

LAKATOS, KÖVES ÉS TÁRSAI
ÜGYVÉDI IRODA

LKT NEWS

COMPETITION LAW

26 MARCH 2020

WHAT CHANGES IN CASES BEFORE THE HUNGARIAN REGULATOR IN COMPETITION LAW CASES DURING CORONAVIRUS EPIDEMIC

Further information to follow

FAQ:

Due to the COVID19 epidemic the Hungarian Competition Office („HCO”) has introduced various changes to its ordinary procedure. These changes are generally designed to limit personal meetings and allow the HCO employees to work from home. These changes may, however, have an impact on ongoing cases as follows:

WHAT HAPPENS TO HEARINGS AND DEADLINES IN ANTITRUST AND CONSUMER PROTECTION CASES?

The competition council (the decision-making unit of the HCO) will not hold any hearings in the foreseeable future and will postpone any scheduled hearings. This means that in cartel, dominance or consumer protection cases the final decision in the cases will be delayed. The guidance provided by the HCO does not address how procedural deadlines are affected, but in the absence of a law specifically suspending such deadlines, we are of the view that they will run their normal course. Under such circumstances it is likely that the HCO may try to take additional procedural steps that delay deadlines, such as issuing requests for information to the relevant companies. Any virtual data room set up in these cases will remain open and new documents arriving in such cases will be uploaded regularly.

WHAT HAPPENS TO PRENOTIFICATION MEETINGS AND DEADLINES IN MERGER FILING CASES?

In case of merger filings, the HCO will continue its work and the deadlines will run their ordinary course but prenotification meetings and submissions can only be made electronically. The current situation shall likely have different impact on notifications depending on their complexity:

- In straightforward cases that can clearly be cleared in a „fast track” 8-day-procedure, we expect that the HCO will be able to keep such deadline provided that the notification is sufficiently detailed.
- In more complicated cases, we think the HCO will more likely open a formal investigation and issue requests for information, which will stop the HCO’s clock (and thus prevent the lapse of the deadline that would cause automatic clearance). The HCO has already communicated that under the current circumstances parties shall expect a delay in clearance due to the difficulties in collecting information from third parties and actually encouraged parties to delay such notifications until further notice.

Therefore, using the prenotification process offered by the HCO and checking the feasibility of the transaction schedule seems crucial, especially in more complicated notifications. If the parties need to expect a longer review period, they may need to adjust the contractual deadlines (e.g. long stop dates) accordingly.

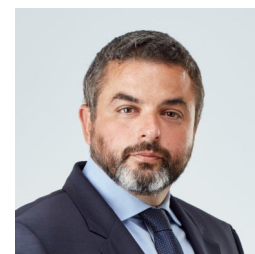
HOW CAN I CONTACT THE HCO?

The case handlers of the HCO and the competition council can be contacted by email and certified electronic letters only.



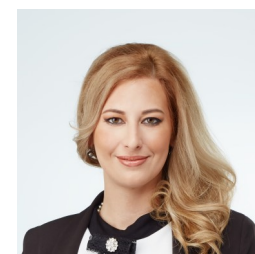
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WHAT IS THE FOCUS OF THE HCO'S ENFORCEMENT DURING THE CORONAVIRUS EPIDEMIC?

THE HCO PAYS INCREASED ATTENTION TO ADVERTISEMENTS IN THE SHADOW OF THE CORONAVIRUS

In the context of the COVID-19 epidemic, the HCO is monitoring the advertising of products offering protection against virus and bacteria and focusing on compliance with the provisions of the Unfair Commercial Practices ("UCP") Act implementing the UCP Directive. One of the issues in focus is advertisements wrongly suggesting that a product has preventive or therapeutic effects. The HCO is entitled to impose severe fines on companies committing infringements regarding false, exaggerated and misleading information since the targeted consumer group is more vulnerable than average consumers. In serious cases, the amount of the fine may be up to 10% of the company's net sales revenue from the previous year.

THE STATEMENT OF THE ECN (EUROPEAN COMPETITION NETWORK) REGARDING COVID-19

The ECN has issued a joint statement regarding COVID-19, which includes guiding conclusions considering agreements between companies. The HCO has published this statement on its website, which is a clear indication that the HCO considers the statement as a governing document in its practice.

It was emphasized in the ECN statement that products essential for the protection of the consumers' health (e.g., face masks, sanitizing gels) should be available at competitive prices. Therefore, the ECN will not hesitate to take actions against companies seeking to gain advantage in the current situation via cartels or by the abuse of dominant position.

However, this exceptional situation may make it necessary for companies to cooperate in order to provide the accessibility and the fair marketing of scarce products for all consumers. Under the current circumstances, the ECN does not wish to take action actively against those necessary and temporary measures that are taken in order to avoid the shortage of supply. The HCO has not given any guidance to companies about its view on „necessary” and „temporary” measures.

The ECN has pointed out that the current regulations allow manufacturers to establish maximum prices in regard with their own products. This may assist in the prevention of unjustifiable price increases by distributors.

WHO TO CONTACT?

Please do not hesitate to contact any member of our team:

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