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THE INTERFACE BETWEEN COMPETITION AND CONSUMER POLICIES

Contribution from the Slovak Republic

-- Session IV --

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-- Slovak Republic --

1. Introduction

1. Competition policy and consumer policy are separated both institutionally and also legislatively in the Slovak Republic. Competition policy is adjusted by independent act and its performance lies within authority of the Antimonopoly Office of SR. Consumer policy is considerably fragmented, adjusted by many independent acts and tens of institutions deal with particular performance of consumer protection.

2. Competition policy

2. Enforcement of competition law lies within authority of the Antimonopoly Office of the Slovak Republic (hereinafter only “the Office”) and is adjusted by the Act No. 136/2001 Coll. on Protection of Competition. Protection of competition against its restriction and creation of conditions for its development to support competition development in favour of consumers are the aim of this Act.

3. The Act distinguishes two forms of non-permitted competition restriction, which the Office punishes, namely agreements restricting competition and abuse of a dominant position. In these two areas proceedings is initiated on a basis of complaints or own incentive and if the breach of the Act is proved the Office issues decisions, in which it requires ending illegal situation and it is also entitled to impose a fine on entrepreneurs breaching the Act.

4. Control of concentrations is another basic area of Office’s activities. The Office monitors, whether concentration does not create or strengthen a dominant position, result of which would be significant barriers of effective competition in relevant market.

5. The Slovak Republic as member of the European Union applies also relevant legislation of EU in given cases.

3. Consumer policy

6. Differently from competition policy, many institutions deal with consumer policy in the Slovak Republic and many acts relate directly or indirectly to this area.

7. Main competences in the area of consumer protection lies within authorisation of the Ministry of Economy, which coordinates activities of all institutions in this area and fulfils many executive, conceptual and strategic functions.

8. Particular performance of policy of consumer protection relates to many institutions. Slovak Trade Inspection, which performs state control of sale of products and provision of services to consumers apart from foodstuff, tobacco and cosmetic products is one of the most important and is key institution of consumer protection from many aspects in Slovakia.

9. Many competencies of consumer protection are divided by sectors. For example, State Veterinary and Food Administration is competent in consumer protection in the area of some foodstuff; many competences in health protection in the area of cosmetic products belong to the Office of Public Health Care; regulatory offices are competent in their industries, namely the Office for Regulation of Network Industries, Post Regulatory Office, Telecommunication Office, State Energy Inspection, State Institute for Drug Control, Slovak Inspection of Environment, etc.

10. Policy of consumer protection relates also to territorial self-administration authorities, which for example perform supervision over observance of consumers' rights in public marketplaces.

11. Consumer associations are special groups of subjects acting in the area of consumer protection. Provision of consultancy, legal protection, involving in international activities is their task and many of them have the right to represent consumers at courts and also in solving litigations in reclaiming proceedings. More than 40 of such associations are registered in Slovakia, although not all of them are active. Some of them are focused on consumption of particular products or services; others have been created for needs of particular region.

12. Legislative framework of consumer protection is similarly wide. Protection of consumer relates directly to some tens of acts in Slovakia. Here are some of them:

- Act on Consumer Protection,
- Government Regulation on General Safety of Products,
- Act on State Control of Internal Market in matters of Consumer Protection,
- Act on Liability on Damage Caused by Faulty Product,
- Act on Consumer Protection in Home Sale and Mail Order,
- Act on Advertising,
- Act on Consumer's Credits, etc.

4. Interface between consumer and competition policy in Slovakia

13. Consumer and also competition policies in the Slovak Republic have common goal – both of them are finally focused on reaching consumer welfare.

14. However, competition policy is specialised in consumer indirectly. As it arises from the Act on Protection of Competition, its aim is to protect competition with the goal to support economic development in favour of consumer. Thus the task of the Office is to ensure effective competition and functioning markets through prohibition of anticompetitive agreements and abuse of a dominant position and also non-approval of concentrations leading to creation of a dominant position. Competition environment leads to low prices, wider supply, innovations and etc., from which consumer benefits. Consumer's effect of competition policy implementation appears in middle-term or long-term horizon, it is not directly visible and is hardly measurable.

15. Consumer policy is focused on consumer more directly than competition policy, since consumer policy deals directly with relation supplier-consumer and covers the areas, which competition policy does not achieve, for example problems of products safety, misleading advertising cannot be solve only by ensurance of competitive environment.

16. Consumer policy in Slovakia faces also the problem that control bodies of this area deals with the relation consumer – entrepreneur, but they cannot entry the contractual relations between consumer and entrepreneur – these can be solved only by courts. However, due to the poor legal awareness and weak knowledge the consumers have low ability to protect their interests.

17. In spite of the fact that no significant conflict between consumer and competition policy has occurred in Slovakia so far, the competition authority and the authorities on consumer protection do not cooperate actively, mainly due to the considerable dilution and narrow specialisation of individual consumers' associations or other consumers' authorities. Changing this situation, better results in implementation of both policies could be reached to the benefit of consumer.

18. Area of liberal professions was one of the areas where the Office experienced the lack of cooperation with the authorities on consumer protection and where the mutual cooperation would indubitably contribute to better solution of situation to the benefit of consumers.

19. In 2005 and 2006 the Office reassessed the regulation in the area of liberal professions in the Slovak Republic. Liberal professions in SR, as in the most countries are more or less regulated, mainly in the area of prices, advertisement, determination of requirements to entry the market and regulation of behaviour of professional services providers. Regulation advocates present as a main argument that regulation assists to maintain the quality of professional services and it protects consumers from abuse, since it is a case of markets where a significant information asymmetry exists (also as a result of a fact that in some cases there are credence goods and many goods have low purchase frequency).

20. The Office does not contest the fact, that certain regulation in the market of professional services is needed, right for the purpose of consumers' protection. However, unreasoned, excessive and disproportionate regulation does not meet its goal for which it has been introduced, but vice versa, it has negative effects on consumer, since due to the elimination of competition among services providers the impulses for providers to work more effectively, to reduce prices, to increase quality or to offer more innovative services are reduced, what could lead to overall decrease of services' quality and to higher prices.

21. The Office concluded that, in most cases, reassessing liberal professions regulation in SR is unreasoned, that it hinders competition and it is not to the benefit of consumer, but rather to his/her detriment. In its request to abolish such an unneeded regulation the Office faced the conflict with chambers and regulators which mostly do not agree with regulation abolishing or change and in the interest of consumer protection they asked to maintain, possibly even extend or tighten it.

22. In spite of invitation the authorities on consumer protection did not become actively involved in discussion on liberal profession regulation and the main problem – regulation influence on consumer and the need to protect the consumer's interests – has been solved by other institutions.

23. The banking sector serves as another example where the Office substituted the authorities on consumer protection to the certain extent and where the involvement of the mentioned authorities would have been desirable.

24. In 2007 the Office dealt with bundling of some retail banking products. Though this problem could not have been solved as abuse of a dominant position or agreement restricting competition, the Office felt that such a conduct has negative impact on consumer and it entered the discussions with commercial banks. In cooperation with Narodna Banka Slovenska (National Bank of Slovakia) it reached that this practice by banks is finished towards consumers since the end of 2007.

25. The area of private enforcement of competition law is the last example where the Office sees the considerable space for cooperation between competition authority and authorities on consumer's protection.

26. There is no specific legislation to regulate private actions for damages for breach of competition law in the Slovak Republic. Consequently, general provisions governing actions for damages under civil

and commercial law will apply. And so far, there have been no actions for damages for breach of competition law filed or decided by the courts in the Slovak Republic.

27. The Office sees the considerable space for cooperation, as well as role of authorities on consumer protection mainly in the area of consumers' informing and in lodging complaints – bring forward cases where consumers are suffering because of anticompetitive behaviour.

28. In the view of the Office the issue of consumer protection is immensely important, so it is necessary to deal with it systematically with the participation of relevant authorities.