



Republic of Serbia
**COMMISSION FOR PROTECTION
OF COMPETITION**
25 Savska St, 4th Floor, Belgrade
Number: 4/0-01-206/2020-1
Date: January 28, 2020

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 PROCEEDINGS SHALL BE INITIATED *ex-officio* to undertake investigations of infringements of competition law **against:**

- APATINSKA PIVARA APATIN DOO APATIN, company number 08045577, with registered office at 5 Trg oslobođenja Sq., Apatin, represented by Vladimir Novaković, CEO, and
- PREDUZEĆE ZA TRGOVINU METRO CASH & CARRY DOO BEOGRAD, company number 17482700, with registered office at 120 Autoput za Novi Sad St., Belgrade, represented by Marijana Racić and Andre Rinnensland, CEOs,

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

II All persons are invited to submit data, documents or other relevant information in their possession that could contribute to the accurate fact-finding in the proceedings to the Commission for Protection of Competition, 25 Savska St., 4th Floor, Belgrade.

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

Exposition

Pursuant to Article 47 of the Law on Protection of Competition (Official Gazette of the RS 51/2009 and 95/2013 – hereinafter, the Law), the Commission for Protection of Competition (hereinafter, the Commission) conducted a retail sector inquiry into the sale in non-specialized stores with food, beverages and tobacco predominating for 2017-2018. The sector inquiry covered, inter alia, the analysis of contractual relations between suppliers and selected trade chains regarding certain product categories.

In such manner, the Commission obtained contracts of purchase and sale entered into by companies APATINSKA PIVARA APATIN DOO APATIN, company number 08045577, with registered office at 5 Trg oslobođenja Sq., Apatin, represented by Vladimir Novaković, CEO (hereinafter, company Apatinska pivara), and PREDUZEĆE ZA TRGOVINU METRO CASH & CARRY DOO BEOGRAD,

company number 17482700, with registered office at 120 Autoput za Novi Sad St., Belgrade, represented by Marijana Racić and Andre Rinnensland, CEOs, (hereinafter, company METRO Cash & Carry), namely:

- Contract of Purchase and Sale No. 285B-70-KA/2016 of March 30, 2016, filed with company Apatinska pivara under No. 817 of April 2016, and with company METRO Cash & Carry under No. 157/ KU-16-12-002 of April 27, 2016,
- Annex 2 – Key Accounts 1 to the Contract of Purchase and Sale No. 285B-70-KA/2016, laying down the conditions under which the seller grants rebates to the buyer, as well as the type and amounts of rebates, filed with company Apatinska pivara under No. 818 of April 2016, and with company METRO Cash & Carry under No. 157/ A2-16-12-002 of April 27, 2016,
- Contract of Purchase and Sale No. 302B-70-KA/2017 of March 23, 2017, filed with company METRO Cash & Carry under No. 157/ KU-17-12-002 of March 31, 2017,
- Annex 2 – Key Accounts D to the Contract of Purchase and Sale No. 302B-70-KA/2017, laying down the conditions under which the seller grants rebates to the buyer, as well as the type and amounts of rebates, filed with company METRO Cash & Carry under No. 157/ A2-17-12-002 of March 31, 2017,
- Contract of Purchase and Sale No. 364B-70-KA/2018 of March 29, 2018, filed with company Apatinska pivara under No. 1347 of April 10, 2018, and with company METRO Cash & Carry under No. 157/ KU-18-12-002 3700 of April 18, 2018,
and
- Annex 2 – Key Accounts D to the Contract of Purchase and Sale No. 364B-70-KA/2018, laying down the conditions under which the seller grants rebates to the buyer, as well as the type and amounts of rebates, filed with company Apatinska pivara under No. 1348 of April 10, 2018, and with company METRO Cash & Carry under No. 157/ A2-18-12-002 of April 18, 2018.

The Commission reviewed the contracts concerned from the standpoint of potential implementation of Article 10 of the Law which provides that 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 paragraph 2 of the same article is laid down that restrictive agreements include contracts or certain contract provisions which in particular, directly or indirectly, set the purchase or selling prices or other conditions of trade. The provision laid down in Article 10(3) of the Law stipulates that restrictive agreements are prohibited and void, except in cases of exemption from prohibition pursuant to the Law.

Upon inspection of the contracts, the Commission established that they contain Article 5 which provides that the buyer is informed of the conditions of sale provided by the seller and accepts that by carrying out its own business activities it will not cause distortions in the sales market through the exorbitant and excessive price undercutting, act in an anti-competitive manner by creating competitive disadvantages for other undertakings, including the seller, to cause harm or exclude its competitors from the market for

distribution and/or sale of the seller's products (for example, by reselling the goods at a price below the selling prices at which the seller's goods are sold to the buyer, with no economic reasoning for long periods of time), nor that its price policy will in any manner call in question both its own reputation and the reputation, production and good name of the seller or the group of companies operating within the Molson Coors system and brands that the company and the seller, as its integral part, sell on the market. It is also established that said provision constitutes an integral part of the Annexes to the Contracts of Purchase and Sale, laying down the conditions under which the seller grants rebates to the buyer, as well as the type and amounts of rebates. Furthermore, Article 2(3) of the Annexes contains a provision which states that if the buyer acts inconsistently with the above-mentioned provision, the seller retains the right to refuse rebates to the buyer and terminate the annexes concerned.

Since it is established that the wording of Article 5 of the Contracts of Purchase and Sale concluded by company Apatinska pivara with its buyer may represent a provision that sets the price at the level below which the buyer cannot resell the goods, the Commission found reasonable grounds to believe that the Contracts of Purchase and Sale entered into between companies Apatinska pivara and METRO Cash & Carry may represent restrictive agreements which directly foresee minimum resale price maintenance.

Under the provision of Article 10 of the Law, restrictive agreements are defined as 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. Article 10(2) of the Law stipulates that restrictive agreements may be contracts, certain contract provisions, express or tacit agreements, concerted practices, as well as decisions of associations of undertakings which in particular, directly or indirectly, set the purchase or selling prices or other conditions of trade, as well as other actions and acts specified in this legal provision.

Article 35(1) of the Law stipulates that the Commission can institute an investigation procedure *ex-officio* in cases of suspected infringements when based on antitrust complaints, information and other available data reasonably assumes the existence of competition infringement, and in view of the fact that all the above considerations have provided adequate grounds for presuming an infringement referred to in Article 10 of the Law, it is decided as in Paragraph I of enacting terms herein.

Pursuant to Article 41 of the Law, the Commission will take all necessary measures of inquiry in the investigation procedure to correctly assess the facts, investigate the existence of infringement of competition law, and having completed the procedure it will enact a final decision on the existence of infringement of competition law.

Pursuant to the provision of Article 35(2) of the Law, it is decided as in Paragraph II of enacting terms herein.

Pursuant to Article 40(1) of the Law, 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 against the final decision of the Commission in this administrative matter.

PRESIDENT OF THE COMMISSION

Nebojša Perić