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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN THE SLOVAK REPUBLIC

-- 2012 --

This report is submitted by the Slovak Republic to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 19-20 June 2013.

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Executive Summary

1. The Antimonopoly Office of the Slovak Republic (hereinafter referred to as „Office“ or „AMO SR“) is the body supervising the compliance with the provisions of the Act No. 136/2001 Coll. on Protection of Competition, as amended (hereinafter referred to as „Act“ or „Act on Protection of Competition“). Within its competences it mainly conducts an investigation of a relevant market, in administrative proceedings it decides in the matters of agreements restricting competition, abuse of a dominant position, merger control and restriction of competition by state administration and local self-administration authorities and it also proposes measures to protect and promote competition.

2. In 2012 the Office issued 38 decisions[1]. Within the first-instance proceedings the Office (Division of Agreements Restricting Competition, Division of Concentrations and Division of Abuse of a Dominant Position) issued 30 decisions. The second-instance body, the Council of the Office issued 8 decisions[2].

3. In accordance with the development of the European competition policy also the Office replaces its formal approach in dealing with competition cases by more economic approach. Its main principle is to give priority to an assessment of impact of the entrepreneurs´ conduct on the market to assessment of conduct´s form. An essential part of such an approach is a thorough knowledge of the sector, which is suspected of competition restrictions. Besides the decision-making activity of the Office, the importance of investigation of relevant market and sector inquiries is growing too. In 2012 the Office conducted 78 general investigations in cases regarding potential infringement of the Act on Protection of Competition. They were focused mainly on sector of banking and building savings, sectors of transport, postal services, energy, waste and water management.

4. Besides investigation and decision-making activities, the Office paid special attention to advocacy activities aimed at elimination of administrative barriers to competition. In 2012 it submitted comments on 33 materials in the interministry comment procedure. In 5 of them the Office formulated fundamental comments on the prepared legislation, 27 comments had nature of recommendation and 3 were combined. Office´s comments referred mainly to health sector, draft of the Act on Advocacy and draft of the Act on Public Procurement.

5. Development of competition culture and dissemination of public awareness about the competition rules have been promoted by working meetings with undertakings, state administration and local self-administration authorities, judges, academic community and experts from other competition authorities.

6. The Office continued in organizing seminars on cartel agreements in public procurement for contracting authorities, this year it focused mainly on local self-administration bodies, smaller towns and municipalities. Other activities in this area include seminar on abuse of a dominant position in the form of margin squeeze, which has been a part of the expert dialogue with courts and workshop on “Access to file as part of defence rights and protection of leniency documents“, primarily devoted to lawyer community.

7. In the framework of memoranda of cooperation with the Faculty of Law of the Comenius University in Bratislava and the Faculty of Law of the Trnava University in Trnava the Office offered study visits for their students.

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1 For the purposes of this report the by decisions are meant only those decisions, which have concluded the first or second-instance proceedings.

2 Decisions of the second-instance body have been issued within examination of the cases dealt with by the first-instance bodies.

8. The Office informed on its decisions and other activities through its website. It also cooperated with media and provided them with press releases on all decisions of the Office. At the same time it replied to numerous journalists´ questions referring to competition. For the fourth year the Office continued in issuing the Competition Bulletin that informs about decisions and other activities of the Office, the European Commission, as well as other competition institutions abroad. At the same time the Office has been regularly publishing in specialized domestic and foreign periodicals devoted to competition issues. Employees of the Office actively participated in expert discussion at both domestic and foreign forums.

9. In 2012 the Office imposed fines totalling EUR 160 419. In 2012 fines at the amount of EUR 678 748 EUR were paid. Revenues from fines are income of the state budget. Within the framework of the programme "Competition", funds totalling EUR 2 451 075 were allocated to the Office for the year 2012. Funds totalling EUR 2 097 610 were allocated to the Office from the state budget for the year 2013.

10. Last year the Office intensively dealt with an assessment of its functioning. With the aim to build a modern and respected competition institution focused on consumer welfare, the Office identified areas requiring reform and prepared various legislative, organizational and technical measures to improve and increase the efficiency of its activities. Particularly, through the prioritization of its activities, the Office intends to allocate its capacities to the most serious infringements of competition rules and to introduce some progressive factors of competition law in the legislative area. Changes in the organizational structure of the Office are aimed at improvement of institution´s functioning and exercise of its powers. New Office´s strategy is available on the website of the Office and it was also publicly presented at the meeting with the expert public[3].

1 Enforcement of competition laws and policies

1.1 Summary of activities – action against anticompetitive practices

1.1.1 Agreements restricting competition

11. In 2012, in the area of agreements restricting competition, based on its own initiative or based on received complaints, the Office particularly focused on cases showing signs of collusive behaviour in public procurement, so-called bid rigging. These are agreements restricting competition between undertakings referring to execution of public procurement. These agreements may occur in various forms (agreements on prices or market allocation etc.), but their subject is always agreement on the winner of public order. Bid rigging in public procurement occurs in various forms or in their combinations, ranging from rotation of price bids, non-submitting or withdrawal of already submitted bid, submitting a cover bid, to distribution of subcontracts or compensation payments to unsuccessful bidders or to undertakings that decided not to submit price bids to public procurement or withdraw already submitted bids. It is one of the most serious types of agreements restricting competition. Negative effects of these agreements include, in particular, artificial increase of prices and inefficient use of public resources resulting in missing funds for other projects financed from public resources, as well as negative impact on business environment. Besides cases monitoring and investigating, the Office also continued to organize workshops aimed at detecting cartel agreements in public procurement. Contracting bodies from local self-administration, smaller towns and municipalities were target group this year.

12. The Office also dealt with the area of professional services. This sector is characterized by high level of regulation, which is set either by legislation or adopted by particular professional organization in the form of its internal rules. To certain extent the regulation is necessary and it serves as protection of consumer and public interest. On the other hand, excessive regulation decreases or eliminates competition

[3] http://www.antimon.gov.sk/files/31/2012/Ciele%20PMÚ%20SR.pdf

between service providers and thus deprives consumers and community of benefit from functioning competition. In order to maximize the positives resulting from competition and regulation, it is necessary to use proportionality test: regulation rules must be objectively necessary to achieve clearly formulated and legitimate aim in public interest and the used mechanism must be minimally restrictive towards competition.

13. In this area, the Office assessed several possible restrictions of competition in the form of decision of undertakings´ association. Based on complaints or its own initiative it investigated and assessed provisions of the internal rules of Chamber of Vets of the Slovak Republic, Slovak Bar Association and Chamber of Restorers.

14. Furthermore, the Office investigated existence of potential prohibited agreements in the area of building societies providing services of building savings, in the area of prices for technical and emission control of motor vehicles, in the area of prices of training of applicants for a driving aptitude test (driving school courses) and in the area of waste electrical and electronic equipment.

15. Upon the requests of undertakings and associations the Office issued opinions on whether or not draft of their agreement or draft of undertakings´ association constitutes an agreement restricting competition. It is an instrument assisting undertakings to eliminate the risk of infringement of competition rules. In 2012 the Office issued 6 opinions.

General investigations	Administrative proceedings	Decisions	Opinions
42	6	2	6

1.1.2 Abuse of a dominant position

16. In the area of abuse of a dominant position, in 2012, the Office continued in trend of application of more economic (effect-based) approach. In accordance with this approach we need to emphasize that at the first sight the anticompetitive practices may often be only the part or consequence of strong competition between operators in the market or they result from any other system problem of particular market. Investigated conduct may sometimes have even a positive impact on consumers. Hence, it is necessary to know the investigated sector thoroughly and to include consistent analysis of real impact of the investigated conduct on consumers in every investigation or proceedings.

17. Office´s activities in the area of abuse of a dominant position in 2012 related to a number of different sectors, mainly transport, postal services, heat management, waste management, natural gas, cemetery and funeral services, water management and films projection and distribution.

General investigations	Administrative proceedings	Decisions
17	2	1

1.1.3 Courts

18. 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 bring 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.

19. In 2012 the courts decided in 9 cases, of which 4 cases were decided by the Regional Court in Bratislava and 5 cases by the Supreme Court of the Slovak Republic.

20. Besides the court examinations of the Office´s decisions in 2012 the Office acted also as participant to private lawsuits in four cases.

1.2 Description of significant cases, including those with international implications

1.2.1 Restrictive ethics code

21. The Office issued a decision that the Code of Ethics for Restorers of 1994 and Code of Ethics for Restorers of 2010 (both approved by General Assembly of Chamber of Restorers in Bratislava, hereinafter referred to as "Chamber") constituted a restriction of competition in the relevant market of providing restorers´ services in provision of article IV., point 22 as it included a restrictive commitment to limit or control sales and market allocation.

22. Code of Ethics for Restorers regulates the situation *"... if the need of consultation on price or method of restoration occurs between owner and a restorer"* (other restorer than the former one). According to the Ethics Code the restorer (other than the former one) should return the client to the former restorer what is completed in next section of the provision, quot. *"Efforts to win a client directly or indirectly in this case interfere the professional interest of other restorer and is not worthy the restorer´s profession."*

23. The Office stated that provision of Ethics Code prevented from change of a restorer in the course of restoration. Pursuant to this provision if certain phase of restoration for the client has been done by one restorer, the efforts of other restorer to win this client is considered unethical conduct. In the Office´s view, such a conduct prevented restorers from competing for contracts, hence the consumers could not benefit from offers, which would have emerged in a competitive environment.

24. The Office did not consider the Chamber´s arguments about the need to respect and adhere to contractual commitments between Chamber members as an appropriate legitimate aim, objectively justifying the adoption of such a provision and concluded that the provisions of the Ethics Code intended to provide protection to Chamber members against the business risks resulting from the properly functioning free competition between restorers.

25. Within the statutory period the Chamber appealed against the first-instance decision. The Council of the Office issued the second-instance decision proving the conclusions of the first-instance body, but it adopted some changes in verdict referring to the specification of application of the substantive provisions of the Act.The decision came into force on 17. 09. 2012.

1.2.2 Investigation of bank sector

26. The Office investigated bank sector in the context of increasing the banking fees for providing mortgage loans to public.

27. In order to verify the suspicion the Office addressed nine banks with the highest market share compared to other banks. It did not include building societies, as according to the Office, they do not represent classic banking houses but the specialized banks focused on supporting public housing. The principle of providing loan by building society and the philosophy of building saving differ from bank loans. Building societies do not represent classic banks and in the view of consumer they are not substitutable by the banks.

28. In its investigation the Office focused on examination of development and level of fees for all forms of mortgage loans available to the public – mortgage loans with state contribution to the young,

mortgage loans without state contribution and other mortgage loans such as American mortgage, mortgage loan not secured by real estate etc.

29. The Office analysed whether the interest rate and fees, namely the price of loan, so-called APR is the same in all compared banks, whether and under which circumstances the loan prices change, whether they are changing in the same time, whether the client has the possibility of more favourable alternative for drawing on the loan, how the conditions of providing loans change depending on development of external economic environment, development on financial markets including development of interest rates of the European Central Bank, legislative framework etc.

30. Based on investigation and established information the Office concluded that the reasons to initiate an administrative proceedings are not sufficient and hence in summer 2012 it terminated the investigation in the matter of potential agreement between banks on amount of banking charges for providing mortgage loans to public.

1.2.3 Investigation of building societies

31. The Office investigated building societies in relation to payments for services provided by the building societies. Investigation was reaction to suspicion from coordination of building societies in reducing or cancelling four kinds of fees, namely:

- reduction of fee for conclusion of a building savings contract
- reduction of annual fee for maintenance of a building savings account
- reduction of annual fee for maintenance of a loan account
- complete cancellation of fee for granting building loan.

32. At the same time the adjustment of the above charges was part of changes in the proposed amendment to the Act No. 310/1992 Coll. on Building Saving.

33. In the framework of investigation the Office analysed the structure of building savings market, operators in this market, their market share, level of concentration, volume and number of loans provided to public. It focused particularly on comparison of fees, making changes of client´s payments to building societies for provided services and also the comparison of loans´ offer between building societies with the aim to assess whether the client has the possibility to alternatively choose a better offer in the same time.

34. Based on investigation the Office did not conclude that reduction or cancellation of fee would result from existence of potential cartel agreement between building societies, thus in summer 2012 it terminated this investigation.

1.2.4 Bank cartel – reference for a preliminary ruling to the Court of Justice of the European Union submitted by the Supreme Court of the Slovak Republic

35. In February 2012 Supreme Court of the Slovak Republic (hereinafter referred to as "SC SR") submitted the reference for a preliminary ruling to the Court of Justice of the European Union in the matter of interpretation of the Article 101 of the Treaty on the Functioning of the European Union (hereinafter referred to as "TFEU") (C - 68/12).

36. In this case, the Office assessed in 2009 the agreement restricting competition between three banks. According to the Office, the illegal conduct of banks was based on the fact that they agreed to

terminate the contract and not to conclude ones on current accounts of the company AKCENTA CZ, a. s.. The Office believed that the aim of agreement was to exclude the company AKCENTA CZ, a. s. from the market of non-cash foreign exchange transactions, where it acted as a banks´ competitor. In the course of proceedings the banks argued that company AKCENTA CZ, a. s. acted in the Slovak market illegally without the licence issued by the National Bank of Slovakia.

37. In September 2010 RC BA examined the decision of the Office within three independent proceedings and it annulled the decision of the Office. The Office lodged an appeal to SC SR. SC SR decided to interrupt the proceedings referring to Slovenská sporiteľňa and submitted four questions referring to interpretation of the Article 101 of TFEU to the Court of Justice of the European Union.

38. Three questions referred to assessment whether it is relevant in application of the Article 101 of TFEU that the competitor (undertaking) affected by the cartel agreement of other competitors (undertakings) acts in the relevant market in the time when the cartel agreement was concluded illegally, or if it is possible to assess this fact pursuant to the Article 101 (3) of TFEU. Next question was focused on assessment of responsibility of undertaking for conduct of its employees who attend cartel meetings and participate in the connected e-mail communication.

39. In the proceedings at the Court of Justice of the European Union the Office submitted the statement advocating the conclusions adopted in its decision and it referred to the relevant case law of the Court of Justice of the European Union regarding these questions.

1.2.5 Terminated proceedings against eustream

40. After return of the case by the Supreme Court of the Slovak Republic the Office repeatedly dealt with the potential abuse of a dominant position by the undertaking eustream, a. s..

41. In 2007 the Office decided that the undertaking SPP – preprava, a. s., Bratislava, renamed in 2008 to eustream, a. s., abused its dominant position. The Office imposed a fine at the amount of SKK 98 900 000 (EUR 3 282 879) for the violation of the competition rules.

42. According to the conclusion of the earlier decisions (annulled by the court) the undertaking eustream, a. s. forced the undertaking GasTrading, s. r. o., to sell the company eustream, a. s. the connection equipment to the transport network of gas operated by company eustream, a. s. and it made the connection of company Gas Trading, s.r.o. to the transport network conditional upon the sale of the connecting equipment to its ownership. Company GasTrading, s. r. o. as an operator of newly built gas distribution network in the area of Industrial Park Levice – Géňa under the threat of losses caused by delayed start of operation finally agreed to sell the connecting equipment, even in spite of its resistance. Council of the Office as an appeal body did not reverse the Office´s decision in merits.

43. Based on action the Regional Court in Bratislava (hereinafter referred to as "RC BA") dealt with this matter. Main cause of action of the lawsuit at RC BA was contesting the Office´s competence to act in a given matter, since according to the plaintiff this matter came under the competence of the Regulatory Office for Network Industries. Plaintiff referred to provision of article 2, par. 6 of the Act on Protection of Competition valid at that time, pursuant to which the Act did not apply to those cases of competition restriction, assessment of which came under the competence of other authority ensuring the protection of competition pursuant to the special regulation.

44. RC BA believed that the Office is a cross-sector authority to protect competition. It interpreted the provision of the article 2, par. 6 in such manner that if the sector regulator in particular case has a legal tool to sanction the anticompetitive conduct in certain sector, the defendant (the Office) cannot act in the same conduct, though it would meet the signs of infringement of (competition) act. In view of the court,

the regulator has a legal tool to sanction the certain conduct when the assessed conduct constitutes the direct infringement of special regulation supervised by the regulator or it violates the issued regulation measure or imposed regulation obligation. If the regulator does not have such tool, either because the conduct of the regulated subject is not directly contrary to the special regulation in given area or because the regulator did not adopt any regulation measure, though the special regulation admits the regulation, then pursuant to the article 2, par. 6 the defendant (the Office) has a competence to hear and to sanction the given anticompetitive conduct. However, contrary to the defendant (the Office), the court believed that if the assessed conduct would have contravened some of provisions of the regulation acts supervised by the sector regulator, it means if the regulator would had tool to sanction such conduct, the Office would not have a competence to hear the matter pursuant to the (competition) Act, even if such a conduct would have been contrary to the (competition) act. Not even the passivity of the competent sector regulator would change the situation of the lack of defendant´s competence. RC BA dismissed the action as unjustified.

45. SC SR believes that circumstances decisive for application of the Office´s competence as the general authority for protection of competition were not sufficiently assessed, since it did not exclude doubts that the other authority (Regulatory Office for Network Industries) is (was) competent to proceed and decide pursuant to the article 2, par. 6 of the Act valid and effective in the concerned time. Further, in view of SC SR, the Office insufficiently assessed circumstances under which the conduct occurred.

46. SC SR believed that completion of the Operating Instructions, dealing with the conditions of connection and also with the question of ownership of connection equipment, occurred due to the current need of this adjustment. It could not be concluded only from the fact that conditions have been set only since 16. 05. 2007, it means after conclusion of contracts between both companies, that the condition submitted by eustream, a.s. in concluding Contract on Connection and Agreement on Interconnection was legally unjustified, thus unfair and enforced and hence subject only and exclusively to the Office. The court considers the question whether the connection equipment is part of transport network as important, but the Office did not deal with it at all. In the view of court there is a direct relation and dependence between technical specification that the connection equipment is part of transport network and system of ownership relations.

47. In the terms of the assessment of adequacy of given condition the court refers to adoption of later amendment of the Operating Instructions and it regards it as relevant. In view of the court, if later regulations explicitly set that the connection equipment is part of transport network, from which also the ownership of connection equipment is derived, then the Office should have positively justified based on which legal consideration it reached a decision that it assessed the same facts objectively existing already prior to validity of these rules in such manner that the requirement of integrity of ownership of the connection equipment with transport network is inadequate and its application (enforcement) in negotiations is sanctionable as abuse of a dominant position.

48. SC SR reversed the decision; it annulled the decision of the Council of the Office and returned the matter for next proceedings. On this basis the Council of the Office repeatedly acted in this matter and within the meaning of the judgement of SC SR and regarding the need of extensive proving it annulled the first-instance decision and returned the matter to the Office for new proceedings and decision.

49. Hence, the Office repeatedly dealt with this matter and in the course of 2012 it made extensive proving, mainly relating to competence issues and course of negotiations on concluding contracts.

50. Fundamental question emerged from the judgement of SC SR whether the facts existing already prior to the later legal adjustment may be assessed as unfair trade condition, if the later legal adjustment accepts such fact. SC SR admitted the possibility that earlier facts may be regarded as unfair trade condition if the Office explicitly justifies legal consideration, based on which it reached this decision.

51. In the annulled decisions the Office stated that the ownership of the connection equipment was not necessary for operation of transport network. On the other hand, as the court states, the later legal adjustment set that the connection equipment was part of transport network and the ownership of connection equipment was derived from it. In other words it means that the legislator regards the ownership of connection equipment as necessary to ensure credible, safe and effective operation of transport network.

52. Legal and factual reasons based on which the Office certified the violation of the Act have been mentioned already in annulled decisions. There was no legal regulation adjusting the integrity of ownership, hence the contractual parties were not able to observe the non-existing legal adjustment. The Office believes that reference to the later legal adjustment would contradict the principle of legal certainty. Business condition exceeded the framework of common contractual conditions in connecting the distribution networks to the transport network. Based on the judgement of SC SR the Office stated that SC SR did not accept the justification of the Office and it did not consider the grounds for declaration on violation of the Act as sufficient. Hence, the Office decided to stop the proceedings as the Office did not prove that the participant to the proceedings has violated the provisions of the Act. The decision came into force on 10. 07. 2012.

1.2.6 Investigation and competition advocacy in water management sector

53. In 2012 the Office terminated the investigation in the area of water management initiated on the basis of complaints submitted to the Office in mid 2011. Complaints concerned the method of determining the volume of piped wastewater. According to the complaints the company Východoslovenská vodárenská, a. s., with seat in Košice (hereinafter referred to as „VVS, a. s.“) in certain cases used the reference data of water consumption (hereinafter referred to as “reference data”) to determine the volume of wastewater. Use of reference data should have harmed concerned end users since higher volumes of wastewater were determined to them than they really piped. These volumes of wastewater were higher than in previous periods and the determined volumes of wastewater did not correspond to volume of water supplied from the public water supply system. Such a situation should have resulted in increased payments for piped wastewater based on drafts of contracts which VVS, a. s. sent to end users in 2011.

54. The Office investigated whether the described conduct constituted an infringement of the Act. It verified whether the company VVS, a. s. determined the volume of water rate based on reference data globally. The Office found out the following facts.

55. Determining the volume of wastewater it may happen that the volume of wastewater is measured by flowmeter or is not measured at all. If the volume of wastewater is not measured, data from water meter or reference data may be used for its determination. Data from water meter may be used only if the end user is connected to the water supply system controlled by VVS, a. s. or to municipality water supply system. If volume of supplied water is not measured by water meter for any reason, reference data will be used. Reference data will be used also if the volume of supplied water is measured by water meter but the end user discharges water into sewerage from its own unmeasured source.

56. In municipalities where the volume of supplied water is measured by water meter the company VVS, a. s. accepts the water meter data, after meeting the particular technical conditions, and it invoices the water rate based on figures read from the water meters. This also applies to municipalities where VVS, a. s. is not an owner or an operator.

57. Based on the above reasons, the Office stated that there was no reason to continue in the investigation and/or open administrative proceedings in the matter of possible infringement of the article 8 of the Act and thus the Office terminated the market investigation.

58. In the course of investigation the Office found out that used figures of reference data did not correspond to reality in terms of real volume of discharged wastewater in Slovakia. Therefore, within the competition advocacy it addressed the Ministry of Environment of the Slovak Republic and drafted the legislative amendments referring to reference data, it means it proposed to decrease the level of reference data. The response to the letter sent by the Chairman of the Office stated that Ministry deals with the given issue with a view to its settlement in 2013 and its aim is the objectification and review of the structure of reference data. VVS, a. s. itself took similar measures through the Association of Water Companies.

1.2.7 Investigation of heat management in Prievidza

59. The Office terminated investigation of complaints in the area of heat management in municipality of Prievidza. Complaints referred mainly to conduct of municipality of Prievidza which according to complainants created obstructions in granting a building permit allowing the residential buildings to disconnect from central heat supply (hereinafter referred to as "CHS") and thus prevented from establishment of other heat sources in the municipality territory. Complaints were directed directly or indirectly at conduct of company Prievidzské tepelné hospodárstvo, a. s. (hereinafter referred to as „PTH, a. s."), which should have also created obstructions in disconnecting and thus abused its dominant position. Since, in principle, the conduct of both municipality and company PTH, a. s. was aimed to achieve the same objective – not to disconnect the residential buildings from CHS system – the Office was assessing and evaluating the potential infringement of the articles 39 and 8 of the Act on Protection of Competition together in their mutual relations.

60. The Office needs to emphasize that investigation of these complaints was also based on generally accepted theoretical basis of competition law and the Office focused not on the form of investigated behaviour but on its real impact on consumers. Thus, in spite of quantity of documents submitted by the complainants, the assessment of the facts that do not fall within Office´s competence, (for example formal correctness of procedure of the municipality of Prievidza in granting the building licence) did not constitute the subject of the Office´s investigation.

61. Investigating the emerged situation the Office focused on total impacts of behaviour of municipality of Prievidza on all consumers of heat used for central heating (hereinafter referred to as "CH") and production of warm water (hereinafter referred to as "WW") and also analysed the consequences of disconnection of concerned residential buildings from CHS in municipality of Prievidza.

62. Disconnection from CHS generally has impact on two groups of consumers. First group is represented by disconnecting residents, expecting mainly the reduction of heating- and WW costs. However, disconnection influences also the other group of consumers, namely those who are still connected to the central heating system. These consumers feel the economic impact in the form of change of heat price, mainly in its fixed part.

63. The Office based its analysis on calculation of change of heat and WW costs e caused by disconnection from CHS to both concerned groups of consumers. On a basis of this analysis the Office concluded that total impact of disconnection of concerned residential buildings from CHS on heat consumers in municipality of Prievidza would be negative. Calculations also proved that disconnection was disadvantageous even for residents of disconnected residential buildings. Thus the investigated conduct of municipality of Prievidza or conduct of company PTH, a. s. aimed at preventing from such disadvantageous disconnection could not result in negative impact on consumers. On these grounds the Office concluded that the infringement of the Act on Protection of Competition was not proved in these cases and it terminated the subjected investigation.

1.2.8 Investigation in the area of municipal waste collection

64. In June 2012 the Office terminated the investigation of behaviour of company Brantner Lučenec s. r. o., which allegedly made efforts to exclude the competitor Mepos s. r. o. from the market. Both companies provide municipal waste management services. According to the complaint, the company Brantner Lučenec s. r. o. as an operator of a landfill site Opatová – Čurgov, where also company Mepos s. r. o. disposes the waste, should have charged more advantageous prices for municipal waste disposal to company Brantner Gemer s. r. o.. Thus it should have disadvantaged other undertakings, including Mepos s. r. o.. Such conduct of company Brantner Lučenec s. r. o. might have constituted infringement of competition rules in the form of abuse of a dominant position.

65. In order to decide whether this conduct constituted abuse of a dominant position and infringement of the Act, the Office had to carry out a thorough investigation and to consider all circumstances (for example definition of market and dominance, negative impact on consumer welfare, existence of objective reasons for dominant´s conduct, etc.), since not every conduct of undertaking being in dominant or monopoly position is automatically considered as infringement of the Act. Firstly, the Office determined the relevant market and thus identified all competition pressures which the undertaking faces, as well as competitors capable to influence its behaviour. Potential product relevant market in this case was determined as market of municipal waste landfilling. Landfilling is a predominant and widely available method of treatment of municipal waste and about 80 % of municipal waste is treated this way.

66. Geographical relevant market was determined as a catchment area of a landfill site, to which it is still advantageous to dispose the waste. Collection distance up to 50 km appeared to be economically profitable. The Office found out that in the relevant market, it means in the radius of 50 km, there were 5 more landfill sites besides the landfill site Opatová – Čurgov and all of them had free capacities to dispose the additional waste and impose the competitive pressure on landfill site Opatová – Čurgov. Landfill sites were open to all interested undertakings and they provided their services at comparable, sometimes also higher price that dump site Opatová - Čurgov.

67. Investigation did not prove the suspicion that company Brantner Lučenec s. r. o. (landfill site Opatová - Čurgov) would hold a dominant position in the market what is a necessary condition for further procedure of the Office in this matter. Hence, the Office terminated the market investigation.

68. However, the conclusion adopted in this case does not exclude that regarding the local specification of municipal waste management the product and geographic relevant markets could be determined differently in future.

1.2.9 Film distribution

69. The Office investigated a complaint against a cinema operator, company Cinemax, a. s. (hereinafter referred to as „Cinemax“), which should have enforced excessive percentage of revenues from ticket sales from a film distributor Saturn Entertainment spol. s r. o. (hereinafter referred to as „Saturn“) and imposed unfair service charge for 3D glasses. The Office examined whether the company Cinemax abused its dominant position and thus restricted competition.

70. When analysing this case the Office considered significant structural and technological changes, which occurred in film production and distribution during the last decades. Changes in the market had impact also on relations between cinema distributors and operators. While in 90-ties the single-screen cinemas predominated in Slovakia and the cinema operators shared their revenues with distributors mostly at 50:50 ratio, the introduction of multiplexes in 2000 changed the situation. Multiplexes offered higher standard of services for higher price of tickets, longer projection time, thus the higher revenues also for

film distributor. Thanks to this situation the multiplexes were able to negotiate better rentals. From the third – fourth week of projection the multiplexes have been returning less than half of gross revenues from the tickets to the distributor.

71. Gradually, the multiplexes have acquired a significant market share in Slovakia and also stronger bargaining power against distributors of films, structure of which has not changed too much. At the same time, distribution companies and multiplex operators have become vertically integrated and this could also influence their bargaining power. Recently, the production companies have substituted classic celluloid records by digital media, which has increased the film quality, decreased production and distribution costs and enabled to project 3D films. However, digitalization requires considerable investments into technical equipment of cinemas.

72. The Office perceives the conduct of company Cinemax described in the complaint as a consequence of development of market structure and change of bargaining power in the area of distribution of films in cinemas. The process of bargaining and price negotiations itself based on changed market structure could not be automatically considered as an infringement of the Act. Cinema operators are aware of their position and they use it when negotiating the price of rentals. Provided data proved that the conduct of company Cinemax did not cause losses from film distribution to distribution company Saturn. Hence, the Office concluded that the competition was not restricted when the gross revenues were shared.

73. In terms of service charge for 3D glasses in the amount of EUR 0,50 the Office admitted that company Cinemax influenced the revenues of company Saturn by imposing the fee in this amount. However, the company Cinemax introduced the service charge globally to all distribution companies in Slovakia. Moreover, the similar charge was standard also in cinemas of other operators both in Slovakia and abroad. Amount of charge ranged from 3% to 7% of the basic price of a ticket to a 3D film. Such figure could not be considered as inappropriate in the market context and the Office believed that the conduct of company Cinemax did not result in infringement of competition rules pursuant to the Act.

74. Impact of conduct of company Cinemax on consumers is hardly to prove. Price of cinema ticket is influenced mainly by demand elasticity, which is not influenced by the objected practice at all. On the contrary, the negotiation of better conditions with distributors may prevent from radical increase of ticket prices, in case of cost increase of digitalization. The Office did not find enough evidence proving the restriction of competition, hence it terminated the investigation.

1.2.10 ZSE Distribúcia

75. Council of the Office dismissed the appeal of ZSE Distribúcia, a. s., Bratislava (hereinafter referred to as „ZSE – D“) and approved the decision of the Office of 28. 12. 2011 on abuse of a dominant position by the undertaking ZSE – D. Abuse occurred in the form of direct enforcement of excessive prices, namely by charging excessively high fee for conducting of above standard reading of electric meter in the period since 01. 04. 2008 till 31. 03. 2010 in the amount of EUR 27,559 without VAT or EUR 27,310 without VAT. ZSE – D charged the fee to a new supplier of electricity if the consumer wanted to change the supplier. It was the payment for determination of electricity consumption to the date beyond the period of usual conduction of standard reading.

76. In order to determine whether the prices were excessive the Office compared the fees charged by ZSE – D in time and also compared them with identical fees charged by other regional distribution system operators (hereinafter referred to as “DSO”).

77. The Council of the Office stated that the fee charged till 31. 03. 2010 was excessive and consequently a significant change occurred when ZSE – D managed to provide the mentioned service at

significantly lower price. The Office considered the price EUR 10,47 as corresponding most to the effective costs. It was based on fact that ZSE – D itself set this price, it means it could indeed ensure the above standard reading of electric meter at this price. At the same time this fee is closer to the fee of other regional DSO.

78. Also the comparison with other regional DSO proved that ZSE – D price was substantially higher (by 148 % higher than the price of company Stredoslovenská energetika – Distribúcia, a. s. and by 103 % higher than the price of Východoslovenská distribučná, a.s.). The objective facts which would ground this difference in prices for providing the identical service of above standard reading of electric meter by the particular regional DSO were not proved.

79. The Council of the Office emphasized that the excessive prices are considered exploiting abuse when the dominant abuses its position in the market and charges the prices which could not be applied in competitive environment. At the same time the Office warned that the addresses of excessive prices were alternative suppliers in newly liberalized sector of electricity supplies to households and the excessive prices could constitute barriers to entry the market. The Council of the Office confirmed the fine for the unreasonably charged fee in the amount of EUR 150 000. This sum represented 0,032 % of the total turnover of undertaking ZSE – D in 2010. The decision came into force on 06. 07. 2012.

1.2.11 SC SR upheld the decision of the Office on fine imposed to ŽS Cargo, a. s.

80. In July 2006 the Office decided that Železničná spoločnosť Bratislava, a. s., and later its legal successor Železničná spoločnosť Cargo Slovakia, a. s., Bratislava (hereinafter referred to as „ŽS Cargo") in period from 2004 to 2005 abused its dominant position pursuant to the Article 82 of EC Treaty and pursuant to the article 8, par. 2 of the Act No. 136/2001 Coll. on Protection of Competition. For the above mentioned conduct the company ŽS Cargo was imposed a fine in the amount of SKK 75 000 000 (EUR 2 489 544).

81. In the Office´s view the conduct of ŽS Cargo consisted in withdrawal from the Agreements on Prices with trucking companies managing the cargo transport for company Holcim (Slovensko), a. s. (hereinafter referred to as "Holcim") caused that the company Holcim was forced to terminate the cooperation with carrier LTE Logistik (hereinafter referred to as „LTE") and Transport Slovakia, s. r. o. Such conduct resulted in exclusion of undertaking LTE from the relevant market of providing services of cargo transportation of large volumes of cement at the railway line Rohožník – Devínska Nová Ves, state boarder. Reason of ŽS Cargo´s conduct was the fact that carrier Holcim concluded contract on managing the cargo transport of cement at railway line Rohožník – Devínska Nová Ves, state border, with a competitor LTE. Formerly was this service ensured by ŽS Cargo itself, through its trucking company. Conduct of ŽS Cargo occurred in newly liberalized market where the positive impact of liberalization on higher competition has not been appreciable so far and it constituted very quick intervention against the entering of a competitor LTE. Assessed practice of ŽS Cargo was fully implemented and the carrier LTE was excluded from the concerned market.

82. ŽS Cargo lodged an appeal against the decision of the Office. In December 2006 the Council of the Office upheld the first-instance decision of the Office. The action by ŽS Cargo against AMO SR followed. The Regional Court in Bratislava concluded that the Office had reason to impose a sanction, however, according to the court, the fine was excessively high. Regional court changed the decision of the Council of the Office on the amount of sanction and it reduced it significantly up to SKK 9 000 000 (EUR 298 745). Among others, the fact that the sanction was imposed to economic successor of the company which has infringed the rules was the reason to reduce the fine.

83. The Office lodged an appeal against the judgement of RC BA and it argued that such a low sanction for serious infringement of competition rules, which the Office approved, means that sanction would not meet the essential function of repression, as well as in individual and general prevention. The Office also referred to settled case law of the European courts on the issue of economic succession.

84. In the proceedings at SC SR the European Commission used the concept of *amicus curiae* pursuant to the article 15 (3) of the Regulation 1/2003 and it passed its comments on concept of economic succession and on efficiency of imposed fines in similar cases. In October 2010 SC SR changed the judgement of RC BA and it dismissed the action of ŽS Cargo against AMO SR.

85. Party to the proceedings filed a complaint to the Constitutional Court of the Slovak Republic. Regarding the procedural error of SC SR when the judgement was announced, the Constitutional Court of the Slovak Republic stated the violation of the plaintiff´s fundamental rights.

86. In January 2012 SC SR repeatedly pronounced the judgement by which it changed the judgement of RC BA and it dismissed the action of ŽS Cargo AMO SR.

1.2.12 SC SR upheld the correctness of the Office´s decision in the matter of Železnice Slovenskej republiky

87. SC SR upheld the judgement of RC BA which in May 2011 dismissed the action of Železnice Slovenskej republiky (hereinafter referred to as „ŽSR“).

88. By the action ŽSR demanded on examination of the legality of the Office´s decisions of 2007 (by which the decision of the Office of August 2005 was changed) by which the Office sanctioned ŽSR for abuse of a dominant position in the form of discrimination in the period since 01. 05. 2001 till 31. 12. 2001. ŽSR was imposed a fine in the amount of SKK 11 100 000 (EUR 368 452).

89. Discrimination was based application of different conditions for identical or comparable performance with respect to the individual undertakings. ŽSR bargained individual commissions with four trucking companies - Express, Express Slovakia, PROXAR and NAKURAIL AG, thus they were advantaged over other customers. At the same time they disadvantaged four selected undertakings against each other, since the price advantages were in the different amount and ŽSR was not able to justify it objectively.

90. Since the advantaging took place during the effectiveness of two acts on protection of competition, in decision of 2007 the Office assessed the legal relations established since 27. 01. 1994 till 30. 04. 2001 pursuant to the Act No. 188/1994 and legal relation established since 01. 05. 2001 till 31. 12. 2001 – pursuant to the Act No. 136/2001. In 2007 the Council of the Office decided that the sanction could be imposed only for illegal conduct which was taking place in the period since 01. 05. 2001 till 31. 12. 2001, it means for 8 months.

91. In its judgement RC BA stated that the Office assessed the conduct taking place during the effectiveness of two acts correctly and it has also correctly regarded the duration and gravidity of the anticompetitive conduct in calculation of new fine. The court approved the assessment of anticompetitive conduct and its real impact on the market which could be apparent all around Slovakia where ŽSR held the dominant position at that time. RC BA stated that the Office did not exceed the maximum limit and respected the principle of equal treatment in setting fines.

92. ŽSR lodged an appeal against the judgement of RC BA and argued that cargo transport was meanwhile transferred to a newly established Železničná spoločnosť. However, SC SR stated that Agreements on Cooperation, based on which the application of different conditions with respect to

individual undertakings took place were concluded by ŽSR which still exists, thus SC SR sees no reason to examine the responsibility of another subject by the application of economic continuity test. SC SR examined the judgement under appeal and concluded that appeal of ŽSR is not justified.

1.3 Mergers and acquisitions

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

93. With effect from 1st January 2012 the assessment of concentrations significantly changed by the introduction of the possibility of simplified proceedings for assessment of concentrations, which do not raise competition concerns. This regime should increase the efficiency and speed up the assessment of concentrations when the Office, based on notification or based on simple investigation, finds out that in given case there are no competition concerns which would require in-depth analysis of the case.

94. Simplified proceedings usually include information on concentration type, list of participants to a concentration and their business activity and the Office´s conclusion. According to the circumstances the simplified proceeding may also include other facts, for example, result of an investigation of certain partial aspect, investigation of which was necessary to declare that the concentration does not raise competition concerns or cases of new assessment of certain concept, which the Office did not deal with yet.

95. When establishing this concept the Office was inspired by the praxis of other member states and the European Commission and its simplified procedure in certain cases of concentrations. Simplified proceedings apply mainly in cases of switching from a joint control to an exclusive control, or if a notification clearly declares that no horizontal overlap of parties to the proceeding or their vertical connection occurs, where it would be possible to identify the impacted markets. The same applies also to the case of joint venture where the parent companies do not act in the same areas as the given enterprise. However, the mentioned types of concentrations do not exclude the application of the simplified proceedings also in other cases. Relevant provision of the Act is sufficiently general, so it is up to the correct consideration of the Office which cases of concentrations could be concluded in this way. Essential decision criterion is whether the notified concentration or results of an investigation would require in-depth analysis of impacts of concentration on competition. According to this philosophy, sometimes it is more appropriate to use an in-depth analysis also in cases, which usually fall under the simplified procedure and issue the decision with full reasoning.

96. The Office issues the decision with simplified reasoning within 25 working days following the date of delivery of the complete notification of concentration. However, the recent praxis proved that the Office usually does not use this period and it issues the decision on concentration much earlier and thus accommodates undertakings.

97. The undertakings notifying a concentration need to cooperate responsibly with the Office also in this case. Office´s decision-making process could be slowed down if the parties to the proceedings do not provide the Office with complete notification of concentration. Doubts may occur as to the real acquirer of control, identification of all companies belonging to portfolio of given economic group, existence of affected markets etc. In this regard the pre-notification contacts play a significant role pursuant to which the undertakings may contact the Office prior to submitting a notification of concentration itself and thus specify the required documents and materials on a less formal basis.

98. Since introduction of simplified proceedings for assessment of concentration, the Office assessed the majority of concentrations within the simplified regime and almost every case was preceded by the pre-notification contacts.

99. Amendment of the Act introduced also switch from recently used dominance test to so-called SIEC test (Significant Impediment of Effective Competition). Within new regime the Office assesses whether a concentration does not result in significant distortion of effective competition in the relevant market where the creation or strengthening of dominant position is only one of possibilities how such significant distortion of effective competition may occur. The Slovak legal adjustment thus uses the same test as the European Commission does according to the Regulation on the Control of Concentrations between Undertakings. However, in 2012, regarding the transitional provisions of the amendment to the Act, the Office still assessed number of cases pursuant to the former dominance test.

General investigations	**Administrative proceedings**	**Decisions**	**Decisions** (approval of concentration)	**Decisions** (prohibition of concentration)	**Decisions** (stopping the proceedings)
4	**30**	**26**	**22**	**1**	**3**

1.3.2 Summary of significant cases

Penta and Estate Consult: Concentration in the area of health-care provision

100. Within the assessment of concentration of the undertakings Penta and Estate Consult the Office conducted in-depth analysis of competition conditions in the area of health-care provision and dealt with the impacts of concentration.

101. By the concentration Penta was acquiring the control mainly over the general hospitals in Humenné, Michalovce, Rožňava, Partizánske, Spišská Nová Ves, Svidník, Vranov nad Topľou (with operation sites in Medzilaborce and Stropkov) and in Trebišov.

102. Since the activities of Penta and Estate Consult overlapped in the areas of providing:

- the institutional health care (IHC),
- ambulatory health care (AHC),
- services of common diagnostic and therapeutic components (CDandTC),
- pharmaceutical care (PC),
- occupational health care (OHC),

103. reimbursed, except OHC, mainly from the obligatory public health insurance, whereas Penta operates also in the area of providing the obligatory public health insurance through the health insurance company DÔVERA, the Office was assessing the impact of the concentration on competition from both horizontal and vertical points of view.

104. Within the horizontal assessment, the Office investigated the overlapping of operation of health-care facilities belonging to Penta and Estate Consult.

105. Within the vertical assessment the Office investigated

- whether the particular Penta health-care facilities could request more advantageous conditions from Všeobecná zdravotná poisťovňa and from health insurance company Union, what would weaken the position of these health insurance companies,

- whether the health insurance company DÔVERA could provide worse contractual conditions to competitors of Penta health-care facilities and thus weakened their position in the relevant market.

106. The Office evaluated how real the potential negative impacts would be, hence whether it is possible that the parties to the concentration would behave in the mentioned manner, whether and how much they are motivated to behave in this manner and whether such potential behaviour could have negative impact on competition.

107. Within assessment of concentration the Office considered also the specifics of provision and purchase of health care given mainly by the nature of negotiations the contractual relations and by regulation.

Institutional health care

108. In the area of providing IHC the Office assessed the overlapping of activities of Penta and Estate Consult and position of Penta after concentration

- in the view of hospitals as a whole,
- in the view of providing particular specializations of IHC
- in the geographical relevant markets which were determined based on analysis of patients´ migration from the relevant regions to the regions where the hospitals acquired by Penta have their seat.

109. In the area of IHC provision the activities of Penta and Estate Consult overlap only minimally, thus the concentration had no negative impacts on competition in the view of its horizontal assessment.

110. In the view of vertical assessment, the Office found out that in their relationship with health insurance companies the hospitals acquired by Penta would play an important role in IHC. However, as for the IHC expenses of individual health insurance companies paid to the hospitals, these expenses accounted for an inconsiderable part of their health care costs. At the same time, impact of the concentration, in terms of exclusion of competitors of hospitals acquired by Penta, was not proved. Therefore, negative impacts of concentration in the area of IHC were identified, even in this view.

Ambulatory health care

111. In the area of providing AHC the Office analysed mainly those specializations, where Penta would become the only provider in the relevant geographical market after the concentration. It referred to some specializations within the specialized AHC.

112. In terms of horizontal overlapping the concentration did not result in more considerable overlapping of the activities of parties to the concentration.

113. Since Penta would be the inevitable partner to health insurance companies after concentration, the Office analysed concentration in the area of providing AHC in the vertical aspect and it regarded that

- for AHC within negotiation of terms between health insurance companies and AHC providers the associations entering the negotiations on prices and contractual condition have greater impact,

- The analysed contracts between the health insurance company DÔVERA and AHC providers belonging to the economic group of Penta did not indicate that the AHC providers belonging to the economic group of Penta would have any advantage over the other AHC providers. costs of individual health insurance companies on AHC provided by health-care facilities, which would be after concentration controlled by Penta, represented inconsiderable part of their costs on health care,

- no impact of concentration in terms of exclusion of Penta´s competitors in the area of AHC was proved

- and concluded that the concentration in the area of providing AHC had no negative impacts, even in the view of its vertical assessment.

Services of common diagnostic and therapeutic components

114. CDandTC services are inevitable to provide services of institutional health care and ambulatory health care, for example, to identify the health problems of a patient and their treatment process. These services consist of collection of biological samples, their analysis and delivery of results to IHC and AHC providers.

115. In the area of laboratory services of CDandTC the Office identified horizontal overlap of Penta and Estate Consult activities in the specialization of biochemistry, hematology, microbiology, pathology and genetics, however, regarding the volume of services of CDandTC that Estate Consult provided to other providers of health care, besides the hospitals controlled by Estate Consult, the Office did not identify negative impact of concentration in the view of its horizontal assessment.

116. In terms of vertical assessment, regarding the fact that costs of particular health insurance companies on CDandTC to health-care facilities which would be controlled by Penta after concentration represented the inconsiderable part of their costs on health care and also regarding the fact that impact of concentration on excluding Penta rivals in the area of providing CDandTC was not proved, the concentration in the area of providing CDandTC had not negative impacts, even in the vertical view.

Pharmaceutical care

117. In the area of providing PC the concentration resulted only in inconsiderable horizontal overlap of activities of parties to concentration, thus the concentration in given area did not have negative impact on competition in the view of its horizontal assessment.

118. Given the fact that in area of PC the prices of medicines fully and partially reimbursed from the obligatory public health insurance are regulated, the Office did not identify the negative impact of the subjected concentration, even in the vertical view.

Occupational health care

119. Also in the area of providing OHC the concentration resulted in inconsiderable horizontal overlap of activities of parties to concentration, thus the concentration in the area of OHC did not have negative impact on competition in the view of its horizontal assessment.

120. Given the fact that provision of OHC is not reimbursed from the obligatory public health insurance, the Office did not identify negative impact of the subjected concentration, even in the vertical view. The decision came into force on 22. 08. 2012.

Concentration AGROFERT HOLDING, a. s. and EURO BAKERIES HOLDING a. s.

121. The Office assessed the concentration consisting in acquisition of direct sole control of the undertaking AGROFERT HOLDING, a. s., Praha, Czech Republic (hereinafter only referred to as „AGROFERT“) over the enterprise of the undertaking EURO BAKERIES HOLDING a. s. Praha, Czech Republic. In this case the Office proceeded pursuant to the former test, so-called dominance test and it examined potential creation or strengthening of dominant position with significant negative impacts on competition.

122. In horizontal assessment the Office focused on analysis of relevant market of production and distribution of fresh bread in SR, relevant market of production and distribution of fresh common bakery products in SR and the relevant market of production and distribution of other sweet and savoury bakery products in SR.

123. According to the findings and conclusions of the Office in the first-instance proceeding, this concentration created dominant position of the undertaking AGROFERT resulting in significant barriers to effective competition in all mentioned markets.

124. In vertical assessment the Office examined the impacts of transaction on the market of flour distribution; however, it did not identify the competition issue in this area.

125. In the light of the conclusions regarding horizontal assessment, the Office prohibited the concentration within the first-instance proceedings. Undertaking AGROFERT appealed against the decision of the Office; however, in the course of second-instance proceedings it withdrew the notification of concentration. Hence, the Council of the Office changed the first-instance decision and it terminated the proceeding[4].

Concentration of laboratory services of common diagnostic and therapeutic components

126. The Office approved the concentration of undertakings providing the laboratory services of common diagnostic and therapeutic components. Concentration consisted in acquisition of joint control by the natural persons – enterprisers MUDr. Radoslav Bardún, Dr. Med. Hans Jakob Limbach and MUDr. Juraj Hanzen over the enterprise of the undertaking HPL spol. s r. o., Bratislava (hereinafter referred to as „HPL“).

127. Target company HPL operates in the area of providing laboratory services of common diagnostic and therapeutic components (hereinafter referred to as “CDandTC”), particularly it provides diagnostic examinations in the specializations of microbiology, clinical biochemistry, hematology and transfusiology, clinical immunology and allergology.

128. First two mentioned natural persons control the company MEDIREX Group (hereinafter referred to as „MEDIREX Group“), which also provides services CDandTC, particularly laboratory examinations in the specializations of clinical biochemistry, hematology and transfusiology, clinical immunology and allergology and medical genetics.

129. CDandTC services are inevitable to provide services of institutional health care (hereinafter referred to as “IHC”) and ambulatory health care (hereinafter referred to as “AHC”), for example to

4 Decision of the Council of the Office No. 2013/ZK/R/2/002 was issued on 25. 01. 2013 and it came into force on 31. 01. 2013.

identify the health problems of patient and their treatment process. These services consist in collection of biological samples, their analysis and delivery of results to IHC and AHC providers.

130. Essential part of provided CDandTC services is reimbursed from the obligatory public health insurance by the health insurance companies with which the CDandTC providers bargain for the price conditions.

131. The Office assessed the fact that after concentration the laboratories of HPL and MEDIREX will not compete with each other, hence it assessed their common position in providing services of CDandTC. Inter alia, the Office´s assessment was also based on statements of the health insurance companies as customers of laboratory services, statements of other providers of CDandTC services and statement of representative these services customers.

132. More providers of CDandTC services were active in the territory of SR. There were for example companies belonging to the economic group Mid Europa Partners (in the time of issuing the submitted decision within the economic group of Penta, further the text provides the current status), MEDIREX Group, HPL, KLINICKÁ BIOCHÉMIA and synlab Slovakia with more laboratories and also with wider territorial scope within SR and more locally acting providers of these services.

133. The Office assessed the transaction at two levels. Partly, it examined its impacts on competition conditions for each of the particular specializations, which are in portfolio of MEDIREX Group and HPL within the CDandTC services and partly it assessed the impacts of concentration in the view of total change of market structure of CDandTC services provision.

134. Based on the Office´s survey and considering the statements of the health insurance companies on impact of concentration on purchase of laboratory CDandTC services in the specialization of biochemistry and in specialization of hematology and statements of these services´ providers on consequences of the concentration, the Office concluded that the concentration would not create or strengthen the dominant position resulting in significant barriers to effective competition. After concentration the laboratories of HPL and MEDIREX Group will remain exposed to competition in providing laboratory services within the given specializations.

135. Given that the companies of MEDIREX Group did not act in the specialization of microbiology and they were not the potential competitors of HPL, further, given that HPL did not act in the specializations of pathology and genetics and it was not the potential competitor of companies MEDIREX Group and regarding the fact that overlap of the activities of merging undertakings in the specializations of immunology and allergology was minimal, the Office concluded that the concentration would not create or strengthen the dominant position in the subjected specializations which might result in infringement of the effective competition in the mentioned specializations.

136. Within the total assessment the Office determined that the concentration would create the structure with the two biggest providers of CDandTC services – laboratories of MEDIREX and HPL and laboratories of Mid Europa Partners (hereinafter referred to as „MEP“). Therefore, the Office contemplated whether the concentration would change the nature of competition so that the providers of CDandTC services would establish a concerted practice, for example in order to retain the higher prices, allocation of customers or geographical territories. Statements of the health insurance companies and other addressed subjects did not prove the existence of coordination of CDandTC providers prior to concentration. Hence, there was no reason to consider whether the concentration would strengthen their coordination. The Office also examined whether the concentration might lead to creation of collective dominance and it also assessed the conditions for its long-term maintenance. The possibility of creating the collective dominance was not proved, in case, the existed conditions of purchase of CDandTC services

would be maintained, mainly regarding the fact that the market structure is created by the health insurance companies and their contractual policy.

137. Thus the Office concluded that if the existed conditions of purchase of laboratory CDandTC services would remain unchanged, the concentration would neither create nor strengthen the collective dominant position of laboratories of MEDIREX Group with HPL and laboratories of MEP, resulting in significant barriers to effective competition in the relevant market.

138. This was the last case of concentration assessed according to the so-called dominance test; it means the Office examined the potential creation or strengthening of the dominant position with the significant negative impacts on competition. As neither the creation or strengthening of the individual dominant position, nor the creation or strengthening of collective dominant position resulting in significant barriers to effective competition was proved, the Office approved the concentration. The decision came into force on 17. 12. 2012.

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

139. Besides the decision-making activity the Office promotes and develops the competitive environment also through competition advocacy. Aim of competition advocacy is to act preventively to affect the expert public, undertakings and politicians, explain and enforce the competition principles and contribute to development of competition culture. Competition advocacy comprises a wide range of activities – from comments of the Office submitted in the interministry comment procedure through various initiative documents and activities of the Office, education in the area of competition policy – to communication with public.

140. Through comments on draft acts and other documents the Office seeks to eliminate potential barriers to the effective application of competition rules likely to cause a distortion of market and competitive environment.

141. In 2012 AMO SR in the interministry comment procedure submitted comments on 33 materials. It submitted its fundamental comments on 5 materials, recommendatory comments on 27 materials, and fundamental and recommendatory comments on 3 materials.

2.1 Act on Protection, Support and Development of Public Health

142. Within the interministry comment procedure the Office submitted the fundamental comment on the draft of the Act amending the Act No. 355/2007 Coll. on Protection, Support and Development of Public Health. Submitted draft of the Act reduces the number of subjects entitled to assess the health capability for work and recognize the occupational diseases only to the providers of institutional health care in the university hospitals. The Office saw the discrimination of other providers of institutional health care and it requested to change the provision, in order to eliminate unjustified discrimination.

2.2 Regulation of the Government of SR on public minimal network of health care providers

143. The Office submitted the fundamental comment on the draft of the Regulation of the Government of SR on public minimal network of health care providers. The Office warned of the absence of objective criteria for including health-care facilities into the list of end network of institutional health care providers, which are automatically entitled to conclude a contract on providing the health care with the health insurance company. In the Office´s view this will exclude the competition between those that are in the list and other institutional health care providers. The contractual relation of health-care facilities included in the end network with the health insurance companies will be automatically ensured regardless the quality

of health care and effective management of health care insurance funds and they will be not motivated to increase both quality and efficiency.

2.3 Act on Advocacy

144. The Office submitted more comments on draft of the Act on Advocacy, having been submitted by the Ministry of Justice of the Slovak Republic. The Office saw the main restrictions of competition in increasing the required praxis of law clerks from three to five years as a precondition to work in advocacy, or cancellation of the possibility to include the other law praxis into the praxis of a law clerk, as well as the proposed restriction preventing the already registered attorney from employing a law clerk only after five years after his/her entering the Bar Register. The Office considers these facts as increasing the barriers to entry the market. The requirement on Bar Association to repeatedly examine the applicants with university diploma from abroad who already successfully passed the Bar Exam is also found as unjustified.

2.4 Act on Waste

145. Fundamental comment of the Office on draft of the Act on Waste having been submitted by the Ministry of Environment of the Slovak Republic aimed at omitting the provision obliging the producer of electric devices to take the electrowaste to an authorized treatment facility. Since Ministry of Environment of the Slovak Republic can grant an authorization only to the companies acting in the territory of SR, the producer cannot take the electrowaste to the facility ensuring its treatment abroad.

2.5 Act on Public Procurement

146. The Office submitted the fundamental comments on draft of the Act on Public Procurement. The Office considers the requirement on the undertaking applying for the contract to have a seat in the territory of the Slovak Republic as discriminatory, advantaging domestic undertakings and in contrary both to the European law and Agreement on Government Procurement. The Office commented also on the formulation which automatically regards the offer defying the level of other offers to be priced very low, thus exposing the applicant to the risk of exclusion. The Office considers it as anticompetitive. Such approach may facilitate creation of cartels and support their stability, since cartel participants submitting the bid with higher price they do not have to worry about low bid of a rival who does not participate in the agreement restricting competition.

147. The Office also commented on the drafted provisions on a strategic order. As they threaten non-discrimination principles in public procurement, the Office proposed to omit this provision. The Office regards the proposed disclosure of information on planned prices of goods and services as harmful, since the disclosure may result in undesirable price transparency and exchange of information and consequently in agreement restricting competition or it may support the prohibited concerted practice of undertakings. The Office also submitted comments on some provisions referring to the electronic auctions and it did not agree with exemption of some groups of procurements from the control through submitting the objections.

148. The Office had also the recommendatory comments, for example on draft proposing that the financial and economic position would be proved by turnover up to three times the supposed volume of a contract. The Office found it discriminatory and aiming at restriction of competition and disadvantaging of smaller and middle enterprises.

149. The Office also did not agree with the proposal to compose the commission evaluating tenders of representatives of employers from the subjected area as it: a) advantages only one group of entities, b) enables the representatives of association, associating either applicants in tender or their real or potential rivals, to participate in commission, hence minimally the latent conflict of interests could not be excluded.

3. Resources of Competition Authority

3.1 Resources overall

3.1.1 Annual budget

	2011		Change
Total expenses	2 403 163 EUR	3 456 360 USD	+ 40 802 EUR (+ 53 569 USD)

3.2.1 Number of employees

	2011	2012
Economists	15	14
Lawyers	17	17
Other professionals	5	4
Support staff	24	26
Total	**61**	**61**

3.2 Human resources

	2012
Enforcement against anticompetitive practices	17
Merger review and enforcement	9
Advocacy efforts	8

150. Period covered by the above information: year 2012