PANORAMIC

MERGER CONTROL

Slovenia

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

Slovenia

Wolf Theiss

Wolf Theiss

Klemen Radosavljević klemen.radosavljevic@wolftheiss.com
Tjaša Lahovnik tjasa.lahovnik@wolftheiss.com

QUICK REFERENCE TABLE

The table below is for quick reference only.

Voluntary or mandatory system?	The filing of a notification with the Competition Protection Agency (CPA) is mandatory in cases where the applicable jurisdictional thresholds have been met.
Notification trigger/filing deadline	A merger notification has to be submitted to the CPA no later than 30 days after the conclusion of the agreement, the announcement of a public bid or the acquisition of a controlling interest (whichever of these triggering events occurs first). If the CPA asks the parties to provide a notification of the concentration because their combined market share in Slovenia exceeds 60 per cent, the merger notification must be submitted no later than 30 days after receiving this request.
Clearance deadlines (Phase I/Phase II)	If the concentration does not raise serious doubts as to its compatibility with Slovenian competition law rules, the CPA must issue its decision within 25 working days of receiving a complete notification (Phase I). There is no legal presumption that the concentration has received approval once the waiting period expires. In cases that raise serious doubts as to their compatibility with Slovenian competition law rules, the CPA initiates Phase II proceedings within 25 working days of receiving a complete notification. Once the CPA has initiated Phase II, it must issue a decision within 60 working days of initiating such proceedings. If the parties propose remedies, the deadline for issuing the Phase I or II decision is extended by 15 working days.

Substantive test for clearance	The CPA assesses whether the intended concentration will result in a significant impediment to effective competition within the territory of Slovenia, or a substantial part of it, in particular due to the creation or strengthening of a dominant position.
Penalties	In the case of a failure to notify the concentration within the filing deadline (or failure to notify the concentration at all), the CPA may impose fines of up to 10 per cent of the annual turnover generated by the undertakings concerned in the preceding business year. In addition, a fine of between €5,000 and €10,000 may be imposed on the responsible persons of such undertakings and (if applicable) a fine of between €3,000 and €5,000 on a natural person already controlling at least one undertaking. If the nature of the infringement of the filing obligation is particularly serious, a fine of between €15,000 and €30,000 may be imposed on the responsible person of a legal entity and (if applicable) a fine of between €10,000 and €15,000 on a natural person already controlling at least one undertaking.
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 Slovenia, merger control, as well as other aspects of competition law, is substantially governed by the Prevention of Restriction of Competition Act (the Act). The Act became effective in January 2023 and was last amended on 30 January 2024 (the amendment became effective in February 2024).

The information and documents to submit in a merger control notification are set out in the Decree on the Contents of the Concentration of Companies Notification Form. The filing fees are determined by the Administrative Fees Act. With regard to procedural matters that are not specifically regulated in the Act, the General Administrative Procedure Act applies.

The relevant authority for merger control (and competition law in general) is the Competition Protection Agency (CPA), which is competent for receiving, reviewing and issuing decisions

on notified concentrations. In fulfilling its competencies, the CPA acts independently and autonomously.

The Agency Director and the Agency Council are the main bodies of the CPA. The latter consists of five members who are appointed by the National Assembly (on the proposal of the government) for a term of five years. The Agency Director is the chair (president) of the Agency Council.

For each case, the Agency Council sets up a separate decision panel (comprising all members of the Agency Council who in turn appoint a panel chair from their midst). The merger control review procedure until the adoption of the decision is then conducted by a public officer authorised by the Agency Director.

The decision to impose a fine (administrative sanction) on undertakings is adopted in one unified procedure under the Act (before the current version of the Act came into force, a separate misdemeanour procedure had to be instigated).

Law stated - 8 April 2024

Scope of legislation

What kinds of mergers are caught?

The Act defines the following as concentrations:

- the merger of two or more previously independent undertakings or parts of undertakings;
- the acquisition of direct or indirect control of one or more other undertakings, in whole or in part, by one or more natural persons already controlling at least one undertaking, or by one or more undertakings, whether by purchasing of securities or assets, entering into a contract or by any other means; or
- the creation of a joint venture by two or more independent undertakings, performing on a lasting basis all the functions of an autonomous economic entity.

A concentration does not arise if banks, insurance companies, savings institutions or other financial institutions, the normal activities of which include transactions and dealing in securities for their own account or for the account of others, hold business assets on a temporary basis that they have acquired in an undertaking with a view towards reselling them. This exemption only applies provided that:

- they do not exercise any voting rights in respect of those business assets with a view towards determining the competitive behaviour of the undertaking; or
- they exercise those voting rights only with a view towards preparing for the disposal of business assets and that any such disposal takes place within one year of the date of acquisition.

If the disposal is not reasonably possible within this period, it may – upon request – be extended by the CPA.

Law stated - 8 April 2024

Scope of legislation
What types of joint ventures are caught?

The creation of a joint venture 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 this joint venture has as its object or effect the coordination of the competitive behaviour of undertakings that remain independent (ie, the joint venture partners), the CPA appraises this coordination in accordance with the cartel prohibition (prohibition of restrictive agreements, article 5 of the Act).

If the CPA concludes that the exemption criteria set out in article 5 of the Act are not met, it will not approve the concentration (article 10(3) 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 may be obtained through rights, contracts or any other means that separately or together, taking into account facts and regulations, confer the possibility of exercising decisive influence on an undertaking or part of an undertaking, in particular on the basis of:

- ownership or the right to use all or part of the assets of an undertaking; or
- rights or contracts that confer a decisive influence on the composition, voting or decisions of the bodies of an undertaking.

Control is acquired by individuals or undertakings that are holders of rights or entitled to rights under the contracts concerned, or while not being holders of such rights or entitled to rights under such contracts, have the power to exercise the rights deriving from the contracts.

Minority interests are caught only provided that 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 CPA must be notified of a concentration where in the business year preceding the concentration:

- the combined turnover of the undertakings concerned (including undertakings belonging to the same group) exceeded €35 million in Slovenia; and
- either the turnover of the undertaking acquired (ie, the target), including undertakings belonging to the same group, exceeded €1 million in Slovenia, or in the case of the creation of a full-function joint venture, the turnover of at least two undertakings concerned (including undertakings belonging to the same group) exceeded €1 million in Slovenia.

Even where these turnover thresholds are not met, the undertakings concerned must inform the CPA of the concentration if a combined market share of the undertakings concerned exceeds 60 per cent in Slovenia. The CPA may then request notification of the concentration within 25 working days of the date on which the undertakings concerned informed the CPA (article 66(3) of the Act).

At present, it is unclear whether the above market share test would also be met if one undertaking alone represents a market share exceeding 60 per cent, and there are no overlaps with the other undertaking or undertakings concerned.

The undertaking or undertakings concerned are the merging undertakings, the undertaking gaining control over another undertaking (ie, the acquirer), the acquired undertaking (target) and undertakings that create a notifiable joint venture.

For the turnover calculation, the net revenues from the sale of products and the provision of services in Slovenia have to be taken into account. Turnover generated by sales or services between companies belonging to the same group is not taken into account.

Where the concentration consists of the acquisition of control in part of one or more undertakings, regardless of whether these parts qualify as a legal entity, only the turnover relating to the parts that are subject to the concentration are taken into account for the purpose of turnover calculation. Two or more transactions that take place within a two-year period between the same persons or undertakings are treated as one and the same concentration arising on the date of the last transaction.

Specific rules apply to the calculation of the turnover of credit, and financial institutions where the financial income from shares, loans granted and operating receivables have to be taken into account. With regard to insurance companies, the amount of the gross premiums written is relevant, comprising all revenues and receivables from insurance contracts, including reinsurance premiums paid, after the deduction of taxes or contributions associated with insurance premiums.

Concentrations falling within the jurisdiction of the EU Merger Control Regulation are not subject to the Slovenian merger control regime (one-stop-shop principle).

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 concentrations are subject to the merger control regime if the jurisdictional thresholds are met. The undertakings concerned could be exposed to fines (administrative sanctions) in the case of a breach of the filing obligation. It is not required that any of the undertakings concerned have a registered seat or local branch in Slovenia. To date, the CPA's practice has not developed a de minimis or effects-based exemption.

Law stated - 8 April 2024

Thresholds, triggers and approvals

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

The Act does not contain any provisions that specifically relate to foreign investment or special sectors; however, provisions related to merger control, foreign direct investment and other relevant approvals can be found, among other things, in the following areas.

Media sector

The Act applies to media mergers in the usual way (ie, the CPA is competent to review, assess and clear or prohibit the concentration if the jurisdictional thresholds are met); however, according to the Mass Media Act, special consent granted by the Ministry of Culture is required for the acquisition of shareholdings (or voting rights) of 20 per cent or more in publishers of radio or TV programmes, or printed daily newspapers.

According to article 58(3) of the Mass Media Act, the Ministry of Culture may refuse to grant such approval if the merger results in the creation of a dominant position:

- in the advertising market;
- in the media market where coverage of more than 15 per cent of analogue terrestrial radio programmes is reached on the Slovenian market for radio programmes transmitted via analogue terrestrial radio signals;
- in the media market where coverage of more than 30 per cent of analogue terrestrial television programmes is reached on the Slovenian market for television programmes transmitted via analogue terrestrial radio signals; or
- where the number of issues of daily newspapers exceeds 40 per cent of all sold issues of daily informative printed media in Slovenia that is issued at least three times a week.

Energy sector

In the energy sector, the role of the market regulator is performed by the Agency for Energy. According to the Energy Act, it is, among other things, competent to supervise the transparency and competitiveness of the electricity and gas markets. In this function, the Agency for Energy may be involved in the assessment of sector-specific mergers.

Electronic communications sector

The market regulator in the electronic communications sector is the Agency for Communication Networks and Services of the Republic of Slovenia (AKOS). The Electronic Communication Act provides specific rules for the cooperation between the AKOS and the CPA.

Among other things, both authorities are authorised to exchange relevant information and cooperate in determining and analysing relevant markets and identifying significant market power. The AKOS is also competent to define relevant markets and to assess significant market power; hence, in practice, it is likely that the CPA will involve the AKOS when assessing sector-specific mergers.

Financial sector

In the case of an acquisition of qualified shareholdings (ie, above 10, 20, 33 and 50 per cent), the laws regulating banks, insurance companies, stock brokerage companies and fund management companies require the approval of the respective regulatory bodies. Obtaining such shareholdings without the prior consent of the competent regulatory body results in the loss of voting rights based on the shares beyond the qualified shareholding.

Foreign direct investment

In 2020, Slovenia established a foreign direct investment (FDI) screening mechanism, which was amended in 2023. The FDI screening mechanism is applicable to investments aiming to establish or maintain lasting and direct links between the foreign investor (ie, any foreign citizen or entity from a non-EU country) and an economic entity established in Slovenia through direct or indirect acquisition of at least 10 per cent participation in capital or voting rights in a Slovenian target company. Such investments may include takeovers, mergers, greenfield investments and acquisition of real estate (acquisitions by foreign investors of real estate essential to critical infrastructure or in the vicinity of such infrastructure is also subject to FDI screening).

The commission established by the Ministry of Economic Development and Technology conducts a preliminary screening procedure and, if it is established that the FDI may pose a threat to public order of Slovenia, it can propose that an in-depth procedure is carried out by the Ministry of Economic Development and Technology. The latter may decide to authorise, condition or prohibit a particular FDI if the investment poses a threat to the security and public policy of Slovenia, such as where it may have an effect on any of the following areas:

- critical infrastructure;
- critical technologies and dual-use items;
- supply of critical sources;
- access to sensitive information;
- freedom and pluralism of the media; and
- certain programmes and projects in the interest of the European Union.

The decision is particularly based on a preliminary evaluation of whether:

- the foreign investor is directly or indirectly controlled by third-country (non-EU) governments, including national authorities or third-country (non-EU) armed forces, including through ownership structure or significant funding;
- the foreign investor has already been involved in activities affecting security or public policy in an EU member state;
- there is a serious risk that the foreign investor engages in illegal or criminal activities;
- the foreign investor reached a takeover threshold in the target and obtained with the successful takeover bid at least 10 per cent of voting rights or 75 per cent of shares with voting rights;
- the foreign investor obtained through the target at least a 20 per cent market share in critical sources in Slovenia; and
- the foreign investor obtained 25 per cent or 50 per cent of shares or voting rights in the target.

A decision to prohibit an individual FDI during the screening procedure will require measures to rectify the effects of the FDI, including disposal of the target's shares.

The applicable FDI must be notified to the Ministry of Economic Development and Technology no later than 15 days after the day of the execution of the respective agreement or the publication of the takeover offer.

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?

A merger notification has to be submitted to the Competition Protection Agency (CPA) no later than 30 days after the conclusion of the agreement, the announcement of a public bid or the acquisition of a controlling interest (whichever of these triggering events occurs first). The same applies to CPA notification due to the parties having a combined market share exceeding 60 per cent. If the CPA requests the parties to notify the concentration because their combined market share in Slovenia exceeds 60 per cent, the merger notification must be submitted no later than 30 days from receipt of this request.

In the case of a failure to notify the concentration within the filing deadline, the CPA may impose fines in the amount of up to 10 per cent of the annual turnover generated by the undertakings involved in the concentration (including other undertakings belonging to the same group) in the preceding business year. In addition, a fine between €5,000 and €10,000 may be imposed on the responsible persons of such undertakings, and (if applicable) a fine between €3,000 and €5,000 on a natural person already controlling at least one undertaking.

If the nature of the infringement of the filing obligation is particularly serious (eg, owing to the amount of damage inflicted, the pecuniary benefit, the infringer's intent or unlawful gain), a fine of between €15,000 and €30,000 may be imposed on the responsible person of a legal entity, and (if applicable) a fine of between €10,000 and €15,000 on a natural person already controlling at least one undertaking.

Law stated - 8 April 2024

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

Concentrations that consist of a merger or acquisition of joint control have to be notified jointly by the undertakings involved in the merger, or by those acquiring joint control. In all other cases, the undertaking acquiring control is responsible for the filing.

The filing fee is determined by the Administrative Fees Act. At present, it is €2,000.

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 intended concentration must not be implemented prior to clearance as undertakings are not allowed to exercise rights and obligations arising from the intended concentration until the CPA issues a clearance decision (suspension obligation).

If the CPA requests the parties to notify the concentration because their combined market share in Slovenia exceeds 60 per cent, the undertakings must cease implementing the concentration as of the date of receipt of this request.

Under exceptional circumstances, the CPA may (upon the request of the parties) permit the implementation of the concentration prior to clearance, if such an implementation is essential to maintain the full value of the investment or to perform services of general interest.

The suspension obligation does not have an effect on the implementation of public bids pursuant to the Takeovers Act, provided that the acquirer does not exercise voting rights or exercises them only in accordance with a permit for early implementation granted by the CPA.

The duration of the waiting period depends on whether Phase I or Phase II proceedings are applied.

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?

In the case of closing before clearance, the CPA may impose fines.

In addition, the CPA may file a legal action with the competent civil court to declare the implementation (the exercise of rights and obligations), which is contrary to the suspension obligation, null and void (articles 12(5) and 68(3) of the Prevention of Restriction of Competition Act (the Act)). We are not aware of this legal action having been filed by the CPA to date.

According to article 77 of the Act, the CPA may impose measures on undertakings to restore the situation to that which existed prior to the implementation, in particular through the division of the undertaking or the disposal of all the shares acquired.

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 to foreign-to-foreign mergers.

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 principle, foreign-to-foreign concentrations are assessed in the same way as local concentrations; hence, under exceptional circumstances, the CPA may (upon the request of the parties) permit the implementation of the concentration prior to clearance if the implementation is essential to maintain the full value of the investment or to perform services of general interest.

The Act does not explicitly provide for hold-separate (carve-out) solutions. Given that the Slovenian merger control regime assesses the effects of a merger in the Slovenian market, depending on the transaction structure, it may be possible to carve out the transaction steps related to the Slovenian market and to proceed with the implementation outside Slovenia without infringing the Slovenian suspension obligation. Although widely discussed in practice, we are not aware of such solutions having been tested with the CPA to date.

Law stated - 8 April 2024

Public takeovers

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

Public takeover bids are primarily monitored by the Security Market Agency and are subject to the provisions of the Takeovers Act. The CPA has to be informed of the intended public bid by a simple written notice on the day such intention is published. Further, the CPA must be provided with the bid document (ie, the prospectus).

Public takeovers that lead to notifiable concentrations within the meaning of the Act require the submission of a merger notification to the CPA no later than 30 days after the announcement of the public bid. Importantly, the suspension obligation does not apply to the implementation of public bids within the meaning of the Takeovers Act, provided that the acquirer does not exercise voting rights or exercises them only in accordance with permission for early implementation granted by the CPA.

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?

The information and documentation to be submitted in a merger notification (the Form) are set out in the new Decree on the Contents of the Concentration of Companies Notification Form, which is valid from February 2024. The Form requires the parties to provide quite substantial information on the concentration as well as on the relevant markets, market shares and market size. Among other things, the following must be provided:

- information on the parties to the concentration (eg, name, registered seat, contact person, nature of business, ownership and control; personal and financial links and previous acquisitions; and annual reports);
- description of the intended concentration;
- originals or certified copies of all documents on the basis of which the concentration takes place;
- definition of the relevant markets;
- the total size of the relevant markets and market shares of the undertakings concerned;
- information on main competitors, customers and suppliers, the structure of supply and demand, market entry, the relevance of research and development, efficiency gains, etc;
- information on indispensable ancillary restrictions; and
- (if available) copies of analyses, reports or studies related to the relevant market.

If none of the undertakings concerned, together with other undertakings in the group, are engaged in economic activity in the same relevant product or service market and geographic

market (horizontal overlap); or in a relevant product or service market that has a vertical relationship with, or is a closely related adjacent market to, a relevant product or service market in which any other party to the concentration operates, the detailed information on the markets does not need to be provided. In any case, the parties must provide information on the definition of the relevant markets.

The parties may also request from the CPA a waiver from providing certain information required by the Form if the entire set of such information is, in the opinion of the parties, not necessary for the accurate and complete filing and the assessment of the case.

If some of the information requested in the Form is not available to the parties, this must be stated in the filing, together with information on where the CPA may obtain such information.

The notification and all documents attached thereto must be submitted in the Slovenian language. Documents on the basis of which the concentration takes place must be provided in certified copies; all other documents attached to the filing may be provided in simple copies.

The notification needs to be complete and must include accurate and true information. If information is missing in the notification, the CPA may ask the notifying party to supplement the required information before the deadline set by the CPA. The notifying party's failure to supplement the notification will trigger a legal presumption that the transaction has not been filed and will make the notifying party subject to the sanctions for failure to notify concentrations. Further, for providing incorrect or misleading information in the notification, the CPA may also impose a procedural fine on the undertaking of up to 1 per cent of the undertaking's annual turnover in the preceding business year.

Law stated - 8 April 2024

Investigation phases and timetable

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

The CPA decides in Phase I proceedings whether the concentration does not raise serious doubts in respect of its compatibility with Slovenian competition law rules. The CPA must then issue its decision within 25 working days of receipt of a complete notification.

In cases that raise serious doubts in respect of their compatibility with Slovenian competition law rules, the CPA initiates Phase II proceedings within 25 working days of receipt of a complete notification. Once the CPA has initiated Phase II, it must issue a decision within 60 working days of initiating the proceedings.

If the parties propose remedies, the deadline for issuing the Phase I or Phase II decision is extended by an additional 15 working days.

The waiting period starts running only once a complete notification has been submitted; hence, if the CPA finds that the submitted notification does not contain all mandatory information, it will issue a request for additional information, and the clock does not start running.

There is no legal presumption that the concentration has received approval once the waiting period expires. In general, the parties may in such a case file a legal action with the Administrative Court of Slovenia.

Following the adoption of the current Act in January 2023, the CPA may also decide in simplified proceedings if:

- none of the undertakings concerned, together with the other undertakings in the group, are engaged in economic activity on the same relevant product or service market and geographic market (horizontal overlap); or on a relevant product or service market that has a vertical relationship with, or is a closely related adjacent market to, a relevant product or service market on which any other party to the concentration operates;
- the combined market share of all undertakings concerned in the concentration, together with other undertakings in the group active in the same relevant product or service market (horizontal relationships), does not exceed 15 per cent under all plausible market definitions;
- the individual or combined market share of the undertakings concerned in the concentration, together with other undertakings in the group active in the product or service market that is vertically related to the market in which any other undertaking concerned in the concentration operates (vertical relationships), does not exceed 25 per cent in any of the vertically related markets under all plausible market definitions; or
- the undertaking concerned, together with other undertakings in the group, acquires sole control over an undertaking over which it already has joint control.

There are also certain exceptions to the simplified proceedings explicitly set out in the Act.

Law stated - 8 April 2024

Investigation phases and timetable

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

The Act does not provide for the possibility of obtaining a waiver, and there is no formal procedure in respect of extensions of the waiting periods. There is no legal presumption that the concentration has obtained approval once the statutory waiting period has expired; therefore, depending on the CPA's workload, in practice Phase I clearance decisions are often rendered around two to two-and-a-half months after the submission of the notification.

The CPA may also decide in simplified proceedings; however, the Act does not provide for a different timeline in this respect.

Law stated - 8 April 2024

SUBSTANTIVE ASSESSMENT

Substantive test

What is the substantive test for clearance?

The Competition Protection Agency (CPA) assesses whether the intended concentration would result in a significant impediment to effective competition within the territory of Slovenia, or in a substantial part of it, in particular because of the creation or strengthening of a dominant position.

We are not aware of any cases in which the CPA has taken somewhat special circumstances into consideration.

Law stated - 8 April 2024

Substantive test

Is there a special substantive test for joint ventures?

No. However, if the creation of a joint venture has as its object or effect the coordination of the competitive behaviour of undertakings that remain independent, such coordination is assessed in accordance with the criteria of article 5 of the Prevention of Restriction of Competition Act (the Act).

Law stated - 8 April 2024

Theories of harm

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

Among other things, the CPA investigates an intended concentration on the basis of:

- market position of the undertakings involved in the concentration;
- options for financing the undertakings involved;
- structure of the market;
- choices and alternatives that are available to suppliers and customers, and their access to sources of supply or the market itself;
- barriers to entry;
- supply and demand projections with regard to the relevant markets;
- benefits to intermediate and final customers; and
- technical and economic development (provided that it is advantageous for consumers and does not hinder competition).

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 such as industrial policy or public interest issues as being relevant for the assessment process; however, in practice, it

is not unlikely that the CPA 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?

Economic efficiencies (described rather generally as 'technical and economic development') are part of the appraisal of the concentration and are taken into account on the condition that they are advantageous to consumers and do not hinder competition.

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?

The Competition Protection Agency (CPA) assesses whether an intended concentration would result in a significant impediment to effective competition within the territory of Slovenia, or in a substantial part of it, in particular owing to the creation or strengthening of a dominant position.

The parties may propose remedies at any time and submit comments and evidence to remove the CPA's concerns; however, ultimately, if the remedies proposed or comments submitted by the parties cannot eliminate the CPA's concerns, it may issue a decision declaring the concentration incompatible with Slovenian competition rules.

Law stated - 8 April 2024

Remedies and conditions

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

According to article 75 of the Prevention of Restriction of Competition Act (the Act), the notifying party may submit remedies to eliminate serious doubts regarding the compatibility of the concentration with Slovenian competition rules. The Act does not distinguish between structural and behavioural remedies. In practice, depending on the case, both may be accepted by the CPA.

Law stated - 8 April 2024

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

Remedies can be submitted within 45 days of the decision of the CPA to initiate Phase II proceedings. Remedies proposed after the deadline will only be assessed by the CPA, if the CPA may clearly deduct on the basis of available data that such corrective measures will entirely and without doubt remedy the detected effects on competition. In this case, the time limit for the CPA to issue its decision is extended by 15 working days.

When assessing the proposed remedies, the CPA takes into account their nature and scope, and the likelihood of their effective and timely implementation. If accepted by the CPA, it specifies the adopted remedies, the obligations to ensure their implementation and supervision, and time limits for their implementation in the clearance decision.

Later, the CPA may require the notifying party to provide a report on the implementation of the imposed remedies.

At the request of the notifying party, the CPA may also amend its decision on remedies due to changed circumstances beyond the control of the notifying party, which occurred after the decision was adopted. If an amendment is not possible, the CPA may annul its previous decision and decide on the compatibility of the concentration with competition, or impose other measures on the notifying party.

Law stated - 8 April 2024

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

The CPA has previously conducted a market test in relation to remedies proposed by undertakings participating in a foreign-to-foreign merger. The transaction concerned the market for the wholesale supply of sports television channels.

Law stated - 8 April 2024

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

In the merger filing, among other things, the parties have to provide information on indispensable ancillary restrictions related to the transaction. If the CPA issues a clearance decision either in Phase I or Phase II, that decision is deemed to cover restrictions directly related to and necessary for the implementation of the intended concentration.

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 Competition Protection Agency (CPA) publishes a list of notified concentrations on its website. Phase I decisions are also made public on the CPA's website.

In a similar way, in Phase II proceedings, both the fact that the proceedings have been initiated and the final decision, are published on the CPA's website. The information on the initiation of Phase II proceedings states the names of the parties and a brief summary of the grounds for initiation of the proceedings, and invites third parties to submit their observations and comments. Non-confidential versions of the decisions of the Administrative Court issued following judicial reviews into CPA decisions are published on the CPA's website.

Third parties that are able to demonstrate their legally recognised interest may lodge an application for participation in the proceedings. The request must be filed with the CPA within 30 days of the publication of the initiation of proceedings. If the participation in the proceedings is granted, the third party may take part in the entire proceedings, receive access to the file, lodge statements and opinions and, ultimately, challenge the final decision issued by the CPA.

Apart from the above, any third parties, even without formally joining the proceedings, may submit comments and statements to the CPA at any stage of the Phases I and II proceedings. Although the CPA is not legally obliged to consider such information, it usually takes it into account when assessing the case.

The CPA may also, in the course of the proceedings, approach third parties (eg, competitors, customers and suppliers) on its own initiative, in particular via written requests for information.

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 CPA publishes a list of notified concentrations on its website. Phase I decisions are also made public on the CPA's website.

In a similar way, in Phase II proceedings, both the fact that the proceedings have been initiated and the final decision, are published on the CPA's website. The information on the initiation of Phase II proceedings states the names of the parties and a brief summary of the grounds for initiation of the proceedings, and invites third parties to submit their observations and comments. Non-confidential versions of the decisions of the Administrative Court issued following judicial reviews into CPA decisions are published on the CPA's website.

The CPA must protect the identity of the complainant or provider of other information if this person requests protection and shows that it is likely that disclosure may cause significant harm to it.

Access to the case file may only be granted to the parties to the proceedings; however, among other things, the parties are not allowed to review or make copies of confidential information or information relating to confidential sources. The burden of proving the existence of such confidential information (eg, business secrets) rests with the undertaking claiming so.

The parties may also be asked by the CPA to submit a non-confidential version of their respective documents. It is advisable to explicitly mark any confidential information as such in the merger notification and in any comments, statements and documents sent to the CPA.

The CPA may disclose confidential information that constitutes a business secret to the notifying parties if the need for disclosing this information prevails over the interest in protecting it. We are not aware of any such cases of disclosure with regard to merger proceedings.

Information on the initiation of the procedure as well as the Phases I and II decisions published on the CPA's website are non-confidential versions from which business secrets of the parties have been removed. The CPA requests the parties up front to provide non-confidential versions of the decisions.

Law stated - 8 April 2024

Cross-border regulatory cooperation

Do the authorities cooperate with antitrust authorities in other jurisdictions?

The CPA is a member of the European Competition Network and the International Competition Network. It also cooperates with the Organisation for Economic Co-operation and Development and maintains informal contacts with some competition authorities of non-EU countries in the region.

Law stated - 8 April 2024

JUDICIAL REVIEW

Available avenues

What are the opportunities for appeal or judicial review?

Legal actions for judicial review against the decision of the Competition Protection Agency (CPA) can be filed with the Administrative Court. The court generally decides without an oral hearing. The plaintiff may not put forward any new facts or evidence unless the plaintiff was not given the chance to put forward facts and evidence in proceedings in front of the CPA.

An appeal against a decision of the Administrative Court can be filed with the Supreme Court.

We are not aware of any merger cases that have been through judicial review, as the undertakings involved usually address the CPA's concerns by offering corrective measures (commitments).

Law stated - 8 April 2024

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

Legal action has to be filed with the Administrative Court within 30 days of the date on which the CPA's decision was served. Based on court statistics for 2022, the average duration of a procedure before the Administrative Court is seven months.

The appeal procedure before the second instance court (ie, the Supreme Court) usually lasts for between several months and one year before the court issues its decision.

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?

The number of notified and cleared mergers has remained relatively stable in recent years. The Competition Protection Agency (CPA) cleared most concentrations that were notified, with the notifying party proposing corrective measures only in exceptional cases.

Law stated - 8 April 2024

Reform proposals
Are there current proposals to change the legislation?

In February 2023, the Slovenian legislator adopted an amendment to the Prevention of Restriction of Competition Act (the Act). A key change introduced by the Act that directly affects merger control is the introduction of a deadline for proposing remedies. In addition, the new Decree on the Contents of the Concentration of Companies Notification Form was adopted. This clearly reduces the amount of information that needs to be provided if there are no overlaps between the undertakings involved.

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?

In the past few years, the Competition Protection Agency (CPA) has become stricter in assessing notified concentrations and is very efficient in tracking non-notified concentrations (in particular, foreign-to-foreign mergers) or any prohibited actions during the waiting period before a decision on merger clearance is issued.

At the end of 2023, the CPA issued its first-ever administrative sanction in a unified administrative and offence proceedings (the Veterinary Association was fined €43,000). Previously, proceedings were carried out in two stages, with breaches established in administrative proceedings and fines determined in offence proceedings. This significantly prolonged the process. Furthermore, the fine was determined on the basis of a submitted proposal for settlement by the Veterinary Association, which enabled the CPA to issue a lower fine for the breach (which lasted almost eight years) than it would have otherwise.

Law stated - 8 April 2024