

ACT

of February 27, 2001

on Protection of Competition and on Amendment of Act of the Slovak National Council No. 347/1990 Coll. on Organisation of Ministries and Other Central State Administrative Bodies of the Slovak Republic as amended

The National Council of the Slovak Republic has adopted this Act:

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Clause I

PART I

INTRODUCTORY PROVISIONS

Article 1

Purpose of the Act

The purpose of this Act is to protect competition in the market for products, performances, works and services (hereinafter only "goods") from any restriction as well as to create conditions for its further development in order to promote economic development to the benefit of consumers and arrangement of power and scope of Antimonopoly Office of the Slovak Republic (hereinafter only "Authority").

Article 2

Scope of the Act

(1) This Act shall apply to:

- a) undertakings,
- b) state administrative bodies and municipality bodies.

- (2) This Act shall apply to all activities and actions of undertakings which restrict or may restrict competition, with the exception of competition restriction performed by undertakings that provide services in public interest pursuant to special regulation if the application of this Act obstructs effectually or legally the fulfilment tasks pursuant to special regulation.¹⁾
- (3) This Act shall also apply to activities and proceedings that have taken place abroad, provided that they lead, or may lead, to a restriction of competition in the domestic market.
- (4) This Act shall, except Part V, not apply to restriction of competition whose effects are only apparent on a foreign market, unless the international agreement published in the Collection of Laws of the Slovak Republic and binding for the Slovak Republic states otherwise.

Article 3

Definition of Certain Terms

- (1) Restriction of competition shall be any restriction placed upon an undertaking's freedom to act on a relevant market, especially the exclusion of existing or potential competitive activities, the actual or potential reduction of scope of that competitive activity, or distortion of conditions for competition.
- (2) Undertaking for the purposes of this Act is an undertaking pursuant to special regulation,²⁾ further natural and legal persons and their associations, as regards their activities and proceedings that are, or may be, related to competition, regardless of whether or not their respective activities and proceedings are focused upon profit-making.
- (3) Relevant market shall be a geographical and temporal concurrence of supply and demand for such goods that are viewed as identical or mutually interchangeable, for the satisfaction of certain needs of users.
- (4) Relevant product market shall comprise identical or mutually interchangeable goods that can satisfy a given need of users.
- (5) Mutually interchangeable goods shall be represented by goods which are interchangeable, especially from a viewpoint of their physical and technical characteristics, price and purpose of their use.
- (6) Relevant geographical market shall be a defined territory on which conditions for competition are homogeneous to such an extent that this territory can be separated from other territories with distinctive conditions for competition.

PART II

FORMS OF UNLAWFUL RESTRICTIONS ON COMPETITION AND CONCENTRATION

Agreement Restricting Competition

Article 4

- (1) Agreement and concerted practice between undertakings as well as decisions of their associations whose object or effect is or might be the restriction of competition (hereinafter only "agreement restricting competition") are prohibited, unless this Act states otherwise.
- (2) For the purposes of this Act:
 - a) an agreement between undertakings is any oral or written expression of the will of the parties thereto, as well as other expression of will derived from their conduct,
 - b) a concerted practice between undertakings is any co-ordination of their activities that does not bear signs of an agreement between undertakings referred to in letter (a) and which cannot be identified as the natural consequence of the actions taken by other undertaking,
 - c) a decision by the association of undertakings is any legal act of the association's body that puts

an obligation upon its members, or association's recommendation to its members.

- (3) There shall be prohibited in particular an agreement restricting competition that involves:
- a) direct or indirect fixing of prices or other trade conditions,
 - b) commitment to limit or control production, sales, technical development, or investments,
 - c) division of the market or sources of supply,
 - d) commitment by the parties to the agreement that different conditions relating to the identical or comparable fulfilment of an agreement will be applied to individual undertakings that will or may disadvantage some of them in competition,
 - e) conditions stipulating that conclusion of agreements will require the acceptance of supplementary obligations which are not related to the subject of these agreements, either by their nature or according to customary commercial practice,
 - f) signs of a collusive behaviour as a result of which undertakings co-ordinate their bids in the process of public procurement.
- (4) If the reason for prohibition is related only to a part of the agreement, then only that particular part shall be deemed prohibited, if it results from its content that the mentioned part can be separated from the remainder of the content.

Article 5

- (1) Agreement on the transfer of rights or on the granting of licences for inventions, industrial designs, trade marks, names of entrepreneurs, protected varieties of plants or breeds of animals, utility models and protected topographies of semiconductor products³⁾ or part of these agreements shall be prohibited pursuant to Article 4, if restrictions of competition imposed upon the acquirer of these rights are not necessary for their protection. The same shall apply to agreement granting rights to works and performances pursuant to special regulation.⁴⁾
- (2) The provision of Paragraph 1 shall apply similarly to the transfer of rights or the granting of licences to manufacturing, technical and commercial knowledge and experience (know-how) that are not arranged in special regulation.⁵⁾

Article 6

- (1) The ban pursuant to Articles 4 and 5 shall not apply to agreements restricting competition if the combined market share of the parties thereto or the share of neither of the respective parties exceeds 10% of the total shares for goods in question on the relevant market of the Slovak Republic, except for:
- a) agreements restricting competition referred to in Article 4, Paragraph 3 letters (a), (b) and (c) or,
 - b) restriction of competition by means of the cumulative effect of agreements restricting competition which contain a similar type of competition restrictions and which lead to similar effects in the relevant market, and their combined share exceeds 10% of the total shares for goods in question in the relevant market.
- (2) The combined market share pursuant to Paragraph 1 shall be a total of the shares held on the relevant market by:
- a) parties to an agreement restricting competition,
 - b) undertakings in which the party to an agreement restricting competition owns at least 50% of the registered capital, or has the power to exercise at least half of the voting rights, or the power to appoint at least half of the members of undertaking's boards, or the right to manage the undertaking's affairs,
 - c) undertakings who have the rights described in the letter (b) in an undertaking of a party to the

agreement restricting competition,

- d) all other undertakings in which the undertaking referred to in letter (c) has the rights described in letter (b) above.
- (3) Based upon a request submitted by an undertaking the Authority shall decide that a ban in accordance with Articles 4 and 5 for a time period stipulated in the Authority's decision shall not apply to an agreement restricting competition that at the same time
- a) contributes to improvement of the production or distribution of goods or to promotion of technical or economic progress,
 - b) allows consumers an adequate share of the resulting benefit,
 - c) does not impose on the parties to the agreement restricting competition such restrictions which are not indispensable to the attainment of these objectives,
 - d) does not afford the parties to the agreement restricting competition the possibility of eliminating competition in respect of a substantial part of the goods in question.
- (4) Based upon the request submitted by the undertakings concerned, the Authority shall issue a decision determining whether their activities and actions are not in contradiction with Articles 4 and 5, or whether their agreement restricting competition is not contradictory to Paragraph 1.
- (5) The Authority may request the undertakings to prove that their agreement restricting competition meets the conditions laid down in Paragraph 1.
- (6) Undertakings may request the Authority to issue a standpoint on whether their draft of agreement restricting competition is not in contradiction with Articles 4 and 5. The Authority shall issue the respective standpoint within 30 days from the day the request has been received; in complicated cases it shall issue the standpoint within 60 days.

Article 7

- (1) The decision pursuant to Article 6, Paragraph 3 and 4 on the basis of its own initiative shall be modified or withdrawn by the Authority if:
- a) the circumstances decisive for its issuing have changed substantially, or
 - b) the decision was based on untrue or incomplete data of the undertakings or was induced by deceit.
- (2) It is possible to appeal against the decision, which modifies or withdraws the decision pursuant to Paragraph 1.
- (3) In cases pursuant to Paragraph 1 the Authority may issue a decision whereby the time period set out in Article 30 is not valid.

Article 8

Abuse of a Dominant Position

- (1) A dominant position in the relevant market is held by one undertaking or by several undertakings that are not subject to substantial competition, or as a result of their economic strength can behave independently.
- (2) The abuse of a dominant position in the relevant market shall be in particular
- a) a direct or indirect enforcement of disproportionate trade conditions,
 - b) a threat of restriction, or an actual restriction of the production, sale or technological development of goods to the detriment of users,

- c) application of different conditions for identical or comparable fulfilment to the individual undertakings through which the respective undertakings are or may be disadvantaged in the competition,
 - d) tying of the agreement conclusion upon the other party accepting additional conditions, unrelated to the subject of the agreement both in substance and in customary commercial practice,
 - e) temporary abuse of economic power in order to exclude competition.
- (3) Essential facility is a facility, infrastructure or its part, location or right, the creation or acquisition of which is objectively impossible by other undertaking and without access to which it would or might lead to, a restriction on competition in the corresponding relevant market.
- (4) Pursuant to this Act an owner or administrator of the essential facility is also a holder of the right, if a right is the respective essential facility pursuant to Paragraph 3.
- (5) An undertaking that is an owner or administrator of an essential facility abuses its dominant position in the market if such undertaking refuses access to it and at the same time
- a) the essential facility enables satisfying the requirements of the undertaking utilising it, while allowing for a simultaneous satisfaction of requirements of the essential facility's owner or administrator at a peak demand for his services and taking into account also a fulfilment of his long-term commitments,
 - b) an undertaking requesting access to the essential facility with the aim of its utilisation is able to ensure adherence to the respective qualitative and quantitative parameters of the essential facility resulting from its operational requirements, or if undertaking requesting the utilisation of essential facility containing a right is able to ensure adherence to all requirements concerning the mentioned right arising from special regulations,⁵⁾
 - c) an undertaking requesting access to the essential facility is capable of providing the essential facility's owner or administrator with the adequate remuneration.
- (6) Abuse of a dominant position in the relevant market shall be prohibited.

Concentration

Article 9

- (1) A concentration for the purposes of this Act shall be a process of economic combining of undertakings through
- a) merger or amalgamation of two or more previously independent undertakings, or
 - b) acquisition of direct or indirect control by one undertaking or more undertakings over other undertaking or undertakings, or a part thereof.
- (2) A merger or amalgamation within the meaning of Paragraph 1 letter (a) for the purposes of this Act is a merger or amalgamation consummated pursuant to special regulation⁶⁾, as well as merger or amalgamation whereby the undertakings concerned are economically connected to each other, while retaining their legal sovereignty especially in the case of existence of a common economic management.
- (3) A part of an undertaking within the meaning of Paragraph 1 letter (b) for the purposes of this Act is an organisational unit of that undertaking⁷⁾ or assets on grounds of which a turnover may be achieved.
- (4) Control within the meaning of Paragraph 1 letter (b) is the possibility to exercise a decisive influence upon activities of an undertaking, especially by means of
- a) property rights or other rights to the undertaking or to a part thereof,
 - b) rights, agreements or other means, which allow for the exercise of a decisive influence on the

composition, voting or decisions of the boards of the respective undertaking.

- (5) Concentration pursuant to Paragraph 1 letter (b), is also the creation of a joint venture jointly controlled by two or more undertakings if the respective joint venture performs all functions of an independent economic entity on a lasting basis.
- (6) Joint control pursuant to Paragraph 5 for the purposes of this Act is the possibility to exercise a decisive influence over another undertaking by means of two or more undertakings.
- (7) In case of a concentration resulting from the creation of a joint venture referred to in Paragraph 5, which is subject to control by the Authority and which has as its object or effect a co-ordination of competitive behaviour of undertakings controlling the respective joint venture, and provided that these undertakings in the substantial extent still operate in the same relevant market as a joint venture, or still operate in the market of supply and sale relating to the market in which the joint venture operates, or still operate in the closely relating neighbouring relevant market, the respective co-ordination of competitive behaviour shall be reviewed by the Authority pursuant to the Articles 4, 5 and 6.
- (8) A concentration shall not be deemed to have arisen where
 - a) banks, branch offices of foreign banks, other financial institutions or the insurance companies, the normal activities of which include transactions and dealings in securities for their own account or for the account of others, temporarily acquire the securities with an aim to resell them, provided that they do not exercise voting rights in respect of those securities with a view to determining the competitive behaviour of that undertaking or provided that they exercise such voting rights only with a view to preparing the disposal of all or part of that undertaking or the disposal of those securities and that any such disposal takes place within one year of the date of acquisition; the Authority, on the basis of an undertaking's request shall issue a decision through which the one-year period may be prolonged in the case that within this time period a sale of securities was not possible to be performed,
 - b) temporary acquisition of control over another undertaking, or over a part thereof, is ensuing from special regulations,⁸⁾
 - c) between legally independent undertakings belonging to the same economic group based on controlling relations, a merger or amalgamation took place with respect to two or more undertakings, or where a direct or indirect control has been acquired by one or more undertakings over another undertaking or part thereof.

Article 10

- (1) A concentration shall be subject to control by the Authority, if
 - a) the combined turnover of the parties to the concentration is at least SKK 500 000 000 and at least two of the parties to the concentration achieved a turnover of at least SKK 150 000 000 each for the accounting period previous to the establishment of the concentration, or
 - b) the joint share of the parties to the concentration or the share of at least one of the parties concerned exceeds 25% of the total share for the respective goods in the relevant market of the Slovak Republic.
- (2) The combined turnover or joint share within the meaning of Paragraph 1 shall be the total of turnovers or shares of
 - a) parties to the concentration,
 - b) undertakings in which the party to the concentration owns at least 50% of the registered capital, or has the power to exercise at least half of the voting rights, or the power to appoint at least half of the members of the undertaking's boards, or the right to manage the undertakings concerned,
 - c) undertakings who have the rights described in letter (b) in an undertaking of a party to the concentration,
 - d) all other undertakings in which the undertaking referred to in the letter (c) has the rights

described in letter (b) above.

- (3) Turnover for the purposes of this Act is the total of revenues, yields or incomes from the sales of goods to which financial aid granted to the undertaking shall be added.
- (4) Financial aid pursuant to Paragraph 3 granted to an undertaking shall be every financial aid granted by a grantor concerning activity performed by an undertaking, which will be shown in the price of its goods, and the undertaking is a recipient of the respective aid.
- (5) A grantor of financial aid for the purposes of this Act is a state body,⁹⁾ state financial institution,¹⁰⁾ municipality¹¹⁾ or other legal person granting financial aid pursuant to special regulation.¹²⁾
- (6) Combined turnover of undertaking does not include revenues, yields or incomes from the sale of goods between the individual undertakings belonging to the same economic group based on control relations.
- (7) If a concentration arises through acquisition of direct or indirect control over another undertaking or a part of one undertaking or several undertakings, only the turnover of the undertaking or those parts that are a subject of concentration is taken into account. Two concentrations or several such concentrations which are not subject to control by the Authority pursuant to Paragraph 1 and are completed within a two year period between the same undertakings shall be deemed to be one and the same concentration arisen on the day the last such transaction took place.
- (8) Where the parties to the concentration jointly have the rights or powers listed in Paragraph 2 letter (b), in calculating the combined turnover no account shall be taken of the turnover resulting from the sale of products between the joint venture and each of the undertakings concerned or any other undertaking connected with any of them, as set out in Paragraph 2 letters (b), (c) and (d), and between the joint venture and other undertakings. The respective turnover from the sale of goods shall be apportioned equally amongst the parties to the concentration.
- (9) A concentration which is subject to control within the meaning of Paragraph 1 must be notified to the Authority within 30 days from the agreement conclusion, from the announcement of acceptance of submission of the bid in a public tender¹³⁾, from the day a decision of state body has been delivered to an undertaking¹⁴⁾, or upon the acquisition of control over another undertaking or over a part thereof by other means. The term starts on the day the first of the above facts occurred.
- (10) An undertaking may request the Authority to issue a standpoint on the intention of a concentration. The Authority shall issue the standpoint within 30 days from the receipt of such request. The issuance of a standpoint does not prejudice the obligation to announce a concentration pursuant to Paragraph 9.
- (11) Notification of a concentration shall be jointly submitted by the parties to the concentration in the case of a merger or amalgamation of two or more independent undertakings, or in the case of acquisition of joint control; in the case of public tender, the notification shall be submitted by the selected bidder; in the case of a decision by the state authority on merger or amalgamation of undertakings pursuant to special regulations¹⁴⁾ the parties of concentration jointly; in other cases the notification shall be submitted by the undertaking that acquires a control over another undertaking or a part thereof.
- (12) Pursuant to Paragraph 9 a notification must contain
 - a) essential information on the parties to the concentration,
 - b) description of concentration,
 - c) data on property and financial linkage,
 - d) data on personal linkage,
 - e) information on affected markets,
 - f) information concerning a possible entry on the market,
 - g) information concerning agreements on co-operation,
 - h) information on trade associations,

- i) general market information,
 - j) information on co-operative effects of joint venture,
 - k) reasons for and effects of concentration and its impact on competition,
 - l) basic documentation,
 - m) receipt of covering respective administrative fee pursuant to special regulation.¹⁵⁾
- (13) Parties to the concentration shall not exercise the rights and fulfil obligations resulting from the arisen concentration until a valid concentration-related decision has come into force.
- (14) A ban pursuant to Paragraph 13 shall not prejudice the right of the selected bidder in a public tender¹⁶⁾ to implement his bid, provided that the acquirer does not exercise the voting right arising in connection with the implementation of the draft bid or that he does so only to maintain the full value of the investments or on the basis of an exception granted by the Authority pursuant to Paragraph 15.
- (15) The Authority, on request, shall issue a decision by which it may grant an exception from the ban under Paragraph 10, if serious reasons for that exist. The Authority shall issue a decision on granting or non-granting an exception within 30 days following the delivery of the request. In deciding on the exception, the Authority shall take into account, inter alia, the effects of the suspension on parties to the concentration or on third parties. That exception may be subject to conditions in order to ensure effective competition.
- (16) The provisions of Paragraph 13, 14 and 15 shall not apply to trading in securities including those openly convertible into other securities accepted for trading on the market pursuant to special regulation,¹⁷⁾ unless the buyer and seller knew or could know that a concentration pursuant to Article 9, Paragraph 1 had arisen.

Article 11

The Authority shall issue, within 60 days from the notification receipt a decision on a concentration. The Chairman of the Authority may, before the expiration of the time period for issuing the respective decision and in complicated cases, adequately prolong the overall period for a concentration-related decision, at most by 90 days. The period shall begin on the day following that of a receipt of the complete notification pursuant to Article 10, Paragraph 12. If the Authority finds that the notification was, within the meaning of Article 10, Paragraph 12, incomplete, a new period shall begin on the day following the receipt of a complete notification pursuant to Article 10, Paragraph 12. The Authority has an obligation to inform on that fact in written form the party to the proceedings. The period for decision, however, starts at the latest after expiration of a one-year period after the day of concentration notification.

Article 12

- (1) The Authority shall issue a decision approving the concentration if
- a) the concentration does not create or strengthen a dominant position resulting in major barriers to effective competition in the relevant market, or
 - b) co-ordination within the meaning of Article 9, Paragraph 7 meets the conditions laid down in Article 6, Paragraph 3.

- (2) The Authority may tie its approval of the concentration to conditions imposed within its decision on a basis of which the major barriers to effective competition arisen through concentration shall be removed.
- (3) The Authority shall prohibit the concentration from creating or strengthening a dominant position, which may result in major barriers to effective competition in the relevant market.
- (4) The Authority shall prohibit a concentration within the meaning of Article 9, Paragraph 7 if it does not meet the conditions laid down in Article 6, Paragraph 3.
- (5) In the decision-making process on a concentration that is subject to control by the Authority pursuant to Article 10, Paragraph 1, including a concentration that has not been notified within the period pursuant to Article 10, Paragraph 9 or where the Authority issues a decision within the meaning of Paragraph 2, it may decide on imposing an obligation for remedial measure including division of the undertaking of the parties to the concentration.

Article 13

- (1) The Authority, on the basis of its own initiative, shall modify or withdraw a decision on concentration if
 - a) the decision was based on untrue or incomplete data of the undertakings, or was induced by deceit, or
 - b) concentration arose otherwise than as it was notified, or parties to the concentration are acting in contradiction with conditions imposed in the decision.
- (2) It is possible to appeal against a decision which modifies or withdraws the decision pursuant to Paragraph 1.
- (3) In cases pursuant to Paragraph 1, the Authority may issue a decision whereby the time periods set out in the Article 11 are not valid.

PART III

THE AUTHORITY

Article 14

- (1) The Authority is a central state administrative body of the Slovak Republic¹⁸⁾ for the protection and support of competition.
- (2) The seat of the Authority shall be located in Bratislava.
- (3) The Authority may establish permanent or temporary branch offices outside the main seat.

The Chairman of the Authority

Article 15

- (1) The Authority shall be headed by its Chairman. In case of his absence, Deputy Chairman shall substitute for the Chairman in the extent of his rights and duties.
- (2) The Chairman shall be appointed and recalled by the President of the Slovak Republic on the basis of a proposal submitted by the Government of the Slovak Republic. His/her term of office shall be five years.¹⁹⁾ Any citizen who is eligible for the National Council of the Slovak Republic may be appointed Chairman of the Authority.
- (3) The Deputy Chairman shall be appointed and recalled by the Chairman of the Authority.

- (4) The same person may be appointed Chairman of the Authority for only two consecutive office terms.
- (5) The professional performance of Chairman of the Authority shall be incompatible with the professional performance and activities pursuant to special regulation.²⁰⁾

Article 16

- (1) Professional performance of the Chairman of the Authority shall be terminated
 - a) at the end of an office term,
 - b) by resignation from the position,
 - c) by recall from the position,
 - d) by death.
- (2) Resignation from the position of Chairman of the Authority shall be effective by delivery of written notification to the President of the Slovak Republic. His/her office term expires on the appointment of a new Chairman of the Authority.
- (3) The President of the Slovak Republic shall recall the Chairman of the Authority if
 - a) he/she has been, by a valid court ruling, sentenced for intentional crime or crime of negligence connected with the performance of his function,
 - b) his/her legal capacity has been, by a valid court ruling, terminated,
 - c) he/she started to perform in function or conduct an activity incompatible with the position of Chairman of the Authority within the meaning of Article 15, Paragraph 5,
 - d) as a result of his/her own fault or if his/her health condition prevents him/her from regular performance, or has not performed in the position for a period exceeding 6 consecutive months.

Article 17

The salary of the Chairman of the Authority shall be determined by Government of the Slovak Republic pursuant to special regulation.²¹⁾

Council of the Authority

Article 18

- (1) A Council of the Authority (hereinafter only "Council") shall be established. The Council shall decide on appeal and review decisions outside of appeal proceedings. The Council shall decide also on renewal of proceedings and on a prosecutor's protest in cases where the Chairman of the state administration body decides pursuant to special regulation.²²⁾ The Council shall be composed of the Council Chairman, Council Deputy Chairman and five members of Council. The Chairman of the Authority is simultaneously the Council Chairman. The Deputy Chairman of the Authority is simultaneously the Council Deputy Chairman.
- (2) An employee of the Authority is not allowed to be a member of Council.
- (3) Council members shall be appointed and recalled by the Government of the Slovak Republic on the basis of a proposal submitted by the Chairman of the Authority.
- (4) The office term of Council members shall be five years. Council members are appointed in such a way that their office term shall be terminated for three of them at most in the course of one

calendar year.

- (5) If the professional performance of a council member terminates before the end of the office term, it shall be possible to appoint a new Council member only for the rest of the respective office term.

Article 19

- (1) The Chairman of the Office shall submit to the Government of the Slovak Republic proposals at least of three candidates for Council member, at the latest three months before expiration of their office term. The Government of the Slovak Republic shall appoint the Council members within two months after delivery of candidate's list. Newly-appointed Council members shall take charge of their office on the day following the date of office term expiration of previously appointed Council members.
- (2) Any natural person who is a citizen of the Slovak Republic, has an academic education, legal capacity and is irreproachable may be appointed a Council member.
- (3) At least two Council members must be graduates of a law university.

Article 20

- (1) A session of the Council shall be called and led by the Council Chairman; in case of his absence, by the Council Deputy Chairman.
- (2) The Council shall have a quorum when the Council Chairman or Council Deputy Chairman and at least another four Council members, or the Council Chairman, Council Deputy Chairman and another three Council members are present. For approval of a Council decision the consent of an absolute majority of the present Council members is required. In case of parity of votes the Council Chairman holds the decisive vote; in case of his absence, the Council Deputy Chairman.
- (3) A decision of the Council shall be based upon voting. Council sessions are closed.
- (4) A written record shall be made on Council voting stating the view of a Council member, the Council Chairman or Council Deputy Chairman if it is different from the adopted decision. The written record on voting is secret.
- (5) Council decisions shall be signed by the Council Chairman; in case of his absence, by the Council Deputy Chairman.
- (6) A member of the Council shall be excluded from a hearing and decision-making process if he/she might be prejudiced with respect to his/her relation to the case, parties to the proceedings or their representatives or if he/she participated in the same matter at another degree.

Article 21

- (1) The professional performance of the Council member shall be terminated
 - a) at the end of office term,
 - b) by resignation from the position,
 - c) by recall from the position,
 - d) by death.
- (2) Resignation from the position of Council member shall be effective on delivery of written notification to the Chairman of Government of the Slovak Republic. If a Council member has resigned from his position, he/she shall remain in his/her position till the appointment of a new Council member.
- (3) The Government of the Slovak Republic shall recall a Council member on the basis of a proposal submitted by the Chairman of the Authority if
 - a) he/she has been, by a valid court ruling, sentenced for an intentional crime or crime of negligence connected with performance of his/her function,

- b) his/her legal capacity has been, by a valid court ruling, terminated,
- c) has not performed his/her function for a period exceeding 4 consecutive months.

PART IV

POWERS OF THE AUTHORITY

Article 22

- (1) The Authority shall
 - a) perform general investigation in the relevant market,
 - b) decide on imposing an obligation to refrain from action which is in contradiction with this Act, and to remedy the illegal state of affairs,
 - c) proceed and decide in all matters of competition protection ensuing from the provisions of this Act,
 - d) control enforcement of the decisions issued within the proceedings before the Authority,
 - e) propose further measures for competition protection and support.
- (2) In fulfilling the tasks resulting from this Act, the employees of the Authority shall have the right to request from undertakings all materials and information which are necessary for activities of the Authority, in particular
 - a) accounting and business records or legal documents, and to take copies or extracts from them or to request their certified translations into the Slovak language,
 - b) to request an immediate oral or written explanation.
- (3) In fulfilling the tasks resulting from this Act, the employees of the Authority, on the basis of special authorisation, shall have the right to enter any premises, land and means of transport of undertakings connected with the activities or actions of undertakings pursuant to Article 3, Paragraph 2.
- (4) The Authority shall be entitled to request from state administrative bodies, municipalities and from natural and legal entities materials and information on an undertaking. These subjects are obligated to provide the Authority with such information if it is not in contradiction with special regulation.²³⁾

Article 23

The Authority shall submit on an annual basis a report on its activities to the Government of the Slovak Republic, and shall do the same whenever asked by the Government of the Slovak Republic.

Article 24

- (1) The Authority shall be obligated to publish its valid decision, a concentration notification and, if the nature of the matter does not exclude it, a notice pursuant to Article 39, Paragraph 2, and commencement of proceeding in all other matters resulting from provisions of this Act. In publishing the Authority shall take due account of preserving the undertakings' right to protect

their business secrecy²⁴⁾ and confidential information.

- (2) In publishing the notification of a concentration, the Authority shall publish the names of parties to the concentration, its nature pursuant to Article 9, Paragraph 1, and the industry in which the concentration has occurred.
- (3) The obligation to publish within the meaning of Paragraph 1 shall be deemed to have been met by publishing the relevant documents in the Official Journal, on the Authority's web site and making the valid decisions accessible at the Authority's library.

PART V

PROCEEDINGS

Article 25

- (1) Proceedings shall begin on the Authority's own initiative or if petitioned by an undertaking.
- (2) The Authority may start proceedings based on its own initiative as well as based on information from a written petition by a natural or legal person that is not, pursuant to this Act, viewed as an undertaking. On the basis of a request submitted by a natural or legal person filing a written petition, the Authority shall inform in written form on the further steps to be taken in a given case within two months following the day of the receipt of the petition.
- (3) The parties to the proceedings shall be a petitioner and undertakings whose rights, interests protected by the law, and duties stipulated by this Act shall be decided about.
- (4) Parties to the proceedings shall immediately notify the Authority of any change relating to the subject of proceedings.
- (5) The Authority shall inform the parties to proceedings on their rights and obligations so as not to suffer a detriment in proceedings as a result of their legal ignorance; the Authority is not obliged to do so if the respective party to proceedings is represented by an advocate or commercial lawyer.

Article 26

Connection of matter

- (1) In the interest of economical proceedings, the Authority may connect for common proceedings the matters which it has initiated and which relate to each other or concern the same parties to the proceedings.
- (2) The Authority may exclude some matters for separate proceedings if a petition for proceedings contains matter, which are not connected, or if the reasons for the connection ceased to exist.
- (3) A decision on connection of matters may not be appealed.

Article 27

Third parties

- (1) For the purposes of this Act a third party is a natural or legal person which is not a party to the proceedings, in particular a consumer, supplier, purchaser or competitor to a party to the proceedings.
- (2) If third parties request in writing that they want to be heard with respect to the subject of proceedings and show an interest in the matter, the Authority shall inform them in writing of the nature and subject of the proceedings and shall set a date by which they may make known their

views.

- (3) If third parties request in writing that they want to be heard at an oral hearing and show an interest in the matter, the Authority may enable them to take part in the oral hearing and make known their views.

Article 28

Business secrecy and confidential information

- (1) The Authority shall be obligated, at the beginning of proceedings, to inform a party to the proceeding that in the course of proceedings it may identify information or documents submitted to the Authority as being subject to business secrecy or being of a confidential nature. Confidentiality of information or materials or their designation as a business secret shall be reasoned in writing. The Authority may request a party to the proceedings to provide other wording of information or documents that does not contain business secrets or does not have a confidential character.
- (2) The Authority shall protect information whose confidentiality has been demanded. Confidentiality of such information shall, however, constitute no obstacle to its disclosure if it is necessary for a decision and if a party to the proceedings does not submit other wording of information and documents that does not contain business secrets or does not have a confidential character.

Article 29

Delivery

- (1) The Authority shall deliver documents, as a rule, by post. The Authority may, however, subject to circumstances in question, deliver the documents through its own employee.
- (2) Documents destined for authorities or legal entities shall be delivered only to persons authorised to accept such documents on behalf of the authorities or legal entities. Should there be no such persons, a document destined to be delivered in person shall be delivered to the persons authorised to act on behalf of the respective authority or legal person; other documents shall be delivered to any employee of theirs who is willing to accept it.
- (3) If a party to the proceedings has a representative with authorisation for the whole proceedings, a document shall be delivered only to the respective representative. However, if the party to the proceedings has to perform something in the proceedings personally, the document is delivered not only to the representative, but also to him.
- (4) Documents destined for an advocate may be delivered to articulated clerks or other employees that perform work activities at the advocate's office and have been entrusted by him with delivery acceptance; this applies adequately also in the case of commercial lawyers, public notaries or executors.
- (5) Parties to the proceedings or their representatives shall be obligated without undue delay to inform the Authority of any change in the place of residence, seat, name of the person entrusted with document acceptance, or of any other fact crucial for the document delivery.
- (6) Any document shall be considered as delivered, even if returned by the postal authority as undeliverable, if an addressee is not present at the delivery location and if the Authority made the delivery to the last known address properly announced to it, or notified to the commercial register, or to the business register as the seat of a given legal person in the case of a legal person, or to the address of permanent or temporary residence, in the case of a natural person. The day on which the document has been returned to the Authority shall be considered the day of delivery.
- (7) Should the delivery to the party to proceedings be connected to difficulties or delays, or concerns a party to the proceedings with its residency abroad, the Authority may order that the respective party appoint a representative for the acceptance of documents to whom they can be delivered with

no difficulties or delays. If the party to proceedings fails to do so, all documents shall be stored with the Authority with the effect of actual delivery; the Authority shall inform the party of this step.

Article 30

Period for decision

The Authority shall be obligated to issue a decision within six months following the day on which the proceedings started. If, taking into account the nature of the case, a decision cannot be reached within that period, the Chairman, may grant a reasonable prolongation, at most for a period of six months. If the Authority cannot reach a decision within six months or within the prolonged period, it shall notify the party to proceedings of it, stating the respective reasons. This provision does not concern a decision issued pursuant to Article 11.

Article 31

If the proceedings are suspended, the period within the meaning of this Act shall cease to pass.

Article 32

Stopping the proceedings

- (1) The Authority may stop the proceedings by issuing a decision if
 - a) one of the parties to the proceedings died or has ceased to exist without a legal successor,
 - b) a party to the proceedings has withdrawn the petition for commencement of proceedings,
 - c) a petitioner within the stipulated time period does not comply with the Authority's request to eliminate insufficiency of the petition.
- (2) The Authority shall stop the proceedings by issuing a decision if
 - a) the only party to the proceedings died or has ceased to exist without a legal successor,
 - b) the petitioner has withdrawn his appeal or petition for retrial,
 - c) reason for proceedings has not been proved to exist or ceased to exist,
 - d) initiated proceedings showed that an undertaking is not a party to the proceedings, while so far having been the only party to the proceedings,
 - e) there is no reason for issuing the decision within the meaning of Article 6, Paragraph 4,
 - f) it is dealing with a competition restriction whose effects are exclusively apparent in foreign markets unless an international agreement published in the Collection of Laws of the Slovak Republic and binding for the Slovak Republic states otherwise.

Article 33

Challenge before issuing the decision

Before a decision in the matter is issued, the Authority shall be obligated to challenge parties to the proceedings to express in oral or written form their views concerning the decision-related documents, justification of the decision, or to propose its amendment and provide information of investigation results that the Authority has discovered on the basis of available information and documents.

Appeal

Article 34

- (1) There shall be a possibility to file an appeal against a first-degree decision within 15 days following the day of decision receipt.
- (2) Appeal proceedings shall be adequately guided by the provisions laid down in Article 25, Paragraphs 3 to 5 and Articles 27 to 33.

Article 35

- (1) Appeal may only be given up with respect to the body that issued a first-degree decision, and only after the respective decision has been announced.
- (2) Appeal may be withdrawn until it has been decided about. Should the party to proceedings withdraw an appeal, it cannot re-file it.
- (3) If the party to proceedings gives up or withdraws an appeal, a first-degree decision shall become valid on the day of receipt of the notice of surrender or withdrawal by the body that issued the first-degree decision.

Article 36

Execution of decision

A decision by the Authority shall be executed at latest within 5 years following the day on which the period for fulfilling a given obligation has passed.

Article 37

- (1) Unless stated otherwise in this Act, proceedings before the Authority shall be governed by the provisions of the Administrative Proceedings Act.²⁵⁾
- (2) In the case of administrative fees, the Authority shall proceed pursuant to special regulation.²⁶⁾

PART VI

RESPONSIBILITY FOR ADMINISTRATIVE OFFENCES

Article 38

- (1) The Authority shall impose a fine on an undertaking for breaching the provisions of Article 4, Paragraph 1, Article 5, Article 8, Paragraph 6, Article 10, Paragraph 9, Article 13, Article 25, Paragraph 4 and Article 29, Paragraph 5 stipulated by this Act of up to 10 per cent of his turnover for the previous closed accounting period pursuant to Article 10, Paragraph 3 and on an undertaking that for the previous closed accounting period achieved a turnover up to SKK 10 000 or that achieved no turnover or on an undertaking whose turnover is not possible to calculate, up to SKK 10 000 000.
- (2) A fine pursuant to Paragraph 1 shall not be imposed on an undertaking, that requested the Authority on issuing a decision pursuant to Article 6, Paragraph 4 and proved that the fulfilment of an agreement restricting competition has not occurred.
- (3) A previous closed accounting period within the meaning of Paragraph 1 shall be the year preceding the one in which a decision was issued, or the year before that year, should the data for the former be unavailable.
- (4) The Authority may impose a fine up to SKK 1 000 000 on an undertaking that failed to submit to the Authority within a fixed period the requested documents or information, or submitted incorrect or incomplete documents or information or did not allow for their review or entry within the meaning of Article 40.
- (5) The Authority may impose a fine up to SKK 100 000 on an undertaking that failed to participate in ordered hearings without having any serious reason for doing so, or who by his action make the process of the proceedings more difficult.
- (6) The Authority may impose a fine imposed pursuant to Paragraphs 1 and 4 even repeatedly if an undertaking continues breaching the provisions pursuant to Paragraph 1 or does not fulfil an obligation pursuant to Article 40.
- (7) The Authority may impose the fines within the meaning of Paragraphs 1 and 4 within four years from the proceedings' initiation. However, the Authority may impose the fines no later than within 8 years following the day on which breaching the provisions stipulated by this Act started.
- (8) If an undertaking fails to pay the imposed fine before the set period, the respective subject shall be obliged to pay a penalty 0.1 per cent of the debt amount of the imposed fine for each day of delay.
- (9) In imposing a fine, the Authority shall consider the seriousness and length of violations of provisions stipulated by this Act. In judging the seriousness of the violations, the Authority shall take into account the nature, real effect in the market and where appropriate, also the size of the relevant market. In addition to these criteria, the Authority shall have regard to other factors, especially repeated violations of this Act committed by the same undertaking, refusal to co-operate, position of the undertaking as a leader or initiator in breaching the provisions of this Act, gaining material benefit as a result of breaching the provisions of this Act, or non-fulfilment of an agreement restricting competition in practice.
- (10) On an undertaking that co-operates with the Authority during the investigation of an agreement restricting competition within the meaning of Articles 4 and 5, the Authority shall not impose any fine or decrease the fine by at least 75% of the respective fine that would otherwise have been imposed if the undertaking had not met at the same time the following conditions
 - a) was a party to the agreement restricting competition,
 - b) was the first who adduced decisive evidence of the existence of the agreement restricting competition,
 - c) put an end to undertaking's involvement in the agreement restricting competition no later than at the time at which the undertaking disclosed the agreement to the Authority,
 - d) did not compel another undertaking to participate in the agreement restricting competition and did not act as an initiator of conclusion of the agreement restricting competition,
 - e) provided the Authority with all the relevant information and maintained continuous co-operation throughout the investigation,
 - f) has not gained any material benefit resulting from the breach of provisions of this Act.

PART VII

OTHER FORMS OF UNLAWFUL RESTRICTION ON COMPETITION

Article 39

- (1) State administrative bodies and municipality bodies shall take care not to restrict competition by support advantaging certain undertakings or in any other way.
- (2) If the Authority discovers that a state administrative body or municipality body is acting in contradiction with Paragraph 1, it shall point this out to the respective state administrative body on the basis of evidence and analysis of the effects. Should the state administrative body fail to secure remedial measures within a period stipulated by the Authority, the Authority shall forward the matter, along with its opinion, to its superior body and, in the case it concerns the central state administrative body, inform the Government of the Slovak Republic.

PART VIII

OBLIGATIONS OF UNDERTAKINGS AND MAINTAINING CONFIDENTIALITY

Article 40

Undertakings shall be obliged to submit to the Authority requested materials and information and be subject to their scrutiny, to co-operate with the Authority in its examination, and to allow employees of the Authority on the basis of special written authorisation to enter any premises, land and means of transportation of undertakings connected with their activities or actions pursuant to Article 3, Paragraph 2. The Authority shall call on the undertakings to identify the subject of business secrecy and other confidential information.

Article 41

- (1) Information and documents acquired by the Authority from undertakings, state administrative bodies, municipalities and from natural or legal entities, may only be used for the purposes of this Act.
- (2) All employees of the Authority as well as those entrusted with fulfilling the tasks that fall within the competence of the Authority, shall be obliged to keep as confidential all facts which they have learnt in connection with the proceedings, unless this Act or a special law²⁷⁾ states otherwise.
- (3) To infringe the duty to maintain confidentiality shall not be deemed to be a breach of obligation of Authority employees dealing with the provision of information, which is subject to the duty to maintain as confidential, to
 - a) a court for the purposes of civil proceedings,
 - b) a body active in criminal proceedings for the purposes of criminal proceedings,
 - c) a service of criminal police of the Police Force and service of financial police of the Police Force for the purposes of task fulfilment set out by special regulation,²⁸⁾
 - d) a prosecutor's office.

PART IX

CIVIL LAWSUITS ARISING FROM UNLAWFUL RESTRICTION ON COMPETITION

Article 42

Consumers whose rights have been violated by unlawful restriction of competition may require the violating party to refrain from the behaviour or to remedy the breach. This right may also be claimed by a legal person authorised to protect the interests of consumers.

PART X

JOINT, INTERIM AND FINAL PROVISIONS

Article 43

A generally binding legal regulation, which shall be issued by the Authority, shall provide the details for

- (a) Article 6, Paragraph 3,
- (b) calculation of turnover pursuant to Article 10, Paragraph 3,
- (c) terms of notification pursuant to Article 10, Paragraph 12.

Article 44

- (1) Legal relations arisen before the day of the entry of this Act into force shall be reviewed pursuant to the existing regulations.
- (2) Proceedings before the Authority that started before the day of the entry of this Act into force shall be completed pursuant to the existing regulations.
- (3) The first Chairman of the Authority appointed pursuant to this Act shall submit to the Government of the Slovak Republic proposed candidates for the council members within one month after his appointment. The Government of the Slovak Republic shall appoint the first council members within one month after the day of the list of candidates receipt.
- (4) Three members of the first council shall be appointed for the term of office of four years and another two members for the term of office of three years.
- (5) The time periods which started to pass before the entry of this Act into force shall be reviewed until their termination pursuant to the existing regulations.
- (6) Provisions of this Act shall be used for imposing fines for breaching the provisions of this Act that arose before its effective date, in the case they are more favourable for the undertaking.
- (7) Decisions issued by the Authority against which a complaint was filed to the Supreme Court of the Slovak Republic on examination of legality before the effective date of this Act shall be reviewed pursuant to the existing regulations.
- (8) In reviewing a decision issued in the first-degree in proceedings started after the effective date of this Act on a basis of appeal, a decision on renewal of proceedings, prosecutor's protest or in reviewing the decision outside of appeal proceedings till appointment of all council members, the Chairman of the Authority, shall decide pursuant to this Act on the basis of a special commission proposal.

Article 45

Act of the National Council of the Slovak Republic No. 188/1994 Coll. on Protection of the Economic Competition as amended by Act No. 240/1998 Coll. and Act No. 121/2000 Coll. shall hereby be repealed.

Clause II.

Act of the Slovak National Council No. 347/1990 Coll. on Organisation Of Ministries and Other Central State Administrative Bodies of the Slovak Republic as amended by Act of the Slovak National Council No. 197/1991 Coll. Act of the Slovak National Council No. 298/1991 Coll., Act of the Slovak National Council No. 494/1991 Coll., Act of the Slovak National Council No. 294/1992 Coll., Act of the Slovak National Council No. 322/1992 Coll., as amended by Act of the Slovak National Council No. 453/1992 Coll., Act of the National Council of the Slovak Republic No. 2/1993 Coll., Act of the National Council of the Slovak Republic No. 61/1993 Coll., Act of the National Council of the Slovak Republic No. 83/1994 Coll., Act of the National Council of the Slovak Republic No. 74/1995 Coll., Act of the National Council of the Slovak Republic No. 207/1995 Coll., Act No. 58/1998 Coll., Act No. 143/1998 Coll., Act No. 200/1998 Coll., Act No. 337/1998 Coll., Act No. 263/1999 Coll., Act No. 293/1999 Coll., Act No. 95/2000 Coll., Act No. 195/2000 Coll., Act No. 329/2000 Coll., Act No. 338/2000 Coll. and Act No. 417/2001 Coll. shall be amended as follows:

1. In Article 20 a new Paragraph 3 shall be inserted after Paragraph 2:

"(3) The Antimonopoly Office of the Slovak Republic shall be headed by its Chairman who shall be appointed and recalled by the President of the Slovak Republic on the basis of a proposal submitted by the Government of the Slovak Republic. His/her term of office shall be five years. Salary of the Chairman shall be determined by the Government of the Slovak Republic pursuant to the special regulation.1) "

2. Existing Paragraph 3 shall be designated as Paragraph 4 and in the first sentence the words "letters b) up to i)" are substituted by words "letters b) up to d) and f) up to j)".

Existing Paragraphs 4 up to 6 shall be designated as Paragraph 5 up to 7.

Clause III.

This Act shall enter into force on May 1, 2001.

1) E. g. Article 2 of Act No. 222/1946 Coll. on Posts (Postal Act), Articles 5 and 7 of Act No. 2/1991 Coll. on Collective Bargaining as amended.

- 2) Article 2 of the Commercial Code.
- 3) Act No. 132/1989 Coll. on Protection of Rights to New Varieties of Plants and Breeds of Animals as amended by Act of National Council of the Slovak Republic No. 22/1996 Coll.
Act No. 527/1990 Coll. on Inventions, Industrial Designs and Rationalisation Proposals as amended
Act No. 478/1992 Coll. on Utility Models as amended by Act of the National Council of the Slovak Republic No. 90/1993 Coll..
Article 8 of the Commercial Code.
Act No. 55/1997 on Trade Marks
Act No. 146/2000 Coll. on Protection of Topographies of Semiconductor Products.
- 4) Act No. 383/1997 Coll. (Authorship Act) and Act amending the Customs Act as amended by Act No. 234/2000 Coll.
- 5) E. g. Act No. 55/1997 Coll., Act No. 383/1997 Coll. as amended by Act No. 234/2000 Coll.
- 6) Article 69 of the Commercial Code.
- 7) Article 7 of the Commercial Code.
- 8) E. g. Article 70 - 75 of the Commercial Code, Article 8 of Act No. 328/1991 Coll. on Bankruptcy as amended
- 9) E. g. Act No. 347/1990 Coll. on Organisation of Ministries and Other Central State Administrative Bodies of the Slovak Republic as amended, Act of the National Council of the Slovak Republic No. 254/1993 Coll. on Organisation of Territorial Financial Bodies as amended, Act of the National Council of the Slovak Republic No. 222/1996 Coll. on Organisation of Local State Administration and on Amendment of Some Laws as amended.
- 10) Article 36 of Act No. 21/1992 Coll. on Banks as amended.
- 11) Act of the Slovak National Council No. 369/1990 Coll. on Municipal Establishment as amended.
- 12) E. g. Act No. 80/1997 Coll. on Export-Import Bank of the Slovak Republic as amended, Act No. 69/1998 Coll. on State Environmental Fund as amended by Act No. 237/2000 Coll., Act of the National Council of the Slovak Republic No. 379/1996 Coll. on Fund of the Foreign trade Support as amended.
- 13) Article 281 - 288 of the Commercial Code.
- 14) Article 14 of Act No. 111/1990 on State Enterprise as amended by Act of the National Council of the Slovak Republic No. 317/1996 Coll.
- 15) Item No. 212 of Administrative Fees Tariff of Act of the National Council of the Slovak Republic No. 145/1995 Coll. on Administrative Fees as amended
- 16) Article 281 - 288 of the Commercial Code.
- 17) Article 71 - 78 of Act No. 600/1992 Coll. on Securities as amended.
Article 20 - 24 of Act No. 330/2000 Coll. on Securities Market.
- 18) Article 20, paragraph 1, letter e) of Act of the Slovak National Council No. 347/1990 Coll. as amended.
- 19) Article 20, paragraph 3 of Act of the Slovak National Council No. 347/1990 Coll. as amended.
- 20) Constitutional Act of the National Council of the Slovak Republic No. 119/1995 Coll. on Prevention of Interest Contradiction in Professional Performance of Constitutional Officials and Senior Officials
- 21) Act No. 143/1992 Coll. on Salary and Compensation Payable for Standby Work in Budgetary and Certain Other Organisations and Bodies as amended.
- 22) Article 63, paragraph 1 and Article 69, paragraph 2 of Act No. 71/1967 on Administrative Proceedings (The Administrative Procedure Act).
- 23) E. g. Article 38 of Act No. 21/1992 Coll. on Banks as amended, Article 23 of Act of the Slovak National Council No. 511/1992 Coll. on Tax and Fee Administration and on Changes in System of Territorial Financial Bodies as amended, Article 76 of Act of the Slovak National Council No. 171/1993 Coll. on Police Force as amended.
- 24) Article 17 of the Commercial Code.

- 25) Act No. 71/1967 Coll.
- 26) Act of the National Council of the Slovak Republic No. 145/1995 Coll. as amended.
- 27) Act No. 211/2000 on Free Access to Information and on Amendment of Certain Laws (The Information Freedom Act).
- 28) Article 17 of Act of the National Council of the Slovak Republic No. 171/1993 Coll. as amended.