Slovenia

Klemen Radosavljević and Tjaša Lahovnik
Wolf Theiss

LEGISLATION AND JURISDICTION

Relevant legislation and regulators

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

In Slovenia, merger control, as well as other aspects of competition law, is substantially governed by the Prevention of Restriction of Competition Act (the Act). The Act became effective in 2008 and was amended in June 2009, April 2011, November 2011, July 2012, August 2013, April 2014, October 2015 and May 2017.

The information and documents to submit in a merger control notification are set out in the Decree on the concentration of companies notification form. The filing fees are determined by the Administrative Fees Act. With regard to procedural matters that are not specifically regulated in the Act, the General Administrative Procedure Act applies.

The relevant authority for merger control (and competition law in general) is the Slovenian Competition Protection Agency (CPA), which is competent for receiving, reviewing and issuing decisions on notified concentrations. In fulfilling its competencies, the CPA acts independently and autonomously.

The Agency Director and the Agency Council are the main bodies of the CPA. The latter consists of five members who are appointed by the parliament for a term of five years. The Agency Director is the chair (president) of the Agency Council. For each case, the Agency Council sets up a separate decision panel (which consists of all members of the Agency Council who in turn appoint from their midst a panel chair). The merger control review procedure until the adoption of the decision is then conducted by a public officer authorised by the Agency Director.

The decision to impose a fine (in cases envisaged by the Act) is adopted in a separate procedure that is decided by a panel composed of three members of the Agency Council and employees of the CPA. The panels adopt decisions by a majority of votes in sessions that are not open to the public. More information about the CPA and its activities can be found online.

Scope of legislation

2 | What kinds of mergers are caught?

The Act defines the following as concentrations:

- the merger of two or more previously independent undertakings or parts of undertakings;
- the acquisition of direct or indirect control of one or more other undertakings, in whole or in part, by one or more natural persons already controlling at least one undertaking, or by one or more undertakings, whether by purchasing of securities or assets, entering into a contract or by any other means; or
- creation of a joint venture by two or more independent undertakings, performing on a lasting basis all the functions of an autonomous economic entity.

A concentration does not arise if banks, insurance companies, savings institutions or other financial institutions, the normal activities of which include transactions and dealing in securities for their own account or for the account of others, hold business assets on a temporary basis that they have acquired in an undertaking with a view towards reselling them. This exemption only applies provided that they do not exercise any voting rights in respect of those business assets with a view towards determining the competitive behaviour of such an undertaking or that they exercise these voting rights only with a view towards preparing for the disposal of business assets and that any such disposal takes place within one year of the date of acquisition. If the disposal is not reasonably possible within this period of time, it may – upon request – be extended by the CPA.

3 | What types of joint ventures are caught?

The creation of a joint venture by two or more independent undertakings, performing on a lasting basis all the functions of an autonomous economic entity (full-function joint venture), constitutes a concentration. If the creation of this joint venture has as its object or effect the coordination of the competitive behaviour of undertakings that remain independent (ie, the joint venture partners), the CPA appraises this coordination in accordance with the cartel prohibition (prohibition of restrictive agreements; article 6 of the Act). If the CPA concludes that the exemption criteria set out in article 6 of the Act are not met, it will not approve the concentration (article 11(3) of the Act).

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

According to the Act, 'control' may be obtained through rights, contracts or any other means that separately or together, taking into account facts and regulations, confer the possibility of exercising decisive influence on an undertaking or part of an undertaking, in particular on the basis of:

- ownership or the right to use all or part of the assets of an undertaking; or
- rights or contracts that confer a decisive influence on the composition, voting or decisions of the bodies of an undertaking.

Control is acquired by individuals or undertakings that are holders of rights or entitled to rights under the contracts concerned, or while not being holders of such rights or entitled to rights under such contracts, have the power to exercise the rights deriving from the contracts.

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

- the combined turnover of the undertakings concerned (including undertakings belonging to the same group) exceeded €35 million in Slovenia; and
- either the turnover of the undertaking acquired (ie, the target), including undertakings belonging to the same group, exceeded €1 million in Slovenia, or in the case of the creation of a full-function joint venture, the turnover of at least two undertakings concerned (including undertakings belonging to the same group) exceeded €1 million in Slovenia.

Even where these turnover thresholds are not met, the undertakings concerned should inform the CPA of the implementation of a concentration, if a combined market share of the undertakings concerned exceeds 60 per cent in Slovenia. The CPA may then request a notification of the concentration within 15 days following the date on which the undertakings concerned informed the CPA (article 42(3) of the Act). At present, it is unclear whether the above market share test would also be met if one undertaking concerned alone represents a market share exceeding 60 per cent and there are no overlaps with the other undertaking or undertakings concerned.

The undertaking or undertakings concerned are the merging undertakings, the undertaking gaining control over another undertaking (ie, the acquirer), the acquired undertaking (target), and undertakings creating a notifiable joint venture.

For the purpose of turnover calculation, the net revenues from the sale of products and the provision of services in Slovenia have to be taken into account. Turnover generated by sales or services between companies belonging to the same group is not taken into account. Where the concentration consists of the acquisition of control in part of one or more undertakings, regardless of whether these parts qualify as a legal entity, only the turnover relating to the parts that are subject to the concentration are taken into account for the purpose of turnover calculation. Two or more transactions that take place within a two-year period between the same persons or undertakings are treated as one and the same concentration arising on the date of the last transaction.

Specific rules apply to the calculation of the turnover of credit and financial institutions where the financial income from shares, loans granted and operating receivables has to be taken into account. With regard to insurance companies, the amount of the gross premiums written is relevant, comprising all revenues and receivables from insurance contracts, including reinsurance premiums paid, after the deduction of taxes or contributions associated with insurance premiums.

Concentrations falling within the jurisdiction of the European Merger Control Regulation are not subject to the Slovenian merger control regime (one-stop-shop principle).

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 concentrations are subject to merger control if jurisdictional thresholds are met. The undertakings concerned could be exposed to fines in the case of a breach of the filing obligation. It is not required that any of the undertakings concerned have a registered seat or local branch in Slovenia. To date, the CPA's practice has not developed a de minimis or effects-based exemption.

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

The Act does not contain any provisions that would specifically relate to foreign investment or special sectors. However, provisions related to merger control, foreign direct investment and other relevant approvals can be found, inter alia, in the following areas.

Media sector

The Act applies to media mergers in the usual way (ie, the CPA is competent to review, assess and clear or prohibit the concentration if the jurisdictional thresholds are met). However, according to the Media Act, in addition, a special consent granted by the Ministry of Culture is required for the acquisition of shareholdings (or voting rights) of 20 per cent or more in publishers of radio or TV programmes or printed daily newspapers. According to article 58(3) of the Media Act, the Ministry of Culture may refuse to grant such approval if the merger results in the creation of a dominant position:

- on the advertising market;
- in the media market where coverage of more than 15 per cent of analogue terrestrial radio programmes is reached on the Slovenian market for radio programmes transmitted via analogue terrestrial radio signals;
- in the media market where coverage of more than 30 per cent of analogue terrestrial television programmes is reached on the Slovenian market for television programmes transmitted via analogue terrestrial radio signals; or
- where the number of issues of daily newspapers exceeds 40 per cent of all sold issues of daily informative printed media in the Republic of Slovenia that is issued at least three times a week.

Energy sector

In the energy sector, the role of the market regulator is performed by the Agency for Energy. According to the Energy Act, it is, inter alia, competent to supervise the transparency and competitiveness of the electricity and gas markets. In this function, the Agency for Energy may be involved in the assessment of sector-specific mergers.

Electronic communications sector

The market regulator in the electronic communications sector is the Agency for Communication Networks and Services of the Republic of Slovenia (ACNS). The Electronic Communication Act provides specific rules for the cooperation between the ACNS and the CPA. Inter alia, both authorities are authorised to exchange relevant information and cooperate in determining and analysing relevant markets and identifying significant market power. The ACNS is also competent to define relevant markets and to assess significant market power. Hence, in practice, it is likely that the CPA will involve the ACNS when assessing sector-specific mergers.

Financial sector

In the case of the acquisition of 'qualified shareholdings' (ie, above 10, 20, 33 and 50 per cent), the laws regulating banks, insurance companies, stock brokerage companies and fund management companies

require the approval of the respective regulatory bodies. Obtaining such shareholding without the prior consent of the competent regulatory body results in the loss of voting rights based on the shares beyond the qualified shareholding.

Foreign direct investment

In 2020, Slovenia established a new foreign direct investment (FDI) screening mechanism, which is applicable to investments aiming to establish or to maintain lasting and direct links between the foreign investor (ie, any foreign citizen or entity including EU, EEA, Swiss citizen or entity) and an economic entity established in Slovenia through a direct or an indirect acquisition of at least 10 per cent participation in capital or voting rights in a Slovenian target company. Such investments may include takeovers, mergers, greenfield investments and even acquisition of real estate (acquisition by a foreign investor of real estate essential to critical infrastructure or in the vicinity of such infrastructure is also subject to the FDI screening). The Slovenian Ministry of Economic Development and Technology may conduct a screening procedure and can decide to authorise, condition, prohibit or unwind a particular foreign direct investment if the investment poses a threat to the security and public policy of Slovenia, such as in the following cases where it may have an effect on any of the following areas considered as risk factors:

- critical infrastructure;
- critical technologies and dual-use items;
- supply of critical inputs;
- access to sensitive information;
- the freedom and pluralism of the media; and
- certain programmes and projects in the interest of the European Union.

The decision to engage in a screening procedure is based particularly on a preliminary evaluation of the following points:

- whether the foreign investor is directly or indirectly controlled by third country (non-EU) governments, including national authorities or third-country (non-EU) armed forces, including through ownership structure or significant funding;
- whether the foreign investor has already been involved in activities affecting security or public policy in an EU member state; and
- whether there is a serious risk that the foreign investor engages in illegal or criminal activities.

A decision to prohibit or unwind an individual foreign direct investment in the screening procedure has the consequence that the relevant merger agreement, takeover procedure or acquisition agreement is declared null and void. The screening procedure can apply even to foreign direct investments made up to five years before the adoption of the screening mechanism.

The respective FDI must be notified to the Ministry of Economic Development and Technology no later than 15 days after the day of the execution of the respective agreement or the publication of the takeover offer.

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?

A merger notification has to be submitted to the Slovenian Competition Protection Agency (CPA) no later than 30 days after the conclusion of the agreement, the announcement of a public bid or the acquisition of a controlling interest (whichever of these triggering events occurs first). If the CPA requests the parties to notify the concentration because their combined market share in Slovenia exceeds 60 per cent, the merger notification must be submitted no later than 30 days from receipt of this request.

In the case of a failure to notify the concentration within the filing deadline, the CPA may impose fines in the amount of up to 10 per cent of the annual turnover generated by the undertakings involved in the concentration (including other undertakings belonging to the same group) in the preceding business year. In addition, a fine between €5,000 and €10,000 may be imposed on the responsible persons of such undertakings and (if applicable) a fine between €3,000 and €5,000 on a natural person already controlling at least one undertaking.

If the nature of the infringement of the filing obligation is particularly serious (eg, owing to the amount of damage inflicted, the pecuniary benefit, the infringer's intent or unlawful gain), a fine between €15,000 and €30,000 may be imposed on the responsible person of a legal entity, and (if applicable) a fine of between €10,000 and €15,000 on a natural person already controlling at least one undertaking.

With regard to the sanctions for closing before clearance.

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

Concentrations that consist of a merger or acquisition of joint control have to be notified jointly by the undertakings involved in the merger, or by those acquiring joint control. In all other cases, the undertaking acquiring control is responsible for the filing.

The filing fee is determined by the Administrative Fees Act. At present, it amounts to €2,000.

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

The intended concentration must not be implemented prior to clearance, as undertakings are not allowed to exercise rights and obligations arising from the intended concentration until the CPA issues a clearance decision (suspension obligation).

If the CPA requested the parties to notify the concentration because their combined market share in Slovenia exceeds 60 per cent, the undertakings must cease implementing the concentration as of the date of receipt of this request.

Under exceptional circumstances, the CPA may (upon the request of the parties) permit the implementation of the concentration prior to clearance, if such an implementation is essential to maintain the full value of the investment or to perform services of general interest.

The suspension obligation does not have an effect on the implementation of public bids pursuant to the Slovenian Takeovers Act, provided that the acquirer does not exercise voting rights (or exercises them only according to a permit for early implementation granted by the CPA).

The duration of the waiting period depends on whether Phase I or Phase II proceedings are applied.

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?

In the case of closing before clearance, the CPA may impose fines.

In addition, the CPA may file a legal action with the competent civil court to declare the implementation (the exercise of rights and obligations), which is contrary to the suspension obligation, null and void (articles 12(4) and 44(3) of the Act on the Prevention of Restrictions of Competition (the Act)). We are not aware that this legal action has so far been filed by the CPA.

Also, according to article 53 of the Act, the CPA may impose measures on the undertakings concerned to restore the situation prevailing prior to the implementation, in particular through the division of the undertaking or the disposal of all the shares acquired. The latter of these measures has recently been applied in a merger between two Slovenian newspaper companies (the acquirer was ordered to dispose of the acquired 75 per cent shareholding).

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

The sanctions for closing before clearance are also applicable with regard to foreign-to-foreign mergers. There is one case currently pending before the CPA, where the CPA is evaluating whether the implementation of a non-notified concentration was compatible with Slovenian competition rules. If it is established that the undertakings concerned did not comply with Slovenian competition rules, the CPA may apply sanctions and declare the concentration null and void. In the same case, the CPA already imposed a sanction for failure to notify in the amount of approximately €54 million. The CPA also seized the shares of the Slovenian subsidiary of the acquirer as collateral for the payment of the fine (once final).

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

In principle, foreign-to-foreign concentrations are assessed in the same way as local concentrations. Hence, under exceptional circumstances, the CPA may (upon the request of the parties) permit the implementation of the concentration prior to clearance, if such implementation is essential to maintain the full value of the investment or to perform services of general interest.

The Act does not explicitly provide for hold-separate (carveout) solutions. Given that the Slovenian merger control regime assesses the effects of a merger in the Slovenian market, depending on the transaction structure, one could argue that it is possible to carve out the transaction steps related to the Slovenian market and to proceed with the implementation outside Slovenia without infringing the Slovenian suspension obligation. Although widely discussed in practice, we are not aware that such solutions have been tested with the CPA so far.

Public takeovers

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

Public takeover bids are primarily monitored by the Slovenian Security Market Agency and subject to the provisions of the Slovenian Act on Takeovers. The CPA has to be informed of the intended public bid by a simple written notice on the day such intention is published. Also, the CPA must be provided with the bid document (ie, the prospectus).

Public takeovers that lead to notifiable concentrations within the meaning of the Act require the submission of a merger notification to the CPA no later than 30 days after the announcement of the public bid. Importantly, the suspension obligation does not apply to the implementation of public bids within the meaning of the Slovenian Takeovers Act, provided that the acquirer does not exercise voting rights or exercises them only according to permission for early implementation granted by the CPA.

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?

The information and documentation to be submitted in a merger notification are set out in the Decree Defining the Contents of the Concentration of Companies Notification Form (the Form). The Form requires the parties to provide quite substantial information on the concentration, as well as on the relevant markets, market shares and market size. Inter alia, the following needs to be provided:

- information on the parties to the concentration (eg, name, registered seat, contact person, nature of business, ownership and control; personal and financial links and previous acquisitions; annual reports);
- description of the intended concentration;
- originals or certified copies of all documents on the basis of which the concentration takes place;
- definition of the relevant markets;
- the total size of the relevant markets and market shares of the undertakings concerned;
- information on main competitors, customers and suppliers, the structure of supply and demand, market entry, the relevance of research and development, efficiency gains, etc;
- information on indispensable ancillary restrictions; and
- (if available) copies of analyses, reports or studies related to the relevant market.

The Slovenian merger control regime does not provide for a short-form notification. Therefore, as a general rule, each notification has to include all the (detailed) information requested in the Form. However, if the (combined) market shares after the concentration are lower than 15 per cent (horizontal relationships) or 25 per cent (vertical relationships) in the relevant product market, the parties may limit information in relation to such markets. In any case, however, the parties must provide information on the size of the relevant markets, their turnover and market shares in such markets, and information about the largest competitors and their market shares.

The parties may also request from the CPA a waiver from providing certain information required by the Form, if the entire set of such information is, in the opinion of the parties, not necessary for the accurate and complete filing and the assessment of the case.

If some of the information requested in the Form is not available to the parties, this must be stated in the filing, together with information on where the CPA may obtain such information.

The notification and all documents attached thereto need to be submitted in the Slovenian language. Documents on the basis of which the concentration takes place must be provided in certified copies; all other documents attached to the filing may be provided in simple copies.

The notification needs to be complete and must include accurate and true information. If information is missing in the notification, the CPA may request from the notifying party to supplement the required information within the deadline set by the CPA. The notifying party's failure to supplement the notification will trigger a legal presumption that the transaction has not been filed and will make the notifying party subject to the sanctions for failure to notify concentrations.

Investigation phases and timetable

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

The CPA decides in Phase I proceedings if the concentration does not raise serious doubts as to its compatibility with the Slovenian competition law rules. The CPA then must issue its decision within 25 working days of the receipt of a complete notification.

In cases that raise serious doubts as to their compatibility with the Slovenian competition law rules, the CPA initiates Phase II proceedings within 25 working days of receipt of a complete notification. Once the CPA has initiated Phase II, it must issue a decision within 60 working days of initiating such proceedings.

If the parties propose remedies, the deadline for issuing the Phase I or Phase II decision is extended by an additional 15 working days.

The waiting period starts running only once a complete notification has been submitted. Hence, if the CPA finds that the submitted notification does not contain all mandatory information, it will issue a request for additional information and the clock does not start running.

There is no legal presumption that the concentration has received approval once the waiting period expires. In general, the parties may in such a case file a legal action with the Administrative Court of Slovenia.

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

The Act does not provide for the possibility of obtaining a waiver or expedited proceedings and there is no formal procedure in respect of extensions of the waiting periods. There is no legal presumption that the concentration has obtained approval once the statutory waiting period has expired. Therefore, depending on the workload of the CPA, in practice Phase I clearance decisions are often rendered around two to two-and-a-half months after the submission of the notification.

SUBSTANTIVE ASSESSMENT

Substantive test

19 What is the substantive test for clearance?

The Slovenian Competition Protection Agency (CPA) assesses whether the intended concentration would result in a significant impediment to effective competition within the territory of Slovenia, or in a substantial part of it, in particular because of the creation or strengthening of a dominant position.

We are not aware of cases in which the CPA took somewhat special circumstances into consideration.

20 Is there a special substantive test for joint ventures?

No. However, if the creation of a joint venture has as its object or effect the coordination of the competitive behaviour of undertakings that remain independent, such coordination is assessed in accordance with the criteria of article 6 of the Act on the Prevention of Restrictions of Competition (the Act).

Theories of harm

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

Inter alia, the CPA investigates the intended concentration on the basis of the following:

- market position of the undertakings involved in the concentration;
- options for financing the undertakings involved;
- the structure of the market;
- choices and alternatives that are available to suppliers and customers and their access to sources of supply or the market itself;
- barriers to entry;
- supply and demand projections with regard to the relevant markets;
- benefits to intermediate and final customers; and
- technical and economic development (provided that it is advantageous for consumers and does not hinder competition).

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 such as industrial policy or public interest issues as being relevant for the assessment process. In practice, however, it is not unlikely that the CPA would take into account non-competition issues in a similar way to the European Commission.

Economic efficiencies

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

Economic efficiencies (described rather generally as 'technical and economic development') are part of the appraisal of the concentration and are taken into account under the condition that they are advantageous to the consumers and do not hinder competition.

REMEDIES AND ANCILLARY RESTRAINTS

Regulatory powers

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

The Slovenian Competition Protection Agency (CPA) assesses whether the intended concentration would result in a significant impediment to effective competition within the territory of the Republic of Slovenia, or on a substantial part of it, in particular owing to the creation or strengthening of a dominant position. The parties may propose remedies at any time and submit comments and evidence to remove the CPA's concerns. However, ultimately, if the remedies proposed or comments submitted by the parties cannot eliminate the CPA's concern, it may issue a decision declaring the concentration incompatible with Slovenian competition rules.

Remedies and conditions

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

According to article 51 of the Act on the Prevention of Restrictions of Competition (the Act), the notifying party may submit remedies to eliminate serious doubts as to the compatibility of the concentration with Slovenian competition rules. The Act does not distinguish between structural and behavioural remedies. In practice, depending on the individual cases, both may be accepted by the CPA.

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

Remedies can be submitted at any time during the proceedings to remove serious doubts as to the compatibility of the concentration with Slovenian competition rules. In this case, the time limit for the CPA to issue its decision is extended by an additional 15 working days.

When assessing the proposed remedies, the CPA takes into account their nature and scope, as well as the likelihood of their effective and timely implementation. If accepted by the CPA, it specifies the adopted remedies, the obligations to ensure their implementation and supervision, and time limits for their implementation in the clearance decision.

Later on, the CPA may require the notifying party to provide a report on the implementation of the remedies imposed.

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

The CPA was in the past conducting a market test in relation to remedies proposed by undertakings participating in a foreign-to-foreign merger (the transaction concerns the market for the wholesale supply of sports television channels). However, according to public sources, the merger was not cleared.

Ancillary restrictions

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

In the merger filing, inter alia, the parties have to provide information on indispensable ancillary restrictions related to the transaction. If the CPA issues a clearance decision, either in Phase I or Phase II, that decision is deemed to cover restrictions directly related to and necessary for the implementation of the intended concentration.

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 Slovenian Competition Protection Agency (CPA) publishes a list of notified concentrations on its website. Phase I decisions are also made public on the CPA's website. In a similar way, in Phase II proceedings both the fact that such proceedings have been initiated and the final decision are published on the CPA's website. The information on the initiation of Phase II proceedings states the names of the parties, a brief summary of the grounds for initiation of the proceedings, and invites third parties to submit their observations and comments. Decisions of the court issued in a judicial review against the decisions of the CPA are published on the CPA's website in a non-confidential version.

Third parties able to demonstrate their legally recognised interest may lodge an application for participation in the proceedings. Such a request needs to be filed with the CPA within 30 days from the publication of the initiation of proceedings. If the participation in the proceedings is granted, the third party may take part in the entire proceedings, receive access to the file, lodge statements and opinions and, ultimately, challenge the final decision issued by the CPA.

Apart from the above, any third parties, even without formally joining the proceedings, may submit comments and statements to the CPA at any stage of the Phase I and II proceedings. Although the CPA is not legally obliged to consider such information, it usually takes it into account when assessing the case.

Also, the CPA may, in the course of the proceedings, approach third parties (eg, competitors, customers, suppliers) on its own initiative, in particular via written requests for information.

Publicity and confidentiality

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

The CPA publishes a list of notified concentrations on its website. Phase I decisions are also made public on the CPA's website. In a similar way, in Phase II proceedings both the fact that such proceedings have been initiated and the final decision are published on the CPA's website. The information on the initiation of Phase II proceedings states the names of the parties, a brief summary of the grounds for initiation of the proceedings, and invites third parties to submit their observations and comments. Decisions of the court issued in a judicial review against the decisions of the CPA are published on the CPA's website in a non-confidential version.

Upon request, the CPA must protect the identity of the complainant or provider of other information, if this person requests protection, and shows that it is likely that disclosure may cause significant harm to it.

Access to the case file may only be granted to the parties to the proceedings. However, inter alia, the parties are not allowed to review or make copies of confidential information or information relating to confidential sources. The burden of proving the existence of such confidential information (eg, business secrets) rests with the undertaking claiming so. The parties may also be asked by the CPA to submit a non-confidential version of their respective documents. It is advisable to explicitly mark any confidential information as such already in the merger notification and any comments, statements and documents sent to the CPA.

The CPA may disclose confidential information that constitutes a business secret to the notifying parties if the need for disclosing this information prevails over the interest in protecting it. To the best of our knowledge, we are not aware of any such case of disclosure with regard to merger proceedings.

Information on the initiation of the procedure as well as the Phase I and II decisions published on the CPA's website are non-confidential versions from which business secrets of the parties have been removed (the CPA requests the parties upfront to provide non-confidential versions of the decisions).

Cross-border regulatory cooperation

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

The CPA is a member of the European Competition Network and the International Competition Network. It also cooperates with the OECD and maintains informal contacts with some competition authorities of non-EU countries in the region.

JUDICIAL REVIEW

Available avenues

32 What are the opportunities for appeal or judicial review?

Legal actions for judicial review against the Slovenian Competition Protection Agency (CPA)'s decision can be filed with the Administrative Court of the Republic of Slovenia. The court generally decides without an oral hearing. The plaintiff may not put forward any new facts or evidence, unless the plaintiff was not given the chance to put forward facts and evidence in the proceedings in front of the CPA. An appeal against the decision of the Administrative Court of the Republic of Slovenia can be filed with the Supreme Court of the Republic of Slovenia.

We are not aware of the merger cases that actually went through judicial review, as the undertakings involved usually satisfy the concerns of the CPA by offering corrective measures (commitments).

Time frame

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

The legal action has to be filed with the Administrative Court of the Republic of Slovenia within 30 days of the date on which the decision of the CPA was served. Because the Administrative Court of the Republic of Slovenia has, in the course of the amendment of the Competition Act in August 2013, only recently become competent for judicial review in first instance, there is not yet much experience concerning its usual time frame for decision-making. The appeal procedure before the second instance court (ie, the Supreme Court of the Republic of Slovenia) usually takes between several months and one year until the court issues its decision.

ENFORCEMENT PRACTICE AND FUTURE DEVELOPMENTS

Enforcement record

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

In 2020, Slovenian Competition Protection Agency (CPA) was deciding on several merger notifications, whereby the CPA cleared some mergers only after the notifying parties proposed sufficient commitments. In several cases, the CPA conducted market tests in relation to the concentration or the proposed commitments. Otherwise, the number of the notified (and cleared) mergers has remained relatively stable throughout recent years.

Reform proposals

35 | Are there current proposals to change the legislation?

In February 2021, the Ministry of Economic Development and Technology published a draft proposal of the new Prevention of Restriction of Competition Act (ZPOmK-2). The proposed act transposes the 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 (Directive 2019/1) into the Slovenian legal system. Key changes introduced by the proposed act directly affecting merger control are:

- merging of the administrative and misdemeanour proceeding into one single and more efficient proceeding (pursuant to the current legislation, the CPA may impose fines only in separate misdemeanour proceedings, which follow the completion of the administrative proceedings); and
- international cooperation of competition authorities (service and enforcement of decisions of the authorities responsible for the protection of competition of other member states in Slovenia; service of preliminary findings on the alleged infringement to an undertaking having its registered office or property in another member state).

The proposal is in the process of preparation at the Ministry of Economic Development and Technology, whereas a draft has already been submitted for public consultation.

A new draft amendment of the Media Act has been proposed in 2020, introducing a combined procedure under the Prevention of Restriction of Competition Act with the concentration assessment procedure under the Media Act, which would be the sole responsibility of the CPA. The CPA publicly opposed the proposed amendment for various reasons, among others, the unclarity of the proposed procedure, certain definitions, set competences, and the role of the CPA, whereas the CPA is of the view that the procedures should remain separate.

WOLF THEISS

Klemen Radosavljević
klemen.radosavljevic@wolftheiss.com

Tjaša Lahovnik
tjasa.lahovnik@wolftheiss.com

Bleiweisova cesta 30
1000 Ljubljana
Slovenia
Tel: +386 1 438 00 00
Fax: +386 1 438 00 25
www.wolftheiss.com

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?

In the past few years, the Slovenian Competition Protection Agency appears to have become stricter in assessing notified concentrations and has also started to track non-notified concentrations (in particular, foreign-to-foreign mergers).

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.

Slovenia	
Voluntary or mandatory system	The filing of a notification with the CPA is mandatory in cases where the applicable jurisdictional thresholds have been met.
Notification trigger/ filing deadline	A merger notification has to be submitted to the CPA no later than 30 days after the conclusion of the agreement, the announcement of a public bid or the acquisition of a controlling interest (whichever of these triggering events occurs first). If the CPA requested the parties to provide a notification of the concentration because their combined market share in Slovenia exceeds 60 per cent, the merger notification has to be submitted no later than 30 days from receipt of this request.
Clearance deadlines (Stage 1/Stage 2)	In the event the concentration does not raise serious doubts as to its compatibility with the Slovenian competition law rules, the CPA must issue its decision within 25 working days of the receipt of a complete notification (Phase I). In cases that raise serious doubts as to their compatibility with the Slovenian competition law rules, the CPA initiates Phase II proceedings within 25 working days of receipt of a complete notification. Once the CPA has initiated Phase II, it must issue a decision within 60 working days from initiating such proceedings. If the parties propose remedies, the deadline for issuing the Phase I or II decision is extended by an additional 15 working days.
Substantive test for clearance	The CPA assesses whether the intended concentration results in a significant impediment of effective competition within the territory of the Republic of Slovenia, or on a substantial part of it, in particular due to the creation or strengthening of a dominant position.
Penalties	In the case of a failure to notify the concentration within the filing deadline (or failure to notify the concentration at all), the CPA may impose fines of up to 10 per cent of the annual turnover generated by the undertakings concerned in the preceding business year. In addition, a fine of between €5,000 and €10,000 may be imposed on the responsible persons of such undertakings and (if applicable) a fine of between €3,000 and €5,000 on a natural person already controlling at least one undertaking. If the nature of the infringement of the filing obligation is particularly serious, a fine of between €15,000 and €30,000 may be imposed on the responsible person of a legal entity, and (if applicable) a fine of between €10,000 and €15,000 on a natural person already controlling at least one undertaking.