

17/12/2015

Antitrust Committee publications

Czech Republic

Victory by exhaustion



For some, 15 years is a long time. Not so, it seems, in relation to Czech antitrust matters. Most see 15 years as half a generation, but one particular case has kept many generations of employees and legal staff at the Czech Antitrust Office busy. It was the case against the telecoms provider O2 Czech Republic (formerly Eurotel, later Telefónica O2) (proceedings file Number 18/01) and it had a rather unspectacular end on 28 May 2015. The result was that an abuse of a dominant position could not be proven.

The background to the case is quite simple. Back in 2000, O2 Czech Republic was the dominant (and originally the only) mobile phone network provider, which was called Eurotel. Eurotel charged higher fees for calls connected to the Cesky Mobil (now Vodafone) network than for calls connected to the RadioMobil network (now T-Mobile).

Originally a fine of CZK 48m (Czech Koruna, approximately €1.7m) was levied on Eurotel which, as expected, appealed the decision. Proceedings were brought before the Administrative Court and the Highest Administrative Court, which upheld the fine. Finally the Constitutional Court in 2007 quashed the lower courts' decisions and remitted the case back to the Czech Antitrust Office. The Czech Antitrust Office issued a more precise decision, as required – among other things – by the Constitutional Court in 2009, which was then appealed again before the President of the Czech Antitrust Office who decided three years later to remit it to the case handlers of the Czech Antitrust Office to re-draft.

Interestingly, in 2012 the President of the Czech Antitrust Office considered that, in addition to other concerns that he had, there was insufficient evidence for the case to proceed. The lack of evidence did not relate to the dominant position of Eurotel, or to the abuse itself, but concerned the legal succession of the company since 2000.

As a result of a decision of the highest Administrative Court on 30 December 2009 in an unrelated case (file number 8 Afs 56/2007-479 concerning petrol station cartels), in the event of a merger or other corporate transformations leading to a legal succession and the deletion of the original defendant company from the company register, a fine by the Antitrust Office can be imposed on the legal successor only if the Antitrust Office can prove that the transformation or reorganisation itself was an abuse of right and it was performed with the intent of circumventing competition law.

It took another three years before the Czech Antitrust Office ended its proceedings. It carried out further detailed investigations and was faced with the fact that after more than ten years, the relevant documents on the basis of which it would be able to pursue the case were not always available. The Czech Antitrust Office concluded in 2015 that the 2003 merger of the then Eurotel into O2 was fully motivated by commercial imperatives and was not carried out with the intent of avoiding the fine imposed by the Czech Antitrust Office. The Czech Antitrust Office would have reached the same conclusion much earlier if it had taken into account the fact that the fine of €1.7m was clearly way below the material costs of a merger of a telecoms company with millions of customers.

At any rate, many more interesting questions relating to the lapse of terms (eg, whether a fine could still be imposed) were not the subject of a final decision by the Office.

Call it much a do about nothing or a victory by exhaustion, the longest running case in Czech competition legal history was quietly put to bed after almost 15 years.

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