Poland
Global merger control handbook – update

APRIL 2020

Merger control legislation changes since 1 July 2018

No merger control legislation has been updated since 1 July 2018.

Landmark merger control cases since 1 July 2018

2018 – VISTULA GROUP AND BYTOM

- In August 2018, the President of the Office of Competition and Consumer Protection ("Competition Authority") approved the merger between Vistula Group and Bytom.
- The Competition Authority conducted a detailed market survey and concluded that the transaction had a horizontal impact on 36 local retail sale markets (bricks-and-mortar) of elegant, mid-level menswear (on none of these markets did the parties' market share exceed 40% – the figure usually accepted as denoting a dominant position). At the same time, the Competition Authority noted that in the case of branded clothing, competition has a national character as promotional campaigns and price policies are established centrally and harmonised across the entire country. Therefore, the transaction would not restrict competition on any of these local markets.
- It was also established that the transaction would not have a negative impact on the national market of online sales of elegant, mid-level menswear as there were many other competitors on this market.

DLA PIPER

SMITHFIELD FOODS AND PINI POLONIA

- In November 2018, the Competition Authority issued a decision allowing the acquisition of Pini Polonia by Smithfield Food. Initially, the merger notification was submitted to the European Commission as the turnover of the concerned undertakings met the thresholds specified in the EU Merger Regulation. Nevertheless, the European Commission referred the case to the Polish Competition Authority as the transaction would affect only the Polish market.
- The transaction had a horizontal impact on the market for the purchase of pig livestock for slaughter. The Competition Authority conducted a market survey and concluded that the undertakings did not have a dominant position. It also had shown that Smithfield Foods would not gain a contractual advantage over stockbreeders allowing it to offer worse contractual without losing a significant number of its suppliers, and therefore the transaction would not restrict competition.

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2019 – AIR PRODUCTS & CHEMICALS TAKE OVER ACP EUROPE AND EUROCYLINDER

- After proceedings lasting almost one year, the Competition Authority finally issued in February 2019 a conditional decision allowing Air Products & Chemicals to take over ACP Europe and Eurocylinder. This is another example of two-phase proceedings that have taken place in recent years. The market share of the acquiring party on the liquid CO2 market is very high (approx. 50%) and it may increase in the coming years as a result of the opening of a new production facility. According to information from the companies' competitors and the results of a market analysis, the concentration could lead to a restriction of competition. Therefore the Competition Authority raised its objections to the transaction.
- In reply, Air Products & Chemicals proposed several conditions to address the Competition
- Authority's doubts and objections concerning the transaction. After additional consultations with other market participants, the Competition Authority accepted the proposed conditions and issued a decision.
- On the basis of the decision, Air Products & Chemicals is obliged to sell part of its assets used for the production of liquid CO2. These assets cannot be old ones (unless they have been modernized). The purchaser should be an independent investor from outside the Air Products & Chemicals capital group that has not conducted activity in Poland before, and it should be accepted by the Competition Authority. The Competition Authority may oppose the sale if the purchaser does not guarantee that after the purchase it will use the production assets and sell liquid CO2. The Competition Authority may waive this condition if an independent enterprise starts building a new plant in Poland that has a production capacity of liquid CO2 double the size of the production assets that were to be sold by Air Products & Chemicals.
- Another condition is that Air Products & Chemicals is obliged to offer Polish wholesale customers contract extensions and it cannot refuse to sell liquid CO2 without an objective justification. The Competition Authority has also introduced a special formula (proposed by Air Products & Chemicals and consulted with customers during the proceedings) setting maximum price levels in order to block potential price increases.

Web link to the national competition authority

Office of Competition and Consumer Protection:
https://www.uokik.gov.pl/
English version: https://www.uokik.gov.pl/home.php

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