GUIDELINES FOR DRAFTING COMPETITION COMPLIANCE PROGRAMS

2023

Republic of Serbia
Commission for Protection of Competition

GUIDELINES FOR DRAFTING COMPETITION COMPLIANCE PROGRAMS

Including a Template Competition Compliance Program and two Competition Checklists

Belgrade, September 2023

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Although both the competition rules and the Commission for Protection of Competition (hereinafter, the Commission), as the principal enforcer of competition rules in Serbia, have been established for more than fifteen years, we can, nevertheless, say that the awareness of market participants - undertakings of the need for and ways to achieve compliance with competition law remains underdeveloped. The current practice of the Commission reveals that anti-competitive behaviours, in many cases, stem from insufficient knowledge or understanding of undertakings competition law.

The document is intended to guide undertakings, both large companies and small and medium-sized enterprises, in drafting their internal acts and rulebooks to ensure that their businesses comply with competition protection legislation. It also aims at reaching out to a wider circle of undertakings to stress the need for regulatory compliance of their operations with this specific area of law. To help undertakings in drafting competition compliance programs, in particular those without sufficient resources at their disposal, unlike large companies, in this document, the Commission provides, in brief, a description and clarifications of individual “steps” in adopting such programs.

This document contains practical guidelines which should help undertakings to draft and implement their respective competition compliance programs. Individual activities listed in the Guidelines should help in facilitating and accelerating the adoption of these programs, as well as avoiding omissions during the program conceptualization that could render them less efficient. The purpose of adopting competition compliance programs should not be a simple ‘tick-the-box’ exercise, but the reduction and neutralization of risks that companies face due to non-compliance with competition rules. The efficiency of implementation of these programs depends only to a lesser extent on the order and number of “steps” in their adoption but much more on the seriousness of intent, foremost of the management, not only to adopt but also consistently implement the program.

The Commission intends to facilitate the development of competition culture in this manner and raise the level of awareness among companies on the need for competition compliance.

WHAT IS COMPETITION, WHY IS IT NEEDED AND DESIRABLE?

Competition implies not only a process of mutual competition between undertakings but also a situation on the market where providers of goods or services, through mutual competition, independently strive to gain the favour of buyers in order to achieve their specific business goals (for example, profits, market share, higher sales numbers, etc.). The competitive rivalry between undertakings exists in prices, quality, ancillary services, or a combination thereof, including other factors that buyers might in some way value.

Competition strongly incentivizes undertakings to be more efficient than their competitors, reduce costs and invest in business innovation and offer. It serves the public interest of a country's economy, pursued through a policy and rules governing its protection. In industries characterized by strong competition a significantly higher degree of utilization of all resources exists; the undertakings are more efficient, innovative and able to produce more goods at lower costs.

WHAT IS A COMPLIANCE PROGRAM, WHO IS IT FOR AND WHAT IS ITS PURPOSE?

A compliance program is a company's internal policy established to ensure its complete compliance with competition rules in all its business activities.

Corporative compliance programs include a set of activities, internal policies and documents that undertakings design as a voluntary exercise or as a part of commitments undertaken in proceedings before the Commission. These programs serve as an expression of the management's will to support and implement competition rules at all organizational levels of the company and by all employees. As part of company's internal regulatory framework, they also impose certain obligations on managers and employees in their work.

As one of the forms of risk management, these programs are directed at achieving the general and specific objectives set out by business policies of individual undertakings, while in the field of competition law, the programs pursue two main objectives:

- To maximally reduce the risk and prevent any potential occurrence of competition infringements envisaged by the Law on Protection of Competition and to provide mechanisms for their timely identification/detection;
- To set out and define a procedure to be followed and implemented when competition infringements are established, including procedures to potentially remedy such violations.

Competition regulations are applicable to all sectors of the economy and all undertakings (all entities involved in the trade of goods and services in the Republic of Serbia) and thus compliance programs are needed and intended for all entities doing business on the market of the Republic of Serbia.

Undertakings face serious risks if they fail to adhere to competition rules in conducting their business activities.

Business entities and their management, employees and all persons providing legal aid/attorneys at law should be aware of consequences that may arise from violations of competition regulations. In addition to administrative fines, many jurisdictions envisage civil penalties[1] and sometimes even criminal sanctions for violations of competition regulations[2]. Such sanctions may include fines, "operating bans" on prominent management body members and/or annulment of agreements found in breach of competition regulations in their entirety or in part. Apart from sanctions imposed by competition authorities or courts, undertakings may suffer: reputational damage, loss of trust of their business partners which will reflect on the whole of their business, increase in costs, not only from fines but potential damage claims by third parties due to the sanctioned illegal acts or market behaviour.

[1] For example, compensation for the damages incurred due to an infringement of competition law
[2] See Article 229 of the Criminal Code ("Official Gazette of the RS", Nos. 85/2005, 88/2005 – corrigendum, 107/2005 – corrigendum, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, and 35/2019).

Business compliance should rule out the possibility for an undertaking to infringe competition rules and be imposed a measure for the protection of competition (up to 10% of aggregate turnover), and ensure long-term compliance with regulations in conducting business activities.

WHAT ARE THE BENEFITS OF DRAFTING AND IMPLEMENTING COMPLIANCE PROGRAMS?

All undertakings should take the necessary measures which will allow them to conduct their business activities in line with competition rules and prevent potential competition infringements defined by the Law on Protection of Competition.

The benefits of drafting and implementing competition compliance programs may, among other things, consist of the following:

- Reducing or removing risks for undertakings arising from participation or forming part of any form of restrictive – prohibited agreement or abuse of dominance;
- Avoiding sanctions and other measures that the Commission may impose, as well as potential damage claims brought by competitors, suppliers, buyers and/or end-consumers;
- Timely termination of competition infringements and potential (significant) reduction of sanctions (measures) that may be imposed (due to the shorter duration of the established infringement of competition law);
- Providing opportunities for a company to benefit from the leniency program when it participates in a restrictive agreement, in particular, a cartel;
- Avoiding lengthy administrative and judicial proceedings, including costs associated with such proceedings;
- Identification, assessment and addressing potential issues associated with competition law enforcement;
- Improvement of the company's management and structure, causing the company to face significantly lower risks when doing business once an investigation or a check of competition compliance occurs;
- Reducing risks of termination of cooperation with suppliers and/or buyers;
- Building trust of business partners (suppliers or buyers) in the company;
- Recognition of the company as an organization that runs corporate ethics programs by its competitors, suppliers, buyers, including potentially new employees – which contributes to increasing the company's reputation on the market and a greater chance of hiring highly qualified staff;
- Minimizing the risk of reputational damage to the company and negative media – whereas the adverse economic effects may be considerably greater than the risks of imposing sanctions in proceedings brought before the Commission;
- Improving effective competition on the market where the company operates – by approaching and cooperating with the Commission in cases when it identifies behaviours (acts or actions) of competitors on the said market that prevent, restrict or distort competition.

HOW TO DRAFT A COMPLIANCE PROGRAM?

The process of designing and adopting a competition compliance program may be defined through several main steps/phases. They are preceded by the so-called **"step zero"** – which implies defining clear business objectives of a specific undertaking. Compliance programs essentially help in identifying, preventing, detecting early signs of potential occurrence, ceasing, and efficiently eliminating risks that may prevent, or at least significantly reduce, the achievement of business goals of a company. It is for these reasons that this "step zero" is viewed as highly important and why it is needed as a stepping-stone to drafting a quality competition compliance program. The identical procedure and sequence are applicable to any other programs put into place by companies to comply with any other regulation or set of rules that concern their business operations.

When framing and implementing a competition compliance program, the company management and heads of organizational units should be included in the process.

The program should define the manners of identifying business risks, training plans and programs for employees so that the awareness of potential risks could be increased within the company, including ways in which the observed risks in business operations can be addressed.

The adoption of competition compliance programs may be observed through the following steps/phases:

STEP 1	Risk self-assessment
STEP 2	Taking clear and explicit management commitments
STEP 3	Creating a clear organizational structure for reporting (notifying) on detected (occurred) issues
STEP 4	Establishing an internal mechanism allowing for cooperation with the Commission
STEP 5	Training of company staff (employees)
STEP 6	Monitoring and evaluation of program results and follow-up actions

STEP 1 – RISK SELF-ASSESSMENT

When assessing the possible risks, the main factors[3] which should be analyzed include the following:

- Size, legal and organizational form of the undertaking, type of management, corporative culture, resources. The analysis helps to identify optimal human resources for the introduction and implementation of compliance programs, adequate training procedures, dissemination of information, etc.;

[3] The list is not exhaustive.

- Scope of activities of the undertaking, characteristic of the sector and market where it operates, including other factors that concern the competitive environment. The undertaking should be able to identify some of the potential risks to real or potential competition infringements, which is of great importance to the drafting of compliance programs;
- Characteristics of the competitive environment in which the undertaking operates – characteristics of the potential relevant product market and relevant geographic market; the presence of competitors; legal framework; regulations; barriers to entry; market share of the company and its main competitors on the relevant market; relations with suppliers, buyers or competitors, etc.;
- Presence of trade and/or other business associations in which the company is a member;
- Other potential risk factors, the details of which are further elaborated below.

STEP 2 – TAKING CLEAR AND EXPLICIT MANAGEMENT COMMITMENTS

Following the initial risk assessment, when drafting and implementing an efficient system and building a culture of competition compliance within the company, the company management must undertake clear and unambiguous commitments and be devoted to implementing the compliance program, the basic steps to that end being the following:

- Clear position of the company management that competition compliance constitutes a part of the company's business policy, in addition to taking necessary measures to inform all employees on the commitment;
- Firm position and a clear message of the company management that each employee is expected to adhere to the full observance of the Law on Protection of Competition;
- For the commitment of the company management to be effective, it must be followed up and supported by actual actions and measures for the introduction and implementation of compliance programs, which necessitates the allocation of human, financial and technical resources.

STEP 3 – CREATING AN ORGANIZATIONAL STRUCTURE FOR REPORTING ON DETECTED ISSUES

The introduction and effective implementation of compliance programs would not be feasible without an active and efficient reporting mechanism put in place, enabling employees to report on potential issues as to the application of competition rules. Such a mechanism must be a part of compliance programs while taking into account the organizational structure of companies and the different responsibilities of individual organizational units and their employees.

The reporting mechanism structure should meet the following requirements:

- Appointment of a compliance officer(s) responsible for the compliance program – a focal person to be contacted by employees in case of potential issues. This person may be a manager, including any other employee, a department of the company (for example, legal), or even the entire compliance team. The contact

person must have the necessary authority to effectively implement the compliance program;
- Identification of an organizational unit, including its obligations, to monitor all amendments to competition legislation (primarily, the Law and regulations), including the case law and the Commission's practice, with the basic purpose of securing an adequate training of employees and swift reaction in case of the occurrence of the "issues";
- As a good practice, the identification of other methods for communication on the issues that have incurred or are likely to incur can be recommended (introduction of "anonymous" reporting hotline; "confidential" notification system; "open door" policy, etc.);
- In parallel to the establishment of a suitable notification system, the companies should adopt and provide "internal procedures for minimizing risks of involvement in competition law infringements" as part of their regular practice, which would form an integral part of compliance programs.

STEP 4 – ESTABLISHING AN INTERNAL MECHANISM ALLOWING FOR COOPERATION WITH THE COMMISSION

When an activity of an undertaking becomes the subject of an investigation procedure before the Commission, the undertaking and all its employees need to provide the requested assistance – in accordance with the Law on Protection of Competition – so that an objective, comprehensive investigation procedure could be achieved so as to conduct a prompt and efficient probe while minimizing risks of imposing statutory sanctions against the undertaking for failure to provide accurate and timely assistance to the Commission or act on request/order of the Commission.

To ensure the above, it is recommended that a developed internal mechanism of cooperation with the Commission during potential investigation procedures be included in the mandatory content of a compliance program. Furthermore, it is recommended that undertakings be informed of their duty to provide the requested information, including of their rights and obligations during dawn raids and conditions for imposing procedural penalties under the Law in order to avoid risks that could potentially arise owing to a lack of awareness of procedural rules governing procedures brought before the Commission.

STEP 5 – TRAINING OF COMPANY STAFF

To achieve compliance with competition rules, it is necessary that a compliance program in its mandatory content also includes guidelines on communication and implementation of training programs for company staff.

The company management should select an adequate and efficient training method intended for employees who in their day-to-day work run business.

Irrespective of the selected training method, it should ensure the attainment of the following objectives:

- Employees must acquire sufficient knowledge of the main provisions of the Law on Protection of Competition in order to identify prohibited behaviours – acts and actions qualified as competition law infringements;
- Employees must be knowledgeable about activities that need to be avoided in their line of work – so that full compliance with competition rules could be secured and any violation of compliance programs be avoided;
- Employees must be privy to all the details of a compliance program – and particularly informed about how the established system of internal reporting can be used;
- When designing training modules, particular attention must be paid to specific risks posed by business operations of each specific undertaking (specific company);
- Staff training should be "targeted" – depending on responsibilities and specific risks posed by business activities of an employee or group of employees;
- Intensity, content and form of training modules should be designed depending on the degree of risk to which individual employees/group of employees are exposed during their day-to-day work;
- Staff should be given regular training updates, advanced by new knowledge and recent developments, with mandatory information about the Commission's activities and practice.

STEP 6 – MONITORING AND EVALUATION OF PROGRAM RESULTS AND FOLLOW-UP ACTIONS

The success of any compliance program cannot be measured merely through the activities for the adoption of said program, in relation to its content, extent, quality and frequency of staff training, but above all through the results achieved in its implementation – avoided and/or terminated competition infringements.

The adoption of compliance programs, as a form of commitment of undertakings to ensure that their operational practices adhere to competition laws, will not be enough if the program fails to create a "culture" of competition law compliance in regular daily operations of each employee and the company as a whole.

To achieve all the benefits of compliance programs, regular monitoring and evaluation of implementation outcomes of these programs (their different aspects) in the company's business activities are required.

The monitoring and evaluation should also help companies to identify new risks that a business may encounter, brought about by the development of business activities and/or potential entry into the new relevant markets, or to innovate and improve their current compliance programs.

WHAT ARE THE CORE REQUIREMENTS OF A COMPLIANCE PROGRAM?

Compliance programs should identify potential risks to operational practices of undertakings, stipulate and prescribe measures to mitigate or eliminate such risks and prescribe internal procedures to address potential issues businesses face in their operations, where it is established that undertakings are exposed to risks.

Irrespective of what method is used to adopt such programs, how they will be designed, the extent to which they will elaborate on some particular elements, the company (undertaking), and the size of a company that has proceeded to adopt a compliance program, etc., all programs should meet several basic requirements, without which they cannot be considered complete and with prospects for effective implementation, able to bring the company all of the expected benefits.

The main content of compliance programs should ensure the following:

- All potential risks of competition infringements have been considered when drafting compliance programs and conducting staff training;
- All employees are familiar with the person(s) responsible for the implementation of compliance programs in the company;
- All employees have direct access to the company's compliance program;
- All employees are informed about the company's compliance program – have declared themselves informed about the program and familiar with their duties and responsibilities arising from the program;
- Adequate legal aid (advice) must be secured at all times when there is a suspected infringement of competition law or even just a concern or uncertainty as to whether an infringement exists;
- Each infringement or suspected infringement must be notified without delay to the legal team in charge of the competition program or other person(s) responsible for the implementation of this program;
- The Commission for Protection of Competition must be notified of instances of concern or information on competition infringements committed by competing undertakings.[4]

[4] Application forms to notify of potential infringements of competition law can be found on the Commission's website, available at: https://www.kzk.gov.rs/obrasci (note: forms are available in Serbian only)

COMPETITION REGULATORY FRAMEWORK OF THE REPUBLIC OF SERBIA

Competition rules consist of the Law on Protection of Competition ("Official Gazette of the RS", Nos. 51/2009 and 95/2013) and regulations or bylaws – regulations, instructions, guidelines.

Regulations currently in force are the following:

"General" regulations:

- Regulation on criteria for defining the relevant market ("Official Gazette of the RS", No. 89/2009);
- Regulation on criteria for setting the amount payable based on measures for protection of competition and sanctions for procedural breaches, manner and terms for payment thereof and conditions for determining the respective measures ("Official Gazette of the RS", No. 50/2010);
- Regulation on the conditions for relief from commitment payment from measure for protection of competition ("Official Gazette of the RS", No. 50/2010).

Regulations that concern restrictive agreements:

- Regulation on agreements between undertakings operating at the different level of production or distribution chain exempted from prohibition ("Official Gazette of the RS", No. 11/2010);
- Regulation on agreements on specialization between undertakings operating on the same level of production or distribution chain exempted from prohibition ("Official Gazette of the RS", No. 11/2010);
- Regulation on R&D agreements between undertakings operating on the same level of production or distribution exempted from prohibition ("Official Gazette of the RS", No. 11/2010);
- Regulation on the content of request for individual exemption of restrictive agreements from prohibition ("Official Gazette of the RS", No. 107/2009).

Regulation that concerns merger control:

- Regulation on the content and manner of filing merger notifications ("Official Gazette of the RS", No. 5/2016).

For some requests and procedures brought before the Commission, awareness and adequate information of the Tariff for the exercise of competencies conferred on the Commission for Protection of Competition ("Official Gazette of the RS", No. 49/2011) can be useful.

In addition to the Law on Protection of Competition, the Law on General Administrative Procedure ("Official Gazette of the RS", Nos. 18/2016 and 95/2018 – authentic interpretation) is also applied to procedures brought before the Commission.

RISKS THAT CAN APPEAR IN CONDUCTING BUSINESS AND HOW TO RECOGNIZE THEM

There are several forms of competition infringements that constitute the main risk elements in conducting business. After getting familiar with the main concepts of competition infringements (restrictive agreements[5] and abuses of dominance[6], including implementing mergers without clearance), undertakings need to recognize situations in which they could find themselves as well as segments of their business operations where individual forms of competition infringements could occur.

Competition infringements are acts or actions of undertakings that have or may have as their object or effect the significant restriction, distortion, or prevention of competition.[7]

Risks can be categorized in the following three groups:

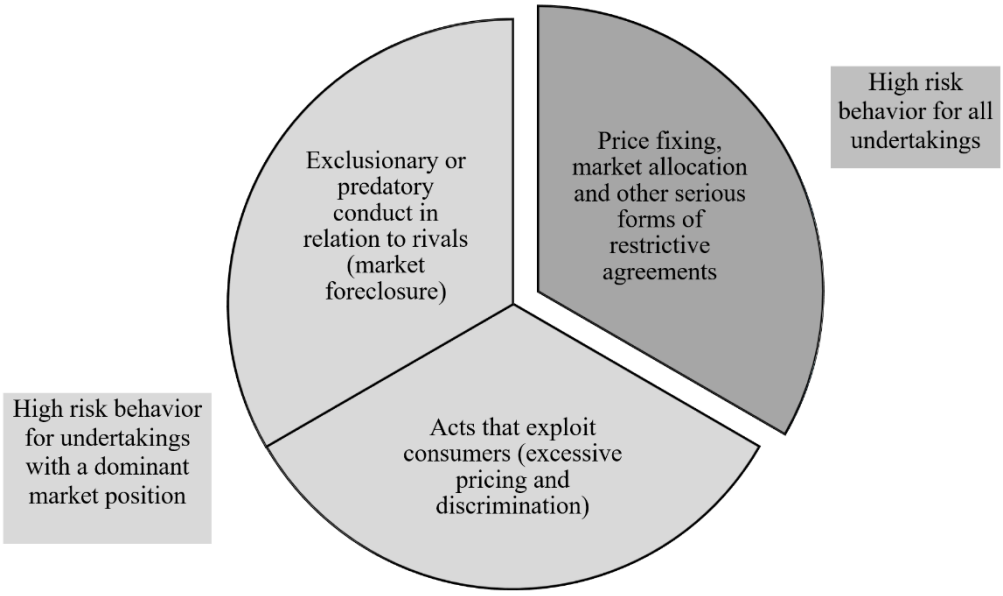
1) Regular risks – which may exist with all undertakings, irrespective of their size or market share (restrictive agreements),
2) Risks that concern undertakings with significant market share (potentially holding a dominant position),
3) Transaction-related risks – when a change of control, merger or acquisition by one company over another occurs, there is a possibility that such transaction needs to be notified to the Commission for Protection of Competition for prior approval.

The Law on Protection of Competition stipulates that an undertaking shall be the subject of a measure for the protection of competition, set in the form of an obligation to pay a monetary sum in the amount up to 10% of the total annual revenue generated in the territory of the Republic of Serbia in the case where the said undertaking:

1) abuses its dominant position on the relevant market;
2) concludes or implements a restrictive agreement;
3) fails to perform or implement measures to eliminate competition infringements or measures of deconcentration;
4) implements a concentration in breach of the standstill obligation or without receiving merger clearance.

The amount of the measure for protection of competition depends on the gravity of the infringement, duration of the infringement, the existence of mitigating and aggravating circumstances, including other circumstances laid down by the Regulation on criteria for setting the amount payable based on measures for protection of competition and sanctions for procedural breaches, manner and terms for payment thereof and conditions for determining the respective measures ("Official Gazette of the RS", No. 50/2010)[8] and guidelines for the application of this regulation.[9]

[5] See Article 10 of the Law
[6] See Article 16 of the Law
[7] Article 9 of the Law
[8] Available at: https://www.kzk.gov.rs/kzk/wp-content/uploads/2016/11/02-Regulation-on-criteria-for-setting-the-amount-payable-on-the-basis-of-measure-for-protection-of-competition-and-sanctions.pdf
[9] See the Guidelines on the application of the Regulation on criteria for setting the amount payable based on measures for protection of competition and sanctions for procedural breaches, manner and terms for payment thereof and conditions for determining the respective measures, available at:



By gravity, the risks or competition infringements under the Commission's guidelines for establishing measures for protection of competition[10] can be classified as follows:

MOST SERIOUS TYPES OF COMPETITION LAW INFRINGEMENTS
1. restrictive agreements that directly or indirectly set the purchase or selling prices or other trading conditions; 2. restrictive agreements on collective boycott of competitors; 3. restrictive agreements that allocate markets or sources of supply, including restrictive agreements between bidders – competitors in public procurement procedures; 4. forms of the abuse of dominance which as their object or effect directly or indirectly fix unfair purchase or selling prices or other unfair trading conditions and/or drive out competition from the market; 5. forms of the abuse of market dominance that restrict production, markets or technical development.
SERIOUS TYPES OF COMPETITION LAW INFRINGEMENTS
1. restrictive horizontal agreements that do not qualify as the most serious types of competition law infringements, and 2. forms of abuses of dominance, such as applying dissimilar conditions to equivalent transactions or bundling or tying practices that do not qualify as the most serious types of competition law infringements.

https://www.kzk.gov.rs/kzk/wp-content/uploads/2011/08/GUIDELINES-for-implementation-of-the-Regulation-on-criteria-for-setting.pdf

[10] Guidelines are available at: https://www.kzk.gov.rs/kzk/wp-content/uploads/2011/08/GUIDELINES-for-implementation-of-the-Regulation-on-criteria-for-setting.pdf

MINOR COMPETITION LAW INFRINGEMENTS
1. restrictive vertical agreements that directly do not concern prices or conditions of sale, 2. implemented concentrations before regulatory clearance within the meaning of Article 65 of the Law, including 3. concentrations implemented in breach of suspension obligation within the meaning of Article 64 of the Law.

RESTRICTIVE AGREEMENTS

Regular risks primarily concern **restrictive agreements,** classified into horizontal (agreements between competitors) and vertical (agreements with companies at a different level of supply chains, up- or downstream).

Definition and prohibition on restrictive agreements
Article 10

Restrictive agreements are agreements between undertakings which have as their object or effect the significant restriction, distortion, or prevention of competition in the territory of the Republic of Serbia.

Restrictive agreements may include contracts, certain contract provisions, express or tacit agreements, concerted practices, including decisions of associations of undertakings, which in particular:

1) directly or indirectly fix purchase or selling prices or any other trading conditions;

2) limit or control output, markets, technical development, or investment;

3) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

4) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts;

5) allocate markets or sources of supply.

Restrictive agreements are prohibited and void, except in cases of exemption from the prohibition pursuant to this law.

Requirements for exemption from the prohibition
Article 11

Restrictive agreements may be exempted from the prohibition if they contribute to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits, and which do not impose restrictions which are not indispensable to the attainment of these objectives, and do not afford such undertakings the possibility of eliminating competition on the relevant market or its substantial part.

Individual exemption from the prohibition
Article 12

At the request of a restrictive agreement participant, the Commission may exempt certain restrictive agreements from the prohibition (hereinafter, individual exemption).

The applicant authority making the request for individual exemption shall bear the burden of proof to demonstrate that the requirements referred to in Article 11 of this Law are met.

The period of individual exemption referred to in Paragraph 1 of this Article shall not exceed eight years.

The Government shall specify in more detail the requirements referred to in Paragraph 1 of this Article.

Exemption from the prohibition by category of agreements
Article 13

The exemption from the prohibition on restrictive agreements may refer to certain categories of agreements in so far as the requirements referred to in Article 11 of this Law are met, including other particular requirements that concern the type and content of agreements or their duration.

Restrictive agreements that meet the conditions referred to in Paragraph 1 of this Article shall not be submitted to the Commission for the exemption.

The Government shall specify the categories of agreements and lay down special requirements referred to in Paragraph 1 of this Article.

Agreements of minor importance
Article 14

Agreements of minor importance are agreements between undertakings whose aggregate market share on the relevant market for products and services in the territory of the Republic of Serbia does not exceed:

1) 10% of market share, if the parties operate at the same level of production and distribution chain (horizontal agreements);

2) 15% of market share, if the parties operate at the different level of production and distribution chain (vertical agreements);

3) 10% of market share, if the agreement has characteristics of both horizontal and vertical agreements or where it is difficult to classify the agreement as either vertical or horizontal;

4) 30% of market share, if the agreements concluded between various parties have similar effects on the market, and if the individual market share of each of the party does not exceed the 5% market share threshold on each individual market affected by the agreement.

Agreements of minor importance shall be allowed unless the object of horizontal agreements is the fixing of prices, limitation of output or sales and allocation of markets or customers, and unless the object of vertical agreements is the fixing of prices or allocation of markets.

HORIZONTAL AGREEMENTS

Horizontal agreement is an agreement between direct competitors, that is parties that operate at the same level of production or distribution chain.

Competitor is an undertaking that operates on the same relevant market (actual competitor) or an undertaking that in a short period of time could undertake the necessary additional investments or other necessary costs to enter the relevant market in response to a small but permanent increase in prices (potential competitor).

Hardcore restrictions contained in horizontal agreements:

1. Price fixing with competitors[11]
   1.1. fixed prices, minimum prices, maximum prices [12]
   1.2. price ranges
   1.3. exchange of price lists
   1.4. price recommendations
   1.5. agreements fixing the distribution margin
   1.6. agreements on price increases or price decreases
   1.7. unilateral disclosure of future company operations
2. Agreements on production or sales volume
   2.1. agreements not to produce or sell unless agreed-on volume
   2.2. agreements to restrict output
   2.3. agreements so that individual competitors would exit the marketplace
   2.4. necessity of obtaining consent between competitors to increase output
   2.5. industrial standard-setting agreements
3. Allocation of markets or customers between competitors
   3.1. agreements to divide sales territories
   3.2. agreements to assign customers
   3.3. participation in public procurements assigning contract winners[13]
   3.4. agreeing not to compete in certain territories or for consumers or particular categories of consumers
   3.5. collective boycott[14]

[11] Any direct or indirect collusive agreement to fix prices between competitors is prohibited. Prohibited agreements may concern agreements on uniform pricing, minimum resale prices or price floors, fixing resale prices, recommended retail prices, future price increases. Price fixing as a prohibited practice concerns not only prices but also certain price elements such as rebates, input prices, price premiums, etc.

[12] For example, the Commission's decision on prices of motor vehicle inspections in Čačak: http://www.kzk.gov.rs/kzk/wp-content/uploads/2020/12/56-30-11-2020-Resenje-tehnicki-pregledi.pdf (full decision in Serbian)

[13] For example, the Commission's decision on public procurements in the defence sector: http://www.kzk.gov.rs/kzk/wp-content/uploads/2018/12/26-resenje-B2M-i-dr.-za-sajt.pdf (full decision in Serbian)

[14] Agreement between competitors on joint refusal to deal with a particular supplier(s) with no reasonable justification, including a joint conspiracy formed to impose conditions on the procurement of goods from a particular supplier(s).

4. Exchange of commercially sensitive information (sharing of business strategies),[15] in particular on the following:
   4.1. sales value or volume
   4.2. market shares
   4.3. prices, in particular future conduct regarding prices
   4.4. planned business strategies

When does the exchange of information give rise to the competition concerns?[16]

The exchange of commercially sensitive information (that concern the nature of the business, i.e., current or future sales prices, cost of goods sold, production volume, credit terms or trading conditions, promotional expenses, customer discounts and rebates, information on consumers, and business or strategic and marketing plans, etc., in particular when such information cannot be considered historical) allows companies to better and more timely adapt their commercial policy to their competitors' strategy and increases the probability of creating anticompetitive effects on the relevant market or concern about increased coordination in the future market scenario.

The information exchanges with no direct or indirect impact on the future commercial strategies of undertakings provided they are: anonymous and pooled, publicly disclosed or available to competitors that have not taken part in the information exchanges, including to consumers, give no rise to the competition concerns.

Collusive tendering or bid rigging is a business practice where competitors mutually agree about the way they submit tenders.

As to the public procurement market and participation in public procurements, the Commission has published several instructions, guidelines and opinions:

- opinion on certain forms of cooperation in public procurement procedures,[17]
- opinion on affiliated undertakings in public procurement procedures,[18]
- instructions for detecting bid rigging in public procurement procedures,[19] providing more detail on potential common forms of bid rigging in public procurements.

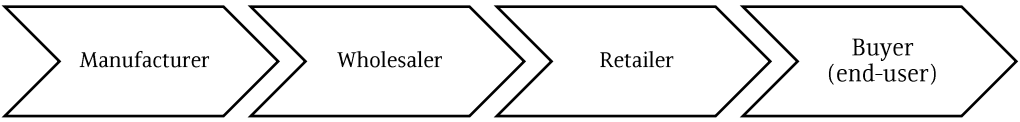
VERTICAL AGREEMENTS

Vertical agreements are agreements between non-competing undertakings or agreements concluded between undertakings each operating, for the purposes of the

[15] For example, the Commission's decision on the edible oil production market: http://www.kzk.gov.rs/kzk/wp-content/uploads/2017/04/Victoria-Vital16_3_20171.pdf (full decision in Serbian)
[16] From the 2014 Annual Report, available at: http://www.kzk.gov.rs/kzk/wp-content/uploads/2015/04/godisnji_izvestaj_kzk_2014.pdf (report available in Serbian)
[17] Available at: https://www.kzk.gov.rs/kzk/wp-content/uploads/2022/01/Opinion-Public-Procurements-25th-March-2021.pdf
[18] Available at: https://www.kzk.gov.rs/kzk/wp-content/uploads/2016/12/Primena-%C4%8Dlana-10.-Zakona-o-za%C5%A1titi-konkurencije-kod-povezanih-lica-u-postupcima-javnih-nabavki1.pdf (available in Serbian)
[19] Available at: https://www.kzk.gov.rs/kzk/wp-content/uploads/2016/12/INSTRUCTIONS-for-detecting-bid-rigging-in-public-procurement-procedures.pdf

agreement, at a different level of the production or distribution chain. They relate to the conditions under which the parties to the agreement may purchase, sell or resell certain goods or services (for example, manufacturer – wholesaler – retailer).

The most common models of distribution are selective distribution, exclusive distribution, and regular (open) distribution.



Selective distribution system is a distribution system where the supplier undertakes to sell the contract goods or services, either directly or indirectly, only to distributors selected on the basis of specified criteria and where these distributors undertake not to sell (at the wholesale level) such goods or services to unauthorized distributors within the territory reserved by the supplier to operate that system.

Agreements on exclusive distribution are agreements where the distributor undertakes to sell the contract goods or services only to one distributor in a particular geographic area or the customer group exclusively allocated to the distributors. **Exclusive purchasing agreements** are agreements where the buyer, either directly or indirectly, undertakes to purchase the contract goods or services exclusively from one supplier.

It is important to make a distinction between active and passive sales, whereas restrictions of passive sales are usually considered more problematic under competition law.

Active sales	Passive sales
Seeking and actively approaching individual customers or a specific customer group and undertaking the activities to sell products or services to said customers by visits, sending of unsolicited mail or e-mails, advertisement in media actively targeting a specific customer group or customers.	Sales on the basis of orders made by the buyer, including orders resulting from advertising in the media and Internet, available in the territory broader than territory exclusively intended for single distributor or specified group of buyers, being the result of a free and unlimited access to advertising message by every buyer or group of buyers.

Typical restrictions in vertical agreements are set out in the Regulation on agreements between undertakings operating at the different level of production or distribution chain exempted from prohibition ("Official Gazette of the RS", No. 11/2010), applicable to vertical agreements.

In the Commission's practice, the most common restrictions are resale price maintenance,[20] exclusive supply or distribution, selective distribution, and non-compete obligations.[21]

Rule	Exception (allowed)
Direct or indirect limitations on the buyer/distributor's ability to set the resale price of products or services, are prohibited.	Supplier may impose a maximum sale price or recommended a sale price,[22] provided that they do not amount to a fixed or minimum resale price as a result of pressure from, or incentives offered by, any of the parties.
Limitations on the territory in which the buyer/distributor may sell the contract goods or services or limitations on a specific customer group to whom the buyer/distributor may sell the contract goods or services, are prohibited.	1) restriction of **active sales** by a buyer party to the agreement to a territory or a customer group which has been allocated exclusively to another buyer or which the supplier has reserved to itself, where such a restriction does not limit sales by the customers of the buyer; 2) restriction of active and passive sales of the contract goods or services to end users by a buyer operating at the wholesale level of trade; 3) restriction of active and passive sales of the contract goods or services to unauthorized distributors by the members of a selective distribution system; 4) restriction of the buyer's ability to sell components, supplied for the purposes of incorporation, to customers who would use them to manufacture of competing goods.
The restriction of **active or passive sales** of the contract goods or services to end users by members of a selective distribution system operating at the retail level of trade, is prohibited.	The possibility of prohibiting a member of the selective distribution system from operating out of an unauthorized place of establishment, is allowed.

[20] For example, the Commission's decision on the distribution of athletic footwear and sporting goods: http://www.kzk.gov.rs/kzk/wp-content/uploads/2017/12/R-40-02-892017-312.pdf or the Commission's decision on maximum discounts on car services and repair: http://www.kzk.gov.rs/kzk/wp-content/uploads/2018/10/Resenje-Auto-Cacak-i-dr.-converted.pdf (full decisions in Serbian)

[21] See Article 6 of the Regulation on vertical agreements

[22] Opinion on recommended prices, available at: https://www.kzk.gov.rs/kzk/wp-content/uploads/2017/09/Opinion-on-the-implementation-of-competition-policy-regulations-in-reference-to-price-recommendation-policy-in-vertical-agreements.pdf

Rule	Exception (allowed)
The restriction of cross-supplies between distributors within a selective distribution system, including between distributors operating at different levels of trade, is prohibited.	
The restriction agreed between a supplier of components and a buyer who incorporates those components, which limits the supplier's ability to sell the components as spare parts to end-users or to repairers or other service providers not entrusted by the buyer with the repair or servicing of its goods, is prohibited.	

What kinds of agreements always create competition concerns?

Irrespective of market share, prohibited agreements are those which have as their object:

horizontal agreement	**vertical agreement**
- the fixing of prices, or	- the fixing of prices,
- the limitation of output or sales,	- the allocation of markets.
- the allocation of supply markets,	

DOMINANT POSITION AND ABUSE

Risks relating to undertakings with significant market share primarily concern the potential abuse of a dominant position, and to that effect, the Commission's past practice on competition law infringements in the form of abuse of dominance should be closely examined.

Dominant market position
Article 15

An undertaking holds a dominant market position if it is, due to its market power, able to operate to a large extent independently from the other actual or potential competitors, buyers, suppliers or consumers.

The market power of undertakings shall be established by reference to the relevant economic and other indicators, in particular:

1) structure of the relevant market;

2) market share of an undertaking whose dominance is established, especially if it exceeds 40% on the established relevant market;

3) actual and potential competitors;

4) economic and financial strength;

5) degree of vertical integration;

6) privileged access to supply and distribution markets;

7) legal or factual barriers to market entry by other undertakings;

8) buyer power;

9) technological advantage, intellectual property rights.

Two or more legally independent undertakings may hold a dominant position if, united by economic links, they are able to jointly perform or act as a single undertaking on the relevant market (collective dominance).

The burden of proving a dominant position on the established relevant market shall be borne by the Commission.

Abuse of dominance
Article 16

Any abuse of a dominant market position shall be prohibited.

Such abuse may, in particular, consist in:

1) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;

2) limiting production, markets or technical development;

3) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

4) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Holding a dominant position on any given market is not in itself illegal. However, a dominant company has a special responsibility to ensure that its conduct does not distort competition.

To this end, undertakings that could have a dominant position in a particular market should carefully examine the potential effects of their business practices when making business decisions and assess how those decisions might affect competitors or the state of competition on the market.

Potential abuses may concern prices or other behaviour of a dominant undertaking and may be directed towards driving out competition from the market or exploiting consumers.

Potential infringements of competition law can be defined as follows:

Acts directed at driving out competition from the market – exclusionary abuses	Acts to exploit buyers – exploitative abuses
- Exclusive dealing, tying arrangements[23] - Predatory pricing - Loyalty rebates, conditioning customers[24] - Tying and bundling - Full-line forcing - Margin squeeze (price squeeze) - Refusal to deal/supply	- Excessive pricing (prices not based on cost considerations)[25] - Discrimination between different buyers (including unjustified price discrimination) - Applying dissimilar trading conditions to equivalent transactions with other trading parties[26]

As a general rule, suppliers have the right to choose who they wish to deal with; however, in certain cases, **the refusal to deal/supply** may be considered to be an abuse of dominance.

For such competition infringement to occur, aside from having a dominant position, the following elements must be identified:

1. the refusal relates to a product or service that is objectively indispensable input, essential for the customers to be able to compete effectively in a downstream market;
2. the refusal is likely to lead to the elimination of effective competition in the downstream market;
3. the refusal is likely to lead to consumer harm;
4. the conduct concerned is not objectively justifiable.

In terms of abusive pricing practices, competition law prohibits predatory pricing (setting prices extremely low) and at the other end of the spectrum, imposing excessive prices (setting prices to high).

[23] For example, the Commission's decision on money transfer practices: https://www.kzk.gov.rs/kzk/wp-content/uploads/2012/03/Resenje-EKI-Transfers-12.01.2010.pdf (full decision in Serbian)
[24] For example, the Commission's decision on funeral services: http://www.kzk.gov.rs/kzk/wp-content/uploads/2011/08/Resenje-JKP.pdf (full decision in Serbian)
[25] For example, the Commission's decision on intercity bus dispatch services: http://www.kzk.gov.rs/kzk/wp-content/uploads/2020/01/Resenje-InterTursPlus1.pdf (full decision in Serbian)
[26] For example, the Commission's decision on the ice-cream market: http://www.kzk.gov.rs/kzk/wp-content/uploads/2014/03/povreda-konkurencije-frikom.pdf or the Commission's decision on the raw milk purchase: http://www.kzk.gov.rs/kzk/wp-content/uploads/2012/03/Resenje-Imlek-25.01.2008.pdf (full decisions in Serbian)

Predatory pricing	Excessive pricing
Predatory pricing may be a part of broader business strategies to drive out the current competitors from the market or deter the entry of potential competitors, causing the dominant undertaking to strengthen its market power. Predatory pricing is a method in which a dominant undertaking sets the price below its incremental costs of producing the output, deliberately incurring losses, to drive out the competitors unable to compete from the market in order to raise the barriers to entry.	Excessive pricing implies imposing unfairly high prices, not set on the "cost principle" or aligned to costs, or excess prices set significantly above competitive levels, objectively justifiable by the cost structure with the expected return.

MERGER CONTROL AND MANDATORY NOTIFICATION

Transaction-based risks most often occur when one or more companies acquire control over another company/-ies or a part(s) thereof, and when the parties need to consider whether a merger filing with the Commission is mandatory to obtain the clearance necessary to implement the transaction.

A concentration between undertakings arises in cases of:

1. mergers and other status changes where a change of control in the undertakings concerned occurs;
2. acquisition of direct or indirect control over another undertaking or a part thereof that may constitute an independent economic entity;
3. joint venture between two or more undertakings to create a new undertaking or acquire joint control over the existing undertaking, performing on a lasting basis all the functions of an autonomous economic entity.

The notification obligation does not concern each transaction where a change of control in the undertakings occurs and each company that implements such a change. Instead, it only exists when the statutory requirements are met.

Concentrations are to be notified to the Commission if:

1. the aggregate **worldwide annual turnover** of all the parties to the concentration in the preceding financial year **exceeds €100mn**, provided that the **turnover of at least one party to the concentration on the market of the Republic of Serbia exceeds €10mn**; or

2. the aggregate domestic annual turnover of **at least two parties** to the concentration in the preceding financial year **exceeds €20mn**, **provided that the turnover of each of at least two parties to the concentration** on the market of the Republic of Serbia **exceeds €1mn** in the same period.

Concentrations implemented through a takeover bid within the meaning of the **Law on Takeovers of Joint Stock Companies**[27] must be notified even if the turnover threshold requirements are not met.

In addition to the notification obligation[28] within the time limit laid down by law,[29] there is a standstill obligation that prohibits the implementation of a concentration before its clearance. The Commission may impose a measure for the protection of competition (up to 10% of the aggregate annual turnover) for violation of the standstill obligation through early implementation of a transaction, including a procedural penalty measure.[30]

Concentrations and negotiations on the implementation of concentrations may pose a high risk of potential competition infringements as undertakings in those circumstances may gain an insight into confidential business information about competitors. Therefore, it should be ensured that employees involved in the process:

- comply with the provisions of data confidentiality agreements, including competition regulations;
- do not share information they learn about competitors with other employees of companies involved in transactions that constitute a concentration.

WHICH BUSINESS SEGMENTS REQUIRE ATTENTION?

Depending on the market and levels of a supply chain where some company operates, various business segments can be distinguished that require attention when drafting compliance programs. These programs must **match the needs of each company**. For example, various business conditions exist in different industries and sectors, including conditions of competition. Similarly, the business practices of a company that operates at the production level are different from those adopted by a company that only operates at the wholesale or retail level.

If a company participates in **public procurement** procedures, it is important to be mindful that this area is subject to specific competition rules. Accordingly, this business area requires special analyses and identification of particular risks.

[27] "Official Gazette of the RS", Nos. 46/2006, 107/2009, 99/2011 and 108/2016)
[28] In the manner and under the conditions laid down by the Law on Protection of Competition and the Regulation on the content and manner of filing merger notifications ("Official Gazette of the RS", No. 5/16). The forms for making notifications are available at: https://www.kzk.gov.rs/obrasci
[29] Under Article 63 of the Law, merger notification must be filed with the Commission within 15 days from (1) the date being that on which the agreement or contract was signed, (2) announcement of a public bid or bid closing, or (3) acquisition of control.
[30] See Article 70 of the Law.

HOW TO APPROACH THE IDENTIFIED RISKS?

If some of the risks that could potentially lead to competition infringements are identified during operational assessments, it is necessary to consider potential ways to mitigate such risks (for example, exemption of restrictive agreements from prohibition, leniency program, termination of certain business conduct).

Following the identification of risks, the company should consider the best and quickest ways to reduce or eliminate such risks.

If the risk consists of a restrictive agreement, an assessment of the following should be made:

1. Are there any grounds for exemption of an agreement from the prohibition (agreements of minor importance, exemption applicable to a specific category of agreements, or if a request for individual exemption needs to be filed);[31]
2. If an agreement cannot be exempt from the prohibition, and if it represents a serious type of competition law infringement, potential applying for the Leniency program should be considered;[32]
3. To avoid any further issues, all prohibited practices should be immediately stopped and alternative ways of achieving the same goal should be considered, without or with a minimal restriction of competition (while taking into account the requirements under which restrictive agreements can be exempt from the prohibition).

In any event, for compliance programs to be efficient, the system of checks and balances should be introduced, including education and training in order to avoid any subsequent issues.

Under the so-called "Leniency Program", a party to a restrictive agreement that is the first to inform the Commission of the existence of such an agreement or provide evidence upon which the Commission can adopt a decision on competition law infringements, may receive full immunity from fines. Furthermore, the Commission may in certain cases grant partial immunity from fines (reduction of fines).[33]

[31] See "Instructions for filing requests for individual exemption of restrictive agreements from prohibition", available at: https://www.kzk.gov.rs/kzk/wp-content/uploads/2011/08/UPUTSTVO-Podnosenje-zahteva-za-pojedinacno-izuzece-restriktivnih-sporazuma-od-zabrane.pdf (available in Serbian)

[32] More information is available on the Commission's website: https://www.kzk.gov.rs/kzk/wp-content/uploads/2017/11/liflet-leniency.pdf (available in Serbian)

[33] More information on the program is available at: https://www.kzk.gov.rs/en/leniency-program

AVAILABILITY OF MATERIALS ON COMPETITION PROTECTION

In addition to the Commission's practice available on its official website,[34] the Commission has also developed several guidelines, promotional leaflets, video clips and issued numerous opinions in its work that should help undertakings harmonize their operations with competition regulations.

INSTRUCTIONS AND GUIDELINES

Various instructions on procedures before the Commission can be found on the Commission's official website, including instructions on filing requests in individual proceedings.[35] Furthermore, guidelines governing conduct in certain situations could also be useful for companies looking to harmonize their operations with competition regulations.[36]

The Commission also drew up several practical instructions and guidelines that concern different procedural issues, such as guidance to facilitate access to file,[37] suspension of proceedings,[38] and filing of competition complaints.[39]

Furthermore, detailed guidelines on individual proceedings before the Commission are also publicly available, namely on merger notification procedure,[40] individual exemption of restrictive agreements from the prohibition,[41] and data protection.[42]

OPINIONS

Opinions on the application of competition rules can be found on the Commission's official website.[43] Individual opinions are also included in the Commission's annual activity reports.[44]

[34] Available at: https://www.kzk.gov.rs/odluke (substantive parts of decisions are translated to English, full versions are available in Serbian)
[35] Instructions available at: https://www.kzk.gov.rs/uputstva
[36] Guidelines available at: https://www.kzk.gov.rs/smernice
[37] Avaiable at: https://www.kzk.gov.rs/kzk/wp-content/uploads/2021/12/Uputstvo-za-uvid-u-spise.docx
[38] Avaiable at: https://www.kzk.gov.rs/kzk/wp-content/uploads/2011/08/Primena-clana-58.pdf
[39] Avaiable at: https://www.kzk.gov.rs/kzk/wp-content/uploads/2011/08/UputstvO-o-sadr%C5%BEini-inicijative-za-ispit-povred-l-10-Zakona.pdf и на: http://www.kzk.gov.rs/kzk/wp-content/uploads/2011/08/uputstvo-sa-obrascem1.doc
[40] Avaiable at: https://rap.euprava.gov.rs/privreda/postupak-pregled/828
[41] Avaiable at: https://rap.euprava.gov.rs/privreda/postupak-pregled/826
[42] Avaiable at: https://rap.euprava.gov.rs/privreda/postupak-pregled/829
[43] Opinions available at: https://www.kzk.gov.rs/misljenja-u-vezi-primene-propisa-u-oblasti-zastite-konkurencije
[44] Annual activity reports are available at: https://www.kzk.gov.rs/izvestaji (all reports in Serbian) and https://www.kzk.gov.rs/en/izvestaji (several reports in English)

VIDEO CLIPS

The Commission's YouTube channel[45] features several short educational video presentations that could be useful for in-house training programs, introduction to competition, or used as a brief refresher on basic competition concepts.

The following thematic units are elaborated in video presentations[46]:


Why is competition good for business?


What you can do to comply with competition law?


What happens if you break competition law?


Price fixing explained?


Information you shouldn't share with other businesses


Dividing up and sharing markets


Resale price maintenance


Bid rigging


How you can help in fighting cartels?


Leniency program


What if someone abuses its dominant market position?


Dawn raids of the Commission


What are concentrations and why we review them?

[45] Avaiable at: https://www.youtube.com/channel/UC4r4DQ1UM8t339x9EaGCl_w/videos
[46] Video presentations are made in cooperation with the UK Competition and Markets Authority (CMA) and customized with prior approval.

BROCHURES AND LEAFLETS

Certain subject matters are presented in more detail in leaflets and brochures, made available free of charge to all interested parties at the reception desk of the Commission for Protection of Competition.

PREVENTION

To minimize the potential for breaches of competition rules in their operations, companies must ensure that every employee, and in particular those exposed to regulatory risks, is familiar with the basic rules governing competition or is able to recognize situations that could expose them and the company to risks of competition infringements.

Employees must know that certain types of agreements almost always represent competition infringements and that they should never discuss or exchange information with their competitors on the following:

- price fixing – including the setting of minimum or maximum prices or price "stabilization";
- setting conditions that concern wholesale or retail prices, adopting standard formulas for the calculation of selling prices, profits, sales promotions, financing conditions, etc.;
- allocation of markets, customers, or territories;
- output restriction;
- bid rigging, including cover bidding;
- collective boycott of competitors, suppliers, customers, or distributors;
- strategic commercial information such as recent individual data on sales value and volume or market shares and prices, whereas the recent data usually means data not older than one year.[47]

The permissibility of information exchanges among competitors primarily depends on the characteristics of information being exchanged, including the characteristics of markets to which they relate.

In principle, the exchange of information is allowed when it concerns:

- exchanges of non-strategic information;
- information exchanges among undertakings to create statistics of a market, depending on the market characteristics, provided the data is older than one year and is in aggregated form;
- recent commercial information to draw up statistics of individual markets for the purposes of associations of undertakings, provided that individual undertakings can only access aggregated market data.

[47] This characteristic of prices will depend to a large extent on the market characteristics such as the usual duration of agreements in certain industries, homogeneity of products or services, price transparency, including whether the market is deemed oligopolistic.

COMPILING INFORMATION ABOUT COMPETITORS

In principle, allowed[48] sources of information include:

- Newspapers, media and other publicly available information (but not as a consequence of prior agreements between competitors to exchange information and market signalization);
- Communication with customers (but not aimed at acquiring confidential information);
- Trade fairs and exhibitions (but not through discussions and prohibited information exchanges with competitors);
- Analyses of market conditions by independent firms (if such analyses do not give an insight into future commercial actions or strategies of competitors).

Prohibited sources of information about competitors include:

- Confidential business or "insider" information about competitors and similar information belonging to persons outside the company. If a company or its employees obtain confidential business or "insider" information from sources outside the company – even by accident – it is necessary to immediately seek legal advice from lawyers or in-house legal counsels;
- Confidential business or "insider" information that new employees have learned in any way during their employment with previous employers;
- Information on bids offered by competitors (prior to bid opening) in public procurement procedures. If employees, even by accident, learn such information, he/she needs to contact lawyers or in-house legal counsels;
- Confidential business information about competitors offered for sale by an entity.

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In order for compliance programs to meet their objectives and genuinely operate in a preventive capacity or mitigate the risks of competition violations, a certain type of cyclical nature and established risk management procedure must exist, on the one part, and on-going training of employees about competition risks, on the other part.

[48] As in the case of information exchanges, the permissibility to compile information about competitors primarily depends on the characteristics of information being compiled, including the characteristics of markets to which they relate. If the compiled information facilitates the reduction of uncertainty regarding the present or future market behaviour of competitors, such information may be risky within the meaning of competition rules.

PRACTICAL RECOMMENDATIONS

1. Dealings with competitors, in particular agreements about prices, market allocation, or participation in public procurements, pose competitive problems.
2. Sharing information about prices, future prices, pricing policy and other commercially sensitive information during meetings attended by competitors, including within trade associations, pose competitive problems.
3. If you attend a meeting where competitors agree on pricing or other commercially sensitive information or exchange views on these issues, it is necessary to immediately disassociate (distance) yourself unequivocally from the discussion and recluse yourself from the conversation, i.e., leave the meeting in which they continue, by making abundantly clear to others that you do not want to take part in any such agreement. Only under such conditions and in those circumstances can you avoid responsibility for the resulting competition violations. Adopting a passive approach during the meeting or subsequent non-application of an agreement following the meeting does not absolve you of responsibility.
4. It is prohibited to incite, reward, or in any way discipline distributors to maintain resale prices of goods or services, both at the wholesale and retail level.
5. It is necessary for each undertaking to independently fix the prices of goods or services that it offers to its buyers.
6. If a company holds a dominant market position or could be considered to hold a dominant position on any given market, the company should pay particular attention to its operations to avoid any abuse.
7. It is desirable to review business contracts and amend them if found to contain restrictive provisions, in particular hardcore restrictions of competition or prohibited provisions under block exemption regulations. Behaviours that may

represent such restrictions of competition pose competitive problems, even when not explicitly agreed upon.

8. It is desirable to consult with experienced competition lawyers when faced with a dilemma on the application of competition rules or when some of the risks to company operations are detected.

APPENDIX 1 - TEMPLATE COMPETITION COMPLIANCE PROGRAM

Note: The template compliance program follows the Guidelines for Drafting Competition Compliance Programs and its purpose is to help undertakings to apply these guidelines more easily.

We provide this template only as an example and a proposal, which is **not a mandatory form**, with the aim of making it easier for undertakings who decide to create their own compliance program to fulfil such a decision and implement the compliance program in their business.

When working on the model, the Commission did not have any specific company in mind, nor did they take into account any specific aspects of business or any specific market in which the participants operate, therefore, if market participants decide to apply such a model, it is necessary to make the necessary adjustments.

Any compliance program should be tailored to the needs of a particular company and tailored to the market or markets in which the company operates.

OBJECTIVE OF THE PROGRAM / INTRODUCTION

It is usual, and the Commission recommends, that there is an introductory address at the beginning of the compliance program by the director or chairman of the company's board addressed to all employees, which explains why the program is being adopted, what the company's basic values are and what goals the program should fulfil. Knowing these goals and values makes it easier to understand the rationale behind the program and increases the likelihood of compliance.

The introductory word, for example, can explain: that the market is dynamic/strategically important/developed and clarify the role of the specific company in that market, which would normally be followed by a binding statement of the company's management on commitment to compliance with legislation in the field of competition protection.

Company XX is committed to respecting competition on the market and enacts a program of compliance with legislation on competition protection in order to achieve the following goals:

For example: more efficient business operations, preservation of the company's reputation, conduct of business in accordance with the standards of business ethics...

Note: The essence of the compliance program is to help in the identification, prevention, early recognition of occurrence, stopping, effective elimination of risks that can prevent, or at least significantly reduce, the achievement of the company's business goals. Defining clear goals that the market participant wants to achieve should contribute to an easier conception of the compliance program itself, in accordance with the goals and values of each individual company. When defining and formulating the goals themselves,

we suggest that you also keep in mind the part of the Guidelines that refers to the advantages of creating and implementing a compliance program.[49]

OBLIGATORY ADHERENCE TO THE COMPLIANCE PROGRAM

The compliance program is binding on all employees of the company XX, regardless of their status in terms of labour law, and applies both to the company's management and to employees in jobs that, in their activities, may detect the existence of, or create the risk of, infringement of competition.

It is mandatory that all existing and new employees of the company XX become familiar with the content of this program and that it be publicly available for inspection by all employees.

In the implementation of this obligation, the HR/personnel/legal department is obliged to hand over a copy of the compliance program to every employee, as well as when establishing a working relationship with a new employee (*or familiarize them with the details of this program in a suitable way*), and the employee is obliged to sign a special statement of acceptance of obligations arising from the compliance program.

Note: It is recommended that all employees familiarize themselves with the rules, that this program be delivered to them and that they sign a statement that they are familiar with the contents of the program, as well as that employee trainings on this matter be conducted from time to time.

Any behaviour that constitutes a violation of the employee's obligations arising from this program, causes or may cause a risk for the company XX regarding the occurrence of a competition infringement, will be sanctioned as a violation of employee conduct. Liability for possible damage to the company, as well as cases of exclusion of liability for breach of duty or damage is regulated by the employment agreement and other internal rules of the company.

Note: The Commission is aware of the fact that in order to ensure full compliance with the obligations from the compliance program, it is necessary to foresee sanctions for breaching conduct. However, it is recommended to develop a culture of cooperation and trust within the company, which is aimed at solving problems and not only at sanctioning employees. It is in the best interest of the company that the risks are identified and that measures are taken as soon as possible to remove or reduce the perceived risk, and not for employees to avoid reporting perceived problems for fear of sanctions that they might suffer themselves. Because of this, it is necessary to find a mechanism that best suits the functioning and business culture of the company itself.

[49] Guidelines available at: https://www.kzk.gov.rs/kzk/wp-content/uploads/2011/08/Compliance-guidelines-CPC.pdf, page 4

BASIC CONCEPTS AND TERMS OF COMPETITION RULES

Note: Before further defining risks, it is recommended to define basic terms, so that employees and persons to whom the compliance program applies are familiar with the basic concepts of competition protection. In order to ensure the effective implementation of a compliance program, it is necessary that those who are expected to act in accordance with the rules first understand what the specific rules entail.

Term	Meaning
Competitor	An undertaking that operates in the same relevant market (actual competitor) or a market participant who in a short period of time could bear the necessary additional investments or other necessary costs in order to enter the relevant market due to a small but more permanent increase in prices (potential competitor).
Agreement, restrictive agreement	Restrictive agreements include contracts, individual contract provisions, express or tacit agreements, concerted practices, as well as decisions of associations of undertakings. (see Article 10 of the Law on Protection of Competition)
Horizontal agreement	An agreement between direct competitors, that is, participants who are at the same level of the production or distribution chain.
Vertical agreement	An agreement between companies who are not mutual competitors, that is, concluded by undertakings who, for the purposes of the agreement, operate at different levels of the production or distribution chain. These agreements refer to the terms under which companies can buy, sell or resell certain goods and/or services.
Active sales	Seeking and approaching customers or a specific group of customers and taking actions with the aim of selling products to those customers, including visiting customers, sending mail and e-mails, advertising in media intended exclusively for those customers or group of customers
Passive sales	Sales based on the customer's order, including orders prompted by advertising in the media and on the Internet, available in an area wider than the area intended exclusively for one distributor or a certain group of customers, which is the result of free and unrestricted access to the advertising message by the customer.
Exclusive purchase or sale	Exclusive purchase agreements are agreements whereby the buyer directly or indirectly undertakes to purchase the contract product exclusively from one seller (the agreement excludes all other sellers).

Term	Meaning
	Exclusive sales agreements are agreements whereby the seller undertakes to sell the contractual product to only one customer in a certain geographic area (the agreement excludes all other customers)
Dominant position	A dominant position is held by a company that, due to its market power, can operate on the market to a significant extent independently of real or potential competitors, customers, suppliers or consumers. (see Art. 15 and 16 of the Law on Protection of Competition)
Business sensitive information	Information about the company's business activities, and in particular information on the basis of which competitors could predict, with greater certainty, the future commercial or strategic behaviour of the company in the market [prices, future prices, rebates, margins, lists of customers or suppliers, plans for the development of the offer products, planned acquisitions, strategy of participation in public procurement procedures, other business strategies...], which would gain a competitive advantage over the company, or would be able to conclude or implement a restrictive agreement with the company. **Note:** it is necessary to note the difference in relation to the term "business/trade secret". Although there are significant "overlaps" of these two terms, not every information that is in the "trade secret" regime is eligible to create this, problematic, predictability of the company's future commercial conduct on the market.
Law on Protection of Competition (LPC)	"Off. Gazette of the RS" no. 51/2009 and 95/2013
Commission for the Protection of Competition	The authority responsible for the protection of competition in Serbia, among other things, for conducting competition infringement proceedings, individual exemption of restrictive agreements and merger control.
Competition infringement	Acts or conduct of undertakings that have or may have as their object or effect a significant restriction, distortion or prevention of competition. This term includes the conclusion or execution of a restrictive agreement and acts of abuse of a dominant position.
Merger	Change of control over an undertaking (see Art. 5 of the LPC), which is carried out through mergers and other status changes in which there is a merger, acquisition by one or more undertaking of direct or indirect control, as well as joint ventures by two or more market participants under certain circumstances. (see Art. 17. LPC)

Term	Meaning
Proceedings before the Commission	A special procedure carried out by the Commission for the Protection of Competition, in accordance with the Law on the Protection of Competition and the Law on General Administrative Procedure ("Official Gazette of RS", No. 18/2016 and 95/2018 - authentic interpretation) (see Arts 33 - 70 LPC)
Dawn raid	Procedural act of securing evidence in the investigative proceedings. It includes the special powers of the Commission for the Protection of Competition if there is a reasonable suspicion that there is a danger of removing or changing evidence that is with a party or a third party. An unannounced inspection is carried out through an unannounced inspection of the premises, data, documents and things found in that place, about which the party, i.e. the holder of the premises and things, is informed at the time of the inspection and on the spot. (see Art. 52 - 55 of the LPC)
Protected information	Information protected in proceedings before the Commission, upon reasoned request (see Art. 45 of the LPC)
Privileged communication, legal privilege	Letters, notices and all other forms of communication between the party against whom the proceedings are conducted and their attorneys, which are directly related to the proceedings. (see Art. 51. LPC)
Leniency program	The possibility of reporting a restrictive agreement that can bring the participant in the agreement exemption from the measure of protection of competition, under certain conditions (see Art. 69 of the LPC)
Measure of competition protection, Competition protection measure	Obligation to pay a sum of money in the amount of no more than 10% of the total annual income generated on the territory of the Republic of Serbia, which is determined for the company if it: 1) abuses its dominant position - Article 16 of the LPC 2) conclude or execute a restrictive agreement, Article 10 of the LPC 3) does not carry out, that is, does not implement the measures to remove the violation of competition, that is, the measure of deconcentration 4) carried out a concentration contrary to the termination obligation, i.e. for which approval for the implementation of the concentration was not issued (see Art. 68 of the LPC)
Interim measures	If there is a risk of irreparable damage to the persons directly affected by the actions or acts that are the subject of the procedure, the Commission may, by conclusion, order the cessation of certain actions

Term	Meaning
	or the application of the act or the obligation to undertake actions to prevent or eliminate their harmful consequences. (see Art. 56 of the LPC)
Procedural penalty measure	A procedural penalty measure can be imposed on an undertaking in the amount of EUR 500 to EUR 5,000 for each day of behaviour contrary to a request of the Commission issued in proceedings or failure to act according to that order. (see Art. 70 of the LPC)
Behavioural measure	The Commission can determine measures aimed at eliminating the determined competition infringement or preventing the possibility of the same or similar infringement, by issuing an order to undertake certain behaviour or ban certain behaviour in the decision establishing a competition infringement (see Art. 59 of the LPC)
Structural measures	If there is a significant risk of repetition of the same or similar infringement, as a direct consequence of the structure of the undertakings, the Commission can determine a measure aimed at changing that structure in order to eliminate such a risk, i.e. establishing the structure that existed before the occurrence of the determined violation. Such a measure is determined only if there is no possibility to determine an equally or approximately effective behavioural measure or if the determination of a behavioural measure would represent a greater burden for the market participant than a specific structural measure, i.e. if a previously pronounced behavioural measure regarding the same violation of competition was not implemented in its entirety. The structural measure may provide for the obligation to dismantle the resulting structure of the undertaking, especially through the sale of some of its parts or assets to other persons who are not related to the market participant. (see Art. 59 of the LPC)
Related entities	Two or more undertakings that are linked so that one or more market participants control the other market participant or participants. The term control means the possibility of decisive influence on the conduct of business of another or other market participants. (See Article 5 of the LPC).

Note: The list of terms is indicative and serves as an illustration of basic terms. For short definitions of other terms, you can familiarize yourself with the materials available on the website of the Commission for the Protection of Competition: https://www.kzk.gov.rs/.

RISKS THAT CAN APPEAR IN CONDUCTING BUSINESS AND HOW TO RECOGNIZE THEM

Note: This part of the program should contain basic concepts and rules related to competition protection, including a way to recognize risks that may lead to competition violations. You can find out more about specific violations of competition from the decisions of the Commission for the Protection of Competition, other materials available on the Commission's official website, as well as the Guidelines for Drafting Competition Compliance Programs.

In case of doubt as to whether the risk described below exists in a competitive case, [contact person] should be contacted. (*Compliance officer and/or legal advisor*)

RISKS RELATED TO RESTRICTIVE AGREEMENTS

Article 10 of the LPC prescribes what is considered an agreement in the sense of the competition protection legislation, and it is especially important that all employees know that **the term agreement does not only include written or oral contracts,** but also other types of agreements, decisions or coordination with competitors and /or potential competitors.

An agreement can be oral, written, formal or informal and can be a problem/violation even if it has not been implemented. Therefore, it is the duty of all employees in the company to pay special attention to: the contracting process and the conclusion of contracts, even if they are typical; their activities and participation in any meeting where the business of the company and/or competitors on the market is discussed; participation in discussions and decision-making in business associations of which the company is a member; business or private communication with customers, suppliers, competitors and/or potential competitors; as well as all other regular daily business activities that could create a risk of infringement of competition.

All employees must avoid:

1. Discussing or communicating with competitors about prices or market sharing
2. Discussing or communicating with other potential bidders on public procurement
3. Obliging (or encouraging) customers to apply the prices from our price list in further sales
4. Agreeing or assuming the obligation to apply the prices determined by our supplier in further sales
5. Paying a competitor not to enter the market or to delay the introduction of a new or innovative product to the market
6. Agreeing to non-compete clauses, especially for a period longer than five years
7. Exchange or publication of any commercially sensitive information, especially when communicating with competitors
8. ...

In the following situations, it is necessary to conduct prior consultations in accordance with internal procedures:

1. Arranging an exclusive purchase or sale

2. Negotiating (or changing the terms) of the selective distribution system
3. Determination, change and procedure of implementation of sales promotion measures
4. Participation in meetings/seminars/formal and informal events where competitors participate (due to the risk of exchanging business sensitive information)
5. ...

RISKS RELATED TO EXCHANGING COMMERCIALLY SENSITIVE INFORMATION

It is against the Law and the obligations arising from this program to exchange with competitors information related to:

1. Future prices, future actions or strategic plans of the company
2. Data that the company takes into account when making strategic decisions
3. Strategic business information, such as recent (recent) individual data on the value and volume of sales or market shares and prices, whereby recent data is usually considered data that is no older than one year
4. Intentions to "stabilize" or harmonize prices (at a certain level; below or above a certain level; by applying a clearly defined "formula" for the formation of prices, etc.)
5. Data on wholesale or retail sales conditions
6. Data on public procurement procedures, in particular: public procurements in which the company participates or intends to participate, on the commercial conditions under which the company participates or on the reasons why it does not want to participate in public procurements, etc.
7. …

Unauthorized sources of information about a competitor

1. Confidential or "insider" information about a competitor and similar information belonging to persons outside the company. If the company or its employees come into possession of confidential or "insider" information from a source outside the company - and even if it happens by accident - it is necessary to immediately seek the advice of a lawyer or the company's legal advisor;
2. Confidential or "insider" information that the new employee discovered in any way from their previous employer;
3. Information about the competitor's bid (before the opening of bids), if it is a public procurement procedure. Even if the employee accidentally learns such information, he should contact the company's lawyer or legal advisor;
4. Confidential information about a competitor offered for sale.

RISKS RELATED TO ABUSE OF A DOMINANT POSITION

Note: This part of the compliance program is particularly important for companies that have/may have a dominant position, whereby the assessment of market power and position should be based on the assessment of economic and other indicators prescribed in Article 15 of the Law on Protection of Competition. During your own assessment of the existence of a dominant position, it is especially important to pay attention to the correct definition of the market in which the company could be dominant. The

company's business conduct on that market needs to be carefully examined and harmonized with competition protection legislation.

A dominant position in the market, as such, is not prohibited or problematic, but companies that have a dominant position in the market have a special responsibility not to abuse this position. Therefore, companies that have, or assume that they have, a dominant position in one of the relevant markets in which they operate, when making business decisions, must carefully consider and evaluate the potential effects of their business practices, and especially carefully assess how those decisions can affect competitors or the state of competition in the market.

Potential abuses may be related to the price or other behaviour of the dominant market participant, and may be aimed at squeezing competitors out of the market or at exploiting customers.

Given that the company XX *has / assumes that it has / estimates that it has* a dominant position (alternatively: that it is the leader, that it is the largest/only company engaged in an activity, that it is an indispensable trading partner on the upstream/downstream market, that the manufacturer of "must have" products, that it is the most important supplier of raw materials-semi-products and similar) on the relevant market/markets: XX, it is the duty of all employees to pay special attention to acts and actions that may represent abuse of a dominant position:

Actions aimed at excluding competitors from the market:

- Exclusive contracts, customer tying (or other acts that may cause the market to be foreclosed to competitors)
- Predatory prices
- Loyalty rebates, customer conditioning
- Tying sales (most often of a key product and a product that is not so represented and where there is competition)
- Assortment tying (obliging the customer to take the entire range of products)
- Margin squeeze (price scissors - *this risk exists mainly when the company is present as a supplier of products at the wholesale level, and sells it to end users at the retail level, where it competes with its reseller customers*)
- Refusal to deal (*in the case when it relates to a product or service that is objectively necessary for market participants to compete effectively in the downstream market, where the refusal is likely to lead to the elimination of effective competition in the downstream market and is likely to harm consumers, and that there are no objectively justified reasons for refusing business/cooperation.*)

Actions aimed at exploiting customers:

- Excessive prices (prices that are not based on the cost principle)
- Customer discrimination (including unjustified price discrimination)
- Application of unequal business conditions to different companies in equivalent transactions (thereby putting individual market participants at a disadvantage compared to competitors)

Note: Due to their market share and strength, it would be advisable for some companies to consult with a (legal) advisor who has experience in the application of competition protection legislation and is familiar with the previous practice of the Commission before

making business decisions or undertaking certain strategies, in order to avoid possible competition infringements.

RISKS RELATED TO THE IMPLEMENTATION OF MERGERS (STANDSTILL OBLIGATION; MERGER FILING OBLIGATION)

Before any status change or transaction which entails purchasing another company, acquiring control over another company or changes the ownership of this company, it is necessary to assess whether this transaction should be reported to the Commission for the Protection of Competition. Since this is not a "regular" situation, this part of the compliance program is only a possibility or an option.

Mergers occur in the following cases:

1) mergers and other statutory changes in which a merger of undertakings occurs;
2) acquisition of direct or indirect control by one or more undertakings over another or more undertakings or over part or parts of other undertakings which may represent an independent business entity;
3) joint venture of two or more undertakings in order to create a new undertaking or to gain joint control over an existing undertaking operating on a long term basis and has all functions of an independent undertaking.

A merger **must be notified** to the Commission if the:

1) total annual revenue of all merger participants generated on the global market in the preceding financial year exceeds 100 million EUR, provided that at least one merger participant revenue generated on the market of the Republic of Serbia exceeds 10 million EUR; or
2) total annual revenue of at least two merger participants generated on the market of the Republic of Serbia exceeds 20 million EUR in the preceding financial year, provided that at least two merger participants generated revenue on the market of the Republic of Serbia exceeds one million EUR per participant, in the same period.

Mergers implemented by means of a takeover bid, within the meaning of the Law on takeover of joint stock companies, must be notified even if the previous turnover conditions are not fulfilled.

Notes for filing parties *(taken from the merger application form):*

** Total income is calculated as the sum of business, financial and other income.*

** In cases of related entities in the sense of Article 5 of the Law on Protection of Competition, the total annual income is calculated as the sum of all total incomes achieved by market participants who are considered related and belong to the group to which the filing party belongs (acquirer of control).*

** Revenues of the target group of companies (group of related entities over which control is acquired), i.e. the target company (undertaking over which control is acquired), i.e. the target business that is the subject of acquisition of control, are counted as the income of only that target group, i.e. only that company, that is, the target business.*

** If, through the implementation of the merger, control is acquired over part of an undertaking, the joint total annual income of the participants in the merger is calculated as the sum of the income of the acquirer of control (taking into account the total annual income of all market participants with whom the acquirer of control is considered related in the sense of Article 5 of the Law) and only that part of the undertaking over which control is acquired.*

** When calculating the annual total income, the income that the participants in the merger achieve in mutual exchange should not be counted, but instead the consolidated income should be stated.*

The following persons are responsible for assessing the risk of potential merger filings: [*insert*]

Note: It is recommended that the financial director of the company, i.e. the person responsible for the company's financial operations and management representatives, is involved in this process.

PROCEDURE IN CASE OF DAWN RAIDS AND COOPERATION WITH THE COMMISSION FOR THE PROTECTION OF COMPETITION

It is recommended *that the compliance program contains an elaborated internal mechanism for cooperation with the Commission during the investigative procedures that may be initiated. In addition, it is recommended that companies are familiar with the obligation to submit data, rights and obligations during the implementation of dawn raids (unannounced inspections) and the conditions for imposing procedural penalties in accordance with the Law, in order to avoid risks that may arise due to ignorance of the procedural rules of the procedure before the Commission.*

In case of dawn raids, it is necessary to cooperate with the Commission and the officials conducting the inspection.

It is necessary to provide access to the premises in accordance with the decision on conducting an unannounced inspection.

It is necessary to provide authorized persons of the Commission with access to business documentation and other requested documents, regardless of the way in which these documents are stored, as well as access to the computers of directors and employees.

It is prohibited and punishable to destroy documentation, electronic correspondence and other documents or assets that may be included in the subject of the investigation.

It is prohibited and punishable to provide false and inaccurate information to authorized persons of the Commission.

Employees must cooperate with the authorized persons conducting the investigation, act in accordance with the requests of the persons conducting the inspection and respect the temporary ban on the use of computers, telephones and other means of communication.

Preventing authorized persons of the Commission from carrying out an inspection constitutes the criminal offense “Preventing an official from carrying out an official

action" from Article 322 of the Criminal Code, and preventing authorized persons from the Commission from inspecting the documentation constitutes the criminal offense "Impeding the exercise of control" from Art. 237 of the Criminal Code.

Preventing the investigation will be assessed as an aggravating circumstance when determining the competition protection measure (monetary amount), if the existence of a competition infringement is established in the proceedings.

The company, as a party to the proceedings, has the right to the presence of a lawyer during the conduct of the unannounced investigation. (*insert the name of the responsible person of the company*) is in charge of assessing the need to hire a lawyer during the investigation.

Note: The given list is indicative. Regarding the rights and obligations of companies regarding the conduct of dawn raids, you can familiarize yourself with the materials available on the website of the Commission for the Protection of Competition, as well as with a video clip on the conduct of dawn raids:

https://www.youtube.com/watch?v=VuZTLZbTWaA

OVERSIGHT OF ADHERENCE WITH DUTIES ARISING FROM THE COMPLIANCE PROGRAM

The following person is responsible for monitoring compliance with the duties arising from this compliance program, as well as monitoring the effective implementation of the program:

Name:	
Position:	
Contact number:	
E-mail:	

Note: Some companies can opt for external advisors - lawyers or other consultants who have experience in this field, as a form of additional procedure. In that case, it is necessary to have an internal procedure for contacting this person - through the person in charge of compliance, through the internal legal team or, for example, directly.

EMPLOYEE TRAINING

The employee training of in order to effectively and fully implement the competition compliance program of company XX rules will be conducted in accordance with the Training Plan and Program, which is an integral part of this program.

Recommendation: In order to ensure the most effective implementation of the compliance program, regular training of employees is recommended, in-person or online. Training should be conducted at least once a year, and it is advisable that new employees go through the training in the process of familiarizing themselves with company procedures and ways of doing business.

Competition compliance training is recommended for **existing and new employees,** especially those whose job description include tasks in which competition infringements can occur (for example, employees who are in charge of the pricing policy, employees who are in charge of collecting information about competitors, employees who come into contact with competitors, company management, especially directors and persons authorized to conclude contracts).

It is recommended that a special document is drawn up - a training plan and program which, if necessary, can be easily changed, supplemented, and refined, without the need to make changes to the Compliance Program itself. Some suggestions regarding this are given in a separate section of this model.

Note: regarding the training materials, you can familiarize yourself more closely with the Guidelines for Drafting Competition Compliance Programs, which are available on the website of the Commission for the Protection of Competition.

INTERNAL PROCEDURES IN CASE OF IDENTIFIED RISKS

Internal procedures and lines of communication in the event of a perceived risk of occurrence or a competition infringement are defined in more detail by a separate internal document, separately attached, which forms an integral part of this program and binds all employees of the company.

Note: In order to ensure the effective implementation of the compliance program, there needs to be a mechanism for reporting potential problems related to the application of competition rules by employees. Such a mechanism must be part of the compliance program, where the organizational structure of the company itself and the different responsibilities of individual organizational parts and individual employees must be taken into account. Depending on the size and structure of the company, it should be clearly defined to whom employees can turn if there is a risk or potential risk of competition infringement. The training program should also include training on internal procedures in the event of a perceived risk (how employees should act, who to turn to for advice or help, and how to avoid such or similar risks in the future).

Recommendation: For the same reasons as with the employee training program - it is recommended that in connection with internal procedures and the line of communication, in case of an infringement or perceived risk of an infringement, a special internal act should be passed that would form an integral part of the entire competition compliance program.

BRIEF REMINDER

It is encouraged that employees have a short list of risks that they should pay attention to in regular communication and business. The following list is one of the possible suggestions:

1. Dealings with competitors, in particular agreements about prices, market allocation, or participation in public procurements, pose competitive problems.
2. Dealings with competitors, in particular agreements about prices, market allocation, or participation in public procurements, pose competitive problems.
3. If you attend a meeting where competitors agree on pricing or other commercially sensitive information or exchange views on these issues, it is necessary to immediately disassociate (distance) yourself unequivocally from the discussion and recluse yourself from the conversation, i.e., leave the meeting in which they continue, by making abundantly clear to others that you do not want to take part in any such agreement. Only under such conditions and in those circumstances can you avoid responsibility for the resulting competition violations. Adopting a passive approach during the meeting or subsequent non-application of an agreement following the meeting does not absolve you of responsibility.
4. It is prohibited to incite, reward, or in any way discipline distributors to maintain resale prices of goods or services, both at the wholesale and retail level.
5. It is necessary for each undertaking to independently fix the prices of goods or services that it offers to its buyers.
6. If a company holds a dominant market position or could be considered to hold a dominant position on any given market, the company should pay particular attention to its operations to avoid any abuse.
7. It is desirable to review business contracts and amend them if found to contain restrictive provisions, in particular hardcore restrictions of competition or prohibited provisions under block exemption regulations. Behaviours that may represent such restrictions of competition pose competitive problems, even when not explicitly agreed upon.

It is desirable to consult with experienced competition lawyers (or other consultants) when faced with a dilemma on the application of competition rules or when some of the risks to company operations are detected.

IMPORTANT CONTACT DETAILS

1) Person in charge of monitoring compliance:
2) Legal advisor:
   Contact information of the Commission for the Protection of Competition
   Savska 25 / IV, 11000 Belgrade, Republic of Serbia
   Phone: + 381 (0) 11 38 11 911
   E-mail: office.kzk@kzk.gov.rs, www.kzk.gov.rs

"Leniency program" - receiving applications and requests: leniency@kzk.gov.rs, phone: 011/3811951

ORGANIZATIONAL CHART OF THE COMPANY XX

Recommendation: As an integral part of the competition compliance program, in the appendix, there could be an organizational structure of the company, in the form of an organizational chart, or in another suitable form. This would be in the function of a more efficient realization of the line of communication through which information about the perceived risk of occurrence, or the resulting competition infringement, would be forwarded more quickly and efficiently to the person authorized to process such information.

BUSINESS GOALS OF COMPANY XX

Recommendation: Given that the so-called "zero step" in the creation of the competition compliance program should represent a clear definition of the company's business goals, as well as the fact that the compliance program itself is part of a broader program and risk management strategy, it might be useful to, in brief and perhaps without too much detail, list the basic business goals of the company. Those goals may differ depending on the relevant markets in which the company operates, as they may be different for certain markets and in certain periods of the company's operations.

RELEVANT MARKETS WHERE THE COMPANY XX IS PRESENT

Recommendation: Companies can operate in more than one market, in which there may be different business conditions, different "sets of regulations" that apply to such operations, and the company may have different market positions *(market shares)* in different markets. It may happen that a company may have greater market power in one of the relevant markets - a dominant position *(or a position very close to dominant),* and therefore in that market it has "special responsibilities" for the acts and actions it carries out in its business on such a market. In addition, companies can appear in different markets in different roles (producer, supplier, buyer of raw materials, distributor of another manufacturer's finished product, exclusive distributor, member of a selective distribution chain, wholesaler and/or retailer of own product, etc.)

In order to draw the special attention of employees to markets where there are increased risks of competition infringements, i.e. to acts or actions that in certain markets may cause a greater risk of competition infringements, it is recommended that the compliance program itself lists the markets where the company business (or different segments of business for which different rules apply).

In addition to simply listing the relevant markets, it would be good to list at least some basic assessed risks in the implementation of acts and actions of employees in those markets, which may lead to competition violations. In this way, employees get a much clearer picture of their obligations arising from the competition compliance program itself.

BASIC RISKS THAT COULD ENDANGER OR HINDER THE REALIZATION OF BUSINESS GOALS OF COMPANY XX

- ***General risks*** - in defining the general risks of competition infringements, you can seek guidance in the Guidelines for Drafting Competition Compliance Programs.
- ***Risks specific to individual organizational units***

Recommendation: In order for the program itself to be more "complete" and easier to implement, and therefore to produce the results that are expected from such a program, it would a good idea to review, in as much detail as possible, the risks to which the employees themselves are exposed in the performance of their duties, which may lead to competition infringements.

INTERNAL PROCEDURES AND COMMUNICATION LINES FOR COMMUNICATING AND INFORMING WHEN RISKS OCCUR

Internal procedures and lines of communication are an extremely important part of the Compliance Program. Without clearly defined and detailed internal procedures and a fully effective line of communication - it is not to be expected that the Compliance Program will produce the desired results. Every employee, especially those who are best or first placed to notice the risk of infringement and/or the resulting competition infringement, should know: what to do in that case and how to do it; to whom they should forward this information and how and the way they receive feedback and instructions for possible further action in order to remove the risk or eliminate the infringement. Clear and direct lines of communication within the company help achieve this goal.

PLAN AND OVERVIEW OF COMPETITION TRAINING OF EMPLOYEES

The employee training plan and program should, as a minimum, include:

- List of employees by individual organizational units who have a work obligation to participate in training;

- Plan of topics that will be covered in employee training - training should, as a minimum, cover risks related to restrictive agreements and the exchange of commercially sensitive information;

- Training schedule (in any case, it would be necessary to plan: a regular training at least once a year for all employees whose work is associated with a possible risk of infringement of competition; occasional training in special cases - e.g. changes in regulations, renewal of acquired knowledge and/or possible checks of acquired knowledge;

- The same plan should prescribe, determine the time and content of the training of new employees.

- Prescribe the method of informing the management about the planned and implemented trainings

- Other topics that the company considers to be related to the implementation of employee training

FORM OF EMPLOYEE STATEMENT ON ACCEPTING THE OBLIGATIONS ARISING FROM THE COMPETITION COMPLIANCE PROGRAMME

After the competition compliance program is adopted, it is necessary to familiarize employees with it. It is encouraged that the employees sign a special statement confirming that they are familiar with the Program and that they accept the obligations arising from that program in relation to them/their workplace/the jobs they perform in the company.

APPENDIX 2 – COMPETITION CHECKLIST - DOMINANT POSITION AND ABUSE

STEP ONE – Does the company have a dominant position?

A dominant position is held by a market participant who, due to its market power, can operate on the relevant market to a significant extent independently of actual or potential competitors, customers, suppliers or consumers.

A dominant position can exist regardless of whether the company is classified as a small, medium or large enterprise, regardless of the number of employees and depends on the specific market in which the company operates, which is why it is necessary to carefully assess whether the company can, for some parts of its business, to be considered a dominant participant in the market.

Companies that operate in several relevant markets may be in a dominant position in some markets, while in other markets they are not in such a position. For these and other reasons, it is necessary to correctly determine the relevant market on which the position of the company and its market power (strength) are assessed. For this purpose, it is necessary to apply the Law on Protection of Competition[50] and the Regulation on Criteria for Determining the Relevant Market.[51]

The wording: "to a significant extent independently..." should be interpreted as a situation in which some market participant, starting from his market power, makes business decisions regarding market performance and commercial conditions under which he operates, especially decisions regarding prices, volumes production and marketing of their products, without fearing the outcome and consequences of their decisions that could occur due to competitive pressure and market response from competitors, suppliers, customers or consumers.

Market shares, volume of turnover and revenues from operations on the relevant market are not the only parameters on the basis of which it is estimated whether a company is in a dominant position. A market share of 40 percent or more in the relevant market does not create a legal assumption of a dominant position, but it is a significant indicator that points to the need to carefully determine whether a specific company has or does not have such a position on the market by analyzing and evaluating other parameters.

The importance and necessity of assessing the existence of a dominant position of a company is significant when it is taken into account that companies in a dominant position have a special responsibility, when it comes to competition protection, for their business decisions and business policies that they implement in the market/markets where they operate.

In the analysis and assessment, it is necessary to pay increased attention to other markets in which the company operates, but in which it is not in a dominant position, because there is always the possibility that the effects of dominance from one market "spill over" to other markets and that they manifest the negative effects of abuse of dominance.

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[50] See Art. 6 of the Law on Protection of Competition

[51] ("Official Gazette of the RS", No. 89/2009)

For all the above reasons you need to check whether the company has such market power/market position that it can be considered a company in a dominant position.

Answers to the following questions can help in such an analysis and assessment:

	YES	NO
Is the structure of the relevant market such that the company is the only one on the market or significantly larger than its competitors?		
Does the company have greater economic and financial strength than competitors?		
Is the company the largest company in the particular market?		
Is the company a market leader?		
Can it be said that the company has more than 40% market share?		
Is the company, unlike its competitors, vertically integrated (it has its own resources for production and further distribution - its own sales network), so that it competes with its customers on the downstream market?		
Are there significant (legal, economic or other objective and realistic) obstacles for another participant to enter the same market?		
Does the company have significant advantages in accessing supply and distribution markets compared to competitors?		
Does the company have significant technological advantages (in terms of production technologies, R&D, innovation, etc.) compared to competitors?		
Does the company have intellectual property rights that are significant in the market in which it operates?		
Are the buyers or suppliers predominantly medium or small companies that operate on the market completely independently (mutually unconnected in some form of association of buyers or suppliers)?		

If the answer to one or more questions is YES, and especially to one of the first five questions, there is a possibility that the company has a dominant position, and in that case it is desirable to make a risk exposure assessment in terms of the risk of abuse of a dominant position.

If the company operates in several markets, these questions need to be examined for each market and each level at which the company operates (for example: manufacturing, wholesale, distribution, retail, after-sales service and spare parts).

If the conditions in the first step are met, that is, if the company is likely to have a dominant position, the next step should be taken.

If it is assessed that the company does not have a dominant position, until the eventual change of circumstances, there is no greater need for the company to review and adjust its operations in terms of the risk related to potential abuse of a dominant position.

STEP TWO – Is there behaviour that could constitute abuse?

Abuse of a dominant position on the market is prohibited. There is no unequivocal and definitive list of behaviours that can represent abuse, but abuse can be considered the behavior of a dominant market participant who competes on the market with methods different from those that represent normal competition. Abuse of a dominant position is an objective concept that refers to the behaviour of a dominant participant in the market, which affects the structure of the market in which, due to the presence of such a participant, the degree of competition is weakened and whose behaviour hinders the maintenance of the level of competition that still exists or the growth of that competition.

Check whether the conduct of a company that has or may have a dominant position can be considered abusive, through the following questions:

	YES	NO
Does the company directly or indirectly impose unfair buying or selling prices?		
Does the company directly or indirectly impose other unfair business conditions?		
Does the company conclude exclusive contracts with customers or suppliers?		
Does the company achieve long-term customer loyalty or retention in other ways (eg, high loyalty rebates)?		
Does the company undertake business strategies aimed at excluding competitors from the market?		
Does the company limit production, market or technical development in any way by its business decisions?		
Does the company apply unequal business conditions to the same transactions with different market participants? As a consequence of this, are certain market participants put at a disadvantage compared to their competitors?		
Does the company condition the conclusion of agreements by imposing on the other party additional obligations that by their nature or according to commercial customs unrelated to the subject of the contract?		
Does the company refuse, without objective justification, to do business with a business partner regarding a product or service that is objectively necessary for market participants to compete effectively in a downstream market?		
Does the company charge excessive prices (prices that are not based costs)?		

	YES	NO
Does the company apply predatory pricing (below the level of unit or marginal cost, knowingly making a loss), in order to squeeze out of the market competitors who are unable to operate at such a low price?		

If the answer to one or more questions is YES, there is a possibility that the company is exposed to the risk of abuse of a dominant position. In that case, for each of the business policies that represent a risk, it is necessary to assess whether there is an objective reason that could justify the actions of the dominant company.

APPENDIX 3 – COMPETITION CHECKLIST - RESTRICTIVE AGREEMENTS

Restrictive agreements are agreements between market participants (undertakings) that have as their object or effect significant prevention, restriction or distortion of competition in the territory of the Republic of Serbia. They can be contracts, individual contractual provisions, express or tacit agreements, concerted practices, as well as decisions of associations of undertakings.

Any company can enter into restrictive agreements, so antitrust provisions should be included in any compliance program. Same or different types of behavior may be more or less risky in different commercial relationships, so it is necessary to identify and distinguish risks that occur in relations with competitors and risks that occur in relations with customers or suppliers.

PART ONE - Horizontal relations - relations with competitors

A horizontal agreement is an agreement between competitors, that is, participants who are at the same level of the production or distribution chain. Competitors include actual competitors (a market participant who currently operates in the same relevant market) and potential competitors (a market participant who could in a short period of time bear the necessary additional investments or other necessary costs to enter the relevant market due to a small but more permanent increase the price).

Check whether the company is exposed to **risk in relation to competitors**, through the following questions:

Does the company (or any employee of the company) with competitors (or any employee of a competitor):

	YES	NO
fix prices?		
talk about price ranges, fixed prices, minimum or maximum prices?		
exchange price lists that have not yet entered into force?		
talk about recommended prices?		
discuss pricing parameters or pricing policy?		
discuss increasing or decreasing margins or rebates?		
discusses price increases or decreases?		
announce planned price increases or decreases at meetings or gatherings with competitors?		
discuss and/or agree a change in the volume of production or sales?		
agree not to produce or sell more than the agreed quantity?		
agree to reduce the production of some/all products or the provision of services?		
arrange activities aimed at certain competitors leaving the market?		
negotiate the necessary consent or approval from competitors to expand/reduce the scale of production?		
coordinate the scope of sales, territory in which, or customers/groups of customers to whom, goods or services will be sold?		
agree on industry standards?		
agree on forfeiting a part of the market to competitors?		
agree on participation in public procurement procedures?		
coordinate future outcomes of the public procurement procedure?		
agree on mutual non-competition in certain territories or with regard to certain customers or categories of customers?		

	YES	NO
agree to boycott a customer or supplier together?		
exchange business sensitive information (strategic business information)?		
communicate about prices, especially future prices?		
communicate intended business strategies?		

If the answer to one or more questions is YES, there is a possibility that the company is exposed to the risk of colluding with competitors. Agreements between competitors pose the most serious risks of infringement of competition and generally fall under the most serious infringements of competition.

If the risks described above have been identified, you can find out about the conditions for exemption from the payment of measures for infringement of competition (Leniency program): https://www.kzk.gov.rs/en/leniency-program

PART TWO - Vertical relationships – relationships with suppliers or customers

Vertical agreements are agreements between undertakings who are not mutual competitors, that is, concluded by market participants who, for the purposes of the agreement, operate at different levels of the production or distribution chain. These agreements refer to the terms under which companies can buy, sell or resell certain goods and/or services.

Check whether the company is exposed to risk in terms of relationships **with suppliers or customers,** through the following questions:

	YES	NO
Does the company directly or indirectly limit the rights of the buyer/distributor to freely determine the price of the product in resale?		
Are the sales incentives used by the company aimed at maintaining a certain price level?		
Do buyers/distributors suffer negative consequences if they do not adhere to prices or receive benefits if they maintain recommended prices in further sales?		
Does the company in its relationship with its suppliers have a direct or indirect limitation of the right to freely determine the price of the product in resale?		
Does the company have negative consequences from its suppliers if it does not adhere to the prices or does it get benefits if it maintains the recommended prices in further sales?		

	YES	NO
Does the company limit the territory in which the buyer/distributor can sell the products that are the subject of the agreement?		
Does the company in its relationship with its suppliers have a territory limitation in which it can sell the products that are the subject of the agreement?		
Does the company restrict the buyer/distributor to sell the contract products only to a certain group of end customers?		
Does the company have a restriction in its relationship with suppliers that it can only sell contractual products to a certain group of end customers?		
Does the company have an established selective distribution system (distribution system in which the seller undertakes to sell contractual products or services, directly or indirectly, solely to distributors selected on the basis of special criteria, and the distributor undertakes not to wholesale those goods or provide services to distributors outside established distribution system)?		
Does a company operating under a selective distribution system restrict members operating in the retail market from actively or passively selling the contract product to end users?		
Does a company operating within a selective distribution system restrict members from mutual supply between members of a selective distribution system, including supply to members who do not operate at the same level of sales?		
Does the company restrict a parts seller who sells those parts to the company to build a new product from selling those parts as replacement parts to end users or repairers or other service providers not authorized by the company to repair or service its products?		
Does the company operate as an exclusive distributor or seller?		
Does the company have an exclusive distributor or seller?		
Does the company have a non-compete agreement with a supplier or customer for a period longer than five years?		

Typical restrictions in vertical agreements are listed in the Regulation on agreements between market participants operating at different levels of production or distribution that are exempt from the ban ("Official Gazette of RS", No. 11/2010), which refers to vertical agreements.

In the event that the answer to one or more questions is YES, it should be checked whether the conditions stipulated by the said regulation for the block exemption of agreements from the prohibition are met, and if they are not, the possibilities of individual exemption of the agreement from the prohibition should be considered.

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