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Competition in the Food Supply Chain – Contribution from the Slovak Republic

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Competition in the Food Supply Chain

- Contribution from the Slovak Republic -

1. Economic and competition analysis of the supply chain

1. The term agri-food industry usually refers to agriculture and agricultural production (NACE A) as well as food processing activities (NACE C10-12), food retail and wholesale (NACE G46-47), or when considering macroeconomic indicators in the analysis of the food production vertical, the food services sector (NACE I56) can also be included. This definition includes a variety of actors ranging from suppliers of inputs and services (e.g. seeds, pesticides, fertilisers, machinery, equipment, packaging, repairs, transport and distribution, finance and consultancy), to research and innovation support (universities, research centres, clusters), to public authorities¹.

2. In recent decades, changing trends in consumer demand and in the strategies of retailers and manufacturers have led to a reorganisation of the structure of agri-food chains, with greater emphasis on product differentiation, quality standards and the use of contracts. These and other features of food chains (e.g. the role of cooperatives) are relevant for understanding market power and market concentration in food chains². Understanding competition in a particular food chain, as well as the potential effect of policies, therefore requires a deeper knowledge about the chain's mechanism.

3. Several empirical approaches have been used to assess competition in agri-food chains. These can be divided into structural, behavioural and performance indicators. Market structure indicators (e.g. sales of the largest firms in the market or the market concentration index HHI) are commonly used in policy debates, although the link between market structure on the one hand and firms' behaviour (such as pricing strategy) and performance (such as firms' profitability) on the other is not as direct as sometimes assumed. Data on firms' performance in terms of profitability can provide complementary information³.

4. It is often pointed out that the food chain has a large number of suppliers in the form of farmers and a limited number of buyers, or processors, wholesalers and retailers, who in turn sell to a large number of consumers. Market concentration ratios are commonly used by economists and competition authorities as indicators of competitive conditions in markets.

5. A typical concern is that farmers are structurally weak relative to other actors in the food chain (such as processors and retailers) and may receive a lower price for their products than they would in a more competitive market, due to the purchasing power of

¹ European Commission (2024). „Transition Pathway for the agri-food industrial ecosystem“. Available at: https://single-market-economy.ec.europa.eu/publications/transition-pathway-agri-food-industrial-ecosystem_en

² Bonnano et al. (2018). „Market power and bargaining in agrifood markets: A review of emerging topics and tools“.

³ Deconinck, K. (2021). „Concentration and market power in the food chain“. Available at: <https://www.oecd-ilibrary.org/deliver/3151e4ca-en.pdf?itemId=%2Fcontent%2Fpaper%2F3151e4ca-en&mimeType=pdf>

stronger actors. In addition, according to research, farmers' and processors' weak position may mean accepting trade practices that are perceived to be unfair, such as unfavourable payment terms or contracts⁴.

6. However, detailed sectoral investigations carried out by competition authorities may therefore be a more relevant source of evidence, as standardised indicators (e.g. concentration levels) may not reflect the actual reality competition in the market for food goods and services.

7. For example, macroeconomic indicators of the agriculture and food sectors in Slovakia have shown mixed development in the last two years. The rate of growth in income has outpaced the rapid growth in farm input costs, leading to record high farm profits. Meanwhile retail chains, usually characterized by having buyer power towards farmers, did not see any significant rise in profit margins.

8. On the other hand, slightly different pattern has been observed across Western EU countries. Price increases in food production inputs were passed on to consumers to a limited extent, as short-term price volatility was absorbed by the manufacturing sector. The views obtained through interviews suggest that food manufacturing was forced to take this step as consumers are very price sensitive⁵. Price and input costs pressures can thus lead to differential changes in the market structure and level of competition depending on at which level of food supply chain firms operate.

1.1. Legislative and policy implications

9. The application of unfair trade practices has a particularly negative impact on smaller entities and is therefore likely to be particularly prevalent at the lower stages of the food value chain or in agriculture.

10. The European Commission has stated that UTPs can be broadly defined as practices that "grossly deviate from good commercial conduct and are contrary to principles of good faith and fair dealing". Policies to prevent or prohibit UTPs exist in several jurisdictions, including the EU⁶.

11. In April 2018, the Commission published an impact assessment on the initiative to improve the food supply chain, detailing the prevalence of UTPs. The impact assessment identifies (i) imbalances in bargaining power; (ii) divergence of rules at national level; and (iii) lack of coordination between enforcement authorities, as the main drivers of the problem. The Commission concluded that there are currently no common rules that provide a minimum standard of protection against UTPs in the food supply chain. Although most EU Member States have already had legislation on UTP, there is limited coordination between them⁷.

⁴ Agricultural Markets Task Force (2016). „Improving market outcomes: Enhancing the position of farmers in the supply chain“.

⁵ European Commission (2016). „The competitive position of the European food and drink industry“. Available at: <https://op.europa.eu/en/publication-detail/-/publication/65cec388-d156-11e5-a4b5-01aa75ed71a1>

⁶ European Commission (2017). „Unfair trading practices in the food supply chain“, JRC Technical Report.

⁷ European Commission (2013). „Initiative to improve the food supply chain (unfair trading practices): Impact Assessment“. Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2018:0092:FIN:EN:PDF>

12. Industry representatives see the inconsistent application of European rules across EU Member States as a major challenge in terms of the impact of regulatory conditions on the competitiveness of European food producers and the future development of the sector. Different interpretations of EU legislation, leading to different enforcement conditions in different Member States, and the tendency of Member States to implement national legislation are particular problems with a negative impact on competitiveness, as they create additional costs and barriers instead of removing them⁸. Moreover, this creates uncertainty, which has a further negative impact on investments in the sector.

13. In a 2017 technical report, the Joint Research Centre (JRC) highlighted the increasing concentration of the retail and processing segments of food supply chains in EU Member States and globally. As a direct consequence, an imbalance in bargaining power is emerging between the different actors in the chain, which can lead to unfair trade practices (UTPs)⁹.

14. It is clear from this that discussions on competition in agri-food chains must take into account the specificities of the sector. The potential impact of implemented policies can vary depending on the structure of the food chain. Policies that may be beneficial in one setting may be ineffective or even counterproductive in another setting. As an example, in a perfectly competitive market, the introduction of a minimum price will lead to overproduction and loss of efficiency. Conversely, in a monopoly market with uniform pricing, a minimum price can increase welfare by forcing the monopolist to increase output. On the other hand, if the monopolist uses perfect price discrimination, the minimum price would not improve welfare (since there is no efficiency loss to begin with), but would redistribute rents from the monopolist to some of its competitors.

15. In Slovakia, measures to prevent undesirable price development are regulated by the third section of the Act on Prices, which are:

- (a) price regulation,
- (b) prohibition to negotiate an unreasonable price.

16. An unreasonable price may not be negotiated:

- (a) a seller in a dominant position as an entrepreneur in the sale of goods,
- (b) the seller or buyer if he is in a more advantageous economic position when selling or buying food products; a seller or buyer who negotiates a price on the market without being exposed to substantial price competition in the relationship between the seller and the buyer shall have a more advantageous economic position for the purposes of this Act, the more advantageous economic position of the seller or buyer being assessed by the competent pricing authority according to the volume of goods sold or purchased, market share, economic strength and financial strength, legal or other barriers to entry, the degree of personal or proprietary links with other persons on the market in question, and any other facts relevant to the assessment of the economic position of the entity on the market¹⁰.

⁸ European Commission (2016). „The competitive position of the European food and drink industry“. Available at: <https://op.europa.eu/en/publication-detail/-/publication/65cec388-d156-11e5-a4b5-01aa75ed71a1>

⁹ European Commission (2017). „Unfair trading practices in the food supply chain“, JRC Technical Report.

¹⁰ Collection of Laws of the Slovak Republic: Zákon 18/1996 Z. z. o cenách. Available at: https://static.novy.slov-lex.sk/pdf/SK/ZZ/1996/18/ZZ_1996_18_20200721.pdf

17. An unreasonable price for the seller is an agreed price which significantly exceeds economically justified costs or a reasonable profit margin. The unreasonable price provisions shall also apply to the price of commercial or intermediary performance.

18. Price regulation has to be justified and is usually implemented in cases of natural monopolies or severe market failures, which is not the case in the food vertical at the present. Although price regulation may have a positive effect in the short term, in the long term it is an interference within the effective market performance.

19. In addition to price regulation, the Act on Prices allows for procedures that could contribute to public policy efforts towards price stabilization in the field of food prices. Price controls of market competitors are an essential instrument of the Act on Prices in the case of temporary market imbalances and in the absence of a developed competitive environment, which makes it possible to prevent speculative behaviour and abusive extra-legal practices by business operators. Other instruments are price records and price information which the price authorities may request from legal subjects for the purposes of assessing price trends, price regulation, price control and proceedings for breaches of the Law on Prices and generally binding legal regulations and decisions in the field of prices¹¹.

1.2. Market structure of the food supply chain

20. An important part of examining market power is to analyse the structure of the market in which firms operate. Although market structure analysis alone does not provide a comprehensive picture of the scale of market power held by firms, it is nevertheless useful to understand the structural power of firms relative to other market participants.

21. The available empirical evidence does not clearly reject the idea that other actors in the food chain exert purchasing power to the detriment of SME; several studies suggest a degree of purchasing power in some markets, and the evidence seems to suggest that even small deviations from competitive conditions could lead to quite large effects on prices paid to farmers and small processors. However, the available evidence (including data on the profit margins of food chain entities and investigations by competition authorities) does not support common and widespread competition problems in the food value chain.¹²

22. A recent study on the impact of modern retail on consumer choice reports that competition between retailers has intensified, mainly due to the development of discount stores. The sector could be further consolidated to ensure quality and volumes and with a reduction in the number of intermediaries. An interesting development among large independent retailers is the increasing tendency to merge with wholesale or commodity suppliers, including the increased presence of cooperatives. These co-operatives have faced two main challenges in the last decade, namely the need to reduce costs and the need to control the production process of final food products due to increased consumer demands. This has led to further vertical integration, with retail cooperatives bringing together actors across the value chain to ensure full control over the trade process and contracting.¹³

¹¹ Ministry of Finance of the Slovak Republic (2023). „Analýza cenového vývoja základných druhov potravín 2/2023“. Available at: <https://www.mfsr.sk/files/archiv/19/Analýza-vybranych-druhov-potravin-2-2023.pdf>

¹² Deconinck, K. (2021). „Concentration and market power in the food chain“. Available at: <https://www.oecd-ilibrary.org/deliver/3151e4ca-en.pdf?itemId=%2Fcontent%2Fpaper%2F3151e4ca-en&mimeType=pdf>

¹³ European Commission (2014). „The economic impact of modern retail on choice and innovation in the EU food sector“. Available at: <https://data.europa.eu/doi/10.2763/77405>

23. Based on the data from The Competitiveness Research Network (CompNet), we looked at the market share of ten largest firms (CR10) within each sector in the food supply chain, between years 2010 and 2020. The concentration reaches its highest level in manufacturing, followed by the retail and wholesale sector. This pattern can be observed both in Slovakia and in all observed European economies. At least 20% and up to 70% of the market share in the retail sector is accounted for by the ten largest firms, depending on the Member State. For wholesale, these figures range from 10% to just over 40%. In terms of the HHI indicator, however, these sectors are not considered to be concentrated, respectively none of the sectors has an HHI above the threshold of 1 500. In the international comparison, only the beverages manufacturing sector (NACE C11) exceeds the threshold in several countries, with the value in Slovakia ranging between 970 and 1150 over the time¹⁴.

24. Although the food value chain sectors appear to be relatively poorly concentrated in most countries, a closer look at the segmented markets, according to the 4-digit NACE code and using national data for Slovakia, suggests a risk of low competition in specific sectors, mainly food manufacturing¹⁵. However, we do not observe significant differences when comparing markets in Slovakia and the rest of the European Single Market. Therefore, higher price growth in recent years does not appear to be mainly a competition problem in the context of the Slovak food value chain.

25. In general, there is not much empirical evidence to support the hypothesis of a widespread problem of increasing market power in food markets. A possible explanation is that buyer power is really only a minor problem in the value chain, as various other factors influence the weaker structural position of individual actors in the market. In such a case, the absence of greater competition in the market is perhaps an incorrect assumption of the occurrence of problems caused by other factors¹⁶.

1.3. Non-competition factors influencing market structure and firm performance

26. Often structural problems in agri-food chains are misinterpreted as competition problems. As empirical evidence suggests, and our analysis of food value chains confirms, market power may not be the main factor. For example, significant differences in output prices, cost competitiveness and factor productivity may be misinterpreted as competition problems.

27. Price transmission, or the rate at which changes in agricultural prices are passed on to consumer prices and vice versa, is also an indirect indicator of competitiveness. A low degree of price transmission is often interpreted as a sign of an uncompetitive market. Indeed, some empirical findings suggest that price transmission will be lower in the presence of market power¹⁷.

¹⁴ Author's own calculations based on data from The Competitiveness Research Network (9th edition). Available at: <https://www.comp-net.org/data/9th-vintage-1>

¹⁵ Author's own calculations based on data from Register of financial statements of Ministry of Finance of the Slovak Republic. Available at: <https://registeruz.sk/cruz-public/domain/accountingentity/simplesearch>

¹⁶ Deconinck, K. (2021). „Concentration and market power in the food chain”. Available at: <https://www.oecd-ilibrary.org/deliver/3151e4ca-en.pdf?itemId=%2Fcontent%2Fpaper%2F3151e4ca-en&mimeType=pdf>

¹⁷ McCorrison, S. – Morgan, C. – Rayner, A. (1998). “Processing technology, market power and price transmission”.

28. It is impossible to accurately estimate the margin on a particular food product, as the final price of the product is influenced by a large number of cost factors, the impact of which cannot be reliably quantified at the unit (or marginal) level. However, assuming that these factors are similar across countries, it is possible to identify unusual developments by international comparison. At the same time, the analysis of individual sectors and firms in Slovakia points to the common performance of the food market as a whole, showing signs of a competitive market environment.

29. The food market situation in Slovakia was assessed by analysing profits at the level of individual sectors and firms. If the rise in output prices has been disproportionate to the rise in firms' input costs, this will be reflected in higher firm profitability. The analysis of price and profit growth was carried out by the Ministry of Finance of the Slovak Republic, using data from the Statistical Office of the Slovak Republic and Eurostat's FIGARO tables.

30. The rise in European food prices during 2022 and 2023 has enabled significant earnings growth in the food vertical. According to company accounts, profitability grew in Slovakia during the inflationary crisis, especially in the agriculture and food manufacturing sectors. In terms of profitability, the agriculture sector performed best in 2022 and the food manufacturing sector improved in 2023. Retail trade maintained stable margins during this period and the profitability rate in this sector did not grow significantly. These developments suggest that the global food price shock first boosted profits in primary production and from there spilled over further into producer and eventually consumer prices. We assume that farmers have prospered mainly because of high exchange world prices for agricultural commodities, which have risen significantly more than the cost of production. Profit margins at the country's largest retail chains either declined slightly or kept the same level, suggesting that retail chains did not benefit significantly from the period of high inflation¹⁸.

31. In well-developed markets, factor productivity is a key factor in generating profit. If value added grows slower than turnover (as is the case in the food industry), the industry becomes increasingly resource-based and therefore more dependent on input prices. This can have a negative impact on profit margins when the input price shock is fully passed on to consumers in the form of higher prices¹⁹. Slovak food supply chain sectors are characterised by a high degree of intermediate input intensity (including imported inputs into production) compared to countries operating in the European single market, which poses a greater threat to Slovak producers in case of a supply shock or a sudden increase in production costs. We believe, and data shows, that part of the high food inflation in Slovakia in recent years could also be accounted for by cost-price transmission. In many cases farmers and food manufactures almost completely translated increase in input costs into production prices. According to Eurostat data, input costs in Slovakia have risen more than 50% since 2020, which is the fifth highest increase among EU member states.

32. Another factor that influences the market structure is labour productivity. The food industry in Slovakia can be characterized by relatively low labour productivity, which results in higher unit labour costs, which also negatively affects the level of investment in the sector. The lower rate of investment leads to lower productivity and lower production

¹⁸ Ministry of Finance of the Slovak Republic (2024). „Analýza cenového vývoja základných druhov potravín 9/2024“. Available at: <https://rokovania.gov.sk/download.dat?id=B235C26AD1644AC6A4F5CD60E4546B3F-970DF23557E7A106758B6FE3AECC3F9E>

¹⁹ European Commission (2016). “The competitive position of the European food and drink industry“. Available at: <https://op.europa.eu/en/publication-detail/-/publication/65cec388-d156-11e5-a4b5-01aa75ed71a1>

capacity compared to foreign entities then leads to relatively higher prices compared to foreign production. According to the Eurostat data, investment rate in agriculture and food manufacturing sectors reaches the average level of the EU, while investments in wholesale and retail remains below EU average. Alongside with low labour productivity, this contributes to insufficient production capacity. To sum up, 87% of household consumption could be covered by inland production²⁰, which ranks Slovakia 20th among EU member states in this indicator²¹.

1.4. Price developments in the food vertical

33. Consumer price inflation in Slovakia between 2021 and 2023 reached historic levels. According to the estimates of the Ministry of Finance of the Slovak Republic, the main cause of high inflation in 2021 and 2022 was mainly higher input costs, which were passed on to consumer prices. The acceleration in inflation was triggered by a series of shocks from abroad. The global pandemic resulted in a reduction in population mobility and household consumption shifted from services to goods. The increase in demand for goods and the different timing of lockdowns around the world led to shortages of components in production and made them more expensive. Since mid-2021, Russia has started to restrict gas supplies to Europe, which has led to higher energy prices. From the second half of 2022, when inflation peaked, higher profits played a significant role in the economy. The annual inflation rate in Slovakia peaked at around 15% in early 2023. Not only energy but also food became significantly more expensive, with prices rising by up to 28% year-on-year at the peak. Slovakia is more sensitive to these factors than more advanced economies in the European Union, given the relatively higher energy intensity of the food industry. As a result, Slovak food inflation was among the highest in the EU. On a year-on-year basis, food prices rose faster in the less developed EU member states in 2023. Food prices in Slovakia reached 106% of the EU average in 2023²².

34. The disruption of global supply chains has also weakened its position in international trade. Rapidly rising energy input prices have been passed through to all components of the consumer basket and pushed inflation to historic double-digit levels. There are parallel trends in the evolution of total and agri-food foreign trade. Total foreign trade has been on a steadily increasing trend, as has foreign trade in the food production category. In both cases, there has been a double-digit percentage increase in both exports and imports²³. However, in recent years, the ratio of food imports has been higher than exports, deepening the negative trade balance in the category and reducing Slovakia's food self-sufficiency. Furthermore, not less than 90% of the total trade in agricultural and food products takes place within the EU Member States, with more than 85% of trade flows taking place between the 10 most important trading partners. This indicates a strong

²⁰ Situation when whole production had been intended to domestic purposes, including exports.

²¹ Author's own calculations based on data from Eurostat (database hbs_exp_t121 and ds-018995)

²² Ministry of Finance of the Slovak Republic (2024). „Analýza cenového vývoja základných druhov potravín 9/2024“. Available at: <https://rokovania.gov.sk/download.dat?id=B235C26AD1644AC6A4F5CD60E4546B3F-970DF23557E7A106758B6FE3AECC3F9E>

²³ Ministry of Agriculture and Rural Development of the Slovak Republic (2023). „Report on Agriculture and Food Sector in the Slovak Republic for 2022“. Available at: <https://www.mpsr.sk/en/download.php?fID=267>

concentration of trade flows and Slovakia's dependence on foreign supply and demand within the food category²⁴.

35. Slovak households consume a lot of goods and services imported from abroad. These prices are not influenced by domestic factors. We can attribute part of the domestic inflation to rising prices of materials, rising wages or increasing profits, but the pricing of a substantial part of the consumer basket is not in the hands of domestic firms. Slovakia has a high proportion of imported food. Only 59% of the total consumption of food and non-alcoholic beverages comes from domestic production, according to data from 2022. Slovakia ranks below average among EU countries in this indicator²⁵. The high share of imported consumption means that a large part of inflation is not influenced by domestic factors. However, lower food self-sufficiency paradoxically helped Slovakia at the peak of the inflation shock. Food imports from abroad tended to dampen prices, as domestic food prices rose more sharply²⁶.

36. The mood of agri-commodity producers confirms the increase in uncertainty on the European market. According to a survey carried out by the European Commission, 92% of farms have been negatively affected by the energy crisis. As a consequence of the crisis, 83% of farms have seen their input costs rise in 2022 and 50% report an increase in labour costs, which in turn has led to an increase in selling prices for 46% of farm entities, while a further 31% have been unable to increase their prices to maintain their competitiveness on the market²⁷.

37. In addition, high inflation rates in several Member States have caused a change in consumer spending, which has also had an impact on agri-food commodities. There are significant differences between EU Member States in the share of household expenditure on food and restaurant services²⁸. Slovakia ranks among the countries with the highest share of food in household expenditure. The main reason for this is the fall or stagnation of disposable incomes at purchasing power parity combined with high food price increases. Due to significant differences in consumer price trends over the recent period, a levelling out of food price levels across EU Member States can be observed. Because of the above, the share of households in Slovakia that cannot afford food has reached one of the highest values among EU countries, as this indicator rises to more than a fifth in 2022²⁹.

²⁴ Author's own calculations based on data from Food and Agriculture Organization of the United Nations (data updated at 30/10/2023). Available at: <https://www.fao.org/faostat/en/#data/TM/metadata>

²⁵ Author's own calculations based on data from FIGARO tables (2024 edition): annual EU inter-country supply, use and input-output tables. Available at: <https://ec.europa.eu/eurostat/web/esa-supply-use-input-tables/database#Supply%20tables>

²⁶ Ministry of Finance of the Slovak Republic (2024). „Analýza cenového vývoja základných druhov potravín 9/2024“. Available at: https://rokovania.gov.sk/download_dat?id=B235C26AD1644AC6A4F5CD60E4546B3F-970DF23557E7A106758B6FE3AECC3F9E

²⁷ European Commission and EIB (2023). „Survey on financial needs and access to finance of EU agricultural enterprises“. Available at: <https://www.fi-compass.eu/publication/market-analysis/survey-financial-needs-and-access-finance-eu-agricultural-enterprises>

²⁸ Author's own calculations based on data from Eurostat database (data updated at 09/2024). Available at: https://doi.org/10.2908/NAMA_10_CO3_P3

²⁹ Eurostat (2023). „Key figures on the European food chain - 2023 edition“. Available at: <https://ec.europa.eu/eurostat/en/web/products-key-figures/w/ks-fk-23-001>

Review of selected investigations in the food supply chain carried out by the Antimonopoly Office of the Slovak Republic

2. Territorial Supply Constraints (TSC)

38. As stated in the Study on territorial supply constraints in the EU retail sector (European Commission, 2020) territorial supply constraints are understood as barriers imposed by private operators (suppliers) in the supply chain, which can affect retailers or wholesalers. These may impede or limit the retailers' or wholesalers' ability to source goods in other EU countries than the one they are based in, and/or prevent them from distributing (i.e. reselling) goods to other EU countries than the one in which they are based. Typically, retailers or wholesalers subject to TSCs are referred to a specific national subsidiary of the supplier. For example, they can be barred from being supplied from abroad or the products may be differentiated to make cross-border supplying impossible.

39. In principle, by the European Court of Justice to run counter to the very idea of the Treaty and its goal to eliminate national barriers: 'an agreement between producer and distributor which might tend to restore the national divisions in trade between Member States might be such as to frustrate the most fundamental objectives of the EU. The Treaty, whose preamble and content aim at abolishing the barriers between States, and which in several provisions gives evidence of a stern attitude with regard to their reappearance, could not allow undertakings to reconstruct such barriers.

2.1. Territorial Supply Constraints (TSC) in the Food Retail Sector – AOSR investigation

40. Antimonopoly Office of the Slovak Republic (Office) conducted an investigation among retail chains in Slovakia to determine the existence of territorial supply restrictions and their impact on competition and price levels of goods, mainly food.

2.2. General economic overview

41. In the second half of 2023, food inflation reached record levels, with a year-on-year increase of 25%. Currently, food prices are stabilizing (year-on-year increase below 5%), but from the perspective of competition economics and law, there may still be unexplored aspects of supplier-retailer relationships affecting the speed of price stabilization.

42. The analysis by the Ministry of Finance of the Slovak Republic (MF SR) highlighted, among other things, that over the past two years, there has been a significant increase in profits for producers, wholesalers (distributors), and retailers. In the case of food prices, import prices rose much more slowly than those from domestic production. MF SR also noted that more expensive input costs and imported inflation can only explain about half of the year-on-year food inflation in the first half of 2023. The unexplained difference is attributed to the increase in nominal gross profits within the food supply chain.

43. The office also drew from the experience of the Austrian Federal Competition Authority (BWB), which published a final report on food price developments in October 2023. The review focused on prices and transparency in their formation, product assortment, market shares, costs, and barriers to market entry. Among other things, the BWB concluded that there are price differences compared to Germany, with many identical products having different prices despite open borders. A driving factor is 10-15% higher

net purchase prices for food retailers in Austria, contributing to the so-called "Austrian price premium."

44. At the EU level, the European Commission also addressed unfair practices that could raise food prices in its 2020 report on TSC. The report identifies only one Slovak retail chain that could face such practices. However, the data from the report is confidential and could not be provided to the office. The European Commission has estimated that TSC costs European consumers at least €14 billion annually. Costs for consumers have likely increased further, as Europe faced record-high inflation between 2022 and 2024.

2.3. Investigation

45. On behalf of this information, the office investigated whether the extreme price developments were influenced not only by objective cost factors but also by the economic-legal nature of international supplier-retailer relationships and the resulting contractual, geographical, and market constraints. Specifically, the office sought to determine whether retail chains were facing refusals from distributors of identical branded products in cases of imports from other EU member states (TSC).

46. The Office contacted 4 major and 8 local food retail chains with a questionnaire regarding their experience with TSCs. The office also held discussions with representatives of the **Slovak Alliance of Modern Trade** (SAMO – Association of Retail Business) on the nature of international price differences among identical products.

2.4. Key Findings

47. The main finding of the office's investigation was that, although parallel trade enabling the purchase of cheaper identical goods from other EU countries is possible, this strategy is not systematically applied among retailers. The main obstacles are transaction costs related to product re-labelling, transportation costs, conditions requiring the purchase of unsuitable quantities, and the instability of parallel imports from other EU member states.

48. Based on the collected data, the office conducted a detailed analysis. Apart from one major retailer, other retail chains did not provide relevant and unambiguous information that would suggest that higher or differing prices of goods are due to the economic-legal nature of international supplier-retailer relationships. The purchasing strategy regarding parallel imports of branded products does not significantly impact the business and sales models of retail chains within the Slovak food market. Smaller Slovak chains, due to logistical costs and purchasing volumes, do not engage in parallel imports of these brands. Given their small-sized stores and lack of their own distribution, some brands are sourced from local wholesale companies operating in Slovakia.

3. Anti-inflationary guarantee – AOSR investigation

In 2023 the Office concluded market investigation into the so called Anti-Inflationary Guarantee among food retailers.

3.1. General economic overview

49. During the cost-push inflationary crisis in Europe during 2022 - 2023, food retailers themselves have become actively involved in the debate on how to mitigate the effects of

high inflation. In Slovakia, in March 2022, the so-called "Declaration on the manifestation of good will in the matter of maintaining food price stability" was signed between the Ministry of Agriculture, Retailers Association and Trade Association. The declaration referred to the "sensitive approach of traders in pricing" selected 13 types of food.

50. Later, in March 2023, the eight largest retail chains agreed on the individual selection of approximately 400 types of food (each chain was to choose 30 to 100 types of food) and the determination of the maximum price of these individual foods, which would be guaranteed for a period of 3 months.

3.2. Key Findings

51. The aim of the Office in this investigation was to find out whether the agreement between the retail chains, the so called "Anti-Inflationary Guarantee" could represent an agreement limiting the economic competition, or whether it could represent a platform for coordinating competitors with the aim of increasing the price level of food above the level justified by inflation.

52. When asked whether the Anti-Inflation Guarantee as such could constitute an agreement restricting competition according to Section 4 of the Act on the Protection of Economic Competition and Art. 101 of the TFEU, the Office concluded that the results did not lead to the suspicion that this initiative resulted in a restrictive agreement on competition. Essential in this case was the fact that the business chains that were members of this initiative had the option of choosing the products they included in the anti-inflationary guarantees. As it emerged from the findings of the Office, there was minimal penetration of identical or interchangeable products (only approx. 13%). At the same time such penetration did not occur among all participating entrepreneurs. Since the high fragmentation of included products did not allow a coordinated behaviour of entrepreneurs, this direct or indirect determination of their prices, could restriction competition.

53. In search of an answer to the question of whether the anti-inflation guarantee could serve as a platform for coordinating the prices of included products, the Office did not identify indications that supported such a suspicion. In the case of these products, the observed increase in consumer prices, show that that this increase generally copied the increase in input prices, while in the majority of cases did not lead to an increase in markups of the retail chains. On the contrary, in the case of some products, there was a dampening of the price increase at the expense of the chain's margin. The investigation also did not produce findings that would supported the suspicion that the Anti-Inflation Guarantee may have served as a platform for price coordination of selected bakery and dairy products.

4. Resale Price Maintenance (RPM)

54. The term resale price maintenance encompasses a number of price-related understandings between upstream and downstream firms. The most common variety involves retailers agreeing with a supplier that they will not charge customers less than a certain price for the supplied product, leaving the retailers free to charge any price above that level (minimum RPM). Sometimes a specific price is mandated (the retailer must charge no more and no less than that price). Alternatively, the firms may agree to a price ceiling, leaving the retailers free to charge any price below that level (maximum RPM). Unless stated otherwise, the term RPM in this note refers to minimum RPM. Under RPM, resellers are required to comply with certain price conditions. In contrast, non-binding price recommendations by upstream firms are generally not considered to be RPM and are permitted. Even when upstream firms advertise recommended prices or print them directly

on a product packaging, that is typically not deemed to be RPM so long as the resellers remain free to charge whatever prices they wish.³⁰

4.1. Resale Price Maintenance of dairy products – RAJO case

55. In the second half of 2013, as part of its prioritisation policy in the field of agriculture and food, the Office started to examine the functioning of markets related to the production and sale of processed dairy products at retail level, in particular in the category of sales through chain stores operating in Slovakia. The facts established in the course of the survey led to further investigations by the Office into the supply and retail sale of dairy products.

56. The Office has received information that retail chains operating in Slovakia generally achieve high margins on the sale of Slovak products in the category. It also carried out its own monitoring of prices of selected dairy products in stores of the most important retail chains in Slovakia. The monitoring showed that for some of the monitored products the same or almost the same counter prices were applied in all monitored retail chains.

57. This information led the Office to suspect that some form of cooperation had been taking place, either between suppliers and retail chains at the vertical level (vertical agreements) or between individual retail chains among themselves at the horizontal level (cartel).

4.2. AOSR investigation

58. For the purpose of its analysis, the Office requested information from selected parties on the real retail prices of certain Rajo products for the period 2013 and 2014. As RAJO's entire product range consists of a large number of products, the Office selected as a sample for the analysis those products which could be among the most important in terms of sales of Rajo products to the final consumer. At the same time, the products were selected in such a way that all three categories under consideration - milk, butter and cream - were covered.

59. The data were submitted on a daily basis, and the Office had information on the counter price for a particular product. In addition, for each price, the businesses interviewed indicated whether it was a normal price or a promotional price. On the basis of the official basic price lists submitted by RAJO, the Office obtained information on the level of the recommended selling prices for the products concerned during the period in question.

4.3. Key Findings and Conclusion

60. The Office's results show that 20 % of the deviations were negative and thus the remaining 80 % were in line with the RPM agreement. According to RAJO's analysis, the proportion of zero and positive deviations was 74%, with the proportion of zero deviations being the same in both analyses, at around 40%.

61. The analysis showed that, in practice, minimum price levels for selected Rajo products were set to a significant extent at the retail level. During the period considered, the agreement on the retail market led to a significant extent either to compliance with the agreed price level or to prices for Rajo brand products in the categories milk, butter, cream

³⁰ OECD (2009). „Resale Price Maintenance“, Series Roundtables on Competition Policy No.94. Available at: https://www.oecd.org/en/publications/resale-price-maintenance_126ecbc8-en.html

higher than the recommended normal counter prices. Thus, real counter prices behaved as minimum prices during the period under review, according to the results of the Office's sub-analysis.

62. Such agreements are prohibited under Section 4(1) in conjunction with Section 4(3)(a) of Act No 136/2001 Coll. on the Protection of Competition as in force until 30 June 2014 and under Article 101(1)(a) of the Treaty on the Functioning of the European Union. The individual fines were set according to the gravity of the infringement, namely 5 % of the relevant turnover, which was then multiplied by the number of years of the infringement.

63. The Office thus imposed fines in amount of 10 266 259,83 euros.³¹

³¹ Judgment of The Antimonopoly Office of the Slovak Republic No. 2018/DOV/POK/R/8. Available at: <https://www.antimon.gov.sk/data/att/a8b/1963.68e64a.pdf?csrt=8217803747959024498>