

# **COMPETITION ENFORCEMENT AGENCIES**

## HANDBOOK 2019

Published in association with:

Atsumi & Sakai

Bowmans

Cooley

ELIG Gürkaynak Attorneys-at-Law

Lapidot, Melchior, Abramovich & Co

Morrison & Foerster LLP

SRS Advogados

Van Bael & Bellis



# Competition Enforcement Agencies Handbook 2019

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A Global Competition Review Special Report

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This article was first published in May 2019

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This publication is intended to provide general information on competition law, economics and policy. The information and opinions that it contains are not intended to provide legal advice, and should not be treated as a substitute for specific advice concerning particular situations (where appropriate, from local advisers).

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ISBN: 978-1-83862-222-0

Printed and distributed by Encompass Print Solutions

Tel: 0844 248 0112

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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.

We would like to thank all those who have worked on the research and production of this publication: the enforcement agencies and our external contributors.

The information listed is correct as of April 2019.

### **Global Competition Review**

London

April 2019

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## Questions and answers

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

The director of the Slovenian Competition Protection Agency (CPA) is appointed for a term of five years. The term may be renewed once.

### When is he or she due for reappointment?

The director of the CPA is due for reappointment in July 2022. The National Assembly of the Republic of Slovenia appointed Mr Andrej Matvoz as the director of the CPA for a five-year mandate, effective from 1 July 2017.

### Which posts within the organisation are political appointments?

None.

### What is the agency's annual budget?

The budget of the CPA for 2019 is currently increased to €1.470 million.

### How many staff are employed by the agency?

The total number of staff currently employed by the CPA is 30.

### To whom does the head of the agency report?

The CPA is an independent authority in its decision-making and in this respect does not receive political orders. According to the provisions of competition law, the CPA reports annually to the government and to the parliament on its activities.

### Do any industry-specific regulators have competition powers? If so, how do these relate to your agency's role?

The CPA has sole competence on competition powers.

### May politicians overrule or disregard authority's decisions? If they have ever exercised this right, describe the most recent example.

No, politicians have no power or legislative option to overrule or disregard the authority's decisions. There are no such existing examples.

### Does the law allow non-competition aims to be considered when your agency takes decisions?

There are no such provisions in the competition law.

### 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? Has any competition decision by the agency been overturned?

Under the present competition law, the Prevention of the Restriction of Competition Act (ZPOMK-1), there is no appeal in the administration procedure against decisions and orders issued by the CPA. However, parties and other participants to the procedure can file a lawsuit against the CPA's decisions (and orders) with the Administrative Court of the Republic of Slovenia, and the revision against the judgment to the Supreme Court. Pursuant to currently valid legislation, if the CPA determines that fines should be imposed to parties subject to a final decision in the administrative procedure, it can do so in a separate minor offence procedure. The parties can then file a case in the District



Court of Ljubljana, seeking to have the fine overturned or reduced with the possibility of an appeal to the High Court, and file extraordinary legal remedies with the Supreme Court.

**Has the authority ever blocked a proposed merger? If yes, please provide the most recent instances.**

Yes, the competition authority has so far blocked a proposed merger in three cases. A prohibition decision was issued in 2009, related to the daily newspaper market. The second prohibition decision was issued in 2013 when an intended merger in the electric power market was prohibited. However, for procedural reasons, the decision was repealed by the Court. In the last case, the prohibition decision was issued in 2018 in a case dealing with TV broadcasting.

**Has the authority ever imposed conditions on a proposed merger? If yes, please provide the most recent instances.**

In 2004 and 2011 there were a few cases where merger cases were cleared with conditions. However, in 2015, four mergers were cleared conditionally subject to additional remedies at the end of either Phase I or Phase II. These conditional decisions were adopted in the following sectors: beer production (corrective measures set in *Heineken/Pivovarna Laško*); urban and suburban passenger bus transport; telecommunications; and electricity trading. In 2018 one merger was cleared conditionally on the market of online selling.

**Has the authority conducted a Phase II investigation in any of its merger filings? If yes, please provide the most recent instances.**

The CPA has conducted Phase II investigations in several merger filings. The most recent instance was a conditional decision on a merger case in Phase II within online selling market.

**Has the authority ever pursued a company based outside your jurisdiction for a cartel offence? If yes, please provide the most recent instances.**  
No.

**Do you operate an immunity and leniency programme? Whom should potential applicants contact? What discounts are available to companies that cooperate with cartel investigations?**

Yes, the CPA operates a leniency programme. Article 76 of ZPOMK-1 introduced leniency into Slovenian

competition law in 2008. Under the leniency programme, members of cartels can benefit from lenient treatment by the CPA in a minor offences procedure if they cooperate with the CPA during its investigations, in line with article 76 of Competition Act. The rules of procedure for granting immunity from fines or reduction of fines are contained in the Decree on the procedure for granting immunity from fines and reduction of fines in cartel cases (Official Gazette RS, No. 112/09 and 2/14), which came into effect on 1 January 2010. The rules are published also on the CPA website.

**Is there a criminal enforcement track? If so, who is responsible for it? Does the authority conduct criminal investigations and prosecutions for cartel activity? If not, is there another authority in the country that does?**

Infringements of antitrust and merger control rules are (apart from the provisions in the Competition Act) also defined as criminal offences under the Penal Code (KZ-1). However, the competition authority has no jurisdiction in this respect. The Prosecutor's Office can prosecute competition type violations set forth in the Penal Code. Criminal penalties of up to five years' imprisonment can be imposed for such violations. Nevertheless, this provision of the Penal Code has not been enforced so far.

**Are there any plans to reform the competition law?**

There are plans to reform the competition law in 2019, mainly regarding procedural issues related to establishing the uniform single procedure for antitrust cases and a simplified procedure for the review of concentrations. The proposal for this amendment is still subject to coordination with the competent ministry.

**When did the last review of the law occur?**

The last amendment of the Slovenian Competition Act, published in the Official Journal of the Republic of Slovenia No. 23/2017, came into force on 20 May 2017, focusing mainly on certain material and procedural rules regarding claims for damages in the light of the implementation of Directive 2014/104/EU.

The amendment provides for a number of new substantive and procedural rules aimed at facilitating damages actions brought by injured parties against undertakings infringing EU or Slovenian competition law.

Changes include prolonged limitation periods, exemptions from joint liability for SMEs, undertakings being granted immunity from fines, discretionary right of the court to determine the amount of harm,

solutions for dealing with passing-on of overcharges and similar.

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

The CPA has a separate section responsible for economic analysis, consisting of 11 people. However, due to the fact that the CPA is permanently understaffed, economists are usually involved in legal aspects of merger case handling as well.

**Has the authority conducted a dawn raid?**

In line with the provisions of Slovenian competition Act (ZPOMK-1), the CPA has similar powers in administrative proceedings, as does the European Commission. It can request information (article 27 ZPOMK-1) and conduct inspections (articles 28–33 ZPOMK-1). The CPA can also conduct inspections on the premises of the undertakings against which proceedings have been initiated, or on the premises of other persons. The CPA conducts dawn raids periodically in most demanding antitrust cases.

**Has the authority imposed penalties on officers or directors of companies for offences committed by the company? If yes, please provide the most recent instances.**

For breach of articles 6 and 9 of the Competition Act or corresponding articles 101 or 102 of the Treaty on the Functioning of the European Union, the CPA can impose minor offence fines of up to 10 per cent of the annual turnover of the undertaking in the preceding business year on a legal entity, entrepreneur or individual who performs an economic activity; or between €5,000 and €30,000 on the responsible person of a legal entity or the responsible person of an entrepreneur. Moreover, the Competition Act also defines as minor offences:

- failure to notify a concentration in time;
- the implementation of rights or obligations arising from the concentration in breach of a stand-still obligation;
- failure to implement remedies or obligations imposed by a decision; and

- actions in contravention of a decision declaring a concentration incompatible and actions in contravention of an enforceable decision imposing measures to restore situation prior to the implementation of concentration.

The most recent instance of penalties on the responsible persons of a legal entity in 2018 were related to a case of collusion and bid-rigging in tenders on public transport and in a case of failure to notify a concentration.

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

The CPA must be notified of a merger (concentration) if:

- the combined turnover of the undertakings involved in a concentration, together with other undertakings in the group, on the market of the Republic of Slovenia in the preceding business year exceeded €35 million; and
- the annual turnover of the acquired undertaking, together with other undertakings in the group, on the market of the Republic of Slovenia in the preceding business year exceeded €1 million. The obligation is applicable also in the case of the creation of a joint venture when the annual turnover of at least two undertakings concerned in a concentration, together with other undertakings in the group, in the preceding business year exceeded €1 million.

Even where these turnover thresholds are not met, the undertakings concerned are obliged to inform the CPA of the implementation of a concentration, if they represent a combined market share of more than 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 Competition Act).

**Are there restrictions on minority investments that involve less than a majority stake in the business?**

No.

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ISBN 978-1-83862-222-0