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Czech Competition Authority issues landmark decision taking compliance programme into account when calculating fines

Case summary

The Czech Competition Authority ('CCA') imposed a fine of 17.65 million CZK (approx. 0.7 million EUR) on a company active in the field of distribution of candles for concluding vertical price fixing agreements with some of its retailers. The case represents 'traditional' resale price maintenance, as we are used to with the CCA.

However, it is interesting that the CCA lowered the final amount of the fine as the undertaking committed to adopt a comprehensive competition law compliance programme. This has been the first time in history the CCA took a compliance programme into account when setting a fine.

The CCA set the following general conditions for the compliance programme to be considered as a mitigating circumstance:

- The compliance programme must be effective and appropriate to the size of the company and its market power.
- The company made use of the settlement procedure or participated in the leniency programme within the proceedings before the CCA.
- In case a compliance programme is already in place; the anticompetitive conduct involved neither the statutory body nor senior management of the fined company.

The CCA noted that it was ready to consider both already existing and newly introduced competition law compliance programmes. However, the CCA emphasized a preference towards already active compliance programmes rather than those hastily adopted in a reaction to its investigation.

Commentary

This development in the decision-making practice of the CCA is certainly good news for companies investing in a compliance programme to mitigate antitrust risks. They can now be sure that their efforts and investments will be considered in case of a violation of competition law rules revealed by the CCA, provided that the compliance

programme meets certain conditions. Therefore, the decision may encourage companies to invest in compliance programmes.

On the other hand, it is questionable whether the compliance programme leading to the reduction of a fine should be tied to the use of a settlement procedure and/or of a leniency programme. The CCA is evidently trying to promote further cooperation with it. However, it could be argued that there are other incentives the purpose of which is to prompt undertakings to cooperate with the competition authorities (such as lowering the fines when applying for leniency or settling the case). In addition, such approach could give rise to situations where it would be more beneficial for undertakings concerned to settle a case (from a risk/reward perspective) even if the CCA's case brought against them is not strong. Lack of judicial review of the settlement cases could also ultimately lead to a decrease in the overall level of protection of fundamental rights of concerned persons in antitrust cases and – more generally – to a lack of judicial case law.