

Serbia: Competition

Decree on Fines and Penalties Decree on the Conditions for Application of Leniency Regime

As BDK reported in its Newsletter 7/2009, the current Law on Protection of Competition that came into force in July 2009 significantly boosts the powers of the Serbian Commission for Protection of Competition ("**Commission**") by vesting it with the authority to impose fines (dubiously concealed under the euphemism "pecuniary measures for protection of competition"). According to the Law, such "measures" may amount to 10% of the total annual income of the market participant concerned. However, in the absence of implementing by-laws prescribing guidelines and criteria for assessment of the amount of fine within the prescribed cap, this authority of the Commission has been a paper tiger so far.

On 31 July 2010, the Commission enacted the Decree on the Criteria and the Conditions for Assessment and Payment of Pecuniary Fines and Procedural Penalties¹. The said Decree heavily relies on criminal law concepts. The following criteria and considerations apply: 1) intent (indirect intent and gross negligence are taken as attenuating circumstances) 2) gravity, consequence and duration of the breach (absence of or insignificant damage is an attenuating circumstance), 3) whether the breach is a repeated infringement or a first-time offence, 4) whether the market participant had incited other participants to the infringement, 5) timing of suspension of the prohibited behavior (suspension prior to becoming aware of the proceedings is an attenuating circumstance), 6) contribution to the removal of the consequences of the committed breach, and 7) cooperation with the Commission. With respect to procedural penalties, two additional criteria apply: significance of the ordered conduct to the outcome of the pending proceedings and repetition of the same or similar behavior by the breaching market participant. The deadline for payment of fines is from three months to one year from the date of receipt of the Commission's decision, whereas the deadline for payment of procedural penalties is from one to three months. In both cases, the financial strength of the breaching market participant is taken into account when specifying the actual deadline. Exceptionally, the Commission may, upon reasoned and substantiated request of the party concerned, allow payment of fine in installments. It should be noted that a challenge to the Commission's decision in judicial accountancy proceedings does not suspend enforcement thereof. Further details and formulae for assessment of actual amount of fines and procedural penalties are set forth in the separate Guidelines adopted by the Commission².

According to the Decree on the Conditions for Application of Leniency Regime³, also enacted on 31 July 2010, a breaching party must fulfill all of the following conditions in order to qualify for the leniency regime: 1) it must be the first party to the restrictive agreement to have notified the Commission thereof, in a situation where the Commission has no prior knowledge of the infringement or has insufficient evidence thereof, 2) it must provide evidence of the restrictive agreement and/or point

¹ The Decree on the Criteria for Assessment of the Amount to be Paid on the Account of Measure for Protection of Competition and Procedural Penalty, Manner and Deadlines for Payment and Conditions for Imposition (*Uredba o kriterijumima za određivanje visine iznosa koji se plaća na osnovu mere zaštite konkurencije i procesnog penala, načinu i rokovima njihovog plaćanja i uslovima za određivanje tih mera*, «Sl. Glasnik RS», no.50/2010)

² The Guidelines on applying the Decree on the Criteria for Assessment of the Amount to be Paid on the Account of Measure for Protection of Competition and Procedural Penalty, Manner and Deadlines for Payment and Conditions for Imposition (*Smernice za primenu Uredbe o kriterijumima za određivanje visine iznosa koji se plaća na osnovu mere zaštite konkurencije i procesnog penala, načinu i rokovima njihovog plaćanja i uslovima za određivanje tih mera*), published at <http://www.kzk.org.rs/download/Smernice%20-%20visine%20iznosa.pdf>

³ The Decree on the Conditions for Release from Liability to Pay the Pecuniary Amount of Measure for Protection of Competition (*Uredba o uslovima za oslobođanje obaveze plaćanja novčang iznosa mere zaštite konkurencije*, «Sl. Glasnik RS», no.50/2010)

Contacts

BOJOVIĆ DAŠIĆ KOJOVIĆ
Advokati/Attorneys at Law

Belgrade office:
Dobračina 38
11 000 Belgrade, Serbia
Tel: +381 11 3284 212
Fax: +381 11 3284 213
E-mail: office@bdklegal.com

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to the person or the place where such evidence can be found, 3) it must not have coerced or incited other parties to enter into or perform the restrictive agreement, 4) it must not have been the initiator or the organizer of the restrictive agreement. The relevant Decree also provides that the leniency status may be obtained if the breaching party: (i) undertakes in writing to fully and continuously cooperate in good faith with the Commission on the case, (ii) submits to the Commission all information, documents and other evidence in its possession or available to it, (iii) terminates its participation in the restrictive agreement without delay, except if otherwise requested by the Commission for the purpose of conducting the proceedings and gathering evidence.

Contacts

BOJOVIĆ DAŠIĆ KOJOVIĆ
Advokati/Attorneys at Law

Belgrade office:
Dobračina 38
11 000 Belgrade, Serbia
Tel: +381 11 3284 212
Fax: +381 11 3284 213
E-mail: office@bdklegal.com