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for the protection of competition
Five initiated proceedings in few weeks**

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***INCREASED ACTIVITY OF THE SERBIAN COMMISSION FOR THE PROTECTION OF
COMPETITION – FIVE INITIATED PROCEEDINGS IN FEW WEEKS***

In the last two months, the Commission for the Protection of Competition (“Commission”) initiated several different proceedings i.e., 3 gun-jumping cases, one for abuse of a dominant position and one case regarding restrictive agreements.

It is necessary to pay attention to these proceedings, because they are not coincidences but rather are initiated due to Commission’s reasonable doubt that market participants have breached the Law on Protection of Competition of Republic of Serbia (“Law”).

Some of the proceedings that have been initiated could be seen and understood as milestone in the Commission practices, and as every other milestone, this one could show in which direction we could expect the Commission to act in future cases.

MULTIPLE GUN-JUMPING CASES AND FIRST ONE CONCERNING ACQUISITION OF TARGET COMPANY WHICH IS A FOREIGN LEGAL ENTITY

The Commission has initiated investigation proceedings against Ananas e-commerce d.o.o. Beograd, part of Delta Holding, for an unnotified concentration regarding acquisition of 100% of shares in Vebspot doel Skopje, company dully incorporated and existing under the laws of North Macedonia.

The Commission considers that concentration notification should have been submitted taking into consideration that the total annual turnover of Delta Holding in the preceding year exceeded prescribed threshold of EUR 100 million on the worldwide market and over prescribed threshold of EUR 10 million on the market of the Republic of Serbia.


Unnotified concentration was discovered by review of the headlines published on the website of Delta Holding, whereafter the Commission investigated and found out that ownership change over Vebspot doel Skopje was registered in North Macedonia as well as that concentration notification has been submitted to competition authority of North Macedonia.

Furthermore, it is highly important to note that this is the first investigation which concerns an acquisition of the target

company not registered in the Republic of Serbia, thus this could possibly mean that the Commission has decided to take a closer look at transactions which are conducted abroad by market participants which are present in the Republic of Serbia and therefore could present important precedent for all future transactions.

In addition to the case regarding Ananas e-commerce, two gun-jumping cases were initiated by the Commission against company Dobergard doo Beograd, present on the market of provision of security services. Cases were initiated for two separate acquisitions, one over company Protecta Group doo Beograd and other over company Sparta Security doo Beograd, both active on the same relevant market as a Dobergard doo Beograd.

Using publicly available data, the Commission has discovered that ultimate beneficial owner of Dobergard doo Beograd has control over several other entities on the market of the Republic of Serbia and that their combined annual turnover in 2021 met the turnover thresholds, hence, the Commission took a standpoint that concentration notification should have been submitted.

A row of pencils is shown against a dark, textured background. Most of the pencils are dark grey or black, with their tips pointing upwards. One pencil, positioned slightly to the left of the center, is bright yellow and stands significantly taller than the others. The text is overlaid on the lower right portion of the image.

Moreover, in the so far Commission's practice, total of 7 proceedings were initiated for the implemented concentrations without the Commission's approval, and 3 of them were initiated in the last 2 months, which shows a significant increase of control and investigation by the Commission.

ABUSE OF A DOMINANT POSITION ON THE MARKET

The Commission has initiated procedure against Glovo Technology d.o.o. Beograd for alleged abuse of dominant position on the market of delivery services. The Commission claims that Glovo holds a dominant position on the market, following its acquisition of one of the largest delivery platform Donesi in 2021.

Prior to initiation of the procedure against Glovo, the Commission has conducted a Sectoral analysis in digital platforms for intermediation in sales and delivery of goods. During the analysis of the agreements that were submitted during the Sectoral analysis, the Commission identified the provisions that may represent an abuse of a dominant position on the market, particularly exclusionary abuse, that may result in excluding or hindering the expansion of other platforms, as well as the abuse that could lead to potential discrimination of partners by applying unequal business terms.

Also, by reviewing the agreements executed by Glovo with individual restaurants, as

well as the general conditions of business “Terms for Glovo partners”, the Commission has noticed certain provisions of the agreements that could be deemed to have clauses that may serve as incentive for the restaurants to have exclusive cooperation with Glovo such as prescribed fees that restaurants need to pay if they enter similar partnerships with another platforms.

Also, individual restaurants are being offered large sums in the form of investment for the marketing purposes, with the highlighted obligation to return the received sum if cooperation with another platform is established.

In addition to the above stated potential abusive clauses, there are also unfavorable conditions for termination of the agreement prior to its expiration date, penalties in case of violation of this deadline i.e., prohibition of termination for the first 12 months and then notice of termination at least 120 days before termination.



By including exclusive clauses in agreements with partners or various forms of incentives or pressures to maintain exclusivity, could exclude competitors from the market or reduce their ability to compete, which could ultimately lead to a possible higher price on the market, less choice for consumers and lower quality of the offer itself.

In the light of the above proceedings, it is important to note that these kinds of proceedings against the food/product delivery platforms, i.e., their relationship with their partners (restaurants, shops, etc.) are common in European competition practice, having in mind that multiple proceedings have already been conducted in various countries.

Some of those proceedings have ended with delivery platforms changing their agreements and clauses which were deemed to be restrictive, but there were also examples in which competition authorities determined that the agreement does not restrict competition on the relevant market.

Regarding the case in Serbia, it will be important to see which way the Commission shall lean and what kind of decision shall render in this case, because, that decision may set a precedent for future relations between the delivery platforms and their partners, and shall maybe play significant role for some other companies when deciding whether to enter the market of the Republic of Serbia.

RESALE PRICE MAINTENANCE ON THE MARKET OF APPLE PRODUCTS

The Commission has initiated proceedings for resale price maintenance against related undertakings, Apcom CE from Hungary and Apcom Distribution doo Beograd, distributors of Apple products for the Republic of Serbia, after analysis of the competition conditions on the market of Apple products in the Republic of Serbia.

The Commission has determined that the prices at retailers in the Republic of Serbia are the same, regardless of whether the retailers have certain status as an Apple authorized reseller or not, as well as regardless of the way sale is conducted, brick-and-mortar stores/retailers or online.

Not for the first time in its practice, the Commission has compared product prices in Serbia with prices in neighboring countries. In this specific case, the Commission has compared the retail prices of iStyle doo Beograd with prices in nine countries where iStyle is also present. The Commission has determined that the prices are higher in the Republic of Serbia, while at the same time are almost the same at all retailers in the Republic of Serbia.

Having in mind all above stated, the Commission has assumed that stated leads to breach of competition by determining the resale prices in the Republic of Serbia by Apcom CE and Apcom Distribution and initiated ex officio investigation proceedings.

CONCLUSION

For all the above-mentioned alleged breaches of Law, a pecuniary fine of up to 10% of total annual turnover generated in the territory of the Republic of Serbia could be imposed against the market participant which committed infringement.

Additionally, if a concentration has already been implemented, and the concentration has been declared incompatible with the provisions of the Law or, has been implemented in contrary to the conditions prescribed by the Law, the Commission may instruct the acquirer to unwind the concentration, sell shares, terminate an agreement and/or take other measures deemed to be necessary for establishing and preservation of the competition, i.e. measure of de-concentration.

Considering all the above different procedures initiated by the Commission in the last two months against the various market participants, and severity of fines prescribed by the Law which may be imposed consequently, it is highly important for all participants on the market to analyze agreements they conclude and transactions in which they participate, as well as to undertake all measures which will ensure that they are compliant with the Law.

This practice of the Commission can be interpreted as a conduct pattern as well as a new trend, which is stepping up in its enforcement activity within all areas of antitrust and competition. Moreover, the Commission plans to even further analyze and initiate proceedings in all situations when there is a possibility that the provisions of the Law have been violated, hence, , there is a need for all market participants to comply their business activities with the Law, not waiting for the Commission to act within the scope of its authority and upon initiating ex officio proceedings, and potentially imposing severe pecuniary penalties and other legal actions which can slow down the planned economic growth of various participants on the Serbian market.

In order for companies to minimize the possibility of breach of competition regulations in their business operations, it is important that every employee, especially those who are exposed to the risk of potential breach of regulations, should be familiar with the basic competition rules i.e., that they should be able to recognize situations that could put them and the company at risk of breach or, to consult with a lawyer experienced in the field of competition protection whenever a dilemma arises regarding the application of competition regulations or, if any of the risks to the company's operations are noted.

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