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CHARACTERISTIC ANTIMONOPOLY RISKS FOR ENTERPRISES OPERATING IN SERBIA: IDENTIFICATION, APPRAISAL AND TREATMENT

Karakteristični antimonopolski rizici za kompanije koje posluju u Srbiji - identifikacija, ocena i tretman

Abstract

The paper focuses on the analysis of antitrust regulatory framework and its possible implications on business operations of enterprises in Serbia, which, consciously or unconsciously, exhibit anticompetitive behaviour. The main objective of this paper is to identify prohibited or anticompetitive practices from the standpoints of the law and the relevant European practice. Each antitrust corporate risk is described in detail and appraised, with subsequent specific suggestions for possible preventive strategies to treat these risks. The paper abounds in real life case studies so that it is easier for the readers from the corporate world to relate to this complex and important topic.

Key words: *anticompetitive behaviour, the Law on Protection of Competition, antimonopoly risks treatment*

Sažetak

U fokusu rada je analiza antimonopolskog regulatornog okvira i njegovih mogućih implikacija na poslovanje preduzeća u Srbiji, koja svesno ili nesvesno ispoljavaju antikonkurentsko ponašanje. Osnovni cilj rada je identifikovanje zabranjenih, odnosno antikonkurentskih praksi sa stanovišta Zakona i relevantne evropske prakse. Svaki antimonopolski korporativni rizik je podrobno opisan i evaluiran, a zatim su dati konkretni predlozi mogućih preventivnih strategija tretiranja ovih rizika. Rad obiluje realnim primerima iz prakse, kako bi se čitaoci iz korporativnog sveta lakše identifikovali sa ovom kompleksnom i važnom temom.

Ključne reči: *antikonkurentska praksa, Zakon o zaštiti konkurencije, tretiranje antimonopolskih rizika*

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Introduction

Preservation and promotion of competition is one of the most important segments of each national economy. Free operation of the existing and potential competitors in the market enables and increases prosperity of all market participants. Competitive pressure is the main driver for enterprise efficiency, increase in productivity, growth, and lower prices for consumers.

The Law on Protection of Competition is defined in order to protect both companies and end consumers. The law encourages fair competition with the aim of improving competitive dynamics and increasing prosperity. Therefore, the basic elements of the Law are prohibition of abuse of a dominant position, prohibited agreements, and control of excessive concentration. The Law applies to every company in the market, but competition clauses vary depending on the market position of the parties.

Dealing with the risk of competition primarily requires good understanding of relevant legislation and business practices. The significance of this field is becoming increasingly prominent with the process of Serbia's accession to the EU and more efficient work of the Commission for Protection of Competition of Serbia. However, regardless of how familiar the companies in Serbia are with this area, the risk of breach, or the implementation of anticompetition practices is extremely high. There is a large number of "gray" areas and unclear guidelines that may be interpreted in many ways. Comprehension of this field requires an understanding of the logic at the heart of any forbidden practice. It is important to emphasize that lack understanding of regulations is no excuse before regulatory bodies.

The subject of this paper is the practice that most often constitutes breach, accidental or intentional, by the dominant or non-dominant companies operating in Serbia. Competitive practices are clearly described and defined, and, in order to facilitate their understanding, each unauthorized practice is supported by a relevant example. A prevention model is shown for each of the identified risks, and it is pointed out that certain practices must not be carried out because there is no method for their adequate treatment or elimination.

The paper is divided into four segments. The first part describes the theoretical and regulatory postulates of anticompetitive practices. The second part focuses on the possible abuse of a dominant position. The focus of the third part is on prohibited horizontal and vertical agreements. The last, fourth, part deals with the problem of excessive concentration of market power.

Anticompetitive practices

The legal framework of the Republic of Serbia on protection of competition largely relies on the adopted legal solutions and best practices of the European Union and the European Commission, which have extensively and systematically been engaged in the anti-monopoly legislation for a number of years. The Law on Protection of Competition (hereinafter the Law) is based on the assumption that the protection and stimulation of competition increases the range of products on the market, which causes a decrease in prices of those products, which, ultimately, has a positive effect on the welfare of end consumers [10]. Therefore, the Law on Competition prohibits any behaviour of companies that leads or may lead (consequence or intention) to reduced level of competition in the relevant market. Reducing the level of competition may be implemented either through mutual agreements with competitors (prohibited horizontal agreements - cartels), mutual agreements with customers or suppliers (prohibited vertical agreements in both directions), or due to the efforts of dominant companies to squeeze out their competitors from the relevant market (abuse of dominant position). It should be added that the Law also regulates control of concentrations, i.e. acquisitions, mergers and takeovers, and therefore each concentration, provided that certain conditions are met (thresholds for the application of concentration prescribed by the Law), must be reported to the Commission for Protection of Competition. According to its own discretion, market conditions and the effects that concentration will have on the market and consumer welfare, the Commission shall decide whether the concentration is approved, conditionally approved or not approved.

The Law essentially prohibits three groups of activities:

1. abuse of dominant position;
2. restrictive agreements;
3. excessive concentration of market power.

Abuse of dominant position

According to the Law "dominant position in a relevant market is deemed to be the position of an undertaking that, due to its market power, may operate in the relevant market to a substantial extent independently from real or potential competitors, customers, suppliers or consumers" [Article 15, 10]. Depending on whether a participant in the relevant market does or does not have a dominant position, the Law prohibits certain business practices. The basic assumption for the existence of a dominant position is the market share in the relevant market that exceeds 40%, which means that certain business practices may be permitted for non-dominant players, and prohibited for the dominant ones. Whereby, the Law recognizes the term of collective dominance that occurs when two or more legally independent market participants can have a dominant position if they are linked by economic relations in a manner that that jointly perform or act as one participant in the relevant market.

It should be noted that it is not necessary to have a written agreement (e.g., contracts, e-mail correspondence) with counterparty for the Commission to establish an abuse of a dominant position. Abuse may be determined based on observed practice and business activities of market participants.

Based on the experience of the European Commission and the Serbian Commission for Protection of Competition, the most common abuses of dominant position are the following:

a. refusing and terminating cooperation;
b. predatory behaviour;
c. tying and bundling;
d. excessive pricing;
e. inappropriate rebate policy;
f. imposing exclusivity;
g. discrimination against customers;
h. parallel distribution channels;
i. renting shelf space, i.e. sales areas.

Refusing and terminating cooperation

Refusal and termination of cooperation is manifested through the unjustified refusal of the dominant players to enter into cooperation with a customer or supplier. In addition to refusal of cooperation, any termination of cooperation with an existing customer or supplier, without justification is also prohibited.

For example, a chemical company Commercial Solvents (CS) was producing a chemical substance A and sold it to a company called Zoja, which used the substance as an input for the production of a chemical substance E. When CS started producing chemical substance E, it refused to sell substance A to Zoja Company. The European Commission has determined that CS had a dominant position in the relevant market and concluded that the implementation of such a practice constituted an abuse of a dominant position [3].

Predatory behaviour

Predatory behaviour occurs when companies sell products to customers based on net sales prices (prices from the price list, net of all rebates and discounts offered) below cost price, with the objective of maintaining or increasing market share. This practice is known as predatory pricing and constitutes an abuse of a dominant position. A sale of products at prices below the average variable cost, in essence, is considered to be an abuse of a dominant position. The logical assumption is that the dominant company has no other interest in determining dumping prices, other than to drive competitors out from the market and subsequently raise its prices by using the acquired monopoly position in the market.

Therefore, the sale of products by a dominant company, at prices that are below average total cost (total cost price), but above average variable costs, also constitutes abuse of a dominant position. For this type of abuse, it is necessary that there is a visible intent to drive competitors out from the relevant market. Sales of products by the dominant company at prices that are below average total costs and above average variable cost is only permitted in exceptional cases, where there are objectively clear economic arguments for selling at such prices.

This practice by the financially strong dominant market participants may have a negative impact on the other players in the market that may be equally effective, but due to limited resources, are unable to withstand aggressive and unfair competition.

For example, the European Commission found that the company called Wanadoo was charging ADSL services at prices that were below the average total cost. The investigation and detailed analysis showed that, for a certain period, the prices were even below the variable cost (1999-2001), while in another period (2001-2002), they were at the level of variable costs, but far below the total costs. In this case, the Commission concluded that this practice was an abuse of a dominant position and imposed a fine of 10.35 million [3].

Tying and bundling

Tying products and assortment bundling are prohibited practices for dominant players. Tying product occurs when the sale of one product is conditional on the purchase of another product. For example, if you are to sell Bambi chocolate conditional on purchasing Plazma. Assortment bundling is very similar, except that here the customer is conditioned to buy a precisely defined assortment. Both of these practices are prohibited for the dominant players, and allowed for the non-dominant ones.

An example of tying is the case of TetraPak. The European Commission has found that TetraPak sold its packaging machines, subject to certain contractual conditions by which other it tied other products and services to the sale of machines. Thus, the customers who bought their machines were required to buy the carton from TetraPak as well. Also, TetraPak further conditioned on them being the sole provider of service and maintainance for the packaging machines. The Commission has imposed a fine on TetraPak in the amount of EUR 75 million for abuse of a dominant position [3].

A famous example of assortment bundling of products is Microsoft. Microsoft sold two of its products (PC OS operating system and Windows Media Player) in one package. The Commission considered that this infringed the competition rules, because customers who purchased Microsoft operating system were forced to buy Microsoft Media Player as well, without the possibility to choose and buy a media player that they find suitable. The Commission imposed extremely high fine on Microsoft amounting to EUR 497 million for abuse of dominant position.

Excessive pricing

Excessive pricing is prohibited for dominant players because it leads to extremely high profit margins.

For example, in the case of Napier Brown - British Sugar, the European Commission has established that over a longer period, this sugar manufacturer sold bulk sugar in wholesale market and packaged sugar in retail market at prices that were not a realistic reflection of costs. In this case, the Commission imposed a fine totalling EUR 50.2 million [3].

Rebate policy

Rebate policy is a specific and big topic in the area of protection of competition. For dominant market participants, rebate policy is inadequate in the following cases:

- If it is not transparent (customers have no insight into the seller's rebate policy);
- If it is not justified (no economically viable explanation for the range of rebates); and
- If rebate creates customer loyalty.

Transparency is achieved by making all consumers aware of sales policy or rebates so that customers know in advance how much rebate they qualify for and under what conditions. Dominant players must have economic justification for rebate. For example, the quantity rebate (discount that is offered depending on the amount of goods withdrawn) should be justified through the calculation of the effects of economies of scale. Offering rebates to customers individually, based on subjective assessment and at different scales is not permitted.

The dominant company in the market should not be offering rebates to customers to increase customer loyalty. Rebates are not allowed to be offered to customers on the condition that most of or all of their needs are met exclusively from the suppliers that grant these rebates. This type of rebate is offered with the aim of limiting customer choice and opportunity to change suppliers. The net effect is to close the market to competing suppliers. All discounts that are passed on to end consumers must comply with cost savings that result from the effects of economies of scale. If a discount is greater than the real savings of costs, it is clear that the dominant company wants to drive competitors out from the market.

A dominant company may also be abusing dominant position if it ties customers through a system of rebates offered in accordance with the sold quantities or according to sales growth over a relatively long reference period. In this way, it puts pressure on customers to achieve the amount of purchases required to qualify for rebates.

As noted above, excessive granting of rebates whose total amount lowers net sales price below cost (predatory pricing) is not allowed either.

The greatest risk arises from offering the so-called "simulated" rebates that are often included in the sales policies and business practices. Sales representatives believe that is enough to give a rebate an adequate name to denote it as meaningful and admissible. Namely, these are rebates that are granted without grounding and economic analysis to justify them. In practice, these rebates are given the following names: the sales promotion rebate, the rebate for the development of the network, the rebate for the expansion of markets, the incentive rebate for the growth of turnover and the like.

An illustrative example in the area of rebates is Michelin, the French tire manufacturer. The European Commission has established that Michelin had abused its dominant position by offering its dealers rebates at the end of the year that were based on the achievement of predetermined sales plan, but without economic justification in the amounts granted. For the implementation of such business practices the Commission imposed a EUR 20 million fine on Michelin [3].

Imposing exclusivity

Another prohibited practice is imposing exclusivity for dominant players. A classic form of imposing exclusivity is outlet exclusivity. This kind of limitation is implemented through the imposition of an obligation to the customer to sells the products of the dominant participant exclusively within that product category in their retail outlet.

For example, the European Commission has established an abuse of a dominant position by Unilever because it provided cooling devices to its customers on condition that they shelved Uniliver's products exclusively - freezer exclusivity. In its market research, the Commission has established that many retailers could not or did not want to install an additional cooling device in their retail outlet. When Uniliver has installed its cooling system in an outlet, it is highly unlikely that another manufacturer would install its own cooling system. Therefore, the Commission concluded that freezer exclusivity also constitutes outlet exclusivity, leading to the closing of the market for other competitors [3].

Discrimination against customers

Discrimination against customers occurs when a dominant company applies different sales conditions to different customers, for the same or equivalent transactions, without clear economic justification. This practice is manifested when the individual customers are offered better sales conditions compared to other customers in the same category, which, from the standpoint of the company, have the same commercial position (they belong to the same category of customers in the sales policy).

For example, the Croatian Agency has established that Proplin d.o.o. restricted competition in the relevant market in natural gas distribution by unequal application of discount policies to their customers or by granting rebates at their own discretion [3].

Parallel distribution channels

By that same logic as the previous prohibited practice, the Law on Prohibition of Competition prohibits the application of dissimilar conditions to equivalent transactions with other companies, due to which they may be discriminated against in comparison to the competition.

Intra-group companies may have different treatment in relation to independent companies, but it is necessary to take into account that such treatment does not exclude or restrict competition in the downstream markets. Therefore, companies are not in risk if the various conditions are based on economically justified reasons.

If the practice of placing intragroup customers in an unequal position compared to those who are independent of the market was *a priori* permitted, there would be a possibility that the companies with dominant position transfer and use their position from one market to another relevant market, thereby distorting market competition.

For example, Nintendo used to sell its products through exclusive distributors. The distributors who sold Nintendo products outside the territory for which they had exclusive rights were sanctioned. The Commission has found that such practice was restricting parallel trade and constituted the abuse of a dominant position for which it imposed a EUR 149.1 million on Nintendo [3].

Renting shelf space, i.e. sales areas

The business practice where rent is payable for a share in shelves with the intention of closing the market for the existing and potential competitors as much as possible or preventing exposure of their goods in retail outlets of the customer is not permitted in cases where the company paying the rent has a dominant position. This leads to restriction and weakening of competition, which, in future, may enable the dominant company to raise prices of their products. The end result of such practices reduces well-being of consumers, as they have more restricted choice at of products offered at higher prices. However, in practice, a dominant company is permitted pay rent for a share in customer's shelves at the percentage that is not higher than the official market share of the dominant company (the space to sale rule), but not more than 80%.

The above prohibited practices are shown in Table 1. In addition to a short description, the table also shows the risk prevention measures if certain practice is not completely prohibited.

Restrictive agreements

Restrictive agreements are agreements between market participants (competitors, customers, suppliers) with the aim or effect of substantially restricting, distorting or preventing competition. Restrictive agreements may be contracts or individual contractual stipulations, explicit or tacit agreements and concerted practices that particularly, directly or indirectly, fix purchase or selling prices or other trading terms and conditions; limit and control production, market, technical development or investment; apply dissimilar conditions to equivalent transactions with respect to the various market participants, which places market participants into a disadvantageous position in relation to competitors; condition conclusion of contracts or agreement on acceptance of supplementary obligations which, given their nature and trading habits and practices are not related to the subject of the agreement; divide markets or sources of supply. Restrictive agreements are prohibited and void, except in specific cases of exemptions from the prohibition. It should be noted that voidance is only applied to those contractual clauses which have anti-

Table 1: An overview of forbidden practices and opportunities for risk mitigation

Name of a prohibited practice	Probability of identification of a prohibited practice	Risk prevention measures
Refusing and terminating cooperation Refusing and terminating cooperation with potential customers or suppliers without legal or economic justification.	Low	Enable cooperation with all interested market participants or clearly explain reasons for terminating cooperation
Predatory behaviour Selling products to customers below cost price with the aim of retaining or increasing market share.	Moderate	Pricing above level of variable costs
Individual or assortment tying of products Conditioning customers to buy certain products in order to be able to buy their desired product or conditioning customers to buy specific products.	High	Avoid such arrangements.
Excessive pricing Excessive prices that lead to extremely high profit.	Moderate	Clearly established and justified price policy.
Inappropriate rebate policy The existence of a large number of different rebates without economic justification leads to suspected simulated or fictive rebates.	High	Unique rebate policy based on economic savings.
Imposing exclusivity Conditioning customers to keep in their outlets only the products from the dominant market participant.	High	Avoid such arrangements.
Discrimination against customers Applying different sales terms and conditions for the same or equivalent transactions without clear economic justification.	High	Applying fair, uniformed and transparent sales policy.
Paralel distribution channels Applying unequal conditions for the same type of transactions with other companies, which may lead them into a less favourable position compared to competitors.	Moderate	Avoid such arrangements or determine cooperation terms and conditions such that they are economically justifiable.
Renting sales areas Renting shelf-space with the aim of closing the market for the existing and potential competitors as much as possible.	Moderate	Limiting rented space in accordance with the market share of the dominant player ('space to sale' rule).

competitive effects, while other provisions may remain in force provided that they are separable.

The prohibition of the existence of restrictive agreements also applies to the established practices with anti-competitive aim or effect. Concerted practices occur when there is a coordination of behaviour between the companies which, although without a formal agreement, consciously replace the risk of competition with mutual cooperation. Companies have concerted practices when exercising direct or indirect contact with intent to influence market behaviour or to disclose to each other their future business decisions. Also, if the result of the direct or indirect contacts between company is the effect of the exchange of sensitive information, it is deemed that there are concerted practices regardless of what the real intention in establishing these contacts was.

General prohibition of restrictive agreements does not apply to agreements within a group, or to legal affairs between the companies that are controlled by the same parent company, and are therefore considered to be a single undertaking. Restrictive agreements may be horizontal and vertical.

Horizontal agreements

Horizontal agreements are formed between actual and/or potential competitors operating at the same level of the supply chain. They constitute strict violation of competition rules. It should be noted that, under the Law on Protection of Competition, an agreement is also any oral agreement and concerted practice. Therefore any direct exchange of information between competitors about prices, costs, margins, profits, customers, suppliers, business plans, market share and other sensitive topics is strictly prohibited. Any open discussion or correspondence on this subject may be interpreted as a cartel fixing.

Horizontal agreements may restrict competition, particularly if the agreements include price fixing and market division, or if the market power that occurs as a result of horizontal cooperation causes negative effects on the market in terms of prices, production, innovation or the variety and quality of products.

All agreements between competitors with the aim of negotiating or fixing prices, dividing markets or undertaking joint activities in order to drive other competitors out from the market constitute strict violation of the rules of competition regardless of the size of the market share for the company.

When competitors mutually agree on sales price and exchange information on supply terms and conditions this actually weakens price competition between them. The result of such an agreement is pricing at a significantly higher level than the prices that would be in place if each company was forming them individually.

Similarly, in trying to increase their bargaining power and get more from their suppliers, companies may join forces and form a purchasing alliance. Joint purchase may have a positive effect through economies of scale and reduced transaction costs. However, when a company enters into an alliance with the aim of fixing the purchase price, then it is an agreement which is contrary to the competition rules.

Example of a prohibited horizontal agreement is the case of Hoffman La Roche for open agreement between eight pharmaceutical companies on prices and sales quotas. Eight companies participated in eight different secret cartel agreements in vitamin products market. The cartel operated in such a way that the participants agreed on the prices for different vitamin products, and divided sales quotas by products and product groups. They also established an internal system of monitoring the implementation of the cartel agreements. In this case, the total penalty case for all eight companies amounted to EUR 855 million [3].

However, cooperation between companies operating at the same level of the supply chain may be a means of sharing risk, saving costs, pooling know-how and faster innovation and, therefore, may sometimes have a positive impact on competition. This type of horizontal agreements is not permitted in principle, but may be exempted from the prohibition under certain circumstances. Such agreements include: agreements on research and development and specialization agreements [6, 7].

Vertical agreements

Vertical agreements are agreements along the vertical of the reproduction chain, with customers or suppliers. These agreements are prohibited when they provide for certain activities that are contrary to the rules of competition, such as direct or indirect restriction of the customers' (retailers') right to determine their prices in re-sales, limiting the territory in which the customer may sell or restricting sales only to a specific group of end users/ customers.

Any kind of agreement between suppliers and retailers concerning the determination of retail prices, which may be manifested through the fixing of prices, strict adherence to the recommended price, determining formula for calculating the price, offering conditional rebates, minimizing sales prices and coordinating sales policy is prohibited.

Entering into agreements with customers which restrict competition is also prohibited whether they ban sale of competing products or implementation of promotional activities, as well as conditioning customers to purchase a certain minimum amount of supply in order to prevent them from purchasing the same goods from the competition.

An especially prohibited form of discrimination is the one where suppliers apply non-linear pricing schemes to retailers in which producers grant various rebates and discounts to retailers thus placing some of them in a more favourable position compared to other.

A typical example of a prohibited vertical agreement is price fixing between a supplier and a customer. For

Table 2: An overview of forbidden practices and possibilities for mitigation of risk in the segment of prohibited agreements

Name of a prohibited practice	Probability of identification of a prohibited practice	Risk prevention measures
	Horizontal agreements	
Joint decision on wholesale prices	High	Independent sales policy making.
Conditioning customers related to prices	Moderate	Applying transparent and clear sales policy.
Exchange of information on costs and determining sales prices.	High	Avoid exchanging sensitive information with competitors completely.
Mutual agreements on supply terms and conditions, or purchase prices.	High	Avoid exchanging sensitive information with competitors completely.
Mutual agreements on market division, or sales territories division.	High	Avoid exchanging sensitive information with competitors completely.
Limiting the amount of products offered for sale through mutual agreements.	High	Avoid exchanging sensitive information with competitors completely.
Conditioning and joint boycotting the suppliers	High	Avoid mutual agreements of this type.
Joint research and development	High	This practice is conditionally allowed, but it is necessary to monitor what type of information is exchanged. It is necessary to seek approval from the Commission for this type of agreements.
	Vertical agreements	
Determining retail prices together with customers, fixing prices	High	Avoid mutual agreements of this type. Retailers must be free to set their own prices.
Forcing retailers to adhere to recommended prices	High	Avoid mutual agreements of this type. Retailers must be free to set their own prices.
Determining a formula for price calculations	High	Avoid mutual agreements of this type. Retailers must be free to set their own prices.
Coordinating retail prices policy with competitors through relationships with suppliers	High	Avoid mutual agreements of this type.
Exclusivity – sales to one customer only	Moderate	Avoid exclusive agreements
Discrimination through non-linear price schemes	High	Applying uniform and transparent sales policy.

example, in the case of Bitumen, eight bitumen producers in the Netherlands entered into an agreement with six customers - building companies - on the purchase of bitumen at fixed prices. All other customers were charged higher prices. The parties to this agreement were fined a total of EUR 266 million [3].

In Romania, the Chamber of Market Competition imposed fines totalling EUR 35 million on 25 entrepreneurs for an agreement on prices between retailers and their suppliers. Retailers and their suppliers agreed on minimum prices for some products and also coordinated promotional campaigns so that if one retailer offered benefits for certain products, then no other retailer was allowed to carry out the same promotional activities. The proceedings before the Romanian Chamber for Protection of Market Competition lasted for five years, and was launched after the market research of food retail in 2008 [3].

The aforementioned vertical agreements are prohibited *per se*, while there are other types of vertical agreements that are generally not permitted but may be exempted from the prohibition under certain circumstances. Such agreements include: exclusive distribution, exclusive purchasing, and selective distribution, franchising agreement, as well as transferring or granting the use of intellectual property rights [5]. If the participants in these agreements have less than 25% market share, these agreements are permitted. Otherwise, if the participants have over 25% market share, it is necessary to seek an exemption from the prohibition of such an agreement with a detailed analysis of the effects of such an agreement.

The aforementioned prohibited practices are summarized in Table 3. Apart from a brief description, the table also measures to prevent the risk if a particular practice is not completely prohibited.

Excessive concentration

Companies that merge or are subjects to acquisition must report the concentration, if they meet the legal requirements. The Law stipulates that the concentration must be reported to the Commission if the total annual income of all participants in the global market, as well as individual income in the Serbian market, is above legal thresholds. Upon considering the effects that the concentration causes, the Commission decides whether a merger may be approved, whether it will be approved conditionally (if certain conditions are met, such as in the case of Agrokor-Mercator winding down or sale of a certain number of stores) or it will not be approved (when it is considered that such a concentration would jeopardize competition in the market).

For example, the Commission for Protection of Competition approved the concentration of Agrokor - Mercator provided that certain structural measures are applied (reducing the area of retail space and the closure of certain facilities) and behavioural measures (regular reporting to the Commission on certain conditions).

Conclusion

Institutional protection of competition is the basic prerequisite of effective protection of all market participants. Market pressure, expressed through effective competition, affects the business practices of individual companies in terms of continuous development, growth and reducing operating costs allowing them to achieve better market position. Business practices of market players, especially the selling policies should be appropriately implemented in practice. Many companies do not fully understand the essence of competition and make accidental or intentional errors.

Table 3: An overview of forbidden practices and possibilities for mitigation of risk in the segment of excessive concentration

Name of a prohibited practice	Probability of identification of a prohibited practice	Risk prevention measures
Mergers and acquisitions that result in high market share.	High	Concentrations require prior approval by the Commission; therefore it is necessary to follow the procedure stipulated by Law.

This paper describes the most common violation of competition. Certain activities such as the agreed production volume, joint price increases, limiting and dividing the market, the exchange of sensitive information, raising entry barriers for new market participants, limiting innovation, liasoning in order to impact customers or suppliers, and other activities mentioned in the paper, are prohibited by Law. The implementation of these activities may reduce competition, increase concentration of market power and lead to the formation of undesirable market structures, which ultimately reduces consumer welfare and all other affected market participants.

Very often, certain companies deliberately resort to the application of certain anticompetitive activities in order to increase their own market impact. Guided by higher profit in relation to a potential penalty, the company knowingly accepts the risk of breaching competition rules. However, it should be noted that the companies led by knowledge, innovation, investment and good business decisions deserve dominant business position. These companies are not affected by the provisions of the Law and the potential penalties because they are building and maintaining their position by adhering to fair competitive practices.

Relevant examples have shown that penalties may be very severe and may lead the company into a very difficult financial position and cause bad reputation. An effective competition policy is implemented with the aim of ensuring equality of all market participants, not as protection for small players. This segment emphasises managerial skills of the dominant companies in mitigating risks in the application of certain business and sales policies. Some companies are very skilful in exploiting room for manoeuvre in the application of certain practices, and accepting certain level of risk.

Some practices, such as price fixing, cartel agreements or introducing incentive rebates which tie customers are strictly prohibited and sanctioned. Practice has shown that the greatest risk exists in the area of granting rebates because the dominant market participants do not follow the logic of economic justification. Rebates are used as a subjective instrument of sales policy that ties and restricts the desires and activities of the customer, which is strictly prohibited. In these cases options to mitigate or eliminate risks are insignificant.

Businesses are not sufficiently acquainted with this area and therefore unintentional violations of competition are very common. In these cases, the measures of the Commission are limited and operate in the field of warning and education. It is necessary to educate the economy more about the effects and the logic of the Law and the practice of protection of competition. Therefore, the subject of future research may be in the area of how much individual companies are aware of (not)permitted practices. Better understanding of these areas may lead to preventative elimination of operating risk in this segment and more effective treatment of anticompetitive risk. Hence, one of the key recommendations for companies is introducing the Antitrust Compliance program, which includes creating manuals for employees and organising adequate education about permitted and prohibited business activities.

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