

Pursuant to Article 21, Paragraph 1, Item 5 of the Law on Protection of Competition (“Official Gazette of the Republic of Serbia” no. 51/2009), the Council of the Commission for Protection of Competition, on its 156th Plenary session held on August 30, 2010, adopts the following

GUIDELINES
for implementation of Article 69 of the Law on Protection of Competition and
Regulation on the conditions for relief from commitment payment from measure for
protection of competition

Introduction

1) This Guidelines shall more closely define conditions, procedure and manner of exercising rights for the relief from commitment payment from measure for protection of competition (hereinafter: commitment relief), and deduction of commitment payment from measure for protection of competition (hereinafter: commitment deduction) of parties to the restrictive agreement, as well as the amount of deduction of commitment payment from measure for protection of competition, pursuant to Article 69 of the Law on Protection of Competition (“Official Gazette of the Republic of Serbia” no. 51/2009 - hereinafter: the Law) and Regulation on the conditions for relief from commitment payment from measure for protection of competition (“Official Gazette of the Republic of Serbia” no. 50/2010 - hereinafter: the Regulation).

Conditions for commitment payment relief and commitment payment deduction from
measure for protection of competition

2) Party to the restrictive agreement shall execute the right to be relieved from commitment payment from measure for protection of competition, if the following conditions are met:

- is first to notify the Commission on the agreement,
- at the time of submission of notification, the Commission had no prior knowledge or sufficient evidence to initiate proceedings,
- provides all available evidence and/or indicates to the Commission on the location or person holding the evidence,
- provided evidences can enable the Commission to enact decision on infringement pursuant to Article 10, Item 1 of the Law,
- is not initiator or organizer of the agreement,
- did not force or encourage other parties to conclude or implement the agreement, and
- in complete and continuous manner fulfils all other cooperation commitments with the Commission in accordance with the Law, Regulation and this Guidelines.

3) The Commission may deduct commitment payment for the party to the restrictive agreement if the said fulfils the following conditions:

- does not fulfills conditions for commitment relief,
- is not initiator or organizer of the agreement,
- did not force or encourage other undertakings to conclude or implement the agreement,

- submits evidences to the Commission that were not available at the particular moment, enabling adjournment of proceeding and enacting of decision on infringement pursuant to Article 10, Item 1 of the Law, and
 - in complete and continuous manner fulfils all other cooperation commitments with the Commission in accordance with the Law, Regulation and this Guidelines.
- 4) As evidences enabling adjournment of proceeding pursuant to Item 3, Line 5 of this Guidelines shall be considered evidences enabling relevant fact finding that previously were not found or found in insufficient manner, and which are considered necessary for determining competition infringement pursuant to Article 10, Item 1 of the Law.
- 5) In addition to conditions pursuant to Item 2 and 3 of this Guidelines, the applicants of request for commitment relief and commitment deduction, are committed to:
- fully, unconditionally and continuously cooperate with the Commission during the entire procedure, pending the validity of the decision determining competition infringement;
 - cease further participation in the restrictive agreement, no later than following submission of the notification on agreement, i.e. request, unless differently agreed with the Commission in the interest of further conduct of proceeding;
 - immediately respond to every call of the Commission for submission of additional evidences or information, or within provided timeframe for such conduct;
 - allow access to authorized persons of the Commission to all employees and former employees who are at dispose of information and/or evidences relating to the restrictive agreement, and provide their full cooperation during the proceeding;
 - do not destroy or hide information or other evidences relating to notified restrictive agreement;
 - keep as classified all information provided in the notification, i.e. request, as well as the fact related to cooperation with the Commission during the proceeding;
 - conscientiously and responsibly act on all matters and other orders or instructions provided by the Commission during the proceeding.

**Procedure and manner
of submitting notification on restrictive agreement and request for commitment
deduction**

- 6) Party to the restrictive agreement that wants to notify on the agreement and exercise the right to be relieved from commitment, may:
- anonymously address the Commission (e.g. via a proxy) by providing information containing a brief description of the content of restrictive agreement, list of available evidences at disposal and brief description of the content of evidences, whereby is not committed to reveal its identity, identity of remaining participants and details of the agreement;
 - submit the notification on restrictive agreement with the request for commitment relief.
- 7) The Commission shall inform the party to the restrictive agreement that anonymously addressed the Commission, on eventual prior existence of notification on restrictive agreement that correlates in description to the agreement subject to submitted notification

before the Commission, and/or whether the Commission already possess evidence sufficient for initiation of proceeding.

8) In cases where the Commission holds no knowledge on such restrictive agreement and possesses insufficient evidences for initiation of proceedings, it shall direct the party to the agreement to submit the notification on agreement with the request for commitment relief.

9) In cases where the Commission already holds the knowledge on such restrictive agreement and possesses sufficient evidences for initiation of proceedings, it shall direct the party to the agreement to consider using the option of submitting the request for commitment deduction.

10) Party to the agreement who anonymously addressed the Commission cannot exercise the right of priority in order of submission of notification on agreement with the request for commitment relief, i.e. commitment deduction.

11) Party to the restrictive agreement may submit to the Commission a pre-notification on restrictive agreement with the request to establish order of submission of notification (the marker).

12) Pre-notification must contain following data: basic information on content of restrictive agreement, information on parties to the agreement, list of evidences at disposal to the applicant, information on other evidences at disposal to remaining participants or third parties, description of content of available evidences, and estimate of time needed for submission of complete notification on agreement before the Commission.

13) The Commission shall, following the submission of pre-notification and performed review and evaluation of all allegations, inform the applicant on the order of submission and time frame in which is committed to submit the complete notification on restrictive agreement with the request for commitment relief, whereby the said time frame cannot be longer than one month from the date of receipt of pre-notification document.

14) Party to the restrictive agreement who complies in accordance with the Commission's information, i.e. submits the complete notification with the request for commitment relief in provided time frame, as the day of submission of complete notification with the request shall be taken the day of submission of pre-notification before the Commission.

15) Following the receipt of complete notification on restrictive agreement with the request for commitment relief, the Commission shall in reasonable period investigate all allegations stated in notification, analyze and evaluate evidence submitted with the notification, examine and evaluate compliance with conditions for commitment relief, and as per need conduct other acts, including issuing orders to the applicant for amending and/or clarifying any and all elements of submitted notification, following which it shall inform the applicant in writing on the compliance with conditions for commitment relief.

16) During the conduct pursuant to Item 15 of this Guidelines, the Commission shall take into account the order of receipt of notifications or requests, whereby it shall not evaluate the later notification or request until it qualifies itself in relation to the pre-notification.

17) Party to the agreement informed by the Commission on the failure to fulfil requirements for commitment relief shall have the right to, within five business days from the date of receipt of information:

– inform the Commission in writing on its decision to withdraw submitted evidences, which shall not affect the right of the Commission to, by implementing its authorizations provided in the Law, acquire such evidences from that particular or remaining participant(s) to the agreement or third parties during the conduct of proceeding;

– respond in writing whether its notification should be in further proceeding considered as the request for commitment relief (request for re-classification).

18) If the Commission within timeframe envisaged in Item 17 of this Guidelines do not receive the information in writing – the declaration, it shall be taken that the applicant of notification has agreed that the submitted evidence may be utilized in further proceedings before the Commission.

19) Party to the restrictive agreement that has submitted the request for re-classification of request for commitment relief pursuant to Item 17 of this Guidelines, as the date of submitting the request shall take the date of submitting the submission by which the restrictive agreement is notified and commitment relief is requested.

20) Party to the restrictive agreement may submit the request for commitment deduction during the entire proceeding, and no later than before the Commission sends the information on relevant facts, evidences and other elements to the parties in proceeding, which are to be taken as basis for enactment of decision.

21) Following the receipt of request for commitment deduction, the Commission shall in reasonable period investigate all allegations stated in the request, analyze and evaluate evidence submitted with the request, examine their probative value, review and evaluate compliance with conditions for commitment relief of the party to the agreement, and as per need conduct other acts from its competence, including issuing orders to the applicant for amending and/or clarifying any and all elements of submitted request, following which it shall inform the applicant in writing on the order of its request, as well as on the fulfilment of failure to comply with the conditions for commitment deduction.

22) The complete notification on restrictive agreement with the request for commitment relief must contain:

– written statement of the party to the restrictive agreement, submitted on memorandum, verified with a stamp and signed by authorized person, whereby giving the explicit and irrevocable admission of participation to the restrictive agreement;

– detailed description of the content of agreement with specification of the manner of communication, description of acts undertaken for implementation of such agreement and list of parties to the agreement;

– business name and headquarters address of the applicant, and in the case of association of undertakings, names and headquarter addresses of parent and all affiliated companies;

– business names and headquarters addresses of all other parties to the restrictive agreement, including temporary parties to the agreement;

– personal names, functions and contact details of natural persons participating in organization and implementation of the agreement;

– information on notifications submitted to competition protection authorities in other countries in relation to the reported agreement, i.e. all conducted or ongoing negotiations by

the party with other competition protection bodies at the moment of submission of notification, as well as their content;

- the statement, prepared using the template available on the Commission’s web page (www.kzk.gov.rs), whereby the party irrevocably, unequivocally and unconditionally commits to fulfil all commitments pursuant to this Guidelines, and declares to continuously, knowingly and in good faith believe cooperate with the Commission for entire duration of the proceeding, pending the validity of decision imposing measure for competition infringement;
- list of evidences, and any and all evidences regardless of their form, source or methods of keeping, as well as information significant for proceeding in determining the infringement of competition that are at disposal at the time of submission of notification – request;
- the request for commitment relief.

23) The complete request for commitment deduction must contain:

- written statement made by the party to the restrictive agreement, submitted on the memorandum, verified with a stamp and signed by authorized person, whereby giving the explicit and irrevocable admission of participation to the restrictive agreement;
- the statement, prepared using the template available on the Commission’s web page (www.kzk.gov.rs), whereby the party irrevocably, unequivocally and unconditionally commits to fulfil all commitments pursuant to this Guidelines, and declares to continuously, knowingly and in good faith believe cooperate with the Commission for entire duration of the proceeding, pending the validity of decision imposing measure for competition infringement;
- list of evidences, and any and all evidences hitherto not requested by the Commission during the proceeding that are considered to have probative value, regardless of their form, source or methods of keeping, as well as information significant for determining the infringement of competition and adjournment of initiated proceeding.

24) Notification on restrictive agreement and request for commitment deduction, on behalf of party to the restrictive agreement shall be submitted by:

- legal representative of the party to the agreement, as such enlisted at the Business Registers Agency on the date of submission of notification or request, or
- authorized attorney of party to the agreement, with attached special power of attorney for submission of notification or request, signed and notarized by legal representative of the party to the agreement, issued at the earliest three days prior to the submission of notification or request.

25) Authorized persons pursuant to Item 24 of this Guidelines shall submit notification or request in person at the premises and during working hours of the Commission. Exceptionally, pursuant to justified request of the applicant and with prior approval of the President of the Commission, the notification or request may be submitted during off-hours of the Commission.

26) Notification or request shall be submitted in writing to the Commission’s Technical Service employee, previously specially authorized by the President of the Commission for such operations. Information on person authorized for communication with applicants and for the receipt of notifications and requests is published on the web site of the Commission (www.kzk.gov.rs).

27) Exceptionally, pursuant to the justified request by the applicant and upon previous

approval of the President of the Commission, the notification on restrictive agreement may be submitted verbally, whereby the Commission shall determine the method of recording and keeping of notification submitted in such manner. The applicant of verbally submitted notification must explicitly and unconditionally commit to subsequently sign and notarize the audio recording transcript. Evidences, particularly in writing, cannot be verbally interpreted during such submission of notification.

28) Notification on restrictive agreement and request for commitment deduction shall be separately submitted to the Commission. Notifications and requests submitted jointly by two or more parties to the restrictive agreement (joint requests) are not permitted and the Commission will not take them into consideration.

Processing of received notifications or requests by the Commission

29) The Commission shall issue the receipt on submission of notification or request to the applicant, indicating the date and hour of the receipt.

30) All submitted notifications, requests, information, evidences, correspondence, and decisions of the Commission related to the submitted requests, shall constitute a part of the case file and have the status of confidential data pursuant to the Law and this Guidelines, pending publication of information pursuant to Article 38, Paragraph 2 of the Law.

31) During the procedure for determining competition infringement, the Commission shall monitor fulfilment of conditions and execution of commitments performed by the applicant of notification or request.

32) If the Commission determines that the applicant of notification or request no longer fulfils conditions or executes taken commitments, it shall immediately inform the applicant in written form on the matter. In that case, the place of the applicant of request for commitment deduction, including all rights and commitments pursuant to this Guidelines, shall be given to the first subsequent applicant of the request.

33) Prior to enacting decision adjourning the proceeding, the Commission shall evaluate overall fulfilment of conditions and taken commitments by the applicant of notification and request, their overall cooperation with the Commission during the proceeding and contribution to the successful, efficient and cost-effective adjournment of proceeding. On the basis of such evaluations, the Commission shall decide on the commitment relief and/or commitment deduction by issuing the decision determining competition infringement.

34) In cases of repeat proceedings due to annulled decision of the Commission in the administrative dispute or pursuant to the Law on Administrative Procedure provisions, parties to the restrictive agreement that previously acquired certain status related to commitment relief or commitment deduction, shall keep the status in repeat proceeding, conditioned to the continuation of full compliance in relation to the conditions and execution of commitments from the Law, Regulation and this Guidelines.

35) The Commission shall to the fullest capacity, pursuant to the Law and its internal rules, protect identity of the applicant of notification and request, and data considered confidential pursuant to the Law and this Guidelines, pending publication of information in accordance with Article 38, Paragraph 2 of the Law, except in cases prescribed by the Law or with explicit consent given by the applicant of notification or request to relieve its identity and confidential information prior to the deadline expiry.

Amount of deduction of commitment payment from measure for protection of competition

36) Party to the restrictive agreement that submitted the request for commitment deduction, and fulfilled all conditions and commitments pursuant to the Law, Regulation and this Guidelines, shall be approved for commitment deduction by the Commission:

- from 30% to 50%, if is finite approved for the status of first applicant for commitment deduction;
- from 20% to 30%, if is finite approved for status of second applicant for commitment deduction;
- up to 20%, if is finite approved for the status of third, and every subsequent applicant for commitment deduction.

37) Percentage of commitment deduction from Item 36 of this Guidelines shall be implemented to the monetary amount from measure for protection of competition previously determined pursuant to the Law, Regulation on criteria for setting the amount payable on the basis of measure for protection of competition and sanctions for procedural breaches, manner and terms for payment thereof and conditions for determination of respective measures (“Official Gazette of the Republic of Serbia”, no. 50/2010) and Commission’s Guidelines for implementation of the said regulation.

Final Provisions

38) Provisions from Article 69 of the Law, Regulation and this Guidelines shall not in any manner affect other undertakings’ rights pursuant to Article 73 of the Law, nor accountability of responsible persons of the applicants of notification or request pursuant to the Criminal Code provisions.

39) These Guidelines shall come into force on the eight day from the date of publication on the notice board of the Commission, and shall be applied on proceedings for determining competition infringement pursuant to Article 10 of the Law, currently conducted on the day of enactment of this Guidelines.

PRESIDENT OF THE COMMISSION

Dijana Marković Bajalović, prof., PhD

This Guidelines have been published on the notice board of the Commission for Protection of Competition on August 31, 2010.

Department for Normative Affairs, Human Resources and General Affairs

Head of Department

Slavomir Raičević