

Kluwer Competition Law Blog

Main Developments in Competition Law and Policy 2020: Serbia

Dragan Gajin (Dokleštic Repic & Gajin) · Thursday, January 21st, 2021

What were competition law developments in Serbia during 2020 worth mentioning and what to keep an eye on 2021?

Merger control

Merger notification thresholds remain unchanged

A well-known trait of Serbia's merger control regime is [extremely low merger filing thresholds](#) – they are so low, in fact, that [around a half of all merger notifications in Serbia concern transactions where the target has no turnover on the local market](#).

Such low merger filing thresholds, naturally, lead to a high number of merger control decisions – around 150 each year. Prior to 2020, the number of merger control decisions in Serbia was constantly rising, with a peak in 2019.

Did this trend continue in 2020? We don't know at the moment, as the official numbers for the previous year are yet to be published. Due to a slowdown in transactions due to COVID-19, it is quite possible that the trend of the rising number of merger clearances paused in 2020.

Three new Phase II probes

While the bulk of transactions notified to the Serbian NCA end up cleared in Phase I, a handful also reach an in-depth, Phase II merger investigation. During 2020, the Serbian NCA afforded three transactions such scrutiny:

- **Agromarket doo – Galenika-Fitofarmacija ad.** The transaction concerned the market for the production and supply of pesticides in Serbia. Both parties were important players in this market, with a combined market of 46%. Following a Phase II probe, the NCA cleared the combination unconditionally.
- **Kingspan Holding Netherlands B.V. – TeraPlast S.A.** This Phase II merger probe, involving the planned takeover of the steel division of the Romanian company TeraPlast S.A., is still underway. The planned combination concerns two markets: 1) the production and supply of foam sandwich panels and 2) the production and supply of mineral fibre sandwich panels. There is a

significant overlap between the parties on the Serbian market – their combined market share would exceed 40%

- **Kingspan Holding Netherlands B.V. – Trimo, arhitekturne rešitve, d.o.o.** This Phase II merger probe, also involving Kingspan, concerns the planned takeover of a company active in the production and supply of mineral fibre sandwich panels. Post-transaction, the combined market share of the parties in Serbia would be between 50% and 60%. However the NCA decides this case, it is certain it will view it in conjunction with Kingspan's planned takeover of TeraPlast's steel division, also active on the market for mineral fibre sandwich panels in Serbia.

Gun-jumping probe in the pharma sector

So far, there has been only one fine for gun-jumping in Serbia, which puts a question mark on the Serbian NCA's resolve to pursue those who implement a notifiable transaction without its approval. Perhaps in a bid to show such resolve, the NCA has started a gun-jumping investigation in the pharma sector.

In the investigation, the NCA is probing whether the acquisition of a pharmacy business in Serbia through a public-private partnership was supposed to be notified in the merger control procedure. In the light of this case, it remains to be seen whether the 2017 fine for gun-jumping will still be the only such fine in the NCA's practice.

Antitrust

Four new infringement decisions...

As we are used to, the Serbian NCA also had its share of dawn raids and antitrust investigations in 2020. By the year's end, the NCA had issued four new infringement decisions:

- **Price fixing in the technical inspection of vehicles.** The Serbian competition watchdog established that 11 providers of technical inspection of vehicles in the town of ?a?ak had agreed to fix the price of their services. What made the job easier for the NCA was the existence of a written agreement between the parties to this end. Upon establishing their participation in the infringement, the NCA fined all 11 companies.
- **Price fixing and info sharing in the technical inspection of elevators.** In another investigation concerning public procurement, the Serbian competition authority found that two companies from the town of Babušnica, active in the maintenance of elevators, had agreed to fix their prices and share other sensitive business information. Both companies ended up with an antitrust fine.
- **RPM on the market for baby equipment (Keprom).** In the first of two decisions concerning the market for baby equipment, the NCA established that, in its agreements with several of its customers, the wholesaler of baby equipment Keprom had inserted resale price maintenance provisions. The NCA viewed this as a hardcore restriction and fined Keprom and four of its customers.
- **RPM on the market for baby equipment (Yuglob).** In another decision involving resale price-fixing in the sale of baby products, the NCA fined Yuglob and several of its distributors for RPM. This case confirmed the NCA's standpoint that it views RPM as a hardcore restriction and one which frees the NCA from establishing both the relevant market and negative effects of the contentious conduct.

...and even more new investigations

While in 2020 it completed four antitrust investigations, during the same period it opened even more new investigations. All but one, the investigations concerned alleged restrictive agreements, with only one abuse of dominance probe:

- Alleged RPM involving Imlek, a leading Serbian dairy producer;
- Alleged RPM involving Apatinska pivara, a leading Serbian brewery (part of Molson Coors);
- Another alleged bid-rigging case, concerning hazardous waste disposal;
- An abuse of dominance investigation against the operator of a bus station;
- Three RPM investigations concerning the retail of consumer electronics (including a probe [why consumer electronics are cheaper in Hungary than in Serbia](#) and an investigation against the [Serbian distributor of Nespresso machines](#));
- An RPM investigation regarding the sale of Audi cars in Serbia.

Since it has become common for the Serbian NCA to open more investigations during a year than it manages to close, it remains to be seen how in the coming period it will deal with the residual caseload from the previous years.

State aid

Still without an incompatibility decision

In 2019, Serbia got a [new State Aid Control Act](#) and a new [State Aid Commission](#). It was therefore interesting to see how the new setup will affect State aid enforcement in Serbia. So, what was the effect?

Indeed, the quality of State aid decisions seems to have improved, with the State Aid Commission now giving more detailed reasons for its decisions. Nevertheless, perhaps the main weak point of Serbia's State aid enforcement – a lack of incompatibility decisions – has remained. To this date, and after several years of State aid enforcement, Serbia is yet to see a decision declaring a State aid measure incompatible.

State aid for attracting investments continues

From a substantive point of view, the most interesting State aid decisions in Serbia concern government support to prospective investors. For instance, during 2020 Serbia granted EUR 41 million of aid to Toyo Tire, the Japanese tire manufacturer. The subsidy was support for Toyo Tire's planned investment in Serbia in the amount of close to EUR 400 million, scheduled to employ more than 500 people.

So, if you would like to invest in a new facility, and would not mind getting State aid for that – come to Serbia.

Legislative reform on hold

Back in 2019, a [draft of a new Serbian Competition Act](#) was published, leading to expectations that

in 2020 Serbia will get brand new competition legislation. In the end, this did not materialize – the Competition Act of 2009, amended in 2013, remains to be the law of the land.

Since the draft of the new legislation contains some welcome changes – such as the introduction of self-assessment for restrictive agreements – hope remains that this legislative reform will not remain dead in the water.

What to keep an eye on in 2021?

- **Legislative reform.** The main thing to watch out for in 2021 is possible legislative reform – the work on the new law stalled during 2020, which can be justified by the uncertainties and havoc caused by the COVID-19 outbreak.
- **Merger control.** The Serbian competition law landscape will likely continue to be dominated by a large number of merger cases. Apart from plain vanilla Phase I clearances, will there also be some interesting Phase II probes?
- **How will the NCA handle the rising number of antitrust cases?** As the number of new antitrust cases in Serbia regularly exceeds the number of closed investigations, it will be interesting to see how the NCA will manage its resources to be able to both start new cases and close the pending ones.

A first version of the post can be found [here](#).

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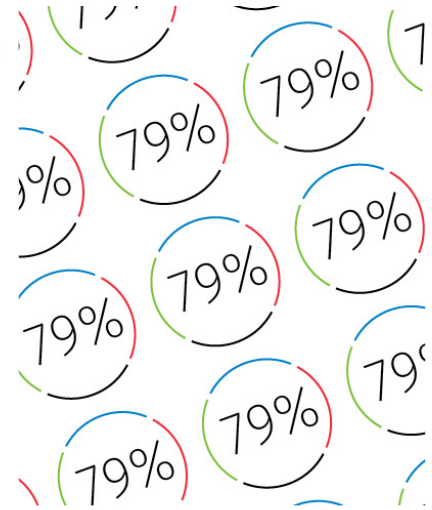
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