June 2021

Main practical changes brought in by the new Slovak Act on Protection of Economic Competition

IMPLEMENTATION OF THE ECN+ Directive

Directive (EU) 2019/1 to empower the competition authorities of the Member States to be more effective enforcers (the "**Directive**") is having a significant impact on the uniform application of EU antitrust rules. Slovak lawmakers viewed their obligation to implement the Directive as an opportunity to adopt the entirely new **Act No. 187/2021 on the Protection of Economic Competition** (the "**new Act**"), which replaces the previous 2001 competition act (the "**old Act**"). The new Act comes with numerous changes and we highlight some of the most important ones in this update.

REFINING THE LENIENCY PROGRAMME

The leniency programme contributes heavily to dissolving existing cartels and deterring future cartels by getting cartel members to cooperate after they have self-reported during investigations. Unlike the old Act, the new Act expressly requires applicants to admit that they themselves participated in a cartel. Although this obligation did exist before the new Act was adopted, it was only prescribed by a non-legislative act issued by the **Antimonopoly Office of the Slovak Republic** (the "**AMO**").

The new Act also specifies the conditions for granting leniency. Firstly, applicants cannot inform other cartel members or third parties of their intention to apply for leniency, of the scope of the application or, later on, that they have made such an application. However, this does not preclude the applicant from reporting any wrongful behaviour to other public authorities as required by relevant law.

The new Act modifies the former obligation for applicants to end their involvement in the cartel by the time they submit their first evidence of anti-competitive conduct. Under the new Act, applicants must terminate their activity immediately upon submitting their application for leniency. This immediacy factor should be assessed on a case-by-case basis. However, in some cases, continued involvement in the cartel might be necessary to preserve the integrity of the investigation and the AMO may allow the applicants to continue their involvement if necessary.

NOTIFICATION OF JOINT VENTURES

Under the new Act, the regime and turnover thresholds for the notification of joint ventures are changing in order to be triggered by fewer extraterritorial joint ventures which do not have any activities in Slovakia. Under the old Act, all concentrations resulting in the creation of a fully-functional joint venture had to be notified to the AMO if the turnover of one of the JV partners exceeded EUR 14 million in Slovakia in the preceding financial year and, at the same time, the worldwide turnover of another JV partner in the preceding financial year exceeded EUR 46 million.

Under the new Act, newly-incorporated joint ventures must only be notified to the AMO if the JV partners' aggregate turnover generated in Slovakia exceeded EUR 46 million in the preceding financial year and, at the same time, the individual turnover of each of at least two JV partners exceeded EUR 14 million in Slovakia in the preceding financial year.

On the other hand, another turnover threshold may be triggered by the creation of fully-functional joint ventures through the acquisition of joint control over a pre-existing undertaking that, before the concentration, had been solely controlled by one of the JV partners. For this threshold to be triggered, it will be sufficient for the turnover of the pre-existing undertaking over which control is being acquired to have exceeded EUR 14 million in Slovakia in the preceding financial year and, at the same time, for the worldwide turnover of one of the JV partners in the preceding financial year to have exceeded EUR 46 million. However, for these changes to take effect, a change in the regime applicable to the undertakings concerned will be required.

MAKING THE AMO A MORE EFFECTIVE ENFORCER

The new Act also hands new powers to the AMO in the form of interim measures which until now were only regulated more widely as part of the interim measures provided under the Administrative Procedure Code. The AMO will now be authorised to apply such measures in cases of suspected cartels or abuses of a dominant position where there is a reasonable presumption that anti-competitive conduct has occurred, and where there is a risk of serious and irreparable distortions of competition, or if it is necessary for ensuring due proceedings. Such interim measures may take the form of obligations to do, to omit from doing or to tolerate something, or to secure certain items.

The new Act also gives the AMO the option of considering whether to impose a basic fine on the undertaking or whether to apply a periodic penalty payment as a sanction. For each day of delay in meeting an obligation set by the AMO, periodic penalty payments can be imposed of up to 5 per cent of the average daily worldwide turnover for the previous financial year.

The new Act also allows the AMO to impose fines on associations of undertakings. The AMO is authorised to impose a fine on associations of up to 10 per cent of the aggregate turnover of all its members active in the market affected by the infringement. The AMO can ultimately claim the fine either from any of the member undertakings whose representatives are part of the decision-making bodies of the association, or from any member undertaking that is active in the relevant market.

SUMMARY

In conclusion, the new Act will have a substantial practical impact on competition law and its enforcement. It provides the AMO with the diverse options necessary to protect competition even before a final decision is adopted in proceedings and, by enacting provisions for international mutual

assistance, it allows the AMO to effectively enforce its decisions abroad. Undertakings should therefore be even more vigilant and consider their activities with greater precision from the perspective of competition law.

About WOLF THEISS

Wolf Theiss is one of the leading law firms in Central, Eastern and Southeastern Europe (CEE/SEE). We have built our reputation on a combination of unrivalled local knowledge and strong international capability. We opened our first office in Vienna over 60 years ago. Our team now brings together over 340 lawyers from a diverse range of backgrounds, working in offices in 13 countries throughout the CEE/SEE region.

For more information about our services, please contact:

Zuzana Hodoňová
Counsel
zuzana.hodonova@wolftheiss.com
T: +421 2 591 012 36

Vladimír Šimkovic
Associate
vladimir.simkovic@wolftheiss.com
T: +421 2 591 012 45

This memorandum has been prepared solely for the purpose of general information and is not a substitute for legal advice.

Therefore, WOLF THEISS accepts no responsibility if – in reliance on the information contained in this memorandum – you act, or fail to act, in any particular way.

If you would like to know more about the topics covered in this memorandum or our services in general, please get in touch with your usual WOLF THEISS contact or with:

Wolf Theiss
Schubertring 6
AT – 1010 Vienna

www.wolftheiss.com