



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

Number: 1/0-06-394/09-2

Date: November 5, 2009

Belgrade

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SUBJECT: Opinion on the implementation of competition policy regulations

In the request of October 15, 2009, you have presented a request for obtaining opinion on the implementation of Article 23(5) of the Law on Protection of Competition (“Official Gazette of the RS”, no. 79/2005) in reference to Article 74 of the Law on Protection of Competition (“Official Gazette of the RS”, no. 51/2009), or respectively, if the silence upon the expiry of the time period of 4 months stipulated in Article 23(5) of the Law means implicit acceptance, or that the Commission has taken a negative decision, meaning the rejection or refusal.

Pursuant to Article 35(6) of the Law on Protection of Competition (“Official Gazette of the RS”, no. 79/2005) and Article 21(8) of the Law on Protection of Competition (“Official Gazette of the RS”, no. 51/2009) in respect to the submitted request, Council of the Commission for Protection of Competition on the 137th session held on November 5, 2009, issues the following opinion.

In accordance with Article 23(5) of the Law on Protection of Competition (“Official Gazette of the RS”, no. 79/2005) is stipulated that parties to the concentration are obligated to interrupt implementation of concentration pending enactment of decision by the Commission approving or rejecting implementation of planned concentration, or until the expiry of the period allowed for the reply in the duration of 4 months from the date of submission of request. In accordance with Article 74 of the Law (“Official Gazette of the RS”, no. 51/2009) proceedings instituted prior to the implementation of the Law on Protection of Competition, or respectively, prior to November 1, 2009, are subject to regulations in force at the time of such initiation. In accordance with Article 64 of the Law on Protection of Competition (“Official Gazette of the RS”, no. 51/2009), parties to the concentration are obligated to interrupt implementation of concentration pending enactment of the decision by the Commission.

Provisions of both Laws stipulate that implementation of concentration is interrupted pending the decision of the Commission. The expiry of the period allowed for the enactment of decision shall mean the rejection of request, in accordance with the provisions of the Law on General

Administrative Procedure, whose implementation is stipulated in Article 52 of the Law and Article 34 of the Law. This in no way implies that the applicant can continue with the implementation of concentration. Once the specified term of 4 months expires, in accordance with Article 23(5) of the Law in reference to Article 208(2) of the Law on General Administrative Procedure (“Official Gazette of the FRY”, nos. 33/97 and 31/2001), the applicant has an option to use the instrument of legal remedy on the ground of failing to enact a decision, which otherwise would be used in the case of decision implying rejection of initial request.

Pursuant to all of the above, applicant of the request for issuing approval for implementation of concentration, which represents the ground for conducting a proceeding in accordance with the provisions of the Law on Protection of Competition in force until November 1, 2009, is obligated to interrupt implementation of concentration pending enactment of the decision by the Commission. If the specified term of 4 months from the submission of related request has expired, the party remains prohibited to continue with the implementation of concentration, but is entitled to submit a statement of claims before the Supreme Court of Cassation of the Republic of Serbia acting in a manner as if the request concerned is rejected.

PRESIDENT OF THE COUNCIL

Prof. Dr. Dijana Marković Bajalović