

Amendments and Modifications to the Law on Protection of Competition

Legislative frame is one of key elements of business environment, and in that sense, harmonization of regulations with EU Equis shall contribute to improvement of business and investment atmosphere, leading to increase of competitiveness and full integration of Serbian economy into EU community market.

Proceeding from assessments and recommendations expressed in EC Report on the Republic of Serbia advancement in the European Integrations Process and UNCTAD Report on the state of competition protection in Serbia, as well as our own observations and experience that particular existing legal solutions have an adverse effect on the actions of the Commission and legal certainty, Commission initiated work on amendments and modifications to the Law.

Initiated amendments and modifications should contribute both to the strengthening of Commission as an institution and its efficiency in acting, as well as to a higher degree of legal certainty and predictability for undertakings.

The following items should be singled out, being of particular importance:

- different concept of dominant position in relevant market, based on market power of undertaking, with clear and transparent criteria, implying deleting currently existing assumption of dominant position in case of 40% or more of market power on defined relevant market, whereas burden of proof is exclusively on Commission (Article 1 of working proposal on amendments and modifications to the Law);
- current provision in Article 58 relating to interruption of procedure is harmonized with rules of a so called commitment decision, by which intend and aim of protection of competition is accomplished, even without determination of a measure for protection of competition (Article 10 of working proposal on amendments and modifications to the Law);
- With regard to statute of limitation period, it has been proposed that a "division" of the statute of limitation be made, to the period of establishment of infringement and determination of a measure for

protection of competition on one hand, and the period for procedure of enforcement of a measure for protection of competition, on the other. In addition, an institute of interruption of statute of limitation period on the grounds of action taken by the authority i.e. Commission has been introduced (Article 14 of the working proposal of amendments and modifications to the Law).

- It has been proposed to delete the provision in paragraph 5, Article 57 of the Law, stipulating that the interest "in case of decrease in the amount thereof or annulment of administrative measure, shall be born by the Commission." Such definition represented a serious and dangerous precedent compared to legislation of EU member states and others. Namely, proceeds from the measure are paid to the Republic of Serbia budget, which pays back that amount i.e. "principal", and the Commission, which does not utilize nor disposes with the said proceeds, and has no influence whatsoever on the period of possible return of funds, is obliged to pay the interest. Further aggravating factor is that, pursuant to the Law, Commission is financed from its own income, but the funds which have not been utilized in current year, are transferred to the budget at the end of the year, meaning that the Commission commences each new year without any financial means, and as a consequence, Commission cannot execute its legal obligation to pay the interest in case of such obligation arising in the mentioned period (Articles 3 and 9 of the working proposal of the amendments and modifications to the Law).

Considering the significance of proposed amendments and modifications aimed at prevention of adverse effects to the activities of authority and ensuring conditions for strengthening of legal certainty of undertakings, it has been suggested to the Ministry that the Law should be passed as urgent matter.

It should be pointed out that the Minister in charge for external and internal trade and telecommunications, set up a Work Group in an exceptionally short period upon receipt of relevant Initiative, to prepare amendments and modifications to the Law. By the decision of the Minister, the Work Group also involved the representatives of CPC.

Work Group prepared working version of the draft amendments and modifications to the Law which is being published. It should be noted that this version represents Draft text to be discussed at public debate during May.