



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

25 Savska St., 4th Floor, Belgrade

Number: 4/0-01-729/2020-1

Date: December 2, 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 INSTITUTED *ex officio* to undertake investigation of alleged infringements of competition law against undertakings:

- PORSCHE SCG DOO BEOGRAD, company number 17522060, with registered office at 11 Zrenjaninski put St., Belgrade, represented by Hubert Wallner and Miloš Vujanović, CEOs,
- AUTOKOMERC DOO, BEOGRAD (SURČIN), company number 06323910, with registered office at 84/c Svetog Save St., Belgrade-Surčin, represented by Zorica Đurđević, CEO,
- DRUŠTVO SA OGRANIČENOM ODGOVORNOŠĆU ZA PROIZVODNJU, TRGOVINU I USLUGE AUTOCENTAR MANIK-ACM PRELJINA, company number 20219823, with registered office at 13 Ibarski put St., Čačak-Preljina, represented by Dragan Grujanac, CEO,
- PRIVREDNO DRUŠTVO BROS AUTO DOO NIŠ, company number 20402016, with registered office at 185 Dimitrija Tucovića St., Niš, represented by Oliver Jevtić, CEO,

to establish the existence of restrictive agreements, 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 accurate fact-finding in this proceedings are invited to submit said evidence to the Commission for Protection of Competition at 25 Savska St., Belgrade.

- III** 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.

Exposition

Pursuant to Article 21(1/6) 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) has conducted an inquiry during 2019, into competitive conditions prevailing on the markets for automotive sales and aftersales services in 2017, 2018 and 2019. The inquiry, inter alia, covered the analysis of contractual relations between suppliers and distributors of bestselling car brands in the territory of the Republic of Serbia.

The contractual relations have been analyzed from the standpoint of potential application of Article 10 of the Law, which in Paragraph 1 reads 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. Article 10 in Paragraph 2 stipulates that restrictive agreements may include 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. Article 10(3) of the Law prescribes that restrictive agreements are prohibited and void, except in cases of exemption from the prohibition pursuant to this Law.

When analyzing competitive conditions, the Commission also obtained dealership agreements for products/Audi-branded vehicles, entered into by company PORSCHE SCG DOO BEOGRAD, company number 17522060, with registered office at 11 Zrenjaninski put St., Belgrade, represented by Hubert Wallner and Miloš Vujanović, CEOs (hereinafter, PORSCHE SCG), with the following companies:

- PORSCHE INTER AUTO S DOO BEOGRAD (PALILULA), company number 20481943, with registered office at 11 Zrenjaninski put St., Belgrade, represented by Hubert Wallner and Miloš Vujanović, CEOs (hereinafter, INTER AUTO S) – namely, a dealership agreement of December 29, 2008, filed with company PORSCHE SCG under No. 124/08 of December 29, 2008, that relates to Porsche Beograd Ada, from Belgrade, 4 Radnička St., and a dealership agreement of January 14, 2013, filed with company PORSCHE SCG under No. 01/13 of January 14, 2013, and with company INTER AUTO S under No. 06-1/13 of January 14, 2013, that relates to Porsche Novi Sad, from Novi Sad, 24 Zrenjaninski put St., with accompanying annexes;
- AUTOKOMERC DOO, BEOGRAD (SURČIN), company number 06323910, with registered office at 84/c Svetog Save St., Belgrade-Surčin, represented by Zorica Đurđević, CEO (hereinafter, AUTOKOMERC) – namely, a dealership agreement of March 9, 2007, filed with company PORSCHE SCG under No. 38/07 of March 9, 2007, and with company AUTOKOMERC under No. 03/07 of April 2, 2007, with accompanying annexes;
- DRUŠTVO SA OGRANIČENOM ODGOVORNOŠĆU ZA PROIZVODNJU, TRGOVINU I USLUGE AUTOCENTAR MANIK-ACM PRELJINA, company number 20219823, with registered office at 13 Ibarski put St., Čačak-Preljina, represented by Dragan Grujanac, CEO (hereinafter, MANIK-ACM) – namely, a dealership agreement of

January 5, 2009, filed with company PORSCHE SCG under No. 17/09 of March 5, 2009, and with company MANIK-ACM under No. 20/09 of March 19, 2009, with accompanying annexes;

- PRIVREDNO DRUŠTVO BROS AUTO DOO NIŠ, company number 20402016, with registered office at 185 Dimitrija Tucovića St., Niš, represented by Oliver Jevtić, CEO (hereinafter, BROS AUTO) – namely, a dealership agreement of January 1, 2009, filed with company PORSCHE SCG under No. 11/09 of February 2, 2009, and with company BROS AUTO under No. 22/09 of April 10, 2009, with accompanying annexes.

By accessing the files, dealership agreements provided by undertakings themselves, the Commission has established that said documents represent a form of standard contracts concluded for an indefinite period, as well as that all dealership agreements in Article 14, Paragraph 1 thereof define that the contractor (PORSCHE SCG) has the rights to sell the contract products to its dealers at prices applicable on the day of shipment. Also, Article 14, Paragraph 2 thereof defines that the dealers can resell the contract products at prices set by the contractor. Furthermore, pursuant to the annexes to the dealership agreements that have also been provided to the Commission, it is established that the validity period of said agreements, as well as the provision at issue, have not been amended.

When assessing the grounds for potential implementation of the Law to the contractual provisions defined in such manner, the Commission has considered the fact that the sole shareholder in companies PORSCHE SCG and INTER AUTO S, with 100% of shares, is Porsche Holding Gesellschaft m.b.H. The Commission has therefore observed these companies as affiliated undertakings, within the meaning of Article 5 of the Law. Given that affiliated undertakings are considered as a single undertaking in pursuance of Article 5 of the Law, said companies cannot enter into restrictive agreements since such agreements, within the meaning of Article 10(1) of the Law, can be only concluded between independent undertakings, where none of the two affiliated undertakings are considered as such.

However, in terms of dealership agreements concluded with companies that are not considered as affiliated undertakings of the contractor, the formulation from Article 14 of the dealership agreements entered into by company PORSCHE SCG with its buyers, may represent a provision that sets resale prices in retail or a provision that sets resale prices in wholesale of the products concerned on their buyers.

In all dealership agreements for products/Audi-branded vehicles that have been provided to the Commission, the existence of a provision contained therein has been established, based on which the contractor was able to set resale prices for motor vehicles. Such provisions can disturb and even eliminate price competition in retail, that is, price competition that could have existed between car dealers of this particular brand if they had been able to set their resale prices independently. For the reasons outlined above, the Commission will in the investigation procedure, in particular, investigate whether the companies against which the proceedings had been brought, have set the resale prices of products/Audi-branded vehicles in the last five years, which, as such, would represent an infringement of competition referred to in Article 10 of the Law. However, this does not preclude the possibility of investigating the potential existence of other restrictive provisions contained in the agreements concerned, such as non-compete clauses, ban on active and passive sales, etc.

Based on the above, the Commission found reasonable grounds to believe that the dealership agreements entered into by company PORSCHE SCG for an indefinite period with companies AUTOKOMERC, BROS AUTO, and MANIK-ACM, may in particular, but not exclusively, represent restrictive agreements that directly set resale prices, within the meaning of Article 10 of the Law.

Article 35(1) of the Law stipulates that the Commission may institute an *ex officio* proceedings to investigate the infringement of competition when based on antitrust complaints, information and other available data finds reasonable grounds to believe the existence of competition infringement. Given the assessment of the fulfillment of conditions for instituting proceedings *ex officio* 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 may undertake all necessary probative activities aimed at achieving accuracy in fact-finding, investigate the existence of acts of infringement of competition, and enact a final decision on the existence of an infringement of competition law upon closing of the investigation procedure.

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

Pursuant to the provision of 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 separate 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