

# **Guidelines on the Competences of the Antimonopoly Office of the Slovak Republic to Conduct Inspections**

pursuant to article 22a par. 1 of the Act No. 136/2001 Coll. on Protection of Competition and on the Amendments and Supplements to the Act of the Slovak National Council No. 347/1990 Coll. on the Organisation of Ministries and Other Central Bodies of State Administration of the Slovak Republic as amended as amended (hereinafter referred to as “the Act”)

1 July 2014

These Guidelines are for information only and their aim is to clarify the competences and the procedures of the Antimonopoly Office of the Slovak Republic (hereinafter referred to as “the Office”) in conducting an inspection in those premises and means of transport of the undertaking, which are related to the activities or conduct of the undertaking (i.e. business premises) pursuant to article 22a par. 1 of the Act.

1. In the performance of their duties pursuant to the Act, the employees of the Office and the persons entrusted with the performance of the duties falling within the powers of the Office (hereinafter in these guidelines referred to as “inspectors”, or “inspector“ in the singular) shall have the right to enter any premises and means of transport of the undertaking<sup>1</sup>, which are related to the activities or conduct of the undertaking, in order to conduct an inspection.
2. Pursuant to article 22a of the Act, an undertaking is obliged to submit to the inspection conducted by the inspectors. When conducting an inspection the inspectors shall prove their identity to the undertaking or any employee of the undertaking (hereinafter referred to as “the undertaking”) through a written authorization issued by the Vice-Chairperson of the Office and by their service card<sup>2</sup>. At the beginning of the inspection the inspector shall submit **a copy of the authorization to conduct an inspection** to the undertaking in whose premises and/or means of transport (hereinafter referred to as “the premises of the undertaking”) the inspection is to be conducted.
3. The inspectors shall inform the undertaking of the object of the inspection in the extent of the authorization to conduct an inspection, and shall instruct the undertaking on their rights and obligations, as well as on the consequences of not allowing to conduct an inspection or other form of non-cooperation with the inspectors during the inspection.
4. The inspectors may ask the undertaking to allow the inspectors to use their technical equipment and data carriers (HDD, PC, laptop, USB, DVD, CD-ROM, cables, printer, copy machine, etc.). If they do not ask the undertaking to use their technical equipment and data carriers, they use technical equipment and data carriers provided by the Office.
5. During the inspection the inspectors are empowered to:
  - a) seal the documents or carriers of the undertaking on which information is recorded, to seal the premises and the equipment of the undertaking, as well as the means of transport of the undertaking for a certain period and to the extent necessary for the inspection;
  - b) take away the documents and carriers on which information is recorded for the time that is necessary with the aim of making copies or gaining access to the information if the inspectors are unable, primarily for

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<sup>1</sup> An “undertaking” within the meaning of this Act means an entrepreneur pursuant to the Commercial Code, as well as any natural or legal person, their associations, and the associations of these associations, with respect to their activities and conduct that are related, or may be related to competition, regardless of whether or not these activities and conduct are aimed at making profit.

<sup>2</sup> The Chairperson of the Council shall issue the written authorisation within the proceedings before the Council of the Office.

- technical reasons, to gain access to the information or make copies of the documents during the inspection;
  - c) ensure the access to the premises of the undertaking and means of transport, to open closed premises and their equipment or to otherwise ensure access to documents and carriers on which information is recorded; the inspectors are entitled to summon other persons capable of overcoming the obstacle;
  - d) ensure the access to all the information stored in any electronic form in the data storage of the undertaking or created in any electronic form by the undertaking or which the undertaking may access in connection with their operations, including information stored in any electronic form in the data storage of other entities to which the undertaking has access and uses for their activity; to ensure the access to these carriers the inspectors are entitled to summon other persons capable of ensuring such access. However, these persons are not entitled to access this information.
- 6. The inspectors are further empowered to make copies of any information in document form, all computer data and information of the undertaking stored in any electronic form on data carriers pursuant to paragraph 5 subparagraph d) of these Guidelines.
- 7. For the purpose and in the course of conducting an inspection the undertaking is obliged to:
  - a) allow the inspectors to enter the premises and means of transport of the undertaking, to open closed premises and their equipment or otherwise provide access to documents and carriers on which information is recorded;
  - b) cooperate with the inspectors and provide the necessary collaboration and to allow proper conducting of the inspection;
  - c) enable their employees to give an explanation and to present documents and information necessary for the operations of the inspectors or the Office regardless of the carrier on which it is recorded;
  - d) ensure access to all documents, information and data in electronic form;
  - e) ensure the seal is intact, if the inspectors seal documents or carriers on which information is recorded, or seal the premises and their equipment as well as means of transport.
- 8. The undertaking has the right to summon legal assistance during the inspection, however, the presence of a legal representative is not a statutory condition of the inspection and the absence of a legal representative does not affect the initiation of the inspection, the inspection process, or the assessment of the legality of the inspection. The inspectors may wait for the arrival of a legal representative of the undertaking for a reasonable time (about 30 minutes), however, this does not prevent them from carrying out urgent operations needed to safeguard (secure) the objects, documents, information and data carriers of the undertaking, which may contain these documents and information.

9. The inspectors have the right to request from the undertaking and any other natural and legal persons the provision of information and documents necessary for their operations, regardless of the carrier on which they are recorded, and to make copies and notes of these documents (in electronic or paper form) or to request their officially certified translations into the Slovak language, to request written or oral explanation and to make audio recordings of the orally given explanation. Electronic copies are made e.g. through copying documents found through key words (see point 11 of these Guidelines) on DVD or CD-ROM or by copying the entire contents of the HDD of a laptop, PC, tablet or other electronic device of the undertaking through the copying device of the Office. The media obtained in this way shall be secured, i.e. sealed in the presence of the undertaking and following the inspection will be stored in secured premises of the Office.
10. The actual examination of the sealed copies of DVD, CD-ROM and HDD will be carried out in the premises of the Office. The Office will enable the undertaking to be present during the examination and the Office will inform the undertaking and/or their legal representative of the time of the examination in writing in time and in advance. If the undertaking and/or their legal representative fails to appear at the specified time, the examination will be carried out in their absence.
11. During the inspection the inspectors may search electronic documents (in PC, laptops, tablets, mobile telephones, DVD, CD-ROM, USB, etc.) based on key words specified by the inspectors. The inspectors do not provide a list of key words in advance. An exact list of key words used during the inspection is specified in the minutes of the inspection.
12. The electronic devices and data carriers (PC, laptops, mobile telephones, tablets, etc.), which the undertaking provided at the inspection venue, will be returned to the undertaking immediately after the inspectors have searched them and have created (printed) copies of the documents found using key words. In case it would be not possible to search them or to create copies of documents right on the spot of the inspection, for time or technical reasons, the inspectors: (i) will copy the documents found through key words on CD-ROM, DVD or on other data carrier, or (ii) will create copies of electronic devices and data carriers or entire contents of their HDD through the copying device of the Office, or (iii) will take away the provided electronic devices and data carriers of the undertaking. The media obtained this way [point (i) to (iii)] shall be secured, or the inspectors will seal them in the presence of the undertaking and will be stored in secured premises of the Office after the inspection. The procedure specified in point 10 of these Guidelines will be used for examination of the sealed media.
13. The inspectors may request from the undertaking the provision of the documents in paper form; these will be returned to the undertaking immediately after the inspectors have examined them and have created copies of the documents. If neither examination, nor creation of copies of these documents at the inspection venue is possible, for time or technical reasons (for example in the case of a large number of documents), the

inspectors may take away these documents for the time that is necessary and examine and/or create copies of them in the premises of the Office.

14. During the inspection the inspectors always have the right to verify whether the documents and data of the undertaking are relevant for the investigation at hand. The inspectors may examine any documents and data of the undertaking in electronic or paper form in order to find the documents or data within the subject matter of the inspection. "Wide" searching in documents and data of the undertaking might therefore also be reasonable (for example if it is not possible to precisely locate the searched documents and data).
15. The inspectors may interrupt the inspection at any time, even repeatedly, and therefore the inspection may last for more days. In such a case the premises of the undertaking with the documents, electronic devices and data carriers that have not been examined (selected) yet, or the premises that have not been searched at all, are sealed. Minutes will be done on sealing. Sealed premises of the undertaking will be unsealed on an agreed day and the inspection will continue.
16. The inspectors are obliged to inform the undertaking of the possibility to identify those pieces of information or documents submitted to the Office during the inspection, which it considers to be subject to trade secret or confidential information.
17. The inspectors shall prepare the minutes of the inspection, which will be signed by the inspectors, the undertaking, and possibly other present persons. The inspection shall be deemed complete after signing the minutes. The inspection shall be deemed complete even if some of the persons present during the inspection refuse to sign the minutes; grounds for refusal shall be given in the minutes.