New regulations of the Hungarian Competition Act entered into force

The recent amendments of Act LVII of 1996 on the Prohibition of Unfair Trading Practices and Unfair Competition (Tpvt., Hungarian Competition Act) entered into force in December 2016 and in January 2017, and serve a number of purposes: to increase the effectiveness of merger control, to significantly reduce administrative service fees, to provide more assistance to clients willing to cooperate with the Hungarian Competition Authority, and finally, to implement the regulations of the Directive on Antitrust Damages Actions into Hungarian law.

With the entering into force of these new regulations, proceedings opened upon request regarding the authorisation of the merger of undertakings are no longer applicable, and in the future undertakings are only required to provide notification if the merger exceeds the prescribed threshold limit and the authority will open a proceeding ex officio to investigate its effects on competition. The authority must settle the notification within 8 days. Regarding the notification, only an amount of 1 million HUF (≈3250 EUR) must be paid as an administration fee when submitting the application, instead of the former 4 million HUF (≈13000 EUR), which means the amount is decreasing.

The threshold limits have also been modified: the former 500 million HUF (≈1.62 million EUR) “net turnover of each of at least two of the groups of undertakings concerned” has been increased to 1 billion HUF (≈3.25 million EUR), while the 15 billion HUF (≈48.75 million EUR) aggregate net turnover of all the groups of undertakings concerned has remained unchanged. According to the act, only the Hungarian turnover, that is the inland sales must be taken into account when calculating the combined net sales revenues.

The GVH receives a new entitlement in connection with the raising of the threshold limits, since mergers under the threshold limits mentioned above can also be investigated, if the combined net sales revenues of the undertakings involved are above 5 billion HUF (≈16.25 million EUR), and the merger is likely to affect competition. In order to ensure the application of the law, undertakings involved in such mergers must notify the acquisition; in default of a notification the authority is allowed to open a proceeding ex officio only within 6 months after the execution of the merger.

In the context of all these changes, the amendments also enable dawn raids to be carried out in merger cases, if a reasonable suspicion exists that the transaction in question would be implemented in the absence of the GVH’s authorisation, or the notification of the concentration conceals essential information or contains misleading information. Accordingly, the GVH is not entitled to conduct dawn raids when the companies do not notify their transaction under the new threshold mentioned above.

The amendments make it possible for full immunity or for a fine reduction to up to 50% to be granted
also in the case of vertical agreements aimed at resale price maintenance. In addition to this, the “agreements of minor importance” characterisation of these vertical agreements (below 10% market share) is no longer applicable.

By amending the Competition Act, the legislators have fulfilled their obligation, according to which the provisions of the 2014/104/EU Damages Directive had to be incorporated into the national law by 27 December 2016.

As regards to settlement procedures, the amendment further raises the threshold of fine reduction to up to 30%.

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