



Republic of Serbia
**COMMISSION FOR
PROTECTION OF COMPETITION**
25/IV Savska St., Belgrade
Number: 6/0-03-300/2019-1
Reference number: 6/0-02-159/2019
Date: March 1, 2019

Pursuant to Article 35(2) and Article 62(2) of the Law on Protection of Competition (Official Gazette of the RS 51/09 and 95/13), and Article 2(1/7) of the Tariff on the level of compensations for activities within the competence of the Commission for Protection of Competition (Official Gazette of the RS 49/11), deciding in the merger control proceeding upon a merger notification entered under number 6/0-02-925/2018-1, filed by company Telekom Srbija a.d., with registered seat at the address 2 Takovska St., Belgrade, Republic of Serbia, represented by Predrag Ćulibrk, CEO, on March 1, 2019, the President of the Commission for Protection of Competition enacts the following

CONCLUSION

I Merger control proceeding shall be **RESUMED EX OFFICIO** involving a notification of merger, created by acquisition of control on the part of company “Telekom Srbija” a.d., with registered seat at the address 2 Takovska St., Belgrade, Republic of Serbia, registered in the Business Registers Agency of the Republic of Serbia under company number 17162543, over company „Telemark Systems“ d.o.o, with registered seat at the address 35 Svetog Save St., Čačak, Republic of Serbia, registered in the Business Registers Agency of the Republic of Serbia under company number 20182296, by purchasing shares, in order to investigate the fulfillment of the requirements for permissibility of the notified merger from Article 19 of the Law on Protection of Competition, or whether the merger concerned would significantly restrict, distort, or prevent competition on the market of the Republic of Serbia or its part, and especially if that restriction, distortion, or prevention would be the result of creating or strengthening of a dominant position.

II ALL PERSONS ARE INVITED to forthwith submit all data, documents or other relevant information in their possession that could contribute to the accurate fact-finding in this proceeding, to the Commission for Protection of Competition to the address 25/IV Savska St., Belgrade.

III COMMITMENT IS ESTABLISHED with respect of the merger applicant, company “Telekom Srbija” a.d., with registered seat at the address 2 Takovska St., Belgrade, Republic

of Serbia, to the payment of a financial compensation for issuing the decision on merger approval in the investigation procedure in the total amount of 50,000.00 (in words: fifty thousand) euro, in the dinar equivalent value calculated at the middle-exchange rate of the National Bank of Serbia on the day of payment, whereas the dinar equivalent value of 25,000.00 (in words: twenty-five thousand) euro paid upon merger notification shall count against the total amount, and **IT IS ORDERED** to the merger applicant, company “Telekom Srbija” a.d., with registered seat at the address 2 Takovska St., Belgrade, Republic of Serbia, to make payment of the remaining amount of the fee of 25,000.00 (in words: twenty-five thousand) euro, in the dinar equivalent value calculated at the middle-exchange rate of the National Bank of Serbia on the day of payment, into the account of the Commission for Protection of Competition maintained with the Treasury Administration of the Ministry of Finance of the Republic of Serbia, number 840-880668-16, reference number 6/0-03-300/2019, no later than 15 (fifteen) days from the date of receipt of this conclusion.

IV 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.

Rationale

Company “Telekom Srbija” a.d. (hereinafter, Telekom Srbija or merger applicant), with registered seat at the address 2 Takovska St., Belgrade, Republic of Serbia, company number 17162543, has filed a merger notification on December 31, 2018, via legal representative Predrag Čulibrk, CEO, entered under number 6/0-02-925/2018-1 (hereinafter, notification), in order to acquire individual control over company „Telemark Systems“ d.o.o., company number 20182296, with registered seat at the address 35 Svetog Save St., Čačak, Republic of Serbia, by purchasing shares.

Company Telekom Srbija, as a parent company of the eponymous company group (hereinafter, Telekom Group), is registered as a joint stock company for wired telecommunication activities (industry code: 6110). The group offers services from the telecommunications sector, such as provision of national and international fixed and mobile telephony services, transiting traffic, data transfer services, leasing of telecommunication lines, provision of non-core services in the field of mobile telephony, internet and multimedia services, development, management, rental and protection of telecommunication infrastructure, etc. Telekom Group owns licenses for mobile and fixed telephony, fixed wireless access, and is registered as an operator in the registry maintained by the Republic Agency for Electronic Communications and Postal Services (hereinafter, RATEL) also for broadband network access, internet services, media content distribution services, etc. The largest and controlling shareholder in this Group is the Republic of Serbia with 58.10% of shares, whereas 20% of outstanding shares are owned by the company, while the remainder is distributed among minority shareholders.

Prior to the merger, the target company „Telemark Systems“ d.o.o. (hereinafter, Telemark or target company), company number 20182296, with registered seat at the address 35 Svetog Save St., Čačak, Republic of Serbia, was under individual control of its founder and sole member, natural person Slobodan Marković, 20/A/13 Koste Novakovića St., Belgrade. The principal business activity of this company, working as an authorized operator on the market of electronic communication services and networks, is the provision of various services from the multimedia filed which corresponds to its predominant registered activity (industry code:

6110 – wired telecommunications activities). The target company offers the media distribution (analogue cable television), cable internet access and fixed telephony services to its users, and owns its own infrastructure necessary for the operations. Telemark has no registered subsidiaries in the Republic of Serbia, and owns a license issued by RATEL for the provision of said services in the territory of a number of cities/municipalities in the Republic of Serbia.

As a merger act, the Commission was provided with the Letter of intent, signed on December 26, 2018, by Slobodan Marković, 20/A/13 Koste Novakovića St., Belgrade, the sole member of the target company, in the capacity of seller, and the legal representative of company Telekom Srbija, in the capacity of acquirer. With this Letter, its signatories declare their readiness and serious intent to enter into negotiations with a view to acquiring 100% of shares in the target company's equity by the applicant. Following the implementation of the notified transaction, the applicant would establish direct control over the target company which represents a merger within the meaning of Article 17(1/2) of the Law. The notification is filed pursuant to the provision of Article 63(2) of the Law.

The data on the combined aggregate annual worldwide and national turnovers of the merger parties provided to the Commission indicate that they exceed thresholds of the combined aggregate annual turnover from Article 61(1/1 and 2) of the Law, indicating the mandatory notification of the merger concerned.

Building on the actual activities of the merging parties on the market of the Republic of Serbia, the merger applicant has proposed that for the purpose of a merger control proceeding, the following relevant product markets be defined as follows:

- retail market of fixed broadband services,
- retail market of media distribution services, and
- retail market of fixed telephony services.

The applicant has further proposed that the territory of the Republic of Serbia be defined as the relevant geographic market for each of the above-listed relevant product markets.

Based on the data and information contained in the Notification and consequent amendments which relate to the merger participants and other parties active on the markets proposed by the Merger applicant as the relevant markets, derives that the merger would create a significant degree of horizontal overlap of the activities of the merger parties on individual markets, with considerable market shares. Pursuant to Article 62 of the Law, the Commission may resume the merger control proceedings *ex officio* based on a conclusion enacted by the Commission President, if it finds that the combined market share of the merger participants on the market of the Republic of Serbia is at least 40%, i.e., reasonably assumes that the merger fails to fulfill the requirements for permissibility from Article 19 of the Law. In order to take a decision according to the Law, it is necessary to establish additional factual details enabling the Commission to define the relevant market and assess the effects of the merger concerned. It is assessed that the data and information provided by the Merger applicant are insufficient to establish the permissibility of merger in summary procedure, rendering it necessary to implement an investigation procedure. In the course of the investigation procedure, the Commission will conduct all necessary actions and establish all facts and present evidence necessary for: definition of the relevant market(s), in particular for but not limited to data against which the possibility of substitution of offer and demand of providers/users of the services concerned will be established given the territory covered by

the operating license of the target company, analysis of the relevant market(s) structure, the level of concentration of the relevant market(s), identification of actual and potential competitors, market position of the merger parties and their competitors, legal and other barriers to entry into the relevant market, level of competition between the merging parties, consumer interests, etc.

A particular aspect of the analysis in this proceeding will be based on data and assessments on direct or delayed effects of the merger concerned, collected from the most significant competitors to the merger parties, active on each of the markets that will be defined as the relevant markets for the proceedings concerned. Towards obtaining data, information and opinions, the Commission will also contact the regulatory agency, and where appropriate, other national authorities and business entities.

On the basis of all facts that derive from the wording of the filed Notification and related amendments, as well as the grounds which are individually presented and reasoned, it was therefore concluded that the conditions for instituting an investigation procedure *ex officio* are fulfilled with regard to the merger concerned, within the meaning of Article 62(2) read in conjunction with Article 19 of the Law.

The decision from Paragraph I of enacting terms herein is made pursuant to Article 62 of the Law.

The decision from Paragraph II of enacting terms herein is made pursuant to Article 35(2) of the Law.

The decision from Paragraph III of enacting terms herein is made pursuant to Article 65(5) of the Law and Article 2(7) of the Tariff on the level of compensations for activities within the competence of the Commission for Protection of Competition.

The decision from Paragraph IV of enacting terms herein is made pursuant to Article 40 of the Law.

Instruction on legal remedy:

This conclusion is not susceptible to separate appeal, but is permitted to institute an administrative dispute against the final decision of the Commission.

PRESIDENT OF THE COMMISSION

Dr Miloje Obradović, m.p.