ANTIMONOPOLY OFFICE
of the Slovak Republic

Coherent application of the EU Competition Law in Slovakia

Visegrad 4 Competition Conference

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- **2004 Reform** – Regulation 1/2003: Member states are obliged to apply Art. 101 and 102 TFEU
- Same substantive rules, procedural and fining mechanisms subject to national rules
- **General principles of EU law**: principle of equivalence and effectiveness
- **Tools**:

- Procedures before NCAs: Art. 11 Reg. 1/2003
- Cooperation with national courts: Art. 15 Reg. 1/2003 (request for standpoint, information on judgments, *amicus curiae*)
- Preliminary reference to the CJEU – Art. 267 TFEU

Slovak experience

- **Preliminary reference to the CJEU** – Art. 267 TFEU :
  - Cartel of banks (2011)
- **Art. 15 (3) Reg. 1/2003 *amicus curiae***
  - „LTE case“ (2010) – fines (economic continuity test)
  - „Green dot case“ (2012) – fines, parallel application of European and national competition rules

Cartel between banks I.

- **Decision of the AMO 2009**
- Cartel of the three banks: Všeobecná úverová banka, a.s. (VUB), Slovenská sporiteľňa, a.s. (SLSP), Československá obchodná banka, a.s. (CSOB) - exclusion of a competitor Akcenta CZ
- Akcenta CZ
  - Czech non-bank payment institution
  - provided foreign exchange services via current accounts (in the same bank as the client)
- Agreement on the termination of the current accounts of the Akcenta CZ and not opening them for this company in the future

Cartel between banks II.

- Akcenta CZ had a licence of the Czech National Bank, but no licence of the Slovak National Bank
- According to banks, the Akcenta CZ was not their competitor as it was operating on the market illegally, without the licence of the National Bank of Slovakia
- The banks claim that they only met to inform each other about the illegality of the Akcenta CZ and the possible negative consequences

Decision of the Regional Court in Bratislava

- three separate proceedings with each bank
- All arguments of the banks accepted:
  - it was necessary for the three banks to meet and exchange the information about the illegal conduct of Akcenta CZ
  - banks were only protecting their customers from possible negative consequences
- SLSP case - the participation of the employees in the meeting and the follow on communication among banks questioned (these were only employees and not the statutory body of the undertaking or the employees empowered by the statutory body)

Decision of the Supreme Court of Slovak Republic

- CSOB – decision passed (2011) – the opinion of the RC upheld (case pending at the AMO)
- In the proceedings with SLSP – preliminary reference to the CJEU
- Final judgments in SLSP and VUB case passed on May 21 and May 22, 2013

Preliminary questions

- „Legality“ of Akcenta CZ – relevant for the assessment of the agreement within the meaning of Art 101 TFEU? (2 questions)
- ”Approval“ of a statutory body for employee involved in the cartel communication?
- Application of art. 101 (3) for such agreements?

CJEU ruling C-68/12

- Art. 101 must be interpreted as meaning that the fact that an undertaking that is adversely affected by an agreement whose object is the restriction of competition was allegedly operating illegally on the relevant market at the time when the agreement was concluded is of no relevance to the question whether the agreement constitutes an infringement of that provision
- Art. 101 must be interpreted as meaning that, in order to find that an agreement is restrictive of competition, it is not necessary to demonstrate personal conduct on the part of a representative authorised under the undertaking´s constitution or the personal assent, in the form of a mandate, of that representative to the conduct of an employee of the undertaking who has participated in an anti-competitive meeting
- Art. 101 (3) must be interpreted as meaning that it can apply only when the undertaking has proved that the four cumulative conditions are met

„Green Dot“ case“ *amicus curiae* I.

- Abuse of dominant position, waste management sector
- Company ENVI-PAK – exclusivity on granting sub licences on the trade mark „Green Dot“
  - Payment system for the trade mark: the service clients of ENVI-PAK (clients using services of packaging waste collection, recovery and recycling), had the possibility to use “Green Dot” for free, but licence clients (interested only in obtaining the approval to use the trade mark “Green Dot”), had to pay the fee for the licence itself
  - Result of the payment system for the trade mark “Green Dot” - it was not economic to become a client of authorized organization other than ENVI-PAK.

„Green Dot case“ *amicus curiae* II.

- Decision of the AMO 2010
  - – national and EU competition rules applied in parallel
  - Violation of the general clause, fine imposed
- RC in Bratislava:
  - it is not possible to impose a fine for the violation of the general clause – conflict with the *nullum crimen sine lege* principle
  - Parallel application of EU and national competition rules questioned
- European Commission – *amicus curiae* intervention before the Supreme Court of SR
- Supreme Court of SR – decision of the AMO upheld in May 2013

Conclusions

- Importance of the instruments ensuring the coherent application of EU rules in Slovakia
- Importance also for „purely“ national cases

Thank you for your attention!

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