

## IMPROVING THE COMPETITION PROTECTION POLICY IN THE REPUBLIC OF SERBIA

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### Abstract

In the study the author observes and analyzes the current development of competition policy in Serbia and gives recommendations for improvement of this policy. Competition policy is seen in the narrow sense, and is concerned with the field of protection and prevention of distortion of competition, or the field of restrictive agreements, abuse of dominant position and control of concentrations. The aim of the study is to provide guidelines for development of competition policy of Serbia. Progress of competition policy is seen through improvements made in the area of competition law and strengthening institutions that implement laws. The results of the competition policy of Serbia are identified and analyzed through relevant international indicators and data from domestic and foreign reports. The conclusion of the author seen in the study is that the progress done in competition policy in Serbia is unsatisfactory and that this policy is ineffective. The aforementioned imposes the need to improve the domestic competition policy, which is the following: a change of focus and approach of competition policy; redefining the key areas of distortion of competition in the law; strengthening law enforcement institutions; and a better promotion of competition policy.

**Key words:** competition policy, competition law, the Commission for Protection of Competition.

## УНАПРЕЂЕЊЕ ПОЛИТИКЕ ЗАШТИТЕ КОНКУРЕНЦИЈЕ У РЕПУБЛИЦИ СРБИЈИ

### Апстракт

Аутор у раду посматра и анализира досадашњи развој политике заштите конкуренције у Србији и даје препоруку за унапређење ове политике. Политика заштите конкуренције посматра се у ужем смислу и тиче се области заштите и спречавања нарушавања конкуренције, односно области рестриктивних споразума, злоупотребе доминантног положаја и контроле концентрација. Циљ рада је давање смерница развоја политике заштите конкуренције Србије. Напредак политике заштите конкуренције посматра се кроз унапређења учињена у области права конкуренције и јачање институција које спроводе законе. Резултати политике заштите конкуренције Србије идентификују се и анализирају посред-

ством релевантних међународних показатеља и података из домаћих и страних извештаја. Закључак аутора у раду јесте да је учињен напредак политика заштите конкуренције у Србији незадовољавајући и да је ова политика неефективна. Речено намеће потребу унапређења домаће политике заштите конкуренције, и то следеће: промену фокуса и приступа политике заштите конкуренције; редефинисање кључних области нарушавања конкуренције у закону; јачање институција за спровођење закона и бољу промоцију политике заштите конкуренције.

**Кључне речи:** политика заштите конкуренције, право конкуренције, Комисија за заштиту конкуренције.

### *INTRODUCTION*

Competition policy is a set of economic policies aimed at enhancing competition and the right of competition designed to prevent business practices that distort competition (Penev, Marušić, Mencellari, Milović, Causevic, Hyseni, 2013, p. 14.). The main objective of competition policy is to enable effective competition, which is a precondition for increasing economic efficiency, economic growth and the growth of social welfare (Stojanović, Radivojević, Stanišić, 2012, p. 123). Effective competition conditions the market entities to behave in the most efficient manner possible. However, the attention must be paid to the fact that any increase of competition does not lead to an increase in economic efficiency and welfare. There are numerous activities and practices of market entities that limit the competition, but at the same time contribute to increasing economic efficiency. These are, mainly, practices and activities related to the development of innovations (Maksimović, Radosavljević, 2012, p. 181-182). This imposes certain requirements in terms of the essence of competition policy and its objectives. Competition policy must therefore be specified as a set of politics and law in the service of intensification and protection of competition in a manner that it does not reduce the increase of economic efficiency and welfare (Massimo, 2003, p. 1). Competition policy, more precisely, has two main objectives: first, the protection of competition from exaggerated market power of companies and abuses that come with this position, and second, encouraging the technological development. The essence of competition policy is to ensure a balance between these two objectives in order to increase economic efficiency (Stojanović, Vučić, 2008, p. 36; Stojanović, Kostić, 2013, p. 329). Competition should not be intensified on behalf of innovations. Summing up, the competition policy should prevent only that distortion of competition which leads to the impairment of economic efficiency and welfare.

Competition policy is the basic instrument of building a competitive market economy. Empirical research shows that well-designed and well-implemented competition policy has a significant positive impact on the growth of productivity of the economy (Buccirosi, Ciara, Duso, Spanish, Vitale, 2012, p. 21). The link between competition policy and economic growth is the following: effective competition policy -> intensifying

competition -> increasing economic efficiency -> economic growth. This refers that in order to achieve intensifying competition and increase of economic growth there is a need for an effective competition policy.

In order for competition policy to be implemented successfully it requires an appropriate legal and institutional framework (Radivojević, 2013, p. 64-65). Competition law represents a vital tool in the process of achieving efficient and effective competition policy. More precisely, the successful implementation of competition policy as a prerequisite requires a fundamental normative regulation of the area of competition protection. Successful competition policy also requires the establishment of adequate institutions – organs and bodies that apply the laws (United Nations, 2010, p. 4- 5). Here it is essential to constitute a strong regulatory body – the Commission, which is fully trained and effective in protecting competition. The application of the competition law is conditioned, of course, with the work of courts. Experiences from around the world show shows that the effectiveness of competition policy is greater in countries where the application of the law is more efficient (Buccirosi, Ciara, Duso, Spanish, Vitale, 2012, p. 20).

Competition policy in the Republic of Serbia gained its importance in the period after year 2005 when Serbia adopted the Law on Protection of Competition and laid the groundwork for the establishment of a regulatory body – the Commission. The Competition Commission was formed in year 2006. In the next period there was an improvement in the legal framework and strengthening of the capacity of the regulatory body. The progress of competition policy of Serbia is determined largely by the process of European integration.

The competition policy of Serbia is ineffective, and this is due to the delay in the formation and implementation of this policy and its slow progression. The consequences of the weaknesses of this policy are the undermined competition and insufficient economic growth. This requires identification of contentious issues in domestic competition policy and limiting factors of intensifying competition, with the aim of providing guidelines for improvement and progress of domestic competition policy, and that is what the author of the study implies.

### *RESEARCH METHODOLOGY*

Research methods of the research used in the study are the inductive and deductive method, analysis and synthesis method, and statistical and comparative method. The competition policy of Serbia is viewed through legal improvements and reforms in the area of competition protection and the work of the institutions that implement laws. Progress of the competition policy of Serbia is viewed through indicator of competition policy from the Report on the transition of the European Bank for Reconstruction and Development. The effectiveness of the competition policy of Serbia is seen

through three indicators from the Report of Global Competitiveness Index of the World Economic Forum, as follows: first, the intensity of local competition; second, the extent of market dominance; third, the effectiveness of antimonopoly policy. Better insight into the characteristics of the domestic competition policy provides an overview and analysis of the structure of open cases of distortion of competition before the Commission for Protection of Competition. Finally, the structure of opened, closed and determined cases of distortion of competition is observed and analyzed in detail before the Commission and the Court for the purpose of examining the essence and analysis of national competition policy, and through determination and calculation of the relationship between output and input relevance, efficiency and effectiveness of competition policy are viewed and determined. Here, the relevant data taken from the Annual Reports of the Commission for Protection of Competition are used and processed. Indicators: the efficiency of the Commission per cases, the frequency of the examination procedure and the effectiveness of competition policy can be found in a descriptive form in several science papers and reports in the form of comments on relationships and values, and the author of the paper shaped this noticed relationships into useful formulas. The obtained results of the research are used as the basis for providing recommendations for the improvement of domestic competition policy.

#### *COMPETITION POLICY IN SERBIA*

Competition policy in Serbia during the 90s of the last century existed only in rudimentary form as an idea and an announcement as a part of the transition programme. Truncancy of market reforms due to strong political and economic crisis resulted in the loss of conceiving and implementing of competition policy. Of course, some progress in terms of protection of competition came with a systemic-normative reform dating from 1996 to 1997 after the adoption of the Antimonopoly Law. However, the application of the law was absent due to legal and institutional deficiencies of the system of protection of competition, as well as due to the conservation of an inherited economic structure, strong state influence on the economy, closure of the country, institutional vacuum, etc.

The first law that directly regulates the field of protection of competition in Serbia is the Antimonopoly Law dating from 1996. This law determined two basic forms of distortion of competition: the prohibition of abuse of dominant position and monopolistic agreements (Vukadinović, 2006, p. 14-15.). The law, therefore, does not recognize the control of concentrations. The dominant position of the company in the market is not clearly defined. The Antimonopoly law does not recognize the category of barriers of entry and exit from the industry, or the category of the relevant market. The area of monopolistic (cartel) agreements is not well determined. Monopolistic agreements are not punishable in advance, but it is

subsequently determined depending on the effects on the competition. Moreover, the law does not distinguish between horizontal and vertical agreements, although they have a different degree of harmfulness (Begović, Bukvić, Mijatović, Paunović, Sepi, Hiber, 2002, p. 15-17.).

The Antimonopoly Commission, in accordance with the Antimonopoly Law, was established under the Ministry of Economy and Foreign Trade in year 1997. However, this Commission, although responsible for implementing this law, has no force needed in practice so the application of the law is lacking. Basic weaknesses of this agency are its lack of independence, poor transparency in work and too much discretionary powers (Penev, Marušić, Mencellari, Milović, Causevic, Hyseni, 2013, p. 130).

The competition policy of Serbia in the period after year 2000 is directly conditioned by the intensification of the processes of transition of the economy to a market economy and the integration of the country into the European Union. Competition policy, as a basic element of transition process comes after revivification of other transitional reforms: liberalization, privatization and stabilization. Building a modern competition policy in Serbia begun with normative adjustment in year 2005 and was intensified in the coming years through the establishment and strengthening of law enforcement institutions and the reform of the law itself. The European integration process has a special impact on the development of this policy. The harmonization of legislation in the field of competition protection of Serbia with the European Union law, building of strong institutions and effective enforcement of the law are the preconditions for EU membership. Serbia was, therefore, stipulated by the European integration process to make adjustments to own policy and competition law with standards and requests of the European Union.

Initiation of development of modern politics and law of competition of Serbia has been made by adopting the Act on Protection of Competition in September in 2005 (Official Gazette of RS, no. 79/05) and by beginning of the work of the Commission for Protection of Competition in May 2006.

The Law on Protection of Competition from 2005 specifies all three cases of distortion of competition in the market: prohibited agreements (cartels), abuse of dominant position and concentrations. In the case of cartels the law makes a distinction between horizontal and vertical agreements. Abuse of dominant position is defined as the use of already existing dominant positions in a manner that suggests an unfair exchange. Realization of concentration requires the prior consent and thereby fulfilling the conditions in terms of concentration which doesn't distort competition. This law also stipulates severe sanctions in case of distortion of the competition. This law has accomplished an advanced level of harmonization with the EU competition law.

According to the Law on Protection of Competition, the Commission for Protection of Competition has been appointed as an independent

institution responsible for the implementation of the law. More specifically, the Commission is responsible for the prevention and punishment of prohibited agreements and abuse of dominant position and the control of concentrations. In the first two cases the Commission acts only when there is a distortion of the market, while in the third case, it acts preventively. The Commission, however, is not able to independently oversee the behavior of market entities, but only works if there is a request (Penev, Filipović, 2008, p. 137). Transparency of the Commission's work is increased due to the issuance of report on their work.

Although it represents a significant improvement in the field of regulation of competition, The Law on Protection of Competition has numerous deficiencies, such as: inapplicable penalties, the small authorizations of the Commission when imposing penalties, low level of income for notification of concentration, lack of independence of the Commission, the exemption from the application of the Law for the entities engaged in activities of general interest, etc. The deficiencies also exist regarding the definition of dominant position and the relevant market (Stojanović, Radivojević, Stanišić, 2012, p. 125). The definition of both horizontal and vertical prohibited agreements is incomplete.

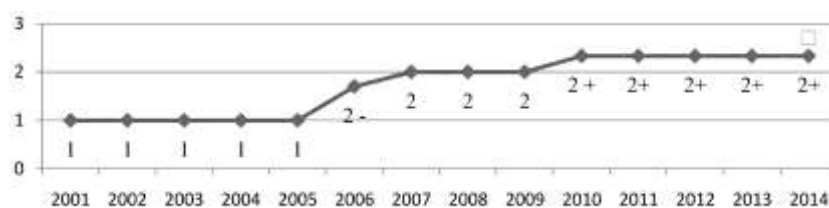
The Law on Protection of Competition from year 2009 (Official Gazette of RS, no. 51/09) was issued in order to overcome the deficiencies of the Law on Protection of Competition from 2005. Improvements made in the new law are the following: more efficient sanctioning of distortion of the competition, more efficient prevention of abuse of dominant position, better control over the undertaking of concentration in the market, increasing the powers of the Commission in the examination procedure and punishing the offender, introduction of the institute of "Leniency" in order to uncover cartels more easily, raising the level of income for notification of concentration, extending a law on subjects performing activities of public interest, specifying the conditions for exemption from the prohibition on agreements of lesser importance, etc. Among key innovations of this law is the possibility for the Commission to self-impose penalties for distortion of the competition. Disadvantages of this law are the following: objectives of the law defined too broadly; imprecisely defined the relevant market, badly defined dominant position, poorly defined criteria for abuse of dominant position, short deadline for examining concentration – three months, the short deadline for the imposition and realization of measures imposed for abuse of the competition – three years, poor regulation of financing of the Commission, the introduction of taxes on the concentration, etc. The Law on Protection of Competition and the legal provisions related to price, insurance, customs, public sector, are not aligned, and there is a conflict of laws. Problems exist in the work and functioning of the Commission for Protection of Competition. Specifically, the capacity of the Commission is weak, and the independence of this body is insufficient.

The legal framework for the protection of competition in Serbia was finished in the period from 2009-2010. By issuing a series of regulations: on individual exemption of restrictive agreements from prohibition; on relevant market; on the notification of the concentration; the exemption of horizontal specialization agreements and research and development from the prohibition; on the exemption of vertical agreements from the prohibition; on the amount of the payment as measure of competition protection and procedural penalties; on the reduction and exemption from payment of “Leniency Programme” (Ujedinjene nacije, 2011, p. 17-18).

The Law on Amendments to the Law on Protection of Competition was adopted in October 2013 (Official Gazette of RS, no. 96/2013). Improvements in the new law are the following: better definition of dominant position, clear criteria for determining the dominant position, the extension of the definition of concentration, improvement of the examination procedure of distortion of the competition, effective elimination of market disturbances caused by distorting competition, extended deadline for certain measures of protection of competition – from three to five years, specified deadlines for action with the Administrative Court, etc. Key disadvantages of this law are keeping a low income level for notification of the concentration and imprecise criteria for determining the restrictive agreement.

#### *ANALYSIS OF THE RESULTS OF THE COMPETITION POLICY*

The competition policy of Serbia can be viewed through a indicator of competition policy from the Report on the transition of the European Bank for Reconstruction and Development. Ratings on progress of competition policy ranges from 1 to 4+, where a rating of 1 means the absence of legislation and institutions for the protection of competition, while a rating of 4+ indicates that the country has achieved standards and performances in the field of competition policy typical for developed market economy.



*Graph 1. Progress of competition policy (EBRD indicator)*

*Source: European Bank for Reconstruction and Development, 2014a, p. 99 and 123; 2013b, p. 112; 2010v, p. 4; 2009g, p. 218; 2007d, p. 184.*

The competition policy of Serbia was scored with score 1 until year 2006, when it received a score of 2-, thanks to the adoption of the Law on

Protection of Competition in year 2005. Progress of competition policy and a rating of 2 in year 2007 came as a result of the establishment and start of work of the Commission for Protection of Competition of 2006. Progress in the field of competition and rating of 2+ in year 2010 came as a result of the adoption of the new Law on Protection of Competition in year 2009 and the adoption of a series of bylaws. Data from the graph 1 show that the adoption of the Law on Amendments to the Law on Protection of Competition in year 2013 did not result in visible progress of competition policy in year 2014. It can therefore be seen that there is no significant progress in the field of competition policy of Serbia in the period from 2010-2014. Serbia had a rating of 2+ (2.3) in 2014, which indicates that the reforms in the area of competition are on half way from the desired ones. This is caused by the late start of the reform activities in the field of competition, not before year 2005, and the absence of significant reform progress in the last four years. Indicative data on Serbia being behind in the field of protection of competition is that in the terms of competition policy advanced transition countries of Central Europe and Baltic countries recorded a rating of 3+ in year 2013, while Serbia recorded a rating of 2+ (European Bank for Reconstruction and Development, 2014, p. 98).

The effectiveness of the competition policy of Serbia can be viewed through indicators in the area of competition within the Global Competitiveness Index of the World Economic Forum, namely: an indicator of the intensity of local competition, an indicator of the extent of market dominance and an indicator of the effectiveness of anti-monopoly policy. Indicators are rated from 1 to 7, wherein the indicator of intensity of local competition rating 1 indicates the absence of the intensity of competition and the rating 7 the extreme intensity of competition. In the case of indicators of the extent of market dominance, rating 1 indicates the dominance of a few business groups in the market, and the score 7 indicates the presence of many companies in the market, i.e. little market participation of each of the companies and the absence of a dominant participant. And finally, an indicator of the effectiveness of anti-monopoly with a rating of 1 speaks of the absence of promotion and support of competition and rating 7 on the effective promotion and enhancement of competition in the market.

The data shown in table no. 1 indicate that the intensity of local competition in Serbia is unsatisfactory – rating of 4.2 in year 2014, that the domestic market is highly concerted and that it is dominated by a small number of players with large market share – rating 2.8 and that the effectiveness of anti-monopoly policy is low – rating 3.3. Progress achieved in the field of effectiveness of competition policy, the intensity of competition and market concentration in Serbia in the period 2008-2014 is insufficient and weak. Rating of Serbia in all fields of competition indicators ranked it in the lowest possible positions, i.e. among the bottom ten places in the rankings list of the countries of the world.



*Table 1. Effectiveness of competition policy*

	The intensity of local competition		The extent of market dominance		The effectiveness of antimonopoly policy	
	Mark	Rating	Mark	Rating	Mark	Rating
2008	3.7	128 (134)	2.6	131 (133)	2.6	129 (133)
2009	4.0	120 (133)	2.7	131 (133)	2.7	130 (133)
2010	3.8	131 (139)	2.5	138 (139)	2.8	137 (139)
2011	3.6	136 (142)	2.5	139 (144)	2.8	137 (142)
2012	3.6	137 (144)	2.6	142 (144)	2.8	142 (148)
2013	3.8	138 (148)	2.6	142 (148)	3.0	141 (148)
2014	4.2	128 (144)	2.8	136 (144)	3.3	126 (144)

Source: World Economic Forum, 2014a, p. 329; 2013b, p. 335; 2012v, p. 313; 2011g, p. 315; 2010d, p. 295; 2009đ, p. 275; 2008e, p. 295.

Competition policy of Serbia can be analyzed through the open cases of possible distortion of the competition before the Commission for Protection of Competition – Table 2.

*Table 2. Overview of opened procedures in order to determine infringement of the competition before the Commission for Protection of Competition*

	Concentration		Abuse of dominant position		Prohibited agreements	
	Number	%	Number	%	Number	%
2006	56	70,9	19	24,0	4	5,1
2007	130	88,4	13	8,8	4	2,7
2008	137	91,9	2	1,3	10	6,7
2009	116	73,4	19	12,8	13	8,8
2010	73	91,2	3	3,7	4	5,0
2011	114	90,5	4	3,2	8	6,3
2012	105	84,0	9	7,2	11	8,8
2013	108	90,7	6	5,0	5	4,2
2014	109	97,3	0	0,0	3	2,7
Total	948	87,4	75	6,9	62	5,7

Source: Komisija za zaštitu konkurencije, 2015a, p. 126; 2014b, p. 98; 2013v, p. 12 and 41; 2012g, p. 13, 22 and 31; 2011d, p. 72; 2010đ, p. 19; 2009e, p. 4, 10 and 14; 2008ž, p. 64; 2007z, p. 11, 13. and 18.

Based on the data from table no. 2 we see that by the number of initiated proceedings before the Commission the first place is occupied by cases of concentration (87.4%), while significantly fewer cases are those of abuse of dominant position (6.9%) and prohibited agreements (5.7%) in the period from 2006-2014. The reason for the large number of requests for approval of the concentration lies in the low-income scale which is set as a condition for the notification of concentration, so that a large number of concentrations fall under the jurisdiction of the Commission. The adoption of the Law on Protection of Competition in year 2009 and setting a level for notification of concentration at the higher level resulted only in minimal reduction in the number of reported cases of concentration, so we have

continuation of the notification of a large number of concentrations. On the other hand, a small number of initiated actions for determining cases of abuse of dominant position and prohibited agreements points to deficiencies in protection of competition, and a weak detection of distortion of competition. Based on the data shown in table no. 2 it can be seen that the adoption of the Law on Protection of Competition of 2009 has no significant impact on increase of the number of observed-detected cases of abuse of dominant position and restrictive agreements before the Commission.

Consideration of effectiveness and efficiency of the competition policy of Serbia requires a detailed review of cases processed, conducted examination procedures and the determined distortion of competition before the Commission and the Court, which are shown in Table 3.

*Table 3. Proceedings before the Competition Commission and the Court*

Parameters	Cases opened before the Commission	Cases proceeded by the Commission	Examination procedure conducted before the Commission	Distortion of competition determined before the Commission	Cases proceeded before the Court	Distortion of competition determined before the Court	Distortion of competition determined by the Court/ the Commission (%)
<b>Prohibited agreements</b>							
2006	4	2	1	0	-	-	-
2007	4	5	1	1	0	-	-
2008	10	2	2	2	1	0	-
2009	13	7	4	4	1	0	-
2010	4	4	4	3	4	1	25,0%
2011	8	7	7	6	6	4	66,6%
2012	11	7	4	4	4	2	50,0%
2013	5	4	2	2	2	0	50,0%
2014	3	0	0	-	0	-	-
Total	62	38	25	22	18	7	38,8%
<b>Abuse of dominant position</b>							
2006	19	14	5	0	-	-	-
2007	13	7	2	2	0	-	-
2008	2	2	2	2	2	0	-
2009	19	19	2	2	0	-	-
2010	3	3	3	2	3	1	33,3%
2011	4	1	1	1	1	1	100%
2012	9	5	4	4	3	3	100%
2013	6	0	0	0	0	-	-
2014	0	5	1	1	2	1	50,0%
Total	75	56	20	13	11	6	54,5%
<b>Concentration</b>							
2006	57	47	3	1	-	-	-
2007	130	110	5	1	1	0	-
2008	137	133	2	0	1	0	-
2009	116	115	3	0	0	-	-
2010	73	73	6	0	1	0	-
2011	114	94	2	0	0	-	-
2012	105	105	3	1	0	-	-
2013	108	97	3	0	0	-	-
2014	109	100	6	0	0	-	-
Total	948	874	33	3	3	0	-

Source: Komisija za zaštitu konkurencije, 2015a, p. 22-23, 67, 81 and 126; 2014b, p. 16, 20-22, 44 and 98; 2013v, p. 14-18, 58-59. And 95; 2012g, p. 12-18, 31 and 43-45; 2011d, p. 12, 15-18, 24-26, and 72; 2010đ, p. 19-21, 37 and 44; 2009e, p. 4-5, 10-14, 32-34; 2008ž, p. 59-61; 2007z, p. 12-13. and 17-19.

Note: The determined distortion of the competition before the Court/the Commission in fact represents the ratio of determined distortion of competition before the Court/processed cases of distortion of competition before the Court. Clarification is that processed cases of the distortion of the competition before the Court are, in fact, the determined distortion of competition before the Commission incurred in a given year and previous years, and are treated by the Court in a given year.

Parameter conducted an examination procedure before the Commission relating to the examination procedures which are brought to the end – finished and that there was no refusal, suspension or termination of proceedings.

In following section of the study the data from table 3 will be analysed and considered

$$\text{Efficiency in work according to the cases (\%)} = \frac{\text{Cases proceeded}}{\text{Opened cases}} \times 100$$

Source: Komisija za zaštitu konkurencije, 2014a, p. 31; 2008b, p. 59.

Efficiency of the Commission in proceeding cases of restrictive agreements is 61,3%, abuse of dominant position 74,6%, and concentration 89,3%.

$$\text{Frequency of examination process (\%)} = \frac{\text{Proceeded examinations}}{\text{Proceeded cases}} \times 100$$

Source: Ristić, Mijušković, 2013, p. 21.

The examination process in the case of restrictive agreements is implemented in 65.7% of cases, abuse of dominant position in 35.7%, and a concentration in 3.8% of cases. Indicator of frequency of the examination procedure indicates that a significant number of cases are not subject to economic analysis, since the examination procedure involves the implementation of economic analysis. The situation is particularly problematic in the area of concentration, which is even less than 5% of cases are resolved in the examination process and by the application of economic analysis.

The Commission for Protection of Competition due to low human and space capacities, poor equipment and lack of finance is not able to carry out solid economic analysis and needed research in order to determine distortion of the competition. Ristić and Mijušković point out that the workload of the Commission by a big number of cases of the concentration forces the Commission to approve most of the cases under the shorten procedure, without the examining procedure, i.e. without a detailed economic research and analysis. In such circumstances, when the Commission is forced to approve the concentration under the simplified procedure, without quantitative analysis, the possibility of errors and permits of concentration that may distort competition significantly increase (Ristić, Mijušković, 2013, p. 21). The scope of the problem is highlighted by the data that over 95% of concentrations was resolved by shortened proceedings.

A large number of pending cases before the Commission for Protection of Competition compared to cases processed and examined procedures conducted indicate poor communication between the Commission and legal sector, and poor promotion of competition policy. The lack of guidelines for business entities in terms of distortion of competition in the market and communication with the Commission resulted in the unnecessary opening of a large number of cases before the Commission, and that there has not been real and significant harm to competition, which lead into waste of resources and attention of this regulatory authority, on the one hand, and business entities, on the other hand.

$$\text{Effectiveness of competition policy (\%)} = \frac{\text{Distortion determined by the Court}}{\text{Distortion determined by the Commission}} \times 100$$

Source: Lončar, Milošević, 2013, p. 118; Ristić, Mijušković, 2013, p. 26.

Relationship between determined distortion of the competition before the Court/the Commission is generally unfavorable, although the results are partly satisfying in the case of abuse of dominant position of 54.5%, and poor in the case of restrictive agreements 38.8%. Case of concentration is particularly unfavorable, and here we have a problem in determining the distortion of competition in the work of the Commission for Protection of Competition itself, so that the number of cases before the Court is insignificant.

Observing the ratio of determined distortion of competition before the Court/the Commission, according to data obtained from the table no. 3, we can conclude that the impact of competition policy on the Serbian market is very weak. The unfavorable relationship between the determined cases of the distortion of competition before the Court against the same before the Commission points to the numerous failures in both the work of the Commission and even more in the work of the Court. A large number of cases have been denied before the Court for procedural reasons, this is due to inexperience of the Commission to communicate with the Court and comply with all necessary procedures. On the other hand, the Court does not possess the necessary competence in the field of economy competition, so we have a small number of determined cases of distortion of the competition before the Court, i.e. rare cases of punishment of the perpetrator and the weak protection of competition.

Seen at first glance through the prism of opened and processed cases before the Commission for Protection of Competition, we get the impression that the Commission is widely engaged in the field of concentration, while it is neglecting the field of cartels and abuse of dominant position. However, if we look at the determined competition distortion cases before the Commission it can be seen that the same regulatory body shows a greater effect in the case of cartels and abuse of dominant position, while it does not deal enough with the disclosure of

harmful concentrations. Specifically, from the total number of cases before the Commission where the distortion of competition is determined, restrictive agreements are determined in 57.8% of cases, abuse of dominant position is presented by 34.2%, while harmful concentration in only 7.9%. The Commission, in fact, deals only with the registered concentrations, which it approves, while unregistered concentrations go unnoticed. The distortion of competition through concentration was found only in three cases throughout the period from 2006-2014. It shows weak monitoring of changes in market structure and market trends, i.e. the inability to detect the disputed concentration. The conclusion is that the Commission is the weakest in the field of detection of concentration, which can lead to distortion of competition due to abuse of such market power. Here I draw attention to the fact that the professional public in Serbia does not notice this problem, but the appeals to the Commission's work are focused on the area of cartels and abuse of dominant position.

#### *RECOMMENDATION FOR IMPROVEMENT OF COMPETITION POLICY*

The competition policy of Serbia, bearing in mind all that it is lacking, - the ineffectiveness, inefficiency and irrelevance, requires a new conception and effective approach to the protection of competition. Insignificant progress has been made in competition policy in the previous period and the modest results of this policy in terms of protection of competition in Serbia impose the need for strengthening and improving of the institutional framework and completing legislation in the field of competition.

More precisely, improvement of the competition policy of Serbia in the field of the protection and prevention of distortion of competition requires the following:

- Change in focus of competition policy;
- Redefinition and specifying the key areas of distortion of competition in the law;
- Change in approach of the policy from the formal and legal to the economic approach;
- Improvement and tightening of the punishment policy in the area of competition;
- Improvement and strengthening of the independence and capacity of the Commission for Protection of Competition;
- Improvement and strengthening of the efficiency and competence of the Administrative Court in the area of competition protection;
- Establishment and improvement of the comprehensive system of protection of competition;
- Development and affirmation of culture of non-disruption and protection of the competition.

The competition policy in Serbia, given its ineffectiveness, requires a change in focus and more practical approach to protecting competition on the market. Increasing the effectiveness of competition policy requires equal improving of the fight against all forms of distortion of competition, in following forms: restrictive agreements, abuse of dominant position and harmful concentrations. I underline the fact that in the past period greater attention was paid to restrictive agreements and abuse of dominant position, while the concentrations was seen as a problem of minor importance. Increasing the effectiveness of this policy requires, above all, a redefinition and extension of defining cases of restrictive agreements, abuse of dominant position and concentration in laws and regulations, as well as the redefinition of the relevant market. Then, the solid application of institute "Leniency" in the case of cartels, and strengthening of monitoring changes in market structure and behavior that distorts competition in order to disclosure harmful concentrations and abuse of dominant position. Also, it is necessary to improve investigative tools, increase inspection responsibilities of the Commission for Protection of Competition and improve the mechanisms to determine evidence, drawing conclusions and making decisions of the Commission.

Competition policy must be efficient and relevant. The relevance and efficiency of the policy could be improved by totally defining of criteria of distortion of the competition. A large number of opened cases in the field of concentration points to failures of the competition policy of Serbia and its irrelevance. Reducing the number of open cases of irrelevant concentration is important in order to reduce the burden of the Commission for Protection of Competition and it would open the space to engage in other types of distortion of competition. This requires raising the limit of income which is a condition for approval of the concentration. Increasing the income limit for participants in concentration from a million Euros to 20 million Euros for the domestic market and 50 million Euros to 100 million Euros for the world market according to the Law from year 2009 proved to be insufficient, and the professional community proposes the increase of the income limit by 100% (Ristić, Mijušković, 2013, p. 22).

The change in the approach of competition policy means placing emphasis on economic analysis and economic information when determining the distortion of competition in opposition to the current dominant formal analysis (Maksimović, Kostić, 2015, p. 34.). The advantage of the economic analysis is the increase of the objectivity and fairness of the Competition Commission's decisions in contested cases, and this ultimately results in increased effectiveness of competition policy. The absence of economic analysis leads into arbitrariness in determining the disputability of case of distortion of the competition, and it is necessary to be eliminated.

Adequate position in the combat against distortion of competition must have a punishment policy, which was in second place in the previous

period. Strict penalties are particularly important in the case of preventing cartels, where it is necessary to increase fines for companies and the introduction of penalties for the responsible persons in the companies in the form of fines and/or imprisonment. Punishment policy is especially inadequate in the case of harmful concentrations. The penalty for not notifying disputed concentration is the same as penalties for distortion of competition through the disputed concentration, and in fact it is lower, and thus dissimulates notification of concentration and that way it encourages conducting of harmful concentration. Notifying the concentration is stultified by bad punishment policy, because the concentrations are notified only by those whose concentrations are allowed, while those whose concentrations are harmful to competition lack adequate stimulation in the form of severe sanctions for notification. The above raises the need for tightening of the penal policy in the field of concentration.

The base of the institutional framework for protection of competition of Serbia is made by the Commission for Protection of Competition and the Administrative Court, so that the application of the law in the area of competition is directly caused by the work of these two institutions. Strengthening of the effectiveness of the institutional framework requires the following: first, strengthening of the independence and capacity of the Commission for Protection of Competition in the implementation of the competition law; and second, to strengthening of the efficiency and competence of the Administrative Court in the area of competition.

Strengthening of the independence of the Commission for Protection of Competition consists, first and foremost, of securing its financial independence. Future financing of the Commission is to be regarded in context of reduction of income which derive from the notification of concentration, and now it presents a substantial income. This requires provision of sufficient budgetary appropriations for the normal operation of the Commission where it is necessary to establish mechanisms to prevent the influence of the Government on the decision of the Commission.

Strengthening the capacity of the Commission for Protection of Competition is caused by the strengthening of human resources and expert base, and through additional employment and/or the education and training of existing personnel. Key personnel problem is too many lawyers and a small number of economists, which are necessary in order to implement economic analysis (Ristić, Mijušković, 2013, p. 188). The Commission, in accordance with the scope of work and needs, is burdened with the problem of shortage of personnel. According to the systematization a total of 54 specific positions are determined, while the total number of employees in this body – professional service is 31 persons (Komisija za zaštitu konkurencije, 2015, p. 8). The consequence of shortage of personnel is the reduced quality of work of the Commission. A significant impact on the quality of work of the Commission, in the context of a shortage of staff, has caseload, which comes

as a consequence of the large number of cases per employee, especially in the case of concentration. Reducing the number of applications of concentration can be expected to reduce the burden of employees. The reason of small number of personnel is of financial nature. Overcoming the problem of shortage of personnel and personnel structure requires an increase in the number of employees and balanced approach in terms of work engagement of lawyers and economists.

The Administrative Court, according to the Law on Protection of Competition, resolves cases concerning claims of companies against the Commission's decision. More precisely, the Court carries out direct control of the final decision of the Commission. It has the ability to confirm the decision of the Commission, to annul the decision of the Commission or to order the Commission to repeat the examining procedure. Bearing in mind the role of the Court in the process of determination of distortion of the competition and expressed inefficiency in the current work, a need to improve its work is imposed. Here the improvement of competence of judges of the Administrative Court in the area of competition is of particular importance, given that the lack of knowledge and experience in this area are the key issues in the work of the Court. Priority is also correlating deadlines regarding the identification and treatment in cases of distortion of the competition before the Commission and the Court.

The system of protection of competition, in addition to the fact that it relies on the Commission for Protection of Competition and the Administrative Court, includes a number of other state and independent institutions and organizations: Ministry of Commerce, the Agency for state aid control, regulatory body for control of public procurement, sector regulators (National Bank Serbia, the Broadcasting Agency, the Commission for Securities, the Energy Agency, the Agency for Telecommunications), consumer protection organizations (Ristić, Mijušković, 2013, p. 8-9.). The existence of a large number of participants of importance for the regulation and protection of competition imposes a need to improve their communication and cooperation and synchronization of their activities (Ristić, Mijušković, 2013, p. 195). Better cooperation and communication of the Commission for Protection of Competition with sector regulators is of particular importance, given that sector regulators are exclusively responsible for the monitoring and control of the competition in their areas.

Development and affirmation of a culture of protection and non-distortion of competition in Serbia is of priority importance, given that a developed culture of competition greatly contributes to power of competition policy and competition protection. Developing a culture of competition involves communication with the general public, primarily with the business world and consumers about the benefits of competition for economic development and strengthening of consumer standards. Businesses establishments should be aware of the obligations arising from competition



laws and penalties. This requires information regarding the application of the law and introduction to basic concepts of law and types of distortion of the competition, the jurisdictions of the Commission and how to contact the Commission, in order to prevent and minimize the actions of distortion of competition. Possible mechanisms of information are the guidelines and guides. Prevention of distortion of competition is necessary to be improved through public marking of significant violators of competition, the damages caused to the market and penalties imposed in such cases.

### *CONCLUSION*

Competition policy is a key policy for intensifying competition. However, it should be borne in mind that merely the existence of competition policy does not guarantee an increase in competition. The need for an effective competition policy is obvious in order to reach the desired intensification of competition, and accordingly increase economic efficiency and welfare.

For competition policy to be effective, first the appropriate institutional and regulatory framework must be established. Achieving effective competition policy is extremely difficult and takes time. The existence of laws and institutions that regulate the law is not sufficient condition for competition policy to be effective. The precondition of effective competition policy is good laws in the field of competition, on the one hand and strong institutions able to fully uphold the laws, on the other hand.

The competition policy in Serbia gained in importance in the period after year 2000, with the intensification of the process of economic transition and European integration. The basis of modern competition policy in Serbia was hit by the Law on Protection of Competition in year 2005 and the establishment of the Commission for Protection of Competition in year 2006. Competition policy shows modest progress and ineffectiveness in the period from 2006-2014 which confirms the analysis of the results of the competition policy.

The effectiveness of competition policy of Serbia is at a low level due to the poor application of competition law, which is a consequence of the weakness of the Competition Commission, the absence of the rule of law and the incompetence of the Court. Weaknesses also exist in the law on the protection of competition and its accompanying bylaws.

Improvement of the competition policy of Serbia demands overcoming all foregoing and identified problems and weaknesses, in order to intensify the protection of competition on the domestic market. More specifically, the improvement of competition policy of Serbia shall mean: changing the focus and approach of competition policy, redefinition and specifying the key areas of distortion of competition in the law; increasing the effectiveness of competition policy, tightening the punishment policy;

improvement of the legal and institutional framework, and very significantly, promotion of competition policy and the development of a culture of competition protection.

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## УНАПРЕЂЕЊЕ ПОЛИТИКЕ ЗАШТИТЕ КОНКУРЕНЦИЈЕ У ОБЛАСТИ ЗАШТИТЕ КОНКУРЕНЦИЈЕ У РЕПУБЛИЦИ СРБИЈИ

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### Резиме

Политику заштите конкуренције чини скуп политика усмерених на интензивирање конкуренције на тржишту и право конкуренције у функцији заштите конкуренције. Основни циљ политике заштите конкуренције јесте интензивирање конкуренције на тржишту, и то на начин да не дође до смањења иновирања и економске ефикасности. Политика заштите конкуренције, наиме, представља један од основних инструмената јачања конкурентности привреде. Емпиријски је потврђена значајна позитивна корелација између ефективне политике заштите конкуренције и продуктивности привреде. Међутим, остварење ефективне политике заштите конкуренције је изразито тешко и захтева пуно специфичних знања и искустава. Прецизније, да би политика заштите конкуренције била ефективна, неопходан је одговарајући нормативни и институционални оквир. Право конкуренције мора бити утемељено на најбољим светским праксама, а истовремено прилагођено домаћем окружењу. Институције за заштиту конкуренције морају бити независне и оспособљене за доследну примену закона.

Политика заштите конкуренције Србије бележи миноран прогрес и скромне резултате у периоду 90-их година прошлог века. Доношење „Антимонополског закона” из 1996. године и оснивање Антимонополске комисије 1997. године указују на позитивне помаке у овој области. Међутим, лоша законска решења, изостајање спровођења закона и распућен привредни систем говоре готово о непостојању политике заштите конкуренције и немогућности заштите и интензивирања конкуренције. Политике заштите конкуренције у Србији добијају на значају у периоду након 2000. године, када долази до њеног развоја и модернизације. Доношење савременог закона о заштити конкуренције 2005. године, усклађеног са правом Европске уније, и формирање независног тела – Комисије за заштиту конкуренције, оспособљеног за заштиту конкуренције – указују на то да је начињен значајан напредак домаће политике заштите конкуренције.

Анализа резултата политике заштите конкуренције у Србији указује на то да је напредак политике заштите конкуренције недовољан и да је ова политика неефективна. То потврђују релевантни међународни показатељи: индекс политике конкуренције са оценом 2+ 2014. године из „Извештаја о транзицији Европске банке за обнову и развој”, затим, индикатори интензитета локалне конкуренције 4.2, степен доминације на тржишту 2.8, ефективности антимонополске политике 3.3 из „Извештаја глобалне конкурентности Светског економског форума”. Индикатори ефикасност Комисије по предметима, учесталост испитног поступка и ефективност политике конкуренције изведени из података из „Извештаја о раду Комисије за заштиту конкуренције” такође указују на неефективност, неефикасност и нерелевантност политике заштите конкуренције у Србији. Наведено указује на потребу унапређења домаће политике заштите конкуренције, и то у погледу повећања ефикасности и ефикасности, и унапређења релевантности ове политике, односно на потребу наставка модернизације политике конкуренције, као и нормативног и институционалног побољшања у области заштите и спречавања нарушавања конкуренције.