PANORAMIC

MERGER CONTROL

Slovakia

LEXOLOGY

Merger Control

Contributing Editor

Thomas Janssens

Freshfields Bruckhaus Deringer

Generated on: September 18, 2024

Contents

Merger Control

UPDATE AND TRENDS

Key developments of the past year

Contributors

Slovakia

Wolf Theiss

Wolf Theiss

Zuzana Hodoňová zuzana.hodonova@wolftheiss.com
Vladimír Šimkovic vladimir.simkovic@wolftheiss.com

QUICK REFERENCE TABLE

The table below is for quick reference only.

Voluntary or mandatory system?	The filing of a notification with the Antimonopoly Office of the Slovak Republic (AMO) is mandatory in cases in which a concentration meets the applicable jurisdictional thresholds.
Notification trigger/filing deadline	There is no explicit filing deadline. However, in any event, the concentration has to be notified to the AMO prior to its implementation (ie before any rights or obligations resulting from a concentration are executed). Among other things, a notification can be filed with the AMO prior to the conclusion of a formal agreement.
Clearance deadlines (Phase I/Phase II)	If the concentration does not require an in-depth analysis due to the identification of competition law concerns, the AMO issues a decision within 25 working days of receipt of the notification (Phase I proceedings). In cases that require an in-depth analysis, the AMO may initiate in-depth proceedings within 25 working days of receipt of the notification (Phase II proceedings). Once the AMO has initiated Phase II, it must issue a decision within 90 working days. Requests for information stop the clock. At the request of the parties or with their consent, the AMO may also prolong the Phases I and II periods, even repeatedly, by a total of up to 30 working days. The AMO may request the parties to propose conditions (commitments) within 30 working days of the delivery of such request. This effectively stops the clock – that is, the Phases I and II reviews or decision-making periods are not in effect until the parties submit their proposed commitments or the 30-day period expires (whichever occurs first).
Substantive test for clearance	The AMO examines whether the concentration will significantly impede effective competition in the relevant market, in particular due to the creation or strengthening of a dominant position.

Penalties	In the event of a failure to notify the concentration or a failure to comply with the standstill obligation, the AMO may impose a fine of up to 10 per cent of the undertaking's worldwide turnover generated in the preceding business year; or up to €330,000 on an undertaking that generated a turnover not exceeding €330, or that has not achieved any turnover, or when its turnover cannot be calculated.
Remarks	Not applicable.

Law stated - 8 April 2024

LEGISLATION AND JURISDICTION

Relevant legislation and regulators

What is the relevant legislation and who enforces it?

In 2021, Act No. 187/2021 on Protection of Economic Competition (the Act) became effective. Among other things, the Act implements the ECN+ Directive.

Changes introduced by the Act in the area of merger control only partially modify the provisions governing notification criteria. The Act specifically abolishes a specific notification threshold for creating full-function joint ventures. This has allowed the merger control rules to be more efficient as extraterritorial joint ventures not active in the territory of Slovakia are no longer subject to review, unless the JV partners already have significant activities in Slovakia.

The other substantive change is a declaration according to which joint-control concentrations (not only joint ventures) are also to be reviewed under the article on coordination. Other major changes regarding the merger control regime concern procedural changes (starting from the assessment period), the possibility of imposing periodic penalty payments for infringements with regard to the merger control regime, the possibility of imposing temporary remedies in certain cases, and specific provisions regarding the covid-19 pandemic situation and turnover calculations.

Some other aspects are regulated by soft law, such as the guidelines on pre-notification contacts, turnover calculation, details of simplified notification, details of granting an exemption from the prohibition of merger implementation and the guidelines on ancillary restraints. These guidelines have been under partial formal revision owing to the formal changes introduced by the Act.

The filing fee is determined by the Act on Administrative Fees. The General Administrative Procedural Act applies to any procedural matter that is not specifically regulated in the Act.

The relevant authority for merger control (and competition law in general) is the Antimonopoly Office of the Slovak Republic (AMO). More information on the AMO may be found on its website.

Law stated - 8 April 2024

Scope of legislation
What kinds of mergers are caught?

The Act defines the following (if on a lasting basis) as a concentration:

- a merger, spin-off or similar corporate reorganisation, including economic mergers (ie situations in which the undertakings concerned become economically combined while retaining their legal independence, especially in the case of joint economic management);
- the acquisition of direct or indirect control by an undertaking or several undertakings over another undertaking(s), its part or their parts; or
- the creation of a joint venture controlled by two or more independent undertakings, performing all the functions of an autonomous economic entity (full-function joint venture) on a lasting basis.

A concentration does not arise if banks, branches of foreign banks, insurance companies or other financial institutions, the normal activities of which include trading in securities on their own accounts or on the accounts of others, temporarily acquire securities with a view to reselling them. This exemption only applies if:

- they do not exercise voting and other rights with a view to influencing the competitive behaviour of that undertaking; or
- they exercise those voting rights only with a view to preparing for the sale of the undertaking or part thereof or the sale of securities and, upon the sale, they will lose control, provided that the sale is effected within one year of the date of acquisition of the securities.

If the disposal is not reasonably possible within this period, it may – upon request – be extended by the AMO. Further exemptions exist under special laws, such as with regard to the acquisition of control over an undertaking by liquidation trustees under the Commercial Code or by the bankruptcy trustee under the Bankruptcy Act.

Law stated - 8 April 2024

Scope of legislation
What types of joint ventures are caught?

The creation of a joint venture controlled by two or more independent undertakings, performing on a lasting basis all the functions of an autonomous economic entity (full-function joint venture), constitutes a concentration. If the creation of the joint venture has as its object or effect the coordination of the competitive behaviour of undertakings, the AMO appraises the coordination in accordance with the cartel prohibition (article 4 of the Act).

Law stated - 8 April 2024

Scope of legislation

Is there a definition of 'control' and are minority and other interests less than control caught?

According to the Act, 'control' is the ability to exercise a decisive influence on the activities of an undertaking, especially by means of:

- ownership rights or other rights; and
- rights, contracts or other facts allowing for the exercising of a decisive influence over the composition, voting or decision-making of the undertaking's bodies.

Minority interests are caught only if they confer control by any of the means described above.

Law stated - 8 April 2024

Thresholds, triggers and approvals

What are the jurisdictional thresholds for notification and are there circumstances in which transactions falling below these thresholds may be investigated?

The AMO must be notified of a concentration where, in the business year preceding the concentration:

- the combined aggregate Slovak turnover of the undertakings concerned amounted to at least €46 million, and each of at least two of the undertakings concerned achieved a turnover of at least €14 million in Slovakia; or
- the worldwide aggregate turnover of at least one of the undertakings concerned amounted to at least €46 million; and
- in the case of a merger, spin-off or similar corporate reorganisation of two or more separate undertakings, including economic mergers (ie situations where the undertakings concerned become economically combined, while retaining their legal independence, especially in the case of joint economic management) the aggregate turnover of at least one other undertaking concerned amounted to at least €14 million in Slovakia, or, in the case of the acquisition of direct or indirect control by an undertaking or several undertakings over another undertaking or part of another undertaking or undertakings, the target (different from the undertaking meeting the worldwide €46-million threshold) generated an aggregate turnover of at least €14 million in Slovakia.

The Act abolished a separate turnover threshold for joint ventures; however, joint ventures can still be notifiable in accordance with the above turnover thresholds.

For the purpose of turnover calculation, 'turnover' means the total of the revenues, yields or incomes from the sale of goods or services, minus discounts and indirect taxes. If applicable, financial assistance granted to the undertaking also has to be added in the total.

Financial assistance means financial aid granted from public sources that concerns an activity performed by the undertaking and that will be reflected in the price of its goods. The undertaking must be the recipient of that aid.

The decisive period for which the turnover is calculated is not only the previous business year, but also the last pre-pandemic business year (ie 2019) if the turnover in the previous business year did not meet the turnover threshold. The provision in this regard is a reaction to the temporary decrease of turnovers in certain industries owing to the covid-19 pandemic.

The aggregate turnover of an undertaking includes:

1. the turnover of the undertaking concerned;
2. the turnover of the undertakings in which the undertaking concerned directly or indirectly:
    - holds more than 50 per cent of the share capital;
    - is entitled to exercise more than 50 per cent of the voting rights;
    - has the right to appoint more than 50 per cent of the members of the undertaking's bodies; or
    - has the right to manage the undertaking's business;
3. the turnover of the undertakings that have the rights referred to in point (2) in an undertaking concerned;
4. the turnover of the undertakings in which the undertakings referred to in point (3) have the rights referred to in point (2); and
5. the turnover of the undertakings in which two or more undertakings referred to in points (1) to (4) have joint rights as referred to in point (2).

In the case of an acquisition of direct or indirect control over one or several undertakings or their part(s), only the turnover pertaining to the acquired undertakings (or the relevant parts) that are subject to the concentration is taken into account for the purpose of turnover calculation.

The aggregate turnover of an undertaking concerned does not include the turnover generated between companies belonging to the same group. The turnover generated by a joint venture is proportionally divided between the joint venture partners exercising the rights set out in point (2) above.

Two or more concentrations that are effected between the same undertakings or between undertakings from the same respective economic groups within two years are deemed to constitute one single concentration that occurred on the date of the occurrence of the last concentration.

Law stated - 8 April 2024

Thresholds, triggers and approvals

Is the filing mandatory or voluntary? If mandatory, do any exceptions exist?

If a transaction constitutes a concentration within the meaning of the Act and exceeds the jurisdictional thresholds, filing is mandatory.

Law stated - 8 April 2024

Thresholds, triggers and approvals

Do foreign-to-foreign mergers have to be notified and is there a local effects or nexus test?

Foreign-to-foreign transactions are subject to Slovak merger control provisions if they qualify as a concentration and meet the jurisdictional thresholds. The currently applicable jurisdictional thresholds intensified the local nexus requirement of notifiable concentrations. As a result, many foreign-to-foreign transactions that previously required a filing in Slovakia now usually fall outside the scope of the AMO's jurisdiction.

Law stated - 8 April 2024

Thresholds, triggers and approvals

Are there also rules on foreign investment, special sectors or other relevant approvals?

A new foreign direct investment (FDI) regime came into effect in Slovakia in 2023.

Transactions carried out by foreign investors (and, in some cases, EU investors, eg when a transaction is financed using funds supplied by a public authority from a third country) are subject to mandatory FDI screening if the local target is active in one or more of the following sectors:

1.
    1. Manufacturing of firearms;
    2. Production, research, development or innovations of military technology or equipment;
    3. Production, research, development or innovations of dual use items;
    4. Production, research, development or innovations in the field of biotechnology in the healthcare sector;
    5. Operating an element of critical infrastructure;
    6. Operating a basic service (as designated by the National Security Office);
    7. Providing digital services in the cloud computing sector;
    8. Manufacturing, research or development of encryption technology or components thereof, or being in possession of such components;

9. Having a broadcasting licence;
10. Providing shared platform services;
11. Publishing of periodic press;
12. Operating a news web portal; and
13. Operating a press agency.

Law stated - 8 April 2024

NOTIFICATION AND CLEARANCE TIMETABLE

Filing formalities

What are the deadlines for filing? Are there sanctions for not filing and are they applied in practice?

There is no explicit filing deadline; however, in any event, the concentration must be notified to the Antimonopoly Office of the Slovak Republic (AMO) prior to its implementation (ie, before any rights or obligations resulting from a concentration are executed) and after:

- an agreement on which the concentration is based has been concluded;
- the acceptance of a bid in a public tender has been announced;
- a state authority's decision has been delivered to an undertaking (eg, certain sector-specific approvals);
- announcement of a takeover bid;
- the day on which the European Commission informed an undertaking that the transaction falls within the jurisdiction of the AMO; or
- the day on which a particular event that led to the concentration occurred.

The notification can also be filed with the AMO prior to the conclusion of an agreement or other event causing the concentration to arise, provided that it results in a concentration that requires a filing with the AMO. The notification must also contain reasoning and documents certifying the facts essential for the concentration.

In the event of a failure to notify the concentration, the AMO imposes a fine of:

- up to 10 per cent of the undertaking's worldwide turnover generated in the preceding business year; or
- up to €330,000 on an undertaking that generated turnover not exceeding €330 or has not achieved any turnover, or when its turnover cannot be calculated.

The AMO is entitled to take into consideration the turnover generated in previous business years if there is a reasonable suspicion that an artificial decrease of the undertaking's turnover in the preceding business year occurred.

The Act also introduces periodic penalty payments, which secure the proper and timely execution of the relevant duties. If the obligation is not fulfilled, this sanction forces the obliged subject to remedy the unlawful state of affairs in the shortest time possible. The Act also responded to the ECN+ Directive by authorising the AMO to use any interim measures necessary for the protection of the market and its conditions.

Law stated - 8 April 2024

Filing formalities
Which parties are responsible for filing and are filing fees required?

The responsibility for the submission of the filing depends on the type of the concentration. Against this background, the filing has to be submitted:

- jointly by the parties to the concentration in the case of a merger or amalgamation of two or more independent undertakings;
- by the selected bidder in the case of a public tender;
- jointly by the parties to the concentration in the case of a decision issued by a state authority on a merger or amalgamation of undertakings pursuant to special legislation;
- by the proposer of the takeover bid in the case of a takeover bid; and
- by the undertaking or undertakings that acquire control over another undertaking or its part, or other undertakings or their parts in any other cases.

The filing fee is determined by the Act on Administrative Fees. It currently amounts to €5,000 (with a decrease if the notification is made in electronic form).

The responsibility for the failure to notify the AMO passes to the economic successor who continues the commercial activity of his or her predecessor once the predecessor has stopped the legal or actual execution of this activity.

Law stated - 8 April 2024

Filing formalities
What are the waiting periods and does implementation of the transaction have to be suspended prior to clearance?

The waiting period falls under the statutory timetable for clearance.

The intended concentration must not be implemented prior to clearance (ie, the undertakings concerned may not exercise rights or obligations arising from the intended concentration until the AMO issues a clearance decision (suspension obligation)); however, the Act recognises the following exemptions:

- In the case of a public tender, the selected bidder may make its bid, provided that it does not exercise the voting rights arising in relation to the implementation of the bid.
-

A public takeover bid or transactions with securities in the securities market through which control is acquired from various subjects may be implemented, provided that:

- the concentration is immediately notified to the AMO (ie, as soon as the acquirer learns that it has acquired control); and
- the undertaking acquiring control does not exercise its voting rights related to those securities or only does so to maintain the full value of its investments based on an individual exemption granted by the AMO.

- Under exceptional circumstances, the AMO may (upon request of the parties) grant an exemption from the standstill obligation if there are serious reasons to do so, such as serious financial problems or insolvency threats.

The AMO decides on the exemption request within 20 working days of its submission. If the AMO asks for further information, the clock may be stopped. The exemption should generally concern only the performance of certain urgent actions if no threat to competition is identified. The AMO may bind the grant of the exemption to conditions and commitments to ensure effective competition.

Law stated - 8 April 2024

Pre-clearance closing

What are the possible sanctions involved in closing or integrating the activities of the merging businesses before clearance and are they applied in practice?

If the suspension obligation is breached (closing before clearance), the AMO imposes fines. In addition, it may oblige the parties to restore the level of competition to the level that existed prior to the implementation of the concentration, especially by ordering the division of a company or the transfer of rights, or the imposition of other obligations.

Law stated - 8 April 2024

Pre-clearance closing

Are sanctions applied in cases involving closing before clearance in foreign-to-foreign mergers?

The sanctions for closing before clearance are also applicable in the case of foreign-to-foreign mergers. In the past few years, the AMO has imposed fines of between €1,000 and €14 million for infringing the standstill obligation. In other cases, fines have been imposed on undertakings based outside Slovakia (in particular in the Czech Republic and Hungary).

On 16 October 2018, the AMO Department of Concentrations issued a decision imposing a fine of €600,000 in aggregate on entrepreneur J&T Finance Group SE, Czech Republic (JTFG), and a fine of €7,751 in aggregate on Ladislav Bödők, Slovakia (LB). In the decision, the AMO submitted that the parties to the proceedings had breached the Act as they failed to notify

the concentration resulting from the acquisition of joint control by the entrepreneurs JTFG and LB over Panta Rhei.

The parties to the proceedings also breached the Act as a result of exercising their rights and obligations resulting from the aforementioned concentration before the issuance of a valid decision concerning that concentration, which had already been implemented to the fullest extent (ie the entrepreneurial JTFG had acquired an ownership interest in Panta Rhei), and this was followed by the parties to the proceedings exercising joint control over that company.

The highest fine imposed for breach of the standstill obligation so far is the fine imposed on a specific holding company last year. In this case, the undertaking concerned appealed against the decision of the AMO; thus the decision is currently under review.

Law stated - 8 April 2024

Pre-clearance closing

What solutions might be acceptable to permit closing before clearance in a foreign-to-foreign merger?

In general, foreign-to-foreign concentrations are assessed and treated in the same way as domestic concentrations. The Act does not provide for hold-separate (carve-out) solutions.

Law stated - 8 April 2024

Public takeovers

Are there any special merger control rules applicable to public takeover bids?

Certain actions related to public takeover bids are, by law, exempted from the standstill obligation.

Law stated - 8 April 2024

Documentation

What is the level of detail required in the preparation of a filing, and are there sanctions for supplying wrong or missing information?

Details concerning the content of the notification and the documents required are set forth in Decree No. 189/2021, which entered into force on 1 June 2021. The Decree does not contain notable changes, just the changes based on the adoption of the Act and several additional precise provisions.

The Decree sets out the following situations in which a short-form notification may be submitted:

- an undertaking intends to acquire sole control over another undertaking in which it already exercises joint control;

- there is no horizontal or vertical overlap between the undertakings concerned under any alternative definition of the relevant market; or
- the combined market share of the parties concerned (including their affiliated companies) is less than 15 per cent at the horizontal level, and individually or combined less than 30 per cent at the vertical level, which is also the case under any alternative definition of the relevant markets.

A short-form notification must contain only a limited level of information, in particular:

- information on the parties to the concentration (ie, their business activities);
- description of the concentration;
- information on the capital, financial and personnel structure;
- general market information (eg, list of all the categories of goods that are produced or imported, including the applicable territories, possible product or geographical market definition based on those product categories, briefly stated characteristics of the markets, a statement on the existence or non-existence of affected markets and the possibility to use the short-form notification, total market size, individual market shares held by the parties, and most important competitors);
- information on cooperative effects;
- reasons for and effects of the concentration and the impact on competition;
- reasons why a short-form notification is allowed and sufficient under the Act and Guidelines regarding the short-form notification;
- information on other applicable competition authorities; and
- underlying documentation.

If the criteria for the submission of a short-form notification are not met, the usual long-form notification must be submitted, which requires the parties to submit, in addition to the limited information contained in a short-form notification, rather extensive data on the affected markets and their functioning.

Together with the notification, a power of attorney must be submitted; however, this need not be notarised and apostilled. If some of the required information is not available or known, the parties may ask (in the filing) for a waiver from providing such data and provide their best estimates or at least an indication of where the AMO could get the information. If some information is not deemed as relevant for the assessment of the concentration, the parties may ask the AMO to agree with the waiver.

The filing and all documents must be submitted in the Slovak language with a certified translation or an affidavit that uncertified translations are correct and complete. If only copies are submitted, an affidavit confirming that the copy is true to the original must be submitted.

In practice, the AMO tends to agree to the submission of certain documents (eg, annual reports) in English or the translation of only certain parts thereof into Slovak.

The submission of false or incomplete information in a merger filing is subject to fines, which may amount to up to 1 per cent of the total turnover for the preceding accounting period.

Law stated - 8 April 2024

Investigation phases and timetable
What are the typical steps and different phases of the investigation?

In practice, it is our experience that the AMO adheres to mandatory deadlines and usually strives to clear cases within Phase I proceedings. The Act does not provide for the possibility of requesting expedited proceedings.

Law stated - 8 April 2024

Investigation phases and timetable
What is the statutory timetable for clearance? Can it be speeded up?

The AMO recommends that pre-notification contact with the AMO is initiated before the notification is formally submitted, even if the case does not raise substantial merger control concerns. Although the provision of a draft merger notification is not mandatory, practice shows that this is usually welcomed by the AMO. Pre-notification contacts should be initiated at least two weeks prior to the intended formal submission of the notification to the AMO.

Under the Act, following the formal submission of the notification, the AMO assesses the completeness of the filing. The AMO then issues an official letter informing the parties about the initiation of proceedings and of the completeness of the filing. It is recommendable to be in contact with the AMO during this stage to ensure that this period is short.

If the AMO finds that the submitted notification does not contain all the required information, it will issue a request to complete the missing information. Once the filing is accepted as complete, the AMO issues an official confirmation letter to this effect. Only complete notification starts the assessment period.

The subsequent handling of the case depends on whether Phase I or Phase II proceedings are applied. If the concentration does not require an in-depth analysis owing to the identification of competition concerns in respect of its compatibility with Slovak competition law rules, the AMO issues a decision within 25 working days of receipt of the complete notification (Phase I proceedings).

According to the Act, the decision does not have to include reasoning; however, if reasoning is included, it shall provide general information about the parties to the concentration and the business sectors or relevant markets where the parties are active. Phase I decisions usually contain simplified reasoning.

In cases that require in-depth analysis because of the identification of competition law concerns (Phase II proceedings), within the deadline for the Phase I proceedings, the parties must be informed about the initiation of Phase II proceedings in writing. Once the AMO has initiated Phase II, it must issue a decision within 90 working days, starting from the last day of the Phase I proceedings period.

If the AMO requests from the parties additional information or documents that it considers relevant for the assessment of the case, this effectively stops the clock. If the notification contains false (misleading) information, the clock is reset and starts running only as of the day following the delivery of the correct information. At the request of the parties, or with

their consent, the AMO may prolong the Phase I and II periods, even repeatedly, by a total of up to 30 working days at most.

If the concentration raises competition law concerns, the AMO may request the parties in writing (including reasoning) to propose conditions (commitments) within 30 working days of delivery of the request. The request effectively stops the clock; in other words, the above-described Phases I and II review or decision-making periods are not in effect until the parties submit their proposed conditions or commitments or upon the expiry of the 30-working-day period (whichever occurs first).

Upon receipt of a justified request, the 30-working-day deadline may be prolonged and the AMO may accept the proposal even after its expiry in exceptional cases. Moreover, inspired by the European Commission's practice, the AMO may test the proposed conditions or commitments by addressing them to natural persons or legal entities by publication or in another manner, or it may appoint an independent trustee to supervise the fulfilment of the conditions or commitments.

Before issuing its final decision in Phase II, the AMO must inform the parties about its assessment of the matter and conclusions, and ask them to provide their comments (if any) in writing. Subsequently, the final decision is issued and delivered to the parties. The decision becomes valid and effective if it is not appealed within 15 days of delivery or if the parties waive the right of appeal.

Law stated - 8 April 2024

SUBSTANTIVE ASSESSMENT

Substantive test
What is the substantive test for clearance?

The Antimonopoly Office of the Slovak Republic (AMO) follows the significant impediment to effective competition (SIEC) test, which is also applied by the European Commission; therefore, the AMO assesses whether the concentration significantly distorts effective competition in the relevant market, in particular owing to the creation or strengthening of a dominant position.

Law stated - 8 April 2024

Substantive test
Is there a special substantive test for joint ventures?

There is a special substantive test for joint ventures and for joint control, which are assessed under the SIEC test and under the coordination provision (if the conditions for coordination are met).

Law stated - 8 April 2024

Theories of harm

What are the 'theories of harm' that the authorities will investigate?

The AMO examines whether the concentration will cause a SIEC in the relevant market, in particular owing to the creation or strengthening of a dominant position. This may especially be the case if an undertaking or several undertakings are not subject to substantial competition or can act independently as a result of their economic power.

As Act No. 187/2021 on Protection of Economic Competition (the Act) does not contain any market share presumptions, each case requires an individual assessment on a case-by-case basis.

The Act does not list specific additional factors that are to be taken into account by the AMO for the purpose of its assessment. In practice, however, the AMO usually considers various factors, including the market position of the undertakings concerned, the market structure and possible future developments, barriers to entry, existence of competitors, intentions of companies to enter the market, supply and demand structure, and price development.

When assessing the concentration on this basis, the AMO enjoys wide discretion. Among other things, it takes into account the European Commission's guidelines on the assessment of horizontal and non-horizontal mergers, the guidelines on the definition of the relevant market and other relevant soft law.

Law stated - 8 April 2024

Non-competition issues

To what extent are non-competition issues relevant in the review process?

The Act does not expressly mention non-competition issues as being relevant for the assessment process; however, as the AMO enjoys wide discretionary powers for analysing the effects of the concentration and tends to follow in general the practice applied under the EU merger control regime, it is not unlikely that the AMO would take into account non-competition issues in a similar way to the European Commission.

Law stated - 8 April 2024

Economic efficiencies

To what extent does the authority take into account economic efficiencies in the review process?

The Act does not expressly mention economic efficiencies. In practice, however, the AMO would most likely take them into consideration (in particular if the parties refer to them in the notification).

Law stated - 8 April 2024

REMEDIES AND ANCILLARY RESTRAINTS

Regulatory powers

What powers do the authorities have to prohibit or otherwise interfere with a transaction?

Based on the assessment of the concentration under the substantial test, the Antimonopoly Office of the Slovak Republic (AMO) may issue:

- a decision approving the concentration;
- a decision approving the concentration, provided that certain conditions and obligations imposed on the undertakings concerned are observed and met; or
- a prohibition decision.

After clearance has been granted, the AMO:

- on its own initiative, has to reverse a decision that has been made subject to conditions and decide on the concentration anew if the parties fail to fulfil the conditions imposed;
- at the request of the parties, may change a decision that has been made subject to conditions if:
    - the situation in the relevant market has changed so substantially that the imposed conditions or obligations are no longer justified; or
    - the parties request the prolongation of the fulfilment deadline because they cannot fulfil the conditions or obligations for serious reasons; or
- on its own initiative, may change or reverse a decision if:
    - information relevant for granting clearance later proves incomplete or wrong; or
    - the parties fail to fulfil the commitments related to the condition imposed in the decision.

Law stated - 8 April 2024

Remedies and conditions

Is it possible to remedy competition issues, for example by giving divestment undertakings or behavioural remedies?

At the request of the AMO, the notifying party must within 30 working days submit proposals suggesting certain conditions and related commitments in view of eliminating competition law concerns. In general, the AMO accepts both structural and behavioural remedies.

The AMO may test draft conditions and commitments by directly inviting natural persons and legal entities to provide comments and observations by making them public on its website or in any other manner. Among other things, the conditions and commitments may include an obligation to appoint an independent trustee to monitor compliance with the agreed conditions and commitments at the cost of the parties.

Law stated - 8 April 2024

Remedies and conditions
What are the basic conditions and timing issues applicable to a divestment or other remedy?

If the AMO identifies competition law concerns, the notifying party is obliged within 30 working days to provide a proposal for commitments and conditions. If the notifying party fails to meet this deadline, the AMO may prohibit the concentration.

The AMO does not usually consider any proposals submitted after the expiry of the 30-working-day deadline; however, upon a justified request, the AMO may accept them even after the expiry of the deadline provided that the remaining period for issuing the decision still allows for a proper review or assessment of the proposal.

No explicit timetable is set for the execution of the divestment or other remedy. The timetable is set in individual decisions based on the individual characteristics of each case.

Law stated - 8 April 2024

Remedies and conditions
What is the track record of the authority in requiring remedies in foreign-to-foreign mergers?

We are not aware of any foreign-to-foreign mergers in which the AMO has requested remedies.

Law stated - 8 April 2024

Ancillary restrictions
In what circumstances will the clearance decision cover related arrangements (ancillary restrictions)?

An AMO clearance decision also covers restrictions directly related to and necessary for the implementation of the intended concentration. Details are set out in the AMO's Guidelines on Restrictions of Competition Relating Directly to a Concentration and Being Essential for its Realisation.

Law stated - 8 April 2024

INVOLVEMENT OF OTHER PARTIES OR AUTHORITIES

Third-party involvement and rights
Are customers and competitors involved in the review process and what rights do complainants have?

The fact that a notification has been submitted is made public on the website of the Antimonopoly Office of the Slovak Republic (AMO) and the Commercial Bulletin, inviting third parties to submit their observations and comments on the intended concentration.

Although third parties have the right to be heard, they do not enjoy procedural rights comparable with those of the notifying parties (eg, third parties in particular generally have no right to appeal the AMO's decision). Under the previous Act on Protection of Economic Competition, effective until mid-2021, third parties could receive access to the file if they were able to demonstrate their legitimate interest. Act No. 187/2021 on Protection of Economic Competition (the Act) does not provide the same opportunity to third parties.

The AMO may also gather information ex officio, in particular by contacting customers and competitors to obtain their opinions on the intended concentration or to request information, clarification or documents related to the concentration. The AMO may also market test the proposals for conditions or commitments.

Law stated - 8 April 2024

Publicity and confidentiality

What publicity is given to the process and how do you protect commercial information, including business secrets, from disclosure?

The fact that a notification has been submitted is made public on the AMO's website and in the Commercial Bulletin. The AMO also publishes its decisions in a similar way. The AMO may, however, not disclose information or documents that contain business secrets that are subject to protection under special laws (eg banking secrecy) or that are marked as being confidential information.

Undertakings are asked to explicitly mark any business or confidential information as such in the notification and in any other comments, statements and documents sent to the AMO, including reasoning regarding why confidentiality has been requested. To be specific, with regard to notification of the concentration, the notifying party must provide reasons for the requested confidentiality and provide a non-confidential version of the notification. The AMO has published guidance on the assessment of information that is marked as business secrets, confidential information or personal data.

The parties may otherwise be requested by the AMO to provide a non-confidential version of the information or documentation, including reasons for the requested confidentiality. Only under exceptional circumstances could the protected information be made accessible by the AMO to another party to the proceedings (with the consent of the affected party) or to its representative (in the absence of such consent).

Law stated - 8 April 2024

Cross-border regulatory cooperation

Do the authorities cooperate with antitrust authorities in other jurisdictions?

The AMO is a member of the European Competition Network and the International Competition Network. It actively cooperates with competition authorities that are members of these networks.

According to the AMO's annual report, its employees were actively involved in European Commission cases as rapporteurs within the Advisory Committee as well as in various working groups with the European Commission. Moreover, the AMO maintains close cooperation with the Czech competition authority, including through the regular exchange of experience and know-how, discussion of legal and other current issues and the organisation of seminars, conferences and workshops. Bilateral cooperation also exists with the Hungarian and Austrian competition authorities.

An important legislative development that is relevant to the implementation of the ECN+ Directive through the Act is the enactment of international mutual assistance. The Act lays down the competency of the AMO to provide assistance in the matter of notification and delivery of relevant documentation to a party to the proceedings in other EU member states.

The AMO also supports the execution of foreign final decisions that impose a fine or periodic penalty payment. In this way, the AMO's decisions are also enforceable in other EU member states, which is particularly important because there have previously been cases in which a fined company ceased to exist or function in the Slovak market, making it difficult to recover fines.

Law stated - 8 April 2024

JUDICIAL REVIEW

Available avenues
What are the opportunities for appeal or judicial review?

Within 15 days of its delivery, the decision of the Antimonopoly Office of the Slovak Republic (AMO) may be appealed to the Council of the AMO. The decision of the Council may be appealed to the Bratislava Administrative Court within two months of its delivery. The decision of the Bratislava Administrative Court may be challenged only on limited occasions before the Supreme Administrative Court.

Filings with the courts do not have a suspensive effect; however, the courts may grant a suspension of the enforceability of the decision at a party's request, provided that serious harm would otherwise occur to the applicant.

There are very few cases in which the AMO has prohibited concentrations in the past; thus, merger control decisions of the AMO have been only very rarely challenged.

Law stated - 8 April 2024

Time frame
What is the usual time frame for appeal or judicial review?

In general, the AMO must issue a decision within three years of the initiation of proceedings (without prejudice to the time limits for issuing a decision in Phase I and Phase II of merger

control proceedings). The judicial review performed by the Bratislava Administrative Court and the Supreme Administrative Court is not subject to any time restrictions; therefore, the time frame largely depends on the complexity of the case and the cooperation of the parties.

Law stated - 8 April 2024

ENFORCEMENT PRACTICE AND FUTURE DEVELOPMENTS

Enforcement record
What is the recent enforcement record and what are the current enforcement concerns of the authorities?

All concentrations notified in 2023 were approved. Two of those concentrations were cleared in Phase II with commitments.

The Antimonopoly Office of the Slovak Republic (AMO) does not distinguish between local mergers and foreign-to-foreign mergers in its assessment, but Act No. 187/2021 on Protection of Economic Competition (the Act) considerably decreases the number of notified cases with regard to extraterritorial joint ventures, owing to the abolishment of the notification threshold related to joint ventures. All foreign-to-foreign mergers that have been notified to the AMO have been cleared.

Law stated - 8 April 2024

Reform proposals
Are there current proposals to change the legislation?

At the time of writing, there are no official proposals to change the legislation.

Law stated - 8 April 2024

UPDATE AND TRENDS

Key developments of the past year
What were the key cases, decisions, judgments and policy and legislative developments of the past year?

An amendment to Act No. 187/2021 on Protection of Economic Competition (the Act) became effective on 15 May 2024, mostly giving the Antimonopoly Office of the Slovak Republic (AMO) the right to carry out market investigations under the Digital Markets Act (the DMA), as well as investigations aimed at verifying that the obligations of gatekeepers under the DMA are being met.

As far as key decisions taken in 2023 by the AMO are concerned, fines exceeding €7 million were imposed by a single decision on a number of undertakings for bid-rigging in the construction field in the energy sector.

One decision in relation to abuse of a dominant position was issued by the AMO, which imposed a fine of €57,939 on a civil association of authors for imposing unfair prices.

All concentrations reviewed in 2023 except two were approved by the AMO in Phase I proceedings and no fines related to concentrations were imposed.

Since 1 March 2023, the AMO has had a new chair, who intends to expand the scope of the AMO's activities.

Law stated - 8 April 2024