

SPOTLIGHT ON:

Recommendations for Improvement of Competition Policy in Serbia Based on Past Experiences and Comparative Analysis of Several Countries

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The aim of this paper is to offer recommendations for improvement of the system of protection of competition in the Republic of Serbia, which are possible to implement in a relatively short period of time. The recommendations are given based on a comparative analysis of the system of protection of competition of European Union (EU), United States of America (USA), but also the system of protection of competition of individual EU member states with a longer tradition in dealing with competition policy compared to Serbia. The core of the system of protection of competition in an institutional sense consists of the Commission for Protection of Competition, whose duty is to implement the Competition Law, and Administrative Court, which performs judicial review of Commission's decisions. The paper will primarily deal with issues of increasing efficiency and effectiveness in the functioning of the abovementioned core, but also with the connection of the core with other elements of the system. Through seven relatively comprehensive recommendations, the paper will cover issues of strengthening Commission's independence, and strengthening Commission's technical and personnel structure through increasing human resources and reducing the number of cases the Commission processes in a year. Reduction would primarily be related to an excessive number of market concentrations, which unnecessarily burden the low capacity of the Commission and increase companies' cost of doing business. In addition to capacity building and strengthening the Commission's independence, the recommendations will also include capacity building of the Administrative Court, because judges' lack of understanding of the economic content of the competition law can become a stumbling block for Commission's correct decisions. The recommendations will point out the need for more intensive communication and cooperation between the Commission and other government and non-government institutions, whose operations have a significant impact on the conditions of competition on local markets. Finally, the last recommendation will show the importance of informing and educating the general public on the importance of protection of competition.

1. Introduction

Competition is not an end in itself, but it is an irreplaceable element in the functioning of markets. It enables efficient use of limited social resources, technological development and innovation, lower prices, higher quality, diversity of products, and in general a higher productivity of the economy as a whole.¹ The result is the improvement of consumer surplus in different markets allowing them a higher standard of living. More broadly, the promotion and protection of competitive pressure in the markets contributes to a strong and sustainable economic growth, and improves national competitiveness and job creation.

In April 2008, Serbia signed the Stabilisation and Association Agreement (SAA), which is currently in the process of ratification and once it comes into effect, Serbia will have an obligation to implement provisions set by the Agreement in order to enter the EU Accession process. Among other things, SAA outlines instructions for developing a competition policy in Serbia. This primarily refers to Articles 81, 82, 86 and 87 of the Founding Treaty of the

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¹ European Commission (2012), *DG Competition Management Plan 2012*.

European Community² and instruments of their interpretation that were adopted by the institution of the European Union.³

Generally speaking, there are four policy areas in competition protection that are considered fundamental, and they are covered by the European Commission at the supranational level. These areas also have to be covered within individual member states, for which the basis are the abovementioned constitutional articles of the EU Founding Treaty: **(1)** Prevention of cartel behaviour (restrictive agreement); **(2)** Prevention of abuse of dominant market position; **(3)** Control of mergers, acquisitions and joint ventures; **(4)** Control of direct and indirect state aid for companies.

The aim of this paper is to offer recommendations for possible improvements in the area of competition policy in Serbia and to present arguments for their importance according to the analysis of circumstances in which this policy is operating in Serbia and other referent countries included in this analysis. The paper will give a limited group of essential recommendations, whose effects can be expected already in the “short” mid-term (from 3 to 4 years), and for whose implementation a foundation already exists, so it will not require considerable capital investments. All recommendations should be taken as a way of doing “fine tuning” of the policy that is already being implemented in Serbia.

Backbone of the competition policy are laws that regulate this sector and institutional bodies that are enforcing these laws. In Serbia, the Law on Protection of Competition (hereinafter LPC) from 2009 is in effect, as well as a number of by-laws that additionally define certain provisions of the law. The law foresees an expert commission whose duty is implementation of the law, it defines its organisational structure and authorities. We are talking about the Commission for Protection of Competition (hereinafter Commission). Also, the Law foresees the Administrative Court to resolve company appeals on decisions that the Commission passes, while the Supreme Court of Cassation is responsible for disputes against Administrative Court decisions.

System of protection and promotion of competition, in a wider sense, in addition to the Commission and the courts, consists of the Ministry responsible for trade, independent regulatory bodies for the control of public procurement and state aid, sector regulators, but also non-government organisations whose aim is to protect the interest of consumers, and last but not least, the wider public for whose benefit this policy exists in the first place (micro-economic entities: companies and consumers). Certainly the high quality work of the independent Commission can be considered an essential link in the protection of competition pressure on partial markets and public promotion of the importance of competition for consumer benefit. In that sense, the Commission for Protection of Competition and Administrative Court can be considered the core of the system. In other words, these two independent bodies form a system in a more narrow sense and that is why the focus of this analysis will be on this core, while fully appreciating the link between the core and other elements.

Through a comparative analysis of the best systems for protection of competition in the world (USA and EU at supranational level), but also of the system of other countries that, much as Serbia, have a short history of dealing with this issue⁴, but compared to Serbia have made a more considerable progress (Croatia, Hungary, Czech Republic, Bulgaria, Romania, Slovenia), we will point out its basic flaws and give recommendations for their elimination. The following table shows an overview of basic characteristics of these countries, which is necessary in order to see the circumstances in which the competition policy is being implemented. Here, we primarily have in mind the time of forming the Commission and passing regulations in this field, the size of internal market that is being regulated, and whether or not the country is part of the integral EU market. Country’s population and GDP *per capita* are stated in order to illustrate the size of the market.

Important difference within this group of countries is that Serbia and Croatia are not EU member states unlike the rest of the stated countries, although Croatia has made a lot more progress on that front than Serbia. Therefore, it is evident that Serbian Commission for Protection of Competition has a significantly shorter history of operating than all the other stated countries.

2 Following the Lisbon revision of the Treaty, Articles 81, 82, 86 and 87 were renumbered into 101, 102, 106 and 107, respectively. Their content did not change.

3 Article 81 prohibits all forms of cartel behaviour, but also making other formal agreements that can violate conditions of competition on the territory of the EU common market. On the other hand, Article 82 regulates activities of companies that have a dominant position on the market. Any abuse of the dominant position is not in line with Article 82, while the very owning of a dominant, even monopolistic position is not considered criminal. Subject of the remaining two articles include control of state aid, which violates or threatens to violate competition by giving advantage to certain companies or certain products (through a system of state subsidies or by guaranteeing exclusive rights).

4 Characterising the history of competition policy implementation in some countries as “relatively short” is done having in mind that competition policy in USA has already been present for over 120 years, while in Europe this policy has been present in its modern form for over 50 years.

Table 1 Basic characteristics of countries and their markets

Countries	Year of establishment of the Commission	Population (last census) *	GDP per capita (in USD ppp)**	Size of the domestic market (index, 1-7) ***	Size of the domestic market (rank out of 144 countries) ***	EU membership
Serbia	2006	7,120,666	10,528	3.5	67	no
Croatia	1995	4,290,612	14,457	3.4	72	no
Hungary	1991	9,942,000	19,591	3.9	55	yes
Czech Republic	1991	10,512,208	18,337	4.2	45	yes
Bulgaria	1992	7,364,570	7,308	3.6	66	yes
Romania	1997	19,043,767	12,838	4.3	44	yes
Slovenia	1997	2,060,382	28,648	3.1	82	yes

Source: * data from the last official census of countries, **IMF (www.imf.org) , ***WEF (2012).

On the other hand, this is a relatively homogenous group of countries in global terms, when it comes to market size. According to the World Economic Forum methodology, Serbia ranks 67th by internal market size out of 144 countries, with domestic market size index value of 3.5. Except Romania and the Czech Republic who have a significantly higher index value than Serbia, partly due to bigger population and partly due to a higher GDP *per capita*, the other selected countries have recorded a much smaller deviation from Serbia. Since the countries are not identical, the conclusions we make about Serbia based on experiences of other countries will not be observed absolutely, but relatively, taking into account evident specificities of the countries.

All recommendations will be divided into two segments. The first segment will include recommendations whose implementation requires changes in legal regulations, while the second segment will include solutions that do not require changes to current regulations and are in exclusive jurisdiction of institutional entities: the Commission, Administrative Court and the Government.

2. Recommendations that Require Changes in Legislation

Modern history of competition policy in Serbia begins in 2005 with the passing of the Law on Protection of Competition⁵ (LPC), which first envisaged the establishment of the Commission for Protection of Competition, independent and competent body in charge of implementing the Law.⁶ The Law on Protection of Competition of 2005 was replaced by the Law of the same name in 2009.⁷ The new Law provided significant approximation to the EU legislation in the field of protection of competition, but there is always room for improvement. In addition to LPC as the basic legislation on the protection of competition, a number of by-laws are also in effect, foreseen by the Law, which additionally clarify certain articles of the Law.

Law on Protection of Competition places three out of the four stated key areas of competition policy under the jurisdiction of the Commission: **(1)** prevention of restrictive agreements, **(2)** prevention of abusing the dominant market position, and **(3)** control of company mergers (concentration), while the control of state aid is not under the jurisdiction of the Commission, but of a separate regulatory body (Commission for State Aid Control).

In this chapter, we will give recommendations for improvement of existing legislation, which would increase the efficiency and effectiveness of the Commission in the implementation of LPC, which primarily foresees strengthening of institutional capacity and independence of the Commission as the most competent body for implementing the Law.⁸

5 RS Official Gazette, issue 79/05.

6 The Commission started operating at the beginning of 2006.

7 RS Official Gazette, issue 51/09.

8 Most of the recommendations that will be given in this paper are also present in the expert analysis of UNCTAD from 2011, which was conducted as part of the Peer Review project with the aim of supporting the efforts of Serbia in increasing efficiency and effectiveness in competition policy implementation (see UNCTAD 2011). The way of citing and explaining the recommendations in the form of "theorem followed by proof" that we will use in this paper was taken over from the abovementioned expert analysis, because we feel it represents an efficient and concise way of formulating a document, whose aim is to help understand the necessary changes in a policy. The essential difference from the UNCTAD study is in the "proof" rather than the "theorem", because the set assumptions are confirmed through a comparative analysis of the state in several countries, which gives a foundation for concrete calibration in implementation, wherever possible. This analysis will formulate a lot less recommendations compared to the UNCTAD document, because we feel that certain recommendations, which will not be stated here, although important, are not part of the hard core of the problems that have to be solved in the short mid-term, so they will probably be subject of some future studies, provided the obstacles formulated in this paper are overcome by then.

2.1. Recommendation 1 (Commission's Financial Independence)

Since the Commission's financial independence is crucial to its operational independence in implementing the LPC, it is necessary to secure stable, predictable and sufficient source of financing for the Commission.

2.1.1. Rationale and Way of Implementing Recommendation 1

The current Law foresees (Article 31) the financing of the Commission from its own revenue that the Commission primarily generates through collection of fees from companies that come under the Commission's scrutiny. The amount of fees is set in the Tariff Book⁹ that the Commission creates with Government approval. However, it should be noted that the collection of fees from companies that have violated rules of competition is done in favour of the state budget of the Republic of Serbia.

In case of a surplus of revenue over spending in the fiscal year, the Commission is obligated to put the surplus funds in the account of Republic of Serbia's state budget, which *de facto* prevents Commission from creating any reserves (Article 32 of LPC). On the other hand, in case of a deficit, there is a possibility of balancing revenue and spending from the state budget, provided the Government gives its approval (Article 32 of LPC). Even though the Law foresees a possibility of the deficit being covered by the state budget, this option does not obligate the Government to actually do so, which puts the Commission in an unfavourable position when it is not able to cover the realised and justified expenses from its own realised revenues.

The revenue from fees collected from the companies that are the subject of the Commission's review are not as predictable as the expenses. So, the Commission whose capacities do not change significantly on year-on-year level, and by the same token neither do its expenses, is not able to plan with certainty the covering of these expenses by revenues that are inherently variable, because they depend on the Commission's activities that are exogenously determined for it.

It should be noted that the fees companies pay for merger (concentration) notification are the most significant item in total fees, and therefore in revenue as well. The test procedure for approval of concentration is certainly the most analytically demanding and therefore presents the biggest burden to the Commission's capacities, so the fees are greater as well. According to the already mentioned Tariff Book, the concentration fees approved by simplified procedure are up to 25,000 EUR, while for concentrations with full test procedures, where Commission's expert capacities are considerably engaged, the fees can be up to 50,000 EUR. These are prohibitive amounts for companies. Compared to selected group of countries, whose commissions are without exception funded by the state, Serbia leads by far in the value of this kind of fees. The real difference is even bigger if we take into account the fact that Serbia is the least developed country in the focus group.

In circumstances where the Commission is forced to independently finance its own expenses, it is stimulated to maintain a relatively high level of fees, which increases the companies' cost of doing business. On the other hand, since the Commission is unable to control and predict its revenue, the Commission could be forced to reduce its activities, which reduces its expenses, which is an unsatisfactory solution as well. The biggest number of Commission's activities is determined by the companies' activities, which means they are exogenous to it, and any reduction in Commission's activities would indicate a non-enforcement of the existing Law.

The following table shows total amount of revenue of the focus countries' commissions based on the latest available operation reports. Also, the revenue will be stated relative to the number of employees in commissions, which would avoid comparing the differences in countries and regulatory body's capacities.¹⁰

⁹ RS Official Gazette, issue 49/2011.

¹⁰ It is evident that the control of state aid in Serbia is under the jurisdiction of a separate regulatory body, which is not the case in countries covered by this comparison (where Commissions for Protection of Competition are in charge of this issue).

Table 2 Commissions revenues according to the total number of employees for 2010

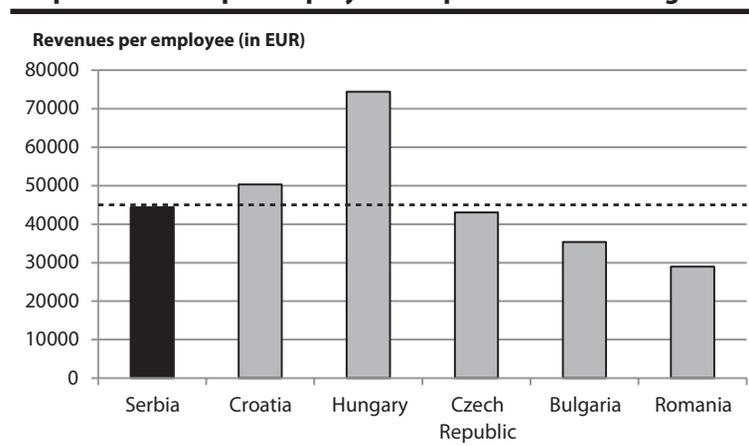
Countries*	Number of employees **	Revenues (in EUR)	Revenues (per employee in EUR)	State aid control within the Commission
Serbia	27	1,198,218	44,378	no
Croatia	45	2,265,219	50,338	yes
Hungary	125	9,300,000	74,400	yes
Czech Republic	126	5,420,511	43,020	yes
Bulgaria***	130	4,601,627	35,397	yes
Romania	295	8,551,158	28,987	yes

* Data for Slovenia on revenue and number of employees was not available at the time of writing this paper.

** Total number of employees includes the employees in the expert staff of the Commission, as well as the other administrative staff (Commission's complete payroll)

*** Data for Bulgaria regarding the revenue amount for 2010 is not available, so data for 2011 was used, with an assumption that the amount of revenue did not change considerably, since the Bulgarian Commission is financed from the state budget. In that sense, the authors bear full responsibility for any possible bias of revenue per employee data shown in the table.

Source: Official reports on the commissions' operations are available on their web pages (See: <http://www.kzk.org.rs>, <http://www.aztn.hr>, <http://www.gvh.hu>, <http://www.compet.cz/en>, <http://www.cpc.bg>, <http://www.consiliulconcurentei.ro>)

Graph 1 Revenue per employee compared to the average

According to Table 2 and its illustration in Graph 1, it is evident that Serbia's Commission revenue in absolute amount is significantly lower than revenues in other countries', which refers to total number of employees as well. Having in mind that only Serbian Commission does not have state aid control in its jurisdiction, which is not the case with other selected countries, it is to be expected that that is the reason it is generating lower revenue, as well as employing less people. Based on the revenue per employee data, it is evident that, compared to other countries, Serbia is just below the average (46,087 EUR) of this group of countries.¹¹

According to the reports of the RS Commission for Protection of Competition for the last two years (2010 and 2011), it turns out that the Commission in both observed years realised a surplus that was sent to the state budget. It can be thus concluded that through the collection of fees, the Commission managed to secure enough funds to finance its own activities, even beyond its total expenditures, which is also proven by the relatively satisfactory level of revenue per employee compared to the observed group of countries. We should also keep in mind that in Serbia's case, the revenue was generated almost predominantly through the collection of concentration notifications, while other countries' revenues predominantly rely on the state budget.

In addition, the increased exposure of the Commission to the risk of unhindered financing is affected by Article 57 of LPC. This article foresees all financial measures that serve for elimination of the competition violation that the Commission should determine and impose on companies, to be paid into the state budget account. If, however, there is a subsequent abolition or reduction in the imposed measure, the funds are paid out of the state budget only up to the amount of the paid nominal fee, while the cost of interest and other expenses are born by the Commission. The Commission's obligation to compensate for the interest and other expenses exposes the Commission to a significant financial risk. Since it is unable to foresee its own revenue, this potentially prevents the Commission from planning and projecting its own expenses, because it is up to the relevant courts to decide whether or not Commission's decisions will be reversed, which would reduce or annul the imposed measures and the Commission would bear the cost of interest and other expenses related to that transaction.

In general, we propose two options as possible solutions for the implementation of Recommendation 1.

The first option, as in the case of focus countries but also the majority of other European countries not covered by this comparative analysis, foresees securing enough funds from the budget to finance the Commission. The Commission would still charge fees, but in such a way that the amount of those funds is far lower than the funds allocated by the

¹¹ Serbia is included in the group's average.

Republic of Serbia state budget. This way of financing would enable changing the existing Tariff Book, which would primarily reduce the fees for concentration notification. Therefore, this form of company's external growth would become less costly, having in mind that all fees that exceed the cost of providing services have a quasi-fiscal character with a strong distorting effect.¹² The plan for financing the Commission the Government should formulate based on a three-year plan of activities, where the Commission would make a detailed specification of costs for three years in advance, taking into account necessary human and financial resources that are needed for the full enforcement of LPC. Also, the funds allocated to the financing of the Commission should be made an integral part of the budget of the Ministry responsible for trade¹³.

Application of this measure would require changes to the existing LPC, i.e. the article regarding the way of financing the Commission (Article 31), which should clearly state which amount of the Commission's expenses is covered by the state budget. This Commission financing option should not jeopardise its independence. In other words, the law should eliminate any possibility of the Government influencing the Commission's plan of activities and their cost specification.

The second option refers to the possibility of providing the Commission with an opportunity to create reserves in case of a realised surplus, from which the Commission would be able, in lack of state budget support, to offset the deficit created in particular years, which would provide a much more stable and predictable financing. The realisation of this measure would require changes to the already mentioned Article 32 of LPC in the part where it foresees the surplus funds to be paid into the state budget. Compared to the possibility of state budget financing, the option of creating reserves could be considered as the second best option.

Naturally, changes to the disputable Article 57 of LPC and abolishing the Commission's obligation to compensate for interest and other costs related to abolishing and reduction of imposed measures by the Administrative Court, should certainly be made, regardless of the financing option that would be selected.

Recommendation 1 should be reviewed by the Commission, the Government and finally the Parliament. The Commission should start an initiative for redefining the means of financing and open a dialogue with the Government, since the existing way of financing is inadequate for the full enforcement of LPC.

2.2. Recommendation 2 (Commission's Organisational Structure and Capacity)

In order for the Commission to do the test procedures prescribed by the Law, it has to optimise its organisational structure and increase its human and therefore professional capacities. That would entail creating new jobs for legal and economic experts specialised in the field of protection of competition, but also for Information and Communication Technology (ICT) experts.

2.2.1. Rationale and Way of Implementing Recommendation 2

Right of competition is specific because its implementation often requires getting into a complex economic analysis, which certainly exceeds the possibility of full legal codification of this area. Combination of law and economy is an essential link in solving the cases in the field of protection of competition, which requires experts of special profiles from the field of law and economy, who would be permanently employed in the Commission.

In addition to the quantity of human resources for implementing the LPC, it is necessary to provide a specific structure of professional profiles of the employees. It is our conclusion that despite the significant progress made in the six years of Commission's operations, its current organisational and personnel structure cannot be considered satisfactory.

We will begin by reviewing the quantitative dimension of human resources that the Serbian Commission has by observing them relative to the number of cases that a regulator faces in a year, and then comparing that data to that of Croatia and the Czech Republic. For comparative reasons, we will focus on the number of employees in three key sectors (Concentration control; Competition violation – cartel behaviour and abuse of dominant position in the market; and Sector analyses), but also on the number of cases that these departments handle in a year. These are key departments for the implementation of competition policy.

¹² According to UNCTAD (2011), it is estimated that a reduction of concentration notification fees should be by 50%, which would bring them down to European standards, meaning that at least 80% of revenue would be generated from the state budget.

¹³ In the current nomenclature of the ministries, the Ministry in charge of trade is named "Ministry of Foreign and Internal Trade and Telecommunications".

Table 3 Structure of cases and employees of three comparative commissions for the protection of competition

Countries	Data	2010	2011	
Serbia	Cases (C)***	1(C) Concentration	67	106
		2(C) Competition violation	15	12
		3(C) Sector analyses	3	3
		Total 1-3(C)	85	121
	Employees (E)	1(E) Concentration	5	6
		2(E) Competition violation	7	7
		3(E) Economic analyses	2	3
		Total 1-3 (E)	14	16
	Relative values	1(C)/1(E)	13.40	17.67
		1-3(C)/1-3(E)	6.07	7.56
Croatia*	Cases (C)***	1(C) Concentration	15	12
		2(C) Competition violation	2	7
		3(C) Sector analyses	3	2
		Total 1-3(C)	20	21
	Employees (E)	1(E) Concentration	8	11
		2(E) Competition violation	4	6
		3(E) Economic analyses	3	4
		Total 1-3 (E)	15	21
	Relative values	1(C)/1(E)	1.88	1.09
		1-3(C)/1-3(E)	1.33	1.00
Czech Republic**	Cases (C)***	1(C) Concentration	45	
		2(C) Competition violation	1	
		3(C) Sector analyses	1	
		Total 1-3(C)	47	
	Employees (E)	1(E) Concentration	31	
		2(E) Competition violation	33	
		3(E) Economic analyses	16	
		Total 1-3 (E)	80	
	Relative values	1(C)/1(E)	1.45	
		1-3(C)/1-3(E)	0.59	

* 2011 data for Croatia on the number of employees per sector was not available, so an approximation was done based on the 2010 data. In the observed three sectors, the number of employees was proportionally increased in relation to the percentage of the total increase of employees engaged in data processing (from 32 to 44 employees).

** At the time of writing this paper, 2011 data for the Czech Republic was not available.

*** The table shows the total number of registered concentrations in the year. This number includes closed cases in that year, as well as cases that are in progress and that are transferred to the next year.

Source: Official reports on the commissions' work are available on their websites (See: <http://www.kzk.org.rs>, <http://www.aztn.hr>, <http://www.compet.cz/en>)

Based on this table, it is evident that in both observed years, Serbian Commission for Protection of Competition had less employees than Croatia, while the difference with the Czech Republic is particularly prominent. However, if we look at the total number of cases, we would see that the situation is quite different. Thanks to a large number of concentration cases in both observed years, the Serbian Commission has almost 6 times more cases in 2010 compared to the Croatian and slightly more cases compared to the Czech Commission. Consequently, this disproportion is reflected in the relative value of the number of cases per employee as well, which best demonstrates the insufficient professional capacity of the Serbian Commission to process cases that are in its jurisdiction.

Number of cases per employees in the concentration control sector especially demonstrates how overburdened the regulatory body is 1(C)/1(E), since the concentration control (company mergers, acquisitions) is analytically the most complex. The 2010 value for Serbia is 13.40, for Croatia 1.88, and for the Czech Republic 1.45. Based on these values, it turns out that the concentration control sector of the Serbian Commission was over 7 times more overloaded with cases than the Croatian Commission, and over 9 times more than the Czech Commission. Comparing Serbia and Croatia for 2011, the focused ratio becomes even more unfavourable for Serbia (over 16 times), primarily due to a major increase in the number of reported concentrations and a minor increase of the concentration control department capacities in Serbia.

By weighting the total number of cases in the stated sectors against the total number of employees in those sectors, 1-3(C)/1-3(E), local Commission's overload can also be observed.

In 2010, the case load of one employee compared to Croatia was 4.5 time higher, while compared to the Czech Republic it was over 10 times higher. In that sense, we could expect several times higher productivity of local experts in case processing. Since that is not the case, below we will see how the problem of case overload can be resolved when the local regulator is concerned. For now, it is sufficient to ascertain that there is a significant disproportion between the number of employees and the number of cases they need to process.

In order to reduce this relationship to the standards comparable to European countries, which are obviously lower, it is necessary to increase the number of experts in the Commission, but also to reduce the number of cases, and especially the number of reported concentrations. The professional capacity of the Commission's Expert Department should be strengthened when it comes to case processing. For example, in order to be at the same level as Croatia, it is necessary to increase employee capacity on case processing at least 30% (up to 6 employees). This percentage could be even higher if we take into account that Croatia's internal market is smaller than Serbia's (see Table 1), which also

means a lower scope of activities from the Commission's jurisdiction and, therefore, a lower need for professional staff.¹⁴

At the same time, in strengthening the expert capacity, special attention should be given to the structure of expert profiles that are being hired, since it is important to have a relatively balanced ratio of legal and economic experts, which is also proven by the experience of countries that Serbia is being compared to in this study. In Serbia, there is a significant dominance of legal experts over economic ones, a disproportion that should be remedied in the future.

Observing the organisational chart of the Commission, it can be observed that it lacks the "Chief Economist" position, which exists for example in Hungary and Croatia, but also at the supranational level of competition protection in the EU, within DG COMP. The role of the Chief Economist is to monitor and control all economic analyses that the Commission would perform, and to form methodology and procedures that the Commission should follow when implementing test procedures that require economic analysis. The Commission Council should respect the opinion of the Chief Economist in cases where economic argumentation is used in the process of proving potential or expressed violation of competition. For example, within DG COMP, the Chief Economist has the right to form his/her own team of economic experts. What we are suggesting is that the opinion of the Chief Economist when selecting economic experts for the work at the Commission should play a major role. When we talk about the position of Chief Economist, a question arises as to what kind of expert profile we are talking about.

When choosing the Chief Economist, it is preferable that the candidate holds the highest academic qualification from the field of economy, PhD in Economic Science and particularly in the field of protection of competition. An expert who should be specialised in game theory and industrial organisation, and within that field, in the protection of competition, which would mean the candidate is an author of a large number of scientific papers from the field, or that he/she has been working for at least 10 years in a developed foreign commission on cases of economic content. Application of econometric tools in the field of protection of competition, as an indispensable factor of test procedures where economic approach is used, should also be part of the knowledge that the Chief Economist brings into the Commission for Protection of Competition. Certainly, the Chief Economist should be a figure that possesses the biggest economic knowledge within the Commission and, therefore, the respectable authority even when the Commission's Council is concerned, in all economic matters on which the Commission is deciding. Also, it is only logical to place the responsibility of forming the economic team of the Commission's Expert Department on the Chief Economist.

That is why the position of the Chief Economist should be defined by Law, which would clarify the qualifications needed for his/her selection. The selection should be done through a public call, through which the best suitable candidate would be chosen. A problem that could ensue regarding this position refers to the possibility of the local Commission financing it, which would currently not be enough for an expert of such a high profile. High fluctuation in the position of Chief Economist is something that should be avoided at all cost, which is impossible to do in a system of compensation and award that is currently implemented at the Commission, which we have already discussed in Recommendation 1.

The Chief Economist position is all the more important to the local Commission if we have in mind that most of the personnel in the Expert Department is of a legal profession, and that the current Commission's Council has five members, all five being legal experts. This last fact about the structure of the Council is particularly disconcerting if we take into account that this is the area of regulation that requires both legal and economic experts. According to that logic, the structure of the Council should be mixed. Let us note that the previous Council could have been considered somewhat mixed, but it was almost entirely replaced after the end of its term. The practice of replacing all members of the Council at the end of the term should be avoided, unless there are objective reasons foreseen by the LPC. In order to enable continuity in work and accumulation of knowledge, and therefore efficiency and effectiveness of the Commission's work, as well as its independence, the Parliament, i.e. the Government should follow the principle where the Commission's Council or at least most of its members would remain in their positions for at least two terms, which the Law does allow.

Discontinuity every five years, connected to the loss of time needed for the new Council to get up to speed, is something that a responsible state that understands the effect of competition on the wellbeing of its citizens should avoid. This practice is standard in most of the EU countries.

¹⁴ According to the 2011 regular annual report of the Commission for the Protection of Competition, the total number of employees in the Expert Department should be increased from the current 31 to 54. Respecting the current proportion in the number of employees, it would mean that the number of employees working on cases should increase from the current 20 to 35, which is certainly above 30%. This scenario of increasing the number of employees could be characterised as quite optimistic having in mind the current Commission's revenue with the current system of generating that same revenue.

In the context of the previous discussion on the Commission's Council, we feel that Article 23 of LPC, which refers to the selection of Commission's bodies (President of the Commission and members of the Council) should be changed soon. This article provides for the Council members to be both lawyers and economists, but it does not limit the extreme situations of having solely lawyers or solely economists in the Council. The amendment of Article 23 should eliminate the possibility of extreme solutions. Also, the principles of selecting Council members should be changed as well in order to choose experts whose business careers are tightly tied to law and economy of competition. When it comes to economists, similar principles should be applied as in the case of selecting the Chief Economist, while when it comes to lawyers, people with highest academic qualifications should be selected, whose scientific and professional orientation are related to competition law. If, however, members outside the academic community are selected and without the highest academic qualifications, this can be done exclusively for the candidates who have acquired long years of experience (at least 10) in one of the respectable foreign commissions for protection of competition. Those candidates can be considered professionals in the field of competition protection due to their narrow speciality.

Finally, in the era of rapid development of information and communication technologies, the Commission has to consider hiring experts in this field as well, who are primarily needed for the investigations into cartel agreements. In order to identify a cartel agreement, any proof of its existence can help the Commission solve the case. So, for example, gathering evidence during an unannounced inspection foreseen by Article 53 of LPC, includes collecting data from computer memories from the offices of the companies that are being investigated, but also from physically remote machines that are connected to the company via communication networks. The collected copies of electronic memories are subject to further forensics at the Commission's headquarters with the aim of finding company's correspondence with other market players, which could serve as evidence of illegal cartel agreements. The role of IT experts in this process is indispensable. According to the UNCTAD 2011 analysis, it is stated that the right measure for strengthening IT capacities of the Serbian Commission would be hiring 2 additional experts in this field.

Recommendation 2 should be reviewed by the Commission, the Government, and the Parliament in the segment related to the changes to CPL in order to strengthen the quality of the personnel structure and systematise new positions, such as the one of the Chief Economist. The pre-condition of implementing this recommendation is the implementation of Recommendation 1.

2.3. Recommendation 3 (Reduction in Number of Concentration Cases)

With the aim of reducing the load of the Commission for the Protection of Competition so that the Commission would be able to focus on more important cases for the conditions of competition in partial markets of the Republic of Serbia, it is necessary to reduce the number of reported concentrations.

2.3.1. Rationale and Way of Implementing Recommendation 3

Unnecessarily large number of concentrations (see Table 3) is the result of the fact that prescribed thresholds for reporting concentrations are set too low (Article 61 of LPC), so a large number of minor concentrations fall under the obligation of notification. Low threshold orientation can be explained by the fact that concentration fees represent generous revenue for the Commission and are an essential part of its budget.¹⁵

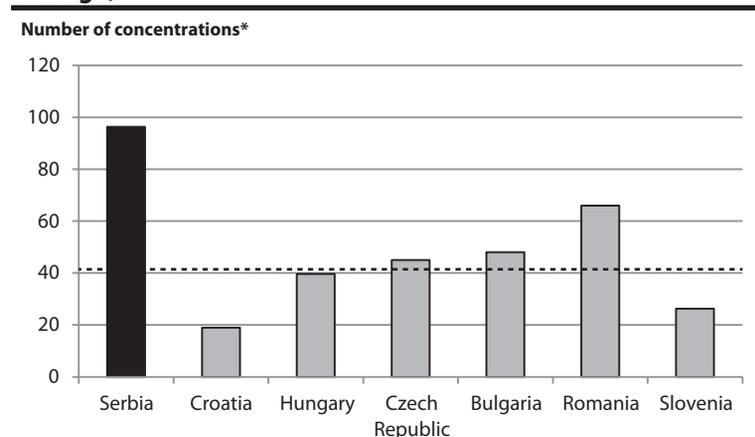
The following graph shows average number of concentrations based on the three last annual reports of regulatory bodies of Serbia and focus group countries.

With an average of 96.33 concentrations a year, Serbia leads significantly compared to the values of observed countries. Dashed horizontal line in Graph 2 shows the average number of concentrations for all stated countries except Serbia (40.67), which Serbia also exceeds by far.

Overload of the Commission by concentrations, out of the need to secure sufficient revenue, forces it to approve most of the cases by simplified procedure, meaning without detailed economic analysis of market structures in which the subjects of the concentration in question operate, which is enabled by Article 37 of LPC. In such circumstances, when the Commission is forced to apply the "rule of thumb", without the accompanying quantitative analysis, in order to approve concentrations, the so-called false positives are significantly increased to approve a concentration that will eventually jeopardise the conditions of competition. In 2011, out of 100 finalised cases, only two were resolved

¹⁵ Within Recommendation 1, it was stated that the amounts of fees for local concentrations are among the highest, comparing that amount to EU countries.

Graph 2 Number of reported concentrations (three-year average)



* In the absence of data for Hungary and Slovenia for 2011 regarding the number of reported concentrations, the average value was formed based on the period 2008-2010, while in other countries the average was formed based on the period 2009-2011.

Source: Official reports on the commissions' work are available on their websites (See: <http://www.kzk.org.rs>, <http://www.aztn.hr>, <http://www.gvh.hu>, <http://www.compet.cz/en>, <http://www.cpc.bg>, <http://www.consilulconcurentei.ro>, <http://www.uvk.gov.si/en>)

panies' economic costs of doing business are increased as well.

Implementation of Recommendation 3 should lead to a reduction in the average number of concentrations up to 50%, which would bring Serbia closer to the average of the focus group countries. In order to realise this reduction, it is necessary to raise the threshold of obligated concentration reporting at least to the average level prescribed by comparative European countries. This would also mean changing Article 61 of LPC. With the aim of demonstrating the disproportion in the level of thresholds (Serbia vs. focus group of countries), Table 4 shows one of the threshold components - "Realised revenue of each of at least two participants on the country's territory" - which is comparable at the level of the group countries covered by this analysis, including Serbia.

According to Table 4 it is evident that aside from Slovenia, all other countries have their thresholds set at a significantly higher level, and in certain cases it is several times higher than in Serbia. As an example, Croatia and Hungary have over 10 times higher thresholds than Serbia. The solution we suggest, when it comes to Serbia, is to do an

Table 4 Threshold for obligated reporting of concentration

Countries and averages	Achieved revenues of at least two participants in the territory
Serbia	1,000,000
Croatia*	13,326,395
Hungary*	1,795,848
Czech Republic*	10,050,251
Bulgaria*	1,533,876
Romania	4,000,000
Slovenia	1,000,000
Average (without Serbia)	5,284,395
Average (without Serbia, Croatia and Czech Republic)	2,082,431

* Amounts stated in the law, since they were given in the local currencies of the countries, have been converted to EUR according to the official middle exchange rate of the central banks of those countries on 16.10.2012.

Source: Laws on Protection of Competition of the covered countries

through test procedure (2% of the total number). As an example, compared to Croatia and Czech Republic, this is evidently a too low percentage (10% and 50% respectively).

The damage of such a low threshold for obligated reporting of concentration, and therefore an overly large number of concentrations, is two-fold. On the one hand, the Commission is overloaded with cases of minor significance for competition conditions, thus losing the possibility to focus on more significant concentrations that bear a high risk of endangering the free market competition. On the other hand, many companies whose concentrations are of minor importance are faced with an obligation to report the concentration, which increases the uncertainty in planning such a business venture, delays its realisation and increases its cost. By imposing on them the obligation of paying fees, the companies'

approximation of local thresholds to the average of the focus group. According to one scenario that includes in the average all stated countries except Serbia, the thresholds should be raised over 5 times. According to another, milder and therefore more realistic scenario, where the averages exclude Serbia, Hungary and Croatia as extreme examples, the thresholds should be raised by around 100%.

Recommendation 3 is intended, much as the previous two recommendations that require changes to the LPC in certain segments, for the Commission, the Government and the Parliament. It should be stressed that a prerequisite for its realisation is the implementation of Recommendation 1, which refers to redefining the system of financing of the Commission.

3. Recommendations Whose Implementation Does Not Require Changes in Legislation

Implementation of the following recommendations does not require changes to the Law on Protection of Competition and the accompanying by-laws. The dominant factor and initiator of their implementation will turn out to be, among others, the Commission for Protection of Competition.

3.1. Recommendation 4 (Development of the “Guidelines” by the Commission)

In order to increase transparency of the Commission’s actions in the cases it processes, and here we primarily mean the cases of company concentrations and abuse of the dominant market position, it is necessary for the Commission to develop Guidelines, which will include practical aspects of the Commission’s actions in enforcing the Law. Increased transparency would have a positive effect on the increase of legal certainty in business planning of companies, which is a deficit category in competition law. In that sense, it is essential to create guidelines for the regulation of horizontal mergers of companies and for defining relevant markets, whose presence is a common trait of most of the developed systems for the protection of competition.

3.1.1. Rationale and Way of Implementing Recommendation 4

In addition to the Law and by-laws, the regulation also includes guidelines prescribed by the Commission, which do not have the legal weight of law and regulations, but have a significant role in the functioning of the system for protection of competition. The guidelines define the practical actions of the Commission in the test procedures it performs.

In developed systems of protection of competition, meaning primarily the supranational systems of EU and USA, the role of the guidelines is considered crucial. The guidelines represent a description of practical actions of the Commission in the test procedures it performs¹⁶, for which there is no room in official laws and by-laws that regulate the competition law. Prescription of guidelines by the Commission raises the level of legal certainty in business operations of companies that could come under the Commission’s scrutiny, but they also help better understanding of this issue by the courts that are ruling on companies’ appeals on the Commission’s decisions.

Defining of relevant markets, foreseen by Article 6 of LPC and relevant by-law¹⁷ additionally explaining this article, represents a key step in regulating the horizontal mergers of companies (concentrations) and in determining the dominant market position of a company and a possibility of its abuse. The road to a definition includes primarily the application of quantitative economic-econometric tools and principles of definitions, based on which these are implemented. According to the mentioned article of the Law and the by-law that gives a precise definition of the relevant market, it is impossible to understand what are the definition’s criteria and how to define its limits. One of the possible principles of the definition, which is widely applied and has many implementation modalities, is the so-called “Hypothetical Monopolist Test”, which should be considered when creating the guidelines.

Please note that the basic problem of the imprecise definition lies in the too broad definition of the market, which carries the danger of diminishing the importance that a particular business endeavour has on the conditions of competition and thus approving it, even though it leads or eventually will lead to violation of competition rules. In a situation where the market is too narrowly defined, it could lead to increased probability of unjustified prohibition of particular business venture, which damages the observed companies, but also the conditions of competition in the industry in which those companies are operating.

Commission’s actions in the test procedures regarding horizontal company mergers (concentrations) should also be codified by guidelines, which until now has not been done. The mere interpretation of the current Law does not clarify how the Commission performs the test procedures. Creating guidelines for horizontal mergers would increase the possibility of companies’ planning their external growth, i.e. estimating whether or not their venture is in line with the Law. Such guidelines would have to contain a simple quantitative test of concentration, which would be based on the Herfindahl-Hirschman Index. This test offers an extremely useful preliminary indication of potential effects of a concentration on the conditions of competition on the determined relevant market. The test should be aligned with the prevailing levels of concentration on the local markets, in order to achieve optimal restrictiveness

¹⁶ Article 41 of CPL defines the test procedure term as evidentiary action directed towards determining the facts.

¹⁷ RS Official Gazette, issue 89/2009.

in its implementation. In the majority of test procedures performed by the Commission in the field of concentration control, this quantitative test has been applied, so its formalisation within the guidelines will not be difficult.

In creating the guidelines, in addition to its own experiences in enforcing the LPC, the Commission should also take into account the current guidelines of the EU¹⁸ and USA¹⁹ (at supranational level), but also the guidelines of comparative EU member states that have a longer experience in implementing the competition policy than Serbia.

Recommendation 4 is intended exclusively for the Commission for Protection of Competition, because prescription of guidelines is entirely in its jurisdiction. However, until Commission's economic team is formed, including its Chief Economist (foreseen by the implementation of the Recommendation 2), we feel that the proper implementation of this endeavour is not completely feasible.

3.2. Recommendation 5 (Training of Administrative Court Judges on Economics)

In order to improve understanding of competition policy in the area that involves economic-econometric argumentation in proving violation or potential violation of competition, it is necessary to train the Administrative Court judges.

3.2.1. Rationale and Way of Implementing Recommendation 5

Direct control of final decisions of the Commission, pursuant to Article 71 of LPC, is under the jurisdiction of the Administrative Court.²⁰ So, all possible appeals of companies on the Commission's final decisions are sent for review to the Administrative Court. The Administrative Court has a possibility of confirming the Commission's decision, annulling it or ordering the Commission to repeat the test procedure. The last two possibilities entail the Administrative Court, as an independent body, not agreeing with reached decisions, which means that the Court is competent to understand the argumentation expressed in the Commission's final decision. Difficulties occur mostly when economic argumentation is in question. This issue is not exclusively characteristic of the local system of protection of competition, but also of systems with a much longer tradition. As a rule, systems where commissions are weak and underdeveloped, the courts are at least slightly inferior in understanding these issues. Lack of courts' understanding is especially expressed in cases of concentration control and abuse of dominant market position, where problems occur already at the beginning, in defining relevant markets. Hence the necessity to prescribe the abovementioned guidelines for defining relevant markets (see Recommendation 4).

Parallel to strengthening the professional capacities of the Commission, it is necessary to strengthen the professional capacities of the Administrative Court as well, through permanent education of judges in charge of cases in the field of protection of competition. Acquiring the necessary economic knowledge in the field of industrial organisation theory and econometrics is necessary for the functioning of the Administrative Court in this field. Certainly, it cannot be expected that an Administrative Court judge would get into this kind of economic issues with the precision level and understanding of a specialised Commission, but the judges can be enabled to understand the logic behind the economic argumentation in the Commission's decisions, as well as that of the party submitting the appeal.²¹ The Court should be able to rule whose argumentation reflects reality, because absolutely correct solutions cannot be expected in this area of regulation.

In its six-year long history, the Commission has had various experiences with the relevant courts. The point is that most of the major cases handled by the Commission have never been confirmed by the courts (e.g. Delta's concentration in 2006). Last in the series of major cases where Commission's negative decision was overruled by the court refers to the concentration of the Serbian sugar producer "Sunoko" with Greek company "Hellenic Sugar Industry". Regarding this decision, the Commission addressed the public with the text entitled "Why Does the Administrative Court Ignore the Public?"²²

18 For guidelines on defining relevant markets see *Official Journal of the European Union* (OJ C 372) and for Guidelines on the regulation of horizontal mergers see *Official Journal of the European Union* (2004/C 31/03).

19 See Federal Trade Commission and U.S. Department of Justice (2010), *Horizontal Merger Guidelines*.

20 At the highest instance, the decision of the Administrative Court could be overruled by the Supreme Court of Cassation, but in practice, this is quite rare.

21 In addition to appeals to the decision of the Commission for Protection of Competition, the Administrative Court is also in charge of lawsuits against 54 institutions of the government, local self-government, public companies and other government agencies. This demonstrates the case load of Administrative Court judges of various content, and how limited the Court's capacities are when it comes to the protection of competition, which requires much more dedication and expertise in the deliberations before the court.

22 See: <http://www.kzk.org.rs/zasto-upravni-sud-ignorise-javnost>

Table 5 Cases handled by the relevant court

Countries	Proceedings before the Court	2010	2011
Serbia	Affirmed decisions (of the Commission)	6	17
	Annulled decisions (of the Commission)	1	3
	Total	7	20
Croatia	Affirmed decisions (of the Commission)	19	9
	Annulled decisions (of the Commission)	0	1
	Total	19	10

Source: Official reports on the commissions' work are available on their websites (See: <http://www.kzk.org.rs>, <http://www.aztn.hr>)

Comparing Serbia and Croatia (Table 5), out of the total of 27 Commission's decisions that ended up in court in the period 2010–2011, the Court has annulled Commission's decisions in 4 cases, while in Croatia in the same period only one decision was annulled out of a total of 29 that ended up in court. In principle, numbers in this case bear little significance if we take into account that the cases are not equally important when it comes to competition. In certain cases, wrong decisions could cause significant consequences when it comes to consumer surplus and negatively affect almost

entire decade on the market where certain actions occurred in violation of rules of competition.

In addition to permanent education of Administrative Court judges on economic issues in competition, we feel that competition, as highly complex area, deserves establishment of a special department of judges specialised in cases from this domain.

Recommendation 5 is intended for the Administrative Court and the Government, who should make joint effort to find a way of strengthening the professional capacities of the courts in this area. For education of judges, it is necessary to allocate certain financial funds from the state budget, which is significantly less compared to consequences of just one wrong decision of the court. In EU accession funds, there are funds designated for the capacity building in the area of competition protection. Parallel to Serbia's accession to EU, it is necessary to realise in time the significance of competition for the economic growth and development, and living standard of the population, and therefore, possibilities to use those funds in the best way.

In addition to courts, in a wider scope of the system for the promotion and protection of competition, the Government, i.e. the Ministry in charge of trade should fully understand the importance of competition and support the independence of the Commission and the Administrative Court, and understand the need for strengthening professional capacities of these bodies. The Ministry should also form a special working group that would deal with issues of the functioning of the system of promotion and protection of competition, since this Ministry is responsible for establishing the basic government strategy for strengthening the competition on domestic partial markets.

3.3. Recommendation 6 (Commission's Cooperation with Other Elements of the System for Promotion and Protection of Competition)

In order to increase the efficiency of the system of protection of competition, it is necessary to strengthen the communication and cooperation between the Commission for Protection of Competition and institutions that, in addition to the Government and the courts, comprise the system of promotion and protection of competition in a wider sense. By other bodies, we mean all specific sector regulators, but also the bodies for the control of public procurement and state aid, as well as the consumer protection associations.

3.3.1. Rationale and Ways of Implementing Recommendation 6

When we say specific sector regulators, we mean the National Bank of Serbia (NBS), Republic Broadcasting Agency, Stock Exchange Commission, Energy Agency of the Republic of Serbia, and Republic Agency for Electronic Communications (RATEL).²³ Institutional cooperation of the Commission with sector regulators is key to efficient implementation of LPC in the sectors that are in these regulators' jurisdictions. Sector regulators, whose operations are defined by specific laws, should also take care if the functioning of their sectors is in line with Law on Protection of Competition. When this is not the case, sector regulators should notify the Commission for Protection of Competition about the circumstances. On the other hand, many activities of sector regulators within the industry that is subject to regulation could have direct effect on other connected industries, i.e. on other connected markets. Therefore, orchestrated operation of the Commission and sector regulators is an important factor in functioning of the system for the promotion and protection of competition. For example, the Stock Exchange Commission should

²³ Civil Aviation Directorate of the Republic of Serbia is also part of the sector regulators. Given that the activities of this regulator are not essential to the application of the Competition Protection Law, it was left out of the list.

notify the Commission of each change of ownership in companies through their merger by purchase of shares of one company by the other, and also warn the parties in the concentration that they need to report their intent to the Commission (Articles 61 and 63 of LPC).

In order for the connection between sector regulators and the Commission to strengthen, it is necessary for the Commission to sign a protocol of mutual cooperation with all the stated regulators, with firm commitment from both sides to fully respect these protocols. So far, protocols of cooperation have been signed with the National Bank of Serbia, Energy Agency, and RATEL. So there are two remaining protocols to be signed in the future. The insistence on signing and implementing the protocols should be initiated by both the Commission and the sector regulators.

In most of European countries, even those that served to us for comparative analysis, the control of the state aid is integrated in current activities of their commissions for protection of competition (shown in Table 2). Also, it is not rare to put the control of public procurement in developed market economies within the scope of the commissions for protection of competition, as is the case in Czech Republic and Slovenia. In Serbia, these activities are performed by special regulatory bodies – for public procurement, we have the Public Procurement Office, and for the control of state aid, there is the Commission for State Aid Control. Both of these areas are regulated by special laws – Law on State Aid Control²⁴ and Law on Public Procurement²⁵. The goals of both these laws almost entirely coincide with the Law on Protection of Competition, which makes their implementation perfectly complementary.

Obviously any attempt to rig a tender procedure presents a direct attempt to eliminate competition between business subjects, tender participants. The importance of public procurement is even bigger if we consider that public procurement makes on average 16.7% of GDP of EU member states, while that percentage is higher in the Balkan countries.²⁶ Having in mind this fact, as well as the fact that efficient control of public procurement could save up to 30% of public spending, makes it clear how competition protection in this area could have positive effects on the state budget and efficient business operations of suppliers, tender participants.

In order to have a more efficient control of public procurement, a tighter institutional connection is needed between the Commission, as the most competent body for the protection of competition, and Public Procurement Office, as the body in charge of organising and ensuring functioning of the process of public procurement.

State aid control is essential when it comes to conditions of competition. In general, every state aid has a potential of favouring certain market participants, thus putting the others in an unfavourable position. Such government behaviour jeopardises the conditions of competition in the market, but cannot be avoided in some cases. The regulators role in this field is to decide which state aid could be considered allowed and which could not. Large scope of government activities in this field is characteristic for Serbia, hence the big interest of EU to make Serbia reduce this issue to an acceptable level. Currently, the biggest problem of regulating this field is the fact that the Commission for State Aid Control does not have the necessary level of independence, since it is under the patronage of the Ministry of Finance and Economy. Let us note that it is somewhat of a paradox to have the Commission for State Aid Control under the jurisdiction of the Ministry of Finance and Economy, which is a direct donor of state aid. On the other hand, the role of the Commission for Protection of Competition is minor when it comes to the functioning of the Commission for State Aid Control. The only role the Commission for Protection of Competition has is to send a proposal for the selection of one member of the Council of the Commission for State Aid Control, which is not enough for an efficient cooperation of these two bodies on implementing the laws whose goals are identical.

Whether we are talking about state aid or public procurement, one of the solutions for these problems includes a closer cooperation of the Commission for Protection of Competition and relevant regulatory bodies that we mentioned. The other solution would be to put the control of public procurement and state aid under the jurisdiction of Commission for Protection of Competition, which would probably be the most efficient solution when it comes to protection of competition. This last solution certainly would not be possible with current capacities of the Commission for Protection of Competition.

The Law on Consumer Protection²⁷ has been in effect in Serbia since the beginning of 2011, and it protects the rights of consumers from unscrupulous producers and retailers. This area of law could be considered complementary to the area of protection of competition that the Commission is implementing. Formal regulatory body for enforcing this

24 *RS Official Gazette*, 51/2009.

25 *RS Official Gazette*, 116/2008.

26 UNCTAD (2011), p. 85.

27 *RS Official Gazette*, 73/2010.

law does not exist. The role of the regulator is performed by non-government associations for consumer protection, whose role comes down to sending public appeals when consumer rights are jeopardised. Cooperation between the Commission and these associations could be reflected in a desire to impose issues of importance through joint public appearances when the protection of competition and therefore protection of consumers is at stake.

Recommendation 6 is directed towards the Commission for Protection of Competition, the Government, stated sector regulators, agencies for the control of state aid and public procurement, as well as consumer associations.

3.4. Recommendation 7 (Increasing the Transparency of the Importance of Competition Protection)

Commission and the Government have to put in extra effort to make the importance of protection of competition transparent and understandable to the general public. Public pressure, when protection of competition is concerned, can be a powerful ally to the Commission, so it needs to work on raising public awareness on importance of competition.

3.4.1. Rationale and Ways of Implementing Recommendation 7

As stated in UNCTAD (2011), work on competition advocacy in any country is a never-ending job. Serbia is only at the beginning of this work, since the public is very poorly informed about issues related to the protection of competition. Competition advocacy would demystify the way market games work, which would eliminate public doubt about enforcing the Law and would increase the certainty of doing business.

In implementing this recommendation, Commission's engagement in the field of promoting the results of realised activities over the year would be necessary, because if they are not promoted, an impression is created that the Commission is not doing anything in this area. Regular highlighting of important decisions and events of the Commission has to be transparently placed on the Commission's website, which it is already doing, and also to all relevant media (print and electronic). For these purposes, it would be desirable if the Commission would have at least one person within the Commission permanently doing the so-called public relations (PR). Presence of the Commission's President in the media is also the key to good public promotion of Commission's results.

Recommendation 7 is intended for the Commission for Protection of Competition and the Government.

4. Instead of the Conclusion

Implementation of the recommendations given in this study should improve the functioning of the core system of protection of competition, which is a necessary condition for the system as a whole to work. The recommendations are a connected system of actions that should be done in the "short" mid-term (3-4 years), so that the system of promotion and protection of competition in Serbia would start functioning as the comparative systems with longer traditions and considerable results in the field. The Commission should make sure the implementation of certain recommendations are a prerequisite for the implementation of others. This primarily refers to Recommendation 1, whose adoption solves the chronic problem of unstable Commission's finances.

The paper proposes 7 relatively complex recommendations, which are divided into two homogenous groups, depending on whether their implementation requires changing the Competition Protection Law or not. The paper proposes possible ways of securing stable, predictable and sufficient sources of funding for the Commission, which would turn out to be one of the main conditions of its independence and of forming optimal personnel structure necessary for the enforcement of all elements of the Law. In order to reduce Commission's case overload with cases of minor importance to conditions of competition, it was suggested that a considerable reduction in the number of reported concentrations in a year be reduced by adequate raising of the legal threshold for the obligation of reporting concentrations.

In the section with recommendations that do not require changes in legislation, it was proposed that the Commission prescribes guidelines in the domain of defining relevant markets and concentration control. The guidelines would describe Commission's actions in defining relevant markets and in controlling concentrations, which would reduce the legal uncertainty that accompanies these economic categories of the Law on Protection of Competition.

Training of Administrative Court judges on understanding economic issues in this field was also listed as an extremely important element of implementing the Law, since non-specialised judicial review of Commission's decisions could bring more harm than good when it comes to the benefit of competition.

The recommendations have also covered the cooperation of the Commission with other government and non-government bodies that comprise the system of promotion and protection of competition in a wider sense, as well as the significance of promoting the importance of competition to the general public. The central role in these activities has the independent Commission for Protection of Competition.

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