



Republic of Serbia
COMMISSION FOR
PROTECTION OF COMPETITION

25 Savska St., 4th Floor, Belgrade

Number: 4/0-02-06/2021-3

Date: July 2, 2021

The Council of the Commission for Protection of Competition pursuant to Article 58(9) of the Law on Protection of Competition (Official Gazette of the RS 51/09 and 95/13) in proceedings instituted upon the proposal for suspension of proceedings No. 4/0-02-06/2021, Ref. No. 4/0-02-13/2020 containing a proposal of commitments of 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, whose procuration holders are Bojana Miljanović and other attorneys at law from the Law Office of Karanović & Partners from Belgrade, 23 Resavska St., at the 57th session held on July 2, 2021, adopts the following

CONCLUSION

I PROCEEDINGS SHALL BE SUSPENDED into the investigation of infringement of competition law No. 4/0-02-06/2021, Ref. No. 4/0-02-13/2020, brought against the Party, Akcionarsko društvo Industrija mleka i mlečnih proizvoda Imlek, Padinska Skela, with registered office at bb Industrijsko naselje St., Padinska Skela, Belgrade-Palilula.

II Proposal of commitments SHALL BE ACCEPTED offered by the Party, Akcionarsko društvo Industrija mleka i mlečnih proizvoda Imlek, Padinska Skela, with registered office at bb Industrijsko naselje St., Padinska Skela, Belgrade-Palilula, that the company is voluntarily willing to undertake to remove potential infringements of competition law, in relation thereto the following measures shall be established, specifically:

1. in procedures for public procurement of products from the product portfolio of AD Imlek in the territory of the Republic of Serbia, the company undertakes not to enter into contractual relations with unrelated third parties under which it would assume the obligation to supply only one undertaking in individual or all public procurement procedures. For the avoidance of any doubt, and having regard to the specific nature of products that AD Imlek distributes (in terms of, for example, quality, method of storing and food safety management requirements), the measure does not imply the obligation of AD Imlek to supply all its products to every party for the purpose of participation in public procurements, nor does it limit the right of AD Imlek to act independently in any public procurement procedure;
2. in public procurement procedures where the contracting entity or third parties acting as potential bidders or suppliers in the public procurement concerned would contact AD 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 said parties. The above mentioned will not apply in cases where the contracting entity or potential bidder winning the tender would request, as terms of cooperation, to conclude its model contract, i.e., other than that of AD 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 AD Imlek sells its products to the contracting entity and/or potential bidder in a 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 with the Draft standard public procurement contract for the sale of goods is provided to the Commission for Protection of Competition for review, should the changes to the standard contract model occur in the course of the implementation of this measure, in its entirety or part, AD Imlek will without delay notify the Commission for Protection of Competition on the matter and provide to the Commission for Protection of Competition 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 written and electronic form, that will contain information on the number of contracts with contracting entities awarded to AD Imlek for the purpose of participating in public procurements, including the information on the number of such contracts concluded on the standard model contract of AD Imlek and the number of such contracts concluded on the model contracts of contracting entities;
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/section for public procurements so that all third-party stakeholders could forward requests to AD Imlek, as a milk and dairy producer, for the supply of AD Imlek products for the purpose of participating in public procurements;
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 for Protection of Competition, in written and electronic form, that will contain information on all received requests filed by third parties addressing AD 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 AD Imlek, as a producer, had issued to such third parties, attesting the full manufacturing and delivery capabilities at the request of third parties. The report will also contain information on third parties whose requests AD Imlek had rejected, stating the reasons thereof. For the avoidance of any doubt, if in the course of the implementation of this measure AD Imlek would receive no requests from third parties for the purpose of participating in public procurements, AD Imlek will also inform the Commission for Protection of Competition 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 public procurement contracts for the sale of goods, authorized to report directly to the Commission for Protection of Competition in respect of the implementation of commitments referred to in Paragraph II, points 3, 4, and 5 of the enacting terms herein, within the meaning of Article 58 of the Law on Protection of Competition, which concern a reporting obligation to the Commission of Protection of Competition, and to provide replies to special inquiries of the Commission for Protection

of Competition, with the help of all company employees. The abovementioned person(s) is to be officially appointed by AD Imlek CEO following the adoption of this conclusion. The authorized person in AD Imlek will, without delay, inform the Commission for Protection of Competition of the person(s) designated as monitoring officer(s) and his/her (their) contact details in written form, including on all potential changes to the designated person(s) during the period in which the commitments are to be implemented within the meaning of Article 58 of the Law on Protection of Competition;

7. once a year, the company undertakes to implement special employee education program on competition rules and regulations that will also cover the rules on public procurement, in the form of mandatory training 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 compliance, where necessary and possible for AD Imlek.

III TIME PERIOD SHALL BE SPECIFIED, of three years from the day of communication of this conclusion during which Akcionarsko društvo Industrija mleka i mlečnih proizvoda Imlek, Padinska Skela, with registered office at bb Industrijsko naselje St., Padinska Skela, Belgrade-Palilula, is obligated to implement the commitments referred to in Paragraph II of the enacting terms herein.

IV This conclusion shall be published on the official website of the Commission for Protection of Competition.

PRESIDENT OF THE COMMISSION

(Signed)
Nebojša PERIĆ