

Subject: Opinion on the Draft Law on Amendments to the Law on Public Utility Activities

On April 25, 2016, the Ministry of Construction, Transport and Infrastructure has submitted to the Commission for Protection of Competition the Draft Law on Amendments to the Law on Public Utility Activities, with a request for the opinion of the Commission.

Based on Article 21, paragraph 1, item 7 of the Law on Protection of Competition ("Official Gazette of the Republic of Serbia", No . 51/09 and 95/13), at its 66th meeting of May 10, 2016, the Council of the Commission has issued the following

#### OPINION

The Council of the Commission has noted that the proponent of the original Law has amended the provision of Article 5, paragraph 2 of the Law on Public Utility Activities ("Official Gazette of the RS", No. 88/2011), which specified that the public utility activity of managing cemeteries and funeral services can be performed only by a public company, a company in which the Republic of Serbia holds a share of at least 51% or by a unit of the local self-government. Enabling the delegation of this public utility activity to all the interested parties in the market, without ownership restrictions, is a positive step towards the creation of conditions for enhancing the state of competition in this market.

The Commission has reacted on several occasions, in its written communications addressed to the Ministry, with regard to the Law which is currently in force, as well as the Draft Law (last such occasion having been on March 24, 2016) and shall not repeat its views herein, with which the Ministry has already been duly acquainted.

With full consideration of the fact that the provision of public utility services is of outstanding importance for the satisfaction of the basic needs of natural and legal persons (for which reason the unit of the local self-government is obliged to create conditions for securing their adequate

quality, volume, availability and continuity, as well as oversight of those services), the Council of the Commission is of the opinion that the Law on Public Utility Activities, through the relevant amendments, should make it possible that certain services connected with public utility activities, but which can be performed independently, can be clearly defined as services of a commercial character, which can be provided by all and not any single one undertaking, on the same conditions. Such conditions and criteria must be defined in a way which would not limit market access for the existing or future service providers, nor impose unjustified conditions.

The Council of the Commission expresses concern regarding Article 7 of the submitted Draft Law (the new Article 8a of the Law - under the subtitle "The fulfillment of conditions for the provision of public utility activities"), which has already been highlighted at the meeting with the Deputy Minister, Jovanka Atanacković, held on December 14, 2015. The proposed legal solution represents an additional barrier to the entry of new market participants, as well as to the continuation of business activities of the existing undertakings, with potentially serious consequences for the business operations of the market participants who are registered for the provision of public utility activities. Namely, the aforementioned Article stipulates that the fulfillment of conditions referred to in paragraph 1 of the Article is subject to determination of the Chamber of Commerce and Industry of Serbia, if the Law does not stipulate otherwise for a particular public utility activity. Therein, it is also stipulated that the Chamber of Commerce and Industry of Serbia issues an act on fulfillment of conditions for the provision of public utility activities to public companies, business organisations, entrepreneurs or other business entities which, along with the original request, submit evidence prescribed by the regulation referred to in paragraph 1 of the aforementioned Article, as well as evidence on the payment of a fee for the issuance of the act on fulfillment of necessary conditions. The same Article further stipulates that the Chamber of Commerce and Industry of Serbia runs a register of the public utility service providers and contracts which have been concluded for the provision of delegated public utility activities.

Pursuant to Article 2 of the Law on Chambers of Commerce ("Official Gazette of the RS", No. 112/2015), chambers of commerce are defined as interest-oriented, business-professional and non-profit organisations of business entities which are connected by a common business interest, with the aim of aligning and representing the members' interests and encouraging economic activity. It is not clear why the position of the Chamber of Commerce and Industry of Serbia as an (to quote the statement from the CCIS official web site): "Independent, non-governmental, professional and interest-oriented association of legal and natural persons performing registered economic activity. The Chamber of Commerce and Industry of Serbia represents the interests of the economy before the Government and other state bodies and institutions..." should be changed. The proposed legal solution will, in our opinion, change thus defined role of the CCIS, which will impose significant additional obligations on the market participants, whereas the Commission evaluates every barrier, especially on this specific market, which should remain open for the entry of new participants, as unnecessary and potentially negative for the state of

competition. Also, one should not leave out of sight the fact that Chapter III of the Law on Public Utility Activities, which includes this, for the Commission debatable Article, is entitled: **ACTIVITIES OF THE STATE ADMINISTRATION IN CONNECTION WITH PUBLIC UTILITY ACTIVITIES**. In our opinion, the Law should not provide for the delegation of state administration tasks to the Chamber of Commerce and Industry of Serbia, in accordance with which we propose the amendment to the aforementioned Article, as well as the Article 26 of the Draft Law.

Last, but not less important, the Council of the Commission wishes to emphasise the fact that providing opinions on draft legislation which has an impact on competition, should ensure that, in cooperation with the proponent of legislation, a contribution is made to reaching better legal solutions. The Commission also wishes to reiterate its general assessment that one of the most important goals of legislation is to secure equal conditions for all market participants, naturally, under the assumption that they fulfill the necessary requirements, as only in that way, through the "fight" of competitors in terms of quality and price, can the economic progress and welfare of the society be achieved, especially to the benefit of consumers, which represent not only the goals of the Law on Protection of Competition, but also a clear determination of the Republic of Serbia that competition represents a necessary requirement for the development of the economy as a whole.

THE PRESIDENT OF THE COMMISSION

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