



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

Number: 1/0-08-138/2010-02

Date: March 19, 2010

Belgrade

CORNER SHOP LLC
Dobanovci
206 Maršala Tita Street

Subject: Request for opinion on the implementation of competition policy regulations

In the request entered under number 54 of March 3, 2010, you have requested a general opinion on the compliance of an agreement with Article 10 of the Law on Protection of Competition, regulating the issue of priority shelf merchandising and favorable visual product placement in retail objects against consideration, i.e. on the necessity to submit request for exemption from prohibition of such agreement. In addition, you have presented a concrete question inquiring whether **CORNER SHOP LLC** as a retailer registered for non-specialized store retail trade services predominately carrying food products, beverages and tobacco (industry code 52110), can enter into agreements with manufacturers of tobacco products regulating obligation of securing their products placement in the predetermined precise percentage pertaining to the share of shelf space allocation (for instance, 19%, 40%...) and as per specified precise shelf space layout (for instance, fifth row, sixth row...) against consideration as set forth in the related agreements.

Pursuant to Article 21(1/8) of the Law on Protection of Competition (“Official Gazette of the RS”, no. 51/09) and in respect to the submitted request, Council of the Commission for Protection of Competition on the 145th session held on March 19, 2010, issues the following

OPINION

Pursuant to Article 10 of the Law on Protection of Competition, restrictive agreements are agreements between undertakings which as their purpose or effect have a significant restriction, distortion or prevention of competition in the territory of the Republic of Serbia. *Inter alia*, restrictive agreements are explicitly listed in the above-mentioned article as agreements which in particular apply dissimilar business conditions to equivalent transactions with respect to a variety of undertakings, by which undertakings are placed in an unfavorable position against competitors.

The character of agreement referenced in your request for opinion, initially does not point to the possibility of placing individual undertakings in an unfavorable position against competitors, thus

causing significant restriction, distortion or prevention of competition on the relevant market. Also, the subject of agreement concerned is not procurement of products, but the manner of placement of procured products, while considering that the case relates to tobacco products subject to prohibition of advertising and publicity, the agreement concerned in a way represents the possibility of suppliers to contract the best possible placement of their products against consideration. In so doing, the consumers' selection is not reduced. **Thus is concluded that contractual arrangement regulating the obligation of buyer, in this concrete case of the retailer concerned, to provide a specified precise shelf space layout and predetermined share of shelf space allocation for products procured from the seller/supplier against consideration, in principle falls under the category of business relations that are free to be pursued between contractual parties in accordance with their business policies. However, if the buyer/retailer holds a dominant position, in accordance with Article 16 of the Law, such party is obligated to apply similar business conditions to equivalent operations with respect to a variety of undertakings, by which some undertakings are not placed in an unfavorable position compared to competitors, due to potential liability pertaining to the abuse of dominance if evidenced that such manner of behavior limits, distorts or prevents competition on the relevant market.**

PRESIDENT OF THE COMMISSION

Prof. dr. Dijana Marković Bajalović