



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

25/IV Savska St., Belgrade

Number: 5/0-02-42/2019-5

Date: June 14, 2019

Pursuant to Article 58(3) of the Law on Protection of Competition (Official Gazette of the RS, 51/2009 and 95/2013), the Commission for Protection of Competition publishes the following

NOTICE

of the commitment proposal offered by Distribution System Operator “EPS Distribucija” d.o.o. Beograd, which said company is voluntarily willing to undertake in order to remove potential infringement of competition, with a call to all interested parties to submit written observations, positions and opinions on the proposed commitments

Based on Conclusion no. 5/0-02-563/2016-01 of August 2, 2016, enacted by the President of the Commission for Protection of Competition (hereinafter, the Commission), the Commission has initiated an antitrust investigation *ex officio* against Distribution System Operator “EPS Distribucija” d.o.o. Beograd, with registered seat at the address 1-3 Masarikova St., Belgrade-Vračar, whose legal representative is Bojan Atlagić, acting CEO (hereinafter, company EPS Distribucija or the party), in order to establish the existence of an act of abuse of dominance within the meaning of Article 16 of the Law on Protection of Competition (Official Gazette of the RS, 51/2009 and 95/2013- hereinafter, the Law).

Based on the analysis of information and documentation collected during the proceedings, the Commission has established that company EPS Distribucija is the sole distribution system operator on the relevant market for electric power distribution in the territory of the Republic of Serbia, excluding the Autonomous Province of Kosovo and Metohija, that is, is the sole service provider on the electric power distribution market, and has undertaken actions in conducting its operations that could represent anticompetitive acts under Article 16 of the Law, specifically:

- by entering into the Electricity Distribution System Access Agreement with all system users, except with EPS Snabdevanje, causing the absence of commitment by EPS Snabdevanje to allocate funds as security instruments as all other distribution system users;
- in order to conclude the Access Agreement, has provided an option to individual system users to choose between two types of security instruments (namely, bank guarantee and specific-purpose deposit - retention bond), while other individual users were conditioned to place only the specific-purpose deposit - retention bond as a security instrument;
- by setting the value of security instruments pursuant to the Access Agreements with individual users based on the estimated value of the distribution system access service, assessed in line with the maximal consumption level on a monthly basis, while negotiated

with other individual users on the value of security instruments based on the maximal consumption level on a quarterly basis;

- in cases when, pursuant to the Access Agreements, the value of the specific-purpose deposit - retention bond was established on the basis of the estimated value of the distribution system access service, assessed in line with the maximal consumption level on a monthly basis, has determined the value of security instruments by multiplying by the coefficient 1 for individual users and by the coefficient 3 for other individual users, and
- by imposing a commitment to place a specific-purpose deposit – retention bond with a single designated commercial bank only - OTP banka a.d. Novi Sad, with the exception of one incident.

In the course of proceedings conducted thus far, company EPS Distribucija undertook activities with a view to remedying all competition concerns as listed above.

Pursuant to the provision of Article 58(1) of the Law, the Commission may enact a conclusion on the suspension of antitrust investigation, if the party, based on the content of a conclusion on the opening of antitrust proceedings, that is, facts established in the proceedings, submits a proposal of remedial commitments that is voluntarily willing to undertake in order to eliminate potential infringements of competition, containing terms and conditions for taking the measure thereof.

On March 18, 2019, company EPS Distribucija has filed a submission titled “Proposal for the suspension of proceedings”, offering to undertake further activities in addition to those already taken with a view to remedying all competition concerns as to the future conduct of company EPS Distribucija, which potentially could represent an infringement of competition, that is, an act of prevention, distortion, or restriction of competition. The said submission contains a commitment proposal that company EPS Distribucija is voluntarily willing to undertake in order to remove potential infringements of competition, with terms and conditions for taking the proposed commitments, i.e. remedial measures thereof (hereinafter, the Commitment proposal).

Pursuant to Article 58(3) of the Law, the Commission publishes on its internet page a notice of the commitment proposal offered by the party, inviting all interested parties to submit written observations, positions and opinions on the remedial measures, no later than 20 days from the date of publication of the notice.

In light of the above, the Commission hereby publishes the Notice that company EPS Distribucija has offered the following Commitment proposal:

1. to submit regular quarterly reports to the Commission on pre-specified points, which, in particular, would contain observations filed by suppliers operating on the commercial market as to the discrimination and distortion of competition, as well as any assessment of the need to amend the Compliance program.
2. to appoint, forthwith, a specially qualified person (rapporteur) in company EPS Distribucija authorized to report directly to the Commission, placed in charge of the submission of the above-mentioned regular quarterly reports and the provision of answers to special inquiries of the Commission, with the assistance of all company staff. The official appointment of said person by EPS Distribucija’s CEO should follow the enactment of the Commission decision on the suspension of proceedings;
3. to start, forthwith, to regularly report to the Commission on any planned amendments to the Rules of operations so that the Commission could provide its commentaries to the draft amendments, in order to avoid any potential prevention, restriction, or distortion of competition;

4. to submit to the Commission, within 7 business days from the date of entering into agreements, any future access agreements entered by EPS Distribucija with licensed/authorized suppliers that govern relationships in connection with the electricity distribution system access.

The proposed commitments and related monitoring will apply for a period of 2 years.

All interested parties are herewith invited to provide written observations, positions and opinions on the Commitment proposal offered by company EPS Distribucija, no later than 20 days from the date of publication of the notice to the following address: Commission for Protection of Competition, 25 Savska St., IV Floor, 11000 Belgrade.

The submissions used to file observations, positions and opinions should contain a note referencing said contributions to the published Commitment proposal offered by company EPS Distribucija.

The observations, positions and opinions may be also submitted electronically during the same period, to the email address: office.kzk@kzk.gov.rs.

The Commission is not legally obligated to accept commitment proposals that a party is voluntarily willing to undertake.

If based on the analysis of any observations, positions and opinions submitted within the prescribed time period and conducted inquiry into market conditions the Commission establishes the likelihood of the fulfillment of the objection of a measure stipulated under Article 59 of the Law, achieved pursuant to the commitment proposal, it shall enact a conclusion establishing the measure for protection of competition based on the offered proposal and suspend the proceedings. The Commission monitors, *ex officio*, the behavior of the party pursuant to the conclusion on the suspension of proceedings, while the proceedings may be resumed in the case of prevailing circumstances stipulated under Article 58(7) of the Law.

COUNCIL OF THE COMMISSION
FOR PROTECTION OF COMPETITION