

Changes in regulations on mergers and cartel cases

Legal newsletter



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Deloitte Legal Szarvas, Erdős and Partners Law Firm, a member of Deloitte Legal's international network, is providing its clients with a monthly newsletter on the most recent changes and newly adopted regulations in economic law and the most notable legal cases.

The Act on the Prohibition of Unfair Trading Practices and Unfair Competition (hereinafter: Competition Act) was amended in a number of aspects with effect from 1 July 2014. Below we would like to outline those changes related to reporting business combinations, the indulgence policy, access to documents and the handling of trade secrets and legal confidentiality which are, in our opinion, the most relevant in terms of practice.

Longer deadlines for reporting business combinations

For companies planning mergers or acquisitions, the 30-day deadline for reporting business combinations (counted from the date of signature of the relevant contract) has been abolished. Instead, the law has introduced the concept of the "prohibition of execution", according to which the request for the planned business combination may be filed at any time, but the business combination may not be executed without permission by the Hungarian Competition Authority (hereinafter: HCA), which means that any delay in reporting will cause a delay in the execution of the transaction as well. This prohibition does not apply to the legal statements required for the conclusion of the transaction (such as the signature of the share sale and purchase contract). The HCA may release an entity from the prohibition of execution, particularly if this is necessary to maintain the value of the investment of the party concerned.

Wider application of the indulgence policy

Since 2009, under the indulgence policy, there has been an option to cancel or reduce competition fines against an entity if it voluntarily provides evidence to the HCA on restrictive agreements or coordinated practices before the HCA reveals such an arrangement. Since 1 July 2014 fines may be cancelled or reduced even if the entity voluntarily provides evidence only after an on-site inspection.

Pretrial negotiations

As from 1 July 2014, in the case of official procedures relating to cartel arrangements or the abuse of economic power, the HCA may request the entity concerned to participate in a pretrial negotiation (previously, this option had only been available to the European Court of Justice). During such a negotiation the entity and the HCA may draw up a joint opinion containing the facts and circumstances of the violation, the evidence supporting such facts, the qualification of the violation and the limits of the fine to be imposed. In its

pretrial statement the entity concerned acknowledges its involvement in the violation and waives its right to legal remedy, in return for which the fine will be reduced by 10%.

Narrower scope of trade secrets and legal confidentiality

So-called documents serving defence purposes, which are excluded from the scope of evidence, may include only communications with the external legal advisor which were actually sent, and internal correspondence with the legal counsel and internal notes continue to be outside of the scope of protection under the detailed rules of the amendment. In terms of trade secrets, the amendment introduces further restrictions and requires, in all cases, a detailed explanation as a pre-requisite for treatment as a trade secret.

Other procedural law changes

Various procedural actions are also affected by a number of changes. As far as possible, the HCA will have to conduct on-site searches between 8:00 a.m. and 8:00 p.m. instead of the notorious "*dawn raids*"; however, the presence of a single employee (e.g. a secretary) is sufficient to commence such a search. Amongst others, the amendment allows the HCA to have access to a wider range of evidence, meaning that the HCA will now be allowed to request cell information from mobile phone companies to use as evidence for a person's presence at a location where a cartel agreement was concluded.

Considering the large number of changes affecting the details of procedural law, as well as the changes to the various request forms and HCA's announcements, it is recommended to engage experts in competition law in both procedures before the HCA and when designing the practice and training related to compliance with competition rules. Deloitte Legal's attorneys provide professional support in navigating the changes to competition regulations.

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