



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

Number: 4/0-02-328/2012-9

Date: November 2, 2012

Belgrade

Pursuant to Article 22(2) of the Law on Protection of Competition (Official Gazette of the RS 51/09), Article 192(2) and Article 251(1) of the Law on General Administrative Procedure (Official Gazette of the FRY 33/97, 31/01, and Official Gazette of the RS 30/2010), reviewing in the light of an administrative dispute relating to the Commission's decision No. 4/0-02-328/2012-8, Ref. No. 4/0-02-36/2010, Ref. No. 4/0-02-361/2009, of June 14, 2012, on the measure for protection of competition imposed for the established breach of competition – prohibited agreement, in proceedings instituted *ex officio* against company Preduzeće za trgovinu Metro Cash & Carry d.o.o. Beograd, with registered office at 120 Autoput za Novi Sad St., Belgrade, represented by attorney at law Rastko Petković from the Law Office of Karanović & Nikolić from Belgrade, 23 Resavska St., and company Preduzeće za proizvodnju, spoljnu i unutrašnju trgovinu, turizam i usluge INVEJ d.o.o. Beograd, 14 Aleksandra Dubčeka St., Belgrade-Zemun, whose legal successor is joint stock company Akcionarsko društvo za proizvodnju, spoljnu i unutrašnju trgovinu, turizam i usluge INVEJ d.o.o. Beograd, 14 Aleksandra Dubčeka St., Belgrade-Zemun, represented by Stanko Tomović, President of the Management Board, via procurator holder, attorney at law Dragana M. Dinić-Jotić, 11 Kumanovska St., Belgrade, at the 113th session held on November 2, 2012, the Council of the Commission for Protection of Competition enacts the following

DECISION

I Decision No. 4/0-02-328/2012-8, Ref. No. 4/0-02-36/2010, Ref. No. 4/0-02-361/2009, of June 14, 2012, enacted by the Commission for Protection of Competition **SHALL BE ANNULLED** due to the passing of the statutory limitation period relating to the measure for protection of competition imposed therein.

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

Rationale

The Administrative Court's judgment No. 19 Y 20530/10 of November 17, 2011, received in the Commission for Protection of Competition (hereinafter, the Commission) on January 12, 2012, upholds the Commission's decision No. 4/0-02-36/2010-5, Ref. No:4/0-02-361/2009, of February 26, 2010, where in Paragraph I of enacting terms therein is established that the provisions of Item II-Rebate on invoice, in part establishing "1% in pricing", Annex I to the Agreement on the conditions of sale of April 11, 2008 (a single agreement) and agreements of April 29, 2009 (three agreements) concluded between the parties to the proceedings, represent acts that prevent and restrict competition

within the meaning of Article 7 of the Law on Protection of Competition (Official Gazette of the RS 79/05). In Paragraph II of enacting terms therein, the Commission established that the provisions of Annex I to the Agreement on the conditions of sale referred to in Paragraph I of enacting terms therein, are null and void under the law.

Based on the procedure for determining a measure for protection of competition relating to effectively established facts pertaining to the breach of competition and the application of the provisions of the Law on Protection of Competition (Official Gazette of the RS 51/09 - hereinafter, the Law), the Commission Council enacted Decision No. 4/0-02-328/2012-8, Ref. No. 4/0-02-36/2010, Ref. No. 4/0-02-361/2009, of June 14, 2012, (hereinafter, the Commission's decision), which in Paragraph I of enacting terms therein releases company Metro Cash & Carry d.o.o. Beograd (hereinafter, Metro) from the commitment to pay a monetary sum of the measure for protection of competition for the infringement of competition – prohibited agreement, established in the final decision of the Commission for Protection of Competition No. 4/0-02-36/2010-5, Ref. No. 4/0-02-361/2009, of February 26, 2010 (hereinafter, the final decision of the Commission), and in Paragraph II of enacting terms therein sets the measure for protection of competition against joint stock company Akcionarsko društvo za proizvodnju, spoljnu i unutrašnju trgovinu, turizam i usluge INVEJ d.o.o. Beograd, 14 Aleksandra Dubčeka St., Belgrade-Zemun (hereinafter, INVEJ) in the form of commitment to pay a monetary sum, no later than three months from the date of receipt of said decision, as established in Paragraph IV of enacting terms therein and in the manner as specified in Paragraph III of enacting terms therein.

Company INVEJ filed a complaint against the Commission's decision, instituting an administrative dispute before the Administrative Court, court case file No. *16 V 9607/12* of July 25, 2012. In the complaint, company INVEJ stated that the Commission had adopted a measure for protection of competition in breach of Article 68(3) of the Law, that is, raised the objection of limitation.

Pursuant to Article 68(3) of the Law, a measure for protection of competition may not be set or collected upon the expiry of a period of three years from the day of perpetrating of acts or activities or failure to fulfill commitment(s), that is, from the last day of a time period related to performing activity(ies) established as the infringement of competition.

By accessing the case file No. 4/0-02-36/2010 and assessing the statements presented in the complaint challenging the Commission's decision No. 4/0-02-328/2012-8 of June 14, 2012, the Commission Council assessed that the period under the statute of limitations has objectively expired within the meaning of Article 68(3) of the Law.

On the basis of the above, pursuant to Article 251(1) of the Law on General Administrative Procedure, the Commission Council decided as in Paragraph I of enacting terms herein.

Pursuant to Article 40(1) of the Law, it is decided as in Paragraph II of enacting terms herein.

Instruction on legal remedy:

This decision is final in the administrative procedure.

This decision is not susceptible to appeal but is permitted to institute an administrative dispute by filing a complaint before the Administrative Court, no later than 30 days from the date of receipt of this decision.

CHAIRWOMAN OF THE COUNCIL

Vesna Janković, President of the Commission