

Unclassified

English - Or. English

15 May 2023

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Working Party No. 2 on Competition and Regulation

**Assessing and Communicating the Benefits of Competition Interventions – Note by
Slovenia**

12 June 2023

This document reproduces a written contribution from Slovenia submitted for Item 6 of the 75th meeting of Working Party 2 on 12 June 2023.

More documents related to this discussion can be found at
<https://www.oecd.org/competition/assessing-and-communicating-the-benefits-of-competition-interventions.htm>

Federica MAIORANO
Email : Federica.MAIORANO@oecd.org

JT03518953

Slovenia

1. The following essay takes a closer look at the benefits and the outcome of formal and informal means of interventions in competition in the context of the work and the role of the Slovenian Competition Protection Agency

1. Introduction

2. The role of a competition regulator is extremely important in the national economy and it is of utmost importance to notify and make available the impact and the gains of the interventions conducted by the competition authority. In the first part of the note the emphasis will be on formal means of informing the public about the benefits of competition intervention and evaluation of its effects, the second part will cover means and measures undertaken by the Slovenian Competition Protection Agency (hereinafter: Agency) to increase the awareness of competition law and the role, impact and effects of the Agency on the economy.

2. Formal means of informing the public of the Agency's work and evaluation of its effectiveness

3. At the outset, it has to be noted that stemming from the Agency's legal status, there are certain requirements provided in the law to safeguard the public's right to be informed about the Agency's functioning, interventions, cases and overall organization. The Agency as a public body in the form of a public agency and a holder of public authorization has a set of obligations laid down in different sectoral legislation¹. The Agency is obliged to adopt an annual report and publish it on its website, besides this there is also an obligation to present it to the competent ministry (in this case Ministry for economy) and then it has to be submitted to the Parliament for it to make itself acquainted with it. There are certain requirements in the Prevention of the restriction of competition Act (*Slo. ZPOmK-2*, hereinafter: ZPOmK-2 or Competition Act)² regarding the content of the annual report, namely minimum requirements entail information about the appointments and dismissals of the members of the Council of the Agency³, budgetary information and data about budgetary changes in comparison with the previous years. The Agency has to submit the

¹ For instance Public Agencies Act, Uradni list RS, št. 52/02, 51/04 – EZ-A in 33/11 – ZEKom-C.

² This Act regulates restrictive practices, concentrations of undertakings, unfair competition, regulatory restrictions of competition and measures to prevent restrictive practices and concentrations that significantly impede effective competition, where they cause or might cause effects in the territory of the Republic of Slovenia. It also determines the authority responsible for the protection of competition, the competences of this authority and the proceedings conducted by this authority.

³ According to Article 21 ZPOmK-2 the Council of the Agency is the body, responsible for passing general organisational acts of the Agency (Rules of procedure, statutory systemisation of job positions within the Agency etc.) and the members of the Council entail also the members of the Senate of the Agency, the decision-making body within the Agency that is responsible for adopting all final decisions of the Agency.

annual report to the Parliament by the February 28th each year and this event is usually conducted in a solemn manner with press releases, photos and news by the media.

4. Another requirement of the Agency according to the act, that regulates public agencies, is also the satisfaction survey, conducted by users of the services of the Agency. However, the Agency decided to broaden the scope of this survey to additional areas (such as website access and richness of its information, accuracy of handling legal issues by the Agency officials, impartiality of Agency officials, professionalism, independence and accountability of Agency officials etc.). This survey represents a deeper insight into the effectiveness and accessibility of the Agency and its officials, as well as obtaining valuable insight from professional stakeholders into functioning of the Agency outwardly, sharing of necessary information with them and professionalism of the Agency officials as well as satisfaction with their relation to relevant stakeholders.

5. Due to statutory requirements, the Agency has an obligation to report on the outcome of this survey and also goals and results, met in the previous year, to the founder of the Agency (i. e. the Government of the Republic of Slovenia). The results of the survey are also included in the annual report so the relevant stakeholders and the interested public can get acquainted with the overall results, extracted from the survey. It goes without saying that the Agency applies the gathered information from this survey to improve and adapt its means of functioning to address possible concerns of stakeholders and strengthen the effectiveness of its relation towards the stakeholders and interested parties.

6. It has to be pointed out that the Agency does not perform any ex-post analysis on qualitative or quantitative effects of its intervention so it also has no established methodology in this area. There is no statutory requirement demanding such analysis and as an Agency that is a rather small organization with a limited number of staff, it is unable to conduct such analysis or to measure the explicit or implicit effects of its intervention. Nevertheless, the Agency does try to illustrate different types of infringements with including price numbers in its press releases, increases in prices or percentages of different sales data, rebates etc. to inform the public about the approximate impact of its intervention. Nevertheless, as said already, it is not sustainable for the Agency and the current number of its staff to perform any kind of additional analysis of the effects of its work and actions.

7. On more specific topic of the activities of the Agency, there is an obligation written down in the Competition Act to publish different acts of the Agency on its website. Namely, the Agency publishes the summary of the commencement of proceedings on its website and invites interested public to submit their potential involvement in the proceeding and forward to the Agency any relevant information regarding the said proceeding. Additionally, the Agency also publishes news on issuing the SO and the main steps in the proceeding such as market test of commitments or proposed remedies in merger cases to remove serious doubts as to the compatibility of a merger with competition rules, where the relevant public can react on the proposition of such commitments and remedies and express their opinion. The Agency also publishes the operative content of adopted decisions (in both merger and antitrust cases) and final decisions with full text (as in detail explained *infra*) to inform the public about the activities and decisions of the Agency. The Agency's decisions are published at the following address:

- <http://www.varstvo-konkurence.si/omejevalna-ravnanja/odlocitve-agencije/> in
- <http://www.varstvo-konkurence.si/koncentracije-podjetij/koncentracije-v-presoji-in-odlocitve-agencije/>.

3. Informal means of informing the public of agency's work and communication of its actions

8. The Agency applies a number of different measures to raise awareness about the role of the Agency and its effects and benefits for the economy. It is essential for the public to be aware about the competencies, possible actions and toolbox and effects of the Agency's work. Undertakings are in the centre of Agency's focus on ensuring competitive conditions on the market; nonetheless, there are also consumers as vital parts of the Agency's indirect focus who need to be informed properly in order for them to utilize the rights stemming from competition instruments. The Agency takes advantage of different tools, from social media, press releases, public consultations and lectures, conferences to publishing booklets and even comic books on certain type of instruments of competition law such as leniency applications and different types of collusion. The news about specific cases and measures of the Agency is by rule communicated through the Agency's website and its Twitter account and also through direct means of communication to different media. The specific types of communication tools will be described in the second part of this article.

4. Press releases

9. The Agency notifies the interested public about all its decisions through press releases on its website which entail decisions on commencements on proceedings, conducted inspections, statements of objections and of course adopted decisions together with other relevant circumstances that can be of importance for a specific proceeding or general activities of the Agency. There are all decisions published, either by the operative content of the decision or display of the whole decision including the reasoning. It is the Agency's obligation to publish final decisions of the Agency, but beforehand it has to prepare a non-confidential version of the decision that is final. Before the decision is reviewed and final by a court decision, the Agency publishes just the operative content of the decision with the addition of some rudimentary reasoning and description of the proceeding, both without confidential information. After the decision of the Agency becomes final, the Agency publishes a non-confidential version of its every decision on its website. In addition to this, every judgement of the court is also published on the unified courts' website for the access to all judicial decision (www.sodnapraksa.si) where the parties and interested stakeholders can access every decision in an anonymised manner that refers to competition law. By rule, the Agency also prepares a press release regarding matters where it receives a judgement from the court and comments the decision within the frame of its jurisdiction. In the past, the Agency also organized press conferences to convey the messages from its decisions, especially in big merger cases containing remedies (f. i. incumbent retailer acquisition) or antitrust decisions that had a large impact on certain undertakings (f. i. incumbent gas operator that was imposed a remedy to change the contracts with its industrial customers).

5. Twitter

10. The Agency recently started using Twitter as an efficient and prompt mean to convey the message of its activities and adopted decisions. The premise is to inform the interested public about its activities and also to notify the media in due time about adopted decisions and key activities of the Agency. The upside of Twitter is the opportunity to react swiftly to the stories of the media, correct the articles and announcements that refrain from

facts and to react to commentaries with explanations and evidence. Twitter helps the Agency to reach the audience that is more involved and interested in the activities of the Agency and it enables the Agency to maintain a hands-on approach to the media coverage.

6. Booklet and presentations

11. With the aim of presenting the activities of the Agency to different audiences, interested in competition rules and enforcement, the Agency decided to cooperate with the Slovenian Chamber of Commerce and release a booklet with the description of most common illegal antitrust practices. This booklet was distributed among the members of the Chamber and subsequently the Agency also organized an event together with the Chamber for its members to present the main instruments of competition law, most common infringements, provided some insight into compliance in conducting business activities and presented some most significant cases. This activity proved to be very efficient and resolved a number of issues that arose among the members of the Chamber.

12. Following the success of this project, the Agency continued to present the topics of competition law and its fundamental principles to other interested organisations, especially sectoral chambers and its members that got an insight a frame of competition law instruments that they need to be aware of.

13. It is also a common practice for the staff of the Agency to participate at different conferences, courses and other events that allow the Agency to present its practice, line of work and fundamental principles of competition law.

7. Comic book and leaflet on leniency and Agency's activities

14. The Agency experienced in the past (and also present to a certain degree) the lack of interest for the leniency programme set up at the Agency. In the initial years after the introduction of the programme, there was no interest whatsoever and the Agency faced an extremely limited number of applications. With the aim of raising awareness of the leniency programme, the Agency, among other measures, published a leaflet with basic information on leniency⁴ and a comic book with a witty depiction of Agency's competences and fundamental instruments of competition law to the wider public⁵.

15. The comic book called Warriors for competition depicts a story of manufacturers of "potica", traditional Slovenian dessert served and consumed mostly on big holidays with which a wider audience can relate to and maintain the necessary motivation to learn about basic competition law instruments. The story builds on the premise of a group of manufacturers of potica that convene on the subjects of mergers, the price of potica and fixing the price for it among themselves and abuse of dominance on the market of potica. Afterwards, there are 4 versions of the outcome of this situation, namely one where all 4 of the manufacturers are sanctioned for their role in the cartel, the second one where there is one manufacturer that has a sense of illegality and comes forward with leniency application and information about the participation in the cartel, the third one that explains the details

4

http://www.varstvokonkurence.si/fileadmin/varstvokonkurence.si/pageuploads/PROGRAM_PRIZANESLJIVOSTI.pdf

5

http://www.varstvo-konkurence.si/fileadmin/varstvo-konkurence.si/pageuploads/Strip-bojevniki_za_konkurencu1.pdf

and obligations in a merger and the last one that presents this case in an abuse of dominance scenario. Ultimately, there are consequences shown about all situations and a motivation to do the right thing in each case.

16. Finally, the comic book received great reviews and it is still an accessory used in teaching opportunities or other contributions to approach and explain the value and effects of competition law instruments and leniency applications, which proved to be very well received.

8. Conclusion

17. As set out in this article, there are a number of ways used by the Agency to raise the awareness of its work, effects and benefits and bring it closer to a wider public. The Agency utilized different tools to explain the basic concepts of competition law inform about the outcome of proceedings and efficiencies gained when prohibiting certain actions and give a general overview of Agency's activities through annual reports. It is crucial to continue this work, raise awareness of competition law efficiencies and inform the interested public about the measures, potential infringements and compliant business activities as well as hypothetical and actual imposed fines for non-compliance with competition law. The Agency will in future continue and strengthen its activities for informing the public about the value and benefits of its work in order to gain the mandate of the public for its activities.