CERHA HEMPEL
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## New Antitrust Compliance Program Guidelines adopted by the Czech Antitrust Authority

At the end of the last year, the Czech Office for the Protection of Competition (the "Office") issued new official guidelines regarding antitrust compliance programs (the “Guidelines”). The Guidelines became effective on 1 January 2024 and set out the rules under which such a program may be recognised by the Office as a mitigating circumstance resulting in a fine reduction.

In earlier cases, the Office was rather resistant to any compliance programs and did not take them into account when imposing penalties for anti-competitive conduct even if the programs were duly implemented in the organisation. Although the Guidelines have been issued only as a soft law, it gives undertakings more legal certainty regarding the decision-making process when the Office is assessing a compliance program.

However, as the Guidelines clarify in more detail, not every compliance program will be recognized by the Office as a mitigating circumstance as there are several key requirements that must be met to ensure the Office officially recognizes the program.

The Office understands the compliance program as a system of internal measures and procedures to prevent possible anti-competitive conduct by an undertaking. The basic rule set out by the Office in the Guidelines is that it will only take into account a compliance program that has been tailor-made precisely to address the needs and purposes of a particular undertaking and its internal organization and to mitigate existing risks of anti-competitive conduct based on a risk assessment.

In addition, the Office will only recognize the compliance program as a mitigating circumstance when imposing a fine if all the following conditions are met:

- The undertaking is successful in obtaining a reduction of the fine in the administrative proceedings based on a leniency application and/or a settlement (separate reduction of a fine is possible through the leniency application itself as well as through reaching a settlement with the Office);
- The undertaking will implement or strengthen a compliance program that is effective considering the company’s size, market power and the type of market on which it operates;
- If a compliance program has already been implemented, there was no anti-competitive conduct with the knowledge of the statutory body or senior management of the respective undertaking.

An undertaking that has conducted its business in an anti-competitive manner and seeks a reduction of the fine through the compliance program must submit a request to the Office, calling upon it to take the compliance program into account. The application must always provide evidence of an effective compliance program and a description of the measures in place. For this purpose, it is highly recommended that the undertaking keeps documents demonstrating actual active implementation of the program in the organization (such as a list of employee training sessions, records of compliance checks, or external audit reports).

If the measures put in place are sufficient and effective, the Office may consider such program as a mitigating circumstance and reduce the fine by up to 10 %. If the undertaking only commits to implementing a new effective compliance program during an ongoing investigation, the Office will consider reducing the amount of the fine by up to 5%.

In light of the Guidelines, it now makes even more sense for undertakings to invest in a proper compliance program, either developed independently with a focus primarily on antitrust law or as part of a broader compliance solution covering various compliance areas. If the requirements set out by the Guidelines are met, the reduction of the fine can be successfully pursued. Furthermore, implementing such a compliance program should help to detect any anti-competitive conduct, ideally before the Office itself becomes involved.

**For more information**

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