



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

25/IV Savska St., Belgrade
Number: 4/0-02-305/2018-1
Date: March 28, 2018

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

CONCLUSION

I PROCEEDING SHALL BE INSTITUTED *ex officio* for the investigation of competition infringement against companies:

- **DRUŠTVO ZA TRGOVINU, TURIZAM I USLUGE GR SPORT DOO SREMSKA MITROVICA**, company number 20021292, with the registered seat in Sremska Mitrovica at address 7 Milice Stojadinović St., whose representative is Dunja Spajić, and
- **POLANIK Sp. z o. o.**, Spółka Komandytowa VAT No PL7712875632 KRS 0000406336 Sąd Rejonowy dla Łodzi-Śródmieścia w Łodzi XX Wydział KRS, ul. Życzliwa 11, 97-300 Piotrków Trybunalski, Poland,

in order to establish the existence of restrictive agreement, within the meaning of Article 10 of the Law on Protection of Competition.

- II** All persons in possession of data, documents or other relevant information that could contribute to the fact-finding in this proceeding are invited to submit said to the Commission for Protection of Competition to the address 25 Savska St., Belgrade.
- III** Company POLANIK Sp. z o.o. is provided with a deadline of 30 (thirty) days from the date of receipt of this conclusion, to submit to the Commission for Protection of Competition a proof of the existence of a procurator holder in the Republic of Serbia, or to appoint a procurator holder for the receipt of notices in the Republic of Serbia, with a forewarning that in the case of failure to act accordingly, a procurator holder for the receipt of notices will be assigned by the Commission for Protection of Competition on behalf of company POLANIK Sp. z o.o., whereas the company shall bear the expense of such legal services.
- 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

The Commission for Protection of Competition (hereinafter, the Commission) has received an initiative submitted by company BMA Trading doo Beograd, 3a Svetozara Papića St., for the investigation of infringement of competition by company “DRUŠTVO ZA TRGOVINU, TURIZAM I USLUGE GR SPORT DOO SREMSKA MITROVICA”, with registered seat in Sremska Mitrovica at the address 7 Antona Smaženka St. (hereinafter, GR Sport), and company POLANIK Sp. z o. o., Spólka Komandytowa VAT No PL7712875632 KRS 0000406336 Sąd Rejonowy dla Łodzi-Śródmieścia w Łodzi XX Wydział KRS, ul. Życzliwa 11, 97-300 Piotrków Trybunalski, Poland (hereinafter, Polanik), on the public procurement market for athletic equipment and sporting articles for the 2017 European Athletics Championships, public procurement number OP 4/2016, published by company Atletika 2017 doo, with registered seat in Belgrade at address 73a Strahinjica Bana St. The initiative is entered in the Commission under number 4/0-04-215/2017-1.

In assessing the adequacy of the antitrust initiative for the investigation of alleged infringement of competition on the above-mentioned public procurement market, company GR Sport has provided to the Commission a copy of the exclusive distribution certificate awarded by company Polanik, valid through December 31, 2016.

According to the information supplied by GR Sport, entered in the Commission under number 4/0-04-215/2017-10 of October 3, 2017, the company has been an exclusive distributor of company Polanik continuously since 2005 until the present day. The exclusive distribution relationship was contractually arranged only for 2005, after which company Polanik continued to subsequently award the limited term certificates. Company GR Sport also submitted a confirmation letter issued by Polanik, stating that GR Sport was the exclusive distributor of company Polanik in the territory of the Republic of Serbia in the period from 2005 to 2016.

In its submission presented to the Commission, GR Sport underlined that the respective cooperation takes place in the following manner: GR Sport submits a supply request by email, where Polanik only initiates the production following the confirmation of said supply request. Before shipping, GR Sport pays an installment, while the balance is settled upon the arrival of goods or upon the collection of payments. Business transactions are based on the principle of mutual trust and support built over 12 years of qualitative cooperation, hence Polanik requires no bills of exchange or bank guarantees regardless of the cash value of shipments. Potential customers that come in direct contact with Polanik are redirected to its distributors as its secure and trusted partners and buyers, and in that way are also referred for potential maintenance and repair/replacements under the guarantee cover period to the respective distributors.

Based on an email sent by Polanik to company Atletika 2017 doo Beograd, submitted to the Commission as an annex to the initiative, it is established that Polanik has featured GR Sport as the only exclusive distributor for the territory of Serbia. Upon reviewing Polanik's website¹, it is established that GR Sport is referred to as an exclusive distributor of equipment, footwear and general constructions of stadiums for the Republic of Serbia and that there are no other designated distributors for the Republic of Serbia.

In addition to the aforementioned, in a letter submitted by GR Sport and entered in the Commission under number 4/0-04-215/2017-16 of December 15, 2017, the company made its own independent assessment of its respective market share, reaching about 30%.

In the process of investigating the claims made by GR Sport in relation to its market share, by analyzing the athletic equipment and sporting articles wholesale market, the Commission has assessed

¹ <http://polanik.info/english/foreign-distributors/europe/serbia>, last accessed on March 14, 2018.

that the market share of GR Sport on the athletic equipment wholesale market (clothing and footwear excluded) might exceed 25%.

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 that as their purpose or effect have a significant restriction, distortion, or prevention of competition in the territory of the Republic of Serbia.”

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

The Regulation on agreements between undertakings operating at the different level of production or distribution chain exempted from prohibition (Official Gazette of the RS 11/2010 – hereinafter, the Regulation) regulates the block agreements for the sale, purchase or distribution of goods and services, and more closely stipulates the conditions under which those agreements may be exempt from prohibition.

Article 4(1) of the Regulation stipulates that vertical agreements are exempted from prohibition provided that the market share of each party to the agreement on the relevant market does not exceed 25%.

The restrictive agreement mentioned was not notified to the Commission with a request for exemption, i.e. is not exempt in accordance with the Law.

Considering the aforementioned, the Commission found reasonable grounds to believe that the party infringed the competition in an act that as its purpose or effect has or may have a significant restriction, distortion, or prevention of competition. The exclusive distribution agreement of athletic equipment manufactured by Polanik and implemented by GR Sport as a distributor, may represent an act of infringement of competition from Article 10 of the Law, whose existence will be investigated and established by the Commission in full and complete accordance with Article 41 of the Law.

Given the assessment of the fulfillment of conditions from Article 35(1) of the Law for instituting proceedings *ex officio* 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 the enacting terms herein.

Pursuant to the provision of Article 69(2) of the Law on General Administrative Procedure (Official Gazette of the RS 18/2016) regulating that where a party or a legal representative of the party are abroad and the party is without an attorney or procuracy holder in the Republic of Serbia, one must be appointed for the receipt of notices in the Republic of Serbia, it is established as in Paragraph III of the enacting terms herein.

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

Instruction on legal remedy:

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

PRESIDENT OF THE COMMISSION

Dr Miloje Obradović