

Amendment to Act on Significant Market Power and its impact on business practices

Dentons Alert

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On 1 January 2023, an amendment to the Act on Significant Market Power in the Sale of Agricultural and Food Products and Its Abuse (the “**Act**”)¹ comes into effect. The amendment significantly expands the Act’s scope both in terms of who is affected as well as the obligations it imposes.

All purchasers of food and agriculture products need to reassess whether they are now subject to the amended Act and revise their internal rules and contractual relations with suppliers accordingly.

Who is affected?

Before the amendment became effective, only those retailers with annual turnover from the sale of food and agriculture products in excess of CZK 5 billion (approx. €207 million) were subject to the Act—i.e. it applied to only a few of the largest supermarket chains in the Czech Republic.

However, from 1 January 2023, the Act applies to all purchasers in the food and agriculture chain (i) whose turnover exceeds €2 million and at the same time exceeds the turnover of their supplier, or (ii) whose total revenue in the Czech Republic exceeds CZK 5 billion. The amendment removes the previous condition that the turnover threshold applied only to the sale of food/ agricultural products, and hence extends Act’s scope to all entities whose total turnover exceeds certain statutory thresholds, regardless the source of such revenues.

In other words, **the Act now applies to all entrepreneurs who, even marginally, purchase food or agriculture products as part of their business if their turnover exceeds the aforesaid limits.** At the same time, new rules also apply to **purchasing alliances** whose members’ total revenue exceeds the statutory turnover thresholds.

¹ Act. no 395/2009 Coll., as amended.

According to preliminary estimates from the Office for the Protection of Competition (the “**Office**”), the Act will apply to some 800 additional entities. Furthermore, the amendment extends the material scope of the Act, since the definition of food and agriculture products now includes, for example, live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage, and prepared animal fodder.

The amended Act will newly impact a much wider range of businesses—for example, **online retailers, food/ meal digital platforms, gas stations, drugstores, pharmacies, restaurant chains, service providers** (such as those offering accommodation, sports, etc.), **tobacco shops/ newsstands chains**, etc.

New obligations under the amended Act

First, the Act stipulates that contracts between purchasers (having significant market power) and suppliers must be concluded in writing and always before the respective deliveries take place. The contract must include specific provisions, such as an exact specification of the purchase price, clear specification of the promotional conditions (if agreed) and invoice due date, which must not exceed 30 days.

Second, the purchasers must refrain from “unfair trading practices”, i.e. practices that substantially deviate from good and fair commercial practice, such as the unilateral imposition of contractual obligations on suppliers. The amended Act explicitly lists the following as unfair practices:

- Unjustified discrimination between suppliers;
- Tying consent to the conclusion of a contract to the condition of the purchase of services or goods;
- Arbitrary change of contractual terms;
- Requiring reimbursement of the purchaser’s costs or payments for promoting the products;
- Noncompliance with statutory requirements for supply contracts.

For noncompliance, the purchaser may be fined up to CZK 10 million (approx. €413,000) or 10 percent of the purchaser’s group turnover. In addition, the Office can impose remedial measures, for example, in the form of an obligation to return to the harmed suppliers the benefits obtained through the purchaser’s use of unfair trade practices. In the past, for example, the Office imposed a fine of CZK 83 million on the hypermarket chain MAKRO as well as ordering the grocery chain HRUŠKA to return a benefit of CZK 39 million to its harmed suppliers.

In this context, the chairman of the Office publicly declared the intent of the office to immediately focus on entities that are newly subject to the Act.

What can we offer?

We will be happy to help you correctly set up your purchaser-supplier relations and train your employees so that your company’s actions are in line with the new legislation. If you have any questions, please don’t hesitate to contact us.

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