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Alternatives to Leniency Programmes – Contribution from Serbia

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Alternatives to Leniency Programmes

- Contribution from Serbia¹ -

1. The possibility of cartel detection is one of the key requirements for effective deterrence – without a realistic risk of cartels being discovered and the participants eventually fined, leniency programs are less attractive, and cartels can continue to operate for as long as it suits the needs of the conspiring companies. The problem with detecting collusion is that once the cartel is established, the collusive behavioural pattern blends into the market and dictates the new market normal after a while. This is why cartels and collusion in general can be difficult to find without leniency, which is why most competition authorities have predominantly relied on leniency as the primary tool to detect collusion.

2. However, according to OECD statistics, leniency applications have been declining in most jurisdictions between 2015 to 2020,² and the overall decline continued in all regions in 2021 except in Europe.³ Although the data from 2022 described the decline in Europe as steady, leading to 70.5% lower number of leniency applications in 2020 than in 2015,⁴ the 2023 statistics show that leniency applications have increased in 2021 but still remained below the number of applications in 2019 and the previous years.⁵ There could be different reasons behind these statistics, however, if the current trend continues, detection of collusion as a deterrent could require competition authorities to take a more proactive approach.

3. In Serbia, the situation with cartel detection is slightly different and detecting collusion through leniency is the exception rather than the rule. Since the establishment of competition laws and the competition authority, detection of collusion has predominantly been based on alternatives to leniency programs. The track record of the authority shows examples of successful detection of collusion in bidding and non-bidding markets alike. The experience outlined in this contribution is without prejudice to the outcomes of initiated cases and concerns the steps taken and indicators used in meeting the legal requirement of “reasonable assumption” needed to initiate proceedings.

¹ This contribution has been written by Ms. Maja Dobrić, Senior Adviser within the Restrictive Practices Division of the Commission for Protection of Competition of the Republic of Serbia. The views expressed herein are those of the author and do not necessarily reflect those of the institution.

² OECD Competition Trends 2022, available at: <https://www.oecd.org/daf/competition/oecd-competition-trends-2022.pdf>

³ OECD Competition Trends 2023, available at: <https://www.oecd-ilibrary.org/docserver/bcd8f8f8-en.pdf?expires=1698242269&id=id&accname=guest&checksum=C4B041CC00BA0BE38EBDA BF8C4E55AC1>

⁴ OECD Competition Trends 2022, available at: <https://www.oecd.org/daf/competition/oecd-competition-trends-2022.pdf>, page 46.

⁵ OECD Competition Trends 2023, available at: <https://www.oecd-ilibrary.org/docserver/bcd8f8f8-en.pdf?expires=1698242269&id=id&accname=guest&checksum=C4B041CC00BA0BE38EBDA BF8C4E55AC1>

1. Introduction

4. The sole authority in charge of competition enforcement in Serbia is the Commission for Protection of Competition (hereinafter CPC), established by law as an independent and autonomous competition authority. The competences of the CPC are outlined in the Law on Protection of Competition (“Official Gazette of the RS”, no. 51/2009 and 95/2013 – hereinafter the Law).⁶

5. Pursuant to the Law, investigations are initiated *ex officio*, by a formal decision when the CPC reasonably assumes the existence of a competition infringement, based on information provided in complaints (initiatives), leniency applications or other sources of information.⁷ When initiating proceedings, the President of the CPC issues a conclusion on initiation of proceedings, which in particular contains a description of practices or acts that might constitute a competition infringement, the legal basis and reasons to initiate the proceedings as well as invitation to all parties to provide the CPC with available data, documents or other relevant information.⁸

6. When it comes to detection of cartels and other restrictive agreements and initiating *ex officio* proceedings, the CPC has experience with both reactive methods, such as complaints, as well as proactive detection tools. Both of these methods are complementary to the leniency program and account for the majority of initiated investigations.

7. Formal and informal complaints have been a reliable and frequent source of information and have helped the CPC form clearer theories of harm when deciding whether to initiate proceedings. In order to facilitate the complaints process, the CPC made a comprehensive form with instruction for complaints related to restrictive agreements. This form is not mandatory, but merely acts as an aid to complainants, clarifying what type of information would be useful for the CPC in determining whether to initiate proceedings.⁹ Instructions for filing complaints and the complaints form can be found on the CPC website.¹⁰

8. In Serbia, there is no need to prove the existence of a legitimate interest on the part of the complainant and any person may make a formal or informal complaint. Complaints can even be made anonymously,¹¹ making them akin to an informal whistleblower tool, however, this can cause challenges in case additional information is required from the complainant. Once a complaint is made, the CPC examines the received information and assesses whether further information is needed to decide whether the standard of

⁶ The English version of the law is available here: <https://www.kzk.gov.rs/kzk/wp-content/uploads/2011/07/Law-on-Protection-of-Competition2.pdf>

⁷ Article 35 para.1 of the Law.

⁸ Article 35 para.2 of the Law.

⁹ The complaint should contain information on the complainant (for subsequent questions, if needed), information on the suspected companies, a description of the conduct that is supposedly a restrictive agreement, all supporting documentation, statements, information on who might possess the evidence the CPC might need in proceedings, basic information on the market where the supposed restrictive agreement exists.

¹⁰ Available in Serbian: <https://www.kzk.gov.rs/kzk/wp-content/uploads/2011/08/Uputstvo-o-sadr%C5%BEini-inicijative-za-ispit-povred-l-10-Zakona.pdf>

¹¹ In the experience of the CPC, anonymous complaints are either handed in person, in paper form without contact information, or submitted from non-personalized email addresses.

“reasonable assumption of the existence of a competition infringement” is met. When acting on the received complaints, the CPC can also gather additional information from undertakings, public authorities and various institutions, as well as from publicly available sources. If there are sufficient grounds, the CPC can initiate proceedings and the same standard applies to all forms of competition infringements. The CPC is not obliged to take *ex officio* enforcement action on each complaint, but the complainants are notified about the outcome of the complaint.¹²

9. The CPC has also initiated several proceedings based on analysis of publicly available information (including press releases, statements of companies, financial reports and publicly available information on the market), analysis of competitive conditions in particular markets, as well as data gathered in sector inquiries. In most cases, various sources of information have been combined in order to gather as much information as possible prior to initiating proceedings and make a clearer theory of harm.

2. Effectiveness of the leniency program

10. The leniency program has been in place in Serbia for over a decade, however, the predominant method of detecting cartels as well as other forms of competition infringements is based on either complaints or on proactive detection tools (sector inquiries, market analysis or screening). Alternative detection tools make up more than 95% of all cases initiated by the CPC when it comes to all forms of competition infringements.

11. Under the applicable legislation in Serbia, leniency exists as both full immunity and partial immunity (reduction of fines). The option of leniency applications is formally not limited to horizontal collusion and cartels, but is addressed at participants in a “restrictive agreement”,¹³ which covers agreements between undertakings which as their object or effect have a significant restriction, distortion, or prevention of competition in the territory of the Republic of Serbia and include contracts, certain contract provisions, express or tacit agreements, concerted practices, as well as decisions of associations of undertakings.¹⁴

12. The leniency program in the previous law, the Law on Protection of Competition (“Official Gazette of the Republic of Serbia”, no. 79/05) made leniency available regardless of the role the participant had in the restrictive agreement, as long as the agreement was notified to the CPC before an investigation had been initiated.¹⁵ When the current law was enacted, it changed the leniency regime to take into account the role of the applicant in the agreement, precluding the initiator from applying for leniency. Before the new regime came into force, there was a surge of leniency applications for various restrictive agreements,¹⁶

¹² More information on leniency and complaints can be found in the ICN Anti-Cartel Enforcement Template for Serbia, available at: https://www.internationalcompetitionnetwork.org/wp-content/uploads/2023/06/CWG_Template_Serbia-2022.pdf

¹³ Article 69 of the Law.

¹⁴ Article 10 of the Law.

¹⁵ Article 71 para 5. of the previous law - Law on Protection of Competition (“Official Gazette of the Republic of Serbia”, no. 79/05)

¹⁶ Brief description of the leniency program in Serbia, titled “Application of the Leniency Institute in the Republic of Serbia” is available at: https://oecdgvh.org/pfile/file?path=/contents/about/newsletters/Issue_No._3_June_2014&inline=true, pages 19 and 20.

including resale price maintenance (RPM).¹⁷ After this initial surge in application before the new regime came into force, leniency as a detection tool has not shown the expected results.

13. Despite the CPC's best efforts in advocacy and promoting the leniency program, over the past ten years, when it comes to concluded infringement cases, there has been only one successful leniency application, in a case related to bid-rigging.¹⁸ Nevertheless, the CPC continuously engages in outreach activities, aimed at raising awareness of competition rules and the possibility of leniency.

14. The small number of leniency applications is mainly due to two reasons: one is that the potential leniency applicant could be excluded from business by generally more powerful undertakings, while the other is the awareness that the person who reports a prohibited agreement is not protected from civil liability (private enforcement of damages) and potentially faces even some residual criminal liability¹⁹ due to participation in such an agreement, which is at the discretion of a criminal judge. Both of these factors and especially lack of legal certainty in this regard can hinder the attractiveness of the leniency program for potential applicants, as it creates incentives for individuals responsible for the involvement in collusion to remain silent and not risk liability if they self-report.

15. In addition to the leniency program, Serbia does not have a whistleblower tool as such and instead relies on formal, informal and even anonymous complaints as one of the regular reactive methods for detecting infringements.

3. Enforcement experience with proactive tools

16. The CPC's track record regarding case initiation shows various detection tools, both reactive (complaints) and proactive (analysis of competitive conditions, sector inquiries²⁰ and screening). Most cases of horizontal collusion in Serbia were based on proactive tools, followed by complaints and finally leniency.

17. Sector inquiries are prescribed by article 47 of the Law and can be conducted in cases where the price flows or other circumstances suggest the possibility of restriction or distortion of competition. In such situations, the CPC can examine the state of competition in a particular sector of the economy or certain categories of agreements in various industries. In order to conduct a sector inquiry, the CPC may require undertakings to submit

¹⁷ For example, decision number : 4/0-02-64/12-69 of September 20, 2012, available at: <https://kzk.gov.rs/kzk/wp-content/uploads/2016/11/DECISION-on-measures-for-protection-of-competition-Grand-Prom-and-Idea-doo.pdf>

¹⁸ Bid rigging - public and other procurements of office equipment with certain features corresponding to the equipment manufactured by Konica Minolta, consumables and after-sales services for office equipment, the non-confidential version of the decision is available in Serbian: <https://kzk.gov.rs/kzk/wp-content/uploads/2019/10/27-09-2019-56-Resenje-o-povredi-konkurencije-Original-Konica-Minolta-i-ostali.pdf>

¹⁹ Under article 229 of the Serbian Criminal code, leniency applicants can be granted immunity from the penalty but under the general criminal law framework may be found to be criminally liable nevertheless (declared guilty and freed from the penalty).

²⁰ For more information on market studies, analysis of competitive conditions and sector inquiries, see the contribution from Serbia for the Global Forum on Competition, "Using Market Studies to Tackle Emerging Competition Issues" 10 December 2020, reference DAF/COMP/GF/WD(2020)25, available at: [https://one.oecd.org/document/DAF/COMP/GF/WD\(2020\)25/en/pdf](https://one.oecd.org/document/DAF/COMP/GF/WD(2020)25/en/pdf)

all necessary information or documents and may conduct all necessary research. In particular, the CPC may require from undertakings to submit all agreements, decisions or notices with respect to concerted practices.

18. When it comes to sector inquiries, the Law also provides the possibility of imposing procedural penalties on undertakings which fail to comply with the CPC's request to submit, disclose, make available or provide access to the requested data or deliver or provide incorrect, incomplete, or false information.²¹ Penalties are prescribed in the amount between 500 EUR and 5.000 EUR per day, for each day of such conduct.

19. Once the sector inquiry is completed, the CPC is obliged to publish the report on conducted sector inquiries in an appropriate manner, and in particular on its website and may invite undertakings to provide their comments regarding the report.²²

20. Analysis of competition conditions on individual markets is conducted pursuant to article 21 para 1 point 6) of the Law, which states that the CPC is authorised to monitor and analyse conditions of competition in individual markets and in individual sectors. The key difference between sector inquiries and analysis of competition conditions on individual markets is that the second category is less formal, there is no obligation to publish a final report and there is no possibility to impose procedural penalties in case companies refuse to submit data or provide incorrect, incomplete, or false information. This is why the analysis of competition conditions or market analysis is used as a residual tool for gathering information from undertakings and public authorities alike.

21. The examples outlined below concern cases where investigations were initiated following the successful use of proactive tools in various markets.

22. With regard to bid-rigging cartels, most of the CPC cases have been initiated following complaints or analysis of competitive conditions and recently even following a notification submitted by the Public Procurement Office. When it comes to analysis of competitive conditions regarding public procurement, the CPC utilises this tool when it gathers data on particular markets or particular tenders to be further analysed. The initial suspicion to further investigate a particular tender can arise from various sources, including media statements that suggest that there was no competitive process in a particular tender or that there had been only one bid made by a consortium.

23. In certain bid-rigging cases, the CPC relied on press releases or other publicly available information that a consortium has submitted the only bid for a particular tender and investigated the bidding documents in greater detail. For example, a recent case was initiated and completed²³ based on a theory of harm that the consortia could have been broken up in smaller groups which could have formed competing bids, which had been suggested by the media reporting on the outcome of the tender. The case was initiated following a thorough analysis of the documentation the consortia members submitted in order to prove the fulfilment of certain conditions of the tender. Based on the content of the suspected bid and in particular, comparing these documents to another bid for a similar service in a tender opened at the same time, with most of the same conditions, made by a consortium including most of the parties in the suspected bid, it was concluded that in the

²¹ Article 70 of the Law.

²² Article 47 of the Law.

²³ The decision on initiating proceedings is available on the CPC website in English: <https://kzk.gov.rs/kzk/wp-content/uploads/2020/02/274-2020-Conclusion-on-instituting-proceedings-ex-officio.pdf>

suspected rigged tender, the consortia members refrained from showing all of the conditions they meet either individually or in smaller groups.²⁴

24. An example of detecting collusion in non-bidding markets was an investigation initiated following a combination of publicly available information²⁵ and a complaint made by a consumer protection organization forwarding a photo of a joint price list to the CPC. Proceedings were initiated by the CPC based on the reasonable assumption that competitors have colluded to fix prices for the provision of roadworthiness testing and vehicle technical inspection services for various categories of motor vehicles on the territory of the City of Čačak. During the proceedings, the Commission obtained statements and business documentation of the parties, adduced evidence based on expert reports and witness testimonies and held an oral hearing. In its decision, the Commission established that the parties to the proceedings reached a direct agreement on the price of roadworthiness testing services and thus entered into a restrictive agreement, which was then set on paper, signed and stamped by all participants.²⁶

25. As leniency in Serbia is not formally limited to horizontal collusion, the track record of the CPC regarding proactive discovery of vertical agreements and especially RPM is also worth noting. Over the past decade, the CPC has detected RPM in several markets, based on the results of sector inquiries,²⁷ publicly available data²⁸ and analysis of competitive conditions on a particular market.²⁹

26. The indicators which the CPC relied on in establishing the “reasonable assumption of the existence of a competition infringement” in the cases based on publicly available data on prices, were on the one hand the difference in prices of consumer electronics in Serbia and markets in neighbouring countries and on the other hand, the similarity of prices in Serbia. Namely, the prices of consumer electronics in the Republic of Serbia were by 13 % higher than the EU average and for certain product categories 33-39 % higher than the prices in Hungary, which has higher VAT rates. The CPC analysed the conditions of competition on the wholesale and retail market for consumer electronics in Serbia and upon reviewing the publicly available data on prices, established that consumer electronics are

²⁴ The operative part of the final decision is available on the CPC website in English: <https://kzk.gov.rs/kzk/wp-content/uploads/2022/09/4-0-01-30-2022-06-Miteco-eng.pdf>

²⁵ Statements made to the media through a televised interview of one of the participants and the website of the consumer protection organization.

²⁶ The outcome of the case is available in the Annual report of the CPC for 2020, available at: <https://kzk.gov.rs/kzk/wp-content/uploads/2021/10/Godisnji-izvestaj-KZK-2020-FinENG.pdf>, page 16

²⁷ In most cases, RPM was determined based on direct evidence in the form of an explicit clause in the agreements providing for price maintenance or maximum discounts – such as the completed cases concerning baby equipment, aftermarket car repair and ceramic tile markets, initiated following sector inquiries.

²⁸ Four cases regarding suspected RPM in consumer electronics were initiated based on the analysis of publically available pricing data gathered from E-shops and comparison of these prices to prices of the same/similar products in neighboring markets. Three of these cases were concluded based on indirect evidence discovered through forensic analysis of emails and documents gathered during dawn raids – two in 2021 and one in 2022, whereas the fourth one is ongoing.

²⁹ The analysis was a follow-up of a sector inquiry completed several years before and the case was initiated based on direct evidence in the form of an explicit clause in the agreements providing for price maintenance.

sold at identical or nearly identical prices in retail outlets, as well as in online stores.³⁰ The three cases related to consumer electronics which were initiated in 2020 based on the information described above, have all been completed by decisions establishing the existence of restrictive agreements, based on emails and other evidence gathered during proceedings, which confirmed the initial suspicions of the CPC.

4. Proactive detection tools: Education and outreach

27. When it comes to education, outreach and general activities aimed at raising awareness of competition rules, the CPC has increased its activities over the past two years. In cooperation with the Serbian Chamber of Commerce, the CPC has organized workshops in five major cities in Serbia, engaging directly with undertakings and explaining competition rules, measures to avoid risks and in particular the leniency program. The educational efforts were adapted to the needs of companies in all sectors of the economy, with the idea to first raise general awareness and to proceed at a later stage with specialized trainings, tailored for specific industry sectors.

28. Last year, within the wider scope of promoting competition compliance, the CPC published two checklists for undertakings to check their exposure to competition risk, one pertaining to abuse of dominance and one to restrictive agreements. The checklists are designed as lists of specific YES/NO questions, phrased in simple terms, which companies can use in assessing their exposure to risks of competition infringements. These checklists stress some of the key issues and risks to be taken into consideration and should ensure an easier and faster risk assessment and help speed up the compliance process. In the first part dedicated to horizontal agreements, the restrictive agreement checklist contains simply phrased questions on possible collusion (such as exchange of commercially sensitive information, market sharing, bid rigging etc) and informs undertakings that they can apply for leniency if they have identified any of the risks outlined in the checklist. In addition, it also contains an indicative list of questions related to typical vertical restraints.

29. As part of the outreach activities, the CPC made a short video promoting the leniency program, including contact information and information on availability of the relevant materials. The video is available on the CPC's YouTube channel³¹ and is posted on the authorities' LinkedIn³² page from time to time, along with relevant information on where to find all materials on the leniency program.

30. All of these activities have been relatively recent, which is why it is too early to assess whether the education and outreach efforts will result in an increase in reports of cartel activity and an impact assessment of these activities has not been made so far. The

³⁰ Three decisions on initiating proceedings are available on the CPC website in English: <https://kzk.gov.rs/kzk/wp-content/uploads/2020/09/2020-575-Conclusion-on-initiation-of-proceedings-ex-officio.pdf> (Roaming Electronics case), <https://kzk.gov.rs/kzk/wp-content/uploads/2020/09/2020-574-Conclusion-on-initiation-of-proceedings-ex-officio.pdf> (Comtrade case) and <https://kzk.gov.rs/kzk/wp-content/uploads/2020/09/2020-580-Conclusion-on-initiation-of-proceedings-ex-officio.pdf> (SF1 case)

³¹ Available in Serbian: <https://www.youtube.com/watch?v=LAF2u8rHIyo>

³² For example: <https://www.linkedin.com/feed/update/urn:li:activity:7111977744049070080>

only visible impact of these activities so far has been the significant rise in the interest the business community in Serbia has shown in competition rules.³³

5. Proactive detection tools: Co-operation with other agencies

31. The CPC has formal and informal collaborations with other agencies and has successfully cooperated with the Public Procurement Office in detecting and suppressing big rigging. When the Public Procurement Office conducts its supervisory activities, it can notify the CPC if it discovers indications that there has been an agreement between bidders regarding the outcome of the tender.

32. The most recent example of such cooperation was the bid rigging case initiated in April 2023 based on the analysis of IP addresses (Internet Protocol addresses) which the supposedly independent bidders were using to submit electronic bids.³⁴ By analysing the IP addresses which the parties to the proceedings used when accessing the Public Procurement Portal in specific public procurement procedures, either to download tender documents or to submit bids, the CPC noted that both companies almost always accessed the Portal from identical IP addresses. The results of the analysis of the IP address of the parties to the proceedings in various public tenders showed a pattern which indicated that the parties accessed the Public Procurement Portal as a rule from the same device, which were connected through the same internet network, and possibly even from an identical device. This gave rise to the adequate legal standard the CPC needed to initiate proceedings.

33. When it comes to challenges to cooperation, the greatest challenge has been the lack of legal basis in the public procurement framework which would enable the Public Procurement Office to automatically notify the CPC on all issues related to possible collusion between bidders in public procurement. However, there are indications that this challenge may soon be overcome. In the meantime, the CPC has developed significant experience regarding the data to look for and the specific data to additionally request from the Public Procurement Office in assessing whether to initiate proceedings.

6. Proactive detection tools: screening

34. In detecting cartels, the CPC independently developed a detection method or screen, which combines structural and behavioural elements. This screen has already shown results in detecting concerted practice in non-bidding markets without relying on leniency, whistleblower programs, sophisticated software or cooperation with other public authorities.³⁵ The method itself was developed based on the behavioural patterns identified on a specific oligopolistic market, expanded and used on a different market, based on which another investigation was initiated. Unlike the traditional cartel screens based only on

³³ For example, the number of followers on the CPC's LinkedIn page has increased five times from the initial period of the education and outreach activities.

³⁴ Full decision on initiating proceedings available: <https://kzk.gov.rs/kzk/wp-content/uploads/2023/05/Conclusion-instituting-proceedings-ex-officio-KTG-Solucije-and-Eco-sense42.pdf>

³⁵ The screening method was presented in detail at the ICN annual conference in Barcelona 2023, at the agency-only breakout session AEWG: Innovative detection tools and their effective usage. The description outlined here does not include all of the key components of the screen, but describes it in a general manner for the purposes of assessing its compatibility with leniency.

detecting collusive conduct by monitoring for typical cartel symptoms, the screen introduces other components and key segments to look for in the market.

35. The structural part of the screen focuses on market conditions conducive to collusion, i.e., stable and/or high market shares, high market concentration, oligopolistic structures, and a small number of players. This can usually be assessed based on publicly available information and the CPC has used various sources of data for screens of this kind, for example available market studies, retail market analytics, financial reports of companies or market association reports. An additional way to gather such data would be an analysis of the competitive conditions pursuant to article 21 of the Law.

36. The behavioural part of the screen focuses on separate areas of market conduct, separated in time, and connected by causality. Because of inherent features of oligopolistic markets, focusing on just the cartel symptoms can create a distorted picture that these are the normal market conditions on a particular market. This is why a wider set of data is needed to establish behavioural patterns and track changes on the markets and especially to see whether the market had different dynamics at some point before the period of potentially collusive stability. The CPC started from the assumption that, from the perspective of undertakings, engaging in cartels is a business decision and that collusion eliminates the risks of market uncertainty and can stabilize the market in crisis. Based on this assumption, a set of indicators was developed to identify patterns in behaviour. When establishing a workable theory of harm, in order to identify patterns of behaviour, the observed period of the conduct should be as wide as possible. The best practice of the CPC shows that the most efficient way to do this is to put all of the available information on the observed conduct into a linear timeframe, in order to establish potential causality between different occurrences on the market.

37. An example of effective detecting of suspected collusion in non-bidding markets by applying the developed screening method is the investigation initiated in 2021 against the two largest coffee producers in Serbia.³⁶ Prior to initiating proceedings, the CPC analysed publicly available information contained in news reports, press releases (especially paid/promo press announcements) and publicly available financial information contained in financial reports at the group level (description on doing business in Serbia). The financial reports showed a significant change in the profitability of the business of one of the observed companies which did not correspond to the market conditions explained in the same report. In addition, given the public statements of one of the producers that raw coffee makes up for 90% of the production costs, the CPC analysed retail prices and compared their changes to changes of prices of raw coffee on the global commodities market.³⁷ The analysis showed a high degree of positive correlation between the two largest competing brands of ground coffee, i.e. the existence of a very high degree of consistency in the price movements of these two products. By comparing the movement of retail prices of ground coffee of the observed products, positive correlation was not established with the movement of raw coffee prices, that is, the values of the correlation coefficient were statistically significant and moderately negative. It was concluded that the prices movement on the market of the Republic of Serbia are not driven by changes in the prices of raw

³⁶ The operative part of the decision on initiating proceedings is available on the CPC website in English <https://kzk.gov.rs/kzk/wp-content/uploads/2021/09/2021-644-Conclusion-instituting-proceedings-ex-officio-Atlantic-Grupa-Strauss-Adriatic.pdf>

³⁷ Prior to initiating proceedings, the CPC opted to use publicly available data on raw coffee prices instead of sending out questionnaires to potential colluding parties

coffee on the world market but are formed under the influence of other factors.³⁸ Lastly, the CPC analysed public statements, interviews and paid promotional press statements of company managers of the observed competing companies in relation to the likelihood of price changes. Based on the combination of all of the data described above, the CPC initiated proceedings in order to examine the existence of a restrictive agreement, based on the reasonable assumption that the two largest participants on the wholesale market of ground coffee, and therefore the two largest competitors, have replaced mutual competition by cooperation and have coordinated their business strategies related to prices of ground coffee in the Republic of Serbia.³⁹ The case is still ongoing.

38. The main challenge in using the developed screening method is the uncertainty and unpredictability of availability of relevant data and subsequent evidence once investigations are initiated. To address this issue, the CPC looks at data as widely as possible and utilises all the data which is publicly available. Once these resources have been exhausted, the CPC often requests information in some form of market analysis, usually to observe trends in price changes or changes of conduct on the observed market.

39. When it comes to resource challenges, as proactive detection has been the predominant detection model in Serbia, case handlers within the Restrictive Practices Division have gained significant experience with data collection and analysis and as part of their induction, the new employees within the Division undergo training and guidance in what to look for and how to conduct research.

7. Strategies to incorporate advanced technology-led screening programs for cartel detection

40. Several years ago, the CPC acquired software from the CMA (UK) to help detect possible collusion in public procurement.⁴⁰ With the new digitized system of public procurement which has been in place since 2020, such software could be of great help in discovering competition infringements.

41. As the business world turns toward a more digital and data-intensive setting, as well as transitioning to alternative means of communication, the CPC will likely use more data-intensive tools in detecting and processing competition infringements, but this transition will follow the pace of digitalization of commerce in Serbia.

42. The CPC will continue to develop its cartel detection screen in the future and will attempt to expand the indicative list of events and patterns to improve each part of the screen in order to increase the potential application of the screen. In the long run, once sufficient information on what to look for in each segment of the screen has been gathered, the CPC will consider adapting the screen to a digital tool, which would help increase efficiency of screening for cartels. If the screen described in this contribution were to be converted into a software solution which would scan publicly available information (for example a linguistical search of news databases based on key terms), it would have to be adapted to encompass different variations of language which would describe the different

³⁸ Annual report of the CPC for 2021, available in English: <https://kzk.gov.rs/kzk/wp-content/uploads/2023/04/GI-2021-4-eng.pdf>, page 101.

³⁹ Annual report of the CPC for 2021, page 19.

⁴⁰ See press release: <https://kzk.gov.rs/en/komisija-koristi-najsavremenije-met>

situations on the market which could fall within categories of specific behavioural patterns, in terms where similar situations have already been described by the media.

8. Conclusion and key takeaways

43. The CPC uses a wide array of alternatives to leniency programs, consisting of both reactive and proactive tools. Having such a wide toolkit has enabled the CPC to initiate *ex officio* investigations regardless of leniency or whistleblower applications and all of these alternatives have shown results when it comes to initiating investigations. From the perspective of the CPC, all of the tools used for detecting competition infringements in Serbia are mutually complementary and do not create conflicting incentives for perspective leniency applicants.

44. When it comes to implementing measures to increase effectiveness of the leniency program, the CPC engages in outreach activities, cooperates with various institutions and public bodies and implements a screening tool which has shown results and has led to a major investigation initiated in 2021.

45. The CPC is continuously working on improving its detection method by expanding the key indicators to look for in each segment of the detection method. The goal is to find a working model which could be used as a basis for screening for collusion with the idea to flag potential markets where collusion could arise and monitor for signs of potential collusion in these markets as it arises.

46. Improving the accuracy of the results of the detection method should increase the likelihood of detection and in turn, increase the incentives for colluding undertakings to blow the whistle and apply for leniency. In the long run, the CPC hopes to create a viable detection threat for colluding undertakings, which would increase incentives for leniency and increase the utilization of the leniency program.