

Kluwer Competition Law Blog

Main Developments in Competition Law and Policy 2024 – Czech Republic

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The year 2024 was eventful one for Czech competition law. Below, we provide an overview of the key developments that took place, starting with anticompetitive agreements – a traditional focus of the Czech Competition Authority (CCA). We also cover mergers and the abuse of dominance and then provide a summary of the key policy changes proposed (but not yet implemented) in the past year. Finally, we provide a brief outlook for 2025.

Anticompetitive Agreements

Vertical Agreements

In 2024, the CCA continued to focus on vertical agreements. Most prominently, the CCA imposed significant fines for resale price maintenance (RPM). The highest fines concerned two manufacturers of household appliances, which were both penalized for fixing retail prices and pressuring distributors to comply under the threat of ceasing supplies. In total, the fines for these two RPM infringements amounted to over CZK 200 million (approx. EUR 8 million). Another fine, albeit much lower, was issued to a pet food manufacturer and distributor for enforcing adherence to its recommended retail prices (CZK 8.7 million, approx. EUR 362,000). In all these RPM cases, the undertakings cooperated with the CCA, and the fines have been reduced as a result of a settlement discount.

That said, the CCA continued to face some challenges due to its previous RPM cases addressed in courts. In 2023, the Czech Supreme Administrative Court (SAC) concluded that the CCA's decision in *Baby Direkt* was unlawful, as the CCA relied on too broad a description of the infringement, as well as insufficient designation of the parties involved in the conduct, namely the distributors. The SAC emphasized the need to demonstrate mutual agreements for each individual act of continuing infringement, citing the European Court of Justice's ruling in the *SuperBock* case. In 2024, the Regional Court in Brno relied on the *Baby Direkt* judgment again when annulling the CCA's *Garland* decision. The CCA has appealed the judgment. The SAC dismissed the appeal in March 2025, expressly confirming its previous decision in *Baby Direkt*, and thus the high standard of defining vertical agreements in CCA's fining decisions. It remains to be seen what impact this decision will have on the CCA's practice.

Besides RPM, the CCA also investigated non-compete clauses in contracts of *Zásilkovna*, a delivery service provider. *Zásilkovna* is a leading Czech delivery company with an extensive network of pick-up points, primarily used for the delivery of parcels from e-shops to customers. The CCA investigated *Zásilkovna*'s non-compete clauses in its contracts with pick-up point operators, which prevented them from handling parcels from competing carriers – not only during the contract period, but also for a period after its termination. Given *Zásilkovna*'s significant market share in certain small parcel deliveries, the CCA was concerned about the risk of market foreclosure (access to pick-up points by competitors).

To address the CCA concerns, *Zásilkovna* proposed commitments, under which, pick-up point operators with contracts longer than two years could also handle parcels from competitors, provided they met certain quality criteria. Additionally, if a contract is terminated, the non-compete clause will apply for a maximum of one year. According to the CCA, the commitment decision opened up more than 3,400 pick-up points to competitors, giving consumers more options for parcel collection.

Horizontal Agreements

In the area of horizontal agreements, the CCA covered a range of issues.

In terms of cartels, the focus was mainly on bid-rigging in public procurement. One such case involved bid-rigging in a tender of *Správa železnic*, the Czech state-owned railway infrastructure management company, for the supply of demolition and repair services. The CCA analyzed the bid prices and identified a price indexation, which could not be explained in any other way but by a collusion between the three bidders involved. All three settled with the CCA, which eventually imposed fines totaling CZK 7.4 million (approx. EUR 295,000).

The CCA also investigated two associations. In one case, the CCA fined the *Czech Security Services Association* CZK 288,000 (approx. EUR 12,000) for publishing a recommended price for physical security services on its website. The CCA concluded that the recommendation had limited impact on the market and thus imposed the fine on the association without considering the revenues of its members (which the CCA could have done, in which case it would have resulted in a higher fine). Similarly, the CCA fined the *Czech Association of Workers in Disinfection, Disinsection, and Deratization* CZK 384,000 (approx. EUR 16,000) for publishing standard prices for the services of its members. In both cases, the CCA also considered ethics codes, under which members of the associations should refrain from criticizing one another. The CCA ultimately did not penalize the associations for these codes, saying that their negative effects had not been proven.

The CCA also continued to investigate agreements on the labor market. Two investigations concerned associations of undertakings' codes of conduct, which required their members to use non-compete provisions in the contracts with their employees "as widely as possible". The CCA ultimately closed both cases without initiating formal proceedings after the associations agreed to remove these provisions from their codes of conduct. In subsequent cases, the CCA no longer seemed to be so lenient. In July 2024, it announced initiation of first two administrative proceedings concerning no-poach agreements.

Dawn Raids

In mid-2024, the CCA started publishing press releases on conducted dawn raids (previously it only announced the initiation of formal proceedings). This is a welcome move forward in terms of the CCA's transparency. We have therefore been able to find out that, in the second half of the year, the CCA conducted a number of dawn raids in the areas such as construction, transport infrastructure, digital platforms, energy, and telecommunications.

There was also an interesting development concerning obstructions of dawn raids. The Chairman of the CCA, acting as an appellate body, revised a first-instance decision regarding a fine imposed on *BEKO* for obstructing a dawn raid. Previously, the CCA fined the electronics distributor CZK 13.65 million (approx. EUR 535,000) for failing to block the email accounts of its associates (not employees) on the @beko.com domain, which could have been manipulated during the investigation. The CCA's Chairman accepted BEKO's argument that the request to enable access by the CCA inspectors had not been interpreted as a demand to block the accounts. The CCA's Chairman noted that while BEKO's actions may have displayed some elements of obstruction, they could not be considered illegal due to unclear instructions from the inspectors. As a result, the Chairman annulled the fine.

Sector inquiries

The CCA continued to engage in a number of sector inquiries:

- *Production and sale of sugar.* In February 2024, the CCA published the results of its sector inquiry into the production and sale of sugar, which was subject to significant price increases in the previous year. According to the CCA, the increase in the sales prices of sugar beet and sugar itself was due to increased costs. Nevertheless, the CCA initiated investigations into retail sugar sales as it found that at the end of 2022, the margins of retail chains had increased exceptionally by about CZK 5 per 1kg of sugar, raising the CCA's suspicion. In September, the CCA closed the investigation as it found that the increase in sugar prices was not the result of anti-competitive behavior, but of a combination of factors – in particular, a sharp increase in input prices at all stages of the production, processing and marketing in 2022.
- *Off-trade sale of non-alcoholic beverages.* The CCA has also launched a sector inquiry into the off-trade sale of non-alcoholic beverages, prompted by high market concentration and a relatively greater price increase in the sector compared to neighboring countries, as noted by Eurostat. The inquiry will cover the period from 2020 to June 2024, gathering data from manufacturers, distributors, and retailers to assess competition levels. The CCA aims to identify market dysfunctions, including the impact of private labels, entry barriers, and expansion challenges. The results have not yet been published.
- *Waste management.* Finally, the CCA has launched a sector inquiry into waste management, focusing on competition in areas like waste collection, sorting, and landfilling from 2013 to 2023, with an emphasis on municipal and packaging waste. This inquiry responds to upcoming legal changes, such as a deposit system for PET bottles and cans, and new landfill regulations. The CCA will gather data from key market players and analyze the sector's structure, identifying potential market issues and proposing recommendations to improve competition, especially in light of the planned legal reforms.

Abuse of Dominance

Based on its press releases, the CCA initiated three dominance abuse investigations in 2024.

In October 2024, the CCA announced a dawn raid at Seznam.cz, a leading Czech internet company, primarily known for its search engine and a wide range of online services, such as email, news, or weather forecast, along with a popular advertising platform for businesses (Sklik). The CCA's press release, which, unusually, named the investigated company, did not clarify which services or conduct had drawn the CCA's suspicion, stirring theories about possible motives for the investigation.

Apart from this, the CCA also initiated administrative proceedings regarding a potential abuse of dominance in the sector of real estate services and, in another case, in the field of forestry, where the potential abuse allegedly consisted in the conclusion of a vertical agreement limiting exports.

Merger Control

In 2024, the CCA published decisions on a total of 34 merger cases (although the actual number of merger decisions is likely higher due to delays between decision issuance and publication of non-confidential version). We cover several noteworthy decisions below.

Clearance of a merger of two leading electronics suppliers

The CCA approved HP Tronic's acquisition of NAY, without commitments. HP Tronic is a Czech electronics retailer operating the largest chain of brick-and-mortar stores, as well as an e-shop, under the brands Datart and ETA. NAY was one of its competitors, operating brick-and-mortar stores and an e-shop under the brand Electro World. The CCA opened an in-depth investigation but ultimately concluded that the competitive pressure from remaining brick-and-mortar stores operators, as well as from strong online players, will constrain its market power. The transaction was also subject to review in Slovakia, where the Slovak Antimonopoly Office imposed commitments (for more detail *see* our forthcoming article on 2024 developments in Slovakia).

Breach of commitments imposed in furniture retail chains merger

In 2019, CCA approved XLCEE-Holding's (XXXLutz), furniture retail chain operator, acquisition of Kika, its competitor, subject to a commitment to sell a XXXLutz store in the Pilsen Region. XXXLutz, however, failed to implement it, and in 2023, the CCA imposed on XXXLutz a fine of CZK 20 million (approx. EUR 800,000) for the breach of the commitment. On appeal, the CCA's Chairman, acting as an appeal body, acknowledged that the failure had occurred during the COVID-19 pandemic, which was an exceptional situation and, although it could not lead to an exemption from liability, it constituted a mitigating circumstance. For this reason, he reduced the fine significantly to rather symbolic CZK 324,000 (approx. EUR 13,000).

Gun-jumping fine

The CCA imposed a fine of CZK 18 million (approx. EUR 720,000), on EP Energy Trading (part of the EPH group) for implementing acquisition of Gazela Energy before obtaining CCA's clearance. Before the transaction was notified, EP Energy Trading, among other things, engaged in exchange of sensitive information with Gazela, and upon agreement with the seller, changed Gazela's bylaws and nominated EP Energy's representative on Gazela's board of directors. EP Energy proactively notified the gun-jumping violation to the CCA, cooperated in the investigation, and agreed on the settlement. EP Energy also notified the transaction, which was cleared in a simplified procedure.

Competition Policy

Czech Competition Act amendment in Parliament

An amendment to the Czech Competition Act is currently in the Parliament. If it is passed, the CCA may get significant new powers, the key ones of which are summarized below:

- *New Competition Tool.* The amendment proposes the introduction of a New Competition Tool (NCT) to address market distortions. Following a sector inquiry, the NCT would enable the CCA to impose – without finding a competition law infringement – behavioral remedies for up to three years. For instance, it could impose obligations to provide access, or to notify acquisitions regardless of their size. It could also impose an obligation to disclose certain information, or, on the contrary, ban price announcements.
- *Call-in model.* The amendment also proposes a “call-in” power for the CCA to enable review of sub-threshold transactions. The call-in powers would be limited. The call-in mechanism would be used in exceptional cases, with the CCA hoping that it will encourage companies to seek comfort letters instead of initiating full merger clearance proceedings.
- *Fines on Individuals.* Under the proposed amendment, the CCA would also have the power to fine individuals (such as managers) who intentionally engage (or attempt to engage) in anti-competitive agreements, both horizontal and vertical, on behalf of their companies. They could face fines of up to CZK 10 million (approx. EUR 0.4 million) and disqualification from representing companies for up to five years.

Further changes to the Czech merger control rule

Besides the amendment already in the Parliament, the CCA has also opened a discussion about possible changes to the merger control rules. The exact proposal is not yet available, but the key areas include revision of the notification thresholds (it is unclear whether the change is necessary in the first place), the call-in model (depending on the outcome of the amendment already in the Parliament), and potentially broadening the scope of simplified procedure. The CCA has already indicated that the proposal is going to be introduced in the second half of 2025 at the earliest. Thus, the changes are unlikely to be effective before 2026.

Outlook for 2025

Based on public statements of the CCA's leadership, the CCA can be expected to keep the pace of its enforcement, imposing significant fines for the most serious infringements. Anticompetitive agreements are likely to remain in the forefront of the CCA's investigations, supported by dawn raids, of which the CCA conducted over 20 per year on average in the recent years. The CCA also seems open to investigating areas such as agreements concerning labor markets, which were historically not high on its radar.

The CCA also seems keen to expand the role of its Chief Economist. In 2025, the CCA made a new appointment to this position and plans to engage it more both in sector inquiries, but also in individual cases with the need of deeper economic analysis.

In sum, we expect 2025 to be yet another intriguing year for the Czech competition law.

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