

# PROPOSED NEW RULES RELATING TO ACTIONS FOR DAMAGES FOR BREACH OF COMPETITION RULES IN SLOVENIA

## AMENDMENT OF THE SLOVENIAN COMPETITION ACT PROPOSED

The Ministry for Economic Development and Technology has recently published a legislative proposal for an amendment of the Competition Act (*Zakon o preprečevanju omejevanja konkurence, ZPOmK-1*) to implement the 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.

The amendment provides for a number of new substantive and procedural rules aimed at facilitating actions for damages brought by injured parties against undertakings that have infringed EU or Slovenian competition law. The most important changes are briefly described below.

### JOINT AND SEVERAL LIABILITY

The amendment proposes that undertakings which have infringed competition law through joint behaviour, e.g. members of a cartel, are jointly and severally liable, meaning that the injured party will have the right to request compensation from each of those undertakings until it has been fully compensated. Certain limitations of the principle of joint liability will apply to SMEs and to undertakings which have been granted immunity from fines by a competition authority under a leniency programme.

### QUANTIFICATION OF HARM

The draft amendment also provides for rules governing the quantification of harm resulting from an infringement of competition law. In particular, it will be presumed that certain serious infringements (cartels) have caused harm. The infringer will have the right to rebut this presumption (in comparison, under general liability for damage rules the claimant needs to prove that an infringement has caused harm). The courts will also have the power to determine the amount of harm if it is established that a claimant suffered harm but the exact amount of harm cannot be determined.

### PASSING-ON

The proposed amendment introduces rules on the passing-on of overcharges to ensure that anyone who has suffered harm as a result of a competition law infringement is able to claim compensation. In particular, both direct and indirect purchasers will be able to claim and obtain compensation. On the other hand, the infringer can invoke a passing-on defence against the claimant, i.e. it can invoke as a defence the fact that the

claimant passed on the whole or part of the overcharge resulting from the breach of competition law.

To avoid that various actions for damages by claimants from different levels in the supply chain (for which different courts may be competent) lead to a multiple liability or to an absence of liability of the infringer, the courts will be able to take account of actions for damages related to the same infringement of competition law but brought by injured parties from other levels in the supply chain, final judgements resulting from such actions for damages, and publicly available information relating to such cases.

## DISCLOSURE OF EVIDENCE

According to the new rules, both the claimant and the defendant will be able to request that the court orders the other party or a third party to disclose the relevant evidence which lies in their control, subject to certain conditions aimed at preventing uncontrolled fishing expeditions. The courts will also have the power to order a competition authority (including the European Commission) to disclose the evidence included in its file if the party requesting the disclosure cannot obtain the evidence from the other party or a third party.

In order to protect confidential information contained in the evidence disclosed, the court shall adopt a decision on protective measures limiting access to the evidence to certain persons who are prohibited from disclosing confidential information to any other person. Any breach of protective measures by persons having access to confidential information is punishable by a fine of up to EUR 50,000.

## LIMITATION PERIOD

The relative limitation period is proposed to be 5 years from when the infringement of competition law ceased and the claimant became aware (or was reasonably expected to become aware) of i) the conduct of the infringer and that such conduct is an infringement of the competition law, and ii) the fact that the infringement of the competition resulted in harm to the claimant, and iii) the identity of the infringer. The draft amendment also specifies instances which affect the running of limitation period.

The absolute limitation period is currently still under review.

## NEXT STEPS

The legislative proposal is currently in the first phase at the Ministry for Economic Development and Technology and we expect that the proposal will be submitted to the Parliament for adoption in the following months.

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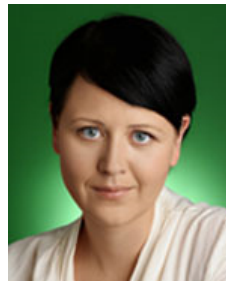


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