



Republic of Serbia
**COMMISSION FOR
PROTECTION OF COMPETITION**
25 Savska St., 4th Floor, Belgrade
Number:9/0-01-350/2021-2
Date: March 29, 2021

MINISTRY OF TRADE, TOURISM AND TELECOMMUNICATIONS

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Belgrade

The Ministry of Trade, Tourism and Telecommunications has submitted to the Commission for Protection of Competition the Proposal for the Conclusion establishing the Basis for concluding the Partnership, Trade and Cooperation Agreement between the Republic of Serbia and the United Kingdom of Great Britain and Northern Ireland, with the text of the agreement, Joint Declaration concerning a trilateral approach to rules of origin, and the Joint Declaration concerning the Protocol on Ireland/Northern Ireland and the Partnership, Trade and Cooperation Agreement, for an opinion.

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), and Article 19(1/1) of the Statute of the Commission for Protection of Competition (“Official Gazette of the RS”, No. 49/2010), at the 45th session held on March 29, 2021, delivers the following

OPINION

In the proposal wording of Annex I to the Partnership, Trade and Cooperation Agreement, Point 7. MODIFICATIONS TO TITLE VI, APPROXIMATION OF LAWS, LAW ENFORCEMENT AND COMPETITION RULES, on page 12, the following wording is provided:

- a) Article 72 shall not be incorporated into this Agreement.
- b) In Article 73:
 - i. **Article 73(2) shall not be incorporated into this Agreement;**
 - ii. in Article 73(4), the words “in conformity with paragraph 2” shall not be incorporated into this Agreement;
 - iii. in Article 73(5), the words “following the methodology and the presentation of the Community survey” shall not be incorporated into this Agreement;
 - iv. Article 73(6) shall not be incorporated into this Agreement;
 - v. Article 73(7)(b) shall not be incorporated into this Agreement;
 - vi. Article 73(8) shall not be incorporated into this Agreement; and

vii. Article 73(9)(b) shall not be incorporated into this Agreement.

In addition to an obvious technical error in the numbering of the quoted part of the text, which refers to the provisions of the current Stabilization and Association Agreement¹ (hereinafter, SAA), the Commission for Protection of Competition (hereinafter, the Commission) **notes that the exclusion of the applicability of Article 73(2) of SAA in this Agreement is not adequate.** Namely, Article 73(2) of SAA stipulates that any practices contrary to Article 73(1) will be assessed on the basis of criteria arising from the application of the competition rules applicable in the Community, in particular from Articles 81, 82, 86 and 87 of the EC Treaty (currently, Articles 101, 102, 106 and 107 of the Treaty on the Functioning of the European Union) and interpretative instruments adopted by the Community institutions. The exclusion of the said provision of SAA in this Agreement is leading to legal uncertainty by leaving the rules undefined that will be relevant when assessing the practices referred to in Article 73(1) of SAA, which remains applicable. **Therefore, we propose that the application of Article 73(2) of SAA would not be excluded through this Agreement.**

We note that the issue of composition of the Partnership, Trade and Cooperation Council has remained outstanding, referred to in Point 11. MODIFICATIONS TO TITLE X - INSTITUTIONAL, GENERAL AND FINAL PROVISIONS, which the Commission has already mentioned in its Opinion No. 7/0-04-706/2019-3 of August 27, 2019.

The Commission further notes that the provision of Article 9(4) of the Partnership, Trade and Cooperation Agreement, stipulating that the Partnership, Trade and Cooperation Council established by this Agreement can make decisions which are different to modify, revoke or supersede the decisions deemed to have been adopted by it or the Stabilization and Association Committee (bodies established under SAA), also may lead to legal uncertainty. This is especially the case in terms of the rights of the Republic of Serbia acquired in the period prior to the United Kingdom's withdrawal from the European Union. Therefore, a safeguard provision should be stipulated, and consider the possibility of amending the provision of Article 9(4) of the Agreement so that the Council may make decisions referred to in the said article **if such decisions would increase the level of already acquired rights of the Republic of Serbia under SAA.**

As regards the remaining part of the documents reviewed by the Council of the Commission for Protection of Competition, it is assessed that from the perspective of competencies of the Commission, there are no further objections.

PRESIDENT OF THE COMMISSION

Nebojša Perić

¹ The Stabilization and Association Agreement between the European Communities and their Member States of the one part, and the Republic of Serbia, of the other part (signed in April 2008 and entered into force on September 1, 2013, following the ratification by the Contracting Parties).