

## **Serbia: Overview of most notable amendments to the Serbian Law on Protection of Competition**

January 2014

### **Change to the definition of “dominant position”**

For the purpose of sanctioning abuses of dominant position, a new definition of “dominant position” has been adopted in an attempt to further align the relevant rules with EU legislation and case law.

Accordingly, the “dominant position of an undertaking” shall now be determined on the basis of such undertaking’s market influence and ability to act in the relevant market independently of its actual or potential competitors, buyers, suppliers or consumers. The amendments provide a non-exhaustive list of indicators which should be examined by the Competition Authority in order to determine the market influence exercised by the undertaking in question, such as: the structure of the relevant market; the undertaking’s market share; the undertaking’s actual or potential competitors; the undertaking’s economic and financial power, the degree of vertical integration; advantages enjoyed by the undertaking *vis-à-vis* access to sources of supply and distribution; legal or actual barriers to other undertakings seeking to enter the market; and technological advantages, intellectual property rights and related rights held by the undertaking.

In addition to this, two or more legally independent undertakings may have a dominant position if they are connected economically in such a manner that they, for all intents and purposes, constitute one single undertaking on the relevant market (“collective domination”).

The burden of proof for determining dominant position on the relevant market rests with the Competition Authority.

### **Extension of deadlines in relation to an investigation of a concentration**

The amendments stipulate a four-month deadline (instead of the previous three-month deadline) for the Competition Authority to issue its decision in *ex officio* proceedings.

### **The “commitment decision” concept**

The amendments introduce the concept of “commitment decision” and stipulate that the Competition Authority may issue a conclusion on the suspension of *ex officio* proceedings in the event that the party in question prepares a draft proposal of commitments (i.e., proposed steps aimed at removing potential infringements to competition) and terms and conditions for complying with such commitments. In the event that the Competition Authority decides that the proposed commitments will eliminate or prevent a repeat of the competition infringement in question, it will issue a conclusion stipulating measures that must be taken in order to ensure the future protection of competition. However, the Competition Authority is not bound to accept the submitted proposal. The suspended proceedings will resume if, within a period of three years from the date of the conclusion on the suspension of *ex officio* proceedings, the circumstances forming the basis for the decision on the suspension of proceedings substantially change, or the party in question, fails to fulfil its commitments or fails to submit evidence of compliance therewith, or the decision on the suspension of proceedings was based on inaccurate or false information.

### **Extension of the statute of limitations**

The amendments extended statute of limitations period from three to five years for the imposition of a measure for the protection of competition. The amendments also introduce the possibility for the statute of limitations period to be suspended should the Competition Authority undertake any action for the purpose of investigating an infringement of the relevant competition rules.

### **Serbian turnover instead of worldwide turnover calculation when it comes to fines**

This amendment constitutes a significant easing of the level of any potential punishment, since it stipulates that worldwide turnover shall no longer be calculated for the purpose of determining a potential fine – instead, the determining factor shall be turnover achieved on the Serbian market (i.e., the relevant undertaking and/or company group may be fined up to 10 per cent of their turnover in Serbia in the preceding financial year in the event of any breach of relevant competition rules). This amendment seems to be more reasonable and flexible than the previous rule; on the other hand, it may encourage relevant companies not to file a merger notification before the Serbian Competition Authority (this relates especially to, the so called “foreign-to-foreign mergers”).

### **Conclusion**

Although the amendments to the Serbian Competition Law seem to further align Serbian competition rules with EU competition legislation (especially those amendments related to the change to of the definition of “dominant position” and the introduction of the “commitment decision” concept), there are still some issues arising from Serbian competition rules that need to be addressed in the future – in particular, the low thresholds for merger filings and the high fees that need to be paid for the Competition Authority’s review of such merger filings.

Source: Mirko Lalatovic, The Serbian Parliament adopts amendments to the law on protection of competition, November 2013, e-Competitions Bulletin October 2013, Art. N° 61082, [www.concurrences.com](http://www.concurrences.com)

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