

## **In the opinion of legal experts, Gorenje, d.d., President and CEO Franjo Bobinac acted lawfully by disclosing information to the Prime Minister of the Republic of Slovenia**

On July 25, 2016, we published the information that Gorenje, d.d., and Panasonic Corporation had signed on July 13, 2016, a set of legal documents allowing Panasonic to conduct partial due diligence investigation of the Gorenje Group. In September 2016, the media published an allegation by the Securities Market Agency (ATVP) that it had, in relation with the said due diligence procedure, "filed a criminal complaint against one natural and one legal person for suspicion of perpetration of a criminal offence of abuse of inside information pursuant to Article 238, Paragraph 2 of the Criminal Code." Some media outlets also reported that the criminal complaint filed by the ATVP was against Gorenje, d.d., President and CEO Franjo Bobinac, because he had informed the Prime Minister of the Republic of Slovenia, before the information was publicly announced, about the due diligence being conducted by the Panasonic Corporation at the Gorenje Group, which could lead to an increase in Panasonic's equity share in Gorenje, d.d.

Gorenje, d.d., learned about the alleged criminal complaint from the media, while in relation with the allegations which it supposedly included Gorenje, d.d., requested the opinion of two reputable legal experts: former chief justice of the Supreme Court of the Republic of Slovenia and former Constitutional Court judge Franc Testen, and the dean and full professor at the Faculty of Law, University of Ljubljana, Prof. Miha Juhart, PhD. Both legal experts find in their opinions that the conduct of Franjo Bobinac President and CEO of Gorenje, d.d., was lawful and that with regard to his disclosure of information to the highest representative of the executive branch of power, such conduct is not prohibited in the financial instruments market. Therefore, there can be no criminal sanction against such conduct.

Former chief justice of the Supreme Court of the Republic of Slovenia and former Constitutional Court judge Franc Testen wrote in his opinion that by disclosing to the Prime Minister the information that Panasonic Corporation was conducting due diligence at Gorenje Group, the President and CEO of Gorenje, d.d., did not breach neither restriction of trading based on inside information (insider trading) pursuant to the Financial Instruments Market Act (ZTFI) nor the prohibition to disclose inside information pursuant to the ZTFI. Moreover, the conduct of the President and CEO of Gorenje, d.d., does not constitute an offence pursuant to Article 566, Paragraph 1, Item 2 of the ZTFI nor a criminal offence of abuse of inside information pursuant to Article 238 of the Criminal Code (KZ-1). Franc Testen states that in judging whether President and CEO of Gorenje, d.d., breached in the case at hand the prohibition of disclosing inside information pursuant to Article 383 of the ZTFI (which provides that inside information may not be disclosed to any other person unless such disclosure is made in the normal course of exercise of employment, profession or tasks), the fact that the other person was the Prime Minister of the Republic of Slovenia who cannot be unauthorized for having access to such information, represents an important circumstance. In this respect, it is of key importance that the President and CEO of Gorenje, d.d., disclosed the information to the Prime Minister of the Republic of Slovenia as a member of the advisory task force on the economy, and that Gorenje is formally classified as an important state asset. The term "unauthorized person" is used in the Criminal Code (KZ-1) in the definition of the perpetration of a criminal offence of abuse of inside information pursuant to Article 238, Paragraph 2. According to the case law, the provision of the Criminal Code does not refer in this case directly to the regulations beyond criminal law; however, knowledge of such regulations is important for the interpretation of some terms used in the description of this criminal offence. Therefore, the provision of Article 238 of the KZ-1 cannot be used without the provisions from the ZTFI. The Criminal Code (KZ-1) provides a more narrow definition of abuse of inside information than specified within the prohibition of trading based on inside information (i.e. insider trading) in the ZTFI; in this case, namely, the criminal nature of conduct depends on the fact that an individual has access to inside information and uses such information to effect a transaction. Since the conduct of the President and CEO of

Gorenje, d.d., does not constitute a breach of prohibition of inside information disclosure pursuant to the ZTFI, Franc Testen stresses that this makes it clear that no criminal offence pursuant to Article 238 of the Criminal Code (KZ-1) was perpetrated.

The Dean and full professor at the Faculty of Law, University of Ljubljana, Prof. Miha Juhart, PhD, pointed out in his opinion that the conduct of the President and CEO of Gorenje, d.d., does not constitute a breach of the ZTFI or a breach of the Regulation (EU) No. 596/2014 of the European Parliament and of the Council on market abuse, which came into effect on July 3, 2016, and that the said conduct cannot constitute a criminal offence pursuant to Article 238 of the Criminal Code (KZ-1). Prof. Miha Juhart stresses that the concept of normative provisions of the prohibition of inside information abuse, and the intent of the legislator, is based on preventing abuse of inside information, rather than communication of information as such. In the introduction to the Regulation, it is expressly stated several times that the intent is not to prevent any and all information, but rather to prevent market abuse as an occurrence that is detrimental to the development of the internal market and to rendering of financial services. Prof. Juhart also notes in this respect that the previously effective Directive 2003/06 had the same intent, and it can therefore be deemed that the intent also applies to the Financial Instruments Market Act (ZTFI), since this Act actually implemented the said directive into the Slovenian legislation. In his opinion this was a case of disclosure that was made in the normal course of employment, profession, or duties of the President and CEO, especially when taking into account the intent of the disclosure, since, when all objective elements are considered, the risk of prohibited insider trading based such disclosure did not increase. Therefore, such communication or disclosure of inside information is subject to the exception from the general prohibition of disclosure or communication of inside information, which is provided both in the Regulation and in the Financial Instruments Market Act (ZTFI). Regarding the disclosure of inside information as a criminal offence pursuant to Article 238, Paragraph 2 of the Criminal Code (KZ-1), Prof. Miha Juhart stresses that this is only a criminal offence when inside information is communicated or disclosed to an unauthorized person; the answer to the question of the definition of an unauthorized person, however, has to be consistent with the legislator's intent, i.e. the provisions of the ZTFI. It is the legislator's intent to incriminate the conduct that has the elements of prohibited conduct in the financial instruments market. Therefore, the criminal law only provides sanctions for conduct deemed inadmissible by the Market Abuse Regulation or the ZTFI, since administrative sanctions do not suffice for the attainment of the goal of prevention of such conduct. This, in turn, means that a person to which inside information may be lawfully disclosed or communicated in accordance with the exception provided by the Regulation and the ZTFI, is not an unauthorized person. According to the opinion by Prof. Miha Juhart, such conduct then cannot constitute a criminal offence.

In their legal opinions, both legal experts separately find that the conduct of Gorenje, d.d., President and CEO Franjo Bobinac was lawful; accordingly, since there was no criminal offence the company Gorenje, d.d., cannot be liable for it either.