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# Screening report

## Serbia

### Chapter 8 – Competition Policy

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## I. CHAPTER CONTENT

The competition *acquis* covers anti-trust, merger control<sup>1</sup> and State aid control policies. It includes rules and procedures to fight anti-competitive behaviour by companies (restrictive agreements between undertakings and abuse of dominant position), and to prevent governments from granting State aid which distorts competition in the internal market. As regards merger control, the Commission has competence to review mergers above certain turnover thresholds while Member States are free to control mergers below these thresholds. The competition *acquis* is based on Article 37 (State monopolies of a commercial character), Articles 101-105 (Rules applicable to undertakings), Article 106 (Public undertakings and undertakings with special or exclusive rights) and Articles 107-109 (Rules applicable to State aid) of the Treaty on the Functioning of the European Union (TFEU).

In the field of **anti-trust**, national competition authorities must closely co-operate with the Commission in EU competition procedures. Since 1 May 2004, all national competition authorities are also empowered to apply fully Article 101 and 102 of the TFEU in order to ensure that competition is not distorted or restricted. For this purpose, they should have powers comparable to those of the European Commission. National courts may also apply EU anti-trust rules directly so as to protect the individual rights conferred on citizens by the TFEU.

In the field of **State aid**, the decision as to whether or not aid granted by Member States is compatible with the Single Market falls under the exclusive competence of the European Commission under the TFEU.

The term **liberalisation** refers in substance to Article 3 of the TFEU which states that the activities of the EU shall include a system ensuring that competition in the internal market is not distorted. For this purpose, there is a specific surveillance system in the case of public undertakings and undertakings to which Member States grant special or exclusive rights. With respect to the liberalisation of specific sectors, reference is made to the relevant sector-specific negotiating chapters.

The *acquis* under this chapter is directly linked to Serbia's obligations under Article 73 of the Stabilisation and Association Agreement between the EU and Serbia (SAA) presently in force.

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<sup>1</sup> Although there is no obligation for Member States to establish a merger control under the *acquis*, and for Serbia to do so under the SAA, this screening report will cover this area, since it is regarded as an integral part of competition policy and Serbia has chosen to introduce merger rules.

## II. COUNTRY ALIGNMENT AND IMPLEMENTATION CAPACITY

This part summarises the information provided by Serbia and the discussion at the screening meeting.

Serbia declared that it is ready to accept the *acquis* regarding competition policy, with all rights and obligations it entails, applying transitional measures subject to negotiations.

### II.a. Anti-trust and mergers

Serbia explained that Article 84 of its Constitution provides that acts which are contrary to the Law and restrict free competition by creating or abusing monopolistic or dominant position shall be strictly prohibited. The current Law on Protection of Competition (LPC) was adopted in 2009 and amended in 2013. It replaces a previous act adopted in 2005. Secondary legislation in this area consists of regulations adopted by the Government on the basis of explicit and specific legal grounds provided by the LPC, and upon proposals by the authority in charge of the application of the LPC, i.e. the Commission for the Protection of Competition (CPC). In addition, the CPC can adopt instructions and guidelines for the implementation of the law.

#### *Substantive rules*

Serbia considers that its competition legislation is largely in line with the *acquis*. According to Serbia, the LPC is modelled upon Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) and other EU regulations, such as the Council Regulation (EC) N°139/2004 (the "Merger Regulation"), as well as other pieces of secondary legislation. The LPC contains the main rules on restrictive agreements, abuses of dominant position and merger control. Article 10 of the LPC prohibits restrictive agreements, while Article 11 exempts restrictive agreements when they fulfil conditions similar to those laid down in Article 101(3) TFEU. Agreements which fulfil these conditions may be exempted, individually, or under block exemptions whose conditions are defined in regulations adopted by the Government. *De minimis* agreements are allowed under conditions which, according to Serbia, are in line with the *acquis*. Article 16 prohibits abuses of dominant position. Article 19 lays down the conditions under which mergers can be allowed. These substantive rules apply to practices that affect or could affect competition in the territory of Serbia, even when they are performed outside of its territory, and to all natural and legal entities which participate in trade in goods and services, regardless of their status, ownership, citizenship or state affiliation.

Secondary legislation provides further substantive rules and guidance on how competition rules should be applied. A regulation on the definition of the relevant market was adopted in 2009. Serbia stated that it had adopted national legislation based on the Commission Regulations 1217/2010/EU on certain categories of R&D agreements, 1218/2010/EU on certain categories of specialisation agreements and 330/2010 on categories of vertical

agreements and concerted practices. Serbia acknowledged that certain EU rules have not yet been transposed in the Serbian legal system, such as the rules on technology transfer agreements, or the rules regarding specific sectors such as transport, agriculture, insurance and motor vehicle.

### *Procedural rules*

As far as procedural rules are concerned, the provisions of the Law on General Administrative Procedure apply, unless otherwise provided for by the LPC. Procedural rules are also provided for by secondary regulation. Serbia considers that the CPC has procedural rules and investigative powers that are similar to with the powers granted to the Commission and national competition authorities by the TFEU, Council Regulation (EC) N°1/2003 (the "Implementing Regulation"), the Merger Regulation and other EU legislation.

A procedure before the CPC may be initiated on the basis 1) of a request for individual exemption from the prohibition of a restrictive agreement, 2) of a submitted notification of a concentration, or 3) ex-officio on the basis of a complaint or information available to the CPC. In case of a risk of irreparable damages caused by an anticompetitive practice, the CPC is empowered to adopt interim measures ordering the suspension of these practices. In order to carry out the investigation, the CPC may issue requests for information. Parties to the case or third parties are under the obligation to provide the information requested by the authority. The CPC may also carry out unannounced on-site inspections at companies' premises (so called "dawn-raids"). At the end of its investigations, the CPC may adopt decisions concluding that the competition rules have/have not been infringed, it may grant or refuse an individual exemption and it may approve (with or without conditions) or prohibit mergers.

For infringement of competition rules, the CPC may impose administrative fines which may amount to 10% of the company's total turnover generated in the territory of Serbia. The specific criteria for setting the fines are outlined in specific guidelines adopted in 2011. Fines cannot be imposed after a period of five years following the date of infringement. This statute of limitation is interrupted and start afresh after any action taken by the CPC to investigate the infringement, with a total limit of ten years. Companies engaged in a cartel may be exempted from the payment of fines, or benefit from reduced fines if they apply for leniency before the CPC and cooperate fully with the authority's investigation of the cartel. The conditions for benefiting from the leniency programme are listed in specific guidelines adopted in 2011. Serbia has not yet adopted rules on the reduction of fines under a settlement procedure.

In its infringement decisions, the CPC may also impose remedies, which aim to eliminate the negative effects of the infringement. Such remedies may be behavioural or structural in nature.

The merger control procedures in the LPC provide that proposed mergers must be notified to the CPC when the combined turnovers of the merging parties exceed certain thresholds. For unproblematic mergers, the CPC must adopt a decision under a summary procedure, within one month from the reception of the complete notification. For potentially problematic mergers, the CPC may open an in-depth investigation procedure. The CPC then has four months to adopt a decision either approving the merger, possibly with conditions, or blocking it.

Procedural rights are given to all parties subject to the procedures of the CPC, i.e. antitrust investigation, request for individual exemption and merger notification. These rights include the right of access to file, to be informed in the course of the procedure, to be heard and to submit evidence.

#### *Administrative Capacity*

The CPC, which is in charge of applying the LPC, was established in 2006. The LPC provides that it is an autonomous and independent authority, with legal personality. The CPC is accountable to Parliament, to which it submits annual reports on its activity. The ruling bodies of the CPC are the President of the CPC and the Council, which adopt all decisions. The Council is composed of a President and four members who are elected by the Parliament among experts in the field of law and economics. After hiring six new officials in 2015, the CPC currently has 35 employees, including 23 case-handlers. It is a self-funding authority whose EUR 1.7 million budget mainly comes from fees for filing merger notifications. In the period 2012 – 2014, the CPC adopted 11 decisions on restrictive agreements, 44 decision on individual exemptions, ten decisions on abuses of dominant position and 302 decisions on mergers, including six conditionally approved and one blocked. Serbia indicated that the administrative capacity of the CPC is insufficient.

#### *Court Appeals and private enforcement*

CPC decisions may be appealed before the Administrative Court within 30 days. The filing of the appeal does not stay the execution of the decision, unless it is established that this execution would cause irreparable damages for the appealing party. The Court shall decide within three months from the receipt of the appeal. The Administrative Court's judgments may be appealed on grounds of interpretation of the law, before the Supreme Court of Cassation. Private enforcement of the competition rules is also possible in courts of general competence. In such cases, it is up to the claimant to demonstrate to these courts the existence and degree of the damage caused by the alleged anticompetitive behaviour.

## **II.b. State aid**

### *Definition*

The definitions of State aid, allowed State aid and not allowed State aid are laid down in the Law on State Aid Control (LSAC), adopted in 2009. Serbia considers that these definitions are fully in line with Article 107 of the TFEU.

### *Procedural rules*

Serbia states that most of the provisions of the LSAC are in line with Council Regulation N° 659/2009 laying down the rules for the application of Article 93 of the EC Treaty (now article 108 of the TFEU) and the other EU regulations on State aid procedure.

The LSAC provides for an ex-ante control: the State aid grantor is under the obligation to notify State aid to the Commission for State Aid Control (CSAC), which is the authority in charge of the application of the LSAC. Similarly, the proponent of a regulation constituting the ground for granting State aid, including legislative acts, is obliged to notify the draft of the regulation to the CSAC, before its adoption. Once it receives a complete notification, the CSAC must take a decision on the notified measures within 60 days. It may decide that the measure does not constitute State aid, that it is allowed State aid, or that it is State aid contrary to the LSAC. In that case, the CSAC adopts a conclusion in which the notifying party is assigned a deadline to amend the measure in order to ensure compliance. If the notifying party fails to follow the recommendations, the CSAC shall adopt a decision concluding that the aid is not allowed. According to the standstill clause, the notified aid cannot be granted until the decision allowing it.

The CSAC may also launch ex-post control, when information available suggests that State aid has been granted or/and is used in breach of the provisions of the LSAC. It may take a similar decision as under the ex-ante control procedure. In cases where the aid is found to be not allowed, the CSAC shall order the recovery of the aid that was granted, with interests.

The notification obligation applies to all aid measures, except *de minimis* aid. Serbia stated that the rules for granting *de minimis* aid are largely harmonised with the EU *acquis* (with the exception of those provisions related to guarantees). Under Commission Regulation (EU) N°651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (the "General Block Exemption Regulation"), certain aid measures do not have to be notified by Member States provided that they fulfil specific conditions. At the suggestion of the Commission, and in order to raise awareness of State aid rules among aid grantors and ensure their effective implementation, Serbia explained that aid measures that could potentially benefit from this block exemption shall nonetheless be notified to the CSAC. However, aid for the provision of services of general economic interest and meeting the conditions laid down in the Commission Decision 2012/21/EU of 20 December 2012 are exempted from the obligation of notification to the CSAC. Serbia plans to remove this exemption in the near future and subject all state aid for

the provision of services of general economic interest to the obligation of notification to the CSAC.

Decisions of the CSAC may be appealed before the Administrative Court.

### *Horizontal aid*

The rules regarding horizontal aid (i.e. aid to small and medium-sized enterprises (SMEs), for regional development, for research and development, for training, to disadvantaged workers, to promote risk finance investments, for environmental protection and for rescue and restructuring) are mainly laid down in the Regulation on rules of State Aid Granting. Serbia stated that these rules generally cover those contained in the relevant Commission guidelines or frameworks and in the General Block Exemption Regulation. It indicated that the definition of SME is in line the Commission Recommendation concerning the Definition of micro, small and medium-sized enterprises.

In particular, since the EU rules for certain State aid types have been changed since the adoption of the Regulation on rules of State Aid Granting, Serbia stated that the provisions of this regulation are partially harmonised with the rules for granting aid in the form of risk capital, aid for newly created small enterprises, aid for research and development and innovation. Serbia also stated that it needs to introduce in its national legislation rules of newly established State aid types, such as aid for research infrastructure, aid to make good the damage caused by natural disasters, aid for sport and multifunctional recreational infrastructures and aid for local infrastructure.

Serbia pointed out that its rules on State aid for rescue and restructuring need to be further aligned with the new Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty which came into force on 1 August 2014. Serbia also indicated that its rules on regional aid had to be aligned further with the new Guidelines on regional aid which entered into force on 1 July 2014. Serbia stated that it has not yet adopted a regional aid map and that this will be done in 2016.

As regards State aid for environmental protection, Serbia explained that the rules on State aid for environmental protection are partly harmonised with the relevant rules in the General Block Exemption Regulation. Further alignment is required, notably in the area for energy efficiency of residential buildings, recycling and energy infrastructure. The rules outlined in the Commission Guidelines on State Aid for Environmental Protection and Energy are not included in the Serbian legislation. Serbia explained that these rules concern aid for environmental protection with higher intensity and that it is unlikely that Serbia will grant aid with such high intensities.

### *Specific aid instruments*

Serbia stated that the rules on State aid in the form of guarantees are laid down in the Regulation on the Rules for State aid Granting and are partially aligned with the Commission Notice on State aid in the form of guarantees.

As regards export-credit insurance, Serbia stated that the specific provisions of the Regulation on the Rules for State aid Granting on this type of aid instrument are only partially aligned with the *acquis*.

As regards the reference/discount rate, it is determined by the Ministry of Finance and published by the CSAC on its website, and defined as the base reference rate, with a margin of 60 to 1000 basis points, depending on the credit rating of the undertaking. The interest rate for recovery of illegal aid is defined by the Law on Default Interest Rate. Serbia stated that upon accession it will apply the interest rate prescribed in the Commission Communication on the Method for Setting the Reference and Discount Rates.

Serbia stated that the conditions under which the sale of publicly owned land does not represent State aid are fully harmonised with the *acquis*.

Serbia explained that its national legislation is partly harmonised with the Commission Notice on the application of the State aid rules to measures relating to direct business taxation. In particular, the concept of tax exemption and the difference between general measures and State aid measures need to be further elaborated. As regards the Corporate Income Tax Law and the Law on Personal Income Tax, Serbia stated that they constitute existing aid within the meaning of Article 73(6) of the SAA and that they need to be brought in line with the State aid rules.

### *Sectoral aid*

As regards aid for culture and media, the LSAC stipulates that aid may be granted to promote the protection and conservation of cultural heritage. The rules for granting State aid for films and other audio-visual works are laid down in the Regulation on Rules for State Aid Granting, and, according to Serbia, they are partly harmonised with the *acquis*. In order to be fully harmonised, Serbia explained that a stricter definition of cultural products and criteria for the assessment whether an audio-visual work is cultural need to be introduced; the possibility to grant State aid for pre-production activities, distribution and modernisation of cinemas need to be further defined, and aid intensities have to be adjusted.

Serbia explained that the financing of the public broadcasters, namely the Public Broadcasting Institution Radio and Television of Serbia and the Public Broadcasting Institution Radio and Television of Vojvodina is regulated by the Law on Public Service Broadcasting, which according to Serbia, is in line with the *acquis*.

The rules for granting aid for the deployment of broadband networks have not been implemented in Serbian legislation.

As regards aid to coal sector, Serbia stated that its legislation is not aligned with the Council Decision on State aid to facilitate the closure of uncompetitive coal mines, which subjects the granting of State aid to loss-making coal mines to their closure by end 2018. Its Regulation on the Rules for State aid Granting allows aid to the coal sector for objectives of environmental protection, for research and development and innovation, for training as well as special costs incurred by rationalisation or restructuring in the coal sector.

As regards aid to steel sector, Serbia underlined that Protocol V to the SAA allows rescue and restructuring aid to this sector until 1 February 2015 and that it stopped providing aid to the only steel mill in difficulty in Serbia, Smederevo Zelezara, before that date.

Serbia stated that there are no specific rules in the national legislation with regard to aid for financial institutions in the context of the financial crisis. Serbia explained that the standard rules on rescue and restructuring aid that are laid down in Regulation on Rules for State Aid Granting are equally applicable to financial institutions. However, so far, there is no instance of the application of State aid rules to banks under restructuring.

Serbia explained that the Law on Railways partly applies the special rules for granting aid in the form of compensation for the provision of rail or road transport. Serbia plans to adopt a regulation on rules for calculating the compensation for the provision of public transport service obligation, with full alignment by the end of 2016.

According to Serbia, the Regulation on Rules for State aid Granting lays down only certain rules for granting aid to airlines for the opening routes and it needs to be amended in order to be fully in line with the EU Guidelines on State aid to Airports and Airlines.

#### *Capacity and enforcement record*

The main authority responsible for State aid matters in Serbia is the CSAC, which was established under the LSAC. The CSAC is composed of five members, appointed by the Government for a five year period upon the proposal of the ministries of Finance, of Economy, of Infrastructure, of Environmental Protection and of the Commission for the Protection of Competition. Serbia explained that the Member of the Commission who is at the same time a representative of the State aid grantor may provide information within the State aid control procedure, but shall not have the right to take part in the procedure for the adoption of the decision on the aid at stake. In its tasks, the CSAC is assisted by the Department for State Aid Control, which is a section of the Ministry of Finance. This department has eight employees. The annual budget of the Commission and its Department is directly provided from the government budget and amounted to EUR 77,000 in 2014. A number of training activities have been undertaken and the department benefited from an IPA

funded senior expert mission in 2014. Serbia stated that the department needs further technical assistance for the period up to 2017.

From the period 2012 to 2014, the CSAC received 192 notifications and one complaint. It took 165 positive decisions, and no negative decision. 67 of these decisions concerned *de minimis* aid, which now no longer have to be notified to and approved by the CSAC.

### **II.c. Liberalisation**

#### *Public undertakings and undertakings with special or exclusive rights:*

Serbia explained that it may establish enterprises in charge of activities of general interest, on the basis of Law on Public Utilities and sectoral laws which define particular industries of general interest. Serbia listed several activities of general interest, in the sense of the Law on Public Utilities, including production and distribution of electricity, railways, production and distribution of coal and oil, telecommunications, postal services, air traffic, as well as management of roads, water and forests.

Serbia explained that according to Article 3 of the LPC, public enterprises and undertakings that perform activities of public interest or fiscal monopolies are within the scope of the LPC, except if, through the application of the LPC, they are unable to perform the tasks or activities assigned to them by the public authority. Serbia indicated that it had adopted two infringement decisions imposing fines on public enterprises for abuse of dominant position.

Serbia stated that the Regulation on Rules for State aid Granting regulates State aid to Services of General Economic Interest (SGEI) and that this Regulation is overall in line with the *acquis*. It plans to adopt amendments to ensure full alignment in the near future.

Serbia stated that its legislation is not aligned with the Commission Directive on the transparency of financial relations between Member States and public undertakings.

#### *State monopolies of a commercial character:*

Serbia indicated that there are no State monopolies of a commercial character.

### **III. ASSESSMENT OF THE DEGREE OF ALIGNMENT AND IMPLEMENTING CAPACITY**

Overall, Serbia has broadly aligned its national legislation with the EU *acquis* on antitrust and merger. Serbia's legislation in the area of State aid is only partially aligned.

A key challenge for Serbia will be to strengthen its administrative capacity and to build up a solid enforcement record, in particular in the area of State aid.

### **III.a. Anti-trust and mergers**

The LPC and secondary legislation are broadly in line with the *acquis*. The substantive rules are largely based on Article 101 and 102 TFEU, the Merger Regulation and other regulations. Serbia has still to align its secondary legislation with a certain number of Commission guidelines and communications, such as those on technology transfer agreements, and on specific sectors such as transport, agriculture, insurance, motor vehicles and transport.

The Procedural rules are also to a large extent aligned with the EU rules: the CPC is entrusted with powers similar to those of the Commission or to those that national competition authorities of the Member States should have under Article 5 of Council Regulation (EC) N°1/2003.

The CPC was created in 2006 and is now a relatively well-established institution, whose powers were reinforced through the amendments to the LPC in 2013. However, Serbia needs to further enhance the authority's administrative capacity, mainly through training and technical assistance. The CPC needs to further strengthen its enforcement record, in particular in the imposition of fines and in the fight against cartels. It should make additional efforts in the area of competition advocacy. Serbia needs to ensure that the recommendations of the CPC on draft legislation having an impact on competition are properly taken into account. The judiciary's capacity to assess complex competition cases also needs to be reinforced.

### **III.b. State aid**

#### *Definition*

The definition of State aid in the Serbian legislation is not fully in line with Article 107 TFEU. Under article 2 of the Regulation on the rules for State aid granting, this definition applies to enterprises, with the exception of enterprises in the process of privatisation. This exemption is not in line with the *acquis*, and this is a significant issue in view of the number and importance of companies concerned. The portfolio of the Privatisation Agency included 399 enterprises as of August 2015.

#### *Procedural rules:*

Serbian procedural rules on State aid control are overall in line with the *acquis*. The investigation and enforcement powers of the CSAC as laid down in the LSAC broadly reflect those enjoyed by the Commission when carrying out the control of State aid granted by Member States. In particular, the LSAC includes a standstill clause for notified aid, pending the decision of the CSAC and provides for the possibility of recovering incompatible State aid. The Commission notes positively that Serbia does not make use of the possibility to block exempt certain types of measures (with the exception, for the time being, of certain aid measures in the form of compensation of services of general economic interest). Further fine

tuning is necessary in order to ensure full alignment, in particular in order to implement the amendments introduced by Council Regulation n° 734/2013 in the area of procedural rules.

#### *Horizontal aid:*

The Serbian rules on horizontal aid are only partially in line with the *acquis*.

As regards the regional aid, the Serbian legislation must be brought in line with the Commission guidelines for regional State aid, which entered into force on 1 July 2014. In particular, further alignment of the rules regarding the scope, operating aid and the assessment of large investment projects is required. Importantly, the CSAC, in cooperation with the European Commission, must draw up a regional aid map in line with its obligation under Article 73(6) of the SAA.

The Serbian rules on environmental aid are not in line with the *acquis*: further alignment is required with the Commission Guidelines on State Aid for Environmental Protection and Energy.

Serbian rules must also be aligned with the newly adopted Guidelines on State aid for Rescue and Restructuring, in particular as regards the new requirement for the own contribution to be provided by the company in difficulty towards its restructuring costs.

#### *Specific aid instruments*

The Serbian rules regarding specific aid instruments are not fully in line with the *acquis*.

The rules on reference /discount rate are in line with EU rules. However, the methodology for setting the interest rates applicable in respect of the recovery of unlawful aid should follow the methodology for setting the reference and discount rates. The rules on export-credit insurance and direct business taxation are only partially aligned. In the area of taxation, three aid schemes which were instituted before the establishment of the CSAC are not in line with the *acquis*, and should have been aligned by 1 February 2014 under Article 73(6) of the SAA. Their legal bases are Articles 46 and 50a of the Law on Corporate Income Tax, which allows for higher aid intensities for large investments, Article 21c and 21 d of the Law on Personal Income Tax and Article 19 and Article 26 of the Law on Free zones.

#### *Sectoral aid*

Rules for aid to culture should be defined in compliance with EU rules. Aid to the audio-visual sector is partly in line with the *acquis*. In particular, a stricter definition of cultural products and criteria for the assessment whether an audio-visual work is cultural and can thus benefit from State aid need to be introduced in order to ensure full alignment. Moreover, additional requirements of the new Commission Communication on State aid for Film and

other Audio-visual Works need to be introduced in the Serbian legislation. As regards the sector of public broadcasting, the Law on Public Service Broadcasting, which regulates the financing of the public broadcasters is largely in line with the *acquis*. The Commission also notes that, under the Law on Public Information and Media also adopted in August 2014, the financing of media publishers from public revenues shall be forbidden as of 1 July 2015, which should address any possible issue of compatibility of aid in this specific area.

In the sector of coal, the Serbian rules are not in line with the *acquis*. In order to reach full alignment, operating aid to uncompetitive coal mines can only be granted under certain conditions, including the closure of the mine by end 2018.

In the area of steel, Serbia needs to ensure full compliance with Protocol 5 on State aid to the steel sector. Under this protocol, Serbia may grant rescue and restructuring aid to steel producing firms in difficulties until 1 February 2015 under certain conditions. There is one steel producer in Serbia, the company Zelezara Smederevo. Serbia is in the process of restructuring this company and needs to respect the Protocol's conditions for granting aid. This includes the production of a restructuring plan ensuring the company's long-term viability, the limitation of the aid to the amount necessary to restore the viability of the company and the provision of compensatory measures balancing the anticompetitive effects of the aid. In line with its obligations under Protocol 5, Serbia has not provided aid to this company after 1 February 2015. However, because of protracted negotiations on its privatisation, which failed in February 2015, Serbia has not yet been able to demonstrate that the aid granted to Zelezara Smederevo complies with the all conditions laid down in Protocol 5.

In the financial sector, Serbia needs to ensure the adoption and effective implementation of the State aid rules to support measures in favour of banks in the context of the financial crisis, in line with the *acquis*.

*Other State aid rules and obligations:*

Serbia should fully align its rules relating to the aid in the form of compensation to the costs of provision of SGEL.

Serbia must define and implement effectively rules for cumulation of State aid across all types of aid.

Serbia must introduce in its State aid legislation requirements in line with the Commission Communication on transparency adopted on 21 May 2014.

In line also with its obligation under Article 73(6) of the SAA, Serbia must establish a comprehensive inventory of aid schemes instituted before the establishment of the CSAC and align them with the EU State aid rules. Special attention must be paid to the existing fiscal schemes, i.e. the Law on Corporate Income Tax, the Law on Personal Income and the Law on Free Zones, which have a strong potential distortive effect on competition, and which raise complex issues such as acquired rights.

**The capacity and enforcement record of the CSAC and its Department** are largely insufficient. The CSAC urgently needs further qualified staff, in order to establish a good enforcement record. The CSAC cannot be considered as an operationally independent authority within the meaning of Article 73(4) of the SAA, since most of its members are nominated by aid granting ministries, and since the Department for State Aid Control, which assists the CSAC in investigating State aid and preparing decisions, is part of the Ministry of Finance. The knowledge of civil servants and administrative staff employed in other ministries and aid granting bodies dealing with State aid issues is not sufficient and needs to be strengthened.

The Commission notes that a certain number of aid measures are not notified to, and approved by the CSAC before being granted. Serbia needs to urgently improve its enforcement record in the field of State aid.

The Commission also notes that Serbia has not provided information on certain individual aid measures that would be necessary for the Commission to assess the compatibility of these aid measures with Serbia's obligations under the SAA. Serbia is under the obligation, under Article 73(5) and Protocol 5 of the SAA, to provide information on individual aid cases.

### **III.c. Liberalisation**

#### *Public undertakings and undertakings with special or exclusive rights:*

The Commission notes that the LPC and LSAC are applicable to public enterprises and undertakings that perform activities of public interests, except if, through the application of this law, they are unable to perform the tasks or activities assigned to them by the public authority. This provision largely reflects Article 106 TFEU and Article 74 of the SAA.

Nonetheless, the Serbian system currently in place does not fully reflect EU rules. Serbia should define better the scope of Services of General Economic Interest (SGEI) in its legislation and transpose the Directive on transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings. Serbia should fully align its rules relating to the aid in the form of compensation to the costs of provision of SGEI. In addition, as underlined above, State aid rules do not apply to public enterprises under privatisation, pursuant to Article 2 of the Regulation on the rules for State aid granting. This exemption must be repealed.

#### *State monopolies of a commercial character:*

The Commission takes note that there are no monopolies of a commercial character in Serbia. Serbia is invited to keep the Commission informed of any new developments in this area.