



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

25/IV Savska St., Belgrade
Number: 4/0-02-542/2019-1
Date: June 11, 2019

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

CONCLUSION

- I PROCEEDINGS SHALL BE INITIATED** *ex officio* for the investigation of infringement of competition against undertakings: **MIKROLIFT SERVIS REMONT I MONTAŽA LIFTOVA I ELEKTRIČNIH UREĐAJA CVETKOVIĆ MIRKO PREDUZETNIK BABUŠNICA**, company number 50511537, with registered seat in Babušnica, 39 Boška Buhe St., and **SCLIFT2018 D.O.O. BABUŠNICA**, company number 21410284, with registered seat in Babušnica, 39 Boška Buhe St., whose legal representative is Saša Cvetković, in order to establish the existence of restrictive agreements within the meaning of Article 10 of the Law on Protection of Competition.
- II** All persons in possession of information, documents or other relevant facts that could contribute to the fact-finding in this proceeding are herewith invited to submit said evidence to the Commission for Protection of Competition to the address 25 Savska St., Belgrade.
- III** 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

On May 7, 2019, the Commission for Protection of Competition (hereinafter, the Commission) has received an initiative for the investigation of infringement of competition, alleging the anticompetitive conduct by companies MIKROLIFT SERVIS REMONT I MONTAŽA LIFTOVA I ELEKTRIČNIH UREĐAJA CVETKOVIĆ

MIRKO PREDUZETNIK BABUŠNICA, company number 50511537, with registered seat in Babušnica, 39 Boška Buhe St. (hereinafter, MIKROLIFT) and SCLIFT2018 D.O.O. BABUŠNICA, company number 21410284, with registered seat in Babušnica, 39 Boška Buhe St., whose legal representative is Saša Cvetković (hereinafter, SCLIFT), on the low-value public procurement market JNMV no. 09-2/2019 – Lift repair services, published by the General Hospital Pirot as the procuring entity (hereinafter, the Procuring entity). The Procuring entity has filed an initiative pursuant to Article 27 of the Public Procurement Law (Official Gazette of the RS 124/2012, 14/2015 and 68/2015) on the concern about the truthfulness of the Declarations of independent bid offered by the bidders.

The Commission has acquired a copy of all tenders presented in the public procurement JNMV no. 09-2/2019 from the Procuring entity, including the proof of fulfillment of both mandatory and supplementary participation requirements, minutes of bid opening, received requests for additional information and clarifications concerning the preparation of bids and related replies, and the report on expert evaluation of bids in the public procurement concerned.

Based on a detailed insight into all available documents, and in order to investigate the validity of claims from the initiative, the Commission has established that SCLIFT and MIKROLIFT have submitted their tenders individually and at the same time, on April 24, 2019, at 12:52 hours, which made them bidders in direct competition in the low-value public procurement JNMV no. 09-2/2019. Furthermore, the Commission has established that undertakings SCLIFT and MIKROLIFT have registered seats at the same address and that contact phone and facsimile numbers of both companies as indicated in the tender documents are identical, as well as that SCLIFT's legal representative was authorized by MIKROLIFT, as a direct competitor, to attend the bid opening on behalf of MIKROLIFT. Therefore, the Commission found reasonable grounds to believe that SCLIFT and MIKROLIFT as bidders have not acted independently in the public procurement concerned, i.e., have agreed on the requirements for their participation in the low-value public procurement JNMV no. 09-2/2019 – Lift repair services, thus infringing the competition by rigging the bidding process in the public procurement concerned. This type of behavior of undertakings in public procurements may represent a special form of restrictive agreements from Article 10 of the Law since it may represent a restrictive agreement between undertakings – competitors on the requirements for participation in public procurement procedures.

The provision of Article 10(1) of the Law on Protection of Competition (Official Gazette of the RS 51/2009 and 95/2013 – hereinafter, the Law) regulates that restrictive agreements are agreements between undertakings which as their object or effect have a significant restriction, distortion, or prevention of competition in the territory of the Republic of Serbia.

The provision of Article 10(2/1) of the Law stipulates that restrictive agreements may be contracts, certain contract provisions, express or tacit agreements, concerted practices, as well as decisions of associations of undertakings, which in particular, directly or indirectly, set the purchase or selling prices or other conditions of trade, while the

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

In view of the assessment of the fulfilment of conditions from Article 35(1) of the Law for the opening of proceedings *ex officio* in order to investigate the conduct in breach of national antitrust rules, pursuant to the provision of Article 35(2) of the Law, it is decided as in Paragraphs I and II of enacting terms herein.

Pursuant to the provision of Article 40(1) of the Law stipulating that conclusions on the opening of proceedings *ex officio* are to be published in the Official Gazette of the Republic of Serbia and on the website of the Commission, it is decided as in Paragraph III of enacting terms herein.

Instruction on legal remedy:

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

PRESIDENT OF THE COMMISSION

Dr Miloje Obradović