

**Template pursuant to Section 3 (a) of the
ICN Framework on Competition Agency Procedures**

Commission for Protection of Competition, Republic of Serbia

The following template is submitted by the **Commission for Protection of Competition, Republic of Serbia** pursuant to Section 3(a) of the ICN Framework on Competition Agency Procedures (“CAP”).

I. Introduction

The Commission for Protection of Competition is established by the Law on Protection of Competition as an independent and autonomous organization performing public competencies in accordance with this law. The Commission has a status as a legal entity.

The Commission is accountable for its work to the National Assembly of the Republic of Serbia, to which it submits the Annual Report on its activities.

Website: <http://www.kzk.gov.rs/en/>

Social media accounts:

Twitter: <https://twitter.com/kzksrbija?lang=en>

Facebook: <https://www.facebook.com/kzksrbija/>

YouTube: https://www.youtube.com/channel/UC4r4DQ1UM8t339x9EaGCI_w

II. Laws, Regulations, and Policies relevant for the implementation of the CAP

Protection of competition on the market of the Republic of Serbia, in order to achieve economic prosperity and well-being of the society, and in particular to the benefit of the consumers, as well as the establishment, position, organization and competencies of the Commission for Protection of Competition is regulated by the Law on Protection of Competition (“Official Gazette of the RS”, no. 51/09 and 95/13, hereafter: Law). Aside from the mentioned law, competition protection is also regulated by a number of regulations for implementation of law, instructions and guidelines. The Commission also holds an obligation to, pursuant to Article 73 of the Stabilization and Association Agreement (between the European communities and their member states of the one part, and the Republic of Serbia, of the other part), appropriately implement criteria arising from the application of the competition rules applicable in the EU.

In the procedure before the Commission, the general administrative procedure rules (contained in the Law on General Administrative Procedure) shall be implemented, unless otherwise provided by the Law on Protection of Competition.

Law on Protection of Competition: <http://www.kzk.gov.rs/kzk/wp-content/uploads/2011/07/Law-on-Protection-of-Competition2.pdf>

Regulations: <http://www.kzk.gov.rs/en/uredbe>

Instructions: <http://www.kzk.gov.rs/en/uputstva>

Guidelines: <http://www.kzk.gov.rs/en/smernice>

b) Non-Discrimination

Each Participant will ensure that its investigation and enforcement policies and Procedural Rules afford Persons of another jurisdiction treatment no less favorable than Persons of its jurisdiction in like circumstances.

The Law on Protection of Competition guarantee following:

The provisions of this Law shall apply to acts and practices performed on the territory of the Republic of Serbia, as well as on acts and practices performed outside of its territory that affect or could affect the competition on the territory of the Republic of Serbia.

The provisions of this Law shall apply to 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 (hereinafter: undertakings), including:

- 1) Domestic and foreign companies and entrepreneurs;
- 2) State authorities, bodies of territorial autonomy and local government;
- 3) Other natural and legal entities and associations of undertakings (unions, associations, sports organizations, institutions, cooperatives, holders of intellectual property rights, etc.);
- 4) Public enterprises, companies, entrepreneurs and other undertakings who perform activities of public interest, or those that have been given a fiscal monopoly through the act of competent state authority, unless the implementation of this Law would prevent performing these activities or delegated tasks.

c) Transparency and Predictability

- i. Each Participant will ensure that Competition Laws and regulations that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- ii. Each Participant with the authority to adopt Procedural Rules will have in place such rules applicable to Investigations and Enforcement Proceedings in its jurisdiction.*
- iii. Each Participant will ensure that Procedural Rules that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- iv. Each Participant will follow applicable Procedural Rules in conducting Investigations and in participating in Enforcement Proceedings in its jurisdiction.*
- v. Each Participant is encouraged to have publicly available guidance or other statements, clarifying or explaining its Investigations and Enforcement Proceedings, as appropriate.*

The Law on Protection of Competition and all regulations are published in the "Official Gazette of the Republic of Serbia" and on the website of the Commission. Also, instructions, guidelines, opinions, notices and merger decisions are publicly available (published on Commission's website). Decisions establishing a competition infringement, as

well as decisions on the institution of proceedings ex officio, are also published in the "Official Gazette of the Republic of Serbia" and on the website of the Commission.

The Law on General Administrative Procedure is published in the "Official Gazette of the Republic of Serbia".

The CPC submits an Annual Report to the National Assembly of Serbia every year. All the Annual Reports are available on its webpage.

CPC regularly updates its webpage, case database and social media accounts listed above. Throughout many projects, which had the advocacy component, the CPC created leaflets, videos and other informative materials which support transparency in the field of protection of competition. Numerous seminars and workshops have been held for different stakeholders with the aim to provide the public with as much information about protection of competition as possible.

Leaflets: <http://www.kzk.gov.rs/kzk/wp-content/uploads/2017/11/liflet-leniency.pdf> (in Serbian)

Annual Reports: <http://www.kzk.gov.rs/en/izvestaji>

Seminar on Public Procurement: <http://www.kzk.gov.rs/en/organizovan-seminar-konkurencija-i>

d) Investigative Process

- i. Participants will inform any Person that is the subject of an Investigation as soon as practical and legally permissible of that Investigation, according to the status and specific needs (e.g., forensic considerations) of the Investigation. This information will include the legal basis for the Investigation and the conduct or action under Investigation.*
- ii. Participants will provide any Person that has been informed that it is the subject of an Investigation, or that has notified a merger or other transaction or conduct, with reasonable opportunities for meaningful and timely engagement on significant and relevant factual, legal, economic, and procedural issues, according to the status and specific needs of the Investigation.*
- iii. Participants will focus investigative requests on information that they deem may be relevant to the competition issues under review as part of the Investigation. Participants will provide reasonable time for Persons to respond to requests during Investigations, considering the needs to conduct informed Investigations and avoid unnecessary delay.*

Party in the procedure before the Commission shall be an undertaking who has submitted a notification on concentration or application for an individual exemption, that is, an undertaking against whom the investigation procedure is initiated. The President of the Commission shall issue the resolution on initiation of proceedings, which shall in particular contain a description of practices or acts that might present competition infringement, legal basis and reasons to initiate the procedure. The resolution will be delivered in written, to the party in the procedure and published in the "Official Gazette of the Republic of Serbia" and on the web site of the Commission.

In the course of investigation procedure, the necessary probative activities aimed at correct determination of established facts shall be taken, in particular related to taking statements

from parties, witnesses, expert witnesses, collecting of data, documents and belongings, performing inspections and temporary seizure of belongings.

Prior to enacting of the decision in competition infringement proceeding, the Commission shall inform the party on relevant facts, evidences and other elements on which the decision will be based, and call the party to make a statement within given time frame (Article 38 of Law).

Parties in the procedure shall be instructed by a resolution to submit or to provide for inspection relevant data kept in written, electronic or other form, documents, items that contain information as well as other items that may be a subject to presenting evidence in the procedure, and which are considered to be obligatory for the party to possess, or the possession is reasonably assumed.

In addition to data and documentation prescribed by the relevant Regulation, undertaking that has notified a merger can also submit other data and documentation considered potentially important.

Reasonably necessary time for parties and other persons to respond to requests during Investigations, is always provided, with an indication of when deadline starts to run, and what

e) *Timing of Investigations and Enforcement Proceedings*

Each Participant will endeavor to conclude its Investigations and aspects of Enforcement Proceedings under its control within a reasonable time period, taking into account the nature and complexity of the case.

The decision on request for individual exemption of restrictive agreement shall be made within 60 days from the date of request submission (Article 60 of Law).

The Commission shall be required to enact a decision on notification of concentration within one month from the date of receipt of the complete notification, that is, a conclusion on implementation of investigation procedure referred to in Article 62 Paragraph 2 of Law (Article 65 of Law). The Commission shall be required to enact a decision within four months from the date of initiation of procedure ex officio (Article 62 of Law). If the Commission fails to enact a decision within the period prescribed under the Law (Articles 62 and 65), it shall be considered that the concentration is approved.

Also see the Article 68 of the Law of Protection of Competition; <http://www.kzk.gov.rs/kzk/wp-content/uploads/2011/07/Law-on-Protection-of-Competition2.pdf>

f) Confidentiality

- i. Each Participant will have publicly available rules, policies, or guidance regarding the identification and treatment of confidential information.*
- ii. Each Participant will protect from unlawful disclosure all confidential information obtained or used by the Participant during Investigations and Enforcement Proceedings.*
- iii. Each Participant will take into consideration both the interests of the Persons concerned and of the public in fair, effective, and transparent enforcement regarding the disclosure of confidential information during an Enforcement Proceeding.*

Article 45 of Law

„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.

The applicant referred to in Paragraph 1 of 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

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.

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.

The record of the deliberation and the voting, official reports and draft decisions, the case files treated as confidential or protected data may not be inspected or copied.”

The Commission enacted Decision on the manner of publishing decisions and acts, and replacing and/or omitting data (anonymization) in decisions and acts of the Commission for Protection of Competition. It is published on its website.

g) Conflicts of Interest

Officials, including decision makers, of the Participants will be objective and impartial and will not have material personal or financial conflicts of interest in the Investigations and Enforcement Proceedings in which they participate or oversee. Each Participant is encouraged to have rules, policies, or guidelines regarding the identification and prevention or handling of such conflicts.

In accordance with The Law on General Administrative Procedures, the authorized official, including decision makers, must be exempted:

- 1) if the party, witness, expert or legal representative or attorney of the party is in the proceedings;
- 2) if the blood relative is in a direct line with the party, legal representative or attorney of the party, and in the collateral line up to the fourth degree inclusive, the spouse or extramarital

partner or in-law relative up to the second degree inclusive, even when the marital union has ended;

3) if he is in a relationship with a party in the custody, adoptive parent, adoptee or foster parent;

4) if he is with the legal representative or attorney of the party in relation to the adopter or adoptee;

5) if it participated in the first instance procedure;

6) if he / she receives compensation or other income from the party or is engaged in the management board, supervisory board or working or professional body of the party;

7) if the outcome of the procedure may bring him direct Supreme Court of Cassation benefit or harm;

8) if there are other facts that cast doubt on his impartiality.

In accordance of the Law on Protection of Competition:

During their mandate in the Commission, the President of the Commission and members of the Council cannot perform other public function or professional activity, that is, they cannot be engaged in any public or private business that include compensation, including providing consulting and advisory services.

The President of the Commission and members of the Council shall hold the status of public officials in terms of the law governing conflict of interest in the exercise of public functions.

The President of the Commission and member of the Council whose membership ceased, cannot be a representative party in the procedure before the Commission in accordance with this Law, at least two years after the termination of membership, that is, the termination of employment.

Accordingly, the provisions of the law governing conflict of interest in accordance with the law governing rights and duties of public employees shall apply on the Technical Service employees (case handlers).

h) Notice and Opportunity to Defend

- i. Each Participant will provide Persons subject to an Enforcement Proceeding timely notice of the alleged violations or claims against them, if not otherwise notified by another governmental entity. To allow for the preparation of an adequate defense, parties should be informed of facts and relevant legal and economic reasoning relied upon by the Participant to support such allegations or claims.*
- ii. Each Participant will provide Persons subject to a contested Enforcement Proceeding with reasonable and timely access to the information related to the matter in the Participant's possession that is necessary to prepare an adequate defense, in accordance with the*

requirements of applicable administrative, civil, or criminal procedures and subject to applicable legal exceptions.

- iii. *Each Participant will provide Persons subject to an Administrative Proceeding with reasonable opportunities to defend, including the opportunity to be heard and to present, respond to, and challenge evidence.*

Please see the question **d)** Investigation Procedures.

The party has the right to access the case files, and copy parts of files at its own expense.

Guide to the Rights and Obligations of the Parties during Dawn Raids; <http://www.kzk.gov.rs/en/vodic-kroz-prava-i-obaveze-stranaka-to>

i) Representation by Counsel and Privilege

- i. *No Participant will deny, without due cause, the request of a Person to be represented by qualified legal counsel of its choosing.*
- ii. *Each Participant will provide a Person a reasonable opportunity to present views regarding substantive and procedural issues via counsel in accordance with applicable law. Notwithstanding the foregoing, Persons may be required to provide direct evidence.*
- iii. *Each Participant will recognize applicable privileges in accordance with legal norms in its jurisdiction governing legal privileges, including privileges for lawful confidential communications between Persons and their legal counsel relating to the solicitation or rendering of legal advice. Each Participant is encouraged to have rules, policies, or guidelines on the treatment of privileged information.*

The party or any person can be represented by qualified legal counsel of its choosing, in accordance with the Law on General Administrative Procedure (Article 49).

Letters, notices and all other forms of communication between the party against whom the procedure is conducted and its attorneys, which are directly related to the procedure, shall be considered as privileged communication (Article 51 of Law).

The provisions of this law related to protected information are applied to privileged communication, accordingly.

j) Decisions in Writing

- i. *Each Participant in charge of issuing decisions or orders will issue in writing its final decisions or orders in which it finds a violation of, or imposes a prohibition, remedy, or sanction under applicable Competition Laws. Such final decisions or orders will set out the findings of fact and conclusions of law on which they are based, as well as describe any remedies or sanctions. Each Participant will ensure that all final decisions are publicly available, subject to confidentiality rules and applicable legal exceptions.*
- ii. *Each Participant will ensure that all commitments it accepts to resolve competition concerns are in writing. Subject to confidentiality rules and applicable legal exceptions, each Participant will (i) make public the commitments it accepts, and (1) describe the basis for the competition*

concerns or (2) reference public materials in which those concerns are expressed, or (ii) provide a summary explanation of the commitments and the reasons for them.

The Commission enacts decisions on competition infringement, individual exemption and permissibility or prohibition of concentration. All its decision are in writing.

An integral part of the decision on competition infringement is the ruling on the measure for protection of competition, that is, other administrative measure as determined by the Commission in accordance with the Law.

Also see the Law on General Administrative Procedure (Article 141, Paragraph 4):

The reasoning must be comprehensible and contain a brief statement of the party's request, the facts and evidence on the basis of which it was established, the reasons that were decisive in assessing each piece of evidence, legal basis / regulations and reasons that, given the established facts, point to a decision and the reasons why a request or proposal was not accepted. The explanation also contains the reasons for which the body deviated from the decision it previously made in the same or similar administrative matters. If the appeal does not delay the execution of the decision, the explanation shall also include a reference to the law which provides for that.

In accordance with Law, the notice on submission of commitments proposal by the party, 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. If the Commission, on the basis of an analysis of market conditions, determines that it is likely that proposed commitments will ensure fulfillment of objectives (removing competition concerns and preventing probable occurrence of the same or similar behavior), it shall pass a resolution / commitment decision, setting the deadline and submission of evidence of fulfilling requirements. It shall be published on its website.

k) Independent Review

No Participant will impose on a Person a prohibition, remedy, or sanction in a contested Enforcement Proceeding for violation of applicable Competition Laws unless there is an opportunity for the Person to seek review by an independent, impartial adjudicative body (e.g. court, tribunal, or appellate body).

Against the final decision of the Commission, a claim may be submitted before the Administrative court within 30 days from the date of service (delivery) of the decision to the party.

Submitting of a claim shall not stay the enforcement of the decision. At the request of the claimant, the Commission may delay the execution of decision until the validity of judicial decision, if the execution of decision would cause irreparable damage to the prosecutor, and especially if it would probably lead to the bankruptcy or termination of business operations of the prosecutor, provided that the delay is not against the public interest. With the request for a delay, a proof on field claim shall be submitted.

Against the Administrative court decision, extraordinary legal remedy may be submitted before the Supreme Court of Cassation.