

INTERNATIONAL COOPERATION

Globalization of economy requires a high level of international cooperation in the field of protection of competition, aimed at creation of tighter convergency in the area of antimonopoly policy. Cooperation with international institutions and competition authorities worldwide results in significant benefits: raising the level of skills, standardization of procedures in investigation, direct benefit from more efficient law enforcement, as well as indirect one for creating identical conditions for all market participants.

Accordingly, Commission for Protection of Competition is actively involved in cooperation with international organizations and competition authorities abroad, through projects, training and education programmes and direct contacts at meetings, conferences and seminars attended by representatives from the Commission.

Relations with European Union

Obligatory relations under the Agreement on Stabilization and Association (ASA):

- In the course of its work, Commission for Protection of Competition acts pursuant to Article defined in the ASA which directly refers to competition policy. On the grounds of provisions of Article 73 referred to in ASA, Serbia is obliged to implement standard enforcement of antitrust rules, identical to those in effect in EU. Based on provisions referred to in Article 72 of ASA, it is necessary to harmonize domestic legislation, whereas on the grounds of provisions contained in Article 74 (public companies) and Article 75 (public procurement) it is necessary to strictly monitor and warn competent institutions on potential violation of competition law and barriers to entry,
- Pursuant to provisions laid down in ASA, Commission established permanent communication with Delegation of European Union in Beograd and DG Competition in Brussels,
- Commission is obliged to provide and deliver, periodically, information on normative developments, institutional capacities and implementation to the above stated EU institutions,
- Under EU standards, Commission proposes to DG Competition "Enforcement Record",
- Commission prepares all necessary information and documentation for Progress Report, as well as for Sub-Committee for Internal Trade (obligatory meetings under ASA); in this last case, active participation at the Sub-Committee meetings is regularly ensured,
- Answers to questionnaires are prepared (from the field of competition) relating to analysis of harmonization of domicile legislation with EU Acquis of around 1480 different acts (from regulations, directives to recommendations and interpretative acts). This exceptionally serious task was made in cooperation with European Integration Office and Ministry of Trade and Services. In line with above mentioned, attendance and active participation was ensured in the work of sub-group for accession to EU,

- Upon completion of questionnaire, preparations of documentation for undergoing "screening", has been initiated,
- Employees in Commission were informed, in details, on EU procedural provisions (particularly EC Regulations 1/2003 and 773/2004, referring to implementation in case of collusion, as well as Regulation 139/2004 referring to harmonization of practice with EU in the part relating to concentrations),
- Commission conducts ad hoc communication with EU Delegation and DG Competition on items not included in ASA – i.e. reasoning under particular relevant items (i.e. concentrations involving parties from EU etc.), and specifically items relating to institutional capacities and implementation, as well as evaluation of sector rules.

Projects

ACPC Project

Assistance to the Commission for Protection of Competition – ACPC is a project financed and realized by the funds from **CARDS 2006 Programme**. The Project, during its three years period (from January 1, 2008 to December 31, 2010) provided the training of employees of the Commission, both in theoretical and practical manner. The main Project benefactor was Commission for Protection of Competition as well as the Ministry of Trade and Services, Chamber of Commerce of Serbia, Judicial Academy and other institutions of significance for improvement of competition protection in Serbia.

The Project consisted of three components:

- Component 1 – strengthening of institutional capacity of the Commission for Protection of Competition, within which 35 workshops were organised for employees of the Commission, study visits were made to similar institutions in Croatia, Slovenia, Austria and Germany as well as the visit to General Directorate for Protection of Competition in Brussels;
- Component 2 – harmonization of legal frame with EU Acquis and enforcement of provisions in practice, within which the Project provided technical support for implementation of new Law on Protection of Competition, as well as assistance for preparation of sub-legal acts, instructions and guidelines;
- Component 3 – raising awareness on importance of competition protection within which a series of seminars was organized with the support of Chamber of Commerce, for representatives from various branches of economy; in cooperation with Judicial Academy, training courses were organised for judges from Administrative Court. Also, several publications were prepared and printed as a part of the Project, and in 2010 publication on Defining of Relevant Market, along with collection of decisions, were published by the European Court of Justice.

IPA 2011

In view of the fact that in the first half of 2010, an invitation was made to submit projects which could be financed from **IPA 2011** programme, a proposal for the project "**Capacity Building and IT Assistance to the Commission for Protection of Competiton**" was prepared. The project is scheduled to last 30 months and implies the strenghtening of capacities of the Commission, as well as practical training, not only staff of the Commision, but also representatives of judges from Administrative Court, economic community and regulatory authorities. The project also provides for introduction of electronic data base of all documents and files handled by Commission, as well as supply and training for working with forensic software to be used during investigation procedure.

The proposal for the project was accepted by EU delegation and European Commission, thus we are now at the point of assessing the offer and selecting a consortium, with the task to realize scheduled activities.

As the project from IPA 2011 Programme may start at the beginning of 2012, the Commission took steps to keep the continuity in the area of education and raising the level of practical knowledge of employees – and with that in mind bilateral cooperation with German government was established on the grounds of which Commission was granted project for capacity building. The project was realized in 2011, organized by German Government Fund **IRZ**.

Participation in translation of EU Acquis to Serbian Language – Professional editing of translation of European legislation

The Republic of Serbia is under obligation to conduct translation of EU Acquis to Serbian language during the Stabilization and Accession Process and thus, at the date of accession to EU membership, has already prepared and translated entire set of EU Acquis to Serbian language, which shall be published in the EU Official Gazette. Translation process of EU legal acts is coordinated by the European Integration Office which, in cooperation with relevant government institutions and other authorities, prepares the list of priorities and upon public procurement engages translators. Every institution is obliged to appoint coordinators and expert copy editors to supervise translation process and engage in expert editing of translated material. Commision for Protection of Competition has been involved in entire process, and coordinator, deputy coordinator and two expert copy editors have been appointed.

The list of priorities for 2010 was delivered to the Office, and so far several EU regulations were submitted for expert editing. Expert copy editors of the Commission acknowledged that certain regulations provided to Commission were not valid any more, e.g. they were modified, on which the European Integration Office was informed. As concerns the rest of documents, February 1, 2011 was set as a date for expert editing to be finalized.

Pursuant to instruction and prescribed time limits, the Commission made a nomination of acts. In compliance with instruction, only acts such as "regulations" were nominated, whereas guidelines and other acts could not be nominated yet. Except for acts nominated by the

Commission, there are acts within the activities of the Commission which were previously nominated, most likely by the Office or some other authority granted with powers to make nomination.

According to records available to Commission, there are in total 45 acts from the field of competition protection, out of which 11 are regulations regulating principles and matters of "common" importance for competition policy, 7 regulations referring to matters relating to merger control, and 27 nominated regulations apply to the so called classical "anti-trust" (restrictive agreements, including cartels and abuse of dominant position).

At present, Commission is engaged in expert editing of :

- 32001016(1) – Commission Notice / Guidelines on the applicability of Article 81 of the EC Treaty to horizontal cooperation agreements; (80 pages in translation)
- 32004R0139 – Council Regulation (EC) No. 139/2004 of 20 January 2004 on the control of concentrations between undertakings (56 pages in translation);
- 32004R0802 – Commission Regulation (EC) No. 802/2004 of 7 April 2004 implementing Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings (84 pages in translation).

February 1, 2011 was set as a time limit for submission of edited documents.

Translation of guidelines and regulations into English was made in order to mitigate interpretation of Law on Protection of Competition to foreign companies engaged in the Serbian market (Guidelines on applicability of Article 69 of the Law on Protection of Competition and Regulation on criteria for relief from obligation to pay financial sanctions on the basis of the measure for protection of competition; Guidelines on applicability of Regulation on criteria for setting the amount payable on a basis of a measure for protection of competition and sanctions for procedural breaches, manner and terms for payment thereof and method for determination of respective measures; Regulation on agreements between undertakings conducting their operations on different production or distribution level which are exempted from prohibition; Regulation on the content of application for individual exemption of restrictive agreements from prohibition; Regulation on criteria for relevant market definition; Regulation on agreements on specialization between undertakings conducting their operations on the same production or distribution level which are exempted from prohibition; Regulation on content and manner for submission of notification of concentration; Regulation on research and development agreements between undertakings operating on the same production or distribution level which are exempted from prohibition).

Relations with other international organizations

International Competition Network (ICN)

ICN is an international organization of global character, exclusively engaged in activities dealing with competition protection.

Primary members of that organization are national competition authorities. Total number of members is 113, and Serbia (Commission for Protection of Competition) has been a member since 2005.

Commission for Protection of Competition is a member of ICN (International Competition Network), international network for competition protection to whom Commission submits its reports necessary for review of activities of our authority and comparison of different approaches to solving of problems, aimed at the convergency in work.

From 2005 to 2010, Serbia took part in nearly all ICN workshops and annual meetings. For the requirements of ICN, Commission provided responses to questionnaires relating to provisions of the Law regulating cartels, manner of conducting investigation, handling of notifications, leniency programme, powers granted to Commission etc.

In 2010, for its project on the manner of work of various competition authorities, ICN requested submissions of responses dealing with notification of concentrations and procedures, which was done. Gathered responses shall constitute a ground for report made by ICN Work Group on future recommendations for work, which will be presented on ICN website.

Regional Competition Center - OECD, Budapest

Although not a member of OECD, Serbia has a prominent role at the workshops organised within the frame of Regional Competition Centre – RCC which are held in Budapest. RCC was founded in 2005 by OECD and Hungarian Competition Authority.

In the previous years, representatives from Technical Service of the Commission attended the said events and contributed through written materials on cases from practice of the Commission, on the grounds of which opinions and recommendations by experts and other competition authorities were made.

Analysing, processing and preparation of proposals in line with current developments in RCC, Budapest and OECD requires permanent insight into analysis and recommendations of those authorities and their possible implementation in Serbia – which is regularly made by the Commission.

Commission is also active in OECD projects whose Secretariat gathers data, analysis and provides professional assistance and on the grounds of that organises seminars and workshops for countries from the region.

Global Competition Review

It is an organization with similar characteristics as ICN, but with significant difference, that is, its members and participants at seminars, workshops and practical presentations are also representatives from law offices, economic sector and other bodies. It is primarily oriented towards organization of seminars relating to particular industries with significant market concentration where violations of competition occurs frequently.

Also, Global Competition Review publishes a very prominent journal from the field of competition protection, as well as annual issue on the best practices throughout the world. Commission prepared and forwarded responses requested for *"The 2011 Handbook of Competition Enforcement Agencies"*, which is an informative journal on competition authorities updated each year.

UNCTAD

During 2010, Commission for Protection of Competition informed UNCTAD through Permanent Mission of the Republic of Serbia with United Nations and other international organizations in Geneva, that it is interested to take a part in a so called Peer review analysis of competition policy. Peer review represents a unique multilateral form of review of competition system within the UN System. It is conducted by experts from more developed countries and developing countries with practical experience in implementation of competition policy, whereby exchange of experience is combined with recommendations for potential improvement in competition policy. Upon finalization of consultations with the director of Competition Protection Department, Mr. X. Quaqaya, an application was sent to General Secretary with a request to UNCTAD to provide technical assistance to Serbia in the field of competition. After the notice on the intend for Peer review to be organized during 2011 and holding of several meetings, Swiss Government expressed its interest to finance implementation of Peer review and activities stemming from it, with a possible scheduled time for it to last up to 3 (three) years. In the last quarter of 2010, UNCTAD commenced necessary activities and technical mission in Beograd. The said activities lasted until June 2011. At the request of UNCTAD Competition Protection Department, steps were taken towards organization of many meetings held in the frame of technical mission, at which representatives of the Commission were actively involved.

Final aim of the above stated activities was to organize the representation of Peer review Report in 2011 during regular session of International Expert Group for competition law and policy (July 19-21, 2011).

Full version of the text, as well as summary Peer review can be found at the following addresses:

http://www.unctad.org/en/docs/ditcclp2011d2overview_en.pdf

http://www.unctad.org/en/docs/ditcclp2011d2_en.pdf

Report from the UNCTAD conference at which the Report was presented can be looked up in the document Excerpt from Report.

CEFTA

In the course of 2010, Serbia chaired CEFTA and on April 14, 2010 a special seminar was organized in Beograd for all CEFTA members with regard to competition rules. Recommendations issued at that meeting were considered at the CEFTA Plenary Meeting (organised by the Chamber of Commerce of Serbia and Ministry of Economy and Regional Development) in November 2010.

On November 10 and 11, 2010 "CEFTA Week" was held in Beograd focused on the priorities of the Republic of Serbia chairing CEFTA Agreement which included trade services, protection of competition, public procurement and investments, but also elimination of non-customs barriers in trade. Commission had an active role in that event.

In the first half of 2011, special CEFTA seminar was held (at which Serbia was very active), dealing with trade defense instruments.

Bilateral relations with countries in the region and U.S.A.

Market participants in Serbia and in countries in the region are nearly identical or are in very close relations, thus a cooperation in border trade activities of the member- countries is of utmost importance for the control of, above all, various kinds of restrictive i.e. cartel agreements which are frequently of national character. In the age of global economy and market, cartel agreements are widely spread, therefore even developed countries worldwide have coordinated system of bilateral agreements on joint fight against cartels.

Similar network of regional character is of particular importance at the level of our region. The Commission intends to initiate bilateral discussion with institutions for protection of competition from the region of former SFRY (except Slovenia), in order to initiate the establishment of regional network. Mentioned intend of Commission to engage in activities leading to conclusion of bilateral agreements and their actual implementation is necessary, in view of the fact that the parties in procedure involving restrictive agreements, abuse, or concentration, are in a large number of cases the same economic entities or subsidiaries of the same founders (parent companies).

Simultaneously, Federal Trade Commission in U.S.A. has at its disposal *Fellowship Program* for young institutions aimed at acquiring of practical and theoretical experience, which is more than necessary for employees conducting and managing procedures before the Commission. The Commission took steps in order to instigate such form of cooperation, therefore it is expected that in the forthcoming period our experts will have an opportunity to acquire, through training and direct contact with the colleague from U.S.A., new knowledge and skills in conducting necessary procedures.

Signed Protocols on Cooperation

- Memorandum on Cooperation in the field of competition policy between Commission for Protection of Competition of the Republic of Serbia and the Federal Authority for Protection of Competition of Austria
- Agreement on Cooperation in the field of competition policy between Commission for Protection of Competition of the Republic of Serbia and Commission for Protection of Competition of Hungary
- Agreement on Cooperation in the field of competition policy between Commission for Protection of Competition of the Republic of Serbia and Bulgarian Commission for Protection of Competition

In 2011 close contacts and cooperation were established with competition authorities from Russian Federation and Republic of Kazakhstan (Federal Antimonopoly Service of Russian Federation and Agency for Protection of Competition – Antimonopoly Agency of the

Republic of Kazakhstan), which led to drafting of proposal to the Agreement on Cooperation, the signing of which is expected in 2012.

International conferences and seminars

- Each April, Commission organises its annual "Competition Day", whereas ACPC project, in cooperation with the Chamber of Commerce of Serbia and with active support provided by Commission, organised Regional Conference on Competition, contributing to the strengthening of the role of Commission (and Serbia) in the region;
- Each chairing EU member, during its mandate organises "European Competition Day" – attendance at those conferences is an unwritten rule for members and candidates, thus the representatives from Commission regularly attend the said event;
- Cooperation with Fordham University (Fordham Competition Law Institute) from U.S.A. is an ongoing activity, therefore representatives from Commission actively participate at seminars organised by Fordham University Summer School and Antitrust Conference;
- In 2011 cooperation with Japan Embassy and Japan Fair Trade Commission continued. Unfortunately, this year the Commission was unable to send its representative to attend the training programme organised by Japan Fair Trade Commission.

Cooperation with regulatory authorities and government bodies in Serbia

Commission should ensure permanent dialog and organise a system of exchange of information with relevant bodies in the Republic of Serbia, whose activities can effect development of competition on the market and implementation of the Law on Protection of Competition, such as:

- Agency for Fight Against Corruption
- Directorate for Public Procurement
- Directorate for Prevention of Money Laundering
- Agency for Energy
- Republic Agency for Electronic Communications (RATEL).
- Health Protection Fund
- Agency for Drugs
- State Aid Commission
- Judiciary Academy
- Chamber of Commerce of Serbia, and other

Commission signed Protocols on Cooperation with individual institutions – National Bank of Serbia, Agency for Energy of the Republic of Serbia, and Republic Agency for Electronic Communications (RATEL)