

**Directorate for Financial and Enterprise Affairs  
COMPETITION COMMITTEE**

**Annual Report on Competition Policy Developments in Slovak Republic**

-- 2016 --

**21-23 June 2017**

*This report is submitted by the Slovak Republic to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 21-23 June 2107.*

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## 1. Executive Summary

1. The Antimonopoly Office of the Slovak Republic (hereafter "the Office", "the Antimonopoly Office of SR", "AMO SR") is the independent central state administration body of the Slovak Republic. Its main mission is to protect and promote competition and create conditions for its further development.

2. The Office's competences result from the Act No. 136/2001 Coll. on Protection of Competition and on Amendments and Supplements to the Act of the Slovak National Council No. 347/1990 Coll. on Organisation of Ministries and Other Central Bodies of State Administration of the Slovak Republic as amended as amended (hereafter "the Act").

3. Within its competences it mainly conducts investigations of a relevant market, in administrative proceedings it decides in the cases of agreements restricting competition, abuse of dominant position, merger control and restriction of competition by state administration and local administration authorities and it also proposes measures to protect and promote competition.

4. Besides the Slovak competition law the Office applies also European law pursuant to the Council Regulation (EC) No. 1/2003 of 16 December 2002 on the Implementation of the Rules on Competition laid down in Articles 81 and 82 of the Treaty on the Functioning of the European Union.

5. On 1 January 2016 the Act No. 358/2015 Coll. on Adjustment of Certain Relations in State Aid and De Minimis Aid and on the Amendment and Supplements to Certain Acts (hereafter "the Act on State Aid") came into force and by it the competences in the area of state aid coordination passed from the Ministry of Finance of the Slovak Republic to the Antimonopoly Office of the Slovak Republic.

6. Pursuant to this Act on State Aid the competences of the Office and the scope of its tasks have been extended since 1 January 2016, thus as the state aid coordinator the Office ensures the protection of competition also in the area of state aid.

7. Last year, the Office continued in emerging trend of its work as a modern competition authority that responds to demands of market and competition participants, current issues and thus contributes to the development of the competitive environment, and in the global sense it helps to develop both the economy and competitiveness.

8. In 2016 the Office issued 54 decisions in the matter of infringement of competition rules and in the area of merger control. The Office issued 45 decisions within the first-instance proceedings (Division of Cartels, Division of Abuse of Dominant Position and Vertical Agreements and Division of Concentrations) and the second-instance body, the Council of the Office, issued 9 decisions.

**Table 1. Overview of the number of issued decisions in 2016**

	Concentrations	Abuse of a dominant position	Agreements restricting competition	§ 39	Sanctions for non-cooperation with the Office	Total
<b>First Instance</b>	29	0	14	0	2	45
<b>Second Instance</b>	0	0	5	0	4	9
<b>Total</b>	29	0	19	0	6	54

9. Division of Cartels and Division of Abuse of a Dominant Position and Vertical Agreements dealt in last year with 99 complaints/approx. 100 complaints on the possible anticompetitive conduct in various sectors. In the first phase of assessment of complaints the Office examines the issue of its competence to deal with the matter or it assesses if it is a competition issue. Regarding the limited financial and personal resources of the Office, it is forced to prioritize these complaints and thus it focuses mainly on infringement cases with higher negative impact (real or potential) on competition level and consumer. Prioritisation also allows the Office to concentrate more on current issues in various sectors in the competition view and thus respond to needs of market and its participants, with a centre of interest focused on the positive impact on consumer. Thus 27 cases were subject to a more detailed investigation and within the administrative proceedings the Office dealt with 19 cases. Division of Cartels dealt mainly with the agreements restricting competition in public procurement (so called bid rigging) and issued 8 decisions relating to agreements restricting competition and other administrative proceedings are ongoing and will continue in next year.

10. In food sector the Office issued the decision by which it imposed fines in the amount of EUR 10 266 260 on 9 undertakings acting in the area of supplies and retail sale of products belonging to the group of milk, butter, cream. It was a case of vertical agreement, namely the practice of "resale price maintenance". Since one of the parties to the proceedings took advantage of settlement its fine was reduced by 50 %.

11. The Council of the Antimonopoly Office of SR imposed a prohibition to participate in public procurements on undertakings which restricted competition in the market of construction work including supply of facilities in the territory of SR by coordinating their bidding procedures relating to construction of healthcare facility -the Emergency Department of the L. Pasteur Faculty Hospital in Košice. By its decision the Council of the Antimonopoly Office upheld and completed the decision of the first-instance body on concluded cartel agreement relating to subjected public procurement.

12. The Office identified the anticompetitive conduct of 5 undertakings acting in the market of meal and benefit vouchers as the most serious infringement of competition rules, so called hard-core cartel and imposed a fine in the amount of EUR 2 982 321 on them.

13. In the area of providing after-sales services relating to selling motor vehicles of certain brands the Office terminated five separated administrative proceeding by issuing commitment decisions.

14. Beside the general investigation and decision-making activities the Office was engaged in number of advocacy activities. Through these activities the Office seeks to enforce the sound competition principles and thus prevent from potential distortions or solve potential or real competition concerns or deficiencies.

15. Within the inter-ministry comment procedure in 2016 the Office submitted its comments on 33 draft acts or other legislations materials. In 5 drafts it formulated fundamental comments, 21 comments had the nature of recommendation and 7 were combined. Thus the Office submitted fundamental comments on 12 drafts (this number includes comments both in view of competition and in other view). Office's comments referred for example to Act on Court Bailiff, Insurance Act, Trust Services Act, Act on Healthcare Insurance or proposals to provide the investment aids to various undertakings, namely the proposal to provide the investment aid to I.D.C. Holding, the proposal to

provide the investment aid to Gestamp Nitra, the proposal to provide the investment aid to Hyunnam SK etc.

16. Development of competition culture and dissemination of public awareness about the competition rules have been promoted by working meetings with undertakings, state administration and local public administration authorities, students, academic community and experts from other competition authorities. The Office presented results of its work and more complex statements of general interest at several press conferences for media and experts. The Office has successfully continued the tradition of conferences on current trends in competition law where the experts from various countries and institutions meet to exchange information and opinion on competition. It also organized press conference on AMO SR news during which it reported on prohibited cartel agreements on the meal vouchers market.

17. With the aim to promote competition culture and sensibility of the future experts in the area of law and economy the Office continues in cooperation with the Faculty of Law of the Comenius University in Bratislava and the Faculty of Law of Trnava University in Trnava and with the University of Economics in Bratislava. Memoranda on cooperation in the area of competition are concluded between the Office and mentioned universities.

18. The Office as the coordinator in the area of state aid intensively cooperates with the aid providers both at the level of central state administration and at the level of local public administration authorities and it also provides information on state aid rules to general public.

19. As the Office fulfils the tasks which come out for the Slovak Republic from the European Union membership, from 1 July to 31 December 2016 it fulfilled, besides its daily work, also tasks related to the presidency of the Council of the EU. It has carried out several important activities and within the Council of the EU it has chaired several meetings of the Council's Working Group on Competition, during which the opinions on legislative proposals for EU acts were discussed. It also organized two expert events, namely a meeting of the Expert Working Group within the European Competition Network and an expert conference entitled European Competition Day, which is organized every six months by the competition authority of an EU Member State currently in the chair of the Council of the EU. The Office contributed to the positive image of Slovakia also at the OECD premises in Paris at the Competition Committee meeting during which it presented the results of the project review of the application of the OECD recommendations on competition in Ukraine.

20. The Office regularly informs the public on its decisions, important outputs and other activities via press releases and also on its regularly updated web page and Twitter. It also cooperated with media and provided them with press releases on its decisions, initiated administrative proceedings and other important statements and it also replied to numerous journalists' questions referring to competition. For the eighth year the Office continued issuing the quarterly Competition Bulletin quarterly providing summary of interesting and brief news both on its activities and on activities of the European Commission and other foreign competition institutions. Competition Bulletin is available at the Office's web page. In May the Office published the Annual Report 2015 and during the year it has been regularly contributing to expert discussion with the European Competition Authorities, expert discussion at both domestic and foreign forums, expert periodicals and other mass media devoted to legal and competition issues.

## 2. Summary of new legal provisions of competition law and related legislation

21. In 2016 the Office submitted any legislative draft but as a co-gestor together with the Ministry of Justice of SR it cooperated in transposition of Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union (hereafter "the Directive") into the legal order of the Slovak Republic. By adopting the Directive in 2014, the European Commission's efforts, which began in 2005 with the introduction of the Green Paper, later in 2008 by White Paper on this issue, were completed. The aim is to improve the position of injured parties in claiming for damages through the introduction of effective remedies, while unifying the substantive and some procedural aspects of the damages, given that vast infringements of competition law often contain a cross-border element and it is necessary for businesses operating in the internal market, to ensure more balanced conditions and improve the conditions under which the consumers apply the rights deriving from the internal market. The European Commission also sought to increase the legal certainty and reduce differences between Member States as regards their national rules governing claims for damages suffered as a result of an infringement both of European Union competition law and national competition law provided it is applied parallelly with the European Union's competition law. By approximating these rules, it is possible to prevent differences between Member States' rules adjusting claims for damages suffered as a result of infringement of competition law to be extended. Member States were required to transpose the Directive by 26 December 2016.

22. This Directive was transposed by the Act No. 350/2016 Coll. on certain rules for the enforcement of claims for damages caused by infringement of competition law amending and supplementing the Act No. 136/2001 Coll. on Protection of Competition and on Amendments and Supplements to Act of the Slovak National Council No. 347/1990 Coll. on Organisation of Ministries and Other Central Bodies of State Administration of the Slovak Republic as amended as amended entering into force on 27 December 2016 (hereafter "Act on Damages"). Provisions of Act on Damages will be applied both in cases when the damage was caused by infringement of the Articles 101 and 102 of TFEU as set by the Directive and also in cases when the damage was caused by the infringement of the provisions of the Act on Protection of Competition on prohibition of agreements restricting competition and abuse of a dominant position, it means infringements pursuant to the national law. In particular, the Act on Damages, in the spirit of the Directive, defines the basic concepts, determines the legal conditions for applying the right to compensation of damages, establishes rules for joint and several liability for damages in relation to participants in an agreement restricting competition, introduces the concept of the transfer of price increases in applying the right to compensation of damages, special provisions on proceedings on damages, special provisions on access to evidence, special provisions on limitation, as well as limitation periods and provisions on alternative dispute settlement.

23. The Act on Damages introduces new tools within the Slovak legal order in the context of litigation for damages caused by infringement of competition law, which should allow for the more effective enforcement of the right towards injured persons. It introduces, for example, the possibility to access the evidence to both the applicant and the defendant, what should significantly contribute within the burden of proof of the applicant, who is often in a difficult position to prove the facts, which are available to the defendant.

24. At the same time it introduces rules for access to evidence located in the file of the competition authority and it is necessary to state that in the view of competition authorities it is a most substantial part of Directive regarding their activities.

25. The competition authority, namely AMO SR should be the last resource of providing this information. Applicant will have to identify primarily entities other than the Office as part of a claim to access the evidence and should have evidence access to which is required within the proceedings for compensation of damages. The Office only may be ordered to access the evidence from its administrative file, if the court ordered to do so to other person and the evidence was not accessed and it was proved that the party to the proceedings or a third person is not in a position to provide the required evidence in the appropriate circumstances and simultaneously the one who requires access to the required evidence, cannot obtain them otherwise.

26. At the same time, categories of information with a time-limited access, as well as evidence that cannot be made available at all, are determined. Within the second mentioned category, it means so-called "black list", there are statements within the leniency programme and submissions within the settlement proceedings. As the Directive states the leniency programme and settlement proceedings are the important instruments for enforcing European Union competition law by public tools, as they contribute to the detection and effective prosecution and sanctioning of the most serious infringements of competition law. Since many decisions of competition authorities in cartel cases are based on application to apply leniency programme and generally the actions for damages in cartel cases follow these decisions, thus the leniency programme is also important for the effective enforcement of claims for damages in matters relating to cartels. Undertakings may refrain from cooperating with competition authorities under leniency programme and settlement proceedings if self-explanatory statements, such as statements under leniency programme and settlement proceedings are submitted which are usually submitted only for cooperation with competition authorities. Such access would entail a risk for cooperating companies or their managers to incur civil or criminal liability under worse conditions than "co-infringer" who do not cooperate with the competition authorities. In order to ensure that undertakings continue to be willing to address competition authorities on a voluntary basis in the context of leniency programme or settlement proceedings, such documents are excluded from the access to evidence. This strict provision of the Directive was, of course, also reflected in the Act.

27. Mentioned Act includes many new provisions that have not been applied in our legal system so far. It is a norm, a *lex specialis* to the Civil Dispute Settlement Code as well as the Commercial Code, which will be applied by courts, respectively the parties to the court proceedings for damages, not by the Office. However, the Office is entitled to enter these proceedings and if requested by the court it may be helpful in some aspects of the application of the competition rules.

28. Besides the standard tasks grounded in analytical activities and economic consultations aimed at promotion of argumentation in particular cases dealt with by the Office, AMO SR focused on statements on operation of consortia and their impact on competition, namely the consortia in construction industry for contracts relating to exchange of crash barriers on highways and motorways and on statement on functioning of the electronic contracting system for under limited contracts.

### 3. Action against anticompetitive practices

#### 3.1. Summary of activities

##### *3.1.1. Agreements restricting competition*

29. Agreements restricting competition may have the form of horizontal agreements that are between direct competitors and include cartels or the form of vertical agreements, which means the agreements between undertakings acting at different levels of distribution network.

30. In 2016 the Office continued in revealing illegal cartel agreements, since they belong to the most serious infringements of competition rules and which only their participants can benefit from.

31. In 2016 the Division of Cartels received 86 complaints, conducted 47 general investigations and initiated 2 administrative proceedings. It issued 8 decisions in the matter of agreements restricting competition and 1 decision, by which it imposed a fine for non-cooperation with the Office.

32. In 2016 of the total number of decisions of the Division of Cartels were 7 decisions in the matter of stopping the proceedings, 1 decision on non-cooperation with the Office and 1 decision imposing a fine.

33. In 2016 the Division of Abuse of a Dominant Position and Vertical Agreements received 7 complaints in the matter of vertical agreements, conducted 3 general investigations and 8 administrative proceedings. It issued 6 decisions in the matter of agreements restricting competition.

34. In 2016 the Office continued in intensive cooperation with state administration authorities in the area of public procurement control. Regularly it organized workshops focused mainly on explaining the indications of anticompetitive coordination of tenderers in public procurement, as well as clarifying the negative consequences of this conduct and the opportunity to cooperate with the Office in revealing cartel agreements.

##### *3.1.2. Abuse of a dominant position*

35. In order to protect competition the Office intervenes, inter alia, against undertakings abusing their dominant position. The purpose is to prevent the dominant companies from abusing their strong market position, and the Office focuses on those types of conduct that harm the consumers the most. The cases of abuse of dominant position must be always based on the “theory of harm”, which means that finding the infringement of competition rules must be based on a logical and consistent assessment of the dominant competitor’s conduct resulting in a real or potential negative impact on competition and consumer either in the form of a higher price level or a lower quality or a constricted supply.

36. Last year the Office, the Division of Abuse of a Dominant Position and Vertical Agreements, in the matter of abuse of dominant position received 42 new complaints and conducted 5 more detailed investigations.

##### *3.1.3. Courts*

37. Decisions of the Council of the Office come into force after they are delivered to the parties to the proceedings. Decisions of the Council of the Office, in connection with

the decision of the Office, may be the subject to judicial review. According to the Code of Administrative Court Procedure a party to the administrative proceedings may sue against the decision of the Council of the Office to the Regional Court in Bratislava (hereafter "RC BA") and to file a cassation complaint against the RC BA judgment to the Supreme Court of the Slovak Republic (hereafter "SC SR").

38. In 2016 the courts decided in 12 cases, of which 3 cases were decided by the Regional Court in Bratislava and 9 cases by the Supreme Court of the Slovak Republic.

## 3.2. Description of significant cases, including those with international implications

### 3.2.1. *A fine on five undertakings for cartels in the market with meal and benefit vouchers*

39. On 11 February 2016 the Office issued a decision, by which it imposed a fine in the total amount of EUR 2 982 351 for two cartel agreements, namely on five undertakings operating in the market of issuing, distribution and sale of meal and benefit vouchers, including providing related services.

40. It came out from the documentation and information available to the Office that the undertakings operating in the relevant market restricted competition by committing two anticompetitive conducts:

- cartel agreement based on market allocation and
- cartel agreement based on limiting the maximum amount of meal vouchers accepted in retail chains.

41. During the years from 2009 till 2014 the undertakings implemented common business strategy on customers (employers both in public and private sectors) which was based on:

- non-competing for competitors' customers, namely by the fact that the aforementioned undertakings:
  - did not address competitors' customers, respectively if they addressed them they applied such price offer that the competition for customer really did not happen (so-called "standard offer"),
  - did not offer zero fees to competitors' customers,
  - did not offer benefits and bonuses to competitors' customers,
  - coordinated their conduct in public procurements, public tenders and similar tenders,
- applying the system of so-called "balanced compensation of losses" (balance), which meant permitted acquisition of competitor's client in case of losing own client, so as the balance between these undertakings was balanced.

42. The intention of implementing a common business strategy was to maintain a stable level of market shares in the relevant market.

43. Implemented mechanism significantly disturbed competition for customers between these undertakings and their motivation to compete. Due to implementation of common business strategy the market conditions did not result from competition, but from their cartel agreement. The undertakings were not motivated to decrease commissions (so called entry commission – commission for purchase of vouchers) to customers and thus win new customers from other undertakings concerned, since

consequently they would take their customers within the system of "compensation of losses". Finally, the cartel agreement resulted in maintenance of higher commissions applied to customers as it would be if such a mechanism among undertakings has not existed and effective competition would have been applied between them.

44. During the period of years from 2011 to 2014 the undertakings realized personal meetings (especially in the association uniting them) and e-mail communication with the aim to determine and install the maximum number of meal vouchers accepted by the retail chains within one purchase from a single issuer.

45. In the effort to limit maximum amount of meal vouchers accepted in retail chains the five undertakings acting in the given market mutually restricted themselves in concluding contracts on accepting meal vouchers with retail chains (acceptance points) following the unification of their terms of trade in these contracts. Since the negotiations with the retail chains failed the limitation has not been realized in practice.

46. The intention of their conduct was to increase the profitability of the output commissions (it means remuneration for the reimbursement of the nominal value of meal vouchers in cash) since issuers enforced higher commission in average relating to restaurants than relating to retail chains, what has resulted from higher bargaining power of retail chains.

47. The Office assessed the conduct of undertakings as agreement restricting competition and/or concerted practices grounded in direct or indirect price fixing or other business conditions, in market allocation and collusive behaviour in public procurement, public tender or other similar tender relating to public procurement, public tender or other tender which are prohibited pursuant to the article 4 of the Act on Protection of Competition and pursuant to Article 101, par. 1 of Treaty on the Functioning of the European Union.

48. In this term the Office states that collusion in public procurement or in public tender is considered as one of the most serious infringement of competition rules (so-called hardcore cartels). Regarding the significant negative impacts of such agreements restricting competition the Office's priority is to reveal the agreements and sanctions their participants. Decision of the Office is not valid, since it is a first-instance decision against which the undertaking concerned appealed.

### ***3.2.2. Commitment decisions on the field of repair and maintenance of motor vehicles***

49. In November 2015 the Office initiated the administrative proceedings in the matter of possible agreements restricting competition in the area of providing after-sales services relating to selling motor vehicles in the territory of the Slovak Republic.

50. The Office initiated five separate administrative proceedings in this area. Proceedings were initiated following the investigations made in the area of providing after-sales services relating to selling motor vehicles of brands Mazda, Seat, Škoda, Toyota and Volkswagen. Based on the documentation gathered the Office suspected that undertakings might have infringed the Act by concluding vertical agreements on making a guarantee conditional to performing repair and maintenance only in service stations belonging to authorised networks. Thereby the independent (unauthorised) services should have been disadvantaged.

51. Decisions relate to provisions of official documents issued by a producer/importer of vehicles of the brands (especially service books etc.) allowing refusing a guarantee on vehicles only on the basis of visiting independent service stations, disregarding the quality of the repair/maintenance performed by the given service station.

52. Throughout the administrative proceedings the individual participants to the proceedings proposed certain commitments, by accepting of which it might be possible to conclude the administrative proceedings. As the Office came out mainly from the provisions within board documents (service books etc.), the participants to proceedings proposed changing the provisions of documents concerned along with informing customers (personally and also on web site of a given brand of vehicles) with valid guarantee that it is not conditioned by performing repair and maintenance exclusively in authorised brand services.

53. Currently, the Office concluded all five administrative proceedings by commitment decisions. For these decisions it was decisive that the proposed commitments eliminate the competition concerns identified by the Office, namely sufficiently effectively, in a short time and for lower administrative costs. Effective cooperation from the side of participants to the particular administrative proceedings positively influenced the achieved results.

### ***3.2.3. Decision on agreements in the area of selling a group of products: milk, butter and cream***

54. On 13 June 2016 the Office issued a decision by which it imposed a fine in a sum of almost EUR 10 million on 9 undertakings. The subjects concerned operate in the field of supply and retail sale of a group of products: milk, butter and cream. One of the participants to the proceedings used the instrument of settlement and the Office decreased the amount of its fine by 50%.

55. In 2013 the Office stipulated the sector of food and agriculture as one of its priority fields and performed the survey in the area of milk and dairy products. The Office investigated the effectiveness of markets relating to basic industry and processing of raw milk from cows as well as selling processed dairy products at the level of retail, mainly at the level of retail chains. The Office identified possible competition concerns at the level of supplies and retail sale of several dairy products. The facts found within the frame of investigation were a part of documentation on the basis of which the Office conducted inspections at the premises of 5 undertakings.

56. On the basis of the inspections and the investigation the Office came to a preliminary conclusion that the relevant supplier of a group of products – milk, butter and cream and relevant retailers in the Slovak Republic might have infringed the Act, thus in April 2015 it initiated the administrative proceedings. The participants to proceedings might have infringed the Act by means of concluding vertical agreements between themselves, with the common purpose of resale price maintenance (RPM) between 2009 and 2014.

57. The application of the vertical restraints in the form of RPM is within the frame of competition law generally prohibited and by its character it belongs to serious infringements of the Act. It is a type of vertical agreement where the supplier of goods determines the prices, or also other conditions under which the customer may sell the goods or services to the end consumer. The incentive for such a restriction of competition is to achieve higher profits for the participants of the agreement to the detriment of the

consumer, while the practice of RPM results in a higher price and a negative impact on the consumer.

58. The basis for assessing the anticompetitive conduct of the undertakings concerned was in the given case mainly the analysis of found e-mail communication. Besides the basic analysis of e-mail communication, the Office optionally conducted also other additional analyses of the real-time counter prices.

59. After examining all the relevant facts, the Office found that the anti-competitive conduct of the parties to the agreement in setting retail prices was applied by:

- reducing market participants' uncertainty in the market and thereby demotivating retailers to intensify competing for end consumer,
- increasing a price level of products for end consumer

comparing to situation without the conduct between the participants to proceedings concerned. The presented behaviour decreased the level of the so-called intra-band competition that is within the frame of selling products concerned and the level of competition in the retail market in the Slovak Republic. The decision of the Office is not valid, since the participants to proceedings appealed against it.

#### ***3.2.4. Cartel in the construction of healthcare facility in Košice***

60. On 30 June 2016 the Council of the Antimonopoly Office of the Slovak Republic issued a decision by which it upheld and amended the first-instance decision on the cartel agreement in public procurement for the construction of healthcare facility – the Emergency Department of the L. Pasteur Faculty Hospital in Košice.

61. In 2011 the undertakings *Chemkostav, a.s.*, Michalovce, *PKB invest, s.r.o.*, Prešov and *PRO – TENDER s.r.o.*, Košice committed the infringement of the Act on Protection of Competition by coordinating their procedure in the subjected public procurement, thereby restricting competition in the market of constructing works, including equipment supply in the territory of the Slovak Republic.

62. The undertakings *Chemkostav, a.s.* and *PKB invest, s.r.o.* submitted concerted bids and the undertaking *PRO – TENDER s.r.o.*, providing services related to subjected public procurement, actively contributed to this coordination.

63. The Council of the Office imposed for the infringement of the Act the fines as follows:

- *Chemkostav, a.s.*: EUR 2 206 706,
- *PKB invest, s.r.o.*: EUR 327 668,
- *PRO – TENDER*: EUR 13 177.

64. Decision of the Council of the Office came into force on 21 July 2016.

65. Pursuant to the abovementioned decision in accordance with the Art. 38 of the Act on Protection of Competition in the wording effective from 18 April 2016, the undertakings has been banned from participating in public procurement for a period of three years from the date the final decision becomes valid.

### ***3.2.5. Cartel in the market of construction and reconstruction works in relation to a guest-house***

66. On 9 June 2016 the Council of the Office confirmed the decision of the Division of Cartels of 25 May 2016, by which it imposed fine on three undertakings for concluding an agreement aimed at restricting competition in the market of construction and reconstruction works including devices supply in the territory of the Slovak Republic.

67. The first-instance body considered as proved on the basis of evidence acquired by analysis that the undertakings VUMAT SK, s.r.o., B.C.D., spol s r.o. and TERCIA, spol. s r.o. coordinated their conduct through the exchange of information and with the purpose to coordinate bids and their participation relating to public tender so that the ranking of participants and winner were known in advance, subsequently by submitting coordinated bids they also realised their purpose in practice. The object of the contract was "Reconstruction of guest-house ENERGETIK" and the assumed contract price was EUR 1 005 962,53 exclusive of VAT. The undertakings concluded an agreement restricting competition while submitting bids in the process of public tender through direct or indirect fixing prices of goods, market allocation and collusive behaviour, by which they coordinated their behaviour consciously.

68. The conclusions of agreement restricting competition were based on:

- the participants' knowledge of submitted bids thereby in the hidden columns of unsuccessful participants' bids were the bids of participants placed before them,
- non-standard conformity of participants' bids.

69. The AMO SR imposed the fine on undertakings for such behaviour in a sum equal to 5 % of the relevant turnover as follows:

- VUMAT SK, s.r.o.: EUR 165 341,
- B.C.D., spol. s r.o.: EUR 28 176,
- TERCIA, spol. s r.o.: EUR 63 562.

70. All the participants of proceedings appealed against this first-instance decision. On the basis of appeals against the first-instance proceedings the Council of the Office examined the first-instance decision and came to conviction that the first-instance body proceeded and decided properly and together with evidence completed by the Council of the Office leads to a conclusion that the participants of the proceedings concluded cartel agreement and the purpose of their coordination was the objected contract has been acquired by the undertaking determined in advance and for agreed price. They also realized this agreement in practice.

71. The agreements on fixing prices, restricting sale, market allocation and collusive behaviour in public tender, for instance in the process of public procurement, public tender or other similar tender are ranked as cartels, which as a special form of horizontal agreements are the most serious infringements of competition rules. Decision came into force on 13 June 2016.

### ***3.2.6. Settlement in the case of a cartel in public procurement in the engineering sector***

72. On 30 June 2016 the Council of the Office issued a decision subjectly upholding the conclusions of the decision of the first instance body that the undertaking MEDMES, spol. s r.o., the Czech Republic and the undertaking MARINER plus s.r.o., Bratislava

restricted competition in the market of production and supply of goods and services in the engineering sector in the territory of the Slovak Republic.

73. In 2013 the undertakings coordinated their conduct when participating in and submitted price-aligned bids in the public procurement process. The subject of the contract was de-protection of starch production for technical purposes and completion of an integrated warehouse management of wheat starch. The contract was realized within the Operational Program Competitiveness and Economic Growth. The project was co-financed by the European Union funds and the state budget. The aim of their mutual coordination was that the predetermined tenderer obtain the contract and at an agreed price. The Office evaluated the conduct of the undertaking as an agreement restricting competition pursuant to § 4 of the Act on Protection of Competition, consisting in the direct or indirect determination of the prices of the goods, the division of the market and the collusive behavior in the public procurement process.

74. Based on the institute of settlement, the Council reduced fine in the total amount of EUR 96 733, and imposed the fines on the undertakings as follows:

- - MEDMES, spol. s r.o.,: EUR 33 066,60,
- - MARINER plus, s.r.o.,: EUR 34 645,50.

75. In accordance with the Act on Protection of Competition it was imposed on the undertakings MEDMES, spol. s r.o., and MARINER plus, s.r.o., a ban on participating in public procurement for one year from the final decision coming into force. The decision of the Council of the Office came into force on 11 July 2016.

## 4. Mergers and acquisitions

### 4.1. Statistics on number, size and type of mergers notified and/or controlled under competition laws

76. In 2016 the Division of Concentrations of the Antimonopoly Office of the Slovak Republic conducted 3 general investigations and 29 administrative proceedings. It is a total number of administrative proceedings, which were initiated and concluded in 2016 as well as those initiated in 2015 or in 2016 and also those continuing in 2017.

77. Last year it issued 30 decisions, by 24 decisions of them it agreed with creating a merger, by 5 of them it decided on stopping administrative proceedings and by 1 decision it imposed a fine on an undertaking for non-cooperation with the Office.

### 4.2. Summary of significant cases

#### 4.2.1. *Merger of Diebold and Wincor Nixdorf Aktiengesellschaft*

78. On 25 May 2016 the merger grounded in the acquisition of exclusive control of the undertaking Diebold, Incorporated, the United States of America over the undertaking Wincor Nixdorf Aktiengesellschaft, Germany was approved.

79. Diebold is an American company acting in more than 90 countries. The core activities are the following two segments: hardware and software supplies and services for so-called financial self-service solutions ("FSS solutions") for banks and supplies of electronic and mechanical security equipment (including safes and devices for dispensing and counting money), supplies of software and integrated systems for financial institutions and other customers. In the territory of Slovakia Diebold acts through its

distributor, company Spherix, s. r. o., Bratislava only in the area of supplies of FSS solutions for banks.

80. Company Wincor Nixdorf is a German company providing FSS solutions to bank clients and the so-called POS solutions (for example cash registers) and self-service solutions for retail customers. In Slovakia Wincor Nixdorf, through its subsidiary company sells FSS hardware, software and provides relating services and support. It also provides solutions for retailers.

81. Since both Diebold and Wincor Nixdorf provides FSS solution for banks in Slovakia, as well as various components, and also relating services and supports and the scope of their activities in Slovakia is different, in the view of impacts of the merger on competition conditions the Office has been considering both horizontal and vertical aspects of merger concerned.

82. Within assessing horizontal aspects, the survey proved that FSS solutions (either as a whole or for example only supplies of hardware, i. e. ATMs or software, etc.) are procured mainly through tenders.

83. The proceedings was distinct from the point of view of the areas of operation of the merging parties, since there was no previous decision-making practice of the Office (neither in a similar area) in this respect. In this case, the Office assessed the economic power and analyzed the proximity of the substitution of the merging parties. As primarily it is a tender market, where the banks select the supplier mostly to expand the network of ATMs / to renew obsolete machines / related software for a particular ATM package, the Office focused on the analysis of tenders over the past period, and from the submitted data and responses of banks it concluded conclusions on proximity of substitution that were the basis for a consensual decision. Market shares-based analysis (coming out of the number of ATMs installed or related sales) did not provide a real image of the market participants and competitors in the market. The Office also took into account market entries and innovation in this area.

84. For example, with regard to customer ATMs supply market there are pre-merger manufacturers/suppliers of customer ATMs in Slovakia. In addition to Diebold and Wincor Nixdorf there is an American manufacturer NCR through the distributor PRINTEC and the Japanese manufacturer OKI through the distributor ALBACON.

85. In the view of unilateral effects resulting from this merger the Office found that the merger will result in enhancing the number of ATMs' installed base, but the elimination of effective competition has not been identified, mainly in the view of:

- presence of at least one incumbent powerful player – company NCR, through its distributor PRINTEC, in the Slovak market (regarding both the global and the European position of the company NCR in supplies of FSS solutions),
- entry of new significant player - company OKI through its distributor ALBACON,
- existence of other competitors in procurements that the banks (or parent companies of the Slovak banks) realize at the supranational level,
- expected entry of other competitors, as it comes out from the survey,
- detected position of Diebold in Slovakia in the case of realized tenders where the customer ATMs Diebold are installed only in banks; in last five years the Diebold ATMs were successful in neither tender (neither purchased directly).

86. Assessing the coordinating effects the Office ascertained that in spite of the high market concentration there are significant factors that impede the coordination, mainly in:

- in the vast majority of tenders the bank decides which companies are invited to tender; also there are direct purchases where the bank directly decides for one supplier without tender,
- more limited position of producer OKI is still relative as since its entry it is invited to tenders just like other players and within the tenders in the view of criteria set by the banks it is an equivalent player and the banks decide based on submitted bid regarding its overall economic efficiency,
- in the view of frequency the tenders or purchases are not realized very often,
- it is an innovative market what is proved also by growing tendency to buy recycling ATMs.

87. Regarding the fact that both Diebold and Wincor Nixdorf in Slovakia provide (may provide) advanced software independently and at the same time they supply hardware for banks, the Office has been dealing with the possible vertical impacts of the merger concerned. It also has been assessing the vertical impacts related to the supply of service and connected services to FSS solutions. Based on information stated in notification of concentration and facts ascertained by the Office's survey, the Office did not identify and concerns from vertical effects of merger concerned. The decision came into force on 25 May 2016.

#### *4.2.2. Merger of KOFOLA CS and WAD GROUP*

88. On 24 June 2016 the Office stopped the administrative proceedings in the matter of merger grounded in the acquisition of exclusive control of the undertaking Kofola CS, a.s., the Czech Republic over the undertaking WAD GROUP, a.s., the Slovak Republic and through this in indirect joint control over the undertaking WATER HOLDING, a.s.

89. Company Kofola CS, a.s., produces in and/or distributes to Slovakia several brands of non-alcoholic beverages and syrups, for instance Rajec, Radenska, Jupi, Jupík, Kofola, Vinea, Rauch and others.

90. The portfolio of the undertaking WATER HOLDING, a.s., also includes several brands of non-alcoholic beverages and syrups, for instance Budiš, Zlatá Studňa, Fatra, Gemerka Šofocola and others.

91. The Office assessed the merger from the point of horizontal overlaps of the merging parties activities, in case of supplies to retail (off-trade) and also to restaurant and similar on trade (on trade), namely in particular relevant markets of goods, the definitions of which were based on extensive evidencing. The Office assessed the merger also in terms of the effect of the portfolio of products supplied.

92. In some areas the Office identified competition concerns, the company Kofola did not submit a draft of conditions and obligations to remove the competition concerns, but it took back the draft for initiating the proceedings on the merger concerned, based on which the Office stopped the proceedings.

## 5. The role of competition authorities in the formulation and implementation of other policies

93. Besides the decision-making activity the Office promotes and enhances the competitive environment also through competition advocacy. Competition advocacy is aimed at prevention in the area of competition protection and increases the awareness of competition principles among lay and expert public. It covers a wide range of activities from initiating legislative changes, through comments in the interministry comment procedure, organisation of seminars and conferences, various initiative documents to the communication with public through media. According to the Office's experience, in many cases where the competition concerns have been specified due to the improperly adjusted relations in some sectors, for example due to the improper regulation, the more effective systematic solution of problems in the market through competition advocacy is more effective than the administrative proceedings against the particular undertakings.

94. Through the comments on draft acts and other documents the Office seeks to eliminate potential barriers to the effective application of competition rules likely to cause a distortion of market and competitive environment.

95. In 2016 the Office submitted its comments on 33 materials submitted within the interministry comment procedure. In 5 materials it formulated fundamental comments on legislation drafts, 21 comments had the nature of recommendation and 7 were combined. Thus the Office submitted fundamental comments on 12 materials, both in the view of protection of competition as well as the comments outside this framework.

96. Comments of the Office referred mainly to the Act on Bailiffs, Act on Healthcare Insurance and to the proposals for the provision of investment aid to various entities, namely the proposal for investment aid for I.D.C. Holding, the proposal for investment aid for Gestamp Nitra, the proposal to provide investment aid to Hyunnam SK etc.

### 5.1. Draft of the Act on Bailiffs

97. To this material, the Office has applied several fundamental comments within the comment procedure. In particular, the Office disagreed with the proposal that bailiffs are allocated by electronically, and the beneficiary is not given the choice of bailiff, since this option forces bailiffs to perform their activity efficiently and at high-quality level. The Office pointed out that the proposal is contrary to the philosophy of services' liberalization of the European Commission and deliberation may, according to the Office, be reflected in the efficiency of the executive proceedings, indirectly in the negative impact on the consumer and the beneficiaries, etc. The comment also referred to the related provisions regarding the contractual remuneration for enforcing the execution activity, which is one of the factors that allow the choice or competition between bailiffs.

98. The Office also raised a comment on the provision according to which if the obligated person is poor the executive proceedings is terminated after a specified period (one year in the case of legal persons and three years in the case of natural persons). Such solution reduces the law enforceability and has a negative impact on the state budget. The Office drew attention to the fact that the time fixed in this manner is inadequately short, and the difference in the time allowed for legal and natural persons was not substantiated. In the case of foreign legal entities without assets in the territory of the Slovak Republic, the Slovak legislation cannot lead to the deletion from a register kept in another state and the abovementioned thus creates an unequal position among the debtors and for the

creditor; it means that the law could not be enforceable. According to the Office, existing legal institutes should be used to release from the debts, and they must be respected when debt is released, with regard to creditors' rights. The Office requested to omit this provision.

99. The comment with nature of recommendation to this material was to allow the executor concerned to decide whether he/she would require the costs of the execution in advance.

100. After the controversy, the provision was partially reworded regarding the suspension of the execution in the case the obligatory person is poor. Other fundamental comments were not accepted.

## 5.2. Draft of the Act on Insurance

101. This material suggested that insurance companies, insurance companies from other Member States and branches of foreign insurance companies are required to pay 4 % of the insurance premiums received and 8 % of the insurance premiums received from activities carried out in the territory of the Slovak Republic.

102. The Office pointed out that the proposed extension of the contributory obligation from premium by other non-life insurance and the increase of the financial costs - contributions in a same amount of 8% of the premium received from this insurance may create in the territory of the Slovak Republic barrier to entry for new entities, may result in exit of entities from the Slovak non-life insurance market to another Member State with a more favorable law on contributions, while it may adversely affect the competitive environment in the non-life insurance market.

103. In addition, the percentage of the insurance premium rate set at a uniform level for all non-life insurance segments does not take into account individual non-life insurance areas, the amount of premiums earned from them, or the purpose for which such funds are to be used. In addition to rising premium rates and premium rates for individual non-life insurance products, the proposed law can also lead to a negative impact on consumers, a reduction in the number of contracts concluded, and thus a reduction in the protection of the property of the population in the event of damage.

104. The Ministry of Finance did not accept the Office's comments. Within the legislative process at the National Council of the Slovak Republic, the provisions of the proposed law were changed. The Office therefore drew attention and expressed its concerns that the obligation set only on the insurance premiums from insurance contracts concluded after 31 December 2016 has the ability to negatively affect the level of competition in the non-life insurance market. These could, on the one hand, hinder the position of existing players on the market and reduce the "mobility" of customers and, on the other hand, it could make it more difficult for new players to enter the market. The Office has also highlighted a potential inconsistency with the EU state aid rules as it could provide a selective advantage to some companies because the contributions have the capacity to unduly advantage firms which have or will have a higher share of insurance contracts concluded prior to 1 January 2017. However, it would be necessary to undergo further analysis on the basis of further information. The Office will continue to closely monitor and evaluate the structure of the insurance market in the Slovak Republic, following the introduction of an 8 % contribution within the entire non-life insurance sector.

105. The Office in 2016, in addition to standard tasks that consist of analytical activities and economic consultations aimed at supporting arguments in cases dealt with by the Office, focused in particular on opinions on the operation of consortia and their impact on competition on a particular example of construction consortia in contracts concerning the exchange of crash barriers on highways and speedways and an opinion on the functioning of the electronic contracting system for under-limited contracts.

## 6. Resources of Competition Authority

### 6.1. Annual budget

	2015		Change
Total expenses	2 129 813 EUR	2 418 403 USD	+586 382 EUR(+637 749 USD)

### 6.2. Number of employees

	2015	2016
Economists	14	25
Lawyers	23	29
Other professionals	2	12
Support staff	17	12
Total	56	78

### 6.3. Human resources

	2016
Enforcement against anticompetitive practices	17
Merger review and enforcement	7
Advocacy efforts	7
State aid	19

### 6.4. Period covered by the above information: year 2016