

Kluwer Competition Law Blog

The Bulgarian Commission for Protection of Competition blocks two transactions

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On 19 July 2018 the Bulgarian Commission for Protection of Competition (“**BCPC**”) refused to approve two separate concentrations - the acquisition of the vertically integrated business of CEZ Group of companies (owned by CEZ a.s., Czech Republic) by Inercom EAD (Bulgaria) and the acquisition of Nova Broadcasting Group AD by PPF TMT (the Netherlands).

Both deals were subject to extensive discussions with political nuances. As a result of the decisions, the media in Bulgaria raised arguments that the rejection by the BCPC was not legally grounded but rather a result of political and/or public pressure.

The Inercom/CEZ deal

The CEZ Group of companies is one of the main players in the electricity sector in Bulgaria, operating on different levels of the electricity value chain. In particular, it owns two natural monopolies in the energy sector - the distribution and supply of electricity in Western Bulgaria (where in the southern part of the country the electricity distribution grid is operated by EVN Group of companies (Austria) and in the eastern - by Energo-Pro Group of companies (Czech Republic)). In addition, the company owns the biggest electricity trading company in the country - CEZ Trade, as well as photovoltaic and biomass generation facilities.

The contemplated transaction appeared as controversial due to rumors concerning the acquirer - Inercom EAD. The controversial character of the deal echoed in the Council of Ministers, where the Bulgarian prime minister even declared that the state will intervene in the deal, by entering as stakeholder in CEZ Group of companies. The public attention was attracted by the personality of the ultimate owner of Inercom EAD, Ms. Ginka Varbakova, a businesswoman completely unknown back then, predominantly active as a medium to small player on the market of production of electricity from renewable energy sources (“**RES**”), in particular - photovoltaic power plants (“**PV Plants**”). The media tried, without any certain result, to find out whether Ms. Varbakova was the real owner of Inercom EAD or was being used as the face to cover appetites towards the CEZ Group of companies by other interested parties. In

reaction to this potential acquisition, amendments to the Energy Act have been adopted to provide to the energy regulator the authority to review and stop strategic deals in the energy sector.

The decision of the BCPC came after a relatively long document collection period, i.e. the period between the filing of the application for concentration clearance and the registration of the respective case file. The decision is very short for such a complicated deal with considerable economic, political and social significance - only 29 pages. The arguments of the BCPC for rejection of the acquisition are difficult to understand and are approximately the following:

- After the transaction, the Inercom companies, producing electricity from PV Plants will be placed in a better market position compared to the other producers of electricity from PV, because:
 1. The production of electricity from PV Plants requires good projection of the meteorological conditions, due to necessity of balancing electricity energy and its high price. Usually, the deviations for the planned production are significant and the producers spend lots of money on balancing energy. By introducing the intraday system for trade with electricity the difference between the planned production and the effectively produced electricity will decrease;
 2. Inercom EAD's market position in the production of electricity will be strengthened due to the decreased investor interest in the PV Plants. This argument is related to the regime of the feed-in tariff in Bulgaria, i.e. following the expiry of the agreements for feed-in tariff for acquisition of electricity, the electricity produced by power plants with installed capacity of 4 MW and more will be sold at the energy exchange. PV Plants with installed capacity of 4 MW and more, will start to sell the produced electricity until the net specific generation threshold under the new schemes with premium agreements. Once the net specific generation threshold is reached, the electricity produced above this quantity, will be sold on the free energy market. Having in mind the low cost for production of electricity from PV Plants, it is expected this energy to be traded at better commercial conditions. All the above is expected to place the new Inercom EAD group of companies in better market position;
 3. The advantage of the Inercom companies, following the acquisition of CEZ Group of companies, appears also on the vertically integrated markets (distribution of electricity and trade with electricity) by giving the Inercom traders of electricity easier access to the distribution grid for Western Bulgaria;
 4. The fact that in the CEZ group of companies, there is a company on the market with balancing energy will decrease Inercom companies' costs for balancing energy.

The above arguments are considered as sufficient enough to refuse approval of the contemplated transaction.

It is difficult to have any thorough discussions for the CEZ/Inercom deal, simply because of the lack of sufficient economic arguments supporting the view of the commission.

Under Bulgarian law, the BCPC may prohibit an intended concentration when it leads to the establishment or strengthening of a dominant position, which may significantly prevent effective competition on the relevant product and geographic market. It is doubtful how the BCPC reached the conclusion that the deal will significantly prevent the effective competition on the affected markets.

PPF/Nova Broadcasting case

Nova Broadcasting Group AD operates one of the two biggest and most influential television companies (Nova TV), along with other information channels (radio stations, news websites, entertaining websites, etc.). The companies from the group have been subject to investigations by the BCPC, in particular in relation to the advertising market.

PPF Group operates in Bulgaria one site for comparison of the price of products and has recently acquired the Bulgarian business of the telecom operator Telenor.

Within the 11-page decision, the BCPC provides its arguments for disapproval of the contemplated transaction (acquisition of 100% share ownership of the Nova Broadcasting group of companies):

- Strong market position for Nova Broadcasting on the TV broadcasting market (between 30 and 40%);
- Strong market position of Nova Broadcasting on the advertising market (between 40 and 50%);
- Considerable experience of PPF in the TV market in Eastern Europe, specifically in the Czech Republic);
- Possibility of amendment of the commercial policy of Nova Broadcasting after the transaction, in particular - price increase and change of conditions under already concluded agreements;
- High entry barriers, preventing potential market entrants to compete.

It remains unclear on what grounds the PPF's experience in other jurisdictions in Eastern Europe in the TV sector were used as an argument for rejection of the concentration and why its intervention in the share capital of the Nova Broadcasting group of companies will lead to price increases for consumers and the amendment of already existing agreement with clients.

Both decisions are subject to appeal before the Supreme Administrative Court within 14 days as from their publication.

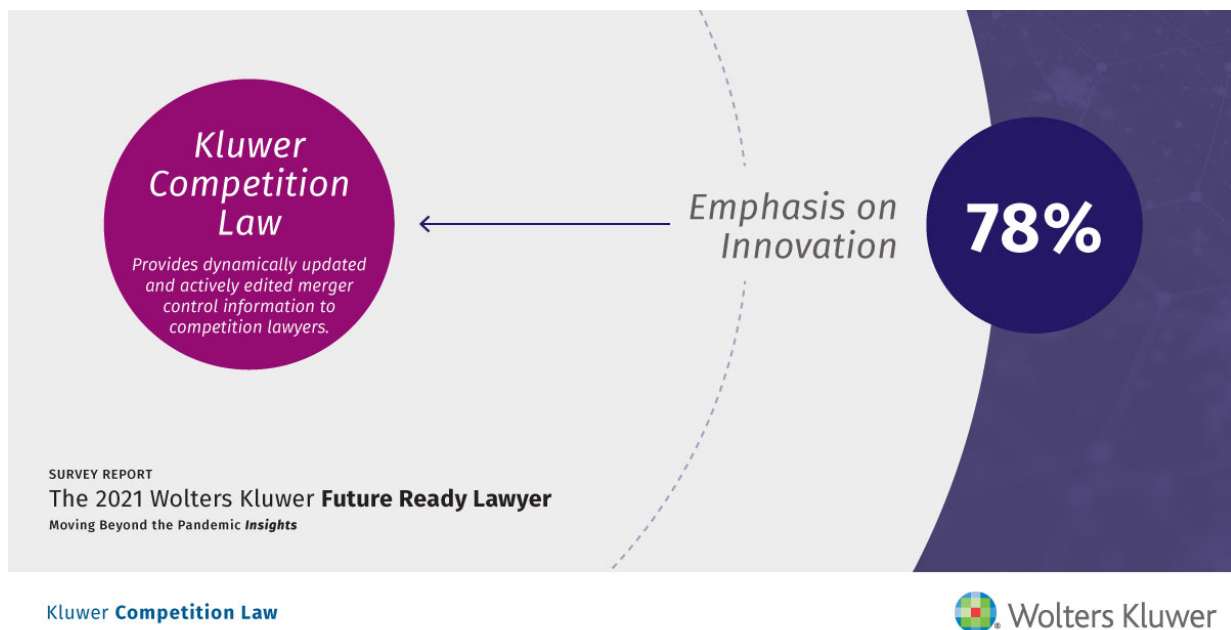
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