The Czech Republic's accession to the European Union in 2004 prompted a number of major changes to the country's competition laws. Tomas Fiala highlights the developments of note

Improving competition

Undoubtedly, the single biggest development in competition law in the Czech Republic during the past decade has been the country's accession to the European Union (EU) on 1 May, 2004, which made European Community (EC) competition law directly applicable. Following the adoption of EU law, an important amendment to the Czech Competition Act was adopted, effective as of 2 June, 2004, in order to bring Czech competition law into line with EC competition rules.

This article will highlight the most significant recent developments in Czech competition law, including the enforcement of Articles 81 and 82 at national level.

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Anti-competitive agreements

Similar to Article 81(1), the Czech Competition Act includes a general prohibition of agreements restricting competition, decisions and concerted practices. It contains a non-exhaustive list of prohibited practices which is almost identical to the list included in Article 81(1). In addition, the Act specifically lists group boycotts as an example of possible infringement.

It is notable that lately the Competition Office has been particularly active in the fight against cartels. For example, in 2004, the office fined six fuel distributors a total of Czk313m (£7.6m) for fixing prices of unleaded petrol. This fine represents the highest fine ever effectively imposed by the Competition Office in its history. The decision is also important for clarifying the evidential burden that the Competition Office must satisfy in order to establish infringements of the competition rules by means of a concerted practice.

In addition, in December 2005, the Competition Office issued a first instance decision imposing fines totalling Czk201m (£4.9m) on Czech building savings banks that supposedly violated the Competition Act by prohibited agreement on information exchange, involving, *inter alia*, data on their market shares. However, as all parties filed an appeal against the decision, it remains to be seen whether the anti-competitive agreement will be proved and the fines confirmed by the appellate authority.

Both these cases have received considerable attention and have been the subject of much debate in the Czech media.

Leniency policy

In order to combat cartels effectively, the Competition Office also administers a leniency programme, which was introduced in 2001 and is based on the EC leniency programme.

Like the EC leniency policy, the Czech leniency programme guarantees full immunity for a qualifying first applicant. However, a decision is only made at the end of the proceedings, depending on whether the company offered decisive evidence and continued to co-operate.

In contrast to the European Notice on immunity from fines and reduction of fines in cartel cases, the Czech leniency programme does not provide for written confirmation of conditional immunity early in the amnesty process. Accordingly, there is some element of uncertainty and subjectivity in the application of the leniency programme in the Czech Republic.

In addition, practical application of the leniency programme is still an underdeveloped area of competition law. For example, to the author's knowledge, the leniency programme has only been applied once, in a case involving vertical restrictions.

Abuse of a dominant position

The prohibition against abuse of market dominance in the Competition Act corresponds with the jurisprudence of the EC Court of Justice. The Act also provides for a non-exhaustive list of examples of abusive conduct.

In addition to the examples laid down in Article 82, the Competition Act also lists predatory pricing and essential facility doctrine. As regards the latter, it still remains to be seen how the Competition Office will approach the essential facility cases. In any case, one would hope that the office would exercise caution in handling this issue, avoiding situations in which a forced access is clearly unjustifiable on legal and economic grounds.

It is noteworthy that in one current case, the Competition Office is, for the first time, seeking to apply the so-called commitment procedure. In March 2006, it outlined its preliminary findings in the investigation into the RWE Transgaz distribution agreements, which began in November 2005. The Competition Office raised a number of issues and gave RWE Transgaz, a dominant gas supplier, 15 days to adopt adjustments to its distribution policy under threat of a fine of at least Czk90m (£2.2m). RWE Transgaz is now obliged to offer commitments that would meet the concerns expressed by the office in order to overcome the office's enforcement action.

Economic dependence

Although, at present, the national law does not include rules on abuse of market power which would be stricter than Article 82, it should be mentioned that the parliament is currently considering an amendment to the Competition Act which will introduce a prohibition of abuse of buying power. Several inquiries into the retailing sector revealed that the buying power of the supermarkets enables them to obtain more favourable terms and non-cost-related discounts from their suppliers, which can distort market outcomes.

If the amendment is passed by parliament, the Competition Act would prohibit certain practices of the non-dominant firms in their dealings with companies that are dependent on them, such as:

- various listing fees;
- attempting to obtain favourable time periods for payment; and
- terms of commercial co-operation.

Decentralisation

Based on Regulation 1/2003, the EC has decentralised the application of its competition rules — handing some of its regulatory responsibilities over to national competition authorities. In the Czech Republic, the Competition Office has exclusive competence to enforce Articles 81 and 82.

In the author's view, the office seems to have sufficient experience and knowledge of the EC competition rules necessary to ensure coherent implementation of the competition *acquis*.

Examining the enforcement record of the Competition Office, one can see that, to date, there has only been one case based on the EC competition rules. In this case, in November 2005, the Competition Office imposed a fine of Czk205m (£5m) on esk Telecom, the largest provider of telecommunications services in the Czech Republic, for infringement of Article 82. The office found that esk Telecom had abused its dominant position in the Czech fixed telephony sector by employing special programmes that were designed to induce customers not to obtain telecommunication services from competing providers.

As a consequence, such a commercial strategy made it more difficult for competing operators, including those from other EU member states, to enter the Czech telephone services market. It is notable that the fine of Czk205m is the largest ever imposed by the office on a single undertaking.

In conclusion, the experiences of the Czech Republic to date illustrate that decentralisation has so far not resulted in many new cases. The procedures in which EC rules have been invoked would have been initiated anyway, at least based on national competition rules. Likewise, there has only been a limited number of civil law litigation cases relating to competition. However, this trend may significantly change in the near future, owing to an increased awareness among companies and lawyers of the possibilities of using the competition rules 'offensively'.

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