

## **Slovakia: The Slovak Antimonopoly Office has initiated public discussion on the amendment of the Competition Act**

*June 2013*

### **Factual background**

As a follow-up to the release by the Slovak Anti-Monopoly Office (the “**AMO**”) of information on the planned amendment of the Slovak Competition Act (the “**Act**”), the AMO recently initiated public discussion on the amendment.

The declared purpose of the amendment is to better link the Act with the actual practices followed by the AMO. While the amendment also concerns the functioning of AMO, it primarily proposes that certain practical changes be made to the merger control procedure and to the imposition of sanctions and introduces a new framework for whistle-blowing in respect of cartel. The proposed amendment is now only at the public consultation stage; therefore, it is not clear when and subject to which changes it will proceed to the formal legislative stage or, if passed, when it is to become effective.

### **Merger control**

#### **Clarifying the thresholds**

Where the acquisition of direct or indirect control is concerned, the amendment proposes to bring more clarity to the thresholds triggering the notification obligation. Under the wording currently in effect, there has been some confusion regarding whether, in the event of the acquisition of direct or indirect control, the target’s turnover shall always be relevant for the assessment or whether, under certain circumstances, a foreign-to-foreign transaction could also be notifiable. The purpose of the relevant provision (in the interpretation of the legislator and, to the best of our knowledge, the AMO) is that a part of the test must always be satisfied by the target – thus no foreign-to-foreign acquisition of direct or indirect control would be notifiable.

The proposed amendment now removes this uncertainty and clearly stipulates that, in cases of direct or indirect acquisition of control, the target must have attained a turnover of at least EUR 14 million in Slovakia and any other undertaking concerned must have attained a turnover of at least EUR 46 million worldwide.

#### **Cutting deadlines for clearance**

For the sake of more accelerated merger control proceedings before the AMO, the amendment proposes a tightening of the deadline by which the AMO must decide on a notification.

Currently, when the merger notification is submitted to the AMO, the time period of 25 business days for AMO’s Phase 1 decision (the “**Phase 1 Period**”) starts to run on the date on which the AMO notifies the notifying party that the submission is complete, which in practice could take days or weeks after the original submission. In addition, even after the AMO proclaims the submission complete, if at later stage of Phase 1 or Phase 2 it finds that the information on affected markets (if applicable) is incomplete, it can request an amendment of the notification and, upon the provision of additional information, the Phase 1 Period starts to run anew.

The proposed amendment suggests that the Phase 1 Period should start to run when the submission is delivered to the AMO. If the information is incomplete, the AMO will be able to interrupt Phase 1 or Phase 2 and, upon the submission being amended, the process will resume. If, however, the information provided to the AMO turns out to be incorrect or untrue, the AMO will have the authority to request the correct information and the Phase 1 Period will start to run anew.

## **Commitments**

The proposed amendment relaxes process whereby commitments are submitted to the AMO. Currently the Act stipulates that any proposals for commitments must be submitted to AMO within 30 days of the AMO's request, which can be extended at the AMO's discretion. The proposed amendment will allow that, where the circumstances of the case so justify, the undertaking concerned will also be able to submit the commitment after such 30-day period has elapsed, provided that the AMO is able to examine the commitment within Phase 1 or Phase 2 respectively.

The AMO will also have new powers in respect of commitments: It will be authorised to publish the proposed commitments on its website or to disclose them to a third party for their assessment and it will have the power to appoint an independent supervisor to monitor the fulfilment of commitments, at the expense of the undertaking concerned.

## **Liability for fines**

Under the proposed amendment, where multiple undertakings belonging to the same economic group are found to be liable for a breach of competition rules, the AMO will have the authority to impose fines on such undertakings for which they would be jointly and severally liable. Under the current Act, no joint and several liability for fines is possible.

## **Whistle-blowing**

The proposed amendment introduces a cartel whistle-blowing scheme. A natural person who is first to provide to the AMO critical evidence (electronic or hard copy documents or information justifying a dawn raid) and who is not applying for leniency or is employed with such applicant (and if such evidence leads to a final AMO decision on the imposition a fine which is subsequently collected) has the right to a reward amounting to 1 per cent of such fine (but in no event more than EUR 100,000).

The whistleblower's identity may be concealed at his or her request. The AMO wishes to implement such scheme after similar trends have been successfully implemented in the United Kingdom or Hungary. The purpose of implementing is clearly to motivate or stimulate persons to co-operate with the AMO, which, in our view, would be a very positive change.

## **Comments**

The objective of the proposed amendment of the Act is to ensure better enforcement and protection of competition in Slovakia and to ensure the AMO's policy is more public-oriented. This is proved also by that fact the AMO chose to initiate public consultations regarding the amendment of the Act. The proposed amendments reflect the current application problems with the Act which, to some degree, restricted the AMO's development of a modern policy.

It is clear from the proposal that the AMO also wishes to level up both the Act and its practice with the recent trends of European competition authorities and draws some inspiration from the trends in the practice of the European Commission. As the proposal is solely AMO's own initiative and is not part of any official legislative procedure, any comments are now bound to come from within the government where the final decision whether to amend the current Act would be in effect taken.

**Text of the case/text commented**

[http://www.antimon.gov.sk/files/38/2013/zakon%20s%C4%9Bcasn%C4%9B%20znenie%20so%20zmenami%20na%20verejnu%20konzultaciu%2031-01-2013%20\(2\).pdf](http://www.antimon.gov.sk/files/38/2013/zakon%20s%C4%9Bcasn%C4%9B%20znenie%20so%20zmenami%20na%20verejnu%20konzultaciu%2031-01-2013%20(2).pdf)

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