

Republic of Serbia

COMMISSION FOR PROTECTION OF COMPETITION

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Belgrade

INFORMATION

on submission of the proposed commitments that the company “Telekom Srbija” is voluntarily willing to undertake in order to eliminate possible competition infringements, including the invitation to all interested parties to submit written remarks, stances and opinions related to proposed commitments

ORION TELEKOM TIM d.o.o. company, with registered head-office at 93A, Nehruova Street, Belgrade, and Association of Internet service providers of Serbia, with registered head-office at 10, Toze Jovanovića Street, Novi Sad, on July 11, 2011, have submitted to the Commission for Protection of Competition (hereinafter: the Commission), the Initiative for investigation of competition infringement pursuant to Article 16 of the Law on Protection of Competition (“Official Gazette of the Republic Serbia” no. 51/09), related to the abuse of a dominant position on the market of wholesale of *ADSL* connection port, i.e. abuse of a dominant position of the operator with significant market power on the broadband Internet market, against the Telecommunication company “Telekom Srbija”, joint-stock company, with registered head-office at 2, Takovska Street, Belgrade (hereinafter: “Telekom Srbija” company, or party to the proceeding).

Based on information and data submitted in the Initiative and its related amendments, the Commission reasonably assumed the possibility of competition infringement pursuant to Article 9 of the Law on Protection of Competition that as the objective or consequence have or might have a significant restriction, distortion or prevention of competition. Due to the fulfillment of conditions from Article 35(1) of the Law, the President of the Commission, pursuant to Paragraph 2 of the said Article, enacted Conclusion no. 5/0-02-761/2011-1 dated October 6, 2011, on instituting proceeding for competition infringement investigation ex officio against “Telekom Srbija” company for determining abuse of a dominant position, pursuant to Article 16 of the Law.

Pursuant to Article 58(1) of the Law on Protection of Competition (“Official Gazette of the Republic Serbia” no. 51/09 and 95/13 - hereinafter: the Law), it is established that the Commission may enact a conclusion on the adjournment of investigation of competition infringement and determine measures referred to in Article 59 of this Law, if the party, based on the content of the conclusion on instituting proceeding, that is, facts established in the

proceeding, submits a proposal of obligations that is voluntarily willing to undertake in order to eliminate possible competition infringement, containing terms and conditions for taking the measure.

On August 7, 2014, “Telekom Srbija” company has submitted a document titled the Proposal of commitments the company is voluntarily willing to undertake in order to eliminate possible competition infringements. Proposal of commitments stated that the said cannot be assumed as, nor it represents and cannot be interpreted as recognition of “Telekom Srbija” company’s act in which competition infringement has been committed in any manner.

The commitments are suggested pursuant to the fact that two relevant markets have been considered as the case file before the Commission: wholesale service of *ADSL* broadband Internet access via copper twisted pair cable on the territory of the Republic of Serbia, and wholesale service of direct Internet access for international connection on the territory of the Republic of Serbia, as well as holding of a dominant position in the said two in period relevant to the case proceeding (2010 and 2011), in addition to the fact that in the proceeding before the Commission the following acts are determined as competition infringements:

- 1) Price/margin squeeze;
- 2) Implementation of unequal business operating conditions for alike operations performed by different undertakings (price discrimination);
- 3) Associating the wholesale service of *ADSL* broadband Internet access with awarding discounts to those Internet providers also acquiring the “Telekom Srbija” company wholesale service of direct Internet access, and
- 4) Contracting conditions pursuant to which the service of direct Internet access for international connection is provided by automatic prolongation of validity of contract for international connection to subsequent 3 years with awarded 40% discount for each increase in bandwidth, and other contract conditions.

“Telekom Srbija” company suggested the following commitments that is voluntarily willing to undertake in order to eliminate possible competition infringements:

1) Price/margin squeeze

a) “Telekom Srbija” company is taking on the obligation to when determining the proposal of new and/or amending current service costs related to the retail sale of *ADSL* broadband Internet access via copper twisted pair cable that is vertically integrated with the wholesale service market of *ADSL* broadband Internet access via copper twisted pair cable, in determining the “price/margin squeeze” use the “equally efficient operator” test.

b) “Telekom Srbija” company is taking on the obligation not to enact and/or alter current prices related to the retail sale of *ADSL* broadband Internet access via copper twisted pair cable that would be lower than the costs, including a reasonable profit margin, calculated in

accordance with the “equally efficient operator” test;

2) Implementation of unequal business operating conditions for alike operations performed by different undertakings (price discrimination)

“Telekom Srbija” company is taking on the obligation that the ratio between unit prices of direct access to Internet and leased bandwidth, which is implemented towards its wholesale users, to likewise implement when calculating the prices of direct Internet access in its retail sector, whereby the offer for users shall be formed based on market terms and conditions.

3) Associating the wholesale service of ADSL broadband Internet access with awarding discounts to those Internet providers also acquiring the “Telekom Srbija” company wholesale service of direct Internet access

“Telekom Srbija” company is taking on the obligation not to offer discounts for the wholesale service of *ADSL* broadband Internet access via copper twisted pair cable that would be conditioned to a coincident purchase of the wholesale service of direct Internet access.

4) Contracting conditions pursuant to which the service of direct Internet access for international connection is provided by automatic prolongation of validity of contract for international connection to subsequent 3 years with awarded 40% discount for each increase in bandwidth

a) “Telekom Srbija” company is taking on the obligation to keep in its offer the following possibilities:

- to conclude or renew contracts whose subject is the wholesale service of direct Internet access for international connection for limited time period, as per buyer’s option (one, two or three years), and

- to renew contracts whose subject is the wholesale service of direct Internet access for international connection prior to its expiry, and for period less than three years (not less than the remaining period to the termination of contract that is being renewed).

b) “Telekom Srbija” company is taking on the obligation that in the case of contracts in vigour related to the wholesale service of direct Internet access for international connection in which the stipulation of automatic prolongation of duration period to subsequent three years for each increase in bandwidth is continued, to offer concluding of an annex in accordance with the options prescribed under Item a), i.e. in previous Paragraph.

INITIATION OF VALIDITY and DURATION OF EXECUTION OF COMMITMENTS

“Telekom Srbija” company is voluntarily willing to undertake commitments listed under Items 1-4 of this information following the period of eight business days upon the receipt of a written

copy of the Conclusion on adjournment of proceeding enacted by the Commission.

“Telekom Srbija” company is voluntarily willing to undertake commitments, as follows:

- commitments related to the “Price/margin squeeze” from Item 1 of this information, for the duration in which is providing the wholesale service of *ADSL* broadband Internet access via copper twisted pair cable, and no longer than two years following the initiation of validity of commitments;
- commitments related to the Price discrimination from Item 2 of this information, for the duration of one year from the day of initiation of validity of commitments;
- commitments related to the Associating the wholesale service of *ADSL* and direct Internet access from Item 3 of this information, for the duration of one year from the day of initiation of validity of commitments;
- commitments related to the Automatic renewal of contracts on direct Internet access in the case of increase in bandwidth from Item 4 of this information, for the duration of two years from the day of initiation of validity of commitments.

REPORTING ON EXECUTION OF COMMITMENTS and SUBMITTING EVIDENCES ON FULFILLMENT OF COMMITMENTS

“Telekom Srbija” company shall submit reports to the Commission on the execution of commitments initially no later than 6 months from the day of initiation of validity of commitments, and subsequently every 6 months for the duration of validity of commitments, and additionally once more within three months from the day of expiration of the said deadline, related to the period of validity of commitments starting from the previous report and closing with the expiration of deadline related to the fulfilment of commitments.

Reports to be submitted to the Commission, shall consist of the following:

- table summary review of individually effected tests of Equally efficient operator – EEO, conducted for every new and/or altered current price of retail sale of *ADSL* broadband Internet access via copper twisted pair cable in period related to the submitted report, and
- legal representative statement confirming the following in the reported period:
 - that discounts for the wholesale service of *ADSL* broadband Internet access via copper twisted pair cable that would be conditioned to a coincident purchase of direct Internet access service in the wholesale are not introduced, and
 - that options listed in Item 4 related to Automatic renewal of contracts on direct Internet access in case of an increase in bandwidth are kept in offer.

“Telekom Srbija” company shall, in addition to the periodical reports, dully notify the Commission on the market conditions, parameters and factors influencing establishment of price for direct Internet access, and bandwidth and price implemented towards its own retail.

“Telekom Srbija” company shall, in addition to the periodical reports, dully notify the Commission on the changes in elements of standard offer published for the wholesale service of *ADSL* broadband Internet access via copper twisted pair cable that are of importance for the fulfillment of order, as well as on possible amendments of the Rulebook on application of the cost-accounting principle, separate accounts and reporting by an operator with significant market power in the electronic communications sector (“Official Gazette of the RS”, no. 52/11).

Pursuant to Article 58(3) of the Law, this information shall be published on the Internet page of the Commission.

All interested parties are hereby called to submit in written form the remarks, stances and opinions related to the proposed commitments that “Telekom Srbija” company is voluntarily willing to undertake in order to eliminate possible competition infringements, within 20 days from the date of publication of this information, to the following address: Commission for Protection of Competition, 7, Knjeginje Zorke Street, 11000 Belgrade. The document should contain the subject related to the written remarks, stances and opinions to the proposed commitments, and referencing the number of this information.

COUNCIL OF THE COMMISSION FOR PROTECTION OF COMPETITION