

Competition Legal Quarters Q1 2022

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Our selection of the most exciting developments in the field of competition law during Q1 of 2022 in the Czech Republic and Slovakia, and the EU.

Among others:

- the EU General Court considered whether national competition authorities may be too lenient and therefore biased in cases where they investigate anticompetitive conduct of state-owned enterprises,
- the war in Ukraine affects supply chains and European competition authorities may, in certain cases, consider cooperation between competitors more leniently,
- the Czech Office for the Protection of Competition (UOHS) has significantly strengthened its position to conduct unannounced inspections, thanks to a series of court victories over the extent of its powers,
- the Slovak Antimonopoly Office (PMU) conducted an unusually high number of investigations regarding abuse of dominance across the sectors of economy.

How to use: this newsletter also provides signposts to articles or client briefs, in which Dentons' lawyers have deep dived the selected topics. Links are also provided to primary legal source or press releases.

European Union

The EU General Court annulled a billion-euro fine for Intel for alleged anti-competitive rebates

On 26 January 2022, the General Court (EU's first instance court) annulled a fine of approximately EUR 1 billion imposed on Intel for allegedly anti-competitive rebate schemes intended to oust its main competitor, AMD, from the x86 CPU market. The Commission appealed and the record-long saga continues.

Intel allegedly abused its dominant position in two ways. First, Intel provided discounts to OEMs (Dell, Lenovo, HP, and NEC) conditional on Intel purchasing all or almost all x86 CPUs for installation in their products. Second, Intel provided MSH, a major equipment distributor, with direct payments, subject to MSH selling exclusively computers equipped with Intel's x86 CPU chips.

The European Commission already fined Intel for these anti-competitive practices in 2009. The case went through the entire EU judiciary round until the Court of Justice of the EU (CJEU) annulled the General Court's first judgment in 2017.

In the most recent judgment, the General Court put into practice the reasoning of the CJEU that if the company under investigation raises reasoned objections, the Commission cannot rely on the presumption of illegality of loyalty rebates and must make a detailed economic assessment to determine whether the alleged practices are indeed capable to affect competition.

According to the latest intelligence, the Commission has opted to appeal the unfavourable judgment to CJEU again; this being the first time ever that an appeal has been brought against a *renvoi* judgment in the area of antitrust law.

More in Dentons' article [here](#), the decision of the General Court is available [here](#).

The General Court annulled the European Commission's decision to reject the complaint against a Polish state-owned carrier

On 9 February 2022, the General Court (EU's first instance court) annulled the decision of the European Commission of August 2019, by which the Commission rejected a complaint by company Sped-Pro S.A. against the Polish state railway carrier PKP Cargo S.A. The complainant alleged that the State-owned carrier had abused its dominant position in the market for rail freight services by refusing to enter into multi-annual contracts with the complainant under normal market conditions.

The Commission rejected the complaint arguing that if the alleged practices concerned mainly Polish market, the Polish competition authority was in a better position to assess the case in detail. While the General Court agreed with this argument, it nevertheless annulled the Commission decision. The General Court got persuaded by the complainant's argument and evidence that, as regards the investigation of a state-owned enterprise, there was a risk that the Polish Competition Authority would treat the defendant too leniently.

In addition, in General Court's opinion the Commission also failed to take account of the fact that Polish courts, which might be sitting on appeal against the competition authority's decision, could not be regarded as sufficiently independent – quoting to the rule of law and judiciary independence problems in Poland.

The decision of the General Court is available [here](#).

Proposal of new rules for horizontal agreements between competitors

On 1 March 2022, the European Commission published a set of new draft guidelines on horizontal co-operation agreements between competitors and two block exemptions for (i) research and development agreements and (ii) specialization agreements.

The amendment to the legal framework, which has been in force for more than 10 years, should bring European competition law closer to the information technology age. The guidelines, therefore, seek to shed more light on data sharing (*data pooling*) and technology infrastructures, for example, or explain the Commission's view on assessing sustainability agreements in the context of the Union's climate change policies (the *Green Deal*).

The new legal framework for horizontal agreements should enter into force on 1 January 2023.

A Commission press release is available [here](#).

Competition law and the war in Ukraine

European Competition Network - ECN, which brings together European institutions and national competition authorities, issued a joint statement on 21 March 2022 on the application of competition law in the context of the war in Ukraine.

As at the height of the Covid-19 pandemic, competition authorities acknowledge the need for market players to cooperate in the supply of goods and products that become increasingly scarce due to the war in Ukraine, and the market players' need to flexibly respond to sanctions lists. Therefore, according to the joint ECN statement, competition authorities may decide not to investigate cooperation between competitors, which is time-limited and necessary to mitigate these market repercussions. The authorities may thus refrain from penalizing such cooperation as anti-competitive agreements within the meaning of Article 101(1) of the EU Treaty, or they may treat such cooperation as justified based on the criteria of Article 101 (3) of the EU Treaty.

At the same time, however, ECN members make clear that essential products must continue to be offered at competitive prices and that it is not permissible to abuse the situation to distort competition.

The ECN statement is available [here](#).

Leaders of the EU legislature reach an agreement over the Digital Markets Act

On 25 March 2022, the representatives of the Council of the European Union, the European Parliament, and the European Commission agreed on a preliminary text of the Digital Markets Act (DMA). According to UOHS' press release, the goal of the DMA is to ensure that large online platforms comply with fair and non-discriminatory rules, which should benefit consumers and business users, including innovators and startups (press release [here](#)). Critics of the DMA claim that that is a discriminatory tool against large technology companies, especially from the USA.

The main enforcer of the DMA regulation will be the European Commission in cooperation with the authorities of the Member States, with companies facing a fine of up to 10% of worldwide turnover or, for example, a ban on mergers and acquisitions.

European Commission press release is available [here](#).

Czech Republic

Record fine from UOHS for resale-price maintenance

On 4 January 2022, UOHS imposed a fine of CZK 96.8 million (about EUR 3.7 million) for resale-price maintenance (RPM) by GARLAND distributor, s.r.o., a supplier of garden equipment, garden tools, and tools for home (hobby) use in the Czech Republic. According to UOHS, vertical agreements initiated by GARLAND aimed to eliminate price competition between its distributors to the detriment of consumers for almost six years. This is a record fine imposed by UOHS for a vertical anti-competitive agreement.

More in the Dentons' article [here](#).

According to the Chairman of UOHS, complying with obligations set by mandatory provisions of law does not lead to antitrust violations

The UOHS Chairman Petr Mlsna annulled a first-instance decision, in which UOHS found company Net4Gas to have abused its dominant position in the gas markets. Net4Gas' abuse allegedly consisted in disadvantaging a competitor, SPP Storage, s.r.o., in the matter of connecting its gas storage facilities in Dolní Bojanovice to the Czech gas transmission system.

The UOHS Chairman closed the proceedings, arguing that there could be no violation of the Czech Competition Act or Article 102 TFEU due to the fact that in the meantime, an amendment to the Czech Energy Act entered into force. As a result, the conditions imposed by Net4Gas on SPP Storage corresponded to the new requirements imposed by the Energy Act, and so Net4Gas could not be held as violating competition law.

Press release of UOHS available [here](#), decision of the Chairman of UOHS [here](#).

Supreme Administrative Court confirmed that UOHS' dawn raid at Fortuna's headquarters was lawful

The Supreme Administrative Court in the Fortuna case, a case of alleged collusion between betting companies, concluded that before conducting unannounced inspections (dawn raids), UOHS must have a sufficiently reasonable suspicion of possible anticompetitive conduct; however, the suspicion does not need to reach the level of certainty. The judgment is another significant boost to the Office's powers to conduct unannounced inspections.

More in Dentons' article [here](#).

Supreme Administrative Court has confirmed that UOHS may request emails automatically forwarded to the domain of a company that itself is not the subject of the investigation

The Supreme Administrative Court rejected EGEM's appeal seeking the illegality of UOHS conduct during an unannounced inspection. UOHS requested the investigated company to provide the company manager's mailbox stored on the infrastructure of another company, which, however, was not strictly in scope of the inspection decision. The Supreme Administrative Court held that, as far as the communication was attributable to the investigated competitor, it can be seized for the purpose of the investigation.

Decision of the Supreme Administrative Court [here](#).

The Regional Court upheld a fine of CZK 274 million imposed on Czech Railways for abusing its dominant position

The Regional Court in Brno dismissed the action filed by České dráhy a.s., the state-owned railway carrier, demanding the annulment of a UOHS fining decision. In 2018, UOHS imposed a penalty of CZK 274 million on České dráhy for abusing its dominant position in the long-distance passenger transport market between 2005 and 2014. According to the conclusion of UOHS and the Regional Court, the activities of České dráhy harmed competitors that participated in public tenders at the beginning of the liberalization of railway transport.

Media article available [here](#).

UOHS again fines the bid rigging cartel and applies a settlement procedure

On 23 March 2022, UOHS issued a press release about a fine in the aggregate amount of CZK 2.4 million imposed for the conclusion of a bid-rigging agreement in the area of audiovisual solutions and technology. According to UOHS, competitors AV MEDIA SYSTEMS, a.s., "M plus" spol. s r.o., Nowatron Elektronik, spol. s r.o. and SCIENTICA AGENCY, s.r.o. colluded to rig the result of two tenders in 2016 and 2017. All participants agreed to submit to the settlement procedure, in which UOHS reduces the fine by 20% for a competitor who has admitted its participation on the cartel and cooperated in UOHS's investigation. UOHS thus seems to continue its focus on punishing bid rigging cartels.

UOHS press release is available [here](#).

Slovakia

PMU fines the abuse of dominance in the field of waste management

PMU imposed a fine of almost EUR 298 thousand for abuse of dominant position in the field of waste management. In this case, PMU found that the firm Brantner, which was found to have a dominant position since 2019, charged significantly higher prices for landfilling mixed municipal waste to some municipalities compared to other municipalities without objective justification. The conduct in question was considered a practice of applying unfair trading conditions. The decision has not yet entered into force and is not published.

PMU fines abuse of dominance in the area of collective rights management

PMU imposed a fine of almost EUR 58 thousand for abuse of a dominant position in the field of collective rights management. PMU found that the dominant undertaking charged unreasonable prices when providing services to users of copyright works in the field of public transmission via TV and/or radio in the rooms of accommodation facilities between period 2015 and 2019. The decision has not yet entered into force and is not published.

PMU is investigating a possible abuse of dominance in the market of online real estate advertising portal services

PMU disclosed that it launched an investigation into a possible abuse of dominance in the provision of online real-estate advertising portals services in Slovakia. The competition authority wishes to test, in particular, suspicions of disproportionate prices for online advertising, conditions disadvantaging certain business and practices that limited choice of online portals for advertising purposes, tying and other restrictive practices that may have taken place as long as since 2016.

ECtHR rejected Vaša Slovensko, s.r.o. in favor of PMU

The European Court of Human Rights (ECtHR) rejected a complaint by Vaša Slovensko, s. r. o. brought against Slovakia. The complainant argued that by a PMU inspection at the company's premises in 2017, Slovakia has breached the company's fundamental rights to fair trial, to privacy, and to obtain an effective remedy. The cartel case in relation to which the PMU conducted the unannounced inspection concerned the market for issuing, distribution, and sale of meal vouchers and benefit vouchers, including the provision of related services.

ECtHR judgment is available [here](#).

Conference of PMU and the Faculty of Law of Comenius University in Bratislava on current trends in competition law

PMU in cooperation with the Faculty of Law of Comenius University in Bratislava organizes a conference on current trends in competition law. The conference is scheduled for May 26, 2022 and should take place on the premises of Comenius University in Bratislava.

Press release and other information available [here](#).

Advocacy letters from PMU

PMU addressed several advocacy letters to state administration and municipal or regional government in the Slovak Republic. Advocacy letters in 2021 concerned issues of (i) limiting the activities of certain categories of retail establishments during the COVID-19 pandemic, (ii) determining the length of opening hours of certain types of establishments in the Bratislava - Staré Mesto district, (iii) regulating prices in the area districts, (iv) gabion

specifications for public sector contracts, and (v) notified proposals for changes in European legislation in the field of the common agricultural policy.

More information about individual issues [here](#).

From other decision-making activities of PMU

PMU approved the creation of a full-function joint venture ColosseoEAS by founders BSP SOFTWAREDISTRIBUTION, a.s., and AZC. ColosseoEAS, a software company, supplies smart lighting systems to sports halls for example. It was a problem-free concentration, where there were no horizontal overlaps or relevant vertical relationships.

It is interesting to note that based on publicly available information, ColosseoEAS' turnover reached "only" EUR 2.2 million in 2020, which is below the threshold for the concentration to be notified for clearance by the PMU. However, according to a special provision of the Slovak Act on the Protection of Competition, it is also necessary to look at revenues in the year in which entrepreneurs were not affected by the Covid-19 pandemic. In 2019, ColosseoEAS reported turnover of EUR 14.2 million; it is possible that the transaction had to be notified to the PMU for this very reason.

PMU decision is available [here](#).

PMU approved an acquisition of indirect sole control by PENTA INVESTMENTS LIMITED over MEDICAL GROUP SK, a.s. The activities of the parties to the concentration did not overlap horizontally. As regards the vertical effects in the relationship between the supplier of medicines and medical devices and the buyers of medicines and medical devices, the notification provided data showing a low market share of the acquired company within the different market alternatives.

PMU decision available [here](#).

PMU approved an acquisition of sole control by CPI PROPERTY GROUP over IMMOFINANZ AG. The activities of the participants in the concentration overlap in the area of renting retail premises. CPI owns and operates office real estate, retail premises, hotels and resorts, residential real estate, investment land, development, industrial, agricultural, and logistics real estate, while performing most activities abroad. Within Slovakia, it operates only in the area of renting retail space. Immofinanz is active in renting of office and retail space. In the area of office space rental in Slovakia, it operates under the international brand "myhive", in the area of retail space rental it operates under the STOP SHOP brand and under the VIVO brand! for shopping malls. However, PMU concluded that the concentration would not significantly impede effective competition in the relevant market in question.

PMU Decision is available [here](#).

PMU approved an acquisition of sole control by INTOCAST Slovakia a.s. over SLOVMAG a.s. Lubeník. PMU identified horizontal overlaps between the parties' activities in the production and sale of shaped and unshaped refractory products, as well as a vertical relationship in the area of raw magnesite used as an input for the production of refractory products. Concerning horizontal effects, PMU took into account in particular the presence of significant competitors, differences in product characteristics and production processes and the low estimated share of the parties to the concentration in the defined relevant markets and concluded that the concentration did not raise competition concerns. With regard to horizontal effects, PMU, in particular, took into account in particular the presence of a major competitor in the mining of magnesite as well as the negligible presence of SLOVMAG in this relevant market and did not identify any competition concerns.

PMU Decision is available [here](#).

We are happy to share our know-how. We will continue to prepare a selection of competition news on a quarterly basis, but you can keep track of exciting developments on our LinkedIn profiles (below).

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