

## COMPETITION POLICY

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## I. ANTITRUST

### A. Scope of application

#### 1. Is the territorial scope of application in the competition law based on the effects or the implementation of certain activities in your country?

Protection of competition in the Republic of Macedonia has been regulated for the first time by the Law against Limiting Competition adopted on 14.12.1999 ("Official Gazette of RM" Nos. 80/99, 29/02 and 37/04) and in implementation as from 01.04.2000. For the purpose of harmonizing the national legislation with the EU legislation in the field of competition, a new Law on Protection of Competition has been enacted ("Official Gazette of the RM" No. 04/05). The Law on Protection of Competition (hereinafter referred to as LPC) entered into force on 25.01.2005. The body responsible for implementing the LPC is the Commission for Protection of Competition (hereinafter referred to as CPC).

The implementation of the LPC is not limited only to practices undertaken within the territory of the Republic of Macedonia, but also abroad, if they produce certain effects on the territory of the Republic of Macedonia. Article 3, paragraph 1 of the LPC stipulates that it shall apply to all forms of prevention, restriction or distortion of competition that produce effect on the territory of the Republic of Macedonia, even when they result from acts and actions carried out or undertaken outside of the territory of the Republic of Macedonia.

Law on protection of Competition and Table of Correspondence – See [06 Annex 01](#).

#### 2. As to the scope of application, does the competition law cover:

- a) all sectors of the economy;
- b) public and private enterprises?

a) The LPC, as a general act for protection of competition covers all sectors of the economy and no exceptions from its implementation have been envisaged. According to Article 3, paragraph (1), the LPC applies to all forms of prevention, restriction or distortion of competition and in accordance with paragraph (2) of the same Article, LPC applies to undertakings, associations of undertakings, related undertakings and state authority. The term 'undertaking' in Article 5 is defined as any type of business venture, regardless of the manner of organisation or the form of management (company, sole proprietor, public undertaking, cooperative undertaking, association of undertakings, etc.), freelance professions (lawyers, doctors, architects, accountants, notaries public, etc.), as well as any other natural or legal person or state authority performing economic activities, regardless of whether they are considered as traders or not.

b) The LPC applies to both public and private enterprises, with limitation stipulated in Article 86 (2) of the EU Treaty. According to Article 3 paragraph (2) LPC also applies to legal entities the founders, or stockholders or shareholders of which are the Republic of Macedonia, the municipalities, municipalities of the City of Skopje and the City of Skopje.

#### 3. Does the law cover goods and services?

The LPC applies to goods and services. In line with Article 5, "economic activity" is defined as trade of goods and/or services on the market with the purpose of making profit.

#### **4. Does the law incorporate the principles of Article 86(2) of the EC Treaty?**

The LPC is completely harmonized with the principle contained in Article 86 (2) of the EC Treaty. This principle is included in the provision of Article 3, paragraph 2 of LPC, and based on this Article, LPC applies to legal entities and natural persons entrusted, pursuant to the law and other legal acts, with performing services of general economic interest or granted with special and exclusive rights or concessions, except in cases when the application of the provisions of this Law would prevent the performance of competencies stipulated by law or for the purpose of which those entities are established.

### ***B. Restrictive agreements***

#### **1. Does the law cover agreements, decisions of associations of undertakings and concerted practices?**

Articles 7, 8 and 9 of the LPC regulate all questions related to prohibited agreements, decisions of association of undertakings and concerted practices.

#### **2. Does the law contain a general prohibition of restrictive agreements?**

Article 7, paragraph 1 of the LPC provides for general prohibition of restrictive agreements in compliance with the basic principle of competition of the EC, relating to agreements, contained in Article 81 of the EC Treaty. This provision stipulates that all agreements concluded between undertakings, decisions by associations of undertakings and concerted practice which have the prevention, restriction or distortion of competition as their objective or effect shall be prohibited, and in particular, those which:

- directly or indirectly fix purchase or selling prices or any other trading conditions;
- limit or control production, market, technical development or investments;
- share market or sources of supply;
- apply dissimilar conditions to equivalent or similar legal transactions with other trading parties, thereby placing them in a position of competitive disadvantage or
- make the conclusion of agreements subject to acceptance by the other parties of supplementary obligations, which, by their nature or according to commercial usage, have no connection with the subject of such agreements.

#### **3. Does the law lay down the nullity of restrictive agreements, i.e. are they unenforceable before the courts?**

Article 7, paragraph 2 of the LPC contains the provision on the nullity of prohibited agreements and decisions or separate provisions thereof. Any agreement and decision or separate provisions thereof that prevent, restrict or distort the competition pursuant to paragraph 1 of Article 7, which cannot be exempted according to Article 8 shall be considered null and void.

Taking into consideration that the quoted provision from Article 7, paragraph 2 regulates the nullity of restrictive agreements, the Commission for Protection of Competition (hereinafter referred to as CPC) is authorized to declare void such agreements and they shall be inapplicable before the courts. However, this does not exclude the right of the party which suffered damage with the implementation of the annulled agreement, to claim compensation of damages through court proceeding.

#### **4. Does the law cover horizontal and vertical restrictions?**

LPC contains several provisions that regulate horizontal and vertical limitations, which may not be contained in agreements, i.e. the limitations that may be contained, by meeting certain conditions. These limitations are regulated in Article 7 paragraph (1) and (3) of the LPC in compliance with Article 81 (1) and (3) of the EC Treaty.

#### **5. Does the law provide for an exception from the prohibition of restrictive agreements, or how are exceptions provided for?**

The LPC includes provisions for block exemption from the prohibition of restrictive agreements, as well as the possibility for individual exemption from the general restrictive agreements.

The provisions in Article 8 regulate block exemptions of:

- Vertical agreements for exclusive right of distribution, selective right of distribution, exclusive right of purchasing and franchising;
- Horizontal agreements for research and development or specialization;
- Agreements on transfer of technology, license or know-how;
- Agreements on distribution or repairing motor vehicles and
- Insurance agreements.

According to the provisions in Article 8, paragraphs 2 and 3, the Government of the Republic of Macedonia, upon a proposal of the CPC, shall determine the conditions for granting block exemptions to agreements by adopting by-laws and defines:

- The conditions that the agreement must contain;
- The limitations or conditions that such agreements are not allowed to contain and
- The other conditions that have to be met.

Article 52 of LPC stipulates that the by-laws shall be adopted within six months from the day the LPC enters into force.

Individual exemptions are regulated in Article 11 of the LPC that stipulates a procedure for determining individual exemption for an agreement that contributes to the promotion of production or distribution of goods and services or promotion of the technical and economic development, under the condition that the consumers have reasonable benefit from it. The decision on individual exemption is reached upon request by the contracting parties in the period not longer than three years, with the possibility for further extension of at least another three years. The provisions in Article 11 of LPC further prescribe measures and conditions necessary for exemption from the agreement, as well as time limits for their execution.

Having in mind the principles stipulated in the Council Regulation No.01/03 in which the notification system included in the EEC Council Regulation No. 17/62 is abandoned, the provisions in Article 56 of LPC regulates the restricted application of notification on individual exemptions until 31 December 2009. This time limit has been set so that the participants on the market can harmonize with the provisions of the LPC.

#### **6. Does the law provide for the possibility of block exemptions to be established (based on EU principles)?**

As already stated in the answer to the previous question, block exemptions shall be regulated with by-laws that shall be binding instruments based on EU principles.

**7. Do the conditions for exceptions from the prohibition of restrictive agreements (both individual and group) correspond to Article 81(3) of the EC Treaty?**

The conditions for individual and block exemptions of restrictive agreements that must be met are contained in Article 7, paragraph 3 of the LPC and are completely harmonized with the provision of Article 81(3) of the EC Treaty.

**8. Does the law contain a "de minimis" rule?**

LPC contains the "de minimis" rule in Article 9. This provision regulates issues related to agreements of minor importance, i.e. agreement in which common market share of the parties of the agreement and undertakings under their control on the market does not exceed the threshold of 10%, if the agreement is concluded between undertakings operating within same level of production or trade or the threshold of 15% where agreement is made between undertakings operating within different level of production or trade. In cases where it is difficult to classify the type of the agreement, the 10% threshold shall apply. The exemption from the general restriction provided in Article 7 of the LPC shall also apply if the market share of undertakings did not increase by more than 2% in the last two consecutive business years. The Government of the Republic of Macedonia, upon the proposal of the CPC, shall adopt a by-law, determining thereof the conditions that have to be met by the agreements of minor importance, as well as the limitations and the provisions that such agreements are not allowed to contain.

***C. Abuse of dominant position***

**1. Does the law contain a general prohibition of abuse of dominance?**

The general prohibition of abuse of dominant position is regulated in Article 14 of LPC. The provision in this Article is completely harmonised with the provision in Article 82 of the EC Treaty. In line with this provision any abuse of dominant position by one or more undertakings that prevents, restricts or distorts competition on the relevant market is prohibited, in particular the following:

- 1) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- 2) limiting production, markets or technical development to the prejudice of consumers;
- 3) applying dissimilar conditions to equivalent or similar legal transactions with other trading partners, thereby placing them at a competitive disadvantage;
- 4) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts;
- 5) refusal to deal or encouraging and requesting from other undertakings or association of undertakings not to purchase or sell goods or services to certain undertaking, with an intention to harm that undertaking in a dishonest manner or
- 6) refusal to allow another undertaking access to its own networks or other infrastructure facilities, against adequate remuneration, provided that without such concurrent use the other undertaking is unable for legal or factual reasons, to operate as a competitor of the dominant undertaking.

**2. Does the law contain an exemption or defence for abuse?**

Exemption from the restriction for abuse of the dominant position is regulated in only one case, pursuant to Article 14, paragraph 3 of the LPC, where access to the network or other infrastructure facilities of dominant undertaking is possible to reject provided that the undertaking

proves that due to operational or other reasons, the concurrent use of its network or infrastructure is not possible, or that it may not be allowed due to certain justified grounds.

## ***D. Mergers***

### **1. Does the definition of mergers cover the establishment of control (including de-jure and de-facto control) and joint ventures?**

According to the provisions in Article 18 of LPC, a concentration shall be deemed to arise where a change of control on a lasting basis results from:

1. the merger of two or more previously independent undertakings or parts of undertakings or
2. the acquisition, by one or more persons already controlling at least one undertaking, or by one or more undertakings, whether by purchase of securities or assets, by contract or by any other means prescribed by law, of direct or indirect control of the whole or parts of one or more other undertakings.

The control shall be constituted of rights, contracts or any other means, which either separately or in combination, and having regard to the actual or legal condition, confer the possibility of exercising decisive influence on an undertaking, in particular by:

1. ownership or the right to use all or part of the assets of an undertaking or
2. rights or contracts which confer decisive influence on the composition, voting or decisions of the bodies of the undertaking.

The creation of joint venture, performing on a lasting basis all the functions of an autonomous entity shall constitute a concentration according to the provisions in Article 18, paragraph 4 of LPC.

The Law also regulates what is not considered as concentration of undertakings.

### **2. Does the law provide for prior notification?**

Article 16 of the LPC stipulates that the participants in the concentration shall notify the CPC prior to the implementation of concentration and following the conclusion of the merger agreement, or the announcement of the public bid on the purchase or the acquisition of the controlling interest in the charter capital of the undertaking.

### **3. What are the criteria for notification (e.g. turnover)?**

According to Article 16 of the LPC, the criteria for notification of the concentration are the following:

- the aggregate worldwide turnover of all undertakings participating in the concentration, generated by sale of goods and/or services on the world market, amounts to at least 5 million EUR in MKD equivalent, realized during the business year preceding the concentration and provided that one of the participants in the concentration realizes sales on the domestic market and
- the aggregate turnover of each of at least two undertakings, generated by sales of goods and/or services on the territory of the Republic of Macedonia, amounts to at least 2.5 million EUR in MKD equivalent realized during the business year preceding the concentration or if their joint participation on the market is more than 40%.

### **4. Does the notification have a suspense effect?**

According to Article 21 of LPC, the concentration shall not be performed either before it is notified or until decision is made that the concentration is in compliance with the provisions of the LPC.

This provision shall not prevent the implementation of a public bid on purchase or of serial of security transactions, enclosing those convertible into other securities purposed to trade on the market, as a stock exchange, provided it does the following:

1. without any delay notify the CPC, according to the provisions of the Law on Take-Over of Joint Stock Companies("Official Gazette of RM" Nos. 4/02 and 37/02) and
2. the acquirer of securities does not exercise voting rights attached to the securities in question, or does so only to the extent which is necessary to maintain the full value of its investments and based on an approval granted by the CPC.

**5. What are the criteria for prohibition (e.g. establishment or reinforcement of dominance)? Is there an exemption for reasons of public interest in order to take into account a specific national interest?**

The criteria pertaining to prohibition of concentration are contained in Article 17 of LPC. According to this provision a concentration, which would significantly prevent, restrict or distort efficient competition on the market or its significant part, in particular as a result of the creation or strengthening of a dominant position of the participants is prohibited.

LPC does not provide for exemptions for any reasons of public interest in order to take into account a specific national interest.

**6. Are there provisions on divestitures or remedies?**

According to Article 22, paragraph 4 of the LPC, when the CPC finds that the concentration:

- 1) has been implemented in contravention to the provisions of the LPC or
- 2) has been implemented in contravention to the condition stipulated in LPC, the CPC may:
  - ask the participants to annul the concentration, particularly by annulling the merger or disposal of all stocks or acquainted asset, for the purpose of achieving restitution of the previous condition existing prior to the implemented concentration. If restitution of the previous condition existing prior to the implementation of the concentration is not possible, the Commission may by annulling the concentration, undertake all other measures adequate to achieve restitution of the previous condition or
  - impose any other adequate measure for the purpose of providing that the participants will annul the concentration or will undertake any other measures for achieving restitution of the previous condition imposed by the Commission's decision.

The CPC may impose temporary measures for restitution of the previous condition or maintaining the conditions of efficient competition when the concentration has been performed prior to its notification or prior to adoption of a decision declaring that the concentration is compliant with the provisions of the LPC or if the concentration has been performed contrary to the conditions imposed by a decision of the CPC or has been already performed and it has been declared as not compliant with the provisions of the LPC.

The unwillingness to execute a measure imposed by the CPC for restitution of the previous condition presents a misdemeanour that entails a fine for the legal entity amounting up to 10% of the value of the aggregate annual turnover of the undertaking, realized in the business year preceding the year when the misdemeanour has been committed, while for the person responsible in the legal entity the fine amounts from 100.000 to 600.000 MKD.

## ***E. General procedures***

### **1. Please describe the authority charged with implementing competition law, including information on the staffing situation (organisational structure, recruitment plans etc.).**

According to Article 24 of the LPC, the authority competent for the implementation of the LCP is the Commission for Protection of Competition (CPC). The CPC is an independent state body with a status of a legal entity and is independent in its work and in making the decisions within the scope of its competencies determined by the LPC. The budget necessary for the work of the CPC is provided from the Budget of the Republic of Macedonia. The CPC is responsible for its work to the Assembly of the Republic of Macedonia and shall submit detailed annual report for its work.

The CPC consists of President and four members. The President and members of the CPC are appointed and dismissed by the Assembly of the Republic of Macedonia, upon a proposal by the Commission for appointment and dismissal matters of the Assembly of the Republic of Macedonia, for a period of five years with the right to reappointment. The President and at least one member of the CPC are professionally engaged in the CPC's operations. The President of the CPC shall represent, present and manage the work of the CPC.

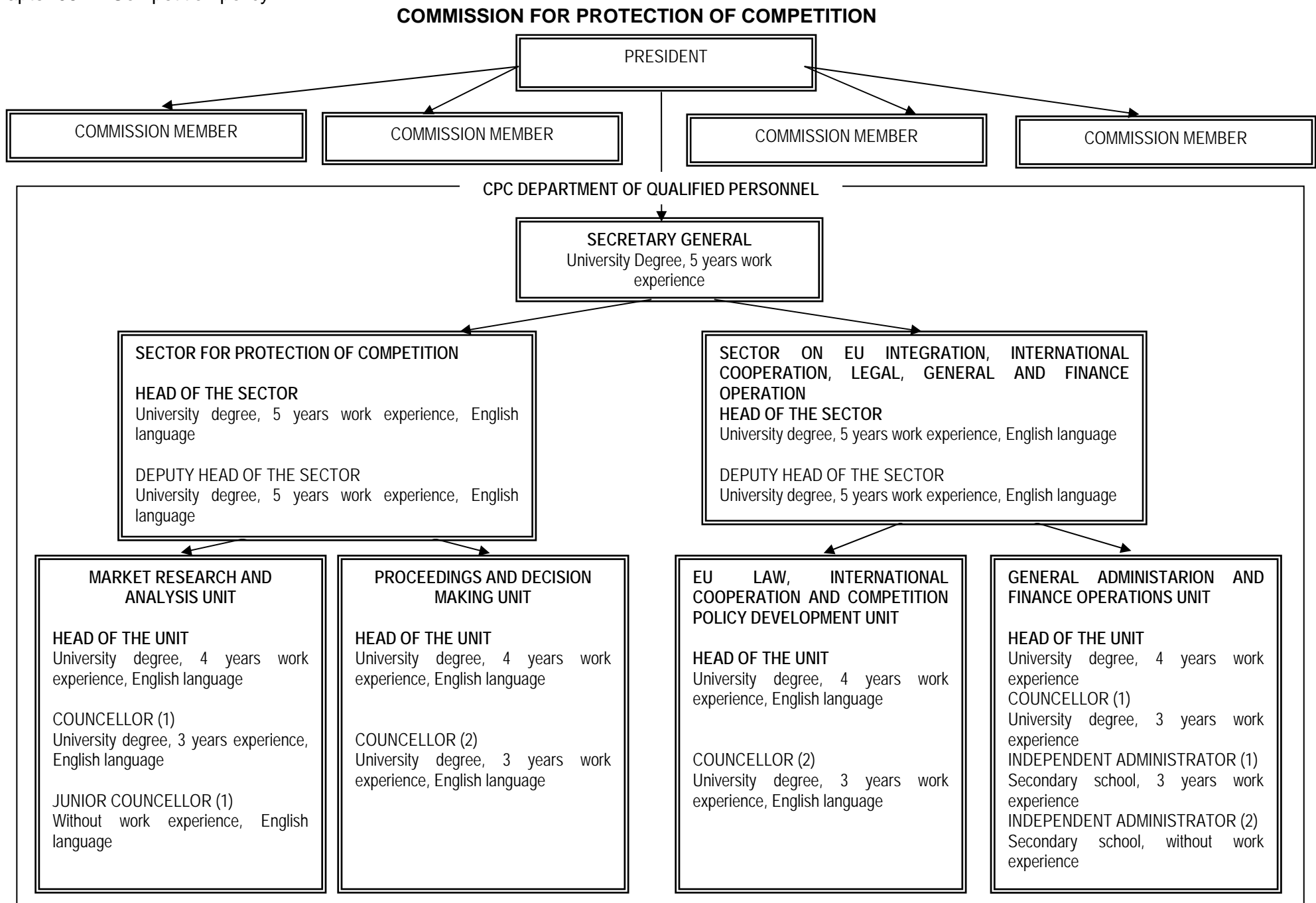
Any citizen of the Republic of Macedonia having completed high education in legal or economic area, having working experience of over 5 (five) years in his area of speciality and having special knowledge in the field of competition, trade law, management and finances can be appointed as President and member of the CPC. For the duration of their term of office, the President and the members of the CPC may not be members of the Assembly of the Republic of Macedonia, members of the Government of the Republic of Macedonia, persons performing duties in bodies of the political parties, members of management bodies of an undertaking, or members of any other form of association of legal and natural persons that might lead to a conflict of interest. Failure to submit or to adopt the detailed annual report may pose grounds for collective dismissal of the CPC.

The investigative and other expert activities of the Commission are performed by the Department of qualified personnel, managed by a Secretary general.

The total number of the staff in the CPC, including the CPC members is 16. The educational structure of the persons engaged is: 13 with university degree and 3 with high school degree. In the period till 2007 the total number of engaged staff is planned to increase to 24 employees, out of which 21 with university degree and 3 with high school degree.

The current proposal for organisation and systematisation of the Department of Qualified Personnel that needs to be adopted by the CPC is presented in the following chart:





## **2. Which investigative powers does the law provide to the competition authority in relation to Regulation 01/2003 EC?**

The investigative powers of the CPC are regulated in Articles 35 and 36 of the LPC, in accordance with the Council Regulation 01/2003. The CPC may request from the undertakings or associations of undertakings to submit data related to their economic and financial situation, their business relations and connections, as well as data in regard to their charters and decisions and the number and identity of the members affected by such decisions.

The CPC shall collect the necessary data by passing a decision, against which an appeal shall not be allowed. The decision must specify:

- the legal grounds,
- the subject and the purpose of the request and
- the time limit for acting upon the decision, and the indication of the offence referred to in this Law for non-compliance with the decision.

The person requested to submit data shall be obliged to submit the requested data, and the data must be correct, complete and true and submitted within the specified time limit.

The authorized persons from the CPC and, when needed, the accompanying persons may conduct any necessary inspections in the undertakings or association of undertakings and may:

- 1) enter any business premises, land and means of transport of the undertaking or association of undertakings;
- 2) examine the books and other records related to the business, irrespective of the medium on which they are performed and stored;
- 3) take or obtain in any form copies or extracts from such books or records;
- 4) seal any business premises and books or records for the period and to the extent necessary to perform the inspection or
- 5) ask any representative or member of staff of the undertaking or association of undertakings for explanations on facts or documents relating to the subject-matter and purpose of the inspection and to record the answers.

If a reasonable suspicion exists that the undertaking or the association of undertakings or third party possesses records or other objects which may be relevant to prove the violation of the provisions of the LPC, the CPC may, with a decision, order from the competent court issuance of a written order for inspection of a person, residence or business premise, as well as seizure of objects and other documentation of an undertaking, association of undertakings or a third party.

## **3. Which fining powers does the law provide in case of violations (a percentage of the turnover)?**

According to Article 45 of the LPC, the CPC shall upon a decision declaring violation of the provisions of the LPC submit to the competent court a request for initiating a misdemeanour procedure against the legal entity, the responsible person in the legal entity as well as against a natural person.

A fine amounting up to 10% of the value of the aggregate annual turnover of the undertaking, realized in the business year preceding the year when the misdemeanour has been committed, shall be imposed on a legal entity, if by premeditation or negligence:

- 1) it has concluded prohibited agreement or has in other manner taken part in an agreement, decision or concerted practice which prevents, restricts or distorts competition;
- 2) it has abused the dominant position in the terms of the provisions in the LPC;
- 3) does not comply with the decision of the CPC in terms of the provisions of the LPC;
- 4) it failed to submit notification on concentration, when the criteria referred to in the LPC are met;

- 5) it has performed concentration in contravention to the LPC;
- 6) it has performed concentration in contravention to the decision of the CPC or
- 7) it failed to meet certain condition or duty determined by a decision of the CPC.

For this misdemeanour a fine amounting from 100.000 to 600.000 MKD shall be imposed on the person responsible in the legal entity.

A fine up to 1% of the value of the aggregate annual turnover of the undertaking, realized in the business year preceding the year when the misdemeanour has been committed, shall be imposed on a legal entity, if by premeditation or negligence:

- 1) it shall submit incorrect or misleading data in the procedure for appraisal of concentrations;
- 2) it failed to proceed upon a decision by the CPC for submitting data or submits incorrect, incomplete and misleading data;
- 3) it shall deny inspection of trade books and other records in terms;
- 4) it gives incorrect or misleading reply or do not proceed upon the request of the CPC for supplementing or correction of incorrect, incomplete or misleading reply, given by an employee in the undertaking, in the determined time limit;
- 5) it fails to proceed or refuse to give complete reply on the facts related to the subject and goal of the inspection, according to the decision of the CPC or
- 6) it reopens the seals stamped during inspection.

For these misdemeanours a fine amounting from 30.000 to 100.000 MKD shall be imposed on the person responsible in the legal entity.

While determining the amount of a fine, the nature, seriousness and duration of the misdemeanour shall be considered.

#### **4. Does the law provide for interim measures?**

The provision in Article 38 of LPC regulates CPC's authorization to impose interim measures during the procedure. The CPC may adopt a decision for interim measures when it shall assess that separate acts and actions preventing, restricting or distorting the competition in accordance with the provisions of the LPC shall cause direct harmful implication for the undertakings, or for certain economic sectors or consumers' interests.

With this decision, the CPC shall order termination of all actions, fulfilment of certain conditions and other measures necessary to eliminate harmful implications of prevention, restriction or distortion of the competition, as well as the duration of the measures which in general can not be longer than three months.

#### **5. Does the law contain prescription periods?**

Article 50 of the LPC contains provisions on limitation. According to these provisions, a misdemeanour procedure cannot be initiated nor conducted after two years from the day when the misdemeanour was committed, while in any case, the limitation for misdemeanour prosecution becomes effective within four years from the date the misdemeanour was committed. The imposed penalty and security measure may not be enforced if three years have passed from the day when the decision on the misdemeanour has become final and in any case the limitation for the penalty execution becomes effective within six years from the date when the decision on the misdemeanour has become final.

#### **6. Does the law contain provisions for the protection of professional and business secrecy?**

Article 42 of LPC contains provisions for the protection of professional and business secrecy.

The President, the members of the CPC and the employees shall be obliged to keep the professional secrecy, regardless of the manner in which they have discovered it, and the obligation to keep the professional secrecy shall continue to apply after the termination of the employment in the CPC. These persons shall not give statements in the public which may undermine the reputation of the legal or natural entity, regarding the measures undertaken by them or the procedures initiated in the course of performing their competencies, until their final closing, except in the case of publishing general information or information regarding the undertaking.

Professional secrecy, shall mean especially such matter as:

- 1) determined by law or other legal act as a professional secrecy;
- 2) determined by a general or other acts of an undertaking as a professional or business secrecy and
- 3) determined as a business or professional secrecy by the undertaking or by the person from which documentation has been taken.

Any data and documents that have been accessible, in any manner, to the public, or that have been officially published on the basis of any other act or decision of the managing bodies of the undertaking, shall not be considered as a professional secrecy.

## **7. Does the law provide for sector inquiries?**

According to the provision in Article 27 of LPC the Department of qualified personnel within the realization of the investigative and other expert activities shall conduct market research based on the methodology determined by the CPC, collect data and information from the undertakings significant for research and determination of the market condition, independently from the procedures carried out in front of the CPC and collect data, conducts check and analysis of individual cases.

## **8. Does the law provide for the right to be heard, including the right of access to files?**

Article 37 of LPC contains provisions on hearing before the CPC. Holding a hearing shall be compulsory in any case where in the procedure parties with opposite interest are participating. As a general rule, the hearing shall be public. The CPC may also decide to hold a hearing in each case when it shall consider it to be useful. There is an exception when the CPC finds, based on the evidences attached, that the factual condition between the parties is indisputable and there are no other obstacles for decision-making, or if it is in the public interest, it may make a decision without scheduling a hearing.

Article 41 of LPC contains provisions on the parties' right of access to the files. The parties in the procedure in front of the CPC shall be entitled to inspect the records of the file and to make, at their own expense, a transcription or copy of certain documents, upon an approval by the President of the CPC.

## **9. Does the law lay down the rights of third parties?**

LPC contains provisions that regulate the rights of third parties. Pursuant to Article 29 of LPC, a person or association of persons on which the decision of the Commission may have an influence or effect shall have the capacity of parties in the procedure, despite the fact that they are not a person upon whose request the procedure is initiated or a person against whom the procedure is initiated. Also the CPC may grant a status of a party in the procedure upon a request of a person.

According to Article 43 of the LPC, in case damage is caused by any action prohibited by the provisions of the LPC, any person that suffered the damage may request compensation according to the law.

Any other issue not regulated by the LPC regarding the protection of third parties' rights in a procedure before the CPC, is regulated with the provisions of the Law on General Administrative

Procedure ("Official Gazette of the SFRY" Nos. 52/56, 10/65, 18/65, 4/77, 11/78, 32/78, 9/86, 16/86 и 47/86 and "Official Gazette of RM" No. 44/02).

#### **10. Does the law provide for judicial review?**

Article 40 of the LPC provides for a judicial review of the CPC decisions.

The participant in the procedure is entitled to file an appeal against the decisions of the CPC. The Commission for Appeals in the field of Competition shall be authorised to decide upon the appeal.

Against the final decisions of this Commission as a second instance body, the participant in the procedure may file a complaint for initiation of an administrative dispute before the Supreme Court of the Republic of Macedonia as a competent court. The Law on Administrative Disputes ("Official Gazette of SFRY" Nos. 4/77 and 36/77 and "Official Gazette of RM" No. 44/02) shall apply to administrative disputes.

The deadline for initiating an administrative dispute is 30 days from the date when the final decision has been delivered.

#### **11. Does the law provide for the publication of the activities of the competition authority?**

According to Article 44 of the LPC, the final decisions of the CPC made pursuant to the authorization determined by this law as well as the court rulings delivered upon complaint against the final decisions of the CPC shall be published in the Official Gazette of the Republic of Macedonia. These decisions shall be also published on the web site of the CPC. On the website of the CPC, the notification on the concentration falling under the provisions of the LPC by stating the names of the participants, country of origin, form of the concentration and relevant market of goods, shall also be published.

All data regarded as a professional secrecy, within the meaning of Article 42 of the LPC, shall not be published.

#### **12. Are latest legislative developments within the EU, particularly the comprehensive merger control reform package, being taken into account?**

The LPC is a basic regulation for protection of market competition that is harmonized with the latest developments of the EU legislation. Regarding the reforms on concentration control, the LPC contains the basic provisions regarding concentrations that regulate the obligation to notify the concentration; appraisal and definition of concentration; calculation of total revenue; investigation of notifications and initiation of procedures; suspension of concentrations as well as the types of decisions; time limits for initiation of procedures and time limits for making decisions.

Article 17 paragraph 7 of the LPC provides for adoption of a by-law that will regulate the form and the content of the notification as well as detailed criteria for appraisal of concentrations. This by-law will be completely harmonized with the rules stipulated in the Commission Regulation No.139/04.

#### **13. Please provide information on the enforcement record of the authority charged with implementing competition law (up-to-date statistics of cases, examples of recent decisions, breakdown of serious competition infringements assessed and results achieved, etc.).**

The body in charge of protection of competition, from the date of its constitution in May 2000 until October 2004, has dealt with a total number of 38 cases. The review of actions for each individual case, as well as the legal grounds, types of decisions, pronounced measures, legal remedies and appeals could be found in attachment. - See [06 Annex 02](#)

Also, three recent decisions of the body in charge of protection are attached to this answer, out of which, two refer to abuse of dominant position and one to control of concentrations. -See [06 Annex 03](#); [06 Annex 04](#) and [06 Annex 05](#).

In the course of its work, the body in charge of competition has not filed any requests for initiating misdemeanour proceedings for failure of implementation of its decisions, due to the fact that all its decisions have been implemented by the parties in the procedures. Requests for initiating misdemeanour proceedings have been filed in three cases for failure to submit data. So far, no pecuniary fine has been pronounced by the courts.

## II. STATE AID

### **1. Which steps have been and/or will be taken to establish a legislative framework for the control of State aid in your country? What are the constitutive parts of that framework (State aid law, secondary legislation, direct reference to the EU acquis)? What will be the timetable for the establishment of the legislative framework?**

In the Republic of Macedonia, the question on state aid has been raised by signing the Stabilisation and Association Agreement (SAA) and the Interim Agreement on trade and trade- related matters (IATTM) in April 2001. Article 69 of SAA and Article 33 of IATTM oblige the Republic of Macedonia to comply with Article 87 of the EC Treaty pertaining to state aid, i.e. to adopt the state aid system and regulate it according to EU rules and regulations.

In order to respond to the undertaken obligation, the Government of the Republic of Macedonia in its Annual Work Program for 2001 has planned to regulate the state aid issues in the Republic of Macedonia by adopting a particular law. The Law on State Aid ("Official Gazette of RM" No. 24/2003) was adopted on 28.03.2003 and implemented as of 01.01.2004. – See [06 Annex 06](#)

By adopting this Law, the issue of state aid in the Republic of Macedonia has been regulated by a particular law for the first time. In the process of drafting this Law, the other countries' practices were used, as well as technical assistance provided through the GTZ Project on Approximation of Legislation. The draft version of the Law was submitted to the European Commission in Brussels and the comments received from the European Commission were incorporated in the final text of the Law.

The Law on State Aid regulates the procedure and supervision of allocating state aid in all areas, except for the area of agriculture and fishery. The basic text of the Law on State Aid provides for addenda to the legislation framework on state aid by adoption by-laws for more detailed elaboration of the regional aid framework (Article 6); state aid for rescue and restructuring (Article 8) and report's content (Article 11), with the possibility to adopt other by-laws related to specific aspects arising from the implementation of this Law.

In compliance with the aforementioned Articles of the Law, the following by-laws were prepared and adopted during the second half of 2003:

- Regulation on establishing conditions and procedure for granting regional aid; - See [06 Annex 07](#)
- Regulation on the procedure and forms of notification to the State Aid Commission and for assessment of state aid; - See [06 Annex 08](#)
- Regulation on establishing conditions and procedure for granting aid for rescuing and restructuring firms in difficulty. - See [06 Annex 09](#)

The Regulations were published in the "Official Gazette of RM" No. 81/2003.

The Law on State Aid and by-laws were prepared in accordance with the European legislation (see [06 II 6](#)) and that is the basic legislation framework for regulating the state aid in the Republic of

Macedonia. In accordance with Article 69 of SAA and Article 33 of IATTM, the deadline stipulated for establishing the legislation framework harmonized with EU legislation in the field of state aid is 5 years from the day of the IATTM enforcement on 01.06.2001, i.e. 01.06.2006. The implementation of the Law on State Aid in the Republic of Macedonia and the mentioned Regulations has started as of 01.01.2004.

## **2. Under the State aid legislation, what is the definition given to State aid? What is the procedure for the assessment of State aid?**

The starting point for defining State Aid is Article 87 (1) of the EC Treaty that states the following: "Save as otherwise provided in the Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the common market."

This definition is transposed in Article 3 of the State Aid Law of the Republic of Macedonia and it states that "State aid shall mean any aid, granted by a State aid provider, in any form whatsoever, favoring certain undertakings or the production of certain goods or the delivery of certain services". The same article defines the export aid, regional aid, aid for rescuing and restructuring of enterprises, as well as aid schemes.

Article 4 defines the compatible aid, which is considered unarmful and not resulting in favouring certain enterprises and/or products, i.e. it will not distort competition and affect the trade between the Republic of Macedonia and the European Union. In compliance with this Article, compatible aid is defined as:

- a) the aid having social character, granted to individual consumers, if it does not make discrimination related to the origin of the products,
- b) the aid to cover the damage caused by natural disasters or extraordinary events, including military activities and
- c) de minimis aid that should not exceed 100.000 EUR over any period of three years. The de minimis aid provisions do not refer to aid provided to the transportation, agriculture and watersupply sectors.

Article 5 of the Law defines the aid that may be compatible in certain cases. Compatible aid is considered to be the regional aid, aid to enterprises facing difficulties, aid for development of certain economic branches and aid aimed at cultural promotion and cultural heritage protection. The Regulation on establishing conditions and procedure for granting aid for rescuing and restructuring firms in difficulty and the Regulation on establishing conditions and procedure for granting regional aid in more details regulate the conditions under which state aid of certain type may be considered compatible.

The aid, which may never be considered compatible according to the legislation on state aid, is export aid (Article 2 of the Law on State Aid).

The aforementioned types of state aid are defined in accordance with Article 87-89 of the EC Treaty.

The procedure for assessment of the state aid is regulated by the Law on State Aid and more precisely elaborated by the Regulation on the procedure and forms of notification to the State Aid Commission and for assessment of state aid. In accordance with Article 12 of the Law:

1. The Commission shall assess the compliance of each state aid with this Law and shall decide to approve it or not to authorize it due to non-compliance with this Law;
2. The Commission shall have the right to request from all State aid providers and aid recipients, all the information necessary for assessing a State aid. Information received from an interested party may be used, if all parties to an assessment procedure have been able to give comment upon them and

3. With regard to the aid schemes approved according to paragraph 1 of this Law and the aid schemes being in force before the entry into force of this law, or the aid granted by the Commission (existing aid), the Commission, upon its own initiative or upon the request by third parties, may propose appropriate measures in order to make such aid compliant with the provisions of this Law. In case the aid provider fails to align such aid scheme, as proposed by the Commission, the matter shall be submitted to the authorized Commission of the Government of the Republic of Macedonia for passing a decision.

In addition to these provisions of the Law, the aforementioned Regulation regulates the procedure for state aid assessment in more details, as well.

Articles 2 -10 of this Regulation describe in details the state aid assessment procedure for the state aid which has been notified to the State Aid Commission. Articles 2 and 3 define the time frame within which the Commission may request additional information if necessary. Articles 4 and 5 regulate the Commission's right to require suspension and/or recovery of the state aid. Article 6 provides for the deadlines for reaching a decision by the State Aid Commission that start running the day following the written confirmation by the Commission of the receipt of the complete notification. Articles 8 and 9 regulate cases where the Commission suspects on the state aid compatibility and decides to initiate formal investigation proceeding.

Articles 11 – 16 of the Decree regulate the procedure for assessing unlawful state aid that has not been notified to the Commission. The case of a negative decision on unlawful state aid is described in Article 16 that provides for the general elements that need to be included in the decision – the state aid amount and the deadline within which it has to be recovered.

**3. What is the situation with respect to existing State aid measures? Please provide an explanation on the current State aid system with reference to the Community classifications.**

The Law on State Aid and the by-laws, implemented as of 01.01.2004 regulate for the first time the issue of state aid in the Republic of Macedonia with separate legislation. The Law contains general provisions on various types of state aid: regional aid, aid for rescuing and restructuring firms in difficulty and aid for small and medium enterprises, whereas the by-laws regulate these kinds of aid in more detail.

Taking into consideration the short period of implementation of this legislation, preparation of the first annual report on state aid is currently in the process. The State Aid Commission is obliged to prepare and submit a report to the Government no later than 31.03.2005 on the aid granted in 2004, in the format prescribed by the by-laws. The Commission prepares the annual report based on the individual aid notification and the annual reports that the state aid providers are obliged to submit to the Commission, as well as based on the Commissions activities on identifying state aid that was not notified.

The Regulation on the procedure and forms of notification to the State Aid Commission and for assessment of state aid lays down the sample forms of individual and annual reports that the state aid providers submit to the State Aid Commission, and the forms of state aid like: subsidies, soft loans, tax incentives, state warranties on extended loans, research related assistance, patent recognition, technology transfer and other assistance (aid A, B, C and D according to the EC classification).

The reports also specify the type of aid: regional aid, aid for rescuing and restructuring etc. Each aid provider must stipulate whether the referred aid is existing or new type of aid, what are the aid schemes, what economic sector is assisted, data on the aid recipient and the amount granted. Based on these data, the Commission assesses each individual aid by means of a methodology and assessment criteria defined in the legislation, and at the same time it is possible to make the aid classification by type, sectors (industry, agriculture etc.) as well as by the criteria whether it is existing or new aid.

As already mentioned, the State Aid Commission for the first time is obliged to prepare and submit to the Government an annual report for 2004. Nevertheless, the Commission has also prepared a report on the aid provided in 2003. The 2003 report was not prepared in the prescribed form; however it provides insight into the Commission's activities in 2003 prior to the implementation of the legislation.



During 2003, the State Aid Commission was mainly focused on establishing the state aid system and identifying the possible state aid providers and recipients.

For this aim five workshops were conducted and large number of possible state aid providers and recipients attended. The topics were mainly related to issues regarding the Macedonian legislation on state aid, and particularly the experience of candidate countries for EU membership, mainly through the Slovenian experience.

Within the frames of undertaken activities in December 2003, a sample form was distributed to all possible state aid providers and recipients in order to collect data on the granted state aid in 2003. The starting base was the list of state budget users prepared by the Ministry of Finance, which included 74 entities like: ministries, funds, local self-government units and other state administration bodies.

Due to the insufficient response, an urgent request for submitting the required data was distributed in February 2004. After the two requests, a total of 56 answers were received, most of them incomplete. Also, there were meetings held with state bodies which, in the opinion of the Commission are possible state aid providers and recipients including: the Ministry of Finance (Compensation Funds Sector, Tax Sector, Public Revenue Office, Commodity Reserves Bureau, the Customs Administration), the Ministry of Economy (Industry Sector, Small and Medium Size Enterprise Sector, Tourism Sector), the Ministry of Local Self-Government (Bureau for Economically Underdeveloped Areas), Ministry of Environment and Physical Planning (Environment Fund), Ministry of Labour and Social Policy (Pension and Disability Insurance Fund), Ministry of Transport and Communications (Civil Aviation Directorate), Information Agency, the General Secretariat and the Sector for European Integration within the Government of the Republic of Macedonia and others. Regular and efficient cooperation has been established with most of the state bodies and institutions. This enabled the implementation of the legal obligations and responsibilities of the State Aid Commission and also contributed to better information about the regulations on state aid and its implementation.

Based on the received data and in discussion with the listed bodies and institutions, it was determined that out of the 74 possible state aid providers, 67 state bodies and institutions answered that they have not provided any state aid in 2003, 5 of them answered that they have granted some financial support to subjects of public interest and 2 bodies and institutions answered that they have granted funds which, in line with the legislation on state aid may be regarded as state aid.

The methodological approach in the state aid assessment in 2003 is the legislative definition of state aid, which provides incentives to some enterprises, the production of certain products or the provision of certain services, without distorting the basic principles of competition. The further analysis of state aid types in 2003 was based on the application of by-laws: Regulation on establishing conditions and procedure for granting regional aid; Regulation on the procedure and forms of notification to the State Aid Commission and for assessment of state aid and Regulation on establishing conditions and procedure for granting aid for rescuing and restructuring firms in difficulty, as well as the analysis of individual legal regulations which are the base for the state aid providing scheme.

#### **4. Do any legal restrictions apply to companies that have received or will receive State aid?**

The state aid legislation (the Law on State Aid and accompanying by-laws), defines certain rules, which are of restrictive type. It includes the following restrictions:

The Law on State Aid (Article 4) restricts the amount of *de minimis* aid that may not exceed 100.000 EUR for the period of three years, regardless of the type and purpose of the assistance.

Regulation on establishing conditions and procedure for granting aid for rescuing and restructuring firms in difficulty provides restrictions that apply to companies receiving state aid for rescuing and restructuring. Article 2 of this Regulation stipulates the cases when enterprises in difficulty may be granted state aid, whereas state aid is excluded for newly established firms which emerges from the liquidation of a previous firm or which has taken over such firm's asset and also, the possible specific conditions are defined under which state aid may be provided to enterprises belonging to a larger business group.

For companies that are rescue aid recipients, Article 3 of the same Regulation provides that rescue aid is a temporary measure that may be approved on the basis of serious regional and/or social difficulties and is by rule acceptable for a period not longer than six months. The rescue aid is restricted to loans and loan guarantees. The loan amount is limited to costs necessary for maintaining the enterprise in operation, the interest rate is market based, i.e. comparable to the interest rates on loans granted to enterprises not facing difficulties, whereas the loan repayment period is limited to a maximum of 12 months from the last installment paid to the enterprise.

Enterprises that receive restructuring aid are subject to compensation measures provided for in Articles 10, 11 and 12 of the Regulation, with aim to reduce the negative effects that the aid might have on the competition. The measures include restrictions of the enterprise's presence on the market during and after the period of restructuring. The compensation measures do not apply to small and medium size enterprises, unless it is otherwise stipulated by rules on allocating state aid in certain sectors.

The amount and intensity of restructuring aid must be limited to a rigid minimum that will facilitate the development of the enterprise, however not expansion of the production capacity, unless such expansion is absolutely essential for the reviving of the enterprise profitability, while not distorting the competition. Article 13 of the same Regulation establishes the "one time-last time" rule, valid for the restructuring aid, which stipulates that restructuring aid may be approved only once (one-time) in a period of 10 years.

The conditions for granting rescue and/or restructuring aid for small and medium size enterprises are laid down in Article 14 of the Regulation. This Article restricts the highest amount of this type of aid for small and medium sized enterprises to a maximum of 1 million EUR, including aid from other sources and other schemes.

Regulation on establishing conditions and procedure for granting regional aid regulates the conditions and highest amounts of regional aid allocated to new investment or expansion/modernization of existing production capacities. According to Article 4 of this Regulation, the regional aid for investing provided to large companies is limited to maximum 50% of the investment value or the salary costs for new jobs in the period of two years (net value). The same Article lays down the restrictions for regional aid provided to small and medium size enterprises. The condition for using the highest value for regional aid is that the recipient participates in funding the investment with a minimum of 25%.

The Law on State Aid and the Regulation are implemented since 01.01.2004 and apply to all companies that have appeared or will appear in the role of state aid recipients, since the date of implementation of this legislation, i.e. since the date of enforcing the Interim Agreement on trade and trade-related matters in cases of existing state aid provided according to previously defined schemes.

##### **5. Which institution is charged with the monitoring and control of State aid, the analysis of competition-related effects of State aid and the establishment of an on-going inventory based on the Community model? To what extent is this institution independent from State aid granting authorities?**

In course of implementation of the state aid system in the Republic of Macedonia along with the rules and standards of the European Union, and based on Article 9 of the Law on State Aid, the Government of the Republic of Macedonia established a State Aid Commission in June 2003, authorized for supervision of any state aid. The State Aid Commission is responsible for monitoring and control of the state aid, analyzing of the state aid effects that affect competition and establishment of current inventory based on the EU model. According to Article 12 of the Law on State Aid, the Commission assesses the compatibility of any state aid and decides on its approval or rejection according to the Law, whereas the aid provided contrary to the provisions in the Law on State Aid must be recovered.

The Commission is independent in its operations. It consists of three members nominated by the Government of the Republic of Macedonia. The members of the Commission have a four-year mandate, with a possibility for a second term. The administrative and expert operations of the State Aid Commission are performed by the Ministry of Economy. The State Aid Commission reports on its work to the Government of the Republic of Macedonia. In accordance with Article 9 of the Law on State Aid, the Commission is obliged not later than 31 March each year to submit to the Government a report on provided aid for the previous year. The report includes information about Commission's decisions, the total amount and distribution of granted state aid, allocated on the basis on aid schemes, as well as individual aid.

**6. To what extent do you intend to implement all substantive rules of the acquis in the State aid field? How will this be done?**

The Law on State Aid and the adopted by-laws on state aid (see [06 II 1](#)) were prepared in compliance with Articles 87-89 of the EC Treaty and in accordance with the following acquis:

1. Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 (now 88) of the EC Treaty;
2. Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to de minimis aid (OJ L10, 13.01.2001, p. 30-32);
3. Commission notice on the determination of the applicable rules for the assessment of the unlawful state aid (2002/C 119/12);
4. Commission Recommendation of 3 April 1996 concerning the definition of small and medium sized enterprises 96/280/EC (OJ L107, p.4-9);
5. Commission Regulation (EC) No. 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State Aid to small and medium enterprises (OJ L10, 13.01.2001, p. 33-42);
6. Community Guidelines on State Aid for rescuing and restructuring firms in difficulty (OJ C 288, 09.10.1999, p.2-18);
7. Corrigendum to the Community Guidelines on State Aid for rescuing and restructuring firms in difficulty (OJ C288, 09.10.1999);
8. Guidelines on National Regional Aid (OJ C74, 10.03.1998, p.9-31);
9. Corrigendum to Guidelines on National Regional Aid (OJ C394, 17.12.1998, p.23);
10. Amendments to the Guidelines on National Regional Aid (OJ C258, 09.09.2000, p.5) and
11. Communication from the Commission - Multisectoral framework on regional aid for large investments projects (OJ C 70, 19.03.2002, p.8-20).

See [06 Annex 06](#)

The existing legislation does not implement acquis regulations referring to:

- Specific types of state aid in the areas of: research and development, environment protection, energy saving, employment and training;
- The rules that regulate the state aid in specific sectors and
- The rules for financial transfers and transactions (e.g. public investment, state guarantees, fiscal aid, financial transfers to the public enterprises etc.).

The Law on State Aid (Article 13) lays down the possibility for preparing and adopting additional by-laws in line with possible needs, which enables implementation of other acquis regulations that have not been included in the existing legislation.

**7. What are the competences of the State aid authority which you have agreed to establish under the Stabilisation and Association Agreement:**

- a) To what extent are its decisions on State aid binding on all parties?**
- b) Can it ask for the recovery of unlawfully paid state aid?**
- c) Can it take ex officio actions?**
- d) Will the authority also be able to control existing State aid?**

The state aid control body in the Republic of Macedonia is the State Aid Commission established in June 2003. The State Aid Commission is authorized for supervision and assessment of the compatibility of any state aid in the Republic of Macedonia, regulated by the Law on State Aid. The State Aid Commission decides on the approval or rejection of all kinds of state aid, regardless of the fact whether it is a new aid, aid provided according to the existing and already adopted state aid schemes or individual aid (Article 2 of the Regulation on the procedure and forms of notification to the State Aid Commission and for assessment of state aid)

In the procedure for assessment of the state aid, the Commission reviews the submitted reports on state aid by the state aid providers and within certain deadline has the right to request additional information from the state aid providers and recipients (Article 12 of the Law on State Aid). The State Aid Commission regarding each notified state aid is obliged to reach a decision on the compatibility of the aid within the time frame determined in Article 6 of the mentioned Regulation. The Commission adopts the decisions with a majority vote.

In addition to being competent for the notified state aid, the State Aid Commission is also competent for the assessment and control of the state aid that has not been notified to the Commission. (See Chapter 3 of the same Regulation). Upon its own initiative or on the request of the third parties, the Commission may undertake activities for assessment of the not notified i.e. unlawful state aid. The activities may include: request for information from the state aid provider and/or recipient; aid suspension; opening a formal investigation procedure and decision on recovery of state aid funds.

Also, the Commission is competent for the existing state aid scheme control and is granted the right to propose measures for their harmonization with the state aid legislation (Article 12 of the Law).

**a)**

The decisions of the State Aid Commission are binding for all parties and published in the Official Gazette of the Republic of Macedonia (Article 9 (4) of the Law). The Commission may: 1) approve the state aid, i.e. reach positive decision on its compatibility; 2) not approve the reported state aid, i.e. reach negative decision on its compatibility; 3) reach a decision on state aid suspension; 4) reach a decision on state aid cancellation; 5) reach a decision on opening a procedure on formal investigation of the aid; and 6) reach a decision on the recovery of state aid funds. In the case of opening a procedure for formal investigation, the Commission is obliged, within legally determined deadlines (Article 8 of the Regulation on the procedure and forms of notification to the State Aid Commission and for assessment of state aid ) to reach a decision on the state aid compatibility. If the Commission does not reach a decision within the prescribed deadlines, the aid provider can allocate the aid based on prior written notification to the Commission.

Any state aid not notified to the State Aid Commission and/or allocated without consent by the Commission is automatically classified as unlawful aid. The Commission may require from the provider or recipient of unlawful state aid to submit correct information on the granted state aid and may require suspension or cancellation of the aid or open a procedure for formal investigation of the aid. The provider and recipient of unlawful state aid are obliged to comply with the decisions and requirements of the Commission.

A complaint against the decisions of the State Aid Commission may be filed to the second instance Commission within the Government of the Republic of Macedonia, although the complaint does not delay the execution of already adopted and published decisions.

**b)**

In accordance with Article 2 (2) of the Law on State Aid, the State Aid Commission may reach a decision on recovery of the unlawfully granted state aid funds. The recovery of the unlawful state aid

is regulated in more details by the Regulation on the procedure and forms of notification to the State Aid Commission and for assessment of state aid. In accordance with Article 4 of this Regulation, prior to reaching the final decision on unlawful state aid recovery, the State Aid Commission may request state aid suspension by the aid provider. In line with Article 13 of this Regulation, the decision on suspension may also be reached if the state aid provider failed to notify the aid and/or failed to submit all necessary information to the State Aid Commission within the determined deadlines and when there are grounded suspicions for the illegality of the state aid. When the state aid is suspended, in accordance with Articles 5 and 13, the state aid provider is obliged to suspend the aid immediately and inform the State Aid Commission in writing. If the state aid provider does not obey the suspension decision, the State Aid Commission has the power to cancel the aid and demand its recovery. In cases of final negative decision on the compatibility of the notified state aid, the State Aid Commission will require recovery of the allocated state aid, and if it is not notified and unlawful state aid, the Commission reaches a decision on the aid recovery in the amount and within the deadline determined by the Commission (Article 16).

**c)**

The State Aid Commission may undertake ex officio actions. Pursuant to Article 12 of the Law on State Aid, the State Aid Commission, upon its own initiative or upon third party request may propose measures for compliance of state aid schemes (approved by the State Aid Commission or schemes enforced prior to adoption of the present legislation) with the provisions of this Law. Unless the state aid provider does not comply the aid with the measures proposed by the State Aid Commission, the case shall be submitted for consideration to the Government Commission.

Pursuant to Article 8 of the Regulation on the procedure and forms of notification to the State Aid Commission and for assessment of state aid, the State Aid Commission is authorized to initiate a procedure for formal investigation, if it suspects the compatibility of the notified state aid with the legislation. In its decision the Commission is obliged to: 1) inform the state aid provider and request additional information; 2) publish its decision in the Official Gazette of the Republic of Macedonia and invite interested parties to submit written remarks and opinions within one month; and 3) reach a decision on the state aid compatibility within 18 months from opening the formal investigation on the state aid. If the Commission does not reach a decision within the deadline, the state aid provider may allocate the aid with prior written notification to the Commission.

The State Aid Commission is authorized to undertake ex officio actions in cases of not notified state aid, i.e. aid for which the state aid provider has not submitted report to the Commission. According to Article 11 of the mentioned Regulation, upon its own initiative or interested party's information, the Commission may require from the state aid provider and/or recipient to submit correct information on the state aid within defined deadlines. Also, the Commission is authorized to request suspension of the unlawful state aid, as well as of the notified aid that is suspected to be incompatible. (See answer b)

**d)**

Regulation on the procedure and forms of notification to the State Aid Commission and for assessment of state aid stipulates that the Commission may assess and control the existing state aid. According to Article 2 of the Regulation, the state aid providers are obliged to inform the Commission on the existing state aid they have allocated in the period prior to the implementation of the Law on State Aid (01.01.2004), starting from the date of enforcement of the Interim Agreement on trade and trade- related matters (01.06.2001). Also, state aid providers are obliged to notify the State Aid Commission regarding the state aid allocated on previously determined schemes on existing state aid (prior to the enforcement of the present legislation), as well as requests for changes of the approved existing aid.

Pursuant to Article 19 of the Decree, the State Aid Commission may request suspension of the existing state aid and initiate procedures for formal investigation if it believes it is grounded. Also, as already mentioned, the State Aid Commission may initiate harmonization of all existing schemes with the provisions of the Law on State Aid.

## **8. Is there a system in place which foresees a prior notification and a standstill clause?**

The system provided for prior notification and the standstill clause is incorporated in Article 10 of the Law on State Aid.

Paragraph 1 of Article 10 regulates the obligation of all state aid providers to submit a prior notification to the State Aid Commission on their plans for providing state aid or changes to the existing aid schemes. There is an exception for aid classified as compatible aid according to Article 4 of the Law.

Paragraph 2 of Article 10 is a standstill clause, which stipulates that not notified state aid may not become effective until approved with a decision by the Commission.

The Commission is obliged to reach its decisions within legally binding deadlines. In accordance with Article 6 of the Regulation on the procedure and forms of notification to the State Aid Commission and for assessment of state aid, the Commission must reach a decision within two months for new state aid, within 30 days for state aid allocated on the base of aid schemes already approved by the Commission, and within 20 days for existing state aid for which significant changes are proposed. The deadlines start to run one day after a written consent has been issued by the Commission on the receipt of the complete report.

## **9. Is there a system in place which foresees complaints by third parties?**

The state aid regulation establishes a system that foresees remarks and complaints by third parties.

In accordance with Article 3 (9) of the Law on State Aid, interested parties are state aid recipients and competing undertakings or associations of undertakings, whose interest may be affected by state aid granting.

Pursuant to Article 12 of the Law on State Aid, the State Aid Commission on the request of third parties may propose measures to harmonize the schemes of existing state aid (approved by the State Aid Commission or schemes enforced prior to the adoption of the present legislation framework) with the provisions of this Law. In cases where the state aid provider does not harmonize the aid with the proposed measures by State Aid Commission, the case will be submitted for consideration to the responsible Commission within the Government.

Pursuant to Article 8 of the Regulation on the procedure and forms of notification to the State Aid Commission and for assessment of state aid, in cases where the Commission reaches a decision on initiating a formal investigation on a state aid, the decision must be published in the Official Gazette of the Republic of Macedonia and invite all interested parties to submit their remarks and opinions in written form. The received remarks and opinions of third parties are then submitted to the state aid provider.

According to Article 11 of the same Regulation, the State Aid Commission, on the base on information by third parties on irregularities in state aid issues, initiates and undertakes activities for investigating it.

## **10. Are fiscal aid measures as well as aid to sensitive sectors (for instance steel sector, synthetic fibres) subject to comprehensive State aid control?**

Fiscal aid measures, as well as aid to the sensitive sectors are subject of comprehensive State aid control. In accordance to the Article 1 paragraph 2 of the State Aid Law, only the state aid granted in the area of agriculture and fishery is not regulated with this Law. There are no other exceptions.

### **III. PUBLIC UNDERTAKINGS AND UNDERTAKINGS WITH SPECIAL OR EXCLUSIVE RIGHTS AS WELL AS STATE MONOPOLIES**

#### ***A. General aspects***

#### **1. Is your competition legislation full applicable to public undertakings and undertakings with special or exclusive rights, in accordance with Article 86 of the EC Treaty?**

The Law on Competition Protection (LPC) fully applies to public enterprises and enterprises with special or exclusive rights, in accordance with Article 86 of the EC Treaty.

A more detailed explanation of this question is included in [06 I A 4](#).

#### **2. Which public or private undertakings have been granted exclusive or special rights?**

Areas in which exclusive and special rights are granted are economic activities of public interest. Pursuant to Article 2 of the Law on Public Enterprises ("Official Gazette of RM" Nos. 38/96, 06/02 and 40/03), the activities or particular operations of activities are considered to be of public interest, if they ensure public interest in the following fields: energy; rail transport and public transport of passengers; road network maintenance; air transport; telecommunications and postal transport; the system of radio and TV communications; oil and gas pipeline transport; forest, water and pasture management and management of other types of natural resources; spatial planning and organization; communal activities; veterinary and sport as well as other economic activities defined by law. The Law on Public Enterprises stipulates that public enterprises (PE) are established for performing economic activities of public interest. On behalf of the Republic of Macedonia, the founder of public enterprises is the Government, however they may also be established by the municipalities and the city of Skopje, within their competencies, under conditions and in a procedure prescribed by the Law. Enterprises that perform activities of public interest are: Joint Stock Company (JSC) "Electric Power Company of Macedonia" Skopje for Production, Distribution and Supply of Electricity in state ownership; JSC "MEPSO" for Transmission of Electricity and Operation of the Electrical Power in state ownership; PE for Procurement, Transport and Distribution of Natural Gas "GA-MA" Skopje; PE "Macedonian Railways"; PE "Makedonija Pat"; PE for Forest Management "Makedonski Sumi"; PE for Pasture Management; PE "Water Economy of Macedonia", PE for Airport Services "Macedonia" Skopje; PE "Official Gazette of the Republic of Macedonia"; PE "Macedonian Broadcasting"; PE "Macedonian Radio and Television"; PE for Postal Traffic "Makedonska Posta" and the public communal enterprises established by the municipalities and the city of Skopje.

Based on agreements, the private enterprises which are granted exclusive or special rights are the following: JSC Oil Refinery "OKTA" Skopje; JSC "Macedonian Airlines" (MAT) and JSC "Toplifikacija" Skopje.

Until 31.12.2004 the JSC "Macedonian Telecommunications" (JSP "MT"), in mixed ownership used to have exclusive rights for providing telecommunications services in the fixed telephony.

#### **3. What is the subject, scope and duration of the relevant exclusive or special rights?**

The subject, scope and duration of exclusive or special rights granted to certain companies in the Republic of Macedonia are covered by laws that regulate the relevant sectors, and by-laws adopted in accordance with these laws.

**In the field of energy**, the existing Energy Law ("Official Gazette of RM" Nos. 47/97; 40/99; 98/00; 94/02 and 38/03) provides for certain activities of public interest like: production, transport and

distribution of electricity; international transport of crude oil through pipelines; production, transport and distribution of natural gas; transport and distribution of heating and geothermal energy. Public enterprises can be established for performing such activities; otherwise, these activities can be performed on base of license authorization. The duration of licenses is not provided by the Law and is determined in the procedure for issuing the license.

For performing the above mentioned activities of public interest in the field of energy, the following enterprises have been granted exclusive or special rights:

1. JSC "Electric Power Company of Macedonia" – Skopje for Production, Distribution and Supply of Electricity in state ownership;
2. JSC "MEPSO" for Transmission of Electricity and Operation of the Electrical Power in state ownership;

These two companies were established upon the division of the Joint Stock Company named "Electric Power Company of Macedonia" for Production, Transmission and Distribution of Electricity in state ownership (JSC – EPSM), which had been granted the exclusive right for production, transmission and distribution of electric power. The procedure of division of JSC – EPSM was completed on 31.12.2004;

3. JSC "OKTA" - Skopje is the sole refinery for production of oil derivatives in the Republic of Macedonia, which, pursuant to the Agreement for sale and concession signed with the Government of the Republic of Macedonia in May 1999 for the period of 20 years (until 09.07.2019), had an exclusive right for import of determined quota of oil derivatives for the period of 5 years (Article 5 of the Agreement), exclusive right to import crude oil at customs rate of 1% (Article 8 of the Agreement), and guaranteed purchase of heating oil by the state in annual quantities of minimum 500,000 tons.<sup>1</sup> Since January 2003 the exclusive rights to OKTA referred to in Article 5 of the Sales Agreement have been cancelled and all other economic subjects in this business have acquired the same status. The guaranteed rights to OKTA for the purchase of the heating oil by the state are still valid and in case the state fails to meet the conditions of the Agreement, it is obliged to compensate OKTA for the incurred damage. OKTA is of mixed ownership (state and private), with dominant share of the foreign investor E.L.P.E.T. Balkanika from Greece;
4. The PE "GA-MA" Skopje, established by the Government of the Republic of Macedonia in 1996 is licensed for supply, transport and distribution of natural gas. The exclusive right for this activity has been granted to GA-MA for an undefined period. However, regarding the ownership of the gas pipeline system, the Government of the Republic of Macedonia is in litigation procedure with the private company JSC "Makpetrol" Skopje. The litigation implies negative consequences on the supply, transport and distribution of natural gas and the use of the exclusive rights by GA-MA. The resolution of this dispute will clarify the rights and obligations of the companies involved in this business and
5. JSC "Toplifikacija" Skopje is a private enterprise licensed for the production, transport and distribution of heating energy on the territory of the City of Skopje. It performs the business activities on the base of an authorization license for such activity issued in 1999 for a period of 2 years. In 2001 the license was extended for another 10 years, i.e. the company is provided with the right to perform the business activities until 2011.

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<sup>1</sup> The validity of these provisions, the Sales Agreement and concessions are, among other issues, subject to evaluation by the arbitration court in the pending dispute between the Republic of Macedonia and E.L.P.E.T. Balkanika, established on the basis of the arbitration clause, according to the rules of the Arbitration Chamber at the International Trade Chamber in Paris. See also answer 06\_III\_A\_4..



**In the field of railroad transport**, the PE “Macedonian Railways” enjoys the exclusive right to perform the railroad transport; construction; reconstruction; repairs; maintenance and protection of the railroad infrastructure, which are considered as activities of public interest. This right has been established by the Law on the Macedonian Railroads (“Official Gazette of RM” No. 09/98) for an undefined period. The railroad infrastructure can be used by other legal and natural entities under the conditions and procedures determined by the Law and international agreements. A new law is being drafted in compliance with the EU legislation in this field, which provides for the division of PE Macedonian Railways into two companies: PE for railroad infrastructure, solely authorized for the management of the railroad infrastructure in state ownership and PE for transport, which is planned to be transformed into a joint stock company, and then privatized.

The company in charge **for the management and maintenance of public highways, motorways and regional roads** in the Republic of Macedonia is the public enterprise named PE “Makedonija Pat” for an undefined period. In addition, the Law on Public Roads (“Official Gazette of RM Nos. 26/96; 40/99; 96/00, 29/02 and 68/04) provides for the possibility the construction and use of highways and motorways and relevant constructions to be offered for concession for a period not longer than 25 years.

**In the area of air transport**, JSC “Macedonian Airlines” (MAT) is the selected state carrier in accordance with the bilateral agreements for regular air transport between the Republic of Macedonia and other countries, based on an agreement signed between the Government of the Republic of Macedonia and this company on 26.06.2000. This status of MAT provides it with the special right, being the “selected carrier” regarding bilateral agreements, for passenger, goods and mail transport in regular lines determined by bilateral agreements, which is enjoyed solely by “selected carriers” of other countries, i.e. contracting parties. The agreement between MAT and the Republic of Macedonia in which MAT is granted this status has been concluded for an initial period of 10 years, with a possible extension for the next two years.

The PE for Airport Services “Macedonia” Skopje has been given the right to manage the airports in Skopje and Ohrid, the only airports in the Republic of Macedonia for an undefined period.

**In the area of telecommunications**, in accordance with Article 22 of the current Telecommunications Law (“Official Gazette of RM” Nos. 33/96, 17/98, 22/98, 28/00, 04/02 and 37/04) until 31.12.2004, the existing public telecommunications operator JSC “Macedonian Telecommunications”, enjoyed the exclusive right to provide: fix telephone services; telegraphic services; telex services; public phone box services and services for renting lines and operating fixed telephone networks. A new Law on Electronic Communications, which has been drafted and is in the process of adopting, is expected to be passed by the Assembly in the first quarter of 2005. The new Law will regulate the liberalization of the market of telecommunication services and the operations of telecommunication services in free market conditions.

**In the area of mail transport**, the PE for Postal Traffic “Makedonska Posta”, as the basic mail operator is exclusively authorized to perform reserved mail services for an undefined period. They include: receipt; sorting; transfer; transport and delivery of mail deliveries, including direct mail in the domestic and international mail traffic, under the condition that these deliveries weigh up to 350 grams. In other mail services, the market is open for competition.

**In the area of radio and TV communications**, according to the Law on Establishing the Macedonian Radio Broadcasting (“Official Gazette of RM” Nos. 06/98 and 98/00), the PE “Macedonian Broadcasting” has been authorized to perform activities of public interest, i.e. to develop, design, construct, maintain and use the basic radio broadcasting network on the territory of the Republic of Macedonia; provide live transmission, broadcasting and distribution of radio and TV programs and other information intended for general receipt in the free space and on cable radio and

TV networks on the territory of the Republic of Macedonia; provide teletext, data transmission and other services on the basic radio broadcasting network; provide and broadcast special information programs; preserve cultural and historical traditions and maintain and promote the relations with ex-patriots and other citizens of the Republic of Macedonia who live in neighbouring countries, Europe and other continents and provide quality and evaluation control and coverage of radio and TV signals broadcasted by Macedonian Radio Television on the territory of the Republic of Macedonia, as well as provide control and evaluation of obstacles caused by other radio broadcasting organizations.

The Law on Establishing the Public Enterprise of the Macedonian Radio Television ("Official Gazette of RM" Nos. 06/98, 98/00 and 78/04) stipulates that this enterprise performs activities of public interest that include: creation and broadcasting of radio and TV programs within the guaranteed freedoms and rights of human beings and citizens on information, educational, cultural, scientific, sports, music, entertainment and other contents in Macedonian language and the languages of the nationalities that live in the Republic of Macedonia, as well as creating and broadcasting special programs for informing and preserving the cultural and historical traditions and maintaining and promoting the relations with ex-patriots and other citizens of the Republic of Macedonia who live in neighbouring countries, Europe and on other continents.

The two public enterprises have been granted special rights for an undefined period.

**In the area of water management,** according to the Law on Waters ("Official Gazette of RM" Nos. 04/98 and 19/00), the Government established a public enterprise in charge of water management of public interest for an undefined period, which in Article 17 of the Law is defined as: construction, maintenance and use of water economy constructions and installations related to providing water for water supply, land irrigation and drainage; identifying protection zones; protection from harmful effects of water; protection of beds and banks of water-flows and lakes; protection from flooding; protection from erosion and management of water storms, extraction of sand, pebble and stone for protection and enhancement of the water regime; providing water reserves that ensures a unique water regime in a confluence (basin) or part of confluence and preparing project documentation related to improvement of water regime.

The Law on Waters management ("Official Gazette of RM" No. 85/03) stipulates that the management, maintenance and economy of common constructions of hydro systems as an activity of public interest has been given to a number of water companies, public legal entities. The decision on the establishment of water companies is reached by the Government of the Republic of Macedonia, upon recommendation of the Ministry of Agriculture, Forestry and Water Management, and each water company signs a contract with the Minister of Agriculture, Forestry and Water Management, which precisely defines all rights and obligations of the water company. This contract can be signed for a minimum of 10 and maximum of 30 years.

**In the area of forest management,** the PE "Makedonski Sumi" has been established to manage forests in state ownership for commercial purposes, and to grow and protect forests for special purposes (of public interest) for an undefined period. This enterprise has been established pursuant to the Law on Forests ("Official Gazette of RM" Nos. 47/97, 07/00 and 89/04), which also provides that the Government of the Republic of Macedonia can allow another legal entity to perform activities for growing and protecting forests for specific purposes (of public interest) by concluding a contract.

**In the area of pasture management,** according to the Law on Pastures ("Official Gazette of RM" Nos. 03/98 and 101/00) the public enterprise for pasture management is in charge of management, promotion and use of pastures in state ownership for an undefined period.

**In the area of communal activities,** the Law on Communal Activities ("Official Gazette of RM" Nos. 45/97; 23/99; 45/02 and 16/04) stipulates that performing communal activities is "of public interest" and also provides for performance, in addition to the public enterprise established for this purpose by the municipalities (or group of municipalities) or the Government of the Republic of Macedonia (for infrastructure systems of importance to the Republic of Macedonia), also by natural and legal entities by contracting the activity of public interest or by way of concession or license (except for certain communal activities) issued by the municipalities or the Government of the Republic of Macedonia.

The Law identifies the communal activities that can be performed in this way. The period of validity of concessions or licences is determined by the particular sectoral law and the contract for concession or license.

**For publishing laws and other regulations and acts**, the PE “Official Gazette of the Republic of Macedonia” is exclusively in charge. This company, based on the Law on Publishing Laws and other Regulations and Acts, in the Official Gazette of RM (“Official Gazette of RM” Nos. 56/99 and 43/02), is the sole enterprise which is entitled with the right to publish laws, other regulations and acts in the Official Gazette of the Republic of Macedonia for an undefined period, as well as the right to issue the official journal called “Official Gazette of RM”.

The Public Procurement Law (“Official Gazette of RM” No. 19/04) regulates procurement by legal entities that perform activities based on “special and exclusive rights” granted by public authorities or the units of local self-government. The Minister of Finance determines the list of such entities. Part 5 of the Law regulates in more detail public procurements of the entities that perform activities of public interest in the area of water economy, communal services, energy, transport and telecommunications.

#### **4. According to which procedure have the exclusive and special rights been granted?**

Exclusive or special rights are granted on the base of the laws regulating the performance of certain activities of public interest or laws for establishing public enterprises, by granting licences or concessions for performing activities of public interest and by concluding an agreement between the exclusive and special rights provider (the Government of the Republic of Macedonia, the municipalities, or the city of Skopje) and the enterprises that have been granted these rights.

The Law on Public Enterprises (“Official Gazette of RM” Nos. 38/96, 06/02 and 40/03), Article 3, lays down that the Government of the Republic of Macedonia holds the right to establish public enterprises, whereas under certain conditions and procedures determined by the Law, the municipalities and the city of Skopje can also establish public enterprises. Public enterprises established for performing activities of public interest are obliged to conduct the activities permanently and continuously (Article 8 of the same Law). The act on establishing public enterprises (Article 10 of the Law) regulates the activity for which the enterprise is established, i.e. the activity for the performance of which the enterprise is granted exclusive or special rights.

Special laws have been adopted for a large number of activities of public interest. They regulate the performance of a defined activity and the conditions under which exclusive and special rights are granted. The Law on Macedonian Railways (“Official Gazette of RM” No. 09/98), Article 2 grants the PE “Macedonian Railways” the exclusive right to perform activities related to rail transport and railroad infrastructure maintenance. The Law on Postal Services (“Official Gazette of RM” No. 55/02) Article 1 stipulates that the PE for Postal Traffic “Makedonska Posta” is granted the exclusive right to perform part of the postal services or the so called reserved postal services, stipulated in the Law. The Law on Public Roads (“Official Gazette of RM” Nos. 26/96; 40/99; 96/00; 29/02 and 68/04), Article 30, stipulates that the Government of the Republic of Macedonia has established a public enterprise for maintenance and protection of motorways and regional roads. The Law on Waters (“Official Gazette of RM” Nos. 04/98 and 19/00), Article 136 stipulated that the Government of the Republic of Macedonia has established a public enterprise for performing activities of public interest in water management. With the Law on Pastures (“Official Gazette of RM” Nos. 03/98 and 101/00), Article 4, the Government of the Republic of Macedonia has established a public enterprise, which has been granted the exclusive right to manage pastures for commercial purposes. The Law on Forests (“Official Gazette of RM” Nos. 47/97, 07/00 and 89/04), Article 17, lays down that the Government of the Republic of Macedonia has established a public enterprise for managing forests in state ownership for commercial purposes. In the Law on Communal Activities (“Official Gazette of RM” Nos. 45/97; 23/99; 45/02 and 16/04), Articles 14-16 provide for the possibility that the municipalities and the city of Skopje can establish public enterprises for communal activities at local level. With the Law on Publishing Laws and Other Regulations and Acts in the Official Gazette (“Official Gazette of RM” Nos. 56/99 and 43/02), Article 11 grants the PE “Official Gazette of the

Republic of Macedonia” the exclusive right to publish laws and other regulations and acts, and issue the official journal called “Official Gazette of RM”.

Public enterprises can be established also by adopting special laws for their establishment, e.g. the Law on Establishing the PE “Macedonian Radio and Television” (“Official Gazette of RM” Nos. 06/98; 98/00 and 78/04) and the Law on Establishing the PE “Macedonian Broadcasting” (“Official Gazette of RM” Nos. 06/98 and 98/00). The two laws include provisions that grant exclusive and special rights to public enterprises for performing particular activities of public interest.

Exclusive or special rights can be granted also by providing and issuing licences or permits for performing certain activities of public interest. Pursuant to the Law on Public Enterprises (Article 43), the licence for performing certain commercial activities of public interest may be issued for all activities, with the exception of certain activities determined by the Law. For obtaining a license, an agreement must be concluded between the licence provider and the performer of the economic activity. It defines their rights and obligations in more details, i.e. the procedure, conditions and period of performing the commercial activity of public interest. The licence provider may be the Government of the Republic of Macedonia, the municipalities or the City of Skopje, or other institutions determined by means of a special sectoral law. For example, in the area of energy, in accordance with the Energy Law (“Official Gazette of RM” Nos. 47/97, 40/99, 98/00, 94/02 and 38/03), licences are granted by the Energy Regulatory Commission of the Republic of Macedonia. The licence for production, transport and distribution of heating and geothermal energy is issued by the municipalities or the City of Skopje. JSC “Toplifikacija” Skopje has been granted the exclusive right in this manner.

In addition to the energy sector, the licensed performance of activities of public interest is also provided by the Law on Communal Activities (Articles 14 and 25); in the Law on Postal Services, which provides for licensing for courier services (Article 14) issued by the Minister for Transport and Communications for the period of 5 years; the Law on Waste Disposal Management, which provides for licences for various types of activities related to waste management (waste transport, storage and burning, import, waste export and transit, dump sites etc), within a period determined by the Law. The Law on Waters provides for issuance of water management licenses for construction, reconstruction and connection of water economy constructions and installations, as well as other licenses related to specific activities of water management activities, regulated by the Law in terms of the procedure, conditions and period.

Exclusive and special rights may be also granted by way of concession. In accordance with the Law on Concessions (“Official Gazette of RM” Nos. 25/02 and 24/03), concessions are issued for performing activities relating to assets of general interest for which special sectoral laws provides for granting of concessions. Concessions are granted by way of public competition, where the subject, period and other conditions of the concession are announced. Domestic and foreign legal and natural entities are entitled with the right to bid. The concession is granted by the Government of the Republic of Macedonia. The concessions are granted in line with the procedure precisely provided for in the Law on Concessions, unless otherwise provided for in the relevant sectoral laws.

The concession for performing a certain activity of public interest is provided for in several laws. The Law on Postal Services regulates the granting of concession for unreserved postal services (for the ones that the Macedonian Post Offices do not hold exclusive rights) for a period that may not be shorter than 10 years or longer than 20 years. The Law on Radio Broadcasting provides for concessions to commercial radio broadcasting companies for performing radio broadcasting activities at local and national level. The Law on Waters (Article 152) provides for the possibility to grant concession for the use of water currents and lakes for purposes stipulated by the Law. The Law on Communal Activities (Articles 14 and 24) provides for the possibility for granting concession for performing communal activities, defined by the Law. The Law on Public Roads (Article 11) provides for concessions for the construction and use of highways (for a period of a minimum of 25 years) and concessions for the use of a highway section or a public road section or road belt (for a period of a maximum of 10 years). The concessions are granted by public announcement, and if there is no

interested bidder, the Law on Public Roads stipulates that the concession is granted on base of a bid submitted to the Ministry of Transport and Communications.

The JSC “Macedonian Telecommunications” (JSC “MT”) holds a concession for providing public telecommunication fixed telephone services until 31.12.2018. Until 31.12.2004, it enjoyed the exclusive right to be the sole entity on the market providing services in the field of fixed telephone services. The exclusive right was granted to JSC “MT” by signing the concession agreement with the Government of the Republic of Macedonia in 2001, following a procedure of public bidding.

A Sale and Concession Agreement granting exclusive rights was also signed by the Government of the Republic of Macedonia and JSC “OKTA” Skopje, i.e. its dominant owner ELPET Balkanika from Greece. This agreement was incorporated and legally supported by the bilateral international agreement for the oil pipeline between the Republic of Macedonia and the Republic of Greece. However, the bilateral agreement was never in effect due to lack of confirmation by the Greek party.<sup>2</sup>

An agreement with the Government of the Republic of Macedonia for certain special rights was concluded in 2000 by JSC “Macedonian Airlines”, according to which, the Government of the Republic of Macedonia granted the status of an “selected state air carrier” for the transport on regular airlines related to in bilateral agreements for regular air transport between the Republic of Macedonia and other countries.

Special rights to be granted by an agreement between the right provider and the activity performer are also provided for in the Law on Local Self Government (“Official Gazette of RM” No. 05/02) Article 24, which stipulates that the municipalities (and the City of Skopje) may delegate the performance of certain activities of local public interest to legal and natural entities, on base of an agreement for performing activities of public interest.

## **5. What is the justification for granting the exclusive rights?**

Without exception, granting exclusive rights to public enterprises or private natural and legal entities is based on the existence of public interest. According to Article 1 of the Law on Public Enterprises (“Official Gazette of RM” Nos. 38/96, 09/97, 06/02 and 40/03), economic activities of public interest are activities that are irreplaceable conditions for the citizens’ life and work and for the work of the legal entities and state bodies. Some of the sectoral laws precisely define the reasons that justify granting of exclusive rights, whereas for some activities of public interest the granting of exclusive rights may be based on the special obligations that the holders of such rights are obliged with.

In most cases, exclusive rights granted to enterprises performing activities of public interest are justified by the requirement to ensure continuing and safe provision of such activities, i.e. to provide equal quality and universal availability of services for citizen, protection of assets of public interest, as well as regular maintenance of the operation and safety of the relevant systems.

For instance, exclusive rights to the PE for Postal Traffic “Makedonska Posta” for providing reserved postal services are justified with the need of providing services on the entire territory of the Republic of Macedonia, including inhabited sites where it is not profitable, and for the maintenance and improvement of the public postal network (Article 9 of the Law on Postal Services, “Official Gazette of RM” No. 55/02).

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<sup>2</sup> The procedure for conclusion of these agreements (the Law on Ratification of the bilateral Agreement) and some of their provisions that provide for exclusive or special rights for OKTA/strategic investor ELPET Balkanika - Greece were abolished by the Constitutional Court of the Republic of Macedonia. Currently, the Republic of Macedonia and the strategic investor ELPET Balkanika - Greece are in a dispute before the arbitration court established on the basis of the arbitration clause, according to the rules of the Arbitration Chamber at the International Trade Chamber in Paris. The subject of the dispute are provisions for the OKTA's exclusive or special rights.

The rights of enterprises in the field of energy are justified by the necessity to produce, transport and distribute various types of energy and the need to maintain and develop the necessary energy systems, as a precondition for an uninterrupted and safe life and work of the citizens of the Republic of Macedonia. Exclusive rights granted to the water management enterprise are justified in a similar way, i.e. to provide for the protection of water being an asset of general interest and ensure the unobstructed use and distribution of commercial water and drinking water throughout the Republic of Macedonia, while also ensure the protection of the people's health and the environment. The maintenance and protection of forests as natural wealth and asset of general interest in the Republic of Macedonia were the reasons standing behind granting the exclusive right to the PE for Forest Management "Makedonski Sumi"; which was established with the purpose to grow, use and protect forests. The maintenance and protection of pastures justifies the exclusive rights granted to the public enterprise for pasture management, in order to ensure the protection of pasture areas, increase their value and ensure reasonable commercial management.

The exclusive rights granted to public communal enterprises and public enterprises that operate in the area of infrastructural systems like water supply systems, drainage and purification stations, solid waste dump sites and industrial dump sites for perilous and harmful substances, crematoria and other infrastructural systems, are based on the specific type of communal activity and the features of the relevant infrastructural systems and their commercial, technical and technological operation and environmental significance for the Republic of Macedonia.

When exclusive rights are granted by concession or contract, they are justified by the particular character of the assets of general interest which, by way of concession or contract are given for provisional use, management or exploitation, or by the particular type of activity of public interest which performance is transferred to the concession holder.

For instance, the provisional exclusive rights granted to JSC "Macedonian Telecommunications" in fixed telephone services were justified by the need to improve the telecommunication network and ensure modern, effective and high quality telecommunication services (universal service), available to all citizens until conditions for market liberalization are fulfilled.

**6. Is there an obligation for the companies with exclusive or special rights to fulfil tasks of a general economic interest? If so, please specify.**

Sectoral laws regularly stipulate that the exclusive or special rights holders fulfil activities of general economic interest. They are obliged to fulfil activities of public interest by providing universal, quality and permanent services, available to all legal and natural entities on the territory on which the activity is performed, at reasonable prices and with appropriate protection of the users or consumers, as well as to develop, maintain, and protect the appropriate systems.

For instance, the Law on Postal Services ("Official Gazette of RM" No. 55/02) stipulates that PE for Postal Traffic "Makedonska Posta" are the sole provider of the so called reserved postal services, is obliged to offer services available to all users on the territory of the Republic of Macedonia, regardless of the geographic location and profitability, under the same conditions and with no discrimination, with care for postal deliveries, as well as to perform the service in a continuance (except in cases of force major).

Similarly, the Telecommunications Law ("Official Gazette of RM" Nos. 33/96, 17/98, 22/98, 28/00, 04/02 and 37/04) provides for the obligation for universal services, defined as a packet of telecommunications services of certain quality. The services must be available to all users of telecommunications services in the Republic of Macedonia, regardless of their geographic location, at reasonable and undiscriminating prices, based on real costs. In cases where the public telecommunications operator or the provider of public telecommunication services does not provide the users with unobstructed, efficient and regular service, the users are entitled to certain compensation for any failure in the quality of the service provided. The regulations on telecommunications services and the procedure for compensation are adopted by the Minister of Transport and Communications and implemented by the Telecommunications Directorate. Also, the

current Telecommunications Law prescribes that the public telecommunications operator shall not reject a requirement for interconnection by another operator, if this interconnection is technically possible. The new Law on Electronic Communications, which is in the process of adoption, regulates in more details the right to network access and the operators' interconnection. The general conditions for interconnection of public communications networks are determined by the Ministry of Transport and Communications, and possible problems and disagreements among operators are to be solved by the Telecommunications Directorate.

Pursuant to the Energy Law ("Official Gazette of RM" Nos. 47/97; 40/99; 98/00; 94/02 and 38/03), legal and natural entities performing activities of public interest in this field are obliged to do it consistently and with good quality. The energy producers and providers are obliged to provide energy to the users in line with the energy balance, mutual agreements and general conditions for the delivery of the relevant type of energy, as well to ensure unobstructed and safe operation of the entire energy system. The Law precisely regulates possible necessary interruptions and the procedure in such cases. The Energy Law prescribes the obligation of legal entities involved in the management of energy systems for energy transmission, transport and distribution, that they use their free capacities to contract services for interested parties. If obligations are not met and in cases of disputes, the Energy Regulatory Commission prescribes the rules for energy network connection.

The PE "Macedonian Broadcasting", in accordance with the Law on its establishment ("Official Gazette of RM" Nos. 06/98 and 98/00) is obliged to use its networks to provide free of charge transmission and broadcasting of radio and TV programs of the PE "Macedonian Radio Television", as well as of the public broadcasting enterprises established at local level. Also, the public broadcasting enterprise is obliged, for a defined fee, to do program transmission and broadcasting for other commercial broadcasting companies which have been granted concession for performing national broadcasting. According to the Law on Communal Activities ("Official Gazette of RM" Nos. 45/97, 23/99, 45/02 and 16/04), the public enterprises are obliged to provide consistent and quality performance of communal activities, and maintain the facilities and equipment of communal infrastructure in operational conditions. The Law on Waste Management provides for the obligation that enterprises in this field provide services based on the principles of: non-discrimination, service consistency, quality and efficiency, transparency, at reasonable commercial costs, and complete coverage of the area identified for providing services.

Part of the obligations of the exclusive and special rights holders refer to ensuring safety and permanent operation of the systems used for providing the services. For instance, providing regular, unobstructed and safe rail, road and air transport entails a series of specific obligations of the activity performers. The PE "Macedonian Railways", which is authorized for performing rail transport and construction, reconstruction, repairs, maintenance and protection of the railroad infrastructure, is obliged to provide unobstructed, regular and safe railroad transport. This obligation may be given to the PE "Macedonian Railways" also in cases of exceptional conditions, i.e. the Law on Railroads, Article 128 ("Official Gazette of RM" No. 09/98) provides for the possibilities to order the Macedonian Railroad Company to do transport in exceptional conditions, under the condition for costs to be covered by the party that has proclaimed the exceptional conditions. The obligation to secure regular, unobstructed and safe transport also refers to enterprises authorized for performing road transport, such as the PE "Makedonija Pat" and the enterprises with concessions on the construction and use of highways or use of highway sections or public roads. The PE for Airport Services "Macedonia" Skopje is in charge of managing the airports in Skopje and Ohrid and must provide conditions for an unobstructed and safe civil aviation, in compliance with the regulations in this field.

## **7. Have the regulatory and commercial functions been entrusted to bodies that are independent of each other?**

The regulatory and commercial functions are, by the rule, entrusted to bodies that are independent of each other.

In the area of energy, the regulatory function is performed by the Energy Regulatory Commission and in the field of broadcasting, the Broadcasting Council, both being independent state bodies.

In the field of telecommunications, the regulatory function has been entrusted to the Telecommunications Directorate, a state administration body within the Ministry of Transport and Communications. The new Law on Electronic Communications, which is in the process of adopting and expected to be adopted in the first quarter of 2005, proposes that this Directorate is transformed into an independent regulatory body, external to the executive authority, as an autonomous state body.

In the field of civil aviation, the regulatory function is performed by the Civil Aviation Authority within the Ministry of Transport and Communications.

The control of the work of the PE "Macedonian Railways" and PE for Postal Traffic "Makedonska Posta" is conducted by the Ministry of Transport and Communications.

The control of the work of the PE "Makedonski Sumi" and PE "Water Economy of Macedonia" is conducted by the Ministry of Agriculture, Forestry and Water Management.

In the field of communal activities there are no specially established regulatory bodies, and the control of the implementation of the Law on Communal Activities is conducted by the Ministry of Transport and Communications, whereas inspection control of the communal entities is performed by the State Communal Inspectorate within the Ministry of Transport and Communications and Communal Inspectors at municipality level.

## **8. Which State monopolies exist?**

Existing state monopolies are:

1. JSC "Electric Power Company of Macedonia" – Skopje for Production, Distribution and Supply of Electricity in state ownership;
2. JSC "MEPSO" for Transmission of Electricity and Operation of the Electrical Power in state ownership;

These two companies were established upon the division of the Joint Stock Company named "Electric Power Company of Macedonia" for Production, Transmission and Distribution of Electricity in state ownership (JSC – EPSM), which had been granted the exclusive right for production, transmission and distribution of electric power. The procedure of division of JSC – EPSM was completed on 31.12.2004. By establishing these two new companies, conditions for liberalization of the access to electric power transmission networks have been created, and by way of a complete privatization of the electrical energy system, which is expected to be done by the end of 2006, market based competition will be provided in this sector.

3. The PE for Postal Traffic "Makedonska Posta", being the basic postal service operator, performs reserved postal services including receipt, sorting, transfer and delivery of postal deliveries, including direct mail too, both in the domestic and international mail transport, under the condition that these deliveries are not heavier than 350 grams. The market is open to competition regarding other postal services and

4. The PE "Macedonian Railways" - This enterprise is granted exclusive rights based on a law to perform rail transport, construction, reconstruction, repairs, maintenance and protection of railroad infrastructure, considered to be activity of public interest. The railroad infrastructure may be used by other legal and natural entities under the conditions and in procedures determined by the law and international agreements. The railroad infrastructure and the rail vehicles of this company are owned by the Republic of Macedonia, and the railroad infrastructure is considered to be an asset of general use and may not be taken ownership thereof.

A new law in compliance with EU legislation in this field is being drafted. The railroad infrastructure is planned to remain in state ownership, and the activities performed by the Macedonian Railroad Company are planned to be subject of privatization and market competition. With this Law, the Macedonian Railroad Company will be divided and two enterprises will be established:



- Public enterprise for railroad infrastructure
- Public enterprise for transportation that will be transformed into a joint stock company in state ownership and then privatized.