

Kluwer Competition Law Blog

Main Developments in Competition Law and Policy 2024 – Slovakia

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In 2024, Slovak competition law continued to evolve, building on the developments in the previous year. The new leadership (the new chairman and vice-chairman were appointed in 2023), the Antimonopoly Office (AMO) has appeared to be remain committed to its stated goal of transforming itself to a more proactive and dynamic competition authority.

The AMO's efforts were particularly notable in cartel investigations. Over the past year, the AMO conducted numerous dawn raids and initiated several administrative proceedings in high-profile cartel cases. That said, formal decisions in these matters are still pending. In addition to cartel enforcement, the AMO also issued several relevant decisions in abuse of dominance, and merger control. We summarize the most significant ones and the AMO's policy developments from the past year below.

Anticompetitive Agreements

In 2024, the AMO issued several decisions regarding anti-competitive agreements. The AMO maintained a focus on cartels, imposing several fines and initiating new investigations.

Horizontal agreements

AMO Council's decisions on bid-rigging in public procurement

The 2024 decisions mainly concern the AMO Council's (the AMO's appeal body) decision on bid-rigging in public procurement. In particular:

- The AMO Council largely upheld total fines of EUR 7.2 million imposed on four companies for bid-rigging in public procurement concerning construction works in the energy sector. With respect to one of the companies, the AMO Council granted a partial leniency, which the AMO in the first instance denied, considering that the evidence submitted was insufficient. The partial leniency, which resulted in a 10% fine reduction, also led to removing the penalty of blacklisting from public procurements, imposed on the remaining companies for three years, as the AMO

cannot blacklist successful leniency applicants from public procurement.

- The AMO Council annulled total fines of EUR 564,111, and blacklisting from public procurement for three years, imposed on four companies for bid-rigging in a public procurement in the food processing sector. The main reason for the annulment was insufficient legal and logical reasoning in relation to some of the evidence by the AMO in the first instance. The case was referred back to the first instance for a new procedure.
- The AMO Council slightly revised the fines to a total of EUR 261,000 imposed on three companies for bid-rigging in a public procurement for the supply of technologies improving production efficiencies of bakeries. The fine imposed on one of the investigated companies, which had submitted a partial leniency application, was increased due to the AMO's first instance errors in reflecting mitigating circumstances in fine calculation. For the two remaining companies, the AMO Council upheld the full amount of the fine and the three-year blacklisting.

Number of initiated administrative proceedings

The AMO also opened, but not yet concluded, another three formal investigations resulting from its previous dawn raids. Specifically, the AMO initiated proceedings concerning:

- Potential cartel in the medical laboratory diagnostics sector;
- Suspected bid-rigging in the industrial photovoltaic equipment supply; and
- Potential bid-rigging, price fixing, and exchange of sensitive information, in the market for the supply and wholesale distribution of medical products.

At least one additional new investigation concerning the provision of in-patient healthcare services has already been opened in 2025.

Activities in the labor market

The AMO opened its first investigation into the labor market. The proceedings concern a business association whose code of ethics allegedly prohibited poaching of employees.

Following the initiation of the proceedings, the AMO also published new guidelines on anti-competitive agreements in labor markets with a list of presumptively permitted and prohibited practices. According to the AMO, acceptable practices include non-competition clauses concluded with employees, which comply with labor laws, collecting information from public sources, conducting anonymized surveys, and engaging in social dialogue with employees. Prohibited practices involve such practices as no-poaching and wage-fixing agreements, harmonization of benefits, and exchange of sensitive information.

Vertical agreements

There were two noteworthy developments in the AMO's activities in the area of vertical agreements.

Restrictions on broadcasting of Czech TV stations in Slovakia

The AMO conducted an investigation into the broadcasting of Czech TV stations in Slovakia. The investigation was initiated due to complaints regarding withdrawals of Czech TV stations from Slovak operators' TV stations offering. At the same time, Slovak TV stations considered the broadcasting of certain Czech programs in Slovakia as an infringement of Slovak TV stations' exclusive licenses. The AMO conducted a broad investigation into the segment but concluded that the territorial exclusivity for TV broadcasting is not on its own a competition law infringement. The AMO also did not identify any other infringements and closed the investigation without imposing fines.

Packeta

The second vertical case concerned Packeta, a delivery company offering primarily the service of package delivery from e-shops to customers. One of methods of delivery are contracted pick-up points, typically kiosks or small shops, where customers may pick up their packages. The AMO raised concerns over non-compete clauses in Packeta's contracts with these pick-up points, which prevented the pick-up points from handling parcels from Packeta's competitors – both during the contract term and for a certain time post termination. After the initiation of the investigation, Packeta changed its policy and allowed the pick-up points to deliver parcels for Packeta's competitors. On this basis, the AMO decided not issued a decision in the case.

Packeta's non-compete clauses with pick-up points in Czechia were subject to investigation by the Czech competition authority, which led to an adoption of a decision with commitments.

Abuse of Dominance

In 2024, the AMO issued several abuse of dominance decisions in relation to investigations concerning:

- *Discount portal provider.* The AMO's investigation of Slevomat. The AMO raised concerns about two main issues: (i) an exclusivity clause between Slevomat and its business partners, thus limiting their ability to promote their products and services on competing online portals, and (ii) price restrictions, which prevented them from promoting and selling their products and services on other online portals for the same or lower prices than on Slevomat. Slevomat offered to address these concerns by commitments, which the AMO accepted in its commitments decision.
- *Excessively high bus fares.* In two separate investigations, the AMO imposed fines of EUR 218,500 and EUR 34,000 on bus station operators in the Žilina region for charging excessively high fees to bus carriers since January 2019. The investigation followed a complaint from the Zilina Region authority, which reimbursed the fee to the bus carriers. In addition to the fines, the AMO also imposed a remedial obligation.
- *Unreasonable business conditions in the waste management sector.* The AMO imposed a total fine of EUR 180,200 on an undertaking in the waste management sector for abusing its

dominance by charging significantly higher prices for landfilling mixed municipal waste to certain municipalities without objective justification.

The AMO also closed two dominance investigations without initiating proceedings. Specifically:

- The AMO investigated a company active in the sale of liquified natural gas (LNG) and compressed natural gas (CNG). The AMO suspected that the company might abuse its dominant position by charging unfairly low prices with the aim to drive competitors out of the market and preserve its dominance. The AMO concluded that the prices were not disproportionately low and closed the investigation.
- The AMO investigated Dovera, one of three major health insurance companies in Slovakia, owned by Penta, Czech-Slovak private equity group. The subject of the investigation was Dovera's announcement of a service that would enable its customers to reserve a medicinal product prescribed by a doctor through Dovera's app. The issue was that the service would only be available to pharmacies belonging to Penta. By the investigation the AMO discovered that it was only a test version of the service, which would then be expanded to other pharmacies. The AMO has thus stopped the investigation.

At least one additional investigation is currently ongoing. The AMO is investigating the wholesale access to mobile networks for mobile virtual network operators (or MVNOs; *i.e.*, operators not operating a network but gain access to a mobile network and sell services at retail level). Currently, there are no MVNOs in Slovakia. The AMO has so far raised no allegations of infringements.

Merger Control

In 2024, the AMO issued approx. 30 merger decisions, with all but two resulting in unconditional Phase I clearance. There was also one significant gun-jumping decision, and one investigation of a sub-threshold transaction leading to a discussion about the need for call-in powers.

AGROFERT? a record fine for gun-jumping in the food sector

The AMO Council upheld a record fine of EUR 21 million imposed by the AMO at first instance for gun-jumping. The AMO concluded that AGROFERT, a major player in the bakeries sector, had acquired indirect sole control over the two Slovak bakeries without notifying the transaction. AGROFERT notified the acquisition of both bakeries to the AMO in 2013, but as the AMO was going to block the transaction and AGROFERT withdrew its notification. The AGROFERT then, according to the AMO's allegations, purchased both bakeries, but formally split the transaction in two, thus avoiding exceeding the notification thresholds. The AMO's record fine reflects the intentional circumvention of the merger control rules.

OMV/BENZINOL

The AMO reviewed OMV, one of the largest petrol station operators in Slovakia, and its acquisition of 27 Benzinol petrol stations. The AMO analyzed the market for retail sales of petrol,

diesel, and liquified petroleum gas (LPG), both on national level, where it raised no concerns, and local level. On local level, the AMO concluded that in one location (defined by a 10km radius from a particular petrol station being acquired), the concentration would lead to the creation or strengthening of dominant position. The AMO thus cleared the transaction subject to divestment of the petrol station concerned. The AMO also assessed the concentration from the perspective of vertical effects (OMV as a wholesale supplier of fuels) but found no negative effects.

The case is also noteworthy for being one of the rare cases when the AMO granted a waiver from stand-still obligation. The AMO granted the waiver with respect to the acquisition of those petrol stations of which the AMO had no concerns about a possible impact on competition.

HP Invest/NAY

The AMO also approved, subject to remedies, HP Invest's acquisition of NAY. Both companies are major players in the consumer electronics retail market in Slovakia, operating a chain of stores throughout the country as well as online shops. The AMO analyzed the market for electronics retail, including its subsegments (large domestic appliances, small domestic appliances, etc.), both on national and local levels (defined by catchment areas of 20-30 minute driving distance from a store), and also based on online and offline sales channels. The AMO ultimately concluded that the acquisition would lead to a creation of a clear leader, both on national and local level, in retail of numerous electronic product segments, with ability to harm competition. The AMO thus allowed the concentration to proceed only subject to divestments of stores in eight locations across Slovakia, where the competition concerns were most prominent. HP Invest, operating in Slovakia mainly under the brand Datart, also promised not to open new stores in Bratislava for a period of 5 years.

Sensitive transaction not meeting notification thresholds and "call-in" discussion

In 2023, Penta, a Czech-Slovak private equity group, which owns one of the leading tabloid publishers, acquired its main competitor in the tabloid business. As the target's turnover was below EUR 14 million, the filing threshold in this case, Penta did not notify the transaction. The AMO primarily investigated whether the thresholds were exceeded and whether the AMO could investigate the transaction under the EU's Court of Justice *Towercast* judgement (under which competition authorities may investigate sub-threshold merger under abuse of dominance rules). The AMO concluded that the thresholds were not exceeded and that the case was not suitable for the application of the *Towercast* judgment, as Penta did not have a dominant position at the time of the acquisition, and the acquisition thus could not have constituted an abuse of dominance.

In response to the outcome of the case, the AMO started to actively promote the need for call-in powers, claiming that the investigated tabloid concentration would have been a perfect example of a case where such powers are needed. The AMO also announced it planned to open a broader discussion about the jurisdictional thresholds and propose a legislative change to the Competition Act in this regard.

Outlook for 2025

As the AMO's leadership enters its third year in office, the results of its increased enforcement efforts are expected to materialize. The AMO is expected to conclude a multiple, high-profile cartel investigation, particularly in the healthcare sector. The authority is also set to issue its first decision concerning competition in labor markets. According to public statements from the AMO's representatives, the authority plans to maintain — or even intensify—its enforcement activity across the board. As a result, 2025 may prove to be another eventful year for Slovak competition law.

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