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## Institutional change in search of the market: The case of Slovenia

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# Kieler Arbeitspapiere

# Kiel Working Papers

Kiel Working Paper No. 706

**Institutional Change in Search of the Market: The Case of Slovenia**

by

**Hans H. Glismann\*, Ernst-Jürgen Horn\* and Peter Stanovnik\*\***

September 1995



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with an Appendix by **Renata Slabe** and **Valentina Prevolnik** on the  
"Ordnungspolitik" in Slovenia

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## Foreword

The Commission of the European Communities included a study on "The Process of Integrating Slovenia and other Central and Eastern European Countries into the European Economy" into its ACE programme in September 1993. The study has been carried out by the Slovenian Institute for Economic Research (Ljubljana), headed by Peter Stanovnik, as the principal co-ordinator, by the Université Libre (Brussels), in particular by Henri Capron, and by the Institut für Weltwirtschaft (Kiel), in particular by Hans H. Glismann and Ernst-Jürgen Horn.

This paper gives a presentation of the institutional issues that had to be dealt with in the project; it was discussed at a workshop held in Ljubljana in June 1995. Thanks are due to the participants of the above mentioned workshop, and most of all, to Ms. Renata Slabe and Ms. Valentina Prevolnik for providing us with a comprehensive synopsis of the Slovenian transformation process; this synopsis is attached as an appendix.

*Hans H. Glismann*

*Ernst-Jürgen Horn*

*Peter Stanovnik*

## **Abstract**

Six main characteristics of an economic order are discussed and empirically evaluated for the case of Slovenia. All of them pertain to the institutional setting *ab urbe condita*; they comprise the legal and jurisdictional situation, the role of private property, the institutionalised strive at competition among firms and individuals, the liberty of markets, the solution of the big assignment problem, and the approach to foreign-trade relations. All six aspects impinge upon the conditions which confront investors in material and in human capital in Slovenia.

The analysis shows that Slovenia has had, for three years now, by and large the same problems that other countries in transition had. For example, it still has, among others, tight regulations regarding foreign exchange transactions, and a highly socialist property system burdened with too complicated procedures of privatisation.

The authors conclude that in Slovenia, as in the other formerly socialist economies, transformation should first and foremost aim at being coherent. Secondly, first things should come first; the first thing would be to privatise. With a proper approach of institutional reforms there should be no barrier to achieving two-digit rates of real growth, just like Germany had after transition into a market economy in 1949.

JEL-Classification: H 1, H 4, K 1, K 2, K 4, P 5.

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## **I. Introduction: The System of "Ordnungspolitik"**

It must have been generations of economists from German-speaking countries that have tried in vain to translate the term "Ordnungspolitik" (which is to be distinguished from the "Prozeßpolitik") into proper English. Only in recent years there has arisen a new branch of economics which is called "institutional economics" (not: economics of institutions!). If this new branch is concerned with the institutional environment of economic agents – such as the law, the procedures, the allocation of powers, the macro-economic assignment of tasks – and how to change this environment in order to achieve certain goals, then the term "Ordnungspolitik" will have found a correct translation at last.

In spite of the topics that we read about each and every day in the newspapers and which, in 99 per cent of the cases, deal with "Prozeßpolitik" the factors that make some countries rich/or grow fast and some countries poor/or grow slowly are all of the "ordnungspolitische" kind. The fact that a formerly developing country, such as Hong Kong, has economically (in terms of per-capita income) surpassed Germany, let alone the Queen's own country, indicates a superior "Ordnung" in Hong Kong. Similar reasoning applies to in-country conditions: In Germany, for example, the mailing of a letter is (much) more expensive than in any other country that we know of; nonetheless, the German Post Company produces losses with each letter mailed that would be considered nightmarish in other countries. The reason, again, can be found in a traditionally mislead sectoral "Ordnungspolitik" in Germany.

In short: "Ordnungspolitik" matters. In the following the (six) main aspects of an economic order will be discussed and evaluated in the case of

Slovenia; all these aspects pertain to the institutional setting *ab urbe condita*. The latter seems to have been achieved in May 1992, when Slovenia – like other previous republics of the former Socialist Federal Republic of Yugoslavia (Croatia, Bosnia and Herzegovina) – was granted full UN membership.<sup>1</sup>

The six main aspects are

- (1) The legal and jurisdictional situation,
- (2) the role of private property,
- (3) the institutionalised strive at competition among firms and individuals,
- (4) the liberty of markets,
- (5) the solution of the big assignment problem,
- (6) the approach to foreign-trade relations.

As is easily understood, all six aspects impinge upon the conditions which confront investors in material and in human capital in Slovenia.

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<sup>1</sup> Some basic information seems to be warranted to make outsiders – if not understand but at least know – about the present formal status of the former Yugoslav republics:

The Federal Republic of Yugoslavia, as it has chosen to call itself since April 1995, comprises the two republics of Serbia and Montenegro. Macedonia declared itself a sovereign state in November 1991 and was admitted to the UN in April 1993. Kosovo became part of Serbia. The UN General Assembly voted to suspend Yugoslavia from participation in its proceedings "until the new Yugoslav state had applied and been accepted to fill the seat in the UN occupied by the former Yugoslavia" (The Europa World Yearbook 1994, p. 4). Consequently, the diplomatic representation of Yugoslavia is catalogued as being "vacant" (*ibidem*, p. 7).

## **II. The Case of Slovenia<sup>2</sup>**

### **1. Some Remarks on the Approach Chosen to Assess Institutional Reforms**

A catalogue based on criteria for essential elements of a liberal market economy seems helpful to analyse the approaches to and the results of the reform process in Slovenia. These criteria include: legal base, state of private property, competition rules, liberty of the markets, macroeconomic assignment of responsibilities, and the openness of the economy. This catalogue mainly serves two purposes. On the one hand, it defines an ideal economic policy framework of a market economy. On the other hand, it can be used as an instrument to determine the *status quo* of the reform approaches. By comparing the ideal conditions of a market economy with the reality existing in Slovenia it seems possible to identify reform deficits in Slovenia and to develop adequate reform proposals.

### **2. Division of Power, Rule of Law, and Individual Contractual Liberty**

In a market economy the state offers a legal system as a public good which is a pre-requisite to an efficient production of private goods. A market system can only work if pursuance of economic activities is guaranteed by law without any discrimination. For this purpose strong public authorities are necessary which, however, have to be controlled in order to avoid political arbitrariness. An effective protection against political arbitrariness can only

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<sup>2</sup> This chapter draws in large part on the results of a study prepared by Renata Slabe and Katka Prevolnik which was commissioned in order to evaluate the details of institutional reforms in Slovenia.

be expected to be achieved if the constitutional order provides a separation of power between the executive, legislative and jurisdictional functions of government and the necessary checks and balances: The jurisdiction should be independent from administrative and parliamentary patronage, and it should be guaranteed that administrative and legislative decisions can be appealed at courts. The legal system must also guarantee the liberty of private contracting which constitutes the essence of a market order. A sanction mechanism is necessary to enforce contractual trust, i.e. public goods in the form of a legal infrastructure and legal instruments are needed to let the markets function properly.

The Basic Constitutional Charter of Slovenia (Official Journal of the RS, 1991, No. 33, The Constitution of the RS, pp. 1373–1386) defines the democratic nature of the new state, recognises the rights and fundamental liberties of its citizens, and lays down the principal of the separation of power among the legislative, executive and jurisdictional branches of government. An Audit Commission is assumed to be established as an independent institution in charge with controlling the state accounts, the state budget and the entire public consumption. It has not been founded yet, but preparations are going on. According to the current planning, the Audit Commission will be independent and bound by the constitution and the law. The Central Bank of Slovenia is independent from the executive branch of government, but responsible to the State Assembly. The governor of the Central Bank is appointed by the State Assembly.

All in all, it appears that Slovenia has by now introduced the fundamental rules of the legal base necessary for a functioning market economy. There are – in international comparison to western democracies – no extraordinary legal constraints of individual liberty. The citizens are now entitled to take

legal steps even against public authorities. Contractual liberty of economic agents is in principal warranted. And the rules of civil law provide, in theory, the necessary legal incentives for contractors to perform their contracts. It seems to be quite another question, however, to what extent the reformation of the legal base (which has been of course a necessary precondition for the transition process) has already been brought to shape the reality of economic incentives and economic conduct in the Slovenian economy. Some major issues in this context will be discussed in the following.

### **3. The Property Question**

Private property – especially that of real estate and of means of production – is a necessary condition for an efficient resource allocation in an economy. In a market economy, private property means that the proprietor has the exclusive right to use and to transfer his property, and to realise returns on his property, as provided and guaranteed by law. In addition, the stability of the property rights structure must be ensured. Under such conditions, the proprietor has incentives to allocate his property efficiently, and to spend returns for the maintenance of his assets.

After World War II, the greatest part of private property in Slovenia had been nationalised, and only a smaller part remained in the private and cooperative ownership (craft workshops, forestry, and agriculture). With the acceptance of the new constitution of Yugoslavia in 1974, the greatest part of the state property was transformed into "socially-owned" property – as the property of everybody and, at the same time, of nobody. Citizens had the obligation to use, maintain and manage socially-owned property in the same way as a good proprietor would have done it. Experience over time revealed

that such an ownership structure is economically totally ineffective. After its independence, Slovenia started a transformation process from the socialist "self-management system" towards a market-economy system, based on private property and the abolishment of socially-owned property. Although private property had in principal been allowed already in the past, its use had been heavily regulated by the government, and its share in national wealth had always been relatively small.

Privatisation of socially-owned enterprises has proved to be a task extremely difficult to achieve. By mid-1995, companies in private ownership employed just 7 per cent of the workforce in Slovenia. They generated, however, already 16 per cent of national income. And they are contributing an even larger share to Slovenian exports. Taken together, Slovenia has chosen a relatively slow path towards privatisation, meant to enable the economy to a proper path of adjustment to the new, changed market conditions of business. Meanwhile, many observers suspect that this strategy may well have retarded the development of the Slovenian economy in recent years, not to speak of the years to come.

Without going into much detail, some facts and figures may serve to illustrate the magnitude of the privatisation problem. At the beginning of 1993, there were 2.157 enterprises (including 812 subsidiaries) with socially-owned capital in Slovenia which should be privatised with an estimated total market value of SIT 817.141 billion (DM 13.361 billion, at the exchange rate of 1 January 1993). This represented 96.1 per cent of all nominated capital controlled by socially-owned enterprises; the remaining amount was distributed among share capital, permanent deposits and capital controlled by individual owners. By March 1995, the Privatisation Agency had approved 596 programs of privatisation, and further 748 programs were

already in due process at the agency. This means that at that date over a billion of German marks of the socially-owned capital had been privatised. Note, however, that the Law on Ownership Transformation of Enterprises had already been adopted at the beginning of 1991. This suggests that the process of privatisation in Slovenia is characterised by high degree of inertia. This seems also to have very much to do with the complex procedures chosen for privatisation.

In a "typical" case, the transformation of company ownership into private hands is performed as follows:

- by the transfer of shares to funds (10 per cent of the social capital to the Slovenian Pension and Disability Fund; 10 per cent of the social capital to the Compensation Fund; 20 per cent to the Mutual Fund for the purpose of further distribution to authorised investment companies). This form is obligatory for companies except for those which are transformed by the sale of company shares or the sale of all company assets;
- by the internal free distribution of shares (to employees via ownership certificates). This form is obligatory only in the case of internal buy-out schemes;
- by the sale of company shares on preferential terms to insiders (employees, former employees and retired workers) under a special internal buy-out scheme (maximum 40 per cent). More than one third of the company employees must take part in the internal purchase of shares;
- by total or partial sale of company shares to domestic or foreign subjects on commercial terms through public offering of shares, public tender, or public auction;

- by the sale of all company assets which were previously transferred to the Mutual Fund by a special contract;
- by the transfer of the remaining common and preferred stocks to the Fund (after the execution of transfer, distribution and sale) up to 60 per cent of socially-owned capital;
- by raising new private equity on commercial terms and transferring the existing shares to various financial institutions. The transformation of a company through increased ownership capital shall be always combined with other transformation forms.

As far as the issue of privatisation is concerned, the Slovenian economy seems to have still a long road ahead in the transition process. This may prove quite a critical factor for the future development of the economy. Economic theory tells us that it is quite essential for the functioning of a market economy that property rights be allocated. Of course and understandably so, in all transition economies the expectations and perceptions of just procedures and just outcomes in the privatisation of national wealth rank high in the political agenda. However, one has also to take into account that it may prove rather time consuming to try to satisfy such expectations and perceptions, and that stretching the transition period over time can also cause heavy economic costs of its own. That is to say that the apparent backlog in the privatisation process in Slovenia may well prove a considerable burden for the economic development in the years ahead, and may also cause considerable repercussions in various other respects of the transformation process towards a market economy.



#### 4. Competition Order

The basic function of competition rules in a market economy is to guarantee the openness of markets and to sanction the abuse of economic power. The more an economic system is committed to the principle of competition, the more efficient the allocation of resources can be expected to be. Competition serves as a combined incentive and control mechanism which ensures an efficient cost control and maximum productivity, because competition forces enterprises and individuals to search permanently for new products, efficient processes, and adequate locations for production. But competition is a permanently endangered good, because suppliers again and again (quite in accordance with Adam Smith's famous phrase) try to arrange agreements in order to restrict competition. It is also an endangered good because in many instances governments try to impose regulations on particular markets which affect competitive conditions. Most market economies have established rules which prohibit restrictive business practices and the abuse of economic power. This kind of institutionalised protection of competition differs, however, considerably across countries, according to the criteria laid down in the rules and according to the actual enforcement of the rules actually existing.

In the case of Slovenia, the competition rules are laid down in The Law on Protection of Competition which was adopted in 1993. The competition law is administered by The Office for the Protection of the Competition which was established at the end of 1994 and is still part of the Ministry of Economic Relations and Development (and which, by the way, is also in charge with anti-dumping procedures against "too cheap" imports). Three major objectives make up the core of the competition law: (i) prohibition and persecution of restrictive business practices; (ii) prohibition and perse-

cution of the abuse of market power; (iii) merger control. In this respect, the Slovenian competition law follows the conventional standards known from many industrial countries. Taking into account the very short time span since the introduction of the competition law, it is of course hard to assess what Slovenian competition policy does already mean in practice or will mean in the future. There is reason to believe, however, that the legal principles of competition policy will not gain much relevance in actual economic policy for many years to come.

- Firstly, many sectors are exempted from the competition law, for example the so-called public services including electricity, oil, gas, waterworks, telecommunications, railways, air traffic and communal services; separate regulations apply to financial services such as banking, insurance, etc.
- Secondly, at present the private sector of the Slovenian economy is still very small. Even if the government actually intended this, it would certainly prove to be a very difficult task to apply the principles of competition policy in the case of socially-owned enterprises, this all the more so because privatisation processes could be easily "disturbed" by competition policy measures.
- The Slovenian economy is a very small economy. This means that on many a market under conditions of autarky only very few firms or even only a single one could exist. In such cases, the best device to hold in check local market power is of course to open up markets for international competition. But the Slovenian government wants also to nurture new firms and new industries. It can therefore be expected that in the design of economic policy competition policy will rank after industrial policy.

- The authority in charge with administering competition policy is not a truly independent cartel office, but a branch of the economics ministry. It follows from this institutional arrangement that the competition policy authorities are themselves in a permanent stage of competition with other authorities in the economics ministry.

Taken together, it can be expected that the fine principles laid down in the Slovenian competition law should not be taken at face value. At present, these principles can be hardly applied anyhow. It remains to be seen, whether and to what extent an indigenous Slovenian competition policy will develop.

## **5. Liberty of the Markets**

The essential feature of free markets is that they are characterised by sovereign decisions of sellers and buyers. It is up to the sellers to fix the prices of their goods, and it is up to the buyers to determine the relevant price for their demand they are willing to pay. Ideally, the price mechanism coordinates supply and demand at an equilibrium price at which the market is cleared. In this process a system of relative prices emerges which carries all the information about relative scarcities of goods and services and helps to allocate the available resources efficiently. The price mechanism is the key process for a decentral coordination of the economy. It can work, however, only as far as government does not impose restrictions on the sovereignty of sellers and buyers.

Since mid-1991 Slovenia has a system of free prices as general rule, but with significant exceptions. The main areas of still-existing price controls concern mainly the fields of energy, transport, communication, and agricultural products. Furthermore, the Law on Prices gives the government

the right to regulate prices in the case of extraordinary market situations. In principle, market entry is free, meaning that everybody who has the necessary qualifications according to the trade concerned can open up a business. Apart from this, various barriers to market entry result mainly from the prevailing conditions of the Slovenian economy, concerning in particular small market size, limited efficiency of financial institutions, and the fact that the major part of the economy is still dominated by socially-owned enterprises. A special problem seems to exist in the field of labour market policies. The employment policy of the government includes measures by which it subsidizes existing employments, subsidizes new employments and public works. Hence, government policy tends to shelter existing occupations at the expense of new occupations.

Since the beginning of 1994, The Law of Force Settlements, Bankruptcy, and Liquidation is in effect. Thus, a legal framework for market exit has been established. In effect, however, the new bankruptcy law seems only to apply to the case of newly established businesses. There is hardly any case known where this bankruptcy law has been applied to the so called socially-owned enterprises. That is to say that the actual application of the new bankruptcy law seems to heavily discriminate between new private enterprises and old socially-owned enterprises inherited from the old system. Nevertheless, the debt-rate of newly established enterprises in Slovenia seems to be very low; available evidence suggests that 80 per cent of them can be expected to survive the first five years. The overall costs of bankruptcies between achievement of independence and in mid-1993 are estimated at about DM 700.000.000. This suggests that (1) regulations for market entry and exit are working and (2) that the Slovenian society is prepared to bear the potential costs of bankruptcy.

## **6. Macroeconomic Assignment of Economic Policy Tasks**

A fundamental question of macroeconomic policy concerns the role of the public sector in a market economy, i.e. the tasks and the institutional structure of economic policies, the goods to be supplied by the public sector, and the public sector's financial structures have to be defined. If the public sector produces a significant share of private goods and services, the private contractual liberty, the guarantee of private property, and free competition will be severely restricted. It is an essential feature of a truly free market economy that the public sector is restricted to the supply of public goods, such as internal and external security, the legal system, the regulation of the monetary system and, to some extent, the supply of infrastructure and the guarantee of a subsistence level to all citizens. Defining public tasks necessarily implies the necessity to find sound financing for the pursuance of these tasks. A restrictive definition of public tasks would also help to avoid significant expenditures like sectoral subsidies which then cause welfare losses in the long run through a distorted allocation system. In addition, public revenues should be based on a simple system of taxes and fees which the tax payers do not regard as disincentives to work. Other basic elements of a sound fiscal policy are the limitation of public loans and strict restrictions on the possibility of financing fiscal outlays from money and credit emission.

If no control of expenditures exists and credit finance can be abused to finance public deficits, monetary stability will be put into question. Considering the close connection between sound fiscal policy and monetary stability it is important to prohibit the financing of the state budget by central bank credits. For this very reason, the independence of the central bank by statutory commitments, a regime of monetary stability seems indispensable

in order to achieve macroeconomic stability. The problem at hand is then to assign to each of the four major economic targets – mandatory price stability, full employment, external equilibrium and sustainable economic growth – just one instrument and just one institution which is held responsible for meeting the target in each case. In the case of a true market economy, an appropriate assignment would include the following elements: (i) an independent central bank responsible for monetary stability; (ii) independent employers and employees associations responsible for full employment by decentral collective bargaining; (iii) external equilibrium to be secured by a flexible exchange rate regime; (iv) a government which guarantees a liberal institutional setting, and produces the necessary public goods to attract domestic and foreign capital investment which again stimulate growth.

Macroeconomic assignment in the achievement of macroeconomic goals has also to deal with the role of social groups whose activities may well be controversial. Although groups of this kind could contribute to the social consensus, there is also always a danger that they may act as rent seekers who try simply to influence economic policy with the intention to push through regulations which only serve as single group's vested interests but may cause social welfare losses for the economy as a whole in the long run. It is quite obvious that a social consensus which aims at the realisation of a liberal economic policy would be socially advantageous in the longer run.

In the case of Slovenia, there seems to exist quite obviously a disproportionate delegation of powers to different branches of government. First of all, the central bank is not really independent, but responsible to the parliament. This institutional regulation implies that the National Assembly, which is in charge for the national budget, has also a strong say on the

decisions of the central bank. In effect, this could mean that the National Assembly decides how much money is going to be printed. Now, in the case of many industrial countries, the central bank is subdued to the ministry of finance. The latter regulation does perhaps imply a much wider influence on the behaviour of the central bank under actual political pressures than it can be expected to be the case under Slovenian regulations.

The government of Slovenia and, in particular, the ministry of labour are held responsible for full employment in Slovenia. In Slovenia itself, there have been heard few voices since which would put into doubt this unachievable target. As a matter of fact, since 1988 unemployment in Slovenia was on average constantly around 2 per cent. In recent years, in the process of the transition to a market economy, the rate of unemployment has significantly increased. Quite apparently, the assignment of macroeconomic policy tasks has not yet been properly assigned. There is no independent central bank (remember that the central bank is responsible to the National Assembly). The National Assembly which has the budget authority is apparently trying to resolve special interests. The outcome of all these decision processes is not all that bad. At least, the inflation rate in Slovenia has been brought down to a rate of about 1 per cent increase per month. But taken on the whole, it seems that Slovenia would be very well advised to make its central bank totally independent. And as far as the executive branch of government is concerned, it would seem well advised to introduce constitutional rules for government debt. Money figures did not really mean anything in the former socialist regime. Now money has become a crucial factor for economic development. So the new government authorities in Slovenia would be well advised to take the money issue very serious.

Money does not cover all things, of course, but without "real" money everything is nothing.

Summing up, Slovenia has not yet established a feasible macroeconomic assignment of economic policy tasks. The Slovenian government is still striving for inconceivable ends. In economic terms:

- sustainable creation of employment cannot be created by money creation;
- external equilibrium cannot be created by trade restrictions;
- there are limits for the public sector to create private goods;
- the Slovenian government would be well advised to create a truly independent central bank.

The latter point seems in particular important, because it would impose on fiscal policy the true costs of this policy. All in all, it appears that the macroeconomic assignment of economic policy tasks is not very well developed in Slovenia. There seems to be very much scope for improvements, in particular with respect to the fact that government activities have in principle to be financed by tax revenues. There is no free lunch in government activities. And the institutional network should reflect just this aspect in order to be sufficient.

## **7. External Economic Relations**

The ultimate test of the question, to what extent Slovenia is really willing to transform its economy into a market economy, can be seen in the policy stance with regard to international economic relations. Only the opening up of the domestic economy to foreign competition and the integration into the international division of labour can show whether and to what extent the Slovenian enterprises and the institutional framework in Slovenia are



competitive. The advantages of openness seem self-evident. The free exchange of goods and services and the unrestricted mobility of capital and labour guarantee an optimal supply; in markets open to international competition, the domestic producers are forced to keep track with international technological progress. Moreover, the participation in the international division of labour would make it easier to overcome the necessary structural changes and to bust the old monopoly structures. In addition, introducing the convertibility of the national currency and unrestricted private currency transactions seem to be an essential concomitant condition for a successful foreign trade liberalisation. Citizens and firms could decide on their participation in foreign trade and capital transfers; domestic sellers and buyers would have available undisturbed information about relative scarcities through world market prices; and the government would be forced to adhere to international standards of capital market policy. In the last event, a convertible currency would mirror the overall condition of the economy.

As far as the state of external trade relations is concerned, nowadays only 3 per cent of all imports require special government permits such as licences or are subject to quantitative restrictions. Tariff rates in Slovenia range from 0 to 25 per cent; in the year 1993 the average tariff rate – measured by collected duties – was around 6 per cent. Capital equipment not produced in Slovenia can be imported duty free. For imports of raw materials and intermediate products not produced in Slovenia, tariff rates are very low. Imports of alcohol, tobacco and used cars are subject to a special 15 per cent import tax. For imports of certain agricultural products a specific import levy is charged as a fixed amount. Besides tariff duties, however, there are general duties on imports in the form of a 1 per cent equalisation tax and a

1 per cent customs formality tax. Furthermore, the customs procedures seem still to require a lot of paperwork which is suspected to cause a considerable degree of confusion in economic relations with foreign countries. The export of goods is generally duty free, except for the export of some basic strategic raw materials; for example a special tax is levied on the export of lumber, iron, steel and non-ferrous metals.

State monopolies for exports or imports do not exist in Slovenia, nor had they existed before the independence of the state. Since then, the Slovenian government has taken a number of measures to liberalise its exports and imports. It has abolished the registration of companies operating in foreign trade, eliminated a lot of bureaucratic procedures and authorisations in foreign trade and lowered the level of protection.

A new law on foreign investment in Slovenia is still pending to be adopted. The existing draft has been prepared by EBRD experts and by some domestic and foreign experts. Despite this state of affairs, it can be stated that the existing and practiced rules for foreign direct investments are fairly liberal and guarantee for instance a free international transfer of profits and capital. Moreover, foreign investments in any form already enjoy full "national treatment"; joint ventures and foreign-owned companies have the legal status of Slovenian legal entities, established and operating in accordance with Slovenian regulations. They are treated in the same way as indigenous companies.

As far as the foreign exchange regime is concerned, it was decided at the end of the 1991 monetary reform to try to practice a managed floating rate of the Tolar in relation to the German Mark. Since then the foreign exchange reserves have steadily increased and have surpassed US\$ 2.5 billion at the

end of 1994. The issue of free international convertibility of the Tolar, however, has not yet been seriously discussed at all. The convertibility of the Tolar would require to remove all restrictions of international transfers of capital and finance. Despite its relatively liberal stance on trade flows, the Slovenian government seems not yet prepared to make the necessary steps towards introducing free convertibility of the currency.

### **III. Privatisation as the Key Issue**

#### **1. Prolegomena**

Looking at the economic performance of most of the formerly socialist countries leads to the conclusion that these countries did not fare too well; this, as a matter of fact, also holds for the five new "Länder" of the Federal Republic of Germany. The statistics of national accounts show that Slovenia by and large developed in the same way that the other formerly socialist countries did, after becoming independent, if only at lower rates of economic decline. In addition, inflation started in 1991 and 1992 at very high rates, again resembling the developments in the other socialist countries; the decline in inflation in 1993 is also matched by similar developments in Poland, Hungary or the Czech Republic.

Bearing in mind the economic performance of Germany after introduction of a market economy in 1949, when Germany exhibited up to two-digit rates of real growth, this comes as a surprise. One can dwell now on the many differences which existed at the start of the German market economy in 1949 and those existent in countries such as Slovenia. We will not do that. Instead, we suggest that of the many fundamental aspects differentiating centrally-administrated economies from market economies there is one

aspect which is especially important when trying to attract domestic or foreign investors: the existence of private property. With private property we do not mean accidental tolerance of private property or of furniture, but instead the principal orientation of a country towards private control over mobile and immobile factors of production. Private control would include usage of property, the transfer of property (purchase, sale, donation, inheritance, etc.), or the change in the substance and structure of property; in addition, straight and clear definitions of private property as opposed to the state's property are required. In other words, orientation of a society on private property reduces the monopoly of the state to the production of public goods and services. Thus, the institution of private property can also be interpreted to provide protection for the citizens against undue infringements by the state; thereby, private property resembles, supplements and may even substitute constitutions which are intended to protect the citizen against undue actions of the government.

With private control over property the economic efficiency of productive (and "unproductive") property is higher than without such control. For example, private property is sold only if the seller profits less from his property than the buyer expects to do; in case seller and buyer are industrial firms, the expanding firm will produce more or produce at higher profits with that particular property than the selling firm – it *has* to produce more or at higher profits because the newly bought property causes higher costs in its balance sheet. In the case of a socialist economy, with the state being the only owner of the factors of production, government officials sell to government officials. The cost/ benefit calculation is then on the side of these government officials or on the side of politicians. Since normally politicians or government officials do not bear any risks, errors in the

economic calculus will then be the rule rather than the exception, i.e. the price charged and paid will tend to be too high (all the more if the soft budget constraint holds).

## 2. Different Types of Property

When transforming government property into private property we find a host of different types of properties. At the extremes there are the pure forms of state property on the one hand and the sole private property on the other hand; between these extremes there is a continuum of combinatoric possibilities. In the following we shall mention the commercialisation, the lease and the functional privatisation.

### a. *The Two Pure Forms of Property*

In case all mobile and immobile factors of production belong to the state and only the state can, through its officials, transfer properties, we can speak of a socialist economy. In the case of pure private property the mobile and immobile factors of production are only under private control without governmental institutions being able to exert any meaningful influence.

It has often been shown that socialist property is economically inefficient (cf. the example above), but what about pure private property? In case the state is not allowed to own factors of production, the government would have to rent offices, schools (in case education is considered a public good) and so on. This would indeed prevent the government from incorrect accounting; there would be a tendency that the government would only rent as many offices as really needed. But how about the classic public goods? The Defence Department, for example, cannot do without government property because private property regarding tanks, missiles and other weapons

would contradict the principle of the (non-disputed) governmental monopoly of exerting power; private properties would in this case induce the much cited "negative" externalities, for example in such a way that private forces may endanger the existence of the state. From this it follows that – quite independent from pure economic calculi – pure private property is no meaningful alternative to pure state property.<sup>3</sup>

*b. Commercialisation*

The transformation from governmental into private control over properties often is done by commercialisation: In the case of commercialisation state-owned enterprises are transferred into private forms of organisations, such as stock companies or limited liability companies (Inc.). In these cases, however, government remains the only shareholder and privatisation does not ensue. For example, privatisation of the Post Office in Germany or of the Deutsche Bundesbahn has been done in such a way as to create "Aktiengesellschaften" and making the German government the only shareholder. As long as the owner remains the same as before, namely the German government, one should not speak of privatisation. Losses as well as profits are still, as before, losses and profits in the government's budget. In addition, such a governmental stock company would not be able to work efficiently because it would represent a mixture of private aims, such as high profits, and public aims, such as preventing (an increase in) overall unemployment. Such a situation is theoretically and empirically not feasible (Tinbergen, 1956).

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<sup>3</sup> As a matter of fact, even a value-added tax or other kinds of taxes (inheritance tax, donation tax, property tax, etc.) can be regarded as deviations from the pure private-property principle.

c. *The Lease*

Similar to commercialisation the state remains the owner in the case of a lease, but as opposed to commercialisation it leases the property rights for a certain time. Two types of lease seem to be interesting here: the lease including the right of succession and the lease excluding this right.

The time horizon of leases determines the economic difference between private and state property. An eternal lease including the right to pass the lease on to the heirs is highly identical with private property. A, say, six-years lease excluding the possibility of transferring it to other people – as it seems to be the rule in the Czech Republic – is highly identical with the pure form of government property. In the latter case (with short-run leases) the investor wants a faster return on the capital invested than in the case of the eternal lease. Many an investment which is rather long-run will under such circumstances not take place. The time horizon of a lease is not the only variable influencing the quality of the lease: A low degree of credibility of the leaser (the government) has by and large the same effect that a short time horizon has. In order to make leases by government more credible, the rights of private lease takers have to be safely guaranteed, for example by including the rights of lease takers in the constitution.

d. *Functional Privatisation*

Functional Privatisation refers to a system where the state has control over the factors of production only in those instances where the state is concerned with the supply of the classic public goods; in all other instances the government would be forbidden to own factors of production. There is again a vast continuum of a functional distribution of property rights here; all western countries fall – in different ways – under this heading.

### 3. Specific Problems of Privatisation

#### a. *The Initial Distribution of Wealth*

Before embarking on a strategy of privatisation it should be made transparent who has been the owner until now. This is one of the lessons to be drawn from privatisation in, for example, the Russian Federation. In the Russian Federation we had and have to do with at least eight levels of state owners.<sup>4</sup> From this experience it follows that before privatising state property we have to have an – enforceable – land register which identifies clearly the institution that is responsible to sell and to receive the money.

#### b. *Restitution*

As opposed to privatisation restitution refers to a renewal of a prior status of private property, based on pre-socialist property structures. In the case of Slovenia this would involve legal problems which reach back a couple of decades and is thus at the same time concerned with the problem of mastering the past (with the re-unification of Germany over the past few years this mastering of the past has been especially delicate). The combination of legal problems with problems of justice makes restitution basically a barrier to the transformation of systems. In countries such as Slovenia it should be considered to assume that an inheritance tax would have deprived all private owners of their property anyway over the past

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<sup>4</sup> In the Russian Federation there existed some competition between institutions which regarded themselves as proprietors of factors of production: (1) the Russian Federation; (2) the autonomous republic (for example Tartastan); (3) the non-autonomous region (Oblast, for example Vladimir); (4) the county (for example Kasnodar); (5) the district (for example Alexandrow); (6) the city or village; (7) the firm's management; (8) the firm's employees.



decades. Thereby, the new distribution of private property would not be burdened with problems of the past.

c. *Other Barriers to Efficient Privatisation*

Many barriers to an efficient privatisation stem from the fact that privatisation is often regarded as a panacea for mastering many other problems. Among them are the goal of social justice, of acceptability of the new owner (by the firm), or of fiscal profitability of privatisation. Especially after decades of socialist policies it can be surmised that many participants are still heavily subject to ideals of justice, equality and equability, and that most probably the real prices of the existing factors of production are overestimated.

In addition, barriers to privatisation may also be seen in the facts (1) that many firms are too large to be profitable, that there is (2) a lack of a well-working system of private banks, and that there is (3) a lack of institutional capital suppliers.

*The Need for Regulation*

One of the most important services of the state is to define and to document property rights. This is especially difficult in East European countries because the state was by tradition the only supplier of venture capital. A clash of interests in the supply of justice and in a rapid sale of state properties seems to be almost inevitable. A solution may be seen in giving priority to the production of present formal legal justice; the conditions for selling government property, such as prices, interest rates and conditions are less important. From this it would follow that the state is reduced to supplying sovereign rights, among which are documentation of the

transformation of properties and the enforcement of legal titles. The sale of government property could be left to private firms (brokers) or auctions, thereby solving two major problems at the same time:

- Reasonably high prices: just like in other capitalist countries, the broker's own interest in high sales is accentuated by providing him with a percentage share in sales.
- Quick sale: since there is a stiff competition among brokers and since non-performance in selling activities leads to losses in interest incomes, it is a safe assumption that all properties will be sold quickly.

### *Problems of Size*

After decades of sectoral monopolies in all fields of production one would expect that the existing firms are too large; at the same time the vertical integration of production processes has in many instances led to regional monopolies as well. Whether an approach of a simple trust busting would be advisable is open to question. In the case that the regional and sectoral monopolies also provided genuine state services – such as the supply of police enforcement or basic schools – trust busting would have to go hand in hand with establishing an administration which would take over these original state affairs.

### *The Problem of Deficient Demand*

It has often been argued that, in formerly socialist countries, there is a lack of income and of wealth which leads to deficient demand for former state property. However, this is a political problem rather than an economic one: It is impossible that a formerly socialist country really wants to privatise and does everything correctly and nonetheless there is no significant national or

international demand for government properties. One can translate such a situation into a too high price of the properties to be privatised – relative to other possibilities for investments in other western countries or in the classic developing countries. This can, for all investment opportunities, only be the case in a country where the currency is overvalued. A simple devaluation or, even better, introduction of a flexible exchange rate, would automatically increase effective demand.

In case there are nonetheless state properties which cannot be sold, this would indicate political barriers – which are thus politically solvable – or they are of a structural kind. The latter refers to the fact that there are always firms which perform worse than others. In such cases the market mechanism would solve the problem, if only in a very rude manner. In case a deficient demand is due to a lack of information or due to false information of potential external buyers, one might consider an improvement of the information system.

#### **4. Variants of Privatisation**

If privatisation is recognised to be a social-welfare-increasing strategy, it should be reminded that it is not very important who will buy the former state property and what the distributional results will be. It was Ronald Coase who in the 1960s demonstrated conclusively that a welfare-maximising distribution of income and wealth is independent from the initial distribution of incomes and wealth (under the condition that there are no further barriers to selling and buying activities).

Many of the formerly socialist countries make a distinction between single privatisation and mass privatisation. The first refers to privatisation of single real estates, houses, or firms; with mass privatisation the government tries

not to give up classic socialist ideas when transforming the economy from socialism to capitalism: former socialist property is distributed as social as possible.

There are basically three ways to privatise in the case of *single privatisation*: auctioning, donating, and offhand selling. The economically interesting point in auctioning is that profit expectations of the highest bidder are not necessarily realistic. Since all bidders are uncertain about the future net profits of the object, one can assume that some bidders are too pessimistic and others are too optimistic regarding future profits. Since only the highest bidder will receive the desired object, there is a high probability that he has paid too much. If that is the case and he will consequently go bankrupt, the whole process may end with the "final" bidder estimating the market value of the object correctly. In case the government makes donations, its discretionary influence on the initial distribution of wealth is relatively high. The economic effect, as opposed to the auctioning or the offhand selling, will consist mainly in a loss of government incomes; the productivity effects of privatisation will most probably occur after the first round of privatisation only. Offhand selling leads to government receipts which should be lower than in the auctioning case and higher than in the donation case. The long-run effects on allocation should not differ among the three procedures.

With *mass privatisation* a number of firms is privatised in a unique procedure at the same time. The idea is that formerly social property is given back to society. From this would follow that the state has no financial claims with respect to privatisation. The receipts from privatisation therefore accrue to the individual firms and increase their liquidity. Again, it can be surmised that many of the profitable firms will not be subject to mass privatisation but

instead will be privatised singularly. This is all the more so because mass privatisation involves creating new institutions which are responsible for managing the mass privatisation. Very often these new institutions also take over the management of the firms subject to mass privatisation. In most instances these institutions hand out vouchers or sell vouchers which represent a share not in any specific firm but in the managing institution itself.

#### IV. Conclusions

Slovenia is different from the other formerly socialist countries in several aspects: It

- is small, with a relatively homogenous population;
- was never (part of) an entirely socialist regime of central planning; instead, the former Yugoslavia had deviated in several ways from socialist ideals (relatively high degree of firm independence and of economic relations with western countries; in fact, Yugoslavia was not part of the COMECON and was not subjected to the Soviet Union as the hegemonic power);
- has been a relatively rich region in terms of per-capita incomes;
- has been more industrialised than the other socialist countries, with a relatively small share of agriculture and a relatively large tertiary sector (excluding government).

These differences should have made it comparatively easy to transform Slovenia into a modern western-type market economy (whatever that means). However, our analyses show that Slovenia had, for three years now,

by and large the same problems that other countries in transition have. It still has, among others,

- tight regulations regarding foreign exchange transactions,
- a highly socialist property system (with too complicated procedures of privatisation).

To be sure, there do exist almost perfect regulations regarding competition policy, or the constitutional and civil laws. In this respect Slovenia is similar to Bulgaria: The competition law of Bulgaria is absolutely perfect, much better in trying to achieve capitalist competition than the German "Gesetz gegen Wettbewerbsbeschränkungen" or the respective articles in the EEC treaty, or even the US acts concerned with ensuring competition. However, Bulgaria, it seems, has had neither the intention nor the institutional power to practise this law and to enforce it; in fact, the other *ordnungspolitische* rules are in direct conflict with free competition. Similar reasoning applies basically to the case of Slovenia: Competition needs an open economy where domestic citizens and foreign investors are treated on equal terms. Slovenia has regulated foreign exchange markets and she treats domestic investors worse than foreign ones; in addition, most of the factors of production are still employed in "socially-owned" firms which have to cope with both the problems of profit maximisation and of keeping unemployment at low rates, which is – as we all know – logically impossible. The fact that market entry into Slovenia is regulated in highly important sectors (banking, insurance) works in the direction of preventing competition rather than stimulating it. Other examples in the case of the competition issue can be found.

Basically, transformation needs a certain amount of coherence among the criteria enumerated above. We have demonstrated this in the case of competition. Another example may be found in the solution of the macroeconomic assignment problem. For example, responsibility for the price-level stability rests with the central bank in Slovenia, which is under supervision of the National Assembly – as a matter of fact: the same institutional setting holds for the Russian Federation. Independence of the central bank would rather require obligation with respect to the aim of price stability than obligation with respect to a (spending) authority. In addition, there is some obvious incoherence between the exchange-rate regime (being pegged on the Deutschmark) and the price-level-stability regime (being pegged on the parliament).

One may conclude that transformation of a socialist economy should first and foremost aim at being coherent. Secondly, first things should come first; in formerly socialist economies the first thing would be to privatise. Thereby it may be possible to achieve two-digit rates of real growth, just like Germany did after 1949.

## Appendix:

### Synopsis of the "Ordnungspolitik" in Slovenia\*

#### Criterion 1: Division of Power, Rule of Law, and Individual Contractual Liberty

##### 1.1. Does a clear separation of legislative executive, and jurisdictional power with mutual control exist?

##### *Legislation framework*

The Basic Constitutional Charter, which enshrined the democratic nature of the new Slovenian state, recognizes the rights and fundamental liberties of citizens and lays down the principle of the separation of the *legislative*, *executive* and judiciary branches of Government. The main legislative body is the State Assembly, with 90 members directly elected for a four-year term. The State Assembly has the final power to appoint the prime minister. The 40-member Council of State, elected for five years, has power only to delay legislation. The head of state, who serves a five-year term, is elected by universal suffrage. The rights and duties of the president are for the most part formal and ceremonial. There is a coalition of three main political parties, ranging from the right (Slovenian Christian Democrats) to the leading centre party (Liberal Democrats of Slovenia) and the left (United List of Social Democrats). The nine political parties represented in the State

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\* Prepared by Renata Slabe and Valentina Prevolnik.



Assembly, public opinion polls and the activities of numerous non-political groups influence this multiparty Government (Slovenia, Your Business Opportunity, Centre for International Cooperation and Development, Ljubljana, October 1994).

By discharging *judicial function* judges became independent. They are obligated to the law and the Constitution. The law defines the arrangement and the competence of courts. It is not allowed to establish extraordinary courts and the same applies for military courts in the peace-time. The Supreme Court is the highest court in the state. The public prosecutor puts in and represents the charges and has other competences determined by the law. The advocate ship as part of the justice is an independent and autonomous service regulated by the law. However, the notary-ship is a public service (Official Gazette of the RS, 1991, no. 33, The Constitution of the RS, pp. 1373-1386).

*The Audit Commission* is assumed to become the highest control organ of the state accounts, the state budget and the entire public consumption. Unfortunately it has not started to operate yet, but the preparations are getting more intensive every day. It will be independent and bound by the Constitution and the law.

Slovenia has *the Central Bank*. It is independent and responsible directly to the State Assembly. The later also appoints the governor of the Central Bank. With the regulation of the money in circulation, the Central Bank causes the inflation ( an additional emission of money) or the rise of the interest rates and consequently disinvestments. In this sense the disputes between the authority which provides budget and the Central Bank arise . In

reality there are pressures on the Central Bank to increase the emission of money. Usually, the Central Bank does not decide for such a step and so the disputes are necessary. This indicates greater independence of the Central Bank.

## 1.2. Is everybody entitled to take legal steps even against public authorities?

### *Legislation Framework*

In the past procedures against the public authorities were not possible. With *The Law on Denationalisation (1991)* the state enabled the return of the wealth to the claimants. The law regulates the denationalisation of the wealth that has been nationalised by the rules of the agrarian reform, the denationalisation, the alienation and others. If the return of the wealth is not possible, the denationalisation involves the payment of the compensation in the form of spare wealth, securities or cash. The law determines the conditions and the way of denationalisation<sup>5</sup> (Official Gazette of the RS, no. 27, 1991 *The Law on Denationalisation*, pp. 1093-1102).

### *Realisation of the law on denationalisation*

The competent bodies for decision-making concerning the requirements for the denationalisation at the first instance (competent municipal administrative bodies, Ministry of Culture, Ministry of Finance) issued

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<sup>5</sup> More about denationalisation will be described in chapter 2.3.

decrees on denationalisation in the period from 20th of June to 15th of October 1992 1531 (1006 requests have been solved, 435 requests have been dismissed and 43 rejected). *With the positive decrees* 10536 ha of forests, 1783 ha of agrarian lands, 13 farms, 70 apartments with the area of 4026 m<sup>2</sup>, 36 dwelling-houses, 124 business buildings and offices and 290739 m<sup>2</sup> of building land *have been denationalised*.

In the next period, from 15th of October to 31st of December 1992, the process of denationalisation intensified further with issuing concrete decrees. In this period also the Law on the Transformation of Company Ownership was passed, which determined that the duties regarding the denationalisation should be carried out in relatively short terms of time. In the beginning of 1993 the Law on Slovenian Compensation Fund and the Law on the Fund of Agrarian Land and Forests of the RS were passed.

Simultaneously *permanent tasks are going on, which especially refer to the help* of the municipal administrative bodies at the realisation of their tasks. Ministries issue written and oral answers to certain questions. However, questions are adjusted within Departmental Group of the Government for inspection of the implementation of the Law on Denationalisation. Continually the organised education of Ministry of Justice is going on.

### *Problems*

There are problems concerning *human resources, organisation (technical), finance and law* at the implementation of the law. The process of denationalisation of enterprises and capital is very slow, because the

certifying procedures are very exact, long and time-consuming. The first problems concern the gaining of valuation documents concerning nationalised enterprises (balances at the nationalisation). It is difficult to determine the shares of the partners because the books of the stockholders do not exist. The problem also appears at the assignment of the person under obligation, regarding the status changes of the enterprises. The same pretentious is the question of judgement of protests of persons under obligation in case of return of the real estate which refers to the essential mutilation of its economical and technological function. (The State Assembly Reporter of RS, no. 6, 1993, The Fourth Report about Realisation of the Law on Denationalisation, pp. 90-98).

### 1.3. Are there any legal constraints on individual liberty?

The way of gaining and enjoying the *property* is determined by the law and thus its economic, social and ecological functions are ensured. The law also determines the way and the conditions of inheritance. Foreigners can gain the property right on the real estate under the conditions determined by the law. But foreigners can not gain the property rights on the land, except with the inheritance at the reciprocital condition. The property right on the real estate can be taken away or limited against the compensation because of the social benefit (Official Gazette of the RS, no. 33, 1991, The Constitution of the RS).

The Law on Enterprises defines the legal and organizational forms of *enterprises*, which can appear under all forms of ownership (public, private, mixed). Irrespective of the type of ownership and the form of the enterprise, enterprises can engage in all the activities defined under the General

Classification of Activities. The classification of the activity an enterprise engages in, which may be any permitted activity, is important from the point of view of the legal consequences entailed. An enterprise can engage in legal transactions, conclude contracts and perform other legal activities only within the scope of a registered activity. Foreigners are not permitted to establish their own enterprises for the performance of some activities (military equipment, railway, telecommunications, insurance...) and to establish enterprises in the territory defined as a prohibited zone under federal law. Companies are established on the basis of an agreement, except where the founder of a company is a single legal or physical entity. The prerequisite for acquiring legal and business capacity is the registration by the court (Slovenian Business Report, 1992, no. 7, p. 18).

The free traffic of goods and services is ensured. *The principle of the contract liberty* (autonomy of the partners) indicates the free arrangement of the contractual relations. Although this liberty is not absolute, the proceedings should not be in the contrary with the forced rules, the public order and good business customs, etc. (Puharic Kresimir, Gospodarsko pravo, Ljubljana, Official Gazette of the RS, 1993).

Concerning *the labour market*, there are some common legal requirements concerning the age, medical condition, education and the ability to perform certain works. Primarily the market is regulated according to the changes in the height of the wages. The common collective contract determines minimal wages in its tariff part (from SIT 39.215 for the simple works to SIT 117.645 for the most pretentious works) (Gospodarski vestnik, no. 6, 1995, p. 65). The state executes the active policy of employment (cofinancing,

covering the expenses, loans, partly compensation of wage) to reduce the unemployment.

In reference of *the capital market*. The license issued by the competent body is necessary for the export of capital and the license issued by the Bank of Slovenia for the export of the securities (which have the payment function). In principle domestic entities can get indebted in foreign countries if this action does not represent the obligations to the RS, except when the obligations are assumed by the law. Enterprises can also take credits in foreign countries (in their name and account) and give guarantee for other entities (The Contribution for Preparation the Starting-Point of Negotiations of RS for The Associative Agreement with the EU, 1994).

For issuing long term securities in the primary market of securities the permit of Ministry of Finance is required. An economic subject should enclose to the request. numerous other documents (Act of the Establishment, opinion of the SDK- Social Accountancy Service, resolution of issuing securities, statement of the persona in charge who guarantees the credibility of data and the prospectus, as the key document).

The economy is open to foreign investors and only a few common limits exist (minimal establishment capital, some protective areas, property of the real estate). More of this will be described in the chapter on foreign direct investments.

#### **1.4. Are there legal incentives for contractors to perform the contract?**

### *Legislation framework*

Obligation relations of legal persons, civil legal persons and physical persons are settled by the ***Law on Obligation Relations*** which took effect already in the former state in 1978. The Law contains common codes of obligation relations and special codes (contractual relations) for the traffic of goods and services. In principle the law treats physical persons like legal persons, although it contains also special codes valid only for economic contracts. If the conditions are fulfilled the business customs and the usage can be used. Slovenian legal regulation referring to this area does not differ much from the regulation of the obligation relations in other countries (Italy, Switzerland). Fundamental principles of the Law on Obligation Relations can be divided into two groups: the principles which refer only to legal persons and the principles which refer to all participants. The following principles are in the first group: (a) co-operation in obligation relations, (b) the obligation to parishioners as consumers and users, (c) prohibition of creation and exploitation of the monopoly state, (d) treatment when fulfilling the obligations and enforcement of the rights, (e) usage of the good business customs. The following principles are in the second group: (a) liberal arrangement of the obligation relations, (b) parity in the obligation relations, (c) principle of the consciousness and the fairness, (d) principle of prohibition of exploitation of the rights, (e) principle of the par duties, (f) principle of prohibition of causing the damage, (g) principle of duty to fulfil the obligation, (h) principle of peace of the settlement of the disputes and (i) principle of dispositive nature of the law codes.

The instruments of the contractual discipline represent the legal means by which the partners assure that the contract will be fulfilled. These are

contractual penalty, guarantee, earns, deposit, cession, mortgage and right of reservation. To ensure the fulfilment of the obligations, the rules of the law provide some measures and means which would contribute to the execution of contents of the obligations and to stabilization of the contractual discipline (those are contractual penalty, guarantee, interests for the delay). These means are explicitly determined in the contract (i.e. contractual penalty) or are determined by the law (e.g. right of reservation, mortgage).

The law determines that when *the contract is invalid* (contrary to the constitutional principles, enforcement rules, social morality, or there is inadmissible basis- public interest), every contractual party should repay the other everything that it gained on the basis of this invalid contract. If this is impossible the party indebt should give the corresponding money compensation based on the prices from the time when the legal decree was issued. The offender is responsible for the damage suffered owing to the invalid contract. It is official duty of the court to look for invalid contracts. However, all interested persons e.g. the state prosecutor or the contractual partners can refer to the invalidation.

*The sanction to contract* is foreseen to secure the individual interest of a physical or legal person. Thus, it is understandable that the abolishment of the contract can be required by the contractual party or in some cases also by the public attorney. The legal consequences are similar to the consequences because of the invalid contract (The Law on Obligation Relations, Official Gazette of the SFRY, no. 29/78, no. 39/85 and no. 57/89).

*Complaints* on the committed damage *are settled by the civil law*.



### *De facto situation*

We have no gathered information concerning the breaking of contracts and de facto enunciated penalties. Despite of that it can be said that in Slovenia contracts are often broken because of not fulfilling the agreed conditions. In most cases the parties do not decide for the settlement of the dispute through the court because the procedure is long and expensive and the penalties relatively low. E.g. a person who concludes the contract with untrue quotations of supply terms or some other essential component part of the contract is imposed a fine or imprisonment up to two years. More often the precautionary mechanisms are used which are included in the contract with the aim to settle the damage by mutual consent.

## **Criterion 2: State of private property**

### **2.1. Is private property permitted?**

After the World War II. the greatest part of the wealth became the property of the state on the basis of *numerous nationalizations*, and the smaller part remained in the private and co-operative ownership (craft workshops, forestry and agriculture). With the acceptance of the Constitution of SFRY (1974) the greatest part of the state property was transformed into the socially-owned property-as the property of everybody and at the same time of nobody. Citizens had the obligation to use, maintain and manage it as the good proprietors. The time showed that such an ownership structure is economically ineffective. With the separation of Slovenia from SFRY and its independence a transformation process from socialist self management

system to market economy was started, based on private property and the abolishment of socially-owned property. Private property was always allowed, however in the past the state often defined the rules of economizing and it executed control; the share of private property has always been relatively small.

*In this transition period* there are the following *forms of property* in Slovenia: socially-owned, state, private, mixed and co-operative property.

According to the data from June 1993, the 19,313 *private enterprises* accounted for app. 82 % of all businesses. It is normal, that the share in the Slovenian economy is relatively insignificant, if measured say by the parameters of commercial property held, the total number of persons employed or by net or gross income. In the first six months of this year the companies in private ownership employed 34,491 workers, 7 % of the total employed in the Slovenian economy; however, as regards income generated the total was SIT 235,917 million, 16 % of total. An analysis (1993) reveals that on the whole private sector companies are more profitable. 13,399 private enterprises, some 86 % of the total achieving a trading surplus are in the private sector; together these enterprises achieved a figure of SIT 7,475 million of gross income. Through these results, the theory and expectation that ownership transformation will give the economy a positive boost gains even more credence (Romana Logar: *The Slovenian Economy Today: Slovenian Business Report*, 1993, no. 9, p. 5).

Since the independence of the state Slovenian citizens have been worried about the ownership transformation. In the year of 1992 the Assembly of RS accepted the first *Law on The Transformation of The Company*

**Ownership** based on the political compromise (combination of the payable and the distributed privatization). Afterwards the law was changed and completed several times. The mentioned law is in its essence the regulation, which enables the abolishment of the socially-owned property and its transformation to the property with the known owners. The privatization and the private property are namely the fundamental conditions of the market economy. The ownership transformation includes the following basic areas: (a) privatization of enterprises; (b) financial rehabilitation (privatization) of enterprises by the state; (c) establishment of public enterprises in the state property; (d) privatization of the public services (Strategy of The Economic Development of Slovenia: Working Conference, Institute of RS for Macroeconomic Analysis And Development, February 1994, p. 7).

Thus, *the private property is allowed. The limits exist only for foreigners* who are not permitted to establish their own enterprises for performance of the following activities: (a) production of and trade in armaments and military equipment; (b) railway and air traffic, transport and telecommunications, insurance, publishing activities; (c) public information).<sup>6</sup> There are primarily the natural-monopoly circumstances and thus the possibilities for the privatization are small.

Unfortunately the *privatizations in other* developed and underdeveloped countries are not comparable with the Slovenian ownership reform, except the professional technical execution. Because of the socially-owned property in Slovenia, which has not the character of the state-owned

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<sup>6</sup> More about foreign investments is described in chapter 6.4.

property we could not use the experiences of the former socialist Eastern European countries. In developed countries (South Korea, Brazil, Mexico, Turkey, etc.) different theoretical concepts and practical proposals exist, that can not be unified.

## **2.2. Is the formation and the transfer of private property restricted in any way?**

The privatisation process of the socially-owned capital has already been going on for two years. The Slovenian concept of privatization can be defined as *fast, massive, decentralized, autonomous, inspected and transparent*. The management has the basic role in defining the way of privatization. There is also a decentralized execution of the ownership transformation and this impacts on complexity and variety of the Slovenian privatization concept.

Slovenia has employed a decentralised model of privatisation, *allowing enterprises to select the method of privatisation and carry out the procedure themselves*, but on the other hand, privatisation is strongly *controlled by the state* - each programme for privatisation as well as its execution must be carefully observed by the Privatisation Agency. The State defines the fundamental conditions and has only the inspectional, corrective and informational function.

Subsidized internal distribution of shares and buy-out enable management employees and former employees to assume 60 % of company shares under special favourable conditions. This is perhaps the most efficient way of privatization execution, because other supervisors, with the exception of the

management, actually do not exist. Because of that the request arises to enable enterprises to transform their ownership in the short run (A Rop, Economical Views of The Privatization: Possible Models of Privatization and Reasons for the Chosen Variant of the Ownership Transformation of Our Enterprises, 1995).

The company shall implement the transformation according to a *transformation programme* approved by the management of the company and submitted for approval to the Agency. The programme shall contain above all: a description of the method or a combination of the methods of the transformation, preliminary plan for the financial and organizational reconstruction of the company, the anticipated manner of company sale and the criteria for the selection of bidders. A company must inform the public of the content of the approved transformation programme by publishing it in the Official Gazette of the RS within a term of 30 days from approval. (The Law on the Transformation of Company Ownership, 1992).

The process of the privatization of socially-owned enterprises was hindered mostly due to *auditing previous ownership transfers* (carried out in accordance with the former Yugoslav Law on Enterprises) as well as *unresolved issues concerning denationalisation*. The auditing process has been completed in more than half the enterprises which were presumed to have induced losses of socially-owned capital or reduced the value thereof in the past three years. There were about one thousand such enterprises. The Agency for Payments, Supervision and Information, which performs the audits of previous ownership transfers has so far audited nearly 700 enterprises.

The suspicion that certain ownership transfers had been conducted to the detriment of socially-owned capital was not disproved. This is shown by the fact that in two thirds of the enterprises audited so far auditors have detected losses of socially-owned capital of a total value of SIT 37,5 billion, or more than DM 614 million. *The most significant ways of causing loss of socially-owned capital* were improper distribution of profits, unreasonable write-off claims, raising loans at excessive interest rates, granting loans at insufficient interest rates, and the improper distribution of assets or similar acts.

While most of the enterprises have already brought the values of the lost socially-owned capital from their business books into line with the findings of auditors, whereby losses totalled over SIT 23 billion or DM 377 million, others ignoring the evidence to the contrary, still deny having caused losses to socially-owned capital. Such disputes will be resolved by courts, and, in addition, the enterprises concerned will lose the opportunity of being privatised in accordance with the privatization act. The Development Fund will become their temporary owner and will privatise them under the special law applicable to the Fund.

The privatization process is hindered not only by audits but also by numerous *unresolved questions relating to the area of denationalisation*.<sup>7</sup>

The process of returning enterprises into private hands is very complex and in most cases the returning of the actual property is not possible owing to the increased value of the enterprises. A compensation for nationalized

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<sup>7</sup> More about denationalisation is described in chapter 2.3.

enterprises securities from the Compensation Fund are (Slovenian Business Report, 1995, no. 1, p. 21).

### **2.3. Is the restitution of former property planned or already enacted?**

***The Law on Denationalisation*** (1991) assigns that all the shares, justified to the reimbursement, have to be eliminated from the socially-owned capital. The claimants to denationalisation are physical persons whose assets had been nonpayably nationalised (private property, which passed into the common public, state, social or co-operative property), on the basis of the regulation from the year of 1963. The assets represent real estate, movables and enterprises or capital investments in personal and capital companies. The law provides the assets to be returned in three forms: with the return in ownership and possession, with the return of the ownership right or with the return of the property share. When the entire return of the assets is impossible, the assets can be returned only partially and claimants receive the compensation for the nationalised part of the assets. The assets cannot be returned if they are under the ownership right of the physical or civilian legal person. The assets of the legal entities in a mixed ownership can be returned only as the property share on legal entity to the height of the share of the social assets. It is impossible to return the real estate in the ownership and possession if because of that the economical or technological functioning of the objects would be mutilated (*The Law on Denationalisation*, 1991).

***The Slovenian Compensation Fund***, founded on the basis of a special law, shall acquire 10 % of the value of an individual company in shares or

purchase price. Besides, the compensation fund acquires sources for covering its obligations in the following two ways:

- out of the part of the purchase price of sold socially-owned apartments or houses and from entire purchase price of the sold nationalised apartments;
- from the Fund of Agrarian Land and Forests of RS.

The Fund was founded by the Republic of Slovenia who established this financial organization for the settlement of the liabilities to the claimants. This activity is executed by the Fund by issuing bonds and other securities.

Business profit, created by the Slovenian Compensation Fund, is put in its reserves. Eventually loss is covered from the reserves (The Law on Transformation of Company Ownership, 1992).

Slovenian claimants to denationalised property have filed *over 1,500 claims for the return of enterprises or capital*, while the number of *claims filed for the return of nationalised property runs into tens of thousands*. Since the process of returning enterprises into private hands is very complex, competent agencies have so far *returned only 30 enterprises and 74 pieces of real estate to the rightful claimants* in their permanent ownership. Although the Law on Denationalisation favours the returning of the actual property, in most cases concerning enterprises this is not possible owing to the increased value of the enterprise. Therefore claimants to denationalised enterprises usually agree on the return of property in the form of property shares, and when this is impossible, claimants receive *compensation for*



*nationalised enterprises in the form of securities from the Compensation Fund* (Slovenian Business Report, 1995, no. 1, p. 21).

#### **2.4. Is the privatization of public property planned or already enacted?**

Slovenia started with the privatisation relatively late, which enables the economy to properly adjust to the new, changed, market conditions of the business. On the other hand this time lag affected the economic growth negatively (bias to disinvestment) and thus decreased the value of enterprises and eased the subsequent privatization.

The mass, decentralised and predominant nonpayable privatisation was started at the end of 1993, when all the greatest shocks had already been passed and enterprises should be already fairly adjusted to the new economic circumstances and first conditions for new economic growth had been established. Thus, Slovenian privatization represents only one of the necessary conditions for definite transition of the economy and creates additional conditions for functioning of the capital market (A Rop, *Economical Views of the Privatization: Possible Models of Privatization and Reasons for the Chosen Variant of the Ownership Transformation of Our Enterprises*, 1995, p. 3).

In the connection with the ownership transformation *the alternative organizational forms of the enterprises and companies should be described*. Actually there are two wider groups of companies: personal companies, in which the partners are responsible for the obligations with

their personal wealth (unlimited liability company, limited partnership and silent company) and capital companies, in which the wealth of the partners is separated from the assets of the company. The company itself as a legal entity is responsible for its obligations (stock corporation, limited partnership with a share capital, and limited liability company) (Official Gazette of the RS 1993, no. 30, The Law on Forms of Enterprise).

*Transformation of company ownership is performed:*

- by the ***transfer of shares to funds*** (10 % of the social capital to the Slovenian Pension and Disability Fund; 10 % of the social capital to the Compensation Fund; 20 % to the Mutual Fund for the purpose of further distribution to authorised investment companies. This form is obligatory for all companies, except those, which are transformed by the sale of company shares or the sale of all company assets;
- by the ***internal free distribution of shares*** (to employees via ownership certificates). This form is obligatory only in the case of the internal buy out scheme;
- by the sale of company shares on preferential terms to insiders (employees, former employees and retired workers) under a special internal buy out scheme (max. 40 %). More than one third of the company employees must take part in the ***internal purchase of shares***;
- by total or partial ***sale of company shares*** to domestic or foreign subjects on commercial terms through public offering of shares, public tender or public auction;

- by the ***sale of all company assets***, which were previously transferred to the Mutual Fund by a special contract;
- by the ***transfer of the remaining common and preferred stocks to the Fund*** (after the execution of transfer, distribution and sale) up to 60 % of socially-owned capital;
- by ***raising a new private equity*** on commercial terms and transferring the existing shares to various financial institutions. Transformation of company through increased ownership capital is always combined with other transformation forms. (The Law on Transformation of Company Ownership, 1992).

The law is very flexible and allows modifications of the basic scheme and various combinations of methods.

*The role of the funds by the ownership transformation:*

***The Development Fund of the Republic of Slovenia*** is a financial organization which manages and disposes of shares and other securities which it acquires in the processes of transformation and in compliance with the law. In each case the fund may demand an audit of the business cooperation of an enterprise. The liquid assets and revenue from securities which the Fund acquires in the processes of transformation and privatization are used in compliance with the special laws for the restructuring of banks and the economy, for stimulating and crediting exports, for technological development projects and ecological investments, for the development of

small business, as well as for investments in the public sector of the company.

A special council composed of nine members is founded in the Fund whose task is to appoint representatives of the Fund in the bodies of executive boards of companies. Five members are appointed by the Assembly of the Republic of Slovenia, one by the Chamber of Economy of Slovenia, two by the unions and one by the Fund.

In the internal repurchase of shares the company shall first transfer shares to the funds (10 % to the Pension Fund, 10 % to the Compensation Fund, 20 % to the Fund for the purpose of further distribution to authorized investment companies). The social capital company, which is anticipated in the internal repurchase programme, shall transfer ordinary shares to the Fund. The company must immediately purchase 20 % of the remaining shares from the Fund. The value of the shares in the internal repurchase programme shall be determined on the basis of the opening balance sheet or according to the assessed value, whereby 50 % discount shall be allowed for during repurchase. In the following four years the company must annually repurchase at least one quarter of the shares from the Fund. The shares shall be purchased by the company to the benefit of the employees from the part of the profit which belongs to the employees from wages and other assets of the employees that they have invested in the company. The Fund shall reduce the price of the shares which the company repurchases for that year according to the repurchase programme by the value of profit belonging to the Fund over and above 2 % of the value of the dividends.

The remaining, undistributed shares up to 20 % of the value of the socially-owned capital may be transferred to authorised investment companies.

***Capital Fund for Pension and Disability Insurance***, established by a special law, shall acquire 10 % of the value of an individual company in shares or purchase price (The Law on Transformation of Company Ownership, 1992).

Functioning of the ***Slovenian Compensation Fund*** is described in chapter 2.3.

*The main characteristics of the approved projects two years after the adoption of the Law on Ownership Transformation of Enterprises:*

- there are 2.157<sup>8</sup> enterprises with socially-owned capital in Slovenia which are to be privatised in total value of SIT 817.141 billion (DM 13.361 billion, at the exchange rate of 1st, January 1993). This presents 96,1 % of all nominated capital, controlled by socially-owned enterprises, the remaining amount is divided among the share capital, permanent deposits and capital controlled by individual owners (Delo, 24.1.1995);

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<sup>8</sup> There are 1,345 enterprises in Slovenia which are to be privatised. But since these enterprises are in control of another 812 subsidiaries, there are actually 2,157 enterprises intended for privatization.

- almost all the enterprises, which are to be privatised under the privatisation act have submitted their programmes to the Privatisation Agency. By 20. March 1995 the Privatisation Agency approved 596 programmes for privatisation, and 748 programmes are already in the process at the Agency, which means that over a billion of German marks of the socially-owned capital has been privatised. (Rop A., Report on the Situation of the Companies Ownership Transformation, March 1995);
- the prevailing scheme of privatisation was as follows: transfer of ordinary shares to the funds (app. 40 %), internal distribution and buy out (app. 20 %) and public sale (app. 20 %). Internal owners dominate from the point of view of the number of companies (these are primarily small and middle-sized enterprises), but not from the point of view of the capital value (A Rop, Economical Views of the Privatization: Possible Models of Privatization and Reasons for the Chosen Variant of the Ownership Transformation of Our Enterprises, 1995, p. 25);
- only a negligible part of applications also foresee the use of fresh equity capital;
- only 124 projects include the public sales of the company shares. By the middle of March 1995, 23 public sales had been concluded. The average share of the socially-owned capital, which was destined for the public sale by the enterprises with the approved programmes, was 40 % (Rop A., Report on the Situation of the Companies Ownership Transformation, March 1995);

- in the year of 1994 more than half of the value of all issued ownership certificates was used (the number of transactions exceeded 1,8 million) (A Rop, Economical Views of the Privatization, 1995). The deadline for investing certificates was extended till the end of 1995;
- certificates have been used direct via privatisation in companies and also via privatisation funds. In the year of 1994, 23 management companies with 40 privatisation funds were established. The four greatest management companies ( in the property of the banks and insurance companies) succeeded to collect 54 % of all ownership certificates. In the middle of January 1995 the majority of the authorised investment companies finished the collection of ownership certificates (A Rop, Economical Views of the Privatization, 1995);
- on 7 December 1994 the Ljubljana Stock Exchange witnessed the first public sale of 20 % share packages transferred by enterprises to the Development Fund for their further sale to the investment companies

### **Criterion 3: Guarantee of Competition**

#### **3.1. Do general market entry barriers for foreign competitors exist ?**

##### *Legislation framework*

According to the Law of Competition Protection, a foreign competitor cannot export goods to Slovenia at a price lower than the normal value. This action is considered as a ***dumping import***. It is also not possible to export

goods, into which production has been invested by the importing state authorities, to Slovenia. In this case the import is said to be *subventioned*. Government can introduce antidumping taxes and compensatory duties in the case of dumping or subventioned import, when it causes significant damage, threatens or obstructs the development of domestic production of this kind of goods. These taxes and duties must not be higher than the rate of the dumping or subvention and last only as long as necessary for the neutralization of the action (Official Gazette of the RS, 1993, no. 18).

*In some economic areas firms in absolute foreign ownership are forbidden* because of the protection of national interests. These are railways and air traffic, production of armament, telecommunications, insurance (max. 49 %), editing and means of public informing, revision, (max. 49 %), exchange intermediary houses and companies for administration (max. 20 %) (Official Gazette of SFRY, 1988, no. 77). Mixed insurance companies should not offer life insurance, reinsurance and insurance of companies which produce and trade armament means and armament. Before the registration of the insurance company in the judicial register it is necessary to gain concession from the Ministry of Finance.<sup>9</sup>

*Foreign banks* do not have national treatment in the phase of foundation. For their foundation it is necessary to gain the approval of the Bank of Slovenia. The same applies to agencies. On the other hand, branches of foreign banks need concession from Bank of Slovenia (Paper of Ministry of Economic Relations And Development, p. 9).

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<sup>9</sup> More about foreign investments in Slovenia is described in chapter 6.4. Also the new Law of foreign investments is been prepared.



### *De facto protection of domestic economy*

The state attempts to accelerate the competition by helping weak and underdeveloped firms (industries) and by obstructing too many monopoly formations (second and third question). Therefore it also allocates money from the budget for the development of small businesses. *Direct budgetary subventions and interventions for development of small businesses* accounted for 0.03 % of GDP in 1991 (Estimation of Economic and Social Development in Slovenia in Years 1991 and 1992, p. 14).

After the independence *subventions and other transfers in the economy* went down from 2,9 % of GDP in 1991 to 1,9 % of GDP in 1994. If we considering their distribution by purpose, the greatest relative share of GDP belongs to the agriculture (0,4 %), followed by the railways (0,3 %), reserves of goods and interventions, reconstructing of industry and technological development, respectively with 0,1 % and other transfers in the economy (expenses which are predominantly covered by the Ministry of Economic Affairs, Ministry of Economic Relations And Development and Ministry of Labour, Family And Social Affairs) represent the last 1 %. In the last year it was ascertained that the share of all state interventions was cut to 17,5 % (Marko Jazbec: Subventions in Slovenian Economy - IB Journal, 28 (1994) 10-11).

*State interventions to the recast manufacturing* in the form of fiscal expenses on public consumption (which were accounted for to approximately 7 % of GDP), tax helps, state guarantees etc. are quite high.

With the amount of ECU 2.266 per worker Slovenia was among the top ten states in Europe last year.<sup>10</sup>

In 1992 the government experts took care of some other forms of help or state interventions to the firms, which could be called *latent subventions*. We talk about nonpaid taxes and social contributions, nonpaid bank loans and nonpaid electricity, for what the firms got 2,7 % of GDP in the form of latent subventions (Gospodarski vestnik, 1995, no. 5, pp. 8-9).

The Office for the Protection of the Competition, which was established at the end of the last year and still works within the Ministry of Economic Relations And Development, can carry out all the investigations about dumping, prepares the proposals of measures for the Government and takes account of their execution. So far the office has dealt with the import of tractors, chips and paper and ended all the procedures by finding out that these imports were not dumped. When constructional works were supplied by Italians on the section of the motorway Arja vas-Vransko an incorrect explanation of dumping procedures was noticed. Inflicted firms tried to prove that Italian executors got the works on the basis of dumping prices. This is of course impossible as we can eventually talk about dumping later, when the material is purchased. It is possible to define dumping only by goods, but not by services (Slovenec, 15.12.1995, p. 5).

### **3.2. Is there any institutionalised control of cartels or abuse of economic power?**

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<sup>10</sup> State guarantees represent the greatest part of this amount.

### *Legislation framework*

The law of protection of competition divides monopoly activities into three main groups: monopoly agreements (cartel agreements are included), abuse of existing monopolies and monopolistic unions of firms. The law explains predominant state (economic power, *monopoly*) of the firm as the state, when the firm respecting specified good or service has no competitors, has only a few competitors or has a fairly better state from competitors with respect to the trade share, possibilities of financing, buying and selling or because of industry entry barriers. A firm is in the predominant state when its share of selling or buying goods/services in the Slovenian market exceeds 40 %. Two or more firms have such a state if there is no significant competition between them and their total share of selling or buying in Slovenia does not exceed 60 % (The Law on Protection of Competition, Official Gazette of the RS 1993, no. 18).

In fact, the law here gives a double definition of monopoly which results in ambiguity in the comprehension of the laws. Is the firm, which fulfils the terms determined in the first definition and has the selling share smaller than 40 %, monopolist or not? Such debatable cases show us the weaknesses and allow a double interpretation of the laws.

With regard to the small Slovenian market, it is sometimes difficult to ensure sufficient demand to enable competition in all industries. Such a state can in

part be mitigated through greater imports,<sup>11</sup> but the results are not immediate. Therefore, the Slovenian Government decided to impose less rigorous legislation of monopolies and to allow the exploration of the mass production advantages in some industries while in the opposite case there is a more expensive production. The legislation itself does not punished the monopoly as such, only its abuse is punishable. Penalties for offenders (legal and responsible physical persons) are only monetary, quite high and without an upper limit. The smallest amount possible for the legal persons is 3 million tolar, for individual responsible persons 250,000 tolar and for an individual entrepreneur 1 million tolar (Slovenec, 15.12.1994, p. 5). Because of all adaptations needed the law has numerous exceptions. However, we are of the opinion that it satisfactorily covers all the fields of monopoly activities.

***Cartel agreements*** covering the terms of business in the market with the aim of limitation of competition among the agreement participants are prohibited and have no legal consequences. Primarily this means the market share, determination of prices or some price elements, limitation of production size, selling or buying and limitation of research, development and innovative activities or exploration of their achievements.

The second prohibited form of the monopoly function is ***the abuse of the predominant state*** of the firm with actions which cause damage to other firms or consumers and could not exist if there was competition. These are selling and buying at the disproportionately high/low prices, the request for

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<sup>11</sup> More about liberalization of import is described in chapter 6.1.

unusual payments and other benefits, the discrimination between buyers and sellers, the forcing of firms to accept agreements, cause harmful actions or to become members of unions, important reductions in the possibilities for buying/selling to other firms (boycott of the firm) and the nonmerit refusal of membership in an economic or expert union.

*The office for protection of competition* certifies the existence of cartel agreements and other prohibited actions or decisions. It starts an inquiry on its own initiative or on the initiative of the interested firm. If the office certifies that the agreement is not in accordance with the law, it makes the decision to abolish or prohibit it. The firm and the responsible person is punished by a monetary penalty for the economic infringement. The above mentioned office has an expert council which gives opinions, proposals and discusses general questions in this field. The office has also some other tasks i.e. accepting and discussing applications for the agreements, certifying the predominant state of the firm or its abuse, accepting notices of mergers, keeping in touch with the newest market data (its structure and functioning), discussing general questions, regarding legal competition and nonpermissible speculations, giving law proposals and performing other expert tasks.

Besides the inspection of the office for protection of competition, the execution of the law regulations is inspected by *the bodies of the market inspection*. These have also the authority to inform the office, to warn on the limited nature of the accepted acts and actions, to temporarily prohibit some actions, to inset the denunciation to the competent public prosecutor or recommend commencement of the administration dispute and other

measures (executive function) (The Law on Protection of Competition, Official Gazette of the RS 1993, no. 18).

*Findings of the office for protection of competition by its functioning:*

- office for the protection of competition certifies cartel negotiations in the banking market (Finance, 13.1.1995);
- in 1994 the office discussed five cases of abuse of the predominant state (monopoly), which was often indicated by arbitrarily formed and disproportionately high prices;
- attempt by a bank union to define the upper passive interest rate can also be called a cartel agreement, except if it is lower and helps to lower the active interest rate (Slovenec, 15.12.1994, p. 5);
- The Celje Exhibition probably abused its monopoly state by charging twice the expenses of specific services to some exhibitors and outfitters;
- the office also certified some state measures or measures of firms with the public authorities which could be considered as the abuse of the monopoly power. The decision of the execution council of Nova Gorica to prohibit the opening of the branches of firms from Ljubljana in its area was cancelled (Finance, 19.10.1994, no. 78, p. 2);
- two years ago the office dealt primarily with speculations, last year with the question of illegal competition, this year more cases of abuse of the predominant state, inadmissible cartel agreements, dumping import and

other classical actions to limit the competition are predicted (Slovenec, 15.12.1994, p. 5).

### **3.3. Have state-owned monopolies been privatised, busted?**

The legal basis for the regulation of public-service industries is the *Law on economic public services*. This law assures more executing forms of economic public services: administrative workshop (state monopoly workshop) (at a normal size of production), public economic institutes (monopoly nonprofit activities), giving of concessions to private owners and depositing public capital into private firms (The Law on Economic Public Services, Official Gazette of the RS, 1993, no. 32).

*Right in the sector of public services (infrastructural activities) few monopoly forms are also presented:* electricity production sector, oil, earth gas, water-industry, telecommunications (PTT), railway and air traffic and communal services. However, monopolies do not exist in other activities. With regard to the above-mentioned activities, they have a broad social sense and state control is necessary. Some economic regulating measures have been adopted in the last ten years, but as yet no one has operated efficiently and rationally, because all the necessary legislation has not yet been accepted. The use of state or public ownership is the most common regulatory method of the monopoly firms. However, some of them have been privatized, e.g. Petrol (Slovenian Oil Company) and part of the PTT (telecommunications), while the other part (Postoffice) has still remains as a nonprofit activity in the public ownership. For most other activities (railways, communal services, electricity production sector) there are little privatization possibilities because of the price policy, which does not allow

prices that would cover operational costs. Such a natural-monopoly character exempt state property (Strategy of The Economic Development in Slovenia: Working Conference, Institute of RS for Macroeconomic Analysis, February 1994). The railways have been rehabilitated and reorganized into two separate subsystems for railway infrastructure and for traffic services. At present the Government is the only shareholder of the Slovenian Railways (Official Gazette of the RS, 1993, no. 71). RTV Slovenia (Radio and Television of Slovenia - public institute in the state property) no longer has a monopoly state in this area because it must offer at least 20 % of programme time by public invitation to other private organizations and producers if they fulfil programme and technical terms. Beside that there are two state TV programmes, three private programmes, while in the radio area the net is fairly more ramified (The Proposal for the Issue of the Law on RTV of Slovenia, The Reporter of the State Assembly, 28.6.1993, no. 17).

#### **Criterion 4: Liberty of the Markets**

##### **4.1. To which extent does free price formation on goods and factor markets exist ?**

Since the middle of 1991 Slovenia has had a system of predominantly *free prices*. The Law on prices enables companies and other juridical persons to create their prices freely according to market circumstances. Only *companies dealing with energy and transport activities have to obtain the government's consent* if they want to change their prices. It is considered that these activities cannot create their prices independently (i.e. monopoly



tendencies are suspected and on the other hand the government is given the possibility to suppress prices in these activities for other purposes).

Three kinds of price determination by the government are foreseen: the highest (*maximum*) *prices*, the means of *price determination* and the *acquisition of consent*. Besides that the government stipulates the agricultural products for which protective prices will be prescribed. The purpose of *protective agricultural prices* is some protection of agricultural production if the level of domestic purchasing prices is lower than the level of protective prices. The system includes some basic agricultural products (wheat, maize, oil plants, sugar-beet, cattle, milk). So far the control of prices has been carried out in the field of energy, transport and communication activities (governmental consent) and for the above mentioned agricultural products.

Until now there has been no need to maximize prices in other areas. The law stipulates such possibility only in the case of *extraordinary market situation* (when the disturbances on the market could not be prevented by other more indirect measures or in the case of monopoly situations). In such circumstances the government has to take into account the level of the determined prices, e.g. the prices determined (maximized) by government should be higher than the production costs - if not, the government should reimburse the producers inflicted (Lapornik M.: Approaches to Industrial and Enterprise Restructuring Comparative Country Study-Slovenia, Institute for Economic Research, 1995, p. 17)

Macroeconomic stabilization was the main objective after Slovenian independence. From October 1991 (monetary independence) monthly

inflation rate went down from 21,5 % to 1,4 % (August 1994), in December 1993 it achieved 1,9 % rate (Zizmond Egon: Price Levels in Slovenia, March 1994, p. 7).

The Government affects market prices by monetary, wages and fiscal policy.

In comparison with 1990, average nominal *wages* in 1991 in Slovenia increased by 82.5 % and cost of living by 115,0 %, so that real wages dropped. After monetary independence real wages decreased until February 1992, after which they began to rise. Until December 1993 average nominal wages in Slovenia increased by 386,1 % and cost of living by 296,1 %, so that real wages increased by 22,7 %. Average nominal wages in Slovenia increased much faster than labour productivity. The main reasons for excessive growth of wages were unsolved problems in collective bargaining, which were the consequence of the old income system under self-management and inappropriate wage setting in the past. In 1993 relative purchasing power of Slovenian wages increased because relative wages increased faster than relative retail prices. The years before wages increased sharply. While wages policy has never been considered effective by itself in restraining demand, a well designed stabilisation programme should include some anchor for wage increases. More must be done to form a stable social pact involving labour unions and, the business sector as well as the government.

The consensus about the wage policy in economy and the supplement about tariffs to general collective contract for economy in 1994 should ensure gradual adjustment of real- wage level to target macroeconomic ratios.

From October 1991 to December 1993 *monetary policy* was quite restrictive. Real money decreased by 5.2 % in this period and had the greatest influence on lowering the inflation rate. In the second half of 1992 conditions on the foreign exchange market stabilized, while on the other hand the Central Bank's room for manoeuvring became much narrower. During this period, the Bank of Slovenia increased its latitude through stabilization, effected with the sale of the new twin bill, and through the use of some other instruments. In the third and fourth quarters of 1992 an additional demand for foreign exchange was again financed by households.

The problem in this period was shown essentially in the field of domestic cost pressures. The real effective exchange rate, adjusted for inflation with relative wages, demonstrates appreciation until February 1993, as in 1992 the growth in average wages exceeded the growth in prices. Quite the opposite is applies for the real effective exchange rate, adjusted for relative inflation, which shows depreciation after July, 1992.

*Fiscal policy* supported stabilization only in achieving surplus in the public sector, while public sector revenues and expenditure rose in real terms. From 1991 to 1993 both public sector revenues and expenditure increased more (by 341,8 % and 365,5 % resp.) than retail prices (298,6 %) so that they rose in real terms (10,8 % and 16,8 % resp.). The main reasons for real increase in revenues were wage rises, a higher contribution rate for health care (1992) and lower inflation rates. Real increase in expenditure was mostly due to the wage rise and social transfers. The shares of public sector revenues and expenditure in GDP rose and in 1993 reached almost 50 %.

In order to maintain the achieved competitiveness, the principal objective for macroeconomic management in 1994 remained controlling inflation. Inflation is still running at 1 % per month and the danger of sudden rises in inflation and instability is still present. Macroeconomic stabilisation in Slovenia is implemented only through restrictive monetary policy and a floating exchange rate (Zizmond Egon: Price Levels in Slovenia, March 1994).

#### 4.2. Do market entry barriers exist ?

##### a. *On markets for goods and services*

Slovenia stimulates entrepreneurship and educational programmes, gives institutional support and in generally encourages activities leading to market economy. Consequently a ***high rate of the market entrance*** is being observed. Enterprises, which entered the market soon after independence, were raised by self-employment, by reconstruction of workshops to enterprises and by reconstruction of large and medium-sized enterprises. Primarily the firms enter the area of small-scale economy, where the rate of the competition is low and high entry barriers do not exist. However, today we ascertain that most of them fail because they are not able to survive the increasingly strong competition struggle.

Because of the small domestic market ***mass production*** represents a barrier and in some industries it is not possible. Therefore, market entrance in these cases is fairly difficult. The ***financial resources for advertising*** represent the second barrier. Advertising became almost necessary for distinguishing among the numerous new products on the market. The next barrier is

*expensive capital* which is so needful for the entering firm. Therefore, more new firms are in activities where large initial capital is not needed (services, trade and tourism). *State barriers* include decisions about taxation, rules and movements of exchange rates against the foreign currencies. The state tries to influence the economic growth by subventioning interest rates, state guarantees, orders and state policy. Increasing competition with its continuing new requirements for the market entry is the factor which impedes the new firms (Gospodarski vestnik, 1992, no. 9 and Gospodarski vestnik, 1993, no. 3) .

*Companies are established on the basis of an agreement (act)*, except where the founder of a company is a single legal or physical entity, in which case an act of establishment must be drawn up. The inscription of the agreement of establishment in the court registration is the prerequisite for acquiring legal and business capacity. There are some essential elements which must be included in the agreements for all types of companies (Legal Affairs Department: Legal Requirements for the Establishment of Enterprises: Slovenian Business Report, 1992, no. 7, pp. 18-19).

*The inscription of the company in the court register* is performed on the basis of an application. The court does not judge the economic reasons for the founding of a company. It only requires certain documentation as evidence that certain legally prescribed acts have been performed (in the stock corporation establishment procedure, for example, they include: the conclusion of the agreement of establishment, the payment of the principal, the convening of the founding assembly, the adoption of the statute or rules, the election of the executive body, etc.)

b. *On factor markets*

**- Capital market**

A few years ago radical changes took place in the legal and political frameworks of the Slovenian state. A range of laws designed to provide for the financial and economic re-structuring of the economy were passed. As a result, the raising of funds for long-term investment funding and business operation through the issue of securities has now become possible. The absence of the capital market over the past 50 years has produced certain effects that must be given attention when engaging in activities in this field. These are, above all, the common ignorance of and mistrust in the long-term forms of mobilization of capital. This general climate is now changing almost daily and great progress has already been made, but it is still too early to speak of a completely normal situation in the capital market. Given that a certain form of a market has nevertheless been present and that the Slovenian economy has been largely export-oriented, our investors and the management in enterprises prove both to have some knowledge of and to be susceptible to new financial instruments.

Last year, trading in securities stabilised at the *Ljubljana Stock Exchange*. It has now overcome most of the "teething troubles" characteristic of young and fast-growing stock exchanges in 1992 and 1993. Daily trading in shares and bonds stayed put at about DM 5 million. The ratio of shares to bond sold on the stock market continued to increase last year. Government bonds are the mainstay of the bond market, while the number of shares is increasing. Shares from the privatization process have yet to be listed, which means that most of the shares are from additional capital raised by banks

and companies. Last year's "novelty" at the Ljubljana Stock Exchange was the *Bank of Slovenia's strong influence* on trading in securities. In past years, their financial policies had little effect on stock market rates, in stark contrast to 1994 when stock market analysts anxiously waited for information on financial policies, primarily concerning Bank of Slovenia treasury bills. It does not therefore come as a surprise that the main trends in stock market rates were the result of central bank policy. The *privatization processes* in Slovenia *have been too slow to affect* the Ljubljana Stock Exchange. But we can expect the coming year to be different, considering that the first company shares ensuing from privatization will be listed in the second half of the year. Trading will begin with shares of the funds collecting ownership certificates.

*An issuer of securities who wishes to gain a listing on the Ljubljana Stock Exchange must fulfil the following requirements:*

- for A class, four year of business ( two years for B class);
- audited account statements;
- capital of at least SIT 1.2 billion ( SIT 600 million for B class);
- for A class, banks must gain approval from the Bank of Slovenia for all operations at home and abroad;
- the minimum total value of A class shares is SIT 400 million (SIT 200 million for B class);
- the public allocation of shares for A class must be at least 25 % or 100 million tolar (10 % or SIT 20 million for B class);
- the minimum number of shareholders is 300 (150 for B class);

- similar requirements apply for bonds, providing that the total nominal value of bonds for listing A is SIT 600 million and for listing B, SIT 300 million;
- requirements for government bonds are slightly different than for other bonds (Slovenian Business Report, No. 1, 1995, p. 33).

***Membership in the stock market*** is open to both public-sector and private-sector enterprises, provided they are from Slovenia. There are still certain limitations concerning the participation of foreign broker firms in stock market trade. A foreign broker can only become a member of the domestic stock market only through the foundation of his own firm in Slovenia. Similarly, securities issued by foreigners are not admitted to the market, except those issued by joint venture firms. However, these limitations are to be removed with the anticipated change in the legislation. As for the purchase of securities traded on the market, they can be bought by domestic and foreign investors alike.

***Investments by foreign persons*** are not subject to any special legal limitations (barring investments in the purchase of immovables). Re-investment of profits from direct investments are not liable to taxation. The repatriation of profits, interest and invested capital is guaranteed by law. Minor limitations still exist in the repatriation of foreign and domestic securities where a special permit is required from the Bank of Slovenia. Domestic and foreign investors are both exempt from payment of capital gains tax. The real development of capital market will start when the privatization process comes into full swing and the shares of the majority of big Slovenian enterprises appear on the market.



Slovenia ranks among those East European countries which have the best conditions for the development of capital markets (infrastructure, market mentality, etc.). The only major obstacle to the development of a financial market is the size of the country, but that obstacle can easily be removed by adopting the policy of openness to other states (Bank Association of Slovenia: Banking in Slovenia-Special Supplement: Slovenian Business Report, 1992, no. 2).

One of the first steps after monetary independence (1991) was *the deregulation of the foreign currency market*. Every Slovenian citizen could buy foreign currency in banks and exchange offices and so haggling on the black market was no longer necessary. The new monetary authorities also changed the official rate of the domestic currency. The principle of the Bank of Slovenia is that the value of the tolar compared to that of the German mark decreases in a controlled way. *The devaluation* was above all an act of adapting to conditions on the market. Monetary policy was quite restrictive after the act of independence and remains so even now. *The galloping inflation was reduced* to a tolerable level relatively quickly. But the growth of prices is still faster than the decrease of the domestic currency, which is not favourable for exporters. The result is a symptomatic conflict between export-oriented companies and the Central Bank (Slovenian Business Report, no. 1, 1995, p. 24).

The Bank of Slovenia can change *the height of the obligatory reserves* and thus impact the ability of commercial banks in offering credits. This instrument is used very rarely, because it is rough and has a great impact. *The changing of the interest rates* (which the Bank of Slovenia pays on deposits or charges on the confirmed credits) has an even greater impact on

amount of money in the circulation. The decrease of the interest rates of BS for the acquired credits accelerates the indebtedness of commercial banks, on the other hand the increase stops it. The decrease of the interest rates of BS leads to the excess reserves of commercial banks, which therefore can confirm new credits, of course at lower interest rates. Thus, the usual consequence of the interest rate's changes of BS is the changing of the interest rates, which are paid by the economy and residents for the credits hired at commercial banks. These interest rates are followed by all other interest rates.

#### **- Labour market**

*Principally in our labour market no entry barriers exist, except some common legislation requirements.* A person, who wants to conclude a working relation should fulfil the general conditions (the age at least 15 years, medical condition without particularities) and special conditions (education, skills, etc.). Employed women have special rights in the time of pregnancy, after childbirth and for the care of maternity (The Law on Employment Relations, 1990). A high share of employed women is typical of Slovenia. The feminization is particularly typical of the social activities. Unfortunately, in reality the apprehension of woman's kinds of works and woman's professions exists also in Slovenia. Many employers look at the woman's labour as inconstant, insecure and expensive. Because of that it can be stated that the *deprivileged status of woman's labour exists*.

*The legislation framework:*

*The Law on Employment Relations*, accepted in March 1990, regulates working relations and other rights, obligations and responsibilities of employees and employers. The law provides the conclusion of *collective contracts* on the republican level, on the level of different fields of production and on the level of particular companies. On the republican level, there are two general collective contracts: one for production and another for services. The Chamber of Economy acts on behalf of the employer in commercial activities, while in noncommercial activities this role is assumed by the Government. In collective contracts, jobs are classified into 7-9 tariff levels, from the simplest to the most difficult. The main criterion is training and education required for carrying out a particular job. Salaries are decreed more or less according to the level of education. Separate criteria for workers and appointed employees, as is the custom in some western countries, do not exist. However, collective contracts do not apply to managers and the company leadership. These conclude individual contracts with their employers (board of directors). The interests of workers are represented by trade unions, organised by different fields of production or professions, and linked into associations and confederations. (*The Law on Employment Relations, 1990*).

### *De facto situation*

In 1990 the general collective contract for the economy was accepted, besides there are also twenty branch collective contracts and many nonobligatorial entrepreneurial collective contracts. Such a system of collective bargaining has only a transitional character, because negotiations concerning its adoption to the requirements of the modern market economy are already in process. Thus, in February 1994 the Association of The

Employers in Slovenia was established, which represents enterprises and companies and protects their interests. However, new unions are constantly organized on the side of employees. The existing system is disputable because of the signatories from the part of employers (the managers of the firms, who are not the owners of the capital) and therefore conditions for changing collective bargaining system were created with the ownership transformation and the formation of new institutional partners. Last year the social partners signed the Tariff Enclosure for The Year 1994 to the General Collective Contract for Production, which regulates the starting wage. They also signed The Agreement about The Wage Policy in Production for The Year 1994, as a separate of Social Agreement. The Social Agreement was signed in this year (Official Gazette of the RS, 1994, no. 23).

At the beginning of 1995 the employers, the Government and unions accepted the *social agreement* (social security of employees, wage policy, price policy, constancy of the co-operation, etc.) to evade social troubles and to reach the reciprocal partnership. The agreement was accepted so late primarily because of the non-co-ordinated role of the unions, risen by their reorganisation and because of the lack of the Government's initiative. Fast reorganisation of unions was due to the redundant workers, limitations on decision-making, wild privatization and pressures on wages (Gospodarski vestnik, 1994, no. 46, pp. 14-15).

Slovenia develops *active employment policy* by which it regulates the labour market operations. In the supply side, these are primarily educational programmes and programmes for stimulating spatial mobility. However, in the demand side there are programmes for maintaining existing employments, subventioning of new employments and public works. Thus,

the state partly undergoes the burden of abolishment of the unemployment from the socialistic period of full employment.

The problem of redundant workers is being resolved by retirements, shrinkage of new employments, increasing the number of temporary employments, bankruptcy, self-employment, etc. (Milič Hribar Samo: Code: Employment, Perspectives, Opportunities, Risk: The Measures of the Active Employment Policy. 1992, pp. 69-88).

The possibilities of new employment for foreign workers were reduced by the acceptance of The Law on Employment of The Foreigners. *The issuing of the work permits for the foreigners* is based on the fact, that there are no Slovenian searchers who would fulfil general and special conditions and would be prepared to accept the offered employment in the foreseen area. This article enables employers to get the work permits for a foreigner by reciting varied special conditions, connected with the working post. This is also possible when there are appropriate Slovenian searchers in the files of The Institute for Employment, but they are not prepared to accept the work because of the exceedingly bad working conditions and low wages. In the last year The Institute for Employment issued 35.365 work permits. Fairly voluble data confirming the above-mentioned estimates reveal that 60 % of all work permits were issued to non-skilled and semiskilled workers. However, only 6 % of all work permits were issued to workers with the superior and the university education (Finance, 1995, no. 14, p. 2). On the request of the employers, 28.522 work permits were issued (Gospodarski vestnik, 1995, no. 8, p. 25).

**4.3. Are there any barriers for market exit? Do bankruptcy proceedings exist ?**

*Legislation framework:*

***The Law on Forced Settlements, Bankruptcy, and Liquidation*** is in effect from the beginning of 1994. This law defines the conditions for execution of forced settlement or bankruptcy proceedings over the debtors, defined by this law (debtor). The purpose of the law is also termination of the debtor's insolvency in a manner of forced settlement or financial reorganization, and paying off the creditors. The bankruptcy proceedings shall be performed over the debtor who is insolvent or overindebted for a longer period, and in other cases defined by this law. The bankruptcy proceedings may be instituted by creditors, the debtor, or a personally liable member of the company. The insolvent or over-indebted debtor is permitted to propose forced settlement to the creditor, prior to the beginning of bankruptcy proceedings or in the course of it. The bankruptcy proceedings are rapid and shall be conducted by the court, which has the subject matter jurisdiction and on which territory the debtor has its panel consisting of 3 judges, while the forced settlement proceeding shall be conducted by a settlement. When the settlement senate establishes that the conditions for institution of the forced settlement proceedings are fulfilled, it is permitted to appoint a forced settlement administrator. In order to protect the interests of the creditors within the forced settlement proceedings, the settlement senate shall nominate a Board of Creditors. The debtor may produce a plan for financial

reorganisation<sup>12</sup> with a motion at the beginning of the forced settlement procedure, but he must submit it within two months from filing the motion. With a plan for financing the debtor submits the forced settlement by: classifying the claims in categories considering legal and business title and other indicators of homogeneity; stating which categories of claims the creditors' position will not change even after confirmation of the plan for financial reorganization; stating suggested payments of decreased claims and terms for payments for each category of the claims except the claim referred to in the proceeding item; providing equal proportional decrease of claims or extending the term for payment for all claims of one category, unless the claimant within one category explicitly agrees in writing on less favourable conditions for repayment of that claim. The law provides shortened liquidation proceeding in the case of the worthless registration in juridical register (Official Gazette of the RS , 1993, No. 67, pp. 3281-3298).

### *De facto situation coherent the bankruptcies*

#### *Period from 1989 to the middle of 1991*

Before 1989 there were practically no bankruptcies in Slovenia. However, after the acceptance of The Law on The Enterprises in December 1988 they became a problem which was difficult to control and which threatened the economy. The bankruptcy itself is socially undesirable because it causes

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<sup>12</sup> The method of financial reorganization includes any business financial method or combination of those methods that shall ensure the debtor's solvency. The creditor explains the methods of financial reorganization particularly when he evaluates and explains the measures necessary for acquiring liquid assets, increasing the capital stock, economization of the production or operation and the modes with which the company will produce income.

damage especially when there is no rearrangement of the economic factors from less into more productive purposes, but for the cessation of the subject's business and destruction of the productive factors. Every bankruptcy causes damage and has its victims. The bankruptcy procedure has three possible conclusions: compulsory settlement, sale of all means of the company, sale of the company as a legal entity. In the period from 1989 to the middle of 1991 12 % of all enterprises were sold, out of which 24 % were sold at the value lower than the estimated are. For about 64 % of the enterprises it is not clear at what relative price they were sold. In the same period 1867 bankruptcies and 56 liquidations were carried out (81 % of socially-owned enterprises). SDK (Social Accountancy Service) was the most usual sponsor. It is a shocking to find out that in many cases the bankruptcy was executed despite very small liabilities and a great part of liquidations was carried out without any good reasons.

***The reasons for bankruptcy of enterprises in Slovenia:***

- the measures of the macroeconomic policy and the circumstances in the environment (the recession of the economy);
- the business and the characteristics of a firm and its management (the shorter business time, the size of the firm, command over the expenses and incomes);
- deviated treatment of the firms and the employees (deceits, economic criminal).



In connection with the bankruptcies there are also *other appearances*: representation of unreal business information, spending more than they earn, the deceptions, managing of the business via private enterprises, the improvident conclusions of contracts, the intentional alienation of the means, the bankruptcy due to privatization, bankruptcy with the purpose of making damage to the creditors, etc.. About 60 % of reasons leading to bankruptcy can be explained by the factors including the elements of privatization (Gospodarski vestnik, 1993, no. 39, p. 42).

*Period from the middle of 1991 to July 1993*

*From the middle of 1991 to July 1993* the Law on Bankruptcy from former Yugoslavia was in force in Slovenia. Thus, no bankruptcies were carried out because of *moratorium on such procedures* ( due to gaining of independence, tremendous losses of markets). A new Law on Bankruptcy has been in force since beginning of 1994.

In *comparison with the former law the new one* has several essential differences. The proposal for bankruptcy or liquidation procedure is submitted by creditors and/or owners (and not by a special agency for the control of payments and taxes - Social Accountancy Service, the SDK - which was the case before). Besides that, the most conspicuous difference is the regulation of compulsory settlements. The compulsory settlement was foreseen by the old law, too. Its stipulations, however, were not satisfactory for the rehabilitation of insolvent enterprises. The purpose of compulsory settlement is the removal of insolvency or over-indebtedness and the repayment of creditors - but previously an insolvent company was allowed to continue to run its business, after settlement.

The enterprise has *payment difficulties* if the SDK (Social Accountancy Service) ascertains that its bank account has been blocked for more than five days. In December 1993 there were more than three thousand such enterprises with about 125.000 employees which means that almost one out of five employed persons in Slovenia worked in a company with a blocked account. At the beginning of 1994 the solvency of enterprises grew even worse.

One of the conditions that must be fulfilled for the *introduction of compulsory settlement* is that the *giro account of a company has been blocked for more than 90 days*. At the end of 1993 there were about 350 such companies (enterprises in private ownership are not included). If private enterprises are added, the conditions for bankruptcy procedure are fulfilled in almost one thousand companies (247 socially owned and 749 privately owned) with more than 32000 employees (only 1300 employed in private enterprises) in 1993. In two proceeding years (when such cases were not announced because of the moratorium) the number of such enterprises was 916 (1992) and 571 (1991) with 52.000 and 94.900 employees respectively (Lapornik Milan: Approaches to Industrial And Enterprise Restructuring Comparative Country Study - Slovenia, Institute for Economic Research, pp. 31-32).

### *Barriers for market exit*

*The death-rate of the newly established enterprises* in Slovenia is very low because 80 % of them survive the first five years (Gospodarski vestnik,

1993, no. 39, p. 13). However, since the competition increases slowly, the share of the collapsed firms would also increase is expected to.

*Large firms* are the only group of firms, the *number of which decreases*. In 1990 there were 617 large firms but in 1992 there were only 480 such firms (2,4 % of all firms). Despite the decrease in the absolute number, their significance for the economy is still great (in 1992 they employed 61,5 % of all employees-especially in mining and manufacturing). Because of their size and illogical composition, some of them fall down and others decentralise. *Unused machines, buildings and labour often form a base for establishment of new small enterprises within large firms (intrapreneuring)*. Mostly these are large firms, which have had support of the state for a long time and have dominated the market (Gospodarski vestnik, 1993, p. 30).

Reorganizations of social enterprises till July 1993 (96 of 150 bankruptcies) caused app. DM 26,5 million of direct expenses connected with liquidations (44 cases) and app. DM 34 million of direct expenses connected with bankruptcies. *All expenses of the 150 bankruptcies were estimated to almost DM 700 million*. The bankruptcy causes damage in the sense of *decreasing the size of production (cut in GDP), losses of taxes and higher expenses for financing the unemployment*. On the other hand, this is beneficial for the creditors (distribution of the assets among the creditors) and also in the sense of the insurance of the morale hazard and the removal of the inefficient management (Gospodarski vestnik, 1993, no. 39, p. 42).

## **Criterion 5: Macroeconomic Assignment of Economic Policy Tasks**

### **5.1. Which institution is responsible for**

- a. price level stability; is the Central Bank subject to government decisions?*

The Government of Slovenia, The Ministry of Economic Relations and Development and partly The Ministry of Economic Activities are responsible for price level stability and price policy. Retail prices increased by 18,3 % in 1994. Institute of Slovenia for Macroeconomic Analysis and Development estimated, that inflation without any direct state interference in price field was 13 % last year and without any indirect state interference (prices of alcohol and tobacco) 11,8 %. The prices of electricity and water, communal services, postal and telecommunications services and prices of fresh meat and sugar grew more than on average. In 1995 a lower inflation rate is expected because of the less intensive abolishment of price disproportions. The prices under the direct government control increased by 2 % in December 1994 - the total contribution of government control to inflation accounted for 0,5% in December 1994 (mostly the increase in postal and telecommunications prices). (Economic Mirror, January 1995).

In March 1993, The Institute for Economic Diagnosis and Prognosis in Maribor carried out the investigation concerning the level of retail prices in Slovenia in comparison with those in Austria. They found out, that the level of retail prices in Slovenia was by 22,6 % lower than that in Austria. The price level of goods was lower even by 16,8%, while the price level of services was even by 50,6 % lower than that in Austria. The main reason for such a low price level was lower wages. From 1990 to 1993 relative prices

Table 1 - Increase in prices &amp; costs of repurchases in economy in %

	December 1994 relative to former month 1993		Year 1994 relative to december			
	<i>prices</i>	<i>costs</i>	<i>prices</i>	<i>costs</i>	<i>prices</i>	<i>costs</i>
Primary activities	1.0	1.1	17.3	17.9	22.8	20.6
Energetics	7.4	4.1	27.1	33.1	32.8	35.2
Recasting activities	0.6	1.2	15.4	17.1	15.2	17.8
All services	1.1	1.1	23.1	18.9	21.6	20.2
Production services	1.3	1.0	18.7	18.2	21.5	19.8
Business services	1.4	1.3	18.8	19.1	21.5	20.7
Public services	0.6	1.3	35.5	19.9	21.5	20.6
ECONOMY	1.2	1.3	19.4	18.6	19.2	19.8
Exchange sectors	0.8	1.1	15.4	17.3	16.8	18.7
Non-exchange sectors	1.7	1.4	24.7	20.1	22.0	21.1

in Slovenia increased by 679,5 % while nominal exchange rate of Austrian shilling increased by 877,5 %. This is why the level of retail prices in

Slovenia dropped and reached the level of 74,2 % in 1993. With this, the competitiveness of Slovenian economy market increased (Egon Zizmond: Price Levels in Slovenia. March 1994, p. 5).

Three main policies were important for the price stabilisation in Slovenia: monetary policy, fiscal policy and wages policy, besides government control of some prices (oil and oil products, public utilities, electricity, basic food, housing, transportation and postal services) and reduction of customs and import duties, (Egon Zizmond: Price Levels in Slovenia, March 1994, p. 7).

*b. Full employment*

The Government of Slovenia and Ministry of Labour are responsible for full employment in Slovenia. Until 1988 Slovenians did not know what unemployment was as the average rate of unemployment was constantly around 2 %. Nowadays this is one of the major macroeconomic problems in Slovenia. Because of the stagflation the Government has not executed the fiscal policy. They use micro interventions, which means active policy of employment. Active policy of employment includes interventions in the labour market with the purpose of selectively regulating its activities. With social policy the government ensures basic security and standard to people when they lose their jobs.

Insurance rights in case of unemployment (Regulations on working relations, salaries, employment and insurance in case of unemployment, 1994, p. 216) are:

- money compensations

- financial help
- help in preparing for employment
- reimbursement of transport costs
- the rights of workers, whose work becomes unneeded
- the right for medical care and old-age pension and disability insurance.

The measures of the active policy of employment are:

- regulation of the supply of the labour force
- regulation of the demand for labour force
- the equation between the demand and the supply of labour.

Educational programs, that accelerate professional, educational and special mobility of the labour force belong the measures for the regulation of the *supply of the labour force*.

Public works, subventions for opening new working posts, advices for self-employment and cofinancing of redundant workers are the measures for the regulation of *demand*.

Bringing the demand and supply together means collecting data concerning supply and demand for labour, establishing contacts between employers and employees, professional advisory and enrolment of the unemployed in different programme prepared by active policy of unemployment. From the Government organizations (employers) can get the means for (Regulations on Employment Relations, Salaries, Employment And Insurance in the Case of Unemployment, 1994, p. 232):

- co-financing in opening new productive working posts,

- reimbursement of one part of costs for the preservation of productive working posts,
- loans for investments in new production capabilities,
- co-financing of employment of workers in seasonal activities,
- help in training new workers,
- co-financing of completing the qualification or of getting other qualification,
- co-financing the adaptation of rooms and technical equipment for invalids.

If an organization employs a person with no working years yet or a person, who has been more than 2 years continuously at The Institute for Employment, the organization can be reimbursed the contributions paid on gross wages for old-age pension and invalid insurance, obstetric vacations, illnesses and different injuries and for employment.

Persons, that cooperate in the programme, prepared by the active policy of employment, can be assured (Regulations on working relations, salaries, employment and insurance in the case of unemployment, 1994, p. 233):

- the reimbursement of the costs of insurance for injuries at work,
- money taxes,
- covering of the costs of executing the informative, formative and educational programme for unemployed,
- a partial reimbursement of the probationers' salaries,
- partial reimbursement of the costs of the salaries for persons, who look for the job for the first time, for invalids and persons, who have had no job for a long time,
- loans for purchasing of equipment for self-employers,



- covering costs of professional adaptations,
- covering costs of professional overqualification because of the new possibilities of employment,
- covering the costs of informational help in self-employment.

The programme of measures in active policy of employment is confirmed by the Government of RS for a year. The Ministry of Labour prepares more accurate directions for executing the measures of the active policy of employment.

### *Public works*

The Institute for Employment organizes public works, which can be entered by all unemployed under the same conditions. The programme of public works is confirmed by an administrative committee and can be entered by all unemployed. The payment for those activities is determined in the contract. In 1992, 3513 persons took part in 476 programme of public works. The programme of public works can be divided into 4 fields (Milic, 1994, p. 82):

- social-security programme,
- programme in public administration, education, culture and tourism,
- ecological, agricultural and forestry programme,
- programme for communal infrastructure.

### *Unemployment*

In spite of the development of the active policy of employment, the unemployment in Slovenia rose sharply. The inconsistency between demand and supply in labour market is getting higher and higher.

Table 2 - The unemployment movements from 1990-1993 in Slovenia

Year	1990	1991	1992	1993
No. of registered unemployed persons	28.341	44.623	75.079	102.530
Unemployment (in %)	4,7	8,2	11,5	14,4

Source: Report for 1993, The Institute for Employment of Slovenia, 1994, p. 12.

In December 1994, 123.500 persons were unemployed, which is 13,5 % of the active population. The number of unemployed was falling through 1993, with the exception of June, September and October when a new generation finished education. In 1994, 80 % of the new generation was among unemployed, whereas in 1993 this number was 97 %. There are also other indicators that show, that employment is getting better. The present rate of unemployment can only be lowered in the long run, because we talk about structural unemployment. 45 % of unemployed are without any formal education and there is no work for them. Among the unemployed with higher education inadequate sectoral collocation can be observed (Institute of Republic Slovenia for Macroeconomic Analysis and Development: Economic Mirror, 1994).

The results of active policy of employment are:

1. The move of redundant labour among unemployed or in premature or invalid retirement.
2. Sustaining the number of employed in non-productive sector.
3. The opening of new working posts (only 19.500).

The Slovenian active policy of employment uses almost all instruments, known in developed market economies. Besides that, it assured constant financial income for 1,7 % of gross salaries, paid by employees and employers. In three years, from 1990/12 to 1994/3 they collected DM 1 billion in this way. The bad side of the active policy is, that there is no control over the allocation of financial resources (Kuzmin: The Main Characteristics of Labour Market, 1994). New ideas concerning shorter working times appear with the purpose of reducing the unemployment, but neither employers nor employees are enthusiastic about it.

*c. External equilibrium*

The Bank of Slovenia and the Government of Slovenia are both responsible for maintaining the external stability.

In 1993, the two major characteristics of export were its redirection from former Yugoslav markets toward world ones and a faster growth of export of services. Total export (including states of former Yugoslavia) experienced a sharp decline in previous years, but in 1993 that decline was moderate,

Table 3 - Slovenian Balance of Payments, 1992-1994, in million US \$<sup>a</sup>

	1992	1993	1994
<b>Current Transactions</b>	<b>926,2</b>	<b>149,9</b>	<b>478,1</b>
Merchandise trade (FOB)	791,9	-154,2	-146,1
Services	180,3	310,4	610,4
Income	-91,3	-47,1	-36,9
Current transfers	46,0	40,8	50,7
<b>Capital and Financial Account</b>	<b>-645,4</b>	<b>-147,0</b>	<b>-545,7</b>
Capital account	...	4,1	-0,8
Capital transfers	...	4,7	0,8
Patents, licences	...	-0,6	-1,6
Financial account	-645,4	-151,1	-544,8
Direct investments	112,9	111,9	88,1
Stock investments	-8,9	3,1	-32,5
Other investments	-116,8	-155,0	41,9
Claims	-157,5	-259,3	-237,4
Liabilities	40,6	104,3	279,3
Int. Monetary Reserves BS	-632,6	-111,1	-642,4
<b>Statistical error</b>	<b>-280,8</b>	<b>-3,0</b>	<b>67,6</b>

<sup>a</sup>The negative presage in saldo means the surplus of the import over export in the current transactions and increase in the assets in capital transactions.

Source: Bank of Slovenia, Bilten, February 1995.

only 1.7 % in real terms. Despite the recession in Europe the real merchandise export (without countries of former Balance of Yugoslavia) increased by 3 %, while export to countries of former Yugoslavia declined by 33 %, thus leading to decline of total export by 5%. For the first time after several years, export to Central and East European countries increased. In comparison with 1992, import trends changed significantly. Merchandise import increased by 17 % in real terms, without countries of former Yugoslavia even by 31 %. The largest increase happened in the import of the consumption goods, which increased its share in total import from 19.5 % in 1992 to 24.9 % in 1993. Trade balance surplus of US \$ 791 million in 1992 was thus followed by US \$ 137 million deficit in 1993.

The total merchandise export increased in 1994 by 11,9 % if compared with that in 1993. Also the merchandise import was higher, due to the import of equipment, raw materials and components. The trade balance is in deficit,

which amounts to - US \$ 146.1 million. On the other hand, the current account is by US \$ 478.1 million in surplus. Due to the services which contribute US \$ 610.4 million of surplus.

Foreign direct investments in 1994 accounted for US \$ 88.1 million, which is by 21.3 % less than one year previously. The decrease results from too slow privatization. The current account surplus in the balance of payments, the inflow of short-term capital from foreigners and increased long-term indebtedness of the enterprises cause even higher excess foreign currencies supply in the domestic monetary market.

## **5.2. The public sector**

a. *Is the public sector responsible for the production of private goods?*

***The Law on Public Enterprises*** is the juridical base for the regulation of public service sector. The role of the state is bigger in the sectors, that have larger social importance. Such sectors are: agriculture, traffic, telecommunications, post, energetics and services.

### ***Agriculture***

The ***importance of the state*** in agriculture has diminished with economic development. Slovenia has poor agricultural conditions. In the system of central planning the industry won the main role and the major part of all investments was destined for industrialization. Hence, the agriculture slipped behind and became underdeveloped (Ales Vesel: *The Possibilities of Agricultural Development in Slovenia*, 1994).

Lower incomes in agriculture and possibilities to get a job in industry sector caused the essential fall in peasantry population after the war. The system of hesitance and agrarian reform caused the land structure not to fit the industrial and modern way of farming. The farms in Slovenia are small and split into small units. The average size of estates is getting smaller and smaller. Our farming has therefore a lot of disadvantages in mass production in competition with foreigners. The consequence is deprofessionalization of our agriculture. In 1991 only 7,3 % of farms earned their income solely from farming. Also the productivity and the structure of labour on the farms is getting worse. All this applies for the private part of Slovenian agriculture, which is becoming bigger because of the process of privatization.

The education of rural population in Slovenia is awfully bad as one third of peasants did not even finish the primary school and one half finished only the primary school. Thus we could hardly talk about professional farming in Slovenia (Ales Vesel: The Possibilities of Agricultural Development in Slovenia, 1994).

The total extent of rural land in Slovenia is smaller from year to year. The extent of the cultivating land is getting bigger, but that is only so because of the meadows and orchards. On the other hand, the size of fields and gardens is getting smaller. Due to the disagrarization and urbanization.

Technical equipment is improving much faster in the private sector than in the social one.

The secondary industry has far too big capacities.

Besides economic function the agriculture has also social, ecological and landscape ones, which have to be financed. The sources for financing are not determined, however, we know that all costs cannot be transferred into prices of agricultural products. These functions could be financed through other sectors, that are somehow connected to farming, like tourism.

*The goals for the development of the agriculture in Slovenia are as follows* (Agriculture Development Strategy in RS, 1993, p. 67):

1. A stable production of good quality and cheap food.

2. Preservation of rural land, developing ecological function, encourage people not to move in urban centre and towns.
3. Increase of the competitiveness of our farming.
4. Assurance of the parity income to overproductive workers.

***Agricultural policy*** (Agriculture Development Strategy in RS, 1993)

Rural land and its potential product have to be treated from two sides. Firstly, as a national wealth, which has to be preserved and secondly, as a constricted productive factor. Both functions demand decision-making concerning possible interruptions in the environment, that would decrease the size of rural land, on the national level. Therefore it would be necessary to ensure the *effective security* of farming land by law.

To stop the migrations to the towns, it is necessary to motivate people and to give them a possibility to cooperate in activities other than farming and thus to ensure them a higher quality of living.

The main problem in the development of agriculture is the small average size of farms. With the help of the *structural policy* Slovenians have to endeavour to get at least 70 % of the rural land in the hands of the farms bigger than 15 ha.

***Productional agricultural policy*** should be a subject of an agreement between the state and economy and should not be directed by the state.



When working on it, technological, economic, ecological and domestic and foreign market studies should be considered.

The state uses *market-pricing policy* to mitigate the variability of incomes for farmers and the variability of prices for buyers. As a part of pricing policy different ways of price subventions in agriculture appeared. Subventions affected the prices of farming inputs, redemption and retail prices. The forms of subventions in Slovenia were bonuses, compensations and reimbursements.

### ***Traffic***

The major goals of transport policy in EU are the stimulation of price competitiveness among conveyers, the establishment of transeuropean nets and multimodality. Slovenia has signed the transport contract with EU and EU is now entitled to free road transit across Slovenia. In the contract those motorways and railways are marked that are of a special significance for both partners. From this point of view the present situation in Slovenia is bad and *a lot of investments* would be necessary to establish better conditions. Because of the change in the basic economic system we also need to make a change in the traffic field is also necessary. Each bidder of transport services *should cover all the costs* he generates (Ales Markezic: The investment in the Economic Infrastructure with the Emphasis on the Road Infrastructure in Slovenia, 1994).

***Railways*** ( Nevenka Bricelj: The Sanation Programme of Slovenian Railways, 1994)

The owner of railway infrastructure, i.e. railway lines with their equipment and realties, is the Republic of Slovenia. Railway infrastructure is a part of Slovenian railways and is used by a public enterprise for the execution of railway traffic. Railway traffic has a social and national importance. RS is a business partner of Slovenian railways for passengers traffic and for cargo traffic. In a contract between the two partners all kinds and volume of services, their quality and terms of payment are defined.

The overemployment is significant for the railway sector in Slovenia. There were too many sectors in the railway field and all of them were quite closed. The flow of the information among them was impossible. Each sector took care only of its business and hence, their work was not coordinated and did not follow a common goal of the public firm. Organizational structure was bad, marketing department was not developed.

As the railway is one of the national strategic sectors, it should be helped by the state in the process of financial rehabilitation. The state should encourage the cargo transport on the railway and at the same time disburden the Slovenian roads by issuing licenses for the road transport. The state should help the railway sector in getting the same position as the railways in other European countries, which have been helped in getting transit cargo. In the long term the state should lower the subventions, which means less revenues from the budget.

***Roads*** (Ales Markezic: The Investment in the Economic Infrastructure with the Emphasis on the Road Infrastructure in Slovenia, 1994)

The Slovenian net of roads is an important condition for the consistent social and economic development of a country. The regional characteristics and the configuration of the country demand a diffusive settlements, which requires a big density of roads in Slovenia. In some parts of Slovenia the roads are the only possible transport infrastructure and have therefore even greater significance.

Roads in Slovenia can be divided into *categorized* and *non-categorized* roads. According to the last data there are 14.173 km of categorized roads, besides those there are also non-categorized roads, like town and city roads, streets and different places and roads designed for special purposes. Categorized roads are: regional, local and motorways.

Table 4 - The lengths of categorized roads in Slovenia, in km

Year	Motorways	Regional roads	Local roads	Other roads	Total
1970	-	3935	8709	843	13486
1975	51	3718	9153	1051	13973
1980	122	3706	9741	1081	14650
1985	199	3694	9104	1082	14079
1990	228	3395	9572	1357	14552

In Slovenia there were 7,1 km of roads per 1000 inhabitants in 1988, which is really little in comparison to the neighbouring Austria, which had 14,1 km of roads per 1000 inhabitants. France had 14,1 and Germany 8,0 km per 1000 inhabitants. Roads are technically obsolete as the dynamic of building new roads lags behind the needs of transport and standards in the world.

### *Telecommunications*

The sector of telecommunications is divided into two subsectors: *Postoffice* and *Telecom*. Market conditions for the postoffice are different than for the telecom. Market for the postoffice is in the decline, whereas the telecom market is in the expansion. Both sectors are of national importance as they deal with the flow of information qualitatively and quantitatively. This is important for Slovenia as well as for our connections outside the borders (PTT Organizations of Slovenia, 1982, p. 9). The reasons for the allocation of the telecommunications in the public sector are:

1. The need of permanent execution of telecommunications activities, which is absolutely necessary for normal functioning of Slovenian society (the business result does not matter).
2. The unity of technical-technological system, which has to operate as a single unit in regional, national and international environment.
3. Telecommunications have to work, no matter if the directors see profits in its functioning or not.

Before the division into two firms (Telecom and Post) PTT of Slovenia was accountable to the Ministry for Transportation and Communications of Slovenia. There were nine PTT socially-owned enterprises that were all autonomous organizations and were located in various districts of Slovenia. Although, Sestavljeno podjetje PTT Podjetje Slovenije or SP PTT was the head of the socially-owned enterprise, it actually held very little power.

The total number of employees of PTT in 1991 was 8,300 people, out of which 2,217 were telecom employees. In 1991, within the telecom sector of PTT, there were 1,457 technicians and 341 qualified engineers, or a total of 15,3 % of total staff. Currently, Slovenia has 22.1 phones per 100 inhabitants, by 1995, 35 per 100 inhabitants are foreseen. The number of phones will have to grow at an annual rate of 33 % in Slovenia in order to catch up with other western European countries and to reach a density of 80 phones per 100 inhabitants by 2000. 6 years ago GNP and telephone density were greater for Slovenia than for all Eastern European countries with the exception of East Germany. Now, Slovenia lags behind in this area of development. That is because for a long time new telecommunications law was not passed, which would allow for some levels of privatization and liberalization and restructure the telecom sector of PTT.

The telephone network of Slovenia is organised as a single transit telephone area with a transit telephone exchange in Ljubljana. Most telephone exchanges are crossbar type (over 50 %), with indirect calling. These exchanges are not produced any more. In 1990, we started to introduce digital telephone exchanges (20 %). Long distance cable networks connect all traffic levels and are of an 85 % terrestrial construction.

Slovenia is a member of three most important organizations in this field:

- a) Universal Postal Union - UPU;
- b) International Telecommunication Union - ITU;
- c) Conference Europeenne des Administrations des Postes et des Telecommunications - CEPT.

The Republic of Slovenia is the majority owner of the Postoffice of Slovenia, also other partners may enter. The same principle applies for Telecom of Slovenia. The post is labour-intensive, whereas telecom is a capital-intensive service (post had 11 % of all capital in former common firm PTT and Telecom had 89 %). Post employed 63 % of all workers and Telecom 37 %. Post generated 31 % and Telecom 69 % of incomes in the years between 1988 and 1992.

### *Energetics*

The production of the energy in Slovenia is quantitatively adequate to the domestic needs. However, the ecological rehabilitation of energetic objects is needed. Development policy has three basic possibilities of development of energetic field in Slovenia. These are:

- domestic sources,
- imported coal,
- earth gas.

The questions about price policy, efficient ways of using energy and questions referring to structural changes in industry arise on the demand side.

*Production of electrics* in Slovenia is a big technical and economic sector and it is therefore controlled by the government. In the autumn of 1989 the whole economic infrastructure, including production of electrics, transformed into public enterprises. This sector transformed into 6 public enterprises and production firms. The execution of the activities, which are defined as public services, is guaranteed by the Republic of Slovenia or local governments through concessions and investments of capital.

Public services can be financed from different sources:

- in the complex of financing public consumption,
- from the sources paid by the users for using public goods,
- domestic and foreign loans,
- different funds,
- foreign investments,
- other sources determined by the law.

We use public consumption funds for the goods, where the users or the use of the goods are not determined or for the subventions (when firms would go bankrupt, but the bankruptcy is not possible because of their national importance). When a firm has difficulties because of the state's price or investment policy, it can get a subvention in a form of a compensation. This has to be settled by the law, which regulates the budget. Other specific ways of help to public services are tax facilities, credits, state guaranties in taking a credit etc.

*Ecology* is a very serious problem. For the ecological rehabilitation it is necessary to abolish indirect subventioning of users through a subventioned price of electricity. This problem can be solved through tax policy. The system of indirect taxes is executed in two ways. Ecological tax is paid by all users of electricity according to their consumption. The other way is to establish a system of prices through the turnover tax, which destimulates the consumption of non-ecological products.

The next possibility is taxing of users according to the volume of exhaust gases or other wastes. If the producers are monopolists, the tax increases the prices.

### *Services*

In the field of *market services* like trade, tourism, banking, financial and insurance services, the state does not play a very big role. These services are developed according to the profit principle, the state only creates general normative and institutional conditions for their independent acting.

The following public services belong to *public and unprofitable services*: electro- industry, oil and earth gas, water industry, telecommunications, railways and communal services. These sectors are *natural monopolies* except for some phases, where they can compete because of the technological development. Some of these sectors could also be privatised, like Petrol and Telecom. In the other sectors like electro industry, there is no reason for privatisation, especially if their price policy does not allow prices, which would cover the costs. For the railways and the postoffice the privatisation possibilities are small. These two sectors are natural



monopolies and have small demand, hence the state property of the two is justified.

It would be necessary to establish *state committees for the price and costs supervision of the public enterprises*. In the non-monopoly phases it would be necessary to equate the prices with the long-term marginal costs. In the monopoly phases we should use the so called *efficient prices* should be used which would cover all costs.

Competition in the phase of production can only be introduced in electro-industry and in telecommunications (without postal services).

*Tourism* is a totally specific sector as it is basically a market service. However, it also has external effects and thus it is treated in a special way by the state. The development in tourism will increase the quality of services; it will improve services from the ecological aspect and as a consequence the prices will be higher. The role of the state is to promote the state and its characteristics in foreign tourist markets organisationally and financially. The state spends quite a big part of its budget on tourism, but one part of the money returns into the budget. The state plays an important role also in developing social and spa tourism.

Besides the infrastructure, there are also around 100 firms in state property in its Fund for Development. Besides these 100, some other firms are also seeking the state help. According to the Institute for Macroeconomic Analyses and Development in Slovenia we still have around **54 % of the socially-owned capital** (where socially-owned capital is defined according to the Law on Privatization). Because of the high capital intensity the share

of employees in these firms is smaller - 34 % of all employees. The Law on the Privatization of the Companies under the State Inspection is in the process of preparation. In this law the concessions will be very important (Interview at IEAD, March 1995).

*b. Is the government bound to a sound fiscal policy by law?*

In the past, under the self-management system, Slovenia's public sector agencies had independent authority in administering expenditure programs and in taxes and contributions at various community levels. The central government budget was responsible only for government administration and subsidies to the economy and accounted for less than one-fifth of the total public sector expenditure. This system had resulted in a proliferation of taxes, frequent and arbitrary adjustment of tax rates and a governmental control over the fiscal policy.

In 1991 the fiscal role of the federal government vanished completely, and a far-reaching fiscal reform programme and a major realignment of the public sector were implemented.

The 1991 fiscal reform consolidated all earmarked funds, except for the pension old-age fund, into the central government budget and introduced a standard corporate profit tax and an individual income tax to replace a host of other taxes. Starting in February 1992, a new and much more simplified sales tax came into effect, replacing a multitude of turnover taxes. The new tax consist of four rates - 5 %, 15 %, 20 % and 32 %, with the 20 % rate being the general rate covering most sales. A draft on the custom tariffs was also implemented and preparation work for introducing a VAT was started.

A high rate of autonomy was preserved in the health and social insurance system which prescribe their own special contributions (Zizmond: Economic policies in Slovenia, pp. 12-15).

The central bank in Slovenia (Bank of Slovenia) is an independent institution and has no connection with The Government of Slovenia. Its politics arise from its functions. One of its functions is internal liquidity, the other is external liquidity or external value of money. Besides the central bank there is also a national bank which acts as a supervisor of other commercial banks and financial institutions and controls the quality of their investments (Ribnikar: Monetary System and Monetary Policy).

Because of the decentralized banking system in former Yugoslavia the induction of the special financial field in Slovenia was technically free and simple. All relation among the state, banks and firms were settled over The National Bank of Slovenia, except, of course, relation with the population or with the people, who held cash. The main reason for the introduction of the new system was the abolishment of crediting some firms. The bank of Slovenia does not approve of credits. At the beginning it did not have any foreign currency reserves and hence it could use only the system of floating rate. The set exchange rate and interest rate were both *market rates*. The money comes into circulation through net credits to domestic sectors and through net buyings of foreign currencies in the foreign exchange market (Ribnikar: Monetary System and Monetary Theory).

The monetary policy of the Republic of Slovenia, which can be described as restrictive, is executed by The Bank of Slovenia. The constitution of the Republic of Slovenia as well as The Law on the Bank of Slovenia determine,

that the Bank of Slovenia is independent in the execution of the monetary policy tasks. The short-term goals of the monetary policy are: an appropriate money base, an appropriate general bank liquidity and an appropriate general liquidity in foreign payments. To achieve those goals, the Bank of Slovenia uses the following instruments: open market policy, changes in the ratio of the required reserves and discount policy.

The Bank of Slovenia achieved one of the major goals of the economic policy, that is a fall in the inflation rate. The other goals of the economic policy have not been achieved. The bank of Slovenia decides independently about the central-bank financing of the budget deficit. The bank of Slovenia also has a very important role in determining the economic policy, mostly in forming goals and in the execution of monetary policy tasks (Ribnikar: Monetary system and Monetary Policy).

### **5.3. Social consensus (major interest groups, their attitude towards the state and conflicts between government bodies and state powers)**

As late as in 1994 a variety of social partnership was de facto introduced in Slovenia.

There are three major interest groups: unions as representatives of *employees, government and employers.*

The social consensus is a consequence of the common interest of all partners to accelerate economic growth, to increase employment, to stabilize economy and to improve the social and legal security in Slovenia.

The Government of the Republic of Slovenia will suggest the laws and other regulations, changes in laws and other measures, that will enable the execution of the social consensus. It will do its best for the realization of all the measures in the consensus.

Employers will consider and realize the social consensus in all their associations and organizations in Slovenia.

Employees agents will respect and consider the social consensus in all institutions, firms and other organizations (Social Consensus for 1995).

*Direction of the social consensus*

In 1995 the economic and social policy assures (Social Consensus for 1995) the following:

1. at least 5 % economic growth,
2. utmost 10 % inflation in 1995,
3. unification in determining wages, other personal incomes and interest rates and the adaptation of these mechanisms to the inflation rates,
4. opening of new working posts, decrease of unemployment, increasing self-employment, the growth of the employment should amount to 1- %,
5. incentives for saving,
6. decreasing the part of total public-financial incomes and expenses in GDP,
7. decreasing the fiscal charge of wages, when the public consumption grows faster than determined in this consensus,

8. preservation of the real value of wages,
9. equitable distribution of the social burden among different generations and strata,
10. improvement of the social security of the most insecure groups of the population and getting closer to the European system of the social security,
11. to ensure the legal security by ensuring more efficient work of the social courts and inspections,
12. the state will ensure decreasing of interest rates and a gradual abolishment of the revalorization system,
13. neutrality of the exchange rate policy and the derogation of the difference between the inflation and the exchange rate, which means, that the exchange rate will grow at least at the same rate as the inflation.

***The social consensus will realize the goals in the following fields*** (Social Consensus for 1995):

**1. The employment:** the solving of the unemployment problem is one of the primary tasks for all social partners. Therefore all partners want to improve the employment possibilities and the opening of new working posts, they want to stop illegal employment and efficiently supervise the rights of the unemployed.

**2. Wages:** collective contracts are the basic instrument for determining basic wages. The difference between the lowest and the highest wages should not be higher than it is in other developed countries. It is forbidden to pay the work in any form, that would avoid payment of taxes and contributions. The

real wages in 1995 will be the same as in 1994. The minimum gross wage should account for at least 40 % of the actual gross wage in Slovenia.

**3. *Social security:*** the system of the social security should not be an obstacle in further development of the society. Social rights must be consistent with the economic ability of the state.

**4. *Old-age pensions:*** the current execution of the pension-invalid system should not be an additional burden for wages. The old-age pensions will grow proportionally to the coefficient of the volume of the financial means and to the number of retired people.

**5. *Prices:*** the goal of the economic policy is stable prices. The government will ensure, that prices in non-tradeable, oligopoly and monopoly sectors will not grow above the average. The inflation in 1995 should not exceed 10 %. The price proportions will be gradually abolished.

**6. *Taxes and contributions:*** the government will assure the following in the field of taxes and contributions and in the field of the budget:

- stimulation of investing in firms and corporations,
- changes of the laws, which will enable decrease of direct taxes and contributions and increase of the wealth taxes over the minimum standards,
- the base of the payment of taxes and contributions should not be lower than the basic wage for a specific tariff group.

**7. Interest rates:** The Government of Slovenia and the Bank of Slovenia want to lower the revalorization and real interest rates and will gradually, with monetary, fiscal and income policy, ensure the abolishment of the revalorization as a whole.

**8. Exchange rate policy:** in 1995 the difference between inflation and exchange rate will be abolished.

### *Legal security*

Legal security is one of the basic needs for an efficient economic and social development. Hence the Government of Slovenia will try to accept only the measures, which will enable greater efficiency and hemstitchness of the Slovenian legal system. Employers as well as employees will help to ensure legal security with better informing (Janez Tusek: Social Consensus, 1995).

The social consensus has not been signed by any party yet. It has been prepared by employers. The Government has not signed it because of the lack of the initiative for the negotiations with the partners and the unions have not signed it because of too uncoordinated actions and mutual mistrust. Everything has been done without Economic and Social Council, that should act as a coordinator and should solve problems, that arise in the process of negotiations. The Government does not see it as a serious body, which causes even greater mistrust with other partners (Janez Tusek: King Arthur and the Cavaliers of the Triangle Table).

Economic and Social Council was established although it was not legally institutionalized. From the Government side the council was recognized



informally and incidentally as a supplement to the agreement concerning the wage policy for 1994. At first the Government did not agree on the establishment of a tripartite body. Consequently, the unions conditioned their signature of wage agreement for 1994 with an agreement concerning the establishment of a tripartite body. So far, the Government representatives attending the meetings of this body have not always been appropriately empowered. It remains for the near future to definitely legalize the council and to oblige the government to accord with or at least to take account of the views of employees and employers with their own standpoints. (Lapornik: Approaches to Industrial and Enterprise Restructuring Comparative Study - Slovenia, 1995).

## **Criterion 6: Trade relations**

### **6.1. To which extent do import restrictions exist?**

Imports of goods are generally free concerning that *nowadays 97 % of imports is absolutely free*, for 1 % licences are needed because of control and only 1 % is subject to quantitative restrictions, which refer to individual agricultural products, textiles and clothing. Although the Government may, in accordance with international agreements, and in view of the implementation of development and protection policies, prescribe quotas for imports of individual goods and require permits.

*What has been done?*

*Tariff rates in Slovenia range from 0-25 %; the average tariff rate collected in the first nine months of 1993 was around 6 %. Capital equipment not produced in Slovenia can be imported duty free. For imports of raw materials and intermediate products not produced in Slovenia, tariff rates have been reduced by 70 %. There is also 1 % equalization tax and a 1 % customs formality tax. Special import taxes have been abolished except 15 % import tax which has to be paid for imports of alcohol, tobacco and used cars. For imports of certain agricultural products a specific import levy is charged as a fixed amount.*

In 1993 producers on average paid only 2,6 % of *customs duties* or 4,0 % of *all import duties* for imported raw materials and components. Higher rates have to be paid for equipment with 4,6 % of customs duties and 6,2 % of all import duties. When importing consumer goods 13,4 % of customs duties and 15,6 % of all duties were paid on average. The consequences of the abolishment of the preferential import from Croatia were considerable exactly at the import of the consumer goods - earlier the duty free import could not be diverged into other opportunities of the exemptions and deductions. Because of that the share of the import with the whole payment of import duties rose highly (from 52,3 % in 1992 to 90,7 % in 1993) (Boris Majcen, Foreign Trade Protection of RS Economy - The Analysis of the Situation after the Independence, Slovenian Economic Review, Volume 45, 1994, no. 1-3, pp. 214-222).

To compensate the lost markets, Slovenia is entering into intensive cooperation with the countries of Central and Eastern Europe on the basis of *free trade agreements*. In trading between Slovenia and the former Czechoslovakia customs duties will be gradually completely eliminated for

all manufactured goods till 1996 (in January 1995 customs duties had to be paid for only 40 % of products). For trading between Slovenia and Hungary a gradually execution of the same measure will have been carried out by the end of 2000 (Slovenia, 1994, pp. 31-33).

*Problems by de facto execution (deduction):*

Unfortunately at present in the customs clearance area, there are *too many prescriptions* which cause a considerable confusion in economic relations with foreign countries. It is necessary to make some changes in the sense of a more modern and more effective foreign trade legislation (protection) following models in developed European countries. At the practical execution of prescriptions, it often comes to several *differences between the declared and de facto rates of protection*, by height and by structure (primarily in mining and recast manufacturing). *Still a considerable protection of recast manufacturing and consumption goods exists* (Majcen B.).

## 6.2. To which extent do export restrictions exist?

As befits a small country, Slovenia is heavily dependent on exports and international trade remains vital to its economy. Slovenia is no doubt among the most open European countries, because it is on the 38th position by the value of the export (in 1994 the export rose to US \$ 6,194 million). The need to expand foreign markets became even more evident with independence in 1991, since the domestic market became too small to absorb the production of Slovenian companies. The process of adapting to the most stringent international standards has been undertaking place in

Slovenia for some time now and we have no special problems because Slovenia has been traditionally open with narrow connections to Western Europe. All types of companies can be involved in foreign trade, there are no obstacles and the registration process is simple (Slovenia, 1994, p. 24).

*Exports of goods is generally duty free, except* the export of some basically strategic raw materials, i.e. a special tax applies for on the export of lumber and some types of sawn wood of the lower cultivation grade and for the export of iron, steel and non-ferrous metal waste. Thus, a policy is pursuant to the requirements of a more accelerating export.

### 6.3. Are there still state monopolies for exports and imports?

*State monopolies for exports or imports do not exist in Slovenia*, nor had they existed before the independence of the state. Since the independence, the Slovenian Government has taken a number of measures to liberalize its exports and imports. It has abolished the registration of the companies operating in the foreign trade, eliminated the bureaucratic procedures and authorizations in foreign trade and lowered the level of protection. The Government can take the following measures for some areas: (a) *prohibition of imports or exports*, (b) *quantitative or quality limits on imports/exports (strategically important raw materials and components)*, (c) *special allowances for import/export (weapons)*. This occurs mostly in cases of natural disasters, extraordinary circumstances, disturbances in the market or similar conditions or for the establishment of an appropriate control (The Law on Protection of Competition, 1993, pp. 105-106).

### 6.4. Is the free movement of capital flows guaranteed?

a. *Foreign direct investment*

With the independence (1991) Slovenia assumed the Yugoslav Law on the Foreign Investments from 1988, set on the international norms. The new Law on the Foreign Investments is being prepared, because the conditions have changed dramatically, especially with the process of privatization where the acquisitions will gain importance. The Law has been prepared by EBRD experts and by some domestic and foreign experts. Despite of that it can be stated, that the existing legislation is fairly liberal and guarantees a free transfer of profits and capital abroad.

*Basic characteristics of the existing legislation framework*

Foreign investments in any form enjoy full "*national treatment*", i.e. companies with foreign capital participation (joint ventures) and wholly-foreign-owned companies have a status of Slovenian legal entities, established and operating in accordance with Slovenian regulations. They are treated in the same way as indigenous companies.

*The minimum founding capital* for establishing a new company (applicable to all companies, whether there is foreign participation or not) is SIT 1,5 million (app. USD 11,700 at the current exchange rate) for a limited liability company and SIT 3 million (app. USD 23,400) for a joint stock company.

Foreign investor can co-operate in the privatization programmes of public firms as a minor or a major partner. The following *ways of direct foreign investments are possible*: establishment of a new equity joint venture in the

form of a mixed firm or a firm in the absolute foreign property, capital enlargement of an existing domestic firm, acquisition of a part of an existing domestic firm (also to 100 %), and redemption of a domestic firm's sources. (Privatization programmes presented till now indicate that firms decide more on buy-out by employees if that is possible, thus outside owners, among whom perhaps also foreign investors are, does not remain much for sale to).

Concerning the *forms of investments*, possibilities are almost limitless: equity joint venture, firms in absolute foreign possession (100 % foreign branches, nonproprietary contractual joint ventures, concessions for exploitation of renewable natural wealth or goods in common use and B.O.T agreements (built operate transfer agreement) for construction, financing and exploitation of manufacturing infrastructure and other capacities in a certain period of time.

Companies established with foreign capital or share acquisitions in existing companies acquire legal status upon *registration* at local court. Any share or asset deal with a local company which has not yet been privatized is possible, but it has to be approved by the Agency for Restructuring and Privatization of the Republic of Slovenia. The approval of Agency is also necessary when foreign investor wants to buy shares from pension, restitution/reimbursement and special investment funds.

*All sectors of the economy are open to foreign investors. Wholly foreign-owned companies* (no maximum foreign share is specified) *are not allowed* in military equipment field, rail and air transport, communications and telecommunications, insurance, publishing and mass media. In auditing companies maximum 49 % of foreign share is permitted, in stock brooking

companies 24 %, in the investment companies (for the management of the investment funds) 20 %, and in author investment companies (for the management of investment funds collecting privatization certificates) 10 %.

***Legal entities*** established and registered in Slovenia, regardless of the foreign share, ***may own real estate***. Foreign natural (***individuals***) and ***legal persons*** are subject to the foreign law and ***cannot own real estate***.

***With 30 % profit tax rate Slovenia is among European countries with the lowest tax burden. Tax deductions:*** (a) 20 % of the sum invested in tangible assets (except motor vehicles) and intangible long-term assets, provided the assets in question are not alienated within a period of three years, in which case the tax base is increased; (b) up to 10 % of the tax base for investment reserves for tangible assets and intangible long-term assets, within a period of 4 years; (c) 30 % of salaries paid out within the first 12 months of employment to trainees, those who enter their first employment, or to employees who, before contracting employment, were registrated at the employment office for at least 6 months, if an employer employs them on a permanent basis for at least two years.

Foreign shareholders are entitled to ***free and unrestricted transfer*** of their profits abroad in foreign currency.

#### ***Problems:***

There are still some problems, which have not been resolved by the legislation. The first is that a ***branch of a foreign firm is not a legal entity*** by the law and so it is not equated to a domestic firm respecting the rights

for buying of realties to perform economic activities. The same applies for a foreign agency. The second problem derives from the request that the *president, procurator or the majority of the administration members of the company should hold the Slovenian citizenship*. Thus the owner of the capital is limited in the free choice and in the appointment of the company president. Further, the *work permits* is needed for foreign workers who want an employment in Slovenia. This permit is the basis for issuing an *employment visa*. When foreigners have found employment in a branch or an agency of the foreign firm they have to gain the *business visa*. *Foreign banks in the phase of establishment have no national treatment* and have to gain the allowance of the Bank of Slovenia. Concerning *foreign service firms there are some common limits* (branches with registered office in Slovenia or forms registrated in Slovenia, the Government of Slovenia can prescribe some additional conditions and criterions) (Proposal to Associating Agreement - Ministry of Economic Relations and Development).

#### *Who are foreign investors in Slovenia?*

By the end of 1993 the number of FDI projects increased to more than 1,000 and the value of invested foreign capital to USD 785 million. This may not seem much by international standards, but the fact is that *USD 395 per capita stock of FDI puts Slovenia immediately after Hungary* among all the countries in transition. In 1993, FDI inflows in Slovenia represented 5,3 % of total fixed investments and 1,03 % of Slovenian GDP in the same year. The *prevailing form is the equity foreign investments* and among them the equity joint investments, while the wholly foreign firms are rare.



Most of FDI in Slovenia comes from *Austria (20,4 % of end 1993 stock). Germany (19,6 %) and Italy (13,6 %). High rankings of Croatia (21,0 %) and, to some extent, France (16,3 %) are a consequence of a particular situation*, and do not reflect adequately the actual situation. In the case of Croatia, this is the consequence of the inherited situation from the former Yugoslavia (previous representative offices of Croatian companies in Slovenia have been transformed into companies in the ownership of Croatia, while in the case of France, high ranking is almost exclusively due to Renault's investment in car manufacturing. The aforementioned countries accounted for more than 90 % of FDI stock in Slovenia. (Matija Rojec, Foreign Investment in Slovenian Development, 1994).

*Manufacturing industry with 63,1% share in total stock of FDI* by the end of 1993 is far the most important recipient of FDI in Slovenia, followed by business services and trade (21,3 %). In the manufacturing industry, FDI is concentrated in the car manufacturing, paper manufacturing and electrical machinery and appliances manufacturing (Finance).

A typical foreign investor in Slovenia is a small to medium sized company from one of the near European Union countries, being also Slovenia's major foreign trade partners. Nevertheless, FDI stock is heavily concentrated on about *a dozen of the largest FDI projects with European multinational enterprises*. Bayer, Renault, Citroen, Henkel, Iveco, IBM, Siemens, Semperit, Bosch are just some of well known multinational enterprises which have invested in Slovenia so far. Among *foreign acquisitions*, the largest acquisitions have been so far as follows: Ljubljana Tobacco Factory by Reemtsma (Germany) and Seita (France), of insulating construction

materials producer Novoterm by Pfleiderer (Germany) and car producing factory Revoz by Renault (France).

In October 1994 *FITAS* (Foreign Investors and Traders Association in Slovenia) was founded with the aim of informing foreign investors about Slovenian legislation and at the same time formulating common interests which it will present to government representatives and political parties. Although this economic association has been established only recently, it has already been joined by more than 100 of most important foreign investors (Finance).

*Motives and reasons for investing in Slovenia:*

In general, to *get access/enlarge the share in the local market* has traditionally been the most important motive of foreign investors for coming in Slovenia. Nevertheless, foreign investors do not follow only one motive but have multi-objective (*growth, profitability, expansion of exports, etc.*) approach to their ventures in Slovenia. In spite of the major importance of local market motive, foreign investors ranked very high also motives like *reduction of production costs, and export base for third countries.*

*46 % of foreign investors in Slovenia had fully* and 38 % had partially *realized their objectives.* Only 16 % have not realized their objectives at all. (Results of interviews). Foreign investors consider the performance of their entities in Slovenia, on average, as less successful than that of parent companies but they are considered to be more or less as successful as their subsidiaries/joint ventures in most non-EU countries. (Matija Rojec, Foreign Investment in Slovenian Development, 1994).

***The main reasons quoted by foreign investors for coming to Slovenia are:***

(a) successful previous cooperation with Slovenian joint venture partner/target company; (b) high purchasing power and growth potential of the small local market; (c) established trade links with other parts of the former Yugoslavia and with Central and Eastern European countries; (d) high export orientation and established market shares of Slovenian companies in West European markets; (e) relatively high management and technical/technological expertise due to the long exposure to quasi market system; (f) traditional industrial environment with technological capacities allowing a fast absorption of foreign technology; (g) low transport costs; proximity to major investing countries and good transport connections with all Europe.

The main reason for a number of foreign firms has been the quality of the Slovenian partner/target company -reliability, good managerial and other staff expertise and tradition, solid production programme, export markets and a successful previous cooperation with a Slovenian company. Thus, ***company rather than country specific advantages are the major attraction of Slovenia as an investment area.***

***b. Currency trade and convertibility***

This area represents a substantial advance in the liberalization of foreign exchange operations and its approach towards the regulations of the developed European economical systems. ***The legislation framework of the currency trade represents the following assignments:***

- ***The foreign currency market*** also comprises all operations of buying and selling foreign means of payment, which are transacted between authorized banks and Slovenian Citizens, directly between authorized banks, and between authorized banks and the Bank of Slovenia;
- as a part of the bourse of money and capital, authorized banks can establish ***currency bourse*** for trading with foreign payment means and it is an independent legal entity;
- ***the rate of exchange of foreign currency is freely formulated*** on the basis of supply and demand on the foreign currency market;
- the ***Bank of Slovenia*** operates on the foreign currency market through the ***intervention*** acquisition and sale of foreign currency and other means of payment and thus it influences the formation of the rate of exchange;
- ***exchange operations*** can be carried out by authorized banks and by other people, who make a contract with an authorized bank on the transaction of exchange operations;
- foreign payment means can be sold or bought ***prompt or terminal***;
- ***the middle exchange rates of the foreign currencies are the indicators*** of trade results and accounting of duty and other taxes. Currency bourse calculates the middle exchange rates on the basis of reports of authorized banks about concerning sellings and buyings of foreign payment means and on the basis of the data referring to transactions on currency bourse, thus determined by the Bank of Slovenia;

- *execution of payments in foreign countries is free* after the reconciliation of all liabilities;
- *domestic legal subjects and individual proprietorships* as a rule do not hold foreign currency accounts, but rather *the inflow of foreign currency is paid out in the tolar countervalue*. This system allows domestic legal entities and individual proprietorships the right to buy foreign currency for the payment of imports and other obligations abroad. *Exceptions* to the basic principle are, however, anticipated, allowing domestic legal subjects and individual proprietorships to receive payments from abroad for their foreign currency accounts at domestic banks for the following purposes: using advanced payments when making investment transactions abroad, operations mediation, agency, forwarding trade and tourist agency business, received registration fees, drawing on foreign currency from the credits of international financial organizations, by means of which the obligations of domestic consumers of credits are fulfilled towards foreign transactions, which have obtained business in relation with the credits of goods from consignment stocks on the basis of the foreign currency shares of foreign parties in a domestic company;
- *Domestic subjects can hold these funds on foreign currency accounts until the conclusion of deals*, that is until the contract obligations towards foreign subjects have been fulfilled or until the foreign currency is spent for the purposes for which it was received;

- *citizens or foreign physical persons* can hold foreign currency accounts of foreign currency savings accounts with authorized banks; they have free use of this foreign currency;
- it is explicitly permitted to *use foreign currency* and other international measures of value as value foundations *in contracts between domestic persons* ( the use of currency clause), whereby the obligations in these cases are transacted in the domestic currency;
- *the Executive Council of the Assembly of the Republic of Slovenia can exceptionally pass temporary measures*, but, only when the solvency of the Republic is threatened, that is, when the measures of the Bank of Slovenia do not achieve the expected results. These temporary measures can last up to six months at the most (The Law on Foreign Exchange Operations, 1991).

*What has been done?*

At the end of 1991 the monetary reform was carried out and a new monetary unit, the Slovenian tolar (SIT) was introduced. We decided on a managed floating rate of the tolar against the German mark because at that time we did not have sufficient foreign exchange reserves. Last year the falling of the exchange rate was smooth and it even started to increase. Foreign exchange reserves were increasing all the time and we could say that in the independent state of Slovenia we do not know what the lack of foreign currencies means. The firms sell more currencies in the currency market than they buy from banks. The current account has had surplus since the independence (the estimation for 1994-the surplus exceeds US \$ 0,5

billion), while the trade balance has been in deficit. The foreign exchange reserves already surpassed US \$ 2,5 billion at the end of October last year, due to the current account surplus and net inflow of the capital (indebtedness for the construction of roads, railways, FDI, reimbursement of money from foreign countries). Our state makes more than 60 % of GDP in foreign countries (*Gospodarski vestnik, Finance*). The favourable situation with regard to foreign exchange reserves already permits the introduction of full convertibility for the tolar (till now it has been only internally convertible). The tolar convertibility would require the relaxation of international currents of capital and finance. But the Bank of Slovenia measure respecting limitation of gaining loans in foreign countries, shows that Slovenia is not so close to this. Until the Slovenian banking system is not able to compete internationally we cannot talk about convertibility (*Finance, 24.2.1995, p. 2*).

Thus foreign exchange reserves completely cover the foreign debt which amounted to US \$ 1,985 (1993) and provide 4 months of import coverage. With 5,4 % debt service ratio Slovenia has absolutely no debt service problems (*Slovenia, 1994, p. 13*). In 1993 Slovenia signed an agreement with the IMF fixing its share in the debt of the former Yugoslavia at 16,39 %. The same percentage was accepted by the Paris Club creditors. Slovenia is prepared to take full responsibility for the so-called "allocated debt" (debt contracted for the direct benefit of Slovenian entities) of about US \$ 340 million and about US \$ 170 million of unallocated debt (debt contracted for general purposes by the former federal Yugoslavia). But commercial banks in the London Club expect from Slovenia to assume responsibility for a total of US \$ 1,2 billion. Because of this lack of agreement the Slovenian Government opened a special fiduciary account at the Dresdner Bank

Luxembourg (US \$ 88,7 was sent by the end of January 1995). The agreed obligations to commercial banks will go into a special account until an agreement is reached with this group of borrowers regarding a solution which will be satisfactory to both sides (Gospodarski vestnik, 23.2.1995, no. 8, p. 5).

Relative liberal legislation encouraged some foreign banks to enter the Slovenian financial market. Foreigners have the majority ownership in five banks and 100 % ownership in one bank.

#### **6.5. Labour force mobility**

In the near past (40 to 50 years ago) there were large *immigration flows* (economic immigrants) to Slovenia *from other republics of ex-Yugoslavia*. Consequently, there is very a varied structure of population. The share of non-Slovenian nationalities was increasing from census to census. At the census in 1991 the share of all non-Slovenians in Slovenia was 12,16 % of total population, and thereof 89 % immigrants from republics of ex-Yugoslavia (what represents 10,8 % of the total population of the Republic of Slovenia) (Results of the Census).

There are *two ethnic minorities* with special rights in Slovenia: *Italian and Hungarian*, which together represent less than 1 % of the total population.

According to a research in this area migration movements were crucial for a slow increase of the population in RS. In last years *surplus of immigrated above the emigrated residents* of RS (average annual net migration in the period from 1981 to 1991 was +3700) has been noticed. For RS immigrating



is a very important factor of development and structure of population, because in this way the demographic picture of Slovenia is changing by the number, the age (more young residents) and nationality (Results of the Research):

*Slovenian citizens are free to choose an employment in foreign countries. But foreigners need a work permits for working in Slovenia.*

Requests for issuing work permits for foreigners are one of the elements which show the variety of movements in the labour market. Last year the institute issued more than 29.000 permits, 60 % of all cases represented only renewals of those permits. It is bad that new permits were requested primarily by workers with Ist. and IInd. grade of education. With a surplus of workers with inappropriate education we primarily seek for cheap labour (Gospodarski vestnik, 1995, no. 3).

#### *Common restrictions for foreigners*

Foreign workers need a **work permit**, on the base of which an employment visa for the employment in RS at a Slovenian employer is issued. When applying for an employment visa at the Institute for Employment foreigner should enclose the evidence that he or she fulfils the common and special conditions requested by the employer and that he/she is ready to accept the employment if there is no other appropriate candidate with Slovenian citizenship in evidence of the institute. Right after the independence were offered permanent work permits, if they were employed on a permanent basis in Slovenia and had been working in RS for at least ten years. To candidates, who did not fulfil this condition, a work permit for one year was

offered. Permit must be prolonged before falling due in order not to interrupt the working relation (The Law on Employment Relations, 1990).

When a foreigner wants to work in a branch or an agency of a foreign firm in Slovenia he should gain the *business visa*, which is valid also as the permit for the temporary residence (Paper of Ministry of Economic Relations and Development).

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