



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

25 Savska St., 4th Floor, Belgrade

Number: 4/0-01-176/2021-02

Date: February 5, 2021

Pursuant to Article 35(2) of the Law on Protection of Competition (Official Gazette of the RS 51/2009 and 95/2013) and Article 139(2) of the Law on General Administrative Procedure (Official Gazette of the RS 18/2016 and 95/2018 - authentic interpretation), the President of the Commission for Protection of Competition enacts the following

SUPPLEMENTARY CONCLUSION

I PROCEEDINGS SHALL BE INSTITUTED *ex officio* to undertake investigations into infringements of competition law against the following undertakings, namely:

- Preduzeće za proizvodnju i trgovinu Tehnomanija d.o.o. Beograd, company number 17233041, with registered office at 7b Milutina Milankovića St., Belgrade, represented by Dejan Radulović, CEO,
- Gigatron eskport-import, prodaja i servis računara na veliko i malo doo Beograd (Čukarica) company number: 17479946, with registered office at 17 Kirovljeva St., Belgrade, represented by Vladan Janković, CEO,
- Tehnomedia centar doo Zaječar, company number: 20168501, with registered office at 44 Generala Gambete St., Zaječar, represented by Dragan Jovanović, CEO,
- Emmezeta Srbija društvo sa ograničenom odgovornošću Beograd (Novi Beograd), company number: 20276444, with registered office at 2A Partizanske avijacije St., Belgrade-New Belgrade, represented by Slobodan Skolnik and Andrzej Pawel Sitarz, CEOs, and
- XLS d.o.o. Beograd (Zemun), company number: 21052868, with registered office at 44 Grmečka St., Belgrade-Zemun, represented by Milko Đerić, CEO,

to establish the existence of infringements of competition referred to in Article 10 of the Law on Protection of Competition.

II This Conclusion shall supplement the Conclusion enacted by the President of the Commission for Protection of Competition No. 4/0-01-574/2020-01 of September 1, 2020.

III 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 present said evidence to the Commission for Protection of Competition at 25 Savska St., Belgrade.

IV 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

The Commission for Protection of Competition (hereinafter, the Commission) has instituted proceedings *ex officio* on the basis of the Conclusion enacted by the Commission President No. 4/0-01-574/2020-1 of September 1, 2020 brought against company Comtrade Distribution d.o.o. Beograd, company number 17172140, with registered office at 7 Savski nasip St., Belgrade-New Belgrade, represented by Nebojša Uskoković, CEO (hereinafter, company Comtrade Distribution), whose procurator holder is attorney at law Rada Janković from the Law Office “Vasiljevic legal” from Belgrade, 29 Terazije St., to investigate the existence of infringements 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).

In the investigation procedure based on the Conclusion referred to above, it is examined whether company Comtrade Distribution, in the previous five years, and in particular during 2019 and 2020, has affected the prices of Tesla-branded products that it owns by applying the resale price maintenance practices, which represents an infringement of competition referred to in Article 10 of the Law.

Major buyers of Tesla-branded consumer electronics owned by company Comtrade Distribution are the following companies active on the retail market:

- Preduzeće za proizvodnju i trgovinu Tehnomanija d.o.o. Beograd, company number 17233041 (hereinafter, company Tehnomanija), with registered office at 7b Milutina Milankovića St., Belgrade,
- Gigatron eskport-import, prodaja i servis računara na veliko i malo doo Beograd (Čukarica) company number: 17479946 (hereinafter, Gigatron), with registered office at 17 Kirovljeva St., Belgrade,
- Tehnomedia centar doo Zaječar, company number: 20168501 (hereinafter, Tehnomedia), with registered office at 44 Generala Gambete, Zaječar,
- Emmezeta Srbija društvo sa ograničenom odgovornošću Beograd (Novi Beograd), company number: 20276444 (hereinafter, Emmezeta), with registered office at 2A Partizanske avijacije St., Belgrade-New Belgrade, and
- XLS d.o.o. Beograd (Zemun), company number: 21052868 (hereinafter, XLS), with registered office at 44 Grmečka St., Belgrade-Zemun.

By assessing the available public data on prices of individual consumer electronics, it derives that Tesla-branded products offered in retail outlets and online sales of the retailers concerned are sold at identical or nearly identical prices, which the Commission had also considered when instituting a proceedings against company Comtrade Distribution. Resale/retail price maintenance as a particular type of anticompetitive behavior may be committed by a supplier only, as well as both at the wholesale and retail levels as a single infringement of competition by both parties in the product distribution channel, in which case the retailer is held jointly liable with the supplier for this type of violation of competition law.

Based on the information and data currently at its disposal, the Commission found reasonable grounds to believe that said buyers, in particular, during the same time period (in the last five years, and in particular during 2019 and 2020) have taken part in the resale price maintenance practices.

Based on the above, the Commission found reasonable grounds to believe that the following buyers, in particular, of company Comtrade Distribution, namely: companies Tehnomanija, Gigatron,

Tehnomedia, Emmezeta, and XLS, have not set their retail prices of the brand products concerned independently, but have fixed them in cooperation with company Comtrade Distribution, i.e., that the prices are the result of an act of infringement of competition law committed in the form of resale price maintenance involving, in particular, the above mentioned buyers of company Comtrade Distribution.

Under 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 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, as well as other actions and acts specified in this legal provision.

Article 35(1) of the Law stipulates that the Commission may institute a proceedings *ex officio* to investigate the infringement of competition law when based on antitrust complaints, information and other available data finds reasonable grounds to believe the existence of infringement of competition law.

The provisions of Article 139(2) of the Law on General Administrative Procedure stipulate that if the authorized unit has not decided on all issues subject of the case, the unit may, on a proposal of the party or *ex officio*, adopt a separate decision on the issues that have not been previously decided on (supplementary decision). The provisions of Article 146(5) of the Law on General Administrative Procedure provide that the provisions of this law referring to decisions may be applied to conclusions.

Given the fact that all the above findings have provided reasonable grounds to believe the existence of a single infringement of competition referred to in Article 10 of the Law with the complicity of companies Tehnomanija, Gigatron, Tehnomedia, Emmezeta, and XLS, the Conclusion enacted by the Commission President No. 4/0-01-574/2020-01 of September 1, 2020 is supplemented by instituting a proceedings against undertakings referred to in Paragraph I of enacting terms herein.

Based on the aforesaid, it is decided as in Paragraphs I and II of enacting terms herein.

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

Pursuant to the provision of Article 40(1) of the Law, it is decided as in Paragraph IV 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