



Slovenia: The Competition Protection Agency's fining policy as a black box

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The Slovenian media company Pro Plus already experienced the tough approach being applied by the Slovenian Competition Protection Agency ("the Agency") at the beginning of this year, when the Agency sanctioned it with a fine for obstructing an Agency investigation (for more information please see [here](#)). According to media reports and as confirmed by the Company, Pro Plus has now been also fined with almost 10% of its 2013 annual turnover for a dominant position abuse on the television advertisement market.

Agency's fining policy

In accordance with the Slovenian Protection of Restrictions of Competition Act ("**the Competition Act**"), the Agency may impose a fine of up to 10% of a company's annual turnover for infringements of Article 9 of the Competition Act as well as of Article 102 of the Treaty on the Functioning of the European Union, both of which in a similar wording prohibit abuses of dominant position.

However, apart from the general wording contained in the Competition Act, the Agency has not issued any regulation or document specifying its fining policy. As infringements of the Competition Act in their nature represent minor offences, the provisions of the applicable criminal laws serve as a last – and only - resort of guidance.

According to the Slovenian Minor Offences Act, the fine shall be determined within the range prescribed by applicable law, taking into consideration factors such as the weight of the infringement, the level of the infringing entity's responsibility, as well as the reasons for and circumstances of the infringement. Additional aggravating circumstances that need to be taken into account in the fine determination process are the company's economic standing and any fines imposed for possible previous infringements. As to the mitigating factors, the Minor Offences Act simply states that they should also be taken into account; however, no specific circumstances are listed as references.

The fine determination "black box"

Apart from the above-mentioned general principles, there is no guidance as to how a precise amount of fine should be calculated. Consequently, the Agency is generally free to impose a fine of between 1 or 10% of the implicated undertaking's annual turnover, a range that leaves far too much leeway and legal uncertainty. A company that is under the Agency's scrutiny cannot foresee how its fine will be determined in the event that the Agency establishes that there has been an infringement on the company's part.

The Agency's website reveals only one decision imposing a (minor offence) fine for a dominance abuse case. Accordingly, companies cannot rely even on the Agency's decisional practice in order to establish what criteria will be taken into account in case of a potential minor offence proceeding for competition law infringements.



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The practice of the European Commission

The European Commission's fining policy is defined in its 2006 Fining Guidelines (Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003) and its fine determination process is structured in significantly greater detail.

The method as used by the European Commission consists of (a) the calculation of a basic amount based on the turnover achieved in the affected territory by the implicated undertaking at the time of the decision, and the seriousness of the infringement, (b) the multiplication of such amount by the number of years the infringement took place, and (c) taking into account different aggravating and mitigating factors (e.g. where an undertaking continues or repeats the same or a similar infringement or where the undertaking concerned provides evidence that it terminated the infringement as soon as the Commission intervened, respectively).

Additionally, other European Commission documents and practices offer further grounds for mitigating the amount of fine determined in accordance with the Guidelines. In accordance with the Leniency Notice, the fine can be further decreased should a company apply for leniency (i.e. companies that self-report and hand over evidence may benefit from either total immunity from fines or a reduction of fines which the European Commission would have otherwise imposed on them). Further to this, the companies are entitled to a further 10% discount in the event that they decide to enter into a settlement with the European Commission pursuant to the Settlement Regulation.

The way forward

The introduction of a transparent and structured fining policy in Slovenia would significantly enhance the legal certainty that companies rightfully expect when engaging in business activities in the country. Such a development would provide the companies and practitioners with the insight they require into the Agency's decision making and fine determination practice, as well as better serve the purpose of efficient deterrence.

Accordingly, the Agency would need to issue some kind of statement or a piece of secondary legislation with respect to its fine determination process. For example, the European Commission's 2006 Fining Guidelines could be used as a basis on which to further elaborate on the principles established by the Slovenian Minor Offences Act.

Moreover, a decision by the Agency to start regularly publishing its administrative and minor offence decisions would be a step of great importance. Only by doing so, will the Agency enable the companies and legal practitioners to get much-needed insight into its decision making and fine determination process.