

Kluwer Competition Law Blog

Main Developments in Competition Law and Policy 2021 – Slovenia

Jakob Šešok (Linklaters LLP) · Monday, February 28th, 2022

Competition developments in Slovenia followed the international trends. In the M&A frenzy of the pandemic era, the Competition Protection Agency (“CPA”) remained busy with an increased number of merger filings. While COVID cases seemed to have grown in parallel with dealmaking bonanza, the CPA returned to conducting on-site dawn raids. As ever, gun-jumping remained a hot topic and the Slovenian courts continued their strict approach when reviewing CPA’s decisions.

Merger control

Merger control remains CPA’s busiest area. In 2021, the CPA received a total of 32 merger filings, which is nine less than the highest tally of 41, recorded in 2020 and 2018.

While several filings remain pending, all the 2021 decisions published till date concerned unconditional Phase 1 clearances.

Consolidation of the banking sector was a prevalent theme, with OTP Bank seeking to acquire its competitor, NKBM Bank, in a deal that would create a market leader. The CPA continues to investigate the proposed acquisition and the outcome is one to watch for in the 2022 update. Until recently, Gorenjska Bank planned to acquire Sberbank’s Slovenian subsidiary, although that deal has now been scrapped in light of the financial sanctions against Russia.

Another case to watch was *United Group / Sport Klub*. In 2018, the CPA prohibited United Group’s acquisition of a portfolio of sports channels. Prior to the transaction, United Group controlled one of the major subscription television providers, and the CPA alleged the merger would result in vertical anticompetitive effects. As United Group “jumped the gun” and closed the acquisition prior to filing, the CPA ordered United Group to sell the acquired channels. United Group appealed the decision, with the Administrative Court repealing the prohibition decision, and returning the case to the CPA. In a 2021 do-over, the CPA cleared the transaction unconditionally, noting that a new issuer of sports channels (Arena Sport) has entered the market, with United Group’s sports channels losing their relevance.

Interestingly, in an Article 22 EUMR development, the CPA was reportedly one of the few EU regulators that refused to refer the *Illumina / Grail* transaction to the EC. The CPA is said to have concerns about legality of referrals that do not reach domestic thresholds.

Gun-jumping saga draws to an end

Back in 2019, the CPA fined AGROKOR, Croatia's leading groceries retailer, a record EUR 53.9 million fine for failure to notify its acquisition of Costella, a Slovenian water bottle company.

AGROKOR appealed the fine and in 2020 the Ljubljana District Court ("District Court") slashed the fine to EUR 1 million. In its decision, the District Court noted that the violation of the standstill obligation did not aim to harm market competition and could be attributed to the negligence of AGROKOR's then CEO. While the antitrust bar widely criticized the initial fine as disproportionate, particularly given CPA's previous enforcement policy, the District Court's "negligence" argument is questionable from an EUMR perspective. In *Canon / Toshiba*, a gun-jumping decision from the same period, the EC made clear that (1) large multinational companies, which have substantial legal resources at their disposal, and (2) have previously been involved in merger control proceedings, should be aware of their *ex-ante* merger control obligations.

In the coming two years, AGROKOR attempted further appeals to reduce the fine. In July 2021, the Ljubljana Higher Court rejected the latest of AGROKOR's appeals and confirmed the EUR 1 million fine. This brings an end to a gun-jumping saga that – due to the size of the initial fine – caught the attention of the wider Slovenian public. While the ultimate fine is significantly lower, the initial amount will surely serve as a deterrent and ensure that antitrust consideration are no longer an afterthought in Slovenian dealmaking.

In an unrelated case, the District Court reduced another gun-jumping fine. In the above-mentioned *United Group* case, the CPA fined the acquirer EUR 3.7 million for missing the filing deadline for a whole year. The District Court reduced the fine to EUR 1.56 million. This shows that the Slovenian courts will not rubber stamp the amount of CPA's fines and have a comparatively more pragmatic approach towards gun-jumping. As is well known, the EC and the ECJ consider the standstill obligation to be an "essential pillar" of merger control and its violations to be serious "by their very nature". On the other hand, the Slovenian courts require existence of other factors, such as (anti)competitive impacts of the underlying merger, when considering the gravity and nature of gun-jumping infringements.

Behavioural matters

In the post-pandemic world, the CPA resumed its focus on behavioural matters. Notably, the CPA launched an abuse of dominance probe into PLASTKOM, a processor of waste cemetery candles. PLASTKOM receives waste candles from various intermediaries, which in turn collect candles from cemeteries and other entities. The CPA alleges that PLASTKOM required that intermediaries supply exclusively to PLASTKOM. In line with the global enforcement trends, the CPA also alleges that PLASTKOM engaged in excessive pricing by setting disproportionate prices for its candle processing activities.

On the cartel front, the CPA returned to conducting dawn raids. In August 2021, it opened an investigation into the alleged price-fixing cartel between VENIS and POB, two companies offering training courses for dangerous goods (ADR) drivers.

Both investigations described above remain ongoing. Meanwhile, the CPA closed a cartel investigation by accepting remedies. In the *LPG Cannisters* case, the CPA investigated an alleged market-sharing cartel between gas companies that purportedly refused to accept empty LPG cannisters produced by other cartel participants. In November 2021, gas companies offered a comprehensive remedies package, which will enable the consumers to return empty cannisters to gas providers of their choosing.

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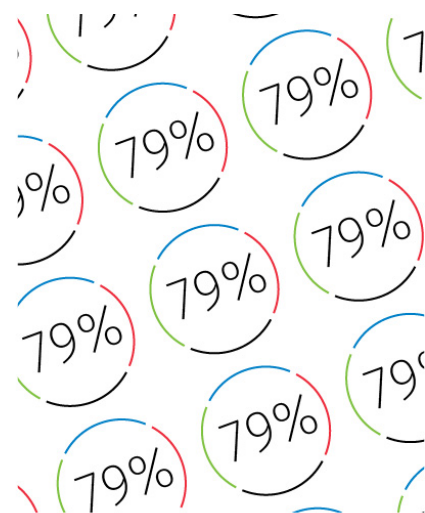
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