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# Kluwer Competition Law Blog

## Gun-Jumping Fines in Serbia: A Paper Tiger?

Dragan Gajin (Dokleštic Repic & Gajin) · Thursday, December 8th, 2022

In the last couple of months alone, the Serbian national competition authority (NCA) has started as many as three new gun-jumping investigations. The investigations relate to transactions which parties failed to notify in Serbia even though the Serbian merger filing thresholds were apparently exceeded.

On surface, this may indicate an increased risk for parties who neglect to file their concentration to the Serbian competition authority. However, considering how gun jumping is treated in Serbian law, and also looking at the practice of the Serbian NCA so far, how tangible is the actual risk of a gun-jumping fine in Serbia?

### **Fines for gun jumping in Serbia: What does the law say?**

The standstill obligation is duly laid down in the Serbian Competition Act, which provides that parties have the obligation to cease with implementation of a notifiable concentration until the Serbian NCA clears it. The Serbian Competition Act also envisages a fine for parties who violate the standstill obligation, in the amount of up to 10% of the infringing party's annual turnover in Serbia.

The issue of amount of fine for gun jumping is further addressed in the Serbian NCA's guidelines on the imposition of fines. In that document, implementation of a concentration without clearance (gun jumping) is qualified as a minor competition infringement, together with the conclusion of a restrictive vertical agreement not directly aimed at fixing prices or commercial conditions.

Apart from minor infringement, the guidelines classify other infringements as either serious competition infringements (such as abuse of dominance in the form of tying or discrimination) or very serious competition infringements (such as horizontal or vertical price fixing).

Therefore, despite the standstill obligation and a theoretical maximum fine of up to 10% of the party's Serbian turnover, Serbian legislation does not treat gun jumping that harshly as may be the case in some other jurisdictions. And such lenient approach to gun jumping is also reflected in the Serbian NCA's practice on the matter.

## Why would the parties want to skip filing their transaction in Serbia?

Before we delve into the practice of the Serbian NCA in gun-jumping cases, let's consider – why would someone want to avoid filing in Serbia in the first place?

In the Serbian context, the issue of gun jumping is often related not so much to the parties' wish to go ahead with a merger that would harm competition in Serbia, but rather with their desire to avoid the procedure in which the Serbian NCA would examine a transaction that has nothing to do with Serbia. And this stems before all from [the all-encompassing merger filing threshold laid down in Serbian law](#).

The Serbian filing threshold is such that the merger filing obligation can arise even if the target and the transaction have no connection with Serbia whatsoever – it is sufficient that the acquirer has turnover in Serbia. As a result, the Serbian NCA gets to examine even mergers taking place in another part of the globe, which have no potential to harm competition in Serbia. It then seems natural that, when their transaction has nothing to do with Serbia, some parties would wish to avoid the Serbian merger filing procedure – despite the Serbian's NCA efficiency in dealing with such filings.

Another reason why parties may wish to skip the filing procedure in Serbia has to do with – money. The merger filing fee in Serbia is not exactly nominal – in most cases, it amounts to EUR 25,000. Such a high administrative fee may additionally discourage parties from filing in Serbia their transaction which has nothing to do with the Serbian market. In other words, not only that parties would need to wait that the Serbian NCA clear their transaction with no nexus with Serbia, but they would also have to pay a hefty administrative fee for such exercise.

## The Serbian NCA's approach to gun jumping over time: Toward a proactive enforcement

As described [in an earlier post](#), the approach of the Serbian NCA to gun jumping can be divided into three phases: the early days, the first fines for gun jumping, and the current phase, when the Serbian NCA is actively looking for potential gun-jumping violations.

In the early days of gun-jumping enforcement in Serbia (around the year 2013), when it would identify a transaction which the parties had failed to notify, the Serbian NCA was content with the parties paying the filing fee payable for Phase II procedure (EUR 50,000) instead of the standard filing fee for a Phase I clearance (EUR 25,000). That approach evolved in 2017, when the Serbian NCA issued its first gun-jumping fine, [concerning a change from joint to sole control in a local company](#).

Finally, the current, proactive, phase of the gun-jumping enforcement in Serbia started in 2021, when the Serbian NCA for the first time started a gun-jumping investigation based on the information it had read in the media. This approach is also reflected in the gun-jumping investigations the Serbian NCA started this year. For instance, in one recent gun-jumping investigation, the NCA noted it had found about the transaction by following the website of the North Macedonian competition authority, where the parties had notified their transaction.

And while the Serbian NCA has been increasingly proactive in investigating potential gun-jumping infringements, how strict have been its fines for that type of competition infringement?

## **Gun-jumping fines in the practice of the Serbian NCA: From no fines at all to (some) fines**

In short, the approach of the Serbian NCA to issuing gun-jumping fines can be described – from no fines at all, to modest fines.

As described, the Serbian NCA was initially satisfied with collecting merger filing fees from the parties it would investigate for gun jumping. And once it started issuing gun-jumping fines, they were higher than the merger filing fee – but not by a wide margin.

In the first case in which imposed a fine for gun jumping, back in 2017, the fine was symbolic –approximately EUR 56,000, or 0.25% of its turnover in the relevant year. The fine was therefore not much higher than the regular merger filing fee (EUR 25,000). That was no coincidence – in the reasoning of the decision, the Serbian NCA expressly mentioned that, when determining the amount of the fine, it considered the amount payable for the merger filing fee.

In its next fine for gun jumping, issued in 2021, the Serbian NCA once again imposed a modest fine, in the amount of approx. EUR 75,000. In this case as well the imposed fine was far below the maximum amount prescribed by the law (10% of the Serbian turnover in the previous year).

This lenient trend has continued to this date (as far as based on what we know from publicly available sources). For instance, in a decision issued in late 2021, the Serbian NCA imposed a gun-jumping fine in the amount of approx. EUR 25,000 – which is exactly the amount the parties would have paid for the merger filing fee had they notified their transaction in the first place.

### **Key takeaways**

Unlike the situation in some other jurisdictions, Serbia does not treat gun jumping as a serious competition infringement. Even in cases when the Serbian NCA would start a gun-jumping probe, the fine imposed on the infringer would be modest – somewhere in the region of the amount the parties would pay for the merger filing fee. So, at least for now, despite a spike in the number of gun-jumping probes in Serbia, it really does seem that the tiger of the Serbian gun-jumping enforcement is made of – paper.

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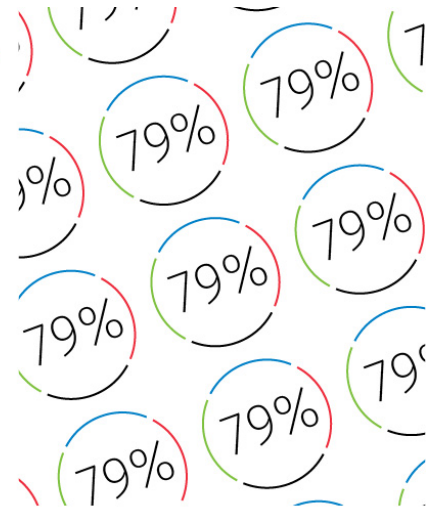
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