

New Slovenian Prevention of Restriction of Competition Act

November 2022

The new Prevention of Restriction of Competition Act¹ ("PRCA-2") entered into force on 26 October 2022 and will apply as of 26 January 2023.

PRCA-2 was adopted to ensure a more effective implementation of the tasks and competences of the Competition Protection Agency and in order to transpose Directive (EU) 2019/1 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market.

In the below overview, we provide a summary of the key changes brought by PRCA-2, including the introduction of administrative sanctions and a new simplified concentration notification procedure, as well as some other notable changes.

Administrative sanctions

With the intention of ensuring more efficient enforcement of competition law and reducing the administrative burden of the Competition Protection Agency (the Agency), PRCA-2 introduces a **new chapter on administrative sanctions** for competition law breaches. This chapter introduces a new legal framework for administrative sanctions into Slovenian law, including a definition of administrative offences, procedural rules and determining sanctions for such offences.

A significant change compared to the legal regime under the former Prevention of Restriction of Competition Act (PRCA-1)² is that the procedure for establishing a competition law breach and for imposing the respective sanctions will now be combined into a **single procedure**. Under PRCA-1, the procedure consisted of two separate parts – first, the Agency would establish a competition law breach in an administrative procedure and then conduct a separate fine procedure, which was conducted as a minor offence procedure in accordance with the rules of the Minor Offences Act³. The new procedural rules will replace the application of the provisions of the Minor Offences Act, allowing the Agency to impose sanctions in a single administrative procedure.

The administrative sanctions procedure is a novelty in Slovenian legislation, so PRCA-2 needed to set out detailed rules in this respect, including the definition of an administrative offence and the corresponding sanctions, the principle of *ne bis in idem* for offences for which a decision has already been taken, and the definition of negligence and intent for the purposes of establishing the existence of an administrative offence, in line with the CJEU case law.

Another change brought by PRCA-2 to ensure consistent implementation of Directive 2019/1 is the introduction of an explicit provision on the **liability of a parent company** for competition law breaches. This rule is in line with the case law of the Court of Justice of the EU on the interpretation of the concept of undertaking in competition law.

¹ Prevention of Restriction of Competition Act – PRCA-2 (Official Gazette of the Republic of Slovenia, No. 130/22)

² Prevention of Restriction of Competition Act – PRCA-1 (Official Gazette of the Republic of Slovenia, No. 36/08 et seq.)

³ Minor Offences Act (Official Gazette of the Republic of Slovenia, No. 29/11 et seq.)

The parent company of the company which has committed an administrative offence is jointly and severally liable for the administrative offence if it has exercised, directly or indirectly, decisive influence over the company and they form an economic unit. A parent company is presumed to exercise decisive influence if it owns all or substantially all of the capital of the other company.

PRCA-2 now also explicitly provides that an **association of undertakings** may be subject to administrative sanctions. In this case, the sanction will be determined by taking into account the annual turnover of the association of undertakings. Where an association of undertakings is not capable of paying the administrative fine on its own, it requires its members to pay a proportionate part of the administrative fine imposed.

PRCA-2 **maintains the maximum sanction** for competition law infringements – a fine of up to 10 per cent of the undertaking's annual turnover in the preceding business year. The Agency may also impose a procedural fine on the undertaking of up to one per cent of the undertaking's annual turnover in the preceding business year for providing incorrect or misleading information, or for failing to provide information or cooperate in a procedure related to an administrative offence.⁴

The provisions on the **statute of limitations** have also been amended. In particular, it is important to note that PRCA-2 now provides that any action taken by the Agency as a result of an investigation or proceeding relating to an infringement interrupts the limitation period. The interruption applies to all undertakings involved in the infringement.

Simplified procedure for a concentration notification

PRCA-2 introduces a **simplified procedure for a concentration notification**. This type of procedure is intended to assess concentrations which do not raise competition concerns.

The Agency shall apply the simplified procedure in any of the following cases:

- If none of the undertakings concerned, together with the other undertakings in the group, is active in the same relevant product or service market and geographic market (horizontal overlapping of activities) or in a relevant product or service market which has a vertical relationship or is a closely related adjacent market to a relevant product or service market in which any other undertaking concerned is active;
- If the combined market share of all undertakings concerned in a horizontal concentration does not exceed 15 per cent under all plausible market definitions;
- If the individual or combined market share of the undertakings concerned in a vertical concentration does not exceed 25 per cent in any vertically related market in the context of all plausible market definitions; or
- If the undertaking concerned, together with other undertakings in the group, acquires sole control over an undertaking over which it already exercises joint control.

New investigative powers of the Agency

PRCA-2 expands the Agency's investigative powers. The Agency may now address a request for information also to "other natural persons". Another new provision of PRCA-2 authorises the Agency to invite, before issuing a decision to initiate proceedings, any representative or employee of the undertaking, any representative of another

⁴ In PRCA-1, the fine for such omissions is set at EUR 50,000 with the possibility for the Agency to compel the undertaking to cooperate by repeatedly imposing the fine until the total amount of the fine reaches one per cent of the undertaking's annual turnover.

legal person or any natural person who may have relevant information, to give oral explanations of facts or documents relating to the object of the investigation.

PRCA-2 now lays down uniform conditions for issuing a search warrant, meaning it no longer differentiates between the conditions for issuing a search warrant for premises and documents and the conditions for issuing a search warrant for electronic devices. In addition, PRCA-2 provides for the possibility for the Agency to appeal against a court decision rejecting a request to open an investigation.

Access to leniency statements and use of information from leniency statements

Furthermore, PRCA-2 transposes the provisions of Directive 2019/1/EU concerning the **access to leniency statements and settlement applications and restrictions on the use of information contained therein**:

- Access to a leniency statement is available only to parties to the proceedings and only for the purpose of exercising their rights of defence;
- A party may use information contained in a leniency statement or a settlement application in the court proceedings for review of the Agency's decision only if this is necessary for the purpose of exercising its rights of defence;
- Documents and information in the Agency's file that have been prepared specifically for the purposes of competition proceedings may not be disclosed in court proceedings before the competition proceedings before the Agency have been concluded.

International cooperation in the service and execution of documents from competition authorities

The new PRCA-2 also regulates certain issues related to international cooperation of competition agencies in relation to the service and execution of procedural acts and final decisions in competition proceedings.

In line with Directive 2019/1, these provisions empower Agency officials to assist in investigations and gathering information at the request of the European Commission or the competition authorities of other Member States.

The new provisions enable the Agency to request assistance of competition authorities of other Member States in connection with the service of procedural documents if the undertaking concerned is not based in Slovenia. Similarly, PRCA-2 authorises the Agency to serve procedural documents on addressees at the request of foreign competition authorities.

Furthermore, PRCA-2 provides for a possibility of international cooperation of competition authorities in relation to enforcement of final decisions imposing an administrative sanction. If an undertaking does not have sufficient funds in the Republic of Slovenia, the Agency may request the competition authority of another Member State to assist in the enforcement of such final decisions. Similarly, PRCA-2 sets out the rules under which the Slovenian Competition Protection Agency may, upon request of a foreign competition authority, file an enforcement action with the competent tax authority.

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Should you require any further details regarding the new legislative changes, please do not hesitate to reach out to us.

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