

**Pursuant to Article 21(1/5) of the Law on Protection of Competition (Official Gazette of the RS 51/2009 and 95/2013), at the 217<sup>th</sup> session held on July 25, 2019, the Council of the Commission for Protection of Competition enacts the following**

## **INSTRUCTIONS**

### **on the contents of initiatives to investigate infringements of competition rules referred to in Article 10 of the Law on Protection of Competition**

#### **1.**

Article 10 of the Law on Protection of Competition (Official Gazette of the RS 51/2009 and 95/2013, hereinafter, the Law) stipulates that 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. Under paragraph 2 of the same article is stipulated that restrictive agreements may 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 purchase 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 a variety of undertakings, by which undertakings are placed in an 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) allocate markets or sources of supply.

Pursuant to Article 10, paragraph 3, restrictive agreements are prohibited and void, except in cases of exemption from the prohibition under the Law. As regards the possibility of exemption of an agreement from the prohibition, more detailed information is contained in the Instructions regarding the submission of requests for individual exemption of restrictive agreements from prohibition, available at <http://www.kzk.gov.rs/kzk/wp-content/uploads/2011/08/UPUTSTVO-Podnosenje-zahteva-za-pojedinacno-izuzece-restriktivnih-sporazuma-od-zabrane.pdf>.

Article 13 of the Law provides for the exemption of certain categories of restrictive agreements in cases where the relevant block exemption regulations are also implemented, depending on whether the agreements concerned are horizontal or vertical. Where the conditions for exemption provided in Article 13 of the Law or under the relevant regulations are not met, the exemption is possible in proceedings concerning individual exemption from the prohibition referred to in Article 12 in conjunction with Article 11 of the Law.

Pursuant to Article 68(1/2) of the Law, the Commission can enact a decision establishing the infringement of competition rules with respect of an undertaking that concludes or implements a restrictive agreement within the meaning of Article 10 of the Law or a restrictive agreement not exempt from the prohibition within the meaning of Article 60 of the Law, and impose a measure for protection of competition in the form of a payment obligation of up to 10% of the total annual turnover generated in the territory of the Republic of Serbia, calculated in accordance with Article 7 of the Law.

Pursuant to Article 35 of the Law, an initiative to investigate infringements of competition rules referred to in Article 10 of the Law (hereinafter, Initiative) may be submitted by all natural and legal persons where well-founded information indicating the existence of an infringement of competition rules referred to in Article 10 of the Law is available to them.

When submitting an initiative to investigate infringements of competition rules, consideration must be given to the fact that the Commission for Protection of Competition (hereinafter, the Commission) is **not competent** to decide in certain cases, and in particular:

- individual disputes concerning contract compliance or noncompliance;
- in cases of contracts and other agreements concluded between associated entities within the meaning of Article 5 of the Law (see the Commission's position on the implementation of Article 10 of the Law on Protection of Competition in cases of associated entities in public procurements, available at the Commission's website at <http://www.kzk.gov.rs/kzk/wp-content/uploads/2011/08/Uputstvo-za-otkrivanje-namesteh-ponuda-u-postupku-javnih-nabavki.pdf>),
- consumer protection and unfair competition issues;
- when state authorities and/or local self-government units perform operations within the scope of competences determined by law and do not participate in the trade of goods or services, i.e. do not act as undertakings but only carry out activities within their competences.

## 2.

The Commission has drafted these instructions with a view to introducing the complainants to the minimum information requirement, necessary for the Commission to have at its disposal in order to be able to take into consideration and handle the concrete initiative, so as to have reasonable grounds to believe that the infringement of competition rules has occurred which constitutes the basis for enacting a conclusion on the initiation of *ex officio* proceedings. In that regard, the initiative should contain the following information:

1. Name, registered seat and business activity of an undertaking, i.e. name, last name and place of residence of a natural person submitting the initiative<sup>1</sup>;
2. Name, registered seat and business activity of undertakings which, according to the complainant, have infringed competition rules referred to in Article 10 of the Law;
3. Description of the act, facts or practice that constitutes a reason to file the initiative or which, according to the complainant, represents the infringement of competition rules, taking the form of a restrictive agreement referred to in Article 10 of the Law, accompanied by a description of the consequences of the said act;
4. Documents, files, correspondence, email communication, as well as other evidence supporting the claims referred to in paragraph 3 herein, and in particular:
  - information on the existence of a contractual relationship between the complainant and undertaking(s) which, according to the complainant, have entered into a restrictive agreement;
  - information on the time period during which, to the best knowledge of the complainant, the act of infringement of competition rules has occurred;
5. Basic information on the market in which the alleged infringement has occurred (on the product/service concerned and the geographic area).

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<sup>1</sup> The Commission also accepts initiatives filed by anonymous persons, in which case the Commission will not be able, as required, to request additional information from the complainant nor to inform the party on the outcome of the initiative within the meaning of Article 35(4) of the Law.

In addition to the above, the complainant may also indicate and submit all other information and documents deemed to be of particular importance in deciding whether or not the filed initiative constitutes sufficient grounds for initiating *ex officio* proceedings before the Commission.

Pursuant to Article 45 of the Law, at the request of the party, a person submitting the initiative to investigate infringements of competition rules or a third party submitting or providing an insight into the requested information in the proceedings, the Commission may order a measure for protection of sources (for example, identity) or specific information (protected information) 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. If the complainant requires that protective measures be taken, the party is obligated to indicate such requirement in the initiative or by making a separate request, and to present the possibility of substantial damage plausible due to the disclosure of the source of information or information specified in the request. The Commission will decide on the reasoned requests for protection of sources or specific information pursuant to Article 45 of the Law.

### 3.

Pursuant to Article 35(4) of the Law, every complainant will be informed on the outcome of the initiative within 15 days from the date of receipt of the initiative, and where the proceedings are brought by the Commission, the complainants submitting initiatives to investigate infringements of competition rules, providers of information and other persons recognized as having a legal interest in bringing proceedings shall hold the right to be informed on the course of the proceedings pursuant to Article 43(3) of the Law.

### 4.

This Instructions shall be published on the website of the Commission and shall enter into force on the next day following that of its publication.

In Belgrade, July 25, 2019

COUNCIL OF THE COMMISSION  
FOR PROTECTION OF COMPETITION

Addendum:

- Application form



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*NOTE: There are various types of restrictive agreements. In order to facilitate the Commission’s acting upon the initiative, it is necessary to supply the Commission with a closer marker on the form in which the agreement is concluded (for example, contract, tacit agreement, verbal understanding), as well as all other information giving grounds to the Commission to establish whether or not such agreement exists and what could be its contents.*

**4) The list of documents, files, correspondence, email communication, as well as other evidence supporting the claims referred to in paragraph 3 of this Instructions/Application form:**

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**5) Basic information on the market in which the alleged infringement has occurred (on the product/service concerned and the geographic area):**

**a) Information of the product/service:**

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**b) Information on the geographic area:**

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