

Kluwer Competition Law Blog

Main Developments in Competition Law and Policy 2023 ? Slovakia

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Following a slow 2022, 2023 proved to be an eventful year for competition law in Slovakia. Notably, changes took place at the helm of the Slovak Antimonopoly Office (AMO). This was overdue as the term of the previous AMO's chairman expired in 2021, and the uncertainty seemed to be contributing to the AMO's inactivity. The new chairman is Juraj Beňa, a former AMO employee, with an experience from both a law firm and a regulatory team of a telecommunications company. Together with the new vice-chairman, Peter Demňák, the new leadership brings a promise of a more modern, active competition authority.

As the installment of the new leadership is relatively recent, it has not yet translated into the number of decisions the AMO adopted in the past year. While we saw a significant uptick in the AMO's cartel investigations – including a handful of dawn raids toward the end of the year, the key decisions in 2023, outside merger control, were the product of investigations started under the previous administration. We report on these decisions below, along with other key developments.

Anticompetitive Agreements

In 2023, the AMO adopted only a few decisions in the area of anticompetitive agreements. We cover the two main ones, both concerning bid-rigging, below. In addition, we report on the results of the AMO's food sector inquiry and the restart of its dawn raid activities.

Bid-rigging in the energy sector

In September 2023, the AMO **fined** four companies, active in the energy sector, a total amount of 7.2 million euros for bid-rigging in public procurement. The AMO initiated its investigation based on a complaint from *Nádacia Zastavme korupciu*, an anti-corruption NGO. The AMO originally investigated six companies but dropped the charges against two of them for lack of evidence. The AMO imposed fines on the three of the remaining companies and blacklisted them from public procurement procedures for three years. One company settled for a lower fine and a public procurement blacklisting for one year (instead of standard three). The decision has not yet been published.

Bid-rigging in the food sector

In July 2023, the AMO **imposed** total fines of 236,892 euros on three companies for bid-rigging in a public tender for the supply of technologies improving production efficiencies of bakeries. The public tender was announced by a recipient of the European Union's Cohesion Fund and European Regional Development Fund. One of the investigated companies submitted a partial leniency application. The AMO did not impose blacklisting from public procurement and reduced the fine, which was further lowered through the settlement procedure, for the leniency applicant. As for the two remaining companies, one received full amount of the fine and three-year blacklisting, and one settled for a lower fine and one-year blacklisting. The decision has not yet been published.

Food sector inquiry

In November 2023, the AMO **published** the results of its sector inquiry into the prices of groceries in supermarket chains, in the context of the so called "anti-inflation guarantee". The anti-inflation guarantee was a result of a government supported effort of supermarket chains to select a list of grocery products for which they would guarantee maximum prices for the following three months. The inquiry sought to establish whether (i) the guarantee represented an anticompetitive agreement, and (ii) it served as a platform for further price coordination.

The AMO concluded that the anti-inflation guarantee did not represent an anticompetitive agreement. According to the AMO, this was mainly because the overlap between the products selected for the guarantee in each supermarket was very low (*i.e.*, different supermarkets decided to apply the guarantee mainly to different products). As for the price coordination beyond the guarantee, the AMO looked at the supermarkets' margins. The AMO found that the price increases followed increases in the input costs and that the margins remained either stable, or slightly decreased over the relevant time period. The AMO thus concluded that there were also no indications that the anti-inflation guarantee led to price coordination.

Dawn raids

After a significant drop in the number of dawn raids following the coronavirus outbreak, the AMO finally restarted its dawn raid activities. In the second half of 2023, the AMO carried out dawn raids in areas of hazardous waste management in the health sector, medical diagnostics, and wholesale of medical devices and goods. All investigations from these dawn raids seem to be ongoing with no fines imposed so far.

Abuse of Dominance

In 2023, the AMO adopted only one abuse of dominance decision – in the LITA case.

On October 19, 2023, the Council of the AMO (the appellate body within the AMO) **dismissed** the

appeal of LITA, an organization for collective management of authors' rights, and upheld the AMO's first instance fine of 58,000 euros for abuse of dominance.

According to the AMO, LITA had a dominant position on the market for offering licensing services in the area of collective management of authors' rights broadcasted through TV and radio in accommodation facilities (mainly hotels) in Slovakia between 2015 and 2019. And LITA abused this position by charging unfairly high prices. In assessing the unfair level of the LITA's prices, the AMO considered primarily (i) the comparison to the prices in the Czech market, in which the conditions were otherwise comparable and the prices significantly lower, and (ii) the fact that LITA charged accommodation providers for each unit (*e.g.*, a hotel room) regardless of whether it was occupied or not. The Council of the AMO upheld the AMO's first instance decision in full.

Merger Control

In 2023, the AMO published a total of more than 20 merger decisions. With one exception, all the AMO's merger cases resulted in unconditional Phase I clearance. We provide more details on one remedy decision below.

PENTA INVESTMENTS LIMITED/Apotheke Slovakia

In August 2023, the AMO [approved](#), subject to remedies, PENTA INVESTMENTS LIMITED's ("PENTA") acquisition of Apotheke Slovakia ("Apotheke").

Both PENTA and Apotheke operated a large number of pharmacies around Slovakia. Penta operated 361 pharmacies under the Dr. Max brand. Apotheke operated 47 pharmacies under the Apotheke brand.

In terms of the relevant product market, the AMO concluded that the sales of pharmaceuticals online are not substitutable with the sales through brick-and-mortar pharmacies. The AMO left open whether prescription medicinal products, over-the-counter medicinal products, and other medical devices are part of the same market. Geographically, the AMO assessed the market on both national and local (city) levels.

On the national level, the AMO found the combined market shares to be at 20–30% and concluded that competition issues were unlikely. On the local level, the AMO identified nine cities, in which the merging parties overlapped and would have significant combined market shares post-transaction – both in terms of number of pharmacies and their sales. The AMO concluded that in the selected cities, the transaction would lead to a significant reduction of competition. Based on these concerns, PENTA offered a remedy consisting of divestment of 11 pharmacies, which PENTA promised not to acquire regardless of its owner in the next five years. The AMO cleared the transaction under this condition.

Other Developments

DMA-related Amendment to the Competition Act

In December 2023, the Slovak Government proposed an amendment to Slovak Competition Act, reflecting mainly the adoption of the EU's Digital Markets Act (DMA). The amendment provides the framework for cooperation between the AMO and the European Commission concerning the DMA enforcement, and also provides the AMO with powers to investigate DMA's violations in Slovakia. The amendment is yet to be approved by the Slovak Parliament.

Foreign Direct Investments

On March 1, 2023, the Act on Screening of Foreign Investments became effective. The new regime is operational and actively enforced by the Ministry of Economy (the "MoE"; for the basic aspects of the Slovak foreign investment screening regime, *see our post* on 2022 developments). The MoE does not publish any of its decisions, so it is not possible to provide an overview of its activities (the MoE is expected to publish its first annual report by June 2024). From our experience, the screening regime works, at least in the non-issue cases, relatively well and predictably despite its relative novelty.

Outlook for 2024

The improvements in the AMO's activities in 2023 hold a good promise for 2024. We expect the AMO to remain active in investigating cartel agreements, which the AMO seems to rightly view as its priority. With several dawn raids carried out towards the end of 2023, the AMO should be able to adopt several cartel decisions in 2024. In the abuse of dominance and merger control, the AMO should be newly supported by the Office of Chief Economist, which the AMO plans to set up in 2024. If these developments materialize, 2024 should be another interesting year for Slovak competition law.

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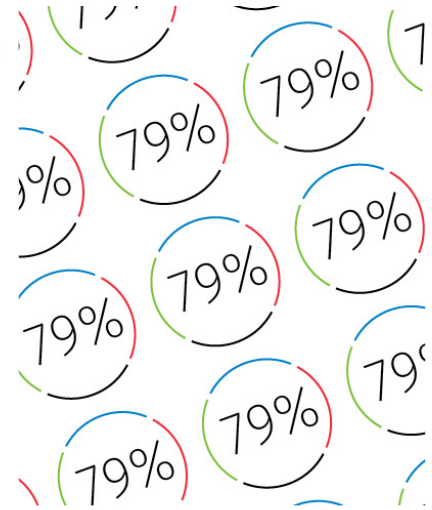
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