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Annual Report on Competition Policy Developments in Slovenia

-- 2021 --

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Slovenia

1. 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 2021.

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. 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, CPA will apply Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU).

3. The long-term objective of 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 12 antitrust cases related to anticompetitive practices, including agreements and abuses of dominant positions. In 2021 CPA issued 26 decisions; two issued decisions were related to anticompetitive agreements and concerted practices and 24 decisions in merger procedures.

4. Concerning the proposed or adopted changes to competition law and policies, further significant amendments to Slovenian antitrust and merger control proceedings are foreseen within the new version of Prevention of Restriction of Competition Act (Competition Act). The most important novelties being considered are: (i) CPA will be allowed to impose a fine within the administrative antitrust proceeding and will no longer need to carry out a separate misdemeanor proceeding and (ii) simplified merger control proceeding will be available and concentrations with limited effect on the Slovenian market will no longer require a full notification in Slovenia.

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 CPA. 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.

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 labor costs, leaving less room for more demanding market analysis projects and international co-operation.

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

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

8. There were no amendments to the Slovenian competition law in 2021.

2.2. Other relevant measures, including new guidelines

9. There were no other measures or guidelines adopted in 2021.

2.3. Government proposals for new legislation

10. The competent Ministry of Economic Development and Technology is contemplating significant amendments to Slovenian antitrust and merger control proceedings within the new version of Competition Act. Some important novelties are being considered, alongside other changes, namely: (i) CPA will be allowed to impose a fine within the administrative antitrust proceeding and will no longer need to carry out a separate misdemeanor proceeding and (ii) simplified merger control proceeding will be available and concentrations with limited effect on the Slovenian market will no longer require a full notification in Slovenia.

11. Slovenia is one of few EU member states, which legislated a two-phase proceeding for competition law infringements. CPA must first establish an infringement in an administrative proceeding and only impose a fine later in a misdemeanor proceeding. Both proceedings are subject to separate appeals in front of different appellate courts.

12. This division enables the legal entities involved to benefit from all criminal procedural law guarantees and discuss separately in a misdemeanor proceeding the lawfulness of the alleged anti-competitive conduct and imposed fine. Proceedings are thereby prolonged and, in most cases, a significant amount of time passes between CPA's infringement establishing an infringement and fining decisions.

13. The renewed competition law shall introduce a new so-called 'administrative sanctioning proceeding', which combines both phases, while at the same time will allow the implicated legal entities to benefit fully from all criminal procedural law guarantees.

14. Filing for merger control clearance in Slovenia takes time, regardless of the merger's effects, as the current wording of the Competition Act provides no simplified notification form. Undertakings must submit a full notification form, regardless of the merger's effects. The draft of the new Competition Act should introduce a simplified merger control procedure for concentrations, which do not have or have a minimal impact on effective competition in the relevant markets.

3. Enforcement of competition laws and policies

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

3.1.1. Summary of activities of competition authority

Activities of competition authority in administrative proceedings

15. 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.

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

17. 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.

18. 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.

19. 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 defense. 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.

20. 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.

21. 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.

22. 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%. 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.

23. 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, CPA is not excluded from dealing with other types of abusive practices.

24. As regards administrative proceedings, in 2021 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 and opened also two new cases. Over 2021, CPA issued two decisions related to anticompetitive agreements and concerted practices and two decisions to close the proceedings. The cases concerned commitments in the alleged vertical restrictive agreement on liquefied petroleum gas (LPG) cylinder market

and restrictive agreement on the market of public tenders regarding maintenance services for the vehicles of the brand Renault (See detailed description in 2.1.2).

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

Activities of competition authority in minor offences proceedings

26. 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, 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.

27. CPA has powers to impose fines of up to 10 % of the infringing companies' worldwide turnover in minor offences proceedings. When setting a fine, 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).

28. 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 % 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.

29. In 2021, CPA imposed the following fines in minor offence proceedings:

Table 1. Fines in minor offence proceedings

The infringer	Type of infringement	Fines imposed (in EUR)		Total amount of fines imposed (in EUR)
		Legal persons	Responsible persons	
Plama-pur	Late notification and prior enforcement of a concentration	151.378	10.000	161.378
TOTAL		151.378	10.000	161.378

Summary of activities of Courts

30. 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 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.

31. Pursuant to currently valid legislation, if 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.

32. In 2021, within the court review, the Administrative Court of the Republic of Slovenia decided on one case, in which the legality of acts issued by CPA was examined; the case referred to the administrative procedure. In a judgments the Court dismissed the application and upheld CPA's findings.

33. Within the court review in 2021, the courts also decided three cases in minor offence procedure related to fines. In two judgements, the court partially upheld the application for judicial protection in respect of the decision relating to the imposed fines and amended CPA's decision on the minor offence on the sanction by imposing a warning on the legal and liable persons instead of a fine, and dismissed the rest of the requests as unfounded. In one case the court also partially upheld the application for judicial protection of the legal entity and the responsible persons and amended CPA's decision on the minor offence in in respect on the sanction by imposing a fine of EUR 1,560,000 on the legal entity and EUR 5,000 on the responsible persons, but otherwise dismissed the applications for judicial protection as unfounded. The legal person has appealed against the judgment and the decision is not yet final.

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

Commitments in the case of alleged vertical restrictive agreement between ISTRABENZ PLINI, PLINARNA MARIBOR, BUTAN PLIN and INA SLOVENIJA

34. By its decision, CPA accepted a proposal for commitments proposed by undertakings ISTRABENZ PLINI, PLINARNA MARIBOR, BUTAN PLIN and INA Slovenija (hereinafter: the parties), distributors and producers of LPG cylinders in Slovenia, in the infringement procedure for vertical restrictive agreement. By accepting the commitments, the procedure for establishing an infringement of Article 6 of Competition Act and Article 101 of the TFEU which was carried out by CPA on 7.9.2020, brought the infringement procedure for the prohibition of restrictive agreements to an end without a final infringement assessment.

35. The case concerned anticompetitive agreement on liquefied petroleum gas (LPG) cylinder market in Slovenia. LPG cylinder producers and distributors – the parties – entered into an agreement by which they partitioned the market by customers. Distributors of LPG cylinders entered into agreement via judicial settlement, via letters unilaterally informing competitors of intended new business models, and by establishing a deposit system that makes it difficult for the end users to switch LPG cylinder providers, which enabled them to suppress competition and share the market.

36. Up until 2007 there was only one sort of LPG cylinders (so called orange LPG cylinders) present in Slovenia. In the orange LPG cylinder system, the end user became a legal owner of the cylinder at first purchase, when they paid a certain sum for the cylinder and for the LPG inside it. At every next purchase of LPG however, the end user exchanged an empty orange LPG cylinder for a full one and paid only for the LPG and not for cylinder. A legal fiction was established that end user was also a legal owner of every orange in LPG cylinder in their possession.

37. In 2007, one of the parties (Butan plin) introduced a new business model. Butan plin released a Green LPG cylinder and also introduced a new system, under which it remained legal owner of the Green LPG cylinders; the end users only pay a deposit for free use of the cylinder at first purchase, at every other purchase they only pay for LPG and

change empty cylinder for full. The deposit is returned in to the end user when they decide to return the (empty) cylinder and not exchange it for a full one, provided that the cylinder is undamaged, and that the end user presents a certificate of deposit that they received upon first purchase. The deposit can only be returned in certain business units, not in every place that sells LPG cylinders, however payment of deposit at first time purchase is possible (and in fact required) everywhere. In 2009, two of the parties (Istrabenz plini and Plinarna Maribor) introduced a similar system, with their own yellow LPG cylinders under the brand name Plindom. Lastly, the fourth party (Ina Slovenija) introduced the system in 2011, by introducing their own Blue LPG cylinder. Using different colours, the undertakings were able to easily distinguish the LPG cylinders among each other and control their movement in the market.

38. Upon introduction of the new business model, each party sent out a letter to their competitors informing them about their future business decisions and instructing them to refrain from picking up LPG cylinders of their respective colours. Furthermore, they concluded out of court settlements by which they agreed that they will not pick up their respective LPG cylinders and that they will introduce the deposit system. This way, the parties agreed on their future business models and decisions, agreed on their future market behaviour and excluded uncertainty and competition among them.

39. During the proceedings the parties offered commitments to address concerns expressed by CPA. The parties undertook to ensure that, for the duration of the commitments, a purchaser of LPG cylinder could deposit an empty cylinder with a deposit refund at several points of sale or with their own delivery service, which will operate over a wider delivery area than hitherto. In addition, three of the parties (ISTRABENZ GAS, GAS MARIBOR and INA SLOVENIJA) would seek to make arrangements with the contracted retailers to allow the deposit to be refunded at their outlets as well. Fourth party (BUTAN PLIN) would enter into such arrangements with contract retailers if they decided to change the refund model, ensuring that the nearest outlet with the possibility of saving is no more than 25 km from any household. In addition, ISTRABENZ GAS, GAS MARIBOR and BUTAN GAS would reduce the deposit and allow the return of an empty LPG cylinder even without a deposit slip, returning the deposit to customers in a single amount. INA SLOVENIJA also committed to a deposit in the circumstances where it requires a deposit, but would still be able to retain the presentation of a deposit slip as a condition for the return of the deposit, as it has two different systems in place for the sale of LPG cylinders and only one of them (i.e. sales at fixed sales outlets) requires the payment of a deposit. The parties to the proceedings undertook to maintain their commitments from the date of the Decision until 31 December 2024 and to report annually to CPA on the implementation of their commitments.

40. CPA considered the commitments by the parties as appropriate to remedy the situation giving rise to the likelihood of an infringement of Article 6 of the Competition Act or Article 101 TFEU, namely conduct or a situation which, taken together, could constitute a single and continuous agreement between the parties to the proceedings, which implies the existence of an overall plan involving different acts for the same purpose, capable of distorting competition on the market. These acts or states of affairs could include the parties to the proceedings informing each other and other competitors about the switch to the proprietary cylinder system and warning against the takeover of proprietary cylinders, thereby possibly coordinating conduct on the market for LPG cylinders in the Republic of Slovenia following the introduction of proprietary cylinders; the conclusion of court or out-of-court settlements between the parties to the proceedings, whereby the parties to the proceedings have agreed to refrain from taking over and returning foreign proprietary LPG cylinders; the deposit slip system set up by the parties to the proceedings,

which could serve to make it more difficult for consumers to switch to another LPG cylinder supplier.

Restrictive agreement between RENAULT NISSAN SLOVENIJA, AVTOHIŠA REAL, AVTOHIŠA MALGAJ, PLEŠKO CARS and Avtoservis KALAN

41. The case concerns agreements/concerted practices among undertakings operating in car after sales services. Official retailers for vehicles and maintenance services Renault concluded an agreement with the aim to divide the market of public tenders regarding maintenance services for the vehicles of the brand Renault. The involved undertakings prevented, restricted or distorted competition on the territory of the Republic of Slovenia and consequently, in a substantial part of the EU's internal market, with practices such as determining the prices of repair and maintenance services for Renault vehicles offered in public procurement procedures and the amount of discounts on the prices of spare parts in the submitted tenders and dividing the market or public contracts for the provision of the services in question.

42. The undertakings involved had participated in concerted practice/concluded agreements whose main goal was not to compete in public procurement procedures (bid rigging) and to divide the market or public contracts. Moreover, they fixed the prices in their tenders as agreed between them and exchanged relevant information with each other.

43. Undertaking Renault played an important role in coordination of agreement especially in the larger tenders, which covered the entire territory of the country and were divided into several lots. Concessionaires, who negotiated with their agents, played a greater role in smaller tenders, but Renault was still watching over the tenders to ensure that everything went according to their after-sales strategy.

44. Renault decided who would apply for the tender, under what conditions and at what location by using discretion when issuing confirmation letters (certificates) to official retailers of Renault for each individual tender, stating that they are in fact official retailers. It also made great efforts to keep the Certificates System as a condition in public tenders in order to control the members of its network in particular by reviewing the tender conditions that the latter had to send before getting the certificate. The other parties to the proceedings participated in these arrangements, in particular because of the economic benefits they received. In this way, involved undertakings largely eliminated effective competition in tenders, prevented contracting authorities from obtaining more favorable or actually competitive bids, and maintained prices at a higher level than would be determined by effective competition in the market. In local areas, individual concessionaires had a stronger position. Thus, in the wider area of Ljubljana, there was a division of clients or individual public procurements, especially between the companies AH Real and AH Malgaj, which also awarded a smaller part of the clients to their agents, the companies AS Kalan and Pleško Cars. The official retailers (AH Real, AH Malgaj, Pleško Cars and AS Kalan) had even a spreadsheet, which was drawn up at a meeting in 2008, where the contracting authorities were assigned to each individual official retailer of the brand Renault. Therefore, in most cases when a public tender of a specific contracting authority occurred, only the designated official retailer applied with accordance to the spreadsheet and no other official retailer would submit its offer to this specific tender or placed higher bids to simulate the appearance of competition.

45. Since the infringement concerned the whole territory of the Republic of Slovenia, and that all tenders above specific contract values must be published in the Supplement to the Official Journal of the European Union and published throughout the EU, it could have an effect on trade between Member States. By influencing the contracting authorities to

retain the Certificates System, the parties influenced the fact that foreign tenderers did not meet the conditions for submitting tenders and were not able to submit tenders and participate in the procurement procedures in question. In addition, Renault is the general importer of Renault vehicles in Slovenia, its parent company being established in France, which further confirms CPA's findings that the present case has an effect on trade between Member States, and thus the invocation of Article 101(1) is justified.

46. All of the above constituted a restrictive agreement or concerted practice aimed at preventing, restricting or distorting competition in the territory of the Republic of Slovenia or in a substantial part of the internal market, which could affect trade between Member States of the European Union. In doing so, the undertakings infringed Article 6(1) of the Competition Act and Article 101(1) of the Treaty on the Functioning of the European Union.

47. In the course of the proceedings, CPA received an application from one of the parties to the proceedings for remission or reduction of the fine, which allows the applicant to benefit from the leniency programme. Under this programme, participants in cartels which are cartels by object may receive more favourable treatment in the infringement proceedings. The party applying for leniency subsequently cooperated with CPA in the proceedings by disclosing its participation in the agreement in question and by providing CPA with additional evidence proving the infringement in question. Throughout the proceedings, the other parties to the proceedings contested CPA's findings and argued that their conduct did not infringe the competition rules and that CPA's allegations of restriction of competition were unfounded.

48. The decision is not yet final, as the parties to the proceedings filed a complaint before the Administrative Court who will decide on these actions against CPA's administrative decision.

3.2. Mergers and acquisitions

49. The authority over merger review is solely within CPA. As a rule, mergers are reviewed solely on competition principles.

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

51. 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.

52. 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.

53. 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.

54. In 2021, CPA dealt with 41 notified concentrations and issued 24 decisions, all of them dealing with concentrations on the national level, which had no international implications. In 2021, there were few decisions worth mentioning, particularly a decision regarding merger in the media sector (Acquisition of the TV broadcasting activities of sports TV – Sport Klub), which was first prohibited in 2018 and was later annulled by the Administrative Court of Slovenia and remanded back to CPA for reconsideration. In the reassessment procedure, CPA has taken into account the current market situation, which has changed significantly since the first decision, and cleared the merger.

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

Table 2. Mergers notified and/or controlled under competition laws

Decisions on Concentrations	2013	2014	2015	2016	2017	2018	2019	2020	2021
Cleared	18	22	15	28	22	26	26	26	24
Cleared with conditions	/	/	4	/	/	1	1	1	/
Prohibited	1	/	/	/	/	1	/	/	/
Prohibition on implementation	/	/	/	/	/	/	/	/	/
Not falling within the scope of Competition Act	1	6	3	4	6	4	5	7	/
TOTAL	18	25	25	23	34	26	32	34	24

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

55. While CPA'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, CPA shall also seek to raise awareness among the institutional and business environment and consumers that the positive effects of competition are properly informed.

56. 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.

57. The tools to be used by CPA shall in particular be a regular communication to the public via publications on the website and through other media (in November 2021, a Twitter account has been set, publishing short news related to CPA's work), the publication of annual reports on CPA'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.

58. In 2021 CPA continued to cooperate with Ministry of Economic Development and Technology in the preparation of the new Competition Act. This participation was 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 CPA's operations, and the implementation of Directive (EU) 2019/1.

59. One of successful activities of CPA is also legal protection in public procurement procedures. In 2021, CPA submitted three requests for proper protection in public procurement procedures as an advocate of public interest and was successful in one.

60. In 2021, CPA was successful in enforcing a claim for legal protection in the public procurement procedure, awarded by INFORMATIKA, subject of the public procurement "IMPLEMENTATION OF MICROSOFT DYNAMICS AX (ERP AX 2012 R3)". The contracting authority granted CPA's request for review and annulled the procurement procedure in its entirety.

61. Upon review of the tender documentation, CPA noted that among the conditions for participation the contracting authority included a reference requirement for experience in the field of energy, a reference requirement for experience in the territory of Slovenia and a requirement for 20 specialist employees in 2019. CPA found these requirements disputable as they are not based on objectively justified circumstances and needs of the contracting authority and therefore constitute a violation of the principle of ensuring competition between tenderers.

62. The contracting authority could and should have ensured an adequate standard of service provision by other measures which would not have constituted a disincentive to potential tenderers. CPA also considers that the contracting authority infringed the principle of equal treatment of tenderers, which is closely linked to the principle of ensuring competition, and the principle of economy, efficiency and effectiveness.

63. CPA also claimed legal protection in the public procurement procedure in which the MINISTRY OF INTERNAL AFFAIRS of Slovenia as the contracting authority, procured the operational rental of vehicles. The National Review Commission for Reviewing Public Procurement Award Procedures (DKOM) rejected CPA's audit claim as unfounded. CPA has no legal remedy against the decision of DKOM since an administrative dispute against decisions of DKOM is not admissible if the request for review was lodged against the content of the publication, the invitation to tender or the tender documentation.

64. CPA lodged the request for review against the tender documentation. In CPA's view, the tender was subject to certain technical requirements (automatic gearbox, minimum engine power, minimum electric motor power, minimum hybrid battery capacity, minimum wheelbase, minimum height from the ground, engine displacement), which have not been objectively justified by the contracting authority, nor has the contracting authority provided a technical justification for the choice of the technical requirements. Despite the freedom enjoyed by the contracting entity in defining its needs, CPA considered that the contracting entity was not unfettered in translating those needs into technical requirements, as technical specifications must ensure equal access to the procurement procedure for all economic operators and must not unduly hinder the opening of public procurement to competition. However, by merely selecting certain models of vehicles from two different manufacturers and determining the presence of certain characteristics in relation to the technical requirements set out, the contracting authority severely restricted competition, even though it had no objective reason to do so.

65. DKOM rejected the request for review as unfounded and took the view that the contracting authority had not unduly restricted competition. The fact that the contracting authority included a limited number of vehicle manufacturers in the analysis (carried out prior to the publication of the procurement procedure in question), one of which also submitted a tender and was selected, does not, in DKOM's view, mean that the contracting authority infringed the Public Procurement Act in any way during the procurement procedure. DKOM further explained that the contracting authority would not have

infringed the Public Procurement Act even if only a limited number of tenderers had indeed met the technical specifications at issue, or even if only vehicles from a limited number of manufacturers had met the technical requirements of the contracting authority.

5. Resources of the Slovenian Competition Protection Agency

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

5.1.1. Annual budget of Slovenian Competition Protection Agency in 2020

Table 3. Annual budget in 2020

		Change over previous year
Approved budget in EUR	1.754.302	130.982
Approved budget in USD*	1.986.922	148.350

Note: *Exchange rate Bank of Slovenia – ECB reference rates from 31 December 2021

Resources of CPA - detailed analysis

66. According to the provisions of Article 8 of the Public Agencies Act, the Government of Slovenia as a founder shall grant approval regarding CPA's program of work and the financial plan for the next year.

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

68. 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.

69. 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 labor costs, leaving less room for more demanding market analysis projects and international co-operation. 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.

Table 4. Annual budget 2015-2021

BUDGET - CPA	2015	2016	2017	2018	2019	2020	2021
Labor costs (salaries)	867.324	914.168	889.200	943.723	1.145.000	1.266.000	1.338.758
Material costs	228.758	220.705	234.278	279.048	375.043	337.320	400.544
Market analysis	/	/	/	/	/	/	/
Investment assets (equipment)	4.769	8.447	15.954	22.967	9.800	20.000	15.000
Budget spent on salaries (%)	78,8	80,0	78	75,8	74,8	78	76,3
TOTAL – EUR	1.100.850	1.143.320	1.139.432	1.245.740	1.529.843	1.623.320	1.754.302
TOTAL – USD*	1.228.659	1.321.907	1.311.030	1.426.372	1.718.626	1.991.976	1.986.922

Note: *exchange rate Bank of Slovenia – ECB reference rates from 31 December 2021

5.1.2. Number of employees (person-years)

Table 5. Number of employees 2015-2021

	2015	2016	2017	2018	2019	2020	2021
FTEs employed	27	24	24	24	27	28	25,9

5.2. Human resources (person-years)

Table 6. Human resources in 2021

	FTE	Change over previous year
Lawyers	10,6	-1,4
Economists	10,9	-0,1
Other professionals	2,4	-0,6
Support staff	2	/
All staff combined	25,9	-2,1

6. Summaries of or references to new reports and studies on competition policy issues

6.1. Sector inquiry into the fuel market

70. In 2017, CPA conducted a sector inquiry into the market for motor fuels, in view of the perception of circumstances on the motor fuels market which indicated that this market, even in a situation of full regulation of the prices of petroleum products, already exhibited elements which could point to the likelihood of restricting and distorting competition on the territory of the Republic of Slovenia. In 2020, the Government of the Republic of Slovenia abolished the nationwide price regulation for all types of motor fuels, so that as of 1 October 2020, motor fuel suppliers were free to price motor fuels at all their service stations. In addition to the fact that the motor fuel market in the Republic of Slovenia was already highly concentrated at the time of the 2017 survey, the number of motor fuel suppliers has since further decreased. This could lead to an even higher likelihood of restricting or distorting competition in the territory of the Republic of Slovenia as the CPA concluded.

71. In accordance with the Slovenian competition legislation, CPA has therefore in 2021 carried out a further investigation of the market for motor fuels. CPA has again examined the frequency with which companies publish the prices of motor fuels on information boards at their service stations and the reasons for any non-publication of prices. The main objective of the investigation was to analyse the evolution of retail prices, purchase prices and margins of seven different motor fuel suppliers on the market for fuels in the Republic of Slovenia, as well as the prices of the various suppliers.

72. In the second inquiry (in 2021), CPA confirmed the findings of the 2017 inquiry, namely that (i) the market for motor fuels is highly concentrated, (ii) entry of new entrants is unlikely and (iii) barriers to entry are high (due to the lengthy procedures in obtaining permits for new service stations, the occupancy of the most attractive sites and the relatively small market).

73. In 2021's inquiry CPA found that the retail price of motor fuels is most influenced by the purchase price of the fuel. However, it also found that most suppliers have increased their margins since deregulation, so the increase in retail prices of motor fuels is not only influenced by the purchase price, which of course accounts for the largest part of the fuel price, but also by the possibility to price at higher prices, which was limited before deregulation.

74. Furthermore, CPA found that prices after deregulation were not identical between providers, but that the same dates of retail price changes were often observed between different providers. No convincing reason for the change in the price of motor fuels on the same days has been identified, nor has it been offered by the motor fuel providers, but the information obtained shows that smaller providers quickly follow the changes in the retail prices of larger providers. Monitoring and adjusting prices to competitors is not in itself a competition law issue, provided that it is not the result of a prohibited restrictive practice by undertakings (restrictive agreement or abuse of a dominant position). CPA notes, however, that the system of forecasting and changing prices in Slovenia, as reflected in the forecasting and inputting of prices in the www.Goriva.si application, allows for a rapid adjustment of prices of other providers (even within half an hour), so that providers do not even need a specific (prohibited) agreement to ensure their coordinated action.

75. CPA reiterated its warning about the continued failure to publish the prices of motor fuels on the information boards directly next to all service stations, as already pointed out in 2017 in the first Motor Fuels Market Study. Some providers offered rather implausible answers to the effect that it was not technically possible to publish on billboards at the moment, some announced that this would be fixed shortly, which has not happened. Such answers show that it is not in the interest of the providers to publish prices publicly, which is of course not helpful or beneficial to the consumer.

76. Finally, CPA concluded that, despite some perceived anomalies on the market (simultaneity of price changes, abolition of roadside display of fuel prices), anticompetitive behaviour by providers on the fuel market or a breach of the Competition Act cannot be directly attributed. Nevertheless, competition on the fuel market has not increased. In conclusion, CPA proposed to regulate the possibility to change prices and to publish prices on roadside billboards at individual service stations, as is the case in most other EU countries.