REPUBLIC OF SERBIA
Commission for Protection of Competition

Commission for Protection of Competition
ANNUAL REPORT FOR 2011

Belgrade, February 2012

CONTENT

1. LEGAL FRAMEWORK OF PROTECTION OF COMEPTITION

The Commission for Protection of Competition (hereafter Commission), in 2011, exercised public powers and acted in the legal framework for protection of competition, which, for the first time since the establishment of the Commission, was almost fully encircled.

The main legislation is the Law on Protection of Competition ("Official Gazette of RS", No. 51/09, hereinafter the Act) which came into force on 01/11/2009. In accordance with Article 74 of Law, the procedures that were initiated prior to the effective date of this Law shall undergo to regulations under which they were initiated, i.e. implemented is the Law on Protection of Competition ("Official Gazette of RS", No. 79/05) and by-laws adopted to implement that Law. In proceedings before the Commission the general administrative procedure rules shall apply, contained in the General Administrative Procedure Act ("Official Gazette" no. 33/97 and 31/01), unless otherwise provided by the law (Article 34 of the Act).

The legal framework for protection of competition is complemented by regulations prescribed by the law, which detail the rights and obligations of market participants and ways of the Commission conduction, namely: the Regulation on the criteria for defining the relevant market ("Official Gazette of RS", No. 89/09), Regulation on the Content and Method for Submission of Notification of Concentration ("Official Gazette of RS", No. 89/09), Regulation on specialization agreements between market participants operating at the same level of production or distribution that is exempt from the prohibition ("Official Gazette of RS", No. 11/2010), Regulation on agreements on research and development between market participants operating on the same level of production or distribution that is exempt from the prohibition ("Official Gazette of RS", No. 11/2010), Regulation on agreements between market participants which are at different levels of production or distribution that is exempt from the prohibition ("Official Gazette of RS", No. 11/2010), Decree on criteria for determining the amount to be paid on the basis of a measure for competition protection and sanctions for procedural breaches, manner and terms of payment thereof, deadlines and methods for determination of respective measures ("Official Gazette of RS", No. 50/2010) and Decree on the conditions for relief from payment of a sum of money as a measures of competition protection referred to in paragraph ("Official Gazette of RS", No. 50/2010).

In accordance with the obligation of the Commission, prescribed in Article 31 of the Law, established is the Tariff on Fees for Activities within the competency of the Commission for Protection of Competition, which, after obtaining approval from the Government of the Republic of Serbia, was published in the Official Gazette of RS, no. 49/2011.

The Commission shall ensure the full implementation of Article 73 of the Stabilization and Association Agreement between Serbia and the European Union (EU) and Member States (Article 38 of the Interim Trade Agreement), and in this regard, when drafting secondary legislation, harmonized the regulations with EU legislation and practice, or decision-making procedure before Commission shall apply the criteria resulting from the application of

competition rules applicable in the EU, which includes primary and secondary EU legislation, the practice of EU institutions, and the judgments of the Court of Justice (*European Court of Justice*) and the Court of General Jurisdiction (*General Court*).

Having regard to the obligation upon Stabilization and Association Agreement, the Commission has commenced the drafting and adoption of guidelines for the application of certain provisions of the Law and Regulations, in accordance with its authority under Article 21 Paragraph 1 Item 5 of the Law, to issue regulations that will more closely define own conduction. The guidelines do not commit the parties involved in proceedings, but oblige the Commission, thus this results in more uniform practice and transparency in procedures, and legal certainty.

In the past the Commission Council adopted guidelines for the implementation of Commission Regulation on the Criteria for Determining the Amount to be Paid on the Basis of Competition Protection and Procedural Penalty, and the Method of their Payment, Terms and Conditions to Determine those Measures that were taken 19/05/2011, and posted on Commission's web page. The Introduction of the Guidelines set out the reasons for their adoption that best explain the necessity for the enactment of this act, as applicable and in compliance with acts of the most of national bodies for the protection of competition in the EU**.** In this regard, the Council stated that the Commission adopted this policy to comply the Law on Protection of Competition and with the said Regulation, in order to harmonize the practices, thus providing equal treatment in identical or similar circumstances for all market participants - parties involved in the proceedings before the Commission, and to ensure transparency in the handling of the Commission. Due to this policy, market participants may be familiar in advance with the attitude of the Commission on the implementation of the underlying provisions of the Law and Regulations, and in that sense, guidelines effect the accomplishment of general prevention of infringement.

2. KEY INNOVATIONS IN LAW ENFORCEMENT

In the previous year, which was the first year of performing relevant public cpmpetencies of the Commission in accordance with new Law, the benefits of substantive legal and legal processing novelties became evident, but, unfortunately, some defects also became obvious. This section contains only the most significant ones, while hereinafter will be referred others, too.

- The Commission, for the first time last year, used its legal authority to independently impose its own sanctions for violations of competition, i.e. competition protection in the form of obligation to pay amount of up to 10% of the total annual income, earned in the year preceding the committed infringement. Charging an amount of money for certain administrative measures shall be credited to the budget of the Republic of Serbia. The total amount of the imposed measures for protection of competition is 1,872,190,859.00 RSD (one billion eight hundred seventy two millions one hundred ninety thousands eight hundred fifty nine and 00/100 RSD), and in the past year the amount of RSD 310,074,025.00 was paid in favor of the budget of the Republic of Serbia. In cases where violation of competition is evidenced, the Commission always imposed behavioural measure,in order to eliminate the damage, and prevent occurrence of such or similar violations in future, by giving orders to undertake certain conduct measures, or ban certain conduct. Effective control of restrictive agreements (popularly known as cartels) and abuse of dominant position is possible only if the cumulative and imposed measures are undertaken to eliminate violations of competition, and measures to punish the offender. If a market participant, who is obliged to take a measure on protection of competition, repeats the violation again in future (repetition), the seriousness of measures is significantly increased.

  Because of imposed measures to protect competition, the Commission has often been the target of the attack, which is not surprising. The parties to the proceedings before the Commission are companies with a distinct economic and financial power, with the financial resources that enable them, to defend their business interests, engage not only national law firm, but also overseas ones, and the lobbyists in Brussels, university professors and other professionals in certain areas, to use various forums and conferences for the one-sided view of their interests. Nevertheless, this very fact (**sentencing)** has been highlighted in a positive way, especially by international institutions.

  The Commission has previously noted and pointed out some of the problems that may be caused by some defect in the very text of the Act, whether it is insufficiently clear wording, or even more serious ommittance, as can be noted in the definition of provision of Article 57 Paragraph 5. The application of this provision, which establishes the Commission's obligation to pay back the interest and other costs incurred in the event of cancellation or reduction of the amount of administrative measures, shall be borne by the Commission, might jeopardize not only the effective implementation of the Act, but even the operations iteselvesof the Commission.

- Using the opportunities that this law provides for in terms of competencies delegated to the Commission, which undoubtedly influenced the strengthening of its role in effective law enforcement, in the past period, the Commission has for the first time applied a provision of Article 70, prescribing measures of procedural penalty. By said provision, contained in paragraph 1, it is established that market participants will be affected by measures on procedural penalty ranging from 500 to 5,000 Euros for each day of business conduct contrary to the Commission's order in a given procedure, or failure to act on that account. The Commission has imposed this measure to three participants in the market (Veropoulos – SuperVero, "CDE S" from Belgrade, and KTC from Subotica), due to failure to comply with resolution on submission of data for the process of investigation regarding application of concentration. There is no doubt that by the adoption of the decision on the measures of procedural penalties, which are not only in the form of penalty, but also have a preventive character, the Commission has shown a willingness to point out to market participants, the necessity of complying with the statutory provisions, as well as the necessity for cooperation needed to accomplish that procedure before Commission, to be carried out with full respect of economic principles, and necessity to establish the procedure correctly and completely with all facts and circumstances that are important to make a lawful and proper decisions.

- The Commission started the implementation of the so-called *Leniency* program, relating to participants who first report the existence of violation of competition in two cases. Reporting of existence of restrictive agreements is the most important way of detecting these violations. Parties to the Agreement, who first report to Commission the existence of an agreement, or who submit the evidence upon which the Commission issues a decision, is releaved from the obligation to paythe funds as a measure for competition protection, provided that the Commission had no previous knowledge of the existence of an agreement or had knowledge but did not have enough evidence to initiate proceedings. This right can be exercised only if the party to the agreement has not been the initiator of conclusion of a restrictive agreement. The application of this provision, encourages participants to report a violation to the Commission, refrain from further participation in the same, enable the the imposition of remedies to offenders, when the same are entitled to be exempted from punishment.

- Significant process innovation within the Law, including the Commission’s proceedings, is the mandatory notification of parties on essential facts set forth in the procedure before making a decision (*statement of objections*), thus contributing to the realization of the principle of protection of citizens' rights and protection of public interest. This notice allows the party to meet all the established facts that the Commission considers relevant and which will base its decision so that the party may propose to adduce new evidence, to submit new data, present its (counter) arguments and so on. In addition, this information is of particular importance for the conditional approval of concentration, because it allows the party itself to propose special conditions that is ready to meet in order to acquire approved concentration.

- As outlined in the previous report, the prescribed period of time limitation for the imposition and payment as the measure of competition protection, is being three years

after the date the infringement was made. Given the complexity of proceedings, and in particular the difficulties in detecting infringement of competition in case-control decisions, as well as possible enforced collection of funds as a measure for protection of competition, the Commission considers that this is a very short time. Longer periods of limitation prescribed in the procedures for the punishable acts with social danger and illegality are not more important than actions and violations of competition, such as a five-year periods of limitation for violations of customs, trade in goods and services, tax and other regulations. Hence, we estimate that it could lead to a failure to collect the monetary amount as a measure of competition protection or procedural penalty, provided by final decision, mainly due to the expiry of a time limitation period.

- In investigation of concentration, the limitation period of 30 days for issuing decision on the permissibility of concentration in a summary procedure, proved to be so far sufficient, but only under the assumption of further strengthening the administrative capacity of the Commission.

  However, this is not the case with the investigation procedure. The Commission shall render a decision within three months from the date of initiation of proceedings ex officio, otherwise it will be considered that the concentration is approved. Period of three months is too short, given that the test procedure examines the concentration of companies whose market share is greater than 40%. The size and power of these market participants, and effects that can cause to the market, require complex economic analyzes, which must be preceded by data collection from their competitors, suppliers, customers, government bodies and so on. This period is particularly short in a situation where the concentration may be granted only conditionally, and the party itself may propose special terms that it is willing to accept, in order for concentration to be approved. In such situation, this short term is not even in the interest of the party.

- Commission strives to follow generally accepted change in trends, giving priority to the economic approach in the analysis and assessment of potential and / or actual economic effects of certain actions and / or conduct of market participants. Consequently, the economic effects and quantitative analysis are assuming an increasing importance and are an essential part of the test procedures, supplemented by a clear analysis of the legal form or forms of a particular conduction of market participants. The consequence of this, the economic-oriented approach, is an increasing focus on the observation of the market as a whole, enabling the detection of potential problems in the whole sector, which contributes to the timeliness of decisions and enables takeing of preventive measures. A comprehensive review and fact-finding is achieved, among other things, by detailed observation of market participants through the time series of data (trends of long term movements), following the seasonal deviations, maximum, minimum and average values, sampling and other techniques using descriptive and inferential statistical analysis .

3. INSTITUTIONAL AND ADMINISTRATIVE CAPACITY

3.1 Institutional Capacity

The Commission is defined by the Law as an independent organization that exercises public authority in accordance with the Law. The Commission shall report to the National Assembly for its performance, submitting to it its annual report on the work by the end of February of current year, for the previous year. The independence of the Commission is ensured by method of election of Commission's President, as well of Council members, and its financial independence.

National Assembly of Serbia passed a decision on electing the President of the Commission and Decision on election of members of the Council, in October 2010. ("Official Gazette of RS", No. 73/2010). These bodies performed their activities during 2011 in the same personal composition, both elected by the Assembly. In 2011, 51 (fifty one) session was held.

Institutional building was also made through the Commission's adoption and compliance with the by-laws of the Commission applicable to the Law on Protection of Competition and other laws and regulations. Harmonization of general and other acts of the Commission is largely done in 2010, and in June 2011, the following acts were adopted: Fire Safety Rules and Regulations on Safety and Health at Work and set of accompanying documents for the implementation thereof, including staff recruitment. Ordinance on Accounting was also adopted.

Much improved is the public presentation of the Commission's operations through the Information on Work and creation of new web presentation, in line with the guidelines of the Government Conclusions 05, number: 030-96880/2010 from December 23, 2010. Thus, it is possible to promptly and fully inform the public of the activities of the Commission.

3.2 Administrative Capacity

Technical Service of the Commission (hereinafter referred to as Technical Service) carries out professional activities under the jurisdiction of the Commission in accordance with this Law, Statute and other acts of the Commission. Technical Service is organized into seven sectors: Sector for testing concentrations, Sector for determining violations of competition, Sector for international and domestic cooperation, Legal Affairs Sector, Sector of Economic Analysis, Sector for Financial mMatters and the Sector for normative legal, personnel and general affairs, while a certain number of positions in job plan is outside the sector, as internal organizational units.

Taking into consideration the needs of the Commission and Regulation on internal organization and operations, there is a total of 54 job plan positions in Technical Service, of which 45 experts with University degree, 1 employee with a high school degree, seven employees with secondary school and one employee with elementary school qualifications. However, due to insufficient

funds and other material conditions, the number of employees is significantly lower, which is noted as one of the biggest problems in the current work of the Commission. In June 2011, the recruitment was carried out for three positions with the appropriate university degree, so that the administrative capacity has been strengthened. However, it is necessary to continue strengthening the administrative capacity of the Commission, taking into account both the need for intensive activities to identify and penalize abuse of dominant position and restrictive agreements, and obligations that Serbia has in the process of accession to the EU, in terms of harmonization of practices in this area.

Technical Service has a total of 31 employees in permanent employment. There are 20 employees engaged as case handlers, while the remaining employees work in the sector of domestic and international cooperation and joint activities (normative-legal, human resources, general and financial affairs) that is, for the sectors that are directly concerned with the protection of competition, or for the Commission as a whole. Qualification structure of employees is excellent, considering that 25 employees have a university degree, one high school, and five employees secondary education. Among employees with academic education, one employee has a PhD in Economics, three are Master of Economic Sciences, two have completed postgraduate studies in law, five employees have completed masters degree and six employees have passed the bar exam. All employees have passed a professional exam for work in Governmental bodies. In 2011, five persons were engaged for an indefinite time: One BA Lawyer, two BSc. economists and two employees with secondary education, one of whom is a disabled person, which fulfilled the obligations to employ persons under the Law on Professional Rehabilitation and Employment of Disabled Persons ("Official Gazette of RS", No. 36/09). On part-time basis, a total of four persons was occasionally engaged. The professional training of employees will be discussed in more detail in the part of the report relating to international cooperation.

The number and qualification structure of employees by internal organizational units, including the heads of sectors is shown in the following table:

#.	Organization Unit	Total	University	HS	SS
1.	Sector for Appraisal of Concentrations	6	6	0	0
2.	Sector for Detection of Violations of Competition	7	7	0	0
3.	Sector for International and Domestic Cooperation	2	2	0	0
4.	Sector of Legal Affairs	3	3	0	0
5.	Sector of Economic Analysis	3	3	0	0
6.	Sector of Material and Financial Affairs	3	1	1	1
7.	Sector for normative legal, HR and General Administrative Matters	5	3	0	2
8.	Outsourcing	2	0	0	2

Compared with the number of employees in the bodies of the Protection of Competition in neighboring countries, and compared to other EU countries, the number of employees listed in the Commission is well below the number of employees in the bodies for protection of competition in those countries. The experience of other countries, especially European ones with a longer tradition in the field of competition and experience, requires that the Commission in the forthcoming period increase its administrative capacity, in proportion to the continued increase in workload and complexity of the cases.

3.3. Financial Report

Funding of the Commission shall be in accordance with the financial plan for each year, made by Commission Council and Commission shall submit the same to the Government for approval, no later than November 1, of the current year, for the next year.
Funding of the Commission through 2011, was carried out in accordance with the Financial Plan, made by the Council and approved by the Government of the Republic of Serbia.

Commission realizes its own funds which include income earned from fees for issuing decisions and other documents, upon request of market participants, in accordance with the Law.

In 2011, positive financial result was achieved. The surplus for 2011 was planned in the amount of RSD 28,817,193.00. Surplus was increased by 89%, according to plan. Surplus of funds exceeding expenditure under Article 32 of the Law on Competition shall be paid to the budget of the Republic of Serbia.

Planned and realized INCOME AND EXPENDITURE (in 000 dinars)

#	Description	Realized	Planned	Index
		2011	2011	
1	INCOME	209,178	190,000	107
2	EXPENDITURE	146,717	161,183	91

*Surplus of income over expenditure is set out without accrued currency differences and amortization;
Expenditure was fully financed from own income.

Expenditure Structure in 2011

Position	Expenditure	Planned 2011	Realized 2011.	Realized in %
1	2	3	4	5
411	Staff remuneration and extras	76,228,000.00	75,802,277.00	99.44
412	Social contributions on behalf of the employer	14,092,312.00	13,267,302.00	94.15
413	Remunerations envisaged by Regulations	50,000.00	43,422.00	86.84
414	Social benefits to employees	450,000.00	202,799.27	45.07
415	Compensations for employees	1,032,495.00	1,002,904.00	97.13
416	Awards, bonuses and other special expenses ,	2,500,000.00	2,425,118.00	97.00
421	Permanent costs	30,400,000.00	30,384,670.52	99.95
422	Travelling costs	4,400,000.00	4,140,621.31	94.11
423	Contract services	17,080,000.00	16,760,060.60	98.13
425	Investment maintenance	350,000.00	210,507.52	60.15
426	Material	2,300,000.00	1,715,694.44	74.60
431	Fixed assets utilization	3,000,000.00	0.00	0.00
444	Borrowing associated costs (negative exchange rate)	7,500,000.00	1,364.42	0.02
482	Taxes, mandatory taxes and fines	150,000.00	74,697.08	49.80
512	Machinery and equipment	1,500,000.00	633,685.96	42.25
515	Intangible assets	150,000.00	52,153.64	34.77
	Total expenditure	161,182,807.00	146,717,277.76	91.03

Within expenditurestructure, the largest share are earnings with 51.67%, whereas contract services, which include compensation to members of the Council, represent 11.42% of business expenditures. Significant share in the expense of fixed costs is related to lease of office space and associated costs. The Commission uses the office space under lease contract no. 3/07-13/09-20 from 05/08/2009, concluded with "BEO INVEST 2009" d.o.o, Belgrade, as the lessor. Therefore, in order to find a lasting solution to the matter of office space, as well as achieving significant cost savings, the Commission addressed the competent directorate that is the owner and manages business premises of the Republic, as well as to the Belgrade City Hall.

In the period since the founding in 2006, and until the entry into force of the new Law, the surplus of revenues over expenditure, was passed to the budget of the Republic of Serbia. However, upon entry into force of the Law, the Commission has no right to reserves, unlike all other forms of organizations covered by Article 12 of the Law on Budget of the Republic of Serbia for 2012, and the entire surplus of revenues over expenses is transferred to the budget, immediately following the adoption of the annual financial statements.

During this period, the Commission paid, on that basis, to the budget of the Republic of Serbia 320,896,474 dinars. Upon the Balance Sheet for 2011, additional 62 million dinars of achieved surplus will be paid.

The financial plan for 2012 was adopted by the Council at its 54th session, held on 31/10/2011, and in the same year the authorities have given a positive opinion, and thus began the procedure for obtaining Government approval.

In 2011, the Commission for Protection of Competition imposed, as a measures of competition protection, the total amount of 1,872,190,859.00 dinars.

In two cases, the Commission prescribed, pursuant to the Law, administrative measure of procedural penalty for not complying with the Commission's order in the conduct of the proceedings.

Payment of funds, determined by decision as a measure for competition protection and procedural penalty, shall be made to the relevant payment account in favour of the budget of the Republic of Serbia, in accordance with the Rules amending the Rules on conditions and methods of accounting for payment of public revenues and allocations of funds from those accounts ("Official Gazette of RS "No. 10/2011).

Company, when a measure for protection of competition and procedural penalty is imposed, upon the validity and finality of the decision issued, shall make a payment in the following amounts:

1. Amount on account of the measures for competition protection 310,074,025.00 dinars
2. Procedural penalties pursuant to the Law on Protection of Competition 4,660,127.20 dinars

Total: 314,734,152.20

4. VIOLATION OF COMPETITION

REVIEW OF PROCEDURES CONDUCTED WITHIN
SECTOR FOR DETERMINING VIOLATIONS OF COMPETITION IN PERIOD JANUARY 01, 2011 TO DECEMBER 31, 2011

Type of Procedure	**TOTAL Number of Procedures**	**Completed Procedures**	**Procedures during 2011, as of 31/12/2011**
Restrictive agreements	8	7	1
Individual exemption of the agreements from prohibition	14	8	6*
Determining the extent of competition	7	5	2**
Abuse of dominant position	4	1	3
Opinions	22	21	1
Initiatives to institute proceedings	24	17	7
Other	32	32	0
Total	**111**	**91*** **	**20*** **

REMARKS:
* In January 2012, the final decisions were made in all six procedures
** In January 2012, the final decision was made in one procedure
*** At the date of this report, the number of finalized procedures accounted to 98, while there are 13 ongoing procedures.

4.1 Restrictive Agreements

Definition and prohibition of restrictive agreements
Article 10

Restrictive agreements are agreements between market participants who seek for an aim or effect a significant restriction, distortion or prevention of the competition on the territory of the Republic of Serbia.

Restrictive agreements can be contracts, certain provisions of the contract, explicit or silent agreements, adjusted practices and decisions of associations of market participants, and where they particularly:

1) *Directly or indirectly fix purchase or selling prices or other terms of trade;*
2) *Limit and control production, market, technical development or investment;*
3) *Apply dissimilar conditions to equivalent transactions with respect to different market participants, whereby market participants are put at a disadvantage relative to competitors;*
4) *Condition the settlement of contracts or agreements subject to acceptance of supplementary obligations which, given its nature and commercial usage and practice are not connected with the subject of the agreement*
5) *Share markets or sources of supply.*

Restrictive agreements are prohibited and void, except in cases of exemptions from the prohibition in accordance with this Law.

In the period 01/01/ - 31/12/2011, a total of eight procedures were conducted in order to investigate the existence of infringement of Article 10, of the Law on Protection of Competition - resulting from resolution on restrictive agreements. Among these, four proceedings were initiated and launched in the previous period, and continued and were completed in 2011.In two cases the procedure was initiated and conducted in 2011, whereby one is completed by bringing a final decision and one is still in progress, while the two proceedings are conducted as a "repeated actions" pursuant to the Administrative Court case decisions. Both repeated procedure are completed by adoption of the final decision.

4.1.1. Administrative procedures in progress

Delta Generali Insurance, Company Dunav Osiguranje and Wiener Städtische Insurance

On the basis of the initiative filed by the end of 2010, submitted documentation and additional information collected, the Commission assumed existence of violation of competition pursuant to Article 10, of the Law, and initiated proceedings ex officio against Delta Generali Insurance, Company Dunav Osiguranje and Wiener Städtische Insurance, all from Belgrade. The procedure was initiated against these insurance companies because they concluded a consortium agreement in order to submit a joint bid in the procurement of insurance and reinsurance of aviation fleet, conducted by the holding company for air transport - Jat Airways, Belgrade. The present contract is restrictive horizontal agreement without approved individual exemption from prohibition in terms of the Law. This agreement, in terms of Article 18 Paragraph 1 item 3), may present a joint

venture, whereby the participants retain their legal independence, and its admissibility must be assessed in accordance with Articles 10 and 11 of relevant Law.

Given the complexity of subject procedure, the fact that many of collected data are protected information and / or trade secrets of market participants they were obtained from, and the fact that the proceeding is in progress, for the purposes of this report, it is not possible to specify more details about this case.

4.1.2 Cases completed in the administrative procedure

IDEA - Swisslion

On the grounds of the final decision it was established that the provision of Article 5, Paragraph 4, of the Purchase Agreement signed in February 2009, between Idea d.o.o, Belgrade as a buyer, Swisslion Takovo d.o.o, Belgrade, and seller which concluded contract in the name and on behalf of subsidiaries: Swisslion d.o.o, Belgrade, Joint Stock Company Takovo Gornji Milanovac and Takovo Agrar d.o.o, Gornji Milanovac - in bankruptcy, stipulating that the seller undertakes to apply a uniform price list on the whole territory of the Republic of Serbia, pursuant to the part of the pricelist under heading "the lowest retail price" from the price list of Swisslion Group d.o.o, Novi Sad, which was in force from 24/08/2009, and is an integral part of the Agreement, representing restrictive agreement. The said agreement determines the selling price in the resale, which significantly distorted competition in the retail trade of food products from: confectioneries, processing of fruits and vegetables and baby food of companies: Concern Swisslion Takovo d.o.o Belgrade, Swisslion d.o.o Belgrade, Joint Stock Company Takovo Gornji Milanovac, Takovo Agrar d.o.o Gornji Milanovac - in bankruptcy, in general stores with mainly foodstuffs and other consumer goods of supermarket type, discount stores, supermarkets and hypermarkets (52 110 business category – non specialized retail trade, mainly of food, beverages and tobacco) on the territory of the Republic of Serbia.

By the same decision, the following was determined as a prohibited restrictive agreement: under item 1 of Annex IV / 1 - Other conditions of cooperation referred to in the same purchase and sale contract, concluded between Idea d.o.o Belgrade, as a buyer and Swisslion d.o.o Belgrade, as a seller, on the date of the original contract, with determined sales price for further sale, which significantly undermined competition in the retail trade of food products from the program: confectionary products of Swisslion d.o.o Belgrade, in general stores mainly for food products and other consumer goods of supermarket type, discount stores, supermarkets and hypermarkets (52 110 business category – non specialized retail trade, mainly of food, beverages and tobacco) on the territory of the Republic of Serbia, as well as the provisions under Section 7 Annex IV / 2 - Other conditions of cooperation referred to in the same purchase and sale contract, concluded between Idea d.o.o Belgrade as a customer and company Takovo a.d. Gornji Milanovac, as a seller on the date of the original contract**,** which is determined by sales price significantly undermining competition in the retail trade of food products, processed fruit and vegetable, as well as baby food by company Kompanija Takovo a.d. Gornji Milanovac, in general stores mainly for food products and other consumer goods of supermarket type, discount stores, supermarkets and hypermarkets **(**52 110 reference number **–** non specialized retail trade, mainly of food, beverages and tobacco) on the territory of the Republic of Serbia.

As a behavioural measure, all companies are prohibited (the parties to the proceedings) to take any future actions that could harm competition, explicit or implicit contracting provisions that contain the customer's obligation to apply the minimum protective, fixed and / or recommended price, or determining in any other way the selling price of products from the production of companies from paragraph 1 of disposition, in further sale. Determined is the measure as a protection of competition to Idea, amounting to 2% of the total annual revenue generated in 2008, which amounted to 569,379,780.00 RSD (five hundred sixty nine millions three hundred seventy nine thousands seven hundred eighty and 00/100 dinars).

The parties to the proceedings: Swisslion Group d.o.o, Novi Sad, Concern Swisslion-Takovo d.o.o Belgrade, Swisslion d.o.o Belgrade, Joint Stock Company Takovo Gornji Milanovac, and Takovo Agrar d.o.o. Gornji Milanovac - in bankruptcy, are exempt from payment as a measure for protection of competition, as it was established beyond doubt during the procedure, that the initiator of the prohibited provisions was Idea, and that Swisslion Group first reported the subject Contract, of which, at the time of application, the Commission had no knowledge.

Lasta – Europa Bus

Companies, carriers SP Lasta ad Belgrade, and the Europa Bus d.o.o Valjevo, concluded an Agreement on joint performance in scheduled passenger transport, determining uniform ticket prices in the price lists concerning seven lines as follows: Belgrade-Valjevo (over Lajkovac) Belgrade-Valjevo (via Ub)-Belgrade-Valjevo Divčibare, Belgrade -Valjevo-Loznica; Belgrade – Valjevo - Krupanj, Belgrade-Valjevo-Ljubovija and Belgrade-Valjevo-Tara. In this way, they eliminated price competition between the parties (mutual competitors) in the relevant market, and also provided a constant and complete exchange of critical business information between competitors. The elimination of price competition is contrary to interests of consumers or passengers. Final decision of the Commission established that Agreement on the joint performance of passenger transport on the routes specified by the same contract, which determined the tickets' price for passengers on these lines, represented a restrictive agreement under Article 10 Paragraph 2 item 1) of the Law.

Parties were ordered a behavioural measure for protection of competition, which prohibited any further action that could impair competition, explicit or implicit contracting and establishing uniform rates of transport for passengers in bus transportation and exchange of confidential business information.

Determined is a measure for competition protection as follows: Lasta ad Belgrade – payment in the amount of 1.38% of total annual revenue generated in 2009, which amounted to 117,248,070.00 RSD (hundred seventeen millions two hundred forty eight thousand and seventy dinars), Europe-Bus d.o.o from Valjevo - 1.38% of total annual revenue generated in 2009, which amounted to 1,737,765.00 RSD (one billion seven hundred thirty seven millions seven hundred sixty five thousand dinars).

Jeremić prevoz – Niš ekspres

By final decision of the Commission, it was found that a common protocol on the performance of passenger transport between Pirot-Babušnica, signed on 24/08/2010, between the parties to the proceedings, which are competitors in that field, is a restrictive agreement under Article 10 Paragraph 2 item 1) of the Law. This protocol envisaged that: Jeremić prevoz cancel return tickets, reduce the number of departures from 01/09/2010, initially for one departure in both directions; tickets are to be sold monthly by Niš-express for both carriers with a commission of 7% of revenues, at the end of the month; Niš-Express makes the calculation of the monthly sales where 50% of realized income belongs to Jeremić prevoz, and 50% to the Niš ekspres, etc.

Imposed is a behavioural measure prohibiting the parties to the proceedings any further action which could undermine competition, explicit or tacit agreements and determining uniform fare, as well as the exchange of confidential information. To the initiator of the restrictive agreement, the company Niš ekspres from Nis, a measure for protection of competition is imposed in the amount of 0.6% of the total annual income realized in 2010, amounting to 21,650,850.00 RSD (twenty one million six hundred fifty thousand eight hundred fifty dinars).

The reporting party of restrictive agreement, Jeremić prevoz, fulfilled the conditions prescribed by law for exemption from payment of a sum of money as a measure for competition protection, and accordingly this party was exempt in final decision from that requirement.

Upon the expiry of the protocol, ticket prices for both carriers are significantly lower compared to prices from the period of application of the Protocol, whereby a difference in prices between the different carriers is evident, and significantly greater reduction in price is applied by Niš ekspres carrier.

Taxi Associations

General Association of Independent Taxi Carriers of Persons and Belongings BEOTAKSI, Belgrade, BELGRADE Taxi Drivers d.o.o, Belgrade; LUX TAXI d.o.o, Belgrade; MAXISS EXPORT-IMPORT d.o.o, Belgrade; Association of taxi carriers of persons and Belongings ČUKARIČKI PLAVI, Belgrade, the General Association of ŽUTI TAKSI, Belgrade; BELL TAXI d.o.o, Belgrade; MS PINK CO d.o.o, Belgrade; CD PEPSIS d.o.o, Belgrade; AURORA d.o.o, Belgrade; NBA d.o.o, Belgrade; ALO TAXI d.o.o, Belgrade, Union of taxi drivers and carriers (TVIAP).

Final decision established that the Decision on the application of uniform rates of taxi services from November 28, 2006, by which all forms of discounts that are applied by taxi drivers in the city of Belgrade were teminated, granted by the aforementioned companies and associations, is a prohibited agreement, which seriously undermined competition in the relevant market for taxi services in the city of Belgrade.

Final decision imposed to the parties to the proceedings behavioural measure prohibiting any future conduct which could distort competition relating to the above stated Decision which is null and voud..

Relevant decision in made in revised proceedings by which all procedural deficiencies were removed**.**

The same decision suspended the proceedings against the Union "Nezavisnost", since it was esdtablished that there is no possibility to sue in specific administrative matter, as well as against the Union "Samostalci", because the relevant company terminated its operations and was deleted from the registry.

The procedure in this administrative matter has been completed in accordance with Article 74 of the Law, and due to application of provisions of the previous Law on Protection of Competition, measures for protection of competition, could not be imposed.

IDEA d.o.o. and GRAND PROM a.d.

Final decision established that the provision in Annex I - General commercial terms and fees from Purchase Agreement, signed in March 2009, between GRAND PROM ad Belgrade, as seller, and IDEA d.o.o, Belgrade, as a customer, under the heading "Rebates" in the part in which the seller's contractual obligation is to grant the buyer 2% discount for complying with the recommended price upon basic rebate of 10% of the invoice, for the products from the production program of "Grand", "Argeta" and "Štark", is prohibited restrictive agreement, which significantly undermined competition in the market of wholesale products from the production range of "Grand", "Argeta" and "Štark", as well as on retail market in non-specialized stores of mainly food goods and other consumer goods of supermarket type, discount stores, supermarkets and hypermarkets (52 110 reference number - Non-specialized retail trade, with food, beverages and tobacco) on the territory of the Republic of Serbia, by which the GRAND PROM ad and IDEA d.o.o performed the violation of competition.

The same decision contained behavioural measure, which prohibited companies any further action which could impair competition, explicit or implicit contracting provisions that contain the customer's obligation to apply the minimum protective, fixed and / or recommended price, or determining in any other way the selling prices of products from the "Grand", "Argeta" and "Štark" production range in further sales.

A measure for competition protection is imposed to Idea, in the amount of 1.5% of the total annual revenues realized in 2008, amounting to 427,034,835.00 RSD (four hundred twenty seven millions thirty four thousand eight hundred thirty five dinars and 00/100), to Grand Prom 2% of the total annual income realized in 2008, which amounts to 249,866,580.00 RSD (two hundred forty nine million eight hundred sixty six thousand five hundred and eighty dinars).

Parties to the proceedings filed a lawsuit against the final decisions and initiated administrative proceedings that ended with a ruling of the Administrative Court 1U. 7215/11 of 29/09/2011, by

which the relevant Commission's decision was annulled and the case returned to the Commission for reconsideration. During the new proceeding, the Commission submitted a request for review of the ruling of the Supreme Court of Cassation.

BMA Trading - Karate Federation

Final decision established that the provision of Article 4 of the Agreement concluded between Karate Federation of Serbia, Belgrade and BMA Trading Company d.o.o Belgrade, on 25/08/2006, in Belgrade, is prohibited agreemen, significantly prohibitiong and distorting competition in the market selling fighting arts protective equipment - gloves and shin-guards and for under knee and instep, which are labeled "WKF Approved", in the territory of the Republic of Serbia.

The same decision, as a behavioutral measure, prohibits the parties to the proceedings any further action which could violate competition in the manner described in paragraph 1 of the disposition of this decision, while simultaneously Karate Federation of Serbia has been ordered to reveal on its website that the competitors in competitions organized by Karate Federation of Serbia active within its calendar of events, can use any brand of protective equipment - gloves and protector lower leg and instep, which are labeled "WKF Approved". It is noted that party to the procedure fulfilled this condition.

Subject decision was made in renewed proceeding, acting upon Administrative Court Decision no. 17. 9887/10 of 29/06/2011. The procedure in this administrative matter was conducted and completed in accordance with Article 74 of the Law, applying the provisions of the previous Law on Protection of Competition, which is the reason why measures for protection of competition could not have been determined.

4.2 Exemption from the Prohibition of Restrictive Agreements

Conditions for exemption from the prohibition

Article 11

Restrictive agreements can be exempt from the prohibition if they contribute to improving the production and trade, or promotion of technical or economic progress, providing the consumers a fair share of benefits, provided that they do not impose restrictions to market participants which are not indispensable for achieving the goal of the agreement, that is they do not exclude competition in the relevant market or its significant part.

4.2.1 Cases completed in the administrative procedure

During the reporting period the Commission, a total of 14 requests has been submitted for individual exemption from the prohibition in compliance with Article 12 of the Law on Protection of Competition. As of 31/12/2011, a total of eight procedures were completed, wherefrom six decisions with individual exemptions approval, and two trials ended with adoption of resolutions on the rejection of the request. In the remaining six cases the procedure was completed with the decision issued in January 2012, and according to this, the cases where the final decision was issued later, will be included in subsequent annual report.

Tigar Tyres – s.t.r. Šipeta

The request of the Tigar Tyres d.o.o Pirot was rejected, the individual exemption from the prohibition of distribution agreements concluded with S.T.R. Šipeta Čačak. The subject contract covers delivery of the MICHELIN Group brands (all product lines) and the Tigar brand by Tigar Tyres d.o.o Pirot to customer S.T.R. Šipeta Čačak, with granting of rights **for non exlusive sale** / distribution rights of products, covered by this contract.

The Commission concluded that the present Contract position is not a restrictive agreement that may result in a significant restriction of competition, since the freedom of distributors to continue the resale of Michelin Group brands is not limited in any way in terms of provisions on protection of competition, and there are no conditions for conduct investigation ex officio and evaluation of the requirements for individual exemption from prohibition of restrictive agreements.

Tigar Tyres – Klacska Jugoslavija d.o.o.

Rejected request of the Tigar Tyres d.o.o Pirot, for individual exemption from prohibition of Contract on delivery and maintenance of tyres to be concluded with company Klacska Jugoslavija d.o.o Belgrade.

It was concluded that the present contract is not a restrictive agreement that may result in a significant restriction, prevention or distortion of competition, since it is a contract for the delivery and maintenance of tyres, which a customer, as an end user, uses to carry out regular activities, and concludes the same with the tyre manufacturer as the seller.

MERCATOR-S d.o.o. – Sanja d.o.o., STR Šljivik and STR Kod Nikoline

Approved individual exemption from subject agreements – contracts on partner franchising that Mercator-S d.o.o Novi Sad concluded with Sanja Company d.o.o Subotica, STR Šljivik Beočin and STR Kod Nikoline Petrovaradin, for a period of 4 (four) years from the date of conclusion.

The Commission is of the opinion that the provision on determining the assortment range, in particular case, presents no limit to market participants and that is does not constitute an additional and unjustified restriction to the receiver of franchise, in respect to assortment range. Bearing in mind the object and purpose of the Contract, this limitation could not distort competition between different "brands" (*inter-brand* competition), which would be to the detriment of consumers.

The Commission assessed that the maximum recommended prices, in this particular case, are not a constraint for market participant and it is not necessary to achieve the goal of the agreement, and this is because they do not limit freedom of recipients franchise in terms of self-determination of prices, where in addition the recommended maximum prices apply only to products branded by franchise provider, i.e. Mercator.

The contract does not produce adverse effects to the detriment of consumers, since business strategy is based on establishing a certain (higher) standards of service which is to the benefit of the consumers themselves. The benefit for consumers is also reflected in a better product availability labeled with sign "Mercator", as well as in cost effectivness of supply through the wholesale franchise system, increasing consumer awareness on the range of products in the franchise recipient's stores, marketing, maintenance and control of standards of service provided to consumers.

Consortium of Insurance Companies - Republic Institute for Health Insurance

Approved an individual exemption from prohibition of the Consortium Contract concluded between the consortium of insurance companies: Energoprojekt Garant AD New Belgrade, Wiener Städtische osiguranje AD Belgrade and AD Uniqa non-life insurance, Belgrade, in order to submit a joint bid in the public procurement services and property insurance in health care institutions, in a negotiated procedure without publication of the call, which is implemented by Republic Health Insurance Institute, Belgrade as a client. The exemption was granted for a period of six months from the date of its conclusion.

Applicants, above mentioned insurance companies, are competing to offer the service of life and non life insurance, or specific types of insurance services of persons and property. The subject application was submitted with intention of submitting a joint bid upon published call, and applicants only by joint bid meet all the requirements of the Bidding Documents, and therefore form a consortium.

Although the subject agreement does not provide a direct contribution to improving the production and trade, the same can certainly create the possibility of a larger and broader selection of bidders in public procurement by the services of the Health Insurance budget at a capacity of Republic of Serbia budget beneficiary. This indirectly provides significant savings that can potentially be transferred in the interest of the health needs of the insurees.

In terms of eliminating mutual competition between the parties in the agreement, the Commission believes that it is also irrelevant to the different decision in this administrative matter, given that, in the absence of agreement on consortium, no single consortium member could solely participate in the tender.

Consortium of Insurance Companies – JKP Beogradske elektrane
(Public Utility Belgrade Power Plants)

Approved an individual exemption from the prohibitions of the Consortium Contract concluded between insurance companies: Energoprojekt Garant AD Novi Beograd, Wiener Städtische Insurance AD Belgrade and AD Uniqa non-life insurance, Belgrade, in order to submit a joint bid in the procurement of property insurance of employees, vehicles and responsibilities upon certain activities, carried out as a client, i.e. JKP Beogradske elektrane, New Belgrade. Exemption is approved for the period of two years from the date of its conclusion.

Applicants, above mentioned insurance companies are competing to offer the services of life and non life insurance. The main reason for concluding the contract is intention to meet all qualification requirements that determine participation in the procedure of public procurement. Applicants only by joint bid meet all the requirements of the Bidding Documents, and therefore form a consortium.

Individual agreement exemption from the prohibition has been approved for a period of two

years from the date of its conclusion, given that the public call for offer for the contractual period is of two years duration.

State Lottery of Serbia – Direct Lot d.o.o

The Commission approved an individual exemption from prohibition of the Contract on hiring an agent to sell lottery tickets, with its annex signed at the request of the Commission, which State Lottery of Serbia concluded with Direct Lot d.o.o Belgrade, for a period of four years from the date of its conclusion.

The subject contract was made in order to complete sales network covered by capillary direct distribution (distribution directly to the point of sale), for each point. The applicant stated that internal resources of State Lottery of Serbia are not capable to fulfill this goal, since the development of direct distribution network of over 1,500 sales outlets throughout Serbia for only one type of product, is not financially justified. Accepted is applicants' justification that one of the prerequisites for achieving the declared objectives of the contract is the organization of capillary distribution of lottery products. Envisaged novelties in distribution process are greatly improving the operation process, and through the terms of the Contract on agency services, the realization of at least 10% increase in turnover is planned.

Assessing the underlying contract from the standpoint of meeting the requirements of Article 11 of the Law, the Commission assessed that the capillary distribution may be considered as a qualitative shift in the organization of traffic of lottery products, wherefrom immediate benefits might be engaged sub contractors as well by selling to end users, and also the end consumers due to easier and better availability of demanded products.

In terms of a fair portion of benefits for consumers, the Commission assessed that the essence of what a consumer buys by purchasing a ticket, is not lottery ticket itself as material thing, but a chance to win a prize from the prize fund. Therefore, the acceptable view is that the value of each ticket directly depends on the value of the prize fund for awarding. Ticket, as the product, will be more easely accessible with adequate distribution outlets, and will reduce the costs of those traveling to purchase the ticket. It will enable the purchase to detached consumers who for that reason were not able to buy it until now, and will directly improve customer communications with State Lottery of Serbia, all in order to monitor potential objections and complaints, and improve products and services.

Applicant, during the proceedings, at the recommendation of the Commission, concluded an annex to the agreement which removed obstacles for the approval of exemptions from the prohibition.

4.2.2 Ongoing Administrative Procedures

Company S.C. Michelin Romania S.A. Bucharest, Romania, filed six requests for individual exemption from the prohibition of restrictive agreements. Of these, four requests relate to exemption from prohibition of the Contract on retail business partnership, which the applicant

concluded with Company: Agrohim d.o.o Niš, KEMOIMPEX ad Belgrade, Beoguma d.o.o. Belgrade and Obnova o.d. Kraljevo. One requirement applies to the Contract on quality labeling of Gumapromet d.o.o Leskovac, and one to long-term partnership agreement signed with the GP Auto-shop d.o.o Lazarevac.[1]

4.3 The Abuse of Dominant Position

The dominant market position
Article 15

Dominant position in the relevant market has a market participant that has no competition or competition is insignificant, or one that has a substantially better position compared to competitors, taking into account the size of market share, economic and financial strength, access to markets, supply and distribution, as well as legal and factual barriers to access to other market participants.

The assumption is that the market participant has a dominant position if its market share in the relevant market is 40% or more.

The assumption is that two or more market participants are in a dominant position if between them there is no significant competition, and if their total market share is 50% or more (collective dominance).

If the participant or market participants have not a market share pursuant to clause 2 and 3 of this Article, the burden of proving the existence of a dominant position is on the Commission.

Abuse of dominant position
Article 16

Abuse of dominant market position is prohibited.

The abuse of dominant position, especially considers:

1) *Direct or indirect imposing of unfair purchase or selling prices or other unfair business conditions;*
2) *Limiting production, markets or technical development;*
3) *Applying of dissimilar conditions to equivalent transactions with other trading parties, thereby placing market participants at disadvantage relative to competitors;*
4) *Conditioning the contract conclusion to the other party to accept supplementary obligations which by their nature or according to commercial usage have no connection with the subject contract.*

[1] These procedures have been completed in January 2012, by bringing decision on the exemption from the prohibition of restrictive agreements.

During the reporting period a total of four procedures have been carried out for investigation of the existence of infringement according to Article 16 of the Law on Protection of Competition - abuse of dominant position.

Three procedures were initiated in the previous year, and continued in 2011, while one proceeding commenced during the reporting period. In one case the procedure is completed with a final decision issued on the existence of the infringement, and in three cases procedures are in progress.

4.3.1 Cases completed in the administrative procedure

JKP Gradska groblja Kragujevac *(Public Utility Company – City Cemeteries of Kragujevac)*

The final legal decision determined tha JKP Gradska groblja Kragujevac has a dominant position in the relevant market for leasing graves on the territory of cemeteries in Bozman district in Kragujevac, and that the same has abused its dominant position by: decisions of the Board on the separation of parts of individual cemetery plots in Bozman under the special regime of regulation, imposing an obligation to the leaseholders for construction and installation of tombstone marks with products from the range of public utility company "City cemetery" entrust to that company**.** Also by the conclusion of lease of grave sites in a separate section Bozman cemetery plot uniform typical civil works contracts had to be concluded relating to the preparation and coating range, in which Article 3 obliged lessee to construct the rented burial place according to plan of the city's cemeteries, when placing the tombstone marks (monuments) – the construction and installation should be exclusively entrusted to JKP Gradska groblja Kragujevac. The conclusion of such provisions of contracted works represents a prohibited activity of "binding", of activities, contrary to Article 16, Paragraph 2 Item 4 of the Law, which preconditions the conclusion of contract in a manner that other party has to accept additional obligations which by their nature or according to commercial usage have no connection with the subject contract. As described, JKP Gradska groblja Kragujevac performed the action of conditioning the contract with the other party accepting supplementary obligations which by their nature or according to commercial usage have no connection with the subject of contracts, and limiting the market, which led to a significant restriction of competition on the relevant market.

The same decision determined measures to remove infringement – behavioural measures, as well as measures to protect competition in the form of obligation to pay a sum of money in the amount of 2.3% of the total annual revenues realized in 2009, amounting to 2,682,000.00 dinars (two millions six hundred eighty two thousand dinars).

4.3.1 Administrative Procedures in Progress

Coca Cola Hellenic Bottling Company – Serbia

The assessment procedure was initiated due to the existence of reasonable doubt that Coca Cola Hellenic Bottling Company Serbia - Industrija bezalkoholnih pića A.D. Beograd-Zemun, in business relationship with customers / "partners" undertook acts and practices that might be contrary to the provisions of Article 16 Law on Protection of Competition (abuse of dominant position). This refers especially but not exclusively, to the contractual provisions setting out the types of rebates, the procedure, manner and conditions for exercising the right of their payment.

Given the complexity of the procedure, the fact that many of the data collected are protected information and / or trade secrets of market participants from whom they are obtained, and the fact that the proceedings are in progress, for the purposes of this report, it is not possible to specify more details about this case.

Frikom A.D.

The assessment procedure was initiated due to the existence of reasonable doubt that the company Industrija smrznute hrane FRIKOM A.D Belgrade, in business relationship with customers / "partners" undertook acts and practices that might be contrary to the provisions of Article 16 Law on Protection of Competition (abuse of dominant position). This refers especially but not exclusively, to the contractual provisions setting out the types of rebates, the procedure, manner and conditions for exercising the right of their payment.

Given the complexity of the procedure, the fact that many of the data collected are protected information and / or trade secrets of market participants from whom they are obtained, and the fact that the proceedings are in progress, for the purposes of this report, it is not possible to specify more details about this case.

Telekom Srbija

The assessment procedure was initiated due to the existence of reasonable doubt that the company Telekom Srbija has performed a violation of competition pursuant to Article 16 of the law. Telekom Srbija, as a vertically integrated active participant in the wholesale market on the internet and internet retail market, offering wholesale services to operators who are its competitors in the retail market at prices that were higher and the price level that is applied to its retail end-users during the implementation of promotional campaigns in the period from 01/06/ to 31/07/2011. It is taken into account that Telekom Srbija conducted a campaign of wholesale ADSL ports which included 25% discount on monthly fees for ADSL connections in all packages. The Commission will assess, during the examination procedure, in mutual relationship, the circumstances of the implementation of the subject activities and the fact that the underlying action is not the only one that a party to the proceedings conducted in the retail market of the Internet in the previous and current year. It will particularly examine the

circumstances under which the end users during the implementation of promotional campaigns were conditionally tied to a contractual period of 12 or 24 months.

The Commission will in the process, particularly but not exclusively, evaluate the contractual obligations of Internet operators in the wholesale supply of Telekom Srbija, which relate to the price, the date on which the contract has been concluded, and the extension of the contract, regarding the requirements for increasing width of flow or lease a larger number of ports in wholesale.

4.4. Determining the extent of competition

In implementing the new Law on Protection of Competition, the Commission raised the question of which law should apply (old or new) to the procedure determined by bindingly finalized prodeures. (dominant position and restrictive agreements) in cases with no specific protective measures for the violation.

In this regard, the Commission had in mind the application of provisions of Article 74 of the new Law which stipulates that "the procedures that were initiated prior to the effective date of this Law shall apply to regulations under which they were initiated." The Commission held a point of view that the object and purpose of the Law does not end just in determining infringement and its further prohibition, but that the administrative measure for protection of competition because of damages incurred, should be determined. Such measures were imposed under the previous Law by the final decision on violation, while a new Law imposes measures by the disposition of the decision establishing the infringement. Therefore, decisions made under the new Law will not induce a problem that occurred in cases legally closed under the previous Law, under which at the time of entry into force of the new Law, administrative measures were not imposed aimed to protect competition.

Starting from the cited provisions of Article 74 of the new Law, the Commission in such cases investigated the issues which Law is is more favorable to the party. In answering this question, the Commission established that the application of the new Law is more favorable to the party, in terms of imposing protective measure, where a violation of competition has been legally established. Application of the new Law is not retroactive application, but application of Law more favorable to the party, and such legal position of the Commission does not challenge the ruling of the Administrative Court. Thus, the legal basis for the setting up and purpose of the Commission as a regulatory body is fulfilled.. Contrary view would mean that the violation is considered as a mere statement of fact, which is not sanctioned, which certainly was not the intention of the legislator.

In determining the amount to be paid on the basis of measure for protection of competition, in accordance with the Law and the Decree on the criteria for determining the amount to be paid on the basis of competition protection and procedural penalty, and the manner of their payment terms and conditions, for the determination of such measures shall be taken into consideration the intentions, gravity, duration and consequences of the violation of competition.

During the reporting period, a total of seven procedures were conducted to determine the extent of the competition violation after Commission's decision was made and become final. Since then, two proceedings commencing in the previous year continued in 2011. Among total procedures conducted, five procedures were completed as follows: one process is terminated, and in four cases final decisions were made imposing protective measures. In two cases the administrative procedures are in progress.

4.4.1 Cases completed in administrative procedures

Imlek Beograd - Mlekara Subotica

The final legal decision imposed a measure as a competition protection to Joint Stock Company Mlekara Subotica in the amount of 1.92% of total annual revenue generated in 2006, which amounts to 51,262,576.00 RSD (fifty one million two hundred sixty two thousand five hundred seventy six dinars).

The same final legal decision determined a measure as competition protection to Joint Stock Company Imlek Beograd in the amount of 1.92% of total annual revenue generated in 2006, that is 254,885,759.00 RSD (two hundred fifty four million eight hundred eight hundred eighty five thousand seven hundred fifty nine dinars). The measure of protection was issued for legally determined abuse of dominant position by those dairies, by the purchase of raw milk in the Republic of Serbia, the imposition of unfair terms of business to primary agricultural producers and for applying dissimilar conditions to equivalent transactions with other market participants.

The violation lasted at least three years, and undoubtedly it was established that it started in April, 2005, and lasted at least until 01/03/2008 - (when the price list was published according to Commission’s ordered measure). Actions were taken against many vendors - the primary producers for the entire country, all of which was determined in a legally binding completed procedure establishing the abuse of dominating position.

Payment was effected in favour of budget of the Republic of Serbia.

Veterinary Chamber of Serbia

The final legal decision imposed a measure for competition protection to Veterinary Chamber of Serbia in Belgrade, in the amount of 7% of the total annual income realized in 2007, which amounts to1,243,690.00 RSD (one million two hundred forty three thousand six hundred ninety dinars).

Protective measure was issued due to bindingly established violation of competition on the grounds of restrictive agreements.

Association of Insurance Companies in Serbia – insurance companies
(Full Car Insurance)

The final legal decision imposed a measure for competition protection to Association of Insurance Companies in Serbia, Belgrade, in the amount of 1.30% of the sum of total annual revenues that members of the Association of Insurers of Serbia (both parties to the proceeding in the same administrative matter) realized from insurance and coinsurance for withholding tax payable on the total amount of premiums earned in 2007, which amounts to 466,994,346.00 RSD (four hundred sixty six millions nine hundred ninety four thousand three hundred forty six dinars). In the event that the Association of Insurance Companies in Serbia is unable to pay the amount of imposed measure for competition protection, jointly associated market participants are jointly and severally liable, namely: Dunav Insurance, DDOR Novi Sad, Delta Generali Insurance, Sava Insurance, Millennium Insurance, Takovo Insurance, Triglav Kopaonik, AMS Insurance, Wiener Städtische Insurance and Globos Insurance, which may jointly or individually pay the obligation.

To other parties to the proceedings the measure for competition protection is determined in the form of the obligation to pay a sum of money in the amount of 1% of the total annual revenue from insurance premiums and coinsurance upon withholding tax payable on the total amount of premiums earned in 2007, resulting for individual parties in the following amounts: Danube insurance amount 125,557,630.00 RSD; for DDOR Novi Sad, the amount of 111,551,740.00 RSD; for Delta Generali Insurance, the amount of 48,663,970.00 RSD; Sava Insurance, the amount of 6,524,610.00 RSD; for Millennium Insurance is 5,942,020.00 RSD; for Takovo Insurance, the amount of 13,968,460.00 RSD; the Triglav Kopaonik, the amount of 9,444,920.00 RSD, for AMS Insurance, the amount of 8,810,550.00 RSD, for Wiener Städtische Insurance, the amount of 26,421,610.00 RSD; Globos Insurance, the amount of 2,340,740.00 RSD.

The measure for protection of competition was imposed for violation of competition - a restrictive agreement.

Association of Insurance Companies in Serbia – insurance companies
(Supply and interest fee)

The final legal decision imposed a measure for competition protection to the parties that did not report to the Commission a Joint Notice as the prohibited agreement, being as follows: Takovo Insurance from Kragujevac in the amount of 1.1% which amounts to 16,492,751.00 RSD; UNIQA Insurance Belgrade in the amount of 0.8%, which amounts to 9,379,152.00 RSD; AS Insurance Belgrade in the amount of 1%, which amounts to 7,870.00 RSD.

Under the same decision, exempt from paying a sum of money as a measure for competition protection, was the company who reported the Joint Notice on 15/06/2009, as a prohibited agreement, referring to the previous provisions of the exemption from prohibition, namely: Association of Insurance Companies in Serbia, Dunav Insurance, DDOR Novi Sad, Delta Generali Insurance, Triglav Kopaonik, Millennium Insurance, Sava Insurance and AMS Insurance.

The measure for protection of competition was issued for the legally established violation of competition - a restrictive agreement, but only in relation to the part of the Joint notification which contains the following "as of 01/07/2009, the insurers have ceased to grant benefits to end users (the insured) in the form of gifts and deferred payment on behalf of the insurer". Market participants, especially those where there is no price competition, should independently and autonomously determine the quality of services provided, as well as the payment terms for services rendered and other criteria aimed to allow a choice to consumers.

According to provisions of Article 108 of the Law on Compulsory Insurance in Traffic, the determination of the same amount for costs relating to automobile insurance by insurance companies, is no longer punishable, whereby insurance companies that carry out work of automobile insurance, shall apply uniform conditions of insurance, the premium systems with unique baseline for insurance premiums, and minimum rate. For this reason, there was no basis for determining the extent of competition for a restricted part of the agreement which reads: "that as of 01/07/2009, all fees and commissions and all other benefits to agents and brokers, including the salaries of employees who, as employees of the insurer, perform activities on technical security controls, other external retail stores and other retail outlets, an annex of existing contracts will adjust matters to regulations, so that the calculation and payment of all these costs and benefits does not exceed 11.45% of the gross premiums paid (excluding tax), in all societies without exception".

Association of Insurance Companies in Serbia – insurance companies
(Compulsory motor vehicle insurance)

The resolution suspended the procedure for determination of measures for competition protection due to legally justified violation of competition in the form of restrictive agreements, performed by the following companies: AD Dunav osiguranje from Belgrade, AD UNIQA non life insurance, New Belgrade and AD Wiener Städtische insurance, New Belgrade.

The reason is that in the meantime the legal provisions on compulsory insurance in traffic have changed. Namely, at the time of initiation of proceedings to determine the extent of competition, pursuant to the specific law, particularly Article 108 of the Law on Compulsory Traffic Insurance, the insurance companies were authorized to implement provisions for which the final decision of the Commission determined that represent acts which significantly distort competition.

Starting from these terms, as well legal certainty relating to criminal law, under which the offense is punishable only if it was not punished at the time of sentencing, it was estimated that there are no conditions for further conduct of the procedure.

4.4.2 Administrative Procedures in Progress

Manufacturers of Drugs - Wholesale

The procedure for determining the extent of competition protection is in progress in following companies: Hemofarm ad Vrsac, Galenika ad Zemun, FHI Zdravlje Leskovac ad, Leskovac, Habit Pharm ad Pharmaceutical factory Ivanjica, Jugoremedija ad Zrenjanin, Slaviamed doo, Belgrade, Srbolek ad Belgrade, Swiss Pharma d.o.o Belgrade, Velefarm ad Belgrade, Vetfarm ad Belgrade, Farmalogist d.o.o Belgrade, Phoenix Pharm d.o.o Belgrade, Jugohemija Pharmaceuticals d.o.o Belgrade, Vetprom Hemikalije a.d. Belgrade, and Unihemkom d.o.o Novi Sad.

The procedure was instituted as the infringement of competition was bindingly established in relation to these companies, on a grounds of restrictive agreement.

Serbia Broadband – Srpske Kablovske mreže

The procedure for determining the extent of competition to Serbia Broadband – Srpske Kablovske mreže d.o.o, Belgrade, because of validly established violation of competition in the form of abuse of dominant position, performed at the determined relevant market by signing contracts with national, provincial and broadcasters in the region of Belgrade, as follows: TV Pink, TV Avala, FOX TV, TV KOŠAVA and HAPPY TV, SUPER TV, TV METROPOLIS, ENTER TV, SOS KANAL and TV STUDIO B, which established the exclusive right of distribution of television programs via DTH technology, resulting in preventing and restricting competition in the defined relevant market or limiting the market and technical development to the detriment of consumers.

4.5. Initiatives to Commence Proceedings to Determine the Violation of Competition

The Commission shall initiate the infringement procedure ex officio when the basis of submitted initiatives, information and other available information, reasonably assume the existence of infringement, as well as in the case of investigation of concentration in terms of Article 62 of this Law. In above stated it has been shown that the initiative for infringement is the source of the most important findings of the Commission, and the increasing number of procedures regarding abuse of dominant position is the outcome of submitted initiatives.

The Commission reviews each submitted initiative and petition, and shall undertake all possible actions in order to gather additional data and information, such as the requirement for submission of data and documents by market participants to which the initiative is concerned, their competitors, other companies that are participants in the same market, as well as from government agencies, organizations and regulatory bodies with jurisdiction in the relevant economic sector, etc. It can be said that the Commission conducts preliminary proceedings, to

collect basic data that will shed light on the situation in the market for which the applicant believes to be a violation, in order to establish a reasonable doubt, which is a necessary condition to initiate proceedings ex officio.

Last year, 24 initiatives were filed, of which 17 were examined and discussed, while the procedure for the other seven is in progress. The applicants are usually market participants, who are not always necessarily the competitors to company that submitted the initiative, then the associations of market participants, entrepreneurs, law firms, and individuals. After an investigation of the case relevant to the initiative, the applicant is promptly informed of the outcome of the initiative, on the circumstances and reasons for the decision of the Commission.

The procedure for infringement, ex officio, was launched by the two initiatives. Smaller number (6) initiatives related to legal situations that do not present the issues of competition and where Commission has no jurisdiction. In some cases, although these were issues in the field of competition, the Commission could not establish a reasonable suspicion of the infringement, due to lack of evidence, because it describes a situation or an aggressive act of unfair competition, but not a violation of competition in terms of the Law. In relation to other initiatives, described and examined situation did not appear to breach the competition. The greatest number of initiatives related to telecommunications, to healthcare and pharmaceutical business, and the funeral services.

Hereinafter will be shown some of the initiatives.

Initiative Life R.F.

The Content of the Initiative: Initiative's applicant represents the foreign stem cells storage bank. Clinical Center Kragujevac concluded agreements with three other stem cell banks and refused to conclude a contract with the initiative applicant. Given that the whole process of taking blood from the umbilical cord of newborns to preserve stem cells is conditioned by the contract health facility with a bank of stem cells with which both parents must have a contract, the initiative applicant considered the denial of the contract by KC Kragujevac as a breach of competition - abuse of dominant position eliminating the applicant from the relevant market in Kragujevac.

In the course of procedure for this initiative, a statement of CC Kragujevac is obtained, with detailed explanations about the procedure and conditions and also the conditions of these types of services provided to parents were evaluated, all by the CC in Kragujevac in terms of parents' possibility relating to the provider of stem cell storage.

In particular case, there are no grounds to institute proceedings to determine infringement. In awarding contracts to foreign stem cells storage banks, concluded contracts with three foreign banks, in this specific situation represents a possibility for choice of service users, that is, that they are not deprived of choice, so one cannot talk about constraining or substantially restricting competition in the aforementioned geographic market, since there is no obligation of CC Kragujevac, in fact it has the freedom to conclude contract with storage banks that meet its assessment requirements. Eventual non-compliance of legal obligations by KC Kragujevac regarding the award of the contract, may be considered as a mode of abuse of dominant position,

because the obligations in question are regulated by the Law on Health Care, which implementation and supervision is under jurisdiction of the Ministry of Health.

Initiative Jotel d.o.o, Niš

The Content of the Initiative: the examination of the infringement of Article 16 of the Law, against Kopernikus Technology d.o.o Belgrade – New Belgrade, which, according to the initiative, performed an act of infringement in Nis and Vranje abusing its significant market share in the distribution of media content (KDS) in Serbia, and offering free cable TV.

In the course of handling this initiative, Commission collected necessary documentation from Jotel, Kopernikus and Telekom Serbia, upon which it determined the following: Kopernikus cannot be an operator with "significant market power" in the Serbian market, because it owns less than 10% market share, thus it is impossible to prove the holding of a dominant position in market distribution of television programs in the Republic of Serbia; in Nis, the situation is identical compared to the whole territory of the Republic of Serbia; in Vranje, based on conduct of all active participants in the market of town Vranje, Commission could not reasonably expect that activities performed by Kopernikus in Vranje have or may have significant distortion, restriction or prohibition on competition, because of other companies present in Vranje or easily able to start operators and service distribution of TV programs provided by IPTV and / or DTH platform, for what reason it would be difficult to prove the thesis of compensation (recovery) of deliberately "sacrificed profits", due to the free provision of cable television.

Initiative „Kanal 9“, Novi Sad

The Content of the Initiative: Investigation of the infringement of Article 10 and 16 of the Law on Competition Protection against „Serbia broadband – Srpske kablovske mreže“d.o.o. from Belgrade. According to the Initiative, SBB committed a violation of the competition by signing restrictive agreements and abuse of dominant position. The Initiative states that in the retail media distribution market in Serbia, there is a situation where SBB did not established a clear bid and offer prices and other terms of distribution program for broadcasters, thus broadcasters are subject to unfair purchase or selling prices or other unfair business conditions; SBB applies dissimilar conditions to equivalent transactions to various participants - broadcasters. The consequence of SBB's conduct on the market is that some broadcasters have limited market audience, thereby placing them at a disadvantage, compared to competitors who have the basic analog package of SBB available to multiple users - viewers, all of which is, according to applicant's Initiative, a sufficient basis to initiate proceedings for the infringement, the existence of restrictive agreements and abuse of dominant position, which SBB has on the retail distribution market (broadcasters) of television media in Serbia.

After a detailed analysis of the submitted initiatives, Commission assessed that there is no reasonable suspicion of violation of competition, or that the statutory requirements are not met for initiation of proceedings ex officio, and according to that, sent the notice to the applicant. This is because the actions taken (and highlighted in the initiative), does not constitute

infringement actions, but it is of commercial character and actions of permissible conduct in making business decisions in a free market conditions.

5. INVESTIGATION OF CONCENTRATION

The Term of Concentration

Article17.

The concentration of market participants arises in cases where:

1) mergers and organizational changes whereby occurs a merger of market participants pursuant to the Law governing on companies;

2) the acquisition by one or more market participants, direct or indirect control, pursuant to Article 5 Paragraph 2 of this Law, over the other participant or several market participants;

3) joint investments by two or more market participants in order to create a new market participants or the acquisition of joint control pursuant to Article 5 Paragraph 2 of this Law over the existing participant, taking into consideration for the time of occurrence the date of last transaction performed.

It shall be considered a concentration of two or more transactions between the same market participants, made in the period of less than two years, taking into consideration for the time of occurrence the date of last transaction performed.

Approval of Concentrations

Article 19

Concentrations of market participants are permitted, unless severely restrictingn, distorting or preventing competition in the market of Serbia or its part, especially if this restriction, prevention or distortion would result either in creating or strengthening a dominant position.

Approval of concentrations of market participants is determined in relation to:

1) The structure of the relevant market;

2) Actual and potential competitors;

3) Position of market participants involved in concentration and their economic and financial power;

4) The possibility of choice of suppliers and users;

5) Legal and other barriers to entry onto relevant market;

6) The level of competitiveness of the market participants within concentration;

7) Trends of supply and demand of relevant goods or services;

8) Trends in technical and economic development;

9) The interests of consumers

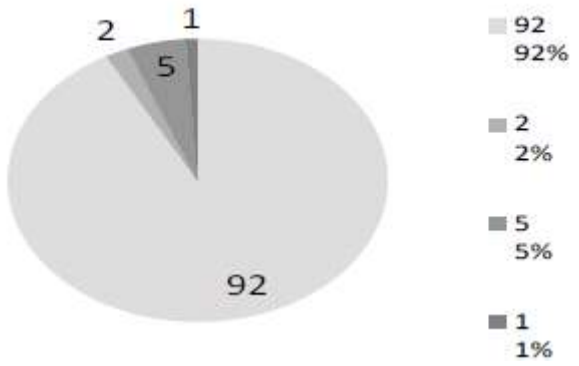
In 2011, a total of 114 applications of concentration were filed. 94 cases were finalized by issuing decisions to approve the implementation of concentration, while six procedures were completed with the on the basis of resolution, of which 5 related to rejection of application for failure to fulfill concentration requirements for submitting an application prescribed by Article 61 of the Law, while one resolution related to suspension of the proceedings ex officio, due to the lack of conditions for further conduct of the procedure.

During the reporting period, it was evident that the most of the filed complaints referred to applicants being foreign entities - in 60 cases (which is 66% of total complaints filed). The number of reported concentrations that occured in the privatization process has been significantly

reduced. Also, in relation to the total number of issued decisions on submitted applications on concentration, practically insignificant was the number of concentrations that occured on the basis of Article 61 Paragraph 3 of the Law, or that were conducted on the grounds of a bid for takeover, pursuant to regulations governing the acquisition of joint stock companies. Only 8 (eight) decisions were issued based on applications concerning takeover of companies, representing about 8.5% of the total number of issued decisions in 2011, by which an implementation of reported concentrations was approved. **In case of such concentration, there is an obligation to notify concentration even when the threshold of participants involved in concentration, prescribed in this Article of the Law, are not met.**

Graph 1

Graphical presentation of completed procedures in 2011, according to notifications on concentrations submitted

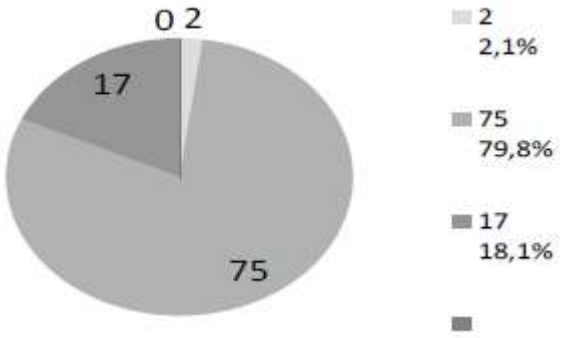


Total number of completed procedures (100) wherefrom:
1. Approved concentrations in summary procedure 92;
2. Approved concentrations investigated in inquiry procedure (Ex officio procedure) 2;
3. Resolution on rejection of notification of concentration pursuant to non fulfillment of conditions 5;
5. Resolution on termination of procedure – ex officio 1.

5.1. Concentrations Approved in Summary Proceedings

Graph 2

Graphical presentation of issued decisions on approval of concentrations in 2011, according to legal ground of their occurrence pursuant to Article 17 of the Law



Total number of issued decisions (94) wherefrom:

1. **Concentrations generated pursuant to Article 17, item 1 (total 2)**
2. **Concentrations generated pursuant to Article 17, item 1 (total 75) wherefrom:**
eight decisions issued upon concentration generated from the offer of acquisition,
this makes 10.7% of overall approved concentrations generated pursuant to Article 17, item 1 of the Law;
two decisions on concentrations that occured in privatization process (2.7% of total number of approved concentrations generated pursuant to Article 17, item 1 of the Law;
3. **Concentrations generated pursuant to Article 17 item 3 (total 17)**

In relation to the total number of approved concentratio in 2011, by far the largest number (73 or even 79% of the total number of procedures were completed by issuing a decision on approval of concentration in summary proceedings), relates to decisions issued under notifications bywhich contractual parties acquired shares or share of one market participant into another participant in the market, on the grounds of Article 17, paragraph 1, item 2. Under this legal grounds, decisions approving the following concentrations in summary proceedings were issued:

1. The concentration of market participants resulting from the acquisition of control by the Import Export and Marketing Company FERMOPROMET d.o.o, based in Croatia, the open joint stock company Moravica from Backa Topola, created by taking over the entire share capital of the target company.
2. The concentration of market participants resulting from the acquisition of control by the company Securitas Services d.o.o based in Belgrade, company for physical, technical *and fire security Sistem FTO from Belgrade, created by transferring entire share of the* company Sistem FTO to company Securitas Services d.o.o by purchase of subject share from former owners.
3. The concentration of market participants resulting from the acquisition of control by the Apsolut Property d.o.o. based in Belgrade, over the open joint stock company Sloboda from Novi Pazar, created by acquisition of entire shares of the company Sloboda from former owners of that capital on the basis of a takeover bid.
4. The concentration of market participants resulting from the acquisition of control by the company DTEK Holdings Limited Company based in Cyprus over the public joint stock company Zahidenergo from Ukraine, created on the basis of acquiring of 70.905% of total share in the share capital of the target company.
5. The concentration of market participants resulting from the acquisition of control by the company DTEK Holdings Limited Company based in Cyprus over the public joint stock company Kyivenergo from Ukraine, on the basis of acquiring of 64.985% of shares of this company.
6. The concentration of market participants resulting from the acquisition of control by the company Javna rasvetljava d.d from the Republic of Slovenia, over the company Elektoroizgradnja Bjelovar AD from Bajina Basta, by purchase of 70.42567% of the share capital of the target company in the privatization process.
7. The concentration of market participants resulting from the acquisition of control by the company DTEK Rovenkyanthracite from Ukraine over State Enterprise of Rovenkyanthracite, created under the Concession Agreement for a period of 49 years.
8. The concentration of market participants resulting from the acquisition of control by the company - factory for fruit and vegetables processing Nectar d.o.o from Backa Palanka, over the company Fructal dd from Slovenia, through direct taking over of 93.7% of shares of the company Fructal dd under Contract of shares sale, entered into force between the company Pivovarna Union dd, Ljubljana - as a seller and Nectar Company d.o.o. as a buyer.
9. The concentration of market participants resulting from the acquisition of control by the company Robert Bosch GmbH, Germany from Inubit AG from Germany, by purchasing of 100% shares of the target company.

10. The concentration of market participants resulting from the acquisition of control by the company for consulting and holding Mač Don Don d.o.o based in Pudarci, over Žitoprodukt joint stock company for the production of grain mill, bakery and confectionary products, trading and services based in Zrenjanin, based on the lease of production capacity as part of the assets of the target company, intended for production of bread and pastries.
11. The concentration of market participants resulting from the acquisition of control by the company Gefco SA of France from the company Gruppo Mercurio S.p.A from Italy, created by taking over from Gefco SA 70% equities in the company of Gruppo Mercurio S.p.A.
12. The concentration of market participants resulting from the acquisition of control, by the subsidiaries of Japan Tobacco Inc., i.e. companies JT International Holding BV and company Loras Holding BV - both from the Netherlands, over the company Haggar Cigarette & Tobacco Factory LTD from Republic of Northern Sudan and the company Haggar Cigarette & Tobacco Factory Ltd from the Republic of South Sudan, created in a manner that acquirers of control, under a sale contract, took over from the previous owner 100% of shares in both target companies.
13. The concentration of market participants resulting from the acquisition of control by the DTEK Holding Limited from Cyprus over an open joint stock company Dniproenergo from Ukraine, created by the acquisition and use of exclusive rights of the deputy chairman of the supervisory board of Dniproenergo, by representatives of DTEK Holding Limited.
14. The concentration of market participants resulting from the acquisition of control by the company from Ukraine DTEK Sverdlovanthracite over state enterprise Sverdlovanthracite from Ukraine, created under Concession Agreement for a period of 49 years.
15. The concentration of market participants resulting from the acquisition of control by the company Energees Management Limited from Cyprus, a corporation with limited liability Prom - Energo Product from Ukraine, created by a contractual acquisition of 100% of shares in the target company from its previous owners and controllers.
16. The concentration of market participants resulting from the acquisition of control by the company Schneider Electric SA of France, which through its subsidiary Schneider Electric Espana SAU from Spain, established control over the company Telvent GIT SA of Spain, created public bid for all shares of Telvent GIT SA and their taking over.
17. The concentration of market participants resulting from the acquisition of control by the company UMG United Minerals Limited from Cyprus, over the company Donkerampromsiryo company in Ukraine, created by acquisition and direct and indirect ownership of the entire share capital of the target company.

18. The concentration of market participants resulting from the acquisition of control by the company Volong Holding Group Co. LTD. from the People's Republic of China, over the joint stock company ATB Antriebstechnik Aktiengesellschaft with its head-office in Austria, created by acquiring of 97.84% of the share capital of the ATB based on trading of shares transferred by the previous owners.
19. The concentration of market participants resulting from the acquisition of control by the company Valant Pharmaceuticals International based in Canada, over the Pharma Swiss SA of Switzerland, created by taking over of the entire share capital of Swiss Pharma from the previous owners of that capital.
20. The concentration of market participants resulting from the acquisition of control by the company Metinvest BV from the Netherlands, over a group of companies which consists of seven subsidiaries in Cyprus, created by acquisition and indirect control of the joint stock company JSC Zaporiz'ky Integrated Iron and Steel Works Zaporizhstal, as the final target company established and registered in Ukraine.
21. The concentration of market participants resulting from the acquisition of control by the company DTEK Holding Company Limited from Cyprus, over the public joint stock company Donetskoblenergo from Ukraine, created on the basis of taking over the Ukrainian property fund of 40.061% of shares of the fund's holding in the target company, which jointly previously possessed DTEK shares of the company in the target company in the amount of 30.826663%, provides 70.887663% of ownership of the share capital of Donetskoblenergo and control over it by DTEK Holding Company Limited.
22. The concentration of market participants resulting from the acquisition of control by the company Meat industry Matijevic d.o.o from Novi Sad, over the entire movable and immovable property of the debtor – joint stock company for crop, livestock production and agricultural services Tromedja in bankruptcy, with its registered office in Majdan.
23. The concentration of market participants resulting from the acquisition of control by the company DTEK Holding Company Limited BV from Netherlands over Taurunum Holdings BV from the Netherlands, created on the basis of taking over of 100% of stake in the target company of Dutch society Dexim BV, as the former owner of the exclusive total stake in the target company.
24. The concentration of market participants resulting from the acquisition of control by the company Dr Oether Nahrungsmittel Beteiligunsh GmbH from Germany, over the company Centro Fantastico d.o.o from Belgrade, created by taking over the entire stake in the target company from the company Centroproizvod ad Belgrade, as the former owner of that share.
25. The concentration of market participants resulting from the acquisition of control by the company for trade, foreign trade and services Silbo d.o.o Belgrade - Zemun, over factory Paraćinka ad Paracin, which came into force by purchasing of 80.09849% of the share capital of the target company under a takeover bid.

26. The concentration of market participants resulting from the acquisition of control by the company UMBH Ukrainian Machine Building Holding Limited from Cyprus, over the Ukrainian company JSCOT Donetskgormash, created by purchase of a majority stake of the two largest individual shareholders in the target company.

27. The concentration of market participants resulting from the acquisition of control by the Company for Trading and Services Kodar Engineering d.o.o. Belgrade, over the open joint stock company Energomontaža ad for design and construction of energy and telecommunication facilities in Belgrade, created on the grounds of a takeover bid by which Kodar Engineering gains the majority of the share capital of the target company, from its previous owner.

28. The concentration of market participants resulting from the acquisition of control by the company Gr. Sarantis Ltd Cyprus from Cyprus, over the company Plusfidelity Limited from Cyprus on the basis of taking over 100% of stake in this company, as well as gaining indirect control over domestic companies Interclean d.o.o. Belgrade, in the part of its activities relating to the management of operations of the company, related to its products, which, when put into circulation, are labeled as "TopStar Graf."

29. The concentration of market participants resulting from the acquisition of control by the company ESPV Limited from Cyprus, over the company Scientific and production company Sigma - Service of Ukraine, created by the acquisition of the entire registered capital of Sigma – Service, from its previous owner.

30. The concentration of market participants resulting from the acquisition of control by the company Meat industry Matijevic d.o.o from Novi Sad over the joint stock company Galad for agricultural processing and marketing of Kikinda, created on the basis of publicly announced takeover bid of company Galad, by which Matijevic company acquired 100% of shares of the target company.

31. The concentration of market participants resulting from the acquisition of control by the company SCM Financial Overseas Limited from Cyprus, over the public joint stock company Bank Renaissance Capital of Ukraine, created on the grounds of taking over of 100% of share capital in the target company, from company RCF Europe BV, the Netherlands, as the current owner of the target company.

32. The concentration of market participants resulting from the acquisition of control by the Company for consulting and holding M.A.Č. DON DON d.o.o. – Pudarci, Republic of Serbia, over the joint stock company in bankruptcy - Pekara Kikinda from Kikinda, by renting the entire property of the target company.

33. The concentration of market participants resulting from the acquisition of control by the company UMBH Ukrainian Machine Building Holding Limited from Cyprus, over the company Ukrtransmash LTD from Ukraine and over the company Kamensk Heavy Engineering Plant from Russia, created by the purchase of controlling package of shares from the same shareholders in both target companies.

34. The concentration of market participants resulting from the acquisition of control by the company Robert Bosch of Germany for taking over the operations of production and distribution of electric starters, alternators, sensors for temperature control and wiper blades from Unipoint group, headed by the company Unipoint Electric Mfg. Co. Ltd., with head-office in Taiwan, created on the basis of concluded sale contract on purchase of shares and assets from their former owners.

35. The concentration of market participants resulting from the acquisition of control by the company Starvista Limited from Cyprus, which gained control over the company Metacapital from Ukraine, by purchase of 99% of stake in Ukrainian company.

36. The concentration of market participants, resulting in acquisition of non-owner control by the Company for consulting and holding M.A.Č. DON DON d.o.o. – Pudarci, Republic of Serbia, over the company producing bread and pastry Fidelinka d.o.o. from Subotica, by renting the entire property of the target company.

37. The concentration of market participants resulting from the acquisition of control by the individual company UPM Kymmene Corporation of Finland, over the company Myllykoski Paper Oy of Finland, by purchasing shares of the target company, by which the previous joint control over that company, was transferred to sole control by UPM Kymmene Corporation.

38. The concentration of market participants resulting from the acquisition of control by the company for the production, sales and services "Agromarket" d.o.o. from the Republic of Serbia over "Agroseme", retail and wholesale company for the production, processing and sales of seed goods and reproductive materials in the Republic of Serbia, by purchase of the share capital of the target company.

39. The concentration of market participants resulting from the acquisition of control by the company Energees Management Limited, Cyprus, over the company Regal Petroleum plc, UK, by purchasing all shares of the target company.

40. The concentration of market participants resulting from the acquisition of control by the company "Ciric and Son" d.o.o from the Republic of Serbia, company for the wholesale and retail, over the Agricultural enterprise "Economy" Joint Stock Company, Serbia, created by taking over of the stock of the target company.

41. The concentration of market participants resulting from the acquisition of control by the company "Centro- štampa " d.o.o. from the Republic of Serbia, over company Štampa sistem“ d.o.o from the Republic of Serbia and company, "Just a moment" doo from the Republic of Serbia, by purchasing the entire property of these target companies.

42. The concentration of market participants resulting from the acquisition of control by the company INDUSTRIA DE DISEÑO Textil, SA from Spain, over a group of related market participants: Delta Still doo, Delta B Fashion d.o.o, Delta MD Fashion d.o.o., Delta O Fashion d.o.o, Delta P Fashion d.o.o. and Delta S Fashion d.o.o, all from the Republic of Serbia, by the purchase of all assets from the above target companies.

43. The concentration of market participants resulting in the privatization process by acquiring the control by the Consortium consisting of Company for production, transport and trade, "Inter-Kop" d.o.o. and the company "MBA Miljković" d.o.o. from the Republic of Serbia over company „Ravnaja u restrukturiranju“ ad, from the Republic of Serbia, by the purchase of 70.26277% of shares in the target company.

44. The concentration of market participants resulting from the acquisition of control by the company Chester Holdings S.a.r.l., Luxembourg over the group of associated market participants, comprising of: (I) Capsugel Belgium BVBA, Belgium, (II) Capsugel de Mexico, S. de R.L. de C.V. from Mexico; (III) Capsugel France ,France, (IV) Capsugel Healthcare Limited, India, (V) Capsugel Japan Inc. ((VI) Capsugel Ploërmel from France, (VII) Capsugel Co. Ltd. from Thailand, (VIII) PT. Capsugel Indonesia from Indonesia and (IX) Suzhou Capsugel Ltd. from China, all subsidiaries of the company Pfizer Inc. from the United States, as well as over certain property used for the performance of operations of the target company Capsugel..

45. The concentration of market participants resulting from the acquisition of control by the company Tikkurila, Finland, over company Zorka Color d.o.o. from the Republic of Serbia, by purchasing of all assets of the target companies.

46. The concentration of market participants resulting from the acquisition of control by the company Robert Bosch GmbH, the Republic of Germany, over the company Hüttlin GmbH, Republic of Germany, created by the purchase of shares and the acquisition of indirect control over the business division Manesty from the United Kingdom, through the purchase of property.

47. The concentration of market participants resulting from the acquisition of control by the company Slovenia Broadband Sarl, Luxembourg, over the company Knight Development Support d.o.o, the Republic of Serbia, by taking over the total capital of the target company.

48. The concentration of market participants resulting from the acquisition of control by the company Bayer CropScience AG, Germany, over the company Raps GbR from Germany, the company PHPetersen Saatzucht Lundsgaard GmbH & Co. Germany and Canola Breeders International Ltd., UK, by taking over the total capital of the target companies.

49. The concentration of market participants resulting from the acquisition of control by the company "SEE MEDIA HOLDINGS" BV Netherlands, over the company "AST" d.o.o. from the Republic of Montenegro, by the purchase of all assets of the target company.

50. The concentration of market participants resulting from the acquisition of control by the company Becchis Osiride d.o.o. from the Republic of Serbia, over the company for the production of insulation materials Azma, from the Republic of Serbia, by purchasing the equity of the target company, on the basis of a takeover bid.

51. The concentration of market participants resulting from the acquisition of control by the company Sberbank of Russia, the Russian Federation, over the Volksbank International AG, Austria, created by the purchase of all assets of the target company.

52. The concentration of market participants resulting from the acquisition of control by the company with limited liability Mega-Trade, company in manufacturing, trading and services, from the Republic of Serbia, over the company Trivit-Pek - Pekarska industrija AD, the Republic of Serbia, by the purchase of share capital on the basis of a takeover bid.

53. The concentration of market participants resulting from the acquisition of control by the company MK Group d.o.o. from the Republic of Serbia, over society Ashmore Carnex Holdings Limited, Cayman Islands, created by purchasing of all shares of the target company

54. The concentration of market participants resulting from the acquisition of indirect control of the company Robert Bosch GmbH, Germany, over the company Aircondition Oak Technology Co. Shandong. Ltd from the People's Republic of China and the company Qingdao Oak Central Air Conditioning Co. Ltd. from the People's Republic of China, created through the subsidiary company Robert Bosch, located in the People's Republic of China - Zibo Bosch Company - which is the direct control acquirer of the target companies.

55. The concentration of market participants resulting from the acquisition of control by Telenor Norge A.S., Kingdom of Norway, over the Company Los Bynett A.S. and Bynett Private A.S. both from the Kingdom of Norway, by taking over the total capital in both target companies from their previous owner.

56. The concentration of market participants resulting from the acquisition of indirect control of the company Mercator-S d.o.o. from the Republic of Serbia, over the overall activity of retail company Family Market d.o.o. also from the Republic of Serbia, on the grounds of the contractual lease of facilities of the target company.

57. The concentration of market participants resulting from the acquisition of indirect control of the company Microsoft International Holdings BV from the Netherlands, over the company Skype Global from Luxembourg, by taking over the total capital of target company, from its previous owner.

58. The concentration of market participants resulting from the acquisition of control over company Džamar d.o.o. Kragujevac, company Ratarstvo from Skorenovac, by taking over of total equity of the target company.

59. The concentration of market participants resulting from the acquisition of control by the open joint stock company Nama a.d from Sabac, over the company Ishrana a.d. from Smederevo, created on the basis of publicly disclosed bid for taking over the shares of joint stock company Ishrana a.d. from Smederevo, upon which company Nama a.d from Sabac becomes the owner of 95.02% of the total number of issued shares of Ishrana a.d. from Smederevo

60. The concentration of market participants resulting from the acquisition of control by the company in the wholesale trade of chemical products Promist d.o.o. Novi Sad, over company Hrastovača from Pozarevac, created by purchasing 100% of shares of the target company.

61. The concentration of market participants resulting from the acquisition of control by the company for the production of agricultural products, transport and services Almex from Pancevo, over an agricultural production Zlatar ad from Mramorak, created by purchasing 100% of shares of the target company.

62. The concentration of market participants resulting from the acquisition of control by the company Delta Agrar Ltd. Belgrade, over the company for Plant Breeding and Seed Production, production, trade and services Selsem d.o.o Belgrade, created on the basis of the contract on transfer of shares and **opting out of members**, by which the company Delta Agrar acquires 100% of stake in the share capital of the target company.

63. The concentration of market participants resulting from the acquisition of control by company Trk Media Holding Limited from Cyprus, over the closed joint stock company Televiziyna Sluzhba Dnipropetrovska from Ukraine by purchase of 68% of the total capital of target company, from its previous owner.

64. The concentration of market participants resulting from the acquisition of control by the company Meggle Eastern Europe GmbH, Federal Republic of Germany, over company Mladost Dairy d.o.o. from Kragujevac, by taking over of 100% share of the target company.

65. The concentration of market participants resulting in change in the independent joint control of the company Affichage Holding SA of Switzerland, over the companies in Serbia: Alma Quattro Belgrade, Air Media d.o.o Belgrade, Europlakat YU d.o.o. Belgrade, created by acquiring of 100% of stake in the companies that own the company Europlakat International Werbeges GmbH from Austria;

66. The concentration of market participants resulting from the acquisition of control by the company Nestle S. A. from Switzerland, created on the grounds of direct control over company Centro-Spice d.o.o Belgrade from Belgrade, by taking over 100% stake in the target company.

67. The concentration of market participants resulting from the acquisition of control by the company Volkswagen AG in the Federal Republic of Germany, over the company MAN SE from the Federal Republic of Germany, created by acquiring 53.71% of shares of the target company, and 55.9% of voting rights in the same company

68. The concentration of market participants resulting from simultaneous acquisition of direct or indirect control of the company WILD Flavors GmbH, in Switzerland, over the target business of AM Todd Group, Inc. from the United States, created by the acquisition of company's assets of AM Todd Group, Inc., necessary for the implementation of the target business, as well as the acquisition of all issued and unissued shares in its subsidiary company AM Todd Company India Private Limited in India, through its completely subsidiary company WILD Juice BV from Netherlands.

69. The concentration of market participants resulting from the acquisition of control by the company Treca petoletka d.o.o Belgrade, over the open joint stock company - trading company Nama a.d from Sabac, created on the basis of publicly disclosed bid for taking over the company shares, by which realization the bid provider takes over the majority of the entire share capital of the target company or acquires 87.53% of its issued shares.

70. The concentration of market participants resulting from the acquisition of control by the company Davidović & Company d.o.o from Bogatic, through publicly disclosed bid for taking over of target company's shares, by which realization the bid offerer acquires total of 98,224% of total number of issued shares.

71. The concentration of market participants resulting from the acquisition of control by the company Idea d.o.o. Belgrade, over six office buildings, owned by the company Tuš d.o.o. from Belgrade, (located in Belgrade, Kragujevac, Jagodina, Novi Sad, Sombor and Sremska Mitrovica), as well as gaining control over Tuš d.o.o. from Belgrade.

72. The concentration of market participants resulting from the acquisition of control by the company Alliance Boots Management Services Limited, UK, over the company Andreae - Noris Zahn AG from Germany, by taking over the entire share capital of the target company.

73. The concentration of market participants resulting from the acquisition of control by the company Portinvest Limited from Cyprus, over company Marine Terminal Yuzhny in Ukraine, created on the basis of acquiring the entire share capital of the target company, by take over from its previous owner.

Pursuant to Article 17, Paragraph 1, item 3) of the Law on Protection of Competition, which refers to the concentration on the grounds of the formation of joint venture or joint control, a total of 17 decisions were issued (i.e. 19% of the total number of issued decisions), approving the following concentrations in summary proceedings:

74. The concentration of market participants resulting in establishment of a new joint holding company Ybbstaler Agrana Juice, founded by Agrana Beteiligungs Aktiengesellschaft from Austria and company RWA Raiffeisen Ware Austria Aktiengesellschaft from Austria, whereby the founders shall jointly control newly founded company where their ownership stakes between Agrana and RWA will be committed in the proportion of 50.01% to 49.99%.
75. The concentration of market participants resulting by joint venture of JP Elektroprivreda Srbije from Belgrade and company RWA AG Essen from Germany, in order to create a new market participant - the company for the construction of hydropower plants on the river Velika Morava and the production of electricity from these facilities, which will be jointly controlled by its founders.
76. The concentration of market participants resulting in acquisition of joint control of the company Wietersdorfer - Beočin Holding GmbH from Austria and the company Lafarge Perlmooser Unternehmensakquisitions GmbH of Austria, over the company Lafarge BFC Investment GmbH of Austria, through the acquisition by the company Wietersdorfer - Beočin Holding GmbH of overall fund of shares which company Alas Serbien Beteiligungsverwaltung GmbH previously owned, in the capacity of the shareholder of the company Lafarge BFC Investment GmbH.
77. The concentration of market participants resulting in bank **recapitalization** of Čačanska banka ad from Cacak, implemented by international financial institutions: European Bank for Reconstruction and Development, based in the UK and International Finance Corporation, with head-office in the United States, which in this concentration act as professional investors, who, after effcting Čačanska banka **recapitalization**, together with Republic of Serbia, exercised joint control over the Bank, through their joint participating interest in the bank' capital amounting to 73.47% of which their individual participation is determined.
78. The concentration of market participants resulting in creation of a joint venture company, which will consist of two legal entities, i.e. companies Aktivsauerstoff GmbH from Austria and Persalze Evonik GmbH from Germany, where the joint venture company will be jointly controlled by a company Evonik Degussa GmbH Peroxide Austria and company Treibacher Industrie AG.
79. The concentration of market participants resulting in creation of a joint venture company Milšped / Mercurio, founded by the company Milšped from Belgrade and company Gruppo Mercurio S.p.A from Italy, where the founders of the newly formed company will exercise a joint control over it.

80. The concentration of market participants resulting in acquisition of joint control of company FIAT POWERTRAIN TECHNOLOGIES S.p.A from the Republic of Italy and General Motors Automotive Holdings, SL the Kingdom of Spain, over 100% of stake in VM Motori S.p.A from the Republic of Italy, created by acquiring 50% of stake in VM Motori S.p.A by FIAT POWERTRAIN TECHNOLOGIES S.p.A.

81. The concentration of market participants resulting in acquisition of joint control of companies KKR & Co., LP from the United States and the Silver Lake Group LLC, from the United States, over the entire business operated by the company The Go Daddy Group, Inc., from the United States, created by the acquisition of shares and management rights in the subsidiary company of Desert Newco, LLC from the United States.

82. The concentration of market participants created by increase in capital base of share capital of the company Nestro Dunav d.o.o. from the Republic of Serbia, whose sole owner (100%) and founde is the company Optima Group d.o.o. from Bosnia and Herzegovina, enabling Naftachem d.o.o. from the Republic of Serbia to acquire 49% of stake, owned by the Nestro Dunav d.o.o which will result in the establishment of a joint rather than individual control over the company.

83. The concentration of market participants resulting in creation of a joint venture company Beijing Foton Daimler Automotive Co. Ltd. founded by Beiqi Foton Motor Co. Ltd, from China and Daimler AG, from Germany, where the founders of the newly formed company gain joint control.

84. The concentration of market participants resulting in creation of a joint venture company WABERER'S HOLDING VAGYONKEZELÖ in Hungary, founded by Mid Europa Partners LLP, UK and Mr. György Waberer, from Hungary, where the founders shall jointly control the newly formed company.

85. The concentration of market participants resulting in creation of a joint venture company which will operate on a long term basis and will have all the features of an independent market participant in the Republic of Serbia, founded by JP Srbijagas from the Republic of Serbia and the open joint stock company Sogaz from the Russian Federation, where the founders shall jointly control the newly formed company.

86. The concentration of market participants resulting in creation of a joint venture company Rolls-Royce Group plc, United Kingdom of Great Britain and Northern Ireland and the company Daimler AG, from German Republic, over the company Tognum AG, from Germany and over operations of Bergen Rolls-Royce Group, where the founders will jointly control the target company.

87. The concentration of market participants resulting in creation of a joint venture company which will operate on a long term basis and have all the features of an independent market participant, founded by BASF SE, Germany and INEOS Industries Holdings Limited, United Kingdom of Great Britain and Northern Ireland, where the founders shall jointly control the newly formed company.

88. The concentration of market participants resulting in creation of a joint venture company Dana Rexroth Transmission Systems S.r.l. from Italy, founded by Bosch Rexroth AG, the German company, and Dana Holding Corporation, the United States, where the founders shall jointly control the newly formed company.

89. The concentration of market participants resulting in establishment of a new company Dekel Holdings Co. In Hong Kong founded by company Henkel Hong Kong Holding Limited, from Hong Kong, and company Tiande Chemical Holdings Limited, Cayman Islands, where the founders shall jointly control the newly formed company.

90. The concentration of market participants resulting in acquisition of joint control over the company PORR BAU GmbH, Austria, and the company MABA Track Solutions GmbH, from Austria, over company Constructing Team Invest d.o.o from the Republic of Serbia, created in a manner that as the first step, PORR BAU GmbH shall acquire 100% of stake in Constructing Team Invest, and as a second step, the acquirer company shall sell to company MABA Track Solutions GmbH, 26% of stake in Constructing Team Invest d.o.o.

Pursuant to Article 17, Paragraph 1, item 1) of the Law on Protection of Competition, which refers to the creation of concentrations in the event of a merger or other status change, two concentrations were approved in summary proceedings (making 2% of the total decisions issued) as follows:

91. The concentration of market participants resulting from status change, so that the company Alpha Bank SA from Greece is merged with another company - EFG Eurobank Ergasias SA from Greece, by which the associated company ceased to exist, and bank created by the merger, changed its corporate name to Alpha Eurobank S.A.

92. The concentration of market participants resulting from the change in the ownership structure of the company Lafarge BFC Investment GmbH from Austria, through status change by merging of Lafarge Perlmooser Unternehmensakquisitions GmbH (applicant herein), with simultaneous establishment of new company - Lafarge BFC Investment GmbH, to which all subsidiaries belonging to Lafarge BFC Investment GmbH will be transferred to; in that manner Lafarge Perlmooser will own 100% of share in the newly formed company, while the control over the remaining part of the company Lafarge BFC Investment GmbH, upon concentration, will be carried out solely by the company Wietersdorfer Beočin.

5.2 Concentrations in Investigation Procedures

Delhaize Group – Delta Maxi

In Ex Officio investigation, the Commission approved the concentration of market participants resulting from the acquisition of direct control by the company "Lion Retail Holding" S.a.r.l Luxembourg, based in Luxembourg, a member of Delhaize Group SA / NV, with head-office in Belgium, over the company Delta Maxi d.o.o, located in Belgrade, and indirect control by the following companies: Pekabeta ad located in Belgrade, C Market a.d. located in Belgrade, TP Srbija a.d. located in Kragujevac, Zvezdara a.d. TP Stadel d.o.o located in Kragujevac, Bel Investment Property d.o.o. located in Belgrade.

During the ex officio procedure, the applicant, the target company, and major competitors were requested to submit relevant data and argumentation. In addition, Commission used data made available by the Tax Administration of the Republic of Serbia, Serbian Companies Registry Agency, and the Statistical Office of Serbia. For the purposes of the procedure, the Institute of Economic Sciences conducted a market research study of retail trade in general stores mostly for food, beverages and tobacco in the supermarket-type stores, supermarkets, hypermarkets and discount stores and determined the situation in this market, which represented the relevant product market for subject concentration. This research covered the period from 2008 to 2010, and in a geographical sense, included Serbia and its defined territorial units, as well as the city of Belgrade.

The Commission assessed that subject concentration represents a merging of companies that operate at the same level of production chain, but in different geographic markets. As one of the crucial fact that the Commission had in mind when making decisions in the relevant administrative matter, is that the implementation of this concentration does not result in cumulative market share of participants, as the acquirer of control has not been active in the determined relevant market up to date. This concentration essentially represents the situation of taking over the current domestic company and its overall business capacity, which at the time of concentration, or taking control from Delhaize Group, will take position and market share as the target company held, before the creation of this concentration. The subject concentration displayes such characteristics, if assessed only as concentration of companies operating on the same level of production. However, the Commission had in mind the fact that the target group of companies until now operated as part of a vertically integrated Delta Group in Serbia, and the market position of the target group of companies in the relevant retail market to a considerable extent had been conditioned (and "privileged") by this fact as well. The implementation of subject concentration eliminates any potential negative effects that might arise from the relationship at different levels of production or distribution. The Commission concluded that this concentration will not cause any adverse effects, as the acquirer of control had no presence in Serbia so far, and is not vertically integrated company in Serbia, and the allegations in the report show that there is no intention of investment, or any intention to do so. On the contrary, if examined on a wider scale - the macro effects of this concentration, which go beyond the consequences of its implementation related to the relevant market and the balance of power as

participants active on it, the Commission considers that is a realistic expectation that Delhaize Group induce serious business momentum with a number of domestic producers of this group and suppliers. This, certainly, does not apply only and exclusively to the supply of facilities within our national territory, but also for the supply of a large number of retail outlets owned by the controller of the future target group of companies, which are outside Serbia borders.

The Commission carried out a simulation of the NN index values for the various territorial units within the entire national territory and determined their difference. In such framework, it has concluded that the defined and reported values that had been determined in subject investigation procedure, after taking over of control of the target company by the applicant, will not substantially change, which is supported by the conclusion that this concentration will not affect further concentration of the relevant market, primarily because the acquirer of control by the implementation of the concentration for the first time enters the Serbian market.

The effects of concentration in relation to consumers and benefits for them, i.e. direct result from the implementation of the concentration, are related to the experience and undoubtedly the best practices of multinational specialist retailer operating in this business for over 140 years. The Commission based its decision on the approval of the concentration based on the fact of significant changes in the structure of the relevant markets that have occurred over the past few years, as well as the current ones - the changes are reflected in the entry of new competitors in the relevant market in 2011. It was concluded that these trends confirm the view that there is no existence of any alarming signals that indicate the existence of entry barriers for access to this market.

Delta Agrar – La Verdura

The Commission approved by its decision – in inquiry procedure - the concentration of market participants, resulting from the acquisition of control by the company Delta Agrar d.o.o from Belgrade, over the affiliated company for the production and services La Verdura d.o.o. based in Belgrade, by purchasing of 100% of stake, by which the company Hemslade Trading Limited based in Cyprus, acquired indirect control.

Implementation of this concentration will not cause a significant change in the structure of defined relevant market, nor will have any negative effects. The market share of participants will be of relatively low concentrations (2.5% to 5%), and, most certainly, in proportion to the market share of their major competitors.

By the previous decision of the Commission, which was annulled by court judgment, this concentration was conditionally approved, because of connection with holder’s control of capital with company DELTA MAXI d.o.o. Belgrade. But the situation has changed so that the company DELTA MAXI d.o.o. Belgrade and its subsidiaries shall not constitute related market participants (the acquirer of control) at the moment when the subject greenhouse will start with production. For the same reason it was concluded that, for the evaluation of subject concentration, the fact that company DELTA MAXI d.o.o. Belgrade is the largest buyer of tomatoes and vegetables in general (in 2007 - the only buyer) from the company that shall

acquire control, is not relevant. The Commission took into consideration the fact that the sale of tomatoes and other vegetables still continue to exceed the production of the same in Serbia. For example, the average annual production of tomatoes in Serbia in the open and indoors is about 180,000 tons, and sale is over 198 000 tons per year. If we observe only the production indoors, this difference is greater, and the impact of imports on reducing the difference between the total sales volume and the volume of domestic production of tomatoes indoors is more pronounced. Administrative and other barriers for entry to vegetable wholesale markets are low.

When evaluating the effects of this concentration, the Commission assessed that control acquirer intends to invest several million Euros to build a modern greenhouse, and the purchase of modern basic equipment for use and maintenance, where the geothermal energy from wells of BB-2 at the location of Beljište by Bogatic, will be uses as a source of energy in greenhouses. All investments and innovations are implemented in order to modernize and improve vegetable production in Serbia.

From the consumers interests' standpoint, as well as the expected benefits that will result from implementation of the concentration, Commission points out the possibilities of tomato production in the periods when the goods are imported from other countries, from February to June and from September to December. Price of tomatoes in the world market during this period is the highest, and the production in Serbia would contribute to the fact that the product is cheaper for the consumer, and more competitive to imported product. This production method is the basis for food production, both of organic and biological origin, which will ultimately provide the consumer a healthy product.

5.3 Resolution terminating the procedure

5.3.1 Resolution rejecting notification

In 2011, Commission rejected five applications of concentration for not fulfilling the conditions for submittance, or failure to submit application in full for approval of concentration, as follows:

1. Rejected concentration application filed by the company Clover Holdings Inc. from the United States in order to obtain direct and exclusive (100%) control over TRS Swiss Production Company d.o.o from Petrovaradin, TRS AG of Switzerland and Periplus Ltd. From Gibraltar, as well as gaining indirect control over society Saakar Printing Design and Engineering Private Limited, where the sole owner and controller is company Periplus Ltd., due to failure to submit the application in respect of earned income of participants in the concentration under Article 61 of the Law.

2. Rejected concentration application filed by company Jugo Kaolin d.o.o from Zajecar, resulting in the privatization process carried out through public tender no. BPE 01/09, with the purpose of buying property Belorečki sandstone from composition of RTB Bor Grupa – Rudnici bakra Bor d. o.o in restructuring, due to failure to submit the

application in respect of earned income of participants in the concentration under Article 61 of the Law

3. Rejected the concentration application filed by company Amiga d.o.o from Kraljevo, to retrieve other (minority) part of other company's shares i.e. Poljopromet ad in bankruptcy from Kraljevo, due to failure to meet the requirements for submitting the application. The applicant already acquired control over company Poljopromet ad in bankruptcy, thus intended acquisition of the remaining shares of this company does not constitute a concentration according to Law.

4. Rejected a request for approval of concentration, submitted by company OST Holding Sudosteuropa GmbH, Austria, created by the acquisition of Austrian company of 62.39798% of shares in newspaper-publishing company The Company "Novosti" ad Belgrade, by taking over the total stake (100%) in the three foreign companies that are its shareholders (Trimax Investments GmbH 24.98887% of shares, Ardos Holding GmbH 24.89984% of shares and Karamat Holdings LTD 12.50927% of shares). The procedure of application for approval of concentration was submitted to the Commission for Protection of Competition on January 19, 2009, but the application was not treated in a maritory manner as of 14/04/2011; resolution was issued – the resolusion on initiation of the inquiry procedure, in order to thoroughly investigate and consider all relevant aspects of this case. Commission's Council, by its decision of May 9, 2011, dismissed the appeal against the decision to initiate the inquiry procedure, upon which the Applicant filed a complaint with the Administrative Court for derogation of said decision. Administrative Court rejected the complaint by the Decision no. 3U.6595/11 of 21/9/2011. The examination procedure, among other things, found out that Applicant did not submit to the Commission the evidence of the serious intentions of all participants of concentration, pursuant to Article 25, paragraph 2 of the Law on Protection of Competition from 2005. ("Official Gazette of RS", No. 79/05) - in this case for the acquisition of 100% of ownership share in the respective companies; in that sense, the request to applicant to submit information dated 6/6/2011 for approval of concentration, among other things, contained request for submission of evidence showing serious intent, which has not been delivered until the date of the completion of the investigation procedure (07/14/2011), not till the date of the decision to reject the request for **approval** of concentration (10/10/2011), pursuant to Art. 27 Paragraphs 1 and Art. 52 item 4 of Law from 2005, and Article 3, Paragraph 1 and 2 from the Regulation of the content and manner of applying for approval of concentration ("Official Gazette of RS", No. 94/2005), which are applied as relevant regulations in force at the time the relevant proceedings have commenced, in accordance with Article 74 of the Law on Protection of Competition ("Official Gazette of RS", No. 51/09). Since the submission of a document showing serious intentions of market participants involved in concentration, in this case the transferor and acquirer of equity of stakes within companies organized in the form of limited liability companies – represents a necessary and proceeding precondition for Commission to engage in assessing the effects of intended concentration and potentially significant prevention, restriction or distortion competition on the relevant market; and since such act was not submitted to Commission, it was decided to reject the request for approval of concentration.

5. Rejected the application of intended concentrations by company Agrokor dd from the Republic of Croatia, created by the acquisition of direct control over society Poslovni sistem Mercator d.d from the Republic of Slovenia, by purchasing of at least 52.1% shares of Slovenian company. The subject application was filed with the Commission by the company Agrokor from the Republic of Croatia, due to the existence of the applicant's intention that, by purchase of at least 52.1% shares in Poslovni sistem Mercator d.d from the Republic of Slovenia, it shall establish control over the company. Submitted application does not meet the requirements of the Law and Regulation on the content and manner of application for concentration ("Official Gazette of RS", No. 89/09), that is, it does not contain all required information and documentation. In addition to this important deficiency, the applicant has not submitted an act of concentration, which is the legal basis for implementation. The submitted document MERIDIAN, indicated in the Application as an act of concentration, represents a booklet for potential investments in the target company dedicated to informing the anonymous business community, made by a legal entity which did not submit evidence that it was authorized to act on behalf of the owner of the shares, intended for sale, and therefore cannot be accepted as an act of concentration.

5.3.2 Resolution terminating Ex Officio Proceedings

Commission suspended ex officio, a procedure relating to the application of intended concentration in 2011.

Commission suspended Ex officio proceeding relating to application, initiated upon application on intended concentration of the company Telekom Austria AG from Austria, which would be created by acquisition of 51% of shares of the company Telekom Serbia ad Belgrade, due to the lack of conditions for further proceedings. After the decision of Serbian Government not to accept the offer of Telekom Austria to purchase 51% of share owned by the Republic of Serbia in the Serbian Telekom Serbia ad Belgrade, the conditions for sale of 51% of the shares were no longer valid, and therefore conditions for implementation of intended concentration of the applicant ceased to exist.

5.4 Administrative Proceedings in Progress

1. The procedure is in prgress for approval of concentration created by the acquisition of control of the company Agrokor from Croatia over the company Poslovni sistem Mercator d.d from Slovenia, by taking over by Agrokor the majority (52.1%) of shares in Poslovni sistem Mercator d.d, currently owned by a group of 11 majority shareholders of this company. Application on the concentration was submitted to the Commission on November 11, 2011, and after that in December 2011 and January this year, it was several times amended. The procedure was initiated upon the application of concentrations, on the grounds of the Resolution, issued on January 5, 2012, and continued as ex officio proceeding.

2. The procedure is in propgress for approval of concentration resulting from acquisition by the company AKKA Technologies SA from France, of 65% of stake in MBtech Group GmbH & Co. KG. KGaA from Germany by German company Daimler, as previous exclusive (100%) owner of the target company, which will continue, after the implementation of the transaction, to own the remaining 35% of stake in the target company.

In late December 2011, 12 applications of concentrations were filed. The procedures were completed within the statutory period of 30 days from the date of submission of application, in January 2012, by the issue of act on summary procedure approving concentrations.

6. JUDICIAL REVIEW OF DECISIONS

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Commission's decision is final in administrative procedure. A complaint against the final decision may be filed within 30 days from the date of its receipt by the party.

In the previous period, the Administrative Court, which has jurisdiction to adjudicate on appeals against the decisions and acts of the Commission, pursuant to Article 3 of the Law on Administrative Disputes, considered as final administrative acts, issued 20 judgments, of which 16 administrative cases were dismissed, three claims were accepted, and in one single lawsuit, it was dismissed by a court decision.

Total number of procedures processes during reporting period	**Administrative procedures, finalized during reporting period**				**Administrative procedures in progress as of 31/12/2011**
24	Rejected complaint	Rejected complaint	**Complained objected** - Cancellation of the Commission's Decision	**TOTAL**	**4**
	16	**1**	**3**	**20**	

Procedures before Cassation Court and Supreme Cassation Court upon request for review of Court's decisions in the period 01/01/2011 – 31/12/2011			
In administrative procedure upon applicants request – At the request of the oarty		**Upon Commission's request - At the request of Commission**	
6		**1**	
In previous period	**In reporting period**	**In previous period**	**In reporting period**
1	**5**	**0**	**1**

Administrative Court, in the past year, made a remarkable breakthrough in relation to disputes in this area, primarily as concerns duration of decision making. The legal limit of two months from receipt of the complaint to decide, in most cases was met. An important novelty is holding of hearings.

Supreme Cassation Court, which has jurisdiction to decide on requests for review of court decisions - extraordinary legal remedy provided by Article 49 Law on Administrative Disputes, filed seven claims, of which six have been submitted by market participants against the judgment which re-approved the decisions of the Commission, and one request was submitted by the Commission against the Administrative Court' decision, due to annulment of the Commission' decision.

It has to be taken into consideration that some of the requests submitted to the Supreme Cassation Court early in 2011, (and that the verdict is still not made), directly affected the implementation of the Law, or the right and obligation of the Commission to decide within the time prescribed by Law. Commission's decision ordering the enforcement of obligations within the time prescribed by the Law, in particular measures for the protection of competition, becomes in practice senseless, which most certainly was not the intention of the legislator. This problem, aimed to ensure legal certainty, has to be overcome, and possible appropriate solution would be to prescribe time limits for decisions of the Supreme Court, or compliance with the terms prescribed by the Law, of course, when it concerns the matters from the competition field .

Improving the protection of competition is not possible without the development and improvement of legal practice in this area, which in turn affects the practice of the Commission, and the practices and actions and documents of market participants and their representatives.

7. INSTRUCTIONS AND OPINIONS

For the effective implementation of laws, of great importance is, among other things, the harmonization of practices of the Commission's conduct of proceedings, indicating to market participants the preferred form of market conduct and respect of principles of predictability and legal certainty. By issuing instructions and opinions, Commission indicates to market participants the importance and essence of the application of competition rules, as well as certain elements which the Commission considers in assessing the **cost** of their actions and acts. These shall have no binding effect for participants in the market, but market participants are familiarized in advance with the views of the Commission and the interpretation of certain provisions, and the practice of acting on certain issues.

The Commission, during the reporting period, issued two directives and over 50 opinions.

7.1 Instructions

Instruction on application of competition protection rules regarding associations of market participants

Competition rules are applied, among other things, to the types of associations of market participants, such as trade and professional associations, unions, associations, sports organizations, cooperatives and other associations, in accordance with the Law. These Instructions shall define and explain the association's activities that are prohibited. A traditionally permissible association of market participants, in particular implies, the following prohibited acts: price fixing, restriction and control of production and consumer markets and joint action in the procurement process in order to eliminate competition. However, in most developed market economies, associations do not act directly and openly referred to restrictive practices, as members facilitate consultation and exchange of sensitive data, set restrictive rules for membership, setting the standard that only a member or members may meet, limiting marketing performance of its members or adopting codes of ethics governing tariffs or other trade conditions. The association's activities may also constitute a breach of competition.

Instructions for the detection of "fixed" bids in the public procurement

One of the most serious violations of competition is known as "fixed or rigged bids" (bid rigging). Market participants often appear together in public tenders, or negotiate in secret before submitting a bid, aimed at the increase in price of products / services, or reduction of quality of products / services, whichever is the subject of procurement. Such conduct not only significantly impedes competition in the market, but also leads to significant outflows of budgetary resources.

This Instruction describes more precisely the most common forms of bid rigging, such as simulated or fictitious bids, refrain from bidding, bid rotating and markets sharing.The most

common indicators of bidriggings are stated,in order to inform responsibleauthorities on the implementation of public procurement and market participants, so they could easily recognize and identify a case of "fixed" bid. The article further points out the activities defined in relation to public procurement, which in the opinion of the Commission, and the best practices of other organs, lead to reduced risk of rigged bids. A check list for detecting bid riggings in public procurement procedures is also presented.

7.2. Opinions on Application of Rules Affecting Market Competition

One of the key questions of the bodies that deal with protection of competition is how to make an impact, in terms of competition protection, over the lawmakers and regulations and the decisions of the executive bodies which effect economic conditions in the country and the state of competition. In this sense, the initiative was sent to the Government of the Republic of Serbia to amend its Rules of Procedure and make mandatory the submission of proposals for Commission's opinion. Although there was no any reaction regarding that matter, thus Commission's opinion has no binding character, the Commission continued with the isuing and publication of opinions on regulations, either upon request to issue opinions, or on its own initiative.

Opinion on Draft Law on Passenger Road Transport

At the request of the Ministry of Infrastructure and Energy, the Commission, pursuant to Article 21, Paragraph 1, item 7) of the Law on Protection of Competition ("Official Gazette of RS", No. 51/2009), gave an opinion on the Draft Law on Passenger Road Transport.

Although generally acceptable, in terms of implementation of competition protection policy, the Commission assessed that the proposed draft law, should, however, at least in some parts be amended or modified.

In regard to the provisions of Article 47 of the Draft Law, it is set out that, based on previous insight and experience in the procedures for individual exemption from prohibition of General terms and conditions of bus stations operations, which Commission conducted at the request of Serbian Chamber of Commerce, it was assessed that such type of regulation incorporates dominantly pre-competitive elements, and that the existence of anti-competitive elements does not significantly effect the improvement of the overall positive effects on competition in providing these types of services.

Given the fact that Article 47 of Draft Law stipulates that the service provider has an obligation to provide bus station services and make collections in accordance with the category of the bus station, and that the Law does not define who, how and by which methodology should determine tariffs for certain categories of bus stations, it is necessary to regulate this issue by the regulation itself.

In terms of aforementioned, Commission supported the draft text of Article 47, but also assessed necessity to incorporate some modifications, particularly in regard to the content of the act -

legislation that will regulate the general conditions of bus stations' operation and bus stations categorization. In terms of aforementioned Commission submitted its draft text of Article 47 of the Draft Law.

In its previous work and several procedures that have been conducted or are still pending before the Commission, in order to determine violation of competition, it was established that some carriers in the performance of services, particularly domestic passenger lines, "associate" in order to provide these services to passengers. Manifestations of this association have different varieties, but in general, it can be concluded that their joint operations are regulated by the principle of "Pooling". Since it is a mutual agreement of competitors, mostly on routes where they overlap in approved schedules, this practice is a problem from the point of application of regulations on protection of competition. None of these agreements were in regular proceedings before the Commission exempted from prohibition, because none of the parties to such agreements required so, which is a pre- condition for the Commission's action in such cases.

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The Commission assessed the necessity to take into consideration, within the law, such possibility particularly bearing in mind the provision of Article 61, Paragraph 2, and Article 62, Paragraph 1, Item 5, to be further regulated. In addition, the Commission has analyzed the provisions of Article 64, Paragraph 1, Item 2) of submitted Draft Law, under which a bus line transport must label the valid pricelist, which should be stamped and signed by authorized persons of the carrier, as stated in paragraphs 3 and 4 of the same Article. The Commission, on this issue, has warned that the obligation of carriers to include the prices into valid price list, in a manner that price cannot be lower than the prescribed rates per kilometer of road, which, as a minimum, were determined by the Government upon the proposal of the line ministry, the obligation which is to be considered in all respects as prescribed minimum price. The theory, regulation and competition protection policy practice do not accept such pricing methods. This commitment would mean that market participant - the carrier, even when in its work and services achieve a level of efficiency that, on the basis of the calculations, could provide the service at a lower price - will not be able to do so, because they are prevented by the law itself. That would further mean that such a carrier would necessarily miss the opportunity to offer more favorable prices at lower costs induced by own competitive advantage potential at the market. Such regulations of pricing policy of individual market participants, pursuant to Commission's standpoint, are not a positive step towards encouraging market participants to develop their effectiveness in order to create conditions for a better service offer and competitive position towards competitors.

In addition, the provisions of Article 78, Paragraph 4, of Draft Law on Passenger Road Transport (authorizing the municipality or the city and the city of Belgrade to calculate and amend economically lowest price in regard to taxi tariffs on its territory) effect competition in relevant market of taxi transport service. Setting the minimum price is inconsistent with the rules of competition, because it is not to the benefit of consumers, who like to be rendered a service or product at the lower price. The above provisions of the Draft Law on Passenger Road Transport are completely off-price competition, and cannot be justified pursuant by theLaw on Protection of Competition.

In accordance with aforementioned, it was proposed that the provisions of Article 78, of Draft Law on Passenger Road Transport should be amended in terms of prescribing the maximum price of the service, being the only solution consistent with the **objective** of the Law on Protection of Competition, representing economic improvement, social benefit and in particular consumers' welfare.

In terms of the previous proposal, the Commission assessed that it would be necessary to enter adequite changes in the text of Article 75, Paragraph 2 and 3, of submitted drafts, whereas the opinion on a given text provide concrete proposals which should be incorporated into Draft Law. As concerns other provisions of Draft Law, the Commission did not recognize them as having an adverse affect on competition policy in the Serbian market.

Opinion on the Permissibility of Approving a Discount to End User by the Manufacturers of Drugs that are not on the Positive List

One of the manufacturers of drugs present in the Serbian market addressed the Commission for Protection of Competition, regarding clarification if it would be a violation of regulations on protection of competition, if a discount system is provided to the final user, regarding the following:

- Manufacturer provides vouchers (coupons) at the checkout register, providing the customer a discount in percentage on the total amount of purchased product of relevant manufacturer, or
- Manufacturer provides a plasticized card (with the label of the card without the owner's name) providing its bearer a discount in percentage on the total amount of purchased product.

The application also lists other information relevant for an opinion regarding the types of products, distribution channels, etc., whereas the prerequisite that the manufacturer does not in any way, directly or indirectly, determine the price of drugs in further sale, is quite clear.

Commission, on the basis of allegations in the mentioned application, understands that this commercial activity aims to provide "an immediate discount to the end user - the patient", determining the following relevant circumstances: that this is a specific product - drugs used for therapeutic purposes in certain precise diagnosis of the disease and do not represent medication or supplement with possible wider application in order to preserve or improve the general health; the use of these drugs is determined by the health institutions, by specialists; these are innovative - original drugs, that are prescribed for specific therapeutic purposes or for a specific diagnosis; these are products that cannot be used by any other person except patients with indicated use within therapy; that it can be safely concluded that the "target group" of this very limited commercial activity is very narrow; the purpose of such activities is to ensure that the end user benefits from discount of purchased drug to a maximum extent, and to avoid any possibility that any participant in the chain of distribution and sales, exercise some irregular activities, realize any benefit from the commercial activities of producers, which is directly aimed at the end user; that a burden of approved and given discount is completely transferred to the producer; by these activities manufacturer by no means can affect the pricing of its products for further sale (retail

price already set). In addition, Commission considered that the implementation of the anticipated commercial activities imply for manufacturer necessary specific investments.

The Commission issued an opinion in which it emphasized that the commercial practice of providing additional discounts from the manufacturers directly to end users, through vouchers or user cards can generally be considered as pro- competitive and to the benefit of consumers. The circumstances of each case would depend on Commission's opinion on specific activity, whether the activity is in compliance with the Law on Protection of Competition, or may represent some kind of infringement.

Particular case describes commercial activity involving regulations on protection of competitio, mentioning the following requirements:

- That cards or coupons for the discounts are available on equal terms to all potential users - patients;
- To ensure that every card/coupon holder, under the same conditions, in the same manner and in the entire market of the republic of Serbia can claim the same discount. This would eliminate the danger of unequal treatment of end-users - patients;
- The amount of the discount granted by producers should be determined in the same nominal amount and regardless of the amount of retail prices. This is because in case that the discount is determined by the percentage of the retail price, there would be a rationale danger for creation and application of different conditions at the retail level, as well as the risk that a retailer who is not bound by requirements in setting retail prices, by raising unjustified retail prices, would annul the positive effects that the end-user should benefit from.

Opinion on the Effect on Competition Provisions of the Rules Amending the Rules of the Criteria, Methods and Procedures for Placement on the Drug List

According to Article 1 of Rules Amending the Rules of the Criteria, Methods and Procedures for Placement on the Drug List, after Article 3, Article 3a is inserted, which provides that, in accordance with the funds provided for the Financial Plan, a new drug can be put on the list of medicines, provided that its placement on the list of drugs did not increase the total amount of financial resources of the National Health Insurance (hereinafter referred to as HIF) that are used for drugs from a list of drugs of particular manufacturer, i.e. the holder of a drug permission, for the past twelve months. For assessment of the provision in the context of its effect on competition conditions, the Council of the Commission took into account that the new provision applies to foreign pharmaceutical manufacturers, as well as to domestic pharmaceutical manufacturers, and in this regard unequal treatment was not established.

Based on the fact of certainly limited state funds for this purpose, it was concluded that this provision provides that HIF, according to financial possibilities and the needs of patients, incorporates medication on the list of drugs, and in justified manner tries to allocate less funds for the same or similar product. The Commission has not accepted the applicant's assertion that such way of limiting market entry supports and prevents investment in research and development

of new products on the Serbian market, because there are no barriers to new medications that are available to patients through sale over the counter.

According to Article 2 of Revised Regulations, the obligation under Article 9, Paragraph 3, of Regulations applies only to an applicant for a drug that is not produced in the territory of the Republic of Serbia. In accordance with Article 9, Paragraph 3, of Regulations, the applicant, who offers a lower price than the lowest comparable price for the drug product, is required to submit proof of the sale of the drug, at the same or lower price than the recommended price in at least one of the reference countries or the European Union, in the amount of at least 5% of the total trade of drugs within the same or a related drug framework, in those countries. According to the Ministry of Health, local manufacturers of drugs do not generally appear in the drug market in the reference countries (Italy, Slovenia and Croatia), nor in the European Union, which is why they cannot obtain the required certification, and for objective reasons, the obligation concerning mentioned provision could not relate to domestic producers.

Last year, the Commission, at its sole discretion, submitted to competent authorities, its opinion on the conformity of certain provisions to the rules of competition in the oil and oil products, in terms of:

Rulebook on technical and other requirements for liquid fuels of petroleum origin ("Official Gazette of RS", No. 97/2010)

The Commission sent the opinion to the Ministry of Mining and Energy (now Ministry of Energy and Infrastructure) on 14/01/2011, in relation to breaches of rules and principles of protection of free competition, created by the entry into force of the Rules on technical and other requirements for liquid fuels of petroleum origin. Article 9 of the Rules provides that the unleaded gasoline BMB 98 and BMB 95 premium is put on domestic market place only from domestic production, and Article 13 of the Rules provides that the diesel fuel D2, D2 S and D1 E is to be placed on domestic market also only from domestic production. The Commission has declared that, pursuant to the Law on Protection of Competition, text of provisions of the regulations could be of significant effect on the status and conditions of competition in all segments in the market of petroleum products.

Relevant Rulebook is replaced by the Rulebook on technical and other requirements for liquid fuels of petroleum origin ("Official Gazette of RS", No. 64/2011) of 31/08/2011, allowing the free import of petroleum products that were previously placed on the market only from domestic production.

Law Amending the Law on Excise Tax ("Official Gazette of RS", No. 101/10)

The Commission sent the letter to the Ministry of Finance, on 14/01/2011, regarding the violation of the principles and rules of protection of free competition, made by the entry into force of the Law Amending the Law on Excise Tax, on January 1, 2011, which changed the excise tax amounts for oil products in a way that the excise tax is increased in different values for petroleum products of different origin.

Excise tax on motor gasoline that do not meet European standards, and placed on the market just from domestic production, is increased by the amount of 0.30 dinars per liter, and the excise tax for motor gasoline of European quality is increased by the amount of 4.80 dinars per liter . At the same time, the excise tax on diesel fuel of domestic production increased by 4.53 dinars per liter, while diesel excise for the Euro Diesel, which is at the regime of free imports, increased by 6.53 dinars per liter. Disproportionate increase of excise tax for "domestic" and "imported" fuel is considered as a serious violation of the principle of free competition, which could produce legal consequences of illegality in all essential aspects of protection of competition.

The Commission stressed the unacceptability of such approach of the legislature with regard to the applications of the Law and requested reconsideration and modification of the regulations.

Assembly of the Republic of Serbia adopted on 14/06/2011, The Law Amending the Law on Excise Tax ("Official Gazette of RS", No. 43/11), with uniform excise taxes for all types of gasoline, as well as all types of diesel fuel.

Rules on Minimum Technical Requirements for Trading Oil and Oil Derivatives ("Official Gazette of RS", No. 62/2011)

The Commission sent a letter to the Ministry of Agriculture, Trade, Forestry and Water Management on 23/12/2011, in order to emphasize the negative effects that may arise from the application of the Rules on minimum technical requirements for trading oil and oil derivatives, and to propose solutions that will allow free competition in the relevant market with respect to technical and other regulations governing the relevant market.

By the analysis of the rules, it ws assessed that Article 6, Paragraph 2, which would be implemented from 01/01/2012, envisages strict obligations for market participants who are engaged in wholesale, in terms of minimum volume of reservoir space, i.e. minimum number and types of tanks for the storage of certain types of petroleum products. The Commission assessed that, from the Law on Protection of Competition standpoint, provisions formulated in such wording, might represent, in practice, the additional barriers to entry for new entrants to the market and that existing market participants are imposed to significant additional obligations and operating expenses. The Commission indicated in its letter that prescribing stringent technical and other conditions may lead to prevention of the positive effects of liberalization of the relevant market.

The Commission expects that the Ministry will reconsider the proposed changes and will find solutions that would enable compliance with the required technical and other standards, while enabling market participants to function freely, subject to no additional constraints and significant costs.

7.3 Opinions on the Application of Law on Protection of Competition

The Commission issued 19 opinions at the request of market participants concerning the implementation of regulations in the field of restrictive agreements and abuse of dominant position, of which we mention only some.

7.3.1. The interpretation of the provisions on restrictive agreements

Opinion on the compatibility of a standard type model contract in regard to the rules of competition protection

At the request of the parties, the Commission does not issue opinion that an action a participant intends to take, or agreement intended to be concluded, is not contrary to Law. This way of conduct would be called. " a *negative clearance*" - which is not under Commission's jurisdiction. At the same time, the applicant is informed of following:

The Law, in Article 9, defines the infringement, Article 10, defines the concept and prohibition of restrictive agreements, and Articles 15 and 16 define concept of dominant position and abuse of dominant position as a kind of infringement. Restrictive agreements are prohibited and void by the Act, unless exempted from prohibition. Conditions for exemption from prohibition of restrictive agreements are defined in Articles 11 to 13 Act, and the actual legal action – applied for, is eventually possible by application of rules from Regulation on agreements between undertakings operating at different levels of production or distribution that are exempt from the prohibition ("Official Gazette of RS", No. 11/2010).

Regulation prescribes the types of agreements by categories that are exempted from prohibition (see Article 13 of the Law) and the conditions that must be met for such exemptions. In addition to the requirements prescribed by the Regulation, the requirements of Article 11 of the Law must always and without exception, be cumulatively fulfilled. Parties – participants in the agreement must commit themselves to evaluating the fulfillment of all conditions for exemption under Regulation, and in that sense, Commission points out that the risk and responsibility for any error of judgment or evaluation of compliance with the requirements, depends on clients. In the event that a restrictive agreement meets all the requirements for exemption from the prohibition under the Decree, the parties do not submit to the Commission any special request for individual exemption. This means that such agreements fulfilled the requirements of Regulation, exempted by the Law. When assessing eligibility for the exemption under Regulation, parties must also take in consideration the provisions of Article 14 of the current Law, which stipulates types of agreements that are considered of minor importance, and are allowed, except in cases prescribed by the law.

If a market participant assessed that all the conditions are not met, and that agreement is not of minor importance, it would be necessary to apply for individual exemption from the prohibitio, in accordance with the Regulation on the content of the request for individual exemption from the prohibition of restrictive agreements ("Official Gazette of RS", No. 107/2009). Individual agreements may be exempted from prohibition only if participants are known.

In addition to aforementioned, a market participant who has dominant position in the relevant market, during "self assessment" of the eligible type model of the contract, must bear in mind its position and power in the market.

Opinion on the Possibility of Granting Additional Rebates

A request for an opinion on the application of regulations in the field of competition has been filed to Commission for Protection of Competition, i.e., the question of whether, in terms of application of positive legislation, a contracting of additional rebates in order to achieve the agreed goals of the quarterly sales level, for each product separately and for all products together, where the manufacturer is not dominant participant in the relevant market, is considered prohibited The request also lists a number of other parameters important for opinion in the matter, and among other things, that the manufacturer agrees to sell the products separately if requested by the customer, and does not impose liability or otherwise impose conditions of the purchase of the manufacturer' product, that discount in absolute values is not so significant that could affect the restriction or prevention of competition and the price for each product is covered by additional long-term average costs.

Based on the analysis of all data and statements given in the request, assuming its accuracy, the Commission has given an opinion in which, inter alia, it states that market participants are free to determine their commercial policies, including the rebate policy, as long as they do not have significant market power, or dominant position in a relevant market, in which case they were required to adjust their commercial policy with the provisions of the Law on Protection of Competition, in order to prevent any actions or activities that might constitute an abuse of dominant position in the relevant market. In this regard, the contracting of additional discounts for groups of products, in order to fulfill the agreed sales targets, where products are in the same - broader relevant market and the fact that none of them is a manufacturer in a dominant position or on more closely defined relevant market, would not be a problem, from the point of application of regulations on protection of competition. Commission bases this standpoint on the assumption that such a commercial policy is conducted in the presence of a significant number of competitors of the same or similar economic power and efficiency in the relevant market, where price is determined for each product in a commercially reasonable manner, covering long-term costs of production, promotion and transport of products covered by commercial activities.

At the same time, the Commission considers that the contracting of additional discounts for achieving sales target for a longer period of time (significantly longer than assumed period of three months), and even by the participants in the market that are not dominant, can, under certain circumstances, have a negative effect on competition in the relevant market and may lead to an effect of preventing the entry of new competitors or eject the existing ones. In this sense, each case can be subject to individual analysis and procedure before the Commission.

All the above in no way excludes the possible responsibility of the manufacturer, if by the implementation of described policies it concludes a commercial contract - an agreement, that would be pursuant to Article 10 of the Law on Protection of Competition considered as restrictive agreement which has not been exempt from the prohibition under the same Law.

The Opinion on certain Restrictions in Distribution Agreements for Vehicle Spare Parts

The Commission has been asked for an opinion on the application of the Regulation on agreements between undertakings operating at different levels of production or distribution that are exempt from the prohibition ("Official Gazette of RS", No. 11/10, hereinafter: Decree) on the contractual arrangement relationship between the main distributor of motor vehicles and spare parts (including servicing) and motor vehicle manufacturers. The question referred to the permission of the contractual restriction (prohibition) on the freedom of the main distributors to sell original spare parts, supplied to it by a manufacturer of motor vehicles, to independent retailers of spare parts, spare parts that are purchased solely for resale, while not being a part of the authorized dealer - service network, or not being members of the established system of selective distribution. The issue concerns the possible application of Law on Protection of Competition, or any application of the provisions of the Stabilization and Association Agreement between the EC and the Republic of Serbia, or the direct application of European regulations in the field of competition protection, where there is a loophole in the regulations of the Republic of Serbia.

The Commission, acting upon subject request, issued an opinion according to which the situation described in the present application is made by application of Article 12 in conjunction with Article 11, or Article 13 of the Law, by simultaneous application of the Regulation on the implementation of agreements between undertakings operating at different levels of production or distribution that are exempt from prohibition.

EU acquis, as well as specific regulations, cannot be directly applied in the Commission's work, unless they become part of domestic legislation. However, in situations where there is an absence of exact provisions of relevant domestic legislation, the Commission shall, based on accepted principles and criteria in the EU, interpret the same in the spirit of national legislation and act accordingly**.**

Limit specified in the request relates to the restrictions established by the manufacturer of motor vehicles, in a way that the main distributor is prohibited to sell spare parts to independent resellers who are not part of a system of selective distribution, or distribution - service network of manufacturers of motor vehicles.

Contractual limitation described in the present application, would be allowed, or would exercise the benefits of so-called "*block exemption*" under the Regulation, if the motor vehicle manufacturer also supplied its distributive-service network, composed of distributors - repairers, except for motor vehicles and spare parts necessary to maintain and service these vehicles. Stated limit, founded on a prohibition to sell spare parts to independent resellers who do not provide repair services for motor vehicle, but purchase spare parts solely for resale and are not part of the

distributive-authorized service network, nor are members of the current system of selective distribution, can be justified by the intention of the manufacturer of motor vehicles to distribute original spare parts to own selective distribution system only for repairs and maintenance of its vehicles within a network of authorized services. At the same time, this is not an obstacle to perform spare parts distribution through other distribution channels.

If the main distributor in the subject application, purchase original spare parts from the manufacturer of spare parts which also supplies the manufacturers of motor vehicles with same products, motor vehicle manufacturer could restrict or prevent the dealer to resell them to customers who are not members of a selective distribution system.

Limitation of the Distributors' Rights to Sell Goods to the Buyer for Re-Export

A request for an opinion on the application of regulations in the field of competition has been filed to Commission for Protection of Competition regarding the possibility of agreement on the distribution right of the local distributor to sell the goods for the domestic customer re-export from Serbia, where the claim does not specify what kind of agreement for distribution or which product is distributed.

Article 5 Paragraph 1 Item 2) of the agreements between market participants operating at different levels of production or distribution that are exempt from the prohibition ("Official Gazette of RS", No. 11/2010), stipulates that the prohibition does not exempt vertical agreements if, directly or indirectly, alone or together with other factors under the control of, the parties aim to restrict the area in which the buyer may sell the products of a contract, or limit their sales to specific group to end users. Notwithstanding this provision (see Article 5, paragraph 2, item 1 of the Regulation), vertical agreements can contain provisions aimed at restricting active buyer in the territory, or customer group, that seller reserved for own sale, or in the territory that the seller exclusively assigned to another buyer, provided that this does not limit the further sale of the customer's customers. From the above, it follows that the exemption does not apply to restrictions: passive sales to distributors, active sales in the territory, or to a group of customers who are not "reserved" for the manufacturer or exclusively allocated to another customer - distributor, nor to any restriction on the buyer's resale customers.

In terms of the above, the term "customer" in the agreements on the distribution, is considered to be a distributor, the term "customers' customers", all market participants who buy a product from the distributor.

The Disposition of a distribution agreement that would impose the restriction that the distributor sells the product only to its customers who will not re-export product from Serbia, would not be exempt from the prohibition under the Regulation. The reason: such limitations would form a "group of customers" in respect of which the dealer is prohibited to perform active and passive sales, whereby this group of customers is "reserved" for the manufacturer or exclusively allocated to another customer - distributor, and at the same time, *de facto*, limits the "customer's customer" in the resale of products.

If there are justified reasons at the supply side, however, that distribution agreement includes certain restrictions in order to prevent re-export of products distributed from Serbia, the signatories would have to seek individual exemption from the prohibition of such agreements.

7.3.2. The Interpretation of Provisions on Abuse of Dominant Position

The Opinion in the Field of Public Works

The Commission has been asked for opinion whether there is a breach of competition or abuse of dominant position in the Decision on fees for the right to connect to public sewer, which was made by the Board of Public Enterprise "Directorate of Construction and Urban Planning of Temerin Municipality", approved by Municipal Assembly of Temerin, and entered into force.

Based on detailed analysis of the submitted documents and supporting data and information, the Commission issued opinion which states that the total fee for the right to connect to public sewer in the Decision on fees for the right to connect to a public sewer is neither defined, nor shown in an acceptable manner. Bearing in mind that the Public utility Company "Directorate of Construction and Urban Planning Temerin" has been entrusted with activity of negotiating of mutual rights and obligations in terms of exercising the right to connect to public sewer, and that it held a legal monopoly in the exercise of these activities, the pricing method should be clear and transparent, based on costs and realistic criteria for an individual port, and fully known in advance to potential user.

Contrary to previously set out, and as defined in the Decision, one of the elements that makes the overall structure of fees - fees for the right to connect to public sewer, shall be determined in the manner that from the total amount of fees, the structures of remaining two elements is deducted - the cost of technical solutions of connection to public sewer and the cost to build a standard connection to a public sewer, thus this fact leads to the conclusion that at first, the value of total compensation was determined, and then subsequently, the value of the elements that make the structure of total compensation. Therefore, one cannot conclude which type of service is a fee for the right to connect to public sewer, which is an integral part of overall compensation, and consequently whether it is reasonably determined.

The Commission said that the methodology for determining the total fees for connection to public sewerage system, as applied in the Decision, is not acceptable for said reasons, without entering into estimation of total amount of compensation. Each element which forms an integral part of the total fee for the right to connect to public sewers must be known in advance and determined or determinable in accordance to clearly defined criteria.

The Commission informed the applicant that it is necessary that the Assembly of Temerin reconsider its decision and resolution which approved the Decision on fees for the right to join the public sewerage system which was adopted by the Public Enterprise "Directorate of Construction and Urban Planning Temerin Municipality".

7.3.3. The Interpretation of Provisions on Merger

In June 2011, the Commission received a huge number of requests for issuance of opinions (over 30), which were mostly related to determining the existence of the obligation to notify the concentration on specific business activities, that applicants for issuance of this opinion intend to enforce. In accordance with the practice of the Commission, developed in previous years, the Commission did not issue any opinion on hypothetical cases or opinions on those submissions where it was not possible to determine the identity of the participants in the concrete business, intended to be implemented. The largest number of requested opinions refers to the application and interpretation of the provisions of Article 61 of Act (amount of annual revenue thresholds of companies that are considered to be participants in concentration), to the implementation of statutory changes, or implementation of defined business transactions between companies that are considered related in accordance with the provisions of the Law, or with a single market participant - (a parent company and the company under its controls), etc. Applicants for the issuance of opinions by the Commission used to be participants in the market, or their legal consultants and law firms, broker - dealer associations, as well as certain state authorities. Hereby we set out following opinions from the group of opinions, issued by the Commission upon request of interested parties, all concerning the interpretation of the meaning and application of some provisions relating to merger control:

Do transactions between related parties in the market represent concentration?

If there is an intention to conduct business transactions between parent company and its 100% subsidiary (both foreign legal persons) of which the first (parent company) is the sole shareholder of a domestic legal entity as well, which (subject to the approval of the Commission) has established control over the property - the functional funds that are part of the assets of a domestic legal entity, with the intention to transform its current position in the ownership structure of domestic legal persons by the transfer of the subject equity to its fully dependent (controlled) foreign legal entity, this transaction is not a concentration of market participants. In this case, the foreign legal entity - Lafarge BFC Investments France, the parent company of local society Lafarge Beočinska Fabrika cementa d.o.o. - which is the current controller of the property - functional resources that are part of the total assets of domestic legal entity, but is also the controlling company of a foreign legal entity to which the previously approved and completed purchase of the functional properties of the Preduzeća za vodne puteve Ivan Milutinović PIM, in restructuring, will be transferred. These companies are connected market participants pursuant to Article 5 of the Law, having regard that the same parent company controls the other two participants in the market, through exclusive ownership of their assets and has the decisive influence on the conduct of business of each of these companies in controlling them. All transactions between related parties in the market do not represent a concentration pursuant to Article 17 of Act, and in such cases there is no legal obligation to report such transactions to the Commission, i.e. Commission’s approval is not required for their implementation.

Does the realization of intended short-term and non-renewable lease of agricultural land represent concentration?

The lessee of subject land property, by this transaction only acquires the possibility of a single, that is non-renewable and timely limited possibility to acquire the rights of utilization, upon which the short-term exploitation rights of the land by "Dijamant - Agrar" as lessee terminate, and are then transferred to the lessor. In addition, the qualification of the transaction valued was the fact that the plot is leased for the first time, and that participants in this business transaction, after the expiration of the lease period, will not renew the lease. The effects of the target rent of agricultural land provided by the applicant, are of a volume that will not affect the market position of "Dijamant - Agrar" in relation to the position prior to transaction. Since the leased land is of lower quality category (5^{th}, 6^{th}, 7^{th} class), where the lessee seeds mercantile sunflower, the Commission has realistically assessed that temporary leased agricultural land, would accomplish lower yields (about 2 tons per hectare) than those accomplished by "Dijamant - Agrar" - the lessee, in the production of these crops elsewhere (about 3 tons per hectare), i.e. by the cultivation on quality soil.

The Commission had on its disposal data illustrating from the standpoint of estimation the effect of this single, short-term transaction, to the intensity of changes in the ratio of the potential lessee of land in the field of sunflower growing. Specifically, the "Dijamant - Agrar"'s total amount of sunflower production, from current 0.4%, after the eventual realization of the underlying lease, would be raise by approximately 0.7% to 0.8% .

It follows that the realization of short-term and non-renewable lease of agricultural land in the manner and under conditions which are the main features of this transaction, does not represent concentration of market participants.

Opinion at the request of the Privatization Agency of Serbia for an opinion on implementation of regulations in the field of competition concerning sale during insolvency proceedings

Problems that the Privatization Agency indicates in its letter result from the mutual incompatibility of a number of regulations relevant for the sale of bankruptcy debtors, or their property. Commission pointed to the following in regard to subject issues:

In case of conducting bankruptcy proceedings, the buyer of the debtor as a legal person, or its entire property, or property units (the acquirer of control), has an obligation to notify the concentration within prescribed period of time, pursuant to Article 63 of the Law on Protection of Competition, if the total annual income of participants in a relevant concentration is met, defined by Article 61, Paragraph 1, item 2 of the Law.

The property unit that is often offered for sale in bankruptcy (in case of sale of the debtor objects with the equipment) is not defined by any of the regulations that are relevant to make the sale in bankruptcy. Due to loopholes, the practice is developed by which the type or structure of assets and properties, primarily in terms of technical - technological and production characteristics of such assets and business and commercial purposes, depends on whether the purchase and sale of

such property acquisition and control units over it, impose a concentration pursuant to the Law. If a particular property represents a separate technical - technological unit, capable of producing specific new product or providing a service known in advance, creating a new market value, and if the particular property is potentiallydivested part of debtor in bankruptcy which can independently generate income, than the purchase I.e. acquisition of control shall represent the concentration in terms of the Law. The criterion for determining the existence of the obligation to notify the concentration, when it comes to selling the whole property of the debtor, is not the value of such assets, but other properties of the same, especially those that "guarantee" that the whole property controlled by the new owner will be able to survive independently in the market production in a business sense, and to realize its own turnover.

One of the features of the implementation of sales in bankruptcy proceedings, is also the fact of concluding purchase agreement, in practice, within eight days upon sale completion. The deadline is in collusion to the legal deadline of 30 days, i.e. the period needed for the issuance of Commission's decision on notification of concentration, submitted in summary proceedings. Therefore, the Commission considers that the advertisement of the sale in bankruptcy proceedings, has to determine the terms and conditions of concluding the sales contract, and to be adjusted to statutory deadlines for decisions to be issued by the Commission.

7.4. Opinion on Article 157, Law on Bankruptcy

The provisions of the Bankruptcy Law ("Official Gazette of RS", No. 104/2009), impose an obligation to obtain opinion of the Competition Commission as follows:

- With the sale of the whole of debtor’s assets or the entire assets and capital (Article 132, Paragraph 10);
- With the sale of the debtor as a legal entity (Article 135, Paragraph 3) and
- With the implementation of measures provided by the Plan of reorganization of the debtor (Article 157, paragraph 3).

Sale of debtor or its assets and the implementation of measures envisaged by the Plan of Reorganization cannot be made contrary to the Law governing the protection of competition. Starting from statutory authorization, the Commission, by giving opinions on submitted plans in bankruptcy proceedings, primarily evaluated whether the proposed actions and measures represent a change of control over the debtor, which means the concentration in terms of the provisions of the Law on Protection of Competition. In this sense, if selling the property, or the whole property of the debtor, or the implementation of reorganization measures, such as the conversion of creditors' claims into company capital, may change control of the debtor, the Commission draws attention to the opinion concerning obligation for assessment of the requirements for notification of concentration.

In 2011, the Commission made decisions in 162 requests for an opinion in the bankruptcy proceedings, wherefrom all, except one, were requests for an opinion on the proposed plan of reorganization of bankruptcy debtor, and only one related to the sale of debtor as a legal entity. Out of total number of requests issued by the Commission in this period, 123 were opinions, while 39 procedures are in progress.

In terms of bankruptcy through reorganization, unlike bankruptcy, the bankruptcy status of the entity reflects the situation when such a debtor has unstable liquidity, but the company's property is not compromised and the company has internal reserves to overcome the problem through a reorganization, and plan for such activities (plan of reorganization) shall be submitted to the Commission for review. The Commission notes that all delivered, reviewed and assessed plans of reorganization, contain a very wide range of measures. A comparative analysis of all submitted plans, found that the most common range of measures is planned organizational change, downsizing, increased economic activity in a particular segment, selling a property, movable or immovable, or conversion of claims from creditors into debtor's capital by the issuance of new shares. It can affect significantly the increase of debtor's capital value and the change in company's ownership structure, while it is necessary to find out whether it is of such content and intensity, that might bring a change of a control of the debtor, or that represents a concentration pursuant to Article 17 of the Law. If a measure or measures from the reorganization plan provide the disposal of assets of the debtor, the Commission determines if that can be a concentration under the terms of the Law, in which case the obligation to notify the concentration is on the buyer, not the debtor.

In this regard, the Commission found one relatively frequent and particularly interesting measure, which leads to the implementation of statutory changes and changes in legal form of the company, from the limited liability company to closed joint stock company, so that individual creditors will become members of the shareholder company in a percentage amount proportional to claims against the debtor. In this case, market participants' concentration may occur pursuant to the Law, with respect to a change of control over the debtor, pursuant to Article 5, Paragraph 2, of the Law. The obligation of reporting the concentration is assessed by Article 61 of the Law, depending on the actual total annual income of participants in concentration. The established control and the ways in which, or who exercise the same, regulates the questions who are the participants in the concentration, i.e. the control acquirer who is obliged to notify the concentration.

Only in a few cases the Commission, in relation to the character of the proposed plan of reorganization measures and their consequences, noted the existence of a real change of ownership and control relationships of a particular company - debtor. Any obligation to notify concentration was evaluated in each case, compared to the revenue of companies that are considered to be participants in particular business transactions.

During June 2011, the Commission issued opinions on pre-prepared plans of reorganization for the following bankruptcy debtors:

- Atako d.o.o. from Belgrade
- Spektar d.o.o. from Gornji Stubac
- Trajal Korporacija a.d. from Kruševac
- Panon Crvenka a.d. from Subotica – Kelebija
- Demetra d.o.o. from Knjaževac
- Fidelinka nekretnine d.o.o. from Subotica
- Belim a.d. from Belgrade
- Kompanija Fidelinka a.d. from Subotica
- Vlasinka a.d. from Vlasotince

- 4 JOBS d.o.o. from Čačak
- Draloni forte d.o.o. from Požarevac
- Aeroakva inženjering d.o.o. from Belgrade
- Dunav promet a.d. from Golubac
- Fidelinka – fabrika testa d.o.o. from Subotica
- ITF Corporation d.o.o. from Kraljevo
- Dekor d.o.o. from Kruševac
- Zlatibor voda d.o.o. from Subotica
- Jankom d.o.o. from Guča
- MM Mali Miloš d.o.o. from Kragujevac
- Masurica a.d. from Surdulica
- Fidelinka mlinarstvo d.o.o. from Subotica
- Ekonomika Jugoslovenski centar za fromdavanje stručnih publikacija a.d. from Belgrade
- Živača a.d. from Belgrade
- Radaković Co d.o.o. from Vršac
- PMV Tronoša d.o.o. from Korenita – Loznica
- Golija impeks plus d.o.o. from Vrbas
- Jedinstvo a.d. from Crvenka
- Graditelj a.d. from Kikinda
- Hemovet d.o.o. from Novi Sad
- Fidelinka - skrob d.o.o. from Subotica
- Štamparija Dimitrije Tucović a.d. from Užice
- ZZ Voćar – Dragačevo
- Stevanović invest d.o.o. from Kruševac
- Euroluxpetrol – ELP d.o.o. from Belgrade
- Ugooprema d.o.o. from Novi Sad
- Simex group d.o.o. from Subotica
- Jedinstvo a.d. from Belo blato
- FK Hajduk from Kula
- Fabrika vijaka Gradac a.d. Zrenjanin
- Mačkatica a.d. from Surdulica
- Višnjica a.d. from Belgrade
- Mlinoservis a.d. from Novi Sad
- ALPEN – OM d.o.o. from Kragujevac
- Poljopromet a.d. from Kraljevo
- Metalska industrija d.o.o. from Grljan
- Pakom d.o.o. from Niš
- Mladost a.d. from Subotica
- Origami hemija d.o.o. from Belgrade
- Grateks o.d. from Čačak
- Napredak a.d. from Velika Plana
- Pan – alko promet d.o.o. from Subotica
- Voćar coop a.d. from Belgrade
- Zvezda film a.d. from Novi Sad
- Staklopan a.d. from Belgrade
- FEIN a.d. Stari Jasen from Kraljevo
- Irva – investicije d.o.o. from Belgrade
- Agroseme invest a.d. from Sremska Mitrovica
- Kopaonik beta from Sombor

- ZIP a.d. from Zrenjanin
- Salaš Grajin d.o.o. from Subotica
- Insa – Oil d.o.o. from Novi Sad
- Don a.d. from Belgrade
- Poljoprom – Zemljoradnička zadruga from Bor
- Vojvodinašped a.d. from Novi Sad
- Polimljetrans a.d. from Prijepolje
- Brodogradilište – Brodotehnika d.o.o. from Belgrade
- Napredak a.d. from Požega
- Graditelj holding a.d. from Belgrade
- Vinoprodukt – Čoka d.o.o. from Subotica
- Agrar Trade d.o.o. from Ivanjica
- Gorki list d.o.o. from Belgrade
- ZZ Molin from Nova Crnja
- MIT – Product d.o.o. from Rabrovo
- Wow Winery d.o.o. sa Palić
- Dorćol inženjering d.o.o. from Belgrade
- Central a.d. from Belgrade – Zemun
- DP Hvar from Novi Sad
- Kapitel d.o.o. from Užice
- Brest Nešović o.d. from Ivanjica
- Filip Višnjić a.d. from Belgrade
- Vitana d.o.o. from Pepeljevac – Kuršumlija
- Nicco Agrar d.o.o. from Banatski Brestovac
- Klanica Polet d.o.o from Bor
- Herm a.d. from Belgrade
- Srbokoka d.o.o. from Jagodina
- Mil – Prom d.o.o. from Veliki Šiljegovac – Kruševac
- Nento d.o.o. from Novi Sad
- Dandy – Pro d.o.o. from Kucur
- Beogrand 80 d.o.o. from Raška
- Jabuka a.d. from Belgrade
- PIK Bečej a.d. from Bečeja
- Servis-Promet d.o.o. from Bela Crkva
- PS Stankom a.d. from Belgrade
- Mining-inženjering d.o.o. from Čačak
- Mediteran 92 d.o.o. from Guča
- Estetika interprojekt d.o.o. from Belgrade
- Preduzeće za puteve Vranje a.d. from Vranje
- Preduzeće za puteve Niš a.d. from Niš
- Preduzeće za puteve Kragujevac a.d. from Kragujevac
- Grozd d.o.o. from Ivanjica
- Trajal korporacija a.d. from Kruševac
- Gumi eko d.o.o. from Ruma
- IVA Co d.o.o. from Aleksinac
- Habit Pharm a.d. from Ivanjica
- WMW d.o.o. from Zrenjanin
- New Deal d.o.o. from Kragujevac
- European group d.o.o. from Belgrade

- EOL d.o.o from Ivanjica
- Duga d.o.o. from Petlovače
- Hip Azotara d. o.o. from Pančevo
- Futura plus from Belgrade
- Kamenolom a.d. Valjevo
- Leonardo KD from Čačak
- Novi Dani a.d. from Čačak
- Rudo a.d. from Niš
- Papirpak d.o.o. from Čačak
- Papirnica Diva d.o.o. from Čačak
- Coop Trans d.o.o. from Belgrade
- Malcon d.o.o. from Subotica
- Livnica A&T from Belgrade
- Trgobanat a.d. from Bela Crkva
- IPP Grmeč Krajišnik a.d. from Krajišnik
- Delta Legal d.o.o. from Belgrade
- BMS Gradnja d.o.o. from Batajnica

8. SECTOR ANALYSES

Article 47, paragraph 1 of the Law on Protection of Competition entitles the Commission to analyze, in cases when price changes or other circumstances indicate the possibility of limitation, violation or prevention of competition, the state of competition in a particular sector of industry or particular categories of agreements in various industries (sector analyses).

The analysis of the markets, in which there are regulatory and/or actual barriers that restrict, prevent or hinder the development of market competition, is of great importance for both the Commission in its decision making process and other authorities which propose legal acts and bylaws to regulate certain activities more closely. The Commission is obliged to publish a report on sector analyses carried out in a proper way, and can invite market participants to give their comments regarding the report (Article 47, paragraph 4 of the Law).

In 2011, the Commission, in line with its legal powers, and in the aim to identify possible violations of competition or other circumstances that have a negative effect on competition, completed the sector analysis of markets of import, processing, wholesale and retail of oil and oil products, which began in 2010, while the Analysis of the state of competition in the sector of production and processing of milk and dairy products is still in progress.

ANALYSIS OF MARKETS OF IMPORT, PROCESSING, WHOLESALE AND RETAIL OF OIL AND OIL DERIVATIVES

Pursuant to Article 47 of the Law on Protection of Competition ("Official Gazette of the RS", No. 51/09) and Decision of the Council, the Commission conducted analysis of competition in the market of import, processing, wholesale and retail of oil and oil derivatives in Serbia in the period from 2008 to 2010. The analysis was based on the data submitted by the major market participants in retail (and wholesale) of oil derivatives: NIS - Petroleum Industry of Serbia, "Lukoil-Beopetrol", "OMV Serbia", "Intermol" and "Eko Serbia", as well as on the data collected from the relevant state institutions - the Ministry of Infrastructure and Energy, the Energy Agency, the Statistical Office, Serbian Chamber of Commerce and the Ministry of Finance – Customs Administration.

Conducted sector analysis showed that in the given period, the legislation in this area dealt with essence of competition, particularly as concerns price competition, and directly influenced the creation and maintenance of administrative and technical barriers of market entry and business activities of market participants. Therefore, one of the main conclusions of the analysis is that it is necessary to bring the legislation to the level of adherence to technical, environmental, safety standards and ensuring sustainability in supply. The fact that, in the observed period, the price competition was most visible with LPG, the only derivative with a completely free import regime and price formation, makes it clear that only free market competition contributes to the achievement of economic development and welfare of society, especially consumers.

The problems that the Commission encountered during data collection and assessment of their comparability led to the conclusion that the continuity of monitoring the observed sector required a comprehensive and updated database, which currently does not exist as such. Monitoring and control of the flow of oil and petroleum products is additionally hindered by the fact that there are phenomena typical of the so-called gray economy which, inter alia, adversely affects the revenue of the country.

Results of the analysis have not shown the existence of acts or activities of market participants that represent restrictive agreements. Although the retail prices in the market in this period have been relatively uniform, no explicit or tacit agreement, concerted practices, pursuant to the Law, have been identified, but it was concluded instead, that the price uniformity resulted from the price transparency and adaption to market conditions. Nevertheless, the Commission indicated that the concerted practice as a form of restrictive agreement may be established and achieved through direct or indirect contact among market participants, the aim or effect of which is the effect on market behavior and trends in the market, or disclosure of the intended future business ventures to their competitors.

After conducting of the sector analysis for the specified period, the Commission adopted a Decision to continue with the analysis in the area of wholesale and retail sale of petroleum products, on an annual basis, for each previous year.

A complete report on the sector analysis, with the conclusions and adopted recommendations, has been published on the website of the Commission (www.kzk.gov.rs) in the section "Sector Analyses".

ANALYSIS OF COMPETITION IN DAIRY SECTOR

Decision on the implementation of competition analysis in dairy sector, which include milk processing, wholesale and retail sale of milk and dairy products, was adopted in November 2010, due to evident problems in this sector of economy, which was reflected primarily in the shortage of certain products in the retail market during the summer months of 2009. The first stage of the analysis includes the manufacturing cycle, i.e. the purchase of raw milk and processing the milk and milk products. The analysis covers the period of six months (June-December) through a comparative review of data for the year 2009 and 2010. For the requirements of analysis the data have been requested from ten largest milk processors from the local market, as well as from the manufacturers who are significant participants in the regional market of milk and dairy products production.

The requested information refer to the total amount and structure (import or local market) of raw milk purchased by the dairy and transported to the factory for further processing, shown in liters, the average cost per unit for each class of purchased milk, monthly stocks of raw milk, dairy product line by product groups, and the amount of raw milk used for their production, the data on the maximum of processing capacities available to the dairy, the details on any changes in the product assortment during the specific period, on stock quantities of final products, method of distribution of finished goods (by their own distribution network or through other distributors).

A number of market participants submitted to the Commission an incomplete and inaccurate data, primarily reflected in the considerable discrepancy between the total amount of purchased raw milk, on one hand, and, on the other, the quantity of raw milk consumed in the production of dairy products. These differences are the result of incomplete and inaccurate data on stocks of raw milk at the beginning and end of each month, as well as the data on the amounts of milk borrowed or sold to other dairies, i.e. purchased and borrowed from other dairies. The largest drawback of the submitted data comes from the fact that a number of dairies have not submitted the information on the produced quantities for each product group, expressed in proper units of measure, or the information on the quantities of raw milk in liters required for their production.

Due to the above stated reasons, the Commission requested, from a number of market participants, additional specifications of these data in order to continue with analysis, thus data collection is still in progress.

The collected data will enable identifying the cause of oscillations in quantities of the processed milk in the observed period, as well as the reasons of possible structural changes in the product assortment. The Commission shall, after analyzing the obtained data, determine the facts in this sector of economy, on the basis of which it will decide on further actions.

9. COOPERATION WITH AUTHORITIES AND REGULATORY BODIES OF GOVERNMENT IN SERBIA

The Commission constantly undertakes activities to ensure continuous dialogue and provide a system of information exchange with competent authorities of the Republic of Serbia, the activities which may contribute to the development of competition in the market and the applicability of the Law on Protection of Competition. In addition to the already signed protocols on cooperation between the Energy Agency and the National Bank of Serbia, a Protocol on cooperation was signed with the Republic Agency for Electronic Communications (RATEL) in 2011. The relationship with these regulatory authorities in Serbia has been significantly improved over the past year in terms of direct cooperation for the needs of administrative proceedings before the Commission. The positive side of this cooperation reflects in the possibility to use their market and other analyses and findings, obtain new sources of information and new initiatives, exchange information and similar. The representatives of the Republic Agency for Electronic Communications (RATEL) and the Energy Agency have held several meetings, aimed at finding an optimal solution to trends and problems existing in the market in these sectors, as well as to taking a stand on important issues.

Cooperation with the Public Procurement Office has been realized through the participation of Commission in planning strategies of public procurements in Serbia, and it has been generally agreed that there is a need for the education of public officers involved in public procurements in the field of law and policy. Potentially, the cooperation of the competition protection authority and the public procurement office, can significantly contribute to the identification and prosecution of the so-called "rigged" bids.

RATEL, the Energy Agency and the Public Procurement Office have made a significant contribution to the *Peer Review* process (which will be discussed in chapter 11.3.) and preparation of the final document, in which the cooperation between the Commission and these bodies has been positively assessed.

There has been a significant level of cooperation for certain procedures conducted before the Commission, with the government authorities, such as the Tax Administration and Customs Administration. Bearing in mind that these are the bodies that have the data which could be relevant for the decision of the Commission, in the year to come, even closer cooperation should be established with them, and with the police as well, in order to get them acquainted in advance with the importance of the Commission, their obligation to submit the requested information, and perhaps agree to channels of communication.

9.1. Participation of Commission's Representative in the work of the Commission for State Aid Control

A representative of the Commission acts as the Vice President of the Commission for State Aid Control in accordance with the State Aid Control Act. The representative of the Commission for Protection of Competition, in the capacity of the Deputy President, attended all meetings of the Commission in 2011 and actively participated in its activities, as well as the other stated tasks of the Commission.

In 2011, 13 sessions were held, usually once a month. Moreover, 77 decisions were passed, approving the allocation of state aid, 78 resolutions on initiation of additional control, 4 decisions and 1 resolution stating that submitted applications did not apply to state aid. In addition, 39 opinions were issued concerning the applicability of particular provisions of the State Aid Control Act and the obligation to submit application for state aid in accordance with the law.

10. MEDIA

The activities directed at the media are of vital importance, if one takes into account their influence on public opinion (*multiplication effect*). In increasing the interest for the competition protection, we achieve understanding and public support, which can further put pressure on the management of leading companies and holders of political decisions. In addition to the website of the Commission, which remains the most comprehensive source of information and way of informing the public on the activities of the Commission, it is important to provide the basic information on the activities via info service.

All statements, as well as decisions, resolutions and relevant information about the activities are regularly published on the website of the Commission, at the Internet addresses: www.kzk.gov.rs and www.kzk.org.rs

In mid 2011, the website of the Commission for Protection of Competition has been updated in accordance with the recommendations of the Government, with modest funds of private resources, after a public tender.

In accordance with the principle that all journalists' questions should be answered promptly and completely, it can be said that, in terms of informing the public, there have been no complaints whatsoever in the past year.

Info Service of the Commission for Protection of Competition responded in 2011 to the hundreds of questions posed by journalists of all Serbian daily and weekly newspapers, agencies, radio and TV stations, as well as to dozens of questions by foreign journalists.

In addition to providing responses to direct questions of journalists, the Commission for Protection of Competition publishes the announcements explaining the most important segments of Commission's activities.

11. INTERNATIONAL COOPERATION

In 2011, the Commission for Protection of Competition has made a major qualitative step forward when it comes to international cooperation. Namely, the Commission representatives participated as spokespersons and lecturers at a number of international conferences, our employees have spent some time in other authorities for the protection of competition, we have actively contributed to the enclosed articles and analyzes in the framework of international network of competition protection, while the most notable activity was presentation of *Peer review* report before the delegates of *UNCTAD* (United Nations Conference on Trade and Development) in Geneva.

The cooperation with international institutions and bodies for the protection of competition from other countries leads to significant benefits: improving skills, standardizing procedures in case handling, direct benefit from more effective law enforcement, as well as the indirect benefits from creating identical conditions for all market participants.

In regard to this, the Commission has been actively involved in cooperation with international organizations and international bodies for the protection of competition, through various projects, training and education programs, as well as through direct contacts at meetings, conferences and seminars attended by the Commission representatives.

11.3. Relations with the European Union

Obligations under the Stabilization and Association Agreement (SAA)

The Commission for Protection of Competition has, in 2011, complied its activities with the recommendations of the European Commission Progress Report. Namely, the basic elements required in the Report have been substantially improved, and related to the development and harmonization of procedures in adopting decisions, and to strengthening of the administrative capacities of the Commission for its activities concerning economic analyses.

- The Commission for Protection of Competition performs its activities in line with the members of the SAA, which directly relate to competition policy. Pursuant to the provisions of Article 73, of the SAA, Serbia needs to undertake standard applications of "*Antitrust*" rules, equivalent to those applicable in the EU. Pursuant to the provisions of Article 72 of the SAA, it is necessary to adapt the local legislation, and in compliance with the provisions of Article 74 (Public companies) and Article 75 (Public procurement), it is necessary to continually monitor and notify respective institutions about potential infringements of the competition law and entry barriers. Each of these obligations is fully applicable in the framework of the Commission's activities.

- In accordance with the provisions of the SAA, the Commission established communication with the Delegation of the European Union in Belgrade and *DG Competition* in Brussels
- The Commission is required to periodically provide and submit the information on the normative progress, institutional capacities and implementation, the above stated EU institutions, which were regularly performed during 2011.
- The Commission proposed *DG Competition "Enforcement Record"*, according to EU standards
- The Commission shall prepare all necessary information and documentation for the *Progress Report* (Report of the EU on Serbia's progress), and for the subcommittee for internal market (mandatory meetings under SSA); in this last case, a regular active attendance at meetings of the subcommittee has been ensured.
- During 2011, responses have been prepared to the Questionnaire (in the area of competition) on the analysis of compliance with the laws of domicile to the *Acquis* legislation (regulations, directives, instructions and interpretative documents). This task was done in collaboration with the Office for European Integration and Ministry of Agriculture, Trade, Forestry and Water Management. Accordingly, an active participation in the activities of EU accession subgroups has been ensured.
- The Commission employees were thoroughly introduced the procedural regulations of the EU (particularly *EC Regulation 1/2003* and *773/2004*, for implementation in case of collision, and *EC Regulation 139/2004* for the EU concerted practices in the area of concentration).
- The Commission has ad hoc communication with the EU Delegation and *DG Competition*, which is not covered by the SSA – for instance, rationales related to some open issues (e.g. concentrations, involving participants from the EU, etc.), especially open issues in terms of institutional capacities and implementation and evaluation of sector policies.

Participation in the Process of Translating Acquis Communautaire into Serbian - Expert Editing of Translations of European Legislation

Serbia is obliged to, during the Stabilization and Association process, translate the Acquis Communautaire into Serbian and, at the time of its accession to the EU, has the entire text of EU legislation translated in the Serbian language and prepared to be published in the Official Journal of the EU. Process of translating EU legal acts is coordinated by the Office for European Integration which, in cooperation with relevant government institutions and other authorities, prepares priority lists and upon the public procurement, engages translators. All institutions are required to appoint coordinators and expert editors who will follow the translation process and be engaged in professional proofreading and editing of the translations. The Competition Protection Commission is involved in the whole process, hence the coordinator, deputy coordinator and two expert editors have been appointed.

Priority lists for 2011 have been submitted to the Office and so far several EU regulations were submitted for the expert proofreading and editing. Expert editors of the Commission stated that the regulations submitted to the Commission were no longer in effect, i.e. they have been changed, and the Office for European Integration informed accordingly.

The Commission has, in accordance with the instructions it received and in defined terms, performed nomination of the acts for the translation. In accordance with the received instructions, only the acts such as "regulation" have been nominated, while the guidelines and other documents could not be nominated yet. Besides acts nominated by the Commission, there are acts in our scope of work that have been previously nominated by the Office or some other body with the authorization for making nomination.

According to the records of the Commission, in the field of competition protection, there has been a total of 45 acts nominated, 11 of which are the regulations governing principles and issues of "general importance'' for competition protection policy, 7 regulations governing matters related to the concentration control, and 27 nominated regulations governing the issues related to the so-called typical "*antitrust*" (restrictive agreements, including cartels and abuse of dominant position).

11.4 Projects

IPA 2011

During the first half of 2011, the so-called "*Terms of Reference*" was prepared for the commencement of tender procedures of projects financed from *IPA 2011*, *"Capacity Building and IT Assistance to the Commission for the Protection of Competition"*. This is a project the implementation of which shall take 30 months and implies strengthening of the Commission capacities, as well as practical training, not only for the Commission members, but also for the representatives of the Administrative Court judges, business community and regulatory bodies. In addition, the project envisages the introduction of electronic database of all documents and cases kept at the Commission, as well as purchase and training for working with forensic software which would be used during investigation.

The proposal was accepted by the EU Delegation and the European Commission, so the tender procedure began after the adoption of criteria.

The project has two phases:

- Purchase and installing of forensic software (with proper training and certification for work), and
- Selection of experts to conduct training and build capacities of the Commission and other institutions designated as crucial in the implementation of antitrust policy (Administrative Court, regulatory bodies, the Chamber of Commerce, etc.).

With the hiring of foreign consultants ("*Danish Management*") the overall tender documentation has been prepared for the project of forensic software procurement. The tender was announced at the end of the year and the deadline for bids is February 1st, 2012, to be followed by its realization.

Tender for the project part referring to the "*Capacity Building*" was also invited during 2011, and the decision on awarding the contract is expected by March 2012.

The value of the whole project is about EUR 3 million.

In 2011, the Commission took steps to maintain continuity in the field of education and increasing the level of practical knowledge of the employees. Bilateral cooperation with the German government was established, based on which the Commission was awarded the project for capacity development, created as an interim solution until the realization of funds from the *IPA 2011* pre-accession programme.

This interim project was implemented in 2011 in the organization of the German government and foundation *IRZ,* and included the hiring of foreign experts in the field of competition protection in specific areas of antitrust policy, for which the Commission has expressed its interest.

11.5. Relations with other International Organizations

UNCTAD (United Nations Conference on Trade and Development)

At the regular annual session of the United Nations Conference on Trade and Development (UNCTAD) in Geneva, the *Peer review* was presented: Report on the analysis of competition policy in Serbia. This report represents the results of joint effort of our representatives and the experts from UNCTAD as well as the large number of worldwide national authorities in charge of protection of competition.

The Commission had, during 2010, through the Permanent Mission of The Republic of Serbia to the United Nations and other international organizations in Geneva, informed the UNCTAD that it was interested in so-called *Peer review* of competition policy analysis. *Peer review* is the only multilateral method of reviewing the systems of competition within the United Nations system. It is performed by the experts, from developed and developing countries, who have practical experience in applying competition policy, where the exchange of experience is combined with the recommendations for possible improvements in competition policy.

After a series of consultations with the Director of the UN Competition Department, H. Qaqaya, a formal request was sent to the Secretary General in which the UNCTAD is invited to provide technical assistance to Serbia in this area. Upon the notice of intent to organize a *Peer review* during 2011 and a series of meetings, Swiss government expressed interest to finance the implementation of *Peer review* and its related activities, which could last up to three (3) years. UNCTAD initiated preparatory activities and technical mission in Belgrade in the last quarter of 2010. Technical activities lasted until June 2011. At the request of the UNCTAD Competition Department, measures were taken to organize a large number of meetings held within the technical mission, where the Commission representatives were the organizers and active participants at all times.

The ultimate goal was to present the *Peer review* of the Report and the Commission for Protection of Competition, during the regular session of the Intergovernmental Group of Experts on Competition Law and Policy (July 19th to 21st, 2011, United Nations, Geneva).
Throughout the preparation of the Report and appearances before the delegates, as well as during the preparation of the technical assistance project resulting from the recommendations of the Report, the Commission established close cooperation with other authorities in charge of competition protection from Switzerland, USA, Sweden, Italy, Russia, Austria, Germany, Japan, Armenia and others.

A very important fact is that the European Commission has been continually involved in the analysis of *Peer review*, and their representative chosen for the panelist at the final conference and presentation of the document.

One of the significant results is the fact that at the end of the conference a meeting with donors was held and the manner of cooperation in the next three years agreed. In line with this conclusion and in collaboration with UNCTAD colleagues, the project of technical assistance to the Commission was developed.

Full text and abridged version of *Peer review* report can be viewed at the following addresses:
http://www.unctad.org/en/docs/ditcclp2011d2overview_en.pdf
http://www.unctad.org/en/docs/ditcclp2011d2_en.pdf

The report from the UNCTAD Conference, where the *Peer review* document was represented, can be seen in the following document at:

http://www.kzk.org.rs/kzk/wp-content/uploads/2011/07/Izvod-iz-Izvestaja-UNCTAD-a.pdf

International Competition Network (ICN)

ICN is an international organization of global character, which is solely in charge of protection of competition. Primary organization members are national bodies for the protection of competition. Total number of members is 115, and Serbian (Commission for the Protection of Competition) has been its member since 2005.

The Commission is a member of the ICN (*International Competition Network*), an international network for the protection of competition which we provide with the reports for analytical examination of the body for the protection of competition and comparison of different approaches to problem solving, with the aim of achieving convergence in work activities.

Serbia has, since 2005 and up to present day, participated in almost all workshops and annual meetings of the ICN. The answers to the questionnaire on the provisions of law regulating cartels, investigation methods, processing of applications, leniency program and mitigation of punishments, the powers of the Commission and others, have been submitted to the *ICN*.

In 2011, ICN, for its project on work activities of various bodies for the protection of competition, requested the submittal of responses to the questionnaire on the concentration and

procedure registration, which was regularly done. The submitted responses will be the basis for the report of the *ICN* Work Group on further recommendations related to work activities which will be published on the *ICN* website.

Regional Competition Center OECD – Budapest

Although not a member of OECD, Serbia has a significant presence in the workshops organized within the Regional Competition Center - RCC, held in Budapest. RCC was established in 2005 by the OECD and the Hungarian body for protection of competition.

The representatives of the Commission expert service, in recent years, attended the above meetings (there were 5 seminars held during 2011) and contributed through written materials with cases from the practice of the Commission, on the basis of which opinions and recommendations were obtained by the experts from other competition authorities.

The analysis, processing and preparation of proposals, in accordance with regular events in Budapest RCC and OECD, require constant access to the analyses and recommendations of these bodies and their possible implementation in Serbia – which the Commission regularly performs.

The Commission is also active in OECD projects, the Secretariat of which collects data, analyzes them and provides technical assistance, and thus organizes seminars and workshops for the countries in the region.

Global Competition Review

An organization of similar characteristics as the *ICN*, with the important difference that its members also include the participants of seminars, workshops and practical presentations as well as employees in the legal affairs, industry and other authorities. ICN is primarily focused on the organization of seminars related to certain industries characterized by significant market concentration where competition infringements occur frequently.

Also, *Global Competition Review* issues a reputable journal in the field of protection of competition, and the yearbook of best practice on global level. The Commission prepared and submitted responses for "*The 2011 Handbook of Competition Enforcement Agencies*", Bulletin on the bodies for the protection of competition, which is updated annually.

11.6. Bilateral Relations with Countries in the Region

Markets in Serbia and regional countries have many similarities, which results in the presence of the same market participants on each of them. Therefore, the "cross-border" cooperation between the member countries is of the utmost importance in fighting primarily various types of restrictive agreements, the so-called cartels, which are often regional in character. Cartel agreements in the era of global economy and markets emerge as a widespread phenomenon. In view of this fact, developed countries have a harmonized system of bilateral agreements on joint fight against cartels.

Similar regional network is also requested at the level of our region. The Commission plans to begin bilateral talks with institutions for protection of competition with the countries from the former Yugoslavia (except Slovenia) region, regarding the formation of a regional network. The above plan of engaging the Commission in terms of concluding bilateral agreements and their implementation is indispensable, given that the parties in the proceedings of restrictive agreements, abuse and concentration are mainly the same companies or subsidiaries of the same founders (parent company).

Internships

In 2011, the Commission began with a special program of staff training through internships in other bodies for the protection of competition. This qualitative step forward in terms of international cooperation has been taken after the presentation of the Commission representatives at the United Nations Conference on Trade and Development (UNCTAD) and positive evaluations of our progress.

Through bilateral cooperation with representatives of the German body for the protection of competition - *Bundeskartellamt*, the internship of our staff in that institution was provided. The first phase was realized in November 2011, when a two-week training was conducted.

Cooperation with the Swiss Commission for the protection of competition (COMCO) enabled the three months' internship for a single employee, which is currently in progress.

Negotiations with the Austrian body for the protection of competition, as well as with the American Commission (*Federal Trade Commission*) are in progress, related to the internship opportunities of our employees in these renowned institutions.

Protocols on Cooperation

During 2011, direct contacts and cooperation was realized with the bodies for protection of competition of the Russian Federation and the Republic of Kazakhstan (the Federal Antimonopoly Service of the Russian Federation and the Agency for Protection of Competition - Antimonopoly Agency of the Republic of Kazakhstan), which resulted in drafting and adoption of the proposal of Cooperation Agreement, the signing of which is expected during 2012.

11.7. International Conferences and Seminars

- Every April, the Commission organizes "Competition Day". This is an opportunity to present the results of the previous year and the possibility of acquiring new knowledge through professional lectures. In 2011, an international conference was held on this occasion with the participation of representatives from European Commission, UNCTAD, EU Delegation, the bodies for the protection of competition from more than 20 countries, as well as the highest representatives of the Serbian government authorities.
- Each member of the EU organizes, during his/hers presidency, "European Competition Day" - the presence at these conferences is an unformal obligation for all members and candidate countries, so that the Commission representatives attended the above meetings.
- The cooperation with *Fordham University New York* (*Fordham Competition Law Institute*), USA, has been continued so that the representatives of the Commission actively participated in their seminars - Fordham University Summer School and Antitrust Conferences
- In 2011, the successful cooperation with the Embassy of Japan and *Japan Fair Trade Commission* has continued.

12. SUMMARY

The complexity of the sphere of competition law comes from a deep and pervasive duality between - the natural and legitimate aspirations of business entities for economic growth and market power, and consequently for overriding and eliminating competitors, on the one hand, and maximization of profit (primarily at the expense of consumers), on the other – and the necessity to provide all participants with fair conditions of market competition and maintain a competitive business environment, which falls under the purview of the government and primarily of the Commission for Protection of Competition. Participants involved in legal procedures investigated by the Competition are mainly economically strongest and socially most influential business entities. It is, therefore, clear that the work activities of the Commission are neither easy nor popular. However, it performs its competencies with full professional conscience, determined exclusively by the positive legislative atmosphere and the mandate entrusted by the National Assembly of the Republic of Serbia – to protect, within its legal competence, free competition in our country.

Activities of the Commission in the reporting year of 2011, briefly outlined, are characterized by the following:

- Improved activities of processing and sanctioning the violations of competition, resulting in a greater number of proceedings related to restrictive agreements and abuse of dominant position. For the first time in Serbia, the market participants who violated competition, have been financially penalized by imposing the measures for protection of competition. (Other novelties are shown in detail in the section of the report titled "Key Novelties in the Application of the Law").

- Harmonization of practice and procedures for the same or similar situations, but it should be noted that the Commission expects greater efforts in this segment. More attention has been devoted to procedural matters, with explicit respect for the rights of the parties, which significantly increased the number of confirmed decisions by the Commission.

- Enhanced work activities on issuing opinions on the compliance of other laws and regulations with the competition protection rules.

- Intensified activities aimed at raising awareness on protection of competition (*competition advocacy*), primarily through the issuance of guidelines, instructions and opinions, but also through the transparency of work activities realized by the publication at the Commission's website and press releases. The adoption of the Action Plan on the Commission activities aimed at raising awareness on the protection of competition for 2012, is expected.

- Continued work activities aimed at strict observance and realization of the recommendations by the European Commission, particularly those included in the *Progress Report*, recognized by the European Commission which supports the efforts of the Commission, primarily through stronger cooperation and technical assistance.

- Enhanced international cooperation, reflected primarily in the closer cooperation established with the United Nations Conference on Trade and Development (UNCTAD), as well as the more intensive bilateral cooperation.

- Continued strengthening of administrative capacity, particularly in terms of the conduct of economic analyses, both through employment of new economists and improved training at the international seminars and workshops, as well as through internships of employees at the authorities for protection of competition with extensive experience and reputation.

- Through the cooperation with the EU, the continuity of the process of further building of the capacity of the Commission has been ensured. The projects to be funded from pre-accession program IPA 2011, in the total value of about EUR 3 million, is approved

OVERVIEW OF THE ACTIVITIES OF THE COMMISSION IN 2011

Type of Case	**Completed**	**In Progress**
Cases in Administrative Procedure		
Restrictive Agreements	7	1
Exemption from Prohibition	8	6
Abuse of Dominant Position	1	3
Determining measures for protection of competition	5	2
Concentrations of market participants	94	12
TOTAL	**115**	**24**
OPINIONS		
Opinions on Enforcement of the Competition Law	48	1
Opinions on regulations concerning effect on market competition	6	-
Opinions on Article 157 of the Bankruptcy Law	123	39
TOTAL	**177**	**40**
NOTICES ON INITIATIVES AND COMPLAINTS WITH NO PROCEEDINGS INITIATED		
TOTAL	**15**	**7**
SECTOR ANALYSES		
TOTAL	**1**	**2**