

# KN COMPETITION

NEWS  
March 2009

## New Draft Law Unveiled

The new draft Competition Law has recently been published by the Ministry of Trade. It features a number of novelties, the most significant one being the Competition Commission's ability to impose sanctions directly (up to 10% of annual turnover).

The new draft also increases thresholds for merger notifications. If the draft were on for a vote today, the higher merger notification thresholds would reduce the amount of notifications by 30-40%, leaving the Commission more focused on enforcement of antitrust rules – abuse of dominant position and restrictive agreements.

While the law makes no material changes in the area of abuse of dominance, it brings critical changes in how restrictive agreements are assessed. Firstly, it introduces the *de minimis* doctrine, which will bring much needed certainty for the small businesses. Larger business would also benefit from the new law, as block exemption would become available to their exclusive dealings, single branding and non-competition clauses.

The draft would bring significant reform in the procedural rules. The Commission would be entitled to make dawn raids, investigate premises, interview employees, all with the police assistance. It will be able to reverse illegal mergers, in which case it might order the

divestiture of shares, annulment of agreements or any other measure to establish or maintain the competition in the market.

Dissatisfied parties would be able to challenge the Commission's decisions before the Higher Commercial Court before approaching the Supreme Court of Serbia.

To conclude, the proposed amendments are expected to provide the Competition Commission with more significant role in safeguarding the competition in the market.

On the other hand, we do express strong concerns over the possibility of Competition Commission making an error in judgment or law. Although the Commission's decisions could be challenged before two court instances, the practical concerns remain as companies could go bankrupt before the justice is delivered. This problem is magnified by the fact that the Supreme Court of Serbia has annulled or overturned most, if not all, of the Commission's decisions.

The Ministry of Trade, which is responsible for competition law matters, has held two public hearings so far, in its efforts to facilitate public debate on the new Competition Law.

Karanovic & Nikolic has participated in the public debate to address the

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potential issues surrounding the law and to advise from its regional and international experience to help improve the law.

## **Drug Companies in a Cartel?**

The Commission has established that all major pharmaceutical Companies in Serbia, including Hemofarm (the local subsidiary of German Stada), Galenika, Zdravlje (Actavis), Jugoremedija, Srbolek, Pharma Swiss and others, operated a cartel which had imposed mandatory conditions offered in public procurement procedures.

The Commission furthermore ruled that the drug companies' trade agreements with wholesalers resulted in foreclosure of the market. The Commission found such agreements to be null and void.

The concerted practice in dealing with wholesalers also maintained the foreclosure, restricting smaller companies from accessing the market.

According to the Commission's decision, the decrease of the number of wholesalers facilitates the direct arrangements between the manufacturers and the wholesalers, which further leads to enabling the manufacturers to control the market at the consumers' expense.

The Commission commenced the misdemeanor proceedings against the responsible manufacturers and the wholesalers for entering into the restrictive agreements.

According to the current Competition Law, they may be fined up to 10% of their worldwide turnover, their manager could face similar fines and they could potentially be prohibited from performing activities in Serbia up to three years.

## **The Commission Probes Bus Transport Companies**

The Competition Commission commenced the proceedings against the leading Serbian bus transport companies, including Lasta, Nis-express, Panonija, Vojvodina and Severtrans, which entered into a restrictive agreement with the German company Deutsche Turing GmbH, for transport of passengers on lines between Serbia and Germany.

### **Contact:**

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