SLOVAK REPUBLIC

(1997)

Synthesis

1997 has been a fourth year of practical application of the Act No.188/1994 Coll. on Protection of Economic Competition. It has given a new experience and knowledge to both officials involved in creation of sound competitive environment and active competition protection and, in a broader sense, to all those operating on the competitive market.

During 1997, no amendments to existing competition legislation were approved in the Slovak Republic. However, within the framework of general legislative creation process, steps have been taken to further develop competition rules in the energy sector, telecommunications, and postal services.

We especially appreciate the fact that starting January 1 1997, the Implementing Rules on Application of Competition Provisions Stipulated by Article 64 of the Europe Agreement and Article 8 of the Protocol to the Europe Agreement have come into effect.

In 1997, the Antimonopoly Office has dealt with 148 cases of anticompetitive practices, concentrations and evaluation of the steps taken by the state administrative bodies or municipalities. Totally, 63 first and second-degree decisions have been issued along with seven requests for remedy. At the same time, 14 appeals against the decisions have been submitted and one charge requesting the review of legality of the decision issued by AOSR has been filed with the Supreme Court of the Slovak Republic. One case was also being reviewed by the Office of Attorney General.

I. Changes in competition policy and in the act on protection of economic competition

Current Act on Protection of Economic Competition

1. Basic principles of competition protection set out in the Slovak legal framework have their origin in the respective international and national legal norms which establish the conditions for integral and comprehensive system of competition protection continually implemented in the market-driven economy of the Slovak Republic. During the respective period of time, i.e. in 1997, no changes in or amendments to, the Act No.188/1994 Coll. on Protection of Economic Competition (hereinafter referred to as "the Act"), have been approved.

2. From the viewpoint of international law, the issues of competition protection are incorporated in the Europe Agreement on Association signed by the European Communities along with the respective Member States and by the Slovak Republic (hereinafter referred to as “the Europe Agreement”). The Europe Agreement has come into force on February 1st 1995. Competition protection is dealt with also in the decision by the Association Committee No.1/1996 on Acceptance of Implementing Rules on Application of Competition Provisions Stipulated by the Article 64 (1)(i), (1)(ii) and (2) of the Europe Agreement and Article 8 (1)(i), (1)(ii) and (2) of the Protocol to the Europe Agreement concerning ESOU products (hereinafter referred to as “the Implementing Rules”).

3. As for the respective domestic legal aspects, national competition legislation is governed by the following legal norms:

- the Constitution of the Slovak Republic which in its Article 55(2) secures protection of, and support to, competition;
- the Act No.188/1994 Coll. on Protection of Economic Competition;
- criminal Code which in its Article 149(1) (b) defines the substantial features of crime being committed by consummation of the agreement restricting competition that is prohibited pursuant to the Act No.188/1994 Coll. on Protection of Economic Competition.

4. The Act on Protection of Economic Competition covers all business activities and conduct of anticompetitive nature, that is activities that exclude, restrict or distort competition. The two major forms of anticompetitive practices are the agreements restricting competition and abuse of dominance on the relevant market. In addition, the provisions of the Act govern market monitoring focused on changes in market structures resulting from enterpreneurial concentrations.

5. Proceedings before the Antimonopoly Office of the Slovak Republic (hereinafter referred to as "the Authority"), which is the body authorised to act in the field of competition protection on the territory of the Slovak Republic, are primarily governed by the Act No. 188/1994 Coll. on Protection of Economic Competition (lex specialis law) and supported by the Act No.71/1967 Coll. on Administrative Proceedings as well as by the Act No.99/1963 Coll. (Civic Proceedings Code), as amended by later regulations. The basic principles of the proceedings - legality, material truth, active co-operation of the parties to the proceedings, speed and efficiency, equality, two-stage proceedings, fair access to the respective official records, right to request the review by an independent court, taciturnity by the investigating body - are secured and incorporated in the above mentioned legislation in a way consistent with the EU competition law.

6. As for other related activities of the Authority, we should mention the preparation of general surveys focused on competitive environment in various industrial branches of the Slovak economy, as well as enforcement of measures protecting and promoting the development of competitive environment.

7. Within the framework of continuing privatisation process, the Authority issues a written opinions evaluating privatisation drafts (proposals) from the viewpoint of purposeful deconcentration.

Other Relevant Legal Norms and Latest Legal Trends

8. Within the framework of general legislative process, the Authority takes part in interministerial recommendation proceedings, submitting official opinions on draft legislation for the sessions of the Slovak government. Special emphasis is put on securing the adherence to competition principles in the areas of telecommunications, energy, natural gas, postal services, water management, railways and airlines. These sectors are relevant because there are public bodies operating on the respective markets and acting in general public interest. The State guarantees the respective services by granting special or exclusive rights to these bodies.

9. During 1997, the Authority prepared 203 official opinions (standpoints) for the interministerial recommendation proceedings. Of all comments made, 45 contained major competition-related recommendations made by the Authority.

10. As for documents reviewed at the government sessions, the Authority submitted 349 evaluations, of which 18 brought about principal legislative comments.

11. The Act No.59/1997 Coll. on Protection from Import Dumping regulates dumping evaluation rules in cases of alleged imports of dumped goods. It also sets out rules on evaluation of dumping damage, collection of evidence pointing at dumping practices and outlines measures to be taken in order to protect the economy from dumped imports. Based on the above act, the Authority issues statements whether or not dumping has taken place, evaluates harm caused by dumped imports and describes causal link between the respective imports and harm identified in the concrete case.

12. The Act No.214/1997 Coll. on Import Protective Measures defines the conditions under which it is possible to introduce protective measures for imports of goods. This applies to goods being imported in large amounts and under conditions that result in a serious harm done to the domestic manufacturers producing the same or similar lines of goods. The Authority here issues a written statement approving or rejecting the imposition of protective measures.

13. The Act No.226/1997 Coll. on Subsidies and Balancing Measures governs the evaluation of prohibited subsidies granted for goods produced and exported by the subsidising country. The Act also deals with the identification of such subsidies and measurement of harm resulting from subsidising, while also outlining the proceedings related to the balancing (corrective) measures. Following the findings concerning prohibited subsidies (used either in case imports to, or exports from, the relevant market), the Authority issues a written statement describing potential impacts on competitive environment in the country.

14. In March 1997, the Authority received within the interministerial recommendation proceedings a draft of Energy Act prepared by the Ministry of Economy of the Slovak Republic. All of the comments made by the Authority were accepted by the submitter. However, legislative process had not been finished by the end of 1997.

15. Also in March 1997, the Authority received within the interministerial recommendation proceedings a draft of Telecommunications Act prepared by the Ministry of Transportation, Posts and Telecommunications of the Slovak Republic. Most of the comments made by the Authority were accepted by the submitter. However, as in case of energy law, legislative process had not been finished by the end of 1997.

16. In October 1997, the Authority received a drafted Postal Act prepared by the Ministry of Transportation, Posts and Telecommunications of the Slovak Republic. The Authority had sent back to the submitter several comments on the respective wording of the law. Since the legislative process has not yet been completed, it is too early to recognise to what extent the competition-related comments are accepted.

Government Drafts Introducing New Legal Norms

17. Based on the recommendations incorporated in the White Book and bearing in mind the approximation of the Slovak competition law to the respective EU legislation, the issue of block

exemptions connected with agreements restricting competition has become a part of the legislative schedule.

That is why it has been proposed that the so-called small amendment to the Competition Protection Act become a part of the Slovak government's legislative plan for 1998.

II. Application of the ACT on protection of economic competition

Proceedings in Cases of Anticompetitive Practices

18. The Act No.188/1994 Coll. on Protection of Economic Competition gives the Authority a right to investigate and prosecute competition-related violations (anticompetitive practices used by entrepreneurs), issue decisions, demand corrective measures, and impose sanctions.

19. In 1997, the Authority has investigated in administrative proceedings 45 anticompetitive practices, out of which 40 per cent (i.e. 22 cases) were focused on agreements which may have restricted competition. 27 cases (60 per cent) dealt with abuse of dominance.

21 cases have been completed by issuing a decision, five cases had to be decided in appeal proceedings by the Chairman of the Authority. In 11 cases, administrative proceedings had not been completed by the end of 1997.

Other cases were dealt with outside the administrative proceedings' framework. In those cases, it had become obvious before the proceedings started that practices described in the petitions (like unfair business practices) were not subject to the Competition Protection Act. Since the Authority did not have legal powers to complete the cases, official administrative proceedings could not be launched.

20. In the first degree (procedural round), one of four executive divisions of the Authority and two regional offices (Banská Bystrica for Central Slovakia, Košice for Eastern Slovakia) are authorised to start proceedings. Parties to the proceedings or those whose interests have been affected by the decision can submit an appeal against the decision . The appeal shall be reviewed and decided upon by the Chairman of the Antimonopoly Office in separate administrative proceedings. The Chairman shall issue a final decision based on recommendations from independent commission. There is no appeal against the final decision.

21. A party to the proceedings may, however, bring an action before the Supreme Court requesting a judicial review of the decision. The deadline for bringing an action is 30 days from the date on which the decision was delivered to the respective party to the proceedings.

22. In 1997, there was one case brought before the Supreme Court of the Slovak Republic requesting a review of the decision issued by the Authority. The Supreme Court had cancelled the original decision of the Authority and sent the case back for renegotiation. Pursuant to the Act on Prosecution, one case is still being reviewed by Attorney General.

Agreements Restricting Competition

23. The Act on Protection of Economic Competition provides that agreements and concerted practices between entrepreneurs as well as decisions of their associations whose object or effect is or may be the restriction on competition are prohibited, if this Act does not state otherwise. There are prohibited agreements restricting competition that involve in particular : - direct or indirect price fixing; commitment to limit or control production, sales, research & development, or investments; - division of the market or of sources of supply; - commitment by the parties to the agreement that different trade conditions relating to the same contractual subject matter will be applied to individual entrepreneurs which will disadvantage some of them in competition; - conditions which connect conclusion of contracts to the acceptance of supplementary obligations which are not related to the subject of those contracts either by their nature or according to commercial usage.

Case Summary - Agreements Restricting Competition

24. In 1997, 18 cases were processed within administrative proceedings, six out of which were completed by issuance of the decision. One decisions has been appealed against. The Chairman then decided on the appeal and publicised a decision fully confirming the first-degree decision.

Three cases were not completed by the end of 1997.

Nine cases were solved outside the administrative proceedings.

As for agreements restricting competition, no request for a review of the decision issued by the Authority has been filed with the Supreme Court of the Slovak Republic.

Brief Description of Major Cases - Agreements Restricting Competition

Waste Dump in the Rajec Region

25. 21 representatives of municipalities and local businesses established the association dealing with the waste disposal and waste dump management of solid household refuse. The Authority considered the respective municipalities to be entrepreneurs, since they conducted business activities in public interest (construction of the waste dump, waste collection/disposal, and managerial activities). Membership in the association was connected with the deposit of specified sum to the association’s account. The city of Rajec had more than one third of the registered votes. Assembly of all members was declared a highest decision-making body; the quorum was agreed to be constituted if the members possessing two thirds of all votes were present at the assembly while two thirds of those present at the meeting were authorised to approve proposals and decisions. That is why the votes belonging to the city of Rajec had, when it came down to the decision making, a key influence on what was being decided. Amongst others, the Articles of Association contained the following provision:”waste shall be collected and disposed of by the city of Rajec's Technical Service Co. (hereinafter referred to as CRTS) or by other company approved by the members' assembly.” Taking the distribution of votes into consideration, without a prior consent given by the city of Rajec (major co-owner of the waste disposal and owner of CRTS Co.), no other company than CRTS could become responsible for waste collection/disposal.

The Authority defined the relevant product market as that of waste collection services. This market is closely connected to another relevant market - waste disposal services and waste dump management. Relevant geographical market for waste collection was defined in a broader sense, thus including the companies offering the respective services in other cities or regions. Therefore the companies from all Slovak regions were counted in and the territory of the Slovak Republic was decided to be a relevant geographical market for waste collection, irrespective of time needed for the service to be done. The relevant geographical market for waste disposal was, however, limited by the territory from which the waste could actually be brought into waste dump. Thus, in fact, waste dumps were considered to be an example of essential facilities since for both economic and environmental reasons, there were certain limits as to the number of dumps allocated in the given region.

Pursuant to the valid Slovak legislation, the municipality is responsible for the waste produced on its territory which in turn means that it is also responsible for waste disposal services. This problem can be solved through the following three ways:

- the municipality founds its own public company offering the respective service;
- the municipality chooses one company with which it will sign an agreement on service provision;
- the municipality chooses more than one company for the waste-related services.

The nature of competition centers around municipality being allowed to choose the most advantageous partner. Thus, in the case above, members of the association agreed on such wording of the Articles of Association that did or may have restricted competition, since they in fact had given up their right to choose the supplier and had made it impossible for the company other than CRTS to become the supplier of waste collection services. In other words, the respective provisions of Association Articles resulted in market division and effective exclusion of other competitors from competition on the relevant market. The Authority came to the conclusion that the respective provision constituted an agreement restricting competition. Pursuant to Article 3 (1), 3 of the Act on Protection of Economic Competition, such an agreement should be prohibited and parties to the agreement should refrain from its further practical implementation. The case itself was an example of demand-side horizontal agreement. Since a direct to restrict competition had not been proved, the Authority decided not to impose a fine on the Association.

Abuse of Dominant Position

26. Pursuant to the Competition Protection Act, a dominant position on the market is held by one entrepreneur or by several entrepreneurs, who are not subjected to substantial competition or, as a result of their economic power, they can behave independently from other entrepreneurs and consumer and can therefore restrict competition. The Act does not prohibit gaining or strengthening of such defined dominant position, it only prohibits abuse of dominance.

27. An abuse of dominance on the market is in particular : - direct or indirect enforcement of disproportionate conditions in contracts; - restrictions on production, sale, research & development of goods and services to the detriment of consumers; - application of different conditions for equal or comparable transactions to individual entrepreneurs on the market, especially if it constitutes a

competitive disadvantage; - making the conclusion of the contract conditional upon another party's acceptance concerning additional conditions, while those conditions are clearly unrelated to the contractual subject matter both in substance and in customary commercial practice.

Case Summary - Abuse of Dominant Position

28. In 1997, 27 cases of described nature have been dealt with, out of which 15 were completed by issuance of the respective decisions. In four cases, appeals against the first-degree decisions were filed with the Authority. Those appeal proceedings resulted in confirmation of the two first-degree decisions by the Authority's chairman, while the other two cases were sent back for review. eight cases had not been completed by the end of 1997.

23 cases were processed outside the official administrative proceedings.

Inappropriate (disproportionate) conditions enforced through business contracts were the most frequent reason for starting an investigation activities.

One charge requesting the review of legality of the decision issued by AOSR has been filed with the Supreme Court of the Slovak Republic. The Supreme Court in its ruling pointed at some deficiencies present in the evidence supporting the original decision. As a result, the original decision was overruled and the case was sent for review to the Authority.

In one case, party to the proceedings turned to Office of Attorney General, filing the request for review. This case was not completed by the end of 1998.

Brief Description of Major Cases - Abuse of Dominant Position

Central Slovakia Water and Sewerage Management (CSWSM)

Versus
SBF, Ltd.

29. Pursuant to the Article 7(5) of the Act No.188/1994 Coll. on Protection of Economic Competition, administrative proceedings had been started at the Antimonopoly Office of the Slovak Republic (hereinafter referred to as "the Authority) in case of abuse of dominant position by Central Slovakia Water and Sewerage Management (hereinafter referred to as CSWSM), state company, Banská Bystrica. A petition was filed by the SBF Ltd. Co. (petitioner) located in the city of Banská Bystrica.

According to SBF Ltd., CSWSM had sent a letter announcing immediate cut of water supplies on the grounds of outstanding debts (water and sewage fees that SBF allegedly did not pay). These debts were in fact associated with the Pozemné stavby (ground construction company - hereinafter referred to as PS), state-owned enterprise located also in Banská Bystrica. PS was the company with which SBF Ltd. signed an agreement on "administration and rent of office and housing facilities of the PS company". However, the PS company was, by the official decision issued by the Slovak minister of construction and public works, abolished and set for liquidation.

Since parties to the case had failed to reach a consensus on water supplies, the Authority issued a preliminary ruling which ordered CSWSM to continue with water supplies for LBF Ltd. until the final decision was issued.

The Authority has identified water supplies from public water-main as the relevant product market. In the long run, there is no substitute to the service of water supplies. As for geographic relevant market, it was clearly a public water-main administered and run by water and sewerage company CSWSM. Waterpipe connection to the office building was a part of this relevant market. A dominant position of CSWSM in the area of drinking and industrial water supplies has been strengthened by the respective legal norms (the Act No.138/1973 Coll. on Water and Decree No. 154/1978 Coll.). These norms granted CSWSM and exclusive right to provide water supplies from public water-main on the respective territory. CSWSM also owned the essential facility - a waterpipe network. Barriers to market entry with respect to granted exclusive rights were high and investments needed for start-up were significant.

Based on the facts mentioned above in the text, the Authority has come to the conclusion that CSWSM company abused its dominant position on the market by terminating water supplies agreement and consequent cutting of those supplies. CSWSM therefore abused its power of the dominant to gain excessive benefits which could not have been gotten if CSWSM had not had a special status resulting from the current legislation.

The Authority therefore decided to order CSWSM to refrain from further abuse of dominant position on the relevant market and imposed a fine on the water supplier for breaching the provisions of the Competition Protection Act.

CSWSM company had filed an appeal against the first-degree decision. Appeal commission chaired by the AOSR's chairman fully confirmed the first-degree decision.

Mergers (Concentrations)

30. According to relevant provisions of the Competition Protection Act, a concentration is a process of economic combining through merger or amalgamation of two or more previously independent enterprises, or transfer of an enterprise to another entrepreneur or acquisition of control by one or more entrepreneurs over an enterprise or part thereof. The Act specifies conditions meeting of which means that a concentration is subject to control procedures conducted by the Authority. The Authority may either fully approve the concentration or approve with certain additional time and subject matter conditions to be met or prohibit the transaction. The Authority shall prohibit the concentration if it creates or strengthens a dominant position on the market unless the participants prove that the harm resulting from the restriction on competition will be outweighed by overall economic advantages of the concentration.

Case Summary - Concentrations

31. 68 concentration cases have been processed in 1997, out of which 17 decisions on concentrations were issued -15 of them were fully approved (no objections) and two concentrations were confirmed with additional conditions to be met by parties to the respective concentrations. No prohibitions have been issued.

In other cases, the Authority was to decide whether or not the conditions were met for the case to be treated like concentration. Some cases also centered around the question whether or not the respective concentration is subject to Authority's control. The Authority imposed fines on the parties to concentration in five cases where the parties did not notify of the concentration.

Three times, the appeals against the first-degree decision were filed with the Authority on fines imposed for breaching the mandatory notification rule. One first degree decision was reconfirmed by the chairman, the second one has been cancelled and sent back for review and in the last case, the decision was fully overruled.

Seven cases had not been completed by the end of 1997.

Of 17 approved concentrations, 10 were of horizontal and five of vertical nature. The remaining two cases represented conglomerate mergers. Six concentrations had international dimensions, i.e. one party to the concentration had its headquarters outside the Slovak Republic.

The Supreme Court of the Slovak Republic has not dealt with any charges (requests for judicial reviews) submitted against original verdicts issued by the Authority.

Brief Description of Major Cases - Concentrations

i) MATADOR, j.s.c. Púchov - MATADOREX, j.s.c. Bratislava

32. In 1996, Matador, j.s.c. Púchov (hereinafter only Matador) had bought in privatisation process 67 per cent shares of the company Matadorex, j.s.c. Bratislava (hereinafter only Matadorex). Pursuant to Article 8(1) (b) of the Act on Protection of Economic Competition (hereinafter only "the Act"), this step was deemed as a concentration which is, according to the Article 9(1) of the Act subject to control by the Authority.

Matador Púchov company was a major domestic manufacturer with high market shares, dealing mainly in production of automobile tyres (both cars and trucks) and conveyor belts.

Matadorex is a rubber producer located in Bratislava, the capital of Slovakia. It was established in 1996 for the purposes of privatisation as a result of amalgamation of two companies - Matador s.p. Bratislava which put into the newly-established Matadorex a manufacturing of products made of technical rubber and Matadorbelt Bratislava which put into the Matadorex firm manufacturing of conveyor belts and rubber hoses. Conveyor belt production had become a major production activity of the new Matadorex company.

Antimonopoly Office of the Slovak Republic (the Authority) identified conveyor belt market as a relevant product market. When defining relevant geographical market, the Slovak Republic was indicated as the relevant market territory, since activities of both participants to the concentration cover the whole country homogeneously.

At the time of concentration, the share of Matador Púchov company on total turnover generated on the Slovak relevant market was 50-55 per cent, while the Matadorbelt company, as the most serious competitor, recorded 35-40 per cent market share. The rest, i.e. 10 per cent, could be attributed to imports from abroad.

Based on the data collected throughout the investigation, the Antimonopoly Office came to the conclusion that entry barriers related to the Slovak relevant market for conveyor belts are very high. Basically the whole market was built on the two main competitors-parties to the above concentration. The Authority stated that Matador Púchov company had already enjoyed a status of a dominant company on the relevant market.

Through the concentration of companies Matador Púchov and Matadorex on the Slovak relevant product market, a very important mutual competition would have ceased to exist between the participants to concentration. The Matador company would have strengthened its dominant position on the relevant Slovak product market for conveyor belts and its share would have reached 90 per cent.

On the basis of the analysis dealing with the submitted effects of concentration, the Authority stated that those positive effects had not outweighed restriction to competition that took place as a result of concentration on the market for conveyor belts. All the considerations resulted AOSR's decision to approve the concentration with the following condition : assets representing the contribution of original Matadorbelt company to the company Matadorex (participant to the above concentration) - production of conveyor belts and rubber hoses - will be divested of the company Matadorex within three months.

ii) Concentration - Gofin, j.s.c. Joint Venture

33. The Authority started investigation proceedings on its own initiative, on the basis of information about joint venture Gofin j.s.c. published in “Eastern Steel”, a regional Slovak weekly. The joint venture was established by VS a.s. Košice (major Slovak steel mill, hereinafter only “VS ”) and F.LLI Goffi s.p.a., Villanuova Clisi, Italy (hereinafter only Goffi). The reason for proceedings' initiation was a possible violation of Article 9(4) - notification provision - of the Act on Protection of Economic Competition (hereinafter referred to as “the Act”). The proceedings were focused on whether or not the joint venture should be deemed as a concentration (Article 8 of the Act) which is according to the Article 9(1) of the Act subject to control by the Authority. In other words the Authority was to find out if parties to the concentration were obligated to notify the Authority of the new joint venture Gofin, j.s.c.

The Authority found that VS owned 46 per cent stake of the newly established joint venture and Italy-based Goffi 54 per cent. The joint venture was to manufacture props and supports for construction sector with the aim to replace imports, especially from the Czech Republic. It should also increase the share of processed (value added) products by VS company.

The Authority held that Gofin joint venture met the conditions described in Article 8 of the Act. The company was jointly controlled by the two founders (VS and Goffi); the combined turnover of the participants to the concentration exceeded SKK 300mn while their separate turnovers each exceeded SKK 100mn threshold which meant that the concentration was subject to the control by the Authority (Article 9 (1)). Consequently, such concentration should have been, according to Article 9(4), notified to the Authority within 15 days after agreement conclusion. During the proceedings, the Authority had sent two urgent requests to VS regarding various documents that the company failed to submit on time. Time period for final decision had to be prolongated four times by the chairman of the Authority as a result of VS 's procrastination. Having faced such procedural problems, the Authority issued a decision ordering VS to submit all of the outstanding documents immediately (Article 15 of the Act). In addition, following the rules set out in Article 14, a SKK 20 000 fine was imposed on VS for breaching the provisions of Article 15 (obligation to submit requested documents). In reaction to it, VS filed an appeal against the

decision, demanding that decision be changed and fine be cancelled. Within the appeal proceedings, the chairman disagreed with VS and fully confirmed the original first-degree decision, while even increasing the respective fine to SKK 400 000.

Investigation proceedings were then completed and it was found that VS violated the provisions of Article 9(4) by not notifying the Authority of the consummated concentration which would have otherwise been subject to control by the Authority. Following the provisions of Article 14(1) and taking into consideration different size/turnovers of the parties to the concentration, the Authority imposed a SKK 3 million fine on VS and SKK 50 000 on Italy-based company Goffi.

VS filed an appeal against the decision, again requesting that the decision be changed and file removed. However, the appeal was handed over to the Authority after the expiration of allowed time periods which meant that the original decision had come into force. VS in the end paid the fine.

After all this, VS followed the wording of the Act and submitted a proper notification of concentration to the Authority which in turn issued a decision approving the establishment of Gofin joint venture.

iii) DUSLO ŠA¼A j.s.c., - VUCHT BRATISLAVA j.s.c.

34. In 1996, DUSLO ŠA¼A had bought in privatisation process the shares of the company VUCHT Bratislava from the National Property Fund, through which its stake in the VUCHT company reached 81 per cent. Thus, pursuant to Article 8(1)(b) of the Act on Protection of Economic Competition (hereinafter only “the Act”), this step was deemed as a concentration which is, according to the Article 9(1) of the Act subject to control by the Authority.

DUSLO is a major and economically sound producer in the chemical processing branch, with significant shares on the respective relevant markets for fertilisers and rubber chemicals.

VUCHT is a chemical technology research and development center (R&D center) located in Bratislava, the capital of Slovakia. It specialises in R&D activities aiming at various rubber chemicals, plastic additives, semi-products for pharmaceutical industry, additives for painting coats, etc.

As for relevant product market, research and development in the area of rubber chemicals in Slovakia has been labelled as decisive. When defining the relevant geographical market, the Slovak Republic was indicated as a relevant area, since activities of both participants to the concentration covered the whole country homogeneously. VUCHT company stated that it held 80 per cent share on the defined relevant market, while the other Slovak R&D institutions had allegedly 20 per cent share. DUSLO conducts R&D activities for its own purposes, so both firms were potential competitors on the defined relevant market.

The Authority found that in the area of rubber chemicals production, there was (besides DUSLO) also a company named ISTROCHEM. When solving research and development problems related to rubber chemicals, ISTROCHEM company is heavily dependent on VUCHT, because it does not have any R&D center of its own.

The Authority come to the conclusion that VUCHT had a dominant position on the relevant market for research and development of rubber chemicals, taking into account low potential and real competition, high market share in the Slovak Republic and significant barriers to market entry.

Through the concentration, VUCHT would have strengthened its dominant position on the relevant Slovak product market for research and development of rubber chemicals. DUSLO company, on the other hand, would have, through gaining a control over VUCHT, strengthened its dominant position on the market of rubber products, since at the time of concentration, it had already had a dominant position on this market.

The Authority held that the effects of the concentration (mutual co-ordination of R&D activities performed by participants to concentration, higher innovation rate, better quality of rubber chemicals and therefore better quality of final production directed to the ultimate consumers) can be considered as overall economic advantages resulting from concentration. The Antimonopoly Office had, however, taken into account restriction to competition which took place on the defined relevant market as a result of concentration, high entry barriers, competitive environment and possible restriction (from the side of DUSLO) to access of third parties to R&D facilities of VUCHT.

The Authority has come to the conclusion that the harm resulting from the restriction to competition would be outweighed by an overall economic advantages of the concentration only on condition that third parties have an access to, and partial control over, VUCHT R&D facilities within the specified area of research and development of rubber chemicals. A control over VUCHT was defined according to the Article 8 (1) (b) of the Act on protection of Economic Competition). Thus, the Authority made it possible through its decision for the third parties to have an access to R&D facilities of VUCHT.

Fines

35. Pursuant to the Competition Protection Act, the Authority is entitled to fine entrepreneurs for breaching duties stipulated by this Act according to its importance up to 10 per cent of their turnover recorder in the previous accounting period. If it is impossible to calculate a turnover, the fine may reach SKK 10mn (USD 333 000). If it has been proved that the entrepreneur made profit through breaching a duty, the fine shall be at least equal to this profit.

36. In 1997, fines of SKK 6 510 000 (USD 186 000) were imposed for breaching duties stipulated by the Competition Protection Act. Fines were related to 20 completed cases.

III. The role of antimonopoly office of the Slovak Republic in formulation and practical implementation of other relevant policies

37. The Antimonopoly Office of the Slovak Republic, as a central state administrative bodies with exclusive powers in the area of antitrust, enforces basic principles of competition in order to develop balanced competitive environment which will in turn contribute to steady economic growth of the Slovak Republic.

38. The Authority monitors protection and support of economic competition taking place through the implemented trade and industrial policy of the Slovak government. It has been in constant touch with the

experts from the Ministry of Economy of the Slovak Republic, contributing by numerous comments on strategic development documents. The Authority closely monitors preparation process focused on protection of the domestic market which was launched in 1996. It is vital that this process be consistent with the relevant regulations of the World Trade Organisation. In its official decision and views, the Authority several times stressed that excessive protectionism represented an artificial intervention destructing trade and economic relations and hampering the overall socio-economic adaptation to the world standards.

39. Decisions issued by municipalities and state administrative bodies can influence competition environment significantly. Pursuant to Article 18 of the Competition Protection Act, those bodies and government institutions must not, through their own actions, restrict competition; if they have already done so, the Authority shall be obligated to require that the state of affairs caused by such actions be remedied.

40. In 1997, the Authority, referring to the Article 18 of the Act (decisions affecting competition issued by municipalities and state administrative bodies) dealt with 15 cases and issued seven requests for remedy. In most cases, municipalities discriminated against businessmen in granting selective exemptions from mandatory fees concerning alcohol and tobacco products. Some of the other cases related to start-up permits issued to small businessmen.

IV. Summary of references to new reports and studies on competition policy

41. Employees of the Antimonopoly Office have also published numerous educational articles in both daily and expert press. We also made sure that all decisions and rulings issued by the Authority were made available for the public.

42. To further explain measures and steps taken in the area of competition protection, the Authority has held press conferences and employees gave interviews to expert journalists

43. The Antimonopoly Office has further developed co-operation with academicians from Bratislava University of Economics, Law School of Bratislava Comenius University, and specialised high schools in Bratislava. The Authority’s officials held courses at those schools, presenting selected problems and issues of antimonopoly policy. They also assisted in diploma work preparation and acted as expert consultants to participants of the doctoral studies.

44. The Antimonopoly Office issues its annual report in both Slovak and English language. The report describes activities and proceedings completed in the respective period.