

# Kluwer Competition Law Blog

## Main Developments in Competition Law and Policy 2023 – Slovenia

Jakob Šešok (Linklaters LLP) · Wednesday, February 14th, 2024

### Year at a glance

2023 saw further consolidation of the banking sector, with OTP Bank buying NKBM, creating the second largest bank in the country. In *MOL / OMV Slovenija*, the European Commission (“EC”) cleared (after a Phase II investigation and subject to an up-front-buyer remedy) MOL’s acquisition of OMV’s gas station network in Slovenia.

Just before the end of the year, the Competition Protection Agency (“CPA”) issued its [first decision](#) under the new settlement regime. The case related to the Veterinary Association’s Code of Conduct, which constituted an anti-competitive decision by associations of undertakings (101 TFEU).

Across the globe, foreign investment screening has become a hot topic of the day. Slovenia had a temporary regime in place since the Covid pandemic and has since introduced a permanent regime in July 2023.

### Merger control: Hungarian hunger (for Slovenian companies)

#### *OTP / NKBM*

Global banking sector woke-up to a tumultuous start of 2023. Silicon Valley Bank (SVB) collapsed, followed by bank runs on several US regional banks. This resulted in major banks snapping up their smaller competitors, increasing concentration levels across the US banking industry.

Slovenia also saw a major banking merger in 2023. In *OTP / NKBM*, the CPA examined the acquisition of NKBM by the Hungarian banking group (OTP), and ultimately cleared the deal unconditionally. Given the complex competition issues, the case underwent a protracted review procedure. The merger was first filed in July 2021 and was cleared in January 2023. This is also a quirk of Slovenian procedural rules: whenever the CPA issues a request for additional information, the review clock restarts from zero.

Interestingly, the CPA cleared the deal unconditionally despite the parties having high combined

shares, exceeding 30% in numerous markets. The CPA was comfortable that the parties were sufficiently constrained by their rivals (including by NLB, the largest Slovenian bank) and their fees did not significantly deviate from the rest of the market.

Moreover, the presence of price comparison websites enabled consumers to compare prices of all the major banks. The CPA also noted the importance of fintech players, such as Revolut and N26, which have shaken-up the market in recent years.

The CPA further considered whether the competitors' lack of branches in certain parts of the country could result in anticompetitive effects in the property mortgage market. The CPA rightfully acknowledged that Slovenia is a small country (where even the most remote village is only a short ride away from the nearest urban area), and a typical consumer (who only takes a handful of property loans during their life) will be incentivised to travel to such larger cities to conclude a loan. The CPA also noted that banks are increasingly migrating to digital banking, reducing the need for physical branches.

### *MOL / OMV Slovenija*

Hungarian buyers (in this case, MOL) seemed to have gotten the bug for Slovenian companies, as they snapped-up another major asset, OMV's Slovenian gas station network. The deal was subject to the EC's jurisdiction; however, the Parties asked the EC to refer the case back to the CPA under Article 4(4) EUMR. The CPA [rejected the referral](#) and the EC retained jurisdiction.

The EC cleared the deal in Phase II, initially being concerned that the merger would harm competition in the retail supply of motor fuels (gasoline and diesel) to Slovenian consumers. In particular, the transaction would:

- Reduce the number of significant retail motor fuel operators from three to two in a market with high barriers to entry and expansion. Given that the merging parties competed head-to-head in many local areas throughout Slovenia and the competitors (other than the legacy oil company, Petrol) were significantly smaller, the transaction would have removed the main competitive constraint that MOL and Petrol faced in the market.
- Significantly reduce competition in the market for the retail sale of motor fuel from non-motorway fuel stations in Slovenia. This was because MOL and OMV Slovenija were very close competitors.
- Increase the likelihood of coordination on the retail motor fuel market between MOL and Petrol (i.e., the legacy market leader).

To alleviate the EC's concerns, the parties offered to divest a nationwide retail network of 39 fuel stations in Slovenia, to an upfront buyer, Shell Group.

Shell's acquisition was reviewed by the CPA, which cleared the deal unconditionally. Prior to the transaction, Shell had a very limited presence in Slovenia, and accordingly, the case qualified for a simplified procedure. The latter was only introduced last year (we reported on it in the legislative developments section of the [2022 edition](#)) and Shell's acquisition was one of the first simplified cases since.

## First settlement decision: No more puppy love

Amid the focus on tech companies, it is perhaps surprising that the veterinary sector has been a hot topic for regulators on both sides of the Atlantic. PE funds in particular have entered the market through a series of roll-up acquisitions. In 2022, for instance, the US FTC imposed significant limits on [JAB Consumer Fund](#)'s future expansion in the veterinary sector. Similarly, in 2023, the UK CMA opened a [market review](#) into the broader veterinary sector.

Slovenian CPA was no exception when it came to antitrust enforcement in the veterinary sector. It opened an [investigation](#) into the Slovenian Veterinary Association, which constrained competition through certain provisions of its Code of Conduct. In short, the anticompetitive provisions prohibited: (i) veterinary businesses from offering any discounts that would deviate from the Association's prescribed prices; and (ii) any advertising relating to prices, discounts, or similar.

After the investigation started, the Veterinary Association submitted a settlement application. While Slovenian law previously had a leniency program in place, the settlement procedure was only introduced in 2022 (again, as reported in our [2022 update](#)). The present case was the first under the new settlement procedure and is a welcome development. It complements the leniency procedure by giving colluding firms an additional opportunity to cooperate with the regulator in exchange for a reduced fine.

## Legislative developments: Permanent FDI regime

As any antitrust practitioner knows, FDI has become a mainstay of daily work. Slovenia has had a temporary FDI regime in place since the onset of the Covid pandemic. This was set to expire at the end of June 2023 but has been replaced with a [permanent system](#) effective from 1 July 2023. Since this is primarily an antitrust blog, we will keep things high-level.

- Under the Slovenian FDI Regime, only non-EU investors are considered foreign investors.
- The FDI regime is mandatory (albeit non-suspensory) when the target is active in a sensitive sector (closely mirroring Article 4(1) of the EU FDI Screening Regulation).
- Investments of 10% or more of equity or voting rights in a Slovenian incorporated entity (operating in a sensitive sector) will trigger a filing. Importantly, subsequent acquisitions in the same entity of 10% are also caught.
- Filings need to be made within 15 days from executing transactional documents.

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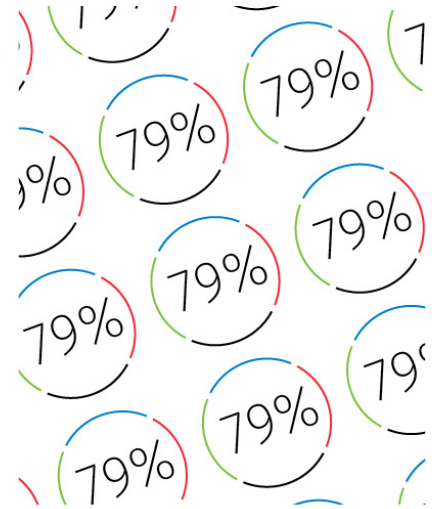
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