ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN THE SLOVAK REPUBLIC

-- 2006 --

This annual report is submitted by the Delegation of the Slovak Republic to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 6-7 June 2007.
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Executive Summary

1. In the past, there have been theoretical discussions about whether certain rules of the game for undertakings operating in the market economy will still be needed following the processes of liberalisation, deregulation, and privatisation. Practice has shown that the majority of countries in the world have adopted competition norms and established institutions entrusted with supervision over competition rules defining the conditions under which business entities compete with each other for customers.

2. This practice includes the development of competition policy, where an important aspect is the prevention of behaviours that weaken competition in markets. Another important aspect of competition policy is competition advocacy. In both cases, it pursues the same goals - to improve the effectiveness of allocation of resources and maximise benefits for consumers. These general goals can be achieved not only through competition policy, but also as a result of other economic policies influencing the business environment and business as such. However, based on the experiences of many countries of the world, it can be stated that an opinion prevails that there will be no sound economic development or increase in benefits for consumers without competition policy and its active application.

3. The Antimonopoly Office of the Slovak Republic (hereafter referred to as "AMO SR" or "the Office") is the guarantor of competition in markets. Reduction or total elimination of competition pressure may be caused by changes in the structure of markets, anticompetitive practices of undertakings or certain measures in the public sector. Therefore, the Office carries out preventative control of the structure of markets through checking large concentrations, intervenes against agreements restricting competition and abuse of a dominant position, and reacts to measures of state administration and self-administration bodies that distort competition (Article 39).

4. In 2006, the Office intervened in all of the aforementioned areas, prohibited concentrations that would have eliminated competition pressure in defined relevant markets, and imposed sanctions on undertakings for concluding cartel agreements and abuse of a dominant position. The Office imposed legally valid fines totalling SKK 2,395,495,000 (EUR 68,442,714). The Office has thus demonstrated that it does not intend to tolerate any violations of the law and sent a clear signal that competition rules must be observed. On the other hand, within the framework of competition advocacy, the Office endeavoured to explain the importance of the observance of the competition rules, in addition to reacting to draft laws and other regulations that deformed the conditions of competition.

5. In 2006, the Office issued 162 decisions, including 141 issued by first-instance bodies (Division of Agreements Restricting Competition, Division of Abuse of a Dominant Position, Division of Concentrations, and Legislative, Legal and European Affairs Division) and 21 issued by second-instance authorities (Table No. 1).
Table No 1
Decisions issued by the Office in 2005

<table>
<thead>
<tr>
<th>Number of decisions</th>
<th>Total</th>
<th>Concentrations</th>
<th>Abuse of a dominant position</th>
<th>Agreements restricting competition</th>
<th>Other (e.g. Article 39, fines for a failure to provide information thwarting of inspection, penalties...)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1&lt;sup&gt;st&lt;/sup&gt; instance</td>
<td>141</td>
<td>54</td>
<td>4</td>
<td>17</td>
<td>66</td>
</tr>
<tr>
<td>2&lt;sup&gt;nd&lt;/sup&gt; instance</td>
<td>21</td>
<td>0</td>
<td>8</td>
<td>3</td>
<td>10</td>
</tr>
<tr>
<td>Total</td>
<td>162</td>
<td>54</td>
<td>12</td>
<td>20</td>
<td>76</td>
</tr>
</tbody>
</table>

6. In order to improve its outputs in 2006, the Office continued to map risk sectors from the viewpoint of competition conditions. Office employees, allocated to 12 specialised working groups, prepared sector studies for the Office's internal use, focusing on the functioning of markets, possible competition risks, and the existing judicatures in the Slovak Republic, the European Union (hereafter referred to as "the EU"), and other countries.

7. In addition to the protection of competition, the Office was actively involved in competition advocacy. AMO SR, as an entity actively presenting its comments, commented new draft legislation and other measures in order to remove regulation barriers to entry into the market and market activities. In 2006, it presented important comments on nine cases with the aim of removing regulation barriers and other competition restrictions. In an effort to remain a trustworthy and transparent institution, the Office intensified communication with the public and provided information on all relevant outputs of the Office through press releases. The subject "Competition Policy" was taught at the Faculty of Social and Economic Sciences of Comenius University in Bratislava under the auspices of Office employees.

8. In 2006, Office employees participated in activities of several working groups within the European Union and took part in international competition forums within the framework of the International Competition Network (ICN), the European Competition Network (ECN), and the Organisation for Economic Cooperation and Development (OECD).

9. The visit of the Ukrainian Antimonopoly Office was aimed at the transfer of experiences gained during the accession negotiations with the EU.

10. In 2006, Office employees took part in the ECDL – European Computer Driving Licence training course in the area of computer skills and information technology, which was co-financed by the EU Social Fund.

11. In the future, the Office's priorities will be to improve its outputs, increase the expertise and qualifications of its employees, and strengthen its advocacy activities. The public still suffers from a certain deficit regarding the knowledge of consumer rights and their enforcement in connection with the violation of competition rules. We also consider it necessary for the Office to more actively cooperate with courts in cases of violations of competition rules.

1. Changes to competition laws and policies, proposed or adopted

1.1 Summary of new legal provision of competition law and related legislation

12. During year 2006 there were no new amendment of competition legislation in the Slovak Republic.
2. Enforcement of competition laws and policies

2.1 Action against anticompetitive practices, including agreements and abuses of dominant positions

2.1.1 Agreements restricting competition - summary of activity

13. Doing business under the conditions of the market economy means competition where the winner is the entrepreneur who offers the best proportion between quality and price, which is beneficial to consumers. The stronger the competition among undertakings, the more profit goes to consumers in the form of low prices and higher quality. It may be sometimes more advantageous for undertakings, particularly in markets with certain specifics, to cooperate and coordinate their conduct than adopting independent decisions in an effort to find their place in the market. However, this reverses the logic of the market, with competitors becoming "friends" and consumers becoming "enemies," because this behaviour leads to higher prices, less innovation, and lower quality.

14. This is why agreements restricting competition are harmful and prohibited and competition authorities impose tough sanctions on undertakings that conclude such agreements. Entrepreneurs are aware that such coordinated behaviour is illegal, which is why they are trying to keep its existence secret, which makes it difficult to prove them. Therefore, the Office, the European Commission (hereafter referred to as "EC"), and other competition authorities abroad must have adequate powers to obtain evidence, for example, the powers to request information, carry out inspections, and secure evidence. "Policy of leniency" makes it possible not to impose or reduce a fine imposed on undertakings that provide key evidence to the Office and fulfil other legal conditions.

15. Certain types of agreements are particularly harmful to competition, which is why they are almost always prohibited. These include, for example, agreements on prices, reduction of production, division of markets, and coordination of bids in public procurement (hard core cartels). These agreements are concluded by undertakings with the aim of restricting competition between them and thus minimising market risks and maximising their profits at the expense of consumers. Coordination of bids in the process of public procurement results in the payment of higher prices from public funds than those generated by the market.

16. Anticompetitive behaviour may also be encouraged by the activities of chambers, unions, and other professional associations if they are directed at restricting or reducing the intensity of competition to the detriment of consumers.

17. In 2006, the Division of Agreements Restricting Competition carried out 41 general investigations. It conducted 24 administrative proceedings and issued 20 decisions in the first instance. The Division of Agreements Restricting Competition imposed fines totalling SKK 115,000 (EUR 3,286).

2.1.2 Agreements restricting competition - description of significant cases

Slovak Bakers' Association – agreement on coordinated conduct

18. Based on articles and reports published by the daily press at the beginning of 2006, which concerned the expected hikes in prices of bakery products, the Office launched an investigation in the relevant market of the production and sale of bakery products, focusing on the activities of the Business Association of Bakers, Pasta Makers, and Confectioners in the Slovak Republic (hereafter referred to as "the Bakers' Association" or "the Association").
19. Within the investigation, the Office inspected the premises of the Bakers' Association, where it obtained documents and information documenting the activities of the Association and its bodies. Based on the documents and information obtained, the Office discovered that in 2005 and at the beginning of 2006, the Bakers' Association had systematically informed producers of bakery products, their customers, and consumers about the necessity to increase prices of bakery products. The Bakers' Association primarily addressed undertakings in the bakery sector, drawing their attention to the need to increase prices and asking them to adopt a unified procedure, particularly with respect to retail chains.

20. The activities of the Bakers' Association in this respect may be divided into three main areas:

i. sessions of the bodies of the Bakers' Association;
ii. the Association's monthly Podnikatel’ – Spravodaj [Entrepreneur - Bulletin];
iii. the mass media.

21. The Bakers' Association used all these areas to push through its goal, i.e. a coordinated increase in prices of bakery products. The Association's statements and recommendations also contained specific proposals regarding by how much the prices should be increased, as well as the time sequence of the individual stages of price hikes.

22. The Office analysed the actual price development in this market and ascertained that the recommended price hikes had been implemented in practice. The Office found a considerable similarity of the procedures of bakers when negotiating prices, which they applied particularly to their main customers, i.e. retail chains, with the aim of pushing through an increase in the prices of bakery products. The coordinated conduct of these undertakings was largely based on information and statements made by representatives of the Bakers' Association, which facilitated their mutual coordination.

23. The Office arrived at the conclusion that by the aforementioned activities, the Bakers' Association had significantly influenced - restricted - competition in the defined relevant market. Its statements, recommendations, appeals, and other activities concerning the bakers' pricing policies were aimed at providing undertakings operating in this market with a set of information that eventually eliminated or reduced their uncertainty regarding the future behaviour of their competitors. The Association thus restricted price competition as one of the most important elements of competition among undertakings.

24. The Office imposed a fine of SKK 50,000 (EUR 1,429) on the Bakers' Association in administrative proceedings. The decision did not become legally valid in 2006. The Bakers' Association lodged an appeal against the decision within the legal time period.

2.1.3 Abuse of a dominant position - summary of activity

25. Competitive pressure on the market may also be reduced as a result of abuse of a strong market position. It is not prohibited to achieve a dominant position, as this may be the result of an undertaking's endeavour to outdo its competitors in quality, effectiveness, or innovation. Therefore, not a dominant position as such, but instead abuse of this position constitutes a violation of competition rules.

26. In order to prove this practice, the Office must define the relevant market, that is, define the products or services between which there are competitive interactions, as well as the geographical area in which this competitive pressure is present. Then, several factors (e.g. market shares of the undertakings subject to assessment, market shares of other competitors, barriers to entry into the market, vertical integration) are used to ascertain whether an undertaking has a dominant position in the defined market, that is, whether its economic strength in the market enables it to act independently with respect to its
competitors, business partners, and consumers. Finally, it is assessed whether the dominant's conduct constitutes abuse of its strong dominant position.

27. A dominant may abuse its market strength in order to push its competitors out of the market, for example, by failing to provide access to a essential facility, applying predatory prices, restricting sales, applying the so-called margin squeeze, and discrimination (exclusion practices). Or it may apply its market strength directly to consumers or business partners, for example, in the form of inappropriate business conditions (exploitation practices).

28. In 2006, the Division of Abuse of a Dominant Position conducted 77 general investigations and launched administrative proceedings in eight cases. The Division of Abuse of a Dominant Position imposed fines totalling SKK 375,968,000 (EUR 10,741,942).

2.1.4 Abuse of a dominant position – description of significant cases

Železničná spoločnosť [Railroad Company] Cargo, a.s.

29. The Council of the Antimonopoly Office of the Slovak Republic upheld the decision of the first-instance authority of 3 July 2006 and the fine amounting to SKK 75,000,000 (EUR 2,142,857) imposed on the undertaking Cargo Slovakia, a.s. for abuse of its dominant position.

30. The company Cargo, a.s. abused its dominant position by terminating the Agreements on Prices with the shipping companies providing railroad freight transport to the company Holcim (Slovakia), a.s. to the full extent of its transport needs (on all routes in the entire territory of the Slovak Republic) when it wanted to purchase transport on one of the routes from the competing company LTE under more advantageous conditions. This resulted in the company Holcim, a.s. terminating cooperation with the carrier LTE Logistik under economic and time pressure and concluding a new agreement with the company Cargo, a.s. on the provision of all railroad freight transport. This conduct excluded the undertaking LTE from the relevant market of providing the service of railroad freight transport of a large amount of cement on the railroad route Rohožník – Devínska Nová Ves, state border.

31. The reason for the conduct of the company Cargo, a.s. was the fact that the carrier Holcim, a.s. had concluded an agreement with the competing company LTE on the provision of railroad transport of cement on the route Rohožník – Devínska Nová Ves state border, which was previously provided by the shipping company Cargo, a.s.

32. The conduct of the company Cargo, a.s. took place in a newly liberalised market, where the first attempts of competitors to enter the market were followed by a prompt reaction of the dominant.

33. The aforementioned conduct constituted abuse of a dominant position according to Article 82 of the Treaty and Article 8 (2) of Act No. 136/2001 Coll. on Protection of Competition. The decision became legally valid on 2 January 2007.

Cintoríny Komárno, spol. s r.o.

34. In this case, the Office assessed the conduct of the company Cintoríny [Cemeteries] Komárno, spol. s r.o. toward the competing funeral services and stonemasons. The undertakings - providers of funeral services complained about being prevented access to the Roman Catholic cemetery in Komárno, in addition to complaints about the exacting of the provision of services consisting of preparation of transported mortal remains for funeral and the undertakings - stonemasons complaining about the application of different fees for permission of access to the cemetery and exacting of payments for
supervision over the construction process. Following an investigation of the aforementioned case, the Office issued a decision on the violation of the law.

35. In 2006, the Office decided that the undertaking Cintoriny Komárno, spol. s r. o. (hereafter referred to as Cintoriny Komárno) had violated the law because it failed to provide funeral homes with access to the Roman Catholic cemetery in Komárno for the purpose of providing funeral services. Access to the cemetery where a client wishes the burial service to take place and the deceased to be buried represents the main input for funeral homes, without which this service cannot be provided. The company Cintoriny Komárno thus excluded all its competitors from the provision of funeral services at this cemetery. In the final analysis, such a violation of the law also has a negative impact on customers – clients who need a burial service, because they do not have the opportunity to choose from the individual providers of funeral services.

36. In this case, the Office also decided that the company Cintoriny Komárno had violated the law by applying different conditions to the collection of fees from individual stonemasons for permission of entry into the Roman Catholic cemetery in Komárno. The Office regarded the fact that only one stonemason was not charged the entry fee while this fee was charged to other stonemasons as putting the individual stonemasons at a disadvantage in competition and discrimination against them with respect to entry into the cemetery for the purpose of carrying out stonemason work.

37. The Office also assessed the conduct of the company Cintoriny Komárno with regards to the exacting of payment from stonemasons for supervision over the construction of grave foundations at the Roman Catholic cemetery as a violation of the law. Supervision of the stonemasons' activities regarding the construction of grave foundations at the cemetery is the obligation of the administrator, in addition to supervision over other activities at this cemetery. However, the party in the proceedings exacted the payment of a fee solely for the aforementioned supervision. The payment for supervision from stonemasons was a condition that was not justified in terms of substance or legally, which is why the Office considered it inappropriate.

38. The company Cintoriny Komárno also violated the law by exacting the provision of services of preparation of mortal remains transported from the hospital in Komárno to the Roman Catholic cemetery in Komárno for funeral. Based on the Cooperation Agreement with the hospital in Komárno (i.e. FORLIFE, n.o.), the company Cintoriny Komárno had an exclusive right to transport mortal remains of people who died in this medical facility to refrigeration units at the Roman Catholic cemetery in Komárno, which allowed it to be the first to have access to the deceased who needed to be buried, in addition to other funeral services that needed to be provided. The company did not hand over mortal remains of the deceased to the funeral home without preparing the deceased for funeral and thus pushed out all other funeral homes, that is, its competitors, from the provision of the funeral service consisting of preparation of mortal remains for funeral.

39. Within the framework of the aforementioned proceedings, a fine amounting to SKK 68,000 (EUR 1,943) was imposed on the undertaking Cintoriny Komárno for the violation of the law in the form of abuse of its dominant position. The decision has not yet become legally valid and is currently subject to appellate proceedings.

Slovnaf, a.s.

40. The Division of Abuse of a Dominant Position at the Antimonopoly Office of the Slovak Republic imposed a fine of SKK 300 million (EUR 8,571,429) on the undertaking Slovnaf, a.s. for abuse of its dominant position in the relevant market of wholesale trade in automotive gasoline in the territory of
the Slovak Republic and the relevant market of wholesale trade in diesel oil in the territory of the Slovak Republic.

41. The Antimonopoly Office of the Slovak Republic launched an investigation of the fuel market in December 2004. The investigation focused on the conduct of the company Slovnaft, a.s. - its pricing and business policies in automotive gasoline and diesel oil markets. During the investigation, the Office discovered competition problems, based on which it started administrative proceedings.

42. The Office investigated business policy of the company Slovnaft, a.s. Consumer prices were set in such a way that the company Slovnaft, a.s. charged prices stated in its pricelist to all customers (these prices changed during the year) and provided discounts or added surcharges. The Office ascertained that discounts and surcharges had been set in different ways and in a discriminatory manner without any objective reasons.

43. The anticompetitive conduct of the undertaking Slovnaft, a.s. toward the undertaking SHELL Slovakia, s.r.o. assessed within these administrative proceedings consisted of discrimination against the undertaking SHELL Slovakia, s.r.o. in wholesale trade in automotive gasoline. Slovnaft, a.s. applied different discounts on the basic wholesale price stated in the pricelist, thus putting the undertaking SHELL Slovakia, s.r.o. at a disadvantage in competition. Slovnaft, a.s. applied different discounts on the basic wholesale price stated in the pricelist with respect to the undertaking SHELL Slovakia, s.r.o., Bratislava and the undertaking OMV Slovensko, s.r.o., Bratislava, charging a higher price per unit of purchased automotive gasoline to the undertaking SHELL Slovakia, s.r.o., Bratislava than the undertaking OMV Slovensko, s.r.o., Bratislava, even though the former purchased a larger amount of automotive gasoline than the undertaking OMV Slovensko, s.r.o., Bratislava. The aforementioned discrimination against the undertaking SHELL Slovensko, s.r.o., Bratislava in the market of wholesale trade in automotive gasoline could also have put the undertaking SHELL Slovakia, s.r.o., Bratislava at a disadvantage in the market of retail trade in automotive gasoline, because it had to factor in the higher price for the goods purchased either by reducing its margin or increasing the price of automotive gasoline for end consumers.

44. The anticompetitive conduct of the undertaking Slovnaft, a.s. with respect to consumers of diesel oil, which was subject to assessment within the same administrative proceedings, consisted of their being discriminated against in wholesale trade in diesel oil. Due to the aforementioned conduct of the dominant player toward customers, these undertakings could be put at a disadvantage in competition. The Office assessed this conduct as abuse of a dominant position.

45. The anticompetitive conduct of the undertaking Slovnaft, a.s. with respect to customers purchasing diesel oil affected undertakings in the form of a higher price for the goods purchased, as well as consumers, because the customers who purchased diesel oil must factor their increased expenses in the market of products of services in their prices to the detriment of consumers.

46. A fine of SKK 300 million (EUR 8,571,429) was imposed on the company Slovnaft, a.s. for the aforementioned conduct and the company was ordered to remove the illegal situation.

47. The decision issued by the Office on 22 December 2006 has not yet become legally valid, because the company Slovnaft, a.s. has appealed against the first-instance decision of the Office.
2.2 **Mergers and acquisitions**

2.2.1 **Statistics on number, size and type of mergers notified**

48. Constant pressure for cutting costs and improving the goods and services provided is a phenomenon that affects entrepreneurs who are trying to find their place in the market. One of the ways to achieve the aforementioned goals is the use of synergic effects resulting from mergers.

49. Concentrations among undertakings are primarily aimed at improving the comprehensiveness of their activities and increasing their effectiveness, particularly through achieving economies of scale and economies of scope, obtaining know-how, gaining a stronger position in the market, and penetrating new geographical and product markets.

50. Concentrations usually bring about positive effects, but in some cases they lead to such structural changes that reduce the intensity of competition in markets. Therefore, concentrations are not prohibited, but it is in the public interest to define ex ante rules for control of concentrations with the aim of maintaining competitive market structures. The ultimate purpose of control is to protect consumers against negative effects of an inappropriate market strength resulting from economic transactions that could lead to increases in prices or inappropriate business conditions for business partners and consumers in the future. Control of concentrations represents the third important part of competition law.

51. It is the task of the competition authority to assess whether or not mergers and acquisitions will lead to the establishment of a market position that restricts effective competition. Control of concentrations is based on market analyses and predictions of future development. The situation before and after a concentration is assessed and, first and foremost, whether or not the concentration will lead to the establishment or strengthening of a dominant position, which would have negative impacts on consumers. Concentrations may have horizontal, vertical, and conglomerate effects, which need to be assessed.

52. According to applicable legislation, undertakings whose turnover exceeds the amount stipulated by law are required to notify a concentration to the Office. After a concentration is notified, the Office analyses the affected markets in detail and issues a decision based on this analysis. If a concentration does not create or strengthen a dominant position of an undertaking in the relevant markets, the Office issues a positive opinion. On the other hand, if a dominant position of an undertaking is established or strengthened in the market, the Office prohibits the concentration. In some cases, the Office may tie its approval to the fulfilment of certain conditions. The undertaking is not allowed to exercise the rights and duties arising from the concentration until the Office's decision becomes legally valid.

53. Since Slovakia's entry into the EU, the Office has had the opportunity to comment on concentrations assessed by the EC if they impacted the Slovak market. A concentration that may impact the markets of several countries may be allocated, within the so-called referral system, to the competition institution that has the best prerequisites to assess it effectively.

54. The year 2006 was characterised by the fact that although the Office assessed concentrations in almost all sectors of the economy, the largest number of cases subject to assessment occurred in the electrical engineering industry and information technology sectors, where the markets are becoming consolidated. A similar process is also taking place in the food-processing industry. During the reported period, the Office also dealt with two cases of acquisition of control by significant and strong companies, which presented risks for competition and could not be solved on the basis of the proposed conditions, which is why the Office had to terminate and prohibit these transactions.
55. In 2006, the Division of Concentrations conducted 51 administrative proceedings and issued 68 decisions. The total amount of fines, particularly for the violation of the suspension of concentration and a failure to provide information was SKK 965,000 (EUR 27,571) during the reported period.

2.2.2 Summary of significant cases

Privatisation of the Bratislava Airport

56. This concentration consisted of acquisition of indirect control by the undertakings Flughafen Wien AG operating the airport in Vienna and PENTA Investments Limited through the company BTS Holding, a.s. and acquisition of direct control by the Ministry of Transport, Post, and Telecommunications of the Slovak Republic over the company Letisko M.R.Štefánika – Airport Bratislava, a.s. operating the airport in Bratislava.

57. Within these proceedings, the Office assessed the impacts of the business connection between the airport in Vienna and the airport in Bratislava on several relevant markets and identified concerns about restriction of competition in the market of providing infrastructure for regular regional passenger flights.

58. Based on a complete assessment of several competition factors, particularly the fact that the airports in Vienna and Bratislava serve an almost identical area, which does not overlap with the areas served by other airports that would represent existing or potential competitors, the Office ascertained that the airports in Vienna and Bratislava competed for airlines and passengers travelling within the aforementioned region and, consequently, the two airports were in the position of competitors in the market of providing aviation infrastructure for regular regional flights as defined by the Office.

59. The Office ascertained that the aforementioned concentration eliminated the only competitor of the Vienna airport and, given the fast growth of the Bratislava airport, high barriers to entry into the market, and the non-existence of potential competitors, the Office arrived at the conclusion that the aforementioned business connection between the two direct competitors would lead to a structural change in the market resulting in the establishment of a sole undertaking that would not be exposed to any competitive pressure and the obtaining of this position would enable it to act independently, i.e. when adopting any decisions, this undertaking would not be forced, particularly from a long-term viewpoint, to take competition into consideration and pass effects arising from competition on to consumers.

60. The assessed structural change in the market, which would result from the aforementioned concentration, would lead to the establishment of a dominant position resulting in significant obstacles to effective competition. Therefore, the Office asked the parties to propose conditions that would remove the problem identified by the Office. The Office assessed the proposed conditions in detail and ascertained that they did not solve the problem identified by the Office. For this reason, the Office prohibited this concentration in accordance with the law.

61. An appeal has been lodged against the Office's decision with the Antimonopoly Office Council within the legal time period, which is why the decision has not become legally valid.

Concentration between the undertakings SABMiller and Topvar

62. This concentration consisted of the undertaking SABMiller plc. gaining indirect exclusive control over the undertaking Topvar, a.s. Both companies are active in the brewing industry. SABMiller plc. is a supranational concern operating in Slovakia through the Šariš brewery and importing beer from the concern's breweries in the Czech Republic. Topvar, a.s. is a traditional Slovak beer producer. The Office defined two relevant markets affected by the aforementioned concentration, namely the sale of beer to
shops (retails outlets and retail chains) and the sale of beer to Horec (including pubs and restaurants purchasing primarily draft beer).

63. Based on the competition analysis performed, the Office ascertained that thanks to the aforementioned business connection, the undertaking SABMiller plc. would equal the market position of the hitherto strongest undertaking in the beer selling area – the undertaking Heineken, a.s. in terms of market shares, number and locations of production facilities, total production capacity, regional presence of both entities, the offered range of beers, and comparability of their distribution systems, marketing activities, and membership in international groups. Neither Heineken, a.s. nor SABMiller plc. would attain the leading position on the market after the concentration.

64. In view of the situation where only two strong business entities would be present at the market, it was necessary to check whether or not they would coordinate their conduct and thus reduce competition pressure. In accordance with the decision-making practice of the European Commission, other antimonopoly institutions, and European courts, the Office assessed possible coordination and its sustainability on the basis of several factors.

65. Within the assessment of the aforementioned concentration, the Office analysed key factors of possible coordination between the undertakings Heineken, a.s. and SABMiller plc. in the future and arrived at the conclusion that this business transaction would not have any impact on the existing characteristics of the market as a result of possible coordination of their conduct. In addition, an analysis of the conduct of these undertakings in the past did not prove any coordination of activities of these breweries; quite the contrary, the existence of intensive competition between the companies Heineken, a.s. and SABMiller plc. was identified.

66. For this reason, the Office arrived at the conclusion that the aforementioned concentration would not lead to the establishment of collective dominance that would create significant obstacles to effective competition in the relevant market and approved the aforementioned concentration. The decision became legally valid on 10 March 2006.

Prohibition of the concentration between the undertakings Tesco and Carrefour

67. This concentration consisted of the undertaking Tesco plc. gaining indirect control over the undertaking Carrefour Slovensko, a.s. on the basis of the Agreement on the Purchase and Sale of Shares. It constituted a horizontal concentration between competing companies. The concentration was notified by the undertaking Tesco plc. to the European Commission in order to fulfil the notification criteria according to Council Regulation (EC) No. 139/2004. As the concentration caused concerns about a violation of competition in local relevant markets in the Slovak Republic, the EC passed the part concerning the Slovak Republic on to the Antimonopoly Office of the Slovak Republic for investigation.

68. The Office analysed the impacts of the concentration on three local relevant markets - the market of the retail sale of consumer goods for everyday use in hypermarkets, supermarkets, and discount stores in the cities of Bratislava, Žilina, and Košice, where the activities of the undertakings Tesco plc. and Carrefour, a.s. overlapped.

69. The undertaking Tesco plc. has the leading position in the aforementioned relevant markets, with the undertaking Carrefour, a.s. being its closest rival and the remaining business entities substantially lagging behind in the relevant markets. In view of the existing structure of the individual local markets, high barriers to entry (considerable direct and forced investments, sunk costs related to the required advertising and marketing support when entering the market, administrative barriers to entry, time necessary for entry into the market, and so forth), saturation of the individual relevant markets, and the
non-existence of potential competitors, if the concentration were carried out, the undertaking Tesco plc would establish or strengthen its dominant position. Consequently, the undertaking Tesco plc. would not be subject to substantial competition and, given its economic strength, it could act independently with respect to its suppliers, consumers, and competitors.

70. On 2 June 2006, the Office informed the company Tesco plc. of competition risks. At the same time, the Office asked the company to propose conditions and obligations that would remove the Office's concerns about a violation of competition. The undertaking Tesco plc. submitted the Final Proposal for the Conditions and Obligations to the Office on 20 October 2006, that is, after almost 4.5 months, requesting an extension of the time limit three times.

71. In its Final Proposal for the Conditions, Tesco plc. proposed the sale of certain operations and identified potential buyers of the business to be transferred. The Office conducted an investigation and ascertained that there were no undertakings with adequate resources, experience, and interest in maintaining and developing the business to be transferred, which would act as competitors capable of exerting competitive pressure on the company Tesco plc.

72. Based on the obtained information and in view of the existing structure of the relevant markets and the character of the business subject to the sale as proposed by the undertaking Tesco plc., the Office arrived at the conclusion that there was a high risk as to whether an appropriate buyer existed for the proposed transfer of business in this case.

73. This means that objective reasons were demonstrated for the application of Article 12 (5) of the Act, according to which a concentration may only be carried out after the elimination of competition problems that could arise as a result of the concentration, i.e. the Tesco plc. would not be able to exercise its rights and duties arising from the concentration until the fulfilment of the imposed conditions. The Proposal for the Conditions and Obligations submitted by the undertaking Tesco plc. did not take the need to apply Article 12 (5) of the Act into consideration despite several reminders from the Office prior to the submission of the Final Proposal for the Conditions and Obligations by the undertaking Tesco plc..

74. In view of the above facts, the identified competition risk, and the fact that the conditions and obligations proposed by the undertaking Tesco plc. neither solved nor were capable of removing the competition problems identified by the Office, the Office prohibited this concentration in accordance with the Act on Protection of Competition, because the change in the market structure would be detrimental consumers. The decision issued by the Office on 29 December 2006 became legally valid on 17 January 2007.

3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies

75. Similarly to competition institutions in other countries, the Office has been active in "competition advocacy," trying to get positive effects of functional competition in markets into the conscience of professionals and laymen in the public and provide information on the competition rules and the Office's outputs. "Competition advocacy" represents the Office's activities aimed at supporting a competitive environment, effective competition in markets, and providing information on positive effects of competition.

76. In 2006, the Office tried to push through several legislative amendments and, within the framework of interministry comment procedures, fostered discussions on competition on academic soil and at business forums.
3.1 **Interministry comment procedures**

In 2006, the Office submitted substantial comments on nine documents with the aim of removing regulatory barriers and other restrictions to competition. Within the framework of the institutionalised system of interministry comment procedures, the Office adopted, among others, the following standpoints:

3.2 **Draft analysis of the comprehensive system of public procurement, recording, and realignment of computers in public administration**

The Office requested that the submitted document also deal with the impacts of centralisation of the public procurement process on small and medium-sized businesses, possible effects of market monopolisation, risks related to the inflexibility of selected suppliers, as well as incorporation of the request that this analysis be tested in a pilot project before it was brought into practice.

In addition, the Office objected to the possibility of concluding long-term framework agreements, which could result in excluding competition. This could bring about monopolisation effects, which may lead to the exclusion of small and medium-sized businesses from the market and, consequently, reduction of competitive pressure.

The Office also emphasised the fact that the centralisation of the system would prevent regional suppliers from participating in competition. Therefore, the Office proposed that the territorial regional principle be taken into consideration when assessing the position and participation of regional suppliers.

It follows from the standpoint of the author of the proposal that the Office's comments have been considered in a study that is currently under preparation and has not yet been subject to interministry comment procedure.

3.3 **Draft law amending Act No. 657/2004 Coll. on Thermal Energy**

The Office made several substantial comments on the draft law, which primarily concerned the definition of powers of municipalities in the thermal energy sector. Municipalities act as regulators (for example, with regards to the approval and preparation of the municipality's energy concept) and in certain cases are also co-owners of central heating plants/distribution plants. This fact causes a conflict of interest, as municipalities that prefer central heat storage facilities (of which they are co-owners) prevent the establishment of alternative sources through various regulatory instruments.

The Office proposed that these shortcomings be removed by transferring part of the specified powers to other entities, in addition to a more detailed definition of the municipalities' procedures in this area.

The Office stressed the need to solve this situation if no agreement was reached between suppliers and customers on the contractual conditions of the supply and consumption of heat, namely by leaving this power with the Office for Regulation of Network Industries (hereafter referred to as "ORNI"), because competition had not yet developed in the thermal energy sector and the deletion of the aforementioned provision could cause problems in negotiations on contractual conditions.

At the Office's request related to the aforementioned comment, the author of the proposal amended the methodological guideline concerning this issue.
3.4 Proposal for the cancellation of a task in the Plan of Legislative Tasks of the Government of the Slovak Republic for 2004 consisting of the cancellation of the task for the Culture Ministry to submit a draft law on the News Agency of the Slovak Republic (hereafter referred to as "TASR") to the government for discussion

86. The Office disagreed with the aforementioned proposal and requested that the task to submit a draft law on TASR to the government for discussion be kept in the Plan of Legislative Tasks of the Government of the Slovak Republic, because according to the Office's experience regarding the decision-making practice, competition in the area of providing news reports had been distorted for a long time due to insufficient legislation. TASR is currently carrying out activities and providing services in a commercial and competitive environment and, at the same time, receiving funds from the state budget for the performance of these activities. New legislation should create a legal situation that establishes standard and equal conditions for all entities operating in this area and removes deformations caused by the current legislation.

87. The Office's substantial comment has not been accepted. In accordance with the Policy Statement of the Government of the Slovak Republic, the draft law on TASR has been included in the Plan of Legislative Tasks of the Government of the Slovak Republic for that year.

3.5 Draft law on the establishment of the joint stock company Lesy Slovenskej republiky [Forests of the Slovak Republic]

88. The Office proposed that the aforementioned law regulate the conditions for business activities in the market of raw wood to the extent and in the manner that secured a competitive environment in this sector. Therefore, the Office requested that a provision requiring that the dominant company Lesy Slovenskej republiky, a.s. manage its assets effectively, in a transparent manner, and under non-discriminatory conditions be implemented in the law. At the same time, the Office proposed the establishment of an opportunity for the company Lesy Slovenskej republiky, a.s. to also sell wood through auctions, where the conditions would be set by the Ministry of Agriculture of the Slovak Republic.

89. The Office rejected the solution proposed by the Ministry of Agriculture of the Slovak Republic as insufficient. The draft law has been withdrawn from the legislative process and has not been included in the Plan of Legislative Tasks of the Government of the Slovak Republic for 2007.

3.6 Draft law amending and supplementing Act No. 276/2001 Coll. on Regulation of Network Industries

90. The Office requested clarification of the devolution of powers between the competition and regulatory authorities and at the same time it issued several comments aimed at preserving ORNI's objectivity and independence. In addition to the aforementioned substantial comment, the Office also issued several comments in the form of recommendations. Regarding the definition of ORNI's scope of activities in Article 5 (1) (a) of the draft law, the Office proposed that the definition of its activities in the area of protection of competition be expanded and made more precise in that ORNI would determine the methods, procedures, and conditions for ensuring competition in network industries and thus optimise competition in areas where competition did not work or exist. In addition, the Office objected that several provisions of the draft Act on Regulation of Network Industries defined ORNI's scope of activities vaguely and inadequately, because its scope of activities was limited to the monitoring of the market and operators' obligations without ensuring a real opportunity to apply rectification mechanisms if deficiencies were identified. Therefore, the Office proposed that the adoption of measures for the removal of deficiencies found and/or the imposition of sanctions be added to the scope of ORNI's activities.
91. Regarding the proposal for the establishment of the Regulatory Board as an independent body for
the strategy and management of regulation in order to ensure independence in the area of regulation of
network industries, the Office proposed the introduction of obligatory public consultations and an
appropriate process mechanism as an alternative for ensuring ORNI's independence and attaining balance
between the independence of the regulatory authority and the responsibility for its activities. This was
closely related to the Office's recommendation that the regulatory policy concept prepared by the
Regulatory Board also contain an assessment of the previous regulation period from the viewpoint of
transparency achieved and competition in the market of products and services in network industries and an
evaluation of the need for further regulation and that the regulatory policy concept should be subject to
consultations with experts. The Office's substantial comment has been accepted, as well as some of its
recommendations.

4. Resources of Competition Authorities

4.1 Resources overall

4.1.1 Annual budget

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4.1.2 Number of employees

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4.2 Human resources

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Period covered by the above information: year 2006