

THE 2000 ANNUAL REPORT

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PETER NIŽŇANSKÝ
Chairman of the Antimonopoly office of the Slovak Republic

Our aim is not to impose fines to entrepreneurs, as many people think it is, but to reach the equal conditions in the competition for all the market participants, and to reach the conditions when the consumer is always respected and equivalent partner for the producer or supplier.

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Peter Nižňanský
Chairman of the Office

Law and Policy of Competition Protection

Present

Legal

Situation

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 the Economic Competition, in the wording of later regulations (hereafter referred to as "Act on Protection of the Economic Competition"), Act No. 71/1967 Coll. on Administrative Proceedings relates to proceedings before the Antimonopoly Office of the Slovak Republic (hereafter referred to as "Office") as a subsidiary law,
- Criminal Code, which in Article 149 limits the factual basis of the criminal act of abusing participation in competition.

Changes in the Law and Competition Protection Policy

Changes in the Law and Competition Protection Policy

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 the Economic Competition and on amendments to Act of the Slovak National Council No. 347/1990 Coll. on the Organisation 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 Terms of Notification of Concentration.

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.

According to the Government Legislative Plan for 2000, the Office was to present a Draft Act on Protection of the Economic Competition and on amendment of Act of the Slovak National Council No. 347/1990 Coll. on the Organisation of Ministries and Other Central Bodies of State Administration of the Slovak Republic in the wording of later regulations for meetings of the Government of the Slovak Republic in September 2000. In its creation, the Office started from the valid Act on Protection of the Economic 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 meetings 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. 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 the Economic Competition and on amendment of Act of the Slovak National Council No. 347/1990 Coll. on the Organisation 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 on May 1, 2001.

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 coordinating 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. In accordance with the Community competition law, 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. 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 Proceedings, which still applies in a subsidiary manner to the Act on Protection of the Economic Competition. Special provisions regulate the appeal 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 agreements restricting competition .

The Draft Act includes a provision authorising the Office to issue three Decrees. Two of them, on the conditions of concentration notification and on turnover calculation, will become effective on May 1, 2001, also the effective date of the Act. The Decree on Conditions of Concentration Notification is based mainly on the respective legal enactments of the European Union whilst the Decree on Calculation of Turnover 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.

Application of the Act on Protection of the Economic Competition

Anticompetitive Practices

During the reported period, the Office reviewed a total of 64 cases within administrative proceedings, which the Office considered as the anticompetitive practices, or which were described as such by the applicants. This number included 29 agreements that restricted or might have restricted competition. The remaining 35 cases concerned reviewing the practices of abuse of a dominant position in the relevant markets of the Slovak Republic. In total, 62 decisions have been issued on these cases, including 42 decision in the matter and 20 procedural decisions.

Agreements Restricting Competition

Article 3 of the Act on Protection of the Economic 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. In 2000, a total of 29 cases were reviewed, including 23 decisions in the matter, 6 procedural decisions and 8 cases that were not completed by the end of 2000.

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.

MATADOR a.s. Púchov and exclusive dealer GMZ co. s.r.o. Tvrdošín
(contract restricting competition)

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. One of these criteria was an obligation by the dealer to order goods of other brands (automobile tires, tubes and pads) exclusively from the entrepreneur Matador. Further criteria were establishment of a minimum order, the right of sales control and the setting of sanctions penalties in the case of non-fulfilment of contract conditions. 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").

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. 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 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 % 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. The limiting ordering condition, by its financial expression, forced the exclusive retailer to orient its activities to the entrepreneur Matador and to those goods which were the subject of the purchase contract and the annex.

The Act on Protection of the Economic Competition, in provision of Article 3, requires evidence that contracts restricting competition have as their goal, or may have as their result, the restriction of competition. At the same time, in provision of Article 5 are stated four conditions under which a legal ban does not apply in contracts restricting competition. The Office undertook the examination of these conditions and 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. In connection with the higher sales price of imported brands sold through Matador in comparison with other competitive sellers on the SR market, this must lead to higher retail sales prices for the consumer. 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, in the months of April and May, 1999 it informed the exclusive seller GMZ Tvrdošín on the situation in the purchase of its imported range and authorized it for the purchase of goods which it did not have at its disposition in its stores from other importers in the Slovak Republic.

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% discount, in which the consumer did not share, as unequivocally follows from the goal of this contract restricting competition.

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

1. on consumers

- did not contribute to the improvement in the distribution of goods in connection with the inflexibility of securing automobile tires and tubes of imported brands, and their long supply cycle,*
- did not provide consumers with even an average part of the advantages, in light of the disadvantage to the consumer of higher sales prices, in which were projected higher Matador sales prices,*
- also allowed contract participants to exclude competition with regard to a substantial part of the given goods.*

2. negative impact on other distributors and dealers

- *there were created conditions for reducing the participation of other brands on the sales market,*
- *there was created the supposition of a consequent reducing of the number of exclusive dealers on the automobile tires, tubes and pads market,*
- *complicated for other brands the possibility to enter and become known on the relevant market through existing dealers.*

The first-degree body considered the contract signed and fulfilled by Matador and GMZ Tvrdošín entrepreneurs and its contents in Anex No. 1 as a documented restricted competition contract in the sense of the provision of Article 3, paragraph 2, letter e) of the Act on Protection of the Economic 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.

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

For infringement on the ban on signing contracts restricting competition, a fine in the amount of SKK 700 000 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.

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.

In the same way, there were a further 10 contracts restricting competition signed between the entrepreneur Matador and individual exclusive dealers (Pneu Comp s.r.o. Nové Zámky, Rotkiv s.r.o. Prešov, Technogum s.r.o. Nižná, Ladislav Smoroň - EURPAL Stará Ľubovňa, Pavol Beňovič - PNEU AGRE Trenčianske Stankovce, Ján Valachovič - VAPA Kút, Štefan Humaj - Pneuservis Bojnice, Štefan Hučko - Pneuservis Šaľa, TatraCredit s.r.o. Kežmarok, BOAN - Anton Bottan Pezinok). The entrepreneur Matador was, by decisions in these administrative proceedings given a fine in the amount of SKK 7 200 000, and the exclusive dealers a total sum of SKK 270 000.

- *Administrative proceedings begun on July 30, 1999*
- *Decision No. 99/KV/B/1/305 issued on: November 26, 1999*
- *Appeal against Decision submitted on: June 15, 2000*
- *Legally valid from: June 19, 2000*

Abuse of a Dominant Position

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 the Economic Competition) are in a dominant position in 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.

In 2000, a total of 35 cases were reviewed, including 19 decisions in the matter, 14 procedural decisions and 2 cases that were not completed by the end of 2000.

In 15 cases, participants in the proceedings lodged an appeal against the decisions issued in the first instance and 2 cases were not completed by the end of 2000.

Stredoslovenské energetické závody š.p.
(abuse of dominant market position)

The Office on March 29, 2000, after receiving a request from the entrepreneur ACER NOBA co-operative Machulince, began administrative proceedings in the matter of abuse of dominant market position in the relevant market according to Article 7, paragraph B, letter b) of the Act on Protection of the Economic 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.

To consider the restriction of the relevant market, the Office considered three basic determining viewpoints - factual, geographic and time. With reference to the fact that the entrepreneur SSE š.p. Žilina was the supplier of electric energy which supplied customers

through its distribution net, as the relevant factual market was stipulated the electric energy supply market. Factual restriction of the relevant market included also consideration of the mutual representation of products on the market which are corresponding or mutually representative for the satisfaction of the determined needs of consumers, since electric energy cannot be replaced by corresponding, interchangeable or comparable goods. 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 December 1, 1999, during which the anti-competitive practice of interrupting the supply of electricity by the entrepreneur SSE š.p. Žilina was exercised.

During the investigation, representatives of the entrepreneur SSE š.p. Žilina stated that the signing of a Business Contract between the entrepreneur SSE š.p. Žilina and the entrepreneur ACER NOBA co-operative Machulince, and also the application for receipt of electricity, was preceded by the presentation of documentation necessary for the signing of the Business Contract wherein there was presented by the party, entrepreneur ACER NOBA co-operative Machulince, a Contract on Leasing of Non-residential premises without the obtaining of the agreement of the owner of the real estate to the receipt of electricity. 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 November 29, 1999 between the entrepreneurial bodies.

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 December 1, 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 October 29, 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. Žilina 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.

The Office ruled according to Article 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 on the entrepreneur SSE š.p. Žilina.

- *Administrative proceedings began on: March 29, 2000*
- *Decision No. 2000/DZ/B/1/135 issued on: May 26, 2000*
- *Legally valid from: June 27, 2000*

Control of Concentrations

The Act on Protection of the Economic 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 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 will 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 the Economic Competition).

During the reported period, a total of 134 concentrations were reviewed within administrative proceedings, including 99 decisions in the matter, 40 procedural decisions and 26 cases were not completed by the end of 2000.

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

Slovenská sporiteľňa a.s. Bratislava and Priemyselná banka a.s. Košice
(concentration)

The concentration of the entrepreneurs Slovenská sporiteľňa a.s. Bratislava and Priemyselná banka 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 Competition Protection as the economic linking of two hitherto independent enterprises.

In considering this concentration, which fell under the competence of the Office according to Article 9, paragraph 1, letter a) of the Act on Competition Protection, 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 the Economic Competition, the Office within the above groups defined the individual relevant goods markets and their space and time dimensions.

As part of the financial services provided to the public, the Office defined the following relevant goods markets: operating current accounts and providing accompanying services connected with them, savings accounts and terminal accounts; accepting deposits in deposit accounts with a cancellation period and without a cancellation period; providing credit, including mortgage credits; the issuing and administering of payment means; providing security boxes; the services of a dealer in securities for the public; currency exchange services. In determining the space dimensions of the relevant markets, the Office began from the fact that providing products and services within these financial services is tied to the mutual bank/ client interaction and takes place within the build-up of banks' branch networks. Since banks whose enterprising strategy is to actively act on these relevant goods markets have built-up (or are progressively opening) branch networks over the territory of the Slovak Republic, as well as in light of the development of electronic banking, which allows banks to provide financial services in areas where they do not have established branches, the Office defined the space dimension of relevant markets as the territory of the Slovak Republic.

Within the financial services provided to entrepreneurs and the public sector, the Office defined the following relevant goods markets: operating current and terminal accounts for entrepreneurial bodies; providing pay relations (foreign and domestic) and accounting; providing credits to entrepreneurs (in domestic and foreign currencies); operating accounts and providing credits to the public sector; providing guarantees; issuing and administering payment means; participation in the issuing of securities and providing accompanying services; doing business in the area of terminal and options trading, including course and interest trading; providing consulting services in enterprising matters; doing business with clients' securities or other valuables; performance of the function of depository; currency exchange services. In the provision of these services to entrepreneurs it is a question of a country-wide space dimension in the stated relevant goods markets, since competition conditions in the provision of these services are homogenous on the territory of the Slovak Republic.

Within the activities oriented to financial markets this concerns primarily doing business on the capital market from the view of active and passive operations, doing business on the foreign exchange and capital markets. These markets have a Slovakia-wide space dimension and, to the extent that banks appear on international markets, concern an international space dimension.

With relation to the fact that in providing financial services it concerns a continuous process, the Office defined the relevant markets in given areas of entrepreneurial activities as time unrestricted.

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 fazes 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.

Coming from a statement by the National Bank of Slovakia according to which there were no other parties interested in the purchase of Priemyselná 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 Priemyselná 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 authorized, at the latest 12 months from the entry into effect of the decision on this concentration, to transfer the entire ownership share in Priemyselná banka a.s., to a physical or legal entity which is neither materially or personally united with itself.

- *Administrative proceedings begun: December 21, 1999*
- *Decision No. 2000/FH/4/1/127 issued on: May 23, 2000*
- *Legally valid from: May 23, 2000*

MOL Rt. Budapest - SLOVNAFT a.s. Bratislava
(concentration)

The concentration emerged on the basis of a Contract on Purchase and Subscription of Shares signed March 31, 2000 between the SLOVNAFT a.s. Bratislava (hereafter referred to as "SLOVNAFT a.s."), SLOVINTEGRA a.s. Bratislava (hereafter referred to as "SLOVINTEGRA a.s."), SLOVBENA a.s. Bratislava (hereafter referred to as "SLOVBENA 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 % share in the basic capital of the SLOVNAFT a.s. company. This concerned a change in the exclusive control which its top managers, owners of the SLOVINTEGRA a.s. and SLOVBENA a.s. companies, previously had over the SLOVNAFT a.s. company, to a joint control by these individuals and the MOL Rt. Company. Thus, a concentration was formed in the sense of Article 8, paragraph 3, letter b) of the Act on Protection of the Economic Competition.

The concentration came under the control of the Office according to Article 9, paragraph 1, letter a) of the Act on Protection of the Economic Competition since the common turnover of the participants to the concentration for 1999 was at least SKK 300 000 000, and each concentration participant had a turnover of at least SKK 100 000 000 for 1999.

The concentration also came under the control of the Office according to Article 9, paragraph 1, letter b) of the Act on Protection of the Economic Competition since the common share of the concentration participants amounted to 20 % 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.

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:

| | <i>SLOVNAFT a.s. share</i> | <i>MOL Rt. share</i> |
|-----------------------------------------|----------------------------|----------------------|
| <i>motor crude oil wholesale market</i> | 70,00% | 4,50% |
| <i>motor petrol wholesale market</i> | 63,20% | 3,50% |
| <i>crude oil retail market</i> | 45,08% | 1,59% |
| <i>petrol retail market</i> | 42,47% | 2,67%. |

The Office discovered that the SLOVNAFT a.s. company had on all restricted relevant markets a high share and great distance from its competitors, in spite of the fact that these shares were gradually falling. The Office came to the conclusion that the level of potential competition on these relevant SR markets is, as the result of high entry barriers, at a low level. Among the barriers to entry may be counted a number of facts - the small extent and stagnation of these markets, the great difficulty of entry from the financial and environmental protection viewpoint, the very strong position of the SLOVNAFT a.s. company, which is the only domestic refiner of oil on these markets, in addition to various administrative barriers, the influence of delivery expenses, border crossing transmittance and the like.

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 the Economic Competition since substantial competition was not established on these markets.

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

According to Article 10, paragraph 2 of the Act on Protection of the Economic Competition, the Office prohibits a concentration which creates or strengthens a dominant position if the participants do not show that such a decrease of competition will be outweighed by the economy-wide advantages of the concentration. On the basis of analysis, the Office came to the conclusion that the presented benefits of the concentration outweigh the restricted competition only on the assumption of the fulfilment of certain conditions.

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

1. *MOL Rt., SLOVINTEGRA a.s. Bratislava and SLOVBENA a.s., Bratislava are required to retain the number of motor fuel filling stations owned or controlled by them on the territory of the Slovak Republic as of December 31, 2004 such that their number corresponds to the number of filling stations owned or controlled by these companies 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., SLOVINTEGRA a.s. Bratislava and SLOVBENA a.s., Bratislava are required, in the period from the legal validity of the Office decision to December 31, 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 them 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., SLOVINTEGRA a.s. or SLOVBENA a.s., or with any of their mother or daughter firms.*
 - *Administrative proceedings begun: April 14, 2000*
 - *Temporary measure No. 2000/PO/1/1/202 issued: July 12, 2000*
 - *Decision No. 2000/FH/1/1/262 issued: September 20, 2000*
 - *Legally valid from: September 22, 2000*

Proceedings against State Administrative Authorities and Municipalities

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.

In 2000, the Office reviewed 18 cases of possible violation of Article 18 of the Act on Protection of the Economic Competition. In 7 cases, the Office demanded a remedy according to Article 18, including 6 cases where the demands of the Office were met. Four cases were not completed by the end of 2000.

| Detva | Town | Office |
|---------------------------------------------|-------------|---------------|
| <i>(requirement on amends by community)</i> | | |

On June 15, 2000, a complaint was delivered to the Office from the URPÍN brewery s.r.o., Slovenská Lupča on a restriction of the restricted exclusive sale of products of the ŠARIŠ brewery a.s. Velký Šariš entrepreneur during the event "Folklórne slávnosti pod Poľanou".

In the course of its investigation the Office learned that the town of Detva had signed a Contract on Cooperation with the ŠARIŠ brewery a.s. Velký 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 exclusively beer beverages exclusively of the Šariš or Smädný Mních brands, i.e. products of the main festival partner, ŠARIŠ brewery a.s. Velký 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.

The Office, after considering all the circumstances and examining the presented documents and materials, came to the conclusion that the town of Detva, by signing a Contract on Cooperation with the ŠARIŠ brewery a.s. Velký 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 the Economic 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 the Economic Competition, requested of the mayor of Detva that he make amends in the way of cancelling the regulation restricting competition in the Contract on Cooperation signed between the town of Detva and the ŠARIŠ brewery a.s. Velký 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.

In a letter of July 27, 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 on Protection of Competition.

- *Investigations begun: June 15, 2000*
- *Request on amends No. ZNE 2000/307/B issued: July 7, 2000*

Fines

According to the Act on Protection of the Economic Competition, the Office is entitled to impose a fine on an entrepreneur for breaching the duties stipulated by this Act of up to 10 % 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 material benefit as result of violating the obligation prescribed by the law, a fine of at least equal to this benefit will 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.

| | | | | | |
|-------------|------|------|------|------|------|
| year | 1996 | 1997 | 1998 | 1999 | 2000 |
|-------------|------|------|------|------|------|

| | | | | | |
|---------------------------------------|-------|-------|--------|-------|--------|
| finances (in thousand SKK) | 5 273 | 6 510 | 14 142 | 6 350 | 11 260 |
|---------------------------------------|-------|-------|--------|-------|--------|

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

Decisions of the Supreme Court of the Slovak Republic

According to Article 13 of the Act on Protection of the Economic 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.

The Supreme Court of the Slovak Republic decided on 11 cases in 2000, of which 6 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 in 2000.

Appeal by SLOVNAFT a.s. Bratislava entrepreneur

The SLOVNAFT a.s. Bratislava entrepreneur submitted on March 22, 2000 to the Supreme Court of SR an appeal on the investigation of the legality of a decision by the Office No. 99/KV/1/1/242 of September 6, 1999, by which the Office decided that the contract between the SLOVNAFT a.s. Bratislava entrepreneur and Spektrum s.r.o. Trenčín entrepreneur fulfils the conditions set in Article 5, paragraph 1 of the Act on Protection of the Economic Competition with the exception of certain provisions and on the investigation of the decision of the Office Chairman No. 2000/FV/P/2/26 of February 10, 2000 by which was changed the statement of the first-degree decision such that the contract between SLOVNAFT a.s. Bratislava and Spektrum s.r.o. Trenčín does not fulfil the conditions in the sense of Article 5, paragraph 1 of the Act on Protection of the Economic Competition and removes point 2 and 3 of the statement. On October 16, 2000, the Supreme Court of the SR issued resolution No. 6 Sz 47-48/00, by which proceedings in the matter were stopped for the following reason:

In its appeal of March 14, 2000, SLOVNAFT a.s. claimed investigation of both above decisions and requested their cancellation with the remark that the subject contract represents only a framework contract relation which is a means for introducing common cooperation between the SLOVNAFT a.s. entrepreneur and its dealers for the goal of improving the SLOVNAFT a.s. distribution system, strengthening domestic entrepreneurs active on the level of wholesale with motor fuels and for creating conditions for reducing the price of motor fuels for consumers.

Paragraph 5 section 3 of the Act on Protection of the Economic Competition allows

entrepreneurs at the time of issue of the subject decision, therefore before the effectivity of Act No. 121/2000 Coll. to request from the Office a decision if individual contracts restricting competition according to Article 3 and Article 4 fulfil the conditions according to paragraph 1 (negative test certificate). In its decision, the SR Supreme Court stated that such a decision has a certifying character in the sense of recommendations for entrepreneurs, while it is not a decision on an individual contract (i.e. if it is prohibited or restricted, or if entrepreneurs are obliged to restrain from fulfilling contracts restricting competition and remove the infringing state on which the Office decides in other proceedings within its competence stemming from the provisions of Article 11, paragraph 1, letters b) and c) of the Act on Protection of the Economic Competition).

According to the statement of the Supreme Court of the SR, this concerns a decision of a temporary character which may, in the case of fulfilment of other preconditions, be a precondition for the issuing of sanction decisions with which the emergence, change and expiry of rights or duties of the entrepreneur are connected.

In the opinion of the Supreme Court of the SR, the correctness of such a conclusion is also supported by the fact that the quoted provision is of an optional character, i.e. it leaves to the choice of the entrepreneur if he requests a test certificate ("attestation") and by this receives an a-priori Office viewpoint on the contents of the contract (without any restricting or prohibiting consequences) or will be passive in this issue and leave himself open in the future to the risk of direct sanctioning measures. Until the issue of a decision of a sanctions type, his legal position however remains unchanged.

In the given circumstances, since such a step is not obligatory for a requestor, it is not quite possible to prove the supposition that the requestor of a negative attestation has his legal rights restrained by its issue, which is an indispensable precondition of proceedings on an appeal against the decision of a legal body in the sense of Article 247 paragraph 1 of the Civil Procedure Code (CPC).

The Supreme Court of the SR therefore came to the conclusion that the decision challenged by the appeal has the character of a temporary nature and as such is outside the investigative competence of the court in the sense of Article 248 paragraph 2, letter e) CPC; therefore the proceedings, in harmony with the provisions of Article 250d paragraph 3 CPC, are stopped.

Protest of the General Prosecutor of the Slovak Republic

According to the 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 lodges 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 acts in proceedings on the prosecutor's protest according to Article 69 of Administrative Proceedings.

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

framework for advantage of a certain group of entrepreneurs to the prejudice of others, who, in their business activity, are discriminated against in competition.

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.

The Ministry of Agriculture of the Slovak Republic has fully accepted the request to remove the inconvention state of affairs and has undertaken to remove the mentioned inconvenience 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*

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 the 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.

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*

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 advantaged 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*

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.

The Office suggested adding into the Draft Act wording that municipalities provide natural and legal entities with information on municipal waste collection and transport in the territory of the municipality and on the headquarters and activities of the facilities dealing with waste in the territory of the municipality. Following from the solution of cases by the Office, most citizens and entrepreneurs in the municipalities have no knowledge of the duties of the municipality in dealing with municipal waste and on duties resulting from the generally binding regulation on waste in their municipality. 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 municipality, as well as with ignorance of the municipality 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.*

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 the 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 the 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.

The Office proposed reducing the required amount of EURO 400 000 from state budgeted funds or municipal funds to an amount set by the provision of Article 2, paragraph 3 of the 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 the Slovak terms and does not correspond to the Act No. 263/1999 Coll. on Public Procurement and Amendments and Supplements to Certain Acts.

Opinions on Privatisation Projects

The relation of the Office to privatisation arises from Article 19 of the Act on Protection of the Economic 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 the Act No. 92/1991 Coll. on the Conditions of Transfer of State Property to Other Persons, as amended.

As part of the interdepartmental remarks proceedings concerning privatisation projects in

2000, the Office issued its opinions on 28 draft privatisation projects.

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

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.

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

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 also requests 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. The Office considered this application to be unsubstantiated.

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

According to this Act, the Ministry of Economy of the Slovak Republic requests 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.

Implementation of Principles of Competition Policy and Co-operation with Institutions

The Chairman of the Office regularly takes part in discussions of the Government of the Slovak Republic and is an official member of the Council of Economics Ministers, a member of the Economic Council of the Government of the Slovak Republic and a member of the Council of the Government of the Slovak Republic for Co-operation with the OECD. Thus, the Office is directly engaged in individual government policies and has the opportunity to express itself from the viewpoint of protection of competition. During 2000, the Chairman of the Committee for the Economy, Privatisation and Enterprising of the National Council of the Slovak Republic, Jaroslav Wolf, and the Chairman of the Constitutional Court, Ján Mazák visited the Office and became familiar with its activities.

Through its representatives, the Office was represented in many bodies, whether in the ministerial commissions or directly in advisory bodies of the Government of the Slovak Republic. The following are some of these:

- The Working Committee of the Council of the Government of the Slovak Republic for Co-operation with the OECD,
- The Working Committee of the Ministerial Council of the Government of the Slovak Republic for European Integration,

- The permanent Working Committee of the Ministry of Finance of the Slovak Republic for Regulation of Postal and Telecommunications Services,
- The State Fund of Market Regulation of the Slovak Republic in Agriculture: implementing standards and principles of the Act on Protection of the Economic Competition,
- The Council for Consumer Policy of the Ministry of Economy of the Slovak Republic: implementing principles of competition in consumer policy,
- The permanent Working Committee for regulation of prices of heat energy at the Ministry of Finance of the Slovak Republic. In the Working Committee there are representatives of the Ministry of Economy of the Slovak Republic, the Antimonopoly Office of the Slovak Republic, the Ministry of Finance of the Slovak Republic, Slovenské elektrárne, š.p., Bratislava, and Slovenský plynárenský priemysel š.p., Bratislava,
- The Inter-ministerial Commission established by the Ministry for Administration and Privatisation of National Property of the Slovak Republic and the National Property Fund of the Slovak Republic for the evaluation of proposals for the entry of a strategic investor to the company SOLIVARY, a.s., Prešov. The Commission prepared a proposal for the selection process of a financial advisor and, from contesting companies, chose a company to act as financial advisor for the preparation and organisation of a business competition for the sale of shares in the SOLIVARY a.s. Prešov company,
- The Commission for the selection of a strategic partner for the company Slovenské Telekomunikácie, a.s., Bratislava. The result of the work of this Commission was the choice of Deutsche Telecom as the most favourable strategic investor for the company Slovenské Telekomunikácie, a.s., Bratislava.

INTERNATIONAL CO-OPERATION

During the year 2000, the main priorities in the area of international relations were the entrance of the Slovak Republic to the Organisation for Economic Co-operation and Development and the process of accession of the Slovak Republic to the European Union. The Office also gave a great deal of attention to bilateral relations with partner institutions and to participation in international conferences, with the goal of keeping up with world developments in competition law and policy.

Participation in the International Integration Process, from the viewpoint of Approximation of Law

The realisation of the process of approximation of Slovak law with that of the European Union is one of the steps towards attaining the full membership of the Slovak Republic in the EU. According to the negotiating position of the Slovak Republic for Chapter 6, Competition, Slovakia accepts the *acquis* in the "Competition" chapter, and is prepared to implement the *acquis* in this area by the goal date for Slovak accession into the EU, January 1, 2004.

In the Regular Report of the European Commission on the Preparedness of the Slovak Republic for Accession to the European Union for 2000 of November 8, 2000, in which the European Commission evaluated the progress made by the Slovak Republic, it is stated that

the valid Act on Protection of the Economic Competition is to a great extent in harmony with the EC rules. It also positively evaluated the adoption of a new version of this law which removed an exemption from the ban on restricting competition in agreements, and the coordination of procedures for entrepreneurs in agricultural production for milk, sugar beets, potatoes, slaughter cattle, oils, grains, fruit and vegetables. It reduced the regulations to a minimum in judging agreements restricting competition, enforced a new wording for the legal concept of negative clearance and reformed the so-called individual exemption from the application of the general ban on agreements restricting competition in the concept of community competition law. According to the Regular Report, it is necessary to accept supporting legislation regarding the calculation of turnover and concentrations notifications and to ensure further harmonisation with the EU law, primarily as regards the EC policy in the area of group exemptions and with the development of *acquis communautaire* on vertical restrictions. According to the European Commission the Antimonopoly Office should ensure that anti-trust rules are effectively encoded and enforced, and that cases regarding the most serious breaches of competition become a priority issue.

A key document in the process of drawing closer to acquiring full membership in the European Union is the National Programme for the adoption of *acquis communautaire* of March, 2000. Part of the short-term priorities of the National Programme for the competition chapter was the fulfilment of the task to accept a new Act on Protection of the Economic Competition. On March 17, 2000 the new Act was passed by the National Council of the Slovak Republic, and it came into effect on May 1, 2000. The acceptance of the new Act meant further progress in the process of harmonising Slovak competition law with that of the EU. A second task ranked among short-term priorities of the National Programme is the passing of a new law on competition protection. The goal of the new law on protection of competition, whose draft was approved by the Government of the Slovak Republic on October 31, 2000 and is presently being discussed in the National Council of the Slovak Republic, is to react to the experiences of the Antimonopoly Office of the Slovak Republic in applying the presently valid Act on Protection of the Economic Competition and on some changes to community law, in the interest of a further approximation of our legislation with that of the EU law. The passing of a new Act on Protection of the Economic Competition and Decrees related to it finishes the harmonisation of rules and procedures in the area of competition with the competition law of the EU and achieves full approximation with *acquis communautaire* for the competition area. The presumed date of January 1, 2001 for the new act's entry into effect was not manageable due to the slowness of the legislative process, and its date was shifted to May 1, 2001.

A medium-term priority of the National Programme for the adoption of *acquis communautaire* for the competition chapter is the acceptance of a Decree on block exemptions for agreements restricting competition with an effective date of December 1, 2002. The preparation of such supporting legislation comes from the EU requirement on including the main principles of block exemptions from the application of the general ban on agreements restricting competition into the Slovak legal order.

In the goal of considering the prepared Draft Act on Protection of the Economic Competition, the Office developed three foreign activities. The first of these was discussion of the proposal with representatives of the EU General Directorate for Competition at which Office representatives undertook to prepare remarks on how to prepare support legislation. The Office requested expert aid of the international specialist of the former General Director of the Swedish Competition Authority and the present Chairman of the Working Group for

Competition at the European Commission, Jorgen Holgersson. The Office Chairman personally visited partner institutions in Portugal, the Competition Council and the General Directorate for Trade and Competition.

In May there took place in Brussels the second meeting of the Conference on the accession of the Slovak Republic to the EU, at which eight chapters were officially opened, among them the Competition Chapter. In its negotiating position, the Slovak Republic maintained that it is prepared to implement in full measure the *acquis* in the Competition Chapter to January 1, 2004. The new Act on Protection of the Economic Competition ensures full approximation of the law of competition in the anti-trust area, for which the Antimonopoly Office of the Slovak Republic is responsible. The Office for State Aid is responsible for the state aid area. The sixth conference of the European Union and candidate countries on competition was aimed at a modernisation of the EU competition law, a new approach to horizontal and vertical agreements in the sense of the EU competition law and the fight against cartels. The unmasking of cartels gained attention at a number of international forums throughout 2000 whose conclusions came to the point that offices of competition protection must have effective tools for the struggle against cartels, such as the right to impose fines and penalties, co-operation among offices and the so-called programme of leniency, i.e. the ability to lower fines for certain conditions favourable for the Office.

Entrance of the Slovak Republic to the Organisation for Economic Co-operation and Development

In September 2000, the Slovak Republic received an official invitation as the 30th member of the Organisation for Economic Co-operation and Development. Slovakia's accession was prefaced by intensive work by ministries and other central bodies of the state administration that were active in individual OECD Committees. The Antimonopoly Office is a sponsor of the OECD Committee on Competition Law and Policy. During the year it presented to this Committee and its working groups the Office's Annual Report for 1999, as well as a contribution on the support of competition in the Slovak gas industry branch.

Bilateral

Relations

As part of the long-term co-operation and good contacts with German institutions, Helmut Lutz, head of the Cartel Office at the Bavarian Ministry for the Economy, Enterprising and Technology in his visit to Bratislava, held within bilateral co-operation between Bavaria and the Slovak Republic, informed Office personnel on changes in German competition law. There were also held mutual discussions with the Chairman of the Office.

Within the Central European region, the Office maintained close contacts consisting of reciprocal informing on developments within competition law, and mainly on the decision of individual cases, which had either common participants in proceedings or features of entrepreneurs' conduct. Such form had the pre-consulted concentration of the Hungarian company MOL Budapest and the Slovak refinery, Slovnaft a.s. Bratislava. The Office also intensively co-operated with the Czech Office for the Protection of Economic Competition in the solution of contemporary problems in the cable television and paper industry areas.

International

Projects

National Economic Research Associates (hereafter referred to as NERA) won a tender of the

Ministry of International Development of the United Kingdom of Great Britain and Northern Ireland to provide technical aid for the Antimonopoly Office of the Slovak Republic. The goal of the technical aid project, approved in November 2000, is to strengthen the Office and to reinforce its capacity to increase the level of effective competition in Slovakia, in line with the EU requirements. The project of Antimonopoly Office of the Slovak Republic contains instruments which support competition and help to invigorate the environment which encourages economic growth and investment. This project builds on the preceding support through the mentioned ministry, also performed by NERA, with the goal of contributing to the development of knowledge of the issue of competition by members of the Office. The project includes three parts, namely:

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| a) | the provision of counselling and specialist leadership in technical competition issues and events related to competition policy by means of a series of three seminars, |
| b) | institutional development support, |
| c) | a limited number of study trips. |

In September began the implementation of the Phare project named Legal Aid for Legislative Approximation which is directed at short-term priorities and long-term priorities of the Partnership for Accession. Concrete legal aid will be organised by APS Consortium, headquartered in Bratislava, in the form of general analyses, information, comparative studies, viewpoints, legal counsel, aid in the preparation of draft legal regulations, the judgment of the already prepared draft legal regulation and the like. The Office will get the benefit of this project during 2001. The Consortium's legal aid will be primarily concentrated on preparing a draft decree on block exemptions.

MEDIA AND OTHER ACTIVITIES

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

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.

A lecture for Office employees on the theme of Decisive Activity in the Area of Competition in the European Union was prepared by an employee from the Legislative-Legal and European Integration Department. The lecture took place in the presence of the representative of the European Institute for Public Administration in Luxembourg, Mr. Peter Goldschmidt, as the finale of a project implemented by this institution under the title, "Training in the Area of EU Law for State Clerks from Slovakia". The content of the lecture was a presentation of a European Commission decision in the matter of a request for a negative clearance and a European Court decision in the matter of the preliminary issue of the Austrian Cartel Court.

Office

Work

Transparency

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 January 1, 1999 as well as information on all initiated administrative proceedings before the Office, on the issuing of first-degree decisions, on remedies 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 January 1, 2001, the Office has also published on its web site information in the sense of the 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.