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COMMISSION FOR
PROTECTION OF COMPETITION

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MINISTRY OF CONSTRUCTION, TRANSPORT AND INFRASTRUCTURE

- Prof. Dr Zorana Mihajlović, Deputy Prime Minister and Minister –

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Subject: Opinion on the Draft Law on Amendments to the Law on Road Passenger Transport

On July 18, 2018, the Ministry of Construction, Transport and Infrastructure has submitted to the Commission for Protection of Competition, with a request for its opinion, the Draft Law on Amendments to the Law on Road Passenger Transport (hereinafter, the Draft).

Upon considering the material submitted, pursuant to Article 21(1/7) of the Law on Protection of Competition (Official Gazette of the RS, no. 51/09 and 95/13), at the 160th session held on July 25, 2018, the Council of the Commission for Protection of Competition issues the following

OPINION

With reference to the provisions of the Draft regulating the conditions for the provision of taxi transport services, we hereby underline the following:

- The provision of Article 4, paragraph 2 of the Draft stipulates that the Decision on approving taxi transport service (hereinafter, the Approval) is issued to a company or entrepreneur fulfilling the requirements in terms of seats, drivers, vehicles and business reputation. Furthermore, Article 5 of the Draft introduces a new Article 87a, which defines the requirement regarding the seat of the undertaking. Namely, this requirement is fulfilled by a company if it has its seat on the territory of the local self-government unit issuing the approval, whereas it is fulfilled by an entrepreneur if it has both its seat and domicile in the duration of at least 12 months on the territory of the local self-government unit issuing the approval.

We hereby recommend the deletion of the seat requirement. This is based on the fact that the introduction of this requirement would limit undertakings to provide taxi transport services only on the territory of a single local self-government unit, that is, the unit where the Approval is issued. This practically means that a taxi operator

holding the Approval for the city of Belgrade could not be granted an Approval for any other city. By removing the above-mentioned requirement, local markets would be opened up as the taxi operators would be able to exercise this profession in all places where they fulfill the remaining requirements and would be able to take part in a competitive race on those territories.

Furthermore, the seat requirement is determined differently for different types of undertakings. Namely, in the case of entrepreneurs, in contrast to companies, an additional restriction is envisaged, perceived by the Commission as unjustified, which consists of the domicile requirement in the duration of at least 12 months on the territory of a local self-government unit, in addition to the seat requirement. In such a way, certain undertakings are placed at a disadvantage and one legal form is favoured over another.

The aforementioned impedes the ability of business entities to pursue their professional activities and in particular, hinders market entry of potential competitors, whereas the reasons why this restriction may be indispensable have not been provided in the Explanatory Note of the Draft.

- In Article 6 of the Draft law, it is stipulated that an entrepreneur may provide taxi services by using only one taxi vehicle, where only he/she may operate the vehicle in question, while a company may provide taxi services with multiple taxi vehicles, where only one driver per vehicle is allowed. In such a way, the number of vehicles which participate in competition on the market may be restricted, to the detriment of consumers. Also, this solution determines the way of doing business for undertakings, by disabling them to independently make their own business decisions and implement different business models that could increase cost-effectiveness and efficiency of their operations, through utilization of a vehicle by several drivers (for instance, a vehicle could be used by two drivers working in two shifts, or other drivers fulfilling the necessary requirements for a taxi driver, in the event of absence of one driver due to illness). In that regard, we hereby propose to remove this restriction.
- Article 12 of the Draft introduces a new Article 91b, where it is prescribed, in paragraph 4, that a taxi operator is obligated to charge for services rendered the amount indicated on the taximeter at the end of the journey or the amount indicated on the receipt issued at the locations of special interest for a local self-government unit.

The legislator's intent behind this provision is clear, to protect passengers from paying higher prices for services rendered than those defined in the price-list. However, the provision formulated in this manner deprives taxi operators of the possibility to reduce prices by providing discounts (on various grounds, such as booking, quantity, frequency of service use, etc.). Bearing in mind that price competition is one of the forms of market competition, in the described manner, this form of competition is disabled and no benefits for the consumers are achieved.

In connection with the foregoing, the Commission hereby proposes that, in paragraph 4 of Article 91b, the wording “at most” be added after the wording “charge for services rendered”.

The acceptance of the proposed amendment is of paramount importance since it would mitigate adverse effects of implementation of the provision from Article 94, paragraph 7, which authorizes local self-government units to set and adjust taxi fares within their territory in their own decisions.

Also, by imposing an obligation to charge for services rendered in the amount indicated on the taximeter, the use of other technologies for the calculation of transport fares is disabled, which restricts the market, as well as technological development and innovations to the detriment of consumers.

- Article 15 of the Draft supplements Article 94 by stipulating that a local self-government unit enacts a program which defines the organization of taxi transport, including the determination of the optimal number of taxi vehicles. Pursuant to the said program, a local self-government unit then adopts an act stipulating the exact number of vehicles for the performance of taxi transport. If such a program is not enacted, the Draft envisages a methodology for calculating the permitted number of vehicles.

One of the fundamental principles of competition law and policy is free access to markets for every undertaking, which fulfills the requirements for the exercise of a profession, so that those undertakings could compete on the price and quality offered, in the interest of the consumers. In that regard, we hereby underline that limiting the number of taxi vehicles represents an unjustified restriction of competition and propose the deletion of those provisions.

Within the same article, it is also envisaged that a local self-government unit, in its decision, sets and adjusts the mandatory taxi fares applicable within its territory. By way of such a decision, the price-list for taxi transport services is set, specifying the prices of taxi services per km of journey, start, minute of waiting, pick-up service and transport of luggage per piece, as well as the fixed price of journey from the location of special interest to the local self-government unit. In such a way, the applicable fares for all service providers within a given territory are set, thus eliminating price competition between them, as one of the more prominent forms of competition.

On the market observed, a certain form of price control may be justified since there is an objective reason to protect consumers from excessive prices, particularly consumers lacking access to full information on taxi transport (for example, foreigners) or those to whom this is the only viable transportation option (for example, persons with disabilities). Such an objective can be achieved in a less restrictive manner, by setting the maximum fares which may be charged by the taxi operators.

Furthermore, the Commission hereby proposes that all local self-government units use identical price components when setting the base fare for taxi services. Acknowledging the specificities of local self-government units, which could potentially justify the differences in fares between various municipalities, certain corrective factors may be set (based on, for instance, the level of taxation or personal income of citizens) relating to a specific local self-government unit, which would serve to adjust the base price. This proposal is made in order to avoid a situation where various local self-government units set different prices for particular taxi services (for example, start price) without a cost-based or some other kind of objective justification.

With reference to the provisions of the Draft regulating the *conditions for the provision of Limousine services*, we hereby underline the following:

In general, the regulation and prescription of requirements for the exercise of any kind of profession is not in contravention of competition rules, but the imposition of unjustified restrictions distorts the state of competition on the market.

This part of the Draft envisages numerous new requirements for the exercise of this profession (for example, technical requirements for vehicles, hiring for tourism purposes only, duration of journey of minimum three hours, requirements in respect of entrepreneurs or drivers, mandatory non-cash payment, etc.), which may significantly restrict competition on this market, primarily to the detriment of the Limousine service customers.

In the explanatory note to the Draft, it is stated: “The provisions presented in the Draft law will have a positive influence on domestic operators providing public road passenger transport services since they will foremost **maintain the current, that is, established volume of transport services**, given that the share of gray economy manifested in illegal taxi and limousine services will be significantly reduced”. This implies that the objective of amendments is to protect the current undertakings operating on the taxi transport market, and that the intent is to maintain status quo, thus establishing administrative barriers to entry in this market, which leads to significant prevention, restriction and distortion of competition.

By failing to create conditions for the opening of markets to alternative types of passenger transport, undertakings already active on the said market do not have incentives to further improve their services, while consumers are faced with a reduction in choice and less qualitative services provided at higher prices.

With regard to *the transitional and final provisions*, we hereby underline the following:

In Articles 36 and 37, it is stipulated that taxi drivers and vehicles operating on the date of entry into force of the Law fulfil all requirements for the exercise of the taxi profession. In such a manner, all undertakings not operating at the time of entry into force of the Law are placed in a less favorable position since they must fulfill all requirements envisaged by the law for the exercise of the taxi profession, whereas the fulfillment of those requirements by the current taxi operators is acknowledged, without verification. In this manner, the current (existing) state of affairs is maintained, while the entry of new undertakings on the market is hindered. Also, the Draft fails to stipulate a criterion (manner and order) of granting approval

for the exercise of taxi transport in the case when it is necessary to fill the number of vehicles up to the envisaged number.

Based on all of the above, we believe that it is necessary to amend the Draft so as to eliminate the identified shortcomings and restrictions of competition, and finally, align the Draft with competition rules.

Taking into account the technical and technological developments up to date, as well as the existence of various needs of passengers (such as, for example, booking of services at a pre-defined time, door-to-door services, prepaid services, time slot booking, etc.), we hereby propose to you to consider the option of prescribing non-discriminatory requirements for the exercise of this kind of transport by passenger vehicles, as well, which could satisfy the specific needs of different customers. In this way, the opening of markets and competitive ability of all undertakings would be enabled for the benefit of consumers.