

RECENT TRENDS AND DEVELOPMENTS IN COMPETITION LAW: REVIEW OF DAWN RAID RULES IN THE CZECH REPUBLIC

Office for the Protection of Competition of the Czech Republic

VISEGRAD 4+ COMPETITION CONFERENCE

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ÚŘAD PRO OCHRANU HOSPODÁŘSKÉ SOUTĚŽE
OFFICE FOR THE PROTECTION OF COMPETITION

DAWN RAIDS STATISTICS

- Until 2014 usually 10 raids per year
- 2015 – 13
- 2016 – 28
- 2017 - 26

- **90 % cartel-related investigations**
- **No warrant required**
- 2015 fine imposed for denial of access to personal computer (CZECH FROST. CZK 1 Mil.)
- 2016 Act on Protection of Competition Amended: Explicit reference to specific type of action
- Czech NCA has never inspected non-business premises
- Strict NO to raid „non-business“ of mayor of municipality

DELTA PEKÁRNY CASE – TIMELINE

- Bakeries (DELTA PEKÁRNY, OK REST, PENAM) concerted their practices and price policy in 2003
- 2005 FIRST INSTANCE decision issued (infringement of national competition rules)
- 2012 final decision of Supreme administrative court (merits, legality of dawn raids)
- 2014 ruling of ECtHR: Czech Republic should secure effective judicial review of dawn raids
- **ECtHR held that a dawn raid carried out by the NCA at a bakery company's premises in 2003 constituted a breach of the bakery's right to privacy. (*Delta Pekařny A.S. v. Czech Republic*, App. No 97/11, ECHR 279, Judgment of 2 October 2014) In the view of the ECtHR, the dawn raid was not strictly necessary to attain the otherwise legitimate aim being pursued by the Authority. As such, the dawn raid was deemed to infringe Article 8 of the ECHR.**
- 2016 Constitutional Court dismissed decisions of administrative courts ordering them to review the whole procedure with regards to ECtHR ruling
- January 2018 – Supreme administrative court confirms the decision of the Czech NCA

DELTA PEKÁRNÝ CASE CONSEQUENCES

EX POST TEST

- Regional Court of Brno started „once again“
- Legality of procedure
- Legitimate aim
- Necessity of interference in democratic society

DEFINITION OF SCOPE/EXTENT OF THE OBJEC

- DAWN RAID EXTENT = EXTENT OF AUTHORIZATION = EXTENT OF SUSPICION

QUESTIONS AND CHALLENGES

- Possibility to challenge the decision/procedure of inspection itself is available (and has always been)
 - Definition of the „scope“ of inspection
 - Legitimate Aim vs fishing expedition
 - Active vs. Passive role of the inspectors
 - Always information on how long the inspection will last
 - List of authorizations
 - Necessity to prove relevance of the actions to the object of inspection
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- What is adequate time period to look back?
 - Question of key-words
 - LPP posed no problem (so far)

THANK YOU FOR YOUR ATTENTION

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