



JAVNA AGENCIJA REPUBLIKE SLOVENIJE
ZA VARSTVO KONKURENCE

SLOVENIAN COMPETITION PROTECTION AGENCY

Andrej Matvoz, Director



SHORT HISTORY OF THE COURT SYSTEM AND COMPETITION LAW IN SLOVENIA

- According to the ZPOmK (Competition act), an **administrative dispute (As appeal against the Authority decision)** was possible against the decisions of the Office
- With the novel of ZPOmK the jurisdiction was conferred to the Supreme Court of the Republic of Slovenia in 2008
- In 2013, the Act Amending the Courts Act returned the jurisdiction to perform judicial review again to the Administrative Court of the Republic of Slovenia





DOUBLE PROCEDURE AND DOUBLING OF THE COURT'S JURISDICTION:

- **ADMINISTRATIVE PROCEDURE**
- **THE COURT ORDER (Dawn Raid/investigation)**
- **MINOR OFFENCE PROCEDURE**





ADMINISTRATIVE PROCEDURE

- Conducted pursuant to the provisions of the ZPOmK-1
- Subsidiary use of ZUP (general administrative procedure law)
- Violation of Article 6 and 9 of ZPOmK-1 (101 and or 102 of the TFEU)
- NO FINE!
- Only decisions regarding establishment of infringement/imposition of measures/acceptance of commitments
- Agency`s decision – judicial review (Administrative Court of RS - appeal Supreme Court of the RS)





THE COURT ORDER (DAWN RAID/INVESTIGATION)

- Issued by the District court in Ljubljana (for purposes of administrative procedure)
- Court demands a dawn raid request based on criminal law standards – Big Problem
 - Agency does not have all the information yet, (purpose of the dawn raid?!)
 - No Police powers, no investigative jurisdiction
 - Very little information when starting a case (noted anonymously, ex officio, leniency)
- Agency has to supplement the proposal for the investigation on several occasions or does not manage to obtain the court order
- Concluding of the procedure – because of lack of evidence





MINOR OFFENCE PROCEDURE

- **Agency** - a minor offence decision making body
- **Framework** in a **rapid** minor offences procedure (minor offence act – ZP)
- **Decides** on the responsibility of a legal person if violating competition legislation
- **Issues** fines
- **Minor** offence procedure starting after final administrative decision
- **Competition** act - only few special provision (criminal provision, determination of fines...)
- **The Ljubljana** local Court has exclusive jurisdiction to decide on appeals for judicial review of the Agency's minor offence decisions





MINOR OFFENCE PROCEDURE

- The appeal against the judgments of the local court is decided by the Ljubljana Higher Court, and a request for the protection of legality, which is decided by the Supreme Court of the RS





JURISDICTIONS SUMMARISED

- Administrative Court of the Republic of Slovenia
- District Court of Ljubljana (issuing an investigation order)
- Supreme Court of the Republic of Slovenia (audit in the administrative procedure and the request for protection of legality in the misdemeanor procedure)
- Local Court of the RS
- Higher Court in Ljubljana





CONSEQUENCES

- Long and confusing procedures
- Non-uniform case law
- Hilarious decision
 - courts confirms the decision of the Agency in an administrative matter on one hand, and on the other hand in a minor offence procedure the companies for the final found violation have not been fined!
 - accordance with the new case law of the court, in the minor offence procedure, the facts and substantive law, including the experts, are reconsidered, even though the factual situation and the violation have been finally established in the administrative procedure (the case of Žičničarji)





- evidence that was considered as a main one in the administrative procedure and the use of which was confirmed by an administrative court, has been repeatedly carried out and the witnesses have been interrogated again by the judge in the minor offence procedure, and in addition, the factual situation which was clearly and completely found in the administrative procedure and confirmed in court was re-established and even set up an expert in the economic profession, but then did not take into account his findings and added the conclusions herself - as a result, the case at the higher court fall





LONG DURATION - EXAMPLE

- PRO PLUS CASE:
- August 10, 2011 The Agency issues a decision to initiate the procedure
- 24 April 2013, the Agency issues a decision establishing violation of Article 9 of the ZPOmK-1 and Article 102 of the TFEU - Abuse of a dominant position
- 3. 12. 2013 The Supreme Court of the RS issues a judgment confirming the decision of the Office in its entirety
- On July 21, 2014, the Agency issues a minor offence decision





- 3 November 2014 Local Court Judgment - the decision of the Agency is changed so that the procedure is stopped because the act as described is not a violation
- 18.9.2015 Judgment of the Higher Court - appeal by the Agency is rejected and confirmed by the judgment of the District Court
- **The procedure lasted for more than 4 years; in the administrative procedure, the violation has been finally found and the court stopped in the misdemeanor procedure, regardless of the fact that the Supreme Court confirmed that the violation existed**





HOPING FOR A SOLUTION

- A SINGLE PROCEDURE, TAKING PROCEDURE BEFORE THE EUROPEAN COMMISSION AS A ROLE MODEL
 - Agency could establish an infringement during the administrative procedure and impose a fine on the company
- Agency is preparing an amendment to ZPOmK-1
- The proposer of the law is MGRT (Ministry of economy) – Not the Agency!





DIFFICULTIES IN IMPLEMENTATION OF EUROPEAN LAW

- The restriction by object before and after the Cartes Bancaires judgment
 - already dangerously approaching (case law) to the proofing of the effects of the agreement
- Failure to comply with European law institutes in the assessment of the Slovenian courts (single and continuous violation, joint and several liability, ...)
- difficulties in proving the cross-border effect and consequently concluding the procedure under 101/102 TFEU
- With regard to the penalty that the courts repeatedly greatly reduce the amount or do not confirm the decision of the agency at all





THANK YOU FOR YOUR ATTENTION

Andrej.Matvoz@gov.si

