

CEE: EU & Competition Monthly Bulletin – April 2020

Stay informed about the latest developments in competition law in Central and Eastern Europe with Schoenherr's multi-jurisdictional newsletter. Each issue offers insight into developments in merger control, anti-trust, as well as public and private enforcement in the region.



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Main takeaways

▶ **Antitrust:**

In addition to the ECN statement on cooperation in the current crisis, several competition authorities have started enforcement against anticompetitive practices related to COVID-19.

The Turkish authority stands out, with significant fines for anticompetitive behaviour in March.

Further enforcement against bid-rigging.

▶ **Merger control:**

Austria: Remedies amended in conditional clearance decision to respond to emergency situation.

Hungary continues its fight against incorrect information, clears one transaction anew with additional remedies after receiving updated information and terminates another investigation.

▶ **Sector enquiries:**

Austria and Hungary publish (interim) results of market studies into car-sharing and comparison platforms.

- ▶ Austria
- ▶ Croatia
- ▶ Czech Republic
- ▶ Hungary
- ▶ Poland
- ▶ Romania
- ▶ Slovakia
- ▶ Turkey
- ▶ Ukraine

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COVID-19 advisory and enforcement

National agencies will not actively intervene in "necessary" company cooperation during the COVID-19 crisis

- ▶ According to a joint statement on the application of competition law by the European Competition Network (ECN), comprising all national competition authorities of the EU Member States, it will not "actively intervene" in necessary cooperation between companies during the COVID-19 crisis.
- ▶ According to the statement, there will be no action against "necessary and temporary" measures, which might be applied by companies during the crisis in order to secure the supply and fair distribution of scarce products to all consumers.

- ▶ This is because "such measures are unlikely to be problematic, since they would either not amount to a restriction of competition under Article 101 TFEU/53 EEA or generate efficiencies that would most likely outweigh any such restriction".
- ▶ Informal guidance will be offered by the European Commission, the EFTA Surveillance Authority or national competition authorities, if companies have doubts regarding the compatibility of such cooperation initiatives with EU/EEA competition law.
- ▶ Lastly, the ECN highlights that it is especially important that products considered essential to protect the health of consumers in the current situation (e.g. face masks and sanitising gel) remain available at competitive prices. Therefore, the ECN will not hesitate to "take action against companies taking advantage of the current situation by cartelising or abusing their dominant position."
- ▶ Besides the ECN's joint statement, several national competition authorities have individually published information and guidance on how they will apply competition rules in the context of the ongoing crisis. From the countries covered by Schoenherr's expertise, the national authorities of Hungary, Poland and Romania have already (as of 2 April) taken concrete action by launching investigations in this regard. We list the authorities' respective activities in the table below.

National competition authorities' advisory and enforcement in the context of COVID-19

AUT	<p>Advisory: In line with the joint statement by the ECN, the BWB points to the necessity of cooperation between undertakings in order to ensure a continued supply of scarce products. Such temporary cooperation measures to guarantee supplies during the COVID-19 health emergency must be taken "where necessary, after appropriately involving consumers and in order to improve the production or distribution of goods".</p> <p>Enforcement: None</p>
BUL	<p>Advisory:</p> <p>In addition to the joint statement by the ECN, the Bulgarian Commission for Protection of Competition (CPC) made the following clarifications concerning the application of antitrust rules during the COVID-19 crisis:</p> <ul style="list-style-type: none"> ▶ The CPC will offer timely informal guidance on specific initiatives taken by undertakings in connection with the COVID-19 crisis. ▶ The CPC will nevertheless not hesitate to exercise its powers when it finds indications of antitrust infringements. ▶ Pointing to the importance of the availability of essential public health products (such as masks, sanitisers, etc.) at competitive prices, the CPC will closely monitor the respective markets and intervene in any attempt

	<p>to cartelise the market or to abuse a dominant position with the aim of profiting from the current situation.</p> <ul style="list-style-type: none"> ▶ To avoid supply issues and guarantee the availability of essential commodities and pharmaceuticals, the CPC will take a more lenient approach to temporary and proportionate coordinated measures taken by market participants pursuing (only) these goals and which are necessary to achieve them. ▶ To prevent the resale of manufacturers' products at excessive prices, the CPC notes that manufacturers can set maximum resale prices for their goods, as long as these do not amount to fixed retail prices and all the other legal requirements are met. ▶ The CPC urges suppliers, traders and distributors from every sector to adopt responsible and legitimate business practices at every level of the supply chain, including in e-commerce. <p>Enforcement: None</p>
CRO	<p>Advisory: Reference to the ECN's joint statement.</p> <p>Enforcement: None</p>
CZE	<p>Advisory:</p> <ul style="list-style-type: none"> ▶ The Czech Competition Authority (CCA) continues to watch the market, focussing on cartel agreements (particularly price fixing and market sharing agreements, agreements limiting production, and bid rigging) and abuses of dominance (particularly by excessive pricing and squeezing out competitors), both related to goods and services crucial during the state of emergency (food, energy, medicine, etc.). ▶ A certain level of cooperation might be desirable during the state of emergency, if (i) it is limited to what is necessary in order to secure critical goods and services during the pandemic, and if (ii) securing these goods and services is endangered by the current situation. ▶ The CCA is available for consultation. <p>Enforcement: None</p>
HUN	<p>Advisory: Reference to the ECN's joint statement.</p> <p>Enforcement: None</p>
POL	<p>Enforcement:</p> <ul style="list-style-type: none"> ▶ Special team appointed that will monitor shops selling food and hygiene articles for (i) excessive pricing, and (ii) misleading statements saying that certain products provide protection against the coronavirus. ▶ By cooperating with a popular online auction platform, the Office of Competition and Consumer Protection (CCP) eliminated over 50,000 offers

	of products that were supposedly intended to help protect against COVID-19.
ROM	<p>Advisory</p> <ul style="list-style-type: none"> ▶ In fighting excessive prices, the Romanian Competition Council (RCC) recommends <i>inter alia</i>: <ul style="list-style-type: none"> - For suppliers to set maximum resale prices; - For platform owners to monitor and (if required) either limit prices or suspend the sale of essential product if there are suspicions of abuse. ▶ The RCC is particularly monitoring companies which have recently switched to make face masks or disinfectants to help fight coronavirus, where prices have more than doubled. ▶ The president of the RCC announced that if prices do not drop, the authority will consider introducing measures such as price capping or the requisition of goods and services. ▶ In terms of cooperation between businesses during the crisis, the RCC refers to the ECN's joint statement, but also stresses that the current crisis should not be used to increase prices without an objective justification, to exchange sensitive information (pricing, trade policy), to exclude competitors from the market or to abuse a dominant position. ▶ It invites companies that have doubts about the compatibility of their initiatives with antitrust rules to reach out to the authority via email. It also encourages consumers that suspect anticompetitive behaviour to contact the authority via its whistleblower tool. ▶ To assist in the fight against the pandemic, the RCC has signalled that it will be flexible in assessing the sharing of sensitive information between pharmaceutical companies (if done to avoid shortages of medication). <p>Enforcement: The RCC has launched investigations into manufacturers of medical and sanitation equipment over possible price fixing.</p>
SVK	<p>Advisory: Reference to the ECN's joint statement.</p> <p>Enforcement: None</p>
SLO	<p>Advisory: Reference to the ECN's joint statement.</p> <p>Enforcement: None</p>
TUR	<p>Advisory:</p> <ul style="list-style-type: none"> ▶ Turkey's Competition Authority (CA) announced that it may impose fines on companies that contribute to price hikes in the food sector (especially fresh foods and vegetables) during the COVID-19 crisis. ▶ The CA stated that it is closely monitoring the behaviour of the players in the food industry and that it will impose heavy penalties on all companies that are found to engage in anticompetitive practices in the food sector. <p>Enforcement: None</p>

UKR	<p>Advisory: The authority urged restraint in increasing prices for medicine and hygiene products. It will also closely monitor the situation to ensure that no antitrust abuses take place.</p> <p>Enforcement: Ukraine International Airlines (UIA) is being probed over price hikes for their tickets prior to the planned suspension of flights due to the COVID-19 crisis. This comes after ticket prices from London to Kiev more than doubled.</p>
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Austria

Investment firm fined for gun-jumping

- ▶ On 12 February 2020, the Austrian Cartel Court fined Castanea Rubra Assets EUR 100,000 for acquiring 94 % of automotive casting components maker Neue Halberg Guss without the necessary merger control approval. The transaction was notified belatedly to the Federal Competition Authority (BWB) in July 2018, and was cleared in Phase I.
- ▶ The press release of the Austrian competition authority ("FCA") can be found [here](#).

In-depth review of brewer tie-up by cartel court

- ▶ The FCA has requested an in-depth review of the tie-up between the Fohrenburg and Brau Union breweries before the Cartel Court. The court will have to conclude the Phase II review within the next five months (this might be extended by one month upon the parties' request).
- ▶ Brau Union, which is owned by the Heineken Group, is Austria's largest brewery. Fohrenburg is based in the Vorarlberg region, the most westerly part of Austria.
- ▶ Some remedies were submitted by the parties involved to address the agencies' concerns. According to the FCA, those remedies were not enough to alleviate all competition concerns.

Remedies amended in ProSiebenSat.1Puls 4 / ATV merger

- ▶ The ProSiebenSat.1Puls 4 / ATV merger was cleared subject to remedies in March 2017. One of these remedies was an undertaking by ATV to maintain its editorial independence in terms of designing its news programmes.
- ▶ Given the current pandemic, the parties requested this remedy to be lifted for the parties to cooperate more closely.
- ▶ This request was temporarily approved and the obligation waived for the duration of the restrictions imposed by the government and only insofar as cooperation is necessary to maintain newsroom operations.
- ▶ The FCA press release can be found [here](#).

Questions on uniform pricing arise from taxi, car-sharing inquiry

- ▶ The [FCA](#) identified the question of uniform pricing for joint car hire and taxi trade in Austria as a significant issue in an ongoing sector inquiry, which was launched by the BWB in September 2019. The sector inquiry on the taxi and car hire services market is assessing whether a legal amendment classifying joint taxi and car hire services under "occasional passenger services", making them subject to the same regulation, restricts competition.
- ▶ So far, the findings have shown that the passenger transport apps and their rating functions reduced the need for statutory regulation, especially with regards to the quality criteria.
- ▶ The first results of the inquiry demonstrated that regulations must strike a balance between boosting competition and innovation in the taxi and car hire market. Too strict regulation might drive innovative digital companies out of the market, but too weak regulation might threaten the overall supply of the service. It will be up to provincial governments to determine whether there should be uniform pricing in this sector. The FCA also identified that new technologies modernise markets and allow customers to benefit from better services.
- ▶ A European comparison has shown that the taxi market is leaning towards deregulation. According to a study conducted by the European Commission (EC), Austria and Germany are the only Member States that have fixed taxi fares, with other Member States generally stipulating maximum or minimum fares.
- ▶ A customer survey is now being planned by the BWB to assess related customer benefits. The final report will include an analysis of the potential impact of various forms of pricing – minimum fares, maximum fares or fixed fares – on competition and innovation.

Croatia

Fourteen driving schools fined for collusion

- ▶ The Croatian Competition Agency ([CCA](#)) fined 14 driving schools operating in the Split region a total of HRK 470,000 (approx. EUR 61,000) for fixing rates for the category B licence.
- ▶ The investigation was opened based on comments made by representatives of the driving schools. The most significant evidence was found in WhatsApp communication between the driving schools, as two group chats were used to discuss rates and to monitor compliance.
- ▶ The agreed rates were applied from 1 January 2018. They published their price lists over a couple of days and the rates also differed slightly to create the impression of competition.

Czech Republic

CCA wants to obtain data from mobile phone operators

- ▶ The Czech Competition Authority (CCA) is seeking an amendment to the Act on Electronic Communications so it can access mobile operator data, which is believed to help significantly in discovering cartels by being able to trace back who contacted whom and when.
- ▶ Here is a [link](#) to a Czech-language news report on the matter.

Hungary

The HCA terminates proceedings against meat firms after finding they submitted correct data in merger review

- ▶ Proceedings into whether Master Good submitted misleading information during the review of its takeover of meat maker SáGa Food were closed by the Hungarian Competition Agency (HCA).
- ▶ The proceedings were initiated after the transaction was cleared by the HCA, due to concerns that Master Good misled officials about its market position.
- ▶ After the HCA approved the concentration, Master Good issued a press release in which the company claimed that the Master Good group provides 40 % of Hungary's total chicken production and processing, while Sága Foods is a Hungarian "market leader" in the production of processed poultry products. The market share data in the press release contradicted the data shared with the HCA during the merger control proceeding.
- ▶ The proceeding revealed that the market share data included in the press release was based on information irrelevant for the merger control assessment proceeding in Hungary. Master Goods' 40 % market share of the chicken processing market was later found to be irrelevant for the assessment of the merger, as it also included exported products, which did not reflect domestic market conditions. Sága Foods was claimed to be a market leader only based on its brand recognition among consumers, which again is irrelevant for a merger control assessment.
- ▶ Therefore, the data submitted by the parties was correct and the HCA's follow-up investigation was terminated.

HCA cleared telco merger for second time with more extensive remedies

- ▶ DIGI's takeover of Invitel has been cleared by the HCA but is now subject to more extensive remedies compared to the original decision, which was revoked in 2018 due to misleading submissions provided by DIGI.
- ▶ The tie-up, which was cleared in May 2018, was originally subject to the divestment of Invitel's network in 16 towns and DIGI's commitment to not renew network contracts for its i-TV subsidiary in 23 problematic areas.
- ▶ The HCA later revoked the decision, since the companies had submitted false information as the basis for the remedies, and imposed a fine of HUF 90m (EUR 270,000) on DIGI.
- ▶ The repeated review found that DIGI's and Invitel's wired telecommunications systems overlap in 34 towns. In the case of 15 towns where the detrimental effects of the merger would be the highest, DIGI agreed to sell the telco networks it acquires as part of the tie-up and overlap with the current network in the towns concerned to a buyer approved by the HCA. This will also include infrastructure and customers subscribed to those services at the time of the sale. The sale process must be closed within three months. Over the next 10 years the divested assets cannot be acquired by DIGI or any company belonging to the same group or to a company jointly governed by DIGI.
- ▶ Furthermore, DIGI is prohibited from offering wholesale services to the buyer or any entity in the buyer's group that would make it possible to obtain commercially sensitive information about these networks.
- ▶ DIGI is also obliged to keep the divestment assets in a competitive state until the closure of the divestment with TM IT services, which was approved as the buyer by the HCA.

- ▶ The HCA also identified competition concerns in connection with 67 towns (compared to the previous 23) where Invitel had overlapping services with DIGI subsidiary i-TV. In these towns, DIGI must ensure that i-TV will not unilaterally terminate its rental agreements with the relevant local network operators until 31 December 2023. In several towns DIGI must ensure that i-TV offers the local network operators to amend the termination date of the rental agreements to the same date. However, local network operators may unilaterally terminate the agreements also prior to this date.

The HCA published the results of its market study of digital comparison tools

- ▶ The HCA recently published a market study report on **digital comparison tools** ("DCTs") as well as underlying market research conducted by Nielsen. The market study is a tool used by the HCA to survey and analyse the operation of particular markets, market developments, market trends, the application of particular market practices in multiple industries or a specific industry segment, and their effects on competition and trading parties. The studies rely on information that is in the public domain, data that is collected on a voluntary basis from market participants and the involvement of external experts or consultants when required.
- ▶ The market study contains findings and recommendations from a consumer protection law perspective for DCTs. This is the first time that the HCA has conducted a market study in the area of unfair commercial practices.
- ▶ Pursuant to the HCA, the market study on DCTs "a) *intends to draw attention to the phenomena which prevent consumers from being adequately informed when using comparison tools and b) wishes to promote the provision of transparent information to consumers, without which the use of comparison tools may also lead to anticompetitive effects*".
- ▶ The recommendations include:
 - to clearly inform consumers on the ranking criteria and whether the highlighted offers are paid advertisements;
 - to ensure that reviews reflect real consumer experience, i.e. only the buyers of the products/services can post reviews;
 - to inform consumers regarding the operator of the DCT and its liability for the transactions through the given DCT;
 - to publish clear and understandable data protection policies;
 - to avoid the use of complex technical and legal terms – the user interface must be simple and comprehensible.
- ▶ The HCA will now monitor the market and market players and may initiate formal proceedings to check and request compliance with the numerous recommendations stated in the report.

Poland

CCP clears cosmetics deal in Phase II

- ▶ The Polish Office of Competition and Consumer Protection (CCP) cleared Sarantis' takeover of assets belonging to PZ Cussons International and PZ Cussons Polska. All parties involved produce and distribute personal care products. The target assets relate to the marketing and sale of Luksja brand products.

- ▶ The Sarantis group sells products belonging to 80 brands, such as STR8, Kolastyna and Jan Niezbedny. Its product portfolio mainly consists of bar soaps, shower gels, deodorants, perfumes, detergents and other household products. In Poland, PZ Cussons International and PZ Cussons Polska are mainly known under brands such as Luksja, Carex and Morning Fresh.
- ▶ The transaction was referred to Phase II in October 2019 and the CCP conducted market research. The investigation showed that the deal would not restrict competition and the deal was therefore cleared.

Romania

Court provisionally suspends payment of abuse of dominance fine by Orange

- ▶ The Romanian High Court of Cassation decided that the payment of a RON 64.92m (EUR 13.9m) fine imposed on Orange Romania for abuse of dominance will be temporarily suspended.
- ▶ The fine was imposed on Orange Romania for obstructing Simplus Invest from conveying commercial messages to and from Orange clients via the mobile telephony service between 2010 and 2015.
- ▶ Orange Romania subsequently filed two appeals with the Bucharest Court of Appeal. The first sought the annulment of the RCC's decision and the second sought the suspension of the fine.
- ▶ According to Orange's legal representatives, the fine will be suspended until a further ruling establishes whether the RCC's abuse of dominance decision against Orange is legally correct.
- ▶ A separate abuse of dominance decision against Orange Romania was upheld by the Romanian High Court of Cassation, but it reduced the fine from RON 147.9m to RON 110.9m.

Slovakia

Antimonopoly Office initiates bid-rigging investigation in the energy sector

- ▶ On 11 March 2020, the Antimonopoly Office of the Slovak Republic (SAO) launched a formal investigation into possible bid rigging of a tender for construction work in the energy sector.
- ▶ According to documentation and information obtained by the SAO in a preliminary investigation, six companies are under scrutiny over potentially coordinating their bids for the procurement of construction and assembly works for the commissioning of electrical equipment.

Turkey

Competition authority fines fuel distributors more than EUR 200m

- ▶ After the Turkish Competition Authority (CA) found that BP Petrolleri AS, Petrol Ofisi AS, Shell & Turcas Petrol AS and Opet Petrolculuk AS abused their dominance by setting resale prices for dealerships, the agency specified in a [decision](#) fines totalling more than TRY 1.5bn (EUR 206.5m).
- ▶ The CA decided that there was no need to fine Guzel Enerji Akaryakit (Total Oil Turkiye).
- ▶ The companies involved received the following fines: BP Petrolleri (TRY 213,563,152), Petrol Ofisi (TRY 507,129,085), Shell & Turcas Petrol (TRY 348,154,458) and OPET Petrolculuk (TRY 433,932,124).

Competition authority fines heating equipment company EUR 3.7m for vertical restraints

- ▶ In a Turkish-language [press release](#) the CA announced that it had fined heating equipment firm Baymak Makina TRY 26.81m (EUR 3.73m) for imposing vertical restraints on dealers.
- ▶ Baymak's conduct was in breach of rules concerning anticompetitive agreements and therefore the company was fined based on its 2019 turnover.
Furthermore, Baymak will have to change its agreements regarding non-compete agreements and determining resale prices within 90 days of the publication of the reasoned board opinion. The CA postponed the hearing in the shipping container probe.
- ▶ According to a Turkish-language [announcement](#) by the CA, a price-fixing probe hearing concerning a freight association and 73 enterprises active in container transportation to and from ports in the Izmir region was postponed to an unspecified date
- ▶ In November 2018, the CA initiated an inquiry into Ege Konteyner Nakliyecileri derneği and 10 of its members over suspected bid rigging.

Fines imposed on ready-mix concrete producers for price-fixing and market-sharing

- ▶ The CA fined eight ready-mix concrete producers 1.2 % of their 2019 turnover for breaching competition rules by market-sharing and price-fixing.
- ▶ The companies involved were Coskunlar Hazir Beton, Irgatoglu Hazir Beton, Sorgun Emek Hazir Beton, Tamer, Tas Hazir Beton ve Beton Ekipmanlari, Uc Yildirim Hazir, Yozgat Guven Beton Pazarlama and Yozgat Koc Hazir Beton Elemanlari, all operating in the central province of Yozgat.

Favourable report received by fertiliser company in cartel case

- ▶ In an ongoing cartel case, the investigation committee of the CA issued a favourable report to fertiliser company Ege Gubre Sanayii, stating that no fines need to be imposed as no antitrust rules were breached.

- ▶ The investigation into whether fertiliser firms colluded to increase prices was initiated in February last year and the inquiry is still ongoing with Ege presenting its formal defence in due course.

Furniture companies fined by CA for setting resale prices

- ▶ The CA fined furniture companies TRY 5.78 (EUR 800,000) for setting resale prices.
- ▶ Erciyes Anadolu Holding (Boydak Holding), Yon Dayanikli Tuketim Mallari Pazarlama and Bellona Mobilya (Boytas Mobilya) were investigated by the CA as part of the probe, but only Bellona Mobilya was fined for infringing competition rules.

CA postpones hearing of natural gas and plumbing association

- ▶ The CA postponed an antitrust hearing concerning a natural gas and plumbing association originally planned for 14 April to an unspecified date.
- ▶ In July last year, the CA initiated an inquiry into Van Dogalgaz ve Mekanik Firmalari Mesleki Dayanisma Dernegi.

Traffic signalling firms fined for bid rigging

- ▶ Nine firms were fined by the CA for rigging traffic signalling tenders. The probe was announced in August 2018.
- ▶ Nurullah Cagatay Tiritoglu NCT Insaat Taahut and Tankes Trafik Sistemleri Elektronik Otomotiv received fines of 2 % of their 2019 turnover, while Asya Trafik Sinyalizasyon and Ishakogullari Sinyalizasyon were fined 2 % of their 2018 turnover.
- ▶ Asim Aytac Bozer AAB Muhendislik, Buharalilar Trafik Sinyalizasyon Elektrik Elektronik, Tandem Trafik Sistemleri Elektronik Bilgi Islem, Mosas Akilli Ulasim Sistemleri and Rayennur Elektronik Ulasim are subject to fines worth 3 % of their 2019 turnover.
- ▶ According to the CA, the tenth company, Matrisled Elektrik Elektronik, was not fined.
- ▶ Here is a [link](#) to the Turkish-language press release.

Ukraine

Energy firm fined for failing to provide information in abuse of dominance case

- ▶ D.Trading, which belongs to the vertically integrated DTEK energy group, was fined UAH 82,600 (EUR 2,848) by the Antimonopoly Committee of Ukraine (AMCU), as it failed to provide sufficient information in an abuse of dominance probe against utility DTEK Zapadenegro.
- ▶ The AMCU found that D.Trading's monthly energy sales figures did not tally with total volumes for the period.

Comments: *The AMCU launched the investigation in October 2019.*

AMCU launched Naftogaz abuse of dominance case

- ▶ The AMCU has initiated an abuse of dominance investigation of natural gas firm Naftogaz, as it suspects the company of setting prices higher for industrial customers than they would have been in a competitive environment.
- ▶ The AMCU compared the pricing at the retail level with that of European hubs for gas delivery to the Ukrainian border and on the Ukrainian Energy Exchange.

Supreme Court backs Ukrspirt abuse of dominance fine

- ▶ A UAH 33m (EUR 1.1m) abuse of dominance fine imposed on state-owned distillery group Ukrspirt was backed by the Ukrainian Supreme Court.
- ▶ The Court validated the decision by the AMCU, which fined Ukrspirt for setting prices in 2017 and early 2018 without reference to objective criteria.
- ▶ Ukrspirt, which holds a 100 % market share in the wholesale ethyl alcohol sector, is expected to promptly pay the fine, cease any further antitrust violations and introduce a transparent pricing policy for the sector.

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