



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 2020
and the plan of main tasks for
2021

Since 2017 the Antimonopoly Office of the Slovak Republic has been regularly communicating to the public about its aims set for the ongoing period. So also in 2021, in the plan of main tasks the Office introduced areas, into which it has been planning to priority direct its capacities, as well as it evaluated the fulfillment of aims set for a previous period.

In the area of the Office's competence defined by relevant legal regulations, whether in the area of competition protection or state aid coordination, the Office identified several challenges for the following periods. In addition, their significance is exacerbated by the continuing global problem associated with the direct as well as the indirect impacts of the COVID-19 pandemic and the measures taken to halt the spread of this communicable disease.

Thus, in the following text, the Office evaluates the fulfillment of tasks it planned to fulfill for the period of 2020 and at the same time it sets out main tasks for 2021 with their detailed description.

In the course of previous periods, the Office identified the need for optimization in the area of systemic and organizational-administrative issues, especially in an effort to increase efficiency and to optimize the management of 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 a process analysis aimed at mapping selected processes of the Office, proposed significant adjustments into the new Act on Protection of Competition. However, not everything was successfully enforced in the wording, which was submitted for discussion by the National Council of the Slovak Republic. Yet the Office successfully continues to implement the selected tools of process management through the gradual creation of procedural guidelines, as well as through the creation of preconditions for the further electronic management of the Office's agendas.

Office's activity with regard to the circumstances connected with the spread of COVID-19

During 2020, the Office responded promptly to the circumstances related to the spread of COVID-19.

Within the framework of drafts of legislative amendments, it went in the way of taking into account the aspects of emergence of an extraordinary situation, resp. state of emergency in the future, too (e. g. in the draft of Act on Protection of Competition). By amending relevant soft laws, e. g. in updating the prioritization policy, it reflected the circumstances emerged by including a new factual gravity, namely the abuse of an extraordinary situation related to the spread of COVID-19 by abusing a dominant position or concluding a prohibited agreement restricting competition affecting (also potentially) consumers or other market participants. At the same time, the Office immediately secured the purchase of selected information and communication technologies, thanks to which the Office's employees can, if necessary, perform tasks entrusted to them from a household, practically without limitations. The involvement of the Office's new documentation system since 1 January 2021 was also helpful. The Office also in an increased extent uses online communication platforms for trainings, conferences, meetings and consultations.

The adopted anti-epidemic measures thus have a minimal negative impact on the functioning of the Office.

Area of competition

In the current and already ending medium-term objective, the Office fulfills 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 a regularly reviewed prioritization policy,
2. active contribution to the development of 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
 - the effective system of detecting and correct sanctioning of infringements of competition law,
 - a business environment stimulating competition,
5. initiating and developing a cooperation with renowned Slovak universities and institutions focusing on law and economic aspects of competition protection.

In line with the above described intentions, the Office set several main aims and tasks also for 2020. At the same time, the below stated evaluation of them determined the nature and the form of the Office's intentions for 2021.

The enforcement of competition law with the application of an updated prioritization policy will enable the Office to direct its capacities more optimally to the most serious delicts by their type with a significant impact on a relevant sector and entities operating in it. As the Office communicated its updated prioritization policy in April 2020, it reflected within it also the current development in connection with the COVID-19 disease. As a result of the extraordinary 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 also in its decision-making activity, it added a newly considered factual gravity into the prioritization process adjusted by the policy, namely by the abuse of an extraordinary situation in connection with the spread of COVID-19 disease, either by the abuse of 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
- the healthcare.

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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 level of competition in them, including factors with the potential to influence their current situation or their future development.

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 advocacy letters with the aim to propose systemic adjustments to the legislative framework, which have the potential to remedy the distortive effects of selected regulations on markets concerned. In order to support the competition aspect in the creation of public policies, the Office repeatedly addresses all the relevant addressees from the past with the interest to conclude the solving of identified competition concerns.

The Office paid an increased attention also to interministry comment procedures to the proposals of legislative orders, which had the potential to change conditions not only in priority sectors.

In terms of practices, the Office continues focusing on both cartels and vertical agreements (in particular the RPM), bid rigging in a public procurement and non-notified mergers. Pursuant to the agreement with the Central Coordination Authority it continued to be actively engaged in the coordination of programming, implementation, monitoring and evaluating the European Structural and Investment Funds. With the project associated with using a non-repayable financial contribution through securing the financing of wages and remuneration of the Office's employees of 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 the CCA, including the regular updating of evaluation equipment of entities involved in controlling the use of funds of this financial mechanism, was implemented through the issuance of CCA's methodological instruction No. 35, as well as its updating. As a part of the update, the Office also amended the procedure of affected entities in relation to the application of selected provisions of the Act No. 350/2016 Coll. on Certain Rules for the Claim of Compensation for Damage Caused by the Infringement of Competition Law and on Amendments to Certain Acts, as amended.

A more effective cooperation and a more flexible adjustment of procedures for identifying risk indicators of anticompetitive behaviour should be enabled not only by standard face-to-face trainings of administrative capacities performed by the Office's employees but also a distance-based educational training, which was made available for administrative capacities in September 2020. So, in the distance-based course Risk indicators, the administrative capacities will be able to learn of the nature of each risk indicator in details, including a way of how to evaluate its relevance on the basis of detailed characteristics and specificities of particular indicator. The Office believes that this will significantly reduce the number of irrelevant complaints, which in the past significantly limited its ability to focus its capacities on cases, in which the anticompetitive coordination of participants in the framework of public procurements related with using ESI Funds were supposed to be detected and proved. As of 13 January 2021, the distance-based course Risk indicators was attended by 47 administrative capacities from various self-governing regions, towns and villages, as well as ministries or offices.

Based on an agreement concluded on cooperation with the Office for Public Procurement of 15 March 2018, the intensive cooperation was held also in several drafts of amending of 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 in the in announcing a contract is not considered as an indicator of 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 by a potential legislative amendment to exclude their participation in a public procurement in advance (in accordance with the case-law of the Court of Justice of the European Union – the 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 when 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 related bidders was “ordered“ from their joint parent business company, although otherwise these bids might not had shown any degrees of similarity nor risk indicators showing their possible coordination. So the Offices plans to elaborate this theme as well as other themes in details in the outputs related to the European Commission’s Communication of 15 March 2021 on anti-collusion instruments in public procurement and on guidelines on how to apply the related collusion exclusion ground, which are provided for in the Article 38 Paragraph 7 Letter e) of the Directive 2014/23/EU, the Article 57 Paragraph 4 Letter d) of the Directive 2014/24/EU and the Article 80 Paragraph 1 of the Directive 2014/25/EU.

The development of legislative framework of competition protection may be significantly affected by the transposition of the 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. At the ending of 2020 the Office submitted the draft of a new Act on Protection of Competition and on adjustment and supplement to certain acts (hereafter also „the draft of act“) to the Government of the SR.

On 7 January 2021, at the 63rd meeting of the Government of the SR, it discussed and approved the submitted draft of act and subsequently the Office submitted the governmental draft of act to the National Council of the SR. In February 2021, a comment procedure was initiated on the related implementing regulations. The draft of act, after it was discussed about by the National Council of the SR in the first reading on 26 January 2021, on the basis of voting of deputies, it was assigned to the Committees of the National Council of the SR for discussion and a deadline was set for its discussion in the second reading. In its second reading and third reading, on 1 April 2021, the National Council of the SR discussed the draft of act at its meeting and also approved it with a parliamentary amended and supplemented proposal.

On 21 April 2021, the President of the SR, Zuzana Čaputová, vetoed the draft of act and returned it to the Parliament for reconsideration on the grounds relating to the parliamentary proposal of amendment to the draft of act in in Art. III, which concerned changes in the Competence Act (Act No. 575/2001 Coll. on the

organization of activity of government and the organization of central state administration, as amended). On 11 May 2021 the National Council of the SR again approved the draft of act in the wording discussed and approved with a parliamentary proposal on 1 April 2021. As the President's comments were not accepted, the head of state exercised the right not to sign the approved act. On 25 May 2021, the act was published in the Collection of acts together with relevant legal regulations and decrees. The act No. 187/2021 Coll. entered into force on 1 June 2021.

In the area of raising awareness of competition law and competition advocacy also in 2020, the focus was the communication mainly towards the forthcoming legislative regulations, which by their nature have the ability to influence the level of competition in selected markets. In addition, in 2020, the Office's representatives were invited as panellists at various international conferences and forums in the EU countries on the area of competition, in order to present the Office's experiences, opinions and positions.

With the interest order to raise the awareness of competition protection, the delegates of the Antimonopoly Office of the SR on 8 October 2020 led an online training activity for the members of the Food Chamber of Slovakia and the Slovak Chamber of Agriculture and Food. The training activity was therefore focused mainly on competition protection in the field of agriculture and food.

Also, in 2020, several trainings held were focused on the administrative capacities of the ESI Funds in accordance with the Central Education Plan. In building an effective system for detecting and the correctly sanctioning of infringements of competition rules and a business environment stimulating competition, the Office was actively developing 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 also in 2020, namely mainly in the form of

- strengthening the principles of a healthy competition by an increased activity in interministry comment procedures,
- introducing 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 identification of systemic failures,
- active participation in the implementation of liberalization rules in historically long-term monopolized and regulated markets and the subsequent monitoring of development of so affected areas of the economy, and
- proposing corrective as well as preventive measures.

Area of state aid

In line with the medium-term intentions in the area of state aid, the Office set several main tasks for 2021.

One of the main and ongoing aims of the Office remains the awareness raising on state aid rules, namely particularly through

- updating of the website www.statnapomoc.sk (Slovak and English version), namely on a regular basis,
- updating of the network of contact persons and its use as one of communication tools in the area of state aid (on a regular basis),
- the elaboration of methodological guidelines for aid providers (the preparation of applications for an opinion on ad hoc de minimis aid for the area of agricultural primary production, the preparation of an aid scheme model, methodological guidelines in selected areas for self-governing regions, cities and villages).

The task of awareness raising also through the regular updating of the website www.statnapomoc.sk was set also in the Office's plan for the year 2020. During 2020, also taking into account the coronavirus pandemic, the website became one of the Office's main communication tools. In the course of 2020 it published a total of 148 information on the website. Of this number, 54 % of information concerned the publication of new state aid and de minimis aid schemes, resp. schemes as amended. Another 25 % of information consisted of published news and interesting facts from the area of state aid, 12 % of information concerned the legislation changes of the European Commission in the area of state aid. And aid coordinator's methodological guidelines. Other 9 % of information concerned the publication of base rate for setting reference and discount rates, a report on granted state aid, as well as the adjustment and adding information on the website.

At the website www.statnapomoc.sk, the Office created a new folder Measures related to COVID-19 in order to facilitate the orientation of providers and recipients of aid in the new legislation and new tools to help companies in the current situation. The folder contains regularly added news in this area, as well as related legislation (temporary framework, its supplements and related forms). It also clearly lists state aid schemes approved for the Slovak Republic by the European Commission (a link to the European Commission's decision and the final text of the scheme is available) as well as de minimis aid schemes in relation to COVID-19, on which the Office as aid coordinator issued an opinion.

In 2020, it also updated the English version of website. The updated information concerned mainly news in connection with the COVID-19 infection and the publication of the basic rate for setting reference and discount rates.

Also in 2020, the importance of network of contact persons for the field of state aid increased - through this they were regularly informed about current news in the area of state aid, as well as about the European Commission's activities to help Member States in preparing measures to mitigate the consequences of pandemic. The network of contact persons was continuously updated.

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In 2020, the e-mail address statnapomoc@antimon.gov.sk was actively used by aid providers or implementers of aid schemes, as well as aid recipients and the wide public, especially in relation to information on new support programmes.

In 2020, through that address, it dealt with 124 requests for a guidance. The largest share of requests for guidance (30 %) concerned expert questions in the application of EU rules on state aid and de minimis aid, but also requests for a training or a consultation. The second largest share of requests for information (29 %) concerned the information system for registering and monitoring of aid (IS SEMP). Other 21 % of questions concerned requests for processing a binding opinion of aid coordinator on aid schemes and state aid notifications. Other 20 % related to requests for providing guidelines during COVID-19 pandemic and a half of them came from self-governments. Their questions related to for example selling of a fortune owned by self-governments for a price lower than the market one, state aid test, state aid assessment, forgiveness of rent at the time of COVID-19 pandemic, request for subsidy at the time of COVID-19 pandemic.

As a part of methodological guidelines, the Office updated the manual on the information system for registration and monitoring of aid (IS SEMP), which is to serve mainly for the providers or recipients of state aid or de minimis aid. In the course of 2020, the Office also established the cooperation with the Association of Towns and Municipalities of Slovakia. As a part of this cooperation on the website www.statnapomoc.sk, in the folder „Self-government“, it published the first two parts of information campaign named „Getting started with state aid“, which is aimed primarily at cities and municipalities and aims to raise the awareness of rules for state aid within this target group. The first part concerns the basic concepts in the area of state aid (the concept of enterprise, economic activity, state aid test), the second part contains basic information about the Act No. 358/2015 Coll. on the regulation of certain relations in the field of state aid and de minimis aid and on the amendment and supplements to certain act (the State Aid Act). The Office will continue in this cooperation in 2021, too.

It also fulfilled the task of compiling searches from selected decisions of the European Commission, which the Office had set for 2020. The assessing of the proposals for aid measures was based on selected decisions of the European Commission and the judgements of the European Court of Justice (e.g. in the area of assessing criteria compatibility for various aid purposes), at the same time these were also the subject of working meeting with aid providers. The Office also regularly processed information from Aid Weekly e-News, by which it informed aid providers about the decisions and the activities of the European Commission.

In 2021, the Office as the aid coordinator plans to continue an intensive cooperation with existing aid providers, focusing on the correct application of state aid rules in practice, also through online platforms (e.g. through working meetings, trainings, methodological and consultation activities). As a part of this task, it plans to

- organize working meetings with aid providers/aid schemes implementers, focusing on existing, resp. planned aid measures and legislative proposals (also using online platforms),
- organize general and specialized trainings for providers of state aid and de minimis aid, resp. aid schemes implementers (also using online platforms),

- cooperate with aid providers in preparing drafts of measures aimed at mitigating the impacts of the COVID-19 pandemic,
- cooperate with aid providers in drafts of measures financed from Recovery and Resilience Plan of the Slovak republic, as well as from specialized funds (e. g. Fair Transformation Fund, Modernization Fund),
- 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 (also using online platforms),
- cooperate with the Association of Towns and Municipalities of Slovakia within the information campaign “Getting started with state aid“,
- cooperate with the delegates of the Central Coordination Authority and aid providers (including managing and intermediate authorities), with the aim of securing the correct application of state aid rules in the framework of preparing for a new programming period.

As in the previous year, it will be specially important to cooperate with aid providers, who will continue preparing measures for enterprises, focusing on mitigating the economic consequences of COVID-19 pandemic so that the measures were in accordance with relevant rules on state aid, as well as the mediation of communication with the European Commission in the case of notified aid measures.

In addition, the Office’s participation in working groups focused on the drafts of aid measures under specialized instruments (Recovery and Resilience Plan of the Slovak Republic, Modernization Fund, Fair Transformation Fund) will be important, especially in terms of identifying measures to support the economic activity and securing their compliance with state aid rules.

In 2020, the fulfillment of this task was significantly affected by measures focused on restricting the spread of new coronavirus. Yet the Office promptly reacted and transferred its activities into online space as follows:

- In the course of 2020, the Office organized 79 working meetings with aid providers, resp. with aid schemes implementers. Following the outbreak of pandemic, it began organizing online meetings through selected communication platforms. This form of meeting was welcomed by the Office’s delegates as well as the providers’ delegates, especially in terms of the operability of setting the date of meeting, the duration of meeting, as well as the possibility of increasing the number of participants in meetings. The number of telephone consultations from aid providers and aid schemes implementers also increased.
- The subject of meetings and consultations were the proposals for legislation, proposals for specific measures, by the implementation of which the state aid, resp. de minimis aid is to be provided and their alignment with relevant state aid rules, as well as specific issues related to aid schemes implementation in practice. A large number of meetings and consultations concerned measures to

mitigate the economic consequences of pandemic. The participants in the meetings were the delegates of ministries as well as the delegates of selected cities. The office also actively communicated with the delegates of the European Commission in relation to notified aid measures, in particular through selected online communication platforms.

- The pandemic situation affected also the possibilities for trainings. In spite of this, a few of them were held. In cooperation with the Office of the Government of the SR, there were held 3 trainings for the administrative capacities of the ESI Funds, the participation of which is mandatory on the basis of the Central Education Plan. A total of about 80 participants attended the trainings. Until then they had not had experience with state aid rules.

In light of the above stated, the subject of trainings were mainly basic information and concepts in the area of state aid and de minimis aid, as well as national legislation (the Act No. 358/2015 Coll. on the regulation of certain relations in the area of state aid and de minimis aid and on the amendment and supplement to certain acts (the state aid act) and the information system for registering and monitoring (IS SEMP), which fulfills the role of a central register containing data on aid granted in the Slovak Republic.

Based on positive experience with working meetings using online platforms, the aid coordinator decided to renew also training opportunities in this way. The initial online training was the training for the regulation No. 1370/2007 for selected self-governing regions, which was successfully organized in November 2020. The participants evaluated the training very positively, therefore the aid coordinator will continue such activities in 2021, too.

Recently, the Office represented the need of further development of the system for registering and monitoring aid - SEMP at various places. In the past, it was repeatedly called upon to proceed with the transformation of this central register into a reference register pursuant to the Article 51 of the Act 305/2013 Coll. on the electronic form of exercising powers of public authorities and on the amendment and supplement to certain acts (the e-Government Act), as well as today already repeatedly into the inter-ministerial comment procedure on the submitted Data Act. However, the Office has so far objected to the stated, with regard to the setting of system and the current obligations of entities concerned (scheme implementers, providers) set by acts in connection with the timeliness and the completeness of all data on aid granted so far. However, it is a logical requirement for the register to fulfill the purpose for which it was established in the future, without any restrictions. However, this would require not only legislation amendment and tightening of the current obligations of entities concerned, but also the development of functionalities and procedural setting of registering of aid granted in the system itself. The system may thus become usable in the future in the wider range of its functionalities for better and a more transparent management of granting aid and its registration.

As a part of its own initiative, the Office plans to focus its activities on legislation/non-legislation acts within which aid could be granted, or on potential aid providers. In this connection the Office plans to

- continue in the activities in areas, which relate to new obligations under the Act on State Aid, with the application of which there has not yet been a much of experience in practice (e. g. public interest contracts in road passenger transport, resp. their amendments),

- continue in the activities related to the activities of cities, municipalities and self-governing regions, through which state aid or de minimis aid can be granted (e. g. the sale/rental of property due to a special consideration, various support instruments).

In connection with this initiative, the Office carried out the following activities in 2020:

- In 2020, the Office established the cooperation with the Association of Towns and Municipalities of Slovakia, within which the initiative „Getting started with state aid“ was launched, the aim of which is to raise the awareness of state aid rules, especially at the level of towns and municipalities. Given the interest and expected benefits of this initiative, the Office plans to continue it also in 2021.
- As a part of its activities, the Office cooperated with selected cities, municipalities and self-governing regions in the matter of proposed or planned aid measures (e.g. proposals for aid schemes, ad hoc aid measures, consultations on public interest contracts or their amendments), it coordinated also the notification process in relation to the European Commission. As a part of the methodological activity, it also assessed proposals for subsidy programmes in various areas.

In 2021, the Office plans to develop the cooperation in the area of state aid with partner institutions in other EU member states and with the European Commission. It will continue to cooperate 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 preparing measures to mitigate the consequences of the COVID-19 pandemic, as well as in relation to open consultation issues with the European Commission. It will also continue to be actively involved in cooperation with the European Commission, especially in the context of ongoing process of revising state aid rules (the so-called fitness check).

The Office also set the task of developing cooperation with partner institutions in other EU member states for 2020. The Office secured fulfilling this task mainly by participating in the meetings of working group for the implementation of state aid modernization, which were organized online in October and November 2020.

The study visit of delegates of the Ukrainian Antimonopoly Office (AMCU) and the delegates of state aid providers from the Ukraine also took place in the premises of the Antimonopoly Office of the Slovak Republic. AMCU is responsible for controlling state aid in the Ukraine under the Ukrainian act on state aid for enterprises. The SESAR project (EU-funded) has been currently being implemented under the AMCU to support the establishment of an effective state aid control and monitoring system in the Ukraine, as required by the EU-Ukraine Association Agreement. Under this part of the project, the delegates of AMCU and some state aid providers had the opportunity to attend a study visit in individual Member States and to learn from their experience in the pre-accession period to the European Union.

The Office actively also cooperated with the European Commission, especially in two areas:

- the process of revising state aid rules (the Office participated in five advisory committees focused on the area of state aid, at the same time it coordinated the submission of comments on drafts of legal norms for the Slovak Republic),
- the process of notifying aid measures (in particular in relation to measures to mitigate the negative consequences of the pandemic), in the form of consultations on specific proposals as well as participation in working meetings with the European Commission.