

Major Amendment to Competition Act: Stronger Office for the Protection of Competition, More Uncertainty for Businesses

Czech competition law may be on the verge of its most significant reform in many years. If the proposed amendment to the Act on the Protection of Competition is adopted, the Office for the Protection of Competition (ÚOHS) will acquire substantially broader powers. These will extend beyond traditional cartel enforcement and merger control to include, for the first time, the ability to intervene directly in markets where ÚOHS considers competition to be 'failing', even in the absence of any infringement. This is the core of the reform: ÚOHS is expected to move away from its traditional role as a repressive authority punishing past infringements and towards an institution capable of actively 'fixing' how markets function going forward. This is a systemic shift, not a cosmetic one.

New competition tool: market interventions without finding any infringement

The greatest attention is understandably focused on the so-called new competition tool. Under the government proposal, ÚOHS will be able to conduct market monitoring and market investigations and subsequently impose generally applicable measures wherever it identifies long-term competition failures. These may include markets with a limited number of players, high barriers to entry, information asymmetry, or an environment conducive to coordination even in the absence of a prohibited agreement. The proposed amendment also



extends to regulated sectors such as energy and telecommunications; compared to earlier plans, the role of sector regulators has been reduced largely to consultation. Crucially, in extreme cases the amendment even allows for structural measures, such as a mandatory divestment of part of a business.

It is precisely this new competition tool that I consider the most problematic part of the reform. The reason is simple: it is based on the vague concept of 'competition failure' and allows ÚOHS to carry out far-reaching interventions without finding any infringement. Undertakings may therefore face state intervention despite having broken no rule. This undermines the predictability of the rules and increases regulatory risk, particularly in concentrated or dynamic markets. Competition law thus moves away from its traditional mission of sanctioning infringements and closer to sector regulation – without it being clear whether ÚOHS has the necessary analytical capacity and institutional checks for such a shift. While similar tools are being introduced in other jurisdictions, in the Czech context it is relevant that ÚOHS and sector regulators (especially the Czech Telecommunications Office) often have differing views on the same issues.

Mergers and personal liability: a new risk equation for undertakings

The second major area concerns mergers. The government proposal raises the standard notification thresholds to CZK 2.5 billion in aggregate turnover in the Czech Republic and CZK 350 million for at least two undertakings. At the same time, however, it introduces a call-in mechanism enabling ÚOHS to request notification of transactions below these thresholds if, in its view, they could significantly distort competition. Compared to earlier proposals I saw, this model is broader: the government proposal no longer requires individual turnover of over CZK 100 million for at least two undertakings; meeting the total turnover threshold of CZK 2.5 billion is sufficient. This power is intended to be used primarily in cases of so-called killer acquisitions (buying and eliminating a future



competitor) or roll-up strategies involving creeping concentration. For transactional practice, the amendment will therefore mean fewer mandatory notifications in routine cases, but at the same time greater legal uncertainty for acquisitions of smaller targets.

Equally sensitive are the changes in the sanctions and procedural framework. The amendment introduces personal administrative liability of individuals for intentional horizontal cartels, including attempts and participation, with fines of up to CZK 10 million and bans on activity for up to five years. The debate on personal liability in antitrust is legitimate in itself: record corporate fines often affect shareholders rather than the true architects of cartels – managers and employees involved in the conspiracy. In my view, however, the problem arises when individual liability becomes primarily a tool for gathering evidence against the company. That appears to be ÚOHS's intention, at least according to how it has presented this. The amendment would allow individuals to avoid sanctions if they self-incriminate and provide evidence of the company's infringement. Such an approach may create new tensions or distrust between companies and their employees – as if we did not already have enough divisions in society.

Procedural powers and dawn raids: efficiency of proceedings at the expense of legal certainty

The amendment further expands ÚOHS's powers during unannounced inspections (dawn raids), explicitly extending them to cloud data and allowing the authority to complete document reviews outside the premises of the undertaking, i.e., at ÚOHS's premises. It also raises fines for non-cooperation to up to 5% of turnover and largely removes the possibility of lodging an appeal in settlements. ÚOHS will additionally gain access to data collected by other public authorities. To be fair, the proposal also introduces certain safeguards, such as new procedural protection of attorney-client privilege and remote access to the case file. The overall trend, however, is clear: greater emphasis on efficiency and speed of



proceedings, with less room for procedural defence. That is precisely the point at which not only competition lawyers, but above all undertakings, should be paying close attention.

Although the amendment contains some rational elements, the prevailing impression is that it shifts the balance between effective enforcement and legal certainty too far in favour of the State. ÚOHS is set to become a much more powerful player. We might take comfort in the fact that its current management generally acts with restraint and promises not to abuse the new tools – as Vice-Chairman Kamil Nejezchleb himself has said, fully aware that “with more power comes more responsibility”. The problem is that these powers will remain in place in the future, even under different management that may not exercise the same self-restraint. All the more reason, then, to scrutinise carefully whether the new powers are truly necessary, defined with sufficient precision, subject to effective review and accompanied by adequate safeguards against excessive interventions.

Because in competition law, it does not generally hold that more powers automatically mean more competition.

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