



**TOMIĆ STEVIĆ DULIĆ**

ADVOKATSKA KANCELARIJA

# TSD NEWSLETTER

Advokatska kancelarija TOMIĆ STEVIĆ DULIĆ informiše o aktuelnostima u radu Kancelarije i u zakonodavnom reljefu RS / Die Rechtsanwaltskanzlei TOMIĆ STEVIĆ DULIĆ informiert über aktuelle Themen der Kanzlei und über den Rechtsrahmen der RS / The TOMIĆ STEVIĆ DULIĆ Law Office is informing about the actual activities of the Law office and the Law frame in RS/ Юридическая контора TOMIĆ STEVIĆ DULIĆ информирует о самых актуальных событиях, о работе конторы и законодательном релiefe PC / Glavni urednik/ Chefredakteur / Editor-in-Chief / Главный редактор: Ljubica Tomić /Lektor/Lektor/Proof reader/Лектор: Ivana Radović, Vojislava Katić, Nevena Stević, Magda Braun / **Br. 27/09**

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### 1. NEW LAW ON PROTECTION OF COMPETITION

#### NEW LAW ON PROTECTION OF COMPETITION

New Law on Protection of Competition (Official Gazette of RS no 51/2009) has been adopted by the Serbian Parliament and shall be applied as of 1<sup>st</sup> November 2009.

The new Law defines the violation of competition as "*acts or practices of the undertakings whose objective or consequence is or may be considerable restriction, infringement or prevention or competition*". Two types of violation of competition – **restrictive agreements and abuse of dominant position** are specially systematised and dealt with.

On the other hand, the new Law **allows for concentrations** of the undertakings, provided that such concentrations do not considerably restrict, infringe or prevent competition in the market of the Republic of Serbia as a whole or in part, particularly when such restriction, infringement or prevention is a result of the creation or strengthening of the dominant position.

The major novelties introduced by this Law are:

- raising considerably the thresholds, whereby the undertakings are obliged to report concentration to the Commission for Protection of Competition (the Commission) before it is carried out.
- the competencies of the Commission are broadened, which ought to contribute to a better efficiency in the area of protection of competition

#### I OBLIGATION TO REPORT CONCENTRATION BEFORE IT IS CARRIED OUT

A concentration must be reported to the Commission BEFOREHAND when:

1. combined annual turnover made worldwide in the preceding year by all the undertakings **exceeds EUR 100 million**, provided that at least one undertaking achieves in the Serbian market a turnover **exceeding EUR 10 million**; or
2. combined annual turnover made in the Serbian market in the preceding year by at least two undertakings **exceeds EUR 20 million** provided that at least two undertakings achieve a turnover exceeding **EUR 1 million each** in the Serbian market for the same period.





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## **II SPECIAL COMPETENCES OF THE COMMISSION IN THE PROCEDURE FOR DETERMINING THE VIOLATION OF COMPETITION**

### **a. Initiating *ex officio* proceedings**

Unlike previously, the procedure for determining the violation of competition may now be initiated **ONLY** *ex officio*.

Under the new Law, the role of the third parties is reduced to bringing the proposals to initiate the procedure, thus such parties no longer have the status of the party involved in the procedure, which used to be the case.

It is therefore clear that the principle underlying the new legal solution is that the procedure for determining the violation of competition may be initiated and carried out only when the Commission, based on the proposals, information and other available data provided, has grounds to believe that there has been a violation of competition (the goal being to achieve protection of public interests through protection of competition), *i.e.* that initiation of proceedings based on every single requests of alleged plaintiffs (protecting thereby only their own private interests) be prevented, thus avoiding the potential situations where, due to heavy workload of the Commission, the violations of competition having a considerable impact on the market may remain beyond its reach.

### **b. Unannounced inspection and entry into premises**

The new Law authorises the Commission to perform an unannounced inspection and entry into premises **without a specific court order** (except when the inspection is performed in an apartment or premises having the same or similar intended use), when there are reasonable grounds to believe that there is a danger that the evidence that is in possession of the party involved or a third party may be destroyed or altered.

As part of the announced inspection, the authorised officer of the Commission has the powers to temporarily seize such items and documents found during the inspection as may be relevant for the decision-making in the proceedings.

### **c. Measures for removal of the violation of competition**

When a case of violation of competition has been determined, the Commission may order:

1. **behavioural measures** – actions that the party violating the competition is obliged to undertake or refrain from, with the aim of removing the established violation of competition *i.e.* preventing such or similar violation in the future, and
2. **structural measures** – if it is established that there is considerable danger of repetition of the



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same or similar violation as a direct result of the structure of the undertaking, the Commission may impose a measure that would seek to change such structure in order to remove the danger, *i.e.* establish the structure that existed before the violation was committed, *e.g.* separation of a company, disposal of shares, disposal of assets, etc.

#### **d. Protection of competition**

This measure consists of a fine of up to 10% of the combined annual turnover, imposed by the Commission on the undertakings concerned, in case of violation of competition.

This is a completely new competence of the Commission, as under the old Law, the Commission could only submit a report to the relevant authority in case of violation of competition.

The new Law allows for relief or mitigation of the fine in case of a party to a restrictive agreement that was the first to report the existence of such agreement to the Commission, or to provide evidence thereof. Relevant by-laws will determine the terms of such relief in more details.

#### **e. Procedural penalty**

The Commission may impose procedural penalty against the undertaking in the form of a fine ranging between €500 and €5.000 for each day of acting in contravention to the orders of the Commission in a given proceedings, or failure to comply with such orders, if the undertaking:

- 1) fails to comply with the request of the Commission to deliver or provide to the Commission the requested information, or if it should deliver or provide incorrect, incomplete or false information,
- 2) fails to comply with interim measure,
- 3) fails to report concentration within the period prescribed under the law.

However, the Procedural Penalty may not exceed the amount of 10% of the combined annual turnover of the undertaking concerned.

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