



Republic of Serbia
**COMMISSION FOR PROTECTION
OF COMPETITION**

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Belgrade

**Ministry of Construction, Transport
and Infrastructure**
Minister, Professor Dr. Zorana Mihajlović

22-26 Nemanjina Street

Belgrade

Subject: Opinion on the Draft Law on Amendments to the Law on Utility Services

On April 25, 2016, Ministry of Construction, Transport and Infrastructure has submitted the Draft Law on Amendments to the Law on Utility Services to the Commission for Protection of Competition, with the request to submit opinion of on the said draft regulation.

Pursuant to Article 21(1/7) of the Law on Protection of Competition (“Official Gazette of the RS”, nos. 51/09 and 95/13), on the 66th Session held on May 10, 2016, Council of the Commission enacts the following

OPINION

Council of the Commission has recognized that the legislative proponent has amended the provision of Article 5(2) of the Law on Utility Services (“Official Gazette of the RS”, no. 88/2011), previously envisaging that utility service regulating the management of cemeteries and provision of funeral services can be exclusively performed by a public enterprise or company with controlling interest of minimum 51% held by the Republic of Serbia or self-government unit. Enabling all interested undertakings to be entrusted with the possibility to provide this utility service with no limitations as to the ownership structure, represents a positive shift toward creating conditions for advancing the state of competition on this market.

The Commission has on several occasions reacted by sending official letters to this Ministry in reference to the current Law, as well as to the draft legislation (most recently on March 24, 2016), and thus shall not repeat its positions already presented to the Ministry.

In full and complete consideration of the fact that performing utility services is of paramount importance for achieving basic needs of natural and legal persons (local self-government units, due to the fact that they are obligated to create conditions for securing provision of services of predetermined quality, volume, availability and continuity, as well as to monitor related performance), position of the Commission's Council is that these amendments to the Law on Utility Services should enable that individual services, which are related to the utility services but can be independently conducted, be clearly marked as services of a commercial character which may be offered by all undertakings under equal conditions, and not just by a single undertaking. Conditions and criteria must be defined so not to limit market access of current and potential service providers, nor to impose unjust conditions.

In relation to Article 7 of the submitted draft regulation (new Article 8a of the Law – subtitle “Fulfilment of conditions for performing utility services”), Council of the Commission expresses its concern, previously also presented during the meeting held on December 14, 2015 with the Assistant Minister, Ms. Jovanka Atanacković. The proposed legal solution represents an additional obstacle for the entry of new, as well as for the continuance of business operations of current undertakings, with potential serious consequences for activities of undertakings registered for the provision of utility services. Namely, the above-mentioned article envisages that the Chamber of Commerce and Industry of Serbia is authorized to determine compliance with conditions from Paragraph 1 of this article, in cases where regulations governing individual utility services do not prescribe differently. It also envisaged that the Chamber of Commerce and Industry of Serbia issues an act on the compliance with conditions for performing utility services to public enterprises, companies, entrepreneurs or other business entities that submit request and related evidence as envisaged by the by-law from Paragraph 1 of this article, in addition to the proof on covering charges related to issuing the compliance act, and to keep a register of utility service operators and concluded contracts on entrusted utility services.

Pursuant to the provision of Article 2 of the Law on Chambers of Commerce (“Official Gazette of the RS”, no. 112/2015), chambers of commerce are defined as interest, professional-expert and non-profit organizations of business entities associated by a joint business interest, with the aim of harmonizing and advocating on behalf of members' interests and boosting business activities. Reasons for amending the position of the Chamber of Commerce and Industry of Serbia remain unclear, which is defined as (direct quote from the official Internet presentation of the SCCI): “Independent, non-governmental, professional-expert and interest association of legal and natural persons performing registered business activity. The Chamber of Commerce and Industry of Serbia represents the economic interests before the Government and other public agencies and institutions.” It is our opinion that proposed legal solution will modify such role of the SCCI by creating considerable additional obligation for undertakings, while the Commission sees each obstacle as unnecessary and potentially adverse in regard to competition conditions, and particularly on this already specific market that should be preparing for the opening and entry of new parties. The fact that title of Chapter III of the Law on Utility Services which contains this disputed article is named: PUBLIC ADMINISTRATION OPERATIONS CONCERNING UTILITY SERVICES, should by no means be disregarded. According to our opinion, the Law should not entrust public administration operations to the Chamber of Commerce and Industry of Serbia, and thus in accordance with the above-mentioned, we suggest amending the said article, as well as Article 26 of the submitted draft.

And last but not less important, Council of the Commission wishes to emphasize that opinions on draft regulations influencing the state of competition should enable drafting of a more qualitative regulative solutions by cooperating with the legislative proponents. The Commission here re-confirms its general assessment that one of the most important objective of drafting regulations is to provide equal conditions for all undertakings operating on the market, undoubtedly under the assumption of fulfilment of all necessary preconditions, because only in such manner - by enabling “contest” between competing parties by means of quality and prices offered, economic progress and well-being of the society and particularly of consumers can be achieved, which is the objective not only of the Law on Protection of Competition, but also a clear commitment of the Republic of Serbia that the competition as a *sine qua non* of the economic development in general.

PRESIDENT OF THE COMMISSION

Miloje Obradović, PhD