



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

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Belgrade

Council of the Commission for Protection of Competition on the 141st session held on December 16, 2009, issues the following

**Opinion on the implementation of Article 61(3) of the Law on Protection of Competition
("Official Gazette of the RS", no. 51/2009)**

Article 61(3) of the Law on Protection of Competition ("Official Gazette of the RS", no. 51/2009, hereinafter referred to as the Law), stipulates that "concentration implemented by means of a takeover bid, within the meaning of regulation governing takeover of joint stock companies, must be reported even if conditions contained in Paragraph 1 of this Article are not fulfilled". From the herein quoted provision, derives the following:

- This provision only relates to concentrations implemented after November 1, 2009, as the date of entry into force of the Law;
- The obligation to notify on concentration within the meaning of this provision relates to all companies, regardless of the amount of total annual turnover generated by all parties to the concentration during the previous accounting period.

The precondition that must be assessed, i.e. fulfilled is that transaction concerned represents a concentration within the meaning of Article 17 of the Law that stipulates cases in which concentration between undertakings occurs. Prior to the implementation of this Law, in cases of mergers and other statutory changes in which concentration of undertakings occurs within the meaning of law governing status of companies, or acquisitions of direct or indirect control within the meaning of Article 5(2) of the Law by one or more undertakings over another or more undertakings or over part or parts of other undertakings, the following circumstances can be distinguished:

- In the case of existed obligation to notify on concentration for issuing related approval for implementation of concentration in accordance with the Law on Protection of Competition ("Official Gazette of the RS", no. 79/05) in force until November 1, 2009, and where the request was not submitted to the Commission for Protection of Competition (hereinafter referred to as the Commission) and/or related approval for implementation of concentration is not issued, exists an obligation to submit notification on concentration.

- In the case of non-existence of obligation to notify on concentration for issuing related approval for implementation of concentration in accordance with Article 23 of the Law on Protection of Competition (“Official Gazette of the RS”, no. 79/05), or respectively, non-fulfilment of requirements in terms of the amount of total annual turnover generated by the parties to the concentration during the previous accounting period, exist no obligation to submit notification on concentration.

- The Law on Protection of Competition (“Official Gazette of the RS”, no. 79/05) has entered into force on September 24, 2005, thus in all cases of concentrations implemented prior to the date of entering into force of this regulation exist no obligation, prior or current, to notify on concentration in accordance with the new regulation.

The reasoning for such position derives from the fact that for the existence of concentration is also necessary to have a precondition assessed by the Commission when determining the obligation to notify on concentration. For the existence of concentration is necessary that the change of control over other undertaking(s) occur within the meaning of Article 5 of the Law. Thus is implied that individual concentration has not occurred when no change of control is registered, which is assessed in accordance with the regulation in force at the time of implementation of transaction concerned.

Within the meaning of Article 84 of the Law on General Administrative Procedure, this opinion is submitted by public announcement posted on the notice board of the Commission and on the official Internet presentation of the Commission.

PRESIDENT OF THE COMMISSION

Prof. Dr. Dijana Marković Bajalović