

**Universal Competition Rules in a Globalised, Post-COVID and Green World: Will the Explosion of Exemptions and Protectionism Destroy Our Own Competitiveness?**

Dear Executive Vice-President, Ladies and Gentlemen,

I am very pleased that, even in troubled times of the coronavirus pandemic, this international conference has taken place. I would like to thank you for the invitation, and I very much appreciate being able to speak here in person and not just through an online broadcast.

As we all know; the whole world has been undergoing an extremely difficult period. The reduction in global economic growth caused by the pandemic and the measures needed to control it are resonating through disrupted supply chains in many sectors and a sudden rise in inflation which is manifested, in particular, by an extraordinary increase in the prices of energy and building materials.

For all competition authorities, this period has meant a certain difficulties and slowdown in activity. At least with regard to on-site inspections, as it was not possible to carry them out in the usual way due to safety reasons. The Office for the Protection of Competition was no exception, although we did our best to minimise the impact of the pandemic on our procedures and returned to dawn raids relatively quickly. In particular, in late summer and in autumn, we conducted a record number of dawn raids in the overall history of the Office.

On the other hand our goal was also to help undertakings affected by the pandemic and to give them advice on what practices we are able to tolerate under given conditions. For this purpose, we published a number of press releases on our website and also offered the opportunity to consult in advance on possibly anticompetitive practices regarding supply of scarce products in the time of Covid pandemic.

Despite all of this regular decision-making activity of the Office has continued in a broadly standard mode even in constrained conditions.

In the past year, we have also launched a large-scale sector inquiry in the pharmaceutical sector, in which we are analysing the state of competition in the markets of the distribution of human prescription medicinal products and medicinal products covered by public health insurance. We also plan to focus on the competition aspects of direct distribution channels in this area. The investigation is intended to identify possible market dysfunctions in the given area and, in particular, to help formulate recommendations for the adoption of pro-competitive measures in the markets in question.

Since my appointment, I have been aware that the economic downturn and inflation we are now experiencing will lead to an increase in anticompetitive behaviour. We must therefore accept that the age of prosperity is over. Some undertakings are facing serious problems and might tend to replace the fight against competitors with mutual agreements aimed towards the exclusion of competition. In this context, it should be emphasized that competition authorities do not protect competition as a *sui generis* asset for businesses. They do not in any

way guarantee undertakings the right to succeed, profit or survive in the market, but primarily and ultimately protect the consumers. And for sure even the crisis cannot be an excuse for cartels. I would also like to mention that the Office for the Protection of Competition also has the power to supervise public procurement in the Czech Republic. This is a unique advantage and we intend to continue to use it in detecting bid rigging. In recent years, the Office has also succeeded in detecting resale price maintenance (RPM) agreements that result in money being lost not only for consumers but also for undertakings themselves. Unfortunately, in this context, we encounter a great deal of ignorance from the side of undertakings who do not consider these types of agreements to be serious and do not realise how harmful they are. At the end of 2021, we have fined almost 97 million Czech crowns (approximately 4 million Euro) for these types of agreements.

Let me now turn your attention to the topic of the conference, which has been very sensitive for competition authorities and will certainly be the subject of lively discussion also in the future. I am referring to the topic of the relationship between competition law and sustainability and/or Green Deal policy.

I am convinced that significant challenges in competition law assessment are ahead. We are already experiencing increased pressure on competition enforcers to be more supportive towards sustainability initiatives. The growing awareness of climate change also has an impact on the approach to protecting consumer welfare, as it is broadening the criteria applied, particularly price, quality and innovation, to include environmental criteria that were previously considered non-economic and potentially unquantifiable.

On the one hand, I am of the opinion that competition law should indeed play an important role in addressing these issues. However, on the other hand, I believe that undertakings themselves are also aware of the extent and gravity of climate change, as well as other sustainability issues (e.g. working conditions, animal welfare, etc.), and are voluntarily introducing sustainable solutions to these problems without the legislator having to give them any incentive. Besides, and most importantly they are well aware that sustainability is an important pro-competitive aspect in many markets.

In particular, it is important to reflect on the potential risks of over-emphasising environmental values over free competition and how changing of enforcement of competition rules could contribute to sustainability - and whether the potential benefits truly outweigh them. Competition authorities are undoubtedly obliged to react to all trends and changes related to climate change as well as technological developments. The Office for the Protection of Competition must continuously adapt to such changes, modernise and cooperate both domestically and abroad.

Competition rules need to be reassessed if they stand in the way of undertakings contributing to a sustainable and climate-neutral economy. Undertakings claim that they want to take more social responsibility for a greener world - but undertakings acting alone might be disadvantaged, while in cooperation with competitors they are able to switch to more

sustainable production methods, where greener but more expensive solutions will not be made uncompetitive thanks to the deal. There are therefore concerns from individual undertakings that without clear and guaranteed compliance with competition rules, the undertakings may be restricted from taking joint sustainability initiatives due to fear of intervention by competition authorities.

I think, one of the biggest risks of 'greener competition' is so called greenwashing, and in particular cartel greenwashing, which can manifest itself in two ways - either by the undertakings' behaviour not actually having a positive effect on sustainability, or by sustainability merely serving as a curtain for anticompetitive behaviour. We should bear in mind that the environmental narrative itself can in no way justify serious and intentional infringement of competition rules. In this context, therefore, I would like to support the European Commission's position, which is to take hard-line action against greenwashing. If there is the slightest suspicion that cartel greenwashing might be behind good intentions, competition authorities must stay aware and strict.

Another risk I see is that undertakings who are allowed to coordinate their actions in the market will have an incentive to provide minimal sustainability benefits at the highest possible prices. It is reasonable to fear that if competition authorities are more accommodating and lenient, there is no guarantee that more sustainable products will be supplied to the market. Moreover, competition authorities will have to strictly require sufficient compensating sustainability benefits, scrutinise and assess these benefits and monitor individual agreements to ensure that sustainability is actually being met and that price increases do not exceed what is needed to cover the costs of the sustainability improvements. This whole process will require a lot of time and effort, at the expense of monitoring and enforcement in other competition areas. Moreover, the fact that undertakings agree on a more sustainable or more environmentally friendly solution means that they actually set a standard and therefore, largely reduce the possibility that they will continue, for example, to develop a similarly efficient solution at lower cost or an even more sustainable or environmentally friendly solution.

The fundamental question that must be answered, is whether undertakings can be expected to produce more sustainably if they are allowed to cooperate in an agreement rather than in a natural competitive environment. Assuming that consumers care about sustainability, it seems logical that undertakings would be interested in investing in a good image in order to attract more customers. Sustainability is a product attribute that consumers are increasingly interested in and therefore undertakings use it when competing with each other and in order to win over customers.

For example, many undertakings are now moving towards 'green' marketing in the area of eco-friendly solutions or organic products, which many customers welcome, as they have no problem paying extra for products and services that are sustainable and environmentally friendly, and, thus, bearing higher costs of undertakings caused by these solutions. On the other hand, when companies coordinate their sustainability efforts, this leads to a lower level of sustainability than in case of competition, and the benefits may not always outweigh the damage. Moreover, if undertakings coordinate their investments in sustainability, this might

allow them to coordinate product prices. It is therefore clear that the line between justified, sustainable cooperation and an anticompetitive agreement is not always clearly defined and a detailed case-by-case assessment is always necessary and clear guidance welcomed.

Competition authorities will face the challenge of balancing economic effects (higher prices for a certain group of consumers) with less quantifiable environmental effects (cleaner air for all) when assessing the impact of sustainability measures on consumer welfare. While environmental economics attempts to assign an economic value to environmental effects, the final results are not always satisfactory. Nevertheless, this area of concern will likely continue to evolve and new methodologies will be introduced in order to assign economic value to non-economic effects.

My personal opinion is that we probably agree on the essentials, which is that traditional antitrust policy contributes to sustainability objectives by promoting competition, including competition in innovation, and that it does not stand in the way of the development of sustainability.

### **Conclusion:**

Ladies and Gentlemen, the irreplaceability of an effective competition in a market economy and its importance as one of the most significant public interests of any modern liberal state are undeniable.

I believe that it is an effective competition that is the main force that will make undertakings supply more sustainably produced goods - along with other desirable characteristics such as high quality of service, efficiency of production, low prices - and thus lead to a greener economy. Therefore, competition protection and environmental policy are not mutually contradictory, as sometimes misinterpreted, but there is a wide scope for finding common path in search for suitable solutions in favour of all these interests. I do believe that the current trend of the gradually increasing number of consumers willing to pay more for more sustainable products will continue, thus encouraging undertakings to vigorously compete not only in better quality or price but also in sustainability. Precisely such competition will lead not only towards higher consumer welfare but also towards protection of our planet.

In the very end, I would like to briefly mention that in the second half of this year, the Czech Republic will take the lead in the European Union. The Presidency of the Council of the EU represents a major challenge also for the Office and we are preparing thoroughly for it. Besides I am aware of the efforts of our French colleagues, it is possible that the Czech Presidency may be responsible for finalising both pending regulations - the Digital Markets Act and the regulation on subsidies distorting Internal market – together with representatives of the European Parliament, within the ordinary legislative procedure. However, even if the acts in question are already finalised, the Office is ready to actively participate in the Presidency, looking for other possible ways to further improve the effectiveness of competition protection. For example, towards increasing the liability of individuals for cartels or finding new effective ways of cartel detection. Thank you all for your attention.