In the antitrust investigation proceedings initiated *ex officio* against a tobacco and tobacco products manufacturer, the Commission for Protection of Competition carried out a detail inquiry into the retail cigarette market. The results of the inquiry demonstrated that this market is characterized by a high degree of transparency due to the current regulatory framework since the tobacco product market in the Republic of Serbia is regulated in detail, causing a reduction in the intensity of competitive engagement which foremost relates to the price competition.

Pursuant to Article 22 in conjunction with Article 21(1/7) of the Law on Protection of Competition (Official Gazette of the RS 51/09 and 95/13), at the 209th session held on June 14, 2019, the Council of the Commission for Protection of Competition issues the following

**OPINION**

The current legal framework governing the cigarettes and tobacco products market is such as to create a high level of certainty for undertakings in terms of transparency and predictability of future behaviors between competitors, thus reducing the market uncertainty, and in particular, the price competition.

The inquiry carried out by the Commission for Protection of Competition into the cigarette market indicates that this market is highly concentrated and has characteristics of an oligopoly market. Thus, the case concerns a market with a small number of participants offering a very similar range of products.

The current regulatory framework governing the production and trade of cigarettes and other tobacco products consists, inter alia, of the Law on Tobacco¹ and the Excise Tax Law²,

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well as other accompanying bylaws. The cigarette price adjustments need to be officially published, while the sale of tobacco products at retail prices that differ from those fixed is not permissible. Pursuant to Articles 67 and 68 of the Law on Tobacco, manufacturers and importers of cigarettes and other tobacco products are required to define the retail prices of these products and to report them to the Administration Office before putting the tobacco products on the market, to be published in the Official Gazette of the Republic of Serbia. The publication must contain the name of tobacco products (goods), new retail prices and the date of applicability of such retail prices in order to ensure that the new prices are publicly available before entering into effect.

Having regard that cigarettes and other tobacco products are classified as so-called ‘excise goods’, Article 40f of the Excise Tax Law stipulates that the report, i.e. document establishing the retail prices must contain the date of applicability of such retail prices.

Based on the price fluctuation inquiry covering the period from 2013-2015, it is established that certain undertakings have published respective retail prices as far as several weeks in advance before entering into effect. In this way, their competitors were able to see the publicly published future prices and adjust their market behaviors in line with the expected business strategies of their rivals. This was noticed especially during 2015 when all undertakings increased their prices on three occasions by the same amount, at or about the same time (a few days in between), even irrespectively of the excise tax adjustments.

Consequently, the effect of the above-mentioned market characteristics is that undertakings active in this market are enabled to operate in line with regulations governing the field concerned, but which at the same time cause the reduction of the degree of competitive engagement (price competition) and competitive pressure, causing the full predictability in behaviors between competitors, both in terms of the new price levels and the date of respective applicability, leading to the coordination of undertakings and parallel behavior (acting in concert) even without an explicit agreement.

In the light of all the foregoing and to remedy the detected problems which may have an effect on the conditions of competition in the market, we hereby suggest to initiate the process of amending the Law on Tobacco and the Excise Tax Law, in conformity with your respective competences, to remove the obligation of undertakings to publish documents on establishing the retail prices in the Official Gazette of the RS, namely by:

- In Article 68(1) of the Law on Tobacco, to amend the provision by deleting the words: “as well as the document on determining the retail price from Article 67 Paragraph 1 of this Law”, and Paragraph 3 thereof to be deleted entirely;

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In Article 40f(4/5) of the Excise Tax Law, to amend the provisions by deleting the words: “and publish them in the Official Gazette of the Republic of Serbia, with the Administration’s consent given in writing.”;

If the obligation to report retail price adjustments to the Tobacco Administration is necessary for efficient fiscal policy and monitoring activities implemented by the Tobacco Administration, the effect of publishing the price lists and the date of applicability of respective retail prices remains unclear in terms of implementation of said measures and competences. By amending said articles, the authority would reduce the market transparency and predictability of behaviors of undertakings, thus enabling the competitive engagement in the interest of consumers as the ultimate beneficiaries.

If the proposed amendments cannot be implemented, constituting an overriding requirement capable of justifying an obligation to publish the new retail prices in the Official Gazette of the Republic of Serbia, undisclosed to the Commission, in that case, we propose the following:

- a precise definition of the time period from the moment of publication of the new retail prices in the Official Gazette of the Republic of Serbia and their implementation. In so doing, it should be ensured that the proposed time periods are not inadequately long, on the one hand, and to enable the preparation of all participants in the chain for their adequate implementation, on the other. Therefore, according to the Commission, it might be needed to conduct a comparative analysis of solutions adopted in some of the neighboring countries, and thereafter to set a time period not exceeding 7 days. The time period proposed is in line with the facts established in proceedings, identifying that within the time period proposed is feasible to make preparations for the price adjustments throughout the entire chain of distribution, from manufacturers/importers to retailers;

- publication of a price ceiling, and not of the precise, in nominal terms, i.e., fixed amount of the new prices.

According to the Commission for Protection of Competition, the interventions as proposed would enable the increased intensity of competitive engagement since the time periods for potential arrangements between mutual competitors would be reduced, also increasing the uncertainty in the market in terms of prices applied, aimed at avoiding uniform pricing as a result of price adjustments.