



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

Number: 1/0-06-515/09-2

Date: December 1, 2009

Belgrade

CENTROPROIZVOD JSC

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SUBJECT: Opinion on the implementation of competition policy regulations

In the request entered under number 1/0-06-515/09-1 of November 23, 2009, you have requested opinion on the implementation of competition policy regulations, namely:

1. does the Law on Protection of Competition permit manufacturers to appoint distributor on an exclusive basis for further sales to the so-called small buyers, while keeping the direct sale operations for the so-called bigger buyers;
2. is it considered as a restrictive agreement if manufacturer contractually obligate distributor of its own products not to distribute competitive products;
3. is it considered as a restrictive agreement if manufacturer contractually obligate distributor of its own products not to distribute any other products within the sector where its own products are distributed, and
4. is it considered as a restrictive agreement if agreement sets the amount of rebate which products buyer can transmit to its buyers.

Pursuant to Article 21(1/8) of the Law on Protection of Competition (“Official Gazette of the RS”, no. 51/09, hereinafter referred to as the Law), in reference to the submitted request, Council of the Commission for Protection of Competition on the 140th session held on December 1, 2009, issues the following opinion.

1. Under Article 10 of the Law, agreements between undertakings which as their purpose or effect have a significant restriction, distortion or prevention of competition in the territory of the Republic of Serbia are prohibited and void, except in cases of exemption from the prohibition pursuant to this Law. Exclusive distribution agreement per its nature restricts competition, but such agreement may be exempt from the prohibition under conditions stipulated by the law and by-laws. Conditions for exemption from the prohibition are prescribed in Articles 11 and 12 of the Law, as well as in Article 13 of the Law, or respectively, by the planned enactment of the Regulation where categories of agreement exempt from the prohibition will be set and special conditions for exemption from the prohibition of restrictive agreements will be more closely stipulated. Also, agreements of

minor importance are allowed provided that the total market share of the participating parties on the relevant market does not exceed amounts set in Article 14 of the Law, unless the purpose of horizontal agreement is price setting or limitation of production or sales, or division of sourcing market, as well as if the purpose of vertical agreements is price setting or division of market. The same is relevant for the referred distribution agreement in which manufacturer keeps for its self the so-called bigger buyers, meaning that such provision *per se* is not prohibited.

2. Agreement in which manufacturer obligates distributor of its own products not to distribute competitive products is considered as an exclusive distribution agreement, which may be exempt from the prohibition only under conditions stipulated by the law and by-laws, and thus, the said provision will be assessed within the context of entire agreement, that is, its duration, competitive conditions on the relevant market and market share of the parties to the agreement.
3. Provision of the agreement in which manufacturer obligates distributor of its own products not to distribute within the distribution sector not only competitive products but also any other products, represents the imposition of restriction which only under exceptional circumstances could fulfil the general conditions for exemption from Article 11 of the Law. This provision in principle prohibits distributor to undertake business activities that are in no relation with the distribution of manufacturer's products, and for that reason there are no economic reasoning for contractual arrangement of such provision, thus in the majority of cases such provision could not be exempt from the prohibition.
4. Agreement in which seller sets the amount of rebate which products buyer can transmit to its buyers represents an agreement that significantly restricts competition, considering that the buyer as an undertaking is free to independently undertake its business activities. In such manner, seller indirectly sets the buyer's retail price of products, due to which in accordance with Article 10 of the Law such agreement would be considered as restrictive, that is, as an agreement that directly or indirectly sets the purchase or selling prices or other conditions of trade, while such agreements are considered as prohibited and void. Imposing such obligation against any buyer represents a restriction which no vertical agreement should contain. Hence, in Article 14 of the Law is stipulated that even agreements of minor importance cannot be allowed if the purpose of vertical agreements is price setting or division of market.

PRESIDENT OF THE COMMISSION

Prof. Dr. Dijana Marković Bajalović