



Republic of Serbia
**COMMISSION FOR PROTECTION
OF COMPETITION**
25 Savska St, 4th Floor, Belgrade
Number: 4/0-01-217/2020-1
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:**

- AKCIONARSKO DRUŠTVO INDUSTRIJA MLEKA I MLEČNIH PROIZVODA IMLEK, PADINSKA SKELA, company number 07042701, with registered office at bb Industrijsko naselje St., Padinska Skela, Belgrade-Palilula, represented by Bojan Radun, CEO,
- and
- DRUŠTVO SA OGRANIČENOM ODGOVORNOŠĆU GOMEX ZA UNUTRAŠNJU I SPOLJNU TRGOVINU I USLUGE, ZRENJANIN, company number 08652163, with registered office at 27a Miletićeva St., Zrenjanin, represented by Goran Kovačević, CEO,

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 sales contracts entered into by companies Akcionarsko društvo Industrija mleka i mlečnih proizvoda Imlek, Padinska Skela, company number 07042701, with registered office at bb Industrijsko naselje St., Padinska Skela, Belgrade-Palilula, represented by Bojan

Radun, CEO (hereinafter, company Imlek), and DRUŠTVO SA OGRANIČENOM ODGOVORNOŠĆU GOMEX ZA UNUTRAŠNJU I SPOLJNU TRGOVINU I USLUGE, ZRENJANIN, company number 08652163, with registered office at 27a Miletićeva St., Zrenjanin, represented by Goran Kovačević, CEO (hereinafter, company Gomex), namely:

- Sales Contract No. 364 of April 25, 2016, filed with Imlek under No. 4883 of April 26, 2016, and with company Gomex under No. IZL-UG-274-2016 of May 23, 2016,
- Annex 1 to the Sales Contract No. 364 of April 25, 2016, laying down the conditions under which the seller grants rebates and reimbursements to the buyer, method of payment, type and amounts of rebates and reimbursements, filed with Imlek under No. 4884 of April 26, 2016, and with company Gomex under No. IZL-UG-274-2016 of May 23, 2016,
- Sales Contract No. 245 of July 31, 2017, filed with company Imlek under No. 6615 of July 31, 2017,
- Annex 1 to the Sales Contract No. 245 of July 31, 2017, laying down the conditions under which the seller grants rebates and reimbursements to the buyer, method of payment, type and amounts of rebates and reimbursements, filed with Imlek under No. 6616 of July 31, 2017,
- Sales Contract No. 249 of December 26, 2018, filed with company Imlek under No. 3582 of December 26, 2018, and with company Gomex under No. UG-410/2018 of June 15, 2018, and
- Annex 1 to the Sales Contract No. 249 of December 26, 2018, laying down the conditions under which the seller grants rebates and reimbursements to the buyer, method of payment, type and amounts of rebates and reimbursements, filed with Imlek under No. 3583 of December 26, 2018, and with company Gomex under No. UG-410/2018 of June 15, 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 and use of its market power towards suppliers and/or consumers, and that it will not act in an anti-competitive manner by creating competitive disadvantages for other undertakings, including the seller, to cause harm or exclude direct and/or indirect potential competitors from the market (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, by using the seller's goods as loss-leaders for long periods of time causing adverse effects on the seller's reputation and operations, etc.). It is also established that said provision constitutes an integral part of the Annexes to the Sales Contracts, laying down the conditions under which the seller grants rebates and reimbursements to the buyer, method of payment, type and amounts of rebates and reimbursements. Furthermore, Article 3(3) of the Annexes contains a provision which states that if the buyer acts inconsistently with the above-mentioned provision affecting the market where it operates or other related markets, the seller retains the right to withhold payment of the rebates and/or reimbursements agreed and terminate the annexes to the contracts.

Since it is established that the wording of Article 5 of the Sales Contracts concluded by company Imlek 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 entered into between companies Imlek and Gomex 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