

Poland

ANTI-COMPETITIVE PRACTICES

Infringement decision—abuse of a dominant position—postal services—information disclosure requirement—pricing strategy—commitments

☞ Abuse of dominant position; Government-owned companies; Information agreements; Poland; Postal services; Pricing

Commitment Decision issued to Poczta Polska

On 1 March 2021 the Polish competition authority (President of the Office Competition and Consumer Protection, UOKiK) addressed a commitment decision to Poczta Polska (hereafter, PP)—a state-owned enterprise designated in Poland as a provider of universal postal services. Poczta Polska is an owner of infrastructure necessary for providing postal services by independent operators. The UOKiK uncovered in antitrust proceeding that PP had imposed on its contractor (and competitor on a market for letter deliveries) a duty to provide PP with commercial information about clients served by an independent operator. In the UOKiK's opinion such a duty was unreasonable and the information PP got from its competitors could be used for acquiring their clients.

Additionally, the UOKiK challenged PP's pricing policy which did not offer to other postal operators a fixed price list but a price for a service that would be negotiated individually in every single case. As a result independent operators were unable to offer predictable prices to their clients. Independent operators had to declare the number of letters that needed use PP's infrastructure over a particular period of time. If the actual number of parcels was lower even by a single piece, a price for all the other parcels could increase significantly.

All these practices served to diminish the incentive for independent postal operators to compete directly with Poczta Polska. An antitrust investigation involving PP confirmed that the aforementioned practices were probably being committed on a domestic wholesale market for receiving, sorting, transport and delivery of letters. According to commitments imposed on PP, the company will not make disclosure of its pricing conditional on information being provided about the postal operators' customers PP was also obliged to present a price list that would be in force for 12 months and would contain only two price thresholds.

If Poczta Polska does not decide to contest the decision, the commitment decision will become totally effective on 31 March.

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Portugal

ANTI-COMPETITIVE PRACTICES

Infringement decision—market for land surveying services—price fixing—decision by association of undertakings—settlement procedure—fine

☞ Competition procedure; Portugal; Price fixing; Professional bodies; Settlement; Surveying; Trade associations

Why not settle? A swift closure for the National Association of Land Surveyors' case

On 11 March 2021, the Portuguese Competition Authority ("PCA") adopted a settlement decision with regard to the National Association of Land Surveyors ("NALS"), under which it imposed a reduced fine of €50,000 for price fixing practices in the national market for land surveying services. NALS settled to obtain a fine reduction, having admitted the infringement, collaborated with the PCA and waived its right to judicial litigation. The case was thereby closed less than one year after the opening of the investigation, following a complaint in May 2020.

In line with the Statement of Objections of 11 November 2020, the Portuguese watchdog found that from November 2003 NALS approved and published, on its website, a detailed fee schedule establishing the value of

remuneration according to a scale used in topographic work and the area associated with the surveyors' activities, as well as other fees to be charged by land surveyors for providing their services.

The PCA considered that such practices constituted price fixing by NALS, given that it had been designed to standardise the prices of services provided by its members (comprising 729 associates who provide, inter alia, surveying services to civil construction and public works in Portugal), thus preventing them from independently setting their fees.

The case is viewed as a success for the PCA, not only for the use of the settlement procedure by NALS—which the PCA has promoted as a way of fast tracking proceedings—but also considering that promotion of competition compliance by business associations was set out as one of the PCA's priorities for 2020. In regard to the latter, in October 2020 the PCA had already closed another case involving infringements by associations of undertakings, having fined advertising services association APAP (*Associação Portuguesa de Agências de Publicidade, Comunicação e Marketing*) €3.6 million for restricting competition in the market.

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COMPETITION LAW POLICY

*Transport—public road
passenger service contracts*

☞ Guidelines; National competition authorities; Portugal; Public procurement; Public transport

A closer look into public transportation: Portuguese Competition Authority (“PCA”) issues best practices for public road passenger transport service contracts

In the context of the impending conclusion of several public road passenger transport service contracts in Portugal, following the implementation of Regulation (EC) 1370/2007, of 23 October and the new Legal Regime for Public Passenger Transport Services (Law No. 52/2015, of 9 June), the PCA took the opportunity to take a close look at public transport service contracts, with a view to fostering competition and efficiency in the public transport sector, to the benefit of consumers, notably as regards a better quality of service and greater innovation.

Accordingly, under its general supervision and market monitoring powers, the PCA communicated a set of guidelines for best practices to transport entities in Portugal, notably municipalities, Inter-Municipal Communities and Metropolitan Areas, having highlighted the need to:

- prioritise competitive bidding in public service allocation, instead of using the direct award of contracts;
- promote access to strategic information relating to the services in order to allow further participation in bidding procedures;
- set forth a system of incentives and penalties associated with the operator's performance and a scheme for monitoring the effective fulfilment of public service obligations;
- establish in the contract reporting obligations for operators to the transport authorities, associated with penalty schemes in case of non-compliance;
- limit the duration of public service contracts to what is strictly necessary for the provider to recoup the investment made and obtain a return on capital under standard operating conditions;

- privilege the opening of new tenders or a new tender over the extension of the concession period and open competitive tenders on a regular basis so as to ensure that contractual conditions are aligned with the reality of the market.

The issuing of these guidelines by the PCA should prove to be one step further towards the adoption of best practices by transport entities, with expected benefits in terms of better allocation of public resources and improved consumer well-being.

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Romania

MERGERS AND ANTI- COMPETITIVE PRACTICES

Merger assessment—market for production and sale of electricity—sectoral investigation—relevant geographic market—clearance decision—commitments following abuse of dominant position investigation

☞ Abuse of dominant position; Acquisitions; Electricity generation; Electricity supply; Romania

Economic concentration on the market for the production and sale of electricity cleared by the Romanian Competition Council

In January 2021, the Romanian Competition Council (RCC) issued a clearance¹ in relation to the economic concentration achieved through the acquisition by Societatea de Producere a Energiei Electrice în Hidrocentrale Hidroelectrica SA (Hidroelectrica) of the sole control over Crucea Wind Farm SA (the Crucea) and Steag Energie Romania S.R.L. (Steag) (the Target Companies). The notification of the economic concentration was made on 30 December 2020 and became effective on 14 January 2021.

Hidroelectrica is a leader in the electricity production and the main service provider for the National Energy System of Romania, being a vital company for a strategic sector with implications for national security. Hidroelectrica's activity is currently structured through two business lines: (i) sale of energy on the wholesale energy market or by import/export; (ii) supply of energy to final consumers (domestic and industrial).

Crucea operates in the field of electricity production having a wind farm with a capacity of 108 MW consisting of 36 wind turbines of 3 MW. Crucea is the only customer of Steag, which provides technical engineering services and monitors the services provided by various suppliers for Crucea.

The relevant market subject to RCC's analysis was the market for the production and sale of electricity. The RCC deemed the relevant market to be a component of the wholesale electricity market that includes electricity produced in various types of plants and physical energy imported through cross-border interconnections in order to be sold to other participants in the electricity market. On this market, electricity producers and importing companies were on the supply side, and the other market participants (electricity suppliers, distribution and transmission operators), which purchase electricity, were on the demand side.

This definition of the relevant market was also supported by a recent report of the RCC on the preliminary results of the sectoral investigation on the Romanian electricity market. The RCC deemed that although electricity could be produced through several types of technologies, using a variety of primary sources, and different production technologies involved different production costs and a distinct degree of flexibility, neither the way in which

¹ The full text of this Decision is available only in Romanian on the website of the Romanian Competition Council: <http://www.consiliulconcurentei.ro/wp-content/uploads/2021/02/Decizie-Hidroelectrica-final-confidentiala.pdf> [Accessed 7 April 2021].