



Republic of Serbia  
**COMMISSION FOR  
PROTECTION OF COMPETITION**  
25 Savska St., 4<sup>th</sup> Floor, Belgrade  
Number: 4/0-01-75//2021-4  
Reference No.: 4/0-01-217/2020  
Date: 11 June 2021

Pursuant to the 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) launched a sector inquiry under Article 47 of the Law on Protection of Competition (Official Gazette of the RS 51/09 and 95/13 – hereinafter, the Law) into the retail sale in non-specialized stores with food, beverages and tobacco predominating in 2017-2018. The sector inquiry covered, inter alia, the analysis of contractual relations between suppliers and selected retail chains for individual product categories.

Accordingly, the Commission obtained the sales agreements that 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, Imlek) concluded with its buyers (hereinafter, Agreements).

Based on the preliminary analysis of the Agreements available with a view to the possible application of Article 10 of the Law, the Commission established that all the Agreements that the Commission had obtained contain an Article 5, which defines that the buyer is aware of the conditions of sale set by the seller and accepts that in performing its business activities it will not, by way of unjustified and substantial speculative price reductions and relying on its market power towards suppliers and/or buyers, cause disturbances on the sales market, behave in a non-market manner that would cause disadvantages for other undertakings, including the seller, with a view to cause harm and drive out direct and/or potential competitors from the market (for example, by selling products at prices at less than costs of purchase without duly justified economic grounds over a longer period of time, by using the seller's products as loss leaders over a longer period of time, causing a negative impact on the seller's reputation and business, etc.). It is also established that the said provision also constitutes an integral part of the annexes to the sales agreements setting the terms and conditions of fees and rebates for buyers, method of payment, type and amount of fees and rebates. Furthermore, the annex in Article 3(3) contains the provision that, where the buyer would act in a manner that is contrary to the previously mentioned provision with consequences on the market where it operates or other

related markets, the seller reserves the right not to pay the agreed rebates and terminate the annex to the agreement.

Since it is established that the wording of Article 5 of the Agreement concluded by Imlek with its buyers might represent a provision that sets the price floor below which buyers cannot resell the products, the Commission found reasonable grounds to believe that the Agreements may represent restrictive agreements by way of minimum resale price maintenance.

For reasons of compliance with the conditions set out in Article 35 of the Law, on 28 January 2020, the Commission launched investigation proceedings against Imlek and 16 companies that have concluded the agreements on sale and purchase with Imlek as a seller, to investigate the infringement of competition referred to in Article 10 of the Law, namely:

- proceedings instituted by way of Conclusion No. 4/0-01-217/2020-1 of 28 January 2020, brought against Imlek and company 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;
- proceedings instituted by way of Conclusion No. 4/0-01-218/2020-1 of 28 January 2020, brought against Imlek and company DOMAĆI TRGOVAČKI LANAC DRUŠTVO SA OGRANIČENOM ODGOVORNOŠĆU ZA TRGOVINU I USLUGE BEOGRAD (NOVI BEOGRAD), company number 20710268, with registered office at 23 Milutina Milankovića St., Belgrade, represented by Obrad Popović, CEO;
- proceedings instituted by way of Conclusion No. 4/0-01-219/2020-1 of 28 January 2020, brought against Imlek and company PRIVREDNO DRUŠTVO RIČ DOO ZA PROMET ROBA I USLUGA NA VELIKO I MALO, PROKUPLJE, company number 07852568, with registered office at bb Nova Božurna St., Prokuplje, represented by Nebojša Miljanović, Milena Anđić Miljanović and Miloš Petrović, CEOs, and Radojko Anđić, Deputy CEO;
- proceedings instituted by way of Conclusion No. 4/0-01-220/2020-1 of 28 January 2020, brought against Imlek and company DOMAĆA TRGOVINA DRUŠTVO SA OGRANIČENOM ODGOVORNOŠĆU BEOGRAD (RAKOVICA), company number 20438819, with registered office at 12d Patrijarha Dimitrija St., Belgrade, represented by Dimitrije Stojanović, CEO;
- proceedings instituted by way of Conclusion No. 4/0-01-221/2020-1 of 28 January 2020, brought against Imlek and company PREDUZEĆE ZA PROIZVODNJU, PROMET I USLUGE VEROPOULOS DOO, BEOGRAD, company number 17330012, with registered office at 86/a Milutina Milankovića St., Belgrade, represented by Nikolaos Veropoulos, Marc Ernest Garofani and Lazar Gavran, CEOs;
- proceedings instituted by way of Conclusion No. 4/0-01-222/2020-1 of 28 January 2020, brought against Imlek and company QVATTPO COMPANY DOO BEOGRAD (NOVI BEOGRAD), company number 17355724, with registered office at 283b Vinogradska St., Belgrade, represented by Slavko Bošković and Darko Nenadović, CEOs;
- proceedings instituted by way of Conclusion No. 4/0-01-223/2020-1 of 28 January 2020, brought against Imlek and company PREDUZEĆE ZA PROIZVODNJU USLUGE I TRGOVINU EXPORT IMPORT METLAKOMERC DOO, LESKOVAC, company number 06462391, with registered office at Vinarce, Leskovac, represented by Danilo Stešević, CEO;

- proceedings instituted by way of Conclusion No. 4/0-01-224/2020-1 of 28 January 2020, brought against Imlek and company PREDUZEĆE ZA TRGOVINU I USLUGE, EXPORT - IMPORT MIKROMARKET NS DOO, NOVI SAD, company number 20585480, with registered office at 50 Cara Dušana St., Novi Sad, represented by Aleksandar Čokorilo, CEO;
- proceedings instituted by way of Conclusion No. 4/0-01-225/2020-1 of 28 January 2020, brought against Imlek and company AS Velpro d.o.o. Donji Dušnik, company number 21267422, with registered office at bb Donji Dušnik St., Donji Dušnik, Gadžin Han, represented by Jovica Ilić, CEO;
- proceedings instituted by way of Conclusion No. 4/0-01-226/2020-1 of 28 January 2020, brought against Imlek and company PRIVREDNO DRUŠTVO ZA SPOLJNU I UNUTRAŠNJU TRGOVINU I USLUGE AMAN DOO SURČIN, company number 06048064, with registered office at 52a Vinogradska St., Belgrade-Surčin, represented by Nemanja Petrović, CEO;
- proceedings instituted by way of Conclusion No. 4/0-01-227/2020-1 of 28 January 2020, brought against Imlek and company SAMOSTALNA TRGOVINSKA RADNJA LONČAREVIĆ MILORAD LONČAREVIĆ PR, ČAČAK, company number 60878510, with registered office at bb Nikolaja Velimirovića St., Čačak, represented by Milorad Lončarević, entrepreneur;
- proceedings instituted by way of Conclusion No. 4/0-01-228/2020-1 of 28 January 2020, brought against Imlek and company AKCIONARSKO DRUŠTVO ZA TRGOVINU NA MALO I VELIKO MIROČ, KLADOVO, company number 07129661, with registered office at 1 Kralja Aleksandra St., Kladovo, represented by Marko Petrović, Acting CEO;
- proceedings instituted by way of Conclusion No. 4/0-01-229/2020-1 of 28 January 2020, brought against Imlek and company SAMOSTALNA TRGOVINSKA RADNJA NA VELIKO I MALO JELENA 2 TOŠIĆ ĐURO PREDUZETNIK, PANČEVO, company number 52235901, with registered office at 24 Svetog Save St., Pančevo, represented by Đuro Tošić, entrepreneur;
- proceedings instituted by way of Conclusion No. 4/0-01-230/2020-1 of 28 January 2020, brought against Imlek and company PREDUZEĆE ZA PROIZVODNJU, TRGOVINU I USLUGE NS-BOMI DOO OBRENOVAC, company number 17136291, with registered office at 121 Vojvode Mišića St., Obrenovac, represented by Bojan Mijailović, CEO;
- proceedings instituted by way of Conclusion No. 4/0-01-231/2020-1 of 28 January 2020, brought against Imlek and company PROIZVODNO I TRGOVINSKO PREDUZEĆE DIS DOO KRNJEVO, company number 07617003, with registered office at 1b Bulevar Oslobođenja Blvd., Krnjevo, Velika Plana, represented by Ivan Šuleić, CEO;
- proceedings instituted by way of Conclusion No. 4/0-01-232/2020-1 of 28 January 2020, brought against Imlek and company UNIVEREXPORT EXPORT-IMPORT DOO NOVI SAD, company number 08207259, with registered office at 165 Sentandrejski put St., Novi Sad, represented by Dragoslav Vučurević, CEO.

Taking account of the fact that Imlek acts in the capacity of seller in all of the above-listed Agreements, that they are drafted in the form of a standard contract with minor variations and concluded with all the above-mentioned buyers, and that said variations do not affect the finding that the matter is grounded upon the same or similar factual state, that the alleged infringements of competition law are founded on the same legal basis, as well as the Commission's compulsory jurisdiction in respect to all matters, for reasons of procedural economy, under Article 95(1) of the Law General Administrative Procedure, by way of Conclusion No. 4/0-01-217/2020-21 of 19 May

2020, the Commission decided on the joinder of proceedings brought against Imlek and 16 above-listed buyers, consolidating the conclusions on instituting antitrust proceedings for the purpose of administering one procedure and simultaneous decision-making, registered as case No. 4/0-01-217/2020.

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 17 July 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. when approached by the unrelated third parties for the procurement of products from the product portfolio of Imlek, 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 to the extent that contracts are concluded by using the standard contract model of Imlek, except in situations when the buyer would request, as the terms of cooperation, to conclude their model contract, i.e., other than that of Imlek. In the new standard contract of Imlek, including all accompanying annexes thereof, the company undertakes to delete the “loss-lead” provision. For the avoidance of any doubt, when concluding the standard contract, it is possible and in accordance with the nature of contractual relations and freedom of contract to agree on various terms and conditions (such as prices at which Imlek sells its products to its buyers, quantities, delivery terms, etc.) depending on the buyer, 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 with accompanying annexes, should the changes to the standard contract model occur in the course of the implementation of this measure, including in its accompanying annexes, in their 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.
2. 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, and authorized to report directly to the Commission in respect of the execution of the commitments contained in point 4 herein within the meaning of Article 58 of the Law on the concluded sales agreements for the previous year and to provide replies to extraordinary queries of the Commission, with the help of all company employees. The abovementioned person(s) would 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.

3. once a year, the company undertakes to implement a special employee education program on competition rules and regulations, 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 to be relevant.
4. once a year and no later than by 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 (i) the total number of agreements concluded by using the standard contract model of Imlek, and (ii) on the total number of agreements not concluded by using the standard contract model of Imlek. Company Imlek undertakes to provide to the Commission for review, at its request, the concluded agreements or sample of concluded agreements for the previous year should the Commission deem it necessary.

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](mailto: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