

# PREVENTION OF THE RESTRICTION OF COMPETITION ACT

## PART I - GENERAL PROVISIONS

### **Article 1 (Subject of the Act)**

This Act shall regulate the prohibited forms of restriction of competition, protection of competition, and measures if restriction arises, the bodies responsible for protection of competition, their competencies, and the procedures of national bodies and parties with respect to restriction of competition.

### **Article 2 (Applicability of the Act)**

**(1)** This Act shall apply to all legal and natural persons performing economic activities, irrespective of their legal status and ownership affiliation (hereinafter referred to as: undertakings).

**(2)** Associations of undertakings which do not directly perform an economic activity but have or may have an influence on the behaviour of undertakings in the market shall also be deemed to be undertakings within the meaning of the first paragraph.

**(3)** Any activity performed on the market for payment shall be deemed to be an economic activity.

**(4)** This Act shall also apply to public undertakings and other public law legal persons performing economic activities unless otherwise provided by law.

**(5)** For the purposes of this Act, controlled undertakings shall be deemed to be undertakings in which other undertakings have directly or indirectly:

- more than half of capital or business interest; or
- more than half of voting rights; or
- the right to appoint more than half of a supervisory or management board members, or of bodies representing an undertaking pursuant to the law; or
- the right to manage the undertaking's business operations.

**(6)** For the purposes of this Act, controlling undertakings shall be deemed to be undertakings having the interests in or influence on other undertakings referred to in the fifth paragraph.

### **Article 3 (Agreements, decisions and concerted practices)**

Unless otherwise explicitly provided by this Act or unless other meaning arises from the provisions of this Act, the provisions in respect of the agreements between undertakings shall also apply to the decisions by association of undertakings, and to the concerted practices.

### **Article 4 (Office for Protection of Competition)**

For the carrying-out of tasks in accordance with this Act, the Office for Protection of Competition (hereinafter referred to as: Office) shall be set up.

## **PART II - RESTRICTION OF COMPETITION BY AGREEMENTS**

### **Article 5 (Prohibition of restrictive agreements)**

**(1)** Agreements between undertakings regarding business conditions in the market which have as their object or effect the prevention, restriction or distortion of competition in the Republic of Slovenia shall be prohibited and shall be null and void.

**(2)** The prohibition shall apply in particular to agreements which:

- directly or indirectly fix purchase or selling prices, or other trading conditions;
- limit or control production, markets, technical development, or investment;
- apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of their contracts;
- share market or sources of supply.

**(3)** The first paragraph shall, however, be declared inapplicable if these agreements contribute to improving production or distribution of goods, or to promoting technical and economic progress, while allowing consumers a fair share of the resulting benefit.

However, these agreements, decisions or concerted practices may not:

- impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives; and
- afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

### **Article 6 (Restrictions of minor importance)**

**(1)** The first paragraph of Article 5 shall not apply to agreements of minor importance.

**(2)** Agreements between undertakings whose aggregate market share of the relevant products or services, including the products and services of both controlled and controlling undertakings, does not exceed 10 per cent threshold where the agreement is made between undertakings operating at the same level of production or trading (»horizontal agreements«), or 15 per cent threshold where the agreement is made between undertakings operating at different levels of production or trading (»vertical agreements«) shall be deemed to be agreements within the meaning of the preceding paragraph. In the case of mixed horizontal-vertical agreements or where it is difficult to determine whether an agreement is horizontal or vertical, the 10 per cent threshold shall be applicable.

~~**(3)** The first paragraph shall also apply if the market share of undertakings has increased by no more than ten per cent over the last two business years.~~

**(3)** Agreements shall not be deemed to be agreements of minor importance where the competition in respect of the relevant product is restricted due to market circumstances, and in particular due to equal or similar agreements made between other undertakings.

**(4)** Even where the aggregate market share of the relevant product or service, including the products or services of controlled and controlling undertakings, does not exceed the thresholds referred to in the second paragraph of this article, the first paragraph of this article shall not apply to:

- a) horizontal agreements which have as their object to:
  - fix prices or restricting production or sales; or
  - share markets or sources of supply;
- b) vertical agreements which have as their object to:
  - fix retail prices; or
  - grant territorial protection to the participating undertakings or to third persons.

**Article 7**  
**(Individual exemptions)**

~~(1) Upon application by one or more participating undertakings the Office may decide that an agreement falls within the third paragraph of Article 5 and that therefore it shall not be prohibited and declared null and void (an individual exemption).~~

~~(2) In the decision pursuant to the first paragraph the Office shall specify the date of the entry into force of an exemption, its duration and the conditions for an individual exemption, as well as the possible obligations imposed on the undertakings.~~

~~(3) If the requirements of the third paragraph of Article 5 are still satisfied after the expiry of the time limit specified in the decision, the Office may upon the application of the undertaking extend the validity of the exemption. The Office may determine the same or different conditions, obligations, and time limit as those from preceding decision.~~

**Article 8**  
**(Negative clearance)**

~~Upon application by an undertaking, several of undertakings, or an association of undertakings, the Office may confirm that, on the basis of the facts in its possession, the first paragraph of Article 5 has not been violated in respect of the relevant agreement (negative clearance).~~

**Article 9**  
**(Block exemptions)**

**(1)** The Government shall specify by decree the categories of agreements referred to in the first paragraph of Article 5 meeting the conditions from the third paragraph of Article 5.

**(2)** The decree referred to in the preceding paragraph must specify the categories of agreements to which it shall apply, and in particular:

- the restrictions or contractual provisions which may or may not be contained in the agreement;
- the contractual provisions which must be contained in the agreement;
- other conditions which must be fulfilled.

**(3)** The decree shall regulate in particular the following categories of contracts:

- licensing contracts;
- contracts on the use of other industrial property rights;
- know-how contracts;
- other contracts on the transfer of technology;
- research and development contracts;
- specialisation contracts;
- distribution contracts;
- franchising contracts;
- exclusive purchasing contracts;
- joint venture contracts.

**(4)** Contracts fulfilling the conditions determined in the decree on block exemptions shall not be notified in order to be granted a decision on an individual exemption.

**(5)** If the effects of an individual agreement are incompatible with the provisions of the third paragraph of Article 5, the Office may use the procedure specified in part VI of this Act to eliminate the benefit of a block exemption.

## **PART III - ABUSE OF DOMINANT POSITION**

### **Article 10 (Prohibition of the abuse of a dominant position)**

- (1) The abuse of a dominant position in the market shall be prohibited.
- (2) A dominant position in the market shall be deemed to be a position where with respect to relevant goods or services an undertaking either has no competitors or the existing competition is insignificant, or it has a substantially better position vis-a-vis competitors in terms of market share, financing possibilities, possibilities for purchase or sale, or when an undertaking has a substantially better position with regard to facts which impede other undertakings upon their entry into the market.
- (3) An undertaking shall be deemed to have a dominant position on the market if its share of purchasing or selling goods or services in the Republic of Slovenia exceeds 40 per cent threshold.
- (4) Two or more undertakings shall be deemed to have a dominant position on the market if no significant competition exists between them, and if their aggregate share of purchasing or selling goods or services in the Republic of Slovenia exceeds 60 per cent threshold.
- (5) Such abuse of dominant position may, in particular, consist in:
- directly or indirectly imposing unfair purchase or selling prices, or other unfair trading conditions;
  - unjustifiably increasing or reducing prices;
  - limiting production, markets, or technical development;
  - applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
  - making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of their contracts.
- ~~(6) An undertaking may request from the Office a negative clearance confirming that it has not violated the competition rules applying to the prohibition of abuse of a dominant position.~~

## **PART IV - CONCENTRATION OF UNDERTAKINGS**

### **Article 11 (Prohibited concentrations)**

- (1) Concentrations which strengthen the power of one or more undertakings, individually or jointly, as a result of which effective competition on the relevant market would be significantly impeded or excluded, shall be prohibited.
- (2) A concentration of undertakings shall be deemed to arise when:
- two or more previously independent undertakings merge; or
  - one or more persons already controlling at least one undertaking, or one or more undertakings acquire, whether by purchase of securities or assets, by contract or by any other means, direct or indirect control of the whole or parts of one or more other undertakings; or
  - two or more undertakings create a joint venture performing on a lasting basis all the functions of an autonomous economic entity.
- (3) For the purposes of this Act, control shall be constituted by rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by:

- ownership of the entire capital or of a capital interest;
  - ownership or the right to use all or part of the assets of an undertaking;
  - right or contract which confers decisive influence on the voting or decisions of the organs of an undertaking.
- (4)** Control is acquired by persons or undertakings:
- which are holders of the rights or entitled to rights under the contracts and transactions referred to in the preceding paragraph; or
  - while not being holders of such rights or entitled to rights under such contracts, have the power to exercise the rights deriving therefrom.
- (5)** A concentration shall not be deemed to arise where:
- banks, savings banks, or other financial organisations or insurance undertakings, the normal activities of which include transactions and dealing in securities, hold on a temporary basis securities which they have acquired in an undertaking with a view to reselling them, provided that the disposal of those securities takes place within one year of the date of acquisition, and provided that they do not exercise voting rights in respect of those securities with a view to determining the competitive conduct of that undertaking on the market;
  - investment management undertakings acquire business interest in undertakings, provided that they exercise the acquired rights only with a view to preserving the full investment value and provided that they do not exercise influence on the competitive conduct of the undertaking.

## **Article 12**

### **(Prior notification of concentration)**

- (1)** A concentration must be notified to the Office by the participants in the transaction:
- if the combined aggregate annual turnover of all the undertakings concerned, including affiliated undertakings, is more than 8 billion tolar before tax in the Slovenian market in each of the last two years; or
  - if all the undertakings participating in the transaction, including affiliated undertakings, jointly achieve more than 40 per cent of sales, purchases, or other transactions in a substantial part of the Slovenian market, with goods or services which are the subject of the transaction, or with their substitutes.
- (2)** A concentration must be notified by the participants to the Office not more than one week of the conclusion of the agreement or the announcement of the public bid, or acquisition of a controlling interest. That week shall begin when the first of those events occurs.
- (3)** A concentration must always be notified by those acquiring control of another undertaking within the meaning of the provisions of Article 11 of this Act. The notification may be effected jointly.
- (4)** Notwithstanding the first paragraph, the Office shall be notified of a public take-over bid in accordance with the provisions of the act regulating take-overs, although the planned concentration does not fulfil one or more conditions referred to in the first paragraph.
- (5)** The Bank of Slovenia shall participate in the procedures applying to concentrations of banks, savings banks, and other financial organisations, and the Ministry of Finance shall participate in the procedures applying to concentrations of insurance undertakings.

## **Article 13**

### **(Appraisal of concentrations)**

- (1)** The Office shall appraise the concentrations within the meaning of this Act primarily with a view to establishing whether or not it exists a threat of creating or strengthening of a dominant position as a result of which effective competition could be excluded or significantly impeded. The threat shall be appraised in view of competition parameters, and in particular in view of:

- the choice available to suppliers and users;
  - the market positions of affected undertakings;
  - the access to sources of supply and to the market itself;
  - the structure of market shares;
  - the competitive position on the market;
  - the barriers to entry in the market for competitive undertakings;
  - the financial capability of affected undertakings;
  - the level of international competitiveness of the undertakings under appraisal;
  - increase in supply and demand of goods and services covered by the concentration.
- (2) On the basis of the appraisal of the elements referred to in the first paragraph, the Office shall issue the following decisions declaring:
- the compatibility of the concentration with competition rules (approval); or
  - the approval of the concentration provided that the undertakings concerned comply with the conditions imposed on them; or
  - the incompatibility of the concentration with competition rules.
- (3) The concentration shall not be put into effect until the issuing of the decision under the third paragraph or the order under the fourth paragraph of Article 38.

## **PART V - OFFICE FOR PROTECTION OF COMPETITION**

### **Article 14 (Organisation of the Office)**

- (1) The Office shall be independent and autonomous in the exercising its tasks.
- (2) The Office shall be managed by its Director, who shall also be responsible for the activity carried out by the Office.
- (3) The Director of the Office shall issue acts under the Office's competence.

### **Article 15 (Tasks and competencies of the Office)**

- (1) The Office shall exercise supervision of the application of the provisions of this Act, monitor and analyse the conditions on the market to the extent necessary for the development of fair and free competition, conduct procedures and issue decisions in accordance with this Act, and submit its opinions to the National Assembly and the Government on general issues under its competence.
- (2) The Office shall be responsible to conduct, in accordance with the 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 (OJ L 1, of 4 January 2003, p.1), procedures on violations of Articles 81 and 82 of the Treaty establishing the European Community.
- (3) Unless otherwise stipulated by the Regulation referred to in the preceding paragraph, the Office shall, for procedures deciding on the violations of Articles 81 and 81 of the Treaty, apply the provisions of this Act and the Act regulating general administrative procedures, unless otherwise stipulated by this Act.

### **Article 16 (Consultative Committee)**

- (1) The Consultative Committee, which shall be appointed by the Government at the proposal by the Director of the Office for a period of four years, shall be established within the Office (hereinafter referred to as: Committee). The members of the Committee may be re-elected.

(2) The Government shall appoint the members of the Committee from among representatives of economic branches and from among economic and legal experts in the area of competition.

(3) The Committee shall be headed by its president, who shall be appointed by the Committee from among its members.

(4) The Committee shall, at its own initiative or at the initiative by the Director of the Office, deal with general issues under the competence of the Office, and shall submit its standpoints to the Director of the Office.

(5) The members of the Committee shall be obliged to protect the official confidentiality of the Office and the business secrets of undertakings.

## **PART VI - PROCEDURE OF DECISION-MAKING BY THE OFFICE**

### **Chapter 1: General provisions on procedure before the Office**

#### **Article 17 (Supervision)**

(1) The Office shall exercise supervision of the application of the provisions of this Act.

(2) In exercising the supervision, the Office may request from the subject under supervision reports and information on all issues relevant for the appraisal whether or not the subject of supervision is acting in accordance with the provisions of this Act.

(3) The reports and information referred to in the second paragraph may also be requested by the Office from the members of the management or supervisory boards of the subject of supervision, as well as from the persons employed at the subject of supervision.

(4) The Office may request from the persons referred to in the third paragraph, within a time limit not shorter than three days, to draw up a written report on the issues referred to in the second paragraph, or invite them to give an oral statement.

#### **Article 18 (Applicability of the provisions regulating procedure)**

(1) The Office shall decide on individual cases from its area of competence under this Act in accordance with the procedure set out in this Act.

(2) Unless otherwise determined by this Act, the provisions of the act regulating the general administrative procedure shall apply to the procedure of decision-making by the Office.

(3) An appeal shall not be possible to be filed against acts issued by the Office in accordance with the preceding paragraph.

#### **Article 19 (Adversarial principle)**

(1) A person against whom procedure is initiated shall have the right to put forward facts and evidence in the procedure, and to express his legal opinions, reply to statements and proposals by other participants in the procedure, as well as to the facts and evidence which the Office takes into consideration ex officio.

(2) The decision by the Office may not be based on the facts and evidence in respect of which the person against whom the procedure has been initiated has not been given the possibility to reply.

**Article 20**  
**(Service of process)**

- (1) If a document cannot be served on the subject of the entry into the court register or the person to be entered into the register at the address specified in the register, service of process shall be carried out in such a way as to affix the writing on the notice board of the Office, while a notification of the method of service of process shall be left at the person's address.
- (2) Service of process shall be deemed to be completed after eight days of the affixation of the writing on the notice board.
- (3) The addressee must be notified of the consequences referred to in the second paragraph in the notification of service of process.

**Article 21**  
**(Initiation of procedure)**

- (1) The procedure before the Office shall be initiated with an order on the commencement of procedure.
- (2) An order on the commencement of procedure shall be issued by the Office ~~on the basis of the application referred to in Articles 7 and 8, and the sixth paragraph of Article 10 of this Act,~~ ex officio or at the request of a party.

**Article 22**  
**(Commencement of procedure on the basis of the application referred to in Articles 7 and 8, and the sixth paragraph of Article 10)**

- ~~(1) On the basis of the application referred to in Articles 7 and 8, and the sixth paragraph of Article 10, the Office must issue an order on the commencement of procedure within 8 days of the submission of the complete application.~~
- ~~(2) If the Office fails to issue a decision within 60 days of the publication of the summary of the order on the commencement of procedure in the Official Gazette, it shall be deemed that the notified agreement referred to in the first paragraph of Article 5 is not in contravention with the provisions of this Act.~~
- ~~(3) In particularly complex cases the Office may issue an order extending the time limit referred to in the preceding paragraph, by a maximum of 30 days. The extension must be reasoned in the explanation to the order. The order on extension shall be served on all participants in the procedure. An administrative dispute shall not be possible against the order on extension.~~
- ~~(4) If the Office fails to issue a decision, a party may initiate an administrative dispute within 8 days of the day it learnt that the decision has not been issued, but no later than within 30 days of the expiry of the time limits referred to in the second respectively third paragraph.~~

**Article 23**  
**(Commencement of procedure ex officio and at the request of a party)**

- (1) The Office shall initiate procedure ex officio when it learns about circumstances from which a probability arises that the provisions of this Act have been violated, or at the request of a party.
- (2) The Office must initiate procedure at the request of a party when this party submits an application in which it has demonstrated its legal interest for carrying out procedure, and if a probability arises from its application that the violation referred to in the preceding paragraph might have occurred. If the application does not fulfil the conditions referred to in the preceding paragraphs, the Office shall issue an order to dismiss the application.



**(3)** If the Office does not issue an order on the commencement of procedure within 30 days of the submission of a request by a party, it shall be deemed that an order on dismissal of the request has been issued.

**Article 24**  
**(Order on the commencement of procedure)**

**(1)** The order on the commencement of procedure must contain:

- a detailed description of the action, practice or circumstances which underlie the initiation of the procedure;
- an allegation of the provisions of the Act for which a probability has been demonstrated that they might have been violated;
- an allegation of documents and other evidence on the basis of which the Office has determined that there is a probability that the provisions of this Act might have been violated; and
- an explanation to the decision on the commencement of procedure.

**(2)** An administrative dispute shall not be possible against the order.

**Article 25**  
**(Publication of the order on the commencement of procedure)**

**(1)** A summary of the order on the commencement of procedure shall be published in the Official Gazette of the Republic of Slovenia unless the Director of the Office determines that this would be in contravention with the interests of the investigation.

**(2)** The summary of the order must contain:

- an allegation of the subjects to which the order applies;
- an allegation of the reason underlying the commencement of procedure, and of the provisions of this Act which are a basis for commencement; and
- an invitation to the natural and legal persons having a legal interest in participating in the procedure to apply for participation within 30 days of publication, and to send to the Office their written opinions on the procedure, and the documents which might be important for adopting a decision without formally requesting for the status of a participant in the procedure.

**Article 26**  
**(Applying for participation in the procedure)**

**(1)** On the basis of the summary of the order, all natural or legal persons demonstrating a legal interest may apply for participation in the procedure within 30 days of publication in the Official Gazette of the Republic of Slovenia.

**(2)** The application referred to in the preceding paragraph must contain statements and evidence which demonstrate the applicant's legal interest in participating in the procedure.

**(3)** If an applicant fails to demonstrate his legal interest, or if the application is belated, or if it is incomplete, the Office shall issue an order to dismiss the application.

**Article 27**  
**(Investigative procedure)**

**(1)** Investigative action shall be carried out by a person employed at the Office on the basis of a written authorisation issued by the Director of the Office.

**(2)** The undertaking against which procedure has been initiated must at the request of the authorised person of the Office provide this person with access for the purpose of carrying out investigative action at the undertaking's registered office and in other premises in which the undertaking itself or other authorised undertakings carry out activities and business operations from which a violation of this Act might arise.

**(3)** The undertaking against which procedure has been initiated must enable the authorised person of the Office to examine the undertaking's business books, business documentation, and administrative and business records to the extent required for identifying all facts relevant for the issuing a decision within the procedure. In the carrying-out of investigative action the authorised person of the Office may use photocopying means and computer equipment available at the undertaking against which procedure has been initiated to make copies and computer records of the aforementioned documents. The costs incurred by this shall be deemed to be procedure costs. Letters, notifications and other methods of communication related to the procedure between the undertaking against which procedure has been initiated and its legal representative shall be excluded from the investigative action.

**(4)** The undertaking against which procedure has been initiated must at the request of the Office submit computer records or copies of its business books, business documentation, and administrative and business records.

**(5)** The authorised person of the Office may request from the members of the management board, supervisory board, proxies, and any other person employed at the undertaking against which procedure has been initiated to give an oral or written explanation on the circumstances with respect to the investigative action. When a written explanation is requested, the authorised person shall specify a deadline for the preparation of the written explanation.

**(6)** The investigative action referred to in the second and third paragraphs shall be carried out by the Office between 8 a.m. and 6 p.m. The Office must carry out its investigative action in such a way as to disturb the undertaking's operations to the smallest extent possible.

**(7)** When the business documentation which could be relevant for the Office to adopt its decision in the procedure in accordance with this Act is seized within criminal or other judicial procedure during house search or in any other method, the Office may request from the court a copy of the documentation, unless the court decides that this may be in contravention with the interests of the criminal procedure.

#### **Article 28** **(Investigative action against third persons)**

**(1)** If the Office has a well-founded reason to believe that a certain person is in possession of information or data necessary for the issuing of the decision, it may propose to the misdemeanours judge to approve a personal body search, or it may apply to obtain a warrant for the search of residential or business premises from the competent investigative judge.

#### **Article 29** **(Order on investigative action)**

**(1)** The order on investigative action in an undertaking against which procedure has been initiated shall be issued by the Office. The order must contain:

- the day and exact time when the investigative action is to commence;
- the subject and purpose of the investigative action;
- the anticipated method of conducting the investigative action;
- the authorised person to conduct the investigative action; and
- legal instructions on the consequences of the refusal to co-operate, or of the obstruction of the investigative action.

**(2)** The order must be served on the undertaking against which procedure has been initiated within minimum of eight days prior to of the commencement of the investigative action referred to in the order.

**(3)** Notwithstanding the provision of the preceding paragraph, the authorised person may service the order on the commencement of procedure and the order on investigative

action as late as at the commencement of the investigative action if otherwise the purpose of the investigative action could not be achieved.

(4) In the case referred to in the fourth paragraph of Article 27, the order must comprise a specification of business books, business documentation, and administrative or business records, which are to be submitted in the form of computer records or copies, as well as the deadline for submission, which may not be less than three days.

#### **Article 30**

##### **(Sanctions applying to the obstruction of procedure or the refusal to co-operate)**

(1) If an undertaking against which procedure has been initiated unjustifiably supplies to the Office incorrect data, if it refuses to submit to the investigative procedure, if it in any other way obstructs the investigation, if it fails to submit the required documents by the specified deadline, or if an individual person obliged to give an oral explanation fails to do so, the Office may by order impose on the offender a monetary fine of from SIT 500,000 to SIT 1,000,000.

(2) If the undertaking referred to in the preceding paragraph continues to obstruct the procedure or to refuse to co-operate despite the adjudicated fine, the Office may by order impose on the offender the monetary fine referred to in the preceding paragraph on a weekly basis.

#### **Article 31**

##### **(Record on investigative action)**

(1) After the investigation is completed, the Office shall compile a record, which must contain the allegation of the documents examined, and the statements obtained, as well as its own findings with respect to the facts and evidence relevant to the procedure.

(2) A copy of the record shall be served on the undertaking against which procedure has been initiated.

(3) The undertaking against which procedure has been initiated may reply to the findings by the Office specified in the record within 15 days.

(4) The undertaking's reply must specify all the facts and evidence relevant to decision making on the subject. If a person refers to evidence in the form of documents, he must submit these documents if he is in possession of them.

#### **Article 32**

##### **(Confidentiality of data)**

(1) All information or data on the undertaking against which procedure has been initiated acquired by the Office during the investigative procedure shall be confidential.

(2) In the publication of the information in accordance with this Act, the Office must protect the confidentiality of data, and may publish only the data which is indispensable for achieving the purpose of the publication.

(3) All the officials of the Office must keep the information and data referred to in the preceding paragraph confidential, and shall be materially and criminally liable for disclosure.

#### **Article 33**

##### **(Decision making)**

The Office shall decide within the procedure without an oral trial, unless it determines that an oral trial needs to be conducted ~~or if so required by a party in the procedure.~~

**Article 33a**  
**(Proposed commitments)**

(1) In the inquiry procedure, a party against whom the Office is conducting proceedings may propose commitments binding it to eliminate the situation from which the alleged existence of the violation of Articles 81 or 82 of the Treaty derive.

(2) The commitments referred to in the preceding paragraph shall be decided upon by the Office by a decision, which shall also decide on the suspension of the procedure until the fulfilment of commitments or until the expiry of the deadline determined for their fulfilment.

**Article 34**  
**(Decision)**

(1) After the investigative procedure is completed, the Office shall issue a decision in accordance with the provisions of Articles 5, 7, 8 and 10 if all conditions for this are fulfilled.

(2) If the Office issues a decision on the established existence of a violation, it shall require, with the same decision, the elimination of the violation or impose measures eliminating the effects of the violation.

(3) The decision shall be issued in writing and shall be signed by the Director of the Office.

(4) The Office shall issue the decision within the time limits prescribed in this Act.

**Article 35**  
**(Service of process and publication of the decision)**

(1) The decision shall be served on all participants in the procedure. If the decision contains data of the undertaking against which procedure has been initiated on business secrecy, this data shall be deleted from the explanation of the decision served on the other participants in the procedure.

(2) The operative part of the decision shall be published in the Official Gazette of the Republic of Slovenia.

**Chapter 2: Procedure on concentrations**

**Article 36**  
**(Application of general rules of procedure)**

The general rules of the procedure shall apply to procedure on concentration unless otherwise determined by this Act.

**Article 37**  
**(Content and form of notification)**

(1) The notifying party must submit to the Office the following filled in on a special application form in accordance with Article 12:

- a copy of the document or the draft documents bringing about the planned concentration;
- a list of the members of the management board, major shareholders or interest holders in the undertakings which have participated or are planning to participate in the concentration;
- the audited accounting statements of the participants in the concentration for a minimum of the preceding three tax years; in the event that a participant is not obliged to audited accounting statements, regular accounting statements are to be submitted;
- a report on any form of participation in a concentration of undertakings in Slovenia in the last three years;

- a list of controlled undertakings and subsidiaries;
- a list of controlling undertakings;
- data on the market shares of the participants in the transaction;
- data on the expected economic consequences of the concentration.

(2) The Government shall determine by decree the content of the application form and on the required elements of notification.

### **Article 38 (Examination of the notification and initiation of procedure)**

(1) The Office must examine the received notification as soon as it is received.

(2) If the Office finds that the concentration notified does not fall within the scope of the provisions of this Act, it shall record that finding by means of a special decision.

(3) If the Office finds that the concentration notified, although falling within the scope of the provisions of this Act, does not raise serious doubts as to its compatibility with competition rules, it shall issue a decision with which it shall:

- decide not to oppose it, and
- declare that it is compatible with competition rules.

(4) If the Office finds that the concentration notified falls within the scope of the provisions of this Act and raises serious doubts as to its compatibility with competition rules, it shall issue an order to commence the procedure.

(5) The Office shall immediately serve the decisions referred to in the second and third paragraphs on the participants.

(6) The Office must issue the decisions referred to in the second and third paragraphs and the order from the fourth paragraph of this Article within 30 days of the day of notification.

### **Article 39 (Publication of decisions issued on the basis of examination of the notification)**

A summary of the decisions referred to in the second and third paragraphs of Article 38 shall be published in the Official Gazette of the Republic of Slovenia. The summary must contain:

- a specification that the concentration has been notified;
- the participants in the concentration;
- the nature of the concentration;
- the commercial areas to which it applies;
- the reasons for which the decision has been issued, and other data related to notification which the Office considers necessary to be published for achieving the purposes of this Act.

### **Article 40 (Suspension of concentration)**

(1) Within the procedure it is conducting, the Office may issue an order for the undertakings participating in the concentration and the competent bodies to suspend the implementation of the concentration until a decision has been issued.

(2) The provision of the preceding paragraph shall not prevent the implementation of a public bid which has been notified to the competent body in accordance with the act regulating take-overs, provided that the acquirer does not exercise the voting rights attached to the securities, or does so only to maintain the full value of those investments and on the basis of an approval granted by the Office.

**Article 41**  
**(Powers of decisions of the Office)**

- (1) If the Office finds that a concentration is not incompatible with the provisions of this Act, it shall issue a decision declaring the concentration compatible with competition rules.
- (2) The Office may attach to its decision additional obligations and conditions intended to ensure that the concentration comply with the requirements laid down in this Act.
- (3) If the Office finds that the concentration is incompatible with the provisions of this Act, it shall issue a decision declaring the concentration incompatible with competition rules.
- (4) If the Office issues the decision referred to in the third paragraph, it may attach to its decision measures with a view to eliminate the effects of the prohibited concentration which have already occurred (demerger of undertakings, demerger of assets, sale of interests, sale of securities, or other appropriate measures).
- (5) If the participants in the concentration at their own fault fail to comply with the imposed measures referred to in the third paragraph by the specified deadline, the Office shall within the administrative executive procedure impose on each participant a monetary fine of from SIT 500,000 to SIT 1,000,000 for each day of delay by the participants in their abiding by the measures.
- (6) The Office must issue one of the decisions under this article within 90 days of the day on which the order referred to in the fourth paragraph of Article 38 has been issued.
- (7) The Office may file with the competent court a lawsuit for declaring voidity.

**Chapter 3: Judicial protection**

**Article 42**  
**(Judicial protection against decisions issued by the Office)**

Judicial protection against decisions issued by the Office shall be ensured via the administrative dispute.

**Article 43**  
**(Administrative dispute against an order)**

- (1) An administrative dispute against orders issued by the Office shall be permitted unless explicitly excluded.
- (2) The filing of a lawsuit within the administrative dispute shall not stay execution.
- (3) If an administrative dispute is filed against an order on the investigative action, the Office may not issue a decision until the appeal has been decided. If the lawsuit is upheld, the decision issued by the Office may not be based on the facts and evidence obtained through the investigative action with respect to which the appeal has been upheld.

**Article 44**  
**(Claim for damages)**

If damage has been caused by any action prohibited in accordance with this Act, the person who has suffered damage may claim compensation in accordance with law of obligation rules.

## **PART VII - RESTRICTION OF THE MARKET BY AUTHORITATIVE LEGAL INSTRUMENTS AND ACTIONS**

### **Article 45 (Prohibition)**

**(1)** The Government of the Republic of Slovenia, state bodies, local community bodies, undertakings, organisations, and individuals exercising public authorisations may not restrict the free operation of undertakings on the market.

**(2)** For the purposes of this Act, restriction of the free operation of undertakings on the market shall be deemed to be general and individual legal instruments and actions which in contravention with the Constitution and the law restrict the free trade in goods and services, the free entry into the market, the free operation on the market, or which prevent the competition in any other way.

### **Article 46 (Restriction of free operation with regulations)**

**(1)** In the event of restriction of the free operation of undertakings with regulations, the protection of interests of undertakings is ensured in the procedure for appraising the compliance of regulations with the Constitution and law if such a protection cannot be ensured in the administrative dispute procedure.

**(2)** The regulations in accordance with which human rights and economic and social relations are guaranteed in accordance with the Constitution, shall not be deemed to restrict free operation in the market; and in particular regulations which set out:

- conditions for trade in goods and services, specifying the properties of goods or the method of provision of services for sanitary, veterinary, phytopathological, environmental protection, safety at work, technical, and other reasons;
- price control measures in accordance with a special law;
- the method of operation of undertakings for the purpose of ensuring consumer protection in accordance with a special law;
- obligatory standards;
- the obligation of legally specified undertakings to carry out their activity for users;

### **Article 47 (Restriction of free operation with individual acts and actions)**

**(1)** Restriction of the free operation with individual acts and actions within the meaning of the second paragraph of Article 45 of this Act shall in particular be deemed acts and actions which:

- prevent an undertaking from carrying out its activity in a specific area or in respect of a specific activity, although this undertaking fulfils all legally specified conditions;
- delay the procedure for the issuing of a permit for an activity or of other permits important for the free operation in the market without a good cause;
- indirectly or directly create discrimination among undertakings with respect to their registered offices;
- prohibit trade in goods and services outside the area of a local community;
- provide a specific undertaking with a privileged position in respect of operations in the market without a good cause.

**(2)** If legal remedies against individual acts and actions are ensured by the administrative procedure, an administrative dispute in the administrative procedure may be initiated against the final decision.

**(3)** If legal remedies against the acts and actions referred to in the first paragraph of this article are not ensured by the administrative procedure, and if judicial protection is not available, the affected undertaking may initiate an administrative dispute.

**Article 48**  
**(Exceptionally permitted restrictions)**

Notwithstanding the provisions of Articles 46 and 47 of this Act, the Government of the Republic of Slovenia may prescribe market restrictions in the following cases:

- if as a result of a natural disaster, epidemics, state of emergency, and other circumstances significant disturbances in the market and in supplies for the population, or disturbances in other fields if they pose a threat on the safety and health of the population have occurred or are likely to occur;
- if significant disturbances in the market have occurred or are likely to occur due to the lack of resources indispensable for production or processing, or for the everyday life of the population;
- If there is a need to satisfy the demand for products, raw materials and production material which are strategically important for the defence of the Republic of Slovenia.

**Article 49**  
**(Condition for using exceptionally permitted restrictions)**

The exceptionally permitted restrictions under Article 48 of this Act may be prescribed by the Government of the Republic of Slovenia only if the reasons for introducing the restrictions cannot be eliminated by introducing measures in undertakings, employing goods reserves, by import, or by measures of current economic policy.

**Article 50**  
**(Measures used in exceptionally permitted restrictions)**

**(1)** As restrictions within the meaning of Article 48 of this Act, the Government of the Republic of Slovenia may prescribe:

- A prohibition of trade in specific goods, a prohibition of the export or import of these goods, a restriction of trade in specific goods in respect of quantity or quality, or a determination of special conditions for trade in specific goods or types of goods;
- The obligation of specific undertakings to put into circulation specific quantities or types of goods, and to make it available or deliver them to specific users according to a specified order of priorities;
- The obligation of specific undertakings to create reserves within the framework of which they must keep specific quantities and types of goods.

**(2)** Corresponding prohibitions or obligations may be prescribed for services.

**(3)** The Government of the Republic of Slovenia shall be obliged to cancel a restriction immediately after the reasons for which the restriction was prescribed cease to exist, or when the situation can be eliminated by the introduction of other measures.

**(4)** If the Government of the Republic of Slovenia fails to cancel the measures within six months of their adoption, it must notify the National Assembly of the measures and report to it on the effects of these measures.

**Article 51**  
**(Mitigation of damage caused by exceptionally permitted restrictions)**

**(1)** If an undertaking has suffered a substantial damage because of the measures under Article 50, the competent national body must adopt measures for mitigating the damage in such a way that the consequences that the prescribed national measures have had on the undertaking are not substantially disproportionate with the consequences suffered by consumers, other undertakings, the state, or local communities in accordance with the circumstances specified in Article 48.

**(2)** If the measures under Article 50 have inflicted a substantially disproportionate damage on an undertaking and the measures referred to in the provision of the preceding



paragraph have not been adopted, the undertaking may demand compensation for the damage it has suffered from the Republic of Slovenia.

## **PART VIII - PENAL PROVISIONS**

### **Article 52**

**(1)** A fine of SIT 30,000,000 to SIT 90,000,000 shall be imposed on a legal entity for committing a violation:

- if it concludes an agreement on the restriction of competition (Article 5);
- if it abuses its dominant position on the market (Article 10).

**(2)** A fine of SIT 10,000,000 to SIT 50,000,000 shall be imposed on a sole entrepreneur for committing the violation referred to in the preceding paragraph.

**(3)** A fine of SIT 1,000,000 to SIT 3,000,000 shall be imposed on a responsible person of the legal entity for committing the violation referred to in the first paragraph of this Article.

**(4)** A fine of SIT 500,000 to SIT 1,500,000 shall be imposed on a responsible person of the sole entrepreneur for committing the violation referred to in the first paragraph of this Article.

### **Article 53**

**(1)** A fine of SIT 6,000,000 to SIT 20,000,000 shall be imposed on a legal entity for failing to notify the Office of the intended concentration or failing to notify it within the deadline (Article 11).

**(2)** A fine of SIT 2,000,000 to SIT 10,000,000 shall be imposed on a sole entrepreneur for committing the violation referred to in the preceding paragraph.

**(3)** A fine of SIT 600,000 to SIT 1,000,000 shall be imposed on a responsible person of the legal entity for committing the violation referred to in the first paragraph of this Article.

**(4)** A fine of SIT 200,000 to SIT 600,000 shall be imposed on a responsible person of the sole entrepreneur for committing the violation referred to in the first paragraph of this Article.

### **Article 54**

A fine of SIT 1,000,000 to SIT 3,000,000 shall be imposed on a responsible person of national and local authorities, undertaking or other organisation, and an individual person carrying out public authorisations, if they perform an activity or issue an individual act (Article 47) restricting the free appearance of undertakings on the market.

### **Article 55**

Procedure regarding the misdemeanour referred to in Articles 52, 53 and 54 shall not be permitted after the expiry of two years of the day the misdemeanour has been committed; procedure in respect of a misdemeanour shall not be possible in no case after the expiry of double the time required for the limitation by the statute regulating the misdemeanour procedure.

### **Article 56**

A proposal for the commencement of a misdemeanour procedure shall be filed by the Office.

## **PART IX - TRANSITIONAL AND FINAL PROVISIONS**

### **Article 57**

#### **(Cessation of validity of the provisions of the Protection of Competition Act)**

On the day this Act enters into force, the provisions of Chapter II - Restriction of competition, Chapter IV - Illegal speculation, Chapter VI - Restriction of the market by authoritative legal instruments and actions, Chapter VII - Protection of Competition, except for the provisions of the ninth indent of the first paragraph of Article 24, Articles 26, 27 and 28 (only the provision of the fifth indent of the second paragraph shall cease to be valid) of the Protection of Competition Act (Official Gazette of the Republic of Slovenia No. 18/1993) shall cease to be valid.

### **Article 58**

#### **(Continuation of work of the Office for Protection of Competition)**

The Office for Protection of Competition shall commence its work by no later than 31 December 2000.

In accordance with this Act, until the commencement of work of the Office for Protection of Competition under the first paragraph of Article 14, all tasks shall be carried out by the current Office for Protection of Competition at the Ministry of Economic Relations and Development.

### **Article 59**

#### **(Appointment of members of the Consultative Committee)**

The Government must appoint the members of the Consultative Committee no later than within one month of the commencement of work of the Office for Protection of Competition.

### **Article 60**

#### **(Continuation of procedure)**

The procedures initiated prior to the entry into force of this Act shall be carried out and completed in accordance with the provisions on the basis of which they were initiated.

If the sanctions referred to in this Act are milder for perpetrators, the latter shall be liable to the sanctions referred to in this Act.

### **Article 61**

#### **(Block exemptions and the application form for notifying a concentration)**

The Government shall adopt regulations within six months of the entry into force of this Act and shall set out the categories of agreements referred to in the first paragraph of Article 5 fulfilling the conditions referred to in the third paragraph of Article 5, and the content of the application form and elements required for notifying a concentration.

### **Article 62**

#### **(Revaluation of amounts)**

The Government shall adjust the tolar amounts specified in Articles 12, 30 and 41 of this Act if the exchange rate of the tolar vs. the Euro changes substantially in accordance with the exchange rate of the Bank of Slovenia.

### **Article 63**

#### **(Entry into force)**

This Act shall enter into force on the next day after its publication in the Official Gazette of the Republic of Slovenia.

**The Act Amending the Prevention Of The Restriction Of Competition Act (ZPOmK-A) (Uradni list RS, no. 37/2004) contains the following transitional and final provision:**

## **TRANSITIONAL AND FINAL PROVISION**

### **Article 16**

Individual exemptions awarded by the Office in accordance with the provision of Article 7 of the Act shall remain applicable until the expiry of the period determined in the decision.

The procedures for awarding a negative clearance or individual exemptions underway upon the entry into force of this Act shall be suspended ex officio.

### **Article 17**

Fines determined by this Act shall be imposed until the beginning of the application of the Misdemeanours Act (Uradni list RS, no. 7/2003) as follows:

1. for a violation under Article 52 of this Act:

- legal entity between SIT 10,000,000 and 30,000,000,
- sole entrepreneur between SIT 3,000,000 and 15,000,000,
- responsible person of a legal entity between 1,000,000 and 1,500,000,

2. for a violation under Article 53 of this Act:

- legal entity between SIT 3,000,000 and 10,000,000,
- sole entrepreneur between SIT 1,000,000 and 5,000,000,
- responsible person of a legal entity between 300,000 and 500,000,

3. for a violation under Article 54 of this Act:

- a responsible person of national and local authorities, undertaking or other organisation, and an individual carrying out public authorisations between SIT 300,000 and 500,000.

### **Article 18**

This Act shall enter into force on the day of accession of the Republic of Slovenia to the EU.