



Legal Alert

9 April 2020

Weinhold Legal

Activities of competition authorities in the European Union during the coronavirus crisis

This Legal Alert deals with the activities of European Union competition authorities ("EU") during the period of the so-called coronavirus crisis - the COVID-19 pandemic. In particular, it focuses on the activities of the European Commission and competition authorities in the Czech Republic and Slovakia.

European Union

Possibility to request competition authorities for informal cartel assessment

The European Competition Network ("ECN"), composed of national competition authorities of EU Member States and the European Commission, issued a joint statement on the application of competition rules in the period of the coronavirus crisis. In this statement, the ECN stated, *inter alia*, that it understands that, given the exceptional current circumstances, the ECN will not actively intervene against any necessary and temporary measures put in place by individual undertakings in order to avoid supply shortages. Such measures, or joint agreements, are not likely to constitute a prohibited cartel. Considering that this approach is also taken by the International Competition Network (ICN), it is expected that any assessment of the criteria of prohibited cartels by competition authorities will be partially "relaxed" during the period of coronavirus crisis. However, this does not mean that undertakings (especially those with a dominant position) will be able to abuse the current coronavirus crisis. On the contrary, abuse of a dominant position in times of the crisis may be considered as an aggravating circumstance when punishing the undertaking.

Should undertakings have doubts as to the compatibility of their envisaged measures with competition laws, they may at any time contact the European Commission or the relevant na-

tional competition authority with a request for an informal recommendation.

Requests for informal recommendations in the area of antitrust law may be addressed to:

- ▶ European Commission: COMP-COVID-ANTI-TRUST@ec.europa.eu
- ▶ Office for the Protection of Competition (Czech Republic): posta@uohs.cz
- ▶ Antimonopoly Office of the Slovak Republic (Slovak Republic): info@antimon.gov.sk

Czech Republic

Preparation of state aid notification to fight the consequences of the coronavirus crisis

In March/April 2020, the European Commission adopted the so-called "*Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak*" ("**Temporary Framework**"), allowing Member States to grant State aid to entrepreneurs affected by the coronavirus crisis.

As some anti-crisis measures (especially State aid programs) prepared by the Government of the Czech Republic constitute state aid, the adoption of such measures shall be notified by a Member State to the European Commission for assessment of their compatibility with EU law.

Therefore, the Office for the Protection of Competition (Czech Republic) has asked the relevant ministries to provide it with all necessary information regarding forthcoming state aid programs in order to be notified to the European Commission. Provided that state aid programs are fully compatible with EU law, they should be approved by the European Commission within a few days after their notification.

Coronavirus crisis does not justify a substantial change of public procurement contract obligation

The Office for the Protection of Competition (Czech Republic) has stressed that an announcement of the state of emergency due to the coronavirus crisis does not *per se* allow a substantial change of obligations arising from public procurement contract according to Section 222 of Act No. 134/2016 Coll., on



Legal Alert

9 April 2020

Weinhold Legal

Public Procurement (“**Public Procurement Act**”). It is therefore still necessary to carefully consider whether the conditions laid down in Section 222 of the Public Procurement Act are fulfilled in the present case.

In the context of the coronavirus crisis, in particular, the possibility of changing obligations due to unforeseen circumstances may be considered (Section 222 (6) of the Public Procurement Act). However, such a change of obligation shall be enforced by the coronavirus crisis, shall not change the overall nature of the public contract and the value of the change shall not exceed 50 % of the original value of the obligation. In addition, in accordance with the above mentioned provision, the contracting authority shall, within 30 days after the change of the obligation, publish a notice of this change. It is also highly recommended that the contracting authority document in detail the procedure (in particular its justification) in case of any change of the public procurement contract obligation due to the coronavirus crisis.

For further details concerning this topic and the current situation in public procurement, please refer to the special issue of Legal Alert dated 2 April 2020.

Slovak Republic

Scheme of *de minimis* state aid for small and medium-sized enterprises – Guarantee instrument to mitigate the effects of the coronavirus crisis

On 30 March 2020, the Antimonopoly Office of the Slovak Republic approved the adoption of the scheme of *de minimis* state aid called “Guarantee instrument to mitigate the effects of restrictions caused by COVID 19 (guarantee and interest rate bonus)” (“**Scheme**”). Following this approval, the Scheme entered into force on 1 April 2020.

The Scheme aims to create a new program of financial support for small and medium-sized enterprises in the Slovak Republic to overcome the coronavirus crisis due to limited access to capital. The program consists of a financial guarantee instrument for financial intermediaries for the purpose of providing preferential bridging loans to small and medium-sized enterprises and interest rate subsidy for interest rate cuts.

The Scheme shall remain in force until 1 July 2025.

We will continue to monitor the activities of EU competition authorities during the coronavirus crisis and inform you thereof in our upcoming Legal Alerts.

This information in this bulletin is correct to the best of our knowledge and belief at the time of going to press. Specific advice should be sought, however, before investment and other decisions are made.

Nor should the information in this bulletin be considered an exhaustive description of the given matter and its possible ramifications. We also note that legal opinion varies regarding some of the issues raised in this bulletin due to ambiguities in the relevant provisions. Thus, it is possible that an interpretation other than the one presented here will prevail in future.

For more information, please contact your usual partner/manager or either of these Weinhold Legal attorneys:



Tomáš Čermák
Manager

Tomas.Cermak@weinholdlegal.com



Tomáš Kočař
Attorney at Law

Tomas.Kocar@weinholdlegal.com

© 2020 Weinhold Legal
All rights reserved