

THE SLOVAK REPUBLIC

(2000)

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Summary

1. In 2000, the Antimonopoly Office of the Slovak Republic dealt with a total of 64 cases within administrative proceedings, which the Office considered as anti-competitive practices, or which were described as such by the applicants. This number included 29 agreements that restricted or could have restricted competition. The remaining 35 cases concerned the evaluation of practices involving an abuse of a dominant position in the Slovak market.

2. During the reported period, a total of 134 concentrations were reviewed. This number included 99 decisions in the matter, 40 procedural decisions, and 26 cases that were not closed by the end of 2000.

3. Within its powers, the Office demanded a remedy from central bodies of state administration and municipal authorities in the cases where they had made decisions restricting competition. In 2000, the Office reviewed 18 cases of violation of the competition law, while demanding a remedy in seven cases. By the end of 2000, remedies were applied in six cases in accordance with the requirements of the Antimonopoly Office of the Slovak Republic.

I. Changes in the law and competition protection policy

1. *Protection of competition – present legal status*

4. The following legal regulations govern protection of competition in the Slovak Republic:

- The Constitution of the Slovak Republic, Article 55, paragraph 2, which states: “The Slovak Republic protects and supports competition”,
- Act of the National Council of the Slovak Republic No. 188/1994 Coll. on Protection of Competition, in the wording of later regulations (hereafter referred to as “Act on Protection of Competition”). Act No. 71/1967 Coll. on Administrative Procedure relates to proceedings before the Antimonopoly Office of the Slovak Republic (hereafter referred to as “Office”) as a subsidiary law,
- Criminal Code, which in § 149 limits the factual basis of the criminal act of abusing participation in competition.

2. *Legislative activities of the Office during 2000*

5. The year 2000 was especially significant from the viewpoint of the Office’s legislative activities. A result of the Office’s activities in connection with the creation of legal regulations is the Draft Act on Protection of Competition and on amendments to Act of the Slovak National Council No. 347/1990 Coll. on the Organization of Ministries and Other Central Bodies of State Administration of the Slovak Republic in the wording of later regulations, a Draft Decree on Calculation of Turnover and a Draft Decree on the Appropriateness of Declaration of Concentration.

6. In January, 2000, for the purpose of completing the above legal regulations, there was formed a working group composed of nine Office employees. The working group met regularly throughout the year.

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7. According to the Government Legislative Plan for 2000, the Office was to present a Draft Act on Protection of Competition and on amendment of Act of the Slovak National Council No. 347/1990 Coll. on the Organization of Ministries and Other Central Bodies of State Administration of the Slovak Republic in the wording of later regulations for deliberations of the Government of the Slovak Republic in September 2000. In its creation, the Office started from the valid Act on Protection of Competition, from Office experience in its application and from the legal arrangement of competition in the European Union. The draft act was prepared in harmony with the legislative intention prepared in 1999. In harmony with the Legislative Rules of the Government of the Slovak Republic, the draft act was the subject of inter-ministerial remarks proceedings, and was presented for deliberations by the Council of Economic and Social Agreement of the Slovak Republic, the Permanent Commission of the Government Legislative Council for Commercial and Civil Law, the Legislative Council of the Government of the Slovak Republic and the Meeting of Economic Ministers.

8. The draft act was also consulted with representatives of the directorate of the European Commission for Competition, and after approval by the Government of the Slovak Republic, was presented as information to the Council for Small and Medium Enterprising. After including the remarks of the stated bodies, the Draft Act on Protection of Competition and on amendment of Act of the Slovak National Council No. 347/1990 Coll. on the Organization of Ministries and Other Central bodies, of State Administration of the Slovak Republic in the wording of later regulations was presented for discussion by the Government of the Slovak Republic as scheduled, and was approved by the Government in October 2000. The probable effective date of the Act is 15.3.2001.

9. The new Draft Act includes, compared to the present version, more definitions of terms and a newly-adjusted concept of the term entrepreneur, the Draft Act deals with a new form of abusing a dominant position – the rejection of access to essential facility. The regulation of concentrations includes a new regime under which the concentration will be examined in the form of joint venture subject to the control of the Office with the aim or result of co-ordinating the competitive behaviour of entrepreneurs managing a joint venture. Marked changes in the area of judging concentration are increased turnover thresholds for participants or of their market share, above which the concentration is subject to control by the Office; description of turnover calculations for the purpose of the new Act and term extensions for proceedings of the Office regarding judging of concentration as well as for the acts of the entrepreneurs. It is proposed that the entrepreneur be entitled to ask the Office for an opinion regarding a proposed concentration.

10. In accordance with the communitarian competitive right, the proponent proposes a regulation of the prohibition of participants of concentration to execute rights and duties resulting from the raising of concentration until a decision comes into effect, and the regulation of statutory exceptions or exceptions of this prohibition, which are provided by the Office in the form of a decision. A joint body for making a decision on a protest is being established in the third part of the new Act, which is a contribution to ensure more independence and objectivity for the Office in appellate procedures. There is also a change in the appointment of the Office Chairman, who will be appointed and dismissed by the President of the Slovak Republic on a proposal of the Government of the Slovak Republic.

11. Within the provisions on proceedings, the proposal includes more exact and more detailed regulations, especially regarding the rights of third parties, namely the right to be heard, to take part in oral proceedings and to express their own opinion. There is proposed a longer general period for Office decision-making than the present one set up in the Act on Administrative Procedure, which still applies in a subsidiary manner to the Act on Protection of Competition. Special provisions regulate the protesting institution, its renunciation and withdrawal. Another extension of the legal regulation regards fines. Regulation of terms for fine imposition is new, wherein the Office distinguishes a subjective 4-year and an objective 8-year period, and the Draft Act also includes a more detailed description of criteria for the

determination of a fine. A completely new concept is that of fine reduction or exclusion on cumulative satisfaction of precisely determined conditions in competition limiting agreements.

12. The Draft Act includes a provision authorising the Office to issue three Decrees. Two of them, on the conditions of concentration notice and on turnover calculation, will become effective on 15. 3. 2001, also the effective date of the Act. The Decree on Conditions of Concentration Notice is based mainly on the respective legal enactments of the European Union whilst the Decree on Turnover Calculation is based on the experience of the Office and was prepared with the aim of improving the point of reference for entrepreneurs notifying a concentration.

3. *Decisions of the Supreme Court of the Slovak Republic on reviewing the legality of decisions issued by the Antimonopoly Office of the Slovak Republic*

13. According to Article 13 of the Act on Protection of Competition, if a participant in the proceedings does not agree with the final decision of the Office, he can file a lawsuit with the court requesting that the legality of the decision be reviewed. According to Article 246 paragraph. 2 letter a) of the Civil Procedure Code (hereafter referred to as CPC”) The Supreme Court of the Slovak Republic is competent to review decisions issued by central bodies of state administration, including the Office.

14. The Supreme Court of the Slovak Republic decided on 11 cases in 2000, of which six cases were struck down when the Supreme Court did not admit the substance of the bill of review of legality of the decisions of the Antimonopoly Office of the Slovak Republic. 18 cases were not completed.

4. *Protest of the General Prosecutor of the Slovak Republic*

15. According to Act No. 314/1996 Coll. on Prosecution in the wording of later regulations, a prosecutor is entitled to review the legality of process and decisions of public authority bodies in individual cases. In a case where a decision of a public authority issued in an individual matter infringes the law or other generally binding legal regulation, the prosecutor shall lodge a protest to the body that issued the unlawful decision or to the supreme or supervising body. The term for deciding on a protest is 30 days from the date of its lodging. The Antimonopoly Office shall proceed in proceedings on the prosecutor’s protest according to Article 69 of Administrative Procedure.

16. The Antimonopoly Office of the Slovak Republic decided in two protests by the General Prosecutor of the Slovak Republic in 2000.

II. Implementation of the act on protection of competition

1. *Proceedings in matters concerning anti-competition practices – agreements restricting competition and abuse of a dominant position*

- *Overall statistic evaluation*

17. During the reported period, the Office reviewed a total of 64 cases in administrative proceedings which the Office considered as anti-competition practices or which were described as such by the applicants. These included 29 agreements that restricted or might have restricted competition. The

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remaining 35 cases concerned the reviewing of practices of abusing a dominant position on the relevant markets of the Slovak Republic.

18. In total, 62 decisions were issued on these cases, including 42 in the matter and 20 procedural decisions, during the reported period.

- *Agreements restricting competition*

19. Article 3 of the Act on Protection of Competition states that agreements or concerted practices between entrepreneurs, as well as decisions of entrepreneurs' associations, which aim at or may result in restricting competition are prohibited, unless the Act provides otherwise. The prohibition especially applies to agreements restricting competition which directly or indirectly fix the prices of goods, a commitment to limit or control production, sales, technological development or investments, division of the market or of sources of supplies, a commitment by the parties to apply different trade conditions to individual entrepreneurs with regard to identical performance, or the conditions that the conclusion of contracts be made conditional upon accepting additional obligations not related to the subject-matter of the contract in terms of their nature or business practices.

- *Summary of proceedings – agreements restricting competition*

20. In 2000, a total of 29 were reviewed, (131 cases in 1999, 217 cases in 1998, 18 cases in 1997, 8 cases in 1996) including:

- 23 decisions in the matter,
- six procedural decisions,
- eight cases that were not completed by the end of 2000.

21. In 16 cases, participants in administrative proceedings lodged an appeal against the decisions issued in the first instance, including 5 cases that were not completed by the end of 2000.

- *Description of a significant case - agreements restricting competition*

MATADOR a. s. Púchov and exclusive dealer GMZ co. s.r.o. Tvrdošín

22. The Office, acting on its own initiative of 11 administrative proceedings in the matter of contracts restricting competition signed and fulfilled by the entrepreneur Matador a. s. Púchov (hereafter referred to as "Matador") and 11 „exclusive dealers". These dealers were included in this group by the entrepreneur Matador on the basis of their fulfilling regulated criteria. In light of the fact that these activities are factually connected together and that one of the participants of the contract restricting competition in each action is the same, i.e. the entrepreneur Matador, as an example we consider the description of the proceeding in the matter of a prohibited contract restricting competition between the entrepreneur Matador and GMZ Pneuservis. s.r.o. Tvrdošín (hereafter referred to as "GMZ Tvrdošín").

23. The basis of the examination of a contract restricting competition was a purchase contract signed between the entrepreneurs Matador and GMZ Tvrdošín which included the obligation of the seller (Matador) to supply the purchaser (GMZ Tvrdošín) with automobile tires, tubes pads and retreads according to order, which formed its inseparable part, from the stores of the Matador sales network, and

the obligation of the purchaser to take over the goods and to pay a contracted price. The subject of the purchase contract was, in its Annex No. 1 (hereafter referred to as „annex“) widened by the ordering of all goods (automobile tires, tubes and pads of all brands) which are the subject of further sale, exclusively from the seller i.e. from the entrepreneur Matador.

24. In the wording of the signed purchase agreement, the entrepreneur GMZ Tvrdošín appeared on the market as the purchaser and retailer of automobile tires, tubes and pads of all brands. The second contracting party, the entrepreneur Matador, did not appear on the market only as seller of products of its own brand but also as the seller of purchased, possibly imported, ranges of automobile tires and tubes, which the purchaser could secure from other sources for more favourable supply and price conditions. The exclusive seller, entrepreneur GMZ Tvrdošín, accepted the obligation in the form of exclusive purchase from the entrepreneur Matador of all brands of automobile tires, tubes and pads, from which indirectly follows a ban on making business with competing entrepreneurs selling similar or equivalent ranges of goods. This ban was reinforced by other conditions contained in the annex to the purchase contract, in which it was established that GMZ Tvrdošín order from the respective selling entrepreneur a minimum annual order in an amount of SKK 10,000,000 (228 990 EUR) without VAT and, in the case of not fulfilling the agreed conditions of exclusive purchase, the obligation to pay a contracted penalty in the amount of 50 percent of its turnover for the preceding three months. Under the stated sanction regulations, the purchaser was not given the possibility to decide on the purchase of similar products from another seller at more advantageous conditions.

25. The Office documented that this is a contract restricting competition with negative results on the market because it does not fulfil the four legally established conditions. The Office arrived at this conclusion on the basis of the statements of the contract participants themselves which directly or indirectly confirmed that the contract deformed the distribution of automobile tires and tubes on the SR market in light of the inability of the entrepreneur Matador to secure a larger range of imported brands in the required supply period or for the promised price conditions. The second participant in the contract, the entrepreneur Matador, confirmed in discussions its worsened financial situation, which was connected to the inflexibility in providing imported brand goods to the exclusive seller. Therefore, Matador authorised GMZ Tvrdošín for the purchase of goods which it did not have at its disposition in its stores from other importers in the Slovak Republic.

26. This subject contract restricting competition was advantageous only for the partners to the contract. For the entrepreneur Matador it ensured turnover on the required level and for the exclusive seller financial advantages in the form of a 3 percent discount, in which the consumer did not share, as unequivocally follows from the goal of this contract restricting competition.

27. The first-degree body evaluated the negative impact of this contract on the participants in the relevant market on two levels:

1. on consumers
2. negative impact on other distributors and dealers

28. The first-degree body considered the contract and its contents in Annex No. 1 as a documented restricted competition contract in the sense of the provision of § 3, paragraph 2, letter e) of the Act on Protection of Competition since it conditioned the signing of the purchase contract on the acceptance of the additional obligations contained in the Annex to the purchase contract, which by their nature do not relate in the subject contract even to business customs.

29. The second-degree body, on the basis of a presented remonstrance by the Matador entrepreneur confirmed the accuracy and fullness shown throughout the proceedings. It performed only a change to the

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legal assessment of the case, implemented by a change in the arbitration part of the decision in the sense that this is a contract on exclusive purchase of goods which is, in the sense of § 3, paragraph 1 of the Act, prohibited and, according to § 3, paragraph 3 of the Act on Protection of Competition, invalid.

30. For infringement on the ban on signing contracts restricting competition, a fine in the amount of SKK 700,000 (16 029 EUR) was imposed on the entrepreneur Matador. There was no fine imposed on the second participant in the contract, GMZ Tvrdošín on account of its willingness to provide evidence documents to the Office as well as its proven attempts to change the conditions of the contract restricting competition by oral and written remarks to the entrepreneur Matador.

31. The entrepreneur Matador, within the legal period, presented an appeal to the Supreme Court of the SR on examination of the second-degree decision. The Supreme Court of the SR, after examining the challenged decision came to the conclusion that the challenged decision is in harmony with the law, and therefore refused the appeal of the entrepreneur Matador.

32. In the same way, there were a further 10 contracts restricting competition signed between the entrepreneur Matador and individual exclusive dealers. The entrepreneur Matador was, by decisions in these administrative proceedings given a fine in the amount of SKK 7,200,000 (164 873 EUR), and the exclusive dealers a total sum of SKK 270,000 (6 183 EUR).

- *Abuse of a dominant position*

33. An entrepreneur or several entrepreneurs that are not exposed to significant competition, or that, with respect to their economic power, can act independently in relation to other entrepreneurs and consumers and can restrict competition (Article 7 of the Act on Protection of Competition) are in a dominant position on the market. By abuse of a dominant position, which is prohibited, is understood mainly direct or indirect imposition of unfair contract terms, limitation of production, sales or technological development of goods to the prejudice of consumers, application of different terms for identical or comparable performance with regard to individual entrepreneurs by which they are disadvantaged in competition, making agreement to signing a contract conditional upon accepting further performance which does not relate to the required subject in businesslike or in business practices.

- *Summary of proceedings – abuse of a dominant position*

34. 32. In 2000, a total of 35 cases were reviewed, (41 cases in 1999, 58 cases in 1998, 27 cases in 1997, 26 cases in 1996), including:

- 19 decisions in the matter,
- 14 procedural decisions,
- two cases that were not completed by the end of 2000.

35. In 15 cases, participants in proceedings lodged an appeal against the decision of the first instance body, including two cases that were not completed by the end of 2000.

- *Description of a significant case - abuse of a dominant position*

Stredoslovenské energetické závody š.p. (Central Slovak Energy Plants š. p. Žilina)

36. The Office on 29.3.2000, after receiving a request from the entrepreneur ACER NOBA co-operative Machulince, began administrative proceedings in the matter of abuse of dominant position in the relevant market according to 7, paragraph B, letter b) of the Act on Protection of Competition with regard to the entrepreneur Stredoslovenské energetické závody š.p. Žilina (hereafter referred to as “SSE š. p. Žilina”), which unlawfully interrupted the supply of electric energy to buildings in Nová Baňa, operated by the entrepreneur ACER NOBA co-operative Machulince.

37. To consider the restriction of the relevant market, the Office considered three basic determining viewpoints – factual, geographic and time. The factual market was stipulated the electric energy supply market. As regards the geographic consideration, the relevant market restricted by the distribution net of the entrepreneur SSE š. p. Žilina was the territory of central Slovakia. The time-relevant market was set as 1.12.1999, during which the anti-competitive practice of interrupting the supply of electricity by the entrepreneur SSE š. p. Žilina was exercised.

38. The entrepreneur SSE š. p. Žilina, RZ Martin interrupted the supply of electricity for the reason of non-presentation of the agreement of the owner of the real estate by the ACER NOBA co-operative, which was confirmed in a letter sent to the entrepreneur ACER NOBA, and this despite the fact that a Business Contract was signed on 29.10.1999 between the entrepreneurial bodies.

39. In the course of the proceedings, the Office discovered and showed that the entrepreneur SSE š. p. Žilina, in its position of a natural monopoly, made use of its economic power with regard to the entrepreneur ACER NOBA co-operative Machulince in such a way that on 1.12.1999 it interrupted the supply of electricity for a period of 45 minutes to the buildings of the ACER NOBA co-operative despite the fact that on 29.10.1999 there was signed a valid Business Contract on the Supply of Electricity, whose contractual conditions were fulfilled on the part of the entrepreneur ACER NOBA co-operative Machulince. The actions of the entrepreneur SSE š. p. Žilina, consisting of a restriction of the supply of electricity, had a negative impact on business competition for the reason that the entrepreneur SSE š. p. Gillian had a dominant position on the relevant market since electric energy is a goods which the entrepreneur ACER NOBA was not able to replace by other corresponding, interchangeable or comparative goods and therefore was not exposed to substantial competition and could abuse its dominant market position due to its economic power.

40. The Office ruled according to § 7, paragraph 5, letter b) of the Act on Competition Protection that the actions of the entrepreneur SSE š. p. Žilina, consisting of an interruption of the supply of electric energy to the entrepreneur ACER NOBA co-operative Machulince, had the nature of abuse of its dominant position on the relevant market of electric energy supply, and imposed a fine in the amount of SKK 200,000 (4 580 EUR) on the entrepreneur SSE š. p. Žilina.

2. Control of concentrations

41. The Act on Protection of Competition defines concentration as a process of economic combination between entrepreneurs through a merger or amalgamation of two or several entrepreneurs, or through a transfer of an enterprise or part thereof to another entrepreneur, or through acquisition of control by one or several entrepreneurs over the enterprise of a different entrepreneur or part thereof. Not all concentrations are subject to control by the Office. The Act explicitly defines the conditions under which a

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concentration is subject to control by the Office. The Office may either approve the concentration, or approve it under stated conditions, or prohibit it. The Office shall prohibit the concentration if it creates or strengthens a dominant position on the market, unless the participants prove that this distortion of competition is outweighed by the overall economic advantages of the concentration (Article 10 paragraph 2 of the Act on Protection of Competition).

- *Summary of proceedings – concentrations*

42. During the reported period, a total of 134 concentrations were reviewed within administrative proceedings (103 cases in 1999, 97 cases in 1998, 40 cases in 1996), including:

- 99 decisions in the matter
- 40 procedural decisions,
- 26 cases that were not completed by the end of 2000.

43. Participants in the proceedings appealed the first instance decisions in 6 cases. All these cases were completed by the end of 2000.

- *Description of a significant case – concentration*

Slovenská sporiteľňa a. s. Bratislava and Priemyselná banka a. s. Košice

44. The concentration of the entrepreneurs Slovenská sporiteľňa a. s. (Slovak Savings Bank a. s.) Bratislava and Priemyselná banka a. s. (Industrial Bank a. s.) Košice came about on the basis of a Contract on the Sale of an Enterprise. The participants to the concentration were universal banks with valid banking licences, while at the time of considering this case, a forced administration had been placed on Priemyselná banka by the National Bank of Slovakia. This contract was a fulfilment of the factual essence of a concentration according to article 8, paragraph 1, letter a) of the Act on Protection of Competition as the economic linking of two hitherto independent enterprises.

45. In considering this concentration, which fell under the competence of the Office according to article 9, paragraph 1, letter a) of the Act on Protection of Competition, the Office began with the fact that it was a question of a horizontal concentration, therefore of a concentration whose participants were predominantly acting on identical relevant markets. In defining relevant markets the Office started from the fact that financial services provided by banks are separated by their character, including price, in dependence of client type, and therefore divided the financial services provided by banks into the following groups: financial services provided to the public, financial services provided to entrepreneurs and to the public sector, and activities oriented to financial markets. In light of the wording of article 7, paragraph 3 of the Act on Protection of Competition, the Office within the above groups defined the individual relevant goods markets and their space and time dimensions.

46. On the basis of the analysis of the position of the participants in the concentration in the individual defined relevant markets as regards market share, market structure, the distancing of competitors from the subject entrepreneurs, the phases of the market, the consideration of barriers to entry onto the market and the probability, timeliness and sufficiency of the entry of new, primarily however potential, competitors on the market, the Office discovered that the concentration reinforced the dominant position of Slovenská sporiteľňa a. s. Bratislava on the relevant market of providing mid-term and long-term credit to the resident public in Slovak crowns.

47. Coming from a statement by the National Bank of Slovakia according to which there were no other parties interested in the purchase of Priemyselna banka a. s., and that the sale represented the most effective solution of the forced administration on the subject bank, the Office approved the concentration of Slovenská sporiteľňa a. s. and Priemyselna banka a. s.,. The implementation of the investigated concentration was taken by the Office on the condition related to competition on the basis of which Slovenská sporiteľňa a. s. was authorised, at the latest 12 months from the entry into effect of the decision on this concentration, to transfer the entire ownership share in Priemyselna banka a. s., to a physical or legal entity which is neither materially or personally united with itself.

MOL Rt. Budapest – SLOVNAFT a. s. Bratislava Concentration

48. The concentration emerged on the basis of a Contract on Purchase and Subscription of Shares signed 31.03.2000 between the SLOVNAFT a. s. Bratislava (hereafter referred to as “SLOVNAFT a. s.”), and MOL Rt. Budapest (hereafter referred to as “MOL Rt.”) companies. As a result of the signing of a subject contract, the MOL Rt. Company acquired a 36.2 percent share in the basic capital of the SLOVNAFT a. s. company. Concentration was formed in the sense of article 8, paragraph 3, letter b) of the Act on Protection of Competition.

49. The concentration was subject to control by the Office according to article 9, paragraph 1, letter a) of the Act on Protection of Competition since the common turnover of the participants to the concentration for 1999 was at least SKK 300,000,000 (6 869 705 EUR), and each concentration participant had a turnover of at least SKK 100,000,000 (2 289 902 EUR) for 1999.

50. The concentration was also subject to control by the Office according to article 9, paragraph 1, letter b) of the Act on Protection of Competition since the common share of the concentration participants amounted to 20 percent of the total turnover on the relevant restricted markets of the Slovak Republic. It concerned a horizontal concentration in that the factual relevant markets were established as motor crude oil wholesale, motor petrol wholesale, crude oil retail and petrol retail markets.

51. In evaluating the level of concentration on restricted relevant markets, the Office in the first degree evaluated the market shares of the participants in the concentration and those of their market competitors. The shares of the participants to the concentration were as follows:

	SLOVNAFT a. s. share	MOL Rt. share
Motor crude oil wholesale market	70.00%	4.5%
Motor petrol wholesale market	63.20%	3.5%
Crude oil retail market	45.08%	1.59%
Petrol retail market	42.47%	2.67%

52. The Office came to the conclusion that the SLOVNAFT a. s. company has a dominant position on the restricted relevant SR markets in the sense of article 7, paragraph 1 of the Act on Protection of Competition since substantial competition was not established on these markets.

53. The Office stated that as a result of the concentration the joint market share of the participants to the concentration would increase, the economic power of the SLOVNAFT a. s. company would be strengthened, and at the same time the number of its actual competitors would be reduced. The MOL Rt. Company has (together with OMV Slovakia s.r.o.) the best preconditions for expanding its enterprising on the Slovak market and to be in the future a significant competitive body of domestic production. On the

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basis of these facts the Office came to the conclusion that the concentration would strengthen a dominant market position.

54. The Office agreed to the concentration while conditioning its agreement on the fulfilment of the following conditions:

1. MOL Rt., is required to retain the number of motor fuel filling stations owned or controlled by it on the territory of the Slovak Republic as of 31.12.2004 such that its number corresponds to the number of filling stations owned or controlled by this company on the territory of the Slovak Republic on the day of signing the Contract on Purchase and Subscription of Shares, i.e. 333 filling stations.
2. MOL Rt., is required, in the period from the legal validity of the Office decision to 31.12.2004, to, within 180 days after opening a new motor fuels filling station, close or sell some of the filling stations or motor fuels stations owned or controlled by it which have the same sum of projected annual sales capacity of motor fuels as will have the newly opened filling station. The purchaser may not be a subject having structural, financial or personal connection with MOL Rt., SLOVNAFT a. s., or with any of their mother or daughter firms.

3. *Demanding a corrective action from state administration bodies and municipalities according to Article 18 of the Act on Protection of Competition*

55. State administration bodies and municipalities must not restrict competition by their own measures, by giving evident support, or in any other ways. The Office may, in the sense of an act, demand that state administration bodies and municipalities take corrective action.

56. In 2000, the Office reviewed 18 cases of possible violation of Article 18 of the Act on Protection of Competition. In seven cases, the Office demanded corrective action according to Article 18, including six cases where the demands of the Office were met. four cases were not completed by the end of 2000.

- *Description of a significant case*

Detva Town Municipality

57. On 15.6.2000, a complaint was delivered to the Office from the URPÍN brewery s.r.o., Slovenská Lupča on an exclusive sale of products of the ŠARIŠ brewery a. s. Veľký Šariš entrepreneur during the cultural festival.

58. In the course of its investigation the Office learned that the town of Detva had signed a Contract on Co-operation with the ŠARIŠ brewery a. s. Veľký Šariš entrepreneur, which bound them to publicity and exclusive sales of Šariš beer products during the festival. It was further ascertained that the town of Detva had signed with individual entrepreneurs providing refreshment services at the festival Contracts on Providing Services which, among other things, bound these entrepreneurs to offer to consumers during the festival beer beverages exclusively of the Šariš or Smädný Mních brands, i.e. products of the main festival partner, ŠARIŠ brewery a. s. Veľký Šariš. By signing such a formulated contract, the URPÍN brewery s.r.o., Slovenská Lupča entrepreneur, as well as other entrepreneurs lost the opportunity to sell beer of other brands in the area of providing refreshment services at the festival, which resulted in a complete exclusion of interbrand competition in the sale of beer.

59. The Office came to the conclusion that the town of Detva, by signing a Contract on Co-operation with the ŠARIŠ brewery a. s. Veľký Šariš entrepreneur, excluded in advance from participation in competition other entrepreneurs. This did not allow them the conditions specified in the Contract on Providing Services and restricted interbrand competition, thus infringing the regulations of article 18, paragraph 1 of the Act on Protection of Competition, according to which bodies of state administration and communities may not, by their own regulations, clear support or other means, restrict competition. Therefore, the Office, in the sense of article 18, paragraph 3 of the Act on Protection of Competition, requested of the mayor of Detva that he make amends in the way of cancelling the regulation restricting competition in the Contract on Co-operation signed between the town of Detva and the ŠARIŠ brewery a.s. Veľký Šariš entrepreneur and the Contract on Providing Services signed between the town of Detva and entrepreneurs providing refreshment services during the festival. The Office also required the mayor of the town of Detva to, in the future, not sign contracts with restrictive effect on competition in the given relevant market. The Office further required that the town of Detva provide information on its procedures in this subject matter within 30 days of the date of announcement of this requirement.

60. In a letter of 27.7.2000, the mayor of the town of Detva announced that the subject contracts were valid only during the course of the festival, and further stated that in the future the town of Detva will not support nor enter into any contractual relations which could in any way have restricting effects on competition and the position of entrepreneurs in the relevant market which could be considered as infringing the provisions of Act No. 188/1994 Coll. on Protection of Competition, in the wording of later regulations.

4. Fines

61. According to the Act on Protection of Competition, the Office is entitled to impose a fine on an entrepreneur for breaching the duties stipulated by this Act of up to 10 percent of the sales generated in the previous accounting period, depending on the significance of the violation. If it is not possible to calculate the sales, the fine may amount to up to SKK 10,000,000. If it is proven that the entrepreneur achieved a property benefit as result of violating the obligation prescribed by the law, a fine of at least equal to this benefit shall be imposed on him. The Office may also impose a fine on an entrepreneur who fails to fulfil the obligation to submit to the Office required documents and true information within the given time, or does not allow their review, or does not allow entry in the buildings, premises and transportation means.

62. During the reported period, i.e. in 2000, the Office imposed in lawful decisions fines of a total amount of SKK 11,260,000. During this period of time the Office collected or recovered in form of fines and penalties an amount of SKK 3,747,000, including SKK 3,651,000 in the form of fines.

63. For comparison, the following fines were imposed in previous years: SKK 6,350,000 in 1999, SKK 14,142,000 in 1998, SKK 6,510,000 in 1997, and SKK 5,272,600 in 1996.

64. Additionally, administration fees in an amount of SKK 3,832,000 were paid to the Tax Office.

III. Task of antimonopoly office of the slovak republic in formulating and implementing other policies

65. The aim of competition legislation in the Slovak Republic, represented by the Act on Protection of Competition, is the protection and support of efficient competition as well as creation of conditions for its further development in order to support economic development for the benefit of consumers. The intensity of competition may be reduced by applying other policies. The Office's duty is therefore also active participation in the process of formulation and implementation of other policies in the form of

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issuing opinions on draft legislation, documents submitted to the Government of the Slovak Republic, opinions regarding privatisation projects, opinions in accordance with Acts providing for these obligations.

1. Opinions on draft legislation

66. Within the legislative process, the Office regularly participated in interdepartmental remarks proceedings and issued opinions on draft legislation submitted to the sessions of the Government of the Slovak Republic. Within the interdepartmental remarks proceedings in 2000, the Office prepared opinions on 278 Draft Acts.

67. The most important comments of the Office, which have been accepted, include opinions on the following legal regulations and documents submitted to the Government of the Slovak Republic:

- The Draft Act amending and supplementing Act No. 44/1988 Coll. On Protection and Use of Raw Materials (Mining Act) in the wording of Act of the Slovak National Council No. 498/1991 Coll.

68. The Office recommended using the term “entrepreneur” instead of the term “organisation” in the Draft Act amending and supplementing Act No 44/1988 Coll. On Protection and Use of Raw Materials (Mining Act) in the wording of the Act of the Slovak National Council No. 498/1991 Coll. It is stated in Article 32 and paragraph 5 of the amendment of the Act that the Ministry of Finance of the Slovak Republic, after previous agreement with the Head Mining Office, can, in reasonable cases, reduce, upon a request of the organisation, the charges for mined raw materials and charges for storage of gases or liquids, or can allow an exemption from these charges. The Draft Act does not define the term “reasonable cases” in which the Ministry of Finance will reduce the charges for mined raw materials and allow an exemption from these charges. The Office thinks that competition may be restricted by application of this provision in such a way that unequal conditions will be created for entrepreneurs.

- *Proposal of Forestry Policy of the Slovak Republic till 2005*

69. Within interdepartmental remarks procedures regarding “The Draft of Forestry Policy of the Slovak Republic till 2005”, the Office demanded from the Ministry of Agriculture of the Slovak Republic removal of the conflict between Decree of the Ministry of Forest and Water Economy of the Slovak Republic No 103/1977 Coll. on Procedures in Forest Land Fund Protection, in the wording of Decree of the Ministry of Agriculture of the Slovak Republic No. 329/1996 Coll., and between Act No 188/1994 Coll. on Protection of Competition in the wording of later regulations, because the decree mentioned creates a legal framework for favouritism of a certain group of entrepreneurs to the prejudice of others, who, in their business activity, are discriminated against in competition.

70. An impediment to the situation lies in that, according to the mentioned Decree of the Ministry of Agriculture of the Slovak Republic, the documents according to Article 1 paragraph 1 letter d), f) and g) regarding the application for issuing a decision on forestry land exemption can be executed only by organisations of the forestry sector administrated by the Ministry of Agriculture of the Slovak Republic.

71. The Ministry of Agriculture of the Slovak Republic has fully accepted the request to delete the impedimental situation and has undertaken to delete objective imperfections when preparing new legislation on forests and related regulations.

- *Analysis of reorganisation of state-owned forests relating to establishment of one single state forestry enterprise in the Slovak Republic*

72. The Office requested an enlargement of the analysis by further supplementary data regarding activities of the state-owned company Lesy SR in the economic area, i.e. where the established condition of the Office was tending during the approval of the concentration of seven state-owned enterprises of the forestry sector in 1999. This regards mainly an evaluation of effects in individual regions, as well as Slovak wood markets as a whole, including an evaluation of the price area, so that the submitted analysis sufficiently evaluated the reorganisation of the state forests in relation to the establishment of one state-owned forest enterprise in the Slovak Republic.

73. The demand of the Office has been only partially accepted, because of, according to the author of this material, the short existence of the state enterprise Lesy SR and because of the so far unfinished financial year he did not have at his disposal the data necessary for preparing an analysis in the structure required by the Office. This demand will be repeated after evaluation of the financial year 2000.

- *Draft Act on Banks*

74. Within the interdepartmental remarks procedure, the Office expressed its principal comment with regard to the provision of the Draft Act on Banks, which suggested that the bank as a state financial institution could be set up by the Ministry of Finance of the Slovak Republic with the aim of consolidation and special financing of the selected sectors. Taking into account that, in the case of accepting the subject provision, the entrepreneurs of selected sectors would be favoured compared to other entrepreneurs and thus unequal competition conditions for business activities of the entrepreneurs would be created, the Office within interdepartmental remarks procedures insisted on a subject principled comment. The Office insisted, at the same time, on a principled comment regarding the provisions of the Draft Act on Banks, by which unequal conditions would be created in requirements for the business performance of the banks, namely through the setting out of special conditions for the business performance of banks that were established as state financial institutions. In this way, unequal competition conditions in the area of bank business performance would be created.

- *Draft Act on wastage and on amending and supplementing Act of the Slovak National Council No. 315/1996 Coll. on Road Traffic*

75. The Office made a proposal to add into the Draft Act wording that the authorisation is valid throughout the territory of the Slovak Republic, because there is no limited territory of its validity. In the interests of non-discrimination of entrepreneurs that provide their business activities on the basis of authorisation and, from the point of view of competition, it would be desirable if these entrepreneurs could provide their business activities throughout the territory of the Slovak Republic.

76. The Office suggested adding into the Draft Act wording that communities provide physical and legal entities with information on municipal waste collection and transport in the territory of the community and on the headquarters and activities of the facilities dealing with waste in the territory of the community. Following from the resolution of cases by the Office, most citizens and entrepreneurs in the communities have no knowledge of the duties of the community in dealing with municipal waste and on duties resulting from the generally binding order on waste in their community. For this reason, pointless suggestions are often delivered to the Office, which it must deal with. When solving these suggestions, the Office comes across ignorance of the law on waste on the part of the municipal authority and the resulting

duties of the community, as well as with ignorance of the community as regards what companies dealing with waste transport operate in their territory.

- *The draft Act of the Slovak National Council amending and supplementing Act No. 168/1996 Coll. on Road Transport as amended and Act of the Slovak National Council No. 455/1991 Coll. on Licensed Trading as amended.*

77. The Office proposed changing Article 7 paragraph 5 of the Draft Act as follows: “The transport licence on a bus line shall be granted for a limited period of time, to a maximum of 8 years”. The Office asked for amendment to the Act from the point of view of competition, development and support of a competitive environment in regular bus transport and in order to ensure conditions for operating regular bus transport under the same conditions for all operators. Companies carrying out business in regular bus transport could compete through tenders (according to Act 263/1999 Coll. on Public Procurement) for line allocation for a limited period of time. Competition would arise without disrupting the integrated transport system. Eight years was set as the maximum determined period of time because 8 years is supposed to be the maximum pay-back period for an operator’s investment. According to Act No. 366/1999 Coll. on Income Tax the depreciable life of buses is four years. An eight year life-span for a new bus is also supposed by the study “Evaluation of impact of unpaid state liabilities on the economy of SAD enterprises”, carried out by the Research Institute of Transport in Žilina.

78. The Office proposed reducing the required amount of EURO 400,000 from state budgeted funds or commune funds to an amount set by the provision of Article 2 paragraph 3 of Act No. 263/1999 Coll. on Public Procurement and amendments and supplements to certain Acts. The amount of EURO 400,000 is too high in Slovak terms and does not correspond to Act No. 263/1999 Coll. on Public Procurement and amendments and supplements to certain Acts.

2. *Opinions on privatisation projects*

79. The relation of the Office to privatisation arises from Article 19 of the Act on Protection of Competition, according to which the Office is obliged, within eight working days, to comment on a draft privatisation project submitted by a founder according to Act No. 92/1991 Coll. on the Conditions of Transfer of State Property to Other Persons, as amended.

80. As part of the interdepartmental remarks proceedings concerning privatisation projects in 2000, the Office issued its opinions on 28 draft privatisation projects.

3. *Opinions according to Act No. 59/1997 Coll. on Protection Against Dumping in the Import of Goods*

81. According to this act, the Ministry of Finance of the Slovak Republic shall request from the Office an opinion on the restriction of competition when assessing dumping in the import of goods, and when reviewing and evaluating the damages resulting from dumping. The Office was not asked by the Ministry of Finance of the Slovak Republic to issue such an opinion in 2000.

4. *Opinions according to Act No. 214/1997 Coll. on Protective Measures in Imports*

82. The purpose of the Act on Protective Measures in Imports is to protect the local production sector against increased quantities of imported goods which may seriously endanger the sector or an

entrepreneur's market position. The Ministry of Economy of the Slovak Republic shall also request a statement in writing from the Office. In 2000, the Ministry of Economy of the Slovak Republic asked the Office for its opinion on application of Slovenský zväz výrobných družstiev (Slovak Union of Production Cooperatives) Bratislava and LIGAREX, a. s. Liptovský Mikuláš for protection against excessive import of goods from China according to Chapter HS No. 42. The Office considered this application to be unsubstantiated.

5. *Opinions according to Act No. 226/1997 Coll. on Subsidies and Balancing Measures*

83. According to this Act, the Ministry of Economy of the Slovak Republic shall request a statement in writing from the Office and from three other central bodies of the state administration on the import of goods that are subsidised in the country of origin, where the local production sector may be intentionally damaged by importing these goods. The Office was not asked by the Ministry of Economy of the Slovak Republic to issue such an opinion in 2000.

IV. REPORTS AND STUDIES ON COMPETITION POLICIES

1. *Office employees' lecturing activities*

84. In 2000, Office staff gave a number of lectures oriented to the professional public and to their own ranks.

85. Lectures for the professional public were carried out mainly at the Economic University in Bratislava, at the Economists Club at the Economic University in Bratislava, at the Technical University in Zvolen, at the Centre for European Policy, at the Conference on Financing Forest Economy and at the French-Slovak Business Chamber, and at business academies.

2. *Office work transparency*

86. During 2000 the Office continued working on the raising of the transparency of its activity. Among the most significant means belong:

- The Office web site where, at the address www.antimon.gov.sk, it is possible to find in their full wording all legally valid Office decisions issued after 01.01.1999 as well as information on all initiated administrative proceedings before the Office, on the issuing of first-degree decisions, on corrective measures lodged against these decisions, on the issuing of second-degree decisions, on Supreme Court of the Slovak Republic decisions, and much more information on contemporary Office activities. From 01.01.2001, the Office has also published on its web site information in the sense of Act. No. 211/2000 Coll. on Free Access to Information.
- Publication twice monthly of information on Office activities in the Hospodárske noviny (Economic Newspaper) daily in the column, "The Antimonopoly Office Informs". An English version of this column appears on the Office web site.

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V. Resources of the antimonopoly office of the slovak republic

1. Total financial and human resources

	2000	1999
a) State budget	SKK 28 718 000 USD 594 452 (1 USD=48,31 SKK)	SKK 28 839 000 USD 675 940 (1USD=42,66 SKK)

* The Act of the National Council of the Slovak Republic No. 303/1995 Coll. on Budget Rules as amended enables state administrative bodies, which impose and recover fines, to use part of these fines to cover their expenses:

<i>SKK 2 200 000</i>	<i>SKK 2 473 000</i>
<i>USD 45 539</i>	<i>USD 57 963</i>
<i>(1 USD=48,31 SKK)</i>	<i>(1USD=42,66 SKK)</i>

b) Number of employees		
- Economists	25	26
- Lawyers	13	17
- Other experts	15	7
- Others	20	21
- Total	73	72

2. Human resources

a) anti-competitive practices and control of concentrations	35	36
b) enforcing the competition law	12	10