

# Kluwer Competition Law Blog

## Food Retailers in the Czech Republic, Be Aware!

Arthur Braun (bpv Braun Partners ) · Thursday, December 12th, 2013

The so-called Act on Significant Market Power for the Sale of Agricultural and Food Products and the Abuse thereof (No. 359/2009 Coll.) had effect from 1 February 2010. In October 2013, internal appeal procedures ended with the first significant fine (above 900.000 EUR) handed out to Kaufland by the Czech Antitrust Office. This case gives us pause for thought.

The Act, which at first was not strongly enforced by the Office, prohibits many kinds of practices in commercial relationships in the case of those who have an important market position in the agricultural and food industry (important in this context is presumed to be met when such persons have a net annual turnover above five billion Czech Koruna (about 190 mil. EUR). The maximum fine under the Act is 1 % of annual turnover.

In the Kaufland case (appeal procedures at court may still be filed), the retailer, one of the largest food retailers in the country, had agreed (one might say imposed) longer payment terms than 30 days with more than half of its suppliers. Moreover, the Office in its very detailed reasoning saw a violation in the Act in Kaufland imposing a handling fee of 4 % that was agreed in case a supplier assigned his receivables to a third party. Quite surprising to many came the third violation of the law which was a bonus (skonto) of 0,5 % for each week that Kaufland paid its invoices before the due date, for many sectors a standard practice.

The Act came into existence before the EU Directive on late payments 2011/7/EU was transposed in to law in 2013. That Directive would provide 60 days as a maximum payment term. For the food and agricultural sector anything above 30 days is considered too much – quite a questionable situation.

Confusion will be even greater after 1 January 2014 with the effectiveness of the new Czech Civil Code which contains additional instruments in order to protect the weaker contractual partner, which is new even for businesses.

The Act had been under long political debate as to its possible abolition, with many observers pointing to the fact that contractual conditions for the many Tier 2/Tier 3 suppliers in the automotive or other industrial sectors tend to be even harsher than in the agricultural/food sector but those are enjoying less political support or are under stronger international competition.

Nevertheless, with the new government due to be sworn in in the next weeks and the head of the second strong party having an extremely strong position in the Czech agricultural sector, no change is to be expected.

Despite very creative ways of circumventing the Act applied by food retailers, more fines are to be expected. Maybe, this group of cases will even lead to the first series of private enforcement cases as disgruntled suppliers reclaim listing fees, bonuses, marketing contributions, etc. which they paid despite the new Act. The Kaufland decision is the first decision where the Office provided detailed guidance on its interpretation of the Act and therefore deserves to be studied by all retailers in the food industry.

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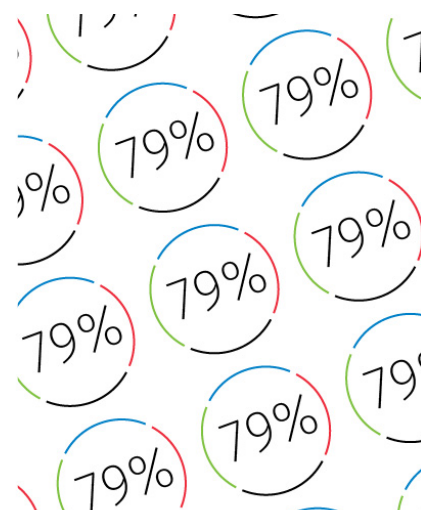
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