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Republic of Serbia
Commission for Protection of Competition

REPORT
ON THE SECTOR INQUIRY INTO COMPETITIVE
CONDITIONS ON THE TOUR OPERATORS MARKET
2017-2019¹

December 2020

¹ The Inquiry also provides data for 2020, primarily concerning the regulatory framework due to regulatory changes introduced therein in 2020-Q4, including certain tabular data for the incomplete 2020-Q1, obtained in a survey carried out before the introduction of the state of emergency in March 2020.

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I INTRODUCTION

The Commission for Protection of Competition (hereinafter, the Commission), under Article 47 of the Law on Protection of Competition („Official Gazette of the RS”, Nos. 51/2009 and 95/2013 – hereinafter, the Law) has launched a sector inquiry into competitive conditions on the tour operators market. Tour operators have filed several antitrust complaints before the Commission sharing their views on the issues and distortions on the market, which constituted one of the reasons to conduct this sector inquiry.

1. SUBJECT-MATTER AND PURPOSE OF THE RESEARCH

The subject-matter of the research was to establish the relationship between market competitors - tour operators, which implies the assessment of their market shares and relative power, including the analysis of (contractual) relations between tour operators and travel guarantee providers.

The main purpose of the research concerns identification of structural inadequacies of the market concerned and potential issues in terms of intensifying competition, restriction, or any other form of distortion or prevention of competition that might affect undertakings.

2. RELEVANT LEGAL AND METHODOLOGICAL FRAMEWORK

The relevant regulations governing tourism activity include the following:

- Law on Tourism (“Official Gazette of the RS”, No. 17/19);
- Rulebook on the type, amount and terms and conditions of travel guarantee, deposit limits based on tourism license categories, calling on and use of guarantee funds, and other mandatory terms and conditions for tour operators, applicable as from 17 October 2020 (“Official Gazette of the RS”, Nos. 124/20 and 137/20), hereinafter, the New Travel Guarantee Rulebook;
- Rulebook on the type, amount and terms and conditions of travel guarantee, deposit limits based on tourism license categories, calling on and use of guarantee funds, and other mandatory terms and conditions for tour operators (“Official Gazette of the RS”, No. 81/19), the basic text entered into force on 23 November 2019, applicable as from 1 January 2020 (hereinafter, the Travel Guarantee Rulebook);

- Rulebook on amendments to the Rulebook on terms and conditions for classification of travel agent licenses by categories, method of administration of license categories, content of requests for issuance and renewal of licenses, and terms and conditions for issuance of solemn form of licenses, applicable as from 14 November 2020 (“Official Gazette of the RS”, Nos. 81/19 and 137/20), hereinafter, the Travel License Rulebook;
- Rulebook on terms and conditions of travel arrangement sales proceeds, methods of regulating mutual relationships between tour operators and intermediaries, and relationships between tour operators and intermediaries towards passengers (“Official Gazette of the RS”, No. 91/16);
- Rulebook on amendments to the Rulebook on the content of the Register of Tourism and registration documents and record-keeping requirements (“Official Gazette of the RS”, No. 81/19).

Also, invalid legislation of significance in the inquiry and relevant for the establishment of dynamics when creating market relations, positions and rules of operation, include the following:

- Law on Tourism (“Official Gazette of the RS”, Nos. 36/09, 88/10, 99/11 – as amended, 93/12, 84/15 and 83/18 – as amended, ceased to have effect: 17/19);
- Rulebook on the type and terms and conditions of travel guarantee, calling on guarantee funds and other requirements for tour operators depending on the type of travel arrangements (“Official Gazette of the RS”, No. 38/11, ceased to have effect: 50/12);
- Rulebook on the type and terms and conditions of travel guarantee, calling on guarantee funds and other requirements for tour operators depending on the type of travel arrangements (“Official Gazette of the RS”, Nos. 50/12, 44/13, ceased to have effect: 2/16);
- Rulebook on the type and terms and conditions of travel guarantee, calling on guarantee funds and other requirements for tour operators depending on the type of travel arrangements (“Official Gazette of the RS”, No. 2/16, ceased to have effect: 81/19).

Other regulations relevant in the inquiry include the following:

- Insurance Law (“Official Gazette of the RS”, No. 139/14);
- Law on Contracts and Torts (“Official Gazette of the SFRY”, Nos. 29/78, 39/85, 45/89 – CCY decision and 57/89, “Official Gazette of the FRY”, No. 31/93, and the “Official Gazette of the SM”, No. 1/2003 – Constitutional Charter);

- Law on the National Bank of Serbia (“Official Gazette of the RS”, Nos. 72/2003, 55/2004, 85/2005 – as amended, 44/2010, 76/2012, 106/2012, 14/2015, 40/2015 – CC decision, and 44/2018).

The temporal coverage of the inquiry refers to a three-year period (2017, 2018, and 2019). The inquiry also covered the period of validity of new tourism regulations of January 2020 and certain incomplete 2020-Q1 data obtained from undertakings before the introduction of the state of emergency in March 2020.

Having regard to the amendments to relevant regulations adopted during the drafting of the inquiry, the time period up to 3 December 2020 is also covered in so far as it concerns the regulatory framework in force as of 17 October and 14 November 2020.

The main sources of data are the data provided to the Commission on the part of:

- Business Registers Agency (hereinafter, BRA), in charge of keeping the Register of Tourism;
- Ministry of Trade, Tourism and Telecommunications of the Republic of Serbia - Department of Tourism (hereinafter, the Ministry);
- National Bank of Serbia (hereinafter, NBS);
- non-life insurance companies;
- National Association of Travel Agencies PU „JUTA“ Beograd (hereinafter, PU “JUTA” Beograd), as the policyholder in a number of contracts;
- undertakings operating on the tour operators market;
- other publicly available information.

The inquiry included undertakings active on the market that are registered under the Standard Industrial Classification code **7911 - Travel agency activities** and **7912 - Tour operator activities**, entered into the Register of Tourism, while excluding the travel agencies specialized in airline ticket sales. The Commission forwarded requests for the provision of information to 44 travel agencies, selected by using the stratified sampling method. The sample included travel agencies that are members of various professional associations (PU “JUTA” Beograd, Association of Serbian Travel Agencies – UTAS, Association of Independent Travel Agencies of Serbia – ANTAS), as well as travel agencies that are not members of any travel association.

The research was conducted by using a combination of the desk (secondary research) method, primarily relating to the analysis of the relevant legal framework, and the field research

(questionnaire) method. All obtained data (primary and secondary) are grouped, processed and presented in tabular and chart form with numeric values.

II STRUCTURE OF THE TOUR OPERATORS MARKET

The analysis of the structure of the tour operators market in 2017, 2018 and 2019 was carried out based on turnover data.

The tour operators market in 2017 included 447 active undertakings with around 9.4 bn dinars in turnover. The list of top ten undertakings by market share, measured as a percentage of the industry's total turnover in 2017, is given in Table 1 below:

Table 1 – Overview of the top ten undertakings, 2017

No.	Business name	Market share
1	KOMPAS TOURISM & TRAVEL DOO NOVI SAD	/5-10/%
2	1 A TRAVEL DOO BEOGRAD	/5-10/%
3	FANTAST TOURIST DOO NOVI SAD	/0-5/%
4	ARGUS TOURS DOO BEOGRAD	/0-5/%
5	BIG BLUE GROUP DOO BEOGRAD	/0-5/%
6	VLADIMIR GLIŠIN PR, TURISTIČKA AGENCIJA HELLENA TRAVEL, NIŠ	/0-5/%
7	S.A.B. TRAVEL DOO	/0-5/%
8	ROYAL TOURS DOO	/0-5/%
9	ELONS TOURS AD ZA TURIZAM NOVI SAD	/0-5/%
10	MONDORAMA DOO NIŠ	/0-5/%

Source: Calculations based on the Register of Tourism data

Based on the data given in Table 1, it can be noted that the market share of the top ten undertakings in the total industry's turnover in 2017 reached /30-40/%. The biggest travel agencies by market share in 2017 were Kompas Tourism & Travel doo Novi Sad, and 1 A Travel doo Beograd with a /5-10/% share each, followed by Fantast Tourist doo Novi Sad with a /0-5/% market share. The market shares of other undertakings included in the top-ten list varied in the /0-5/% range.

The number of active undertakings on the market concerned in 2018 reached 467, generating around 11.1 bn dinars in turnover. The list of top ten undertakings by market share, measured as a percentage of the industry's total turnover in 2018, is given in Table 2 below:

Table 2 – Overview of the top ten undertakings, 2018

No.	Business name	Market share
1	1 A TRAVEL DOO BEOGRAD	/10-20/%
2	KOMPAS TOURISM & TRAVEL DOO NOVI SAD	/5-10/%
3	BARCINO TOURS DOO VRNJAČKA BANJA	/5-10/%
4	FANTAST TOURIST DOO NOVI SAD	/0-5/%
5	VLADIMIR GLIŠIN PR, TURISTIČKA AGENCIJA HELLENA TRAVEL, NIŠ	/0-5/%
6	ROYAL TOURS DOO	/0-5/%
7	ARGUS TOURS DOO BEOGRAD	/0-5/%
8	BIG BLUE GROUP DOO BEOGRAD	/0-5/%
9	KONTIKI TRAVEL & SERVICE DOO BEOGRAD	/0-5/%
10	MONDORAMA DOO NIŠ	/0-5/%

Source: Calculations based on the Register of Tourism data

Based on the data given in Table 2, it can be noted that the market share of the top ten undertakings in the total industry's turnover in 2018 reached /30-40/%. The biggest travel agencies by market share in 2018 were 1 A Travel doo Beograd (/10-20/%) and Kompas Tourism & Travel doo Novi Sad (/5-10/%), followed by Barcino Tours doo Vrnjačka Banja with the market share of /5-10/%. The market shares of other undertakings included in the top-ten list varied in the /0-5/% range.

Based on the data provided by undertakings included in the sample and available data from the previous period, the Commission assessed the 2019 turnover level in view of the fact that annual financial statements of all undertakings have not been publicly available at the time of drafting this part of the inquiry. On the market under the analysis, 387 undertakings active in 2019 have generated, based on the estimates, around 12.1 bn dinars in turnover.

The list of top ten undertakings included in the sample by market share, measured as a percentage of the industry's total turnover in 2019, is given in Table 3 below:

Table 3 – Overview of the top ten undertakings, 2019

No.	Business name	Market share
1	1 A TRAVEL DOO BEOGRAD	/10-20/%
2	KOMPAS TOURISM & TRAVEL DOO NOVI SAD	/5-10/%
3	BARCINO TOURS DOO VRNJAČKA BANJA	/0-5/%
4	ROYAL TOURS DOO	/0-5/%
5	FANTAST TOURIST DOO NOVI SAD	/0-5/%
6	ARGUS TOURS DOO BEOGRAD	/0-5/%
7	VLADIMIR GLIŠIN PR, TURISTIČKA AGENCIJA HELLENA TRAVEL, NIŠ	/0-5/%
8	BIG BLUE GROUP DOO BEOGRAD	/0-5/%
9	KONTIKI TRAVEL & SERVICE DOO BEOGRAD	/0-5/%
10	FILIP TRAVEL DOO BEOGRAD	/0-5/%

Source: Calculations based on the Register of Tourism data

Based on the data given in Table 3, it can be noted that the market share of the top ten undertakings in the total industry's turnover in 2019 reached /40-50/%. The biggest travel agencies by market share in 2019 were 1 A Travel doo Beograd (/10-20/%) and Kompas Tourism & Travel doo Novi Sad (/5-10/%), followed by Barcino Tours doo Vrnjačka Banja with the market share of /0-5/%. The market shares of other undertakings included in the top-ten list varied in the /0-5/% range.

By comparing the number of tour operators in all three years, it can be noted that the number has reduced in 2019 relative to 2018. In this regard, a reply provided by one of the sampled undertakings should be mentioned, in which the interviewee said that following the receipt of an

unacceptable offer by the insurance company Triglav and the explanation stating that “the offer is only valid for agencies renewing the insurance policies” by the insurance company Milenijum, the company abandoned the plans to file for the issuance of a new tour operators license in early 2020 and re-registered as an intermediary or subagent.

III PRE-EXISTING REGULATORY FRAMEWORK AND ANALYSIS OF CONTRACTUAL RELATIONS

Under the Law on Tourism, travel agencies can perform the activities of tour operators or intermediaries, i.e., subagents. To pursue professional activities as a tour operator, business entities must obtain a travel license, i.e., ensure the provision of appropriate travel guarantees necessary for the organization of tourist travels, including school excursions. To perform the subagent activities, undertakings require no license.

The competent authority is the Ministry, while the Minister in charge of trade, tourism and telecommunications adopts all licensing rules, including the amount of minimal travel guarantees.

Under Article 57 of the Law on Tourism, to obtain a travel license, an applicant must make a bank deposit in the stipulated amount based on the license category and hold the prescribed travel guarantee in case of insolvency insurance and professional indemnity insurance claimed by passengers for failure to fulfill, partial performance, or defective performance of contractual obligations (hereinafter, the travel guarantee).

Under the Travel Guarantee Rulebook valid until October 2020, banks or insurance companies, i.e., policyholders, could act as travel guarantee providers.

A bank guarantee is a guarantee agreement and a type of collateral warranty that provides security to the guarantee beneficiary. Under the pre-existing regulatory framework, bank guarantees are negotiated and agreed upon by tour operators and banks.

An insurance policy is a primary legal contract governing rights and obligations between the parties in the contract of insurance. The policyholder is a business entity or legal person that concludes a contract of insurance, signs the insurance policy or cover note with the insurance provider, and is required to pay the insurance premium.

Concerning the reasons for the amendments to laws and regulations governing tourism, the Ministry provided information stating that given the Directive (EU) 2015/2302 of 25 December 2015, regulations of the neighboring tourist countries, and the level of development of the tourism and hospitality industry in the Republic of Serbia, favorable conditions have been created for the systematic regulation of the tourism sector by way of two laws – Law on Tourism and the Law on Hospitality.

The Law on Tourism was created as a result of an analysis of market conditions and mapping of critical problems faced by undertakings on the tour operators market and other entities whose business activity indirectly concerns the tourism industry. The Law on Tourism is harmonized with the Law on Inspection Oversight (“Official Gazette of the RS”, Nos. 36/15, 44/18 – as amended, and 95/18), Law on General Administrative Procedure (“Official Gazette of the RS”, Nos. 18/16 and 95/18 – authentic interpretation), and the Law on Consumer Protection (“Official Gazette of the RS”, Nos. 62/14, 6/16 – as amended, and 44/18).

The basis for determining the value of travel guarantee and deposit limits was the category of tourism license, specified based on the number of passengers for whom the tour operator has realized tourist travels in the last 12 months, calculated from the date of submission of the tourism license request. Depending on the number of passengers, tourism licenses are ranked in four categories:

- category A 20 license, up to 1,000 passengers;
- category A 25 license, from 1,001 to 5,000 passengers;
- category A 35 license, from 5,001 to 10,000 passengers;
- category A 40 license, more than 10,001 passengers.

Depending on the license category, the prescribed deposit limits are set in the minimum amount of:

- 2,500 euros for the category A 20 license;
- 5,000 euros for the category A 25 license;
- 7,500 euros for the category A 35 license;
- 10,000 euros for the category A 40 license.

The deposits are held in RSD accounts of the tour operators’ banks, in a dinar-currency equivalent value calculated at the middle exchange rate of the National Bank of Serbia. Tour operators can use the funds during a month for regular transactions but are obligated to have the funds deposited on the last day of the current month.

The total cover limit is the amount that can be used for payments on claims of all beneficiaries of the issued travel guarantee per an insured event. The maximum cover limit is agreed upon by the travel guarantee provider and the tour operator. Depending on the tourism license category, the total cover limit based on the license category is set to be at least:

- 200,000 euros for the category A 20 license;

- 250,000 euros for the category A 25 license;
- 350,000 euros for the category A 35 license;
- 400,000 euros for the category A 40 license.

Under a decision valid until 2019, only one level of the license category with a guarantee of at least 300,000 euros was prescribed, while the decision from 2016 envisaged the minimum guarantee of 30,000 euros. The baseline for setting the value of travel guarantees by license categories was the amount of 300,000 euros, stipulated under the previous rulebook as a single value for all tour operators regardless of their volume of operations.

The Travel Guarantee Rulebook also envisaged the mandatory records of sold tourist travels, as well as an obligation of travel agencies to inform passengers of the access to software app for checking the accuracy of information from the issued confirmation on travel guarantee.

1. INSURANCE POLICY AS TRAVEL GUARANTEE

At the end of 2019, 20 (re)insurance companies operated in the Republic of Serbia. From the total number of insurers, 16 were engaged in the business of insurance, of which four insurers were engaged exclusively in life insurance, six companies performed exclusively non-life insurance, and six insurers were engaged in both life and non-life insurance. Four companies were engaged exclusively in the business of reinsurance².

Insurance policy for damage liability of tour operators – travel guarantee insurance, is a type of non-life insurance policy. According to NBS data, 5 out of 12 non-life insurance companies have offered the insolvency insurance and professional indemnity insurance claimed by passengers in 2017 and 2018, namely: DDOR Novi Sad a.d.o. Novi Sad (hereinafter, DDOR), Dunav osiguranje a.d.o. Beograd (hereinafter, Dunav), Milenijum osiguranje a.d.o. Beograd (hereinafter, Milenijum), UNIQA neživotno osiguranje a.d.o. Beograd (hereinafter, UNIQA), and Wiener Städtische osiguranje a.d.o. Beograd (hereinafter, Wiener).

Based on the Commission's request, NBS provided information on the number of concluded insurance contracts, average premium, and the total amount of settled damages in 2017 and 2018 for the Republic of Serbia, while the 2019 data were not available at the time of providing information.

² The business of reinsurance includes the conclusion and implementation of reinsurance contracts where the excess per insurance risk that sits above a self-insured retention of an insurance company is transferred to reinsurance.

NBS has not provided information on policyholders because, as outlined, they are not covered by the regular reporting obligation placed on insurance companies.

Overview of the number of concluded insurance contracts, average premium, and the total amount of settled damages in 2017 and 2018, based on NBS data, are given in Table 4:

Table 4 - Number of concluded insurance contracts, average premium, and the total amount of settled damages in 2017 and 2018

Year	Number of insurance contracts	Total insurance premium (in 000 RSD)	Average premium (in RSD)	Settled damages (in 000 RSD)
2017	783	83,459	106,589	7,287
2018	740	70,825	95,709	131,328

Source: NBS

Under the Decision on amendments to the Decision on reporting of insurance/reinsurance companies (“Official Gazette of the RS”, No. 88/2019), as of the validity date set on 31 December 2019, data on the insolvency insurance of tour operators and professional indemnity insurance claimed by passengers, depending on the covered risk, are shown under the tariff ‘insolvency insurance of tour operators’ and ‘liability insurance of travel agencies’. Based on the report titled “Number of insurances, insured parties and premiums by type of insurance and tariff”, available on the NBS website, it is established that the number of insolvency insurances of tour operators in 2019 reached 549 with the total insurance premium of 230,106 thousand dinars, while the number of liability insurances of tour operators reached 134 with the total insurance premium of 7,475 thousand dinars.³

As mentioned earlier, of 12 non-life insurance companies, five to six companies, based on a year point, have offered the services of insolvency insurance and professional indemnity insurance claimed by passengers in the reporting period. Table 5 gives an overview of the insurance companies offering the above-mentioned insurance, with the number of concluded insurance policies.

Table 5 – Number of concluded liability insurance policies of tour operators

³ https://www.nbs.rs/export/download/osg-izv-y/god_T1_2019.pdf accessed on 9 July 2020.

[...]

Source: Insurance companies' data

The amount of invoiced premiums and claims paid by companies, provided by the insurance companies, are given in Table 6:

Table 6 – Amount of invoiced premiums and claims paid by insurance company, 2017-2020

[...]

Source: Insurance companies' data

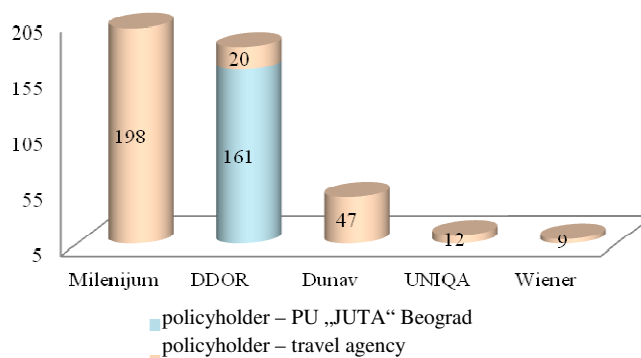
* for the first two months

** premiums of individual tour operators given in Euro currency are presented in the Serbian Dinar (RSD) currency, calculated at the average middle exchange rate of NBS for a given year. The FX exchange rate for 2020 indicative on 28 February 2020 applied.

The data given in Table 6 indicate that the total premium by this type of insurance increased 3.5 times in 2019 compared to 2018. In terms of damage claims, other than DDOR in 2018, the rest of the insurance companies had no major events in the reporting period. In late June 2018, one major insurance event occurred when the travel agency SAB Travel canceled 2,249 travel arrangements, causing damage to around 6,000 passengers. The damage claim was valued at around 600,000 euros, which accounted for around 30% of SAB Travel's turnover in 2017. The amount of damage claim exceeded many times over not only the DDOR's premium but also the total premium of all insurance companies.

An overview of the number of travel guarantees or valid insurance policies by insurance company in 2017, based on data provided by BRA, is given in Figure 1:

Figure 1 – Number of valid insurance policies, 2017

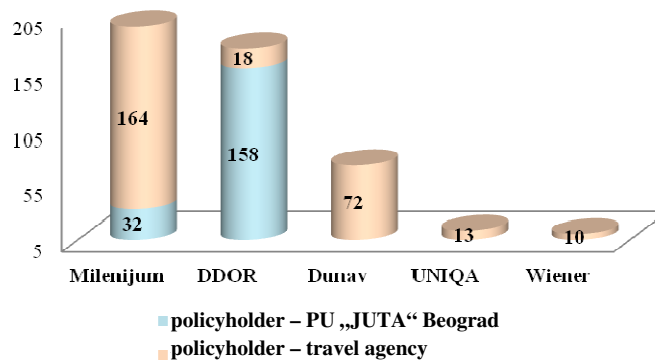


Source: Register of Tourism

Based on data from Figure 1, it can be noted that five insurance companies had the concluded insurance policies in their insurance portfolio in 2017 envisaged under the Law on Tourism. The largest number of valid insurance policies in 2017 are issued by two insurance companies – Milenijum (198) and DDOR (181). Also, data shows that PU “JUTA” Beograd was the policyholder for 161 travel agencies with insurance coverage at DDOR.

The number of travel guarantees or valid insurance policies by insurance company in 2018, based on data provided by BRA, is given in Figure 2:

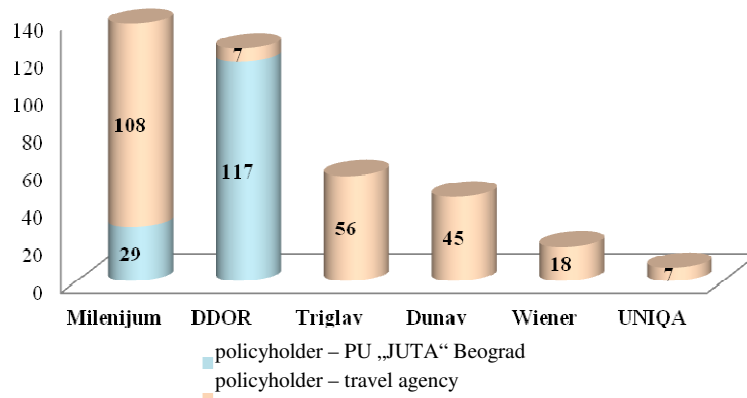
Figure 2 – Number of valid insurance policies, 2018



Source: Register of Tourism

Based on data from Figure 2, it can be noted that five insurance companies had the concluded insurance policies in their insurance portfolio in 2018 also, envisaged under the Law on Tourism. The largest number of valid insurance policies are issued by two insurance companies – Milenijum (196) and DDOR (176). Also, data shows that PU “JUTA” Beograd was the policyholder for 32 travel agencies with insurance coverage at Milenijum and 158 travel agencies with insurance coverage at DDOR.

An overview of the number of travel guarantees or valid insurance policies by insurance company in 2019, based on data provided by BRA, is given in Figure 3:

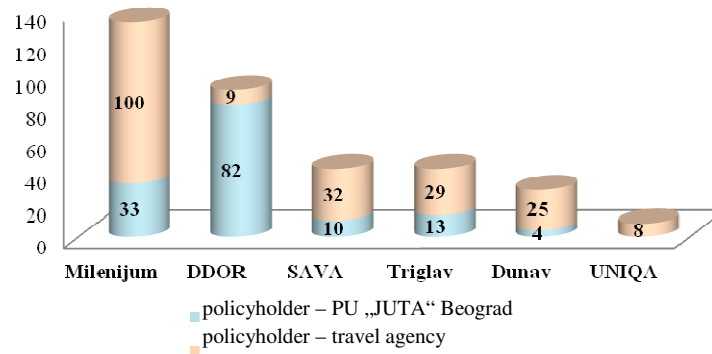
Figure 3 – Number of valid insurance policies, 2019

Source: Register of Tourism

Based on data from Figure 3, it can be noted that six insurance companies had the concluded insurance policies in their insurance portfolio in 2019 envisaged under the Law on Tourism. The largest number of valid insurance policies are issued by two insurance companies – Milenijum (137) and DDOR (124). Also, data shows that PU “JUTA” Beograd was the policyholder for 29 travel agencies with insurance coverage at Milenijum and 117 travel agencies with insurance coverage at DDOR.

Looking at the information on the number of insolvency insurance policies and professional indemnity insurance policies claimed by passengers based on data provided by BRA, insurance companies, PU “JUTA” Beograd, as well as information on the total number of insurance policies in 2017 and 2018 provided by NBS, the Commission noted certain discrepancies. The discrepancies occurred because the sector inquiry considered only tour operators registered under the Standard Industrial Classification codes 7911 and 7912, including the different periods observed (data based on calendar or contract year). Also, it is established that in mid-2019 a number of insurance policies concluded with the insurance company Triglav have been switched with the insurance policies concluded with the insurance company Milienijum.

The Register of Tourism also provided information on the number of tour operators that have secured a rank-based license by 29 February 2020 under the new regulations. An overview of the number of travel guarantees or valid insurance policies by insurance company that are concluded by October 2020, based on data provided by BRA, is given in Figure 4:

Figure 4 – Number of valid insurance policies, 2020

Source: Register of Tourism

Based on data from Figure 4, it can be noted that six insurance companies had the concluded insurance policies in their insurance portfolio by 29 February 2020 envisaged under the Law on Tourism. The largest number of valid insurance policies are issued by two insurance companies – Milenijum (133) and DDOR (91). Also, data show that, unlike in previously observed periods, PU “JUTA” Beograd was the policyholder with all insurance companies, except UNIQA. According to information provided by one undertaking, from early February 2020, travel agencies have switched the insurance policies agreed with various insurers and entered into the BRA Register of Tourism in late January 2020 with the insurance policies concluded with Milenijum, owing to far more favorable policy costs.

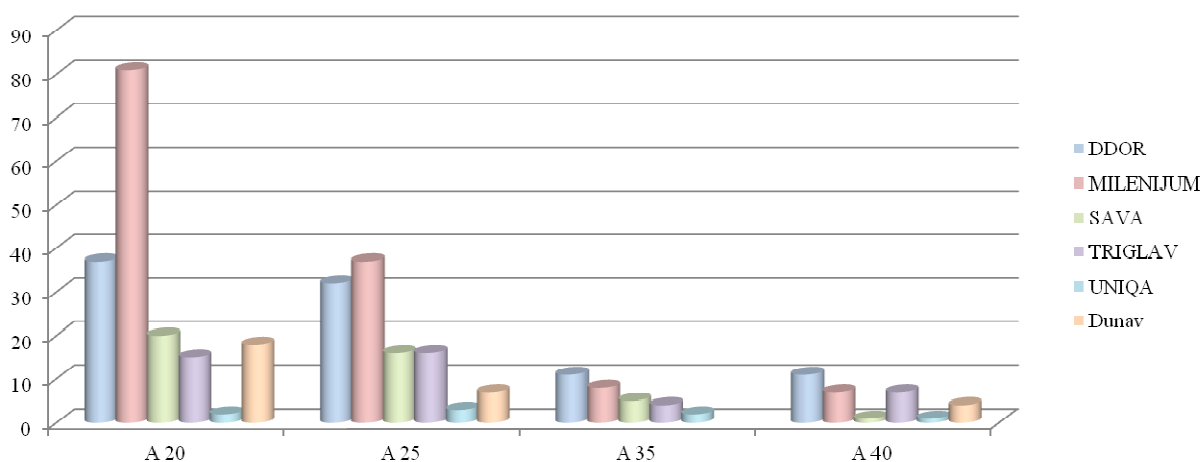
The insurance company Wiener stopped providing this kind of insurance in 2020, citing the publishing of a new rulebook and the inability of this company to secure the necessary reinsurance coverage as reasons. The Commission noted with extreme concern this statement made by Wiener given the reducing number of undertakings on the supply side, which was already relatively limited. On the other hand, the insurance company Sava, after it has stopped providing this sort of insurance in 2015 when the company found the market conditions at the time to be unfavorable, has started reoffering this kind of insurance policy in 2020 envisaged under the Law on Tourism.

In the Commission’s view, it is important to identify the reasons that keep other insurance companies away from offering this kind of insurance in order to assess whether there are objective commercial justifications behind them. Based on replies provided by the surveyed insurance companies, the Commission assumes that the inability to secure reinsurance coverage and the complexity of the introduction of a new type of insurance in their insurance portfolio -

and for a relatively small number of potential policyholders, are potential reasons for such business decisions of insurance companies.

The risk dispersion or an overview of the number of travel agencies with various categories of license is given in Figure 5:

Figure 4 – Number of travel agencies by category of license/insurance companies, 2020



Source: Calculations based on information from the Register of Tourism

Based on data from Figure 5, it can be noted that five out of six insurance companies had concluded insurance policies with undertakings under this analysis, with licenses ranked in all four categories (A 20, A 25, A 35, A 40). The insurance company Dunav its insurance portfolio had no insurance policies concluded with travel agencies holding the A 35 license category. Most travel agencies (81) with the A 20 license category had the insurance coverage with Milenijum, while the majority (11) of travel agencies with the A 40 license category had the insurance policies issued by DDOR.

Also, data from Figure 5 show that out of the total number of tour operators with the rank-based license secured by 29 February 2020, most of them (173) had the A 20 license category, followed by 111 tour operators with the A 25 license category, 30 tour operators with the A 35 license category, and 31 tour operators with the A 40 license category.

Concerning the highest amount of 400,000 euros, the Ministry said it represents the maximum amount of the cover limit for which the insurance companies are willing to provide coverage given that it represents a potential business risk for which they find it difficult to secure the reinsurance.

Based on the obtained data, the Commission established, as indisputable, the fact that the insurance premium increased 3.5 times in 2019 on the previous period. In an attempt to analyze the reasons and justifications behind such an increase in the insurance premium costs, the Commission can only safely conclude that the increase in insured sums laid down by the Ministry can only be one of the reasons for the increase in insurance premiums, although it cannot fully justify it. Other reasons, which only can be assumed, the Commission was not able to ascertain during the analysis since such an assertion would be the subject of potential investigation proceedings instituted ex officio. Based on all other findings that the Commission has obtained during the inquiry concerned, primarily owing to a relatively small number of insurance companies offering this sort of insurance service, the manner in which the records are kept and other circumstances, and especially considering the fact that the insurance premiums are essentially identical - while also noting that the premium baseline is identical for all insurance companies, the Commission was not able to exclude with sufficient certainty that such an increase in insurance premiums is partly the result of coordination and/or collusion between insurers. In that regard, the Commission expresses serious concern that, if under a potential investigation procedure instituted ex officio such a type of cooperation and coordination between insurance companies would be established, it would represent an infringement of competition within the meaning of competition regulations.

2. POLICYHOLDER IN THE ISSUANCE OF TRAVEL GUARANTEES

Data from the Register of Tourism showed that during the reporting period, the only policyholder in cases where the insured and policyholder are not the same entity, within the meaning of the Travel Guarantee Rulebook, was PU “JUTA” Beograd.

There are two types of membership in PU “JUTA” Beograd – full and associate membership.

The full members can be legal and natural persons pursuing the agency activity, namely the following: organization and implementation of tourist travels in country and abroad; offers, sales and brokerage of sales of tourist travels; organization of passenger handling; organization of excursions, tourist sightseeing, entertainment programs and alike, including the brokerage of event, fair, manifestations and sports event management; provision or brokerage of tour guide, tour escorts, local tour guides and tour animator services, acquisition of travel documentation, reservation and sales of travel tickets in the name and on behalf of national and foreign carriers; reservation and sales of travel, hospitality and other services related to the travel and stay of

passengers; brokerage of rentals of rooms and other accommodation facilities owned by natural persons; brokerage of sales of specific travel services: brokerage of rentals of vehicles to tourists and passengers; reservations and sales of tickets for sports, cultural and other events and manifestations, passenger and luggage insurance intermediation under law governing insurance, sales of tourist publications, etc.; foreign currency translation (exchange operations); other operations customary to the tourist trade.

The Managing Board decides on the contributions paid by full members.

The amount of regular annual membership contributions is determined by reference to the number of employed persons and is given in Table 7 below:

Table 7 – Regular annual contributions for full membership in PU “JUTA” Beograd

Number of employed persons	Membership contributions (in RSD)
1-3	16,000
3-5	32,000
5-10	40,000
10+	56,000

Source: PU “JUTA” Beograd

The amount of admission fee is also determined by reference to the number of employed persons and is given in Table 8 below:

Table 8 – Admission fee for full membership in PU “JUTA” Beograd

Number of employed persons	Admission fee (in RSD)
1-3	15,000
3+	30,000

Source: PU “JUTA” Beograd

The associate members can be legal and natural persons pursuing complementary activities to the tourist activity, provided their activity is of interest for the improvement of operations carried out by the members of PU “JUTA” Beograd, based on filed requests for associate membership.

By accessing the publicly available register of associate members published on the official website of PU “JUTA” Beograd, it is established that the following insurance companies hold the associate membership status: Dunav, Milenijum, Triglav, UNIQA, DDOR, and Generali osiguranje. In responding to the Commission’s request, PU “JUTA” Beograd underlined that the associate membership is not the *conditio sine qua non* for tour operators to conclude an

insolvency insurance policy and professional indemnity insurance claimed by passengers with an insurance company.

As the prevailing reason for taking the role of a policyholder, PU “JUTA” Beograd claimed the “YUTA Travel Guarantee” system that envisages emergency response, provided in terms of assistance to insurers and provision of help to passengers during travel and stays at destinations, without explaining why the system would function with difficulties if PU “JUTA” Beograd would not be the policyholder and where instead, each tour operator would individually agree on its insurance policy.

In responding to the Commission’s request, PU “JUTA” Beograd underlined that the selection of insurance companies with which the insurance policy would be concluded was made based on the offer of this specific type of insurance. By accessing the “Questionnaire for receipt of offers – YUTA Travel Guarantee 2020” for completion by travel agencies, it is established that the following insurance companies were included in the offer: Dunav, Milenijum, Triglav, Sava, and DDOR. It was also indicated that travel agencies may check only one box, i.e., select only one insurance company from which they wish to receive an offer.

In its response to the Commission, PU “JUTA” Beograd said that the position taken by PU “JUTA” Beograd as to the travel agency on behalf of which it will be the policyholder is primarily based on the agency’s preference to be a part of the “YUTA Travel Guarantee” system. Furthermore, PU “JUTA” Beograd also considers information on travel agencies that it obtains from different sources (partners in-country and abroad, cooperation with other agencies, liquidity...), and adopts a final decision based on all those parameters.

Most tour operators said that the selection of insurance companies was made based on previous experience and cooperation, insurance premium (insurance policy costs), insurance terms and conditions, previous successful cooperation in the sale of travel medical insurance, insurer’s reputation. Some tour operators, PU “JUTA” Beograd members, said that the selection of insurance companies was made under the instructions/recommendations given by PU “JUTA” Beograd or in collaboration, consultations and suggestions made by PU “JUTA” Beograd. The Commission establishes that there are no records of criteria based on which PU “JUTA” Beograd recommended/suggested individual insurance companies.

Of the total number (41) of undertakings included in the sample, 24 travel agencies said they have concluded insurance policies in early 2020 via PU “JUTA” Beograd as a policyholder, while 13 have independently agreed on their insurance coverage – of which two are members of

PU “JUTA” Beograd and 4 undertakings have concluded their insurance policies via insurance intermediaries.⁴

As reasons for opting to conclude insurance policies via PU “JUTA” Beograd as the policyholder, travel agencies as organizers of individual and group tours mentioned the full membership in PU “JUTA” Beograd, facilitated procedure in terms of provided instructions and assistance in the preparation of documentation for BRA, trust and support in the case of insured events, better policy payment conditions provided to long-term members, benefits for passengers achieved through the technical cooperation during the travel guarantee period, and assistance in the market approach by travel agencies that include:

- guaranteed refund to passengers as soon as possible in the event of insolvency and damage claims;
- guaranteed urgent free accommodation at a designation in the event of failure by a travel agent to secure or pay for accommodation;
- guaranteed organization of free return from a destination;
- possibility of securing alternative travels in the event of journey not taken by passengers via travel agencies with the “YUTA Travel Guarantee”;
- free arbitration in the event of partial non-fulfilment of tour programs;
- legal aid to beneficiaries – passengers and travel agencies;
- marketing support in all news media outlets;
- original “YUTA Travel Guarantee” label for branch offices;
- “YUTA Travel Guarantee 2020” certificate;
- use of the “YUTA Travel Guarantee” sign in travel catalogues and tour programs.

One of the undertakings, as a reason for choosing PU “JUTA” Beograd as the policyholder, has mentioned that if the insurance policy is not taken via PU “JUTA” Beograd, the travel agency would lose its membership in the association, thus the possibility to participate in public procurements. Although the aforementioned claim made by a single undertaking did draw attention and caused concern for the Commission, the accuracy of claims was not further investigated by the Commission in conducting the analysis. Such investigation could potentially be the subject of a separate investigation procedure probing unilateral acts and actions of undertakings and/or association of undertakings, which undeniably is not the subject of this

⁴ Of 44 undertakings in total to which the Commission has forwarded the questionnaire, three undertakings have said that they are travel sales intermediaries and not undertakings on this market, of which one respondent provided information indicating that it has concluded insurance coverages independently in the previous period. Therefore, the Commission considered information provided by 41 tour operators.

market inquiry. In any case, should the claims be proven to be correct, meaning that internal acts of PU “JUTA” Beograd as an association of undertakings envisage sanctions in the form of termination of membership for the reasons outlined above, thus causing the inability to meet the most frequently set, eliminatory, requirements for the participation at public tenders for the provision of services by said undertaking, that could also be the case of infringement of competition law, i.e., restriction of competition by way of acts and actions of an association of undertakings.

By way of random check of requirements for the tenderer's qualification to perform the contract in several public procurements – elementary and high school student excursions, the Commission has established that the membership in PU “JUTA” Beograd and “YUTA Travel Guarantee” are set as one of the requirements for participation in public procurements. In this regard, the Commission underlines that the membership may only be agreed on a voluntary basis and it cannot create an advantage over tour operators that are not PU “JUTA” Beograd members. The Commission has assessed that they represent discriminatory criteria and are in violation of the principle of competition referred to in the Law on Public Procurements, and ultimately affect the competition by enabling, without objective justification, preferential treatment of tour operators that are PU “JUTA” Beograd members and hold the “YUTA Travel Guarantee” over other tour operators.⁵

The Commission reviewed the provisions of travel guarantee agreements concluded between PU “JUTA” Beograd and tour operators, specifically with the following travel agencies: Omnipromet, Felix travel, Kuća putovanja, Oktopod doo, Plan tours, Kompas tourism and travel Novi Sad, Mondorama doo Niš, Omega travel doo Beograd, Nittravel, Kompas doo Beograd, Odeon world travel, TTUP Holiday, Ponte travel doo, Big blue group, Kontiki travel and service, Filip travel, Viva travel doo, Mediteraneo holidays, and Halo tours. All provided agreements are made in a standard contract form and contain no restrictive provisions.

Furthermore, the Commission reviewed the provisions of agreements concluded between PU “JUTA” Beograd and insurance companies. [...]. The Commission establishes that all agreements concluded between PU “JUTA” Beograd and insurance companies stipulate an agreed monthly fee paid by insurers to PU “JUTA” Beograd, set at [...]%, apart for the insurance company [...] that pays a fee to PU “JUTA” Beograd of [...]% of the insurance premium charged, VAT excluded. One insurance company outlined that it has entered into the agreement

⁵ The search of publicly available information allowed the Commission to learn that line Ministry has amended tender documents in one public procurement procedure by deleting the mandatory requirements implying the PU “JUTA” Beograd membership.

conditioned by PU “JUTA” Beograd to be the policyholder for tour operators that were the company’s clients.

The Commission expresses its concern over the fact that most tour operators as PU “JUTA” Beograd members have agreed on their respective insurance policies via PU “JUTA” Beograd as the policyholder throughout October 2020 and not directly in an agreement with the insurance companies. PU “JUTA” Beograd received in return a [...] % commission or [...] % of insurance premium, depending on the insurance company. Based on the available information obtained in the sector inquiry, the Commission was not able to recognize and in particular value the potential advantages of the insurance coverage when PU “JUTA” Beograd acted as a policyholder over an insurance coverage directly agreed by tour operators with insurance companies. It is reasonable to assume that in the absence of this type of insurance activity, there would be room to lower the prices of travel arrangements.

The Commission contacted NBS requesting an opinion on the compliance of a practice under the Insurance Law and other insurance regulations where a policyholder is entitled to a commission or other forms of remuneration on insurance premium by way of concluding an insurance contract on behalf of third parties, paid by the insurance company or insurer.

NBS provided a reply to this request of the Commission, in which it has stated, among other things, the following (quote):

„...insurance contract elements are laid down by the Insurance Law, and we hereby indicate that this act does not envisage any kind of commission for policyholder on behalf of the third party that said policyholder would collect from an insurance company with which it has concluded an insurance contract on behalf the third party. We hereby also indicate that under no provision of the Insurance Law is stipulated that an insurance agent can at the same time be a policyholder, allowing the said party to benefit from the agent fee or other remuneration. When concluding an insurance policy with an insurance company, whether on its own behalf or for the case referred to in Article 95 of the Insurance Law, the policyholder holds no right to an agent fee or any other commission that would be paid by an insurance company. Given that a policyholder on behalf of the third party acts on behalf of said party, it is obligated to take due account of the interests of said party, which is why we believe that any payment of a fee (commission) to said policyholder by an insurance company in relation to the successfulness of collection of an insurance premium (i.e., provision) is incompatible with the nature of acting on behalf of the third party.

In conclusion, we emphasize that legal provisions applicable to insurance agency activities do not envisage an exception to the rule which sets that a policyholder concludes insurance contracts with third parties on behalf and on account of an insurance company.”

Although the details mentioned remain under the domain of the Insurance Law, the Commission expresses its concern over the possibility that insurance activities may be used to gain additional income, which could cause the demand-side disturbances as PU “JUTA” Beograd - in order to maintain the level of additional income, may interfere with the freedom of choosing an insurance company and cause the favoring of an insurance company on the supply side.

The following concern of the Commission is triggered by the fact, based on the Commission’s assessment, that a mechanism is not available to everyone, concerning the implementation of technical support for the reduction or removal of risks of failure, partial performance, or defective performance of contractual obligations by tour operators, that would by its essence (purpose) resemble the assistance services provided by PU “JUTA” Beograd. Specifically, guarantees set out in Article 58 of the Law on Tourism provide for the financing of costs of necessary accommodation, food and return of passengers, including the reimbursement of any damages that a passenger (beneficiary of tour operators’ services) would suffer, without clearly defining the obligation of any institution that would take upon itself the technical organization work for the preparation and implementation of necessary activities to prevent and reduce the impact of an event (occurrence) that would activate the guarantee (for example, renting a bus or plane for repatriation, alternative accommodation booking, food organization..). PU “JUTA” Beograd provides assistance services, i.e., technical support to passengers of tour operators included in its system, while PU “JUTA” Beograd is also usually at the same time the policyholder. According to one insurance company, when concluding such contracts (where PU “JUTA” Beograd is the policyholder), PU “JUTA” Beograd explicitly requested the insurance company to simultaneously also conclude the Contract for the provision of assistance services in the area of travel guarantees with PU “JUTA” Beograd. The Commission believes that there is no discrimination as regards the above mentioned, although it underlines that tour operators that are PU “JUTA” Beograd members are not on an equal footing with those that are not members of this association, which ultimately may reflect on passengers.

To the best of its knowledge, the information provided by PU “JUTA” Beograd in its reply has revealed the existence of a number of coinsurance contracts in this type of insurance on the market - of which the Commission was previously unaware, meaning that individual requests for the exemption of these agreements from prohibition have not been filed before the Commission.

3. BANK GUARANTEE AS A TRAVEL GUARANTEE

In its reply to the Commission, NBS said that it has no information on the list of banks as issuers of bank guarantees, the number of concluded bank guarantees, the average price of bank guarantees and on the number of activated bank guarantees, which represent a security instrument to travel guarantee beneficiaries.

A bank guarantee, pursuant to Article 1083 of the Law on Contracts and Torts (“Official Gazette of the SFRY”, Nos. 29/78, 39/85, 45/89 – CCY decision and 57/89, “Official Gazette of the FRY”, No. 31/93, “Official Gazette of the SM”, No. 1/2003 – Constitutional Charter, and “Official Gazette of the RS” No. 18/2020), is a document issued in writing where a bank assumes the obligation to a recipient of the guarantee (beneficiary) to settle his obligation, should a third person fail to fulfill on maturity the obligation due to him, if the terms specified in the guarantee are met accordingly. Given the purpose of financial guarantees set out in the Law on Tourism, it is impossible to know upfront the guarantee beneficiaries. When issuing insurance policies, tour operators are policyholders, and passengers are insurance beneficiaries and do not need to be pre-defined. Article 1087 of the Law on Contracts and Torts lays down that the orderer is obliged to pay to the bank every amount paid by the bank on the ground of guarantee issued with the clauses "without objection", while the right to recovery of insurance indemnity, except in case of intent or gross negligence, is not possible to exercise. In the absence of explicit statements of banks, based on information obtained by the Commission during the inquiry, as some of the possible reasons for not issuing bank guarantees under the Law on Tourism, the Commission also recognizes the above-mentioned characteristics.

IV NEW REGULATORY FRAMEWORK

Changes to the regulatory framework are introduced in October and November 2020. Specifically, the New Travel Guarantee Rulebook was adopted in October 2020, amended in November 2020 along with the Travel License Rulebook.

The reasons for adopting new rulebooks concerned the market withdrawal announcement of insurance companies as primary travel guarantee providers, justifying such a withdrawal, among other things, by consequences brought about by COVID-19 disease caused by the SARS-CoV-2 virus.

It should be noted that even though the previous rulebook also stipulated the bank guarantee as a travel guarantee in addition to the insurance policy, tour operators have not used this instrument.

The new rulebook more closely defines the procedure of issuance of bank guarantees. Specifically, the major novelty envisaged by the rulebook concerns a clear definition of the holder of a bank guarantee. The rulebook defines the holder of a bank guarantee as a recipient of the bank guarantee who, upon the notification of a guarantee beneficiary, may activate the bank guarantee should the cases prescribed therein emerge due to insolvency of a tour operator or in the case of payment of insurance claims. The recipient party (bank guarantee beneficiary) may be a professional or business association or association of travel agencies. The bank guarantee beneficiary provides written approval to a tour operator for the provision of a bank guarantee. The rulebook also amended the definition of a guarantee beneficiary, now defined as a person that settled the costs of necessary accommodation, food and return of passengers to the place of departure, including the passenger in the case of failure, partial performance or defective performance of contractual obligations by tour operators, laid down by the general terms and conditions and travel program.

The second important change stipulated by the new/amended rulebooks concerns the introduction of two new license categories. Specifically, depending on the number of passengers, the new rulebooks rank the tourism licenses in six categories:

- category A 10 license, up to 300 passengers;
- category A 15 license, from 301 to 600 passengers;
- category A 20 license, from 601 to 1,000 passengers;
- category A 25 license, from 1,101 to 5,000 passengers;
- category A 35 license, from 5,001 to 10,000 passengers;

- category A 40 license, more than 10,001 passengers.

Depending on the license category, the prescribed deposit limits are set in the minimum amount of:

- 300 euros for the category A 10 license;
- 500 euros for the category A 15 license;
- 1,000 euros for the category A 20 license;
- 1,500 euros for the category A 25 license;
- 2,500 euros for the category A 35 license;
- 3,500 euros for the category A 40 license;

Depending on the license category, the total cover limit based on the license category is set to at least:

- 50,000 euros for the category A 10 license;
- 100,000 euros for the category A 15 license;
- 200,000 euros for the category A 20 license;
- 250,000 euros for the category A 25 license;
- 350,000 euros for the category A 35 license;
- 400,000 euros for the category A 40 license.

Based on the publicly available information from the Register of Tourism is established that of 41 tour operators approached by the Commission with a request for the provision of information, which in early 2020 have secured the rank-based licenses, 11 tour operators have secured the insurance policies as travel guarantees by 3 December 2020. It is established that three insurance companies currently offer this type of insurance, namely Dunav, Triglav, and Globus osiguranje, noting that Globus osiguranje has not offered this type of insurance in the previous period. All tour operators have independently concluded insurance contracts.

Information provided in the paragraph above will be analyzed in the period to come.

V CONCLUDING OBSERVATIONS AND RECOMMENDATIONS

Based on information obtained and the sector inquiry conducted into competitive conditions on the tour operators market, the following relevant conclusions are drawn, and individual recommendations are provided.

1. CONCLUDING OBSERVATIONS

In early 2020, rulebooks governing tourism came into force, while the amendments primarily concerned the method of licensing, determining the amount secured by a travel guarantee and deposit limits, including mandatory requirements for obtaining a tour operator's license. By providing opinions on current legal solutions, 15 out of 42⁶ undertakings said they either have no commentary on, or objection to the said matter and that current legal solutions cover all customs of trade necessary to operate as tour operators. In contrast, 27 undertakings said they believe there are nonetheless regulatory enforcement issues, perceived in terms of the following:

- incompleteness of the Law on Tourism and accompanying rulebooks;
- determining the license category, thus the total amount secured by a travel guarantee and deposit limits based on one criterium only and disregarding other indicators (income, turnover, average price of travel arrangements...);
- complicated procedures, new records, since all information needs first to be entered into the passenger booking program and then the Association of Serbian Insurers' system;
- inadequate amount secured by a travel guarantee and deposit limits, and unclear purpose of the deposit in case of the insured event;
- expensive insurance policies, issuing insurance policies for a period shorter than one year and the unwillingness of banks to offer bank guarantees;
- lack of protection for tour operators in relation to intermediary travel agencies and flexible requirements for opening a travel agency intermediary;
- lack of compatibility of the Law on Tourism with the Law on Trade in the part concerning the uniform amount of travel arrangements.

⁶ Of 44 undertakings to which the Commission has forwarded requests for the provision of information, three have said that they are travel agency intermediaries, while one of them gave a detailed assessment of the rulebooks by saying that amendments to regulations and the inability to acquire insurance policy at a reasonable price have affected the company not to file for the new license. Therefore, the Commission considered replies provided by 42 travel agencies, one of them being an intermediary.

The analysis into the market power of undertakings was conducted based on information on the operating income. The results showed that during all three observed years, two undertakings were slightly ahead by market share, namely 1 A Travel doo Beograd, and Kompas Tourism & Travel doo Novi Sad, while the market share of the top ten undertakings reached around /30-40%, /30-40% and /40-50%, respectively. Furthermore, the results have shown a drop in the number of travel agencies as tour operators in 2019 since the number from 467 in 2018 fell to 387 in 2019.

In late 2020, an amended regulatory framework was adopted, regulating in more detail individual terms that foremost concerned the provision of travel guarantees.

Based on information obtained during the inquiry, the Commission here below outlines the essential considerations that to an extent affect its concern for the state of competition on the tour operators market:

- The Commission believes that the purpose and intent of the legally established deposit institute is not completely clear and that the said may be burdensome to tour operators' businesses and affect the increase in prices of travel arrangements.
- Although the analysis did not collect sufficient information on the method of establishing a record of the sold travel arrangements as stipulated by the Travel Guarantee Rulebook nor on the method of functioning of the requested computer software app where the correctness of issued travel guarantees would be checked, as those issues have not been the primary purpose of the inquiry, the Commission calls attention and warns that the records of sold travel arrangements through computer software app may represent a platform for the prohibited exchange of business-sensitive information between insurance companies, which could represent an infringement within the meaning of competition regulations.
- The Commission establishes that only individual insurance companies have issued travel guarantees, with no banks participating in the issuance of travel guarantees. The Commission's concern is based on the reduced number of travel guarantee providers and reduced choice for tour operators, potentially creating grounds for collusion and various types of prohibited arrangements.
- By analyzing the information available, the Commission tried to recognize the primary causes and justifications behind multiple increases in insurance premiums but failed to find a justification only in the fact that the increase in insured sums occurred due to the Ministry's

decision and in the fact that a major insurance policy event occurred in 2018. Although it establishes that baselines for insurance premiums are almost identical (insured sums are set by the Ministry, identical terms and conditions of insurance...), the Commission cannot rule out from the outset that the increase in insurance premiums is the result of potential coordination or even collusive behavior between insurance companies. If a separate investigation procedure would potentially establish the existence of such coordination, it would represent an infringement within the meaning of regulations governing competition.

- The only policyholder, in cases when the insured and policyholder are not the same person, and within the meaning of the Travel Guarantee Rulebook, was PU “JUTA” Beograd until October 2020. During the observed period, the number of insurers has increased, providing the insurance policies where the insured and policyholder are not the same person. In such instances, the policyholder, PU “JUTA” Beograd, and insurance companies have concluded agreements on the provision of assistance services, i.e., agreements on business cooperation in the area of travel guarantees. In this regard, the Commission expresses its concern over the fact that most tour operators that are PU “JUTA” Beograd members have arranged the insurance coverage until October 2020 through PU “JUTA” Beograd as the policyholder and not in direct contact with insurance companies. PU “JUTA” Beograd received [...]% or [...]% of insurance premiums, depending on the insurance company. There are reasonable grounds to believe that in the absence of such a manner of contracting the insurance coverage, there would be room to lower the prices of travel arrangements, while the Commission recognized no contribution made by PU “JUTA” Beograd to the insurance system versus the insurance directly agreed by a tour operator with an insurance company. The Commission establishes that from October 2020 up to and including 3 December 2020, all surveyed tour operators, with insurance policies as travel guarantees, have obtained the insurance coverages independently. The Commission assesses that there is a possibility that PU “JUTA” Beograd, as the policyholder, can use the activity to generate additional income, which is not in conformity with regulations governing the sector considering a reply provided by NBS to the Commission’s request referenced in the inquiry in which NBS has clarified that “When concluding insurance contracts with insurance companies, whether on its behalf or in the case referred to in the Insurance Law (Article 95), the policyholder holds no right to agents’ commissions or any other fee paid by the insurance company”. The Commission voices its concern that such additional income generation can cause the demand-side disturbances on account of the fact that PU “JUTA” Beograd, in an effort to maintain the level of additional income, can deny tour operators’ the right of choice and independent

decision making about insurance companies and lead to favoring of individual insurers on the supply-side.

- The Commission establishes that travel guarantee agreements concluded between PU “JUTA” Beograd and tour operators are made in a standard form of agreements with no restrictive provisions.
- Given that some tour operators, PU “JUTA” Beograd members, have said that the selection of insurance companies was made upon instructions/recommendations provided by PU “JUTA” Beograd itself, and since in conducting the sector inquiry the Commission was not able to gain reliable knowledge regarding criteria on which PU “JUTA” Beograd based its recommendations/suggestions for the selection of insurers, the Commission expresses its concern that such PU “JUTA” Beograd activities, in case of favoritism of individual insurance companies, could have impacted the competitive conditions on the market concerned.
- Considering that individual public procurements envisaged the membership of tour operators in PU “JUTA” Beograd as a mandatory requirement for participation in tender procedures, the Commission takes the position that membership in professional associations can only be agreed upon voluntarily. Therefore, the Commission assesses that the membership requirement creates advantages against tour operators that are not members of associations. Also, such a request specified in tenders can be considered discriminatory, contrary not only to the principle of ensuring competition under the Law on Public Procurement but also a criterion that affects competitive conditions by favoring, without objective justification, tour operators that are PU “JUTA” Beograd members.
- To the knowledge of PU “JUTA” Beograd, of which it has informed the Commission in its reply, there are already a number of coinsurance contracts on the market providing the liability insurance of travel agencies, on which the Commission had no previous knowledge.
- The Commission believes that insufficiently precise and clear terms governing the provision of bank guarantees as travel guarantees, could to some extent affect the banks’ decisions, previously not providing the guarantees. The Commission welcomes the line Ministry’s efforts to remove any ambiguity and extend the number of undertakings on the supply-side by amending the regulatory framework, and in particular, by defining the guarantee holder.

- The Commission establishes that a mechanism is not available to everyone, concerning the implementation of technical support for the reduction or removal of risks of failure to perform, partial performance, or defective performance of contractual obligations by tour operators, i.e., there is no mechanism that would resemble the assistance services provided by PU “JUTA” Beograd. Specifically, guarantees set out in Article 58 of the Law on Tourism provide for the financing of costs of necessary accommodation, food and return of passengers, including the reimbursement of any damages that a passenger (beneficiary of tour operators’ services) would suffer, without clearly defining the obligation of any institution that would take upon itself the technical organization work for the preparation and implementation of necessary activities to prevent and reduce the impact of an event (occurrence) that would activate the guarantee (for example, renting a bus or plane for repatriation, alternative accommodation booking, food organization). The Commission assesses that tour operators as PU “JUTA” Beograd members are not on an equal footing with those that are not members of this association. The Commission establishes that the Law on Tourism stipulates an obligation of tour operators to obtain a travel guarantee in order to secure a travel license. Therefore, there is only one definite travel guarantee that is mandatory and which all tour operators must have irrespective of the membership in an association. The PU “JUTA” Beograd members that opt for PU “JUTA” Beograd as the policyholder, conclude the Travel Guarantee Agreement where one of the articles contains a provision under which the tour operator, by way of signing the agreement, becomes a member of the YUTA Travel Guarantee board, which requires the payment of a certain amount of money. On the other hand, PU “JUTA” Beograd was concluding agreements on the provision of assistance services with insurance companies that concerned the travel guarantees (envisaged by the law). One gets the impression that “YUTA Travel Guarantee” represents an additional safety instrument when in actuality it concerns a single travel guarantee, laid down by the law, that envisages obligations of insurance companies that have concluded agreements with PU “JUTA” Beograd on the provision of assistance services in the field of travel guarantees, i.e., agreements on business cooperation. The Commission underlines that this primarily concerns the type of a “marketing support” (certificates, labels that affect the perception of passengers) provided to PU “JUTA” Beograd members. [...]. The Commission closes this paragraph with a conclusion that all passengers have the same scope of rights in case of the ensured event, irrespective of whether or not the tour operators have concluded their insurance policies independently or via policyholders.

2. COMMISSION'S RECOMMENDATIONS

1. It is recommended to **insurance companies** looking to conclude a coinsurance contract, to consider in all cases that coinsurance represents a form of cooperation between competitors on the same relevant market for insurance services and that such cooperation, within the meaning of regulations governing competition and for exemption from the general prohibition, should be submitted to the Commission for preliminary analysis and potential granting of exemption from the prohibition on restrictive agreements.
2. It is recommended to **insurance companies**, that based on estimates and recommendations of their actuaries, to consider other possibilities and modalities of insurance underwriting, i.e., define the insurance underwriting terms and conditions and tariffs for the sake of variety in premium amounts between insurers.
3. It is recommended to **contracting authorities**, that in public procurements which concern travel tours, bidding should not be conditional on PU "JUTA" Beograd membership and the possession of the "YUTA Travel Guarantee". The Commission provides the identical recommendation to the **Ministry of Education, Science and Technological Development** with regard to public procurements of student excursions and points to this discriminatory criterium used by schools when selecting tour operators in public procurements, including **other competent authorities that deal with public procurements**, in particular considering the agreed memoranda on cooperation with the Public Procurement Office, and the Republic Commission for Protection of Rights in Public Procurement Procedures.
4. It is recommended to the **Ministry** and **NBS**, to look into reasons why other undertakings, insurance companies and banks that meet the regulatory requirements, are not active on the market for the provision of tourist travel insurance services given that only a certain number of insurance companies registered for non-life insurance and no bank were involved in the issuance of travel guarantees in the reporting period.
5. It is recommended to **NBS**, to review the PU "JUTA" Beograd's practice as the policyholder given the Commission's assessment in which it has established a possibility that the business of arranging insurance coverage can be used to generate additional income that is not in conformity with regulations governing the sector, given the NBS reply.
6. It is recommended to the **Ministry**, to consider amending the Travel Guarantee Rulebook. The amendments should relate to the section that governs the total amount of cover regulated by tourism license categories. As one of the possible solutions, the regulator could consider the setting of a minimum deposit limit for each travel agency, plus the

appropriate amount of cover depending on the travel arrangement sales, potentially capped at a certain percentage of the tour operator's turnover.

7. It is recommended to the **Ministry**, considering that a mechanism is not available to everyone, concerning the implementation of technical support for the reduction or removal of risks of failure to perform, partial performance or defective performance of contractual obligations by tour operators, that would by its essence (purpose) resemble the assistance services provided by PU "JUTA" Beograd, to amend the regulatory framework and create a mechanism that would be available to beneficiaries of all tour operators.
8. It is recommended to the **Ministry**, to review the justification of the established deposit institute given that its purpose and intended use are not fully clear, potentially causing a financial burden on tour operators' operations.
9. It is recommended to **tour operators** that their own choices when selecting the method in which to conclude insurance policies, either by purchasing insurance independently or from policyholders, be made in a manner where they would not be conditioned in any way. If tour operators opt for insurance coverage through policyholders, it is necessary for criteria when selecting an insurance carrier to be clearly defined and presented in advance.
10. It is recommended to **competent authorities**, given the current regulatory framework and possibility of partial compensation for passengers, to consider the setting up of a guarantee fund that would allow for gradual accumulation of funds and full compensation on behalf of all tour operators in case of insolvency.
11. It is recommended to the **software developer**, to examine whether the software developed for the Association of Insurers of Serbia allows for the exchange of business-sensitive information between insurance companies.

In the light of all conclusions, findings and recommendations of the Commission, considering the fact that the regulatory framework was amended in 2020, and the changes occurring on the market caused by the Covid-19 pandemic, the Commission establishes as the final finding of the Inquiry that further monitoring of this complex and dynamic market is needed.

ANNEX 1 – LIST OF UNDERTAKINGS INCLUDED IN THE SAMPLE

Company number	Business name
17137549	TRAVELLAND DOO BEOGRAD
20195720	WAYOUT DOO BEOGRAD
07587961	DJORDJEVIĆ-COLUMBO TRAVEL AGENCY DOO JAGODINA
20986743	CARPE DIEM TRAVEL d.o.o. Beograd
20190191	PREDUZEĆE ZA TURISTIČKE USLUGE ELDORADO TOURS DOO, SMEDEREVO
07929552	MONDORAMA DOO NIŠ
06176275	PONTE DOO BEOGRAD
20117826	JUMBO TRAVEL DOO BEOGRAD
08218838	KOMPAS TOURISM & TRAVEL DOO NOVI SAD
07361491	TURISTIČKO-TRANSPORTNO I USLUŽNO PREDUZEĆE HOLIDAY DOO KRAGUJEVAC
20370424	ODEON WORLD TRAVEL DOO BEOGRAD
07613857	PREDUZEĆE ZA TURIZAM, SAOBRAĆAJ I TRGOVINU PLANA-TOURS DOO, VELIKA PLANA
20179961	BIG BLUE GROUP DOO BEOGRAD
17468898	NITRAVEL DOO NIŠ
06963838	FILIP TRAVEL DOO BEOGRAD
06677428	ARGUS TOURS DOO
20006544	RAPSODY TRAVEL DOO SJENICA
17408844	TRAVELLINO DOO BEOGRAD
20702460	FG TRAVEL GROUP DOO BEOGRAD
17054899	TRIM TRAVEL DOO BEOGRAD
20096268	OMEGA TRAVEL DOO BEOGRAD
17299794	ROYAL TOURS, doo, Beograd
20700173	LOVE 2 TRAVEL DOO BEOGRAD
07485166	OMNIPROMET DOO BEOGRAD)
07538065	KOMPAS DOO BEOGRAD
20899999	KonTiki Travel & Service d.o.o. Beograd
17205196	OKTOPOD DOO BEOGRAD
20405317	1 A TRAVEL DOO BEOGRAD
17521942	FIBULA DOO BEOGRAD)
20957654	FELIX TRAVEL DOO
20868384	KUĆA PUTOVANJA DOO
21102628	AGAPE TRAVEL D.O.O. Preduzeće za saobraćaj i turizam Beograd

Company number	Business name
20911794	DEUS TRAVEL DOO Novi Sad
21224332	ALTA MAREA d.o.o. Beograd
21214035	VIVA TRAVEL DOO BEOGRAD
21337552	DISKO TRAVEL DOO Beograd
20106182	BARCINO TOURS DOO VRNJAČKA BANJA
20024925	FANTAST TOURIST DOO NOVI SAD
60054649	VLADIMIR GLIŠIN PR, TURISTIČKA AGENCIJA HELLENA TRAVEL, NIŠ
17307398	HALO TOURS DOO BEOGRAD
17380699	MEDITERANEO HOLIDAYS DOO BEOGRAD
17463977	SUNLINE TRAVEL DOO BEOGRAD
08734496	DOO TANGO TRAVEL NOVI SAD
06867057	DOO NIKISTEF KNJAŽEVAC