

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

VOLUNTARY PEER REVIEW OF COMPETITION LAW AND POLICY:

SERBIA

FULL REPORT



UNITED NATIONS
New York and Geneva, 2011

NOTE

UNCTAD serves as the focal point within the United Nations Secretariat for all matters related to competition policy. UNCTAD seeks to further the understanding of the nature of competition law and policy and its contribution to development and to create an enabling environment for an efficient functioning of markets.

UNCTAD's work is carried out through intergovernmental deliberations, capacity building activities, policy advice, and research and analysis on the interface between competition policy and development.

UNCTAD's voluntary peer review of competition law and policies falls within the framework of the Set of Multilaterally Agreed Principles and Rules for the Control of Restrictive Business Practices (the "United Nations Set of Principles and Rules on Competition"), adopted by the General Assembly in 1980. The set seeks, inter alia, to assist developing countries in adopting and enforcing effective competition law and policy that are suited to their development needs and economic situation.

The designations employed and the presentation of the material in this publication do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area, or of its authorities, or concerning the delimitation of its frontiers or boundaries. Material in this publication may be freely quoted or reprinted, but acknowledgement is requested, together with a reference to the document number. A copy of the publication containing the quotation or reprint should be sent to the UNCTAD secretariat.

UNCTAD/DITC/CLP/2011/2

Acknowledgement

The substantive preparation for UNCTAD's voluntary peer reviews of competition law and policies is carried out by UNCTAD's Competition and Consumer Policies Branch (CCPB) under the direction of Hassan Qaqaya, Head of CCPB.

This report was prepared for UNCTAD by Dr. Abel Mateus, Professor at the University of Lisbon and, former Chairman of the Portugal Competition Authority. Ms. Ulla Schwager and Mr. Carl Buik provided valuable comments on the various drafts. UNCTAD would like to acknowledge the valuable assistance received from Ms. Vesna Jankovic, President of the Commission for Protection of Competition, Ms. Gordana Lukic, Member of the Council, Mr. Dragan Penezic, Head of International Cooperation and Domestic Relations Division, Ms. Marina Joksimovic and Mr. Zoran Soljaga, Senior advisers within the Commission. UNCTAD would also like to acknowledge the support of their colleagues from the Commission and representatives from other Serbian institutions¹ which contributed during the preparation of this report, as well as the financial support provided by SECO, Switzerland.

¹ The Ministry of Trade and Services, the Ministry of Economy, the Administrative Court, the Agency for electronic communications, the Agency for energy, the Agency for Privatisation, the Public procurement office, representatives of universities, consumers organizations, the private sector and lawyers.

CONTENTS

PREFACE	4
1. FOUNDATIONS AND HISTORY OF COMPETITION POLICY	8
1.1 Introduction: Serbia's Competition System in Context	8
1.2 The Economic, Historical, and Political Environment	8
1.2.1 Political Context	8
1.2.2 Economic Context	8
1.2.3 Institutional Development and Transition	11
1.2.4 EU Association.....	13
2. THE LEGAL FRAMEWORK – THE LAW ON THE PROTECTION OF COMPETITION.....	13
2.1 Scope, aims and coverage.....	15
2.2 Anticompetitive agreements and practices.....	17
2.3 Exemptions.....	17
2.4 Abuse of Dominance.....	19
2.5 Mergers.....	20
2.6 Claims for Damages caused by Anticompetitive Practices	21
2.7 Unfair Competition	22
2.8 State Aid	22
3. THE CAPABILITIES OF THE COMPETITION AUTHORITY: RESOURCES AND CONSTRAINTS, AND RECORD ON ENFORCEMENT	23
3.1 Institutional Framework and Operations of the SCPC.....	23
3.1.2 Functions of the SCPC	26
3.1.3 The SCPC's Investigatory Powers	27
3.1.4 Procedural aspects of competition cases	28
3.1.5 Merger notifications	31
3.1.6 Overview of the SCPC activities	33
3.1.7 Sanctions and Remedies	35
3.1.8 Criminalization of Anticompetitive Practices.....	41

3.2 Budget and Resources of the SCPC.....	42
3.3 The Judiciary and the Resolution of SCPC Competition Cases.....	43
3.4 Relations with the Legislature and the Executive.....	44
3.4.1 Legislature.....	44
3.4.2 Executive.....	44
3.4.3 Towards a Domestic Competition Network.....	45
3.5 Cooperation with Non-governmental stakeholders.....	45
3.5.1 Business Organizations.....	45
3.5.2 Consumer Groups and Consumer Protection.....	46
3.5.3 Universities and National Institutes.....	48
3.5.4 Cooperation with Non-Government Organizations.....	48
4. SECTOR REGULATION OF SERBIA AND ENFORCEMENT.....	48
4.1 Institutional Framework.....	48
4.2 Energy Regulation.....	49
4.2.1 Electricity.....	49
4.2.2 Natural Gas.....	54
4.2.3 Oil Derivatives.....	56
4.3 Telecommunications.....	57
4.4 Other sectors.....	66
5. FURTHER ASPECTS OF THE COMPETITION POLICY REGIME OF SERBIA: ACHIEVEMENTS AND CONSTRAINTS.....	69
5.1 Institutional Framework.....	69
5.2 External Trade and Foreign Investment Regime.....	69
5.3 Privatization and competition.....	72
5.4 Procurement Procedures.....	73
5.6 Doing business: entry barriers and exit.....	77
6. INTERNATIONAL COOPERATION AND CAPACITY-BUILDING.....	78
6.1 Assistance to the Serbian Commission for Protection of Competition.....	78

6.2 International Cooperation	79
7. FINDINGS AND POLICY RECOMMENDATIONS	80
7.1 Competition Law and Enforcement	80
7.2 Regulatory Issues and Competition Policy	87
7.3 Other Institutional Issues	90
ANNEX I	92
ANNEX II	101

PREFACE

Serbia is a country in transition towards a market economy. It has been deeply affected by the events in the Balkans and is now in a decisive process of recovery and of accession to the European Union (EU). Serbia has substantially liberalized external trade and is about to accede to the WTO. It has liberalized most industry sectors, but some major enterprises still remain under state control. Regulatory systems have improved significantly and are being harmonized with the EU. Procurement systems are still incipient.

Serbia has a competition law since 2005 and a competition authority since 2006. With respect to the enforcement of its competition law, Serbia has made progress by adopting several decisions on anticompetitive practices and by exercising merger control. Some of the major decisions received substantial media coverage and contributed to increase awareness of competition law among the business community and consumer organizations. However, most of the decisions of the Serbian Commission for the Protection of Competition have been annulled by the Supreme Court and one fine was levied in January 2011. A new competition law was adopted in November 2009 giving more powers to the Commission and moving judicial control to the Administrative Court. The first important competition case was confirmed in November 2010 and a criminal investigation was announced by the Public Prosecutor's office in an abuse of dominance case in the milk market. Increasing the resources of the Commission for the Protection of Competition, improving its methodologies in procedural issues, reinforcing its investigatory powers and strengthen the capacity of the judiciary in the field of competition law remain the highest priorities in order to strengthen Serbia's competition law enforcement.

International competition led to a restructuring of industry sectors in Serbia with reallocation of factors. Trade with the EU has intensified and barriers to trade in Serbia have been substantially reduced, although some impediments remain that will have to be eliminated when Serbia becomes a member of the WTO which is expected to take place in 2011. Serbia is also part of the Central European Free Trade Agreement (CEFTA) that created a free trade union. Barriers to trade have also been eliminated between Serbia and Russia, which is another major trading partner for Serbia. However, barriers to entry still persist in major wholesale and retail markets.

In the first years of the past decade, the Government undertook a large privatization program, with particular relevance for medium and small-sized enterprises. Following this program, and before Serbia had established a system of merger control, large concentration waves took place in several markets that led to high concentration levels, in particular in the food retail and milk markets, as well as to the formation of several conglomerates. Private monopolies characterize certain sectors, like the oil industry. Public monopolies still dominate the energy sector and some telecommunication markets. Privatization of some major enterprises is still a priority of the present Government, a process that was interrupted by the financial crisis. Competition issues will need to be taken into consideration during any future privatization process in order to avoid high concentration levels in the sectors concerned which would be detrimental to the competitiveness of the economy and to consumers.

In particular in the health sector, where past methods of procurement and regulation have facilitated collusion among suppliers, procurement issues need to be addressed. The recently established Agency for Anti-corruption has started its work and a major case has already attracted attention.

Serbia was a fairly developed country (as a part of Yugoslavia) until the 1980s and had a tradition of a market economy until World War II, so it should be possible to (re-)establish a solid base of small and medium-sized enterprises. Physical infrastructure has been upgraded and the legal framework

for doing business has been improved with the help of programs supporting Serbia during the EU accession process.

Competition policy is a major instrument for building a modern and competitive market economy. Competition law and its enforcement form one pillar of competition policy. In a country in transition like Serbia, other aspects of a competition policy, such as external trade and investment policies, sector regulation, privatization policies, public procurement policies, licensing and concessions, as well as reducing barriers to entry and exit of firms, are essential to build an efficient economy with a strong level of innovation. For example, opening the economy to international competition is an important policy that shall increase efficiency. Privatization can contribute to establishing a competitive market or to creating monopolies and dominant market players. Procurement policies can substantially raise the State's and ultimately the taxpayers' cost of provision of goods and services; if cartelization is allowed among bidders and competitive bidding does not take place. These areas are addressed in this report.

Serbia has already built a good level of infrastructure, although economic growth requires the modernization and expansion of the existing infrastructure in several sectors, like transportation and energy. Having an efficient infrastructure is crucial for a modern competitive economy, since a country's infrastructure constitutes the backbone of its entire economy. As in other sectors, competition plays a major role in promoting efficiency and reducing costs. Since infrastructure sectors are often characterized by the presence of natural monopolies, like in network industries, regulation needs to correct market failures. Vertically integrated dominant companies may have to be unbundled in order to promote competition and natural monopolies have to be regulated, mainly in terms of maintaining an open and non-discriminatory access. In this respect, Serbia has undertaken the first steps, but the infrastructure sectors remain of the highest priority to be addressed in the country's competition policy. Serbian sector regulation has been improved substantially and will be further aligned to EU standards.

Electricity prices in Serbia are among the lowest in Europe, but the industry remains in the hands of state enterprises, much in need of modernization. Maintaining low prices for political reasons will undermine an increase in efficiency and will not facilitate the process of opening the sector to new independent power producers. Priority should be given to fully unbundle production from operating the high-voltage transportation network system. Gas prices are comparable to those in other countries in the region, but high considering the purchasing power parity of the country. Gas supplies are monopolized by Srbijagas, but there is very little the country can do before there is a diversification in suppliers, which depends on the realization of international pipelines projects. District heating systems in major cities are quite inefficient.

Telecommunication prices in Serbia are among the lowest in the region, and telecommunications operators offer some of the best services in the region, but competition still remains an issue in

预览已结束，完整报告链接和二维码如下：

https://www.yunbaogao.cn/report/index/report?reportId=5_9860

