



# Slovenia

– Mirjam Močnik<sup>†</sup>

Slovenia was until 1990 a constituent part of former federal Yugoslavia. It became independent in 1991, with a democratic political system and market-based economic system. In the mid-1990s, it started negotiations for accession to the EU and became member of the same on May 01, 2004. On January 01, 2007 Slovenia adopted the euro as its national currency and as such became the member of euro zone. In July 2010 Slovenia became a full member of OECD.

## Economy

Slovenia, with its historical ties to Western Europe, enjoys a GDP per capita substantially higher than that of the other transition economies of Central Europe. In March 2004, Slovenia became the first transition country to graduate from borrower status to donor partner at the World Bank.

Privatisation of the economy proceeded at an accelerated pace in 2002-04. Despite lackluster performance in Europe in period 2007-13<sup>1</sup> Slovenia maintained moderate growth. However the economic crises in 2008 hit Slovenia more than some other transition economies in EU. Structural reform to improve the business environment is the main challenge for attracting greater foreign participation in Slovenia's economy and to participate in creating new, higher added value posts as well as to lower unemployment.

The inflation is rather in normal range (2.5 percent annual rate for October 2012) and no further measures are needed. Slovenia having adopted the Euro in 2007, must keep its debt levels, budget deficits, interest rates, and inflation levels within the EU's Maastricht criteria. One of the challenges within the budget planning regarding the deficit is to note down the so called "golden rule" in the special law or even in the Constitution.

## Competition Evolution and Environment

Slovenia inherited a legacy of economic structure and political philosophy of socialism (communism) that was

PROFILE	
Population:	2.054.741***
GDP (Current US\$):	36.2 billion EUR*** 49.54 billion US\$***
Per Capita Income: (Current US\$)	23,610 (Atlas method)*** 24.187 (at PPP)***
Surface Area:	20,250 sq. km
Life Expectancy:	79 years**
Literacy (%):	99.7 (of ages 15 and above)**
HDI Rank:	21***
<i>Sources:</i> - World Development Indicators Database, World Bank, 2011 - Human Development Report Statistics, UNDP, 2011 (**) For the year 2010 (***) For the year 2011	

the dominant political and economic orientation of the country for almost 50 years (from 1945 to 1990). As a result, its economy was characterised by large-scale manufacturing and agricultural undertakings that were promoted on the assumption that industrial concentration together with the market openness and the fact that Slovenia is a member of EU single market would be conducive to economic efficiency and lower costs. This should, in principle, improve the competitiveness of the economy and benefit the consumers.

In practice, however, SoEs were in the period of former Yugoslavia largely inefficient and not competitive in international markets. The social experimentation with economic self-management and political decentralisation, during 1960 and 1970, temporarily improved the economic performance, but was soon aborted because of nationalistic antagonism and the deteriorating financial and economic situation. As a result of economic and political tensions, Yugoslavia disintegrated in 1990.

<sup>†</sup> Original paper submitted in November 2004. Revised in June 2005 & April 2006. Updated (November 2012).

<sup>1</sup> The period of financial perspective aligned to the budget planning at EU level.

Independent Slovenia was initially confronted with the problem of transition from state owned enterprises and administratively planned economy to a market-based economy during which it dismantled its concentrated industrial structure through liberalisation and competition, while simultaneously maintaining a certain level of social protection of those groups that were hit by the restructuring. As a result, competition was introduced only gradually, and consumers' concerns were subordinated to the interests of industrial groups. These developments proved to be a fertile ground for the proliferation of special interests that defended their positions by invoking national interest as a convenient excuse for prevention of international and even domestic competition.

The beginning of accession negotiations with the EU in mid-90s and the OECD in 2005 presented an opportunity, as well as the obligation, to introduce competition and competition monitoring in the economic system.

### **Competition Law and Policy**

The Constitution is a source of principles about competition and commercial practices. Its Article 74 provides that: (i) free economic initiative shall be guaranteed, (ii) the conditions for establishing commercial organisations shall be established by law. Commercial activities may not be pursued in a manner contrary to the public interest, and (iii) unfair competition practices and practices which restrict competition in a manner contrary to the law are prohibited.

After Slovenia became independent in 1991, it did not have a competition law for over two years. None of the former Yugoslav laws related to competition were applied. The first Law on the Protection of Competition for the Republic of Slovenia was not effective until April 1993. Because there was little political consensus to establish the Competition Protection Office (CPO) until it was absolutely necessary, the CPO did not begin operations until October 1994, with a staff of four persons and a minimal budget. During the 1990s, the CPO played no role in the privatisation process, brought few cases of major significance, and had limited resources to pursue its functions.

A new competition law (Prevention of the Restriction of Competition Act) was adopted in 1999. The substance and structure of the Law generally followed the then-current EU models. Later the law was amended in order to impose effective and deterrent fines (2003). Further amendments followed in 2004, and again in 2007 which introduced several procedural changes.

A new law was adopted in 2008 (The Prevention of the Restriction of Competition Act-1). The main reasons for the 2008 reform of the competition legislation were ineffective sanctions for violation of the law, inadequate penalties for companies that do not cooperate with CPO

investigations and the need to further align Slovenian law with EU competition law. The 2008 Law defines terms more precisely, authorises CPO personnel to enter premises and seize documents, introduces significantly higher fines (ranging up to 10 percent of an undertaking's annual sales), and provides that appeals from CPO substantive decisions must be filed directly with the Supreme Court.

After several years the general level of awareness of competition problems is better understood and in 2011 the legislation was adopted in the way to even strengthen the position of competition protection in Slovenia by reorganising CPO in to Competition Protection Agency (CPA). The process of reorganisation should be finished by the end of 2012. The main reason is to enforce the independency in the field of competition protection. Competition policy is better understood not mainly as a policy of protection of job providers and producers from competition of 'unfriendly' internal and external competitors but equally as a subset of consumer protection policy.

CPO has been active in several areas of competition, and has dealt with some highly publicised cases. However, due to insufficient human and financial resources, it is still far from an efficient enforcement agency.

### **Sectoral Regulation**

Legislative liberalisation of markets for services of general interest, like energy, telecommunications and transportation that was introduced during the negotiations for EU membership, have been implemented timely and as such pursued within the whole period of the EU membership with sufficient vigour in cooperation with sectorial regulators. This results in mainly competitive markets. Although developments in recent years may have put pressure on mark-ups in industries such as construction and food retail, there are still many markets marked by an absence of competition. This is particularly evident in network industries. For instance, there are no foreign operators in the retail and wholesale energy markets (infringement proceedings have been opened in relation to the Third Energy Package<sup>13</sup>) and switching of suppliers in 2010 was as low as 2 percent (electricity) and 0.2 percent (gas). Regarding transport networks, the railway market still appears to be a closed shop. There is no significant competition in either the freight or the passenger sectors, probably due to the lack of separation between infrastructure and transport operators. Public service contracts are still awarded via direct negotiations.

### **Power Sector**

Slovenia began upgrading its legal framework for the electric power industry to meet European standards with the Energy Act of 1999. With accession to the EU in 2004, Slovenia enacted amendments in 2004 and supplementary legislation setting the stage for opening the Slovenian wholesale and retail electric markets. All the EC directives

for the energy sector have been incorporated in Slovenia's legal system. The industry is now in the process of transitioning to a competitive sector. Two competitors are being established in the production segment, transmission and distribution functions have been placed in two separate public regulated monopolies [HSE and GEN (NEK, SEL, TEB) as power generation along with "GEN I" as electricity trading company] and all customers have been free to choose their supplier since 2007.

However, the sector continues to be dominated by a structure of generation and distribution companies that are owned or controlled by the state. Moreover, there is a *de facto* legal monopoly in import and export transmission capacity, although these capacities have been auctioned since 2007.

In the retail market the Energy Agency in 2011 made a significant contribution to the transparency of prices and offers for household customers and thus contributed to the functioning of competition. For this purpose, it delivered web applications for the comparison of offers and checking bills for electricity. Moreover, it provided e-services for monitoring individual offers by sending automatic messages when offers changed. The entire set of web applications was upgraded. It also published monthly report on the supply of electricity and retail market index for household customers.

In accordance with the provisions with the third energy package the Energy Agency actively contributed to the unification of data exchange for the most important market activities.

### **Telecommunications Sector**

The electronic communications sector is regulated and supervised by APEK (Postal services and Electronic Communications Agency), in accordance with the Electronic Communications Act. The Act liberalised the telecommunications domain in line with EU regulations. One purpose of the Act was to establish effective competition on the electronic common market (Article 2).

Under the Act, APEK is charged with promoting effective competition, contributing to the development of the single EU market, and supporting the interests of EU citizens (Article 120). APEK imposes additional obligations on operators with significant market power, and provides for adequate price ratios in specific markets. APEK has all the necessary means to ensure non-discriminatory access to essential network facilities and network interconnection for ensuring universal service provision. However Telekom Slovenije still dominates the two of three primary telecoms segment fixed telephony and mobile telephony while the competition within broadband internet is more spread lately. Telekom Slovenije is still the largest broadband provider, with a market share of nearly 50 percent.

Slovenia is encouraging the development of alternative networks, in part by seeking to have two state-owned enterprises – Slovenian Railways and Slovenia Motorway Construction Company – offer their excess telecommunications line capacities in the market. Moreover, a strategy has been implemented on stimulating the private sector to develop broadband networks and services in rural and scarcely populated areas.

#### **Box 1: Mobitel–Abuse of Dominant position**

In February 2012, CPO issued a decision finding that Mobitel, (a subsidiary and separate legal entity of Telekom Slovenije, now fully integrated in the Telekom Group) abused its dominant position with the purpose of strengthening or preserving its market power on an important part of the retail mobile telecommunications market by setting unfair retail prices for its mobile services retail package.

According to the CPO's investigation, it appeared that soon after the entrance of two new competitors in the mobile market and furthermore after the introduction of a similar retail package by the strongest competitor Si.mobil, Mobitel's market share decreased, as many customers migrated from Mobitel to other mobile operators. Consequently, in November 2008 Mobitel launched a new retail package of mobile services dedicated to the same consumer segment as the package offered by the competitors. Due to the high market saturation, switching of subscribers between operators

is the only possibility to increase the market shares of competitors on the Slovenian market.

After an analysis of the costs for providing Mobitel's package, the CPO found that the price charged by Mobitel for the bundle of services included in the suspected retail package was below its costs. Furthermore, it appeared that an equally efficient operator would not have been able to compete without suffering unsustainable losses. It was obvious that with such an aggressive strategy Mobitel intended to exclude its competitors from the market.

Therefore, the CPO concluded that with the introduction of the suspected retail package to the market, Mobitel abused its dominant position in the retail market for mobile telecommunications services and thus foreclosed its competitors from the market in the period from November 2008 to July 2010.

APEK has exclusive competence for assessing significant market power and defining the relevant market for the purpose of regulation. The Electronic Communications Act establishes rules for cooperation between APEK and the CPO (Article 124). Moreover, in September 2009 the protocol of cooperation between CPO and APEK was signed. Both agencies are to provide each other with information necessary for the performance of their responsibilities, and to cooperate in analysing relevant markets and determining the existence of significant market power. APEK has some power to regulate retail markets, if it identifies a problem in a retail market, it can by decision, based upon the market analysis, impose obligations to service providers who do not meet obligation according to the law.

### Anticompetitive Business Practices

Prevention of competition through restrictive practices and abuse of market position is not limited to national markets, and can be found in many local markets, where local authorities protect local providers, or at least condone their behaviour.

#### Box 2: Cartelisation of Local Utilities

Many local utilities services are still partly closed to competition with the result that consumers have no choice and must pay prices that are normally considerably above costs. Two of the most exorbitant abuses of monopoly position remain services for chimney inspection (and cleaning), and funeral services.

Chimney inspection has been declared a service of public interest, and the legislation obliges each homeowner to pay for an annual chimney inspection of his house. There is usually a single monopoly provider of this service at a local level –public or private enterprise that sets prices that bear no relationship to the time spent for inspection. However the service provider is chosen by open public call with clear requirements. The choice to select one or more service providers is up to local community. When the provider(s) are selected the choice of another provider is not allowed and the refusal of inspection is penalised, even if there is no need for inspection (e.g. no use of chimneys, use of clean fuels, like gas, etc.).

In the area of funeral services only the local monopolist, private or public enterprise, can provide funeral services which charges prices that are extremely high and impossible to relate to actual costs. There is still a practice that private funeral services are in inferior position and not allowed in the majority of local communities. However the service provider is chosen by open public call with clear requirements. The choice to select one or more service providers is up to local community.

There are many abuses of price fixing and restriction of entry in areas of some highly sensitive independent professional services. These services are mostly regulated by professional associations, which as a rule defend professionals against complaints of consumers.

Since one of the main tasks is that the State moves from the ownership in non-strategic areas the level of cooperation of regulatory bodies with CPO has improved. Besides energy, transportation and telecommunications, the state still has a major share and influence in the capital of the biggest banks, insurance companies and local utilities. This is considered to be useful for ‘better micro and macro management’ of the economy. Needless to say that in such ownership arrangements and institutional set-up the concerns of consumers are usually paid only lip service.

The well established and clear regulations are a strong cornerstone for an efficient penalising system and as such to the effective functioning of CPO. The departures from competitive behaviour and abuses of dominant positions are generally treated as minor offences and are sanctioned with serious fines ranging up to 10 percent of an undertaking’s annual sales. A stricter penalising system, as introduced in 2008, prevents the transgressors to find it profitable to continue with anticompetitive behaviour and thus, through the benefits of more competitive market benefits also the consumers.

### Consumer Protection

Consumer Protection Act does not include rules on competition. The Consumer Protection Office which was set up as independent body under responsibility of the Ministry of the Economy in 1996 was closed down in 2011 due to rationalisation of public administration. The Consumer Protection Office merged with the current Ministry of Economic Development and Technology (MEDT). It was integrated within the Directorate for Internal Market, Unit for Consumer and Competition Protection. This organisational solution might cause certain interference between policy making and implementation in the field of consumer protection.

In the non-government sector, the Slovene Consumers’ Association (Zveza potrošnikov Slovenije - ZPS), has been the most active non-government consumer organisation since 90’s. It initiated several well known cases of consumer protection, viz. usurious lending practices by financial intermediaries, banking charges and housing.

The average consumer in Slovenia is relatively well aware of his consumer rights, but he is still facing difficulties in asserting his rights, primarily due to lack of redress possibilities, court procedures being inadequate and too lengthy for consumer disputes such as mediation and out-of-court dispute resolution schemes virtually being unavailable to consumers.

### Box 3: Restrictions in Liberal Professions

In Slovenia there are restrictions of entry into pharmaceutical retail business, and exclusivity in the preparation of documentation for building permits.

Entry into pharmaceutical retail trade is regulated with licenses granted by the Slovene Chamber of Pharmacy. In the whole country there are 24 public sector pharmacies (*Javni zavodi*) with several retail outlets and 87 private pharmacies (single outlet). In addition there are 26 pharmacies connected to hospitals, and in general not accessible to public.

The ratio population/outlet (estimated at about 18.000 population/outlet) shows undersupply of this service, but the Chamber is very restrictive in granting new private licenses. It usually insists not only on professional qualifications but also on marginal technical requirements (e.g. size of shops, etc) and on economic justification!

Data on market shares by sector of ownership is not available. It is, however, estimated that the public sector share is much bigger than the share of private pharmacies. This is often justified on the ground that drug provision (sale) is declared a service of public interest. Salaries and profits of pharmacies are reported to be very high and are defended with arguments that this work is very responsible and requires the highest qualifications. It comes as no surprise that private pharmacies have aligned their margins with those of public pharmacies, which are considered to be overstaffed.

No individual consumer who intends to construct his house is in a position to prepare the necessary documents for building permit by his own efforts. The administrative procedures to collect and prepare a host of permits and documents are very bureaucratic, non-transparent and time consuming (often up to two years or more). The documents are, therefore, prepared by professionals (architects and building engineers) with connections to local authorities, at considerable costs to consumers.

In 2011, a screening of entry requirements was announced for Slovenia's numerous regulated professions. Work is still ongoing and no concrete proposals have been put forward to date. The national reform programme indicates policy action in this area only in a vague manner with line ministries responsible for preparing regulatory changes. Ideally, these should reduce unnecessary entry barriers while ensuring consumer protection, but it is too early for an assessment. There is an ongoing process of modernising regulation in the area of the restrictions in liberal professions that determines the entering barriers for starting and doing business. The main issue is to reduce the entering barriers as deregulation in the area of professional qualifications as such as other technical requirements. This process runs within the "cutting red tape" initiative with single goal: reducing administrative burdens and easy business start as well as operation.

### Concluding Observations and Future Scenario

There is a growing awareness within public authorities responsible for consumer and competition policies that the low level of competition results in clear consumer detriment. This detriment has to be assessed with the appropriate methodology and explained to consumers. One of the attempts and signals in this direction was made with merging the two functions, consumer and competition policies, under the newly established structure under MEDT - Unit for Consumer and Competition Protection.

Slovenia, as member of worldwide competitive business environment participates in relevant EU and OECD bodies that among other issues transfer the best practices of other countries that have been demonstrated as efficient and effective, both in the area of consumer protection and competition policy as well as to promote the interlinks of competition policies and consumer protection

In May 2012 a new Resolution on Consumer Protection Programme for the period 2012 - 2017 was adopted by the National Assembly. The new Programme stresses the importance to better promote consumer issues by supporting more competition in provision of goods and services (in the first place in utilities, financial services, and energy sector). One of the key pillars of the new Programme is also to ensure better access to justice to consumers by establishing out-of-court dispute resolution mechanisms for consumers in line with the recent EU legislation initiative.

The Government recognises the important advocacy role of non-government consumer organisations as well as their role in providing consumers with independent advice and information

† *Mirjam Močnik has a degree in economics and Masters degree in Policy Analysis. Over the last 17 years she has been involved in establishing of competition policy in Slovenia, actively participating in the accession negotiations with the EU and the OECD as also to the activities in the presidency of Slovenia to the EU in 2008. Currently she's responsible for international relations in the Slovenian Competition Protection Agency.*