

**Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE****Annual Report on Competition Policy Developments in the Slovak Republic****-- 2019 --****10-12 June 2019**

This report is submitted by the Slovak Republic to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 10-12 June 2020.

JT03464521

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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.
2. The Office intervenes in the cases of cartels, the abuse of a dominant position, vertical agreements, it controls mergers, which meet notification criteria and assesses the conduct of state and local administration authorities if they restrict competition by their conduct. The Office also ensures the protection of competition in the area of state aid as well.
3. The competences of the Office 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“). Besides Slovak competition law, the Antimonopoly Office of the SR applies also European competition law. At the same time, within the European Competition Network (ECN) it fulfils tasks resulting from the membership of the SR in the European Union.
4. Within its competences pursuant to the Act on Protection of Competition, the Antimonopoly Office of the Slovak Republic conducts mainly investigations on a relevant market, in administrative proceedings it decides on the infringements of the Act in the matter of agreements restricting competition, the abuse of dominant position and the restriction of competition by state and local administration authorities and it also performs mergers control, as well as it proposes measures to protect and promote competition.
5. In accordance with 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 a state aid coordinator ensures the protection of competition also in the area of state aid.
6. Last year, the Antimonopoly Office of the SR continued fulfilling its tasks grounded in the protection of competition and state aid coordination. By its work it made an effort to bring consumers the most of benefits from effectively functioning competition, too. As a modern competition authority it reacted to current competition issues and market demands, as well as participants to competition or entities concerned. By various activities it supported creating more favourable competition environment and also improving the awareness of the public about competition rules and the benefits of competition.
7. In 2019 the Office issued a total of 37 decisions in the matter of the infringement of competition rules and in the area of merger control. Out of this number, the Office (the Division of Concentrations, the Division of Cartels, the Division of Abuse of Dominant Position and Vertical Agreements) issued a total of 32 decisions within the first-instance proceedings and the second-instance body, which is the Council of the Antimonopoly

Office of the SR (hereafter also “the Council of the Office”), issued 5 decisions¹. The number of decisions issued is demonstrated by the following table:

Table 1. Overview of the number of decisions issued in 2019

	Mergers	Abuse of Dominant Position	Agreements Restricting Competition	Infringement of the Article 39 of the Act	Fines for Non-Cooperation with the Office	Total
First-instance	26	1	2	1	2	32
Second-instance	0	1	3	0	1	5
Total	26	2	5	1	3	37

8. In 2019, the Office issued the most of decisions in the area of merger control. This area was covered by 26 decisions issued by the Division of Concentrations. Out of this number, by 25 decisions it issued an approval with mergers and by 1 decision it stopped an administrative proceedings in the matter of the assessment of a merger.

9. In the matter of the abuse of a dominant position, the Division of Abuse of Dominant Position and Vertical Agreements issued 1 decision and the Council of the Office issued 1 decision, too.

10. The total number of decisions on agreements restricting competition includes 1 decision issued by the Division of Cartels, another 1 decision issued by the Division of Abuse of Dominant Position and Vertical Agreements and 3 decisions issued by the Council of the Office.

11. The Division of Cartels decided also on the infringement of the provision of the Article 39 of the Act on Protection of Competition, namely in 1 decision. It covered the unlawful restriction of competition by a municipality.

12. As a part of the sanctioning of undertakings for non-cooperation with the Office, the Division of Cartels, the Division of Abuse of Dominant Position and Vertical Agreements and the Council of the Office decided in individual cases, each of them issued 1 decision in this connection.

13. In the past year, selected organizational units of the Office also dealt with a large number of received complaints on possible anti-competitive behaviour in various sectors of the economy. The Division of Cartels received almost 50 complaints and the Division of Abuse of Dominant Position and Vertical Agreements received a similar number of complaints.

14. In the first phase of the assessment of complaints, the Office mainly examines the issue of its competence to deal with the matter or it assesses, whether it is a competition issue. Thus, last year, several tens of cases became the subject to a more detailed investigation or administrative proceedings. Several administrative proceedings, which were initiated by the Office last year are ongoing during the current calendar year.

15. In the period of a few last years, the Office received a significantly increased number of complaints also in relation to assessing the indices of potential anticompetitive

¹ Decisions of the Office’s second-instance body were issued within the framework of the review of cases dealt with by the Office within first-instance proceedings.

behaviour of undertakings, which were identified by bodies competent to control the use of European Structural and Investment Funds. At the same, the Office regularly updated rules for identifying risk indicators of anticompetitive behaviour. Various forms of cooperation also with other bodies of state administration of the SR that were realized on the basis of concluded mutual cooperation agreements contributed to a more effective revealing of anticompetitive practices and improving the protection of competition.

16. Last year, the Office assessed and sanctioned infringements of competition rules by undertakings in several areas. Undertakings affected by the Office's decisions operated e. g. in the areas of rail freight transport, the supply of furniture, medical equipment, clothing, footwear and textile products, the distribution and sale of children's products, the provision of pharmaceutical care, the sale of motor vehicles, the realization of construction works on sports fields or ensuring drinking regime. At the same time, in other areas there were active three different undertakings, in cases of which the Office or the Council of the Office decided that they had breached the obligation to submit documentation or information to the Office within a stipulated time-limit or which submitted false or incomplete documentation and information to it.

17. In the first-instance proceedings, the Office by its decisions imposed fines totalling EUR 4 219 970. The fines imposed in the second-instance proceedings reached the total amount of EUR 3 408 681. Out of this, during the calendar year 2019, valid final fines imposed by decisions of the Office at the first instance and/or by the Council of the Office were in the total amount of EUR 3 315 248.

18. The highest fine imposed last year by the Office was for the abuse of a dominant position in rail freight transport. By the fine of almost EUR 3 million it sanctioned the illegal behaviour of the company 'Železničná spoločnosť Cargo Slovakia, a.s.

19. In addition to the imposition of fines, the Office, within the scope of its powers, also imposed a ban on participation in public procurement for several undertakings who had entered into agreements restricting competition in public procurements.

20. A case in which, in addition to imposing fines, the Office also decided to impose a ban on participation in a public procurement was also the case of a cartel agreement between six undertakings in public procurements for the supply of furniture and medical equipment, as well as supplies of clothing, footwear and textile products, which were realized through electronic contracting system. In this case, the total amount of the fines reached over EUR 1 million, making it the second highest fine imposed last year.

21. One of the highest sanctions, i. e. in the total amount of more than EUR 9 million, as well as the ban on participation in public procurement imposed by the first instance body on fifteen sellers of motor vehicles in the previous year, the Council of the Office reviewed last year and decided to annul the first instance decision and refer the case back to the first instance body for a further proceedings.

22. The Office appreciates the use of the institute of settlement by undertakings and their admission to an infringement. Last year, the Office agreed with the settlement application submitted by the company ags 92, s.r.o. Based on the settlement, it thus reduced the company's fine by 50 % in comparison to a fine which it would otherwise impose for the practice of a vertical agreement. Since it was based on determining the prices of goods for resale by retail customers - operators of online stores/e-shops with children's goods in the Slovak Republic and the Czech Republic, the Office became one of competition institutions, which likewise found anti-competitive behaviour in the so-called e-commerce or internet commerce. Nowadays this area has been significantly monitored by competition

institutions around the world due to the growing importance of this a form of sale and purchase.

23. By the Office's decision was addressed also the unlawful conduct of the municipality Šurany, because by a visible support it clearly favoured certain undertakings in competition on the market of providing pharmaceutical care in public pharmacies. In 2020, the Council of the Office decided on the appeal lodged by the municipality.

24. In connection with decision-making activity, the Office also intensively dealt with issuing decisions on many assessed mergers of undertakings in various sectors of the economy. In addition, in the framework of pre-notification contacts it resolved approximately 40 cases last year. At the same time, it continued focusing its activities on detecting and sanctioning failures to notify mergers and their implementation without prior approval of the Office.

25. In an effort to promote competition principles and strengthen competitive environment, the Office was also engaged in competition advocacy.

26. As part of this activity, it submitted several comments on drafts of acts and other legislative documents, from the point of view of both the protection of competition and state aid. The Office also sought to resolve potential or existing competition concerns or obstacles to the effective application of competition rules and to prevent possible market distortions.

27. The raise of the awareness of the importance and rules of functioning competition was increased by several training activities, working meetings with undertakings, with representatives of the state and local administration bodies of the SR. During the training activities, the Office's representatives presented the rules of competition and drew attention to the harmfulness of anti-competitive practices in public procurements.

28. Cooperation with academia and future experts in the area of economics and law also improved competition awareness. On the ground of a university, the Office successfully organized an international conference bringing together experts from different countries, institutions and of different professions to exchange experience and views on current events and issues in competition law. Likewise, representatives of the Antimonopoly Office of the SR were invited to various events in Slovakia and abroad to present experience and opinions on current topics in competition.

29. International cooperation with competition authorities in various countries, including the European Commission, is considered by the Office as one of the important parts of its activities.

30. In the premises of several organizations, the Office actively contributed to professional discussions, presented the positions of the SR and fulfilled the obligations arising from the membership of the SR in the Organization for Economic Development and Cooperation (OECD) or the European Competition Network (ECN). It continued developing bilateral relations with competition institutions in Europe.

31. In the framework of cooperation within Europe, it also paid a considerable attention to the legislative area and the planned changes in connection with the transposition of the

ECN+ Directive in order to empower the competition authorities, to more effectively enforce law and to ensure the proper functioning of the internal market².

32. For communication with the public about its activity, significant results and important outcomes it used its website and also the social network twitter throughout all the past year. It provided its statements for editors and reporters of various massmedia. It published more than 80 press releases and provided more than 200 written statements on the issues of competition and state aid. It raised the public awareness by its publishing activity, within which it already for the eleventh year issued a quarterly periodical named Competition Bulletin, in order to provide up-to-date information on competition and state aid in Slovakia and abroad. At the same time, it published also the annual report for the previous year. The Office published its valid decisions and announcements about initiated proceedings via the Commercial Journal. It also published them on its website. It contributed to expert discussions of the European Network of Competition Authorities and expert journals and other types of media focused on the issues of law and competition not only in Slovakia but also abroad.

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

33. In the framework of cooperation within Europe, it also paid a considerable attention to the legislative area and the planned changes in connection with the transposition of the ECN+ Directive in order to empower the competition authorities, to more effectively enforce law and to ensure the proper functioning of the internal market.

34. The transposition of the ECN+ Directive in all EU Member States should also contribute to a closer and more effective international cooperation. The main topics that were closing the year 2019 and still resonate are in particular the digitization and possible revision of competition rules, especially in the area of concentrations. The Office saw these initiatives as a stimulus for discussion, but was more cautious about changing rules, which had been proved as well working. On the other hand, the Office is also aware of the necessity to find effective tools for interventions on the markets associated with the development of digitization, where it is necessary to react promptly and also consistently. All the more, the international cooperation, especially for smaller countries, will be a necessity.

3. Enforcement of competition laws and policies

3.1. Action against anticompetitive practices

3.1.1. Summary of activities

Cartel agreements

35. In 2019 the Office continued revealing unlawful cartel agreements. The Division of Cartels of the Antimonopoly Office of the SR received 45 complaints and conducted 45

² 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 enforces and to ensure the proper functioning of the internal market

general investigations concerning possible agreements restricting competition. The division led 5 administrative proceedings.

36. In the matter of agreements restricting competition, in 2019 the Division of Cartels issued 1 decision, by which it imposed fines on six undertakings in the total amount of EUR 1 190 062 and which became the subject of a review by the Office's second-instance body.

37. Over the period of a few last years, the Office received a large number of complaints concerning unlawful cartel agreements. Many of them came from state administration authorities in connection with the control of public procurements financed by the European Structural and Investment Funds. For this reason, also in the year 2019 the Office continued to intensively cooperate with state authorities in the field of public procurement control.

38. The cooperation included also regular training sessions, which were thematically focused on competition rules and cartel agreements. During the trainings, the Office's representatives mainly explained the indications of anticompetitive coordination of tenderers in public procurement, as well as they clarified negative impacts of anticompetitive behaviour on consumers and the economy as a whole. They also drew attention to the possibilities of cooperation with the Office in revealing cartel agreements.

Vertical agreements

39. In the matter of vertical agreements, the Office, the Division of Abuse of Dominant Position and Vertical Agreements, in the year 2019 received 7 complaints, conducted 4 general investigations and 2 administrative proceedings.

40. In the matter of vertical agreements, last year it issued 1 decision, by which it imposed a fine on an undertaking in the amount of EUR 20 632. This decision came into force.

41. Over the past few years, the Office registered a relatively stable number of complaints, investigations and administrative proceedings in the field of vertical agreements. The year 2019 was characterized by the fact that the Office assessed more complaints in this area than in the previous period and it also conducted more administrative proceedings than in the previous period.

Abuse of dominant position

42. Last year, in the field of the abuse of a dominant position the Office, the Division of Abuse of Dominant Position and Vertical Agreements, registered 38 new complaints, conducted 9 more detailed investigations and 1 administrative proceedings.

43. At the same time, it issued 1 decision concerning the abuse of a dominant position. By that decision, it imposed a fine in the amount of EUR 2 990 651 on a company operating in rail freight transport. The fine imposed and its amount, after the review of the decision in the framework of the second-instance proceedings, was upheld by the Office's second-instance body by its decision at the end of 2019. Details of the case of the abuse of the dominant position by the company Železničná spoločnosť Cargo Slovakia, a.s., can be found in the subchapter of the second-instance proceedings.

44. In 2019, in comparison with the year 2018, the number of complaints in the field of the abuse of dominant position decreased. This is a common phenomenon, the number of complaints in this field may vary significantly each year. In spite of the lower number

of complaints, in 2019 the Office carried out the most investigations in this field in the last few years.

Anticompetitive measures of state and local administration authorities

45. In relation to this form of unlawful restriction of competition, last year the Division of Cartels of the Antimonopoly Office of the SR dealt with 10 complaints, while last year it received 4 of them and in previous years it received the rest of them. At the same time the division of Cartels conducted 4 more detailed investigations and 1 administrative proceedings.

46. In the matter of the breach of the provision of the Article 39 of the Act on Protection of Competition, the Division of Cartels issued 1 decision, in which it imposed a fine of EUR 15 000 on the municipality Surany. In May 2020 the Council of the Office decided on the breach of the Act on Protection of Competition and the appeal lodged by the party to the proceedings.

47. The number of complaints concerning the unlawful restriction of competition by state and local administration authorities were received last year by the Division of Cartels. This number represents a slight decrease compared to previous year. However, last year, the Office's activity in this field melted also into the issued decision.

Second-instance proceedings

48. Parties to the proceedings may lodge an appeal against the Office's first-instance decision. The Council of the Antimonopoly Office of the Slovak Republic, which is the Office's second-instance body decides on the appeals lodged.

49. The Council of the Office's decisions come into force when they are delivered to participants to the proceedings.

50. Last year, the Council of the Office issued 5 decisions. These decisions related to cartel agreements (3 decisions, namely in the area of the sale of motor vehicles, securing a drinking regime, realization of construction works at sports playgrounds), the abuse of a dominant position (1 agreement in the area of rail freight transport) and the non-cooperation with the Office by the form of submitting false information during an investigation according to the Article 22 Paragraph 1 Letter b) of the Act to notice if there is a reason to initiate an administrative proceedings in the matter of the failure to notify a merger (1 decision in the area of the operation of recreational facilities and the provision of related services).

51. Out of the total number of the Council of the Office's decisions, in 4 decisions it imposed fines in the total amount of EUR 3 408 681. In 1 case concerning the imposition of fines in the total amount of EUR 9 386 456 for a cartel agreement in the area of selling motor vehicles, the Council of the Office annulled the first-instance body decision and returned the matter to it for a new proceedings.

52. The development of the number of cases dealt with and decisions issued corresponds to the decision-making activity within the first-instance proceedings, for the proceedings before the Council of the Office follow the first-instance decisions in cases set by the Act.

Judicial review of the Office's decisions

53. In accordance with the Code of Administrative Court Procedure, decisions of the Council of the Office in connection with the decisions of the Office may become a subject to a judicial review.

54. Within the frame of decisions review, a total of 7 court decisions were issued in 2019. Out of them, the Regional Court in Bratislava decided in 4 cases and the Supreme Court of the Slovak Republic decided in 3 cases. There was a resolution issued in 3 case on stopping the proceedings.

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

More than a million fine for a cartel agreement between six undertakings in public procurements in ECS

55. On 5 December 2019 the Office issued a decision, by which it imposed fines in the total amount of EUR 1 190 062 on six undertakings for the conclusion of a cartel agreement, thereby they infringed the provision of the Article 4 Paragraph 1 in connection with the provision of the Article 4 Paragraph 4 Letter a), c) and f) of the Act on Protection of Competition.

56. The anticompetitive conduct of the undertakings was based on the coordination of their bidding procedure for public procurements, which were realized through the electronic contracting system (ECS) from 12 January 2015 to 28 April 2017.

57. The agreement concerned the supply of furniture and medical equipment and the supply of clothing, footwear and textile products.

58. The Office informed about the initiation of the administrative proceedings in the given matter by its press release in the year 2017.

59. The Office's decision has not come into force yet, since the participants to the proceedings lodged an appeal against this decision. Based on this, the Office's second-instance body, which is the Council of the Antimonopoly Office of the SR, will review the decision.

A reduced sanction for a vertical agreement related to the distribution and the sale of children's goods

60. On 15 July 2019 the Antimonopoly Office of the Slovak Republic issued a decision, by which it imposed a fine on the company ags 92, s.r.o., Bratislava (hereafter „ags 92, s.r.o.“) in the amount of EUR 20 632 for a vertical agreement restricting competition under the Article 4 Paragraph 1 in connection with the Article 4 Paragraph 4 Letter a) of the Act on Protection of Competition and the Article 101 Paragraph 1 Letter a) of the Treaty on the Functioning of the European Union in the field of distribution and sale of children's goods.

61. The anti-competitive conduct of the company ags 92, s.r.o., which as a distributor was always one of the parties to the vertical agreement, consisted of determining prices for resale of Chicco goods sold by retail customers - operators of Internet shops/e-shops with children's goods to end customers in the territory of the Slovak Republic and in the territory of the Czech Republic.

62. Restricting competition in the form of determining prices for resale (a restriction in the form of RPM or resale price maintenance) is by European competition law considered as a hardcore restriction, which, by its very nature, aims to restrict competition with a negative impact on an end consumer.

63. In this case, there was also the assessment of anti-competitive conduct in the field of e-commerce - trading via the Internet. The importance of this form of sale and purchase of goods has been growing in the EU as well as in the Slovak Republic for a long time; therefore, it has become the focus of all competition authorities in the recent period.

64. Within the administrative proceedings, the company ags 92, s.r.o., filed an application for settlement pursuant to the Article 1 Paragraph 1 of the Decree of the Antimonopoly Office of the Slovak Republic No. 171/2014 Coll., laying down the details of the settlement conditions. After evaluating all facts, the Office agreed to the settlement procedure, based on which the fine originally imposed on the party to the proceedings was reduced by 50 %, i. e. to the above stated amount of EUR 20 632.

65. The Office's decision came into force on 9 August 2019.

Unlawful restriction of competition in providing pharmaceutical care in Nitra region

66. On 2 October 2019 the Division of Cartels of the Antimonopoly Office of the SR issued a decision imposing a fine in the total amount of EUR 15 000 on the municipality Šurany in Nitra Region for breaching the provision of the Article 39 of the Act on Protection of Competition.

67. On the basis of the evidence gathered, the Office came to the conclusion that by providing evident support giving advantage to a certain undertaking or otherwise the municipality in question restricted competition in the market of the provision of pharmaceutical care in public pharmacies. By this conduct the municipality favoured undertakings, which were operating in the market in question during the period of the assessment.

68. The Office's decision has not come into force yet, as the party to the proceedings has exercised its right to lodge an appeal against this first-instance decision. Based on this, the decision became the subject of review by the Office's second-instance body - the Council of the Antimonopoly Office of the SR.

Almost a 3 million fine for the abuse of a dominant position in rail freight transport

69. On 14 November 2019 the Council of the Antimonopoly Office of the Slovak Republic changed the first-instance decision of the Antimonopoly Office of the Slovak Republic, the Division of Abuse of Dominant Position and Vertical Agreements, of 19 July 2019, by which it had imposed a fine in the amount of EUR 2 990 651 on the undertaking operating in the area of rail freight transport for the abuse of its dominant position during the period of years 2005 – 2010.

70. Last year the Office issued a press release about the first-instance decision, which is available at <https://www.antimon.gov.sk/5891-en/amo-sr-again-decided-about-the-abuse-of-dominant-position-in-rail-freight-transport/>.

71. The Council of the Office confirmed the fine and its amount imposed by the Office, but it came to the conclusion about the necessity to define the length of the anticompetitive

behaviour in accordance with the judgement of the Supreme Court of the SR in the matter concerned, i. e. from 3 March 2009 to 31 December 2010 so that the point 1 of the operative part of the decision corresponded with its point 2. So by the change of the period assessed, the Council of the Office removed the conflict resulting from the first-instance decision, in which the Office imposed a fine for a period other than that specified in the point 1 of the operative part of the decision. In the decision of the Council of the Office, it came to the conclusion that, with the exception of the time span of period of duration of the anticompetitive behaviour, the first-instance body correctly assessed the factual state of the matter, correctly applied the legislation and imposed a fine in a reasonable amount for the conduct committed.

72. The Council of the Office imposed a fine in the amount of EUR 2 990 651, for the dominant company Železničná spoločnosť Cargo Slovakia, a.s., (hereafter “Cargo”) restricted the sale and the lease of electric locomotives and refuelling 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. The company committed the illegal conduct between the years from 2009 to 2010.

73. During the period assessed, Cargo was a dominant player in the rail freight transport market, where several other private carriers were operating. 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.

74. 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.

75. Both restrictions, i. e. the sale and the lease of electric locomotives, as well as the refuelling of motor locomotives were the part of a strategy aimed at pushing competitors out of the market and maintaining the dominant position, as evidenced also by direct evidence obtained by the Office. The conduct of Cargo made it difficult for private carriers to efficiently provide their services, succeed in the market and compete with Cargo.

76. The decision was issued in the proceedings, in which the Office had already decided once, but the previous decision was annulled by the Regional Court in Bratislava and the Supreme Court of the SR. Therefore, the courts’ objections were taken into account in this current decision.

77. The decision of the Council of the Office came into force on 15 November 2019.

78. Since the participant to the proceedings lodged an appeal against this decision to a court, the Office’s decision in this case cannot be considered as a final decision.

Over 9 million fine for cartel agreements between sellers of motor vehicles

79. On 12 July 2019 the Council of the Antimonopoly Office of the Slovak Republic issued a decision, by which it decided on the appeals lodged by the participants to the proceedings against the first-instance decision of the Antimonopoly Office of the Slovak Republic, the Division of Cartels, of 30 November 2018.

80. In that decision, the Office's first-instance body imposed fines in the total amount of EUR 9 386 456 on fifteen undertakings for the infringement of the Act on Protection of Competition, which was based on the conclusion of several cartel agreements on prices, market allocation, the exchange of sensitive business information and coordination in public procurement process in relation to selling passenger and light commercial motor vehicles.

81. At the end of the year 2018 the Office informed about issuance of the Office's first-instance body via its press release, which is available at <https://www.antimon.gov.sk/antimonopoly-office-of-the-slovak-republic-has-decided-on-more-than-eur-9-million-fine-for-cartel-agreement-in-the-sale-of-motor-vehicles/>.

82. Parties to the proceedings lodged an appeal against the first-instance decision within the statutory time limit, on which the Council of the Office decided.

83. The Council of the Office annulled the decision of the first-instance body of the Office and returned the matter to it for a new proceedings and a decision on the grounds that the first-instance body incorrectly identified the participants to the proceedings. At the same time, the Council of the Office drew the attention of the Office's first-instance body on the need to reconsider the matter in the overall context of the case, as well as a more comprehensive assessment of the evidence in terms of time, i. e. the demonstration whether the agreement lasted also later and who continued as its participant, and also on the need to more precisely reason steps of the methodology applied in calculating the fine.

84. By annulling the decision of the first-instance body, the matter was returned to the stage before the first-instance body. After dealing with the issue of the participation in the proceedings, in accordance with the opinion of the second-instance body, the first-instance body was obliged to establish the factual state, assess it legally and impose an adequate fine on that basis.

85. The decision of the Council of the Office came into force on 31 July 2019.

Collusion of undertakings in public procurements for construction works on sports playgrounds

86. On 19 December 2019 the Council of the Antimonopoly Office of the Slovak Republic confirmed the first-instance decision of the Office, the Division of Cartels, dated 7 November 2018, by which the Office imposed fines on three undertakings in the total amount of EUR 117 690 for the conclusion of cartel agreement.

87. The object of the cartel agreement was to coordinate the conduct of the undertakings M.Cup, s.r.o., MPL STAVING, spol. s r.o., and RECORD TK, spol. s r.o., operating in the field of the realization of construction works on sports playgrounds and the supply of related goods and services, namely during the submission of bids in seven public procurements announced in September and October 2014.

88. These projects were partially financed from public funds provided by the Government Office of the Slovak Republic.

89. In this case it is a collusion in the process of public procurement, respectively public tender, which by its nature is ranked among the most serious infringements of competition rules.

90. The Office informed on this case in relation to the first-instance decision in its press release published at <https://www.antimon.gov.sk/cartels-antimonopoly-office-of-the->

slovak-republic-imposed-fines-for-cartel-agreement-between-undertakings-in-relation-to-the-construction-of-sports-playgrounds/

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

92. The Council of the Office confirmed the fine imposed by the Office and its amount as well as the imposition of the ban on participation in public procurement.

93. The decision of the Council of the Office came into force on 2 January 2020.

94. According to the information available to the Office, the participants to the proceedings sued an action against this decision to a court. Therefore, the Office's decision in this case cannot be considered as a final decision.

Coordination of undertakings providing drinking

95. On 4 April the Council of the Office by its decision changed the first-instance decision of the Antimonopoly Office of the SR, the division of Cartels, by which it imposed fined on the undertaking AQUA PRO, s.r.o., and DOXX – Stravné lístky, spol. s r.o., (as a legal successor of the company DOXX MINERÁL, s.r.o.) for the participation in an agreement restricting competition during the period from 13 November 2013 till 19 February 2014.

96. The Office informed about the first-instance decision by its press release available at <https://www.antimon.gov.sk/cartels-amo-sr-decided-on-fines-for-two-undertakings-providing-drinking/>.

97. In the decision, the Council of the Office upheld the Office's conclusions that the undertakings coordinated their activities in the field of providing drinking regime, particularly by supplying water, gallons and dispensers, including related services, in the territory of the SR, namely through the scheme of anticompetitive practices. They were based on:

- an agreement on the price-increase for the year 2014,
- an agreement on setting minimum prices for water gallons and the monthly lease of dispensing equipment according to the size of a customer,
- market allocation by the form of an agreement on a mutual non-attacking customers of the above-stated undertakings.

98. Individual anticompetitive practices were mutually connected by one aim, which was to exclude competition between the undertakings above-stated in the field concerning the agreement restricting competition.

99. But the Council of the Office did not agree with the Office's conclusion that the coordination of the behaviour of the undertakings AQUA PRO, s.r.o., and DOXX MINERÁL, s.r.o., was also proved in a specific tender carried out in 2013.

100. The assessed target agreement is prohibited according to the provisions of the Article 4 Paragraph 1 in conjunction with the Article 4 Paragraph 3 Letter a) and c) of the Act on Protection of Competition, in a wording effective till 30 June 2014 and the Article 101 Paragraph 1 of the Treaty on the Functioning of the European Union.

101. The Council of the Office upheld the amounts of fines imposed by the first-instance body. The Office imposed fines on the undertaking in the total amount of EUR 281 218 (it imposed on the undertaking AQUA PRO, s.r.o., a fine in the amount of EUR 232 304 and on the undertaking DOXX – Stravné listy, spol. s r.o., a fine in the amount of EUR 48 914.)

102. The Council of the Office's decision came into force on 25 April 2019.

103. Since the decision became the subject of a judicial review, this decision of the Council of the Office cannot be considered as a final decision in this matter.

3.2. Mergers and acquisitions

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

104. In 2019, the Division of Concentrations of the Antimonopoly Office of the Slovak Republic in 1 case continued in the general investigation for a possible delict in a direct connection with the merger control, i. e. the failure to notify a merger to the Office and the breach of the prohibition on exercising rights and obligations arising from the concentration without a prior valid approval by the Office. In another case, the Office initiated such an investigation, and subsequently it initiated an administrative proceedings in this matter.

105. The Division of Concentrations conducted 28 administrative proceedings altogether. This is the total number of administrative proceedings that were initiated and terminated in 2019, as well as those that were initiated in 2018 and terminated in 2019, as well as those that continue in 2020.

106. In the area of merger control, the Division of Concentration issued a total of 26 decisions last year. Of this number, by 25 decisions the Office approved a merger. In 1 of the decisions, the Office stopped an administrative proceedings, since during the administrative proceedings all of its participants withdrew their motion to initiate the administrative proceedings in all extend after the Office identified certain possible competition concerns.

107. Within the framework of pre-notification contacts, the Office dealt with almost 40 cases. Some of them subsequently resulted in the notification of a merger, in several cases the need to notify a merger was not identified, due to either the transaction did not meet the definition of a merger or the turnovers of the parties to the merger were below thresholds set by the Act.

108. The number of administrative proceedings as well as the number of decisions on mergers has been stable over recent years. Last years, the Office's increased activity towards sanctioning unnotified mergers and their implementation without the Office's approval has also been evident, in the form of issuing a decision on the basis of investigations carried out by the Office.

3.2.2. Summary of significant cases

Acquisition of employment agencies by the undertakings Manuvia, a.s., PhDr. Marek Kuchta, MBA, Ing. Daniel Bercel, MBA and ELNI CAPITAL LTD

109. On 7 August 2019 the Division of Concentration of the Antimonopoly Office of the Slovak Republic approved the merger, which is grounded in the acquisition of the joint control of the undertakings Manuvia, a.s., (hereafter "Manuvia"), PhDr. Marek Kuchta,

MBA, Ing. Daniel Bercel, MBA and ELNI CAPITAL LTD over the undertakings EUROTRADE - SR, a.s., EDYMAX Flexibility, s.r.o., EDYMAX Europe, s. r. o., and EDYMAX Personal Management SE (hereafter "acquired undertakings").

110. Within the assessment of the impact of the merger on the conditions of competition, the Office focused on those activities of the undertakings, in which there was an overlap resulting from the merger. In the given case, there was a horizontal overlap in the area of employment mediation for remuneration (hereafter "EMR") and the performance of activities as a temporary employment agency (hereafter "performance of TEA activities") in the SR.

111. The given merger concerns the entrance of the undertaking Manuvia into the acquired undertakings and it will perform the joint control with all or some of the current owners of the acquired undertakings. Thus, during assessing the given merger the Office assessed the position of the undertaking Manuvia, the position of other parties to the proceedings, together with the acquired undertakings and the position of their competitors in the abovementioned areas of activities.

112. In assessing the merger, the Office relied on the market information submitted in the merger notification, which, due to the lack of publicly available information in this area, it verified by the information submitted to the Office by the Central Office of Labour, Social Affairs and Family. In the area of performing TEA activities it relied also on the information submitted to the Office by the competitors of the parties to the merger, which were addressed by the Office within the survey.

113. The Office concluded that the merger does not raise competition concerns as the result of horizontal overlap of the activities of its participants in the EMR area in the SR, especially with regard to the achieved market shares of the parties to the merger in connection with the market structure, while leaving the question of possible narrower division of goods market of EMR open.

114. In relation to the performance of TEA activities, based on the information obtained, the Office found out that the parties to the merger will become a leader in the market of providing services of TEA after the merger. In spite of this fact, the merger does not raise competition concerns, taking into account in particular the method of selecting providers of services of TEA by the side of user employers (diversification of providers of services of TEA), taking into account the market structure - the existence of several relevant competitors in the provision of services of TEA, some of which belong to over-nationally operating groups. At the same time, the Office took into account that there is almost no exclusivity in trade relations in the market and that barriers to entry to the market are low. Based on these facts, the Office concluded that the merger does not raise competition concerns as the result of horizontal overlap of activities of parties to the merger in the area of providing services of TEA.

115. After evaluating all the documentation and information obtained during the administrative proceedings in question, the Office did not identify that the merger in question would significantly distort effective competition in the relevant market, in particular as the result of the creation or strengthening of dominant position. Thus, neither it did identify competition concerns as the result of the merger assessed. So, the Office came to the conclusion that the merger assessed is in compliance with the Article 12 Paragraph 2 of the Act on Protection of Competition.

116. The decision came into force on 8 August 2019.

Acquisition of two beverage distributors by the undertaking Mast-Jägermeister SE

117. On 25 March 2019, the Division of Concentrations of the Antimonopoly Office of the SR approved the merger, which, according to the merger notification, was grounded in the acquisition of a direct exclusive control by the undertaking Mast-Jägermeister SE, Germany (hereafter "MJSE") over the undertaking REMY COINTREAU SLOVAKIA, s. r. o., Bratislava (hereafter "RCSK") and the undertaking REMY COINTREAU CZECH REPUBLIC, s.r.o., the Czech Republic (hereafter "RCCZ").

118. The economic group of the undertaking MJSE is a producer and seller of alcoholic beverages, especially in the category of bitter beverages. In addition to Jägermeister bitter alcoholic beverages, which are marketed in more than 130 countries around the world, its portfolio also includes Schlehenfeuer liqueur and Gin Sul brand gin. MJSE operates in the territory of the SR as a foreign supplier of only bitter alcoholic beverages of the brand Jägermeister. Prior to the merger, the undertakings RCSK and RCCZ were indirectly exclusively controlled exclusively by the company Rémy Cointreau S.A., France. The undertakings RCSK and RCCZ are exclusively distribution companies that distribute alcoholic beverages of the parent group, as well as alcoholic beverages of other, independent producers. In a small extent they also distribute non-alcoholic beverages. RCSK performs its activity in the territory of the SR and, among other things, it is the exclusive distributor of the Jägermeister brand in the territory of the SR. RCCZ is active in the territory of the Czech Republic.

119. There was no horizontal overlap between the activities of the merging parties at the time of its assessment by the Office. However, there was a vertical relationship between the activities of the merging parties in the territory of the Slovak Republic, when RCSK acted as the exclusive distributor of Jägermeister brand beverages in the territory of the SR. Based on the information submitted to the Office, this vertical relationship did not raise competition concerns, taking into account, inter alia, the portfolio of distributed brands by the acquired company, the existence of other independent distributors and the fact that already before the merger the Jägermeister brand was distributed exclusively by the acquired company.

120. After evaluating the documentation and information acquired during the administrative proceedings, the Office came to the conclusion that the merger in question is in compliance with the Article 12 Paragraph 1 of the Act on Protection of Competition, as it will not significantly impede effective competition on the relevant market, in particular as a result of the creation or strengthening of a dominant position.

121. The decision came into force on 26 March 2019.

Acquisition of the undertakings Opel Slovakia Automotive, s.r.o. and Opel Czech (Automotive), s.r.o., by the distributor and cars dealer Emil Frey Holding AG

122. On 11 June 2019 The Division of Concentrations of the Antimonopoly Office of the Slovak Republic approved the merger, which is grounded in the acquisition of indirect exclusive control of undertaking Emil Frey Holding AG, Switzerland over undertakings Opel Slovakia Automotive, s.r.o., the Slovak Republic and Opel Czech (Automotive), s.r.o., the Czech Republic.

123. The undertaking Emil Frey Holding AG is active in the area of distribution and sale of cars. In the territory of the Slovak Republic it is active in the area of wholesale distribution of Citroën, Peugeot and DS passenger cars, wholesale distribution of Citroën and Peugeot light commercial vehicles (hereafter "LCV"), wholesale distribution of

original spare parts and accessories for passenger cars and LCV under the brands Citroën, Peugeot and DS and related logistic services, as well as in the area of wholesale distribution of used cars.

124. The acquired company Opel Slovakia Automotive, s.r.o., is active in the territory of the Slovak Republic in the area of wholesale distribution of passenger cars and LCV under the brand OPEL, wholesale distribution of original spare parts and accessories for passenger cars and LCV under the brands Opel and Chevrolet and in area of retail distribution of passenger cars and LCV to large business (end) customers (only to a very limited extent). The company Opel Czech (Automotive), s.r.o., will be active exclusively in the Czech Republic and therefore it was not necessary to deal with its activities in detail in the decision.

125. The activities of the above mentioned undertakings overlap in the wholesale distribution of passenger cars and wholesale distribution of LCV.

126. Based on the common market shares of the parties to the merger on the market of the wholesale distribution of passenger cars after the realisation of the merger and the structure of the market of the wholesale distribution of LCV before and after the merger, as well as with regard to the character of competitors and the existence of one economic group, which includes the brand Opel as well as the brands Peugeot and Citroën at manufacturer level, the Office concluded that the merger assessed is in accordance with the Article 12 Paragraph 1 of the Act on Protection of Competition, since it will not significantly impede effective competition on the relevant market, particularly as the result of the creation or strengthening of dominant position.

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

127. The Office also carries out competitive advocacy activities, as it can support and develop a competitive environment through them. Within competition advocacy it focuses on prevention in the field of competition protection, raising awareness of competition principles among the professional and lay public and promoting competition principles in other public policies.

128. In competition advocacy it deals with a wide range of activities, from submitting Office's comments within inter-ministry comment procedure, providing opinions, directly addressing entities concerned, through organizing professional seminars and conferences, presenting various initiative materials, to communication with the public through mass media.

129. From the Office's experience comes out that in many cases, when competition problems arise due to improperly set relationships in certain sectors, for example due to inappropriate regulation, then systemic problem solving on the market through competition advocacy is more effective than conducting administrative proceedings against particular undertakings

130. With an effort to remove potential obstacles to the effective application of competition rules and, consequently, possible distortions on the market and the competitive environment, the Office also submits its comments on draft of Acts and other legislative documents.

131. In 2019 the Office commented on 62 materials submitted within inter-ministry comment procedures. It made only fundamental comments on 17 proposals, recommendations on 32 proposals and simultaneously it applied fundamental comments and recommendations on 13 of them - this number includes comments that were given in terms of competition protection and also comments outside this framework.

132. The Office also made several comments from the point of view of state aid on several proposals.

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

134. Last year the Office promoted competition among general public also, for instance, by organizing and participating in several conferences, seminars, training activities or continuing and developing cooperation with Slovak universities, Slovak administration authorities and foreign competition institutions, as well as its publishing activities.

135. Through communication activities, it regularly improved the awareness of undertakings, state administration and self-government bodies, as well as the academic community about up-to-date information on the Office's activities, competition rules and the benefits that a fair competitive environment brings to consumers. Communication with experts from foreign competition institutions and also with the mass media also made a significant contribution to spreading awareness of the Office's work.

5. Resources of competition authorities

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

Table 2. Annual budget

	2019	Change over previous year	
Total expenses	4 179 622,39 EUR	4 783 159,86 USD	+1 135 998,83 EUR +1 300 037,06 USD

136. The expenditures approved for the year 2019 were adjusted to EUR 4 180 thous. by implemented budgetary measures of the Ministry of Finance of the Slovak Republic and the Office of the Government of the Slovak Republic in 2019. The approved budgetary measures were connected mainly with the approved requests for the payment for the projects of Operational Programme Technical Assistance and they were implemented also in relation to the judgment of the Supreme Court of the Slovak Republic No. 10Asan/6/2018 of 30 July 2019, in connection with refunding the fine to the company Tesco Stores SR, a.s.

Table 3. Number of employees

	2019	Change over previous year
Economists	21	-2
Lawyers	29	+3
Other professionals	16	+2
Support staff	10	-1
Total	76	+3

5.2. Human resources

Table 4. Human resources

	2019
Enforcement against anticompetitive practices	20
Merger review and enforcement	7
Advocacy efforts	5
State Aid	14

5.3. Period covered by the above information:

- Year 2019