DOI: 10.5937/bankarstvo2602166P

Primljeno: 04.05.2026.
Odobreno: 18.08.2026.

PROGRAM USKLAĐENOSTI POSLOVANJA BANAKA SA PROPISIMA O ZAŠTITI KONKURENCIJE: NOVI TREND JAČANJA KONKURENCIJE U SRBIJI ILI REGULATORNI TROŠAK?

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Rezime: *Objavljivanjem Smernica za izradu programa usklađenosti poslovanja i Modela programa usklađenosti, Komisija za zaštitu konkurencije je učinila značajan iskorak u razvoju okvira usklađenosti poslovanja sa pravom konkurencije, približavajući ga rešenjima koja su već prisutna u pravu konkurencije Evropske unije. U radu se postavlja pitanje u kojoj meri je taj normativni iskorak praćen praktičnim rezultatima i da li postojeći institucionalni i regulatorni uslovi omogućavaju efektivnu primenu programa usklađenosti poslovanja u domaćem sektoru bankarstva. Posebna pažnja je posvećena analizi uporednopravnih rešenja u državama članicama Evropske unije, gde postoje podsticajni mehanizmi koji mogu dovesti do umanjenja kazni za povredu prava konkurencije u slučaju postojanja programa usklađenosti. Zaključuje se da, u odsustvu adekvatnih institucionalnih podsticaja i efikasne primene prava konkurencije u bankarskom sektoru, programi usklađenosti poslovanja nemaju značajan potencijal da ojačaju konkurenciju, a njihovo usvajanje može predstavljati regulatorni trošak.*

Ključne reči: Zaštita konkurencije; Komisija za zaštitu konkurencije; Program usklađenosti poslovanja; Bankarski sektor; Podsticajne mere.

JEL klasifikacija: K21, K23, G21

Uvod

Usvajanje internih programa usklađenosti poslovanja sa propisima o zaštiti konkurencije na osnovu takozvanog mekog prava (engl. soft law), predstavlja novi trend u zemljama članicama EU. Ti programi su interni pravni akti tržišnih učesnika u vidu internih pravila i procedura koje su zasnovane na proceni rizika povrede prava konkurencije, sa ciljem poštovanja propisa o zaštiti konkurenciji i minimiziranja rizika koji mogu da nastanu u slučaju njihove povrede (npr. regulatorni, reputacioni, finansijski rizik). U skladu sa tim, Komisija za zaštitu konkurencije u Srbiji (KZK) je 2021. godine usvojila opšte Smernice za izradu programa usklađenosti poslovanja sa propisima o zaštiti konkurencije (Smernice), a zatim i prateći Model programa usklađenosti poslovanja (Model) 2022. godine, namenjen svim učesnicima na tržištu.

U radu se razmatra da li bi usvajanje i primena tih programa usklađenosti, po uzoru na države članice EU, moglo da ima značajan efekat na jačanje konkurencije u sektoru bankarstva, ili bi u praksi moglo da ostane bez značajnijih rezultata, svodeći se na regulatorni zahtev koji predstavlja dodatni trošak za učesnike na tržištu i koji u krajnjem efektu može da umanji konkurentnost.

Rad se, između ostalog, u jednom delu oslanja na rad Ilića (2026) koji razmatra ulogu i odnos usklađenosti poslovanja (compliance) i zaštite konkurencije u načelu. Ovim radom se dalja analiza usmerava na pomenute koncepte u bankarskom sektoru. Naime, razmatraju se regulatorni okvir Narodne banke Srbije (NBS), postojeća praksa KZK kada su banke u pitanju, ali i pitanje njihove institucionalne saradnje. Dodatno, rad obuhvata sektorsku analizu usklađenosti poslovanja banaka sa pravilima zaštite konkurencije, sa fokusom na mogućnost da funkcija usklađenosti poslovanja banaka identifikuje i uključi rizik povrede konkurencije u postojeće sisteme upravljanja rizicima.

Struktura rada prati postavljeno istraživačko pitanje tako da se u drugom delu rada analizira sadržina i svrha programa usklađenosti poslovanja, dok treći deo rada sadrži uporednopravni prikaz relevantnih normativnih rešenja i sudske prakse, sa posebnim osvrtom na iskustva država članica EU. Četvrti deo rada je posvećen analizi postojećeg institucionalnog i pravnog okvira u Srbiji, uključujući podzakonske akte KZK i NBS, kao i poslovnu praksu banaka u pogledu izrade i primene programa usklađenosti poslovanja sa propisima o zaštiti konkurencije. U završnom delu rada slede zaključna razmatranja.

Sadržina i svrha programa usklađenosti poslovanja sa propisima o zaštiti konkurencije

Propisi o zaštiti konkurencije, između ostalog, uređuju ponašanje privrednih subjekata na relevantnom tržištu tako što načelno zabranjuju restriktivne sporazume i zloupotrebu dominantnog položaja i omogućavaju kontrolu koncentracija. Ristić i Trifunović (2022) smatraju da je osnovni cilj tih propisa uvećanje konkurentskog pritiska na tržištu i samim tim uvećanje ekonomskog napretka i naročito blagostanja potrošača. Usklađenost sa tim propisima podrazumeva organizovanje poslovanja učesnika na tržištu tako da se rizik od povrede konkurencije svede na najmanju moguću meru, što je direktno povezano sa efikasnijim ostvarivanjem osnovnih ciljeva prava konkurencije. Dodatno, ta usklađenost poslovanja može da doprinese uvećanju pravne sigurnosti u poslovanju, sprečavanju finansijskih i reputacionih posledica povrede zakona i očuvanju poverenja i tržišne pozicije.

U skladu sa tendencijama koje su uočljive u okviru OECD-a i Evropske unije, posebno u pogledu jačanja primene prava konkurencije, KZK je u decembru 2021. godine izdala Smernice za izradu programa usklađenosti poslovanja sa propisima o zaštiti konkurencije između ostalog, sa ciljem podizanja svesti o značaju primene prava konkurencije i razvoja kulture zaštite konkurencije u Srbiji, o čemu govori i Dobrić (2023). Dodatno, u junu 2022. godine Komisija je objavila i Model programa usklađenosti poslovanja sa propisima o zaštiti konkurencije.

I pored toga što izrada programa usklađenosti poslovanja nije zakonska obaveza za učesnike na domaćem tržištu, ona predstavlja preporuku Komisije, imajući u vidu da interni akti tog tipa predstavljaju pomoć učesnicima na tržištu da se pridržavaju propisa o zaštiti konkurencije u svom poslovanju, po ugledu na praksu nacionalnih tela za zaštitu konkurencije zemalja članica EU.

Smernice su namenjene svim tržišnim učesnicima, odnosno svim subjektima koji učestvuju u prometu dobara i usluga na domaćem tržištu. U skladu sa Smernicama, osnovni cilj izrade programa usklađenosti poslovanja je smanjenje rizika povrede konkurencije, što se postiže blagovremenom identifikacijom rizika i utvrđivanjem aktivnosti za njihovo otklanjanje. Na taj način, pored zaštite konkurencije, učesnici na tržištu značajno smanjuju verovatnoću da će im biti izrečene novčane kazne (do 10% ukupnog godišnjeg prihoda), građanske i krivične sankcije, naneta reputaciona šteta ili da će protiv njih biti podnete tužbe za naknadu štete. Drugim rečima, prednosti izrade i primene programa usklađenosti su višestruke i odnose se na smanjivanje rizika zaključivanja restriktivnih sporazuma, zloupotrebe dominantnog položaja i nedozvoljenih koncentracija.

Efikasan program usklađenosti treba da zadovolji kriterijume koji se odnose na adekvatnu identifikaciju rizika od povrede propisa, definisanje mera za njihovo ublažavanje, definisanje proceduralnog okvira i nadležnih lica, obezbeđivanje obuke zaposlenih, dostupnost pravne pomoći, uvođenje obaveze internog prijavljivanja povreda i informisanje Komisije o povredama konkurencije.
Takođe, Smernice imaju za cilj podizanje svesti o potrebi usklađivanja sa propisima o zaštiti konkurencije, razvoj kulture konkurencije, jednostavniju izradu internih programa (posebno za preduzeća sa ograničenim resursima) i jačanje fer konkurencije na tržištu, što ima za rezultat efikasnije tržište, niže cene i kvalitetnija dobra i usluge za potrošače.
KZK je, pored objavljenih Smernica, otišla korak dalje objavljivanjem Modela programa usklađenosti poslovanja sa propisima o zaštiti konkurencije. Model predstavlja skup uputstava namenjenih

učesnicima na tržištu za kreiranje i implementaciju programa usklađenosti. Model je komplementaran sa Smernicama i ima za cilj da olakša izradu i implementaciju programa usklađenosti poslovanja posebno za mala i srednja privredna društva, pri čemu data forma programa nije obavezujuća, već naprotiv, formu programa je neophodno prilagoditi specifičnostima tržišta i poslovanja datog učesnika na tržištu.

Iako su Smernice i Model programa usklađenosti poslovanja osmišljeni tako da učesnicima na tržištu pruže jasan okvir za identifikaciju i upravljanje rizicima od povrede propisa o zaštiti konkurencije, njihova primena u domaćem pravnom okviru ostaje ograničena na preporučenom soft-law nivou, odnosno na nivou mekog prava. Naime, domaći propisi ne predviđaju dodatne podsticaje niti olakšice za usvajanje i primenu programa usklađenosti poslovanja, pa u slučaju povrede propisa o zaštiti konkurencije postojanje adekvatnog i efikasnog programa usklađenosti ne predstavlja pravno relevantnu okolnost prilikom odmeravanja sankcija. Shodno tome, uspostavljanje programa usklađenosti interpretira se kao akt samoregulacije tržišnih učesnika, dok se prateći izdaci tretiraju troškovima samoregulacije. Upravo taj normativni jaz između sadržine programa i njegovog pravnog značaja i pravnih posledica predstavlja polazište za uporednopravnu analizu koja sledi.

Program usklađenosti poslovanja sa propisima o zaštiti konkurencije u uporednom pravu

U poslednje vreme brojne su inicijative usmerene na povećanje efikasnosti u sprovođenju propisa o zaštiti konkurencije, koje su rezultirale pojačanim kontrolama i povećanjem broja utvrđenih povreda i izrečenih novčanih kazni na nivou EU. Uz to, mnoge zemlje članice EU su takođe uvele i značajne podsticajne mere na nacionalnom nivou, za učesnike na tržištu koji su izradili i primenjuju programe usklađenosti poslovanja, o čemu govori i Ilić (2026), sa posebnim osvrtom na značajan napredak u definisanju podsticajnih mera u okviru nacionalnih pravnih okvira u Italiji, Španiji i Nemačkoj.

Italijanska agencija za zaštitu konkurencije (it. Autorità Garante della Concorrenza e del Mercato – AGCM) je u septembru 2018. godine usvojila Smernice o programima usklađenosti sa propisima o zaštiti konkurencije, koje definišu sadržinu tih programa i pružaju značajne podsticaje za njihovo usvajanje i primenu, propisujući da adekvatan i efikasan program može da posluži kao pravni osnov za ublažavanje sankcija. Dodatno, AGCM je u Smernicama eksplicitno navela i da samo formalno usvajanje programa nije dovoljno, već da agencija za zaštitu konkurencije očekuje i dokaze o njegovoj efikasnoj primeni u praksi (npr. angažovanje menadžmenta, procena rizika, obuka zaposlenih, praćenje i/ili revizija) kako bi se takav program mogao uzeti u obzir kao olakšavajuća okolnost. U slučaju da učesnik na tržištu dokaže da je program adekvatan i efikasan, može se kvalifikovati za smanjenje kazne u rasponu od 5% do 15% od ukupnog novčanog iznosa kazne. Do sada su AGCM i nadležni sudovi u Italiji u nekoliko slučajeva već primenili ublažavanje izrečenih sankcija zasnovanih na programu usklađenosti poslovanja. Najznačajnije, u slučaju Ondulati Nordest, AGCM je prvobitno odobrila smanjenje kazne od 5%, koje je naknadno revidirano 2024. godine i nakon sudske odluke preinačeno na 10%.
Špansko nacionalno telo za zaštitu konkurencije (esp. Comisión Nacional de los Mercados y la Competencia – CNMC) usvojilo je Smernice za program usklađenosti sa propisima o zaštiti konkurencije u junu 2020. godine. U skladu sa tim Smernicama, učesnicima na tržištu neće biti omogućeno smanjivanje kazne samom činjenicom da su usvojili program usklađenosti poslovanja. Taj program mora biti efikasan, što znači da mora da uključuje ključne elemente kao što su pravilan dizajn,

implementacija, praćenje i kanali za uzbunjivanje. Dodatno, poželjno je da program bude usvojen ex ante, odnosno pre konkretne povrede propisa o zaštiti konkurencije. Međutim, i u slučajevima kada je efikasan program usvojen ex post, kompanija takođe može očekivati da će joj kazna biti umanjena, iako će takvo smanjenje najverovatnije biti manje ili će biti podložno dodatnim uslovima. Iako španski Zakon o zaštiti konkurencije ne predviđa izričito usvajanje programa usklađenosti poslovanja kao olakšavajuću okolnost, u pravnoj praksi se postojanje efikasnog programa uzima u obzir prilikom odmeravanja sankcija. U slučaju Consulting Firms CNMC je kaznila 22 konsultantske firme sumom od ukupno 6,3 miliona evra zbog kartelskog sporazuma i odobrila smanjenje izrečene kazne od 10% jednoj od njih (Indra Consultoras), na osnovu toga što je implementirala efikasan program usklađenosti pre i tokom postupka.

Nemačka Savezna kancelarija za kartele (nem. Bundeskartellamt) smatrala je da je usklađenost poslovanja sa propisima o zaštiti konkurencije pravna obaveza, zbog čega nije uzimala u obzir ni postojanje ni kvalitet programa usklađenosti kao olakšavajuću okolnost prilikom utvrđivanja kazni. Međutim, došlo je do značajnih promena 2021. godine, kada je usvojen amandman na Nemački zakon o zaštiti konkurencije (GCA), kojim se odstupilo od tradicionalnog konzervativnog stava i kada su uvedeni značajni podsticaji za usvajanje programa usklađenosti poslovanja.

Najčešće finansijske aktivnosti kojima banke vrše povredu propisa o zaštiti konkurencije manifestuju se u vidu manipulacija referentnim kamatnim stopama. Jedan od najpoznatijih primera takve prakse je skandal sa manipulacijom Londonskom međubankarskom ponuđenom stopom (engl. LIBOR) i deviznim referentnim vrednostima iz 2012. godine. Slučaj sa LIBOR-om i deviznim tržištem usledio je neposredno nakon finansijske krize iz 2007/2008. godine i uključivao je bankarske službenike različitih banaka koji su zajednički radili na manipulisanju to jest dogovornom određivanju referentnih kamatnim stopama radi sopstvene koristi.

Za razliku od SAD, u Ujedinjenom Kraljevstvu nije bilo krivičnog gonjenja banaka kao pravnih lica u vezi sa optužbama za manipulaciju LIBOR-om i deviznim referentnim stopama. Razlog su regulatorna ograničenja koja se odnose na kažnjavanje pravnih lica i definisanja odgovarajućeg krivičnog dela za pravna lica. Reformom regulatornog okvira nadležnim telima bi se obezbedila mogućnost pokretanja krivičnih postupaka protiv banaka kao pravnih lica, kao što je to slučaj sa banaka koje stupaju u zabranjene dogovore radi manipulisanja referentnim stopama u cilju sticanja protivpravne koristi. U nedostatku odgovarajućeg krivičnog dela za pravna lica koje bi se primenilo na buduće manipulacije referentnim vrednostima, zakon o zaštiti konkurencije mogao bi pružiti osnov za izricanje visokih novčanih kazni bankama učesnicama. U slučaju utvrđivanja povrede konkurencije, učesnicima na tržištu (u ovom slučaju bankama) bi se mogle izreći i druge mere koje su strožije od same novčane kazne. Primer bi bile mere zabrane obavljanja delatnosti odgovornom licu (direktoru) i određivanje mera otklanjanja povrede. Jedna od mera otklanjanja povrede odnosila bi se na obavezu uvođenja programa usklađenosti poslovanja radi sprečavanja budućih manipulacija, uz sistem praćenja od strane regulatornih tela.
Dodatno, u junu 2012.godine Barclays banka je postigla poravnanje u iznosu od 453 miliona dolara sa regulatornim telima Ujedinjenog kraljevstava i SAD zbog manipulacije LIBOR-om u periodu od 2005. do 2009. godine. Tom prilikom postojeći (doduše neadekvatan) program usklađenosti bio je ključna tačka u pregovorima o poravnanju i predstavljao je osnovu za umanjenje kazne. Kako bi tržišni učesnik svoj program usklađenosti učinio adekvatnim i efikasnim može se odlučiti da samostalno sprovede

istragu postojanja kartela kako bi osigurao efikasnost svojih sistema kontrole. Ukoliko se interno otkrije nezakonito ponašanje ostvariće se pogodnosti postojanja programa usklađenosti i korišćenje programa oslobađanja.

Između ostalog, zbog toga i Evropska komisija (EK) podržava uvođenje programa usklađenosti poslovanja. EK ima značajnu ulogu u finansijskom i bankarskom sektoru EU u oblasti zaštiti konkurencije. Prema zvaničnim podacima EK u periodu od 2013. do 2023. godine novčane kazne u ukupnom iznosu od 3,9 milijardi evra izrečene su u sedam slučajeva. Prema istom izvoru, novčane kazne izrečene bankama predstavljaju čak 20% od ukupnog iznosa izrečenih kazni (19,3 milijarde evra). Na primer, 2013. godine EK je kaznila sedam banaka u ukupnom iznosu od 1,49 milijardi evra zbog učestvovanja u kartelu u vezi sa formiranjem EURIBOR-a (engl. Euro Interest Rate Derivatives (EIRD) case). Slično tome, EK je iste godine kaznila pet banaka u iznosu od 6 miliona evra zbog kartelskog sporazuma u vezi sa određivanjem cene finansijskih derivata.

Takođe, u maju 2021. godine EK je kaznila banke sa ukupno 371 miliona evra zbog učešća u kartelu prilikom trgovine evropskim državnim obveznicama. U kartelu je učestvovalo sedam banaka UniCredit, UBS, Bank of America, Natixis, RBS (NatWest) i Portigon (WestLB). Tom prilikom kažnjene su UniCredit (69,4 miliona evra), UBS (172,4 miliona evra) i Nomura (129, 5 miliona evra). Preostale četiri banke nisu kažnjene po različitim osnovama. RBS (NatWest) je dobio potpuni imunitet zbog otkrivanja kartela, čime je izbegnuta ukupna kazna od oko 260 miliona evra, Bank of America i Natixis nisu kažnjene budući da su izašle iz kartela više od pet godina pre nego što je Komisija započela istragu, dok Portigon (WestLB) nije ostvario neto promet u poslednjoj poslovnoj godini. Naknadno, nakon podnetih žalbi kazne su umanjene UniCredit na iznos od 65 miliona i Nomura na 125,6 miliona evra. Između ostalog, u teoriji je jasno istaknuto da bi ti i slični slučajevi u bankarskom sektoru bili predupređeni ili otkriveni znatno ranije da su u bankama postojali odgovarajući interni programi usklađenosti poslovanja.

Na osnovu prethodne analize može se zaključiti da su u većini država članica EU podsticaji usmereni, s jedne strane, na kontinuirano unapređenje i efikasniju primenu propisa o zaštiti konkurencije, a s druge strane, na uvođenje posebnih podsticajnih mera za usvajanje i efektivnu primenu programa usklađenosti poslovanja. Sadržina programa usklađenosti predviđena Smernicama KZK u suštinskom je smislu usklađena sa programima razvijenim u državama članicama EU i usmerena je ka jačanju primene propisa o zaštiti konkurencije. Međutim, pozitivni propisi o zaštiti konkurencije ne predviđaju podsticaje za usvajanje i primenu programa usklađenosti.

Regulatorni okvir, praksa komisije i programi usklađenosti poslovanja u sektoru bankarstva

Programi usklađenosti poslovanja banaka u EU suštinski predstavljaju interne pravne akte dizajnirane da spreče povredu propisa o zaštiti konkurencije, kao što su zaključivanje restriktivnih sporazumima, zloupotreba dominantnog položaja i/ili nedozvoljene koncentracije. Ti programi posebno ublažavaju visokorizične segmente poslovanja banaka poput razmene poslovnih informacija, određivanje naknada i uslova ponuda, obezbeđujući usaglašenost sa regulatornim standardima.

U Srbiji je NBS kao centralna banka ključna regulatorna institucija u okviru finansijskog i bankarskog sektora. Ključne aktivnosti NBS odnose se na: a) kontrolu i nadzor (supervizija) – izdaje dozvole za rad bankama i vrši stalnu kontrolu njihovog poslovanja; i b) regulacija – donosi podzakonske propise i

pravila kojih se banke moraju pridržavati, uključujući i standarde o kapitalu i upravljanju rizicima. Regulatorni okvir NBS, između ostalog, uređuje oblasti kontrole poslovanja banaka i upravljanje rizicima. Te oblasti su u velikoj meri usklađene sa međunarodnim standardima, odnosno Bazel III okvirom. S tim u vezi, NBS propisuje da banke moraju uspostaviti sveobuhvatan sistem upravljanja rizicima koji uključuje i proceduralni okvir, odgovarajuću organizacionu strukturu, kao i sistem unutrašnjih kontrola za praćenje i kontrolu svih rizika u poslovanju.

Uz to, NBS podzakonskim aktima uređuje funkciju usklađenosti poslovanja kao dela sistema unutrašnjih kontrola banke, kao i pojam rizika usklađenosti. Rizik usklađenosti jeste rizik koji nastaje usled neusklađenosti poslovanja banke sa zakonom, podzakonskim aktima, internim propisima, propisima o sprečavanju pranja novca i finansiranja terorizma, kao i sa pravilima struke i poslovne etike. Taj rizik obuhvata mogućnost izricanja regulatornih sankcija, finansijskih gubitaka, kao i narušavanja ugleda banke. U cilju adekvatnog praćenja rizika usklađenosti, podzakonska akta NBS propisuju i obavezu uspostavljanja posebne organizacione jedinice i nadležnih lica (engl. Compliance officer). Nadležnost tih lica se odnosi na definisanje proceduralnog okvira u vezi sa poslovnim aktivnostima (npr. program, metodologiju, plan aktivnosti, izveštavanje i ostale aktivnosti) koji se usvaja na nivou upravnog odbora banke.
Između ostalog, banke svojim programima i planovima usklađenosti poslovanja redovno, a najmanje jednom godišnje, identifikuju i procenjuju rizike poslovanja banke (npr. sankcija regulatornog tela, rizik od finansijskih gubitaka i reputacioni rizik, kao i rizik u vezi pojave novog bankarskog proizvoda odnosno novog procesa/prakse). S tim u vezi, funkcija usklađenosti poslovanja u bankama podrazumeva brojne procedure, od izrade internih akata banke, odnosno proceduralnog okvira u smislu usklađenosti sa zakonskim, podzakonskim i drugim obavezujućim pravnim aktima, uvođenje novih proizvoda i procesa, prigovora i pritužbi klijenata, angažovanje trećih lica, do procedure uspostavljanja poslovnih odnosa sa novim klijentima. U osnovi programa usklađenosti je identifikacija i mapiranje rizika, kao i načina upravljanja tim rizicima, izveštavanje i sankcionisanje nepoželjnog ponašanja u cilju izbegavanja kazni, narušavanja reputacije i kršenja regulatornog okvira. Daljom analizom moguće je povući određene paralele između propisa koji se odnose na zaštitu konkurencije i postojeće prakse u domaćem bankarskom sistemu.

Regulatorni okvir NBS ne prepoznaje rizik povrede konkurencije kao jedan od mogućih rizika. Zbog toga ovaj rizik nije u nadležnosti funkcije usklađenosti, niti bilo koje druge organizacione jedinice u banci poput funkcije upravljanja rizicima. To implicira da stroga zakonska regulativa centralne banke ne zahteva obavezno praćenje rizika povrede konkurencije, već bi ta kategorija rizika mogla da se podvede pod kategoriju ostali rizici. Time se bankama prepušta odluka o praćenju rizika povrede konkurencije i izrada programa usklađenosti poslovanja sa propisima o zaštiti konkurencije.

Domaće banke čine 25% bankarskog sektora, dok 75% tržišta pripada bankama u stranom vlasništvu. Imajući u vidu takvu strukturu, može se očekivati da će banke pristupi uspostavljanju i primeni programa usklađenosti sa popisima o zaštiti konkurencije biti različiti. Kod banaka koje posluju u okviru međunarodnih grupacija razvoj programa usklađenosti tipično je povezan sa politikama matičnih banaka i regulatornim okvirima zemalja porekla, dok su domaće banke u većoj meri samostalne u oblikovanju takvih internih akata. S tim u vezi, u dosadašnjoj praksi domaćih banaka ne može se govoriti o sistemski razvijenim formalizovanim programima usklađenosti sa propisima o zaštiti konkurencije.

Aktivnosti Komisije u bankarskom sektoru u prethodnom periodu odnosile su se na ispitivanje koncentracije i izdavanje rešenja o njihovom odobrenju. Međutim, u javno dostupnim izveštajima i odlukama Komisije ne uočavaju se podaci o obavljanim kontrolama i proverama kršenja konkurencije, niti podaci da su pokretani postupci kada je reč o restriktivnim sporazumima, zloupotrebama dominantnog položaja ili izuzeća restriktivnih sporazuma od kazni u tom sektoru. Dodatno, nema potvrde da su rađene sektorske analize koje su za predmet imale bankarski sektor. Na odsustvo kontrola Komisije u sektoru bankarstva ukazuje i činjenica da je, prema podacima NBS, stepen tržišne koncentracije meren HHI indeksom u segmentu kreditne aktivnosti bio u zoni umerene koncentracije tokom 2024. godine.

Dodatno, banke na domaćem tržištu nemaju značajnije podsticaje za usvajanje programa usklađenosti poslovanja kao što je to slučaj u pojedinim zemljama članicama EU, s obzirom da Komisija i sudovi nemaju pravni osnov da taj program eventualno koriste kao osnovu za umanjenje kazni. Zbog takvih pravnih i institucionalnih rešenja programi usklađenosti poslovanja nisu široko rasprostranjeni i nije u potpunosti iskorišćen njihov potencijal za jačanje konkurencije u sektoru bankarstva.

Podsticajne mere za uvođenje programa usklađenosti ne mogu se posmatrati izolovano, već kao deo šireg sistema zaštite konkurencije. Da bi mere imale stvarni efekat, potrebno je obezbediti određene institucionalne i regulatorne uslove: jačanje kulture konkurencije kroz saradnju Komisije i NBS, razvijanje svesti učesnika na tržištu odnosno banaka o značaju zaštite konkurencije i uključivanje rizika povrede konkurencije u postojeće sisteme upravljanja rizicima u bankama. Institucionalna saradnja Komisije i NBS mogla bi se odnositi na razmenu podataka, savetodavne uloge i aktivnosti na regulatornoj usklađenosti. U tom smislu, ukoliko bi se uspostavila veza između smernica koje preporučuje Komisija i striktne regulative NBS, stvorila bi se institucionalna i regulatorna podrška u procesu uvođenja i primene programa usklađenosti poslovanja u cilju zaštite tržišne konkurencije i obezbeđivanja njenih pozitivnih efekata u sektoru bankarstva.

Takođe, Komisija bi mogla da pojača sopstvenu promociju i primenu propisa kroz preventivne i detektivne kontrole u skladu sa međunarodnim trendovima. U tom slučaju banke bi uvidele potrebu za izradom programa usklađenosti poslovanja kao alata za upravljanje rizikom povrede konkurencije i osnov za poštovanje propisa iz oblasti zaštite konkurencije.
U cilju pronalaženja kompromisnog rešenja za banke, kada je u pitanju primena Smernica Komisije i propisa NBS, potrebno je razmotriti mogućnost prilagođavanja modela koji predlaže Komisija tako da program usklađenosti poslovanja istovremeno pomogne u identifikaciji, praćenju i upravljanju rizika na koje upućuje i NBS ili vice versa. Tako bi se izbegla izrada dva okvira i posebnih procedura za potrebe Komisiju i NBS, odnosno postojala bi mogućnost da jednom procedurom budu ispoštovani regulatorni zahtevi obe institucije kada je reč o adekvatnom upravljanju rizicima iz oblasti zaštite konkurencije. Takođe, na taj način bi se racionalizovala upotreba resursa banaka i značajno uticalo na efikasnost ovih procesa, kao i na celovitost i sveobuhvatnost upravljanja rizicima od mogućih izricanja regulatornih sankcija, finansijskih gubitaka, kao i narušavanja ugleda banke.

Zaključna razmatranja

KZK je izdavanjem Smernica i Modela ostvarila napredak u podizanju svesti o značaju primene prava konkurencije i razvoja kulture zaštite konkurencije u Srbiji, čime se KZK u značajnoj meri usaglasila sa novom praksom u EU. Sadržina programa usklađenosti poslovanja u Smernicama KZK je praktično identična sadržini programa koji su razvijeni u zemljama članicama EU, koji za krajnji cilj imaju jačanje aktivnosti na primeni propisa o zaštiti konkurencije.

Ono što predstavlja jednu od ključnih razlika jeste činjenica da učesnici na domaćem tržištu, a time i banke, nemaju podsticaje za usvajanje i primenu programa usklađenosti poslovanja kao što je to slučaj u pojedinim zemljama članicama EU, jer KZK i Upravni sud nemaju pravni osnov da taj program koriste kao osnov za umanjenje kazni, odnosno da postojanje programa uzimaju u obzir prilikom određivanja sankcija za povredu propisa o zaštiti konkurencije.

Dodatno, s obzirom da učesnici na tržištu EU podležu efikasnim kontrolama koje sprovode tela nadležna za zaštitu konkurencije, povećava se verovatnoća da će i banke biti kažnjene usled eventualnih povreda propisa o zaštiti konkurencije. Na taj način, stvoreni su snažni podsticaji za usvajanje i primenu adekvatnih programa usklađenosti poslovanja, koji mogu da predstavljaju i pravni osnov za umanjenja kazni i imaju značajan uticaj na povećanje konkurentnosti između banaka.

Na osnovu razmatranja u radu, može se zaključiti da je prvenstveno potrebno razviti svest o postojanju rizika od povreda konkurencije u bankarskom sektoru kroz koordiniranu institucionalnu saradnju KZK i NBS, kao i kroz uključivanje rizika od povrede prava konkurencije u okvire za upravljanje rizicima na nivou banaka. Dodatno, potrebno je uvođenje internih i eksternih, preventivnih i detektivnih kontrola od strane KZK, čime bi se posebno dalo na značaju potrebi poštovanja propisa o zaštiti konkurencije. Na taj način dalje, uvođenje podsticajnih mera za usvajanje i primenu programa usklađenosti poslovanja po ugledu na uporedna tela za zaštitu konkurencije dobilo bi svoj puni značaj i predstavljao bi ozbiljan argument za uvođenje i primenu programa usklađenosti u bankama. Proces bi u nastavku podrazumevao kontinuiranu edukaciju zaposlenih u cilju razumevanja konteksta i značaja zaštite konkurencije. Posledično, praćenje i revizija aktivnosti banaka u oblasti zaštite konkurencije, kao i naknadne provere predstavljaju sledeći korak za uspostavljanje efikasnog sistema upravljanja rizikom povrede propisa, a time i jačanja konkurencije u okviru sektora.

Međutim, ukoliko izostanu institucionalna rešenja, kontrolni mehanizmi i podsticaji za usvajanje i primenu programa usklađenosti poslovanja, izrada tih programa bi u velikoj meri predstavljala samo još jednu normu bez efektivne primene, odnosno regulatorni trošak. Taj trošak u praksi može da ima za posledicu potpuno suprotne efekte od nameravanih, odnosno može da umanji konkurentnost učesnika u bankarskom sektoru i da postane prepreka daljem razvoju.

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DOI: 10.5937/bankarstvo2602166P

Date of receival: 04.05.2026.
Date of acceptance: 18.08.2026.

COMPETITION COMPLIANCE PROGRAMMES IN THE BANKING SECTOR: A NEW TREND IN STRENGTHENING COMPETITION IN SERBIA OR A REGULATORY COST?

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Summary: *The Commission for the Protection of Competition has made a significant step forward in developing the framework for business compliance with competition law by publishing the Guidelines for the Development of Competition Compliance Programs and the Model of Compliance Program, bringing it closer to the European Union competition law. This paper raises the question of the extent to which this normative step has been followed by practical results and whether existing institutional and regulatory conditions enable the effective implementation of competition compliance programs in the domestic banking sector. Special attention is paid to the analysis of comparative legal solutions in the member states of the European Union, where incentive mechanisms exist and can lead to a reduction of penalties for infringement of competition law in the case of compliance programs. It is concluded that, in the absence of adequate institutional incentives and effective enforcement of competition law in the banking sector, competition compliance programs do not have significant potential to strengthen competition, and their adoption may be a regulatory cost.*

Keywords: Competition Protection; Commission for Protection of Competition; Competition Compliance Program; Banking Sector; Incentive Measures.

JEL classification: K21, K23, G21

Introduction

The adoption of internal competition compliance programs based on so-called soft law is a new trend in EU member states. These programs are internal legal acts of market participants in the form of internal rules and procedures based on a risk assessment of potential violations of competition law, aimed at ensuring compliance with competition regulations and minimizing risks that may arise in the case of such violations (e.g., regulatory, reputational, and financial risks). In this context, the Commission for Protection of Competition (CPC) in Serbia adopted the General Guidelines for the Development of Competition Compliance Programs (Guidelines) in 2021, followed by the Model of Competition Compliance Program (Model) in 2022, designed for all market participants.

This paper examines whether the adoption and implementation of these compliance programs, following the example of EU member states, could have a significant impact on enhancing competition in the banking sector, or whether, in practice, it might lead to minimal results, reducing to a mere regulatory requirement that imposes additional costs on market participants and ultimately decreases competitiveness.

The paper, among others, relies on the work of Ilić (2026), which discusses the role and relationship between compliance and competition protection in general. This paper further focuses on these concepts in the banking sector. Namely, the regulatory framework of the National Bank of Serbia (NBS), the existing practice of the CPC when it comes to banks, as well as the issue of their institutional cooperation are being discussed. In addition, the paper includes a sectoral analysis of the compliance of banks' operations with competition rules, with a focus on the possibility for the compliance function of banks to identify and include the risk of competition infringement in existing risk management systems.

The structure of the paper follows the set research question, with the second part analyzing the content and purpose of compliance programs, while the third part provides a comparative legal overview of relevant regulatory solutions and case law, with particular emphasis on the experiences of EU member states. The fourth part is dedicated to the analysis of the existing institutional and legal framework in Serbia, including the secondary legislation of the CPC and the NBS, as well as the business practices of banks regarding the development and implementation of compliance programs with competition law regulations. The final section of the paper contains concluding considerations.

Content and Purpose of Competition Compliance Programs

Competition law regulations, among other things, govern the behavior of economic entities in the relevant market by generally prohibiting restrictive agreements and the abuse of dominant market position, as well as enabling the control of concentrations. Ristić and Trifunović (2022) argue that the primary goal of these regulations is to increase competitive pressure in the market, which in turn promotes economic progress and, particularly, consumer welfare. Compliance with these regulations entails organizing business operations in a way that minimizes the risk of violating competition law, which is directly linked to the more effective realization of the core objectives of competition law.

Furthermore, this compliance can contribute to increasing legal certainty in business, preventing financial and reputational consequences of legal violations, and preserving trust and market position. In line with trends observed within the OECD and the European Union, particularly with regard to strengthening the enforcement of competition law, the CPC in Serbia issued Guidelines for Developing Compliance Programs with Competition Law Regulations in December 2021, with the aim, among other things, of raising awareness about the importance of enforcing competition law and developing a culture of competition protection in Serbia, as discussed by Dobrić (2023). Additionally, in June 2022, the Commission published a Model Compliance Program with Competition Law Regulations. Although the development of a compliance program is not a legal obligation for participants in the domestic market, it is a recommendation from the Commission, given that such internal acts provide assistance to market participants in ensuring compliance with competition law, following the practice of national competition authorities in EU member states.

The Guidelines are intended for all market participants, i.e., all entities engaged in the trade of goods and services in the domestic market. According to the Guidelines, the primary goal of developing a compliance program is to reduce the risk of violating competition law, which is achieved through the timely identification of risks and the implementation of activities to address them. In this way, in addition to protecting competition, market participants significantly reduce the likelihood of incurring fines (up to 10% of their total annual turnover), civil and criminal sanctions, reputational damage, or being subject to damage claims. In other words, the benefits of developing and implementing a compliance program are numerous and relate to reducing the risk of entering into restrictive agreements, abusing a dominant position, and engaging in prohibited concentrations.

An effective compliance program must meet criteria related to the adequate identification of the risks of violating regulations, defining measures to mitigate those risks, establishing procedural frameworks and responsible individuals, providing employee training, ensuring legal assistance availability, implementing internal reporting obligations for violations, and informing the Commission about competition law violations.

Additionally, the Guidelines aim to raise awareness of the need for compliance with competition law, develop a competition culture, simplify the development of internal programs (especially for businesses with limited resources), and enhance fair competition in the market, resulting in a more efficient market, lower prices, and higher-quality goods and services for consumers.

In addition to the Guidelines, the CPC went a step further by publishing the Model of Competition Compliance Program. The Model is a set of instructions intended for market participants to create and

implement their compliance programs. The Model is complementary to the Guidelines and aims to facilitate the development and implementation of compliance programs, particularly for small and medium-sized enterprises, with the form of the program not being mandatory. On the contrary, the form must be adapted to the market and business specifics of each individual market participant.

Although the Guidelines and Model are designed to provide market participants with a clear framework for identifying and managing competition law violation risks, their application within the domestic legal framework remains limited to a soft-law level. That is, domestic regulations do not provide additional incentives or exemptions for adopting and implementing compliance programs, meaning that in the event of a competition law violation, the existence of an adequate and effective compliance program does not constitute a legally relevant circumstance when determining sanctions.

Accordingly, the establishment of a compliance program by market participants is interpreted as act of self-regulation, while the associated costs are treated as costs of self-regulation. This normative gap between the content of the program and its legal significance and legal consequences serves as the basis for the comparative legal analysis that follows.

Competition Compliance Programs in Comparative Law

Recently, numerous initiatives have been aimed at increasing the efficiency of competition law enforcement, leading to tightened controls and an increase in the number of violations identified and financial penalties imposed within the EU. Alongside this, many EU member states have introduced significant incentives at the national level for market participants who develop and implement compliance programs, as discussed Ilić (2026) with the special attention to Italy, Spain, and Germany, since these countries have made significant progress in defining incentive measures within their national legal frameworks.

The Italian Competition Authority (it. Autorità Garante della Concorrenza e del Mercato – AGCM) adopted Guidelines on Compliance Programs with Competition Law Regulations in September 2018. These guidelines define the content of such programs and offer significant incentives for their adoption and implementation, stipulating that an adequate and effective program can serve as a legal basis for reducing sanctions. Furthermore, AGCM explicitly stated in the Guidelines that mere formal adoption of the program is insufficient; the competition authority expects evidence of its effective implementation in practice (e.g., management involvement, risk assessment, employee training, monitoring, and/or auditing) in order for such a program to be considered as a mitigating factor. If a market participant demonstrates that the program is adequate and effective, it may qualify for a reduction of the fine ranging from 5% to 15% of the total penalty. To date, the AGCM and relevant courts in Italy have already applied the reduction of sanctions based on the existence of a compliance program in several cases. Notably, in the Ondulati Nordest case, the AGCM initially approved a 5% reduction in the fine, which was later revised in 2024, following a court ruling, to a 10% reduction.

Spain National Competition Authority (esp. Comisión Nacional de los Mercados y la Competencia – CNMC) adopted Guidelines for Compliance with Competition Law Regulations in June 2020. According to these guidelines, market participants will not be allowed to reduce their fines simply by having adopted a compliance program. The program must be effective, meaning that it must include key elements such as proper design, implementation, monitoring, and whistleblower channels.

Additionally, it is preferable that the program be adopted ex ante, i.e., before the specific violation of competition law occurs. However, even in cases where an effective program was adopted ex post, companies can still expect a reduction in their fine, although this reduction is likely to be smaller or subject to additional conditions. Although Spanish competition law does not explicitly recognize the adoption of a compliance program as a mitigating circumstance, in legal practice, the existence of an effective program is taken into account when determining sanctions. In the Consulting Firms case, when the CNMC fined 22 consulting firms a total of 6.3 million euros for participating in a cartel and granted a 10% reduction in the fine to one of them (Indra Consultoras) because it had implemented an effective compliance program before and during the procedure.

Germany's Federal Cartel Office (ger. Bundeskartellamt) considered business compliance with competition law as a legal obligation, meaning that it did not take the existence or quality of compliance programs into account as a mitigating factor when determining fines. However, significant changes occurred in 2021, when it was adopted amendment to the German Competition Act (GCA), by which Germany has moved further from its traditionally conservative stance and introduced significant incentives for the adoption of compliance programs.

In the banking sector, the most frequent financial activities that lead to competition law violations manifest in the manipulation of reference interest rates. One of the most famous examples of such practices is the 2012 LIBOR (London Interbank Offered Rate) and foreign exchange benchmark manipulation scandal. This case, which followed directly after the 2007/2008 financial crisis, involved bank officers from various institutions collaborating to manipulate, i.e., collectively set, reference interest rates for their own benefit.

Unlike the United States, the United Kingdom did not pursue criminal charges against banks as legal entities for LIBOR and foreign exchange reference rate manipulation. The reason for this was regulatory limitations related to penalizing legal entities and defining a criminal offense for them. Reforming the regulatory framework would allow the relevant authorities to initiate criminal proceedings against banks as legal entities, as is the case with banks entering into prohibited agreements to manipulate reference rates for illicit gain. In the absence of an appropriate criminal offense applicable to legal entities for future manipulation of reference values, the competition law could provide the basis for imposing high fines on participating banks. In the case of a competition law violation, market participants (in this case, banks) could be subjected to other measures that are stricter than a mere fine. An example would be measures prohibiting the responsible person (the director) from engaging in certain activities, along with measures to remedy the violation. One such remedial measure could include the obligation to introduce a business compliance program to prevent future manipulations, with ongoing monitoring by regulatory bodies.

Furthermore, in June 2012, Barclays Bank reached a settlement with regulatory authorities in the United Kingdom and the United States in the amount of 453 million dollars for its role in manipulating LIBOR between 2005 and 2009. At that time, an existing (though inadequate) compliance program played a key role in the settlement negotiations and served as the basis for a fine reduction. To make their compliance programs adequate and effective, market participants may choose to independently investigate the existence of cartels to ensure the efficiency of their control systems. If illegal behavior is discovered internally, the advantages of having a compliance program and using leniency programs will be realized.

In addition, the European Commission (EC) supports the introduction of business compliance programs. The EC plays a significant role in the financial and banking sectors of the EU in terms of competition protection. According to official EC data, between 2013 and 2023, financial penalties amounting to 3.9 billion euros were imposed in seven cases. According to the same source, fines imposed on banks account for nearly 20% of the total amount of fines (19.3 billion euros). For instance, in 2013, the EC fined seven banks a total of 1.49 billion euros for participating in a cartel related to case EURIBOR (Euro Interest Rate Derivatives) setting. Similarly, in the same year, the EC fined five banks a total of 6 million euros for a cartel agreement concerning the pricing of financial derivatives.

In May 2021, the EC fined banks a total of 371 million euros for participating in a cartel involving the trade of European government bonds. The cartel involved seven banks: UniCredit, UBS, Bank of America, Natixis, RBS (NatWest), and Portigon (WestLB). The fines were reduced after appeals, with UniCredit's fine reduced to 65 million euros and Nomura's to 125.6 million euros. In theory, these and similar cases in the banking sector would have been prevented or detected much earlier had the banks had adequate internal compliance programs in place.

Based on the previous analysis, it can be concluded that in most EU member states, incentives are directed, on the one hand, towards continuous improvement and more effective enforcement of competition law and, on the other hand, towards introducing special incentives for adopting and effectively implementing business compliance programs. The content of the compliance program as outlined in the CPC Guidelines is substantially aligned with the programs developed in EU member states and is aimed at strengthening the enforcement of competition law. However, positive competition law regulations do not provide incentives for adopting and implementing compliance programs.

Regulatory Framework, Commission Practice, and Compliance Programmes in the Banking Sector

Compliance programmes of banks within the EU essentially constitute internal legal instruments designed to prevent infringements of competition law, such as the conclusion of restrictive agreements, abuse of a dominant position, and/or unlawful concentrations. These programmes are particularly aimed at mitigating high-risk areas of banking operations, such as the exchange of business information, the setting of fees and offer conditions, thereby ensuring conformity with applicable regulatory standards.

In Serbia, the National Bank of Serbia (NBS), as the central bank, is the key regulatory institution within the financial and banking sector. Its principal activities relate to: (a) control and supervision – issuing banking licences and conducting ongoing oversight of banks' operations; and (b) regulation – adopting by-laws and rules with which banks must comply, including standards relating to capital adequacy and risk management.

The regulatory framework of the NBS, inter alia, governs the areas of banking supervision and risk management. These areas are to a large extent aligned with international standards, notably the Basel III framework. In this regard, the NBS requires banks to establish a comprehensive risk management system, including an appropriate procedural framework, adequate organisational structure, and an internal control system for monitoring and controlling all risks arising from banking operations.

In addition, through its secondary legislation, the NBS regulates the compliance function as part of a bank's internal control system, as well as the concept of compliance risk. Compliance risk is the risk arising from a bank's failure to operate in accordance with laws, by-laws, internal regulations, anti-money laundering and counter-terrorist financing rules, as well as professional standards and business ethics. Such risk encompasses the possibility of regulatory sanctions, financial losses, and reputational damage to the bank. In order to ensure adequate monitoring of compliance risk, NBS by-laws also prescribe the establishment of a dedicated organisational unit and responsible officers (Compliance Officers). Their competences include defining the procedural framework relating to business activities (e.g. programmes, methodologies, action plans, reporting, and related activities), which is adopted at the level of the bank's management board.

Among other matters, banks, through their compliance programmes and plans, regularly—and at least annually—identify and assess operational risks, such as the risk of regulatory sanctions, financial losses, reputational risks, as well as risks connected with the introduction of new banking products or new processes/practices. In this respect, the compliance function within banks encompasses numerous procedures, ranging from the drafting of internal acts and ensuring conformity with statutory, regulatory, and other binding legal instruments, to the launch of new products and processes, handling customer complaints, engaging third parties, and establishing business relationships with new clients. At the core of any compliance programme lies the identification and mapping of risks, the methods for managing such risks, reporting obligations, and the sanctioning of undesirable conduct, all with a view to avoiding penalties, reputational harm, and breaches of the regulatory framework. Further analysis reveals certain parallels between competition law rules and existing practices within the domestic banking system.

The regulatory framework of the NBS does not expressly recognise the risk of competition law infringement as a distinct category of risk. Consequently, this risk does not fall within the formal remit of the compliance function, nor of any other organisational unit within a bank, such as the risk management function. This implies that the strict legal framework established by the central bank does not require mandatory monitoring of competition law risks; rather, such risks could only be subsumed under the residual category of "other risks." Accordingly, banks are left to decide whether to monitor competition law risks and whether to develop compliance programmes relating to competition law.
Domestic banks account for 25% of the banking sector, while 75% of the market belongs to foreign-owned banks. In light of such market structure, differing approaches to the establishment and implementation of competition compliance programmes may reasonably be expected. In banks operating within international banking groups, the development of compliance programmes is typically linked to the policies of parent institutions and the regulatory frameworks of their home jurisdictions, whereas domestic banks enjoy greater autonomy in designing such internal instruments. In this context, the current practice of domestic banks does not indicate the existence of systematically developed and formalised competition compliance programmes.

The activities of the Commission in the banking sector during the previous period have primarily related to merger control and the issuance of decisions approving concentrations. However, publicly available reports and decisions of the Commission reveal no significant data concerning inspections or investigations into competition law infringements, nor evidence of proceedings relating to restrictive agreements, abuses of dominance, or exemptions from fines in this sector. Furthermore, there is no confirmation that sector inquiries concerning the banking sector have been conducted.

The absence of Commission enforcement activity in the banking sector is further illustrated by the fact that, according to NBS data, the level of market concentration measured by the HHI index in the lending segment remained within the zone of moderate concentration during 2024.

Moreover, banks operating in the domestic market do not have substantial incentives to adopt compliance programmes, unlike in certain EU Member States, since neither the Commission nor the courts have a legal basis to use such programmes as grounds for mitigating fines. Owing to these legal and institutional arrangements, compliance programmes are not widely implemented, and their full potential for strengthening competition in the banking sector has not been realised.

Incentive measures for the introduction of compliance programmes cannot be viewed in isolation, but rather as part of a broader competition protection system. For such measures to have genuine effect, certain institutional and regulatory preconditions must be ensured: strengthening the culture of competition through cooperation between the Commission and the NBS, raising awareness among market participants—namely banks—of the importance of competition protection, and incorporating competition law risks into existing banking risk management systems. Institutional cooperation between the Commission and the NBS could include data exchange, advisory functions, and activities aimed at regulatory alignment. In that sense, if a connection were established between the guidelines recommended by the Commission and the strict regulatory framework of the NBS, institutional and regulatory support would be created for the process of introducing and implementing compliance programmes with a view to protecting market competition and ensuring its beneficial effects in the banking sector.

Likewise, the Commission could strengthen its own advocacy and enforcement of competition rules through preventive and detective controls, in line with international trends. In such a case, banks would recognise the need to develop compliance programmes as tools for managing competition law risks and as a basis for ensuring compliance with competition regulations.

In order to identify a balanced solution for banks with regard to the simultaneous application of the Commission's Guidelines and NBS regulations, it is necessary to consider adapting the model proposed by the Commission so that the compliance programme simultaneously assists in identifying, monitoring, and managing the risks recognised by the NBS, or vice versa. In this way, the need to develop two separate frameworks and distinct procedures for the purposes of the Commission and the NBS would be avoided. Instead, a single procedure could satisfy the regulatory requirements of both institutions with respect to the adequate management of competition-related risks. Such an approach would also rationalise the use of banking resources and significantly improve the efficiency of these processes, as well as the coherence and comprehensiveness of risk management concerning possible regulatory sanctions, financial losses, and reputational harm.

Concluding Remarks

By issuing the Guidelines and the Model, the Commission for Protection of Competition (CPC) has made progress in raising awareness of the importance of the enforcement of competition law and the development of a culture of competition protection in Serbia, thereby aligning itself to a significant extent with contemporary practice within the European Union. The substance of the compliance programme set out in the CPC Guidelines is practically identical to the programmes developed in

EU Member States, whose ultimate objective is to strengthen activities relating to the enforcement of competition law rules.
One of the key differences, however, lies in the fact that market participants in the domestic market, including banks, do not have incentives to adopt and implement compliance programmes comparable to those existing in certain EU Member States. This is because the CPC and the Administrative Court lack a legal basis to use such programmes as grounds for reducing fines, or to take their existence into account when determining sanctions for infringements of competition law.

Furthermore, since market participants within the EU are subject to effective inspections and enforcement measures conducted by competition authorities, the likelihood increases that banks will be sanctioned in the event of breaches of competition rules. In this manner, strong incentives have been created for the adoption and implementation of adequate compliance programmes, which may also serve as a legal basis for fine reductions and have a significant impact on increasing competitiveness among banks.

Based on the considerations presented in this paper, it may be concluded that priority should be given to developing awareness of the risk of competition law infringements in the banking sector through coordinated institutional cooperation between the CPC and the National Bank of Serbia (NBS), as well as through the inclusion of competition law risks within banks' risk management frameworks. In addition, the introduction of internal and external, preventive and detective controls by the CPC is necessary, thereby further emphasising the importance of compliance with competition law rules.
Thereafter, the introduction of incentive measures for the adoption and implementation of compliance programmes, modelled on comparative competition authorities, would acquire its full significance and would constitute a serious argument in favour of introducing and applying such programmes in banks. The subsequent phase would entail the continuous education of employees in order to ensure an understanding of the context and significance of competition protection. Consequently, the monitoring and review of banking activities in the field of competition protection, together with follow-up inspections, represent the next step towards establishing an effective system for managing the risk of regulatory infringements and, accordingly, strengthening competition within the sector.

However, in the absence of appropriate institutional solutions, control mechanisms, and incentives for the adoption and implementation of compliance programmes, the drafting of such programmes would largely amount to yet another formal rule without effective application, namely a regulatory cost. In practice, such cost may produce effects entirely contrary to those intended, by reducing the competitiveness of market participants in the banking sector and becoming an obstacle to further development.

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