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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN SLOVAK REPUBLIC

-- 2015 --

15 - 17 June 2016

This report is submitted by the Slovak Republic to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 15 - 17 June 2016

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ANNUAL REPORT OF THE ANTIMONOPOLY OFFICE OF THE SLOVAK REPUBLIC 2015¹

Executive Summary

1. The Antimonopoly Office of the Slovak Republic (“Office“ or “AMO SR“) is the central state administration body of the Slovak Republic (“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 (“Act“ or “Act on Protection of Competition“)². Within its competences it mainly conducts investigations of a relevant market, in administrative proceedings it decides in the cases 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 pursuant to the Council Regulation (EC) No. 1/2003 of 16 December 2002 on the Implementation of the Rules on Competition laid down in Articles 81 and 82 of the Treaty on the Functioning of the European Union (“EU”).

2. The aim of the Office in 2015 was to continue in trend of its existence as a modern competition authority responding by its activities to demands of market and competitors, current issues, and thus contributes to the development of the competitive environment and globally promotes economic development and competitiveness.

3. In 2015 the Office issued 40 decisions³ in the matter of infringement of competition rules and in the area of merger control. The Office issued 35 decisions within the first-instance proceedings (Division of Cartels, Division of Abuse of Dominant Position and Vertical Agreements and Division of Concentrations) and the second-instance body, the Council of the Office, issued 5 decisions⁴.

Number of decisions	Total number	Mergers	Abuse of dominant position	Agreements restricting competition	§ 39	Sanctions for non-cooperation with the Office
First instance	35	23	0	8	0	4
Second instance	5	0	0	4	0	1
Total	40	23	0	12	0	5

1 This report is submitted by the Slovak Republic Delegation to the Competition Committee at its forthcoming meeting in June 2016 in Paris

2 Act on Protection of Competition and on Amendments and Supplements to Act of the Slovak National Council No. 347/1990 Coll. on Organisation of Ministries and Other Central Bodies of State Administration of the Slovak Republic as amended as amended

3 For the purposes of this report by decisions are meant also the decisions having procedural nature, it means not only those decisions, which have concluded the first or second-instance proceedings.

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

4. Last year Division of Cartels and Division of Abuse of Dominant Position and Vertical Agreements dealt with around 180 complaints on the possible anticompetitive conduct in various sectors. In the first phase of assessment of complaints the Office examines the issue of its competence to deal with the matter or it assesses if it is a competition issue. Regarding the limited financial and personal resources of the Office, it is forced to prioritize these complaints⁵ and thus it focuses mainly on infringement cases with higher negative impact (real or potential) on competition level and consumer. Prioritisation also allows the Office to concentrate more on current issues in various sector in the competition view and thus respond to needs of market and its participants, with a centre of interest focused on the positive impact on consumer. Thus, 32 cases were subject to a more detailed investigation. Also in 2015 the Division of Cartels dealt mainly with the agreements restricting competition in public procurement (so called bid rigging). The Office revealed and sanctioned totally 9 cartel agreements and other administrative proceedings are ongoing and will continue in next year.

5. In sector of information and communication technologies the Office, Division of Cartels issued the decision by which it imposed a fine on undertakings for the coordination of their procedures in public procurement. It was the next case where the instrument of so called leniency programme has been used according to which the party to the cartel agreement can completely avoid a fine or achieve a reduction of up to 50 % if it provides the Office with the evidence on infringement.

6. Undertakings increasingly use the instrument of settlement⁶, which provides the possibility to reduce the fine by 30 to 50 % depending on type of infringement, namely for admission of infringement. In 2015 the undertakings used this instrument not only in the matters of agreements restricting competition but also in mergers, namely in the decision on fine for violation of the obligation to notify merger which was subject to control by the Office in the area of wholesale and retail of daily consumer goods. In this case the Office also proved that the undertaking exercised rights and obligations resulting from a concentration before the Office issued a valid decision and it is contrary to the Act.

7. In the food sector in 2015 the Office continued in investigation and it initiated the administrative proceedings in the area of milk and dairy products following the unannounced inspection conducted in May 2014 in the premises of four retail chains and one supplier of milk and dairy products. Referring to the conducted inspection the Office issued decision by which it imposed a fine on the undertaking in the amount of EUR 1 645 969, 20 for violation of its obligation during the inspection. The undertaking did not cooperate with the Office in the assessment of information and documents, namely through various obstructions – by giving information on inspection to the third person and by failing to ensure proper and comprehensive blocking of e-mail accounts of selected persons. This decision has been subject to examination by the Council of the Office since the undertaking appealed the decision.

8. Beside the general investigation and decision-making activities the Office was engaged in number of advocacy activities. Through these activities the Office seeks to enforce the sound competition principles and thus prevent from potential distortions or solve potential or real competition concerns or deficiencies. In 2015, besides the own initiatives, the Office dealt with 453 materials, which were submitted within the interministry comment procedure. Monitoring the prepared legislation, concepts and other governmental documents the Office focuses on prevention of enforcement of various undesirable barriers to business, possible discrimination or on improvement of condition of effective competition. The Office submitted its comments on 29 materials. In 10 materials it formulated fundamental comments on legislation drafts, 10 comments had the nature of recommendation and 9 were combined. Office's

5 For more details see the prioritisation policy of the Office <http://www.antimon.gov.sk/prioritisation-policy/>

6 For settlement conditions see more in decree of the http://www.antimon.gov.sk/data/files/413_171_2014-decree-laying-down-details-of-settlement-conditions.pdf

comments referred mainly to Act on Home Loans, Accounting Act, Decree on Basic Banking Product, the Act on Payment Services and the Public Procurement Act.

9. 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, students, academic community and experts from other competition authorities. The Office has successfully continued the tradition of May conferences on current trends in competition law where the experts from various countries and institutions meet to exchange information and opinion on competition.

10. On the basis of the memorandum on cooperation in the area of competition law concluded between the Office and the Faculty of Law of the Comenius University in Bratislava and the Faculty of Law of Trnava University in Trnava study visits at the Office were organised in 2015. In 2015 the Office continued in cooperation with the Faculty of National Economy of the University of Economics in Bratislava.

11. The Office regularly informs the public on its decisions and other activities via press releases and also on its regularly updated web page and Twitter. It also cooperated with media and provided them with press releases on its outcomes and replied to numerous journalists' questions referring to competition. The Office organized two press conferences addressing the current issues of general interest.

12. For the seventh year the Office continued issuing the quarterly Competition Bulletin that informs about decisions and other outputs of the Office, the European Commission, as well as other foreign competition institutions. At the same time the Office has been regularly publishing in specialised domestic and foreign periodicals devoted to competition issues and the employees of the Office actively participated in expert discussion at both domestic and foreign forums.

13. In 2015 the Office imposed valid fines totalling EUR 5 600 809,20. In 2015 fines at the amount of EUR 1 739 406,44 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" for the year 2015, funds totalling EUR 2 034 975,00 were allocated to the Office in the form of expenditures and EUR 200 000,00 in the form of revenues. Funds totalling EUR 2 166 443,00 were allocated to the Office from the state budget for the year 2016 and the revenues of the Office were calculated in the amount of EUR 200 000,00. Incomes acquired during the fiscal year are the fines for infringement of the Act on Protection of Competition.

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

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

14. The effort of the Office is not only to intervene in case of infringement, but also to prevent them. Thus, one of the Office's activity is to assist the undertakings in assessment of their planned business activities through guidelines. The Office also seeks for transparency of its procedures. In 2015 it issued following guidelines – one related to vertical agreements, and the other outlining assessment of business secret and other protected information pursuant to the relevant provisions of the Act on Protection of Competition.

Guidelines on assessment of protection of business secret, confidential information and personal data

15. Guidelines adjust the assessment of the applications for protection of business secret, confidential information, personal data and other sensitive data pertaining legal protection. According to the guidelines it is in the Office's interest to carefully assess the conflict of public interest compared with the private interest of natural and legal persons in protection of their sensitive data. The aim of the guidelines is to increase the efficiency of the protection of sensitive data collected by the Office for application of relevant provisions of the Act and to summarize the recent praxis of the Office. Guidelines also inform the undertakings and public about the Office's approach to assessment of protection of applications for protection of business secret, confidential information and personal data.

Document on target vertical agreements in the view of the Antimonopoly Office of the Slovak Republic

16. The Office issued the document on vertical agreements with the aim to minimize the legal uncertainty of an undertaking in the area of vertical agreements and thus increase the predictability of the Office's assessment of such cases. The document should outline the Office's perception of particular forms of vertical agreements, it should specify what constitutes a problem and what is not considered a serious infringement of competition.

17. Document elaborates on target vertical agreements that have as their object elimination, restriction or distortion of competition. In detail it deals with the vertical agreements restricting competition by object that are listed in General Block Exemption Regulation as both the European Commission and the Office consider these agreements as serious restriction of competition. It relates to these types of agreements:

- agreements on resale price maintenance;
- agreements on restriction of territories or customers;
- agreements on the restriction of sales to end users by members of a selective distribution system operating at the retail level of trade;
- agreements on the restriction of cross-supplies between distributors within a selective distribution system;
- agreements on the restriction of the supplier's ability to sell the components as spare parts to end-users or to repairers.

18. In this document the Office clarifies its attitude towards target vertical agreements restricting competition by object and specifies circumstances in which the enforcement of vertical agreements may cause serious restriction of competition.

2. Enforcement of competition laws and policies

2.1 Action against anticompetitive practices

2.1.1 Summary of activities

- **Agreements restricting competition**

19. Agreements restricting competition may have the form of horizontal agreements between direct competitors, so called cartels or the form of vertical agreements, it means, agreements between undertakings acting at the different levels of distribution network.

20. In 2015 the Office continued in revealing illegal cartel agreements, since they belong to the most serious infringements of competition rules, which only their participants can benefit from. In 2015 the Division of Cartels received 94 complaints, conducted 24 general investigations and initiated 12 new administrative proceedings resulting in 10 decisions. 9 of them were imposing a fine and 1 decision had procedural nature in the matter of stopping the proceedings.

21. Cartel agreements in public procurement, so called bid rigging, remained the priority of the Office, since existence of these agreements thwart purpose and aim of public procurement. Cooperation of tender participants may occur in various forms, for example agreement on price, contracts allocation or other forms of coordination, agreements on non-submitting the bids or contract rotation. The Office continued in cooperation with the Government Office of the Slovak Republic and other state administration authorities in the area of public procurement control.

22. Besides, the Division of Cartels receives increasing amount of requests for consultations and it regularly organizes workshops focused on specification of collusive behaviour indications, negative consequences of this conduct, relevant law and opportunities to cooperate with the Office in revealing these cartel agreements.

	Received complaints	General investigations	Administrative proceedings	Decisions
Cartels	94	24	12	10
Vertical Agreements	8	5	6	0
Total	102	29	18	10

- **Abuse of a dominant position**

23. In order to protect competition the Antimonopoly Office intervenes, inter alia, against the undertakings that abuse their dominant position. The purpose is to prevent the dominant companies from abusing their strong market power, and the Office focuses on those types of conduct that harm the consumers the most. Cases of abuse of dominant position must be based on so-called “theory of harm”, it means, that the infringement of the competition rules by the dominant company 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. The emphasis is given to the exclusionary practices.

24. In 2015 the Office received 78 new complaints and three of them were subject to a more detailed investigation.

Received complaints	General investigations	Open administrative proceedings	Decisions
78	3	0	0

- **Courts**

25. 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.

26. In 2015 the courts decided in 18 cases, of which 1 case was decided by the Regional Court in Bratislava and 17 cases by the Supreme Court of the Slovak Republic.

2.1.2 Description of significant cases, including those with international implications

- **Coordination of the procedure of construction companies in the tender for construction of healthcare facility**

27. The Office imposed a fine totalling EUR 2 547 551 on three undertakings for concluding cartel agreement grounded in coordination of the procedure in the tender for construction of healthcare facility in Košice region. The contract in the total amount of EUR 26 889 937,50 was co-financed by the European Union Funds within the Operational Programme Healthcare.

28. The fined entities included two undertakings acting in the construction industry which have submitted their bids in the tender and one undertaking providing services for the contracting authority. The Office received information and documents justifying the initiation of the administrative proceeding from law enforcement authorities. These documents have shown that two undertakings agreed on the winner of the tender and the undertaking providing services for the contracting authority assisted in implementation of this agreement.

29. Decision of the Antimonopoly Office is not valid, parties to the proceedings appealed the decision.

- **Fine for cartel in tenders for purchase of passenger motor vehicles**

30. The Office issued decision by which it imposed a fine on nine undertakings acting in the area of purchase of new passenger motor vehicles totalling EUR 5 310 762 for concluding cartel agreements grounded in coordination of the procedure in the public procurements and tenders relating to supplies of new passenger motor vehicles.

31. It came out from the documents and information available to the Office that the undertakings concerned have been agreeing on their bidding in specific public procurements and tenders in years 2009 to 2013.

32. The fine imposed on three undertakings was reduced based on application for leniency programme and on five undertakings based on settlement.

33. Decision of the Antimonopoly Office is not valid, parties to the proceedings appealed the decision.

- **Application of leniency programme in the market of delivery of information and communication technology**

34. The Office issued decision by which it imposed a fine on undertakings GAMO a.s. and S&T Slovakia s. r. o. totalling EUR 616 371 for coordination of the procedure in public procurement announced by Matej Bel University in Banská Bystrica in the total amount of EUR 7 140 000 including VAT. Both undertakings act in the market of delivery of information and communication technology.

35. It came out from the documents and information available to the Office that the undertakings concerned coordinated their bidding procedure, the predetermined applicant (undertaking GAMO) was to become a winner of the tender and unsuccessful applicant (undertaking S&T Slovakia) was to be involved in contract through subcontracting. By their bids the undertakings have not been really competing in tender, they were only pretending the competitive environment.

36. This administrative proceedings represent next case where the instrument of so-called leniency programme was applied, according to which the participant to the cartel agreement may waive the fine (if based on its own initiative it is first to provide the Office with decisive evidence on such agreement when no evidence on cartel agreement is available to the Office or it submits information and evidence decisive for conducting inspection) or reduce its amount up to 50 %.

37. Based on application of the leniency programme the basic fine to undertaking GAMO as the first applicant for leniency has been reduced by 50 % and the basic fine to undertaking S&T Slovakia as the second applicant for leniency has been reduced by 40 %. Both undertakings also applied for settlement according to which they admitted both their participation in anticompetitive conducts and their liability for the anticompetitive conduct and they also expressed that they are prepared to adopt a fine in the amount determined by the Office. According to instrument of settlement the fine imposed on both undertakings was reduced by 30 %. Finally the Office imposed the fine totalling EUR 176 216 (original amount of fine – EUR 503 477,08) on undertaking GAMO and the fine totalling EUR 440 155 (original amount of fine – 1 047 988,11) on the undertaking S&T Slovakia.

38. The decision came into force on November 12, 2015.

- **Fine for non-cooperation in inspection in milk and dairy products sector**

39. In 2015 the Office continued in analysis of milk and dairy products sector. Following the inspection conducted in May 2014 in undertaking's premises, the Division of Abuse of a Dominant Position and Vertical Agreements issued a decision on April 21, 2015 by which it imposed a fine in the amount of EUR 1 645 969,20 EUR for infringement of the obligation set by article 40 of the Act on Protection of Competition.

40. During the inspection in undertaking's premises in May 2014 the undertaking did not cooperate with the Office in verification of information and documents during the inspection by more obstructions – by giving information on inspection to the third person and by failing to ensure proper and comprehensive blocking of e-mail accounts of selected persons.

41. Provisions on obligations of the undertaking to cooperate with the Office during the inspection and the corresponding provision on sanction for infringement of these obligations are aimed at ensuring of respect for the Office by the investigated entities during the inspection. It is essential for the Office to

sanction such misconduct of undertakings; as such conduct threatens the proper exercise of the powers of the Office and reduces the efficiency of inspections, and thus the opportunity to reveal the anticompetitive conduct of undertakings.

42. Decision of the Antimonopoly Office is not valid, parties to the proceedings appealed the decision.

- **Initiation of administrative proceedings in motor vehicles sector**

43. Following the investigation conducted since 2014 for suspicion of prohibited vertical agreements in the area of providing after-sales services related to sales of motor vehicles, in November 2015 the Division of Abuse of a Dominant Position and Vertical Agreements initiated an administrative proceedings in the matter of alleged vertical agreements.

44. In this area it initiated five separated administrative proceedings. The Office initiated the administrative proceedings following the conducted investigation in the area of providing after-sales services related to sales of motor vehicles of particular brands. Based on gathered documents the specific undertakings became suspicious of committing infringement of the Act by concluding vertical agreements according to which only members of authorized networks could exclusively realize repair and maintenance services of motor vehicles. Subjected conduct grounded in fact that the validity of guarantee was conditioned by providing repair and maintenance services only in services being part of authorized networks.

45. The fact that the Office opened the administrative proceedings does not imply that the entities concerned have infringed the competition rules, nor does it prejudice the conclusions of the Office included in the decision.

- **Cartel of construction companies in public procurements**

46. The Council of the Office has been assessing the decision of the Division of Cartels dated on July 28, 2014 by which it imposed a fine on four construction companies for concluding cartel agreement in public procurements and it upheld the illegal conduct of these companies.

47. Public procurement in which the collusion occurred related to reconstruction of the Juraj Schopper Facility for Seniors in Rožňava in the total amount more than EUR 2 million. The project was financed by the European Regional Development Fund, state budget of SR and Environmental Fund.

48. The Council of the Office upheld the decision of the Office according to which the undertakings coordinated their bidding conduct with the aim to concert the bids and their participation relating to public procurements announced by this facility. Coordination of participants to the cartel agreement was based predominantly on indirect evidence, namely on way of setting prices, consistent irregularities and shortcomings in the bids, and the existence of incorrect calculations, as well as information provided within the leniency programme. One of the participants used the leniency programme and provided evidence on illegal conduct according to which its fine was reduced by 40 % and it also benefited from the exemption from the prohibition to participate in public procurements. Two parties to the proceedings used the settlement according to which their fine was reduced by 30 %. Within settlement the undertakings admitted their participation in cartel agreement and admitted their liability for their conduct.

49. The decision came into force on March 22, 2015.

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- **Cartel in supply of goods and services for the high school in Trenčín**

50. On February 12, 2015 the Council of the Office of the Antimonopoly Office of the Slovak Republic issued the decision which partially changed the decision of the Division of Cartels dated on August 07, 2014 by which the Division of Cartels imposed fines on ten undertakings for conclusion of four cartel agreements. Agreements entailed coordination of their behaviour in four public procurements financed under the Operational Programme Education using the European Social Fund and national resources.

51. These public procurements included the supply of educational tools, measuring instruments, parts and accessories for vehicles and the provision of technical assistance to the special aero-technical high school in Trenčín.

52. Besides the undertaking participating in public procurement the fines were imposed also on the undertakings providing administrative services referring to these public procurements in the terms of receiving the EU funds and thus enabled or facilitated the conclusion of cartel agreements.

53. The Office acquired information on mutual communication between some undertakings in the form of e-mails. The Office also made an analysis of bids for public procurement. It found that the bids were of non-standard conformity.

54. The decision came into force on March 23, 2015.

- **Cartel of IT distributors**

55. The Council of the Antimonopoly Office upheld the decision of the Division of Cartels by which, in June 2014, it imposed a fine in the total amount of EUR 4,28 milion on distributors of IT technologies and complementary products for concluding a cartel agreement.

56. Five distributors of IT technologies and complementary products agreed on introduction of a handling fee in the amount of EUR 1 which was to be charged on each invoice issued to the customers for delivery of goods. Introduction of the fee was conditioned by its introduction by all undertakings participated in the agreement. Also the date of the introduction of the handling fee was part of the agreement and it has been set differently for each operator with the aim not to raise suspicion of cartel. First proved meeting where the initial discussions on introduction of the handling fee took place was held in February 2013 in Sri Lanka. The parties concerned started to charge the fee the following month, gradually during one week. The parties concerned have been monitoring the implementation of the agreement. Acquired evidence also proved that the undertakings were aware of the illegality of their conduct and they strived to conceal it. The Office acquired the decisive evidence on existence of this cartel agreement during the inspection in premises of the fined companies.

57. The aim of the participants to the agreement was to introduce an agreement which according to the Office might restrict competition. Participants to the agreement belong to the significant undertakings in the market of distribution of IT technologies and complementary products, thus their conduct related to the substantial part of the market. The final price of service was not agreed on, only its part – the administrative service charge, however it finally influenced the price of provided service. Since the price fluctuations in the market of information technologies and complementary products are very sensitive, already the sum of EUR 1 was able to influence the competition as it could elicit the realignment of customers, which they fight for. The potential of competition decrease was evident already from the substance itself and from the reason of coordination of participants to the agreement following the introduction of handling fee. Agreement on common procedure should result in exclusion of such risk and

thus exclusion of competition which could have occurred without the agreement. The participants to the agreement therefore primarily did not obtain benefits solely due to the fact that without fear of competition they could increase the price by introducing additional price component and thus charge a higher price for the provided services, but mainly from excluding competition to some extent in this area as a whole, what could have brought them future profits that would otherwise have not received without such coordination.

58. One of the parties concerned did not apply the agreement in practice and did not charge the handling fee, which the Office assessed as the mitigating circumstance and lowered the fine imposed on this undertaking.

59. The decision came into force on April 13, 2015.

- **Agreement in the area of mapping the earth's surface and product of aerial photogrammetry**

60. On September 24, 2015 the Council of the Office issued a decision by which it annulled the decision of the Office, Division of Cartels and returned the matter for new proceedings and decision. The decision related to infringement of the article 4 of the Act on Protection of Competition and Article 101 of Treaty on the Functioning of the European Union, by which in 2014 the Division of Cartels imposed the fines in the total amount of EUR 498 202 on two undertakings acting in the market of production, distribution and sale of goods and services in the area of mapping the earth's surface and products of aerial photogrammetry. The Office stated that during the years 2005 – 2013 these two undertakings have been coordinating their activities in the relevant market, namely relating to fixing prices and other trade conditions of products distribution, as well as relating to market allocation, both for the purposes of production of photogrammetry products and for their consequent distribution and coordinated their conduct in public procurements. As a result of this agreement which eliminated competition among undertakings, such conduct of undertakings caused harm to their customers, which were also the public sector entities.

61. The Council of the Office examined the decision and the particular administrative file on the matter and it found that each party to the proceedings having as a main activity the mapping the earth's surface and compiling the digital ortophotomaps, 3D territory models etc., had ortophotomap/ortophotomaps (or photogrammetry products) of approximately 50 % of the territory of the Slovak Republic and they considered them subject to copyright and they regularly updated them. The Council also ascertained that participants to the proceedings established their mutual cooperation system based on which they have been cooperating minimally since 2004. Based on contract concluded in written they joined their works, exchanged the licenses on their products/works free of charge (on 50 % of the territory of the Slovak Republic not covered by their products/works) which they were entitled to provide to customers and in a predetermined manner they fairly shared the revenues from sale. Such conduct could have resulted in elimination of competition among them. In the first instance decision the Office did not consider this agreement concluded in written and the exchange of licenses as a part of prohibited agreement restricting competition, either in its substance, or in view of time relating to duration of the agreement. It comes out from the decision of the Office that it considers the conduct of participants to the agreement in the view of their open system of cooperation or provisions of their contract of 2004 as contrary to the competition rules. Contested decision also proves that the first instance body considered all communication of participants to the proceedings as prohibited relating to information on prices, exchange of sensitive information etc. regardless it referred to their contract of 2004. The question arouse whether it is possible to conclude that the conduct of contractual parties according to the provisions of the contract which the Office does not consider as prohibited, could be assessed as contrary to the Act.

62. According to the opinion of the Council of the Office the agreement of participants to the proceedings of 2004 is relevant to the case, as it constitutes basis for their cooperation. If the cooperation

among the participants to the proceedings is prohibited according to the opinion of the first instance body, it is necessary to deal with it also in relation to their agreement/contract of 2004 as a whole or its parts or with their cooperation as such. Otherwise this agreement of participants to the proceedings is still valid, as well as the conduct realized on its basis. These facts need to be perceived in the context of guidelines issued by the European Commission and the case law of the European Court of Justice on horizontal agreements, agreements on cooperation as well as distinction of agreements in the view of their object and effect.

63. The Council of the Office also stated that these conclusions do not imply that the mutual agreement/contract of participants to the proceedings of 2004 should have justified their conduct. The Council of the Office considers agreement/contract of the participants to the proceedings of 2004 as relevant as it comes out from the agreement, conduct of the participants to the proceedings, documents gathered in the administrative file and from the expressions of the participants, that the participants to the proceedings established the system of closed cooperation among them launched by the agreement of 2004 at the latest, namely by connection of works, exchange of licenses and establishment of system of sharing revenues from sold licenses.

64. In further proceedings the Council of the Office obligated the first instance body to deal with the agreement of participants of 2004 and the related issues, mainly the issue of the mutual competition and consequently the concerned communication of participants to the proceedings could be assessed.

- **Decision in the matter of ZSE Distribúcia, a.s. upheld by the Supreme Court**

65. The Supreme Court upheld the decision of the Office in the matter of ZSE Distribúcia, a.s. ("ZSE- D").

66. The Supreme Court upheld that the fee charged 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 was excessively high. 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.

67. 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.

68. 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 in the amount of EUR 10,47 as corresponding most to the effective costs.

69. Also the comparison with other regional distribution system operators 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 distribution system operators were not proved.

70. The Supreme Court agreed that the competence of the Office in energy sector is given since the Office is a cross-sector authority to supervise the protection of competition. The Supreme Court also proved both the assessment of the anticompetitive conduct and the imposed fine in the amount of EUR 150 000.

2.2 Mergers and acquisitions

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

Open administrative proceedings	Decisions	Decisions (approval of merger)	Decisions (prohibition of merger)	Decisions (stopping the proceedings)	Decisions (connection of proceedings)	Decisions (fines)	General investigations
30	23	21	0	0	1	1	7

2.2.2 Summary of significant cases

- **Concentration of PHOENIX and SUNPHARMA**

71. On June 22, 2015 the Antimonopoly Office of the Slovak Republic approved the merger through which the undertaking PHOENIX International Beteiligungs GmbH, Federal Republic of Germany (“PHOENIX”) acquired the indirect exclusive control over the undertaking Sunpharma Europe, Société à responsabilité limitée, Grand Duchy of Luxembourg (“Sunpharma”).

72. In Slovakia the undertaking Sunpharma realizes its activities through the 100 % subsidiary SUNPHARMA SK, a. s., Slovak Republic (“SUNPHARMA SK”). SUNPHARMA SK (directly or indirectly) runs in Slovakia the network of 43 public pharmacies and also the online sale of medicines, medical devices, other health care products and lifestyle-oriented products.

73. Since both PHOENIX and Sunpharma operates public pharmacies and PHOENIX realizes also the distribution of medicines, the Office has been assessing both horizontal and vertical aspects of the merger concerned.

74. The Office assessed horizontal impacts of merger concerned both at the local and Slovak levels. In the view of territory of the Slovak Republic prior to concentration PHOENIX acted in the area of retail sale of medicines only through two pharmacies and the Office concluded that regarding these facts and regarding the number and nature of competitors, the concentration would not result in such horizontal overlapping of activities, that would raise competition concerns. Regarding the geographic localization of pharmacies the Office did not identify any competition concerns even at the local level.

75. In the view of possible vertical impacts of merger concerned on the competition conditions in the relevant market the Office has been assessing the possibility of foreclosing the access to subscribers for the competing distributors of medicines and also the foreclosing the access to entries for competing public pharmacies.

76. Relating to possible foreclosing the access to subscribers, data acquired by the Office did not prove the concerns that as a result of acquisition of SUNPHARMA SK network of pharmacies the undertaking PHOENIX would be capable to foreclose the access of competing medicine distributors to subscribers.

77. Similarly the concerns that as a result of this concentration the undertaking PHOENIX would be capable and motivated to foreclose the access of competing public pharmacies to entries, or it would restrict access to entries resulting in significant reduction of effective competition were not proved. Most of the public pharmacies in the worsening business conditions could quickly change supplier of medicines and at least the closest competitor in the distribution of medicines would be able to begin to supply any pharmacy in Slovakia in the short term. Even the economic motivation of PHOENIX to behave in this manner was not proved.

78. Decision came into force on June 23, 2015.

- **Fine on M-MARKET for violation of the obligation to notify merger**

79. The Antimonopoly Office issued decision by which it imposed a fine on undertaking M-MARKET, a.s., ("M-MARKET") for violation of more provisions of the Act relating to merger control.

80. The Office found that the undertaking M-MARKET did not fulfil the obligation to notify merger which was subject to control by the Office and grounded in acquisition of exclusive control over the part of the enterprise of the undertaking ZDROJ-VOPO, s.r.o., ("ZDROJ-VOPO"). Merger emerged on October 29, 2010 by transfer of assets relating to retail and wholesale activities of undertaking ZDROJ-VOPO based on oral sales contract. Its conclusion is declared by invoices between companies ZDROJ-VOPO on one hand and CBA Slovakia, a.s. Lučenec (as a subsidiary to M-MARKET), or M-MARKET on the other hand. Violation of the undertaking's obligation to notify concentration which is subject to control by the Office in this case represented the less serious form of Act infringement, namely in the view of its nature in the context of misconducts relating to merger and also in the view of its real impact on the market (regarding the fact that the Office issued a decision approving the subjected concentration). The Office also regarded the fact that it was less standard form of concentration, assets have been transferred gradually within certain time and it was hard to determine the specific time of establishment of concentration which was subject to control by the Office. In this case the violation of the Act represents more than 4,5 years, undertaking M-MARKET notified the concentration on June 12, 2015.

81. The Office also proved that the undertaking M-MARKET exercised the rights and obligations resulting from a concentration before the Office issued a valid decision, namely by the fact that it really acquired the part of the enterprise of the undertaking ZDROJ-VOPO, paid the assets in the amount of their purchase price and has been exercising the proper and continuous control over this part of the enterprise since October 29, 2010 till August 19, 2015. In setting the fine in this case the Office considered the fact that the undertaking M-MARKET has been using the transferred assets from the beginning for its business activity, thus it was not only the exercise of partial acts but the proper and continuous control over this part of the enterprise ZDROJ VOPO. On the other hand, assessing the seriousness of this misconduct the Office took into account that it issued a decision approving the subjected concentration, since it did not specify negative impacts on market as a result of this concentration. In this case the violation of the Act represents more than 4,5 years.

82. Assessing the aforementioned factors the Office imposed a fine totaling EUR 81 440 for both violations. Based on application the Office held a discussion on settlement during the administrative proceedings and the undertaking M-MARKET admitted both its participation in infringement as well as liability for it. Based on these facts the settlement was accepted and the Office reduced a fine by 50 % pursuant to the Act.

83. Final amount of the imposed fine following the settlement was EUR 40 720.

84. The decision came into force on September 9, 2015.

- **Taking control over BUS PARTNERS SERVICES by Deutsche Bahn AG**

85. On July 16, 2015 the Office approved the merger through which the undertaking Deutsche Bahn AG, Berlin, Germany ("DB AG") acquired indirect exclusive control over the undertaking BUS PARTNERS SERVICES, Bratislava, Slovak Republic ("BPS") and through it also over the undertaking Slovenská autobusová doprava Trnava, Slovak Republic ("SAD Trnava").

86. For the specification of relevant markets and consequent assessment of the impacts of concentration on competition the Office addressed selected undertakings acting in the area of providing services of public bus transport, namely city transport (“CT”), suburban bus services (“SBS”) and long-distance bus services (“LBS”) broken down into national and international bus transport, as well as selected local administration authorities.), irregular and contractual services and other services.

87. Undertaking DB AG parallelly entered the other, similar and separately notified concentration through which the undertaking DG AG should have acquired the indirect exclusive control over the undertaking SAD Liorbus, Ružomberok, Slovak Republic. These two transactions were neither mutually conditioned nor linked and the Office assessed them as two separate mergers.

88. Activities of undertakings concerned horizontally overlap in the area of passenger bus transport, thus the Office dealt with this area in more details, mainly with providing regular public bus transport, namely city transport, suburban bus services and long-distance bus services (both national and international).

89. The Office dealt separately with the segment of CT and SBS and separately with segment of LBS, mainly due to the different legal and regulation framework and conditions of their providing (taking into account also the previous decision-making praxis of the European Commission relating to the Slovak Republic). In case of CT and SBS it is a competition for market, it means in the view of products it is a market of awarding contracts on operation of public bus transport in towns and regions, in case of LBS it is a market of commercial long-distance transport. In CT and SBS the contracts should be gradually awarded to the carrier selected by tender. Today, however, the vast majority of contracts were awarded through direct choice of carriers.

90. Determining the geographic relevant market of awarding contracts on CT/SBS the Office has been assessing more alternatives of impacts of this merger and it has been assessing its impact relating to national market, regional market and at the level of neighbouring regions.

91. Geographic determination of LBS market is given in relation to each specific LBS operated line bordered by places of departure and destination.

92. DB Group provided services of city transport in municipalities of Nové Zámky, Komárno, Štúrovo, Šaľa, Šurany, Levice, Šahy, Trebišov, Nitra, Zlaté Moravce, Topoľčany, Liptovský Mikuláš, Ružomberok and Dolný Kubín. Suburban bus services are provided in regions of Michalovce, Sobrance, Trebišov, Komárno, Levice, Nové Zámky, Štúrovo, Šaľa, Nitra, Topoľčany, Vrábľa, Zlaté Moravce, Liptovský Mikuláš, Ružomberok, Dolný Kubín, Námestovo and Trstená.

93. SAD Trnava acted in the area of city transport in municipalities of Trnava, Piešťany, Senica and Hlohovec. It provides suburban bus services in municipalities of Trnava, Piešťany, Senica and Hlohovec, and some of lines overlap into regions of Bratislava, Nitra and Trenčín.

94. Both companies provide both national and international long-distance bus services.

2.3 *Competition assessments*

- **Market of contracts on operation of CT/SBS in national view**

95. The Office investigated and assessed the position of undertakings concerned both in view of their revenues from SBS/CT and in the view of the number of busses which the particular providers of SBS/CT have. DB group was a leader in this market prior to concentration both in terms of revenues and also in terms of number of busses. The acquired company was one of the more players acting in this market. The

biggest competitor of notifying company in the view of market share in such determined market is SAD Zvolen. The assessed merger does not significantly change the powers in this market in national view, but the market structure and survey replies indicate the existence of competition pressure from the DB group competitors if the tender is announced.

96. The Office also considered the nature and present status quo regarding the contract awarding and it agreed with the arguments submitted within the notification of concentration. It means that DB group would be not able to increase the prices or significantly change the providing of their services even following the implementation of merger, since the particular local administration body sets the fare, frequency and schedule of services.

- **Market of contracts on operation of CT/SBS at regional level**

97. The Office dealt with possible overlapping in neighbouring regions of Nitra and Trnava, which might have occurred in SBS among the undertakings concerned since the granted the transport licences at some lines do not correspond with the borders of regions, it means some lines may overlap into the region serviced by the other undertaking concerned within SBS. The Office concluded that generally the complementarity of providing SBS services by undertakings concerned could be observed in neighbouring regions.

98. Similarly to the national market the Office also took into account the system of operation of market of awarding contracts for CT/SBS.

99. Finally, the Office concluded that the proposed transaction does not lead to concerns of competition infringement in the market of awarding contracts on providing CT and SBS at the regional level.

- **Market of contracts on operation of CT/SBS at the level of neighbouring regions**

100. The Office has been assessing the impact of concentration at the level of region determined by areas of DB and SAD Trnava services, together with the areas of services of all nearest neighbouring competitors. It took into account that the significant part of activities relating to awarding contracts on CT/SBS of undertakings concerned is concentrated in regions of Nitra and Trnava as the neighbouring regions and also the arguments of some competitors indicating the geographic market being narrower than the national one. Competition concerns have not been proved even in such determined alternative of relevant market.

- **Market of providing commercial LBS**

101. The Office's assessment proved that in view of overall position in the segment the merger would not result in the significant change. Within the existed lines the Office dealt only with those where the overlapping among undertakings concerned occurred.

102. In LBS area only partial overlapping of activities of acquirer and the acquired undertaking occurred, mainly in the determined distances which are also serviced by other undertakings. More undertakings operate entire or partial distances of these lines and regarding the nature of this market and quite easy entry to this market, the Office considered also the possible competition.

103. The decision came into force on July 21, 2015

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

104. 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 lay 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 media. According to the Office's experience, in many cases where the competition concerns have been specified due to the improperly adjusted relations in some sectors, for example due to the improper regulation, the more effective systematic solution of problems in the market through competition advocacy is more effective than the administrative proceedings against the particular undertakings.

105. Through the 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.

106. In 2015 the Office dealt with 453 materials, which were submitted within the interministry comment procedure. The Office submitted its comments on 29 materials. In 10 materials it formulated fundamental comments on legislation drafts, 10 comments had the nature of recommendation and 9 were combined. Office's comments referred mainly to Act on Home Loans, Accounting Act, Decree on Basic Banking Product, the Act on Payment Services and the Public Procurement Act. In appropriate cases, which could infringe functioning competitive environment, the Office submitted its statement even beyond the interministry comment procedure.

- **Draft of the Act on Public Procurement**

107. Within the interministry comment procedure referring to the new Act on Public Procurement the Office submitted more fundamental comments. One of the priorities of the Office is to reveal cartels in public procurement which not only distort the market, but also significantly harm the public finances. In order to fight against cartels in public procurement effectively and also to achieve the efficient sanctions on undertakings for such conduct, it is necessary to reflect these facts in the Act on Public Procurement. The Office considered the submitted draft of the Act on Public Procurement as a retreat from the recent effective system of revealing and sanctioning the cartels in public procurement which has been proved and was the inspiration for other European countries.

108. Firstly the Office required to maintain the obligation to exclude from the public procurements those undertakings that have participated in cartel in public procurement since the draft changed this obligation into the optional. According to the Office such restriction should refer not only to participants to the public procurements but also to their subcontractors that the excluded undertakings could not evade the act by means of subcontracts.

109. The other comment referred to the interconnection of leniency programme according to the Act on Protection of Competition with the exclusion of undertaking from the public procurement for participation in cartel. Leniency programme is the effective tool of fighting against cartels, since the participant to the cartel provides the Office with information and details on cartel in exchange for avoiding the fine or its reduction. According to the recent adjustment in the Act on Public Procurement the undertaking that used the leniency programme was not excluded even from the public procurements. The praxis of the Office proved that the benefit in the form of exemption from the prohibition to participate in public procurement significantly motivates the undertakings participating in agreement restricting

competition and they consider to use the leniency programme. Thus the Office proposed to maintain the present adjustment as a part of revealing and sanctioning cartels.

110. The Office is aware of the practice that the firms with the property and personal links often act as competitors in public procurement (for example entities within one economic group) and they only pretend the competition. The Office proposed to introduce a system disabling the linked persons to participate in public procurement.

111. Since the competition intensity is higher if more small and medium-sized enterprises are included, the Office proposed the reduction of required turnover of participants to public procurement up to the level of the estimated contract value. It would enable also the smaller undertakings to enter the tenders and they may bring the price alternative and innovations compared with large established supplier.

112. As a novelty, the Office proposed to introduce an obligation of applicants to notify the person that prepared the bid what should contribute to the transparency of environment and hinder the coordination between undertakings. Next novelty promoted by the Office is the possibility to terminate a contract concluded as a result of cartel in public procurement, as well as fixed reduction of price by 30 % if the cartel is revealed.

113. The Office's comments were accepted relating to interconnection of leniency programme with the exemption from the prohibition to participate in public procurement if the undertaking participate in agreement restricting competition in public procurement, public tender or other competition. At the same time there will be a change in the matter of prohibition to participate in public procurement, which will fall under the competence of the Office since April 18, 2016.

- **Draft of the Act on Accounting**

114. In the draft of the Act on Accounting the Office expressed its disagreement with the provision imposing wide information obligations on entities of public interest with more than 500 employees. Information obligations include brief description of business model that is perceived as description of the activities of the accounting entity, method of use of assets and generating income, cost structure, the structure of margins and structure of concluded contracts.

115. The draft imposed on entities the obligation to disclose information that are subject to business secret very often.

116. In the Office's view the requirement to disclose sensitive business information leads to undesirable transparency of the market as it refers not only to information on historical data, but also to information about ongoing business activities. Such disclosure of information would be equivalent to the exchange of business information among undertakings. On one hand the disclosure would enable the simple coordination, but on the other hand it would allow the effective control of anticompetitive agreements between undertakings (thus the participants to the agreement would be able to control the cartel participants whether they indeed observe the illegal arrangements), resulting in higher cartel stability.

117. From the mentioned reasons the drafted wording of the Act elicited concerns of restricting impacts on competition through easier violation of provisions both of national and European competition law. Thus the Office expressed its disagreement with adoption of this provision and required to omit it.

- **Draft of the Copyright Act**

118. In its comments on Copyright Act the Office highlighted that it is not evident from the reasoning report why the independent management entity is not obliged to meet the same level of conditions as the

provider of collective rights management. Since the independent management entity and the providers of collective rights management will provide some services of the same nature, the Office's opinion is that the different conditions for entering the market of providing services in this area could lead to unequal conditions for these types of entities.

119. The Office also commented the provision setting the requirements of annex to the application for granting the licence to carry out the collective rights management.

120. Since the current practice of the operation of collective rights management companies proves that in the market of providing services in the area of collective rights management there is underdeveloped competitive environment, despite the theoretical potential arising from the current wording of the Copyright Act, the Office proposed to consider the drafted wording of the provision, mainly the condition according to which the annexed application for granting the licence is a written commitment of at least five foreign collective rights management companies which are under the law of another state authorized in its territory to carry out collective rights management in relation to the same area of collective rights management, proving that they will cooperate with the applicant in representing right holders in the territory in which they carry out the collective rights management, if the applicant will be granted a licence, since it could represent a barrier to entry.

- **Draft of the Act on Payment Services and the Act on Banks**

121. According to the drafted amendment the Office still considered the introduction of inter-bank account number portability as the most appropriate and most effective clients' mobility tool and the competition promotion between banks, but it had some fundamental comments submitted within the draft:

- **by the Act determine the obligation to publish information on account transfer in the form comprehensible to average consumer, mainly at website of the financial institution**

122. This draft enhances consumer deciding on the most appropriate choice for a particular consumer and on practical options to address the situation of the consumer, leading to increased competitive pressure on providers of payment services and to the benefits for consumers.

- **by the Act determine the obligation of the financial institution to refer to the website of the National Bank of Slovakia, that publishes the comparison of service charges bound to a payment account**

123. The above will enable consumers not only to be informed on total charges, but allow them to directly search for and find information on comparison of these charges with the current data of other banks.

- **extension of the application of the Act to all users of payment services, not only to consumers**

124. The provision of the Act allows the provider of payment services to extent the application of this term also to a person who at the time of concluding a framework contract on providing payment services employees less than ten people and its annual turnover or the total annual balance sheet value does not exceed EUR 2 000 000, but this procedure is only optional and the Office considers the draft as insufficient. In addition to consumers in its narrow meaning (it means the natural persons not engaged in business) right the small and medium-sized enterprises have the insufficient bargaining power towards providers of payment services to affect the charging policy of these providers. The promotion of competition development is very important also in this segment.

- **legally determine the obligation of initial providers of payment services to introduce the automatic system of redirecting the incoming payments and direct debits to the new provider for at least 18 months from closing the account**

125. The Office explains this opinion by the fact that the automatic redirection of payments is positively comprehended as an effective elimination of barriers to account portability. Time limit of automatic redirection should exceed 12 months in order to cover the payments that are paid annually.

4. Resources of Competition Authority

4.1 Resources overall

4.1.1 Annual budget

	2014		Change
Total expenses	1 979 934 EUR	2 248 215 USD	+149 879 EUR (+170 188 USD)

4.1.2 Number of employees

	2014	2015
Economists	14	14
Lawyers	21	23
Other professionals	2	2
Support staff	18	17
Total	55	56

4.2 Human resources

	2015
Enforcement against anticompetitive practices	21
Merger review and enforcement	7
Advocacy efforts	6

Period covered by the above information: year 2015