

# **LAW ON PROTECTION OF COMPETITION**

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## **I GENERAL PROVISIONS**

### **Subject**

#### **Article 1**

This Law shall regulate the protection of competition on the market of the Republic of Serbia, in order to achieve economic prosperity and well-being of the society, and especially the benefit of the consumers, as well as the establishment, position, organization and competencies of the Commission for Protection of Competition (hereinafter: the Commission).

### **Territory of application**

#### **Article 2**

The provisions of this Law shall apply to acts and practices performed on the territory of the Republic of Serbia, as well as on acts and practices performed outside of its territory that affect or could affect the competition on the territory of the Republic of Serbia.

### **Scope of application**

#### **Article 3**

The provisions of this Law shall apply to all natural and legal entities who, directly or indirectly, permanently, temporary or on one-term basis participate in trade of goods and services, regardless of their legal status, ownership, citizenship or state affiliation (hereinafter: undertakings), including:

- 1) domestic and foreign companies and entrepreneurs;
- 2) state authorities, bodies of territorial autonomy and local government;
- 3) other natural and legal entities and associations of undertakings (unions, associations, sports organizations, institutions, cooperatives, holders of intellectual property rights, etc.);
- 4) public enterprises, companies, entrepreneurs and other undertakings who perform activities of public interest, or those that have been given a fiscal monopoly through the act of competent state authority, unless the implementation of this Law would prevent performing these activities or delegated tasks.

### **Employment**

#### **Article 4**

The provisions of this Law shall not apply to employment relationships between employer and employees, as well as to labor relations covered by collective agreement between employer and unions associations.

## **Affiliated undertakings**

### **Article 5**

According to this Law, affiliated undertakings are two or more undertakings who are connected in such a way that one or more undertakings control another or the other undertakings (hereinafter: affiliated undertakings).

According to this Law, control over an undertaking represents possibility of decisive influence on the conduct of activities of another or other undertakings, and in particular:

- 1) if controlling participant has the role of a control (parent) company, that is, a controlling member or shareholder, individually or within joint action, according to the rules of affiliated companies within the meaning of the law governing status of companies;
- 2) based on the ownership or other property rights over the assets or part of the assets of another undertaking;
- 3) based on the rights deriving from contracts, agreements or from the securities;
- 4) based on the claim or means for securing claims or based on the terms of business practices that are determined by the controlling participant.

Affiliated undertakings within the meaning of this Law shall be considered as a single undertaking.

Rules governing affiliated parties and affiliated companies shall be applied on affiliated undertakings, in accordance with the law governing status of companies, unless these rules are contrary to the provisions of this Law.

## **Relevant market**

### **Article 6**

In terms of this Law, the relevant market is a market that includes the relevant product market in the relevant geographic market.

The relevant product market represents a set of goods and services that consumers and other users considered interchangeable in terms of their characteristics, common purpose and price.

The relevant geographic market represents a territory in which undertakings are involved in the supply or demand and in which the same or similar conditions of competition apply, substantially different from the conditions of competition in the neighboring territories.

The Government shall more closely prescribe the criteria for the determination of the relevant market.

## **Annual revenue statement**

### **Article 7**

In terms of this Law, annual revenue of an undertaking shall be determined in the amount of the total annual revenue prior to tax deduction, for the financial year proceeding the year in which the procedure is initiated.

Total annual revenue under Paragraph 1 hereof for the financial services undertakings, as well as for insurance and reinsurance companies, shall be calculated in the following manner:

- 1) for the financial services undertakings, after the deduction of taxes that are directly related to them, the sum of the following revenues is used:
  - (1) interest revenues and similar revenues,
  - (2) revenues from securities (revenues from shares and other securities with variable return, revenues from shares in undertakings, revenues from stocks in affiliated undertakings),
  - (3) revenues from fees and commissions,
  - (4) positive discrepancy between financial revenues and financial expenditures,
  - (5) other operating revenues;
- 2) for insurance and reinsurance companies, premium based revenues from insurance and reinsurance contracts concluded by, or on behalf of such companies, withholding tax payable on the premium amount per single contract, or the total amount of premiums.

Total annual revenue under Paragraph 1 hereof, in terms of forms of associations of undertakings, shall be determined based on the sum of the total annual revenue of the association.

## **Foreign currency clause**

### **Article 8**

Amounts expressed in Euro (EUR) in this Law, as well as in acts enacted on the basis of this Law, shall be calculated in Dinar (RSD) currency equivalent at the middle exchange rate of the National Bank of Serbia, on the day of the annual turnover account, or the day of payment or collection of the amount determined by the imposed measure.

## **II COMPETITION INFRINGEMENT**

### **Definition**

#### **Article 9**

According to this Law, competition infringement shall include acts or actions of undertakings that as their purpose or effect have or may have a significant restriction, distortion, or prevention of competition.

### **1. Restrictive agreements**

#### *Definition and prohibition of restrictive agreement*

#### **Article 10**

Restrictive agreements are agreements between undertakings which as their purpose or effect have a significant restriction, distortion, or prevention of competition in the territory of the Republic of Serbia.

Restrictive agreements shall include contracts, certain contract provisions, express or tacit agreements, concerted practices, as well as decisions of undertakings associations, which in particular:

- 1) directly or indirectly set the purchasing or selling prices or other conditions of trade;

- 2) limit and control production, markets, technical development or investments;
- 3) apply dissimilar business conditions to equivalent transactions with respect to variety of undertakings, by which undertakings are placed in unfavorable position against competitors;
- 4) conditions the conclusion of contract or agreements with the acceptance of supplementary obligations which, given their nature and trading customs and practices, are not related to the subject of the agreement;
- 5) share markets or sources of supply.

Restrictive agreements are prohibited and void, except in cases of exemption from the prohibition pursuant to this Law.

*Conditions for exemption from the prohibition*

**Article 11**

Restrictive agreements may be exempted from the prohibition if they contribute to the improvement of production and trade, or incite technical or economic progress, while providing consumers with a fair share of benefits, provided that they do not impose restrictions on undertakings that are not necessary for achieving objectives of the agreement, that is, do not exclude competition in the relevant market or in its substantial part.

*Individual exemption from prohibition*

**Article 12**

At the request of restrictive agreement participant, the Commission may exempt certain restrictive agreement from prohibition (hereinafter: individual exemption).

The applicant for individual exemption shall bear the burden of proving that the conditions under Article 11 hereof are fulfilled.

The period to which the individual exemption refers, under Paragraph 1 of this Article, cannot be longer than eight years.

The Government shall more closely prescribe the content of requirements referred to in Paragraph 1 of this Article.

*Exemption from prohibition according to categories of agreements*

**Article 13**

Exemption from the prohibition of restrictive agreements may refer to certain categories of agreements, provided that the requirements under Article 11 hereof, as well as other special conditions relating to the type and content of the agreement, or its duration, are fulfilled.

Restrictive agreements that fulfill the conditions from Paragraph 1 of this Article shall not be submitted to the Commission for the exemption.

The Government shall determine the categories of agreements and more closely prescribe special conditions referred to in Paragraph 1 of this Article.

*Agreements of minor importance*

**Article 14**

Agreements of minor importance are agreements between undertakings whose total market share in the relevant market of products and services on the territory of the Republic of Serbia, do not exceed:

- 1) 10% of market share, if the parties operate at the same level of production and distribution chain (horizontal agreements);
- 2) 15% of market share, if the parties operate at the different level of production and distribution chain (vertical agreements);
- 3) 10% of market share, if the agreement has characteristics of both horizontal and vertical agreements, or where is difficult to determine whether the agreement is vertical or horizontal;
- 4) 30% of market share, if the agreements concluded between various participants have a similar impact on the market, and if the individual market share of each participant does not exceed 5% threshold in each individual market where the effects of the agreement are manifested.

Agreements of minor importance shall be allowed, unless the purpose of the horizontal agreement is price setting or limitation of production or sales, or division of sourcing market, as well as if the purpose of the vertical agreements is price setting, or division of market.

## **2. Abuse of a dominant position**

### *Dominant position on the market*

#### **Article 15**

The dominant position holds an undertaking that because of its market power in the relevant market can substantially independently operate in relation to actual or potential competitors, customers, suppliers or consumers.

The market power of undertakings shall be determined in relation to the relevant economic and other indicators, and in particular:

- 1) structure of the relevant market;
- 2) market share of undertakings whose dominant position is being determined, especially if its higher than 40% on the defined relevant market;
- 3) actual and potential competitors;
- 4) economic and financial power;
- 5) degree of vertical integration;
- 6) advantages in accessing the sourcing and distribution markets;
- 7) legal or factual obstacles for other participants' market access;
- 8) purchasing power;
- 9) technological advantages, intellectual property rights.

Two or more legally independent undertakings may have a dominant position if they are economically linked in such a way that in the relevant market they jointly perform or act as one participant (collective dominance).

The Commission shall carry the burden of proving the dominant position on the relevant market.

*Abuse of a dominant position*

**Article 16**

The abuse of a dominant position in the market is prohibited.

The abuse of a dominant position are particularly considered to be practices which:

- 1) directly or indirectly impose unfair purchasing or selling prices or other unfair business conditions;
- 2) limit production, markets or technical development;
- 3) apply dissimilar business conditions to equivalent operations with respect to a variety of undertakings, by which some undertakings are placed in unfavorable position compared to competitors;
- 4) conditions the conclusion of agreement with the acceptance of supplementary obligations by other party, that given their nature or trading customs are not related to the subject of agreement.

**III CONCENTRATION OF UNDERTAKINGS**

**Definition of concentration**

**Article 17**

The concentration of undertakings occurs in the following cases:

- 1) mergers and other statutory changes in which a merger of undertakings occurs, within the meaning of the law governing status of companies;
- 2) acquisition of direct or indirect control, within the meaning of Article 5, Paragraph 2 hereof, by one or more undertakings over another or more undertakings or over part or parts of other undertakings, who may represent an independent business entity;
- 3) joint venture of two or more undertakings in order to create a new undertaking or to gain a joint control, within the meaning of Article 5, Paragraph 2 hereof, over an existing undertaking who operates on a long term basis and has all functions of an independent undertaking.

Two or more transactions between the same undertakings concluded during the period of less than two years shall be considered as a concentration, whereas the time of its occurrence is considered to be the day of the last concluded transaction.

**Exceptions**

**Article 18**

The concentration of undertakings shall not be considered to occur if:

- 1) bank or other financial institution or insurance company, in the course of its regular business operations temporarily acquires stocks or shares for further sale purpose, provided it sells them within one year from the date of acquisition and does not use them to influence the business decisions of undertaking in terms of its conduct in the market;

- 2) investment fund management company or an investment fund acquires stakes in an undertaking, provided that rights based on those stakes are exercised only to preserve the value of its investment and that it does not affect the competitive behavior of the undertaking;
- 3) joint venture aims to coordinate market activities between two or more undertakings who retain their legal independence, while such joint venture is to be assessed in accordance with Article 10 and 11 hereof;
- 4) bankruptcy manager acquires control over an undertaking.

The Commission may extend the period referred to in Paragraph 1, Item 1 of this Article, at the request of the acquirer of the stocks or shares, provided that the acquirer proves that the sale of stocks or shares was not reasonably possible within that period, but not longer than six more months.

## **Permissibility of concentration**

### **Article 19**

Concentrations of undertakings shall be permitted, unless they significantly restrict, distort or prevent competition in the market of the Republic of Serbia or its part, and especially if that restriction, distortion or prevention is the result of creating or strengthening of a dominant position.

The permissibility of concentration of undertakings shall be determined in relation to:

- 1) structure of the relevant market;
- 2) actual and potential competitors;
- 3) market position of participants in concentration and their economic and financial power;
- 4) possibility of the choice of suppliers and customers;
- 5) legal and other barriers to enter on the relevant market;
- 6) level of competitiveness of participants in concentration;
- 7) supply and demand trends of the relevant goods or services;
- 8) technical and economic development trends;
- 9) interests of consumers.

## **IV COMMISSION FOR PROTECTION OF COMPETITION**

### **The position of the Commission**

#### **Article 20**

The Commission is an independent and autonomous organization that performs public competencies in accordance with this Law.

The Commission has the status of a legal entity.

The Commission shall be accountable for its work to the National Assembly, to which it shall submit an annual report by the end of February of the current year for the preceding year.

## **Competencies of the Commission**

### **Article 21**

The Commission shall be authorized to:

- 1) decide on the rights and obligations of undertakings in accordance with the Law;
- 2) impose administrative measures in accordance with this Law;
- 3) participate in preparation of regulations enacted in the field of protection of competition;
- 4) propose to the Government passing of regulations for implementation of this Law;
- 5) issue instructions and guidelines for implementation of this Law;
- 6) monitor and analyze conditions of competition in individual markets and in individual sectors;
- 7) give opinions to competent authorities on draft regulations, as well as on current regulations that have an impact on market competition;
- 8) give opinions regarding implementation of regulations in the field of protection of competition;
- 9) establish international cooperation in the field of protection of competition in order to fulfill international obligations in this area, and collect information on the protection of competition in other countries;
- 10) cooperate with state authorities, territorial autonomy and local self-government bodies in order to ensure implementation of this Law and other regulations that regulate the issues of important matter for protection of competition;
- 11) undertake activities to raise awareness on the necessity of protection of competition;
- 12) keep records on notified agreements, undertakings that have a dominant position in the market, as well as on concentrations, in accordance with the Law;
- 13) organize, undertake and supervise implementation of measures that secure protection of competition;
- 14) perform other duties in accordance with the Law.

The activities referred to in Paragraph 1, Items 1) 2) 3) 4) 5) 6) 7) 8) 9) 10) and 13) of this Article, the Commission shall perform as entrusted activities.

## **Bodies of the Commission**

### **Article 22**

Bodies of the Commission are the Council of Commission (hereinafter: the Council) and the President of the Commission.

The Council shall enact all decisions and acts on matters within the competence of the Commission, unless it is stipulated otherwise by this Law and the Statute.

The Council shall consist of the President of the Commission and four members.



President of the Commission shall represent and act on behalf of the Commission, enact decisions, and carry out other operations in accordance with the Law and Statute.

## **Election of the bodies of the Commission**

### **Article 23**

The President of the Commission and Council members shall be elected among distinguished experts in the field of law and economics with at least ten years of relevant professional experience, who have achieved significant and recognized work or practice in the relevant field, particularly in the areas of protection of competition and the European Law, and who enjoy reputation of being objective and impartial persons.

The composition of the Council, including the President of the Commission, must include experts from both relevant fields referred to in Paragraph 1 of this Article, with at least two representatives.

The President of the Commission and Council members shall be elected and dismissed by the National Assembly at the proposal of the competent committee in charge of trade.

The election of the President of the Commission, i.e. members of the Council shall be conducted on two separate lists of candidates containing at least the same, and no more than the double number of candidates against the number to be elected.

The President of the Commission, i.e. members of the Council shall be elected among candidates who receive the most votes in each list, i.e. the subsequent candidate or candidates on the list for members of the Council with appropriate expertise, until the fulfillment of conditions referred to in Paragraph 2 of this Article.

The same person may be a candidate on both lists, and if elected from the list for President of the Commission, the outcome of voting for the said person on other list will not be taken into account.

The election of the bodies of the Commission shall be conducted in a public contest invited by the National Assembly Speaker, no later than three months before the expiry of mandate of the President of the Commission and members of the Council, or immediately upon termination or dismissal within the meaning of Article 24 hereof.

## **Mandate**

### **Article 24**

The President of the Commission and Council members shall be elected for five year term, with the possibility of re-election.

The mandate of the President of the Commission and members of the Council shall terminate upon:

- 1) expiration of the term for which they were elected;
- 2) dismissal for reasons provided by the Law;
- 3) legal or factual reasons for inability to perform duties (resignation, fulfillment of the statutory retirement age, loss of legal capacity, serious health condition that prevents fulfillment of duties, etc.).

The reasons for termination of mandate under Paragraph 1, Items 1 and 3 of this Article, shall be determined by the competent committee of the National Assembly.

The National Assembly shall dismiss the President of the Commission or member of the Council following the proposal of the Council or competent National Assembly committee, if:

- 1) it is reasonably determined that information stated in the candidacy is inaccurate or incomplete in sense of omitting information that would significantly reduce the possibility of election;
- 2) circumstances referred to in Article 27 hereof occur;
- 3) there are gross violations of the provisions of this Law or the Code of Ethics.

## **Activities of the Council**

### **Article 25**

The Council shall bring the decisions by majority votes of all members.

During the procedure of investigation of infringement of competition, a rapporteur among the members of the Council shall be determined, who in cooperation with the official party assigned to lead the procedure, prepare a draft decision and report to the Council on the reasons and all relevant facts and circumstances of the case.

President of the Commission shall determine a rapporteur parallel to the institution of a procedure.

The President of the Commission shall preside and direct the work of the Council, sign the decisions and other acts, and ensure their execution.

The Council shall elect among its members a person who will exercise the authorities referred to in Paragraph 4 of this Article in the event of incapacity or exemption of the President of the Commission, in the manner prescribed by the Statute of the Commission.

## **Technical Service**

### **Article 26**

The Technical Service of the Commission (hereinafter: the Technical Service) shall perform professional operations within the jurisdiction of the Commission in accordance with this Law, the Statute and other acts of the Commission.

General labor regulations shall be applied on the rights and obligations of the Technical Service personnel.

In terms of legality, professionalism, political neutrality, impartiality, the use of official language and script, professional education and training of the employees, as well as in regards to office operations, regulations related to public administration shall be applied.

The Technical Service shall be managed by the Secretary General.

The Secretary General shall be appointed by the Council by majority votes.

A person with a university degree in the economics or law, with at least 10 years of professional experience and knowledge in the field of competition, may be appointed as a Secretary General.

For its work, the Secretary General shall be held accountable to the Council.

## **Incompatibility of functions and operations**

### **Article 27**

During their mandate in the Commission, the President of the Commission and members of the Council cannot perform other public function or professional activity, that is, they cannot be engaged in any public or private business that include compensation, including providing consulting and advisory services.

The prohibition stated in Paragraph 1 of this Article shall not apply to scientific activity, teaching activity in institutions of higher education and activities related to professional development.

President of the Commission and members of the Council cannot be members of political parties' bodies, nor may publicly advocate programs or positions of political parties.

## **Conflict of interest**

### **Article 28**

The President of the Commission and members of the Council shall hold the status of public officials in terms of the law governing conflict of interest in the exercise of public functions.

The President of the Commission and member of the Council whose membership ceased, cannot be a representative party in the procedure before the Commission in accordance with this Law, at least two years after the termination of membership, that is, the termination of employment.

The President of the Commission and member of the Council, at the time of taking the office, shall need to provide a written statement on the absence of obstacles for election referred to in Paragraph 1 of this Article.

Accordingly, the provisions of the law governing conflict of interest in accordance with the law governing rights and duties of public employees shall apply on the Technical Service employees.

## **Code of Ethics**

### **Article 28a**

The Commission shall enact a code of ethics that includes standards of behavior and conduct of members of the bodies and employees of the Commission, in order to preserve the dignity of the organization, independence and impartiality, awareness of the responsibility in their work, as well as to protect and improve professional integrity.

## **Compensation for work**

### **Article 29**

The President of the Commission and members of the Council shall be entitled to salary, that is, compensation for the work in the Commission.

## **Statute of the Commission**

### **Article 30**

The Statute of the Commission shall more closely regulate the internal organization, manner of operations and implementation of procedures before the Commission, as well as the authority to enact other acts of the Commission.

The Statute of the Commission shall be enacted by the Council, with the prior approval of the Government.

The Statute shall be published in the "Official Gazette of the Republic of Serbia".

## **Financing of the Commission**

### **Article 31**

The funds for Commission's operations shall be secured from revenues that the Commission generates from its activities, particularly from:

- 1) fees payable in accordance with this Law;
- 2) donations, except from donations made by undertakings to whom this Law applies;
- 3) revenues from the sale of Commission's publications;
- 4) other sources in accordance with the Law.

The tax amount referred to in Paragraph 1, Item 1 of this Article shall be determined by the Tariff, enacted by the Commission with the approval of the Government.

The Tariff referred to in Paragraph 2 of this Article shall be published in the "Official Gazette of the Republic of Serbia".

## **Financial Plan**

### **Article 32**

The financing of Commission's operations shall be done in accordance with a financial plan enacted by the Commission for each year, and submitted to the Government for approval no later than November 1<sup>st</sup> of the current year for the subsequent year.

If the financial plan is not adopted in the manner referred to in Paragraph 1 of this Article and before the start of a related fiscal year, the financing of the Commission shall be carried out up to the amount of the total expenditures incurred in the previous year, in proportion to the period until the approval of the financial plan.

The financial plan shall specify total revenues and expenditures of the Commission, including allocations for contingency fund, as well as elements of the wage bill.

Total expenditures of the Commission included in the financial plan cannot exceed expenses required for successful implementation of the competencies of the Commission.

If based on the annual revenues and expenditures statement be determined that the total generated revenues of the Commission are exceeding realized expenditures, and following the allocation of funds for a contingency fund, the difference shall be paid into the budget of the Republic of Serbia.

If generated income jeopardizes regular execution of Commission's expenditures, the Commission shall notify the Government on the matter and suggest measures within its

competence in order to balance out revenues and expenditures, which includes the possibility of a support from the budget of the Republic of Serbia.

Financial operations of the Commission shall be subject of an audit performed by the State Audit Institution.

The Commission shall publish its financial statement no later than three months following the financial year-end.

## V PROCEDURES BEFORE THE COMMISSION

### 1. General provisions on the procedures before the Commission

#### *Party in the procedure*

#### **Article 33**

Party in the procedure before the Commission shall be an undertaking who has submitted a notification on concentration or application for an individual exemption, that is, an undertaking against whom the investigation procedure is initiated.

According to this Law, parties that submit an initiative for investigation of competition infringement, providers of information and data, experts and organizations whose analysis are used in the procedure, as well as other government authorities and organizations that cooperate with the Commission in the procedure, shall not be considered as parties in the procedure.

#### *Implementation of general administrative procedure rules*

#### **Article 34**

In the procedure before the Commission, the general administrative procedure rules shall be implemented, unless otherwise provided by this Law.

#### *Institution of procedure ex officio*

#### **Article 35**

The Commission shall institute a procedure on investigation of competition infringement ex officio, when based on initiatives, information and other available data, reasonably assumes the existence of competition infringement, as well as in the case of investigation of concentration within the meaning of Article 62 hereof.

The President of the Commission shall issue the conclusion on initiation of procedure, which in particular shall contain a description of practices or acts that might present competition infringement, legal basis and reasons to initiate the procedure as well as invitation to all parties to provide the Commission with available data, documents or other relevant information.

No special appeal against the conclusion on initiation of procedure shall be allowed.

The Commission shall be obligated to inform every applicant of the initiative for investigation of competition infringement on the outcome of the initiative within 15 days from the date of receipt.

#### *Institution of procedure upon the request of the party*

#### **Article 36**

The procedure upon the notification of concentration, as well as procedure for individual exemption, shall be instituted and conducted upon the request of the party, unless otherwise provided by this Law.

*Summary procedure*

**Article 37**

The Commission may enact a decision directly, without conducting the investigation procedure, if during the procedure instituted upon the notification on concentration based on submitted evidences and other facts known to the Commission, can reasonably assume that the concentration fulfills the requirements of permissibility in accordance with Article 19 hereof, unless the conditions for conduct of concentrations proceeding ex officio are determined and obtained.

The summary proceeding decision shall be enacted by the President of the Commission.

*Decisions enacted by the Commission*

**Article 38**

The Commission shall enact decisions on competition infringement, individual exemption and permissibility or prohibition of concentration.

Prior to enacting of the decision in competition infringement proceeding, the Commission shall inform the party on relevant facts, evidences and other elements on which the decision will be based, and call the party to make a statement within given time frame.

An integral part of the decision on competition infringement is the ruling on the measure for protection of competition, that is, other administrative measure as determined by the Commission in accordance with this Law.

The decision of the Commission is final, while an administrative dispute proceeding against the decision may be initiated before the court.

The enacted conclusion shall relate to the procedural issues, interim measures and presentation of evidence.

The conclusion is submitted in written form in the case when is necessary to be delivered to the party or a third person, that is, for the publication.

The conclusion on the presentation of evidence is enacted by the official conducting the procedure, unless otherwise provided by this Law.

Against the conclusion under Paragraph 5 of this Article, no special appeal is allowed, unless otherwise provided by this Law.

The appeal against the conclusion shall not delay its execution.

*Delivery*

**Article 39**

The delivery of written documents (summons, decisions, conclusions, etc.) shall be conducted in accordance with the general administrative procedure rules.

Exceptionally, in the case of repeated delivery, that is, in the case of delivery by a public notice, the content of written documents shall be published on the web site of the Commission and shall be considered as delivered after the expiry of 15 days from the date of publication, unless the Commission decides to extend the deadline.

Party may not invoke to inappropriate delivery if the delivery is made to the address of the proceedings party's seat kept in the Business Registers Agency.

In the proceedings against undertakings who are considered to be affiliated undertakings pursuant to Article 5 hereof, the delivery to one undertaking shall be considered to be a delivery to all affiliated undertakings.

#### *Publication of acts*

#### **Article 40**

The decision specifying the competition infringement, as well as the decision on the institution of procedure ex officio, shall be published in the "Official Gazette of the Republic of Serbia" and on the web site of the Commission.

The conclusion on the institution of procedure shall not be published if the President of the Commission evaluates that the said publication might jeopardize the conduct of proceeding.

#### *Investigation procedure*

#### **Article 41**

In the course of investigation procedure, the necessary probative activities aimed at correct determination of established facts shall be taken, in particular related to taking statements from parties, witnesses, expert witnesses, collecting of data, documents and belongings, performing inspections and temporary seizure of belongings.

The investigation procedure shall be executed by an authorized official from the Technical Services, appointed by the President of the Commission in each case.

The conclusion on the implementation of investigation procedure and expert witnessing is enacted by the President of the Commission.

The list of experts and institutions that may be appointed as expert witnesses in the procedure before the Commission shall be determined by the Council.

#### *Official identity card*

#### **Article 42**

Officials from the Commission who implement actions in the course of investigation procedure shall have an official identity card.

Official identity card under Paragraph 1 of this Article shall be issued by the President of the Commission.

The Government shall more closely prescribe the form and content of the official identity card under Paragraph 1 of this Article.

#### *Right to access the case files and right to be notified on the course procedure*

#### **Article 43**

The party shall hold the right to inspect the case files, and at its own expense, copy individual parts of case files.

The record of the deliberation and the voting, official reports and draft decisions, the case files treated as confidential or protected data may not be inspected or copied.

Parties that are applicants of the initiative for investigation of competition infringement, information providers and other parties who make their legal interest in the monitoring process possible, shall hold the right to be informed on the course of the procedure.

The Council shall enact the act more closely specifying the content and manner of notification referred to in Paragraph 3 of this Article.

*Obligation to submit and to inspect the documentation*

**Article 44**

Parties in the procedure shall be instructed by a conclusion to submit or to provide for inspection relevant data kept in written, electronic or other form, documents, items that contain information as well as other items that may be a subject to presenting evidence in the procedure, and which are considered to be obligatory for the party to possess, or the possession is reasonably assumed.

In the event of party's failure to deliver, or placing for inspection the requested documents, data, or items until the conclusion of procedure, the Commission shall make a decision according to the state of available evidence in the case, that is, on the suspicion as a result of the lack of mentioned evidences, and shall be detrimental to the party that did not act upon the order.

*Protected information*

**Article 45**

At the request of a party, the applicant of the initiative for investigation competition infringement or the third party who has submitted or provided for investigation requested information in the procedure, measures on protecting the source of information or specific data (protected data) may be determined, if it is evaluated that the interest of that applicant is justified and substantially more important than the public interest in terms of the subject of the request.

The applicant referred to in Paragraph 1 of this Article, in the said request shall be obligated to present the possibility of substantial damage plausible due to the disclosure of the source of information that is, information specified in the request

The President of the Commission shall decide on the request referred to in Paragraph 1 of this Article, whereas against the conclusion that rejected or dismissed the request, a special appeal is allowed on which is decided by the Council.

Protected information does not have the status of information of public importance in terms of the law governing free access to information of public importance.

*Reopening of the procedure*

**Article 46**

The procedure before the Commission may be reopened under the conditions prescribed by the general administrative procedure rules, as well as in case of a violation of conditional approval of concentration or an individual exemption.



## *Sectoral analyses*

### **Article 47**

In cases where the price flows or other circumstances suggest the possibility of restriction or distortion of competition, the Commission may analyze the state of competition in a particular sector of the economy or certain categories of agreements in various industries (sectoral analysis).

In order to implement sectoral analysis in terms of Paragraph 1 of this Article, the Commission may require from undertakings to submit all necessary information or documents and may conduct all necessary researches.

The Commission may in particular require from undertakings to submit all agreements, decisions or notices with respect to concerted practices.

The Commission shall be obligated to publish the report on conducted sectoral analyses in an appropriate manner, and in particular on its website and may invite undertakings to provide their comments regarding the report.

### *Obligation to provide requested information*

### **Article 48**

If it is reasonably assumed that the requested information, belongings or documents are in the possession of the third party, the Commission shall issue a request for their submission, or for enabling supervision.

Parties who receive the request referred to in Paragraph 1 of this Article shall be obligated to submit, or make information, documents or belongings that are the subject of the request available for supervision, except in cases prescribed by the law.

The request for providing information contains, in particular, assertion to whom and on what data are referring, deadline for acting, in addition to a warning of the consequences of withholding of information or giving false information.

At the request of the person who is obligated to provide, or make information available for supervision, the Commission may supervise and collect information in the premises of that person.

### *Cooperation of state authorities and organizations*

### **Article 49**

The Commission may submit to other government authorities and organizations a request for providing information.

The state authorities and organizations are obligated to cooperate with the Commission and to act on the request referred to in Paragraph 1 of this Article, in due course, that is, to provide information, documents or other requested evidence they possess, or to give a reasoned statement on the subject of request.

The obligation referred to in Paragraph 2 of this Article, particularly refers to the authorities and organizations in charge of statistics, tax authorities, authorities and organizations of local self-government, chambers of commerce and other organizations that exercise public authority.

In the event of an untimely or incomplete action or failure to act by the authorities or organizations referred to in Paragraph 1 of this Article, the Commission may inform on the event the body in charge of monitoring of operations of authority or organization concerned, that is, the body in charge of holding them liable for their operations with a request to take necessary actions aimed at acquiring requested information.

In the case of lack of cooperation subsequent to acting in accordance with Paragraph 4 of this Article, or multiple failed attempts of the Commission to establish a cooperation with the appropriate state authority or organization, the Commission may publish an information about that matter.

#### *Cooperation with the police*

##### **Article 50**

Upon the request of the Commission, the police will provide assistance in performing certain actions in the procedure, especially with the investigation and the temporary seizure of belongings in accordance with the law governing the police.

The provisions of Article 49, Paragraphs 4 and 5 also relate to cooperation with the police.

#### *Privileged communication*

##### **Article 51**

Letters, notices and all other forms of communication between the party against whom the procedure is conducted and its attorneys, which are directly related to the procedure, shall be considered as privileged communication.

The provisions of this law related to protected information are applied to privileged communication, accordingly.

In the case of suspected abuse of privileged communication, the President of the Commission may review the content of communication, that is, decide to abolish that status in relation to some of its forms.

## **2. Special provisions on procedure related to competition infringement**

#### *Authorizations in inspections*

##### **Article 52**

The official conducting the investigation may:

- 1) enter and inspect business premises, vehicles, land and other facilities at the seat of the party and other locations where the party or a third person conducts business or other activities;
- 2) inspect business and other documents, regardless of the manner in which these document are kept;
- 3) confiscate, copy or scan business documents, and if this is not possible due to technical reasons, the authorized person may confiscate business documentation and keep it as long as it is necessary to make copies of these documents;
- 4) seal all business premises and business documents during the investigation;

- 5) take oral and written statements from a representative of a party or its employees, as well as documents on the facts that are the subject of investigation, and if a written statement is necessary, the authorized person must determine the date until which such statement must be submitted;
- 6) perform other duties in accordance with the objectives of the procedure.

The party must be provided with the possibility to be present at the scene of investigation, if demanded by the party, unless the request is aimed at prolonging or impeding the procedure.

#### *Dawn raid*

### **Article 53**

If there is a reasonable doubt that there is a risk of removing or altering evidence in possession of a party or a third person, a dawn raid may be ordered.

Dawn raid shall be performed by the sudden control of premises, that is, documentation, information and belongings that are on the site, on which the party or the holder of the premises is notified at the moment of investigation and on the site.

#### *Entering the premises*

### **Article 54**

If it is necessary for the investigation to be conducted at the premises of the party or a third person, an official of the Commission, who is conducting the investigation is obligated to present to the owner or holder of the premises its official identity card and submit the conclusion on conducting investigation in that premise, that is, demand to enter that premises.

If the owner or the holder of the premise unreasonably opposes to the implementation of investigation, a forced entry with the police assistance may be conducted.

If it is necessary to conduct an investigation in an apartment or other premise which has the same, similar or related purpose, and the owner or the holder of the premise opposes to it, the President of the Commission shall immediately ask for an appropriate court order.

The court order is issued by the court competent to decide on the complaint against the decision of the Commission under the rules of civil procedure for the preservation of evidence.

Holder of the apartment and other premises reserves the right to be present during the investigation in person or by representation, along with two adult witnesses.

If the holder of the apartment or its representative are not present, the investigation is admissible in the presence of two adult witnesses.

#### *Temporary seizure of documents and belongings*

### **Article 55**

If during the investigation, documents, objects, or belongings containing data or other things relevant to decision making in the procedure are found, their temporary seizure may be determined until all relevant data and facts that these documents contain are established, or at least until the end of the procedure.

The conclusion on the temporary seizure of documents or belongings, as well as their return, is brought by the official person conducting the investigation, i.e. conducting the procedure.

Special certificate is issued on the site to a person for whom the documents or belongings are temporary seized.

The costs of seizing and keeping documents and belongings, as well as the possible damage due to their impairment are included in the costs of the procedure.

*Interim measures*

**Article 56**

In case there is a danger of occurrence of irreparable damage to the parties to which actions or acts, which are a subject of the procedure, directly refer to, the Commission can pass a conclusion containing an order to suspend particular implementation of action or execution of acts, that is, order implementation of obligatory action aimed to prevent or remove their harmful effects.

The conclusion from Paragraph 1 of this Article, against which a special appeal is allowed, is enacted by the President of the Commission, whereas the Council shall decide upon the appeal.

Interim measures referred to in Paragraph 1 of this Article may last until passing of the decision in that procedure.

*Administrative measures imposed by the Commission*

**Article 57**

If the Commission determines the competition infringement or other violation of this Law, it shall impose a measure for protection of competition, measure to eliminate competition infringement, that is, other administrative measure prescribed by this Law.

When determining the amount payable based on the measure for protection of competition, that is, procedural penalty, the intention, gravity, duration and consequences of the competition infringement shall be taken into account.

The collection of monetary amount determined by an administrative measure shall be made into the account of the budget of the Republic of Serbia.

Forced execution of measures for protection of competition, that is, the procedural penalty, as well as the refund in case of reduction or annulment by the decision of the court, shall be conducted by the Tax Administration in accordance with the regulations governing collection of taxes.

For measures against certain forms of associations of undertakings, all associated participants shall be held jointly liable, who may jointly or individually pay the obligation, if the association is unable to make the payment or does not have its own funds.

The Government shall more closely prescribe the criteria for determining the amount to be paid based on the extent of measure for protection of competition and procedural penalty, manner and deadlines for such payments, and more closely prescribe conditions determining the measures referred to in Paragraph 1 of this Article.

*Adjournment of proceeding*

**Article 58**

The Commission may enact a conclusion on the adjournment of investigation of competition infringement and determine measures referred to in Article 59 of this Law, if the party, based on the content of the conclusion on instituting proceeding, that is, facts established in the proceeding, submits a proposal of obligations that is voluntarily willing to undertake in order to eliminate possible competition infringement, containing terms and conditions for taking the measure.

The proposal referred to in Paragraph 1 of this Article, may be placed by the party no later than the receipt of notification referred to in Article 38, Paragraph 2 of this Law.

The notice on submission of proposal by the party referred to in Paragraph 1 of this Article, which contains a brief description of the proposal and essential elements of the case, the Commission shall publish on its website, inviting all interested parties to submit written remarks, stances and opinions within 20 days from the date of publication of this notice.

If the Commission, on the basis of an analysis of market conditions, determines that it is likely that proposed commitments will ensure fulfillment of objectives from the measure referred to in Article 59 of this Law, it shall pass a conclusion determining the measure on the basis of a given proposal.

The Commission shall not be held obliged to accept the proposal referred to in Paragraph 1 of this Article.

The conclusion on adjournment of proceeding sets the deadline for execution of obligations of the party and submission of evidence on fulfilling requirements from the measure.

The proceeding shall be continued within a period not exceeding three year period from the date of enacting conclusion from Paragraph 1 of this Article, if:

- 1) substantial change of circumstances on which the conclusion on adjournment of proceeding is based on, occur;
- 2) a party fails to fulfill obligations from the measure within specified time, that is, fails to provide adequate evidence on the matter;
- 3) the Commission finds that the conclusion on adjournment of proceeding is enacted based on inaccurate, false, incomplete or misleading information provided by the party.

The treatment of the party upon the conclusion on adjournment of proceeding shall be supervised ex officio by the Commission.

The conclusion on adjournment of proceeding, that is, continuance of proceeding shall be enacted by the Council.

#### *Measures for removal of competition infringement*

### **Article 59**

The Commission may, in the decision determining competition infringement, set the measures aimed at removing competition infringement, i.e., preventing probable occurrence of the same or similar infringement, by giving orders to undertake certain behavior or prohibit certain behavior (behavioral measures).

The measures referred to in Paragraph 1 of this Article must be proportionate to the gravity of competition infringement and in direct relation to acts or practices that caused such infringement.

If it is determined that there is a significant risk of recurrence of the same or similar infringement as a result of the structure of undertakings, the Commission may set a measure with the objective of changing the structure in order to eliminate such risk, that is, establishing the structure that existed prior to infringement (structural measures).

The structural measure shall be set if there is no possibility to set an equal or similarly effective behavioral measure or if the behavioral measure constitutes a greater burden for the undertaking than the structural measure, that is, if the earlier imposed behavioral measure for the same infringement is not carried out in its full.

The structural measures may require decomposition of created undertakings structure, particularly through the sale of some parts or assets to other parties that are not affiliated to the undertaking.

The Government shall prescribe conditions for setting protective measures referred to in Paragraphs 1 and 3 of this Article.

### **3. Special provision on individual exemption of restrictive agreement proceeding**

#### *Deciding on request for individual exemption*

#### **Article 60**

The decision on request for individual exemption of restrictive agreement shall be made within 60 days from the date of request submission.

The decision on individual exemption shall specifically include the duration period of individual exemption, in addition to the exemption conditions.

The party may request the extension of individual exemption duration period by filing a special request submitted no later than two months prior to the expiry of the said period.

At the request referred to in Paragraph 3 of this Article, the same or different conditions and the duration period of an individual exemption may be determined.

The Commission may, in the repeated procedure ex officio under Article 46 hereof, within one year period following its enactment, revoke the decision referred to in Paragraph 1 of this Article, if the conditions under which the exemption is granted are substantially altered, that is, to annul the decision if the exemption decision is based on incorrect or false information or if the exemption is misused.

For issuance of the decision on submitted request form from Paragraphs 1 and the 3 of this Article, the applicant shall pay a fee in the amount determined by the Tariff from Article 31, Paragraph 2 hereof.

### **4. Special provisions in concentration investigation proceeding**

#### *Obligation to report concentration*

#### **Article 61**

The concentration must be reported to the Commission in the case if:

- 1) total annual revenue of all concentration participants generated on the international market in the preceding financial year exceeds 100 million EUR, provided that at least one concentration participant revenue generated on the market of the Republic of Serbia exceeds ten million EUR;
- 2) total annual revenue of at least two concentration participants generated on the market of the Republic of Serbia exceeds 20 million EUR in the preceding financial year, provided that at least two concentration participants generated revenue on the market of the Republic of Serbia exceeds one million EUR per participant, in the same period;

Revenue generated by these undertakings in a reciprocal exchange shall not be added during the calculation of total annual revenue under Paragraph 1 of this Article.

Concentration implemented by means of a takeover bid, within the meaning of regulation governing takeover of joint stock companies, must be reported even if conditions contained in Paragraph 1 of this Article are not fulfilled.

#### *Investigation of concentration ex officio*

### **Article 62**

Upon learning of implemented concentration, the Commission may conduct an investigation of concentration if it finds that the combined market share of concentration participants on the market of the Republic of Serbia is at least 40%, i.e., reasonably assumes that the concentration fails to fulfill conditions of permissibility from Article 19 hereof, as well as in the case of other concentration not approved in accordance with this Law.

If during the reported concentrations proceeding is determined that conditions for instituting investigation procedure ex officio are fulfilled under Paragraph 1 of this Article, the procedure shall be continued ex officio based on the conclusion enacted by the President of the Commission.

The Commission shall bear the burden of proving the existence of the market share and conditions contained in Paragraph 1 of this Article.

The Commission shall be held obliged to enact a decision in concentrations proceeding within four months from the date of initiation of procedure ex officio.

#### *Notification of concentration*

### **Article 63**

Notification of concentration shall be submitted to the Commission within the period of 15 days from the date of performing the first of the following acts:

- 1) conclusion of an agreement or contract;
- 2) announcement of public invitation, that is, offer or closing of public offer;
- 3) acquisition of control.

Notification referred to in Paragraph 1 of this Article may be also submitted when undertakings demonstrate serious intent for conclusion of agreement by signing the letter of intent, announcing the intent to make an offer or in any other manner preceding the act stated in Paragraph 1 of this Article.

When control over the entire or parts of one or more undertakings is acquired by another undertaking, the application shall be submitted by undertaking who acquires the control, and in the case of joint ventures, the application shall be submitted jointly by all undertakings.

The Government shall more closely prescribe the content and manner for notification of concentration.

#### *Interruption of concentration*

#### **Article 64**

Participants in concentration shall be required to interrupt the implementation of concentration pending the decision of the Commission.

In the case stated in Article 62 hereof, participants in concentration shall be required to interrupt the implementation of concentration from the date of receipt of the decision on institution of concentrations approval proceedings.

Obligation of interruption of concentration referred to in Paragraph 1 and 2 of this Article shall not prevent implementing the takeover, notified to the competent body in accordance with the law governing takeover of joint stock companies, that is, law governing privatization, provided that the notification of concentration is timely, that the acquirer of control does not execute management rights on the basis of acquired rights or it does so only to maintain the full value of the investment and on the basis of the specific approval of the Commission.

The President of the Commission shall decide upon the request for approval referred to in Paragraph 3 of this Article, by enacting a conclusion.

#### *Decisions in concentrations proceedings*

#### **Article 65**

The Commission shall be required to enact a decision on notification of concentration within one month from the date of receipt of the complete notification in terms of regulations referred to in Article 63, Paragraph 4 hereof, in accordance with Article 37 hereof, that is, a conclusion on implementation of investigation procedure referred to in Article 62 Paragraph 2 hereof.

If the Commission fails to adopt a decision on notification within the period referred to in Paragraph 1 of this Article, that is, fails to adopt a decision in the procedure of investigation of concentration ex officio within the period prescribed under Article 62, Paragraph 4 hereof, it shall be considered that the concentration is approved.

By enacting the decision, the Commission shall approve concentration that fulfills the permissibility conditions within the meaning of Article 19 hereof, or otherwise prohibit the same.

If it is determined that notification fails to fulfill conditions as prescribed in Article 61 hereof or that the applicant has not supplemented incomplete notification as per order of the Commission, the notification shall be rejected in a conclusion enacted by the President of the Commission.

For issuance of the decision on notification of concentration, the applicant shall pay a fee in the amount determined by the Tariff from Article 31, Paragraph 2 hereof.

If the notification of concentration is rejected due to the failure to meet requirements from Article 61 hereof, the fee referred to in Paragraph 5 of this Article shall not be paid, that is, the fee shall be refunded to the applicant.



### *Conditional approval of concentration*

#### **Article 66**

If the Commission determines no conditions for approval of concentration, it shall notify the applicant on relevant facts, evidences and other elements on which it founds the decision, and invite the party to make a statement in due course.

In this statement, the applicant may suggest special conditions that is willing to accept aimed at fulfilment of conditions enabling approval of implementation of concentration.

Bearing in mind suggested special conditions, the Commission shall evaluate if they are suitable to fulfill conditions from Article 19 hereof, and enact the decision approving concentration and set special conditions and terms for implementation, as well as manner of controlling implementation of given conditions (conditional approval).

### *Measure of deconcentration*

#### **Article 67**

If the Commission determines the conduct of concentration for which the approval is not issued, or failure to fulfill conditions and obligations of conditional approval of concentration, it may enact a decision imposing measures to concentration participants that are necessary for establishing or preserving competition on the relevant market (measures of deconcentration), and order participants to conduct a division of company, disposal of stocks or shares, termination of contract or to perform other actions in order to establish conditions prior the concentration.

The decision referred to in Paragraph 1 of this Article shall include a deadline and special conditions necessary to fulfill the given order.

## **5. Measures for protection of competition and procedural penalty**

### *Measure for protection of competition*

#### **Article 68**

The measure for protection of competition, in the form of an obligation to pay a monetary sum in the amount up to 10% of the total annual revenue generated on the territory of the Republic of Serbia, and calculated in accordance with Article 7 hereof, shall be determined to an undertaking if it:

- 1) abuses a dominant position in the relevant market within the meaning of Article 16 hereof;
- 2) concludes or implements a restrictive agreement within the meaning of Article 10 hereof, or restrictive agreement that is not exempt within the meaning of Article 60 hereof;
- 3) fails to perform or implement measures to eliminate competition infringement, or measure of deconcentration within the meaning of Article 59 and 67 hereof;
- 4) conducts a concentration oppose to the obligation of interruption within the meaning of Article 64 hereof, or for witch the approval for implementation of concentration is not issued within the meaning of Article 65 hereof.

The deadline for payment of the amount of measure for protection of competition shall be set by the same decision which sets the said measure, and may not be shorter than three months nor longer than one year from the date of receipt of the decision.

The measure for protection of competition may not be set upon the expiry of five year period from the day of effecting of activity or failure to fulfill obligation, that is, from the last day of time period related to performing activity as referred to in Paragraph 1 of this Article.

The statute-barred from the Paragraph 3 of this Article shall be terminated by every action taken by the Commission in order to establish the actions from Paragraph 1 of this Article and set measures for protection of competition. When the Commission conducts a procedure against several undertakings or undertakings association(s), the statute-barred shall be terminated on the day when any of the said undertaking, which holds the status of a party in the proceeding, receives the Commission's submission.

Following each interruption, the statute-barred shall start to run again, however the procedure on investigation of competition infringement may not be conducted upon the expiry of a double period specified in Paragraph 3 this Article.

The measure for protection of the competition may not be collected upon the expiry of five year period from the day of entry into force of the Commission's decision, and if the administrative procedure is initiated, from the day of judicial decision validity.

The statute-barred shall be considered interrupted by every action of the competent body conducted in order to collect measure for protection of competition, and it shall start running again but the collection procedure may not be conducted upon the expiry of a double period determined in Paragraph 6 of this Article.

#### *Relief from measure for protection of competition*

### **Article 69**

The agreement participant referred to in Article 10 hereof, the first to report on the existence of agreements or deliver evidence to the Commission, based on which the Commission enacted a decision on competition infringement referred to in Article 10, Paragraph 1 hereof, may be relieved from the commitment to pay a monetary sum from the measure of protection of competition.

Relief from the commitment to pay a monetary sum referred to in Paragraph 1 of this Article shall be implemented conditioned that the Commission, at the moment of submission of evidence, had no knowledge of the existence of agreement referred to in Article 10, Paragraph 1 hereof, or it had the knowledge but not enough evidence to enact a conclusion on institution of proceedings.

For the agreement participant referred to in Article 10, Paragraph 1 hereof, who fails to fulfill conditions for the relief from commitment to pay monetary sum, the amount of monetary sum from the measure of protection of competition may be reduced, conditioned the delivery of evidence submitted to the Commission during the procedure that were not available at the time and that allow terminating proceeding and enacting decision on competition infringement referred to in Article 10, Paragraph 1 hereof.

Provisions of Paragraphs 1 to 3 of this Article shall not apply to an agreement participant who initiated agreement conclusion referred to in Article 10, Paragraph 1 hereof.

The Government shall more closely prescribe conditions for the relief from commitment to pay a monetary sum from Paragraphs 1 to 4 of this Article.

### *Procedural penalty measure*

#### **Article 70**

Against undertaking acting contrary to the orders issued by the Commission in the respective proceeding, or fails to comply with these orders in accordance with Article 57 hereof, a procedural penalty measure shall be imposed in the amount between 500 EUR and 5,000 EUR per day, for each day of such conduct, if it:

- 1) fails to comply with the Commission's request to submit, disclose, make available or provide access to the requested data, disables the entry into premises, or disable investigation in other manner, that is, deliver or provide incorrect, incomplete or false information, including the information within the meaning of Articles 44, 47 and 48 hereof;
- 2) fails to comply with the interim measure from Article 56 hereof;
- 3) fails to submit notification of concentration within the given time period from Article 63, Paragraph 1 hereof.

Procedural penalty may not exceed 10% of the total annual revenue calculated in accordance with Article 7 hereof.

The deadline for payment of procedural penalty shall be set by the same decision which sets the said measure, and may not be shorter than one or longer than three months from the date of receipt of the decision.

The measure for payment of procedural penalty may not be imposed or collected upon the expiry of one year period from the date of failure to act as referred to in Paragraph 1 of this Article.

## **VI JUDICIAL REVIEW**

### *Judicial review of decisions of the Commission*

#### **Article 71**

Against the final decision of the Commission, a claim may be submitted before the court within 30 days from the date of service of the decision to the party, competence of the Administrative Court as a court of appeal.

Submitting of a claim shall not stay the enforcement of the decision.

At the request of the claimant, the Commission may delay the execution of decision until the validity of judicial decision, if the execution of decision would cause irreparable damage to the prosecutor, and especially if it would probably lead to the bankruptcy or termination of business operations of the prosecutor, provided that the delay is not against the public interest.

With the request for a delay, a proof on field claim shall be submitted.

The Council shall decide on the request for delay of execution, no later than the expiry period for payment specified in the decision.

### *Judicial proceedings*

#### **Article 72**

In the judicial proceeding review of lawfulness of decision of the Commission, the provisions of the law governing administrative procedure shall be applied, unless this Law stipulates otherwise.

The legality of decision of the Commission, in part referring to the monetary amount of certain administrative measure, shall be examined in relation to the conditions for that decision envisaged by this Law and bylaws.

If the court determines that disputed decision of the Commission is unlawful only in part related to the monetary amount of certain administrative measure, the ruling shall, as per usual practice, overturn the disputed decision in that part, under the conditions envisaged by the law governing administrative procedures.

The deadline for submission of claims with attachments to the Commission for counter statement purpose shall be 15 days from the date of receipt by the court, whereas the deadline to provide such response shall be 30 days from the date of receipt of claim for counter statement.

The court shall make a decision on the claim no later than three months from the receipt of counter statement, i.e. expiry of the period for responding to the claim.

The deadline for submission of extraordinary legal remedy with attachments to the Commission for counter statement purpose shall be 15 days from the date of receipt by the court, whereas the deadline to provide such response shall be 30 days from the date of receipt of extraordinary legal remedy for counter statement.

The Supreme Court of Cassation shall decide on the extraordinary legal remedy no later than three months from the receipt of counter statement on extraordinary legal remedy, i.e., expiry of the period for such response.

#### *Compensation for damage*

##### **Article 73**

The compensation for damage caused by acts and practices which constitute competition infringement in terms of this Law, and which is determined by the decision of the Commission, shall be received in a civil procedure before the court of competent jurisdiction.

The decision of the Commission referred to in Paragraph 1 of this Article shall not assume occurrence of damage, but that such matter must be proved in a judicial procedure.

## **VII. TRANSITIONAL AND FINAL PROVISIONS**

##### **Article 74**

Procedures initiated before the day of beginning of implementation of this Law, shall be completed pursuant to regulations under which they are initiated.

##### **Article 75**

On the day of beginning of implementation of this Law, the Commission for Protection of Competition established by the Law on Protection of Competition (“Official Gazette of the Republic of Serbia”, no. 79/05), shall continue its activities in accordance with provisions of this Law.

##### **Article 76**

The President and members of the Council of the Commission, shall perform the duty of the President of the Commission and duty of the members of the Council, respectively, in accordance with this Law, pending election of the bodies of the Commission, in accordance with this Law.

#### **Article 77**

The High Commercial Court shall be the competent court for claims filed against decisions of the Commission, until the Administrative Court starts to operate in accordance with the law governing the courts.

Pending elections of the President and Judges of the Supreme Court of Cassation, salary of the President of the Commission and members of the Council shall be determined at the level of salary of the President and Judges of the Supreme Court, respectively.

#### **Article 78**

As from the date this Law comes into force, the Law on Protection of Competition (“Official Gazette of the Republic of Serbia”, no. 79/05) shall cease to apply.

#### **Article 79**

Bylaws enacted in accordance with the provisions of this Law, shall be enacted beforehand the day of beginning of implementation of this Law.

#### **Article 80**

Pending enactment of bylaws in accordance with this Law, bylaws enacted prior to the day of beginning of implementation of this Law shall be implemented, except provisions contrary to this Law.

#### **Article 81**

This Law shall enter into force on the eight day from the date of publication in the “Official Gazette of the Republic of Serbia”, and shall be implemented as from November 1, 2009.

### **SEPARATE ARTICLES OF THE LAW ON AMENDMENTS TO THE LAW ON PROTECTION OF COMPETITION**

(“Official Gazette of the RS”, no. 95/13)

#### **Article 22[s1]**

The procedures before the Commission not completed prior to the day this Law enters into force, shall be continued pursuant to the provisions of this Law.

As an exception from Paragraph 1 of this Article, rules in force prior to the day this Law enters into force, shall be applied for determining dominant market position and statute-barred of the measure for protection of competition.

The President of the National Assembly, within one month period from the day of this Law entry into force, shall publish the public content for the election of the bodies of the Commission.

For the President of the Commission and the Council members in the office at the time of entry into force of this Law, the mandate shall cease pending election of new bodies as referred to in Paragraph 3 of this Article.

**Article 23[s1]**

This Law shall enter into force on the eight day from the date of publication in the "Official Gazette of the Republic of Serbia".