Amendment to the Antitrust Act

CZECH REPUBLIC

Arthur Braun
bpv Braun Partners, Prague
Arthur.braun@bpv-bp.com

An amendment (Act 293/2016 Coll) to the Czech Act on the Protection of Competition came into force on 19 October 2016. Even though it cannot be considered to be a revolution, it still contains some important aspects for antitrust lawyers.

Merger control

International readers who have come into contact with Czech antitrust law usually have done so within the framework of merger control filings. This meant also dealing with the old questionnaire which was modelled after Form CO of the 1990s, which over the years became really outdated and requested a lot of repetitive and unnecessary information. In September 2016, the Czech office issued a slightly modernised and simplified version of the questionnaire as guidelines (Decree 294/2916 Coll).

Now, due to the amendment, a small change has improved the simplified procedure which means the filing must be decided within 20 days. Since October 2016, when the Antitrust Office (the 'Office') requires additional information, it will not need to start Phase I proceedings but the 20-day decision term is simply halted. If using a Czech attorney, all communication is done electronically, saving a few days compared to former times for mail delivery. Simplified procedures - which possibly may be viewed as best practice - have allowed for the possibility to discuss the matter on a pre-notification level. The Office had for many years issued guidelines for such contacts.

Cartel sanctions

An amendment that was added in the legislative process regulates the blacklisting of cartelists from public tenders. Now the possibility to exclude them is still limited to three years but the actual duration is to be decided according to the severity of the cartel violation.

Supervision of state bodies

An issue that was discussed at many conferences — and viewed as more important considering the certain politicisation perceived by many in the country - concerns the supervision of state bodies for antitrust matters by the Ofiice. Such authority was widely formulated in the law but had little * practical use. In recent years, the Office had in its second main responsibility as the supervisory body for public procurement not only cancelled many tenders but also issued, on occasion, quite severe fines to ministries and municipalities as well as to other public institutions. Therefore, fears existed that a further increase of its powers would create more friction between state bodies.

The amendment does not justify such fears. The supervision of state institutions for antitrust infractions has now become more precise and excludes a large scope of state activities.

Legal review of dawn raids

Another matter of European relevance is related to the *Delia Pekarny* decision by the ECHR from 2 October 2014, which dealt with the need to provide legal review to defend against dawn raids by antitrust authorities. After a few months of not conducting dawn raids, they were taken up again by the Office, arguing that there was sufficient legal review of dawn raids in the Czech legal system. For safety reasons, a special possibility to file a complaint at the competent court at the place of the dawn raid has been introduced.

Procedural changes

Some changes of terminology are of lower importance, but one procedural change that confirms prior practice is a more detailed regulation of the access to files.

Finally, it is of interest that information sharing with foreign antitrust offices is now expressly allowed by the Antitrust Act if an international treaty exists and protection of information in the receiving state is comparable to national protection