

DRAFT

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

Article 1

In the Act on Amendments and Modifications to the Law on Protection of Competition ("Official Journal of the RS" No. 51/09), Article 15 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.

Two or more legally independent undertakings with share in the relevant market of 50% or more, may hold a dominant position if, based on their economic relations, undertakings concerned act jointly 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 previous 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 of the paragraph before Article 47 is deleted.

Article 7

After Article 51, a new title of the paragraph is added which should read as follows::

„ 2. Specific provisions on procedure due to competition infringement"

Article 8

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

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

Article 9

In Article 57, paragraphs 4 is amended and should read as follows:.

"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."

Paragraphs 5 and 7 are deleted.

Current paragraphs 6 and 8 become 5 and 6.

Article 10

Article 58 is amended and should read as follows

The Commission may issue a resolution on suspension of procedure for competition infringement, by which a measure referred to in Article 59 of this Law is determined, if the party propose commitments and to that end suggest 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 identifies that it is likely that 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 concerning the cost- efficiency of the procedure.

The resolution under paragraph 1 of this Article sets the deadline for implementation 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 infringement of competition i.e. from the last day of the time period the infringement was made, if:

- 1) the circumstances on the grounds of which the resolution on suspension 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 suspension of procedure was based on inaccurate or false information provided by the party.

The Commission shall supervise ex officio the party's implementation of the resolution on suspension of procedure.

The Council of the Commission passes the resolution on suspension, 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 annul 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 paragraph 4, the word "three" is replaced with word "four"

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."

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 imposed 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, procedure for infringement cannot be initiated if the period equal to twice the statute of limitation as referred 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."

Article 16

In Article 71, paragraph 1, the word "Administrative Court" is replaced with "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 decide 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 legal 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 reply."

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."