

New Merger Control Rules in Slovakia

In November 2011, a long expected amendment to the Slovak merger control rules was approved under Act No. 387/2011 Coll. and Decree No. 402/2011 (the "**Amendment**"). The Amendment results from the efforts of the Slovak Antimonopoly Office (the "**Office**") to reform its stringent merger control rules. The major changes brought about by the Amendment are as follows:

- **New turnover thresholds;**
- **Shorter clearance deadlines;**
- **Introduction of the SIEC test for the substantive assessment;**
- **New definition of affected markets.**

The Amendment will become effective on 1 January 2012. Although it does not apply to notifiable transactions signed before 31 December 2011 and any merger control proceedings commenced before that date, the Office will stop any merger clearance proceedings where the new merger control thresholds will not be met.

New turnover thresholds

The key change in the introduction of new turnover thresholds is the requirement of local turnover nexus of the target undertaking in cases of the acquisition of sole control.

Under the new rules, there are two alternative turnover thresholds. As to the first turnover threshold, a concentration is notifiable to the Office if the combined Slovak turnover of the parties to the concentration is at least EUR 46 million for the last financial year and if each of at least two parties to the concentration has a Slovak turnover of at least EUR 14 million for the same period.

As to the second turnover threshold, a concentration is notifiable to the Office if the worldwide turnover of a party to the concentration is at least EUR 46 million and

- in case of the acquisition of (sole or joint) control over an existing undertaking, the Slovak turnover of this target undertaking is at least EUR 14 million; or
- in case of establishment of a new full-function joint venture or, in the rare case of a merger or consolidation as defined under Slovak company law, a Slovak turnover of any other party to the concentration is at least EUR 14 million.

The introduction of the local nexus requirement of the target undertaking in case of the acquisition of sole control is expected to reduce the number of merger notifications and the current backlog of pending notifications being handled by the Office.

Shorter clearance deadline

The Amendment significantly shortens the clearance deadlines for simple cases from 60 to 25 business days. Although the Amendment does not introduce a short form notification, the Office can generally issue a decision with simplified reasoning on straightforward matters.

In cases where the assessment of a concentration requires a thorough analysis as a result of competition concerns, the clearance deadline will be 90 business days from the date when the notifying parties are notified by the Office thereof.

Furthermore, the Amendment should limit the situations when the Office 'restarts the clock' only to those cases where the notification of a concentration is incomplete in terms of the official questionnaire concerning the affected markets. In all other cases, the clearance deadline would be merely suspended.

It is questionable to what extent the shortening of deadlines and introduction of new rules on the suspension and reactivation of the clearance period will lead to delivering a faster merger clearance process. In the last decade, the Office has been known to restart the clock in virtually all cases in order to better manage its backlog of cases and lack of personnel. As long as the Office uses the new rules to manage its scarce resources better, they should indeed assist in achieving a more

expeditious process.

New substantive test (SIEC)

The Amendment will introduce the Significant Impediment of Competition (SIEC) test for the substantive assessment of concentrations, replacing the current test based on dominance. The Office has been inspired by the EU Commission and other competition authorities which have recently followed this trend.

Affected markets and less formalities

The Amendment introduces a new definition of the affected markets which the notifying parties will need to describe in their merger notifications. Based on the recommendations within the public consultations, the new definition mirrors the one under the Form CO of the EU Commission. Thus, the affected market is, in case of horizontal overlaps, the one in which the parties to the concentration will have a combined market share of 15% or more and, in case of vertical relations, the one in which one party to the concentration will have a market share of 25% or more.

Moreover, the Office will no longer require notarial certification and apostilles for the Powers of Attorney of the notification parties which has been considered as particularly

Useful links

[Act No. 387/2011 Coll. - Amendment to the Competition Act \(in Slovak\)](#)

[Act No. 402/2011 Coll. - Amendment to the Decree of the Antimonopoly Office \(in Slovak\)](#)

[Antimonopoly Office of the Slovak Republic](#)

[European Commission: Competition](#)

burdensome.

Conclusion

The Amendment aims to reduce the number of merger notifications and information provided by the notifying parties as well as to simplify the decision-making process of the Office. The changes seem to be positive overall and should lead to better use of the resources of the notifying parties as well as of the Office. It remains to be seen whether this will help to address the current backlog of merger notifications and, as a result, speed up the merger clearance process and its predictability.

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