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The Czech Regional Court rules that the Competition Office is under the duty to return along with a refunded fine the default interest on it (Českomoravská stavební spořitelna)

Czech Republic, Anticompetitive practices, Exchange of information, Sanctions/Fines/Penalties, Judicial review, Tax

I. Introduction

On 2 March 2010, the Regional Court in Brno issued a judgment holding that the Competition Office, following the annulment of its decision by an appellate court, is under the duty to repay to the undertaking previously fined not only the amount of the fine but also the default interest on it.

The case arose out of previous antitrust proceedings conducted by the Competition Office against six major building savings banks. In April 2007, the Competition Office found that the banks concluded information exchange agreements under which they exchanged structured data revealing their business results and positions on the market. However, in January 2008 the Regional Court abolished the decision on the ground that the agreements were materially not capable of distorting free competition on the building savings market. Following the Regional Court's verdict, one of the building savings bank, Českomoravská stavební spořitelna, a. s., filed a request for the return of the fine imposed by the Office (CZK 20.5 mil.; approx EUR 800,000). Since the Competition Office repaid to it only the principal sum, the bank filed a lawsuit to the Regional Court which held that the Competition Office is under a duty to repay not only the sum of the financial sanction paid by the bank but also the statutory default interest.

II. Reasoning of the Regional Court

At the outset of its reasoning, the Regional Court defined the relevant legal framework which governs the levying and enforcing fines for anti-competitive behaviour by the Competition Office. This aspect of the Competition Office's activity, the Regional Court held, is regulated by the pertinent provisions of the Act on the Administration of Taxes and Levies (Act No. 337/1992 Coll., as amended; hereinafter: the "Tax Administration Act"). The Regional Court supported its conclusion by the following arguments.

In the first place, the Regional Court recalled Section 22(6) of the Act on Protection of Competition (Act No. 143/2001 Coll., as amended; hereinafter: the "Competition Act") which stipulates that in levying and enforcing fines, the Competition Office is bound to follow a special legal regulation, namely the Act on the Administration of Taxes and Levies (Act No. 337/1992 Coll., as amended). Thus, the Regional Court held, although the primary task of the Competition Office consists in furtherance and protection of economic competition (this activity being different from a "classic" tax proceedings), the Competition Office has a special role in administrative proceedings concerning the levying as well as returning of fines where it acts as a tax administrator sui generis.

As the Regional Court highlighted in this respect, the fact that the fine imposed by the Competition Office is not a "tax" within the meaning of Section 1(1) of the Tax Administration Act is not conclusive. The application of the Act on the

Administration of Taxes and Levies is based rather on Section 1(4) which states that if a public authority renders a decision whereby it imposes a payment duty to the State budget, the payment of this amount shall follow the procedure prescribed in Part VI. of the Act on the Administration of Taxes and Levies. As the Court observed, the decision of the Competition Office imposing a fine is clearly a decision of a public authority laying down a payment duty which represents a revenue of the State budget. Accordingly, the payment of the fine is subject to the rules spelled out in Part VI. of the Act on the Administration of Taxes and Levies.

Turning to the specific rules enshrined in Part VI. of the Act on the Administration of Taxes and Levies, the Regional Court mentioned Section 64(1) which mandates that the amount of payment which exceeds the payable tax represents the so-called tax overpayment. Article 64(6) then stipulates that if the existence of the overpayment has been caused due to a fault of the tax administrator, he shall be liable to return the overpayment without a corresponding request within fifteen days and, if he returns it after this deadline, he is under the duty to pay to the subject concerned also an interest on the overpayment in the amount of the repo rate determined by the Czech National Bank increased by fourteen points and valid for the first day of the relevant calendar half-year.

In this respect, the Regional Court recalled that the decision of the Competition Office on the imposition of the fine to the Českomoravská stavební spořitelna, a. s., had been abolished as unlawful on the ground of a wrong legal assessment of the Competition Office, i.e. due to its fault. Moreover, given the fact that the illegal decision had been issued to the detriment of the plaintiff, it had to be annulled with effect ex tunc. Consequently, the fine had been imposed without any legal basis and represented an undue overpayment ever since its imposition.

In conclusion, the Regional Court recalled that the power of the Competition Office to sanction undertakings for their anti-competitive conduct is inextricably linked with its responsibility for its own decisions. As the Regional Court emphasized, the illegal decision of the Competition Office constrained the plaintiff for a certain period of time in its liberty to freely dispose with the financial amount paid as the fine and to use it for profitable purposes. In such a situation, the fine must be repaid by the Competition Office along with appurtenances which represent the gain that could have been achieved by the plaintiff in a situation where it would have had the financial resources in its own disposition. The beginning of the statutory period for the return of the default interest is marked by the 16th day after the maturity date of the fine or, as the case may be, after the day on which the fine was paid.

III. Conclusion

The judgment of the Regional Court reflects the basic requirements of fairness and reaffirms the applicability of the principles of EC competition law in the Czech jurisdiction. The verdict is in line with the relevant case law of the Court of First Instance of the EC pursuant to which the payment of default interest on an unduly paid fine is an essential component of the public authorities' obligation to restore the undertaking to its original position following a judgment of annulment and to avoid unjust enrichment [1]. Above all, the judgment puts an end to the long-standing "no-default-interest" policy of the Office which is of significant benefit to all undertakings. For all these reasons, the judgment represents a rather welcomed precedent.

[1] CFI, October 10th, 2001, Corus UK (British Steel) v. Commission, Case T-171/99, [2001] ECR II-2967.

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