COMPETITION COMMITTEE

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN SLOVAK REPUBLIC

2003

TABLE OF CONTENTS

ANNUAL REPORT OF THE ANTIMONOPOLY OFFICE OF THE SLOVAK REPUBLIC

2003

Executive summary

1. Protection of competing market structures, maintaining effective competition, and elimination of restrictive measures are optimal instruments for ensuring the supply of innovative products at appropriate prices. Given the specifics and character of the individual economic sectors, protection of competing market structures requires an appropriate combination of competition and regulation rules aimed at controlling the market power and preventing anticompetitive practices of business entities. It is also necessary to pay appropriate attention to the process of eliminating regulation if expenses related thereto exceed the benefits of such regulation. There is a general principle that profit resulting from the existence of competing market structures has a direct impact both on the macroeconomic and microeconomic levels.

2. Competing market structures create room for sellers and buyers to actively participate in establishing the prices of goods and services offered on the market. If markets are functioning on a competitive basis, every entrepreneur is interested in providing goods and services at a comparable or better level than their competitors. This rivalry, motivated by the entrepreneurs' effort to increase their effectiveness by improving and innovating their own output in order to at least catch up with their competitors, brings direct benefits to consumers from the viewpoint of satisfying their needs. It can be stated that competing market structures are, in fact, working for consumers, because effective competition and satisfying consumers' needs ensures a higher quality of goods and services provided by such entrepreneurs.

3. The existence of these structures does not mean or make sure that various acts and practices resulting in or leading to restriction of competition cannot be conducted on individual markets. If there is no control or supervision over the conduct of individual business entities, this may lead to various negative impacts, especially at the price level within the economy, in the form of various anticompetitive practices of business entities aiming at inappropriate maximization of profit. Competition rules serve to eliminate price distortions and deformation of the value of individual products and services. They are intended to distinguish the clear and legitimate conduct of business entities within the competitive "battle."

4. High-quality competition rules, which give business entities the possibility of being successful or unsuccessful on the market according to their competitive abilities, will allow a meaningful reaction to market failures and imperfections. Competition rules are primarily aimed at reducing the establishment of cartels on the market, preventing unfair business practices of dominant companies, and limiting the acquisition of inappropriate market power. Generally speaking, competition rules "keep a tight rein" on various restrictions to competition. It is also necessary to emphasize the need to make the effectiveness of application of the competition rules conditional upon an adequate enforcement mechanism.

1. Changes to competition laws and policies

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

5. Within the framework of its legislative activities in 2003, the Office prepared a draft law on the protection of competition, which the Government of the Slovak Republic approved in December and submitted as the government's draft law to the National Council of the Slovak Republic for discussion.

6. The aim of the submitted draft law is to create a legal framework for the fulfilment of tasks resulting from Council Regulation (EC) No. 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty establishing the European Community (hereinafter referred to as "Regulation 1/2003") and further approximation of the Slovak Republic's competition law to the acquis communautaire in the area of competition law.

7. The draft amendment brings about important changes, especially in the flexible assessment of agreements restricting competition, where an entrepreneur independently assesses the fulfilment of the criteria within the meaning of Article 6 (3) of the draft Act and/or the conditions related to the *de minimis* rule according to Article 6 (1) of the draft Act. This legislation abolishes the institution of the individual exemption and the institution of the so-called negative clearance. This legislation provides that if agreements restricting competition meet the conditions prescribed by law, *de lege* they are not subject to prohibition and need not be reported to the Office.

8. The draft Act also contains a reference to the application of European Commission regulations on block exemptions and their connection to groups of agreements restricting competition with a domestic impact, i.e., the categories of agreements that have no impact on trade between European Union member states. The aforementioned legal regulation will simplify and unify the entire legal procedure regarding the so-called block exemptions.

9. In connection with the legislation contained in Regulation 1/2003, the powers of the Antimonopoly Office of the Slovak Republic will also be strengthened with respect to the performance of inspections within the framework of investigations conducted on relevant markets, including the tightening of the Office's sanction policy.

10. The draft Act also regulates the criteria for notification of concentrations and abolishes the relative criterion of "market share" as an alternative criterion for notification of a concentration, which does not comply with the objectivity and transparency requirement, and instead introduces the unified criterion of turnover, including the introduction of the institution of local nexus, the fulfilment of which requires notification of a concentration. The regulation concerning the amount of the turnover criterion contained in the submitted draft law reflects the reality of the Slovak market and previous practical experience.

11. In connection with the European Commission's monitoring report of November 2003, and in accordance with the recommendations of the European Commission, the Office has adopted an internal directive on the procedure for imposing fines. This directive distinguishes between less serious, serious, and very serious violations of the provisions of the Act on Protection of Competition and introduces a generally tighter sanction policy, especially with respect to the conclusion of hard cartel agreements.

2. Enforcement of the act on protection of competition

2.1 Agreements restricting competition

2.1.1 Statistics

12. The most important activities of the Antimonopoly Office of the Slovak Republic primarily include interventions against so-called cartel agreements, which eliminate competition and seriously harm both consumers and the country's economy. The competitiveness of the sectors exposed to long-term effects of cartel agreements becomes significantly weaker, accompanied by the disappearance of cost or innovation effectiveness, especially due to the absence of competitive pressure.

13. These agreements, which take various forms of restricting competition, from joint agreements on the prices of goods or services all the way to the division of geographical or product markets, and actually reduce consumer benefits and lead to an ineffective allocation of resources. The danger and resulting negative impacts of such restrictive market output of business entities are also evident from general statistical data, according to which, for example, the establishment of price cartels may lead to an increase in the prices of products and services from 10% to 50%, depending on the nature of specific cases related to the existence of agreements restricting competition.

14. Cartel behaviour of enterprises affects the very nature of free and natural activities of entrepreneurs in the market, which means making decisions on prices and output on the basis of natural competition and consumer preferences, and not only causes deformation of optimal utilization of resources, but also transfer of profit from illegal activities solely to a small group of participants in the cartel. The danger of such conduct of business entities for society as a whole must be naturally subject to equivalent, that is, strict, sanctions on the part of the Office, also because such practices are generally perceived to be the most serious violations of the Act on Protection of Competition. The risk of discovery and subsequent sanctions related to these agreements restricting competitions must be higher than extra profit or profit acquired as the result of mutual collusion.

15. The unacceptability of the existence of agreements restricting competition in this manner and the urgency of their speedy and successful elimination were the main reason for the incorporation of the so-called leniency principle into the competition legislation, which creates an effective space for entrepreneurs to cooperate with the Office and the possibility of eliminating guilt related to the violation of the law by fulfilling the conditions prescribed by the law. The leniency principle is an instrument for increasing the effectiveness of uncovering and solving cases relating to the establishment of cartels on markets within a relatively sophisticated environment, including obtaining vital evidence of their existence on the basis of active cooperation by entrepreneurs themselves. Ensuring a "certain guarantee" for an effectively cooperating entrepreneur establishes, to a certain extent, a balanced relationship between the Office and an entrepreneur participating in a cartel arrangement.

16. During the course of 2003, the Office dealt with 120 cases regarding agreements restricting competition, within which it issued 57 decisions, 72% of which banned an agreement restricting competition or part thereof, while 7% of the decisions concerned negative clearance. Five percent of the decisions individually exempted an agreement restricting competition from the legal ban, and approximately **16%** were procedural **decisions**. At the same time, approximately 26% of proceedings were initiated at the request of entrepreneurs and 74% by the Office itself. During the course of 2003, the Office issued 13 opinions on submitted draft agreements restricting competition. The largest number of cases was concentrated in the sectors of chemical industry and transportation. During the reported period, the Office issued fines totalling SKK 7,554,454 (175 685 EUR) by means of decisions regarding agreements restricting competition.

2.1.2 Description of significant cases

SLAG – SCRAP, a.s. Košice – Application for granting an individual exemption

17. Based on an application of enterprise SLAG - SCRAP, a.s. Košice for granting an individual exemption for an agreement restricting competition, the Office assessed, within proceedings, the Framework Agreement for the years 2002 – 2003 concluded between the enterprises U.S. Steel Košice, s.r.o. and SLAG - SCRAP, a.s. Košice, which especially concerned the establishment of the quantity, product range, quality, and conditions for supplies of blast furnace granulated slag and blast furnace gravel with respect to all contracts concluded between the parties in 2002 and 2003.

18. The proceedings regarding the granting of an individual exemption from the legal ban on the agreement restricting competition are based on the assessment of the fulfilment of the criteria stipulated by law, the cumulative fulfilment of which is required for an individual exemption of an agreement restricting competition, namely the Framework Agreement subject to assessment in this case. The core of this assessment is an analysis of the balance of benefits resulting from the aforementioned agreement compared with the detrimental effect on competition caused by direct implementation of the agreement. In this case, the relevant markets were the market of blast furnace granulated slag supplies and the market of supplies of blast-furnace gravel and natural gravels. Blast-furnace granulated slag, produced from waste coming from steel production (U.S. Steel Košice, s.r.o. is the only producer in Slovakia with a 94% market share; as a result, the remaining percentage is covered by imports from the Czech Republic) is intended for the manufacture of cement and represents an irreplaceable component in the production of mixed cements, which forms the basis for potential customers of this product, which cannot be replaced in cement production. Based on an investigation, the Office arrived at the conclusion that cement producers in Slovakia depended on this one and only source of blast furnace granulated slag within the territory of the Slovak Republic, which corresponded to the relevant geographical market in this case.

19. In the Framework Agreement, the parties agreed that SLAG – SCRAP, a.s. Košice (in which two cement producers are shareholders) would also provide this commodity for the needs of other customers (competing cement works such as Ladce, Horné Sŕnie, and so forth) to the extent of purchased blast-furnace granulation products, which included the obligation according to which any quantity of goods produced by U.S. Steel Košice, s.r.o. beyond the contractual framework would be offered to SLAG – SCRAP, a.s. Košice in the first place. Only if this company were not interested, the goods would then be offered to other entities. The aforementioned provisions required SLAG – SCRAP, a.s. Košice to supply contracted goods to the companies that were not parties to the Framework Agreement and restricted freedom of conduct, decision-making, and determination of business conditions of this company. At the same time, when exercising its pre-emption right, SLAG – SCRAP, a.s., Košice became an exclusive customer of contracted goods from U.S. Steel Košice, s.r.o. The aforementioned arrangement also limited third parties, i.e. potential buyers of the goods, which did not have the possibility of receiving the goods directly from U.S. Steel Košice, s.r.o. The combined share of the enterprises U.S. Steel Košice, s.r.o. and SLAG – SCRAP, a.s. Košice on the relevant market of blast furnace granulated slag supplies amounted to as much as 90% during the reported period. Given the high market share and the fact that, due to the Framework Agreement, other competing companies producing cement became dependent on receiving blast-furnace granulated slag from their competitors - shareholders in SLAG - SCRAP, a.s. Košice, this resulted in a subsequent negative impact on competition, and it was not possible to grant an individual exemption to this Framework Agreement, because the conditions necessary for granting an individual exemption were not fulfilled.

Slovak Chamber of Pharmacists – decision of the association of entrepreneurs

20. During the course of 2003, based on a request from the Association of Discriminated Pharmacists, the Office investigated the procedure taken by the Slovak Chamber of Pharmacists (SLEK) when issuing opinions on professional and ethical qualifications for the performance of pharmaceutical care. Based on the investigation results, the Office initiated administrative proceedings against SLEK.

21. It followed from the documents that the Office managed to obtain that in the case of several pharmacists who applied for a certificate of professional and ethical qualifications for the performance of pharmacist professions, which is required for the opening of a new public pharmacy, the relevant Regional Chambers of Pharmacists (RLEK), which dealt with their applications, suspended proceedings regarding this matter and filed a petition for the commencement of disciplinary proceedings against these pharmacists. The reason for this procedure was the alleged violation of obligations of SLEK members defined in Article 15 (2) (a) of Act No. 216/2002 Coll. on Pharmacists' Authorization to Perform Their

Profession and, among other things, in accordance with the Code of Ethics for Pharmacists. According to RLEK, pharmacists interested in opening a new pharmacy acted in contravention of the provisions of the Code of Ethics for Pharmacists, according to which pharmacists are required to help and support each other and to be fair and loyal to each other if the opening of a new pharmacy threatens the operation of an existing pharmacy.

22. The Office arrived at the conclusion that the conduct of RLEK created a barrier restricting the entry of new entrepreneurs into the market of provision of pharmaceutical care and discriminated against entities interested in providing pharmaceutical care. The Office assessed this conduct as an agreement restricting competition according to Article 4 (1) of the Act, which is prohibited, and imposed a fine on SLEK.

2.2 Abuse of a dominant position

2.2.1 Statistics

23. A company's dominant position manifests itself, among other things, in its ability to increase prices above the competitive level without any considerable loss of volume of business, which would mean that this price increase is unprofitable and must be revised. The decisive factor for the assessment of a dominant position is the existence of an entrepreneur's ability to increase the prices of its products above the market (competitive) level for a relatively long duration, and consideration is also given to the market's ability to exert adequately effective pressure on the given entity's conduct subject to assessment. Business entities having a dominant position often face the temptation to inappropriately use these advantages and capabilities resulting from their unique position.

24. The competition rules dealing with the conduct of dominant market players abusing their position are aimed at securing that, given the market structure, enterprises having a dominant position act in a manner close to the competitive level. For example, one form of abuse is the application of inappropriate business conditions by a dominant company, which, in essence, usurps commercial benefits that would not be generated under normal competition conditions. A dominant enterprise must, given its market position, accept stricter rules and/or greater restrictions than other players on the market. Generally speaking, this is a type of a "price" to be paid for an "exclusive position," as the competition law does not allow this enterprise to make full use of its economic power and, consequently, excessive ineffectiveness of allocation on the market.

25. In this context, larger problems arise on the market, especially in the cases of vertical integration if a dominant company is present in the related competing markets at the same time. If such structural connections are established, dominant players resort to various forms of abusive practices, inappropriately using the advantages of their dominant position to restrict competition on the related markets.

26. Restrictive practices of entities in a dominant position create artificial barriers to competition, which groundlessly exclude existing or potential competition. The conduct of dominant companies having the character of abuse may be at a horizontal, vertical, or unilateral level, or based on specific agreements. A dominant business entity may use various forms of conduct or behaviour to exclude or prevent smaller entities from their natural "expansion" on the market, namely by the refusal of supplies, predatory conduct, discrimination, activities tied to certain conditions, exclusivity, and so forth. The gravity of negative impacts of activities and conduct of dominant companies on the market and third parties leads to a very strict assessment and sanctions on the part of the Office, because this constitutes a very serious violation of the competition rules.

27. In the reported period, abusive practices were most frequently assessed in the telecommunications sector, which is generally characterized by the highest incidence of restrictive practices. The Office also recorded instances of abuse of a dominant position in the sectors of transportation, water management, and the media.

28. During the course of 2003, the Office assessed a total of 55 cases and issued 37 decisions, and imposed fines in the amount of SKK 184,985,474 (4 301 988 EUR).

Description of significant cases

Tlačová agentúra SR – approval of the conclusion of a contract being tied to unrelated obligations

29. During the reported period, the Office assessed and decided on proceedings regarding the Tlačová agentúra SR [News Agency of the Slovak Republic] (hereinafter referred to as "TA SR"), which centered on the refusal to provide a price offer and conditions for the purchase of news and the approval of the conclusion of a contract being tied to the purchase conditions and other unrelated services. When analyzing the combination of the supply and demand for news services, the Office also examined the conditions under which TA SR was operating on the market of domestic, international, economic, sports, video, and TOP news programs provided in the Slovak language within the territory of the Slovak Republic and arrived at the conclusions set forth below.

30. The Office stated that an important competitive advantage possessed by the company was the fact that the company received funds from a special chapter of the state budget. The reason for this situation is that this company is required by law to carry the full wording of statements made by ministries and central bodies of state administration and report on standpoints of the individual state administration bodies, the government, and the president, as well as on Parliament's sessions and so forth. Funds allocated by the state on an annual basis enable the company to cover any losses incurred in connection with its business activities to which the aforementioned legal obligation does not apply. The aforementioned system of additional financing of the enterprise TA SR eliminates the risk of economic problems for this company and does not pressure it to carry out effective and natural business activities on the market precisely because state funds are used for activities that are not related to the tasks assigned to this company by law. The absence of separate accounts and records of actual expenses related to the mandatory provision of certain news as required by law enables the company to cover its commercial activities by state funds. This "softer" environment established for the enterprise TA SR deforms and distorts the competitive environment and creates room and conditions for this enterprise to act independently with respect to its competitors and third parties.

31. In this particular case, SITA, a private competing company operating in the markets of domestic, economic and sports news, requested a price offer and conditions for the purchase of the news service in order to supplement its news service with information that the company was unable to obtain from other sources, because it was exclusively offered by enterprise TA SR, which was rejected because the customer was a competing company. The Office confirmed that the SITA company had the indisputable right to this information, being not only a regular customer of news services of the TA SR company on other markets, but also an enterprise on the markets where its direct competitor was operating.

32. Among other things, the obligation of the enterprise TA SR to ensure and supply verbal and video news to legal entities in the Slovak Republic also resulted from a special law. The fulfilment of this obligation was covered by funds from the state budget, which was the reason why these funds were provided to the dominant player.

33. Another practice of the aforementioned company consisted of tying the customer's approval of the conclusion of an agreement on the supply, purchase and use of domestic, video, and TOP news to the condition that the other party would also purchase other services, namely other separate types of news services, such as sports, international, and economic news, with respect to which the tied purchase was not justified and, moreover, the private company SITA also operated on the markets of the provision of sports and economic news. The Office arrived at the conclusion that the individual types of news services should be provided separately, while their provision in the so-called packages was only justified as a reaction to demand generated on the basis the customers' interest, needs, and requirements. In this case, the Office came to the conclusion that the aforementioned tying of services eliminated the customers' possibilities to switch over to another competing company and this conduct led to the deformation of competition. The Office described both practices as restrictive practices on the part of the enterprise TA SR, having the character of abuse of a dominant position on the market, which is prohibited by law.

Východoslovenská vodárenská spoločnosť, a.s. – unjustified refusal of supplies

34. In August 2000, Východoslovenská vodárenská spoločnosť a.s. Košice [Eastern Slovak Water Management Company] (hereinafter referred to as "VVS a.s. Košice") stopped supplying unprocessed water to the company DAMIJO KOMPLET, s.r.o. Svidník (hereinafter referred to as "DK s. r. o."), which used the unprocessed water to produce table water. Despite the demonstrable effort on the part of DK, s.r.o to settle business relations, VVS a.s. Košice refused to resume unprocessed water supplies.

35. The Office conducted an investigation and arrived at the conclusion that VVS a. s. Košice was an entity having the character of a natural monopoly, which was the administrator of the water distribution sewerage systems in the territory of eastern Slovakia and a dominant supplier of water. This company was the only possible unprocessed water supplier for DK, s.r.o.

36. The Office also found out during the investigation that it was, and still is, fully viable for DK s. r. o. Svidník to connect to the unprocessed water distribution channels of the company VVS a. s. Košice. No restrictions in terms of technology, safety, capacity, or other restrictions were found due to which it would be necessary to stop unprocessed water supplies. DK, s.r.o. also met all technical, administrative, and business conditions related to unprocessed water supplies.

37. Therefore, the Office assessed the refusal of the company VVS a. s. Košice to supply unprocessed water to DK s. r. o. Svidník and its failure to resume these supplies after the attempts of DK s. r. o. Svidník to conclude a new agreement in 2003 as abuse of a dominant position of the company VVS a. s. Košice on the relevant market; a fine was imposed on the company, and it was ordered to remedy the illegal state of affairs within 30 days.

Slovenské telekomunikácie, a.s. – enforcement of inappropriate conditions

38. During the reported period, the Office assessed and decided on the conduct of the company Slovenské telekomunikácie, a.s. [Slovak Telecommunications] (hereinafter referred to as "ST, a.s.") related to the enforcement of inappropriate business conditions on the market of telecommunication services based on the ADSL technology provided via the fixed telecommunication network with local lines (wholesale service) to Internet service providers. DSL-based technologies, including ADSL, can only be used in the fixed public telecommunication network (PVTS) with local lines, as a consequence of which PVTS with a local line ending in the user's location forms an inevitable part of each connection to the Internet via ADSL.

39. It is practically impossible to provide ADSL-based telecommunication services without the enterprise ST, a.s. at present. In this case, the dominant entity, ST, a.s., operated on the wholesale service

market in a non-competitive environment, as well as on the related market of the provision of high-speed data transmission on the basis of ADSL technology for end users (retail service), where this company could meet with competitors when providing the aforementioned service to end users.

40. The Office's task within these proceedings was to prevent the dominant player on the wholesale service market from gaining an inappropriate market advantage resulting from restriction of competition on the related retail service market. The inappropriate conditions set by the company ST, a.s. for the provision of the basic service resulted in the elimination of competition on the related market. The inappropriate conditions of entry into the market of the provision of Internet services with high-speed data transmission on the basis of ADSL technology to end users were clearly aimed at closing the relevant market and had a considerably negative impact on the possibility of developing competition in that market, which was in great demand from the viewpoint of other competing companies, given its high attractiveness to end users. The conduct of the enterprise ST, a.s., which, by setting inappropriate conditions for the supply of the wholesale service, in fact, prevented and eliminated any competition on the related/affected retail service market, would result in a situation where this dominant company, due to the setting of inappropriate conditions, would act as the only player on the related retail service market as well, not as the result of natural competition, but because of abuse of its dominant position. The Office assessed this conduct as abuse of a dominant position and imposed a fine on the dominant company ST, a.s. for the violation of the law resulting from the aforementioned restrictive practice.

2.3 Mergers and acquisitions

2.3.3 Statistics

41. Concentrations have become an important part of the economic life of modern market economies. Concentrations, based on economic links between entrepreneurs, lead to structural changes on the market, accompanied by reallocation of assets and human resources. These processes are often accompanied by the production of goods at lower cost and of higher quality, as well as by the introduction of new products on the market.

42. The institution of control of concentrations is a mechanism primarily aimed at protecting consumers from negative impacts of inappropriate market power resulting from such economic transactions. The purpose of control of concentrations is to maintain a competitive environment on markets by means of intervention against concentrations aiming at establishing or strengthening a dominant position on the market, which negatively affects the competitive market environment. Not all concentration cases must necessarily arouse interest from the viewpoint of competition; this only applies to those that could lead to the establishment or strengthening of a dominant position by subsequent accumulation of the existing market power.

43. In the cases where subsequent effects of concentrations subject to assessment provoke the competition institution's concern, the Office is required to very thoroughly examine and assess the effects of such concentrations, including the assessment of developments expected on the individual markets in question. The reason is the possibility that these concentrations may lead to a considerable and permanent (long-term) reduction of competition on the given market, increase prices and set business conditions to the disadvantage of third parties. This is partially the result of possible motivation behind concentration, which may be aimed not only at achieving the certain effectiveness, but also at reducing competitive pressure, creating market power directed at higher prices, and so forth.

44. In optimal conditions, concentrations can have a wide range of positive effects, not only on their shareholders, but also on third parties, as they can make use of quantity savings, reduce prices of goods sold to end consumers, increase their quality and innovation, and thus better satisfy the needs of

consumers. In these cases, concentrations serve as an instrument for increasing "welfare," but it is necessary to distinguish between this type of concentrations and those whose effects are directed at creating and strengthening dominant structures on the market, which do not bring any benefit to consumers.

45. In 2003, when assessing horizontal concentrations, the Office identified serious competition problems in a number of cases. If a concentration of entrepreneurs creates or strengthens a dominant position, which results in serious obstacles to effective competition, the Office will prohibit this concentration.

46. If it is possible to eliminate negative effects of concentration on competition by its modification, the Office will approve the concentration, but its approval will be tied to the fulfilment of certain conditions, which will ensure the same competitive situation as that existing on the relevant markets before the concentration. If a concentration cannot be modified in such a way that it does not have a negative impact on the competition conditions, the Office will prohibit the concentration creating or strengthening a dominant position, which would otherwise lead to serious obstacles to effective competition.

47. In 2003, the Office issued 147 decisions on concentrations and 18 opinions on the submitted concentration intentions. Of the total number of the decisions, concentration was approved in 82 cases and conditionally approved in three cases. Concentration was prohibited in three cases and proceedings were terminated in 21 cases. The remaining decisions concerned granting or a refusal to grant an exemption, return of an administration fee, and so forth. Among the sectors with the highest number of concentrations were the transportation sector, pharmaceutical industry, food-processing industry, and chemical and construction industries. In 2003, fines totalling SKK 1,550,000 (36 046 EUR) were imposed for delays in reporting concentrations and the violation of suspension of concentrations.

2.3.4 Description of significant cases

UCI CE and Ster Century SR - prohibited concentration

48. Horizontal concentrations, on which the Office issued valid decisions in 2003 and within the assessment of which serious competition problems were ascertained, included a concentration resulting in the Dutch company UCI CE acquiring total control over the Slovak company Ster Century SR.

49. Before the concentration, both companies operated in Slovakia as sole operators of multiplex cinemas - UCI CE operated a movie theater with 12 screens and a capacity of 2,300 seats in the AUPARK shopping and entertainment center in Bratislava, while Ster Century SR operated a movie theater with eight screens and a capacity of 1,600 seats in the Polus City Center shopping and entertainment center in Bratislava.

50. This concentration led to changes in the competition conditions on the relevant market of public screening of movies in movie theaters, which had already been considerably concentrated before said concentration, as UCI CE and Ster Century SR controlled approximately two-thirds of the market, with the remaining part being formed by several smaller entrepreneurs with low market shares for a long time. Given the position of the smaller companies on the market and other factors (obsolete equipment, low capacity and low number of movie theaters, narrow screening profile, inability to offer additional services, lack of funds for modernization and renovation, etc.), they were unable to exert competitive pressure on the two aforementioned strongest players on the market.

51. If the aforementioned concentration was carried out, this would eliminate the most important competitor of the company UCI CE. After the concentration, UCI CE would not be subject to any

significant competition and could act independently in the market of public screening of movies in movie theaters and, for example, increase ticket prices. It would be able to do so thanks to its strong market position, with its substantial edge over other entrepreneurs incapable of exerting substantial competitive pressure on UCI CE, as well as due to large barriers to entry into market and, consequently, the unlikelihood that a significant competitor would enter the market. As this concentration would also eliminate UCI CE's competitor with the highest standard of services provided, this would also prevent any pressure on the improvement of services, offering of new services, innovation, and modernization, which could generally lower the quality of services being provided to customers. Following the concentration, UCI CE would also possess significant negotiating power with respect to film distributors, which would create room for the company to act independently with respect to film distributors, for example, by setting inappropriate conditions. Given the established market structure, film distributors would be forced to accept the conditions set by UCI CE, because they would not have an adequate substitute for screening their films in cinemas.

52. The implementation of the aforementioned concentration would result in the establishment of a dominant position of UCI CE, which might create significant obstacles to effective competition on the relevant market of public screening of films in cinemas.

53. As the Office did not find within the proceedings any conditions that would be effective and easily controllable and eliminate the competition problem arising from the concentration, and the party to the proceedings did not propose any conditions, the Office prohibited the concentration between UCI CE and Ster Century SR.

Südzucker AG and Saint-Louis-Sucre, S.A. - prohibited concentration

54. Concentrations on relevant markets with an oligopoly structure may lead to the creation of conditions for entrepreneurs to coordinate their conduct without entering into an explicit agreement, or make coordination easier for entrepreneurs operating on the market, who had already coordinated their conduct before the concentration, and, consequently, to the establishment or strengthening of the so-called collective dominance - a dominant position of two or more entrepreneurs on the relevant market.

55. The first case of concentration, within the assessment of which the Office identified the establishment of collective dominance, is the concentration between the German company Südzucker and the French company Saint-Louis Sucre.

56. Both companies are important sugar producers in Europe. Südzucker and the Agrana company jointly controlled SLOVENSKÉ CUKROVARY [Slovak Sugar Factory], the sugar factory in Rimavská Sobota and a plant in Sereď, while Saint-Louis Sucre and the Dutch company Tate&Lyle Holland BV indirectly controlled the sugar factory in Dunajská Streda – Eastern Sugar Slovensko in the Slovak Republic before the concentration.

57. The concentration affected two relevant markets, namely the relevant market of production and sale of sugar for consumption in production and the relevant market of production and sale of sugar for final consumption, the dimensions of which were given by the territory of the Slovak Republic. Slovenské cukrovary, Eastern Sugar, and Považský cukor operated in these relevant markets.

58. In the case of the aforementioned concentration, it turned out that the structure and character of the relevant market, especially in view of a high degree of their concentration, homogeneity of goods, weak growth, low level of innovation, inflexibility of demand, large transparency, and symmetry of the enterprises operating on these relevant markets, would create conditions for these enterprises to coordinate their conduct if the concentration were carried out.

59. Following the concentration, two independent enterprises - Slovenské cukrovary and Eastern Sugar Slovensko on one side and Považský cukor on the other - would only be present in both relevant markets. This means that, after the concentration, a small number of independent business entities with comparable market shares and market power would operate on the relevant markets. Despite certain differences, the mutual position of the two market players would be largely comparable and symmetric from the viewpoint of market power, cost structure, and technological level, which would also reinforce the tendency to coordinate their conduct on the market. Given the character of the relevant markets subject to assessment, their structure resulting from the concentration would create a prerequisite that the two business groups would naturally prefer long-term mutual coordination on the market to any competition battle, because possible competition would primarily lead to a decrease in profits.

60. At the same time, it was proven that the concentration would create conditions for the long-term sustainability of coordination of the enterprise's conduct on these relevant markets and, consequently, the application of a long-term joint policy on the market, which would not be threatened by an expected reaction of the remaining competitors or pressure from buyers.

61. The assessed concentration would create a collective dominant position, which could result in significant obstacles to effective competition on the relevant market of production and sale of sugar for consumption in production and the relevant market of production and sale of sugar for final consumption in the Slovak Republic. As this could not be modified by any conditions, the Office prohibited the concentration.

62. The enterprise Sudzucker appealed the first-instance decision, but the Council of the Office confirmed the first-instance decision. A lawsuit has been filed against the Office Council's decision with the Supreme Court of the Slovak Republic, which has not yet decided on the matter.

General Electric Company acquiring control over AGFA's NDT business - conditionally approved concentration

63. In the case of the concentration consisting of the US General Electric Company (GEC) acquiring control over the Belgian company AGFA-Gevaert, which is involved in the production and sale of equipment for non-destructive tests of materials – ultrasound NDT devices and NDT X-ray films and chemicals for their development, the Office tied its approval of the concentration to the conditions that would eliminate significant obstacles to effective competition arising from the concentration.

64. The concentration resulted from an agreement on the purchase of shares and assets and on the basis of a long-term exclusive obligation of AGFA-Gevaert to supply NDT X-ray films and chemicals for their development solely to GEC.

65. Both GEC and AGFA-Gevaert are European leaders in the sphere of development, production, and sale of NDT equipment. The two companies were almost exclusive suppliers of ultrasound thickness gauges, ultrasound crack detectors, and converters to the Slovak Republic. The concentration would eliminate an important competitor of GEC on the relevant markets, while, given the barriers to entry, insignificant growth of demand for the aforementioned goods, non-existence of an important current or potential competitor, and a substantial edge on other competitors operating on the relevant markets, GEC could act independently, for example, by increasing the prices and reducing the quality of produced goods on a long-term basis after the concentration.

66. However, since GEC agreed to modify the concentration in such a way as to prevent horizontal overlapping of business activities of the parties subject to the concentration, which removed negative effects of the concentration, the Office approved the concentration.

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

67. After exhausting regular remedial measures (appeals) against the Office's decisions, a party to administrative proceedings may file a lawsuit requesting that a court examine the legality of the decision in question. According to Article 246 (2) (a) of the Civil Judicial Code, examination of decisions issued by state administration bodies, including the Office, is within the jurisdiction of the Supreme Court of the Slovak Republic.

68. In 2003, the Supreme Court of the Slovak Republic dealt with six lawsuits and, consequently, issued six decisions of the Supreme Court of the Slovak Republic. Of the total number of cases, the Supreme Court of the Slovak Republic dismissed three lawsuits in full, confirming the Office's decisions, terminated the proceedings in one case, and overruled the Office's decision and returned the matter for new proceedings in two cases. This included the case related to the abuse of a dominant position by Slovenské telekomunikácie, a.s. and the agreement restricting competition concluded between PST - Slovakia a.s. and PROVEST spol s.r.o.

69. In 2003, five new lawsuits requesting the examination of the legality of a decision were filed, as well as one new lawsuit requesting the examination of the legality of the official procedure, on which the Supreme Court of the Slovak Republic had not decided by the end of 2003.

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

70. In connection with asserting the so-called competition advocacy, the Antimonopoly Office of the Slovak Republic monitors and draws attention to the need to introduce the competition principles and remove competition restrictions in society within interdepartmental vetting procedures related to draft legislation and draft economic blueprints concerning various sectors of the economy. The Office's task is to maintain communication with the relevant ministries and, if necessary, with the National Council of the Slovak Republic during the legislative process and, by issuing opinions, to assert elimination of possible restrictions to competition. In the reported period, the Office assessed 575 drafts and put forward fundamental objections to the cases involving possible restrictions to competition. Several examples are set out below.

3.1 Liberalisation of professional services

71. The process of the establishment of many professional and cross-sector chambers, especially on the basis of legal regulations, has been made more dynamic since 1989. However, some legal regulations concerning professional associations inappropriately regulate the provision of professional services and impose various restrictions that do not correspond to the needs of the market and especially consumers. These restrictions to the performance of professional services include the determination of prices and fees for services, advertising restrictions, exclusivity, inappropriate requirements for entry, structural restrictions, and so forth. During the course of 2003, the process of reforming the regulation of professional services was launched in order for the sector to become more open and to introduce a greater degree of liberalization and competition on the relevant markets of provision of professional services.

72. The purpose of the reform of regulation of professional services is to only introduce a regulatory mechanism in those markets of the provision of these services where market failures occur especially due to external factors – the impact of the provision of a professional service on third parties or information asymmetry between customers and service providers due to the absence of expert knowledge on the part of consumers - and to eliminate inappropriate regulation that could exclude or restrict competition among

providers of professional services and, consequently, reduce their initiative in pressuring for cost effectiveness, lower prices, quality growth, and innovative changes.

73. The procedure within the aforementioned reform is based on the adoption of Government Resolution No. 830, where the government has approved a set of criteria as the basis for reassessment and change of the current level of regulation of the individual types of professional services with the aim of their subsequent liberalization.

74. **Draft Act on Postal Services.** Among other things, the Office objected to the incorrect definition of universal service in the draft law, which allowed extending the scope of the law to business entities operating outside the areas subject to the draft law, including the imposition of inappropriate obligations resulting from the incorrect definition. The Office also objected to the establishment of the so-called compensation fund, to which all providers of postal services were required to contribute and which would serve to cover losses of the one and only company providing universal postal service. The Office is of the opinion that the existence and continuation of this company's postal exclusivity adequately ensure the covering of losses resulting from the provision of universal service. Based on this fact, the existing compensation does not have to be extended any further, and it is not necessary to establish the compensation fund and require all other business entities operating on the market of the provision of postal services to make the proposed payments.

75. **Draft amendment to the Act on Waste.** The Office raised a fundamental objection to the amendment to the Act on Waste and requested eliminating the exclusivity of the Recycling Fund as the only clearing center for advance payments for packaging. If the barriers to entry into the market of repurchasing of packaging and providing clearing services with respect to advance payments for packaging are removed, this will create room for the establishment of a competitive environment and entry of other business entities in this market. Deputies of the National Council of the Slovak Republic have accepted this objection.

76. **Draft Act on Access to Railroad Infrastructure.** Regarding this draft law, the Office requested the abolition of the provision contained in the draft law according to which the infrastructure manager was entitled, in the case of a lack of capacity, to preferentially allocate infrastructure capacity to applicants intending to operate railroad freight transport for export of Slovak goods or for the needs of Slovak producers. The reason for the requested abolition of the proposed provision of the law was the elimination of discrimination against foreign producers resulting from preferences given to Slovak producers with respect to the allocation of infrastructure capacity at the expense of foreign producers.

77. **Draft Act on Slovak Television.** Within the assessment of the draft law, the Office expressed its disapproval of the restriction imposed on Slovak Television, as the draft law did not allow this company to open an account in a bank of choice operating in the Slovak Republic, including branches of foreign banks. At the same time, the Office proposed that administration of archives be excluded from the exclusive powers of Slovak Television in order to ensure non-discriminatory access to archives for other broadcasters in the Slovak Republic.

78. **Draft Act on Regulation of Network Industries.** Regarding the draft law, the Office adopted a negative standpoint on the transfer of powers in the sphere of regulation of business activities in the energy sector from the Office for Regulation of Network Industries to the Economy Ministry of the Slovak Republic, as a consequence of which the regulatory authority would only be established as a price regulator without the possibility of overall regulation of the entrusted network industries. Consequently, the Office requested a change in the system of control of the regulatory authority's decisions in order to ensure balance between independence and responsibility for this authority's output, especially by introducing the

obligation to consult and make public regulation procedures and methods, including the possibility of appealing decisions issued by this regulatory authority.

79. **Draft Act on the Energy Sector.** In connection with this draft law, the Office expressed a fundamentally negative opinion on the fact that only one single license had been granted for transport of oil and natural gas and transmission of electricity according to the law.

80. **Draft Act on Transformation of Post.** In this case, the Office requested that a body other than the Ministry of Transport, Post and Telecommunications of the Slovak Republic be authorized to administer shares and exercise shareholder's rights in Slovenská pošta [Slovak Post], as it was necessary to separate the position of a state administration authority setting the conditions and rules of operation on the market of postal services from exercising shareholder's rights in the same area.

81. The Office made similar comments on the draft Act on Airport Companies.

82. **Draft Act on Electronic Communications.** Several fundamental objections concerned the ensuring of a link between the draft law and the existing competition legislation and establishing a joint philosophy of protection of competition.

4. Resources

4.1 Annual budget

	2003		Change
Total expenses	42 016 000 Sk	1 247 283 USD	+ 9 195 000 Sk

4.2 Number of employees

	2003	2002
Economists	23	32
Lawyers	13	8
Other experts	10	6
Other employees	16	15
Total	63	61