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The Future of Effective Leniency Programmes – Note by the Slovak Republic

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More documents related to this discussion can be found at https://www.oecd.org/competition/the-future-of-effective-leniency-programmes-advancing-detection-and-deterrence-of-cartels.htm

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1. General overview

1. The Antimonopoly Office of the Slovak Republic (hereinafter as "AMO" or as "Office") is the independent central body of state administration of the Slovak Republic responsible for the protection of competition. The AMO has power to impose sanctions for the infringements of competition law, which are of an administrative nature.

2. The Office considers cartels to be the most harmful anticompetitive practices from which only their participants may benefit. That is why fight against cartels remains its main priority. It is very difficult to uncover cartels and it is also very hard to obtain information and evidence of their existence. The Office actively uses all available tools provided by the legal framework to obtain the necessary evidence.

3. Main information about possible anti-competitive behaviour comes from AMO´s own activities or from complaints. There is no specified process or strict form how to inform the AMO. This enables anybody to come and inform the AMO about potential competition problems in the market.

4. The Office may also conduct investigations in the individual industry sectors in order to obtain information on the state of competition in the sector (sector inquiries) or conduct investigations in order to determine whether there is a reason to initiate proceedings under the Act no. 187/2021 Coll. on Protection of Competition (hereinafter referred to as „the Act on Protection of Competition", or as „the Act")[1], or it may initiate the proceedings on its own incentive when it receives relevant information from any kind of source (e.g. complaint from undertaking, information from media, etc.).

5. Anyone could file the complaint. According to the Act, proceedings commence ex officio - on the AMO's own incentive or in case of concentration upon a notification of a concentration. This legislation enables the AMO to prioritize and select cases, thus the Office may refuse a complaint, which does not constitute a priority in the enforcement of the law. The Office shall justify the refusal with regard to the current prioritisation policy.

6. In order to increase competitive awareness the AMO explains the meaning and benefits of effective competition to undertakings, municipalities and public authorities, politicians and wide public.

7. The Office issued some materials to inform general public, especially the procurement agencies about the harmfulness, consequences and forms of cartel agreements in public procurement, specific cases dealt with by the competition authorities - „*Cartel agreements in public procurement*" with references how to identify suspicious anticompetitive conduct and to inform the AMO on this fact - *„Indications of anticompetitive conduct of entrepreneurs within public procurement*". The main reason for initiating activities in this field was the intention to receive information on particular tender bearing the signs of agreement between undertakings from credible resource of information - complaints submitted by other state administration bodies and procurement agencies dealing with public procurement within their competences. These bodies could directly

[1] This Act replaced previous Act on Protection of Competition no. 136/2001 Coll. (hereinafter referred to as „the Act 136/2001"). The new Act in 2021 was based on the previous legislation and adopted most of it.

inform AMO on suspicious conduct of participants to public procurement, because it is probable they are able to observe the signs of cartel.

8. In order to enhance cooperation, the Office has been maintaining cooperation with universities in Slovakia, especially with their faculties focused on law and economics and cooperation with state administration authorities of the SR - the *Office for Public Procurement* and the *Supreme Audit Office of the Slovak Republic, Ministry of Investments, Regional Development and Informatization of the Slovak Republic, Agricultural Paying Agency*. The Office also cooperates with the authorities and the institutions of the SR involved in the system of protection of the EU's financial interests and the fight against fraud within the AFCOS network.

1.1. Requests for information

9. After commencement of proceedings, the AMO gathers all relevant information concerning the case. Pursuant to the legal framework, anything that can clarify facts of a case and is in line with legal order of the Slovak Republic can be used as evidence. The AMO can interview undertaking and employees of undertaking as well as summon witnesses, ask for information or documents necessary to carry out its activity according to the Act.

10. According to art. 16 of the Act, the AMO has the power to request from undertakings, senior employees of an undertaking, statutory bodies of an undertaking or members of the statutory bodies of an undertaking, control bodies of an undertaking or members of the control bodies of an undertaking, employees, legal and natural persons the information and documents necessary for the AMO's activities regardless of the medium on which they are recorded, and make copies and notes from these documents or request their officially certified translations into the Slovak language. AMO has also power to request an oral or written explanation and to make an audio recording of an oral explanation. These requested legal or natural person is obliged to provide the AMO with the information and documents free of charge in the time limit stipulated by the AMO; in case of sensitive protected information under the conditions set by the special legislation.

1.2. Power to conduct inspections

11. AMO has also power to carry out an inspection in business premises on the basis of written authorization and to enter any buildings, premises and means of transport of an undertaking, which are related to the activity or conduct of the undertaking that are, or may be, related to competition for that purpose.

12. The stricter conditions apply for inspection in private premises. If a reasonable suspicion exists that information or documents related to the activities or conduct of an undertaking based on which a restriction of competition may be proven, are located in buildings, premises or means of transport other than business premises (e.g., facilities for leisure time which belong to undertaking), as well as in private buildings, private premises or private means of transport of the present or former undertaking's employees, the AMO may conduct an inspection in these premises. Since Constitutional rights can be effected by inspection in other than business premises and in particular in private premises, the inspection may only be performed on the basis of a court's approval of the inspection, which shall be issued following a proposal from the AMO.

2. Leniency programme

2.1. General overview

13. The leniency programme was introduced into the Slovak competition law in 2001, this legislation mirrored in a large extent leniency programme of the European Commission.

14. Leniency programme is a very important tool for detection of cartels. The Act allows the Office not to impose a fine or to reduce the fine for the cartel participant, which would otherwise be imposed for this illegal conduct under certain conditions. It is possible not to impose a fine only to one, namely the first undertaking, which has provided the Office with the decisive evidence to prove a cartel agreement or was the first to provide, on its own initiative, information and evidence being decisive to conduct a dawn raid, by which decisive evidence to prove a cartel agreement should be obtained (hereinafter referred to as "immunity applicant" or "immunity recipient"). In case the Office has already information about the cartel and cartel participants provide the Office with significant evidence which is not sufficient to prove a cartel agreement by itself, but in connection with information already available to the Office, it could enable the Office to prove it (added value), and it is possible to reduce the fine up to 50 % of the fine amount which would be otherwise imposed (hereinafter referred to as "applicant for reduction" or "partial immunity").

15. The AMO monitors the fulfilment of conditions for participation in the leniency programme from the moment of the submission of an application until the final decision in the matter is issued.

16. Conditions for participation in the leniency programme of all applicants belonging to one economic group/unit which submit joint application are considered to be fulfilled if each applicant fulfils these conditions.

17. Only an undertaking can apply for a leniency, which means a person entitled to act in the name of an undertaking but not individual employees of the undertaking. The application may be filed also by legal representative but he/she needs for this purpose to prove his/her identity by valid authorization.

18. The application can be filed whenever, that is, prior to the investigation, during the investigation, during inspection as well as whenever during the administrative proceedings. It is in undertaking's own interest to submit the application as soon as possible. Undertaking who plans to apply for full immunity from fine may ask the AMO first for reservation of an order (so-called marker). Undertaking can file a hypothetical application when it submits describing list of evidence, which it suggests to provide lately. In a case when applicant applies for a non-imposition of fine but does not meet conditions for it, such an application will be assessed as an application for a reduction of a fine. The applicant is informed about it. In situation when the AMO informs the undertaking that it does not meet conditions for full immunity, the applicant can ask not to use the submitted documents and information as evidence in the proceedings and at the same time to request a return of the submitted evidence back. More detailed information can be found in AMO's Guidelines.

19. The evidence needs to be submitted on the cartel participants' own initiative - that means before the AMO invites the undertaking to submit a piece of evidence and before the AMO has the decisive evidence proving the agreement restricting competition. Whether an investigation or proceedings have been initiated at the time the undertaking submitted decisive evidence in the matter is not crucial, however, it also depends on what stage the investigation is at and what evidence is already available to the AMO.

20. As an application filed to one competition authority is not considered to be an application filed to another competition authority, to reduce administrative load by filing complete applications at more competition authorities within EU, an applicant may ensure itself the first position in the order by filing brief summary applications to more competition authorities. If the European Commission is the most suitable competition authority to assess the case, an applicant which filed application for immunity to the European Commission in case of a targeted inspection or it intends to do so, may file a complete application to the European Commission and simultaneously summary applications to all national competition authorities, which it considers to be suitable to assess the case, that is, also to the AMO. In a case the AMO will be become competent authority to deal with a case, applicant will be requested to submit the complete application in a specified time period.

21. Details of applications for leniency programme, applications for marker, hypothetical applications, conditions for participation in leniency programme and process of the AMO following the application are determined by the Decrees laying down detail on leniency programme issued by the AMO.

2.2. Main legislative amendments

22. Since 2001, the rules have not changed significantly, the most significant change was the amendment of the Act 136/2001 in 2014. The new Act in 2021 maintained the rules of the previous Act, only some provisions had to be specified in order to transpose necessary provisions of the EU Directive into the national legal law[2].

23. In 2014 leniency programme was amended to increase the legal certainty for undertakings. Leniency programme was revised to reduce the concerns of potential leniency applicants and increase their motivation to submit the leniency application. The amendment in 2014 introduced into the Act 136/2001 the so called “marker” which is a way of reservation of order for the applicant and improved the previous regime in terms of alignment with ECN Model Leniency Programme.

24. Amendment in 2014 also enabled to apply for leniency also for the initiator of the agreement.

25. Another important change introduced certain advantage for the immunity applicants with regard their liability for damages, with the aim to boost up the applications in leniency programme. More details of the change are mentioned further in the text of this submission.

26. The Act also currently contents more comprehensive adjustment of access to file and protection of sensitive information (that was further specified by amendment to the Act 136/2001). Since important change in 2014, leniency application is not a part of the file until the Call before Issuing a Decision (equivalent of “statement of objection”) is addressed o the parties of the proceedings. After the Call is issued, the party to the proceedings can make a transcript of documents but not a copy of them. The amendment introduced also more detailed rules for dealing with a business secret and confidential information in general.

27. In relation to private lawsuits, amendment in 2014 introduced also the confidentiality of the leniency statements.

[2] Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market

28. Important changes in the area of actions for damages caused by anticompetitive infringements referring to leniency were made also in 2016 due to transposition of the EU Directive as mentioned further in this submission.

3. Leniency and Detection. Increasing motivation towards immunity applications.

29. Leniency programme, as mentioned above, is an important tool for detecting cartels.

30. However, despite the fact, that leniency programme was part of the Act on Protection of Competition, leniency programme was not used to its full potential. AMO has therefore always examined possible obstacles for undertakings to apply, especially for immunity within the leniency programme.

3.1. Criminal liability

31. One of the first obstacles identified to possible effective use of the programme was the criminal liability of natural persons pursuant to the Criminal Code[3] for breach of competition rules. Article 250 of the Criminal defines the criminal act of abusing participation in competition. Pursuant to the art. 250 of Criminal Code, everyone who by activity which is against competition law causes the other competitor substantial damage or jeopardizes the running of his/her business shall be punished by a sentence of imprisonment of up to three years. A person who committed this kind of crime shall be punished by a sentence of imprisonment of up to two to six years when there are other aggravating circumstances simultaneously present, such as an existence of large extent damage, bankruptcy of other undertaking. A crime committed from the special motive or committed in a more serious way shall be punished by a sentence of imprisonment of up to two to six years.

32. The AMO had considered existence of criminal liability as an obstacle for effective application of leniency programme. Individuals, such as managers or representatives of undertakings, who applied for leniency, were not exempted from criminal enforcement. For that reason, the AMO communicated this issue with the Ministry of Justice and as a result of the AMO´s initiative, the amendment of the Criminal Code of the Slovak Republic by Act No. 224/2010 was approved by the National Council of the Slovak Republic and came into force in September 2010. The exemption in the Criminal Code, art. 86d (so called an effective regret) provides the possibility for the person who by his/her own actions, enabled the entrepreneur or other legal entity to fulfil the conditions for not imposition or reduction of fine according to the Act on Protection of Competition, to gain immunity within the meaning of the Criminal Code which means that this person is not criminally liable.

3.2. Whistleblower

33. In 2014, an amendment to the Act on Protection of Competition introduced a reward system for natural persons who provide evidence about cartel, amounting to 1% of the fine imposed on undertakings for the infringement of art. 101 Treaty on the Functioning of the European Union (TFEU) or national counterpart provisions (cartel) (of maximum EUR 100 000). The person may also provide information that would enable AMO to conduct targeted inspection.

[3]. Act no. 300/2005 Coll. as amended.

34. The AMO was inspired by the similar provisions that existed at that time in the Great Britain and in Hungary.

35. A whistleblower can only be a natural person who is not an undertaking. To qualify for the reward, he or she should provide information or evidence to prove a cartel which will be decisive for the decision of the AMO or decisive to carry out a targeted inspection. The law further requires for the reward to be paid to whistleblower that the court which reviews the decision on the cartel infringement confirms the decision and the sanction imposed by the AMO has to be paid by the parties to the proceedings. In case the court changes the imposed sanction, the sanction as changed by court will be the base for calculation of the reward. In exceptional cases when the sanction would not be paid by the parties to the proceedings, the person has the right to 50 % of the reward (maximum EUR 10 000). The instrument of the whistleblower can be applied in parallel with the leniency programme. However, once the AMO has evidence or information about the existence of a cartel from the whistleblower, there is no longer possibility for the undertaking to apply for full immunity under leniency programme. This should create an incentive for the undertaking to bear in mind that there is a possibly that their employees may "blow the whistle" if they hesitate to file an application for leniency programme (especially application for immunity).

36. Whistleblower cannot be an employee of the undertaking that applied for the leniency programme and the leniency application had been submitted before the whistleblower submitted his application. On the request of the whistleblower his/her identity will be protected. The amendment explicitly stipulates in this regard that providing evidence to the AMO cannot be seen as a violation pursuant to special legislation (such as Labour Code, etc.) or their duties pursuant to their contract in order to protect whistleblowers. The AMO expected that this amendment could, together with existing leniency programme, contribute to the fight against cartels.

37. A few years after the introduction of the whistleblower into the Act on Protection of Competition a general law on whistleblowers was passed where the objective is to create incentives for whistleblowers and protection of the employees who inform relevant authorities about illegal activities. The anticompetitive activities prohibited by the Act on protection for Competition would be covered by this legislation as well. Therefore, the person can decide whether to inform about cartel under the two different pieces of legislation, one of them being Act on Protection of Competition. However, the general law on whistleblowers does not provide right for the reward when the conditions are met, as the reward may be assigned only by the decision and is subject to discretion of the special institution[4] that has competence to act in this matters. General law provides protection of whistleblowers in relations to their employer and a support for them also in the form of the legal representation where necessary. However, this requires that the identity of the whistleblower has to be uncovered to the employer. Experience of the AMO shows that whistleblowers of cartels prefer remaining anonymous, i.e. they're not willing to uncover their identity for the purpose of the proceedings. AMO introduced also internal special regime to secure and protect the identity of a whistleblower.

38. At the same time, in the years of the introduction of the whistleblowers reward into the Act, the AMO conducted several inspections.

39. The number of applications for immunity under leniency programme has increased. It is difficult to draw conclusions what was the main reason of this increase whether the introduction of whistleblower programme or more dawn raids activities or the combination

[4] Whistleblower Protection Office

of more factors. However, we observe certain increase, especially in the immunity applications which were rather rare until that time. It is possible that the mere introduction of the programme effected the motivation of undertaking towards applications for immunity.

40. At the same time, we have to make a note, that the introduction of the whistleblower programme did not reach our expectations in the submissions from whistleblowers. The lack of application in practice over the years is not going to positively affect the motivation of undertakings to participate in the leniency programme.

3.3. Ex officio investigations and cooperation with other authorities

41. Despite many efforts to increase the incentives for immunity applications, AMO has strongly relied on its own investigations and detections of cartels over years. In past years, AMO has strengthened cooperation with authorities auditing and controlling projects financed from EU funds. AMO concluded also memorandums of cooperation and provided many trainings for the staff that control tenders. The check lists of control mechanisms nowadays include also the signs and red flags that signal possible collusive and coordinated behaviour[5]. Relevant cases are then reported to the AMO or consulted with the AMO. AMO provides further and continuous trainings in order to improve the relevance and quality of these potential complaints as well as to improve their relevance in time in order to have the possibility to intervene effectively and quickly when needed.

42. The Office has also examined the possible use of more sophisticated/electronic tools for detection of cartels. However, their future use would depend on the financial resources.

43. We think that effective cooperation with police and prosecutor´s office is also important in uncovering secret collusive behaviour. Companies use nowadays more sophisticated methods for coordination and it is becoming more and more difficult to uncover and also prove prohibited coordination despite having strong reasonable suspicion of the cartel. Therefore, it´s becoming more important to be able to intervene especially during the duration of cartel. The use of wiretapping comes also into question and consideration. AMO does not have power to conduct these kind of investigative methods. In 2014, an amendment to Act on Protection of Competition introduced among other provisions also possibility to access the files in administrative proceedings and the possibility for the AMO to take notes, copies from the files and use them for the purpose of the proceedings on infringements of the competition law.

44. AMO applied this provision in a cartel case and used the transcripts of the wiretapping of communication among undertakings in the form of transcript of phone calls and messages. The wiretapping was originally conducted in the criminal investigation pursuant to the provisions of Criminal Code and related legislation with the approval of the competent court. Criminal investigation was stopped later and did not continue. The evidence was used to prove the cartel in the administrative proceedings of the AMO. However, the court reviewing the decision of the AMO annulled the decision. The court was of the opinion that the transcripts were not enough as the AMO did not verify those with the original and the AMO did not examined the court´s approval in terms of the legality of the wiretapping and since it was not in the administrative file, it was impossible to assess the legality of the evidence.

[5] OECD Recommendation on Fighting Bid Rigging in Public Procurement and the Guidelines for Fighting Bid Rigging in Public Procurement served as the basis

45. The AMO will have to reflect this opinion of the court in future proceedings as it will be crucial in the efforts to increase the probability of detection of secret cartels for the future.

3.4. Actions for damages for infringements of competition law

46. Actions for damages are one of the factors that are subject to discussions when it comes to immunity applicants. It is sometimes argued, that the immunity applicants are first in line to be hit by the action for damages and to pay the damages as the cartel participants are jointly and severally liable for the entire harm caused by the infringement (cartel). A co-infringer has however, right to obtain contribution from other co-infringers if it has paid more compensation than its share. It is important to note in this regard that the special provision of the Act on Protection of Competition provided an exemption for immunity applicants from liability of damages from July 2014 until 2016, pursuant to which recipient of immunity was not obliged to compensate for the damage if it could be compensated by other undertakings – cartelists. The immunity recipient was also not obliged to make contributions to other cartelists' compensation for damages. In the event that the damage could not be compensated by other infringers, the amount of the contribution of an infringer granted immunity from fines under a leniency programme could not exceed the amount of the harm it caused to its own direct or indirect purchasers or providers. In December 2016, the legislation was aligned accordingly, to the wording in the EU Damages Directive6 which had to be transposed into the Slovak legal order. Since the transposition of Damages Directive immunity recipient is jointly and severally liable to its direct or indirect purchasers or providers and to other injured parties only where full compensation cannot be obtained from the other undertakings that were involved in the same infringement of competition law. Nevertheless, the leniency programme didn´t/doesn´t seem to be very attractive for undertakings due to the exemption regarding its liability for compensation of damages. It is also important to note, that the actions for damages that were caused by anticompetitive infringements are still very rare. Some (mostly follow-on actions) were filed in the abuse of dominant position cases and almost none for cartels. We are not aware of any case where the court would assign damages to the claimant. Cases that were concluded so far, were either dismissed due to lack of competence, for the reason that the infringement was not proved or due to procedural reasons.[7]

47. The special act on actions for damages[8] also provides special rules with regard the access to file of the AMO and leniency statements are specifically protected.

48. At the same time, effective system of actions for damages may deter undertakings from competition law infringements. Although the private enforcement may contribute to

[6] Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union

[7] It is important to note that competent courts hearing these cases should inform AMO about every open case and its result which should enable AMO to consider amicus curiae intervention. However, there might be cases where the AMO was not informed.

[8] The complete title of the act: Act no. 350/2016 Coll. on certain rules on claims for damages caused by infringements of competition law and on the changes and amendments of the Act no. 136/2001 Coll. on the protection of Competition and on the changes and amendments of the Act no. 347/1990 Coll. on the organisation of the ministries and other central bodies of state administration of the Slovak Republic as amended

deterrence, within the Slovak Republic, administrative sanctions imposed by AMO remain the main deterrent factor.

49. Due to lack of actions for damages and cases in the past, before or after the changes and amendments to the legislation in this area also with regard to the leniency applicant/recipients, it is difficult to draw the conclusion that the risk of claims for damages would be the obstacle in the motivation of undertakings to participate in the leniency programme specially to apply for immunity.

4. Leniency and deterrence

50. Due to lack of ongoing private enforcement, and no criminal records for the criminal act of abuse of the participation in competition, the main deterrence effect lies on the administrative sanctions.

51. As it´s been already mentioned, the AMO has power to impose fines on undertakings for the abuse of dominant position and agreements restricting competition, periodic penalty payments and in cases of bid-rigging cartels, also the prohibition on participation in public tenders. Since 2021, AMO has also power to impose structural and behavioural remedies.

4.1. Exclusion in public tenders

52. Pursuant to art. 48 of the Act on Protection of Competition, the Office imposes a ban on an entrepreneur from participating in public procurement for three years in cases where a fine was imposed on this entrepreneur for violating the prohibition of an agreement restricting competition in the form of coordination of undertakings in public procurement, in a commercial public tender or in another similar tender, in relation with public procurement, business tender or other similar tender, or a ban of one year if the undertaking successfully applied for settlement in the case. On the other hand, such a ban shall not be imposed in cases where the entrepreneur's fine has been reduced pursuant to § 51 par. 2 of the Act on the Protection of Competition. This means that undertakings who successfully apply for the leniency programme, either through a request for non-imposition of a fine or a request for a reduction of a fine, cannot be sanctioned in the form of prohibition from participating in public procurement.

53. This type of "sanction" plays its role in both deterrence and also partially in relation to detection of bid rigging cartels. Since the introduction of this provision we have been observing an increase in number of leniency applications for reduction of fines.

4.2. Judicial review

54. Courts reviewing decisions and inspections of the AMO play also important role in the effective use of leniency programme. We have observed, for example, a decrease in number of leniency applications after a few negative judgments in 2015 on the inspections and authorisation of the inspections conducted in cartel cases. We have observed also more actions filed before courts against inspections conducted after year 2015 also in cases where the limitation period to file an action has expired long time ago. Again, it is hard to conclude that this is the only and direct link to decrease in number of applications, but in general, we observe that depending on the decisions of the courts, the undertakings are more or less motivated to cooperate with the AMO if they feel there is chance to quash the entire inspection or chance to successfully question the evidence gathered in administrative file in general or to question the assessment of the matter in court.

55. The procedures of the AMO have to be flawless and decisions duly justified. Nevertheless, sometimes we still receive surprising judgements from the courts on the matters that have been already resolved by the Court of Justice of the EU.

56. The review process of the decisions and procedure of the AMO by courts plays a crucial role also in this regard and the effective public as well as private enforcement depend on the review procedures of the court.

4.3. Ongoing enforcement in other EU countries

57. Another phenomenon we have observed in leniency applications is the activity and ongoing investigations of other NCAs in the EU countries. This has been confirmed throughout many years. Undertakings operating on the markets of more countries acknowledge the possibility of being sanctioned in more countries where the cartel took place or effected the market. Cooperation with the EU countries in this regard pursuant to the EU regulations is therefore crucial in these cases.

4.4. Trends in leniency applications

58. After analysis of submitted leniency applications, we can deduce some factors that could have an impact on the number of applications. Most of them have already been mentioned.

59. First of all, we identified that the full immunity leniency applicant usually belongs to the group of an undertakings with a **parent foreign company**. This fact may be related to a greater discipline of undertakings and knowledge of competition law abroad.

60. **Claims for private damages** and **bidder exclusion** are among the factors that may have an impact on the dynamics of leniency requests.

61. We are aware that the number of leniency applications also depends on the fact how is **the competition authority** respected or seen by stakeholders which is mainly **created by its interventions**. This assumption was confirmed after the number of leniency applications increased after a significant increase in dawn raids in 2014, 2015.

62. However, we also observe **the influence of the activities of other competition authorities** on the submission of leniency applications in Slovakia. We have also noticed the cartel investigation on the markets in the EU countries as one of the factors that encourages leniency submissions in our jurisdiction as well.

63. As referred to above, AMO conducts **trainings** for public procurement officers, who subsequently identify suspicious tenders and submit complaints to the Office.

64. The Office also provides information on its website about leniency programme, it also informs about leniency programme and provides undertakings with the material about the leniency programme also during the dawn raid.

65. We found in our practice that **requests for a reduction of the fine** occur more frequently than full leniency applications. Parties usually decide to cooperate and ask for partial leniency when they are aware about the AMO activities/findings. In that cases, the leniency application is usually followed by the settlement. To our opinion, this parties´ approach is affected also by **bidder exclusion sanction**. However, we have also observed different tactics of undertakings where they select the information they will submit as the applicants for reduction. They tend not to uncover everything they have at their disposal and also provide misleading or incomplete information. This is despite the fact that the provision in the Act on Protection of Competition guarantees the undertaking that provides

evidence of additional value, for example on the duration of infringement, that this evidence is not going to result in the increase of fine for the duration for this undertaking. This issue will have to be reduced for the future as different tactics and misleading sometimes introduces more confusion into the cases rather than expected added value to the evidence in administrative file. This is also the question on the legal representation of the undertakings as it shouldn´t happen in cases where undertaking is represented by the member of the bar.