

SLOVAK REPUBLIC

2001

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Executive summary

1. Slovak competition law went through significant changes in 2001. A new Act on Protection of Competition and two new notices setting down the details on calculation of turnover and on conditions of notification of concentration entered into force in May 2001. During the year the Antimonopoly Office of the Slovak Republic also worked on the adoption of some secondary EU legislation into our own legal system, particularly regulations on block exemptions and on simplified procedure in concentration assessment.

2. The Office paid a great attention to the application and enforcement of the competition law, focused on serious violations of competition rules, namely in the area of abuse of a dominant position in the telecommunications and in the production and distribution of fuels. For the first time it dealt with certain practices of abuse of a dominant position, such as predatory prices, loyalty rebates, or refusal of access to local telecommunication circuits.

3. In addition to control of concentrations and recovery for anti-competitive practices, the Office got actively involved in drafting governmental and economy policies and through its comments the Office proposed alternative solutions to these issues intended not to be restrictive in their effect and to promote competition.

I. Changes to Competition Law and Policies

1. Summary of new legal provisions of competition law

4. A new Act No. 136/2001 Coll. on Protection of Competition entered into force on 1 May 2001. The need to prepare a new act emerged from the necessity to harmonize Slovak competition law with the *acquis communautaire* within the approximation process, as well as from Office's experience with the application of the preceding Act on the Protection of Economic Competition. The Office prepared the new act with the view of adopting the *acquis communautaire* from the area of competition to the greatest possible extent and simultaneously it adjusted those provision of the Act which application had been problematic either for undertakings or the Office.

5. As for the agreements restricting competition, the new act, alike the preceding one, adjusts the *de minimis* doctrine, the purpose of which is to prevent assessments of agreements restricting competition having negligible impact on the competition in the relevant market. The new act increased the percentage threshold for the share of parties to agreements restricting competition, which indicates the importance of agreement's impact on the competition from 5% to 10%, i.e. if the combined share of parties to such an agreement in the relevant market is less than 10%, the agreement restricting competition is exempted from the ban. However, the *de minimis* doctrine is not enforced to the agreements containing cartel arrangements as well as to the restriction of competition by means of the cumulative effect of agreements, which contain a similar type of competition restrictions and which lead to similar effects in the relevant market, and their combined share exceeds 10% of the total shares for concerned goods in the relevant market.

6. The list of practices deemed to be restricting competition was extended in the new act to include collusive behaviour of undertakings resulting in undertakings co-ordinating their bids in the process of public procurement.

7. The possibility for the undertakings to request the Office to issue its standpoint on a draft of an agreement restricting competition is also new. Despite Office's standpoint not being binding, the said possibility gives undertakings an opportunity to consider concluding an agreement that, if entered into force, would be deemed by the Office to be an agreement restricting competition and therefore violating the law.

8. The act also introduced a so called "leniency programme" for imposing fines to undertakings that were parties to the agreement restricting competition, within the meaning of which the Office will not impose any fines to an undertaking or decrease the fine by at least 75% of the respective fine that would otherwise have been imposed, if the undertaking had not met at the same time the conditions outlined in the act, i.e. the undertaking was a party to the agreement restricting competition, was the first who adduced decisive evidence of the existence of the agreement restricting competition, put an end to undertaking's involvement in the agreement restricting competition no later than at the time at which the undertaking disclosed the agreement to the Office, did not compel another undertaking to participate in the agreement restricting competition and did not act as an initiator of conclusion of the agreement restricting competition, provided the Office with all the relevant information and maintained continuous co-operation throughout the investigation, has not gained any material benefit resulting from the breach of provisions of this act. The purpose of this programme is to motivate undertakings to put an end to their involvement in any agreement restricting competition and provide the Office with evidence of the existence of such an agreement as soon as possible.

9. In the area of abuse of a dominant position the new act extends the demonstrative list of cases that constitute abuse of a dominant position. Also the threat of restriction of the production, sale or technical development of goods to the detriment of users, as well as temporary abuse of economic power in order to exclude competition, i.e. so called "predatory behaviour" became the practice of abuse of a dominant position. Another new form of abuse of a dominant position adjusted by the act is abuse of a dominant position by refusing the access to an essential facility, although the said practice had been penalised even under the former act. Essential facility, as referred to in this act, is a location, right, facility, infrastructure or its part combined with services related to such infrastructure which have auxiliary nature to economical activities in a market that is separate, but relating to the market in which the owner or administrator of the essential facility operates and the duplicate creation of such facility is objectively impossible or unsubstantiated by any new competitor. Access to the essential facility may be refused, provided that it is justified by qualified criteria outlined in the act. The conditions determined by the act provide for the access to the essential facility to be granted on a non-discriminative basis.

10. Another change related to abuse of a dominant position is that the new act left out the assumption that unless it proves otherwise, the undertaking should hold a dominant position in the market whenever its market share is 40 % or more. Although the said provision provided a simple way of determining whether the undertaking was or was not in a dominant position, it was often omitted that this limit outlined by the act served only as an assumption for determining a dominant position in the market, as the actual market share itself does not give a picture of undertaking's sufficient economical strength yet.

11. In the area of concentration, the new act increased the thresholds of turnover of parties to concentration or their market share, below which such a concentration is not subject to control by the Office. The purpose of this increase is to allow the Office to assess only concentrations with a substantial impact on the competition within the corresponding relevant markets.

12. Similarly as with agreements restricting competition, the new act allows undertakings to request the Office to issue its standpoint on the intention of a concentration and thus early enough consult various problems, which could possibly arise in the relation to the concentration.

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13. In compliance with the *acquis communautaire*, the new act introduced a ban for parties to a concentration to exercise the rights and fulfil obligations resulting from the arisen concentration until a valid concentration-related decision has come into force – so called “concentration suspension”. At the same time, however, the undertaking may request the Office to grant an exemption from the said ban, if serious reasons for that exist.

14. The new act has modified powers of the Office in assessment of concentrations, giving it greater means for protection of competitive surroundings. Comparing the previous, there is a change that the Office will ban any concentration that creates or strengthens a dominant position, which may result in major barriers to effective competition in the relevant market. Assessment of a concentration creating or strengthening a dominant position in the market where the detriment to the competition is viewed against the overall benefits to the economy has been omitted. In concentration assessment the Office can also decide on imposing an obligation to pursue a remedy, including the division of the undertaking of the parties to the concentration.

15. One of the objectives of the new Act on Protection of Competition was to strengthen Office’s independence and decision making objectiveness by changing the way of creating the position of the Chairman of the Office who is appointed, on the basis of a proposal submitted by the Government, by the President of the SR for 5-year term of office. The act allows the same person to be appointed for only two consecutive office terms with the taxative reasoning of his/her recalling and establishes a new body – the Council of the Office. The Council is a collective body of the Office deciding on the appeal, prosecutor's protest, it reviews decisions apart from the appeal proceedings and it also decides on renewal of proceedings. The Council is composed of seven members – Chairman of the Office, Deputy Chairman and experienced experts with legal or economy background who work with the Office as externs.

2. *Other relevant measures*

16. To execute the new Act on Protection of the Competition the Antimonopoly Office of SR has issued two notices, which entered into force on 10 May, 2001. The first notice sets out details on calculation of turnover (Notice 167/2001 Coll.), which is one of the criteria on the basis of which a concentration either is, or is not subject to the control by the Office. The second notice sets out details on the conditions of notification of concentration (Notice 168/2001 Coll.) and lists in detail all basic data and information that the concentration notification should include.

3. *Government proposals for new legislation*

Amendment to the Act on Protection of Competition

17. An amendment to the Act on Protection of Competition started to be drafted in 2001 and is expected to come into force on 1 June 2002. This amendment is required to further harmonisation of the law of the Slovak Republic with the law European Union in the area of protection of competition.

18. The main purpose of the amendment is to transpose block exemptions for certain categories of agreements restricting competition into the Slovak legal system, particularly the following block exemptions:

- block exemption for agreements restricting competition of vertical nature;

- block exemption for agreements restricting competition in the area of distribution and maintaining of motor vehicles;
- block exemption for agreements restricting competition in technology provision;
- block exemption for agreements restricting competition in the area of specialization;
- block exemption for research and development agreements restricting competition;
- block exemption for agreements restricting competition in the insurance sector;
- block exemption for agreements restricting competition in the area of maritime transport.

19. The block exemptions will constitute a legal adjustment on the basis of which certain agreements restricting competition, subject to meeting thoroughly defined conditions will be automatically exempted from the ban without any obligation to notify them to the Office. The block exemptions will bring the undertakings a peace comparable to that of an individual exemption granted by the Office.

20. The amendment will also include adjustment on the application of simplified proceedings in the assessment of concentrations having negligible impact on the market. This legal adjustment will contribute to speeding up the proceedings at the Office as it allows to issue, in a reduced period of time, a simplified decision on concentration where it is apparent that they would not restrict competition.

State aid

21. The Office also participated in drafting an act on abolishment of the Office for State Aid and in adjusting the transfer of the state aid provision to the Antimonopoly Office. According to the mentioned, as of 6 May 2002 assessment, evaluation, approval, monitoring and record keeping of the state aid will extend Office's tasks.

II. Enforcement of Competition Laws and Policies

1. Agreements restricting competition

Statistics

22. In 2001 the Office assessed 39 cases of agreements restricting competition, a majority of which (31 cases) was assessed based on a notification related to a request for a negative clearance or an individual exemption. Having issued 24 decisions, in 8 cases the Office imposed a fine to parties of the agreement. Chemical and food-processing industries were the sectors with the highest number of notified agreements in 2001. Next year the Office intends to deal more actively with agreements restricting competition and to focus on the most serious anti-competitive practices.

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Description of significant cases

Distribution contracts (OMV Slovensko and FREYTAG-BERNDT)

23. The Office imposed a fine in the amount of SKK 8 million (183 908 EUR) to the undertaking OMV Slovensko for concluding a contract on intermediation of goods with the undertaking FREYTAG-BERNDT – a supplier of cartographic products such as maps, atlases, globes and tourist guides. Within the administrative proceedings the Office thoroughly analysed individual provisions of the contract on possible violation of law and found out that the contract contained provisions which in their nature constituted an agreement restricting competition.

24. FREYTAG-BERNDT is an undertaking interested in sales of cartographic products which can be sold in a filling station network. According to the contract in question, the task of OMV was to mediate purchasers of contractual goods to FREYTAG-BERNDT, which were in a leasing or agency relation with OMV. In its investigation the Office found out that the contract contained provisions pursuant to which the prices for which FREYTAG-BERNDT was to sell cartographic products to its purchasers were subject to approval by OMV.

25. In Office's opinion the subjected contract arrangement restricted competition resulting in one of the substantial negative impacts of the agreement restricting competition to the market, where the non-existence of price competition led to high retail prices of cartographic products sold to end users at OMV filling stations compared to prices in other filling stations.

26. Similarly, the contract contained provisions on the basis of which OMV permitted miscellaneous goods to be sold at OMV filling stations leased to third undertakings, decided which goods would be approved for selling at the filling stations and bound the purchaser not to purchase goods from other suppliers within the validity of the said contract. The contract constituted competition restrictions for third parties, i.e. for other suppliers of goods who were capable of supplying goods to the filling stations, and based on that the Office prohibited the subjected provisions.

2. Abuse of a dominant position

Statistics

27. In 2001 the Office assessed 26 cases in the matter of abuse of a dominant position in a relevant market, within which it issued 17 decisions. The most frequently assessed practice of dominants in 2001 was the application of different conditions in identical or comparable fulfilment against the individual undertakings through which the respective undertakings were disadvantaged in the competition, i.e. the discrimination. For the first time the Office dealt with certain practices of abuse of a dominant position, such as predatory prices, loyalty rebates, or refusal of access to local telecommunication circuits.

Description of significant cases

Application of different conditions (Slovnaft)

28. The Office assessed a form of abuse of a dominant position by Slovnaft - a company holding a dominant position in the market of producer-to-wholesaler supplies of oil in the territory of SR. The abuse

of a dominant position in the relevant market by Slovnaft grounded on the application of different conditions of producer-to-wholesalers supplies of oil between Slovnaft's production plant in Bratislava and its commercial division in Horný Hričov.

29. Due to the decision of Slovnaft, 3H undertaking was not allowed to purchase oil from the plant in Bratislava and was redirected to the commercial division in Horný Hričov where the purchase price of oil was higher than that of the oil supplied by the plant in Bratislava. Decisive in this case was not the fact that the prices of oil in Horný Hričov were higher than those in the production plant, but the proved fact that several competitors of 3H were allowed to continue purchasing oil fuel for lower prices from the plant in Bratislava, as a result of which 3H was disadvantaged in the competition.

30. Based on the above, the Office decided that by application of different conditions to producer-to-wholesaler supplies of oil Slovnaft discriminated 3H against its competitors who were active in the same market and were allowed to continue purchasing oil from Slovnaft's plant in Bratislava. By such conduct Slovnaft disadvantaged 3H against its own commercial division in Horný Hričov that was active in the same relevant market as 3H and was 3H's direct competitor. The Supreme Court of SR also confirmed the decision in question.

Predatory behaviour, loyalty rebates

31. In 2001 the Office dealt with a practice of possible predatory behaviour of an undertaking in the relevant market of fuel retailing. The undertaking in question, given the characteristics of the relevant market, its position in this market, financial strength, possibility of cross-subsidizing, existence of a distribution network, access to sources and administrative barriers, held a dominant position.

32. The practice constituting abuse of a dominant position grounded on enforcement of such a pricing policy of the undertaking, under which retail prices of fuels sold in a filling station within the defined relevant market were set to target a specific competitor, possibly with an intention to push him out of the market.

33. This case of possible predatory behaviour included also loyalty rebates applied by this undertaking through a bonus system that contained conditional discounts on the price of fuels and was introduced to get customers in favour of the undertaking in the dominant position. In the view of competition, it is essential to deal with loyalty rebates or support discounts granted by dominant undertakings on the grounds other than cost savings and creating a system that discourages customers from purchasing competing goods, which may lead to a substantial part of the market being closed for the competitors. Despite the fact that the assessed undertaking ceased to exist, the Office continues investigating the case.

Application of different conditions, refusal of access to local telecommunication circuits (Slovak Telecommunications)

34. In the period under consideration the Office assessed and decided in the matter of abuse of a dominant position by Slovak Telecommunications. The analysis of actions taken by this undertaking as the lessor of digital circuits proved that the undertaking applied different pricing conditions in providing "Interconnect" and "Access" services (as part of one digital circuit) to end users using internet services of the Slovak Telecommunications compared to end users using internet services of other internet providers.

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35. The Office concluded that in certain months the Slovak Telecommunications as the lessor of digital circuits invoiced different prices for a standard digital circuit to different internet users, where the prices invoiced to internet users using ST's services were lower than those invoiced to internet users of other internet providers.

36. Within the proceedings in question, the Office also dealt with a refusal to provide access to a local circuit – essential facility, as the refusal to lease local circuits to internet users resulted in restriction and exclusion of competition in the market of telecommunication services forming a secondary internet market.

37. In addition, Slovak Telecommunications arbitrarily changed the local circuit lease service by its prequalification to another, much more expensive service without any changes to technical, technological and qualitative parameters of the service in question and without any additional financial or technological inputs. By not subscribing to this new service, users exposed themselves to a risk of Slovak Telecommunication fitting a frequency filter to their leased local circuits, thus limiting the quality of data transfer on the expense of the existing internet service end users. It was the installation of frequency filters that aggrieved the relevant market of local circuit lease by restricting competition.

38. Such activities of the Slovak Telecommunications, holding a dominant position in the relevant market of local circuit lease, where there is no competition directly affecting the competition intensity in the relevant market of data services (internet) provision, where the ST is active in, is abuse of a dominant position.

Consumers' complaints – cable television

39. In the course of 2001 the Office received several consumers' complaints against undertakings providing television and radio broadcast retransmission services by means of cable network. Consumers' complaints contained mainly objections against the application of inappropriate prices for the services provided. The complaints in question concerned an area where prices for the provision of services had been regulated by the respective regulator and therefore to investigate whether the undertaking had violated the pricing discipline, i.e. whether the price for the provision of television and radio broadcast retransmission services by means of a cable network had been appropriate was not within Office's powers. In line with the above, the said consumers' complaints against the activities of "cable TV" providers which might have led to the restriction of consumer rights were redirected to the Telecommunication Office of SR, the task of which is to inspect the observance of duties and conditions set out in the Act on Telecommunications. Pursuant to this act, the regulation and inspection of telecommunication service providers and telecommunication network operators was entrusted to this regulatory body, the task of which is to create conditions for forming and maintaining competition environment in the telecommunications market, as well as to assure the fulfilment of requirements for carrying out telecommunications activities.

3. Mergers and acquisitions

Statistics

40. In 2001 the Office decided on 87 concentrations. Most of the assessed concentrations, as much as 68 %, were horizontal concentrations, 18 % were conglomerate concentrations and at least 14 % were vertical concentrations. In most of the assessed concentrations there was a foreign undertaking involved as a party to the concentration. As much as 46 % of assessed concentrations were concentrations of foreign

undertakings, i.e. concentrations of foreign origin which, however, had had some impact on the market in the Slovak Republic and therefore were notified to the Office. They were mostly the concentrations of strong multinational undertakings, especially from mechanical engineering, electrotechnical engineering and chemical industry. Approximately 40 % of assessed concentrations were transactions of foreign investors entering Slovak undertakings. These concentrations had taken place especially in the dairy industry and in services and banking sectors. The least number of assessed concentrations were the concentrations between Slovak undertakings. There were only 14 % of such concentrations and most of them emerged in the area of publishing and distribution of press.

41. As none of the concentrations assessed by the Office constituted a risk of creating any substantial effective obstacles to competition, the Office approved all assessed concentrations.

Description of significant cases

42. In the area of concentrations one could notice an increasing trend in the number of concentrations in services area – namely in banking and insurance services, but as well in leasing, advertisement, marketing, sales of media space, TV and radio broadcast retransmission, telecommunication services and internet services. As its practical experience with concentrations in this type of industries had been limited, the Office thoroughly dealt with the concentrations, especially with respect to the determination of relevant markets and factors to be taken into consideration in the assessment of such dynamically developing service sectors.

III. The role of competition authorities in the formulation and implementation of other policies

43. In addition to sanctioning anti-competitive practices by means of abuse of a dominant position in the market, by cartel agreements and monitoring market structures by means of concentration inspections, the Antimonopoly Office's duty is also to monitor and call for adherence to and application of competition principles in the process of drafting policies and the legal framework of our community.

44. In the course of 2001 the Office therefore got actively involved in the drafting of governmental and economy policies and through its comments the Office proposed alternative solutions to these issues intended not to be restrictive in their effect and to promote competition.

45. The Office was actively involved in the transformation process of the Slovak Post – a joined stock company in 100 % ownership of the state and a dominant provider of post services, and supported the liberalisation in the field of postal services. In the area of agriculture and food processing the Office prevented the market environment from being deformed by fixing minimum prices of agricultural products for trading in the home trade. The Office also prevented discrimination measures from being implemented in the field of alcohol production and trade and dealt with forest management privatisation issues. It promoted incorporation of competition principles into the tax policy and compulsory medical insurance system.

46. The Office also assisted in establishing independent regulatory bodies in the area of natural monopolies (Office for Regulation of Network Industries, Telecommunications Office, Postal Authority) and made all efforts to implement and enforce competition principles in these areas.

47. Within the privatisation process, which has not been finished yet in SR, the Office emitted its opinions on privatisation of individual state undertakings. Through its standpoints the Office warned of possible anti-competition effects that the privatisation could have given rise to. The Office also monitored

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and commented on the privatisation methods whenever they were found discriminatory or created unequal conditions for different parties interested in the privatisation.

IV. Resources

Annual budget

	2001		Change
Total expenses	32 836 000 Sk	692 742,6 USD	4 118 000 Sk

Number of employees

	2000	2001
Economists	25	29
Lawyers	13	10
Other experts	15	14
Other employees	13	9
Total	66	62

V. Summaries of new reports and studies on competition policy issues

48. The trade environment in Slovakia has changed significantly recently. Resolute entry and expansion of multinational business corporations – trade chains, brought about structural changes to the retail and wholesale markets, as well as to the market of suppliers to retail chains, which invoked a strong reaction of the subjects concerned. As more and more voices called for the introduction of a legal regulation of further activities of the trade chains in the market, the Antimonopoly Office elaborated an analysis in which it took a complex evaluation and assessment of the issue and recommended the Government of SR not to carry out any regulatory measures in the retail business.