

Cartel Regulation

in 46 jurisdictions worldwide

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Slovakia

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Legislation and jurisdiction

1 Relevant legislation

What is the relevant legislation?

Competition rules in Slovakia, including the rules on cartels, are contained in Act No. 136/2001 on Protection of Competition (the Competition Act), which replaced the previous Act on Protection of Competition from 1994. So far, the Competition Act has been subject to five amendments, the last amendment becoming effective as of 1 January 2012. The most significant changes to the Competition Act were adopted by amendment in 2004 in connection with the accession of the Slovak Republic to the European Union. The rules on cartels correspond to article 101 of the Treaty on the Functioning of the European Union (TFEU), which is also applicable to the conduct of individuals and corporations in Slovakia.

2 Relevant institutions

Which authority investigates cartel matters? Is there a separate prosecution authority? Are cartel matters adjudicated or determined by the enforcement agency, a separate tribunal or the courts?

The Antimonopoly Office of the Slovak Republic (the AMO) is the central governmental authority responsible for the protection and promotion of competition. It is led by a chair appointed by the president of Slovakia based on a proposal by the government. The AMO has broad powers to facilitate competition on the market. It is responsible for the investigation, prosecution and adjudication of cartel matters. Inter alia, the AMO imposes fines for participation in a cartel and the obligation to refrain from anti-competitive conduct, and controls the observance of its decisions. If cartel conduct constitutes a criminal offence, a state prosecutor investigates the matter and files a criminal action with the general court that adjudicates the matter. Competences of the AMO and prosecutors are independent. However, any action taken by the former does not preclude any action to be taken by the latter, and vice versa.

3 Changes

Have there been any recent changes, or proposals for change, to the regime?

In 2010, the AMO commenced work on a comprehensive amendment to the Competition Act. It is expected that this amendment will significantly affect the cartel regime. At the time of writing, however, the final draft of the amendment has not been made available to the public. Thus, the actual extent of the changes that will be introduced by the amendment, if adopted by the parliament, is currently unclear.

Pursuant to a working draft of the amendment, it appears that the AMO intends to apply an economic approach (ie, it will assess the impact of certain practices on competition) more thoroughly in

the enforcement of the competition rules. The AMO also proposes to introduce the EU concept of undertaking, including the concept of the single economic unit. The AMO expects that by adopting the new concept of undertaking, it will be able to sanction cartel conduct more efficiently and react more swiftly to the evolving EU case law.

Since the adoption of the aforementioned amendment has not been included in the government's legislative priorities for the current government term, it is not clear when, if at all, the proposal of the amendment will be made public.

4 Substantive law

What is the substantive law on cartels in the jurisdiction?

Sections 4 and 6 of the Competition Act comprise the substantive law on cartels. These sections correspond to article 101 TFEU.

Section 4(1) prohibits agreements and concerted practices between undertakings as well as decisions by associations of undertakings that have as their object or effect restriction of competition. The prohibition applies unless the Competition Act provides for an exemption.

The term agreements covers both explicit oral and written agreements as well as implied consent of the parties, such as gentlemen's agreements or arrangements – the existence of which may be proved by evidentiary means other than the contract itself (if such proof shows that an agreement must have been concluded). General business terms and conditions fall also within this definition.

A decision by an association of undertakings is any legal act of a body of the association, as well as any recommendations of a body of the association. Decisions are thus unilateral legal acts, usually having their legal basis in the incorporation documents of the association, which are binding for the members of the association.

Finally, concerted practices refer to the coordination of the behaviour of undertakings, which does not amount to an agreement. Concerted practices must, however, be strictly distinguished from actions that are the accidental or logical results of market conditions or parallel behaviour.

A demonstrative list of prohibited agreements is set out in section 4(3). Such agreements are particularly those that contain:

- direct or indirect fixing of prices or other trading conditions;
- commitment to limit or control production, sales, technical development or investment;
- division of the market or sources of supply;
- commitment by the parties to the agreement to apply dissimilar conditions to equivalent or comparable performance to individual undertakings, which will or may disadvantage these undertakings in competition;
- conditions stipulating that the conclusion of contracts will require the parties to accept supplementary obligations that, by their nature or according to commercial usage, have no connection with the subject of such contracts; or

- signs of collusive behaviour, especially in the process of public procurement (bid rigging).

Under the de minimis exemption set out in section 6(1), an agreement otherwise prohibited shall be exempted from prohibition if the market shares of the parties thereto do not exceed certain thresholds. In order for the undertakings to benefit from the exemption, their combined market share or the market share of each party must not exceed 10 per cent. The de minimis exemption shall, however, not apply if the agreement in question contains hard-core restrictions, or if competition is restricted by the cumulative effect of agreements that contain similar types of competition restrictions and lead to similar effects in the relevant market and their combined market share exceeds 10 per cent.

Section 6(3) follows the wording of article 101(3) TFEU and exempts the agreements that meet the requirements of the rule of reason. Pursuant to the rule of reason, agreements that contribute to improving the production or distribution of goods or to promoting technical or economic progress while allowing consumers a fair share of the resulting benefit are excluded from the prohibition set forth in section 4(1). For the exemption to apply, the agreement must not impose restrictions that are not indispensable and must not afford the parties thereto the possibility of eliminating competition in respect of a substantial part of the products in question.

In line with the modernisation of the EU antitrust rules, as of 1 May 2004 it is no longer possible to request an individual exemption under section 6(3). Undertakings must themselves assess potential anti-competitive arrangements and ensure compliance with the law. Moreover, undertakings cannot request the issuance of a negative clearance, although they can ask the AMO to review a draft agreement or a draft decision of an association. The AMO is obliged to issue its view within 30 business days from receipt of the request; in exceptional cases, the review period may be extended up to 60 business days.

5 Industry-specific provisions

Are there any industry-specific infringements? Are there any industry-specific defences or antitrust exemptions?

The Competition Act does not contain any industry-specific infringements and defences or antitrust exemptions. In particular, the Competition Act is silent on the application of the competition rules on agriculture and transport. On the other hand, the regime set out in the Competition Act does not apply to the anti-competitive activities of undertakings entrusted with the operation of services of general economic interest, such as postal services, to the extent to which the application of the competition rules would obstruct the performance of the tasks assigned to them.

The cartel ban in section 4 of the Competition Act does not apply to those arrangements that cannot affect interstate trade but have as their object, or may result in, restriction of competition on the domestic market and meet the conditions of the European Commission block exemptions. Similar to the authorisation of the EC to withdraw the benefit of a block exemption, where the particular arrangements have effects that are incompatible with article 101(3) TFEU, the AMO may withdraw the benefit of a block exemption in respect of arrangements having no effect on interstate trade but that are incompatible with section 4(3) of the Competition Act.

6 Application of the law

Does the law apply to individuals or corporations or both?

The law applies to undertakings and associations of undertakings. The Competition Act defines an undertaking broadly, and its definition covers both individuals and corporations. However, the law

applies to individuals and corporations only with respect to their activities that are related or potentially related to competition. An individual or a corporation falls under the definition of an undertaking irrespective of whether its activities are profit-oriented. Note that employees or officers of a corporation are not subject to the Competition Act. The criminal or civil liability of such employees or officers is, however, not excluded.

7 Extraterritoriality

Does the regime extend to conduct that takes place outside the jurisdiction? If so, on what jurisdictional basis?

The Slovak competition rules are based on the effects doctrine. Therefore, the AMO may only assert jurisdiction over infringements incurred outside Slovakia where such infringements affect, or threaten to affect, competition within Slovak territory. Since cartel conduct that includes indirect sales of the cartelised product to Slovakia may under certain circumstances have a restricting effect on competition within Slovak territory, pursuant to the effects doctrine, the Competition Act may apply to such conduct even if it takes place wholly outside of Slovakia. However, we are not aware of any decisions or pending proceedings where the AMO would adopt this approach.

On the other hand, activities restricting competition that only affect foreign markets fall outside the scope of the Competition Act, unless an international treaty provides otherwise (eg, the Accession Treaty).

Investigation

8 Steps in an investigation

What are the typical steps in an investigation?

As the first step, the AMO collects information on potential cartel activities through its own activity and from various other sources (cartel members under the leniency programme, media, third-party complaints or notifications, etc). The collection of information is usually an informal process without the actual administrative proceedings having been formally opened. This is to prevent the cartel members from learning that the AMO knows of the existence of the cartel.

A third party that notifies the AMO of an existing cartel agreement can request that it be informed of the AMO's further actions on that matter. The AMO is obliged to inform such party in writing of its further steps within two months of receipt of the notification.

Once the AMO has collected sufficient evidence to prove the existence of a cartel, it opens administrative proceedings and notifies the parties thereto. After the administrative proceedings have been opened, the members of the alleged cartel may propose certain commitments to remove the concerns of the AMO. If the AMO accepts these commitments, it will issue a decision imposing the obligation to comply with the commitments. Such decision does not confirm the existence of the cartel, and no sanctions are imposed on the parties. If the commitments are not observed by the undertakings, the AMO may open new administrative proceedings and impose a fine of up to 10 per cent of the undertakings' respective turnover for the preceding accounting year. If the cartel participants do not propose any commitments or if the commitments are rejected, the AMO will usually issue a final decision by which it adjudicates the cartel matter.

Prior to the issuance of the final decision, the AMO is obliged to invite the parties of the alleged cartel to submit their observations, objections and proposals for supplementations to the draft decision, the information on which it is based and the manner of obtaining such information.

The AMO may conduct an oral hearing, although it is not compulsory. The AMO must issue its final decision within six months.

However, the chair of the AMO is entitled, in complicated cases, to repeatedly extend this period up to two years. The first instance proceedings are completed upon issuance of the final decision by the AMO.

9 Investigative powers of the authorities

What investigative powers do the authorities have?

In general, the AMO is entitled to request information and documents from undertakings, enter any premises, land or means of transport belonging to the undertakings concerned, take or obtain copies of documents, and request oral or written explanations. Oral explanations may be recorded.

The AMO is entitled to request submission of information or documents that are necessary for the assessment of the cartel matter from the undertakings concerned. Moreover, the AMO may seal the documents or premises in which the documents are located when carrying out a dawn raid, or may seize documents for the time necessary irrespective of the medium on which information or a document is recorded. The AMO may request that an official Slovak translation be submitted by the undertaking.

Employees of the AMO may carry out unannounced inspections (dawn raids) at any premises, land or means of transport belonging to an undertaking on the basis of a written authorisation issued by the chair of the AMO. If there is reasonable suspicion that evidence related to a cartel may be located at private premises, on land or in vehicles of the undertaking's employees, a dawn raid may be carried out at such premises, on land or in vehicles subject to, and on the basis of, a decision of the AMO and the authorisation of the court. The decision and the authorisation must be submitted to the undertakings or employees concerned at the beginning of the dawn raid. If the raided party refuses to cooperate with persons authorised to carry out the dawn raid, the assistance of the police may be requested.

The AMO may impose fines of up to 1 per cent of the undertaking's turnover if the undertaking concerned fails to comply with the information or document request, if it submits incorrect or incomplete information and documents, or if it obstructs a dawn raid.

International cooperation

10 Inter-agency cooperation

Is there cooperation with authorities in other jurisdictions? If so, what is the legal basis for, and extent of, cooperation?

Since Slovakia is a member state of the EU, the AMO is a member of the European Competition Network (ECN) established by Council Regulation No. 1/2003. In this context, the AMO exchanges information with other members of the ECN (competition authorities of other member states and the European Commission) and carries out dawn raids in Slovakia at the request of other ECN members. Further, the AMO is entitled to request a dawn raid to be carried out in other EU member states.

The AMO also cooperates with competition authorities of non-EU countries within the Competition Committee of the OECD and as a member of the International Competition Network.

11 Interplay between jurisdictions

How does the interplay between jurisdictions affect the investigation, prosecution and penalising of cartel activity in the jurisdiction?

The EU cartel regime is directly applicable in Slovakia. Pursuant to section 3(1) of Council Regulation No. 1/2003, the AMO and the general courts are obliged to apply article 101 TFEU in cartel cases affecting interstate trade. Furthermore, agreements, decisions of associations of undertakings or concerted practices that do not

restrict competition within the meaning of article 101(1) TFEU or that fall under the exemption laid down in article 101(3) TFEU cannot be prohibited under Slovak cartel law.

Cartel proceedings

12 Adjudication

How is a cartel proceeding adjudicated?

The AMO is responsible for the investigation, prosecution and sanctioning of cartel activity. A cartel matter is adjudicated by a decision of the AMO issued in administrative proceedings.

If a cartel constitutes a criminal offence, the criminal proceedings can only be initiated by a prosecutor and adjudicated by the court of relevant jurisdiction.

13 Appeal process

What is the appeal process?

A decision of the AMO adjudicating a cartel matter may be appealed to the Council of the Antimonopoly Office (the Council). The Council is a collective authority consisting of a chair, a vice-chair and five other members. The chair and the vice-chair of the AMO are the chair and the vice-chair of the Council, respectively.

An appeal of an AMO decision must be filed no later than 15 days from receipt. The permissible scope of appeal is rather wide, as the appellant may challenge both factual and legal aspects of the decision. The Council is obliged to review the entire AMO decision upon appeal and cannot limit its review to matters challenged by the appellant. On the other hand, the Council cannot extend its review to matters that were not the subject of the first instance decision. The appellate proceeding usually takes place without an oral hearing, and the Council's decision is based on written submissions of parties. The Council purportedly must decide an appeal within six months. However, the decision can be postponed for up to two years.

The decision of the Council may be challenged by an administrative action at the Regional Court in Bratislava. Subsequently, an appeal against the judgment of the Regional Court may be filed with the Supreme Court of the Slovak Republic. The administrative action can challenge both an error of law in the Council's decision as well as an incorrect interpretation of facts. Similar to the proceeding before the Council, courts often decide without oral hearings on the basis of parties' written submissions. There are no specific deadlines for courts to decide on actions against Council decisions. General practice is that a court's decision is issued within approximately 18 months.

14 Burden of proof

Which party has the burden of proof? What is the level of proof required?

The burden of proof in cartel cases rests with the AMO. However, if an undertaking claims the benefit of an exemption under section 6(1), (3) or (4) of the Competition Act (see question 4), it is obliged, upon request of the AMO, to demonstrate that the agreement in question qualifies for the respective exemption.

The AMO is required to prove that a cartel agreement exists beyond reasonable doubt. Otherwise, the alleged participants of a cartel benefit from the *in dubio pro reo* principle. Application of this principle does not require the AMO to ascertain the absolute truth, but it must achieve a level of certainty enabling it to decide fairly on the matter. The AMO enjoys relatively wide discretion in determining what evidence will form the basis of the final decision.

Sanctions

15 Criminal sanctions

What, if any, criminal sanctions are there for cartel activity? Are there maximum and minimum sanctions?

Participation in a cartel constitutes a criminal offence provided that the illegal conduct has caused damage in excess of €26,000 to a competitor or has threatened the business operation of a competitor. In such case, an individual may face imprisonment for up to three years as well as other sanctions (eg, imposition of a fine or prohibition to pursue business activity). If the damage caused to a competitor exceeds €133,000 or the illegal cartel conduct results in the bankruptcy of a competitor, the imprisonment sentence shall be from two to six years. Even more severe sanctions apply if the conduct qualifies as bid rigging. In such case, the individual may face imprisonment of up to 12 years.

Recent amendments to the Criminal Code introduced indirect criminal liability of corporations. Corporations may have forfeiture of financial resources or property imposed upon them, which is, however, not a criminal sanction but a protective measure. If a court imposes property forfeiture on a corporation, the competent bankruptcy court shall, without undue delay, declare the corporation bankrupt. It should be noted that the indirect criminal liability of corporations has limited application in Slovakia.

No criminal convictions related to participation in a cartel have been reported in Slovakia.

16 Civil and administrative sanctions

What civil or administrative sanctions are there for cartel activity?

Although the Competition Act does not explicitly stipulate that a prohibited agreement is null and void, such consequence stems from section 39 of the Civil Code. If any part of the agreement, which is not affected by the prohibition, can be separated from the remainder of the agreement, that part shall remain valid and effective.

The AMO imposes fines that are administrative in nature. No civil fines are imposed under the Competition Act. The AMO may impose fines on undertakings participating in a cartel of up to 10 per cent of their respective turnover for the preceding accounting year. There is no ceiling on fines calculated on the basis of undertakings turnover. If an undertaking's turnover for the relevant accounting year did not reach at least €330 or the undertaking did not have any turnover, the AMO may impose a fine of up to €330,000. Furthermore, the AMO may impose an obligation on the cartel members to refrain from the illegal conduct and an obligation to remedy the unlawful state. The AMO imposes a fine in approximately one out of two cartel proceedings.

17 Sentencing guidelines

Do sentencing principles or guidelines exist? Are they binding on the adjudicator?

In 2008, the AMO issued guidelines to determine the amount of fines in cartel cases (the Guidelines on Fines). Pursuant to the Guidelines on Fines, a fine is calculated using a multiple-step procedure. First, the AMO determines the amount of the turnover relevant for the calculation of the fine, which is equal to the turnover achieved in the preceding accounting year on the markets affected by the cartel. Second, the relevant turnover is multiplied by the severity factor, which may amount up to 30 per cent in the most serious cartel cases. The resulting amount is multiplied by the number of years during which the undertaking participated in the cartel. If the participation in the cartel lasted less than one year, the amount of the fine is not adjusted. Finally, the ultimately determined amount of the fine is adjusted by taking into account aggravating and

mitigating circumstances and other factors, if applicable. Pursuant to the Guidelines on Fines, the aggravating circumstances include repeated offence, leadership in the cartel or intentional obstruction of the investigation. The mitigating circumstances are, inter alia, a passive role in the cartel or effective cooperation with the AMO. The AMO may also adjust the amount of the fine to ensure that it has a deterrent effect. However, the maximum amount of the fine cannot exceed 10 per cent of the undertaking's total turnover.

The Guidelines on Fines are not considered a generally binding legal regulation. Pursuant to section 3 of the Guidelines on Fines, their purpose is to explain the general principles of setting fines. On the other hand, the case law of the Slovak Supreme Court has repeatedly confirmed that guidelines issued by a state authority are binding upon such authority and may establish legitimate expectations on the side of the undertakings. Thus, although not technically binding, the AMO should not depart from the Guidelines' application for non-objective reasons. Otherwise, its decision could be challenged in court.

18 Debarment

Is debarment from government procurement procedures automatic or available as a discretionary sanction for cartel infringements?

Pursuant to Act No. 25/2006 on Public Procurement, a person who has been convicted of participating in a cartel or bid rigging is automatically debarred from any public procurement. Debarment also applies to corporations whose director has been convicted of such criminal offence. An administrative sanction imposed by the AMO on either an individual or a corporation does not affect its capacity to participate in public procurement procedures.

19 Parallel proceedings

Where possible sanctions for cartel activity include criminal and civil or administrative sanctions, can they be pursued in respect of the same conduct? If not, how is the choice of which sanction to pursue made?

Criminal, civil and administrative sanctions can be pursued in respect of the same conduct.

Private rights of action

20 Private damage claims

Are private damage claims available? What level of damages and cost awards can be recovered?

No specific legal basis for private damage claims within the realm of competition rules exists under Slovak law. A person who incurred damage in connection with a cartel may, however, claim compensation for damages under the general provisions of the Commercial Code or Civil Code before the courts. A person harmed by a cartel agreement may only claim single damages covering actual damage and loss of profit. In general, Slovak courts cannot award punitive damages, and this also applies to cartel cases. It should be noted that courts can only award costs up to an amount calculated under the relevant legislation. Such an award often does not cover a successful claimant's costs in full.

Any person harmed by a cartel is entitled to claim damages. However, for such a claim to be successful, such person must show the link between the behaviour of the cartel members and the claimant's damages. Although no such claims have yet been reported, direct purchasers or competitors excluded by cartel members should have no difficulties showing such link. The situation may be less favourable for persons active on other levels of the vertical chain. However, the fact that a person is neither a competitor nor a customer of the cartel members does not mean that he or she cannot successfully claim damages.

In line with the general trend in the EU, the AMO is trying to promote and raise the general awareness of the private enforcement of the antitrust rules in Slovakia.

21 Class actions

Are class actions possible? What is the process for such cases?

Class actions are not possible under Slovak civil procedure rules. However, the courts are entitled to deal with several related claims (such as claims for damages caused by the same cartel) in one proceeding if it contributes to a fast and efficient trial. It is up to the court to determine whether such requirement is fulfilled in each particular case. It is unlikely that courts would combine a larger number of claims in one proceeding due to technical and personal limitations. Consumers and consumer associations can file actions seeking a judgment imposing an obligation on the cartel members to refrain from illegal conduct.

Cooperating parties

22 Leniency/immunity

Is there a leniency/immunity programme?

A leniency programme in Slovakia has been in force since 2001. The main provisions governing leniency are contained in section 38(10) and (11) of the Competition Act. The AMO has also issued guidelines on the application of the leniency programme ([www.antimon.gov.sk/files/30/2009/Leniency5\(k\)-en.rtf](http://www.antimon.gov.sk/files/30/2009/Leniency5(k)-en.rtf)) (the Leniency Guidelines).

23 Elements of the leniency/immunity programme

What are the basic elements of the leniency/immunity programme?

A cartel member may be granted either full immunity or a reduction in fines of up to 50 per cent. Full immunity is granted if the following conditions are cumulatively met:

- the undertaking was the first to provide the AMO with decisive evidence proving the existence of a cartel, or evidence instigating a targeted dawn raid, by which the decisive evidence has been obtained;
- the undertaking had terminated its participation in the cartel no later than the time when it provided the evidence to the AMO;
- the undertaking did not force another undertaking to participate in the cartel or was not the instigator of the cartel; and
- the undertaking provided the AMO with all evidence available to it and cooperated with the AMO throughout the entire investigation.

A reduction in the fines of up to 50 per cent may be granted subject to fulfilment of the following conditions:

- the undertaking provides the AMO significant evidence that, in combination with information and documents already available to the AMO, enables the AMO to prove the existence of the cartel; and
- the undertaking had terminated its participation in the cartel no later than the time when it provided the evidence to the AMO.

When determining the intensity of the fine reduction, the actual contribution of the evidence to revealing the cartel and the time of its submission is taken into account.

Joint leniency applications by two or more undertakings as well as leniency applications of associations of undertakings are not allowed. The leniency programme applies only to horizontal agreements.

24 First in

What is the importance of being 'first in' to cooperate?

Only the undertaking that first approaches the AMO with the decisive evidence proving the existence of the cartel receives full immunity from fines, subject to fulfilment of the remaining conditions (see question 23). If the undertaking submits evidence that does not suffice for the full immunity to be granted, the undertaking may still obtain a reduction of fine up to 50 per cent. In such case, being the first to apply for leniency is an important factor for determination of the amount of fine reduction.

25 Going in second

What is the significance of being the second cooperating party? Is there an 'immunity plus' or 'amnesty plus' option?

Those cartel members who were not the first to approach the AMO may still obtain a reduction of up to 50 per cent of the fine if the evidence submitted is significant for proving the existence of the cartel. The reduction of the fine is not limited to the 'second-in', although the order and the time of the submissions are taken into account by the AMO. More importantly, the AMO assesses the importance of the evidence submitted.

The Competition Act does not provide for an 'immunity plus' or 'amnesty plus' option.

26 Approaching the authorities

Are there deadlines for applying for immunity or leniency, or for perfecting a marker?

An application for leniency may be filed prior to commencement or at any stage of the investigation as well as during the course of the administrative proceedings. After the undertaking decides to apply for leniency, it should file the application as soon as possible. Otherwise, it may lose the benefit of being the 'first-in'. Neither the Competition Act nor the Leniency Guidelines explicitly provide for any deadline to apply for leniency; however, for the application to be relevant, it must be submitted before the decision adjudicating the cartel matter is issued by the AMO. The deadline for perfecting a marker is always determined by the AMO on a case-by-case basis. The applicant shall propose and justify a time period needed for perfection of marker, which should be taken into account by the AMO.

27 Cooperation

What is the nature and level of cooperation that is required or expected from an immunity applicant? Is there any difference in the requirements or expectations for subsequent cooperating parties?

An applicant who wishes to receive full immunity under the leniency programme must fully cooperate with the AMO. This includes the obligation to submit all evidence regarding the cartel activity available to the applicant when applying for leniency, as well as timely supplementing of this evidence. The applicant must also duly and timely respond to all AMO requests for information. Last, but not least, the applicant must refrain from hindering the AMO's investigation of the cartel by, for example, informing cartel participants of its cooperation with the AMO or by submitting false or incomplete evidence.

28 Confidentiality

What confidentiality protection is afforded to the immunity applicant? Is the same level of confidentiality protection applicable to subsequent cooperating parties?

Any information and documents submitted to the AMO by the leniency applicant can only be used for the purpose of the administrative

proceedings. Nonetheless, the AMO will disclose the identity of the leniency applicants in the final decision adjudicating the cartel matter and it will describe the extent of the applicants' cooperation. No distinction shall be made by the AMO between the first and subsequent applicants. The parties to the administrative proceedings shall be granted access to the file, but the AMO has to take into consideration the legitimate interests of the leniency applicant. The Competition Act does not contain specific provisions in this respect, and thus the decision on disclosure of particular information and documents is always made on a case-by-case basis weighing the interests of all parties involved.

Employees of the AMO must maintain confidentiality of the information and documents they have reviewed during the administrative proceedings. Such information and documents may, however, be disclosed to a court in civil proceedings, and to the police and prosecutor in criminal proceedings.

29 Settlements

Does the enforcement authority have the ability to enter into a plea bargain, settlement or other binding resolution with a party to resolve liability and penalty for alleged cartel activity?

There is no legal basis allowing the AMO to enter into plea bargaining agreements. Since January 2012, a cartel participant may, however, benefit from a reduction of the fine if, as a result of the settlement procedure, it voluntarily acknowledges its participation in the cartel. The settlement procedure is governed by guidelines adopted by the AMO (the Guidelines on Settlement Procedure). Even though the Guidelines on Settlement Procedure are not a generally binding legal regulation, the AMO may not depart from them unless there are objective reasons (see question 17). The AMO has declared its intention to include the provisions governing the settlement procedure in the Competition Act through the upcoming amendment of the Competition Act.

The settlement procedure may be initiated either by a cartel participant or the AMO. During the settlement procedure, the AMO shall inform the applicant about the details of cartel conduct that the AMO deems proven, and the amount of fine it intends to impose on the applicant. The applicant may submit its observations and objections in this respect. The settlement procedure is successfully completed if the applicant fully and without reservations acknowledges its participation in the cartel and admits its liability. In such case, the AMO shall grant a reduction of 50 per cent of the fine to participants in vertical agreements and 30 per cent in the case of horizontal agreements.

It should be noted that the AMO is not obliged to accept the cartel participant's application for a settlement procedure. The AMO will most likely reject the application for the settlement procedure in cases where it has sufficient evidence of the cartel conduct at hand and the cartel participant's confession is not necessary for the AMO.

The settlement procedure results in decreasing the fine set out in the AMO's final decision adjudicating the cartel matter. Only parties to the proceeding may challenge the final decision. However, if the AMO erred in applying the settlement procedure, a prosecutor may challenge its decision in court. Third parties may submit motions to the prosecutor, but it is in the prosecutor's sole discretion whether to take an action against the AMO's decision.

30 Corporate defendant and employees

When immunity or leniency is granted to a corporate defendant, how will its current and former employees be treated?

Employees may obtain immunity from criminal sanctions if they have contributed to a successful leniency application. Administrative sanctions cannot be imposed on employees of an undertaking by

the AMO. Thus, leniency granted to a corporate defendant cannot apply to its employees.

31 Dealing with the enforcement agency

What are the practical steps in dealing with the enforcement agency?

When applying for leniency, the undertaking should contact the Division of Agreements Restricting Competition of the AMO. It is advisable that counsel act on behalf of the undertaking when dealing with the AMO. The applicant must submit all evidence it has available for its application to be successful.

If the undertaking decides to file a leniency application but is not able to submit any or all evidence immediately due to objective reasons, it may benefit from the marker system. The marker system allows the undertaking to 'reserve the order' of its application (place a marker) on the condition that the evidence will be submitted within a period specified by the AMO. If the evidence is submitted in a timely manner, the leniency application will be deemed as filed at the time when the marker was placed.

Another option for applying for leniency is a hypothetical application. An undertaking may anonymously file a hypothetical application in which it provides a descriptive list of evidence and documents it intends to submit to the AMO. If the AMO concludes that the evidence described in the application would suffice in revealing the cartel, it will specify a period for submission of the evidence. If the evidence is submitted in time, the leniency application will be deemed as filed at the time when the hypothetical application was filed.

32 Ongoing policy assessments and reviews

Are there any ongoing or anticipated assessments or reviews of the immunity/leniency regime?

In 2010, the AMO informed the public of its intention to adopt certain changes to the leniency programme through the upcoming amendment to the Competition Act (see question 3). The AMO has not yet specified the precise extent of the changes; however, it appears that it intends to include a number of provisions from the Leniency Guidelines, which represent a soft-law document, directly in the Competition Act. In addition, the AMO plans to issue a new detailed leniency programme in the form of a generally binding legal regulation.

Defending a case

33 Representation

May counsel represent employees under investigation and the corporation? Do individuals require independent legal advice or can counsel represent corporation employees? When should a present or past employee be advised to seek independent legal advice?

At the outset, employees cannot be prosecuted by the AMO in the administrative proceedings at all. However, criminal prosecution is not excluded. Counsel is not prohibited from representing both the corporation and its employees provided that no conflict of interest exists. However, it should be noted that a conflict of interest may indeed arise in cartel cases between the employees and the corporation. The likelihood of such conflict should be carefully evaluated when deciding on legal representation. Employees should seek independent counsel if the circumstances indicate that they may be subject to criminal prosecution.

34 Multiple corporate defendants

May counsel represent multiple corporate defendants?

Counsel may represent multiple corporate defendants on the condition that no conflicts of interest arise.

Update and trends

In recent years, we have witnessed a more frequent application of the AMO's leniency programme. Since immunity was granted under the leniency programme for the first time in 2009 with respect to the gas insulated switchgear cartel, the AMO has received several leniency applications. The second decision, which granted immunity to a cartel participant, was issued in late 2011, and generally confirms that undertakings are more inclined to approach the AMO using this tool. The trend has been supported by the adoption of an amendment to the Criminal Code, which offers criminal immunity to the employees and officers of successful leniency applicants.

The AMO has published a document outlining its enforcement priorities. Cartel investigations are listed as its number one short-term priority due to their substantial impact on competition and consumers. With respect to particular industries, the AMO will be focusing on the financial sector, food industry and heating sector. The AMO also published an extensive report on its inquiry into the heat generation, distribution and supply sectors in the second half of 2013.

35 Payment of legal costs

May a corporation pay the legal costs of and penalties imposed on its employees?

There is no general prohibition preventing a corporation from reimbursing its employees for their legal costs and penalties imposed on them. The tax ramifications on the corporation and the relevant employees will, however, need to be carefully considered on a case-by-case basis.

36 International double jeopardy

Do the sanctions imposed on corporations or individuals take into account any penalties imposed in other jurisdictions?

Sanctions imposed by other competition authorities need to be taken into account when the AMO issues its decision. First, the AMO cannot pursue a cartel investigation as a breach of article 101 TFEU if the European Commission has already sanctioned members of such cartel. However, the AMO may investigate and sanction a cartel with respect to its effects in Slovakia prior to its accession to the EU (1 May 2004).

If the cartel has already been investigated and its members sanctioned by a third country's competition authority, the AMO may still sanction the cartel members for the cartel effects in Slovakia. However, pursuant to general legal principles, the AMO shall take into account the sanctions already imposed on the cartel members for the same conduct. The Slovak Republic does not have any bilateral agreements in place that would prevent the AMO from sanctioning cartels already investigated in third countries.

37 Getting the fine down

What is the optimal way in which to get the fine down?

The undertaking should always assess the option to apply for leniency, which in most cases will be the most effective way of avoiding or reducing a potential fine. Individuals and employees of a corporation that successfully apply for leniency can also obtain immunity from criminal prosecution. The AMO also takes into account the cooperation of the undertakings in the administrative proceedings when determining the amount of the fine.

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