Republic of Serbia
COMMISSION FOR PROTECTION OF COMPETITION
25/IV Savska St., Belgrade
Number: 4/0-02-673/2018-1
Date: September 19, 2018

Pursuant to Article 35(2) of the Law on Protection of Competition (Official Gazette of the RS 51/2009 and 95/2013), President of the Commission for Protection of Competition enacts the following

CONCLUSION

I **PROCEEDINGS IS INSTITUTED** *ex officio* for investigation of infringement of competition against the following undertakings:

- **PREDUZEĆE ZA PROMET POSREDOVANjE I ZASTUPANjE FARMIX DOO BEOGRAD,** company number 07784848, with registered seat in Belgrade-Vračar, 36 Koče Kapetana St., whose legal representatives are Irena Krstovski and Mihajlo Stefanović, both acting autonomously,
- **PREDUZEĆE ZA UNUTRAŠNjU I SPOLjNU TRGOVINU BEOHEM-3 DOO, BEOGRAD (RAKOVICA),** company number 17177516, with registered seat in in Belgrade-Rakovica, 9 Trstenjakova St., whose legal representative is Danka Vitić,
- **PHARMASWISS DOO PREDUZEĆE ZA PROIZVODNjU, UNUTRAŠNjU, SPOLjNU TRGOVINU I ZASTUPANjE BEOGRAD,** company number 17338480, with registered seat in Belgrade-Zemun, 5A Batajnički drum St., whose legal representative is John Connolly,
- **MAKLER DRUŠTVO SA OGRANIČENOM ODGOVORNOŠĆU ZA OBAVLjANjE KOMERCIJALNIH POSLOVA MARKETINGA I POSLOVA SPOLjNOTRGOVINSKOG PROMETA BEOGRAD (VRAČAR),** company number 07721510, with registered seat in Belgrade-Vračar, 39 Beogradska St., whose legal representative is Ljubomir Štrbac,

in order to investigate the infringement of competition from Article 10 of the Law on Protection of Competition.

II All persons in possession of data, documents or other relevant information which could contribute to the accurate fact-finding in this proceedings are called upon to submit said to the Commission for Protection of Competition to the address 25 Savska St., Belgrade.

III This conclusion shall be published in the Official Gazette of the Republic of Serbia and on the website of the Commission for Protection of Competition.

R a t i o n a l e

On October 9, 2017, the Commission for Protection of Competition (hereinafter, the Commission) has received an initiative, filed under case no. 4/0-04-646/2017-1, in which is claimed on the existence of a cartel of pharmaceutical distributors of medicines used for Hemophilia, making the price of new recombinant pharmaceuticals lower than the price of human plasma-derived medicines in use for over 30 years.

Acting upon the initiative, the Commission has collected relevant data and documentation from the National Health Insurance Fund (hereinafter, NHIF) and publicly available data on centralized public procurements from the NHIF's internet page[1], relating to the centralized public procurements of medicines used for Hemophilia (hereinafter, CPP), opened once a year since 2014. Also, the Commission has analyzed data provided by the Medicines and Medical Devices Agency of Serbia (hereinafter, ALIMS) relating to human medicines[2].

By inquiring into the NHIF's decision on entering into a framework agreement 08/2 no. 4041-130/13-22 of February 3, 2014, NHIF's decision on public procurement of medicines used for Hemophilia re Lots 1, 3, 4 and 5 in PP 404-1-110/15-11, 08/2 no. 404-1-100/14-23 of April 7, 2015, NHIF's decision on public procurement of medicines used for Hemophilia re Lots 2 and 6 in PP 404-1-110/15-11, 08/2 no. 404-1-100/14-28 of May 11, 2015, NHIF's decision on public procurement of medicines used for Hemophilia in PP 404-1-110/16-47, 08/2 no. 404-1-45/2016-18 of September 20, 2016, NHIF's decision on public procurement of medicines used for Hemophilia for the year 2017 in PP 404-1-110/17-36, 08/2 no. 404-1-37/17-31 of November 3, 2017, report on the expert assessment and evaluation of bids submitted in the public procurement call PP 404-1-110/17-36 for medicines used for Hemophilia for the year 2017, 08/2 no. 404-1-37/17-30 of October 17, 2017, decisions of the Ministry of Health no. 515-04-01307/2013-11 of May 10, 2013, no. 515-04-00347/2009-05 of May 11, 2009, no. 515-04-02649/2009-05 of August 19, 2009, no. 515-04-01002/2012-22 of March 13, 2012, no. 515-04-06037/2013-11 of November 27, 2013, no. 515-04-00578/2014-11 of March 10, 2014, no. 515-0401307/2013-11 of May 10, 2013, no. 515-04-7080/2015-11 of February 23, 2015, no. 515-04-07079/2014-11 of February 23, 2015, no. 515-04-06684/2013-11 of December 11, 2013, no. 515-04-04858/2015-11 of October 27, 2015, no. 515-04-04448/2015-11 of August 19, 2015, no. 515-04-5998/2016-11 of September 22, 2016, ALIMS's decisions no. 515-01-6457-12-001 of March 14, 2013, no. 515-01-8179-11-001 of March 23, 2012, no. 515-01-1053-10-001 of March 16, 2011, no. 3202/2010/12 of June 2, 2010, no. 515-01-7918-11-001 of February 7, 2012, no. 515-01-8170-11-001 of March 9, 2012, no. 515-01-8229-12-001 of March 13, 2013, no. 515-01-0925-11-001 of August 29, 2011, no. 515-01-0926-11-001 of August 29, 2011, no. 515-01-7570-11-001 of November 10, 2011, no. 515-01-8205-11-001 of March 9, 2012, no. 515-01-03688-13-192 of October 16, 2013, no. 515-01-03688-13-190 of October 16, 2013, no. 515-01-2226-12-001 of January 25, 2013, no. 515-01-8205-11-001 of March 9, 2012, no. 515-01-

[1] https://www.javnenabavke.rfzo.rs/
[2] https://www.alims.gov.rs/ciril/lekovi/pretrazivanje-humanih-lekova/

7570-11-001 of November 10, 2011, no. 515-01-0926-11-001 of August 29, 2011, no. 515-01-8204-11-001 of March 9, 2012, no. 515-01-7569-11-001 of November 10, 2011, no. 515-01-0925-11-001 of August 29, 2011, no. 515-01-5889-12-001 of March 8, 2013, no. 515-01-5888-12-001 of March 8, 2013, no. 515-01-5887-12-001 of March 8, 2013, no. 515-01-3126-10-001 of March 2, 2011, no. 515-01-7920-11-001 of February 7, 2012, no. 515-01-3125-10-001 of March 2, 2011, no. 515-01-7919-11-011 of February 7, 2012, no. 515-01-03688-13-237 of October 17, 2013, no. 515-01-03688-13-236 of October 17, 2013, no. 515-01-03688-13-235 of October 17, 2013, no. 515-01-01917-13-001 of August 28, 2013, no. 515-01-8381-12-001 of March 19, 2013, no. 515-01-4064-11-001 of August 15, 2012, no. 515-01-00962-13-001 of May 29, 2013, no. 515-01-00963-13-001 of May 29, 2013, no. 515-01-00964-13-001 of May 29, 2013, no. 515-01-5329-11-001 of January 4, 2012, no. 515-01-03406-13-001 of September 25, 2013, no. 515-01-03407-13-001 of September 25, 2013, no. 515-01-6064-11-001 of January 21, 2013, no. 515-01-00785-13-001 of February 28, 2013, no. 515-01-6065-11-001 of January 21, 2013, no. 515-01-00786-13-001 of February 28, 2013, no. 515-01-6063-11-001 of January 21, 2013, no. 515-01-00784-13-001 of February 28, 2013, no. 515-01-6630-12-001 of March 19, 2013, no. 515-01-4055-11-001 of August 15, 2012, no. 515-01-3408-13-001 of September 25, 2013, no. 515-01-04290-15-001 of August 23, 2016, no. 515-01-04557-14-001 of June 3, 2015, no. 515-01-04260-14-001 of May 7, 2015, no. 515-01-04172-16-003 of July 19, 2017, no. 515-01-04259-14-001 of May 7, 2015, no. 515-01-04172-16-004 of July 19, 2017, no. 515-01-03598-16-001 of May 12, 2017, no. 515-01-02560-17-001 of August 21, 2017, no. 515-01-02560-17-002 of August 21, 2017, no. 515-01-01127-16-001 of February 7, 2017, 515-01-01136-16-001 of February 27, 2017, no. 515-01-01137-16-001 of February 27, 2017, no. 515-01-00703-16-001 of October 14, 2016, no. 515-01-00704-16-001 of October 14, 2016, no. 515-01-01969-14-001 of April 29, 2015, no. 515-01-01970-14-001 of April 29, 2015, letter of confirmation issued by ALIMS on the receipt of a request for renewal of permission for human medication no. 515-01-04557-2014-4-002 of December 2, 2014, statement on the renewal of permission for medication of January 15, 2014, letter of confirmation issued by ALIMS on the receipt of a request for renewal of permission for human medication no. 515-01-0073-2016-4-002 of February 29, 2016, notification letter issued by ALIMS to Pharmaswiss no. 515-01-00703-2016-4-015 of August 31, 2016, letter of confirmation issued by ALIMS on the receipt of a request for renewal of permission for human medication no. 515-01-03052-2017-4-003 of July 31, 2017, letter of confirmation issued by ALIMS on the receipt of a request for renewal of permission for human medication no. 515-01-03050-2017-4-003 of July 31, 2017, letter of confirmation issued by ALIMS on the receipt of a request for renewal of permission for human medication no. 515-01-03049-2017-4-003 of July 31, 2017, letter of confirmation issued by ALIMS on the receipt of a request for renewal of permission for human medication no. 515-01-01649-2017-4-003 of April 28, 2017, letter of confirmation issued by ALIMS on the receipt of a request for renewal of permission for human medication no. 515-01-01648-2017-4-003 of April 28, 2017, letter of confirmation issued by ALIMS on the receipt of a request for renewal of permission for human medication no. 515-01-01644-2017-4-003 of September 11, 2017, letter of confirmation issued by ALIMS on the receipt of a request for renewal of permission for human medication no. 515-01-01643-2017-4-003 of September 11, 2017, letter of confirmation issued by ALIMS on the receipt of a request for renewal of permission for human medication no. 515-01-01642-2017-4-003 of September 11, 2017, letter of authorization issued by SCL Behring for and on behalf of Pharmaswiss of December 18, 2014, letter of authorization issued by PREDUZEĆE ZA UNUTRAŠNjU I SPOLjNU TRGOVINU BEOHEM-3 DOO, BEOGRAD (RAKOVICA) (hereinafter, Beohem 3) doo Beograd of April 3, 2015, letter of authorization issued by Beohem 3 for and on behalf of PREDUZEĆE ZA PROMET POSREDOVANjE I ZASTUPANjE FARMIX DOO

BEOGRAD (hereinafter, Farmix) of April 1, 2015, letter of authorization issued by PREDUZEĆE UNIFARM-MEDICOM ZA MEDICINSKO SNABDEVANjE, UVOZ, IZVOZ I ZASTUPSTVO DRUŠTVO SA OGRANIČENOM ODGOVORNOŠĆU, BEOGRAD (ZEMUN) (hereinafter, Unifarm-Medicom) for and on behalf of Farmix of April 1, 2015, letter of authorization issued by PHARMASWISS DOO PREDUZEĆE ZA PROIZVODNjU, UNUTRAŠNjU, SPOLjNU TRGOVINU I ZASTUPANjE BEOGRAD (hereinafter, Pharmaswiss) for and on behalf of Farmix of April 2, 2015, letter of authorization issued by Beocompass doo Beograd for and on behalf of Farmix of April 2, 2015, letter of authorization issued by Unifarm-Medicom for and on behalf of MAKLER DRUŠTVO SA OGRANIČENOM ODGOVORNOŠĆU ZA OBAVLjANjE KOMERCIJALNIH POSLOVA MARKETINGA I POSLOVA SPOLjNOTRGOVINSKOG PROMETA BEOGRAD (VRAČAR) (hereinafter, Makler) of April 1, 2015, letter of authorization issued by Beohem 3 for and on behalf of Makler of April 1, 2015, letter of authorization issued by Farmix for and on behalf of Makler no. 112/15 of July 3, 2015, letter of authorization issued by Unifarm-Medicom for and on behalf of Beohem 3 of April 1, 2015, letter of authorization issued by Beohem 3 for and on behalf of Farmix no. 802 of September 6, 2016, letter of authorization issued by Pharmaswiss for and on behalf of Farmix no. 5281 of September 7, 2016, letter of authorization issued by Unifarm-Medicom for and on behalf of Farmix of September 5, 2016, letter of authorization issued by Kedrion Biopharma for and on behalf of Makler of September 5, 2016, letter of authorization issued by Beohem 3 for and on behalf of Makler no. 803 of September 6, 2016, letter of authorization issued by Unifarm-Medicom for and on behalf of Makler of September 5, 2016, letter of authorization issued by Farmix for and on behalf of Makler no. 153/16 of September 7, 2016, letter of authorization issued by Unifarm-Medicom for and on behalf of Beohem 3 of September 5, 2016, letter of authorization issued by Pharmaswiss for and on behalf of Beohem 3 no. 5282 of September 7, 2016, letter of authorization issued by Pharmaswiss for and on behalf of Farmix of October 6, 2017, letter of authorization issued by Unifarm-Medicom for and on behalf of Beohem 3 of October 5, 2017, letter of authorization issued by Unifarm-Medicom for and on behalf of Farmix no. 763 of October 5, 2017, letter of authorization issued by Beohem 3 for and on behalf of Farmix of October 5, 2017, letter of authorization issued by Unifarm-Medicom for and on behalf of Beohem 3 no. 764 of October 5, 2017, letter of authorization issued by Farmix for and on behalf of Beohem 3 of October 6, 2017, letter of authorization issued by Unifarm-Medicom for and on behalf of Pharmaswiss no. 760 of October 4, 2017, statement issued by Beohem 3 no. 837/3 of September 29, 2017, and publicly available data of ALIMS, the Commission has established the following:

1. The 2014 CPP

Company Farmix has presented a bid for Lot 1 offering medicines for which companies Beohem 3, Pharmaswiss and Unifarm-Medicom are holders of respective licenses, as well as medicines covered by licenses issued for and on behalf of Farmix. Companies Beohem 3 and Pharmaswiss have not participated in the CPP with those medicines, nor have presented their bids for Lot 1 offering some other medicines. Beohem 3 has presented a bid for Lot 5 offering medicines for which companies Pharmaswiss and Unifarm-Medicom hold respective licenses. Company Pharmaswiss has not bidded for Lot 5 offering this, nor any other medicines. Company Makler has presented a bid for Lot 4 offering medicines for which companies Beohem 3, Farmix and Unifarm-Medicom are holders of respective licenses, as well as medicines covered by licenses issued for and on behalf of Makler. Companies Beohem 3 and Pharmaswiss have not participated in the CPP offering those medicines, nor have presented their bids for Lot 4 offering some other medicines. Company Pharmaswiss

has presented a bid for Lot 5 offering medicines covered by licenses issued for and on behalf of Pharmaswiss. The foregoing is presented in Table 1 given below.

Table 1

PARTY	LOT	MEDICINE	LICENSE HOLDER
FARMIX	1	IMMUNATE 250	FARMIX
		IMMUNATE 500	
		IMMUNATE1000	
		OCTANATE 250	UNIFARM-MEDICOM
		OCTANATE 500	
		OCTANATE 1000	
		HAEMOCTIN 250	BEOHEM 3
		HAEMOCTIN 500	
		HAEMOCTIN 1000	
		BERIATE 250	PHARMASWISS
		BERIATE 500	
		BERIATE 1000	
	2	RECOMBINATE 250	FARMIX
		RECOMBINATE 500	
		RECOMBINATE 1000	
	3	FEIBA NF	FARMIX
MAKLER	4	AIMAFIX 500	MAKLER
		HAEMONINE 500	BEOHEM 3
		BERININ P 600	PHARMASWISS
		IMMUNINE 600	FARMIX
BEOHEM 3	5	HEAMATE P 500	PHARMASWISS
		HEAMATE P 1000	
		WILATE 450	UNIFARM-MEDICOM
PHARMASWISS	5	HEAMATE P 500	PHARMASWISS
		HEAMATE P 1000	

In the 2014 CPP, company Farmix has successfully bidded for Lots 1, 2 and 3, company Makler has presented a successful bid for Lot 4, and company Beohem 3 for Lot 5.

2. The 2015 CPP

Company Farmix has presented a bid for Lot 1 offering medicines for which companies Beohem 3, Pharmaswiss, Beocompass and Unifarm-Medicom are holders of respective licenses, as well as medicines covered by licenses issued for and on behalf of Farmix, whilst company Pharmaswiss also presented a bid offering medicines for which companies Beohem 3, Beocompass and Unifarm-Medicom are holders of respective licenses, as well as medicines covered by licenses issued for and on behalf of Pharmaswiss. Company Beohem 3 has not participated in the CPP offering those medicines, nor has presented a bid for Lot 1 with some other medicines.

Company Beohem 3 has presented a bid for Lot 5 offering medicines for which companies Pharmaswiss and Unifarm-Medicom are respective license holders. Company Pharmaswiss has not presented a bid for Lot 5 offering these, nor any other medicines. Company Makler has bidded for Lot 4 offering medicines for which companies Beohem 3, Farmix and Unifarm-Medicom are holders of respective licenses, as well as medicines covered by licenses issued for and on behalf of Makler. Companies Beohem 3 and Pharmaswiss have not

participated in the CPP with those medicines, nor have presented their bids for Lot 4 offering some other medicines. The foregoing is presented in Table 2 given below.

Table 2

PARTY	LOT	MEDICINE	LICENSE HOLDER
FARMIX	1	IMMUNATE 250	FARMIX
		IMMUNATE 500	
		IMMUNATE1000	
		OCTANATE 250	UNIFARM-MEDICOM
		OCTANATE 500	
		OCTANATE 1000	
		HAEMOCTIN SDH 250	BEOHEM 3
		HAEMOCTIN SDH 500	
		HAEMOCTIN SDH 1000	
		BERIATE 250	PHARMASWISS
		BERIATE 500	
		BERIATE 1000	
		KOATE DVI 500	BECOMPASS
	2	RECOMBINATE 250	FARMIX
		RECOMBINATE 500	
	3	FEIBA NF	FARMIX
MAKLER	4	AIMAFIX 500	MAKLER
		HAEMONINE 500	BEOHEM 3
		OCTANINE 600	UNIFARM-MEDICOM
		IMMUNINE 600	FARMIX
BEOHEM 3	5	HEAMATE P 500	PHARMASWISS
		HEAMATE P 1000	
		WILATE 450	UNIFARM-MEDICOM
PHARMASWISS	1	BERIATE 250	PHARMASWISS
		BERIATE 500	
		BERIATE 1000	
		KOATE DVI 500	BECOMPASS
		OCTANATE 500	UNIFARM-MEDICOM
		OCTANATE 1000	
		HAEMOCTIN SDH 250	BEOHEM 3
		HAEMOCTIN SDH 500	
		HAEMOCTIN SDH 1000	
	2	HEAMATE P 500	PHARMASWISS
		HEAMATE P 1000	

Company Farmix has successfully bidded for Lots 1 and 3, and Makler for Lot 4, while company Beohem 3 has presented a successful bid for Lot 5. Company Farmix has failed to present a successful bid for Lot 2 due to a more favorable bid presented by a third party.

3. The 2016 CPP

Company Farmix has presented a bid for Lot 1 offering medicines for which companies Beohem 3, Pharmaswiss and Unifarm-Medicom are holders of respective licenses, as well as medicines covered by licenses issued for and on behalf of Farmix. Companies Beohem 3 and Pharmaswiss have not participated in the CPP with those medicines, nor have presented their bids for Lot 1 with some other medicines. Biohem 3 has presented a bid for Lot 5 offering medicines for which Pharmaswiss and Unifarm-Medicom are license holders. Company

Makler has presented a bid for Lot 4 offering medicines for which companies Beohem 3, Farmix and Unifarm-Medicom are respective license holders, as well as medicines covered by licenses issued for and on behalf of Makler. Companies Beohem 3 and Pharmaswiss have not participated in the CPP with those medicines, nor have presented their bids for Lot 4 with some other medicines. The foregoing is presented in Table 3 given below.

Table 3

PARTY	LOT	MEDICINE	LICENSE HOLDER
FARMIX	1	IMMUNATE 250	FARMIX
		IMMUNATE 500	
		IMMUNATE1000	
		OCTANATE 250	UNIFARM-MEDICOM
		OCTANATE 500	
		OCTANATE 1000	
		HEAMOCTIN 250	BEOHEM 3
		HEAMOCTIN 500	
		HEAMOCTIN 1000	
		BERIATE 250	PHARMASWISS
		BERIATE 500	
		BERIATE 1000	
	2	RECOMBINATE 250	FARMIX
		RECOMBINATE 500	
		RECOMBINATE 1000	
	3	FEIBA NF	FARMIX
MAKLER	4	AIMAFIX	MAKLER
		HAEMONINE 500	BEOHEM 3
		OCTANINE F	UNIFARM-MEDICOM
		IMMUNINE	FARMIX
BEOHEM 3	5	HEAMATE P 500	PHARMASWISS
		HEAMATE P 1000	
		WILATE 450	UNIFARM-MEDICOM
		WILATE 500	
		WILATE 1000	

Company Farmix has successfully bidded for Lots 1 and 3, Makler for Lot 4, while company Beohem has presented a successful bid for Lot 5. Company Farmix has failed to present a successful bid for Lot 2 due to a more favorable bid presented by a third party.

4. The 2017 CPP

Company Farmix has presented a bid for Lot 1 offering medicines for which companies Beohem 3, Pharmaswiss and Unifarm-Medicom are holders of respective licenses, as well as medicines covered by licenses issued for and on behalf of Farmix. Companies Beohem 3 and Pharmaswiss have not participated in the CPP with those medicines, nor have presented their bids for Lot 1 with some other medicines. Biohem 3 has presented a bid for Lot 4 offering medicines for which companies Farmix and Unifarm-Medicom are license holders, as well as medicines covered by licenses issued for and on behalf of Biohem 3. Company Farmix has

not presented a bid for Lot 4. Company Pharmaswiss was the only one bidding for Lot 5. The foregoing is presented in Table 4 given below.

Table 4

PARTY	LOT	MEDICINE	LICENSE HOLDER
FARMIX	1	IMMUNATE 250	FARMIX
		IMMUNATE 500	
		IMMUNATE1000	
		OCTANATE 250	UNIFARM-MEDICOM
		OCTANATE 500	
		OCTANATE 1000	
		HAEMOCTIN 500	BEOHEM 3
		HAEMOCTIN 1000	
		BERIATE 250	PHARMASWISS
		BERIATE 500	
		BERIATE 1000	
	2	ADVATE 250	FARMIX
		ADVATE 500	
		ADVATE 1000	
	3	FEIBA NF	FARMIX
BEOHEM 3	2	NUWIQ 250	UNIFARM-MEDICOM
		NUWIQ 500	
		NUWIQ 1000	
	4	HAEMONINE 500	BEOHEM 3
		OCTANINE F	UNIFARM-MEDICOM
		IMMUNINE	FARMIX
PHARMASWISS	5	HEAMATE P 500	PHARMASWISS
		HEAMATE P 1000	
		WILATE 500	UNIFARM-MEDICOM
		WILATE 1000	

Company Farmix has successfully bidded for Lots 1 and 3, Beohem 3 for Lot 4, while company Pharmaswiss has presented a successful bid for Lot 5. Company Farmix has failed to present a successful bid for Lot 2 due to a more competitive bid presented by a third party.

Following a comprehensive analysis of the foregoing facts, the Commission has reasonably assumed that companies Farmix, Beohem 3, Makler and Pharmaswiss have shared the healthcare supply market of Hemophilia medicines within the centralized public procurement system in the period from 2014-2017. The reasonable assumption is based on the fact that in the centralized public procurements of Hemophilia medicines the Parties have offered medicines whose license holders are other Parties, whilst the Parties - license holders, have withhold from bidding in the public procurements concerned, not offering medicines for which they hold respective licenses. More precisely, the Commission has reasonably assumed that the Parties have beforehand agreed on the participation models in the CPPs from 2014, particularly where:

- In the 2014 CPP, company Farmix could have placed a bid for Lot 4 as well, Biohem 3 could have placed a bid for Lots 1 and 4 also, Pharmaswiss could have bidded for Lots 1 and 4 too, but they have failed to do so, thus enabling company Makler to bid for Lot 4 free of competition;

- In the 2015 CPP, company Farmix could have placed a bid for Lot 4 as well, Biohem 3 could have placed a bid for Lots 1 and 4 also, Pharmaswiss could have bidded for Lot 5 too, but they have failed to do so, thus enabling company Makler to bid for Lot 4 free of competition;
- In the 2016 CPP, company Farmix could have placed a bid for Lot 4 as well, Biohem 3 could have placed a bid for Lots 1 and 4 also, but they have failed to do so, thus enabling company Makler to bid for Lot 4 free of competition;
- In the 2017 CPP, company Farmix could have placed a bid for Lot 4 as well, Biohem 3 could have placed a bid for Lot 1 also, Pharmaswiss could have bidded for Lot 1 too, but they have failed to do so.

The provision of Article 10(1) of the Law on Protection of Competition (Official Gazette of the RS 51/2009 and 95/2013 – hereinafter, the Law) stipulates the following: "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."

In Article 10(2/5) is regulated that restrictive agreements may include contracts, certain contract provisions, express or tacit agreements, concerted practices, as well as decisions of associations of undertakings, which in particular share markets or sources of supply.

Article 10(3) of the Law stipulates that restrictive agreements are prohibited and void, except in cases of exemption from the prohibition pursuant to the Law.

In view of the assessment of the fulfilment of conditions from Article 35(1) of the Law for instituting *ex officio* proceedings for the investigation of competition infringement, pursuant to the provision of Article 35(2) of the Law, it is decided as in Paragraphs I and II of enacting terms herein.

Pursuant to the provision of Article 40(1) of the Law stipulating that conclusions on instituting *ex officio* proceedings are to be published in the Official Gazette of the Republic of Serbia and on the website of the Commission, it is decided as in Paragraph III of enacting terms herein.

Instruction on legal remedy:
This conclusion is not susceptible to special appeal, but is permitted to institute an administrative dispute by appealing to the Administrative Court against the final decision of the Commission.

PRESIDENT OF THE COMMISSION

(Sgd.)Dr Miloje Obradović