

## Constitutional Court's intervention in the Act on Significant Market Power

19<sup>th</sup> June 2020

With effect from 27 May 2020, the date of publication in the Collection of Laws of the Constitutional Court's decision adopted in April 2020 (Pl. US 30/16), one of the mandatory requirements for the content of contracts concluded between buyers with significant market power and suppliers pursuant to the Act on Significant Market Power (Act No. 395/2009 Coll., on significant market power in the sale of agricultural and food products and its abuse) was abolished.

The Constitutional Court held that the provisions of the Act requiring contracts to contain the amount of all payments of the supplier to the buyer was contrary to the Constitution; the limit of the payments had been set at a maximum of 3% of the supplier's annual revenues for the last closed accounting period for food delivered to an individual buyer in the year in which the payment took place. The above requirement was incorporated into the Act on Significant Market Power by the comprehensive and widely discussed (and criticized) amendment adopted in 2016.

The Constitutional Court discussed the motion of two groups of senators to repeal the Act on Significant Market Power; the Court did not repeal the law in its entirety; the only point on which the Constitutional Court granted the motion is the above-mentioned three-percent limit on the supplier's payment. The Constitutional Court held that the limit was a restriction of the right to enterprise guaranteed by the Charter of Fundamental Rights and Freedoms. The Constitutional Court, inter alia, claimed that the said provision was generally unreasonable, stating further that the given requirement for the content of the contract could not be considered a reasonable means of achieving the objective pursued by the legislation, as it *"forces the parties of the buyer-supplier relationship to agree on limiting the amount of the supplier's payments for the buyer's related services to a fixed amount, the maximum of which cannot be determined in advance. In fact, this limit does not even prevent the statutory maximum amount of the supplier's total payments from being exceeded."* The Constitutional Court nevertheless added that its current conclusion did not preclude the legislator from setting a different method of limiting the amount of the supplier's total payments in the future.

**Practical implications of the above intervention of the Constitutional Court can be summarized as follows:**

- ▶ the Act on Significant Market Power continues to apply to the relations between buyers with significant market power and suppliers, including the requirement for a written form of a contract between such buyers and suppliers and the requirements concerning the content of the contract (with the exception of the 3% limit that has been abolished), all provisions prohibiting the abuse of significant market power and governing sanctions for administrative offenses; in this context, it should be noted that the abuse of significant market power (which is generally prohibited) specifically includes, e.g., negotiating and implementing contractual terms that create a significant imbalance in the rights and obligations of the parties; implementing or obtaining any payment or discount, the amount of which, or the purpose and scope of the provided consideration for the payment, was not agreed in writing prior to the delivery of the food or provision of the services to which the payment or discount relates;

- ▶ under the current legislative situation, the existing contracts between buyers and suppliers can be amended to the extent of the arrangements governing the supplier's payments, or the limit of such payments.

If you have any questions, we are ready to discuss the topic with you in detail.



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