

Pursuant to Article 21, paragraph 1, item 5) of the Law on Protection of Competition ("Official Gazette of the Republic of Serbia", no. 51/09, 95/13), and Article 19, paragraph 1, item 1) of the Statute of the Commission for the Protection of Competition ("Official Gazette of the Republic of Serbia", No. 49/09), Council of the Commission for the Protection of Competition at the 120th session held on April 7, 2023 brings the following

INSTRUCTIONS ON THE CONTENT AND METHOD OF SUBMITTING REQUESTS FOR DETERMINING DATA PROTECTION MEASURES

This instruction shall regulate in more detail the content and method of submitting a request for determining the measure of protection of data sources and/or specific data, prescribed by the provisions of Article 45 of the Law on Protection of Competition (for the purposes of this instruction: request for data protection).

Data protection shall imply that the protected data will not be made public, that is, that they will be omitted from the decisions and acts of the Commission for the Protection of Competition (hereinafter: Commission) that are publicly published, as well as that they cannot be viewed or copied when inspecting the case files, regardless of whether the original documents are in printed or electronic form, in Serbian or a foreign language.

Protected data shall not have the property of information of public importance in the sense of the law regulating free access to information of public importance.

Data Protection Applicant

The request for data protection can be submitted by the party, the petitioner of the initiative for investigation of competition infringement and the third party who submitted, that is, made available for inspection the requested data in the procedure before the Commission.

Applicants requesting opinion regarding the application of regulations in the field of competition protection cannot submit this request, unless they submit certain data at the request of the Commission.

Subject of Protection

The request for data protection can refer to the source of the data and/or to the data itself.

The protection of data sources shall imply the protection of data about the applicant, that is, about the one who submitted the data to the Commission (e.g. first and last name, name and other data), that is, from whom the applicant obtained the data or who submitted the data thereto.

The request to protect the identity of the initiator shall be a request to protect the data source.

Parties to the proceedings cannot demand that their identity be protected as a data source.

Data that cannot be Subject to Protection

Data that has already been published and is available to the public, that is common knowledge or easily accessible to persons who, in the course of their activities, usually come into contact with such data and other persons, or that is publicly available in any other way, cannot be subject to

data protection. Data that can be obtained by paying for access services to databases, official records and registers (e.g. registers of companies) are considered publicly available data.

The Commission will consider publicly available data from studies, market research, etc. which are publicly published or available to third parties on the market (on sale).

The subject of data protection cannot be data on the attorney in the proceedings, the name and date of the conclusion of the concentration act, the name of the act for which an individual exemption from the ban or other transactional act is requested, data resulting from the assessment and/or analysis of the Commission, data from publicly available annual financial statements and/or conclusions obtained on the basis of these data, etc.

Data that have lost their commercial significance, for example due to the passage of time (especially for a period longer than five years), will not be considered eligible for protection, unless the applicant proves otherwise.

The data protection applicant shall be responsible for the claim that it such data is not publicly available.

Protection of Trade Secrets

Data representing a trade secret in accordance with the regulations governing the protection of trade secrets shall be protected as a trade secret.

If the applicant for data protection refers to the protection of trade secrets, it is necessary to state in the request the regulation and the explanation according to which the data in question represents a trade secret.

Protection of Other Confidential Data

If the subject is the protection of other data that one considers confidential, the applicant shall be obliged to state the basis and reasons for the confidentiality of the data.

Confidential data that is not a trade or other secret in accordance with the law governing trade secrets shall be considered data whose publication or disclosure could cause significant damage to the applicant for data protection or another person to whom the data relates. Such data is particularly considered to be data on market participants' know-how, production secrets and procedures and production costs, sources of supply, volume and value of production and sales, market shares, suppliers, customers and distributors, business and marketing plans, sales policy and strategy, strategic decisions, cost structure and price structure, etc.

Depending on the circumstances of each specific case, data on the basis of which it is possible to determine the identity of the petitioner of the initiative for the investigation of the infringement of competition or other persons who submit data or information to the Commission at its request, and who justifiably wish to remain anonymous and whose publication could cause significant damage to a natural person or market participant shall be deemed confidential data.

Content of the Request

In the request, the applicant is obliged to make the possibility of significant damage likely due to the disclosure of the source of the data, i.e. the data to which the request refers, as well as to provide an assessment of the type and amount of damage that could occur due to the disclosure of the data (quantification of the damage).

It is necessary for the applicant to precisely state the data whose protection is sought (data specification), stating the reasons on the basis of which it is claimed that each data represents a trade secret or other data that one considers confidential, as well as the evidence for the statements thereof, with an indication in which part of the submission they are contained (indicating the page, paragraph, section, number, etc.).

In addition to the above, the applicant shall be bound to prove in the request that his/her interest is justified and that it is significantly greater in importance compared to the interest of the public regarding the subject of the request.

The following shall be enclosed with the data protection request:

- an anonymized version of each submission that contains information whose protection is sought (e.g. merger notification, restrictive agreement), i.e. a version/copy of each submission in which the data whose protection is requested is omitted or anonymized (for example marked with: „CONFIDENTIAL “, „XXX “, [...] or in other suitable manner). The Commission will replace market shares with ranges in accordance with the Decision on the manner of publication of decisions and acts and on the replacement, i.e. omission (anonymization) of data in the decisions and acts of the Commission for the Protection of Competition,
- the original power of attorney, if the request is submitted through an attorney, unless the power of attorney has already been submitted and is in the case file.

The Commission will consider other requests as incomplete requests that cannot be acted upon, and will send a request for clarification/call for correction of the submission under the threat of rejection in accordance with the Law on General Administrative Procedure.

Filing the Request

The request for data protection shall be submitted simultaneously with the filing of the submission containing the data whose protection is requested.

If the request for data protection is submitted after the Commission's decision has been made and published on its website, the Commission will not be held responsible for any damage caused by the publication of a decision in which data has not been replaced or omitted (anonymized).

If the request for data protection is submitted after the Commission's decision has been made and published on its website, the Commission will not be held responsible for any damage caused by the publication of a decision in which data has not been replaced or omitted (anonymized).

Until a decision is made on the submitted request for data protection, the Commission will not publish or make available to third parties and the public, the data that is the subject of protection.

When deciding on the submitted request, the Commission will take into account the circumstances of each specific case, especially taking into account whether it is decisive data for making a decision (for example, whether competition infringement has been committed, and the probative strength of the data; whether the data are necessary, i.e. whether the factual situation cannot be properly established without them; whether it concerns data that represents essential information

necessary for the assessment of the origin of the concentration, the determination of the relevant market and the assessment of the effects of the concentration).

Attached to this instruction is a non-binding form of Request for data protection.

This instruction shall enter into force on the eighth day after its publication on the Commission's website.

PRESIDENT OF THE COMMISSION

Nebojša Perić, m.p.

DATA PROTECTION REQUEST FORM

REPUBLIC OF SERBIA

COMMISSION FOR PROTECTION OF COMPETITION

25/IV Savska Street, Belgrade

Subject: Request for data protection in case/procedure number XXX

Applicant:

Business name (seat name and address)	
Name and surname of the responsible person or representative	
Company/registration number	
Phone number of the contact person or representative	
Electronic address (email) of the applicant, i.e. the contact person or representative	

Note: In line with Article 45 of the Law on Protection of Competition, the Request for Data Protection, can be submitted by a party to the proceedings, a person who is the petitioner of the initiative for the examination of the infringement of competition or a third party who submitted, that is, made available for inspection the requested data to the Commission based on the order of the Commission for the provision of data.

Specification of data to which the request refers:

(example)

1. Data on _____ contained in _____
2. Number of sold units _____ contained in _____
3. Annex no. _____ attached to the submission/request supplement as of _____

Note: It is necessary to specify the data for which protection is requested (data specification). The data is specified by writing which data is in question, i.e. describing what type of data it is (*e.g. revenue from the sale of goods/services, list of business partners, data on customers and suppliers, content of agreements/concentration acts, etc.*). It is also necessary to indicate where they are located (*e.g. page 2 of the submission, item (part) 9 of the merger notification, attachment 4 to the Request, etc.*). It is recommended to enumerate the data (by ordinal numbers). If the data for which protection is requested is only marked in an anonymized version or is stated in general terms (*e.g. "all data" or "entire request"*), the Commission will send a request for clarification/call for correction of the submission under threat of rejection. Data that is publicly available, published or otherwise publicly communicated (*e.g. data published in registers available in BRA, data contained in product declarations, data published on the Internet, etc.*) will not be protected.

Reasoning of the request - reasons for data protection:

Note: It is necessary to justify the request so that it further follows that it is necessary to protect the requested data, that is, that the interest of the applicant is justified and that it is significantly greater in importance compared to the interest of the public regarding the subject of the request for data protection. It is necessary to state in the request the reasons why it is considered that the specified data are a trade secret or deemed confidential, i.e. commercially sensitive (for example, data on _____ are part of the applicant's basic *commercial/business* strategy; data on _____ are a *trade secret/confidential/not available to third parties*, their disclosure/making available/making them available for inspection could cause damage in the form of ..., which is greater than the interest of the public to discover the data that is the subject of the request, etc.). It is not enough to generically state that it is a trade secret while citing the provisions of the Law on the Protection of Trade Secrets.

When deciding on the submitted request, the Commission will take into account the circumstances of each specific case, especially taking into account whether it is decisive data for making a decision (for example, whether competition infringement has been committed, and the probative strength of the data; whether the data are necessary, i.e. whether the factual situation cannot be properly established without them; whether it concerns data that represents essential information necessary for the assessment of the origin of the concentration, the determination of the relevant market and the assessment of the effects of the concentration).

Damage quantification:

By publishing or making available data on _____, damage may occur for the applicant that amounts to/exceeds the amount of _____ RSD/EUR.

Note: It is necessary to provide an estimate of the amount of potential damage that would occur as a result of the publication of all data for which protection is requested, and it is possible to provide an estimate of the amount of potential damage for each category of data or for each requested data. In line with Article 45, paragraph 2 of the Law on Protection of Competition, the applicant is obliged to make probable in the request, the possibility of significant damage due to the disclosure of the source of the data, that is, the data to which the request refers. The assessment can be given either nominally or descriptively (for example, in the value of the transaction; in the value of the contract, etc.)

1. Attachment Anonymized version¹ of the submission containing the requested data;
2. The Power of attorney, if the request is submitted through an attorney whose power of attorney is not included in the case files.

Place and date:

Applicant's signature

¹ The anonymized version is the version/copy of the submission in which the data for which protection is sought has been omitted. They may be marked "CONFIDENTIAL", "XXX" or in another convenient manner. The Commission will replace market shares in accordance with the Decision on the manner of publication of decisions and acts and on the replacement, i.e. omission (anonymization) of data in the decisions and acts of the Commission for the Protection of Competition.