

COMPETITION ENFORCEMENT AGENCIES

HANDBOOK 2019

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Competition Enforcement Agencies Handbook 2019

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For further information please contact Natalie.Clarke@lbresearch.com



Competition Enforcement Agencies Handbook 2019

Insight account manager Bevan Woodhouse

bevan.woodhouse@lbresearch.com

Tel: +44 20 3780 4291

Head of production Adam Myers

Editorial coordinator Hannah Higgins

Deputy head of production Simon Busby

Designer James Green

Production editor Harry Turner

Subeditor Janina Godowska

Research editor Tom Barnes

Researcher Helen Barnes

Editor, Global Competition Review Pallavi Guniganti

Publisher Clare Bolton

To subscribe please contact

Global Competition Review

87 Lancaster Road

London, W11 1QQ

United Kingdom

Tel: +44 20 7908 9205

Fax: +44 20 7229 6910

subscriptions@globalcompetitionreview.com

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For an authorised copy contact claire.bagnall@globalcompetitionreview.com

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Global Competition Review's 2019 edition of the *Competition Enforcement Agencies Handbook* provides full contact details for competition agencies in over 100 jurisdictions, together with charts showing their structure and a Q&A explaining their funding and powers. The information has been provided by the agencies themselves and by a panel of specialist local contributors.

The *Competition Enforcement Agencies Handbook* is part of the *Global Competition Review* subscription service, which also includes online community and case news, enforcer interviews and rankings, bar surveys, data tools and more.

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Antimonopoly Office of the Slovak Republic

Drienova 24, 826 03 Bratislava, Slovakia

Tel: +421 2 48 297 111

Fax +421 2 43 333 572

pmusr@antimon.gov.sk

www.antimon.gov.sk

Contacts

Tibor Menyhart

Chairman

Tel: +421 2 4333 7305

Fax: +421 2 4829 7365

Boris Gregor

Deputy Chairman

Tel: +421 2 4333 1126

Fax: +421 2 4333 1126

Zuzana Bonova

Secretary general

Tel: +421 2 4333 7305

Fax: +421 2 4829 7365

Jana Krivosudska

Director, Economic Division and
Chairman Division

Tel: +421 2 4829 7380

Fax: +421 2 4333 3572

Michaela Nosa

Director, Legislative, Legal and
Foreign Relations Division

Tel: +421 2 4333 1092

Fax: +421 2 4333 3572

Daniela Lukacova

Director, Second Instance
Division

Tel: +421 2 4333 3596

Fax: +421 2 4333 3572

Emil Vojtko

Director, Abuse of a Dominant
Position and Vertical Agreements
Division

Tel: +421 2 4333 0149

Fax: +421 2 4333 3572

Zuzana Minarovjech

Director, Cartels Division

Tel: +421 2 4333 4045

Fax: +421 2 4333 3572

Erika Lovasova

Director, Concentrations Division

Tel: +421 2 4333 4072

Fax: +421 2 4333 3572

Sona Drobova

Director, Division of State Aid

Tel: +421 2 4829 7215

Fax: +421 2 4333 3572

Questions and answers

How long is the head of agency's term of office?

The term of office of the chairperson is five years. He or she may be reappointed for two consecutive terms.

When is he or she due for reappointment?

The current chairman started his second term of office in November 2016.

Which posts within the organisation are political appointments?

None.

What is the agency's annual budget?

The approved budget of the Antimonopoly Office of the Slovak Republic (the Office) for 2019 is €2.8 million.

How many staff are employed by the agency?

As of 1 February 2019, there are 72 employees at the Office. Of these, 25 are professional lawyers, 22 are economists and 14 are professionals from other industries.

To whom does the head of the agency report?

The Office is an independent central state administrative body. Its chairperson is appointed on the proposal of the government by the President of Slovakia. The chairperson may not be recalled from his or her function except for the reasons set out in the Act on Protection of Competition (the Act).

Do any industry-specific regulators have competition powers?

Yes. However, they are not entrusted with the enforcement of articles 101 and 102 of the Treaty on the Functioning of the European Union, their national counterparts or the merger control regime.

If so, how do these relate to your role?

These institutions are specific regulators and their major task is to ensure the effective competition in specific sectors by means of ex ante measures. The aim of the specific regulators is to set the conditions of the competition in sectors where competition does not work properly (for example, electricity, telecommunications) and to remove barriers to entry in specific markets. The Office and the specific regulators exercise their functions independently from each other.

Do politicians have any right to overrule or disregard the decisions of the authority?

No.

Does the law allow non-competition aims to be considered when taking decisions?

No. The Act has no provision forcing or allowing the Office to consider 'non-competition aims' when taking decisions.

Which body hears appeals against the agency's decisions? Is there any form of judicial review beyond that mentioned above? If so, which body conducts this?

Each party to the proceedings has the right to submit an appeal against the Office's decisions to the Council of the Office, which is an independent second-instance body. It has seven members, including the chairman of the Office; the others are legal external professionals and economists (not employees of the Office) – university professors, lawyers and representatives of the non-governmental organisation.

Parties to the proceedings have the right to submit a lawsuit challenging the Office's decisions to the Regional Court in Bratislava. The decision of the Regional Court could be appealed at the Supreme Court.

Has the authority ever blocked a proposed merger?

The last prohibited merger was the case of *Tesco/Carrefour* in the area of everyday goods sales in 2006. In recent years, in several cases undertakings have withdrawn their notification filings after statement of

objection concluding that the merger in question was to be blocked.

Has the authority ever imposed conditions on a proposed merger?

Yes. The last concentration where this rule was applied was the case of *Penta Investments Limited / Nemocnica Topoľčany* in 2017. In several other cases within past two years where the Office issued a statement of objection requesting remedies, the parties have withdrawn their notification filings.

Has the authority conducted a Phase II investigation in any of its merger filings?

Yes, the Office can conduct Phase II investigations. In 2018, two merger filings were assessed in Phase II. In other cases where it was necessary to conduct market research, or any other in depth investigation, it was managed within the first phase.

Has the authority ever pursued a company based outside your jurisdiction for a cartel offence?

In 2018 the Office did not carry out any proceedings for a cartel offence against a party to the proceedings based outside the Slovak jurisdiction.

Do you operate a leniency programme? Whom should potential applicants contact?

The Office does operate a leniency programme. The first applicant may be granted full immunity; other applicants may be granted a reduction in fine of up to 50 per cent.

Potential applicants should contact the following people at the Cartel Division:

Ján Šufliarsky
Tel: +421 2 48 297 350
jan.sufliarsky@antimon.gov.sk

Zuzana Kochanová
Tel: +421 2 48 297 350
zuzana.kochanova@antimon.gov.sk

Is there a criminal enforcement track? If so, who is responsible for it?

Criminal proceedings in cartel cases can be lead only by criminal bodies (for example, police, prosecution, courts) pursuant to the relevant legislation (Criminal Code, Criminal Procedure Code).

The law system in the Slovak Republic provides for criminal enforcement of anticompetitive practices. Criminal responsibility lies with natural persons

(legal persons or undertakings are responsible for anticompetitive behaviour within the application of administrative enforcement pursuant to the Act). The Criminal Code provides a definition of criminal acts for the abuse of participation in competition. This criminal conduct, according to the provisions of the Criminal Code, is referred to the breach of the Act, which results in considerable harm to the other competitor or threatens the operation or development of the entrepreneurial subject.

Criminal acts pursuant to the provisions of the Criminal Code would be investigated by the police or prosecutor, and the charges are brought before the court in criminal proceedings.

Are there any plans to reform the competition law?

In connection with the obligation to transpose the Directive of the European Union 2019/1 to empower the competition authorities of EU member states to be more effective enforcers and to ensure the proper functioning on the internal market, signed into law on 11 December 2018 and published in the Official Journal of the European Union on 14 January 2019, we plan to reform our competition law in two years.

When did the last review of the law occur?

The last review of the Act occurred in 2014 and came into force on 1 July 2014. Since then, the Act was amended by the Public Procurement Act, which came into force on 18 April 2016.

The amendment provides the Office with new competence (article 38(h)) to impose a prohibition to take a part in public procurement for the period of three years on the undertaking.

The Act was afterwards subject to few, not significant changes regarding the revision of the Civil Code of Procedure and transposition of the EU Damages Directive.

Do you have a separate economics team? If so please give details.

No, currently the Office covers the position of chief economist in the form of consultant directly reporting to the deputy chairman.

Has the authority conducted a dawn raid?

Yes, the Office has such power.

Has the authority imposed penalties on officers or directors of companies for offences committed by the company?

No, we do not have such competence; we can impose penalties only on undertakings (companies), but not on individuals.

What are the pre-merger notification thresholds, if any, for the buyer and seller involved in a merger?

The notification thresholds are set by the law. There are several options on how thresholds are met and it is sufficient if the undertakings concerned fulfil one of them (the first one is general and the others depend on the type of the concentration).

A concentration shall be subject to control by the Office if:

- the combined aggregate turnover of the undertakings concerned is at least €46 million attained for the accounting period preceding the establishment of the concentration in the Slovak Republic, and at least two of the undertakings concerned each attain the aggregate turnover of at least €14 million in the Slovak Republic for the accounting period preceding the establishment of the concentration; or
- the aggregate turnover attained for the accounting period preceding the establishment of the concentration in the Slovak Republic:
 - is a matter of concentration pursuant to article 9, paragraph 1, subparagraph (a) at least by one of the undertakings concerned is €14 million and simultaneously the worldwide aggregate turnover for the accounting period preceding the establishment of the concentration attained by another undertaking concerned is at least €46 million; or
 - is a matter of concentration pursuant to article 9, paragraph 1, subparagraph (b) at least by one undertaking concerned which is acquired or part of it is acquired is at least €14 million and simultaneously the worldwide aggregate turnover for the accounting period preceding the establishment of the concentration attained by any undertaking concerned is at least €46 million; or
 - is a matter of concentration pursuant to article 9, paragraph 5 at least by one of the undertakings concerned creating a jointly controlled enterprise is at least €14 million and simultaneously the worldwide aggregate turnover for the accounting period preceding the establishment of the concentration

attained by another undertaking concerned is at least €46 million.

Only the turnover of the undertaking that is the target in a specific concentration is taken into account from the portfolio of seller's companies.

Are there any restrictions on minority investments?
No.

What discounts are available to companies that cooperate with cartel investigations?

Proper cooperation is one of the conditions for the immunity or reduction in fine to be granted under the leniency programme.

The undertaking is legally obliged to cooperate with the Office and failure to do so can be fined in itself or assessed among aggravating circumstances when calculating the amount of fine for the infringement committed. Moreover, effective cooperation can be evaluated under mitigating circumstances in the calculation of fine for the infringement committed under the condition undertaking does not benefit from the leniency programme and the effective cooperation goes beyond legal obligation to cooperate.

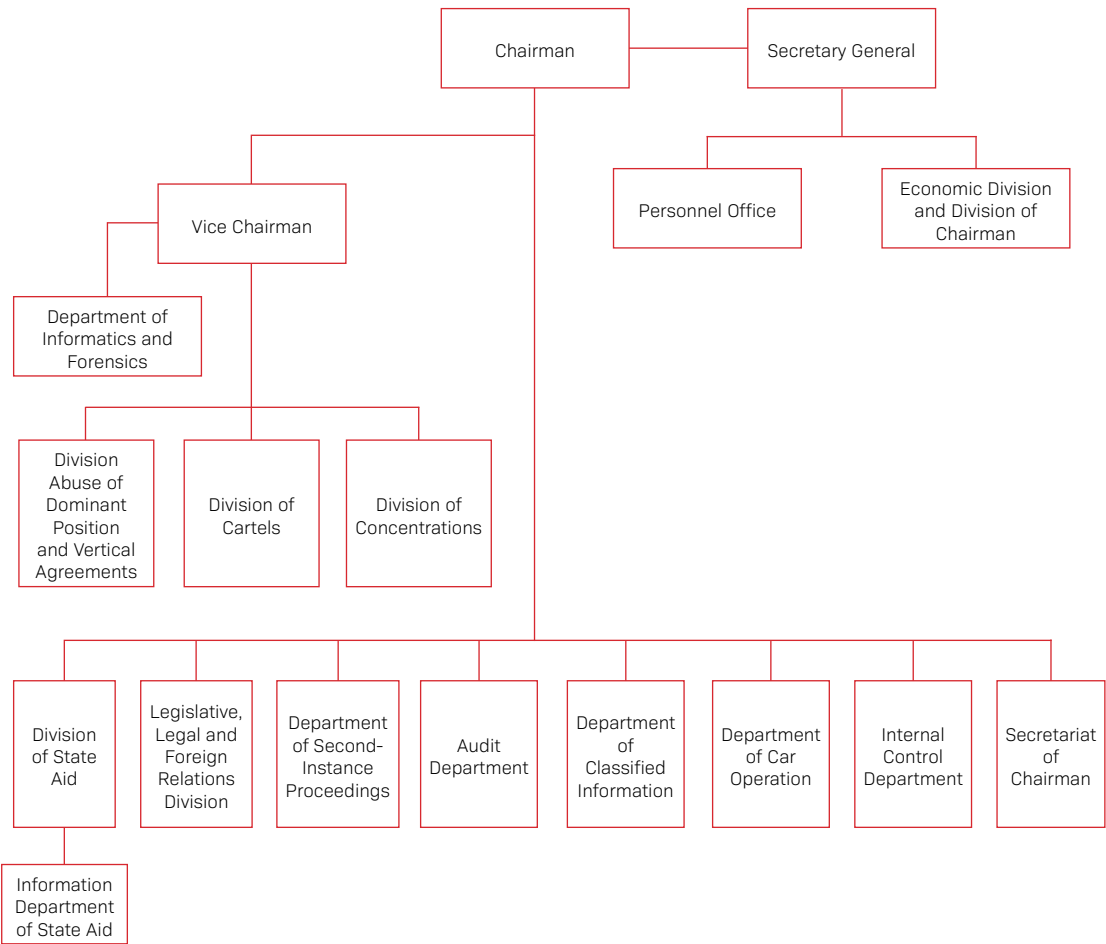
Will to undergo the settlement procedure may be also perceived as a special form of cooperation of an undertaking. The Office is allowed to settle the case if an undertaking agrees on conclusions of settlement discussions, admits its participation in the infringement and accepts its responsibility. If the Office settles the case the undertaking may be granted reduction in fine of 30 per cent in antitrust cases.

The above cooperation is also indirectly rewarded through the leniency programme and the settlement. The debarment from public procurements for three years is another administrative sanction which may be pursued on an undertaking, if applicable, apart from fine. If an undertaking benefits from a leniency programme debarment is not applicable. However, if an undertaking settles the case it will be debarred, if applicable, for one year instead of three.

Does the authority conduct criminal investigations and prosecutions for cartel activity? If not, is there another authority in the country that does?

No, we do not have such competence; only criminal bodies can conduct criminal investigations and prosecutions.

Organisation chart



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