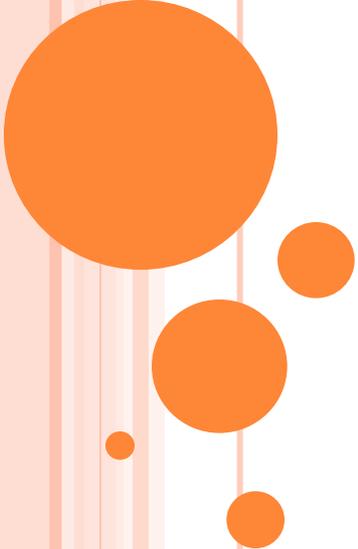


RECENT LEGISLATIVE DEVELOPMENTS OF THE SLOVENIAN COMPETITION LAW



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REGULATORY FRAMEWORK

- Prevention of the Restriction of Competition Act (ZPOmK-1)
 - Decree defining the contents of the concentration of companies notification form
 - Decree on the procedure for immunity from and reduction of fines in cartel cases
- General Administrative Procedure Act (ZUP)
- Minor Offences Act (ZP-1)
- Criminal Code (KZ-1)





SLOVENIAN COMPETITION PROTECTION AGENCY (CPA)

- newly established on 1 January 2013
- amendments to the ZPOmK-1 (ZPOmK-1D), which entered into force on 28 July 2012
- established by reorganisation of the Competition Protection Office (CPO), which was a body within the Ministry of Economic Development and Technology and was entrusted authority for the enforcement of competition rules





- organised as an independent public body
- the CPA and members of its bodies (council and director) may not be bound by the guidelines and instructions provided by state or other authorities, no right of access to the individual case concerned by the Ministry
- independent and autonomous in the implementation of its tasks





- reports once a year to the Government and the Parliament on its work
- financed from the state budget, as an indirect budget user
- run by the Director and five-member council (the director is a member of the council and also its President) - all nominated by the Government and appointed by the Parliament for a five-year mandate





THE DIRECTOR

- nominated by the Minister of Economic Development and Technology
- selected in an open nomination procedure
- appointed by the government for a 5 year mandate
- conducts proceedings
- represents the Agency
- presides the Council by law





THE COUNCIL

- adopts the Financial Plan and Annual Report
- adopts the Rules of Procedure
- sets Agency Annual Plan of Work
- decides on the cases in a decision making panel (Senate)





THE PANEL (SENATE)

- A decision-making body in:
 - administrative procedures (the panel members are all members of the Council)
 - misdemeanour procedures (3 members - president + 2 members, the Panel members can be the members of the Council and Agency officials)





CURRENT LEGISLATIVE AMENDMENTS TO THE ZPOMK-1

- prepared by the Ministry of Economic Development and Technology
- instructions for the current amendments originate from the Decision of The Constitutional Court from 11 April 2013
- the Supreme Court referred rules of articles 28 and 29 of the ZPOMK-1 – conduction of inspections as unconstitutional
- the Constitutional Court found that article 28(1), giving the CPA the right to conduct inspections at the premises of companies against whom the proceedings have been initialised allowing also for inspection of all form of data carriers and communication, based only on the order of the director of the CPA, is in breach of article 37 of the Constitution of the Republic of Slovenia (Constitution) on communications privacy.





- article 37 of the Constitution states that communications privacy can only be suspended if:
 - so prescribed by the law,
 - on the basis of a court order,
 - for a set time,
 - where it is necessary for the initiation or course of criminal proceedings or for reasons of national security
- current regime is unconstitutional since it allows for intrusion of communication privacy without the order of the competent court
- the Parliament has been given one year to bring the unconstitutional provisions in line with the Constitution – deadline: 6 may 2014; until the changes to the ZPOmK-1 are adopted, the current regime can still be used by the CPA





CURRENT REGIME

- an order for inspection in an undertaking against which procedure has been initiated is issued by the Agency (the Director)
- served personally on the undertaking at its premises at the beginning of the inspection
- no right to appeal against an order on inspection
- inspections are conducted by employees of the CPA, specific professional tasks may be carried out by specialized organizations, institutions or individuals (hereinafter: authorized person)
- authorized persons are entitled to examine any documents related to the business, irrespective of the medium on which they are stored on





PROPOSAL AMENDING ZPOMK-1

- initiation of an investigation on the basis of:
 - the consent of the company or
 - reasoned written decision by a competent court (Court order)
 - issued by a single judge by the District Court in Ljubljana no later than 24 hours after the receipt of a complete request of the CPA
- served personally on the undertaking at its premises at the beginning of the inspection
- right to appeal against the court order within 8 days to the Higher Court in Ljubljana (must decide within 15 days). An appeal shall not delay the execution of the inspection!





- specifically pointed out that authorized persons are entitled to examine electronic devices and related equipment, electronic data carriers such as telephone, fax, computer, optical media, memory cards and other media with electronic data, and also data on electronic devices, which the undertaking held with provider of information technology services, such as particular rental services server and cloud services and to obtain forensic copies
- the user of the electronic device is under the duty to cooperate (has to enable access to the device, provide encryption keys or passwords, give explanations on the use of the device) and has the right to be present at the examination of the contents of electronic devices (protection of privacy)





PROPOSAL OF THE CPA

Currently the CPA conducts 2 separate procedures:

- administrative (the CPA establishes the infringement)
- misdemeanour (usually conducted as a follow-on procedure, the CPA imposes fines on undertakings and individuals – responsible persons)





- Proposal for an unified procedure
 - procedure combining establishment of infringement and imposing of fines
 - what about individuals – responsible persons?
 - link between criminal act as set in the Criminal Code (KZ-1) and misdemeanour as set in the ZPOmK-1?
 - Ministry of Economic Development and Technology did not consent with this proposal, as the Amendment is passed in a shortened procedure only to get in line with the Decision of the Constitutional Court





ABUSE OF A POSITION OF MONOPOLY - ARTICLE 225 OF THE CRIMINAL CODE (KZ-1)

- prescribes imprisonment for between six months and five years for persons who, while performing a business activity, breach antitrust rules banning the conclusion of anti-competitive agreements between undertakings, abuse the dominant position of one or more undertakings, or create a forbidden concentration of undertakings, and who in this way prevent, materially impede or distort competition in the Republic of Slovenia or in the EU market, or materially or in significant part affect trade between member states, resulting in significant proceeds for that undertaking or undertakings, or significant loss for another undertaking
- in addition, an undertaking can be held responsible for the same offence in accordance with the Liability of Legal Persons for Criminal Offences Act, punishable by a fine of between €10,000 and €1 million, forfeiture of property, termination of the undertaking, a ban on participation in public procurement or a ban on trading with financial instruments





- KZ-1 also provides for a form of leniency which applies to **all** anti-competitive agreements. A perpetrator who concludes an anti-competitive agreement, but informs authorities of this before the investigation has begun, cooperates with authorities during the investigation and applies remedies to the situation, and who has not coerced others to participate or remain in agreement, can have his punishment remitted





Thank you very much for your attention!

