

Competition Flash

June 2018

Czech NCA: Fines revisited

In late April, the Czech NCA, the Office for the Protection of Competition (“NCA”) introduced a new policy for setting fines for a breach of the Competition Act.¹ In it, the NCA claims to have taken into account its experience with the application of the previous rules and the relevant case law. At the same time, it warns that starting from 24 April 2018, it will be allowed to impose much harsher penalties as a result of the new rules.² This issue of Competition Flash will briefly cover the most significant changes in this document.

Specific circumstances of conduct taken into account

When setting the fines, the NCA will to a greater extent take into account the economic aspects of the anti-competitive conduct. They are already reflected in the initial stage of the fine assessment, where one of the input values is the turnover generated from the sale of goods that is directly or indirectly affected by the anti-competitive conduct. We hope that given its tightening in other sections of the methodology, the NCA will not assess fines based on turnover generated on the entire relevant market when only a part of the market is affected. The NCA also promises to make a distinction between the real and the potential effects on competition, the benefits achieved as a result of the anti-competitive conduct as opposed to the impact on the final consumer.

Increasing the basic amount of fine

The proportion of sales used as the basis for the fine assessment has also increased. The fine for very serious infringements has been raised from the existing maximum of 3% to 5–15%. Furthermore, the final fine for very serious

infringements should amount to at least 0.5% of the total annual turnover of the undertaking. The fine for serious infringements should range from 3% to 10% and for less serious infringements should amount to a maximum of 5% of the turnover affected (i.e. turnover affected by the anti-competitive conduct).

Scope for fine adjustment

The NCA also introduces a new threshold when adjusting the fine amount as a result of mitigating and aggravating circumstances. The total fine adjustment may, as a result, amount to a maximum of 70% of the basic fine. This threshold will thus limit the possibility to lower the fine if multiple mitigating circumstances were applicable.

Conclusion

The NCA made a number of other changes that will affect the final amount of the fine. The increase in the percentage levels for serious infringements, introduction of a threshold for mitigating circumstances and classification of certain hard core vertical restrictions (e.g. setting prices for future sale) among very serious infringements are a clear signal that the NCA is ready to impose higher fines in the future. On the other hand, the new methodology allows for the application of economic reasoning to a greater extent, which could in turn benefit the undertakings namely when the anti-competitive conduct (e.g. horizontal price agreements) has no or minor effects on competition. Note that this policy is binding for the NCA in line with the case law although undertakings may seek to deviate from it whenever it contradicts the law or constitutional principles.

¹ Available at: http://www.uohs.cz/download/Legislativa/HS/CR/Metodika_pokut_2018_04.pdf.

² See UOHS's press release at: <http://www.uohs.cz/cs/informacni-centrum/tiskove-zpravy/hospodarska-soutez/2416-uohs-prepracoval-metodiku-pro-ukladani-pokut-za-protisoutezni-jednani-tresty-budou-spravedlivejsi.html>.

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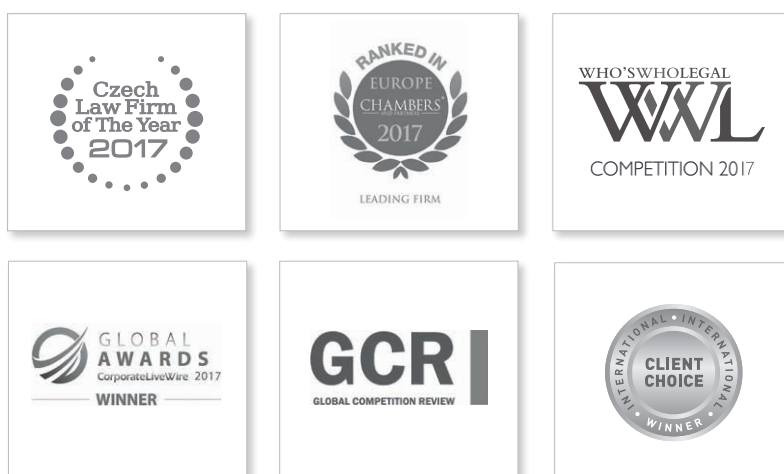
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