rules can be established in this case as the pressure applied by the claimant has already ceased.

Merger between Jacoby GM, Kwizda, Richter cleared conditionally

- ▶ The BWB engaged in a detailed analysis of the planned merger of the respective business units "blister packaging" of Jacoby GM Pharma GmbH ("Jacoby GM"), Kwizda Pharmahandel GmbH ("Kwizda") and Richter Pharma AG ("Richter") in Apotheken Blister Center GmbH ("ABC") by a contribution in kind of the business unit "re-blister packaging". At the same time, Richter acquired one-third of the shares in ABC.
- ▶ Based on the comments submitted by the market participants, competition concerns were identified, i.e.
- ▶ Foreclosure concerns by ABC cooperating with the parties exclusively.

- ▶ ABC could grant special advantages to affiliated pharmacies and thus discriminate against independent pharmacies.
- ▶ ABC could make the supply or the granting of any discounts for the supply of new drugs dependent on the purchase of other products or services from the parties.
- ▶ These concerns were addressed by commitments in lieu of an in depth investigation before the Cartel Court. A German version of the remedies can be found [here](#).

Corporate governance changed to address concerns

- ▶ In the context of a planned joint venture in 2011, a corporate governance was developed to ensure that ÖBB, Graz-Köflacher Bahn and Busbetrieb GmbH do not align their competitive behavior. These commitments are still valid. See details of the merger at that time: BWB/Z-1406.
- ▶ Now, ÖBB and LTE (whose parent company is 50 % Graz-Köflacher Bahn und Busbetrieb GmbH, which in turn is owned by the Republic of Austria) and ELL Austria are planning a new joint venture "Instandhaltungs-GmbH". This is to offer smaller workshop services for locomotives from all manufacturers on a non-discriminatory basis for all railway operators. The merger was notified to the European Commission and approved by it in mid-April 2020.
- ▶ Due to the new plan to set up a joint venture, steps were taken to ensure that the agreed commitments of 2011 would not be jeopardised by cooperation in the context of the newly established joint venture. The respective corporate governance can be found [here](#).

Bulgaria

Bulgarian regulator sanctions electricity supply companies for abuse of stronger bargaining power

- ▶ The Commission for Protection of Competition has established committed violations under Art. 37a, para. 1 of the Competition Protection Act (the "**CPA**") (abuse of a stronger negotiating position) and imposed a property sanction on CEZ Electro Bulgaria AD in the amount of BGN 4,193,758 (approx. EUR 2m), CEZ Distribution Bulgaria AD in the amount of BGN 10,000 (approx. EUR 5,000) and CEZ Bulgaria EAD in the amount of BGN 207,742 (approx. EUR 100,000). The proceedings were instituted at the request of Fast Pay HD AD with allegations of violations under Art. 37a of the CPA by CEZ Electro Bulgaria AD, CEZ Distribution Bulgaria AD and CEZ Bulgaria EAD.
- ▶ Fast Pay HD AD has contractual relations with CEZ Electro Bulgaria AD and CEZ Distribution Bulgaria AD (both acting through CEZ Bulgaria EAD) by virtue of which, Fast Pay HD AD, in its capacity of operator (contractor), undertakes to provide, against payment by CEZ, acceptance of cash payments for the supply and distribution of electricity from clients of CEZ Electro Bulgaria AD and CEZ Distribution Bulgaria AD.
- ▶ In the course of the investigation it was established that the respondent companies have terminated without cause their long-term trade relations with Fast Pay HD AD and a new contract has been concluded in which a gratuitous provision of services for administration and cash payment of electricity has been agreed (i.e. CEZ is not obliged to any remuneration and/or other payments for the accepted cash payments).
- ▶ Due to the danger of losing the legal relationship with the energy operators, the weaker party, Fast Pay HD AD, was threatened by a complete cessation of its activities and, thus, had to accept CEZ's conditions.

- ▶ The Commission views this conduct as constituting an abuse of a stronger bargaining position, which harms the interests of Fast Pay HD AD as the weaker party, as well as the interests of end users, i.e. customers of the commercial service representative.
- ▶ The CPC's decision is subject to appeal in two instances.

Bulgarian regulator opens sector analysis on the markets of production, transmission and supply of heat for household and non-household needs and of the vertically connected markets

- ▶ The Commission for Protection of Competition opens sector analysis on the markets of production, transmission and supply of heat for household and non-household needs and of the vertically connected markets. The public is now invited to submit any information and data as regards the competition in the sector.
- ▶ In its decision, by which the sector analysis was opened, the Commission pointed out that in recent years various aspects from the work of the energy sector have been investigated and analysed (including proceedings for antitrust breaches by participants on the relevant market).
- ▶ Earlier this year, the regulator also adopted a sector analysis on the competitive environment on the wholesale electricity market at freely negotiated prices in Bulgaria.

Derogation from EU competition rules for milk, potato and live plant and flower sectors

- ▶ On 4 May 2020, the European Commission announced temporary derogations from EU competition rules for the milk, potato and live plant and flower sectors. The derogations form part of the European Commission's response to the COVID-19 pandemic and aim to bring much-needed support to these sectors during the crisis.
- ▶ On 2 June 2020, the Bulgarian Commission for the Protection of Competition (CPC) published on its website information about temporary derogations from the prohibition to enter into agreements or coordinated practices among competitors in these sectors. Although the derogations are in line with EU law, the adopted measures allow farmers, farmers' associations, associations of such associations, recognised producer organisations, associations of recognised producer organisations and recognised inter-branch organisations in the relevant sector to adopt temporary measures to stabilise how these sectors function.
- ▶ The measures apply for up to six months and authorise:
 - the conclusion of agreements and the taking of common decisions on planning the volume of raw milk to be produced in the milk and milk products sector (the measures apply for six months from 1 April 2020 to 1 October 2020);
 - the conclusion of agreements concerning potatoes for processing and the taking of common decisions concerning potatoes for processing on market withdrawals and free distribution, transformation and processing, storage, joint promotion and temporary planning of production in the potatoes sector (the measures apply for six months from 5 May 2020 until 5 November 2020); and
 - the conclusion of agreements and the taking of common decisions on market withdrawals and free distribution, joint promotion and temporary planning of production in the live plants and flowers sector (the measures apply for six months from 5 May 2020 until 5 November 2020).

- ▶ The measures (i.e. agreements or decisions) are admissible upon notification to the CPC and the Ministry of Food and Agriculture (MFA). Notifications should be made immediately after the conclusion of an agreement or a decision and should set out an estimate of the volume of production covered. There is no standard form of notification and no explicit approval by the CPC or the MFA is required.
- ▶ An additional notification about the actual volume of production subject to the agreement or decision must be filed with the CPC no later than 25 days after the end of the agreement or decision period.
- ▶ The above derogation does not concern agreements or decisions that have as their object or effect share markets or sources of supply or discrimination based on nationality or price fixing.

Croatia

Competition authority opened investigations into breweries and football association over anticompetitive practices

- ▶ The Croatian Competition Authority (CCA) opened a probe into the Croatian Football Association and the breweries Pivovara Daruvar and Zagrebačka Pivovara over suspected restrictive agreements and abuse of dominance.
- ▶ The breweries are suspected of concluding contracts with their business partners that may be in breach of vertical competition rules, which are prohibited under Art. 8 of the Competition Act.
- ▶ The CCA suspects collusion and abuse of dominance in the sale of television rights for football competitions and matches by the Croatian Football Association for the period from 2022 to 2028.

Comments: *Two investigations are against Pivovara and one each against the Football Association and Zagrebačka.*

Competition authority dismissed complaint alleging discriminatory behaviour by forest management firm

- ▶ After finding no breaches of competition rules the [CCA](#) dismissed a complaint that alleged discriminatory behaviour by state-owned forest management firm Hrvatske šume through firewood contracts that it signed with cogeneration facilities.
- ▶ Following tenders in 2010, 2012, 2015, 2016 and 2019, Hrvatske šume concluded dozens of contracts with firewood buyers
- ▶ Hrvatske and the buyers committed themselves to using the wood exclusively for producing electricity and/or heat. Although the terms in the tenders changed over time, the contracts would be terminated if the exclusive use condition was breached.
- ▶ The CCA stated that many contracts were terminated but only where a party failed to submit a "certificate of occupancy" within a given period, which was a mandatory requirement under the agreement.
- ▶ The agreements concluded were in line with the existing rules on the purchase of electricity with the Croatian Electricity Market Operator (HROTE) and the tariff system for the production of electricity from renewable sources.

- ▶ According to the CCA the documents submitted did not indicate any breaches of competition rules by Hrvatske šume.
- ▶ The complainant also stated that some entities could potentially sell their surplus wood chips in the free market. But the CCA stated that this was not permitted, as a provision from 2012 requires the buyers to use the chips to produce electricity and/or heat and not to sell them in the free market.

Comments: *Last year the CCA closed a preliminary investigation into potentially anticompetitive behaviour in the country's wood processing sector.*

Czech Republic

Czech price comparison site Heureka files follow-on damage claim against Google

- ▶ Czech price comparison engine Heureka has filed a follow-on damages claim against Google before the Municipal Court in Prague seeking CZK 395m (EUR 14.8m) in damages for abuse of dominance.
- ▶ The claim relies on the 2017 European Commission decision fining Google EUR 2.42bn for abusing its dominant position as a search engine by giving an illegal advantage to its own comparison shopping service. In addition to the fine, Google was instructed to comply with "the simple principle" of applying equal treatment to rival comparison shopping services as to its own service. The General Court heard Google's appeal in February this year.

Comments: *Several Czech newspapers reported on this damage claim, citing Heureka's CEO. According to the newspapers, Heureka disputes the remedies Google has implemented as insufficient and is suing for damages incurred between 2013 and 2017. Heureka is also considering filing a complaint with the Czech Competition Authority.*

Competition Authority imposed fine on currency exchange cartel

- ▶ The Czech Competition Authority imposed fines totalling over CZK 2m (approx. EUR 78,000) on participants of a cartel agreement between currency exchange office operators in the city of Olomouc.
- ▶ Four currency exchange office operators allegedly sent and shared daily exchange rates of currencies in the period from 4 July 2012 to 6 December 2017. The exchange rates offered by the cartel participants were almost identical in the period concerned. The Competition Authority secured evidence in the form of e-mail correspondence in the course of on-site inspections.

Comments: *The decision is not final, as three out of four parties appealed against it.*

Competition Authority fined four companies for freight cartel

- ▶ The Czech Competition Authority has fined four railway cargo companies CZK 18.4m (EUR 690,000) for entering into cartel agreements.
- ▶ The Competition Authority found that AWT Čechofracht, Interfracht, Argo Logistics, Spedica and Rail Cargo Austria breached both Czech and EU competition law by

dividing their customers and contracts for transporting goods, coordinating prices for their services and exchanging sensitive information.

- ▶ While the agreements were in force between 2004 and 2013, Spedica participated only between 2008 and 2010 and Interfracht between 2010 and 2013, according to the release. To help allocate customers and services, the companies used a booking system to communicate and divide up business.

Comments: *AWT Čechofracht, Interfracht, Argo Logistics and Spedica were fined, while Rail Cargo Austria avoided a penalty under the country's leniency scheme.*

Hungary

Competition Authority opened sector inquiry into broadcasting market

- ▶ Following complaints, the Hungarian Competition Authority (GVH) opened a sector inquiry into the broadcasting market.
- ▶ Smaller broadcasters are put at a competitive disadvantage as television programme providers offer better prices to larger broadcasters than to smaller ones.
- ▶ This may distort competition, which could lead to consumers having less choice and getting less content for their money.
- ▶ On the other hand, the increased competition among larger broadcasters over price and quality could lead to positive effects on competition.
- ▶ The sector inquiry will focus on the pricing mechanisms and the strategy of market participants and how they affect wholesale prices.

Comments: *A competition probe can be initiated by the GVH if it finds distortions of competition.*

Hungary introduced temporary foreign investment control mechanism

- ▶ In order to tackle the impact of the coronavirus pandemic, the Government of Hungary introduced a temporary foreign investment control mechanism. With the lifting of the state of emergency on 18 June 2020, the mechanism has been transposed into a law compiling temporary measures related to pandemic preparedness.
- ▶ The rule, which will be in effect from 26 May 2020 to 31 December 2020, will make it necessary for foreign investments from both inside and outside the EU to be approved by the government.
- ▶ The government will ban any investment if it finds that it violates public security, especially the safety of supply of basic needs.

Comments: *The new mechanism applies to 21 sectors, including healthcare, medical device manufacturing, pharmaceutical, communication, agriculture, tourism, information technology, food and agriculture, defence and energy.*

Authority provides guidance on start-up investments

- ▶ The GVH has initiated a proceeding in 2019 in order to review a non-compete clause featured in a concentration involving a start-up undertaking. The GVH's scrutiny

focused on the length and geographic scope of the clause. It has indicated that the non-compete clause is not fully in line with the relevant notice of the GVH.

- ▶ The parties expressed willingness to modify the non-compete clause in line with the GVH's views, which led to a commitment decision with no fine imposed on the undertakings.

Comments: *The GVH had little practice on non-compete clauses previously. Therefore, the GVH's decision constitutes a confirmation that non-compete clauses are permissible under Hungarian law within certain constraints clarified by the GVH's relevant notice.*

Authority imposes procedural fine on RTL

- ▶ The GVH has imposed a procedural fine of HUF 20m (approx. EUR 57,000) on RTL due to the undertaking's failure to provide a consistent and full reply to the GVH's RFI in a merger control proceeding. The merger was prohibited in 2016 by the GVH, but on judicial review the court ordered a new procedure, which the GVH initiated in March 2020.

Comments: *Although the fine is relatively low, the GVH continues to show its willingness to sanction behaviours which might hinder its proceedings.*

Poland

Agency scrutinising Gazprom for failing to cooperate during Nord Stream 2 JV probe

- ▶ The Polish Office of Competition and Consumer Protection ([UOKiK](#)) may impose a EUR 50m fine on Gazprom for failing to provide information during an inquiry into the construction of the Nord Stream 2 gas pipeline.
- ▶ The company may be liable for a EUR 50m fine independent of the outcome of the proceedings.
- ▶ The investigation concerns a joint venture, which was set up by Gazprom, Engie Energy, Uniper, OMV, Shell and Wintershall to finance the project without regulatory approval.
- ▶ Back in 2016 the companies withdrew their JV merger notification after the agency found that the project could potentially restrict competition.
- ▶ The UOKiK reopened the investigations in 2018 as it suspected that the consortium was trying to circumvent the rules by establishing a joint venture to finance the project without consent.
- ▶ The UOKiK contacted Gazprom earlier this year seeking further justification, but according to the agency the company failed to provide the information.
- ▶ As part of the same inquiry Engie received a PLN 172m (EUR 39.1m) fine in 2019, as it also failed to provide information regarding gaseous fuels, including transmission, distribution, sale, delivery and storage agreements.
- ▶ Engie said that it will appeal the fine.

Comments: *According to the UOKiK President Tomasz Chróstny, it is particularly reprehensible if large companies do not comply with the rules and the investigation will come to an end as soon as the agency has gathered adequate evidence.*

Polish parliament adopts rules on foreign takeovers as part of Anti-Crisis Shield 4.0

- ▶ As part of the "Anti-Crisis Shield 4.0" the Polish parliament (Sejm) adopted regulations, including anti-takeover provisions.
- ▶ Those regulations are designed to protect Polish companies from hostile takeovers amidst the coronavirus crisis.
- ▶ The new regulations will give the President of the UOKiK additional powers to protect Polish companies important to public order, security or health.
- ▶ After the new rules enter into force, any acquisition that is covered by the provisions of this act that leads to the acquisition of a company or that results in a substantial participation or acquisition of dominance by entities with a registered office or nationality outside an EEA and OECD member state, will be placed under the supervision of the UOKiK.
- ▶ The rules will be valid for two years.
- ▶ Companies that achieved revenues exceeding EUR 10m in Poland, in any two years preceding the intention to acquire, will be protected by the new provisions.
- ▶ The UOKiK President will control all transactions that involve the acquisition of a significant number of shares (at least 20 %) in such companies.
- ▶ He will also be able to object to transactions of Polish companies that are of strategic importance, as hostile takeovers have become a bigger threat due to the economic effects of the COVID-19 pandemic.
- ▶ Any takeover that is not notified to the agency or that is carried out despite objections can result in serious financial consequences.

Comments: *The exchange of information on foreign investments between EU Member States and the European Commission will be made possible by new rules.*

Romania

Competition Council ready to open new investigations after COVID-19 state of alert is lifted

- ▶ During a [webinar](#) organised by Schoenherr Romania together with the Romanian Competition Council (CC), the CC Chairman provided several insights into the authority's activity during the COVID-19 pandemic and what companies can expect in the aftermath.
- ▶ The authority announced that it will launch new probes after the state of alert, which was established as a result of the coronavirus pandemic, is lifted. Since the outbreak of the virus the CC has not opened new investigations, but it will soon start to engage in smaller scale dawn-raids before tackling larger cases. The authority is also likely to organise online hearings in pending cases to comply with social distancing rules.
- ▶ The CC has remained active throughout the pandemic and has provided companies (online platforms, food retailers, fuel companies) with several recommendations and guidance upon request.
- ▶ The CC also [published](#) brief recommendations in the context of the reopening of shopping centres. The authority warned companies to independently negotiate their

commercial terms, whereas smaller firms may reach out to a third party (mediator, trade association, etc.) to conduct joint negotiations, in full compliance with antitrust rules.

Competition Council asks natural gas suppliers to avoid anticompetitive pricing

- ▶ The CC [warned](#) natural gas suppliers about abusing their dominant position or colluding when setting gas prices once the household market is liberalised.
- ▶ In light of the fact that only two major gas producers and two suppliers cover 3.4m consumers (approx. 90 % of the country's household demand), the CC urges that all natural gas suppliers should have equal access to natural gas from internal sources.
- ▶ According to the CC, all consumers will be able to switch suppliers with no interference from their current supplier, as this is the only way consumers can put competitive pressure on producers and suppliers to obtain better contracts.
- ▶ To prevent anti-migratory measures taken by suppliers and to improve household consumer's access to relevant information, the CC will cooperate with the National Energy Regulatory Authority and the National Consumer Protection Authority.
- ▶ The CC will ensure that no hurdles may prevent fair market competition among natural gas suppliers. It announced that it will monitor the market and investigate any abuses of dominance or anticompetitive agreements.

New legislation and guidelines launched into public debate

- ▶ The CC has been fairly active and has published a draft Emergency Government Ordinance (EGO) concerning the enforcement of Regulation (EU) 2019/1150 (applicable to online intermediation services) as well as a draft for Guidelines on vertical agreements.
- ▶ The draft EGO provides that the CC will be the competent authority for investigating and sanctioning breaches caused by providers of online intermediation services. Sanctions can range from a warning up to fines between 0.1 % and 1 % of the company's relevant turnover. This specifically refers to the turnover registered from managing the online platform. Behavioural measures can become applicable as well.
- ▶ The draft for Guidelines on vertical agreements is generally aimed at helping local companies to be aware of and better understand the rules applicable to contracts such as distribution or supply agreements. The Guidelines also contain a series of relevant examples from national and EU case law.

Comments: *The draft EGO had a brief public consultation and can still be found [here](#) (only version in Romanian is available). Stakeholders and other interested parties can provide their comments on the draft for Guidelines on vertical agreements (found [here](#); only version in Romanian is available) until 30 July 2020.*

Slovakia

The Antimonopoly Office raids technical, medicinal and special gases sector firms

- ▶ The Slovak Antimonopoly Office (SAO) informed in a press release that it has conducted dawn raids at business premises of companies operating in the technical, medicinal and special gases sector.
- ▶ On 23 and 24 June, the SAO inspected the company premises for potential conclusion, execution or assistance in a restrictive agreement. The authority did not provide further information on the investigation.

Office imposes EUR 6.7m fine on car cartel

- ▶ The Council of Slovakia's Antimonopoly Office ([SAO](#)) imposed a EUR 6.7m fine on several companies that were involved in restricting competition and rigging bids related to the sale of Volkswagen (VW) passenger and commercial vehicles.
- ▶ On 15 May the council amended its fine, which it originally imposed on 3 February.
- ▶ In February the SAO cartel division found that 18 undertakings had taken part in a cartel to restrict competition in the market of the sale of new VW vehicles in Slovakia.
- ▶ In order to eliminate competition, maintain a certain customer range and level of prices, retailers agreed on maximum discounts provided for individual Volkswagen vehicles and divided the Slovak regions among themselves.
- ▶ The sellers also divided the market through the application of certain tactics, such as offering worse proposals to customers from another seller and instructing customers to buy vehicles from a certain seller.
- ▶ They also coordinated their bids and exchanged sensitive business information in public tenders, in the public procurement process or similar competitions regarding the sale of Volkswagen passenger and light utility vehicles.
- ▶ The council upheld the cartel findings but did not fine two participants in line with the leniency programme and reduced the fines on two more companies.
- ▶ As part of a settlement with the agency, the council also reduced the fine on one undertaking and banned another company from taking part in public procurements for three years.
- ▶ The cartel lasted for several years and was one of the most serious violations of competition law.

Comments: *The decision came into force on 1 June 2020 and is subject to appeal.*

Slovenia

Court revokes TV channel divestment order

- ▶ The Slovenian Competition Protection Agency (CPA) received a judgment of the Slovenian Administrative Court, revoking the CPA's decision pursuant to which Dutch telecom provider United Group was ordered to divest TV channel Sport Klub, as the CPA found that the concentration of companies from United Group over the activity of

broadcasting the TV programmes of Sport Klub did not comply with the competition rules.

- ▶ With this judgment, the Administrative Court returned the case to the CPA for reconsideration.
- ▶ This does not affect the decision, which was issued in a separate misdemeanour proceeding, by which the CPA imposed a EUR 3.7m fine on United Group in July 2019 for failing to notify the acquisition of Sport Klub in due time.

Court slashes Agrokor's gun-jumping fine to EUR 1m

- ▶ A court in Ljubljana cut the EUR 53.9m fine imposed by the CPA on Croatian food company Agrokor to EUR 1m.
- ▶ Agrokor has confirmed the court's ruling, but intends to file another appeal and to challenge the CPA's decision to confiscate Agrokor's 70 % stake in Slovenian food retailer Mercator.
- ▶ On 15 June 2020 the CPA prolonged the seizure of Agrokor's stake in Mercator as Agrokor refused to pay its gun-jumping fine.
- ▶ The confiscation was ordered by the CPA on 16 December 2019, as Agrokor received a EUR 53.9m fine for failing to notify its acquisition of the Slovenian water bottling company Costella from Alsafi Partners.
- ▶ Agrokor filed a complaint with the European Commission (EC) stating that the confiscation was in breach of EU and Slovenian law.
- ▶ Back in January, the Ljubljana District Court upheld the decision to seize the Mercator shares and in June the Slovenian Constitutional Court also dismissed Agrokor's appeal against this court's decision.

Turkey

Court rejected Google request to suspend fines from Android abuse of dominance decision

- ▶ The 10th Administrative Court of Ankara refused to suspend daily fines imposed by the Turkish Competition Authority (CA) on Google for non-compliance with an Android abuse of dominance decision.
- ▶ The CA fined Google TRY 93.08m (EUR 12.68m) in September 2018 for abuse of dominance, as it imposed restrictions on mobile phone manufacturers.
- ▶ The decision also required Google to remove clauses imposing certain conditions from contracts it concluded with phone manufacturers that want to use Android as an operating system on phones sold in Turkey.
- ▶ Despite amending the contracts, Google was fined by the CA, as the changes did not extend to individual contracts signed with certain manufacturers.
- ▶ The tech giant requested a suspension of the fine, as it felt that the companies fully complied with the requirements. It also argued that the beginning of the fine was set for a date before the full reasoned opinion was published.

- ▶ The Council of State and administrative courts can suspend the execution of administrative decisions if the implementation would result in overwhelming losses to the company.
- ▶ Such a decision can be taken upon the receipt of a defence statement, or the proceedings can be halted until such a defence statement is received. But according to the court, Google did not meet the requirements, so the appeal was rejected.
- ▶ Once the legal notice has been issued to the relevant parties, the decision can be challenged before the Regional Administrative Court of Ankara within seven days.

Comments: *The case is 2020/591 Google LLC, Google International LLC, and Google Reklamcılık ve Pazarlama Ltd Sti v Rekabet Kurumu before the 10th Administrative Court of Ankara*

Founding president of Competition Authority voices concerns over law changes

- ▶ Aydin Ayaydin, the founding father of the CA, feels that the planned changes to the national competition law, which will introduce de minimis and settlement concepts as well as commitments to the competition legislation, in line with EU rules, may cause legal concerns.
- ▶ If the CA believes that behavioural measures or administrative fines are ineffective, the draft amendments will allow the agency to take structural measures, such as requesting firms to hand over certain operations or shareholdings in cases where an infringement takes place.
- ▶ For Ayaydin it is not quite clear why Turkey needs such mandates that will allow the CA to impose measures involving property rights, as this is uncommon in most other jurisdictions.
- ▶ The fact that the CA will be fully composed of members that were appointed and can be removed by the country's president in combination with the extensive rights of the agency may cause concerns for international investors.
- ▶ As specialised courts can now also evaluate the granting of exemptions, the CA no longer has the monopoly on evaluating such requests.
- ▶ For Ayaydin this change comes too soon, as Turkey's courts lack the specialisation in competition law and resources to carry out the extensive economic evaluations required for legal analysis from a competition perspective.
- ▶ The dual competence of courts and the CA on granting exceptions may lead to legal ambiguity and conflicting outcomes.
- ▶ Efficiency may be increased in line with the EU by setting a two- or three-month deadline.
- ▶ The CA will also be allowed to seize computers and data during dawn raids, so it will not be constrained to limited on-site inspections. On the one hand this will make it easier for the CA to operate, but on the other, companies must be given assurances, such as the possibility to impose punitive punishments on CA personnel in case of a data breach.
- ▶ The de minimis provisions may decrease the CA's workload but could also harm small firms that may have been affected by smaller competition law infringements before. A possible equaliser could be the implementation of a compensation mechanism to cover the losses of such firms.

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- ▶ In order to make the settlement mechanism more appealing to companies, the 25 % threshold on the reduction of the fine in case of a settlement could be relaxed even further and the application deadline for settlements may be set to a date after the publication of a case report.
- ▶ The CA will also be able to detect oligopolies that emerge as a result of mergers more clearly, as the agency will conduct a test to determine if there is a significant reduction in effective competition, rather than carrying out a dominance test when looking at mergers.

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Feel free to contact our legal experts across CEE:

Austria



Christoph Haid
Partner
T: +43 1 534 37 50 119
c.haid@schoenherr.eu



Franz Urlesberger
Partner
T: +43 1 534 37 50196
f.urlesberger@schoenherr.eu



Volker Weiss
Partner
T: +32 2 743 40 44
v.weiss@schoenherr.eu



Hanno Wollmann
Partner
T: +43 1 534 37 50152
h.wollmann@schoenherr.eu

Bulgaria



Galina Petkova
Attorney at Law
T: +359 2 93310 83
g.petkova@schoenherr.eu

Croatia, Serbia



Srđana Petronijević
Partner
T: +381 11 3202 600
s.petronijevic@schoenherr.rs

Czech Republic, Slovakia



Claudia Bock
Attorney at Law
T: +420 225 996 500
c.bock@schoenherr.eu

Hungary



Anna Turi
Counsel
T: +36 1 8700 707
a.turi@schoenherr.eu



András Nagy
Attorney at Law
T: +36 1 8700 684
a.nagy@schoenherr.eu

Poland



Paweł Halwa
Partner
T: +48 22 223 09 11
p.halwa@schoenherr.eu

Romania



Georgiana Bădescu
Partner
T: +40 21 319 67 90
g.badescu@schoenherr.eu

Slovenia



Eva Škufca
Partner
T: +386 1 200 09 82
e.skufca@schoenherr.eu

Turkey



Levent Çelepci
Partner
T: +90 212 230 17 00
l.celepci@schoenherr.eu