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<p>In the published version of this decision, some information has been omitted, pursuant to articles 30 and 31 of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...]</p>		<p style="text-align: center;">PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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**Subject: State Aid SA.46530 – Slovakia
National Football Stadium**

Sir,

1. PROCEDURE

- (1) By letter dated 4 July 2016, Slovakia pre-notified an aid measure to support the construction of a national football stadium in Bratislava. The Commission held a pre-notification meeting with the Slovak authorities on 12 July 2016 and provided further comments on 12 July 2016 and, following a further request from the Slovak authorities, on 14 July 2016 and on 28 July 2016.
- (2) By electronic notification registered at the Commission on 1 October 2016 (SANI 670250), the Slovak authorities formally notified the measure concerned, pursuant to Article 108(3) TFEU. By letters of 7 December 2016, 10 February 2017 and 25 April 2017, the Commission asked for supplementary information. By letters dated 28 December 2016, 11 January 2017, 3 March 2017 and 27 April 2017, Slovakia submitted its replies. Furthermore, teleconferences were organised on 15 December 2016 and 21 February 2017.

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2. DETAILED DESCRIPTION OF THE MEASURE

2.1. The investment project and the aid beneficiary

- (3) The measure concerns the public funding of the construction of the national football stadium, a sport park and an underground parking lot (hereinafter "the Stadium") in Bratislava, Slovakia.
- (4) The beneficiary of the aid is NFS, a.s. (hereinafter "NFS"), one of two successors of Národný futbalový štadión, a.s.. This company was split on 31 December 2015 into NFS and Tehelné, a.s.. The former is responsible for the Stadium, i.e. the sport part of the project and the latter for the property development part of the project (multifunctional building with shops and apartments and an administrative building). NFS is 100% owned by ŠK Slovan Bratislava futbal a.s., the only first league football club in Bratislava. The club is [...] * owned by Mr Ivan Kmotrík with the remaining [...] belonging to Mr Ľudovít Černák.
- (5) The investment project of the Stadium consists of construction of a new football stadium, which would be compatible with UEFA "category 4" requirements allowing for the organisation of international events. Furthermore, the project includes the construction of a sport park in the multifunctional building and an underground parking lot with 1,000 individual parking spaces.
- (6) The objectives of the new construction include:
- Constructing a stadium complying with the UEFA category 4 requirements in Bratislava;
 - supporting the development of both professional and amateur football;
 - supporting representative activities of the national football;
 - fostering a wider positive social impact in favour of the non-sportive community as well as when it comes to the overall support of sport activities.
- (7) The total investment costs of the project amount to EUR 75.2 million in discounted value. They include, inter alia, the costs of construction works on the Stadium, the sport park and the parking lot, soft costs (e.g. developer's fee, architectural services), a proportion of the historic planning costs incurred by Národný futbalový štadión, a.s and financing costs.
- (8) The construction works financed through the grant described in the section below will be subject to a competitive process, respecting the applicable procurement rules.

2.2. The aid measure

- (9) The beneficiary submitted an aid application to the Ministry of Education, Science, Research and Sport (hereinafter "the Ministry") for a direct grant of EUR 27.2 million on 17 October 2013. Slovakia further stated that the construction works started in autumn 2016.

- (10) One of the reasons for the start of construction works in autumn 2016 was the rent agreement with the city of Bratislava¹. This agreement allows for terminating the rent if the construction approval decision is not granted by 31 December 2018.
- (11) The Ministry provided a Feasibility study for the Stadium which was an independent economic appraisal by KPMG² and contained an analysis of various performance options that could be achieved by the management of the Stadium, as well as an assessment of the value of the total investment costs and its different components, including the so-called historic costs mentioned above.
- (12) The project is expected to be completed in 2018.
- (13) The aid measure consists of two sub measures: one will be a direct grant of EUR 27.2 million. The other is an option given to NFS (hereinafter "the option"), which would enable it to sell the Stadium to Slovakia, for a period of up to five years following its completion in case the Stadium fulfils the agreed technical requirements. The option has been valued by an independent evaluator³ at EUR 8.76 million. The total envisaged aid for the investment costs of EUR 75.2 million corresponds to an aid intensity of 47.8%. The remaining part of the investment cost, amounting to EUR 48 million, will be financed by the beneficiary.
- (14) According to the Slovak authorities, the aid amount does not exceed the difference between, on the one hand, the investment costs of EUR 75.2 million and, on the other hand, the operating profit of the investment of EUR [10 – 15] million and the residual value of EUR [15–25] million over a period of 15 years⁴ as demonstrated by the funding gap analysis⁵. The operating profit was deducted from the investment costs ex-ante on the basis of reasonable projections⁶.

Table 1: Investment costs and aid amount

Parameters	Discounted values, EUR million
Investment costs	75.2
Net revenues – optimistic scenario	[30–40]
Project funding gap	[35–45]

* Business secret.

¹ The sport part (the Stadium) as well as the property development part will be mostly built on a lot of 54,974 m² owned by the city of Bratislava. The remaining part of the site where the two parts will be built of 1,722 m² is owned by Tehelné, a.s.. Both NFS and Tehelné, a.s. act as tenants in the rent agreement with the city of Bratislava.

² Feasibility study of the National Football Stadium by KPMG for the Ministry, 30 November 2015.

³ CORPORA, a.s.

⁴ The projections also include two additional years representing investment and pre-opening periods.

⁵ Analysis of the financial aspects of the construction and operation of the National Football Stadium in Bratislava prepared by KPMG for the Ministry, 3 August 2016.

⁶ The Financial analysis contains two funding gap analyses. They represent the so-called optimistic and pessimistic scenarios. With the investment costs initially at EUR 73.231 million, these resulted into funding gaps of EUR [30-40] million and EUR [50-60] million respectively.

Parameters	Discounted values, EUR million
Aid amount	35.96

- (15) As regards, more specifically the option, the independent evaluator of the option based its assessment⁷ on the information provided by the Ministry as prepared by KPMG. In order to estimate the value of the option, the evaluator took into account the market value of the Stadium and the probability that the beneficiary would be able to trigger the option.
- (16) The evaluator compared the price the State would have to pay for the Stadium with its market value. The price to be paid was determined at maximum EUR 48 million, corresponding to the difference between the effective investment costs of maximum EUR 75.2 million and the direct grant of EUR 27.2 million.
- (17) In order to determine the market value, the evaluator considered the free cash flows in the first five years of EUR [1-5] million (in discounted values) and the Stadium's on going-concern value⁸. On the basis of the average data from both optimistic and pessimistic scenarios, the profit has been set at an average of EUR [1-5 million] and the going-concern value at EUR [30-40 million]. The total market value of the Stadium would then be EUR [30-40] million.
- (18) The difference between the maximum price to be paid on the basis of the option (EUR 48 million) and the Stadium's estimated market value after the first 5 years of operation (EUR [30-40] million) is EUR [5-10] million.
- (19) The ability of the beneficiary to trigger the option is governed by an agreement between the beneficiary and the State. The agreement actually lays down exclusively technical requirements of the construction to be fulfilled for triggering the sale option without requiring any explicit financial viability trigger. The technical requirements include a valid construction approval decision as well as a degree of completion of the property development part. The probability that the beneficiary would fulfil these technical conditions was estimated by the evaluator at [85-95]%.
- (20) The value of the option thus amounts, according to the Slovak authorities, to EUR [5-10] million*[85-95]% = EUR 8.76 million.

2.3. Operation and use of the Stadium

- (21) NFS will remain the owner and operator of the Stadium following the completion of the project.
- (22) The option given to the beneficiary allows it to sell the Stadium back to the State in case it wishes to do so. Should the beneficiary decide to exercise the option, the Stadium would become a property of the State.

⁷ Expert assessment to value the put option for Stadium prepared by CORPORA, a.s. for the NFS, 30 December 2016.

⁸ This value has been estimated by considering the free cash flows for the last known period (i.e. 2023), discounted and multiplied by the estimated growth rate.

- (23) NFS may also decide, between six months before and 12 months after the Stadium becomes operational, to contemplate other operational models. This may result in NFS being replaced by a professional stadium operator.

2.3.1. Users of the infrastructure

- (24) The whole set of facilities under the investment project will have a multi-functional character. The sports infrastructure will not be used exclusively by a single professional user. A non-exhaustive list of the intended use of the Stadium is provided below:

– *Use by a professional football sport club*

- (25) The Stadium will be mainly used by a professional first league football club. A tender will be organised in order to select this user. Since ŠK Slovan Bratislava is the only first league football club in the direct proximity, it looks like the most probable candidate.

– *Use by the Slovak national football team*

- (26) The Slovak national team will be able to use the Stadium for international football matches, which require UEFA category 4 premises.

– *Other sporting events*

- (27) Other professional and non-professional sports events may take place at the Stadium.

– *Commercial use*

- (28) The Stadium may also be used for wider commercial activities. These include providing space for concerts, opera, theatre, entertainment events, movie screenings, religious events, political events and others. The facilities may also be used for conferences, trainings, meetings and other indoor activities.

– *Sport park*

- (29) The sport park is in area of 10,400 m² located on the first floor of the multifunctional building. It is envisaged that it will be mainly used by sport unions. Sport schools and sport NGOs could also benefit from this space.

– *Parking lot*

- (30) The parking lot built as a part of the Stadium shall provide access to 1,000 individual parking spaces. These will be primarily used by the visitors of events organised at the Stadium. However, the beneficiary plans on renting up to 500 of these on permanent, long-term and short-term bases to apartment owners and occupants of the administrative building, leaving a minimum of 500 places permanently available for sporting events. The income of these short, long and permanent term rents will flow to the operator of the Stadium. Prices for the different types of rents correspond to those currently practised in Bratislava.

2.3.2. *Terms and conditions for the use of the Stadium*

- (31) According to the Slovak authorities, access to the Stadium will be open to several users and be granted on a transparent and non-discriminatory basis, inspired by the provisions of Article 55 of the General Block Exemption Regulation⁹.
- (32) NFS will rent out the Stadium's facilities to third parties to organise sporting and other commercial events and offer parking facilities. In such cases, NFS will ensure that the sport infrastructure will not be used exclusively by a single professional sport user. Other professional or non-professional sport users will annually account for at least 20 % of time capacity. The Slovak authorities will ensure that the pricing conditions for its use are made publicly available.

2.4. Transparency

- (33) Slovakia committed to publish, within six months of the granting act, on a comprehensive State aid website at national or regional level, the following information, which will be kept for at least ten years and will be available to the general public without restrictions:
 - (a) the full text of the individual granting decision and its implementing provisions, or a link to it,
 - (b) the identity of the granting authority/(ies),
 - (c) the identity of the beneficiary, the form an amount of aid granted, the date of granting, the type of undertaking (SME/large company), the region in which the beneficiary is located (at NUTS level II) and the principal sector in which the beneficiary has its activities (at NACE group level).

3. ASSESSMENT OF THE MEASURE

3.1. Existence of State aid

- (34) According to Article 107(1) TFEU, *"any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market"*.
- (35) Therefore, for a measure to constitute State aid within the meaning of that provision, the following cumulative conditions apply: 1) the measure must be granted through State resources; 2) it has to confer an economic advantage to undertakings; 3) this advantage must be selective and distort or threaten to distort competition; and 4) the measure must affect intra-Union trade.
- (36) With regard to the requirement that the measure must be granted through State resources and be attributable to the State, this criterion is fulfilled in the present case as the measure is decided by the State and the State will contribute a direct grant for construction and with an option given to the beneficiary to purchase the Stadium thereby reducing the commercial risk that the beneficiary will take on the

⁹ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty

operation of the Stadium in its first five years of operation (duration of the sale option) .

- (37) The public funding of the construction of the Stadium may constitute aid if it leads to a selective advantage for specific economic activities.
- (38) According to the Leipzig/Halle airport judgment of the Court of Justice¹⁰, the public funding of the construction may constitute State aid when said infrastructure will be used for commercial activities. Following the Court's judgement, the economic character of the later use of the infrastructure would determine the economic nature of its construction.
- (39) Similarly to the precedent cases concerning sizeable football infrastructure¹¹, it results from the data on expected future events to be held at the Stadium presented in the Feasibility study that the facility will be primarily used by a professional football club thus involved in economic activity. The identity of this football club will be determined on the basis of a future tender, but this club is anyhow likely to be part of the national first football league. The Stadium will further be available for other commercial activities, such as organising sporting and other events (e.g. concerts). This does not mean that all activities taking place in the Stadium shall be regarded as economic in nature.
- (40) Both the grant and the sale option are selective to the extent both have been granted exclusively to the beneficiary to the exclusion of any other (competing) undertaking.
- (41) Finally, the market for organising large scale commercial sport events taking place in UEFA category 4 stadiums, as well as similar types of public events is open to competition between venue providers and event organisers, some of which operate in several Member States or belong to international groups.
- (42) Considering that the Stadium will be used for matches (and other commercial events such as concerts) that will attract visitors from other Member States, and the relative proximity of another Member State (Austria), it cannot be excluded that the aid granted for the Stadium could distort competition and affect intra-Union trade.
- (43) The Commission therefore concludes that the measure constitutes State aid in the meaning of Article 107(1) TFEU.

3.2. Legality of the aid measure

- (44) The aid is subject to a grant agreement of 21 November 2013 between Národný futbalový štadión, a.s. and the Ministry. No part of the aid has been released to the beneficiary yet. The aid will only be issued after approval by the Commission.

¹⁰ Cases T-443/08 and T-455/08 *Freistaat Sachsen and Land Sachsen-Anhalt and Mitteldeutsche Flughafen AG and Flughafen Leipzig-Halle GmbH v European Commission*, ECLI:EU:T:2011:117, para. 107; Case C-288/11 *Mitteldeutsche Flughafen AG and Flughafen Leipzig- Halle GmbH v European Commission*, ECLI:EU:C:2012:821. See also the judgement of 24 October 2002, case C-82/01P *Aéroport de Paris*, ECLI:EU:C:2002:617.

¹¹ See Commission decision of 18 December 2013 in case SA.35501 – France – Financement de la construction et de la renovation des stades pour l'EURO 2016.

3.3. Compatibility

- (45) The public financing of the construction of the Stadium with the aim to offer it, in part, for commercial use may be compatible with the internal market pursuant to Article 107(3)(c) TFEU if it pursues a policy objective of common interest, is necessary and proportionate and does not cause undue distortion of competition¹².

3.3.1. Objective of common interest

- (46) With regard to the achievement of a policy objective of common interest, the construction of venues for sport and other public events and supporting different types of activities which benefit the general public can be considered a State responsibility towards the general public. The Amsterdam Declaration on Sport and Article 165 TFEU both acknowledge the social significance of sport: "*the Union shall contribute to the promotion of European sporting issues...*".
- (47) In the present case, the Stadium will be used for hosting various sport competitions of commercial (main professional football club) and non-commercial nature. The facilities will also be made available to amateur clubs and to the general community with the aim to promote the wider participation in sports for both children and adults, including for educational activities.
- (48) The Stadium is also intended to be used for cultural events (e.g. concerts, theatre, cinema), as well as providing a meeting place of a wider nature (conferences, church meetings) and as such contribute to the promotion of cultural diversity, according to Article 167(4) TFEU.
- (49) In view of the above, the Commission considers that the construction of the Stadium contributes to the attainment of policy objectives of common interest.

3.3.2. Necessity, proportionality and incentive effect of the aid

- (50) Concerning the necessity of the notified measure, the Slovak authorities indicated that following their negative experience in the past, they concluded that the private sector is unable to build a sport infrastructure complying with international standards without benefitting from public funding. The Commission takes note of several precedent cases, as listed in recital (39), confirming that public intervention is often needed for large scale sport infrastructure allowing for the organisation of internationally recognised events. Therefore it is unlikely that NFS would have been able to obtain commercial revenues over the lifetime of the project allowing it to build and operate the Stadium on purely commercial terms. Therefore the aid is necessary for this project.
- (51) More particularly, in the absence of public funding and the risk-mitigating option, the project would not be realised as it would not be viable for a private investor, as demonstrated by the credible funding gap analysis provided by the Slovak authorities (see recital 14). According to the funding gap analysis which is based on an optimistic scenario, the net revenues over a period of 15 years (EUR [30-40] million in discounted value)¹³ cannot cover the full investment costs of the

¹² For instance, see European Commission decisions SA.44439, Ireland, Cork and SA.37373, the Netherlands, ice arena Thialf.

¹³ Net revenues are based on projections of possible operating profit and costs derived from the operating of the infrastructure and the residual value of the infrastructure at the end of the reference period under optimistic scenario.

project (EUR 75.2 million in discounted value). The Commission underlines, in this context, that if the revenues were to unfold under the pessimistic scenario, the funding gap would be even higher than the one presented by the Slovak authorities.

- (52) The beneficiary also submitted an aid application before the start of the works on the project, which demonstrates that the formal incentive effect requirements have been respected. It has thus been established that the public co-financing of the Stadium is necessary as without it the financing needed for the project implementation would not have been forthcoming. The aid measure consisting of both the grant and the sale option remains below the funding gap and is therefore limited to what is strictly necessary to implement the project.
- (53) Concerning the commercial use of the Stadium, NFS as a private operator has a strong incentive to maximise its revenues and not to charge prices which are too far below the prices for the use of comparable infrastructure¹⁴. Any revenues from the commercial use of the infrastructure will contribute to reducing the running costs of the Stadium. The Commission also notes in this context the commitment of the Slovak authorities to make the conditions for use of the Stadium available in a transparent and non-discriminatory manner.
- (54) The Commission considers that the aid granted in the form of a direct grant constitutes an appropriate aid instrument to achieve the desired objective of the investment project. The aid granted in form of the option is also considered appropriate since this measure aims at mitigating the commercial risk of the beneficiary without however exempting him from the construction risks and without exempting him totally of later operating risks as the option is capped.
- (55) In light of the above, the aid is necessary, proportionate and has an incentive effect.

3.3.3. Avoidance of undue negative effects on competition and trade between Member States

- (56) Regarding the extent of possible effect on trade and competition between Member States, the Commission considers that the Stadium, being used by the Slovak national football team and a future professional football club chosen on basis of tender, could also be used in future international competitions. However, given the multiplicity of such stadiums in the EEA, the negative effects on wider competition are likely to remain limited.
- (57) Regarding the other envisaged use of the Stadium, the commercial exploitation for cultural or congress activities will be open to several competing users and will be granted on a transparent and non-discriminatory basis. It is therefore unlikely that the operation of the Stadium will unduly distort competition and trade between Member States.

¹⁴ Slovakia indicated there are or that soon there will be three similar stadiums in Slovakia and that a project of reconstructing and modernising 21 football stadiums throughout the country is underway. In Bratislava, there is one stadium of a comparable size, which is however not suitable for international football events. Three other infrastructures in the city could be used for non-sportive events (albeit at lower capacity than the one estimated for the Stadium).

- (58) On the basis of the above, the Commission considers that the Slovak authorities have demonstrated that the public funding of the infrastructure under assessment is necessary, proportionate and does not affect trade and competition between Member States to an extent contrary to the common interest, according to Article 107(3)(c) TFEU.

3.3.4. *Transparency*

- (59) Lastly, the Commission observes that Slovakia has provided assurances that the transparency conditions will be respected (see the Commission communication on transparency¹⁵).

4. CONCLUSION

The Commission has accordingly decided:

- not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107 (3)(c) of the Treaty on the Functioning of the European Union.

The Commission notes that Slovakia has agreed that the present decision would be adopted, notified and published in the English language.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission

¹⁵ Communication from the Commission of 27 June 2014 amending the Communications from the Commission on EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, on Guidelines on regional State aid for 2014-2020, on State aid for films and other audiovisual works, on Guidelines on State aid to promote risk finance investments and on Guidelines on State aid to airports and airlines.