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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN SLOVENIA

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This report is submitted by Slovenia to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 27-28 October 2015

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TABLE OF CONTENTS

Introduction.....	3
1. Changes to competition law and policies, proposed or adopted.....	3
2. Enforcement of competition laws and policies.....	4
2.1 Action against anticompetitive practices, including agreements and abuses of dominant positions	4
2.2 Mergers and acquisitions	8
3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies	9
4. Resources of the Slovenian Competition Protection Agency	10
4.1 Resources overall (current numbers and change over previous year):	10
4.2 Human resources (person-years) applied to	11

Introduction

1. The Slovenian Competition Protection Agency (CPA) is an authority with the powers of enforcing competition rules. It was established in 2013 by reorganization of the former Slovenian Competition Protection Office which was a part of the Ministry of the Economy. The CPA is now organized as an independent administrative authority which is responsible for the enforcement of antitrust and merger control rules in Slovenia. If an anti-competitive practice also affects trade between EU member states, the CPA will apply articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU).

2. The CPA is organized as an independent public body led by a director and five council-members, all of which were appointed by the Parliament on the proposal of the government. In the administrative procedure, the decision-making body is a panel consisting of the members of the Council, led by the director of the CPA. In minor offence procedures, the decision-making body is a panel consisting of the members of the Council and employees of the CPA.

3. The CPA's powers of inspection, in accordance with competition law were challenged as unconstitutional before the Constitutional Court in 2012. After the decision of the Constitutional Court from 11 April 2013 the reform of competition law took place in spring 2014 accordingly. The latest amendment to the Slovenian Competition Act brought about the implementation of a Constitutional Court ruling of April 2013 requiring the Slovenian Competition Protection Agency to obtain a prior court order for investigation at a company's premises.

4. CPA has also assumed additional competences in relation to the newly imposed conduct rules in the food sector. The amendments to the Agriculture Act established, inter alia, a new monitoring authority in the form of an *Ombudsman for the relations in the food supply chain*, who is also in charge of notification of any illicit practices to the CPA.

5. In 2014 CPA has issued 28 decisions; 2 issued decisions were related to anticompetitive agreements and concerted practices and 1 decision to the abuse of dominant position. In 2014 CPA also dealt with several notified concentrations and issued 25 decisions. Apart from 22 approved concentrations, 3 cases were not subject to competition law.

6. CPA in parallel with its legal competences also performed activities aiming to raising competition culture of all market participants and therefore competition advocacy represents important role in the policy of the Agency. CPA is entitled to providing comments in the mandatory review process with regard to legislative proposals; from this perspective, competition advocacy is an important tool in the promotion of competition principles and market methods. Successful advocacy may contribute to a higher quality of regulation or to accelerate deregulation processes in situations where new market conditions do not lead to increased competitiveness of the companies.

1. Changes to competition law and policies, proposed or adopted

7. The latest amendment to the Slovenian Competition Act was adopted in April 2014. It brought about the implementation of a Constitutional Court ruling of April 2013 requiring the Slovenian Competition Protection Agency (hereinafter: CPA) to obtain a prior court order for investigation at a company's premises.

8. Furthermore, the Administrative Court of the Republic of Slovenia is now competent in the first instance for the judicial review of decisions of the CPA. Previously, the Supreme Court of the Republic of

Slovenia had that competence and under the new system it is now the competent court in the second and last instance.

9. With adoption of the amendments to the *Agriculture Act*, CPA has assumed additional competences in relation to the newly imposed conduct rules in the food sector. The amendments also established a new monitoring authority in the form of an *Ombudsman for the relations in the food supply chain*, who is also in charge of notification of any illicit practices to the CPA.

10. The Agriculture Act identifies activities that are considered illicit practices when they are enforced by undertakings that hold significant market power and in contrast with fair trade practices abuse the other contracting party. Illicit practices are particularly identified as, inter alia, the non-respect of payment deadlines or conditioning further purchases on extra payments, bonuses and rebates.

11. The CPA shall be responsible for the supervision of the implementation of provisions on illicit practices and can, in the minor offence procedure, impose a fine in the range of €6.000 to €18,000 on the undertaking concerned and a fine of up to €1,800 on the responsible officer of the undertaking. If the illicit practice also breaches the Competition Act¹ (i.e. if the undertaking involved would hold the dominant position as it is defined in the Competition Act) the CPA can initiate antitrust proceedings, which can lead to antitrust fines.

12. The monitoring authority (i.e. the *Ombudsman for the relations in the food supply chain*) has been formally appointed just recently (26 February 2015) therefore CPA has no practice yet in this field.

2. Enforcement of competition laws and policies

2.1 Action against anticompetitive practices, including agreements and abuses of dominant positions

2.1.1 Summary of activities of:

2.1.1.1 Competition authorities

13. Slovenian Competition Protection Agency (CPA) is the sole authority responsible for the enforcement of competition rules. It is organized as an independent public body led by a director and a five-member council.

14. The rules in Competition act on substantive matters are modeled on EC competition rules and applied to all sectors and all undertakings.

15. In the field of anticompetitive agreements and concerted practices Article 6 of Competition Act prohibits as null and void agreements between undertakings, decisions by associations of undertakings and concerted practices of undertakings (agreements), which have as their object or effect the prevention, restriction or distortion of competition on the territory of the Republic of Slovenia with some actions stated as examples of prohibition: This prohibition applies in particular to agreements that (i) directly or indirectly fix purchase or selling prices, or other trading conditions; (ii) limit or control production, markets, technical progress or investment; (iii) apply dissimilar conditions to comparable transactions with other trading parties, thereby placing them at a competitive disadvantage; (iv) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or

¹ Zakon o preprečevanju omejevanja konkurence – ZPOMK-1 (Competition Act) (Uradni list RS, št. 36/08, 40/09, 26/11, 87/11, 57/12, 39/13 Odl. US: U-I-40/12-31, 63/13-ZS-K in 33/149

according to commercial usage, have no connection with the subject of their contracts; (v) share a market or sources of supply. The listed examples of illegal agreements are substantially the same as in Article 101 TFEU; the same applies for the possibility and conditions for exemptions in line with Article 101(3) TFEU.

16. In 2014 CPA issued two decisions related to anticompetitive agreements and concerted practices. A few cases were remanded back from to Court to CPA for reconsideration therefore no new investigations were carried out. The cases concerned:

- i) A resale price maintenance (RPM) in the electricity market related to an umbrella electricity purchase agreement containing explicit RPM clauses concerning the resale prices of electricity that were charged to private and commercial customers. The decision in this case has been issued in 2012, but appealed and by the judgement of the Supreme Court in 2014, remanded back to the Agency for reconsideration. CPA issued a revised decision in 2014, establishing the same infringements, but removing certain procedural irregularities, as requested by the Court.
- ii) A restrictive agreement, involving three providers of office supplies for public administration. Providers of office supplies were involved in bid rigging and market sharing in several public tenders lasting from 2007 to 2012. The prohibition decision has been accepted. (See detailed description in 2.1.2).

17. Article 9 of Competition act, modeled on article 102 TFEU, prohibits the abuse of a dominant position on the market by one or more undertakings in the territory of the Republic of Slovenia, or in a substantial part of it. Dominance is defined as the ability of an undertaking to act, to a significant degree, independently of competitors, clients or consumers. In addition there is a legal presumption that the undertaking is dominant if its share of the Slovenian market exceeds the 40 per cent threshold and that undertakings are jointly dominant if their share on the Slovenian market exceeds 60 per cent. Determining dominance is assessed with regard not only the market share, CPA takes into consideration also financing options, legal or actual entry barriers, access to suppliers or the market and existing or potential competition.

18. In 2014, CPA issued one decision related to abuse of dominant position. The case concerned the abuse of dominant position on the market of gas supply by prohibited contractual clauses of Geoplin, incumbent gas importer and supplier in the Republic of Slovenia.

19. The CPA is empowered not only to establish the infringement of the competition rules, but also to impose fines. In line with the existing Slovenian regulations the CPA conducts two types of procedures: an administrative procedure in which infringements of the Competition Act and articles 101 or 102 of TFEU are assessed and brought to an end and a minor offence procedure where fines are levied. For the minor offences procedure the provisions of the Minor Offences Act also apply.

20. The CPA has powers to impose fines of up to 10 per cent of the infringing companies' worldwide turnover in minor offences proceedings. When setting a fine, the CPA takes into account the general provisions of the Minor Offences Act and, thus, all circumstances that may reduce or increase the sanction (mitigating and aggravating circumstances).

21. In the case of a breach of articles 6 or 9 of the Competition Act or articles 101 or 102 TFEU, CPA can impose a minor offence fine on a legal entity, entrepreneur or an individual who performs economic activity of up to 10 per cent of the annual turnover of the undertaking in the preceding business year. A fine of between €5,000 and €30,000 can also be imposed on the responsible person of a legal entity or the responsible person of an entrepreneur.

22. In 2014, CPA imposed fines in five minor offences proceedings amounting to a total of € 5, 6 million. Minor offences proceedings were related to two cases on abuse of dominant position, one restrictive agreement on the national level and two proceedings based on failing to notify a concentration.

2.1.1.2 Courts

23. Under the present Competition Act, there is no appeal in the administration procedure against the decisions and orders issued by the CPA. However, the 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. A request for judicial protection has to be filed within 30 days from the issue of the decision or the order.

24. 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.

25. In 2014, within the court review, the Supreme Court of the Republic of Slovenia decided on 38 cases, in which the legality of acts issued by the CPA was examined; the cases referred to the administrative procedure.

26. Three judgments upheld the CPA's decision, 15 of them partially upheld the CPA's decision, in 18 judgments the case was fully remanded back to the Agency for reconsideration and in two cases the action was dismissed by the Court.

2.1.2 *Description of significant cases, including those with international implications.*

2.1.2.1 Resale Price Maintenance in the Electricity Market (Gen Energija – GEN-I)

27. On 14 August 2012 CPA issued a decision finding that Slovenia's second largest electricity producer GEN Energija and the electricity retailer GEN-I infringed Article 6 of Competition Act and Article 101 TFEU, in the period from January 2007 till April 2010.

28. CPA found that the above mentioned undertakings engaged in an umbrella electricity purchase agreement containing explicit resale price maintenance (RPM) clauses concerning the resale prices of electricity which Gen-I had to charge to its private and commercial customers. According to the agreement the energy producer GEN Energija unilaterally controlled the pricing policy of its retailer GEN-I through several provisions; amongst others, the margin to be charged to the end costumers was set in the agreement and was linked to the wholesale price.

29. The minimum price level at which the retailer could sell electricity to its final customers was also fixed in the agreement. Finally, the agreement foresaw a special authorization procedure if the retailer wanted to sell electricity below the set price - a specified form was to be filled and a request sent to the producer, and it was only if this approval was forthcoming that GEN-I could lower the retail price.

30. The relevant provisions of the agreement were removed and annulled by the contracting parties during the administrative procedure in front of the CPA.

31. The decision was appealed and by the judgement of the Supreme Court in 2014, remanded back to the Agency for reconsideration. CPA issued a revised decision in 2014, establishing the same infringements, but removing certain procedural irregularities, as requested by the Court.

2.1.2.2 Anticompetitive agreement and/or concerted practice among providers of office supplies regarding bid rigging, price fixing, exchange of price information and market sharing in public tenders of office supplies for public administration.

32. Based on the information gathered during the analysis of public procurement markets, CPA initiated in April 2010 an ex-officio case against DZS, EXTRA LUX and MLADINSKA KNJIGA, providers of office supplies, for breach of competition rules regarding bid rigging, price fixing, exchange of price information and market sharing in the field of public tenders of office supplies for public administration.

33. The evidence for investigation was obtained from the Ministry of Public Administration, Public Procurement Directorate, Ministry of Interior and the Commission for the Prevention of Corruption.

34. The involved undertakings dealing with the distribution of office supplies are the main competitors in the market of the distribution of office supplies and were solely capable to provide comprehensive wide range supply for large purchasers.

35. In the joint public tender procurement procedure of office supplies for public administration in 2007 (altogether for 127 public authorities, totaling EUR 7 million) the involved undertakings have agreed to divide among them the purchasers and submitted customized joint and individual offers.

36. The evidence obtained also showed that the undertakings were involved in an agreement as well as a concerted practice to divide amongst them shares of the supply contracts awarded in public procurements commissioned by the Public Procurement Directorate of the Ministry of Public Administration. This enabled the undertakings to retain their market shares for a long period of time therefore CPA declared that the parties infringed Article 6 of Competition Act.

37. CPA concluded that there was evidence of agreement or concerted practice among the above mentioned undertakings in Slovenia concerning market sharing, price-fixing of tender prices and bid-rigging. Providers of office supplies were involved in bid rigging and market sharing in several public tenders lasting from 2007 to 2012.

38. On 13 October 2014 CPA issued a prohibition decision finding the involved undertakings in breach of article 6 of Competition Act. The decision was appealed and the case is still pending before the Administrative Court. The level of fines will be set on a later stage in a minor offence procedure conducted separately from the above mentioned administrative procedure.

2.1.1.1 Abuse of dominant position on the market of gas supply to large industrial customers

39. On 23 December 2015 CPA issued a decision finding that Geoplin, incumbent gas importer and supplier in the Republic of Slovenia, violated its dominant position in the supply of gas to industrial users with long-term contracts that led to excessive gas prices.

40. CPA established that Geoplin abused its dominant position predominantly by concluding long-term contracts with industrial customers connected to the transmission network. These long-term contracts included contracted quantities of gas to be taken over for the whole contract period as also obligation to take delivery of minimum quantities. Penalties and other fees were also set out in the long-term contracts

for the quantities that have not been taken over, whereby preventing the industrial customers the right to use the surplus quantities or to be resold. Therefore industrial customers connected to the transmission network were entirely tied to Geoplin.

41. In order to prevent further infringements of competition rules as also to ensure effective redress of infringements, Geoplin was given the possibility to autonomously and at its own choice take the necessary measures, including the corresponding adjustments of still valid long-term contracts.

42. The decision was appealed and according to the judgment of the Administrative Court in 2015 remanded back to CPA for reconsideration.

2.2 Mergers and acquisitions

43. The authority over merger review is solely within the Competition Protection Agency. As a rule mergers are reviewed solely on competition principles.

44. Merger control is regulated by the Prevention of the Restriction of Competition Act (Competition Act), which implemented Council Regulation (EC) No. 139/2004 (EC merger Regulation).

45. The concept of concentration as provided in article 10 of the Competition Act shows that a concentration is deemed to arise where a change of control on a lasting basis results from the merger of two or more previously independent undertakings or parts of undertakings; the acquisition of direct or indirect control of the whole or parts of one or more other undertakings; or the creation of a joint venture by two or more independent undertakings, performing on a lasting basis all the functions of an autonomous economic entity.

46. A concentration must be notified if (i) the combined aggregate annual turnover of all the companies concerned, including the affiliated companies, exceeded €35 million before tax in the Slovenian market in the preceding financial year; and (ii) the annual turnover of the target, including the affiliated companies, exceeded €1 million before tax in the Slovenian market in the preceding financial year; or (iii) in cases of joint ventures, the annual turnover of at least two companies concerned, including affiliated companies, exceeded €1 million before tax in the Slovenian market in the preceding financial year.

47. Regardless of the matched thresholds, the concentration does not need to be notified if it is subject to review of the EC Commission under the Regulation 139/2004/EC.

48. In 2014 CPA dealt with several notified concentrations and issued 25 decisions, all of them dealing with concentrations on the national level which had no international implications. Apart from 22 approved concentrations, three cases were not subject to competition law.

2.2.1 *Statistics on number, size and type of mergers notified and/or controlled under competition laws*

Decisions on Concentrations	2008	2009	2010	2011	2012	2013	2014
Cleared	31	14	12	12	17	18	22
Cleared with conditions	-	-	-	1	-	-	-
Prohibited	-	1	-	-	-	1	-
Prohibition on the implementation	-	1	-	-	-	-	-
Not falling within the scope of COMPETITION ACT	9	2	8	12	1	6	3
TOTAL	41	18	20	25	18	25	25

3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies

49. CPA in parallel with its legal competences also performed activities aiming to raising competition culture of all market participants and therefore competition advocacy represents important role in the policy of the Agency. CPA is entitled to providing comments in the mandatory review process with regard to legislative proposals; from this perspective, competition advocacy is an important tool in the promotion of competition principles and market methods.

50. From this perspective, competition advocacy is an important tool in the promotion of competition principles and market methods. Successful advocacy may contribute to a higher quality of regulation or to accelerate deregulation processes in situations where new market conditions do not lead to increased competitiveness of the companies.

51. In 2014 CPA has, in the framework of inter-ministerial coordination, actively followed government proposals for new legislation. Furthermore, an opinion has been issued related to the regulatory limitations with respect to the establishment of new pharmacies.

52. The competition culture activity of CPA encompasses various activities. In the field of exchange of experiences on the international level, CPA participated at two TAIEX events, one being hosted in Slovenia for the delegation of participants from competition authority of Bosnia and Hercegovina. Participation to several conferences and roundtables in EU competition authorities also enabled the staff of CPA to share and exchange experience on competition field.

53. CPA has the objective of establishing closer ties with other public authorities as also representatives of Chamber of Commerce and Industry and various branch associations. In the framework of various consultations the competences and areas of action of CPA were introduced, in order to better understand the scope of competition law and policy.

4. Resources of the Slovenian Competition Protection Agency

4.1 Resources overall (current numbers and change over previous year):

4.1.1 Annual budget of Slovenian Competition Protection Agency in 2014

		Change over previous year
Approved budget in EUR	1.117.470	-130.872
Approved budget in USD	1.224.188	-315.142

4.1.1.1 Resources of CPA- detailed analysis

54. According to the provisions of Article 13a of the competition act, the Government shall grant approval regarding the Agency's program of work and the financial plan for the next year. If the Government does not grant approval by 15 December, the financial plan for the previous year shall apply pending approval.

55. In the first step, the CPA's annual budget is negotiated with the competent ministry as part of the CPA's working programme. When approved, the annual budget can in principle be publicly available.

56. CPA does not generate its own income and depends totally on the budgetary resources. According to the existing legislation, the fees or fines imposed on undertakings are part of the income of the general budget.

57. Detailed analysis of the authority's annual budget in the past five years shows that the budget is in constant trend of decrease; considering also the increased number of FTEs it is evident that the lion's share of budget is used for labour costs, leaving less room for more demanding market analysis projects and international cooperation. This development is mostly due to consequences of financial and budgetary crisis.

BUDGET - CPA	2010	2011	2012	2013	2014
Labour costs (salaries)	597.169	467.358	444.287	989.565	872.918
Material costs	204.052	197.984	160.900	236.972	199.306
Market analysis	39.960	-	-	-	-
Investment assets (equipment)	3.356	13.078	3.550	21.805	29.330
Budget spent on salaries (%)	70,7	68,9	73	79	79,3
TOTAL - €	844.537	678.420	608.737	1.248.342	1.101.554

TOTAL – US \$	1.041.398	836.559	750.633	1.539.330	1.206.752
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4.1.2 *Number of employees (person-years):*

	2010	2011	2012	2013	2014
FTEs employed	17	14	18	27	26

4.2 *Human resources (person-years) applied to:*

		Change over previous year
Lawyers	10	+1
Economists	11	-2
Other professionals	3	-
Support staff	2	-
All staff combined	26	-1