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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN THE SLOVAK REPUBLIC

-- 2011 --

This report is submitted by the Slovak Republic to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 13-14 June 2012.

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TABLE OF CONTENTS

Executive Summary	3
1. Changes to competition laws and policies, proposed or adopted	5
1.1 Summary of new legal provision of competition law and related legislation	5
2. Enforcement of competition laws and policies.....	6
2.1 Summary of activities – action against anticompetitive practices	6
2.2 Mergers and acquisitions	19
3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies	22
3.1 Intent of the Public Procurement Act and the Public Procurement Act.....	23
3.2 Report on the state of the business environment in the Slovak Republic with proposals for its improvement	23
3.3 Act on Electronic Communications	24
3.4 Code of Civil Procedure.....	24
4. Resources of Competition Authority	25
4.1 Resources overall.....	25
4.2 Human resources.....	25

Executive Summary

1. The competition is a key mechanism of the market economy – it promotes innovation, decreases production costs and increases performance of the whole economy. Only companies stimulated by competition offer products and services that are competitive in terms of price and quality. The competition is effective if independent companies that are exposed to a competitive pressure operate on the market. For companies to be able to develop this pressure, the competition law defines prohibited practices that are likely to restrict the competition. The mission of the Antimonopoly Office of SR (hereinafter referred to as “Office“ or” AMO SR“) is to intervene against prohibited practices, control the structure of markets and stimulate the creation of favourable competition conditions.

2. 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 2011 the Office issued 44 decisions and conducted 117 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 39 decisions and the second-instance body issued 5 decisions.

4. The development of competition law as well as the application experiences of the Office, triggered works on amendment of the legislation. An amendment of the Act on Protection of Competition aimed to the area of assessment of concentrations was prepared and approved in 2011.

5. Significant changes occur in the competition law. A formal approach is replaced by an economic approach and a search for new, more efficient instruments for handling competition failures and achievement of higher procedural effectiveness is undertaken. In the year under review, the Office opened public consultations to the concepts of commitments and settlement and published the procedure of their application on its website.

6. In 2011 the Office continued its advocacy activities that were aimed to the elimination of administrative regulatory barriers to competitive pressures.

7. The competition advocacy is one of the main pillars of modern competition policy. It aims at creating and promoting public awareness and perception of the protection of competition and effects that it brings for economy and consumer. Advocacy activities comprise a wide range of activities of competition institutions – besides the decision-making - starting from opinions submitted in the interministry comment procedure and at government meetings through sector inquiries, seminars, conferences, public discussions or lectures.

8. In 2011 the Office sent comments to 36 materials in the interministry comment procedure. In eight from them the Office formulated fundamental comments to the prepared legislation.

9. Sector inquiries help to detect the causes of deformation of selected markets and to identify potential anticompetitive restrictions. They are particularly important in the new-liberalised sectors that gradually open to the competition. In 2011 the Office finalised the sector inquiry in the area of railway transport that was discussed with the concerned undertakings and regulators.

10. The cooperation of a competition institution with affected parties, undertakings, regulators, government or academic community plays an important role. The communication and promotion of

competition culture are important too. In the interest of creation of competition culture and better public awareness of the competition rules the Office continued its cooperation with undertakings, regulators, government and self-government bodies, professional associations. It organized two workshops on cartel agreements in public procurement and a workshop on the Office's approach to the issue of professional associations and regulation of their internal acts that are likely to influence the competition.

11. The Office wishes to inform the public on its outputs and other activities, to obtain the feedback and to discuss with experts in protection of competition. In 2011 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 Office also regularly informs the media and through them the public about its outputs in the form of press releases and information published on the website of the Office. In the effort to identify the level of competition culture in Slovakia and obtain the feedback from affected parties, especially undertakings, the Office obtained opinions on its activity through an inquiry. The Office's employees actively participated in expert discussions at both domestic and foreign forums and published numerous contributions in domestic and foreign periodicals.

12. The creation of competition culture and competition awareness significantly helps to protect the competition. The Office wishes that the new generation of managers and lawyers becomes aware of the competition rules, therefore it develops a targeted and intensive cooperation with universities. In the framework of 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 implemented several common activities and enabled the organization of study visits covered by scholarship at the Office.

13. The Faculty of Law of the Trnava University was a partner of the Office in the organization of the international conference "Twenty Years of Application of Competition Rules in Slovakia", that also analyzed new trends in the protection of competition, not only in Slovakia, but also within the EU.

14. In cooperation with OECD the Office organized an international seminar on "Effective Application of Competition Rules".

15. In 2011 the Office imposed fines and penalties totalling EUR 13 499 223. In 2011 fines at the amount of EUR 3 505 362 and penalties at the amount of EUR 62 014 were paid, totalling EUR 3 567 376. Revenues from fines and penalties are income of the state budget.

16. Within the framework of the programme "Competition", funds totalling EUR 2 145 056 were allocated to the Office for the year 2011. Funds totalling EUR 2 119 136 were allocated to the Office from the state budget for the year 2012.

17. A challenge for the Office in the following year will be the priority focus on handling of anticompetitive restrictions that are most detrimental to the consumer, the application of new rules for assessment of concentrations, and intensive advocacy activity and cooperation with other regulators, undertakings and academic community. It will be equally important for the Office to find solutions for real handling of competition failures damaging consumers after the review by courts. In 2012 the Office will further work on improvement of the quality of its activity and promotion of skills and professional qualifications of its employees.

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 Amendment of the Act on Protection of Competition

18. On 19 October 2011 the National Council of the Slovak Republic approved the draft amendment of the Act on Protection of Competition, submitted for the legislative process by the Antimonopoly Office of the Slovak Republic. The changes proposed in the amendment result from requirements of the application practice and from expert discussions with undertakings and lawyers and reflect the development in the European legislation. The amended Act entered into force on 1 January 2012.

19. Before discussion by the parliament, the draft Act was submitted for public consultation to undertakings and lawyers with the request for sending potential suggestions and comments. The draft Act was amended on the basis of opinions sent in the public discussion. The changes in the amended Act particularly concern the regulation of concentrations of undertakings.

20. The criteria determining whether a concentration is subject to control by the Office, were redefined. According to the new wording of the Act, turnover in the Slovak Republic must be attained by the acquired company. This change will lead to the elimination of the mandatory notification of a concentration in cases where the acquired company only fulfils the criterion of global turnover and does not significantly participate in the competition on the Slovak market.

21. A new, so-called “two-phase“ process for assessment of concentrations is introduced. Low-risk concentrations will be assessed in the first phase and the period for their assessment will be reduced to 25 working days. The decision on this type of concentration will have certain specifics and will be issued in a simplified form in a majority of cases. In case of a more complicated concentration the assessment will proceed into the second phase with a period of 90 working days for decision. This change will accelerate and increase the effectiveness of the process of assessment of concentrations.

22. Another news in the existing system of assessment of concentrations is the change of the existing dominance test to SIEC test (Significant Impediment of Effective Competition) used by the European Commission within the meaning of the Regulation on the Control of Concentrations between Undertakings.

1.1.2 Regulations of the Antimonopoly Office of SR

23. On 17 November 2011 two regulations of the Antimonopoly Office of SR were published in the Collection of Laws. It was the Decree of the Antimonopoly Office of the Slovak Republic No. 403/2011 Coll. amending and supplementing the Decree of the Antimonopoly Office of the Slovak Republic No. 269/2004 Coll. laying down the details on the calculation of turnover and the Decree of the Antimonopoly Office of the Slovak Republic No. 402/2011 Coll. amending and supplementing the Decree of the Antimonopoly Office of the Slovak Republic No. 204/2009 Coll. laying down details of particulars of notification of concentration.

1.1.3 Alternative solution of cases

24. In the effort to enhance the effectiveness of proceedings in competition law an alternative solution of competition cases, e.g. concept of commitments, is increasingly used. For explanation of its procedure and principles of making commitments, the Office published on its website the material Commitments and opened a public consultation to it. The outcome is a binding document that helps the

undertakings to accelerate and enhance the effectiveness of the process of submission of commitments. The material is published on the website of the Office.

1.1.4 Commitments

25. The substance of commitments is that the Office can terminate administrative proceedings on agreements restricting competition and abuse of a dominant position otherwise than by a “classic” decision. In specified cases a party to the proceedings can submit from its own initiative commitments – proposed solutions that he undertakes to fulfil and that will lead to solution of competition problems. If the Office accepts the commitments, it will issue a decision on commitments, by which it obligates a party to the proceedings to fulfil these commitments. In this case the Office does not declare a violation of the law and hence does not impose a fine on a party to the proceedings. An advantage of this approach is the reduction of administrative costs and a fast and effective intervention on the market, which brings benefits, particularly to consumers.

26. Another instrument for alternative solution of cases is the concept of settlement. Following a public discussion the Office published on its website a procedure for the application of the concept of settlement.

1.1.5 Settlement

27. The sense of settlement is that an undertaking that violates the law, voluntarily confesses the violation and assumes responsibility for the violation, can be imposed a fine reduced by 20% in case of horizontal agreements and a fine reduced by 50% in case of vertical agreements. The purpose of the concept of settlement is to save public resources by acceleration of the proceedings and to achieve a fast and efficient remedy on the market. A party to the proceedings benefits from a lower fine as well as from lower costs of administrative and potential legal proceedings.

2. Enforcement of competition laws and policies

2.1 Summary of activities – action against anticompetitive practices

- Agreements restricting competition

In general terms, an agreement restricting competition is any agreement between undertakings, whose aim or effect is a restriction of competition. Nevertheless, some of these agreements are not always contrary to the Act on Protection of Competition, either because their impact on the market is insignificant or because their positive effects are higher than their negative effects on the competition. It particularly applies to vertical agreements, but also to certain types of horizontal agreements, such as agreements on specialization, research and development, etc. On the other hand, agreements restricting competition can be a very harmful anticompetitive practice with very negative impact on the consumer, because they cause the increase of prices, negatively affect the supply and the quality of products or innovations. They represent so-called “hard-core cartels“, i.e. agreements between competitors whose content is price fixing, limitation of production or sales, or market allocation.

One of frequent forms of hard-core cartels is so-called “bid rigging“, i. e. collusion between participants in public tenders. Also in 2011, the Offices focused on the area of public procurement, in terms of monitoring and investigation of the individual cases as well as in terms of competition advocacy. The Office succeeded to identify and convict tenderers of conclusion of a cartel agreement and to penalize them. The Office also continued to organize workshops for

representatives of state institutions and self-governing regions aimed to a clarification of issues of cartel agreements in public procurement. In 2011, an important activity of the Office, particularly in the area of agreements restricting competition, was the elaboration of conditions of application of the concept of settlement in case of violation of the Act on Protection of Competition. Following a public discussion the Office published the procedure for application of the concept of settlement on its website.

In the period under review the Office, acting upon suggestions or from its own initiative, investigated several cases of potential anticompetitive agreements, e.g. in the area of bank loans for housing, guarantee service of motor vehicles, levying a fee for access to websites of the media, prices for taxi services, distribution of the press, compulsory insurance of motor vehicles, etc.

In 2011 the Office conducted 76 investigations on the relevant market, initiated 3 administrative proceedings and issued 9 decisions. The Division of Agreements Restricting Competition imposed fines at the amount of EUR 1 379 642.

- Abuse of a dominant position

Penalising of cases of abuse of a dominant position is one of traditional areas of the competition law. Its purpose is to prevent dominant undertakings from abusing their powerful market position. For assessment whether a particular conduct of an undertaking is or is not abuse of a dominant position is important to prove the relation between the assessed conduct and harm to consumer welfare. Cases of abuse of a dominant position must therefore be based on the “theory of harm“, i.e. economically logical and consistent explanation how the assessed conduct affects the consumer. As the Office has tried to apply an economic approach in recent period, it regards the theory of harm as an integral part of assessment of each case of abuse of a dominant position. The Office quite often encounters misunderstanding of this fact, especially on the part of the complainants, which is one of explanations of the large disproportion between the number of complaints of potential abuse of a dominant position and the number of cases where the Office proved the violation of the competition rules.

In 2011 the Division of Abuse of a Dominant Position dealt with 90 complaints of potential abuse of a dominant position or violation of § 39. The complaints came from different sectors such as energy, postal services, transport, waste management, health, water management and many others. As far as the number is concerned, many of the complaints proved ungrounded or beyond the competence of the Office in the first phase, due to which only 41 cases proceeded to the investigation phase. In one case administrative proceedings were initiated in 2011, during which the decision on abuse of a dominant position was issued and a fine imposed. In the year under review the Division of Abuse of a Dominant Position also dealt with cases that were returned for review after the review by the courts. In two cases the Office also decided on a failure to submit data. In 2011 the Division of Abuse of a Dominant Position initiated 5 administrative proceedings.

In some cases it proved that the Act on Protection of Competition had not been violated. But during investigation the Office identified problem market areas and informed the respective bodies of these restrictions within the framework of the competition advocacy. Examples include the letter to the Ministry of Transport regarding problems in the area of tachographs, letter to the Ministry of Environment promoting new methods of collection of small electrical waste, and the letter to the Ministry of Culture concerning the functioning of press agencies.

The Division systematically dealt with certain sectors and in one case summarized and published its knowledge in the form of a sector inquiry – “Problems in the Railway Transport Services Sector from a Competition Point of View“.

- Courts

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 judgment of the regional court to the Supreme Court of the Slovak Republic.

In 2011 the courts decided in 21 cases, of which 12 cases were decided by the Regional Court in Bratislava and 9 cases by the Supreme Court of the Slovak Republic.

2.1.1 Description of significant cases, including those with international implications

- Procter & Gamble and HENKEL admitted participation in an agreement

The Office issued a decision in matter of agreement restricting competition according to § 4 of the Act on Protection of Competition and Art. 101 (2) of the Treaty on the Functioning of the European Union, concluded among detergent producers Procter & Gamble, International Operations SA, Swiss Confederation, Procter & Gamble, spol. s r. o., Slovak Republic, Henkel Central Eastern Europe Gesellschaft GmbH, Austria and HENKEL SLOVENSKO, spol. s r.o., Slovak Republic.

In the period from the middle of year 1999 to the end of year 2004, the parties to the agreement were negotiating, at the level of the Central European region, a limitation of the scope and frequency of promotional activities at the sale of high-efficiency detergents. At the same time, the parties to the agreement in connection with a standardization of packing of high-efficiency detergents agreed that after introduction of the new standard packing the prices would remain at the level of initial packing. It was related with exchange of sensitive commercial information among the parties to the agreement.

By this conduct the undertakings concluded and implemented an agreement restricting competition whose content was indirect fixing of prices for goods on the relevant market of detergents for use in households in Slovakia.

Administrative proceedings were initiated at request of the undertakings Procter & Gamble, International Operations and Procter & Gamble, spol. s r. o. for non-imposition of fine (leniency program).

- Leniency program

According to the Act on Protection of Competition the Office shall not impose or shall decrease a fine on undertakings who are the first to submit to the Office from their own initiative information and a proof of the existence of a prohibited agreement and fulfil further conditions laid down by the law. The leniency program represents an important instrument for detection of horizontal agreements restricting competition, i.e. agreements concluded between competitors. Undertakings that fulfil the conditions laid down by the law can rely on not being imposed a fine or on being imposed a fine decreased by up to 50%.

In this case both undertakings fulfilled all the conditions and therefore they were not imposed a fine.

The Office imposed a fine at the amount of EUR 291 060 on the undertaking Henkel Central Eastern Europe and a fine at the amount of EUR 194 040 on the undertaking HENKEL SLOVENSKO, spol. s r.o. In both cases the Office took into account as mitigating circumstance that both parties to the proceedings admitted their participation in the said agreement, cooperated with the Office and submitted a proof of the existence of the agreement. For these reasons the basic amount of fine was decreased by 30%. This procedure brought an advantage in the form of lower costs of proceedings for both the Office and the parties to the proceedings. The decision entered into force.

- Cartel agreement of CRT monitor manufacturers

The Office imposed a fine totalling EUR 828 447 on parties to an agreement restricting competition, concluded by manufacturers of CRT monitors that are delivered as intermediate products to TV and PC monitor manufacturers.

The Office initiated the proceedings on the basis of a request for non-imposition of fine (leniency program) submitted by one of the parties to the agreement. The request comprised the admission of participation of the said undertaking in an agreement restricting competition, consisting in coordination of the activity of the parties to the agreement on the relevant CRT monitor manufacturing and supply market and submission of proofs of the existence of this agreement. During the administrative proceedings another party to the agreement requested for the decrease of a fine and submitted to the Office supplementary information proving the existence of the agreement.

From proofs obtained by the Office it resulted that the parties to the agreement had attended multilateral and bilateral meetings, where they had exchanged sensitive commercial information such as information on prices of products, quantity of manufactured products, production and sales plans. They also determined volumes of supplies for important customers and negotiated production limitations with the aim to prevent decline of monitor prices. At these meetings they had also directly bargained about product prices and verified the observance of agreed prices. The Office concluded that the parties to the agreement by their conduct had directly and indirectly fixed prices of CRT monitors and undertaken to a limitation of their production and sale. The length of participation of the individual undertakings in the agreement in the period under review, i.e. from 1996 to 2004, was different and the Office took this into account when determining the amount of fine.

The parties to the agreement operated globally and in Europe they supplied products also to the territory of SR.

Agreements on direct or indirect price fixing as well as agreements on limitation of production and sales are generally regarded as one of the most severe violations of the law. Their objective is a restriction of the competition without need of examination of impacts of such conduct on the market. The implementation of such agreement, that was demonstrated in this case, always leads to a significant restriction of the competition, which brings benefits exclusively to the parties to such agreement to the detriment of customers or end users. The decision has not entered into force. Several parties to the proceedings lodged an appeal against the decision.

- Agreement restricting competition in the form of concerted practice in public procurement

The Division of Agreements Restricting Competition issued a decision that companies PAP-PEX SLOVAKIA, s. r. o., Topoľčany and SLOVPAP Slovakia s. r. o., Bratislava had committed a prohibited concerted practice in public procurement announced by the headquarters of the Social Insurance Company in Bratislava for the supplier of office supplies and stationery. This concerted practice consisted in direct price fixing for goods and in coordination of the conduct in

public procurement, for which the Office imposed on the undertakings a cumulative fine of EUR 63 387.

The Office established and proved that intensive communication had occurred between the undertakings in the period between the announcement of public procurement or sending the request for tender documentation and the submission of a bid to the contracting authority.

At the same time, bids of both undertakings contained identical prices of offered products to a degree that excludes independence of each of the undertakings in the preparation of a bid.

Having been informed about conclusions of the investigation, both undertakings submitted to the Office a statement where they admitted their participation in an anticompetitive conduct and requested the Office to take it into account when determining the amount of fine.

When determining the amount of fine, the Office took into account the severity of the prohibited practice – horizontal cartel agreement of competitors. Its decision was based on the substance and sense of public procurement as a system whose functioning is conditional upon the existence of a competitive environment as basic condition that enables the selection of the best bid in terms of quality and price, with the aim to save public resources. In this case the parties to the agreement by their conduct only wanted to create an appearance of a competitive environment, knowing that they violated the act by their conduct. But the Office took into account that the parties to the proceedings had cooperated with the Office and admitted their participation in an illegal conduct, from which they derived no material benefit, on the basis of which it decreased the fine imposed on them by 40 per cent. The decision entered into force.

- A decision concerning the excessive fee for above-standard reading of electric meters

In the previous period the arrangement of the electricity sector went through substantial changes. In the past undertakings operating in the electricity sector were organized as vertically integrated mono-polies. Such undertakings had one management and were owned by the state. In the process of restructuring of the Slovak electricity sector the undertaking that carried out all activities in the electricity sector was divided into autonomous and independent undertakings, specifically an electricity producer, an operator of transmission grid, and distribution and sales companies that implemented distribution and sale of electricity to customers.

In 2007, within the framework of unbundling in distribution and sales companies, the electricity distribution was separated from activities not related to distribution, such as trading and sales of electricity. In this context independent companies – companies engaged in electricity distribution were founded. These included distribution system operators (hereinafter “DSO“) and companies engaged in electricity trade, i.e. purchase of energy and its sale to end consumers. They are however subsidiaries of one group of companies that have common parent company and among which mutual relations still exist.

The unbundling was accompanied by opening of the market, where undertakings and households can choose their electricity supplier since 2005 and 2007, respectively. The new electricity suppliers can win electricity customers in the segment of households (but also outside of this segment) more or less only from the traditional electricity supplier. In the administrative proceedings the Office focused on assessment of the conduct of DSO in the West Slovak region.

In the process of change of the electricity supplier it is necessary to measure electricity consumption of a particular customer at the date of change. The consumption measurement in case of the change of supplier is the responsibility of DSO. The electricity consumption measurement in case of change of the electricity supplier is related to a fee that is the subject of administrative proceedings. This fee was not paid by the end users, but by the new electricity

suppliers. DSO started charging this fee in a period when new electricity suppliers – competitors in West Slovakia began to enter the electricity supply for household segment.

The Office dealt with this fee because its price seemed to be unreasonable and it also received signals from the new electricity suppliers that the fee caused problems on the market of electricity supply for households.

The Office proved that the assessed fee had been unreasonably high. The Office used the benchmarking method to prove the practice. Proving of the practice was based on a comparison in time of the amount of the fee and on a comparison of the fee with fees for similar services performed by other DSO in the other two regions of Slovakia. The proving showed that the assessed fee had been more than 100 per cent higher in both comparisons.

Due to the unreasonably high fee the new electricity suppliers paid for provided service in the West Slovak region much more than they would have paid if the anticompetitive practice had not been implemented there. Another consequence of the practice was that the unreasonable amount of fee acted as a barrier to access of the new suppliers to the market of electricity supply for households in the territory of West Slovakia. The amount of fee, that the new suppliers had to pay for each individual household they won, represented a profit margin for several years that they potentially could win by electricity supply for the household.

DSO – company existing on the market before the entry of new electricity suppliers could charge such unreasonable price, because it knew that there was no other alternative for the new suppliers to measure consumption in case of change of the electricity supplier. In the effort to win a customer in the household segment the new suppliers were forced to pay this fee.

The Office imposed a fine at the amount of EUR 150 000 for the violation of the competition rules. The decision has not entered into force.

- Investigation and advocacy in the tachograph sector

In 2011 the Division of Abuse of a Dominant Position conducted a more extensive investigation on the basis of several complaints from the area of provision of services for different brand tachographs in SR. During this investigation the Office verified whether the conduct of authorized representatives of certain brands of these highway speed recorders restricted or could have restricted the competition in different ways. The problems specifically concerned the process of issue of certificates required for the implementation of verification of tachographs of different brands, as well as the area of adjustment of contractual conditions among representatives of the individual brands of tachographs and companies providing various services related to tachographs for final customers.

In this case the investigation was terminated, because it did not disclose any factors justifying the assumption that the conduct of companies operating in the tachograph sector had restricted the competition according to the law.

However this investigation by the Office showed that the highway speed recorder – tachograph is also defined in SR as a designated measuring gauge, due to which it falls under regulation, not only by the Ministry of Transport, Construction and Regional Development of SR (hereinafter “Ministry“), but also under more strict rules of the metrological legislation. The scope of measures that undertakings have to comply with in the respective area, causes that the whole system of functioning is often non-transparent and ambiguous to them and it was also the cause of several complaints lodged with the Office.

The Office has not the competence for assessment of the scope and for adjustment of the national legislation in this area. In the effort to improve the market situation the Office sent to the

Ministry a letter summarizing the proposed measures that in the Office's view could improve the conditions of operation of the undertakings on given market.

- Connection of new-constructed local gas industry facilities

In May the Office terminated investigation in the area of connection of new-constructed local gas industry facilities ("GIF") to the distribution network of company SPP – distribúcia, a. s., during which it dealt with complaints delivered to the Office by several entities in the same matter. The procedure used by the company SPP – distribúcia, a. s. for settlement of the relation to these GIF in the form of conclusion of the lease contract was problematic for the owners of the individual GIF and some of the provisions of this contract also seemed to be inadequate to the owners.

The Office examined all the objected items and on the basis of its findings stated that company SPP – distribúcia, a. s. applied a uniform and objective procedure for settlement of relations to GIF of third parties, taking into account valid rules of the energy legislation. The conduct of company SPP – distribúcia, a. s. in this area thus did not restrict the competition according to the law, so the Office terminated the investigation. Nevertheless, in view of recurrent complaints in this area the Office plans to deal with this issue as a part of its advocacy activity also in the following period.

- Megawaste

In April the Office terminated investigation of company Megawaste Slovakia, s. r. o. (hereinafter "Megawaste") for the suspicion of the violation of the Act on Protection of Competition. According to the complaint the company Megawaste tried to edge its competitor, company Chudovský, a. s. (hereinafter "Chudovský"), out of the market when it refused to deposit municipal waste collected by the company Chudovský on the municipal waste dump site Sverepec.

The complaint indicated that the company Megawaste, owner of the dump site, had been willing to deposit waste produced by communes – contracting partners of the company Chudovský, on the dump site under the condition that the waste would not be collected by the company Chudovský, but by the company Megawaste. The complaint regarded this conduct as abuse of a dominant position by the company Megawaste.

The Office conducted an investigation into the market, assessed the conduct of the company Megawaste and concluded that this company had not a dominant position on this market and therefore no abuse of a dominant position could occur. For this reason the Office terminated the investigation.

- Slovglass – SPP

In the case Slovglass versus SPP, a. s. the Act was allegedly violated when the company SPP, a. s. refused to conclude a contract with company Slovglass for gas supply in January 2011. The company Slovglass believed that SPP, a. s. had refused to conclude the contract because it had learnt about their departure to a competitor gas supplier. Slovglass had not concluded any contract for January with any gas supplier, which had given rise to a risk of the disconnection from gas supply and hence shutdown of production and high damage to the company's property.

By investigation the Office arrived at the conclusion that company Slovglass had repeatedly failed to fulfil its financial obligations towards company SPP, a. s. resulting for it from the existing Gas Supply Contract. The company SPP, a. s. tried to repeatedly handle this situation in

the past, but solvency of the company had not improved for a long period. The company SPP, a.s., therefore decided not to prolong the contractual relationship with Slovglass.

When a customer fails to fulfil its financial obligations and the supplier therefore refused to supply goods to him, it is regarded as an objective reason, on the basis of which the conduct in question is not regarded as abuse of a dominant position. It was not proved that the motive of conduct of the company SPP, a. s. had been the effort to edge its competitor out of the market. For this reason the Office terminated this case.

- Nitra self-governing region and ENERGO-SK

The Office investigated whether the conduct of the Nitra self-governing region (hereinafter “NSK“) and company ENERGO-SK, a. s. (hereinafter “ENERGO-SK“) founded by NSK for the purpose of administration of energy facilities in buildings of organizations of NSK could have led to the violation of the Act on Protection of Competition. The complainant, operator of the hospital Nemocnica Topoľčany, n. o., who operated the hospital under the lease contract with NSK, objected that NSK in cooperation with ENERGO-SK had made Nemocnica Topoľčany to conclude a disadvantageous heat supply contract with company ENERGO-SK, thus preventing it from choosing its own supplier and rationalizing costs of the hospital. The Office further examined whether company ENERGO-SK had not caused the increase of costs of the hospital by transferring certain activities of administration of energy facilities of Nemocnica Topoľčany to other company, ENERGYR NITRA, s. r. o. After the evaluation of documents and information the Office found no indications showing abuse of a dominant position or other restriction of the competition, so it did not deal with the complaint any further.

- Investigation of electrical waste collection

AMO SR terminated its investigation of potential violation of the competition rules in electrical waste collection. In March 2011 the Ministry of Environment of SR at request of regional and district environmental authorities did not give approval to electrical waste collection in the premises of offices, public institutions and schools.

According to § 39 of Act No. 136/2001 Coll. on Protection of Competition government, state administration authorities, local self-administration authorities and special interest bodies must not give advantage to certain undertakings or otherwise restrict competition.

The Office investigated whether this conduct does not give advantage to certain undertakings. It concluded that the opinion of the Ministry of Environment of SR had not given advantage to certain undertaking or had not been directed to a particular undertaking, but that it had concerned electrical waste collection in the premises of offices, public institutions and schools and that it had been directed towards all undertakings that might have been interested in this form of electrical waste collection.

The Ministry of Environment of SR initiated a simplification of electrical waste collection by creation of standard conditions for small electric appliances and mobile telephones in the premises of schools, hospitals, municipal authorities or zoological gardens. A similar collection scheme is operated e.g. in the Czech Republic where 1600 schools participate in it.

The Office furthers the possibility of electrical waste collection in this manner and concluded that a reason for initiation of proceedings in this matter according to the Act on Protection of Competition does not exist. For this reason the Office terminated the investigation.

- Imposition of fine on undertaking Marianum

By virtue of a judgment of the Supreme Court of SR (hereinafter “court“) the Council of the Office again dealt with the case of abuse of a dominant position by the undertaking Marianum.

The court in its judgment objectively upheld the initial decision of the Council of the Office in combination with the first-instance decision, as regards practices that were designated as abuse of a dominant position. The undertaking Marianum excluded other rival funeral undertakings by not allowing them to provide certain funeral services (e.g. services of the master of ceremony, bearers during a funeral) in cemeteries and crematoriums administered by it. It also directly harmed customers by charging unjustified fees, particularly a fee for disposal of floral tribute after the funeral and a fee for the removal of old tombstone in case of the lease of a plot in a cemetery, which was charged to the new lessee.

The court also confirmed the correctness of the application of so-called general clause to assessed practices. As the types of abuse of a dominant position specified by the Act are only demonstratively enumerated examples of the most frequent anticompetitive practices, the Office applies the general clause prohibiting any abuse of a dominant position on the market to other “not specified“ cases.

The court cancelled the verdict on imposition of a fine for the reason of insufficiently established facts of the case and incorrect legal assessment of the case and in this part returned the case to the Council of the Office for reassessment. Arguments of the court were based on the need to observe the principle of predictability when penalising undertakings. If the Office applies the general clause, i.e. the type of abuse of a dominant position does not fall under any of the examples demonstratively enumerated by the Act, in the court’s view a dominant undertaking is unable to predict that such conduct constitutes abuse of a dominant position on the market, for which he can be penalised.

In accordance with the legal opinion of the court the Council dealt with the possibility of imposition of a fine in case of the application of the general clause to assessed practices of the dominant. On the basis of analysis of the judgment of the court, the case law of Slovak courts and a comparison of foreign regulations from the area of competition and the case law of the European Court of Justice, the Council concluded that observance of the principle of predictability should be examined with regard to each assessed case. The application of the general clause therefore does not automatically mean in each case the violation of the principle of predictability.

In view of the circumstances of this case the Council subsequently examined whether the undertaking Marianum could have predicted that its conduct was problematic from the view of protection of competition and can be assessed as abuse of a dominant position on the market. When doing so it used theoretical basis commonly used for assessment of the criteria of observance of the principle of predictability at European level that were also confirmed by the European Court of Justice.

It was found that in the past the undertaking Marianum had been a party to administrative proceedings before the Office, though no sanction had been imposed on it. In view of the content and character of the assessed proceedings the practices involved did not represent a novum, because the Office had dealt with similar types of practices, though concerning other sectors. It is not less important that in the past the Office intervened also directly in the area of cemetery and funeral services, specifically against practices of a dominant undertaking that were similar to those involved in this case from the view of the purpose (exclusion of competitors).

From the established previous practice of the Office it resulted that for this case the undertaking Marianum could have predicted with a sufficient certainty that its conduct would be assessed as abuse of a dominant position. Based on this conclusion, the Council of the Office re-examined the amount of fine which, after the evaluation of severity and duration of the illegal conduct, represents EUR 235 200.

- Stopping of the proceedings against undertakings in the sector of sale of luxury cosmetics and perfumes

The Office decided on the agreement restricting competition concluded between the undertaking FAnn-parfumérie, s. r. o. (herein-after “FAnn-parfumérie“) and its nine customers. According to the first-instance decision of the Office the undertakings violated the Act on Protection of Competition by concluding an agreement on fixing resale prices. The Office stated that such conduct had occurred on the basis of contractual provisions on the obligation to maintain prices recommended by the undertaking FAnn-parfumérie and on the basis of the existence of mutual contacts and technical support on the part of the undertaking FAnn-parfumérie.

On the basis of appeals lodged by the parties to the proceedings the case was dealt with by the Council of the Office. Its assessment of the existence of an agreement on fixing resale prices was based on the principles set forth in the Commission Regulation (EU) No. 330/2010 of 20 April 2010 on the application of Article 101 (3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices and in the Guidelines on vertical restrictions, and on the evaluation of risks of a restriction of competition in relation to their positive effects. The Council of the Office believes that it was necessary to assess the conduct of the parties to the proceedings in the context of market situation and impacts on competition, consumers and consumer welfare. A thorough knowledge of the relevant market, the level and the functioning of competition on the market is a prerequisite of assessment whether a conduct of undertakings has negative impacts on competition and causes harm to consumers.

The Council of the Office completed evidence with information provided by the suppliers of cosmetic products and perfumes and with information on the functioning of the sale via the Internet. Based on this information in combination with market information that was also relied upon by the first-instance body, the Council of the Office concluded that the conduct had not a restrictive character of a practice of resale price fixing and that it did not fulfil conditions for the prohibition.

For assessment of impacts on competition it is also necessary to know the functioning of the market and the market position of the undertakings. In this case a vertical relationship existed between the undertaking Fann-parfumérie, s. r. o. and nine independent undertakings whose market share is low. The undertaking Fann-parfumérie, s. r. o., is an important and core customer of cosmetic products and perfumes from suppliers to SR and thanks to this position it is able to agree with suppliers on advantageous conditions of the purchase of products and to transfer these advantages to the nine undertakings. The relationship of the nine independent undertakings with the undertaking Fann-parfumérie, s. r. o. brought advantages that were transferred to customers, particularly in the form of increased effectiveness of the distribution chain, possibility to grant special allowances to consumers (discounts and special offers) that would be economically intolerable for the undertaking itself, extension of the range of products, possibility to use advantages from loyalty cards and other campaigns also in independent shops out of the network Fann-parfumérie, s. r. o.

In the context of collected information on the system of functioning of the cosmetics market in SR the Council of the Office concluded that the system of cooperation of the undertaking Fann-

parfumérie, s. r. o. and the nine undertakings did not show signs of an anticompetitive practice and brought benefits for the consumer.

The general resale price fixing embodied in some of the assessed contracts represents a severe restriction of competition, therefore competition institutions deal with them and examine such contractual provisions. But in this case findings on the functioning of the market did not prove the existence of resale price fixing with negative impact on competition and to the detriment of the consumer. The Council of the Office therefore stopped the administrative proceedings. The decision entered into force on 15 November 2011.

- Noncompliance with a decision on prohibition of concentration - Phoenix zdravotnícke zásobovanie, a. s.

The Supreme Court of the Slovak Republic dealt with the appeal of the Antimonopoly Office of SR against the judgment of the Regional Court in Bratislava, where the Regional Court had decided on action against a penalty decision of the Office in the area of concentrations. It concerned noncompliance with a decision on prohibition of concentration.

The Regional Court objectively upheld the Office's decision, but at the same time used its discretionary power within full jurisdiction and significantly decreased the fine imposed on the undertakings. The Regional Court justified its decision particularly by the need to maintain the preventive function of imposed penalty. According to the court's findings, the decision of the Antimonopoly Office of SR put special stress on its repressive function. The Supreme Court of the Slovak Republic changed the judgment of the Regional Court in Bratislava by dismissing the action and upholding the imposition of fine at the initial amount.

In its judgment the Supreme Court of the Slovak Republic particularly made comments on the scope of reviewing power of the court, especially in relation to the use of full jurisdiction in case of a reduction of imposed fine.

The Supreme Court of the Slovak Republic believes that a court does not assess the expediency and suitability of an administrative decision. When reviewing an administrative decision, it only examines whether the judgment did not go beyond the limits and aspects provided by the law, whether it complies with the rules of logical thinking and whether information on which such judgment is based were collected fully and through a proper procedure. If these conditions are fulfilled the court should not draw different or opposite conclusions from the same circumstances than the administrative court.

From the decision it also resulted that potential change in the amount of imposed fine should be justified. The court must not decide alone on an adequate amount of fine without explaining why it regards conclusions of the administrative court as erroneous and without stating a violation of the law.

According to the decision of the Supreme Court of the Slovak Republic, it was also necessary to respect both functions of a fine in order to ensure the efficiency of fines for the violation of the European competition law. The purpose of fines is not only a penalty, but also the prevention. These two functions of fines must not be separated from each other.

- Abuse of a dominant position by the contributory organization MARIANUM– pohrebníctvo mesta Bratislavy

The Supreme Court of the Slovak Republic decided on the appeal of the plaintiff against the judgment of the Regional Court in Bratislava that had decided on an action for review of a decision of the Antimonopoly Office. In the administrative proceedings the Office decided on

abuse of a dominant position by the plaintiff in the area of funeral and cemetery services. The general clause pursuant to § 8 (2) of the Act on Protection of Competition was applied in the decision. The Regional Court dismissed the action as ungrounded and thus upheld the decision of the Office. On the contrary, the Supreme Court of the Slovak Republic changed the decision of the Regional Court in Bratislava by cancelling the decision of the Council of the Office in the verdict section of the decision on imposition of a fine and returned the case to it for further proceedings and decision. The rest of action was dismissed. The Supreme Court of the Slovak Republic thus confirmed that the law had not been violated in this case.

According to findings of the Supreme Court of the Slovak Republic, the contested decision was conflicting with the *nullum crimen sine lege* principle. The Supreme Court of the Slovak Republic believes that, unlike the facts of the case explicitly named by the law, setting the facts of case at general clause has constitutive meaning, because the facts of the case are then directly created by the Office. An undertaking can be penalized only when the undertaking knows the exact wording of the prohibited practice. The Office must impose a sanction only when the undertaking does not respect the facts of the case set by a decision.

- First valid decision in the matter of cartel of four banks – Československá obchodná banka

The Supreme Court of the Slovak Republic decided on the appeal of the Office against the judgment of the Regional Court in Bratislava that had decided on an action for review of the legality of Office's decisions. The Office's decisions concerned an agreement restricting competition concluded between three banks (Slovenská sporiteľňa, Československá obchodná banka and Všeobecná úverová banka), allegedly consisting in an agreement on termination and non-conclusion of new contracts on current accounts of the company AKCENTA CZ, a. s. The decision was based on collection of evidence on a meeting of the parties to the proceedings, their later e-mail communication and conduct on the market. The Supreme Court of the Slovak Republic upheld the judgment of the Regional Court. The legality of the Office's decision was reviewed in three independent legal proceedings (before the Regional Court and the Supreme Court of the Slovak Republic), without combination of the actions against the same decision in one proceedings, in spite of the explicit request of the Office. The Office still waits for a judgment of the Supreme Court of the Slovak Republic in case of other two banks.

During the proceedings the courts concluded that the company AKCENTA had not held the licence for performance of business activities on the foreign-exchange market of SR. The courts refused the Office's objections that the conduct of the plaintiff and of the other banks should have been assessed as anticompetitive, irrespective of whether their conduct is directed against an existing or potential entity on the market. On the contrary, they concluded that it was important whether the conduct of the banks was directed against an entity that conducted business in the territory of the Slovak Republic legally and therefore enjoyed protection for its business under the law. In the courts' opinion the banks had the right to eliminate such activity. To the Office's objections that the National Bank of Slovakia by its decision did not state the illegality of operation of the company AKCENTA on the foreign-exchange market in the period when, as alleged by the Office, an agreement restricting competition was concluded and accounts were cancelled, the courts replied that the Office had not proved that the said company had operated in the territory of the Slovak Republic legally, i.e. that it had held the licence for performance of this activity.

- Competence of a cross-sector regulator in sector-regulated areas – eustream, a. s.

The Supreme Court of the Slovak Republic decided on the appeal of the plaintiff against the decision of the Regional Court in Bratislava on review of the legality of the Office's decision, by which the Regional Court in Bratislava dismissed the action. The Office decided on abuse of a

dominant position of the plaintiff eustream, a. s., who is a gas transport network operator. In the Office's view, the abuse of a dominant position consisted in enforcement of an unreasonable business condition by the plaintiff, consisting in making the connection to the transport network of the plaintiff conditional upon the sale of the connecting equipment. The Supreme Court concluded that the decision of the Council of the Office had been illegal, and therefore it annulled this decision and returned the case to it for further proceedings and decision.

The Supreme Court of the Slovak Republic concluded that in the proceedings the Office had not sufficiently dealt with the question of its competence in a regulated area such as gas industry. At the time of assessment of the conduct at issue the provision of § 2 (6) of the Act on Protection of Competition, that the Act shall not apply to cases of restriction of competition, whose assessment falls within competence of other body ensuring the protection of competition according to a special regulation, was valid. The purpose of this provision was to prevent the violation of the ne bis in idem principle. The Supreme Court of the Slovak Republic believed that the Office had not fully excluded doubts that the proceedings were in the competence of the Regulatory Office for Network Industries which, in the view of the Supreme Court of the Slovak Republic, acted and decided within the scope of its competence. Interestingly, at the time of decision of the Supreme Court of the Slovak Republic the Justified Opinion of the European Commission in proceedings against the Slovak Republic on violation of the Treaty was already published. From this opinion it resulted that a conflict of powers of cross-sector and sector regulators could never arise and hence the ne bis in idem principle could not be violated under any circumstances. The European Commission regarded as problematic the application of § 2 (6) in the practice, not its wording. In spite of this fact, the Supreme Court of the Slovak Republic concluded that a conflict of competences of the Office and the Regulatory Office for Network Industries could have arisen.

- Denial of access to local loops

The Supreme Court of the Slovak Republic decided on the appeal of the Office against the judgment of the Regional Court in Bratislava. The Regional Court in Bratislava annulled Office's decisions concerning abuse of a dominant position by the plaintiff Slovak Telekom a. s., consisting in denial of access to local loops as an essential facility. In view of the specific character of this case the general clause according to § 8 (2) of the Act on Protection of Competition was applied.

The Supreme Court of the Slovak Republic believes that in this case a specific refusal of the request for individual access to local loops as essential facility was not proved. In view of the Supreme Court of the Slovak Republic, the Office did not sufficiently explain in its decisions what specific obligation the plaintiff had violated by not providing services that could have been undoubtedly sought but that had not been specifically applied for in the decisive period. In this context the Supreme Court of the Slovak Republic believed that denial of access to local loops as essential facility could be included, by a logic interpretation, in the concept of denial of access to an essential facility according to the provision of § 8 (5) of the Act on Protection of Competition (that defines special conditions that must be fulfilled for us to speak of abuse of a dominant position). The Supreme Court of the Slovak Republic believes that if the facts of a crime of abuse of a dominant position by denial of access to an essential facility on the part of its owner or manager, that is created directly by the law, the Office assessing the legality of a deed cannot apply the facts of a crime of abuse of a dominant position based on the general clause. The Supreme Court of the Slovak Republic thus upheld the decision of the Regional Court.

- Margin squeeze – Slovak Telekom, a. s.

The Supreme Court of the Slovak Republic decided on the appeal of the Antimonopoly Office of SR against judgment of the Regional Court in Bratislava. The Regional Court in Bratislava annulled the decision of the Council of the Office concerning abuse of a dominant position by the plaintiff, consisting in margin squeeze at submitting the price offer by the plaintiff in the tendering procedure for solution of the virtual private network of Ľudová banka, a. s. in 2004. In the Office's view the margin squeeze consisted in an adjustment of the ratio of wholesale prices, for which the plaintiff offered its competitors a wholesale product for production of a retail product, to retail prices, for which it offered the product on the retail market, so that its competitors were unable to compete with prices of this product on the retail market.

The Office reassessed the conduct of the plaintiff after the Regional Court had annulled the Office's decision in 2007 (hereinafter "first annulling judgment of the court"). In the first annulling judgment the court concluded that for establishment whether the margin squeeze test could have been used in this case, it was necessary to draw up an expert opinion to identify differences in technical solutions used by the plaintiff and by its competitor for the development of the product offered on the retail market.

The Supreme Court of the Slovak Republic upheld the judgment of the Regional Court. The Supreme Court of the Slovak Republic identified itself with judgment of the Regional Court in the sense that the facts of the case were not sufficiently established, because an expert opinion was drawn up in the proceedings after the case had been returned to the court for new trial, but the Office did not deal with it sufficiently in the decision. The Supreme Court of the Slovak Republic did not accept the Office's statement that differences in technical solutions used on the wholesale market had not excluded the application of the margin squeeze test, because the plaintiff had offered its competitors on the wholesale market only one product and they had to take it into account when setting the price of a retail product. In view of the Supreme Court of the Slovak Republic, the expertise revealed differences in technical solutions for the development of the service offered by the plaintiff and by its competitor and influence of these differences on prices offered in the tendering procedure. In view of the Supreme Court of the Slovak Republic, the question whether differences in technical solutions were significant enough to exclude the application of the margin squeeze test was not answered without doubts.

2.2 Mergers and acquisitions

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

28. Through control of concentrations the Office examines impacts of large mergers and acquisitions on the structure of markets. Concentrations are a tool of external growth of companies and of increasing the effectiveness of undertakings. They are not prohibited. The Office assesses these operations from the view of potential creation of important barriers to effective competition on the markets.

29. In the period under review 37 economic transactions were notified to the Office. In 16 cases the Office used the Guideline of AMO SR on pre-notification contacts that provide the undertakings with an opportunity to consult prepared transactions with the Office and hence speed up the process of assessment of notified concentrations. In one case the Office approved a concentration with conditions.

2.2.2 *Summary of significant cases*

- Concentration of Holcim and VSH

The concentration consisting in gaining a direct exclusive control by the undertaking HOLCIM Auslandbeteiligungs GmbH, Federal Republic of Germany (hereinafter “Holcim“) over the undertaking Východoslovenské stavebné hmoty, a. s., Turňa nad Bodvou (hereinafter “VSH“) was the first concentration since the publication of the Directive on Conditions and Obligations on the Office’s website in 2006, that the Office approved with conditions and obligations.

In this case, during imposition of conditions and obligations, the concept of trustee and the prohibition to implement a concentration before the fulfilment of conditions and obligations imposed by a decision of the Office were used for the first time.

Holcim as a member of a group of companies controlled by Holcim Ltd. operated in the Slovak Republic through its subsidiary Holcim (Slovensko) a. s., Rohožník in the area of production and sale of bulk and packed cement, truck-mixed concrete, aggregates and transport services.

VSH was a Slovak company that operated particularly in the area of production and sale of bulk and packed grey cement. VSH was also engaged in production and sale of truck-mixed concrete, aggregates and transport services. The Office analyzed impacts of the concentration on several relevant markets and found that the concentration would negatively influence the effective competition on the relevant market of production and sale of grey cement in SR. As a consequence of this, the Office identified barriers to effective competition also on the relevant market of production and sale of truck-mixed concrete within the respective territories in SR.

Upon the call of the Office, the undertaking Holcim proposed conditions and related obligations leading to the sale of the Vlkanová Terminal within a scope necessary for achievement of viability and competitiveness of the sold business.

The Office tested whether the proposed conditions were sufficient and effective enough to prevent the undertaking Holcim from acquiring or strengthening a dominant position as a result of the concentration, which would create important barriers to effective competition on the respective relevant markets.

On the basis of market testing and information received in the administrative proceedings the Office found that competition problems would not arise in case of the sale of the Vlkanová Terminal to an independent transferee who is not related to the parties to the concentration and their economic groups. It was also necessary for the suitable transferee to have experiences and an incentive and opportunity to maintain and develop the respective business and to be able to exert an effective competitive pressure on the undertaking Holcim after the implementation of concentration on the relevant market of production and sale of grey cement. The sale of the Vlkanová Terminal to a suitable transferee was subject to approval by the Office.

In view of the limited number of suitable transferees of the sold business the Office applied in its decision the provision of the law, according to which the parties to a concentration must not exercise the rights and obligations resulting from the concentration until the fulfilment of the imposed condition. The decision with conditions and obligations entered into force.

- Henkel and Tiande

The Office assessed a concentration consisting in the foundation of a fully functional joint venture of undertakings Henkel Hong Kong Holding Limited, Hongkong, and Tiande Chemical Holdings Limited, Hongkong.

Henkel is an indirect subsidiary of Henkel AG & Co. KGaA, a parent company of the Henkel group with seat in Germany (hereinafter "Henkel Group"). The Henkel Group operates all around the world and offers leading brands and technologies in three commercial areas: washing and cleaning products, cosmetics and toilet articles and adhesive technologies. The subsidiary Henkel Slovensko, spol. s r.o. operates within the territory of the Slovak Republic.

Tiande is an investment holding company that does not carry out any direct business activity. It has three production subsidiaries and one distribution subsidiary in China (hereinafter "Tiande Group"). The Tiande Group is specialized in production, research and development, and distribution of chemical products. Its products can be divided into five broader categories: cyanoacetic acid and ester products, alcohol products, chloroacetic acid and derived products, fine petrochemical products and other by-products.

The Tiande Group is not engaged in any direct business. The joint venture WFOE will primarily produce, offer and sell large volumes of CA monomers for use in production of quick-acting glues, especially for the Chinese market. After the evaluation of all received documents and information the Office approved this concentration.

The Office found that the Contract contains restrictions of competition, particularly (i) non-compete obligations of the parent companies that will control the joint venture, towards the joint venture and (ii) prohibition of offering employment to employees of the joint venture on the part of its parent companies of this undertaking.

According to § 12 (8) of the Act on Protection of Competition the decision pursuant to § 12 (1) to (3) of the Act on Protection of Competition also applies to restrictions of competition relating directly to a concentration and being essential for its realisation.

The Office assessed whether obligations from the Contract and submitted annexes to the Contract could be regarded as restrictions relating directly to a concentration and being essential for its realisation, as it results from the Office's directive Restrictions of Competition Relating Directly to a Concentration and Being Essential for its Realisation, published on the website of the Office.

According to this directive obligations concerning the purchase and sale between parent companies and a joint venture can be regarded as restrictions directly relating to and being essential for the realisation of concentration, but duration of the obligation of purchase or sale must be limited to a period necessary for a substitution of the relationship of dependency, but not more than 5 years.

At the same time, obligations of purchase and sale that guarantee the exclusivity concern an unlimited number of supplies or purchases and favour certain suppliers or purchasers and they usually cannot be regarded as essential for the realisation of concentration. In its decision the Office stated that non-compete obligations of parent companies, that will control the joint venture, towards the joint venture and the prohibition of offering employment to employees of the joint venture on the part of parent companies of this undertaking can be regarded as restrictions of competition relating directly to a concentration and being essential for its realisation during the period of existence of the joint venture as far as they concern the products, services and territory set forth in the Contract.

But the Office also found that the contract, that forms an annex to the Contract, could not be regarded as a restriction directly to a concentration and being essential for its realisation and it is not covered by this decision. In view of the aforesaid this contract is subject to assessment pursuant to the provisions of § 4 and § 6 of the Act on Protection of Competition, or Article 101 and Article 102 of the Treaty on the Functioning of the European Union.

- Caterpillar/MWM

In 2010, concentration of undertakings Caterpillar Inc., United States of America (hereinafter “Caterpillar“) and MWM Holding GmbH, Germany (hereinafter “MWM“) was notified to the Office.

During the administrative proceedings in matter of concentration of the undertakings Caterpillar MWM the European Commission informed the Member States that the German competition authority Bundeskartellamt had submitted to the European Commission the request for referral under Article 22 of the Regulation No. 139/2004 (hereinafter “Regulation“) in case of concentration of the undertakings Caterpillar and MWM and that other countries had an opportunity to join the first request of the German competition authority.

The proposed concentration caused a horizontal overlapping, especially in the area of gas power plants driven by piston engine (hereinafter “REGS“) for decentralized energy supply. The geographical relevant market was determined by the area of EEC.

The Office joined the first request of the German competition authority Bundeskartellamt and requested the European Commission for assessment of the case.

The European Commission informed the Office that a referral was admissible because it fulfilled the requirements set forth in Article 22(2) and Article 22(3) of the Regulation, i.e. the request of the Office had been delivered within the prescribed period and the concentration influenced trade between the Member States and gave rise to the risk that it would significantly influence competition in the territory of the Member State or Member States submitting the request. The European Commission therefore decided to examine the concentration of undertakings Caterpillar and MWM according to the Regulation. Subsequently the Office stopped the administrative proceedings in matter of concentration of the undertakings Caterpillar and MWM in accordance with § 32 (2) (j) of the Act by its Decision No. 2011/ZK/3/1/005 of 16 February 2011. In this case the Office successfully applied Article 22 of the Regulation for the first time.

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

30. The Office endeavours to increase the competitive pressure on the markets, not only by its decisions, but also through other activities. 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 competition. The competition advocacy comprises a wide range of activities – from comments of the Office submitted in the interministry comment procedure, through initiative documents and activities of the Office, education in the area of competition policy, to communication with the public. In 2011 the competition advocacy was one of the Office’s priorities, through which the Office tried to influence the expert and general public, undertakings and politicians and to enforce the principles of competition.

31. Inputs of the Office for the interministry comment procedure are a very important part of the competition advocacy. Through comments to draft acts and other documents the Office tries to eliminate potential barriers to the effective application of the competition rules likely to cause a failure of the market and the competitive environment.

32. In 2011 the Antimonopoly Office of the Slovak Republic in the interministry comment procedure sent comments to 36 materials. It sent its fundamental comments to 8 materials, recommendatory comments to 24 materials, and fundamental and recommendatory comments to 4 materials.

3.1 *Intent of the Public Procurement Act and the Public Procurement Act*

33. In 2011 the Office sent several fundamental comments to materials regulating the procedure in public procurement.

34. The Office submitted several conceptual comments to intent of the Act on Public Procurement that reflected competition problems in public procurement and might, in the Office's view, increase the effectiveness of competition among undertakings in the process of public procurement.

35. The comments concerned among others the use of specialized companies for the preparation of a bid. The Office suggested that the tenderer or applicant for a contract should be obliged to indicate whether he prepared the bid alone, or to name the person who prepared the bid for him, in order to allow the contracting authority to identify the author of the bids and hence potential anticompetitive risks in the process of public procurement.

36. Further comments concerned intellectual property rights that can potentially get into conflict with the competition rules (not only) during the process of public procurement. The Office paid special attention to the development of "tailored" software solutions. The Office suggested the establishment of a legal framework that would allow the contracting authority to acquire the property rights to software solutions that would enable him to implement upgrades and updates of software also through other entities independently from the licensor.

37. The Office's comments also dealt with the issue of subcontractors that the successful tenderer can use in public procurement. On one hand, the use of subcontractors allows smaller companies to participate in a delivery of order that they would be unable to implement within full scope exclusively by their own means. On the other hand, the Office warned that subdeliveries are a frequent form of compensations in case of coordination of bids. In this context the Office suggested that a tenderer or applicant for a contract should be obliged to submit the contracting authority a list of subcontractors, whose share on the value of order exceeds 10 per cent, and its update in case of performance of the contract. This solution would increase the transparency of public procurement and allow the contractor to freely choose the subcontractor and change him during performance of the contract.

38. The Office also suggested that the contracting authority should be obliged to justify the amount of security that is a condition of participation in a tender. The reason is that an unreasonably high security should not discourage potential tenderers/applicants from participating in a tender.

39. The Office also submitted comments to the provisions of the Public Procurement Act. These comments agreed with comments submitted to the intent of the Public Procurement Act.

40. Moreover, the Office suggested that the Act should be completed with a provision prohibiting the participation of several economically or personally related persons in one tender, if their relationship of dependency is likely to influence their conduct in the respective tender.

41. The draft Act was withdrawn from the interministry comment procedure and will be submitted in the form of an amendment to the existing Public Procurement Act.

3.2 *Report on the state of the business environment in the Slovak Republic with proposals for its improvement*

42. The Office submitted comments to the material in connection with recommendations concerning the improvement of the business environment. In the material the Office identified several recommendations that are likely to be contrary to the declared objective of improvement of the business

environment and, on the contrary, to harm effective competition among undertakings. The comments concerned the recommendation of the presenter in the process of public procurement, that it was necessary “to introduce transparency rules into the public procurement system at all levels of public administration – by preferring producers and service providers over intermediaries, by selecting only participants with a clear trace and history.” In this context the Office commented that determination of such criteria was discriminatory with the potential to distort competition among tenderers and that such criteria find no support in the Public Procurement Act either.

43. In 2011 the draft material was not submitted to the Government of the Slovak Republic.

3.3 Act on Electronic Communications

44. The Office submitted comments to the Act on Electronic Communications, the declared purpose of which was among others a transposition of secondary EU legislation.

45. The Office regarded as problematic among others provisions establishing a mechanism of imposition of sanctions for violation of the obligations laid down by the Act on Electronic Communications. The Office regarded this mechanism as too complicated and non-transparent. The Office also objected duplication in regulation of certain sanctions and low amount of fines in case of validly imposed obligations that would not fulfil a preventive function in case of sanctioned undertakings with significant economic power.

46. The Office also commented on the absence of sanction for the transfer or lease of rights resulting from allocation of frequencies to the network or electronic communication service providers not permitted by the law.

47. Further comments concerned e.g. the proposed obligations of property owners to perform necessary adjustments of the coppice on land in protection areas so as not to endanger safety and reliability of the lines. In the Office’s view the imposition of these obligations on property owners was inadequate because the obligations concerning maintenance of land and related costs would be shifted from the network or electronic communication service provider to the land owner.

48. The aforesaid fundamental comments were incorporated in the draft Act. Some of the raised comments were withdrawn by the Office following negotiations with the presenter. The draft Act was approved by the National Council of the Slovak Republic.

3.4 Code of Civil Procedure

49. The Office submitted comments to the current wording of the Code of Civil Procedure in the section concerning administrative justice. It paid special attention to provisions causing application problems in the practice.

50. The Office among others suggested that ambiguous provisions regulating the annulment of decisions based on an action for review of the legality of an administrative body’s decision should be amended. The Code of Civil Procedure distinguishes between annulment of an administrative body’s decision after its review within the limits of the action and after its review where the court is not bound by grounds of action. While in the first case an appeal against the judgment of the court can be lodged (§ 250j ods.2), in the second case no appeal can be lodged (§ 250j par. 3). The second case should therefore concern “fundamental errors“ that the court must take into account from its own initiative (e.g. unreviewability of judgment due to the failure to submit files). The ambiguity of regulation was caused by the fact that the unreviewability due to incomprehensibility or lack of reasons had been indicated as one of the reasons for annulment of the decision in both cases. So it was left to the court’s discretion which of the

provisions it would apply, due to which the possibility for the party to the proceedings to lodge an appeal had changed substantially. The Office's practice also showed that courts had not distinguished between the first and the second case and annulled decisions pursuant to § 250j par. 2 also for reasons that had not been objected by the party to the proceedings.

51. The comment was accepted after a discussion. The Act was approved by the National Council of the Slovak Republic.

4. Resources of Competition Authority

4.1 Resources overall

4.1.1 Annual budget

	2010		Change
Total expenses	2 251 312 EUR	3 257 648 USD	+ 151 851 EUR
			(+ 198 712 USD)

4.1.2 Number of employees

	2010	2011
Economists	17	15
Lawyers	20	17
Other professionals	5	5
Support staff	27	24
Total	69	61

4.2 Human resources

	2011
Enforcement against anticompetitive practices	21
Merger review and enforcement	9
Advocacy efforts	10

Period covered by the above information: year 2011