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The First Bid Rigging Case in Slovakia After Years of Judicial Disputes

by

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I. Introduction

In 2006, the Antimonopoly Office of the Slovak Republic (hereafter, AMO) decided its first bid-rigging case concerning a cartel between six construction companies[1]. According to the cartel decision[2], the six construction companies infringed the Act on the Protection of Competition[3] as well as Article 101 TFEU.

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[1] Decision no. 2006/KH/R/2/116 and decision no. 2005/KH/1/137.

[2] The AMO decides on cases on the basis of a 2-instance system. The executive department of the AMO decides on the case in the 1st instance. This decision may then be reviewed by the Council of the AMO. After the 2nd instance decision is taken, the case may be brought before the court. The text below uses a term 'decision' in this context.

[3] Act no. 136/2001 Coll on Protection of Competition and on Amendments and Supplements to Act of the Slovak National Council No. 347/1990 Coll. on Organisation of Ministries and

The illegal conduct at hand related to the tender procedure for construction works on the D1 highway Mengusovce – Jánovce (stretch from 0.00 to 8.00 km). Six construction companies (two Czech, one Portuguese and three Slovak) participated in the tender – five of them participated in the tender in the form of two associations, the sixth of the construction companies participated in the tender on its own. Three bids were thus submitted. The high prices proposed by the bidders raised suspicion of the public procurer – the National Highway Company. Based on the complaint of the latter, the AMO commenced an investigation.

Bids submitted to the tender covered complex construction works with nearly 900 individual price units. The AMO discovered that the ratio of unit prices submitted to the tender showed extremely constant figures. According to the authority, such figures could not be explained otherwise than by collusion of the participating companies.

The fine imposed by the AMO amounted to nearly 45 million EURO. The companies brought the case before the Regional Court in Bratislava. In 2008, the Regional Court in Bratislava[4] annulled the decision of the AMO. The AMO subsequently appealed against the judgement. The Supreme Court of the Slovak Republic[5] changed the decision of the Regional Court in Bratislava and ultimately dismissed the actions of the claimants.

The courts dealt with three key issues in their judgements:

Content of the operative part of decisions in cartel cases;

1) Imposition of sanctions in case of infringements of both the TFEU and the Slovak Act on the Protection of Competition; and
2) Proving the collusion on the basis of circumstantial evidence.

II. On the application of criminal law standards to administrative proceedings

The discussion on the abovementioned issues inevitably leads to another and rather complex difficulty, namely the application of criminal law principles to administrative proceedings.

The problem has two aspects. The first concerns the use of analogy in administrative law. The second relates to the application of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter, Convention).

Competition law infringements belong to the group of the so called 'other administrative offences'. These include offences committed by natural and legal persons in various branches of the law such as: offences in the area of environmental law, offences in construction law, etc.

Other Central Bodies of State Administration of the Slovak Republic as amended as amended (hereafter, Act on the Protection of Competition).

[4] Judgement of the Regional Court in Bratislava no. 2S/430/06-393 of 10.12.2008.

[5] Judgement of the Supreme Court of the Slovak Republic no. 1Sžhpu/1/2009 of 30.12.2013.

Unlike minor offences, 'other administrative offences' are regulated by a number of different laws. When it comes to substantive legal regulation, they lack *lex generalis*. Both the substantive aspects of 'other administrative offences' and their procedural particularities are regulated by *lex specialis*. As regards procedural issues, the function of *lex generalis* is fulfilled by the Administrative Procedural Code[6].

Albeit the Administrative Procedural Code regulates the procedural aspect of the assessment of 'other administrative offences', the Code does not cover general questions such as: the basic principles for the imposition of fines, the application of exculpatory circumstances, etc. This *altum silentium* may be replaced by the application of analogy with a branch of law that possess the relevant legal regulation, for example, by the application of criminal law principles. Analogy with criminal law is however quite disputable. Nevertheless, the use of analogy seems to be natural when it comes to the application of principles such as *ne bis in idem*, *nullum crimen sine lege*, and others norms that are generally considered to be criminal law principles. By contrast, the application of other principles, such as *reformatio in peius*, is not that clear[7].

Courts often refer to the Council of Europe's Recommendation no. (91) 1 of the Committee of Ministers to Member States on Administrative sanctions[8] in their case law. The Recommendation lays down the basic principles which should be followed in administrative procedures – most of these derive from criminal proceedings. They include: the *nullum crimen sine lege* principle, the burden of proof, *ne bis in idem*, etc.

The other aspect of the application of criminal law principles to administrative proceedings lies in that the Slovak Republic is a contracting party of the Convention.

Slovak courts, as well as the AMO, generally accept that the principles enshrined by the Convention also apply to administrative proceedings.

The application of Article 6 of the Convention, or at least of some of its aspects (such as the right to a fair trial), to administrative proceedings has always been controversial. This derives from the European Commission's and the CJEU's hesitant position towards its application. Though the AMO does not refer directly to the application of Article 6 in its decision, and it has never stated that infringements of competition rules have a criminal nature, it seems that the Slovak competition authority at least tries to avoid direct conflict with the Convention. This can be seen, for example, in the legal provisions of the Act on the Protection of Competition. A new amendment[9] that entered into force in July 2014 sets out, for instance, rules as regards access to the file by a procedural party in case of conflicts between the

[6] The act no. 71/1967 Coll. On Administrative Proceedings (the Administrative Procedural Code) as amended (hereafter, the Administrative Procedural Code).

[7] E.g. the decision of the Constitutional Court of the Czech Republic no. III. ÚS 880/08. The Court came to conclusion, that *reformatio in peius* does not apply to the administrative proceedings.

[8] Available at: http://www.dhv-speyer.de/stelkens/Materialien/Recommendation_No_R%2891%291.pdf Adopted by the Committee of Ministers to Member states on administrative sanctions on 13 February 1991.

[9] Act no. 151/2014 Coll. on the amendment of the Act on Protection of Competition.

protection of business secrets (confidentiality) and the right to defence. According to the new rules, priority is given to the right to defence.

III. Content of the operative part of cartel decisions

The Regional Court in Bratislava questioned the formulation of the operative parts of AMO decisions. The Court found that administrative bodies decided on liability for administrative offences, the character of which is similar to that of minor offences. Furthermore, the Court compared administrative offences and minor offences with crimes and stressed that the differences between them, in the sphere of the subject-matter of the regulation and procedural rules, should not be overestimated. Thus on the basis of the comparison of different types of 'criminal offences', the Court analysed requirements laid on certainty of the operative part of decision of administrative bodies and the specification of the act constituting the offence in question. Under § 163(3) of the Code of Criminal Procedure, the operative part of judgments on criminal cases shall contain an exact description of the crime at stake not only by its legal title and legal qualification, but also by the place, time and means of committing that crime, if relevant, as well as other circumstances in order to describe the crime in a manner that avoids interchangeability. Similarly, under § 77 of the Act on Minor Offences, the operative part of the decision on a minor offence shall also contain a description of the given offence by the identification of the place and time of committing that offence, declaration of guilt and type and amount of sanction. The Court found no legal reason for deviating from these requirements with respect to the content of the operative part of decisions on administrative offences in competition matters. It also held that it is not enough to give such a description of the infringement in the part of the decision that contains its justification – it is, in fact, necessary to provide it in the operative part of the decision. As a result, the court denied the legality of the decision of the competition authority which described the infringement in its operative part merely as: 'Behaviour of [names of companies] consisting of collusive behaviour due to which the aforementioned undertakings coordinated their activities in the public procurement procedure opened by Slovenská správa ciest for construction works for the realisation of the construction of 'Highway D1 Mengusovce – Janovce, part 0,00–8,00 km' published in the Journal of Public Procurement on 11.05.2004'. The Court found that this description of the illegal behaviour is lacking the annotation of place, time and means of committing the offence, which would avoid interchanging this behaviour with another. Due to this failure, the Regional Court of Bratislava found the decision of the AMO to be non-reviewable

It must be noted that within its reasoning the Regional Court of Bratislava referred also to Czech jurisprudence, particularly the judgment of the Supreme Administrative Court of the Czech Republic No 2 As 34/2006-73 of 15.01.2008. The latter also stressed the necessity to describe the behaviour of the offender by the designation of the place, time and means as well as other circumstances that are necessary to avoid mistaking the practice at hand with the behaviour with others. Since administrative procedure

law of Slovakia and the Czech Republic derive from a common legal history, and many of their rules are still similar, Czech jurisprudence may be applicable in cases heard by Slovak courts. However, this general opinion of the Czech Supreme Administrative Court was since then modified with respect to the special conditions of competition law application (e.g. judgment No. 1 Afs 58/2009 of 31.03.2009). The Czech Supreme Administrative Court understood that in cartel cases it is not absolutely necessary to describe a cartel by the place where it occurred, because a cartel can be made up of several acts that can occur in different places. Hence, it is enough to describe a cartel e.g. by defining its customers, describing the time framework of the acts and effect of a cartel. The requirement to describe the place of the offence in cartel cases must thus be understood as a description of the relevant market.

The Supreme Court of the Slovak Republic did not uphold the above arguments of the Regional Court in Bratislava. First of all, the Supreme Court found that the Regional Court erred in declaring that the decision of the AMO was non-reviewable. Still, these quite elaborate thoughts regarding the application of procedural rules of judicial review are not interesting from the competition law point of view.

In its reasoning, the Supreme Court focused mainly on the application of criminal law principles when sanctioning administrative offences and the similarity of competition offences with minor offences. The Supreme Court stressed that courts cannot be misled by this similarity and the analogy cannot by applied automatically.

Comparing to other parts and issues mentioned in the judgment, the Supreme Court confirmed the position of the AMO which stated that in cases of concerted practices it is often impossible to specify the place, time and means of committing such behaviour, as it was theoretically required by the Regional Court.

Quite surprising was the argument of the Supreme Court that in competition cases it is not necessary do describe the behaviour at stake in great details since comparing to the frequency of minor offences, there are very few cartel cases and there is no danger of mistaken identity (of the illegal practice) and the violation of principles of *res judicata* and *lis pendens*. Hence, in this particular case, although the Supreme Court admitted that the operative part of the AMO decision lacks a perfect description of the time of the offence, yet the behaviour of the undertakings was described in an unmistakable manner.

It seems therefore that the Supreme Court finally accepted the exceptional character of competition law and its enforcement clarifying that it is not necessary in cartel cases to identify the exact place, time and means of concluding the illicit agreement, which are, indeed, irrelevant for the assessment of the anticompetitive behaviour. This procedural approach is definitely coherent with material competition rules and it is necessary to describe the illegal agreement on a relevant market, its time span and means, as well as how competition was distorted or was planned to be distorted.

IV. Imposing sanctions in case of infringements of both the TFEU and the Act on the Protection of Competition

In the case at hand, the AMO decided on the infringement of both the Act on the Protection of Competition and the TFEU. The parallel application of the Act on Protection of Competition and the TFEU is not excluded; similarly, the Regulation 1/2003[10] foresees such practice.

The Regional Court in Bratislava came to the conclusion that the AMO was obliged to apply criminal law principles to its proceedings. According to the Court, the AMO had to take into consideration this fact in the process of calculating the fines and to apply thereto similar rules as according to the Criminal Code.

For an explanation, the Criminal Code[11] divides criminal acts into criminal offences (less serious) and crimes (more serious). According to the Criminal Code, in case when the offender commits two or more criminal offences, the court will at first determine, which of them is more serious and for which the higher punishment may be imposed. Second, the court will impose only one punishment for the most serious infringement. The law does not allow the accumulating of punishments. This is the so called 'absorption of punishment'.

In a case where at least one of the criminal acts is a crime, the Court will determine the most serious infringement and then increase the maximum sentence permitted by the law by one third and impose a punishment within this range. This procedure is called the 'aspiration of punishment'.

The Criminal Code also sets specific procedures in cases when the offender is sentenced by a court and later found guilty for another criminal act that was committed before the first judgement is publically proclaimed. In this case, the court that decided on the 'second criminal act' annuls the first judgement and applies the rules mentioned above.

Neither the Administrative Procedural Code nor the Act on the Protection of Competition foresees any special procedure for such cases.

Nevertheless, according to the Regional Court in Bratislava, the AMO is obliged to apply the abovementioned criminal law principles when calculating the fine. The Court held here that the accumulation of fines cannot be applied, inasmuch as such accumulation is not familiar to the Slovak legal order. According to the Court, the decision of the AMO does not sufficiently specify which principles were used in the process of the calculation of fines. Thus, in the Court's opinion, the AMO's decision is not sufficiently reasoned as regards fines.

The truth is that a similar attitude towards the calculation of fines was expressed by the Slovak judiciary also in other cases. E. Babiakova, judge of the Supreme Court of the Slovak Republic, draws attention to the criminal nature of administrative

[10] 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 of the Treaty, OJ [2003] L 1/1.

[11] Act no. 300/2005 Coll. as amended.

offences.[12] In her opinion, the application of analogy in administrative law is generally accepted by the courts of the Slovak Republic as well as by the courts of the Czech Republic.

For instance, the Supreme Court of the Slovak Republic dealt with a case where the Council for Broadcasting and Retransmission imposed 24 fines on a national private TV operator for 24 infringements in 24 separate administrative proceedings. The Supreme Court annulled the decisions of the Council and held that the Council for Broadcasting and Retransmission should have dealt with the infringements in a joint proceeding according to criminal law principles. According to the court, in such cases, administrative bodies should impose a single fine, calculated in compliance with criminal law principles.

The Supreme Administrative Court of the Czech Republic[13] dealt with a similar case when an administrative body fined a natural person for several traffic offences in several separate proceedings. The Supreme Administrative Court pointed to the necessity to apply criminal law principles in this case. It drew the conclusion that an administrative body has to decide on a fine with respect to previous fines imposed, for as much as the previous infringement had been committed before rendering the decision on the first infringement.

According to the Supreme Administrative Court, the fact that an administrative body did not conduct joint administrative proceedings in the case of both offences does not necessarily mean that it acted *contra legem*. Though the court appreciated the absence of specific procedural rules concerning the imposition of fines (in contrast to criminal law), it concluded that it there are no obstacles constraining the administrative body from deciding on the amount of the fine with respect to the fine already imposed.

The attitude of the AMO concerning the application of criminal law principles in its case law as regards the calculation of fines is not particularly clear.

In the reviewed decision on the *Highway cartel*, the AMO decision explains that the authority imposed a fine for the infringement of both national and EU law, which means that the infringement had wider effects than the violation of purely national provisions. According to the AMO, this must be reflected in the amount of the fine imposed. It is not to be considered as an aggravating circumstance, but the circumstance that by itself affects the basic amount of the fine.

On the other hand, the AMO stated in another decision[14] that it imposes a single fine for both infringements of national and EU law. Contrary to the previous decision, it pointed out that both the national and EU infringement are of equally severity and so the fact that two provision were breached does not affect the amount of the fine imposed.

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[12] E. Babiaková, 'Analógia v oblasti správneho trestania' ['Analogy in the domain of administrative punishment'] (2012) 64(3) *Justičná revue* 343–348.

[13] Judgement of the Supreme Administrative Court of the Czech Republic no. 1 As 28/2009-68.

[14] The decision no. 2011/KH/1/1/055.

In the case of the *Highway cartel*, the Supreme Court did not provide a clear explanation with regard to the necessity to apply criminal principles to administrative proceedings. It seems that the Supreme Court is quite reserved when it comes to the implementation of criminal law principles to administrative proceedings. It stressed that the AMO sufficiently explained in its decision that it imposed a single fine on both infringements. It is interesting that the Supreme Court also remarked that the European Commission did not impugn the process of the calculation of fines used by the AMO, even though the imposition of fines is a matter of national law.

Despite the ruling of the Supreme Court, Slovak rules concerning the calculation of fines in case of two or more infringements remain unclear.

V. Proving a collusion on the basis of circumstantial evidence

As mentioned above, the *Highway cartel* was the first case were the AMO decided on an infringement even though it did not possess any direct evidence to substantiate it.

Clearly, the ideal situation occurs when the competition authority possesses evidence such as e-mails or other direct proof of contacts between cartel members. However, given the endeavour of cartel members to conceal their illegal conduct, it may sometimes be impossible to obtain such evidence. Therefore, it is not impossible that the case will be decided on the basis of circumstantial evidence only – either on the basis of proofs of communication between the cartel members (without knowing the content of such communication) or on the basis of economic evidence.

The AMO based its decision on the analysis of the price units submitted by the tender participants and on the results of this analysis which proved they high conformity of these prices

The AMO referred to the judgment of the Court of Justice of the European Union in the case *Woodpulp*[15] whereby parallel conduct cannot be regarded as furnishing proof of concertation unless concertation constitutes the only plausible explanation for such conduct.

With respect to this judgement, the AMO sought the plausible explanation for this conformity and came to the conclusion that it is not possible for such conformity to be achieved otherwise than via an agreement of the undertakings concerned. The undertakings explained the conformity by the use of the same software in the process of creating bids, the use of the same suppliers, the use of the standardized price lists, etc.

However, after the AMO analysed other tenders in the construction industry (and prices submitted to these tenders), it found that such price conformity had never occurred in the past. The comparison of prices in other tenders showed different indexes.

[15] Joined cases C-89/85, C-104/85, C-114/85, C-116/85, C-117/85 oraz C-125/85 do C-129/85 *Ahlström Osakeyhtiö and others v. Commission*, ECR [1993] I-01307.

The National Highway Company confirmed that such conformity is highly improbable and cannot be accidental.

The Regional Court in Bratislava admitted that the analysis of the unit prices submitted to the tender proved unusual conformity. On the other hand however, the Court came to the conclusion that the AMO did not sufficiently prove the illegal conduct of the undertakings. According to the Court, the authority failed to clarify both the background of the anticompetitive agreement and its content.

According to the Supreme Court, the result of the comparison of unit prices is not direct evidence of the infringement. However, in accordance with the abovementioned jurisprudence of the Court of Justice of the European Union, it was up to the undertakings to explain this conformity.

Moreover, the Supreme Court drew attention to the fact that this indirect evidence was supported by other indirect evidence that indicated the infringement such as: the official position of the public procurer, the comparison with other tenders in the same sector, the existence of communication platform among the bidders.

According to the Supreme Court, the AMO rebutted the objections of the undertakings in detail. It is natural that the use of circumstantial evidence carries with it the risk that the reviewing judiciary might view cases built on such evidence with scepticism. Circumstantial evidence should thus be used cautiously, and should persuasively point to the infringement. It is almost inevitable for the competition authority to support this type of evidence with other indirect proofs, or other indications of the infringement. It is also necessary to carefully assess all the objections submitted by the undertakings concerned and to answer these objections in detail in the decision.

IV. (Non-)Disqualification from public procurement

Slovak public procurement rules automatically disqualify participants of bid-rigging from public procurement for not fulfilling the personal status necessary for the participation in procurement procedures[16]. These rules were changed in 2008.

[16] Act No. 25/2006 Coll. on Public Procurement and on the Amendment of Certain Acts as amended, current wording:

§ 26(1)(g) 'Only the one meeting the conditions of participation with regard to personal status may take part in the public award of contracts: he has not been proven any grave professional misconduct over the preceding three years, which contracting authorities and contracting entities are able to prove'.

§ 26(5): 'For the purpose of this Act, grave professional misconduct shall mean in particular participation in an agreement restricting competition in public procurement and any other a grave infringement of law or a grave infringement of obligations from contract, which can be proven by a final decision of the competent public authority. The period pursuant to paragraph 1(g) shall begin on the date when the decision has become final'.

Act No. 25/2006 Coll. as effective till 30 June 2008: § 26(1)(h): 'Only a person may take part in the public award of contracts who meets the conditions of participation concerning his

Until 30 June 2008, the period of disqualification was five year from committing bid-rigging. Since 1 July 2008, the period of disqualification was three years after the final decision on the participation in a bid-rigging cartel offence. Since the effects of the AMO's decisions were suspended by the judiciary after a complaint was filled, cartel members were not excluded from the participation in procurement procedures even after a final decision of the AMO. All attempts of the Office for Public Procurement (hereafter, OPP) to exclude these companies were overturned by the Regional Court in Bratislava (e.g. cases no. 2S 142/2007, 2S 262/07, 2S/11/2012) and confirmed by the Supreme Court (e.g. cases no. 3Sžf/31/2011, 6Sžf/18/2010). The Regional Court in Bratislava supported its reasoning by an allegedly EU-conform interpretation of § 26 of Act No. 25/2006 Coll. on Public Procurement. According to the judiciary, this provision had been codified into legislation by Act No. 232/2008 Coll. (amendment of act No. 25/2006 Coll. in force from 1 July 2008) and suspends the effects of decisions issued by competition authorities. The courts neglected the fact that the decision of the completion authority established the existence of the cartel and the text of Article 155a(5) of Act No. 25/2006 Coll..

Hence the question of the disqualification of cartel participants was closed until 20 March 2014 when the final judgment (case no. 1 Sžhpu/1/2009) in the *Highway Cartel* case became effective. Afterwards, discussions on the exclusion of the affected major construction companies reopened. The issue was closed several months later with the publication by the OPP on 27 July 2014 of the Explanatory Position No 4/2014 'Participation in cartel as a reason for exclusion from public procurement procedures'. Despite its general title, the explanatory position dealt only with Highway Cartel issues. Regarding the counting of the disqualification period from public procurement in the *Highway Cartel* case, the OPP found that:

1. due to intertemporal provision Article 155a, the period for exclusion commences when the cartel was committed;
2. the date of the commitment of the cartel was set as 11 May 2004 when the call for the tender was published;
3. the disqualification period was interrupted when the effects of the AMO's decisions were suspended;
4. hence the exclusion period shall be counted from 11 May 2004 to 7 December 2006 or 15 May 2007 (depending on the date of the suspension of the AMO's decisions by the Regional Court regarding particular companies); the period shall be counted again from 20 March 2014;
5. due to the fact that the Amendment Act No. 232/2008 Coll. changed the five-year period to a three-year period, and taking into account principles of a just application of legal norms and the constitutional principle of non-discrimination,

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personal status: over the preceding five years, he has not violated the prohibition of illegal employment pursuant to a special regulation'.

Under the intertemporary provision § 155a of Act No 25/2006 Coll. as in force from 1 July 2008 'Previous provisions concerning grave professional misconduct shall be used for cases committed by tenderers before 1 July 2008'.

the OPP decided to apply the three-year period as it is more favourable for the companies at stake.

Using the aforementioned rules set by the OPP, the disqualification periods for all of the cartel participants lapsed at different times between 20 March 2014 and the end of August 2014. Hence the Explanatory position of the OPP shrank the five-year (or three-year) disqualification period to several days.

From the legal point of view, the OPP made several errors in its Explanatory position. It did not take the more favourable way of applying existing public procurement rules, but took the utterly most favourable approach possible to the participants of the *Highway Cartel*. The Explanatory position bears the burden of a misapplication and misinterpretation of criminal law principles and human-rights rules applicable in cases of criminal charges. Its initial failure lies in the fixing of the time of the commencement of the disqualification period at the time of the likely beginning of the cartel. It is generally accepted both in criminal as well as administrative law, that an offence that lasts a certain period of time is deemed committed when the offenders end their illegal behaviour or abandon the illegal state. Therefore, the beginning of the disqualification period should have been set to the end of the cartel. However, the OPP's position contains also a major error in how the authority defined the passing of the disqualification period. The OPP was correct to see disqualification as a type of sanction, and hence that was indeed necessary to compare sanctions applicable at the time of the offence being committed and those applicable at the time of the decision being issued. Nevertheless, the OPP ultimately failed to compare which of these sanctions would be more favourable for the offender. Instead, it constructed a brand new sanction. The approach used by the OPP is not consistent with the way how criminal rules are generally applied. Under this criminal-law principle, the more favourable sanction shall be chosen (including all of its features) but not a most favourable mix of the elements of both sanctions. Thus, the OPP should have to compare the five-year disqualification period counted from the time of the commitment of the cartel offence with a three-year disqualification period counted from the time when the final decision became effective (i.e. from 20 March 2014). Using this approach, the three-year period would have ended in March 2017 and the five-year disqualification period would have ended between March and August 2016, depending on the individual cartel members.

Nevertheless, disqualification rules connected with cartel infringements are not very effective since they can easily be circumvented by employing subsidiaries, sister or parent companies that were not named as cartel participants, even if they form a single economic group with the cartel offender. Therefore, the already quite weak disqualification sanction was made by the OPP case totally toothless in the Highway Cartel.

VII. Conclusion

As seen from above, in the highway construction bid rigging case, Slovak courts clarified certain issues that had been under discussion for a long period of time. For instance, the non-fulfilment of the 'requirements for the operational part of the decision' was repeatedly the reason for the annulment of the AMO's decision. The opinion of the Supreme Court on this issue is thus highly appreciated. The same applies to its opinion on the use of circumstantial evidence.

On the other hand, some issues continue to remain unanswered. It would have been advisable for the courts to have provided a clear opinion as regards the conduct of proceedings and the calculation of fines in cases of several competition law infringements by the same offender. Given the lack of relevant legal rules, administrative bodies, as well as procedural parties, are still plagued by legal uncertainty in this context.

The judgement of the Supreme Court also opened a very interesting discussion as regards the interpretation of the Act on Public Procurement concerning disqualifications from public procurements. It has to be said that the interpretation applied by the OPP goes beyond legal standards, and ultimately leads to the absolute infectivity of relevant legal provisions. Thus, the companies that participated in this cartel remain practically unpunished as concerns the public procurement process.