

# Czech Republic November 2012: First Sanction on Predatory Pricing Squashed by the Court (STUDENT AGENCY)

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Arthur Braun (bpv Braun Partners)

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In November 2010, the Czech Antitrust Office handed down its first ever decision to penalise predatory pricing, dealing with the dominant operator of public passenger coach services between the two largest Czech cities, Praha and Brno. The decision to issue a fine was confirmed during administrative appeal proceedings but was reversed by the Administrative Court in Brno on 9 November 2012 and the case was sent back to the case-handling level. The 2010 decision was the first case that the new economic approach used by the Czech Antitrust Office was used extensively but the appeal by STUDENT AGENCY was successful on base of the wrong definition of the relevant market.

The practice covered a time span of only a few months in which time STUDENT AGENCY, reduced the fare for the bus trip of more than 200 km to about 2 EUR one-way (for the cheapest way of buying tickets) after a competitor threatened to increase its market position by offering very low introductory fares (also 2 EUR) in order to gain market awareness. The fare charged by STUDENT AGENCY was increased back to its previous levels once the competitor had left the particular route.

In order to establish a dominant position of STUDENT AGENCY on the Praha-Brno passenger transport market, the Antitrust Office had first to establish that the railway passenger transport on the way from Prague to Brno constituted a different market from the coach passenger transport, even though Czech railways also participated in a price war for passengers on this key connection in the country. This market definition was held to be wrong by the Administrative Court, the Office could not prove that two different markets existed.

The Czech Antitrust Office was, however, able to prove with internal e-mails of STUDENT AGENCY that the intent of the fare reduction (below average variable cost), on this particular distance was aimed at pushing the much smaller and financially weaker competitor from the particular route - in which it eventually succeeded. Using economic analysis, the fact that the prices could in no way be defended under cost aspects by the largest Czech coach company, the Czech Antitrust Office in unusually long proceedings had decided to issue the fine.

The court decision may still be appealed to the Highest Administrative Court. Should the Office insist to continue the fight, one may assume again that some 8-10 years after the supposed anticompetitive behaviour a case will finally be settled - as is unfortunately often the case in the country way too late in order to have some deterrent effect.

Ironically STUDENT AGENCY as the supposed offender in this decision had to fight its way against the old monopolies in coach transport in order to grow into today's position and now competes with the much bigger Czech railways on the important Praha-Ostrava rail link claiming to be victim of abuse of a dominant position on that connection. Supposed abuse and being supposedly the victim are sometimes quite close...