



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

Number: 1/0-08-9/2010-04

Date: February 26, 2010

Belgrade

**Subject:** Opinion on the implementation of competition policy regulations

In the request no. 1/2010 of January 11, 2009, you have requested an opinion on the compliance of Article 2 of the Draft service agreement for retail display of tobacco products, with competition policy regulations.

**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 143<sup>rd</sup> session held on February 26, 2010, issues the following opinion.**

In accordance with Article 10 of the Law on Protection of Competition, restrictive agreements are 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. Restrictive agreements are prohibited and void, except in cases of exemption from the prohibition pursuant to this Law.

Restrictive agreements may be exempted from the prohibition if they fulfil conditions pertaining to the exemption stipulated in Article 11 of the Law, while the period of individual exemption cannot exceed eight years.

Article 13 of the Law stipulates that exemption from the prohibition of restrictive agreements may refer to certain categories of agreements, provided that the requirements under Article 11 of the Law, as well as other special conditions relating to the type and content of the agreement or its duration are fulfilled. It is also stipulated that the Government determines the categories of agreements and more closely prescribes special conditions pertaining to the exemption of agreements from prohibition. On February 18, 2010, the Government has enacted the Regulation on agreements between undertakings operating at the different level of production or distribution chain exempted from prohibition. The Regulation stipulates the exemption from prohibition of agreements that contract a clause on non-compete obligation (obligation of buyer not to manufacture, purchase, sell or resell goods or services on the same relevant market) for the period of five years. The Commission notices that from the manner in which you have regulated the possibility of contract prolongation in Article 2 of the Agreement, it can be concluded that the case concerns the contract of indefinite duration.

Contractual arrangement of obligation stipulating prolongation of agreement terms under conditions more favorable than initially contracted, subject to the agreement of service recipient, is incompatible with the competition policy regulations if related service provider holds a dominant position. If in so doing, the contractual party is revealed information on the individual undertaking offering more favorable conditions, such circumstance can also have adverse consequences affecting competition because it facilitates collusion between undertakings.

Considering that when assessing the compliance of contractual provisions with provisions of the Law, the Commission also assesses the possibility of achieving the purpose of agreement concerned with slightest limitations to competition, or respectively, with limitations of minor degree to competition, the Commission recommends the party to conclude a fixed-term agreement not exceeding five year period, and to prearrange all terms and conditions under which the service provider will deliver services concerning the retail display of tobacco products. The fulfilment of conditions pertaining to the exemption of agreement from prohibition can be assessed in accordance with the provisions stipulated in the Regulation on agreements between undertakings operating at the different level of production or distribution chain exempted from prohibition, to be published in the meanwhile. In the case that related agreement fails to fulfil conditions stipulated in the above-mentioned Regulation, you can submit a request for individual exemption of agreement from prohibition.

PRESIDENT OF THE COMMISSION

Prof. Dr. Dijana Marković Bajalović