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NATIONAL REPORTS

Czech Republic

Mergers

Competition Office
*FISCHER/K & K Capital
Group—travel and holidays—parties
on different markets—merger cleared*

December 3, 2003
Case No.S227/03-4410/03

Decision to clear an acquisition of a tour operator—failing firm defence (does it exist?)

The Competition Office has approved the acquisition of a Czech travel empire FISCHER by K & K Capital Group. The deal does not raise any competition concerns, since the companies' activities are on different markets.

FISCHER is a family owned Czech company, which is mainly active in the travel industry. The company's main activity is a tour operator and supplier of package holidays. K & K Capital Group is a Czech holding company specialising in investment banking, financial consultancy and oil industry.

According to the transaction notified to the Competition Office for clearance under the Competition Act, K & K Capital Group will achieve control of FISCHER travel companies (Cestovní kancelář FISCHER, a.s., FISCHER, s.r.o., and FISCHER AIR, s.r.o.) by purchasing a total stake of 75 per cent in these companies.

The Competition Office's investigation has shown that there are no overlaps between the activities of FISCHER travel companies and those of K & K Capital Group, since the companies' activities focus on different markets. The transaction thus will not lead to any addition of market shares of the acquirer in the Czech Republic. The Competition Office therefore concluded that the acquisition would not lead to a creation or strengthening of a dominant position.

An interesting aspect of this case is that although the acquisition saved FISCHER travel companies from collapse, the Competition Office has not used this opportunity to clarify a "failing firm defence" in the context of the merger proceedings under Czech competition law. Therefore, it still remains to be seen whether and to what extent may the "failing company defence" be taken into account under the Czech merger control regime.

France

Anti-competitive practices

**Court of Cassation, Commercial
Division**
*TF1—Videogram production, editing
and advertising—joint production
contracts—whether restrictive or
abusive—breach—appeal—decision
upheld*

November 26, 2003

Anti-competitive practices in the videogram production, editing and advertising sector

Editions Montparnasse and Ciel referred a matter to the Competition Council regarding anti-competitive practices implemented by TF1 in the videogram production, editing and advertising sector.

More particularly, by means of standard clauses included in production-sharing contracts, TF1 was accused of subjecting its commitment to finance the audiovisual work to the executive producer's agreement to entrust, upon the signature of such contracts, the editing and distribution of the work in videogram format exclusively to its subsidiary (TF1 Entreprises) for a term of up to 18 years without, for all that, undertaking any commitment with regard to the actual exploitation of the work in such format.

In a decision dated December 22, 1999, the Competition Council ruled that TF1 had breached the provisions of Arts 7 and 8 of the December 1, 1986 Order (on prohibited agreements and abuses of dominant position) and fined it around €1,525,000, further ordering it to delete the clause from its audiovisual production-