

**Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE****Annual Report on Competition Policy Developments in Slovenia****-- 2018 --****5-7 June 2019**

This report is submitted by Slovenia to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 5-7 June 2019.

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Slovenia

BACKGROUND AND EXECUTIVE SUMMARY

1. This annual report describes recent development in competition law and policy in Slovenia and summarizes the competition enforcement activities of the Slovenian Competition Protection Agency (hereinafter referred to as “CPA”) for the year 2018.

2. CPA is an authority with the powers of enforcing competition rules. It was established in 2013 by reorganization of the former Slovenian Competition Protection Office which was a part of the Ministry of the Economy. The CPA is now organized as an independent administrative authority which is responsible for the enforcement of antitrust and merger control rules in Slovenia. If an anti-competitive practice also affects trade between EU member states, the CPA will apply articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU).

3. The long-term objective of the CPA is the promotion of effective competition in all sectors of national economy. This general objective is pursued primarily by decision-making activities and competition advocacy. In this respect, CPA has been dealing with 14 antitrust cases related to anticompetitive practices, including agreements and abuses of dominant positions. In 2018 CPA has issued 43 decisions; one issued decisions was related to anticompetitive agreements and concerted practices and one decision to the abuse of dominant position. Furthermore, in 2018 CPA dealt with several notified concentrations and issued 41 decisions.

4. Concerning the proposed or adopted changes to competition law and policies, further development in the regulation of the assessment of illicit behavior in the food supply chain was enacted, aiming to contribute to the more effective identification and assessment of those practices by market participants. In the amended Agriculture Act a re-defined legal presumption of significant market power is introduced. Moreover the illicit behavior is expanded and redefined with a list of 23 specific practices and the level of fines for offences is now linked to the share of annual turnover.

5. CPA, in parallel with its legal competences, also performed activities aiming to raising competition culture of all market participants and therefore competition advocacy represents important role in the policy of the Agency. CPA has the objective of establishing closer ties with other public authorities as also representatives of Chamber of Commerce and Industry and various branch associations. In the framework of various consultations, the competences and areas of action of CPA were introduced, in order to better understand the scope of competition law and policy.

6. In the field of exchange of experiences at the international level, participation to several conferences and roundtables in EU competition authorities also enabled the staff of CPA to share and exchange experience in competition field.

7. Concerning the authority’s annual budget over the past few years, analysis shows that budget is gradually increasing; considering also the number of FTEs, the lion's share of the budget is still used for labour costs, leaving less room for more demanding market analysis projects and international cooperation.

1. Changes to competition law and policies, proposed or adopted

1.1. Summary of new legal provisions of competition law and related legislation

1.1.1. Amendments to the Decision on the establishment of the Slovenian Competition Protection Agency

8. On a proposal from the Ministry of Economic Development and Technology, the Government adopted a Decision amending and supplementing the Decision on the Establishment of the Slovenia Competition Protection Agency¹, which aligns the current Decision with the amended Competition Act, the Agriculture Act, the Public Agencies Act, the Public Finance Act and the Act on the Implementation of the Budget of the Republic of Slovenia for 2018 and 2019.

9. In addition to some minor changes and alignments, the proposed decision also codifies the amendment to Article 19 of the Decision, which now stipulates that the Director shall report to the ministry responsible for the protection of competition, including on the achievement of the objectives and expected results of his work which is his contractual obligation.

10. This amendment deprives the Agency of the possibility to report on its work to the Government and the National Assembly, as was the case before this amendment, despite the fact that the National Assembly remains designated for the appointment of the Director of the Agency.

1.1.2. Amendments to the Agriculture Act

11. In 2018 further development in the regulation of the assessment of illicit behavior in the food supply chain was enacted, aiming to contribute to the more effective identification and assessment of those practices by market participants.

12. In practice, and on the basis of the research carried out by the Agency in 2017 on alleged unfair commercial practices in the food supply chain, it was proved difficult to control illicit practices mainly because of the vague definition of significant market power and illicit practices.

13. In the amended Article 61(f) of the Agriculture Act (ZKme-1), which was adopted in April 2018, a re-defined legal presumption of significant market power derives from the size of the undertaking on the purchase site (EUR 25.000.000 of annual turnover in the Republic of Slovenia), but the provisions of this Article do not apply to the relationships between cooperatives and members of that cooperative.

14. In the view of the detection of unfair commercial practices both in Slovenia and in the EU, in addition to the irregular non-respect of the prescribed payment deadlines, the illicit behavior is also expanded and redefined with a list of 23 specific practices.

15. Legislative changes also provides for the obligation of written contracts, which must contain: the indicative value of the transaction and the indicative commodity price, the indicative quantity of the goods and the indicative time schedule for the delivery of the goods, the duration of the contract, details of the payment periods and procedures, the

¹ Decision on the establishment of the Competition Protection Agency of the Republic of Slovenia (Official Gazette of the Republic of Slovenia, No. [64/12](#) and [37/18](#))

modalities of delivery of the goods, the rules applicable to the change in the price of the goods and the rules applicable in the event of force majeure.

16. Likewise, one of the novelties is also an obligation on a party with significant market power to systematically document the whole negotiation process and exercise the necessary supervision (which should not be transferred to another person).

17. The new ZKme-1 proposal also amended the level of fines for offences, which is currently linked to the share of annual turnover of an enterprise in the Republic of Slovenia (up to 0.25 % of the annual turnover of the Republic of Slovenia) and the fine for the responsible person (between EUR 5.000 and EUR 10.000). Those changes in ZKme-1 will allow the Agency to launch proceedings against infringers, but the successful exercise of the powers provided by the Agriculture Act in 2019 necessarily requires the realization of employment agreed at the time of the adoption of the amending ZKme-1.

2. Enforcement of competition laws and policies

2.1. Action against anticompetitive practices, including agreements and abuses of dominant positions

2.1.1. Summary of activities of competition authority

18. Slovenian Competition Protection Agency (CPA) is the sole authority responsible for the enforcement of competition rules. It is organized as an independent public body led by a director and a five-member council.

19. The rules in Competition act on substantive matters are modeled on EC competition rules and apply to all sectors and all undertakings.

20. In the field of anticompetitive agreements and concerted practices the statutory provision dealing with anticompetitive agreements is article 6 of the Competition Act. Slovenian competition law prohibits anticompetitive agreements, decisions and concerted practices, which have as their object or effect the prevention, restriction or distortion of competition on the territory of the Republic of Slovenia. Such agreements are null and void.

21. Application of 'object' and 'effect' concepts is in line with the practice developed by the European Commission and the EU courts. Slovenian competition law covers horizontal as well as vertical restrictive agreements. Its main wording corresponds to article 101 TFEU and lists the same examples of restrictive practices as article 101 TFEU such as price fixing, fixing of production, sales quotas and market sharing.

22. Efficiency enhancing agreements fall outside the scope of article 6(1) of the Competition Act. Where in an individual case a restriction of competition within the meaning of article 6(1) of the Competition Act has been proven, article 6(3) can be invoked as a defence. Article 6(3) of the Competition Act provides similar four cumulative conditions as article 101(3) TFEU in order to satisfy the exemption. The burden of proof rests on the undertaking invoking the benefit of the exception rule.

23. In addition, according to article 7 of the Competition Act certain types of agreements of minor importance are not prohibited (the de minimis exemption). The thresholds are 10% (for horizontal agreements and mixed horizontal-vertical agreements) and 15% (for vertical agreements) of the aggregate market share, in combination with other undertakings in the group, on any of the relevant markets on the territory of the Republic

of Slovenia. If competition on a relevant market is restricted by the cumulative effects of parallel or similar agreements between other undertakings, the mentioned market share thresholds are lowered to 5%. However, the article defines certain anticompetitive agreements for which the de minimis exemption does not apply even though the thresholds were not exceeded. These are 'hard-core' practices such as price fixing, limiting of production or sales or market sharing in cases of horizontal agreements and fixing of retail prices or granting territorial protection in vertical agreement cases.

24. In 2018 CPA handled 14 cases related to anticompetitive agreements and concerted practices, tackling primarily with cases that were remanded back from the Court to CPA for reconsideration. Over 2018, CPA issued one decisions related to anticompetitive agreements and concerted practices. The case concerned a restrictive agreement and price fixing among driving schools in the Posavje Region.

25. Article 9 of Competition act, modeled on article 102 TFEU, prohibits the abuse of a dominant position on the market by one or more undertakings in the territory of the Republic of Slovenia, or in a substantial part of it. Article 9(4) of the Competition Act also lists the same examples of infringements as article 102(2) TFEU.

26. Dominance is defined as the ability of an undertaking to act, to a significant degree, independently of competitors, clients or consumers. In addition there is a legal presumption that the undertaking is dominant if its share of the Slovenian market exceeds the 40 per cent threshold and that undertakings are jointly dominant if their share on the Slovenian market exceeds 60 per cent. Determining dominance is assessed with regard not only the market share, CPA takes into consideration also financing options, legal or actual entry barriers, access to suppliers or the market and existing or potential competition.

27. Similar to the EU competition law, the abuse of a dominant position as such is not defined by the Competition Act. The Competition Act generally prohibits the abuse of a dominant position and lists four typical examples of abusive behavior which show that the concept of abuse covers exploitative as well as exclusionary practices. The list of forms of abuse in article 9 of the Competition Act is not exhaustive. Therefore the CPA is not excluded from dealing with other types of abusive practices.

28. As regards administrative proceedings, CPA issued a decision against Renault Nissan Slovenija for allegedly abusing its dominant position in the national market for the provision of technical information and technical training needed by (authorized and independent) service shops of Renault motor vehicles (See detailed description in 2.1.2).

29. Moreover, there were still a few opened cases that the Administrative Court or the Supreme Court returned to the CPA or the Administrative Court for reconsideration and re-evaluation.

30. The CPA is empowered not only to establish the infringement of the competition rules, but also to impose fines. In line with the existing Slovenian regulations the CPA conducts two types of procedures: (i) an administrative procedure in which infringements of the Competition Act and articles 101 or 102 of TFEU are assessed and brought to an end and (ii) a minor offence procedure where fines are levied. For the minor offences procedure the provisions of the Minor Offences Act also apply. It is worth noting that Slovenia has a dual proceeding system. In the first phase, CPA establishes the infringement in the administrative procedure and only after this decision is final, CPA can initiate the second, a minor offence procedure and set the fine. For several years CPA is seeking to amend the current legislation and consequently optimize the proceedings.

31. The CPA has powers to impose fines of up to 10 per cent of the infringing companies' worldwide turnover in minor offences proceedings. When setting a fine, the CPA takes into account the general provisions of the Minor Offences Act and, thus, all circumstances that may reduce or increase the sanction (mitigating and aggravating circumstances).

32. In the case of a breach of articles 6 or 9 of the Competition Act or articles 101 or 102 TFEU, CPA can impose a minor offence fine on a legal entity, entrepreneur or an individual who performs economic activity of up to 10 per cent of the annual turnover of the undertaking in the preceding business year. A fine of between €5,000 and €30,000 can also be imposed on the responsible person of a legal entity or the responsible person of an entrepreneur.

33. In 2018, CPA imposed the following fines in minor offence proceedings:

The infringer	Type of infringements	Fines imposed (in EUR)		Total amount of fines imposed (in EUR)
		Legal persons	Responsible Persons	
ADVENTURA HOLDING	Late notification of a concentration	160.000	5.000	165.000
BUS OPERATORS	Restrictive Agreement	3.040.075	28.000	3.068.075 ²

2.1.2. Summary of activities of Courts

34. Under the present Competition Act, there is no appeal in the administration procedure against the decisions and orders issued by the CPA. However, the parties and other participants to the procedure can file a lawsuit against the CPA's decisions (and orders) with the Administrative Court of the Republic of Slovenia and the revision against the judgment to the Supreme Court. A request for judicial protection has to be filed within 30 days from the issue of the decision or the order.

35. Pursuant to currently valid legislation, if the CPA determines that fines should be imposed to parties subject to a final decision in the administrative procedure, it can do so in a separate minor offence procedure. The parties can then file a case in the District Court of Ljubljana, seeking to have the fine overturned or reduced with the possibility of an appeal to the High Court and file extraordinary legal remedies with the Supreme Court.

36. In 2018, within the court review, the Administrative Court of the Republic of Slovenia decided on 3 cases, in which the legality of acts issued by the CPA was examined; the cases referred to the administrative procedure.

37. Within the decisions, in one case the action was dismissed by the Court, in one judgment the case was fully remanded back to the Agency for reconsideration and in one case the Court partly upheld the application and remanded the case back to the Agency for reconsideration.

² In the case of bus operators, the Agency imposed fines totalling EUR 3.068.075. However based on [Decree on the procedure for granting immunity from, and reduction of, fines for offenders who are parties to cartels](#),³ undertakings and their responsible persons were exempted from fines in the amount EUR 927.130.

2.2. Description of significant cases, including those with international implications.

2.2.1. Accepted commitments proposed by Renault due to abuse of dominant position

38. On 30 May 2018, CPA has adopted a decision that renders legally binding the commitments offered by Renault Nissan Slovenija (hereinafter: Renault). In the course of proceedings, initiated due to abuse of a dominant position of Renault in the relevant market of providing technical information and courses to mechanical service providers, CPA raised concerns that by providing access to technical information and training only to authorized mechanical service providers, Renault left independent service providers at a competitive disadvantage.

39. CPA initiated proceedings against Renault in July 2017. The company was suspected of treating authorized mechanics and independent mechanics differently, which gave the agency grounds to believe that Renault had abused its dominant position. In response, Renault proposed remedies in an attempt to address the agency's concerns and eliminate the alleged anti-competitive effects on the market.

40. Renault has agreed to accept certain commitments based on which authorized and independent mechanics will be treated equally (i.e., have access to technical information and training under the same conditions).

41. The commitments included obligations to adopt, amend and publish internal acts, including information on how to provide mechanics with access to technical information, teaching materials, technical training and pre-training.

42. Further, Renault obliged itself to provide independent mechanics with all of the technical information which they need in order to perform a quality repair and maintenance of Renault vehicles. Access to this technical information must not be conditional on participation in the technical training. In addition, the company must prepare free training and education on the use of Renault InfoTech portal annually.

43. In connection with the pre-education and training, Renault has committed itself to inform mechanics on envisaged dates and content of pre-training and training, publish instructions on how to apply to individual training, whereby the price for training shall be the same for all mechanics (i.e., authorized and independent).

44. In November 2017 the CPA published Renault's proposed commitments online and invited third parties to comment and make suggestions. On 30 May 2018, CPA issued a decision closing the proceedings and accepting the commitments.

45. The addressee must comply with the decision and implement the commitments within two months of receipt. The commitments will remain in force for three years from the date on which the decision was issued.

46. The commitments will also help the CPA to monitor Renault's behavior by obliging Renault to report on its compliance annually and provide information on the training it has performed on the agency's request. Moreover, during the commitments period, documents such as internal acts and price lists for technical training should be sent to the agency for review.

47. The adoption of a commitments decision means that no violation of competition rules has been established. However, the proceeding may be re-opened if Renault does not

comply with its commitments. In this case, the company may be fined up to 10% of its annual worldwide turnover for non-compliance.

2.3. Mergers and acquisitions

48. The authority over merger review is solely within the Competition Protection Agency. As a rule mergers are reviewed solely on competition principles.

49. Merger control is regulated by the Prevention of the Restriction of Competition Act (Competition Act), which implemented Council Regulation (EC) No. 139/2004 (EC merger Regulation).

50. The concept of concentration, as provided in article 10 of the Competition Act, shows that a concentration is deemed to arise where a change of control on a lasting basis results from the merger of two or more previously independent undertakings or parts of undertakings; the acquisition of direct or indirect control of the whole or parts of one or more other undertakings; 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.

51. A concentration must be notified if (i) the combined aggregate annual turnover of all the companies concerned, including the affiliated companies, exceeded €35 million before tax in the Slovenian market in the preceding financial year; and (ii) the annual turnover of the target, including the affiliated companies, exceeded €1 million before tax in the Slovenian market in the preceding financial year; or (iii) in cases of joint ventures, the annual turnover of at least two companies concerned, including affiliated companies, exceeded €1 million before tax in the Slovenian market in the preceding financial year.

52. Regardless of the matched thresholds, the concentration does not need to be notified if it is subject to review of the EC Commission under the Regulation 139/2004/EC.

53. In 2018 CPA dealt with several notified concentrations and issued 41 decisions, all of them dealing with concentrations on the national level which had no international implications. Apart from 26 approved concentrations, one concentration was prohibited, one cleared with conditions and 13 cases were not subject to competition law³. In 2018 there is two decision of note, a prohibition decision in the media sector (*Concentration of Adria Media Ltd and Balkan S.R.L.*) and a concentration cleared with conditions (*Concentration of the online merchants Ceneje.si and Sully System a.s. from the Czech Republic*).

2.3.1. Statistics on number, size and type of mergers notified and/or controlled under competition laws

Decisions on Concentrations	2011	2012	2013	2014	2015	2016	2017	2018
Cleared	12	17	18	22	15	28	22	26

³ Every potential concentration has to be notified if the thresholds from Article 42 of Competition Act are met. After examination, CPA can issue various decisions, i.e. a proposed concentration can be cleared, cleared with conditions, prohibited or, in case both - economic and legal conditions are not met - CPA issues a decision that the concentration is not falling within the scope of Competition Act.

Cleared with conditions	1	-	-	-	4	-	-	1
Prohibited	-	-	1	-	-	-	-	1
Prohibition on implementation	-	-	-	-	-	-	-	-
Not falling within the scope of Competition Act	12	1	6	3	4	6	4	13
TOTAL	25	18	25	25	23	34	26	41

3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies

54. While the Agency's core activity focuses on making decisions related to infringements of the provisions of Competition Act, it is also important to develop and raise awareness of the competitive environment of the general public. Competition culture and an understanding of the public benefit of competition is the backbone of a market economy. To this end, the CPA shall also seek to raise awareness among the institutional and business environment and consumers that the positive effects of competition are properly informed.

55. From this perspective, competition advocacy is an important tool in the promotion of competition principles and market methods. Successful advocacy may contribute to a higher quality of regulation or to accelerate deregulation processes in situations where new market conditions do not lead to increased competitiveness of the companies.

56. The tools to be used by the Agency shall in particular be a regular communication to the public via publications on the website and through other media, the publication of annual reports on the Agency's activities and the organization of workshops, seminars and conferences devoted to competition protection. Competition awareness has a particularly important role to play in the legislative process.

57. In 2018, the Agency issued a leaflet entitled 'Leniency program',⁴ providing key information for market participants on the program. The Agency's main guidance for the publication for this particular leaflet was to raise awareness among cartel participants, who represent one of the most serious infringements of the competition rules. The leaflet informs the market participants on the possibility of dismissal or a reduction of the fine in proceedings before the Agency, to encourage cartel participants to report to the Agency, to inform them about the advantages of the program and, as a consequence, to make more contribution to the effectiveness of detection of cartels in the Republic of Slovenia.

58. In 2018 CPA has, in the framework of inter-ministerial coordination, actively followed government proposals for new legislation. In 2018, the Agency participated in the preparation of the amendment to Competition Act, in particular in the preparation of substantive changes to the provisions, which refer to the urgent need to introduce a so-called 'single procedure' which would increase the efficiency of the Agency's operations.

4 http://www.varstvo-konkurence.si/fileadmin/varstvo-konkurence.si/pageuploads/PROGRAM_PRIZANESLJIVOSTI.pdf.

59. In addition, CPA have issued a formal opinion to the Municipalities of Jesenice and Žirovnica on measures to eliminate restrictions of competition in the market of funeral services.

60. The competition culture activity of CPA encompasses various activities. In the field of exchange of experiences on the international level, CPA participated at various events. Participation to several conferences and roundtables in EU competition authorities also enabled the staff of CPA to share and exchange experience in competition field.

61. CPA has the objective of establishing closer ties with other public authorities as also representatives of Chamber of Commerce and Industry and various branch associations. In the framework of various consultations the competences and areas of action of CPA were introduced, in order to better understand the scope of competition law and policy.

62. Among the priorities, the CPA will continue to prioritize the most serious infringements of restrictive agreements and abuse of a dominant position, paying particular attention to raising awareness among the public and market participants about competition policy, and will further strengthen awareness-raising activities on the opportunities offered by the leniency program. The CPA also intends to pursue the introduction of a single procedure which remains to be one of the prime objectives.

4. Resources of the Slovenian Competition Protection Agency

4.1. Resources overall (current numbers and change over previous year):

4.1.1. Annual budget of Slovenian Competition Protection Agency in 2018

		Change over previous year
Approved budget in EUR	1.377.981	200.000
Approved budget in USD*	1.577.788	222.404

*exchange rate Bank of Slovenia from 31 December 2018

4.1.2. Resources of CPA- detailed analysis

63. According to the provisions of Article 13a of the competition act, the Government shall grant approval regarding the Agency's program of work and the financial plan for the next year. If the Government does not grant approval by 15 December, the financial plan for the previous year shall apply pending approval.

64. In the first step, the CPA's annual budget is negotiated with the competent ministry as part of the CPA's working programme. When approved, the annual budget can in principle be publicly available.

65. CPA does not generate its own income and depends totally on the budgetary resources. According to the existing legislation, the fees or fines imposed on undertakings are part of the income of the general budget.

66. Detailed analysis of the authority's annual budget in the past few year's shows that the budget is gradually increasing; considering also the number of FTEs it is evident that the lion's share of budget is used for labour costs, leaving less room for more demanding market analysis projects and international cooperation. This development is mostly due to general budgetary and employment limitations and long lasting negotiations for the

increased annual budget and increased employment rates with the competent ministry. However, over negotiations for the next two years budget, agreement was reached for the budget increase according to the needs of the CPA.

BUDGET - CPA	2013	2014	2015	2016	2017	2018
Labour costs (salaries)	989.565	872.918	867.324	914.168	889.200	943.723
Material costs	236.972	199.306	228.758	220.705	234.278	279.048
Market analysis	-	-	-	-	-	-
Investment assets (equipment)	21.805	29.330	4.769	8.447	15.954	22.967
Budget spent on salaries (%)	79	79,3	78,8	80,0	78	75,8
TOTAL - €	1.248.342	1.101.554	1.100.850	1.143.320	1.139.432	1.245.740
TOTAL - US \$	1.539.330	1.206.752	1.228.659	1.321.907	1.311.030	1.426.372

Number of employees (person-years):

	2013	2014	2015	2016	2017	2018
FTEs employed	27	26	27	24	24	24

Human resources (person-years) applied to:

		Change over previous year
Lawyers	10	+1-
Economists	9	-1
Other professionals	3	-
Support staff	2	-
All staff combined	24	-

4.1.3. Period covered by the above information: 2018