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NEWS | 28 November 2023

Enforcement of Regulations related to Distribution Agreements in Slovakia - Calm Before the Storm?

Competition law (non-)enforcement

Those of you who follow the Distribution Law Center closely may have noticed a lack of news related to Slovakia. You may wonder why. The Antimonopoly Office of the Slovak Republic (the 'AMO') has not been active against vertical agreements for a long time. In 2022, the AMO received only 2 complaints and opened 1 investigation in relation to the possible vertical agreements. There were no formal proceedings or decisions, which is also the case for 2023.

What about UTP?

However, as explained in the Slovak Q&A on Distribution Agreements, there is also the Unfair Trading Practices ('UTP') Act, which is applicable and relevant for the food trade (based on EU Directive 2019/633). There is not much publicly available information on the enforcement of this regulation in Slovakia. Therefore, we took a deep dive into the Slovak UTP to find out how it is enforced in Slovakia.

The Ministry of Agriculture and Rural Development of the Slovak Republic (the "Ministry"), which is responsible for the enforcement of the Slovak UTP Act, only publishes annual reports in which it reports on the inspections carried out. Inspections may result in the identification of wrongdoing and the initiation of sanction proceedings, or in the identification of no wrongdoing. The published annual reports for 2021 and 2022 show that the Ministry carried out 21 inspections during this period and identified a problem in 12 cases. In all cases where a problem was identified, there was only one unfair practice - failure to pay the purchase price by the due date. The maximum period is set by the Slovak UTP Act at 30, 20 or 15 days, depending on the circumstances and the type of food.

Although the Ministry does not publish its decisions, that did not stop us from requesting them under the Freedom of Information Act. The result was surprising.

We asked for the outcome of all 12 cases with an identified problem, but received 10 decisions. In the other 2 cases, no decision had been made at the time of our request. Of the 10 decisions provided, the proceedings were suspended in 6 cases, 5 mostly because the Slovak UTP Act had been amended in favour of the parties to the proceedings. The Ministry was therefore unable to impose a fine on them. In the remaining 4 cases, the Ministry

imposed fines totalling to 1,250 EUR only.

Commentary

The numbers do not lie - distribution agreement rules are clearly not an enforcement priority in Slovakia. The question is whether this is about to change. There are more reasons to believe that the tide could turn in the future, both for the AMO's enforcement and for the Ministry.

The AMO has recently undergone a change in leadership and is preparing to step up its enforcement of competition law. A similar change in the Czech Competition Authority (which traditionally cooperates closely with the AMO and is its inspiration to certain extent) has led to a significant increase in enforcement, with an unprecedented focus on resale price maintenance.

The Ministry has also undergone a change in leadership. The new Slovak government has stated in its programme that the fight against unfair trade practices in the food sector is one of its goals.

Only time will tell whether the AMO and the Ministry will become more active and reshape the regulatory landscape for distribution agreements, or whether the prevailing trend of subdued enforcement will continue. The comparison about the enforcement records in Czechia and Slovakia is striking. The question is whether the UTP legislation has been properly enforced at all in Slovakia.