
# EU INTEGRATION PERSPECTIVES OF THE CANDIDATE COUNTRIES

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## DUE PROCESS IN COMPETITION LAW – DOES IT MATTER FOR CANDIDATE COUNTRIES? A CASE OF SERBIA

*While Serbia opened negotiations for the EU accession in January 2014, negotiations in the Internal Market Cluster, to which the chapter on competition policy belongs, have not been opened yet. In its annual reports on the progress of Serbia in the accession process, the European Commission assesses the competition legislative framework, the institutional framework and the enforcement capacity. The Commission finds the legislative framework broadly aligned with the EU competition acquis. The assessment of the procedural aspects of national competition law has not been a focus of the Commission so far. At the same time, the Commission has been continuously emphasising the importance of strengthening the rule of law in candidate countries.*

*Serbia established the current institutional and procedural framework for implementing competition law in 2010, with the adoption of the Competition Protection Act (CPA). Serbian procedural competition law is based on the General Administrative Procedure Act of 2016, supplemented by specific rules that reflect the exceptional nature of competition proceedings and the need to harmonise with EU law. CPA is only partially aligned with Council Regulation 1/2003/EC, Commission Regulation 773/2004, Council Regulation 139/2004 and Commission Implementing Regulation 2023/914.*

*In the paper, we discuss three important departures of the CPA rules from the EU competition procedure. The first one relates to the status of the complainant in antitrust investigations. The second one concerns the third party standing in merger control proceedings. The third one pertains to the transparency of investigations, decision-making, and decreased public awareness of competition law enforcement. Shortcomings in the regulation of these issues in the CPA contributed to the low credibility of the Commission for the Protection of Competition's decision-making and decreased public awareness of the CPC's enforcement efforts.*

*Focusing on harmonisation of national substantive competition rules with EU law is not sufficient for the success in accession negotiations. The procedural aspects of competition law must receive adequate attention when assessing a candidate country's preparedness to assume obligations arising from EU membership. Procedural competition rules should be seen as one of the elements for assessing the respect for the rule of law in a candidate country, the rule of law being the fundamental EU value.*

Keywords: EU accession, competition law enforcement, procedural rules, competition authorities, third-party standing

The decades-long development of EU competition law has addressed not only substantive rules but also the incorporation of procedural guarantees of fairness and impartiality of the European Commission's and national competition authorities' investigations and decision-making, as well as the warranting of effective judicial protection for defendants and other parties in competition proceedings. Over the years, EU legislators have gradually improved procedural rules, thereby rectifying an EU enforcement model that was far from perfect with respect to the principles of the separation of powers and the right to a fair trial.

Candidate countries have assumed the obligation to harmonise their national law with the EU acquis. In the field of competition, they must also demonstrate that harmonised law is effectively implemented. The EC continuously monitors candidate countries' progress in legal harmonisation and the implementation of competition law. Our hypothesis is that the EC has been paying more attention to the harmonisation of substantive competition rules and formal indicators of competition enforcement. EC progress reports lack the institutional analysis of candidate countries' competition authorities, information on the level of their independence and autonomy, and on the extent to which procedural fairness and impartiality are ensured. Such an attitude is at odds with the proclamation of the rule of law as the fundamental EU principle, which is also relevant to candidate countries' accession to the EU.

In this paper, we first outline the nexus between the concepts of democracy and the rule of law, on the one hand, and competition law and policy, on the other. We follow by outlining the EU requirements regarding the institutional independence of national competition authorities and guarantees of fair procedure and effective judicial protection. The second part of the paper focuses on Serbia's path to EU membership and the features of its competition enforcement model, highlighting the fusion of investigative and decision-making powers, the absence of third-party rights in administrative and judicial competition proceedings, and the insufficient transparency in the operation of the Commission for the Protection of Competition. We consider these features the major deficiencies that diverge the Serbian competition enforcement model from the rule-of-law incarnation.

## 1. Democracy, rule of law and competition law

EU competition rules are normally seen as a tool ensuring economic efficiency, consumer welfare and the proper functioning of the internal market.[380] Companies and other market participants should compete freely across the entire territory of the EU member states. Competition restrictions, such as anticompetitive agreements and abuses of dominant positions, must be sanctioned and eliminated. Concentrations that result in a

[1] For an overview of the goals of EU competition law, see: Konstantinos Stylianou, Marios Iacovides, *The goals of EU competition law: a comprehensive empirical investigation*, Legal Studies, Vol. 42, 2022, pp. 620-648

dominant position in the market or otherwise impede effective competition must be prevented.

Those acquainted with the historical development of EU competition law are well aware that its roots lie in the Ordoliberal school of thought, which regarded competition as a weapon to fight monopolies and to ensure democratic economic governance, preventing economic power from transforming into political power.[381] The role of competition law in ensuring democracy in a society is indispensable. Competition law defends a market economy in a way that is equivalent to the separation-of-powers principle.[382] In economic terms, the dispersion of power among market players epitomises the essential precondition for the existence of a democratic society that respects the rule-of-law requirements.

A discussion on the nexus between the rule of law principle and EU competition law has gained new momentum in recent years, following the EU's facing democratic backsliding in some member states.[383] The rule of law is one of the basic values on which the EU is founded.[384] Its exact definition is missing in the EU treaties. According to the Council, the rule of law means that all public authorities act within constraints set out by law. It includes a transparent, accountable, democratic, and pluralistic law-making process, effective judicial protection provided by independent and impartial courts, and the separation of powers. It requires that everyone enjoys equal protection under the law and prevents the arbitrary use of power by governments.[385] Besides being a fundamental EU principle and a value, it is an enforceable legal norm, even though the European Court of Justice (hereinafter: ECJ) has never based its decision solely on Art. 2 TEU. Instead, it relies on other treaty rules that give substance to the rule-of-law principle.[386]

Inasmuch as competition law embodies rules that target the behaviour of economic operators in the market, aiming to protect market competition and, consequently, the

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[381] See Elias Deutscher, Stavros Makris, Exploring the Ordoliberal Paradigm: The Competition-Democracy Nexus, *The Competition Law Review*, Vol. 11, 2016, pp. 181-214, at pp. 186-7; David J. Gerber, *Constitutionalizing the Economy: German Neoliberalism, Competition Law and the'New' Europe*, The American Journal of Comparative Law, Vol 42, 1994, 25-84; Ryan R. Stones, *EU Competition Law and the Rule of Law: Justification and Realisation*, doctoral thesis, 2018, The London School of Economics and Political Science;

[382] Miguel P. Maduro, *Ensuring Market and State Accountability: The Private? Public Distinction in the EU Internal Market*, in Oleg Andriychuk (ed.) *Antitrust and the Bounds of Power – 25 Years On*, 2023, Bloomsbury Publishing, pp. 33-50, at p. 34

[383] Andrea Piletta Massaro, Market Integration and Competition as a Way to Strengthen the Rule of Law and Democracy in the Enlarged European Union, *EU and Comparative Law Issues and Challenges*, 2024, Issue 8, pp. 333-359; Dimitry Vladimirovich Kochenov, Upgrading rule of law in Europe in populist times, *Pravni zapisi*, 2021, No. 1, pp. 16-28; Guillermo Íñiguez, Competition in Times of Democratic Crisis: Domestic Judicial Reforms and the Effectiveness of EU Competition Law, *Cambridge Yearbook of European Legal Studies*, 2025, 1-18, doi:10.1017/cel.2024.4; Katalin Cseres, *European competition law, an overlooked element of the EU's rule of law toolbox*, 2024, Swedish Institute for European Policy Studies

[384] Art. 2 of the Treaty on European Union

[385] European Council, Rule of law, https://www.consilium.europa.eu/en/policies/rule-of-law-why-it-matters. Accessed 3.05.2026

[386] See, for example, Associação Sindical dos Juízes Portugueses v. Tribunal de Contas, Case C-64/16, EU:C:2018:117; Commission v. Hungary (Judicial Retirement Age), Case C-286/12, EU:C:2012:687; Commission v. Poland (The Independence of Supreme Court), Case 204/21, ECLI:EU:C:2023:442

interests of other economic operators, consumers, and society as a whole, the rule of law must be respected in the enforcement of EU competition law. The respect for the rule of law in competition law enforcement is predominantly expressed by two elements: 1) the setup of institutions responsible for enforcement, including the status of members of decision-making bodies and investigating officers, and 2) the procedural rules governing competition law investigations, decision-making, and judicial control.

## 2. Competition authorities set up

The first element is addressed in EU law by Regulation 1/2003[387] and Directive 2019/1.[388] Art. 5(1) of Regulation 1/2003 briefly requires member states to designate national competition authorities (hereinafter: NCA) and provide them with investigative and decision-making powers to apply EU antitrust rules. Directive 2019/1 sets out more detailed rules to ensure that NCAs have the necessary guarantees of independence, resources, and enforcement and fining powers as essential prerequisites for effectively applying Articles 101 and 102 TFEU. Member states of the EU must ensure that NCAs perform their duties and exercise their powers impartially and in the interests of the effective and uniform application of those provisions, subject to proportionate accountability requirements and without prejudice to close cooperation between competition authorities in the European Competition Network.[389]

Directive 2019/1 does not interfere with member states' choice of competition authority model.[390] In the EU, an administrative and bifurcated judicial model of competition law enforcement exists, with the former type prevailing.[391] The Directive lays down rules for independent investigation and decision-making of national administrative competition authorities. Administrative competition authorities must be able to perform their duties and to exercise their powers independently from political and other external influence. These authorities should neither seek nor accept instructions from the government or any other public or private entity, and should avoid taking any action that constitutes a conflict of interest.

The prevalence of administrative competition authorities in the EU competition landscape is not the only reason why Directive 2019/1 focused on them. In the bifurcated judicial model, the courts decide antitrust cases, while administrative authorities conduct investigations. The courts' independence is secured by other sources of EU law – Art.

[387] Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L 1, 4.1.2003

[388] Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, OJ L 11, 14.1.2019

[389] Art. 2 (1) of Directive 2019/1

[390] In the past, both the Commission and the European Court of Justice took opportunities to influence the shaping of the national competition authorities. See on this subject: Giorgio Monti, *Independence, Interdependence and Legitimacy: The EU Commission, National Competition Authorities, and the European Competition Network*, European University Institute Working Papers, Law 2014/1, pp. 12-13

[391] See on this subject: Jurgita Malinauskaite, Public EU competition law enforcement in small 'newer' Member States: addressing the challenges, *The Competition Law Review*, 2016, Issue 1, pp. 19-52

19(1) of the Treaty on European Union and Art. 47(1) of the Charter of Fundamental Rights of the European Union.[392] Administrative national competition authorities are a common feature of EU competition law, yet they lack certain elements that would qualify them as courts or tribunals.[393] For this reason, their status cannot be assessed under Art. 47(1) CFREU and Art. 19(1) TEU.

Directive 2019/1 did not go much further to rule on how the NCAs' independence is secured. Guaranteeing independence through explicit declaration of independence in national competition law is common practice. In reality, the NCA's status often differs substantially from the legal proclamations, rendering them ineffective. The status of a competition authority is closely related to the overall competence of administrative institutions in a country and to the authority's longevity. As Giorgio Monti remarked, the longer a Member State has been a party to the EU, the more independent the authority is.[394]

Occasionally, the ECJ has ruled on certain features of the administrative model of competition enforcement. In the VEBIC case,[395] the ECJ decided on the compatibility of the Belgian competition enforcement model, in which the administrative authority was established against the judicial model, with separate decision-making and investigative functions. The issue was that the decision-making body lacked the authority to respond to defendants' appeals in antitrust cases to the appellate court. Instead, it was the minister in charge of the economy who responded. The ECJ found this procedural element incompatible with EU law, as it feared that if the NCA did not have an opportunity to defend its decision, the appellate court might be wholly 'captive' to the appellants' pleas in law and arguments.[396]

Regarding the status of members of the decision-making bodies, Directive 2019/1 requires that they be selected, recruited, or appointed in accordance with clear and transparent procedures laid down in advance in national law.[397] Officials deciding on infringements of Articles 101 and 102 TFEU and imposing fines and periodic penalty payments must not be dismissed for reasons related to the proper performance of their duties or the proper exercise of their powers.

NCAs must have the power to set their priorities when applying Articles 101 and 102. Member states need to provide them with a sufficient number of qualified staff and

[392] One can say that the wording of Art. 19(2) TEU and Art. 47(1) CFREU do not provide the guarantee of courts' independence. Art. 19(1) TEU requires member states to provide remedies sufficient to ensure effective legal protection in the fields covered by Union law, while Art. 47(1) only mentions 'courts or tribunals of Member States'. However, the ECJ interpreted these articles as also requiring courts' independence in their establishment, structure and decision-making. See: Court of Justice of the European Union, *Independence of the Judiciary*, 2024, https://curia.europa.eu/site/upload/docs/application/pdf/2025-10/independance_de_la_justice_-_en.pdf

[393] Dijana Marković Bajalović, The EU Institutional Model of Competition Law Enforcement Revisited: How Much Rule of Law Suffices?, *Pravni zapisi*, 2022, No. 2, pp. 500-535

[394] G. Monti, op. cit., p. 11

[395] Vlaamse federatie van verenigingen van Brood- en Banketbakkers, Ijsbereiders en Chocoladebewerkers (VEBIC), 2010, Case C-439/08, ECR I-12471, ECLI:EU:C:2010:739

[396] VEBIC, para 58

[397] Art. 4(4)

sufficient financial, technical, and technological resources necessary for the effective performance of their duties. NCAs report periodically on their activities to the national parliament or the government. These reports are published to ensure transparency in NCA operations. An NCA report must include information about the appointments and dismissals of members of the decision-making body, the amount of resources that were allocated in the relevant year, and any changes in that amount compared to previous years.

The major deficiency of Directive 2019/1 is that it applies only to authorities responsible for applying antitrust rules. It does not apply to authorities responsible for controlling concentrations. This attitude of the EU legislator can be defended by the argument that Articles 101 and 102 TFEU concern competition law infringements. NCAs must be fit and able to decide on competition infringements and impose fines and periodic penalty payments. In exercising these powers, NCAs play a quasi-judicial role, which justifies requirements for independence, transparency, and legality in the recruitment and appointment of members of decision-making bodies, as well as their protection from unlawful dismissal.

It should not be overlooked that NCAs also need guarantees of independence, transparency in their operations, and sufficient resources when assessing the compatibility of a concentration with EU or national competition law. EU and national rules on the control of concentrations also provide for the imposition of fines and periodic penalty payments on concentration participants and third parties that breach obligations to notify, to stop implementing concentrations before a competition authority decides on their compatibility, and to submit required information.[398] Besides, rules on the control of concentration help maintain competitive markets, thus disincentivising anticompetitive behaviour. In implementing these rules, NCAa must act autonomously and professionally, without being vulnerable to political or other pressures.

## 3. Rules on participation of third parties in competition proceedings

On the procedural side, EU legislators have gradually developed procedural rules intended to protect the parties' rights in competition proceedings and to ensure the transparency and impartiality of competition investigations and decision-making. Regulation 1/2003 entrusted the EC and NCAs with investigative and decision-making powers to enforce the Treaty's antitrust provisions (Art. 101 and 102 TFEU). Inexplicably, Regulation 1/2003 is unpretentious in its outline of due process guarantees compared with the investigative and decision-making powers it grants to the Commission and NCAs. Article 2 declares that the burden of proving infringements of the Treaty antitrust rules rests on a competition authority or a party alleging the infringement. Article 27 deals with the defence rights of a party against whom competition proceedings are initiated. Persons who are subjects of the proceedings are guaranteed the right to be heard on the

[398] Art. 14 and 15 of the Merger Control Regulation - Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, OJ L 24, 29.1.2004, hereinafter: MCR

matters to which the Commission has taken objections. The Commission can base its decisions only on objections that the parties concerned have had an opportunity to comment on. Parties are guaranteed access to the files, subject to two restrictions. The first relates to third parties' legitimate interests in protecting their business secrets. The second one concerns confidential information and internal documents of the Commission or the competition authorities of the member states.

The ECJ first discussed the privilege against self-incrimination in *Orkem*.[399] The ECJ stated that an individual could not be compelled to give incriminating answers to the Commission, since doing so would infringe the general principles of EU law, which include fundamental rights as an integral part. While companies are obliged to cooperate with the Commission during anti-competition investigations, they cannot be compelled to provide answers that would amount to an admission of guilt for breaching antitrust rules.

### *3.1. Third parties in antitrust proceedings*

In parallel with the defendant's rights, Regulation 1/2003 outlines the rights of interested persons. Under the enforcement model established by Regulation 1/2003, the Commission may initiate an investigation on its own and issue a decision finding an infringement. Third parties may inform the Commission of alleged infringements of competition rules, and interested persons may lodge a complaint, but the Commission decides whether it shall initiate investigations and issue a decision prohibiting certain behaviour.[400] Regulation 1/2003 sets out a similar rule regarding NCAs' power to initiate cases and to decide on competition infringements. Where, on the basis of the information in NCA's possession, the conditions for prohibition are not met, they may likewise decide that there are no grounds for action on their part.[401]

The position of interested parties and third persons in proceedings concerning allegations of infringements of antitrust rules, as outlined in Regulation 1/2003, reflects an attempt in striking a balance between the legitimate interests of interested parties and third persons in participating in competition proceedings and in contributing to proving the alleged infringement, on one side, and empowering the Commission and NCAs to prioritise cases and ensure secrecy of proceedings for the sake of investigation effectiveness, on the other.

Regulation 1/2003 differentiates between complainants and third persons. Only persons with a legitimate interest may lodge a complaint, including member states.[402] The Commission Regulation 773/2004 specifies that the right to complain is granted to natural and legal persons who can demonstrate a legitimate interest in doing so.[403] Complainants will have a legitimate interest if they show that their economic interests are harmed or likely to be harmed by an alleged violation of Art. 101 and 102 TFEU. Final consumers of

[399] Orkem v. Commission, Case 374/87, ECLI:EU:C:1989:387
[400] Art. 7 of Regulation 1/2003
[401] Art. 5(3) of Regulation 1/2003
[402] Art. 7(2) of Regulation 1/2003
[403] Art. 5(1) of Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty, OJ L 123, 27.4.2004

goods and services have a legitimate interest if they show they have suffered economic damage resulting from an agreement or conduct liable to restrict or distort competition.[404] Even if a complainant demonstrates a legitimate interest, a competition authority still has discretion to decide whether it will initiate a case. The European Commission is responsible for implementing EU competition policy under Article 105 TFEU and, therefore, is not bound to commence proceedings to establish the existence of any infringement of competition law.[405] The Commission is entitled to prioritise cases and can reject a complaint for lack of an EU interest in initiating an investigation.

Similarly, Directive 2019/1 provides NCAs with the power to prioritise cases:

> "To the extent that national administrative competition authorities are obliged to consider formal complaints, those authorities shall have the power to reject such complaints on the grounds that they do not consider such complaints to be an enforcement priority. "[406]

An NCA may reject a complaint on the grounds that another NCA is dealing with a case. Likewise, the Commission and an NCA may reject a complaint on the grounds that another NCA has already dealt with it.[407] Member states may establish additional grounds for rejecting complaints under their national law.[408]

The Commission can reject a complaint if it does not provide sufficient grounds to act on the complaint based on the information provided by the complainant. In such a case, the Commission must invite the complainant to state its views in writing within a specified time limit. The Commission is not obliged to consider the late complainant's submissions. If the complainant fails to submit his views, the complaint will be considered withdrawn. If the complainant submits his statement in writing, the Commission may reject the complaint by a reasoned decision.[409]

The Commission decision rejecting a complaint is subject to an appeal before the General Court of the EU under Article 263 of the TFEU.[410] Rarely did a complainant succeed in annulling a decision of the Commission to reject a complaint before the EU courts. Even if he did, the Commission was not obliged to initiate an investigation following the court's decision. This happened in *CEAHR*,[411] where the Court annulled the first Commission's decision rejecting the complaint, but the Commission again rejected the complaint, reasoning that it could not prove an infringement without employing sufficient resources to investigate the case, which would be disproportionate to the effects of a decision.

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[404] Österreichische Postsparkasse and Bank für Arbeit und Wirtschaft v. the Commission, joined cases T-213/01 and T-214/01, EU:T:2006:151, para. 115
[405] Automec Srl v Commission, Case T-24/90, ECR 1992 II-02223, para. 74
[406] Art. 4(5) of Directive 2019/1
[407] Art. 13 of Regulation 1/2003
[408] Ibid.
[409] Art. 7 of Commission Regulation 773/2004
[410] Malgorzata Kozak, Jacek Mainardi, Rights of Complainants before the European Commission, *Journal of European Competition Law&Practice*, Vol. 13, 2023, pp. 152–164, https://doi.org/10.1093/jeclap/lpad015
[411] CEAHR v. Commission, Case T-472/08, ECLI:EU:T:2010:517

There are several justifications for limiting the power of interested persons to bring a case before a competition authority, the competition authority's responsibility for conducting competition policy being the principal one. Second, the competition authorities' limited resources compel them to focus on cases of greater public interest. The third justification is that parties suffering harm from competition violations have the power to initiate a case before a civil court, seeking an annulment of an anticompetitive agreement, bringing the competition infringement to an end, or asking for damages.

Courts of EU member states obtained the power to apply EU antitrust rules under Regulation 1/2003.[412] National courts also apply national competition laws, which provide an additional legal basis for initiating a civil law case.

The civil-law protection of private interests in competition law has not been the most effective method of competition law enforcement so far. Private persons face immense hurdles in obtaining evidence to prove violations of antitrust rules. They lack the powers and resources that competition authorities have to investigate the case, making it almost impossible for them to collect the necessary evidence to win. Natural persons and small companies often lack the financial resources to cover substantial litigation expenses.[413] In such circumstances, the risk of losing the case prevents them from bringing it before the court.

Thirdly, the option of civil enforcement is generally available to those who have a legal interest in bringing civil charges to the court, i.e., injured persons. The case may be that competition infringement causes minor damage to an individual, whereas it is not opportune for that person to sue in court. A class action is not generally available in the national legal systems of the EU member states, making it almost impossible for certain social groups, such as consumers or small businesses, to defend their interests effectively in civil litigation. Only recently has the European Union adopted the Representative Actions Directive (RAD), a specific type of class action that allows qualified entities to represent consumers' interests in court.[414] RAD aims at ensuring that a representative action mechanism to protect the collective interests of consumers is available in all

[412] Art. 6 of Regulation 1/2003

[413] In the White Paper on damages actions for breaches of the EC antitrust rules (COM(2008) 165 final), the Commission proposed that the costs of antitrust infringements would be borne by the infringers, and not by the victims and law-abiding businesses. Effective remedies for private parties also increase the likelihood that more illegal restrictions of competition will be detected and that infringers will be held liable. Antitrust Damages Directive (Directive 2014/104/EU, OJ L 349, 5.12.2014) set out in Art. 4 the principle of effectiveness, obliging member states to design and apply national rules and procedures relating to the exercise of claims for damages in such a way that they do not render practically impossible or excessively difficult the exercise of the Union right to full compensation for harm caused by an infringement of competition law. The effectiveness principle also extends to litigation costs.

[414] See: Slobodan Vukadinović, Jelena Popović, Class Action Versus Representative Action: Are We Facing the Gradual Harmonisation Between American and European Model of Collective Consumer Actions, *Balkan Yearbook of European and International Law 2025*, D. V. Popović et al. (eds.), Springer, pp. 225-243 https://doi.org/10.1007/978-3-032-16296-0_9

member states. When transposing RAD, some EU member states offered collective redress also for competition law cases, but not all of them.[415]

Complainants have a right to receive a non-confidential version of a statement of objections that the Commission notifies to the parties concerned. The complainant may express his views vis-à-vis the statement of objections within a time limit set by the Commission.[416] The right to respond to the statement of objections is the principal complainant's procedural right, since his participation in an oral hearing is conditional upon the Commission inviting him.

In case the Commission has rejected the complaint, the complainant has the right to access the file. The enjoyment of this procedural right is limited in that the claimant can access only a non-confidential version of the documents. The Commission may deprive him of accessing the documents containing business secrets and other confidential information belonging to other parties involved in the proceedings.[417] Access to the documents in the Commission's possession enables the complainant to initiate a case in court.

By limiting the complainant's right of access to the documents, the Commission intended to strike a balance between the parties' legitimate interests in protecting confidential commercial information and the complainant's right to legally protect his interests. Commission Regulation 773/2004 entrusts parties concerned and other persons who submit information to the Commission with the right to designate information which represents a business secret or other types of confidential information. In practice, exercising this right can substantially limit the complainant's access to relevant information, rendering it ineffective. To solve this issue, it is necessary to define the concepts of business secrets and other confidential information, and to determine the criteria for identifying which business secrets and confidential information warrant protection. Business secrets are confidential information about a company's business activity, of which mere transmission to a person other than the one who provided the information may seriously harm the latter's interests.[418] Other confidential information is information other than business secrets, insofar as its disclosure would significantly harm a person or a company.[419] Regardless of the EU institutions' attempts to define the concepts of business secrets and confidential information, these concepts remain obscure and confer substantial discretion on a competition authority in deciding whether to grant protection to specific information. Access to the file is provided on condition that the information thereby obtained may be used only for the purposes of judicial or administrative proceedings for the application of Article 101 or 102 TFEU.[420]

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[415] Thorsten Matthies, Lewin Klusmann, European competition (class) actions: Is the EU Representative Actions Directive leading to more fragmentation?, *Competition Law&Policy Debate*, Vol. 9, 2026, pp. 93-103 DOI: 10.4337/clpd.2025.03-04.03

[416] Art. 6(1) of Commission Regulation 773/2004

[417] Art. 8(1) of Commission Regulation 773/2004

[418] Postbank NV/Commission, Case T-353/94, EU:T:1996:119, para. 87

[419] European Commission, *Guidance on confidentiality claims during Commission antitrust procedures*, p. 2

[420] Art. 15(4) of Commission Regulation 773/2004

A complainant can request the Commission to allow him to express his views at an oral hearing with the parties to the case.[421] The Commission is not bound by the complainant's request. It will afford the complainant the opportunity to participate in an oral hearing only if it deems it appropriate.[422]

Complainants have a right to appeal against a Commission's decision in competition cases, provided that he shows that the decision is of a direct and individual concern to them.[423] The request of direct concern refers to the ability of the EU measure to affect an individual without member states having to implement it, while individual concern relates to the ability of the act to affect an individual even if it does not mention him.[424] Notification of a statement of objections by the Commission to a complainant and the Commission's decision mentioning him are not sufficient elements for obtaining *locus standi* before the EU courts.[425] Normally, a complainant will be recognised as having a right to appeal against the Commission's decision in the following circumstances: the Commission closes a case by accepting commitments from a defendant and the Commission issues a final decision finding infringement of competition rules but the complainant is not satisfied with a remedy imposed.

The status of third persons who did not complain to the Commission but have an interest in the outcome of a case is inferior to that of the complainants. The Commission has a substantial range of discretion in determining third persons' legal position in competition proceedings. Legal and natural persons may apply to the Commission to be heard, demonstrating sufficient interest in the case. The Commission will inform them in writing of the nature and subject matter of the procedure and will set a time-limit within which they may make known their views in writing. The Commission may invite them to develop their arguments at the oral hearing of the parties[426]

In addition, the Commission may invite any other person to express its views in writing and to attend the oral hearing of the parties to the case. It may also invite these persons to express their views at the oral hearing.[427]

### *3.2. Party status in control of concentration proceedings*

The status of parties in proceedings conducted under the Merger Control Regulation (MCR) is comparable to that in antitrust proceedings, the main difference beeing that the MCR did not address the complainant's status. The reason for doing so is obvious – proceedings under MCR are initiated by the parties' notification of concentration, which eliminates the possibility of the Commission acting on a complaint.[428] Nevertheless, third

[421] Art. 6(2) of Commission Regulation 773/2004
[422] Ibid.
[423] Art. 264(4) TFEU
[424] Ivo Van Bael, *Due Process in Competition Proceedings*, Kluwer, 2011, p. 335
[425] Wegenbouwmaatschappij J. Heijmans v Commission, Case T-338/06, ECR II 110, paras. 22-33
[426] Art. 13(1-2) of Commission Regulation 773/2004
[427] Art. 13(3) of Commission Regulation 773/2004
[428] However, it is possible that the Commission learn about a concentration that has been implemented without prior notification of the parties, in which case it starts the proceedings *ex officio* in line with Art. 8(4) MCR. The Commission can obtain this information from third parties that could enjoy complainant status if only MCR had provided a rule on this.

parties might have an interest in the outcome of proceedings for control of a concentration. Competitors of concentration parties, suppliers, buyers, and consumer representatives will most likely be interested in participating in the proceedings, since their economic interests can be harmed by concentrations that strengthen the market power of participating undertakings.

MCR provides a right to be heard to persons concerned and persons demonstrating sufficient interest.[429] The term 'persons concerned' in MCR has a wider meaning than the term 'parties to concentration'. It refers to persons who are affected by a Commission decision declaring a concentration compatible with the internal market. The Commission Implementing Regulation 2023/914 uses terminology inconsistent with MCR, by differentiating between the following persons who shall have a right to be heard in concentration control proceedings:

- notifying parties,
- other involved parties, that is, parties to the proposed concentration other than the notifying parties, such as the seller and the undertaking which is the target of the concentration,
- third persons, that is, natural or legal persons, including customers, suppliers and competitors, provided they demonstrate a sufficient interest.[430]

The notifying and other involved parties are concerned parties within the meaning of Art. 18(1) and (3) of MCR.

Parties concerned have an unconditional right to be heard. The extent of the right, however, varies. The Commission must provide the notifying and other involved parties with a statement of objections in writing before it adopts a final decision, and must set a time limit within which the concerned parties may respond. Following the issuance of a statement of objections, the Commission may address a letter of facts to the notifying parties, informing them of additional or new facts or evidence that it wishes to use to corroborate objections already raised. The Commission does not have the same duty towards the other parties involved. While the Commission must afford notifying parties an opportunity to develop their arguments at an oral hearing, it may do so for other parties involved.[431]

The Commission (and the competent authorities of member states) may hear other natural and legal persons, in so far it deems it necessary.[432] If third persons apply to be heard, the Commission must inform them in writing of the nature and subject matter of the proceedings and set a time limit within which they may make known their views. The Commission may send to third persons a non-confidential version of a statement of

[429] Art. 18(4) MCR
[430] Art. 11 of Commission Implementing Regulation (EU) 2023/914 of 20 April 2023 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings and repealing Commission Regulation (EC) No 802/2004, OJ L 119, 5.5.2023
[431] Art. 14 of Commission Regulation 2023/914
[432] Art. 18(4) of Regulation 139/2004

objections or inform them of the nature and subject matter of the proceedings by other appropriate means. Third persons may make known their views in writing within the set time limit. The Commission may, where appropriate, afford such third persons who have so requested in their written comments the opportunity to participate in a hearing.[433] The Commission may invite any other natural or legal person to express its views, in writing as well as orally, including at an oral hearing.

With regard to access to the files, again, the status of notifying parties differs from that of involved parties. The Commission will grant the parties to whom it addresses the statement of objections access to the files for the purpose of exercising their right to defence. Other involved parties who have been informed of the objections will be accorded access to the file, to the extent necessary to prepare their comments.[434]

Not all of the above-mentioned persons will be entitled to appeal against the Commission decision to the General Court. A person wishing to appeal to the Court must show that it is directly and individually affected by the Commission decision. In line with ECJ case law, a decision on whether a third party is individually concerned by a decision finding a concentration to be compatible with the internal market depends on a body of consistent evidence or on facts which may relate both to that undertaking's participation in the administrative procedure and to the effect on its market position. Active participation in the administrative procedure before the Commission is a factor regularly taken into account in the case-law on competition. The current and future position of an undertaking not party to a concentration on a market which may be influenced by that concentration must be substantially affected if that undertaking is to be individually concerned by the decision finding that the concentration is compatible with the internal market.[435]

## 4. Serbia's accession to the EU and the rule of law

The Republic of Serbia gained EU candidate country status in March 2012, and the Stabilisation and Association Agreement between the EU and Serbia entered into force on September 1, 2013.[436] The accession negotiations between the EU and Serbia started in January 2014 when the 1st Intergovernmental Conference was held.

The accession process of Serbia and five other Western Balkan countries over the last 10 years has been marked by the EU's 2018 Enlargement Strategy[437] and the steps taken after its publication. In its Communication to the European Parliament, the Council and other EU bodies, the Commission emphasised the importance of implementing fundamental reforms in the rule of law, fighting corruption, strengthening the economy, ensuring the

[433] Art. of Commission Regulation 2023/914
[434] Art. 17(1-2) of Commission Regulation 2023/914
[435] Mainova AG v. Commission, Case C-484/23 P, ECLI:EU:C:2025:482
[436] Stabilisation and Association Agreement between the European Communities and their Member States of the one part, and the Republic of Serbia, of the other part, OJ L 278, 18.10.2013
[437] *A credible enlargement perspective for and enhanced EU engagement with the Western Balkans*, Communication from the Commission to the European Parliament, the Council, the European Social and Economic Committee and the Committee of the Regions, 6.2.2018, COM(2018) 65 final

proper functioning of democratic institutions and public administration, and aligning foreign policy. Negotiations on the fundamentals are to be opened first and closed last, and progress on them will determine the overall pace of negotiations. The rule of law stands out as the most remarkable fundamental.[438] It was declared as the ultimate test for EU accession.[439]

In February 2020, the European Commission adopted a revised methodology for the accession process of the six Western Balkan countries. In the document outlining the revised methodology,[440] the Commission stressed that WB countries must deliver more credibly on their commitments to implement fundamental reforms, including the rule of law and the proper functioning of democratic institutions and public administration.[441] The new methodology entails grouping negotiation chapters into six clusters,[442] and the Commission monitors the accession country's progress by cluster. Meeting the benchmarks for each negotiation chapter within the cluster is a necessary precondition for opening the cluster negotiations. Between 2014 and 2026, Serbia opened 22 negotiation chapters, including all chapters in cluster 1 on the fundamentals of the process and in cluster 4 on the Green agenda and sustainable connectivity. Since 2021, no cluster has been opened. The Commission has repeatedly recommended opening cluster 3 on competitiveness and inclusive growth for negotiations, and the Council has been confirming the Commission's assessment that technical conditions have been met. However, it refrained from giving the green light to open cluster 3, noting that Serbia's negotiating pace is contingent on progress on the rule of law and the normalisation of relations with Kosovo. [443] The Commission monitors progress in the rule of law by focusing on Chapter 23 – Judiciary and fundamental rights, and Chapter 24 – Justice, freedom and security. It fails to assess the fulfilment of the rule of law requirements in specific sectors, including competition policy.

When it comes to the Internal market cluster, more than half of the chapters belonging to it have not been opened yet for negotiations, including Chapter 8 on competition. All opening benchmarks in Chapter 8 for Serbia were related to the state aid field.[444] The focus on state aid can be explained by Serbia taking major steps to align its competition law with the EU acquis a few years before accession negotiations started. Serbian Parliament adopted the Competition Protection Act (hereinafter: CPA) in 2009,[445] and the

[438] It is illustrated, among other things, by the Commission's mention of the rule of law 24 times in the Enlargement strategy for the Western Balkans.

[439] Vladimir Međak, Duško Lopandić, Maja Bobić, Ivan Knežević, *Twelve Proposals for EU Enlargement from Western Balkans*, Belgrade 2018, p. 23

[440] *Enhancing the accession process – A credible EU perspective for the Western Balkans*, Communication for the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 5.2.2020, COM(2020) 57 final

[441] *Enhancing the accession process*, p. 2

[442] The clusters are: 1. Fundamentals, 2. Internal market, 3. Competitiveness and inclusive growth, 4. Green agenda and sustainable connectivity, 5. Resources, agriculture and cohesion, 5. External relations.

[443] See, for example, Council conclusions on enlargement, 17.12.2024, 16983/24, par. 29

[444] European Commission, *Screening report Serbia*, *Chapter 8 – Competition policy*, MD 205/15

[445] Official Herald of RS, Nos. 51/2009 and 95/2013

government regulations needed for the CPA implementation in 2010.[446] In the Screening report for Serbia, the Commission stated that Serbia has broadly aligned its national legislation with the EU acquis on antitrust and merger control, but only partially aligned its State aid legislation. The Commission assessed that the key challenge for Serbia would be to strengthen its administrative capacity and to build up a solid enforcement record, in particular in the area of State aid.[447]

The Commission publishes a progress report for each candidate country annually, assessing steps made towards EU membership. As regards Chapter 8 on competition, the Commission focuses on the level of harmonisation of national legislation with EU acquis on competition and the enforcement record in competition cases. The Commission has never expressed views on the compatibility of Serbian procedural rules applicable in the competition field with the EU acquis. In the 2025 Report, the Commission noted that the Commission for Protection of Competition of the Republic of Serbia (hereinafter: CPC) has a reputation as an operationally independent institution. The Commission remarked that decisions should be systematically published and that the transparency of the CPC's work should increase. The capacity and specialisation of the judiciary in complex competition cases need to be significantly improved.[448]

## 5. Features of Serbia's competition enforcement model

Serbia opted for an administrative model of competition enforcement, as many new member and candidate states did. CPA established the CPC as an autonomous and independent organisation that exercises public authority under the law. It is accountable to the National Assembly of the Republic of Serbia, to which it reports annually.[449]

The CPC Council is the principal decision-making body in competition cases. It issues decisions on competition infringements, individual exemptions from the prohibition of restrictive agreements, and in second-phase merger investigations.[450]

The Council consists of five members, one of whom is the CPC President. CPA sets out the conditions and procedure for the election of CPC Council members. The Council members are elected by the National Assembly through an open competition procedure. Their term of office is determined by law, as well as the exact reasons for the premature end of the term.[451] The CPA provides sufficient guarantees of institutional independence and professionalism. Research on the level of formal independence of regulatory bodies in

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[446] In 2026, the Government adopted four new block exemption regulations to align with EU law on vertical agreements, technology transfer agreements, agreements in the railway and road sectors and agreements in the motor vehicle sector. For more information on the competition legislation in force in Serbia, see the webpage of the Commission for Protection of Competition https://kzk.gov.rs, available in Serbian and English.

[447] European Commission, *Screening report Serbia, Chapter 8 – Competition policy*, p. 10

[448] European Commission, *Serbia 2025 Report*, SWD(2025) 755 final, 4.11.2025, p. 78

[449] Art. 20 CPA

[450] Art. 22(2) CPA

[451] The reasons for the discharge of duties of a Council member are specified in Art. 24(4) CPA: 1) providing false or incomplete information in the application for the election as a Council member; 2) conflict of interest; 3) wrongful infringement of the CPA or the Ethical Codex.

Serbia found that the CPC has 0.8 points on a scale from 0 to 1.[452] The same research confirmed that *de facto* independence is rather lower. The process of electing Council members is neither transparent nor free from the ruling party's political influence.[453] Another study indicated that establishing the President as a separate CPC organ elected by the National Assembly made it more vulnerable to political pressure.[454]

A prominent role of the CPC President is the most remarkable feature of the Serbian competition enforcement model. As already mentioned, the President is one of the Council members who chairs the Council and participates in decision-making. At the same time, the President plays the principal role in conducting investigations. In antitrust investigations, the President appoints one of the Council members as a rapporteur and nominates an official from the CPC Technical Service to conduct an investigation.[455] The President issues an administrative act (conclusion) to start an investigation[456] and an authorisation for a CPC official to inspect business premises and documents, and to take statements from company officials and personnel.[457] The President issues a decision on interim measures and on the compatibility of a concentration with competition rules in first-phase investigations (so-called expedited procedure), or on whether to start an in-depth investigation of a concentration.[458]

It follows from the above that the President exerts a dominant influence over whether to initiate an investigation and over its course. At the same time, the President participates in the Council's decision-making and makes the final decision in the first phase of concentration cases. The lack of a separation between investigative and decision-making powers depicts the principal shortcoming of the Serbian enforcement model. This feature, combined with insufficient transparency in CPC operations and the political influence exerted over the election of the President and Council members, creates fertile ground for impetuous investigations and submissive decision-making.

### 5.1. *The status of third parties in antitrust proceedings*

The second deficiency of the Serbian competition enforcement model is the very limited role of third parties in proceedings before the Commission, which contravenes general rules on administrative proceedings. The General Administrative Proceedings Act

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[452] Slobodan Tomić, Aleksandar Jovančić, Nastanak i razvoj regulatornih tela u Srbiji: domaće ili eksterne determinante?, *Političke perspektive*, Vol. 2, 2012, pp. 23-52, at 34

[453] See, for example, an NGO Centar za evropske politike's public statement of 9.10.2024, which noted that the contest for electing the President and the Council members was not published on the CPC website. https://cep.org.rs/praksa-komisije-za-zastitu-konkurencije-u-senci-hitno-potrebno-poboljsanje-transparentnosti-i-primene-pravila/

[454] Miodrag Radojević, Nezavisna (regulatorna) tela i institucije u Srbiji, *Srpska politička misao*, Vol. 30, 2010, pp. 53-76, at p. 62

[455] Art. 25(3) and Art. 41(2) CPA

[456] Art. 35(2) CPA

[457] Art. 41(3) CPA

[458] Art. 37(2) and Art. 41(2) CPA

(hereinafter: GAPA)[459] differentiates between direct and indirect parties. Direct parties are those persons whose administrative matter is the subject of the proceedings. Indirect parties (or interested parties, intervenients) are any other natural or legal person whose rights, duties and legally protected interests the outcome of administrative proceedings can affect.[460] An indirect party is allowed to participate in the proceedings because it is affected by the outcome of its subject matter and therefore has a personal interest in being heard, or in other ways participating in the proceedings. Its legal interest is affected by or even intertwined with the subject matter of the administrative proceedings. The interest of an indirect party must be based on law or other regulations. For this reason, it is named in legal theory a "legally interested party." Legally interested parties are distinguished from factually interested parties, who are interested in the outcome of the proceedings for other reasons. If an administrative body recognises the status of a third (interested) party in relation to a person, that person acquires procedural rights comparable to those of a direct party. It may propose the presentation of evidence, examine witnesses, has the right to be served with the decision of the body that decides on a specific matter, may file a legal remedy against that decision, etc. Third parties cannot exercise procedural rights if the institution conducting the procedure has not granted them party status. Serbian administrative law does not provide for a gradation of procedural rights for third parties comparable to those set out in Commission Regulations 773/2004 and 2023/914, which seems to be the main obstacle to granting specific procedural rights to third parties.

The CPA makes an exception to the GAPA rules regarding the third-party status, enumerating parties in proceedings before the CPC. The party status is *ex lege* granted to undertakings that notify a concentration, to undertakings that submit a request for an individual exemption from a prohibition on restrictive agreements, and to undertakings against which the CPC has started an antitrust investigation.[461] The CPA explicitly denies party status to persons who submit an initiative for investigations into competition infringements, persons who provide information and data to the CPC, expert witnesses, and state organs and organisations that cooperate with the CPC during investigations.[462]
Persons who submit an initiative to the CPC to start an investigation into alleged competition infringement (hereinafter: initiators) have a bare right to receive a notification from the CPC regarding the outcome of their initiative.[463] The CPC initiates investigations *ex officio* when, based on the submitted initiatives, information and other

[459] Official Herald of RS, Nos. 18/2016, 95/2018 – authentic interpretation, 2/2023 – decision of the Constitutional Court
[460] Art. 44(1) GAPA
[461] Art. 33(1) CPA
[462] Art. 33(2) CPA
[463] Art. 43(3) CPA

available data, it reasonably assumes the existence of a competition violation.[464] The CPC informs the initiator about the outcome of his initiative within 15 days of its receipt.[465]

The above-cited legal provisions evidently depart from the generally accepted principle in administrative proceedings that parties with a legally recognised interest in the outcome of a case have standing. At the same time, CPA procedural rules depart substantially from EU competition proceedings rules. The Serbian legislator failed to lay down rules regarding the status of a complainant in antitrust proceedings and parties concerned in proceedings on the control of concentrations.

The CPC has so far strictly construed the CPA rules on party standing, thereby obstructing every attempt by interested parties to gain standing in proceedings before the Commission.[466] As if that was not enough, the Administrative Court (hereinafter: AC), which is responsible for determining the legality of CPC administrative acts, upheld the CPC's interpretation of CPA Article 33, thereby denying interested parties the right to challenge CPC decisions. The AC logic is that if a person was not granted party standing in proceedings before the CPC, that same person cannot bring charges against the CPC administrative act because they lacked party standing in the proceedings from which the act arose.[467]

The concept of an interested party is more specifically outlined in Article 13 of the Administrative Disputes Act (hereinafter: ADA):[468]

> „An interested party is a person to whom the nullity of an administrative act would directly cause damage.“

In competition cases, interested parties bring lawsuits against the competition authority's decisions when dissatisfied and seek their nullification in court. Under Serbian law, an interested party may participate in an administrative dispute either when it has been granted party standing in proceedings preceding the dispute or when it opposes the nullification of the administrative act at issue. Since CPC has never recognised the party standing of interested parties in administrative proceedings, it follows that the same parties cannot obtain the party standing in court proceedings.

In a case involving a party that submitted an initiative to the CPC alleging abuse of dominant position by the incumbent telecom operator, the CPC informed the initiator of the initiative's outcome. The CPC decided not to initiate proceedings against Telekom Serbia in connection with this initiative. The initiator filed a dispute before the AC, challenging the legality of the CPC notification regarding the outcome of the initiative. The AC rejected the suit, explaining that the CPC notification to the initiator on the

[464] Art. 35(1) CPA
[465] Council of the CPC, *Instruction on the content of an initiative for investigating a competition violation based on Art. 10 CPA*, 25.07.2019
[466] For the criticism of Art. 33 CPA see Zoran Tomić, *Komentar Zakona o opštem upravnom postupku*, Belgrade, 2021, pp. 289-291
[467] Decision of the Administrative Court no. 6 U. 21041/18, 7.02.2019; Decision of the Administrative Court no. II-4 Uv. 131/2019, 27.08.2019
[468] Official Herald of RS, No. 111/2009

outcome of the initiative is not an administrative act within the meaning of Art. 3 and 4 of ADA:

> „The notification of the Commission for the Protection of Competition of the Republic of Serbia ….from Article 35, paragraph 4 of CPA, by its content and legal nature does not constitute an act from the cited provisions of Articles 3 and 4 of ADA, the legality of which is decided in an administrative dispute, since this notification does not decide on the individual right or duty of the initiator, nor does it constitute a decision of the CPC from Article 38 of the aforementioned law, which is subject to judicial review."[469]

The AC's reasoning reflects a conventional approach regarding the definition of the administrative act. Based on Article 16(1) GAPA, an administrative act is an individual legal act by which an administrative authority decides on the right, obligation, or legal interest of a party, or on procedural issues, by directly applying regulations in an administrative field. Administrative acts are called orders and conclusions, but they may be named differently under the relevant law. In the AC's view, only acts that decide on the rights and obligations of the direct parties and which are named decisions in line with Art. 38 of the CPA are regarded as administrative acts. The AC overlooked that third parties' interests may also be affected by the CPC notification that it will not initiate an investigation against the alleged infringer, reasoning that the notification is not capable of determining a party's legal rights and duties.

### 5.2. *The status of third parties in control of concentration proceedings*

Third parties are denied the right to participate in proceedings concerning the control of concentrations. The CPC refuses to grant third parties standing in proceedings initiated by a concentration party's notification, based on the party definition in Article 33 CPA, and the Serbian courts have failed to provide protection to third parties who claim a legal interest in participating in proceedings before the CPC.

In 2017 and 2018, an incumbent telecommunications company, Telekom Serbia, began acquiring local cable TV and internet companies operating across various municipalities in Serbia. The CPC President approved these acquisitions, following a first-phase concentration investigation (expedited procedure). When one of the major competitors – a cable operator ranked as the No. 2 competitor in Serbia - learned of the incumbent's acquisitions in the cable TV and internet markets, it requested that the CPC recognise its standing in the concentration proceedings. The CPC rejected the request, and the cable operator filed the case with the AC. The AC rejected the suit on the ground that the cable operator lacked party status in the proceedings before the CPC and was not a concentration party under Article 33 of the CPA. The cable operator then appealed to the Supreme Cassation Court (hereinafter: SCC). The SCC confirmed the AC's decision by

[469] Order of the Administrative Court II-1 Uv. 121/2017, 29.08.2017

providing a more nuanced explanation. It principally confirmed the appellant's argument that a third party having a legal interest in the subject matter of a competition case may be granted standing in the court's proceedings. However, it held that the major competitor of the incumbent operator does not possess sufficient interest to qualify it for obtaining standing before the court:

> "The fundamental interest of market participants established by the CPA is precisely the protection of competition, under the violation of which, in the sense of Article 9 of this law, are considered acts or actions of market participants whose aim or effect may be to significantly limit, distort or prevent competition. As a result of the above, only the market participant whose competitive position on the market was directly harmed by the disputed act, by significantly limiting, distorting, or preventing competition, can be legitimised to file a lawsuit in an administrative dispute against a decision on concentration. In this particular case, the outcome of the procedure conducted following the application by the BB company, whether positive or negative, could not directly affect the appellant's business, nor did the appellant prove that the contested act had as its goal or consequence a significant limitation, distortion, or prevention of competition. Indirectly 'reflecting the effects of the concentration' on the applicant's business does not constitute a basis for active legitimation in an administrative dispute, because, otherwise, all other participants in the market to which the effects of the concentration extend - competitors, suppliers, consumers, etc. will be legitimised."[470]

The SCC accepted the CPC's argument that granting third parties standing would lead to "legal uncertainty and uncertainty for the implementation of all concentrations that are subject to the notification obligation". If every person to whom the effects of the decision on the approval of the concentration are extended would be recognized as a party in the administrative dispute, this could have the consequence that, contrary to the express provisions of Article 33 of the CPA, they would also be recognized as a party in the proceedings before the CPC in the event that the lawsuit is accepted in the administrative dispute and the decision on the approval of the concentration is annulled, and the case is returned to the CPC to reopen it.

The SCC's reasoning reflects an insufficient expertise in competition law when it concluded that the acquisition by one company of another company cannot affect the appellant's business. The Court was not aware that the acquisition of control over a company may strengthen the market position of the acquirer and the target company and, consequently, weaken the market power of their competitors. Secondly, the Court put a heavy burden on the appellant's back, requiring him to prove that the contested act

[470] Decision of the Supreme Cassation Court Uzp 387/2019, 24.01.2020

had as its goal or consequence limitation, distortion or obstruction of competition, only to be granted the party standing. This goal cannot be proved prima facie; it can only be established after an investigation. The SCC conditions for granting the party standing effectively make it impossible for the third party to obtain it. Thirdly, the SCC gives the legal certainty of concentration parties greater weight than the legitimate interests of competitors, suppliers and consumers in protecting their economic interests. The Court did not explain why the private interests of concentration parties prevail over the private interests of their competitors, suppliers, or consumers.

### 5.3. *Transparency of CPC investigations and decision-making*

The transparency of CPC's investigations and decision-making is not adequately regulated under the CPA. Under Article 40 of the CPA, the CPC must publish decisions that establish a competition infringement. It also publishes conclusions to initiate a case investigation, but the CPC President may decide not to publish a conclusion if the publication might jeopardise the case investigation. The CPC is not obliged to publish information on notified concentrations and decisions concerning concentrations. In practice, the CPC regularly publishes decisions in antitrust and concentration cases, although exceptions have been noted.

The exclusive power of the CPC President to decide on the approval of concentrations in an expedited procedure, combined with the lack of an obligation to publish information on notified concentrations, confers the President a substantial margin of discretion in approving concentrations that might raise competition concerns, given that he can avoid opening an investigation, while his decisions issued in expedited procedure remain under the radar. This is clearly shown by the latest information on concentrations approved in expedited proceedings published on the CPC website. In 2025, the incumbent telecom operator, Telekom Srbija, acquired 15 cable TV and internet operators active in the territory of the Republic of Serbia.[471] All acquisitions were approved in an expedited procedure. For the majority of these concentrations, full decisions remained unpublished on the CPC website, citing that proceedings to protect data on concentration under Article 45 of the CPA are still ongoing.

## 6. Conclusion

The EU legislator has made an effort to set out the legal framework for establishing independent, impartial and professional competition authorities and to lay down procedural rules that will ensure the effectiveness of competition investigations while adequately protecting the parties' legitimate interests. In the matter of institutional set-up, the European Parliament and the Council didn't go beyond proclaiming the general principles for the establishment and functioning of national competition authorities. On the procedural side, the EU legislator set out detailed rules to warrant the right to defence and interested parties' participation in competition proceedings, while granting the

[471] Data obtained from the CPC webpage publishing decisions on concentrations https://kzk.gov.rs/odluke/tipovi/koncentracije

European Commission authority to determine the actual scope of their participation in each case. The Commission's discretion is effectively restricted by transparency obligations and the substantial powers of the EU courts in controlling the Commission's procedural decisions relating to third-party rights. The deficiencies of the current model can be neutralised, if not eliminated, by strengthening the EU legal framework for private enforcement of competition law.

Serbia began harmonising its national competition law more than two decades ago. Regarding substantive rules, the level of harmonisation is rather high. Concerning the institutional setup, Serbia adopted an administrative enforcement model, with the Commission for the Protection of Competition enjoying proclaimed independence and operational autonomy. On the procedural side, the principal shortcomings of the Competition Protection Act are the fusion of investigative and decision-making powers in the person of the CPC President and the failure to regulate third parties' rights in competition proceedings. The CPA genuinely denies third parties' participation in antitrust and concentration control proceedings, prioritising the efficiency of proceedings and the interests of direct parties over the protection of third parties' interests. The general administrative law of Serbia recognises third parties as participants in administrative proceedings. However, the well-established rules on third parties are suspended in competition proceedings due to the CPA's unfortunate conceptualisation of the party. Consequently, third parties are also denied access to the court responsible for judicial review of CPC decisions.

In the candidate countries' setting, guarantees of third parties' rights in competition proceedings serve not only to protect the private economic interests of competitors, suppliers and consumers, but, more importantly, to make competition authorities' operations more transparent and accountable and thus contribute to strengthening the rule of law in the competition field. The latter is the very reason why the European Commission should monitor whether institutional independence, autonomy, and operational transparency, as well as procedural guarantees, are not only set out in law but also respected in practice.

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LEGISLATION

**European Union**

Commission Implementing Regulation (EU) 2023/914 of 20 April 2023 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings and repealing Commission Regulation (EC) No 802/2004, OJ L 119, 5.5.2023
Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty, OJ L 123, 27.4.2004
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