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PREVENTION OF THE RESTRICTION OF COMPETITION ACT (ZPOmK-1)

(Unofficial Consolidated Text)¹

PART I GENERAL PROVISIONS

Article 1 (Contents of the Act)

(1) This Act regulates restrictive practices, concentrations of undertakings, regulatory restrictions of competition and measures to prevent restrictive practices and concentrations, which significantly restrict effective competition, where they cause or might cause effects on the territory of the Republic of Slovenia.

(2) This Act lays down the authority responsible for the protection of competition, its powers and procedures before it.

Article 2 (Implementation of EC regulations)

This Act regulates the procedure and authorities for the implementation of 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, 4. 1. 2003, p. 1, hereinafter: Regulation 1/2003/EC) and Council Regulation (EC) No. 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ L 24, 29. 1. 2004, p. 1, hereinafter: Regulation 139/2004/EC).

Article 3 (Definition of terms)

Terms used in this Act shall have the following meanings:

1. An “undertaking” shall mean any entity that is engaged in economic activities, regardless of its legal and organisational form and ownership status. An undertaking shall also mean an association of undertakings that is not directly engaged in an economic activity but affects or

¹ ZPOmK-1 (Official Gazette of the Republic of Slovenia No. 36/08) and ZPOmK-1A (UL RS No. 40/09)

may affect the behaviour on the market of undertakings referred to in the first sentence of this point;

2. An “economic activity” shall mean any activity that is performed on the market for payment;

3. A "controlling undertaking" shall mean an undertaking that, directly or indirectly,:

- holds a majority of interests in capital or business shares in another undertaking;
- holds a majority of voting rights in another undertaking;
- has the right to appoint or remove a majority of the members of the management or supervisory board of another undertaking; or
- has the right to manage the affairs of another undertaking on the basis of a business contract or other legal arrangement;

4. A “dependant undertaking” shall mean any undertaking in which another undertaking has the rights or powers referred to in the previous point;

5. “Undertakings in the group” shall mean undertakings that are:

- involved in an agreement or concentration;
- their dependant undertakings;
- their controlling undertakings;
- dependant undertakings of undertakings referred in the preceding indent; and
- undertakings in which one or more undertakings referred to in the preceding indents jointly or in collaboration with one or more undertakings has or have the rights or powers referred to in the third point of this article;

6. A “relevant market” shall mean a market defined by the relevant product/service market and the relevant geographic market;

7. A “relevant product/service market” shall mean a market that, as a rule, comprises all products or services that are regarded as interchangeable or substitutable by the consumer or user given their characteristics, their prices or their intended use;

8. A “relevant geographic market” shall mean a market that, as a rule, comprises an area in which competitors on the relevant product/service market compete in the sale or purchase of products or services, in which the conditions of competition are sufficiently homogeneous, and which can be distinguished from neighbouring areas because the competition conditions are appreciably different;

9. "Undertakings involved in the concentration” shall mean undertakings that merge, undertakings that gain control over other undertakings, acquired undertakings and undertakings creating a joint venture;

10. An “annual turnover” shall mean net revenues from sales generated by an undertaking over a business year from the sale of products or the provision of services falling within ordinary activities;

11. An “annual turnover in an undertakings involved in a concentration together with other undertakings in the group” shall mean an annual turnover generated by the undertakings involved in a concentration together with other undertakings in the group and shall not include net revenues from the sale of products and the provision of services between undertakings in the group. Where the concentration arises by acquiring control of a part of one or more undertakings, regardless of whether these parts have the status of a legal entity, only the turnover relating to the parts that are the subject of the concentration shall be taken into account with regard to the seller or sellers. Two or more transactions within the meaning of the preceding sentence that take place within a two-year period between the same persons or undertakings shall be treated as one and the same concentration arising on the date of the last transaction. If undertakings in a group, combined or in collaboration with third undertakings, have rights referred to in the third point of this article, the turnover of the joint undertaking shall be apportioned equally amongst the undertakings concerned;

12. An “annual turnover generated on the market of the Republic of Slovenia” shall mean net revenues from the sale of products and the provision of services on the territory of the Republic of Slovenia;
13. An “annual turnover of credit and financial institutions” shall comprise financial income from shares, financial income from loans granted and financial income from amounts receivable. The terms “credit institution” and “financial institution” used in this Act shall bear the same meaning as the terms used in the act governing banking;
14. An “annual turnover of a credit institution” shall be the amount of gross premiums written, comprising all revenues and receivables from insurance contracts, including reinsurance premiums paid, less taxes or contributions associated with insurance premiums;
15. “Information” shall be all information, including confidential information, irrespective of the medium in which such information is recorded or stored;
16. “Confidential information” shall mean business secrets, business correspondence concerning the economic activity of an undertaking, personal data and any other information that, under this Act or other regulations, is subject to special arrangements for its protection and to special conditions for accessing it. Confidential information shall not include information that is publicly accessible;
17. A “business secret” shall mean information whose disclosure would cause considerable damage, and which are known to a limited number of persons;
18. “Block exemptions” shall mean categories of agreements that meet the criteria referred to in the third paragraph of Article 6 of this Act or the third paragraph of Article 81 of the Treaty establishing the European Community;
19. “Restrictive practices” shall comprise restrictive agreements and abuses of a dominant position.

Article 4 **(Application of the Act)**

- (1) This Act shall apply to undertakings.
- (2) Pursuant to Regulation 1/2003/EC, this Act shall also apply to infringement of the provisions of Articles 81 and 82 of the Treaty establishing the European Community (Official Gazette of the Republic of Slovenia, No. 7/04, hereinafter: EC Treaty).
- (3) This Act shall be without prejudice to the relationships between employers and employees.

Article 5 **(Competition Protection Office of the Republic of Slovenia)**

The tasks under this Act shall be performed by the Competition Protection Office of the Republic of Slovenia (hereinafter: Office).

PART II **RESTRICTIVE PRACTICES**

Article 6 **(Prohibition of restrictive agreements)**

(1) Agreements between undertakings, decisions by associations of undertakings and concerted practices of undertakings (hereinafter: agreements), which have as their object or effect the prevention, restriction or distortion of competition on the territory of the Republic of Slovenia shall be prohibited and shall be null and void.

(2) The prohibition shall apply in particular to:

- direct or indirect fixing of purchase or selling prices or, other trading conditions;
- limiting or controlling production, sales, technical progress or investment;
- 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;
- sharing markets or sources of supply.

(3) The first paragraph shall be inapplicable if these agreements contribute to improving the production or distribution of goods or to promoting technical and economic progress, while allowing consumers a fair share of the resulting benefit. These agreements shall 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 the competition in respect of a substantial part of the products or services that are the subject of the agreement.

(4) An undertaking invoking the preceding paragraph shall bear the burden of proving that the conditions referred to in the preceding paragraph have been fulfilled.

Article 7 **(Restrictions of minor importance)**

(1) The first paragraph of the preceding article shall not apply to agreements of minor importance.

(2) Agreements of minor importance shall be agreements between the undertakings whose aggregate market share, in combination with other undertakings in the group, on any of the relevant markets on the territory of the Republic of Slovenia to which the agreement pertains, does not exceed:

- 10 percent in the case of undertakings operating at the same level of production or trade ("horizontal agreements"),
- 15 percent in the case of undertakings operating at different levels of production or trade ("vertical agreements"),
- 10 percent in the case of mixed horizontal-vertical agreements or where it is difficult to determine whether an agreement is horizontal or vertical.

(3) If competition on a relevant market is restricted by the cumulative effects of parallel or similar agreements between other undertakings, the market share thresholds referred to in the preceding paragraph shall be decreased by 5 percent.

(4) Even if the thresholds referred to in the second and third paragraph of this article are not met, the first paragraph of this article shall not apply to:

a) horizontal agreements having as their the object:

- the fixing of prices;
- the limiting of production or sales, or
- the sharing of markets or sources of supply;

b) vertical agreements having as their object:

- the fixing of resale prices, or

- granting territorial protection to the participating undertakings or to third persons.

Article 8 (Block exemptions)

- (1) For groups of agreements that meet the conditions referred to in the third paragraph of Article 6 of this Act, the provisions of the Regulations of the European Commission or the Council of the European Union shall apply *mutatis mutandis*, even if there is no indication of an effect on trade between EU Member States.
- (2) The Government of the Republic of Slovenia (hereinafter: Government) may specify by decree other categories of agreements that meet the conditions referred to in the third paragraph of Article 6 of this Act.
- (3) The Office may withdraw the benefit of the block exemption if it finds that a particular agreement has certain effects which are incompatible with the third paragraph of Article 6 of this Act or the third paragraph of Article 81 of the EC Treaty.

Article 9 (Prohibition of the abuse of a dominant position)

- (1) The abuse of a dominant position on the market by one or more undertakings on the territory of the Republic of Slovenia or on a substantial part of it shall be prohibited.
- (2) An undertaking or several undertakings shall be deemed to have a dominant position when they can, to a significant degree, act independently of competitors, clients or consumers.
- (3) In determining the dominant position, the Office shall take into consideration in particular the market share, funding options, legal or actual entry barriers, access to suppliers or the market, and existing or potential competition.
- (4) The abuse of a dominant position shall, in particular, constitute:
 - directly or indirectly imposing unfair purchase or selling prices, or other unfair trading conditions;
 - limiting production, markets or technical development to the prejudice of consumers;
 - 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.
- (5) An undertaking shall be deemed to have a dominant position if its share on the market of the Republic of Slovenia exceeds the 40 percent threshold.
- (6) Two or more undertakings shall be deemed to have a dominant position if their share on the market of the Republic of Slovenia exceeds 60 percent.

PART III CONCENTRATION OF UNDERTAKINGS

Article 10 (Definition of concentration)

- (1) A concentration shall be deemed to arise where a change of control on a lasting basis results from:

- the merger of two or more previously independent undertakings or parts of undertakings, or
 - the acquisition, by one or more natural persons already controlling at least one undertaking, or by one or more undertakings, whether by purchase of securities or assets, by contract or by any other means, of direct or indirect control of the whole or parts of one or more other undertakings, or
 - the creation of a joint venture by two or more independent undertakings, performing on a lasting basis all the functions of an autonomous economic entity.
- (2) Control of a whole undertaking or a part of it within the meaning of the preceding paragraph shall be constituted by rights, contracts or any other means that, either separately or in combination and having regard to the considerations of facts or regulations involved, confer the possibility of exercising decisive influence on such an undertaking or part of undertaking, in particular:
- ownership or the right to use all or part of the assets of an undertaking;
 - rights or contracts that confer a decisive influence on the composition, voting or orders of the bodies of an undertaking.
- (3) Control is acquired by persons or undertakings that:
- are holders of rights or entitled to rights under the contracts concerned; or
 - while not being holders of such rights or entitled to rights under such contracts, have the power to exercise the rights deriving from contracts.
- (4) A concentration shall not be deemed to arise when banks, insurance companies, savings institutions or other financial institutions, the normal activities of which include transactions and dealing in securities for their own account or for the account of others, hold on a temporary basis business assets that they have acquired in an undertaking with a view to reselling them, provided that they do not exercise voting rights in respect of those business assets with a view to determining the competitive behaviour of that undertaking or provided that they exercise such voting rights only with a view to preparing the disposal of these business assets and that any such disposal takes place within one year of the date of acquisition of these business assets. The period of one year may be extended by order of the Office on request when the undertaking can show that the disposal was not reasonably possible within the prescribed period. No judicial protection shall be allowed against such an order.

Article 11

(Appraisal of concentration)

- (1) Concentrations that would significantly impede effective competition on the territory of the Republic of Slovenia or on a substantial part of it, in particular as a result of the creation or strengthening of a dominant position, shall be prohibited.
- (2) The Office shall appraise concentrations primarily on the basis of the market position of the undertakings involved in the concentration, their financial options, market structure, alternatives available to suppliers and users, their access to sources of supply or markets, any legal or other barriers to entry, supply and demand trends for the relevant markets, the interests of intermediate and ultimate consumers and the development of technical and economic progress provided that it is to consumers' advantage and does not form an obstacle to competition.
- (3) If the creation of a joint venture within the meaning of the third indent of the first paragraph of the preceding article has as its object or effect the coordination of the competitive behaviour of undertakings that remain independent, such coordination shall be appraised in accordance with the criteria of Article 6 of this Act. If the Office determines that

the conditions referred to in the third paragraph of Article 6 of this Act are not met, it shall issue an order declaring the concentration in compatible with competition rules and prohibit the concentration.

PART IV THE OFFICE

Article 12 (Tasks and powers of the Office)

(1) The Office shall be a body empowered to control the implementation of this Act and Articles 81 and 82 of the EC Treaty. The Office shall monitor and analyse the conditions on the market to the extent necessary for the development of effective competition, conduct procedures and issue decisions in accordance with this Act, and submit its opinions to the National Assembly of the Republic of Slovenia (hereinafter: National Assembly) and the Government on general issues under its competence.

(2) The Office shall act as an minor offence procedure authority passing decisions in cases of infringement of the provisions of this Act and the provisions of Articles 81 and 82 of the EC Treaty in accordance with the act regulating minor offences unless stipulated otherwise herein.

(3) The Office may bring an action before the competent court for nullity in cases referred to in the first paragraph of Article 6 and the third paragraph of Article 44 of this Act.

Article 13 (Organisation of the Office)

(1) The Office shall be independent and autonomous in the implementation of its tasks.

(2) The Office shall be run by its Director, who shall also be responsible for the activity carried out by the Office.

(3) For reaching a decision in an administrative procedure and minor offences procedure a panel shall be set up in each case.

(4) The panel shall consist of the Office Director acting as chairman, and two Office employees appointed by the Office Director. The exclusion of the Director shall be subject to a decision made by the Government.

(5) The panel shall, after consultation, adopt decisions by voting in a session, which shall not be public. Decisions shall be adopted by majority vote.

(6) The panel shall issue acts by which the procedure before the Office is concluded.

(7) The Office Director shall issue other acts within the Office's competence.

Article 13a (Obligation to protect confidential information)

(1) Civil servants of the Office and persons cooperating with the Office in the implementation of tasks pursuant to this Act and coming into contact with confidential information shall treat such information as confidential in compliance with the rules determining protection of such information. The obligation to protect confidential information shall continue to apply after the termination of the employment or other relationship on the basis of which a person cooperates with the Office in the implementation of tasks pursuant to this Act.

(2) In accordance with the definition of the term 'processing of personal data' in the act governing personal data protection, persons referred to in the first paragraph of this article may process personal data and collections of personal data that are necessary for the implementation of tasks under this Act.

(3) Information obtained in accordance with this Act may be used only for the purposes stipulated by this Act.

Article 13b **(Disclosure of information)**

(1) The Office may disclose information in its possession to administrative bodies, other state authorities and holders of public authorisations on the basis of a substantiated written request by the principal or his authorised person, clearly indicating the purpose of the request to carry out their statutory responsibilities.

(2) The Office shall also disclose information to:

1. the European Commission and authorities of EU Member States responsible for the protection of competition in accordance with the procedure in Regulation 1/2003/EC;
2. authorised authorities of foreign countries when so determined by international treaties binding on the Republic of Slovenia.

(3) The Office shall disclose to competent authorities information required for the purpose of execution under this Act.

(4) Notwithstanding the provisions of the act regulating access to public information, the Office shall refuse a person requesting access to public information access to information relating to the secrecy of the source and to information constituting a business secrets of undertakings.

Article 14 **(Cooperation with the Office)**

For the implementation of tasks under this Act, state authorities, local community authorities, holders of public authority and other persons and organisations with access to information required for decision-making shall provide the Office, at its request, the required information free of charge.

PART V **DECISION-MAKING PROCEDURE WITHIN THE OFFICE**

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

Article 15 **(Application of procedural provisions)**

(1) The Office shall decide on matters within its competence in accordance with this Act, following the procedure set out in this Act.

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

(3) There shall be no appeal against acts issued by the Office.

Article 16
(Parties to procedure)

- (1) In procedure before the Office, the parties to the procedure shall be the undertaking against which the procedure has been initiated, and the person notifying the concentration.
- (2) A person submitting the initiative, complaint, message or other document shall not be a party to the procedure.
- (3) A person claiming entry to the procedure in order to protect their own legal interests must lodge an application to participate in the procedure within 30 days from the day of publication of the order on the commencement of procedure on the website of the Office.
- (4) The application referred to in the preceding paragraph must contain statements and evidence that demonstrate the legal interest in participating in the procedure.
- (5) An application to be party to the procedure shall be decided on by the Office with an order. If a person fails to demonstrate a legal interest, the Office shall issue an order denying the status of an accessory participant.

Article 17
(Protection of confidential sources)

- (1) At the request of a person who is the source of a complaint or the source of other information used by the Office in implementing its competencies, the Office must protect the identity of such person if it is likely that the disclosure may cause such person significant harm.
- (2) A person requesting the protection of his identity must, on producing documents, produce also a version of the documents which omits any information which could result in disclosure of the source.

Article 18
(Right of parties to review a case file)

- (1) Parties shall have the right to review documents of the case file and make transcripts and copies at their own expense. The inspection, transcription and photocopying of documents shall be supervised by an official or done through the information system of the authority or an information system for the acceptance of applications, service of documents and notifications, in which a party authenticates itself using a qualified electronic signature certificate. The inspection and transcription of documents may also be requested orally.
- (2) If during the procedure data from computerized records and other electronic information and records are used, these data shall be considered as documents in case file.
- (3) In procedure concerning restrictive practices, the parties shall have the right to review the case file documents after an order on the commencement of procedure has been issued unless the Office Director determines that this would be against the interests of the procedure. In such cases, the Office Director shall issue an order postponing the right to inspection of documents; however, not for longer than to the service of a statement of objections. No judicial protection shall be allowed against such an order.
- (4) The right to review the case file shall also be granted to an expert, to the extent necessary in order to render an expert report and opinion.
- (5) Parties may not review or make copies of the following:
 - internal Office documents relating to the case file, including correspondence between the Office and the European Commission or competition protection authorities of other EU Member States;

- confidential information;
- information relating to the confidential sources;
- minutes of consultations and voting, and
- draft decisions.

(6) The burden of proving the existence of a business secret referred to in the second indent of the preceding paragraph shall be on the undertaking so claiming. At the request of the Office, the undertaking must produce a version of the document which omits data referred to in the second indent of the preceding paragraph.

(7) The Office may disclose information that constitutes a business secret to the undertaking against which the procedure has been initiated and to the notifying party if it deems that its disclosure, due to the right to defence, might objectively prevail over the interests of protecting such information as a business secret. In this context, the Office may postpone the review of information constituting a business secret but not longer than to service of the statement of objections.

Article 19 **(Adversarial principle)**

In order to ensure the right to defence, a decision adopted by the Office may not be based on facts and evidence in respect of which the undertaking against which the procedure has been initiated and the notifying party have not been given the possibility to reply.

Article 20 **(Service)**

(1) If a person that is entered or is being entered in the court register cannot be served at the address specified in the register, the service shall be made by means of a public announcement on the notice board and on the e-government state portal, while notification of the method of service shall be left at the person's address.

(2) The service of process shall be completed after 15 days of the date of publishing the announcement on the notice board and e-government state portal.

(3) The addressee must be notified of the consequences referred to in the preceding paragraph in the notification of service.

Article 21 **(Oral hearing)**

In procedure, the Office shall decide without an oral hearing unless an official conducting the procedure determines that an oral hearing needs to be conducted in order to clarify or establish essential facts.

Article 22 **(Decisions and orders)**

(1) A decision must state the grounds. The statement of grounds must also contain an explanation of the orders taken, which may be contested in a procedure of judicial protection against the decision pursuant to the third paragraph of Article 55 of this Act.

(2) An order issued hereunder, must state the grounds and must also contain instructions on legal remedies, only if a procedure of judicial protection against the decision is not excluded.

(3) If a decision or an order, by which the procedure is concluded, contains confidential information on a party, other parties shall be served a version of the decision or order with all such information deleted from the statement of grounds.

(4) At the request of the Office, a party shall, within the period specified by the Office, produce a version of a decision or an order, by which the procedure is concluded, on which the confidential data are marked.

(5) The operative part of a decision or an order, which concludes the procedure, shall be published on the Office's website.

(6) On its website, the Office shall publish its final decisions in an administrative procedure and minor offences procedure, as well as final orders by which the procedure is concluded, without confidential data.

Chapter 2

Procedure concerning restrictive practices

Subchapter 1

General provisions

Article 23

(Initiation of *ex officio* procedure)

The Office may *ex officio* issue an order on the commencement of procedure when it learns of circumstances that raise a probability that the provisions of Article 6 or Article 9 of this Act, or Articles 81 or Article 82 of the EC Treaty have been infringed.

Article 24

(An order on the commencement of procedure)

(1) An order on the commencement of procedure shall contain:

- a description of the act providing grounds for the commencement of procedure, and
- a specification of the provisions of the Act for which a probability has been demonstrated that they have been infringed;
- an explanation of the grounds for the commencement of procedure.

(2) No judicial protection shall be allowed against such an order.

(3) An extract of the order on the commencement of procedure shall be published on the Office's website.

(4) The extract of the order shall contain:

- an indication of the parties to which the decision applies;
- a brief statement of grounds for the initiation of procedure, and of the provisions of this Act pursuant to which the procedure has been initiated, and
- a request to persons to send to the Office any information that could be relevant for the decision.

(5) Should the need arise to amend the procedure to include another infringement or another undertaking; the Office shall issue an order amending the order on the commencement of procedure. The preceding paragraphs shall apply *mutatis mutandis* to an order amending the order on the commencement of procedure.

Article 25

(Single procedure)

(1) In case of the procedure alleging the infringement of Articles 81 or 82 of the EC Treaty, the Office shall also conduct a procedure alleging the infringement of the provisions of Article 6 or 9 of this Act (single procedure).

(2) If, during the procedure, it should be determined that there are no grounds for conducting procedure pursuant to Article 81 or 82 of the EC Treaty since trade between EU Member States has not been affected, the Office shall issue an order terminating the procedure in this segment. No judicial protection shall be allowed against such an order.

Subchapter 2

Investigations into sectors of the economy and into types of agreements

Article 26

(Investigations into sectors of the economy and into types of agreements)

(1) When price rigidity or other circumstances indicate the possibility of a restriction or distortion of competition on the territory of the Republic of Slovenia, the Office may conduct a study of an individual sector of the economy or certain types of agreements (hereinafter: inquiry).

(2) In order to obtain data for the inquiry, Articles 27 through 34 shall apply *mutatis mutandis*.

(3) The Office may publish a report on the results of the inquiry, excluding confidential information, and invite interested third parties to submit their comments.

(4) The Office may use information obtained in the course of conducting an inquiry in procedures pursuant to the provisions of this Act.

Subchapter 3

Investigative procedure

Article 27

(Request for information)

(1) In the course of supervising the implementation of the provisions of this Act, or Article 81 or Article 82 of the EC Treaty, the Office may, prior to issuing an order on the commencement of procedure, address a request for information to each undertaking, partners, members of management or supervisory boards and persons employed with the undertaking.

(2) The Office may request information from an undertaking by a special order, which shall include: the legal basis, the purpose of the request, a specification of the required information, an appropriate time-limit within which the information must be provided, and the notice on penalty for supplying incorrect, incomplete or misleading information, or for failing to provide information within the specified time-limit. No judicial protection shall be allowed against such an order.

(3) An undertaking must submit all documents; but it is not obliged to admit infringement of the provisions of this Act or Article 81 or Article 82 of the EC Treaty.

(4) The Office may issue an order imposing on an undertaking a penalty of up to EUR 50,000 if the undertaking, to whom the Office had addressed a request for the information in the form of an order, supplies the Office with incorrect, incomplete or misleading information or does not supply information within the required time-limit. The time-limit for paying the fine may not be shorter than 15 days and not longer than one month.

(5) At the same time as issuing the order referred to in the preceding paragraph, the Office shall issue an order specifying a new time-limit for the submission of information. No

judicial protection shall be allowed against such an order. The Office shall treat an undertaking that continues to refuse cooperation, in the same manner as stipulated in the preceding paragraph, until the sum of penalty payments from individual orders reaches an amount of one percent of the annual turnover of the undertaking in the preceding business year. No judicial protection shall be allowed against such an order.

(6) Orders referred to in the fourth and fifth paragraph of this article shall be executable. Execution shall be conducted by the tax authority in accordance with the procedure laid down for the enforcement of tax liabilities.

(7) The time limit for issuing a decision shall be suspended for the period in which a party is late in responding to a request for the submission of information.

Article 28 **(An order for inspection)**

(1) An order for inspection in an undertaking against which procedure has been initiated shall be issued by the Office. The decision shall specify:

- the subject-matter and purpose of the inspection;
- the date on which the inspection will begin;
- the authorised person in charge of the inspection;
- scope of powers referred to in Article 29 of this Act, and
- notice on a penalty that can be imposed for refusal to cooperate or obstruction of an inspection.

(2) An order for inspection shall be served personally on the undertaking against which the inspection is being conducted at the commencement of the inspection.

(3) An authorized person may serve an order on the commencement of procedure at the same time as the order for inspection if this is unavoidable in order to achieve the purpose of the inspection.

(4) No judicial protection shall be allowed against an order on inspection.

Article 29 **(Inspection)**

(1) An inspection shall be conducted by employees of the Office, whereby specific professional tasks may be carried out by specialized organizations, institutions or individuals (hereinafter: authorized person) provided this is not in conflict with the public interest or the interests of the parties.

(2) Authorized persons may:

- enter and inspect premises, land and means of transport (hereinafter: premises) at the registered office of the undertaking and at other locations at which the undertaking itself or another undertaking authorized by the undertaking concerned performs the activity and business for which there is probability of an infringement of the provisions of this Act or Article 81 or Article 82 of the EC Treaty;
- examine the books, contracts, papers, business correspondence, business records and other information relating to the business of the undertaking, irrespective of the medium on which they are stored (hereinafter: business books and other documentation)
- take or obtain in any form copies of or extracts from business books and other documentation using photocopying devices and the computer equipment of the undertaking or the Office. If, for technical reasons, it is not possible to make photocopies with photocopying devices or the computer equipment of the undertaking

or the Office, authorized persons may take away the business books and other documentation for the time required to make photocopies. An official note of this shall be made.

- seal any business premises and business books and other documentation for the period and to the extent necessary for the inspection;
- seize items and business books and other documentation for a period no longer than 20 working days;
- ask any representative or member of staff of the undertaking to give an oral or written explanation of facts or documents relating to the subject-matter and purpose of the inspection and record it. When a written explanation is requested by the authorised person, the latter shall set a deadline for its submission.
- examine papers disclosing the identity of persons;
- perform other actions in line with the purpose of the inspection.

(3) If items referred to in the fifth indent of the preceding paragraph are seized, the Office must make a note in the inspection report as to where the items were found, describe them and issue a certificate of confiscation.

(4) An undertaking must allow authorized persons access to premises and business books and other documentation. Authorized persons may also conduct an inspection against the will of the undertaking.

(5) An inspection shall, as a rule, be carried out between 6:00 and 22:00. Authorized persons must carry out the inspection in such a manner as to cause minimum disturbance to the undertaking's operations.

(6) When business books or other documentation which could be relevant for the Office to adopt a decision in accordance with this Act are seized in criminal or other procedure during a house search or any other method, the Office may request from the Court or other authority a copy of the documentation, except when this would be contrary to the interests of criminal or other procedure.

Article 30 **(Conducting an inspection)**

(1) Persons employed by the Office shall prove their authorisation for conducting an inspection by an official identity card; specialized organizations, institutions or individuals shall produce written authorization from the Office Director, which shall specify the scope of the authority.

(2) An official identity card shall be issued by the minister responsible for the economy.

(3) The general form of the official identity and the procedure for its issue shall be prescribed by the minister responsible for the economy.

Article 31 **(Obstruction of an inspection)**

(1) If an undertaking refuses to permit an authorized person, or interferes with, any entry into the premises or denies access to business books or other documentation or obstructs or otherwise interferes with an inspection or where this is reasonably expected, the authorized person shall have the right to enter the premises or access business books and other documentation against the will of the undertaking with the assistance of the police. Any costs and damage arising from entry or access shall be born by the undertaking.

(2) If an undertaking obstructs an authorized person in the exercise of powers under the second paragraph of Article 29 of this Act, the Office may issue an order imposing a penalty

payment amounting up to one percent of its annual turnover in the preceding business year. The time-limit for paying the fine may not be shorter than 15 days and not longer than one month.

(3) If a natural person obstructs an authorized person in the exercise of powers under the second paragraph of Article 29 of this Act and, in compliance with the fifth paragraph of this article, it is not deemed that the inspection has been obstructed by the undertaking, the Office may issue an order imposing a penalty payment amounting up to EUR 50,000. The time-limit for paying the fine may not be shorter than 15 days and not longer than one month.

(4) An order referred to in the second and third paragraphs of this article shall be executable. Execution shall be conducted by the tax authority in accordance with the procedure laid down for the enforcement of tax liabilities.

(5) An undertaking shall be deemed to be obstructing an inspection if it is obstructed by the members of its management or supervisory bodies, its employees, or by its external contractors.

Article 32 **(Privileged communication)**

(1) An inspection shall exclude letters, notifications and other means of communication between the undertaking against which the procedure has been initiated and its attorney, to the extent such communications pertain to the procedure in question (hereinafter: privileged communication).

(2) If an undertaking or its attorney refuses to allow access to information, claiming it to be privileged communication, an authorized person shall verify whether the claim is evidently unfounded. If the communication is not deemed to be privileged, the authorized person shall seal the document (or its copy) in an envelope signed by authorized person and the undertaking or its attorney.

(3) The justification of claiming privileged communication shall be decided by the Administrative Court of the Republic of Slovenia within 15 days of the date after the request has been filed by the Office. The Office shall attach the sealed envelope to the request.

(4) If the Administrative Court of the Republic of Slovenia in Ljubljana decides that the communication in question does not constitute privileged communication, it shall send the documents to the Office. If it decides that it is indeed privileged communication, it shall send them to the undertaking or its attorney. There shall be no legal remedy against such a ruling.

Article 33 **(Inspection of other premises)**

(1) If there are reasonable grounds to suspect that business books and other documentation relating to the subject matter of an inspection are being kept at the premises of an undertaking against which the procedure has not been initiated, or on residential premises of members of the management or supervisory bodies or of staff or other associates of the undertaking against which procedure has been initiated, the Office shall obtain a court order to search the premises from a judge of the competent court in Ljubljana.

(2) The provisions of Articles 28 through 32 and Article 34 shall apply *mutatis mutandis* for conducting the inspection.

(3) During the inspection of residential premises, two adult persons shall be present as witnesses.

Article 34

(Report on the inspection)

- (1) The Office shall draw up a report on the inspection after an inspection has been completed.
- (2) The report on the inspection shall contain:
 - the place and date of the preparation of the report;
 - the name and title of the authorized person by whom the report was prepared;
 - a brief description of the course of the inspection;
 - a list of statements given by the representatives or employees of the undertaking against which the inspection has been conducted, and
 - a list of documents and other items that the Office obtained during the inspection.
- (3) The report on the inspection shall be served on the undertaking against which the inspection has been conducted.
- (4) The undertaking against which the inspection has been conducted may provide comments to the report on the inspection within 15 days from its service date.

Article 35

(Cooperation of the Office in inspections conducted by others)

- (1) Authorized persons may:
 - at the request of the European Commission or the competition authority of another EU Member State, undertake an inspection, in accordance with this Act, in which case no order on the commencement of procedure shall be issued;
 - actively assist officials and other persons authorized by the European Commission to conduct an inspection in compliance with Article 20 of Regulation 1/2003/EC, which, in the second paragraph of Article 20, also specifies the scope of powers of authorized persons.
- (2) The Office may allow officials of the competition authority of another EU Member State, or of the European Commission, and other persons authorized by this authority, to cooperate with authorized persons of the Office in the conduct of an inspection in accordance with Article 22 of Regulation 1/2003/EC.
- (3) In conducting an inspection pursuant to this Article, the police must provide assistance to persons referred to in the first and second paragraph of this article, in accordance with the first paragraph of Article 31 of this Act.

Article 36

(Statement of objections)

- (1) A statement of objections shall include findings on facts and evidence that are relevant for making a decision.
- (2) Where the Office intends to issue a decision establishing the existence of an infringement of Article 6 or Article 9 of this Act or Article 81 or Article 82 of the EC Treaty, it must inform the parties of the statement of objections.
- (3) If the statement of objections contains confidential information about the party, such information shall be deleted from the statement of objections prior to service on other parties.
- (4) The Office shall set a reasonable time-limit within which the parties may provide their comments on the statement of objections. The Office shall not be obliged to consider comments on the statement of objections that are received after the expiry of this time-limit.
- (5) The time-limit referred to in the preceding paragraph may not be longer than 45 days.

Subchapter 3
Decisions and orders of the Office

Article 37
(Termination of an infringement)

- (1) The Office may issue a decision establishing the existence of an infringement of Article 6 or Article 9 of this Act or Article 81 or Article 82 of the EC Treaty, and require the undertaking concerned to bring such infringement to an end.
- (2) The same decision may impose on the undertaking the obligation to take reasonable measures to bring an infringement and its consequences to an end, in particular through the disposal of business or part of the undertaking's business, division of an undertaking or disposal of shares in undertakings, transfer of industrial property rights and other rights, conclusion of licence and other contracts which may be concluded in the course of operations between undertakings, or ensuring access to infrastructure.
- (3) Where the implementation of such measures is contingent on the consent or another action of the Office, the Office shall decide thereon by order. No judicial protection shall be allowed against such an order.
- (4) The Office must adopt a decision referred to in the first paragraph of this article within two years after issuing an order on the commencement of procedure.

Article 38
(Interim measures)

- (1) If the existence of the infringement of Article 6 or 9 of this Act or Article 81 or Article 82 of the EC Treaty is likely, the Office may in cases of urgency due to the risk of serious and irreparable damage to the effective competition on the market, adopt by order interim measures.
- (2) In the order imposing interim measures, the Office shall specify the duration of such measures. The Office may extend interim measures.
- (3) An action against an order on interim measures may be filed by the party within three days of its service on the party. The Court shall render a ruling on such an action without delay, and no later than within 15 days of receiving the action.

Article 39
(Commitments)

- (1) After issuing an order on the commencement of procedure, the undertaking against which the procedure has been initiated may offer commitments with a view to eliminating the circumstances leading to the likelihood of the existence of infringement of Article 6 or 9 or Article 81 or Article 82 of the EC Treaty. The undertaking against which the procedure has been initiated may offer commitments until the expiry of the time-limit for comments on the statement of objections.
- (2) If the offered commitments do not suffice to eliminate the circumstances leading to the likelihood of the existence of the infringement of Article 6 or 9 or Article 81 or Article 82 of the EC Treaty, the Office shall notify the undertaking that offered the commitments of this in writing.
- (3) The Office may make the offered commitments binding by adopting a decision. The Office may set a time limit for which the commitments are binding.

(4) When the implementation of the commitments is contingent on the consent or another action of the Office, the Office shall decide thereon by an order. No judicial protection shall be allowed against such an order.

(5) The Office may, on request or on ex officio, annul the decision referred to in the third paragraph of this article and continue the procedure if:

- there has been a material change in the factual circumstances on which the decision was based;
- the undertakings fail to meet their commitments, or
- the decision was based on incomplete, incorrect or misleading information provided by the parties.

(6) The Office must adopt a decision referred to in the third paragraph of this article within two years after issuing an order on the commencement of procedure.

Article 40 (Termination of procedure)

(1) If, in the course of procedure, the Office finds no infringement of Article 6 or 9 of this Act or Article 81 or Article 82 of the EC Treaty or if specific circumstances indicate that procedure would not be reasonable, the Office shall terminate it by an order.

(2) Where the European Commission initiates procedure for the infringement of Article 81 or Article 82 of the EC Treaty, or has already issued a decision on the same matter, in which the procedure has been initiated by the Office, the Office may by an order terminate the procedure. No judicial protection shall be allowed against such an order.

(3) Where a competition authority of another EU Member State has initiated procedure for the infringement of Article 81 or Article 82 of the EC Treaty, or has issued a decision on the same matter, in which the procedure has been initiated by the Office, the Office may by an order terminate such procedure. No judicial protection shall be allowed against such an order.

Article 41 (Report)

The Office may, by a request for information, require an undertaking to which the decision is addressed to provide a report on the fulfilment of commitments, obligations and measures imposed on it by decision.

Chapter 3 Procedure in respect of concentrations

Article 42 (Obligation of notification)

(1) A concentration must be notified to the Office if:

- the total annual turnover of the undertakings involved in a concentration, together with other undertakings in the group, on the market of the Republic of Slovenia in the preceding business year exceeded EUR 35 million, and
- the annual turnover of the acquired undertaking, together with other undertakings in the group, on the market of the Republic of Slovenia in the preceding business year exceeded EUR 1 million; or if in the case referred to in the third indent of the first paragraph of Article 10 of this Act the annual turnover of at least two undertakings

concerned in a concentration, together with other undertakings in the group, in the preceding business year exceeded EUR 1 million.

(2) Notwithstanding the achieved threshold referred to in the preceding paragraph, a concentration need not be notified if it is to be appraised by the European Commission in accordance with Regulation 139/2004/EC.

(3) Even if the concentration does not reach the thresholds referred to in the first paragraph of this article, the Office may, no later than 15 days following the date on which the undertakings involved in the concentration notify the Office of its implementation, invite the latter to notify a concentration if they, together with other undertakings in the group, hold more than a 60 percent market share on the market of the Republic of Slovenia.

Article 43 **(Notification of concentrations)**

(1) A concentration shall be notified to the Office prior to its implementation but not later than 30 days after the conclusion of the contract, the announcement of the public bid, or the acquisition of a controlling interest. That period shall begin when the first of these events occurs.

(2) When the European Commission, on a request pursuant to Article 4 of Regulation 139/2004/EC, decides not to appraise the concentration, the concentration must be notified to the Office no later than 30 days after the undertaking that is obliged to notify the concentration in accordance with the fifth paragraph of this article, has been informed of the decision made by the European Commission.

(3) When the European Commission, in accordance with Article 9 of Regulation 139/2004/EC, by means of a decision notifies the undertakings that the concentration shall be appraised by the Office, the concentration must be notified to the Office no later than 30 days from the service of the decision on the undertaking that is obliged to notify the concentration in accordance with the fifth paragraph of this article.

(4) In cases referred to in the third paragraph of the preceding article, the concentration must be notified to the Office no later than 30 days from service of the invitation on the undertaking that is obliged to notify the concentration in accordance with the fifth paragraph of this article.

(5) A concentration that consists of a merger or the acquisition of joint control shall be notified jointly by the undertakings involved in the merger, or by those acquiring joint control. In all other cases, the notification shall be effected by the person or undertaking acquiring control of the whole or parts of one or more undertakings.

(6) The undertakings shall notify the concentration using a special form, the contents of which shall be stipulated by the Government by decree.

Article 44 **(Suspension of implementation of concentrations)**

(1) Undertakings shall not exercise rights and obligations arising from a concentration that is subject to notification until a decision declaring the concentration compatible with competition rules has been issued.

(2) When the Office, in compliance with the third paragraph of Article 42 of this Act, invites undertakings to notify the concentration to the Office, the undertakings must cease the implementation of the concentration on the date of the service of the invitation.

(3) Actions that are contrary to the preceding two paragraphs shall be void.

(4) In exceptional cases and on the proposal of an undertaking, the Office may issue an order

permitting the implementation of concentration within a specified scope and under specified conditions prior to issuing a decision, provided that the undertaking can demonstrate in its proposal that such implementation is essential to maintain the full value of the investment or to perform services of general interest. The Office shall take into account in particular the effects of the suspension of the implementation of the concentration on one or more undertakings involved in the concentration or on a third party and the threat that the concentration poses to the effective competition.

(5) The Office may issue an order permitting or refusing the implementation of concentration within 15 working days of the date of receipt of the proposal referred to in the preceding paragraph.

(6) The prohibition of implementation of the concentration referred to in the first paragraph of this article shall have no effect on:

- the implementation of a public bid pursuant to the law regulating take-overs provided that the acquirer does not exercise the voting rights or exercises them in accordance with the order referred to in the fourth paragraph of this article;
- the validity of transactions in securities, including those convertible into other securities, admitted to trading on the organised market, unless the buyer and seller know or ought to have known that the transaction was carried out in contravention of the first paragraph of this article.

Article 45 (Initiation of procedure)

(1) Procedure for the appraisal of concentration shall be initiated on the basis of a notification.

(2) The Office shall initiate *ex officio* procedure for the appraisal of concentration by issuing an order on the commencement of procedure when likelihood is demonstrated that the concentration governed by the provisions of this Act has been implemented but the undertakings failed to notify it.

(3) The Office shall initiate *ex officio* procedure for the elimination of the effects of concentration.

(4) Article 24 of this Act shall apply, *mutatis mutandis*, for an order referred to in the second and third paragraph of this article.

(5) In the course of procedure for the appraisal of the concentration referred to in the first paragraph of this article, the Office may, *ex officio*, by decision prohibit undertakings, competent authorities and holders of public authority from exercising voting, management, property and other rights and obligations arising from the concentration until a decision declaring the concentration compatible with the competition rules has been issued. In the course of the procedure for the appraisal of a concentration referred to in the second paragraph of this article, the Office may, *ex officio*, by decision establish that the concentration falls within the scope of the provisions of this Act and prohibit undertakings, competent authorities and holders of public authority from exercising voting, management, property and other rights and obligations arising from the concentration until a decision declaring the concentration compatible with the competition rules has been issued.

Article 46 (Examination of a notification)

(1) The Office shall examine a notification without delay. If the notification does not contain all the required elements specified on the special form referred to in the sixth paragraph of Article 43 of this Act, the Office shall invite the notifying party to correct the deficiencies and

shall set a time limit for such correction. If the notifying party fails to correct the deficiencies within the time limit, it shall be deemed that the concentration has not been notified.

(2) If the Office concludes that the concentration notified does not fall within the scope of the provisions of this Act, it shall issue a decision thereon.

(3) If the Office finds that the concentration, 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 that it shall not oppose it and shall declare the concentration compatible with competition rules.

(4) If the Office finds that the concentration 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 on the commencement of procedure.

(5) Article 24 of this Act shall apply *mutatis mutandis* for an order referred to in the preceding paragraph.

(6) The Office must issue a decision referred to in the second and third paragraphs of this article or an order referred to in the fourth paragraph of this article within 25 working days of the receipt of a complete notification.

(7) A decision referred to in the third paragraph of this article shall be deemed to cover restrictions directly related and necessary to the execution and implementation of the concentration.

Article 47 **(Request for information)**

(1) Article 27 of this Act shall apply *mutatis mutandis* to a request for information.

(2) The deadline for issuing an order on the commencement of procedure and decisions referred to in Articles 46 and 50 of this Act shall be suspended while a party is in arrears with its reply to a request for information.

Article 48 **(Inspections)**

(1) The provisions of Articles 28 through 34 shall apply *mutatis mutandis* when conducting an inspection.

(2) Authorised persons shall actively assist officials and other persons authorised by the European Commission to conduct an inspection in accordance with Article 13 of Regulation 139/2004/EC, which, in the second paragraph of Article 13, also specifies the scope of powers of authorized persons.

(3) Inspections on the basis of an order for inspection may be conducted in undertakings involved in a concentration or undertakings likely to be involved in a concentration.

Article 49 **(Statement of objections)**

(1) When the Office intends to issue a decision declaring a concentration incompatible with competition rules, it must inform the notifying party of statement of objections.

(2) Article 36 of this Act shall apply *mutatis mutandis* to the statement of objections.

Article 50 **(Decisions)**

- (1) Within 60 working days after an order on the commencement of procedure has been issued, the Office shall:
- issue a decision declaring the concentration compatible with competition rules if it finds that the concentration is not in contravention of this Act;
 - issue a decision declaring the concentration incompatible with competition rules and prohibit it if it finds that the concentration is in contravention of this Act.
- (2) The decision referred to in the first indent of the preceding paragraph shall be deemed to cover restrictions directly related to and necessary for the execution or implementation of the concentration.

Article 51 (Remedies)

- (1) A notifying party may propose remedies to remove serious doubts as to the compatibility of a concentration with competition rules.
- (2) The Office shall adopt such remedies as it considers appropriate to remove serious doubts as to the compatibility of the concentration with competition rules, taking into consideration their nature, scope and likelihood of effective and timely implementation.
- (3) If the Office adopts remedies, it shall specify in the operative part of the decision referred to in the third paragraph of Article 46 of this Act and the first indent of the first paragraph of the preceding article:
- remedies;
 - obligations to ensure their implementation and supervision; and
 - time limits for their implementation.
- (4) When the implementation of remedies is contingent on the consent or another action of the Office, the Office shall decide thereon by order. No judicial protection shall be allowed against such an order.
- (5) The time limit for issuing an order on the commencement of procedure shall be extended by 15 working days if remedies have been proposed by the notifying party.
- (6) The Office may by a request for information require the notifying party to provide a report on the implementation of remedies imposed by decision.

Article 52 (Special cases of annulment of a decision)

- (1) The Office may annul a decision declaring the concentration to be compatible with competition rules or a decision referred to in the second paragraph of Article 46 of this Act, and in the same decision decide on the compatibility of the concentration with competition rules:
- if the decision is based on incomplete, incorrect or misleading information supplied by one of the undertakings involved in the concentration; or
 - if an undertaking acts contrary to the obligations referred to in the second indent of the third paragraph of the preceding article.
- (2) The decision referred to in the first indent of the preceding paragraph may be issued within three years from the date on which a decision declaring the concentration compatible with competition rules or the decision referred to in the second paragraph of Article 46 of this Act has been issued and served, and in the case of the decision referred to in the second indent of the preceding paragraph, within two years after the time limit referred to in the third indent of the third paragraph of the preceding article has expired.

Article 53
(Measures to eliminate the effects of concentration)

- (1) If a concentration prohibited by the Office has been implemented, or if an undertaking has failed to implement the remedies specified in the decision declaring the concentration compatible with the competition rules, the Office may impose measures on the undertakings involved in the concentration to restore the situation prevailing prior to the implementation of the concentration, in particular through the division of the undertaking or disposal of all the shares acquired.
- (2) When restoration of the situation prevailing before the implementation of the concentration is not possible, the Office may impose any other measure appropriate to achieve such a restoration as far as possible.
- (3) When implementation of the measures referred to in the first and second paragraph of this article is contingent on the consent or another action of the Office, the Office shall decide thereon by order. No judicial protection shall be allowed against such an order.
- (4) The Office may impose the measures referred to in the first and second paragraph of this article by a decision declaring the concentration incompatible with competition rules or by a separate decision.

Chapter 4
Judicial protection

Article 54
(Judicial protection)

- (1) Judicial protection against the decisions adopted by the Office shall be provided in the procedure stipulated in this Act (hereinafter: judicial protection procedure).
- (2) The law governing administrative disputes shall be applied *mutatis mutandis* to judicial protection procedure initiated against decisions adopted by the Office, unless otherwise provided by this Act.

Article 55
(Right to judicial protection against decisions and orders)

- (1) Judicial protection procedure may be initiated against decisions of the Office.
- (2) Judicial protection procedure may be initiated against orders of the Office pursuant to this Act, unless expressly excluded.
- (3) Notwithstanding the preceding paragraph, judicial protection procedure against a decision may be applied to contest an order, against which the judicial protection procedure has been excluded in compliance with this Act, namely:
 - an order for request for information from an undertaking (Article 27 of this Act);
 - an order for inspection (Article 28 of this Act).
- (4) Judicial protection procedure shall be allowed against any order that may be subject to appeal under the provisions of the law governing general administrative procedure.
- (5) Matters subject to judicial protection procedure shall be considered urgent cases under this Act and shall be subject to priority decision by the court.

Article 56
(Jurisdiction and structure of the court)

Decisions in judicial protection procedure shall be made by the Supreme Court of the Republic of Slovenia sitting in a panel of three judges.

Article 57
(New facts and evidence)

A plaintiff in judicial protection procedure may not introduce new facts or present new evidence.

Article 58
(Lawsuit testing limits)

The court shall test a decision by the Office within the limits of the claim and within the limits of the grounds stated in the action, and shall, *ex officio*, pay attention to essential infringements of the provisions of the procedure in compliance with the third paragraph of Article 27 of the Administrative Disputes Act (Official Gazette of the Republic of Slovenia, No. 105/06).

Article 59
(Session)

As a rule, the court shall decide without a hearing.

Article 60
(Review of the case files)

Article 18 of this Act shall apply *mutatis mutandis* in reviewing the case files before the court.

Article 61
(Legal remedy)

No appeal shall be allowed against a judgment or decision delivered in judicial protection procedure.

PART VI
COURT PROCEDURE

Article 62
(Compensation)

(1) A person who intentionally or through negligence infringes the provisions of Article 6 or Article 9 of this Act or Article 81 or Article 82 of the EC Treaty shall be liable for the damage caused by such infringement.

(2) If the damage has been caused by the infringement of provisions of Article 6 or Article 9 of this Act or Article 81 or Article 82 of the EC Treaty, the court shall be bound by the final decision of the Office and the European Commission establishing the existence of the infringement. This obligation shall be without prejudice to rights and obligations pursuant to Article 234 of the EC Treaty.

(3) The statute of limitations for compensation claims under the first paragraph of this article shall be suspended from the date of initiating procedure before the Office or the European Commission to the date on which such procedure has been finally concluded.

(4) The court must immediately notify the Office of any action brought before it, claiming compensation for infringement of the provisions of Article 6 or Article 9 of this Act or Article 81 or Article 82 of the EC Treaty.

Article 63

(Cooperation among the courts, the European Commission and the Office)

(1) The court must notify the Office without delay of any court procedure for the application of Article 81 or Article 82 of the EC Treaty.

(2) When, in accordance with the third paragraph of Article 15 of Regulation 1/2003/EC, the European Commission submits a written observation on issues relating to the application of Article 81 or Article 82 of the EC Treaty, the court must submit a copy of the written observation to the Office and the parties to the procedure without delay.

(3) When, in accordance with the third paragraph of Article 15 of Regulation 1/2003/EC, the Office submits a written observation on issues relating to the application of Article 81 or Article 82 of the EC Treaty, the court must submit a copy of the written observation to the parties to the procedure without delay.

(4) The European Commission and the Office may submit a written observation referred to in the second and third paragraphs of this article at any time until a decision is issued. The written observation shall not be binding.

(5) If the court requests the European Commission to submit an opinion in accordance with the first paragraph of Article 15 of Regulation 1/2003/EC, it must notify the parties thereof and, after receiving the opinion of the European Commission, send a copy of the opinion to the Office and the parties to the procedure. The opinion shall not be binding.

(6) The court must send the Office and the European Commission a copy of any decision adopted with respect to the application of Article 81 or Article 82 of the EC Treaty at the same time as serving such a decision on the parties.

(7) Communication between the court and the European Commission may be conducted directly or through the Office.

PART VII

RESTRICTION OF THE MARKET BY REGULATORY INSTRUMENTS

Article 64

(Prohibition)

(1) The Government, state authorities, local community authorities and holders of public authority may not restrict the free performance of undertakings on the market.

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

Article 65

(Regulatory restrictions on free performance)

(1) In the case of regulatory restrictions on the free performance of undertakings, the protection of interests of undertakings shall be ensured in a procedure for appraising the compliance of regulations with the Constitution and law if such protection cannot be ensured in an administrative dispute.

(2) For the purposes of this Act, regulations that in accordance with the Constitution guarantee human rights and economic and social relations shall not be considered to restrict free performance of undertakings on the market, in particular regulations laying down:

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

Article 66

(Restrictions of free performance by individual instruments and actions)

(1) Restrictions on free performance by individual instruments and actions within the meaning of the second paragraph of Article 64 of this Act shall in particular be deemed instruments and actions that:

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

(2) If legal remedies against instruments and actions referred to in the preceding paragraph are not ensured in an administrative procedure, the undertaking affected may initiate an administrative dispute.

Article 67

(Exceptionally permitted restrictions)

Notwithstanding Articles 65 and 66 of this Act, the Government may lay down market restrictions in the following cases:

- if, as a result of a natural disaster, epidemics, state of emergency or similar circumstances, serious disturbances in the market and in supplies for the population, or disturbances in other fields if they pose a threat to the safety and health of the population, have occurred or are likely to occur;
- if significant disturbances on the market have occurred or are likely to occur due to a lack of goods indispensable for production or processing, or for the everyday life of the population;

- if there is a need to meet the demand for products, raw materials and reproduction materials, which are of specific or strategic importance for the defence of the Republic of Slovenia.

Article 68

(Condition for the application of exceptionally permitted restrictions)

The exceptionally permitted restrictions referred to in the preceding article may be laid down by the Government only if the reasons for introducing restrictions cannot be eliminated by measures in undertakings, import, or by current economic policy measures.

Article 69

(Measures applied in exceptionally permitted restrictions)

(1) As restrictions within the meaning of Article 67 of this Act, the Government may prescribe:

- a prohibition of trade in specific goods, restrictions in the trade in specific goods in terms of quantity and quality, or a determination of specific conditions for trade in specific goods or type of goods;
- the obligation of specific undertakings to put into circulation specific quantities or types of goods, and to make them available or deliver them to specific users in accordance with a set order of priority;
- the obligation of specific undertakings to create reserves, within which they must keep specific quantities and types of goods.

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

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

(4) If the Government 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 70

(Mitigation of damage caused by exceptionally permitted restrictions)

(1) If an undertaking has suffered substantial damage due to measures referred to in the preceding article, the competent national body must adopt measures for mitigating the damage in such a way that the consequences of the prescribed national measures for the undertaking are not substantially disproportionate in comparison with the consequences suffered by consumers, other undertakings, the state or local community under circumstances referred to in Article 67.

(2) If the measures referred to in the preceding article have inflicted substantially disproportionate damage on an undertaking and the measures referred to in the preceding paragraph have not been adopted, the undertaking may claim for compensation of the damage from the Republic of Slovenia.

Article 71

(Opinions of the Office)

(1) With a view to ensuring effective competition on the territory of the Republic of Slovenia and in cases in which the provisions of the law or other regulations cause restriction of

competition or proper functioning of the market and when this is not in the general public interest, and in cases referred to in Article 66 of this Act, the Office shall send the competent authorities an opinion on measures appropriate to eliminate or prevent the restriction of competition.

(2) The Office shall publish information about cases for which it has provided an opinion, where this is appropriate given the nature and significance of the restriction.

Article 72 (Consultation)

(1) The Office shall submit an opinion on a proposed act or decrees when it deems it necessary or when requested by a competent state authority.

(2) The Prime Minister or the competent minister may request the Office to submit an opinion on proposed acts or decrees which have the following direct effects:

- laying down quantitative restrictions in implementing activities or access to the market;
- laying down exclusive rights in certain economic fields;
- laying down general conditions of operation.

PART VIII PENALTY PROVISIONS

Article 73 (Fines for restrictive practices)

(1) A fine for minor offence of up to ten percent of the annual turnover of the undertaking in the preceding business year shall be imposed on a legal entity, entrepreneur or an individual who performs economic activity when:

- they act in contravention of Article 6 of this Act or Article 81 of the EC Treaty,
- they abuse a dominant position in contravention of Article 9 of this Act or Article 82 of the EC Treaty;
- they act in contravention of an enforceable decision issued by the Office pursuant to Article 37, Article 38 or Article 39 of this Act.

(2) A fine between EUR 5,000 and EUR 10,000 shall also be imposed on the responsible person of a legal entity or the responsible person of an entrepreneur for minor offence referred to in the preceding paragraph.

(3) If the nature of the minor offence referred to in the preceding paragraphs is particularly serious due to the amount of damage inflicted, or due to the amount of the illegally acquired pecuniary benefit, or due to the offender's intent or unlawful gain, a fine of between EUR 15,000 and EUR 30,000 shall be imposed on the responsible person of a legal entity or the responsible person of an entrepreneur.

Article 74 (Fines in concentrations)

(1) A fine of up to ten percent of the annual turnover of the undertaking involved in a concentration together with other undertakings in the group in the preceding business year shall be imposed on a legal person and entrepreneur for a minor offence when:

- they fail to notify to the Office a concentration governed by the provisions of this Act, or fail to notify it within the time limit referred to in Article 43 of this Act;
- in breach of Article 44 of this Act they implement rights or obligations arising from the concentration;
- they fail to implement remedies or obligations imposed by a decision declaring the concentration compatible with competition rules;
- they act in contravention of a decision declaring a concentration incompatible with competition rules;
- they act in contravention of an enforceable decision issued by the Office pursuant to Article 53 of this Act.

(2) A fine of between EUR 5,000 and EUR 10,000 shall be imposed on the responsible person of a legal entity or the responsible person of an entrepreneur for a minor offence referred to in the preceding paragraph.

(3) A fine of between EUR 3,000 and EUR 5,000 shall be imposed on a natural person already controlling at least one undertaking for a minor offence referred to in the first paragraph of this article.

(4) If the nature of the minor offence referred to in the preceding paragraphs is particularly serious due to the amount of damage inflicted, or due to the amount of the illegally acquired pecuniary benefit, or due to the offender's intent or unlawful gain, a fine of between EUR 15,000 and EUR 30,000 shall be imposed on the responsible person of a legal entity or the responsible person of an entrepreneur, and a fine of between EUR 10,000 and EUR 15,000 on a natural person already controlling at least one undertaking.

Article 75 **(Limitation period)**

Minor offences procedure for Articles 73 and 74 of this Act shall not be permitted after the expiry of five years from the day on which the minor offence is committed; minor offences procedure, however, may in no case be instituted after the expiry of a period equal to twice the limitation period stipulated by law in respect of minor offences procedure.

Article 76 **(Immunity from and reduction of a fine)**

(1) An offender involved in agreements or concerted actions among two or more competitors, which have as their object the prevention, restriction or distortion of competition on the territory of the Republic of Slovenia through practices such as the fixing of purchase or selling prices or other trading conditions, limitations of production or sales, the sharing of markets (hereinafter: cartel) shall be granted immunity from a fine provided that all the following conditions are met:

- the offender fully and completely discloses his or her participation in an alleged cartel;
- the offender is the first to submit information and evidence which, in the Office's view, will enable an inspection in connection with the alleged cartel or the finding of an infringement of Article 6 of this Act or Article 81 of the EC Treaty in connection with the alleged cartel;
- the offender cooperates with the Office throughout the procedure;
- the offender ends his or her involvement in the alleged cartel immediately after the beginning of cooperation with the Office in respect of the immunity from a fine except for what would, in the Office's view, be against the interests of the inspection; and
- the Offender did not coerce other undertakings to join the cartel or to remain in it.

(2) An offender that does not meet all the conditions referred to in the preceding paragraph and that is not granted immunity from a fine may be eligible for a reduction of fine provided that all the following conditions are met:

- the offender provides evidence of his or her participation in the alleged cartel, which represents significant added value with respect to the evidence already in the Office's possession;
- the offender cooperates with the Office throughout the procedure; and
- the offender ends his or her involvement in the alleged cartel immediately after the beginning of his or her cooperation with the Office in respect of the immunity from or reduction of a fine except for what would, in the Office's view, be against the interests of the inspection.

(3) A reduction of fine of 30 to 50 percent shall be granted to an offender meeting all the conditions referred to in the preceding paragraph and is the first to provide evidence referred to in the first indent of the second paragraph of this article. A reduction of fine of 20 to 30 percent shall be granted to an offender meeting all the conditions referred to in the second paragraph of this article and is the second to provide evidence referred to in the first indent of the second paragraph of this article. A reduction of fine of up to 20 percent shall be granted to other offenders meeting all the conditions referred to in the second paragraph of this article and submitting evidence referred to in the first indent of the second paragraph of this article.

(4) A fine laid down within the range may not be reduced below the threshold stipulated by this Act.

(5) The procedure for immunity from or reduction of a fine referred to in the preceding paragraphs shall be laid down by the Government by means of decree.

Article 77 (Imposition of a fine)

The Office may impose by fast-track procedure a fine for an infringement in any amount within the range stipulated by this Act.

Article 78 (Calculation of annual turnover of an association of undertakings)

When the infringement of an association of undertakings involves the activity of its members, the annual turnover of the association of undertakings in the preceding business year shall include the annual turnover of each member active on the market to which the infringement pertains.

PART IX TRANSITIONAL AND FINAL PROVISIONS

Article 79 (Repealed regulations)

- (1) On the day of entry into force of this Act, the following acts shall cease to apply:
- Prevention of the Restriction of Competition Act (Official Gazette of the Republic of Slovenia, Nos. 56/99, 37/04 and 40/07);
 - Decree on Block Exemptions (Official Gazette of the Republic of Slovenia, Nos. 69/02, 109/02 and 6/03 – corrigendum);

- Decree defining the contents and elements required for the notification form for the concentration of undertakings (Official Gazette of the Republic of Slovenia, No. 4/00) and
- Instructions on procedures and conditions for relevant market definition (Official Gazette of the Republic of Slovenia, No. 83/00).

(2) The regulation referred to in the third indent of the preceding paragraph shall apply pending a new regulation.

Article 80 **(Amendment of other regulation)**

On the day of entry into force of this Act, the fifth paragraph of Article 58 of the Media Act (Official Gazette of the Republic of Slovenia, No. 110/06 – officially consolidated text, and 69/06 –ZOIPub) shall be amended so as to delete the text “and opinion of the body, competent for protecting the competition”.

Article 81 **(Conclusion of procedures initiated prior to entry into force of this Act)**

(1) Concentration appraisal procedure that started prior to entry into force of this Act shall be concluded pursuant to regulations applicable to date.

(2) Notwithstanding the preceding paragraph, provisions of Article 44, the fifth paragraph of Article 45 and Article 74 of this Act shall apply to procedures for the appraisal of concentration initiated prior to entry into force of this Act in respect of the suspension of a concentration. Undertakings involved in the appraisal of concentration procedures must cease to implement the concentration pending a decision declaring the concentration compatible with competition rules. Judicial protection procedure against orders issued pursuant to Article 40 of the Prevention of the Restriction of Competition Act (Official Gazette of the Republic of Slovenia, Nos. 56/99, 37/04 and 40/07) shall be discontinued.

(3) Persons at whose request the Office initiated procedure prior to entry into force of this Act shall keep the status of party.

(4) Judicial protection procedures against a decision of the Office issued prior to entry into force of this Act shall be concluded pursuant to regulations applicable to date. Judicial protection procedures against decisions pending until entry into force of this act shall continue pursuant to the provisions of this Act.

Article 82 **(Time-limits for issuing implementing regulations)**

(1) The Government shall issue the decree referred to in the sixth paragraph of Article 43 of this Act within one year of the entry into force of this Act.

(2) The minister responsible for the economy shall issue the rules laying down the general form of the official identity card and the procedure for issuing it pursuant to the third paragraph of Article 30 of this Act within six months following the entry into force of this Act.

Article 83 **(Identification in the course of inspection)**

Pending issue of the official identity cards referred to in the second paragraph of Article 30 of this Act, persons employed at the Office shall, in the course of an inspection, prove their identity by a written authorization from the Office Director.

Article 84
(Entry into force)

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

TRANSITIONAL AND FINAL PROVISIONS (ZPOmK-1A)

Article 19

The Government of the Republic of Slovenia shall issue the decree referred to in the fifth paragraph of Article 76 of the Act within three months after the enactment of this Act.

Article 20

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