



Republic of Serbia
**COMMISSION FOR
PROTECTION OF COMPETITION**
25 Savska St., 4th Floor, Belgrade
Number: 4/0-02-06/2021-7
Date: September 29, 2021

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

NOTICE

of the Proposal for Commitments offered by Kruna-Komerc d.o.o. Beograd which the company is voluntarily willing to undertake to remove potential infringements of competition law, with a call inviting all stakeholders to submit written observations, positions and opinions thereon

The Commission for Protection of Competition (hereinafter, the Commission), in a procedure to investigate the merits of the claim from an antitrust complaint concerning the public procurement procedure JN-OP 24/16 conducted by the contracting authority Clinical Center Kragujevac, has obtained the Business Development Partnership Agreement on May 25, 2017, concluded between Akcionarsko društvo Industrija mleka i mlečnih proizvoda Imlek, Padinska Skela (hereinafter, Imlek) and Kruna-Komerc d.o.o. Beograd (hereinafter, Kruna-Komerc), which entered into force on June 1, 2016, and remained in force until November 1, 2016. Based on the analysis of contractual provisions, the Commission assessed that the contracting parties have agreed on commercial and other conditions of trade with a view of establishing pricing policy for the public procurement participation purposes. Specifically, the Commission found reasonable grounds to believe that the agreement established cooperation between direct competitors, given that both companies participate in public procurement procedures as bidders with identical products and that the said agreement contains provisions relating to resale price maintenance, which as its purpose or effect may have a significant restriction, distortion, or prevention of competition.

Due to the fulfillment of conditions referred to in Article 35 of the Law on Protection of Competition (“Official Gazette of the RS” Nos. 51/2009 and 95/2013 – hereinafter, the Law), on May 31, 2017, by way of Conclusion No. 4/0-02-418/2017-1, an antitrust proceedings ex officio is brought against companies Imlek and Kruna-Komerc to establish the existence of infringements of competition referred to in Article 10 of the Law.

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

On August 17, 2021, Kruna-Komerc has submitted, within the meaning of Article 58 of the Law, the Proposal for Commitments which the company is voluntarily willing to undertake to remove potential infringements of competition law, with terms and conditions for taking the measures thereof, amended on September 22, 2021 (hereinafter, the Proposal for Commitments).

Under Article 58(3) of the Law, the Commission publishes on its website a notice of the proposal for commitments offered by the party, inviting all stakeholders to submit written observations, positions and opinions thereon, no later than 20 days from the date of publication of the notice.

In light of the above, the Commission hereby publishes the Notice informing the public that Kruna-Komerc has submitted the following Proposal for Commitments under which it undertakes to:

1. without delay and at the latest within thirty (30) days from the receipt of the conclusion on suspension of this proceedings, the company undertakes to appoint one or more persons/monitoring officers within the company tasked with monitoring the conclusion of contracts concerning public procurements and authorized to communicate and provide answers to the Commission in case of potential inquiries by the Commission addressed to the company. The authorized person in Kruna-Komerc will, without delay, inform the Commission of the person(s) designated as the monitoring officer(s) and his/her (their) contact details in written form, as well as on all potential changes to the designated person(s) for the entire period of these commitments;
2. at the latest within 60 (sixty) days from the receipt of the conclusion on suspension of this proceedings, the company undertakes to draft and adopt an internal act, entitled "Competition Compliance Policy", in which it will address the basic concepts of the Law on Protection of Competition, in particular those that concern infringements that may occur in public procurements, with a view of training and acquiring the necessary knowledge in the field of competition by the company's employees managing public procurements, and to forward one copy of the adopted internal act to the Commission immediately after adoption;
3. at least once a year, the company undertakes to implement a special employee education program on competition rules and regulations, in particular with reference to rules governing public procurements, in the form of mandatory training to be held once a year for current and new employees. The training will be provided to employees who, in the performance of their regular duties, might find the rules provided for by the Law on Protection of Competition to be relevant. The education program will be implemented either in the form of special training or as a part of the training within the framework of regular annual employee training on competition rules, where appropriate and possible for Kruna-Komerc. Where amendments to laws relevant for the field concerned occur between the mandatory annual training, Kruna-Komerc undertakes to hold an emergency training for the company's employees holding relevant positions. Kruna-Komerc undertakes to forward a report on conducted training to the Commission no later than by 28 February of the current year for training conducted during the previous calendar year;
4. in agreements for the purposes of procurement of milk and dairy products concluded with manufacturers or suppliers (except with affiliated entities to Kruna-Komerc) in order to participate in public procurements, the company undertakes not to agree on retail price maintenance provisions to create a more favorable position for Kruna-Komerc. For the

avoidance of any doubt, when concluding said contracts, it is possible and in accordance with the nature of contractual relations and freedom of contract to agree on various commercial terms and conditions (for example, prices at which Kruna-Komerc purchases goods, quantities, delivery terms, etc.) depending on the specific seller, legal requirements and business interests of both contracting parties. For the purposes of demonstrating fulfillment of this commitment, by no later than 28 February of the current year for the previous calendar year, Kruna-Komerc undertakes to submit a report in written and electronic form that will contain information on the number of public procurements in which the company participated, including information on the number of contracts concluded for the purposes of procurement of milk and dairy products with manufacturers or suppliers (except with affiliated entities to Kruna-Komerc) in order to participate in public procurements. If in the course of the implementation of this measure Kruna-Komerc would conclude no such agreements, the company undertakes to inform the Commission on the matter. Also, Kruna-Komerc undertakes not to cooperate with competitors and/or potential competitors in public procurement procedures with a view of establishing a pricing policy.

Kruna-Komerc proposed the period of three (3) years from the date of receipt of the Commission's conclusion on suspension of proceedings as the time period within which the company is ready to assume the commitments.

All stakeholders are invited to present their observations, positions and opinions on the Proposal for Commitments offered by Kruna-Komerc in written form, no later than 20 days from the date of publication of the notice, to the address: Commission for Protection of Competition, 25 Savska St., 4th Floor, 11000 Belgrade.

Submissions in which the observations, positions and opinions are presented should contain a note giving reference to the Proposal for Commitments offered by Kruna-Komerc.

The observations, positions and opinions can be also provided electronically within the same 20-day limit, to the address: office.kzk@kzk.gov.rs, containing a note giving reference to the Proposal for Commitments offered by Kruna-Komerc.

The Commission is not legally obligated to accept the Proposal for Commitments that the party is voluntarily willing to undertake.

Should the Commission determine, based on the analysis of potential observations, positions and opinions provided within the prescribed time period and a market test, that the offered commitments are likely to ensure the achievement of the objective of the measure referred to in Article 59 of the Law, it will enact a conclusion specifying the measure based on the proposal and suspend the proceedings. The conduct of the party upon the suspension of proceedings will be supervised *ex officio* by the Commission. The proceedings can be reopened if any circumstances referred to in Article 58(7) of the Law would arise.

COUNCIL OF THE COMMISSION FOR
PROTECTION OF COMPETITION