



Serbia ❖

– Sanja Filipovic †

Serbia is a country located at the crossroads of Central and South-east Europe, covering the Southern part of the Pannonian Plain and the Central Balkans. A landlocked country, Serbia borders Hungary to the North; Romania and Bulgaria to the East; Macedonia to the South; and Croatia, Bosnia, and Montenegro to the West; it also borders Albania through the disputed territory of Kosovo.

Serbia was part of the status of the union between Serbia and Montenegro until June 03, 2006, when the Montenegrin Parliament declared the independence of Montenegro, formally confirming the result of the referendum carried out in May in the same year. Serbia did not object to the declaration. On June 05, 2006, the National Assembly of Serbia declared Serbia to be the legal successor to the former state union.

Serbia was granted a formal candidate status for European Union (EU) membership on March 01, 2012, while negotiations on membership of the World Trade Organisation are at an advanced stage.

The process of ratification of the Stabilisation and Association Agreement (SAA) is under way; it has already been ratified by 26 EU countries and by the European Parliament. Since signing the SAA with the European Commission (EC) in 2008, Serbia has begun unilaterally to implement an Interim Trade Agreement with the EU. An Interim Agreement binding all the Parties – namely the EU and its Member States on the one hand and the Republic of Serbia on the other hand – entered into force on January 01, 2010.

The Interim Agreement, and subsequently the SAA, includes provisions comparable to the EU *acquis* on competition, covering (i) anti-competitive agreements, (ii) abuses of dominant market positions and (iii) state aid. Moreover, they include special rules that apply to public undertakings and undertakings with special and exclusive rights and prohibit quantitative restrictions on imports from the EU into the Western Balkan countries. The Agreements

PROFILE	
Population:	7.224 million**
GDP (Current US\$):	37.49 billion**
Per Capita Income: (Current US\$)	5,680 (Atlas method)** 9,533 (at PPP)**
Surface Area:	88360.0 thousand sq. km (2010)
Life Expectancy:	75 years*
Literacy (%):	98* (of ages 15 and above)
HDI Rank:	64**
<i>Sources:</i> - World Development Indicators Database, World Bank, 2013 - Human Development Report Statistics, UNDP, 2013 (* for the year 2011 (**) for the year 2012	

require operationally independent authorities to supervise the application of competition rules in the Western Balkan countries.

Economy

After 2000 Serbia has started reforms, which resulted in renewed growth. From 2000 until 2007 (the eve of the global financial crisis), the Gross Domestic Product (GDP) growth rate averaged 5.5 percent per annum. The economic boom was mainly fuelled by: i) large inflows of international finance in the form of foreign direct investments (FDI) and bank loans; ii) significant increase in domestic demand, and iii) positive expectations regarding the EU integration process, providing for integration in the trade and financial flows of the EU.

However, in terms of GDP, the country was only at 70 percent of the level of 1989. Regarding the latest World Bank data for 2011, Serbian GDP per capita was about US\$ 6,310, which is only 18 percent of the EU level or 88 percent of the level of the poorest EU country (Bulgaria). In 2011 the Serbian economy recorded one of the lowest growth levels in the SEE region (1.6 percent), and growth

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has significantly weakened further in the same year. The combination of weak domestic demand and the on-going crisis in the Eurozone, has a major dampening effect on Serbian economy.

After a year of decline, inflation is on the rise again. In December 2012, inflation stood at 12.2 percent year-on-year. The National Bank of Serbia (NBS) expects inflationary pressure to persist due to a combination of higher agricultural prices, a recent VAT increase and an expected increase in some regulated prices, and as a result, it anticipates that inflation will temporarily remain well above the upper limit on the target band of 4 ± 1.5 percent. In response, NBS raised the key repo rate to 10.75 percent which tightened reserve requirements and heated depreciation effects. Alongside the central bank's significant intervention to prevent further depreciation (the NBS has sold €1.35bn on the interbank foreign exchange market so far in the year to support the dinar), the dinar has weakened nominally by 7 percent. Substantial fiscal adjustment is needed in the short term. The budget deficit (7 percent of GDP) and public debt 55 percent of GDP, significantly exceeds the target agreed with the International Monetary Fund under the Stand-by Arrangement.

Competition Evolution

Even during the period of socialism, Serbia (as part of former SFR Yugoslavia) had a certain degree of competition in some sectors of its economy. Certain articles of the federal *Law on price control system* were related to competition. In its disposal section this Law strictly prohibited monopolistic agreements and contained a separate regime for price formation in some fundamental areas of the economy, such as the production and distribution of oil and oil derivatives, natural gas, coal, black and non-ferrous metallurgy, base chemistry, medicines, etc.

After disintegration of SFR Yugoslavia and establishment of FR Yugoslavia (1992), competition policy was given only limited importance for a number of years and was not directly regulated by law. This area was partially regulated by the federal Constitution and the Constitution of member republics (Serbia and Montenegro), as well as by several laws indirectly regulating some of the issues related to competition behaviour of economic entities in the single market - *Foreign Trade Law* (1992), *Trade Law* (1993), etc.

The first law to directly regulate the rules of market behaviour of economic entities was the *Federal Anti-monopoly Law* (1996). Even though this Law sanctioned the abuse of a dominant and monopolistic position, it had a few major omissions. The Law did not: i) define concentrations (connections, takeovers and foreign investments); ii) recognise the category of entry and exit barriers or make a distinction between real and potential

competition; iii) sanction the creation of a monopolistic position, but only its abuse, which led to market infringement and single market distortion; iv) define the concept of a dominant position of an economic subject, which therefore allowed for discretionary decision-making by the Commission for Protection of Competition and only determined the abuses of that position instead of its causes. Such an imprecise definition posed a threat to successful enterprises, which due to superiority of their operation, as to their competitors, enlarged their market participation. In an attempt to define the category of dominant position more closely, the Commission adopted an internal act in 1999, which not only lacked legal force, but also defined the criteria for determining a monopolistic, i.e. dominant, position descriptively, with no explicit analysis.

After constituting the new State Union of Serbia and Montenegro (2003), the Federal Anti-monopoly Law was taken over but due to its general, unclear and incomplete provisions, it was amended soon afterwards. The Law on Protection of Competition has been adopted by the Parliament of the Republic of Serbia in September 2005, while the Parliament of the Republic of Montenegro adopted the *Law on Protection of Competition* in November 2005.

The Law on Protection of Competition (2005) was the first law based on modern rules for protection of competition. It also established the Serbian Commission for Protection of Competition, an independent state authority, responsible only to the National Parliament. The Law established a system of merger control, and ensured equal treatment of private and public undertakings. However, the Law saw major failures concerning implementation thereof. The main problems had been created by the legislator itself through the adoption of inadequate procedural rules. The Law did not vest the Commission with its own powers to impose sanctions on undertakings that obstructed its orders, and hampered both the investigation of suspected infringements and the execution of final decisions. On the other hand, the Law failed to provide the Parties with all procedural guarantees required from a State of law, in particular the full rights of defense.

Competition Law and Policy

In response to the various limitations of the previous Law, the National Assembly of Serbia adopted the new Law on Protection of Competition, which came into force on November 2009. The new legal framework was completed during 2010 by the adoption of eight by-laws.

The Law is in conformity with the laws of the most advanced countries. Reorganisation of the legal text has made a clear distinction made between rules of substance and rules of procedure. The Law has considerably improved rights of defense, approximating them to the standards of EU Competition Law. The legitimate interests of parties involved in an *ex officio* procedure are protected

in different manners, according to the different phases of the procedure.

According to the Law, a concentration must be notified to the Commission in case: (a) the combined aggregate annual turnover of all undertakings concerned made on the global market in the preceding year is above €100mn, with the condition that at least one party involved in the concentration on the market of the Republic of Serbia generated an income exceeding €10mn; and (b) the aggregate annual turnover of at least two parties involved in concentration made on the market of the Republic of Serbia is higher than €20mn in the preceding year, if at least two parties involved in the concentration have an annual turnover of more than €1mn each in the same period on the market of the Republic of Serbia. The thresholds have increased from the previous Law, but they are still considered quite low.

The fees paid for notification are RSD 2mn (US\$25,000) for summary proceedings and RSD 4 mn (US\$50,000) for inquiry proceedings. About 95 percent of the notifications are summary proceedings. These are clearly among the highest fees paid in Europe, considering the income levels of Serbia. A concentration may be investigated ex officio, if the parties' aggregate market shares reach or exceed 40 percent of the relevant market in Serbia, or if there are grounded indications that the concentration would not meet the conditions for approval, or if it was not approved according to the Law. The applicant may present special conditions, currently known as remedies. If the Commission considers that the proposed commitments to solve the anti-competitive problems posed by the concentration are sufficient, it will then approve the concentration on the condition that the applicant fulfills the commitments, and will monitor the implementation thereof.

Under the previous law, judicial control was exercised by the Supreme Court of Serbia. Judicial review significantly restricted the enforcement of competition law. In some cases, the Commission corrected the procedures and took a similar decision, and in a few cases it dropped them. The Supreme Court always quashed cases on the basis of procedural issues. Some reasons for the Commission's failure in court related to a lack of clarity about the distribution of competence between the Council and the Commission. Others related to the lack of access to the minutes of the Council and to the fact that the decision did not contain references to all the documents submitted by the parties. But the most common criticism was lack of clarity about the case.

Under the new Law, review of the Commission's decisions is carried out by the new institution Administrative Court; which began operations in January 2010. Commission has the power to pronounce sanctions. The immediate object of a fine is to punish undertakings for infringements

committed in the past and to prevent any recurrence, but fines also act as a general deterrent to other undertakings.

Institution and its Competencies

The Anti-monopoly Commission was set up in 1997 and became operational in 1998 at the Federal level under the supervision of the federal administration body within the Federal Ministry of Economy and Internal Trade. The Federal Anti-monopoly Law (1996) entitled the Commission to enforce the law against the abuse of dominant positions, to analyse the acts of dominant market players, to examine the existence of dominance in particular markets and anti-competitive agreements, and to make decisions about abusive practices and agreements. The work of the Commission was not transparent, since it was not obligated to make information available to the public. The Commission not only lacked restrictive measures, but it also included a provision that allowed members of the Commission to also be entrepreneurs.

After the establishment of the State Union of Serbia and Montenegro in 2003, the Anti-monopoly Commission has been shut down and become a department in the Serbian Ministry of Trade and Tourism, without much power to intervene.

The new independent agency – Commission for Protection of Competition was set by the Law on Protection of Competition in 2005. According to this Law, the Commission is an independent and autonomous organisation entrusted with public competencies within the scope defined by the Law. The Commission is responsible to the National Assembly of the Republic of Serbia for its work and shall submit to it its annual report of activities.

Under the new Law on Protection of Competition (2009), the Commission is an independent organisation that exercises public authority in accordance with the Law. The Commission shall report to the National Assembly for its performance, submitting to it its annual report on the work by the end of February of current year, for the previous year. The independence of the Commission is ensured by method of election of the Commission Chairman, as well of the Council members, and its financial independence. Funding of the Commission shall be in accordance with the financial plan for each year, made by Commission Council and Commission shall submit the same to the Government for approval, no later than November 1, of the current year, for the next year.

The Commission shall ensure the full implementation of Article 73 of the SAA between Serbia and the EU and Member States (Article 38 of the Interim Trade Agreement), and in this regard, when drafting secondary legislation, harmonised the regulations with EU legislation and practice, or decision-making procedure before Commission shall apply the criteria resulting from the application of 4 competition rules applicable in the EU,

which includes primary and secondary EU legislation, the practice of EU institutions, and the judgments of the Court of Justice (European Court of Justice) and the Court of General Jurisdiction (General Court).

The functions of the Commission can be divided into: i) enforcing the competition law; ii) supervising markets; iii) counseling the Government on competition rules; iv) advocacy; and v) international cooperation.

Anti-competitive Practices

Due to quite low concentrations thresholds, Commission was overloaded with numerous requests for authorisation which absorbed more than 80 percent of its working capacity. Hence, the capacity to investigate cartels and abuses of dominance was rather limited.

The number of merger cases and individual exemptions totaled, on average, 110 cases per year. There was a peak of 133 decisions taken in 2008 when a substantial number of privatisations were made (40 to 45 cases). About 70 percent of the cases involved foreign companies. A lower number of cases have been notified since November 2010 when the new Law (which increased the thresholds) came into force. However, no merger has yet been effectively blocked neither have major remedies been imposed. The Commission has taken about 6 decisions per year on anti-competitive practices, but only in 2010 was it able to see a major decision upheld by the courts. Judicial control has now passed to the new Administrative Court.

Box 1 The Abuse of Dominant Position on Dairy Market

In February 2013, the Administrative Court of Serbia dismissed the claim of “Mlekara Subotica” and “Imlek”, thus confirming the decision of the Commission for Protection of Competition according to which the dairies have had a dominant position in the wholesale market of raw (cow’s) milk and that they have abused the position by imposing unfair and unequal business conditions for the same business operations with different market participants.

Wholesale milk market is characterised by pronounced imbalance in economic power of the biggest wholesalers of milk (dairies) and primary producers of milk, all having small economic power and being individually weak. The dairies used their position of dominant buyers in determining the prices, terms and ways of business operations in the raw milk wholesale market, in order to gain higher profits, bind the producers, limit existing competition and prevent the entry of new competitors.

The said dairies, owned by the investment fund “Salford”, were fined the payment of 1.92 per cent of the 2006 annual revenue.

In the same period, an average of 14 cases of anti-competitive practices were decided per year, which included four cases of dominance abuse and three cartels, with individual exemptions accounting for the remainder of the cases. The large number of individual exemptions was due to the obligation, under the previous law, to notify agreements.

Commission has the power to pronounce sanctions, which constitute administrative measures, provide for fines and periodical penalty payments. The immediate object of a fine is to punish undertakings for infringements committed in the past and to prevent any recurrence, but fines also act as a general deterrent to other undertakings.

Sectoral Regulation

As a precondition for the prevention of abuse of dominance in the area of public utilities, Serbian regulatory authorities have undertaken some steps in setting up modern regulatory regimes for utilities in the sphere of natural monopolies. The Commission has concluded cooperation agreements with sector regulators, such as the Energy Agency and Regulatory Agency for Electronic Communications and Postal Services (RATEL).

Box 2 Cooperation between Competition and Energy Regulatory Bodies

In November 2012, SEE Energy Community Competition Network was established as a platform for direct cooperation between the competition authorities of the Energy Community member states, by exchange of information and experiences, consideration of individual cases, adoption of guidelines and best practices, etc. The ultimate goal was improvement of the existing legislative frameworks governing energy sector and the protection of competition sector, especially a proper application of the Law on Protection of Competition in energy sector. The signing of the joint declaration and establishment of the Energy Community Competition Network was significant for the Competition Commission, primarily having in mind that Commission has thus far only conducted the analyses in the said sector, which is still to undergo enhancement of free market competition, but failed to conduct administrative procedures in terms of determining abuse or the existence of restrictive agreements.

Energy Sector

The process of liberalisation and improvement of competition in energy sector includes, in short, the following:

- unbundling vertically integrated energy activities on, at least, the accounting level
- introduction of competition in the segment of production and supply of electricity and natural gas, as well as

- free choice of suppliers for certain categories of consumers.

The 2011 Energy Law is largely in line with the requirements of the Energy Community but the adoption of implementing legislation is progressing slowly. Under the new Energy Law, the tasks and powers of the Energy Agency of the Republic of Serbia (AERS) are largely in line with the EU energy *acquis*, but the implementation of the new law will require an enlargement of the AERS' staff and further capacity building. Adoption of the Electricity Market Code is still pending.

The electricity market is characterised by the dominant position of the state-owned "Elektroprivreda Srbije" (EPS) company, established for electricity generation and distribution and for the supply of electricity for tariff customers in Serbia. There are eleven companies that are subsidiaries of the EPS mother company and all of them are in the form of limited liability companies. These comprise five electricity generation companies, five regional distribution system operators, and one coal-mining company. The unbundling of distribution and supply functions has not yet been achieved. EPS holds a *de facto* monopoly, due to the persistence of regulated prices, which are set at the levels below the market price.

The electricity market has been opened for all non-household consumers. The energy regulator approved new methodologies for establishing the costs for connection to electricity and gas transmission and distribution systems and the cross-border capacity allocation rules for electricity for 2012. However, no eligible customers have switched supplier. All eligible customers connected to the distribution system are entitled to be supplied at regulated tariffs until 2013.

The process of restructuring and reorganisation of the public enterprise Oil Industry of Serbia (NIS) began in 2005 on the occasion of establishing two public enterprises ("Transnafta" and "Srbijagas") and the joint stock company NIS j.s.c. Novi Sad. "Transnafta", responsible for oil transport, conducts its operations wholly owned by the state, as in accordance with the EU standards. PE "Srbijagas" is wholly owned by the state and has not been unbundled. It remains a fully integrated company and is the only wholesale supplier on the market. So far, accounting unbundling as regards all the activities was conducted at the level of PE "Srbijagas", as a minimum prerequisite for conducting such energy activity under market conditions, according to the EU directives. Further, liberalisation process will imply adoption of the rules of procedure for transmission and distribution network. NIS privatisation was completed in 2009 by selling 51 percent of NIS shares to Russian OAD "Gazprom Njeft", in the amount of €400mn.

The natural gas market is dominated by a single importer and a dominant supplier. The biggest network for the transport and distribution of gas is owned by the public enterprise, "Srbijagas", which is the wholesaler, transporter, distributor and retailer. The South-east of the country is supplied by "Yugorozgas" – a company owned by "Gazprom" (50 percent), "Srbijagas" (25 percent) and "Centrex ME Energy" (25 percent) – which is also a wholesaler, transporter, distributor and retailer. The Serbian natural gas market will be fully liberalised for households, in line with ratification of the Energy Community Treaty binding Serbia, by 2015. In order to increase competition and energy security, it would be advisable to diversify the sources and routes of natural gas supply by expanding interconnection with other major suppliers.

Telecommunications

The level of competition in the fixed network and related services is still incipient, due to the recent liberalisation process. The fixed telephony market is dominated by the incumbent, "Telekom Srbija", which is controlled by the state (80 percent). Prices of fixed telephony are below the average electricity generation cost. For example, the minimum cost of a local call is half a euro cent, compared with 3.7 cents in Turkey. Standard residential rates have been rising substantially over the last three years, but they are still among the lowest in Europe. The same applies to business rental rates. There are 70 operators of cable

Box 3 Assessment of competition on the internet market

In October 2011, the Commission started the assessment procedure against "Telekom Srbija" due to the existence of reasonable doubt that the company violated competition.

"Telekom Srbija", as a vertically integrated active participant in the wholesale market on the internet and internet retail market, offering wholesale services to operators as its competitors in the retail market, at higher prices and the price level that applied to its retail end-users during the implementation of promotional campaigns in June-July 2011. "Telekom Srbija" conducted a campaign of wholesale ADSL ports, which included 25 percent discount on monthly fees for ADSL connections in all packages. Promotional campaigns were conditionally tied to a contractual period of 12 or 24 months.

The Commission will evaluate the contractual obligations of Internet operators in the wholesale supply of "Telekom Srbija", which relate to the price, the date on which the contract has been concluded, and the extension of the contract, regarding the requirements for increasing width of flow or lease a larger number of ports in wholesale.

television, but they have regional monopolies, with SBB the largest company in Belgrade. The penetration rate of cable television is still low (15 percent).

Regulation in the telecommunications market is entrusted to RATEL, an independent institution with about 100 employees. The regulation in place follows the 2003 EU package, but an effort is being made to update the regulatory framework.

Thus far, prices have been regulated in only two markets: domestic fixed telephony, and cable television services. There is clearly another market where mobile operators have a monopoly position, namely the termination calls market, which has been regulated in most of the EU markets. Regulatory enforcement is still rather weak. The maximum fine that can currently be imposed is €20,000.

The implementation of laws and competitive safeguards generally lags behind. Decision-making is often not transparent, creating uncertainty for market players. Specialised expertise of judges handling telecom cases needs to be developed.

Consumer Protection

The new Consumer Protection Law came into force in January 2011. The Law implemented all key EU directives and created a legal framework that allows the convergence of consumer protection in Serbia with EU standards. This is a significant step forward in prediction of new rules on the sale of goods to consumers, the legal guarantee, and

distance contracts away from business premises, tourist travel and timesharing, the unfair business practices and unfair contract terms and services of general economic interest.

Conclusion

Serbia has established both legal and institutional frameworks in the area of competition. While legal framework for competition is largely based on EU rules, additional efforts are necessary to strengthen the Commission capacities and create a sustainable and predictable source of financing. The capacity of the judiciary to assess complex competition cases also needs to be strengthened.

Even though some progress can be reported in the area of antitrust, mergers and state aid, the Law on Competition still contains shortcomings that need to be addressed in the future. For example, the new Law increased the thresholds but they are still considered quite low so the Commission is overloaded with numerous requests for authorisation and does not have enough capacity to investigate cartels and abuses of dominance.

Concerning liberalisation of specific sectors, a number of Serbian undertakings continue to enjoy special or exclusive rights (e.g. in the fields of energy, postal services, telecommunication services, broadcasting, transportation). Additional efforts need to be made towards market liberalisation and price regulation in these specific sectors.

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