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Verwaltung in Mittel- und Osteuropa“

Heft 6 (2005)

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Jochen Franzke

**Slovak Telecom Administration**  
Transformation and Regulation in a Dynamic market

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### **Forschungspapiere „Probleme der Öffentlichen Verwaltung in Mittel- und Osteuropa“ Heft 6 (2005)**

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## 0. Introduction

This paper<sup>1</sup> is part of a series of papers worked out by a DFG-funded research project on "Genesis, Organization and Efficiency of the central-state Ministerial Administration in Central and Eastern Europe" at the chair of political sciences, administration and organization at the University of Potsdam. The project is analysing the changes in administrative structures at central-state level in Estonia, Poland and Slovakia by looking at the policy fields of telecommunications and agriculture since the end of communist rule. This paper includes the respective case study on Slovak administration in the telecommunication sector.<sup>2</sup>

In the first chapter – after describing briefly the role of the telecom sector within Slovak economy – the national sectoral policy is analysed. According to the general development of Slovak politics, three different periods can be identified: 1993/1998, 1998/2002 and since 2002. The analysis is focused on telecom legislation (including the regulation framework), the liberalization of the telecom market and the privatisation of the former state owned telecom operator. In the second chapter the development of the organizational structure of the "Slovak telecommunication administration"<sup>3</sup> will be analysed in particular at the level of the ministry and the regulating agency. The last section of this chapter is dealing with the relationship between the different actors of telecom policy, especially between the "main player" (Ministry of Transport, Posts and Telecommunications, Telecommunication Office, Anti-Monopoly Office and Council for Broadcasting and Retransmission) and their co-ordination problems. Finally, the paper is summing up the results of changes since 1990 in this branch of Public Administration.

The author of this paper has to thank all Slovak officials and experts for their kind readiness to discuss with him the problems of the telecom policy. The deadline of this study was at the end of 2004.

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<sup>1</sup> This paper was worked out with the help of Mr. Brano Dolny (postgraduate student from the Comenius University Bratislava), who on the basis of a contract for services provided the author with a collection of information about telecom policy and its administration in Slovakia (henceforth quotes as Dolny 2003).

<sup>2</sup> For being short in the following mostly the abbreviation "telecom" is used.

<sup>3</sup> Since the appointment of the Act on Electronic Communication in 2003 according to EU terms in documents of Slovak governmental institutions the term of "Electronic communications" is used instead of „Telecommunication“. Electronic communications "ensure the exchange or transmission of information, between a finite numbers of users realized via electronic communications networks. Electronic communications do not include information conveyed as part of television and radio broadcasting to the public over an electronic communications network, except for information related to the identifiable user receiving the information." (Act No. 610/2003 on Electronic Communications, Section 2)

## 1. Telecom Policy in Slovakia (since 1990)

### 1.1. Telecom Sector in Slovakia

Telecommunication belongs to the branches of the transition economy with the deepest changes since the end of communist rule. The initial scenario of this development was contradictory. The Czechoslovak "Post and Telecommunication sector" at the end of communist rule was on the one hand a strong economic "complex" of its own with exclusively state owned enterprises acting in a monopoly situation (and in close interaction with the sectoral public administration). (Nørgaard/Møller 2002: 33ff.) Within the sector in the Czechoslovak federation more than 124.000 employees were engaged in 1990, 37.400 of them (30 %) in Slovakia. The telecom branch itself (including Radio-communication) incorporated more than 32.500 employees, thereof 12.000 (37 %) in Slovakia.<sup>4</sup>

On the other hand, the level of technological development of this branch – with the exception of the military structure - remained very low. With 13,4 basic telephone sets per 100 inhabitants in 1990, Slovakia's penetration rate was in fact better than the Polish or Hungarian one, but still very poor in comparison with the EU member states level.<sup>5</sup> The telecom networks were insufficient and technically obsolete.<sup>6</sup> This was due to the fact that – as a result of the "closed" character of the socialist state (and its society) and the lack of resources in the planned economy – the development of modern telecom networks was hampered by the old regime.

Since the end of communist rule and especially since Slovakia won independence on January 1, 1993, the telecom sector has become one of the most improving and developing sectors in its economy. Its market value increased rapidly to 930 million EUR in 2002 (700 million EUR in 2001).<sup>7</sup> This is equivalent to 3,4 % in the GDP of Slovakia.<sup>8</sup> The national market is small, but of relevance as part of the regional market in Central Eastern Europe.

Within the sector mobile telephone is the most rapidly growing and important segment (47 % market share in 2002), while the share of fixed voice telephony segment is decreasing both

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<sup>4</sup> Federal Ministry of Post and Telecommunications of CSFR 1992

<sup>5</sup> Ibid., p. 17

<sup>6</sup> Ibid. But there are also other descriptions about the state of the art of telecommunication in communist Czechoslovakia: „Adequate, modern, automatic system with direct dial connections with many parts of country and most European countries.“ (US Library of Congress, 1987)

<sup>7</sup> EC Directorate-General Information Society (ed.) 2003, p. 12 (data for 2002). All following data on Slovak telecom sector are taken from this report.

<sup>8</sup> Ibid., p. 13.

absolutely and relatively. The data segment is developed very well, with more than 10 % share. The Internet segment is still underdeveloped but some growth may be observed when liberalization will finally be implemented. The mobile penetration rate reached 60 % in 2003. Fixed line penetration rates are relatively low (26,8 % inhabitants penetration and 58,2 % household penetration). The share of the fixed market is unlikely to grow because of the serious competition posed by the mobile services companies.

The ownership structure in the telecom branch is still dominated by the successor of the former state monopoly, *Slovak Telecom* (Slovenské telekomunikácie, a. s. or ST). It remains the leading telecom services provider in Slovakia, owning and operating a telecom network that covers the entire territory of Slovakia, providing national and international telephone services and a wide portfolio of data and Internet services. (Nemec et al 2003: 13) In addition it also caters for the distribution and broadcasting of radio and TV signals. But ST is "not yet fully competitive" in a totally liberalized market.<sup>9</sup>

As of July 2000, *Deutsche Telekom* acquired a 51 % interest in the fixed incumbent operator, the rest 49 % is still owned by the state. (See 1.2.2.) The fixed incumbent is still in a monopoly position in the area of local access, because the formal liberalization of this market in 2003 had up to now "no practical effect".<sup>10</sup> As of 30 June 2003, there were 17 licensed alternative operators but none of them has started operation by this date. *Eurotel Bratislava*, a. s., the first mobile operator on the market, is owned by ST (51 %) and the remaining 49 % are owned by Atlantic West B.V. The second operator (*Orange Slovensko*, a. s.) has a private majority shareholder (64 % is owned by Orange group from the UK).

The Slovak telecom sector in 2003 includes 11.411 employees.<sup>11</sup> More than 9.800 of them (87 %) are employed by ST, which is still one of the largest employers in Slovakia.<sup>12</sup>

Since 1990 the telecom market in Slovakia is facing an unfinished multilateral transition: "from monopoly to competition; from a voice-only market to a combination of voice and data; and from a fixed-line-only market to a combination of fixed and mobile".<sup>13</sup> This transition is difficult for all parties involved, including policy makers, regulators, alternative operators and the incumbent.

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<sup>9</sup> Gole 2003

<sup>10</sup> EC Directorate-General Information Society (ed.) 2003, p. 113.

<sup>11</sup> According to data of the Statistical Office <http://www.statistics.sk/webdata/english/tab/emp/emp03a.htm>

<sup>12</sup> Number of employees as of 31 December 2002 in average full time equivalent. (ST Annual Report 2002, Bratislava 2003)

<sup>13</sup> Gole 2003

## 1.2. Slovak Telecom Policy

The actual telecom policy in Slovakia forms a central element within the national strategy for the information society („umbrella-policy“).<sup>14</sup> The further development of telecommunications is basically oriented towards convergence with the communication, media and information regime of the EU. There is a gradual inclusion of the telecom networks and services into a wider complex of infrastructure serving for the development of the information society.

The characteristic features of Slovak policy in this sector since 1990 are the following:

- **Commercialization** (introduction of market tools in the management of telecom companies and the abandoning of bureaucratic forms of company management);
- **Privatisation** (increasing participation of the private sector in the ownership and management of telecom companies);
- **Liberalization** (free access to the market while complying with legal requirements as well as granting a selection of providers for the respective telecom services);
- **Competition** (improving quality and availability of services, increasing the number of new services and decreasing prices).

The main goal of telecom policy in Slovakia is a significant increase of both, qualitative and quantitative levels of telecom services and the approximation of the Slovak telecom environment to the trends in the EU member states. A comparable level of telecom services with EU countries should be reached as soon as possible by digitalisation and increasing the density of telecom networks and by the introduction and application of new technologies.<sup>15</sup>

In general, the development of Slovak telecom policy can be – according to the general development of Slovak politics – divided into three periods: (see table 1)

- The period between January 1993 und October 1998 with – albeit shortly interrupted for nine months in 1994 – the one party dominated coalition governments under the autocratic leadership of Prime Minister Mèciar,<sup>16</sup>

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<sup>14</sup> The Slovak Governance Institute is criticizing the “non-balanced co-relation between state telecom policy and state information society policy”. (Slovak Governance Institute 2003)

<sup>15</sup> See Governmental Decree No.440/2000, National Policy on Electronic Communications (National Telecommunications Policy) 2003

<sup>16</sup> The Moravčík government (March and December 1994) is not counted separately because in its program telecom policy plays only a very limited role. The government expressed its will to continue all started policies



- The period between October 1998 and October 2002 with a coalition government under Prime Minister Dzurinda,
- The period since October 2002 with the second coalition government under Prime Minister Dzurinda, the first Prime Minister in CEE who was directly re-elected into office.

On the one hand, the differences between these periods can be seen in the strategic aims of the telecom policy, but on the other hand much more in its results and the ability to implement reforms.

### ***1.2.1. Telecommunication policy 1993-1998***

After gaining independence, Slovakia had to define its own national strategy of telecom policy. The first strategic document "Conception of development of communications until 2000" (adopted 31.8.1993) specified the development goals in a short-term (1993-1995) and medium-term (1996-2000) time horizon.<sup>17</sup> The strategy was further developed in the next strategic document "Telecommunication policy - project of development of telecommunications until 2000" (approved in December 1995).<sup>18</sup>

The telecom policy of this period can be characterized by five basic priorities:

- 1. Modernization of telecom legislation.** The main priority was the adoption of a new Telecom Act, providing tariff and regulatory measures with the aim "to create a standard regulatory environment".<sup>19</sup> From the very beginning the objective of the new telecom legislation was – as the then minister Dzurinda put it in April 1994 - "to harmonize it with EU trends".<sup>20</sup> Due to differences between its coalition parties on strategic questions the Mečiar government need nearly five years for preparation works of the new law (1993-1998). Hence, it wasn't able to finish its preparation of the new

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<sup>17</sup> Concept of development of communications until 2000, 1993. 45 % of the financial resources for the period 1993-1995 were provided through loans from foreign banks (World Bank, EBRD, EIB) and through credits from suppliers of technology.

<sup>18</sup> Governmental Decree No. 981/1995

<sup>19</sup> MDSVP (ed.) 1994, p. 6

<sup>20</sup> Ibid. The new legislation should be based on the requirements of EU White Book for associated countries of EU and on previous studies of the PHARE program, advisory activity of consulting firms of EU countries and expert consultations with EU.

law.<sup>21</sup> So, the outdated Telecom Act from 1964 (with some amendments and ministerial decrees) remained the legal basis for this policy field.<sup>22</sup>

2. **Liberalization of telecom services and networks.** The telecom sector was liberalized gradually: the data services market (liberalized in 1992), the mobile market (partially liberalized in 1996) and the alternative infrastructure (liberalized in 1998). The process finished at the end of 1998, when all telecom services were liberalized, except the basic voice telephone service in the Single Telecommunication Network, provided by the state-owned enterprise ST.<sup>23</sup>
3. **Changes in the regulation framework.** The regulation frame of this period was defined by the old telecom and price legislation. The Mečiar government declared to change these unsuitable conditions, but wasn't able to do so. Due to the failure of the new legislation, the situation in the regulatory frame did not change until the end of 1998. This favoured the former state monopolist ST to defend its dominant position in the market. Three regulators were acting in this period in the telecom sector: the Ministry of Finance (regulating domestic telephone tariffs), the MTPT (regulating international telephone tariffs) and the Telecom Office TÚ (regulating all other telecom matters).
4. **Transformation of the telecom operator.** The Mečiar government decided finally against the privatisation of any strategic sectors of the Slovak economy. So the National Council in 1995 adopted a special act that was forbidding the privatisation of infrastructure sector monopolies including the telecom sector. The government preferred to transform the state-owned enterprise ST into a joint-stock company with 100 % state ownership. The respective preparations began in 1995 on the basis of legislative amendments. In May 1996 and June 1997 MTPT submitted to the government drafts

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<sup>21</sup> The discussion of a new telecom law lasted nearly six years. It started with inter-ministerial discussions in 1993. In November 1995 "the principles of a draft law" were submitted by MTPT to the Legislative Council of the government. From October 1996, a working group prepared a ministerial decree for the new law. In 1997, these activities were transformed for eight newly defined Ministerial decrees. After being approved by the government, the draft of principles of the telecom act was considered in the corresponding committees of the National Council during January 1997. A month later, its chairman recommended the preparation of the Telecom Act with the final wording. The draft of paragraph version of the act was approved on MTPT level in April 1997 and by the expert collegium of the ministers under the consideration of the inter-sectoral notice procedure and submitted it to the Legislative Board of Government in May 1997. In November 1997 the board for the first time discussed the new law. It recommended to complete the law with own suggestions and to consider the alternative solutions with the Ministry of Finance. After this law drafting procedure for the Telecom Act in 1998, it went first of all to the professional organizations for consulting and commenting. In October 1998 the Mečiar government failed.

<sup>22</sup> Telecommunication Act No. 110/1964 with amendments No. 150/92, No. 96/1993 and No. 212/95.

<sup>23</sup> According to the Governmental Program Declaration of the Mečiar Government two licenses for GSM mobile network were granted.

for the transformation of ST into a joint-stock company. But until the end of staying in power in October 1998, the Mečiar government wasn't able to present any draft legislation to parliament.

5. **Technical development.** The aim of some governmental projects was to accelerate the technical development of the telecom sector. Within the Telecommunication project Nr. 1 (1992-1995) the overlying digital network was built up, the digitalisation increased, and new technologies and local networks were supported.<sup>24</sup> The Telecommunications Project No. 2 (1996-2000) dealt with the further development of telecom infrastructure.<sup>25</sup> Its goal was to reach a comparable level of telecom services with that of the EU countries until the year 2000. Despite of the negative impact of the lagging behind with the decision on the entry of foreign capital into the market, the telecom projects were successful.<sup>26</sup> A special state administration data network (the GOVNET project) was introduced in 1993.<sup>27</sup>
6. **Information Society as Part of Telecom Policy.** Since 1995 Slovakia started with Information Society (IS) activities as part of the telecom policy. The national IS strategy was defined for the first time by government resolutions in 1996 and 1997.<sup>28</sup> MTPT started in 1997 to implement the aim of the establishment of an Information Society into the telecom policy.<sup>29</sup>

Overall, the balance of the Meciar Government in the telecom policy is prevailingly negative. It failed in modernizing telecom legislation, changing the regulatory framework in the sector and the transformation of ST. The ability to implement reforms was insufficient. Positive results were gained in liberalization and in the technical development of the sector.

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<sup>24</sup> MTPT (ed.) 1996, p. 4

<sup>25</sup> Governmental decree No. 981/1995

<sup>26</sup> The development of television network completed in this period and allows the broadcasting of two television programs STV 1 98,3 % coverage of inhabitants, STV 2 88,3 % coverage of inhabitants. In order to utilize the network of third TV program (private TV Markiza), on the basis of contract between ST and TV Company, completing the building up of the scope with common financial participation.

<sup>27</sup> GOVNET continues to be implemented. At present, the majority of central state administration bodies and other important organizations are connected to GOVNET, which is managed by the Government Office.

<sup>28</sup> Gov. Resolutions No. 807/1996 and No. 770/1997.

<sup>29</sup> For more information, see the Slovak Governance Institute 2003.

### 1.2.2. Telecommunication policy 1998-2002

The new government under Prime Minister Dzurinda, coming to power after the elections in October 1998, significantly changed the priorities of telecom policy and the speed of its implementation for the better. The basic strategic document for telecommunication policy in this period is „The telecommunications policy of the Slovak Republic for the years 2000-2002“ approved by the Government in 2000.<sup>30</sup> The scope of this strategy was to establish uniform and transparent conditions for the development of the telecom market. Its main intention was to harmonize Slovak with EU legislation and to fully liberalize the telecom market until 31 December 2002.<sup>31</sup> Thus, Slovak telecom policy changed to privatisation of state-owned enterprises (especially ST) and the establishment of a transparent regulatory framework.

**1. Negotiating the adoption of the *acquis* in telecom.** As other policy fields, in “Telecom, Information Technology and Postal Services” (Chapter 19) Slovakia had to adopt regulations of the *acquis communautaire*. The negotiations of the respective chapter were opened in November 2000, provisionally closed in April 2001 and finally closed in December 2002. The closure of the chapter means “the confirmation on the part of the EU that the SR met requirements in this area put on the candidate country before its accession to the EU”.<sup>32</sup> Slovakia requested no transitional arrangements.<sup>33</sup>

**2. New Telecommunications Legislation.** The new act on telecommunications was approved by the National Council on 19 May 2000 and entered into force on 1. July 2000.<sup>34</sup> It modernized Slovak telecom policy in the following directions:

- Transparency,
- Economic competition and simplification of regulatory environment,
- Status of an independent regulatory body in telecommunications,
- Open network access,

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<sup>30</sup> Government Resolution No. 440/2000, defining the national telecom strategy particularly in the area of public telephone service, price policy and regulation, satellite communications, mobile and personal communications, interconnection, leased line services, utilization of frequency spectrum, development of land analogue and digital radio and TV broadcasting, numbering of telecom networks and services, Information Society and international co-operation.

<sup>31</sup> ESIS 2001

<sup>32</sup> National Policy on Electronic Communications (National Telecommunications Policy) 2003

<sup>33</sup> European Commission 1997, 1998, 1999, 2000 and 2003

<sup>34</sup> The Act on Telecommunications No. 195/2000. Since 4<sup>th</sup> October 2000, this Act has been amended by the Act No. 308/2000 on Broadcasting and Re-transmission.

- Universal service provision and financing,
- Creation of a standard licensing system.

Currently, the act regulates terms and conditions for the establishment and operation of telecom networks and equipment. It regulates terms and conditions for the provision of telecom services; state regulation of telecom activities and prices; rights and duties of telecom enterprises and users of public telecom services; protection of public telecom networks and telecom equipment, rights and obligations with respect to third party real estate, state supervision, sanctions and powers of state telecom authorities.<sup>35</sup>

The new act was trying to implement the "1998 EU telecom acquis" into the Slovak legislative system. Its main problem was the absence of clear legal provisions and their implementation into praxis as new players enter the market and the regulatory body needs to effectively and timely solve or positively influence (potential) disputes.<sup>36</sup>

**3. Full Liberalization of Telecom Services.** The strategic aim of telecom policy was the full liberalization of the telecom market until 1. January 2003. ST had exclusive rights to provide basic public telephone service in the fixed telecom network and operation of the public telephone network guaranteed by 31. December 2002. But government failed to establish full liberalization until this date. (See 1.2.3)

**4. Privatisation of Slovak Telecom.** On 1<sup>st</sup> April 1999, ST was registered as a joint-stock company with 100 % investment of the state. At the end of October 1999, the Government adopted a draft intent and procedure for ST privatisation. A month later interested parties were invited to participate in an international tender for the selection of a strategic partner in ST. But the only official offer was submitted from *Deutsche Telekom*, one of the world's leading telecom players, which 2000 acquired 51 % majority stake in ST shares for EUR 1 billion on 18<sup>th</sup> July.<sup>37</sup> The rest is owned by the State (34 % by the MTPT and 15 % by the National Property Fund). The next step in the privatisation process was originally planned in 2002, but up to now no further decision was taken.<sup>38</sup>

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<sup>35</sup> Act on Telecommunications No. 195/2000

<sup>36</sup> Slovak Governance Institute 2003.

<sup>37</sup> The sale of ownership interest in the joint stock company ST to the buyer Deutsche Telekom AG was based on the SR government decree from June 12, 2000. The sale was combined with the obligation to invest 1 billion EUR on development and secure 100% digitalization and increase of penetration of telecommunication network.

<sup>38</sup> In 2002, a new telecom operator TRANSTEL was established with potential significant influence of government through its shareholder position in energy and gas companies. TRANSTEL was established as infrastructure and service operator based on telecom infrastructure of all energy and gas companies while their privatization share was a maximum of 49 % for strategic investors. A privatization plan for TRANSTEL has not yet been published. (Slovak Governance Institute 2003)

**5. Establishing the Regulatory Authority.** From 1<sup>st</sup> July 2000, the Telecommunication Office (TÚ) was established as the regulatory body for the telecom sector. The regulating rights and obligations were transferred from the MTPT and the Ministry of Finance to TÚ. This office is the very first regulating agency in Slovakia despite of the existence of the Nuclear Regulatory Authority.<sup>39</sup>

**6. Information Society as Part of Telecom Policy.** A new strategic document on the "Policy of society informatisation" was adopted in 2001.<sup>40</sup> Slovakia is taking part in the common initiative eEurope+ of the EU candidate countries.

The balance of the Dzurinda government in telecom policy was predominantly positive. Telecom legislation was modernized and harmonized with EU legislation ("1998 aquis"), a new regulation regime was established and the negotiations with the EU on Chapter 19 were finished. But the government anew failed in fully liberalize the telecom market.

### *1.2.3. Telecommunication policy since 2002*

In March 2003 the second Dzurinda Government, coming into power after the October 2002 elections, approved the National Policy for Electronic Communications (National Telecommunications Policy) elaborated by MTPT as a framework document for this sector.<sup>41</sup> It builds upon the full liberalization of the telecom area in Slovakia, following the preceding one for the telecom "Policy for 2000–2002". The key tasks include the transposition of the new regulatory framework in the field of electronic communications into the national legislation, the reinforcement and transparency of the regulatory area, the liberalization of fixed-lines voice service as the final stage of creating a free telecom market and the support for high-speed Internet access.

In this period, the government set the priority in establishing a network of effective institutions on information society policy. Thus in April 2003, the respective competencies were transferred from the Ministry of Education to the MTPT. In September 2003, the Government Council for Informatics was reorganized. In April 2004, the MTPT submitted the *Information*

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<sup>39</sup> Neither in the energy nor in the financial sector – as in most of the OECD member states, including Poland - a regulating agency in Slovakia was existing. (OECD 2002) The Nuclear Regulatory Authority was established as an independent governmental body in January 1993 on the basis of the Act No. 2/1993. Until now, Slovakia has no specific legislation on conditions and requirements for creating public agencies and for regulating their accountability.

<sup>40</sup> Governmental decree No.522/2001

<sup>41</sup> National Policy for Electronic Communications (National Telecommunications Policy) 2003

*Society Strategy and Action Plan* for discussion to the advisory bodies of the government. This document builds upon the "Information Society Policy" approved 2001 and transposes the tasks from the *eEurope+ Action Plan* into the Slovak conditions.

The fixed telecom market in Slovakia has been liberalized since 1 January 2003 but this has had "no practical effect" although the government declared the move as one of its priorities.<sup>42</sup> The market opening, scheduled for the beginning of 2003, "has been seriously obstructed".<sup>43</sup> The European Commission characterized the problems as the following: "Interconnection tariffs, which should be published in order to conform with the *acquis*, are still confidential and new operators are unable to enter the market on an equitable commercial basis. The re-balancing of tariffs and the achievement of affordable universal service also needs to be ensured. Neither carrier selection nor pre-selection have been implemented so far, even though the law obliges operators to provide users with at least one of these facilities. Plans for the implementation of number portability need to be brought in line with the *acquis*."<sup>44</sup>

As of 30 June 2003, there were 17 licensed alternative operators but none of them has started operation by this date.<sup>45</sup> According to European legislation, any telecom company with a significant market share has an obligation to rent such a network to its competitors for prices based on costs and adequate profit. The obligation to establish a "local loop unbundling" regime should have been injected into the amendment to the Slovak telecom act, which was prepared by the government. The National Council adopted this amendment in May 2003, but President Rudolf Schuster refused to sign it in July and sent it back to parliament where it finally failed.<sup>46</sup> After a hard political struggle, the government was able to overcome this setback by adopting a new electronic communications bill that passed the cabinet in September 2003 and was adopted by Parliament on 3.12.2003.<sup>47</sup> The act entered into force on 1.1.2004, with some exceptions that will take effect after entrance into the EU. It is replacing the Telecom Act from 2000.<sup>48</sup> The aim of the act is to approximate legislation, implement the new EU regulatory framework ("2002 *acquis*") and achieve full compliance with EU law. Shortcomings of the existing legislation shall be eliminated. The act has the ambition of changing the approach of companies on the issue of access and interconnection of public elec-

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<sup>42</sup> EC Directorate-General Information Society (ed.) 2003

<sup>43</sup> European Commission 2003, pp. 37f.

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*

<sup>46</sup> Although the law passed parliament in May 2003 with the support of 68 out of 118 members present, the bill needed an absolute majority of 76 votes in the 150-member assembly to pass over President Schuster's veto. However, only 59 legislators supported the bill on July 1. (Slovak Spectator, 14.7.2003)

<sup>47</sup> Act No. 610/2003 on Electronic Communications.

<sup>48</sup> EC Directorate-General Information Society 2003, p. 69f.

tronic communication networks, including the unbundling of local loops. It sets an obligation to publish a reference offer for network interconnection and a reference offer for renting the local loops of ST.<sup>49</sup> In the case of interconnection, the telecom carrier who holds the significant market share must use it when working out its contracts. The responsible telecom regulation authority TÚ has an obligation to evaluate each final contract for adherence to the reference offers and, if it is acceptable, publish it. The new act is defining requirements for companies that want to establish networks and provide services. It also describes more precisely price regulation for terms and tariffs of public electronic communication services, as well as terms for individual permits for the use of public frequencies and numbers.

The regulatory authority TÚ shall be strengthened by the act and equipped with the relevant competences and powers for the conduct of regulatory activities.<sup>50</sup> It shall be more active in talks between different carriers in the case of conflicts regarding interconnection contracts.

A reason for this development can be seen in "obstructions with network sharing of dominant ST".<sup>51</sup> Alternative carriers complained that the contracts offered by ST have a "discriminating character".<sup>52</sup> Until the end of 2003, ST didn't sign any contract with other companies for network interconnection. The situation changed when at 26 November 2003, when ST signed the first hook-up agreement with an alternative phone operator, ConnSpec Telekom<sup>53</sup>.

The unfinished liberalization of the fixed telecom market shows also the institutional shortcomings of the national regulatory authority TÚ. For this reason alternative telecom providers blamed that TÚ had done little to ensure free competition despite a requirement to ensure an open telecom market at the beginning of 2003.<sup>54</sup> The date of fully liberalization of the tele-

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<sup>49</sup> A reference offer is a skeleton contract embedded in the law that must be used for contracts within the field it regulates.

<sup>50</sup> Some of the representatives of alternative carriers, however, still do not consider that the TÚ as defined in the new bill, will be strong and independent enough to be prepared to negotiate with ST. (Slovak Spectator, 13.10.2003)

<sup>51</sup> The Slovak telecom network remains in the hands of the still dominant ST. In order to make the liberalization of voice services real, alternative operators will need to have their networks hooked to the ST network. The interconnection will enable clients of different networks to make phone calls through fixed lines. At the same time, this interconnection is a basic condition for providing the public with a free choice of operator. Alternative operators do not have the means to create their own full fixed-line network, due to the enormous costs of such projects and because they are very time consuming. Moreover, there is an already functioning network built by ST. Still, any alternative carrier needs to have developed at least a small local network if it wants to provide such services.

<sup>52</sup> Juraj Taptič, CEO of eTel, at the telecom conference in Bratislava (Slovak Spectator, 13.10.2003)

<sup>53</sup> ConnSpec Telekom AG is an Austrian-US telecommunication company cooperating with voice-services provider Telekom Austria and Bell South in the US. Its Slovak subsidiary was founded in 2002. (Slovak Spectator, 8.12.2003)

<sup>54</sup> "The TÚ has, in our opinion, not been functional for a long time." Statement by the head of ATO, Vladimír Ondrovič, in a letter of late December 2002 to the Speaker of Parliament Pavol Hrušovský. (ATO 2002)



com market, with unlimited access to the fixed phone line market for alternative operators, is at the moment unclear.

## **2. Telecommunication Administration in Slovakia**

### **2.1. History**

Under communist rule in Czechoslovakia, a federal ministry of its own administered telecommunications with branches in Prague (Czech Socialist Republic) and Bratislava (Slovak Socialist Republic).<sup>55</sup> After the regime change at the end of 1989 until 1992, Slovak telecom administration was part of the federal administration in this sector (see Table 2). The central body of Czech and Slovak telecom policy formed the "Federal Ministry of Post and Telecommunications" (FMPT) in Prague.<sup>56</sup> This ministry regulated "the post and telecom policies, coordinates unification of rules for the activities and operations of Post and Telecommunications, determines the rules for the establishment of tariffs, issues postage stamps and other valuables, organizes and regulates the uniform system of Post and Telecommunications."<sup>57</sup> Two administrations of Post and Telecom existed in Prague and Bratislava that "provide for and manage complex economic and operative activities ensuring the continued development of Telecommunication and Postal networks and the services they provide" on the territory of the Czech Republic (CR), respectively the Slovak Republic (SR).<sup>58</sup> They were attached to the Ministry for Economic Policy and Development of the CR, respectively the Ministry of Transport, Post and Telecom of the SR.

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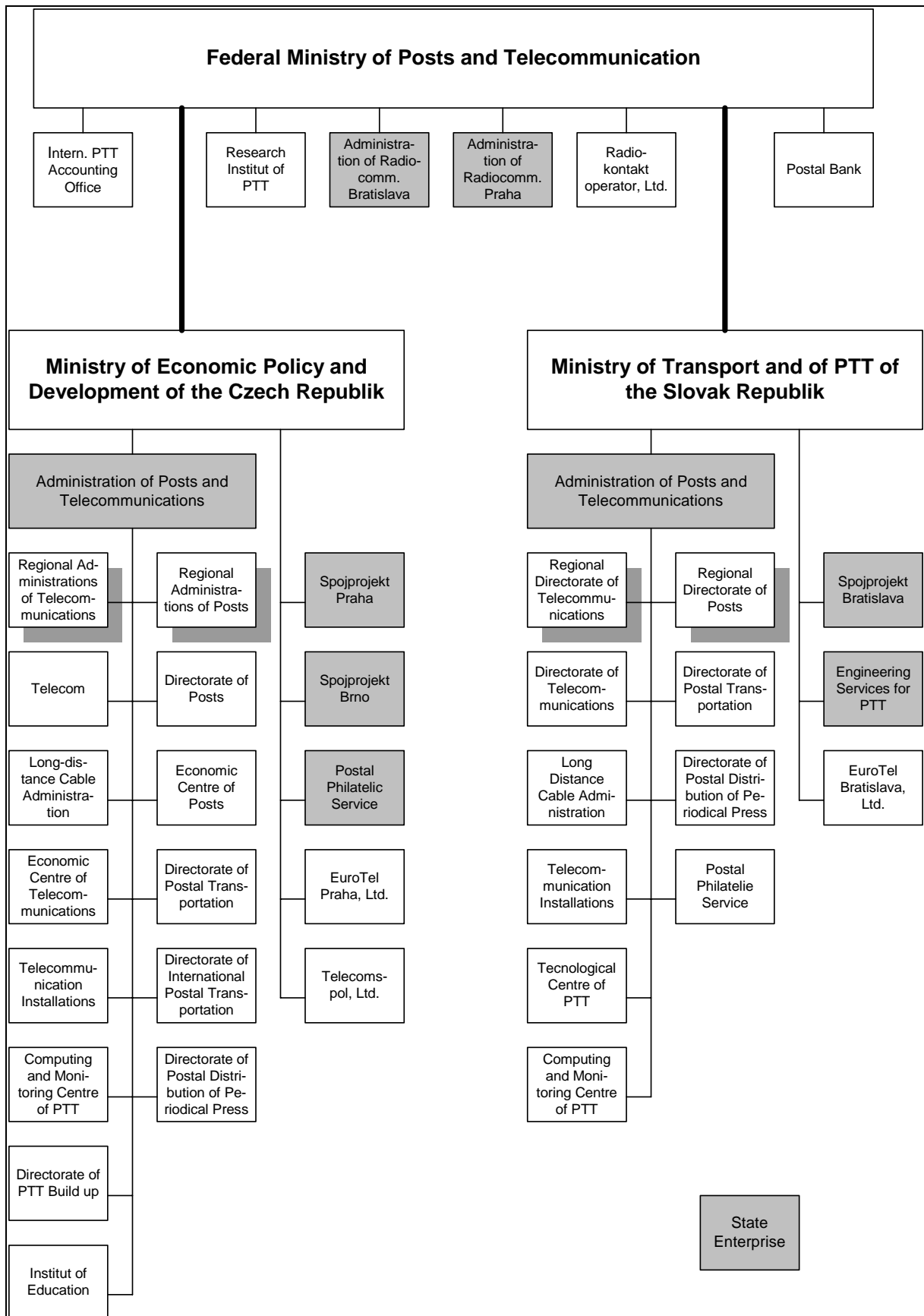
<sup>55</sup> Data from August 1986. Transportation forms a separate Ministry. Altogether, there are 13 ministries existing at that time.

<sup>56</sup> As an amalgamation of the Ministry of Transport resp. the Ministry of Telecommunications, already existed under communist rule.

<sup>57</sup> Federal Ministry of Post and Telecommunications of CSFR 1993, p. 5.

<sup>58</sup> Ibid.

**Figure 1 Organizational structure of PTT in the CSFR 1992**



Source: Federal Ministry of Posts and Telecommunications of CSFR (ed.) 1992, p. 9

At the beginning of this period the following features are characteristic for the telecom administration in Slovakia:

- Part of the federal telecommunication administration;
- Unity of executive-administrative and ownership functions in a sector with state enterprises as monopolist;
- Strict combination of telecom administration and services with Post;
- Powerful regional network in the sector with its 36 District Administrations for Telecommunications all over the SR;
- Over-staffed telecom sector.

During 1990, the reform of the telecom sector started. But soon it became clear – as the then federal minister Emil Ehrenberger put it – that “the telecommunication network, as set of facilities and their interaction, can be understood as a system with a relatively long time response to interventions”.<sup>59</sup> He estimated that three to five years would be necessary to implement the reform. The privatisation and liberalization process kicked off a widespread reorganization of the post and telecom administration. It was planned primarily by completing separation of the Postal from the telecommunications services, but also “principal changes in the area of telecommunication”.<sup>60</sup> Fundamental organizational changes were introduced with the aim of changing the structure of the branch by the complete separation of Post, Telecommunications and the Postal Distribution of Periodical Press (PNS) 1 January 1992. On 1 July 1992, two divisions were established in the administrations of Posts and Telecommunication Bratislava (SPT). But soon after the decision on the separation of the federal state in summer 1992, the split in the up to then united telecom sector and its institution started.

Because of the independence of Slovakia from 1 January 1993 onwards, all jurisdiction of the former Federal Ministry of Post and Telecommunications came to the Ministry of Transport, Communications and Public Works (MDSVP) as the central body of Slovakia for communications and “the regulatory body for the United Telecommunication Networks (JTN)”.<sup>61</sup> It directed the Telecommunications Office of SR (TÚ SR), founded in 1992, which as “the regulatory authority for other sectors of telecommunications was not controlled by

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<sup>59</sup> Ibid, p. 3

<sup>60</sup> Ibid, p. 4

<sup>61</sup> MDSVP (ed.) 1994, p. 4. With this date SR became member of UPU, ITU, EUTELSAT and other international organizations in the telecom branch.

MDSVP".<sup>62</sup> On 1 January 1993 three new state enterprises were established by the decision of MDSVP: Slovak Post, Postal Distribution of Periodical Press and Slovak Telecommunications (by amalgamation of the Administrations of Radio- with Telecommunications).

The interviewees mostly regarded as an advantage that with the independence the ministries in Slovakia were able to appoint new staff for newly established positions, which beforehand were situated in the federal ministries. One interviewee described the situation at the beginning of establishment of the 'Telecom Strategy Department' in the ministry as followed: "Nothing was here because everything was situated on federal level in Prague. Nobody came from Prague to Bratislava after splitting. We started from Point Zero. At the beginning it was very hard to establish an independent policy department in the ministry, because ST influenced everything. But until 1995/1996 we were able to independently develop policy." But on the other hand, the Mečiar government used this situation to penetrate the state bureaucracy with political appointees and clients.<sup>63</sup>

From 1993 until 2000 the structure of Slovak telecom administration remained relatively stable with two main authorities: MDSVP (since 1994 Ministry of Transport, Posts and Telecommunications - MTPT)<sup>64</sup> and TÚ. With the Act on Telecommunications of 2000, the situation changed. TÚ became an independent regulatory body and had been authorized to regulate the telecom sector.

## **2.2. Structure**

### ***2.2.1. The Ministry of Transport, Post and Telecommunications***

The Ministry of Transport, Post and Telecommunications (MTPT) are the central institution in the state administration for the telecom sector and the sector policy maker.<sup>65</sup> In the period from 1993 to 2000 the ministry was responsible for the realization of state telecom policy, legislation, preparation and implementation of strategic goals in the telecom sector. It also served as the regulative body in the field of licensing the services in the Single Telecommunication Network (STN), determined the international tariffs and controlled the usage of fre-

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<sup>62</sup> Ibid.

<sup>63</sup> OECD/SIGMA 2003, Krivy 1998, O'Dwyer 2002

<sup>64</sup> In 1994, the area of public works was transferred to the new established Ministry of Construction and Public Works. The ministry was renamed to "Ministry of Transport, Post and Telecommunications".

<sup>65</sup> MDTP (ed.) 2003.

quency spectrum for the devices of all branches of economy. MTPT was also responsible for steering TÚ.

Since 1 July 2000 with the new Act on Telecommunications, the ministry lost all mentioned regulatory functions to the National Regulatory Agency, TÚ.<sup>66</sup> (See 2.2.2.) Since, the competence was divided between the MTPT and TÚ. According to the new Act on Electronic Communications from 3 December 2003 the Ministry is now in charge of:<sup>67</sup>

- Elaborating proposals of the national policy in electronic communications and submitting them to the Government for approval,
- Elaborating a proposal of the national table of frequency allocations and submitting it to the Government for approval,
- Providing for international relations in the field of electronic communications at the EU level as well as international governmental and non-governmental organizations.

The Ministry is the central body of the Slovak state administration for:<sup>68</sup>

- Railway transport, ways and sidings,
- Road and urban transport, urban ways and the ways of special destination,
- Land communications and motorways,
- Inland and sea navigation and ports,
- Civil aviation,
- The corps in transport and the railway military,
- Railway health service,
- Posts and telecommunications.

The source document for the Ministry's operational targets is the Governmental Program Declaration for the given election period.<sup>69</sup> The work of the Ministry is steered by the *Plan of*

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<sup>66</sup> This includes the responsibilities for the international relations in the field of telecom at the level of regulatory bodies, for technical and price regulation of telecommunication market and the co-operation with the Council of the Slovak Republic for radio and TV broadcasting in the field of radio and TV broadcasting retransmissions. Also in the Post branch MTPT lost the competencies for price regulation of postal services, which were passed to the regulatory authority, the Post Office.

<sup>67</sup> Act No. 610/2003 on Electronic Communications.

<sup>68</sup> Act No. 575/2001 on Organisation of Governmental Activities and Organisation of Central State Administration. The Ministry also fulfills the function of Naval Authority and Slovak Ship Register. It administers the State expert technical inspection in the matters of all traffic, of road and urban transport, inland and naval navigation. Other competencies of the Ministry are involved in special laws regulating the branch of transport, posts and telecommunications.

*Main Tasks* and the *Plan of Legislative Tasks* as well as by the *Sector Development Conceptions* that all have to be approved by the Government. In the field of its competence, the Ministry issues generally binding legal regulations, internal regulations, organizational and steering standards and individual steering norms.

The organizational structure is based on internal regulations, which together with the generally binding legal regulations and the Statute of the Ministry,<sup>70</sup> lines out the extent of authorizations and responsibilities of the Ministry's employees and the competence and organizational relations of the Ministry's organizational bodies. The actual organizational structure of the Ministry of Transport, Post and Telecommunications is shown in Figure 2. The MTPT - as other line ministries - is internally divided into divisions (*sekcia*) as a basic level of steering. Divisions consist of departments (*odbor*).<sup>71</sup>

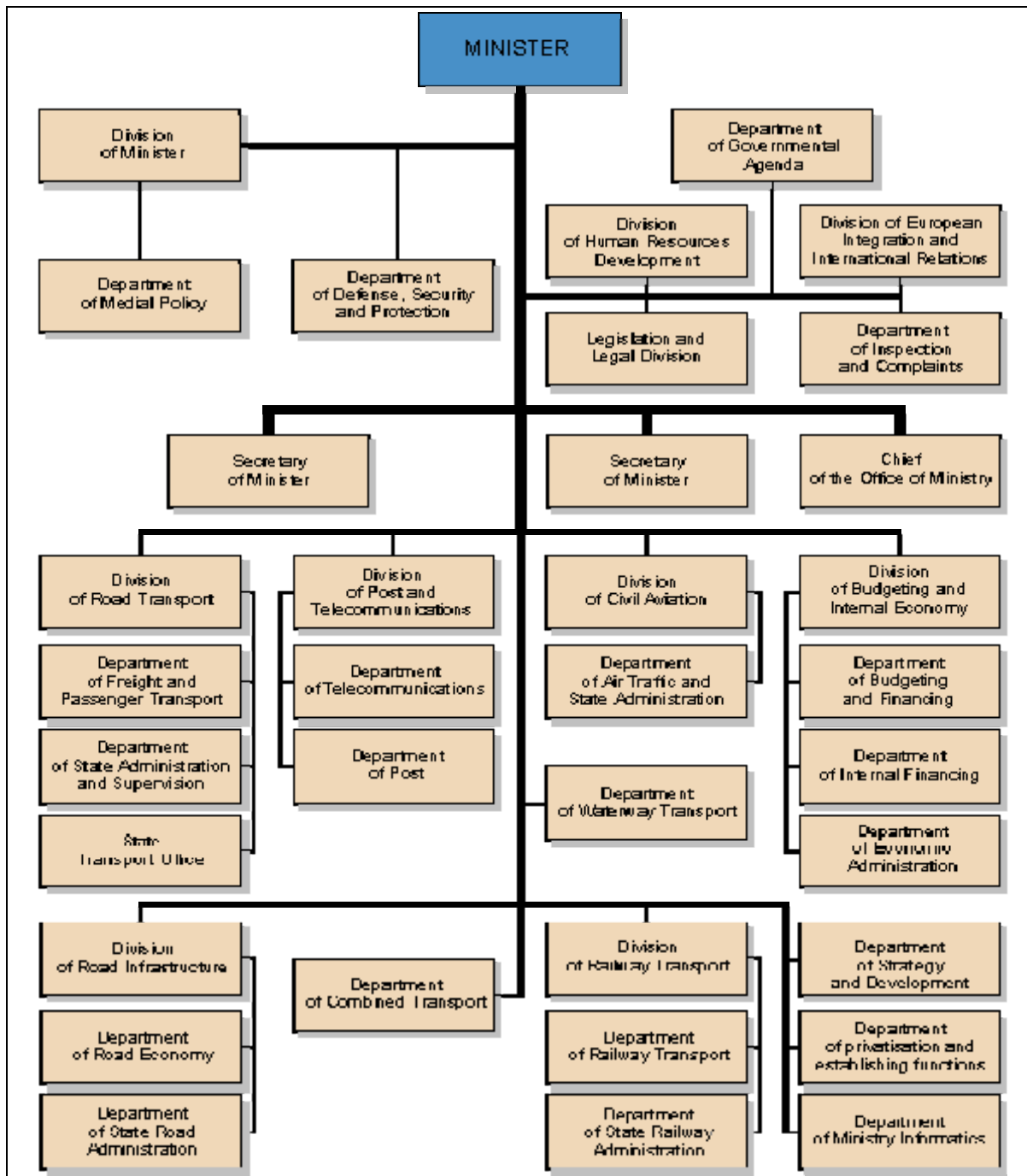
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<sup>69</sup> Policy Statement of the Government of the Slovak Republic 2002

<sup>70</sup> The first statute of the ministry dated 1993, the new statute MTPT was become effective at 17 February 1998.

<sup>71</sup> Departments can be divided on sections (*oddelenie*).

**Figure 2 Structures of the Ministry of Transport, Post and Telecommunications**



Source: <http://www.telecom.gov.sk/english/index.php3> (11.3.2004)

The Organizational structure of MTPT is under permanent change and modifications of state, numbers and relations of organizational units are under consideration almost every year. The Telecommunication Division existed since the foundation of the ministry with the following changes:<sup>72</sup>

<sup>72</sup> According to the Annual Reports of MDTP.

- From 1.1.1993 to 1996 as a joint division (responsible for telecom and post) with three departments: Coordination for Post and Telecom (with two sections for "External Cooperation" and "Branch Information"<sup>73</sup>); Telecommunications (with three sections for "Strategy and Licence Policy", "Telecom Services"<sup>74</sup> and "State Administration") and Post (with three sections for "Strategy Policy and Development", "Postal Operation and Transport" and "State Administration");
- From 1997 to 1998 as a division exclusively responsible for telecom<sup>75</sup> with two departments: Telecom Policy (with two sections for "Technical Policy" and "External Cooperation") and Regulation and State Administration (with two sections for "Regulation" and "State Administration");
- From 1999 to 2000 again as a joint division for Post and Telecommunications with three departments: Telecommunications Policy (with two sections for "Technical Policy" and "External Cooperation"), Regulation and State Administration (with two sections for "Regulation" and "State Administration") and the Postal Department;
- Since 2000 – when MTPT lost its regulatory tasks – as a joint division Post and Telecommunication with two departments: Telecommunication (with two sections for "Telecom Policy" and "Strategy and Frequency Spectrum"), as well as the Postal Department.
- In May 2003, the competencies in the field of information society were transferred from the Ministry of Education to the MTPT, where an Information Society Policy Department was established.<sup>76</sup>

The Ministry has also established a wide range of advisory and consultative bodies (permanent as session of Ministries leadership, Operative Council, College of Ministers and some other variants which changed almost every year) and temporary institutions. Results from Sessions of the Ministry's leadership or the Operative Council are binding.

What telecom is concerned, this policy field is only one field of activities within the broad infrastructure ministry MDTP. Even its name reveals the priorities "Transport, Post and Tele-

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<sup>73</sup> The section was renamed in 1995 into „Postal and Telecommunication Services Section“.

<sup>74</sup> The section was abolished in 1995.

<sup>75</sup> A separate Posts Division was established and some cross-sectional divisions within MDTP were set up.

<sup>76</sup> But at the MTPT homepage, the organizational structure is not included (as of 11.3.2004). The relationship between the Telecom Division and the IS Department is unclear. (Slovak Governance Institute 2003)



communication". The overwhelming majority of the staff in the ministry is working on non-telecommunication issues. Hence the role of telecom affairs in the policy of the ministry is usually relatively limited.

The number of staff in MTPT remained over the time relatively constant. It reached the highest level with 292 employees in 1999 and the lowest with 265 in 2002. The number of staff in the Telecom Policy Department varied between 8 and 10 employees.<sup>77</sup> In the "Information Society Policy Department" there are officiating six employees. So the strategy planning capacity of MTPT in the field of telecom is limited.

There is a long lasting conflict of interest inside the Ministry "between the functions of a policy maker for telecom and IS policy with the ownership rights in Slovak Telecom".<sup>78</sup> MTPT is holding a share of 34 % in ST. This may negatively influence the independence of the national policy-maker in electronic communications from the organisations regulated in the electronic communications markets. Therefore, the transfer of these rights to another central body of the state administration (e. g. Ministry of Finance) or to another state administration body not later than on the day of the SR's accession to the EU in May 2004 was planned but finally not realized (see Footnote 125).<sup>79</sup>

### **2.2.2. Telecommunication Office**

From 1993 until 2000 the regulatory functions in the field of telecommunication were performed by MTPT (technical regulation, licensing, international tariffs, etc.) and by the Ministry of Finance (domestic tariffs). TÚ as the third regulating authority had to provide the following functions:

- Regulation of networks and services outside the UTN,
- Management of frequency spectrum, type of the approval process in telecommunications,
- Protection of the rights of users and operators of telecom networks and services,
- Sanction activities,
- Managing the Regional Telecommunication Offices etc.

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<sup>77</sup> European Commission 2002

<sup>78</sup> Slovak Governance Institute 2003

<sup>79</sup> National Policy for Electronic Communications (National Telecommunications Policy) 2003.

Until that date TÚ was a budget organization of MTPT and had to report to the Ministry.

Since 1 July 2000, with the new Act on Telecommunications, TÚ was established as an independent regulatory body and has been authorized for technical and price regulation of the telecommunications market. Regulatory rights and obligations were transferred from the MTPT and the Ministry of Finance to the independent regulatory body. But as the following years show, implementation problems occurred so that the regulatory regime was characterized as "weak".<sup>80</sup> Especially the lack of activity, independence and effectiveness of the NRA was criticized. This made it necessary to adopt a new Act on Electronic Communications on December 3, 2003. According to this act, the TÚ is now in charge of the following:<sup>81</sup>

- Performing regulation,
- Providing for international relations in the field of electronic communications at the level of regulatory authorities,
- Issuing generally binding legal regulations,
- Providing for information obligations toward the National Council and the European Commission,
- Setting payments,
- Leading out-of-court dispute resolution,
- Executing supervision and imposes sanctions.

The Office has issued roughly 5.600 decisions, comprising licenses, types of approvals, penalties and assignment of numbers. Only seven decisions were appealed against in the Supreme Court, of which six were confirmed.<sup>82</sup> As part of horizontal coordination on a voluntary basis, TÚ is participating in the "Independent Regulators Group (IRG)" that is working on harmonizing regulatory practice across Europe.

TÚ is headed by a chairman who is appointed by the National Council on governmental proposal for a term of six years and a maximum of two consecutive terms. The Vice-chairman is appointed and recalled by the Government.

The organizational structure of the TÚ remained with four departments relatively stable between its establishment in 1993 and 2000.<sup>83</sup> The "Certification Department" and the "Regula-

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<sup>80</sup> Gole 2003

<sup>81</sup> Act No. 610/2003 on Electronic Communications.

<sup>82</sup> European Commission Report 2002

<sup>83</sup> According to the Annual Reports of MTPT.

tion Department" (and since 1994 a "Special Office for Building") were under the supervision of the director. The "Telecommunication State Inspection Department", the "Frequency Management Department" and the Regional Telecommunication Offices were supervised by the deputy director.<sup>84</sup>

In accordance with the Telecom Act 2000, the organizational structure of the TÚ changed completely on 11 July 2000. Now all departments are subordinated to the President of TÚ. There number increased to ten:<sup>85</sup>

- The Departments for "State Inspection" and "Supervision" together with eight regional department of state supervision;
- Four core Departments ("Frequency Management", "Certification", "Regulation" and the new "Department for Emergency Situations");
- Four new supportive departments ("Human Resources", "International Relations", "Legal Department" and "Department of Economics").

In May 2002, the organizational structure changed again, the number of departments increased to 13 departments. (See Figure 3) The "Regulation Department" was split into the "Technical Regulation Department" and the "Economic Regulation Department". The "Verification Department" and the "Information Technology Department" were newly established.<sup>86</sup>

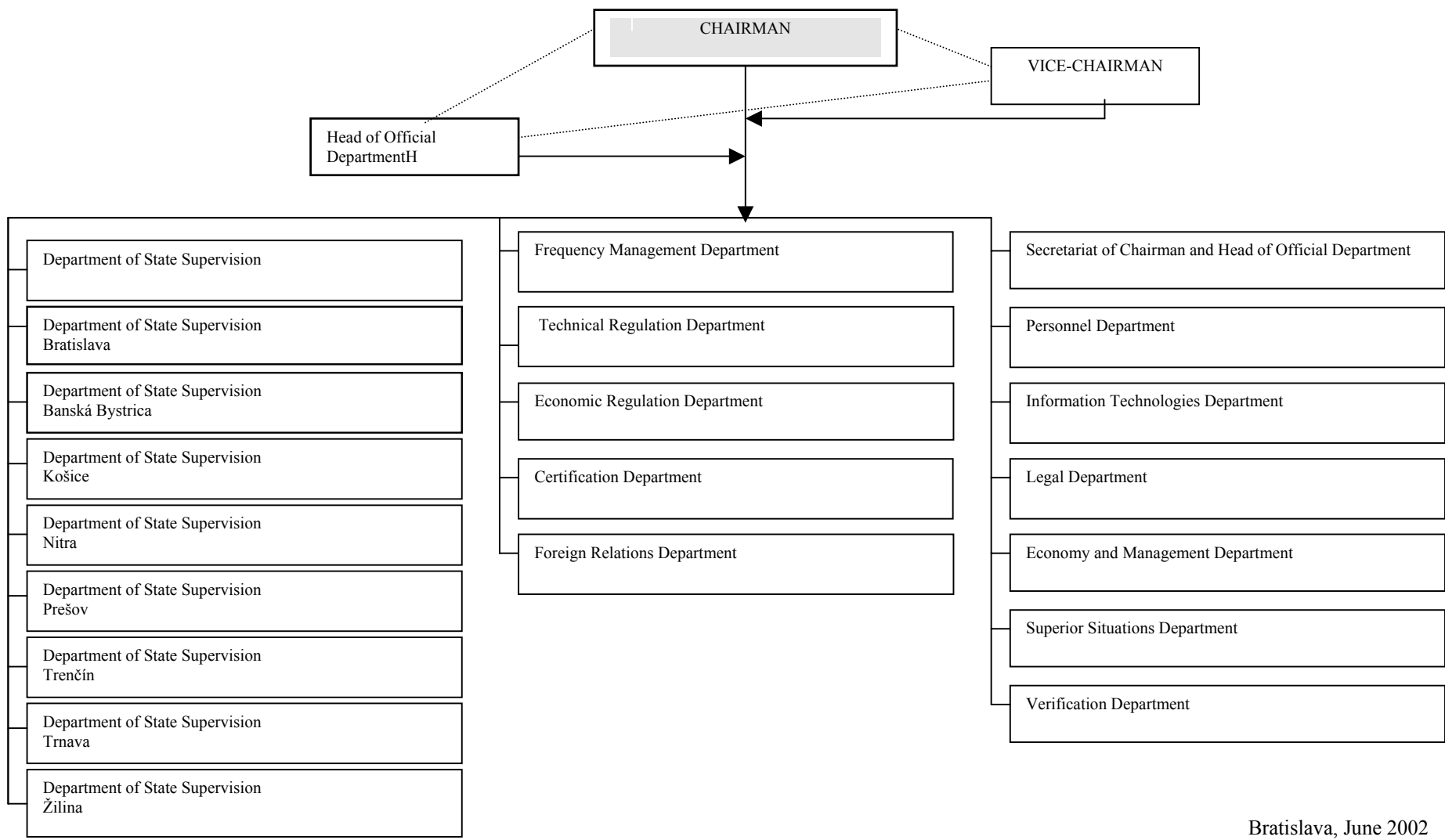
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<sup>84</sup> The number of the Regional Telecom Offices changed from three (1996) to eight (since 1998).

<sup>85</sup> MTPT (eds.) 2001, p. 8. The Regional Telecom Offices were formally canceled. Activities of the Building Offices concerning telecommunications buildings formerly performed by the Regional Telecommunication Offices went to the local offices.

<sup>86</sup> Some other departments were only renamed.

**Figure 3 Structure of the Telecommunication Office**



Bratislava, June 2002

As of 30 June 2003, the TÚ had 188 employees. But only nine of them were directly involved with telecom regulatory tasks.<sup>87</sup> This is the lowest number of staff dealing with regulatory affairs in all NRAs in the accession states. A further increase of the number of employees was planned.<sup>88</sup> So the majority of the employees are engaged in activities not required by the acquis as they are technicians.<sup>89</sup> Problems concern in particular the inadequate language skills of employees and too much (little) specialized knowledge. As is emphasized in the interviews, the office needs more telecom lawyers and economists.

The Operational budget of TÚ in 2002 reached 2,55 million EUR from the State budget.<sup>90</sup> Since 1 January 2004 the independent regulatory authority is a budgetary organization funded by the state budget. The Slovak government reacted with this decision to the recommendation of the European Commission to comply to a fully “separation of regulatory and operational functions”.<sup>91</sup>

The main problems of TÚ are the lack of activity, political independence and administrative effectiveness.<sup>92</sup> It is also criticized for insufficient activities when regulating affairs in combination with a bureaucratic attitude.<sup>93</sup> The lack of political independence from the government (and the ST) but also the lack of legal provisions and practically experience hampered the administrative impact of TÚ in the past. With the new act of 2003 the framework for gaining such independence may be better. The problem of administrative effectiveness has first of all to do with the existing staffs that are pre-occupied with technical rather than regulatory affairs. In view of the forthcoming full liberalization of the sector, however, the Office is not yet sufficiently resourced. While the necessary administrative structures are in place, resources are too limited.<sup>94</sup>

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<sup>87</sup> EC Directorate-General Information Society (ed.) 2003, p. 113

<sup>88</sup> Ibid.

<sup>89</sup> Most of them worked in the past for ST.

<sup>90</sup> EC Directorate-General Information Society (ed.) 2003, p. 113

<sup>91</sup> European Commission (ed.) 2003, p. 37. But market players reported, “that TÚ does not have its own budget chapter, as it is included in that of the Ministry.”

<sup>92</sup> Ibid.

<sup>93</sup> Slovak Governance Institute 2003. In an open letter to the President of the National Council from December 2002, the members of the Association of Telecommunication Operators criticized by means of concrete examples the work of the TÚ and stated “its clinical death”. (See ATO 2002)

<sup>94</sup> European Commission (ed.) 2003, p. 37

### 2.2.3. *Anti-Monopoly Office*

The Antimonopoly Office (AMO) was established in August 1990.<sup>95</sup> With the law on Protection of Competition in 2001, it gained more power as the central state administrative body "for the protection and support of competition".<sup>96</sup> A Chairman appointed for five years heads the office. The position is with only two consecutive office terms (and recalled) by the President on the basis of a proposal submitted by the Government. He is authorized to act on behalf of the Office, to supervise and manage its activities and report to the Government. The Council of the AMO - composed of the Chairman, the Deputy Chairman and five members - is deciding on appeals, on review decisions outside the appeal proceedings, on the renewal of proceedings and on a prosecutor's protest in cases where the Chairman of the state administration body decides pursuant to special regulation.

The organizational structure of the office includes the following departments with 160 employees:<sup>97</sup>

- Four supportive Divisions (Division of the Chairman and of Informatics, "Economic Division", "Legislative, Legal and European Integration Division");
- Three specialized divisions represent the basic management and executive levels in the process of enforcement of antitrust policy and competition protection (Division of Concentrations, Division of Agreements Restricting Competition and Division of Abuse of a Dominant Position);
- Division of Methodology.

The main task of the AMO is to promote and to protect the economic competition, to create conditions for its further development as well as to prevent the creation and maintenance of monopolistic or dominant position of entrepreneurs, if it precludes or restricts economic competition. Its competencies are defined as follows:<sup>98</sup>

- "If it regards an agreement to be restrictive, it can make the decision to prevent the fulfilment of such an agreement",

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<sup>95</sup> Act No. 347/1990 on Organisation of Ministries and other Central State Administrative Bodies

<sup>96</sup> Defined by the Act No. 136/2001 on the Protection of Competition. In the field of state aid the „Slovak State Aid Office“ is in charge.

<sup>97</sup> See <http://www.antimon.gov.sk/>

<sup>98</sup> Act No. 136/2001 on Protection of Competition

- Issuing decisions against abusing of dominant positions by organizations or enterprises,
- Taking decisions regarding concentration,
- Demanding corrective action if state administrative bodies and municipalities restrict economic competition,
- Supporting economic competition in the privatisation process from the view of appropriate de-concentration,
- Participating on identification and elimination of market entry barriers.

During 2002, AMO issued a total of 37 decisions regarding abuse of dominant positions in all sectors, which included in the telecom sector assessments of ST practices in providing the ISDN service and access to local lines. The office imposed a "preliminary ruling requiring ST to refrain from providing services on the basis of ADSL technology".<sup>99</sup>

The European Commission characterized the performance of AMO positive ("functioning well").<sup>100</sup> Slovakia has implemented the necessary structures in competition policy. But in the field of telecom, permanent tensions between competition policy (represented by AMO) and the regulatory policy (represented by TÚ) exist. These conflicts concern the "abuse of dominant position", which is relatively frequently observed in the telecom sector and its former state monopolist ST. Hence, AMO is arguing that competition law is applied in this sector "even during the existence of an effective regulatory framework."<sup>101</sup> Because of unclear competencies, both institutions tried to limit the disputes by an agreement about the basis of their co-operation.<sup>102</sup>

#### ***2.2.4. Council for Broadcasting and Retransmission***

The Council for Radio and Television Broadcasting (CRTB) was created in 1992.<sup>103</sup> With the new Act on Broadcasting and Retransmission from 2000, Slovak law in this area was fully harmonized with European legislation and the council got more influence in this policy

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<sup>99</sup> AMO (ed.) 2003, p. 16f.

<sup>100</sup> European Commission (ed.) 2003, p. 22

<sup>101</sup> AMO (ed.) 2003, p. 14.

<sup>102</sup> Agreement on cooperation between AMO and TÚ, November 2002

<sup>103</sup> Act No. 294/1992 on Council of Slovak Republic for Radio and Television Broadcasting.

field.<sup>104</sup> The initial name of the council was changed into "Council for Broadcasting and Retransmission" (CBR).<sup>105</sup>

The CBR acts as a state administrative authority with nation-wide activities in the area of broadcasting and retransmission. It has nine members who are elected and recalled by the National Council. Their term of office is six years. They can be elected for a maximum of two terms in office. The Council elects on its own a Chairperson and Vice-chairpersons amongst its members. The CBR is working with its own budget according to special regulation. Its activities are refunded from the state budget. The Managing director, who is also the spokesperson of the Council, leads its Office. It consists of four divisions and two departments with 29 employees:<sup>106</sup>

- Economy and organizational division (4 employees),
- Licensing division (6),
- Technical division (2),
- Programmed division (13 + 1),
- Department of international relations (1)
- Documentary department (1).

The objective of the CBR is "to enforce the interests of the public in the exercise of the rights to information and freedom of speech, and rights of access to cultural values and education".<sup>107</sup> It shall pursue the maintenance of plurality of information in the news programs of the broadcasters. The main functions of the council are:<sup>108</sup>

- Regulation in the areas of broadcasting and retransmission;
- Licensing for broadcasting and on registrations for retransmission;<sup>109</sup>
- Monitoring monitor TV and radio stations;
- Supervising the compliance with legislation governing broadcasting and retransmission;

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<sup>104</sup> Act No. 308/2000 on Broadcasting and Retransmission

<sup>105</sup> Its activity is ruled by Statute and Rules of procedure that are approved by the National Council.

<sup>106</sup> Plus one employee performing civil military service.

<sup>107</sup> Act No. 308/2000 on Broadcasting and Retransmission, Article 4

<sup>108</sup> Act No. 308/2000 on Broadcasting and Retransmission, Article 5

<sup>109</sup> It has to update "The plan of utilization of frequency spectrum of the Slovak Republic for broadcasting".



- Participating in the creation of laws and other legislation in the area of broadcasting and retransmission;
- Informing the National Council, the right holders, broadcasters and to the public.<sup>110</sup>

The CBR is determined to cooperate with the TÚ and further the developing of the broadcasting conception in the area of using frequencies for public service broadcasters and broadcasters by license. It shall warn the Slovak Television Council and Slovak Radio Council on the infringement of duties of public service broadcasters under law. The CBR has to report annually to the National Council.

After the enforcement of the new Act on Broadcasting and Retransmission in October 2000 the CBR had to overcome a difficult period of adaptation to its new obligations. The most important problems are the insufficient flexibility and efficiency of the sanctioning system and the absence of provisions enabling to revoke licenses in case of significant and repeated violation of law. According to the CBR report 2002 the first one was "partly solved" with the Act 206/2002, but the other one still remains.<sup>111</sup> However, for 2002 the CBR stated a "stabilization of the work especially within the Licensing Division of the Office"<sup>112</sup>. On the other hand, a general growth of the permanent agenda is to be seen, especially within monitoring and analysis of program services secured by the Program Division of the Office.

### **2.3. Relations between the Main Players in the Sector**

In general, the Slovak state administration has the problem of scarce inter-administrative and inter-ministerial co-operation and conflict resolution. Ministries continue to be "closed realms"<sup>113</sup>, in which each minister is the sovereign and policy co-ordination is very weak or non-existent. This situation has its consequences also for the telecom sector. An overview on the institutional relations in the telecom sector is given with Figure 5.

Four administrative institutions, which we have already introduced, can be described as "main players" in telecom administration – MTPT, TU, AMO and CBS. MTPT can be characterized as the policy-maker and the TÚ as the National Regulating Agency responsible for the implementation of the objectives of the telecom policy. Their division of labour can be

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<sup>110</sup> CBR 2002

<sup>111</sup> Ibid.

<sup>112</sup> Ibid.

<sup>113</sup> OECD/SIGMA 2003

seen in the regulatory, licensing, law creating, supervising, monitoring, management and information function. (See table 1)

Other relevant actors in telecom policy should be added: the Ministries of economy, education, finance, culture and interior, the National security office, the Statistical Office (*Infostat*) and the National Property Fund. The position of the Ministries of Finance and Economy in telecom policy is increasing in the last years; the position of the Ministry of Education is declining.

**Table 1 Functions of the Main Players**

<b>Functions</b>	<b>MTPT</b>	<b>TÚ</b>	<b>AMO</b>	<b>CBR</b>
Regulatory function	---	Electronic communications	Competition protection	Broadcasting and retransmission
Licensing Function	Proposal of the national table of frequency allocations (in co-operation with TÚ)	Proposal of the national table of frequency allocations (in co-operation with MTPT)	---	Decisions on licences for broadcasting, registrations for retransmission or there suspension
Law-creating function	National policy in electronic communications	---	Competition policy	Broadcasting and retransmission policy
Supervising function	---	Electronic communications	Control enforcement of the decisions issued within the proceedings before the Authority	Broadcasting and retransmission legislation
Monitoring Function	---	---	General investigation in the telecom market	TV and radio stations
Management function	---	Frequency Spectrum	---	---
Information function	To the Government and National Council	To the National Council and the European Commission	To the Government	To National Council

Source: Own compilation on the basis of Act No. 610/2003 on Electronic Communications, Act No. 308/2000 on Broadcasting and Retransmission, Act No. 136/2001 on Protection of Competition

The advisory and coordinating body for the government of informatics issues (including telecom policy) is the "Government Council for Informatics", chaired by the Minister of Transport, Post and Telecommunication. The Vice-chairman is the Minister of Economy and

also the chairman of the Statistical Office. Members of this Council are representatives from most of the central bodies, delegates of selected state administration organizations and non-profit organizations. Lately, the council was criticized to be not active and functional enough.<sup>114</sup> Within the National Council, the Committee for Education, Science, Sport, Youth, Culture and Media is responsible for telecom affairs.

Another good example for the set of PA institutions acting in the field is the Expert Group for Digital Broadcasting, a temporary inter-branch working group established in 2001 for the task to elaborate a strategy of implementation of terrestrial digital broadcasting.<sup>115</sup> The group is led by the Chairman of the CBR and consists of deputies of 16 institutions and other bodies, eight of them coming from PA: the Ministries of transport, post and telecommunications, culture, economy, finance and education, CBR and research institutions for Communication.<sup>116</sup>

The main institutional conflict in telecom administration is between the Regulating authority of the sector (TÚ) and the main competition authority (AMO). The conflict is representing the difference between general competition regulations and sector-specific regulations. The dispute is about the regulatory instruments in the telecom market on the basis of general competition law or branch specific regulations. Another question concerns the obligations that have to be imposed on the dominant operator ST. Since 2001, AMO is becoming more and more a veto player in the telecom sector. Both institutions were sometimes clashing, for example in the ADSL project of ST in 2002, about the necessity to transferring the execution of the shareholders' rights of MTPT to another administrative body, the division of the budget chapter to the TÚ from MTPT. To avoid further public disputes both institutions signed in November 2002 a unique "agreement on cooperation".<sup>117</sup> They signed up to a more coordinated performance "to prevent the creation of positive or negative competency conflicts" by finding the "same interpretation of terms", "co-operation for determination of consist procedures" and regular exchange of information."<sup>118</sup>

The cooperation between the other main players (MTPT and TÚ, TÚ and CBS) appears to work well. All institutions in this policy field have to increase administrative effectiveness, but first of all the TÚ and the CBS.

<sup>114</sup> In September 2003, the government recalled 36 members and the Vice-Chairman of the Council from their positions and, at the same time, appointed 25 new members and a new vice-chairman.

<sup>115</sup> According to the resolution of the government Nr. 589 of 27 June 2001 the statute of the group came into force on 3 December 2001. On 9 January 2002 the chairman of the Council was appointed.

<sup>116</sup> Other members are the Slovak Telecommunications (OZ Radiocommunications) Association of independent radio and TV stations (ANRTS), Slovak Television, Slovak Radio, Orava Production Plant Trstená, Slovak Technical University (FEI), University Žilina and Telenor Slovakia.

<sup>117</sup> Agreement on cooperation between AMO and TÚ, 2002

<sup>118</sup> Ibid.

### 3. Summary

The transformation of Slovak telecom administration since 1990 can be characterized as “coercive cross-national institutional isomorphism”<sup>119</sup>, whereby adaptation is enforced by external (EU Commission) settings of binding standards (the *acquis* with the domestic telecom regulation regime). From the very beginning, modernization policy of this branch of Slovak PA was orientated towards the EU regulations.<sup>120</sup> The process was temporarily hampered (especially in 1996-1998) because of the policy of the Mečiar government, but more due to general political reasons (autocratic style of government) and less due to specific sectoral reasons. The new Dzurinda government declared at the end of 1998 its main intention to adapt the EU regulatory regime in the field of telecom and the harmonization of the Slovak with EU legislation. Therefore, the negotiation about the adoption of *acquis* in “Telecom, Information Technology and Postal Services” (Chapter 19), conducted between November 2000 and April 2001, were unproblematic. Slovakia requested no transitional arrangements. With the *acquis*, Slovakia was taking over the legal basis of the EU regulatory regime in the telecom sector (with both, the “1998 *acquis*” and the “2002 *acquis*”). As of October 2004 Slovakia has still to adopt secondary legislation (like seven other EU-Member States)<sup>121</sup> in order to give full effect to primary legislation. But the problems of the implementation of this regime into the administrative praxis were underestimated.<sup>122</sup>

The institutional layout and the division of functions in Slovak telecom administration changed in the three identified reform periods as follows:

- The basic institutional design of post-communist telecom administration in Slovakia as a part of the Czechoslovakian federal administration was established very early in 1990: the “Ministry of Transport and of Post and Telecom” (MTPTT) was an amalgamation of the Ministries of Transport respectively Telecommunications, which were still existing under communist rule.
- With the gaining of independence on 1 January 1993, Slovakia established a telecom administration of its own, getting rid of all former federal institutions, based from the very beginning an two main authorities: on the one hand the Ministry

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<sup>119</sup> DiMaggio/Powell [1983] 1991, pp. 67ff.

<sup>120</sup> This position was made clear in most of the interviews.

<sup>121</sup> Spain, France, Cyprus, Latvia, Lithuania, Poland and Slovenia. (European Commission 2004: 9)

<sup>122</sup> This development was do to the fact, that harmonisation with the *acquis* mean first of all legal harmonization, but this problem is also resulting from a phenomenon known in Slovakia as “legislative optimism”, which assumes that every problem can be solved through legislation (OECD/Sigma 2003, p. 9)

(MDTPT, since 1994 MTPT) as the central administrative state institution for the telecom sector and the sectors policy maker with regulative functions and on the other hand the Telecom Office (TÚ), established in 1992, as a dependent regulatory agency steered and budgeted by MTPT, responsible for some regulative affairs in the telecom sector. Until 2000, this structure remains relatively stable.

- With the Act on Telecommunication 2000, the competencies between the ministry and the TÚ changed fundamentally. TÚ became an independent national regulatory agency; the ministry lost its regulatory functions. The independence of TÚ was further legally strengthened by the new Act on Electronic Communications in December 2003, because TÚ is now funded directly by the state budget.

Obviously there was no orientation on a specific foreign national state model of organising the telecom sector.<sup>123</sup> Organisational legacies from communist times are playing no role in Slovakia, because a national telecom administration was completely rebuilt after the end of communist rule. The only exception is to be seen in the mind-set of some of the staff. As Katarina Mathernova put it, problems concern more the "lack of qualified and talented individuals".<sup>124</sup>

The telecom sector in Slovakia started to be liberalized very early in the year 1990; some strategic parts of the sector were successfully liberalized only gradually until the end of 1998. But the last decisive step, the liberalization of the fixed telecom network failed due to serious obstructions, especially by ST and parts of the political elite. It is now expected to take place in 2004. Further efforts are necessary to prepare for a complete liberalization of the market. Fair competition and proper functioning of the market needs still to be ensured. Because most of the other accession countries liberalized their fixed markets at the beginning of 2003, the Czech Republic, Estonia, Poland and Slovenia even before, Slovakia is now in field of liberalization a latecomer, which has negative consequences for its telecom market.<sup>125</sup>

Originally, the Mečiar government preferred for strategic reasons to transform the state-owned enterprise ST into a joint-stock company with 100 % state ownership share. This transformation of the main telecom provider of Slovakia started in 1995 and was finished in April 1999, when ST got a joint-stock company with 100 % investment of the state. The new Dzurinda Government changed the strategy and started in October 1999 with the privatisation procedure. Since July 2000, the Deutsche Telecom acquired 51 % majority stake in ST, the

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<sup>123</sup> Only one interviewee told me, that Denmark was the model.

<sup>124</sup> Mathernova 2002, p. 50

<sup>125</sup> EC Directorate-General on the Information Society (ed.) 2003, p. 18

rest is owned by the State (34 % by the MTPT and 15 % by the National Property Fund). Further steps in this privatisation process, originally planned for 2002, are not to be seen at the moment. In this way, Slovakia is now in the middle field of the accession states together with six countries, where the state still holds a majority of the fixed incumbent.<sup>126</sup>

Telecom legislative alignment has reached a high level. Slovakia will need to transpose the updated telecommunications *acquis* before accession and to complete the implementation procedures as soon as possible afterwards. Since the Opinion, Slovakia has made reasonable progress in aligning with the *acquis*, particularly in terms of putting the necessary legislative framework and regulatory authorities in place. Over the past years, Slovakia's policy in this area has moved steadily towards complete transposition and implementation of the *acquis*.

The main problem of telecom administration in Slovakia at the present stage is the constant weakness of regulating agencies. Instruments for improvement of its performance would be better communications with relevant market players and transparency of regulatory procedures. It is necessary to gear up for a system of relations between the national regulatory authority and the European Commission, as well as to relations with national regulatory authorities of the EU member countries. The main problems of TÚ are the lack of activity (insufficient activities in regulating affairs in combination with a bureaucratic attitude), lack of independence (from the government and ST) and lack of administrative effectiveness. With the new act of 2003, the independence of TÚ was strengthened especially what the independent financing of the regulatory body was concerned.

The administrative capacity in the telecom sector is still not sufficient. This is a problem of nearly all institutions in the field (not only TÚ) and their interconnections. But in TÚ, the efficiency problem is dramatic. With nine out of 188 employees handling directly regulatory tasks, the Slovak NRA has the lowest number of staff dealing with regulatory affairs in all the NRAs in the accession states. The majority of the employees are engaged in activities, not required by the *acquis*, they are technicians. The office needs more telecom lawyers and economists. In view of the forthcoming full liberalization of the sector, however, the Office is not yet sufficiently resourced.

Especially since 1998 Slovakia developed a high ability of adoption of the telecom-regulating regime and of policy learning, what the implementation problems of laws within

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<sup>126</sup> Ibid, p. 19. The Government Resolution No. 1161 of 1 December 2004 leaves owner shares in stockholding companies in which the state has ownership participation and performance of owner rights in the administration of the materially relevant ministries. "At the present time this is the optimal manner for securing the performance of ownership rights since the structural separation of the regulatory function from ownership activities is thus sufficiently secured." (MTPT 2004b: 50)

institutions and the relations between them is concerned. This forms a good basis for the further development in the field of electronic communications.

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## List of Abbreviations

AMO SR	Anti-Monopoly Office
ANO	Alliance of New Citizen
ADSL	Asynchronous Digital Subscriber Line
BGIS	Board of Government for Information Science
CBR SR	Council for Broadcasting and Retransmission
CSFR	Czech and Slovak Federal Republic
CSO	Civil Service Office
DFG	German Research Foundation
EBRD	European Bank for Reconstruction and Development
EIB	European Investment Bank
EU	European Union
FMPT	Federal Ministry of Post and Telecom
GDP	Gross Domestic Product
GOVNET	Governmental Network
HZDS	Movement for Democratic Slovakia
IS	Information Society
IRG	Independent Regulators Group
KDH	Christian Democratic Movement
MTPT SR	Ministry of Transport, Posts and Telecommunications
MDSVP SR	Ministry of Transport, Communications and Public Works
NDS	National Democratic Party
NRA	National Regulatory Authority
PHARE	program
PTT	Post and Telecommunication sector
SDK	Slovak Democratic Coalition
SDKÚ	Slovak Democratic and Christian Union
SDE	Party of Democratic Left
SNS	Slovak National Party
SOP	Party of Civic Understanding
ST	Slovak Telecom (Slovenské telekomunikácie, a. s.)
STV	Slovak TV channel
TÚ SR	Telecommunication Office

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