



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

Number: 1/0-06-523/09-2

Date: December 16, 2009

Belgrade

Commercial company GORENJE LLC Beograd
7 Milutina Milankovića Street
11070 New Belgrade

SUBJECT: Opinion on the implementation of competition policy regulations

In the request of November 19, 2009, received in the Commission for Protection of Competition on November 26, 2009, you have presented a request for obtaining opinion on the implementation of competition policy regulations, or respectively, on the permissibility that company concerned as a household appliances manufacturer can submit to its buyers a non-mandatory provisional retail prices.

Pursuant to Article 21(1/8) of the Law on Protection of Competition (“Official Gazette of the RS”, no. 51/09) and in respect to the submitted request, Council of the Commission for Protection of Competition on the 141st session held on December 16, 2009, issues the following opinion.

In accordance with Article 10 of the Law on Protection of Competition, restricting buyers on the part of distributors (suppliers) to set own selling prices, represents the case of restrictive agreements between undertakings which as their purpose or effect have a significant restriction, distortion or prevention of competition on the relevant market. Pursuant to the identical article, restrictive agreements are prohibited and void, except in cases of exemption from the prohibition in accordance with this Law. Agreements stipulating restriction of buyer’s rights to determine its own selling prices cannot be exempt from the prohibition within the meaning of provisions of the Law regulating the issue of exemption from prohibition. Imposing such obligation on buyers represents a restriction that no vertical agreement should contain. Hence, Article 14 of the Law stipulates that even agreements of minor importance are not allowed if the purpose of vertical agreements is price setting or division of market.

The contractual arrangement of the provision concerned creates a direct influence on the narrowing down of products range per various prices, thus restricts the market competition pertaining to the sales of goods concerned, i.e. services. Restriction of competition in the described case primarily relates to products, i.e. services within the so-called intra-brand competition range (competition among distributors of the same branded products).

The consequence of such disturbed competition is reflected in the incapability of buyers that by acting as distributors mutually compete by offering a variety of prices for identical products, although it is in the interest of all buyers that by acting as individual distributors sell products at the lowest possible prices against competitors. The possibility of consumers to select individual distributors or retailers from which will procure products or services concerned in direct relation to the offered price levels is also restricted.

In contrast to imposing restrictions on buyers to set own selling prices, distributors (suppliers) have a possibility that in accordance with the competition policy regulations impose on buyers a maximum price in further sales, or to recommend a price in further sales (resale price). The notion of recommendation must be understood literally, meaning that buyers must be fully at liberty to sell purchased products at individually and independently set price levels. Contracting of recommended resale prices must not in any way be interconnected with any kind of conditioning that would result in an obligation of buyers to accept the recommended price as a result of executed pressure or offered incentive.

PRESIDENT OF THE COMMISSION

Prof. Dr. Dijana Marković Bajalović