



Republic of Serbia  
**COMMISSION FOR  
PROTECTION OF COMPETITION**  
25 Savska St., 4<sup>th</sup> Floor, Belgrade  
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## **ENERGY AGENCY OF THE REPUBLIC OF SERBIA**

5 Terazije Sq., 5<sup>th</sup> Floor  
Belgrade

The Energy Agency of the Republic of Serbia has sent to the Commission for Protection of Competition on October 14, 2021 an invitation for participation in the public debate and provision of objections and suggestions on the Draft Rules on Prevention of Abuse on the Electricity and Natural Gas Markets.

The Council of the Commission for Protection of Competition, pursuant to Article 22 read in conjunction with Article 21(1/7) of the Law on Protection of Competition (“Official Gazette of the RS”, Nos. 51/2009 and 95/2013), at the 64<sup>th</sup> session held on October 22, 2021, delivers the following

### **OPINION**

The Council of the Commission has considered the Draft Rules on Prevention of Abuse on the Electricity and Natural Gas Markets, submitted by the Energy Agency of the Republic of Serbia during the public debate, and notes the following:

Under the provision of Article 51, paragraph 1, point 2a of the Law on Energy (Official Gazette of the RS”, Nos. 145/14, 95/18 – as amended, and 40/21), the Draft Rules should regulate, in more detail, requirements for registration of undertakings on the wholesale energy market, conditions governing the publication of privileged information, ban on insider trading, ban on market manipulation, type, content, format, method and deadlines for drafting and publication of data, data protection, professional secrecy and operational responsibility, obligations of persons professionally arranging transactions in accordance with commitments of the Republic of Serbia undertaken in line with the ratified international agreements.

However, on the whole, the provisions of the Draft Rules are not precisely formulated, leading to arbitrary interpretation and possible divergent interpretations and, ultimately, adverse impact on legal certainty of undertakings. The terms used in the text of the Draft Rules such as “probably”, “probability”, “significant”, further lead to uncertainty regarding the interpretation of the said regulation. Furthermore, the Commission believes that for the delivery of an opinion or objections and suggestions, an explanatory memorandum to the regulation needs to be submitted.

Examples sufficient and appropriate to provide a basis for the Commission's conclusions are described in more detail below.

1. Chapter 5 of the Draft Rules which govern the ban on insider trading, a practice that represents a market abuse and an offense punishable by law, in point 5.3., subpoint 1) and 3) stipulates that the ban on insider trading implies the prohibition for every person in possession of insider information on a product on the wholesale market to:

- 1) when buying or selling, or attempting to buy or sell, use directly or indirectly, on his or her own account or the account of a third party, information relating to the product on the wholesale market;
- 3) recommend or cause others, based on insider information, to buy or sell the wholesale product to which the information relates.

On the other hand, in point 5.5. of the same chapter of the Draft Rules is stipulated that the provisions referred to in point 5.2., paragraph 1, subpoint 1) and 3) will not apply to the transmission and transport system operators when buying electricity or natural gas for the purpose of the system, providing auxiliary and system services under law governing energy sector.

Exceptions to point 5.5. of the Draft Rules that concern transmission and transport system operators when buying electricity or natural gas for the purpose of the system, without providing a detailed explanation of the specific provision, give insufficient information or grounds for a proper evaluation of effects on the market competition. If justifiable reasons for the exemption of individual undertakings from certain obligations would remain unclear, it could represent discrimination, i.e., placing such undertakings in a more favorable position to competitors.

2. The provision of Chapter 11 of the Draft Rules that governs data protection, protection of professional secrecy and professional responsibility, in point 11.5 stipulates the following:

11.5. To improve the transparency of the wholesale electricity market, the Agency may publish or make available information at its disposal, **provided it is not likely to distort competition.**

The provision also contains an imprecision in respect of the wording set out in bold, given that it fails to specify under which conditions the Agency may refuse to publish or make available information at its disposal or detail the method in which it will establish the likelihood of distortion of competition.

Furthermore, we note that in Chapter 4 of the Draft Rules, titled "Requirements for Registration of Undertakings on the Wholesale Market", point 4.10 contains a technical error, i.e., the sentence is not complete. Therefore, we propose to add the wording "international agreements." after the wording "in line with the ratified".

**PRESIDENT OF THE COMMISSION**

*(Signed)*  
Nebojša PERIĆ