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

20-May-2005

English - Or. English

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

DAF/COMP(2005)18/29
Unclassified

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN THE SLOVAK REPUBLIC

-- 2004 --

This report is submitted by the delegation of the Slovak Republicto the Competition Committee FOR INFORMATION at its forthcoming meeting (1-2 June 2005).

JT00184527

English - Or. English

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Executive summary

1. Competition pressure is one of the basic mechanisms of an effective allocation of resources and maximisation of consumer benefits in the market economy. If markets come under competition pressure, businesses are forced to improve their effectiveness, cut prices, improve quality, and innovate their products. Therefore, the aim of competition protection policy is to protect and develop competition conditions on markets. Competition policy also serves as an instrument for creating an attractive environment for investments and increasing the number of job opportunities and, consequently, influences the achievement of sustainable growth and competitiveness of the economy, as declared in the Lisbon Strategy.

2. Looking back on the year 2004, it can be stated that in the process of fulfilling the aforementioned goals, the Antimonopoly Office of the Slovak Republic (hereafter referred to as the "Office") dealt with "classic" anticompetitive practices and concentrations and assumed new tasks and competences in connection with the Slovak Republic's entry into the European Union (hereafter referred to as the "EU"). In 2004, the Office was involved in the preparation and implementation of new legislation, which reacted to changes in the EU competition rules and, among other things, allowed direct application of Articles 81 and 82 of the Treaty establishing the European Community (hereafter referred to as the "Treaty") and ensured full compatibility of Slovak legislation with European law. The European dimension of the application of competition legislation has been considerably strengthened. In accordance with European legislation, certain institutions have been amended, for example, the leniency programme for agreements restricting competition, and the Office's powers have been strengthened with respect to the performance of inspections.

3. Practical experience from 2004 again confirms that higher demands are placed on economic and legal analyses of cases subject to examination, with special expert opinions being required in certain cases. The successful handling of cases concerning undertakings, mostly big companies, which violate the competition rules, requires high-level qualifications and professional expertise of the Office employees and their stabilisation. When analysing cases and preparing decisions, it is necessary to study the decision-making practices of the European Commission and European courts to a much greater extent.

4. Competition on markets is often negatively influenced by administrative and regulatory barriers. The Office's opinions therefore react to the introduction of these limitations and initiate changes to ensure that markets are open and competitive.

5. As an institution financed from public resources, we devoted attention to providing information and preparing a communication strategy of the Office.

1. Changes to competition laws and policies

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

6. Act No. 204/2004 Coll. amending Act No. 136/2001 Coll. on Protection of Competition and on an Amendment to the Act of the Slovak National Council No. 347/1990 Coll. on Organisation of Ministries and Other Central State Administration Bodies of the Slovak Republic as amended by Act No. 465/2002 Coll. and on Amendments to Certain Laws (hereafter referred to as the "Act") entered into force on 1 May 2004 and its complete wording was promulgated in the Collection of Laws under No. 475/2004 Coll.

7. The aim of the Act prepared and submitted by the Office for the legislative process was to ensure full compatibility of the Slovak competition law with the legislation of the European Community and incorporate changes resulting from the Office's decision-making practices.

8. The Act has brought flexibility into the assessment of agreements restricting competition through the abolishment of the institution of individual exemption, which means that an undertaking is no longer required to ask the Office to individually exempt an agreement restricting competition through an administrative act - in the form of a decision of the Office. The responsibility for assessing an agreement restricting competition has been transferred to undertakings.

9. Furthermore, in accordance with Regulation (EC) No. 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, the Act introduced a new type of a decision on agreements restricting competition and abuse of a dominant position, where the Office decides on the imposition of an obligation to fulfil commitments submitted to the Office by an undertaking, provided that the Office arrives at the conclusion that a decision of this type adequately addresses a possible competition problem. The powers of the Office in the fulfilment of tasks according to the Act have been extended.

10. The area of control of concentrations has also been amended, especially in connection with the change increasing the limit of the criteria and conditions determining the obligation for undertakings to notify the Office of concentrations for the purpose of their subsequent assessment by the Office. The notification criteria must be clear, precise, objective, quantifiable, and quickly and easily accessible to undertakings, so that they themselves are able to judge without problems whether or not a concentration is subject to control by the Office. As the share of the relevant market achieved by parties to a concentration did not meet these conditions as a notification criterion, this notification criterion has been abolished through an amendment to the Act. When determining the notification conditions, the Office made sure that the so-called local nexus, which was missing in the Act, was incorporated into these conditions, in order to ensure that the Office does not assess concentrations that do not have a certain economic impact on markets in the Slovak Republic.

11. Since the effective date of the amendment to the Act, the participation of the Office in court proceedings concerning competition law has been strengthened. Courts should play an important role in ensuring an effective application of the competition rules, including acquis communautaire - Articles 81 and 82 of the Treaty. According to the amended Act, a court is required to immediately inform the Office of the commencement of proceedings in which the relevant Articles of the Treaty are applied. An important new provision is an amendment to the Code of Civil Procedure, which introduced the "amicus curiae" institution, which creates conditions for active cooperation between the Office and courts in dealing with matters related to competition.

12. Following the amendment to Act No. 136/2001 Coll., the Office issued new decrees regulating the method of calculation of turnover (No. 268/2004 Coll.) and the conditions of a concentration notification (No. 269/2004 Coll.).

2. Enforcement of the act on protection of competition

2.1 Agreements restricting competition

2.1.1 Statistics

13. The prohibition of agreements restricting competition arising from the national competition legislation is based on the basic principles of competition, which do not allow cooperation between independent undertakings that prevents, restricts, and distorts competition, especially in the case of so-called hard cartel arrangements, where the "technical" form of cooperation is unimportant. Freedom of

"technical execution" of such cooperation allows these forms of cooperation to be sanctioned in a broader context, which means cooperation between undertakings in the form of establishing a formal contractual relationship, adopting a decision of associations, concerted practices, and other forms of mutual understanding.

14. In general, the purpose of agreements restricting competition is to increase prices of goods and services provided by parties to an agreement and, consequently, their profits, while these agreements bring about no objective benefits to consumers. Agreements restricting competition reduce the competitiveness of an industry in the long-term, because they eliminate competitive pressure contributing to innovations and effectiveness.

15. The task of the Office is to assess these forms of behaviour of undertakings and in many cases it is important to comprehensively assess and analyse these practices within a certain appropriate timeframe. An effective method of assessing and judging restrictive behaviour of undertakings should not consist of the atomisation of specific acts of undertakings, but instead assess the "method" of their presence on the market during a certain period.

16. The so-called individual exemption, based on which undertakings were able to ask the Office to issue a decision on whether an agreement restricting competition concluded by them met the conditions for individual exemption from the legal ban on agreements restricting competition has been abolished in the competition law as of 1 May 2004. The abolition of the institution of individual exemption has introduced a much more rational approach to assessing and making decisions on agreements restricting competition, because according to the new legislation, the Office decides on whether or not an agreement is prohibited, while it is no longer necessary to make decisions on the basis of so-called identification assessments, i.e. whether an agreement restricts competition and, consequently, to allow an agreement to be individually exempted from the legal ban based on an individual request from an undertaking. The abolition of individual exemption has introduced greater flexibility and a lower administrative burden on both sides, i.e. both for the Office itself and undertakings concerned. Within the new procedure, the Office may fully concentrate on the assessment of possible anticompetitive effects of agreements subject to competition law.

17. Agreements restricting competition form an important part of the competition law, which is why the Office's interventions against these practices are among the most important activities of the Office. The reason is primarily the fact that these restrictive practices seriously harm consumers and the economy, because they considerably weaken the competitiveness of the sectors exposed to long-term effects of such agreements resulting from the absence of competitive pressure.

18. In 2004, the Office dealt with 24 cases concerning agreements restricting competition, within which it issued 21 first-instance decisions with the following verdicts: proceedings were stopped in seven cases, a decision on the violation of the Act was issued and a fine was imposed in seven cases, individual exemption was granted in two cases, negative clearance was issued in three cases, and procedural decisions were issued in two cases. Fines imposed with respect to agreements restricting competition totalled SKK 5,999,500 (EUR 149,987) in 2004.

2.1.2 Immunity from or reduction of fines on agreements restricting competition (leniency programme)

19. As was already stated, agreements restricting competition have strong negative impacts on consumers and economic effectiveness, which is why it is a priority for every competition institution, including the Office, to seek out such agreements and impose tough sanctions on parties to these agreements. However, proving these practices is a complicated task. Therefore, more effective instruments are being sought to punish these agreements and facilitate the supply of evidence. One of these instruments

is the so-called leniency programme consisting of a more moderate procedure for imposing sanctions with respect to the conclusion of cartel agreements.

20. According to applicable legislation, the Office **will not impose a fine** on an undertaking that was a party to a horizontal agreement if this undertaking is the first to provide the Office with decisive evidence, terminated its participation in an agreement restricting competition at the time when it provided evidence, was not the instigator of the conclusion of such an agreement, and provided the Office with all evidence available to it. The Office **will reduce a fine** by up to 50% of the amount of the fine if an undertaking provides significant evidence which, in combination with information and documents already available to the Office, enables the Office to prove an agreement restricting competition and, at the same time, terminates its participation in the agreement at the time when it provided evidence to the Office at the latest.

21. As this procedure has been in effect for quite a short time, the Office only received one application for granting such immunity in 2004. As this involved a cartel operating almost worldwide, the case is within the powers of the European Commission.

2.1.3 Description of significant cases

Pig breeders – horizontal agreement on prices

22. On its own initiative, the Office launched an investigation of the relevant market of pigs for slaughter and found that a meeting had been held in the headquarters of the Pig Breeders Association, where a majority of the breeders present agreed not to supply meat-packing plants and slaughterhouses with pork cheaper than SKK 39 or SKK 41 (approx. 1 EUR), depending on the quality of meat. It also transpired from the minutes of the aforementioned meeting that five representatives of breeders had voted against this decision. The Office arrived at the conclusion that the agreement preventing the supply of pork to processing companies below the price set by the breeders constituted a horizontal agreement on prices.

23. The agreement among the breeders could have led to an overall increase in the price level on the aforementioned relevant market and, consequently, on related markets, including retail prices of pork. The conclusion of the agreement constituted a violation of the Act and a fine totalling SKK 2,053,300 (EUR 51,332) was imposed on the 48 parties to the agreement for the aforementioned anticompetitive practice.

24. The Office's decision has not yet become legally valid, as the parties to the proceedings submitted an appeal, on which no legally valid decision was issued in 2004.

2.2 Abuse of a dominant position

2.2.1 Statistics

25. Unlike other players, undertakings in a dominant position "carry" special responsibility for their market output. In these market structures, it may occur that the transfer of ineffectiveness of allocation by dominant companies to the conditions of placement of their production leads to the abuse of a dominant position. Control and intervention against the endeavour of undertakings possessing market strength - dominants to abuse their position and hinder new competition is among important activities of the Office.

26. The ban on the abuse of a dominant position concerns unilateral outputs of dominant companies, which abuse their "exclusive" position, so to speak. The conduct of dominant players on the market may be exploitative or eliminatory or a combination of both. In general, practices of dominant companies that usually deviate from standard procedures of undertakings operating on competitive markets and are capable of influencing the market structure through the weakening or elimination of the existing level of

competition are considered abusive. The existence of a real or potential effect presenting an obstacle to or weakening the existing level of competition is usually an attribute necessary for qualifying a certain conduct as abuse of a dominant position on a relevant market.

27. General application practice confirms that the abuse of a dominant position and its consequences may not only affect the same market, but also neighbouring and related markets. The complex character of the evaluation of dominant companies' behaviour requires an objective assessment, where it is necessary to distinguish between output carrying signs of abuse due its restrictive character and legitimate competition output of these companies.

28. In 2004, the Office dealt with 24 cases of abuse of a dominant position, in which it issued 21 decisions in the first instance. Fines imposed for the abuse of a dominant position totalled SKK 107,561,504 (EUR 2,689,038) in 2004.

2.2.2 Description of significant cases

Železničná spoločnosť a.s. – Setting of inappropriate trade conditions

29. Based on incentive, the Office launched administrative proceedings within which it assessed the conduct of the joint stock company Železničná spoločnosť, a.s. [Railroad Company] preventing senders of consignments in railroad carriages and operators of railroad sidings from using seals other than those supplied by Železničná spoločnosť, a.s. to seal railroad carriages. The incentive was submitted by a company that, as an alternative supplier of seals, felt disadvantaged on the market of supplies of plastic security seals used for sealing railroad carriages.

30. According to the transportation rules set by Železničná spoločnosť, a.s., each carrier was required to seal carriages using seals intended for this purpose, which they personally received exclusively from the transport company, i.e. Železničná spoločnosť, a.s.. When a carrier did not accept this condition, Železničná spoločnosť, a.s. refused to conclude a freight contract with this carrier.

31. The conduct of Železničná spoločnosť, a.s. resulting from its internal regulation prevented other carriers from making a choice and using other security seals meeting the qualitative and technical parameters in accordance with special legislation, despite the existence of more advantageous offers in terms of quality and delivery terms on the part of alternative suppliers of plastic security seals. Due to this procedure of Železničná spoločnosť, a.s., these suppliers were de facto excluded from the possibility of competing for customers in the area of offering/supplying security seals. Železničná spoločnosť, a.s., as a dominant carrier and unavoidable business partner, abused its dominant position by enforcing inappropriate trade conditions.

32. The Office issued a decision requiring Železničná spoločnosť to eliminate the illegal situation and refrain from the aforementioned conduct and imposed a fine of SKK 30,051,500 (EUR 751,287) on the dominant railroad carrier.

Železničná spoločnosť- Abuse of a dominant position

33. Based on an appeal against and a review of a decision issued in the first instance, the Council of the Office decided that the joint stock company Železničná spoločnosť, a.s. [Railroad Company] abused its dominant position when it applied different conditions to comparable performance (discrimination) on the relevant market of providing railroad freight transport of mass substrates for wholesale customers on medium and long routes on the territory of the Slovak Republic, because it paid different contractual commissions to four dispatch companies providing this service. By agreeing to pay commission to four selected dispatch companies only, it put these dispatch companies at an advantage with respect to other

customers receiving this service and, at the same time, it also put the four dispatch companies at a disadvantage with respect to each other, because it agreed to pay them different amounts of commission. The result of this conduct of Železničná spoločnosť, a.s. was that the dispatch companies to which commission was paid were put at an advantage in the competition for customers, who viewed the price of the service provided as one of the decisive criteria for choosing a dispatch company and their decision was influenced by the amount of the agreed commission in this case. This means that the advantaged dispatch companies were able to provide their services at lower prices.

34. The Council of the Office imposed on Železničná spoločnosť, a.s. the obligation to refrain from the illegal conduct, accompanied by a fine amounting to SKK 37,000,000 (EUR 925,000).

UPC Slovensko, s.r.o. – Restriction of sales at the expense of users

35. In this case, the Council of the Office assessed the conduct of the dominant company UPC Slovensko, s.r.o. toward its customers – receiving a service consisting of retransmission of television programmes via a cable network.

36. During the period subject to assessment, the limited liability company UPC Slovensko, s.r.o. had a dominant position on the defined relevant market of providing retransmission of television programmes via a cable network, i.e., it was the only provider of this service and no other comparable option on the basis of other technologies existed for those interested in receiving a television signal in the regions of Bratislava and Banská Bystrica during that period.

37. UPC Slovensko, s.r.o. increased the price of the service, but this increase exceeded the limit allowed by the Telecommunications Office of the Slovak Republic as the appropriate regulator of the sector. Consequently, UPC Slovensko, s.r.o. disconnected customers who did not pay the price requested by the company for the aforementioned service.

38. The Council of the Office assessed this conduct as the abuse of a dominant position, because UPC Slovensko, s.r.o. restricted the sale of the service to its customers without a reason, even though they paid the price set by the relevant regulatory authority for this service. At the same time, it imposed a fine of SKK 15 million (EUR 375,000) on UPC Slovensko for the abuse of its dominant position.

2.3 Mergers and acquisitions

2.3.1 Statistics

39. It is customary in the economic sphere that some companies are established and others dissolved, some companies merge or amalgamate, and undertakings become interconnected through capital holdings. This could bring about a number of economic effects, but also cause the establishment of entities that will not face competitive pressure, which would subsequently affect their behaviour to the detriment of consumers and worsen the allocation of resources. Therefore, interventions in the structure of markets can be made by means of control of concentrations. This only applies to large transactions, where a potential risk of deformation of the competition conditions is expected.

40. Transactions leading to an amalgamation or merger between two or more independent undertakings or where an undertaking acquires direct or indirect control over another undertaking or part thereof are defined as concentrations. The Act clearly defines transactions subject to the notification obligation. Concentrations that do not meet the notification criteria are not subject to control by the Office and the entities concerned may carry out the relevant transaction without the Office being required to issue an opinion on this transaction. Concentrations that may affect the European market are assessed by the European Commission. Within the framework of the so-called referral system, a concentration that may

affect the markets of several countries may be assigned to a competition institution that has the best prerequisites for assessing it effectively. The Office may comment on concentrations assessed by the European Commission with respect to their impacts on the Slovak market.

41. After being notified of a concentration, the Office analyses the markets, assesses the changes resulting from the concentration, and identifies possible competition risks. If a concentration leads to the establishment or strengthening of a dominant position, which results in significant obstacles to effective competition on the relevant markets, the Office will prohibit this concentration. If a competition problem is possible to eliminate by setting a condition for an undertaking, this concentration may be approved with a condition of a structural or behavioural nature. If a concentration does not lead to competition concerns, the Office will approve it.

42. In 2004, the Office dealt with 103 cases of concentrations and issued 79 decisions in the first instance.

2.3.2 Description of significant cases

PHOENIX - FIDES

43. In 2004, the Office assessed a concentration consisting of the joint stock company PHOENIX, a.s. acquiring control over the joint stock company FIDES, a.s. Both companies operated on the market of distribution of medicines, health aids, and supplementary goods from producers to pharmacies and hospitals. However, PHOENIX did not operate on the territory of the Slovak Republic. The aforementioned concentration resulted in PHOENIX entering the Slovak market through the purchase of the distributor, which had already carried out 36 percent of the wholesale distribution of medicines and medical supplies through its subsidiaries, Biama and DRUG Impex, in Slovakia.

44. The concentration subject to assessment did not lead to the horizontal overlapping of activities of the parties to the concentration, because the parties to the concentration operated on different territorial relevant markets. However, the strengthening of the financial position of a party to the concentration and other factors may still lead to the establishment or strengthening of its dominant position on the relevant market in these cases as well. The Office analysed the situation on this market in detail, in view of the large market shares of the parties to the concentration and barriers to entry into the market.

45. The Office primarily dealt with the question of how relevant financial resources were with respect to the penetration of the market by the undertakings operating in the sphere of wholesale distribution of medicines and health aids, whether significant differences existed among undertakings operating on this market in terms of their internal financial resources, and whether the character of the industry made it difficult for undertakings to acquire external financial resources.

46. Undertakings operating in the relevant area acquire funds both from internal and external sources, while financial needs of most undertakings operating on the relevant market of wholesale distribution of medicines and health aids are predominantly covered from external sources – credits from suppliers and bank loans, which are available to undertakings, despite certain problems, without the need to establish links with a foreign undertaking through capital holdings.

47. The Office approved the aforementioned concentration, because the acquisition of exclusive control by PHOENIX over FIDES would not financially strengthen FIDES to the extent leading to the establishment or strengthening of a dominant position of PHOENIX and, consequently, significant barriers to effective competition on the relevant market of wholesale distribution of medicines and health aids.

48. Those undertakings whose concentrations are subject to the **notification obligation** are required to notify the Office of such a transaction within a specified time limit. The Office is required to impose a sanction for the violation of this obligation. During the course of 2004, the Office issued three legally valid decisions imposing fines on undertakings for the violation of the obligation to notify the Office of a concentration within the time limit stipulated in accordance with the Act.

Sony and Ericsson – Fine imposed for a delayed notification of a concentration

49. During the previous period, the Office assessed the concentration between the undertakings Sony Corporation, Telefonaktiebolaget LM Ericsson and Sony Ericsson Mobile Communications AB, which consisted of establishing a joint venture, Sony Ericsson Mobile Communications AB, on the basis of the Shareholders' Contract concluded between Sony Corporation, Telefonaktiebolaget LM Ericsson and Sony Ericsson Mobile Communications AB.

50. According to the Act, a concentration subject to control by the Office must be notified within 30 days of its establishment. In the aforementioned case, the undertakings' failure to observe the legal notification obligation and delay in the notification of the concentration constituted a violation of the Act. Due to this procedure, fines of SKK 250,000 (EUR 6,250) were imposed on Sony Corporation and Telefonaktiebolaget LM Ericsson each.

51. In order to ensure a smooth execution of a possible prohibition decision of the Office, undertakings are required to respect the so-called **suspension** of concentration, i.e., a ban on the execution of the rights and duties resulting from a concentration until a decision on the concentration becomes legally valid. In 2004, the Office issued 4 legally valid decisions imposing a fine for the violation of the ban on the execution of rights and duties prior to the issuance of a legally valid decision on concentration.

Poštová banka, a.s. – Fine imposed for the implementation of concentration prior to the issuance of a legally valid decision

52. In 2004, the Office assessed a concentration between the joint stock company Poštová banka, a.s. [Postal Bank] and the joint stock company Prvá penzijná správ. spol., a.s., [First Pension Administration Company], where Poštová banka, a.s. acquired direct control over Prvá penzijná správ. spol., a.s. on the basis of the Contract on the Purchase of Securities concluded on 18 December 2003 between Poštová banka, a.s. as the buyer and the joint stock company ASIC – Asset Strategic Investment Company, a.s. as the seller.

53. The Act prohibited the parties to the concentration from executing any rights and duties arising from the concentration from the establishment of the concentration to the effective date of a legally valid decision on the concentration.

54. Based on documents and information submitted during the administrative proceedings concerning the assessment of the concentration and administrative proceedings concerning the imposition of a fine, the Office found that Poštová banka, a.s. had violated the ban on the implementation of the concentration prior to the effective date of a legally valid decision on the concentration. The substance of the violation by Poštová banka, a.s. of the ban on the execution of rights and duties from the establishment of the concentration to the issuance of a legally valid decision on the concentration consisted of the payment of the first and second instalments of the purchase price, for which it acquired a 67-percent stake in all shares in Prvá penzijná správ. spol., a.s., and the execution of shareholders' rights consisting of the adoption of an amendment to the Articles of Association of Prvá penzijná správ. spol., a.s.

55. A fine of SKK 200,000 (EUR 5,000) was imposed on Poštová banka, a.s. for the violation of the Act.

Deutsche Telecom – EUROTEL- Opinion of the Office on a concentration assessed by the European Commission

56. Slovak Telecom announced in September that it had concluded a definitive agreement on the purchase of the remaining 49-percent stake in the company, EuroTel Bratislava, thus increasing Slovak Telecom's stake in EuroTel to 100 percent. As the Office was of the opinion that the aforementioned concentration could significantly influence the functioning of the telecommunications market, the Office used the possibility of sending the European Commission its opinion on the aforementioned transaction, accompanied by information on possible effects of the concentration on individual markets, including information on certain specific characteristic of the Slovak telecommunications sector.

Examination of Decisions of the Antimonopoly Office of the Slovak Republic by the Supreme Court of the Slovak Republic

57. A lawsuit may be filed with the Supreme Court of the Slovak Republic (hereafter referred to as the "Supreme Court") against a decision issued in the second instance. Based on Act No. 428/2004 Coll. amending the Code of Civil Procedure, the appropriate authority authorised to review the legality of the Office's decisions and official procedures has been changed in such a way that the Regional Court in Bratislava is the appropriate authority in the first instance (lawsuits against a legally valid decision issued by the Office) and the Supreme Court is the appropriate authority in the second instance (appeals against decisions issued by the Regional Court). This amendment has been in effect since 1 October 2004.

58. In 2004, the Supreme Court reviewed and decided on 29 lawsuits against decisions issued or an incorrect procedure taken by the Office. Of this amount, the Supreme Court rejected 27 lawsuits, stopped the proceeding in one case, and in another case, it issued a resolution passing the matter on to the Regional Court in Bratislava. **The Supreme Court did not reverse the Office's decision in any of the aforementioned 29 cases.**

59. In addition, the Supreme Court decided on three appeals in the second instance – SLOVFOND, a.s., Slovak Telecom, a.s., and PST – Slovakia against decisions issued by the Supreme Court in the first instance. In the case of the joint stock company SLOVFOND, a.s. of 30 September 2004, the second instance upheld the first-instance decision dismissing the lawsuit. In the case of the joint stock company Slovak Telecom, a.s. of 18 February 2004, the second instance reversed the first-instance decision reversing the Office's decision and stopped the proceedings. In the case of PST – Slovakia of 18 February 2004, the second instance confirmed the first-instance decision reversing the Office's decision.

60. In 2004, ten new lawsuits were filed with the Supreme Court, on which the Supreme Court has not yet decided. In 2004, 16 appeals were submitted against decisions issued by the Supreme Court in the first instance, on which the Supreme Court has not yet decided: 14 appeals were submitted by Probugas, one by Sudzucker, and one by Herold Tele Media.

3. Role of the antimonopoly office of the Slovak Republic in the formulation and implementation of other policies

61. Despite the fact that general foundations of an effective competition procedure in the Slovak economy have been established in the past and the mechanism of competition policy forms part of our economic area, which has been based on market principles for a decade, the area of building competition culture and competition advocacy remains more or less an open issue and needs to be addressed especially at the regional level.

62. The extension of areas that come under competitive pressure, elimination of barriers to entry into and output from the market, and liberalisation frequently go against the interests of players who do not

want to abandon their strong market positions, often established or strengthened thanks to the aforementioned barriers. Therefore, given the distribution of interests, arguments in favour of competition may not always be successful. This is one of the reasons why communication between the Office and other entities is important, as well as maintaining its independence.

63. In 2004, the Office carried out a number of activities within the framework of competition advocacy – on its own initiative, it prepared a document on professional services for a government session and in its standpoints submitted within an interministry comment procedure, it requested the strengthening of competition principles in the economy, as well as the extension of areas that will be based on the competition principles and the removal of competition deformations. For several years, employees of the Office have participated in a pedagogical process in the sphere of competition and taken part in the work of international expert groups.

64. In accordance with trends in the EU, the transfer of part of the competition agenda to special regulators requires mutual cooperation and coordination. Regulators should act in such a way as to create conditions for the establishment and functioning of a competitive environment. Through its standpoints on legislative proposals concerning regulators, the Office endeavoured to strengthen the competition principles and improve the regulatory framework.

65. An example of competition advocacy is the Office's activity in the sector of electronic communications, where the Office adopted a standpoint reminding the Telecommunications Office of the Slovak Republic (hereafter referred to as the "Telecommunications Office") of the need to reassess the attitude toward the service consisting of retransmission of radio and television signals via cable distribution networks as an electronic communication service outside the scope of the areas defined by the regulator - relevant markets. The reason is the fact that local relevant markets may also exist, where a certain entity is in the position of a dominant or natural monopoly and effective competition is absent, which creates room for assessing whether it is appropriate to introduce regulation.

3.1 Documents Prepared by the Office on Its Own Initiative

3.1.1 Professional services

66. In 2004, the Office devoted attention to professional services. This area is characterised by a high degree of regulation by the state and professional chambers.

67. The Office was interested in initiating steps toward reassessing the extent of regulation in this area, because an excessive and inappropriate regulation might have negative effects – it may restrict competition among providers of professional services and thus reduce the stimuli to cut expenses, reduce prices, improve quality, and provide innovative services.

68. Therefore, the Office prepared a document for a government session, which it submitted for an interministry comment procedure in December. The document contains a brief summary of the regulation of lawyers, notaries, architects, civil engineers, auditors, tax advisors, and pharmacists in the Slovak Republic, as well as an evaluation of impacts of the most frequent types of regulation (such as price fixing, advertising restrictions, requirements related to entry into the market) on competition. In this document, the Office also recommended an amendment to the existing regulation in order to minimise negative impacts on competition.

3.2 Conflict of interest

69. When addressing deformations of the competitive environment, the Office repeatedly encountered the issue of conflict of interest in the areas where the state exercised shareholder's rights and,

at the same time, determined the rules of the game on a relevant market. As this problem cut across several ministries, the Office proposed establishing a working group in which all the ministries concerned, including the Office, would be represented and whose output would consist of a draft system solution to the exercising of shareholder's rights and their separation from the regulatory function.

3.3 Interministry Comment Procedure

70. Within the interministry comment procedure in 2004, the Office submitted fundamental objections on 43 draft legal regulations in total. It is important for the Office to be able to express its view on restrictions of competition that new draft legislation may contain, because this enables it to react ex ante, that is, at a time when draft laws are being discussed, and not after they have been adopted. Therefore, the Office strongly objected a proposal for limiting the possibility of other state administration bodies being full-fledged entities authorised to make comments.

- *Draft of the Act on the energy sector*

71. The Office identified the delegation of powers concerning the regulation of prices of heat supplied to municipalities, which are also in the position of owners and, in several modified forms, operators of the system of thermal facilities for production, distribution, and supply of heat, as a conflict of interest and an opportunity to deform the market. The method of payment of costs arising from the disconnection from the public heat distribution facility was questionable and inappropriate as well. If the method of calculation of costs related to disconnection is determined in such a way that the disconnection fees discourage customers from disconnecting heat supply, this could create a barrier that negatively affects competition conditions.

- *Draft of the Act on TA SR and on amendments to certain laws*

72. The draft Act was contrary to the need to ensure effective competition in activities that can be carried out in a competitive environment. Non-transparent support provided by the state to a single entity on the market deforms competition conditions. In the draft Act, it was considered that expenditures of TA SR [News Agency of the Slovak Republic] would be more extensively covered from the state budget, which, compared with the current situation, would allow the costs of services that can be, and still are, provided on a commercial basis, to be covered to a greater extent. The Office was of the opinion that the subsidy from the state budget should be tied to a specific purpose and should only cover the costs of activities directly related to the provision of information that is not interesting from the commercial viewpoint, but its provision is in the public interest and everyone, including individuals and legal entities, should have free access to this information in real time. The purpose of this request was to achieve an effective and transparent utilisation of state budget funds and establish an effective mechanism to control their use.

- *Project for transformation of the state-owned company Lesy SR [Slovak Forests]*

73. The Office proposed that the project should contain several alternatives of transformation and an analysis of their possible advantages and disadvantages. From the viewpoint of protection of competition, the project should also deal with methods of securing a competition environment and related pressure for effectiveness, including a proposal for a method of separating public functions from commercial ones, as well as their financing and organisation of commercial activities. As competitive conditions need to be established in this sector and decentralisation elements need to be strengthened, especially in commercial activities, the Office requested that this missing information be added to the document.

- *Draft of the Act on the highway company and roads for motor vehicles*

74. Conflict of interest was the predominant feature of this draft Act. The Ministry of Transport, Post, and Telecommunications of the Slovak Republic, as a 100-percent shareholder in the Highway Company and, at the same time, a public administration body determining the conditions and rules of business in the area of road transport, was subject to conflict of interest. In addition, the Ministry performs state supervision and control over the administration of highways and roads, which means that it supervises and controls itself in this case.

75. At the same time, the draft Act did not ensure that income of the Highway Company from the collection of tolls, sale of highway stickers, and interest on these funds was only used to repair, maintain, and build highways, rather than financing other commercial activities that the Highway Company was allowed to carry out.

- *Draft of the Act on driving schools*

76. Despite the fact that the Trade Licensing Act does not restrict undertakings carrying out licensed business by banning them from performing activities (not only business activities) other than those specified in their licenses, the proposed wording of the Act put unjustified restrictions on undertakings in the sense that it prevented them from carrying out "other business activities."

77. In addition, the draft Act unjustifiably requested proof of financial reliability, including the ownership or financial leasing of a costly driving simulator. Undertakings were not allowed to provide training on a driving simulator through another undertaking or decide independently on the method of providing this training. An excessive financial burden related to the commencement of operations of a driving school could cause difficulties or prevent business activities in this area.

78. The proposed ban on the transfer of training vehicles, driving simulator, and even teaching aids among driving schools seemed unjustified. As this equipment is very expensive, driving schools should have the possibility of mutual assistance in providing training, which would eventually be beneficial to applicants for training as well.

79. According to the proposed wording of the draft Act, expert qualifications can be obtained during a course for instructors provided by the Ministry of Transport, Post, and Telecommunications of the Slovak Republic (hereafter referred to as the "Ministry"), which may entrust these courses to the association of licensed traders. The same applies to refresher courses for driving school instructors. The aforementioned provisions thus created conditions for the association of licensed traders to monopolise its position with respect to training provided to applicants and the authorisation to provide training to drivers and refresher courses to holders on an instructor's authorisation. This created a legal barrier to entry into the relevant market by other parties interested in providing the aforementioned services, which was contrary to the principles of competition.

- *Draft Postal Policy up to 2008*

80. The draft Postal Policy up to 2008 included, among other things, transformation of the state-owned company Slovenská pošta [Slovak Post] to a joint stock company in which the Ministry of Transport, Post, and Telecommunications of the Slovak Republic would be a 100-shareholder. In its capacity as a state administration body, the Ministry establishes rules for the postal service and would also exercise shareholder's rights in this company. The Office drew attention to a possible conflict of interest in this case.

81. The Office repeatedly pointed out that the **electronic communications** market was *de jure* liberalised, but the procedure for opening this market was de facto quite slow (for example, the draft National Strategy for Broadband Access in the Slovak Republic).

4. Resources

4.1 Annual budget

	2004		Change
Total expenses	44 004 000 Sk	1 134 124 USD	+ 1 988 000 Sk

Number of employees

	2004	2003
Economists	20	23
Lawyers	16	13
Other professionals	12	10
Support staff	17	16
Total	65	63

	2004
Enforcement against anticompetitive practices	23
Merger review and enforcement	10
Advocacy efforts	5

5. Summaries of or references to new report and studies on competition policy issues

82. During the year 2004 two outstanding contributions on competition policy have been published:

Lubomir Strieska: Taxes, Margins and Consumer Prices. Perfect Competition. Ekonom, Bratislava 2004.

Contribution of Mr. Jan Figel and Mr. Miroslav Adamis on Competition Issues at the following web site address: http://www.euroinfo.gov.sk/index/go.php?id=231.