

COMPETITION ENFORCEMENT AGENCIES

HANDBOOK 2019

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ELIG Gürkaynak Attorneys-at-Law

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Competition Enforcement Agencies Handbook 2019

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Competition Enforcement Agencies Handbook 2019

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Global Competition Review's 2019 edition of the *Competition Enforcement Agencies Handbook* provides full contact details for competition agencies in over 100 jurisdictions, together with charts showing their structure and a Q&A explaining their funding and powers. The information has been provided by the agencies themselves and by a panel of specialist local contributors.

The *Competition Enforcement Agencies Handbook* is part of the *Global Competition Review* subscription service, which also includes online community and case news, enforcer interviews and rankings, bar surveys, data tools and more.

We would like to thank all those who have worked on the research and production of this publication: the enforcement agencies and our external contributors.

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Questions and answers

How long is the head of agency's term of office?

According to the provisions of the Law for Protection of Competition the mandate of the director of the Agency for Protection of Competition (APC) is defined to four years.

When is he or she due for reappointment?

In July 2018, an acting director was appointed and in February 2019 their mandate was extended again for a period up to six months.

Which posts within the organisation are political appointments?

None.

What is the agency's annual budget?

The budget for 2015 was approximately €305,000; for 2016, it was approximately €380,000; for 2017, the budget was approximately €482,000, it was approximately 2018 €763,000 and for 2019 it is €795,506.

How many staff are employed by the agency?

There are currently 26 employees at the APC, including members of the Council, the director, employees from State Aide and employees from Competition, out of which 10 employees are case handlers.

To whom does the head of the agency report?

The APC is obliged to submit its annual report to the government and the parliament of Montenegro and to publish it on its website.

Do any industry-specific regulators have competition powers?

No.

If so, how do these relate to your role?

Not applicable.

Do politicians have any right to overrule or disregard the decisions of the authority?

No.

Does the law allow non-competition aims to be considered when taking decisions?

No.

Which body hears appeals against the agency's decisions? Is there any form of judicial review beyond that mentioned above? If so, which body conducts this?

Against the decision or conclusion issued by the Agency, the right to appeal to other appellate administrative body is excluded, but according to article 64 of the Law on Protection of Competition (LPC), an administrative dispute may be initiated before the Administrative Court. An administrative dispute is initiated by a lawsuit. The Administrative Court either approves or rejects charges as unfounded. If charges are accepted, the Administrative Court annuls decision of the APC.

Against the final decision of the Administrative Court, extraordinary legal remedies can be submitted to the Supreme Court of Montenegro, such as request for review of the court's decision and request for retrial. The Supreme Court issues a decision on a request for special review of the Administrative Court's decision and on request for retrial decides the court that brought decision against which the request is submitted.

Has the authority ever blocked a proposed merger?

No.

Has the authority ever imposed conditions on a proposed merger?

Yes.

Has the authority conducted a Phase II investigation in any of its merger filings?

Yes.

Has the authority ever pursued a company based outside your jurisdiction for a cartel offence?

No.

Is there a criminal enforcement track? If so, who is responsible for it?

No.

Are there any plans to reform the competition law?

The government of Montenegro adopted the Law on Amendments to the Law on Protection of Competition in February 2018. In the amendments, inter alia, it is envisaged that the powers and actions of the State Aid Control Commission are under the jurisdiction of the Agency for Protection of Competition. The Council has a president and two members, and competence between of the Council and the director of the APC have been clearly divided.

This will enable operations of the state aid control to be carried out within the existing institutional arrangements, without expanding the network of regulatory bodies.

When did the last review of the law occur?

The existing LPC was adopted and came into force on 9 October 2012 (Official Gazette of Montenegro No. 44/12), introducing a number of changes in the field of competition protection and introducing European competition law principles. With the new law entering into force, grounds were set for founding an operationally independent body, the APC, in February 2013 (before, it was Administration for Protection of Competition). The LPC is allowing further development of the competition law and policy by way of a number of new legal provisions.

Do you have a separate economics team? If so please give details.

In accordance with a new rule book on internal organisation and systematisation of workplaces in the APC, we formed separated unit for dealing with economic analyses.

Also in each sector there is an economist who deals with the economic part of the area in which he or she is

in charge and in a position to work with the sector for economic analysis.

Has the authority conducted a dawn raid?

Yes.

Has the authority imposed penalties on officers or directors of companies for offences committed by the company?

Yes, according to the LPC (article 67), a fine of from €1,000 to €4,000 shall be imposed on the responsible person in an undertaking, as well as on the responsible person in a public body, state administration body, local administration body or local self-government body, if such body acts as an undertaking, for misdemeanours referred to in paragraph 1 of said article. Article 68 of the LPC also states that a fine of from €1,000 to €4,000 shall also be imposed on the responsible person in an undertaking for misdemeanour referred to in paragraph 1 of said article 68 of the LPC.

What are the pre-merger notification thresholds, if any, for the buyer and seller involved in a merger?

Article 50 of the LPC defines obligation to notify concentration, based on alternative economic thresholds and subject to prior year turnover. Undertakings shall submit a request for approval of concentration to the APC, if one of the following conditions is fulfilled:

- the combined aggregate annual turnover of at least two parties to the concentration achieved in the market of Montenegro exceeds €5 million in the preceding financial year; or
- the combined aggregate annual worldwide turnover of the parties to the concentration achieved in the preceding financial year exceeds €20 million if at least one party to the concentration achieved €1 million in the territory of Montenegro in the same period.

Does the country have an immunity and leniency programme? What discounts are available to companies that cooperate with cartel investigations?

Against a party to an agreement that prevents, restricts or distorts competition, who in the proceedings conducted before the APC enables the finalisation of the proceedings and adoption of the decision regarding competition infringement as defined in article 8 of the LPC, the APC may decide not to submit the request for initiating misdemeanour proceedings or withdraw the request already submitted, or propose to the court during the proceedings more lenient punishment of the party to the agreement, if the party to the agreement:

- is the first to report to the APC the existence of the agreement and submits valid evidence;
- submits evidence of the existence of the agreement referred to in article 8 of this law to the APC which at that moment had some knowledge thereof but did not have sufficient evidence; or
- reports existence of another prohibited agreement it is a party to or has immediate knowledge of, of which it has supplied evidence.

These provisions shall not apply to a party to the agreement who initiated or organised the conclusion or enforcement of the agreement that prevent, restrict or distort competition.

The APC may, applying analogously the law regulating misdemeanour proceedings, propose to the party to the agreement to conclude the agreement on admission of guilt.

Does the authority conduct criminal investigations and prosecutions for cartel activity? If not, is there another authority in the country that does?

The Criminal Law prescribes criminal liability for a responsible person in a legal entity for the abuse of dominant position or if there is a cartel with 100 per cent market share in the market in a specific field or area. The APC refers the case and the necessary data to the Public Prosecutor, who refers it to the Special Prosecutor who establishes if there are grounds of criminal offence. The Public Prosecutor keeps the Agency informed and puts the case into procedure.

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