



Republic of Serbia  
**COMMISSION FOR THE  
PROTECTION OF  
COMPETITION**  
25/IV Savska Street, Belgrade  
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## **MINISTRY OF CONSTRUCTION, TRANSPORT AND INFRASTRUCTURE**

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Belgrade

On July 6, 2022, the Ministry of Construction, Transport and Infrastructure submitted, by email, to the Commission for the Protection of Competition, the Draft Regulation on a temporary measure to determine the priority of transport in railway traffic carried out on the railway network of the Republic of Serbia, with attachments, for the purpose of giving an opinion.

The Council of the Commission for Protection of Competition, pursuant to Article 22, and in relation to Article 21, paragraph 1, item 7) of the Law on Protection of Competition ("Official Gazette of the Republic of Serbia", 51/2009 and 95/2013), at its 89th meeting held on July 7, 2022, passes the following

### **OPINION**

The Council of the Commission considered the Draft in question, as well as the explanation and other attachments submitted with the submitted Draft Regulation, and concluded the following.

Draft Regulation on a temporary measure to determine the priority of transport in railway traffic carried out on the railway network of the Republic of Serbia (hereinafter: Draft Regulation or Regulation) the Government of the Republic of Serbia gives its consent that in order to prevent a major disruption in the supply market of goods: energy and other specified goods of vital importance for the performance of the activities of economic entities in the Republic of Serbia, the manager "Infrastruktura železnice Srbije" a.d., as a temporary measure, ensure priority in the traffic of all transports that the Joint-Stock Company for the Railway Transportation of Goods "Srbija Cargo" as a national operator, performs on the railway network of the Republic of Serbia, in relation to all other transports that are performed on the railway network in the Republic of Serbia, including passenger rail traffic. The regulation shall be valid for six months from the date of entry into force.

In the explanation, it is stated that the legal basis is set forth by Article 39 of the Trade Law, which stipulates that in order to prevent disruptions in the market or eliminate the harmful consequences of disruptions in the market with regard to the supply of goods and services of vital importance for the life and health of people and for the work of economic entities, institutions and other organizations of general interest, the Government may determine temporary measures related to a certain type of goods

and services, a certain category of traders, service providers or consumers, working hours, the need to implement the obligations assumed by the international agreement, prices, as well as other conditions for conducting trade, except for the measures that relate to the import and export of goods. In addition, the same article stipulates that the Government determines temporary measures as well as the time period of application of such measures, in proportion to the goal and expected results, which cannot be longer than six months from the date of determination of the temporary measure, i.e. the longest until the fulfillment of the obligation when it comes to implementation obligations assumed by an international agreement, unless otherwise specified by a special law.

Circumstances have been listed that the proponent considers meet the conditions as prescribed in Article 39 of the Law on Trade, which will be finally assessed by the Government when adopting the Regulation.

Given that the Commission is not competent to assess the fulfillment of the conditions for the determination of a temporary measure, but only to assess its impact on the conditions of competition, we hereby wish to point out that, based on the explanation of the Draft Regulation it was not possible to reliably determine the structure of the transport market of the said goods, i.e. how many participants there are on those markets.

However, as stated in the explanation and annexes of the Draft Regulation, other types of transport are not excluded from the railway network of the Republic of Serbia, but priority is established for the transport of the specified goods. Also, the Draft Regulation does not state that the temporary measure refers to the goods of certain suppliers, i.e. to goods of a certain origin, nor can it be concluded that a privileged position of certain buyers of the goods transportation service referred to in paragraph 2 of the Draft Regulations is being established. Prioritization is carried out, as stated, in order to prevent "major delays in the delivery of goods of vital importance for the electric power sector and other strategically important systems for the Republic of Serbia, which, in conditions of market disruptions, may have incalculable adverse consequences for the economy and the population of the Republic of Serbia." , and it is reasonable to expect that the scope and method of prioritization will not only be determined, but also limited by this goal. Otherwise, in the event that the regulation is applied in a manner and in situations not foreseen for its adoption, an adverse effect of the application of the regulation could arise in relation to the conditions of competition.

As an important circumstance for giving its opinion, the Commission also took into account the validity period of the Regulation of six months, i.e. the fact that the temporary measure is short-term. If the regulation were to be applied for a longer period of time, the Commission is of the opinion that the effects on the market conditions resulting from its application and its impact on regular business should be examined first.

PRESIDENT OF THE COMMISSION

Nebojša Perić, m.p.