

Kluwer Competition Law Blog

New competition tool and call-in power for mergers in Czechia?

Jan Kupčík (Schoenherr) · Friday, January 26th, 2024

The Czech Competition Authority (CCA) recently announced that it prepared a proposal to update the Czech Competition Act (the “Act”). While at present the proposal is just a set of ideas, it indicates how Czech competition enforcement may evolve in the years to come. Crucially, the CCA suggests deploying a “new competition tool” that will allow it to intervene even without proof of anticompetitive agreements or abuse of dominance. In addition, it wants to have call-in powers for under-threshold mergers.

The proposal represents a collection of ideas that may initiate a formal legislative process. Currently, the CCA has not provided further details beyond a press release. Nevertheless, the release already provides insights into the CCA’s approach to enforcement for the upcoming years, clearly indicating a proactive stance. It should be recalled that the CCA has already been enforcing the act on significant market power and unfair trade practices (“UTP”) and holds authority for overseeing public procurement. If these ideas find their way into law, the CCA would arguably be one of the most powerful authorities within the EU, measured by the range of enforcement tools.

New competition tool

Currently, the CCA has the usual range of enforcement tools at its disposal. It can investigate anticompetitive agreements and abuse of dominance. It can also review mergers if they exceed standard turnover thresholds. Moreover, the CCA can run sectoral investigations to monitor markets, but cannot currently impose remedies without initiating a formal investigation of an anticompetitive agreement or an abuse of dominance. This is exactly where the CCA believes it needs a little more power.

According to the proposal, after running a sectoral investigation and finding that competition in the market is not going well, the CCA could impose corrective measures on market participants. Even if the participants have not committed an antitrust offence, the CCA could require them to:

- notify concentrations below notification thresholds;
- adhere to transparency and non-discriminatory standards;
- provide access to infrastructure and networks;
- deal with other parties and modify business contracts;

- publish information or provide data to competitors;
- create separate business and accounting units; or
- divest part of a business.

While the CCA notes that the last option would be used only in extreme cases, it is nonetheless alarming and may affect investors' willingness to enter the Czech market. It is relevant especially in industries mentioned by the CCA as prone to structural distortion, such as digital and other oligopolistic markets (energy and telecommunications markets may come to mind).

Call-in powers for mergers

In addition to the new competition tool, the CCA is apparently proposing a general call-in model. It would technically allow the CCA to require any transaction with a link to the Czech market to be notified. The power could work retroactively, so the CCA could even review closed deals.

Currently, Czech notification criteria are based on usual turnover thresholds requiring the target or the parents of a joint venture to generate significant business in the Czech market. While transactions relating to Czech targets may already be called in by the Czech Ministry of Industry and Trade under the local FDI screening regime, it is confined to narrowly defined concerns about national security. If the CCA could also call in mergers affecting the competitive landscape, many more transactions could be under threat of reversal.

Other proposed tools

The proposal does not stop at the new competition tool and call-ins. The CCA also wants to be able to conduct dawn raids without needing to establish a reasonable suspicion of an antitrust infringement. In other words, it asks to be allowed to perform random and "preventive" inspections. Presently, the primary safeguard ensuring that dawn raids are used judiciously is the CCA's obligation to possess sufficient suspicion. It is hard not to see that such a power could easily end up being used to "bully" competitors without effective judicial supervision.

Finally, the CCA is also seeking to introduce fines for natural persons participating in anticompetitive conduct, typically the managers of investigated companies. As experience from other jurisdictions has shown, managers' liability for a company's infringement may be an important issue for clients when contemplating an investment in a local target.

Conclusion

The CCA's extensive proposal marks the initial stage of a process with an uncertain outcome. Hopefully, we will see a discussion involving all stakeholders before the proposal evolves into a bill for consideration in a parliamentary session. Nevertheless, we may be at the dawn of the most important update to Czech competition law in the last 20 years.

* This entry is a re-post of the contributor's blog post [here](#).

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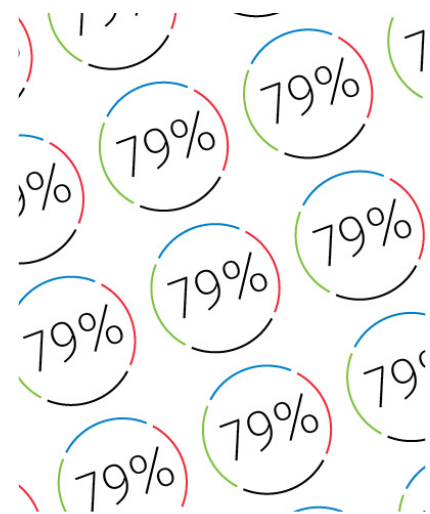
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