

## Ten Years in the European Union – Selected Remarks Related to the Harmonisation of Slovak Competition Law with EU Competition Law

by

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### CONTENTS

- I. Historical background of current Slovak competition legislation
  1. Overview of the regional development of competition law before 1989
  2. Overview of the regional development of competition law after 1989
- II. 10 years of interaction between Slovak and EU competition law – a story of convergence
- III. Future vision – even more convergence?

### *Abstract*

The aim of this paper is to provide an overview of the application of competition law in the Slovak Republic since it became a member of the European Union 10 years ago. Special emphasis is placed on selected problems and questions which arose in the application of European competition rules and the need for an adjustment of Slovak competition legislation to EU requirements. The paper presents the relevant amendments in the Slovak Competition Act and analyses in detail their background.

Slovak competition law has undergone many changes in the past 10 years, not always without problems. The aim of this paper is to identify the most important of those difficulties and explain why they have occurred. The correct application of national and EU competition rules by Slovak courts has proven to be one of the biggest challenge here, ultimately even causing the European Commission

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to intervene as *amicus curiae*. The actions taken by the European Commission in relation to competition matters within the Slovak Republic, and its resulting recommendations, will also be considered.

The paper will outline how Slovak competition law has been step-by-step increasing its harmonisation with EU competition law over the last 10 years. Indeed, it is now possible to claim that Slovak competition legislation is fully harmonised with the rules of the European Union. The paper will thus mainly focus on those elements of Slovak law which can give a clear picture of the state of convergence of both legal systems. Nevertheless, the end of the road has not yet been reached. Further harmonisation of selected current topics within Slovak competition law will need to be assessed also. It will also be necessary to analyse which direction should Slovak competition law take in the future with regard to current EU trends. These issues include the need to find a balance between the protection of business secrets and the right of procedural parties to due process, especially in connection with the protection of leniency documents.

### *Résumé*

Cette contribution vise à fournir un aperçu de l'application de la loi sur la concurrence de la République slovaque au cours des 10 dernières années – depuis l'époque d'adhésion de la Slovaquie à l'UE. L'accent particulier est mis sur certains problèmes et questions qui se posent dans l'application des règles de concurrence de l'UE et sur la nécessité d'une adaptation du droit slovaque de la concurrence aux exigences de l'UE. Cet article présentera les changements pertinents dans la Loi slovaque sur la concurrence aussi qu'un analyse détaillé de l'arrière-plan de ces changements.

Au cours des 10 dernières années, la loi slovaque de la concurrence a subi de nombreux changements – pas toujours sans problèmes. Le présent article tentera d'identifier les problèmes principaux et donner au lecteur une explication quant à la raison pour laquelle ils ont eu lieu. Dans ce sens-là, l'un des plus grands problèmes est la bonne application des règles nationales et communautaires de concurrence par les juridictions slovaques au moment de décider sur des affaires relatives à la concurrence. Cela a même abouti à la nécessité pour la Commission européenne d'intervenir comme un *amicus curiae*. Cet article vise également à fournir une analyse des actions de la Commission européenne en ce qui concerne les questions de concurrence en Slovaquie et les recommandations qui en découlent.

Le présent article tente de présenter la manière dont le droit slovaque de la concurrence a suivi, étape par étape, un chemin vers l'harmonisation avec le droit communautaire de la concurrence au cours des 10 dernières années. Aujourd'hui, nous pouvons déjà affirmer que la réglementation juridique slovaque de droit de la concurrence est entièrement harmonisée avec la réglementation juridique de l'UE. Par conséquent, nous concentrerons notre attention sur les points dans la loi slovaque qui peuvent donner une image claire de la convergence de ces deux règlements juridiques. Néanmoins, nous ne sommes pas encore à la fin de la route.

L'harmonisation supplémentaire de certains sujets actuels dans le droit slovaque de la concurrence devra être évaluée et il sera nécessaire d'analyser la direction vers l'avenir, en particulier ce qui sera le meilleur pour le droit de la concurrence slovaque en ce qui concerne les tendances actuelles dans le droit de la concurrence de l'UE. Parmi ces questions, il y a une nécessité d'un équilibre entre la protection des secrets d'affaires et le droit des participants à la procédure de concurrence pour un procès équitable, en particulier dans le cadre de la protection des documents de clémence.

**Classifications and keywords:** Slovak Republic; competition law; development of the Slovak competition regulation; Act on the Protection of Competition; harmonisation with European law

## **I. Historical background of current Slovak competition legislation**

### **1. Overview of the regional development of competition law before 1989**

The development of competition law in the geographic region of the current Slovak Republic and Czech Republic was uniform, due their common history and developments that took place in the Czechoslovak Republic before the year 1989. It can be said however that the applicable legal rules were always largely influenced by other European legislations and that national legislature has been known to seek inspiration especially in Austrian, German, Hungarian, and French law. Czechoslovak (later Slovak) law was always a “European product”, trying to follow new legal trends in neighbouring states.

The perception of cartels was historically significantly different to the perspective characterising current competition law. At the beginning of the 20<sup>th</sup> century, cartels were assessed primarily from an economic point of view and no special legislation existed that dealt with them. Cartel agreements were allowed and subject to a legal regime pursuant to Article 879 of the 1811 General Civil Code. After 1918, Czechoslovak legislation contained several acts which regulated the freedom of economic activity, especially with respect to supplying inhabitants and the determination of prices. The most significant among them was Act No. 111/1927 Coll. on unfair competition. Many cases having the nature of a possible cartel were assessed according to its general clause.

The founding of the independent Czechoslovak Republic had led to the establishment of separate legislation on competition law. Since then, it is a regional tradition to have separate legal acts governing competition law and unfair competition matters.

Competition law has been separately regulated for the first time in the Act No. 141/1933 Coll. on cartels and private monopolies (*zákon č. 141/1933 Zb. o karteloch a súkromných monopoloch (kartelový zákon)*)<sup>1</sup>. The theoretical and conceptual basis of this act was found in economic theories stating that a cartel is a certain form of an agreement on the regulation of production and price, and that it is not completely harmful. Its benefits were said to exist in the fact that cartels allowed smaller undertakings to be active on a market and, at the same time, that it governed undertakings united in the cartel agreement within their business activities<sup>2</sup>. The abovementioned act reflected the positive attitude of the economists of that time towards the question of the feasibility of cartel agreements. Concluding such agreements was therefore permissible provided the participants followed a certain procedure, imposed by the act, especially when creating and setting up the functioning of the cartel. According to that act, cartels were permissible until the participants exceeded certain limitations, after which cartel members could be seen as abusing their gained position. In those cases, cartels had to be investigated because they threatened the public interest (a necessary condition to start proceedings and subsequently to impose sanctions). The above act has therefore defined the subject-matter of cartel agreements, participation conditions and the conditions under which it was possible to exit a cartel agreement as well as the assessment of cartel agreements regarding prices. Cartel proceedings were administrative in nature; judicial examination of resulting decisions was undertaken by a special cartel court.

The cartel act was never explicitly annulled. Nevertheless, in the period of time after 1950, characterised by the establishment of a communistic regime and centrally planned socialistic economy, there was less and less room for the use of the cartel act, which finally became obsolete without it ever being formally annulment.

The Commercial Code<sup>3</sup> was introduced within those abnormal market conditions also containing rules on competition. According to its provisions, the Commercial Code was meant to prohibit organisations from abusing their economic position in order to gain an unjustified or unappropriated advantage to the prejudice of other organisations or consumers.

The following period of the evolution of competition law in the Czechoslovak Republic was characterised by a State-governed economic system based on a centrally planned economy, in which there was no room for any competition. This period lasted a full 40 years from 1948 until 1989. A short interruption

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<sup>1</sup> See also J. Munková, J. Kindl, *Zákon o ochraně hospodářské soutěže. Komentář*, Praha 2009, p. 6 *et seq.*

<sup>2</sup> K. Engliš, *Národní hospodářství*, Praha 1946, p. 112 *et seq.*

<sup>3</sup> Act No. 109/1964 Coll. Commercial Code.

occurred between 1967 and 1969 were an effort was made to introduce a more developed system of planned governance. This short period of time was characterised by an attempt to combine a planned economy system with free market economy according to the model pursued in France or Italy. One of the early efforts for change was, for example, to allow free choosing of suppliers or customers.

Interestingly from the perspective of current Slovak competition law, Government directive No. 100/1966 Coll., which had opened the way for those changes, was amended by government regulation No. 169/1969 Coll., which contained two general clauses resembling Articles 101 and 102 TFEU. A subsequently prepared Act on competition, which was meant to unify all national provisions on both unfair competition and competition law, has nevertheless never been adopted. Out of the two aforementioned general clauses, only the provision on the abuse of a dominant position (included in § 119a of the Commercial Code) actually “survived” the period of normalisation that followed 1970. Although it was never applied in practice, not even to a single case, it nevertheless endured as part of the national legal order for the next 20 years<sup>4</sup>.

## 2. Overview of the regional development of competition law after 1989

Political changes that occurred after 1989 brought about legislative amendments also. Key here was the reintroduction of free competition and a market-based economic system, which demanded the preparation of a new Act on the Protection of Competition in the first half of 1990. Looking at European developments in the field of competition law, especially those from after the establishment of the European Economic Community, it was decided in the region to follow the path of European developments as closely as possible and to link national legislation to rules applicable to undertakings under the Treaty establishing the European Community (TEC)<sup>5</sup>. A number of different circumstances influenced legislative development after 1989. They included

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<sup>4</sup> See as well K. Knap, “Současný stav kodifikace práva hospodářské soutěže v Československu” (1970) I *Aktuální otázky práva autorského, práv průmyslových a práva soutěžního*; J. Švidroň, “Technická tvorba a právo na Slovensku v premenách šiestich desaťročí” (2008) 3 *Právny obzor*; J. Švidroň, Z. Adamová, A. Škreko, M. Návrat, *Právo duševného vlastníctva v informačnej spoločnosti a v systéme práva*, Bratislava 2009; K. Rybárik, “Využívanie vynálezov a socialistická súťaž” (1969) 6 *Právny obzor*. On the issue of Law against Unfair Competition see J. Vozár, L. Lapšanský, “Reklama z pohľadu práva proti obmedzovaniu hospodárskej súťaže” (2004) 6 *Právny obzor* 489-510; J. Vozár, “Generálna klauzula nekalej súťaže” (1999) 3 *Právny obzor*; J. Vozár, *Reklama a právo*, Bratislava 1997.

<sup>5</sup> Art. 85 and 86 of Treaty on establishing the European Community.

the fragmentation of the Czechoslovak Republic and the establishment of the Czech-Slovak Federative Republic, which was in turn later separated into the independent Czech Republic and Slovak Republic. Relevant here was also the adoption of the European Treaty constituting the affiliation of the Slovak Republic to the European Community (Association Treaty)<sup>6</sup> as well as the overall reforms of European competition law.

The Act No. 63/1991 Coll. on the Protection of Competition (hereafter, Competition Act of 1991) can be considered the first, separate legislative act in the competition law area in the history of the Slovak Republic. Its adoption corresponded with the start of a new phase in the development of competition law in the Slovak Republic<sup>7</sup>. After a long period of time, legal rules of competition were once again reintroduced into the national legal order.

The first act had a mixed nature. Besides “classic” content regulating market competition, it also set a certain direction towards economic transformation, which was being conducted at that time. It was therefore not only meant to protect the competitive environment, which did not exist for the previous 40 years, but also help re-create a healthy competitive environment in the first phase of its application. Hence, the Competition Act of 1991 defined its objectives as, besides the protection of competition, also the creation of conditions necessary for the further development of competition. Moreover, it was meant to counteract the creation and maintenance of monopoly or dominance of legal or natural persons in the pursuit of their economic activities.

The Competition Act of 1991 contained provisions on its territorial and subjective scope and on the position and duties of the Antimonopoly Office of the Slovak Republic (hereafter: AMO). It restricted cartel agreements (with possible exceptions from this ban) and the abuse of a dominant position, and contained basic rules on mergers (at that time, newly regulated within the European Community). The act’s relation with private prosecution and the Criminal Code<sup>8</sup> was covered as well as transitory provisions regarding cartel agreements concluded before the act’s entry into force. European law inspiration can be seen within the Competition Act of 1991 especially with regard to its merger rules and regulation of undertakings’ market activities.

The above act was replaced in the newly established Slovak Republic in 1994 by Act No. 188/1994 Coll. on the Protection of Competition (hereafter,

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<sup>6</sup> Európska dohoda zakladajúca pridruženie medzi Slovenskou republikou na jednej strane a Európskym spoločenstvom a jeho členskými štátmi na strane druhej, č. 157/1998 Z.z.

<sup>7</sup> K. Kalesná, *Právo proti obmedzovaniu hospodárskej súťaže*, Bratislava 1995, p. 42.

<sup>8</sup> V. Janáč, L. Kurilovská, “Hospodárska súťaž a jej ochrana v trestnom práve” (2011) 3(94) *Právny obzor* 266–277.

Competition Act of 1994), which came into force on 1 August 1994. The adoption of a new act was primarily motivated by inadequacies in the legislation connected to the separation of the Czech-Slovak Federative Republic and the establishment of an independent Slovak Republic. The introduction of the new act was also caused by the need to modify the powers of the AMO with respect to gaining evidence and information from undertakings as well as the necessity to take into account other subsequently adopted laws, especially the Commercial Code. In comparison to the first act, several conceptual changes were made to the provisions of the Competition Act of 1994, which brought Slovak legislation distinctively closer to European law. Accordingly, Slovak legal provisions of that time followed the principles of Articles 85 and 86 TEC, the directives of the Council of the European Communities and the European Commission as well as the jurisprudence of European courts. In this period, a strong tendency towards harmonisation of Slovak legislation with foreign legal orders can be observed, especially with European competition law. A strong impulse for such a tendency was provided by the conclusion of the Association Treaty, which made the harmonisation of Slovak competition law obligatory in order to reach its full compatibility with the European legal system<sup>9</sup>.

## **II. 10 years of interaction between Slovak and EU competition law – a story of convergence**

The need to once again adopt a new Act on the Protection of Competition followed from the application practices of the AMO as well as from the need for Slovak competition law to further comply with European competition law as part of the general approximation process of the Slovak legal order. As a result, the Act No. 136/2001 Coll. on the Protection of Competition was adopted which entered into force on 1 May 2001 (hereafter, Competition Act of 2001).

The Competition Act of 2001 did not change, in principle, the basic concept and structure of its predecessor. One of the main reasons to design a new act was the need to strengthen AMO's independence. This goal was fulfilled by the creation of the Council of the Antimonopoly Office of the Slovak Republic as a collective, 2<sup>nd</sup> instance organ deciding on appeals against 1<sup>st</sup> instance decisions issued by the Antimonopoly Office of the Slovak Republic. Changed was also the way of appointing and recalling the Chairperson of the

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<sup>9</sup> See as well the Explanatory report to Act No. 188/1994. Coll. (Dôvodová správa k návrhu zákona č. 188/1994 Z.z.)

Antimonopoly Office of the Slovak Republic. It was also necessary to actualise some of the national provisions in light of the changes occurring in European legislation. Finally, there was a need to clarify some key issues which were not defined in the earlier act<sup>10</sup>.

Nevertheless, subsequent amendments were planned already at the time of the adoption of the Competition Act of 2001. They were to follow the Slovak Republic's EU accession in light of the forthcoming reform of European competition law.

An important new period in the development of Slovak competition law started on 1 May 2004, when the Slovak Republic joined the European Union. The national legislature attempted to harmonise Slovak competition law with that of the EU already before 2004, when such duty resulted from the Association Treaty. The Explanatory report to the Competition Act of 2001 mentioned that further harmonisation of Slovak competition law with European rules had been one of the main reasons (but not the only one) for preparing a new act.

Since joining the EU, European competition law became an inherent part of the Slovak legal order. In the initial period, harmonisation efforts mostly focused on copying into the national legal system of relevant provisions of the TFEU as well as of Regulation (EC) No. 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 TEC (currently Articles 101 and 102 TFEU)<sup>11</sup> (hereafter: Regulation 1/2003). Through its 2004 reform, European competition law introduced greater decentralisation of decision-making competences to national competition authorities, which are now competent to decide on individual cases<sup>12</sup>. This reform was also applied in Slovak competition law. As a result, European competition rules penetrated national competition rules, and principles deriving from the jurisprudence of European courts and the case law of the European Commission penetrated national case-law. The importance of Regulation 1/2003 can also be seen in the fact that decentralisation was based on the principles of mutual awareness and cooperation on an *ad hoc* basis for each individual case or within the network of competition authorities.

Resulting from the principles of precedence and the direct effect of European law, the provisions of European competition law impose rights and duties on their recipients – the latter are however also the direct addressees of Slovak law. Relevant legal rules of Slovak and European competition law formulate most of these rights and duties in a similar manner. However, EU

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<sup>10</sup> See as well the Explanatory report to Act no. 136/2001 Coll.

<sup>11</sup> Council Regulation (EC) No. 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 EC of the Treaty, OJ L 1, 4.01.2003, p. 1.

<sup>12</sup> See M. Petr, *Modernizace komunitárního soutěžního práva*, Praha 2008, p. 50 *et seq.*



law is particularly important in cases when both legal systems regulate certain activities in a slightly different way. European rules will have special meaning also in cases where a certain activity is regulated by EU competition law, but not by its national equivalent. The Slovak legal order grants protection to those harmed by anticompetitive behaviour on the basis of European competition law, including situations where such protection is not granted on the basis of its own national competition law.

European competition law has its place in the Slovak legal order within its substantive provisions as well as in procedural law. Rights and duties, which European competition law grants or imposes directly on the addressees of Slovak law, are the object of proceedings before competent Slovak state institutions, whether within administrative proceedings before the AMO or within civil proceeding before Slovak courts.

Slovak legislation has converged towards new trends in European competition law even in more recent stages of its legal history, that is, after its accession to the European Union. This can be clearly seen in the numerous amendments made in the last decade to the Competition Act of 2001, amendments made because the Slovak legislature chose to continue to follow new trends in European competition law.

As noted above, the basis Slovak legislation in the competition law field lies in Act No. 136/2001 Coll. on the Protection of Competition on Amendments and Supplements to the Act of the Slovak National Council No. 347/1990 Coll. on the Organisation of Ministries and Other Central Bodies of the State Administration of the Slovak Republic of 27 February 2001, as amended (*Zákon č. 136/2001 Z. z. o ochrane hospodárskej súťaže a o zmene a doplnení zákona Slovenskej národnej rady č. 347/1990 Zb. o organizácii ministerstiev a ostatných ústredných orgánov štátnej správy Slovenskej republiky v znení neskorších predpisov*)<sup>13</sup>. It is the Competition Act of 2001 that provides for the enforcement of Articles 101 and 102 TFEU and mirrors the provisions of Regulation 1/2003<sup>14</sup>.

The Competition Act of 2001 was adopted to harmonise national legislation with the European *acquis* and to reflect lessons learned from practical experiences. It has already been amended five times – the most recent changes entered into force on 1 January 2012<sup>15</sup>.

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<sup>13</sup> Available at <http://www.antimon.gov.sk/571/act-on-protection-of-competition.axd> (2.05.2014).

<sup>14</sup> J. Faul, A. Nikpay, *The EC Law of Competition*, London 1999; C. Jones, *Private enforcement of Anti-trust law in the EU, UK and USA*, Oxford 1999; A. Jones, B. Sufirin, *EU Competition law*, Oxford 2011.

<sup>15</sup> For a detailed account on the concrete provisions of the Act see commentary to the Act No. 136/2001 Coll. on Protection of Competition: K. Kalesná, O. Blažo, *Zákon o ochrane*

First, the Amendment of the Competition Act No. 465/2002 Coll. excluded practices covered by block exemptions from the Ban of Agreements Restricting Competition.

Second, the primary goal of the Amendment of the Competition Act No. 204/2004 Coll. was to comply with the changes occurring in the EU related to the modernisation process introduced by Regulation No. 1/2003. It was mainly aimed at ensuring flexibility when assessing agreements restricting competition and at decentralising competences connected with the application of Articles 101 and 102 TFEU. The sanctioning policy of the AMO was strengthened and changes brought to the national leniency programme. In line with Regulation 1/2003, the Amendment introduced a new type of decision into Slovak competition law. Instead of merely sanctioning undertakings for their anticompetitive behaviour, the AMO could from then on approve commitments, provided they could eliminate the identified competition problems. Introduced was also the possibility to conduct inspections of private premises of undertakings<sup>16</sup>, although with a court's approval, and the possibility for interested parties to participate in relevant proceedings as *amicus curiae*.

Third, the Amendment of the Competition Act No. 68/2005 Coll. increased the powers of the AMO concerning abuses of a dominant position. As a result, the definition of an abuse includes now not only the 'direct or indirect imposition of unfair trade conditions' but also the 'imposition of disproportionate prices'.

Four, the Amendment of the Competition Act No. 165/2009 Coll. brought changes to the national merger control system approximating it further with

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*hospodárskej súťaže. Komentár*, Praha 2012. Regarding another aspects of various questions within Slovak competition law see K. Kalesná, "Kto môže niesť zodpovednosť za porušenie súťažného práva?" (2009) 2(92) *Právny obzor* 123-130; B. Králičková, "Autorskoprávna ochrana versus ochrana hospodárskej súťaže (nielen) vo svetle judikatúry komunitárnych súdov" (2010)4 *Právny obzor* 390-398; B. Králičková, "Krok vpred na ceste k dosiahnutiu efektívneho súkromnoprávneho vymáhania súťažného práva" (2009) 2 *Právny obzor* 131-138; B. Králičková, *Súkromnoprávne aspekty protimonopolného práva*, Bratislava 2012, p. 196; J. Munková, P. Svoboda, J. Kindl, *Soutěžní právo*, Praha 2006; J. Munková, "Reforma procesního předpisu pro aplikaci soutěžních pravidel ES" (2003) 5(11) *Právní rozhledy* 231; O. Blažo, "Rule of reason, pridružené obmedzenia a systém výnimiek v prípade dohôd obmedzujúcich súťaž v európskom a slovenskom práve" (2012) 1(XXXI) *Acta Facultatis Iuridicae Universitatis Comeniana: vedecký časopis Právnickej fakulty Univerzity Komenského v Bratislave* 30; A. Králik, *Náhrada škody spôsobenej porušením súťažného práva*, Bratislava 2014.

<sup>16</sup> According to the Slovak Competition Act, Article 3, an undertaking is considered an entrepreneur pursuant to special legislation (Article 2 of the Slovak Commercial Code), as well as natural and legal persons, their associations, and the associations of these associations, with respect to their activities and conduct that are, or may be, related to competition, regardless of whether or not these activities and conduct are aimed at making a profit.

the EU Merger Regulation<sup>17</sup> as well as introducing the possibility to also notify an ‘intended concentration’. Moreover, the Amendment contained new provisions concerning the national leniency programme which implement ‘targeted inspections’ in line with the European Competition Network’s Model Leniency Programme. The Amendment empowered the AMO to impose a fine of up to 1% of the undertakings’ annual turnover on undertakings which failed to provide requested or correct information, or obstructed inspections. Furthermore, it eliminated a vague provision that used to exist in the Competition Act of 2001 which enable the AMO to intervene in certain sectors that were also supervised by specific regulators, such as telecommunications, postal services, energy, etc.

Five, the most recent Amendment of the Competition Act No. 387/2011 Coll. introduced, once again, changes to the national merger control system. It was meant to shorten the merger control process as well as to make it more efficient as far as financial and personnel resources are concerned. Its most significant changes include the amendment of the notification criteria and the introduction of a ‘two-stage process’ of merger control. The AMO is now obliged to issue a final merger decision within 25 working days (in less complicated cases) or within 90 working days (in particularly complicated cases).

Many provisions of the currently applicable Competition Act of 2001 mirror those found in European competition law, especially where they define which market practices are subject to legal restrictions.

According to its Article 2, the Competition Act of 2001 applies to undertakings, State administration authorities during the performance of State administration, territorial self-administration authorities during the performance of self-administration and transferred performance of State administration, and special interest bodies during the transferred performance of State administration. It also applies to all activities and conduct of undertakings that restricts or may restrict competition. The latter is subject to an exception for situations where competition is restricted by undertakings providing services in the public interest pursuant to special legislation, if the application of the Competition Act of 2001 effectually or legally prevents them from fulfilling their tasks pursuant to that legislation.

Articles 4-6 of the Competition Act of 2001 prohibit cartels, enforcing the provisions of Article 101 TFEU; Article 8 prohibits the abuse of a dominant position, as provided for in Article 102 TFEU. More specifically, Article 4 prohibits all agreements between undertakings, decisions by associations of undertakings, and concerted practices that have as their object or effect

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<sup>17</sup> Council Regulation (EC) No. 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), OJ L 24, 29.01.2004, p. 1.

the prevention, restriction, or distortion of competition within a market, in accordance with the provisions of Article 101 TFEU. At the same time, Article 8 prohibits the abuses of a dominant position. The wording of this provision mirrors that of Article 102 TFEU.

The principle of extraterritoriality is provided by Article 2(4) of the Competition Act of 2001. Accordingly, the applicability of the Act extends over activities and actions that have taken place abroad, provided that they lead, or may lead, to the restriction of competition in the domestic market (i.e. on the Slovak market).

### **III. Future vision – even more convergence?**

Regarding future developments of Slovak competition law, especially in the light of current trends in European competition law, it is important to mention a new amendment to the Competition Act of 2001 which is currently being considered by the Slovak Parliament<sup>18</sup>. Once approved, the new amendment should enter into force on 1 July 2014. It clearly represents further efforts of the Slovak legislature to follow recent European developments.

The forthcoming amendment reacts to the need for legislative changes in certain problem areas, which have arisen in the national application practice. New legal features are also introduced with the aim to make the enforcement of competition rules more effective.

The most important of the changes relate to the assessment of concentrations. They should once again improve effectiveness and swiftness of the existing administrative procedure to be benefit of the participants. The latter should gain from the proposed amendment since it modifies the system governing the passage of time periods in their favour. In order to make the assessment process even more effective and smooth, special application forms are being introduced to start merger control proceedings, which will certainly help undertakings.

Other proposed changes relate to the area of competition restricting agreements and the abuse of a dominant position. In light of accumulated practical experiences, legal rules on commitments and the national leniency programme will also be modified. They will both be introduced into the Competition Act of 2001 as new separate provisions, which is sure to help increase legal certainty for undertakings. The amendment also aims to protect leniency applicants (especially their identity and the protection from disclosure

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<sup>18</sup> Slovak Parliament will be assessing the amendment to the Act on the Protection of Competition in May 2014.

of leniency documents within the proceedings) in order to motivate them to use the programme and, in turn, to increase cartel discovery numbers. Worth noting is also the introduction of the legal institution of settlement as an alternative way of concluding proceedings concerning all types of anticompetitive practices. Still, the use of settlements will be restricted to cases where the procedural party confesses its participation in the alleged infringement and assumes its responsibility for the violation.

Finally, the forthcoming amendment introduces a completely new legal institution into the Slovak legal system – a financial reward for citizens for submitting evidence of a cartel agreement. The new provision was inspired by legislation already in operation in some other European countries. Cartel participants use increasingly sophisticated methods to conceal their activities, which are clearly against competition rules, seeing as these illegal agreements are of significant economic value for them. As such, uncovering cartels is extremely difficult. With the goal of gaining significant information and evidence, new Slovak competition rules provide an important motivation for informants in the form of a financial reward amounting to 1% of the imposed cartel fine (maximum EUR 100,000).

The content of many Slovak judgments provide proof that it is not just the national legislature but also the courts that are trying to follow EU competition law as well as the jurisprudence of European courts. Nevertheless, the level of judicial understanding of certain aspects and specifics of European competition law must become far more widespread in the future decision-making practice and jurisprudence of Slovak court. That is, unfortunately, not a self-evident fact yet.

A particularly good example here can be found in a recent case related to the abuse of a dominant position in the form of discrimination in the railway transport sector. The judgment followed a decision of the AMO<sup>19</sup> which imposed a sanction of SK 11,100,000 (EUR 3,550,864) on the Slovak railway company ZS SK (legal ancestor of the present company ZS Cargo). The AMO used here for the first time the test of economic continuity, which makes it possible to punish, after the fulfilment of certain conditions, the economic successor of an undertaking, which violated competition rules but ceased to exist in the meantime. On the grounds of an action submitted by ZS SR against the decision of the AMO, the Regional court of Bratislava decided to accept the application of the economic continuity test but perceived it as a mitigating circumstance only and thus lowered the original fine.

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<sup>19</sup> Decision of the AMO No. 2006/DZ/2/1/067 of 3.07.2006 in connection with the Decision of the Council of the AMO No. 2006/DZ/R/2/144 of 22.12.2006. Available on the website of the AMO: [www.antimon.gov.sk](http://www.antimon.gov.sk) (2.05.2014).

The AMO filed in turn an action against the judgment of the Regional court of Bratislava to the Highest Court of the Slovak Republic. Within the resulting proceedings, the institution of *amicus curiae*<sup>20</sup> was used by the European Commission which submitted a statement on the application of the institution of economic continuity and on the effectiveness of imposing sanctions in such cases. This was the first time for the *amicus curiae* institution to be used in Slovak competition law and so this case served as an important milestone in bringing Slovak jurisprudence closer towards European law and practice. Ultimately in this case, the Highest Court of the Slovak Republic annulled the judgment of the Regional court of Bratislava and reconfirmed the decision of the AMO.

It can be said in conclusion that the practical experiences of harmonising Slovak competition law with European competition rules is a long-term process and it is unlikely that it will ever be possible to regard it as completely finished, without any further adjustments being needed. The national legislature had to solve many difficulties and open questions in the recent history of competition law developments in the Slovak Republic. There is a clear tendency here, especially when it comes to competition rules, to follow European trends. Sometimes it is a good thing to have a positive attitude and not wanting to be left “behind” other States or current legal trends. Such attitude is however known to result in the copying of European rules into national hard or soft laws, sometimes in a word-for-word manner.

It should therefore be advocated for future Slovak competition rules to not only follow the trends of European law, but also respect its own national specifics and needs, which cannot always correspond to those on the European level. Slovak courts will have an important role to play here as they will be able to thoughtfully balance national and EU interests through their jurisprudence.

## Literature

Blažo O., “Rule of reason, pridružené obmedzenia a systém výnimiek v prípade dohôd obmedzujúcich súťaž v európskom a slovenskom práve” (2012) 1(XXXI) *Acta Facultatis Iuridicae Universitatis Comenianae: vedecký časopis Právnickej fakulty Univerzity Komenského v Bratislave*.

Engliš K., *Národní hospodářství*, Praha 1946.

Faul J., Nikpay A., *The EC Law of Competition*, London 1999.

Janáč V., Kurilovská L., “Hospodárska súťaž a jej ochrana v trestnom práve” (2011) 3(94) *Právny obzor*.

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<sup>20</sup> Article 15(3) of the Regulation 1/2003.

- Jones C., *Private enforcement of Anti-trust law in the EU, UK and USA*, Oxford 1999.
- Jones A., Sufirin B., *EU Competition law*, Oxford 2011.
- Kalesná K., *Právo proti obmedzovaniu hospodárskej súťaže*, Bratislava 1995.
- Kalesná K., “Kto môže niesť zodpovednosť za porušenie súťažného práva?” (2009) 2(92) *Právny obzor*.
- Kalesná K., Blažo O., *Zákon o ochrane hospodárskej súťaže. Komentár*, Praha 2012.
- Knap K., “Současný stav kodifikace práva hospodářské soutěže v Československu” (1970) I *Aktuální otázky práva autorského, práv průmyslových a práva soutěžního*.
- Králičková B., *Súkromnoprávne aspekty protimonopolného práva*, Bratislava 2012.
- Králičková B., “Autorskoprávna ochrana versus ochrana hospodárskej súťaže (nielen) vo svetle judikatúry komunitárnych súdov” (2010) 4 *Právny obzor*.
- Králičková B., “Krok vpred na ceste k dosiahnutiu efektívneho súkromnoprávneho vymáhania súťažného práva” (2009) 2 *Právny obzor*.
- Králik A., *Náhrada škody spôsobenej porušením súťažného práva*, Bratislava 2014.
- Munková J., Kindl J., *Zákon o ochraně hospodářské soutěže. Komentář*, Praha 2009.
- Munková J., Svoboda P., Kindl J., *Soutěžní právo*, Praha 2006.
- Munková J., “Reforma procesního předpisu pro aplikaci soutěžních pravidel ES” (2003) 5(11) *Právní rozhledy*.
- Petr M., *Modernizace komunitárního soutěžního práva*, Praha 2008.
- Rybárik K., “Využívanie vynálezov a socialistická súťaž” (1969) 6 *Právny obzor*.
- Švidroň J., “Technická tvorba a právo na Slovensku v premenách šiestich desaťročí” (2008) 3 *Právny obzor*.
- Švidroň J., Adamová Z., Škreko A., Návrat M., *Právo duševného vlastníctva v informačnej spoločnosti a v systéme práva*, Bratislava 2009.
- Vozár J., Lapšanský L., “Reklama z pohľadu práva proti obmedzovaniu hospodárskej súťaže” (2004) 6 *Právny obzor*.
- Vozár J., “Generálna klauzula nekalej súťaže” (1999) 3 *Právny obzor*.
- Vozár J., *Reklama a právo*, Bratislava 1997.