

Pursuant to Article 21(1/5) of the Law on Protection of Competition (“Official Gazette of the RS”, no. 51/09), the Council of the Commission for Protection of Competition on its 27th Session held on April 28, 2011, enacts the following

Instructions on the implementation of competition rules applicable to associations of undertakings¹

The Council of the Commission enacts this Instructions with the intent of indicating the undertakings, in particular their associations, on the importance and substance of implementing competition rules, proceeding from the fact that the main objective of regulating competition area is to achieve economic prosperity and well-being of the society, and especially the benefit of the consumers. The Instructions does not represent a mandatory act although contains certain elements that the Commission for Protection of Competition considers and evaluates when assessing the behaviors of different forms of associations of undertakings, and in that sense represents a desirable pattern of their market behavior.

I. General remarks

Competition rules apply to all legal and natural entities who participate in the trade of goods or services, regardless of their legal status, ownership, citizenship or state affiliation. Competition rules apply to, among others, forms of associations of undertakings such are unions, associations, sports organizations, cooperatives and other forms of associations in accordance with the law.

Forms of associations may include associations of individuals or corporations such are trade or professional associations.

Trade association is the most common form of associations of undertakings implying association of individuals or corporations with common commercial interests who, under the auspices of the organization, join together in order to take joint actions that further their commercial or professional goals. This term also includes organizations of public interest such are various types of unions, associations, groups in the field of arts, culture, literature, charities, etc. However, not all these forms of organizations of individuals and/or legal entities can be considered as an association subject to competition rules. Different forms of organizations, that is, associations are the subject of competition-related regulations if such forms of organizations, i.e., associations participate in the trade of goods or services, directly or indirectly, permanently, periodically or on a one-time basis.

¹ Source of the document: Organization for Economic Co-operation and Development (OECD), Potential pro-competitive and anti-competitive aspects of trade/business associations, November 4, 2008 (<http://www.oecd.org/competition>).

The role of association is of paramount importance for their members because participation provides ample opportunities for companies in the same line of business to discuss and exchange opinions of a common interest. In addition to the basic activity of association that consists of providing services to its members, associations hold a very important role in the economic policy as well. To this effect, they promote products-related standards, create better production and distributive practices by defining and promoting conditions for meeting provisions and standards of sale. Also, associations issue and publish codes of ethics and recommendations for individual commercial and non-commercial issues. Finally, they promote, represent and protect interests of members in relation to the provisions of laws and subordinate legislation that are of a particular interest to their members.

The right of associated members, considered as competing parties, to advocate via the association with the state authorities for changing regulations that would reduce competition, does not represent a violation of competition regulations if the basis of harmonized activities does not represent an attempt of making a direct interference in the business relations of competing parties. Many activities of associations are founded on the law or they conduct certain entrusted activities in the public interest. In such manner, some associations are authorized by the competent public authority to determine prices or other conditions for implementing commercial activities, such is the fulfillment of certain certificate-related requests or standards. In some instances, the state authority is requested to approve or prohibit decision brought by an association. The issue is whether such activities, which may imply serious limitations of prices imposed by the members of association, should be the subject of investigation-related activities from the standpoint of competition infringement even if they are imposed or permitted by the law. In many countries, the courts have concluded that the responsibility for competition infringement cannot be established if the related behavior of a business entity (including the behavior of trade associations) determined by the law, is recognized as a set of public measures. In line with the doctrines of so-called “state interventionism” or “regulated behavior”, companies are not held responsible for competition infringement if their competition-violating behavior is requested by the measure determined in the public interest and if such companies lack the space for individual activities.

The most frequent activities of trade associations as per their nature relate to making a contract or agreement between members of the association that may represent a horizontal limitation of competition, which implies the implementation of competition regulations. In some instances, the subject of implementation of those regulations is the decision of related association.

The area where traditionally exists a concern for associations and implementation of competition rules relate to the issues of agreements on prices, market distribution and so-called, bid-rigging in public procurement procedures. In the developed market economies associations most often directly and openly do not conduct the above-mentioned restrictive practices, but do so by facilitating collusive practices between members, i.e., the exchange of a sensitive data, by placing restrictive membership rules, determining standards that only certain member or members may fulfil, limiting promotional presentations of their members or by enacting codes of ethics that regulate prices of services or other trading conditions. Aimed at avoiding the possibility of being the subject of implementation of competition rules, associations are

recommended to educate their members on how to harmonize their behaviors against the competition rules (antitrust compliance program).

Pursuant to Article 10 of the Law on Protection of Competition (hereinafter: the Law), the 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 include contracts, certain contract provisions, express or tacit agreements, concerted practices, as well as decisions of associations of undertakings. Horizontal restrictive agreements occur between undertakings that operate at the same level of production or distribution chain, or between undertakings that operate on the same relevant market or which may in the short period of time appear on the market. One of the most severe competition infringements (that may be of the importance for associations) relates to a horizontal agreement (cartels) that directly or indirectly set the purchase or selling prices or other conditions of trade, limit production, markets or development and investments, and distribute markets or sources of supply.

II. Trade association as the subject of competition regulations

An association is considered as a trade association pursuant to the implementation of competition regulations if it contains two elements: structural (organizational) and functional element. The structural element implies a lasting corporate structure of the association achieving a clear distinguishing of the association (and its antitrust liability) from that of its members. Also, corporate structure is a factor that distinguishes the legal form of an association from a joint activities of companies-competing parties, most frequently achieved via mutual agreements. From the standpoint of antitrust legislation, it is irrelevant if an association as per its legal form is a profit or non-profit making organization, or whether it performs activities in the public interest. The functional element of the concept of association implies the ability to have an effect on the economic activity, irrespective whether the association itself is active on a market or not. In so doing it is also relevant that activities of an association somehow have an effect on the competition. Associations and their activities that have no direct or indirect effect on the market competition such as the organizations of public importance (charities, cultural, health, educational and other similar organizations), fall outside the scope of implementation of competition rules.

The activities of trade associations in furthering commercial interests of their members and society as a whole are various and can be divided into three broad categories:

- *The principal functions* of trade associations are activities directed toward *providing services to their members*, including organizing and participating in seminars and training activities; organizing and sponsoring fairs; publishing newsletters, booklets, trade journals and the like.
- *Economic and regulatory functions* imply the role of trade associations in shaping the way their industry works, and in such manner they promote product standards and best practices for their respective industry branches; they publish and enforce codes of ethics and issue recommendations to their members on a variety of commercial and non-commercial issues.

- *Political and lobbying functions* imply promoting, representing and protecting the interests of their members in the process of enacting legislation and regulations, and creating certain policies that are likely to affect their business operations.

III. Professional associations

Experts within certain professional activities (e.g. lawyers, doctors, architects, auditors, accountants, etc.) usually organize own professional associations to publicly intervene in the establishment and implementation of rules which affect their profession, and in the elaboration of profession-related regulations to be endorsed by the public regulatory authorities. Professional associations lay down the type and degree of level of education and appropriate qualifications required for practicing the profession, keep registers of members, promulgate standards of conduct to be maintained by the members, and may enforce these standards through appellate and disciplinary proceedings.

Membership in professional associations has been often a *conditio sine qua non* for the exercise of certain professions. Establishment of the rules relating to professional associations' membership is mainly regulated by the professional association itself. Market entry regulations, established by professional associations, may act as a barrier to entry into the relevant market. Excessively restrictive regulations may result in the reduction of supply related to certain services on the market, which consequently may have negative consequences on the competition and quality of services. While a certain degree of control concerning market access for exercising individual professional activities may be acceptable from the standpoint of preserving the quality and standards of services provided, competition authorities are concerned that unreasonable and unjustified access criteria may result in the increased costs for consumers. For this reason, membership criteria should be qualitative in nature, rather than quantitative, and they should be proportionate to the policy objectives they are meant to serve.

1. Absolutely prohibited activities of associations of undertakings in terms of competition rules

Taking part in the operations of associations implies that corporations - members of associations, operating on the same level of production or distributive chain, conduct the majority of their operations within the joint meetings discussing the business-related issues of common interest. These meetings, where competitors legally exchange market experiences, may very easily result in the acts whose mutual coordination fundamentally results in the engagement of illegal conduct.

Traditionally prohibited behaviors of associations of undertakings practically include, but are not limited to taking the following prohibited acts: fixing of prices, limiting and controlling the production market and consumers, and engaging in joint activities during the public procurement processes aimed at eliminating competition.

1.1. Direct or indirect price fixing

If associations of undertakings directly or indirectly fix prices of products or services that are

marketed by their members – competing parties, it is considered that such conduct is likely to significantly restrict competition on the market pursuant to Article 10, Paragraph 1 and 2, Item 2) of the Law. There are many ways in which association can fix prices. Price fixing may involve fixing of current prices charged by association's members, as well as one of their components, such as the level of rebate, transport fees, delivery charges or the level of payments for additional services, credit terms or terms of guarantees. The association does not need to fix current prices, but may achieve the same or similar effect by setting a minimum price. Equally restrictive is the practice of coordinated price increases that members of an association can adopt *vis-à-vis* their consumers, for example, by limiting the members' freedom to independently determine the amount or percentage by which prices are to be increased, or by imposing price range allowing no further price variations. Similarly, restriction of competition also implies association behavior of imposing obligation against their members not to quote prices without consulting in advance the association or other members.

In addition to prices, undertakings also compete in other terms and conditions of sale. While not all terms and conditions are likely to have an equal effect on competition, if an association imposes on its members an obligation to use common terms and conditions of sale or purchase, this will inevitably restrict competition to some degree.

1.2 Guidelines on the amount of service-related compensations (fees)

Professional organizations usually publicly announce instructions on the amount of professional service-related compensations in order for consumers or experts to be informed via transparent and objective source of information on the prevailing market prices relating to providing certain professional services.

These instructions *per se*, as a source of information, are not the subject of competition regulations. However, if their publishing would be done with the intent or expectation that members of professional association harmonize their prices against the amount of compensations indicated in the instructions, these acts would be considered as restrictive from the competition standpoint. The recommendation to associations is that the overview of compensations for providing professional services be exclusively enacted for information purposes only, with no intent or expectations for members to adopt the overview relating to the amounts of compensations for their market services. When determining prices of their services, members must be fully allowed to deviate from the published amounts of compensations, free from fear of sanctions. As per rule, a possibility that instructions concerning the amount of service-related compensations can be disputable from the competition standpoint is to some extent reduced if they are: prepared in a systematical manner and on the basis of appropriate scientific methods; founded on the statistical data collected and processed by an independent third party; founded on surveys based on which respondents provided information on the average amount of compensations charged in the given time period against the amount of preferred compensation considered as acceptable, and founded on the independently verified sample of received responses.

1.3 Distribution of markets and/or consumers

In economic terms, agreement on market distribution holds a similar effect to price fixing, particularly when products are standardized. Lack of competition constrains consumers to one

particular, exclusive supplier, ultimately paying the higher price by default. Distribution (allocation) of markets may take different forms: undertakings - competing parties may mutually allocate individual consumers or entire consumer groups; or they may exclusively assign to each other particular geographic territories. Agreements on specialization may have similar effects if each competing party specializes for the production of certain products on a particular manufacturing level or for the production of single products' specific components. Associations of undertakings are sometimes directly involved in activities that determine the territorial or distributive exclusivity on behalf of their members.

1.4. Collusive activities in public procurement procedures

Proceeding from the fact that in certain industry branches market competition would not be achievable without public procurements, an essential feature of tender procedure is that prospective suppliers prepare and submit their bids independently. If bidders agree amongst themselves on who should win the tender and/or at what price, this will almost invariably infringe competition rules envisaged by Article 10, Paragraphs 1 and 2, Item 2) of the Law.

Collusive tendering can take many forms of “rigging”, that is, “fixing”:

- Cover or fictitious bidding is the most common form manifesting in a mutual agreement of competing parties relating to: submitting bids containing higher amounts than the bid of the designated (agreed) winner; competing party providing conditions that are known to be too high to be accepted; competing party providing such specific terms that are known to be unacceptable to the contracting authority.
- Bid suppression implies a strategy implying colluding between competing parties that relates to refraining one or several of them from bidding on the tender, or to withdraw previously submitted bid so that designated winner's bid can be accepted.
- Bid rotation implies an agreement based on which conspiring parties continue to bid, but they agree to take turns being the winning bidder. The bid rotation plan is mainly created as per size of the bidder.
- Market allocation implies that competing parties carve up markets and agree not to mutually compete for certain contracting authorities or in certain geographic areas. This implies that competing parties will not competitively bid or will take factious bid participation to a designated type of contracting or potential authorities, which are “allocated” to particular companies.

Although manners in which competing parties may misuse tender procedure may vary, that is, “rig” the tender, the common characteristic is collusion of undertakings in reference to their joint tender participation aimed at eliminating competition, which always leads to the price increase and augmented public spending, that is, of budgetary funds.

In any case, the abuse of tender procedure requires active coordination amongst prospective bidders and often entails a sophisticated monitoring system. In this respect, associations of undertakings may function as a “secretariat” and headquarters for the bid-rigging cartel, collect information on the intended bidding quotes and allocate manners of tender bidding amongst their members according to previously agreed methodology.

2. Other associations of undertakings' activities potentially contrary to the competition rules

The above-mentioned activities of associations represent a market competition infringement by default, by virtue of which these activities *per se* are considered as absolutely prohibited from the competition standpoint.

Associations may also conduct other activities that have a restrictive character (that limit competition), but consequently may also have the so-called pro-competitive character, that is, may bring to certain enhancing effects on the market in terms of increasing the welfare of consumers and improvement of the economy. Towards examining the permissibility of conducting certain activities of a restrictive nature, the Commission for Protection of Competition shall investigate in each concrete case the outweighing of the pro-competitive or restrictive effects against market competition.

The following activities of associations may have a restrictive character, thus their effect on the relevant market is estimated in each concrete case.

2.1. Membership rules and restrictions on access

Rules on membership suspension or expulsion from trade associations may have restrictive effects on competition if they allow associations or their members to arbitrarily exclude potential new members from effecting the benefits of membership. However, access restrictions applied to new applicants may be particularly harmful only if associations play important role in particular industry sectors and hold such an influence that non-members would be at a distinct competitive disadvantage *vis-à-vis* their members.

The key elements to be taken into account when assessing if the restrictive access to association membership makes it extremely difficult for third parties to enter the market are: analysis of services offered by an association and availability of such services effecting the competitiveness of non-members, and the degree of association's influence on the relevant market.

As to the criteria regulating undertakings' right to choose the access to a particular association, competition regulations generally require that membership be voluntary and based on a clear, objective and qualitative criteria, which are easily ascertainable. It is possible to argue that eligible criteria are reasonable if they are related to the objectives and activities of the association. Also, appellate proceedings in the case of membership refusal should also be established.

Association rules that govern the suspension or expulsion of their members may have similar anticompetitive effects as the refusal to grant membership. If association's membership restrictions do not violate antitrust regulations, enforcement of those rules is not considered as illicit. However, expulsion or suspension of members should be reasoned and properly motivated, granting the right of an appeal to the member. Arbitrary expulsions from membership and expulsions which are not related to the goals of association may be found as a basis to limiting of competition.

2.2 Collection and dissemination of market information

One of the most important tasks of trade associations is to provide their members with information on the developments and achievements in the specific industry branches and statistical information on the economic and business factors relevant for trading activities of their members. The availability of market information is generally viewed as critical for developing competitive environment, perceived as a positive factor to be encouraged. The ideal model of advanced competition is premised on the demand and supply-side market information, so that the knowledge of markets and their key features (e.g., demand characteristics, accessibility to production capacities, investment plans, etc.) can facilitate the effective growth and efficient market strategies of undertakings. New undertakings find these information beneficial for more efficient market entry strategies and creating opportunities for more successful competition against operating undertakings. Also, consumers can compare terms and conditions under which specific goods and services are offered and freely choose the most suitable to their needs. In those circumstances, increased transparency is a factor that promotes competition.

On the other hand, increased transparency is one of facilitating factors influencing tacit collusion aimed at sustaining acquired positions on the market. Artificial removal of market uncertainty about competitors' actions, which is the essence of competition, can in itself eliminate competitive rivalry. This is particularly the case in highly concentrated markets where increased transparency enables undertakings to better predict or anticipate the conduct of their competitors and thus to align its own activities against the anticipated behavior. For this reason it is important to establish a clear demarcation between cases where dissemination of information underlies an illicit conspiracy and cases where it facilitates efficient competition. Drawing such a line may not be easy in the practice and it depends on many factors including types and nature of information exchanged and structure of markets involved. In this respect, the role of associations of undertakings is extremely sensitive, keeping in mind that associations create and implement statistical information exchange programs which may provide the ideal context for undertakings-competing parties to exchange competition-sensitive information. The fact that there is no direct contact between competitors but that communication is managed by a trade association does not change the assessment of the practice under competition rules.

Assessing if the exchange of information is in line with the competition rules depends on multiple factors, and thus the following factors are important when assessing whether information exchange is likely to restrict competition:

2.2.1 Type and nature of information exchanged

Undertakings as competing parties cannot mutually exchange very sensitive information relating to the very nature of the business, in particular information relating to: current or future prices, costs of sales and volumes of production, credit or commercial conditions, promotional costs, retail discounts and rebate policy, information on consumers, and business or strategic and marketing plans.

2.2.2 Level of details of information exchanged

Higher level of details of information exchanged creates higher possibility for competitors to predict each other's future conduct and to adjust their business operations accordingly. Competition related regulation do not object to dissemination of aggregated/statistical data based on which is impossible to identify information related to individual corporations.

2.2.3 Reference period of information exchanged

The exchange of data regarding future strategies is more troublesome than the exchange of historical data. Information on the future conduct of individual undertaking is particularly sensitive and data should remain within the corporate knowledge of each specific undertaking. Historical information (even if regarding individual undertaking) has generally lost its competitive value and cannot affect the future conduct of involved competitive undertakings.

2.2.4 Frequency of the exchange

Frequent data exchanges allow undertakings to better and more timely adapt their operative policies against strategies of their competitors, and therefore are more likely to lead toward creating anticompetitive effects on the respective market.

2.2.5 Concentrated nature of markets where undertakings that exchange information operate

Competing parties find it easier to reach and enforce sustainable terms of coordination on more concentrated markets. For this reason, particular attention is given to reviewing the exchange of information that increase transparency on the oligopolistic markets, particularly if protected by high entry barriers.

2.2.6 Nature of the products concerned

Undertakings find it more straightforward to coordinate activities on a single, homogeneous product market than on the market with many interchangeable products. On the interchangeable product markets, access to detailed, sensitive information probably may not be useful for undertakings to predict future behavior of their competing parties, and therefore may not lead towards increased coordination when taking suitable activities.

2.2.7 Advantages of the information exchange programs

When assessing the permissibility of appropriate information exchange, the issue of private nature of the exchange of information is taken into account, whereas this form of cooperation between companies only improves the seller's knowledge of the market, or has a wider public influence impacting consumers as well, who will in that case be in a position to compare various offers thus increasing the level of competition on the market. Given the anti-competitive potential of asymmetric price transparency, it would be preferable if associations of undertakings shared as widely as possible any sensitive price data they have collected related to prices, namely through the media or publications that are likely to be accessible to both members, non-members and consumers, and the general public alike.

It can be inferred from the paragraphs above that associational information exchange programs can be structured upfront so as to prevent any competition concerns. For instance, participation in the statistical programs should be voluntary and open to non-members, and - if possible - the collected information should be made available also to non-members. Associations of undertakings should not become the forum for further discussions between members about the data disseminated and its bearing on commercial strategies, while the staff of associations involved in collecting and aggregating information should be independent in their operations from the members of association.

In general, there should be no objections to the exchange of information from the competition standpoint if related information have no direct or indirect bearing on the future commercial strategies of undertakings, and if they are: anonymous and aggregated, i.e. does not allow the recipient to identify information concerning particular undertaking in the exchange; and are publicly released, i.e. the data are also available to the members who have not participated in the exchange, non-members and consumers.

2.3. Setting of standards and certification programs

Associations of undertakings are often involved in setting and promoting technical safety and quality standards in the related industry. Also, they enact certification programs to ensure that products or services marketed by the members of association comply against the standards promoted by related industry. Standards can cover a variety of issues, such as the quality grades or sizes of a particular product or technical specifications and the like. Standard setting and certification programs are generally considered as activities to be promoted. Promulgation of standards by associations can result in significant procompetitive effects as it lowers information costs, favors interoperability in-between various industry and other systems within the society (standard setting implies harmonization of factors in competence of various industry and other social systems), and creates better quality of products.

However, as with many other joint activities by undertakings as direct competitors, standard setting through an association may give rise to antitrust liability. Competition rules relate to joint activities of members that as their goal or consequence have deprivation of consumers from acquiring adequate products, elimination of quality competition, exclusion of producers of rival products or services, prevention of commercialization of innovative and lower-cost products, or simply facilitating creation of oligopolistic pricing.

To determine whether programs, that is, standard setting policy may result in a restriction of competition, a number of factors are generally taken into account, and in particular the following:

2.3.1 Participating in the standardization process

In order for standard setting process to be successful and to yield pro-competitive effects, it should be the outcome of a wide discussion between various players from appropriate industry. For this reason, participation in the standard setting process should be unrestricted and opened for participation of non-members, as well as transparent in the overall sense. The above-mentioned standard setting manner is achieved in the practice when standards are adopted by the

recognized standards bodies, operating by utilizing open and transparent procedures, and based on non-discriminatory policies.

2.3.2 Market coverage in the standardization process

When placing standard setting efforts which have a negligible influence in the industry, it is unlikely that they will raise competition concerns. High market coverage of an industry subject to the set group of standards does not necessarily amount to a concern, as the effectiveness of a standardization process is often proportional to the share of the industry involved in setting and/or applying the standard. On the other hand, standards that are not accessible to the third parties may discriminate or exclude them, thereby restricting the competition. Therefore, if the industry standards are set by undertakings which are jointly dominant, creating a *de facto* industry standard (otherwise unattainable without their involvement to that end), it is important that the standard be as open as possible and applied by as many undertakings as possible.

2.3.3 Scope of the standardization process

Standardization processes imposed by standardization authorities which affect minor aspects of commercial activities, such as the standards related to characteristics of products of a minor significance, are unlikely to be the subject of investigations conducted by competition authorities.

2.3.4 Mandatory and discretionary standards

Adoption of standards does not justify restricting innovations going beyond those standards, i.e., reaching further than the standards. Thus, there should be no obligation to comply against standards that disable innovations, that is, if potentially restrictive effect of such standardization agreement disables the development of alternative (advanced) technologies or innovative products with features which do not comply against agreed standards.

2.3.5 Standardization process and consumers benefit

In addition to markets where consumers can independently make informed decisions when opting for products as to their technical and other quality characteristics, there are markets where is necessary to determine standards that would serve the consumer as a determinant when deciding on the selection of products. Standard setting in this case has an educational and pro-competitive role. This is the case on complex markets such is the health care market, or other markets where technical complexity, safety and compatibility issues represent an important functional factor.

2.4 Other restrictions: advertising/marketing activities and trade exhibitions

There are additional manners in which associations can interfere with members' freedom to determine their commercial strategies independently from associations and other members. Two potentially restrictive practices deserve particular mentioning: restrictive marketing/advertising rules imposed by associations on their members and associational restrictions in reference to participation at trade fairs and other forms of exhibitions.

Advertising reduce barriers for new market entries, enabling new companies to introduce themselves on the market and familiarize consumers with their offer. According to the economic theory, advertising may facilitate competition by informing and educating consumers about different product features and characteristics. Advertising provides means by which consumers can compare products and services on the market by seeking out what best suits their needs and financial means. The existence of severe advertising restrictions can make it more difficult for consumers to determine the likely price of a given product/service, and hence generally contribute to the consumer's ignorance. It is not uncommon, however, for associations of undertakings to issue rules regulating prohibition of their members' independent marketing activities, including promotional and advertising activities, such as for instance, advertising of discounts. In other cases, associations may impose the option of advertising exclusively via pre-determined media or containing specific types of advertising contents. These restrictions may raise antitrust concerns due to the asymmetry of information between suppliers and consumers. This is particularly the case for some professional services where consumers may find it especially complex to assess information about professional services, such as the quality claims about specific services offered. In such manner, the consumer is prevented from appropriate protection from misleading or manipulative assertions.

Also, associations of undertakings organize trade fairs and other exhibitions which bring together all industry players (manufacturers, wholesalers, distributors, retailers and consumers) of a given sector, which helps promote a wide range of products. Both manufacturers and consumers benefit from these events, which in overall enhance the competition in a given sector. However, certain rules imposed by associations organizing such events may restrict competition. These restrictions often concern so-called 'restraints periods' (determined periods before or after trade fairs during which participants are prohibited from exhibiting elsewhere); other restrictions may relate to limitations to participants' freedom to promote or sell products which are not presented at the fair. A general concern with these types of restrictions is that trade shows and fairs may be used for exclusionary purposes. For these reasons, trade fairs admissions should be open to everyone on a non-discriminatory basis. However, competition authority may accept restrictions on participation in trade fairs as justified, if based on genuine problems in relation to limited exhibit space.

3. Penal policy implications on associations

Within the auspices of associations their members meet to pursue legitimate objectives, whereas they may encounter a situation where by mentioning products prices, quantities or other elements of business strategies, the agreement or informal understanding leading towards a clear violation of antitrust rules is triggered. If an association is subject to antitrust liability, association's accountability differs from the one of an individual member. If members, independently from association, have taken a joint business policy that leads toward infringement of competition, the responsibility is solely of those members. Founding members of association are solely responsible for competition-related restrictions deriving from the act of incorporation or by-laws of the association. The association, however, may be responsible alongside its members if it had a separate role in instigating, facilitating or executing illegal conducts of its members. In that sense, the responsibility of association implies executing the amount payable related to the

measure for protection of competition as a substantive administrative measure. In such case, appropriate effect related to the collection of related measure is omitted, having in mind that association's revenues are mostly generated from the membership fees. For that reason, competition regulations prescribe that the total annual revenue for the forms of associations of undertakings is determined based on the sum of total annual revenues of associated members. In the case when association is unable to make the payment or does not have its own funds, all associated participants shall be held jointly and severally liable, and may collectively or individually settle the obligation determined in the form of measures against association of undertakings.

PRESIDENT OF THE COMMISSION

Vesna Janković

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