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Substantial amendments to the Hungarian Competition Act

Important changes concerning – among others – merger law and leniency rules have been enacted and the possibility of settlement in competition supervision proceedings has also been introduced into Hungarian competition law.

Contrary to the old regime, under which companies could bear the risk of going ahead with a concentration without formally having obtained the approval of the Hungarian Competition Authority (HCA), the new provisions now prohibit this. Thus, the concentration may not be executed (for example voting rights may not be exercised) without the prior approval of the HCA.

Nevertheless – similar to EU merger rules – an exemption may be granted by the Competition Council if the companies prove that the exercise of controlling rights prior to the formal approval of the HCA is necessary for running the business and for preserving the value of investments.

According to a new provision enacted on the basis of foreign models, the Competition Council now has the opportunity to initiate a consultation procedure in merger cases and before adopting a commitment decision in order to obtain the preliminary views of companies active on the affected markets. It should also be mentioned that according to a new rule, the government may decide that a concentration bears national strategic significance, for example in order to safeguard jobs or to protect supply, and does not therefore fall under the authorisation obligation of the HCA.

According to the new leniency rules, a non-final, so-called ‘marker’ application, which is aimed to obtain full immunity from the cartel fine (type ‘A’ application), may only be submitted if the information submitted enables the HCA to carry out a dawn raid. The possibility of withdrawing the application is only permitted in type ‘A’ applications. In our view, it seems that giving certain benefits exclusively to type ‘A’ applications may result in other types of applications, ie. those that aim at the reduction of the cartel fine, becoming less attractive for companies that intend to confess their participation in a cartel agreement.

Detailed rules concerning a settlement procedure have also been introduced into the Hungarian Competition Act. This procedure aims at simplifying the competition supervision procedure for the company in question while rationalising the resources of the HCA.

The new settlement procedure allows a company to acknowledge the relevant facts of the case, the infringement as well as the fine and to accept that that it will not dispute the HCA’s decision before the judicial court. The HCA then terminates the competition supervision procedure within a substantially shorter term.

It should also be mentioned that this possibility may also be beneficial in leniency cases. If the given company has previously submitted to the HCA a leniency application aimed at the reduction of the cartel fine, the fine may be further reduced by an additional ten per cent if the settlement procedure has been successfully completed.

We also add that as the settlement procedure is a completely new institution under Hungarian competition law, aspects of its implementation will be interpreted through the Hungarian Competition Council’s decision-making practice and by the courts (for example definition of the term ‘time frame which does not jeopardise the completion of the settlement procedure in a fast and efficient manner’).