

Opinion on the implementation of Article 21 in reference to Article 5 of the Law on Protection of Competition

Prior to the commencement of operating activities of the Commission for Protection of Competition, the Ministry of Trade, Tourism and Services of the RS has implemented activities from the competition policy area and has issued the Opinion on the implementation of Article 21 in reference to Article 5 of the Law on Protection of Competition (“Official Gazette of the RS”, no. 79/05).

The above-mentioned Opinion of the Ministry of Trade, Tourism and Services of the RS has stipulated mandatory submission of requests for issuing approvals pertaining to the implementation of concentrations when implementing statutory changes between affiliated undertakings.

Pursuant to Article 35(1/6) of the Law on Protection of Competition, the Council of the Commission for Protection of Competition issues the following Opinion on the implementation of Article 21 in reference to Article 5 of the Law on Protection of Competition:

Within the meaning of Article 5 in reference to Article 21 of the Law on Protection of Competition, affiliated undertakings are not obligated to submit request for issuing approval for implementation of concentration in the cases when affiliation derives from the decisive influence of one undertaking on the conduct of activities of another or other undertakings on the basis of controlling equity interest, i.e. stocks (in excess of 50%).

However, toward avoiding arbitrary assessment concerning affiliation within the meaning of Article 5(2) of the Law, when affiliation derives from the decisive influence of one undertaking on the conduct of activities of another or other undertakings on the basis of minority, i.e. non-controlling equity interest, such undertakings are obligated to submit to the Commission a notice of intention to perform statutory changes between them. Such obligation exists only in the cases of affiliation deriving from the decisive influence of one undertaking on the conduct of activities of another or other undertakings on the basis of minority equity interest. In those cases, undertakings are obligated to submit to the Commission for Protection of Competition evidence on the existence of decisive influence on the conduct of activities, or respectively on the right, contract or other grounds providing the decisive influence on the conduct of activities on the basis of non-controlling equity interest.

If the Commission determines that undertakings are affiliated within the meaning of Article 5 of the Law by assessing the submitted evidence pertaining to the decisive influence on the conduct of activities, it shall issue an opinion to applicants concerned on the nonexistence of obligation to

submit request for issuing approval for the implementation of concentration within the meaning of the Law on Protection of Competition (“Official Gazette of the RS”, no. 79/05) and the Regulation on the content and manner of submitting notification on concentration (“Official Gazette of the RS”, no. 94/05).

If the Commission determines that applicants are not affiliated undertakings within the meaning of Article 5 of the Law on Protection of Competition, it shall issue an opinion instructing on the obligation of applicants to submit request for issuing approval for the implementation of planned concentration.