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airport of Brussels-Charleroi, for parties interested in entering the two routes under examination. It is striking that the Competition Council does not make a distinction between slots, for example during peak hours. The question arises whether a potential entrant would be interested in slots very late at night or early in the morning. The decision is however silent on this point, but refers to the Competition Service's investigation, opinion of competitors and of independent experts to decide that the airports in question are far from being saturated to clear the transaction for lack of barriers to entry.

In response to the uncertainty about the substitutability between Brussels airport and other airports, between direct and indirect flights and between flights and other modes of transport, that remained after the report of the Competition Service, the Competition Council made a fundamental remark about the role of a second phase investigation. Pointing to the important consequences of such an investigation for the notifying parties, the Competition Council refers to the legal test which only allows such a procedure if serious doubts regarding the admissibility of the concentration remain. Such serious doubts are, however, not present in case of impossibility to collect all answers before the end of the first phase examination. In the Competition Council's opinion, such circumstance cannot be held against the notifying parties, given that it would shift the burden of proof from the Competition Service to the parties. As a "sweetener" to the Competition Service, the Competition Council however reminds that the 45 days period for the first phase examination only starts running as from the day the notification is complete.

It remains to be seen what impact this part of the decision will have for merger control in Belgium, but it cannot be excluded that the Competition Service will adopt a stricter approach before it considers a notification to be complete, especially considering that pre-notification talks are not practised in Belgium.


*An Hertogen
Linklaters, Brussels*

Czech Republic

Mergers

Competition Office
*Gorenje/Mora Moravia—domestic
appliances—merger cleared*

December 23, 2004

 Czech Republic; Dominant position; Electrical equipment; Mergers

On December 23, 2004, the Competition Office cleared the operation by which a Slovenian company Gorenje will acquire, by purchase of shares, control of the whole of a Czech company Mora Moravia.

The concentration primarily involved domestic appliances (such as cooking appliances, water heaters, etc.). In making its assessment, the Competition Office considered that after the acquisition Gorenje will face competition from several large competitors, namely Electrolux, Bosh and Siemens Group and Merloni. In addition, integration of the Czech Republic into EU has removed barriers to trade and main European producers of major domestic appliances can freely market their products on a Czech market. Thirdly, the Competition Office has taken into account that the merger will bring about various types of efficiencies, e.g. in the form of new or improved products.


The Gorenje case is important, since the Competition Office has explicitly recognised that industrial policy may also play a limited role when applying the substantive test for clearance. The key criterion in examining efficiency claims is, in line with EC practice, that consumers should not be worse off as a result of the proposed merger.

Mergers

Competition Office

Delta Pekarny/Bakeries International Luxembourg—bakeries—proposed acquisition—merger blocked

February 1, 2005

 Czech Republic; Dominant position; Food industry; Mergers

*Josef Vejmelka and
Ondřej Ležatka
Vejmelka & Wünsch*

On February 1, 2005, the Chairman of the Czech Competition Office, Mr Josef Bednář, refused by his second instance decision the proposed acquisition of Delta Pekarny by Bakeries International Luxembourg. The parties are the two largest undertakings in the bakeries sector in the Czech Republic.

According to the Chairman of the Competition Office, the merger would result in emergence of a giant complex in the Czech Republic that would suppress any other competitor in the market. Bakeries International Luxembourg that control other important bakeries companies in the Czech Republic could thus increase prices regardless of its competitors and with devastating effects for the customers. The merger could result in decrease of the number of important competitors being active in the bakeries market and this fact could lead to easier realisation of anti-competition practises and violation of the market structure.

The decision has come into force and no steps that would be aimed at realisation of this merger may be implemented, otherwise sanctions including imposition of remedies and high fines would be imposed. In this context it is worthwhile mentioning that the Competition Office has adopted such a strict decision in a few cases only.

The parties have not announced yet whether they would file with an appropriate court an action for the annulment of the said decision.