

## HUNGARIAN COMPETITION AUTHORITY AGAIN REVOKES A MERGER CLEARANCE DECISION

On 2 May 2017 the [Hungarian Competition Authority \(HCA\) revoked its foreign-to-foreign merger clearance decision](#) granted in January 2017 to **Infineon Technologies AG** for the acquisition of **Wolfspeed** (i.e. the Power and RF division of Cree, Inc.) due to misleading information provided in the application. The HCO also imposed a fine of HUF 75.8 million (EUR 242,000/USD 263,000) on Infineon.

Following the HCA's clearance of the Infineon/Cree merger on 10 January 2017, the Federal Trade Commission (FTC) sent the HCA various documents relating to the notification of the same transaction in the US. On reviewing those documents, the HCA noticed that Infineon provided different worldwide turnover data and different market share data to the FTC and to the HCA and did not disclose the vertical relationship between the relevant products to the HCA. The HCA says that if the data provided to the FTC had also been provided to HCA the review process of the HCA would have had to go into more detail, and a Phase II procedure should have been launched.

The HCA opened a new investigation to investigate the inconsistencies, during which Infineon argued that the information provided to the HCA was not misleading, and that the same information was provided to the German and Austrian authorities. The HCA did not accept those arguments, and revoked its earlier clearance.

This is the second time the HCA revokes a merger decision since [the new rules](#) on the merger clearance process entered into force in January 2017. The [first revocation decision](#) was issued in March 2017 in relation to a Hungarian domestic merger filing by a property fund called Diófa Alapkezelő Zrt. (Diófa). On that occasion, the HCA noticed inconsistencies because in 2016 Diófa provided data on its ownership structure that differed from the data provided during a filing made by Diófa earlier that year. The HCA launched an investigation at the end of which it revoked the merger clearance decision, and imposed a fine of HUF 7 million (EUR 2,260/USD 2,450).

In both cases, the HCA concluded that the inaccurate information provided was "material" for the purposes of its assessment. The HCA gave an explanation of what it considered to be "material" for the application of Section 32. In both cases the HCA applied Section 32 of the Competition Act, which obliges the HCA to revoke its clearance decision if it had not been subject to review by a court, and if it had been based upon the misleading communication of a material fact.

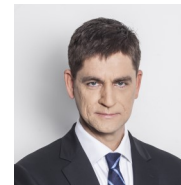
The Infineon decision reveals the (perhaps surprising) exchange of information in a merger case between the US and the Hungarian authorities – which may be explained by the fact that the Infineon/Wolfspeed transaction was blocked by the US authorities for national security reasons. It remains to be seen whether this decision will be tested by the courts on appeal.

### Practical implications

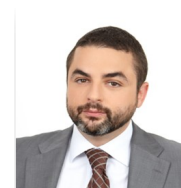
Various lessons can be drawn from this decision, which has implications for anyone implementing a merger:

- Data submitted should be correct, and take account of the HCA's view on materiality. Rigorous verification should be carried out before submission.
- The content of submissions in different jurisdictions should be consistent, and the possibility of communication between regulators should be taken into account.
- In addition to revocation and the significant uncertainty and difficulty that can create i.e. if the transaction has closed, the ruling may also contain a significant fine.

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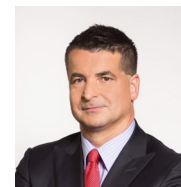
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