

CURRENT ISSUES OF ANTIMONOPOLY LAW AND ANTIMONOPOLY REGULATION IN THE SLOVAK REPUBLIC

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ABSTRACT

Without healthy competition, the market can't function optimally. The protection of competition through the legislation and antitrust regulation is therefore essential. The aim of this article is to evaluate the success of the antitrust policy in the Slovak Republic in selected areas of its implementation. The basic rules of competition in the Slovak Republic is based on the Constitution of the Slovak Republic. Other laws governing this area of the economy are the Commercial Code, and in particular the Act No. 136/2001 Coll. on the Protection of Competition. Besides the Slovak competition law, is applied also European law which is an essential part of Slovak legislation.

The Antimonopoly Office of the Slovak Republic in the year 2017 proved cartels concluded in the area of aerial measuring photographing, also in the sale of motor vehicles and in the market with meal and benefit vouchers. Furthermore, they pointed to vertical agreements restricting competition in relation to the sale and servicing of motor vehicles, where imposed on the undertakings the obligation to accept commitments in order to eliminate competition problems in a short time and at lower administrative costs.

Keywords: competition, antimonopoly law, antimonopoly regulation

INTRODUCTION

Competition is a natural and at the same time essential phenomenon in the market. Without healthy competition, market could not operate optimally. We can mark it as a drive motor that motivates entrepreneurs to make progress, improve and be able to offer something different, better than their competitors, so will consumers prefer and buy their product. They achieve so one of their major goals, which is to maximize profit. The improvement may lie in the new product design, increase its quality, implementation of new technologies in the production, etc. what may have an ultimately beneficial effect on consumers, who have the opportunity to choose from the many diverse products and it will also positively affect the market.

On the basis of these reasons, we can conclude that the protection of competition through legislation and antitrust regulation is of major importance and is undoubtedly needed. Particularly in the case of market structures as a monopoly and oligopoly, where the incidence of anti-competitive behaviour is not unusual [3]. The aim of this article is to evaluate the success of the antitrust policy in the Slovak Republic in selected areas of its implementation.

ANTIMONOPOLY LEGISLATION

One of the fundamental objectives of the European Union (EU) is the support and development of economic life in the community. This objective is achieved through the establishment of the common market and economic and monetary union. The basic premise of the existence and functioning of the internal market, like any other, is an effective competition, which is a fundamental value protected by the law of the EU [1], [2].

The concept of competition law can be defined as a summary of legal norms that regulate the processes of competition from various points of view, govern competition between actors operating on the market and enter into competitive relationships.

Among the main objectives of this legal sector can be included the consumer welfare, efficiency, protection of competitors and integration and protection of the EU internal market. The subject of competition law is to protect competition against its distortion. The actual disruption may lie in the proceedings of entrepreneurs or even in the activities of public or state institutions. On this basis, we can divide the competition law into four areas, as follows: the area of agreements restricting competition, the area of abuse of dominant position, control of concentrations and state aid control [2].

Legislation for the protection of competition in the Slovak Republic

The basic legal regulation of competition is based on the Constitution of the Slovak Republic: „The Slovak Republic protects and promotes competition. The law shall lay down the details.“ [8]. Under the laws mentioned in this constitutional article we can consider The Commercial Code, which in part II confront unfair competition, and Act No.136/2001 Coll., on Protection of Competition. In addition to this legislation, we must also take into account European law, that is, since the entry of the Slovak Republic to the EU, an integral part of the Slovak legal order [5].

The Act No. 136/2001 Coll. on Protection of Competition is special legislation, which we include in the public legal practice [4]. Its content is divided into 10 parts. The first part contains basic provisions such as the purpose and scope of the Act. We find here also the definitions to some of the concepts (for example, entrepreneur, relevant market, turnover, etc.). The following sections are devoted to forms of illegal restrictions of competition which are similar to European law the agreements restricting competition and abuse of dominant position. It also includes legislation of concentrations. The third and fourth part introduces us with the Office and its jurisdiction. In the condition of the Slovak Republic, this Act applies and on its compliance supervises the Antimonopoly Office of the Slovak Republic (AMO SR). The fifth section deals with the issue of proceedings for the illegal restriction of competition. Provisions of the six-section outline fines as such, their storage, their maximum height [9]. It also includes the leniency programme which, under certain conditions allows to reduce or not to impose a fine for participating in a cartel [6]. It also defines the concepts such as the settlement (possibility of the fine reduction, if the entity takes responsibility), the obligations (imposition them in order to remove a possible threat to competition) and remuneration for bringing evidence of a competition restricting agreement. Part seven is devoted to other forms of illegal restrictions of competition.

ANTIMONOPOLY REGULATION

Regulation in the case of cartels

Cartel is an agreement between entrepreneurs, who are each other's competitors. Mutual agreement of the competitors will remove competition and pressure on entrepreneurs, resulting in a significant price increase, a smaller selection of goods and services and a slowdown in innovations. As a result, consumers pay more for less quality. This negative impact on the consumers will finally be reflected even in the economy as a whole. Therefore, the cartels are prohibited at all times and in all circumstances.

The Council of the Antimonopoly Office of the Slovak Republic in 2018 confirmed the correctness of the first-instance decision of the OMU SR, the Division of Cartels, which on the five entrepreneurs operating in the market for the issuance, distribution and sale of meal and benefit vouchers, impose a fine for two cartels agreements. Entrepreneurs have committed two of the anti-competitive proceedings:

- market sharing cartel agreement and
- cartel agreement based on limiting the maximum number of meal vouchers accepted in retail chains.

By the decision of the Council of the Office, the fines for individual entrepreneurs were confirmed in the following amount: DOXX, Žilina: EUR 486 158; Edenred Slovakia: EUR 845 237; LE CHEQUE DEJEUNER, Bratislava: EUR 1 127 401; SODEXO PASS SR, Bratislava: EUR 20 307; VAŠA Slovensko, Bratislava: EUR 503 248.

In accordance with the Act on Protection of Competition, the entrepreneurs got a ban to participate in public procurement for a period of three years [7].

The Antimonopoly Office of the SR in 2018 also has imposed over EUR 9 million fine on 15 entrepreneurs for cartel agreement in the sale of motor vehicles [6]. The cartel agreement was based on negotiations on prices, market allocation, the exchange of sensitive business information and coordination in the process of public procurement, public tenders or other similar competition. The agreement concerned the sale of passenger cars and light commercial vehicles.

Over the last few years, the Office has received many complaints relating to the practice of agreements restricting competition. They were received from state administrative authorities and related to public procurements financed by the European Structural and Investment Funds. Cartel agreements in public procurements remained the Office's priority, since the existence of these agreements thwarts the purpose and the aim of public procurements. The cooperation between tender participants may occur in various forms, for example as agreements on price, contracts allocation or other forms of coordination, agreements on non-submitting bids or contract rotation.

Table 1 Balance of the activities of the Antimonopoly Office in the area of cartels

	Year 2014	Year 2015	Year 2016	Year 2017	Year 2018
Sum of decisions	5	10	9	3	4
Sum of administrative proceedings	12	20	15	7	5
Sum of general investigations	9	24	47	60	40
Sum of received complaints	-	94	86	58	41

Source: Annual Report of the Antimonopoly Office of the SR 2018

Regulation in the case of dominant position abuse and vertical agreements

Dominant position as such is not prohibited. Entrepreneurs, however, don't be allowed to abuse their dominant position and so restrict the competitive pressure and make harder for competitors entering the market. We can talk about the dominant position of the entrepreneurs,

if an entrepreneur has a space for independent manners in relation to competitors, customers and consumers, which enables him to influence the price, output, innovation, etc.

Negative effect have not only the agreements among direct competitors (horizontal agreements) but also vertical agreements among entrepreneurs operating on the other stages of the distribution chain, for example, a relationship of supplier-costumer. These can be the exclusive distribution agreements or agreements whose conclusion is conditional on the adoption of additional obligations that have no connection with the subject of such contracts. Not all vertical agreements are in conflict with the Act on Protection of Competition.

The Council of the AMO SR in 2018 confirmed the decision of the AMO SR, the Division of Abuse of Dominant Position and Vertical Agreement, by which the Office imposed fines on the entrepreneurs RAJO, a.s., Bratislava and its distributors - 8 chain stores. They committed in the years 2014 to 2018 anticompetitive conduct in the form of vertical agreements restricting competition. Their common purpose should be resale price maintenance (RPM) in the area of supply and sale of products of the brand Rajo in the categories of milk, butter, cream for end consumers in the territory of the Slovak Republic. The fines were set according to the gravity of the infringement at a rate of 5% of the relevant turnover, which was then multiplied by the number of years of infringement, that is, from one to five years. In the case of the company BILLA, s.r.o., Bratislava, the fine was reduced by 50% based on the successful settlement process. The Office has imposed here fines totalling EUR 10 million [6].

Table 2 Balance of the activities of the Antimonopoly Office in the area of abuse of dominant position and vertical agreements

	Year 2014	Year 2015	Year 2016	Year 2017	Year 2018
Sum of decisions	0	0	0	0	1
Sum of administrative proceedings	0	0	0	1	2
Sum of general investigations	2	3	5	7	8
Sum of received complaints	29	78	42	61	46

Source: Annual report of the Antimonopoly Office of the SR 2018

In 2018, there was a decrease in the number of complaints in the area of abuse of dominant position compared to 2017. This is a common phenomenon, as the number of complaints in this area may vary significantly each year. Despite the lower number of complaints, the Office conducted the highest number of investigations in this area in 2018 compared to last few years.

Regulation in the case of concentrations

The concentration (merger) is a process of economical merger of entrepreneurs. The joining of enterprises is a common phenomenon of free enterprising in the condition of a market economy. However, such joining are able to restrict competition. Not all joining among entrepreneurs shall be subject to inspection by the Antimonopoly Office of the SR, but only those which meet the turnover criteria determined by law.

AMO SR, the Division of Concentrations, in 2018 issued a decision imposing fines on the entrepreneur "JFTG", Czech Republic in the total amount of EUR 600 000 and the entrepreneur "LB", Slovak Republic in the total amount of EUR 7 571. The parties to the proceedings infringed the Act on Protection of Competition by failing to notify the merger grounded in the acquisition of the joint control of the entrepreneur JFTG and LB over the entrepreneur Panta

Rhei. They infringed the Act also by exercising rights and obligations arising from the merger before it was finally decided on it by the Office, while there has been the full implementation of the merger, i.e. the acquisition of the business share in the company Panta Rhei. Both parties, having regard to the Office's findings, made the settlement, resulting in the reduction of the fine by 50% [7].

Table 3 Balance of the activities of the Antimonopoly Office in the area of concentrations

	Year 2014	Year 2015	Year 2016	Year 2017	Year 2018
Sum of decisions (fines)	0	1	1	1	1
Sum of decisions (approval of merger)	21	21	24	22	26
Sum of general investigations	19	7	3	5	2
Sum of administrative proceedings	26	30	29	28	34

Source: Annual report of the Antimonopoly Office of the Slovak republic 2018

The number of administrative proceedings, as well as the number of decisions on mergers, have been steady over last few years. It is evident that the Office's activity towards sanctioning the failures to notify mergers and their implementation without the Office's approval has increased throughout the recent years.

CONCLUSION

The Antimonopoly Office of the Slovak Republic intervenes in the case of cartels, abuse of dominant position, vertical agreements. It controls the mergers and assesses the conduct of state administration bodies and local self-government in the case that they have been committed by the restriction of the competition. It also ensures the protection of competition in the field of state aid. AMO SR applied in addition to the Slovak also the European competition law. It also proposes measures for the protection and promotion of competition.

Cartel agreements rank among the most serious infringements of the competition rules, which bring benefits only to their participants. The Division of Cartels and Division of Abuse of Dominant Position and Vertical Agreements in 2018 dealt with more than 100 complaints of possible anti-competitive behaviour in various sectors. Sanctions in the form of fines have reached the total amount of more than EUR 10.6 million.

The Act on Protection of Competition allows the Office doesn't impose a fine or reduce this fine cartelists for participation in the cartel, which would otherwise have been imposed. Don't impose a fine is possible only to one and the first entrepreneur who ask the Office on his own initiative don't impose fine, and at the same time submit decisive evidence of the cartel's existence, or submit information and evidence crucial for the conduct of the inspection. "Leniency program" contributes significantly to the detection and sanctioning of cartels, encourages entrepreneurs to cooperate with the Office and so helps to effectively fight the cartels. This program is built on the same principles as the program of the European Commission.

An alternative option to the imposition of a fine is the use of the institute of "commitments". The entrepreneur can propose commitments to the Office that will eliminate the competitive problem in the market. In such a case, the Office don't find a violation of the ban, but directly

committed to the entrepreneur for the implementation of the measures, which will remove the problem identified in the market.

Another entrepreneur's option in the case of abuse of dominant position in the market is the use of institute of “settlement”. The settlement allows the person who has infringed the Act on Protection of Competition, to get the benefit in the form of a reduced fine up to 30% in the case that this person voluntarily admits to the lawbreaking, and at the same time assumes the responsibility for such violations.

AMO SR focuses on the prioritization of the Office's activities. Its objective is to address the personnel and financial capacity of the Office, in particular, to the solution of fundamental competitive problems. This means that from the number of suspicion on the lawbreaking, the Office solves those that affect a large circle of consumers, respectively, concern a very serious anticompetitive conduct. It is a Europe-wide trend of transition from a formal assessment of the competition cases to the so-called economic approach. In terms of sectors, the Office considers a priority for the next period the public passenger transport, sector of motor vehicles and food-processing industry.

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