

ST. MARTIN'S CONFERENCE 2021

The St. Martin's Conference on the latest events and trends in competition law and significant market power is a traditional annual peak of the Office's educational activities and is regularly attended by leading Czech competition experts and distinguished foreign guests. The fourteenth edition of the conference took place at the premises of the Office for the Protection of Competition (hereinafter referred to as the Office) in Brno on 10 and 11 November and took place after a one-year break caused by the coronavirus pandemic.

In his opening speech, the Chairman of the Office, Mr Petr Mlsna, reminded the audience of the difficult economic situation in which the country's economy finds itself as a result of the coronavirus pandemic and rising inflation. However, he pointed out that economic difficulties cannot be the reason for an increase in anti-competitive behaviour among entrepreneurs. As a result of extraordinary and protective pandemic measures, the Office had to temporarily limit the conduction of on-the-spot inspections carried out at the premises of undertakings, and, on the other hand, it had more scope for analytical or methodological activities and, for example, launched a large sector inquiry into the pharmaceutical industry. *"We are trying to start a comprehensive map of some markets, to verify whether there is functional competition or whether distortions are present. The result should then be a recommendation to the government and legislators to take an action against it"*, said Chairman Mlsna. On the other hand, in connection with the pandemic, the Office's State aid agenda increased significantly.

The Chairman of the Office also touched on some of the topics that were subsequently raised at the conference panels, in particular, the current issues of digital markets and platforms: *"We have to face the fundamental question of what to do next. Aren't digital giants a major threat to competition and society as a whole? When we talk about their regulation today at the European level, we are beginning to change the paradigms of competition policy, because competition is no longer just for ex post regulation, but, at the same time, we are also applying ex ante tools. It will be an interesting topic both for this conference and for negotiations at the level of the European Commission. "*

At the end of his speech, Petr Mlsna informed the participants about the agenda that the Office will be dealing with next year as part of the Czech Presidency of the Council of the European Union: *"If the French presidency is not capable of completing the negotiations, we will finalize EU legislation on digital markets, as well as the regulation of subsidies from third countries, possibly some competitive aspects of the European Green Deal and collective bargaining of the self-employed."*

The first panel of the conference was traditionally devoted to the summary of the most important information on the activities of the Czech and Slovak competition authorities, which were joined this year by Hungary and Austria. Kamil Nejezchleb, Vice-chairman of the Office, announced that despite the difficulties caused by the coronavirus pandemic, the Office has conducted 26 inspections this year, which is the most in history. *"On-site inspections will be our main tool while verifying the reasonable suspicions which we have obtained through the investigation of complaints,"* said Kamil Nejezchleb, indicating that these inspections will be carried out more frequently. The Vice-chairman of the Office also announced that six decisions on prohibited agreements and one on abuse of dominance had been issued so far this year, and announced that a significant case in the area of vertical agreements would be completed by the end of the year. There has been a significant increase in merger review, with more than 50 mergers expected to be assessed this year.

Mr Boris Gregor, Vice-chairman, later informed about the figures achieved by the Slovak Competition Authority. Mr Csaba Balázs Rigó, Chairman of the Hungarian Competition Authority (GVH), commented on statistics and significant cases in Hungary, and Mr Martin Janda, a representative of the Austrian Competition Authority, commented on the Austrian results, including the development of a large cartel in the construction industry.

The topic of the following panel was the preparation of amendment to Act No. 143/2001 Coll., On the Protection of Competition, which should transpose the Directive (EU) 2019/1 of the European Parliament and of the Council to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, the so-called ECN + Directive. The draft amendment to the Czech Competition Act has not been discussed by the current legislators, so the Office intends to take advantage of the situation and include new provisions in the text of the proposal.

An intensive discussion took place in the panel on digital platforms, which mainly concerned the Digital Markets Act proposal. According to legal experts, the forthcoming ex ante regulation may not bring new developments, because a significant amount of measures can be initiated under the current competition rules. The last panel of the first day focused on so-called gun jumping, which can be defined as a situation where the merging undertakings implement a merger before approval decision is issued by the competition authority.

The second day of the conference was opened by a panel on significant market power, specifically on the issue of implementing Directive (EU) 2019/633 of the European Parliament and of the Council on Unfair Trading Practices into Czech law, moderated by Mr Petr Solský, Vice-chairman of the Office. In his speech, he introduced the basic characteristics and principles of the directive, which should be transposed into national law through the amendment to the Act on Significant Market Power. The current draft amendment, which is managed by the Ministry of Agriculture, was created with the intensive cooperation of the Ministry of Industry and Trade and the Office and with the significant contribution of professional associations, especially the Agrarian Chamber, the Food Chamber and the Czech Association for Trade and Tourism. The compromise proposal will soon be submitted to the Legislative Council of the Government. Unlike the Act on Significant Market Power in the Sale of Agricultural and Food Products and Abuse Thereof, the new regulation covers the entire supply and demand chain, not just the relationship between the supply chain and its supplier.

In her speech, Ms Dana Večeřová, President of the Food Chamber, summarized legislative developments since 2002, described the difficulties in creating the transposition amendment and the way in which the compromise text was finally reached. She also sees the positive impact of the proposed amendment in the coverage of the entire food chain, the adjustment of the so-called black and grey practices and the specification of conditions for marketing and advertising campaigns. On the other hand, the absence of regulation of discount events is considered a disadvantage. The President of the Czech Confederation of Commerce and Tourism, Mr Tomáš Prouza, emphasized that in the Czech Republic, thanks to the Act on Significant Market Power, we are not building on greenfield sites, but, on the other hand, the Act on Significant Market Power did not protect the weakest links in the supply chain. He also criticized that even the new legislation will not address possible abuse of power by strong suppliers or territorial restrictions on sales. Representatives of food producers and traders thanked the Office and the ministries for their cooperation on the amendment and appreciated the methodological activity of the Office in the area of significant market power.

The conference ended with three parallel workshops. The first workshop followed up on the panel on significant market power. Ms Jana Zmeškalová, Director of the Significant Market Power Department,

Mr Vojtěch Mucha from Tesco Stores CR and Aleš Rod from the Centre for Economic and Market Analysis spoke about unfair trade practices of suppliers in the form of territorial restrictions on food supply. The workshop on the procedural procedure of the Office, hosted by the Director of the Office's Cartels Department, Mr Igor Pospíšil, Mr Marek Šulc from the same department and an attorney Ms Ivana Halamová Dobišková from Allen & Overy, covered some aspects of sentencing and conducting local investigations. The workshop on the issue of vertical agreements was led by Ms Lenka Svobodová, Director of the Department of Dominance, Vertical Agreements and Mergers, together with Pavel Breinek from the Office and lawyer Mr Jiří Kindl from Skils. The participants focused on the competition law definition of agreements, the assessment of vertical agreements in terms of the degree of distortion of competition, including meeting the conditions for which selected types of vertical agreements can be subject to the EU block exemption, as well as the proposed reform of this EU legislation.

The Chairman of the Office, Mr Petr Mlsna, concluded the fourteenth year of the St. Martin's Conference and thanked the participants for their active participation in the discussions: *"The feedback you give us is very important to us. Thank you and we look forward to seeing you in November 2022."*