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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN THE SLOVAK REPUBLIC

-- 2005 --

This report is submitted by the Slovak Delegation to the Competition Committee FOR DISCUSSION at its forthcoming meting to be held on 8 and 9 June 2006.

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Executive Summary

1. Competition policy may contribute to long-term and sustainable growth through the effective functioning of markets subject to competitive pressure. In 2005, the Antimonopoly Office of the Slovak Republic focused on improving its output and streamlining the internal functioning of the Office.

2. The Office intervened against anticompetitive agreements between undertakings and abuse of a dominant position, assessed concentrations, and, in some cases, it also intervened against state administration bodies if their conduct distorted the competition conditions on markets. The number of decisions issued is shown in Table No. 1.

3. In 2005, the Office managed to detect very serious violations of the law, which were followed by the imposition of heavy fines totalling SKK 2,560,564,867 (EUR 67,383,285). The Office thus sent a signal that it would uncompromisingly punish anticompetitive practices and demand rectification.

Table No 1

Decisions issued by the Office in 2005

	Total	Agreements restricting competition	Abuse of a dominant position	Concentrations	Other (e.g. Article 39, fines for a failure to provide information, thwarting inspection)
1st instance	114	6	16	66	26
2nd instance	22	3	5	3	11
Total	136	9	21	69	37

4. The Office also focused on the preparation of primary analyses, mapping sectors that presented a risk from the viewpoint of competition conditions. For this purpose, it established 12 working groups, which will also continue to work in the future.

5. During the year in question, the Office focused on "competition advocacy" (activities supporting the establishment and development of a competitive environment and increasing general information on the benefits of competition). In view of the positive effects of competitive pressure, it is important to extend the areas subject to this pressure and remove barriers to entry/output into/from the market. The Office, as an entity actively participating in the comment procedure, had the opportunity to express its opinions on restrictions to competition, which it identified in the draft new legislation and proposals for various concepts and strategies. In 2005, the Office submitted fundamental comments on 32 documents with the aim of removing regulation barriers and other restrictions to competition. The Office also took the initiative and prepared documents (concerning, for example, the detection of cartels in the public procurement process) in an effort to increase the detection of anticompetitive practices and remove regulation barriers to competition.

6. The implementation of competition policy currently has a supranational dimension, which increases demands on the quality of the Office's outputs, as they are directly confronted with the required European standards and place high demands on professional knowledge and language skills of its

employees. In the reported year, the Office directly applied Articles 81 and 82 of the Treaty to its decisions and within the so-called referral system, it assessed concentrations in accordance with the procedure set by the European Commission.

7. During 2005, the Office organised four workshops in Bratislava in cooperation with the European Commission, the OECD, and national competition authorities of the United States, France, and Sweden.

8. The Office prepared and approved the Vision of the Office Up To 2010, in which it set a strategic goal for the Antimonopoly Office of the Slovak Republic to become a respected and trustworthy institution whose outputs would meet European standards. When pursuing its vision, the Office worked on improving its internal organisation and internal communication system in 2005. Employees of the Office participated in the CAF (Common Assessment Framework) project and organised a number of seminars and training courses.

1. Changes to competition laws and policies, proposed or adopted

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

9. On March 1, 2005 an amendment of the Act on Competition Protection came into force, through which the Antimonopoly Office of the Slovak Republic was given a new power in the area of abuse of a dominant position. Pursuant to this amendment the Office is empowered to assess the abuse of a dominant position through the excessive prices.

2. Enforcement of competition laws and policies

2.1 Action against anticompetitive practices, including agreements and abuses of dominant positions

2.1.1 Agreements restricting competition - summary of activity

10. The campaign against cartel agreements and the endeavour to uncover and eliminate them is one of the priorities for the Antimonopoly Office of the Slovak Republic. Cartel agreements are characterised as being concluded between competitors and restricting competition. These primarily include agreements on prices, restriction of production and sales, and division of markets among competitors. It is generally known that these agreements directly "attack" the principles of competition and belong to the most serious types of anticompetitive/restrictive practices. The reason for this categorisation is simple: they damage consumers and the economy of the country.

11. If competitors decide to replace competition with an agreement or collusion, consumers lose the advantages arising from the rivalry among undertakings in the form of lower prices, better quality of goods and services, and so forth. Consequently, consumers' purchases are not carried out under the conditions resulting from mutual competition, but instead under the conditions affected by mutual agreements on non-competition.

12. The mission of the Office, and not only for this year, is to search for possible cartel agreements and concerted practices and to investigate them and decide on relevant matters, including the imposition of effective fines on those involved in these restrictive practices. The selection of sectors and areas that show certain characteristics signalling susceptibility to various forms of cartel agreements and collusions is a very important instrument for pursuing this goal, in addition to subsequent investigations in sectors with the aim of detecting possible deformations of the market, including gathering information on the actual functioning of these sectors.

13. The year 2005 was the first year for the Slovak Republic to apply Council Regulation 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty establishing the European Community, namely through the application of the Community competition legislation by the Antimonopoly Office of the Slovak Republic, which specifically applied Article 81 of the EC Treaty to agreements restricting competition which may affect trade between Member States. During the reported period, the competition law of the Community, that is, assessment of restrictive practices according to Article 81, was implemented in cases concerning the construction sector and the provision of professional services.

14. In 2005, the Office dealt with 15 cases (45 investigations) in the area of agreements restricting competition and issued 15 decisions in the first instance, including six cases where the Office identified a violation of the law. Within the framework of this procedure, the Office imposed fines totalling SKK1,479,584,867 (EUR 38,936,443) in 2005.

2.1.2 Agreements restricting competition - description of significant cases

Cartel agreement on highway construction

15. For a long time, the Office investigated the market of construction work within the highway program of the Slovak Republic, which was supplied on the basis of public procurement. This market is considerably concentrated and extremely susceptible to cartel agreements. In this context, the Office carried out an investigation and requested documents concerning public tenders for the construction of the D1 highway section between Mengusovce and Jánovce from the Slovak Road Administration. For the purpose of the public tender, the highway section was divided into two sections - section 0.00 – 8.00 km and section 8.00 – 25.85 km. Three entities submitted their bids in the international tender: 1. **Mengusovce Associations** (Strabag a.s., Doprastav, a.s., BETAMONT, s.r.o., 2. **JV IS – Skanska Consortium** (Inžinierske stavby, a.s., Skanska DS, a.s. Banské stavby, a.s., and 3. **MOTA – ENGIL, S.A./**

16. Based on the investigation and analysis of the documents, the Office proved that seven construction companies had coordinated the preparation of their price bids in advance in the public tender for the construction project "D1 highway Mengusovce – Jánovce, section 0.00 – 8.00 km." This led to the conclusion of an agreement restricting competition, which is prohibited by law. The bids of all three independent bidders did not result from their independent creation based on their own price databases, recommended construction work price lists, knowledge or practical experience from other tenders, or their own conditions for the performance of construction work, etc.

17. Public procurement as a form of acquiring goods, work, and services financed from public resources is only effective if undertakings compete with each other and submit the best bids on the basis of their own calculations and independent offers. If undertakings coordinate their conduct, for example, agree in advance on who will win the respective tender and other bidders adjust their prices to the agreed victorious bid, this is always detrimental to the procurer and, consequently, public funds are spent ineffectively.

18. In this case, the aforementioned conduct was also in violation of Article 81 of the Treaty establishing the EC, because it involved an international public tender, in which bidders from other countries could also take part and trade between EU Member States may have been affected.

19. The Act on Protection of Competition prohibits undertakings from concluding cartel agreements and/or coordinating their conduct, because this causes considerable damage to customers and consumers. Experts estimate a possible increase in prices by 10-50 percent as a result of cartel agreements. Coordination of actions in the process of public procurement, the so-called hard-core cartels, are among the

most serious anticompetitive practices, which is why tough sanctions against members of these cartels also have a preventative effect and discourage undertakings from such practices. The total fine imposed on the seven participants in the collusion amounted to SKK 1,473,978,000 (EUR 38,788,894).

20. The aforementioned decision has not yet become legally valid, because the parties to the proceedings appealed against it within the legal time limit.

Slovak Bar Association – violation of European competition law

21. During the reported period, on the basis of an investigation of the sector of professional services, the Office launched administrative proceedings against the Slovak Bar Association, which had issued the Rules of Lawyers' Professional Conduct containing a number of provisions that restricted lawyers' opportunities to advertise their services, both in terms of substance and form, and had a negative impact on the intensity of competition in this market.

22. The provisions of the Rules of Lawyers' Professional Conduct assessed by the Office prevented Slovak lawyers from using the advantages resulting from the possibilities provided by foreign law offices, because they were not allowed to use the names of these companies even if the holders of these names, with whom they cooperated or had permanent business relations, fully agreed. Without the possibility of using the international names and reputation of foreign law offices in the Slovak Republic, Slovak lawyers who wish to join these foreign associations are deprived of the decisive element of establishment required by law offices from the EU, which creates an obstacle to the establishment of foreign law offices from the EU in Slovakia. The definition of the legal name according to the Rules of Lawyers' Professional Conduct excludes certain competitors operating on the Community market from the Slovak market and affects the structure of competition within the Community and, consequently, economic activities of the affected undertakings. At the same time, the provisions of the Rules of Lawyers' Professional Conduct, as a binding internal norm, restricted lawyers' freedom to promote their services.

23. The aforementioned illegal conduct of the Slovak Bar Association resulted in the violation of the national and Community competition legislation, for which the Office imposed a fine of SKK 50,000 (EUR 1,315). This decision has not yet become legally valid and is currently subject to appellate proceedings.

Taxi services – agreement on the flag fall rate

24. On its own initiative, the Office started administrative proceedings to examine whether or not the conduct of taxi service operators bore the hallmarks of a cartel agreement on prices. The Office found out that at a meeting of representatives of several taxi services in Bratislava, six taxi service operators agreed to increase the basic flag fall rate from SKK 20 to SKK 40 (EUR 0,5 to 1), which constituted a violation of the Act on Protection of Competition.

25. According to the Act, this constituted a horizontal agreement on prices, which is prohibited. Agreements on prices have a negative impact on end consumers, which is why they are considered a serious violation of the competition law. As the parties to the proceedings only agreed on one part of the total price - the flag fall, while the rates per kilometer and waiting time were not changed, the price agreement among the parties to the proceedings did not have a considerable impact on prices in the defined relevant market. At the same time, in view of a low share of the participants in the agreement on the relevant market, no major influence of the aforementioned agreement on the intensity of competition was ascertained. After taking all these facts into consideration, the Office imposed fines totalling SKK 81,100 (EUR 2,134) on the six parties to the administrative proceedings.

26. This decision has not yet become legally valid, because the parties to the proceedings lodged an appeal against the first-instance decision of the Office within the legal time limit.

2.1.3 Abuse of a dominant position - summary of activity

27. An assessment of restrictive practices consisting of abuse of a dominant position does not only mean investigating the practices of undertakings in a dominant position, which directly cause damage to consumers, but also the actions of dominants that are detrimental to consumers because they influence market structures by weakening the existing level of competition or restricting its growth.

28. When assessing the conduct of undertakings holding a dominant position, it is important to assess how this conduct damages competition and how it weakens the existing level of competition, as well as direct and indirect impacts of the behaviour subject to assessment on competitors or third parties and whether the dominants' intentions include the so-called exploitation or exclusion, in addition to whether the conduct subject to assessment represents a legitimate reaction to competition, whether this practice is proportionate to their legitimate interests, and so forth.

29. The Office's practical experience in this area confirms that undertakings whose position is directly confronted with possible competitive pressure from new players entering the market as a result of the liberalisation process, or companies already present particularly in adjacent or related markets, which are interesting for dominant players, resort to abuse of their market position. In many cases, a restrictive reaction of the dominant is just a simpler answer to the existing situation.

30. In 2005, the Office investigated 76 cases of abuse of a dominant position on the market and issued 17 decisions in the first instance and three other decisions (for example, Article 39, fines for a failure to provide information, thwarting of inspection). The total amount of fines imposed for these practices was SKK 1,046,500 (EUR 27,539).

2.1.4 Abuse of a dominant position – description of significant cases

M. R. Štefánik Airport – Airport Bratislava, a.s. - denial of access to an essential facility

31. In 2005, the Office assessed and decided on the conduct of the company M. R. Štefánik Airport – Airport Bratislava, a. s. (hereafter referred to as "LMRŠ, a.s."), which denied the company Two Wings, s.r.o. access to the check-in area of the Bratislava airport intended for transporting, loading, and unloading of refreshments onto/from aircraft by air carriers. Two Wings, s.r.o. asked the undertaking LMRŠ, a.s. to allow it access to the check-in area of the airport, but LMRŠ, a.s. did not permit it to access this area before the Office issued a first-instance decision on the matter.

32. The Office arrived at the conclusion that the check-in area of the Bratislava airport, where services of transporting, loading, and unloading refreshments onto/from aircraft were provided, was an essential facility. The company LMRŠ, a.s., which operates the Bratislava airport, is its sole owner, a fact that gives it a dominant position on the market of the provision of access to the check-in area of the Bratislava airport. For the company Two Wings, s.r.o., the undertaking LMRŠ, a.s. represents an exclusive business partner and the only entity that can allow it access to the check-in area of the airport. The company LMRŠ, a.s. is exclusively operating on the market of transporting, loading, and unloading of meals and drinks onto/from aircraft in the check-in area of the Bratislava airport (in addition to the company Slovak Air Services s.r.o., a subsidiary of the Czech Airlines air carrier, which provides these services to its aircrafts), where the company Two Wings, s.r.o. also tried to establish itself.

33. The company Two Wings, s.r.o. fulfilled all the conditions for being permitted access to the check-in area of the Bratislava airport. Moreover, no capacity, technical, security, administrative, or other reasons existed in the reported period for which it could, or should, be denied access.

34. By its conduct, the company LMRŠ, a.s. abused the ownership of an essential facility, which resulted in LMRŠ, a.s. maintaining and/or strengthening its position on the vertically connected market of transporting, loading, and unloading meals and drinks onto/from aircraft at the Bratislava airport, where it is impossible to enter and remain without having access to the check-in area of the airport. By the aforementioned conduct, the company LMRŠ, a.s. restricted competition in the vertically connected market, which resulted in the elimination of competitive pressure on the part of the company Two Wings, s.r.o. and prevented effective competition in this market.

35. A fine in the amount of SKK 3,000,000 (EUR 78,947) was imposed on the undertaking LMRŠ, a.s. for the violation of the law in the form of abuse of a dominant position. This decision has not yet become legally valid and is currently subject to appellate proceedings.

Virtual private network – application of the margin squeeze practice

36. In 2005, the Antimonopoly Office of the Slovak Republic decided on the violation of the Act on Protection of Competition by the company Slovak Telecom, a.s. in the process of a tender for a solution to the "Integrated Communication Platform Ľudová Banka, a.s. [Volksbank]."

37. The case concerned a virtual private data network (VPS) for Ľudová Banka, a.s. VPS is a closed computer network built in the open environment of public networks, particularly the internet, using various encryption devices.

38. Restriction of competition consisted of the application of a price bid of August 2004 by the company Slovak Telecom, a.s. in the tender in connection with prices charged by Slovak Telecom, a.s. for the lease of networks to competitors according to the General Conditions and Tariffs effective at the time of the tender, because the amount of the wholesale price for the lease of networks and the retail price offered to Ľudová Banka, a.s. by Slovak Telecom, a.s., as a vertically integrated company, did not create room for competitors to offer a competitive price in this tender. It was not possible to compete with the retail price offered by Slovak Telecom, a.s., unless a competitor incurred a loss even if it were equally effective as Slovak Telecom, a.s. This procedure may be described as the so-called "margin squeeze."

39. A "margin squeeze" is a form of abuse where the difference between the retail price charged by the dominant and the wholesale price charged to its competitors for comparable services is negative or insufficient to cover the costs specific to the product of the dominant, which also provides its own retail service in the related market.

40. The Office imposed a fine of SKK 80,000,000 (EUR 2,105,263) on the company Slovak Telecom, a.s. This decision has not yet become legally valid, because Slovak Telecom, a.s. has lodged an appeal against the decision issued in the first instance.

41. In 2005, courts of the Slovak Republic reviewed 45 decisions of the Office. They dismissed 28 lawsuits, thus confirming the Office's decisions, and stopped or suspended proceedings in four cases. Courts reversed the Office's decisions contested by lawsuits in three cases. Courts have not yet issued legally valid decisions on other cases.

Slovak Telecom, a.s. – Refusal of access to local lines

42. The Council of the Antimonopoly Office of the Slovak Republic confirmed two points of a decision issued in the first instance, in which the Division of Abuse of a Dominant Position stated that the company Slovak Telecom, a.s. had abused its dominant position by failing to provide access to local lines and fined it a total of SKK 885,000,000 (EUR 23,289,473). The point of the first-instance decision concerning the obligation to remove the illegal situation became superfluous, because the Telecommunication Office, as the regulator of the telecommunications sector, had already issued a decision imposing specific obligations on ST, a.s. regarding access to telephone lines on the basis of the Act on Electronic Communications. The decision came into force on 16 January 2006.

43. Slovak Telecom, a.s. is the sole owner and administrator of the fixed public telecommunication network in the entire territory of the Slovak Republic, which includes local lines, also called the "last mile," connecting the end point of the network on the premises of a customer with the main switchboard or an equal device in the fixed public telephone network.

44. The fixed public telephone network with local lines represents an essential facility, which is essential for doing business in related markets and whose duplicate construction is not objectively possible in view of large investments, a long period of return, and the risk of incurring "sunk costs." ST, a.s. as the owner and administrator of this essential facility is an unavoidable business partner for undertakings for which access to infrastructure is essential for their own business activities in view of the non-existence of an equal alternative. Therefore, in order to create competitive pressure, it is necessary to make sure that access to these facilities is provided.

45. By failing to provide access to local lines, Slovak Telecom, a.s., as a vertically integrated company owning local lines, imposed restrictions on its competitors operating in related markets. The failure to provide access to local lines caused the liberalisation of the telecommunications sector to be considerably postponed, despite the establishment of a legal framework for the full liberalisation of the sector. Access to local lines enables undertakings to compete in offering high-speed data transmission services for permanent access to the internet, as well as in the area of DSL-based multimedia applications and the voice service - provision of the public telephony service (local calls, long distance calls, international calls). As ST failed to voluntarily create and publish an offer regarding the establishment of contractual relationships with entities interested in access to local lines, it excluded potential competition and restricted the expansion of the existing competition, by which it artificially prolonged the possibility of obtaining the so-called monopoly rent.

46. The behaviour of ST, a.s. deformed the competitive environment in the market of electronic communication services for a long time, which also had negative impacts on consumers, who could not benefit from competitive pressure in the form of lower prices, better-quality products and services, implementation of new technology, and so forth.

47. The seriousness of this behaviour is increased by the fact that the conduct of the company Slovak Telecom, a.s. concerns services provided within the sector of electronic communications in the territory of the Slovak Republic. Electronic communications are the key factor on the path toward an information society and, at the same time, they create basic conditions for undertakings, public institutions, and individuals to access modern communication networks and services within information infrastructure worldwide.

48. Within the aforementioned proceedings, the Council of the Office dealt with the conduct of the undertaking Slovak Telecom, a.s. during the period starting on 1 August 2002, when Decision of the Antimonopoly Office of the Slovak Republic No. 2002/DZ/P/2/157 of 30 July 2002, regarding the conduct

of the company Slovak Telecom, a.s. in the previous period, became legally valid. This decision had also been confirmed by the Supreme Court of the Slovak Republic. In both cases, the company abused its dominant position in connection with access to an essential facility with the aim of excluding competition and strengthening its own position on the market.

Slovak Telecom, a.s./UPC Slovensko, s r.o.

49. The Council of the Office dealt with an appeal lodged against Decision No. 2005/DZ/2/1/086 issued by the Division of Abuse of a Dominant Position on 19 August 2005. The first-instance authority decided that Slovak Telecom, a.s. (ST, a.s.) had abused its dominant position on the defined relevant market, as it jeopardised sales of the undertaking UPC Slovensko, s r.o. (UPC, s r.o.) by terminating its contract regulating the lease of cable ducts in Bratislava and failing to conclude a new contract to regulate their use, which could have jeopardised services provided by the company UPC, s.r.o.

50. ST, a.s. provides the so-called Carrier Duct service, through which undertakings can lease, for payment, openings in cable ducts (underground routes shaped like a breeze block, divided into sections marked by cable shafts for laying cables of electronic communication networks). The company UPC, s.r.o. is the owner of the cable distribution system, through which it provides retransmission of television and radio broadcasting and broadband internet. In many locations, cable ducts represent the only possibility for laying cables of electronic communication networks, and access to the openings of cable ducts in these areas is essential for the undertaking UPC, s r.o. to provide services.

51. Based on the appeal lodged, the case was dealt with by the Council of the Antimonopoly Office, which accepted the fundamental objection of the undertaking ST, a.s. (that the Office had no jurisdiction), changed the decision issued in the first instance, and stopped the aforementioned administrative proceedings.

52. This is because the application of the Act on Protection of Competition is excluded if another body ensures protection of competition in a specific case in accordance with special legislation. In this case, the issue is regulated by the Act on Electronic Communications (No. 610/2003 Coll.), which entitles and requires the Telecommunication Office of the Slovak Republic to intervene if necessary. Therefore, there was no reason for the Office to take action with respect to this matter.

2.2 Mergers and acquisitions

2.2.1 Statistics on number, size and type of mergers notified

53. Similarly to other competition authorities abroad, the Antimonopoly Office of the Slovak Republic is authorised to assess large merger and acquisition projects, which may impact the market structure and the intensity of competitive pressure. The market structure significantly influences the competitive behaviour of firms, and if there is a danger that after a concentration is completed, the intensity of competition will be considerably restricted as a result of the establishment or strengthening of dominance in the market, the Office will prohibit such transactions or may tie their approval to the fulfilment of certain conditions.

54. Parties to a concentration who fulfil the notification criteria stipulated in the law are required to notify the Office of the transaction, provide information necessary for its assessment, and suspend the implementation of the concentration until the Office issues a decision. The Office will issue a decision on the basis of an analysis of the markets that may be affected by the concentration.

55. The year 2005 was the first time that the Office applied the so-called referral system in accordance with Council Regulation (EC) No. 139/2004 on the control of concentrations between

undertakings. The aforementioned regulation clearly defines the division of powers between the European Commission and Member States in determining which institution will assess a concentration. The basic criterion of division is based on the amounts of turnovers of parties to a concentration, for example, if the aggregate worldwide turnover of the parties to a concentration exceeds EUR 5 billion and certain additional criteria are met, the concentration will be assessed by the European Commission. This is a simple and fast criterion that gives legal certainty to the parties to a concentration, but it may not always be correctly determined on the basis of this criterion whether the concentration is indeed assessed by the most appropriate competition authority. Therefore, the regulation provides for a certain correction mechanism, the so-called "referral system," i.e. a system of referrals of concentrations, based on which the Commission may refer a concentration with a Community dimension to Member States and, vice versa, Member States may refer a concentration without a Community dimension to the European Commission according to the general principle that a concentration should be dealt with by the most appropriate competition authority.

56. A concentration was referred by the Commission to the Antimonopoly Office of the Slovak Republic within the framework of the referral system in the case of the undertaking TESCO, which gained control over the undertaking Carrefour, to the extent concerning the territory of the Slovak Republic.

57. In 2005, the Office started 65 administrative proceedings concerning concentrations. The Division of Concentrations issued 80 decisions in the first instance during the reported period. The Office did not prohibit any concentration.

2.2.2 Summary of significant cases

Concentration of the undertakings Austrian Airlines Österreichische Luftverkehrs, AG through SLL, s. r. o., Bratislava, SR over SLOVENSKÉ AEROLÍNIE, a. s.

58. This concentration consisted of the undertaking Austrian Airlines Österreichische Luftverkehrs, AG (hereafter referred to as AUA) gaining indirect control over the company SLOVENSKÉ AEROLÍNIE [SLOVAK AIRLINES], a. s. (hereafter referred to as SA) through the undertaking SLL, s. r. o., Bratislava, SR (hereafter referred to as SLL) on the basis of a resolution on an increase in share capital adopted by an extraordinary general meeting of the undertaking SA on 23 December 2004.

59. Based on the minutes of the extraordinary general meeting attested by a notary and the SA Articles of Association, the Office ascertained that the undertaking AUA would acquire a 62-percent stake in the share capital of the undertaking SA through its subsidiary, SLL, as a result of which it would be able to exercise controlling influence on the activities of the undertaking SA, in addition to the opportunity to decide on its strategic business conduct. The undertaking thus acquired indirect control and according to Article 10 (1) (a) of the Act, this concentration was subject to control by the Office. The undertakings AUA and SA were the parties to the concentration. When assessing the concentration, the Office defined three relevant commodity markets - regular, freight, and charter transport.

60. When assessing the influence of the aforementioned concentration on competition in the relevant markets, the Office proceeded from the fact that the implementation of the concentration subject to assessment would reduce the number of independent decision-making entities, but the competition conditions in the relevant markets would not change substantially. In view of its financial and economic situation, the SA air carrier was unable to exercise substantial or long-term competitive pressure on other air carriers operating in the defined relevant markets. After the completion of the aforementioned concentration, the undertaking SA would strengthen its financial position on the markets, but the AUA financial group, which SA would join, would be subject to competitive pressure from other air carriers.

61. After examining the impact of the aforementioned concentration on the individual relevant markets of regular, freight, and charter transport, the Office arrived at the conclusion that the concentration between the undertakings AUA and SA would neither create nor strengthen a dominant position that would significantly hinder effective competition in these relevant markets, which is why the Office approved the concentration.

Fides Zdravotnícke zásobovanie [Medical Supplies], a.s., Biama, a.s. – fine imposed for a failure to observe a decision on prohibition

62. In this case, the Office imposed a fine for a failure to respect the prohibition of a concentration, on which a legally valid decision had been issued in December 2003.

63. The concentration consisted of the undertakings Fides Zdravotnícke zásobovanie, a.s. and Biama, a.s. gaining control over the company SL Plus, a.s. on the basis of the Agreement on the Purchase of Securities. The Council of the Office issued a decision prohibiting the aforementioned concentration, because it created a dominant position for the undertakings Fides Zdravotnícke zásobovanie, a.s. Biama, a.s. Drugimpex, s.r.o. and Villa Pharm, s.r.o. in the relevant market of wholesale distribution of medicines and health aids in the territory of the Slovak Republic, which might have resulted in significant barriers to effective competition.

64. The Office conducted an investigation and ascertained that the undertakings Fides Zdravotnícke zásobovanie, a,s, Biama, a.s. and SL Plus, s.r.o. carried out the concentration even after the decision prohibiting it became legally valid.

65. The law requires the Office to intervene in such a case and impose a fine on the undertakings failing to respect the prohibition. This obligation to impose a fine arises from the amendment to Act No. 204/2004 Coll. effective from 1 May 2004. Based on the facts mentioned above, the Office stated in its decision that a fine could only be imposed for the period starting on 1 May 2004, despite the fact that the illegal conduct of the undertakings Fides Zdravotnícke zásobovanie, a.s. and Biama, a.s., consisting of a failure to respect the legally valid decision prohibiting the concentration, had lasted six months.

66. Within the framework of the institution of control of concentrations, conduct contrary to a legally valid decision on prohibition constitutes a serious violation of the law. The failure to respect the decision on prohibition led to the establishment of a horizontal concentration, that is, a merger between two competing companies and the establishment of a dominant position prohibited by the decision.

67. In this case, the Office imposed a fine in the amount of SKK 23,000,000 (EUR 605,263) on the undertaking Fides Zdravotnícke zásobovanie, a.s. and a fine in the amount of SKK 7,000,000 (EUR 184,210) on the undertaking Biama, a.s. for the violation of the law.

Concentration between AGROFERT HOLDING, a. s., Czech Republic and Duslo a. s., Šaľa

68. In 2005, the Office decided on a concentration resulting from the acquisition of indirect exclusive control by the undertaking AGROFERT HOLDING, a. s. over the company Duslo a. s.

69. AGROFERT HOLDING, a. s. is a member of a group of business entities operating in the sectors of agricultural production and chemical and food-processing industries in the Czech Republic. It is operating in Slovakia through its subsidiary, AGROFERT Slovakia. The other party to the concentration, Duslo a. s., is involved in the production and sale of industrial fertilizers, preparations for protection of plants, rubber chemicals, polyvinyl acetate dispersions and dispersed glues, special organic and inorganic chemical products, and chemical products made of magnesium.

70. The Office analysed the impacts of the concentration on the relevant markets of the production and sale of industrial fertilisers. On the basis of the documents submitted, the Office ascertained that the activities of the parties to the concentration only overlapped in the product group of industrial fertilisers, which included nitrogen fertilisers, multi-component fertilisers, and special fertilisers. AGROFERT HOLDING a. s. only imports special fertilisers to Slovakia, but the other party to the concentration, Duslo a. s., does not produce them. The Office ascertained from its analysis that the merger between the undertakings did not present a risk to competition in the market of the production of industrial fertilisers.

71. The Office also analysed the distribution system through which these products get to end consumers with the aim of identifying the impacts and changes that the concentration might cause to this chain. The Office's analysis showed that the company Duslo a. s. had already built, on a regional basis, a historical distribution network consisting of the so-called agro-chemical companies, which were independent in the past and also had the necessary storage capacity (seasonal utilisation of fertilisers).

72. The Office assessed the situation in the aforementioned markets before the concentration, as well as the changes that would occur after its implementation. The Office arrived at the conclusion that no structural changes in the defined relevant markets would result from the concentration. The new owner, AGROFERT HOLDING, did not operate on any of the relevant markets prior to the concentration, nor is it a potential competitor capable of entering the market without incurring substantial expenses. The intensity of competitive pressure on the relevant markets will not change after the implementation of the concentration. The concentration will not have a negative impact on end consumers, because the change in the ownership situation will not distort or restrict market relationships established between suppliers and customers. The implementation of the concentration will also not undermine the existing connections between other participants in the market and their customers, nor will it create new barriers to entry for these participants or new entities interested in entering the market. Therefore, the Office approved the aforementioned concentration.

3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies

73. In a broad sense of the word, "competition advocacy" means activities aimed at supporting the establishment and development of a competitive environment and general information on benefits of functional competition. The Office also endeavoured to actively support the creation of competitive conditions through other instruments, in addition to its decision-making activities. At the same time, it tried to disseminate information on its outputs and their explanations and to also use other forms of disseminating information on benefits of competitive pressure.

74. A number of sectors and areas are undergoing development and transformation with the aim of setting new mechanisms of functioning based on the principles that stimulate competition. The current period is important and gives the Antimonopoly Office, as the authority competent to assess the functioning of the market, significant room to contribute to the formation of a standard business environment by its opinions and comments.

75. During the reported period, the competition authority also used so-called "competition advocacy“ in an effort to contribute to a less restrictive application of the measures adopted with the aim of increasing effectiveness and investments and to make sure that state interventions did not exceed the limits necessary for the preservation of competing market structures.

3.1 Interdepartmental comment procedures

76. Within the framework of the institutionalised interdepartmental comment procedures regarding various draft legal regulations, strategies, and concepts, the Office adopted, among others, the following standpoints during the course of 2005:

3.2 Draft Memorandum of Understanding between the Government of the Slovak Republic and the Swedwood Company on the Investment Project for the Expansion of Furniture Production

77. Regarding the aforementioned memorandum, the Office objected to a long-term contractual guarantee for supplies of large amounts of spruce by the dominant undertaking Lesy [Forests] š.p. to the company Swedwood, which could have a negative influence on the market, primarily because access by other customers purchasing spruce to wood supplies would be restricted for a long time, which could lead to their being driven out of the market or the market being closed.

78. At the same time, the aforementioned contractual relationship would create more advantageous conditions for a single undertaking – the Swedwood company and constitute the risk of possible discrimination. In addition, the state guarantee of wood supplies actually represented a non-standard intervention by the state in commercial relationships between the individual business entities, including an inadequate competitive advantage compared with other undertakings - parties to contractual relationships related to the purchase of wood from the same dominant supplier. The aforementioned guarantee would not only distort the competition conditions on the market, but it would also lead to taking on the responsibility for the fulfilment of commercial obligations of two business entities and set a precedent for similar requests for state guarantees by other business entities.

79. The Office's arguments were accepted in full and, consequently, the aforementioned memorandum was not implemented.

3.3 Concept for the privatisation of the airport companies Letisko M. R. Štefánika – Airport Bratislava, a.s. and Letisko Košice, a.s.

80. The Office requested that the examination of impacts on competition be an important aspect of the privatisation process and that the selection of a strategic partner should not eliminate existing or potential competition or vertical integration. The Office proposed that a possible negative influence of the bidders interested in the privatisation on competition already be tested in the first round. The concept of the privatisation process should primarily be aimed at creating a fully competitive environment.

81. The aforementioned opinion of the Office was incorporated in the concept for the privatisation of the airport companies approved by the Government of the Slovak Republic.

3.4 Acceleration of liberalisation of the postal services market

82. An analysis submitted by the Ministry of Transport, Post, and Telecommunications of the Slovak Republic was based on the assumption that a single provider of the universal service would exist, without considering the establishment of a competitive environment, which was unacceptable to the Office. Regarding the analysis submitted, the Office objected to the proposed procedure for non-acceleration of the process of liberalisation of postal services and the insufficient assessment of possible positive effects if the liberalisation of this market was accelerated, stressing the need/necessity to define a legal and regulatory framework, access to the network, method of ensuring competition neutrality, and models or methods of the financing of the universal service. The aforementioned document was subsequently rewritten in accordance with the Office's comments.

3.5 Draft law amending Act No. 168/1996 Coll. on Road Transport

83. The Office stressed the need to complete the submitted draft law in connection with the requirement to identify the criteria for granting transport licenses for public bus transport and the criteria for selecting a carrier with whom an agreement on activities in the public interest would be concluded. The comment procedure was not completed before the date of preparation of this Report (February 2006).

3.6 Draft law amending Act No. 323/1992 Coll. on Notaries and Notaries' Activities

84. The draft law assumes that the Presidium of the Chamber of Notaries would approve details of notaries' examinations. The Office holds the view that the regulator – the ministry should be authorised to define details of examinations, because the setting of the examination parameters by the Chamber of Notaries could create barriers to entry into the sector for new notaries. The comment procedure was not completed before the date of preparation of this Report (February 2006).

3.7 Act on Collection of Electronic Toll for the Use of Defined Sections of Roads

85. 85. The Office objected to the exclusion of possible participation of individual entrepreneurs in the building and operation of the technical system. The submitted draft law would discriminate against individual entrepreneurs. The Office's comments have been accepted.

4. Resources of Competition Authorities

4.1 Resources overall

4.1.1 Annual budget

	2004		Change
Total expenses	49 800 000 Sk	1 606 451 USD	+ 5 796 000 Sk

4.1.2 Number of employees

	2005	2004
Economists	31	20
Lawyers	17	16
Other professionals	7	12
Support staff	15	17
Total	70	65

4.2 Human resources

	2005
Enforcement against anticompetitive practices	24
Merger review and enforcement	10
Advocacy efforts	6

Period covered by the above information: year 2005.