



Republic of Serbia
**COMMISSION FOR
PROTECTION OF COMPETITION**
25 Savska St, 4th Floor, Belgrade
Number: 4/0-02-06/2021-2
Date: 11 June 2021

Pursuant to Article 58(3) of the Law on Protection of Competition (Official Gazette of the RS 51/2009 and 95/2013), the Commission for Protection of Competition publishes the following

NOTICE

of the proposal of commitments offered by Akcionarsko društvo Industrija mleka i mlečnih proizvoda Imlek, Padinska Skela, that the company is voluntarily willing to undertake to remove potential infringements of competition, with a call to all stakeholders to submit written observations, positions and opinions on the offered commitments

The Commission for Protection of Competition (hereinafter, the Commission) in a procedure of investigating the arguments relied in support of an antitrust complaint that concerns the public procurement JN-OP 24/16, published by Klinički centar Kragujevac as the contracting authority on 25 May 2017, has obtained the Business Development Agreement concluded between Akcionarsko društvo Industrija mleka i mlečnih proizvoda Imlek, Padinska Skela (hereinafter, Imlek) and Kruna-Komerc d.o.o. Beograd (hereinafter, Kruna-Komerc), entered into force on 1 June 2016 and valid until 1 November 2016. Based on the analysis of contract provisions, the Commission assessed that the contracting parties have agreed on the commercial and other conditions of trade to establish the pricing policy for the purpose of participating in public procurement procedures. Specifically, the Commission found reasonable grounds to believe that the agreement concerned establishes cooperation between direct competitors, given that both companies participate in public procurement procedures as bidders of equivalent products, and that it contains provisions on resale price maintenance, which as its purpose of effect may have a significant restriction, distortion, or prevention of competition.

For reasons of compliance with the conditions set out in Article 35 of the Law, on 31 May 2017, by enacting the Conclusion No. 4/0-02-418/2017-1, the Commission instituted antitrust proceedings *ex officio* against companies Imlek and Kruna-Komerc to establish the existence of an infringement of competition referred to in Article 10 of the Law on Protection of Competition (Official Gazette of the RS 51/2009 and 95/2013 – hereinafter, the Law).

Under the provision of Article 58(1) of the Law, the Commission may enact a conclusion on suspension of antitrust investigation if the party, based on the content of the conclusion on instituting proceedings or facts established in the proceedings, offers a proposal of commitments that is

voluntarily willing to undertake to remove potential infringements of competition, containing terms and conditions and deadlines for implementation thereof.

On 10 September 2020, within the meaning of Article 58 of the Law, Imlek has offered the Proposal of commitments that the company is voluntarily willing to undertake to remove potential infringements of competition, with terms and conditions and deadlines for implementation thereof, clarified and supplemented by the submission of 8 June 2021 (hereinafter, Proposal of commitments).

Under Article 58(3) of the Law, the Commission publishes the notice of the proposal of commitments offered by the party to the proceedings on its website, inviting all stakeholders to submit written observations, positions and opinions no later than 20 days from the date of publication of the notice.

For this purpose, the Commission publishes the Notice of the Proposal of commitments offered by Imlek:

1. in public procedures for the procurement of products from the product portfolio of Imlek in the territory of the Republic of Serbia, the company undertakes not to enter into contractual relations with the unrelated third parties under which would assume the obligation to supply only one undertaking in some or all public procurement procedures. For the avoidance of any doubt, and having regard to the specific nature of products that Imlek distributes (in terms of, for example, quality, method of storing, and food safety management requirements), the measure will not imply the obligation of Imlek to supply all its products to every party for the purpose of participation in public procurements, nor it will limit the right of Imlek to act independently in any public procurement procedure;
2. in public procurement procedures where the contracting authorities or third-parties as potential bidders or suppliers in the public procurement concerned would contact Imlek to procure its goods in the event of winning the tender, the company undertakes to apply the same principle of cooperation as regards the contractual framework, i.e., conclude the standard contract with the said parties. The above mentioned will not apply in cases where the contracting authority or potential bidder winning the tender would request, as the terms of cooperation, to conclude their model contract, i.e., other than that of Imlek. For the avoidance of any doubt, when concluding the standard contract, it is possible and in accordance with the nature of public procurements to agree on various commercial terms and conditions (for example, prices at which Imlek sells its products to the contracting authority and/or potential bidder in the public procurement, quantities, delivery terms, etc.) depending on the terms and conditions of a specific public procurement, legal requirements, and business interests of both contracting parties. Considering that the Commission was presented with the Draft standard contract for the sale of goods for the purpose of public procurements, should the changes to the standard contract model occur in the course of the implementation of this measure, in its entirety or in part, Imlek will without delay notify the Commission on the matter and provide to the Commission the amended standard contract model for review;
3. by no later than 28 February of the current year for the previous year, the company undertakes to submit a report, in the written and electronic form, that will contain information on the number of contracts with the contracting authorities that are awarded to Imlek for the purpose of participating in a public procurement, and information on the number of such contracts

concluded by using the standard contract model of Imlek and on the number of such contracts concluded on the contract models of the contracting authorities;

4. within thirty (30) days from the date of receipt of the conclusion on suspension of proceedings, the company undertakes to publish on its official website a special web address, that is, a webpage for public procurements so that all third-party stakeholders could forward requests to Imlek, as a milk and dairy producer, for the delivery of Imlek products for the purpose of participating in a public procurement;
5. once a year and by no later than 28 February of the current year for the previous year, the company undertakes to submit a report to the Commission, in written and electronic form, that will contain information on all received requests of the third parties that have addressed Imlek, as a producer, in the capacity of potential tender bidders/suppliers and in reference to the planned participation in public procurements, and information on the number of issued confirmations that Imlek, as a producer, had issued to such third parties, attesting the full production and delivery capabilities by request of the third parties. The report will also contain information on the third parties whose requests Imlek had rejected, stating the reasons thereof. For the avoidance of any doubt, if in the course of the implementation of this measure Imlek would receive no requests by the third parties for the purpose of participating in public procurements, Imlek will also inform the Commission on this matter;
6. without delay and at the latest within thirty (30) days from the receipt of the conclusion on suspension of the proceedings concerned, the company undertakes to appoint one or more persons/monitoring officers within the company tasked with monitoring the conclusion of standard contracts for the sale of goods for the purpose of public procurements, and authorized to report directly to the Commission in respect of the execution of the commitments contained in point 3, 4, and 5 within the meaning of Article 58 of the Law that concerns the reporting to the Commission and to provide replies to extraordinary queries of the Commission, with the help of all company employees. The abovementioned person(s) would need to be officially appointed by Imlek CEO, following the enactment of the Commission's conclusion on suspension of proceedings. The authorized person in Imlek will, without delay, inform the Commission of the person(s) designated as the monitoring officer(s) and his/her (their) contact details in the written form, as well as on all potential changes to the designated person(s) during the period of the commitments within the meaning of Article 58 of the Law;
7. once a year, the company undertakes to implement a special employee education program on competition rules and regulations that will also cover the rules on public procurement, in the form of mandatory training to be held once a year for current and new employees. The training will be provided to employees who, in the performance of their regular duties, might find the rules provided for by the Law on Protection of Competition on public procurement to be relevant. The education program will be implemented either in the form of special training or as a part of training within the framework of regular employee training on competition where necessary and possible for Imlek.

Imlek proposed the period of three (3) years from the date of receipt of the Commission's conclusion on suspension of proceedings as the period within which the company is ready to assume the commitments.

All stakeholders are invited to present their observations, positions and opinions on the Draft commitments offered by Imlek, in the written form, no later than 20 days from the date of publication of the notice, to the address: Commission for Protection of Competition, 25 Savska St., 4th Floor, 11000 Belgrade.

Submissions in which the observations, positions, and opinions are presented should contain a note giving reference to the Draft commitments offered by Imlek.

The observations, positions, and opinions can be also provided electronically within the same 20-day limit, to the address: office.kzk@kzk.gov.rs, containing a note giving reference to the Draft commitments offered by Imlek.

The Commission is not legally obligated to accept the proposal of commitments that the party is voluntarily willing to undertake.

Should the Commission determine, based on the analysis of potential observations, positions and opinions provided within the prescribed period and a market test, that the offered commitments are likely to ensure the achievement of the objective of the measure referred to in Article 59 of the Law, it will enact a conclusion specifying the measure based on the proposal and suspend the proceedings. The conduct of the party upon the suspension of proceedings will be supervised *ex officio* by the Commission. The proceedings can be reopened if any circumstances referred to in Article 58(7) of the Law arise.

COUNCIL OF THE COMMISSION FOR
PROTECTION OF COMPETITION