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Annual Report on Competition Policy Developments in the Slovak Republic

-- 2018 --

5-7 June 2019

This report is submitted by the Slovak Republic to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 5-7 June 2019.

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Slovak Republic

1. Executive Summary

1. The Antimonopoly Office of the Slovak Republic (hereafter also „the Office“, „the Antimonopoly Office of the SR“, „AMO SR“) is an independent central body of state administration of the Slovak Republic for the protection of competition and state aid coordination. It intervenes in the cases of cartels, abuse of dominant position, vertical agreements, it controls mergers, which meet the notification criteria and assesses the conduct of state and local administration authorities if they restrict competition. The Office ensures the protection of competition in the area of state aid as well. Besides Slovak competition law, the Office applies also European competition law. Within the European Competition Network (ECN) the Office fulfils the tasks, which result from the membership of the Slovak Republic in the European Union.

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“, „the Act on Protection of Competition“).

3. Pursuant to the Act, within the Office´s competences is to conduct investigations of relevant markets, to decide in administrative proceedings on the infringements of the Act in the matter of agreements restricting competition, abuse of dominant position, merger control and the restriction of competition by state and local administration authorities and it also proposes measures to protect and promote competition.

4. At the same time, 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 coordinator ensures the protection of competition also in the area of state aid.

5. Last year, the Antimonopoly Office of the Slovak Republic responded by its activities to current demands and complaints of competition participants and parties concerned. At the same time, by its intensive advocacy activities, it has contributed to the development of competitive environment and increased the awareness of the area of its competence.

6. In 2018 the Office issued 38 decisions in the matter of infringement of competition rules and in the area of merger control. Out of this number, the Office issued 37 decisions within the first-instance proceedings (by the Division of Concentrations, Division of Cartels, Division of Abuse of Dominant Position and Vertical Agreements) and the second-instance body, the Council of the Office, issued 1 decision[1] within the second-instance proceedings.

[1] The decision of the second-instance body was issued within the review of the case that was dealt with by the first-instance body within the first-instance proceedings

Table 1. Overview of the number of decisions issued in 2018

	Mergers	Abuse of Dominant Position	Agreements restricting competition	Article 39 of the act	Fines for non-Cooperation with the office	Total
First-instance	29*	1	4	0	3	37
Second-instance	0	0	1	0	0	1
Total	29	1	5	0	3	38

Notes: * The number covers also 2 decisions, by which the fines for the offenses relating to merger control were imposed (more details are in the subchapter 2.2)

7. The Division of Cartels and the Division of Abuse of Dominant Position and Vertical Agreements dealt in last year with more than 100 complaints on possible anticompetitive conducts in various sectors. In the first phase of the assessment of complaints, the Office examines mainly the issue of its competence to deal with the matter or it assesses, whether it is a competition issue. Over recent years, the Office has been exposed to the significantly increased number of complaints, particularly in relation to assessing the indices of potential anticompetitive behaviour that was 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 this year. Within general investigation, the Office dealt also with several possible agreements restricting competition in public procurement.

8. Out of the total number of decisions on the agreements restricting competition, there were 4 decisions issued by the Division of Cartels and 1 decision issued by the Council of the Office. Fines on undertakings for non-cooperation with the Office were imposed by 2 decisions issued by the Division of Concentrations and by 1 decision issued by the Division of Abuse of Dominant Position and Vertical Agreements.

9. Last year, the Office decided on the infringements of competition rules in various areas, e.g. in the area of the construction of sports playgrounds, the sale of motor vehicles, the provision of a drinking regime, the construction of a rehabilitation house and the Office decided also on the non-compliance with the Act in the case of setting a fee for passengers at the airport terminal.

10. The Council of the Office decided on the anticompetitive conduct of 9 undertakings distributing and selling the group of dairy products. The Council of the Office reviewed the Office's first-instance decision and in 2018 it confirmed the correctness of the decision as well as the total amount of fines, i.e. almost EUR 10 million imposed by the Office. This case has been ranked among the cases in which the total amount of fines imposed for the infringements of the provisions of the Act on Protection of Competition were of the highest in the history of Slovakia.

11. Among the cases in which the total amount of fines imposed on the parties to the proceedings was of the highest amounts is also the case in which the decision on the cartel agreement between 15 undertakings in the sale of motor vehicles was made. In this case, the total amount of fines imposed by the Office reached over EUR 9 million.

12. There has been observed a certain increase in the intensity of the Office's activity in sanctioning undertakings for the breaches of obligations set by the Act, resp. for their non-cooperation with the Office. Particular undertakings did so by submitting false

documentation and information requested by the Office, as well as by failing to submit documentation and information within the time-limit stipulated by the Office.

13. It was necessary to impose sanctions also for offenses in connection with merger control, i.e. the failure to notify mergers to the Office and its implementation without a previous valid decision of the Office.

14. The Office considered as one of its priority sectors also the e-commerce sector, where it has been conducting a sector inquiry since 2017. The Office´s aim of this sector inquiry is to gather documentation and information on the functioning of e-commerce in specific markets and to identify potential competition problems with the impact on suppliers, sellers and consumers of products offered through online channels. With the interest to objectively assess the development of markets in e-commerce, the Office has sent questionnaires to selected retailers active in the online sales of products of various categories. During the year 2018, any other retailers (e-shops) could also participate in this survey by filling out the questionnaire or a part of it and sending it either by e-mail or by post to the address of the Office.

15. Besides conducting general investigations and decision-making activities, the Office also engaged itself in advocacy activities. Through these activities, it endeavoured to promote the principles of the functioning of fair competition, thus preventing potential distortions, or to solve potential or existing competition concerns or its deficiencies.

16. In order to eliminate potential obstacles to the effective application of competition rules, the Office applied its comments to a total of 75 drafts of acts or other legislations materials that were submitted within the inter-ministry comment procedures in 2018.

17. Working meetings with undertakings, state and local administration authorities, students, academia and experts from other competition authorities also contributed to the development of the public awareness about competition rules and the benefits of fair competition for its participants. During the events organized for the representatives of mass media as well as for the professional public, the Office presented the results of its work and more complex statements that affect wider public.

18. The Office successfully continued developing the tradition of annual conferences on current trends in competition law, during which the experts from various countries, institutions and professions meet to exchange information and opinions on current competition issues. The results of the Office's work, its experience, professional knowledge of competition law and its attitudes were represented also by its representatives as speakers at professional conferences, forums, as well as training activities either in Slovakia or abroad.

19. In the area of state aid, the Office as an aid coordinator intensively cooperated with aid providers at the levels of central and local state administration authorities as well as with the European Commission; furthermore, it provided information on state aid rules to wider public.

20. By cooperating with the academic sphere, especially with the faculties of universities focused on law and economics and which the Office has concluded memoranda, resp. agreements on mutual cooperation in competition law with, the Office continued developing competitive culture and the awareness of competition issues in the future professionals in this field.

21. Last year, the Office concluded agreements aimed at strengthening mutual cooperation with state administration authorities of the SR, namely the Office for Public

Procurement and the Deputy Prime Minister´s Office for Investments and Informatization of the SR.

22. International cooperation is one of the most important parts of the Office's activities. Through its active approach, the Office seeks to fulfil the obligations of the Slovak Republic resulting from its membership in EU and other organizations, such as the Organization for Economic Cooperation and Development (OECD). The Office's priority is also to actively participate in activities held within the European Competition Network (ECN), through which the Office's employees participate in the work of individual expert working groups and present the statements and attitudes of the Slovak Republic.

23. The Office has taken an active role in formulating and communicating the opinions on behalf of the Slovak Republic during the negotiations of the Council Working Group on one of the largest legislative proposals in the area of competition law. *Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market* that has been issued recently has the potential to significantly influence the development of the legislative and regulatory framework for competition protection.

24. The mutual cooperation between competition authorities in EU Member States has contributed to more effective enforcement of competition policy, too. In 2018, the representatives of the Office participated also in various international competition events, where they were invited as speakers.

25. In communication with the public, the Office continued using its website and the social networking site Twitter, via which it provided the wide public with the information on its decisions, important results and other activities. Furthermore, it cooperated with mass media and sent them press releases on its decisions and other important statements and it also replied to their numerous questions.

26. For the tenth year the Office continued issuing Competition Bulletin, which four times a year brought the summary of interesting and brief news not only on its activities, but also on the activities of the European Commission and competition institutions abroad, too. It published the Competition Bulletin regularly also at the Office‘s website. Moreover, it published the Annual Report 2017. During the year 2018 it 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.

27. The total amount of valid fines imposed by the Office´s decisions in 2018 was EUR 10 628 934,09. In 2018 the fines in the total amount of EUR 5 455 324,70 were paid. These include also the fines that were imposed in the last years. Revenues from fines are income of the state budget.

2. Changes to Competition Laws and Policies, Proposed or Adopted

28. Within the frame of foreign agenda, the Office participated, inter alia, in the negotiations on the new legislative proposal on competition - a proposal for *Directive (EU) 2019/1 of the European Parliament and the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers*

and to ensure the proper functioning of the internal market (hereafter "ECN+ directive"). The ECN+ directive was published in the Official Journey of the European Union on 14 January 2019.

29. With regard to the fact that this was the largest legislative proposal in this area since the adoption of 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 establishing the European Community*, the Office paid due attention to this area and actively participated in commenting on the proposed text during the negotiations of the EU Council working group. Subsequently, the proposal of the ECN+ directive became the subject of negotiations on the so-called ECN+ directive trilogues with the European Commission, the EU Council and the European Parliament.

30. Following the issuance of the ECN+ directive, in relation to the process of its transposition, the Office called on the public to engage in the professional discussion and to send its suggestions and comments on the amendment to the *Act No. 136/2001 Coll. on Protection of Competition and on amendment and supplements to act of the Slovak National Council No. 347/1990 Coll. on the organization of ministries and other central bodies of state administration of the Slovak Republic as amended as amended*. Any suggestions and comments could be sent to the Office by e-mail by 31 March 31, also beyond the provisions of the ECN+ directive.

31. In the same year, the Antimonopoly Office of the SR published a methodological guideline on procedure for setting fines in the cases of abuse of dominant position and agreements restricting competition. It is the revision of the methodological guideline, which was issued in 2014. The aim of the revision was to inform the public about the current procedure on setting fines for the infringements of the Act on Protection of Competition by the abuse of dominant position or by the participation in an agreement restricting competition. The new wording of this guideline takes into account the Office's previous practice and recent developments in setting fines, which reflects, among other things, changes in the development of the structure and the character of cases currently dealt with by the Office. The Office involved also the public in the process of the revision of the methodological guideline particularly within the frame of a public consultation. Afterwards, during the conference held by the Office in 2018, it introduced the new wording of the parts of the methodological guideline to the public and the reasons that led the Office to the revision, too.

32. At the same time, the Office issued a methodological guideline regulating administrative and technical conditions on looking into files and preparing depreciation and copies thereof for parties to proceedings and their representatives or other authorized persons. The methodological guideline was published mainly due to the need to technically ensure looking into files, following the electronic exercise of the public authority and with regard to the Office's practice in this area.

3. Enforcement of Competition Laws and Policies

3.1. Actions against anticompetitive practices

3.1.1. Summary of activities

Agreements restricting competition

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

34. Last year, the Office continued revealing illegal cartel agreements, since they belong to the most serious infringements of competition rules and which only their participants can benefit from.

35. In 2018 the Division of Cartels of the Antimonopoly Office of the SR received 41 complaints and conducted 40 general investigations, which related to possible agreements restricting competition. The division conducted 5 administrative proceedings. In the matter of agreements restricting competition, the Division of Cartels issued 4 decisions, imposing a fine by each of them. In the year 2018 the Division of Cartels imposed fines in the total amount of EUR 10 092 910, out of this amount the total amount of fines imposed by decisions that came into force in 2018 was EUR 307 546.

~~36.~~ Over the last few years, the Office has received many complaints relating to the practice of agreements restricting competition. They were received from state administration authorities and related to public procurements financed by the European Structural and Investment Funds.

37. Also in 2018 the Office continued in its intensive cooperation with state administration authorities in the area of public procurement control.

38. Regularly it lectured at workshops focused mainly on explaining the indications of anticompetitive coordination between tenderers in public procurement, as well as on clarifying both the negative consequences of such conduct and the opportunities to cooperate with the Office in revealing cartel agreements.

39. Cartel agreements in public procurements remained the Office´s priority, since the existence of these agreements thwarts the purpose and the aim of public procurements. The cooperation between tender participants may occur in various forms, for example as agreements on price, contracts allocation or other forms of coordination, agreements on non-submitting bids or contracts rotation.

40. In the matter of vertical agreements, the Office, the Division of Abuse of Dominant Position and Vertical Agreements, received 5 complaints and conducted 3 general investigations during the year 2018.

41. The numbers of complaints, investigations and administrative proceedings in the area of vertical agreements have been stable in recent years. The year 2018 was characterized by the fact that after the termination of several cases in the area of vertical agreements in 2017, the Office initiated investigations in new sectors, some of which were preceded by inspections.

Abuse of dominant position

42. 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 consumers the most. The cases of abuse of dominant position must be always based on the theory of harm, which means that the finding about 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, e.g. in the form of a higher price level or a lower quality or a constricted offer.

43. In the area of abuse of dominant position, the Office, the Division of Abuse of Dominant Position and Vertical Agreement, last year registered 46 new complaints, conducted 8 more detailed investigations and 2 administrative proceedings. At the same time, it issued 1 decision concerning the abuse of dominant position. This decision came into force and by this decision the Office imposed a fine in the amount of EUR 127 000.

44. In 2018, there was a decrease in the number complaints in the area of abuse of dominant position compared to 2017. This is a common phenomenon, as the number of complaints in this area may vary significantly each year. Despite the lower number of complaints, the Office conducted the highest number of investigations in this area in 2018 compared to last few years, investigating sectors that are considered complicated and difficult from the point of their functioning.

Anticompetitive measures of state and local administration authorities – the application of the article 39 of the act on protection of competition

45. 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, as well as 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.

46. In relation to this form of illegal restriction of competition, the Office received 11 complaints and conducted 14 general investigations last year.

47. The number of complaints, which concern the illegal restriction of competition by state and local administration authorities and which the Office received over past two years, shows a slight increase compared to previous period. In 2018, 14 general investigations related to this infringement and they were conducted by the Division of Cartels.

Second-instance proceedings

48. Parties to the proceedings can lodge an appeal against the first-instance decision. The Council of the Antimonopoly Office of the Slovak Republic (hereafter also “the Council of the Office“) decides on the appeals lodged. The Council of the Office reviews the procedure of the first-instance body, deals with objections and completes 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. The Council of the Office consists of its Chairman being the Chairman of the Office and six external members of the Council.

49. Last year, the Council of the Office issued 1 decision, which related to the case of vertical agreements restricting competition. By this decision it confirmed the correctness of the first-instance decision of 2016 as well as the amount of fine imposed, i.e. almost EUR 10 million.

50. The development of the number of cases dealt with by the Office´s second-instance body and the decisions issued corresponds to the trends in the development of cases and objections raised by the parties against the Office's first-instance decisions.

Judicial review of Office´s decisions

51. 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 also „RC BA“) and to file a cassation complaint against the RC BA judgment to the Supreme Court of the Slovak Republic (hereafter also „SC SR“).

52. Within the frame of decisions review, a total of 5 court decisions were issued in 2018. Out of them, RC BA decided in 2 cases and SC SR decided in 2 cases. There was a resolution issued in 1 case on stopping the proceedings.

3.1.2. Description of significant cases, including those with international implications

Cartel agreement during the construction of a rehabilitation house

53. On 5 October 2018 the Office issued a decision imposing fines totalling EUR 307 546 on the undertakings PINGUIN, s.r.o., Košice and HORADSTAV, s.r.o., Bratislava for the conclusion of cartel agreement.

54. It was based on the coordination of the bidding procedure of the undertakings operating in the area of construction works and the supply of equipment, namely in the public procurement that was announced on 2 December 2010 by the contracting authority PATRIA, n.o., Drienovec and the object of the contract was the realization of the construction of rehabilitation house with accommodation for retirees, Drienovecké spa, Drienovec.

55. The project was funded by the European Structural and Investment Funds.

56. The documentation and information available to the Office showed out that in 2010 there were negotiations between these undertakings about the procedure for submitting bids in this public procurement.

57. The Office evaluated the conduct of the undertakings as an agreement restricting competition and based on direct or indirect determining prices of goods, market allocation and collusive behaviour in the public procurement process, which is prohibited under the Article 4 of the Act on Protection of Competition.

58. The decision of the Office came into force on 5 November 2018.

Over EUR 9 million fine for cartel agreement in the sale of motor vehicles

59. On 30 November 2018 the Office issued a decision imposing fines in the total amount of EUR 9 386 456 on 15 undertakings for the infringement of the provisions of the Act on Protection of Competition by concluding a cartel agreement.

60. The cartel agreement was based on negotiations on prices, market allocation, the exchange of sensitive business information and coordination in the process of public procurement, public tenders or other similar competition. The agreement concerned the sale of passenger cars and light commercial vehicles.

61. The Office informed about initiating the administrative proceedings in this matter via its press release, which was published in 2016 at https://www.antimon.gov.sk/cartels-the-amo-sr-initiated-the-administrative-proceedings-in-the-matter-of-possible-cartel-agreement-in-the-field-of-sale-of-motor-vehicles/.

62. The participants to the proceedings have exercised their right to appeal against this first-instance decision. Based on this, the decision in this case has become the subject of the review by the Office´s second-instance body - the Council of the Office.

Cartel agreement between two undertakings providing drinks

63. On 11 April 2018 the Office issued its first-instance decision in the matter of an agreement based on the coordination of the activities of two undertakings in the area of providing drinking, particularly by supplying water, gallons and dispensers, including related services. By this decision the Office imposed fines in the total amount of EUR 281 218.

64. The Office´s findings showed that between 2013 and 2014 two undertakings coordinated their activities in the given area of providing drinking regime in the territory of the Slovak Republic, namely through the scheme of anticompetitive practices consisting of a price-fixing agreement, market allocation and the coordination of their behaviour in tender.

65. Particular infringements could be evaluated as separate agreements or concerted practices restricting competition if assessed separately. However, it was clear from the circumstances of the case that the particular infringements were the part of the overall plan of the undertakings in the area of providing drinking regime and they were interlinked with one aim, which was to eliminate competition between undertakings in the area concerned.

66. The Office, during its own investigation, acquired a suspicion. In connection with the evaluation of the suspicion that there was an agreement restricting competition concluded between the undertakings, contrary to the Article 4 of the Act on Protection of Competition and the Article 101 of the Treaty on the Functioning of the European Union, the Office carried out inspections at the premises of the undertakings concerned. Subsequently, in the course of the investigation and the administrative proceedings, the Office obtained documentation, especially e-mail communication of the undertakings confirming the Office´s conclusions about the existence of the agreement based on the coordination of their activities in the area of providing drinking regime and it evaluated the conduct of the undertakings as the agreement restricting competition according to the Article 4 of the Act on Protection of Competition and its wording effective until 30 June 2014 and the Article 101 of the Treaty on the Functioning of the European Union.

67. The anticompetitive conduct of the undertakings described is classified as the so-called hard-core cartel - target agreement and by its own nature it represents the form of cooperation that shows the sufficient degree of harmfulness to competition. At the same time, in the practice of competition authorities, it is one of the most seriously sanctioned violations of law.

68. The participants to the proceedings have lodged an appeal against this first-instance decision, on the basis of which the decision in this case has become the subject of the review by the Office´s second-instance body - the Council of the Office.

Abuse of dominant position by Bratislava Airport

69. On 18 January 2018 the Office issued a decision, by which it imposed a fine in the amount of EUR 127 000 on the company Letisko M. R. Štefánika - Airport Bratislava, a.s., (BTS), Bratislava (hereafter "M. R. Štefánik Airport") for the abuse of dominant position.

70. The company M. R. Štefánik Airport operates the airport in Bratislava and its task is to manage the airport infrastructure and to provide aviation and non-aviation services mainly to carriers and passengers.

71. On 1 July 2016 M. R. Štefánik Airport introduced a fee for full VIP services provided in general aviation terminal, with the fee paid by every departing passenger passing through the general aviation terminal. The anticompetitive conduct of the company consisted of setting the fee - the fee for full VIP services was not linked with the real use of full VIP services by passengers, but it was linked only with the entrance to the general aviation terminal, while the entrance to the terminal is charged by a different fee. This led to the situation when the full VIP fee was paid also by clients who were not interested in using such services and who did not use the services.

72. The Office evaluated the conduct of M. R. Štefánik Airport as the abuse of dominant position by inappropriate conditions according to the Article 8 Paragraph 2 Letter a) of the Act on Protection of Competition and the Article 102 Letter a) of the Treaty on the Functioning of the European Union.

73. The anticompetitive conduct ended on 31 August 2017.

74. Within the administrative proceedings M. R. Štefánik Airport submitted an application for settlement according to Article 1 Paragraph 1 of the Decree of the Antimonopoly Office of the Slovak Republic, which establishes the details of settlement conditions. After evaluating all facts, the Office agreed with the settlement process, on the basis of which it reduced the amount of the fine that was originally imposed on M. R. Štefánik Airport by 30 %, i.e. to the sum of EUR 127 000.

75. The decision came into force on 5 February 2018.

Almost EUR 10 million fine for the supplies and sale of the group of Rajo dairy products upheld

76. The Council of the Antimonopoly Office of the Slovak Republic upheld the first-instance decision of the Antimonopoly Office of the Slovak Republic, the Division of Abuse of Dominant Position and Vertical Agreements, No. 2016/KV/2/1/029 dated 13 June 2016, by which the Office imposed fines on the undertaking RAJO, a.s., Bratislava and its distributors, chain stores CBA Slovakia, a.s., Lučenec, COOP Jednota Slovensko, spotrebné družstvo, Bratislava, Diligentia R.C., s.r.o., Bratislava, Kaufland Slovenská

republika, v.o.s., Bratislava, TERNO Group, k.s., Bratislava, BILLA, s.r.o., Bratislava, Retail Value Stores, a.s., Bratislava and TESCO STORES SR, a.s., Bratislava, as from 28 May 2009 to 28 February 2014 they committed anticompetitive conduct in the form of vertical agreements restricting competition, with the common purpose of resale price maintenance (RPM) in the area of supply and sale of products of the brand Rajo in the categories of milk, butter, cream for end consumers in the territory of the Slovak Republic.

77. Such agreements are prohibited by the Article 4, Paragraph 1 in connection with the Article 4, Paragraph 3, Letter a) of the Act No. 136/2001 Coll. on Protection of Competition in the wording effective until 30 June 2014 and by the Article 101, Paragraph 1, Letter a) of the Treaty on the Functioning of the European Union.

78. The Council of the Office upheld the amount of fines, which the Office´s first-instance body imposed on all the participants to the proceedings.

79. The fines were set according to the gravity of the infringement at a rate of 5 % of the relevant turnover, which was then multiplied by the number of years of infringement, that is, one year in the case of Diligentia R.C., s.r.o., and five years in the case of the other participants.

80. In the case of the company BILLA, s.r.o., Bratislava, the Office decreased the amount of fine thus set by 50 % based on its successful settlement.

81. The Office thus imposed fines in the total amount of almost EUR 10 million.

82. The decision of the Council of the Office came into force on 2 May 2018.

83. Since the parties to the proceedings have brought an action against this decision before the court, the Office's decision in this case cannot be considered as final decision.

Regional Court in Bratislava upheld the AMO SR´s decision on agreement restricting competition against companies issuing meal and benefit vouchers

84. On the basis of the complaints filed against the Council of the Office´s decision, RC BA reviewed the decision of the Council of the Office (decision of No. 31/2017/ODK-2017/KH/R/2/025 dated 11 September 2017) in connection with the Office's first-instance decision (decision of No. 2016/KH/1/1/004 of 11 February 2016), by which the fines for two cartel agreements were imposed on five undertakings operating in the market of issuing, distributing and selling meal vouchers and benefit vouchers, including providing related services.

85. According to the decisions issued, the undertakings DOXX – Stravné lístky, spol. s r.o., Žilina, Edenred Slovakia, s.r.o., Bratislava, LE CHEQUE DEJEUNER, s.r.o., SODEXO PASS SR, s.r.o., Bratislava and VAŠA Slovensko, s.r.o., Bratislava committed two anticompetitive conducts:

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

86. By the decision of the Council of the Office, the fines for the individual undertakings were confirmed in the following amount:

- 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.

87. The Council of the Office´s decision came into force on 4 October 2017. The parties to the proceedings filed complaints against this decision at RC BA, which decided by its judgement on 21 November 2018. Against the RC BA´s judgement, the parties filed cassation complaints, which has become the subject of a review by SC SR.

Supreme Court of the SR upheld the judgement of Regional Court in Bratislava, which upheld the AMO SR´s decision on agreement restricting competition of construction companies in relation to one plaintiff

88. SC SR has upheld RC BA´s judgment dismissing the complaint of the construction company J.P.-STAV, spol. s r.o., against the Council of the Office´s decision (the decision of No. 2015/KH/2/004 of 12 February 2015) in connection with the Office´s first-instance decision (the decision of No. 2014/KH/1/1/021 of 28 July 2014). In these decisions, the Office imposed fines on four construction companies for the conclusion of cartel agreement in public procurements and in 2015 the Council of the Office upheld the illegal conduct of these companies.

89. The subject of the public procurements, in which the collusion occurred, was the reconstruction of the facility for seniors of Juraj Schopper in Rožňava in the final amount of more than EUR 2 million. According to the Council of the Office's decision, the undertakings coordinated their conduct with the aim to harmonize price bids and participation in the public procurements announced by this facility. The coordination of cartel participants was proved mainly by indirect evidence, namely by fixing prices, identical irregularities and deficiencies in price bids and the existence of miscalculations, as well as information provided within leniency programme. The project was financed by the European Regional Development Fund, the state budget of the Slovak Republic and the Environmental Fund.

90. One of the parties to the proceedings applied for the leniency programme and provided further evidence of the illegal conduct, based on which its fine imposed was reduced by 40 % and the undertaking obtained the immunity from the ban on participation in public procurements. Two parties to the proceedings applied for settlement, based on which their fines were reduced by 30 %. By the settlement, these undertaking admitted their participation in the cartel agreement and took the responsibility for their conduct.

91. The following amounts of fines were imposed on the undertakings concerned:

- J.P.–STAV, spol. s r.o.: EUR 158 783,
- Ing. Vladimír Maduda PLYSPO: EUR 39 539,60,
- Vertikal – SOLID, s. r. o.: EUR 43 657,
- GMT projekt, spol. s r.o.: EUR 148 981,70.

Supreme Court of the SR upheld the judgement of Regional Court in Bratislava annulling AMO SR´s decision in the matter of abuse of dominant position by Železničná spoločnosť Cargo Slovakia, a. s.

92. On 31 May 2018 SC SR upheld RC BA´s judgement, by which it annulled the Council of the Office´s decision (the decision of No. 2014/DZ/R/2/035 of 5 November 2014) in connection with the Office´s first-instance decision (the decision of No. 2013/DZ/2/1/021 of 22 August 2013) in the matter of abuse of dominant position by the railway company Železničná spoločnosť Cargo Slovakia, a. s., (hereafter "Cargo").

93. The Council of the Office confirmed the fine imposed by the Division of Abuse of Dominant Positions and Vertical Agreements of the Antimonopoly Office of the SR, which was in the amount of EUR 10 253 662 on the dominant company Cargo, because it restricted the sale and the lease of electric locomotives and refueling motor locomotives to competing private carriers. Thus, the company Cargo abused its dominant position pursuant to the Article 8 of the Act on Protection of Competition and the Article 102 of the Treaty on the Functioning of the European Union. According to the decision, the company committed the illegal conduct between 2005 and 2010.

94. In the period assessed, according to the decisions annulled, Cargo was the dominant player on the rail freight transport market, where several other private carriers operated. To be able to operate in Slovak market, the companies inevitably needed motor or electric locomotives. Electric locomotives are more cost-effective, but those that were able to be operated under the conditions in the Slovak Republic were mostly available to Cargo. However, Cargo refused to sell or lease them to its competitors. Private carriers were forced to increasingly use less efficient diesel motor locomotives. Here, private carriers encountered another problem, as the network of petrol stations needed was owned by Cargo and the refuelling was not allowed to private carriers there.

95. Both restrictions, i.e. the sale and the lease of electric locomotives, as well as refuelling of motor locomotives were, according to the decisions contested, the part of a strategy aimed at pushing competitors out of the market and maintaining the dominant position.

96. SC SR upheld the judgment according to which the case was returned to the Office for further proceedings. According to RC BA, the decisions were based on the incorrect assessment of the matter from the legal point of view, the finding of the factual state, on the basis of which the correct decision was made, is not in compliance with the contents of files and the finding of factual state is insufficient to assess the matter. According to RC BA, the evidence in relation to the interchangeability of petrol stations owned by ZSSK and Cargo was insufficient, the Office incorrectly applied the institue of single continuous infringement, the existence of requests for the sale/lease of locomotives and refueling at Cargo´s refueling facilities was not sufficiently proved.

3.2. Mergers and acquisitions

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

97. During the year 2018 the Division of Concentrations of the Antimonopoly Office of the SR conducted 2 general investigations. In these cases it did not initiate administrative proceedings.

98. The Division of Concentrations conducted 34 administrative proceedings. It is the total number of administrative proceedings initiated and also those terminated in 2018 as well as those initiated in 2017 and terminated in 2018 and those continuing in 2019, too.

99. There were 31 decisions[2] altogether issued in the area of merger control last year. Out of the number, in 26 decisions the Office agreed with a merger. By 1 of the decisions the Office stopped the administrative proceedings, because its participant withdrew, in its entirety, the application to initiate the proceedings. In 2 cases it issued decisions[3], by which it imposed fines for non-cooperation with the Office, whereas the breaches related to the submission of false documentation and information to the Office. In other 2 cases, it imposed fines on undertakings for offences in direct connection with the merger control, i.e. the failure to notify a merger and its implementation without the prior approval. In both cases the participants to the proceedings used the institute of settlement. In 2018, the Office, the Division of Concentrations, imposed fines totalling EUR 648 053 for these breaches and offences.

100. The number of administrative proceedings as well as the number of decisions on mergers have been steady over last few years. It is evident that the Office‘s activity towards sanctioning the failures to notify mergers and their implementation without the Office‘s approval (either in the form of issuing a decision or conducting investigations, including the use of an inspection as a tool for obtaining evidence in this respect) has increased throughout the recent years.

3.2.2. Summary of significant cases

Creation of the joint venture of companies SWAN, a.s., and BENESTRA, s. r. o.

101. On 21 March 2018 the Office approved a merger grounded in the creation of a full-function joint venture jointly controlled by undertakings Ing. Juraj Ondriš and Ing. Pavol Ondriš, the Slovak Republic (hereafter "Notifier 1 and 2") on one hand and undertaking Sandberg Capital, správ. spol., a.s., Bratislava (hereafter "Notifier 3", together with Notifier 1 and 2 "Notifiers") on the other hand, the joint venture being formed by companies SWAN, a.s., Bratislava (hereafter "Swan"), SK Consortium 2 S.á.r.l., the Grand Duchy of Luxembourg (hereafter "SKC2"), SK Holdco B.V., the Netherlands (hereafter "SKH"), Carduelis 2 B.V., the Netherlands (hereafter "C2") and BENESTRA, s. r. o., Bratislava (hereafter "Benestra").

102. The joint venture will include the company Benestra from the economic group of Notifier 3 as well as the companies SKC2, SKH and C2 which are holding companies. The joint venture will include the company Swan of the Notifiers 1 and 2 which indirectly jointly controlled the company before the merger.

103. Prior to the merger, through the company Swan, the Notifiers 1 and 2 directly/indirectly jointly/exclusively controlled several companies. Based on the submitted documentation and information, the Office found out that creating the joint venture will result in the change in the control also over all the undertakings that prior to

[2] This total number of decisions includes decisions, which came into force in 2018 and also 1 decision reviewed by the Office's second-instance body on the basis of an appeal lodged by the participant to the proceedings

[3] Against 1 of the decisions, the participant to the proceedings lodged an appeal at the Office's second-instance body

the merger were controlled by the Notifiers 1 and 2 through the undertaking Swan, thus also the Notifier 3 will acquire indirect control over these companies.

104. In the part devoted to the assessment of the impacts of the merger, the Office assessed as the activities of Notifiers 1 and 2 also the activities of the undertakings SWAN Mobile, a. s., Bratislava, Amtel Slovensko, s.r.o., Bratislava and CNC, a.s., Bratislava. These undertakings, however, were not among the undertakings which were the subject to the change of control over them as the result of creating the joint venture.

105. Notifiers 1 and 2 jointly control several companies operating in various fields or are engaged in numerous activities, especially in the field of electronic communications and also in activities such as systems integration, IT security, production and sale of customized information systems, national registration of Internet domains, sale of mobile applications, local retransmission, operation of web portals and others.

106. Notifier 3 is a management company, creating and managing alternative investment funds and foreign alternative funds. The economic group which includes Notifier 3 operates primarily in the field of electronic communications, software development and supply, information systems, food and consumer goods retail, plant and animal primary production.

107. In the view of the activities of the Notifiers, the Office focused on assessing the impacts of the merger in relation to the field of electronic communications. In the merger notification were identified several relevant markets or segments of goods/services in the field of electronic communications in which the Notifiers 1 and 2 and/or the Notifier 3, respectively companies belonging to the Notifiers' economic groups operate. For several segments/markets, due to the structure of these markets and the position of the Notifiers, it was possible to assess the merger as unproblematic already from the information given in the notification.

108. The Office focused more deeply on segments identified by the Notifiers as the wholesale market for the lease of circuits, services of complex ICT solutions, retail markets in relation to fixed internet access (with possible breakdown by customer type - referred to as services for mass market and for business customers) and services of individual data transfer solutions, business customers.

109. Within these segments, the Office both defined the relevant markets or their alternatives and evaluated the impacts of the merger after a detailed analysis. These are segments in which the activities of the merging parties overlap horizontally and they are vertically linked to each other, too, whereas competing providers of electronic communications networks and services expressed a number of concerns about the negative impacts of the merger in these fields. In the view of the aforementioned, the Office assessed both the horizontal effects of the merger on a wholesale as well as on a retail, regrading high-quality fixed internet access services (including certain types of services in the fields aforementioned by the Notifiers and provided to business customers) and, on the other hand, it assessed also the consequences of the vertical link between these Notifiers´ activities.

110. Within assessing the horizontal effects of the merger on retail provision of high-quality fixed internet access (hereafter "retail VKP"), based on competitors´ objections the Office focused on assessing potential restriction of offer as a result of the reduction in the number of players and of the increase in the independence of the merging parties, on the consequences of infrastructure cummulation, in particular radio infrastructure in

licensed bands - specifically for future 5th generation technologies (hereafter "5G") and on the provision of retail VKP for public sector customers.

111. The Office primarily regarded the current market structure. It also found out that this segment is specific especially for the higher prices of products and services provided for business customers, which also means that the ownership of the necessary infrastructure may not be a competitive advantage (often the completion of the infrastructure is on the basis of the contract); furthermore, most of the orders are based on tenders. Moreover, after the merger, the players on the background of which is a strong international group with many years of experience in electronic communications remain in the market.

112. In relation to infrastructure cumulation, the Office found out that the merging parties do not have such an optical infrastructure that would give them a more competitive advantage and that also after the merger there will be undertakings with more extensive infrastructure on the market. Concerning radio frequencies in 3.5 GHz and 3.7 GHz licensed bands, which were primarily contested by competitors, from the data submitted by the Notifiers, some competitors and also by the regulator in this field, the Office found out that also several competitors have licenses in the bands concerned (even in a greater extent) and that there are also other frequency bands in which the same types of services can be provided. Specifically for the deployment of future 5G technologies the Office found that the frequency bands on which these services will be provided have not been standardized so far, whereas licenses for those bands in the hands of the Notifiers are limited in time. Furthermore, the regulator stated that it had no knowledge that the merging parties and the companies in their economic groups had a unique infrastructure that would give them competitive advantage over other businesses.

113. In connection to the provision of retail VKP for the public sector, the Office found out that these products and services do not constitute a separate market but are part of a wider market in this field for business customers. Nor this case was about joining two strong players specifically in this field, but only the group of Notifiers 1 and 2, not Notifier 3, took a more prominent position. Except the merging parties (especially of the group of the Notifier 1 and 2) also other relevant players with significant activities in relation to public sector entities operate in this field.

114. Within the assessment of the merger´s horizontal effects on wholesale level of the provision of high-quality access to the Internet (hereafter "the wholesale VKP"), the Office found out that the undertaking Benestra is one of the major wholesale players in the market, but the undertaking Swan operates only to a limited extent on this market. Due to the merger, the increase will be minimal. At the same time, several undertakings will remain active on the market and the distance from the joint venture created by the merger will not increase significantly. Thus, the undertaking Swan, by operating on the wholesale VKP market, does not exert such competitive pressure on Benestra, the elimination of which would lead to a change in the competitive conditions on the wholesale VKP market. In connection to the horizontal assessment of the merger on the wholesale VKP market, the Office also found that the extent of the infrastructure of the undertakings operating on this market does not correspond to their competitive significance or the role they play in the relevant market. On the basis of the documentation and information obtained during the administrative proceedings, the undertaking Benestra uses its infrastructure suitable for providing high-quality internet access services to provide outsourced wholesale services to a greater extent, the undertaking Swan uses its infrastructure to compete on the wholesale market for high-

quality access only limitedly and it primarily provides it in the form of self-supply to compete in the retail market for high-quality access.

115. Within assessing the vertical effects of the merger concerned, the Office assessed whether the merger would not result in the closure/restriction of the access to inputs or buyers.

116. In relation to the closure/limitation of access to wholesale accesses in this field, the Office assessed mainly the position of the merging parties on the wholesale VKP market, the position of other undertakings on this market and the related availability of wholesale VKP services, the importance of high-quality internet access services purchased by wholesalers for the provision of services of retail VKP and the impact of merger on the competitiveness of the undertakings in the retail VKP market and thus on competition. In view of the aforementioned, the Office concluded that it is unlikely that the closure/restriction of the access to wholesale inputs would have such an impact on the provision of a retail VKP that it would lead to negative impacts on competition in the relevant market.

117. In relation to the closure of access to customers, the Office assessed whether the refusal of the undertakings Swan and Benestra to take a wholesale VKP from their competitors in the wholesale market would impede access to a major customer base for these wholesale suppliers, thereby leading to worsening conditions of providing wholesale VKP and to weakening competitors of the merging parties in retail VKP and thus to negative impacts on competition in this retail market. The Office found that the undertakings Swan and Benestra were not an important customer base, as the undertakings Swan and Benestra were vertically integrated already prior to the merger and a long time they were acquiring the vast majority of high-quality access services internally. The merger would not lead to a significant change compared to the situation before it.

118. In relation to the assessment of the vertical effects of the merger in the field of VKP, the Office took into account also the fact that both merging parties operate both in the retail and wholesale (with different degree of operating of both groups of the Notifiers at given levels). As a result of the merger, there may only come to the shuffle of wholesale VKP supplies, when, for example, the fact that the undertakings Swan and Benestra will deliver more wholesale accesses internally could lead to the situation when their previous wholesale customers would become the new customer base for the undertakings which originally supplied services to Swan and Benestra (which reduces the concerns about closing the access to customers as well as the inputs). Similarly, also other undertakings operating in the wholesale access market are vertically integrated. The same infrastructure the undertakings use to provide wholesale high-quality access services is principally suited also for providing retail high-quality access services. Consequently, a potential rejection by the merging parties on the wholesale market would then lead to strengthening of the competitiveness of the vertically integrated undertakings in the retail market.

119. After the evaluation of the acquired documentation and information, the Office concluded that the merger assessed is in line with the Article 12 Paragraph 1 of the Act No. 136/2001 Coll. on protection of competition, since it will not significantly impede effective competition on the relevant market, particularly as a result of creating or strengthening of dominant position.

120. The decision came into force on 27 March 2018.

Acquisition of undertaking TATRAVAGÓNKA, a.s., by undertakings BUDAMAR LOGISTICS, a.s., and Optifin Invest, s.r.o.

121. On 14 June 2018 the Office, the Division of Concentrations, approved a merger grounded in the acquisition of direct joint control of the undertakings BUDAMAR LOGISTICS, a.s., Bratislava (hereafter "Budamar") and Optifin Invest, s.r.o., Bratislava (hereafter "Optifin") (hereafter both as "notifiers") over the undertaking TATRAVAGÓNKA, a.s., Poprad (hereafter "Tatravagónka").

122. In assessing the impacts of the merger, the Office focused on the activities of the undertakings belonging to the group BUDAMAR and the group Optifin, which relate to the activities of the parties to the merger in question, particularly from the point of view of their vertical links and potential coordination effects, and thus on the area of rail transport technology production with a more detailed focus mainly on the production of rail freight wagons, the area of the provision of maintenance, repair and the modernization of rolling stock, the area of rolling stock rental, the area of rail freight transport and the area of the provision of forwarding; also including possible alternative definitions.

123. The group Optifin manages and develops the portfolio of companies active in various areas, mainly in international and domestic transportation, engineering, waste management, metallurgy and information technology. In the area of forwarding, rail transport and rolling stock leasing, in the Slovak Republic it is active mainly through the companies Express Group, a.s., and EP Rail S.R.L.

124. According to the merger notification, at the time of the merger the company BUDAMAR was the main company of the economic group BUDAMAR consisting of companies, the subject of which activity is mainly forwarding by rail, road, river and sea, multimodal and intermodal transport, customs declarations, warehousing and consultancy. From the point of view of transportation, forwarding or rolling stock renting, it is active both as the company BUDAMAR also as partly through other companies in the group. In the area of rolling stock production, the group Budamar acquired the company ŽOS Vrútky, a.s., in 2018.

125. The main business activity of the company Tatravagónka, which covers companies belonging to the group Tatravagónka, is the production of rail freight wagons and railway chassis. Marginally it also deals with the production of welded subassemblies and spare parts.

126. In assessing, the Office came out of the merger notification, publicly available information concerning the merging parties and their competitors, information and documentation submitted by the undertaking ŽOS Trnava, a.s., as well as the decision-making practice of the Office and the European Commission. At the same time, it took into account the fact that the group Tatravagónka belonged to the group Optifin group already before the merger.

127. With regard to the business activities carried out by the merging parties, from the point of view of horizontal impacts the Office assessed particularly the existence of a horizontal overlap between the activities of the participants to the merger in the area of rolling stock production and their maintenance, repair and reconstructions.

128. In the area of rolling stock production, it found that there is no horizontal overlap, since the production of freight wagons (produced by Tatravagónka) and the production of

passenger wagons (produced by ŽOS Vrútky belonging to the group Budamar) belong to separate relevant markets.

129. In the area of maintenance, repairs and reconstructions of rolling stock, the Office did not find unambiguous conclusion, whether the provision of repair services and the provision of modernization services in relation to passenger railway wagons and in relation to rail freight wagons constitute the separate goods markets. Therefore, the Office assessed a possible horizontal overlap in the alternative of the existence of a common market for freight/passenger wagons - further in the segmentation into the markets of maintenance, of repairs and of modernization; leaving the issue of an accurate definition of markets in this area open. Also in the case of such alternatives, the horizontal overlap between the activities of the group Tatravagónka, group Optifin and ŽOS Vrútky (group Budamar) was minimal, e.g. also from the point of view of other spatial coverage of the provision of the given services.

130. Further, the Office focused, among other things, on the following vertical effects of the merger in question:

- the production and the sale of rail freight wagons (group Tatravagónka) - the provision of services of rail freight transport, rental of rail freight wagons, forwarding (group Optifin, group Budamar),
- the provision of services of repairs and modernization of rolling stock (group Tatravagónka) - the provision of services of rail freight transport, rental of rail freight wagons and forwarding (group Budamar and group Optifin).

131. In relation to the vertical relationship relating to the production of rail freight wagons and the demand for them, in the merger assessment the Office took into account on the one hand, the indicative shares achieved by the merging parties in the aforementioned areas, the production capacity of the undertaking Tatravagónka, the information about the main customers of rail freight wagon producers, namely in the context of assessing the overall demand for new rail wagons by the side of the notifiers in relation to the production of the company Tatravagónka. In assessing the vertical relationship in question between the notifiers and the acquiring group Tatravagónka, the Office did not identify unilateral negative effects of the merger, which would consist of limiting access to inputs or restricting access to customers.

132. In relation to the vertical relationship relating to the maintenance, repairs and reconstructions of rolling stock, the Office did not identify unilateral negative effects of the merger in none of the alternatives of a spatial market definition.

133. In this case, the Office also assessed the coordinating non-horizontal effects of the merger in question, namely the assessment of the impact of the acquisition of the joint control of the notifiers over the group Tatravagónka on creating or strengthening the coordination of the group Optifin and the group Budamar on the relevant markets where both of these groups of undertakings operate. The Office did not find that as a result of the acquisition of joint control of the notifiers over the group Tatravagónka, the negative effects of the merger would occur in terms of coordination effects.

134. The decision came into force on 15 June 2018.

Sanctions for the failure to notify the change of control over Panta Rhei and for the merger implementation

135. On 16 October 2018 the Antimonopoly Office of the Slovak Republic, the Division of Concentrations, issued a decision imposing fines on the undertaking J&T FINANCE GROUP SE, the Czech Republic (hereafter "JTFG") in the total amount of EUR 600 000 and the undertaking Ladislav Bödők, the Slovak Republic (hereafter "LB") in the total amount of EUR 7 571 (hereafter "parties to the proceedings").

136. The Office stated in the decision that the parties to the proceedings infringed the Act on Protection of Competition by failing to notify the merger grounded in the acquisition of the joint control of the undertaking JTFG and LB over the undertaking Panta Rhei. They infringed the Act also by exercising rights and obligations arising from the merger before it was finally decided on it by the Office, with the full implementation of the merger being occurred, i.e. it came to the acquisition of the share in the company Panta Rhei by the undertaking JTFG and to the subsequent exercise of the joint control of the parties to the proceedings over the company.

137. Before the merger, the company Panta Rhei was under the exclusive control of LB. The Office initiated the investigation in relation to the medialized information about the sale of this company. It was found out that a certain share in the company Panta Rhei was acquired by the undertaking Diversified Retail Company, a.s., Bratislava (hereafter "DRC"). On the basis of the information available, the Office had suspicions in relation to the real acquirer of the share in Panta Rhei. In the view of this information, the Office further investigated whether by the transfer of share and the setting-up of decision-making processes did came to the creation of a merger that should be notified to the Office. In the framework of the investigation outside the administrative proceedings, the Office used several options to acquire information and documentation, among other things, it carried out an inspection in the business premises of the undertaking DRC and the undertaking Panta Rhei.

138. Its findings in relation to the infringements of the Act were communicated by the Office in the call for expression before the issuance of the decision addressed towards the parties to the proceedings. At the same time, the Office may, in the interests of economy of the proceedings or of swift and effective remedy on the market, on its own initiative or at the request of a party to proceedings, conduct a settlement hearing. In this case, the Office began negotiations on settlement. If the party to proceedings and the Office agree with the conclusions of the settlement negotiations and the participant to the proceedings admits his/her participation in the infringement and assumes the responsibility for such participation, the Office shall reduce the fine that he would otherwise have imposed. Both parties, having regard to the Office's findings, made the settlement, resulting in the reduction of the fine by 50 %.

139. The decision came into force on 2 November 2018 and it has become a final decision on this matter.

140. After the decision was issued, a remedy was made in the form of an additional notification of a merger grounded in the acquisition of joint control of the undertaking J&T FINANCE GROUP SE, the Czech Republic and the undertaking Ladislav Bödők residing in the Slovak Republic over the undertaking Panta Rhei, s.r.o., the Slovak Republic and on 28 November 2018 the Office initiated the administrative proceedings in the matter of the assessment of the merger in question.

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

141. Besides decision-making activity, the Office supports and develops competitive environment also through competition advocacy. Competition advocacy is aimed at the promotion of competition principles in other public policies, prevention in the area of competition protection and the raise of the awareness of competition principles among the professional and the laic public.

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

143. Based on the Office’s experience, in many cases, where 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 administrative proceedings against particular undertakings.

144. Through comments on drafts of acts and other legal documents, the Office seeks to eliminate potential barriers to the effective application of competition rules, which could consequently cause the distortion of market and competitive environment.

145. In 2018 the Office commented on 75 materials in the interministry comment procedure. It made only fundamental comments on 18 proposals, recommendations on 36 proposals and it applied simultaneously fundamental comments and recommendations on 21 of them. Thus, the Office made fundamental comments on 39 materials – this number includes comments that were given both in terms of competition protection and comments outside this framework.

146. The Office´s comments concerned, for example, the drafts of the act on insurance tax, the act on waste, the act on the protection of whistleblowers, the act on public procurement, the act on the promotion of renewable energy sources and highly effective combined production, the act on inadequate conditions in commercial relations, subject of which is food, the decree of the Regulatory Office for Network Industries, which sets price regulation in gas industry, ordinary preliminary opinion on the proposal for the directive of the European Parliament and of the Council on the protection of persons reporting on breaches of Union law, proposal of the group of members of the National Council of the SR for the issuance of the act on special levy for retail chains, proposal of the realization of the new university hospital in Martin or several proposals to the provision of investment aid to various entities, too.

147. More information on these and other comments were regularly, throughout the year, published in the Office´s newsletter on competition, which is available at https://www.antimon.gov.sk/newsletter-sutazny-spravodajca and at the website www.slov-lex.sk.

5. Resources of Competition Authorities

5.1. Resources overall (current numbers and change over previous years)

Table 2. Annual budget

	2017		Change
Total expenses	2 782 225 EUR	3 115 813,78 USD	+ 261 398,56 EUR (+ 292 740,25 USD)

Table 3. Number of employees

	2017	2018
Economists	24	23
Lawyers	29	25
Other professionals	12	14
Supported staff	10	11
Total	75	73

5.2. Human resources

Table 4. Human resources

	2018
Enforcement against anticompetitive practices	19
Merger review and enforcement	7
Advocacy efforts	5
State Aid	15

148. Period covered by the above information: Year 2018