



**International
Competition
Network**

**ANTI-CARTEL
ENFORCEMENT
TEMPLATE**

**CARTELS WORKING GROUP
Subgroup 2: Enforcement Techniques**

SERBIA

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ICN ANTI-CARTEL ENFORCEMENT TEMPLATE

IMPORTANT NOTES:

This template is intended to provide information for the ICN member competition agencies about each other's legislation concerning anti-competitive practices, particularly hardcore cartels. At the same time the template supplies information for businesses participating in cartel activities about the rules applicable to them; moreover, it enables businesses and individuals which suffer from cartel activity to get information about the possibilities of enforcement of their rights in private law in one or more jurisdictions.

Reading the template is not a substitute for consulting the referenced statutes and regulations. This template should be a starting point only.

[Please include, where applicable, any references to relevant statutory provisions, regulations or policies as well as references to publicly accessible sources, if any.]¹

1. Information on the law relating to cartels

A. Law(s) covering cartels: [availability (homepage address) and indication of the languages in which these materials are available]	Law on Protection of Competition, "Official Gazette of the RS", no. 51/2009 and 95/2013 The English version is available here . Available in Serbian and English
B. Implementing regulation(s) (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]	General legal framework on restrictive agreements (partly applicable to cartels): <ul style="list-style-type: none">(i) Regulation on the Content of Request for Individual Exemption of Restrictive Agreements from Prohibition - "Official Gazette of the RS" no. 107/2009, available here.(ii) Regulation on the Conditions for Relief from Commitment Payment from Measure for Protection of Competition - "Official Gazette of the Republic of Serbia", no. 50/2010 – (Leniency Regulation) – available here.(iii) Regulation on R&D Agreements -Regulation on R&D

¹ Editor's note: all the comments in [square brackets] are intended to assist the agency when answering this template, but will be removed once the completed template is made public.

	<p>Agreements Between Undertakings Operating on the Same Level of Production or Distribution - "Official Gazette of the Republic of Serbia", no. 11/2010, available here.</p> <p>(iv) Regulation on Specialization Agreements - Regulation on Agreements on Specialization Between Undertakings Operating on the Same Level of Production or Distribution Chain Exempted from Prohibition - "Official Gazette of the Republic of Serbia", no. 11/2010, available here.</p> <p>(v) Regulation on fines - Regulation on Criteria For Setting The Amount Payable on the Basis of Measure for Protection of Competition and Sanctions For Procedural Breaches, Manner and Terms for Payment Thereof and Conditions for Determination of Respective Measures - "Official Gazette of the Republic of Serbia", no. 50/2010, available here.</p> <p>(vi) Regulation on The Criteria for Defining The Relevant Market - "Official Gazette of the Republic of Serbia", no. 89/2009, available here.</p> <p>Available in Serbian and English</p>
<p>C. Interpretative guideline(s) (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</p>	<p>Leniency Guidelines - Guidelines for Implementation of Article 69 of the Law on Protection of Competition, available here.</p> <p>Fining Guidelines - GUIDELINES for implementation of the Regulation on criteria for setting the amount payable on the basis of measure for protection of competition and sanctions for procedural breaches, manner and terms for payment thereof and conditions for determination of respective measures, available here.</p> <p>Available in Serbian and English</p>
<p>D. Other relevant materials (if any): [availability (homepage address) and indication of the languages in which these materials are available]</p>	<p>Other relevant materials, such as blank forms of statements and leniency contact information available here in English and here in Serbian.</p> <p>Promotional materials made to promote the Leniency Programme, available on the official website of the CPC in Serbian https://www.kzk.gov.rs/kzk/wp-content/uploads/2017/11/liflet-leniency.pdf</p> <p>Short video explaining the benefits of Leniency, available here in Serbian.</p> <p>Short video explaining Price Fixing Arrangements available here in Serbian.</p> <p>Short video explaining Market Division available here in Serbian.</p> <p>Short video explaining Information Exchange Between Competitors available here in Serbian.</p> <p>Short video explaining Bid Rigging available here in Serbian.</p>

	<p>Short video explaining how consumers can help in suppressing cartels available here in Serbian.</p> <p>Short video explaining what happens in case of illegal activities of market participants available here in Serbian.</p>
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2. Scope and nature of prohibition on cartels

<p>A. Does your law or case law define the term “cartel”? [Please quote.]</p> <p>If not, please indicate the term you use instead. [Please quote.]</p>	<p>There is no definition of “cartel” as such.</p> <p>The Law defines restrictive agreements in Article 10 and lists examples and forms of restrictive agreements as follows:</p> <p>“Restrictive agreements are agreements between undertakings which as their purpose or effect have a significant restriction, distortion, or prevention of competition in the territory of the Republic of Serbia.</p> <p>Restrictive agreements shall include contracts, certain contract provisions, express or tacit agreements, concerted practices, as well as decisions of undertakings associations, which in particular:</p> <ol style="list-style-type: none"> 1) directly or indirectly set the purchasing or selling prices or other conditions of trade; 2) limit and control production, markets, technical development or investments; 3) apply dissimilar business conditions to equivalent transactions with respect to variety of undertakings, by which undertakings are placed in unfavourable position against competitors; 4) make the conclusion of contract or agreements conditional upon the acceptance of supplementary obligations which, given their nature and trading customs and practices, are not related to the subject of the agreement; 5) share markets or sources of supply. <p>Restrictive agreements are prohibited and void, except in cases of exemption from the prohibition pursuant to this Law.”</p>
<p>B. Does your legislation or case law distinguish between very serious cartel behaviour (“hardcore cartels” – e.g.: price fixing, market sharing, bid rigging or production or sales quotas²) and other types of “cartels”? [Please</p>	<p>Not as such, however the criteria is taken from the provision on the agreements of minor importance (de minimis - Article 14 Law on Protection of Competition) and the Fining Guidelines (available here).</p> <p>Article 14 states in paragraph 2:</p>

² In some jurisdictions these types of cartels – and possibly some others – are regarded as particularly serious violations. These types of cartels are generally referred to as “hardcore cartels”. Hereinafter this terminology is used.

<p>describe how this differentiation is made and identify the most egregious types of conduct.]</p>	<p>“Agreements of minor importance shall be allowed, unless the purpose of the horizontal agreement is price setting or limitation of production or sales, or division of sourcing markets, as well as if the purpose of the vertical agreements is price setting, or division of the market.”</p> <p>The Fining Guidelines state:</p> <p>„Per gravity, competition infringements are classified as:</p> <ul style="list-style-type: none"> - very severe competition infringements, including: restrictive agreements that directly or indirectly set purchase or selling prices or other conditions of trade; restrictive agreements on collective boycott of competing parties; restrictive agreements on segmentation of markets or sources of procurement, including restrictive agreements of bidders – competing parties in public procurement procedure; forms of abuse of a dominant position that as their purpose or effect have direct or indirect impose the unfair purchase or selling prices or other unfair business conditions, and/or competing parties’ exclusion from markets; forms of abuse of a dominant position that limit production, markets or technical development; - severe competition infringements, including horizontal restrictive agreements that are not classified as very severe competition infringements, and forms of abuse of a dominant position, such are implementation of dissimilar business conditions or linked trades that are not classified as very severe competition infringements; - minor competition infringements including vertical restrictive agreements that are not directly targeted to prices or conditions of sales, implemented concentration that is not approved for implementation pursuant to Article 65 of the Law, and concentration implemented contrary to the requirement to interrupt concentration pursuant to Article 64 of the Law.”
<p>C. Scope of the prohibition of hardcore cartels: [including any exceptions, exclusions and defences e.g. for particular industries or sectors. Please also describe any other limitations to the ban on hardcore cartels.]</p>	<p>There have not been any exceptions of hardcore cartels so far.</p>
<p>D. Is participation in a hardcore cartel illegal <i>per se</i>³? [If the situation differs for civil, administrative and criminal liability, please clarify this.]</p>	<p>Participation in a hardcore cartel is an illegal restriction by object, considering that <i>per se</i> is not a phrase used in the legislative terminology in Serbia.</p>
<p>E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?</p>	<p>Cartels remain with other restrictive agreements primarily an administrative offence, however, there may be criminal liability as well.</p> <p>Since 2018, concluding a restrictive agreement (note that this is wider than participating in a cartel) is a criminal offence.</p>

³ For the purposes of this template the notion of ‘per se’ covers both 'per se' and 'by object', as these terms are synonyms used in different jurisdictions.

The Criminal Code ("Official Gazette of RS", no. 85/2005, 88/2005 - corrected, 107/2005 - corrected, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019), available in English [here](#), reads as follows:

"Conclusion of a restrictive agreement

Article 229

(1) Whoever in a business entity concludes a restrictive agreement that is not exempted from the prohibition in the sense of the law regulating the protection of competition, which determines prices, limits production or sales or divides the market, shall be punished by imprisonment from six months to five years and a fine.

(2) The perpetrator of the offense referred to in paragraph 1 of this article who meets the conditions for release from the obligation determined by the measure of competition protection in the sense of the law regulating the protection of competition, may be released from the penalty."

Note: Paragraph 2 refers to successful Leniency applicants

Although Article 229 (1) refers to a physical person in a business entity, under Law on Responsibility of Legal Entities for Criminal Offenses ("Official Gazette of RS", No. 97/2008) the business entity is responsible for the offence as well as the above mentioned physical person. Foreseen sanctions are monetary fines (scale from 100.000 RSD to 500.000.000 RSD, depending on severity of sanction envisaged in The Criminal Code), termination of business, convictional sentence and security measures. E.g. for the offence envisaged in article 229 (1), the monetary fine would be 2-5.000.000 RSD.

In addition, bid rigging (as a form of cartel) has been a criminal offence in The Criminal Code far longer, with specified aggravated offences depending on the value of a particular public procurement:

"Abuse Concerning Public Procurement

Article 228

(1) Whoever, concerning a public procurement, submits a bid based on false information, or makes unlawful arrangements with other bidders, or takes other unlawful actions with the intention of influencing the decision-making by the buyer in the public procurement shall be punished with imprisonment of six months to five years.

(2) The punishment specified in paragraph 1 of this Article shall also be pronounced to a person with the buyer in the public procurement who, by abusing his/her position or powers, exceeding the limits of his/her powers or failing to perform his/her duty, violates the law or other regulations governing public procurements and thus damages public funds.

(3) If the offence specified in paragraphs 1 and 2 of this Article was committed in relation to a public procurement worth more than one hundred and fifty million dinars, the offender shall be punished with imprisonment of one to ten years.

(4) The offender specified in paragraph 1 of this Article who

	voluntarily discloses that the bid is based on false information or on an unlawful agreement with other bidders, or that he/she had undertaken other unlawful actions with the intention of influencing the decision-making of the buyer prior to making their decision on contract awarding, may be remitted from punishment.”
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3. Investigating institution(s)

A. Name of the agency, which investigates cartels: [if there is more than one agency, please describe the allocation of responsibilities]	Komisija za zaštitu konkurencije (Commission for Protection of Competition)
B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]	Commission for Protection of Competition Address: Savska 25 / IV, 11000 Belgrade, Serbia Tel. + 381 (0) 11 38 11 911 Fax: + 381 (0) 11 38 11 936 E-mail: office.kzk@kzk.gov.rs Website: www.kzk.gov.rs (SR) and https://www.kzk.gov.rs/en/ (ENG) Available in Serbian and English
C. Information point for potential complainants:	Instructions for filing complaints can be found here . Also, information can via phone [+ 381 (0) 11 38 11 958] and via inicijativa@kzk.gov.rs , as well as via details in 3 B. There is also a separate contact for Leniency applications: Contact with applicants and the receipt of leniency notifications: leniency@kzk.gov.rs , Telephone number: +381 11 3811951.
D. Contact point where complaints can be lodged:	Directly, by mail or e-mail (please see above).
E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.	According to Article 49 of the Law on Protection of Competition, The Commission may submit to other government authorities and organizations a request for providing information. The state authorities and organizations are obligated to cooperate with the Commission and to act on the request, in due course, that is, to provide information, documents or other requested evidence they possess, or to give a reasoned statement on the subject of request. The obligation particularly refers to the authorities and organizations in charge of statistics, tax authorities, authorities and organizations of local self-government, chambers of commerce and other organizations that exercise public authority. Upon the request of the Commission, the police provides assistance in performing certain actions in the procedure, especially with the investigation and the temporary seizure of belongings in accordance with the law governing the police. (Article 50 of the Law on Protection of Competition). The assistance of the police is particularly useful when there is

	need to secure safe entry onto the premises during dawn raids.
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4. Decision-making institution(s)⁴ [to be filled in only if this is different from the investigating agency]

A. Name of the agency making decisions in cartel cases: [if there is more than one agency, please describe the allocation of responsibilities.]	Komisija za zaštitu konkurencije (Commission for Protection of Competition) is both the investigative and decision-making authority. However, the jurisdiction of the Commission for Protection of Competition is functionally divided, as different organizational parts within the Commission are in charge of investigation (the Technical Service) and the decision-making part (the President and the Council).
B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]	Same as 3 B
C. Contact point for questions and consultations:	Same as 3 B
D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.	<p>Individual case handlers from the Technical Service of the Commission are appointed by the President for each case. They carry out the inquiry, gather evidence and establish the legal and factual basis of the case.</p> <p>During the procedure of investigation of infringement of competition, a rapporteur among the members of the Council shall be determined, who in cooperation with the appointed case handlers, prepares a draft decision and report to the Council on the reasons and all relevant facts and circumstances of the case, so that the Council can reach a final decision.</p> <p>In carrying out the investigation, case handlers appointed by the President request documentation containing data related to the investigated infringement, conduct inspections and other necessary acts in order to establish legal grounds; in carrying out enquiries the case handlers are entitled to request statements from parties, witnesses and experts, and current or former responsible persons, employees of the parties to the proceedings as well as from all other persons disposing of the facts relevant to the procedure and to conduct oral hearing.</p>
E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?	Criminal proceedings are usually initiated once a competition infringement has been established. The Commission cooperates with the public prosecutor handling the case.

⁴ Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

5. Handling complaints and initiation of proceedings

<p>A. Basis for initiating investigations in cartel cases: [complaint, ex officio, leniency application, notification, etc.]</p>	<p>Investigation are initiated ex officio, on the basis of information provided in complaints (initiatives), leniency application or other sources of information.</p>
<p>B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)? [If there is a requirement to complete a specific form, please, indicate its location (website address).]</p>	<p>Specific form is not prescribed by Law. In 2019, the Commission made a clear form with instruction for complaints related to restrictive agreements. This form is not mandatory, but merely acts as an aid to complainants. Instructions for filing complaints and the complaints form can be found here.</p>
<p>C. Legal requirements for lodging a complaint against a cartel: [e.g. is legitimate interest required, or is standing to make a complaint limited to certain categories of complainant?]</p>	<p>There is no limitation on making complaints and any person may make a formal or informal complaint.</p> <p>There is no need to prove legitimate interest and complaints are not limited to certain categories of complainant.</p>
<p>D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect? [Please elaborate.]</p>	<p>The Commission is not obliged to take enforcement action on each complaint, but the complainants are notified about the outcome of the complaint. The Commission examines the received information. Upon examining the basis of the complaint, the Commission has discretion whether to initiate proceedings, if it finds there are sufficient grounds.</p>
<p>E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?</p>	<p>The Commission is obliged, under the Law, to inform the complainant about the outcome of his complaint, by sending a notification. There is no formal decision addressed to the complainant as such.</p>
<p>F. Is there a time limit counted from the date of receipt of a complaint by the competition agency for taking the decision on whether to investigate or reject it?</p>	<p>The Law prescribes that the Commission is obliged to provide information on the outcome of the complaint, to each party that submitted complaint, within the period of 15 days of its receipt of the complaint. This is an instructive period, but the time needed for assessing the complaint depends on the complexity of the allegations and sufficiency and adequacy of the information provided, and also on availability of other relevant information.</p>
<p>However, there is no binding time limit.</p>	

6. Leniency policy⁵

<p>A. What is the official name of your leniency policy (if any)? [Please indicate its public availability.]</p>	<p>Leniency is regulated in Article 69 of the Law, titled “Relief from measure for protection of competition”</p> <p>The rule for Leniency are further clarified in the Regulation on the Conditions for Relief from Commitment Payment from</p>
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⁵ For the purposes of this template the notion of ‘leniency’ covers both full leniency and a reduction in the sanction or fines. Moreover, for the purposes of this template terms like ‘leniency’ ‘amnesty’ and ‘immunity’ are considered as synonyms.

	<p>Measure for Protection of Competition, available here.</p> <p>In addition, the Leniency programme is also regulated by the Guidelines for implementation of Article 69 of the Law on Protection of Competition and Regulation on the conditions for relief from commitment payment from measure for protection of competition, available here.</p>
B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?	Yes, full immunity is available for the first applicant, provided all other conditions for leniency are met, while a reduction of fines is available for subsequent applicants, as well as applicants that fail to meet the criteria for full leniency.
C. Who is eligible for full leniency [only for the first one to come forward or for more participants in the cartel]?	Full immunity is available only for the first applicant, provided the other conditions are met, especially if such applicant is not the initiator or organizer of the restrictive agreement.
D. Is eligibility for leniency dependent on the enforcing agency having either no knowledge of the cartel or insufficient knowledge of the cartel to initiate an investigation? In this context, is the date (the moment) at which participants in the cartel come forward with information (before or after the opening of an investigation) of any relevance for the outcome of leniency applications?	<p>Yes, both for full leniency and subsequent applicants.</p> <p>Full leniency is available only for applicants before the opening of an investigation, and partial leniency is available both before opening an investigation and after opening an investigation, provided the other conditions are met.</p>
E. Who can be a beneficiary of the leniency program (individual / businesses)?	Undertakings (predominantly companies) can be leniency applicants. According to Article 3 of The Law on Protection of Competition, undertakings are all natural and legal entities who, directly or indirectly, permanently, temporary or on one-term basis participate in trade of goods and services, regardless of their legal status, ownership, citizenship or state affiliation.
F. What are the conditions of availability of full leniency: [e.g. provide decisive evidence, maintain cooperation throughout, not to be the ringleader, cease the infringement, restitution, etc.]	<p>Cartel participant (participant in the restrictive agreement) shall be relieved from measure for protection of competition in form of obligation to pay a monetary sum, if it:</p> <ol style="list-style-type: none"> 1) is first to notify on agreement on which the Commission for Protection of Competition had no prior knowledge about existence of restrictive agreement or sufficient evidence to initiate proceedings; 2) provides all available evidence on restrictive agreement (including information in possession or available, and documents/other evidence related to the notified agreement) and/or indicate to the Commission on location or person holding those evidence; 3) did not force or encourage other undertakings to conclude or implement restrictive agreement; 4) is not the initiator or organizer of the restrictive agreement. 5) signs the statement by which it is committing in good faith, to fully and continuously cooperate with the Commission, pending

	<p>the validity of decision imposing measure for protection of competition (cooperation includes immediate response to every request for submission of additional evidence or information within provided deadlines, providing access and full cooperation of all present and former employees who dispose the information/evidence relating to restrictive agreement, refraining from destroying or hiding information/evidence of the restrictive agreement, keeping as classified all information provided to the Commission);</p> <p>6) without delay ceases further participation in restrictive agreement, unless by request and approval of the Commission that is in the interest of further conduct of proceeding and gathering evidence.</p>
<p>G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment): [e.g.: valuable, potential, decisive evidence by witnesses or on basis of written documents, etc.? Must the information be sufficient to lead to an initiation of investigations?]</p>	<p>The amount of monetary sum from the measure of protection of competition may be reduced for a cartel participant who does not meet the condition no 1 from 6 F (see above) .</p> <p>The Commission may deduct commitment payment for the party to the restrictive agreement if the said fulfils the following conditions:</p> <ul style="list-style-type: none"> - it does not fulfil the conditions for commitment relief, - is not initiator or organizer of the agreement, - did not force or encourage other undertakings to conclude or implement the agreement, - submits evidences (with added value) to the Commission that were not available at the particular moment, enabling completion of proceeding and enacting of decision on infringement pursuant to Article 10, Item 1 of the Law, and - in complete and continuous manner fulfils all other cooperation commitments with the Commission in accordance with the Law, Regulation and this Guidelines.
<p>H. Obligations for the beneficiary after the leniency application has been accepted: [e.g. ongoing, full cooperation with the investigating agency during the proceedings, etc.]</p>	<p>Leniency applicants are obliged to:</p> <ul style="list-style-type: none"> - fully, unconditionally and continuously cooperate with the Commission during the entire procedure, pending the validity of the decision determining competition infringement; - cease further participation in the restrictive agreement, no later than following submission of the notification on agreement, i.e. request, unless differently agreed with the Commission in the interest of further conduct of proceeding; - immediately respond to every call of the Commission for submission of additional evidences or information, or within provided timeframe for such conduct; - allow access to authorized persons of the Commission to all employees and former employees who are at dispose of information and/or evidences relating to the restrictive agreement, and provide their full cooperation during the proceeding; - not destroy or hide information or other evidences relating to notified restrictive agreement; - keep as classified all information provided in the notification, i.e. request, as well as the fact related to cooperation with the Commission during the proceeding; - conscientiously and responsibly act on all matters and other

	orders or instructions provided by the Commission during the proceeding.
<p>I. Are there formal requirements to make a leniency application? [e.g. must applications take a particular form or include particular information/data, must they be in writing or can they be made orally, etc.]</p>	<p>The Law does not constitute any formal requirements regarding the form of application.</p> <p>However, the Commission issued guidelines that state that the notification or request shall be submitted in writing to the Commission's Technical Service employee, previously specially authorized by the Commission President for such operations (Leniency Officer). Exceptionally, pursuant to the valid request of the applicant and upon previous approval of the Commission President, the notification of restrictive agreement may be submitted verbally, whereby the Commission shall determine the method of recording and keeping of notification submitted in such manner. The applicant of verbally submitted notification must explicitly and unconditionally commit to subsequently sign and notarize the audio recording transcript. Evidence, particularly in writing, cannot be verbally interpreted during such submission of notification.</p> <p>Notification of restrictive agreement and request for commitment deduction, on behalf of the party to the restrictive agreement shall be submitted by:</p> <ul style="list-style-type: none"> - the legal representative of the party to the agreement, as such enlisted at the Business Registers Agency on the date of submission of notification or request, or - an authorized attorney of the party to the agreement, with attached special power of attorney for submission of notification or request, signed and notarized by legal representative of the party to the agreement, issued at the earliest three days prior to the submission of notification or request. <p>The complete notification of restrictive agreement with the request for commitment relief must contain:</p> <ul style="list-style-type: none"> - written statement of the party to the restrictive agreement, submitted on the memorandum, verified with a stamp and signed by authorized person, whereby giving the explicit and irrevocable admission of participation to the restrictive agreement; - detailed description of the content of agreement with specification of manners of communication, description of acts undertaken for implementation of such agreement and list of parties to the agreement; - business name and headquarters address of the applicant, and in the case of association of undertakings, names and headquarter addresses of parent and all affiliated companies; - business names and headquarters addresses of all other parties to the restrictive agreement, including temporary parties to the agreement; - personal names, functions/positions and contact details of natural persons participated in the organization and implementation of the agreement;

- information on notifications submitted to competition protection authorities in other countries in relation to the reported agreement, i.e. all conducted or ongoing negotiations of the party with other competition protection bodies current to the submission of notification, as well as their content;
- the statement, prepared using the template available on the Commission's web page (www.kzk.gov.rs), whereby the party irrevocably, unequivocally and unconditionally commits to fulfil all commitments pursuant to this Guidelines, and declares to continuously, knowingly and in good faith believe cooperate with the Commission for entire duration of the proceeding, pending the validity of decision imposing measure for competition infringement;
- list of evidence and any and all evidence, regardless of their form, source or methods of keeping, as well as information significant for proceeding of determining competition infringement that are at disposal when submitting the notification – the request;
- the request for commitment relief.

The complete request for commitment deduction must contain:

- the written statement of the party to the restrictive agreement, submitted on the memorandum, verified with a stamp and signed by authorized person, whereby giving the explicit and irrevocable admission of participation to the restrictive agreement;
- the statement, prepared using the template available on the Commission's web page (www.kzk.gov.rs), whereby the party irrevocably, unequivocally and unconditionally commits to fulfil all commitments pursuant to this Guidelines, and declares to continuously, knowingly and in good faith believe cooperate with the Commission for entire duration of the proceeding, pending the validity of decision imposing measure for competition infringement;
- list of evidence, and any and all evidence hitherto not requested by the Commission during the proceeding that are considered to have an added probative value, regardless of their form, source or methods of keeping, as well as information significant for determining competition infringement and completion of initiated proceeding.

Party to the restrictive agreement that wants to notify the Commission on the agreement and exercise the right to be relieved from commitment, may anonymously address the Commission (e.g. through an intermediary), by submitting the notice with brief description of the content of restrictive agreement, list of available evidence and information at disposal, and brief description of the content of evidence, whereby is not committed to reveal its identity, identity of remaining participants and details of the agreement, or it can submit the notification of restrictive agreement with the request for commitment relief.

The Commission shall notify the party to the restrictive agreement that anonymously addressed the Commission, on eventual prior existence of notification of restrictive agreement

	<p>that correlates in description to the agreement, subject to the submitted notification before the Commission, and/or whether the Commission already possess evidence sufficient for initiation of proceeding.</p> <p>Party to the agreement who anonymously addressed the Commission cannot exercise the right of priority in order of submission of notification of agreement with the request for commitment relief, i.e. commitment deduction.</p> <p>Guidelines are available in Serbian and English (here).</p>
<p>J. Are there distinct procedural steps within the leniency program? [e.g.: provisional guarantee of leniency ("PGL") and further steps leading to a final leniency agreement / decision)?]</p>	<p>Guidelines envisage that the Commission shall issue to the applicant, the receipt on submission of notification or request, indicating the date and hour of the receipt.</p> <p>During the procedure for determining competition infringement, the Commission shall monitor fulfilment of conditions and execution of commitments performed by the applicant of notification or request. If the Commission determines that the applicant of notification or request no longer fulfil conditions or execute taken commitments, it shall immediately notify the applicant in written form on the matter. In that case, the place of the applicant of the request for commitment deduction, including all rights and commitments pursuant to this Guidelines, shall be given to the first subsequent applicant of the request. Prior to enacting decision completing the proceeding, the Commission shall evaluate overall fulfilment of conditions and taken commitments by the applicants of notification and request, their overall cooperation with the Commission during the proceeding and contribution to the successful, efficient and cost-effective completion of proceeding. On the basis of such evaluations, the Commission shall decide on the commitment relief and/or commitment deduction by issuing the decision determining competition infringement.</p>
<p>K. At which time during the application process is the applicant given certainty with respect to its eligibility for leniency, and how is this done?</p>	<p>Complete certainty is formally given in the decision completing the proceedings, as the leniency applicant has to cooperate during the proceeding in manner described in 6 F, and that is evaluated before reaching the mentioned decision.</p>
<p>L. What is the legal basis for the power to agree to grant leniency? Is leniency granted on the basis of an agreement or is it laid down in a (formal) decision? Who within the agency decides about leniency applications?</p>	<p>The legal basis for the power to grant leniency is Article 69 of the Law. Leniency is formally granted in the final decision completing the proceeding reached by the Commission Council, in which the existence of restrictive agreement is determined.</p>

<p>M. Do you have a marker⁶ system? If yes, please describe it.</p>	<p>The guidelines envisage a marker system. Party to the restrictive agreement may also submit to the Commission a pre-notification of restrictive agreement with the request to establish the order of submission of notification (the marker). Pre-notification must contain following information: basic information on the content of restrictive agreement, information on parties to the agreement, list of evidence at disposal to the applicant, information on other evidence at disposal to the remaining participants or third parties, description of the content of available evidence, and estimate of time needed for submission of the complete notification of agreement before the Commission.</p> <p>The Commission shall, following the submission of pre-notification, perform the review and evaluation of all allegations, notify the applicant on the order of submission and time frame in which is committed to submit the complete notification of restrictive agreement with the request for commitment relief, whereby the time frame cannot be longer than one month from the date of receipt of pre-notification.</p> <p>Party to the restrictive agreement that complies in accordance with the Commission's notification, i.e. submit the complete notification with the request for commitment relief in provided time frame, as the day of submission of complete notification with the request shall be taken the day of submission of pre-notification before the Commission.</p> <p>Following the receipt of complete notification of restrictive agreement with the request for commitment relief, the Commission shall in reasonable period investigate all allegations stated in the notification, analyse and evaluate evidence submitted with the notification, examine and evaluate the compliance with conditions for commitment relief, and as per need conduct other acts, including issuing orders to the applicant for amending and/or clarifying any and all elements of submitted notification, following which it shall notify the applicant in writing on the compliance with conditions for commitment relief.</p> <p>The Commission shall not evaluate the later notification or request until it decides on the earlier notification.</p>
<p>N. Does the system provide for any extra credit⁷ for disclosing additional violations? [e.g. a hardcore cartel in another market]</p>	<p>Extra credit as such is not envisaged. However, if another violation implies separate proceedings, and applicant meets the criteria from 6 F or 6 G for leniency regarding such separate proceedings, such an undertaking could acquire the benefit of leniency.</p>
<p>O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.</p>	<p>There is no such requirement in the regulations. However, according to the Guidelines, the Commission shall to the fullest capacity, pursuant to the Law and its internal rules, protect the identity of the applicant of notification and request, and data</p>

⁶ A marker protects an applicant's place in the queue for a given period of time and allows it to gather the necessary information and evidence in order to meet the relevant evidential threshold for immunity.

⁷ Also known as: "leniency plus", "amnesty plus" or "immunity plus". This category covers situations where a leniency applicant, in order to get as lenient treatment as possible in a particular case, offers to reveal information about participation in another cartel distinct from the one which is the subject of its first leniency application.

	considered confidential, pending publication of the notification in accordance with Article 38, Paragraph 2 of the Law (equivalent of Statement of Objections), except in cases prescribed by the Law or with explicit consent given by the applicant of notification or request to relieve its identity and confidential information prior to the deadline expiry.
P. Is there a possibility of appealing an agency's decision rejecting a leniency application?	The Law does not envisage the possibility of appealing, apart from the possibility to address this issue in front of the Administrative court after the final decision that determines the existence of restrictive agreement is reached. Moreover, the Law does not envisage a specific decision on leniency applications.
Q. Contact point where a leniency application can be lodged [telephone and fax including the country code, plus out of hours contacts (if any)]:	The Commission has a contact point with following details: E-mail: leniency@kzk.gov.rs , Telephone number: +381 11 381 1951.
R. Does the policy address the possibility of leniency being revoked? If yes, describe the circumstances where revocation would occur. Can an appeal be made against a decision to revoke leniency?	According to the Guidelines, this is possible only if the applicant of notification or request no longer fulfils conditions or no longer executes taken commitments. In that case, the applicant is immediately notified in written form on the matter. There is no prescribed possibility of an appeal to that specific notification.
S. Does your policy allow for "affirmative leniency", that is the possibility of the agency approaching potential leniency applicants?	The Law does not constitute such right of the Commission. As the General Administrative Procedure Law envisages the principle of assistance to the party, the Commission can at any time present the rights stated in Article 69 of the Law to the party to the proceedings. E.g. during down raids, it is practice of the Commission to present those rights at the beginning of the down raid. The leaflets made by the Commission are available as a brief explanation of these possibilities for the parties to the proceedings.
T. Does your authority have rules to protect leniency material from disclosure? If yes, please elaborate which parts are protected and what does protection actually mean.	All submitted notifications, requests, information, evidence, correspondence, and decisions of the Commission related to the submitted requests, shall constitute a part of the case file and have the status of confidential data pursuant to the Law, pending publication of the notification pursuant to Article 38, Paragraph 2 of the Law (equivalent of the Statement of Objection). As these documents would generally contain information relevant for initiating proceedings and finding of an infringement, the particular data used to establish an infringement will most likely be available to the parties to the proceedings in respect of their right of defence.

7. Settlement

A. Does your competition regime allow settlement? If yes, please indicate its public availability (link to the	No, there is no possibility of settlement.
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relevant rules, guidelines, etc.].	
B. Which types of restrictive agreements are eligible for settlement [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]?	See (7 A) above.
C. What is the reward of the settlement for the parties?	See (7 A) above.
D. May a reduction for settling be cumulated with a leniency reward?	See (7 A) above.
E. List the criteria (if there is any) determining the cases which are suitable for settlement.	See (7 A) above.
F. Describe briefly the system [who can initiate settlement – your authority or the parties, whether your authority is obliged to settle if the parties initiate, in which stage of the investigation settlement may be initiated, etc.].	See (7 A) above.
F. Describe the procedural efficiencies of your settlement system [e.g. shorter decision, etc.].	See (7 A) above.
G. Does a settlement necessitate that the parties acknowledge their liability for the violation?	See (7 A) above.
H. Is there a possibility for settled parties to appeal a settlement decision at court?	See (7 A) above.

8. Commitment

A. Does your competition regime allow the possibility of commitment? If yes, please indicate its public availability [link to the relevant rules, guidelines, etc.].	<p>Yes, there is a possibility of commitment decisions, referred to in the Law as “Adjournment of proceeding” under Article 58.</p> <p>The Article reads as follows:</p> <p>“The Commission may enact a conclusion on the adjournment of investigation of competition infringement and determine measures referred to in Article 59 of this Law, if the party, based on the content of the conclusion on initiation of proceeding or facts established in the proceeding, submits a proposal of obligations (measures) that it is voluntarily willing to undertake in order to eliminate the possible competition infringement, containing terms and conditions as well as deadlines for taking such measures.</p> <p>The proposal referred to in Paragraph 1 of this Article, may be placed by the party no later than the receipt of notification referred to in Article 38, Paragraph 2 of this Law. (* note: this is</p>
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	<p><i>the statement of objections, which is the pre-final act in investigations in Serbia)</i></p> <p>The notice on submission of proposal by the party referred to in Paragraph 1 of this Article, which contains a brief description of the proposal and essential elements of the case, the Commission shall publish on its website, inviting all interested parties to submit written remarks, stances and opinions within 20 days from the date of publication of this notice.</p> <p>If the Commission, on the basis of an analysis of market conditions, determines that it is likely that proposed commitments will ensure fulfilment of objectives from the measure referred to in Article 59 of this Law, it shall pass a conclusion determining the measure on the basis of a given proposal. (* note: Article 59 concerns measures for removal of competition infringement)</p> <p>The Commission shall not be held obliged to accept the proposal referred to in Paragraph 1 of this Article.</p> <p>The conclusion on adjournment of proceeding sets the deadline for execution of obligations of the party and submission of evidence on fulfilling requirements from the measure.</p> <p>The proceeding shall be continued within a period not exceeding three year period from the date of enacting conclusion from Paragraph 1 of this Article, if:</p> <ol style="list-style-type: none"> 1) substantial change of circumstances on which the conclusion on adjournment of proceeding is based on, occur; 2) a party fails to fulfil obligations from the measure within specified time, that is, fails to provide adequate evidence on the matter; 3) the Commission finds that the conclusion on adjournment of proceeding is enacted based on inaccurate, false, incomplete or misleading information provided by the party. <p>The treatment of the party upon the conclusion on adjournment of proceeding shall be supervised ex officio by the Commission.</p> <p>The conclusion on adjournment of proceeding, that is, continuance of proceeding shall be enacted by the Council.”</p> <p>The Commission also issued an Instruction on Implementation of Article 58 of the Law on Protection of Competition, explaining the principles and applicability of commitment decisions, available in English here.</p>
<p>B. Which types of restrictive agreements are eligible for commitment [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]?</p> <p>Are there violations which are excluded from the commitment possibility?</p>	<p>The Commission assesses the pros and cons of commitment decisions in each individual case. However, according to the Instruction on Implementation of Article 58 of the Law on Protection of Competition, certain restrictions are not suitable for commitment decisions:</p> <p>“Adjournment of proceeding, pursuant to provision of Article 58 of the Law, shall not be appropriate in proceedings investigating the most severe competition infringements whose objective is price setting (fixing) or limitation of production or sales, or division of sourcing market, and thus, generally, proposals of commitments submitted by the party to</p>

	proceeding of such type shall not be accepted.”
<p>C. List the criteria (if there are any) determining the cases which are suitable for commitment.</p>	<p>The Commission assesses the pros and cons of commitment decisions in each individual case. The key criteria are that it is likely that proposed commitments will ensure fulfilment of objectives from the measure for removal of competition infringement.</p>
<p>D. Describe, which types of commitments are available under your competition law.[e.g.: behavioural / structural]</p>	<p>Commitments can be behavioural or structural, but in practice behavioural remedies are predominant. Types of commitments are not specified in the Law, but a parallel can be made to measures for removal of competition infringement, in Article 59:</p> <p>“The Commission may, in the decision determining competition infringement, set the measures aimed at removing competition infringement, i.e., preventing probable occurrence of the same or similar infringement, by giving orders to undertake certain behaviour or prohibit certain behaviour (behavioural measures).</p> <p>The measures referred to in Paragraph 1 of this Article must be proportionate to the gravity of competition infringement and in direct relation to acts or practices that caused such infringement.</p> <p>If it is determined that there is a significant risk of recurrence of the same or similar infringement as a result of the structure of undertakings, the Commission may set a measure with the objective of changing the structure in order to eliminate such risk, that is, establishing the structure that existed prior to infringement (structural measures).</p> <p>The structural measure shall be set if there is no possibility to set an equal or similarly effective behavioural measure or if the behaviour measure constitutes a greater burden for the undertaking than the structural measure, that is, if the earlier imposed behavioural measure for the same infringement is not carried out in its full.</p> <p>The structural measures may require decomposition of created undertakings structure, particularly through the sale of some parts or assets to other parties that are not affiliated to the undertaking.”</p>
<p>E. Describe briefly the system [who can initiate commitment – your authority or the parties, in which stage of the investigation commitment may be initiated, etc.]</p>	<p>Commitment decisions are initiated by parties to competition infringement proceedings and the Commission has no power to propose these commitments officially.</p> <p>The commitment proposal can be made from the initiation of proceedings to the moment the Statement of Objections is issued. In Serbia, this Statement is the pre-final act in investigations and contains all the evidence gathered by the Commission and established factual situation that might be a proof of competition infringement, sent out to the Parties so that they can address the case and use their “right of defence” in infringement proceedings.</p> <p>Authorised case handlers within the Restrictive Practices Division of the Commission prepare a draft decision on proposed commitments, and forward it to the <i>rappporteur</i>, and then to the Council. If the Council finds that commitments might be acceptable, a “market test” is performed - proposed commitments are published on Commission website along with</p>

	<p>a call for contributions to general public. If the Council, on the basis of an analysis of market conditions and factual situation established until then, determines that it is likely that proposed commitments will ensure fulfilment of objectives from the measure referred to in Article 59 of the Law, it whether to accept or reject proposed commitments.</p> <p>Once commitments are accepted, an interim decision is made (Adjournment of proceeding) and the monitoring period starts. Once the monitoring period elapses, if the undertaking in question complies with the accepted commitments, proceedings are terminated in a final decision. The monitoring period can last up to three years.</p> <p>Under no conditions is the Commission obliged to accept the proposed commitments.</p>
I. Does a commitment decision necessitate that the parties acknowledge their liability for the violation?	No, there is no obligation to acknowledge liability for the violation.
J. Describe how your authority monitors the parties' compliance to the commitments.	Commitments are usually monitored through reports the company has agreed to provide to the Commission in set time periods.
K. Is there a possibility for parties to appeal a commitment decision at court?	<p>No, it is not possible to appeal the commitment decision directly. Although it is treated as procedural decision (which cannot be a part of an independent judicial review before the Administrative court), there was a case in which there was a independent claim against decision on proposal of commitments that was accepted into court procedure by Administrative court, but with rejection of the claim and upholding the decision of the Commission.</p> <p>Parties can file for judicial review against the final decision of the Commission in competition infringement proceedings, in which they can address the issue of the Council not accepting proposed commitments, which is the opportunity undertakings usually take.</p>

9. Investigative powers of the enforcing institution(s)⁸

A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids⁹, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.	<p>In Serbia, there is a wide variety of investigative measures available to the Commission, from requests for information, dawn raids, searches of documentation in electronic form and using expert witnesses.</p> <p>Investigative measures are performed by authorised case handlers, based on their own decision, apart from dawn raids and taking expert witness evidence, which are conducted based on the decision of the Commission President. Only measure that requires a court warrant is search of an apartment or other premise that has the same, similar or related purpose, and the owner or the holder of the premise</p>
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⁸ “Enforcing institutions” may mean either the investigating or the decision-making institution or both.

⁹ “Searches/raids” means all types of search, raid or inspection measures.

	<p>opposes to the search.</p> <p>Searches of premises can be performed with or without announcement (down raids), and they include not only search of documentation, but also searches of vehicles, computers, telephones, etc.</p> <p>Requests for information can be sent to parties in proceedings, third parties and public institutions. In all cases there is an obligation to indulge the request of the Commission. In case undertakings refuse to submit data or documents, or submit false documents in competition investigations, the Commission can impose procedural penalties in the amount of 500 EUR to 5000 EUR per diem, up to 10% of the previous year's annual turnover.</p> <p>Statements of the parties and witnesses can be taken, as well as expert witness evidence.</p> <p>In addition, the Law also provides authorisation for temporary seizure of documents and things, as well as interim measures.</p>
<p>B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?</p>	<p>Private locations can be inspected, but a court order is needed if the person holding the premises objects to the raid. There are no provisions regulating search of persons as such. Locations that are registered in the Company register are not treated as private locations.</p>
<p>C. Can servers located outside the territory (abroad or in a cloud) be inspected? Are there special rules for this investigative power? Please explain!</p>	<p>There are no special rules for this investigative power, however, if the data can be accessed from Serbia it has been used in cases.</p> <p>This can be linked to the territorial scope of application of the Law on Protection of Competition, which applies not only to acts and practices performed on the territory of the Republic of Serbia, but also on acts and practices performed outside of its territory that affect or could affect the competition on the territory of the Republic of Serbia.</p>
<p>D. May evidence not falling under the scope of the authorisation allowing the inspection be seized / used as evidence in another case? If yes, under which circumstances (e.g. is a post-search court warrant needed)?</p>	<p>There are no clear rules on this, however, the Commission upholds the best practices established in the case law of the EU.</p>
<p>E. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.</p>	<p>So far, there have been no court decisions that challenge the use of investigative measures.</p> <p>Challenges of investigative measures can be made within the administrative dispute against the final decision of the Commission, as there is no direct legal remedy against them, not even for dawn raid decisions. Challenges have been made by representatives of investigated companies, but there has been no significant judicial review on this issue.</p>

10. Procedural rights of businesses / individuals

<p>A. Key rights of defence in cartel cases: [e.g.: right of access to documents in the possession of the enforcing authority, right to a written statement of the case against the defendant, right to respond to that case in writing, right to respond orally, right to confront companies or individuals that make allegations against the defendant, right to legal representation before the enforcing authorities, right not to self-incriminate, etc.] Please indicate the relevant legal provisions.</p>	<p>The party is entitled to access the files, right to be heard, ask for the hearing, right to reply to Statement of objections and may propose and provide evidences.</p> <p>Given that the general framework of competition enforcement is administrative, the party to the proceedings also has the rights granted by the provisions of the General Administrative Procedure Law that are not in conflict with the provision of the Law on Protection of Competition.</p>
<p>B. Protection awarded to business secrets (competitively sensitive information): is there a difference depending on whether the information is provided under a compulsory legal order or provided under informal co-operation? Please indicate the relevant legal provisions.</p>	<p>There is no differentiation based on the way of obtaining of information, the same rules apply.</p> <p>When it comes to the protection of business secrets, the Law on Protection of Competition states as follows:</p> <p>“Protected information</p> <p>Article 45</p> <p>At the request of a party, the applicant of the initiative for investigation competition infringement or the third party who has submitted or provided for investigation requested information in the procedure, measures on protecting the source of information or specific data (protected data) may be determined, if it is evaluated that the interest of that applicant is justified and substantially more important than the public interest in terms of the subject of the request.</p> <p>The applicant referred to in Paragraph 1 of this Article, in the said request shall be obligated to present the possibility of substantial damage plausible due to the disclosure of the source of information that is, information specified in the request.</p> <p>The President of the Commission shall decide on the request referred to in Paragraph 1 of this Article, whereas against the conclusion that rejected or dismissed the request, a special appeal is allowed on which is decided by the Council.</p> <p>Protected information does not have the status of information of public importance in terms of the law governing free access to information of public importance.”</p>

11. Limitation periods and deadlines

<p>A. What is the limitation period (if any) from the date of the termination of the infringement by which the</p>	<p>The procedure on investigation of competition infringement may not be started or conducted upon the expiry of 10 years from the last day of performing activity suspected to be competition infringement.</p>
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<p>investigation / proceedings must begin or a decision on the merits of the case must be made? Please describe potential suspension or interruption opportunities of this limitation period and the requirements for such rules to apply!</p>	<p>Also, there is limitation for setting a measure for protection of competition. Such measure cannot be set upon the expiry of five year period from the last day of performing activity determined as competition infringement. The limitation period is automatically terminated by every action taken by the Commission in order to establish the competition infringement. When the Commission conducts a procedure against several undertakings or undertakings association(s), the limitation period shall be terminated on the day when any of the said undertaking, which holds the status of a party in the proceeding, receives the Commission's submission. Following each interruption, the limitation period shall start to run again, but the procedure cannot continue upon the expiry of 10 years from the last day of performing activity suspected to be a competition infringement.</p>
<p>B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision on the merits? Please describe potential suspension or interruption opportunities of this limitation period and the requirements for such rules to apply!</p>	<p>There is no deadline prescribed, however, the limitation periods need to be observed. Please see 11 A for the limitation periods.</p>
<p>C. What are the deadlines, statutory or otherwise (if any) to challenge the commencement or completion of an investigation or a decision regarding sanctions? (see also 15A)</p>	<p>There is no formal and independent challenge prescribed for decisions to initiate proceedings. Commencement of investigation cannot be challenged on their own, but may be challenged within a challenge to the final decision, in an administrative dispute, before the Administrative Court, not later than 30 days after the delivery of the final decision of the Commission.</p>

12. Types of decisions

<p>A. List which types of decisions on the merits of the case can be made in cartel cases under the laws listed under Section 1. [E.g.: finding of an infringement, ordering to bring the infringement to an end, imposition of fines, etc.]</p>	<p>Decisions on the merits can be as follows: Finding of an infringement, imposition of financial measure of protection of competition, measures aimed at removing of the competition infringement, i.e., preventing probable occurrence of the same or similar infringement, by giving orders to undertake certain behaviour or prohibit certain behaviour (behavioural measures), measures with the objective of changing the structure in order to eliminate significant risk of recurrence of the same or similar infringement which is result of the structure of undertakings (structural measures), measure of banning participation in public procurement (if the cartel is related to public procurement).</p>
<p>B. List any other types of decisions on the merits of the case relevant particularly in hardcore cartel cases under the laws listed under Section 1 (if different from those</p>	<p>There are no specific decisions on the merits that are envisaged only for cartel cases.</p>

listed under 12/A).	
C. Can interim measures¹⁰ be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both¹¹.) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?	<p>In case there is a danger of occurrence of irreparable damage to the parties to which actions or acts, which are a subject of the procedure, directly refer to, the Commission President can issue an order for an interim measure - an order to suspend particular implementation of action or execution of acts, that is, order implementation of obligatory action aimed to prevent or remove their harmful effects. The interim measures may last until the final decision in the proceedings is reached.</p> <p>Appeal on interim measures is possible to Commission Council.</p>

13. Sanctions for procedural breaches (non-compliance with procedural obligations) in the course of investigations

A. Grounds for the imposition of procedural sanctions / fines [e.g. late provision of requested information, false or incomplete provision of information, lack of notice, lack of disclosure, obstruction of justice, destruction of evidence, challenging the validity of documents authorizing investigative measures, etc.]:	<ul style="list-style-type: none"> • Failure to comply with the Commission's request to submit, disclose, make available or provide access to the requested data; • Disabling entry into premises; • Disabling investigation in other manners, that is, delivering or providing incorrect, incomplete or false information; • Failure to comply with the interim measure.
B. Type and nature of the sanction (civil, administrative, criminal, combined; pecuniary or other):	Administrative. As such it is not called "sanction" but a procedural penalty measure (pecuniary measure).
C. On whom can procedural sanctions be imposed?	Procedural sanctions can be imposed on parties to the procedure and third parties - undertakings that fail to comply with Commission's requests.
D. Criteria for determining the sanction / fine:	<p>Criteria for imposition of fines, are described in details in the Regulation of fines and Guidance on calculation of fines.</p> <p>These are:</p> <ul style="list-style-type: none"> - importance of ordered treatment for the outcome of proceeding, - repeat of same or similar behavior in the same or some other proceeding before the Commission,

¹⁰ In some jurisdictions, in cases of urgency due to the risk of serious and irreparable damage to competition, either the investigator or the decision-making agency may order interim measures prior to taking a decision on the merits of the case [e.g.: by ordering the immediate termination of the infringement].

¹¹ Only for agencies which answered "yes" to question 2.B. above

	- gravity and importance of competition infringement determined in the proceeding.
E. Are there maximum and / or minimum sanctions / fines?	Procedural penalty measure can be imposed to an undertaking in amount between €500 and €5.000 to be paid per day of acting contrary to the orders of the Commission. The amount may not exceed 10% of the total annual turnover generated on the territory of the Republic of Serbia, realized in the year preceding the year in which the procedure has been initiated.

14. Sanctions on the merits of the case

A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined): On whom can sanctions be imposed? [E.g.: representatives of businesses, (imprisonment for individuals), businesses, in the case of associations of companies the associations or the individual companies?]	Administrative. As such it is not called “sanction” but Measure for protection of competition. These measures can be imposed to undertakings that are parties to the proceedings. According Article 3 of The Law on Protection of Competition, undertakings are all natural and legal entities who, directly or indirectly, permanently, temporary or on one-term basis participate in trade of goods and services, regardless of their legal status, ownership, citizenship or state affiliation.
B. Criteria for determining the sanction / fine: [e.g.: gravity, duration of the violation, benefit gained from the violation]	Criteria for imposition of fines, set by the Law, are intent, gravity, effects and duration. These criteria are described in details in the Regulation of fines and Guidance on calculation of fines.
C. Are there maximum and / or minimum sanctions / fines?	The amount of measure for protection of competition, in the form of an obligation to pay a monetary sum, may not exceed 10% of the total annual turnover realized in the year preceding the year in which the procedure has been initiated.
D. Guideline(s) on calculation of fines: [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]	Guidelines for implementation of the Regulation on criteria for setting the amount payable on the basis of measure for protection of competition and sanctions for procedural breaches, manner and terms for payment thereof and conditions for determination of respective measures Available in Serbian and English (here).
E. Does a challenge to a decision imposing a sanction / fine have an automatic suspensory effect on that sanction / fine? If it is necessary to apply for suspension, what are the criteria?	Starting a judicial procedure against a decision imposing a sanction does not have automatic suspensory effect. It is necessary to request such a suspension. Request can be filed to Commission and/or Administrative court, which decide upon requests unbound from each other. Delay of the execution of decision can be granted until the validity of judicial decision, if the execution of decision would cause irreparable damage to the challenger, and especially if it would probably lead to the bankruptcy or termination of his business operations (a proof on field claim shall be submitted), provided that the delay is not against the public interest.

15. Possibilities of appeal

A. Does your law provide for an appeal against a decision that there has been a violation of a prohibition of cartels? If yes, what are the grounds of appeal, such as questions of law or fact or breaches of procedural requirements?

There is no appeal as such, the decisions made by the Commission are final.

The legal remedy against the decision of the Commission is judicial review, which can be initiated before the Administrative court. The Administrative court can annul the decision, or can reject the claim after which the decision of the Commission becomes unappealable.

Reasons for the administrative dispute are defined in Art.24 of the Law on Administrative Disputes ("Official Gazette of the RS", no. 111/2009 – available in English [here](#)), which states that an administrative act may be challenged by a lawsuit in an administrative dispute due to its illegality, if:

- 1) the law, other regulation or a general act is not at all or not properly implemented in the act;
- 2) the act was issued by an incompetent body;
- 3) the rules of the proceeding were not followed in the process of issuing the act;
- 4) the factual state is incompletely or incorrectly defined or if the identified facts brought to an incorrect conclusion in terms of the factual state;
- 5) in the discretionary act (issued based on a free assessment), the deciding body has exceeded the limits of the legal authority or if such an act was not issued in line with the objective in which the authorisation was given.

B. Before which court or agency should such a challenge be made? [if the answer to question 15/A is affirmative]

The Administrative Court, located in Belgrade, with departments in Novi Sad, Niš and Kragujevac.

16. Private enforcement

A. Are private enforcement of competition law and private damage claims possible in your jurisdiction? If there is no legal provision for private enforcement and damage claims, what are the reasons for it?

Private enforcement of competition law is possible only in the scope of private damage claims, as a follow-on claim, while there is no possibility for stand-alone claims in regards of competition law enforcement.

B. Laws regulating private enforcement of competition law in your jurisdiction [indication of the provisions and languages in which these materials are available; availability (homepage address)]

The Law on Protection of Competition ("Official Gazette of the RS", no. 51/2009 and 95/2013) provides the option for damages claims in Article 73, as follows:

"Compensation for damage

Article 73

The compensation for damage caused by acts and practices

	<p>which constitute competition infringement in terms of this Law, and which is determined by the decision of the Commission, shall be received in a civil procedure before the court of competent jurisdiction.</p> <p>The decision of the Commission referred to in Paragraph 1 of this Article shall not assume occurrence of damage, but that such matter must be proved in a judicial procedure.”</p> <p>The English version of the Law is available here.</p> <p>Available in Serbian and English.</p> <p>Also, other provisions applicable to damage claims, not directly related to competition law, can be found in the Law of Contract and Torts (“Official Gazette” of the SFRJ” no. 29/78, 39/85, 45/89, 57/89, “Official Gazette” of the SRJ” no. 31/93, “Official Gazette of the RS” no. 18/20). Grounds for those claims are based on article 154 of the Law of Contract and Torts, that states: “Whoever causes injury or loss to another shall be liable to redress it, unless he proves that the damage was caused without his fault”.</p> <p>The English version of the Law of Contract and Torts is available here.</p>
<p>C. Implementing regulation(s) on private enforcement (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</p>	<p>There are no implementing regulations.</p>
<p>D. On what grounds can a private antitrust cause of action arise? / In what types of antitrust matters are private actions available?</p>	<p>Private enforcement is possible as a follow-on claim for damages (i) caused by acts and practices which constitute competition infringement in terms of the Law on Protection of Competition and (ii) which is determined by the decision of the Commission. In order to file action for private damages, these conditions have to be met cumulatively.</p> <p>Competition infringements in terms of the Law include all forms of restrictive agreements and abuse of dominance, not just cartels.</p> <p>In addition, there is a legal possibility for damage claims that could be characterised as stand-alone claims, arising from actions which could be classified as competition infringement, without establishing competition infringements as such. These claims should not be perceived as private enforcement of competition law, but as general damage claims with full application of the Law of Contract and Torts.</p> <p>Note: Given that the described potential stand-alone claims are just a possibility under the legal framework and would largely depend on the way the claim is made, the Commission has no knowledge of whether this has been implemented in practice and what the outcome of these claims may be.</p> <p>The difference between existing follow-on claim and pseudo stand-alone claim is in the burden of proof of the damaging conduct. In a follow-on claim, the court is bound by the conduct established by the competition authority, whereas the claimant</p>

	<p>of the latter has to prove not only causation and the damage, but also the existence of the damaging conduct itself. In such cases, the court always decides on a case by case basis.</p>
<p>E. What pleading standards must the plaintiff meet to file a stand-alone or follow-on claim?</p> <ul style="list-style-type: none"> • is a finding of infringement by a competition agency required to initiate a private antitrust action in your jurisdiction? What is the effect of a finding of infringement by a competition agency on national courts/tribunals? • if a finding of infringement by competition authority is required, is it also required that decision to be judicially finalised? 	<p>Finding of a competition infringement by the Commission is required to initiate a private antitrust action in Serbia, however, such a decision does not assume occurrence of damage. The plaintiff bears the burden of general damages claims in Serbia – the amount of damages and a causal link between them and the damaging conduct (determined by the Commission).</p> <p>The Law doesn't stipulate that the decision has to be judicially finalised – decisions of the Commission are final (no appeal is possible, only an administrative dispute as a form of judicial review).</p>
<p>F. Are private actions available where there has been a criminal conviction in respect of the same matter?</p>	<p>Under the general civil law rules (for example bid-rigging is a separate criminal offence, regardless of the existence of a competition infringement), follow-on damage claim is available.</p>
<p>G. Do immunity or leniency applicants in competition investigations receive any beneficial treatment in follow-on private damages cases?</p>	<p>No, under the current legal framework, there is no beneficial treatment for immunity or leniency applicants.</p>
<p>H. Name and address of specialised court (if any) where private enforcement claims may be submitted to</p>	<p>There are no specialized courts.</p> <p>Private claims can be filed to any competent court and the competence of the courts is determined by the subject matter and the amount of the dispute. The competent court could be the commercial court if the damages occurred in business to business relations or the regular courts if the damaged party are consumers. In the second category, disputes in the amount of 40.000 EUR or more are decided by the Higher courts, while disputes below this amount are heard by the Basic courts.</p> <p>The seat of the competent court is determined any one of the following criteria:</p> <ul style="list-style-type: none"> • location where the defendant has headquarters (if there are several defendants with different locations of headquarters, any locations can be used for establishing the seat of the competent court), • location where acts that caused the damage were performed; • location where damages have occurred.
<p>I. Information about class action opportunities</p>	<p>There is no possibility for class action.</p>

<p>J. Role of your competition agency in private enforcement actions (if at all)</p>	<p>The Commission doesn't play an active role in private enforcement. It can supply information upon request of the court or upon request to access information of public interest to interested individuals.</p> <p>Given this significantly limited role of the Commission, the knowledge it has on past of ongoing private enforcement is limited, which makes any assessments difficult.</p>
<p>K. What is the evidentiary burden on plaintiff to quantify the damages? What evidence is admissible?</p> <ul style="list-style-type: none"> • Role of your competition agency in the damage calculation (if at all) 	<p>The plaintiff bears the evidentiary burden prescribed by general civil law when it comes to damages: damaging conduct (except in follow-up claims), damage and causation. In the claim itself, the plaintiff has to quantify the damages and state their amount clearly in the initial claim (this can impact the competence of the court to hear the claim). Any relevant evidence is admissible, in accordance with the rules on civil procedure.</p> <p>There is no assumption of occurrence of damage when a competition infringement is determined.</p> <p>There is no specific role of the Commission in damage calculation.</p>
<p>L. Discovery / disclosure issues:</p> <ul style="list-style-type: none"> • can plaintiff obtain access to competition authority or prosecutors' files or documents collected during investigations? • is your competition agency obliged to disclose to the court the file of the case (in follow-on cases)? • summary of the rules regulating the disclosure of confidential information by the competition agency to the court • summary of the rules regulating the disclosure of leniency-based information by the competition agency to the court 	<p>The Commission can supply information upon request of the court. Also the Commission can supply information upon request to access information of public interest to interested individuals, apart from data that has been protected in accordance with Article 45. of the Law.</p>
<p>M. Passing-on issues:</p> <ul style="list-style-type: none"> • how is passing-on regulated / treated in your jurisdiction? • is standing to bring a claim limited to those directly affected or may indirect purchasers bring claims? 	<p>The issue is not regulated.</p>