

**Cancels & replaces the same document of 25 May 2018**

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

**-- 2017 --**

**6-8 June 2018**

This report is submitted by the Slovak Republic to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 6-8 June 2018.

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***Note by Turkey***

The information in this document with reference to “Cyprus” relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the “Cyprus issue”.

***Note by all the European Union Member States of the OECD and the European Union***

The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

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## 1. Executive Summary

1. The Antimonopoly Office of the Slovak Republic (hereafter also “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. 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*. Pursuant to 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 also “the Act on State Aid”) the Office as the state aid co-ordinator ensures the protection of competition also in the area of state aid.

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 also „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 a 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. At the same time, according to the Act on State Aid it exercises the competence of the aid co-ordinator and thus it ensures the protection of competition also in the area of state aid.

5. 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 so contributes to the development of competitive environment and in the global sense it helps to develop both the economy and competitiveness.

6. In 2017 the Office issued 36 decisions in the matter of infringement of competition rules and in the area of merger control. Out of this number, the Office issued 32 decisions within the first-instance proceedings (Division of Concentrations, Division of Cartels, Division of Abuse of a Dominant Position and Vertical Agreements) and the second-instance body, the Council of the Office, issued 4 decisions. The decisions of the second-instance body were issued within the examination of the cases dealt with by the first-instance bodies.

**Table 1. Overview of the number of issued decisions in 2017**

	Mergers	Abuse of dominant position	Agreements restricting competition	Article 39 of the act	Fines for non-co-operation with the office	Total
First instance	26	0	5	0	1	32
Second instance	0	0	4	0	0	4
<b>Total</b>	<b>26</b>	<b>0</b>	<b>9</b>	<b>0</b>	<b>1</b>	<b>36</b>

7. Division of Cartels and Division of Abuse of a Dominant Position and Vertical Agreements dealt in last year with more than 100 complaints on 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. Over recent years the Office has been exposed to a significant increase in the number of complaints, particularly in assessing the indices of potential anticompetitive behaviour identified by bodies competent to control the use of European Structural and Cohesion Funds. Thus, several tens of cases were subject to a more detailed investigation or administrative proceedings. Several administrative proceedings are ongoing and will continue in next year. Out of the total number of decisions relating to agreements restricting competition were 3 decisions issued by the Division of Cartels. Within general investigations it dealt also with several possible agreements restricting competition in public procurement. Non-co-operation of undertaking with the Office was sanctioned by one decision issued by the Division of Abuse of a Dominant Position and Vertical Agreements.

8. The participation of seven undertakings in cartel agreements concluded on the market of the sale of new passenger cars of brand Škoda was confirmed by the second-instance body of the Antimonopoly Office of the SR - Council of the Office. In this case, also on the basis of successful settlement process and the application of leniency program, the original amount of fines imposed on some participants was reduced and a ban on participation in public procurement was imposed on two participants.

9. The anticompetitive conduct of five undertakings operating in the market of meal and benefit vouchers is ranked among the most serious infringements of competition rules, the so-called hard-core cartels and the Council of the Office confirmed the correctness of the total amount of fines, i. e. almost EUR 3 million, as well as the imposition of bans on participation in public procurements for it.

10. Bans on participation in public procurements were upheld by the Council of the Office also in the case of two undertakings which concluded an agreement restricting competition in the field of aerial measuring photographing and aeronautical photogrammetry products.

11. Also last year the Office decided in the case of conditional guarantee on the repair and maintenance of motor vehicles of two brands in the territory of Slovakia by accepting commitments.

12. The Office imposed sanctions on individual undertakings for the infringements of obligations set by the Act. They committed the infringements by submitting false documentation and information requested by the Office and by the failure to notify the concentration and its implementation without a previous Office's valid decision.

13. Besides conducting general investigations and decision-making activities, the Office was intensively engaged in the number of advocacy activities. Through these activities the Office seeks to enforce principles of functioning of healthy competition and thus prevent potential distortions or solve potential or real competition concerns or deficiencies.

14. Within the inter-ministry comment procedure in 2017 the Office submitted its comments on 80 drafts of acts or other legislations materials. To 17 drafts it formulated fundamental comments, 40 comments had the nature of recommendation and 23 were combined. So the Office submitted fundamental comments on 40 drafts (this number includes comments both in view of competition and in other view). Office's comments

referred for example to the drafts of act on excise duty on mineral oil, act on waste, act on medical products and medical devices, health care and related services act, the freedom of information act, commercial code, act on the conditions of operating vehicles, act on some measures in the field of environmental burden, government resolution on financing the reconstruction, modernization and the construction of football stadiums, the concept of the development of University Hospital Bratislava and the realization of the construction of a new university hospital in Bratislava, several proposals to the provision of investment aid to various entities, too.

15. The development of competition culture and the dissemination of public awareness about 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 meetings organized for media and experts. The Office 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 opinions on competition. During meetings organized for mass media representatives as well as for the professional public, the Office presented the results of its work and more extensive opinions related to broader public. For example, at the meeting with representatives of non-governmental organizations, associations, companies, law firms and mass media, it explained details of the procedure for submitting evidence of an agreement restricting competition and the protection of the identity of whistleblower submitting the evidence and the payment of reward for decisive evidence provided by the whistleblower tool that is enshrined in the Act on Protection of Competition and also explained in Office's methodological guideline issued last year. In the area of state aid, the Office as an aid co-ordinator intensively co-operated with aid providers at the level of central state administration and also at the level of local public administration authorities as well as with the European Commission and it also provided information on state aid rules to general public.

16. In the context of competition advocacy, the Office considers it is important to draw attention to possible negative impact on the level of competition in public procurement, public tender or other similar competition. For this reason, the Office thoroughly analysed public procurements, in particular sub-limit contracts realised by using electronic market place (ECS). It thoroughly examined the electronic market place settings and assessed the level of impact of competitive processes and trading conditions on the intensity of competition, the existence of opportunities for the co-ordination between undertakings, and after consultations with competent authorities with regard to findings and proposals leading to supporting competition and eliminating the risk of collusive behaviour, it published the results of its analysis in the document Electronic Market place (ECS) - Sub-limit Contracts that is available in Slovak language.

17. With the aim to promote competition culture and the sensibility of future experts in the area of law and economy, the Office continued co-operating with the Faculty of Law of the Comenius University in Bratislava, the Faculty of Law of Trnava University in Trnava and the University of Economics in Bratislava. Memoranda on co-operation in the field of competition law are concluded between the Office and the mentioned universities. Last year also agreements were concluded to intensify the mutually beneficial co-operation between the Office and the Faculty of Economics and the Faculty of Economic Informatics of the University of Economics in Bratislava.

18. International co-operation represents an important part of the Office's activities, too. By its active approach, the Office seeks to meet the responsibilities of the Slovak Republic as a member of the EU and other organizations, for example Organization for Economic Co-operation and Development (OECD). The Office's priority is also to actively participate in activities within European Competition Network (ECN), through which the Office's staff are involved in the work of individual expert working groups, in which they represent the opinions and attitudes of the Slovak Republic. The Office's representatives were also invited to speak on competition issues at various international conferences and forums in EU countries in 2017 and they presented the Office's outcomes, experience and attitude in this area.

19. In the field of communication with the public, the Office regularly informed the public on its decisions, important outputs and other activities via its updated website and social networking site Twitter. It also co-operated 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 ninth year the Office continued issuing Competition Bulletin which four times a year provided summary of interesting and brief news on its activities and on activities of the European Commission and on other foreign competition institutions, too. Competition Bulletin is available also at the Office's website. The Office published the Annual Report 2016 and during the year 2017 it regularly contributed to expert discussions with European Competition Authorities, to expert discussions at both domestic and foreign forums, to expert periodicals and other mass media devoted to legal and competition issues as well.

## 2. Enforcement of competition laws and policies

### 2.1. Action against anticompetitive practices

#### 2.1.1. Summary of activities

##### *Agreements restricting competition*

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

21. In 2017 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.

22. In 2017 the Division of Cartels received 58 complaints and conducted 60 general investigations, which related to the possible agreements restricting competition. The Division conducted 7 administrative proceedings. It issued 3 decisions in the matter of agreements restricting competition, by 2 of them it stopped the proceedings and by 1 of them it imposed a fine.

23. In 2017 the Division of Abuse of a Dominant Position and Vertical Agreements received 8 complaints in the matter of vertical agreements, conducted 1 general investigation and 2 administrative proceedings. It issued 2 decisions in the matter of

agreements restricting competition and 1 decision on imposing a fine for non-cooperation with the Office.

24. Among the Office's competences is involved also sanctioning state administration authorities in the performance of state administration, local administration authorities (municipalities and self-governing regions) in the performance of local administration and delegated performance of state administration, and special interest bodies (various chambers and professional associations) in the delegated performance of state administration if they provide evident support giving advantage to certain undertakings or otherwise restrict competition. Last year, in relation to this form of anticompetitive restriction of competition, the Office received 11 complaints and conducted 10 general investigations.

25. Also in 2017 the Office continued in intensive co-operation with state administration authorities in the area of public procurement control.

26. Regularly it lectured at workshops focused mainly on explaining the indications of anticompetitive co-ordination between tenderers in public procurement, as well as clarifying the negative consequences of this conduct and the opportunity to co-operate with the Office in revealing cartel agreements.

#### *Abuse of a dominant position*

27. In order to protect competition, the Office intervenes, inter alia, against undertakings abusing their dominant position. The purpose is to prevent dominant companies from abusing their strong market position, and the Office focuses on those types of conducts that harm the consumers the most. The cases of abuse of a dominant position must be always based on the "theory of harm", which means that finding the infringement of competition rules must be based on the 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.

28. Last year the Office, the Division of Abuse of a Dominant Position and Vertical Agreements, in the matter of abuse of a dominant position received 61 new complaints, conducted 7 more detailed investigations and 1 administrative proceeding.

#### *Second-instance proceedings*

29. Parties to the proceedings can lodge an appeal against the first-instance decision. The Council of the Antimonopoly Office of the Slovak Republic (hereafter "the Council of the Office") decides on the lodged appeals. The Council of the Office reviews the procedure of the first-instance body, deals with objections and complete evidence if necessary. The Council of the Office may uphold, change, annul the first-instance decision and return the matter to the first-instance body for further proceedings or terminate the proceedings for procedural reasons. The Council of the Office consists of its Chairman being the Chairman of the Office and six external members of the Council.

30. Last year the Council of the Office issued 4 decisions, which related to the cases of agreements restricting competition.

### *Review of decisions by courts*

31. 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") .

32. Within the frame of decisions review, a total of 9 court decisions were issued in 2017. Out of them, RC BA decided in 5 cases and SC SR decided in 4 cases. RC BA also issued 4 resolutions on stopping the proceedings in 4 cases.

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

##### *Conditional guarantees on the repair and maintenance of motor vehicles*

33. In September and November 2017 the Office initiated other two 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.

34. The Office initiated the two separate administrative proceedings following the investigation made in the area of providing after-sales services relating to selling motor vehicles of brands Opel and Subaru. Based on the documentation gathered, the Office suspected that the parties to the proceedings 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 authorized networks. Thereby, the independent (unauthorized) services should have been disadvantaged.

35. Decisions relate to the provisions of official documents issued by a producer/importer of vehicles of the brands, which allowed refusing a guarantee on vehicles only on the basis of visiting independent service station, disregarding the quality of the repair/maintenance performed by the given service station.

36. 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, guarantee conditions, etc.), the participants to proceedings proposed changing the provisions of the documents concerned along with informing customers (personally and also on web page of a given brand of vehicles) with valid guarantee that it is not conditioned by performing repair and maintenance exclusively in authorized brand services.

37. Last year the Office concluded both administrative proceedings by commitment decisions. For the issuance of 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 co-operation from the side of participants to the particular administrative proceedings positively influenced the achieved results, too.

38. From 2016 to 2017 the Office issued a total of seven commitment decisions relating to the area. The decisions issued in 2016 related to the sale of motor vehicles of brands Mazda, Seat, Škoda, Toyota and Volkswagen.

*Restriction of competition on the market of the sale of new passenger cars*

39. On 25 August 2017 the Council of the Antimonopoly Office of the Slovak Republic issued a decision amending the first instance decision of the Antimonopoly Office of the Slovak Republic, the Division of Cartels, dated 11 September 2015.

40. The Council of the Office reduced the amount of fines imposed by the first-instance body on individual undertakings for participating in agreements relating to public procurement process or public tender, by which they aimed to restrict the competition on the market of the sale of new Škoda passenger cars in the territory of the Slovak Republic. This anticompetitive conduct was realised by the means of direct or indirect determining prices of goods, market allocation and collusive behaviour, which resulted into co-ordinated behaviour of undertakings in the public procurement process and public tender.

41. The Council of the Office imposed on the undertakings the following sanctions:

- On the undertaking DANUBIASERVICE, a.s., a fine in the amount of EUR 43 893,
- On the undertaking BOAT, a.s., a fine in the amount of EUR 23 009 and a ban from participating in public procurement for a period of one year from the date of the final decision,
- On the undertaking Autoprofit, s.r.o., a fine in the amount of EUR 25 228,
- On the undertaking Porsche Inter Auto Slovakia, spol. A fine in the amount of EUR 60 599,
- On the undertaking ŠKODA AUTO Slovensko, s.r.o., a fine in the amount of EUR 51 719,
- On the undertaking Todos Bratislava, s.r.o., a fine in the amount of EUR 6 117,
- On the undertaking IMPA Bratislava, a. S., a fine in the amount of EUR 108 660 and a ban from participating in public procurement for a period of three years from the final decision.

42. The amount of fines imposed on three of the fined participants to the proceedings was reduced on the basis of leniency programme. At the same time, the amount of fines was reduced to all participants to the proceedings except for IMPA Bratislava, a.s., on the basis of successful settlement, within which the undertakings admitted their participation in the infringement as found by administrative authorities in the course of the administrative proceedings.

43. In the case of two of the sixteen agreements reviewed by the first-instance body, the proceedings were stopped pursuant the Article 32 Paragraph 2 Letter c) of the Act on the Protection of Competition, because there was no reason for the proceedings.

44. The rest of the first-instance decision was upheld by the Council of the Office.

The decision of the Council of the Office came into force on 12 September 2017.

*Two cartel agreements in the market with meal and benefit vouchers*

45. On 11 September 2017 the Council of the Office upheld the first instance decision of the Antimonopoly Office of the Slovak Republic, the Division of Cartels, dated 11 February 2016, by which it imposed fines for two cartel agreements concluded by five undertakings operating in the market of issuing, distributing and selling meal and benefit vouchers, including providing related services.

46. The Council of the Office upheld the conclusions of the first instance body that the undertakings, namely DOXX – Stravné lístky, spol. s r.o., Edenred Slovakia, s.r.o., LE CHEQUE DEJEUNER, s.r.o., SODEXO PASS SR, s.r.o., and VAŠA Slovensko, s.r.o., committed two anticompetitive conducts:

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

47. The following fines imposed on undertakings were confirmed by the Council of the Office's decision:

- DOXX – Stravné lístky, spol. s r.o., Žilina – EUR 486 158,
- Edenred Slovakia, s r. o., Bratislava – EUR 845 237,
- LE CHEQUE DEJEUNER, s.r.o., Bratislava – EUR 1 127 401,
- SODEXO PASS SR, s. r. o., Bratislava – EUR 20 307,
- VAŠA Slovensko, s. r. o., Bratislava – EUR 503 248.

48. Pursuant to the Article 38 of the Act on Protection of Competition effective since 18 April 2016, the undertakings were prohibited from participating in public procurement during the period of three years after the final decision comes into force.

49. The decision of the Council of the Office came into force on 4 October 2017. Since parties to the proceedings appealed against the decision, it became the subject of judicial review.

*Participation in agreement restricting competition on the market with encapsulated, gas-insulated switching devices*

50. The Council of the Office based on the judgment of the Supreme Court of the Slovak Republic (No. 5Sžhu/1/2014 dated 28 April 2016) in connection with the judgment of the Regional Court in Bratislava (No. 1S 182/ 2009-453 dated 6 August 2014) re-decided on the participation of the company Siemens Aktiengesellschaft Österreich, Vienna, Austria in an agreement restricting competition and on 15 June 2017 it issued a decision, by which it confirmed the correctness of the first-instance decision of the Antimonopoly Office of the Slovak Republic.

51. Pursuant to the provisions of the Article 4 Paragraph 1 in conjunction with the Article 4 Paragraph 3 Letter a, b, c and f of the Act on Protection of Competition, the company Siemens Aktiengesellschaft Österreich infringed the Act by its participation in an agreement restricting competition. Its participants co-ordinated their behaviour on the relevant market of the production and sale of encapsulated, gas-insulated switching devices (GIS) for applications of 72 kV and higher in the territory of the Slovak Republic, namely by price determination, market allocation, maintaining a stable level of market

shares on the basis of pre-approved quotas, by mutual constraints in concluding licensing agreements with third parties and by collusive behaviour in the public procurement process.

52. The Council of the Office considered the fine imposed by the Office as inappropriate to the breach of the provisions of the Act on Protection of Competition and therefore it changed the amount of fine to EUR 132 770.

53. The decision of the Council of the Office came into force on 17 July 2017.

*Agreement restricting competition in the field of aerial measuring photographing and aeronautical photogrammetry products*

54. On 27 November 2017 the Council of the Office amended the first-instance decision of Antimonopoly Office of the Slovak Republic, the Division of Cartels, dated 23 August 2017. The Office imposed fines in the total amount of EUR 128 653 on the undertakings EUROSENSE, s.r.o., Bratislava and GEODIS SLOVAKIA, s.r.o., Banská Bystrica operating in the market of the production, distribution and the sale of goods and services in the field of aerial measuring photographing and aeronautical photogrammetry products.

55. On the basis of objections raised in appeals, as well as the complex assessment of the case, the Council of the Office concluded that the first-instance body did not properly assess the conduct of the undertakings.

56. The conduct of the undertakings was based on setting a system of close co-operation on the market of the production, distribution and the sale of goods and services in the field of aerial measuring photographing and aeronautical photogrammetry products, whereas the basis of the co-operation was a copyright treaty on joint work. The Office concluded that the treaty itself does not constitute a prohibited agreement and it assessed only the factual conduct of the undertakings on market which was based in co-ordinating pricing policy and other terms of products sales, customer allocation and a common approach in the course of public procurements and public tenders or other similar competitions.

57. The Council of the Office concluded that in this case it is impossible to separate the assessment of the treaty from the conduct of the undertakings carried out on its basis, and their co-operation needs to be assessed in a complexive way. Following the assessment, the Council of the Office concluded that the conduct of both of the undertakings, starting with concluding the treaty on their works, including the de facto conduct of the both undertakings on the market, is an agreement restricting competition and thus it amended the Office's decision.

58. Despite the change in the description of the unlawful conduct, the Council of the Office concluded that the fines imposed by the first-instance body are appropriate and lawful and so the conclusions in this section were identical. The fines were imposed as follows:

- EUROSENSE, s.r.o.: EUR 124 947,
- GEODIS SLOVAKIA, s.r.o.: EUR 3 706.

59. Council of the Office upheld the Office's conclusion that it was reasonable to impose on undertakings the ban on participating in public procurement during the period of three years after the final decision comes into force.

60. The decision of the Council of the Office came into force on 14 December 2017.

## 2.2. Mergers and acquisitions

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

61. In 2017 the Division of Concentrations of the Antimonopoly Office of the SR conducted 5 general investigations altogether, including a case in which it initiated the administrative proceedings, a case in which it conducted an inspection and 3 general investigations concluded by the Office as well.

62. The Division conducted 28 administrative proceedings. It is the total number of administrative proceedings, which were initiated and concluded in 2017 as well as those initiated in 2016 and concluded in 2017 and also those continuing in 2018.

63. Last year, in this area it issued 26 decisions. By 23 decisions of them it agreed with a merger, including 1 decision by which it agreed with a merger under fulfilling certain condition. The structural part of the condition was fulfilled within stipulated time. By other 2 decisions it stopped administrative proceedings as the mergers were not a subject to the Office's control and by 1 decision it imposed a fine for the failure to notify merger and its implementation without the approval.

### *2.2.2. Summary of significant cases*

#### *Control over Topolčany Hospital taken over by Group Penta under conditions*

64. On 1 March 2017 the Office approved the merger grounded in the acquisition of indirect exclusive control of the undertaking PENTA INVESTMENTS LIMITED, the Channel Islands (hereafter "Penta" or "Group Penta") over the assets through which the hospital and clinic in Topolčany (hereafter "Topolčany Hospital") were operated by.

65. This approval of the Office is bound with fulfilling certain conditions ensuring that the effective competition would not be reduced as a result of this merger, and the conditions imposed relate to the operation of medical transport service.

66. At the time of merger assessment the undertaking Penta operated in the territory of the Slovak Republic in several sectors, but due to the fact that Topolčany Hospital operated in the sector of health care, the Office focused on this sector. At the time of assessment, the merging parties' activities overlapped in the following areas:

- Inpatient health care,
- Outpatient health care,
- Services of the joint diagnostic and treatment units,
- Pharmaceutical care,
- Medical transport service (hereafter "mts").

67. Thus the Office thoroughly assessed the possible impacts of the merger in each of the above mentioned areas and detailed in its decision.

68. Since the health care in the Slovak Republic is paid mostly from the resources of compulsory public health insurance and Group Penta performed the control over the

health insurance company DÔVERA zdravotná poisťovňa, a.s., the Office took into account this fact, too.

69. From the point of assessing the non-horizontal effects of the assessed merger in the relation: provider of the MTS – buying the services of MTS by health insurance companies, the assessed merger would significantly impede effective competition in the relevant market, mainly as the result of the creating or strengthening of a dominant position and therefore, it is not in accordance with the Article 12 Paragraph 1 of the Act.

70. The Office's conclusion is based on the assessment of a number of facts. The Office found that Group Penta as the provider of MTS in the SR before the assessed merger had a bargaining power against the health insurance company Union, with some of factors valid also in relation to the public health insurance company Všeobecná zdravotná poisťovňa. By acquiring control over Topolčany Hospital, which is the provider of MTS, group Penta would strengthen its bargaining power in this area. The increase of the power towards health insurance companies in the area of MTS also leads to the strengthening of the undertaking Penta's ability to influence the existence of the providers of MTS in the territory where it has the interest to act as the provider of MTS, namely due to the combination of the activity of the undertaking Penta as the owner of the insurance company Dôvera (the necessary contractual partner of the providers of MTS) and the provider of inpatient health care/outpatient health care in the certain territory (which is an important customer of the MTS). So the Office concluded that, as the result of the merger, Group Penta as the provider of MTS has the capability and motives to require higher payments (prices, limits/financial volumes) or other more favourable terms and conditions for the provision of MTS from the health insurers, thus it might weaken the position of competing MTS providers which do not have such a bargaining power or it might cause their leave from the market.

71. The undertaking Penta submitted to the Office the proposal of conditions and obligations to remove the competition concerns, which after the Office's assessment has been accepted by the Office and it approved the merger, and the approval is bound with fulfilling the conditions (and related obligations) defined in the decision.

72. It was a structural condition, i.e. the divestiture of the whole business of MTS, which prior to the merger was operated by Topolčany Hospital, to an independent provider of MTS within the stipulated time. And in order to ensure the purpose of this condition, the undertaking Penta is obliged not to operate MTS within the defined territory (Topolčany) for a certain period, neither to perform the acts that might lead to thwarting of the action of an independent provider of MTS in this territory.

73. The decision of the Office came into force on 1 March 2017.

*Acquisition of a part of the undertaking ČEZ Slovensko, s.r.o., by the undertaking Východoslovenská energetika Holding, a.s.*

74. On 23 November 2017 the Office approved the merger grounded in the acquisition of indirect exclusive control of the undertaking Východoslovenská energetika Holding, a.s., Košice (hereafter "VSEH") over part of the undertaking ČEZ Slovensko, s.r.o., Bratislava (hereafter "ČEZ").

75. At the time of the merger assessment, the company VSEH was owned by the Slovak Republic and the RWE Group, while it was indirectly exclusively controlled by RWE AG. At the time stated, the RWE Group operated in Slovakia in the field of energy, mainly through the VSE Group, which includes the company VSEH, its parent and

subsidiary companies (hereafter "the group of acquirer"). The group consists of electricity companies which in a limited scope are active on the electricity generation and wholesale supply market - VSE Ekoenergia, s.r.o., and Bioplyn Rozhanovce, s.r.o., in the field of electricity distribution - Východoslovenská distribučná, a. s., (hereafter "VSD"), in the supply of electricity - Východoslovenská energetika, a. s., (hereafter "VSE") and natural gas - innogy Slovensko, s.r.o. Moreover, VSEH provides shared services in human resources, consulting, financial services, IT services and so on for its subsidiary companies.

76. The acquired part of the undertaking ČEZ that is called "Domácnosti" (hereafter "ČEZ Domácnosti") at the time of assessment exercised exclusively activity in the retail supply of electricity and gas to households in Slovakia.

77. In relation to the competitive assessment of the merger, the Office found that there comes to horizontal overlap between the activities of the merging parties and their economic groups as well as to non-horizontal interconnection. Considering the activities of the merging parties, the Office focused mainly on the assessment of

- Horizontal overlap in the field of gas supply to households,
- Horizontal overlap in the field of electricity supply to households,
- Vertical interconnection - gas production/wholesale and gas retail supply (to households),
- Vertical interconnection - electricity production/wholesale and electricity retail supply (to households),
- Electricity distribution and electricity retail supply (to households).

78. The Office separately assessed the field of electricity and of gas supply, while in the case of this merger it was unnecessary to focus more closely on conglomerate effects.

79. The Office assessed vertical consequences of the merger in the above-mentioned contexts, namely from the view of possible restriction of access to customers and restriction of access to inputs. It did not find the merger's negative impacts resulting from these vertical relationships.

80. In relation to assessing the horizontal overlap in the field of gas supply to households in the Slovak Republic, the Office found that regarding the increase of the VSE Group's shareholding resulting from the acquisition of ČEZ Domácnosti and also regarding the status and character of competitors in this field, the group of acquirer will be further exposed to competition in the relevant market.

81. With regard to horizontal overlap in the field of electricity supply to households, the Office assessed two alternatives. It considered the effects of the merger in the case of defining spatial relevant market as the entire territory of the Slovak Republic and also in the case of its local defining by the areas of "traditional" operating of individual energy companies. Within this, it focused mainly on the region of Eastern Slovakia, i. e. the area of "traditional" activity of the group of acquirer (hereafter "Eastern Slovakia"). In the case of defining national market, similar assumptions are applied as in the case of gas supplies. With regard to the local alternative of market, there is the group of acquirer, through VSE, that is clearly the most significant player in the area of its "traditional" area. On the other hand, the share of ČEZ Domácnosti in Eastern Slovakia is minimal and the Office also took into consideration the ratio between the annual loss of VSE customers and the degree of growth rate due to the acquisition of ČEZ Domácnosti. It also took into

consideration the facts that pointed to other competitors than ČEZ Domácnosti, to which the customers in this region were coming and who were considered for being strategic competitors. For these reasons, the Office came to a conclusion that the horizontal overlap would not result in reducing effective competition in any of the spatial alternatives of the market, with the geographical definition of the market not having to be closed.

82. After assessing the documentation and information submitted, the Office came to conclusion that the merger assessed would not significantly impede effective competition on relevant markets, particularly as the result of the creation or strengthening of dominant position.

83. The decision came into force on 23 November 2017.

#### *Sanction on undertaking for failing to notify a merger to the Office and for its implementing*

84. On 14 February 2017 the Office issued a decision, by which according to the Article 38 Paragraph 1 Point c) and Point d) of the Act on Protection of Competition as in force until 17 April 2016 in connection with the § 38e of the Act stated it imposed a fine in the total amount of EUR 3 000 on the undertaking Imre Fazakas, Hungary.

85. The undertaking infringed the provision of the Article 10 Paragraph 7 of the Act during the period from 20 October 2015 to 23 December 2015 by failing to notify a merger grounded in the acquisition of indirect exclusive control of the undertaking Imre Fazakas over the undertaking NORMESTON GROUP LIMITED CYPRUS, Cyprus and the undertaking NORMESTON TRADING LIMITED, Belize created on 20 October 2015 in a way stated in Office's decision of the number 2016/FK/3/1/011.

86. The undertaking also infringed the provision of the Article 10 Paragraph 11 of the Act during the period from 20 October 2015 to 24 March 2016 by having performed the rights and obligations arising from the merger before the Office's final decision.

87. In the territory of the Slovak Republic, at the time of assessment, the acquired companies operated in the market of retail sale of diesel, gasoline and LPG (the operation of gas stations LUKOIL) and the market of trading in crude oil.

88. The decision came into force on 3 March 2017.

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

89. 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.

90. It covers a wide range of activities from the Office's comments within the interministry comment procedure, statements, direct addressing of stakeholders, through the organization of professional seminars and conferences, various initiative documents to communication with the public through mass media.

91. Base on the Office's experience, in many cases, where the competition concerns arise due to the improperly adjusted relations in certain sectors, for example due to the

improper regulation, the systematic solution of problems in the market through competition advocacy is more effective than conducting the administrative proceedings against the particular undertakings.

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

93. In 2017 the Office commented on 80 proposals in the interministry comment procedure. It made fundamental comments on 17 proposals, recommendations on 40 proposals and it applied simultaneously fundamental comments and recommendations on 23 of them. Thus, the Office has made fundamental comments on 40 documents – this number includes comments that have been given both in terms of competition protection and comments outside this framework.

94. The Office's comments related, for example, to the drafts of act on excise duty on mineral oil, act on waste, act on medical products and medical devices, health care and related services act, the freedom of information act, commercial code, act on the conditions of operating vehicles, act on some measures in the field of environmental burden, government resolution on financing the reconstruction, modernization and the construction of football stadiums, the concept of the development of University Hospital Bratislava and the realization of the construction of a new university hospital in Bratislava, several proposals to the provision of investment aid to various entities, too.

95. The Office makes use of various opportunities to explain the meaning and the need for competition to undertakings, local administration bodies and general public. Besides the enforcement of competition policy through dealing with the cases and by the active involvement in the legislative process, the Office sees the benefit also in active discussions with businesses and other stakeholders, especially in the prevention and avoidance of addressing competition problems in the formal administrative procedure. It is also about finding ways to improve the setting and functioning of the present institutional framework. At the same time, undertakings and public represent the important resource of information and knowledge on market functioning and related problems.

96. Last year the Office promoted competition in general public by organizing and participating in several conferences, seminars, training activities or continuing and developing co-operation with Slovak universities and foreign competition institutions as well as its publishing activities. More attention is paid to them in the following two subchapter

### **3.1. Act amending the Act No. 725/2004 Coll. on Conditions of Vehicle Operation in the Road Traffic and on the Amendments to some Acts as amended**

97. Besides the recommendatory comment the Office applied also the fundamental comment to this draft.

98. The proposed provision of this draft imposes a condition for granting a licence to establish a technical inspection station so that the applicant is also a person authorized to carry out an emission control or that he/she simultaneously applies for such licence or that the applicant applies for permission to establish an emission control station.

99. Thus in the future, it will no longer be possible to carry out a technical inspection without the emission control and vice versa. It may constitute a barrier to entry the market

for new providers as well as barrier to remain in the market for already existing subjects which do not fulfil this condition. The reason report does not include the reasoning why this draft of the Act is introduced.

100. Similarly, the proposed provision includes the condition for granting the permission to establish the emission control station so that the applicant is also the person authorized to carry out the technical inspection according to the provision.

101. Similarly as the condition for granting the permission to establish the technical inspection station in the draft's provision, also this condition may constitute barrier to entry the market in the competition view.

102. On one hand the submission report introduces that the aim of draft is the effort to liberalize this market, on the other hand the potential competition barriers are applied both to the future subjects which might act in this market and to the existing subjects remaining in the market.

103. Therefore the Office required to omit the proposed items from the draft. Consequently, after considering the fact that the liberalization relating to set numbers/capacities of technical inspection stations and the emission control stations takes place and regarding also the significant difference in amount of input costs and investments to entry the market of technical inspection stations and emission control stations, the Office redefined the fundamental comment to the recommendatory under the condition that the draft Act would continue to consider the liberalization after the comment procedure and thus provide for the abolition of the current condition that the network of technical inspection and emission control stations and their numbers according to the kinds and types are determined by the ministry (and to omit the related provisions).

### **3.2. To the draft Act amending the Act No. 98/2004 Coll. on Excise Duty on Mineral Oil as amended amending the Act No. 309/2009 Coll. on Support of Renewable Energy Sources and High Efficiency Combined Heat and Power Generation and on Amendments to some Act as amended**

104. The Office sent the particular factual fundamental comment on the point No. 38, article 25b par. 7 letter b) of the mentioned draft. It proposed to reassess the introduction of condition of annual volume of mineral oil sale since this condition could prevent some mineral oil distributors from acting in the market and thus the competition intensity could be lowered. In the Office's view the reason report does not sufficiently explain the reason to tighten the conditions to issue the permission, thus the purpose of this change is not evident; at the same time the analysis enabling to assess the alleged impacts is missing.

105. In the Office's view the draft misses any assessment of impact of introducing the criteria of annual sold volume of 50 000 000 l of fuels (article 25b par. 7 letter b) of the draft) as a precondition to act as a distributor or to be granted or to keep the permission for fuel distribution and the fact that it causes intervention into the subjects already acting in the market and their exit from the market. This regulation could result also in the creation of environment prone to collusive behaviour of certain subjects and market allocation as well as to incidence of exclusive practices against the entrepreneurs that only just meet the volume conditions. In the Office's view the draft act provides more new tightening provisions which should be sufficient to ensure the aim supposed by the Office (prevention from the tax evasion).

### **3.3. To the material of the Act amending the Act No. 79/2015 Coll. on Waste and on Amendments to certain acts as amended**

106. Besides the recommendatory comments the Office applied also several fundamental comments on this amendment.

#### ***3.3.1. To the article I. point 44 and point 61***

107. It comes out from the practical experience of the Office that the co-ordination centres in certain cases (mainly if they are controlled by the most powerful organisation of producers liability in the market) might be not interested in co-operating with other organization of producers liability (hereafter only "OPL"), for example by concluding the contract. However, the problem is not only the non-conclusion of contract itself, but also the fact that the contract or its draft is not available since the statutes of co-ordination centres include various approval processes of these contracts which may last longer and moreover, a large majority of the members must vote for them.

108. Thus the Office proposed to include into the amendment the obligation not only to conclude the contract in certain period, but also the obligation of the co-ordination centre to set the period in which the contract drafts need to be prepared/approved. In point 44 the Office proposed to replace the words "without delay" by the particular period, for example 10 days.

#### ***3.3.2. To the article I. point 47***

109. The Office proposed to omit the condition resulting from the provision that the producers of dedicated products fulfilling the dedicated obligation individually need to be members of co-ordination in order to offer them the exceeding quantities. Reasoning of the different approach to non-members of the co-ordination centre (hereafter only "CC") is not included in reason report.

#### ***3.3.3. To the article I. points 46, 47, 49, 80 and 81***

110. The obligation of OPL for packaging to prove the establishment, financing, operation and maintaining of functional system of associated waste management with a dedicated waste stream changes that OPL needs to prove that the aggregate number of inhabitants in contract municipalities corresponds to its market share. However, the market share calculated based on number of packaging introduced into the market is not directly related to the number of inhabitants, since the each municipality has a different waste generation potential. The Office holds the opinion that there will be situations when the amount of collected waste would not respond to the market share in spite of the fact that the condition of contracting the municipalities in which the number of inhabitants would respond to the market share is fulfilled. It might consequently result in problems to fulfil the conditions set in article 54, par. 1 letter e).

111. Regarding the existing situation in the market (if OPL have concluded contracts with the municipalities) and regarding the abolition of the term of exceeding quantities, the mentioned change prevents new OPL from entering the market or expansion of already existing OPLs since there is not a mechanism which would motivate OPLs having contracting more inhabitants (it means municipalities) than corresponds to their market share, to "release" these municipalities to other OPLs.

112. It does not definitely come out from the new wording of provision of the article 28, par. 5 letter f) that OPLs need to have aggregate number of inhabitants in contractual municipalities explicitly corresponding to their market share and that they cannot have more inhabitants. Moreover, it is not technically possible, since within the system one municipality – one contract it may happen that by contracting one municipality the % of contracting number of inhabitants may grow by 1% - 3%. Mentioned system may have negative impact on competition between OPLs – supports or maintains the existing high concentration in the market and prevents new players from entering the market or the expansion of the already existed ones.

113. The Office stated that the submitted text misses the facts on functioning of new system. Since according to the Office the amendment is not clear and it provides for various interpretation, it proposed more clear settlement of rules for system of packaging waste management. Moreover, for system complexity it required to explain the article 28, par. 5 letter f) in more details in reason report and also to explain the functioning of system of packaging waste management as a whole.

114. Alternatively, if it was not possible to clearly and unequivocally set up a new functioning of packaging system in this amendment, the Office proposed to keep the current system as it is planned in the field of electrical equipment and batteries and accumulators, it means also with the obligation of provision exceeding the amount of market.

#### ***3.3.4. To the article I. point 56***

115. The Office pointed out that the Act only deals with the process of CC establishment, but not the access of other OPLs to CC membership (both OPLs not participating in establishment for some reasons or newly established OPLs). CC sets the access to membership individually in statutes and the conditions might be set also in such manner that it is easy to refuse a new member. CC membership thus may constitute certain competition advantages to OPLs (for example due to the access to information and data) and OPLs associated in CC may prevent the competitors from becoming CC members. Thus the Office proposed to adjust the conditions for other OPLs to become CC members that their access is bound to the objective conditions.

116. The Office also proposed to specify the establishment, organization and functioning of CC in more details that the particular OPLs would have at least information on other OPLs and would prevent from exchanging information through CC (for example CC is an independent legal person in which any employee or statutory of existed OPLs cannot figure as the employee or statutory, etc.) and thus from distortion of competitive environment. There is a risk that CC operation set in present manner may lead to co-ordination of competitive behaviour with all consequences connected – price increase, quality decrease, innovation decrease.

#### ***3.3.5. To the article I. point 83***

117. Provision provides the possibility that the obligations of retail chains (hereafter only “RCH”) for these products (so called private brands or “PB”) would be fulfilled by producers producing these products for RCH. PB are introduced to the market under the brand of particular RCH, pricing is determined by RCH and any trade policy is also determined by RCH. Slovak producers produce these products with lower margin, sometimes significantly lower than for brand products. It is given both by the RCH’s market power and by the competition from the foreign producers. Though the mentioned

provision provides for such “possibility” and it does not exclude the retaliation by RCH to the benefit of producers, it is likely that in context of this market it would result in higher costs for Slovak producers and restriction of their competitiveness towards foreign producers. It might have impact on competition in the market in SR.

118. It is also necessary to state that besides PB also the so called brand products of producers simultaneously producing PB for RCH are placed in the market. It is not evident why the possibility of different adjustment of obligations should exist for these brand products and why in case of brand products the producer should fulfil the obligations and in case of PB also “the producer”, if the law clearly sets that in case of PB the RCH is considered as producer. Reason report to this point in its second part seems incomprehensible. The Office also observed that in view of volume of some product types (for example milk) and in some RCH the volume of PB strongly/several times exceeds the volume of brand products, it means the producers’ costs (see paragraph above) should be significantly increased.

119. Based on these facts the Office proposed to omit this provision.

### **3.3.6. Generally**

120. With the aim to support competition the Office proposed to enable the municipalities and producers to switch OPLs whenever, not only at the end of year. Currently it is extremely difficult for new OPL to win any municipality (it makes it difficult not only to enter the market for new OPL, but with regard to the media information also the existence of a large number of already existing OPLs in the market). It seems to be necessary also if the Ministry plans to use its right and within the authorization would motivate OPLs to “release” the surplus municipalities/inhabitants, it would be desirable to realize this transfer as soon as possible.

121. The Office also observed that in the area of packaging there are several thousand of active entrepreneurs and two biggest OPLs in this area are established by approx. 10 subjects what constitutes negligible percentage/promile of the market. From this reason the Office proposed to consider if due to support of control and transparency, it would be appropriate to “open” by the law also the existed OPLs and to enable any other producers to become another OPL founder (it means for example at the end of each year all producers showing the interest to do so till the certain time in given year could become the OPL “founders”).

## **3.4. To the draft Act amending the Act No. 362/2011 Coll. on Drugs and Medical Devices and on Amendment and Supplements to Certain Acts as amended, amending and supplementing certain acts**

122. The Office applied several particular fundamental comments on this draft.

123. They referred also to the article I, amending point 25 (article 21, par. 2 letters b) and c)). According to the proposed provision, besides the natural person fulfilling the set conditions also the legal person whose statutory body or the member of the statutory body is its expert representative may provide pharmaceutical care in public pharmacy. According to the draft a statutory body or member of the statutory body acting on behalf of the legal person must be the person having university degree in the field of pharmacy. Pharmaceutical care in public pharmacy may also be provided by the legal person realizing university study in the field of pharmacy, legal person established by such person or legal person that holds a licence to provide hospital health care.

124. According to the special section of reason report these provisions introduce higher competence in management of company operating the public pharmacy.

125. General section of reason report also states that the holders of licence for providing pharmacy care in public pharmacy or in branch of public pharmacy would have to ensure that the majority shareholders are pharmacists.

126. In particular, according to the Office, it was not clear from the draft act what objective the proposal wants to achieve by this draft.

127. On one hand, general section of reason report speaks of “majority partnership” of pharmacists what is not reflected by the draft act at all. If the aim was to prevent from ownership of public pharmacies and branches of public pharmacies by the subjects other than pharmacists then the fact that pharmacists are the statutory body does not ensure it, it means it is not given by the Act that “the holders of licence for providing pharmacy care in public pharmacy or in branch of public pharmacy would have to ensure that the majority shareholders are pharmacists”. Special section of reason report speaks that only pharmacist must act on behalf of legal person.

128. Also the provision stating that the person with university degree in the field of pharmacy may act on behalf of legal person as a statutory body or member of statutory body is unclear. „Acting on behalf of company“ is adjusted by the business law and if also other persons are members of statutory body it is not clear how it would be controlled in multimember statutory bodies or if the statutory body entrusts the other person to act on behalf of company.

129. Anyway, the regulatory intervention is not sufficiently reasoned in draft and the proposed amendment does not necessarily ensure the aim, namely the higher competence in management of company operating the public pharmacy. In this regard the Office also observed that the draft does not even ensure the indirect control of pharmacies by the subjects that are not pharmacists. Also the providers of healthcare may run the pharmacies, however several hospitals are controlled by the private sector, thus the draft creates an imbalance.

130. The Office requested to explain or to reassess the draft or to adjust it according to the comments.

### **3.5. To the draft of the Regulation of the Government of the Slovak Republic amending and supplementing the Regulation of the Government of the Slovak Republic No. 640/2008 Coll. on public minimum network of healthcare providers as amended**

131. The Office submitted fundamental comment on this material.

132. Special section of reason report states that, when selecting a fixed network of institutional healthcare providers (hereafter only “IHC”) providing emergency service at Emergency Type 1 and at Emergency Type 2, there have been chosen the providers of IHC operating the general hospital on the basis of specified criteria such as the number of hospitalizations at Emergency, the number of operations, the number of primary transports of the emergency medical service, the number of secondary transports to other institutional health facilities, the number of rehospitalisation, the bed occupancy and the technical equipment and the personnel to the IHP providers for emergencies.

133. When selecting IHC providers that run the general hospital the accessibility of particular IHC providers both in winter and in summer was taken into account.

134. The Office regards the choice of IHC provider that provides institutional emergency service at Emergency Type 1 or at Emergency Type 2 as a fact supporting the importance of this IHC provider when the health insurance companies select the IHC providers into their fixed network. The Office also regards necessary to set the criteria of selection of IHC provider in such manner that IHC providers presenting for the health insurance companies the alternative in including IHC providers into their fixed network were not excluded.

## 4. Resources of Competition Authority

### 4.1. Resources overall

**Table 2. Annual Budget**

	2016		Change
Total expenses	2 716 195 EUR	3 056 152 USD	+ 66 030 EUR (+ 79 183 USD)

**Table 3. Number of employees**

	2016	2017
Economists	25	24
Lawyers	29	29
Other professionals	12	12
Support staff	12	10
Total	78	75

**Table 4. Human Resources**

	2017
Enforcement against anticompetitive practices	22
Merger review and enforcement	8
Advocacy efforts	6
State Aid	19

135. Period cover by the above information: year 2017