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Act on Unfair Conditions in Business Relationships

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The primary objective of competition law is the protection of competition at the level of public as well as private law. The Slovak Act on the Protection of Competition is the primary source of public legal protection for antitrust issues and the abuse of a dominant position. Private legal protection is ensured especially through the Commercial Code, which contains provisions on unfair competition.

As this legislation was considered insufficient, Slovakia introduced the Act on Retail Chains (ARC) in 2003, widely criticized by the European Commission for its discriminatory approach and for being in conflict with the principles of free market economy. Even if Slovakia amended the ARC under the threat of an infringement procedure by the European Commission, the ARC has proven insufficient in its enforcement at a practical level.

Following discussions about the unequal position of small and medium-sized enterprises (SMEs) with respect to large wholesalers in other EU states (such as Germany and the Czech Republic), Slovakia adopted a new Act on Unfair Conditions in Business Relationships (AUC) on April 11 2008, replacing the ARC. According to the declarations of the Slovak government, its aim is to increase consumer and SME protection against the abuse of economic power by larger market players creating unfair business conditions. In the past, these market players often could not be punished for abuse of their position as their position was not dominant under competition law.

Furthermore, the approved wording of the AUC extends the scope of the discriminatory ARC's application to all business relationships between a supplier and a distributor in a position of economic dependency.

Economic dependency

Economic dependency is defined as "a state when one party to the business relationship concludes a contract under unfair conditions with another party because its possibilities to conclude a contract with other entrepreneurs are limited in Slovakia on the grounds of the same or comparable unfair conditions applied by other entrepreneurs". The AUC focuses on economic dependency with respect to the business relationships between an entire group of entrepreneurs. The actual application of the AUC would therefore depend on an overall analysis of the market and could lead to many enforcement problems in practice.

Unfair conditions

The AUC contains an exhaustive list of unfair conditions. Unfair conditions include financial contributions by a supplier if the total amount of such contributions exceeds 3% of the annual revenue for the goods sold to the distributor. Some examples of unfair conditions are an entry in the distributor's list of suppliers, the placement of goods on the distributor's premises and use of the distributor's network.

Unfair conditions are also other performances compelled by a party without any legal grounds, such as returning goods to a supplier at the supplier's cost, transferring sanctions imposed by controlling bodies to another party, and excluding the right to delay interest for late payments. In accordance with the provisions of Directive 2000/35/EC on combating late payments in commercial transactions, an unfair condition can also be an agreement on a payment period longer than 30 days.

These unfair conditions are forbidden by law. The controlling body (the Ministry of Agriculture and Ministry of the Economy) is entitled to impose fines of up to €150,000 for unfair financial contributions and up to €300,000 for other unfair performances. However, the invalidity of unfair conditions is not directly provided for in the AUC. Provided that the controlling body does not order the abolition of unfair conditions, the injured entrepreneur's only option is to file a petition with the court to decide on the issue.

Another attempt by Slovakia to regulate the private relationships of entrepreneurs has been rather unsuccessful. In spite of its threats and the fears of many investors, the approved wording of economic dependency and the conditions for their enforcement seem vague. As the Slovak Antimonopoly Office refused to be the controlling body, the AUC is likely to fail due to the same weakness as that of the ARC. That is, the lack of an experienced body responsible for controlling its fulfilment and enforcement.

Moreover, the enforcement mechanism of the AUC does not really protect injured entrepreneurs against strong market players as it promises to. It does not encourage them to initiate any control proceedings, while the results of the control are, with respect to the unclear definition of economic dependency, uncertain. In return for the possible invalidity of a particular unfair condition, an injured entrepreneur can risk grounded liquidation. Similar to the situation presented under the ARC, many SMEs will probably be afraid of endangering their existence by making any motions with the respective controlling body.

Practical application will prove the justness of these concerns. Nevertheless, the AUC will be a good starting point for future necessary amendments and serve as an inspiration for other countries.

Banking and finance

Recommended firms
Tier 1
Allen & Overy
White & Case
Tier 2
Cechová & Partners
Cernejová & Hrbek
Csekes Világi Drgonec & Partners
Jaroslav Ruzicka/CMS Cameron McKenna
Squire Sanders & Dempsey
Tier 3
Freshfields Bruckhaus Deringer
Salans
Weinhold Legal
Wolf Theiss

The Slovak capital markets have remained fairly slow this year. Some say their underdevelopment is a legacy of historical financing methods, while others say the Slovak Republic is just fundamentally too small for its capital markets to offer a reasonable level of liquidity. "We have somehow missed the boat," laments one partner.

Plain vanilla is still the dominant feature of Slovak bank lending, and the past 12 months have seen little development. The credit crunch forced banks to adopt a more prudent approach to lending and increased their desire for higher-quality documentation. Law firms welcome the latter development, as it may increase the demand for outsourced legal services.

Infrastructure improvements have been on the rise, and EU membership requirements are the driving force behind a number of projects. The Slovak government favours the PPP financing model in the transport and energy sector, and the structure has been used in deals such as the £2.1 billion D1 motorway project.

Although the international firms have attracted a fair share of the projects mandates, local firms have been holding their own. For example, Cechová & Partners' work advising Électricité de France in its construction of a nuclear power plant in Jaslovske Bohunice shows that local firms are more than capable of advising on top-quality mandates.

One of the biggest developments in the Slovak legal market has been Linklaters announcement that it will be ending its presence on the ground in Bratislava, as well as in Prague, Budapest and Bucharest. The four offices are to join to make a regional firm in November 2008.

The move is part of Linklaters' strategy to focus on faster-growing markets, such as those in the Middle East. The CEE region will be serviced from a virtual desk in London.

Allen & Overy

"Frankly speaking, there are only two external offices we can communicate with: Allen & Overy and White & Case," says one banking and finance client. With Linklaters to close its Bratislava office in November, the two firms now dominate the top tier.

Allen & Overy this year lost partner Patricia Olsokská, who is pursuing a career outside law. But this was partly counter-balanced by the promotion of rising star Martin Magál to the partnership in May 2007. Meanwhile Igor Pálka is recognised by many of his peers and clients as a leading banking and finance lawyer in the Slovak Republic. "He is very focused, very professional and very experienced in the banking industry," says one client. "He is a businessman and a lawyer at the same time."

The firm's list of banking clients includes Erste Bank, Citibank, Intesa Sanpaolo and York Capital Management. One of the firm's highlighted deals was its work advising Unicredit Bank Slovakia on a €50 million revolving credit facility to Kia Motors Slovakia.

The firm has provided regulatory advice to both Citibank and Vseobecná Uverová Banka regarding Mifid's local implementation. Allen & Overy has also advised various financial institutions on regulatory aspects of financial derivatives, Isda and Credit support annex documentation.

The firm has acted in its share of the growing number of project finance programmes, advising Vinci Concessions and Skanska Infrastructure Development on the multi-billion Euro Slovak roads project. It is also representing Slovintegra on the development of an 80MW power plant in Levice industrial park. In addition, the firm advised Slovintegra on the refinancing of its credit facilities provided by a syndicate of banks.

Leading lawyers

Igor Pálka

White & Case

The breadth and complexity of White & Case's Slovak finance work, in tandem with the firm's international experience and resources, make it tier-one firm. Leading partners Ivo Bárta and Michal Dlouhy have a wealth of finance experience between them, and both divide their time between the firm's Slovak and Czech offices.

Partner Marek Staron focuses solely on the Slovak market and is well respected by clients. One comments: "Marek Staron is a very good lawyer and a manager at the same time. I really trust him."

Capital markets activity is thin on the ground in Bratislava, but the firm has gained extensive experience dealing with regulators such as the National Bank of Slovakia on behalf of capital markets clients. Frustratingly for White & Case, the firm has been working on two potential IPOs that are now on hold.

The practice has also advised on some of the jurisdiction's largest real-estate financings. For example, Bárta led White & Case's team advising investment company ECM Group on its €64 million syndicated loan from Erste Bank to finance its acquisition of retail group Carrefour Slovensko.

White & Case also advises the European Bank for Reconstruction and Development in Slovakia, and specifically advised the bank in connection with loans to Tatra Banka, Vseobecná Uverová Banka, Slovenská Sporitel'na and Dexia for the secondary financing of the construction of sustainable energy sources in Slovakia.

Finally, the firm advised Citibank (Slovakia) and Tatra Banka as arrangers of a €64 million syndicated facility to Slovak investment fund Slavia Capital. The loan was used to acquire a majority stake in Slovak chemical producer Palma-Tumys.

Leading lawyers

Ivo Bárta
Michal Dlouhy
Marek Staron

Jaroslav Ruzicka/CMS Cameron McKenna

The office of Jaroslav Ruzicka moves into the second tier following its extensive activity in the Slovak Republic's booming real-estate market. The firm's ability in the sector is highlighted by its established client relationship with Eurohypo, a real-estate bank, which it advised on the arrangement of over €70 million acquisition financing in 2008.

The firm has also worked with Bank Austria Creditanstalt on other real-estate projects, including the provision of finance to real-estate investment company Heitman Group to acquire an office building in Bratislava via the purchase of its owner.

Leading lawyers

Dana Nemcíková

Squire Sanders & Dempsey

Peers comment that Squire Sanders & Dempsey's finance work may not have the breadth of the top-tier firms, but the firm nevertheless has a reputation for attentive counsel. Says one competitor: "They have very good clients they take care of."

One such client is UniCredit Bank, which the firm advised on a €50 million financing to residential real-estate developer GTS. The firm advised the same client on the provision of an investment and development term loan facility for €127 million to a commercial property developer.

Leading lawyers
Peter Suba

Other notable firms

Partners Patrik Bolf and Daniel Torsher will become part of the new regional firm replacing **Linklaters** in Bratislava from November 2008. Both their quality and their experience of high-end, complex transactions built up during their time with Linklaters will mean the new firm will be well-placed to act on the jurisdiction's most prominent banking and finance deals.

Cechová & Partners is an excellent example of an independent local firm benefiting from the surge in infrastructure improvements in the past year. The firm's standout mandate was advising Électricité de France in relation to the construction of a nuclear power plant in Jaslovske Bohunice. Peers comment that the firm has good referral links with international firms.

Salans is added to the rankings this year after extensive recommendation following its roles on some notable transactions. The firm's Slovak office has continued its strong real-estate reputation, this year providing advice to both Hypo Real Estate Bank and MKB Bank on their provision of commercial property financing.

Weinhold Legal upholds a good reputation in banking and finance, and is involved in a range of transactions spanning the Czech and Slovak Republics. These have included advising mBank on its establishment of a presence in both jurisdictions.

Mergers and acquisitions

Recommended firms
Tier 1
Allen & Overy
White & Case
Tier 2
Cechová & Partners
Cernejová & Hrbek
Csekes Világi Drgonec & Partners
Squire Sanders & Dempsey
Tier 3
Dedak & Partners
DLA Weiss-Tessbach
Freshfields Bruckhaus Deringer
Jaroslav Ruzicka/CMS Cameron McKenna
Peterka & Partners
Weinhold Legal
Wolf Theiss

The level of Slovak M&A activity remains high in the context of the country's buoyant economy. Unlike the states to its west, Slovakia is posting impressive real GDP growth figures - supported by high levels of foreign direct investment, growth reached 10.4% for 2007 and a predicted 7.5% for 2008. The government has ruled out any further privatisation of strategic assets, meaning that deals now sit in the small to mid-size range. But the steady deal flow is keeping the international firms busy, even if the halt in privatisation has deprived them of the blockbuster deals they originally entered the market for.

Private equity is becoming more active, but is likely to be of a local nature. The market has not reached a size yet that encourages the large international private-equity houses to enter.

On a regional level these funds are keen to add to their portfolios, and there have been numerous pan-regional deals across central and eastern Europe that involve Slovak subsidiaries. There have also been occasional larger acquisitions of purely local targets - for example, KBC's €350 million acquisition of Austrian bank Bawag's Slovak operation.

Allen & Overy

Allen & Overy has had another good year in the M&A market, in line with the general market conditions.

Like his colleague Igor Pálka, partner Hugh Owen receives great praise from peers and clients. "He is practical. He does not hide behind theoretical ideas," says a client. "There is a lot of flexibility on his side."

Allen & Overy advised Belgian KBC Bank as the winning bidder in the auction for Bawag's operations in Slovakia, primarily Istrobank. The €350 million acquisition of the Slovak commercial bank was one of the jurisdiction's standout transactions. Acquisitions in the banking and financial sector have been a common theme in the Slovak Republic in recent times, and the jurisdiction's high economic growth was a key factor for KBC's desire to expand in the region.

The firm has also advised on a range of private mid-size M&A deals in a variety of sectors. Construction supplier Wolseley sought the firm's counsel in relation to its acquisition of the plumbing and heating distribution business of Gama in the Czech and Slovak republics.

One of Allen & Overy's local highlights was advising the shareholders of Vezmos on the sale of its shareholdings in Vegum, a Slovak rubber producer.

Leading lawyers
Hugh Owen
Igor Pálka

White & Case

White & Case remains firmly in the top tier, having acted for on some the country's key deals. Marek Staron, who is permanently located in Bratislava, co-heads the M&A practice with Ivo Bárta, and commands respect from both clients and peers as a leading lawyer.

White & Case has serviced some prominent foreign investors, and these clients are full of praise for the firm. The clients note that the firm is very helpful, particularly in addressing language difficulties. The firm's negotiating abilities are also appreciated; says one client: "They were very proactive in trying to liaise with the other side."

This year the firm advised the Slovak subsidiary of Citibank in connection with its cross-border merger with the Irish subsidiary of Citibank. This was the first large cross-border merger involving a Slovak company. In December 2007 the firm assisted ArcelorMittal in its €100 million acquisition of OFZ, the largest ferro-alloy manufacturer in central Europe. The deal size is significant relative to the Slovak market, and the acquisition affects several jurisdictions.

Another marquee deal saw the firm advise investment company ECM Group on its acquisition of Carrefour Slovensko, the owner of the Carrefour hypermarket chain in Slovakia.

White & Case has also been busy advising private-equity buyers. The firm assisted Enterprise Investors in its purchase of two Slovak trucking companies. It then advised the same fund in the tendering process for the

Hame group of food producers. The transaction is managed from Bratislava, but is multi-jurisdictional and utilises White & Case's network of offices across the CEE region.

The last year has also seen a wave of consolidations and corporate reorganisations of several banks, with the firm advising Czech bank CSOB on the transformation of its Slovak branch into a separate legal entity.

Leading lawyers
Ivo Bárta
Marek Staron

Squire Sanders & Dempsey

Squires Sanders & Dempsey was the first foreign law firm to set up in Bratislava in 1991 and is consequently well accustomed to the Slovak legal market. Partner Kevin Conner is respected as a leading M&A lawyer by clients and peers, who also recognise Peter Suba as a leader of the younger generation and as someone who "has the trust of the business community".

Squires Sanders & Dempsey has a presence throughout central and eastern Europe and although it does not operate on the scale of the top firms, it is still capable of acting on the region's most prominent transactions.

The firm played a role in one of the most significant central European private-equity transactions in the first half of 2008. Kevin Connor and Adrian Barger advised a consortium led by US investors Columbia Capital and M/C Venture Partners on its purchase of telecoms provider GTS Central Europe.

Squires Sanders & Dempsey has also been active in the real-estate sector, advising Tesco, the largest foreign retail chain investor in Slovakia, on its investments in more than 50 green- and brownfield acquisitions.

Leading lawyers
Kevin Connor
Peter Suba

Jaroslav Ruzicka/CMS Cameron McKenna

Jaroslav Ruzicka in association with CMS Cameron McKenna and CMS Reich-Rohrwig Hainz benefits from regional strength deriving from its membership of the CMS alliance.

In line with CMS Cameron McKenna's prominence in real estate, the firm advised Pramerica Real Estate Investors on the acquisition of the Tulip shopping centre in the town of Martin. The deal was led by partner Ian Parker, who works in both Bratislava and Prague.

Other highlights include advising cable systems company Leitner on its potential acquisition of mountain transport systems company Tatrapoma, including a comprehensive due diligence programme.

Leading lawyers
Ian Parker

Peterka & Partners

Peterka & Partners was the first Czech firm to cross the border and establish an office in the Slovak Republic, and has since spread further afield to Kyiv. The practice aims to service the increasing number of clients investing in cross-border projects across central and eastern Europe.

In one such deal, Premysl Marek advised Icelandic investment company Nordic food on its acquisition of Czech food canning company Hame Food in August 2007.

The firm is also active advising buyers of Slovak entities. In November 2007, Peterka & Partners provided counsel to French wholesale industrial supplier Descours & Cabaud on its Sk100 million (€3.3 million) acquisition of Technaco - a Slovak hardware wholesaler and retailer.

Leading lawyers
Premysl Marek

Weinhold Legal

Weinhold Legal is highly visible on both sides of the Czech-Slovak border, and has been increasingly building its standing in the Slovak market. As an indication of the calibre of the firm's clients, it advised ExxonMobil on its disposal of almost 100 operating chains in Slovakia and the Czech Republic and the sale of its lubricants and aviation business. The deal involved close coordination with the firm's Czech office, an aspect of its practice which allows the firm to operate beyond the domestic market.

Weinhold Legal also advised Technaco, a Slovak hardware company, on its €3.3 million sale to Descours & Cabaud. In addition, the firm advised Canadian company Opta Minerals on a Slovak acquisition. Finally, a team featuring Róbert Kovácik is advising Wiko on the sale of its shares in a joint venture to manufacture car parts.

Leading lawyers
Róbert Kovácik

Other notable firms

Having led **Linklaters** as a top-tier M&A practice, partners Patrik Bolf and Daniel Torsher will give the new regional firm that the four ex-Linklaters offices are creating an excellent chance of featuring highly in future rankings.

The three Slovak firms that occupy the second tier: **Cechová & Partners**, **Cernejová & Partners** and **Csekes Világi Drgonec & Partners**, are considered to be leading domestic firms. They are all frequently seen opposite the large international firms on the jurisdiction's headline transactions.

Wolf Theiss enters the rankings after acting on some of Slovakia's most significant recent transactions. The firm advised Russian oil company Lukoil on its acquisition of ConocoPhillips petrol stations in the Czech and Slovak Republics. It also advised the Austrian bank Bawag on the sale by tender of its Slovak operation, Istrobanka.