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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN THE SLOVAK REPUBLIC

-- 2010 --

This report is submitted by the Slovak Republic to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 29-30 June 2011.

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Executive Summary

1. The competition is a key mechanism of the market economy that ensures an optimal use of resources in the economy and thus puts pressure on innovation and the economic growth. The competition causes a good functioning of markets in favour of consumers. Its positive effects are generally recognized and documented by numerous empiric studies. The competitive pressure:

- maximizes benefits for the consumer as well as overall social benefits,
- positively influences the effective allocation of resources and production of maximum revenues for which the economy has a potential,
- positively influences the production effectiveness, stimulates the cost reduction, eliminates wasting in production, stimulates more effective methods of production and edges less effective entities out of the market,
- has a positive influence on the dynamic effectiveness, stimulates innovation and development of new products.

2. The ambition of the Antimonopoly Office of the Slovak Republic (hereinafter referred to as „Office“ or „AMO SR“) is therefore to protect and promote the competition and to create conditions for its further development. The Office intervenes in cases of agreements restricting competition, abuse of a dominant position and controls large mergers and acquisitions. The Office's competences result from the Act No. 136/2001 Coll. on Protection of Competition, as amended (hereinafter referred to as „Act“ or „Act on Protection of Competition“).

3. In 2010 the Office issued 63 decisions and conducted 139 general investigations in cases regarding potential violation of the Act on Protection of Competition. The first-instance bodies (Division of Agreements Restricting Competition, Division of Concentrations, and Division of Abuse of a Dominant Position) issued 57 decisions and the second-instance body issued 6 decisions.

4. The global trends in the competition policy show that significant changes occur, as regards the shift from a formal to an economic approach to the application of the rules, search for new more efficient instruments for handling of competition failures, but also search for a higher procedural effectiveness. The cooperation with affected parties, undertakings, regulators, government and academic community plays an important role. The communication and promotion of competition culture are important too.

5. In the period under review, beside of the decision-making activity, the Office therefore paid special importance to advocacy activities, because an intervention against system changes, that are likely to create administrative or regulatory barriers to competitive pressures, can bring higher consumer welfare. Advocacy activities comprise a wide range of activities, from more formalized ones, such as opinions issued in the process of the interministry comment procedure (hereinafter referred to as „ICP“), sector inquiries, opinions presented at the meeting of the government, to less formalized ones, such as various discussion forums or lectures. In the year under review the Office sent in comments to 37 documents in the process of the interministry comment procedure. In 9 of them the Office formulated fundamental comments to the prepared legislation.

6. In the effort to enhance the effectiveness of the proceedings and the procedural effectiveness, institutes like settlement and commitments start to be used more frequently and we may observe efforts to enhance the effectiveness of the system of reparation of damages caused by infringement of the

competition rules. The Office therefore opened public consultations to provide guidance on commitments, pre-notification contacts in the process of assessment of concentrations and private enforcement of competition law on its website. Following the processing of suggestions from the consultations the Office prepared guidelines for the area of commitments and pre-notification contacts.

7. In accordance with the Office's values, the Office focused on the openness and cooperation with undertakings, ministries and regulators in 2010. It organized several workshops for undertakings, e.g. in the area of a more conciliatory termination of disputes and adjustment of an effective system of assessment of concentrations.

8. One of the priorities of the Office in the year under assessment was cartel agreements in public procurement that cause a substantial increase in the tender prices and ineffective use of public resources. In the effort to intensify cooperation with suppliers as well as with public institutions the Office prepared a publication entitled "Cartel agreements in public procurement" and organized workshops with the Office for Public Procurement, the Supreme Audit Office of the Slovak Republic, the Anti-Corruption Agency and representatives of the ministries. The ambition of the Office is to provide information about indications of anticompetitive conduct that must be reported to the Office for further investigation, provision of information about how tenders should be adjusted to minimize the margin for collusion, and information about new instruments available in this area. The Office initiated conclusion of memoranda of cooperation with the Office for Public Procurement and the Supreme Audit Office of the Slovak Republic.

9. Sector inquiries are one of comprehensive instruments for handling of market failures, so the Office decided to start the preparation of inquiries for postal services and railway transport in the period under review. In 2010 it finalised a sector inquiry in the gas sector that was discussed with relevant undertakings and regulators during a workshop and submitted as an informative document for the meeting of the government.

10. The aim of the Office is to inform the public about its outputs and other activities, to obtain the feedback and to create conditions for discussions with experts in protection of competition. In 2010 the Office continued to issue the Competition Bulletin that informs about decisions and other activities of the Office, the European Commission, as well as other competition institutions abroad. The public is also regularly informed in the form of press releases and via the new updated website of the Office.

11. In the year under review the Office actively participated in expert discussions at both domestic and foreign forums. The Office's employees also published numerous contributions in domestic and foreign periodicals

12. The Office considers that cooperation with the academic community is very important. Its aim is to inform the managers or lawyers about the competition rules and new trends in this area. The Office therefore very intensively works with universities, e.g. has concluded memoranda of cooperation with the Faculty of Law of the Comenius University in Bratislava, the Faculty of Law of the Trnava University and the University of Economics in Bratislava. The Office regularly enables the organization of study visits covered by scholarship at the Office. At the Faculty of Economic and Social Sciences of Comenius University in Bratislava the Office's employees provide a one-semester course on the Policy of Competition and students prepare diploma theses from this area.

13. In cooperation with the Faculty of Law of the Comenius University in Bratislava the Office organized an international conference devoted to the private enforcement of competition law and reparation of damages resulting from violation of the competition rules. In cooperation with the Trnava University it co-organized a seminar on the Actual Development and Trends in Competition Law. The Office's employees participated in discussions at numerous expert discussion forums.

14. The development of competition law as well as the application experiences of the Office triggered works on amendment of the legislation. The works on amended legislation will be completed in the following year.

15. A quality review by courts is required for an effective enforcement of the competition rules. As judgements of courts in the Slovak Republic have long been problematic and inconsistent with the European case law, the Office tried to solve the situation.

16. In 2010 the Office imposed fines and penalties totaling EUR 9 612 395,50. In 2010 fines at the amount of EUR 3 923 200 and penalties at the amount of EUR 499,50 were paid, totaling EUR 3 923 699,50. Revenues from fines and penalties are income of the state budget.

17. Within the framework of the programme "Competition", funds totaling EUR 2 367 745 were allocated to the Office for the year 2010. Funds totaling EUR 2 145 056 were allocated to the Office from the state budget for the year 2011.

18. A challenge for the Office in the following period will be the enforcement of an economic approach, the preparation of a new act, improving the effectiveness of the system of assessment of concentrations, identification of sectors problematic from the view of competition through sector inquiries, influencing of other policies with the aim to find solutions that restrict competition as little as possible, further opening of the Office to the public by means of workshops, consultations and provision of information.

19. In 2011 the Office will further work on the improvement the outputs, promotion of skills and professional qualifications of its employees and strengthening of advocacy activities. The Office will continue its activities aimed to the improvement of communication, especially with experts, but also with the general public, which provides the Office with inspiring information from the real practice in the area of competition. A challenge for the Office will also be the setting of priorities with regard to the limitation of financial resources in the following year.

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

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

1.1.1 Pre-notification contacts

20. As a part of its legislative activity the Office issued a guideline on pre-notification contacts in the process of assessment of concentrations. Pre-notification contacts are informal and confidential negotiations of concentrations, for which the parties to the proceedings can apply the Office before they notify the concentration to it. The Office already organized the pre-notification contacts before the elaboration of this guideline, but it regarded it as important to define transparent rules regulating the content and the process of these contacts. The purpose of pre-notification contacts is to increase the effectiveness of the proceedings, in particular to prevent situations, when the notification of concentration is incomplete, and to identify competition concerns resulting from concentration at the earliest possible stage. During the pre-notification contacts the Office and the parties to a concentration will particularly discuss procedural and other legal issues, especially whether the concentration will be subject to the control by the Office. They can also be used for discussion on the scope of required information and for the preparation to the concentration proceedings through identification of the key issues and potential competition concerns (theories of harm) at this early stage. The pre-notification contacts can also deal with issues of the completeness of the notification of concentration and potential reduction of required information, with regard to the specific character of each concentration. On the contrary, they will not deal

with binding opinions of the Office as to whether the concentration creates or strengthens a dominant position, resulting in significant obstacles to effective competition in the relevant market.

1.1.2 Amendment to the Criminal Code

21. On 27 April 2010 the National Council of the Slovak Republic adopted the Act amending and supplementing the Act No. 300/2005 Coll., Criminal Code, as amended (hereinafter referred to as "Criminal Code"), and the Act No. 301/2005 Coll., Criminal Procedure Code, as amended. The amendment to the Criminal Code also affected the provisions on effective repentance that cause the expiration of punishability of a crime in connection with violation of the competitive rules in the form of cartel agreements. The criminal law in the provisions of Section 250 of the Criminal Code enshrines the facts of a crime of abuse of the participation in economic competition. The wording of these facts includes an applicant for the leniency program, who would achieve the immunity or reduction of the fine in the proceedings before the Office, but then would probably have to account for a crime. In the provisions on effective repentance the Criminal Code provides that punishability of the crime above expires if the offender has fulfilled the conditions for non-imposition or reduction of the fine according to the Act on Protection of Competition. This change initiated by AMO SR entered into force on 1 September 2010.

1.1.3 Possibilities of more conciliatory approach of the Office

22. Institutes that can contribute to a faster termination of cases, such as settlement, commitments or private enforcement of competition law, start to be increasingly applied in the competition law.

23. Commitments are an effective method that allows the Office to terminate the administrative proceedings and achieve a faster closing of the case. In cases where undertakings from their own initiative submit proposals for measures that will eliminate the competition concerns identified by the Office, the Office can terminate the administrative proceedings without decision that an administrative delict was committed by the respective conduct. It means that the Office does not impose the fine in these cases. The Office prepared a manual to this institute and obtained reactions from undertakings through public consultations

24. Settlement is an efficient instrument that allows an effective termination of the proceedings, particularly in matter of agreements restricting competition. This approach consists, on the one hand, in the will of the parties to the proceedings to admit their participation in an anticompetitive conduct and bear the responsibility for such conduct and, on the other hand, in the will of the competition authority to take into account this confession at the determination of the amount of the fine. If during the proceedings the parties conclude that the Office has evidence that fully prove their illegal conduct they can propose their guilty plea to the Office. The Office will decrease their fine in consideration for this procedure. In this case negotiations are opened between the interested parties where conditions of settlement are agreed. Following the delivery of the decision the parties to the proceedings waive the appeal or do not lodge an appeal within the legal period and the decision enters into force. The decision is therefore reviewed neither by the appeal body nor by the competent court. The outcome of the settlement is acceleration of the proceedings and resulting cost and time savings that the Office can use for action in other cases. Nevertheless, the decision as such does not lose its educational and deterrent effect and may motivate other undertakings to the application of this procedure in the proceedings before the Office.

25. AMO SR has terminated in this way the following cases: ELCOM, FM Group, COOP Jednota/ORFEX.

2. Enforcement of competition laws and policies

2.1 Summary of activities – action against anticompetitive practices

2.1.1 Agreements restricting competition

26. Within the framework of agreements restricting competition agreements at horizontal level – cartel agreements can be concluded between undertakings, particularly for the purposes of prices fixing, market or customer allocation. However, unlike vertical agreements restricting competition that are concluded by undertakings at different levels of the vertical chain, i.e. on related markets, horizontal agreements restrict competition and damage the market without any potential benefits. In plain terms, in cartel agreements the potential positive effects are actually nil.

27. However the aforesaid does not apply to vertical agreements restricting competition, where certain restriction of competition can be accompanied by positive effects. It subsequently requires analyses on the part of the Office, whether the positive effects create a balance with regard to the negative effects resulting from the agreement being assessed. Generally it can be stated that cartel agreements concluded between competitors are prohibited "per se". In case of vertical agreements restricting competition it is necessary to apply the "rule of reason", i.e. to assess the aspect of effectiveness of vertical restrictions in the specific context of the case, not only for the undertakings themselves, but also for the consumers.

28. In given period a number of complaints, leading to potential restriction of competition for the reason of conclusion of agreements restricting competition in the areas of mobile communication, distribution of motor vehicles, provision of pharmaceutical services, sugar production, provision of services in the public interest in the suburban and intercity transport, motor insurance, distribution and sale of cosmetic products, were verified and examined and cases notified to the Office in the framework of the Leniency Programme were investigated.

29. In the period under review the Office paid special attention to public procurement and started to investigate a number of tenders for the reason of potential collusion between undertakings. At the same time, the Division of Agreements Restricting Competition within the framework of the competition advocacy actively dealt with the issue of potential collusion in public procurement and implemented a series of workshops devoted to this subject. This area is elaborated in detail in the chapter Competition Advocacy.

30. In 2010, within the framework of the institute of agreements restricting competition, the Office carried out 69 investigations, initiated 8 administrative proceedings and issued 4 decisions. The fines imposed in the year under review for violation of the competition rules in the area of agreements restricting competition amounted to EUR 552 387.

2.1.2 Abuse of a dominant position

31. In 2010 the assessment of cases of the abuse of a dominant position was further affected by the change from a formal to an economic approach. The formal approach foresees that a certain form of conduct of the dominant undertaking is automatically anticompetitive and constitutes the abuse of a dominant position. However the conduct of the dominant player may not automatically lead to negative anticompetitive effects. On the contrary, many cases may involve forms of conduct without negative impact on the consumer welfare. In the assessment of conduct of an undertaking in a dominant position it is therefore necessary to pay attention to the analysis of impacts of the conduct of the dominant undertaking, bearing on mind that the primary aim of the protection of competition on the market is to increase the consumer welfare.

32. The change to an economic approach to the assessment of cases of abuse of a dominant position on the market and the departure from the formal procedures generally create conditions for a better justification of the intervention of the competition authority. Such approach also requires a more sophisticated approach to the assessment of cases using different economic analyses. The economic approach to the assessment of practices of the dominant undertaking will allow to prevent the negative impacts on the consumers through the reduction of the consumer surplus and at the same time to eliminate the potential risk of unjustified interventions into the market.

33. In the period under review the Office dealt with complaints from the heat, gas, power, and waste management and telecommunications industries and carried out several investigations. Its activities were also aimed to the preparation of sector inquiries in the areas of gas, railway transport and postal services.

34. In 2010 the Division of Abuse of a Dominant Position carried out 65 investigations, initiated 1 administrative proceeding and issued 1 decision. The fines imposed by the Division in the year under review amounted to EUR 9 028 746.

2.1.3 Courts

35. Decisions of the Council of the Office enter into force when delivered to the parties to the proceedings. If an undertaking has objections against a decision of the Council of the Office, it can file an action to the Regional Court in Bratislava and lodge an appeal against the judgement of the regional court to the Supreme Court of the Slovak Republic.

36. In 2010 the courts of the Slovak Republic decided in 13 cases, of which 8 cases were decided by the Regional Court in Bratislava and 5 cases by the Supreme Court of the Slovak Republic.

37. Also in 2010 the Office endeavoured to ensure the effective application of the competition rules in the Slovak Republic. As it repeatedly encountered very problematic outputs of courts that were inconsistent with the European case law (for details see: "Problems resulting from the decision-making practice of courts in competition law in SR")1 it tried to handle the situation in cooperation with relevant institutions in the Slovak Republic and in the European Union.

38. The problem for the Office is its inability to defend any of its major decisions in court, especially in case of imposition of higher fines. The consequences are negative for the economy, the consumer, the business environment as well as the state budget. Moreover the effective application of the competition rules in the Slovak Republic is not ensured. Main problems of the decision-making practice of courts in the area of competition law referred to by the Office in its analysis are unusual requirements for the verdict, decisions being returned without indication of the legal opinion of the court and inconsistency of judgements with the European case law. The court often requests the Office to review cases for which it is not competent, or even makes incorrect statements.

2.1.4 Description of significant cases, including those with international implications

- <u>COOP Jednota, Vranov nad Topľou, and ORFEX – exclusivity agreement</u>

  The Division of Agreements Restricting Competition decided that the companies ORFEX and COOP Jednota, Vranov nad Topľou (hereinafter referred to as "COOP Jednota") had concluded an agreement restricting competition on the market of gaming machines and slot machines installed in catering establishments and restaurants, and imposed a fine for the violation of the law at the amount of EUR 3 300.

The undertakings concluded an agreement that guarantees to the company ORFEX the exclusivity for the installation of gaming machines in buildings owned by COOP Jednota. The lessees of the buildings are undertakings that operate in these buildings catering and restaurant establishments under properly concluded lease contracts. Due to conclusion of the assessed contract, the share of the company ORFEX on the relevant market increased on the average by 50 %, in terms of the number of contracted establishments and in terms of the number of installed gaming machines.

COOP Jednota sent to the lessees a letter inviting them to cancel all contracts concluded with providers of gambling services, because the company ORFEX was said to become their exclusive contract partner for this activity. In case of failure to conclude these contracts, a one-month period of notice was said to start to run to these lessees within the meaning of the contract on lease of non-residential area. All the lessees cancelled these contracts and concluded new contracts with the ORFEX.

The Office terminated this case by settlement, because both parties to the proceedings admitted their participation in an agreement restricting competition and resulting further conduct and withdrawn all their objections indicated in their opinions to the call before issuing the decision. The Office qualified it as an attenuating circumstance which influenced the determination of the final amount of the fine. The decision entered into force.

- Fann-parfumerie – RPM – maintenance of retail prices – vertical restriction

In the administrative proceedings the Office imposed a fine totalling EUR 543 218 on the companies FAnn-parfumérie, s. r. o. (hereinafter referred to as "FAnn-parfumérie") and its 9 customers for conclusion of an agreement restricting competition. The company FAnn-parfumérie is a retail trader and sells cosmetic products in its own shops organized within the framework of a retail chain under the brand FAnn. Other 9 undertakings are independent retail traders of cosmetic products who sell these products in their retail shops. It means that the undertakings FAnn-parfumérie and 9 parties to the proceedings operate as competitors at the retail level. Moreover, under the purchase contracts concluded with the 9 independent retail traders of cosmetic products, the company FAnn-parfumérie delivers cosmetic products to their retail shops. Consequently, the company FAnn-parfumérie acts as a supplier of these 9 undertakings in the framework of supplier/customer relations. The undertaking Fann-parfumérie thus also operates as a wholesale trader in Slovakia.

The undertakings violated the Act on Protection of Competition when they concluded a vertical agreement between the supplier (Fann-parfumérie) and the customers (9 independent retail sellers of cosmetic products), by which they undertook to sell goods for recommended selling prices according to valid pricelists that formed an integral part of the contracts. This conduct occurred deliberately, on the basis of the existence of mutual contacts and technical support on the part of the undertaking FAnn-parfumérie. The investigation also established that retail prices of FAnn-parfumérie, s. r. o. and 9 customers had been identical in spite of the fact, that the customers were classified to different price categories, purchased cosmetic products under different price conditions and their margins were also different.

The parties to the proceedings lodged an appeal against the first-instance decision and the Council of the Office as the second-instance appeal body of the Office is acting in the matter.

- Prešov self-governing region – false and incomplete information

  The Office imposed on the Prešov self-governing region the fine at the amount of EUR 2 500 for submission of false and incomplete information in connection with the Office's request regarding the provision of information about transport operators in the Prešov self-governing region and their requirements for conclusion of the public service contract in the area of public suburban bus transport, as well as in connection with the request for submission of correspondence with transport operators, regarding the conclusion of public service contracts.

  The Office requested this information in connection with investigation of potential application of a discriminatory procedure of the Prešov self-governing region towards the operators of public regular suburban bus transport.

- Slovak Bar Association

  The Office imposed on the Slovak Bar Association (hereinafter referred to as "SBA") the fine at the amount of EUR 5 847 for the violation of the Act on Protection of Competition, as well as of Article 81 of the Treaty Establishing the European Community (hereinafter referred to as "Treaty") (now Article 101 of the Treaty on the Functioning of the European Union) by several provisions of the Order on Lawyers.

  In 2005 the Office initiated the proceedings following the investigation in the area of chambers and professional associations. In 2006 the Council of the Office upheld the decision of the first-instance body and imposed on SBA the fine at the amount of EUR 3 319 for the violation of the competition rules. Subsequently the Regional Court in Bratislava as well as the Supreme Court of the Slovak Republic annulled both decisions of the Office and returned the case to the Division of Agreements Restricting Competition for review.

  The Office re-examined the case and concluded that SBA had violated the competition rules. SBA through several provisions of its Order on Lawyers restricted the opportunity for the lawyers to promote their services, making it impossible for the consumers to obtain enough objective, transparent and verifiable information to help them in deciding on the selection of the legal service provider. The assessed provisions of the Order on Lawyers made it impossible for the individual legal service providers to provide their clients with information about prices for provided services, which restricted fair competition among legal service providers.

  At the same time, SBA violated Article 81 of Treaty because through the provisions in its Order on Lawyers, regulating the business name or designation of the law office, it created conditions for discrimination of foreign lawyers. These provisions prohibited the use of names of foreign law offices even in cases where the owner(s) of these names, with whom the lawyers cooperated or had other permanent business relations, granted their full consent to their use. These provisions may result in the exclusion from the Slovak market of those lawyers who operate on the EU market and to influence the structure and intensity of competition on the single EU market and hence the economic activity of the affected undertakings. The party to the proceedings SBA lodged and appeal against this first-instance decision. The Council of the Office as a second-instance appeal body of the Office upheld the disputed decision and decided that both national and European competition rules were violated.

- Slovnaft, a. s. – discriminatory rebates

  On 15 December 2010 the Office issued a decision imposing on the undertaking Slovnaft the fine at the amount of EUR 9 028 746 for a discriminatory practice used in wholesale of fuels in the Slovak Republic.

  In the assessed case the administrative proceedings was initiated as early as in 2005, when the Office verified the pricing policy of Slovnaft as a result of the fact that fuel prices increased more significantly in this period. In December 2006 the Office issued a first-instance decision, in which it imposed the fine on Slovnaft for the use of a discrimination practice. This decision was also upheld by the Council of the Office in December 2007. However the Regional Court annulled the decisions of the Office in December 2009. In 2010 in the administrative proceedings the Office again dealt with the situation on the fuel selling market in the years 2005 – 2006.

  The Office defined two relevant markets – gasoline wholesale market in the Slovak Republic and diesel oil wholesale market in the Slovak Republic, where Slovnaft has a dominant position. Beside of classic, normally used qualitative methods, the Office used quantitative methods, such as stationary tests, for definition of the relevant markets and dominance.

  The practice assessed by the Office was a practice of discrimination, specifically its exploitative form, where the aim is not to edge the competitor out of the market, but to win a property benefit. The Office found out that in the years 2005 and 2006 (for diesel oil) and in 2006 (for gasoline) Slovnaft implemented a fuel distribution system, where prices for the customers were determined individually (tailored) on the basis of their preferences, willingness to pay and/or possibility to switch to the competitors. Due to this practice the customers had different fuel prices corresponding to the maximum amounts that they were willing to pay. The price differences among the customers could not be objectively justified (e.g. on the basis of different selling costs). The impact of the practice was that those customers, who e.g. could not easily switch to the competition, had unjustifiably higher prices. The Office also used quantitative methods, such as regression analysis, to prove the practice.

  The final fine imposed on Slovnaft amounted to EUR 9 028 746. The fine was calculated from relevant turnover, i.e. turnover achieved from the sale of products concerned by the violation of the law, in this case from the wholesale of gasoline and diesel oil in the Slovak Republic. The Office also quantified the property benefits achieved by Slovnaft by the practice in question at the amount of EUR 6.7 mil. The Office is not obliged to do it, but it did it, as the character of this case allowed it.

  The decision has not entered into force; the party to the proceedings lodged an appeal against the first-instance decision.

- Investigation into the market of mobile voice and data services

  The Division of Abuse of a Dominant Position received from the third mobile operator of mobile voice and data services in the Slovak Republic, company Telefonica O2 Slovakia, s. r. o., Bratislava, an incentive for investigation of potential abuse of a dominant position against two former mobile operators, Orange Slovensko, a. s., Bratislava and T-Mobile Slovensko, a. s., Bratislava (now Slovak Telekom, a. s.).

Subsequently, the Office pursuant to Art. 22 (1)(a) of the Act carried out investigation into the relevant market. The Division of Abuse of a Dominant Position investigated the following issues:

- unreasonably high termination fees of the two largest mobile operators (in comparison with costs). Termination fees are fees charged by the operator of the called subscriber to the operator of the calling subscriber,
- predatory prices of on-net calls. Predatory prices are low prices determined below the level of costs. On-net calls are calls starting and ending in the network of the same operator,
- club effects created by low prices of on-net calls and high prices of off-net calls. Off-net calls are calls starting and ending in the networks of two different operators,
- margin squeeze, i.e. adjustment of wholesale and retail prices of the dominant undertaking that restrict competition on the market,
- other technical issues (e.g. telephone blocking, manual or automatic transfer of telephone numbers).

Following the investigation carried out and on the basis of collected data the Division of Abuse of a Dominant Position concluded that sufficient reasons to initiate the administrative proceedings in matter of potential abuse of a dominant position do not exist and therefore terminated the investigation into the relevant market.

- ENVI-PAK – restriction of competitors

On 6 August 2010 the Council of the Office imposed the fine of EUR 18 394 for abuse of a dominant position by the company ENVI-PAK, a. s. (hereinafter referred to as "ENVI-PAK") on the relevant market of granting approval to use the trademark "Green Dot" in the territory of the Slovak Republic. The illegal conduct was in violation of Art. 8 of the Act on Protection of Competition valid in the Slovak Republic as well as of the European law (Article 102 of the Treaty on the Functioning of the European Union).

ENVI-PAK is exclusive holder of the licence for use of the registered trademark Green Dot (hereinafter referred to as "GD") in the territory of the Slovak Republic. Based on this licence it is entitled to grant individual sublicences to third parties, i.e. manufacturers and distributors of packings and packed products, as well as to suppliers and importers, to use the trademark GD in the Slovak Republic. It is also entitled to introduce in the Slovak market products in a packing marked with GD (licence clients). No alternative to this trademark exists in Slovakia for users of GD.

ENVI-PAK also operates on the market of provision of services of authorized organizations, i.e. it ensures collection, recovery and recycling of packing waste for liable persons (service clients) according to the Act No. 529/2002 Coll. on Waste, where it is exposed to competitive pressure of other authorized organizations.

In the effort to strengthen its position on the market of packing waste collection, recovery and recycling ENVI-PAK set the payment system for the trademark GD in such a manner that for obligated persons using GD it was more advantageous to become its service client, in spite of the lower prices for service charged by the competitors. By this conduct ENVI-PAK restricted competition and illegally strengthened its position on the market of services for the service clients. In the set system the clients of ENVI-PAK had an opportunity to use GD for free, while clients of competitors had to pay a fee for GD, and even for packages without GD. For obligated persons using GD it was therefore not economically rational to remain or become a client of competing authorized organization other than the company ENVI-PAK. The conduct of the

company ENVI-PAK led to the restriction of competition on the relevant market of collection, recovery and recycling of packing waste through authorized organizations in the Slovak Republic.

The party to the proceedings lodged a complaint against this valid decision of the Office to the Regional Court in Bratislava.

- Associations of real-estate brokers – price fixing

The Council of the Antimonopoly Office of the Slovak Republic upheld the first-instance decision of the Office towards the Association of Real-Estate Brokers (hereinafter referred to as "Association") for violation of the Act on Protection of Competition by conclusion of an agreement restricting competition.

The Association violated the Act by determining the range of commissions for provided services of real-estate brokers in its Code of Ethics and Professional Code (hereinafter referred to as "Code"). From the point of view of competition it means fixing of minimum and maximum prices of services. In consequence of the conduct of the Association the intensity of competition on the relevant market of provision of real-estate services (mediation of sale, purchase and lease of real estate) decreased, because all providers of these services could foresee with a high degree of certainty the pricing policy of their competitors.

The price is the basic and most important instrument of competition in a majority of markets. A price fixing agreement is a restriction of competition by its very nature, even if prices fixed by agreement are not applied by the undertakings in the practice. The competition law prohibits for this reason any price arrangements among undertakings. Minimum price fixing agreements secure a certain agreed income regardless of the quality of provided services, which is again to the detriment of consumers of these services.

The observance of these prices was secured through the Disciplinary Code. It provided the Association with an instrument to enforce the observance of fixed commissions from its members. As a result of the determination of sanction mechanism these prices became de facto fixed for all Association members. Commissions for transactions and services of real-estate brokers should result from a free agreement between the service provider and the client. Moreover they should only reflect abilities, the effectiveness and costs of the individual providers and be exposed to competition pressures in the relevant market.

The decision entered into force. No action against this decision was filed to the court.

2.2 Mergers and acquisitions

2.2.1 Statistics on number, size and type of mergers notified and/or controlled under competition laws

39. The assessment of concentrations usually distinguishes among horizontal concentrations that concern undertakings operating on the same relevant market, vertical concentrations, where undertakings operate at different levels of the production chain, and conglomerate concentrations, where undertakings operate on unrelated markets.

40. In the period under review 22 horizontal, 1 vertical and 15 conglomerate transactions were notified to the Office. The competition institutions show special interest in concentrations at horizontal level, because most of negative impacts on competition are created by this specific type of concentrations.

41. Concentrations, i.e. transactions between competing companies, are market operations requiring the assessment whether such an alliance of competitors does not cause a structural change on the market, resulting in the creation of a company with higher market power (dominance) and hence ability to reflect the gained market position in the anticompetitive conduct on the market, and in particular in a price increase. It particularly affects the position and the ability of the competitors to exert a sufficient competitive pressure on the concentrating entity that is the subject of assessment. Other factors that should be examined in this context are the assessment of production capacity on the market, elasticity of demand, amount of costs related to switch to the competition, possibility to enter a market, and buying power.

42. On the other hand in sectors, where undertakings are fragmented with a relatively low market shares, the impact of concentration on market prices is usually insignificant, because the number of competitors and their ability to compete will not allow the concentrating companies to make a major price increase. For this reason special attention should be paid to highly concentrated sectors rather than to those characterised by fragmentation.

43. In the period under review the Office particularly dealt with horizontal concentrations. In most cases the transactions concerned less concentrated markets, where the assessed concentrations did not represent a risk of problematic structural change. They concerned particularly food and engineering industries, health sector, drugstore goods, banks, etc.

44. On the contrary, the assessment of concentration in the cement industry required an in-depth examination of this sector. As this case was rather complicated, the assessment of the proposed transaction could not be terminated in the year 2010.

45. In 2010 the Office issued a Guideline of the Antimonopoly Office of the Slovak Republic on pre-notification contacts in the process of assessment of concentrations. On this basis the mechanism of pre-notification contacts was set up, which provided the undertakings with an opportunity to consult prepared transactions and hence speed up the process of assessment of notified concentrations.

46. In 2010 the Office issued 26 decisions in matter of approval of notified concentrations. In the same period it imposed fines at the amount of EUR 5 650 for a failure to notify a concentration and for the violation of prohibition of the suspension (exercise of rights and obligations resulting from a concentration pending the final decision of the Office in the case).

2.2.2 Summary of significant cases

- Scholz AG and Heim Trade S.E. – failure to notify a concentration

  The Office imposed on the companies Scholz AG and HEIM Trade S.E fines totaling EUR 5 650 for a failure to notify a concentration within the period prescribed by the law and for the exercise of rights and obligations resulting from the concentration pending the final decision on this concentration. In view of amendment of legislation adopted at the time of assessment of the case the Office assessed which of the legal acts is more favourable for the undertakings.

  The old legislation imposed on undertakings the obligation to notify a concentration in 30 working days from the date of implementation of concentration, while the new legislation does not impose this obligation on undertakings. However, it also requires that concentration must be notified to the Office before the undertakings start to exercise the rights and obligations resulting from it.

In view of the aforesaid the Office proceeded according to the new amended Act on Protection of Competition that was more favourable for the undertakings. When imposing the sanction the Office also took into account that the company Scholz AG had submitted documents and information after the expiration of the period determined by the Office.

The decision of the Office entered into force.

- Hitachi Medical Corporation a Aloka Co., Ltd.

  The Office approved a concentration consisting in acquisition of exclusive control by the undertaking Hitachi Medical Corporation over the undertaking Aloka Co., Ltd. After the completion of the assessed transaction Hitachi Medical Corporation by its share on the market of distribution of diagnostic ultrasound devices in the territory of Slovakia will be ranked third, behind the companies Siemens and General Electric.

  Hitachi Medical Corporation carries out activities in the area of electronic medical devices, including magnetic resonance, X-ray computed tomography, diagnostic ultrasound and nuclear medicine systems. Hitachi Medical Corporation operates in the Slovak Republic through an independent distributor. Aloka Co, Ltd. is active in the area of production and distribution of diagnostic ultrasound devices and operates in the Slovak Republic through an independent distributor.

  The assessed concentration did not represent any competition risks and was approved by the Office. The decision entered into force.

- SITNO HOLDING, SLAVIA CAPITAL HOLDING and WAY INDUSTRIES

  The Office approved a concentration consisting in acquisition of the joint control by the undertakings SITNO HOLDING, a. s. (hereinafter referred to as "SITNO HOLDING") and SLAVIA CAPITAL HOLDING Ltd. (hereinafter referred to as "SLAVIA CAPITAL") over the enterprise of the undertaking WAY INDUSTRIES, a. s. ("WAY INDUSTRIES"). The concentration was implemented on the basis of the Contract on Sale of Shares of the company WAY INDUSTRIES (hereinafter referred to as "Contract") concluded on 30 April 2010 between SITNO HOLDING as the seller and SLAVIA CAPITAL as the purchaser.

  Before conclusion of the Contract the company WAY INDUSTRIES was controlled by the company SITNO HOLDING. After the completion of concentration decisions concerning strategic opportunities of the company WAY INDUSTRIES will be jointly adopted by the undertakings SLAVIA CAPITAL and SITNO HOLDING.

  SITNO HOLDING is engaged in investment and management of its ownership interests in other companies. SITNO HOLDING is active in the engineering industry, in provision of specialised out-patient services and in real-estate business and services.

  SLAVIA CAPITAL manages its ownership interests in other companies. It is also active in agriculture, financial and advisory services, cosmetic and energy industries, mineral oil production and distribution, and in real-estate business and services.

  WAY INDUSTRIES manufactures skid-steered loaders Locust and mine-sweepers Božena.

  The Office found out that the concentration in question had neither created nor strengthened a dominant position of either party to the concentration on relevant markets in the aforesaid areas,

which would create significant barriers to effective competition on these markets. The Office therefore approved the concentration. The decision entered into force.

- ČEZ, a. s. and Lumius, spol. s. r. o. – intention of concentration

  The Council of the Office as a second-instance appeal body annulled the first-instance decision of the Office in matter of concentration of the undertakings ČEZ, a. s. (hereinafter referred to as "ČEZ") and Lumius, spol. s. r. o. (hereinafter referred to as "Lumius"), in which the Office stated that there was no reason for initiation of the proceedings because the intention of concentration did not exist.

  The Council of the Office decided that the case must be re-assessed, because both parties sufficiently expressed the will to implement the concentration, including the specification of conditions of the transaction. Moreover the company Lumius signed the Contract on Transfer of Business Interest. In the Contract on conditions of transfer the undertaking ČEZ unambiguously undertook to acquire the business interest and pay the fixed purchase price if specific precedent conditions are fulfilled. He also informed the Office about reasons for which he was interested and willing to gain the control over business of the undertaking Lumius, which the Office did not take into account.

- The European Commission as amicus curiae in the Slovak Republic

  In case of abuse of a dominant position by the railway company Cargo Slovakia the European Commission even entered the proceedings before the Supreme Court of the Slovak Republic as amicus curiae. The Commission does it only exceptionally, but in this case it decided to do so, because there was a risk that the court's judgement would set the assessment of succession and sanctions in the Slovak Republic differently from the European judicature. The use of amicus curiae in this case changed the view of the Regional Court in Bratislava of important institutes.

  The European Commission in its written opinion among others stated that test of economic succession had to be applied, because otherwise a bad signal would be sent to undertakings. The undertakings namely cannot be incited to implementation of changes through restructuring, sale or other organizational changes with the aim to avoid payment of the fine. The Commission stressed that the fine had to fulfill not only a repressive, but also a preventive function.

  On 26 October 2010 the Supreme Court of the Slovak Republic allowed the appeal of AMO SR and changed the decision of the Regional Court in Bratislava in such a manner that it dismissed the action and thus upheld the decision of the Office, as well as the initial fine of SKK 75 mil. (EUR 2.5 mil.) for abuse of a dominant position. This case shows that an intervention of the European Commission at national courts has a high importance.

- Judgement of the Regional Court Bratislava in the case Akcenta CZ

  The problematic situation can be illustrated by the judgement of the Regional Court Bratislava in the case Akcenta CZ.2 The Office was examining the agreement of three banks that, according to the Office's findings, coordinated their action in order to exclude their competitor from the market. The Office based its conclusions on collected evidence about the e-mail communication of the banks. All three banks filed actions against the decision of the Office to the Regional Court Bratislava. In spite of the Office's motion to combine the cases, the court tried and decided each action individually. Such approach of the court causes many procedural and material-law problems – e.g. different approaches of different tribunals to certain issues (one of the tribunals

disputed the communitarian element of the agreement, whereas the others did not). The Office considers it as one act that occurred as a result of the joint action of the parties to the agreement, and therefore their proceedings cannot be separated and assessed individually. The Regional Court Bratislava in similar cases hitherto assessed an agreement of several parties jointly (judgement of the Regional Court Bratislava No. 2S 430/06 – 393 (Highways)). The court compelled the Office to indicate the place of conclusion of the agreement in the verdict. The Office again argues that such approach is very unusual and indicates a misunderstanding of the substance of the concept of agreement in competition law. If the agreement is based on the e-mail or telephonic communication, the Office is unable to objectively establish the place of its conclusion. Moreover it is fully irrelevant and unnecessary for the identification of violation in competition law.

Furthermore, the court disputed the communication of the banks saying that employees of the banks participated in this communication, instead of their statutory representatives. In this context the Office refers to a contradiction with the European law, e.g. the judgement of the Court of Justice in the case Musique Diffusion Francaise 100/80, where such evidence is not required.

These requirements of the court for proving of a cartel agreement mean that a competition institution would be unable to prove such a conduct that is very dangerous for the society, and that undertakings will not be discouraged from the cartelization which causes a substantial decrease of consumer benefits.

The Office lodged an appeal against the judgements of the Regional Court Bratislava to the Supreme Court of the Slovak Republic.

- Judgement of the Regional Court Bratislava in the case VPS

The case concerns the abuse of a dominant position in the form of margin squeeze in the tender for a data virtual private network (VPS) for a bank. It is the second judgement of the Regional Court Bratislava in this case, by which the decision of the Office was annulled and the case returned for further proceedings. The court repeatedly returned the case to the Office with a request to hear evidence in the case that was already established by initial decisions of the Office from the years 2005/2006 and was not disputed by the Office and the party to the proceedings. On the contrary, the court repeatedly avoids giving answer to legal assessment that the Office as well as the party to the proceedings rightfully expect from the court. Moreover, in the Office's view the judgement contains several false statements of the court.

The Office lodged an appeal against this judgement to the Supreme Court of the Slovak Republic.

- Judgement of the Regional Court Bratislava in the case eustream, a. s.

The case concerned the abuse of a dominant position in the form of enforcement of an unfair trade condition. In the Office's view eustream, a. s., forced the undertaking GasTrading, s. r. o., to sell to the company eustream, a. s., a connecting facility to the gas distribution network operated by the company eustream, a. s. by making the connection of the company Gas Trading, s. r. o. to the distribution network conditional upon the purchase of the connecting facility. GasTrading, s. r. o. as operator of the new-built gas distribution network in the Industrial Park Levice – Géňa under the threat of loss on the delayed start of operations finally sold the connecting facility, although it disagreed with this sale. The Office imposed on eustream, a. s.,

the fine at the amount of SKK 98 mil. (EUR 3.25 mil.). The Regional Court Bratislava dismissed the action filed against the Office's decision.

The main ground of action was the impeachment of the Office's competence to act in this case, because in the complainant's view the case fell within the jurisdiction of the Regulatory Office for Network Industries (hereinafter referred to as "RONI"). The provision of Art. 2 (6) of the Act was interpreted by the court as follows. If the sector regulator has a legal instrument to sanction anticompetitive behaviour in a certain area at a specific time, the defendant (the Office) is not competent to decide on the same behaviour, even if it fulfilled the characteristics of violation of the (Competition) Act. In the Office's view the regulator has a legal instrument to sanction certain behaviour, when the assessed behaviour is a direct violation of a special law, the observance of which is supervised by the regulator, or when it violates an issued regulatory measure or an imposed regulatory obligation. If the regulator does not have such instrument, which in the court's view was the case, then the Office has the jurisdiction to try and sanction the respective anticompetitive behaviour.

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

47. In addition to decision-making activities, the Office endeavours to carry out other activities to increase the competitive pressure on the markets. The competition advocacy is a set of activities aimed at the promotion and development of the competitive environment and enhancement of general awareness on benefits of well-functioning competition. The objective of competition advocacy is to preventively influence other policies affecting competition. These activities comprise a wide range of activities – comments of the Office submitted in the interministry comment procedure, initiative documents and activities of the Office, education in the area of competition policy, communication with the public, etc.

48. The competition advocacy was one of the Office's priorities in the year under review, through which the Office tried to influence the expert and general public, undertakings and politicians and to enforce the principles of competition.

49. The Office regards its inputs to the interministry comment procedure as a very important part of its activities, through which it tries already in the phase of preparation of new legislation to eliminate potential barriers to the effective application of the competition rules likely to cause a failure of the market and the competitive environment.

50. In 2010 the Office entered in the process of interministry comment procedure within the framework of 37 materials. It sent its fundamental comments on 9 occasions, recommendatory comments to 27 materials and fundamental and recommendatory comments to 1 case. Some comments of the Office were accepted or partially accepted by the applicant and some were not.

51. In the process of the interministry comment procedure the Office endeavours to react to the requirement for the draft legislation not to contain any regulatory constraints, such as maintenance or extension of regulation, regulation without clear separation of regulated and unregulated activities, limitation of the number of market players, provision of exclusivity for certain activities, or advantaging of certain players.

3.1 Draft act on the new arrangement of railway companies

52. The Office expressed fundamental comments to the draft act on the new arrangement of railway companies submitted by the Ministry of Transport, Posts and Telecommunications of the Slovak Republic. The Office fundamentally disagrees with the creation of a holding structure, because it would mean de

facto a merger of the railway infrastructure manager and the state operators of freight and passenger transport services.

53. The risk of this arrangement of railway undertakings consists in the potential advantaging of the state operators of transport services on the part of the infrastructure manager and in the decrease of transparency in management of the individual railway companies.

3.2 Draft decree on treatment of electrical waste

54. The Ministry of Environment of the Slovak Republic drafted a decree amending the Decree No. 208/2005 Coll. on treatment of electrical equipment and waste, as amended by the Decree No. 313/2007 Coll. introducing the obligation for the electrical waste treatment plant to be equipped by technologies for processing of all categories of waste, to which the Office was fundamentally opposed for the reason of potential deformation of the competitive environment. Ten main categories (e.g. large household appliances, consumer electronics, lighting devices, etc.) of electrical waste and 99 subcategories have been defined. Electrical waste processors can currently apply for the permission to process separately only the individual categories or subcategories of electrical waste, due to which technology for processing of a single category or subcategory of waste is sufficient.

55. In the practice it would mean for the electrical waste processors the obligation to have in place technologies for processing of washing machines, microwaves, electric ovens, etc. Such unjustified intervention means a threat of liquidation of a majority of electrical waste processors, which represents the risk of a substantial deterioration of the existing competitive environment as well as the risk of price increase for the consumers.

3.3 Draft Act on excise duty on mineral oil

56. In the process of the interministry comment procedure the Office submitted a comment to the draft Act amending the Act No. 98/2004 Coll. on Excise Duty on Mineral Oil, as amended. The formulation of the valid provision of Art. 19 (6) of the Act on Excise Duty, as amended, does not allow the development of competition in the area of blending of biogenous substances with mineral oil, because business in given area is only limited to the tax store operator, i.e. the mineral oil producer. In the practice it means that in case of the application of the said limitations these blends can only be produced by the company Slovnaft, a. s., which prevents the biogenous blend producers from producing and marketing of these blends. For this reason the Office required that the licence for production of biogenous substance and mineral oil blends should be regulated with the aim to create a competitive environment in this area.

3.4 Draft Act on emission quota trading

57. In the process of ICP the Office expressed a fundamental comment to the draft Act amending the Act No. 572/2004 Coll. on Emission Quota Trading and on Amendments of Certain Acts, as amended. The draft Act included provision that the valid decision on permission to use the building is a precondition of the licence to enter into force. From this provision it is not clear whether it would also apply to testing plants of undertakings that were not subject to the provisions of the Act No. 572/2004 Coll. before and were not parties to the emissions trading schemes. It would mean that also an undertaking operating a testing plant releasing greenhouse gases would become a new party to the trading scheme. The Ministry of Agriculture, Environment and Regional Development of the Slovak Republic should allocate greenhouse gas quotas to such operator at its request, if the reserve for them is not exhausted. Otherwise such undertaking would have to buy them in order not to expose itself to administrative sanctions. However, this procedure would mean a significant burden for undertakings, cause inadequate financial costs and put them at a disadvantage to existing market players, which can be perceived as a barrier to

business. The Office therefore requested this provision to be omitted or changed so that testing plants are excluded from it.

3.5 Draft Act on Postal Services

58. In connection with the process of liberalization of the postal service market and its full opening from January 2012, the Ministry of Transport, Construction and Regional Development of the Slovak Republic drafted a new Act on Postal Services. This act will fully change the existing method of financing of the universal service. The postal reservation that allows financing of the universal service by Slovenská pošta, a. s., will be replaced by the system of contributions by the competitors to a compensation fund. This fund will be used for financing of the unreasonable burden to the provider that arises to him by the fulfilment of this obligation.

59. The Office submitted several fundamental comments to the draft Act. It particularly disagreed with the introduction of a high administrative charge for issue of the individual licence, which would prevent the entry of competitors in the market of services substitutable with the universal service. The Office also objected against the maximum amount of contribution to the compensation fund that was fixed in the draft Act at 6 % of turnover of the undertaking providing substitutable postal services. Such high contributions could be potentially liquidating for the postal market players, because profits in this sector are low. This comment was related to the enforcement of the requirement for the calculation of the contribution to take into account the turnover of the universal service provider.

60. The draft Act also provided that the Office shall cooperate with the Postal Regulatory Office which shall issue, if required, an opinion to the assessment of substitutable postal services and other partial changes that are regarded by the Office as problematic from the view of competition protection.

3.6 Draft Act on Regulation in Network Industries

61. The Office expressed a fundamental comment to the draft Act, amending and supplementing the Act No. 276/2001 Coll. on Regulation in Network Industries and on Amendments to Certain Acts, as amended. The objective of the Ministry of Economy, that presented the draft Act, is particularly the dissolution of the Board for Regulation and the direct appointment of the chairman of the Regulatory Office for Network Industries by the government.

62. AMO SR believes that this procedure would impair the independence of RONI and at the same time mean among others the cancellation of the two-instance administrative proceedings in matters of regulation. As a precondition of regulation in the European Union, it should be functioning professionally and independently from the government and any political influence. However, the submitted proposal envisages exactly the opposite procedure, namely the strengthening of the regulatory body's dependence on the political power. This procedure is contrary to the legislation of the European Union.

3.7 Project of revitalization of railway transport

63. The Office expressed fundamental comments to the material "Project of revitalization of railway transport". The material should have contained measures aimed at increasing the performance and economic effectiveness of railway companies, but the proposed measures were vague and generalised. The measures proposed among others to conclude long-term, at least 10 year contracts for provision of public transport services in railway passenger transport by the direct award. The Office noted that long-term contracts on provision of public services concluded with one transport operator, moreover without a tender, can result in the full closing of the market to the competitors. To cause the minimum distortion to competition, the contracts for public transport services should be concluded for a reasonable (not very long) period. In addition, the transport operator should be selected through a tender and the contracts

should be concluded for smaller units, e.g. for the individual regions, which will allow new smaller companies to apply for public service contracts.

64. Beside of ICP, the Office used direct communication with the relevant ministries.

3.8 Act on Waste

65. The Office officially approached the Ministry of Environment of the Slovak Republic in connection with a proposal for the amendment to the Act on Waste. The existing legislation provides that hazardous waste produced in the Slovak Republic shall be preferably recovered in the Slovak Republic. If the recovery of such waste in the Slovak Republic is impossible, it shall be preferably recovered in one of the Member States. From 1 January 2006 it is practically impossible to export hazardous waste from the Slovak Republic. Hazardous waste includes particularly large households appliances used for cooling, preserving and storage of food, and used lead batteries. The practical prohibition of their export affected the collecting organizations that are economically interested in the sale of collected hazardous waste to the processor for the best price as well as the collective organizations that are economically interested in payment of the lowest price to the processor for recovery of hazardous waste. The collecting organizations have potential foreign partners who could offer services for better prices. For example, the average price of recovery and recycling of a used TV receiver in the Slovak Republic is EUR 0,30 – 0,45/kg, while in the neighbouring countries it is EUR 0,155 – 0,22/kg. In view of the valid legislation, the collecting organizations are forced to accept any conditions in the Slovak Republic, even in case that the commercial conditions in other countries are much more advantageous. From the view of collective organizations, the Act on Waste impacts the performance of producers and importers, because in other countries they would pay lower prices for processing of hazardous waste. Consequently, lower recycling fees could be charged which would decrease prices for the final consumers. The Office concluded that the existing legislation unreasonably created a strong to monopoly position of certain undertakings engaged in the recovery of hazardous goods, limited the choice and decreased the effectiveness of the whole sector. The existing legal state creates barriers to entry the foreign markets of recovery and management of hazardous waste.

3.9 Milk market

66. The Office approached by a letter to Ministry of Economy of the Slovak Republic in connection with a draft legislation to be dealt with by the European Parliament, regarding the legalization of conclusion of price fixing cartel agreements by milk producers. In this context the antimonopoly institutions of the EU member countries adopted a resolution (http://www.antimon.gov.sk/files/26/2010/Resolution%20of%20EC%20 authorities_milk.rtf), where they strongly warn against any draft legislation permitting the milk producers to jointly fix prices for milk. The competition rules offer to the farmers a sufficient legal framework for the development of sustainable forms of cooperation and strengthening of their bargaining power. In the absence of any structural reorganization of the sector of milk producers aiming at the increase of economic effectiveness such legislative initiative would unavoidably reduce the economic motivation of the milk producers to develop, together with the required change resulting from the reform of the Joint Agricultural Policy. At the same time, there is a risk of the increase of the competitive disadvantage of small and medium entrepreneurs and local milk processors, whose ability of change to alternative and cheaper sources of supplies will be significantly limited. Moreover, such legislative initiative may force larger dairy farms and retail traders to search for more competitive prices outside of the existing milk collection area. It will cause the impairment of the regional and structural balance in the supplier chain due to the decrease of demand and the increase of milk production surpluses in some areas, as well as due to higher marginal costs of milk production at the level of the individual firms. This initiative will have negative impacts on final consumers, too. The Office therefore believes that it is important for the Slovak Republic to take into account the aforesaid risks in the determination of its position to the submitted draft legislation.

3.10 Regulation of the Ministry of Interior of the Slovak Republic

67. The Office requested the Ministry of Interior of the Slovak Republic for a remedy in connection with the Regulation of the Ministry regarding the indication of brands of weapons that can be used by the police officers for performance of their obligations. The Office believes that, except for the identification of the required parameters of permitted fire weapon in this regulation, the indication of the list of selected brands – fire weapon producers is contrary to the competition rules, because it disadvantages the other fire weapon producers who are not included in the said list, although they fulfill the required parameters. The objected problem was solved by an amendment of the regulation with effect from 1 December 2010.

4. Resources of Competition Authority

4.1 Resources overall

4.1.1 Annual budget

		2009	Change
Total expenses	2 374 019 EUR	3 435 205 USD	- 122 707 EUR (- 177 557 USD)

4.2.1 Number of employees

	2009	2010
Economists	25	17
Lawyers	19	20
Other professionals	5	5
Support staff	24	27
Total	73	69

4.2 Human resources

	2010
Enforcement against anticompetitive practices	23
Merger review and enforcement	13
Advocacy efforts	11

68. Period covered by the above information: year 2010