Chapter 10 Slovak Republic

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The goal of this part of the study is to present the current methodology and the legal framework concerning the market definition in the Slovak media sector. At first, we will introduce the relevant regulatory framework, the legal provisions and the regulatory authorities and then we will investigate the relevant markets in the publishing, music, film, broadcasting (radio and television) and Internet areas. Therefore, we will firstly elaborate on the origin and criteria for market definition in the Slovak competition law. Then we will analyse a comprehensive repertoire of market definitions in the media sector in the Slovak Republic. There we will also compare the repertoire of relevant markets as defined by the European Commission and the markets defined by the Slovak competition and regulatory authorities where possible. Comparing
these markets with the relevant markets as upheld by the EC Commission in the media sector in application of the EC competition rules, the analysis will show that in the Slovak Republic in most of the cases the same market definition methodology is used and the same principles are shared. Finally we will examine the impact of different regulatory frameworks on the analysed market definitions.

A Market Definition in Competition and Media Law in Slovak Republic

I. Introduction

1. Relevant legislation

a) The Act on Protection of Economic Competition

Slovak competition law is regulated by the Act No. 136/2001 Coll. on Protection of Economic Competition (Zákon o ochrane hospodárskej súťaže) as amended (“Competition Act”)¹, which is supplemented by two regulations of the Slovak competition authority, the Antimonopoly Office of the Slovak Republic, that outline the requirements for merger notifications and calculations of turnover.

The Slovak Competition Act entered into force on 1 May 2001. It replaced the Act No. 188/1994 Coll. on Protection of Economic Competition and provided a completely new legislative basis for the competition policy. For the sake of completeness, it is necessary to mention that the new era of the competition law has begun with the approval of the Act No. 63/1991 Coll. on Protection of Economic Competition from March 1991, through which the competition protection rules were implemented into the Slovak law system again as a reaction to the gradual economy transformation and return to the free market economy.

The Competition Act applies to all undertakings active in all sectors of the economy. Its purpose is “to protect competition in the market for products, performance, work and services from any restriction and to create conditions for its further development with a view to promoting economic development to the benefit of consumers and regulating the powers and the scope of activities of the Slovak competition authority – the Antimonopoly Office of the Slovak Republic”³. The Competition Act is enforced under administrative law. As a part of the

³ Article 1 of the Competition Act.
enforcement, the Antimonopoly Office of the Slovak Republic can impose fines in the event of any violation of the Competition Act.

On 1 May 2004 substantial amendments to the Slovak Competition Act came into force due to the Slovak Republic’s accession to the European Union, in line with EU antitrust and competition policy and rules (and especially in light of the new EU competition regulations). The amendments aimed to create a legal framework for the fulfilment of tasks resulting from the Council Regulation (EC) No. 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty establishing the European Community and further approximation of the Slovak Republic's competition law to the acquis communautaire in the area of competition law. According to the 2004 Annual Report of the Antimonopoly Office, the Slovak Competition Act is in full compliance with the EC Competition Law. In order to provide more information on the activities and the output of the Antimonopoly Office of the Slovak Republic to experts and the general public, the Office continues to update the information provided via the website http://www.antimon.gov.sk, making available especially the information regarding ongoing administrative proceedings before the Antimonopoly Office, opinions on current issues related to the protection of competition, as well as many other reports on the Antimonopoly Office’s activities.

2. Relevant Competition and Regulatory Authorities in Slovak Republic

a) The Antimonopoly Office of the Slovak Republic

The Antimonopoly Office of the Slovak Republic (Protimonopolný úrad Slovenskej Republiky) was established in the year 1990 by the Act No. 347/1990 Coll. on Organisation of Ministries and Other Central State Administrative Bodies (Zákon o organizácii činnosti vlády a organizácií ústrednej štátnej správy).

The exclusive activity of the Antimonopoly Office in the sphere of protection of economic competition is defined by the Competition Act. The residence of the Antimonopoly Office is in Bratislava, the capital city of the Slovak Republic.

The task of the Antimonopoly Office is to promote and protect economic competition in the markets for products, performance, work and services against prevention, restriction or distortion as well as to create conditions for its further development in order to promote economic progress for the benefits of consumers.

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6 http://www.antimon.gov.sk

7 Act No. 347/1990 Coll. on Organisation of Ministries and Other Central State Administrative Bodies; Coll. of Laws No. 56/1990, page 1229.
The statutory body and the head of the Antimonopoly Office is its chairperson who is appointed and recalled by the President of the Slovak Republic on the basis of a proposal of the Government of the Slovak Republic. The chairperson's term in office shall be five years. The chairperson is authorised to act on behalf of the Office and to supervise and manage its activities.

The second important body of the Antimonopoly Office is the Council. The Council shall decide on appeals and review decisions outside the appellate proceedings. The Council shall also decide on the reopening of proceedings and on the prosecutor’s protest in the cases where the head of the Antimonopoly Office decides pursuant to the Competition Act. The Council consists of the chairperson of the Antimonopoly Office, the vice-chairperson and five other members. The Council members shall be appointed and recalled by the Government of the Slovak Republic on the basis of a proposal from the chairperson. The term in office of the Council members shall be five years.

The aforesaid system of functioning of the Antimonopoly Office’s bodies guarantees the independence of the Antimonopoly Office that is necessary especially to ensure the most possible objectivity of its decision-making.

Proceedings before the Antimonopoly Office shall commence on the Antimonopoly Office's own initiative (ex officio) or if petitioned by a participant in the proceedings. However, proceedings in the case of an agreement restricting competition and in the case of the abuse of a dominant position shall always commence on the Antimonopoly Office's own initiative. The proceedings are partially governed by the Competition Act, while the Act No. 71/1967 Coll. on Administrative Proceedings (Správny poriadok) is applied in a subsidiary manner.

The Antimonopoly Office enforces the prohibition of agreements restricting competition, rules on the abuse of a dominant position on the relevant markets and assesses concentrations. The Antimonopoly Office is empowered to initiate proceedings, to take administrative measures and to grant individual exemptions. According to Article 8a of the Competition Act, the Antimonopoly Office is competent to apply Article 81(1) and Article 82 EC.

In the event of a violation of the Competition Act, the Antimonopoly Office may impose fines or penalty sanctions. If the companies concerned disagree with the Antimonopoly Office’s administrative decision within the first instance proceedings, in general, they are entitled to file an appeal. The Council shall decide on such appeal. According to the relevant legal provisions, the legality of the decisions of the Antimonopoly Office may be reviewed by the Supreme Court of the Slovak Republic. In 2003, the Supreme Court of the Slovak Republic dealt with six lawsuits and, consequently, issued six decisions. Of the total number of cases, the Supreme Court dismissed three lawsuits in full, confirming the Antimonopoly Office’s decisions, terminated the

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proceedings in one case, and overruled the Antimonopoly Office’s decisions and returned the matter for new proceedings in two cases.\textsuperscript{10}

The Slovak Competition Act does not specifically regulate the private actions for damages for the breach of the competition law. Consequently, general provisions governing actions for damages under civil and commercial law will apply. Based on our knowledge, there have been no actions for damages for breach of the competition law filed or decided by the courts in the Slovak Republic. In the interest of the precision, it is necessary to mention that on 1 January 2005 a new Act No. 371/2004 Coll. on Court Seats and Circuits (\textit{Zákon o sídlach a obvodoch súdov Slovenskej republiky})\textsuperscript{11} has entered into force, selecting a single court for the competition related cases in both first and second instance. The District Court Bratislava II shall be used as the first instance court and it should be handling competition cases without differentiation whether based on the breach of national or EC competition law. The Regional Court in Bratislava will hear appeals against the decisions of the District Court Bratislava II. Both courts will be territorially competent for the whole territory of the Slovak Republic.

For the sake of completeness, it is necessary to mention that no relevant case law exists in relation to damages caused by a violation of the competition law.

b) The Telecommunication Office of the Slovak Republic

The Telecommunication Office of the Slovak Republic (\textit{Telekomunikačný úrad Slovenskej republiky})\textsuperscript{12} ("Telecom Office") has already been established in July 1964 by the Act No. 110/1964 Coll. on Telecommunications\textsuperscript{13}.

The Telecom Office is the national regulatory and pricing authority in the sector of electronic communications, which tasks and powers are provided in the Act No. 308/2000 Coll. on Electronic Communications (\textit{Zákon o elektronických komunikáciah}).\textsuperscript{14}

The Telecom Office is presided by a chairperson, who is elected and recalled by the National Council of the Slovak Republic for a six years term. The chairperson, in time of its absence, is deputised by the vice-chairperson. The vice-chairperson is appointed and recalled by the Government of the Slovak Republic for a six years term.

In general, the decisions of the Telecom Office may be appealed.\textsuperscript{15} The chairperson of the Telecom Office shall decide on the appeal, on the basis of a proposal of the special commission


\textsuperscript{11} Act No. 371/2004 Coll. on Court Seats and Circuits; Coll. of Laws No.: 157/2004, page 3622.

\textsuperscript{12} http://www.teleoff.gov.sk

\textsuperscript{13} Act No. 110/1964 Coll. on Telecommunications; Coll. of Laws No.: 48/1964, page 0785.

\textsuperscript{14} Act No. 610/2003 Coll. on Electronic Communications as last amended by the Act No. 716/2004; Coll. of Laws No.: 249/2003, page 5826.

\textsuperscript{15} For exceptions see Article 72 paragraph 1 and 2 of the Act No. 610/2003 Coll. on Electronic Communications.
established by the chairperson. Furthermore, the decisions as well as the proceedings of the Telecom Office may be revised by Supreme Court of the Slovak Republic. The proceedings are partially governed by the Act on Electronic Communications, while the Act No. 71/1967 Coll. on Administrative Proceedings (Správny poriadok)\textsuperscript{16} is applied in a subsidiary manner.

\textit{Inter alia}, the Telecom Office (i) is responsible for the regulation of the electronic communication sector, including the price and competition regulation; (ii) cooperates with the Ministry of Transport, Posts and Telecommunications of the Slovak Republic in the elaboration of a proposal of the national table of the frequency spectrum; (iii) protects the interests of the end-users in respect of the quality and prices of the services; (iv) provides information to end-users with respect to services, performs users researches, publishes them and uses them in its activities; (v) is in charge of the development of the market and the competition in the market of electronic communication services; (vi) decides on the fees for frequencies, and on the right to use numbers; (vii) fulfils obligations supporting the economic competition, the development of common market of the EU, the interests of all persons of the EU member states in the territory of the Slovak Republic, the access to networks, the interoperability of networks and services and protects freedom of carrier selection applying technical standards.

The Competition Act shall not apply to the cases of restriction of competition that come within the jurisdiction of another bodies ensuring protection of competition according to a special legislation.\textsuperscript{17} According to this provision, in the sector of electronic communications (i.e. also in the internet sector) the Telecom Office shall be the relevant competition and regulatory authority, however, only to the extent set forth in the Act on Electronic Communications.

In the aforesaid connection, the Telecom Office shall (i) define the relevant markets in the field of electronic communications on the basis of the list of relevant markets and procedures of relevant market analysis recommended by the European Commission in line with principles of assurance of competitive environment and taking into account specific national circumstances, especially the geographical ones\textsuperscript{18}; (ii) continuously supplement/change the list of the relevant markets based on the instructions and recommendations of the EC; (iii) analyse the relevant markets at least once in two years (the aim of such analysis is to detect whether there is effective competition on the relevant market)\textsuperscript{19}; (iv) identify, by a decision, the undertaking with significant market power on the relevant market (“SMP undertaking”) and, at the same time, impose in such decision at least one legal obligation pursuant to the Act on Electronic Communication on the SMP undertaking.\textsuperscript{20}

\begin{itemize}
\item \textsuperscript{16} Act No. 71/1967 Coll. on Administrative Proceedings as last amended by the Act No. 527/2003; Coll. of Laws No. 27/1967, page 0284.
\item \textsuperscript{17} Article 2 paragraph 6 of the Competition Act.
\item \textsuperscript{18} See Article 15 of the Act No. 610/2003 Coll. on Electronic Communications. At the present, the Decision of the Telecom Office from 28.01.2004 on the determination of the list of the relevant markets is valid and effective (effective as of 05.02.2004); http://www.teleoff.gov.sk/Rozhodnutia/trhy.html
\item \textsuperscript{19} See Article 16 of the Act No. 610/2003 Coll. on Electronic Communications.
\item \textsuperscript{20} See Article 17 of the Act No. 610/2003 Coll. on Electronic Communications.
\end{itemize}
It is necessary to mention that if it is suggested contracts on access, interconnection or facility sharing limit the competition in the relevant market, impair other undertaking or user, or the content of the contracts is in contradiction with the provisions of the Act on Electronic Communication or with the decision or the measure of the Telecom Office issued under the Act on Electronic Communication, the Telecom Office shall be entitled, on the proposal of the undertaking or its own initiative, to intervene into negotiations on conclusion of such contracts, assess their preparation, request from the contracting parties a specification of issues to be included in contracts, and impose a measure in case of detected shortcomings. The Telecom Office shall also be entitled to stipulate detailed technical and operational conditions of interconnection and methodology of calculation of prices or share on revenues for interconnection.

Furthermore, the Telecom Office is entitled, on its own initiative or upon the proposal of the undertaking, to suspend the execution of the contract on access, interconnection of networks or co-location and facility sharing, if technical, operational or financial conditions of the contract limit the competition in the relevant market, impair other undertaking or user or if the content of the contract is in contradiction with provisions of the Act on Electronic Communication or with decision or measure of the Telecom Office issued on the basis of the Act on Electronic Communication.

In addition, the Telecom Office shall co-operate (in the form of consultations\textsuperscript{21}) with the Antimonopoly Office in the issues related to determination of the relevant markets, the analysis of the relevant markets in the field of electronic communications and the determination of undertaking with a significant market power on the relevant market in the field of electronic communications. When applying regulatory responsibility of the Telecom Office defined by the Act on Electronic Communications and the powers of the Antimonopoly Office governed by the Competition Act, both Offices shall exchange information and supporting materials.

c) Council for Broadcasting and Retransmission

The Council of the Slovak Republic for Radio and Television Broadcasting has been established already in July 1992.\textsuperscript{22}

On 4 October 2000 the Act No. 308/2000 Coll. on Broadcasting and Retransmission entered into force\textsuperscript{23}, which has \textit{inter alia} changed the initial name of the Council to the Council for Broadcasting and Retransmission (\textit{Rada pre vysielanie a retransmisiu})\textsuperscript{24} (“Council”). The tasks

\textsuperscript{21} Article 10 of the Act No. 610/2003 Coll. on Electronic Communications.

\textsuperscript{22} Act No. 294/1992 Coll. on the Council of the Slovak Republic for Broadcasting and Retransmission; Coll. of Laws No.: 61/1992, page 1649. Five years later, in July 1997, the aforesaid Act has been replaced by the Act No. 160/1997 Coll. on the Council of the Slovak Republic for Broadcasting and Retransmission; Coll. of Laws No.: 74/1997, page 1314.


\textsuperscript{24} \url{http://www.rada-rtv.sk}
and the powers of the Council are laid down in the Act on Broadcasting and Retransmission. A more detailed regulation of the functioning of the Council is provided in the Statute of the Council.

The Council has nine members who are elected and recalled by the National Council of the Slovak Republic. The term of office of the Council members shall be six years, however, a Council member may be appointed for a maximum of two terms. The Council shall be renewed by one-third every two years. The Council elects a chairperson and a vice-chairperson from its members. The function of the member of the Council is a public function.

The Act on Broadcasting and Retransmission sets forth the decisions of the Council that may be appealed within 15 days after their delivery. The Supreme Court of the Slovak Republic shall decide on such appeal.

The function of the Council is to enforce the interests of the public in the exercise of the rights to information, the freedom of speech and the rights of access to cultural values and education and to perform state regulation in the areas of broadcasting and retransmission.

The Council shall pursue the maintenance of plurality of information in news programmes of the broadcasters transmitting on the basis given by law or on the basis of a licence according to the Act on Broadcasting and Retransmission. The Council shall supervise the compliance with the legislation governing broadcasting and retransmission and perform state administration in the area of broadcasting and retransmission.

The most important competencies of the Council include *inter alia*: (i) deciding on the licences for broadcasting; (ii) deciding on the registrations for retransmission; (iii) deciding on the suspension of retransmission of a programme service; (iv) decision taking on conferring additional broadcasting frequencies; (v) initiation of licensing proceeding for terrestrial broadcasting; (vi) providing of consents with satellite broadcasting; (vii) imposing sanctions on a broadcaster and a operator of retransmission and on those who broadcast or operate retransmission without authorization; (viii) elaborating plans for using the frequency spectrum for broadcasting in cooperation with the appropriate bodies of the state administration for telecommunications, (ix) determining in cooperation with the Telecommunication Office of the Slovak Republic a broadcast conception in the area of using frequencies for public service broadcasters and broadcasters by licence.

When deciding on granting licences, the Council shall evaluate and take into account the transparency of ownership relations of the applicant for the licence as well as the fact that the applicant for the licence shall not win a dominant position in the relevant market.

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25 For more see Article 5 of the Act No. 308/2000 Coll. on Broadcasting and Retransmission.
26 Article 47 lit. b) of the Act on Broadcasting and Retransmission.
27 Article 47 lit. f) of the Act on Broadcasting and Retransmission.
The Act on Broadcasting and Retransmission establishes a general obligation of the ministries, other central bodies of state administration and other state administration bodies to cooperate with the Council on issues connected with the area of broadcasting and retransmission and provide their needed cooperation to the extent of their powers and competencies. In addition, the Council is obliged to cooperate with the Telecommunication Office of the Slovak Republic in the matters of use of frequencies by the broadcasters.

3. Slovak media and telecommunication authorities and acts

The Ministry of Transport, Posts and Telecommunications of the Slovak Republic as well as the Ministry of Culture are the competent authorities involved in the Slovak media and telecommunications sector. Detailed analysis of these authorities as well as the respective legal provisions are introduced in Section (D).

II. The General Approach to Market Definition under Competition Law in the Slovak Republic

The Slovak Competition Act is based on and closely linked to EC law, with a prohibition system resembling the system of Articles 81 and 82 of the EC Treaty. The substantive provisions of the Competition Act contain the prohibition of agreements restricting competition and concerted practices (Articles 4-7), the prohibition of the abuse of a dominant position (Article 8) and the control on concentrations (Articles 9-12).

The general criteria used for the purpose of the market definitions reflect the criteria applied at EC level. These criteria have to be applied to different dimensions of a relevant market, i.e. (i) product, (ii) geographic and (iii) temporal dimension. When defining the relevant market, it is usually examined how, where and when the consumers’ needs are satisfied (product, territorial and temporal relevant market). Furthermore, in its decisional practice, the Antimonopoly Office relies on the demand side as well as the supply side substitution.

Pursuant to Article 3 paragraph 2 of the Competition Act the relevant market means the “geographical and temporal concurrence of the supply of and the demand for goods that are identical or mutually interchangeable with respect to the satisfaction of certain needs of consumers”.

The aforesaid legal definition of the relevant market is built on the general definition of the market as the place where the demand and the supply meet and shall identify all competition barriers that the entrepreneurs have to meet. The given definition is identical with the relevant market definition included into the Slovak competition law in the preceding Act No. 188/1994 Coll. on the Protection of Economic Competition.

28 Argumentative report to the Act No. 136/2001 Coll. on Protection of Economic Competition; http://www.antimon.gov.sk/?c=190
When defining the relevant markets, like the European Commission, the Antimonopoly Office considers both the product and the geographic dimension of the relevant market and, in addition, also the temporal dimension thereof. Furthermore, it is necessary to mention that in each individual case the Antimonopoly Office applies the aforesaid legal definition of the relevant market, precisely by a strict consideration of the detailed economic analysis that is based on the separate examination of the three aspects of the relevant market – product, geographic and temporal.

The relevant market is a matter of fact and, therefore, it shall be a subject to evidence. Pursuant to Article 32 paragraph 1 of the Act on Administrative Proceedings, the Antimonopoly Office is obliged to determine exactly and fully the real status quo and for this purpose to provide the necessary documents for its decision. That means the expression of the so called “material truth”, which also means that the Antimonopoly Office is not bound by the participants' proposals when providing the evidence and is allowed to determine the manner of obtaining it. The basis for such decision may include anything by which the real status quo can be discovered and what is in accordance with the legal regulations.

1. **Product Market**

The 1997 Notice on Market Definition\(^{29}\) defines the concept of relevant product markets as comprising

> “all those products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the products, characteristics, their prices and their intended use”.

For a comparison, according to the Article 3 paragraph 4 of the Slovak Competition Act, the relevant product market shall comprise

> “identical or mutually interchangeable goods, i.e. products, performance, work and services\(^{30}\), that can satisfy a certain need of users”.

a) **Demand Side Substitution**

The relevant product market comprises all goods that are considered to be identical or mutually interchangeable or mutually substitutable from the user’s point of view and this upon the evaluation of product characteristics, the price and the intended usage purpose. To define it the user’s point of view is crucial, while the evaluation of the substitutability of the demand is to be emphasized, i.e. the identification of the scope of goods considered by the user as mutually interchangeable. Finally, the user decides by which sort of goods the given goods will be replaced.


\(^{30}\) Article 1 of the Act No. 136/2001 Coll. on Protection of Economic Competition.
in case the price has been increased or there is a lack of it, after the identification of the real alternative sources of the goods supply. The substitutability of the demand appears to be the most instant effective force affecting the suppliers of the given goods, especially in terms of pricing.31

b) Supply Side Substitution

While defining the relevant product market it is also possible to consider the supply side substitution, especially if the supply substitution effectiveness is comparable with the demand substitution impact. It means that the suppliers are able to continually move to the production of relevant goods (supply) and to realize them on the market within a short period of time without bearing any significant additional costs or risks arising from acceptable permanent price changes from the user’s side. If the supply substitutability is connected with additional investments, strategic decisions, or if any relevant interference in the supplier’s assets is required, the supply substitutability will not be considered to be the basis for defining the relevant market in goods.32

2. Geographic market

The next step in defining a relevant market for the purpose of applying Slovak competition law is to analyse the geographic scope of the product market.

The relevant geographic market comprises an area in which the respective entrepreneurs enter relationships to offer and demand goods and in which the conditions of competition are sufficiently homogenous. An area which clearly differs from other areas just by the fact that the conditions of competition are considerably different from the conditions in other areas. The factors isolating the geographic market from outside competitive pressure can include e.g., regulatory barriers in certain sectors, quotas, taxes as well as a limited access to distribution channels. The range (extent) of the geographic market can be limited when voluminous and low-value goods are involved and when the transportation costs play an important role and also by the currently geographically conditioned habits of users.

The 1997 Notice on Market Definition33 defines the concept of relevant product markets as comprising

“the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas”.

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31 Argumentative report to the Act No. 136/2001 Coll. on Protection of Economic Competition.
32 Argumentative report to the Act No. 136/2001 Coll. on Protection of Economic Competition.
For a comparison, according to the Article 3 paragraph 6 of the Slovak Competition Act, the relevant geographical market shall be defined as:

“a territory in which the conditions for competition are homogeneous to such an extent that this territory can be separated from other territories with different conditions for competition”.

As far as the general application of Slovak competition law is concerned, the upheld geographic market may cover at most the geographic size of the Slovak Republic. However, when considering the practice of the Antimonopoly Office, two basic geographic markets can be distinguished. At one hand, there is the whole national market, and at the other, there are the local markets (e.g. in the district, town or quarter, and it is even possible to imagine the market of a particular place – e.g. a market place). In its decision No. 2003/FH/3/1/007, the Antimonopoly Office restricted the public film broadcasting market in cinemas to the area of 50 km from Bratislava.

3. Other Criteria

As regards the temporal criteria of the relevant market, in the majority of the Slovak legal publications there is mentioned also this dimension of the relevant market. The temporal criteria is generally considered to be very important primarily because it is necessary to evaluate/consider the status of the competitors on the market in a certain time horizon. This means, that the part of the market being considered is within a certain, previous time period.

B. Relevant Markets in the Media Sector

In the former Czechoslovak Socialist Republic the Velvet Revolution of November 1989 started the process whereby totalitarian authority was cast out and control was passed peacefully and without violence into the hands of the democratic regimes and institutions. The first independent and democratic parliament was elected in 1990. Almost overnight, Czechoslovakia became politically independent and there was an essential but difficult issue which had to be addressed, the definition of its international legal identity against the background of the complex map of its political and economic interests.

The Slovak Republic clearly demonstrated its affinity to the cultural and political traditions of developed western democracies, ranging from respect for and the protection of human rights and ending with adoption of free market economy doctrines. It had never been geo-politically excluded from Europe, so what was really voiced here was the desire of the Czech people for the reintegration of their country into the cultural, economic and political community of the developed democratic countries, represented in Europe by the European Communities.

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34 Decision from 23.01.2003, No. 2003/FH/3/1/007.
35 e.g. Žitňanská L.: “Právna úprava zneužitia dominantného postavenia” Bratislava 1997, pp. 2 et seq.
The legal status of publishers, broadcasters and journalists in Czechoslovakia and subsequently in Slovakia has significantly changed. The developing new laws clearly reflect the opinion of political elites on what role the media should play in society in general and consequently in politics. The year 1989 is considered to be the starting point of establishing a new, democratic and pluralistic media system. When the Slovak Republic has been established in 1993, conditions for completing the Slovak media system were created. This processes is to be considered as controversial and conflicting but – in their main direction – as positive and irreversible.

The Slovak media market is relatively concentrated. Partially because the Slovak Republic is a small country, i.e. bigger media companies are more effective and productive. On the other side, the huge shares of the state in media still restrict the competitive environment that is necessary for the reduction of the negative impacts of the high concentration of the ownerships of media. This status is significant mainly on the television market, where the dominant TV Markíza did not have a long time any important competition.

I. Market Definition in the Books and Publishing Sector

1. Introduction

Changes in the Slovak media system were accompanied with misunderstandings and conflicts with the political power. The media found fault with unequal access to government information, bad economic conditions, lack of independence of the public media etc. After the elections in September 1998, conditions for better relations between the political power and the media sector have been established. Since the second half of 1997, the National Centre for Media Communication has used a brand new typology of the press. This typology is based on UNESCO press statistics, as well as on the previous knowledge of the press system in Slovakia. However, the UNESCO press statistics were not applied automatically, but with consideration for the contemporary print media structure in Slovakia.

As for the press, the number of published press titles increased three times, the new subsystems of advertising and erotic press came to being, and the regional and local press expanded considerably. The content as well as the graphic of newspapers achieved higher standards, the size of newspapers and magazines increased. The average circulation of newspapers, especially the dailies decreased, while their cover price went up. Unlike to magazines, newspapers lost a considerable part of their readers.

There are seven (7) national daily newspapers in Slovak Republic, 6 of them in the Slovak language ((Hospodárske noviny, Národná obroda, Nový čas, Pravda, SME, Šport) and one in the Hungarian language (Új Szó).

These daily newspapers are different in content. It is possible to include Nový čas to the group of so-called daily tabloids. Daily newspapers SME, Pravda and Národná obroda (ceased to exist on May 31, 2005) are comparable in content, since they contain mainly the news. Daily newspaper Új Szó is comparable with these daily newspapers in content; it is published in the Hungarian language. Hospodárske noviny is focused on information within the economic area; Šport brings reporting from the sport area.
Regional newspapers have very strong position in the Slovak Republic. Bratislavský večerník and Korzár in Košice are published daily. Simultaneously, versions of Korzár are published under the names Prešovský denník, Zemplínsky denník, Spišský denník, Tatranský denník and Gemerský denník. Remaining regional newspapers are published weekly. Petit Press, a.s., Bratislava publishes the majority of regional newspapers.

Weekly newspapers Nový čas pre ženy, Život, Eurotelevízia (published by Ringier Slovakia, a.s. being also the publisher of daily newspaper Nový čas), Plus 7 dní, Báječná žena, Šarm (published by Spoločnosť 7 plus, s.r.o.), Markíza (published by Foxi, s.r.o.), Vasárnap, Roľnicke noviny (published by Petit Press, a.s. being also the publisher of daily newspapers SME and Új Szó and the majority of regional newspapers) are the most sold magazines in the Slovak Republic.

<table>
<thead>
<tr>
<th>National daily</th>
<th>Pressed Sold</th>
<th>Publisher</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nový čas pre ženy</td>
<td>301 978 249 599</td>
<td>Ringier Slovakia, a.s.</td>
</tr>
<tr>
<td>Plus 7 dní</td>
<td>234 555 183 346</td>
<td>Spoločnosť 7 Plus, s.r.o.</td>
</tr>
<tr>
<td>Báječná žena</td>
<td>231 550 158 456</td>
<td>Spoločnosť 7 Plus, s.r.o.</td>
</tr>
<tr>
<td>Život</td>
<td>186 183 146 710</td>
<td>Ringier Slovakia, a.s.</td>
</tr>
<tr>
<td>Eurotelevízia</td>
<td>150 930 123 717</td>
<td>Ringier Slovakia, a.s.</td>
</tr>
<tr>
<td>Šarm</td>
<td>130 373 87 837</td>
<td>Spoločnosť 7 Plus, s.r.o.</td>
</tr>
<tr>
<td>Slovenka</td>
<td>99 982 62 886</td>
<td>Živena</td>
</tr>
<tr>
<td>Telemagazín</td>
<td>77 805 62 215</td>
<td>Ringier Slovakia, a.s.</td>
</tr>
<tr>
<td>Vasárnnap</td>
<td>39 358 33 713</td>
<td>Petit Press, a.s.</td>
</tr>
<tr>
<td>TV Oko</td>
<td>29 080 21 272</td>
<td>Petit Press, a.s.</td>
</tr>
<tr>
<td>Trend</td>
<td>19 938 15 158</td>
<td>Trend Holding, s.r.o.</td>
</tr>
<tr>
<td>Roľnicke noviny</td>
<td>12 953 6 673</td>
<td>Petit Press, a.s.</td>
</tr>
</tbody>
</table>

For a long period of time, there were hardly any decisions of the Antimonopoly Office that thoroughly dealt with the problem of market definition in the press sector. In the last few years, however, a couple of cases occurred where the definition of markets in the field of press, books...
and publishing was necessary. However, there are several decisions of the Antimonopoly Office that seem to be of particular relevance to evaluate the criteria upheld to define markets in the publishing sector.

The Antimonopoly Office defines relevant markets in this sector as follows:

2.  *Readers, Markets/Press*

a)  Distinction between Press and Other Media

In compliance with the Office’s decision No. 2004/FH/3/1/021 – *Ringier AG* and decision No. 2000/FH/3/1/93 *VERSUS s.r.o.* it has to be emphasised that the publishing of the press in comparison with other information media, such as radio and television, should be considered as a special market. The Antimonopoly Office stressed that the press differs from the above-mentioned media in relation to a number of characteristics. Those are *inter alia* – the quantity and depth of information, topicality, actuality, frequency of publication as well as easy access. Pursuant to the decision No. 2001/FH/3/1/150 – *Petit Press, a.s.* regional weekly newspaper are print media. The information given to the final consumer via print media are not fully substitutable by the information given through other media, e.g. through radio or television broadcasting, and this from the point of view of several factors. The extent of topicality of the delivery of the information and opinions in print media is larger than the information given to the final consumer by broadcasting.

b)  Distinction between Regional Newspapers and National Newspapers

In the case No. 2004/FH/3/1/021 – *Ringier AG* the Antimonopoly Office distinguished between several separate markets in the publishing sector. The case dealt with the Swiss publisher Ringier AG, who intended to take over the Slovak company Vydavateľstvo novín a časopisov spol. s r.o. The Antimonopoly Office had to define several different markets in the publishing sector. The Office also considered that regional daily newspapers provide specific range of information and are concerned with different topics of problems as a national daily and from this point of view they are not considered to be substitutable and, therefore, both have to be regarded as separate markets. When considering the publishing of periodical press, the Antimonopoly Office had to take into consideration the fact that some daily newspapers follow the events in the whole area of the Slovak Republic, but others concentrate on events and news in particular regions/locations of Slovakia and the content of their information is interesting especially for the readers in the respective region/location. Since the regional daily newspapers only offer a specific scope of information and have a different focus than the national ones, they are not considered to be substitutes of the national daily newspapers and, therefore, when considering the respective concentration, they were not considered by the Antimonopoly Office in detail.


38  Decision from 07.05.2001, No. 2001/FH/3/1/150.

In the case No. 2001/FH/3/1/150\textsuperscript{40} – *Petit Press, a.s.*, the Antimonopoly Office concluded that readers of regional newspapers are interested for the life in the local area whose specification is narrower than the whole region; apart from this they usually buy some kind of daily newspapers, either regional or national. Any regional or national daily is then for this group of people additional and not substitutable to a regional weekly.

Furthermore, in the case No. 2000/FH/3/1/93\textsuperscript{41} *VERSUS s.r.o.* the Antimonopoly Office acknowledged, that in our country the national daily newspapers are very popular and have a higher number of readers than the regional daily newspapers and they are by no means substitutable by other groups of goods when we consider their form (printed information) as well as the actuality of the supply of information to the readers. All these daily periodicals provide the readers with reports from Slovakia, from abroad, economics, sport and culture related news as well as political topics and advertisements. A daily is a product with a very short topicality. The time between its publishing and distribution is approximately from 22.00 to 04.00 when the distribution to the most distant parts of Slovakia should start, so that the readers can buy it at the newsagent in the morning or find it in their mailboxes.

**aa. Product Market**

As regards the newspapers and magazines, in the case No. 2004/FH/3/1/021\textsuperscript{42} – *Ringier AG* the Antimonopoly Office identified the following markets: (i) the market for daily newspapers (opinion forming and tabloid press), (ii) the market for weekly magazines and (iii) the market for monthly magazines. These markets are also known as the *reader markets*. From the analysis of all three relevant markets, we can conclude that those providing periodical press are characterized by a high amount of market participants. In comparison with the neighbouring countries, this market is specific for a high amount of titles distributed from Bratislava, the capital of Slovakia. The products in the respective relevant markets are comparable in terms of quality, whereas one can observe that the competitors are highly flexible and able to fill a possible gap in the market very quickly.

Each of these products ought to be considered, according to the Antimonopoly Office, as forming a separate market. The Office noted that the above mentioned products should be deemed not to be perfectly substitutable for they differ with regard to their *characteristics*, i.e. content and *publishing frequency* and *sort of information* by the type of printing or paper quality, format, length or character of the respective articles. Moreover, the *prices* of these products were significantly *dissimilar*. Another feature that differentiates the above mentioned products is, according to the Antimonopoly Office, the fact that they address different groups of readers. Thus, the Antimonopoly Office voiced its opinion that these three types of press media products should be considered to belong to three separate markets, namely

(i) the market for *daily newspapers*,

\textsuperscript{40} Decision from 07.05.2001, No. 2001/FH/3/1/150.

\textsuperscript{41} Decision from 25.04.2000, No. 2000/FH/3/1/93.

(ii) the market for weekly magazines and

(iii) the market for monthly magazines.

Here, the Antimonopoly Office was of the opinion that magazines that are being sold on a weekly basis generally constitute a distinct product, i.e. the weekly magazines. Weekly magazines distinguish themselves from those appearing on a monthly basis primarily with regard to their content. The internet can be a substitute for some titles according to the Antimonopoly Office. Despite the fact that the possibilities of its usage in the society are gradually increasing, it remains inaccessible for the majority of end-users who buy newspapers or magazines, that is connected with high price of personal computers and the Internet connection.

bb. Geographic Market

The Antimonopoly Office has defined the geographic scope of the aforesaid markets as the territory of the Slovak Republic, whereas it based its conclusions on the fact that as far as the Slovak periodical press published by the participants in civil law procedure of the respective concentration is considered (if we consider daily newspapers, weeklies or monthly published newspapers), these are being published in Slovak language and are distributed in the whole territory of the Slovak Republic.

With regard to newspapers, the Antimonopoly Office further distinguishes between the readers market and the advertising market.

3. Advertising Market

a) Product Market

The Antimonopoly Office suggested in its decision No. 2001/FH/3/1/150\textsuperscript{43} – *Petit Press, a.s.* that for the group of consumers the regional dailies are substitutable through advertising media that are delivered to the readers for free as well as through regional weeklies, as some advertisers are identical. Therefore, it is possible to conclude that regional weeklies are partly substitutable through regional dailies and advertising media but only from the point of view of those who advertise in the advertising media.

\textsuperscript{43} Decision from 07.05.2001, No. 2001/FH/3/1/150.
It is not possible to give more details in the defining of the distinction between regional newspapers and house-to-house newspapers on the one hand and other advertising media on the other because of the lack of relevant decisions of the Antimonopoly Office.

b) Geographic Market

In the aforesaid case the Antimonopoly Office defined the relevant market as the local market. It assumed that written media often have an advertising area that corresponds with the area in which the media are available themselves.

4. Press Market

In addition, in one of its media orientated decisions, the Antimonopoly Office had to examine the possible consequences of the concentration of press services, that is to say the supply of information and copy to the media. At the time of the decision, the Office addressed 9 daily publishers, 14 weekly and monthly publishers and one international (Czech) press importer.

The examination proved that there is a strong competition among periodical press publishers, that the penetration of other publishers into this media environment is not restricted by any significant obstacles. The number of daily newspapers and its goods has been decreasing for the last couple of years while the number of new weeklies and monthly magazines has been rising. Even on the vertical level there are no obstacles as it was proved in the decisions of the Antimonopoly Office on the concentration in polygraphy in the last few years, the printing capacities are sufficient, almost unexploited. The only accession obstacle is the decreasing consumer interest, which has the effect of pressure to the effectiveness and the quality of the publishing work.

5. Magazines

By studying the affiliate relevant decisions of the Antimonopoly Office when defining and analysing the magazine market we can conclude that the Antimonopoly Office takes into consideration the point of view of their periodicity and focusing from the point of view of the target reader group, their interests and language.

6. Books

In the merger decision No. 2000/FH/3/1/24344 EUROMEDIA GROUP, k.s. (German Bertelsmann Group) who intended to take over the Slovak publisher’s company IKAR a.s. the Antimonopoly Office focused on book markets.

a) Supply side

Upon the material relevant market analysis of this decision it is obvious that a high number of subjects are present in the relevant market of particular books and they can be divided into three groups:

(i) publisher group with a turnover of SKK 35 000 thousand/year to SKK 100 000 thousand/year includes six publishers,

(ii) publisher group with a turnover of SKK 900 thousand/year to SKK 35 000 thousand/year includes 22 subjects.

(iii) the last group (not specified upon the turnover achieved per year) includes publishers who publish books only rarely and with small goods.

Based on the about mentioned information it is clear that the particular book market, including the import from the Czech Republic, is marked by a high number of market participants. The mentioned residual market participants share with a low turnover or with a low periodicity will increase the aggregate turnover that is being reached on the particular book publisher market.

b) Demand side

A large number of publishers in the Slovak market is connected with a high number of distributors who are competitors even in the individual regions. The books are delivered from publishers to outlets through distributors by direct delivery (the book-seller chooses the books directly from the distributors or upon the catalogue or edition plan).

In this decision the Antimonopoly Office has come to the conclusion to determinate/restrict the relevant market, i.e. the book publishing market, in the range: fiction, poetry, biography, encyclopaedia, atlases, dictionaries, manuals, travel guides, popular-science. The Office acknowledged that one specific feature of the Slovak book market is a rather high presence of books imported to the Slovak market from the Czech Republic. A significant number of Slovak readers considers books written in their mother tongue as fully interchangeable with books written in Czech language. Even some specific title categories are available on the Slovak market exclusively in Czech language and eventually other world language. For the reason of a significant interchangeability of books in Czech language for the books in Slovak language the Antimonopoly Office has integrated/included the import of a specific group of book titles from the Czech Republic into the relevant market. The fact was emphasised that – from the demand side point of view of the consumer – these books are not interchangeable.

II. Market Definition in the Music and Copyright Sector

As regards the music and copyright area, pertinent decisions of the Antimonopoly Office regarding market definitions in the music and/or copyright sector do not exist in the Slovak competition law. This lack of decisions is possibly due to the fact that the Slovak market is dominated by the same few record companies which as well dominate to the music industry
worldwide. Section (D) will elaborate more on the relevant legal provisions that might also have an impact on the market definitions regarding the music and copyright sector.

III. Market Definition in the Film Sector

In the film sector hardly any specific cartel decisions can be found, nor is there any thoroughly elaborated sector-specific market definition in the remaining rulings. In other words, the Antimonopoly Office did not have to cope with competitive behaviour in the film sector.

In its decision No. 2003/FH/3/1/007 the Antimonopoly Office decided on the concentration resulting in the Dutch company UCI CE acquiring total control over the Slovak company Ster Century SR. Before the concentration, both companies operated in Slovakia as sole operators of multiplex cinemas – UCI CE operated a movie theatre with 12 screens and capacity of 2,300 seats in the AUPARK shopping and entertainment centre in Bratislava, while Ster Century Slovak Republic operated a movie theatre with eight screens and a capacity of 1,600 seats in the Polus City Center shopping and entertainment centre in Bratislava. This concentration led to changes in the competition conditions on the relevant market of public screening of movies in movie theatres, which had already been considerably concentrated before the said concentration, as UCI CE and Ster Century Slovak Republic controlled approximately two-thirds of the relevant market, with the remaining part being formed by several smaller entrepreneurs with low market shares for a long time. If the aforementioned concentration was carried out, this would eliminate the most important competitor of the company UCI CE. After the concentration, UCI CE would not be subject to any significant competition and could act independently in the market of public screening of movies in movie theatre and, for example, increase ticket prices. Given the established market structure, film distributors would be forced to accept the conditions set by UCI CE, because they would not have an adequate substitute for screening their films in cinemas. The implementation of this concentration would result in the establishment of a dominant position of UCI CE, which might create significant obstacles to effective competition on the relevant market of public screening of films in cinemas. As the Antimonopoly Office did not find within the proceedings any conditions that would be effective and easily controllable and eliminate the competition problem arising from the concentration, the Antimonopoly Office prohibited the concentration between UCI CE and Ster Century Slovak Republic.

IV. Market Definition in the Broadcasting (Television and Radio) Sector

1. Product market

Slovak Republic has a dual system of public and commercial broadcasting with numerous local public radio and television stations. The broadcasting sector comprises a multitude of trading relations.

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As to the market definition criteria, in the broadcasting sector
- the prices,
- the quality and composition of services
- the technical differences and
- (partially) legislative conditions

are of particular importance.

Since October 2000, radio and television broadcasting is regulated by the Act No. 308/2000 Coll. on Broadcasting and Retransmission. The Act does not make a distinction between radio and television broadcasting. It provides for the legal basis for the creation of radio and television programmes as well as for their distribution. Furthermore, the Radio-Act regulates the granting of licences, whereas this activity is in the sole competence of the Council for Broadcasting and Retransmission. When deciding on granting licences, the Council for Broadcasting and Retransmission shall evaluate and take into account also the fact that the applicant for the licence shall not win a dominant position in the relevant market. However, the Act does not introduce a definition of the relevant market in the broadcasting sector nor the criteria for the evaluation of the dominant position.

As regards the relevant product market in the field of radio and television broadcasting, the following decisions of the Antimonopoly Office are of particular importance:

a) Relevant market of the transmission and broadcasting of radio signal (supply market) and the relevant market of the operation of radio broadcasting (aggrieved relevant market)

In its decision No. 2003/DZ/2/1/309 concerning the abusing of the dominant position on the relevant market by the entrepreneur Slovenske Telekomunikacie, a.s., the Antimonopoly Office has identified the relevant market of the transmission and broadcasting of the radio signal (the supply market). As set out in the reasoning of the aforesaid decision, this market results from the extent and the nature of the service that is provided by Slovenske Telekomunikacie, a.s. to the particular radios, whereas this service is not interchangeable with any other service provided on the basis of another technology. The mutual substitutability has been proved from the technological, price, qualitative and legislative point of view as well as from the point of view of

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48 Article 47 lit. f) of the Act on Broadcasting and Retransmission.
49 Based on an oral information of the Council for Broadcasting and Retransmission, the Council was already asked by the Antimonopoly Office to prepare a definition of the relevant market in the broadcasting sector and provide the Antimonopoly Office with it.
the licence norms. The Antimonopoly Office found out that in the case the radio would secure the transmission of the radio signal from the studio to the transmitters via another technology than the radio relay route, there are several possibilities of the substitution for the radio relay route, namely (i) the route from the optic cable (the Office considered this technology as very expensive and at the same time legislatively demanding within the building proceedings, and, therefore, not as an interchangeable substitution of the radio relay route from the demand-side, i.e. the radio); (ii) the metallic circuits via coaxial cables (the Office considered this technology as being ineffective and out of use at the present and at the same time price, timely and legislatively demanding and, therefore, not interchangeable with the radio relay route for the radio); (iii) signal transmission via telecommunication satellite – by using the V Sat system, or in the form of the satellite distribution for the transmission of the modulation to the radio transmitters (the Office has decided that although both of the abovementioned ways are very progressive and fast solutions, they are not interchangeable with the radio relay route of the radio due to their high investment costs). The radio signal broadcasting via transmitters is given by a licence, a part of which is the frequency list, and is not interchangeable with any other technology. The licence specifies the transmitter and not its producer and there is no technical substitution for the transmitter. By the aforesaid reasons, the Antimonopoly Office has decided that the given distribution system, that has to be reviewed as one entity, is not mutually interchangeable with any other distribution technology.

Furthermore, in the same decision the Antimonopoly Office has identified the aggrieved relevant market on which the radio might be handicapped in the economic competition against the other competitive radios as the relevant market of the operation of radio broadcasting. The reasoning of the aggrieved relevant market has been supplemented by the Council of the Antimonopoly Office (as the appeal body) as follows: this definition of the relevant market results from the subject matter of the business activity of the radio and from the extent of the services that are provided by the radio. On this relevant market the competition of particular radios (providers of radio broadcasting) takes place and it is this market on which the particular radio broadcasting providers can be disadvantaged depending on the different conditions of the provision of the retransmission and broadcasting of the radio signal.

b) Relevant market of the retransmission of television programmes via the MMDS system

In its decision No. 2004/DZ/2/1/200 regarding the abusing of the dominant position on the relevant market by the entrepreneur SATRO, s.r.o., the Antimonopoly Office has reviewed, when defining the relevant product market, which technologies of the retransmission of television programmes might be considered as mutually interchangeable, i.e. being able to satisfy the needs of their users, in particular from the point of view of the physical and technical parameters, prices and the purpose of the use. Furthermore, the Antimonopoly Office has also considered the qualitative extent of the relevant product market pursuant to the valid pricelists of SATRO, s.r.o. and this in particular in the basic and standard (extended) extent and from the urban point of view in conformity with the pricelists on the users in the individual and collective housing build-up area. On the basis of the performed analysis, the Office has considered the situation on several

In Bratislava, except of SATRO, s.r.o. that provides its services via MMDS system as well as via cable networks, also the company UPC Slovensko s.r.o. provides the retransmission of television programmes via cable networks. However, the Antimonopoly Office has considered that these services are not interchangeable with the MMDS system of the company SATRO, s.r.o. due to the price reason (the price for the cable retransmission is much higher than for the retransmission via MMDS system). Furthermore, UPC Slovensko s.r.o. also provides the retransmission of television programmes via MMDS system, but the Office has considered that neither these services are interchangeable with the MMDS system of the company SATRO, s.r.o. due to the price reason (the price of UPC Slovensko s.r.o. for the retransmission via MMDS system is much higher than the price of SATRO, s.r.o. for the same service). In addition, in Bratislava, there is the possibility of the television signal reception via encoded satellite broadcasting UPC Direct of the company UPC Slovensko s.r.o. According to the opinion of the Office, this service is not interchangeable with the retransmission via MMDS system provided by SATRO, s.r.o., and this from the qualitative (it does not include the terrestrial stations, such as STV 1, STV 2 and Markíza) as well as price point of view (the price is multiply higher than for the reception via MMDS system). In addition, in Bratislava also the reception of the television signal via a set of satellite receiver in combination with the terrestrial aerial is possible. Such reception may be considered as interchangeable with the MMDS system of SATRO, s.r.o. from the point of view of the quality (reception of the stations STV 1, STV 2 and Markíza possible) and of the price. On the basis of the analysis of the existing status and after the verification of all relevant circumstances from the point of view of the conditions of the provided services and their qualitative parameters, the Antimonopoly Office has delimited the relevant product market in Bratislava as the relevant market of the retransmission of television programmes via MMDS system and via the satellite receiver set with a terrestrial aerial. On the basis of similar procedures, the Office has also identified the relevant product markets in Nitra (relevant market of the retransmission of television programmes via MMDS system and via the satellite receiver set with a terrestrial aerial), Považská Bystrica (relevant market of the retransmission of television programmes via MMDS system and via cable networks of the company KATES s.r.o.), Galanta (relevant market of the retransmission of television programmes via MMDS system), Trenčín (relevant market of the retransmission of television programmes via MMDS system and via cable networks of the company DUOSAT s.r.o.), Nové Mesto nad Váhom (relevant market of the retransmission of television programmes via MMDS system and via cable networks of the company TFM spol. s r.o.) and Piešťany (relevant market of the retransmission of television programmes via MMDS system).

c) Relevant market of the provision of the service of retransmission of television programmes via cable networks

In the decision No. 2003/DZ/2/1/231 regarding the abusing of the dominant position by the entrepreneur UPC Slovensko, s.r.o. (at the present the biggest cable networks television operator

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in the Slovak Republic), the Antimonopoly Office has identified the respective relevant product market as the relevant market of the provision of the service of retransmission of television programmes via cable networks. The Office found out that in the analysed period, the service of the retransmission of television programmes via cable (distribution) networks has not been interchangeable with any other service on the basis of other technologies (there have been no providers of services via MMDS system or via satellite receiver set with aerial in the analysed period). As regards the consideration of the substitutability of the products, the Antimonopoly Office has set that from the point of view of the user (i.e. demand-side substitution), the determinative elements of the substitutability of particular services are the criteria of the price and the quality of services. Both aforesaid criteria are mutually interconnected and, therefore, the possible substitutes for the service of the retransmission of television programmes via cable (distribution) networks have to be analysed with respect to both criteria. Is was proved that for the user both the price and the quality of the service are decisive, whereas the quality shall mean the quality of the received programme (the quality of the sound, the picture etc.) as well as the quality of the programme composition, i.e. the extent of the received programmes. Furthermore, in the opinion of the Antimonopoly Office, the infrastructure on the basis of which the respective service is provided is not important from the point of view of the user, in the case when different infrastructures will be able secure equal or comparable quality and price of the service.

In the another decision, No. 2003/DZ/2/1/122, concerning the abusing of the dominant position by the company Stavebné bytové družstvo, the Antimonopoly Office has identified, on the basis of an analysis and evaluation of the possibilities of the retransmission of television signal and its substitution for the end user from the point of view of the programme menu, price and quality, the relevant product market (in the city Šaľa) as the relevant market of the provision of the service of retransmission of television programmes via cable networks. Other technological possibilities of the retransmission of television programmes, such as common television aerials, satellite reception, reception of the MMDS signal, the Office considered as being not interchangeable with the reception of television programmes via cable networks, since these effect on other relevant markets. Furthermore, from the analysis of the Office results, that common television aerials are one of the possibilities of the reception of television programmes mainly in town agglomerations with higher residential density. The number of the received programmes is individual, given by the local circumstances of the reception of television signals, the configuration of the surface as well as external perturbing influences that may depreciate the reception (e.g. fog, snow). From the point of view of the possible number of 4 – 10 programmes (not their quality), the common television aerials could be regarded as an interchangeable system only in the extent of the basic programme package (individually according to local circumstances). In contrast to the aforesaid, it is possible to receive via cable networks both the basic and the extended programme package as well as the special programme offers in the extent of up to 40 programmes. By the aforementioned qualitative and quantitative reasons, it was not possible to consider these two ways of retransmission of television programmes as mutually interchangeable from the point of view of the user. As another prospective substitute, the Office considered also the retransmission of television programmes via MMDS system. According to the qualitative (the number of the received television channels is smaller in comparison with the

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Cable distribution networks, quantitative (the exploiting of this technology requires the building-up of a new infrastructure) and partially price aspects, the retransmission via MMDS system may not be considered as interchangeable with the retransmission via cable distribution networks from the point of view of the user. Therefore, the Antimonopoly Office came to the conclusion that the change of the providers of the services of television programmes retransmission is theoretically possible for the customers, however, only under the fulfilment of the challenging technical, temporal and financial conditions. By this reason, this possibility seems to be practically unviable and the change of the services is not possible in such extent, so that the retransmission services provided by particular cable operators might be considered as mutually interchangeable from the point of view of the user (demand-side substitution).

d) Relevant market of the distribution of television and radio signal via television distribution cables

In one of its older decision No. 99/FH/4/1/267\(^54\) concerning the concentration of *Unite Pan-Europe Communications N.V.* (“UPC”) and *Kabel Plus, a.s.*, the Antimonopoly Office has set that according to the fact that the UPC subsidiaries conduct business on the same relevant product market of the distribution of television and radio signal via television distribution cables as the company Kabel Plus, a.s. does, it decided to identify this product market. The Office has considered that the television distribution cable is a system of multifunctional nature that gives a wide range of possibilities for the business activities of its owner as well as for its use for the needs of the police, cities, banking, insurance industry etc. That means that due to the fact that the television distribution cables merge the reception of terrestrial television and radio and the reception of satellite programmes and information channels they are not interchangeable with other systems of the signal and information transmission (aerials, satellite aerials, system of transmission via MMDS signal etc.). Furthermore, the Antimonopoly Office has defined the relevant product market – the delivery/distribution of the television and radio signal via television distribution cables to be a natural monopoly. For the purposes of the economic competition the television distribution cables are considered as unique equipment due to their technical maintenance, costingness and inefficiency of investment by more than one entrepreneur at the same local relevant market. The owner of the unique equipment as the provider of the services on the delimited relevant market has a dominant position.

2. Geographic market

As regards the geographic delimitation of the relevant market in the broadcasting sector, it depends on the concrete case, whether this market is formed by the whole territory of the Slovak Republic or only by a part of it. When defining the geographic market, it is even more difficult to frame the general criteria than it is by the delineation of the relevant product market. Due to the fact that the Act on Broadcasting and Retransmission distinguishes between four basic types of broadcasting depending on the territory covered by it\(^55\), there are tendencies to see each of this

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\(^{54}\) Decision from 04.10.1999, No. 99/FH/4/1/267.

\(^{55}\) See part III. 3. of this chapter.
levels as a separate market, whereas each of the smaller markets could be included into the bigger one.

In the decision No. 2004/ZK/2/1/023 regarding the abusing of the dominant position on the relevant market by the entrepreneur *UPC Slovensko, s.r.o.*, the Antimonopoly Office has delimitated the relevant geographic market of the retransmission of complete and unchanged authentic television programmes as the “*local territories in the cities Banská Bystrica, Zvolen and Sliač*”. When identifying this market, the Office has set that it considered the characteristics of the activities of UPC Slovensko, s.r.o. on the relevant market without providing any further explanation.\(^{56}\)

In its decision No. 2004/DZ/2/1/200 regarding the abusing of the dominant position on the relevant market by the entrepreneur *SATRO, s.r.o.*, the Antimonopoly Office has identified the geographic relevant market by the delimited territory in the cities Nitra, Bratislava, Považská Bystrica, Galanta, Trenčín, Nové Mesto nad Váhom and Piešťany, in which the company SATRO, s.r.o. provides the service of retransmission of television programmes via MMDS system and has issued separate pricelists for the particular cities as the “*local relevant markets in the cities Nitra, Bratislava, Považská Bystrica, Galanta, Trenčín, Nové Mesto nad Váhom and Piešťany*”.\(^{57}\)

Furthermore, in its decision No. 2003/DZ/2/1/231 regarding the abusing of the dominant position by the entrepreneur *UPC Slovensko, s.r.o.*, the Antimonopoly Office has identified the relevant geographic market of the provision of the service of retransmission of television programmes via cable networks as the “*territory where the cable networks of the respective cable operator are located*”. The Antimonopoly Office has said that with respect to the nature of the provided service via cable (distribution) networks, in its opinion it is neither necessary nor effective to make a detailed specification where these networks are exactly located and divide the relevant geographic market into the territories of particular districts. In this connection the Office found out that in each city, in which the company UPC Slovensko, s.r.o. is operating, it has one cable (distribution) system that consists of the main station from which the signal is spread into the city via cable networks. In each city, the program structure of the package is the same for each user, in the whole cable (distribution) system the same signal is spread and also the technical maintenance (the service) and the price are unified within the whole city. Therefore, there do not exist any differences in the provision of the respective service by UPC Slovensko, s.r.o. in dependence of the particular districts.\(^{58}\) In the decision No. 2003/DZ/2/1/122 concerning the abusing of the dominant position by the company *Stavebné bytové družstvo*, the Antimonopoly Office has identified the relevant geographic market of the provision of the service of

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\(^{56}\) Decision from 12.02.2004, No. 2004/ZK/2/1/023.

\(^{57}\) Decision from 23.11.2004, No. 2004/DZ/2/1/200.

retransmission of television programmes via cable networks in the same way, i.e. the “territory where the cable networks of the respective cable operator are located”.  

In its decision No. 2000/FH/4/1/208 concerning the concentration of Deutsche Telekom AG and Slovenské telekomunikácie, a.s., the Antimonopoly Office has identified the relevant geographic market of the transmission, broadcasting and reception of radio, television and other communication signals for broadcasters by law and licensed broadcasters, the provision of telecommunication and radio communication services and their technical security (also called as the “broadcasting services”) as follows: from the point of view of the identity and mutual substitutability when satisfying the broadcasting needs of particular consumers, the Office distinguishes the market of the provision of broadcasting services among the services with (i) a full-area coverage of the broadcasting in the Slovak Republic; with (ii) the coverage of the broadcasting of a certain region, where the needs of a certain larger region regarding the news, advertising, entertainment; with (iii) the coverage of the broadcasting of a certain locality with local news, advertising and similar. From the point of view of the technical equipment for the provision of the abovementioned services (substitutability of the product from the supply side), on the first product market the broadcasting services are provided via a whole network of transmitters, so that the whole territory of the Slovak Republic is covered. On the second market, a smaller – regional network is necessary, respectively more individual transmitters, so that the territory is covered for which the programme is dedicated. On the third market, for the provision of broadcasting services one transmitter with bigger or smaller capacity is sufficient – according to the requirement of the size of the territory delimited by the granted licence.  

3. Other Criteria

In United Pan-European Communications/Kabel Plus the Antimonopoly Office has defined the relevant temporal market of the delivery/distribution of television and radio signal via distribution cables as given by the validity of the licence granted to the broadcaster by the Council.  

In its decision No. 2003/DZ/2/1/309 regarding the abusing of the dominant position by the entrepreneur Slovenske Telekomunikacie, a.s., the Antimonopoly Office has defined the relevant temporal market of the transmission and broadcasting of the radio signal as uninterrupted since the concurrence of the supply and the demand exists continuously.


4. **The relevant market of the transmission of television and radio broadcasting to end users (wholesale market) as defined by the Telecom Office**

In its decision on the list of relevant markets from 28.01.2004\(^{63}\), the Telecom Office has provided for a definition of the relevant market of the transmission of television and radio broadcasting to end users (wholesale market). Please note that the aforementioned decision, has been made in accordance with the Recommendation C(2003)497\(^{64}\).

According to this decision, “transmission of television and radio broadcasting to end users (wholesale market)” means “the service of transmission of analogue or digital television and radio broadcasting via electronic communication networks to end users”.

From the geographical point of view, the whole territory of the Slovak Republic is considered to be the relevant market.

For the sake of completeness it is necessary to mention that at least once in two years, the Telecom Office shall perform an analysis of the relevant market to detect whether there is effective competition on the market or not. According to an information from the respective officers, the relevant market of the transmission of television and radio broadcasting to end users (wholesale market) has not been defined, yet. However, in the case the Telecom Office will find out that there is not an effective competition on this relevant market, it shall decide on the undertaking with significant market power and impose a duty on such undertaking as set out in the Act on Electronic Communications. The aim of such duty shall be the support of the effective competition as well as the development of the domestic market.

V. **Market Definition in the Internet Sector**

1. **The wholesome market for internet access**

The decision of the Antimonopoly Office considered the internet access (retail) to be a separate relevant product market. The Antimonopoly Office said that according to the internet access this market shall divide into (i) dedicated internet access (continuous access) via computer and (ii) internet access via telephone line. However, it did not divide this market into further sub-markets distinguishing between the usual dial-up access/ISDN-dial-up on the one and fast access via cable or ADSL on the other hand.\(^{65}\) The geographic dimension of this internet access (retail) market was regarded to be the territory of Slovakia taking into account that according to the

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\(^{63}\) Decision of the Telecommunication Office from 28.01.2004 on the list of relevant markets (effective as of 05.02.2004), available also on WWW at: http://www.teleoff.gov.sk/Rozhodnutia/trhy.html


\(^{65}\) Decision from 12.03.2002, No. 2002/ZK/3/1/039.
global character of the built up telecommunication networks the respective service may be used on the whole territory of the Slovak Republic. According to the fact that such service is provided continuously, the relevant temporal market is unlimited.

2. **The markets for top level domain names**

In the decision No. 2004/DZ/2/1/155 from 15 July 2004 the Antimonopoly Office regarded the administration of the top level domain `.sk` and the registration of domains of second level under the domain `.sk` to constitute a separate relevant product market. It was held that the country code domains represent a certain identification sign of their owner and they bear the information from which country the owner comes from or in which country he is active. The domain `.sk` identifies the reference, respectively the relationship to Slovak Republic. Furthermore, the sub-domain under the domain `.sk` may be registered only by a Slovak legal entity or a Slovak natural person, therefore, from the point of view of foreign subjects the domain `.sk` may not be changeable with generic domains (such as EDU, COM, NET, INFO etc.).

The geographic dimension of this respective market was regarded to be the whole territory of the Slovak Republic.

3. **Relevant markets in the field of electronic communications as defined by the Telecom Office**

The Telecom Office shall define, by a decision published in the Official Journal of the Telecom Office, the relevant markets in the field of electronic communications on the basis of the list of relevant markets and procedures of relevant market analysis recommended by the European Commission in line with principles of assurance of competitive environment and taking into account specific national circumstances, especially geographical ones. At present, the Decision from 28 January 2004 on the determination of the list of relevant markets (“Decision”) is valid and effective.

According to the Decision, the “retail market” means the “market of such electronic communication services that are provided by an undertaking to the end-users”. The “wholesale market” is defined as the “market of such electronic communication services that are provided by one undertaking to another undertaking”. In addition, the Decision introduces a fruitful number of

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66 The Slovak national domain `.sk`, is administered by a private company – EuroWeb Slovakia, a.s., based on an authorisation by the Internet Corporation for Assigned Names and Numbers – ICANN. The company operates the Slovak top-level domain registry SK-NIC, available at www.sk-nic.sk. It has issued the Rules for Provision of Name Space in the Internet Domain SK (Rules) and the Domain Migration Plan. The Rules describe the types of possible legal relationships with the domain registry and the registration procedure. The agreements that may be entered into with the domain registry are (i) framework agreements, (ii) registrar agreements, and (iii) domain agreements.


68 Article 15 of the Act on Electronic Communications.

69 Decision of the Telecommunication Office from 28.01.2004 on the list of relevant markets (effective as of 05.02.2004), available also on WWW at: http://www.teleoff.gov.sk/Rozhodnutia/trhy.html
specific retail and wholesale relevant markets in the area of electronic communications, such as the connection of housing customers to the public telephone network, the connection of non-housing customers to the public telephone network, or the service of the transmission in the fixed public telephone network.\textsuperscript{70}

From the geographical point of view, the whole territory of the Slovak Republic is considered to be the relevant market.

Please note that the aforementioned market definitions in the field of electronic communications, have been defined in accordance with the Recommendation C(2003)497.\textsuperscript{71}

C  Comparative Analysis of Market Definitions

Due to the fact that market definitions issued in the media cases in the Slovak Republic are still in their embryonic stage, no detailed comparison to the practice of market definition at EC-level can be provided. Furthermore, the market definition procedure in some of the media cases in Slovakia is rather short and yet not very elaborated, so that in some cases hardly any clear criteria for market definition can be worked out. This makes a comparison a difficult task. However the existing market definition procedure of the EC Commission and the European Court of Justice is for the Office a very important source of relevant information data and education but this is not obligatory for the Antimonopoly Office. As can be seen from the cases above, the Antimonopoly Office mainly defines markets according to the demand-side substitutability test. In this regard it can be noted that the tendency of the Antimonopoly Office is that the methodology of market definition will be in line with the market definition procedure of the EC Commission and the European Court of Justice, unless the Competition Act provides otherwise.

For the sake of completeness it is necessary to mention that in contrast to the EC Commission, which assess the demand-side substitutability of products from the perspective of a typical customer, the Antimonopoly Office does not make any differences in this respect.

However, this difference might well lead to different results when the market definition is solely based on the demand-side substitutability test.

A noticeable difference in the actual outcome of a market definition lies within the geographic dimension of the relevant market. The Antimonopoly Office in most cases defines the geographic markets according to the national boundaries, i.e. the biggest geographic market is the whole territory of the Slovak Republic. According to the Slovak competition law, it is also possible to define smaller geographic markets such as regional or local markets. In contrast, the EC

\textsuperscript{70} For the definitions see Article 2 of the Decision.

Commission often defines larger markets than national markets, e.g. EC-wide markets. The EC merger regulation applies to the common market or a substantial part of it as the relevant market for competition law purposes. According to this, the definitions of the relevant geographic markets can lead to different results, i.e. national and international relevant geographic markets.

When analysing markets in the field of media in the Slovak Republic, it has to be taken into consideration that the market definition methodology was not separately created for the media sector. That means that during the pre-accession period the Antimonopoly Office has not used any other criteria than the general ones arising from the valid Slovak competition law when defining the relevant markets in the media sector. However, based on an oral information of the respective officers, even during the pre-accession period the Antimonopoly Office has attempted to implement the results provided for in the media relevant EC decisions. In this connection it is necessary to mention that the relevant decisions in the media sector are reasoned only in a general way and they are not elaborated as detailed as the EC decisions. By this reason, it will be possible to make a more comparative analysis only after the application of the Council Regulation (EC) No. 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty establishing the European Community as well as a the new EC Merger Regulation No. 139/2004 which came into force in May 2004 becomes evident in the daily practice of the Antimonopoly Office.

VI. Conclusion

Surprisingly enough, the problematic of relevant market has not been so far conceptually summarized/worked on in any Slovak theoretical specializing work, even though the term relevant market is defined by law and is commonly used in the application practice of the Antimonopoly Office. The Antimonopoly Office has also not provided the definition or specification of the term relevant market in a more generalizing conceptual form, yet – in this case it is only possible to draw conclusions based on arguments relating the published decisions. The domestic magazine sources, legal comments as well as any other sources are in this respect rather a rarity than a standard/rule. It is therefore advisable and necessary, when dealing with the problematic of the relevant market, to take into consideration/base one’s arguments not only on the Slovak legal regulations but also from foreign legal data/records, mainly on those which focus on competition law. In addition, since, as it was already mentioned before, the Slovak competition law is based on a model applied on the EU level, and the same can also be claimed about the applicability of the term relevant market and references regarding methods and decision competences/activities of the EU in the area of relevant markets are a common part of the domestic application practice of the Antimonopoly Office.
Impact of Different Regulatory Frameworks on Market Definitions

The regulatory framework for the media sector in the Slovak Republic

1. Sociological characteristics of Slovakia

With its app. 5,400,000 inhabitants living in a territory of app. 49,000 square kilometres, the Slovak Republic is one of the smaller countries of the European Union. Slovaks comprise about 86 percent of the country’s inhabitants. Hungarians, who constitute the largest minority group, comprise close to 11 percent; and Roma (Gypsies) represent less than 2 percent. Small numbers of Czechs, Russniaks, Ukrainians, Poles, and Germans also live in Slovakia. However, all major media are in the Slovak language.

The most important sector-focused provisions relevant for the purpose of this study are as follows:

2. The regulatory framework for the media sector in Slovakia

a) Constitutional Provisions

The basic regulation of the media law is contained in the Act No. 460/1992 Coll. the Constitution of the Slovak Republic (Ústava Slovenskej republiky) with all amendments. The Constitution guarantees several rights and liberties associated with the activities in the media sector, especially:

(i) freedom of expression, right for information and ban of the censure (Article 26 and 45);
(ii) freedom of opinion (Article 24);
(iii) cultural rights and minority rights (Article 34 and 43);
(iv) protection of the intellectual property rights (Article 43 paragraph 1);
(v) the protection of human dignity and personal honour (Article 19 paragraph 1);
(vi) the protection of privacy (Article 16 paragraph and 19 paragraph 2);
(vii) protection of personal data (Article 19 paragraph 3, Article 22 paragraph 1);
(viii) transferred data confidentiality (Article 22).

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Furthermore, the Slovak Constitution provides the general framework for the entrepreneurial activities by guaranteeing the right of property (Article 20) and professional liberty (Article 35).

b) Sector-specific regulations

aa. Legal framework

At the moment, the following main Acts building the framework for the Slovak media legislation (including the general competition regulations) are in force:

(i) Act No. 136/2001 Coll. on Protection of Economic Competition (Zákon o ochrane hospodárskej súťaže).74

(ii) Act No. 308/2000 Coll. on Broadcasting and Retransmission (Zákon o vysielaní a retransmisii).75

(iii) Act No. 16/2004 Coll. on Slovak Television (Zákon o Slovenskej televízii).76

(iv) Act No. 619/2003 Coll. on Slovak Radio (Zákon o Slovenskom rozhlase).77

(v) Act No. 610/2003 Coll. on Electronic Communications (Zákon o elektronických komunikáciách).78

(vi) Act No. 1/1996 Coll. on Audio-Vision (Zákon o audiovízii).79

(vii) Act No. 81/1966 Coll. on Periodical Press and Other Mass Media (Zákon o periodických tlači a o ostatných hromadných informačných prostriedkoch).80

(viii) Act No. 212/1997 Coll. on Free Copies of Periodicals, Non-Periodicals and Audiovisual Copies (Zákon o povinných výťažkoch periodických publikácií, neperiodických publikácií a

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76 Act No. 16/2004 Coll. on Slovak Television; Coll. of Laws No. 7/2004, page 119.


rozmnožením audiovizuálnych diel)\textsuperscript{81}, which obliges the editors/producers of the periodical publications, non-periodical publications and audiovisual works to deliver copies thereof to the entities listed in the Act.

(ix) Act No. 618/2003 Coll. on **Copyright and Related Rights (Copyright Act)** [(Zákon o autorskom práve a právach súvisiacich s autorským právom (autorský zákon)]\textsuperscript{82}

(x) In addition, there are several other Slovak acts valid in the field of media legislation, for example:

- Act No. 147/2001 Coll. on Advertisement (Zákon o reklame)\textsuperscript{83}

- Act No. 428/2002 Coll. on Protection of Personal Data (Zákon o ochrane osobných údajov)\textsuperscript{84}, which regulates the collection, disclosure and use of personal information either in electronic or physical form.

- Act No. 211/2000 Coll. on Free Access to Information (Zákon o slobodnom prístupe k informáciám)\textsuperscript{85}, which sets forth the general rules on disclosure of information held by all “obliged persons”, which means state agencies (including parliament, government, courts, etc.), municipalities, legal entities established by law and by state agencies, as well as legal entities and natural persons that have been given the power by law to make decisions in the area of public administration. The Act is frequently used by the media for acceding to the information that obliged persons are bound to provide by this Act. There are, however, limitations on confidential or other qualified information.

- Act No. 395/2002 on Archives and Registries (Zákon o archívoch a registratúrach)\textsuperscript{86}, which regulates the state administration concerning the archives and registers. According to this Act, the archives of the Slovak Radio and of the Slovak Television are considered to be public archives. Under some conditions, documents, films or audio records of other media may be considered as archive documents.

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\textsuperscript{82} Act No. 618/2003 Coll. on Copyright and Related Rights (Copyright Act); Coll. of Laws No. 252/2003, page 5954.


• Act No. 212/1995 Coll. on Concessionary Fees (Zákon o koncesionárskych poplatkoch)\textsuperscript{87}, which provides a framework for the collection of concessionary fees, their payment and enforcement. Concessionary fees are payable by individuals owning radio or television receivers or entrepreneurs or legal entities registering radio or television receivers in their books. The receiver of the concessionary fees for radio receivers is the Slovak Radio and of the concessionary fees for television receivers is the Slovak Television. The concessionary fees for radio and television receivers vary in function of the status of the payer from SKK 20 up to SKK 100.

• Act No. 270/1995 Coll. on State Language of the Slovak Republic (Zákon o štátnom jazyku Slovenskej republiky)\textsuperscript{88}, which sets forth the rules for the use of the state official language of the Slovak Republic, which is Slovak. Some of the rules are directly applicable to the mass media sector, such as the general obligation to broadcast the programmes in Slovak in the television or radio, but for some exceptions. The access to the media by language minorities is to be guaranteed by the Act on Slovak Television and the Act on Slovak Radio.

• Act No. 22/2004 Coll. on Electronic Commerce (Zákon o elektronickom obchode).\textsuperscript{89}

• Act No. 215/2002 Coll. on Electronic Signature (Zákon o elektronickom podpise).\textsuperscript{90}

• Act No. 40/1964 Coll. Civil Code (Občiansky zákoník).\textsuperscript{91} In Article 11, the Civil Code protects certain aspects of human personality\textsuperscript{92}. In Article 12, the Civil Code sets forth the rules for the use of documents of personal nature, pictures or shots or audio records related to an individual.

These acts are definitely apart of the Slovak regulatory framework concerning media, however, it may be considered to introduce more complementary rules to the aforesaid basic acts.


\textsuperscript{89} Act No. 22/2004 Coll. on Electronic Commerce; Coll. of Laws No. 9/2004, page 146.


\textsuperscript{92} “Everyone has the right to the preservation of his personality, mainly of life and health, personal honour and human dignity as well as privacy, name and exhibitions of personal nature.”
Administrative rules with respect to the media sector, that are currently in force, are mostly regarding telecommunications and are mainly dealing with technical requirements and provide for more detailed implementation of the provisions laid down in the Act on Electronic Communications. These have been issued by the Ministry of Transport, Posts and Telecommunications of the Slovak Republic and the Telecommunication Office of the Slovak Republic. Administrative regulations with special focus on different media (communications) markets do not exist yet.

II. Regulatory authorities in Slovakia having an impact on the media sector

1. Ministry of Transport, Posts and Telecommunications of the Slovak Republic

   a) Legal Basis

   The Ministry of Transport, Posts and Telecommunications of the Slovak Republic (Ministerstvo dopravy, pôšt a telekomunikácií Slovenskej republiky)93 (“Ministry of Transport”) is one of the central bodies of state administration operating under the general regulation of the Act No. 575/2001 Coll. on Organisation of the Activities of the Government and Organisation of the Central State Administration (Zákon o organizácii činnosti vlády a organizácii ústrednej štátnej správy)94 (“Government Act”). The Minister of the Ministry of Transport is a member of the Government of the Slovak Republic (“Government”).

   b) Functions / Competencies

   The Ministry of Transport is along with the Telecom Office a body of the state administration in the area of electronic communications.

   According to the Act on Electronic Communications, the Ministry shall (i) elaborate the proposals of the national policy in electronic communications and submits them to the Government for approval, (ii) elaborate the proposal of the national table of frequency allocations and submit it to the Government for approval, (iii) ensure international relationships in the area of electronic communications at the level of the European Union, the international governmental and non-governmental organisations.

93 http://www.telecom.gov.sk

2. Ministry of Culture of the Slovak Republic

a) Legal Basis

The Ministry of Culture of the Slovak Republic (Ministerstvo kultúry Slovenskej republiky)\(^{95}\) ("Ministry of Transport") is one of the central bodies of state administration operating under the general regulation of the Government Act. The Minister of the Ministry of Culture is a member of the Government.

b) Functions / Competencies

Under the general regulation of the Government Act, the Ministry of Culture is the central body of state administration for the state language, art, copyright and related rights, support of the culture of minorities, support of the culture of Slovaks living abroad, media and audio-vision, protection of the culture fund, cultural heritage and library science. Some specific powers are provided by separate laws, such as the power to register periodical and non-periodical press pursuant to the Act on Periodical Press and Other Mass Media or to decide on the granting of the authorisation for collective administration of rights pursuant to the Copyright Act and the supervision over such collective administration organisations.

3. Personal Data Protection Authority

a) Legal Basis

The Personal Data Protection Office ("PDPO") has been established by the Act No. 428/2002 Coll. on Protection of Personal Data (Zákon o ochrane osobných údajov)\(^{96}\) and is a state administration authority participating on the protection of fundamental rights and freedoms of natural persons in the course of processing their personal data. The Office performs its tasks and duties independently and in course of the law.

b) Functions / Competencies

The main function of the PDPO is the supervision in matters of compliance with the data protection legislation except for the supervision in these matters over the intelligence services which is exercised by the National Council of the Slovak Republic. The PDPO shall register the information systems and assure the access to the registration situation; continuously monitor the situation in personal data protection; inspect processing of personal data in information systems etc. Furthermore, the PDPO is also authorised to take some compulsory statements in respect of qualification under some provisions of the Data Protection Act and exercise inspection powers in respect of personal data protection.

\(^{95}\) http://www.culture.gov.sk

III. Market definitions and/or criteria upheld for market perception in the relevant sector focused legislation

1. Press

a) Basic legislation

The freedom of speech and the right to information are guaranteed pursuant to the Article 26 of Slovak Constitution \(^{97}\) and to the Constitutional Act on the Declaration of Fundamental Rights and Freedoms \(^{98}\). Everyone has the right to express their views in word, writing, print, picture, or other means as well as the right to freely seek out, receive, and spread ideas and information without regard for state borders. The issuing of press is not subject to licensing procedures. Censorship is banned.

In this connection, the most important law is Act No. 81/1966 Coll. on Periodical Press and Other Mass Media (Zákon o periodickej tlači a o ostatných hromadných informačných prostriedkoch) \(^{99}\). This law has been amended ten times. The most important amendment was the Act No. 86/1990 Coll. adopted one the year after the velvet revolution 1989, when several articles were cancelled, which would insure political regulation of newspapers and journalists in the pre-revolution period.

This Act defines the “periodical publication” as the “newspapers, magazines and other periodical publications, published at least twice a year under the same name and in a format typical for this type of publication” \(^{100}\). However, we do not consider collections of law, official publications and publications that are used only for official, administrative or operative purposes of public bodies and organizations, of scientific and cultural institutions, commercial, social and other organizations.

Periodical publications can be issued by legal entities as well as by natural persons that have reached the age of 18. Other persons than legal entities or natural persons can only issue such publications upon the understanding of the respective state administrative body of the Slovak Republic according to the respective residence of the publisher. The authorization for publishing periodical publications arises by its registration. The register of periodical publications is a public list. The Ministry of Culture of the Slovak Republic carries out the registration.

The publisher of periodical publications is obliged to assure that periodical publications will not contain (i) information that would propagate war or describe cruel or otherwise inhuman behaviour in a way in which they would downplay, excuse or approve it, (ii) information that


\(^{98}\) Selected Declarations of the General Assembly of UN No. 1/1948.


\(^{100}\) Article 3 paragraph 1 of the Act on Periodical Press and Other Mass Media.
would propagate drug use or use of psychotropic substances or describe the use of drugs or psychotropic substances in a way, in which they would downplay, excuse or approve it, (iii) information that is in contradiction with the rules of the election campaign for the National Council of the Slovak Republic and the Regional Administration, the presidential campaign as well as with the pre-referendum campaign rules.

Citizens who make use of the constitutionally guaranteed freedom of speech, expression and press, enjoy full protection according to the valid regulations. Publishing of an information which could endanger the law-protected interests of the society or of a citizen would be considered as an abuse of the freedom of speech, expression and press. The publisher, managing editor, editor and the author are responsible for the protection of the society and of the citizens against an abuse of the freedom of speech, expression and press to the extent of the valid regulations. Also the liability of indemnity of an editor towards organizations or citizens is considered according to these regulations.

Slovak private law cases are usually handled in the regular judicial system, starting with the court of first instance (i.e. the District Court) and going on to the County Courts as the Courts of Appeal and the High Court. Most trials against the press are based on damage suits for defamation or violation of privacy upon the civil code.

In connection with the press, the Act No. 212/1997 Coll. on Free Copies of Periodicals, Non-Periodicals and Audiovisual Copies (Zákon o povinných výtlačkoch periodických publikácií, neperiodických publikácií a rozmnožení audiovizuálnych diel) has to be mentioned. Pursuant to this act we can define a periodical publication as a periodical or other publication issued at least twice a year under the same title with an indication of periodicity and a layout typical for this sort of published work. A periodical is a publication which is not designed for the official, service and operational needs of public authorities, communities and legal and natural persons as well.

As a non-periodical publication is defined an intentionally-made publication, a copy of a literary, photographic, scientific or art work, which is, as a rule, an unrepeated issue and can be published in parts irrespective of the form and the method of compilation, issue or manufacture. A non-periodical publication is further not (i) a three-dimensional cartographic work, a basic state map or a thematic state map according to special provisions (ii) a three-dimensional copy of an art work and (iii) a copy designed for social or family purposes, especially an invitation or announcement. The supervision of duties which result from this Act will be provided by the Ministry of Culture as a registry authority for periodicals and for non-periodicals and audiovisual copies, by a district authority in cooperation with the University Library in Bratislava, which is responsible for the allocation of ISBN and ISMN numbers.

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b) Books

The Slovak National Library, whose founder is the Ministry of Culture of the Slovak Republic, is a national library of the Slovak Republic as amended by Act No. 183/2000 Coll. on Libraries. It is a conservational and depositional library of the Slovak Republic and its priority is to collect, expertly process, preserve, protect and to make accessible domestic and foreign slovacical documents. It is a national bibliographic agency which ensures the coordination of the national bibliographic system, national bibliographic registration of slovacical documents, expert processing and accession of Slovak national bibliography. It administers and protects historical library documents and the historical library fund. Books are not further defined in the law.

2. Music and copyright

The provisions concerning copyright are to be found in the Act No. 618/2003 Coll. on Copyright and Related Rights (Zákon o autorskom práve a právach súvisiacich s autorským právom). Although the Act contains a fruitful number of legal definitions, it does not introduce the legal definition of a “music work”. However, the Act sets forth that music work (with or without lyrics), that is the result of creative intellectual activity of the author, shall be the subject matter of copyright.

A “sound recording” is defined as an “exclusively aural fixation of sounds, regardless of the method or of the medium by which and on which these sounds are fixed”. A sound recording that has been recorded together with pictures shall not be considered as a sound recording. The “producer of a sound recording” is the “natural person who or legal entity which initiated or facilitated the final making thereof”.

The “communication to the public” is defined as the “dissemination or performance of work by any technical means for dissemination of sound or sound and images simultaneously, or of the representation thereof, by means of wire or without wire, in such a way that said work is perceivable by persons in places where it would not be possible to perceive this work without such communication; communication to the public includes cable retransmission, broadcasting and the making available to the public”. The “broadcasting” shall mean the “public transfer carried out by a broadcaster, and this also in the case when the transfer is ensured by another person under the guidance and responsibility of the original broadcaster, including the

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103 Act No. 618/2003 Coll. on Copyright and Related Rights (Copyright Act); Coll. of Laws No. 252/2003, page 5954.

104 Article 5 paragraph 25 of the Act on Copyright and Related Rights.

105 Article 5 paragraph 20 of the Act on Copyright and Related Rights.

106 Article 5 paragraph 14 of the Act on Copyright and Related Rights.
broadcasting by satellite”. An “artistic performance” is the “playing, delivering or other creative performing of literary work, artistic work or work of folklore by action such as singing, acting, dancing or in another way”.

Pursuant to Article 7 paragraph (1) of the Copyright Act, the subject matter of copyright is constituted by

- literary work,
- scientific work and
- artistic work

that are the result of creative intellectual activity of the author, e.g. computer program, work delivered orally or declaimed, or literary work performed in another way, theatrical work, musical work with or without lyrics, audiovisual work, work of visual art, photographic work, architectural works, work of applied art, cartographic work in analogue or any other form.

3. Film

There is no sector specific legislation with regard to Film production. There are several acts which provide us particularly with the general definitions of legal conception connected with film production.

The Copyright Act specifies a number of provisions for film (Articles 5,7 of the Act) an audiovisual work is the work perceptible by means of a technical device as sequence of related images with or without accompanying sound provided it is designed to be made available to the public. Inter alia the main director, the author of the scenario, the author of the dialogues and author of the music specially created for the work shall be considered to be the co-authors of such a work. The subject matter of copyright is constituted by literary and other artistic work and scientific work that is the result of creative intellectual activity of the author, in particular a audiovisual work, first of all cinematographic work. The Copyright Act furthermore specifies a collective work as a work that has been created by the joint activity of two or more authors who have agreed on the use of their own creative intellectual activity for its creation under the direction of the natural person who, or legal entity which, (i) has initiated the creation of the work and (ii) has directed or facilitated the creation of the work. (Article 10) Article 55 regulates also an international Registration of Audiovisual Work. According to this legal provision an entry concerning the work in an International Register of Audiovisual Works shall be considered true until the contrary is proved, except (i) where the entry can not be valid pursuant to Copyright Act and (ii) where the entry is contradicted by another entry in the International Register.

107 Article 5 paragraph 21 of the Act on Copyright and Related Rights.
108 Article 5 paragraph 13 of the Act on Copyright and Related Rights.
The second important law in this respect is the Act on Audio-Vision. This Act regulates the (i) denomination of audiovisual works, (ii) duties of producers distributors and operators, (iii) promotion of audiovisual performance, (iv) financing of Slovak Audiovisual Works and (v) supervision.

Article 5 of the Act on Audio-Vision sets out that an operator of a cinema and an operator of technical equipment are obligated to ensure in the part of an audiovisual performance which is promotional, that the published promotion is distinguishable and clearly marked in sound or picture and separated from the rest of the contents of the performance, which cannot be interrupted with the promotion. According to Article 4 of this Act a distributor of an audiovisual work is obligated to ensure that the Slovak language edition or other language edition fulfilling the requirement of basic understandability from the point of view of the state language for each Slovak audiovisual work, while at least 40% of all audiovisual works used and disseminated by him will be edited in Slovak dubbing or to a language edition fulfilling the requirement of basic understandability from the point of view of the state language and other ones with Slovak subtitles. A distributor is obliged to ensure exclusively Slovak dubbing for an audiovisual work designated for children under the age of 12 years.

Article 6 of the Act on Audio-Vision that provides a regulatory framework for the financing of Slovak audio-visual works is formulated in a very insufficient and general way. According to this Article, the Ministry of Culture can share in financing the creation or distribution of domestic (i.e. Slovak) audiovisual works.

An “audiovisual work” means “every work which consists of a series of recorded, connected-together pictures, either accompanied by sound or not, perceivable by sight, and if they are accompanied by sound, perceivable also by hearing, as well as work, which represents only an individual sound recording, if it is designated for public usage and dissemination by means of technical equipment.” A “Slovak audio-visual work” is defined as:

(i) an “audiovisual work, the producer of which has or had at the time of its first public presentation its permanent residence or registered seat on the territory of the Slovak Republic”;

(ii) an “audiovisual work in the creation of which the aforementioned producer has shared at least 20% of the entire budget for the work”.

In this connection it is necessary to provide for also the legal definition of the producer of an audiovisual work for the purposes of the Act on Audio-Vision. According to Article 2 paragraph 2 lit. a) of this Act, a “producer of an audiovisual work” is “a person who has obtained the rights to use the individual parts of an audiovisual work on the basis of a contract and, at the same time, has produced thus work”.

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10.127

10.128

10.129

110 Article 2 paragraph 1 lit. a) of the Act on Audio-Vision.

111 Article 2 paragraph 1 lit. b) of the Act on Audio-Vision.
The film-makers have been calling for more support from the government. However, the time is not right as the government is in debt and more interested in finding ways to save money.

There are about 18 audiovisual production companies established and operating in Slovakia at present: ALEF Film & Media Group, s.r.o., AG STUDIO, s.r.o., ARTKREA, s.r.o., ARS MEDIA, s.r.o., ARTKREA, s.r.o., ARTREAL, s.r.o., ATARAX, s.r.o., BAMAC, s.r.o., BAMAC PRODUCTION COMPANY CHARLIES, s.r.o, K2 STUDIO, s.r.o., MY STUDIO TRIGON PRODUCTION, s.r.o., IVO BRACHTL.112

In this connection, it might be interesting to note that the Slovak Film Institute has a special department, namely the Slovak Audiovisual Information Center, which (i) promotes Eureka Audiovisual and Eurimages programmes and makes use of advantages concerning Slovak participation, (ii) contacts foreign institutions and provides relevant information relating to Slovak cinematographic and audiovisual area, (iii) collects, processes and distributes information coming to Ministry of Culture and Slovak Film Institute relevant to specialists of Slovak cinematographic and audiovisual territory, (iv) co-operates with partner institutions including the Ministry of Culture of the Slovak Republic, the Media Institute, the Council for Broadcasting and Retransmission and (v) provides relevant information concerning film and audiovisual databases abroad and up-to-dates regularly a directory of Slovak companies and organisations operating on cinematographic and audiovisual area.

4. Broadcasting (television and radio)

a) Introduction

The Slovak Republic has a dual system of public and commercial broadcasting with numerous local public radio and television stations. The broadcasting sector comprises a multitude of trading relations.

Within the uniform Czechoslovak state system, television and radio matured as bilingual (Czech and Slovak) state-wide mediums. After the velvet revolution in November 1989, when the leading role of the communist party was removed and the system of state control of mass media fell apart, legislative conditions for the development of the dual system of electronic media have been created.

The former Czechoslovak Republic has been the first post-communist country to pass an act on radio and television broadcasting (in 1991113). Furthermore, in May 1991 the Slovak National Council has approved the acts on Slovak television114 and Slovak radio115, that defined them as

112 http://www.aic.sk/adresar.html
national, independent, public-service, informative, cultural and educational institutions. It was the first time in the countries of the Middle and Eastern Europe that the former state radio and television organisations transformed themselves into public-service institutions.

Although radio has a significant lead on television in the development of the dual system, the structure of the radio market is still very unbalanced. The Slovak radio does not have a dominant position anymore, however, according to technical and economical conditions, it is losing its dominant position only slowly. Between 85-88 per cent of the Slovak population aged above 14 years listened to the radio broadcasts according to a long-term research in 2003. Thus, it is the second most popular medium after television.116

b) Broadcasting

On 4 October 2000 the new Act No. 308/2000 Coll. on Broadcasting and Retransmission (Zákon o vysielaní a retransmisi)117 entered into force. This Act is the legal basis for the creation of radio and television programmes as well as for their transmission. Its provisions regulate all kind of broadcasting, this is to say the cable, satellite and terrestrial distribution, irrespective of whether it is analogue or digital, radio or television programme service.

Furthermore, the Act on Broadcasting and Retransmission regulates the granting of licences, which is in the sole competence of the Council for Broadcasting and Retransmission (“Council”). The decision on the granting of the licence shall be issued after an agreement with the Telecom Office about the allocation of frequencies and about other technical conditions of the broadcasting which have to comply with the plans for the utilisation of frequencies for broadcasting of a radio and television programme service. The list of frequencies shall be a part of the decision on the granting of the licence.

The Act on Broadcasting and Retransmission distinguishes between the broadcasters who have permission for broadcasting by law, i.e. the Slovak television (Act No. 16/2004 Coll.) and the Slovak radio (Act No. 619/2003 Coll.) (also known as the “public-service broadcasters”), and the broadcasters who have permission for broadcasting on the basis of a licence according to the Act on Broadcasting and Retransmission (“licensed broadcasters”). The Slovak television shall supply two nation-wide channels and the Slovak radio shall supply at least 5 nation-wide channels (both of them on nation-wide terrestrial channels).

The licences for broadcasting of radio and television program services are granted by the Council for eight years (broadcasting of radio programme services), or for twelve years (broadcasting of television programme services), however, the licences may also be granted for a shorter period of time (but only by reasons mentioned in the Act on Broadcasting and Retransmission).

116 http://www.ejc.nl/jr/emland/slovakia.html
When deciding on granting licences, the Council shall evaluate and take into account also the fact that the applicant for the licence shall not win a dominant position in the relevant market.

The Act on Broadcasting and Retransmission does not introduce a definition of the relevant market in the broadcasting sector, neither product, nor geographic.

aa. “Product market”

The “broadcasting” is defined as “the distribution of original coded or un-coded radio programme services or television programme services as well as other sound, visual or audio-visual information including teletext via public telecommunication networks or telecommunication equipment determined for reception by the public; broadcasting does not include communication services directed to providing information or other communications on the basis of individual demand or broadcasting via Internet”\(^{118}\). The transmission of contents via Internet is therefore expressly excluded from the notion of broadcasting. The “terrestrial broadcasting” is defined as the “broadcasting carried out by the telecommunication equipment placed on earth”\(^{119}\).

It is necessary to emphasize that the regulatory framework in the Slovak Republic does not make a distinction between the free-TV and pay-TV such as the European Commission in competition cases does\(^ {120}\). The broadcaster is entitled to decide whether it will charge the television and radio broadcasting or not.

A “programme” is defined as an “audio or audio-visual communication, which in its content, form and function forms a closed unit; it is the basic unit of the broadcast programme service and may not be interrupted unless this law states otherwise”\(^ {121}\). A “programme in the public interest” shall mean a “programme aimed at the satisfaction of the informational and cultural needs of listeners or viewers on the territory covered by the signal of the broadcaster”\(^ {122}\). Primarily, it is:

(i) programmes for minors aimed at educational, upbringing and informational purposes,

(ii) news,

(iii) programmes aimed at educating and training, science and research,

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\(^{118}\) Article 3 lit. a) of the Act on Broadcasting and Retransmission.

\(^{119}\) Article 3 lit. l) of the Act on Broadcasting and Retransmission.

\(^{120}\) Compare in particular Case IV/M.469, [1994] OJ L364/1, paragraphs 32 et seq. – MSG Media Service; Case IV/M.993, [1999] OJ L53/1, paragraph 18 . Bertelsmann/Kirch/Premiere; Case COMP/JV.37, paragraphs 23 et seq. – BSkyB/KirchPayTV.

\(^{121}\) Article 3 lit. f) of the Act on Broadcasting and Retransmission.

\(^{122}\) Article 3 lit. h) of the Act on Broadcasting and Retransmission.
(iv) programmes which provide legal and other information, support healthy life-style, the protection of nature, the protection of environment, the protection of life, health and property, and road safety,

(v) programmes, which present culture, with emphasis on the Slovak national culture and the culture of national minorities and ethnic groups, their life and opinions,

(vi) programmes, which present religious activities,

(vii) programmes, which are determined for groups of citizens in social need.

When introducing the restriction of sponsorship, the Act on Broadcasting and Retransmission distinguishes between three different programme categories, i.e. (i) news programmes, (ii) sport reports and (iii) current affairs programmes. The independent news programmes, which contain exclusively information about the weather, traffic situation or sport, build an exception.\textsuperscript{123}

bb. “Geographic market”

The Act on Broadcasting and Retransmission distinguishes between the following four basic types of broadcasting depending on the territory covered by the broadcasting. They are:

(a) the “\textit{full-range broadcasting}” that covers the whole territory of the Slovak Republic and that can be received by more than 80\% of its inhabitants;

(b) the “\textit{multi-regional broadcasting}” that covers several regions and that can be received by more than 30\% and less than 80\% of its inhabitants;

(c) the “\textit{regional broadcasting}” that covers a region larger than the cadastral territory of a community and can be received by less than 30\% of inhabitants;

(d) the “\textit{local broadcasting}”, the reception of which is usually geographically limited to a community and where the area of reception does not include more than 100,000 inhabitants and, if it concerns a town, more than 200,000 inhabitants (broadcast programmes are aimed at local information environment or sources and on the issues of common interest, while creating and deepening internal relations of any given community, and leading to a maintaining of the feeling of identification with the community).

c) Retransmission

The “\textit{retransmission}” is defined as the “\textit{reception and simultaneous transmitting of complete and unchanged original programme services or other sound, visual or audio-visual information of broadcaster destined for public reception, realised by means of telecommunication networks or facilities, or by means of other technological system for reception and simultaneous broadcasting of programme services}”.\textsuperscript{124}

\textsuperscript{123} Article 39 paragraph 5 of the Act on Broadcasting and Retransmission

\textsuperscript{124} Article 3 lit. c) of the Act on Broadcasting and Retransmission.
The “telecommunications facility” means a “technical facility for emission, transmission, routing, reception, switching or processing of signals and information in the form of pictures, sound or data (“signal”) by wire, radio, optical or other electromagnetic means, as well as associated facilities”\(^{125}\), whereas the “associated facilities” are defined as “technical facilities and other equipment associated with a network, which enable or support the provision of services via that network or service. They include conditional access systems and electronic programme guides”\(^{126}\).

Furthermore, the “electronic communications network” shall mean a “functionally interconnected transmission systems and, where applicable, switching and routing equipment, as well as other resources which permit the conveyance of signals by wire, radio, optical or by other electromagnetic means, including satellite networks, circuit- and packet-switched fixed networks, including Internet and mobile terrestrial networks, power distribution networks to the extent that they are used for transmission of signals, networks for radio and television broadcasting and cable distribution systems, irrespective of the type of information conveyed”.\(^{127}\)

The national licensing policy does not depend on the respective means of retransmission.

d) Broadcasting advertisement

In Slovak media law specific provisions exist for the supervision of broadcasting advertisement embedded in the Act on Broadcasting and Retransmission. The term “advertisement” is hereby defined as follows:

“any public announcement broadcast in return for payment or any similar counter-value including self publicity with the aim of supporting the sale, purchase or lease of goods, services, including real estates, rights and obligations, or to reach other effect pursued by the ordering party of the advertisement or by the broadcaster”.

To broadcasting under the Act on Broadcasting and Retransmission shall apply the general regulations on advertisement\(^{128}\), if this Act does not stipulate otherwise.

As the regulatory framework for advertisement does not distinguish between the radio and television, no further conclusions as to market definitions under competition law can be drawn at this stage.

\(^{125}\) Article 3 paragraph 1 of the Act on Electronic Communications.

\(^{126}\) Article 3 paragraph 4 of the Act on Electronic Communications.

\(^{127}\) Article 4 paragraph 1 of the Act on Electronic Communications.

5. Internet

There is no specific legislation concerning market definition for the internet in Slovak law. As already explained (see above II. aa.) the Act on Broadcasting and Retransmission excludes the internet from its application defining.

The internet infrastructure is seen as one sub-heading of what is defined as the “electronic communications networks” by the Act on Electronic Communications, which shall mean the “functionally interconnected transmission systems and, where applicable, switching and routing equipment, as well as other resources which permit the conveyance of signals by wire, radio, optical or by other electromagnetic means, including satellite networks, circuit- and packet-switched fixed networks, including Internet and mobile terrestrial networks, power distribution networks to the extent that they are used for transmission of signals, networks for radio and television broadcasting and cable distribution systems, irrespective of the type of information conveyed”\(^\text{129}\).

However, the same Act defines the “electronic communications service” by excluding the information society services which do not consist wholly or mainly in the conveyance of signals on networks.\(^\text{130}\)

IV. Market definitions and/or criteria for market perception in the media-sector, as upheld in sector specific practice of authorities and/or courts

There are no pertinent decisions in the sector specific practice dealing with market definition in the media sector in particular. Up to now media market definition has solely been effected by the Slovak Antimonopoly Office and the Slovak Telecom Office. It is expected that due to a requirement of the Antimonopoly Office the Council will define the relevant market in the area of television broadcasting.

V. Common factors and differences between these market definitions and the market definitions used in applications of the competition rules

Due to the lack of relevant decisional practice in which the non-competition authorities would have the opportunity to define media markets, this question can not be answered for Slovak Republic.

\(^{129}\) Article 4 paragraph 1 of the Act on Electronic Communications.

\(^{130}\) Article 5 paragraph 1 of the Act on Electronic Communications.
VI. The impact of the non-competition framework and practice on the work of the competition regulators, in particular when defining the relevant markets

As already mentioned above, the non-competition framework does not provide any indications for market definition in the media sector. Only the Antimonopoly Office and the Telecom Office are entitled to define relevant markets in their decisions, however, the Telecom Office only in the area of electronic communications. Therefore, the Telecom Office shall co-operate (in form of consultations) with the Antimonopoly Office in the issues related to determination of the relevant markets, the analysis of the relevant markets in the field of electronic communications and the determination of undertaking with a significant market power on the relevant market. Furthermore, both Offices shall exchange information and supporting materials.

In the interest of the precision, it is necessary to note that in each particular case in its decision-making practise the Antimonopoly Office is entitled to decide freely and independently, whether it will take into consideration besides other determining factors also the non competition framework.