

Republic of Serbia

COMMISSION FOR PROTECTION OF COMPETITION

Number: 5/0-02-563/2016-01

Date: August 2, 2016

Belgrade

Pursuant to Article 35(2) of the Law on Protection of Competition (“Official Gazette of the RS”, no. 51/2009 and 95/2013), the President of the Commission for Protection of Competition, enacts the following

C O N C L U S I O N

I THE PROCEEDING for investigation of competition infringement ex officio **IS INSTITUTED against:**

the Distribution System Operator EPS Distribucija d.o.o. Beograd, with registered head-office at 1-3, Masarikova Street, Belgrade-Vračar, against power of attorney by Bojan Atlagić, Acting General Manager,

for ascertainment of act relating to the abuse of a dominant position, pursuant to Article 16 of the Law on Protection of Competition.

II All parties in disposal of data, documents or other relevant information that might contribute to establishing of fact-finding in this proceeding are invited to submit the said to the Commission for Protection of Competition to the following address: 25, Savska Street, Belgrade.

III This conclusion shall be published in the “Official Gazette of the RS”, and on the Internet page of the Commission for Protection of Competition.

R a t i o n a l e

The Commission for Protection of Competition (hereinafter: the Commission) on April 11, 2016 received the initiative for instituting competition infringement proceeding, referenced in the Commission under no. 5/0-03-326/2016-1, submitted against the Distribution System Operator EPS Distribucija d.o.o. Beograd (hereinafter: EPS Distribucija). The initiative stated that EPS Distribucija discriminates commercial electricity suppliers by placing the Electric utility power company of Serbia PC Belgrade – Subsidiary EPS Supply (hereinafter: EPS Snabdevanje

company) in more favorable position in contracting electric power distribution system access. The applicant of initiative states that the EPS Distribucija is contracting standard contracts on electric power distribution system access, whereby envisaging commitment for all commercial suppliers to deposit funds on deposit (guarantee) account when contracting system access as account security payment on system access services. Pursuant to listing from initiative, this commitment is not envisaged solely for the EPS Snabdevanje company, even in the case when this company carries out commercial supply activities. In such manner, as per opinion of the initiative applicant, all commercial electricity suppliers, apart from the EPS Snabdevanje company, have significant operating capital in retained, thus placing the EPS Snabdevanje company in favorable position against other relevant market undertakings, while the EPS Distribucija, as a sole electric power distribution system operator in the Republic of Serbia is abusing a dominant position.

Amendments to the initiative submitted on April 19, 2016, pointed to the Commission to other form of possible discrimination of commercial electricity suppliers by the EPS Distribucija company. The amendments listed that one of the EPS Distribucija company commitments as per Contract on distribution system access, is data acquisition from measuring devices and related data delivery to the suppliers. According to the amendments to initiative listing, the initiative applicant, as commercial electricity supplier, measured data is delivered 15 days overdue, which causes commercial suppliers operating problems.

Attached to the initiative are documents evidencing stated by the applicant, among which is the copy of Contract on electric power distribution system access that the EPS Distribucija company is contracting with distributive system users – the suppliers.

Aimed at investigating the admissibility of initiative, i.e. fulfilment of legal conditions for possible institution of proceedings ex officio for investigating competition infringement, the Commission sent the request for providing information to the Energy Agency of the Republic of Serbia, as regulatory authority with competences covering electricity, natural gas, oil and oil product, and CHP heat energy sectors. Also, the request for providing information was also submitted to the company, the subject of instituted initiative.

Based on collected data, information and documents, the Commission made an ascertainment that listed statements in the initiative are admissible, and considering that data, information or documents that might ascertain to alternative conclusion are not established during the proceedings of investigating admissibility of the said initiative, reasonably assumed the ascertainment of competition infringement that as purpose or effect have or may have a significant restriction, distortion, or prevention of competition. Imposing commitments by EPS Distribucija for all commercial suppliers apart from EPS Snabdevanje to deposit funds on deposit (guarantee) account when contracting system access as the account security payment on system access services, as well as unequal option of accessing data at disposal of EPS Distribucija that are considered important for distributive system suppliers operating, can constitute acts of competition infringement pursuant to Article 16 of the Law on Protection of Competition (“Official Gazette of the RS”, no. 51/2009 and 95/2013 – hereinafter: the Law), whose ascertainment shall be investigated and determined by the Commission pursuant to Article 41 of the Law.

Considering the assessment on fulfilment of conditions pursuant to Article 35(1) of the Law

relating to instituting proceeding on competition infringement investigation ex officio, in accordance with the provision of Article 35(2) of the Law, it is decided as in Paragraph I and II of enacting terms.

Pursuant to provision of Article 40(1) of the Law, envisaging publication of conclusion on instituting proceeding ex officio in the “Official Gazette of the RS” and on the Internet page of the Commission, it is decided as in Paragraph III of enacting terms.