

136/2001 Coll.

ACT

of 27 February 2001

**on Protection of Competition and on Amendments and Supplements to Act of the Slovak
National Council No. 347/1990 Coll. on Organization of Ministries and Other Central
Bodies of State Administration of the Slovak Republic as amended**

Amendment: 465/2002 Coll.

Amendment: 204/2004 Coll.

The National Council of the Slovak Republic has passed the following Act:

Section I

PART ONE BASIC PROVISIONS

Article 1 Purpose of the Act

The purpose of this Act is to protect competition in the market for products, performance, work and services (hereinafter referred to as "goods") from any restriction and to create conditions for its further development with a view to promoting economic development to the benefit of consumers and regulating the powers and scope of activities of the Antimonopoly Authority of the Slovak Republic (hereinafter referred to as "the Authority").

Article 2 Scope of the Act

(1) This Act shall apply to:

- a) undertakings;
- b) state administration authorities during the performance of state administration, territorial self-administration authorities during the performance of self-administration and transferred performance of state administration, and special interest bodies during the transferred performance of state administration.

(2) This Act shall apply to all activities and actions of undertakings that restrict or may restrict competition, except for competition restriction by undertakings providing services in the public interest pursuant to special legislation, provided that the application of this Act effectually or legally prevents them from fulfilling their tasks pursuant to

special legislation.¹⁾

(3) The provisions of Articles 22 to 40 shall also apply to the Authority's procedure where the Authority assesses activities and actions of undertakings pursuant to special legislation. 1aa)

(4) This Act shall also apply to activities and actions that have taken place abroad, provided that they lead, or may lead, to restriction of competition in the domestic market.

(5) This Act, except Part Five, shall not apply to restriction of competition whose effects are only apparent in a foreign market, unless the international agreement published in the Collection of Laws of the Slovak Republic, by which the Slovak Republic is bound, provides otherwise.

(6) This Act shall not apply to the cases of restriction of competition that come within the jurisdiction of another body ensuring protection of competition according to special legislation 1a)

1) For example, Article 7 of Act No. 507/2001 Coll. on Postal Services, Articles 5 and 7 of Act No. 2/1991 Coll. on Collective Bargaining as amended.

1a) For example, Article 2 (b) of Act No. 276/2001 Coll. on Regulation of Network Industries and on Amendments and Supplements to Certain Laws as amended, Article 10 of Act No. 195/2000 Coll. on Telecommunications, Article 13 (1) of Act No. 507/2001 Coll.

1aa) Council Regulation (EC) No. 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty establishing the European Community (Official Journal of the European Communities L 001, 4/1/2003).

Article 3 **Definitions of Terms**

(1) Restriction of competition means 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 the scope of competitive activities, or distortion of conditions for competition.

(2) For the purpose of this Act, undertaking means an entrepreneur pursuant to special legislation, 2), as well as individuals and legal entities, their associations, and associations of these associations, with respect to their activities and actions that are, or may be, related to competition, regardless of whether or not these activities and actions are aimed at making a profit.

(3) Relevant market means a geographical and temporal concurrence of the supply of and demand for goods that are identical or mutually interchangeable with respect to the satisfaction of certain needs of users.

(4) A relevant market in goods shall comprise identical or mutually interchangeable goods that can satisfy a certain need of users.

(5) Mutually interchangeable goods shall be goods that are interchangeable, especially from the viewpoint of their physical and technical characteristics, price, and purpose of use.

(6) Relevant geographical market shall be defined as a territory in which the conditions for competition are homogeneous to such an extent that this territory can be separated from other territories with different conditions for competition.

2) Article 2 of the Commercial Code.

PART TWO **FORMS OF UNLAWFUL RESTRICTION OF COMPETITION** **AND CONCENTRATION**

Agreement Restricting Competition

Article 4

(1) Agreement and concerted practice between undertakings, as well as decisions of their associations, whose objective or effect is or may be restriction of competition (hereinafter referred to as an "agreement restricting competition") are prohibited, unless this Act provides otherwise.

(2) For the purpose of this Act:

- a) an agreement between undertakings means any verbal or written positive expression of the will of the parties thereto, as well as any other positive expression of will derived from their conduct;
- b) a concerted practice between undertakings means any coordination of their activities that does not bear signs of an agreement between undertakings referred to in (a) and cannot be identified as the natural consequence of the actions taken by another undertaking;
- c) a decision by an association of undertakings is any legal act of the association's body, as well as a recommendation of the association's body.

(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 an identical or comparable performance will be applied to individual undertakings, which will or may disadvantage these undertakings in competition;
- e) conditions stipulating that the conclusion of agreements will require the parties to accept further obligations that are not related to the subject of these agreements in terms of their nature or according to customary commercial practice; or
- f) signs of collusive behavior as a result of which undertakings coordinate their bids, especially in the process of public procurement.

(4) If the reason for prohibition is only related to part of an agreement between undertakings or decision by an association of undertakings, then only that particular part shall be deemed prohibited, provided that it follows from the content of this agreement or the content of this decision by the association that the aforementioned part can be separated from the remaining content.

(5) The Authority shall assess within the same proceedings agreements restricting competition concluded between an undertaking and other undertakings which, for the purpose of such agreement restricting competition, carry out business activities at a different level of a production chain or distribution system than the said undertaking if the contents of these agreements restricting competition are identical in terms of their purpose and objective.

Article 5

Repealed by Act No. 204/2004 Coll.

Article 6

(1) The ban pursuant to Article 4 shall not apply to an agreement restricting competition where the combined market share of the parties thereto or the share of neither of the respective parties exceeds 10% of the total share for goods in question on the relevant market of the Slovak Republic, except for:

- a) agreements restricting competition referred to in Article 4 (3) (a) to (c); or
- b) restriction of competition by means of the cumulative effect of agreements restricting competition which contain a similar type of competition restriction and lead to similar effects in the relevant market, and their combined share exceeds 10% of the total share for goods in question in the relevant market.

(2) The combined market share referred to in paragraph 1 shall be a total of the shares held in the relevant market by:

- a) a party to an agreement restricting competition;
- b) undertakings in which the party to an agreement restricting competition directly or indirectly:
 - 1. holds more than half of the registered capital;
 - 2. has the right to exercise more than half of the voting rights;
 - 3. has the right to appoint more than half of the members of the undertaking's bodies; or
 - 4. has the right to manage the undertaking;
- c) undertakings that have the rights referred to in (b) in an undertaking of a party to the agreement restricting competition;
- d) undertakings in which the undertakings referred to in (c) have the rights referred to in (b)

(3) The ban pursuant to Article 4 shall not apply to an agreement restricting competition which at the same time:

- a) contributes to the improvement of production or distribution of goods or to the promotion of technical or economic development;
- b) allows consumers an adequate share of the resulting benefits;
- c) does not impose on the parties to the agreement restricting competition such restrictions that are not indispensable to the attainment of the objectives of the agreement;
- d) does not afford the parties to the agreement restricting competition the possibility of excluding competition in respect of a substantial part of the goods in question on the relevant market.

(4) The ban pursuant to Article 4 shall not apply to groups of agreements restricting competition that cannot influence trade between European Union Member States, whose objective or effect is or may be restriction of competition on the domestic market and which meet the conditions for exemption from the ban pursuant to special legislation. 5a)

(5) The Authority shall issue a decision that the exemption referred to in paragraph 4 will not apply to an agreement restricting competition if it meets the conditions according to which the Commission may withdraw an exemption in accordance with special legislation 5a), provided that this agreement restricting competition meets its conditions for exemption from the ban.

(6) The Authority may ask undertakings to prove that their agreement restricting competition meets the conditions laid down in paragraph 1, 3 or 4.

(7) Undertakings may ask the Authority to issue an opinion on whether or not their draft agreement or draft decision by an association of undertakings constitutes an agreement restricting competition. For this purpose, the Authority shall not assess a draft agreement between undertakings or a draft decision by an association of undertakings pursuant to paragraphs 1, 3 or 4. The Authority shall issue an opinion within 30 working days following the day of delivery of the request; in complicated cases it shall issue an opinion within 60 working days.

5a) For example, Commission Regulation (EC) No. 1400/2002 of 31 July 2002 on the application of Article 81(3) of the Treaty establishing the European Community to categories of vertical agreements and concerted practices in the motor vehicle sector (Official Journal of the European Communities L 203, 01/08/2002), Commission Regulation (EC) No. 358/2003 of 27 February 2003 on the application of Article 81(3) of the Treaty establishing the European Community to certain categories of agreements, decisions and concerted practices in the insurance sector (Official Journal of the European Union, L 053, 28/02/2003), Commission Regulation (EC) No. 2659/2000 on the

application of Article 81(3) of the Treaty establishing the European Community to categories of research and development agreements (Official Journal of the European Communities L 304, 05/12/2000), Commission Regulation (EC) No. 240/96 of 31 January 1996 on the application of Article 85 (3) of the Treaty establishing the European Community to certain categories of technology transfer agreements (Official Journal of European Communities L 031, 09/02/1996), Commission Regulation (EC) No. 2658/2000 of 29 November 2000 on the application of Article 81(3) of the Treaty establishing the European Community to categories of specialization agreements (Official Journal of European Communities L 304, 05/12/2000), Commission Regulation (EC) No. 823/2000 of 19 April 2000 on the application of Article 81(3) of the Treaty establishing the European Community to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia) (Official Journal of European Communities L 100, 20/04/2000), Commission Regulation (EC) No. 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty establishing the European Community to categories of vertical agreements and concerted practices (Official Journal of European Communities L 336, 29/12/1999).

Article 7

Repealed by Act No. 204/2004 Coll.

Article 8 Abuse of a Dominant Position

- (1) A dominant position in the relevant market is held by an undertaking or several undertakings that are not subject to substantial competition or can act independently as a result of their economic power.
- (2) Abuse of a dominant position in the relevant market shall be defined as:
 - 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 performance with respect to the individual undertakings, through which the respective undertakings are or may be disadvantaged in the competition;
 - d) tying the conclusion of an agreement to the condition that the other party accepts further commitments, unrelated to the subject of the agreement in terms of substance or according to customary commercial practice; or
 - e) temporary abuse of economic power with a view to excluding competition.
- (3) Essential facility is a facility, infrastructure or part thereof, location or right, the building or acquisition of which is objectively impossible by another undertaking and without the use of which competition would or might be restricted in the relevant market.
- (4) Pursuant to this Act, an owner or administrator of an 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 relevant market if such an undertaking refuses to provide access to it and, at the same time:
 - a) the essential facility permits satisfying the undertaking's requirements regarding the utilization of the essential facility, while allowing for simultaneous satisfaction of the requirements of the essential facility's owner or administrator at the time of peak demand for its services, also taking into account the fulfillment of its long-term commitments;
 - b) an undertaking requesting access to the essential facility with the aim of its utilization is able to ensure adherence to the respective qualitative and quantitative parameters of the essential facility resulting from its operational requirements, or if the undertaking requesting the utilization of an essential facility represented by a right is able to ensure adherence to all requirements concerning the aforementioned right as stipulated in special legislation; 5)
 - c) an undertaking requesting access to the essential facility is capable of providing the essential facility's owner or administrator with adequate payment.

(6) Abuse of a dominant position in the relevant market is prohibited.

5) For example, Act No. 55/1997 Coll., Act No. 383/1997 Coll. as amended by Act No. 234/2000 Coll.

Article 8a

(1) The Authority may end proceedings regarding a violation of the ban referred to in Articles 4 and 8 or the ban stipulated in special legislation 5b) by means of a decision imposing on an undertaking the requirement to fulfill the commitments submitted by the undertaking to the Authority for the purpose of elimination of possible restriction of competition. The Authority may issue this decision for a specific time period.

(2) The Authority may modify or reverse a decision referred to in paragraph 1 on its own initiative if:

- a) the conditions that were decisive for issuing the decision substantially changed after the issuance of the decision;
- b) the undertaking fails to fulfill the commitments imposed by the Authority's decision; or
- c) information provided by the undertaking, which was decisive for issuing the decision, was incomplete or false.

5b) Articles 81 and 82 of the Treaty establishing the European Community (consolidated version: Official Journal of the European Communities C 325, 24/12/2002).

Concentration Article 9

(1) For the purpose of this Act, concentration means the process of economic combining of undertakings through:

- a) a merger or amalgamation of two or more separate undertakings; or
- b) acquisition of direct or indirect control by an undertaking or several undertakings over another undertaking or part of another undertaking or undertakings.

(2) For the purpose of this Act, a merger or amalgamation within the meaning of paragraph 1 (a) means a merger or amalgamation pursuant to special legislation, 6) as well as a merger or amalgamation whereby the undertakings concerned become economically combined, while retaining their legal independence, especially in the case of the existence of joint economic management.

(3) For the purpose of this Act, part of an undertaking within the meaning of paragraph 1 (b) means an organizational unit of that undertaking 7) or assets based on which turnover may be attained.

(4) Control within the meaning of paragraph 1 (b) means the ability to exercise a controlling influence on the activities of an undertaking, especially by means of:

- a) ownership rights or other rights to the undertaking or part thereof;
- b) rights, agreements or other facts allowing the exercising of a controlling influence on the composition, voting or decisions of the undertaking's bodies.

(5) Concentration within the meaning of paragraph 1 (b) shall also mean the establishment 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) Within the proceedings regarding concentration according to paragraph 5, which is subject to control by the Authority and is aimed at or may lead to coordination of competitive behavior of undertakings, the Authority shall assess such concentration according to Articles 4 and 6.

(7) Concentration shall not be deemed to have arisen where:

- a) banks, branches of foreign banks, other financial institutions or insurance companies, the normal activities of which include trading in securities on their own account or on the account of others, temporarily acquire securities with a view to reselling them, which enables them to acquire control over another undertaking or part thereof, if they do not exercise voting and other rights with a view to influencing the competitive behavior of that undertaking or if they exercise these voting rights only with a view to preparing for the sale of the entire undertaking or part thereof or the sale of securities, provided that this sale is effected within one year of the date of acquisition of the securities; based on an undertaking's request, the Authority shall issue a decision through which the one-year time limit may be extended if it is proven that the sale of securities was not possible within this time limit;
- b) temporary acquisition of control over another undertaking or part thereof ensues from special legislation. 8)

6) Article 69 (3) of the Commercial Code.

7) Article 7 of the Commercial Code.

8) For example, Articles 70 to 75 of the Commercial Code, Article 8 of Act No. 328/1991 Coll. on Bankruptcy and Settlement as amended.

Article 10

(1) Concentration shall be subject to control by the Authority if:

- a) the combined global turnover of the parties to the concentration is at least SKK 1,200,000,000 for the closed accounting period preceding the establishment of the concentration and at least two of the parties to the concentration attain a turnover of at least SKK 360,000,000 each in the Slovak Republic for the closed accounting period preceding the establishment of the concentration; or
- b) at least one of the parties to the concentration attains a total turnover of at least SKK 500,000,000 in the Slovak Republic for the closed accounting period preceding the establishment of the concentration and at least one other party to the concentration attains a total global turnover of at least SKK 1,200,000,000 for the closed accounting period preceding the establishment of the concentration.

(2) The combined turnover of a party to the concentration shall be a total of turnovers of:

- a) the party to the concentration;
- b) undertakings in which the party to the concentration directly or indirectly:
1. holds more than half of share capital;
 2. is entitled to exercise more than half of the voting rights;
 3. has the right to appoint more than half of the members of the undertaking's bodies; or
 4. has the right to manage the undertaking concerned;
- c) undertakings having the rights referred to in (b) in an undertaking of a party to the concentration;
- d) undertakings in which the undertakings referred to in (c) have the rights referred to in (b); and
- e) undertakings in which two or more undertakings referred to in (a) to (d) have joint rights referred to in (b).

(3) For the purpose of this Act, turnover means a total of revenues, yields or incomes from the sale of goods, to which financial assistance granted to the undertaking shall be added.

(4) Financial assistance granted to an undertaking as referred to in paragraph 3 means any financial aid granted by a provider, which concerns an activity performed by an undertaking and will be reflected in the price of its goods, and the undertaking is the recipient of the respective aid.

(5) For the purpose of this Act, a provider of financial assistance means a state authority, 9) municipality, 11) or other legal entity granting financial assistance pursuant to special legislation. 12)

(6) Combined turnover of an undertaking shall not include revenues, yields or incomes from the sale of goods between individual undertakings referred to in paragraph 2.

(7) If concentration arises via acquisition of direct or indirect control over another undertaking or part of one undertaking or several undertakings, only the turnover of the undertaking or the parts forming the subject of the

concentration shall be taken into account. Two or more concentrations that are not subject to control by the Authority pursuant to paragraph 1 and are established between the same undertakings within two years and are jointly subject to control pursuant to paragraph 1 shall be deemed to be one and the same concentration that arose on the day of the last concentration.

(8) If the parties to the concentration jointly have the rights referred to in paragraph 2 (b), the calculation of the combined turnover shall not include the turnover resulting from the sale of goods between the joint venture and each of the parties to the concentration or any other undertaking associated with any of them according to paragraph 2 (b) to (e). The turnover from the sale of goods between the joint venture and other undertakings shall be equally apportioned among the parties to the concentration.

(9) A concentration subject to control by the Authority within the meaning of paragraph 1 must be reported to the Authority within 30 working days following the date on which:

- a) an agreement is concluded;
- b) acceptance of a bid in a public tender is announced; 13)
- c) a state authority's decision is delivered to an undertaking; 14)
- d) the European Commission (hereinafter referred to as the "Commission") informs an undertaking that the Authority will deal with the matter; or
- e) another fact occurred based on which concentration has arisen.

The time limit shall begin on the date on which the first of the facts referred to in (a) to (c) or (e) occurred.

(10) An undertaking may ask the Authority to issue an opinion on the intention of a concentration. The Authority shall issue an opinion within 30 working days from the delivery date of the request. The issuance of an opinion 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; in the case of public tender, the notification shall be submitted by the selected bidder; in the case of a decision issued by a state authority on a merger or amalgamation of undertakings pursuant to special legislation, by the parties to the concentration jointly; in other cases the notification shall be submitted by the undertaking or undertakings that acquire control over another undertaking or part of another undertaking or undertakings.

(12) A notification referred to in paragraph 9 must contain the following information:

- a) basic information on the parties to the concentration;
- b) description of the concentration;
- c) information on the connection through capital and financial holding;
- d) information on the connection through personnel;
- e) information on affected markets;
- f) information concerning the possibility of entering the market;
- g) information on cooperation agreements;
- h) information on trade associations;
- i) general market information;
- j) information on cooperative effects of a joint venture;
- k) reasons for and effects of the concentration and their impact on competition;
- l) underlying documentation; and
- m) document confirming the payment of an administrative fee according to special legislation. 15)

(13) At the justified request of an undertaking announcing a concentration, the Authority may reduce the amount of information required according to paragraph 12. If the Authority ascertains during the proceedings that the reduced amount of information does not suffice for making a decision on the matter, it may ask the undertaking to complete this information. The time limit referred to in Article 11 shall not be in effect between delivery of the request for completion of the required information and the submission of this information.

(14) An undertaking may not exercise the rights and obligations resulting from a concentration before the decision on the concentration becomes legally valid.

(15) A ban pursuant to paragraph 14 shall not prejudice the right of a selected bidder in a public tender 16) to make their bid, provided that the acquirer does not exercise their voting right arising in connection with the implementation of the bid.

(16) At the request of an undertaking, the Authority shall issue a decision granting an exemption from the ban under paragraph 14 if there exist serious reasons for this. The Authority shall issue a decision on the granting of or non-granting of an exemption within 30 working days following the delivery of the request. This time limit shall begin on the day following the day of delivery of a complete notification of concentration at the earliest. When deciding on the exemption, the Authority shall also take into account the effects of suspension of the concentration on the parties to the concentration and third parties. An exemption may be granted subject to a condition in order to ensure effective competition.

(17) The provisions of paragraphs 13 to 16 shall not apply to trading in publicly marketable securities pursuant to special legislation 17), unless the buyer or the seller knew or could know that a concentration pursuant to Article 9 (1) had arisen.

9) For example, Act No. 575/2001 Coll. on Organization of Activities of the Government and Central State Administration Organizations, Act of the National Council of the Slovak Republic No. 254/1993 Coll. on Territorial Financial Authorities as amended, Act of the National Council of the Slovak Republic No. 222/1996 Coll. on Organization of Local State Administration and on Amendments and Supplements to Certain Laws as amended.

11) Act of the Slovak National Council No. 369/1990 Coll. Municipal Establishment as amended.

12) For example, Act No. 80/1997 Coll. on Export-Import Bank of the Slovak Republic as amended, Act No. 69/1998 Coll. on State Environment Fund as amended by Act No. 237/2000 Coll., Act of the National Council of the Slovak Republic No. 379/1996 Coll. on the Foreign Trade Promotion Fund as amended.

13) Articles 281 to 288 of the Commercial Code.

14) Article 14 of Act 111/1990 Coll. on State Enterprises as amended by Act of the National Council of the Slovak Republic No. 317/1996 Coll.

15) Item No. 212 of the Administrative Fees Tariff of Act of the National Council of the Slovak Republic No. 145/1995 Coll. on Administrative Fees as amended.

16) Articles 281 to 288 of the Commercial Code.

17) Articles 71 to 78 of Act No. 600/1992 Coll. on Securities as amended.
Articles 20 to 24 of Act No. 330/2000 Coll. on the Stock Exchange.

Article 11

The Authority shall issue a decision on the basis of notification of a concentration within 60 working days following the date of delivery of the notification. Prior to the expiration of the time limit for issuing a decision on concentration, the Authority chairperson may extend this time limit as appropriate and repeatedly in complicated cases, also repeatedly, by a total of 90 working days at a maximum. The time limit shall begin on the day following the date of delivery of a complete notification pursuant to Article 10 (12). If the Authority ascertains that the notification within the meaning of Article 10 (12) was incomplete, a new time limit shall begin on the day following the date of delivery to the Authority of a complete notification pursuant to Article 10 (12). The Authority is required to inform the party to the proceedings thereof in writing.

Article 12

(1) The Authority shall issue a decision approving a concentration if the concentration does not create or strengthen a dominant position resulting in significant barriers to effective competition in the relevant market.

(2) The Authority shall issue a decision approving a concentration pursuant to Article 9 (6) if the concentration complies with paragraph 1 and coordination of competitive behavior is not prohibited according to Article 4 (1).

(3) The Authority shall also issue a decision approving a concentration if the condition imposed in the decision ensures that the concentration complies with paragraph 1 or 2. In its decision, the Authority may impose on the parties to the proceedings an obligation related to that condition, especially in order to ensure the fulfillment of the imposed condition, the achievement of its purpose, or control its fulfillment.

(4) The Authority shall ask a party to the proceedings in writing to propose a condition and an obligation related to this condition according to paragraph 3 if the concentration raises concerns of non-compliance with paragraph 1 or 2, which the Authority shall explain in its request. The Authority shall not be bound by the proposed condition. The party to the proceedings is required to submit to the Authority within 30 working days of delivery of the request a written proposal for a condition for ensuring compliance of the concentration with paragraph 1 or 2 and an obligation related to this condition. The Authority shall not take into account any proposal submitted after the expiration of the time limit. In justified cases, the Authority may extend this time limit prior to its expiration at the request of the party to the proceedings. The time limit referred to in Article 11 shall not be in effect during the 30-day time limit. If the party to the proceedings describes the submitted proposal for the condition and the obligation related to this condition as final prior to the expiration of this time limit, the time limit referred to in Article 11 shall begin on the date of delivery of the final proposal.

(5) In a decision pursuant to paragraph 3, the Authority may decide that the parties to the proceedings must not exercise the rights and obligations resulting from the concentration until the imposed condition is fulfilled.

(6) The Authority shall prohibit a concentration if it creates or strengthens a dominant position resulting in significant barriers to effective competition in the relevant market.

(7) The Authority shall prohibit a concentration within the meaning of Article 9 (6) if the concentration creates or strengthens a dominant position resulting in significant barriers to effective competition in the relevant market or if coordination of competitive behavior contradicts the provisions of Article 4 (1).

(8) A decision referred to paragraphs 1 to 3 shall apply to competition restrictions that are directly related to a concentration and essential for implementing the concentration.

Simplified Proceedings for Assessment of Concentration Article 12a

Repealed by Act No. 204/2004 Coll.

Article 12b

Repealed by Act No. 204/2004 Coll.

Article 12c

Repealed by Act No. 204/2004 Coll.

Article 12d

Repealed by Act No. 204/2004 Coll.

Article 12e

Repealed by Act No. 204/2004 Coll.

Article 12f

Repealed by Act No. 204/2004 Coll.

Article 13

(1) The Authority shall reverse a decision according to Article 12 (3) on its own initiative and issue a decision prohibiting a concentration according to Article 12 (6) or (7) if the party to the proceedings fails to fulfill the condition imposed in the decision.

(2) The Authority shall modify a decision according to Article 12 (3) at the request of a party to the proceedings if:

- a) the situation in the relevant market has substantially changed and no longer justifies the fulfillment of the condition or the obligation related to the condition imposed on a party to the proceedings;
- b) prior to the expiration of the time limit set in the decision for the fulfillment of a condition or an obligation related to the condition, a party to the proceedings applies to extend this time limit because it is impossible to adhere to it for a valid reason.

(3) The Authority shall modify or reverse a decision on concentration on its own initiative if:

- a) information provided by an undertaking, which was decisive for issuing the decision, was incomplete or false; or
- b) the concentration has arisen in a way other than notified.

Article 13a

If the rights and obligations resulting from a concentration were exercised:

- a) prior to the issuance of a decision prohibiting the concentration according to Article 12 (6) or (7); or
- b) after the issuance of a legally valid decision prohibiting the concentration according to Article 12 (6) or (7), the Authority may impose on the undertaking the obligation to restore the level of competition that existed prior to the establishment of the concentration, especially an obligation to divide a company or transfer rights. The Authority may impose on the party to the proceedings another obligation aimed at ensuring the fulfillment of said obligation.

PART THREE THE AUTHORITY

Article 14

(1) The Authority is a central body of state administration of the Slovak Republic 18) for the protection and promotion of competition.

(2) The Authority shall exercise powers in the sphere of protection and promotion of competition entrusted to competition authorities pursuant to special legislation. 18a)

- (3) The seat of the Authority shall be located in Bratislava.
- (4) The Authority may establish permanent or temporary branch offices outside its seat.
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18) Article 21 (b) of Act No. 575/2001 Coll.

18a) For example, Council Regulation (EC) No. 1/2003, Commission Regulation (EC) No. 139/2004 of 20 January 2004 on the control of concentrations between undertakings (Official Journal of the European Communities L 024, 29/01/2004).

Chairperson of the Authority

Article 15

- (1) The Authority shall be headed by the Chairperson. In the case of his or her absence, the Authority Deputy Chairperson shall substitute for the Chairperson to the extent of his or her rights and duties.
- (2) The Chairperson shall be appointed and recalled by the President of the Slovak Republic on the basis of a proposal from the Government of the Slovak Republic. The Authority Chairperson's term in Authority shall be five years. 19) Any citizen who is eligible for being elected to the National Council of the Slovak Republic may be appointed Chairperson of the Authority.
- (3) The Deputy Chairperson shall be appointed and recalled by the Chairperson of the Authority.
- (4) The same person may be appointed Chairperson of the Authority for a maximum of two consecutive terms in office.
- (5) The performance of the post of Authority Chairperson shall be incompatible with the performance of office and activities pursuant to special legislation. 20)
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19) Article 22 (2) of Act No. 575/2001 Coll. as amended by Act No. 143/2002 Coll.

20) Constitutional Act of the National Council of the Slovak Republic No. 119/1995 Coll. on Prevention of Conflict of Interests in the Performance of Posts of Constitutional Officials and Senior Civil Servants.

Article 16

- (1) The performance of the office of Chairperson of the Authority shall end:
- a) at the end of their term in office;
 - b) by resignation from office;
 - c) by being recalled from office;
 - d) in the event of death.
- (2) The Chairperson of the Authority may resign from office by means of a written notification to the President of the Slovak Republic. His/her term in office will end upon the appointment of a new Chairperson of the Authority.
- (3) The President of the Slovak Republic shall recall the Chairperson of the Authority if:
- a) he/she has been sentenced on the basis of a legally valid court ruling for an intentional criminal act or crime of negligence directly related to the performance of office;
 - b) his/her legal capacity has been terminated on the basis of a legally valid court ruling;
 - c) he/she has begun to perform a post or activity incompatible with the position of Chairperson of the Authority within the meaning of Article 15 (5);
 - d) he/she has not performed office for a period exceeding six consecutive months due to his/her own fault or if his/her health condition prevents him/her from doing so.

Article 17

The Government of the Slovak Republic shall determine the salary of the Chairperson of the Authority pursuant to special legislation. 21)

21) Act No. 143/1992 Coll. Act No. 143/1992 Coll. on Salary and Compensation for Standby Work in Budget-Funded and Certain Other Organizations and Bodies as amended.

Council of the Authority Article 18

(1) A Council of the Authority (hereinafter referred to as the “Council”) shall be established. The Council shall decide on appeals and review decisions outside appellate proceedings. The Council shall also decide on the reopening of proceedings and on a prosecutor’s protest in the cases where the head of a central body of state administration decides pursuant to special legislation. 22) The Council shall consist of the Council Chairperson, Council Deputy Chairperson and five members of Council. The Chairman of the Authority is simultaneously the Council Chairperson. The Deputy Chairperson of the Authority is simultaneously the Council Deputy Chairperson.

(2) An employee of the Authority is not allowed to be a member of the Council.

(3) Council members shall be appointed and recalled by the Government of the Slovak Republic following a proposal from the Chairperson of the Authority.

(4) The term in office of Council members shall be five years. Council members shall be appointed in such a way that the term in office will end for a maximum of three of them during the course of one calendar year.

(5) If the performance of the post of a Council member ends before the end of their term in office, a new Council member may only be appointed for the remainder of the respective term in office.

22) Article 63 (1) and Article 69 (2) of Act No. 71/1967 Coll. on Administrative Proceedings (Rules of Administrative Procedure).

Article 19

(1) The Chairperson of the Authority shall propose to the Government of the Slovak Republic at least three candidates for each position of a Council member at least three months prior to the expiration of their term in office. The Government of the Slovak Republic shall appoint the Council members within two months of delivery of the list of candidates. The newly appointed Council members shall assume office on the day following the expiration date of the term in office of the previously appointed members of the Council.

(2) Any individual who is a national of the Slovak Republic, has a university degree, legal capacity and a clean criminal record may be appointed a Council member.

(3) At least two Council members must have a degree in law.

Article 20

(1) A session of the Council shall be convened and conducted by the Council Chairperson or by the Council Deputy Chairperson in the absence of the former.

(2) The Council has a quorum if the Council Chairperson or the Council Deputy Chairperson and at least four other Council members, or the Council Chairperson, the Council Deputy Chairperson and at least three other Council members are present. The adoption of a Council decision requires the consent of an absolute majority of the Council members present. In the event of a tied vote, the Council Chairperson or, in his/her absence, the Council Deputy Chairperson, shall have the casting vote.

(3) The Council shall make decisions by voting. The Council shall hold closed meetings.

(4) A written record on the Council's voting shall be kept, stating the view of a Council member, the Council Chairperson or the Council Deputy Chairperson if it differs from the adopted decision. The written record on the voting shall be subject to secrecy.

(5) Council decisions shall be signed by the Council Chairperson or, in his/her absence, by the Council Deputy Chairperson.

(6) A member of the Council shall be excluded from a hearing and decision-making on a matter if, in view of his/her relation to the matter, parties to the proceedings or their representatives, there may exist doubts about this member's impartiality or if he/she has participated in proceedings regarding the same matter in a different instance.

Article 21

(1) The performance of office of a Council member shall end:

- a) at the end of their term in office;
- b) by resignation from office;
- c) by being recalled from office;
- d) in the event of death.

(2) Resignation from the position of Council member shall be effective upon delivery of a written notification to the Prime Minister of the Slovak Republic. If a Council member has resigned from his/her position, he/she shall remain in his/her position until a new Council member is appointed.

(3) The Government of the Slovak Republic shall recall a Council member following a proposal from the Chairman of the Authority if:

- a) he/she has been sentenced on the basis of a legally valid court ruling for an intentional criminal act or crime of negligence directly related to the performance of office;
- b) his/her legal capacity has been terminated on the basis of a legally valid court ruling;
- c) he/she has not performed office for a period exceeding four consecutive months.

PART FOUR POWERS OF THE AUTHORITY

Article 22

(1) The Authority shall:

- a) conduct investigations in the relevant market;
- b) issue a decision that an undertaking's conduct or activity is prohibited pursuant to this Act or special legislation;
- 5b) decide on imposing the obligation to refrain from such conduct and the obligation to remedy the unlawful state

of affairs;

- c) issue a decision that this Act has been violated by a state administration authority during the performance of state administration, by a territorial self-administration authority during the performance of self-administration and transferred performance of state administration, and a special interest body during the transferred performance of state administration;
- d) proceed and decide on all matters regarding the protection of competition ensuing from the provisions of this Act or special legislation;18a)
- e) control the observance of decisions issued within the proceedings before the Authority;
- f) issue an opinion according to special legislation; 22a)
- g) ensure international relations in the area of protection of competition at the level of authorities having jurisdiction over this area;
- h) submit an application to a court for approving an inspection for the Commission for the performance of its activities pursuant to special legislation;1aa)
- i) submit an application to the court for approving an inspection for the performance of its activities according to paragraph 4;
- j) propose further measures for the protection and promotion of competition.

(2) In connection with the fulfillment of tasks pursuant to this Act and special legislation, 1aa) employees of the Authority and those entrusted with the fulfillment of tasks falling within the Authority's jurisdiction (hereinafter referred to as "Authority employees") shall have the right to request from undertakings, senior employees of an undertaking, statutory bodies of an undertaking or members of the statutory bodies of an undertaking, control bodies of an undertaking or members of the control bodies of an undertaking (hereafter referred to as "employees of an undertaking") information and documents necessary for the Authority's activities, especially accounting and trade documents or legal documents, regardless of the medium on which they are recorded, and make copies of and notes from these documents or request their officially certified translations into the Slovak language. They are also entitled to request an oral or written explanation and make an audio recording of an oral explanation. In order to obtain these documents and information, Authority employee shall have the right:

- a) to seal this information or documents or to seal the buildings and premises in which an inspection is carried out according to paragraph 2 for a specified time period and to the extent necessary for the Authority to conduct an investigation;
- b) to take away this information and these documents for the necessary time with the aim of making copies or gaining access to information if the Authority is unable, primarily for technical reasons, to gain access to information or make copies of documents during the performance of an inspection according to paragraph 3 or 4. The Authority shall make a record of this in the form of minutes.

(3) When fulfilling their tasks pursuant to this Act, Authority employees shall have the right, on the basis of written authorization by the Authority Chairperson, to enter any buildings, premises and means of transport of an undertaking, which are related to the activities or actions of the undertaking pursuant to Article 3 (2), in order to carry out an inspection.

(4) If there exists a reasonable suspicion that information or documents related to the activities or actions of an undertaking according to Article 3 (2), based on which a serious restriction of competition may be proven, are located in an undertaking's buildings, premises or means of transport other than those listed in paragraph 3, as well as in private buildings, private premises or private means of transport of the undertaking's employees, the Authority shall issue a decision on an inspection to be performed by Authority employees.

(5) The statement section of a decision of the Authority pursuant to paragraph 4 shall primarily contain the definition of the purpose of the inspection, specification of the buildings, premises or means of transport in which the inspection will be performed, the date and time period within which the inspection will be performed, and the specification of the persons who will perform the inspection, including their powers related to the performance of the inspection. In the explanatory part of the decision, the Authority shall also specify the facts giving grounds for a justified suspicion according to paragraph 4. An appeal may be lodged against a decision on the performance of an inspection, which, however, shall not have a suspensive effect.

(6) An inspection under paragraph 4 may only be performed on the basis of a court's approval of the inspection, which shall be issued following a proposal from the Authority according to special legislation. 22b) The Authority shall deliver the court's approval of the inspection to the person at whose premises the inspection will be performed at the beginning. If the person at whose premises the inspection is to be performed is not available, the Authority

shall leave the court's approval of the inspection, accompanied by a copy of the record of the inspection performed, with the post Office within 24 hours after the performance of the inspection.

(7) The Authority shall invite a custodian appointed by the court that has decided on the approval of an inspection to attend the inspection according to paragraph 4.

(8) Following an unsuccessful request for entry, Authority employees are entitled to enforce an entry into all buildings, premises and means of transport according to paragraph 3 or 4. During an inspection according to paragraph 3 or 4, Authority employees are entitled, following an unsuccessful request for information and documents according to paragraph 2, to inspect the buildings, premises, or transportation means and enforce access to information and documents by breaking down resistance or a created obstacle. The Authority is entitled to invite other persons able to ensure the obstacle is overcome. The Authority shall make a record of this in the form of minutes.

(9) Pursuant to special legislation, 22c) a police department is required, at the request of the Authority, to provide protection and cooperation to the Authority employees in the fulfillment of tasks according to this Act or, at the request of the Authority, also to employees of other competition authorities responsible for the implementation of the provisions of special legislation 5b) (hereinafter referred to as the "national competition authority") if they participate in an inspection according to paragraph 3 or 4, or to Commission employees and persons authorized by the Commission when fulfilling tasks pursuant to special legislation.1aa)

(10) The Authority is entitled to request from individuals and legal entities information and documents concerning an undertaking, as well as other information and documents necessary to the Authority's activities pursuant to this Act. These entities are required to provide such information and documents to the Authority without delay, unless this is contrary to special legislation. 23)

22a) For example, Act No. 59/1997 Coll. on Antidumping Protection Related to Import of Goods, Act No. 214/1997 Coll. on Protection Measures Related to Import, Act No. 226/1997 Coll. on Subsidies and Compensation Measures, Act of the National Council of the Slovak Republic No. 18/1996 Coll. on Prices as amended.

22b) Article 78a of the Code of Civil Procedure.

22c) Article 73 of Act of the National Council of the Slovak Republic No.171/1993 Coll. on the Police Corps as amended.

23) For example, Act No. 483/2001 Coll. on Banks and on Amendments and Supplements to Certain Laws as amended, Article 23 of Act of the Slovak National Council No. 511/1992 Coll. on Tax and Fee Administration and Changes in the System of Territorial Financial Authorities as amended.

Article 23

The Authority shall submit a report on its activities to the Government of the Slovak Republic on an annual basis and whenever the Government of the Slovak Republic so requests.

Article 24

(1) The Authority is required to publish a legally valid decision of the Authority, a notification of concentration and, if the nature of the matter does not exclude it, a notice on the commencement of proceedings regarding all other matters resulting from the provisions of this Act. In respect of this publication, the Authority shall take due account of preserving the undertakings' right to the protection of their business secrecy 24) and confidential information.

(2) Regarding the publishing of a notification of concentration, the Authority shall publish the names of the parties to the concentration, the character of the concentration pursuant to Article 9 (1), and the industry in which the concentration has been established.

(3) The publication obligation within the meaning of paragraph 1 shall be considered fulfilled if the publication is

made in the Commercial Bulletin and on the Authority's official website and legally valid decisions of the Authority are made available.

24) Article 17 of the Commercial Code.

PART FIVE PROCEEDINGS

Article 25

(1) Proceedings shall commence on the Authority's own initiative or if petitioned by a participant in the proceedings. Proceedings in the case of an agreement restricting competition and in the case of abuse of a dominant position shall always commence on the Authority's own initiative.

(2) The Authority may initiate the proceedings on its own initiative and on the basis of a written petition by an individual or a legal entity that is not an undertaking pursuant to this Act. On the basis of a request submitted by an individual or a legal entity filing a written petition, the Authority shall inform them in writing of further procedure regarding the matter within two months following the date of receipt of the request.

(3) Parties to the proceedings shall be:

- a) in the case of an agreement restricting competition, the parties to this agreement restricting competition;
- b) in the case of abuse of a dominant position, the undertaking whose activities or actions may constitute abuse of a dominant position;
- c) in the case of concentration within the meaning of Article 9 (1) (a); the undertakings subject to a merger or amalgamation;
- d) in the case of concentration within the meaning of Article 9 (1) (b), the undertaking or undertakings which acquire direct or indirect control over another undertaking or part of another undertaking or undertakings;
- e) in the case of a possible violation of the provisions of Article 39, the state administration authority, the territorial self-administration authority, or the special interest body;
- f) in the cases other than those specified in (a) to (e), those on whose rights, interests protected by law or obligations laid down by this Act a decision shall be made.

(4) If a party to the proceedings has a representative in the proceedings, the signatures of the authorized person and the authorizing person on a written power of attorney must be officially certified.

(5) During the course of the proceedings, the parties to the proceedings are required to immediately inform the Authority of any change relating to the subject matter of the proceedings.

(6) The Authority shall instruct the parties to the proceedings on their procedural rights and obligations, so that they do not suffer any harm in the proceedings as a result of their lack of legal knowledge; the Authority is not required to do so if a party to the proceedings is represented by an attorney or commercial lawyer.

(7) If a petition for the commencement of the proceedings contains any deficiencies, the Authority shall ask the party to the proceedings to remove the deficiencies within a specified time limit. If the deficiencies are not removed from the petition, the time limit for making a decision shall not be in effect. If the deficiencies are not removed from the petition within the specified time limit, the Authority shall proceed in accordance with Article 32 (1) (c). The Authority is required to inform the party to the proceedings in writing on the consequences of the deficiencies contained in the petition and the failure to remove them.

Article 26

Connection of Matters

- (1) In the interest of cost-effectiveness of the proceedings, the Authority may connect for common proceedings the matters with respect to which the proceedings have commenced and which relate to each other or concern the same parties.
- (2) If the Authority has connected matters for common proceedings, it shall issue a decision within the time limit pertaining to the proceedings that began earlier.
- (3) The Authority may exclude a matter for separate proceedings if a petition for the commencement of the proceedings contains matters that are not suitable for being connected or if the reasons for which the Authority has connected the matters cease to exist.
- (4) A decision on connection of matters and a decision on excluding a matter for separate proceedings may not be appealed.

Article 27

Third Parties

- (1) For the purpose of this Act, a third party shall be an individual or a legal entity that 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 matter of the proceedings and show interest in the matter, the Authority shall inform them in writing of the subject matter of the proceedings and set a date by which they may make their views heard.
- (3) If third parties request in writing that they want to participate in an oral hearing and show interest in the matter, the Authority may enable them to take part in the oral hearing and make their views heard.

Article 28

Business Secrecy and Confidential Information

- (1) The Authority is required to inform a party to the proceedings at the beginning of the proceedings that, during the proceedings, they may indicate which of the information or documents provided to the Authority they consider being subject to business secrecy or which of the information or documents they consider confidential. The party to the proceedings must explain in writing the confidentiality of information or documents or their designation as business secrets. The Authority may ask the party to the proceedings to provide a different wording of information or documents that does not contain business secrets or does not have a confidential character.
- (2) The Authority shall also protect information whose confidentiality it has been asked to maintain. Confidentiality of such information shall, however, constitute no obstacle to its disclosure if this is necessary for a decision and if a party to the proceedings does not provide any other wording of the information and documents that does not contain business secrets or is not confidential.

Article 29

Delivery

- (1) As a rule, the Authority shall deliver documents by post. However, the Authority may, depending on the circumstances, deliver a document through its own employee.

(2) Documents intended for authorities or legal entities shall be delivered to persons authorized to receive documents on behalf of these authorities or legal entities. If there are no such persons, a document to be opened only by addressee shall be delivered to a person authorized to act on behalf of the relevant authority or legal entity; other documents shall be delivered to any of their employees who is willing to receive the document.

(3) If a party to the proceedings has a representative with authorization for the entire proceedings, a document shall only be delivered to that representative. However, if the party to the proceedings must personally perform something within the proceedings, the document shall be delivered not only to the representative, but also to the party to the proceedings.

(4) Documents intended for an attorney may also be delivered to articulated clerks or other employees who work for the attorney and have been authorized by the attorney to receive mail; this shall also apply to delivery of documents intended for commercial lawyers, notaries, and bailiffs.

(5) The parties to the proceedings or their representatives are required to inform the Authority without undue delay of any change in their residence, registered office, the person authorized to receive documents, or any other similar fact important for proper delivery of documents.

(6) A document shall be considered delivered, even if the post returns it as undeliverable, if the addressee is not present at the delivery location and the Authority makes the delivery to the last known address announced to the Authority, the Commercial Register or the Trade Licensing Register as the registered office of the legal entity or, in the case of an individual, as his/her place of business or permanent or temporary residence. The date on which the document is returned to the Authority shall be considered the date of delivery.

(7) If delivery to a party to the proceedings is associated with difficulties or delays, or the party to the proceedings has his/her registered office abroad, the Authority may order this party to appoint a representative for receiving documents, to whom documents can be delivered with no difficulties or delays. If the party to the proceedings fails to do so, documents intended for this party shall be stored in the Authority with the effect of actual delivery; the Authority is required to inform the party to the proceedings thereof.

(8) If several parties to the proceedings file a joint petition for the commencement of the proceedings, the Authority may appoint for them a joint representative for delivery, unless they appoint such a representative themselves.

Article 30 **Time Limit for Issuing a Decision**

The Authority shall issue a decision within six months following the date on which the proceedings commenced. In complicated cases, the Authority Chairperson may allow, also repeatedly, an appropriate extension of the time limit for issuing a decision by a maximum of 24 months in total. If the Authority is unable to make a decision within six months, it is required to notify the party to the proceedings thereof and indicate the reasons. This time limit shall not apply to the issuance of a decision pursuant to Article 11.

Article 31

(1) The Authority may also issue a decision on suspension of the proceedings:

- a) if another national competition authority is already dealing with the same matter concerning a violation of the provisions of special legislation; 5b)
- b) in the case of concentration, until it is determined on the basis of special legislation 24a) who will deal with the matter.

(2) If the proceedings are suspended, the time limits according to this Act shall not be in effect, except for the time limit according to Article 38 (8), which shall begin on the date on which the violation occurred.

24a) Commission Regulation (EC) No. 139/2004.

Article 32

Stopping of 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 his/her petition for the commencement of the proceedings;
- c) a petitioner does not comply with the Authority's request to remove deficiencies from the petition within a specified time limit;
- d) another national competition authority is already dealing with or has decided on the same matter concerning a violation of the provisions of special legislation. 5b)

(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 party to the proceedings has withdrawn his/her appeal or petition for the reopening of the proceedings;
- c) the reason for proceedings has not been provided or ceased to exist;
- d) it has been established during the commenced proceedings that an undertaking is not a party to the proceedings while so far having been the only party to the proceedings;
- e) the Authority is already dealing with or has decided on the same matter;
- f) they involve a restriction of competition, whose effects are exclusively manifested in a foreign market, unless an international agreement published in the Collection of Laws of the Slovak Republic and binding on the Slovak Republic provides otherwise;
- g) it has not been proven within the proceedings that a party to the proceedings has violated the provisions of this Act;
- h) it has been established during the commenced proceedings that activities or other actions performed by undertakings abroad do not, and cannot, lead to a restriction of competition in the domestic market;
- i) the Commission is already dealing with or has decided on the same matter according to special legislation; 5b)
- j) the Commission is already dealing with or has decided on the same concentration.

(3) The Authority may also stop part of the proceedings in accordance with paragraphs 1 and 2.

(4) A decision on stopping the proceedings according to paragraph 2 (a) and b) shall only be indicated in the file.

Article 33

Call Before Issuing a Decision

Before a decision is issued on a matter, the Authority is required to call on the parties to the proceedings to express in oral or written form their views on the grounds for the decision and the method of establishing it or to propose an amendment thereto, as well as to inform them on the conclusions of the investigation at which the Authority has arrived on the basis of available information and documents.

Appeal

Article 34

(1) A decision issued within the first instance proceedings may be appealed within 15 days following the date of delivery of the decision.

(2) The provisions of Article 25 (3) to (7) and Articles 27 to 33 shall apply accordingly to appellate proceedings.

(3) A decision on stopping the proceedings according to Article 32 (2) (a), (b), (i) and (j) may not be appealed.

Article 35

(1) An appeal may only be waived with respect to the authority that has issued the decision in the first instance, only after the decision has been announced.

(2) If an appeal has not been decided on, it may be withdrawn. If a party to the proceedings withdraws his/her appeal, it may not be resubmitted.

(3) If a party to the proceedings waives an appeal or withdraws his/her appeal, the decision will enter into force on the date of delivery of the waiver or withdrawal of the appeal to the authority that has issued the decision in the first instance.

Article 35a

The provisions of Article 25 (3) to (7) and Articles 27 to 33 shall apply accordingly to the proceedings concerning the reopening of the proceedings and the review of a decision outside the appellate proceedings. The provisions of Article 25 (3) to (7), Articles 27 to 29, and Articles 31 to 33 shall apply accordingly to the proceedings concerning a prosecutor's protest.

Article 36

Execution of a Decision

The Authority's decision may be executed within five years after the expiration of the time limit set for the fulfillment of the imposed obligation.

Article 37

(1) Unless this Act provides otherwise, proceedings before the Authority shall be conducted in accordance with general legislation on administrative proceedings. 25)

(2) In respect of administrative fees, the Authority shall proceed according to special legislation. 26)

25) Act No. 71/1967 Coll.

26) Act of the National Council of the Slovak Republic No. 145/1995 Coll. as amended.

PART SIX

LIABILITY FOR ADMINISTRATIVE OFFENCES

Article 38

- (1) For the violation of the provisions of Article 4 (1), Article 8 (6), Article 10 (9), Article 25 (5) and Article 29 (5), the Authority shall impose on an undertaking a fine of up to 10% of its turnover pursuant to Article 10 (3) for the preceding closed accounting period and a fine of up to SKK 10,000,000 on an undertaking that attained a turnover of up to SKK 10,000 or attained no turnover, or on an undertaking whose turnover is not able to be calculated.
- (2) The Authority shall impose a fine pursuant to paragraph 1 on an undertaking that fails to fulfill a condition, an undertaking that violates an obligation or commitment imposed by a decision of the Authority, an undertaking that fails to fulfill a decision of the Authority, or an undertaking that has violated the prohibition to exercise the rights and obligations ensuing from a concentration, unless the Authority has granted an exemption pursuant to Article 10 (16).
- (3) For the violation of the prohibition pursuant to Article 39, the Authority shall impose a fine of up to SKK 2,000,000 on a state administration authority, territorial self-administration authority, or special interest body.
- (4) The preceding accounting period pursuant to paragraph 1 shall be the year preceding the year in which the Authority issues a decision or the year preceding that year if data for that year is not available.
- (5) The Authority may impose a fine of up to SKK 5,000,000 on an undertaking or legal entity that fails to fulfill the obligation to submit the requested documents or information to the Authority within the specified time limit, or submits false or incomplete documents or information, or does not allow their examination or entry according to Article 40.
- (6) The Authority may impose a fine of up to SKK 100,000 on an entrepreneur who fails to attend, without valid reasons, a hearing or otherwise interferes with the progress of the proceedings.
- (7) The Authority may repeatedly impose fines referred to in paragraphs 1 to 3 and 5.
- (8) The Authority may impose fines pursuant to paragraphs 1 to 3 and 5 within four years from the commencement of proceedings. However, the Authority may impose these fines within eight years from the day of the violation of the provisions of this Act and/or the provisions of special legislation 5b), the failure to fulfill a condition or the violation of an obligation or commitment imposed by a decision of the Authority; in the event of a continuing administrative offence or lasting administrative offence, the time limit shall begin on the date on which the violation last occurred.
- (9) If an undertaking fails to pay a fine within the specified time limit, it is required to pay a penalty of 0.1% of the outstanding amount of the imposed fine for each day it is overdue.
- (10) When imposing a fine, the Authority shall consider the gravity and duration of the violation of the provisions of this Act, violation of the provisions of special legislation 5b) or violation of a condition, obligation or commitment imposed by a decision of the Authority. When assessing the gravity of the violation, the Authority shall consider its character, actual impact on the market and, where appropriate, the size of the relevant market. In addition to these criteria, the Authority shall also consider other facts with respect to imposing a fine, especially a repeated violation by the same undertaking, an undertaking's refusal to cooperate with the Authority, an undertaking being in the position of a leader or instigator of a violation, gaining financial benefit as a result of a violation or failure to fulfill in practice an agreement restricting competition.
- (11) The Authority shall not impose a fine on an undertaking which was a party to an agreement restricting competition according to Article 4 (3) (a) to (c) or (f), for the purpose of which the parties carry out business activities at the same level of a production chain or distribution chain, and which, at the same time:
- a) was the first to provide, on its own initiative, decisive evidence to prove a violation of the prohibition pursuant to Article 4 or special legislation; 26a)
 - b) terminated its participation in an agreement restricting competition at the time when it provided evidence according to (a) at the latest;
 - c) did not force another undertaking to take part in an agreement restricting competition or was not the instigator of the conclusion of said agreement;
 - d) provided the Authority with all evidence available to it and cooperated with the Authority throughout the entire

investigation.

(12) The Authority shall impose a fine reduced by up to 50% of the amount of the fine that the Authority would otherwise impose on an undertaking that was a party to agreement restricting competition pursuant to Article 4 (3) (a) to (c) or (f), for the purpose of which the parties to said agreement carry out business activities at the same level of a production chain or distribution chain, if the undertaking fails to comply with any of the following conditions:

a) to provide, on its own initiative, significant evidence, which, in combination with information and documents already available to the Authority, enable the Authority to prove a violation of the prohibition pursuant to Article 4 or special legislation; 26a)

b) to terminate its participation in an agreement restricting competition at the time when it provided evidence according to (a) at the latest.

(13) Fines and penalties imposed shall be collected and enforced by the Authority. Collected fines and penalties shall form state budget income.

26a) Article 81 of the Treaty establishing the European Community.

PART SEVEN OTHER FORMS OF UNLAWFUL RESTRICTION OF COMPETITION

Article 39

State administration authorities during the performance of state administration, local self-administration authorities during the performance of self-administration and transferred performance of state administration, and special interest bodies during the transferred performance of state administration must not provide evident support giving advantage to certain undertakings or otherwise restrict competition.

PART EIGHT OBLIGATIONS OF UNDERTAKINGS AND MAINTAINING CONFIDENTIALITY

Article 40

Undertakings are required to submit to the Authority the requested information and documents, allow an examination of this information or these documents, cooperate with the Authority in their examination, and to allow employees of the Authority, employees of another national competition authority, and employees of and persons authorized by the Commission to enter all buildings, premises and means of transport of the undertakings. The Authority shall ask the undertakings to indicate the subject of business secrecy and their confidential information.

Article 41

(1) Information or documents obtained by the Authority may only be used for the purpose of the proceedings

according to this Act, unless special legislation provides otherwise.

(2) Authority employees are required to maintain confidentiality of information subject to business secrecy of an undertaking or designated as confidential by an undertaking, of which they become aware during the course of the proceedings, unless this Act or special legislation 27) provides otherwise.

(3) It is not considered a violation of the confidentiality obligation by Authority employees if information subject to the confidentiality obligation is provided to:

- a) a court for the purpose of civil proceedings;
- b) an authority involved in criminal proceedings for the purpose of criminal proceedings;
- c) the Police Corps Criminal Police Service and the Police Corps Finance Police Service for the purpose of fulfillment of tasks prescribed by special legislation; 28)
- d) the Prosecutor's Office.

27) Act No. 211/2000 Coll. on Free Access to Information and on Amendments and Supplements to Certain Laws (Act on Freedom of Information).

28) Article 17 of Act of the National Council of the Slovak Republic No. 171/1993 Coll. as amended.

PART NINE

CIVIL LAWSUITS RELATED TO UNLAWFUL RESTRICTION OF COMPETITION

Article 42

Consumers whose rights have been violated by unlawful restriction of competition may demand in court that the violating party refrain from this conduct and remedy the unlawful state of affairs. This right may also be claimed by a legal entity authorized to protect the interests of consumers.

PART TEN

COMMON, TRANSITIONAL AND FINAL PROVISIONS

Article 43

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

- a) the calculation of turnover pursuant to Article 10 (3); and
- b) the particulars of a notification pursuant to Article 10 (12).

Article 44

(1) Legal relations that arose before the effective date of this Act shall be assessed pursuant to previous legislation.

(2) Proceedings before the Authority that commenced prior to the effective date of this Act shall be completed pursuant to previous legislation.

- (3) The first chairperson of the Authority appointed pursuant to this Act shall submit to the Government of the Slovak Republic proposals for candidates for the posts of Council members within one month after his/her appointment. The Government of the Slovak Republic shall appoint the first Council members within one month following the date of delivery of the list of candidates.
- (4) Three members of the first Council shall be appointed for four years and two other members for three years.
- (5) The time limits that began prior to the effective date of this Act shall be assessed pursuant to previous legislation until they lapse.
- (6) The provisions of this Act shall apply to the imposition of fines for the violation of the provisions of this Act, which occurred prior to the effective date of this Act, if they are more favorable for the undertaking.
- (7) Decisions issued by the Authority, against which a lawsuit was filed with the Supreme Court of the Slovak Republic requesting a review of their legality prior to the effective date of this Act shall be reviewed pursuant to previous legislation.
- (8) Regarding a review of a decision issued in the first instance within the proceedings that commenced after the effective date of this Act on the basis of an appeal, a decision on the reopening of proceedings, a prosecutor's protest or a review of a decision outside the appellate proceedings, the Chairperson of the Authority shall decide pursuant to this Act on the basis of a proposal from a special commission until all members of the Council are appointed.

Article 44a

Transitional Provisions on Provisions Effective as of the Effective Date of the Treaty on the Slovak Republic's Accession to the European Union

- (1) Legal relations that arose prior to the effective date of the Treaty on the Slovak Republic's Accession to the European Union shall be governed by the provisions of this Act; the establishment of these legal relations shall be assessed pursuant to previous legislation.
- (2) Proceedings before the Authority that commenced prior to the effective date of this Act shall be completed pursuant to the provisions of this Act, unless this Act provides otherwise.
- (3) Procedural acts conducted within the proceedings regarding the assessment of activities and actions of undertakings according to Article 4 or 8 prior to the effective date of this Act shall also remain unchanged for the purpose of assessing the same activities and actions of undertakings within proceedings according to the provisions of special legislation. 5b)
- (4) An exemption from the prohibition of agreements restricting competition, granted to an undertaking on the basis of a decision issued by the Authority pursuant to previous legislation, shall remain effective until the expiration of the time period for which it has been granted. The Authority shall reverse a decision on its own initiative if it ascertains that an agreement restricting competition to which an exemption has been granted is contrary to special legislation 26a) or if the conditions decisive for issuing the decision have substantially changed.
- (5) Undertakings are required to ensure compliance of their agreements restricting competition with special legislation 5a) in accordance with Article 6 (4) within six months of the effective date of this Act.
- (6) The Authority shall issue a decision on stopping the proceedings that commenced prior to the effective date of this Act, in which it is requested that the Authority issue a decision that the prohibition of agreements restricting competition does not apply to an agreement restricting competition for the time period specified in the decision, as well as proceedings that commenced prior to the effective date of this Act, in which it is requested that the Authority issue a decision on whether the respective activities and actions constitute an agreement restricting competition. The Authority shall also issue a decision on stopping the proceedings regarding concentrations, which commenced prior to the effective date of this Act, if the respective concentration is not subject to control by the Authority according to Article 10 (1), as well as proceedings regarding a possible violation of the prohibition pursuant to Article 4 if the

prohibition pursuant to Article 6 (1) does not apply to an agreement restricting competition from the effective date of this Act.

(7) Simplified proceedings regarding the assessment of a concentration subject to control by the Authority according to Article 10 (1), which commenced prior to the effective date of this Act, shall be completed pursuant to previous legislation.

(8) If the Authority issued a legally valid decision approving a concentration, which was tied to a condition, prior to the effective date of this Act, and the undertaking fails to fulfill this condition after the effective date of this Act, the Authority shall proceed according to the provisions of this Act.

(9) If the Authority issued a legally valid decision prohibiting a concentration prior to the effective date of this Act and the prohibition to exercise the rights and obligations ensuing from this concentration was violated after the effective date of this Act, the Authority shall proceed according to the provisions of this Act.

(10) If the Authority issued a legally valid decision prohibiting a concentration according to Article 12 (6) or (7), a violation of the prohibition to exercise the rights and duties ensuing from the establishment of the concentration, which occurred prior to the effective date of this Act, shall be governed by previous legislation.

(11) The time limits that began prior to the effective date of this Act shall be assessed according to previous legislation until they lapse.

(12) The imposition of fines for the violation of the provisions of previous legislation, which occurred prior to the effective date of this Act, shall be governed by the provisions of previous legislation.

Article 45

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

Section II

Act of the Slovak National Council No. 347/1990 Coll. on Organization of Ministries and Other Central Bodies of State Administration 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., 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, new paragraph 3 in the following wording shall be inserted after paragraph 2:

"(3) The Antimonopoly Office of the Slovak Republic shall be headed by its Chairperson, who shall be appointed and recalled by the President of the Slovak Republic following a proposal from the Government of the Slovak Republic. The term in office of the Chairperson shall be five years. The Government of the Slovak Republic shall determine the salary of the Chairperson according to special legislation 1)."

2. Previous paragraph 3 shall be marked as paragraph 4 and the words "(b) to (i)" in the first sentence shall be replaced by the words "(b) to (d) and (f) to (j)".

Previous paragraphs 4 to 6 shall be marked as paragraphs 5 to 7.

Section III

This Act shall enter into force on 1 May 2001.

Act No. 465/2002 Coll. entered into force on 1 October 2002. Article I of this Act shall cease to be in force on the effective date of the Treaty on the Slovak Republic's Accession to the European Union.

Act 204/2004 Coll. shall enter into force on the effective date of the Treaty on the Slovak Republic's Accession to the European Union.

Rudolf Schuster, sign manual
Jozef Migaš, sign manual
Mikuláš Dzurinda, sign manual