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EPS DISTRIBUCIJA KAŽNJENA 2.67 MILIONA EVRA ZBOG ZLOUPOTREBE DOMINANTNOG POLOŽAJA

Savet Komisije za zaštitu konkurencije doneo je 23. decembra 2016. godine rešenje kojim se utvrđuje da je Operator distributivnog sistema EPS Distribucija d.o.o. Beograd, kao jedini operator na tržištu distribucije električne energije Srbije zloupotrebio dominantan položaj. Ovom tržišnom učesniku izrečena je i mera zaštite konkurencije u visini od 330 miliona dinara koju je dužan da uplati u budžet Republike Srbije, kao i mere ponašanja u cilju izjednačavanja uslova poslovanja na tržištu.

Ovo je najveća kazna do sada u Srbiji izrečena za zloupotrebu dominantnog položaja na tržištu.

Tokom postupka Komisija je utvrdila da je navedeno društvo svoj dominantan položaj zloupotrebilo tako što je pojedine komercijalne snabdevače električnom energijom, a posebno EPS Snabdevanje, stavilo u povoljniji položaj u odnosu na druge konkurente. Ovakvo ponašanje je između ostalog i posledica netransparentne poslovne politike EPS Distribucije.

EPS Distribucija je prilikom ugovaranja pristupa sistemu za distribuciju električne energije nametala obavezu deponovanja sredstava obezbeđenja svim komercijalnim snabdevačima, osim EPS Snabdevanju. Istovremeno, privredno društvo EPS Distribucija je pravilo razliku u pogledu iznosa sredstava obezbeđenja, jer je za neke korisnike sistema iznos računat na bazi mesečne, a za druge na bazi tromesečne vrednosti pružene usluge. Pri tome, gotovo svi komercijalni snabdevači električnom energijom, mogli su da vrše deponovanje sredstava obezbeđenja samo u jednoj poslovnoj banci, po izboru EPS Distribucije. EPS Snabdevanje imalo je, u kraćem vremenskom periodu, značajno duži rok za plaćanje dospelih obaveza, u odnosu na sve ostale komercijalne snabdevače.

Stoga, Komisija je utvrdila da je EPS Distribucija zloupotrebila dominantan položaj na tržištu tako što je: (1) primenivala

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EPS DISTRIBUTION FINED EUR 2.67 MILION FOR ABUSE OF DOMINANCE

On 23 December 2016 the Council of the Commission for Protection of Competition adopted a decision finding that the national electricity distribution system operator EPS Distribution LLC Belgrade abused its dominant position as the sole operator on the market for electricity distribution in Serbia. A pecuniary measure for protection of competition in the amount of approximately RSD 330 million (equal to approximately EUR 2.67 million) was imposed on this undertaking, to be paid into the budget of the Republic of Serbia. This is in addition to behavioral measures aimed at providing equal business conditions on the relevant market.

This is so far the highest fine imposed for abuse of dominant position on relevant market in Serbia.

During the course of the proceedings, the Commission determined that the aforesaid undertaking abused its dominant position by placing certain commercial electricity suppliers and, in particular, its sister company EPS Supply, in a more favorable position vis-à-vis their competitors. Such behavior was, among other things, a consequence of the non-transparent business policy of EPS Distribution.

While contracting access to the electricity distribution system, EPS Distribution imposed a commitment to deposit security instruments on all commercial suppliers except its sister-company, EPS Supply. At the same time, EPS Distribution discriminated between different suppliers in terms of the amount of the deposited security instruments, by setting the amount for some suppliers based on the monthly value of services provided, while for others the amount was based on a trimonthly value. In addition, almost all commercial suppliers of electricity were obliged to deposit their security instruments in just one commercial bank, chosen by EPS Distribution. During a brief period, EPS Supply also enjoyed a much longer grace period for settling its liabilities towards EPS Distribution, compared to all other commercial suppliers.

Therefore, the Commission found that the EPS Distribution abused its dominant market position by: (1) applying dissimilar



nejednake uslove poslovanja na iste poslove sa različitim učesnicima na tržištu, i na taj način pojedine učesnike na tržištu dovela u nepovoljniji položaj u odnosu na konkurente, i (2) što je nametanjem tih nepravilnih uslova poslovanja učesnicima na tržištu nametnula obavezu poslovanja sa samo jednom poslovnom bankom i to po izboru EPS Distribucije.

Konkretno, Komisija je utvrdila da je EPS Distribucija povredila odredbe Zakona o zaštiti konkurencije na sledeća 2 načina :

1. Primena nejednakih uslova poslovanja na iste poslove sa različitim učesnicima na tržištu, a koji uslovi poslovanja su se sastojali u sledećem:

1) Obaveza deponovanja sredstava obezbeđenja: Po oceni Komisije EPS Distribucija je, prilikom ugovaranja pristupa sistemu za distribuciju električne energije („Sistem“) svim korisnicima Sistema osim Javnom preduzeću „Elektroprivreda Srbije“ Beograd, nametnula obavezu deponovanja sredstava obezbeđenja na ime obezbeđenja plaćanja računa za usluge pristupa Sistemu. Dodatno, EPS Distribucija je po oceni Komisije ugovarala različite rokove plaćanja sa pojedinim učesnicima na tržištu, konkretno privrednom društvu EPS Snabdevanje d.o.o. Beograd e pružena mogućnost dužeg roka otplate za plaćanje usluga pristupa Sistemu u odnosu na ostale učesnike na tržištu;

2) Mogućnosti izbora vrste sredstva obezbeđenja: Po oceni Komisije, prilikom zaključenja ugovora o pristupu Sistemu („Ugovor“), EPS Distribucije je pojedinim korisnicima Sistema dala mogućnost izbora između dve vrste sredstava obezbeđenja i to: (1) bankarske garancije i (2) namenskog-garantnog depozita. Sa druge strane, pojedine korisnike Sistema je uslovlila prihvatanjem samo namenskog-garantnog depozita;

3) Razlika u pogledu obračuna iznosa sredstava obezbeđenja: Po oceni Komisije EPS Distribucija je nejednako postupala prema korisnicima Sistema u smislu ugovaranja i obračuna visine iznosa sredstava obezbeđenja namenjenim za plaćanje računa za usluge pristupa Sistemu. Konkretno EPS Distribucija je pravila razliku u pogledu obračuna iznosa sredstava obezbeđenja koje je nametnula u Ugovorima pojedinim korisnicima Sistema, i to tako što je za neke korisnike Sistema taj iznos sredstava obezbeđenja obračunavala na osnovu mesečne potrošnje, dok je nekim učesnicima na tržištu obračunavala na osnovu tromesečne potrošnje (ovo za 3 učesnika na tržištu).

2. Nepravilni uslovi poslovanja koji su se sastojali u sledećem:

business conditions to equivalent transactions with different market participants, which resulted in a less favorable position of some individual market participants in relation to their competitors, and (2) by imposing these unfair business conditions to the market participants it imposed to the market participants the obligation of cooperation with only one commercial bank selected by the EPS Distribution.

In particular, the Commission found that EPS Distribution violated provisions of the Law on Protection of Competition in the following 2 ways:

1. The application of dissimilar business conditions to equivalent transactions with different market participants, which business conditions consisted of the following:

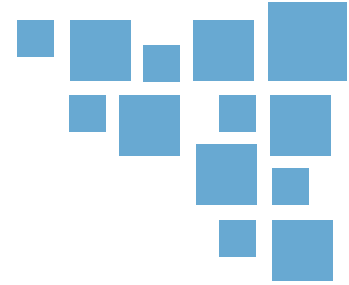
1) The obligation of depositing of collateral: According to the Commission, when negotiating access to the system for distribution of electricity ("System"), EPS Distribution has imposed to all users of System, except Public company "Electric Power Industry of Serbia" Belgrade, the obligation of depositing of collateral as security for the payment of bills for the System access services. In addition, according to the Commission, EPS Distribution was arranging different payment terms with some market participants, in particular company EPS Supply Belgrade was given the opportunity of extended repayment period for payment of System access services, compared to other market participants;

2) Selection options of type of collateral: According to the Commission, when concluding agreement on access to the System (the "Agreement"), EPS Distribution to some participants of the System gave a choice between two types of collateral as follows: (1) the bank guarantee, and (2) guarantee deposit. On the other hand, it conditioned certain users of the System with accepting only the guarantee deposit;

3) The difference regarding the calculation of the amount of collateral: According to the Commission, EPS Distribution acted unequally towards users of the System in terms of contracting and calculating the amount of collateral intended for the payment of bills for System access services. In particular, EPS Distribution made difference in terms of calculating the amount of security imposed in the Agreements to some users of the System, in a way that it to some users of the System calculated the amount of collateral on the basis of monthly consumption, while to other market participants it calculated the amount of collateral based on quarterly consumption (this for 3 participants on the market).

2. Unfair business conditions, which consisted of the following:





1) Obaveza poslovanja sa poslovnom bankom po izboru EPS Distribucije: Po oceni Komisije EPS Distribucija je nametnula nepravične uslove poslovanja, time što je nametnula obavezu polaganja namenskog (garantnog) depozita kod samo jedne imenovane banke i to po izboru EPS Distribucije. Konkretno, EPS Distribucija nije omogućila učesnicima na tržištu slobodu odabira poslovne banke kod koje bi položili sredstva obezbeđenja za obezbeđenje plaćanja računa za usluge pristupa Sistemu.

Sve navedene radnje za posledicu imaju povećanje cene koštanja električne energije kojom komercijalni snabdevači snabdevaju krajnje potrošače.

Komisija je naročito cenila saradnju i postupanje EPS Distribucije koja je, još tokom trajanja postupka, izmenila sporne akte i iskazala volju da u potpunosti otkloni ponašanje na tržištu koje je dovelo do povrede konkurencije.

1) The obligation of doing business with commercial bank selected by the EPS Distribution: According to the Commission EPS Distribution imposed unfair business conditions, by imposing obligation of depositing a dedicated (guarantee) deposits with a single bank selected by EPS Distribution. In particular, EPS distribution did not enable market participants freedom of choice of the commercial banks in which to lay collateral to secure payment of bills for the System access services.

The abovementioned conduct resulted in increased costs of electricity with which commercial suppliers supply the end consumers.

The Commission especially took into account the cooperation and overall conduct of EPS Distribution during the proceedings. This included, in particular, the amendment of the disputed acts and a demonstration of intent to fully eliminate the harmful effects of the prohibited market behavior.

Za više informacija o ovome kontaktirati



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