



Republic of Serbia
**COMMISSION FOR
PROTECTION OF
COMPETITION**

25/IV Savska Street, Belgrade

Number: 7/0-01-49/2022-10

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MINISTRY OF MINING AND ENERGY

Nemanjina 22-26
Belgrade

The Ministry of Mining and Energy submitted to the Commission for the Protection of Competition (hereinafter: Commission), by e-mail on 30.11.2022., the Proposal for the adoption of the Procedural Act on the integration of the regional energy market by the Ministerial Council of the Energy Community, Annex 05a/02-11-2022, for comment.

The Council of the Commission for Protection of Competition, pursuant to Article 22 paragraph 2 of the Law on Protection of Competition ("Official Gazette of the Republic of Serbia", number 51/09 and 95/13, hereinafter referred to as: Law) at the 105th session as of December 5, 2022, after considering the submitted material, gives the following

OPINION

The Commission maintains the views expressed in the previously given opinions¹ to proposals for amendments to the Treaty on the Establishment of the Energy Community² (hereinafter: the Treaty), as well as drafts of procedural and other acts that were prepared in the process of negotiations regarding amendments to this Treaty. The Commission also notes that procedural acts of the Energy Community cannot regulate a matter that falls within the scope of regulation of the Treaty on the Establishment of the Energy Community, nor can such acts amend the Treaty, which clearly prescribes the manner and conditions of its amendment.

If the previously stated position is not respected, and in terms the submitted Proposal for the adoption of the Procedural Act on encouraging the integration of the regional energy market in the Energy Community, Annex 05a/02-11-2022 (hereinafter: Annex 05a), we hereby wish to point out the following:

¹ Commission Opinion No. 7/0-01-49/2022-2 dated May 18, 2022.

Commission Opinion No. 7/0-01-02/2020-32 dated November 23, 2020.

Commission Opinion No. 7/0-01-02/2020-22 dated September 22, 2020.

² Law on the Ratification of the Treaty on the Establishment of the Energy Community between the European Community and the Republic of Albania, the Republic of Bulgaria, Bosnia and Herzegovina, the Republic of Croatia, the Former Yugoslav Republic of Macedonia, the Republic of Montenegro, Romania, the Republic of Serbia and the United Nations Interim Mission in Kosovo in accordance with Resolution 1244 of the United Nations Security Council, was published in the "Official Gazette of RS" No. 62 as of July 19, 2006.

The provision of Article 2, paragraph (1), item (b) of Annex 05a provides for the authorization of the European Union Agency for the Cooperation of Regulatory Bodies in the Energy Sector (ACER) to adopt individual decisions that are binding for stakeholders in the energy sector, both from the countries of the contracting parties and from the member states of the European Union covering the territories specified in Article 27 of the Treaty.

The aforementioned provision does not specify which individual decisions are involved, that is, on the basis of which provision of the Treaty the said decisions are made, and therefore the Commission cannot precisely state its position regarding the compliance of this provision with the rules of competition protection in Serbia. If the aforementioned decisions of the Agency concern the issue of competition protection, such issues could only be within the competence of the Commission, and in accordance with the Law on Competition Protection.

In the light of the provisions of Article 4. Annex 05a, which regulates the cooperation between authorities responsible for competition, we emphasize the following.

The Commission is committed to international cooperation both bilaterally and within international organizations, and especially to fulfilling obligations in the process of Serbia's accession to the European Union. All forms of cooperation are possible within its competences and in accordance with the Law. The commission is of the opinion that the provision of this Article, and in particular in items (1) and (3), is not precise enough in the part that states "enforcement of prohibitions in the field of competition and state aid, as contained in articles 18 and 19 of the Treaty". In this context, the Commission points out that the Law entrusts it with the exercise of public powers and that it is exclusively competent to decide on the rights and obligations of market participants and to determine administrative measures in accordance with the Law, both in the procedures for examining restrictive agreements and abuse of a dominant position, as well as in concentration control procedures. Therefore, according to the opinion of the Commission, the provision of Article 4 of the proposal in this part can be interpreted only in that sense (for example, an administrative measure containing a prohibition of certain behavior can only be adopted by the Commission in accordance with the Law). Any other possibility, for example that another national body or a body of the Energy Community, makes a decision that determines the violation of competition on the market of the Republic of Serbia or its part and/or determines some measure in this regard, would be contrary to the Law.

Furthermore, the provision of Article 4, paragraph (5) of Annex 05a stipulates that this Article does not call into question the powers of the Secretariat or the European Commission under the Treaty, or under the Treaty on the Functioning of the European Union.

We therefore suggest that at the end of this paragraph, following the words "European Union", the words: "as well as the powers of national bodies for the protection of competition" are added.

Finally, when it comes to cooperation with other bodies for the protection of competition and the European Commission, the Commission points out that such cooperation already exists and takes place within the framework of valid regulations, primarily the Law and the Stabilization and Association Agreement³ (hereinafter:

PRESIDENT OF THE COMMISSION

Nebojša Perić, m.p.

³ Law on Confirmation of the Stabilization and Association Agreement between the European Communities and their member states, on the one hand, and the Republic of Serbia, on the other hand, ("Official Gazette of the RS - International Agreements", No. 83/2008).