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Republic of Serbia  
**COMMISSION FOR  
PROTECTION OF COMPETITION**

Number: 6/0-03-01/2017-26

Reference: 6/0-03-762/2016

Date: March 13, 2017

Belgrade

Pursuant to Article 22(2) and Article 66(3) of the Law on Protection of Competition (“Official Gazette of the RS”, nos. 51/09 and 95/13), Article 192 of the Law on General Administrative Procedure (“Official Gazette of the FRY”, nos. 33/97 and 31/01 and “Official Gazette of the RS”, no. 30/10), Article 2(1/7) of the Tariff on the level of compensation for activities within the competence of the Commission for Protection of Competition (“Official Gazette of the RS”, no. 49/11), deciding under the notification of concentration submitted by Serbia Broadband - Srpske kablovske mreže LLC, with registered seat at the address 8a Zorana Đinđića Boulevard, Belgrade - New Belgrade, Republic of Serbia, represented by Viktorija Boklag, via plenipotentiary, attorney Rastko Petaković from Law office “Karanović and Nikolić”, with registered seat at the address 23 Resavska Street, Belgrade, Republic of Serbia, in the proceeding continued *ex officio*, on its 100th Session held on March 13, 2017, the Council of the Commission for Protection of Competition enacts the following

## **DECISION**

**I** Concentration of undertakings **IS CONDITIONALLY APPROVED**, created by the acquisition of direct control on the part of Serbia Broadband - Srpske kablovske mreže LLC, with registered seat at the address 8a Zorana Đinđića Boulevard, Belgrade - New Belgrade, Republic of Serbia, registered in the Business Registers Agency of the Republic of Serbia under company registration number 17280554, over Interaktivne kablovske objedinjene mreže - I.KOM LLC, with registered seat at the address 10d Džona Kenedija Street, Belgrade - New Belgrade, Republic of Serbia, registered in the Business Registers Agency of the Republic of Serbia under company registration number 06901590, created by obtaining 100% of shares.

**II SPECIAL CONDITIONS AND DEADLINES FOR RELATED EXECUTION ARE DETERMINED:**

**1) Commitment of divesting the parallel secondary network infrastructure in the buildings with overlaps between undertakings from Paragraph I of enacting terms hereof:**

**1.1** Serbia Broadband - Srpske kablovske mreže LLC is committed to divest, that is, place all reasonable efforts toward divesting – selling of the parallel secondary cable infrastructure in the buildings with overlaps of the Infrastructure, property of Serbia Broadband - Srpske kablovske mreže LLC and Interaktivne kablovske objedinjene mreže - I.KOM LLC.

**1.2** “Reasonable effort” shall mean an active acting towards divesting the Infrastructure, including active participation in identifying the potential purchaser.

**1.3** ”Infrastructure” shall mean the following elements of the parallel secondary cable infrastructure used for providing services of media content distribution within the Facilities: telecommunication network from the building entrance to the user’s apartment entrance, consisting of cables, hollow tiles, closets and passive equipment that includes connectors, distributors, splitters and amplifiers with local power supply (where amplifiers are installed).

**1.4** “Facilities” shall mean all buildings in the City of Belgrade with overlaps of the Infrastructure belonging to Serbia Broadband - Srpske kablovske mreže LLC and Interaktivne kablovske objedinjene mreže - I.KOM LLC as identified on the validity day of the Decision enacted by the Commission for Protection of Competition.

**1.5** Serbia Broadband - Srpske kablovske mreže LLC shall be committed to divest the Infrastructure within the deadline of [...] initiating from the validity day of the Decision enacted by the Commission for Protection of Competition.

**1.6** Serbia Broadband - Srpske kablovske mreže LLC shall sell the Infrastructure, subject to the divestment, to the purchaser who in cumulative terms fulfils the following conditions:

- a) Is not an affiliated party in terms of the Law on Protection of Competition, to Serbia Broadband - Srpske kablovske mreže LLC;
- b) Disposes with appropriate financial means based on which its business operating capacities can be reasonably presumed;
- c) Foremost represents an actual or potential competing party to Serbia Broadband - Srpske kablovske mreže LLC;
- d) Has obtained an approval for implementation of concentration issued by the Commission for Protection of Competition and approvals of other competent authorities, if such approvals are required.

**1.7** Serbia Broadband - Srpske kablovske mreže LLC is committed, following the validity of the Decision enacted by the Commission for Protection of Competition, to take all measures at disposal with the goal of maintaining the functionality of the Infrastructure, that is, to abstain

from the acts that may have considerable adverse influence on the Infrastructure functioning, until the divestment of the Infrastructure occurs, that is, until the enactment of corresponding decision of the Commission for Protection of Competition establishing that Serbia Broadband - Srpske kablovske mreže LLC has taken all reasonable measures toward divesting the Infrastructure.

**1.8** It shall be considered that the divestment is implemented in each individual Facility if the divested Infrastructure, as per choice of Serbia Broadband - Srpske kablovske mreže LLC, corresponds to the identified property of either Serbia Broadband - Srpske kablovske mreže LLC or Interaktivne kablovske objedinjene mreže - I.KOM LLC, as identified on the validity day of the Decision enacted by the Commission for Protection of Competition.

**1.9** Serbia Broadband - Srpske kablovske mreže LLC is committed to send a written information to the Commission for Protection of Competition within 2 (two) months from the validity day of the Decision enacted by the Commission for Protection of Competition, containing the following mandatory elements:

a) information on the Infrastructure to be offered for divestment in each individual Facility, i.e., the selected Infrastructure owned by either Serbia Broadband - Srpske kablovske mreže LLC or Interaktivne kablovske objedinjene mreže - I.KOM LLC that will be divested, as identified on the validity day of the Decision enacted by the Commission for Protection of Competition;

b) candidate for implementation of the Infrastructure divestment proceeding – **Divestiture Trustee**. The Divestiture Trustee is obliged that prior to the appointment to the position, submit to the Commission for Protection of Competition a work plan and program of measures intended toward the Infrastructure divestment; and,

c) candidate for monitoring viability of the existing Infrastructure and related divestment proceeding, and submitting appropriate reports to the Commission for Protection of Competition - **Monitoring Trustee**, observing that the Divestiture Trustee and Monitoring Trustee cannot be the same person.

d) Serbia Broadband - Srpske kablovske mreže LLC, in addition to the previously obtained written consent agreement of the Commission for Protection of Competition, shall select each of the above listed Trustees – a legal person not affiliated to Serbia Broadband - Srpske kablovske mreže LLC, that is, a natural person that is not an employee, manager, member of the board of managers, executive, steering or regulatory board member of any company within the group of companies to which Serbia Broadband - Srpske kablovske mreže LLC belongs (herewith also implying all companies in similar relation to Interaktivne kablovske objedinjene mreže - I.KOM LLC), and which was not an employee, manager, member of the board of managers, executive, steering or regulatory board member of any company within the group of companies to which Serbia Broadband - Srpske kablovske mreže LLC belongs (herewith also implying all companies in similar relation to Interaktivne kablovske objedinjene mreže - I.KOM LLC), during 2 (two) year period prior to enacting the Decision of the Commission for Protection of Competition and during the Trustees mandate period.

e) Divestiture Trustee and Monitoring Trustee, and their affiliated persons in terms of the Law on Protection of Competition, as well as spouses, adoptive parents or adoptees, blood relatives in a straight line regardless of the degree of kinship and in the side line up to the second degree of kinship, or in-laws up to the second degree of kinship (for natural person(s) to be authorized by the Divestiture Trustee for the divestment of the Infrastructure) must not hold a private interest that influence or might influence the acting when performing their commitments pursuant to the Draft conditions, which exclude the subscription relation with Serbia Broadband - Srpske kablovske mreže LLC, or affiliated persons. The Divestiture Trustee and Monitoring Trustee are committed that prior to the appointment, submit to the Commission for Protection of Competition a certified statement confirming that they will not be in a conflict of interest during the term. The duty not to create a conflict of interest shall be effective during the mandate of Trustees and 2 (two) years following the termination of mandate.

When approving the appointment of Trustees, the Commission for Protection of Competition shall particularly value if candidates fulfil conditions relating to the obligation of avoiding conflict of interest, in addition to the work plan and program of measures for divestment.

**1.10** Serbia Broadband - Srpske kablovske mreže LLC shall place all reasonable efforts toward divesting the Infrastructure for the Appropriate Purchaser under previously listed conditions, at the price that is not a minimal and which is considered as appropriate, no later than within the divestment deadline. If Serbia Broadband - Srpske kablovske mreže LLC within the set divestment deadline fails to divest the Infrastructure, within 15 (fifteen) days following the expiration of deadline, the Monitoring Trustee shall submit to the Commission for Protection of Competition a substantiated information on the failed divestment and all reasonable measures taken toward divesting, while the Commission for Protection of Competition shall establish whether all reasonable measures are taken, and in such case the Commission for Protection of Competition may permit the deadline extension, i.e. additional deadline in the duration of [...] where Serbia Broadband - Srpske kablovske mreže LLC shall not have the right to determine the minimal price of the Infrastructure, but the said shall be divested as per offered price of the Appropriate Purchaser. The Divestiture Trustee is also obligated to take care of the legitimate financial interests of Serbia Broadband - Srpske kablovske mreže LLC when implementing the divestment measures during the additional deadline (for example, in the case of competitive offers, he/she is obligated to select economically more favorable offer), where Serbia Broadband - Srpske kablovske mreže LLC cannot influence the price of the Infrastructure divestment. At the same time, the Commission for Protection of Competition may order Serbia Broadband - Srpske kablovske mreže LLC to appoint a new Divestiture Trustee, conditioned to taking all reasonable measures directed toward the Infrastructure divestment, which is established by means of a separate decision enacted by the Commission for Protection of Competition.

**1.11** If Serbia Broadband - Srpske kablovske mreže LLC within the additional deadline also fails to divest the Infrastructure to the Appropriate Purchaser, within 15 (fifteen) days from the expiration of the additional deadline, the Monitoring Trustee shall submit the Commission for Protection of Competition a substantiated information on the failed divestment and all reasonable measures taken toward divesting. In that case and based on the analysis of all measures taken, the

Commission for Protection of Competition shall enact a corresponding decision establishing that Serbia Broadband - Srpske kablovske mreže LLC has taken all reasonable measures toward the Infrastructure divestment, that is, has fulfilled the conditions' objective from the decision of the Commission for Protection of Competition by taking related measures.

Within 7 (seven) days from receiving the consent agreement of the Commission for Protection of Competition, Serbia Broadband - Srpske kablovske mreže LLC shall authorize the Divestiture Trustee for divesting the Infrastructure, established as the subject to the divestment. If the Divestiture Trustee is a legal person, it shall be requested to appoint a natural person, that is, natural persons to be authorized by the Divestiture Trustee for implementing the Infrastructure divestment. The natural person(s) must fulfil all terms and conditions determined in the enacting terms of the Decision enacted by the Commission for Protection of Competition.

**1.12** Serbia Broadband - Srpske kablovske mreže LLC shall bear costs of the Divestiture Trustee and Monitoring Trustee.

## **2) Price reporting commitment**

**Serbia Broadband - Srpske kablovske mreže LLC shall be committed**, within 15 (fifteen) calendar days from the day of retail price change of media content services provided via basic package, to submit to the Commission for Protection of Competition, in written and e-form, a report containing data on the retail price change of media content distribution services via basic package, with a rationale of the cause of related price change.

This behavioral measure shall be implemented within 2 (two) years deadline from the validity day of the Decision enacted by the Commission for Protection of Competition.

## **3) Contract option offer to the current users**

**Serbia Broadband - Srpske kablovske mreže LLC shall be committed**, as from the validity day of this Decision, to publish on its official Internet page the Information for all current subscription contract users with Interaktivne kablovske objedinjene mreže - I.KOM LLC, containing information on the subscription contract offer relating to option of individually choosing between two types of contracts:

- a) subscription contract for an indefinite period in line with the valid regular terms and conditions offered to the current or potential new users: or,
- b) subscription contract for a fixed term in line with the valid promotional terms and conditions offered to the current or potential new users.

**III IT IS ESTABLISHED** that Serbia Broadband - Srpske kablovske mreže LLC has executed the payment in the amount of RSD 6,161,947.50 (in words: six million, one hundred sixty-one thousand, nine hundred forty-seven and five tenths Dinars) to the account of the Commission for Protection of Competition maintained with the Treasury Administration of the

Ministry of Finance of the Republic of Serbia, which represents determined amount of the fee as compensation for issuing decision on approval of concentration in investigation procedure from Article 2(1/7) of the Tariff on the level of compensation for activities within the competence of the Commission for Protection of Competition.