Slovakia

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LEGISLATION AND JURISDICTION

Relevant legislation and regulators

1 | What is the relevant legislation and who enforces it?

Merger control, as well as other aspects of competition law, was substantially governed by Act No. 136/2001 on Protection of Economic Competition (the old Act). On 1 June 2021, the new Act on Protection of Economic Competition (the new Act, or just the Act, if the particular provision remains unchanged in the new Act) became effective. The new Act is, inter alia, an implementation of Directive 2019/1 (EU) to empower the competition authorities of the member states to be more effective enforcers and to ensure the proper functioning of the internal market (EU Directive).

The changes in the area of merger control only partially modify the provisions governing the notification criteria. The new Act specifically abolishes the currently effective specific notification threshold for creating full functioning joint ventures. This will allow the merger control regulation to become more efficient considering the elimination of cases, when the formal assessment of a merger was necessary in the event of the creation of extraterritorial joint ventures that were not active in the territory of the Slovak Republic. The other substantive change consists of a declaration, which the joint control merger (not only the joint venture) is to be reviewed also under the article on coordination. Other major changes regarding the merger control regime concern procedural changes (starting from the assessment period), the possibility to impose periodic penalty payments for infringements with regard to merger control, the possibility to impose temporary remedies in certain cases and specific provisions regarding the pandemic situation and turnover calculations.

Furthermore, the new Act repeals a few decrees that are necessary for the execution of the Act, such as Decree No. 170/2014, which sets forth the details concerning the content of the notification and the respective documents required. This and other decrees have been replaced by new ones, which became effective on 1 June 2021. In addition, some other aspects are regulated by soft law, such as the guidelines on pre-notification contacts, turnover calculation, details of simplified notification, details of granting an exemption from the prohibition of merger implementation and the guidelines on ancillary restraints. These guidelines have been under revision, partly only under formal revision due to the formal changes in the Act. Guidelines on turnover calculation and guidelines on turnover calculation have been revised also substantially.

The filing fee is determined by the Act on Administrative Fees. The General Administrative Procedural Act applies to any procedural matters not specifically regulated in the Act.

The relevant authority for merger control (and competition law in general) is the Antimonopoly Office of the Slovak Republic (AMO). More information on the AMO may be found on its website.

Scope of legislation

2 | What kinds of mergers are caught?

The Act defines the following as a concentration (if on a lasting basis):

- a merger or amalgamation of two or more separate undertakings (including mergers and amalgamations pursuant to special legislation, as well as 'economic mergers', namely, situations whereby the undertakings concerned become economically combined, while retaining their legal independence, especially in the case of joint economic management);
- the acquisition of direct or indirect control by an undertaking or several undertakings over another undertaking, its part or their parts; or
- the creation of a joint venture controlled by two or more independent undertakings, performing all the functions of an autonomous economic entity (full-function joint venture) on a lasting basis.

A concentration does not arise if banks, branches of foreign banks, insurance companies or other financial institutions, the normal activities of which include trading in securities on their own accounts or on the accounts of others, temporarily acquire securities with a view to reselling them. This exemption only applies if they do not exercise voting and other rights with a view to influencing the competitive behaviour of that undertaking or if they exercise these voting rights only with a view to preparing for the sale of the entire undertaking or part thereof or the sale of securities, and upon such sale, they will lose the control, provided that this sale is effected within one year of the date of acquisition of the securities. If the disposal is not reasonably possible within this period of time, it may – upon request – be extended by the AMO. Further exemptions exist under special laws; for example, regarding the acquisition of control over an undertaking by liquidation trustees under the Commercial Code or by the bankruptcy trustee under the Bankruptcy Act.

3 | What types of joint ventures are caught?

The creation of a joint venture controlled by two or more independent undertakings, performing on a lasting basis all the functions of an autonomous economic entity (full-function joint venture), constitutes a concentration. If the creation of such joint venture has as its object or effect the coordination of the competitive behaviour of undertakings, the AMO appraises such coordination in accordance with the cartel prohibition (article 4 of the new Act).

4 | Is there a definition of 'control' and are minority and other interests less than control caught?

According to the Act, 'control' is the ability to exercise a decisive influence on the activities of an undertaking, especially by means of:

- ownership rights or other rights; and

- rights, contracts or other facts allowing the exercising of a decisive influence on the composition, voting or decisions taken by bodies belonging to the undertaking.

Minority interests are caught only provided that they confer control by any of the means described above.

Thresholds, triggers and approvals

5 What are the jurisdictional thresholds for notification and are there circumstances in which transactions falling below these thresholds may be investigated?

The AMO must be notified of a concentration where in the business year preceding the concentration:

- the combined aggregate Slovak turnover of the undertakings concerned amounted to at least €46 million and each of at least two of the undertakings concerned achieved a turnover of at least €14 million in Slovakia; or
- the worldwide aggregate turnover of at least one of the undertakings concerned amounted to at least €46 million; and
- in the case of a merger or amalgamation of two or more separate undertakings (including mergers and amalgamations pursuant to special legislation, as well as 'economic mergers' (ie, situations whereby the undertakings concerned become economically combined, while retaining their legal independence, especially in the case of joint economic management)) the aggregate turnover of at least one other undertaking concerned amounted to at least €14 million in Slovakia; or
- in the case of the acquisition of direct or indirect control by an undertaking or several undertakings over another undertaking or part of another undertaking or undertakings, the target (different from the undertaking meeting the worldwide €46 million threshold) generated an aggregate turnover of at least €14 million in Slovakia.

In contrast to the old Act, under the new Act the sole creation of a joint venture is not one of the cases when the AMO has to be notified.

For the purpose of turnover calculation, 'turnover' means a total of revenues, yields or incomes from the sale of goods or services, to which – if applicable – in addition, financial assistance granted to the undertaking has to be added. Financial assistance means financial aid granted from public sources, which concerns an activity performed by the undertaking and will be reflected in the price of its goods, and the undertaking is the recipient of the respective aid.

According to the specific provision, the decisive period for which the turnover is calculated is not only the previous business year, but also the periods preceding if the turnover in the previous business year did not meet the turnover threshold (this specific provision is a reaction to the temporary decrease of turnover in certain industries owing to the pandemic).

The aggregate turnover of an undertaking concerned includes:

1 the turnover of the undertaking concerned;
2 the turnover of undertakings in which the undertaking concerned directly or indirectly:
   - holds more than 50 per cent of the share capital;
   - is entitled to exercise more than 50 per cent of the voting rights;
   - has the right to appoint more than 50 per cent of the members of bodies belonging to the undertaking; or
   - has the right to manage the undertaking;
3 the turnover of undertakings having the rights referred to in (2) in an undertaking concerned;
4 the turnover of undertakings in which the undertakings referred to in (3) have the rights referred to in (2); and
5 the turnover of undertakings in which two or more undertakings referred to in (1) to (4) have joint rights as referred to in (2).

In the case of an acquisition of direct or indirect control over an undertaking or part of one undertaking or several undertakings, only the turnover pertaining to the acquired undertaking (or the relevant parts thereof) being subject to the concentration is taken into account for the purpose of turnover calculation.

The aggregate turnover of an undertaking concerned does not include the turnover generated between companies belonging to the same group. The turnover generated between the joint venture and other undertakings shall be proportionally divided among the parties to the concentration.

Two or more concentrations that are effected between the same undertakings or between undertakings from the same respective economic groups within two years are deemed to constitute one single concentration that occurred on the date of the occurrence of the last concentration.

6 Is the filing mandatory or voluntary? If mandatory, do any exceptions exist?

If a transaction constitutes a concentration within the meaning of the Act and exceeds the jurisdictional thresholds, filing is mandatory.

7 Do foreign-to-foreign mergers have to be notified and is there a local effects or nexus test?

Foreign-to-foreign transactions are subject to Slovak merger control if they qualify as a concentration and meet the jurisdictional thresholds set out above. The currently applicable jurisdictional thresholds intensified the local nexus requirement of notifiable concentrations. As a result, many foreign-to-foreign transactions that previously required a merger notification in Slovakia today usually fall outside the scope of the AMO's jurisdiction.

8 Are there also rules on foreign investment, special sectors or other relevant approvals?

There are no special rules on foreign investments.

Approval or at least a notification of acquisitions of interests above certain thresholds is required in certain other sectors, including energy, finance and media.

NOTIFICATION AND CLEARANCE TIMETABLE

Filing formalities

9 What are the deadlines for filing? Are there sanctions for not filing and are they applied in practice?

There is no explicit filing deadline. However, in any event the concentration has to be notified to the Antimonopoly Office of the Slovak Republic (AMO) prior to its implementation (ie, before any rights or obligations resulting from a concentration are executed) and after:

- an agreement on which the concentration is based has been concluded;
- the acceptance of a bid in a public tender has been announced;
- a state authority's decision has been delivered to an undertaking (eg, certain sector-specific approvals);
- announcement of a takeover bid;
- the day on which the European Commission informed an undertaking that the transaction falls within the jurisdiction of the AMO; or

- the day on which a particular event that led to the concentration occurred.

The notification can also be filed with the AMO prior to the conclusion of an agreement or other event causing the concentration to arise, provided that it results in a concentration that requires a filing with the AMO. Such notification must also contain reasoning and documents certifying the facts essential for the concentration.

In the event of a failure to notify the concentration, the AMO shall impose a fine of:

- up to 10 per cent of the undertaking's worldwide turnover generated in the preceding business year; or
- up to €330,000 on an undertaking that generated turnover not exceeding €330 or has not achieved any turnover, or when its turnover cannot be calculated.

The AMO is entitled to take into consideration the turnover generated in previous business years if there is a reasonable suspicion that an artificial decreasing of the undertaking's turnover in the preceding business year occurred. Furthermore, the Act on Protection of Economic Competition (the new Act) entitles the competition authority to penalise the association of undertakings. The AMO can impose fines up to 10 per cent of the turnover not of the association of undertakings itself, but of its member undertakings' turnovers in the aggregate. If the association is unable to pay the fine, it will become obliged to require contributions from its members. If the members do not comply with this requirement, the AMO may claim the fine amount either from any of the member undertakings, if its representatives are part of the decision-making bodies of the association, or from any member undertaking that is active on the relevant market.

The new Act also introduces periodic penalty payments, which secure the proper and on-time execution of the relevant duties. If the obligation is not fulfilled, this sanction forces the obliged subject to remedy the unlawful state of affairs in the shortest time possible. The new Act also responded to the EU Directive by authorising the AMO to use any interim measures necessary for the protection of the market and its conditions.

10 Which parties are responsible for filing and are filing fees required?

The responsibility for the submission of the filing depends on the type of the concentration. Against this background, the filing has to be submitted:

- jointly by the parties to the concentration in the case of a merger or amalgamation of two or more independent undertakings;
- in the case of a public tender, by the selected bidder;
- in the case of a decision issued by a state authority on a merger or amalgamation of undertakings pursuant to special legislation, by the parties to the concentration jointly;
- in the case of a takeover bid, by the proposer of the takeover bid; and
- in any other cases, the notification has to be submitted by the undertaking or undertakings that acquire control over another undertaking or its part or other undertakings or their parts.

The filing fee is determined by the Act on Administrative Fees. It currently amounts to €5,000 (with a decrease if the notification is made in electronic form). As of 1 March 2016, the filing fee is paid based on the payment order issued by the AMO. If the parties wish to evidence the payment together with the merger notification (and thus avoid losing time with additional formal letters), the AMO should be contacted at least one day before the actual notification and application for the payment order.

The responsibility for the failure to notify the AMO passes to the 'economic successor', who continues with the commercial activity of his predecessor, when the predecessor stopped with the legal or actual execution of this activity.

11 What are the waiting periods and does implementation of the transaction have to be suspended prior to clearance?

The waiting period falls under the statutory timetable for clearance.

The intended concentration must not be implemented prior to clearance (ie, the undertakings concerned may not exercise rights or obligations arising from the intended concentration until the AMO issues a clearance decision (suspension obligation)).

However, the Act on Protection of Economic Competition recognises the following exemptions:

- In the case of a public tender, the selected bidder may make its bid provided that it does not exercise the voting rights arising in relation to the implementation of the bid.
- The implementation of a public takeover bid or of transactions with securities at the securities market through which control is acquired from various subjects, provided that:
  - such concentration is immediately notified to the AMO (ie, in practice, as soon as the acquirer learns that it has acquired control); and
  - the undertaking acquiring control does not exercise its voting rights related to these securities or only does so to maintain the full value of its investments based on an individual exemption granted by the AMO.
- Under exceptional circumstances, the AMO may (upon request of the parties) grant an exemption from the standstill obligation if there are 'serious reasons'; for example, serious financial problems or insolvency threats. The AMO has to decide on the exemption request within 20 working days of its submission (however, if the AMO asks for the further information, the clock may be stopped). The exemption should generally concern only the performance of certain urgent actions if no threat to competition is identified. The AMO may bind the grant of the exemption to conditions and commitments to ensure effective competition.

Pre-clearance closing

12 What are the possible sanctions involved in closing or integrating the activities of the merging businesses before clearance and are they applied in practice?

If the suspension obligation is breached (closing before clearance), the AMO shall impose fines.

In addition, the AMO may oblige the parties to restore the level of competition that existed prior to the implementation of the concentration, especially by ordering the division of a company or the transfer of rights, or the imposing of other obligations.

13 Are sanctions applied in cases involving closing before clearance in foreign-to-foreign mergers?

The sanctions for closing before clearance are applicable also in case of foreign-to-foreign mergers. During the past few years, the AMO imposed fines in the range of €1,000 to €600,000 for infringing the standstill obligation. In three instances, such fines have been imposed on undertakings based outside the Slovak Republic (in particular in the Czech Republic and Hungary).

On 16 October 2018, the AMO Department of Concentrations issued a decision imposing a fine in an aggregate amount of €600,000 on entrepreneur J&T Finance Group SE, Czech Republic (JTFG), and

a fine in an aggregate amount of €7,751 on Ladislav Bödők, Slovak Republic (LB). In the decision, the AMO submitted that the parties to the proceedings breached the Act as they failed to notify a concentration resulting from the acquisition of joint control by the entrepreneurs JTFG and LB over PantaRhei. The parties to the proceedings also breached the Act as a result of exercising their rights and obligations resulting from the aforementioned concentration before the issuance of a valid decision concerning that concentration, which had already been implemented to the fullest extent (ie, the entrepreneur JTFG had acquired an ownership interest in PantaRhei), and this was followed by exercising joint control over that company by the parties to the proceedings.

14 What solutions might be acceptable to permit closing before clearance in a foreign-to-foreign merger?

In general, foreign-to-foreign concentrations are assessed and treated in the same way as domestic concentrations. The Act does not provide for hold-separate (carve-out) solutions.

Public takeovers

15 Are there any special merger control rules applicable to public takeover bids?

Certain actions related to public takeover bids are – by law – exempted from the standstill obligation.

Documentation

16 What is the level of detail required in the preparation of a filing, and are there sanctions for supplying wrong or missing information?

Details concerning the content of the notification and the respective documents required are set forth in the new Decree No. 189/2021, which entered into force on 1 June 2021. The new Decree does not contain notable changes, just the changes based on the adoption of the Act and several additional precise provisions. The Decree sets out the following situations where a short-form notification may be submitted:

- an undertaking intends to acquire sole control over another undertaking in which it already exercises joint control;
- there is no horizontal or vertical overlap between the undertakings concerned under any alternative definition of the relevant market; or
- the combined market share of the parties concerned (including their affiliated companies) is less than 15 per cent at the horizontal level and individually or combined less than 30 per cent at the vertical level also under any alternative definition of the relevant markets.

A short-form notification must contain only a limited level of information, in particular:

- information on the parties to the concentration (ie, their business activities);
- description of the concentration;
- information on the capital, financial and personnel structure;
- general market information (eg, list of all categories of goods produced or imported including the respective territories, possible product or geographical market definition based on such product categories, short characteristics of the markets, statement on the (non-)existence of affected markets and the possibility to use the short-form notification, total market size, individual market shares held by the parties, most important competitors);
- information on cooperative effects;
- reasons for and effects of the concentration and the impact on competition;
- information on other applicable competition authorities; and
- underlying documentation.

If the criteria for the submission of a short-form notification are not met, the usual long-form notification must be submitted that requires the parties to submit, in addition to the limited information contained in a short-form notification, rather extensive data on the affected markets and their functioning.

Together with the notification, a power of attorney must be submitted, which is not, however, required to be notarised and apostilled. If some of the required information is not available or known, the parties may ask (in the filing) for a waiver from providing such data and provide their best estimates or at least an indication of from where the AMO could get the information. Also, if some information is not deemed as relevant for the assessment of the concentration, the parties may ask the AMO to agree with the waiver.

The filing and all documents must be submitted in the Slovak language with the certified translation or the affidavit that the uncertified translations are correct and complete. Also, if only copies are submitted, the affidavit declaring the identity of the copy with the original is required. In practice, the AMO tends to agree with the submission of certain documents (such as annual reports) in English or the translation of only certain parts thereof into Slovak.

The submission of false or incomplete information in a merger filling is subject to fines, which may amount up to 1 per cent of the total turnover for the preceding accounting period.

Investigation phases and timetable

17 What are the typical steps and different phases of the investigation?

In practice, it is our experience that the AMO adheres to mandatory deadlines and usually strives to clear cases within Phase I proceedings. The Act does not provide for the possibility to request expedited proceedings.

18 What is the statutory timetable for clearance? Can it be speeded up?

The AMO recommends that pre-notification contacts are initiated before the notification is formally submitted with the AMO, even if the case does not raise substantial merger control concerns. Although the provision of a draft merger notification is not mandatory, practice shows that this is usually welcomed by the AMO. Pre-notification contacts should be initiated at least two weeks prior to the intended formal submission of the notification to the AMO.

Under the new Act, following the formal submission of the notification, the AMO assesses the completeness of the filing. Then the AMO issues an official letter informing the parties about the initiation of proceedings and of the completeness of the filing. It is recommendable to be in contact with the authority during this stage to ensure that this period is short. If the AMO finds that the submitted notification does not contain all the required information, it will issue a request to complete the missing information. Once the filing is accepted as 'complete', the AMO issues an official confirmation letter to this effect. Only complete notification starts the assessment period.

The subsequent handling of the case depends on whether Phase I or Phase II proceedings are applied. If the concentration does not require an in-depth analysis owing to the identification of competition concerns as to its compatibility with the Slovak competition law rules, the AMO issues a decision within 25 working days of receipt of

the complete notification (Phase I proceedings). According to the new Act, the decision does not have to include a reasoning. However, if the reasoning is included, it shall only provide some general information about the parties to the concentration, and the business sectors or relevant markets where the parties are active. Under the old Act, the decision contained 'simplified reasoning'.

In cases that require in-depth analysis because of the identification of competition law concerns (Phase II proceedings), within the deadline for the Phase I proceedings the parties must be informed about the initiation of Phase II proceedings in writing. Once the AMO has initiated Phase II, it must issue a decision within 90 working days starting from the last day of the Phase I proceedings period.

If the AMO requests from the parties additional information or documents that it considers relevant for the assessment of the case, this effectively stops the clock. If the notification contains false (misleading) information, the clock is reset and newly starts running only as of the day following the delivery of the true information. At the request of the parties or with their consent, the AMO may prolong the Phase I and II periods, even repeatedly, by a total of up to 30 working days at most.

If the concentration raises competition law concerns, the AMO may request the parties in writing (including reasoning) to propose conditions (commitments) within 30 working days upon delivery of such request. Such request effectively stops the clock, namely, the above-described Phase I and II review or decision-making periods are not in effect until the parties submit their proposed conditions or commitments or the expiry of the 30-working-day period (whichever occurs first). At justified request, the 30-working-day deadline may be prolonged or the AMO may accept the proposal even after its expiry in exceptional cases. Moreover, inspired by the European Commission's practice, the AMO may test the proposed conditions or commitments by addressing them to natural persons or legal entities, publishing or in another manner or may appoint an independent trustee to supervise the fulfilment of such conditions or commitments.

Before issuing its final decision in Phase II, the AMO is required to inform the parties about its assessment of the matter and conclusions and asks them to provide their comments (if any) in writing. Subsequently, the final decision is issued and delivered to the parties. The decision becomes valid and effective if it is not appealed within 15 days of the delivery or the parties waive the right of appeal.

SUBSTANTIVE ASSESSMENT

Substantive test

19 | What is the substantive test for clearance?

The Antimonopoly Office of the Slovak Republic (AMO) follows the significant impediment to effective competition (SIEC) test, which is also applied by the European Commission. Therefore, the AMO assesses whether the concentration does not significantly distort effective competition on the relevant market, in particular owing to the creation or strengthening of a dominant position. We are not aware of any cases where the AMO took into account the 'failing firm' defence.

20 | Is there a special substantive test for joint ventures?

There is a special substantive test for joint ventures and for joint control, which are assessed under the SIEC test and under the coordination provision (if the conditions for coordination are met).

Theories of harm

21 | What are the 'theories of harm' that the authorities will investigate?

The AMO examines whether the concentration will not significantly impede effective competition in the relevant market, in particular owing to the creation or strengthening of a dominant position.

This may especially be the case if an undertaking or several undertakings are not subject to substantial competition or can act independently as a result of their economic power. As the Act on Protection of Economic Competition (the Act) does not contain any market share presumptions, each case requires an individual assessment on a case-by-case basis.

The Act does not list specific additional factors to be taken into account by the AMO for the purpose of its assessment. In practice, however, the AMO usually considers various factors, including the market position of the undertakings concerned, market structure and possible future developments, barriers to entry, existence of competitors, intentions of companies to enter the market, supply and demand structure, price development, etc.

When assessing the concentration on this basis, the AMO enjoys wide discretion. Inter alia, it takes into account the European Commission's guidelines on the assessment of horizontal and non-horizontal mergers, the guidelines on the definition of the relevant market and other relevant soft law.

Non-competition issues

22 | To what extent are non-competition issues relevant in the review process?

The Act does not expressly mention non-competition issues as being relevant for the assessment process. However, as the AMO enjoys wide discretionary powers for analysing the effects of the concentration and tends to follow in general the practice applied under the EU merger control regime, it is not unlikely that the AMO would take into account non-competition issues in a similar way as the European Commission.

Economic efficiencies

23 | To what extent does the authority take into account economic efficiencies in the review process?

The Act does not expressly mention economic efficiencies. In practice, however, the AMO would most likely take them into consideration (in particular if the parties refer to them in the notification).

REMEDIES AND ANCILLARY RESTRAINTS

Regulatory powers

24 | What powers do the authorities have to prohibit or otherwise interfere with a transaction?

Based on the assessment of the concentration under the substantial test, the Antimonopoly Office of the Slovak Republic (AMO) may issue:

- a decision approving the concentration;
- a decision approving the concentration provided that certain conditions and obligations imposed on the undertakings concerned are observed and met; or
- a prohibition decision.

After clearance has been granted, the AMO:

- on its own initiative, has to reverse a decision that has been made subject to conditions and decide on the concentration anew if the parties fail to fulfil the conditions imposed;

- at the request of the parties, may change a decision that has been made subject to conditions if:
  - the situation on the relevant market has changed so substantially that the imposed conditions or obligations are no longer justified; or
  - the parties request the prolongation of the fulfilment deadline, because they cannot fulfil the conditions or obligations for serious reasons; or
- on its own initiative, may change or reverse a decision if:
  - information relevant for granting clearance later proves incomplete or wrong; or
  - the parties fail to fulfil the commitments related to the condition imposed in the decision.

Remedies and conditions

25 Is it possible to remedy competition issues, for example by giving divestment undertakings or behavioural remedies?

At the request of the AMO, the notifying party may submit proposals suggesting certain conditions and related commitments in view of eliminating competition law concerns. In general, the AMO accepts both structural and behavioural remedies.

The AMO may test draft conditions and commitments by directly inviting natural persons and legal entities to provide comments and observations, making them public on its website or in any other manner. Inter alia, the conditions and commitments may include an obligation to appoint an independent trustee who monitors the compliance with the agreed conditions and commitments at the costs of the parties.

26 What are the basic conditions and timing issues applicable to a divestment or other remedy?

If the AMO identifies competition law concerns, the notifying party is obliged within 30 working days to provide a proposal for commitments and conditions. If the notifying party fails to meet this deadline, the AMO may prohibit the concentration. The AMO does not usually consider any proposals submitted after the expiry of the 30 working days deadline. However, upon a justified request, the AMO may accept them even after the expiry of the deadline provided that the remaining time period for issuing the decision still allows for a proper review or assessment of the proposal. No explicit timetable is set for the execution of the divestment or other remedy. The timetable is set in individual decisions based on the individual characteristics of the case.

27 What is the track record of the authority in requiring remedies in foreign-to-foreign mergers?

We are not aware of any foreign-to-foreign mergers where the AMO has requested remedies.

Ancillary restrictions

28 In what circumstances will the clearance decision cover related arrangements (ancillary restrictions)?

The clearance decision of the AMO usually covers restrictions directly related to and necessary for the implementation of the intended concentration. Details are set out in the AMO's Guidelines on Restrictions of Competition Relating Directly to a Concentration and Being Essential for its Realisation.

INVOLVEMENT OF OTHER PARTIES OR AUTHORITIES

Third-party involvement and rights

29 Are customers and competitors involved in the review process and what rights do complainants have?

The fact that a notification has been submitted is made public on the website of the Antimonopoly Office of the Slovak Republic (AMO) and the Commercial Bulletin, inviting third parties to submit their observations and comments on the intended concentration.

Although third parties thus have the right to be heard, they do not enjoy procedural rights comparable with those of the notifying parties (eg, third parties in particular generally have no right to appeal the AMO's decision). Under the Act No. 136/2001 on Protection of Economic Competition, third parties could receive access to the file based on article 40(1), if they were able to demonstrate their legitimate interest. The new Act on Protection of Economic Competition does not provide the same opportunity for the unconcerned persons.

The AMO may also gather information ex officio, in particular by contacting customers and competitors to get their opinions on the intended concentration or for requesting information, clarifications or documents related to the concentration. The AMO may also market test the proposals for conditions or commitments.

Publicity and confidentiality

30 What publicity is given to the process and how do you protect commercial information, including business secrets, from disclosure?

The fact that a notification has been submitted is made public on the website of the AMO and in the Commercial Bulletin. The AMO also publishes its decisions in a similar way. The AMO may, however, not disclose information or documents that contain business secrets subject to protection under special laws (eg, banking secrecy) or that are marked as confidential information. In practice, it is therefore recommended to explicitly mark any business or confidential information as such in the notification and any other comments, statements and documents sent to the AMO, including reasoning as to why confidentiality has been requested. To be specific, as regards notification of the concentration, the notifying party is obliged to provide reasons for the requested confidentiality and provide a non-confidential version of the notification. The AMO published guidance on the assessment of information marked as business secrets, confidential information or personal data.

Otherwise, the parties may be requested by the AMO to provide a non-confidential version of the information or documentation, including reasons for the requested confidentiality. Only under exceptional circumstances could the protected information be made accessible by the AMO to another party to the proceedings (with the consent of the affected party) or to its representative (in the absence of such consent). Decisions issued within Phase I are rather short and contain only the simplified reasoning.

Cross-border regulatory cooperation

31 Do the authorities cooperate with antitrust authorities in other jurisdictions?

The AMO is a member of the European Competition Network and the International Competition Network. It actively cooperates with competition authorities that are members of these networks. According to the annual report of the AMO, its employees were actively involved in European Commission cases as rapporteurs within the Advisory Committee as well as in various working groups with the European

Commission. Moreover, the AMO maintains close cooperation with the Czech competition authority, including the regular exchange of experience and know-how, discussion of legal and other current issues and the organisation of seminars, conferences and workshops. Bilateral cooperation also exists with the Hungarian and Austrian competition authorities.

An important legislative development relevant to the implementation of the EU Directive is the enactment of international mutual assistance. The new Act on Protection of Economic Competition lays down the competency of the AMO to provide assistance in the matter of notification and delivery of relevant documentation to a party to the proceedings in other member states. The AMO also supports the execution of foreign final decisions that impose a fine or periodic penalty payment. This way, the decisions of the AMO are enforceable in other member states as well, which is particularly important because in the past there were cases in which the fined company ceased to exist or function on the market of the Slovak Republic, making it complicated to recover the fines.

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JUDICIAL REVIEW

Available avenues

32 | What are the opportunities for appeal or judicial review?

Within 15 days of its delivery, the Antimonopoly Office of the Slovak Republic (AMO)'s decision may be appealed with the Council of the AMO (the Council). The decision of the Council may be appealed with the Regional Court Bratislava within two months of its delivery. The decision of the Regional Court Bratislava may be challenged only in limited occasions with the Supreme Court of the Slovak Republic based on the special remedy.

Filings with the courts do not have a suspensive effect. However, the courts may grant a suspension of the enforceability of the decision at the party's request, provided that serious harm would otherwise occur to the applicant.

There are only very few cases where the AMO has prohibited concentrations in the past (and thus merger control decisions of the AMO have been only very rarely challenged).

Time frame

33 | What is the usual time frame for appeal or judicial review?

The AMO is obliged to issue a decision within three years of the initiation of proceedings. The judicial review performed by the Regional Court Bratislava and the Supreme Court of the Slovak Republic is not subject to any time restrictions; therefore, the time frame largely depends on the complexity of the case and cooperation of the parties.

ENFORCEMENT PRACTICE AND FUTURE DEVELOPMENTS

Enforcement record

34 | What is the recent enforcement record and what are the current enforcement concerns of the authorities?

All notified concentrations in 2020 were approved. The numbers of both administrative proceedings and decisions concerning mergers have been stable over the past three years, with a slight decrease in 2020 (possibly because of the pandemic). In recent years, in several cases where the Antimonopoly Office of the Slovak Republic (AMO) had competition concerns, the parties decided to refrain from offering commitments to overcome those concerns and decided to discontinue the intended transaction. They withdrew the notification and the proceedings were closed. In recent years, there has been a trend indicating increased activity of the AMO aimed at fining parties to non-notified mergers for the implementation of these mergers without having first obtained AMO's clearance.

The AMO does not distinguish between local mergers and foreign-to-foreign mergers in its assessment, but the new Act on Protection of Economic Competition will, in our opinion, considerably decrease the number of notified cases with regard to extraterritorial joint ventures, owing to the abolishment of the notification threshold related to joint ventures. All foreign-to-foreign mergers that have been notified to the AMO have been cleared.

Reform proposals

35 | Are there current proposals to change the legislation?

The new Act on Protection of Economic Competition became effective on 1 June 2021, together with the related new decrees. Proceedings before the AMO that have been initiated and were not closed under the old Act on Protection of Economic Competition shall be completed pursuant to the provisions of the new Act. Legal effects of the acts that occurred during proceedings before the new Act became effective shall remain preserved. If the proceedings regarding concerns were initiated according to the old Act, and in the new Act the specific concern would not be subject to control, the AMO shall dismiss the proceedings. In the case of imposing fines, the more favourable Act for the subject shall be used.

UPDATE AND TRENDS

Key developments of the past year

36 | What were the key cases, decisions, judgments and policy and legislative developments of the past year?

The most important legislative development is the implementation of Directive 2019/1 (EU) by adopting the new Act on Protection of Economic Competition, together with the relevant Decrees necessary for its execution.

With regard to key cases, on 20 May 2020, the Antimonopoly Office of the Slovak Republic (AMO) issued a decision in which it imposed fines on Grafobal Group Development, a. s., Bratislava of €27,000 and on Bratislavská vodárenská spoločnosť, a. s., Bratislava of a symbolic amount of €1,000. The undertakings infringed the Act by failing to notify a merger grounded in the acquisition of their joint control over the undertaking Infra Services, a. s., Bratislava and by exercising rights and

obligations arising from this merger before the AMO's decision on the merger came into force.

Since 2020, other mergers have been approved by the AMO and without any other imposed fines.

Under the new Act, the AMO is able to stay the proceedings if the circumstances related to an emergency situation interfere with the proper assessment of the matter. Until the stay is lifted, the relevant time limits cease to run.

Quick reference tables

These tables are for quick reference only. They are not intended to provide exhaustive procedural guidelines, nor to be treated as a substitute for specific advice. The information in each table has been supplied by the authors of the chapter.

Slovakia	
Voluntary or mandatory system	The filing of a notification with the AMO is mandatory in cases in which a concentration meets the applicable jurisdictional thresholds.
Notification trigger/ filing deadline	There is no explicit filing deadline. However, in any event the concentration has to be notified to the AMO prior to its implementation (ie, before any rights or obligations resulting from a concentration are executed). Inter alia, the notification can be filed with the AMO already prior to the conclusion of a formal merger agreement.
Clearance deadlines (Stage 1/Stage 2)	If the concentration does not require an in-depth analysis due to the identification of competition law concerns, the AMO issues a decision within 25 working days of the receipt of the notification (Phase I proceedings). In cases that require an in-depth analysis, the AMO may initiate in-depth proceedings within 25 working days from the receipt of the notification (Phase II proceedings). Once the AMO has initiated Phase II, it must issue a decision within 90 working days. Requests for information stop the clock. At the request of the parties or with their consent, the AMO may also prolong the Phase I and II periods, even repeatedly, by a total of up to 30 working days at a maximum. The AMO may request the parties to propose conditions (commitments) within 30 working days upon delivery of such request. This effectively stops the clock, that is, the above-described Phase I and II review/decision-making periods are not in effect until the parties submit their proposed commitments or the expiry of the 30-day period (whichever occurs first).
Substantive test for clearance	The AMO examines whether the concentration will not significantly impede effective competition in the relevant market, in particular due to the creation or strengthening of a dominant position (SIEC test).
Penalties	In the event of failure to notify the concentration or failure to comply with the standstill obligation, the AMO may impose a fine of up to 10 per cent of the undertaking's worldwide turnover generated in the preceding business year; or up to €330,000 on an undertaking that generated a turnover not exceeding €330 or has not achieved any turnover, or when its turnover cannot be calculated.