



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

25/IV Savska St., Belgrade  
Number: 4/0-02-305/2018-1  
Date: March 28, 2018

Pursuant to Article 35(2) of the Law on Protection of Competition (Official Gazette of the RS 51/2009 and 95/2013), President of the Commission for Protection of Competition enacts the following

### CONCLUSION

**I PROCEEDING IS INSTITUTED** *ex officio* for investigation of competition infringement against companies:

- **DRUŠTVO ZA TRGOVINU, TURIZAM I USLUGE GR SPORT DOO SREMSKA MITROVICA**, company number 20021292, with the registered seat in Sremska Mitrovica at address 7 Milice Stojadinović St., whose representative is Dunja Spajić, and
- **POLANIK Sp. z o. o.**, Spółka Komandytowa VAT No PL7712875632 KRS 0000406336 Sąd Rejonowy dla Łodzi-Śródmieścia w Łodzi XX Wydział KRS, ul. Życzliwa 11, 97-300 Piotrków Trybunalski, Poland,

in order to establish the existence of restrictive agreement, within the meaning of Article 10 of the Law on Protection of Competition.

- II** All persons in possession of data, documents or other relevant information that could contribute to the fact-finding in this proceeding are called upon to submit the said to the Commission for Protection of Competition to the address 25 Savska St., Belgrade.
- III** Company POLANIK Sp. z o.o. is provided with a deadline of 30 (thirty) days from the date of receipt of this conclusion, to submit to the Commission for Protection of Competition a proof of the existence of a procurator holder in the Republic of Serbia, or to appoint a procurator holder for the receipt of notices in the Republic of Serbia, with a forewarning that in the case of failure to act accordingly, a procurator holder for the receipt of notices will be appointed by the Commission for Protection of Competition at the expense of company POLANIK Sp. z o.o..
- IV** This conclusion shall be published in the Official Gazette of the Republic of Serbia and on the website of the Commission for Protection of Competition.

## *Rationale*

The Commission for Protection of Competition (hereinafter referred to as the Commission) has received an initiative submitted by company BMA Trading doo Beograd, 3a Svetozara Papića St., for investigation of competition infringement effected by company “DRUŠTVO ZA TRGOVINU, TURIZAM I USLUGE GR SPORT DOO SREMSKA MITROVICA”, with the corporate seat in Sremska Mitrovica at the address 7 Antona Smaženka St. (hereinafter referred to as GR Sport), and company POLANIK Sp. z o. o., Spółka Komandytowa VAT No PL7712875632 KRS 0000406336 Sąd Rejonowy dla Łodzi-Śródmieścia w Łodzi XX Wydział KRS, ul. Życzliwa 11, 97-300 Piotrków Trybunalski, Poland (hereinafter referred to as Polanik), on the public procurement market of athletic equipment and sports props for the 2017 European Athletics Championships, public procurement number OP 4/2016, implemented by company Atletika 2017 doo, with the corporate seat in Belgrade at address 73a Strahinjica Bana St. The initiative is entered under number 4/0-04-215/2017-1.

Investigating the merits of the initiative to initiate investigation of competition infringement on the above-mentioned public procurement market, the Commission has acquired from GR Sport an exclusive distribution certificate awarded by company Polanik, in effect until December 31, 2016.

According to information supplied by GR Sport, entered in the Commission under number 4/0-04-215/2017-10 of October 3, 2017, GR Sport has been an exclusive distributor of company Polanik continuously since 2005 until the present day. The exclusive distribution was arranged in a form of an agreement only for 2005, followed by subsequently awarded limited-time certificates by company Polanik. GR Sport has also submitted a confirmation letter issued by Polanik stating that GR Sport was the exclusive distributor of company Polanik in the territory of the Republic of Serbia during the period 2005-2016.

In addressing the Commission, GR Sport underlined that the respective cooperation takes place in pursuance with the following pattern: GR Sport submits a supply request by email, where Polanik only initiates the production following the confirmation of that supply request. Before shipping, GR Sport pays a portion of the total amount, while the balance is paid upon the arrival of goods or upon the collection of receivables. Business transactions are based on the principle of mutual trust and support built over a 12-year period of qualitative cooperation, hence Polanik requires no bills of exchange or bank guarantees, regardless of the cash value of shipments. Potential customers that come in direct contact with Polanik are redirected to its distributors as secure and trusted customers, thus making that potential maintenance and repair/replacement-related commitments envisaged during the guarantee cover period are correspondingly reassigned to its distributors.

Based on an email sent by Polanik to company Atletika 2017 doo Beograd, submitted to the Commission as an annex to the initiative, it is established that Polanik has underlined the existence of only one exclusive distributor for the territory of Serbia – GR Sport. Upon reviewing the Polanik’s website<sup>1</sup>, it is established that GR Sport is designated as an exclusive distributor of equipment, footwear and general constructions of stadiums for the Republic of Serbia, and that there are no other designated distributors for the Republic of Serbia.

In addition to the aforementioned, in a letter submitted by GR Sport and entered in the Commission under number 4/0-04-215/2017-16 of December 15, 2017, the company independently assessed its market share to about 30%.

Investigating the claims of GR Sport in relation to the market share, by analyzing the athletic equipment and sports props wholesale market, the Commission has assessed that the market share of GR Sport on the athletic equipment wholesale market (clothing and footwear excluded) might exceed 25%.

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<sup>1</sup> <http://polanik.info/english/foreign-distributors/europe/serbia>, last accessed on March 14, 2018.

The provision of Article 10(1) of the Law on Protection of Competition (Official Gazette of the RS, 51/2009 and 95/2013– hereinafter referred to as the Law) stipulates the following: “Restrictive agreements are agreements between market participants, which as their purpose or effect have a significant restriction, distortion or prevention of competition in the territory of the Republic of Serbia“.

The provision of Article 10(3) of the Law stipulates that restrictive agreements are prohibited and void, except in cases of exemption from the prohibition pursuant to this Law.

The Regulation on agreements between undertakings operating at the different level of production or distribution chain exempted from prohibition (Official Gazette of the RS 11/2010 – hereinafter referred to as the Regulation) regulates the block agreements for the sale, purchase or distribution of goods and services, and more closely stipulates the conditions under which those agreements may be exempt from prohibition.

Article 4(1) of the Regulation stipulates that vertical agreements are exempted from prohibition provided that the market share of each party to the agreement on the relevant market does not exceed 25%.

The restrictive agreement mentioned was not notified to the Commission with a request for exemption, i.e. is not exempt in accordance with the Law.

Considering the aforementioned, the Commission has reasonably assumed the existence of competition infringement that as a purpose or effect has or may have a significant restriction, distortion or prevention of competition. Exclusive distribution of athletic equipment produced by Polanik and implemented on the part of GR Sport as a distributor, may represent an act of infringement of competition from Article 10 of the Law, whose existence will be investigated and established by the Commission in full and complete accordance with Article 41 of the Law.

Given that the Commission has assessed the fulfilment of conditions from Article 35(1) of the Law for instituting *ex officio* proceeding for investigation of competition infringement, pursuant to the provision of Article 35(2) of the Law, it is established as in Paragraphs I and II of the enacting terms herein.

Pursuant to the provision of Article 69(2) of the Law on General Administrative Procedure (Official Gazette of the RS 18/2016) stipulating that in cases where the party or the legal representative of the party are located abroad, and do not have a procuracy holder in the Republic of Serbia, one must be appointed for the receipt of notices in the Republic of Serbia, it is established as in Paragraph III of the enacting terms herein.

Pursuant to the provision of Article 40(1) of the Law which stipulates that a conclusion on the institution of *ex officio* proceeding will be published in the Official Gazette of the Republic of Serbia and on the website of the Commission, it is established as in Paragraph IV of the enacting terms herein.

#### **Instruction on legal remedy:**

This conclusion is not susceptible to special appeal, but is permitted to institute administrative dispute by an appeal against the final decision of the Commission.

PRESIDENT OF THE COMMISSION

Dr. Miloje Obradović