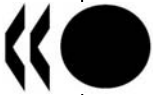


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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN SLOVENIA

-- 2005 --

This report is submitted by the Delegation of Slovenia to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 18-19 October 2006.

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1. Executive summary

1. There have been no changes to competition law in 2005 as the current Competition Act, which had been enforced in 1999 was amended in April 2004 (and enforced with 1 May 2004), in order to ensure the necessary compliance with the legal framework of the European Union especially with regard to ensure common standards of application of the rules prohibiting restrictive agreements and abuse of dominance.

2. As there have been limited human and financial resources of the Competition Protection Office the Enforcement Record was much more in favor of merger control than antitrust cases. The reason can be found in the following important elements:

- notified mergers have to be cleared in 30 (simple one phase procedure) or 120 days (two phase procedure); in less than 1% cases the terms are exceeded in order to provide legal certainty for the merging parties;
- notifying parties provide reasonable scope of data on time and the procedures are usually smooth;
- there are limited number of case handlers and in order to provide merger review on time, the structure of the cases (statistics) is unfortunately more merger review oriented than antitrust cases oriented, although the time and resources allocation is different than it could be understood from the Enforcement Record, because the antitrust cases are much more time (and resources) consuming.

3. There was a significant change in the Misdemeanor Act, according to which the Competition Protection Office got the competence to impose fines. This competence can be applied to the breaches of the Competition Act after 1 January 2005, what in practice means that in 2005 there was no possibility to impose fines. This possibility became very realistic in the beginning of 2006.

2. Enforcement of Competition law and policies

4. According to scarce human and financial resources, merger review cases still prevail significantly in comparison with antitrust cases.

2.1 Abuse of dominance

5. Abuse of dominance cases are, not only in 2005 but steadily from 1997 on, common in the telecommunication sector, including fixed telephony, mobile telephony, internet etc.

6. In 2005 there were two decisions in the field of mobile telephony; in one of the decisions the Competition Protection Office accepted the undertakings as offered by the incumbent.

7. Funeral services represent another important industry that frequently appear before the Competition Protection Office, and one of the three decisions in connection with the abuse of dominant position relates to the funeral services.

2.2 Restrictive agreements

8. Restrictive agreements usually have the form of decisions of business associations and/or specialized chambers. In 2005 there were to cartel agreements detected and declared null and void, one of

them was a price fixing cartel as a result of a decision of the Chamber of pharmacies to introduce a special surcharge on every non-prescript medicine sold in the pharmacies, the other was a price fixing cartel as a result of a decision of the association of tour-operators to uniform price for booking of tourist capacities.

9. The cartels were proved by material evidences, economic analysis were made to back up material evidence. Economic analysis did not represent the clue evidence in any of the above cases.

Anticompetitive practices	2005	2006 *
Abuse of dominant position	3	0
Restrictive agreements	2	2
- individual exemptions**	0	0
- negative clearance**	0	0
- prohibited agreements	2	2
Total	5	2

* data until 27 September 2006 included

** although there is no possibility to grant individual exemption or negative clearance after 1 May 2004, some parties still expect such decision

2.3 *Merger review*

10. In comparison with the period from 1999-2004 there was no mergers that would be approved with conditions and/or blocked. There were two cases when the parties did not decide to proceed with merger because of the negative opinion in the pre-notification activities. One of the non-realized mergers was in the field of infrastructure and services, the other in the field of distribution of electricity.

11. There were certain notification that were not necessary because the economic threshold was not exceeded. Such cases appeared only in case of take-over , when the Stock Market Agency wanted the companies to do it, although it was not necessary to do it.

12. There were some cases of parking the shares elsewhere in order to avoid the notification of take-over and in some cases to avoid merger notification. In such cases the Competition Protection Office started an *ex officio* merger review.

MERGERS – Issued decisions	2005	2006 *
Total	54	32
- cleared	43	26
- cleared with conditions	0	0
- not falling within the scope of the Competition Act	11	6
- termination of procedure	0	0

* data until 27 September 2006 included

3. Resources of the Competition Protection office

13. Human and financial resources are scarce, even more than the figures show as the structure is less suitable than necessary. The majority of the staff has only few years of professional experience as only exceptionally the Competition Protection Office employs other staff than trainees. The reason can be found in the Governmental personnel policy, according to which there is a negative trend for employment in the public sector.

14. Such situation leads to high fluctuation rate.

a) Annual budget (in local currency and USD)

2005: 156.612.000 SIT ; corresponding value: 812.701 USD

2006: 174.404.000 SIT ; corresponding value: 888.507 USD

b) Number of employees (person-years)

	2005	2006
Economists	9	9
Lawyers	10	8
Other professionals	0	0
Support staff	1	1
Total	20	18

3.1 Competition Advocacy efforts

15. Taking into account the scarce resources, non-efficient courts regarding the fines, competition advocacy activities have been of high importance. These activities have been most needed in the following fields and to the following target groups:

- ministries, especially with regard to legal framework that still includes provisions that (may) represent entry barriers, especially in the field of professional services;
- sector regulators, especially with regard to identification of public interest and to protected categories; this applies especially to the fields of telecommunication and energy,
- local communities, municipalities, with regard to secondary legislation that introduce entry barriers and/or protect local monopolies; this applies especially to special kind of services, like funeral services
- chambers (Chamber of economy and commerce and its associations) and specialized chambers, as the majority of cartel agreements in the past were detected as the decisions of these institutions;
- professional public (lawyers and economists), especially with regard to certain important issues, like public procurement and liberalization.

4. Concluding remarks

16. The enforcement record should be more in favor of antitrust issues than merger review. The competition culture is not at appropriate level. The passive approach of the courts, non-willingness to impose fines made the decisions of the Competition protection Office less efficient than expected and necessary. There is usually low level of reaction (especially with regard to timely and complete responses) to inquiries of the Competition Protection Office.

17. The solution may be in the new legal framework providing more competences, especially with regard to fines and in re-definition of the Competition Protection Office, granting sufficient resources for professional operation.