



ANTIMONOPOLY  
OFFICE  
OF THE SLOVAK  
REPUBLIC

# Plan of the Main Tasks of the Antimonopoly Office of the SR

Evaluation of the fulfillment of  
main tasks planned for 2019  
and the plan of main tasks for  
2020

By this document the Antimonopoly Office of the Slovak Republic, in order to continue on the path towards public communication about the aims set during the current period, introduces the areas in which it plans to prioritize its capacities in 2020. In the area of the Office's scope defined by relevant legislation in competition or state aid coordination, the Office identified a number of challenges, the importance of which is stressed by the current global problem associated with the direct and indirect effects of the pandemic and the measures adopted to prevent the uncontrolled spread of COVID-19 disease.

In the following text, the Office evaluates the fulfilment of the tasks which it planned to fulfil for the period of 2019 and at the same time it sets out the main tasks for 2020 with their detailed description.

The Office continues to work on the analysis and evaluation of its own activities in order to find optimal solutions in the field of systemic and organizational-administrative issues, especially in an effort to increase the efficiency and to optimize the management of the organization and the division of work. In addition to adapting its own processes to changes caused by the electronic exercise of public power, as well as engaging in cooperation in controlling the use of selected financial schemes and mechanisms, the Office, following the process analyses aimed at mapping its selected processes, plans to implement the most significant changes by converting them into new form of the Act on Protection of Competition. At the same time, the Office continues to implement selected tools of process management through the gradual creation of procedural guidelines, as well as through the creation of preconditions for further electronic management of the Office's agendas.

### Area of competition

Within current medium-term objectives, the Office fulfils the following main intentions in the area of competition:

1. the enforcement of competition law in its national as well as its international dimension with the application of regularly reviewed prioritization policy,
2. active contribution to the development of the legislative framework of competition protection in Slovakia in coordination with competent European institutions enforcing competition protection in the context of cooperation between EU Member States,
3. raising the awareness of competition law and the economic and social consequences of its infringement and intensifying communication with the representatives of associations of undertakings,
4. developing cooperation with other central state administration bodies in building
  - effective system of detecting and correct sanctioning of the infringements of competition law,
  - business environment stimulating competition,
5. initiating and developing cooperation with renowned Slovak universities and institutions focusing on law and economic aspects of competition protection.

In line with these above described intentions, the Office set several main aims and tasks also for 2019. At the same time, their evaluation stated below determined the nature and the form of the Office's intentions for 2020.

**The enforcement of competition law with the application of the updated prioritization policy** will enable the Office to focus its capacities more optimally on the most serious delicts with a significant impact on relevant sector and entities operating in it. The Office reflected in the updated prioritization policy also the current development in connection with COVID-19 disease due to the date of its communication. As a result of the emergency situation caused by the disease, the level of vulnerability of selected market participants increased. So the Office, feeling the need to take this into account in its decision-making activity, added a newly considered factual gravity into the prioritization process adjusted by the policy. It was the abuse of an emergency situation in connection with spreading infectious COVID-19 disease, whether through the abuse of a dominant position or a prohibited agreement restricting competition with impacts (including potential ones) on consumers or other market participants.

The Office evaluates the following sectors as priorities for the next periods:

- internet sales/e-commerce and digital platforms,
- automotive/production and the sale of motor vehicles,
- information technologies and systems and
- healthcare.

In the e-commerce sector, in previous periods the Office initiated a sectoral investigation as well as a sector inquiry in order to thoroughly map the affected markets, the levels of competition in them, including factors with the potential to influence their current situation or their future development. The focus on this sector is also documented by the Office's decision of 15 July 2019, in which the Office imposed a fine of EUR 20 632 on the company ags 92, s.r.o., Bratislava for a vertical agreement restricting competition pursuant to the Article 4 Paragraph 1 in conjunction with the Article 4 Paragraph 4 Letter a) of the Act on Protection of Competition and the Article 101 Paragraph 1 Letter a) of the Treaty on the Functioning of the European Union in the field of distribution and sale of children's goods.

In the priority sectors, the Office not only actively conducts investigations, but it also consistently approaches to complaints addressed to the Office. In addition to investigations and administrative proceedings, the Office's efforts may also result in the processing of letters of formal notice with an aim to propose systemic adjustments to the legislative framework, which have the potential to remedy the distortive effects of selected regulations on the markets concerned. In order to support competition aspect in creating public policies, in 2020 the Office will once again address all the addressees of its letters of advocacy from the past, which related to competition concerns that have not been resolved yet.

The Office paid increased attention also to inter-ministry comment procedures, which had the potential to change conditions not only in the priority sectors.

In terms of practices, the Office continued focusing on both cartel and vertical agreements (in particular RPM), bid rigging in public procurement and unnotified mergers. Pursuant to the agreement with the Central Coordination Body (hereafter "CCB"), it continued to be actively engaged in the coordination of the programming, implementation, monitoring and evaluation of the European Structural and Investment Funds (hereafter "ESI Funds"). With a project associated with using a non-repayable financial contribution through ensuring financing wages and remuneration for the Office's employees in the field of detecting agreements

restricting competition, it increased the intensity of control in the affected cases of using relevant financial resources.

The planned fundamental revision of risk indicators within the ESI Funds Management System and the creation of a flexible model of cooperation with CCB, including regular updating of the evaluation equipment of entities involved in controlling the use of funds of this financial mechanism, was implemented through the issuance of CCB's methodological instruction of No. 35, as well as its update. More effective cooperation and more flexible adjustment of procedures for identifying risk indicators of anticompetitive behaviour should enable not only standard face-to-face training of administrative capacities performed by the Office's staff but also a distance-based educational training, which is expected to be available for administrative capacities in 2020. So the administrative capacities will be able to learn of the nature of each risk indicator, including a way how to evaluate its relevance on the basis of detailed characteristics. The Office believes that this will significantly reduce irrelevant complaints, which in the past significantly limited its ability to focus its capacities on cases, in which anticompetitive coordination of participants in the framework of public procurements related to using ESI Funds was supposed to be detected and proved.

In accordance with the agreement concluded on cooperation with the Office for Public Procurement of 15 March 2018, the Office intensively cooperated with it also in amending the Act on Public Procurement, namely in particular in the area of adjusting rules on public procurement, in which bidders with property, organizational or personnel connections participate. The membership of bidders in one economic group, who submitted separate bids during the announcement of a contract is not considered as an indicator of a possible anti-competitive behaviour. For a long time, the Office has been presenting the fact that entities belonging to one economic group cannot conclude an agreement restricting competition, since they are not independent entities. Nor is it possible to exclude their participation in public procurement in advance by a potential legislative amendment (in accordance with the case-law of the Court of Justice of the European Union - judgments in the case C-538/07, Assitur or case C-531/16, Ecoservice projektai). According to the proposed but ultimately unaccepted amendment, the contracting public authority could ask bidders (e. g. property-linked), who are presumed to have acted in a coordinated manner during submitting their bids, ask for the nature of their connection and requesting additional information in accordance with proportionality principle and for the assurance that their offers are truly separate and independent. The reason for excluding according to the Article 40 Paragraph 6 Letter g) of the Act on Public Procurement could occur, for example, if based on a reliable information it was found out that the content of bids submitted by particular bidders was "ordered" from their joint parent business company, although otherwise these bids might not had shown any degrees of similarity or risk indicators showing or indicating their possible coordination.

**The development of legislative framework for the protection of competition** will be significantly affected by the transposition of Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, that was published on 14 January 2019 in the Official Journal of the European Union. It is aimed at strengthening the functioning of the internal market through a number of instruments, in particular

- adjustments to national rules that prevent national competition authorities from enforcing law effectively, thus ensuring a more balanced protection of enterprises in Europe,

- ensuring the availability of the same guarantees and instruments in national competition law, in cases where it is applied in parallel with the Articles 101 and 102 of the Treaty on the Functioning of the European Union so as to ensure legal certainty and the same conditions and
- the introduction of effective rules on mutual assistance in order to ensure the smooth functioning of the internal market and the system of close cooperation within the European Competition Network.

In connection with the transposition process, on 18 January 2019 the Office invited the public to participate in an expert discussion and to send possible proposals and comments on the amendment of the Act on Protection of Competition.

The whole transposition process should be completed by 4 February 2021, which clearly predetermines the preparation of the wording of the amended Act and the subsequent legislative process as one of the most important tasks of the Office for the current period. In addition to incorporating the amendments introduced by the European Directive, the Office will most likely use the space also for

- the review of two-instance nature of the Office's proceedings and decisions,
- the introduction of additional, resp. extended notification criterion for the notification of mergers with the aim to capture all competitively relevant mergers in affected markets,
- the elimination of possible negative effects on the intensity of competition when imposing a ban on participation in public procurements for selected types of infringements,
- procedural amendments, including the running of time limits, access to the administrative file, as well as the area of international cooperation.

In the area of the Office's soft laws related to its decision-making activities in imposing fines pursuant to the Article 38a of the Act on Protection of Competition, in 2019 the Office prepared documentation for the issuance and publication of a methodological instruction on specifying the manner of requesting documentation and information from undertakings, state administration bodies, local governments, municipalities or other persons from whom it is set by law and also the amendment of a particular procedure, cooperation of individual Office's organizational units, as well as the unification of formal and content side of the outcomes in investigations and administrative proceedings of the Office.

**In the area of raising awareness of competition law and competition advocacy** in 2019, the focus was put on communication mainly towards the forthcoming legislative regulations, which by their nature have the ability to influence the level of competition in selected markets. Among such regulations were, for example, the draft of the Act on eGovernment, the Act on the deposit of disposable packaging for beverages, the Act on health insurance companies and health care supervision, the Act on health care providers, health care workers and professional organizations in health care, the Act on prices, the draft of Legislative intent on the Act on public procurement chamber, as well as the draft of the Decree of the Office for the Regulation of Network Industries, which sets price regulation in the electricity sector and certain conditions for the performance of regulated activities in the electricity sector. In building an effective system for detecting and correct punishing infringements of the Act on Protection of Competition and a business environment stimulating competition, the Office actively **developed cooperation with other central state administration bodies**, in particular supervisory authorities and regulators in individual sectors of the economy, which it plans to continue in 2020, namely mainly by the form of

- strengthening the principles of healthy competition by increased activity in inter-ministry comment procedures,
- introduction of control mechanisms within sectors prone to the application of agreements restricting competition by undertakings through intensified communication with the ministries concerned, especially in the case of the identification of systemic failures,
- active participation in the implementation of liberalization rules in historically long-term monopolized and regulated markets and subsequent monitoring of the development of such affected areas of the economy, and
- proposing corrective as well as preventive measures.

### Area of state aid

In line with the medium-term intention, in the area of state aid the Office planned the following main tasks for 2020:

1. raising the awareness of rules on state aid,
2. the continuation of intensive cooperation with existing aid providers, focusing on the interpretation and application of rules on state aid in practice,
3. focusing the Office's activities on legislative/non-legislative acts, within which the aid could be provided, or on potential aid providers (the Office's own initiative),
4. developing the Office's cooperation in the field of state aid with partner institutions in other EU Member States.

Within the above-mentioned main tasks set by the Office for 2020, as one of the main aims remains **raising the awareness of rules on state aid**, through

- regular updating of the website [www.statnapomoc.sk](http://www.statnapomoc.sk) (Slovak and English version),
- regular updating of the network of contact persons and its use as one of the communication tools in the area of state aid,
- elaboration of methodological guidelines for aid providers (preparation of a model of an aid scheme, preparation of applications for an opinion on ad hoc de minimis aid for the area of agricultural primary production, methodological guidelines in selected areas for self-governing regions, cities and villages),
- preparation of searches from selected decisions of the European Commission and judgments of the Court of Justice, resp. preparation of questions and answers from the e-Wiki platform.

The task to raise the awareness also through regularly updated website [www.statnapomoc.sk](http://www.statnapomoc.sk) was set in the Office's plan for the year 2019. During 2019, it published a total of 79 information on the website. Of this number, 66 % of information concerned the publication of new state aid and de minimis aid schemes, resp. schemes as amended. Another 13 % of information consisted of published news and interesting facts from the area of state aid, 21 % of the information concerned the publication of the base rate for setting the reference and discount rates, the report on the state aid provided, as well as adjustments and adding information on the website and information on legislative changes of the European Commission in the area of state aid and methodological guidelines of the aid coordinator.

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In 2019, it modified the English version of the website and added on it up-to-date information.

According to the plan of tasks set for 2019, the Office used the network of contact persons as a communication tool - it regularly sent current information and news in the area of state aid to the contact persons. It continuously updated the network of contact persons, namely based on up-to-date contact details from aid providers, as well as on the Office's own initiative. At various meetings, also new aid providers were informed about the network of contact persons.

The e-mail address [statnapomoc@antimon.gov.sk](mailto:statnapomoc@antimon.gov.sk) is an active tool for raising the awareness in the area of state aid and at the same time it is a contact point for the public. Its aim is to provide methodological and consulting activities for individual applicants for a guidance in the area of compliance with the rules on state aid and de minimis aid in general, or in specific cases.

Through that address, it dealt with 107 requests for a guidance in 2019. The largest share of requests for guidance (67 %) concerned requests for a binding opinion from the aid coordinator on aid schemes, expert questions on the application of EU rules on state aid and de minimis aid, the interpretation of the concept of a single enterprise, but also requests for a training or a consultation. The second largest share of requests for information (18 %) came from local governments. These questions concerned, for example, the sale or lease of property owned by the local government at a price lower than a market price, the local nature of an aid measure, differences between economic and non-economic activity. Other questions concerned the information system for registering and monitoring aid (IS SEMP).

In 2019, the Office issued a new methodological guideline entitled "Cases not subject to state aid rules". The methodological guideline is focused on aid measures, the implementation of which is not subject to state aid rules, such as non-economic activities, non-economic activities with additional economic use of infrastructure projects and the evaluation of the local nature of economic activities. In addition to the theoretical part, the methodological guideline also contains editable annexes, which individual providers can use in assessing their measures.

The Office also updated three methodological guidelines in 2019, namely the Methodological guideline for ensuring uniform content of applications for opinions of ad hoc de minimis aid providers pursuant to Commission Regulation (EU) No. 1095/2010. 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid (November 2019), Model of the declaration of the applicant for de minimis aid under Commission Regulation (EU) no. 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the functioning of the European Union to de minimis aid (November 2019) and the Manual on the information system for registering and monitoring aid (IS SEMP) (October 2019). The reason were the changes brought by their implementation in practice, respectively changes in the basic settings of the information system.

It also fulfilled the task of compiling searches from selected decisions of the European Commission, which the Office had set for 2019. For its own use, it prepared searches of selected decisions of the European Commission and judgments of the European Court of Justice (e. g. in the area of the absence of effect on trade, the area of the assessment of compatibility of criteria for various aid purposes), on which it informed

also aid providers during their working meetings. Through information processed from Aid Weekly e-News, the Office regularly informs aid providers about the latest decisions of the European Commission.

In 2020, the Office as the aid coordinator plans to **continue intensively cooperate with existing aid providers**, focusing on the application of rules on state aid in practice (e. g. in the form of trainings and workshops, or methodological guidelines of the Office for aid providers) and monitoring aid provided (e. g. by the form of coordination meetings). As a part of this task, it plans to:

- organize working meetings with aid providers focused on specific, respectively planned aid measures and legislative proposals (also using online platforms),
- organize trainings for providers of state aid and de minimis aid (also using online platforms),
- cooperate with aid providers in preparing measures aimed at mitigating the impacts of the COVID-19 pandemic,
- cooperate with the Office of the Government of the SR in training administrative capacities in the area of state aid and with the Ministry of Finance of the SR in training auditors,
- actively cooperate with representatives of the Central Coordination Body and aid providers (including managing and intermediate authorities), with the aim of sharing experiences and preparing for the new programming period.

Of the above stated tasks, it will be necessary to pay a special attention mainly on cooperating with aid providers who will prepare measures for entities carrying out economic activity with the aim to mitigate impacts and economic consequences of the COVID-19 pandemic so that these measures were in compliance with relevant rules on state aid.

In 2019, the task of intensifying cooperation with existing aid providers was fulfilled as follows:

- In the course of 2019, the Office organized 71 working meetings with aid providers, resp. with the implementers of aid schemes. The subject of the meetings were mainly proposals for particular measures, by the implementation of which should be provided state, resp. de minimis aid (aid schemes, ad hoc aid) and their harmonization with relevant rules on state aid, forthcoming notifications, or potential measures not subject to state aid rules, as well as drafts of legislation and comment procedures about fundamental comments of the Antimonopoly Office of the SR raised within inter-ministry comment procedures. The most frequent participants in the meetings were representatives of ministries.
- In 2019, the Office organized a total of 17 trainings and practical workshops, mainly on the basis of an ever-increasing number of requests from aid providers. The trainings were focused also on local self-government, i. e. higher territorial units, cities and municipalities. Some of them were held directly in regions.

The subject of the trainings were procedural rules for granting aid, the explanation of difference between economic and non-economic activity and the cumulative conditions of state aid in accordance with the Article 107 Paragraph 1 of the Treaty on the Functioning of the EU, the so-called state aid test. The training also included national legislation with a special focus on aid schemes, ad hoc aid, as well as an information system for registering and monitoring aid (IS SEMP). The workshops were



mostly focused on selected areas of granting aid by particular providers. At the end of individual trainings and workshops, there was a space for discussions, during which the participants could ask their questions and solve practical problems related to the application of rules on state and de minimis aid.

The Office, in cooperation with the Department of Regional Development Support of the Office of the Deputy Prime Minister for Investment and Informatization, organized a training in Banská Bystrica for representatives of contact points in the least developed districts.

Based on the request from Bratislava self-governing region, in the premises of the institution it held a training focused on the provision of de minimis aid in the framework of valid and effective de minimis aid schemes prepared by Bratislava self-governing region. The participants took the opportunity to actively participate in the training, especially through specific questions and problems they encountered in the implementation of schemes.

The cooperation of the Office with the Office of the Government of the Slovak Republic in 2019 took place in the framework of compulsory education of administrative capacities in the area of state aid. At the same time, the Office cooperated with the Ministry of Finance of the SR in training auditors.

As a part of its own initiative, the Office plans to **focus its activities on legislation/non-legislation acts, within which an aid could be provided, or on potential aid providers**. This includes

- continuation of the Office's activities in areas, which related to new obligations under the Act on State Aid (e. g. amendments to public interest contracts in road passenger transport),
- continuation of the Office's activities related to the activities of cities, municipalities and self-governing regions, through which state or de minimis aid can be provided (e. g. subsidy schemes to support various areas, the management of property due to special consideration).

In connection with the Office's initiative to focus its activities on the above-mentioned legislation/non-legislation acts, in 2019 the Office implemented the following:

- The Office prepared methodological guidelines for particular cities, which concerned the application of individual conditions for the provision of aid under regulation No. 1307/2007, as well as the possibility of extending existing contracts to comply with all the conditions of related legislation. It also dealt with the possibility of using regulation no. 1370/2007 for road passenger transport services in the framework of cross-border cooperation.
- The Office also focused its activities on cities, municipalities and self-governing regions as aid providers and on their specific position, either within methodological guidelines or consultations focused on e. g. individual areas of support under generally binding regulations. The Office also assessed proposals for specific measures by self-governing regions (de minimis aid schemes, including supplements, ad hoc aid measures). The Office paid a special attention also to the proposal of measures by cities and municipalities in particular areas (e. g. support for culture and sports), as well as the proposal for

measures of a local character and proposals of measures that represented support for non-economic activities.

Last but not least, the Office plans to **develop cooperation in the area of state aid with partner institutions in other EU Member States**. It will put an effort to continue cooperating with the Office for the Protection of Competition in Brno in the area of state aid, as well as with aid coordinators in other Member States, for example also in connection with the preparation of measures to mitigate the impacts of the pandemic due to COVID-19 disease.

Already in the plan of main tasks for 2019, the Office had set its task of developing cooperation with partner institutions in other EU Member States. Following the above stated, the Office as the aid coordinator organized a meeting of an international working group for the implementation of state aid modernization in Bratislava on 8 February 2019.

The working group is an informal platform for mutual discussion and the exchange of experience of representatives of coordinators in the area of state aid in EU Member States. Meetings of the working group are always held in another EU Member State and are usually attended also by the representatives of the European Commission.

The subject of the working group meeting in Bratislava was especially more detailed information from the European Commission on the extension and the evaluation of selected state aid rules, as well as the first experience of Member States with the implementation of important projects of common European interest and also the implementation of cross-border cooperation projects (Interreg).