

**DRAFT REGULATION  
ON AGREEMENTS BETWEEN UNDERTAKINGS OPERATING IN THE RAIL,  
ROAD AND INLAND WATERWAYS TRANSPORT SECTOR EXEMPT FROM  
THE PROHIBITION**

Subject matter

Article 1

This Regulation shall prescribe agreements, decisions and concerted practices between undertakings operating in the rail, road and inland waterways transport sector (hereinafter referred to as: Agreements) and more closely stipulate special conditions under which those Agreements may be exempt from the prohibition.

Meaning of terms

Article 2

For the purposes of this Regulation, the following terms within the given meaning shall apply:

1) **‘rail and road transport and inland waterways transport’** means public transport available under equal conditions to all users of transport services and performed on the basis of transport agreements;

2) **‘successive operating transport services’** means part of operating transport services conducted on the basis of transport agreement concluded by the original carrier that are performed on the part of successive carrier with the approval of the ordering party;

3) **‘combined operating transport services’** means operating transport services of intermodal transport units performed by various forms of transport under one ticket;

4) **‘waterway’** means part of inland waters serving as a route or way of travel or transport, categorized and open for navigation;

5) **‘inland waters’** means rivers, channels and lakes on the territory of the Republic of Serbia;

6) **‘inland navigation’** means navigation on inland waters;

7) **‘tariff’** means collection of by-laws, general terms and prices that in conjunction with related legislative acts make a unique binding entirety of regulations implemented in the public operating transport services;

8) **‘undertaking’** means party to the agreement and related undertakings;

9) **‘competitor’** means undertaking operating on the same relevant market (actual competitor) or undertaking that in response to a small but permanent increase in relative prices, be likely to undertake, within a short period of time, the necessary additional investments or other necessary switching costs to enter the relevant market(s) (potential competitor).

Other terms used in this Regulation shall have a meaning and will be interpreted in accordance with the provisions of the Law on Protection of Competition, other laws and by-laws governing terms and manner of performing public transport operations by rail, road and inland waterways.

Agreements exempt from the prohibition

Article 3

The exemption from prohibition shall apply to the Agreements that as their purpose or effect have implementation of technical improvements or establishment of technical cooperation by means of:

1) the standardization of equipment, transport supplies, vehicles or fixed installations;

2) the exchange or pooling, for the purpose of operating transport services, of staff, equipment, vehicles or fixed installations;

- 3) the organization and execution of successive, complementary, substitute or combined transport operations, and the fixing and application of inclusive tariffs/rates and conditions for such operations, including special competitive tariffs/rates for the provision of operating transport services;
- 4) the use, for journeys by a single mode of transport, of the routes which are most rational from the operational point of view;
- 5) the coordination of transport timetables for connecting routes;
- 6) the grouping of single consignments;
- 7) the establishment of uniform rules as to the structure of tariffs and their conditions of application, provided such rules do not lay down transport rates and conditions.

#### Exemption for groups of small and medium-sized undertakings

##### Article 4

The exemption from prohibition from Article 3 herein shall also apply to agreements that as their object have:

- 1) the constitution and operation of groupings of road or inland waterway transport undertakings with a view to carrying on transport activities;
- 2) the joint financing or acquisition of transport equipment or supplies, where these operations are directly related to the provision of transport services and are necessary for the joint operations of the aforesaid groupings;

The exemption from Paragraph 1 hereof shall be implemented provided that:

- 1) the total carrying capacity of any grouping does not exceed 10,000 metric tonnes in the case of road transport or 500,000 metric tonnes in the case of transport by inland waterways; and that
- 2) the individual carrying capacity of each undertaking belonging to a grouping shall not exceed 1,000 metric tonnes in the case of road transport or 50,000 metric tonnes in the case of transport by inland waterways.

#### Agreements not exempt from the prohibition

##### Article 5

The exemption shall not apply to the Agreements that directly or indirectly, independently or in conjunction with other factors under the control of contractual parties contain restrictions that as their purpose have:

- 1) fixing of transport rates;
- 2) fixing of transport conditions that limit or control the supply of transport services;
- 3) share of transport markets.

#### Transitional and final provisions

##### Article 6

Agreements which have been concluded before this Regulation enters into force must be brought in compliance with the provisions of this Regulation within three months from the entry into force of the Regulation.

#### Entry into force

##### Article 7

This Regulation shall enter into force on the eighth day following the day of its publication in the "Official Gazette of the Republic of Serbia".

## RATIONALE

### I STATUTORY GROUNDS FOR THE ENACTMENT OF THE REGULATION

The legal basis for the enactment of this Regulation is contained in Article 13(3) of the Law on Protection of Competition (“Official Gazette of the RS”, nos. 51/09 and 95/2013) and Article 42(1) of the Law on Government (“Official Gazette of the RS”, nos. 55/05, 71/05-correction, 101/07, 65/08, 16/11, 68/12-CC, 72/12, 7/14-CC and 44/14).

### II STATEMENT OF REASONS FOR THE ENACTMENT OF THE REGULATION

The provision of Article 13 of the Law on Protection of Competition (“Official Gazette of the RS”, nos. 51/09 and 95/2013) stipulates the possibility of exemption of certain categories of restrictive agreements from prohibition, whereby it is not necessary that such agreements which fulfill conditions from this article be submitted to the Commission for the exemption. Paragraph 3 of this article regulates that the Government determines the categories of agreements and more closely prescribes special conditions for the exemption referred to in this article.

In the Republic of Serbia thus far has not been enacted a special regulation that would prescribe conditions for the exemption of agreements from prohibition in the rail and road transport and inland waterways transport sectors, while the current legal framework does not regulate this particular issue in an adequate manner. For instance, the Merchant Shipping Act (“Official Gazette of the RS”, no. 96/2015) in Article 24 through 26, regulates issues concerning the infringement of competition, exemption for technical agreements and exemption for small and medium-sized enterprises, but fails to regulate the issue of agreements subject to the nonapplicability of exemption, that is, agreements that cannot be exempt from the prohibition. Thereby, the case solely relates to agreements from the inland waterways transport sector. Thus is necessary that when regulating the issue of conditions for the exemption from prohibition of agreements that are identical to all transport sectors, or respectively, relevant in the rail and road transport and inland waterways transport sectors, to obligatory consider specificities of the transport sector and to correspondingly regulate special, sector-related competition policy regulations that differ from the general competition policy regulations.

In addition to the above-mentioned, the enactment of this Regulation aligns with the need to consolidate legislation of the Republic of Serbia against the EU *acquis*, as stipulated in the provisions of Article 72 of the Stabilization and Association Agreement concluded between the Republic of Serbia of the one part, and the European Union (European communities and their member states) of the other part. In regard to the rules of competition to transport by rail, road and inland waterways, the European Commission implements the Regulation no. 169/2009 of February 26, 2009.

In accordance with the mentioned, the enactment of the Regulation drafted by the Commission for Protection of Competition implies not only the fulfilment of commitment of the Republic of Serbia to align its legislation against the EU *acquis*, but also to secure legal certainty for undertakings when entering into agreements in the rail and road transport and inland waterways transport sectors.

### III COMMENTARY ON THE BASIC LEGAL INSTITUTES AND INDIVIDUAL PROVISIONS

#### **Article 1**

Determines the subject of the ordinance, which is in accordance with Article 13(3) of the Law on Protection of Competition (“Official Gazette of the RS”, nos. 51/09 and 95/2013).

#### **Article 2**

Stipulates the meaning of terms used in the Regulation, whereby the terminology is adjusted to those used in laws and by-laws governing terms and manner of performing public transport operations by rail, road and inland waterways.

### **Article 3**

This article stipulates agreements that are exempt from the prohibition pursuant to the Regulation, or respectively, those that as their purpose or effect have implementation of technical improvements or establishment of technical cooperation, given that they contribute to the improvement of productivity. Such agreements are solely exempt if technical improvements or establishment of technical cooperation are achieved by means of the standardization of equipment, transport supplies, vehicles or fixed installations; the exchange or pooling, for the purpose of operating transport services, of staff, equipment, vehicles or fixed installations; the organization and execution of successive, complementary, substitute or combined transport operations, and the fixing and application of inclusive tariffs/rates and conditions for such operations, including special competitive tariffs/rates for the provision of operating transport services; the use, for journeys by a single mode of transport, of the routes which are most rational from the operational point of view; the coordination of transport timetables for connecting routes; the grouping of single consignments; or the establishment of uniform rules as to the structure of tariffs and their conditions of application, provided such rules do not lay down transport rates and conditions. Namely, the case concerns the closed list that sets the manners in which technical improvements are achieved or technical cooperation is established. If technical improvements or establishment of technical cooperation are achieved by some other means that are not listed in this article, Paragraph 1, Items 1) through 7), agreements that as their purpose or effect have implementation of presented technical improvements or establishment of technical cooperation shall be the subject of other ordinances regulating the issue of exemption of agreements.

### **Article 4**

Stipulates that agreements on groupings of small and medium-sized undertakings operating in the rail and road transport and inland waterways transport sectors may be exempt from the prohibition, as well as conditions for their exemption pursuant to the Regulation.

### **Article 5**

Stipulates that agreements which directly or indirectly, independently or in conjunction with other factors under the control of contractual parties contain restrictions that as their objective have fixing of transport rates, fixing of transport conditions that limit or control the supply of transport services, or share of transport markets, cannot be exempt from the prohibition pursuant to this Regulation.

### **Article 6**

Envisages transitional and final provisions regulating the obligation of bringing into compliance of the existing agreements in the rail and road transport and inland waterways transport sectors, against the provisions of the Regulation, along with the deadline for such acting of undertakings affected.

### **Article 7**

Determines the entry into force of the proposed Regulation.

## **IV FUNDS REQUIRED FOR THE IMPLEMENTATION OF THE REGULATION**

For the implementation of this Regulation is not necessary to allocate funds from the Budget of the Republic of Serbia.