

Unclassified

DAF/COMP/AR(2014)6

Organisation de Coopération et de Développement Économiques  
Organisation for Economic Co-operation and Development

16-May-2014

English - Or. English

Directorate for Financial and Enterprise Affairs  
COMPETITION COMMITTEE

DAF/COMP/AR(2014)6  
Unclassified

**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN THE SLOVAK REPUBLIC**

-- 2013 --

18-19 June 2014

*This report is submitted by the Slovak Republic to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 18-19 June 2014.*

JT03357431

Complete document available on OLIS in its original format

*This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.*

English - Or. English

## TABLE OF CONTENTS

EXECUTIVE SUMMARY .....	3
1. Changes to competition laws and policies, proposed or adopted .....	7
1.1 Summary of new legal provisions of competition law and related legislation .....	7
2. Enforcement of competition laws and policies.....	7
2.1 Action against anticompetitive practices .....	7
2.1.1 Summary of activities .....	7
2.1.1.1 Agreements restricting competition .....	7
2.1.1.2 Abuse of a dominant position .....	8
2.1.1.3 Courts.....	9
2.1.2 Description of significant cases, including those with international implications.....	9
2.1.2.1 Settlement in the case of real estate agencies and Chamber of Veterinary Doctors of the Slovak Republic.....	9
2.1.2.2 Open administrative proceedings.....	9
2.1.2.3 Fine for the participant in the freight rail transport market.....	10
2.1.2.4 Investigation in the market of disposal of cooling and freezing equipment .....	11
2.1.2.5 The Supreme Court of SR upheld the decision of the Office in the matter of cartel of six construction companies.....	12
2.1.2.6 The Supreme Court of the Slovak Republic upheld the decision of the Office on fine imposed on Slovnaft, a. s.....	12
2.1.2.7 The Supreme Court of the Slovak Republic upheld the correctness of the Office’s decision in the matter of a bank cartel.....	13
2.1.2.8 The Supreme Court of the Slovak Republic upheld the Office’s decision on fine imposed on ENVI-PAK.....	14
2.2 Mergers and acquisitions .....	15
2.2.1 Statistics on number, size and type of mergers notified and/or controlled under competition laws .....	15
2.2.2 Summary of significant cases .....	16
2.2.2.1 Concentration of Slovak Telekom and DIGI .....	16
2.2.2.2 Concentration of GlaxoSmithKline plc. and de Miclén a.s.....	17
2.2.2.3 AGROFERT withdrew its notification .....	19
3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies .....	19
3.1 Legislative changes in water sector .....	20
3.2 Act on Health Insurance.....	20
3.3 Act on Court Executors and Execution Activities .....	20
3.4 Act on Waste.....	21
4. Resources of Competition Authority .....	21
4.1 Resources overall.....	21
4.1.1 Annual budget.....	21
4.1.2 Number of employees.....	21
4.2 Human resources.....	21

## EXECUTIVE SUMMARY

1. The Antimonopoly Office of the Slovak Republic (hereinafter referred to as „Office“ or „AMO SR“) is the central state administration body of the Slovak Republic (hereinafter referred to as „SR“). Its main mission is to protect and promote competition and create conditions for its further development. 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“). Within its competences it mainly conducts investigations of a relevant market, in administrative proceedings it decides in the matters of agreements restricting competition, abuse of dominant position, merger control and restriction of competition by state administration and local administration authorities and it also proposes measures to protect and promote competition. Besides the Slovak competition law the Office applies also European law and it fulfils the tasks resulting from the membership of the SR in the European Union (hereinafter referred to as „EU“).

2. In 2013 the Office issued 24 decisions<sup>1</sup>. Within the first-instance proceedings the Office (Division of Cartels, Division of Abuse of Dominant Position and Vertical Agreements and Division of Concentrations) issued 22 decisions. The second-instance body, the Council of the Office issued 2 decisions<sup>2</sup>.

<b>Number of decisions</b>	<b>Total number</b>	<b>Mergers</b>	<b>Abuse of dominant position</b>	<b>Agreements restricting competition</b>	<b>§ 39</b>
<b>First instance</b>	22	16	1	5	0
<b>Second instance</b>	2	1	1	0	0
<b>Total</b>	<b>24</b>	<b>17</b>	<b>2</b>	<b>5</b>	<b>0</b>

3. In 2013 Division of Cartels and Division of Abuse of Dominant Position and Vertical Agreements dealt with around 122 complaints on the possible anticompetitive conduct in various sectors. Initial assessment proved that, mainly in the area of abuse of dominant position, most of them were not legitimate or did not fall within the Office's competence. 43 cases passed to the phase of more detailed investigation.

4. 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. In practice it means that, firstly, it reviews the real impact of undertakings' conduct on competition and consumers. With the aim to fulfil the role at its best, to effectively use its resources and taxpayers' money, the Office has started to prioritise its activities. It focuses on very serious types of anticompetitive conducts, such as price cartels

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

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

and the conducts harming large group of consumers. The Office has priorities also in terms of the method of solving competition concerns. Experience shows that in many cases the initiation of administrative proceedings and imposing sanctions is not the best solution. On the contrary, the alternative solution can be the use of advocacy activities, adoption of commitments or settlement, which may be a faster, more effective and more beneficial remedy both for consumers and competition.

5. In terms of priority sectors, in 2013, the Office focused on in-depth analysis of potential competition concerns in the heating sector, financial services and food industry. These sectors are very sensitive to consumers as the possible price fluctuations refer to almost all citizens of the SR. Repeating complaints in the **heating sector** signalled structural deficiencies and existence of systemic problems. After completing the investigation of particular cases the Office completed the Study on the Functioning and Problems in the Heating Sector in the SR Aimed at Systems of Central Heat Supply and it presented the outcomes of this material to expert public.

6. Currently the Office continues its analysis of potential competition issues in sectors of financial services and food industry. Effectively functioning **sector of financial services** represents one of the most important driving factors of economy. The Office focused on this sector also due to the fact that some markets in the area of provision of financial services show relative stability and higher degree of concentration on a long term basis. Following a previous investigation, in 2013 the Office focused on conditions of providing certain financial bank products to population, small and medium-sized undertakings and local public administrations. These bank clients are characteristic by information asymmetry and lower bargaining power. The Office investigated whether the banks bind the provision of selected types of credits to the population, small and medium-sized undertakings and local public administrations with the provision of current account in the respective bank. Binding products may weaken competition in a given area of providing financial services through higher switching costs, lower transparency of prices what may result in lower mobility of bank clients concerned and higher barriers to entry the market for new providers of financial services (mainly those specialising in one product).

7. Regarding the stable relatively high concentration of market in the areas of providing selected bank products, which is monitored by the Office and the lower bargaining power of some types of bank clients the Office will continue with active monitoring and assessment of conditions of providing bank products to these consumers.

8. **Food industry** is permanently in the focus of national competition authorities and the European Commission and it seems to be problematic also in Slovakia. It is of high importance since it touches every citizen. Surveys show that consumers in Slovakia are very price sensitive, not only in time of crisis. Thus, within its competences, the Office has started to investigate this sector in more detail. Within the initial phase of investigation it focused on market of milk and milk products and in the second half of 2013 it launched an extensive survey to assess the current situation in this area. It addressed entities acting at all levels of distribution network starting from basic industry through processing up to sale to the end user. Collected data are subject to detailed analysis which will continue also in 2014. If the Office discovers a possible infringement of competition rules it is ready to intervene within its competences.

9. New development of the Office could be observed also in the legislation. By the amendment to the Act on Protection of Competition the Office endeavours to solve some issues resulting from the application practice and it also introduces new elements. Development of legislation occurred also at the European level. In 2013 Proposal for a directive of the European Parliament and of the Council on certain rules governing actions for damages for infringements of the competition law took place within the Council of the EU. The Office actively submitted its comments to this proposal.

10. In 2013 the Office experienced a breakthrough in approach of the courts to assessing the cases of infringement of competition rules. The Supreme Court of SR upheld the correctness of the Office's decisions in cases of two cartel agreements<sup>3</sup> and in two cases of abuse of a dominant position<sup>4</sup>. In all cases both the Slovak and the European competition law have been infringed. In recent years the Office has endeavoured to intensify the cooperation with judges and to develop the expert dialogue with them.

11. Beside the general investigation and decision-making activities the Office was engaged in number of advocacy activities aimed mainly at elimination of administrative barriers in the market. In 2013 the Office dealt with 555 materials, which were submitted within the interministry comment procedure. The Office submitted its comments on 34 materials. In 3 materials it formulated fundamental comments on prepared legislation, 29 comments had the nature of recommendation and 2 were combined. Office's comments referred mainly to health sector, waste management sector and draft of the Act on Court Executors and Execution Activities.

12. 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 public administration authorities, judges, academic community and experts from other competition authorities. An important step was establishing a tradition of international conferences devoted to competition law which the Office intends to organise annually each May. The conference proved to be an outstanding opportunity to exchange information and opinions with representatives of other countries, institutions and professions engaged in competition. Business Breakfast with Chairman was the novelty with favourable response from expert public which is usually very busy. Besides first-hand information on Office's events the participants could discuss the topical issues in an informal discussion. The Office also continued in organising seminars on cartel agreements in public procurement (so called „bid rigging“). This year the students of the Faculty of Law of the Trnava University in Trnava expressed their interest in this seminar.

13. 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. For the first time also the students of economics from the Faculty of National Economy of the University of Economics in Bratislava completed an expert study at the Office.

14. With the aim to provide quality information on its decisions and other activities in a transparent and comprehensible form the Office renovated its website. The Office also started to communicate with public on Twitter. It also cooperated with media and provided them with press releases on its decisions. At the same time it replied to numerous journalists' questions referring to competition. For the fifth 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 foreign competition authorities. At the same time the Office has been regularly publishing in specialised domestic and foreign periodicals devoted to competition issues. Employees of the Office actively participated in expert discussion at both domestic and foreign forums.

15. In 2013 the Office imposed valid fines totalling EUR 10 264. Within the first-instance proceedings the Office imposed the fines totalling EUR 13 439 117,50 but they are not in force since the parties to the proceedings appealed the decisions. In 2013 fines at the amount of EUR 16 054 166,16 were paid. These include also the fines imposed in the last years. Revenues from fines are income of the state budget. Within the framework of the programme "Competition", funds totalling EUR 2 097 610 were

---

<sup>3</sup> Cartel of three banks; cartel of six construction companies

<sup>4</sup> Case of Slovnaft (discrimination in wholesale of petrol and wholesale of oil); case of ENVI-PAK (abuse of a dominant position in the market of granting a licence to use the trade mark "Green Dot")

allocated to the Office for the year 2013. Funds totalling EUR 2 017 375 were allocated to the Office from the state budget for the year 2014.

16. Last year the Office continued with implementation of changes declared in its strategy issued at the end of 2012. It intensified its interventions in revealing the most serious infringements of competition rules, namely price cartels in the area of public procurement. – so called “bid rigging”. It allocated large capacities to investigation of priority sectors and it intends to continue in doing so also in the next period. Successful completion of legislative procedure and adoption of the amendment to the Act on Protection of Competition focusing on higher efficiency of competition rules enforcement represents the challenge for next year.

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

### ***1.1 Summary of new legal provisions of competition law and related legislation***

17. At the end of 2013 the Office submitted several proposals for amendments to Act No. 136/2001 Coll. on Protection of Competition to the interministry comment procedure. The amendments respond to the need for legislative changes in certain areas following changes in the practice. They also aim at enhancing the efficiency of the competition rules. The most significant changes concern the introduction of new instruments in the Slovak competition policy. Some additional changes relate to the decision-making process. First, the Office intends to modify the system of time limits in the merger control area and to introduce notification using specific forms to simplify and speed up the process. The area of antitrust is also subject of certain amendments: the provisions on commitments and the leniency programme will be amended to increase legal certainty for undertakings. The leniency programme has been revised to reduce the concerns of potential leniency applicants and increase their motivation to submit a leniency application, thereby intending to increase the number of revealed cartels. The draft amendment provides for possible limitations in case of actions for damages against a successful leniency applicant. The amendment also foresees the possibility to use settlement as an alternative method of case resolution for all types of competition infringements.

18. The amendment introduces a brand new instrument in the Slovak competition practice: a financial reward for natural persons who provide cartel evidence, amounting to 1% of the imposed fine for a cartel (maximum EUR 100 000). The Office expects that this amendment will, together with the existing leniency programme, contribute to the fight against cartels.

## **2. Enforcement of competition laws and policies**

### ***2.1 Action against anticompetitive practices***

#### ***2.1.1 Summary of activities***

##### **2.1.1.1 Agreements restricting competition**

19. Agreements restricting competition may occur in the form of an agreement between direct competitors, so called cartels or in the form of agreement between undertakings acting at the different levels of distribution network, for example in a relation supplier – customer. These are the vertical agreements.

20. In accordance with the prioritisation policy published in 2013 the Office focused on revealing cartels. Mutual agreement of competitors is aimed at elimination of competition between undertakings resulting in significant price increase, lower selection of products and services and reduction of investments. Expert studies state that the prices may rise by 50% due to the cartel. Thus the cartels belong to the most serious infringements of competition rules from which only their participants may benefit.

21. The Office paid special attention to cartel agreements in public procurement, so called “bid rigging”, since due to these agreements the public procurement loses its meaning – to ensure the most effective use of public resources. Cooperation of bidders may occur in various forms, for example agreements on prices, contract allocation or other forms of coordination including agreement on non-submitting the bid or contract rotation. These cartel agreements may occur in all sectors but highly concentrated markets with small number of entities or markets with certain symmetry between undertakings (their cost structure or market shares are similar) are predisposed. Bid rigging often occurs also in the markets with high barriers to entry, with a few or any substitutes, standardised products, high transparency, stable market environment and repeating tenders. If it is proved that the bidder participated in

collusion in public procurement, it cannot participate to public procurements for the period of three years from the final decision proving the existence of an agreement restricting competition.

22. It comes out both from the Office's analyses and from the complaints by third parties that the cartel agreements are not rare. However, their participants use more and more sophisticated methods to keep their secrecy, since such agreements bring them considerable profits. Cartels are very difficult to reveal and it is also very hard to obtain information and evidence on their existence. The Office actively uses all available tools provided by the valid legislation to receive the necessary evidence. One of the best practices are the unannounced inspections in the premises of undertakings. Their intensity has risen recently. As it is very principal intervention into the undertaking's rights, each inspection is preceded by the detailed analysis of indications on suspicious conduct of undertakings and each intervention of the Office must be objectively justified and must fulfil strict criteria. Materials acquired during inspection consequently become subject to rigorous analysis with the aim to ensure the most convincing evidence. Besides its own initiative the Office conduct inspections also based on so called leniency applications where a cartel participant informs the Office on the place where it is appropriate to conduct a targeted inspection. As a „reward“ it acquires immunity from fine. In 2013 the employees of the Office conducted 11 inspections of 33 entities, for example in sector of banks, building, information technologies, geodesy and cartography etc.

23. New instrument of informant introduced in the amendment to the Act on Protection of Competition should contribute to revealing of cartels. If the amendment is approved natural persons could acquire a financial reward of up to 1% of imposed fines in a decision of the Office (maximum of EUR 100 000), if they provide the Office with the evidence on cartel existence. Main objective is to motivate people to cooperate with the Office and provide it with important information.

24. Higher awareness on possible anticompetitive practices through knowledge and education of expert and laic public also represents a preventive tool of the fight against cartel. The Office also continued organising seminars on cartel agreements in public procurement intended for students of the Faculty of Law of the Trnava University in Trnava.

	<b>General investigations</b>	<b>Administrative proceedings</b>	<b>Decisions</b>
<b>Cartels</b>	19	9	5
<b>Vertical agreements</b>	5	0	0
<b>Total</b>	<b>24</b>	<b>9</b>	<b>5</b>

#### 2.1.1.2 Abuse of a dominant position

25. In the area of abuse of dominant position, in 2013, the Office continued in the trend of application of more economic (effect-based) approach which is in accordance with the development of the European competition policy. The fundamental aim of competition protection in the market is to increase the consumer welfare. Within this approach the infringement of competition rules by dominant undertaking is constituted only if its conduct has real or potential negative impact on consumer, either in the form of higher price, lower quality or constricted supply and the emphasis is given to the exclusionary practices. An essential part of assessing impacts in the cases of abuse of a dominant position is a thorough knowledge of the structure and functioning of the relevant sector with the aim to prove the interconnection between the assessed conduct of undertaking and the harm to consumer welfare. This procedure requires more sophisticated approach to assessing cases using various economic analyses and it places increased educational requirements of employees. The shift to a more economic approach to assessing cases of abuse

of dominant position in the market and the diversion from formal procedures generally creates presumption for better demonstration of the legitimacy of the competition authority's intervention.

26. In 2013 the Division of Abuse of Dominant Position and Vertical Agreements recorded 56 complaints on possible abuse of a dominant position. Many complaints proved during the first phase as illegitimate or not falling within Office's competence. 9 cases from the sectors of freight rail transport, waste management, postal services, heating industry, telecommunications and water management passed to the phase of more detailed investigation.

General investigations	Administrative proceedings	Decisions
9	1	1

#### 2.1.1.3 Courts

27. 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 (hereinafter referred to as „RC BA“) and lodge an appeal against the judgement of the regional court to the Supreme Court of the Slovak Republic (hereinafter referred to as „SC SR“).

28. In 2013 the courts decided in 15 cases, of which 6 cases were decided by the Regional Court in Bratislava and 9 cases by the Supreme Court of the Slovak Republic.

#### 2.1.2 Description of significant cases, including those with international implications

##### 2.1.2.1 Settlement in the case of real estate agencies and Chamber of Veterinary Doctors of the Slovak Republic

29. The Office issued two decisions where it applied settlement. In the first case it fined five real estate agencies for setting the range of commission, amount of processing fee and commitment not to compete which the Office assessed as agreement on prices and restriction of sale. It also imposed a fine on Chamber of Veterinary Doctors of the SR for concluding a prohibited agreement as the chamber confirmed more provisions in its statutes which were aimed at restriction of competition.

30. Fines imposed on participants to the proceedings in both cases were lowered by 30% based on application of settlement. The Office promotes this type of alternative resolution, mainly in the minor cases where it may quickly and effectively contribute to remedy in the market. Fines have mostly preventive and educational effect and should turn the attention to the fact that the Office strictly monitors and punishes the prohibited agreements between competitors.

##### 2.1.2.2 Open administrative proceedings

31. Special form of cartel is the collusion in the public procurement (so called “bid rigging”), when the tenderers agree on mutual non-competing beforehand. Such agreement may thwart purpose and aim of public procurement in the view of “value for money” principle. Taking into account the fact that the majority of financial resources allocated to projects financed from the EU funds is subject to public procurement the Office actively participates in revealing cartels in this area. It also cooperates with other state administration bodies with the aim to set the most effective and efficient control.

32. In 2013 the Division of Cartels opened two administrative proceedings concerning the suspicion of existence of cartel agreements in public procurements financed by the EU funds. In September 2013, based on its own initiative, the Office opened administrative proceedings against twelve undertakings concerning their participation in submitting the bids in public procurements financed from the Operational Program Education using the resources of the European Social Fund and national resources. Based on accumulated evidence the Office had a justified suspicion that the undertakings acting in the area of sale of teaching aids agreed on non-competing in submitting bids within the public procurements concerned. In December 2013 the Division of Cartels opened administrative proceedings against four undertakings in the area of building industry as it had a justified suspicion that the building companies coordinated their conduct in submitting bids in public procurement concerning reconstruction of a building providing social services in the total amount of more than EUR 2 mil. The project was funded by the European Regional Development Fund and by state budget of the SR.

33. With the aim to confirm its suspicion and to obtain further evidence in both cases the Office conducted unannounced inspections in the premises of undertakings prior to commencing administrative proceedings and thus it acquired relevant documents on the public procurement in question.

34. The Office opened another administrative proceedings for the suspicion on bid rigging in the market of production, distribution and sale of products and services in the area of geodesy and cartography (mapping the earth's surface and providing products and services related thereto) in the territory of the SR. This administrative proceeding was also preceded by inspections in the premises of the concerned undertakings. Based on the acquired evidence the Office had a justified suspicion that in terms of provision of goods and services these two undertakings agreed on a Slovak market allocation, coordinated their behaviour in public procurement and public tender, directly or indirectly fixed prices of goods and services provided or other trading conditions and agreed that they were going to limit or control production, sales, technical development or investment with the aim to control their production activities. Such conduct may constitute an infringement of the Article 4 of the Act on Protection of Competition and Art. 101 of the Treaty on the Functioning of the European Union, which both prohibit agreements restricting competition.

35. In May 2013, based on its own initiative, the Division of Cartels opened administrative proceedings against five undertakings acting in the market of distribution of IT technologies and associated services in the SR. IT distributors were suspected of concluding an agreement on introducing the handling charges or administrative fees in the same amount and almost in the same time. With the aim to acquire the most of direct evidence also in this case the Office conducted unannounced inspections in the premises of several undertakings in Bratislava, Košice and Žilina.

36. The fact that the Office opened the administrative proceedings does not imply that the participants concerned have infringed the competition rules, nor does it prejudice the findings which the Office might reach in its decision. However, if the infringement of competition rules is proved a fine of up to the amount of 10% of their turnover for the preceding closed accounting period might be imposed upon the cartel participants.

#### 2.1.2.3 Fine for the participant in the freight rail transport market

37. On 22 August 2013, the Office issued a decision finding an abuse of dominant position in the freight rail transport market. The dominant company adopted an exclusionary strategy consisting of the restriction of leasing/selling of electric locomotives to competitors as well as the restriction of refuelling motor locomotives of competitors in such a way that it distorted competition in the market. The intention of this conduct was to exclude the rivals from the market or to prevent them from growing. The Office imposed a fine of EUR 10 253 662 for continuous infringement of the Act during the period between 2005 and 2010.

38. A necessary pre-condition for carriers to provide freight rail transport services is to have access to locomotives, either electric or diesel. The electric locomotives are more effective than the diesel ones. Electric locomotives which are capable of operating in the Slovak Republic are predominantly owned by the dominant company, which refused to sell/hire them to its competitors. Hence, the private carriers have been increasingly using the less effective diesel locomotives. However, diesel locomotives need regular refuel of oil and the network of fuel-stations for diesel locomotives is owned by the dominant company, which did not allow private carriers to refuel at its fuel-stations.

39. The Office decided that the conduct of the dominant company increased costs of competing carriers: they were not able to effectively provide their services, succeed on the market, grow and compete with the dominant company.

40. The first-instance decision has been appealed to the Council of the Office.

#### 2.1.2.4 Investigation in the market of disposal of cooling and freezing equipment

41. In 2013 the Division of Abuse of Dominant Position and Vertical Agreements completed an investigation in the market of disposal of cooling and freezing appliances, launched in 2012 based on the complaint submitted by one of the collective systems. According to this entity the company disposing electrowaste from the cooling and freezing appliances has been charging excessive prices for its services.

42. Pursuant to the Act on Waste the electrowaste from the cooling and freezing appliances (namely the old refrigerators and freezers) need to be disposed in the way determined by the Act and by the company having the relevant disposal authorisation. The company against which the complaint was directed is the biggest company disposing electrowaste from the cooling and freezing appliances in the Slovak Republic. The collection and disposal of electrowaste is usually organised and ensured by the so called collective organizations. However, the final costs of disposal are beared by the producers and sellers of the concerned appliances and they reflect it in the final price of refrigerators and freezers paid by the consumer.

43. Pursuant to the article 22, par. 1, letter a) of the Act on Protection of Competition the Office was investigating whether the conduct of the mentioned company disposing electrowaste from the cooling and freezing appliances constituted an infringement of the Act. The concerned disposal company is a significant Slovak company disposing electrowaste from the cooling and freezing appliances. Its strong position in the market is amplified by the fact that from 2006 until the end of 2012 there was a legislative barrier evidently decreasing competitive pressure of the foreign disposal companies, namely pursuant to this Act on Waste the dangerous waste produced in SR must have been preferentially disposed in the SR; it was not possible to export it. Old refrigerators and freezers belong to dangerous waste. Such legislation, which the Office objected several times through the interministry comment procedure referring to the Act on Waste, as well as officially through addressing the Ministry of Environment of the Slovak Republic with the draft amending the Act on Waste, significantly strengthened the position of this disposal company in the market.

44. While assessing the practice, and more specifically, while assessing the fact whether the prices are excessive the Office, dealt mainly with the price charged for disposal of electrowaste from the cooling and freeing appliances and it predominantly focused on the comparison of prices and costs and comparison of prices in the SR and abroad.

45. Even though the facts found during the investigations indicated possible competition concerns, the investigations of the Office itself and the amendment to the Act on Waste cancelling the prohibition to export the dangerous waste from 1 January 2013 led to significant changes in the market of disposal of the

cooling and freezing equipment, and thus it was not necessary to impose any sanctions by the Office. Moreover, thanks to the activities of the Office, the problems in the market were resolved systematically by establishing more competitive environment which is more acceptable and more efficient to the market than introduction of regulation of behaviour.

#### 2.1.2.5 The Supreme Court of SR upheld the decision of the Office in the matter of cartel of six construction companies

46. In December 2013 the Supreme Court of the Slovak Republic changed the verdict of the Regional Court Bratislava, which in December 2008 annulled the decisions of the Antimonopoly Office of the SR in a cartel case involving six construction companies during construction of highways and it dismissed all actions of the construction companies. Definitely, without the possibility of further ordinary remedy it upheld the findings of the Office in the largest cartel case in the history of the Slovak competition law.

47. In 2006 the Antimonopoly Office decided<sup>5</sup> that companies Strabag a.s., Doprastav, a.s., BETAMONT s.r.o., Inžinierske stavby, a.s., Skanska DS a.s., MOTA - ENGIL, ENGENHARIA E CONSTRUCAO, S.A. concluded a cartel agreement infringing the provisions of the Act on Protection of Competition and Art. 101 of the Treaty on the Functioning of the European Union.

48. The cartel participants coordinated their conduct in the tender for the execution of works for the construction of the D1 highway Mengusovce - Jánovce (stretch from 0.00 to 8.00 km) and the Office imposed a fine amounted to nearly EUR 45 million. The highest fine in the amount of EUR 13 880 900 was imposed on company MOTA – Engil, the next one was the company Strabag a. s. (EUR 12 206 433), company Skanska DS a. s. (EUR 8 978 822), Doprastav, a. s. (EUR 6 566 155), Inžinierske stavby, a. s. (EUR 3 024 763) and BETAMONT s. r. o. (EUR 131 147). The six construction companies participated in the tender in the form of two associations established for the purpose of preparing and submitting their bids and the subsequent construction of the highway. One of the companies participated in the tender independently. Three bids were submitted in this tender, which included a complex of construction works nearly 900 unit prices.

49. Based on the previous analysis, the Office determined that the companies cooperated in setting the tender prices. Conformity of bids (unit prices indexes of the particular items of construction) was the decisive evidence. Ratio between the unit prices submitted by each tenderer showed extremely constant figures. Such a strong convergence is non-standard and it could not be objectively justified otherwise than by an anticompetitive agreement of tender participants.

50. The Office had received indication on possible anticompetitive conduct from the contracting authority – Národná diaľničná spoločnosť, a. s.. The allegations of anti-competitive conduct by the bidders in the tender concerned were raised due to the high prices submitted by bidders.

#### 2.1.2.6 The Supreme Court of the Slovak Republic upheld the decision of the Office on fine imposed on Slovnaft, a. s.

51. In April 2013 the Supreme Court of the Slovak Republic issued a judgement in the matter of Slovnaft, a. s. versus the Antimonopoly Office of the Slovak Republic. SC SR changed the verdict of the Regional Court in Bratislava which in March 2012 annulled the decision of the Council of the Office together with the decision of the Office. SC SR thus upheld the Office's decision imposing Slovnaft, a. s. the fine of EUR 9 028 746 for abusing of dominant position in form of discrimination in wholesale of

---

<sup>5</sup> decision No. 2006/KH/R/2/116 and decision No. 2005/KH/1/137

diesel oil in Slovakia in the period from January 1, 2006 to December 31, 2006 and in wholesale of petrol in Slovakia from January 1, 2005 to December 31, 2006.

52. The administrative proceedings in this case was opened in 2005 when the Office investigated the price policy of Slovnaft since in this period the fuel prices significantly grew. In December 2006 the Office issued the first-instance decision by which it sanctioned Slovnaft for a discriminatory practice. The Council of the Office upheld this decision in December 2007. However, the Regional Court annulled these decisions in December 2009. In 2010 the Office repeatedly dealt with the situation in the market of fuel sale during the years 2005 – 2006.

53. In this case the Office determined two relevant markets – the wholesale market of diesel oil in the SR and the wholesale market of petrol in the SR where Slovnaft holds a dominant position. While determining the relevant market and dominance, the Office used, beside the classic qualitative methods, also the quantitative methods, for example tests for stationarity.

54. In this case the Office assessed the practice of discrimination, namely its exploitative form when the aim is not to exclude the competitor out of the market, but to acquire the financial benefit. The Office determined that Slovnaft in 2005 and 2006 (for petrol) and in 2006 (for diesel oil) set individual prices tailored for customers according to their preferences, willingness to pay and/or opportunities to switch to competitors. This practice resulted in fact that customers had different prices of fuels reflecting the maximum price they were able to pay and price differences could not be objectively justified (for example based on the different sale costs). Impact of this practice resulted in unreasonably higher prices for the customers having less opportunity to switch to competitors. Proving the practice the Office also used the quantitative methods, namely the regression analysis.

55. Final fine imposed on Slovnaft was EUR 9 028 746. This fine was calculated from the relevant turnover, it means from the turnover attained from the sale of products to which the infringement of the Act referred, namely the wholesale of diesel oil and petrol in the SR. Even though, standardly the Office is not obliged to do so, it calculated also the financial benefit acquired Slovnaft through the mentioned practice in the amount of EUR 6,7 mil.

2.1.2.7 The Supreme Court of the Slovak Republic upheld the correctness of the Office's decision in the matter of a bank cartel

56. In 2009 the Office sanctioned by its decisions<sup>6</sup> three banks – Slovenská sporiteľňa, a. s., Všeobecná úverová banka, a. s. and Československá obchodná banka, a. s. for the cartel the aim of which was to exclude a competitor, company AKCENTA CZ, a. s. from the market and to take over its clients. Total fine for all three banks was EUR 10 191 800. The Office qualified the conduct of the banks as a very serious infringement of competition rules, as it allocated markets (clients), which is classified as hard-core cartel. The Office imposed a fine of EUR 3 197 912 on Slovenská sporiteľňa, a. s., EUR 3 810 461 on Všeobecná úverová banka, a. s. and a fine of EUR 3 183 427 on Československá obchodná banka a. s.

57. All three banks appealed the first and the second instance decisions before the Regional Court which annulled the Office's decision concerning the three banks and returned it to the Office for next proceedings. As the main reason the court stated that the conduct of banks could not be illegal, as AKCENTA runs a business in Slovakia without the licence required. The Office appealed the judgement to the Supreme Court arguing that AKCENTA was a competitor of the banks on the Slovak market of cashless foreign exchange operations and the fact, whether it held the licence or not, was not relevant for

<sup>6</sup> Decision No. 2009/KH/1/1/030 and decision No. 2009/KH/R/2/054

assessing the banks' conduct from the point of view of competition rules. What was decisive was that generally accepted principles of assessing and deciding in the matter of cartel agreements were infringed.

58. This opinion was supported also by the Court of Justice of the European Union, which in its answers to prejudicial questions of the Supreme Court confirmed that "*Article 101 TFEU must be interpreted in such meaning that the fact that an undertaking concerned by the cartel agreement, which object is the restriction of competition was allegedly operating illegally on the relevant market at the time when the agreement was concluded is of no relevance to the question whether the agreement constitutes an infringement of that provision*". European Court of Justice further explained that competition rules protect not only the interests of competitors and consumers, but also markets and competition as such and it is for public authorities – and not private undertakings or associations of undertakings – to ensure compliance with the competition rules. Opinion of the Court of Justice of the European Union is binding to the Slovak courts.

59. In May 2013 the Supreme Court of the Slovak Republic changed the judgement of the Regional Court in Bratislava and it dismissed the action of Slovenská sporiteľňa, a. s., against the Office and also the action of Všeobecná úverová banka, a. s. a day later. Thus the Supreme Court of SR upheld the decision of the Office dated on 2009 referring to these two banks. In the terms of third bank the Supreme Court of SR returned the case for next proceedings.

#### 2.1.2.8 The Supreme Court of the Slovak Republic upheld the Office's decision on fine imposed on ENVI-PAK

60. In 2013, the Supreme Court of the Slovak Republic confirmed the decision of Office in the matter of infringement of competition rules by ENVI-PAK, a. s.. The Supreme Court changed the verdict of the Regional Court Bratislava so that it dismissed the complaint of ENVI-PAK against the Office. The Supreme Court thus upheld the Office's decisions, by which a fine of EUR 18 394 was imposed on ENVI-PAK for having abused its dominant position on the relevant market of granting approval to use the trademark "Green Dot" (hereinafter referred to as "GD") in the territory of the Slovak Republic. The conduct was found to be an infringement of Art. 8 of the Act on Protection of Competition valid in the Slovak Republic as well as Article 82 of EC Treaty (now Article 102 of the Treaty on the Functioning of the European Union).

61. ENVI-PAK was in assessed period a sole undertaking entitled to provide GD trade mark sublicenses in Slovakia. On that basis ENVI-PAK was entitled to provide individual licenses (sublicenses) to third parties, i. e. producers, distributors of packaging and packed goods, suppliers and importers for using the trademark GD in the Slovak Republic and for the right to introduce the goods in a packaging marked with GD (licensed clients) in Slovakia. Each importer or another obliged person introducing in the Slovak market packaging being already marked with GD, had to make a contract with ENVI-PAK. There was no other alternative for obliged persons to obtain trademark GD other than a contract with ENVI-PAK.

62. At the same time ENVI-PAK acted on the market for provision of services of authorised organisations, i. e. it provided packaging waste collection, recovery and waste recycling for obliged persons (service clients), where it was subject to competitive pressures of other authorised organisations. Impacts of the abuse conduct of ENVI-PAK appeared in this market.

63. ENVI-PAK set the system of payments for GD in such way, that its service clients, that are companies having used the packaging waste collection, recovery and recycling services of ENVI-PAK could use the Green Dot free of charge, while companies using the services of its competitors, which were interested only in the GD sublicense, had to pay a separate license fee. Final price paid by an undertaking applying only for the GD sublicense was always higher than the price that the undertaking would have paid

if it had been a service client of ENVI-PAK. For an obliged person using Green Dot it was not economically reasonable to be or to become service client of another rival authorised organization. ENVI-PAK abused its dominant position in the market of granting approval to use the trademark Green Dot via individual licenses in such way that in fact it indirectly forced obliged persons using Green Dot to use also its services in the market of packaging waste collection, recovery and waste recycling, what led to limiting of expansion of competitors in the market.

64. As the conduct was also an infringement of European law, European Commission submitted a written observation on the case. In its amicus intervention sent to the Supreme Court it expressed its opinion on the parallel application of national and European competition rules prohibiting the abuse of dominant position, as well as to possibility to impose a fine for the infringement of general prohibition of the abuse of dominance. The Commission's statement is consistent with the line of argument in the Office's appeal to the Supreme Court.

65. Judgements of the Supreme Court of SR cannot be appealed.

## 2.2 *Mergers and acquisitions*

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

66. In the area of mergers in 2013 the Office issued several „soft law“ documents which help the undertakings and contribute to the faster and more simplified procedure of merger assessment. **Guidelines on Calculation of Turnover to Fulfill the Notification Criteria** is a brand new document. In this document the Office explains in more detail the way and various specifics of calculation of turnover which decides on the fact whether the merger is subject to control by the Office. The Guidelines were issued for the purpose of merger control, and will help the merging undertakings determine whether they meet the turnover criteria and thus are obliged to notify the merger to the Office. At the same time the Office also revised **Guidelines on Pre-notification Contacts**. The Office considers the contacts with undertakings prior to official merger notification as very useful part of merger assessment. This form of communication may significantly contribute to higher efficiency of merger approval. It is recommended to use this possibility also for mergers which do not seem to raise competition concerns. Consultations with the Office within the pre-notification contacts do not represent administrative proceedings or formalised contacts, but only a preliminary discussion taking place in the phase when the undertakings only prepare the transaction or prepare the merger notification or collect information necessary for assessing the obligation to notify the transaction to the Office. Both parties may profit and take advantage of these consultations. Undertakings may informally discuss the issues concerning the obligation to notify the transaction to the Office and they also may agree on extent of requested information and documents. On the other hand, during the pre-notification contacts the Office acquires information on given transaction earlier than from the formal notification which leads to more effective collection of information and documents necessary for evaluation of the transaction and ultimately it may speed up the administrative proceedings.

General Investigations	Administrative Proceedings	Decisions	Decisions (approval of merger)	Decisions (prohibition of merger)	Decisions (stopping the proceedings)
6	17	16	15	0	1

## 2.2.2 *Summary of significant cases*

### 2.2.2.1 Concentration of Slovak Telekom and DIGI

67. Within a merger review the Office focused on the sector of electronic communications where it authorised the acquisition of the company DIGI SLOVAKIA (hereinafter referred to as „DIGI“) by the company Slovak Telekom (hereinafter referred to as „ST“). Regarding the nature of activities of both participants to the concentration the Office focused mainly on the area of paid television (hereinafter referred to as „TV“), which it has dealt with for the first time in relation with concentrations.

68. Company ST provides complete portfolio of data and voice services. It owns and operates wide fixed and mobile telecommunication network covering almost the whole territory of the Slovak Republic. ST provides the services of broadband access to internet via fixed networks – metallic xDSL and optical FTTx and via mobile broadband networks. ST entered the market of paid TV via IPTV technology through fixed networks under the brand “Magio”, later it provided similar service based on satellite technology covering the whole territory of SR. ST provides video on demand (hereinafter referred to as “VoD”) as well.

69. Target company DIGI provides services of paid TV in the whole territory of SR through satellite technology or fixed nets and the broadband access to internet through fixed networks.

70. The Office assessed the impact of concentration on competition focusing on markets that could be affected by this concentration. It concerns the following markets:

- retail market of providing broadband access to internet for end users
- retail market of providing paid TV including related markets – wholesale market of providing the rights for sport matches broadcasting (or more precisely in wider scale providing licenses on audiovisual content).

71. In the case of retail market of providing broadband access to internet, the Office did not identify any competition concerns. In fact, ST customers may choose from the offer of other providers of broadband access and there is also the possibility to choose other competitors at the local level. It indicates that the concentration does not infringe effective competition on the retail market of provision of broadband internet.

72. In the field of provision of paid TV the Office assessed provision of licenses on audiovisual TV content, i. e. licenses on movies, sport broadcastings etc. Neither ST nor DIGI are providers of licenses on audiovisual TV content, their activities however overlap in the field of acquiring of licenses. Therefore the Office assessed consequences of given concentration from the viewpoint of buying power after concentration. ST acquires licenses to provide video on demand while DIGI for producing the channel DIGI SPORT. As it concerns acquiring of TV content rights for different purpose (home video distributors versus insertion of content into program menu of the own channel DIGI SPORT) and with different content (sport broadcasting versus movies) the concentration does not result in horizontal overlap of activities of participants to the concentration. Even if the Office would have taken into consideration acquisition of licenses generally, regardless the purpose, or content, the concentration would result in horizontal overlap of participants to concentration only minimally.

73. Next, the Office inquired into providing the rights of TV channels. ST is not a producer of any channel. DIGI is a producer of the channel DIGI SPORT which is transmitted exclusively in the frame of DIGI. The Office assessed whether it is “a must have channel” that significantly affects end consumers when choosing providers of paid TV. Evaluating ratings, the interest in particular sport channel, the

interest in sports channels in general, the Office found out, that acquiring the rights of TV channel DIGI SPORT ST could not prevent its competitors from providing services of paid TV.

74. As ST and DIGI purchase the rights of TV channels from their producers, their activities horizontally overlap in demand for the rights of TV channels. The Office therefore assessed whether the concentration can create or strengthen the buying power of ST towards providers of rights of TV channels in such extent that ST could behave towards these providers independently (for example by acquiring unreasonably privileged purchase conditions, eventually exclusivity) and impacts of eventual acquisition of exclusivity in the market of retail provision of paid TV. The Office found out, that providers of rights are on the one hand big supnationals placing their products globally and disposing of sufficient negotiating power, against which ST has not significant buying power. On the other hand there are producers of so called “must have channels” (Markíza, JOJ, STV1, STV2 etc.). These channels represent the focus of viewers’ interest and are necessary for provision of services of paid TV to end consumers, what presupposes strong negotiating position of their producers. At the same time, if ST would be able to negotiate exclusive rights for some TV channels, there would be those, which are not necessary for providing services of paid TV. Even in this case it is not likely that other providers have no access to the necessary entry for the provision of paid TV services to end consumers. The Office concluded that the concentration in question does not infringe effective competition in this market.

75. The Office assessed the impact of concentration on retail market of provision of paid TV services to end consumers. Both ST and DIGI provide services of paid TV to end consumers in Slovakia. Concentration changes structure of the relevant market. The Office assessed the position of undertakings in the relevant market in terms of number of clients and in terms of revenues for services of paid TV taking into account barriers to entry the mentioned market. The assessment was done alternatively, because it was not clear whether the whole offer of undertaking M7Group (Skylink and CS link) can be considered substitutable with the services of other providers of paid TV. However it was not necessary to answer this question, because in any case the Office did not find significant infringement of competition.

76. The analyses showed, that despite the growth of market share of ST, this undertaking will be under sufficient pressure of competitors even after the concentration, namely by undertakings LIBERTY GLOBAL and M7Group (or even if the whole portfolio of M7Group is not placed in given market, this undertaking is at least at the potential competitor) and it is not very likely that ST could behave towards its clients independently (e.g. to increase prices for long term, lower the quality of services).

77. As ST operates in several relevant markets in the field of providing telecommunication services, the Office investigated, whether ST can as a result of the concentration, obtain any unreasonable advantage in relation to triple play and quadruple play service packages. The fact that ST had all necessary components for creating quadruple play package, i.e. mobile voice, fixed telephony, internet and paid TV already before the concentration was essential. At the same time, DIGI does not provide any mobile voice services. As a result of the concentration, ST significantly strengthens its position only in the segment of paid TV. ST was able to create quadruple play package regardless of the concentration with DIGI.

78. After evaluating all received information the Office concluded that the assessed concentration does not arouse competition concerns.

79. The decision came into force on 2 August 2013.

#### 2.2.2.2 Concentration of GlaxoSmithKline plc. and de Miclén a.s.

80. At the end of the year the Office approved concentration consisting of acquisition of exclusive indirect control by the undertaking GlaxoSmithKline plc., 980 Great West Road, Brentford, Middlesex,

TW8 9GS, United Kingdom (hereinafter only “GSK”) over the enterprise of the undertaking de Miclén a.s., nám. A. Hlinku 1, Bratislava (hereinafter only “de Miclén”).

81. GSK is a global company specialising in research, development, production, marketing and sale of vaccines, medicines and healthcare products. It also develops, produces and sells various brands of toothpaste. Part of the production of toothpastes is produced in its own plants and part is produced by several contractual producers. De Miclén is one of them.

82. Undertaking de Miclén is contractual producer of cosmetic and personal hygiene products for third parties. Main business activity of de Miclén consists of production of toothpastes and hair cosmetics for other companies. De Miclén neither produces any products nor places them on the market under its own brand.

83. Since company de Miclén supplies the company GSK with toothpastes based on contractual production, the Office has been assessing the impacts of concentration both in the market of contractual production of toothpaste and in the market of production and sale of toothpastes. This concentration refers mainly to the vertical relations between its participants. The Office made extensive survey including both competitors of company GSK in the market of production and sale of toothpastes (some of them are also customers of company de Miclén in the terms of toothpastes) and the competing contractual toothpaste producers.

84. The Office investigated whether due to the vertical interconnection after the concentration the company may prevent others from entering the consumers market of production and sale of toothpaste, whether it would be motivated to do so and whether this strategy is harmful to competition in consumers market. It has also been assessing whether GSK is capable of preventing the competing contractual producers (its competitors in the consumers market) from approaching the customers. In other words it evaluated whether the company GSK is so important customer of contractual toothpaste producers that if the business relationship with this company is terminated it would result in lack of alternatives for sale of competing producers' inputs.

85. In the terms of preventing from the inputs (it means the contractual production of toothpaste) the Office found out that the concentrating entities has significant share in the market of contractual production of toothpaste, but the survey proved that in the downstream market of production and sale of toothpastes the competitors of GSK predominantly ensure the production of toothpaste through their internal capacities.

86. The consumers of toothpaste originating from the de Miclén have more alternatives how to substitute the possible failure to supply the contractual paste from de Miclén, for example through the internal production or through other contractual producers. Investigating the motivation of the entity to restrict the approach of the GSK competitors to the inputs after the concentration, the Office found that there is no such motivation in the view of the fact how close are the substitutes of particular types of toothpaste produced by de Miclén. Thus the Office ascertained that due to the concentration the competitors' costs on inputs do not rise, for example because they produce the toothpaste through their internal capacities or are able to shift to appropriate alternative inputs. In this manner they may impose a sufficient pressure on the entity established by the concentration and thus prevent from higher prices of inputs.

87. In the terms of preventing from approaching the customers in the market of contractual production of toothpastes, based on the share of GSK in the European market of production and sale of toothpastes and the proportion of this share compared with the biggest competitors it could not be observed

that the company GSK would have such market power enabling it to restrict the approach of competitors to the contractual production.

88. Moreover GSK is not the sole and exclusive customer of the contractual production of toothpastes in the European market and there are sufficient alternatives for existing contractual producers in the terms of customers of the contractual production of toothpastes.

89. As the concentration results in vertical interconnection of the contractual producer with the customer, it may happen that on one hand the supplier volume of toothpaste in the contractual production would weaken (if the company GSK would produce more through the de Miclén and less through other contractual producers) and on the other hand the customer volume of toothpaste in the contractual production would increase (of those GSK competitors who might not be interested in contractual production through de Miclén after concentration, but they are looking for another contractual producer). Thus due to the concentration both the demand among GSK competitors and the offer among de Miclén competitors may be reoriented.

90. It is highly unlikely that after the concentration the company GSK would be capable to prevent other contractual producers from the access to their customers.

91. Therefore, the Office concluded that the concentration in question would not result in significant infringement of efficient competition and it approved the concentration.

92. The decision came into force on 6 December 2013.

#### 2.2.2.3 AGROFERT withdrew its notification

93. Based on an appeal lodged by the party to the proceedings AGROFERT HOLDING, a. s., Praha (hereinafter referred to as „AGROFERT“) the Council of the Antimonopoly Office of the Slovak Republic changed the decision of the Office dated on 29 June 2012 in the way that it terminated the administrative proceedings initiated by the company AGROFERT as the party to the proceedings withdrew its complaint. In June 2012 the Division of Concentrations prohibited the concentration grounded in acquisition of direct exclusive control of the undertaking AGROFERT over the enterprise of the undertaking EURO BAKERIES HOLDING a. s. with the seat in Prague, Czech Republic, as the concentration created dominant position of the undertaking AGROFERT resulting in significant barriers to effective competition in the relevant markets of production and sale of fresh bread, fresh common bakery and other fresh sweet and savoury bakery products in the territory of the SR. AGROFERT lodged an appeal against the decision, later it announced that it was withdrawing its notification of concentration and it asks the Council of the Office to terminate the administrative proceedings. The Council of the Office terminated the administrative proceedings in the subject matter in its full extent.

94. The decision came into force on 31 January 2013.

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

95. Besides the decision-making activity the Office promotes and enhances the competitive environment also through competition advocacy. Competition advocacy is aimed at prevention in the area of competition protection and increases the awareness of competition principles among laic and expert public. It covers a wide range of activities from initiating legislative changes, through comments in the interministry comment procedure, organisation of seminars and conferences, various initiative documents to the communication with public through various media. According to the Office's experience the enforcement of competition advocacy in sector is more appropriate and effective in many cases. Such

approach contributes to creation of more competitive environment through supporting the systematic solutions of problems in the market and it is often more acceptable to both market and undertakings than the time-consuming and expensive administrative proceedings.

96. 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.

97. In 2013 the Office dealt with 555 materials, which were submitted within the interministry comment procedure. The Office submitted its comments on 34 materials. In 3 materials it formulated fundamental comments on prepared legislation, 29 comments had nature of recommendation and 2 were combined.

### **3.1 *Legislative changes in water sector***

98. In 2012, the Office completed an investigation in the water industry. As part of the investigation, the Office officially addressed the Ministry of Environment of the Slovak Republic and asked to initiate legislative changes, which could improve the situation of households in Slovakia, as water consumers and wastewater producers. The Office pointed out the discrepancy between the values of reference data of water consumption in the Decree no. 397/2003 Coll. with the current situation. A reference number of the water consumption is statistically determined quantity unit of water for different types of water consumption. Reference data are used in cases when volume of consumed water is not measured by a water meter.

99. Within the investigation the Office found out that the values of reference data of water consumption determined in 2000 did not meet current situation. Since 2003 water consumption has significantly decreased and it is expected to continue decreasing. The current average household consumption is at a significantly lower level than indicated in the decree before the change. At the same time, the unit water prices were continuously raising, which had, in combination with overestimated reference data, an adverse effect on water consumers. The same applies also for the cases, when the volume of wastewater is determined on the basis of reference data.

100. For the above-mentioned reasons the Office called the Ministry of the Environment of the Slovak Republic to review the adjustment of reference data of water consumption so that they reflect the current average water consumption. In 2013, with effect from 1 January 2014, the Ministry of Environment of the Slovak Republic considerably lowered the value of the category of reference data from 55 m<sup>3</sup> per person per year to 34 m<sup>3</sup> per person per year (it also lowered the value of other categories of reference data). This change will significantly reduce the expenditures of those households, which water consumption and/or wastewater volume is determined on the basis of reference data.

### **3.2 *Act on Health Insurance***

101. The Office submitted a fundamental comment on recent draft of this Act when it did not agree with the different regime for the existing and new operators of health-care facilities in reporting a staff qualified for the classification system of diagnostic and therapeutic groups, which, according to the Office, creates a barrier to entry the market for new applicants. The Office proposed to harmonise the conditions for acquiring/maintaining the licence for potential and real operators.

### **3.3 *Act on Court Executors and Execution Activities***

102. The Office submitted fundamental comments on the draft of the Act amending the Act No. 233/1995 on Court Executors and Execution Activities submitted by the Ministry of Justice of the Slovak Republic. In some provisions it saw efforts to eliminate the number of executors what could be perceived

as undesirable restriction of competition. The Office saw no reason for extension of the praxis of executory clerks from three up to five years which undesirably increases the barriers to entry the market. The Office found problematic also the provision that the selection procedure on executors could be announced if the Ministry of Justice of the Slovak Republic orders to do so, thus it could decide on number of executors. In the Office's view there are not objective reasons for such regulation intervention which could result in lower quality of executors' services as the pressure on effective application of execution activities would be restricted. The Office holds the position that the submitted draft is contrary to the European Commission's philosophy of liberalisation of professional services having been declared in past in various documents, for example in Lisbon Strategy or in Report on Competition in Professional Services in EU.

### 3.4 *Act on Waste*

103. The Office had a specific recommendatory comment on **legislative intention of the Act on Waste** submitted by the Ministry of Environment of the Slovak Republic. The comment referred to condition of granting an authorisation to collective organizations. In the Office's view the requirement of 100% coverage of the territory by the collective organisation creates a barrier to entry the market and it prevents from competition between the collective organisations.

104. The Office had more recommendatory comments on the draft of the Act amending the Act No. 223/2001 Coll. on Waste. The Office proposed to specify the conditions of waste export outside the territory of the SR, as well as registration procedure for batteries and accumulators producers. Also the requirement of minimum 100 founders of a collective organisation restricts the maximum number of collective organisations in the market and it constitutes the barrier to entry the market and restricts competition in the area of collective organisations.

## 4. Resources of Competition Authority

### 4.1 *Resources overall*

#### 4.1.1 *Annual budget*

	2012		Change
Total expenses	2 443 965 EUR	3 509 929 USD	-367 965 EUR (-508 417 USD)

#### 4.1.2 *Number of employees*

	2012	2013
Economists	14	13
Lawyers	17	18
Other professionals	4	2
Support staff	26	24
Total	61	57

### 4.2 *Human resources*

	2013
Enforcement against anticompetitive practices	18
Merger review and enforcement	9
Advocacy efforts	8

**Period covered by the above information:** year 2013