

PREVENTION OF THE RESTRICTION OF COMPETITION ACT
(ZPOmK-1)
(Only the Slovenian version shall be deemed authentic)

PART I
GENERAL CLAUSES

Article 1
(Content of Act)

(1) This Act regulates acts of restriction, concentration of undertakings, arbitrary restriction of competition and measures to prevent restrictive acts and concentration which significantly restrict efficient competition, as they cause or might potentially cause effects on the territory of the Republic of Slovenia.

(2) This Act defines the body competent for the protection of competition, its powers and the procedures before it.

Article 2
(Implementation of EU regulations)

This Act regulates the procedure and powers for implementation of Council Regulation (EC) No. 1/2003 of 16 December 2002 on the Implementation of the Rules on Competition mentioned in Articles 81 and 82 of the Treaty (Official Gazette L No. 1 dated 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 No. 24 of 29.1.2004, p. 1, hereinafter: Regulation 139/2004/EC).

Article 3
(Meaning of terms)

For the purposes of this Act, the terms used shall have the following meanings:

1. An "undertaking" is an entity engaging in economic activities, regardless of its legal form and ownership structure. An undertaking can also be a business association which does not directly perform an economic activity but affects or could affect the actions of undertakings mentioned in the first sentence of this clause on the market.

2. "Economic activity" is any activity performed on the market for payment.

3. A "controlling undertaking" is an undertaking which, directly or indirectly, holds:

- the majority of voting rights in another undertaking;
- the right to appoint or dismiss the majority of the management staff or supervisory board of another undertaking; or
- the right to manage the affairs of another undertaking on the basis of a business contract or other legal arrangement.

4. A "controlled undertaking" is an undertaking in which another undertaking has the rights or influence mentioned in the preceding clause.

5. "Group undertakings" are undertakings which:

- are involved in an agreement or concentration;
- their controlled undertakings;

- their controlling undertakings;
- controlled undertakings from the preceding indent; and
- undertakings in which one or more of the undertakings mentioned in the preceding indents jointly or in collaboration with one or more undertakings gains the influence mentioned under item 3 of this Article.

6. "Relevant market" is a market defined by the relevant product/service market and the relevant geographic market.

7. The "relevant product/service market" is a market which comprises all those products and/or services that the consumer and/or user considers as substitutes regarding their characteristics, price or intended use.

8. The "relevant geographic market" is a market which comprises the region where competitors on the product/service market compete in the sale or purchase of products or services, where competition conditions are sufficiently homogenous, and which can be distinguished from neighbouring regions on the grounds that competition conditions are significantly different in such regions.

9. "Undertakings participating in the concentration" are undertakings which merge, undertakings which gain control over other undertakings, acquired undertakings and undertakings founding a joint venture.

10. "Annual sales" is net sales revenue generated by the undertaking over the financial period through the sale of products and provision of services through regular activities.

11. "Annual sales of undertakings participating in the concentration with other group undertakings" are the annual sales generated by undertakings participating in the concentration together with other group undertakings; it excludes net revenue from sale of products and services between group undertakings. In cases where concentration occurs through gaining control over a part of one or more undertakings, regardless of whether these parts have the status of a legal entity, the portion of the seller's/sellers' annual sales which refers to the parts comprised in the concentration shall be taken into account. Two or more transactions in the sense of the preceding sentence carried out by the same persons or undertakings shall be deemed as one concentration created on the date of the last transaction. If group undertakings, combined or in collaboration with third undertakings, have rights listed under subsection 3 of this Article, the annual sales of the group undertaking shall be distributed among them equally.

12. "Annual sales generated on the market of the Republic of Slovenia" are net sales revenues from the sale of products and services on the territory of the Republic of Slovenia.

13. "Annual sales of credit and financial institutions" comprise financial income from shares, financial income from loans granted, and financial income from operating receivables. The terms "credit institution" and "financial institution" used in this Act bear the same meaning as the terms used in the act governing banking.

14. "Annual sales of insurance companies" is the amount of gross premium written, which comprises all revenues and receivables from insurance contracts, including reinsurance premiums paid, less taxes or contributions associated with insurance premiums.

15. "Trade secret" comprises data whose disclosure would cause considerable damage, and which is known to a limited number of persons.

16. "Group exceptions" are groups of agreements which meet the criteria mentioned in the third paragraph of Article 6 of this Act or the third paragraph of Article 81 of the Treaty on the European Union.

17. "Acts of restriction" are restrictive agreements and abuse 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 violations of Articles 81 and 82 of the Treaty establishing the European Community (Official Gazette of the Republic of Slovenia, No. 7/04, hereinafter: Treaty on the European Union).
- (3) This Act does not deal with relationships between employers and employees.

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

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

Part II
ACTS OF RESTRICTION

Article 6
(Prohibition of restrictive agreements)

- (1) Agreements between undertakings, resolutions of business associations and concerted actions of undertakings (hereinafter: agreements) whose object or effect is 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 progress or investment;
 - apply dissimilar conditions to comparable 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 a 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. These agreements, however, shall not:
 - impose on the undertakings in question 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 which are the subject of the agreement.
- (4) An undertaking invoking the preceding paragraph shall bear the burden of proving that the conditions listed 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 are agreements between undertakings whose total market share, in combination with other group undertakings on any of the relevant markets on the territory of the Republic of Slovenia to which the agreement pertains, does not exceed:

- 10 percent for undertakings operating at the same level of production or commerce ("horizontal agreements");
- 15 percent for undertakings operating at different levels of the production or distribution process ("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 limited as a result of the cumulative effects of identical or equivalent agreements between other undertakings, the market share thresholds from the preceding paragraph shall be decreased by 5 percent.

(4) Even if the thresholds mentioned under the second and third paragraphs of this Article are not reached, the first paragraph of this article shall not apply to:

a) horizontal agreements which have as their object:

- price determination;
- limiting production or distribution; or
- sharing markets or sources of supply;

b) vertical agreements which have as their object:

- fixing retail prices; or
- granting territorial protection to the participating undertakings or to third persons.

Article 8 (Block exemptions)

(1) For groups of arrangements which meet the conditions of the third paragraph of Article 6 of this Act, the provisions of the Regulations of the European Commission or Council of the European Union which regulate the application of the third paragraph of Article 81 of the Treaty on the European Union shall apply *mutatis mutandis*, even if there is no indication of effect on commerce between EU Member States.

(2) The Government of the Republic of Slovenia (hereinafter: Government) may specify by decree the categories of agreements meeting the conditions from the third paragraph of Article 6 herein.

(3) The Office may also eliminate the benefit of block exemptions if it finds that the effect of individual arrangements are incompatible with the third paragraph of Article 6 herein or the third paragraph of Article 81 of the Treaty on the European Union.

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

(1) The abuse of a dominant position in the market by one or more undertakings on the territory of the Republic of Slovenia or its significant portion shall be prohibited.

(2) An undertaking or several undertakings shall be deemed to have a dominant position when they can act independently of competitors, clients or consumers to a significant degree.

(3) In determining the dominant position, the Office takes into consideration the market share, financing options, legal or actual entry barriers, access to suppliers or the market, and existing or potential competition.

(4) Such abuse of dominant position may, in particular, constitute:

- indirectly or directly setting unfair sale and purchase prices or other unfair business conditions;

- restricting production, markets or technical advances to the detriment of consumers;
 - applying dissimilar conditions for comparable 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 on the market if their share of the market of the Republic of Slovenia exceeds a 40 percent threshold.
- (6) Two or more undertakings shall be deemed to have a dominant position on the market if their share of the market of the Republic of Slovenia exceeds a 60 percent threshold.

Part III CONCENTRATION OF UNDERTAKINGS

Article 10 (Concept of concentration)

- (1) Concentration is involved in lasting changes of control over an undertaking, namely:
- when two or more previously independent undertakings or parts of undertakings merge; or
 - when one or more natural persons already controlling at least one undertaking, or one or more undertakings, acquires, 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
 - when two or more undertakings create a joint venture performing on a lasting basis all the functions of an autonomous economic entity.
- (2) In the sense of the preceding paragraph, control over an undertaking 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 regulations involved, confer the possibility of exercising decisive influence on such undertaking or part of undertaking, in particular by:
- ownership or the right to use all or part of the assets of the undertaking;
 - rights or contracts which confer decisive influence on the structure, voting or decisions of the governing bodies of an undertaking.
- (3) Control is acquired by persons or undertakings which:
- have the rights or entitlement to such control on the basis of contracts; or
 - have an actual option of enforcing the rights arising from contracts, despite not being bearers of rights or entitlements to such rights arising from contracts.
- (4) It shall be deemed that there is no concentration involved when banks, insurance companies, savings institutions or other financial undertakings whose regular activities include trading securities on their own behalf or on behalf of others, simultaneously gain equity interests in an undertaking with the purpose of resale, provided that they do not invoke voting rights linked to such equity interests in order to affect the competitive actions of the undertaking in question, or provided that they only invoke such voting rights in the interest of arranging for the sale of such equity interests, with the further proviso that such sale is made within one year of purchase of the equity interests. The one-year period may be extended by Office order at the request of the undertaking when the undertaking can demonstrate that the sale could

not be properly executed within the prescribed period. No legal remedy may be invoked against such order.

Article 11
(Appraisal of concentrations)

(1) Concentrations which significantly impede effective competition in the Republic of Slovenia or its significant portion, particularly as a result of creating or strengthening the dominant position, shall be prohibited.

(2) The Office shall appraise the concentrations primarily on the basis of the market position of undertakings participating in the concentration, their options for financing, market structure, choice available to suppliers and users, and their access to providers, or to the market itself, existence of any legal or actual barriers for entry, fluctuation of supply and demand on relevant markets, benefits of intermediary and end-users, and technical and economic development, provided it benefits consumers and does not impede competition.

(3) If the establishment of a joint venture in the sense of the third indent of the first paragraph of the preceding article has the aim or effect to perform concerted action of undertakings which remain mutually independent, this concerted action shall be determined under the provisions of Article 6 herein. If the Office determines that conditions from the third paragraph of Article 6 herein are not met, it shall issue a decision on the concentration's incompliance with competition rules, and shall prohibit such incompliance.

Part IV
OFFICE

Article 12
(Tasks and competencies of the Office)

(1) The office is a body empowered to control the implementation of this act and Articles 81 and 82 of the Treaty on the European Union. 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 acts as a misdemeanor authority, passing decisions in cases of the violation of provisions of this Act and provisions of Articles 81 and 82 of the Treaty on the European Union in accordance with the act regulating misdemeanors unless stipulated otherwise herein.

(3) The Office may initiate action before the competent court to establish voidness in cases described under the first paragraph of Article 6 and the third paragraph of Article 44 herein.

Article 13
(Organisation of the Office)

(1) The Office shall be independent and autonomous in exercising its tasks and powers.

- (2) The Office shall be managed by its Director, who shall also be responsible for the activity carried out by the Office.
- (3) Decisions in administrative procedures and in misdemeanor procedures shall be passed by a panel of arbiters set up each time for this purpose.
- (4) The senate shall consist of the Office Director acting as chairman, and two Office employees appointed by the Office Director.
- (5) The senate shall adopt decisions and vote in a session, which shall not be public. Decisions shall be adopted by a majority vote.
- (6) The senate shall issue acts, concluding the procedure before the Office.
- (7) The Director of the Office shall issue other acts under the Office's competence.

Article 14
(Cooperation with the Office)

In order to carry out its tasks under this Act, state authorities, local community bodies, public authorities and other entities and organizations with access to information required for deciding shall be required to provide, upon the Office's request, any information and documents, including trade secrets and other confidential information, regardless of any provisions governing protection of such information (hereinafter: data).

PART V
DECISION PROCESS WITHIN THE OFFICE

CHAPTER 1
General provisions on procedure before the Office

Article 15
(Application of procedural provisions)

- (1) The Office shall decide on 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) It shall not be possible to file an appeal against acts issued by the Office.

Article 16
(Parties in procedure)

- (1) In a procedure before the Office, the parties to the procedure shall be the undertaking against which proceedings have been initiated, and the informant of the concentration.
- (2) The applicant who lodged an initiative, report, briefing or other application shall not hold the position of a party.
- (3) The person claiming to be entering the procedure in order to protect its legal interests must lodge an application to be entered into the procedure within 30 days from the announcement of the decision to initiate proceedings on the Office's website.

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

(5) The request to be entered into the proceedings shall be decided by the Office by way of an official decision. If the person fails to demonstrate legal interest, the Office shall issue a decision denying his involvement as an intervenient.

Article 17

(Protection of confidential sources)

(1) At the request of a person who is the source of a report or other information which the Office uses in the performance of its competencies, the Office must protect the identity of such person if it is likely that divulging his information may cause significant damage.

(2) The person requesting protection of his identity must, in addition to producing documents, also produce a version of the documents which omits any information which could result in disclosure of the source.

Article 18

(Right of parties to review the case file)

(1) Parties have the right to review the case file documents and make transcripts and copies at their own expense. Reviewing, transcribing and photocopying shall be supervised by an authorized official, or done through a public authority's information system or an information system for accepting applications, serving official writs and sending information, where parties authenticate themselves using a qualified electronic signature certificate. Review and transcription of documents may also be requested orally.

(2) If the procedure involves data from computerized records and other electronic information and records, these data shall be considered part of the relevant case file.

(3) In the procedure of limiting actions, parties have the right to review the case file after the decision initiating proceedings has been issued, unless the Office Director deems this is not in the best interest of the procedure. In such cases, the Office Director shall issue a decision postponing the right to inspection of documents; however, this should be no later than the time of service of a summary of relevant facts. No legal remedy may be invoked against such decision.

(4) The right to review documents in the case file shall also be granted to the expert witness, 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 regarding the file, including correspondence between the Office and the European Commission or competition protection authorities of other EU Member States;
- data which constitute trade secrets,
- data relating to the secrecy of the source,
- minutes of discussion and voting, and
- draft decisions.

(6) The burden of proof regarding the existence of a trade secret mentioned in the second item of the preceding paragraph shall be borne by the undertaking claiming it to be such. Upon request from the Office, the undertaking must produce a version of the document which omits data mentioned under the second indent of the preceding paragraph.

(7) The Office may disclose data which constitute a trade secret to the undertaking against which charges are being brought, if it deems that its disclosure might objectively prevail over the interests of protecting such information as a trade secret in order to ensure the right to defence. In this context the Office may postpone the review of data constituting a trade secret, although not longer than the time of service of the summary of relevant facts.

Article 19
(Adversarial principle)

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

Article 20
(Service)

(1) If a document cannot be served on the subject of the entry into the companies 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 a public announcement on the notice board of the Office and online on the e-government Internet portal, 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 15 days of the affixation of the announcement on the notice board and the e-government portal.

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

Article 21
(Oral process)

The Office shall pass decisions without an oral trial, unless an official person overseeing the procedures determines that an oral trial needs to be conducted in order to clarify or establish essential facts.

Article 22
(Decisions and orders)

(1) Grounds must be given for the ruling. The statement of grounds must also contain an explanation of resolutions which may be contested in the procedure of judicial protection against a decision pursuant to Article 55 of this Act.

(2) Grounds must be given for a resolution issued hereunder, which must also contain instructions on legal remedies only if judicial protection proceedings against the resolution are not excluded.

(3) If the decision whereby the proceedings are concluded contains confidential data on the party, such data shall be deleted from the statement of grounds for the decision served on the other participants in the procedure.

(4) The proclamation of the decision or resolution which concludes the proceedings shall be published on the Office's website.

CHAPTER 2
Procedure in restrictive acts

Subchapter 1
General provisions

Article 23
(Commencement of procedure ex officio)

(1) The Office shall initiate procedure ex officio when it learns of circumstances from which a probability arises that the provisions of Articles 6 or 9 of this Act, or Articles 81 or 82 of the Treaty on the European Union, have been violated.

Article 24
(Order on the commencement of procedure)

- (1) The order on the commencement of procedure shall contain:
- description of the act which was the cause for commencing proceedings;
 - a statement of the provisions of the Act for which a probability has been demonstrated that they might have been violated;
 - an explanation of the grounds to initiate the procedure.
- (2) No legal remedy may be invoked against the order.
- (3) An extract of the order on the commencement of procedure shall be published on the Office's website.
- (4) The summary of the order shall contain:
- an indication of the parties to which the order applies;
 - a brief statement of the grounds for the commencement of procedure, and of the provisions of this Act which are a basis for commencement; and
 - a request to the persons to send any information which could be relevant for passing the decision to the Office.
- (5) If, by the time the summary of relevant facts is issued, it has been determined that the procedure should be expanded to include another violation or another undertaking, the Office shall issue an order expanding the order on the commencement of procedure. With regard to the order expanding the order on the commencement of procedure, the preceding paragraphs shall apply *mutatis mutandis*.

Article 25
(Common proceedings)

- (1) In cases of proceedings involving violations of Articles 81 or 82 of the Treaty on the European Union, the Office shall also conduct proceedings involving violations of Articles 6 or 9 of this Act (common proceedings).
- (2) If during the proceedings it should be determined that there is no basis to conduct the proceedings under Articles 81 or 82 of the Treaty on the European Union since there is no influence on the commerce between EU Member States, the Office shall

issue an order terminating the proceedings in this segment. No legal remedy may be invoked against such order terminating the proceedings.

Subchapter 2
Research of the sector or certain types of agreements

Article 26
(Study of the sector or certain types of agreements)

(1) When price rigidity or other circumstances indicate the possibility of impeding or distorting competition on the territory of the Republic of Slovenia, the Office may conduct a study of an individual sector or certain types of agreements in multiple sectors (hereinafter: study).

(2) In order to acquire the data required for the study, Articles 27 through 34 of the present Act shall apply *mutatis mutandis*.

(3) The Office may publish a report on the study excluding data which constitute trade secrets and other confidential data, and invite interested third parties to submit their feedback.

(4) The Office may use the data obtained in the course of conducting research in procedures contemplated within the present Act.

Subchapter 3
Investigative procedure

Article 27
(Request for data submission)

(1) In the course of supervising the implementation of this Act or Articles 81 or 82 of the Treaty on the European Union, the Office may, prior to issuing an order on the commencement of procedure, address a request for data submission to each undertaking, partners, members of governing or supervisory bodies and employees.

(2) The Office may also request data from an undertaking by special order, which includes: legal basis, purpose of the request, specification of requested data, specification of a suitable deadline for provision of requested data and the threatened penalty for providing inaccurate, incomplete or misleading data or for failure to provide data within the specified time. No legal remedy may be invoked against such order.

(3) The undertaking must provide all documentation; however, it is not obliged to admit to violation of the provisions of this Act or Articles 81 and 82 of the Treaty on the European Union.

(4) If an undertaking to which the Office has addressed a request to provide data via special order provides inaccurate, incomplete or misleading data, or if it fails to provide such data within the specified time, the Office may issue an order imposing a pecuniary penalty of up to EUR 50,000. The deadline for payment of the fine may not be shorter than 15 days, nor longer than one month.

(5) At the same time as issuing the order of penalty mentioned in the preceding paragraph, the Office shall issue an order specifying a new deadline for provision of information. The Office shall treat undertakings which continue to refuse to cooperate in the same manner as described in the preceding paragraph until the sum of pecuniary penalty amounts from individual orders reaches 1 percent of the undertaking's annual sales in the preceding financial period.

(6) Resolutions under the fourth and fifth paragraphs of this article shall be an executory title. The execution shall be carried out by the tax authority under the procedure prescribed for collection of tax liabilities.

(7) The deadline for issuing the decision shall be suspended while the party is in arrears with its reply to the request to provide information.

Article 28 (Order of investigation)

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

- the subject and purpose of the investigation;
- date of initiation of investigative action;
- the authorised person to conduct the investigative action;
- scope of powers from Article 29 of this Act; and
- warning on the threatened pecuniary penalty in the event of refusal to cooperate or obstruction of investigative action.

(2) The order on investigative action shall be served on the undertaking against which the procedure is to be initiated at the onset of the investigation.

(3) An authorized person may serve the order on the commencement of procedure at the same time as the order on investigative action, if this is unavoidable in order to achieve the purpose of the investigation.

(4) No legal remedy may be invoked against the order on investigative action.

Article 29 (Investigation)

(1) The investigation shall be conducted by persons employed at the Office, while specific expert tasks may be carried out by specialized organizations, institutions or individuals (hereinafter: authorized representatives), with the proviso that this is not contrary to public interest or the interest of the parties involved.

(2) Authorized persons may:

- enter and inspect the premises, land and vehicles (hereinafter: premises) at the registered address of the undertaking and in any other locations where the undertaking itself or another undertaking authorized by the undertaking is conducting activities for which a possibility exists that they are in contravention with Articles 81 or 82 of the Treaty on the European Union;
- review business books and other documentation, regardless of the medium on which it is written or stored;
- seize or obtain copies of or extracts from business books and other documentation in any form using photocopying devices and computer equipment of the undertaking or the Office. If it is impossible to make photocopies with photocopying devices and computer equipment belonging to the undertaking or the Office due to technical reasons, 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 all business premises and business books and other documentations pending investigation and in the scope required;
- seize items and business books and other documentation for a period no longer than 20 working days;
- require any representative or employee to give an oral or written explanation of facts or documents which relate to the subject or purpose of the investigation, and

record this in the minutes. When a written explanation is requested, the authorized person shall specify a deadline for the preparation of the explanation;

– perform other actions in accordance with the purpose of the investigation.

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

(4) The undertaking must allow authorized persons access to premises and business books and other documentation. Authorized persons may conduct investigations against the undertaking's will.

(5) As a rule, the investigation shall be conducted between 6.00 and 22.00 hours. Authorized persons must conduct investigative acts so as to cause minimal hindrance of the undertaking's operations.

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

(7) Authorized persons must protect the trade secrets and other confidential information of which they are made aware in the course of the investigation.

Article 30 (Investigation)

(1) Persons employed at the Office shall demonstrate their authorization to perform investigative acts by presenting an official ID card, and specialized organizations, institutions or individuals shall present a written authorization signed by the Office Director, which specifies the scope of authority.

(2) The official ID card shall be issued by the minister responsible for the economy.

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

Article 31 (Obstruction of investigation)

(1) If an undertaking refuses to allow access into its business premises or prevents access to business books or other documentation, or if it hinders such access or otherwise obstructs the investigation, or if this can be reasonably expected, an authorized person may enter the premises and access business books or other documentation against the undertaking's will, with the help of the police. The costs of entry and access and any resulting damage shall be borne by the undertaking.

(2) If an undertaking hinders authorized persons in the performance of their authorized tasks described in the second paragraph of Article 29 herein, the Office may issue an order imposing a fine in the amount of up to 1 percent of the undertaking's annual sales in the preceding financial period. The deadline for payment of the fine may not be shorter than 15 days, nor longer than one month.

(3) The order referred to in the preceding paragraph shall be an executory title. The execution shall be carried out by the tax authority under the procedure prescribed for collection of tax liabilities.

Article 32
(Privileged communication)

(1) The investigation shall exclude letters, notices and other forms of communication between the undertaking subject to investigation and its attorney, to the extent such communications pertain to the proceedings in question (hereinafter: privileged communication).

(2) If an undertaking or its attorney refuses to allow access to data, claiming it to be privileged communication, an authorized person shall verify if the reference is clearly unjustified. If an authorized person deems that this is not privileged communication, it shall file the document (or its copy) in a sealed envelope signed by both the undertaking and its attorney.

(3) The justification of claiming privileged communication shall be decided by the Administrative Court of the Republic of Slovenia in Ljubljana within 15 days of the lodging of the request 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 it to the undertaking or its attorney. There is no legal remedy against such a ruling.

Article 33
(Investigation at third parties)

(1) If there is just cause for suspicion that business books and other documentation relating to the subject of the investigation are to be found on the premises of an undertaking which is not the subject of the investigation, or on residential premises of members of the undertaking's governing or supervisory bodies, of employees or other associates of the undertaking against which proceedings have 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 34 of this Act shall apply *mutatis mutandis* when conducting the investigation.

(3) During the inspection of residential premises, two persons of legal age must be present as witnesses.

Article 34
(Investigation report)

(1) The investigators shall prepare an investigation report after the investigation has been completed.

(2) The investigation report shall contain:

- place and date of the preparation of the report;
- name and title of the authorized person preparing the report;
- a brief description of the course of the investigation;
- a list of statements given by representatives or employees in the undertaking which was subject to investigation; and
- a list of documents and other items which the Office obtained during the investigation.

(3) The investigation report shall be served on the undertaking which was subject to investigation.

(4) The undertaking which was subject to investigation may provide comments to the investigation report within 15 days of service.

Article 35

(Involvement of the Office in investigative action conducted by others)

(1) Authorized persons shall:

– conduct investigative acts on the basis of an appeal of the European Commission or a body in charge of competition protection of another EU Member State, pursuant to this Act, in which case no order on the commencement of procedure shall be issued;

– actively assist official persons and other persons authorized by the European Commission to conduct investigative acts in accordance with Article 20 of Regulation 1/2003/EC, where the scope of powers of authorized persons is specified in the second paragraph of Article 20 of Regulation 1/2003/EC.

(2) The Office may allow official representatives of a body competent for protection of competition of another EU Member State, or the European Commission and other persons authorized by this authority, to collaborate with authorized persons of the Office in the conduct of investigative acts in accordance with Article 22 of Regulation 1/2003/EC.

(3) In the conduct of research pursuant to this Article, the police must provide persons mentioned under the first and second paragraphs of this Article assistance, pursuant to the first paragraph of Article 31 herein.

Article 36

(Summary of relevant facts)

(1) Summary of relevant facts shall include findings regarding facts and evidence of significance for rendering a decision.

(2) When the Office intends to issue a decision establishing the existence of violation of Articles 6 or 9 of this Act or Articles 81 or 82 of the Treaty on the European Union, it must inform the parties involved via a summary of relevant facts.

(3) If the summary of relevant facts contains data on the party which constitutes a trade secret, such data shall be deleted from the summary of relevant facts for the decision served on the other participants in the procedure.

(4) The Office shall set a reasonable deadline within which parties may provide their comments on the summary of relevant facts. The Office shall not be required to consider statements regarding the summary of relevant facts received after this deadline has expired.

(5) The deadline mentioned in the preceding paragraph may not be longer than 45 days.

Subchapter 4

Decisions and orders of the Office

Article 37

(Termination of violation)

(1) The Office may issue a decision establishing the existence of violation of Articles 6 or 9 of this Act or Articles 81 or 82 of the Treaty on the European Union, and demand from an undertaking to cease such violation.

(2) The same decision may impose upon the undertaking the obligation to take reasonable measures to eliminate the violations and their consequences, particularly through sale of activities or parts of activities, division of an undertaking or disposal of equity interests 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) When fulfillment of such measures is contingent on the consent or another action by the Office, the Office shall render a decision in the form of an order. No legal remedy may be invoked against such order.

(4) The Office must issue the decision mentioned under the first paragraph of this Article within two years from issue of the order on the commencement of procedure.

Article 38 (Temporary measures)

(1) If there is a possibility of violation of Articles 6 or 9 of this Act or Articles 81 or 82 of the Treaty on the European Union, the Office may issue an order introducing temporary measures in cases of emergency, when there is a danger of severe damage to the effectiveness of the competition on the market.

(2) In the order introducing temporary measures, the Office shall specify the duration of such measures. The Office may extend temporary measures.

(3) A party may lodge a complaint against an order introducing temporary measures within three days of service on the party. The court shall render a ruling on such complaint without delay, and no later than within 15 days of lodging.

Article 39 (Covenants)

(1) After an order on the commencement of procedure has been issued, the undertaking against which procedure has been initiated may propose covenants rectifying the circumstances from which a probability arises that the provisions of Articles 6 or 9 of this Act, or Articles 81 or 82 of the Treaty on the European Union, have been violated. The undertaking against which procedure has been initiated may propose covenants before expiration of the deadline for replying to the summary of relevant facts.

(2) If the proposed covenants are not sufficient to rectify the circumstances from which a probability arises that the provisions of Articles 6 or 9 of this Act, or Articles 81 or 82 of the Treaty on the European Union, have been violated, the Office shall inform the proposing undertaking of this in writing.

(3) The Office may accept the proposed covenants by decision. It may impose a time limit on such covenant.

(4) When fulfillment of such covenants is contingent on the consent or another action by the Office, the Office shall render a decision in the form of an order. No legal remedy may be invoked against such order.

(5) The Office may, upon proposal or ex officio, annul the decision from the third paragraph of this Article and continue proceedings when:

- there has been significant change in actual circumstances on which the decision was based;
- undertakings are not fulfilling the covenants; or

– the decision is based on inaccurate, incomplete or misleading data provided by parties.

(6) The Office must issue the decision mentioned under the third paragraph of this Article within two years from issue of the order on the commencement of procedure.

Article 40 (Termination of proceedings)

(1) If in the course of the proceedings the Office finds no violation of Articles 6 or 9 of this Act or Articles 81 or 82 of the Treaty on the European Union, or if special circumstances indicate that proceedings would not be warranted, it can terminate the proceedings by way of an order.

(2) When the European Commission initiates procedure on the grounds of violation of Articles 81 or 82 of the Treaty on the European Union, or if a decision has already been issued by the European Commission on the same matter involved in the procedure being brought before the Office, the Office shall terminate proceedings by way of an order. No legal remedy may be invoked against such order terminating the proceedings.

(3) If another EU Member State's body in charge of protecting competition initiates procedure on the grounds of violation of Articles 81 or 82 of the Treaty on the European Union, or if a decision has already been issued by this body on the same matter involved in the procedure being brought before the Office, the Office may terminate proceedings by way of an order. No legal remedy may be invoked against such order terminating the proceedings.

Article 41 (Report)

The Office may request an undertaking to which the Office order is addressed to provide a report on fulfilment of covenants, obligations and measures imposed upon it by order.

CHAPTER 3 Procedure on concentrations

Article 42 (Obligation of notification)

(1) A concentration must be notified if:

– total annual sales of undertakings participating in the concentration together with other group undertakings generated on the market of the Republic of Slovenia exceeded EUR 35 million; and

– the annual sales of the acquired undertaking, together with other group undertakings, generated on the market of the Republic of Slovenia during the preceding financial year exceeded EUR 1 million; or, in cases described under the third indent of the first paragraph of Article 10 of this Act, the annual sales of at least two undertakings participating in the concentration, together with other group undertakings, generated on the market of the Republic of Slovenia over the preceding financial period exceeded EUR 1 million.

(2) Regardless of the threshold mentioned in the preceding paragraph, the concentration need not be notified if it is under consideration of the European Commission in accordance with Regulation 139/2004/EC.

(3) Even if the concentration does not reach the thresholds from the first paragraph of this Article, the Office may, no later than 15 days following the date when undertakings participating in the concentration notify the Office of its creation, require the latter to notify concentration if they hold more than 60 percent market share on the Slovenian market, together with other group undertakings.

Article 43 (Prior notification of concentration)

(1) Concentration must be notified to the Office prior to its execution, however, no later than 30 days from signing the contract, public announcement or obtaining control. That time period shall begin when the first of these events occurs.

(2) When the European Commission decides in accordance with Article 4 of Regulation 139/2004/EC that it shall not evaluate the concentration, the concentration should be notified to the Office no later than 30 days from notifying the undertaking that it must notify the concentration in accordance with the fifth paragraph of this Article, by decision of the European Commission.

(3) When the European Commission notifies undertakings that the concentration shall be evaluated by the Office by written decision in accordance with Article 9 of Regulation 139/2004/EC, the concentration should be notified to the Office no later than 30 days from service of the decision to the undertaking obligated to notify the concentration in accordance with the fifth paragraph of this Article.

(4) In cases described under the third paragraph of the preceding Article, the concentration should be notified to the Office no later than 30 days from service of the request on the undertaking obligated to notify the concentration in accordance with the fifth paragraph of this Article.

(5) Concentration created through merger or joint control must be jointly notified by the undertakings participating in the merger or undertakings obtaining joint control. In all other cases concentration should be reported by a person or undertaking obtaining control over the entirety or parts of one or more undertakings.

(6) Undertakings shall notify concentration using a special form whose contents shall be prescribed by the government by decree.

Article 44 (Suspension of concentrations)

(1) Undertakings shall not exercise rights and obligations arising from concentration subject to obligatory notification until a decision on compliance of the concentration with competition rules has been issued.

(2) When the Office urges undertakings to notify concentration in accordance with Article 42 of this Act, undertakings must cease to execute concentration from the date of service of the notice.

(3) Acts contrary to the preceding two paragraphs shall be void.

(4) In exceptional cases and at the request of an undertaking, the Office may issue an order permitting execution of concentration in a specified scope and under specified conditions before the decision is issued, provided that the undertaking can demonstrate in its appeal that such execution is crucial in order to maintain the value of the investment or performance of services of general interest. In this regard the Office shall consider in particular the effects of suspended execution of concentration on one or more undertakings participating in the concentration or on third parties, and the threat that the concentration poses to the effectiveness of competition.

(5) The Office shall issue an order permitting or denying execution of concentration within 15 working days from receiving the appeal mentioned under the preceding paragraph.

(6) The prohibition of execution of concentration specified in the first paragraph of this Article shall not affect:

- the execution of a public offering under the law governing takeovers, provided that the acquiring party does not invoke voting rights or that it exercises such rights in accordance with the order mentioned in the fourth paragraph of this Article;
- the validity of transactions involving securities, including those tradeable for other securities traded on a regulated market, unless the buyer and seller are or should be aware that the transaction was carried out in contravention to the first paragraph of this Article.

Article 45

(Initiation of the procedure)

(1) The procedure of concentration assessment is initiated on the basis of notification.

(2) The Office begins the procedure of concentration assessment ex officio by issuing an order on the commencement of procedure when a possibility is demonstrated that a concentration governed by the provisions of this Act has been created, which has not been reported by the undertakings.

(3) The Office initiates proceedings to eliminate the effects of concentration ex officio.

(4) Article 24 of the present act shall apply mutatis mutandis for the order mentioned under the second and third paragraphs of this Article.

(5) In the course of the proceedings to assess concentration from the first paragraph of this Article, the Office may issue, ex officio, a decision prohibiting undertakings, competent bodies and bearers of public authority from exercising voting, property and other rights and obligations arising from concentration until a decision declaring the concentration compatible with competition rules has been issued. In the course of the proceedings to assess concentration from the second paragraph of this Article, the Office may issue an ex officio decision finding that the concentration is subject to the provisions of this Act, and prohibit undertakings, competent bodies and bearers of public authority from exercising voting, property and other rights and obligations arising from concentration until a decision declaring the concentration compatible with competition rules has been issued.

Article 46

(Test of notification)

(1) The Office shall examine the notification as soon as it is received. If the notification does not contain all required components of the special form mentioned under the sixth paragraph of Article 43 of this Act, the Office shall request the notifier to rectify the inadequacies and set a time period in which they must rectify such inadequacies. If the notifier fails to rectify the inadequacy in due time, the concentration shall be deemed as not notified.

(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, 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 contest the concentration and it shall declare it to be compliant 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) Article 24 of the present act shall apply mutatis mutandis to the order specified in the preceding paragraph.

(6) The Office must issue the decisions referred to in the second and third paragraphs or the order from the fourth paragraph of this Article within 25 days of the day of receipt of a complete notification.

(7) A decision referred to in the third paragraph of this Article shall be deemed to include restrictions directly related and required for the execution or implementation of concentration.

Article 47

(Request for data submission)

(1) Article 27 of the present Act shall apply mutatis mutandis to the request for data submission.

(2) The deadline for issuing the order on the commencement of procedure shall be suspended while the party is in arrears with its reply to the request to provide information.

Article 48

(Investigations)

(1) The provisions of Articles 28 through 34 of this Act shall apply mutatis mutandis to conducting investigations.

(2) Authorized persons shall actively assist official persons and other persons authorized by the European Commission to conduct investigative acts in accordance with Article 13 of Regulation 139/2004/EC, where the scope of powers of authorized persons is specified in the second paragraph of Article 13 of Regulation 139/2004/EC.

(3) Investigations on the basis of an order on investigative action may be carried out in undertakings participating in the concentration or undertakings likely to be participating in the concentration.

Article 49

(Summary of relevant facts)

(1) When the Office intends to issue an order of non-compliance with competition rules, it shall make the notifier aware of a summary of relevant facts.

(2) Article 36 of the present act shall apply mutatis mutandis to the summary of relevant facts.

Article 50

(Decisions)

(1) Within 60 working days from the date of issue of the order on the commencement of procedure, the Office shall:

– issue a decision declaring the concentration compatible with competition rules, if it finds that a concentration is not incompatible with the provisions of this Act;

– issue a decision declaring the concentration incompatible with competition rules and prohibiting it, if it finds that a concentration is not compatible with the provisions of this Act.

(2) A decision referred to in the first indent of the preceding paragraph shall be deemed to include restrictions directly related and required for the execution or implementation of concentration.

Article 51 (Corrective measures)

(1) The notifying party may propose corrective measures to eliminate serious suspicion of compliance of concentration with competition rules.

(2) The Office shall adopt such corrective measures as it considers adequate to alleviate serious suspicion of compliance of concentration with competition rules, given the nature, scope and likelihood of successful and timely execution.

(3) If the Office adopts corrective measures, it shall specify the following in the decision referred to in the third paragraph of Article 46 of this Act and in the first indent of the first paragraph of the preceding Article:

- corrective measures;
- obligations to ensure their implementation and supervision; and
- deadline for fulfilment.

(4) When fulfilment of such corrective measures is contingent on the consent or another action by the Office, the Office shall render a decision in the form of an order. No legal remedy may be invoked against such order.

(5) The deadline for issuing a decision or order on the commencement of procedure shall be extended by 15 working days if the notifier proposes corrective measures to the Office.

(6) The Office may issue a request for data submission, requesting the notifier to provide a report on fulfilment of corrective measures which were imposed by decision.

Article 52 (Special cases of annulment of the decision)

(1) The Office may annul the decision declaring the concentration compatible with competition rules or the decision referred to in the second paragraph of Article 46 of this Act and decide on the compliance of concentration with competition rules:

- if the decision is based on inaccurate, incomplete or misleading data provided by one of the undertakings participating in the concentration; or
- if the 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 Article may be issued within three years from the date when the 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 served, and in the case of a decision referred to in the second indent of the preceding Article, within two years following expiration of the deadline referred to in the third indent of the third paragraph of the preceding Article.

Article 53 (Measures to eliminate the effects of concentration)

(1) If concentration prohibited by the Office has been effected or executed, or if the undertaking failed to fulfil the corrective measures specified in the decision declaring the concentration compatible with competition rules, the Office may impose upon undertakings participating in the concentration suitable measures to restore previous conditions which existed prior to the execution of concentration, particularly the division of the undertaking or disposal of all acquired interests.

(2) When the condition existing prior to the concentration cannot be established, the office may impose any other measures in order to establish the conditions which resemble the conditions prior to the execution of concentration as closely as possible.

(3) When the fulfilment of measures referred to in the first and second paragraphs of this Article is contingent on the consent or another action by the Office, the Office shall render a decision in the form of an order. No legal remedy may be invoked against such order.

(4) The Office shall impose measures referred to in the first and second paragraph of this Article by issuing a decision declaring the concentration incompatible with competition rules, or by special decision.

CHAPTER 4 Judicial protection

Article 54 (Judicial protection)

(1) Judicial protection against the Office's decisions shall be provided in the procedure stipulated in this Act (hereinafter: procedure of judicial protection).

(2) The law governing administrative disputes shall be applied *mutatis mutandis* for judicial protection proceedings initiated against the Office's decisions, unless otherwise provided by this Act.

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

(1) Judicial protection proceedings may be initiated against decisions of the Office.

(2) Judicial protection proceedings against orders issued by the Office in accordance with this Act shall be permitted unless explicitly excluded.

(3) Notwithstanding the preceding paragraph, judicial protection proceedings against a decision may be used to contest an order which excludes judicial protection proceedings under this Act, in the following cases:

– order whereby the Office requires an undertaking to submit data (Article 27 of this Act);

– order on investigative action (Article 28 of this act).

(4) Special judicial protection proceedings are permissible to contest an order against which a complaint may be lodged according to regulations governing general administrative procedure.

(5) Matters in judicial protection proceedings pursuant to this act are urgent; the court ruling on these cases is a priority.

Article 56 (Jurisdiction and composition of the court)

The Supreme Court of the Republic of Slovenia shall rule in judicial protection proceedings in a panel of three judges.

Article 57
(New facts and evidence)

The plaintiff may not introduce new facts or produce new evidence in judicial protection proceedings.

Article 58
(Limits of testing)

The court shall test the Office's decision within the limits of the claim and within the limits of the grounds stated in the action, whereby it shall pay attention ex officio to any material infringement of the procedural provisions specified in the third paragraph of Article 27 of the Administrative Disputes Act (Official Gazette of the Republic of Slovenia, No. 105/06).

Article 59
(Session)

The court shall rule without a hearing as a rule.

Article 60
(Review of case file documents)

Article 18 of this Act shall be applied mutatis mutandis to review of case file documents before the court.

Article 61
(Legal remedies)

The judgment or resolution issued in the procedure of judicial protection may not be appealed.

Part VI
COURT PROCEEDINGS

Article 62
(Compensation)

(1) Anyone violating, either deliberately or out of negligence, the provisions of Articles 6 or 9 of this Act or Articles 81 or 82 of the Treaty on the European Union shall be liable for any damages arising from such violation.

(2) If the damage was caused through violation of Articles 6 or 9 of this Act or Articles 81 or 82 of the Treaty on the European Union, the court is bound by the final decision determining the existence of violation rendered by the Office and the European Commission. This liability does not infringe upon the rights and obligations stipulated in Article 234 of the Treaty on the European Union.

(3) The statute of limitations for damage claims referred to in the first paragraph of this Article shall be suspended from the date of initiating proceedings before the

Office or the European Commission to the date when such proceedings are concluded and final.

(4) The court must immediately notify the Office of any action brought before it, demanding compensation on the grounds of violation of Articles 6 or 9 of this Act or Articles 81 or 82 of the Treaty on the European Union.

Article 63

(Collaboration between courts, the European Commission and the Office)

(1) The court must inform the Office without delay of any court proceedings linked to the application of Articles 81 or 82 of the Treaty on the European Union.

(2) When the European Commission renders a written opinion regarding the application of Articles 81 or 82 of the Treaty on the European Union in accordance with the third paragraph of Article 15 of Regulation 1/2003/EC, the court shall send a copy of the written opinion to the Office and parties involved without delay.

(3) When the Office renders a written opinion regarding the application of Articles 81 or 82 of the Treaty on the European Union in accordance with the third paragraph of Article 15 of Regulation 1/2003/EC, the court shall send a copy of the written opinion to the parties involved without delay.

(4) The European Commission may render a written opinion referred to in the second and third paragraph of this Article at any time until a decision is issued. The written opinion shall not be binding.

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

(6) The court must send the Office and the European Commission copies of any decisions involving the application of Articles 81 or 82 of the Treaty on the European Union at the same time as serving such decisions to the parties involved.

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

Part VII

RESTRICTION OF THE MARKET BY AUTHORITATIVE LEGAL INSTRUMENTS AND ACTIONS

Article 64

(Prohibition)

(1) The Government of the Republic of Slovenia, state bodies, local community bodies and individuals exercising public authorizations 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 free trade in goods and services, free entry into the market or free operation on the market, or which prevent competition in any other way.

Article 65

(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 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 on 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 66

(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 64 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 without good cause the procedure for issuing a permit for an activity or other permits important for the free operation on the market;
- 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 on the market without good cause.

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

Article 67

(Exceptionally permitted restrictions)

Notwithstanding the provisions of Articles 65 and 66 of this Act, the Government of the Republic of Slovenia may prescribe market restrictions in the following cases:

- if, as the result of a natural disaster, epidemic, state of emergency or other circumstances, significant 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 in the market have occurred or are likely to occur due to a 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 68

(Condition for using exceptionally permitted restrictions)

The exceptionally permitted restrictions under the preceding Article 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 69

(Measures used in exceptionally permitted restrictions)

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

- a prohibition of trade in specific 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 them 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 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 70

(Mitigation of damage caused by exceptionally permitted restrictions)

(1) If an undertaking has suffered substantial damage because of the 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 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 67.

(2) If the measures under the preceding Article have inflicted 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.

Article 71

(Office opinions)

(1) In order to ensure more effective competition in the Republic of Slovenia, in cases where provisions of the law or other regulations cause restriction of competition or proper market operation and where this is not in general public interest, and in cases described in Article 66 of this Act, the Office shall send competent bodies an opinion

on suitable measures to be taken in order to eliminate or prevent limitation of competition.

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

Article 72 (Consultation)

(1) The Office shall prepare an opinion on a bill or regulation 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 prepare an opinion regarding an act or regulation whose direct effects involve:

- setting quantity restrictions involving economic operations or access to the market;
- setting exclusive rights in certain segments of the economy;
- setting general conditions of operation.

Part VIII PUNITIVE PROVISIONS

Article 73 (Fines in restrictive acts)

(1) A fine of up to 10 percent of the undertaking's annual sales in the preceding financial period shall be levied on a legal entity, sole trader or individual independently pursuing an activity if they commit one of the following offences:

- act contrary to Article 6 of this Act or Article 81 of the Treaty on the European Union,
- abuse their dominant position contrary to Article 9 of this Act or Article 82 of the Treaty on the European Union;
- act contrary to an executable decision issued by the Office on the basis of Articles 37, 38 or 39 of this Act.

(2) A fine of between EUR 5,000 and 10,000 shall also be levied on the responsible person of a corporate body or a responsible independent contractor for the offence cited in the preceding paragraph.

(3) If the nature of the offence cited in the preceding paragraphs is particularly serious given the amount of resulting damages or amount of unlawfully acquired pecuniary benefits or the perpetrator's intent or purpose to exploit, the responsible person of the legal person or sole trader shall be fined between EUR 15,000 and 30,000.

Article 74 (Fines in concentrations)

(1) A fine of up to 10 percent of the annual sales of undertakings participating in the concentration together with other group undertakings generated in the preceding financial year shall be imposed on a legal entity and sole trader if:

- it fails to notify concentration which is governed by the provisions of this Act, or fails to notify it within the deadline stipulated in Article 43 of this Act;
- it exercises rights or obligations associated with the concentration contrary to Article 44 of this Act;

- it fails to fulfil corrective measures or obligations specified in the decision declaring the concentration compatible with competition rules;
- it acts contrary to the decision declaring the concentration incompatible with competition rules;
- it acts contrary to an executable decision issued by the Office on the basis of Article 53 of this Act.

(2) A fine of between EUR 5,000 and 10,000 shall also be levied on the responsible person of a corporate body or a responsible independent contractor for the offence cited in the preceding paragraph.

(3) A fine of EUR 3,000 to 5,000 shall be imposed upon a natural person already controlling at least one undertaking for committing the violation referred to in the first paragraph of this Article.

(4) If the nature of the offence cited in the preceding paragraphs is particularly serious given the amount of resulting damages or amount of unlawfully acquired pecuniary benefits or the perpetrator's intent or purpose to exploit, the responsible person of the legal person or sole trader shall be fined between EUR 15,000 and 30,000 and a natural person controlling at least one undertaking shall be fined EUR 10,000 to 15,000.

Article 75 (Statute of limitations)

Procedure regarding the misdemeanour referred to in Articles 73 and 74 of this Act shall not be permitted after the expiry of five years from the day the misdemeanour has been committed; procedure in respect of a misdemeanour shall not be possible in any case after the expiry of double the time required for the limitation by the statute governing misdemeanour procedure.

Article 76 (Remission of sanctions)

The fine may be waived in case of agreements or concerted actions between two or more competitors whose purpose is to prevent, impede or distort competition in the Republic of Slovenia through actions which include particularly setting purchase or sale prices or other business conditions, limitation of production or sale, or division of the market (hereinafter: cartel), if:

- the perpetrator discloses its involvement in a cartel;
- the perpetrator is the first to provide evidence which the Office deems sufficient to make it possible to initiate investigations into an alleged cartel or to determine a violation of Article 6 of this Act or Article 81 of the Treaty on the European Union in connection with the alleged cartel;
- the perpetrator collaborates with the Office throughout the course of the procedure;
- the perpetrator ceases to participate in the alleged cartel immediately after beginning to collaborate with the Office in connection with the waiver of sanctions, unless the Office deems this to be contrary to the interest of the investigation; and
- the perpetrator did not force others to participate in the alleged cartel, or force them to continue to operate in such alleged cartel.

Article 77 (Proclamation of fine)

The Office may make use of summary proceedings to proclaim a fine in any amount within the limits defined within this Act.

Article 78

(Calculation of annual sales of a business association)

When the violation of a business association involves activity of its members, the annual sales of the business association in the preceding financial period shall comprise the annual sales of each member active on the market to which the violation pertains.

Part IX

TRANSITIONAL AND FINAL PROVISIONS

Article 79

(Cessation of force of regulations)

- (1) On the day that this act enters into force, the following shall cease to be in force:
- Prevention of Restriction on 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 – amended);
 - 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 cited in the third indent of the preceding paragraph shall apply until a new regulation is issued.

Article 80

(Amendment of the second regulation)

On the day this Act enters into force, the fifth paragraph of Article 58 of the Media Act (Official Gazette of the RS, Nos. 110/06 – official consolidated text, and 69/06 – ZOIPub) shall be amended so as to abolish the text "and opinion of the body competent for protecting the competition".

Article 81

(Conclusion of procedures initiated prior to the enactment of the Act)

- (1) Concentration assessment procedures started prior to the entry into force of this Act shall be completed pursuant to previously applicable regulations.
- (2) Notwithstanding the preceding paragraph, suspension of execution of concentration in procedures of concentration assessment initiated prior to enactment of this Act shall be subject to the provisions of Articles 44 and 77 of this Act. Undertakings involved in the procedure of concentration assessment must cease execution of concentration until a decision declaring the concentration compatible with competition rules is issued. Judicial protection proceedings against an order issued on the basis of Article 40 of the Prevention of Restriction on Competition Act

(Official Gazette of the Republic of Slovenia, Nos. 56/99, 37/04 and 40/07) shall be suspended.

(3) Persons at whose request the Office initiated proceedings prior to the enactment of this Act shall retain the status of parties.

(4) Judicial protection proceedings against orders of the Office issued prior to the entry into force of this Act shall be completed pursuant to previously applicable regulations. Judicial protection proceedings against orders which have not yet been concluded before the enactment of this Act shall be continued under the provisions of the present Act.

Article 82

(Deadlines for the issuing of subsidiary regulations)

(1) The Government of the Republic of Slovenia shall issue the decree from 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 rules prescribing the form of the official identity card and the procedure for its issue from the third paragraph of Article 30 of this Act within six months of the entry into force of this Act.

Article 83

(Identification of investigators)

Until official identity cards cited in the second paragraph of Article 30 of this Act have been issued, persons employed at the Office shall demonstrate their authenticity with a written authorization signed by the Office Director.

Article 84

(Entry into force)

This act shall enter into force on the 15th day after its publication in the Official Gazette of the Republic of Slovenia.