

The new Decree on the Content and Manner of Submission of Merger Notifications (“Decree”) which entered into force on 2 February 2016, has introduced the possibility of submitting a short-form merger notification, simplifying the procedure before the Commission for Protection of Competition, being the competent authority for protection of competition in the Republic of Serbia. Lawyers from the JPM Janković Popović Mitić took active part and made significant contributions to drafting of the Decree, reflected by the numerous adopted proposals being incorporated into the final version of this legal document.

The main goal of the Decree is to achieve efficiency on two levels. On the one hand, the intent is to make merger notification process easier for market participants, while on the other hand the goal is to alleviate the burden of the Commission, so that it may focus more attentively on preventing actions that lead to hindering of competition. From several aspects, this Decree represents a successful outcome of harmonizing Serbian regulations with European Union law in the competition domain.

As mentioned, the most important new element is certainly the possibility to submit short-form merger notifications, while a full notification is required only when it is objectively necessary to assess the relevant facts and circumstances in greater detail. Short-form merger notifications are submitted in the following cases:

1. if none of the participants in the merger operates in the same relevant product market and relevant geographic market or in a relevant product market in which any other upstream or downstream participant in the merger operates; or
2. if the following requirements are met:
  - that the combined market share of all horizontally related participants in the merger in the same relevant product market and relevant geographic market is less than 20%; or
  - that the individual or combined market share of all vertically related participants in the merger in the relevant product market and relevant geographic market is less than 30%; or
3. that the merger notifier has acquired individual control over a participant in the market over which it already had joint control; or
4. that the combined market share of all horizontally related participants in the merger is less than 40%, while the change (delta) of the Herfindahl-Hirschman Index (HHI) resulting from the merger should be less than 150.

Introduction of the short-form merger notification has made merger notifications easier for those mergers of foreign companies in the global market which have no impact or have insignificant impact on competition in the Serbian market. The short-form notification also involves supplying fewer documents and information than for the full notification. For instance, while for a full notification certain documents need to be submitted for the three years preceding the merger notification, for a short-form notification the same documents need only be submitted for the year immediately preceding the notification. This is the case

with data relating to the value of sales to the five major customers and value of purchases from suppliers, the total annual income of the participants in the merger, data on the relevant market and volume and value of sales of the relevant product, and so forth. The Decree also more closely defines the manner in which all the information is to be submitted to the Commission, which was previously not the case. A good example, both in the case of full and of short-form notifications, is the point relating to the relevant market, which now specifies the data that a merger notification has to include.

However, even though the Decree has introduced the short-form, the Commission is also entitled to request submission of a full merger notification when the circumstances indicate that the permissibility conditions for the merger have not been fulfilled. The Decree only notes the particular circumstances which indicate possible non-fulfillment of merger permissibility conditions, which in a way grants discretionary powers to the Commission and brings the clearly specified conditions for submission of short-form merger notifications into question. Thus participants in the market could be instructed to submit full notifications in cases (i) when the Commission lacks experience in defining a specific relevant market, (ii) when it is necessary to define the relevant market or market shares for emerging markets, (iii) when the participant in the merger is a new entrant or potential entrant into the market, (iv) when the relevant market is concentrated ( $HHI \geq 2000$ ), and the HHI delta  $\geq 150$ , and (v) when control changes from joint to individual, resulting in strengthening the strategic position of the participant acquiring individual control, and when the Commission did not examine the prior acquisition of individual control.

A very important and positive change in the work of the Commission is seen in its willingness to hold pre-notification meetings with participants in the market to resolve any uncertainties they may have regarding application of the Decree. Participants in the market are thereby given the opportunity to minimize the risk of an unsuccessful outcome in the merger notification procedure.

The Commission took the opportunity presented by the adoption of the new Decree to once again point out the obligation of market participants to notify mergers in cases prescribed by the law and to suspend mergers until the Commission has reached a decision. The Commission reminded market participants of its competence to impose fines in cases of non-compliance, amounting up to 10% of a company's annual income, in addition to its authority to impose other procedural penalties.

Courtesy of

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