



CEE: EU & Competition Monthly Bulletin – March 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.



**Christoph Haid**

Partner

+43 1 534 37 50119

[c.haid@schoenherr.eu](mailto:c.haid@schoenherr.eu)

Main takeaways

▶ **Merger control:**

New merger control guidelines in Bulgaria (filing form) and Hungary (jurisdictional notice)

Hungary is again scrutinising a merger control filing for alleged incorrect information – possible fine, withdrawal of clearance and new review looming

▶ **Antitrust:**

The Romanian authority continues to be very active in antitrust enforcement

Several bid-rigging cases across the region

Waste management industry subject to several proceedings

Turkey continues its enforcement in the tech sector; otherwise not much antitrust enforcement in the digital industry

▶ **Unfair competition:**

The Hungarian authority continues strict enforcement of unfair competition rules

▶ **Sector enquiries:**

Recommendations for increasing competition in the waste management market in Romania

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

Table of Contents

<b>Austria</b>	<b>3</b>
Antitrust complaint against pharma wholesaler	3
<b>Bulgaria</b>	<b>3</b>
Short and long filing forms introduced	3
Review of the wholesale electricity market	3

<b>Czech Republic</b>	<b>4</b>
Music collecting society fined for abuse of dominance	4
<b>Hungary</b>	<b>5</b>
Another investigation into the correctness of data in a merger control filing	5
Updated merger control notice	5
Court partially overturns car battery disposal decision	5
EUR 4.8m fine on medical device firms for bid rigging	6
EUR 2.5m fine for bid rigging in waste treatment	6
Security alarm companies fined for vertical infringements	7
Record-breaking fines in unfair competition cases	7
Competition authority opens investigation into VoIP and instant messaging software application Viber	8
<b>Poland</b>	<b>8</b>
Competition authority scrutinising advertising regulations	8
Investigation into sports equipment distributor over RPM	8
Proceedings into e-commerce platform Allegro	9
Conditional clearance for takeover of Multimedia Polska by Vectra	9
<b>Romania</b>	<b>10</b>
EUR 3.7m fine on Distrigaz Sud Retele	10
EUR 1.3m fine on natural gas distributor	10
Fines totalling RON 3.18m on road sign suppliers	11
Investigation into bid rigging in local sanitation services	11
Netcity Telecom fined RON 2.18m for excessive prices	12
Possible bid-rigging in parking services	12
Security companies fined EUR 94,000 for bid rigging	13
Roche Romania fined EUR 12.8m for abuse of dominance	13
Recommendations to boost competition in waste management	14
<b>Serbia</b>	<b>14</b>
Investigations into waste management firms over collusive bid rigging	14
<b>Slovenia</b>	<b>15</b>
Court confirms confiscation of shares by the Slovenian Competition Agency in Agrokor's Mercator	15
Merger in packaging waste management prohibited	15
Slovenian Competition Agency examines multi-unit apartment building management market	16
<b>Turkey</b>	<b>17</b>
Fine on Google for non-compliance with order	17
EUR 14m fine on Google in Shopping case	18
Fine on chemotherapy treatment firms for bid rigging	18
<b>Ukraine</b>	<b>19</b>
Antimonopoly Committee drops EUR 6.67bn fine against Gazprom after reaching an agreement	19

## Austria

### Antitrust complaint against pharma wholesaler

- ▶ The Austrian competition authority officials stated that they had received a complaint against drug wholesaler Herba Chemosan, which was filed by several retailers and pharmacies.
- ▶ Herba Chemosan has a reported market share of 43 % in Austria and supplies 90 % of all domestic pharmacies.
- ▶ According to the complainant, Herba Chemosan and its US-based parent McKesson concluded unfair contracts with pharmacies and imposed country-based quotas. The Austrian drug wholesaler is also alleged to have artificially restricted the market by creating supply bottlenecks for medicines.

## Bulgaria

### Short and long filing forms introduced

- ▶ New merger filing guidelines took effect on 1 January 2020. They can be found [here](#) (Bulgarian version only).
- ▶ Most importantly, a short filing form has been introduced. To be eligible for such filing:
  - The parties' combined market share in case of overlaps must be below 15 %.
  - Each of the parties must have a market share below 25 % in case of vertical links.
- ▶ If these conditions are not met, the long filing form must be completed, which has been extended and now includes more than 60 questions. For example, market information has to be provided for the last three years, and must include a projection for the next two years.

### Review of the wholesale electricity market

- ▶ The Bulgarian Commission for the Protection of Competition (CPC) issued its report on competitiveness in the wholesale electricity market between January 2016 and September 2019.
- ▶ It noted numerous regulatory changes and dynamic development.
- ▶ Positive steps towards developing a competitive electricity market were taken, including the development of stock exchange trading, the elimination of barriers to imports and exports, the gradual integration of the stock market in regional markets.
- ▶ At the same time, the sector identifies a number of problems in the competitive environment, such as the unpredictability of the regulatory framework and the lack of a long-term development strategy, incomplete liberalisation of the electricity market, compulsory supply of all electricity produced on the organised stock

exchange market, lack of effective control over the activity of the stock exchange operator and wholesale trade in electricity, lack of transparency, etc.

- ▶ In light of this, the CPC recommended:
  - Measures to ensure a predictable and stable regulatory framework (e.g. public discussions of legislative drafts, etc.).
  - Complete liberalisation of the electricity market (e.g. drafting a plan for complete liberalisation, providing social measures).
  - Active and effective ex-ante control over the activity of the stock exchange operator (including more powers to be entrusted to the state regulator over the activity of the stock exchange operator).
  - Active control of wholesale trade by the Energy and Water Regulatory Commission (including providing transparency of the control performed by the state regulator).
  - Other measures to stimulate competition in the free market (e.g. providing public information for the electricity produced by each producer, provision of publicly available up-to-date information on the utilisation of interconnection capacities, etc.).

## Czech Republic

### Music collecting society fined for abuse of dominance

- ▶ The Czech Office for the Protection of Competition (the "Office") has fined music collecting society OSA (Association for the Protection of the Rights of Music Authors and Publishers) CZK 10.68m (EUR 0.42m) for abuse of dominance.
- ▶ Between 2008 and 2014, OSA not only breached Czech but also EU competition law, as the association also represents foreign music authors.
- ▶ According to the Office, from 18 May 2008 OSA imposed unreasonable conditions on leisure accommodation providers as they had to pay a fee for playing recorded music, not taking into account whether the rooms in the accommodation facilities were occupied or empty.
- ▶ This change in policy followed the introduction of a regulation which capped rates for the licences to provide TV and radio broadcast in hotel rooms. Therefore it was clear that OSA did not consider room occupancy in order to maximise profits. This was deemed an unfair condition, not fulfilling the requirement of proportionality between performance and consideration.
- ▶ The decision is not final. An appeal was lodged against it.

## Hungary

### Another investigation into the correctness of data in a merger control filing

- ▶ Hungary's competition authority (HCA) started an investigation into whether meat processing firms provided incorrect data in a merger filing for the acquisition of SáGa Foods Élelmiszeripari Zrt by Master Good Termelő és Kereskedelmi Kft from Bernard Matthews BV and Bernard Matthew Foods.
- ▶ This was triggered when the HCA noticed that market shares provided in the media did not match data the companies had submitted in the filing. Master Good disclosed in the media that it holds more than 40 % of the market for processing chicken and referred to SáGa Foods as the country's leading poultry meat manufacturer, the HCA noted. The data provided in the filing were significantly lower.
- ▶ Should the infringement be confirmed, the HCA can withdraw its approval.
- ▶ The HCA has 60 days for its investigation. In the worst case scenario (as also happened before), the authority can impose a fine, withdraw clearance and reopen the review of the transaction.

### Updated merger control notice

- ▶ The Hungarian Competition Authority (HCA) has released an updated merger control notice applicable as of 1 January 2020 (the "Notice"). The Hungarian version of the Notice can be found [here](#).
- ▶ The Notice clarified *inter alia* that:
  - A "business plan" (rights regarding which might confer decisive influence) shall not be interpreted formally by the labelling of a document but based on a document's content. Also, if there is no provision in a company's bylaws as to which body is entitled to adopt the business plan, it is presumed that the supreme body is entitled to adopt it;
  - In sale-and-leaseback arrangements, the leasing of the real estate is usually not considered a concentration; however, the acquisition of the real estate shall be notifiable if the turnover thresholds are met;
  - If the closing of a transaction depends on certain conditions precedent (e.g. granted bank guarantee or consent of a third owner) which are not met at the time of filing, such absence does not render the notification premature as long as the parties have a binding concurrence of wills as to entering into the transaction.

### Court partially overturns car battery disposal decision

- ▶ Hungary's Supreme Court (the "Kúria") has partially accepted appeals by Jász-Plasztik and waste processing company Alcufer against fines imposed in July 2016 for sharing the market for car battery disposal. The Kúria's decision can be found [here](#).

- ▶ Back in 2016, the HCA found that the two companies plus waste disposal firm FE-Group Invest had agreed to share the car battery disposal market. Consequently, it imposed fines of EUR 90,000 on Alcufer, EUR 100,000 on Fe-Group (including a 10 % settlement discount) and EUR 100,000 on Jasz-Plasztik (see [here](#) for the announcement).
- ▶ The original decision was confirmed by the first appellate body and subsequently appealed to the Kúria.
- ▶ The Kúria found that the Hungarian Competition Authority (HCA) breached the parties defence rights, as after the SO was delivered, the companies only had two and three days each to send their reasoned requests for access to documents. In addition, they were given only 16 and 17 days each from the delivery of the SO and three days from the time they were allowed access to the files to provide representations, the court found. In the view of the Kúria, this violated the right to a fair trial.
- ▶ The Kúria found a second violation of the right to fair trial in that fines were imposed by the HCA after the deadline to close the probe had expired, and without extending the deadline with a decision. The Kúria concluded that once the procedural deadline of the HCA to render a decision elapsed, the HCA cannot impose a fine.
- ▶ In terms of substance, the Kúria disagreed with the finding that the conduct constituted a single, complex and continuous infringement. A "complex infringement" requires the existence of an anticompetitive agreement and coordinated conduct (which was not the case of the behaviour subject to the appeal). A "single and continuous infringement" necessitates an anticompetitive plan by the parties and a subsequent adjustment to that plan.
- ▶ In the present case, however, the evidence only shows that the parties shared objectives and consulted about how to implement them. But they did not take action on the plan.

### EUR 4.8m fine on medical device firms for bid rigging

- ▶ The Hungarian Competition Authority (HCA) imposed a total fine of HUF 1.6bln (EUR 4.8m) on seven manufacturers of medical devices (MRI, CT and X-ray machines) for colluding on a tender for the procurement of diagnostic imaging devices.
- ▶ The companies involved are: Siemens Healthcare (HUF 256m), GE Hungary Ipari és Kereskedelmi (HUF 341m), Philips Magyarország (HUF 146.8m), Premier G. Med (HUF 308m), Euromedic Technology (HUF 299.8m), Medirex (HUF 162.6m), HOGE Orvosi Műszer (HUF 158.5m) and Mediszer (no fine).
- ▶ Three of the companies involved submitted a leniency application. Mediszer received full immunity from fines. Siemens received a 40 % leniency reduction as well as a further 30 % settlement reduction. Hoge's leniency application was dismissed, but its fine was reduced by 30 % for its settlement with the HCA. The fines of Philips Magyarország and Euromedic Technology were also reduced.
- ▶ A criminal investigation is also ongoing.

### EUR 2.5m fine for bid rigging in waste treatment

- ▶ The Hungarian Competition Authority (HCA) found that five undertakings – JUMBO LOG Kft., RESTONE Kft., Profi-Bagger Kft., M-U-T Kft. and MENTO Kft – participated

in bid rigging relating to waste treatment funded by the EU. The HCA concluded that the undertakings shared unlawful information and agreed in advance on the company submitting the winning bid in a public procurement tender.

- ▶ The authority reduced the fines imposed by 30 % on three of the undertakings concerned in return for their cooperation during the settlement procedure and for waiving their right to appeal.

### Security alarm companies fined for vertical infringements

- ▶ Paradox Security Systems (Bahamas) and its Hungarian distributors Power Biztonságtechnikai Kereskedelmi Kft (Power) and Trióda Biztonságtechnika Zrt (Trióda) were fined HUF 549m (EUR 1.65m) by the Hungarian Competition Authority for vertical infringements relating to the distribution of alarms and accessories.
- ▶ The anticompetitive agreement restricted supply by prohibiting passive exports and fixing the minimum level of the installation price gap resulting in fixed resale prices. It also banned the display of retail prices, restricting online sales.
- ▶ The agreement made it possible for resellers and installers to set a high margin for Paradox products, which was ultimately paid by the customers. The high profits also motivated them to promote Paradox products over other products to customers, who due to a lack of professional knowledge went with the recommendation.
- ▶ Paradox was fined HUF 300m and Power HUF 240m. Trióda only received a HUF 9m fine after a fine reduction of 30 %, as they settled the probe and implemented a compliance programme.

### Record-breaking fines in unfair competition cases

- ▶ In 2019 the amount of fines imposed by the Hungarian Competition Authority (HCA) in consumer protection cases exceeded the amount imposed in cartel cases. The tendency to "reward" misleading consumers with higher fines seems set to continue in 2020. Major cases include:
- ▶ Facebook case: The HCA found that Facebook committed an infringement when it advertised its services as being free of charge on its homepage and Help Centre. The HCA held that while it was true that users did not have to pay money for these services, they paid with their data, as Facebook benefited economically from the users' data and activities. The HCA imposed a fine of EUR 3.6m.
- ▶ Fines for repeated infringements in the telecom sector: between December 2019 and February 2020, all three major telecommunications companies (Telenor, Vodafone, Telekom) received record-breaking fines for repeatedly misleading consumers. In the cases of repeated infringements, each of the prior infringements committed within 10 years entitles the HCA to increase the fine by up to 100 % per occasion. As a result, the HCA imposed fines totalling EUR 8m on the three companies.
- ▶ **Comments:** *In recent years, the HCA's attention has increasingly focused on unfair commercial practices related to consumers. Compliance with the applicable regulations is especially important in view of the major fines imposed for repeated infringements, where repeated infringement is interpreted broadly.*

## Competition authority opens investigation into VoIP and instant messaging software application Viber

- ▶ After the heavy fines imposed on Facebook for the same conduct, the Hungarian Competition Authority (HCA) has now turned its attention to the practices of Viber, as it also claims to be "free of charge".
- ▶ The HCA examines whether customers pay for Viber's services with their data, as providing data is a precondition for using the service.
- ▶ The HCA is also examining the safety claims as being potentially misleading, as end-to-end encryption would not necessarily apply to all in-app conversations. Additionally, the lack of disclosure of certain important conditions in the Hungarian language could also be considered an unfair commercial practice.

## Poland

### Competition authority scrutinising advertising regulations

- ▶ The Office of Competition and Consumer Protection (UOKiK) [showed](#) its concerns about the advertising regulations adopted by the Warsaw City Council, as it fears it might create a monopoly for AMS S.A, Poland's largest out-of-home advertising provider, and eliminate other advertising companies from the market.
- ▶ The resolution adopted by the Warsaw City Council on 16 January 2020 will come into force at the beginning of May. It aims to regulate the principle conditions of situating small objects, advertising boards and services as well as fences.
- ▶ One of the only permitted forms of advertising in Warsaw will be placing advertising at public transport stops. This is currently controlled by one content provider and the resolution may result in the strengthening of its competitive position, creating a monopoly for the manager of the advertising space in public transport shelters.
- ▶ After examining the content resolution as well as similar resolutions in other Polish cities, the UOKiK initiated explanatory proceedings.

### Investigation into sports equipment distributor over RPM

- ▶ The Office of Competition and Consumer Protection (UOKiK) announced that it had launched an investigation into Spokey, a company that sells inline skates, scooters and electric scooters, over suspected resale price maintenance ("RPM").
- ▶ It is suspected that Spokey may have fixed minimum prices for scooters and skates for online stores and auction sites since 2010. This would mean that no consumer could purchase items at lower prices than those imposed by the company.
- ▶ During a raid at Spokey's headquarters, the UOKiK found information indicating an unlawful RPM agreement that may have lasted since 2010. The company also kept a close eye on sellers, so that none of them sold the products cheaper.
- ▶ The distributors themselves also monitored each other and reported cases directly to Spokey when a retailer sold at lower prices than agreed.



- ▶ This RPM agreement resulted in consumers paying higher prices than they would have if the shops were free to set prices.

### Proceedings into e-commerce platform Allegro

- ▶ The Office of Competition and Consumer Protection (UOKiK) confirmed that it had launched an investigation targeting e-commerce platform Allegro over unlawful favouring of its own online shop over other sellers.
- ▶ According to a study conducted in 2019, Allegro is by far the most popular platform for online shopping in Poland, as 75 % of consumers prefer buying products from Allegro over other platforms.
- ▶ Due to its popularity, Allegro is the only possibility for many companies to reach a wide range of customers. But according to the UOKiK, many of them complained to the office about unequal conditions of competition.
- ▶ Allegro acts as an intermediary platform for online sales but also competes on this platform with other sellers through its own "official shop". The platform is suspected of using its high market status to favour its own sales activity.
- ▶ Allegro apparently used the platform's operation, including the relevancy algorithm, for itself in order to better position its own offers in the search results according to the relevancy criterion.
- ▶ Furthermore, some sales or promotional features were exclusively available to Allegro's official shop, while other retailers could not use them. According to the UOKiK, Allegro could also increase interest in its own offers on the platform, as the platform owner had exclusive access to special promotional banners.
- ▶ According to Allegro's spokesperson, the company does not agree with the UOKiK's suspicions and will cooperate with it to clarify the matter.
- ▶ Allegro's official shop sales represent only 1 % of total sales on the platform.

### Conditional clearance for takeover of Multimedia Polska by Vectra

- ▶ After proceedings lasting 16 months, the Office of Competition and Consumer Protection (UOKiK) conditionally approved the acquisition of control over Multimedia Polska (Multimedia) by Vectra.
- ▶ Vectra and Multimedia are leading providers of pay-TV and internet (broadband fixed-line as well as mobile access). After in-depth market research, the UOKiK articulated its concerns about the transaction (voiced reservations about planned takeover in a formal letter to Vectra). The case was closed, however, with a conditional clearance combining structural and behavioural remedies.
  - Vectra is obliged to sell its own or target's network in eight towns. This will be pursued by the transfer of assets, contracts with subscribers, infrastructure, relevant employees and databases of customers to eight newly established entities which will be purchased by independent investors accepted by the

UOKiK. Moreover, until the respective companies are sold, Vectra will not poach customers transferred there (ban on any marketing actions in this regard).

- Vectra is obliged to allow subscribers from 13 towns to change the provider of cable TV and/or fixed-line internet. This condition relates to all customers of Vectra in these areas (including current subscribers of Multimedia) who as a result will be able to switch to another provider free of charge within nine months of receiving the relevant letter from Vectra.
- ▶ **Comment:** *In line with its established approach, the UOKiK concluded that pay-TV and digital terrestrial TV are separate product markets. When it comes to internet access, the authority found that broadband fixed-line and mobile network access comprise distinct markets as well.*

## Romania

### EUR 3.7m fine on Distrigaz Sud Retele

- ▶ In line with the decision of the Romanian Competition Council (CC), Distrigaz Sud Retele was fined RON 17.65m (EUR 3.69m) for abuse of dominance.
- ▶ The company held a licence for installation services in Bucharest and 19 other counties. According to officials, it charged excessive prices for its services in those regions between 2011 and 2012.
- ▶ As the CC suspected that Megaconstruct, Mega Conect, Instalatii Mintaj and Distrigaz Sud Retele charged excessive prices to clients who were connected to the natural gas system in areas where these companies held licences, the CC raided their premises.
- ▶ The CC also raided the premises of natural gas distributor Gaz Sud, as it was investigating whether the company charged unfair prices for natural gas equipment installation services in the area where it held a licence to operate.
- ▶ **Comments:** *The CC imposed fines totalling RON 900,000 on 10 gas companies as they concluded anticompetitive agreements to fix household connection prices.*

### EUR 1.3m fine on natural gas distributor

- ▶ Natural gas distributor Premier Energy, the legal successor of Gaz Sud, was fined RON 6.3m (EUR 1.3m) by the Romanian Competition Council (CC) for abuse of dominance.
- ▶ Gaz Sud held a monopoly in the market for natural gas distribution due to its distribution licence covering 31 towns, mainly in the Ilfov county.
- ▶ In June 2017, the CC raided the premises of Gaz Sud.
- ▶ According to the CC, Gaz Sud was legally bound to check all natural gas installation projects within the area covered by its supervisory licence. As a result of the investigation, the officials concluded that the company charged discriminatory fees for natural gas installation services depending on which company oversaw the design and execution of the installations.

- ▶ As a result of this practice, consumers that hired competing natural gas distribution companies operating in the same area were charged higher prices for natural gas installations than consumers that carried out projects and installations with Gaz Sud. This resulted in 42 consumers having to pay higher fees for installation projects without any logical economic reason.
- ▶ As the legal successor of Gaz Sud, Premier Energy was fined, but received a 15 % fine reduction as it recognised the offence.
- ▶ Premier Energy also paid RON 88,347 in damages to claimants.

### Fines totalling RON 3.18m on road sign suppliers

- ▶ The Romanian Competition Council (CC) [announced](#) that it had fined four road sign suppliers, Vesta Investment, Helvespid, Loial Impex and Girod Semnalizare Rutiera, a total of RON 3.18m (approx. EUR 667,000), for rigging private and public tenders.
- ▶ Since opening the investigation in 2017, the CC examined both private tenders that were organised by road maintenance entrepreneurs as well as public tenders that were staged by the National Road Infrastructure Management Company and local councils. In 2018 the investigation was extended to Girod Semnalizare Rutiera.
- ▶ In an effort to eliminate competitors, the companies involved concluded two non-compete agreements to coordinate their behaviour.
- ▶ Vesta Investment, Helvespid and Loial Impex not only avoided competition in tenders by setting up consortia or as single bidders, but also shared sensitive information among themselves. This led to higher costs for road signs and traffic sign maintenance contracts between 2010 and 2017.
- ▶ Loial Impex and Girod Semnalizare Rutiera tried to divide road sign supply contracts at higher prices between 2009 and 2016.
- ▶ While Girod Semnalizare Rutiera and Helvespid only supplied road signs, Vesta Investment and Loial Impex both also dealt with traffic signage.
- ▶ As Loial Impex and Vesta Investment both provided the CC with crucial evidence during the investigation, they both received reduced fines after applying for leniency. Helvespid also benefited from a reduced fine after admitting to the infringement.
- ▶ The following fines were imposed: Loial Impex (RON 1,504,279), Girod Semnalizare Rutiera (RON 930,795), Vesta Investment (RON 725,267) and Helvespid (RON 21,843).

### Investigation into bid rigging in local sanitation services

- ▶ This new Competition Council (CC) investigation targets 11 public tenders organised between 2017 and 2019 by several territorial administrative units in Mureş county (mainly the city halls) concerning sanitation services.
- ▶ The investigation is currently ongoing and all three companies have been subjected to dawn raids.
- ▶ The CC [announced](#) it will look into a potential anticompetitive agreement between three companies (Sylevy Salubriserv SRL, Bissdog SRL and Services Salubritate

București SA) aimed at contract sharing for the sanitation services delegation in Mureș county.

- ▶ The authority suspects that these companies agreed upon tender participation, aimed at winning contracts at a value close to the maximum set by the city halls.

### Netcity Telecom fined RON 2.18m for excessive prices

- ▶ Netcity Telecom received a RON 2,183,552 (EUR 460,000) fine from the Romanian Competition Council (CC) for abusing its dominant position.
- ▶ It is Netcity Telecom's responsibility to design, implement and provide technical and commercial support to the underground network.
- ▶ The company holds a monopoly position in Bucharest, as it has a 49-year concession contract to install and manage Netcity, a support infrastructure for existing telecom operators that want to offer services in the Romanian capital.
- ▶ Netcity Telekom charged disproportionately high fees for functional buckles, where shorter fibres caused higher prices. The company also forced operators to purchase minimal lengths of tubes and imposed fibre-to-the building optic bundles, which included exclusive Netcity high-speed broadband service equipment. Operators were also forced to accept Netcity's services for a minimal five-year contract.
- ▶ The CC opened the probe in May 2016 after a complaint by Ines Group and was later linked to another investigation that was launched in April 2019 following a complaint by Internet Exchange.
- ▶ Netcity Telekom benefited from a 15 % fine reduction, as it recognised the infringement.
- ▶ The CC also found as part of the same probe that between November 2013 and October 2016 the mayor and the city council of Bucharest encouraged Netcity Telekom to abuse its dominant position as they failed to enforce the terms of connectivity to Netcity's fibre optic infrastructure.

### Possible bid-rigging in parking services

- ▶ The Romanian Competition Council (CC) opened a probe into Brasov city's public parking services over the suspicion of collusive bidding.
- ▶ In 2018 Brasov Mayoralty held a public tender for public parking services. According to the CC, an agreement was reached between Rosilo Montaj, Bio Diversitas, Aeon Building and M.B. Building&Consulting, which specified that one of them should win the tender.
- ▶ As part of the investigation authorities raided the premises of the companies suspected of collusion.
- ▶ In March 2018 the CC opened a preliminary study into the municipal market of public pay parking services in Brasov, Constanta, Iasi, Timisoara, Cluj-Napoca and Craiova. This study established that competition among public service providers is only guaranteed if the tenders are organised by local authorities.

- ▶ The CC also found that the concession contracts for public parking services were granted for very long time periods. Therefore, the CC recommended limiting the concession periods to five years and avoiding their unjustified extension.

### Security companies fined EUR 94,000 for bid rigging

- ▶ The Romanian Competition Council (CC) sanctioned Safety Security SRL and Spartan Pază și Protecție SRL with fines totalling approx. RON 450,000 (EUR 94,000) for collusive behaviour during a tender organised by the National Forest Agency Romsilva SA. A Romanian language report can be found [here](#).
- ▶ The authority found that the companies had agreed not to compete with each other during the tender and engaged in a sensitive information exchange to coordinate their commercial behaviour.
- ▶ The investigation was initiated in November 2017, upon the contracting authority's (Romsilva) complaint, further to discovering indications of potential anticompetitive behaviour from the two companies.
- ▶ Safety Security SRL was fined approx. RON 396,000 and Spartan Pază și Protecție SRL was fined approx. RON 53,000.

### Roche Romania fined EUR 12.8m for abuse of dominance

- ▶ The Romanian Competition Council (CC) [announced](#) that it sanctioned pharma company Roche Romania with fines of approx. RON 60m (EUR 12.8m) for abuse of dominance on the market of certain oncological drugs. These fines were applied following two investigations opened in 2017. The anticompetitive behaviours allegedly occurred during 2017 – 2019. Roche Romania was fined approx. RON 44m (EUR 9.47m) for the anticompetitive behaviour found during the first investigation and approx. RON 15.8m (EUR 3.4m) in the second investigation.
- ▶ In the first investigation, Roche was found to have eliminated competition during public tenders for medicines containing Rituximab and Trastuzumab substances within the National Oncology Program as well as in 47 tenders organised at the hospital level.
- ▶ Roche competed with its partner distributors during these tenders and offered higher prices to these distributors than its own. This strategy was also motivated by the intention to delay and hinder market access to similar drugs.
- ▶ During the second investigation, Roche allegedly prevented the sale of cheaper/competing drugs containing the active substance Erlotinib. This included directing patients to their most expensive product (Tarceva) and covering the price difference through the budget allocated for reimbursement of Tarceva.
- ▶ It was further found that the State would have been able to reimburse more similar drugs for patients by an additional (estimated) amount of more than RON 2m from the National Health Insurance Fund (UNFASS).

## Recommendations to boost competition in waste management

- ▶ The Romanian Competition Council (CC) made recommendations to the Environment Ministry and local authorities in order to boost competition in the local waste management market.
- ▶ According to the CC, transparent and non-discriminatory selection criteria and procedures will not restrict the waste management market to licensed operators but instead will make it possible for more companies to provide waste collection services.
- ▶ The Environment Ministry should therefore license any company that is seeking a licence to collect waste and let it prove that it can keep up operations for at least three months after being registered as a service provider.
- ▶ Furthermore, local authorities should not restrict access to the waste management market by demanding disproportionate technical criteria, such as the possession of costly equipment.
- ▶ The recommendations by the authority followed the examination of the waste management market in the Ploiesti Municipality, as authorities there issued administrative decisions, which secured exclusive rights to a single operator and therefore restricted competition in the waste disposal market there.
- ▶ **Comments:** *Local authorities suspended the licensing procedure in 2017 and also refused to register any waste collectors between February and May 2019.*

## Serbia

### Investigations into waste management firms over collusive bid rigging

- ▶ **According** to the Serbian Commission for Protection of Competition (CPC), five waste management firms, Miteco, Yunirisk, Modekolo, Brem Group and Kemis doo Valjevo are being investigated, as they are suspected of concluding collusive bidding agreements in order to form a single bidding group with one joint bid.
- ▶ They therefore prevented competition with separate bids submitted by smaller groups of bidders.
- ▶ While analysing two public tenders for the disposal of hazardous waste services organised in August 2018 by the Ministry of Environmental Protection, the CPC discovered that in both tenders the bidding groups consisted of the same four undertakings and each time only one bid was submitted.
- ▶ The CPC also carried out dawn raids at five locations, collecting relevant documents or other relevant information.

## Slovenia

### Court confirms confiscation of shares by the Slovenian Competition Agency in Agrokor's Mercator

- ▶ The Slovenian Competition Agency (SCA) conducted proceedings against Agrokor d.d., a Croatian retailer conglomerate, and its responsible person as they failed to notify the merger with Ardeya Global Ltd, despite the SCA's request. The fine imposed on Agrokor d.d. amounted to EUR 53,900,000 and the fine imposed on Agrokor's responsible person amounted to EUR 5,000.
- ▶ Agrokor filed a request for judicial protection (*zahteva za sodno varstvo*) before the District Court in Ljubljana; therefore, the SCA's fining decision is not yet final.
- ▶ The SCA also confiscated 70 % of the Mercator shares owned by Agrokor to secure the enforcement, pursuant to the Slovenian Misdemeanour Act, against which Agrokor also appealed.
- ▶ According to Agrokor's press release, the main complaint was that the confiscation is unconstitutional, arbitrary and illegal. Furthermore, the conglomerate considered the seizure to be illegal as it was not based on a final court decision and it was made by one of the SCA's directors, and not the entire board.
- ▶ Agrokor also complained to the European Commission (EC) about the SCA's decision to confiscate its shares in retailer Mercator, as it feels this decision is contrary to EU and Slovenian regulations.
- ▶ In the beginning of January 2020, the court upheld the SCA's decision on confiscation of Mercator's shares and rejected the appeal as unfounded.
- ▶ Agrokor is currently undergoing a special insolvency procedure in Croatia and its business activities are being transferred to Fortenova grupa. According to Agrokor's administrator, the SCA's gun jumping findings were a politically motivated attempt to prevent the transfer to Fortenova grupa.

### Merger in packaging waste management prohibited

- ▶ On 30 December 2019, the Slovenian Competition Agency (SCA) issued a decision according to which Surovina d.o.o., Dinos d.o.o., Salomon d.o.o. Ljubljana and Recikel, d.o.o., all active in the packaging waste management sector, concluded a restrictive agreement pursuant to which they ousted a competitor (i.e. INTERSEROH zbiranje in predelava odpadnih surovin d.o.o) and shared the market for the system organisation of packaging waste management. This constitutes an infringement of Article 6 of the Slovenian Prevention of Restriction of Competition Act and Article 101 TFEU.
- ▶ The infringement concerned two markets, i.e. the market of packaging waste service providers (where Salomon, Surovina and Dinos are active) and the market for the system organisation of packaging waste management (where Recikel, Surovina, Dinos and the competitor are active). Both markets are connected as companies from the second market order services from companies operating on the first market.
- ▶ The parties agreed that Salomon, Surovina and Dinos would cease to provide non-municipal waste management services to the competitor with the aim to remove this competitor from the market. The competitor largely demanded those services from

Salomon, Surovina and Dinos and the cessation of services would prevent the competitor from being able to provide the services of system organisation of packaging waste management due to a significant increase in its costs. Additionally, the parties demanded that the competitor's customers stop doing businesses with the competitor. Consequently, its customers transferred to other companies, including the parties (Recikel, Surovina and Dinos). At the same time, the parties agreed that Recikel, Surovina and Dinos would share the competitor's customers and, to this end, would exchange lists of the competitor's customers.

- ▶ The decision is not yet final and according to publicly available information a lawsuit was filed against the decision.

*Comment: Only the decision's operative part is publicly available.*

### Slovenian Competition Agency examines multi-unit apartment building management market

- ▶ Following media reports on the difficulties involved in replacing the agents who manage multi-unit apartment buildings, excessive management costs and ousting small managing agents from the market, the Slovenian Competition Agency (SCA) carried out market research on the management of multi-unit apartment buildings.
- ▶ In its research, the SCA considered the following issues allegedly present on the multi-unit apartment building management market: (i) difficulties in replacing existing managing agents and the potentially limited selection of agents; (ii) concerns about the introduction of the trusted managing agent certificate, in particular whether it represents an attempt to oust smaller managing agents from the market; and (iii) excessive management costs.
- ▶ The SCA concluded that while there are certain anomalies in the management of multi-unit apartment buildings, such issues do not yet indicate a breach of competition law. Some of these anomalies may qualify as unfair commercial practices (e.g. low price for management services); however, the SCA is not the competent authority for such allegations.
- ▶ The SCA estimates that the size of the market for managing multi-unit apartment buildings in Slovenia is approximately EUR 47m. However, almost a third of companies operate multi-unit apartment buildings within 11 to 20km of the company's seat, while the vast majority of companies (77 %) manage multi-unit apartment buildings located at a maximum distance of 40km from the company's seat. The SCA stressed that this could indicate that there is no significant interregional competition and that competition is present on narrower geographic market(s) only, which means that the relevant geographic market should be defined significantly narrower than the national market. This increases the chances for market leaders to exceed a 40 % market share and trigger the application of the dominant position assumption, which brings additional competition law limitations that managing agents must consider.

*Comment: The above are selected sections from our article published in ILO on 5 March and available in full here: [www.internationallawoffice.com/newsletters/detail.aspx?r=81475](http://www.internationallawoffice.com/newsletters/detail.aspx?r=81475)*



## Turkey

### Fine on Google for non-compliance with order

- ▶ Google was fined by the Turkish Competition Authority (TCA) for failing to comply with an order it received following the TCA's abuse of dominance decision with regard to Android.
- ▶ Although Google amended its Mobile Distribution Agreements and Revenue Sharing Agreements by cancelling exclusivity requirements for mobile phone manufacturers, the amendments did not go far enough, as they did not include individual contracts signed with certain producers.
- ▶ According to the TCA, Google breached competition rules by requiring that its search engine and Google Webview be included as default on devices and that the company's search toolbar must be placed on the main screen.
- ▶ Google was ordered to remove those clauses from contracts it signs with phone manufacturers that want to use the Android OS and to not introduce financial and other incentives to promote these conditions, nor to require that devices be free of rival search engines.
- ▶ After receiving the decision on 4 February 2019, Google had six months to comply with the instructions. But on the 7 November, the TCA released a decision stating that Google did not fully comply with the order as already mentioned above.
- ▶ The TCA said that after the amendments there were still uncertainties about whether Google's search engine still required exclusivity on certain search nodes.
- ▶ Google also included a provision that would require its own voice command to be pre-installed, which the TCA deemed to be an exclusionary practice.
- ▶ The amendments also included incentives for manufacturers to pre-load Google's search toolbar on their devices as they would be charged a fee if they did not do so. The TCA required Google not to set different prices for manufacturers based on whether they pre-loaded the default app or bought alongside with another Google product.
- ▶ The TCA found the provision in the amendments requiring manufacturers to comply with additional security and update requirements (even if they were free to decide whether to integrate WebView) to be anticompetitive, as it had a deterrent effect in contrast to previous provisions. WebView is an Android app used to show web contents.
- ▶ The TCA imposed a daily administrative fine of 0.05 % of Google's 2018 turnover, to be calculated from the decision date (7 November) until the date Google fully complies with the requirements.
- ▶ Despite highlighting the similarities to the European Commission's (EC) Android case, the TCA, in contrast to the EC, deemed it reasonable for Google to prevent manufacturers from pre-installing Google apps on phones running on alternative versions of Android (also known as "forks").
- ▶ **Comments:** *As a result of the restrictions imposed on mobile phone manufacturers, the TCA fined Google TRY 93.08m (EUR 12.68m) in September 2018.*

## EUR 14m fine on Google in Shopping case

- ▶ In a [case](#) concerning abuse of dominance in comparison shopping services, Google was fined TRY 98.35m (EUR 14.27m) by the Turkish Competition Authority (TCA).
- ▶ The TCA determined that the undertaking consisting of Google Reklamcilik ve Pazarlama Ltd Sti, Google International LLC, Google LLC, Google Ireland Limited and Alphabet holds a dominant position in the sector of presenting shopping alternatives online.
- ▶ The TCA launched an inquiry into whether Google was abusing its dominant position in the search engine market to disadvantage competitors in online shopping services in August 2018.
- ▶ Apparently, the Google companies made use of their market position by pushing rivals to disadvantageous positions and hindering competition in the sector. The TCA therefore imposed a fine on Google that was based on the company's 2019 turnover.
- ▶ Google was therefore instructed to implement a number of measures. Among others, the company must amend its practices within three months, so competitors are not disadvantaged. It also has to make clear that everything presented on the shopping unit is clearly marked as ad material. Furthermore, Google is required to stop prioritising its own shopping unit in cases where a product name and another shopping comparison platform are entered in the search engine.
- ▶ Every five years Google must present reports on the situation to the TCA.
- ▶ **Comments:** *After the reasoned opinion is published, the decision can be appealed within 60 days before the district courts of Ankara.*

## Fine on chemotherapy treatment firms for bid rigging

- ▶ The Turkish Competition Authority (TCA) found that chemotherapy treatment firms Korulu Grup, Meditera, Oncosem, Onkofar and Santek Saglik breached competition law by colluding. Each company was fined 0.25 % of their 2018 gross turnover.
- ▶ Despite being probed during the TCA's investigations, Invotek Saglik Teknolojileri did not receive a fine but the authority directed the company's affiliate, Eraser Medikal, to modify its contracts with its dealerships within 60 days.
- ▶ Clauses that prohibited passive sales had to be removed and non-compete obligations had to be restricted to up to five years. The clauses, including a ban on passive sales and indeterminate non-compete terms, could not benefit from the block exemption offered by the TCA.
- ▶ To limit non-compete requirements to up to five years, the TCA also requested a General Dealership Protocol to be signed between Oncosem, Korulu and Real Medikal Tibbi within 60 days.

## Ukraine

### Antimonopoly Committee drops EUR 6.67bln fine against Gazprom after reaching an agreement

- ▶ The Antimonopoly Committee of Ukraine (AMCU) has agreed to drop its total fine of EUR 6.67bln against Gazprom after the two parties reached a settlement agreement. Under the agreement, all existing disputes between the two parties will be settled with effect from the end of this year.
- ▶ Gazprom initially received a UAH 172bln (EUR 5.8bln) fine from the AMCU in 2016, as the company abused its dominant position in the country's natural gas transit market.
- ▶ Following a complaint from the Ukrainian national oil and gas company Naftogaz, the European Commission also started investigating Gazprom's Nord Stream 2 project due to suspected anticompetitive behaviour.
- ▶ **Comments:** *An arbitral tribunal seated in Stockholm also ruled that Gazprom must pay EUR 2.6bln to Naftogaz as agreed under the settlement with the AMCU.*

Feel free to contact our legal experts across CEE:

#### Austria



**Christoph Haid**  
Partner  
T: +43 1 534 37 50 119  
[c.haid@schoenherr.eu](mailto:c.haid@schoenherr.eu)



**Franz Urlesberger**  
Partner  
T: +43 1 534 37 50196  
[f.urlesberger@schoenherr.eu](mailto:f.urlesberger@schoenherr.eu)



**Volker Weiss**  
Partner  
T: +32 2 743 40 44  
[v.weiss@schoenherr.eu](mailto:v.weiss@schoenherr.eu)



**Hanno Wollmann**  
Partner  
T: +43 1 534 37 50152  
[h.wollmann@schoenherr.eu](mailto:h.wollmann@schoenherr.eu)

#### Bulgaria



**Galina Petkova**  
Attorney at Law  
T: +359 2 93310 83  
[g.petkova@schoenherr.eu](mailto:g.petkova@schoenherr.eu)

#### Czech Republic



**Claudia Bock**  
Attorney at Law  
T: +420 225 996 500  
[c.bock@schoenherr.eu](mailto:c.bock@schoenherr.eu)

#### Hungary



**Anna Turi**  
Counsel  
T: +36 1 8700 707  
[a.turi@schoenherr.eu](mailto:a.turi@schoenherr.eu)

#### Poland



**Paweł Halwa**  
Partner  
T: +48 22 223 09 11  
[p.halwa@schoenherr.eu](mailto:p.halwa@schoenherr.eu)

#### Romania



**Georgiana Bădescu**  
Partner  
T: +40 21 319 67 90  
[g.badescu@schoenherr.eu](mailto:g.badescu@schoenherr.eu)

#### Serbia



**Srđana Petronijević**  
Partner  
T: +381 11 3202 600  
[s.petronijevic@schoenherr.rs](mailto:s.petronijevic@schoenherr.rs)

#### Slovenia



**Eva Škufca**  
Partner  
T: +386 1 200 09 82  
[e.skufca@schoenherr.eu](mailto:e.skufca@schoenherr.eu)

#### Turkey



**Levent Çelepçi**  
Partner  
T: +90 212 230 17 00  
[l.celepci@schoenherr.eu](mailto:l.celepci@schoenherr.eu)