

HUNGARY *

Legislative Developments

Astrologists projected that 2013 will bring major shifts and changes to Earth, both greatly affecting our life on the planet. We leave it for you to decide whether their foretelling was correct, and in this summary, we rather focus on those legislative developments that took place in Hungary the year 2013 and are likely to have multi-year implications.

Following more than a decade of scientific and legislative consultations and preparations, Parliament adopted Act V of 2013 on the Civil Code.¹ The new Civil Code of Hungary will enter into force on March 15, 2014. The Code incorporates many different areas of private, public, and corporate laws that were earlier embodied in separate acts of law. The changes in the new Civil Code will have a wide ranging effect on many other laws and regulations, including those on competition.

In the area of competition law there was no need to pass a brand new law to replace Act LVII of 1996 on the Prohibition of Unfair Trading Practices and Unfair Competition² ("Competition Act"). Instead, and considering that an extensive review of the Competition Act was last completed in 2009, the legislator decided to introduce additional changes into the existing Competition Act to (i) secure coherence within the Competition Act and with other legislations, (ii) incorporate domestic judicial practice, and (iii) comply with

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¹ Act V of 2013 on the Civil Code, which will enter into force on March 15, 2014, available in *Hungarian* at http://njt.hu/cgi_bin/njt_doc.cgi?docid=159096.239298

² Available in *Hungarian* at http://njt.hu/cgi_bin/njt_doc.cgi?docid=26902.250701

international competition trends and tendencies.³ As a result, Parliament passed Act CCI of 2013 on the Amendments to the Competition Act (“Amendments”). Provisions of the Amendments take effect on January 1, 2014 and on July 1, 2014.⁴

One of the most important changes of the Amendments concerns the merger control process and the relation between merger authorization and merger implementation. Provisions of the Competition Act did not expressly prohibit the implementation of mergers prior to obtaining the formal authorization of the Economic Competition Office (“Competition Authority”)⁵, and allowed the parties to implement the transaction at their own risk. In such cases, however, several problems arose when the Competition Authority following completion of its internal review procedure did not authorize the merger, or in the authorization decision prescribed certain mandatory conditions. In order to prevent these situations, amended Section 29 of the Competition Act expressly stipulates that mergers cannot be implemented without the prior authorization of the Competition Authority. This prohibition primarily applies to voting rights and to the appointment of executive officers of the merged entities, both of which can now be exercised only after obtaining the formal authorization decision of the Competition Authority. The Amendments also introduced one exception to this rule, when at the specific request of the parties the Competition Authority can approve the exercise of certain control rights prior to the merger authorization if it is necessary to preserve the value of the investment.⁶

³ The Competition Act was repeatedly amended in the past years to reflect and comport to changes in other laws but lacked detailed and thorough reconciliation, which was done in 2013.

⁴ Available in Hungarian at http://njt.hu/cgi_bin/njt_doc.cgi?docid=165228.252924; http://njt.hu/cgi_bin/njt_doc.cgi?docid=165228.252923; http://njt.hu/cgi_bin/njt_doc.cgi?docid=165228.252925.

⁵ In Hungarian: Gazdasági Versenyhivatal or “GVH”.

⁶ See Section 29/A of the Competition Act.

Another modification concerns the conditions that the Competition Authority can set forth in the merger decision. Under the Competition Act, these conditions were determined solely by the Competition Authority irrespective to the consent of the undertakings. Under amended Section 30(3) of the Competition Act, the Competition Authority, instead of blocking the merger may authorize it if the parties are willing to amend their agreement and eliminate the detrimental market effect by accepting certain pre- and/or post-merger conditions, such as the sale of certain assets, or the release of control over indirect parties.

In order to expedite competition supervision proceedings and follow the established practice of the European Commission and other national competition authorities, the legislator introduced the possibility of settlements with the Competition Authority.⁷ This means that following establishment of the relevant facts, and provided that the parties are willing to cooperate, the Competition Authority can enter into settlement negotiations. Within the framework of these negotiations the Competition Authority informs the parties of the facts it has established, the evidence gathered, and the penalty range of the imposed fine. On the basis of these information, the parties are free to make a settlement declaration, in which they admit their participation in the presumed illegal conduct, set the maximum amount of fine they are willing to pay, and announce that in case the final decision of the Competition Authority reflects the content of their settlement declaration they will not request further negotiations, and abstain from raising any judicial challenge. According to amended Section 73/A (5) of the Competition Act, the parties can withdraw their settlement declarations until the expiry of the judicial review deadline if the decision of the Competition Authority is substantially different than the content of their settlement declaration. This would include the case when the size of the fine imposed by the Competition Authority exceeds the maximum amount of the fine proposed by the party in the settlement declaration. Settlements not only

⁷ For details see Section 73/A of the amended Competition Act.

shorten the competition and judicial review procedures in some cases by years, but also provide significant financial benefit to the central budget in the immediate and voluntary payment of the imposed fine.

Mergers

On December 10, 2013, the Competition Authority approved the joint direct control by SQ-INVEST Kft (“SQ-INVEST”) and Közép Európai Média és Kiadó Zrt (“CEMP”), over the online book sales company Shopline-webáruház Nyrt (“Shopline”), and the joint indirect control over the book sales company LIBRI Kft (“LIBRI”).⁸ The Competition Authority identified horizontal competition issues with regard to the transaction⁹ and prescribed specific conditions relating to the price margin of LIBRI and a 1% price margin return from both companies to publishers that have direct contractual relationship with them for retail online sales for years 2014, 2015 and 2016.

On April 12, 2013, the Competition Authority approved the direct sole acquisition of global solutions provider Nypro Inc., by Jabil Circuit Inc. (electronic manufacturing solutions provider; “Jabil”). In addition to Hungary, the merger was notified in China, Germany, Mexico, Russia, and the USA. As a result of the transaction, Jupiter Atlas Acquisition Corp., the subsidiary of Jabil merged into Nypro, and the shareholders of Nypro received cash consideration.¹⁰

⁸ Decision No. Vj/52-169/2013., December 10, 2013, *available in Hungarian* at <http://www.gvh.hu/domain2/files/modules/module25/2477929269E00C3E6.pdf>

⁹ The price margin of Shopline is lower than that of LIBRI, the merger may indicate a rise in the price margin, which could possibly adversely affect the consumer prices and publisher activity.

¹⁰ Decision No. Vj/024-12/2013., April 12, 2013, *available in Hungarian* at <http://www.gvh.hu/domain2/files/modules/module25/23315819CC28CA302.pdf>

On August 5, 2013, the Competition Authority unconditionally authorized Magyar Villamos Művek Zrt (“MVM”), to acquire control of natural gas trader company E.ON Földgáz Trade Földgázkereskedő Zrt., and natural gas storage company E.ON Földgáz Storage Földgáztároló Zrt.¹¹ Similar competition review procedures were initiated in Austria, Germany, Romania, Ukraine, and Serbia. Competition authorities in these countries also approved the acquisition without setting any conditions.

In a separate transaction aimed at the acquisition of additional natural gas storage facilities, the Competition Authority authorized the acquisition of sole direct control over natural gas storage company MMBF Földgáztároló Zrt. (“MMBF” is a member of the MOL group), by state-owned bank MFB Magyar Fejlesztési Bank Zrt. (“MFB”), on December 16, 2013.¹² MFB, whose independent decision-making was again confirmed by the Competition Authority, acquired 51% of the shares of MMBF.

Cartels and Other Anticompetitive Practices

On November 19, 2013, the Competition Authority ruled that twelve banks and mortgage lenders¹³ violated the Competition Act by coordinating their strategies between September 15, 2011 and January 30, 2012, through the exchange of information qualified as a business secret in order to reduce the full prepayment of foreign currency based mortgages on fixed exchange rates by limiting access to loans which would have been suitable to redeem (and repay early in full) these loans.¹⁴ On the basis of the available information, and in particular

¹¹ Decision No. Vj/31-145/2013., August 5, 2013, *available in Hungarian* at <http://www.gvh.hu/domain2/files/modules/module25/23935C643D91CCFE6.pdf>

¹² Decision No. Vj/85-12/2013., December 16, 2013, *available in Hungarian* at <http://www.gvh.hu/domain2/files/modules/module25/2479031BE3FD56C5F.pdf>

¹³ Specifically (using abbreviated names): Budapest Bank, CIB Bank, Citibank branch, ERSTE Bank, FHB, K&H, Takarékbank, MKB, OTP, Raiffeisen, UCB Ingatlanhitel Zrt., UniCredit.

¹⁴ http://www.gvh.hu/gvh/alpha?do=2&st=2&pg=133&m5_doc=8456

based on written evidences (emails, internal notes, etc.), the Competition Authority concluded that in order to reduce the number of replaced loans and the full prepayment of loans on fixed exchange rates, the involved financial institutions coordinated their practices in a uniform, comprehensive scheme. The banks not only shared information about their strategies relating to full prepayment and interested clients but conducted internal consultations to coordinate their strategies.¹⁵ In its decision the Competition Authority ordered the banks to pay fines in the total amount of HUF 9,488,200,000.00 (approx. US \$43 million).¹⁶ Individual fines were calculated in accordance with Notice No. 1/2012¹⁷ of the President of the Competition Authority and the Chairman of the Competition Council, which provides information about the factors which must be taken into consideration when fines are imposed. The differences in the fines imposed reflected that the revenues gained by the banks as a result of the violation significantly differed, as did the participation of the individual banks.

Court Decisions

In its July 3, 2013 judgment, the Curia of Hungary¹⁸ found in favor and maintained the decision of the Competition Authority, and dismissed the complaints of EGÚT Egri Útépitő Zrt ("EGÚT") belonging to the COLAS Group Zrt ("COLAS"), and Strabag Építő Zrt ("STRABAG").¹⁹ On the January 29, 2009 issued decision²⁰, the Competition Authority

¹⁵ Decision No. Vj/74-873/2011., November 19, 2013, *available in Hungarian* at <http://www.gvh.hu/domain2/files/modules/module25/2458168963FF1F688.pdf>

¹⁶ One bank (FHB) was exempted from the fines and the GVH terminated the proceedings with respect to Magyar Cetelem Bank Zrt.

¹⁷ *Available in English* at

<http://www.gvh.hu/domain2/files/modules/module25/19939E3741DB36983.pdf>

¹⁸ Formerly known as the Supreme Court of Hungary.

¹⁹ The claim of COLAS was already dismissed by the first and second instance courts, and the Supreme Court confirmed the previous instance judgments.

found that between 2006 and 2009 the practices of STRABAG and EGÚT were eligible to restrict economic competition when they divided the market and fixed their prices in bids that they submitted in response to public procurement tenders for bridge and road construction works in Hungary. The Competition Authority also fined COLAS, because of its price fixing practice in another but related public tender. The participants were ordered to pay the total amount of HUF 3,000,000,000.00 (approx. US \$13.8 million) in fines.

On March 25, 2013, the Metropolitan Administrative and Labor Court dismissed the claims of five taxi companies and upheld the decision of the Competition Authority²¹ in which it imposed a fine in the amount of HUF 24,500,000.00 (approx. US \$110 thousand). In the challenged decision the Competition Authority established that the companies concluded an agreement to restrict competition and to acquire the contractual partners of one of their competitors.

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²⁰ http://www.gvh.hu/gvh/alpha?do=2&st=2&pg=113&m5_doc=6011

²¹ Available in Hungarian at

http://www.gvh.hu/gvh/alpha?do=2&st=1&pg=11&m5_doc=8348