

On the 140<sup>th</sup> session held on December 1, 2009, Council of the Commission for Protection of Competition issues the following

**Opinion on the implementation of Article 63 in reference to Article 65 of the Law on Protection of Competition (“Official Gazette of the RS”, no. 51/09)**

The Commission for Protection of Competition (hereinafter referred to as the Commission) conducts investigations of concentrations in proceedings instituted upon submission of notifications on concentrations or *ex officio*.

The submission of notification is an act that represents the ground for institution of proceeding in which an undertaking qualifies as a party to the concentration investigation procedure, and is linked to the commencement date for decision enactment. The Law on Protection of Competition (“Official Gazette of the RS”, no. 51/09, hereinafter referred to as the Law) in Article 61 stipulates cases pertaining to the obligation to report concentration. Article 63 regulates which undertakings have obligation to report concentration, deadline for related action and conditions in view of content and manner for notification of concentration. The provision of Article 63(4) of the Law is implemented and more closely regulated by the enactment of the Regulation on the content and manner of submitting notification on concentration (“Official Gazette of the RS”, no. /09, hereinafter referred to as the Regulation). The content and manner of submission of notification are prescribed in Article 2 and Articles 3 and 4 of the Regulation, respectively.

The submission of notification must be done in accordance with the Law and Regulation. Defaulting notification in terms of stipulated content cannot be considered as proper, similar to the failure to submit notification in full alignment with conditions prescribed in the Regulation. Prior to determining the permissibility of concentration within the meaning of Article 19 of the Law, the Commission will consider whether the submission of notification fulfils conditions from the Law and Regulation.

If in so doing the Commission assesses that notification is not submitted in accordance with the Law and Regulation, it shall order the applicant to regulate such notification within the deadline set by the official designated by the Commission. If the applicant regulates said notification within the deadline determined, the commencement date for the enactment of decision concerned initiates from the date of submission of addendum, as the date when notification was submitted in full accordance with the Law and Regulation. Since the Law does not more closely regulate the provision on the deadline for decision enactment, rules governing general administrative procedure will be implemented. The Law on General Administrative Procedure in Article 208 stipulates that the authority is obliged to adopt a decision “no later than one month counting from the day the request has been properly submitted, i.e. from the day of the institution of the procedure *ex officio*, unless other shorter term has been stipulated by a special rule”.

If the applicant fails to properly amend its notification within the given deadline and the Commission finds that conditions from the Law and Regulation are not fulfilled, such notification will be rejected by the enactment of a decision. This derives both from the Law and Regulation which stipulate necessary requirements in order for an act to be considered as a notification of concentration, and also from the provisions of Articles 58 and 115 of the Law on General Administrative Procedure.

The submission not containing any documentation cannot be considered as notification of concentration, regardless of the fact that such file is entitled as notification on concentration and directly submitted to the authority. Such submissions will be recorded as communications submitted to the Commission and not as notifications of concentration, on which the applicant will be informed when filing the submission.

Provision of Article 65(1) of the Law stipulates that the Commission is required to enact a decision on notification of concentration within one month from the date of receipt of the complete notification in accordance with Article 37 of the Law, that is, a conclusion on implementation of investigation procedure referred to in Article 62(2) of the Law. In the opposite case, it will be considered that the concentration is approved. Being that the Law does not regulate the provision on deadline, Article 90(2) of the Law on General Administrative Procedure is implemented, where is envisaged that the deadline of one month is expired on the day that by its number matches that day when the event constituting the commencement of the deadline has occurred. If such day is not within the last month, the deadline expires on the last day of that month.

If the Commission fails to adopt a decision on notification of concentration within the period stipulated, i.e. fails to adopt a conclusion on the concentration investigation procedure, it will be considered that the concentration is approved. The Commission may also adopt a decision on notification of concentration upon the expiry of deadline, but only in a form of a decision on approval of concentration.

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