

CEE: Competition Monthly Bulletin – June 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.

Main takeaways

▶ **Merger control:**

Several countries have enacted (new) FDI regimes lately, creating further regulatory requirements for foreign investments.

The Austrian NCA has had several cases in May either clearing new mergers subject to remedies or amending the conditions of previously approved mergers.

▶ **Antitrust:**

Antitrust advocacy or enforcement related to COVID-19 is still moderate compared with the NCAs of Western Europe, but the Turkish authority has opened two high-profile cases (regarding face masks and FMCG).

Austria has reported three noteworthy abuse of dominance cases, concerning motor vehicle distribution, price gouging in cancer treatments and fees to access broadcasting services.

▶ **Unfair competition:**

Romania has jumped aboard the UTP train by proposing a new law that would give broad enforcement rights to the Romanian competition authority.

Meanwhile, the Czech authority has issued a comment on the Supreme Court judgment finding parts of the national UTP act unconstitutional.

▶ **Sectors and sector enquiries:**

Austrian regulators are tackling the challenges of digitalisation, publishing a paper on possible changes to competition law and a paper on tools to monitor online platforms.

Sector enquiries have been opened or concluded into television broadcasting (Hungary), waste (Poland) and the sharing economy (Romania).

Webinar on 24 June 2020: Competition law enforcement in CEE / what's hot?

With Covid-19 in the air, it might have gone unnoticed that competition authorities in Hungary, Romania and Turkey are jumping from one milestone to the next. Why is this? What do companies need to look out for in the future? What industries are in the spotlight? What routes are these authorities taking that differ from the EU Commission and prominent national authorities? [Register for our webinar](#) and learn more about enforcement trends in three of the most active jurisdictions in Eastern Europe!



Christoph Haid

Partner

+43 1 534 37 50119

c.haid@schoenherr.eu

- ▶ Austria
- ▶ Czech Republic
- ▶ Hungary
- ▶ Poland
- ▶ Romania
- ▶ Slovakia
- ▶ Slovenia
- ▶ Turkey

Table of Contents

AUSTRIA	3
Suspension of media merger remedy extended due to COVID-19	3
Amendment to conditional clearance of an acquisition by OMV	3
Media merger cleared subject to remedies	3
FCA requests declaratory judgment from cartel court in pharma abuse case	4
Cartel court finds abuse of dominance in motor vehicle distribution	4
Supreme Cartel Court rejects alleged abuse of dominance	4
Monitoring of digital communication platforms and gatekeepers	4
CZECH REPUBLIC	5
Competition office fines sports equipment company for resale price maintenance	5
Unfair competition: Office issues statement on the Constitutional Court judgment of May 2020	5
HUNGARY	5
Top court confirms fine imposed for submission of false information in telco merger probe	5
Hungary introduces FDI mechanism	6
The Hungarian Competition Authority (GVH) launches sectoral inquiry into the television broadcasting market	6
Annual report of the GVH to the parliament revealed more fines imposed in consumer protection cases than for cartels	7
POLAND	7
Government adopts new proposals in envisaged FDI mechanism	7
Agency opened investigation against DAF truck dealers	8
Consumer ombudsman applied for price-fixing investigation against fuel stations	8
UOKiK published a report on waste market	8
ROMANIA	9
Competition Council being sued by internet platform for imposing unduly lenient fine	9
Proposed amendments to the Unfair Competition Law bring focus on companies with superior bargaining position	9
Competition Council publishes study on impact of collaborative (sharing) economy	10
SLOVAKIA	10
Agency fines car dealer cartel EUR 6.7m	10
Agency clears takeover of Le Bélier by Guangdong Wencan	11
Agency closed administrative proceedings into book merger	11
Inquiry opened into postal firm over suspected failure to provide information	11
Interim measures issued and revoked in industrial park case	12
SLOVENIA	12
Slovenia introduces foreign investments screening rules	12
TURKEY	13
Face masks and FMCG price gouging investigated	13
Draft changes to competition law	13

Austria

Suspension of media merger remedy extended due to COVID-19

- ▶ Following an earlier temporary suspension at the outset of the coronavirus crisis, ProSiebenSat.1Puls 4 was successful in obtaining an extension of selected behavioural obligations regarding its acquisition of competing broadcaster ATV being lifted until 30 June.
- ▶ These obligations were part of the conditional clearance in 2017 and aimed at safeguarding effective competition as well as media plurality.
- ▶ In March 2020, the Federal Competition Authority ("FCA") approved the request to suspend part of its commitments until 30 April 2020. The respective commitments concerned the obligation of ATV to maintain its editorial independence when designing its news programmes. Since COVID-19 still has a firm grip on businesses in Austria, ProSiebenSat.1Puls 4 asked for the temporary waiver to be extended until 30 June

Amendment to conditional clearance of an acquisition by OMV

- ▶ On 26 May 2017, oil & gas company OMV Aktiengesellschaft ("OMV") notified the FCA of its intention to acquire joint control of KSW Elektro- und Industrieanlagenbau Gesellschaft m.b.H. ("KSW"), which builds and maintains tank facilities.
- ▶ Due to concerns regarding possible access to sensitive information of competitors for OMV, obligations were drawn up to remove the competition concerns.
- ▶ At OMV's request, the statutory parties agreed to amend the commitments due to a change in the framework of OMV's shareholding in KSW, which resulted in a substantial change in the original concentration project.
- ▶ The previous and current set of commitments can be inferred from the FCA's website ([here](#)).

Media merger cleared subject to remedies

- ▶ MedMedia Verlag und Mediaservice GmbH (MedMedia) and Universimed Cross Media Content GmbH (Universimed) notified their intention to merge their business areas "Medizinischer Fachverlag" into a joint holding company in mid-March 2020.
- ▶ Competitors and pharmaceutical advertising customers were interviewed as part of a market survey. It transpired that the merged entity would have the largest portfolio of medical journals on the Austrian market in terms of numbers and diversity of topics. The aggregate market shares would exceed the thresholds for the presumption of dominance.
- ▶ The investigation showed that the advertising revenues of many relevant market participants tend to be declining. In addition, there have been numerous hiring or ownership changes of clinical journals in the recent past. The market survey confirmed the risk of further title hirings and the danger of market foreclosure.
- ▶ To allay these concerns, the notifying parties offered remedies. They can be found [here](#).

FCA requests declaratory judgment from cartel court in pharma abuse case

- ▶ The FCA has [requested](#) a declaratory judgment in an alleged abuse of dominance case regarding a global pharma company's pricing policy for cancer medicine.
- ▶ The company is suspected of abusing its dominant position by applying "dumping prices" for its medicines in order to discourage hospitals from switching to generics. According to the FCA, this conduct could have prevented generic drug makers from entering the market.

Cartel court finds abuse of dominance in motor vehicle distribution

- ▶ Car manufacturer PSA (comprising Peugeot, Citroën, DS, Opel, Fiat, Lancia and Chrysler) has reportedly been found to have abused its dominant position in the distribution of new vehicles by putting price restrictions on car retailers and pressuring them into participating in PSA's price discounts. This has violated both the competition act (abuse of dominance) as well as the Local Supply Act (NahVG).
- ▶ The Cartel Court's judge also found that PSA knowingly set excessive sales targets to reduce trade margins and that PSA's tying of bonus payments to customer satisfaction is illegal.

Supreme Cartel Court rejects alleged abuse of dominance

- ▶ A satellite services firm has failed with an abuse of dominance case against a fellow broadcaster before the Austrian courts. The claim was based on an allegation of excessive fees for satellite decoding services by the incumbent provider.
- ▶ The incumbent terminated the original contract with the claimant in March 2019 and in a new contract planned to charge nine times more for the same service, effectively forcing the claimant out of business.
- ▶ The Austrian Cartel Court rejected the claim, concluding that since the parties had meanwhile reached an agreement on a fair price, an abuse of dominance could not be established.
- ▶ The claimant appealed the ruling before the Supreme Cartel Court, arguing that even the attempt to charge an unfair price is illegal, but the court disagreed and confirmed that an infringement of competition rules can no longer be established, as the pressure applied by the defendant on the claimant has ceased.

Monitoring of digital communication platforms and gatekeepers

- ▶ The Austrian telecoms regulator (RTR) decided to regularly monitor digital communication platforms and gatekeepers for an impermissible impediment of competition. A summary of the monitoring paper can be found [here](#).
- ▶ The monitoring aims at providing an overview of competition-related issues and to analyse potential negative developments. The method paper explains the analysis in general and the aspects that have been considered in detail. Factors such as the functioning of communication platforms, their market power and economies of scale leading up to their strong position are currently being analysed by the regulator, which expects the first results this year.

- ▶ The RTR and the FCA will exchange the results of their monitoring activities at regular intervals. If there is reason to suspect breaches of competition rules, particularly an abuse of market dominance, the FCA could then initiate an in-depth investigation on this basis.

Czech Republic

Competition office fines sports equipment company for resale price maintenance

- ▶ Sports equipment company ABISTORE SPORT received a CZK 1.85m (EUR 67,305) fine from the Czech Office for the Protection of Competition (the "Office") for resale price maintenance, as the company was found to have made agreements with retailers to sell at set prices. ABISTORE SPORT restricted or halted supplies if retailers failed to comply with the pricing.
- ▶ Following complaints, the Office opened the case in 2018. During dawn raids carried out the same year it found evidence for the infringement in email communications.
- ▶ ABISTORE SPORT was instructed to inform retailers in writing that those agreements are no longer valid within 30 days once the decision enters into force. The decision is not yet in force, since ABISTORE SPORT filed an appeal.

Unfair competition: Office issues statement on the Constitutional Court judgment of May 2020

- ▶ The Czech Office for the Protection of Competition (the "Office") issued a statement in response to the Czech Constitutional Court decision of April 2020 which declared the 3 % limit on marketing payments under the Act on Significant Market Power (the "SMPA") unconstitutional (see our May 2020 newsletter).
- ▶ Exceeding the 3 % limit on marketing payments may no longer be considered an unfair practice; however, the Office points out that compliance with the remaining SMPA requirements remains vital and is not affected by the decision of the Constitutional Court.
- ▶ The Office emphasises that retailers must comply with the general prohibition of abuse of significant market power. In addition, retailers may not request payments from food suppliers to which they have not provided any counterparts/services and suppliers' payments to retailers for marketing services may not be disproportionate and/or discriminatory.

Hungary

Top court confirms fine imposed for submission of false information in telco merger probe

- ▶ The Kúria, Hungary's top court, confirmed the ruling of a lower court that revoked a fine that was imposed by the competition authority (GVH) for the submission of false information during its review of telco Invitel's takeover by DIGI.
- ▶ After the GVH discovered that there were 89 problematic areas where potential competition concerns arose rather than 23, it revoked its clearance of the tie-up, which

it had only just granted a few months earlier in May 2018. It also imposed a HUF 90m (EUR 0.27m) fine.

- ▶ After a second review, the GVH cleared the deal again in March 2020. It imposed similar but more extensive remedies than in the original decision.
- ▶ Due to an appeal filed by DIGI with the Budapest-Capital Regional Court against the penalty, the court halved it, as it found that both sides had made mistakes.
- ▶ The first instance ruling found that the GVH should have asked the company for clarification if it found discrepancies between the data uncovered during the dawn raids and the information submitted.
- ▶ The GVH filed an appeal against this ruling and the appellant filed a cross-appeal to the Kúria. The authority argued that it has no obligation to clarify its findings and that the company was the only one in the position to report any shortcomings in the decision. The company, on the other hand, argued that it did not mislead the authority intentionally.
- ▶ The Kúria rejected both appeals, as it found that the authority would have had to check the completeness of the list if it was planning to use it as evidence.
- ▶ The appellant's appeal was also dismissed, as it submitted a cross-appeal that made it only possible to contest issues the GVH was contesting. The GVH was not contesting the findings of the first instance ruling, so the company's cross appeal could not do so either.

Comments: *The case is Kf.11.37.809/2019/12. before the Kúria.*

Hungary introduces FDI mechanism

- ▶ A new temporary foreign investment control mechanism was introduced on 26 May 2020 by Hungary's Prime Minister Viktor Orbán to screen and control foreign takeovers amidst the ongoing COVID-19 crisis.
- ▶ The mechanism foresees mandatory approval by the government for foreign investments from both in and outside the EU. An investment will be banned if the government finds that it violates public security, particularly if it threatens the safety and supply of basic resources.
- ▶ It affects 21 sectors, including healthcare, medical device manufacturing, pharmaceuticals, communications, agriculture, tourism, information technology, food and agriculture, defence and energy.
- ▶ The temporary framework will be in place until 31 December 2020.

The Hungarian Competition Authority (GVH) launches sectoral inquiry into the television broadcasting market

- ▶ According to the indications received by the GVH, the television broadcasters provide their services at a more favourable price to larger television distributors than to their smaller competitors. As a result, smaller distributors incur higher costs and are likely to be placed at a competitive disadvantage, thereby potentially leading to distortions or restrictions of competition (supply). This could ultimately result in fewer choices and worse value for money of programme packages for consumers. However, the enhanced (price and quality) competition generated by larger television distributors and the increased efficiency of certain telecommunication service providers may also bring benefits for consumers.

- ▶ The GVH therefore decided to initiate a sectoral inquiry for observing these market trends and identifying the appropriate intervention.
- ▶ The undertakings on the market in question are obliged to cooperate with the authority in the course of the sectoral inquiry, which will be closed upon the publication of the GVH's report. If the inquiry reveals distortions of the market, the GVH may initiate competition supervisory proceedings, make recommendations for the market actors, initiate new legislation or recommend the amendment of existing legislation to the legislator.

Annual report of the GVH to the parliament revealed more fines imposed in consumer protection cases than for cartels

The GVH closed nearly 100 proceedings in 2019, in which the HCA imposed total fines of HUF 8.3bln (approx. EUR 240,700). Forty-one percent of the fines (HUF 3.4bln; approx. EUR 98,687) were imposed in cartel cases and 59 % of the fines (HUF 4.9bln; approx. EUR 142,013) were for unfair commercial practices against consumers.

Poland

Government adopts new proposals in envisaged FDI mechanism

- ▶ The new proposals which were adopted by the government on 20 May 2020 include provisions to allow for scrutiny of foreign investments.
- ▶ Together with the Office of Competition and Consumer Protection (UOKiK), the proposals were created in response to the COVID-19 pandemic. The bill will not be discussed in parliament.
- ▶ The so-called "Anti-Crisis Shield" will give the UOKiK president additional powers to protect Polish enterprises which are important for public order, public security or public health. Such enterprises must have their headquarters in Poland and must generate revenues from sales and services exceeding the equivalent of EUR 10m in Poland.
- ▶ In addition, the entities must meet one of the following conditions: they are public companies; they have property that has been disclosed in the list of objects, installations, equipment and services included in the critical infrastructure; or develop relevant software or conduct business in one of the areas specified by law.
- ▶ The coronavirus pandemic and resulting economic effects may give rise to hostile takeovers of strategic Polish enterprises.
- ▶ UOKiK would have the power to object to foreign investments and non-compliance with an objection or conducting a takeover without notifying the Office may result in significant financial sanctions.
- ▶ To avoid causing delays to foreign investments, UOKiK will try to keep the decision-making period below 30 days.
- ▶ The proposed rules stipulate that each investment must be notified to the UOKiK's president, who will conduct a verification procedure. If no concerns arise regarding public security, public order and public health, the Office will issue a decision of no objection.
- ▶ Acquiring a protected company without notifying the authority or despite objections from the UOKiK's president will be invalid.

- ▶ The UOKiK will initiate an examination if the notification or an investment require a more thorough review.

Agency opened investigation against DAF truck dealers

- ▶ The President of the Polish Office of Competition and Consumer Protection ([UOKiK](#)) has initiated antitrust proceedings against three DAF truck dealers.
- ▶ Dawn raids at the premises of the companies have delivered evidence suggesting that agreements dividing markets have been concluded.
- ▶ Two of the investigated companies are already part of another investigation in this sector, involving five truck dealers. It is suspected that the companies involved might have acted concurrently in two collusions with different entities.

Comments: *The companies involved may face a fine of up to 10 % of their annual turnover.*

Consumer ombudsman applied for price-fixing investigation against fuel stations

- ▶ Legnica's Municipal Consumer Ombudsman applied to Poland's competition agency to open an investigation over potential price-fixing by fuel stations in the city.
- ▶ According to the ombudsman, the reason for the investigation is that fuel is getting cheaper nationwide, while high prices are being maintained in Legnica.
- ▶ The ombudsman became aware of this when drivers started discussing this topic online and when complaints were filed about potential price fixing.

UOKiK published a report on waste market

- ▶ The UOKiK recently published a report on the Polish waste market. The waste sector was under scrutiny due to signals regarding significant increases in municipal waste management fees.
- ▶ Based on the report's findings, the increased prices stemmed from growing operating costs rather than higher margins of market players. The UOKiK also concluded that the level of price competition between different facilities is not satisfactory, which in the agency's opinion is a result of relatively high transportation costs as well as significant capacity utilisation by providers of waste treatment services.
- ▶ The UOKiK's recommendations presented in the report include, among others: greater scrutiny over the sector (market regulator monitoring costs and prices) and municipalities' investments to increase production capacities of local waste facilities.
- ▶ When publishing the report, the UOKiK declared that it will continue to monitor the waste sector and react when competition is distorted.

Romania

Competition Council being sued by internet platform for imposing unduly lenient fine

- ▶ A Romanian interconnection platform for data traffic, InterLAN Internet Exchange, is suing the Competition Council (CC) for imposing an unduly lenient fine on network infrastructure operator NetCity Telecom.
- ▶ InterLAN requested a partial annulment and amendment of the RON 2.18m (EUR 0.46m) fine, which was imposed by the CC on NetCity Telecom for abusing its dominant position between 2010 and 2019 by charging disproportionate fees on functional buckles.
- ▶ Netcity Telecom operates Netcity, a support infrastructure for existing telecom operators wanting to offer services in Bucharest.
- ▶ InterLAN accuses the CC of reaching an agreement with NetCity Telecom to impose a reduced fine in exchange for closing some parts of the case due to insufficient evidence.

Comments: *Netcity Telecom benefited from a 15 % fine reduction as it recognised the infringement.*

Proposed amendments to the Unfair Competition Law bring focus on companies with superior bargaining position

- ▶ A draft Emergency Government Ordinance (EGO) materially amending Law 11/1991 (Unfair Competition Law) has been recently published on the CC's website. This draft EGO aims to introduce the concept of significant bargaining power (termed "superior bargaining position" in the draft EGO).
- ▶ "Superior bargaining position" is defined in the context of significant imbalances, which allow a non-dominant undertaking to influence partners active on a different market.
- ▶ Identifying a potential infringement would be based on the following cumulative criteria: (i) the existence of unbalanced forces due to the non-dominant company's considerable size or its market position; (ii) the importance of the business relationship for the partner's business; and (iii) difficulties in identifying an alternative solution or lack of options for the partner.
- ▶ The draft legislation also contains a series of scenarios in which companies would exert their superior bargaining position, e.g. in case of a refusal to supply or purchase, breach of contractual clauses (for payment, supply or purchase), unjustified and discriminatory terms, contractual termination or unjustified amendment of contractual clauses.
- ▶ The proposed fines for companies range between 0.01 % and 1 % of the company's turnover, in any case a minimum nominal fine of RON 5,500 (approx. EUR 1,250) and a maximum of RON 100,000 (approx. EUR 22,500). Several tools usually applicable in antitrust investigations have also been translated into this draft legislation, thus bringing the Unfair Competition Law closer to the general antitrust framework.
- ▶ The CC Chairman has publicly stated that these new changes are focused on dealings of companies that do not meet the criteria to be considered dominant (below the 40 % market share threshold), but are clearly stronger and have a significant negotiating strength towards smaller firms (usually ranging between a 20–30 % market share).

Comments: The draft EGO can be found [here](#) (only version in Romanian is available). Stakeholders and other interested parties can provide comments until 3 July 2020.

Competition Council publishes study on impact of collaborative (sharing) economy

- ▶ The Competition Council (CC) published its study on the impact of the collaborative economy on the competitive environment and competition policy (which was finalised in March 2020).
- ▶ A collaborative economy (consisting in business models facilitated by platforms, e.g. Uber, Airbnb, transport services platforms) has been deemed to allow a more efficient allocation of resources in terms of using unused assets, so-called "pending assets" (cars, real estate, capital, etc.).
- ▶ The CC points out that the accumulation of a large number of market participants in a single platform could lead to the creation of a dominant position. This would lead to limited competition between platforms and few incentives for market entry by new competing platforms. There is also a risk that the dominant platform may impose unjustified restrictions on service providers.
- ▶ The CC recommends that collaborative platforms should maintain a "neutral, transparent and rigorous role" in moderating reviews and managing its rating system.
- ▶ The CC notes that platforms may intervene when the rating system falls below a certain threshold in terms of demand or supply of services, as rating systems should deter harmful behaviour, reduce information asymmetries and ultimately ensure quality of services.

Comments: This new study is currently available on the CC's website and can be found [here](#) (full version available only in Romanian) and [here](#) (summary available in English).

Slovakia

Agency fines car dealer cartel EUR 6.7m

- ▶ The Slovak Antimonopoly Office (SAO) has fined 18 undertakings a total of EUR 6.7m for concluding anticompetitive agreements in connection with the sale of new Volkswagen passenger and commercial vehicles.
- ▶ According to a [press release](#) by the SAO, the sellers of the vehicles agreed on the amount of maximum discounts provided for individual cars and geographically divided the market in the Slovak Republic according to the regions to eliminate competition while maintaining customers and the level of prices.
- ▶ The companies also agreed on offering less advantageous conditions to customers belonging to another seller and instructing them to purchase vehicles from a particular seller.
- ▶ In addition, the companies engaged in bid rigging by coordinating bids and exchanging sensitive business information in public tenders or similar competitions.
- ▶ Two undertakings applied for leniency and were not fined. One undertaking's fine was reduced as part of a settlement with the SAO and another undertaking was banned from participating in public tenders for the next three years.

Agency clears takeover of Le Bélier by Guangdong Wencan

- ▶ After finding no significant horizontal overlaps in the takeover of auto components maker Le Bélier by Guangdong Wencan Die Casting, the SAO cleared the deal.
- ▶ Guangdong, a Chinese aluminium alloy auto components maker, mainly focuses its activities on China and only generates a small proportion of its turnover in Europe and Slovakia. It imports brake and driving components.
- ▶ Le Bélier, also an aluminium alloy auto component maker, mainly focuses on Europe, generating most of its turnover in Slovakia from the sale of brake components.
- ▶ According to the findings of the SAO, there are horizontal overlaps at the European market level in alloy components for suction, driving and brake systems. The only direct overlap is in the suction systems for lightweight vehicles, but there is no significant impact of at least 15 % market share in Slovakia. There are no actual or potential vertical relationships.

Agency closed administrative proceedings into book merger

- ▶ The SAO [announced](#) that it closed its administrative proceedings into a tie-up between Czech J&T Finance Group (JTFG) and businessman Ladislav Bődők with book retailer Panta Rhei.
- ▶ In 2018, both JTFG and Bődők received a fine from the SAO, as they failed to notify the concentration to the SAO despite being expected to do so.
- ▶ Since then the joint control of JTFG and Bődők has ceased.
- ▶ In 2019, a new change in ownership structure took place as a stake in Panta Rhei was acquired by businessman Patrik Tkáč.
- ▶ A joint-control over Slovak book distributor Ikar, which was announced by Tkáč, Bődők and businessman Igor Mrva is currently being looked into by the SAO.
- ▶ As a result of the changes in control, the SAO closed its inquiry into the JTFG, Bődők and Panta Rhei merger.

Inquiry opened into postal firm over suspected failure to provide information

- ▶ The SAO [announced](#) that it opened an inquiry into a company in the postal sector over a suspected failure to provide information.
- ▶ The company, which was not named by the SAO, may have failed to provide information by a specific deadline, and then only partially.
- ▶ The investigation is being conducted by the department for abuse of dominance and vertical agreements.
- ▶ **Comments:** *For withholding information, the agency can impose fines of up to 1 % of the company's turnover for the previous financial year.*

Interim measures issued and revoked in industrial park case

- ▶ The SAO imposed interim measures in an ongoing abuse of dominance inquiry, which it opened in April, regarding Slovak company CHEMES Humenné.
- ▶ Twenty-five companies operate out of the Chemes industrial park, which also houses a power plant that supplies power to users and nearby households. The company also provides services such as hardware, software and internet services.
- ▶ The SAO suspects the company of an infringement relating to sales conditions imposed by CHEMES Humenné regarding the energy supply and other media on those that use the facilities.
- ▶ Interim measures were imposed in order to ensure that one user of the facility would maintain the energy supply and would not be forced to leave the market as a result of its power being cut.
- ▶ On 27 May, the SAO issued an update stating that the energy supply to the entity concerned has now been resumed and that an agreement for further provision of energy and other media was concluded between the parties.

Comments: *A possible appeal against the interim measures would not have created any suspensive effects and noncompliance would have resulted in a fine of up to 10 % of the company's turnover.*

Slovenia

Slovenia introduces foreign investments screening rules

- ▶ As of 31 May 2020, the third Anti-COVID-19 legislative package is in force in Slovenia, introducing, among other measures, a screening instrument for foreign investments. This is a novelty in the Slovenian regulatory landscape.
- ▶ The Slovenian FDI screening mechanism anticipates that investments by foreign investors (i.e. EU, EEA, Swiss, third country individual/entity) acquiring an interest of at least 10 % must be notified to the Ministry of Economy within 15 days from (i) the conclusion of a share purchase agreement or a public takeover bid, (ii) the establishment of a corporate entity, or (iii) the acquisition of a right to dispose real estate.
- ▶ The investment is notifiable if it concerns one of the listed sectors, including critical infrastructure (such as energy, transport, water, health, communications, media, data processing or storage, etc.), critical technologies and dual use items (such as artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, etc.), supply of critical inputs (such as energy or raw materials, food security as well as medical and protective equipment), access to sensitive information, the freedom and pluralism of the media, and projects or programmes of the EU interest as listed in Annex 1 of Regulation (EU) 2019/452.
- ▶ The Ministry can prohibit the transaction only if it can establish that it would go against public order or security. In determining whether a foreign direct investment is likely to affect security or public order, the Ministry may take into account, in particular: (a) whether the foreign investor is directly or indirectly controlled by the government, including state bodies or armed forces, of a third country, including through ownership structure or significant funding; (b) whether the foreign investor has already been involved in activities affecting security or public order; or (c) whether there is a serious risk that the foreign investor engages in illegal or criminal activities.

- ▶ A review period of two months is envisaged for all cases. In case the transaction is prohibited, the respective contract is deemed to be null and void by law.
- ▶ Failure to notify foreign direct investment is subject to severe monetary penalties.
- ▶ The regime will remain in force until 30 June 2023.

Comment: The full article on FDI screening rules in Slovenia is available here: www.schoenherr.eu/publications/publication-detail/slovenia-introduces-foreign-investments-screening-rules

Turkey

Face masks and FMCG price gouging investigated

- ▶ According to a news report, the Turkish Competition Authority (TCA) has opened an investigation into 10 companies selling face masks for grossly inflated prices. Prices allegedly have increased 600–700 %.
- ▶ In parallel, the TCA has launched a probe into 29 players in the FMCG supply chain, including supermarket chains, for price hikes regarding food, cleaning and hygiene products.

Draft changes to competition law

- ▶ Reportedly, a draft amendment to the Turkish competition act has been presented. The most important changes would include:
 - The introduction of a substantially reduced competition test for the merger control regime.
 - Clarification of investigative powers, including dawn raids and taking of copies of hardcopy and electronic data.
 - A settlement mechanism (including a possible reduction in fines of up to 25 %) and behavioural commitments in antitrust investigations.

eu & competition

eu & competition CEE updates |
June 2020

Feel free to contact our legal experts across CEE:

Austria



Christoph Haid
Partner
T: +43 1 534 37 50 119
c.haid@schoenherr.eu



Franz Urlesberger
Partner
T: +43 1 534 37 50196
f.urlesberger@schoenherr.eu



Volker Weiss
Partner
T: +32 2 743 40 44
v.weiss@schoenherr.eu



Hanno Wollmann
Partner
T: +43 1 534 37 50152
h.wollmann@schoenherr.eu

Bulgaria



Galina Petkova
Attorney at Law
T: +359 2 93310 83
g.petkova@schoenherr.eu

Croatia, Serbia



Srđana Petronijević
Partner
T: +381 11 3202 600
s.petronijevic@schoenherr.rs

Czech Republic, Slovakia



Claudia Bock
Attorney at Law
T: +420 225 996 500
c.bock@schoenherr.eu

Hungary



Anna Turi
Counsel
T: +36 1 8700 707
a.turi@schoenherr.eu



András Nagy
Attorney at Law
T: +36 1 8700 684
a.nagy@schoenherr.eu

Poland



Paweł Halwa
Partner
T: +48 22 223 09 11
p.halwa@schoenherr.eu

Romania



Georgiana Bădescu
Partner
T: +40 21 319 67 90
g.badescu@schoenherr.eu

Slovenia



Eva Škufca
Partner
T: +386 1 200 09 82
e.skufca@schoenherr.eu

Turkey



Levent Çelepci
Partner
T: +90 212 230 17 00
l.celepci@schoenherr.eu