

Opinion on the reports on electronic communications market inquiry

The Regulatory Agency for Electronic Communications and Postal Services of the Republic of Serbia (RATEL) requested the Commission for Protection of Competition to issue an opinion on the following reports on electronic communications market inquiry:

1. wholesale market of the call origination on the public telephone network provided at a fixed location (Market 2),
2. wholesale market of (physical) access to network infrastructure elements and associated facilities (including shared and full unbounded access to the local loop) (Market 4),
3. wholesale market of leased lines (Market 6), and
4. wholesale market of voice call termination on mobile network (Market 7).

The market inquiry procedure is implemented with the objective of continuous monitoring of conditions on the above-mentioned markets toward detecting changes with respect to previously conducted inquiry of the relevant markets from August/November 2011, and foremost with the goal of establishing the existence of qualitative competitive market behaviors and presence of multiple operators with significant market power on the relevant markets. Referencing the provisions of Article 60(2) of the Law on Electronic Communications, as well as the provisions of Article 3 of the Protocol on Cooperation, the Commission was requested to submit an opinion as to whether the reports on the relevant markets inquiry, as well as regulatory commitments recognized in the reports as feasibly mandatory for operators with significant market power on the relevant markets, are in accordance with regulations governing competition policy.

Issued opinion: In the opinion of September 18, 2015, the Commission stated that implemented methodology and applied principles when analyzing the markets concerned are essentially implemented in the competition policy area as well. However, a different approach, i.e. potential differences in conclusions, particularly when establishing the relevant market, may be the result of differences in legal frameworks implemented in the electronic communications and competition policy areas with respect to the circumstances relating to each individual case. From the above-mentioned reason is possible to have a situation where for the purpose of a specific individual proceeding conducted before the Commission, the relevant market may be defined, either in terms of product or geographic dimension, in a manner that is not in complete agreement with definitions adopted for the need of analyses concerned. In terms of regulatory commitments established for operators with significant market power on the analyzed relevant markets, they are set in accordance with Article 63 of the Law on Electronic Communications, where measures that may be imposed to operators with significant market power are explicitly itemized. In addition to the previous assessment is emphasized that in accordance with Article 59 of the Law on Protection of Competition, the Commission may, in the decision determining competition infringement, set the measures aimed at removing competition infringement. The objective of those measures is aimed at removing competition infringement, i.e., preventing probable occurrence of the same or similar infringement, by giving orders to individual

undertaking to undertake certain behavior or prohibit certain behavior(s). However, in contrast to the Law on Electronic Communications, the Law on Protection of Competition does not explicitly itemize the behavioral measures that the Commission may impose, since they depend on the circumstances of each individual case.