

## Republic of Serbia

### COMMISSION FOR PROTECTION OF COMPETITION

Number: 5/0-02-233/2012-12

Date: August 9, 2012

Belgrade

Pursuant to Article 74 of the Law on Protection of Competition (“Official Gazette of the Republic of Serbia, no. 51/09), Article 33(1) of the Law on Protection of Competition (“Official Gazette of the Republic of Serbia, no. 79/05) and Article 192 of the Law on General Administrative Procedure (“Official Gazette of the Federal Republic of Yugoslavia, no. 33/97 and 31/01, and “Official Gazette of the Republic of Serbia”, no. 30/2010), acting on enforcement of ruling of the Administrative Court no. 15 V 12773/11 (2009), from February 28, 2012, and deciding on renewed proceedings instituted ex officio for investigating abuse of a dominant position against the Joint-stock company “Mlekara” from Subotica, with registered head-office at 10, Tolminska Street, Subotica, against power of attorney by Milan Grujić, General Manager, and Joint-stock company Milk and Dairy Industry “Imlek” from Belgrade, with registered head-office at bb, Industrijsko naselje, Padinska Skela, against power of attorney by Slobodan Petrović, General Manager, via joint power of attorney of legal representatives, lawyers from Janković, Popović, Mitić Law Office, with registered head-office at 6, B-02, Milentija Popovića Street, Belgrade, the Council of the Commission for Protection of Competition on its 99<sup>th</sup> Session held on August 9, 2012, enacts the following

#### DECISION

**1. IS DETERMINED** that joint-stock companies “Mlekara” from Subotica, with registered head-office at 10, Tolminska Street, Subotica, and Milk and Dairy Industry “Imlek” from Belgrade, with registered head-office at bb, Industrijsko naselje, Padinska Skela, as a single undertaking, hold a dominant position on the relevant market of buying raw (cow) milk intended for further industrial processing in dairy farms on the territory of the Republic of Serbia.

**2. IS DETERMINED** that joint-stock companies from Paragraph I of enacting terms of this decision have abused a dominant position on the relevant market of buying raw (cow) milk intended for further industrial processing in dairy farms on the territory of the Republic of Serbia:

a) by imposing unfair business conditions in manner such are:

- In standard type contract concluded with milk producers relating to milk production, delivery and purchase, Article 6.1 envisaged that the purchase price of raw milk shall be established based on the price list, enclosed as Annex 2 of the said contract, not envisaging conditions for alternation of the price list terms, nor the right of producers to unilateral termination of contract under reasonable conditions in case of unsatisfactory purchase price;

- In standard type contract concluded with milk producers relating to milk production, delivery and purchase, Article 7.2 envisaged that verification of raw milk quality is performed in the dairy laboratory, and that the contracting parties are in agreement that findings of the dairy laboratory are considered as final for the purpose of contract implementation;
- In standard type contract concluded with milk producers relating to milk production, delivery and purchase, Article 10.1, Item 7 and 8, envisaged producer's commitment to immediately and without a delay inform the dairy on contacts with other dairy farms or milk buyers and business offers received from other dairy farms, milk buyers and other natural and legal persons;
- In standard type contract concluded with milk producers relating to milk production, delivery and purchase, Article 12 envisaged the right of unilateral contract termination by the dairy, stipulating commitment of the producer to compensate the dairy for any damage caused as a consequence of contract termination due to producer's oversight, as opposed to Article 13.1 envisaging the right of contract termination by a producer, without contracted commitment related to compensation of damages, only in cases when dairy fails to collect raw milk from the producer three or more days repeatedly, except when the producer is informed on the matter or the collection is cancelled on reasonable grounds, or in the case when the producer does not receive payment for delivered raw milk of a satisfactory quality, pursuant to Article 6 of the Contract;
- In contracts on allotment of heifers and contract on credits, the producers have been conditioned to take a commitment related to the whole delivery of produced quantities of milk for determined period of time, and not solely of the milk collected from the allotted and received heifers, or heifers purchased on the credit.

and

b) by implementing unequal business conditions for alike operations with different undertakings, in manner such are:

- In Article 4 of the Contract on buying and selling of raw cow milk concluded with PC "Đuro Strugar", i.e. "Đuro Strugar" Ltd, specifically determined the manner of price calculation for collected milk quantities, and in Article 5 of the Contract envisaged option of altering prices during the year, regulated via annex ratification between contracting parties;
- In Article 7 of the Contract on buying and selling of raw cow milk concluded with "PKB" Corporation specifically determined the right on control analysis, implementing different instructions for raw milk sampling on chemical and microbiological examinations that are integral component of these contracts.

**III PROPOSAL IS REJECTED**, of joint-stock companies from Paragraph I of enacting terms of this decision related to presentation of evidence by professional forensic expertise review.

**IV** This decision shall be published in the „Official Gazette of the Republic Serbia“.