

WORKING VERSION

ACT ON AMENDMENTS AND MODIFICATIONS TO THE LAW ON PROTECTION OF COMPETITION

Article 1

Article 1 is amended and should read as follows:

"An undertaking holds a dominant position when, due to its market power, it can act in the relevant market to a considerable extent independently of its actual or potential competitors, buyers, suppliers or consumers.

Dominant position of an undertaking on relevant market is determined based on relevant economic and other indicators, in particular:

- 1) structure of the relevant market and market share, and/or;
- 2) actual or potential competitors, and/or;
- 3) economic and financial power, and/or;
- 4) degree of vertical integration, and/or;
- 5) advantages in access to sources of supply and distribution, and/or;
- 6) legal or factual barriers for other undertakings to enter the market, and/or;
- 7) buyers power, and/or;
- 8) technological advantages, intellectual property rights and related rights.

It shall be assumed that an undertaking holds a dominant position if its share in the relevant market is 40% or more. Commission shall determine dominant position in relevant market in each individual case on the basis of indicators referred to in paragraphs 1 and 2 of this Article.

Two or more legally independent undertakings may hold a dominant position if, based on their economic relations, undertakings concerned act jointly and/or act as a single undertaking in the relevant market (collective dominance)."

Article 2

Article 17, paragraph 1 item 2 is amended and should read as follows:

"2) acquisition of direct or indirect control, within the meaning of Article 5 paragraph 2 of this Law, over either another or several undertakings or over part i.e. parts of other undertakings, by one or more undertakings."

Article 3

Article 32, paragraph 3, is amended and should read as follows:

"Total revenues and expenditures of the Commission, including reserve funds, shall be determined by the Financial Plan."

Paragraph 5 is amended and should read as follows:

"If the annual financial statement of income and expenditures shows that the total revenues of the Commission exceeded the expenditures, the balance shall be paid to the Republic of Serbia budget, following the allocation to the reserves".

Article 4

Article 38, paragraph 8 is amended and should read as follows:

"Against resolution referred to in paragraph 5 of this Article, a separate appeal may not be lodged, unless otherwise prescribed by this Law"

Paragraph 9 is deleted.

The current paragraph 10 becomes paragraph 9.

Article 5

Article 45, paragraph 3 is amended and should read as follows:

"The President of the Commission shall decide on the request under paragraph 1 of this Article by issuing a resolution; the Council shall decide upon appeal contesting a resolution by which the request has been dismissed or rejected".

Article 6

The title before Article 47 is deleted.

Article 7

Before Article 52, a new title is added:

„ Specific provisions on procedure due to competition infringement"

Article 8

Article 56, paragraph 2 is amended and should read as follows:

"The President of the Commission shall issue a resolution referred to in paragraph 1 of this Article against which an appeal may be lodged; the Council shall decide upon the appeal contesting a resolution."

Article 9

In Article 57, paragraphs 4, 5 and 7 are deleted.

The current paragraphs 6 become paragraph 4

After paragraph 4, new paragraph 5 is added which should read as follows:

(5) "Forced execution of the measure for protection of competition i.e. procedural penalty, as well as return of excess proceeds paid, in case of decrease in amount or annulment of execution by the court ruling, shall be implemented by tax administration, pursuant to provisions regulating tax collection."

The current paragraph 8 becomes paragraph 6.

Article 10

The Commission may issue a resolution on interruption of procedure for competition infringement, by which a measure referred to in Article 59 this Law is determined, if the party proposed commitments and to that end suggested terms and conditions for the performance of the measure.

The party may propose commitments within a year from the initiation of the competition infringement procedure or within the time provided for its submission of statement under Article 38 paragraph 2 of this Law, whichever term expires first.

If the Commission establishes that it is likely that the proposed conditions will eliminate or prevent re-occurrence of competition infringement, it shall pass a resolution determining the measure on the basis of the submitted proposal; however, the Commission shall not be bound to follow in whole the terms of the proposal.

The resolution referred to in paragraph 1 of this Article shall be issued if the party was fully cooperative in procedure before the Commission, as well as in other cases, where the Commission finds reasonable grounds pertinent to cost- efficiency of the procedure.

The resolution under paragraph 1 of this Article sets the deadline for performance of the measure and submission of evidence proving the compliance with the terms of the measure.

The procedure shall resume, within a period not exceeding five years from the execution of the measure i.e. from the last day of the time period provided for execution, if:

- 1) the circumstances on the grounds of which the resolution on interruption of procedure substantially change;
- 2) the party fails to fulfil its obligations contained in the measure or fails to submit appropriate evidence thereof;
- 3) the resolution on interruption of procedure was based on inaccurate or false information provided by the party.

The Commission shall follow up ex officio the party's performance upon the issuance of the resolution on interruption of procedure.

The Council of the Commission passes the resolution on interruption, i.e. continuation of procedure.

Article 11

In Article 60, after paragraph 4, a new paragraph 5 is added which reads as follows:

(5) "The Commission may set aside the decision referred to in paragraph 1 of this Article, if the conditions on the grounds of which the exemption was granted have changed, i.e. it may cancel the decision if the exemption was based on incorrect or falsely presented facts or such exemption has been abused."

The current paragraph 5 becomes paragraph 6.

Article 12

In Article 62, paragraph 1, the word "that" is deleted. **[In the English version, the word should be replaced with "the"].**

Paragraph 4 is amended and should read as follows: "The Commission is obliged to issue a decision in investigation of concentration procedure within the period of four months from the day of ex officio initiation of procedure."

Article 13

In Article 65, paragraph 1 is amended and should read as follows:

"The Commission is obliged to issue a decision upon a notification of concentration within the period of one month from the date of receipt of complete notification pursuant to the regulation under Article 63, paragraph 4 of this Law, in accordance to Article 37 of this Law i.e. it shall issue a resolution on conduct of investigative procedure referred to in Article 62, paragraph 2 of this Law."

Paragraph 4 is amended and should read as follows:

"If it is found that the notification does not meet the conditions under Article 61 of this Law or if the applicant fails to supplement incomplete notification, as ordered by the Commission, the President of the Commission shall issue a resolution dismissing the notification."

After paragraph 4, a new paragraph 5 is added which reads as follows:

(5) "Decision referred to in paragraph 1 of this Article may be cancelled by the Commission, if the decision was made on the grounds of incorrect or falsely presented facts."

The current paragraph 5 becomes paragraph 6.

Article 14

Article 68, paragraph 3 is amended and should read as follows:

"Measure for protection of competition cannot be determined upon the expiry of the period of five years from the day of action performed or failure to fulfill the obligation i.e. from the last day of time period on which the action was taken as referred to in paragraph 1 of this Article."

After paragraph 3, new paragraphs 4, 5, 6 and 7 are added which should read as follows:

(4) "Any action taken by the Commission for the purpose of investigation of an infringement as referred to in paragraph 1 of this Article and imposing the measure for protection of competition shall be considered as interruption of the statute of limitation referred to in paragraph 3 of this Article. Whenever the Commission conducts a procedure against several undertakings or association of undertakings, statute of limitation shall be interrupted with effect as of the date on which Commission's submission is served on any of the undertakings being the party to the procedure.

(5) Each interruption shall start time running afresh. However, statute of limitation shall expire at the latest on the day on which a period equal to twice the statute of limitation referred to in paragraph 3 of this Article has elapsed.

(6) The enforcement of measures for protection of competition cannot be executed after the expiry of five years period from the day of enforceability of the Commission's decision i.e. the ruling of a court, in case an administrative dispute has been initiated. Statute of limitation is interrupted by any action of the competent authority undertaken to enforce the measure for protection of competition.

(7) Each interruption shall start time running afresh. However, the statute of limitation period for the enforcement of a measure for protection of competition shall expire on the day on which a period equal to twice the statute of limitation period, referred in paragraph 6 of this Article, has elapsed."

Article 15

In Article 70, paragraph 1, item 1 is amended and should read as follows:

"1) fails to act upon the Commission's order to deliver or provide requested information, or delivers or provides incorrect, incomplete or false information within the meaning of Articles 44, 47 and 48 of this Law." After paragraph 3, new paragraphs 4 and 5 are added and should read as follows:

(4) "Decision referred to in paragraph 1, item 3 of this Article, shall be made upon the submission of notification of concentration, for the period from the expiry of time period contained in Article 63, up to the day of submission of notification of concentration."

(5) "If the procedure is initiated in terms of Article 62, and in the course of procedure it has been established that the relevant concentration was not implemented, or was not implemented in whole, a decision referred to in paragraph 1, item 3 of this Article shall be issued, for the period from the date of expiry defined in Article 63, upto the issuance of resolution on initiation of procedure."

Article 16

In Article 71, paragraph 1, is amended and should read as follows:

"Against the final decion of the Commission, a complaint may be lodged to court within the period of 30 days from the day of delivery of decision to the party, to be decided by the Commercial Appellate Court.

Article 17

In Article 72, paragraphs 4 and 5 are amended and should read as follows:

(4) "The deadline for service of the complaint with the enclosures on the Commission is 15 days from its filing with the Court; the deadline to reply to the complaint is 30 days from its receipt."

(5) "The court shall pass a decision upon the complaint within three months following the receipt of the reply to the complaint i.e. the expiry of the deadline to reply to the complaint.

After paragraph 5, new paragraphs 6 and 7 are added that read:

(6) "The deadline for service of an extraordinary remedy with the enclosures to reply to statement is 15 days from its filing with the court; the deadline to reply is 30 days from service of the extraordinary remedy.

(7) "The Supreme Court of Cassation shall issue a decision on the extraordinary remedy at the latest within three months from the receipt of the reply thereto i.e. following the expiry of the period to respond."

Article 18

The procedures underway before the Commission that did not end by the entry of this Law into force, shall continue in accordance with the provisions of this Law.

The exception is provision under Article 1 of this Law which shall be applied in procedure instituted following the entry of this Law into force.

Article 19

This Law shall enter into force on the eighth day of its publication in the " Official Journal of the RS."