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Czech Competition Authority accepts commitments in the Zásilkovna Case

Case summary

The Czech Competition Authority ('CCA') issued a decision in the Zásilkovna case, accepting the commitments offered by the delivery services operator. Zásilkovna, part of the Packeta Group, is a leading Czech e-commerce/logistics company, primarily focusing on the transport of goods from e-shops to customers.

Zásilkovna operates a dense network of external pickup points managed by thousands of various operators across Czechia. These pickup points are typically local shops run by small-scale individual entrepreneurs, such as local groceries, flower shops, tobacco shops, and news-stands.

According to the CCA, Zásilkovna holds a significant market share in the relevant market for small parcels delivery (up to 30 kg), particularly in the external pickup point delivery segment, including self-service delivery boxes and other alternative delivery methods.

The CCA has been investigating Zásilkovna since late 2020 following complaints about the non?compete (exclusivity) clause in Zásilkovna´s contract terms with pickup points operators. The clause allegedly prevented them from providing pickup services to competing shipping companies. The non?compete clause applied not only during the contract term but also for a certain period after its termination, potentially excluding competitors from the market.

To address these concerns, Zásilkovna offered commitments to limit the non-compete obligation to the contract term, which the CCA published for market testing to determine whether they would alleviate the competition concerns.

After rejecting Zásilkovna´s initial proposal, the CCA accepted a second set of commitments. Zásilkovna proposed to amend its contractual terms so that after two years from the contract's conclusion, the operators of pickup points (meeting certain technical/qualitative criteria) could also serve parcels delivered by Zásilkovna´s competitors. In case of contract termination, the non-compete clause would last for a maximum of one year, applying only to contracts shorter than 12 months.

Commentary

The case is unique as the CCA has for the first-time market-tested commitments before accepting them. An

effective approach to evaluate whether the proposed commitments alleviate competition concerns. However, we find the CCA's competition concerns somewhat dubious.

Zásilkovna's high market share likely disqualified the non-compete clause from the Vertical Block Exemption Regulation application. However, this does not imply it was anticompetitive. An exclusive supply obligation is usually not a by object restriction. Therefore, had the administrative proceedings continued, the CCA should have been able to present credible evidence that Zásilkovna´s business model was harmful to competition, producing appreciable anticompetitive effects.

Even under Article 102 TFEU, exclusivity obligations are not necessarily anticompetitive restrictions. Recall Unilever (C-680/20), where the Court of Justice affirmed that establishing an abuse of a dominant position in case of exclusivity clauses needs to be evidence-based. An NCA assessing such case must consider the specific market conditions and weigh the efficiencies and anticompetitive effects of the exclusivity obligation based on tangible evidence.

In other words, under both Article 101 TFEU and Article 102 TFEU, the effects of the non-compete clauses would likely need examination. To find an infringement, the CCA would have to prove appreciable anticompetitive effects, a challenging task given the high number of existing pickup points operators and low barriers to entry.

Zásilkovna's pickup points rarely possess unique characteristics. Given the number of these local shops, Zásilkovna´s competitors could thus create their own networks of pickup points without major obstacles. Therefore, the market foreclosure or exclusionary theory of harm seems improbable.