Concentration in Competition Law

The control of the concentration of companies is aimed at preventing the creation of monopolies by instruments based on competition law. The modern market economy entails the phenomenon of the concentration of capital. The competition law does not wish to prevent its presence but it seeks to regulate and discourage concentrations, which present exceptionally harmful effects on competition.

The acting Competition Authority authorized on 24 July 2016 the merger of the Hungarian lending and banking branch office AXA Europe S.A.'s with OTP Bank Nyrt. Our article summarizes the current legislation relating to concentration on the basis of the actual resolution and justification.

In view of the fact that the available aggregate net sales of the two groups of undertakings exceeded HUF 15 billion at the time of submission of the application and in respect of both of them exceeded HUF 500 million, the concentration reached the threshold subject to authorisation under the Competition Act (Act LVII of 1996 on the Prohibition of Unfair Trading Practices and Unfair Competition).

If the competition does not significantly decrease in the relevant market as a result of the concentration, the Hungarian Competition Authority (GVH) is obliged to authorize the merger. In particular, the creation and strengthening of a possible dominant position must be examined during the authorization procedure.

The vertical, portfolio and horizontal effects of concentrations are at the centre of the attention of the acting competition council on the basis of the experiences in the application of competition law.

Concentration may have vertical effects if the groups of undertakings concerned operate in successive stages of the supply chain. The portfolio effect stems from the expansion of the product lines manufactured and marketed by the group of undertakings coming into being through the merger.

Concentration with horizontal effects may have impact on the economic competition in the relevant markets where the groups of undertakings involved in the merger are actually and potentially present. Accordingly, the number of competing companies may fall due to concentration and, at the same time, the market share of the group of undertakings enlarging through the merger may increase. The increasing market share enables the group of undertakings to conduct exploitative (for instance setting excessively high selling prices) and restrictive market practices (for instance, preventing market access). Furthermore, it may improve the chances that agreements restricting competition and parallel practices develop in the relevant market.

The harmful horizontal effects can be clearly excluded on the basis of Communication No. 1/2014 of the President of the Competition Council, if the combined market share of the groups of undertakings concerned does not exceed 20%.

Harmful horizontal effect is not expected in the given circumstances, if the combined market share exceeds 20% but the combined share of other groups of undertakings concerned does not exceed 5% disregarding the group of undertakings holding the biggest market share. In this case, it is a condition i that there is a competitor in the market, holding a market share similar to that of the group of undertakings holding the biggest market share. Furthermore, it is also required that the undertaking holding currently small market share will not perceptibly increase. In examining the service group of mortgage equity withdrawal, the acting competition council explained in the lending and banking merger of AXA Europe S.A.'s Hungarian branch office and OTP Bank Nyrt. that the fact in itself does not preclude the authorization under competition law, if the combined market share exceeds 20% and more specifically both groups of undertakings have over 5 percent. It was taken into consideration as a specific circumstance that firstly a large number of competitors having a significant international background are present in the relevant market, secondly, AXA Europe S.A. Hungarian Branch Office had not granted new credit since 2011, thirdly nine of the ten competitors contacted did not draft any concerns relating to the concentration and fourthly, a specific sectoral regulation restricts the unilateral increase in the interest rates.

An effective, customer-friendly, transparent and predictable instrument is available to the Competition Authority under the present regulations in respect of the control of concentration of undertakings providing an opportunity for thorough and individual assessment.