

Opinion on the Draft Public Procurement Law

In its opinion on the Draft Public Procurement Law, *inter alia*, the Commission particularly emphasizes its position in respect of increased number of administrative measures envisaged by this regulation in relation to the infringements of competition in public procurement procedures. The proposed solution stipulating that an organization authorized for protection of competition may ban a bidder or an interested party from participating in public procurement procedure, where it determines that the bidder or the interested party has violated competition rules in public procurement procedure within the meaning of the law governing competition protection, and that this measure may last up to two years, which was unfortunately adopted and is an integral part of the Law in effect (since April 1, 2013), represents an additional administrative measure, which as per assessment of the Commission, may produce contradictory effects on the market. Namely, the Commission's opinion is that this provision should be deleted, considering that the Law on Protection of Competition in considerable manner already sanctions infringements of competition, or that it already prescribes measures which have significantly strong deterring effect in respect of the Law and competition infringements. The measure (of forbearance from action) stipulated by the Public Procurement Law, could contribute to create a deterrent effect affecting undertakings in terms of competition infringements within the meaning of Articles 10 and 16 of the Law on Protection of Competition. On the other part, the Commission pointed to the need of taking into consideration the fact that the degree of concentration in supply on the market of the Republic of Serbia still remains high, particularly in areas where state authorities are present as sole buyers (defense, electric power supply, etc.), thus by reducing the number of parties in public procurement procedure, effectiveness of that procedure may consequently be reduced. An additional circumstance to be considered is proposed centralization of the public procurement system that will decrease the number of potential participants, which may additionally increase the potential for infringements of competition, because by reducing the number of undertakings and the level of transparency and predictability of public procurement procedures, the collusion between competitors may be favored.