

Kluwer Competition Law Blog

Main Developments in Competition Law and Policy 2022 – Slovakia

Lenka Štiková Gachová, Dušan Valent, Ivo Tatiš (Havel & Partners) · Thursday, January 19th, 2023

The level of enforcement of competition law in Slovakia in 2022 was noticeably lower compared to previous years. Outside merger control, where the Slovak Antimonopoly Office's (AMO) activity is less influenced by its leadership, the AMO was rather inactive. It issued no relevant decisions in the area of restrictive agreements and carried out only a handful of dawn raids. Its activities in the abuse of dominance area were largely a product of the AMO's activity in the previous years. While it is hard to point out the specific reasons for the decrease in the AMO's activity it seems plausible that the key factor is the instability of the AMO's leadership. The term of the current AMO's chairman expired in November 2021, and it is still in place only because the Slovak Government did not nominate a new candidate since then. Nevertheless, there were a few noteworthy developments in 2022. We provide an overview of those below.

In addition, Slovakia has adopted a new foreign investment screening regime in 2022. As this area is typically dealt with by the same practitioners as competition law, we included a note on this development as well.

Merger Control

In 2022, the AMO published a total of at least 26 merger decisions, making the merger department the AMO's busiest one. With one exception, all AMO's merger cases resulted in unconditional Phase I clearance.

The AMO's remedy case was MOL's acquisition of NORMBENZ Slovakia (Case No. 2022/KOH/SKP/3/15 of March 28, 2022). In Slovakia, MOL and NORMBENZ were both active mainly in the retail sale of motor fuel in service stations (under the brands SLOVNAFT, and LUKOIL respectively). The AMO analyzed the market on the local level, calculating market shares primarily based on the number of service stations in which the merging parties and their competitors operated. Under this analysis, the AMO identified problematic overlaps in three cities. The AMO cleared the transaction in Phase I subject to MOL's divestment of altogether four service stations located in the respective cities.

Anticompetitive Agreements

The AMO's activity in the area of anticompetitive agreements was notably low in 2022. The AMO issued no major decision concerning either vertical agreements or cartels.

The last relevant [decision](#) was issued on December 30, 2021, in which the AMO imposed a total fine of €9 million on three companies for bid-rigging in public tender for construction works in the energy sector. Two of the companies were also blacklisted from participation in public tenders for three years. The third company avoided the public tenders blacklist while having the fine partially reduced, as it participated in the AMO's leniency program. The AMO initiated the proceedings based on a complaint from a corruption-fighting NGO, *Zastavme korupciu*, and a dawn raid which followed. The decision or the identity of the fined companies has not yet been published. The decision was appealed to the AMO's Council, the AMO's appeal body.

The AMO conducted four dawn raids in 2022. These were in the sectors of sales and repair of robotic workplace equipment, cable manufacturing, IT and forestry. No fines were imposed based on those investigations so far.

Abuse of dominance

The AMO issued three relevant decisions in the area of abuse of dominance in 2022.

Slovak Post

The AMO accepted remedies from [Slovak Post](#) ("*Slovenská pošta*" in Slovak), a Slovak state-owned postal services provider, to end its abuse of dominance investigation (Case No. 2022/DOZ/UPZ/2/39 of July 29, 2022). The AMO believed that Slovak Post abused its position in the market for delivery of letters submitted in bulk. Specifically, the AMO alleged Slovak Post provided different discounts to different customers without reasonable justification, thus unduly harming some of them. As a remedy, Slovak Post offered to change its discount policy to prevent the alleged discrimination going forward. The AMO accepted the remedy and closed the investigation without imposing a fine. (Disclosure: HAVEL & PARTNERS represented Slovak Post in the proceedings before the AMO.)

LITA

The AMO imposed a fine of €58,000 on [LITA](#), a collective management organization for authors' rights. According to the AMO, LITA abused its dominant position between 2015–2019 by imposing unfair conditions for licensing rights to hotels. In particular, LITA required hotels to pay an excessive fixed rate for licenses to works distributed through TV and radio units in the hotel rooms, regardless of whether a particular room was occupied on a specific day or not. The decision has not yet been published.

Brantner

The Council of the AMO annulled the AMO's fine of €298,000 imposed on [Brantner](#), a waste management company, for unfair prices charged to two cities in Slovakia. According to the Council, new evidence emerged from the proceedings before the Council, which were not known to the AMO when issuing the first-instance decision. The Council has returned the case to the AMO. Neither the AMO nor the Council decision have been published yet.

Foreign Direct Investments

In December 2022, the President signed into law the Act on Screening of Foreign Investments (FDI Act). The law will be effective as of March 1, 2023, and will be administered by the Ministry of Economy (MOE). We provide a description of the key aspects of the regime set up by the FDI Act below.

The FDI Act will apply to investments of non-EU investors which entitle the investor to relevant control over an entity based in Slovakia.

The FDI Act provides for a different regime depending on whether the foreign investment represents a *critical foreign investment*. Critical foreign investments are investments into companies active in areas listed in the Government's Regulation. As of the publishing day of this blog, the Government had not adopted the Regulation, but the regulation's proposal covers the usual areas – including military technology and dual-use items, biotechnology, critical infrastructure, cyber security, media, and publishing.

If the investment qualifies as critical, the investor will be obliged to receive approval from the MOE before being able to implement the investment. For all other investments (*i.e.*, those that do not qualify for critical), the notification will be voluntary. If the investors decide not to notify, the MOE will be able to review the investments within two years following its implementation.

The distinction between critical and non-critical investments will also have an effect on the participation thresholds – in terms of either shareholding or share of voting rights – triggering filing. For critical investments, the relevant participation thresholds will be 10%, 20%, 33%, and 50%. For non-critical investments, the thresholds will be 25% and 50%. The FDI Act will be triggered both in cases of initial acquisition of the relevant participation, as well as every time an additional threshold is exceeded.

Outlook for 2023

Following a rather uneventful 2022, we have hopes for more robust competition law enforcement in 2023. The key variable is the name of the new chairman of the AMO, whose nomination seems to be in the final stages. Other than that, there seems to be a handful of ongoing investigations, both in the cartel and merger departments, which may make for a more interesting 2023.

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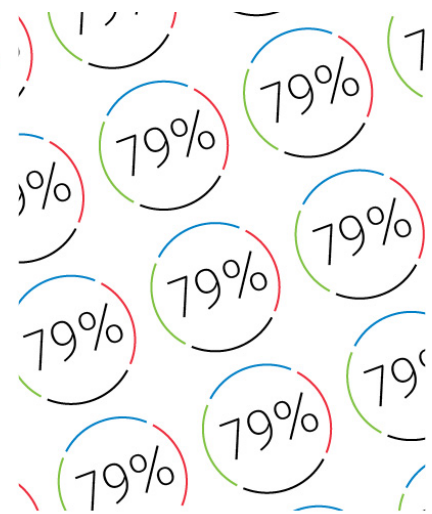
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