

Republic of Serbia

COMMISSION FOR PROTECTION OF COMPETITION

Number: 5/0-02-563/2016-60

Date: December 23, 2016

Belgrade

Pursuant to Article 22(2), Article 57(1), and Article 68(1/1) of the Law on Protection of Competition (“Official Gazette of the RS”, no. 51/09 and 95/13), Article 192 of the Law on General Administrative Procedure (“Official Gazette of the FRY, no. 33/97 and 31/01, and “Official Gazette of the RS”, no. 30/2010), and Article 3 and 4 of the Regulation on criteria for setting the amount payable on the basis of measure for protection of competition and sanctions for procedural breaches, manner and terms for payment thereof and conditions for determination of respective measures (“Official Gazette of the RS”, no. 50/2010), deciding in the proceedings instituted *ex officio* against the distribution system operator EPS Distribution LLC Belgrade, with registered seat at the address 1-3, Masarikova Street, Belgrade-Vračar, company registration number: 07005466, represented by Bojan Atlagić, acting General Manager, for determining the act of abuse of a dominant position within the meaning of Article 16 of the Law on Protection of Competition, the Council of the Commission for Protection of Competition on its 90th Session held on December 23, 2016, enacts the following

DECISION

I IT IS DETERMINED that undertaking, the distribution system operator EPS Distribution LLC Belgrade, with registered seat at the address at 1-3, Masarikova Street, Belgrade-Vračar, company registration number: 07005466, represented by Bojan Atlagić, acting General Manager, holds a dominant position on the relevant market of electric power distribution on the territory of the Republic of Serbia.

II IT IS ESTABLISHED that undertaking, the distribution system operator EPS Distribution LLC Belgrade, with registered seat at the address at 1-3, Masarikova Street, Belgrade-Vračar, company registration number: 07005466, **has abused its dominant position, in particular by:**

1) applying dissimilar business conditions to equivalent transactions with different undertakings, by way of which some undertakings are placed in a less favorable position than their competitors, through the following:

a. imposing a commitment to allocate funds as security instruments for the payment of bills issued on account of service of access to the system against all electric power distribution system users, except for the Public enterprise “Electric Power Industry of Serbia” Belgrade;

b. when signing the Contract on access to the electric power distribution system, certain individual system users were provided with the option of choosing between two types of security instruments (bank guarantee and specific purpose – guarantee deposit), while other individual users were conditioned to accept only the specific purpose (guarantee) deposit;

c. treating unequally electric power distribution system users in terms of contracting and calculating the amount payable referring to the security instruments for the payment of bills issued on account of service of access to the system,

2) imposing unfair business conditions, by way of imposition of the commitment of placing the specific purpose (guarantee) deposit with a single nominated commercial bank.

III MEASURE FOR PROTECTION OF COMPETITION IS IMPOSED against the undertaking from Paragraph I of enacting terms of this decision in the form of commitment of payment of a monetary sum in the amount of 0.6% of the total annual revenue generated in 2015, which amounts to RSD 330,179,814.00 (in words: three hundred thirty million, one hundred seventy-nine thousand, eight hundred fourteen, and 00/00)

IV IT IS ORDERED to the undertaking from Paragraph 1 of enacting terms of this decision to pay the monetary amount of the measure of protection of competition from Paragraph III of enacting terms of this decision into the account of the budget of the Republic of Serbia, number 840 743224 843 94, model 97 - reference number: two-digit control number per model 97 – three-digit number of municipality, city or area – number of this decision.

V DEADLINE IS SET against the undertaking from Paragraph 1 of enacting terms of this decision to **four (4) months** from the date of receipt of the decision, for the execution of the order from Paragraph IV of enacting terms of this decision, under the threat of enforcement by the Tax Administration in accordance with regulations governing the collection of taxes.

VI IT IS ORDERED to the undertaking from Paragraph 1 of enacting terms of this decision to, within 5 (five) days from the date of execution of order from Paragraph IV of enacting terms of this decision, submit to the Commission for Protection of Competition the proof of executed payment.

VII MEASURES FOR REMOVAL OF COMPETITION INFRINGEMENT AND DEADLINES FOR EXECUTION OF MEASURES THEREOF ARE DETERMINED, AND IT IS ORDERED to the undertaking from Paragraph 1 of enacting terms of this decision to:

1) within 3 working days from the date of receipt of this decision, publish on its Internet page the Model procedure for drafting the contract on access to the distribution system, approved on July 3, 2015, by the General Manager of the “Electric Power Industry of Serbia” Belgrade, and in the said deadline inform in writing the Commission for Protection of Competition on the matter;

2) within 3 working days from the date of receipt of the approval by the Energy Agency of the Republic of Serbia referring to the Distribution grid code, inform in writing the

Commission for Protection of Competition on the matter;

3) within 5 working days from the date of receipt of the approval by the Energy Agency of the Republic of Serbia, publish on its Internet page the Distribution grid code;

4) within 10 working days from the date of receipt of the approval by the Energy Agency of the Republic of Serbia referring to the Distribution grid code, harmonize the Model procedure for drafting the contract on access to the distribution system, dated July 3, 2015, with the afore mentioned Code;

5) within 5 business days from the date of enacting the decision on harmonizing the Model procedure for drafting the contract on access to the distribution system with the Distribution grid code, inform in writing the Commission for Protection of Competition on the matter, and publish on its Internet page the harmonized Model procedure;

6) offer the conclusion of an annex to the Contract on access to the electric power distribution system also to users who utilize the electric power distribution system for their own needs, fully in accordance with the annex offered to the commercial suppliers on November 7, 2016;

7) extend the deadline for the banks which have been sent a letter on November 23, 2016, and thereby invited to submit a draft contract on the opening of a special purpose deposit account, by additional 15 days for submitting their responses along with the documentation which corresponds to that which has been submitted to the OTP bank JSC, Novi Sad, for the purposes of drafting the Contract on opening and administering a deposit account denominated in RSD, previously offered to the electric power distribution system users;

8) by publishing on its Internet page, make available the list of banks with whom the electric power distribution system users may open an account for depositing the specific purpose (guarantee) deposit;

9) to conclude the Contract on access to the electric power distribution system with all the eligible electric power distribution system users under equal conditions, regardless of whether they are users utilizing the electric power distribution system for further supply of end-users or for their own needs.

VIII IT IS ORDERED to the undertaking from Paragraph 1 of enacting terms of this decision to, within 30 (thirty) days, execute the orders from Paragraph VII, Items 6), 7) and 8) of enacting terms of this decision, and submit to the Commission for Protection of Competition the evidence of their execution.

IX IT IS PROHIBITED that the undertaking from Paragraph 1 of enacting terms of this decision take any further action which could prevent, limit or distort competition by way of abuse of dominance in the manner described in Paragraph II of enacting terms of this decision.

X This decision shall be published in the „Official Gazette of the Republic Serbia“ and on the Internet page of the Commission for Protection of Competition.