

SLOVAK REPUBLIC

(1998)

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Summary

1. The role of the Antimonopoly Office of the Slovak Republic is to support and protect competition within the meaning of the Act No.188/1994 Coll. on Protection of Economic Competition. This law defines the Office's powers in the fields of violations of fair competition principles through anticompetitive practices, in the area of merger control, supervision over competition restricting interventions by state bodies or municipalities, and support of competition enforcement during the process of privatisation.

2. During the course of 1998, the Antimonopoly Office of SR prepared draft amendment to the Act No.188/1994 Coll. The goal of this draft is to further harmonise Slovak competition law with the EU legislation (*acquis communautaire*) through introduction into the legal system of the Slovak Republic of *de minimis* doctrine, negative clearance and the so-called individual exemption within the meaning of *acquis communautaire*. It is also aimed at introduction of authorisation provisions for the adoption of the notice further setting out conditions under which agreements restricting competition are not prohibited (group exemptions).

3. In the first half of 1998, based upon MPs initiative in the Slovak Republic's parliament, the new provision of the Act No.240/1998 on Agriculture was successfully incorporated into the negotiated version of legislative wording, whose result was a total exemption from the general ban on agreements and concerted practices of all agreements/concerted practices enforced by entrepreneurs operating in agricultural production in the fields of milk, cattle, oil-plants, cereals, sugar-beet, fruits, vegetables, and potatoes. The Antimonopoly Office had therefore immediately prepared yet another amendment to the Act on Agriculture that would remove the provision on exemption from the final wording.

4. Negotiations on both amendments are expected to take place at the parliament in March 1999.

5. During the year 1998, the Antimonopoly Office has dealt within administrative proceedings with 275 cases, where either Authority or petitioners were of the opinion that anticompetitive practices took place. Out of those cases, there were 217 agreements that restricted or could have restricted competition which was almost 80 percent of all investigated cases. The remaining 58 cases were related to the evaluation of practices concerning abuse of dominant position on the Slovak market.

6. During the evaluated period of 1998, 97 cases were investigated within administrative proceedings (1997 - 68 cases, 1996 - 40 cases, 1995 - 25 cases). Out of those 49 decisions were issued in the given subject-matter (case-related decisions), 51 procedural decisions, and 20 cases that had not been completed at the end of 1998.

7. Within its powers, the Authority has several times requested remedial measures from the central state administrative bodies, municipal or local self-governments, provided they had restricted competition by their decisions. In 1998, the Authority has dealt with 34 such cases of violations of Competition Protection Act, out of which in ten cases remedies were requested. In most cases, municipalities granted discriminatory exemptions to certain entrepreneurs. Up until the end of the year, nine remedies were introduced as requested by the Antimonopoly Office of the Slovak Republic.

I. Changes in Competition Policy and in the Act on Protection of Economic Competition

1. Current Act on Protection of Economic Competition

1. Legal framework for regulation of protection of economic competition is, within the domestic legal norms, anchored in the following legislation:

- the Constitution of the Slovak Republic which in its Article 55 para 2 declares the commitment of the Slovak Republic to protection and support of economic competition;
- the core law governing issues of competition protection and proceedings before the Antimonopoly Office of the Slovak Republic (hereinafter sometimes referred to as „the Authority“) is the Act by National Council No.188/1994 Coll. on Protection of Economic Competition, as amended by the Act No. 240/1998 Coll. on Agriculture, Changes in, or Amendments to, other laws. Subsidiarily, proceedings before the Antimonopoly Office of the Slovak Republic are also governed by the Act No.71/1967 Coll. on Administrative Proceedings (Administrative Code);
- Criminal Code which in its Article 149 defines the substantial material features of crime being committed by abusing participation in economic competition.

2. Draft Laws Changing Current Act

2. In 1998, the Antimonopoly Office of SR submitted two draft laws changing the Act by National Council No.188/1994 Coll. on Protection of Economic Competition, as amended by the Act No. 240/1998 Coll. on Agriculture and Changes in, or Amendments to, other laws.

3. **The first of the draft laws** that changed and amended the Act by National Council No.188/1994 Coll. on Protection of Economic Competition as well as the Act by National Council No.145/1995 Coll. on Administrative Fees, was submitted in July 1998 by the Antimonopoly Office of SR on the basis of 1998 Government Legislative Tasks Plan. The goal of this draft is to further harmonise Slovak competition law with the EU legislation (*acquis communautaire*) through introduction into the legal system of the Slovak Republic of *de minimis* doctrine, negative clearance and the so-called individual exemption within the meaning of *acquis communautaire*.

4. Adoption of the so-called ***de minimis doctrine*** into our competition law is in accordance with the Europe Agreement on Association signed by the European Communities and its respective Member States on one side, and by the Slovak Republic on the other.

5. By introducing this doctrine, it will be possible to exempt from the general ban on agreements restricting competition stipulated by articles 3 and 4 of the Act No.188/1994 Coll. on Protection of Economic Competition, amended by the Act No.240/1998 Coll. on Agriculture, those agreements restricting competition whose impact on competitive environment is objectively negligible, that is, restriction to competition on the relevant market is not appreciable. In practice, it concerns agreements between entrepreneurs, whose position on the market is insignificant. It is a very important fact that application of *de minimis doctrine* will lead to a greater support to small and medium-sized entrepreneurs, primarily facilitating co-ordination and co-operation between them.

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6. Negligible or insignificant effect of the agreement on the market is defined in this draft law through a quantitative criterion. Such an effect occurs if combined share of participants to the agreement restricting competition does not exceed five percent of the total volume of identical or mutually substitutable goods on the relevant market. However, exempted from the application of *de minimis doctrine* are the so-called hard-core cartels, i.e. agreements directly or indirectly setting prices of goods or agreements dividing the market or sources of supply.

7. The draft law also anchors entrepreneur's right to ask the Antimonopoly Office of SR for a decision concerning whether or not his activities or conduct contradict articles 3 and 4 of the Act No.188/1994 Coll. on Protection of Economic Competition, amended by the Act No.240/1998 Coll. on Agriculture, Changes in, or Amendments to, other laws that govern agreements restricting competition, or whether he correctly applied *de minimis rule*. It concerns the so-called ***negative clearance*** which represents a declaratory confirmation issued by the Antimonopoly Office of SR for the entrepreneur, assuring that he has not acted contrary to the Act No.188/1994 Coll. on Protection of Economic Competition, amended by the Act No.240/1998 Coll. on Agriculture.

8. Another legal tool introducing by the above amendment is the so-called ***individual exemption***. Draft law gives an entrepreneur the right to ask the Antimonopoly Office of SR to issue, based on his request, a decision on whether the submitted agreement restricting competition meets requirements laid down in Article 5 para 4 (a) to (d) of the competition protection act, i.e. whether that agreement can be exempted from the mandatory and absolute ban for a time specified in the decision. Within the meaning of the draft, entrepreneurs themselves are not authorised to judge whether their agreements restricting competition can be exempted from the absolute ban, even if they are of the opinion that the respective agreements meet relevant criteria.

9. The draft law has also reflected a task of reshaping authorisation provisions for the adoption of the notice further setting out conditions under which agreements restricting competition are not prohibited. It concerns the so-called ***group exemptions***. This task has emerged for the Antimonopoly Office of SR as a result of the National Programme for Adoption of Acquis Communautaire in the Slovak Republic (sector No.6 - economic competition) and was included into the group of short-term priorities.

10. The last important change proposed and incorporated into the draft law is the one introducing the Antimonopoly Office's authority to request from entrepreneurs proofs of a correct application of *de minimis rule* on agreements restricting competition, or proofs showing that their agreements restricting competition have met criteria laid down in the notice by the Antimonopoly Office of SR that will be issued based on the authorisation anchored in the submitted draft law.

11. On July 30 1998, the Collection of Laws published the Act by the National Council of SR No. 240/1998 Coll. on Agriculture and Changes in, or Amendments to, other laws. Within the meaning of the last article No. VI, this act had come into force (except for a few exemptions) on July 1 1998. Article IV thereof meant in fact an amendment to article 5 of the Act No.188/1994 Coll. on Protection of Economic Competition. Having taken into account the fact that this part of the law (amending competition legislation) was not submitted for interministerial recommendation proceedings and the Antimonopoly Office of SR had no opportunity to express its views on it, first draft amendment to the Act No.188/1994 Coll. prepared by the Antimonopoly Office and submitted to the Legislation Council of the Slovak government had not reflected changes introduced by the Act No.240/1998 Coll. on Agriculture, Changes in, and Amendments to, other laws. Simultaneously, numbers of the respective paragraphs were changed. Taking account of the aforementioned developments, the Antimonopoly Office of the Slovak Republic requested that draft negotiations at the Legislation Council be stopped for reasons of its further review and

harmonisation with the Act No.240/1998 Coll. on Agriculture, Changes in, and Amendments to, other laws.

12. By the Act No.240/1998 Coll. on Agriculture that also amended the Act No.188/1994 Coll. on Protection of Economic Competition, there had been exemptions introduced from the article 3 2(a) to (e) governing ban on agreements restricting competition; these exemptions were related to the agreements and concerted practices of entrepreneurs operating in agricultural production in the fields of milk, cattle, oil-plants, cereals, sugar-beet, fruits, vegetables, and potatoes, provided that such agreements are aimed at harmonisation between production and marketing of the above products at economically justifiable prices.

13. Since, as it was mentioned earlier, the Antimonopoly Office had no opportunity to express its stance towards the Act No.240/1998 Coll. which in itself was a serious intervention into competition, it submitted in October 1998 a *second draft law* for interministerial recommendation proceedings, in order to reinstate legal status present before the Act No.240/1998 Coll. on Agriculture came into effect. The Antimonopoly Office of SR proposed to omit the provisions that had exempted from the application of the Act No.188/1994 Coll. all agreements and concerted practices of entrepreneurs operating in agricultural production in the fields of milk, cattle, oil-plants, cereals, sugar-beet, fruits, vegetables, and potatoes. At the same time, it proposed to impose on those entrepreneurs (who concluded such agreements with effects present to that date) an obligation to refrain from the conduct performed in accordance with such agreements and put their wording into harmony with competition legislation within three months; otherwise all those agreements are declared void.

14. The Office considered it necessary to submit the second amendment, since such an exemption from the ban on agreements restricting competition does have a negative impact on economic competition. It acts in a counterproductive way, especially in relation to the restructuring, allocation and efficiency processes, leads to deformations and slow-down which in turn results in global economic losses. Yet another fact proves to be important, namely that it is the sectors of agriculture and food-processing (influenced by the exemption, too) that have shown a large number of cartel agreements in the past. These agreements represent one of the most serious violations of the Act No. 188/1994 Coll. on Protection of Economic Competition, amended by the Act No.240/1998 Coll. on Agriculture, Changes in, or Amendments to, other laws.

15. In the interest of rationalisation and increased efficiency of the works within the amendments to the Act No.188/1994 Coll. on Protection of Economic Competition, the two draft laws were merged into one that will be submitted to the government of the Slovak Republic in February 1999.

3. *Official Opinions on Drafted Legal Norms*

16. Within the framework of general legislative process, the Antimonopoly Office of SR takes part in interministerial recommendation proceedings, submitting official opinions on draft legislation for the sessions of the Slovak government.

17. During the evaluated period, the Authority prepared within interministerial recommendation proceedings official opinions on 73 drafted legal norms, out of which two were legislative intentions. Some of the Authority's opinions contained comments on the submitted drafts. Amongst the examples, we can mention the following:

- draft law amending and changing the parliamentary Act No.273/1994 Coll. on health insurance, health insurance funding, establishment of General Health Insurance company and establishment of sectoral, industrial, corporate and civic health insurance companies, as amended by later regulations. Amongst other things, the Authority proposed in its opinion to remove requirement about minimum number of clients-beneficiaries. The Authority had also proposed a change in wording of article 38(1) of the original law concerning closing contracts with health care facilities;
- in the opinion on draft law on medicaments and health care devices, the Authority put forth a removal of article 34(4) about the specified distance between two pharmacy outlets. The Authority pointed out that a minimum distance of 300 meters between the two pharmacies established an entry barrier to the market of medicament/health care device supplies, by which existing market players were protected against potential entrants, to the detriment of citizens.

4. *Government Drafts Introducing New Legal Norms*

18. With respect to the need for strengthened independence of the Antimonopoly Office of SR, the new Slovak government formed after the 1998 elections announced in its Programmatic Declaration an intention to prepare a draft version of the new (constitutional) competition protection law that would introduce a collective decision making body at the Authority and reflect the experience gained in application of the currently valid Act No.188/1994 Coll. on Protection of Economic Competition, as amended by the Act No.240/1998 Coll. on Agriculture, Changes in, and Amendments to, other laws.

19. Preparation of draft legislative intention related to this act has been included into 1999 Legislative Task Plan of the Slovak government. Final wording should be completed by the end of 2000 so that the act can come into force on January 1, 2001.

II. *Application of the Act on Protection of Economic Competition*

20. Resulting from the provisions of Administrative Code and in conjunction with the organisational structure of the Antimonopoly Office of SR, 4 executive divisions and two branch offices located in Banská Bystrica and Košice were authorised to act in the first degree in cases of violations of the Act No.188/1994 Coll. on Protection of Economic Competition, as amended by the Act No.240/1998 Coll. on Agriculture, Changes in, and Amendments to, other laws.

21. Proceedings under the act on protection of economic competition are governed by the provisions of the Administrative Code, unless the Act No.188/1994 Coll. on Protection of Economic Competition, as amended by the Act No.240/1998 Coll. on Agriculture, states otherwise. Similarly, the Administrative Code governs second-degree proceedings which means that parties to the administrative proceedings may file an appeal against the first-degree decision. Based on recommendations made by the special commission, the appeal shall be reviewed and decided upon by the Chairman of the Antimonopoly Office of SR. There is no appeal against the final decision. A party to the proceedings that disagrees with the decision issued by the Authority may, however, bring an action before the Supreme Court, requesting a judicial review of the decision within 30 days from the day the decision was delivered to them. During the evaluated period of time, there were five complaints filed with the Supreme Court of the Slovak Republic,

requesting judicial review of the Authority's decisions. Out of those, four cases were not completed at the end of 1998.

1. Proceedings in Cases of Anticompetitive Practices - Agreements

Restricting Competition and Abuse of Dominant Position

22. In the reviewed period, the Antimonopoly Office has dealt within administrative proceedings **with 275 cases**, where either Authority or petitioners were of the opinion that anticompetitive practices took place. Out of those cases, there were 217 agreements that restricted or could have restricted competition which was almost 80 percent of all investigated cases. The remaining 58 cases were related to the evaluation of practices concerning abuse of dominant position on the Slovak market.

23. In total, there were **287 decisions issued during the monitored period, out of which 26 were case-related and 261 were of procedural nature**. Other cases were dealt with outside the administrative proceedings. In most of those cases, it had been shown before the proceedings started that practices described in the petitions either did not represent violations of the Act No.188/1994 Coll. on Protection of Economic Competition, as amended by the Act No.240/1998 Coll. on Agriculture, or constituted violations of other laws (Commercial Code for instance) whose enforcement does not fall within the powers of the Antimonopoly Office of the Slovak Republic.

- ***Agreements Restricting Competition***

24. The Act on Protection of Economic Competition in its article 3 provides that agreements and concerted practices between entrepreneurs as well as decisions of their associations whose object or effect is or may be the restriction on competition are prohibited, if this Act does not state otherwise. There are prohibited agreements restricting competition that involve in particular : - direct or indirect price fixing; commitment to limit or control production, sales, research & development, or investments; - division of the market or of sources of supply; - commitment by the parties to the agreement that different trade conditions relating to the same contractual subject matter will be applied to individual entrepreneurs which will disadvantage some of them in competition; - conditions which connect conclusion of contracts to the acceptance of supplementary obligations which are not related to the subject of those contracts either by their nature or according to commercial usage.

1(a) Case Summary - Agreements Restricting Competition

25. In 1998, **217 cases** were investigated, which had been the largest number so far (1997 - 18 cases, 1996 -eight cases, 1995 - 39 cases). Out of those were :

- ten decisions issued in the given subject-matter (case-related decisions);
- 228 procedural decisions;
- 58 cases not completed at the end of 1998.

The extraordinary increase of the investigated cases (217) in the year 1998 in comparison with the previous years is grounded on the fact that the Office on a basis of reasonable suspicion concerning a

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conclusion of agreements restricting competition among five big distribution companies of the trade marks cosmetics with the high number (nearly 200) of their customers (retailers) had to investigate these cases individually in the separate administrative proceedings what had been caused by the procedural reasons. As it is obvious from the mentioned number of the procedural decisions in the most cases these proceedings were stopped as a breach of law had not been proved.

1(b) Description of Significant Cases - Agreements Restricting Competition

Sempol Trnava, Osivo Zvolen, Osivex Kosice

26. The Antimonopoly Office of the Slovak Republic (hereinafter only „the Authority) had obtained information about sales of various kinds of seeds for agricultural co-operatives. These information concerned issues of pricing on the side of major seed companies. The Authority came to a justified suspicion that companies Sempol Trnava, Osivo Zvolen and Osivex Kosice had developed very close co-ordination and co-operation relations amongst themselves. Based on the above knowledge, the Authority launched administrative proceedings against these commercial companies in case of agreement restricting competition.

27. The basic proved information was the fact, that in 1995 District Court of Banska Bystrica registered Lucenec-based company named Semenarsky majetok, a.s. Osivo Zvolen was the sole shareholder in this company. However, in 1996 Osivo Zvolen sold 96 percent of the shares to Sempol Trnava, Osivex Kosice, and a group of twelve physical persons that were (both personally and financially) very closely tied to the three seed production companies. In fact, those persons were sitting on the boards of directors and supervisory boards of the companies. Besides that, they were connected to other trading companies operating either on the seed market or related markets.

28. In September 1996 Semenarsky majetok, a.s. Lucenec adopted new articles of association, changing also the company name to “Slovenska osivarska spolocnost Zvolen” (hereinafter only “SOS Zvolen”). In addition to it, new business activities were officially introduced along with the personal changes in, and additions to, the structure of board of directors and supervisory board. New members were (again) the persons sitting on the statutory bodies of the above three seed companies and other entities operating on the seed market.

29. At the SOS Zvolen board meeting, the document was approved under the following name “**Principles of Co-operation between Companies-Shareholders in SOS Zvolen**” (hereinafter only “the Principles”). It resulted from the investigations and analyses made with respect to the concrete conditions laid down in the Principles that those were primarily targeted at co-ordination and co-operation relations among Sempol Trnava, Osivo Zvolen and Osivex Kosice.

30. From the facts collected during the investigation regarding a definition of the co-operative joint venture and approved Principles, it became obvious that these principles in fact meant a conclusion of horizontal agreement among the shareholders in SOS Zvolen.

31. At the beginning of the investigation, it had been proved that agreed conditions for the co-operation set out in the Principles are **agreements by nature**, with some pieces of concerted practices also showing up. As an example, the principles laid down orchestrated steps of all shareholders in dealing with owners of particular seed types and initial planting material, with the Ministry of Agriculture, various associations and other state or self-government bodies. The participants to the agreement adopted

principle of mutually provided information on new activities, business plans, performance results, existing seed surpluses, etc. These agreed points defined in the Principles had their practical reflection in actual steps taken by the shareholders - seed companies in SOS Zvolen.

32. The Authority had also found that SOS Zvolen's board meetings approved common steps in seed contracting negotiations, price mechanisms and general overview on demand for seed in the Slovak Republic. Common negotiations were also related to the production itself, including specification of the production fields (areas) to be established by the SOS's shareholders, and co-ordinated participation of all shareholders in various expositions and fairs, where they had used the common logo. To sum this part up, all of the above actions were very closely interlinked and based upon information on future intentions, plans, and regularly updated measures. As the analysis showed, effects of co-ordinated activities had a significant restrictive impact on competition in the **seed market**, mainly due to the fact that the concerned companies had a big aggregated market share on the already highly concentrated market for homogeneous products.

33. Having adopted the Principles of co-operation between companies - shareholders in SOS Zvolen, **subject-matter of the case represented horizontal agreement restricting competition**. The above three companies had significantly strengthened their power on the relevant market, which put them into even more advantageous position compared to the third parties - competitors, customers - and consequently affected their future conduct.

34. Based on all facts of the case, the Authority decided that Principles of co-operation among companies - shareholders in SOS Zvolen adopted through the board of directors's resolution met the criteria for a declaration of competition restriction. The respective agreement was therefore prohibited and declared void.

- *Abuse of Dominant Position*

35. Pursuant to Article 7 of the Competition Protection Act, a dominant position on the market is held by one entrepreneur or by several entrepreneurs, who are not subjected to substantial competition or, as a result of their economic power, they can behave independently from other entrepreneurs and consumers and can therefore restrict competition. In this case, by restrictions to economic competition, we mean abuse of dominant position on the market. An abuse of dominance on the market is in particular : - direct or indirect enforcement of disproportionate conditions in contracts; - restrictions on production, sale, research & development of goods and services to the detriment of consumers; - application of different conditions for equal or comparable transactions to individual entrepreneurs on the market, especially if it constitutes a competitive disadvantage; - making the conclusion of the contract conditional upon another party's acceptance concerning additional conditions, while those conditions are clearly unrelated to the contractual subject matter both in substance and in customary commercial practice.

1(c) Case Summary - Abuse of Dominant Position

36. In 1998, **58 cases** were investigated in total (1997 - 27 cases, 1996 - 26 cases, 1995 - 77 cases). Out of those were :

- 16 decisions issued in the given subject-matter (case-related decisions);

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- 33 procedural decisions;
- 20 cases not completed at the end of 1998.

37. In eight cases parties to the administrative proceedings filed an appeal against the first-degree decisions. In one case the first-degree body decided about the appeal on the basis of article 57 (1) of the Act No.71/1967 Coll. on Administrative Proceedings (self-remedy).

38. The most frequent forms of abuse of dominance were those connected with enforcement of differentiated trade conditions in case of identical supplies and inappropriate conditions enforced through business contracts.

1(d) Description of Significant Cases - Abuse of Dominant Position

Hobyt Bratislava and Zapadoslovenske energeticke zavody, s.p. Bratislava

39. Based on the petition filed by HOBYT Bratislava (hereinafter only HOBYT), the Antimonopoly Office of the Slovak Republic started proceedings against Zapadoslovenske energeticke zavody, s.p. Bratislava (energy company, hereinafter only ZSE). The Office came to a justified suspicion that actions taken by ZSE (and consisting in permanent threats towards HOBYT regarding total disconnection from the energy supplies) had a character of abuse of dominant position. The respective petition filed by HOBYT can be characterised as follows:

40. HOBYT closed an agreement with ZSE on payments for electricity supplies. However, after two years of contractual relations, ZSE informed HOBYT, that C24 price rate (more advantageous rate) had been incorrectly incorporated in the original agreement, because it did not meet requirements for energy consumption measurement in case of HOBYT. In other words, according to ZSE, HOBYT had not had a right to use the advantageous rate. Based on the above, ZSE required that HOBYT should recalculate all invoices for 1995 and 1996, adhering to the C 13 price rate (newly-determined rate). Since HOBYT did not agree with the re-invoicing, ZSE announced that if the company failed to pay extra SKK 593,442 (new rate), it would mean a disconnection from the electricity supplies.

41. In its opinion, HOBYT expressed the view that ZSE, as a party to the agreement, had tried to enforce additional financial requirements despite the fact that the other party to the agreement (HOBYT) did not agree to change of the contractual wording. For this reason, the original agreement closed between the two companies was legally fully valid and ZSE had no right to request re-invoicing.

42. The Antimonopoly Office launched further investigation focused on whether or not ZSE actually abused its dominant position. During the investigation, it was found that HOBYT took over the building (energy supplies to which were in the centre of that dispute) from the company GUMON Bratislava. **At the time of signing the agreement with ZSE, HOBYT announced only its succession to the building and had not applied for a specific supplies price rate. In spite of this, ZSE closed a deal with HOBYT automatically at advantageous rate.**

43. According to commercial/technical conditions, the supplier shall submit new draft agreement on supply rates in case major changes have taken place with respect to some part of the agreement. ZSE, however, had not done so, and requested recalculation of all invoices on the basis of the **rate different from the originally agreed one, without ever proposing any changes in the contractual wording.** ZSE

company subsequently sent HOBYT another letter demanding recalculation of all 1995 and 1996 invoices and expressing a clear threat of disconnection, should HOBYT refuse to pay the new (higher) invoices. Despite the preliminary ruling issued by the Antimonopoly Office, by which it ordered ZSE to continue with supplies for HOBYT till the final decision was made, ZSE sent yet another letter to HOBYT, requesting re-invoicing under the threat of disconnection. **Energy supplies had not been cut only thanks to immediate intervention by the Antimonopoly Office of the Slovak Republic.**

44. Relevant product market had been defined as **electricity supplies** that were administered by ZSE through distribution network. Geographical market was determined as **distribution network on the territory of Bratislava and former Western Slovakia region, which is still administered by ZSE.** After overall evaluation, the Antimonopoly Office managed to prove that ZSE had a dominant position on that market.

45. The fact that requested recalculation of invoices for energy supplies was not dealt with (on the side of ZSE) by mutual agreement on amendments to contractual conditions valid for HOBYT or by using the existing judicial system, rather it was **done through threats** consisting in electricity supplies disconnection, had lead the Authority to conclusion labelling the above practice as one of the forms of abuse of dominant position within the meaning of the Act on Protection of Economic Competition.

46. For the purposes of law and in line with the subject matter related to abuse of dominance on the relevant market, a **threat** within the meaning of the law means a form of pressure conduct shown by a dominant entrepreneur which, in the absence of any justified legal reasons, leads to the direct or indirect enforcement of disproportionate conditions in contracts, abusing customer's dependency on the purchase of goods/services provided by the dominant entrepreneur. Such a conduct is contradictory to the binding rules and rules of fair competition and might result in a damage or harm caused to another entrepreneur or consumer.

47. Based upon proven facts, the Authority decided that steps taken by ZSE concerning permanent threats towards HOBYT and aimed at total disconnection from the energy supplies to the lodging house operated by HOBYT, showed signs of abuse of dominant position on the relevant market. A fine worth SKK 24,000,000 was imposed on ZSE by the Antimonopoly Office.

2. Concentrations

48. According to the relevant provisions of the Competition Protection Act, a concentration is defined as a process of economic combining through merger or amalgamation of two or more previously independent enterprises, or transfer of an enterprise to another entrepreneur or acquisition of control by one or more entrepreneurs over an enterprise or part thereof. The Act specifies conditions meeting of which means that a concentration is subject to control procedures conducted by the Authority. The Authority may either fully approve the concentration or approve with certain additional time and subject matter conditions to be met or prohibit the transaction. The Authority shall prohibit the concentration if it creates or strengthens a dominant position on the market unless the participants prove that the harm resulting from the restriction on competition will be outweighed by overall economic advantages of the concentration (article 10(2) of the Act on Protection of Economic Competition).

49. It is within the powers of the Antimonopoly Office of SR to review concentrations with involvement of foreign entrepreneurs, provided conditions are met pursuant to the Act No.188/1994 Coll.

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on Protection of Economic Competition, as amended by the Act No.240/1998 Coll. on Agriculture, Changes in, or Amendments to, other laws.

2(a) *Case Summary - Concentrations*

50. During the evaluated period of 1998, **97 cases** were investigated within administrative proceedings (1997 - 68 cases, 1996 - 40 cases, 1995 - 25 cases). Out of those were:

- 49 decisions issued in the given subject-matter (case-related decisions);
- 51 procedural decisions;
- 20 cases not completed at the end of 1998.

51. In eleven cases, parties to the administrative proceedings filed an appeal against the first-degree decisions.

2(b) *Description of Significant Cases - Concentrations*

Wienerberger Slovenske tehelne. s.r.o. Zlate Moravce - Brick Slovakia,a.s., Bratislava

52. The company Wienerberger Slovenske tehelne. s.r.o. Zlate Moravce (brick-making, hereinafter only Wienerberger Slovenske tehelne) bought in 1998 100 percent shares of Brick Slovakia, a.s. Bratislava (hereinafter only Brick), by which a concentration took place pursuant to the Act No.188/1994 Coll. on Protection of Economic Competition (mentioned below as „the Act“). This concentration had met both notification criteria laid down in the Act.

53. Wienerberger Slovenské tehelne, a company that gained control over Brick, is a part of multinational concern WIENERBERGER Baustoffindustrie AG, Wien, Austria (hereinafter only WIENERBERGER Baustoffindustrie AG). In the Slovak Republic, WIENERBERGER Baustoffindustrie AG is in a position of majority owner of Wienerberger Slovenske tehelne and also controls another company producing concrete roofing material.

54. In analysing competitive environment, the Authority examined impacts of the respective concentration on **two relevant product markets - market for kiln walling materials and broader market for all kinds of walling materials.**

55. Kiln walling materials have a wide variety of usage ways in all types construction, especially then in vertical structures (main walls, dividers, filling walls). There is a competitive product on the market that is used instead of kiln bricks, namely non-kiln walling products. From the viewpoint of traditional usage in the Slovak Republic, kiln walling materials have a longer history in the country, reflecting long-term preferences shown by customers. With respect to production of the above two types of materials and definition of relevant markets, kiln and non-kiln walling materials can not be mutually interchangeable and as such can not be compared against one another.

56. Based on submitted the documents and investigation results, there had been 13 decisive market players identified on the market for kiln walling products. Taking into account a sharp fall in investments

made in the whole economy, utilisation rate at available brick making facilities was only 26 percent in 1994.

57. The Authority examined impacts of the concentration on the market for kiln walling products, as well as on the market for all walling products.

58. It turned out from the collected investigation results, that the share of Wienerberger Slovenske tehelne on total available brick-making facilities in the Slovak Republic reached 22.96 percent (kiln products only.) Share of the Brick company which owns manufacture in Boleraz, was 7.75 percent. After-concentration combined market share therefore totalled 30.7 percent. Taking into account imports of kiln walling materials realised by the domestic producers on the Slovak market in 1997, Wienerberger Slovenske tehelne had 30.89 percent of the market, while Brick attracted 5.26 percent. The combined share of Wienerberger Slovenske tehelne increased to 36.14 percent after the concentration. As for the number of bricks kiln in the respective year, Wienerberger Slovenske tehelne had 30.39 percent of the market and Brick's share was 6.62 percent. Wienerbergers's total market share after the take-over rose to 37.01 percent.

59. Investigation results have shown that Wienerberger's production capacities represented 8.84 percent of total available production facilities for **both** kiln and non-kiln walling materials in the Slovak Republic. The Brick's company share on the same market was 2.98 percent. This made total share go up to 11.83 percent of all facilities producing kiln and non-kiln walling products.

60. It also appeared from the Authority's investigation of both kiln and non-kiln product supplies realised by producers in the Slovak Republic that the share of Wienerberger Slovenske tehelne on the market for kiln and non-kiln walling materials (imports of both types included) reached 15.58 percent, while Brick's share represented 2.65 percent of the broadly-defined market. The combined share of Wienerberger Slovenske tehelne on such market increased to 18.23 percent after the concentration. As for the number of kiln and non-kiln bricks made in the respective year, Wienerberger Slovenske tehelne had 12.68 percent of the market and Brick's share was 2.76 percent. After the take-over, Wienerbergers's total market share on the market for kiln and non-kiln walling materials rose to 15.44 percent.

61. Based upon the above facts and further analyses of both relevant markets, the Authority has come to a conclusion that within the meaning of the Act, the concentration neither created nor strengthened the dominant position of Wienerberger Slovenske tehelne on the Slovak market. This held true for supplies of kiln walling product as well as for overall supplies of all types walling materials.

62. Thus, concentration did not have a negative impact on competition on any of the two markets and was therefore judged as not being contrary to the law. The Authority issued a decision giving a green light to the concentration.

Control Gained over Kooperativa Insurance Company

63. The Austria-based company Wiener Stadtische Versicherung AG, Wien (hereinafter only Wiener Stadtische) filed a notification with the Antimonopoly Office about purchase of the shares of Kooperativa insurance company. Having purchased the shares, Wiener Stadtische had got control over Kooperativa.

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64. Wiener Stadtische is an Austrian company operating in all areas of life and asset insurance business. It also provides services of health care insurance. Amongst 78 companies in the domestic market, it has achieved a position of market leader.

65. Kooperativa is a shareholding company, functioning as a universal banking institution on the markets of life and asset insurance. It has 54 branch offices throughout Slovakia. 31 percent of shares were (at the time) held by the Slovak Insurance Co., a.s. Bratislava.

66. In the respective case, concentration took place as a result of control gained through the share purchase and realised by Wiener Stadtische in Kooperativa. Concentration was formally governed by purchase agreements. According to the agreements, the Slovak Insurance Co., a.s. Bratislava (hereinafter only Slovak Insurance Co.) - the seller – made a commitment to sell its stake in Kooperativa to the buyer (Wiener Stadtische) who in turn was obligated to pay the agreed price. Having consummated that transaction, Wiener Stadtische increased its stake in Kooperativa from 21.16 percent to 52.17 percent which pursuant to valid articles of association meant a control over the company.

67. From the submitted documents, it was obvious that the above 52.17 percent stake is sufficient for the Wiener Stadtische to exert a control over Kooperativa. Combined turnover of the parties to concentration was SKK 52.66bn which was many times more than the threshold set out in the Act. The concentration was therefore subject to review by the Authority.

68. In defining relevant product market, the Authority built on the fact that both parties to concentration were universal banking institutions operating on the market for life and asset insurance, as further structured within the meaning of the Act No.24/1991 Coll. On Insurance, as amended by later regulations. That is why the Authority analysed the impact of concentration on the competition intensity of the **relevant market for life and asset insurance**.

69. At the time of investigation, there were 22 insurance companies and one insurance association on the market while in 1996 it was only 18 companies. In 1996, the Slovak Insurance Co. was the market leader with 68 percent of the insurance market. Kooperativa ranked second, having a market share of 7.5 percent.

70. Shares acquired through the purchase by Wiener Stadtische was bought directly from the Slovak Insurance Co. which meant lowering its market power (as a leader on the insurance market) and liquidation of its stake in Kooperativa company. From the viewpoint of competition protection, that step was considered positive. The purchase did not result in the establishment of a new market player in the life and asset insurance sector but it, however, strengthened the position of the No.2 (life insurance) and No.3 (asset insurance), respectively, on the market in 1996 (third position was recorded for the first half of 1997). Along with Allianz, Kooperativa represented the most serious competitors for Slovak Insurance Co., while their share (Allianz and Kooperativa) on the life and asset insurance market only slightly exceeded seven percent. Taking into account dominant position of the Slovak Insurance Co., the Authority viewed a loss of its stake in Kooperativa as a highly positive development. Within the dynamic growth of the Slovak insurance market since 1990, long-term capital investments proved to have been of highest importance. With respect to the fact that life insurance represented only 26 percent of the total insurance volumes, the Slovak market had a significant growth potential in this field. The developed European countries show 40-60 percent ratios.

71. On the basis of the above, the Authority stated that the respective concentration **had not created nor strengthened the dominant position** of Kooperativa on the insurance market or on the respective

partial markets common for both parties to the concentration. At the same time, the concentration did not create any new barriers to market entry. By the concentration, competition intensity would be even increased on all concerned market through strengthening of the company with a low market share.

72. The Authority further stated that in this case there was no restrictive threat to competition in the insurance sector as a whole, neither was there any threat to the respective relevant partial markets. Therefore, the Authority approved the concentration.

3. Fines

73. In keeping with the Competition Protection Act, the Authority is entitled to fine entrepreneurs for breaching duties stipulated by this Act according to its importance up to ten per cent of their turnover recorder in the previous accounting period. If it is impossible to calculate a turnover, the fine may reach SKK 10mn (appr. USD 300 000). If it has been proved that the entrepreneur made profit through breaching a duty stipulated by the Act, the fine shall be at least equal to this profit.

74. In 1998 the Authority imposed fines in the total amount of SKK 14 142 000 (USD 372 579) by means of its valid decisions. During the evaluated period of time, the Authority collected or exacted fines and penalties worth SKK 13 387 000 (USD 352 689) out of which fines represented SKK 12 957 000 (USD 341 360).

75. Apart from the above sums, administrative fees amounting to SKK 1 901 000 were transferred to the tax authorities.

III. The role of the antimonopoly office of the Slovak Republic in formulation and practical implementation of other relevant policies

76. In competition policy enforcement, the Antimonopoly Office of the Slovak Republic, as a central state administrative body with exclusive powers in the area of antitrust entrusted to it by the Act No.188/1994 Coll. on Protection of Economic Competition, as amended by the Act No.240/1998 Coll. on Agriculture, builds upon basic principles of competition, shaping competitive environment in a way securing balance of partial policies within the framework of overall economic development of the Slovak Republic.

77. From the viewpoint of protection and support of competition, the Authority monitors implementation of trade policy tools applied by the government of the Slovak Republic. It has been involved in a constant dialogue with the experts from the Ministry of Economy of the Slovak Republic, contributing by numerous comments and consultancy outcomes to the preparation of strategic ministerial documents. At the same time, the Authority closely monitors preparation of the measures aimed at protection of the domestic market and takes part in its realisation in a way ensuring consistency with the relevant regulations of the World Trade Organisation.

78. Decisions issued by municipalities and state administrative bodies can influence competition environment significantly. These bodies must not, as stipulated by the Article 18 of the Competition Protection Act, restrict competition through their own actions. If state bodies or municipalities have restricted competition by their decision, the Authority requested that remedial measures be taken.

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79. In 1998, the Authority, dealt with 34 such cases of violation of Competition Protection Act, out of which in ten cases remedies were requested. In most cases, municipalities granted discriminatory exemptions to certain entrepreneurs. Up until the end of the year, nine remedies were introduced as requested by the Antimonopoly Office of the Slovak Republic.

IV. New reports and studies on competition policy

80. During the last year, an important event was hosted by the Authority, namely the Fourth Conference on Competition of Associated Countries of Central and Eastern Europe and EC Commission, held in Bratislava on May 24-26 1998. The importance of this conference was underlined by the presence of Mr. Alexander Schaub, director general at the EC Commission's DG IV, and Mr. Jonathan Faull, international affairs director of the DG IV. His presentation was focused on the need for co-operation between competition protection bodies from the concerned countries, issues of bilateral agreements and multilateral co-operation, pre-accession strategy and tasks to be performed by national competition authorities within the process of the EU enlargement.

81. In 1998, several employees of the Authority took part in lecturing outside the Antimonopoly Office of SR. It has become a regular tradition to prepare presentations of the Authority's experts at the Law School of Bratislava Comenius University which was joined in 1998 by other universities, high schools and commercial academies.

82. In conjunction with the introduction of greater transparency into activities of the Antimonopoly Office, its chairman adopted several major measures at the end of 1998. First of them was the principle of regular information provided to the public through daily press and related to particular activities, administrative proceedings launched and decisions issued after January 1 1999. At the same time, the relevant information will be made available through the Authority's Internet page in both English and Slovak versions. The second major measure concerns full availability of valid rulings and decisions for all those interested, including the copy-making service.

83. As a part of competition advocacy programme, employees of the Antimonopoly Office have published numerous educational articles in both daily and expert press. What we considered especially important was the policy, pursuant to which all cases completed by a valid decision of the Authority were made available for the public

84. Within the framework of propagation of the activities, the Authority has held several press conferences and employees gave individual interviews for media (TV, radio, press).

85. The Antimonopoly Office issues its annual report in both Slovak and English language. The report describes activities and proceedings completed in the respective year.

V. Resources of the Antimonopoly Office of the Slovak Republic

<i>I. Resources overall:</i>	1998	1997
a) annual budget	26 552 000 SKK 699 528 USD	26 092 000 SKK 687 409 USD

* The Act No. 303/1995 Coll. on Budgetary Rules as amended enables the state administrative bodies imposing and exacting fines to utilise a part of these fines for coverage of its expenditures:

2 631 000 SKK
69 327 USD

2 878 000 SKK
75 823 USD

b) number of employees

- economists	26	25
- lawyers	13	15
- other professionals	12	10
- support staff	21	22
-all staff combined	72	72

2. *Human resources applied to:*

a) enforcement against anticompetitive practices and control of concentrations	34
b) advocacy efforts	8

3. *Period covered by the above information:* 1998