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FORMS OF STATE AID AND THE IMPORTANCE OF ITS REGULATION

Abstract: The direction of the company's operation and success in the market are related to number of strategic decisions from the moment of entering the market. One of the most important topics that companies have to deal with is financing business activities, which is not always easy and sometimes they have to reach for possible forms of help. These are mostly state aid and subsidies, effective tools that not only serve the beneficiaries by influencing their market presence and enabling to increase their competitiveness, but at the same time, they are effective for the provider, as they allow it to enter the market developments in accordance with its stated aims and intensions. However, this can lead to distortions of competition, for example by favoring certain companies, regions or types of services and goods. The presence of coordinators and regulatory authorities monitoring the use of such measures for the benefit of businesses within established criteria is therefore very important. In Slovakia this competence falls to the Antimonopoly Office of the Slovak Republic. Our paper focuses on topic of state aid in individual areas of the economy with regard to its control and regulation, which is one of the tools of competition policy.

Keywords: regulation, state aid, subsidy

1. PROTECTION OF COMPETITION AND ANTITRUST REGULATION

Competitive conditions are one of the best mechanisms for organizing economic activities, achieving the goals of companies and increasing the well-being of society. The essence of competition policy is to ensure and protect these conditions and environments, which on the one hand ensure an outflow of less efficient companies, on the other hand increase the efficiency of the economy.

The role of economic policy can be seen both from the perspective of the consumer, as he is one of the key players in the market, but also from the perspective of the market itself. The presence of competition forces manufacturers to reduce prices or offer their products at the best possible prices, which motivate consumers to buy them. At the same time, the existence of a functional competitive environment forces manufacturers to increase production efficiency, which is also related to the introduction of innovations into the production process, which enable manufacturers to bring ever better and higher quality products to the market. Such quality products can also attract an increasing share of consumers, leading to an increase in the market share of the company. The result of the innovative thinking of all companies in the market, and their efforts to constantly progress and improve, is the presence of differentiated products, which means that consumers have a choice. In addition, the increasing number of consumers contributes not only to the better position of the producer in the market, but also to the positive development of the market itself and to the overall growth of the economy.

However, the competitive environment requires the presence of the regulator as the authority that oversees the maintenance of the competitive environment and compliance with the conditions of competition. To protect free competition, a set of strict rules determining which practices are considered illegal has been established. In the case of a market of imperfect competition, the intervention of a regulatory body that pursues a society-wide purpose and addresses situations related to illicit market behavior can be monitored. By illegal behavior in this case we mean the creation of illegal contracts and agreements, the creation of cartels, merger agreements, market sharing and the abuse of

a monopoly and dominant position in the market. The set of tools by which the state ensures the removal of barriers to entry, the monitoring of restrictions on competition and consumer protection itself we call Antitrust Policy.

2. LITERATURE REVIEW

Although antitrust, competition policy and protection of competition are considered to be synonymous, there is a significant difference in their meaning. Competition policy differs from antitrust policy in its broader focus (Hošoff, 2008). As Hošoff points out, this focus covers various economic activities, such as consumer protection, the environment, energy, industrial and business development, intellectual and industrial property protection, social rights, taxation, financial services, the common transport policy, telecommunications and information technology. Thus, the protection of competition is generally a broader concept. Competition can be considered a condition for the functioning of the market mechanism. Part of the competition policy is protection against its restriction and the application of rules that promote competition between individual entities, which are motivated by it and its pressure to constant progress. The last term, which is often considered synonymous with the two previous ones, is also the term competition policy. Dolgoš (2006) points out its ambiguity, stating that it does not contain information that it is aimed at restricting competition by market power and not against unfair competition.

The main role of protection against anti-competitive behavior has already mentioned regulator. Each country has its own national competition authority - the Antitrust Authority. In Slovakia, such body is the Antimonopoly Office of the Slovak Republic, in the form of interventions concerning structure, behavior or output (Antimonopoly Office of the Slovak Republic, 200x 4). The structure of the market influences the behavior of the entities operating in it, which forces the regulator to prevent the emergence of a dominant position and prevent its abuse due to insufficient competitive pressure. If such unauthorized behavior occurs, the regulator is forced to intervene, in accordance with the legislation. For example, in the case of natural monopolies, it may be a matter of controlling outputs, by which we mean the prices of products and services. However, globalization often leads to transnational distortions of competition. The handling of such pan-European cases is under the auspices of the European Commission (EC) (European Commission, 2014).

The European Union's (EU) competition rules apply equally to all its member countries and apply to businesses as well as other organizations involved in economic activity. The EC strives to cooperate with the authorities not only of individual member states of the EU, but also of bodies operating worldwide, with the common goal of working on the creation of effective standards and legislation and their subsequent implementation in the field of competition. The expected result is subsequently sustainable and inclusive growth, increased efficiency in markets and improved conditions for consumers.

As we already mentioned, the central administration of the Slovak Republic for the protection of competition and coordination of state aid is the Antimonopoly Office of the Slovak Republic, an independent body that was established in 1991 and, in addition to Slovak, also applies European competition law. The basic legal regulation governing the process of protection of competition is the Act of 27 February 2001 on the protection of competition and on the amendment of the Act of the Slovak National Council no. 347/1990 Coll. on the organization of ministries and other central state administration bodies of the Slovak Republic, as amended. Within the European Competition Network, it mainly performs tasks arising from the Slovak Republic's membership in the EU.

The EU's basic rules, which follow from the Treaty on the Functioning of the European Union, include the following:

- *companies must not argue on prices and market sharing,*
- *companies must not abuse their dominant market position and thus crowd out smaller competitors,*
- *undertakings operating on the European Union market must not merge in order to dominate the market; the merger can only take place with the consent of the European Commission (even if the companies are located outside the European Union) (European Commission, 2014).*

Infringements and circumvention of the conditions of competition occur on the supply-side entities, in particular in order to dominate the market with their products. The forms of anti-competitive behavior pursued by the EU are:

- *Cartels*
- *Abuse of a dominant position*
- *State aid*

3. STATE AID AND SUBSIDIES

One of the important decisions of the company, which determine the direction of its operation on the market, clearly includes the method of financing. Sufficient funds enable the implementation of business plans and the achievement of the goals of new entities without major complications. As with start-ups, in the case of established companies, the issue of finance should be given increased attention, too. Their financial situation is influenced by a number of factors, such as the development of the economy and its cycles or events in the world, the unfavourable development of which may jeopardize the continued operation of these companies. In such cases, there are several ways to find support for further business. One of them is the possibility to use the form of state aid. It has been present in various forms in national government decisions long since, as it is a way of gaining control of the market. This is also the reason for its justified

regulation, despite its positive side from the point of view of individual recipients. Its control can ensure the maintenance of a functioning competitive environment and prevent distortions of competition by favouring selected companies. As important as maintaining a competitive environment at national level, so is it at EU level. For this reason, the EC acts as the main regulatory body for EU Member States, deciding on state aid proposals. Each Member State also has its own coordinating body under the Commission, which ensures control within that country. In the Slovak Republic, the Antimonopoly office of the Slovak Republic is currently this coordinating body.

3.1. State aids

There are several ways to define state aid. In general, it is the use of public funds to support individual companies or industries, which can lead to the provision of a competitive advantage and thus to distortions of competition (European Commission, 2014). In connection with the concept of state aid, the minimal aid is often mentioned. Both of them focus on helping entities defined as an enterprise, i.e. an entity that carries out an economic activity regardless of the legal form or method of financing (Antimonopoly Office of the Slovak Republic, 2022). As non-profit entities may also carry out an economic activity, in this case their definition omits the assumption that an enterprise is an entity whose main purpose is to make a profit. Despite the fact that state and minimum aid focus on the same entities, they are two separate and different legal institutes to which different rules are applied (Antimonopoly Office of the Slovak Republic, 2022).

To determine whether it is state aid, the so-called state aid test is used, which defines the conditions that must be met in its case. We therefore consider as State aid measures that meet the following criteria:

- *transfer of public resources (state resources) and imputability to the state (aid must be granted to EU Member States),*
- *economic advantage of the aid recipient (economic advantage),*
- *selectivity of the aid measure,*
- *distortion of competition,*
- *effect on trade between EU member states (Antimonopoly Office of the Slovak Republic, 2022).*

Distortions of competition are directly linked to State aid and, as a cumulative criterion, are already met when the threat of distortions arises. It is therefore a situation, where the competitive position of the entity in comparison with its opponents is improving. At the same time, distorted competition can affect trade between EU Member States. This is the reason why the EU enters the decision-making process on its provision.

On the contrary, the term minimum aid means a form of aid that does not exceed the ceiling (maximum value) set during a given period. This ceiling is set by the European Commission for a period of three fiscal years. In addition to this condition, the following conditions must be met:

- *the beneficiary is the only company (this concept is regulated by the guidelines of the Antimonopoly Office of the Slovak Republic),*
- *all conditions for the provision of minimum aid must be met in accordance with the regulations of the European Commission and the State Aid Act (Antimonopoly Office of the Slovak Republic, 2022).*

State aid be understood in several ways - as a part of free competition policy, as a tool to remedy a market failure or as a politically motivated tool. At the same time, we know several reasons for its use - economic, social, political and strategic (Vlachynský et al., 2014). Each of these views has its rationale in practice. Many authors agree that state aid can be beneficial, for example, if the market mechanism fails. At that time, the state, as a form of economic instrument, should be interested and able to support innovation, education, underdeveloped industry, environmental protection and regions that are among the less backward. Other policy arguments are also linked to this, especially in the case of supporting the regions and reducing disparities between them. One of the best known, most common and very specific forms of aid at the same time is regional state aid, which is provided in various forms and in different ways. However, despite its importance, it usually leads to the promotion of just one type of industry and thus to an advantage within a certain sector, as a result of which the ability to adapt to new conditions is prevented. This can lead to undesirable economic losses in turn (Vlachynský et al., 2014). Regional development aims to help the most disadvantaged regions, while supporting start-ups, investment and job creation. Given that, such regions also face the problem of missed opportunities (as they focus mainly on one industry sector) the aim of supporting regional development is also to diversify economic activities.

4. SUPPORT FOR THE LEAST DEVELOPED REGIONS

Within the issue of regional development, which is currently one of the priorities of the Ministry of Investment, Regional Development and Informatization of the Slovak Republic (MIRDI SR), to ensure the support of the least developed regions, several ways and methods have been adopted. These are the result of deepening disparities between regions due to long-standing problems, such as lack of opportunities, investment, poor infrastructure, low education or the outflow of labour abroad. All of that despite their potential, whether in the field of tourism, ecological economy, the use of renewable energy sources or in terms of natural and cultural wealth (MIRDI SR, 2022). The main aim of helping and supporting the least developed districts (LDD) is to improve the quality of life by reducing these disparities,

supporting job creation, investment and entrepreneurship, promoting their competitiveness and preventing young and educated people from leaving the area, in accordance with the law of the support of the LDD, which was adopted in 2015. In the past, the providers of the contribution for the given regions were the Ministry of Transport, Construction and Regional Development of the Slovak Republic, the Office of the Government of the Slovak Republic and Deputy Prime Minister's Office for Investments and Informatization of the Slovak Republic. Since 2020, these competencies have been transferred to the already mentioned MIRDI SR, which came with its amendment (which was approved in the second half of 2021), in order to change the models of calls for contributions to a more transparent version. Calls for grants can be found on the ministry's website, along with all the necessary information (MIRDI SR, 2022). The list of least developed districts is maintained by the Ministry of Labour, Social Affairs and Family of the Slovak Republic, based on registered unemployment calculated from the available number of job seekers. In order for a district to be included in the list, this unemployment rate must be higher than 1.6 times the average registered unemployment rate in the Slovak Republic for the same period in at least nine calendar quarters (Deputy Prime Minister's Office for Investments and Informatization of the Slovak Republic, 2022). According to the list published on 20.10.2021, the LDD are districts of Lučenec, Poltár, Revúca, Rimavská Sobota, Kežmarok, Sabinov, Svidník, Vranov nad Topľou, Gelnica, Rožňava, Sobrance, Trebišov, Bardejov, Medzilaborce, Košice-okolie, Levoča, Snina, Stropkov and Michalovce. As of 31.12.2020, Veľký Krtíš was removed from the list.

Despite the fact that the years 2020 and 2021 were affected by the pandemic crisis, affecting all segments and spheres of public life and the economy, focusing on helping regions, which were still facing a development problem before the pandemic, is still one of the state aid priorities. The priority of the Ministry of Economy of the Slovak Republic for 2021 was defined as support for investments that use smart industry technologies and develop research and development in the Slovak Republic (Ministry of Economy of the Slovak Republic, 2021). In addition, support of job creation in the LDD is one of the priorities. Supported projects include industrial production, technology centre, combination of industrial production and technology centre or business services centre, while initial investments should be focused on setting up new branches, expanding the existing branches, diversifying the production of existing branches by products (services) that were not produced (provided) before, and a fundamental change in the overall production process of the existing operation (Ministry of Economy of the Slovak Republic, 2021).

The Ministry of Economy also specifies accessible forms of investment aid, which include:

- *subsidies for long-term tangible and intangible assets,*
- *subsidies for new jobs created (eligible wage costs supported),*
- *income tax relief (total eligible costs are supported),*
- *transfer or lease of real estate for a value lower than the value of real estate or the value of rental of real estate determined by an expert opinion.*

5. SHORTCOMINGS AND REGULATION OF STATE AID

Although the name State aid gives the impression that it is an effective welfare-enhancing measure, it has a number of shortcomings and problems that need to be taken into account. Friederiszick, Röller and Verouden (2006) identify four main issues that need to be addressed. The first is the problem of measuring market failure, which is almost impossible in practice due to the number of factors involved. On the contrary, it is possible to monitor whether and how significantly the market is failing, which by its qualitative nature allows to form more reliable conclusions. The second important issue mentioned by the authors is the cost of state aid, which includes the use of state funds that could have been used in other areas and the cost of obtaining the required funding (shadow tax costs). It can be stated that even if state aid is provided for a good purpose, it still can be so costly and not payable as a result. The third issue, which we have already mentioned above, is the side effects of state aid and its impact on the functioning of the market and thus the distortion of competition, which can affect market players at both national and international level. The fourth, and therefore the last, important issue is government failures to select targeted beneficiaries, which are largely influenced by the subjective objectives of governments or regulators that do not coincide with public objectives. Thus, market failure may be an economic reason for state aid, but its effectiveness is determined by many other factors and cannot be expected to be perfect.

These problems, defined by (Friederiszick et al., 2006), and especially the third in a row, are related to the need for regulation not only at the national but also at the international level. At a time when state aid crosses national borders and affects the market with other countries, the presence of a higher authority is required. The regulation of state aid in the EU Member States falls within the competence of the European Commission, which, as the main regulatory body, assesses individual applications. At the same time, state aid control is present in each developed country individually. In the Slovak Republic, the competencies of the state aid coordinator have been transferred to the Antimonopoly Office of the Slovak Republic from the Ministry of Finance of the Slovak Republic since 2016.

As we have already mentioned, the main regulatory body for assessing state aid is the European Commission. Therefore, before granting the aid, EU Member States must notify the intension of its provision and request its approval. This process is called the general notification obligation and falls under the tasks of the country's aid coordinator (Antimonopoly Office of the Slovak Republic, 2021). Exceptions to this obligation apply to minimum aid, block exemptions, individual aid granted under applicable state and minimum aid schemes. At the same time, the European Commission (or the Council) has the power to declare state aid justified and compatible with the internal market in the

above-mentioned regions with exceptionally poor conditions (very low employment or standard of living). This is the application of exceptions (from the Treaties on the Functioning of the EU) in situations where, as a result of the aid, trade conditions are potentially affected (Vlachynský et al., 2014). Related to this is the approval of aid to companies that may become profitable, which is in the EU's interest (European Commission, 2014).

Various issues may also arise in relation to regulation, such as the extent to which the European commission should act as a supranational body to address problems at national level, whether problems with national obligations justify its intervention and whether this supranational regulatory body is able to address the problem (Friederiszick et al., 2006). The Commission's position gives it sufficient powers for regulatory action and control even in the event of such problems, but its view of national circumstances, current and historical situations can sometimes be insufficient and distorting. This fact may, on the one hand, give the impression of disadvantage and, on the other hand, represent an unbiased approach to the matter.

In the case of regulation, the administrative burden and the possibility of providing assistance can also be considered a problem. The Ministry of Economy of the Slovak Republic focuses on improving the business environment, and considers better regulation by public administration bodies to be one of the important factors (Ministry of Economy of the Slovak Republic, 2022). This agenda includes the Regulatory Impact Assessment (RIA). The aim of the national project to improve the business environment is to optimize the regulatory environment in the Slovak Republic through activities related to all parts of the regulatory cycle (Ministry of Economy of the Slovak Republic, 2022). The agenda of better regulation can also be found under the terms Better Regulation (EU), Smart Regulation (EU) and Regulatory Policy (OECD). Strategy of better regulation (RIA 2020) contained the following strategic objectives (Ministry of Economy of the Slovak Republic, 2021):

1. *Raise public awareness of better regulation*
2. *Improve the quality of the ex ante impact assessment process*
3. *Introduce systematic ex post evaluations of regulations*
4. *Implement innovative regulatory approaches*
5. *Create conditions for the involvement of other entities in better regulation activities.*

It also includes an implementation action plan containing 32 tasks with deadlines. It is based on the methodology, the development of which was preceded by an OECD expert workshop on ex post evaluation of existing regulations from 2019. In 2020, the Ministry of Economy of the Slovak Republic and central state administration bodies participated in meeting four of the five strategic goals. The implementation of the tasks of the fourth goal was not considered as priority due to the unfinished tasks of the previous goals. The implementation of individual goals was complicated by the pandemic situation related to the COVID-19 disease. The summary on the website of the Ministry of Economy of the Slovak Republic informs about the fulfillment / partial fulfillment of 6 out of 11 tasks of the goal 1, 4 out of 12 tasks of the goal 2 and 3 out of 5 tasks of the goal 3. Within the 5th strategic goal, a methodology for parliamentary bills is being developed. For its successful completion, it will be necessary to obtain support and establish cooperation with deputies of the National Council of the Slovak Republic. As a result of the pandemic, the main priorities have been updated and its implementation will continue until August 2023 (Ministry of Economy of the Slovak Republic, 2022). The main expected outcomes of the project are educated employees on the process and content of impact assessment of regulatory frameworks and non-legislative proposals, functional national coordinator for impact assessment in the Slovak Republic, effective methodologies and better regulation tools and comprehensive IT platform for better regulation (Ministry of Economy of the Slovak Republic, 2021).

6. CONCLUSION

In a free market economy, every company strives to maximize its profits. An essential element of an open market economy is free competition, which ensures an outflow of less efficient companies and increases the efficiency of the economy. In the paper we presented the concepts and approaches of antitrust policy and to get a basic overview of the activities of the European Commission (as an authority focusing on competition issues) with each Member State also having its own regulatory body, solving problems at national level. In the Slovak Republic this regulatory body is Antimonopoly Office of the Slovak Republic. The aim of the bodies' activities in accordance with the law is to ensure the presence of a functional competitive environment and to protect and promote competition, which lead not only to improving the position of the company itself, but also to streamlining the economy, growing economic.

The goal of the bodies is not only to protect the competitive environment, but they also have the opportunity to use public funds to support certain companies and industries. Such aid is a great way of help to its recipients, but on the other hand it can cause market distortions, distort competition and distort trade. That is why its regulation is also one of the priorities of these offices. There are several ways in which the companies and sectors can be supported, but each of them must be approved by the regulatory body, whose task is to monitor compliance with the rules and the criteria for granting aid.

This paper focuses on the topic of state aid, its forms and the current situation in providing it, which has recently been affected by the emergency situation related to the Covid-19 pandemic. This has affected not only the health of people around the world, but also the economies and the functioning of the market, as many entrepreneurs have had to close down. Countries, in cooperation with the European Union, are trying to address the impact on the life of companies

with exceptional contributions and various forms of assistance. In addition to this support, the priorities also include support for the most backward and least developed regions and districts, for which state aid is one of the most effective forms of support.

Closely related to the topic of regulation is the need to make it more effective in order to improve the business environment, whether at national or supranational level. This is the focus of the RIA 2020 strategy, which defines strategic objectives aimed at promoting a better business environment through the optimization of regulatory conditions. Due to the complications caused by the pandemic situation related to the COVID-19 disease, it was not possible to fulfill all the set tasks and it was necessary to focus on updating the project priorities. The expected conclusions of the project are more effective ways of assessing selected impacts, more effective methodologies and regulatory tools and the functionality of an analytical model important in the process of policy making and optimization.

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