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Conference on State Aid Law and Small and Medium Sized Enterprises 2019, Czech Republic, 29-31 May

The Office for the Protection of Competition in cooperation with the Ministry of Industry and Trade organized a three-day international conference on State Aid and issues of small and medium-sized enterprises between 29 and 31 May 2019. Mr. Petr Rafaj, the Chairman of the Office, welcomed almost 150 conference attendees from various countries.

The opening speech was followed by Mr. Petr Solský, the Vice-Chair of the Office, who introduced the Office's last year's activity in the field of State Aid. He mentioned particularly the successful negotiations with European Commission concerning State Aid for Czech Post, combined transport, school meals or periodical publications on Czech cinematography. The Vice-Chairman also pointed out that the number of notifications, pre-notifications and GBER block exemption notifications have annually stabilized at 130. The Office records about 300 of new providers of State Aid each year in connection with the *de minimis* register agenda; approximately 60-70 proceedings per year has to be conducted due to errors in provider's registration. From the upcoming Office's agenda were mentioned consultations on the extension of certain regulations and guidelines until 2022, the so-called fitness check of State Aid rules or the preparation on fulfilling the State Aid basic conditions in the 2021-2027 programming period (in cooperation with the Ministry for Regional Development).

Other contributions of the introductory part were focused on the State Aid for high-speed internet networks. Mr. Pietro Pantalissi from the DG Comp presented the views of the European Commission, and then Mr. Marian Piecha, the Deputy Minister at the Ministry of Industry and Trade, summarized the situation in the Czech Republic. He thinks that the Ministry is mainly concentrating the aid particularly on the construction of infrastructure in so-called white areas (i.e. in locations without broadband infrastructure), supporting the demand, increasing of the network permeability and on creation of digital maps of infrastructure in particular regions. Ambassador Mr. Jaroslav Zajíček from the Permanent Representation of the Czech Republic to the EU in Brussels explained the role of Permanent Representation in the negotiations concerning the State Aid and pointed out the great importance of the current time period after the recent European Parliament elections. Afterwards Ms. Libuše Bílá, the head of the State Aid Unit, was presenting the ongoing and upcoming revisions and changes in legislation, especially she mentioned the EC proposal to extend the validity of a number of regulations by two years, i.e. until 2022.

Ms. Iva Příkopová from the Office explained in her presentation the terms economic and non-economic activities. Her colleague, Ms. Jana Staroňová, subsequently summarized the general and specific obligations of State Aid providers. Mr. Martin Fott from the DG Comp devoted his speech to aid provided on low-emission mobility, rules on support of science, research and innovation and last but not least, on so-called Important Projects of Common European Interest (IPCEI). Ms. Gabriela Kinclová from the Office in her contribution about the State Aid in the transport sector presented two

support projects for building and operating the Park&Ride parking lots from the initiative of the Ministry for Regional Development and the Capital City of Prague. Ms. Martina Břešťovská from the Ministry of Agriculture informed the audience about the State Aid in agricultural sector and the most important decisions of the European Commission as well as the case law of the Court of Justice of the EU were summarized by Mr. Michael Kincl from the Supreme Court of the Czech Republic.

The second day of conference was dedicated to the issue of small and medium-sized enterprises. Ms. Graça da Costa from the DG Comp spoke about the way how the small and medium-sized enterprises are defined for the purposes of providing State Aid. When determining the size of the enterprise, we have to take into account not only the number of employees and the turnover rate or the annual balance sheet, but also the relationships with other businesses. In this context, the speaker highlighted the judgements of the General Court from 2016 dealing with cases of Crosfield Italia Srl and K Chimica Srl. Practical experience with the enterprise size verification was then provided by Ms. Lucia Jenčová from the Ministry of Economy of the Slovak Republic, Ms. Renáta Mičická from the Audit Authority at the Ministry of Finance of the Czech Republic and Mr. Bohumil Šmucr from the Ministry of Industry and Trade. The latter speaker raised concerns about the complexity and ambiguity of the small and medium-size enterprise definition and mentioned the fact, that this definition isn't incorporated into the secondary law, but we can find it only in lower-ranking implementing provisions or even in soft-law.

Mr. Martin Piecha, the Deputy Minister at the Ministry of Industry and Trade, has announced that every project will be subject to control of SME's status. This obligation will be newly transferred solely prior to issuance of grant award decision. The modification is applicable from September 2019 and its aim is to save capacity for the projects that will pass an assessment. The problematic areas are seen in the reliability of the information sources, the reliability of the inspections carried out and its duration. Therefore Mr. Piecha recommended simplifying the definition of SMEs with regard to the relationship of the enterprise with other individuals and its partners or employees. Mr. Balázs Greinstetter from the Hungarian Ministry of Finance, Ms. Patrycja Brudnicka from the Polish Ministry of Entrepreneurship and Technology and Ms. Lucia Jenčová from the Ministry of Economy of the Slovak Republic spoke about basically identical problems in applying the SME definition in administratively demanding SME status control procedures and emphasized the inconsistent data within the available registers and databases.

The program of the last conference day was dedicated to discussion within workshops and roundtables, particularly about possible changes to the current unclear definition of SMEs, clarification of the procedures during identifying business interconnections through individuals and on access to data that may be useful for identification of these connections. Mr. Bohul Šmucr from the Ministry of Industry and Trade summarized the discussions and remarked that the majority of discussion participants expressed doubts about the relevance of the number of employees on determination of the true economic strength of enterprise and that they would prefer to take into account only indicators such as turnover or business assets. The participants also identified as problematic issue the approach dealing with relationships towards enterprises in a group, where the direction of the control process is not taken into account when considering the SME definition. The conference participants agreed on criticism of the ambiguity of the small and medium-sized enterprise definition, which causes disproportionate administrative burden on both the providers and the beneficiaries of the State Aid.

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