

The Competition Act has modified the regulations regarding merger supervision

The amendment of the Competition Act (CA) with entry into force on 1st July has brought about significant changes in the merger supervision procedure – the expert of Kovács Réti Szegheő Attorneys at Law raised the attention of Origo. The regulations regarding merger control are aimed at the extension of Competition Authority supervision over the concentration of companies, associations, mergers, acquisitions and any other strategies of acquisition of control - informed the legal column of Origo dr Mónika Kapetz attorney.

The Hungarian Competition Authority (GVH) shall issue authorisations only subsequent to in-depth verification that the merger does not considerably restrict the competition on the market, or create and strengthen harmful dominant market position – said the legal expert of Kovács Réti Szegheő Attorneys at Law.

As a major implication of the amendment new procedural deadlines were introduced, in case of a simplified process GVH will bring a final decision as early as within thirty days.

The joint communication issued under number 1/2014 by the GVH and Competition Council chairs on the distinctive criteria regarding mergers requiring simplified or comprehensive authorisation procedures will help the enterprises decide whether to expect a faster and inexpensive simplified procedure, or one compliant to the regulations of the full-fledged assessment procedure.

Mergers - Only after GVH approval

In line with the provision of the new Civil Code regarding entry into force upon a third party or authority approval – compliant to EU regulations – mergers may not be performed without prior GVH authorisation; which resolves the previously existing discrepancy – said dr. Mónika Kapetz.

This also means that the management control rights especially voting rights and powers to designate executive officers in the company may not be exercised, and in the course of the decision making of the previously independent company and continuation of existing business relationships the situation preceding the merger must be observed, i.e. these must be performed compliant to the provisions of the Competition Act regarding competition restrictions.

In case of substantiated applications

Upon the substantiated request of the company required to file an application the GVH may permit the company acquiring control to exercise its control rights. In this case, in order to preserve the level of competition that existed before the merger may impose obligations to that end i.e.it may introduce control restriction provisions.



The Competition Act imposes serious legal consequences in cases where the GVH refuses to authorise the merger, any act or legal statement arising from the exercise of control rights in violation of the prohibition or the control restriction provisions will be deemed null and void, and the business enterprise will be held liable for damages arising from the enforcement of legal consequences of annulment.

Dr Mónika Kapetz emphasised that the procedure will be faster and more efficient starting from 1st July 2014, since the Competition Act enables the companies liable to submit the application to enter into prior negotiations with GVH before submitting the application, for the purpose of clarifying the data and documents required to be enclosed with the application.

As a new feature, the regulation stipulates the exchange rate to be applied in the course of calculation of the net sales revenues, the sums indicated in a foreign currency shall be translated to forints by the medium rate of exchange published by the National Bank of Hungary in effect at the time of closing the financial year of the company in question.

With the amendments taking effect, the merger of more than two companies that were previously independent will not be deemed as a singular merger, thus the applicant will be required to submit more than one application and pay the service fee accordingly. In case of transactions created on the same day GVH will adjudicate the cases jointly under one single procedure.

Targeted amendments

The above facts clearly demonstrate that the amendments were targeted at a more efficient, transparent and predictable fusion control and at the same time provide the GVH with more efficient and adequate enforcement measures and sanctions against the companies infringing the relevant statutory regulations.

To this end, the law specified the legal effects of application, laid down unambiguous provisions regarding prohibition on implementation and clear-cut distinction of the scope of full-fledged procedure and introduced the preliminary procedure of prior negotiation – summarised the key features dr. Mónika Kapetz.