COMPETITION POLICY IN FR YUGOSLAVIA

Center for Liberal-Democratic Studies

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COMPETITION POLICY IN FR YUGOSLAVIA:
EXISTING MARKET STRUCTURES
AND COMPETITION INSTITUTIONS

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Preface

Competition policy is one of the key elements of transition towards a market economy. Non-competitive market structures, especially the monopolies typical of the communist inheritance, within the framework of a market economy (with minimal government intervention and private property), generate very undesirable effects on social welfare. Therefore, fundamental reform in this area, first of all the formulation of an appropriate competition policy and the establishment of effective competition institutions, is a precondition for the establishment of an effective market mechanism, and an increase in economic efficiency.

However, in many transitional countries, the public is unaware of the need for the establishment and implementation of a competition policy. While the reasons for privatisation and enterprise restructuring, monetary stability and convertibility of the currency, a liberal regime of foreign trade and similar policies are more or less clear to everyone (which does not necessarily mean that everyone agrees with them), competition policy somehow always remains in the shadow of spectacular reforms of the institutional framework. Such ignorance related to competition policy is not specific to the countries undergoing transition at the end of the last and the beginning of the current century. Competition policy existed in hardly any European country for a large part of the last century. It was the major historical changes that resulted in a substantial increase in American influence on the Continent, which led to the establishment of consistent competition policy and appropriate competition institutions in Europe. Such circumstances provoked cynics to refer to competition policy as an "imported" commodity. In the last century, the import came from America to Europe; nowadays the economically and institutionally developed West exports competition policy to countries in transition. In other words, countries in transition reform, i.e. establish their own competition policy, not because there is a widely accepted autonomous political consensus in favour of it (this would require an understanding of the significance of competition policy), but because of specific international „pressure", i.e. the suggestions that the international community makes to the leaders of political reform in countries in transition.

Serbia and FR of Yugoslavia were spared from even considering these ideas for a long time. There was no transition in the country; even reforms that everyone would have understood (such as privatisation) did not take place and the pressure exerted on our country by the international community was wholly unrelated to competition policy. Consequently we are now starting from scratch. In its regular report on transition, the European Bank for Reconstruction and Development (EBRD) gave

competition policy in Serbia /FR Yugoslavia the lowest possible mark. This, surely, will come as no surprise at all, at least to those who are familiar with the current state of domestic competition policy. However, it is interesting to ask how many people are worried by this negative opinion. An even more interesting question is why are they worried? Is it because of the bad domestic competition policy as such, i.e. its negative effects on social welfare, or is it perhaps only the unfavourable perception of an important international financial institution that causes concern? The answer to this question is important since it provides a basis for an answer to the following question; does Serbia/FR Yugoslavia need to reform the existing competition policy, that is, establish an entirely new competition policy, because we consider it necessary, or simply in order to satisfy the requests of the international community? Will competition policy, once again, prove to be a wholly imported product?

The aim of this report is to demonstrate and explain to the general public that the country needs an entirely new, effective and efficient competition policy and new institutions for its effective implementation. Serbia/FR Yugoslavia needs this in order to speed up and complete the development of the new market economic system, and to increase the economic efficiency that will enhance social welfare. The arguments that this study offers are related to analysis of the existing market structures and the existing competition institutions. Therefore we will start from the beginning, making an effort to create a sound foundation for reforms of economic policies and the development of new institutions through analysis of existing circumstances. In this manner a new competition policy can be formulated and new competition institutions can be developed because it is in our best national interest. Fortunately, we do have the support of the international community in this.

The support for this project came from the United States Agency for International Development (USAID) via the program to strengthen the environment for the growth of private enterprise in the FR Yugoslavia/Serbia, also known as the USAID Commercial Law Project, implemented by the local branch of *Booz Allen Hamilton*. We are grateful to all those who helped in the realization of this study.

Belgrade, 31st May 2002

Boris Begović
Boško Mijatović

Executive Summary

1. Competition policy should deal with the protection and fostering of market competition that will, by its invisible hand, i.e. the struggle between competitors and their rivalry, produce economically efficient outcomes. Accordingly, competition policy should be directed at creating competitive market structures that will enable increased economic efficiency, and consequently improved social welfare. Competition policy should definitely not be directed towards attempts to control the resource allocation process by, for example, administrative price control.
2. The character of market structures, i.e. the degree to which they are competitive is characterised by the number of buyers and sellers, the market price character (whether it is parametrical from the point of view of buyers and sellers) and conditions of entry and exit from the industry, i.e. if there are barriers to entry and exit. The perfectly competitive market, i.e. perfect competition, is characterized by a large number of decision makers (buyers and sellers), parametrical price character and absolutely free entry and exit from the industry. The perfectly competitive market enables efficient allocation of resources, i.e. maximised social welfare. In other words, the unconstrained decisions of private entrepreneurs on such a market ("invisible hand") lead to maximal social welfare.
3. There are various forms of non-competitive market structure; the extreme form of non-competitive market structure is monopoly, a situation in which there is only one producer – only one firm on the supply side. Non-competitive market structures result from the tendency of private entrepreneurs to maximize their profit. Since monopolistic profit is the highest profit that can be appropriated, the elimination of competition/competitors and the creation of a monopoly is only a vehicle for profit maximisation. Each non-competitive market structure generates economic profit – that is profit above the normal appropriated according to the normal profit rate. The normal profit rate is the one appropriated on the perfectly competitive market. It equals the cost of capital, i.e. the cost incurred when purchasing the capital on the capital market. Accordingly, profit appropriated according to that rate is indicated as zero economic profit, and cost of capital is included in total production costs.
4. In conditions of perfect competition, i.e. conditions of zero economic profit, product price is equal to the marginal costs of production. If the marginal costs deviate from the price, i.e. if the price exceeds

marginal costs, market power appears. market power is indicated by the existence of economic profit. Market power is the consequence of non-competitive market structures, so it is a reliable and undisputable indicator of such market structures. The biggest market power, i.e. the largest deviation of the price from the marginal costs, is recorded in the case of monopoly and extremely non-competitive market structures.

5. The existence of non-competitive market structures has a very adverse impact on economic efficiency, and therefore social welfare. Modern economic analysis identifies various welfare effects of non-competitive market structures. Allocative inefficiency (dead-weight loss) arises from the deviation of product market prices from marginal costs, and leads to decreased equilibrium supply and increased equilibrium price, compared to the perfect market competitive equilibrium. The dead-weight loss (allocative welfare loss) that occurs represents the fragment of consumer welfare (consumers' surplus) that is not re-distributed to the producer, i.e. that is appropriated by producers as economic profit. Therefore, aside from the loss of social welfare (dead-weight loss), allocative inefficiency leads directly to the redistribution of welfare from consumers to producers.
6. Non-competitive market structures have significant consequences for production efficiency (factors' productivity) as well, and in that way effects social welfare. The effects of non-competitive market structures can be contradictory. On the one hand, the absence of competition removes incentives for the monopolist to increase short-term production efficiency, i.e. there are no incentives to reduce so called X-inefficiency). Furthermore, without incentives for investment in research and development, long-term production is not increased either, viewed as long-term reductions in unit cost. „A quiet life is the sweetest of all monopolistic profits“. On the other hand, the goal of every profit-making enterprise is to obtain the most advantageous position on the market, achieving advantage compared to competitors and, ultimately, eliminating all competitors and establishing a monopoly, in order to maximise profit. The prospect for establishing a non-competitive market structure (monopolies, if possible) creates incentives for firms to invest in research and development, to create new products and reduce the production costs of existing ones, i.e. it creates incentives for substantial increases in production efficiency. In short, non-competitive market structures can have contradictory effects on productive efficiency and social welfare.
7. Some changes in market structures can have contradictory effects on various types of economic efficiency. For example, if there is an economy of scale, the horizontal merger of two companies (the merger of two firms that are competitors on the same market) can lead to the establishment of a non-competitive market structure (market power) and allocative inefficiency, i.e. dead-weight loss of social welfare. However, such a merger may also lead to the creation of an economy of scale, reducing unit production costs and increasing production efficiency, thus producing increments in social welfare on that

account. Obviously, evaluation of each specific merger and the consequent modification the of market structure, involves paying special attention to the relative value of allocative and production efficiency changes.

8. Obviously, the economic efficiency and welfare effects of market structures and their changes are very complex. It is possible that some of those changes, although *prima facie* they may not seem desirable, in fact lead to economic efficiency and social welfare increases. Especially if a time dimension is taken into account, and therefore the long-term changes of economic efficiency are considered as well. Taking all this into account, a good competition policy has to be well balanced and flexible. On the one hand, if the competition policy is too lose, market power and the abuse of the monopolistic position will be easily achievable, so that allocative inefficiency will lead to a dead-weight loss of social welfare. On the other hand, if the competition policy is too stringent, constraints for private entrepreneurship will be created and incentives for economic (production) efficiency will be removed, particularly incentives for increasing long-term production efficiency, like investments in research and development.
9. Empirical research on the competitiveness of market structures should encompass answers to questions of the character of concentration supply on a specific market and conditions of entry and exit, i.e. barriers to entry or exit from the industry. As for supply concentration, apart from supply from domestic producers, it is necessary to include imports into the analysis as well, i.e. supply which foreign producers generate. In addition a key question of such an analysis is how to specify the market for which the analysis is provided – the issue of the relevant market. The relevant market is the market on which an individual producer perceives competitive pressure form the other producers (competitors). The relevant market should encompass categories of geographical market (taking into account the significance of transport costs for total supply costs) and to encompass competitions from substitutes, i.e. these products that can easily replace the products of the observed market (high cross-elasticity of demand).
10. Empirical research of market structures in Serbia/FR Yugoslavia started with analysis of supply concentration using data about firms' total turnover. The Hefrindahl-Hirschmann Index was used as an indicator of supply concentration (HHI, minimum value 0, maximum value for monopoly 10,000). The analysis was performed at the sub-sector level, therefore at the lowest aggregation level. The implicit assumption of this analysis is that the sub-sector level represents the relevant market for each product, although there is an element of doubt about this– such a market can, in many cases, be larger than the relevant market, especially when considering substitutes. In those industries in which transport costs are high, it is relatively easy to spot situations in which the real relevant market is much smaller than the relative market estimated in the way described. The analysis demonstrated a relatively high degree of supply concentration. In almost 44% of sub-sectors an extremely high degree of supply concentration (HHI higher then 2,600) was revealed.

11. The highest supply concentrations occur in the energy sector and heavy industrial sector, although the inclusion of sub-sectors even in these industries reveals significant variations of supply concentration from one sub-sector to another. Non-manufacturing businesses, with the exception of transportation industries and industries that are legal monopolies, show a somewhat lower level of supply concentration. Still, in some non-manufacturing sectors and sub-sectors extremely high levels of supply concentration were indicated.
12. Civil engineering proved to be one of the industries with the lowest level of supply concentration. Such a result was to be expected, considering the nature of the industry but the very fast growth of new entries, i.e. the growth of new firms during the 1990s is also a key factor in explaining the low levels of concentration supply. Therefore, low barriers to entry represent a key factor not only of potential, but also of actual competition.
13. Analysis of supply concentration on the basis of the quantity of supply of particular products was conducted on the basis of data on the number of actual articles of a particular type produced in the country. In this analysis the relevant market was defined as only the market for the particular product in question. It can be assumed that such a definition of the relevant market is too restrictive, baring in mind that not all substitutes of the product are taken into account. The results of this analysis indicate an even higher level of supply concentration, which was fully to be expected, considering the narrow definition of the relevant market.
14. Generally speaking, analysis of domestic market structures indicated extremely high supply concentration in most of the observed cases (products and/or sub-sectors). Such results were to be expected, taking into account the size of the domestic market and the breaking of economic links with companies from former the Yugoslav republics. Nevertheless, a decrease in the level of supply concentration dynamic is apparent over time. While the share of the markets (sub-sectors) with low supply concentration accounted for only 18% in the year 1992, eight years later that share increased to 28%. Almost symmetrically to this change, the share of markets with high and extremely high supply concentration decreased as well. The most fundamental cause of this decrease in supply concentration was new entries, i.e. an increase in the number of firms. In the year 2000, the number of operational firms in Serbia was almost seven times greater than in 1990, even though the year 2000, unlike 1990, does not include companies from Kosovo.
15. The crucial factor of market structure is conditions of entry and exit from the industry. The results already mentioned confirm that even in Serbia, supply concentration depends heavily on the number of new entries. Furthermore, the sheer possibility of free entry and exit from an industry creates incentives for existing firms to become economically efficient – potential competition creates the same incentives as real competition. These are incentives for economic efficiency, i.e. incentives for the efficient allocation of resources and social welfare

maximisation. The analysis has also demonstrated that in the case of Serbia/FR Yugoslavia significant barriers to entry exist, of a political, economic and institutional nature.

16. Political (non-commercial) risk generates a substantial barrier to new entries, especially in the case of foreign direct investments (FDIs), but also in the case of domestic private entrepreneurs and investors. It has been demonstrated that, in spite of the drastic decrease in political risk during the year 2000, political conditions in the country nevertheless, still generate substantial risks. A few typical risks should be mentioned initially; political instability due to the weak coalition in power, political pressure for new elections and constant international pressure on the political affairs of the country (most importantly the ICTY – Hague criminal tribunal); the future of the joint state of Serbia and Montenegro and the important economic consequences of a possible collapse of the existing country, the future international legal status of Kosovo and uncertainty about the country's ability to meet the financial obligations which it has taken over (repayment of the old debt).
17. Economic barriers to entry are the most resistant of all barriers to entry, since they are generated by factors which are, at least in the short-term, very hard to eliminate or even substantially change. One of the most significant barriers is the economy of scale, which requires a certain threshold market size as a prerequisite for investment with a minimal efficient quantity of production. This type of the entry barrier is particularly significant for small countries like Serbia and can only be overcome by developing export markets. Furthermore, the undeveloped capital market in Serbia/FR Yugoslavia, both in terms of financial and real capital, generates high costs of exit and entry to virtually all industries and constitutes one of the crucial economic barriers to entry.
18. Institutional barriers to entry are, technically speaking, easy to remove. However it requires a strong political will. Institutional barriers in Serbia/FR Yugoslavia are very high for the time being. Although they have been reduced slightly over the last two years, they are still substantial. These barriers are related to, for example, the firm and/or business registration process, the issuing of work permits by various agencies, the acquisition of urban land for development, the issue of development and construction permits according to town planning regulations, the definition of industrial relations and collective contracts (bargaining) and the activities of the state and local authority inspection services.
19. For a small open economy such as Serbia/FR Yugoslavia, with a small domestic market, it is crucial to understand the influence of international trade on the character of domestic market structure, especially concerning imports as a source of competition on the domestic market. If the liberalisation of imports were to lead to a considerable reduction of supply concentration, thus compelling domestic market structures to become more competitive, it could even be considered a replacement for a conventional competition policy. At the least, such liberalisation might constitute a crucial lever of a small

country competition policy. Therefore, it is necessary to eliminate or decrease all existing and potential barriers to imports.

20. The analysis of import barriers to Serbia/FR Yugoslavia and their effects on market structures are related to the year 2000, since it was the last year with available data. It was shown that substantial barriers to import existed: tariff protection (high and dispersed tariff rates), non-tariff barriers (import licences and quotas), import procedure barriers (compulsory application for each foreign trade transaction), technical barriers (antidumping, technical standards, sanitary and phyto-sanitary measures etc.), barriers which derive from the poor condition of the transportation infrastructure etc. It has also been demonstrated that the foreign trade reforms which were introduced at the end of 2000 and mid 2001 led to the abolition of non-tariff barriers, the reduction and simplification of custom tariff rates and considerable reductions in import procedure barriers. However, substantial barriers to import still exist, primarily tariff and technical barriers. Naturally, these barriers vary from product to product, the highest barriers to entry being recorded in the case of agricultural products, consumer goods and durables.
21. The existing barriers to import and their reform should be viewed within the context of joining the World Trade Organization and the obligation to conclude the agreements on Free Trade Zones. The process of joining the WTO imposes obligations regarding swift and irreversible foreign trade liberalization, in both areas of tariff and non-tariff barriers. The process of negotiating and concluding new agreements on free trade zones, including already concluded and ratified agreements, effectively reduces barriers to imports while increasing the possibility for export of domestic products to countries with which agreements have been ratified.
22. Introducing the competition generated by imports into the analysis of the domestic market structure significantly decreased supply concentration - it has been demonstrated that the character of the domestic market becomes substantially more competitive when import supply (competition) is included. On average (using a 300 product sample) the HH index decreased by approximately 68%. From an HH index value of 7,025, introducing import competition led to an HH index of 2,248. The most significant reduction of supply concentration was recorded in the case of durable consumer goods and capital goods.
23. Regression analysis demonstrated that both the new (post-import) level of supply concentration, and the magnitude of the supply concentration change, was dependent to a statistically significant degree on import barriers (tariff and non-tariff protection of domestic production) and transport costs. Therefore, apart from the expected significant influence of import barriers such as tariff and non-tariff protection, it has been demonstrated that transport costs play a substantial role in creating domestic market structures.
24. The highest HH index values, that is the lowest level of competitive market structure even after the introduction of imports as a source of competition are recorded in industries which produce aluminium,

ceramics, glass, paper and iron products, construction materials, as well as products of the basic chemical industry. This only confirms the outcome that even after the introduction of imports as a source of competition, the most non-competitive markets are the markets for raw materials and inputs & components. It is obvious that high transport costs are one of the key reasons for such results, although the effects of some other factors should not be excluded. It is fundamentally important to perceive that tariff and non-tariff protection in the case of these products was somewhat low. In other words, further liberalization of the foreign trade regime will most probably not increase competitive market structures in these industries.

25. The situation described above can be very dangerous. The non-competitive market structure or raw material and inputs & components markets increases the price of those products, which further on inevitably increases the costs of consumer goods made by domestic producers that use those inputs. Such cost increases are passed on to the the consumer, which means increased prices of consumer goods, no matter what their market structure character. There is a hidden danger in this, considering that increased costs and hence prices will occur on perfectly competitive markets. Accordingly, raw material and inputs & components markets should be under strict competition policy control, much more stringent than the markets of consumer goods and durables.
26. Since the research was conducted on the basis of data for 2000, under conditions of high protectionism, it is necessary to follow-up this research on data for the year 2001 (foreign trade liberalisation was inaugurated in June of that year) and the current year (with operations fully within the new, liberal foreign trade regime). A Follow-up to this research will provide new information on import elasticity to changes in the international trade regime, that is the information on the basis of which it will be possible to make a reliable estimate of the impact of foreign trade flow on the character of the domestic market structure.
27. Domestic competition regulation is codified in a Federal Competition Law, but there is also a whole string of laws and decrees regulating competition, some provisions of which are contradictory to the Competition Law. There are also a number or regulations that have a contrary effect, i.e. regulations which create monopolies.
28. The competition legislation is not concerned with monopolistic, that is dominant position as such, but exclusively with abuse of that position, i.e. monopolistic behaviour. In other words, the Federal Law is exclusively concerned with the consequences of non-competitive market structures, not with those structures themselves, that is, with the process of their initiation. As a result, it does not halt any of the acts that lead to the creation of these structures. In relation to this, the Law does not provide for merger control (neither vertical or horizontal), so that implementation of the Law does not prevent mergers that create non-competitive market structures. Since it does not provide a merger control, the Law does not differentiate horizontal mergers (merging of companies in the same industry, i.e. competitors) from

vertical mergers (merging of companies where one company is supplier and the other a buyer).

29. The Law does not recognise barriers to entry and exit from the industry, meaning that the tools to block activities that would create additional barriers to entry does not exist, which further complicates entry for new competitors. Although it was demonstrated, even in the case of Serbia/FR Yugoslavia, that free entry and exit represents a key precondition for the establishment of competitive market structures, attempts to prevent such entries go unpunished under the current legislation.
30. The law only makes criminal monopolistic behaviour, that is the practice of the companies that, due to the existence of a non-competitive market structure, reduce their output and increase the price of their products causing allocative inefficiency (dead-weight loss). However, it has become apparent that other consequences of non-competitive market structures exist as well, primarily those connected with production inefficiency. since the Law does not deal with the creation of non-competitive market structures, its implementation does nothing to eliminate the consequences described.
31. The company's dominant market position is not clearly defined by the Law neither is this required by any additional legislation. In addition large powers of discretion are left to the authorized institution to decide quite arbitrarily whether a company has a dominant position, or whether it is abusing this. As a result the level of uncertainty increases for all companies, especially for those that, through good business practice, substantially improve their own position on the market.
32. The Law does not incorporate the concept of the relevant market and therefore consistently insists on a single market, which does not make much sense, considering that the relevant market it the one to which market power relates to. Firms that do not have market power on a single market can have very significant market power on their relevant markets. Since there is no relevant market category, the Law does not provide guidance for determining competition policy practice.
33. The Law punishes monopolistic (cartel) agreement, although such agreement is not a violation of the Law *per se*. Namely, there is a provision of the Law that allows for certain agreements to be refused official sanction, and for their consequences to be re-examined. Such agreements are therefore permitted if it has been estimated that their consequences are beneficial. By this provision all agreements are made subject to reasonable discretional assessment (the rule of reason).
34. The Law does not recognize the difference between horizontal and vertical agreements. Such a decision cannot be judged favourable. While horizontal agreements eliminate competition and have adverse effects for social welfare, vertical agreements can very often lead to increases in economic efficiency, and sometimes even to development of competition. That can especially be the case with contracts on the exclusive distribution of foreign producers, which, through import

promotion, develop domestic market competition. It would be very beneficial to differentiate between horizontal and vertical agreements, so horizontal agreements *per se* should be in contravention to the law .

35. Situations that the Law describes as abuse of monopolistic, or dominant position could in fact be perfectly legitimate and desirable business practice. The text of the Law insists specifically on price increases which are higher than the average price increase, which by itself does not have to imply any monopolistic behaviour whatsoever, at least not until information on the costs and their changes is provided.
36. The domestic competition legislation is flawed by inconsistent codification. Not only has competition regulation remained dispersed through other Laws, but an over complicated system of relations has grown up between legal institutions and the body responsible for implementing anti-monopolistic legislation. Thus we must conclude that the system is incomplete and also repressive, rather than regulative in character.
37. The central competition institution is the Federal Antimonopoly Commission, which was established by Federal Government Decree. The Commission is not independent, or even autonomous; it is merely a department of the Federal Ministry of Economy and Internal Trade. Members of the Commission (commissioners) are appointed and dismissed by the Federal Government, on the suggestion of the authorized ministry. The Decree does not specify a procedure of the appointment and dismissal of commissionaires, the grounds for dismissal or the duration of their mandate. This enables the Government, that is the authorized ministry to influence directly the work of Commission, and its decisions.
38. The President and members of the Commission are appointed from the ranks of eminent experts, scientists and businessmen. This grounds for conflict of interest, since “eminent businessmen” are by nature interested in eliminating competitors in their industry. Membership of the Commission gives them the opportunity to arrange this by means of state intervention.
39. The Decree does not oblige the Commission to elaborate in detail the procedure and criteria for decision-making, nor to publish such criteria. The Commission produced an internal document which gives some guidelines for reaching a decision, although it is more in the nature of a study than an operational document. This document is unavailable to the public, so that economic decision-makers are not familiar with the decision-making criteria and procedure of the Commission, information which can be vital to such firms.
40. Generally speaking, the current legislation and accompanying institutional solutions do not satisfy the needs of a modern competition policy. Obviously the existing legislation was made without a clearly defined competition policy concept, and in the absence of such concept, certain conceptual solutions were used from the period of self-management socialism. Consequently it is not possible to reform the existing legislation; it must be replaced in its entirety. The foundation

for such new legislation should be a clearly defined and widely accepted concept of a new competition policy that meets the needs of Serbia/FR Yugoslavia.

41. The Introduction of new regulations from this sector (a new Competition Law and numerous additional acts) should be accompanied by the construction of a new competition institution, primarily a Competition Commission. This should start with the clear specification of the Commission's legal position, guarantees of its independence/autonomy, a clear account of its powers and the accountability of the commissionaires, that is the grounds for their appointment and dismissal. Next this implies constant training of Commission members and, especially, their professional support staff. The building of new institutions is a long-term process that yields results only in the long term, so it is an activity that requires commitment and patience.
42. A consistent competition policy implemented consistently has an extensive influence on all economic decision-makers. Therefore powerful political and lobbyist pressures can be expected at the stage of making and implementing competition policy. Bearing this in mind, a key precondition for the successful formulation of a new competition policy and institutional reforms which succeed is firmly expressed political support in this project, i.e. political will for establishing a contemporary competition policy in Serbia/FR Yugoslavia.

I Competition Policy: An Introduction

1. PERFECT COMPETITION AND ITS VIOLATION

1.1. Assumptions of perfect competition

The basic considerations of microeconomic theory are based on the assumption of the perfect market, i.e. perfect market competition.[1]

Perfect competition is founded on a few assumptions:

- A large number of sellers (producers) and buyers;
- Parametrical price character;
- Free entry or exit from the industry.

A large number of sellers (producers) is a precondition for dispersed supply, and in the case of buyers it is a precondition for dispersed demand as well. Within theoretical models of perfect competition, the assumption of dispersed supply means that the number of firms tends to be infinite. Implicitly, it is assumed that the total output of one firm in terms of total market supply is infinitely small (tends to zero). However, contemporary contributions to microeconomic theory often skip the assumption of perfect competition in terms of the number of firms and focus the analysis on the next two assumptions.

Parametrical price character means that a market price is exogenous for each competitor on the market, i.e. for each producer (firm). In other words, no single firm can, by its own actions, independently of other firms' actions, affect the (equilibrium) market price of its product. Of course, if an infinitely large number of producers exists, i.e. if the industrial output of a single firm is infinitely small, it is to be expected that the equilibrium market price for each individual firm is exogenous. However, the parametrical (exogenous) character of the market price does not necessarily require that the assumptions of the number of firms or their output be fulfilled. The market price becomes exogenous (parametric) for individual firms even when there is a smaller number of firms, depending

1 In some recent contributions to microeconomic theory the term "perfect competition" implies "perfect market". In this paper, however, "perfect competition" describes a smaller set of assumptions, primarily the assumptions regarding the relations between decision makers on the supply side. According to this approach, accepted in this paper, the existence of perfect competition does not necessarily imply the existence of a perfect market. Accordingly, perfect competition is a necessary, but not sufficient condition for the perfect market.

on the next assumption of perfect competition: the assumption on free entry and exit from the industry.

Finally, the main assumption of perfect market competition is free entry or exit from the industry, which means that there are no barriers to entry or exit. Free entry/exit allows a favourable business environment in an industry (if growth in demand is greater than supply, for example, followed by the creation of economical profit, i.e. rent) to attract new entries to the industry. The new entries create additional output, they expand the total (aggregate) supply and in that way clear the way for a new competitive equilibrium in the industry (partial equilibrium). Likewise, if the business environment deteriorates in an industry (decline of aggregate demand below aggregate supply, for example, creating financial losses for the incumbent firms), free exit allows reallocation of resources used in this industry to another, more prosperous one, and hence economic efficiency of resource utilisation is increased. As a side effect, a new competitive equilibrium is achieved in the industry these firms left, since the consequence of their exit is to reduce total (aggregate) supply.

Free exit and entry is the crucial precondition and mechanism for establishing equilibrium on a competitive market. In addition, exit barriers, although specific, represent nothing but a special case of entry barriers. The entrepreneur, i.e. investor who faces barriers to exit, does not want to invest in (enter) the industry, since his resources (capital) will remain trapped in that industry in the case of poor financial results. This is why barriers to exit are often treated only as very specific barriers to entry.

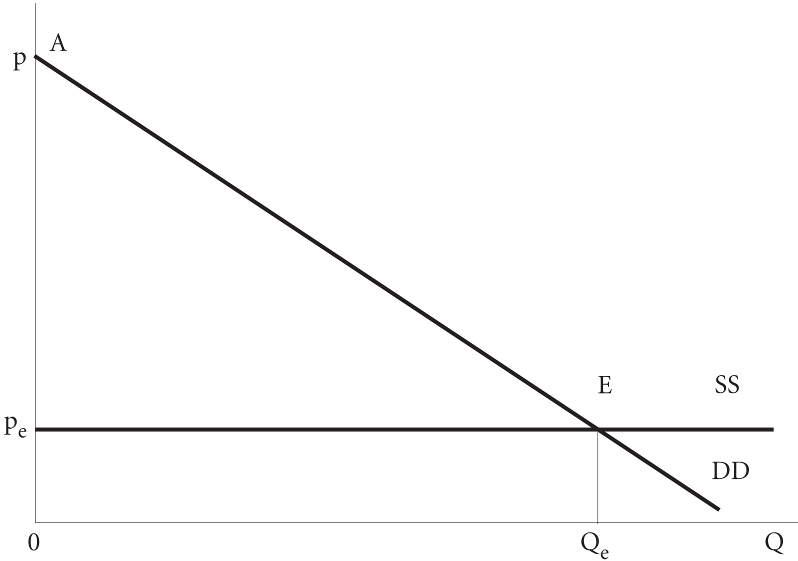
If every market in the real world were actually characterized by the described features (assumptions), i.e. if the real world markets were actually always perfectly competitive, there would be no need for any kind of competition policy. Unfortunately, competition deteriorations and failures, i.e. departures from the perfect competition model, are rather frequent in the real world – non-competitive market structures are rather frequently found in real-world contemporary industries. In order to understand the rationale for introducing competition policy in the case of such market conditions, it is essential to understand the equilibrium mechanism, (both in the case of perfect and imperfect market competition, i.e. both competitive and non-competitive market structures). It is also essential to understand the welfare consequences of the violation of a perfectly competitive market, i.e. the consequences of non-competitive market structures. This is the only way to grasp the rationale behind the formulation and enforcement of a competition policy.

1.2. Market equilibrium mechanism

The market equilibrium mechanism will be considered within the framework of the simple partial equilibrium model, which is described in the following, simple diagram (Picture 1.). The following analysis assumes production characterized by constant returns, i.e. constant average and marginal costs, so the supply curve is represented by the curve of average and marginal costs (average costs are equal to marginal ones for every output level). Accordingly, the supply curve (SS), matching the marginal cost curve, is a straight line parallel to the horizontal axis. Its inter-

section with the vertical axis describes the magnitude of the average/marginal costs. The (aggregate) demand curve (DD) has a negative slope, due to the assumption of decreasing marginal utility for every product. As the consumption quantity of a product goes up, its market price goes down – consumers are willing to pay less for each extra unit of that product.

Picture 1.1
Market equilibrium in perfect competition



Each producer maximizes his profit by equalizing his marginal revenues to his marginal costs. In conditions of perfect competition, market price is a parametrical (exogenous) variable from a firm's standpoint; marginal revenues (revenue obtained by sale of an additional unit of the product) are equal to the market price. Considering that, within the perfect competition framework, the producer (firm) cannot affect the equilibrium market price by any of its actions, regardless of its output, i.e. its supply to the market – the equilibrium market price does not change. Accordingly, the marginal revenue curve matches the aggregate demand curve. The producer's marginal revenues become equal to marginal costs at the point E, which leads to the equilibrium price pe and the equilibrium output Q_e.

Market equilibrium on the perfectly competitive market has a few essential features. First of all, market equilibrium price equals marginal costs – that is the sufficient condition for social welfare maximisation. In this hypothetical case, social welfare equals the consumer's surplus (triangular area Ap_eE), i.e. social welfare equals consumers' welfare. Secondly, prefect competitive equilibrium leads towards zero economic profit, i.e. no producer appropriates any economic profit.[2] Thirdly, every change in

2 This is based on the assumption that all producers use the same technology. Furthermore marginal and average costs encompass the cost of capital, so the producers appropriate the amount of profit that is equal to the costs of purchasing the capital.

aggregate demand leads to an automatic readjustment of the equilibrium and towards a new equilibrium output of the industry. A key precondition that permits this readjustment is absolutely free entry to the industry and exit from it. This is precisely the importance of free entry and exists from the industry as a crucial mechanism that allows the competitive market equilibrium to adjust.

Market equilibrium on a perfectly competitive market leads to the efficient (optimal) allocation of available resources, maximising social welfare. Accordingly, given a perfectly competitive market, there is no need for government intervention in that market with any form of competition policy. The situation is quite different, however, if the assumptions of perfect competition are relaxed, i.e. if non-competitive market structures are analysed. The most extreme case of a non-competitive market is pure monopoly, distinguished from other market structures by three features:

- Only one producer (firm) in the industry;
- High barriers to entry and exit;
- No close substitutes of the product.

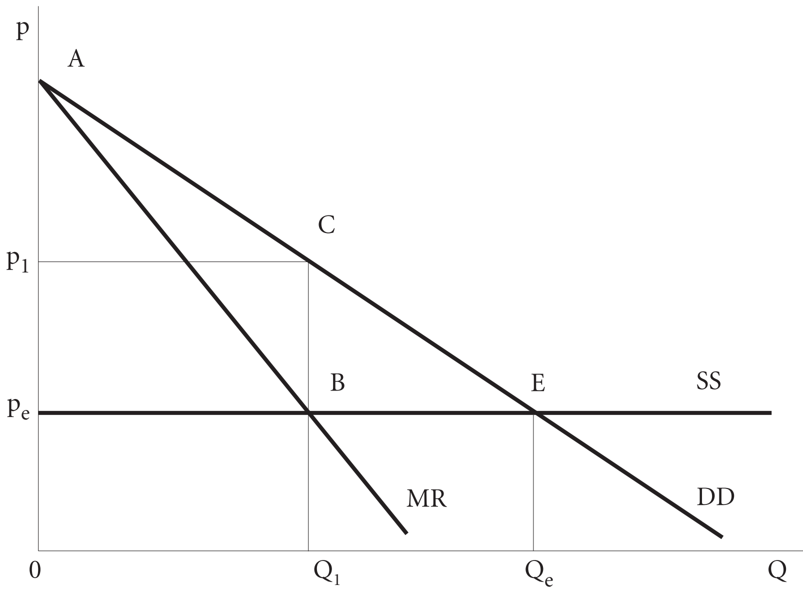
These conditions lead to the departure of the marginal revenues curve and the curve of demand for the monopolistic product. In fact, under pure monopoly conditions, the aggregate demand curve becomes the individual demand curve, i.e. the demand curve a monopolist is faced with inevitably has a negative slope. In other words, the greater the monopolist's supply on the market, the lower the market equilibrium price – the consumers will be willing to pay a lower price in order to enjoy the additional unit of the product. This is why the marginal revenue of a monopolist (revenue from the additional product unit sold) is always lower then the market price of the product. Accordingly, the marginal revenue curve (MR) has a steeper slope than the demand curve (DD), and the equilibrium is achieved at the intersection point between the marginal revenues curve and the marginal costs curve (point B, picture 2.1.).

The new monopoly equilibrium price p_1 is far higher than the perfect competitive equilibrium price ($p_1 > p_e$), and the new equilibrium supply is far below the previous one, i.e. the perfect competitive equilibrium supply ($Q_1 < Q_e$). There are a few consequences of this change in the equilibrium price and supply. First, the equilibrium price does not equal the marginal costs, which leads to the conclusion that there was a misallocation of resources, as well as a social welfare loss. The equilibrium price (p) is above marginal costs (MC), which leads to the existence of **market power.** The index of market power (MP) is the approximation of the welfare loss that can be expected.

$$MP = (p - MC)/p$$

Market power exists in every case of departure of the market price form the marginal costs, i.e. in every case of departure form the conditions of perfect competition. If the market power index has a positive value it is due to non-competitive market structure. Accordingly, every departure form the perfectly competitive market inevitably leads to a market power and a welfare loss.

Picture 2.1.
Pure monopoly equilibrium

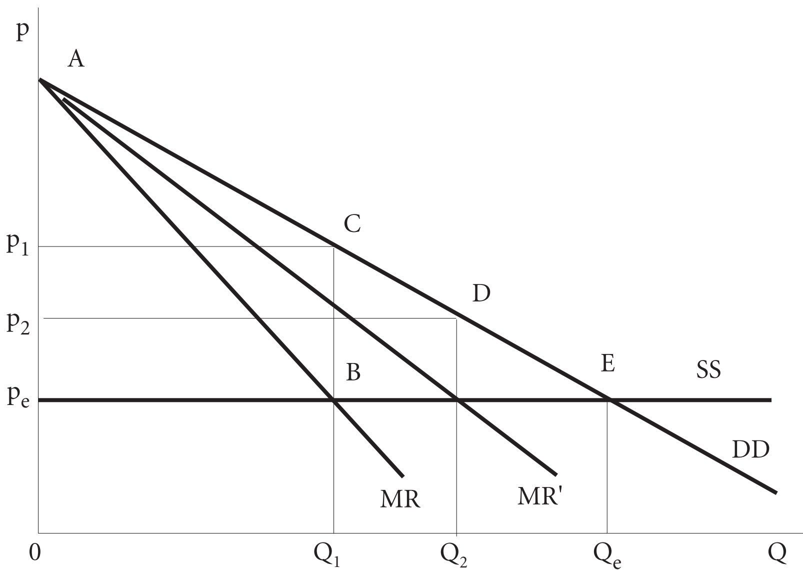


In order to estimate the social welfare loss that results from establishing a pure monopoly on the market, it is necessary to observe the magnitude of changes in consumers' surplus alongside the firm's (monopolist's) profit. The consumers' surplus diminished ($Ap_1C < Ap_eE$), monopolistic profit was introduced (area p_eBCp_1). In other words, a part of the consumer's surplus partition (area p1peBC) is redistributed to the monopolist and appropriated as monopolistic (economic) profit. As to this part of the social welfare, i.e. consumer's surplus, it is the matter of sheer repartition – there is no social welfare loss. Still, a part of the initial consumer's surplus remains undistributed, and is simply lost for everyone. This part of consumer excess is outlined by the triangular area CBE (also known as Haberger's triangle), representing dead-weight welfare loss. Therefore, the introduction of pure monopoly, i.e. market power, inevitably leads to dead-weight welfare loss.

Dead-weight welfare loss (allocative inefficiency) is inevitable within any market structure that is a departure from the perfectly competitive market. Pure monopoly only represents extreme non-competitive market structure, that is market structure that generates maximal market power and, subsequently, the highest dead-weight welfare loss, as well as the biggest feasible amount of economical profit appropriated by the producer. Nevertheless, every non-competitive market structure inevitably introduces market power and, therefore, leads to dead-weight loss of social welfare. For example, in case of oligopoly or monopolistic competition, departures of the marginal revenues curve from the aggregate demand curve are more modest than in the case of pure monopoly, so the corresponding marginal income curve (MR') has a slightly less steep slope. Accordingly, the intersection point between the marginal cost and mar-

ginal revenue curves moves to the right, which results in a lower equilibrium price compared to monopoly and higher equilibrium output. However, the equilibrium price remains higher than the one achieved on the perfectly competitive market ($p_1 > p_2 > p_e$), and the equilibrium output is lower ($Q_1 < Q_2 < Q_e$). The market power index is lower than is the case for pure monopoly, but market power still exists.

Picture 3.
Market power without monopoly



Although monopoly is replaced with a different, more moderate non-competitive market structure, dead-weight welfare loss still exists – it is only slightly smaller in comparison to dead-weight welfare loss in the case of pure monopoly. Taking all this into account, any departure of the marginal revenue curve from the aggregate demand curve inevitably leads to the introduction of market power, which then inevitably leads to dead-weight welfare loss and economic profit creation and appropriation (profit above the cost of capital).

Within this framework, the key question is whether any kind of non-competitive market structure is sustainable. If there is free entry/exit to the industry, i.e. if there are no barriers to entry and exit, the existence of market power (economic profit), will attract new entries (competitors) that will, by virtue of the new entries, increase the number of firms on the supply side and increase aggregate supply. This will lead to the decrease and ultimate disappearance of market power, that is to a dissipation of economic profit. Therefore, if there are no barriers to entry or exit, non-competitive market structures are not sustainable – they inevitably become competitive structures. This is why barriers to entry and exit have key significance in evaluation of the character of market structures. The existence of substantial barriers to entry/exit is a neces-

sary condition for the market structure under examination to be judged non-competitive.

Therefore, all non-competitive market structures lead to dead-weight welfare loss by the same mechanism, and it is only a magnitude of welfare loss that depends on the type of non-competitive market structure (monopoly, oligopoly, monopolistic competition, various forms of dominant firms etc.) – dead-weight welfare loss will occur in all these cases.

Although the desirability of income/welfare redistribution is not primarily an economic issue, the sheer existence of market power inevitably leads to welfare redistribution from consumers to producers (monopolists and others enjoying market power). Such redistribution is not acceptable for many. For them this welfare redistribution represents an additional negative consequence of non-competitive market structures.

2. CONSEQUENCES OF NON-COMPETITIVE MARKET STRUCTURES

The already identified allocative inefficiency, i.e. dead-weight welfare loss (as well as the welfare redistribution) represents only one of the consequences of market power, i.e. the consequences of non-competitive market structures.

The other consequence of non-competitive market structures, especially pure monopoly, is static production inefficiency, known as X-inefficiency. The point is that if there is no competition, this removes the incentives for control and reduction of production costs – the costs increase without control. The point is that total production cost can be divided into exogenous (the ones the producer cannot influence) and endogenous – the ones producer can influence. If there is no competition, there is no threat of competitors, which leads to uncontrollable endogenous cost increases, i.e. to total cost increase, which further on leads to production inefficiency. In this way, in order to produce one production unit, more resources are used than is necessary – the opportunity cost of utilised resources increases. All unnecessarily utilised (allocated) resources could be alternatively used in the production of some other goods, which means that static production inefficiency inevitably reduces the efficiency of resource utilisation along with social welfare.

The growth of static production inefficiency, or X- inefficiency, can lead to reduced dead-weight inefficiency (a decrease in Haberger's triangle), but this allocative inefficiency reduction cannot compensate for production inefficiency growth and its overall adverse effect on welfare in this respect.

There is no unambiguous view of the modern economic theory on X-inefficiency phenomenon. As an argument against the very existence of this kind of inefficiency it has been pointed out that, since profit maximisation is the aim of every firm, cost increases will be resisted regardless of the market structure. Nevertheless, even the most passionate opponents of the X-inefficiency concept accept some of the arguments for the existence of productive inefficiency, that is X-inefficiency. If ownership and management are separated, manager goals are not usually the same as owner goals, (i.e. profit maximisation) and in asymmetrical information condi-

tions, the agency problem appears, so that managers can increase costs and reduce the effort invested in the job they are doing.However, the real question is weather the agency problem is more significant in pure monopoly conditions. The answer is unambiguously yes, since in pure monopoly there is no other (benchmark) firm as a yardstick for cost comparison of the monopolistic firm, i.e. no way to establish whether management is working efficiently. Therefore, it is evident that non-competitive market structures, especially pure monopoly, lead to static productive inefficiency that furthermore leads to social welfare reduction.

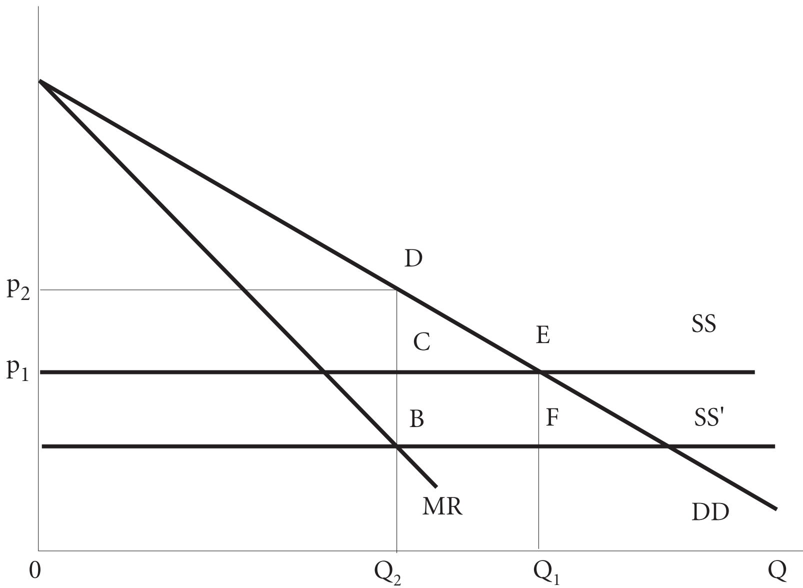
Up to this point we have based our non-competitive market analysis on, among other things, the assumption of constant returns. If this assumption is replaced with the assumption of increasing returns, i.e. decreasing costs, the possibility arises that the elimination of the one type of inefficiency of resource utilisation may lead to the creation of the another. Increasing returns, i.e. decreasing costs, appear if the growth of output leads to average cost reduction, i.e. reduction of the unit cost. In such a situation, a merger between two or more firms leads to greater output and, in this way, average cost reductions materialise – there is an increase of production efficiency.

Nonetheless, at the same time, such a merger leads to the creation of market power and allocative inefficiency, i.e. dead-weight loss of social welfare. Due to the increasing returns, the merger of several firms into one changes the cost function, and the downward movement of the marginal/average cost curve describes the change (Picture 1.4.). Initially, on the perfectly competitive market, there was no dead-weight loss (allocative inefficiency) and the equilibrium price was p_1. The merger moves the marginal/average cost curve downward (to position SS'), but it also establishes a non-competitive market structure (let us assume a pure monopoly). As a result the marginal revenues curve departs from the aggregate demand curve. This leads to the new market equilibrium characterized by a higher equilibrium price ($p_2 > p_1$) and lower equilibrium output ($Q_2 < Q_1$).

The new equilibrium established after the merger produces allocative inefficiency (dead-weight loss of social welfare, indicated by Haberger's triangle CED). At the same time, the merger leads to increased productive efficiency, represented on cost reduction, matching the area ABCp1. Providing the area ABCp1 (production efficiency gain) is larger then the Haberger's triangle area (CED), it can be estimated that the merger has led to improved resource utilisation, increased economic efficiency and increased social welfare, even though allocative inefficiency (dead-weight loss) has occurred. Although the consumers' surplus is smaller on this particular market after the merger, resources gained through increased production efficiency can be utilised in some other industry, i.e. for some other production, which leads to a social welfare increase.

In principle, it is not clear in a situation like this, what kind of welfare change will occur, weather production efficiency increases will outweigh dead-weight loss, i.e. allocative efficiency decreases. Nevertheless, it is evident that many changes in market structure lead to compensatory movement in other types of economic efficiency. A good competition policy must take into account all these changes and to establish a well-balanced

Picture 1.4.
Merger leading to production efficiency increase



relation towards market structure changes. The hypothetical merger, considered above led to market power and to dead-weight loss. If the competition policy were such that it *a priori* prevented every change that led to market power introduction, this would open up a whole range of possibly wrong decisions that might halt significant increases in production efficiency and effectively block increases in net social welfare. Accordingly, a very stringent competition policy can be counterproductive with a view to increases in social welfare.

A very extreme case, in which the introduction of non-competitive market structures represents a precondition for improved production efficiency, is the case of natural monopoly. In this case, as far as social welfare is considered, it is perfectly legitimate for a single producer to produce total output sufficient to the market needs completely. Namely, the cost function is such that the average cost of a single producer within every output range that can be sold on the market is lower than the average cost of two or more firms. Natural monopoly is based on specific technologies and the cost functions they generate, and it is a usual phenomenon in network industries, that is infrastructure and utilities (power, gas, segments of telecommunications, water supply, railways etc.). Competition policy should prevent horizontal separation of one firm into several in the case of natural monopolies. If the natural monopoly argument is just an excuse for sustaining a non-competitive market structure, the competition policy should trigger the separation and establishment of competition. In the case of a true natural monopoly industry, it is necessary to accomplish both allocative and production efficiency. This however does not belong to the sphere of competition policy, but rather to the area of economic regulation.

In the long run, as far as social welfare is concerned, it is far more important to assure dynamical production efficiency rather than the static alternative. Dynamic production efficiency is related to the increased efficiency of resource utilisation, i.e. the implementation of technological progress, and it is directly related to research and development of new technologies. The relationship between non-competitive market structures (monopoly) and dynamic production efficiency is somewhat controversial. On one hand, any production activity is motivated by profit and its maximisation, and the profit is at its maximum if a monopoly is established. Therefore, every company wants to become a monopoly. Research and development that leads to the implementation of technological progress makes this possible, through the issue of patents and granting of similar protection (at least for limited time). In other words, the sheer possibility of becoming a monopolist is a very strong incentive for each producer to improve production efficiency, which leads to dynamic economic efficiency and substantial growth in social welfare.

On the other hand, monopoly as such does not create incentives for research and development, i.e. incentives for investment in research and development (technological progress). There is no competitor to eliminate, so the maximal profit is based on traditional monopolistic behaviour. The key to a balanced approach to dynamic production efficiency could be the duration of the monopoly, or the duration of patent protection. It is possible, at least in theory, to specify the optimal duration of a monopoly which is the result of technical progress (patent). This produces the best incentives for research and development, leading to dynamic production efficiency, while also minimizing the adverse effects of the monopoly in the form of dynamic production inefficiency and other forms of economic inefficiency.

Finally, government intervention is a very common way of introducing monopolies or other non-competitive market structures. This takes the form of the introduction of legal/administrative barriers to entry, usually, direct state prohibition to entry into some industries. Considering that monopoly generates significant economic profit, all potential monopolists are prepared to invest a significant amount of resources to secure legal/administrative barriers to entry (prohibition to enter) for the industry in which they operate. This ultimately means securing monopoly profit – once the barriers are introduced, they will be the only ones remaining on the market. This goal can be attained by influencing decision-makers, primarily the legislative and executive branches of government. Influencing the person in charge of decision-making, i.e. lobbying, assumes the allocation and utilisation of real resources, hence there are substantial opportunity costs attached to allocating these resources. If the resources are utilised for lobbing, no added value is gained, it only influences redistribution of existing value, and all these resources could alternatively be used in creating the new value. Since, in the case monopoly, as well as other non-competitive market structures, it is a matter of rent appropriation, the behaviour of the people in charge within the legislative and executive branches of government is known as rent seeking behaviour. It is estimated that a substantial part of monopoly profit is dissipated in that way, i.e. a part of

monopoly profit supply is "spent" in covering the real cost of attaining a legal monopoly position on the market.

Taking all this into account, it is evident that non-competitive market structures reduce economic efficiency and social welfare. It is exactly these adverse effects for social welfare that provide the main rationale for competition policy government intervention. Nevertheless, it is evident that market structure changes in some cases generate the opposite effects – while one form of economic efficiency increases, the other one decreases. This is why it is necessary for competition policy to be flexible, so as to make the maximisation of social welfare feasible. However, flexibility is not the sole condition for such maximisation. Knowledgeable and competent people are also badly needed to formulate and enforce competition policy.

3. ECONOMIC FOUNDATIONS OF COMPETITION POLICY

Contemporary competition policy is a method which enables the market to operate efficiently and without constraint, to maximise economic efficiency social welfare. In other words, economic efficiency is the goal of competition policy. However, although economic efficiency is an indisputable competition policy goal, there is still some dispute as to weather competition policy should accomplish some other goals as well.

It is often reiterated that economic efficiency should be the only goal of competition policy and that this policy should not be burdened with other goals. Generally speaking, other goals should be achieved through the implementation of other polices. This position sounds very reasonable, especially taking into account the suggestion from the theory of government intervention that every individual economic goal should be achieved by means of at least one economic policy. Taking this suggestion into account leaves room for only one conclusion: the accomplishment/ maximisation of economic efficiency should be the sole aim of competition policy. The relevance of such an approach is most obvious in very complicated cases in which there is a conflict between allocative and production efficiency. Adding other goals to competition policy would only make the problem too complex for solution.

Nonetheless, the suggestion that competition policy should have some other aims aside from achieving economic efficiency is still encountered. For example, one of the goals of the competition policy of the European Commission is to prevent the creation of any barriers to trade among the European Union member states. Such a competition policy goal is very specific, it is basically oriented toward a political value (a unified market within the EU, that is economic integration of the Union) and it can sometimes come into conflict with increasing economic efficiency.

The protection of small firms and/or the provision of incentives for small business is sometimes established as competition policy goal. Such a goal is not appropriate. Leaving aside the issue of whether such a goal is in the social interest (it remains unclear why the protection of small businesses should be in the interest of society), it should be born in mind that competition policy has no instruments for small firm protection and for

providing incentives for small business. These are the instruments of fiscal policy (tax exemption or subsidies), and competition policy cannot be utilised to achieve the mentioned goal. Furthermore, the protection of small and medium size firms is in conflict with the goal of promoting competition and economic efficiency. Economic efficiency implies that inefficient firms, weather small orlarge, go bankrupt and are liquidated. Hence, small firms protection contradicts the main goal of competition policy, which is to boost economic efficiency by developing tough market competition.

Unfortunately, while social justice can be formulated as a competition policy goal, it is not possible to specify such a goal accurately and precisely. This goal is non-operative by nature and can lead to great confusion and uncertainty in achieving economic efficiency. Social justice can be formulated as economic equality. In that case accomplishing social justice directly contradicts economic efficiency. This will inevitably lead to conflict between competition policy goals.

Taking all the arguments into account, there should only be one goal of competition policy: the promotion of economic efficiency. This is the only way to accurately define the operating aims of competition policy and decision-making in complex situations.

Competition policy should protect competition itself, not competitors. For this reason, the actual process of competition is protected, not the participants (decision-makers) in the process. A firms' ambition to destroy its rivals on the market is legitimate and it can do it as long as it uses only permitted (legal) means. It is precisely this ambition of the participants in market contest, under the competitive conditions of the free market that lead to increases in economic efficiency. A company's bankruptcy and liquidation, i.e. its exit from the industry, is nothing but a very effective way for new, more efficient utilisation of resources once inefficiently used by this firm.

However, in certain situations, the elimination of competition implies the elimination of competitors and visa versa– the elimination of competitors implies elimination of competition. This is what is termed a specific competition policy paradox.

Modern competition policy should be well-balanced. On the one hand, it should be stringent enough and consistent in order to prevent the introduction of non-competitive market structures and preclude allocative efficiency loss, i.e. reduction of social welfare on this basis. On the other hand, it should not be so stringent and rigid, that it impedes entrepreneurs' initiative focused towards increased economic efficiency and economic profit appropriation based on that. Competition policy should not punish the enterprising and successful, those who find ways to be more efficient than others and enjoy the profit due to this efficiency. This is the driving force of the modern economy. A well-balanced competition policy requires a great deal of knowledge and feel, in many situations enforcing a well-balanced competition policy is a kind of art form.

In case of small, open economies, such as Serbia/FRY, that is, in the case of an economy with a small domestic market, as well as the cases of countries with a relatively low institutional level of development (with regard to modern economic institutions, again the case of Serbia/FRY), it is ques-

tionable weather competition policy is needed at all. It is evident that competition on these markets can be introduced by imports, by drastic liberalisation of the foreign trade regime, by removing import barriers. The dilemma is very important, since the suggested liberalisation can be introduced very quickly, while the construction of competitive institutions takes a considerable amount of time.

It is indisputable that foreign trade liberalisation is a key method in introducing competition to the domestic market in specified situations, i.e. a key method for the quick break up of non-competitive market structures and disciplining firms that enjoy substantial market power. However, this kind of "competition policy" on the domestic market structure has some flaws. Firstly, there are a significant number of products with high transportation costs, and these costs inevitably reduce the competitiveness of imported products. Secondly, as a consequence of prohibitively high transportation cost, particular products are non-tradables, so that removal of import barriers simply has no effect on the domestic market structure for these products. Thirdly, certain import barriers are not administrative, but are a consequence of structural factors and therefore cannot be removed swiftly by the foreign trade course of liberalisation. Finally, when considering possible radical foreign trade liberalisation, interest groups which are against this liberalization should be taken into account too, i.e. domestic firm lobbies that ask for substantial tariff protection and non-tariff import barriers. Their substantial political power and good organisation can undermine efforts at foreign trade liberalisation.

Furthermore, one of the recent suggestions related to competition policy, especially in countries with a relatively low level of institutional development, is to focus on the administrative barriers to entry/exit to the industry. Elimination of these entry barriers is considered the key element in the elimination of non-competitive market structures. However, barriers to entry are complex and only some of them that are administrative, which can be eliminated relatively swiftly. A large number of these barriers are due to persistent factors and cannot be removed in a short period of time. This is why it is necessary to observe the number and character of barriers to entry and exit, so that this segment of competition policy can be defined. This, of course, does not mean that elimination of all barriers to entry and exit that could be eliminated relatively easily and quickly should be delayed. These barriers should be swiftly eliminated.

II Analysis of Existing Market Structures

1. INTRODUCTION

The character of market structures depends on two key elements:
- supply concentration;
- conditions of entry and exit from the industry.

Only on the basis of a detailed analysis of both specified elements can reliable conclusions regarding the character of the given market structure be provided.

2. ANALYSIS OF EXISTING SUPPLY CONCENTRATION

There are two key elements in the analysis of supply concentration:
- supply concentration indicator (measure);
- specifying the relevant market.

As far as supply concentration indicators are concerned, The Herfindahl-Hirschmann index is the most suitable one (hereafter HHI or HH index). The HH index is calculated in the following way:

$$HHI=\sum_{i=1}^{n}(100\,s_i)^2$$

where n stands for the number of producers (firms) in the given industry, i.e. on the given relevant market, while si stands for share of single producer i of the total market supply, i.e.:

$$s_i=\frac{q_i}{Q}$$

where q_i stands for production, i.e. supply of the single producer i, whereas Q stands for total market supply, i.e. total production in the given industry.

Theoretically speaking, the HH index can produce values between 0 and 10,000. In the case of absolutely dispersed supply, i.e. in the theoretical case of an infinite number of producers ($n \rightarrow \infty$), the production of a single company will tend to zero, and HHI also tends to zero. Contrary to this, in the case of a monopoly, the existence of only one single producer whose production equals total market supply, HH value is 10,000.

Measuring supply concentration with the HH index is superior to the alternative method – concentration supply index K_n. This index measures the ratio between total (cumulative) supply of a specified number of the biggest companies in the industry and total market supply. For example, concentration index K_4, signifies the ratio between cumulative supply of the four biggest companies within the industry and total supply in the industry. However, this indicator, in contrast to the HHI, does not yield any information on the supply ratio among the four biggest producers. In other words, the very same index concentration can describe significantly different concentration supply structures, i.e. significantly different market structures. Accordingly, concentration index K_n is an inferior indicator of supply concentration and was not used in the analysis.

The next crucial question is what data is used to calculate the HH index. The following empirical analysis is based on two types of data:

- data about gross revenues (turnover) of the firms in the industry;
- data about production of a single product specified in physical units of measurement.[1]

Defining the relevant market is a very important part for estimating supply concentration. Two elements should be taken into account: the existence of close substitutes and the definition of the geographically relevant market (depending on the share of transportation costs). The rule accepted for this empirical analysis is that the relevant market is a market of the sub-sector. In the case of concentration analysis based on the turnover data, this level is the lowest achievable aggregation level, so the question of the relevant market in the case of the turnover date virtually did not come up. In the case of concentration analysis that is based on data on production in physical unit measures, the product market as such is considered to be the relevant market. In this case the issue of substitutes comes up, that is the possibility of cross-elasticity of demand between the two products. Thus it was decided to conduct the empirical analysis at two levels, first on the subsector level, and then the single product level.

As for the geographical aspect of the relevant market, it was included on a case-by-case basis, taking into account specific features of the product and / or groups of products. This aspect of the relevant market is included in analysis in the form of comments on the results of supply concentration obtained.

2.1. Supply concentration analysis based on company turnover

In order to provide an unbiased examination of supply concentration, i.e. the competitiveness of market structure, it is necessary to modify the classification of market type according to HH index values. The following classification had been adopted here:

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1 The analysis based on data about turnover refers to the all industries, while analysis based on data about production in physical units of measurement refers to the manufacturing industries only, since this kind of data is collected only for these industries. In the both cases the data referred to is from the year 2000.

- non-concentrated (or low concentration of) supply: HHI value lower than 1,000;
- medium supply concentration: HHI value between 1,000 and 1,800;
- high supply concentration: HHI value between 1,800 and 2,600;
- extremely high supply concentration: HHI value above 2,600 but lower than 10,000;
- monopoly supply concentration: HHI value equal to 10,000

According to this classification, the distribution of Serbian industrial sub-sectors according to supply concentration type in the year 2000 is displayed on the following table (Table 2.1.).

Table 2.1. Classification of Serbian industrial sub-sectors according to HH index value for the year 2000.

HHI value	Type of supply concentration degree	Number of Sub-sectors	Percentage
Below 1,000	Non-concentrated	48	27.9
From 1,000 up to 1,800	medium concentration	23	13.4
From 1,800 up to 2,600	High concentration	26	15.1
Above 2,600, but lower than 10,000	Extra concentration	60	34.9
Equal 10,000	Absolute concentration	15	8.7

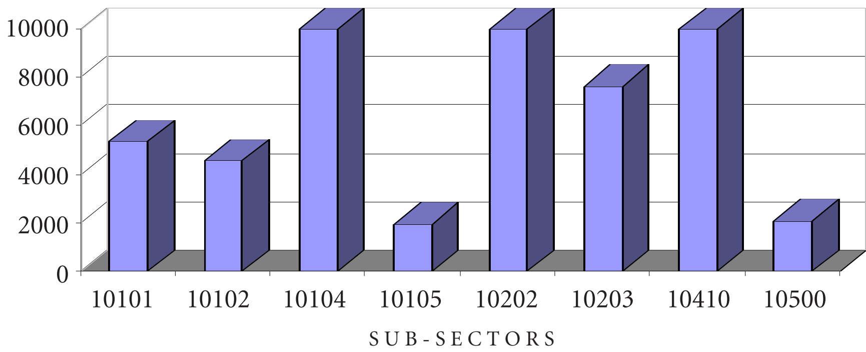
Considering all the sub-sectors, huge diversities are noticed, regardless of the generally high degree of concentration. The energy sector (industries: 0101 power industry, 0102 coal production, 0103 coal processing, 0141 oil and gas and 0105 oil derivative production) even contains three sub-sectors with a maximum HH index value: 010104 transmission of electrical energy, 010202 brown coal production and 010410 crude oil production. The causes of maximum concentration here are variable – as for the transmission of electrical energy, certainly, the character of the industry conditions the legal framework – it is a case of a natural monopoly. With brown coal natural resources are at issue, whereas in the case of crude oil production, the integration of oil industry in Serbia was accomplished roughly ten years ago by the establishment of the publicly owned company NIS.

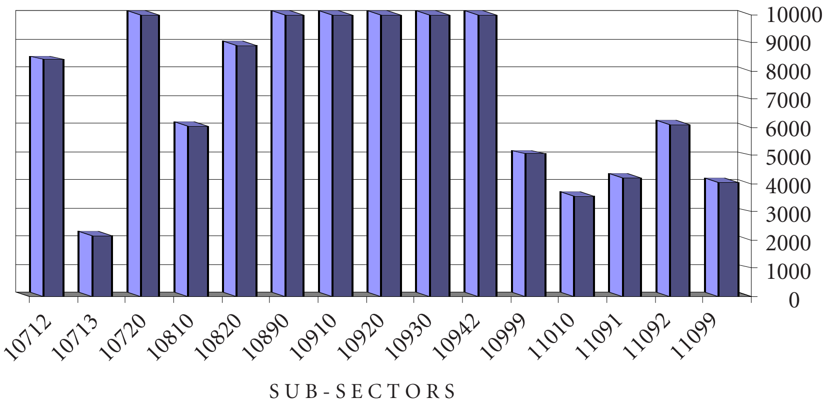
High concentration supply exists in other sub-sectors of this sector – not in a single case do the HH values drop to the low or even medium concentration brackets, although sub-sectors 010105 distribution of electrical energy and 010500 fuel deviates production are relatively close to the medium concentration group.[2]

The level of concentration is also high in the metallurgy sector (industries 0106 iron ore extraction, 0107 iron and steel, 0108 non-ferrous metal

2 In the case of power distribution, ten regional monopolies exist, i.e. situation in which every power distribution company for power distribution has a monopoly in its own area. In reference to this, a calculated HH index for the single market does not make any sense.

Picture 2.1. HH index values in Serbian energy sector.



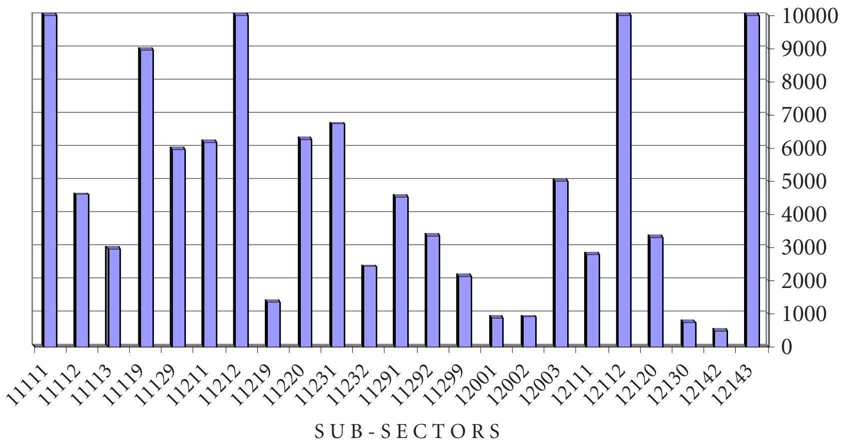


extraction, 0109 production of non-ferrous metals). As can be seen in picture 2.2, the following six sub-sectors showed a maximum HH index value (010720 production of ferroalloy, 010890 production of remaining metal ores, 010910 copper production, 010920 lead production, 010930 zinc production and 010942 aluminium production). Obviously (aside from ferroalloy production) these are natural monopolies since production is connected to particular mines. The level of supply concentration is extremely high in other sub-sectors of this sector as well, apart from sub-sector 010713 rolled iron production, although even here the HH index value is above the medium concentration bracket. Generally speaking, in this sector the lowest level of concentration is in the sub-sectors of industry 0110 processing of non-ferrous-metals, in which the HH index value shifts in a range from 3,584 (aluminium processing) to 6,094 (remaining processing of non-ferrous metals), although obviously, in each of these sub-sectors the HH index value is extremely high.

Picture 2.3. displays HH index values in the complex of non-ferrous metal and construction material (industries 0111 non-metal production, 0112 processing of non-metals, 0120 production of stone, gravel and sand and 0121 production of construction materials. As shown in this complex,

the following four sub-sectors have a maximum HH index value (011111 asbestos production, 011212 production of glass containers, 012112 gypsum production and 012143 production of bitumen products), and some extremely high HH index values in other sub-sectors too (primarily, 01119 production of remaining metals).However, this complex contains sub-sectors with a considerably lower level of concentration. Those with an HH index value in the medium bracket: (011219 production of other salts), those exhibiting a low level of concentration (012001 stone production, 012002 sand production, 012130 brick and tile production and 012142 production of pre-fabricated elements). On the whole, the HH index values for 120 and 121 industries are considerably lower, indicating to considerably lower level of supply concentration . When interpreting these values, however, that is when identifying the appropriate market type sight of the main question should not be lost – what is the relevant market? The high level of transport costs in these sub-sectors ensures that the geographical market for these products will be relatively small, much smaller than the uniform market for which the HH index value was calculated.

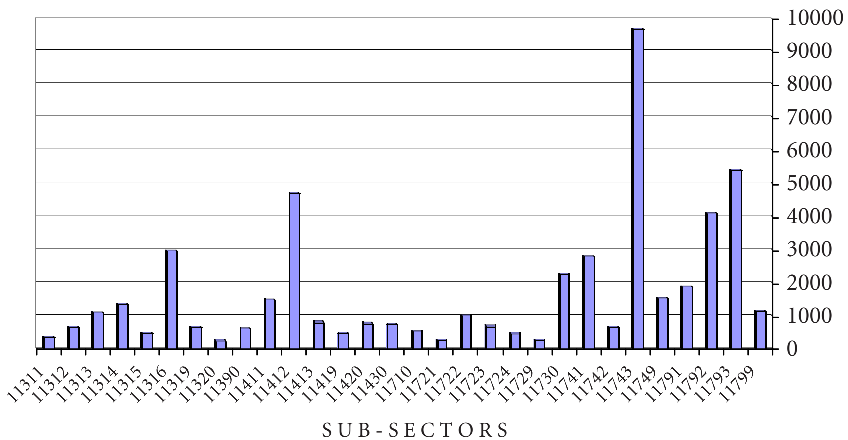
Picture 2.3. HH index value in Serbian production of Serbian non-ferrous metal and construction materials.



The following graph (picture 2.4.) shows the HH index values for the metal processing industries (sub-sectors), in which we included industries 0113 metal processing activity, 0114 the engineering industry and 0117 production of electrical machines and appliances, while means of transport production (industries 0115 transportation vehicles and 0116 shipbuilding) are presented in picture 2.5. As can be seen, metal processing industries show low supply concentrations, that is competitive market structures – in 16 sub-sectors (out of the 30 presented sub-sectors) the HH index values were within the low concentration bracket, while the next six fall within the limits of medium concentration. Therefore, in only eight sub-sectors from this complex is there a somewhat higher or considerably high level of concentration. Absolute concentration is not represented in any of the sub-sectors (the highest HH index value of 9,688 within this

complex is in sub-sector 011743 production of washing appliances, and the next according to size are 5,411 – in sub-sector 011793. Production of electric batteries and 4,713 – in sub-sector 011412 production of construction material), In addition to the sub-sectors already mentioned, a high level of concentration (high HH index value) was observed in sub-sectors 011316 production of bearings, 011730 cable production, 011741 production of thermal apparatuses and 011791 production of electrical installation material, whereas with the second and fourth subsector the HH index value was below the 2,600 limit which is taken as the boarder between high and extra high concentration for the purposes of this study.

Picture 2.4. HH index value in Serbian metal processing industry



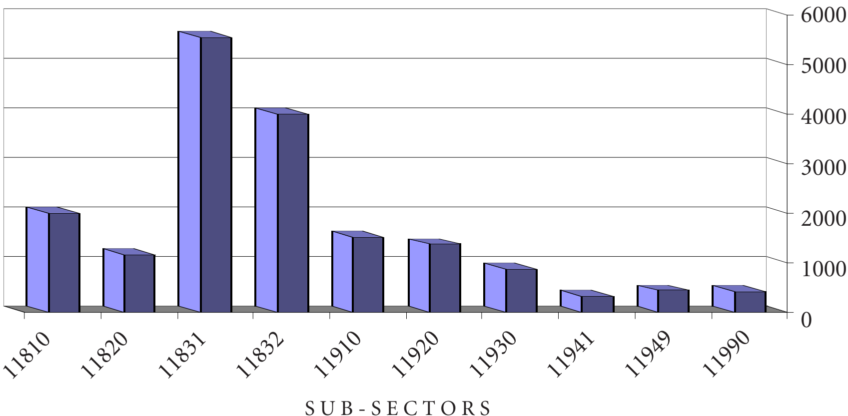
The HH index values, and therefore the supply concentration level in the transportation equipment industry are displayed on the following graph. Generally speaking, the level of supply concentration is considerably higher than in the metal processing industry. Hence, in two out of 13 subsectors absolute supply concentration of production exists: 011524 tractor production and 011525 motorcycle production, while the other three are very close to this number – 011601 marine shipbuilding (HHI=9,064), 011530 production of aircraft equipment (7,989) and 011523 car production (6,595).Generally, in this industry, medium and low levels of supply concentration exist in only two subsectors: 011527 production of car components, HHI=466) and 011602 river shipbuilding (HHI=1,263). Considering technological and other production features, related to the minimal economically efficient size of a company, there should not be (too) much insistence on reduction of supply concentration, but rather import liberalisation, i.e. introduction of import supply as the main source of the competition on the domestic market.

The level of supply concentration in the chemical industry (industry 0118 production of chemical products and 0119 processing of chemical products) is shown in the following graph (picture 2.5.). According to the HH index value this industry can be classified as more competitive. In only two of these subsectors (011831 production of chemical fibres and

Picture 2.5. HH index value in Serbian transportation equipment industry.

0118832 production of plastic mass) is an extremely high HH index valueobserved – 5,534 and 3,995, while in other subsectors the concentration level is low (four subsections: 011930 production of paint and varnish, 011941 plastic mass wrapping production and 011990 production of other chemical products) or medium (three subsections: 011820 production of chemicals for agriculture, 011910 production of medicines and 011920 production of soaps and cosmetics). Finally, it should be pointed out that in subsector 011810 the production of chemicals, supply concentration is close to the limit between medium and high concentration (HHI=1,987).

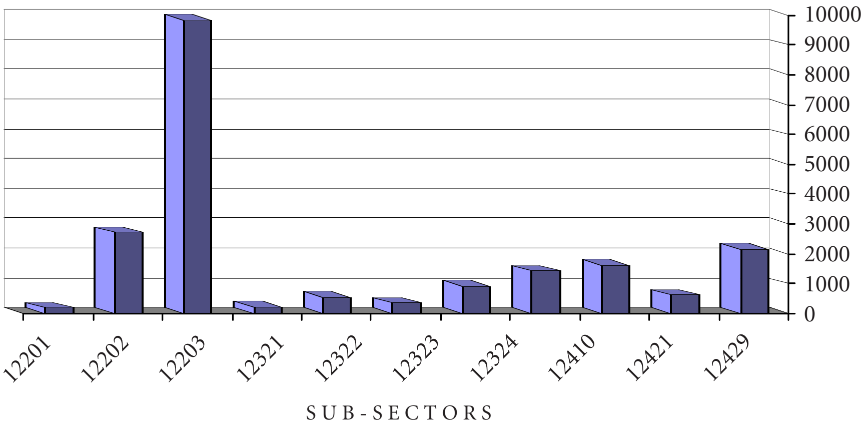
Picture 2.6. HH index value in Serbian chemical industry.



Overall, in the wood and paper industry (Picture 2.7) there is a relatively low level of concentration, i.e. relatively strong competition. The HH index values are high only in subsectors 012203 wood impregnation (HHI=9,832) and 012202 panel production (HHI=2,714), whereas the

next subsector, is obviously below the 2,600 limit set in this study. At the level of high concentration, but also below this limit and close to medium concentration is subsector 012429 remaining paper processing (HHI=2,170). For the remaining subsectors in this sector the level of concentration is classified as medium (012324 production of cane objects and 012410 cellulose production and paper) and low for the (remaining six sub-sectors).

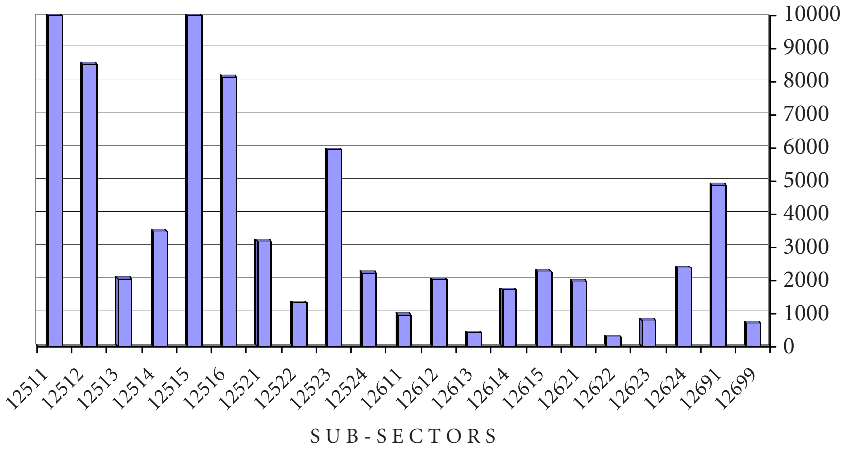
Picture 2.7. HH index value for Serbian wood and paper industry.



The following sector (textile industry: industry 0125 production of yarn and textiles and 0126 production of finished textile products) displays extensive variation in HH index values. For 0125 industries high HH index values prevail, indicating a high level of concentration. For subsector 012511 production of hemp fibre, the concentration is monopolistic (HHI=10,000), and very close to this is the HH index value for sub-sector 012515 production of silk yarn (HHI=9,989). The values for subsectors 0112512 production of cotton yarn, 012516 production of synthetic yarn and 012523 production of hemp textiles are extremely high. In both branches of the industry the HH values are somewhat lower in sub-sectors 012514, production of hemp yarn and 012521, production of cotton textiles, but both are, nonetheless, at a high level of concentration. Finally, for subsectors 012513 production of woollen yarn and 012522, production of woollen textiles, index values are close to, or below the medium concentration level. In contrast to branch 0125, industry 0126 exhibits a more competitive structures are represents – concentration levels are considerably lower. Only sub-section 012691, the production of floor coverings, shows a high HH index value, while the other subsectors the index value is either close to the medium concentration limit, or in the low concentration bracket.

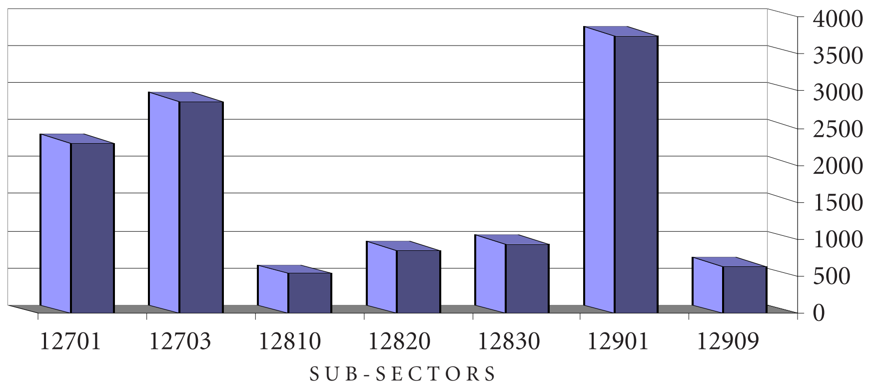
Picture 2.9. displays HH index values for the leather and rubber industries (industry: 0127 production of leather and fur, 0128 production of leather footwear and accessories and 0129 latex processing). As can be seen this industry is also relatively competitive, with low levels of concen-

Picture 2.8. HH index values in Serbian textile industry.



tration. Out of the seven sub-sectors present in the Serbian leather and rubber industry, only one (012901the production of tyres) has a high level of concentration (HHI=3,745), although even this is considerably lower than in some other subsectors characterised by a high level of concentration., The HH index value remained above the 2,600 limit established for this study in sub-sectors 012703 the production of small hides and furs (HHI=2,857). It was lower, but still in the high concentration bracket, in subsection 012701, the production of bulk leather (HHI=2,305). For the four remaining subsectors the HH index value is below 1,000, or in the low concentration bracket, therefore exhibiting a highly competitive structure. The HH index value for 012810, the production of leather footwear, 012820, the production of accessories, 012830, the production of leather ready-made clothing and 012909, other latex processing, ranges from 546 to 937.

Picture 2.9. HH index value for Serbian leather and rubber industry

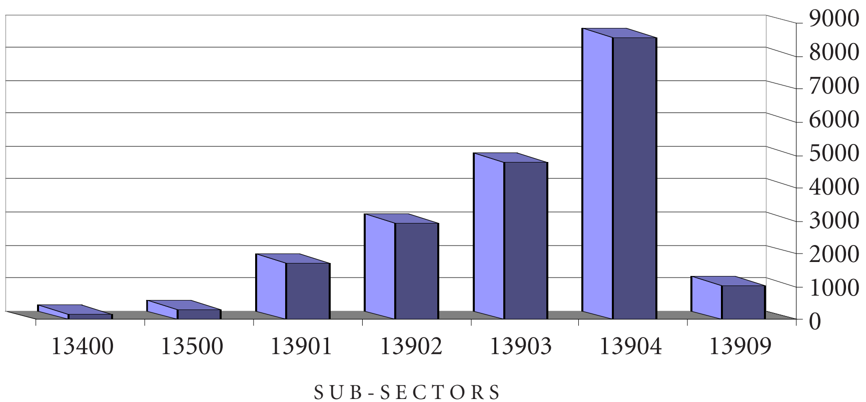


The level of supply concentration as shown by the HH index value for the sectors encompassing industries 0130, the production of food products, 0131, drink production, 0132, the production of cattle food and 0133 tobacco production and processing, are presented in picture 2.10. Generally speaking, a relatively high degree of competitive structures can be noticed, that is, a somewhat lower HH index value. The concentration of supply in the cattle food and food industry is the lowest, while drink production and tobacco production and processing show high HH index values. The highest value for this index is in sub-sector 013320, tobacco processing (HHI=6,673), which, according to the classification adopted here, falls within the very high concentration bracket. The HH index values for the following sub-sectors are somewhat lower, but still very high: 013114, the production of grape distillates (HHI=5,820), 013091 starch production (HHI=5,320), 013115, fruit-brandy production (HHI=5,047) 013111 alcohol production (HHI=4,975), 013122 mineral water production (HHI=4,768). Ascan be seen, amongst these sub-sectors, only one is from industry 0130- production of food products. Sub-sectors 013073 biscuit production (HHI=3,257) and 0130074 cake production (HHI= 3,419) are in the zone of extremely high concentration. The zone of high concentration (HH index value ranging between 1,800 and 2,600) consists of seven subsectors: 013022 pastry production, 01343 fish processing, 013071 production of cocoa products, 013072 candy production, 013080 production of plant oil, 013119 production of remaining alcohol drinks and 013121 production of refreshments. The group with medium concentration values (HHI between 1,000 and 1,800) consists of five subsectors (013042 meat processing, 013050 milk processing, 013060 sugar production, 013112 beer production and 013310 production of fermented tobacco), and the low concentration group of six (013010 grainmilling, 013021 bread and pastry production, 013030 fruit and vegetables, 013041butchering, 013099 remaining food production and 013200 cattle food production).

Picture 2.10. HH index value for Serbian food processing industry

Finally, picture 2.11 displays HH index values for the rest of Serbian industry (industry 0134 graphic industry, 0135 recycling of raw materials and 0139 production of various products). As displayed, industries 0134 and 0135 are classified as the ones with lowest concentration in Serbia, while subsectors in industry 0139 range from low concentration (013909 the remaining industry previously indicated) across medium concentration (013901 production of teaching appliances and physical training equipment) to sub-subsectors with a high level of concentration (013902 production of musical instruments) and extremely high concentration (013903 production of matches and 013904 production of jewelry).

Picture 2.11. HH index value in Serbian graphic and remaining other industry.



The same market classification according to HHI index values was performed for Serbian non-manufacturing sub-sectors for the year 2000 and the results are displayed in Table 2.2. Industries from 2 to 11 are included (therefore, excluding education and culture, health care and social security). As shown in the Table, the highest degree of competitiveness undoubtedly exists in the construction industry, where out of seven subsectors exhibit low market concentration (HH index value below 1,000) and the remaining sub-sectors fall into the medium concentration bracket. In constructing industry (as was seen above with industries such as the production of stone and sand and construction material) the geographical factor is inescapable, that is the problem of relevant market, which is considerably smaller than the single product one, meaning that the findings presented here should be treated with caution.Nevertheless, the sheer number of companies indicates that low concentration, i.e. a relatively high level of competitiveness exists, regardless of the relevant market question. As picture 2.12. shows, the main factor for the increase in competitiveness within the construction industry was entries of new companies – in 1998 the number of the companies in this area was more than three times larger than in 1990, and even if the record of companies from Kosovo is excluded, which is the reasonfor the decrease in number of companies in 1999 and 2000, they still number above 3,200.

Picture 2.12. Number of companies in Serbian construction industry.

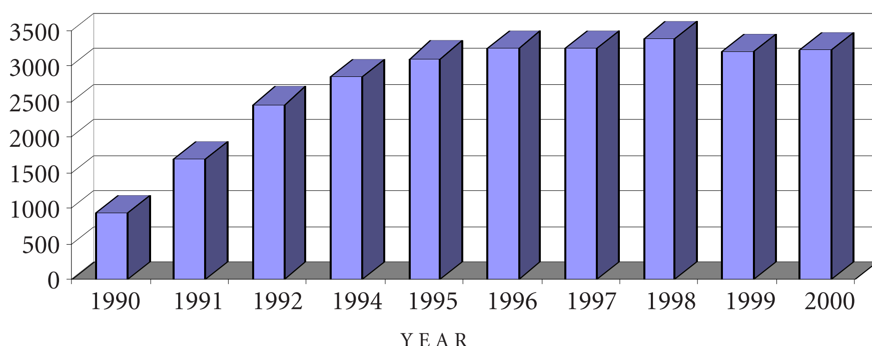


Table 2.2. Classification of non-industrial Serbian subsectors according to HH index value for the year 2000 (industries 2 to 11)

Area		Market type				
		Non-concentrated	Medium concentration	High concentration	Extremely high concentration	Absolute concentration
2	Agriculture and fishing	5	3	0	2	0
3	Forestry	1	0	0	2	0
4	Water industry	1	0	0	1	0
5	Civil engineering	6	1	0	0	0
6	Transportation and telecom	3	3	2	9	5
7	Wholesale and retail	25	3	2	6	1
8	Hotel business and tourism	5	3	0	4	0
9	Small handicrafts	13	3	4	3	0
10	Communal-housing activities	1	7	1	4	0
11	Financial and other services	12	3	1	7	1

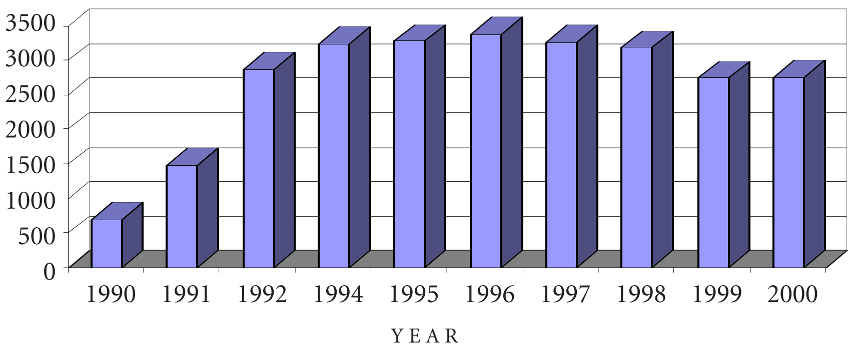
As it can be seen from the Table 2.2, competitive market structures, that is a low level of supply concentration exists in agriculture, fishing, trade (wholesale and retail), handicrafts and financial and other services, as well as in the hotel business, whereas in transport and network groups with high supply concentration an extreme degree prevails (in 9 groups the level of concentration is at a HHI level of 2,600 and more, and in 5 reaches the maximum 10,000: 60101 railway transport, 601002 rail haulage, 60201 marine transport, 60202 sea-ship transport services and 60801 port reloading). The groups in which the level of supply concentration is low

are all three subsections from road transport: 60501 passenger road transport, 60502 goods road transport and 60503 road transport services. Medium level of concentration according to HH index values exists in public transport (two out of three groups: 60601 transport of passengers in public transport and 60602 cab car transport) and reloading services (60803 reloading in railway stations). Considering that passenger transport in public transport, except for Belgrade, is organised as a legal local monopoly of the local public transport company, competitiveness in this area is not an issue. Since private companies were introduced into public transport few years ago in operations and effectiveness of this solution, reliable evaluations are not possible.

In contrast to agricultural supply concentration, a different kind of problem exists from earlier on, which is manifested in existence of non-competitive market structures not on the supply side, but the demand side. This cannot be seen from the table above. This problem – the problem of monopsony or similar market structure on the demand side, requires further and specific analysis, and the undertaking of specific measures, i.e. very specific solutions in any future competition policy.

Most markets with non-concentrated supply (25) exist in trade (wholesale and retail), but trade has another 9 groups in which the level of concentration is high (HH index value above 1,800), and two groups have an HH index value between 1,800 and 2,600 (subsections 70113 meat and fish retail trade and 70125 furniture retail trade), in the six sub-sectors the level is above 2,600 (subsections 70112 fruit and vegetable retail trade, 70126 glass retail trade, 70128 book retail trade, 70131 department stores, 70150 fuel derivatives retail trade and 70222 raw leather wholesale trade), and in one it reaches the absolute 10,000 (subsection 70210 food wholesale trade).[3]

Picture 2.13 Number of firms in Serbian trade (wholesale and retail)



3 Groups 070120 wholesale food trade is not originally activity subsection, but a section (code 07012), so that unregistered company actually classifies as one of the subsections from that activity. Obviously, it is a technical question - this company is not classified as appropriate activity by ZOP, so that practically one subsection appears artificially with maximal HH index value. Of course, it was the same case with, regarding this company during previous years, so that HH index value always appears in formal accounts.

The low supply concentration in trade (wholesale and retail) is a consequence of the economic characteristic of this activity, but also of a substantial increase in number of firms as well, i.e. many entries of new companies into this industry during 1990s. Although, starting from 1997, a decrease in number of companies occurred in this industry, the number of firms was still considerably high, and barriers to entry and exit were obviously very low.

As for the other non-manufacturing industries (forestry, water industry, communal and housing industries), they are not relevant for this kind of analysis – it is certain that they relate to monopolistic market structure. In the case of communal (local public utilities) and housing activities, it is obvious that there are, in general, natural monopolies at the level of local communities (municipalities), so that results displayed at the Table above, for this area drastically underestimates the level of supply concentration – it is an issue of a large number of local monopolies . In the case of forestry and water industry, monopolistic public companies are established by political decision – Srbijašume and Srbijavode, so that discussions about supply concentration and competitiveness of the market structures of these industries do not make much sense for the time being – consumers are faced with monopoly supply as well.[4]

Finally, for understandable reasons, the HH index results (values) are not displayed for areas 12, 13, and 14 of standardised activity classification (education and culture, healthcare and social security, etc.).

2.2. Supply concentration analysis based on single product output

Previous analysis is based on data from Serbian firms' income statements for the year 2000 on the level of subsector, six digit standardised classification of activity. Taking into account already indicated problems of this classification (unequal degree of aggregation), it is rather clear that in some subsectors there is an unequal “accumulation” of companies and their production activities. Furthermore, it is implicitly assumed that the entire turnover comes form the core activity of the firms, according to its registration. Accordingly, it is clear that analysis based on data from the firms' income statements has certain hidden generalisations, which to some extent distort reality. Hence the results of the supply concentration are biased so the estimates are that the market structure characters are more competitive that they really are. This is the reason why the analysis based on the physical output of single product products is truly necessary, and promises to be less biased and more reliable in the results, hence more useful for competition policy purposes.

According to the available data, analysis on the level of products is possible for manufacturing industry, in which, according to official standardised classification,[5] which was valid in the year 2000 (for which the following analysis was made), a few thousands of products were included. In the

4 It is interesting that both indicated public companies are conglomerates, so that aside from main activity, which is the reason why they have been founded, they are deal in a ing with line upstring of various other commercial activities.

5 Classification of industrial products, Službeni list SFRJ, number 6, 1990.

year 2000 manufacturing industry in the FR of Yugoslavia produced 1,883 of the items listed in the official classification. Out of these products, the production output of 70 products was negligible, so the actual production deals with 1,813 products.

From the remaining 1,813 products, the total industrial production was concentrated within a single company in 737 cases. In those cases HH index value was, of course, maximum, that is equal to 10,000.[6] Hence, in these cases we can speak of the existence of a (domestic) monopoly on these markets.

For the remaining 1,076 industrial products some form of (more or less effective) competition could be spoken about, implying the existence of duopolies, that is various forms of oligopolies, as well as other non-competitive market structures. The total number of products (markets) where only two producers generate total supply was 352. Those cases could be either classic duopolies (if two existing producers are roughly equal) or about quasi monopoly (hidden monopoly, or as it is commonly termed partial monopoly). Various conditions in this group are clearly indicated by the HH index rage – its minimum value within the group framework was 5,000 (which is the theoretical minimum in case of two producers), and maximum value of 9,995 (which is very close to the maximum HH index value of 10,000). The average HH index value for this group of products is 7,115, which testifies to an extremely high supply concentration too , therefore concentration that does not indicate the overcoming of a classical duopoly situation, but a situation characteristic of some forms of partial monopoly, that is the domination of a single producer.

The next step of the analysis was based on the clear identification of these markets with three domestic suppliers (including the markets where a larger number of producers are registered, but the participation of the forth and further producers is practically negligible). Such situations existed in the year 2000 in a total of 193 markets. Average HH index value for this group of products was 5,682, while minimal and maximal values were 3,344 and 9,983. Obviously, big differences among production market conditions (structures) for certain products existed here too, that is some of these products could justifiably be classified as some other form of hidden (quasi or partial) monopoly, whereas for some others a form of equal participation of three producers could be verified, which is not explored in detail in economic theory, but is simply classified as oligopoly situation.

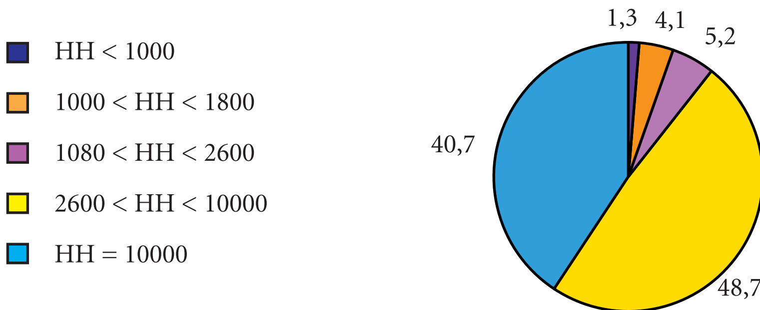
The remaining products, a total of 531, had four or more (effective) producers, and in this some degree of competitive structure could be said to exist (including various forms of oligopoly, dominant forms, as well as other forms of non-competitive markets).

Generally speaking, a higher level of supply concentration is noticed in comparison to the one obtained through analysis on the level of sub-sectors, and according to the data from income statements. Obviously this is

6 Products (approximately 8% of the mentioned number) where production is achieved not within the framework of one producer, but two and more, whereas participation of second (or succeeding) producer was negligible (less thaen basic production unit) existed within the framework of these 737. In these cases it is accepted that entire production was realized within the framework of single producer, that is production monopoly existed factually.

a case of insufficient Standardised classification disaggregating level, i.e. a wide range of production activities are grouped as one at the most disaggregated level of activity.In some sub-sectors, groups of ten products are represented, regardless of the fact that those products are often rather similar to each other. The companies that are involved in the sub-sector most often do not produce all of these products, nor even the majority of them, so by using the income statement data the empirical results are biased, underestimating the real level of supply concentration. The General classification of the markets of single products in relation to the previously accepted classification according to HH index value (see Picture 2.14.) already indicates to what extent the results were skewed towards an underestimation of supply concentration. Out of a total 1, 813 industrial products, over 40% (737 products) had an HH index value that amounted to 10,000, while in almost 49% of cases the value varied between 2,600 and 10,000 (that is for 883 products). The remaining types of the supply concentration (low and medium concentrated and highly concentrated, but below HH index value of 2,600) totalled just above 10% of the total number of products (24, 75 and 94 single products respectively, that is total of 193 products in all).

Picture 2.14. Classification of products according to HH index value.



Industry by industry, this classification of various supply concentration types are displayed in the following table (Table 2.3.). As can be seen the distribution is very asymmetrical – in basic industries, products with low or even medium concentration level are almost non-existent. There are somewhat more in the some processing industries, but not in all. Furthermore, there are surprising characteristics of the market structures in the metal processing industry, especially in production of electrical machines and appliances, in which a high concentration was noticed for almost all products. Somewhat more competitive structures, i.e. low supply concentration, occur in construction (building) material production (of course, always bearing in mind the geographical element in defining the relevant market). Also, a certain number of products with relatively low levels of supply concentration appear in some other processing industries – production of finished wood products, production of finished textile products, production of leather footwear and accessories, drink production. Finally, the biggest by far (absolutely and relatively) share of

lower concentration degree is in production of food industry, production of cattle fodder and graphical industry, which are at least at this level of analysis, the most competitive industries.

Table 2.3. Supply concentration forms according to industries in accordance with HH index value.

Industry	Sub-sectors number	Product number	HH index value				
			Less then 10,000	Between 1,000 and 1,800	Between 1,800 and 2,600	Between 2,600 and 10,000	10,000
Electrical energy production	2	11	1	1	2	5	2
Coal production	3	28	0	0	0	18	10
Coal processing	–	–	–	–	–	–	–
Production of oil and gas	2	8	0	0	0	5	3
Production of fuel derivatives	1	31	0	0	0	14	17
Iron ore extraction	–	–	–	–	–	–	–
Iron and steel	3	33	0	0	1	4	28
Production of non-ferrous metals	4	13	0	0	0	10	3
Production of non-ferrous extraction	6	22	0	0	0	5	17
Processing of non-ferrous metals	4	32	0	0	0	8	24
Production of non-metal minerals	4	27	0	0	0	7	20
Processing of non-metal minerals	11	61	0	0	0	17	44
Metal processing activity	9	154	0	4	7	90	53
Machine engineering	7	153	0	1	1	67	84
Vehicles production	8	43	1	1	1	16	24
Shipbuilding	2	13	0	2	1	4	6
Production of machines and electrical appliances	16	166	0	0	0	75	91
Production of basic chemical products	4	110	0	0	2	44	64
Processing of chemical products	6	153	0	3	14	98	38
Production of stone, gravel and sand	3	30	0	2	2	18	8
Production of construction materials	5	49	2	6	4	21	16
Production of cut construction material and panels	3	38	1	2	3	22	10
Production of finished wood products	5	93	0	4	5	61	23

Industry	Sub-sectors number	Product number	HH index value				
			Less then 10,000	Between 1,000 and 1,800	Between 1,800 and 2,600	Between 2,600 and 10,000	10,000
Paper production and processing	3	44	0	0	2	17	25
Production of textile yarn and textiles	9	60	0	1	5	31	23
Production of ready made textiles	11	79	0	5	9	45	20
Leather and fur production	3	19	0	0	1	6	12
Production of footwear and accessories	3	37	0	5	2	20	10
Latex processing	2	48	0	0	1	26	21
Production of food products	16	181	14	28	25	88	26
Drink production	8	18	0	2	4	11	1
Production of cattle food	1	13	3	1	1	8	0
Production and processing of tobacco	2	6	0	1	0	1	4
Graphic industry	1	11	2	5	0	3	1
Recycling of raw materials	1	14	0	1	1	10	2
Production of various products	3	15	0	0	0	8	7
Total	171	1813	24	75	94	883	737

A somewhat more detailed examination of the basic findings on level of concentration in single manufacturing products will be displayed according to industrial sub-sectors, making possible a comparison with the results obtained through analysis of data from company income statements for the year 2000. Due to the quantity of information, it will require mostly table display of the results, where aside from number of products within the each subsector, only basic data is displayed, that is values: HH index value, its standard deviation within the examined group (subsector), as well as maximum and minimum value.[7]

The following table (Table 2.4.) displays the relevant results for the energy sector, in which industries 101, 102, 103, 104 and 105, with total of 8 sub-sectors (activity subsections), therefore the same number as in analysis based on final accounts, but nonetheless with different content. Sub-sector 010104 transfer of electrical energy and 010105 distribution of

7 Average HH index value within the framework of subsector is accounted for as non-weighted average of related HH index values for singular products. In this manner one part of important information is surely lost, especially with subsectors which large number of products, especially in subsectors where along with basic side products are produced. However, product weighting, by which this loss would lessen, isn't possible on this level of analysis, due to existence of different unit measures in which production of related products is signified.

electrical energy are, naturally, not represented here, instead two new sub-sectors appear: 010201 production of stone coal and 010420 production of natural gas. In this way, both analyses could to a certain extent be examined as mutually complementary. Significant differences are apparent between sub-sectors that appear in both analyses which makes the above conclusions to a large extent relative. The production of hydro-electrical energy, which is represented with two products, here obtained an HH index value considerably larger than that shown in picture 2.1., although it is in the same group according to the adopted classification (extremely high supply concentration). Production of thermal electrical energy, with nine products, has somewhat larger (average) index value here, and it is also in the same group as in picture 2.2. Significant differences did not exist for production and hydrating of lignite (subsector 010203). In the following three subsectors that are represented in both analyses, however, the difference is more significant. Hence for the production of brown coal which showed a maximum HH index value (Picture 2.2.) here shows an average value of 5,614. Crude oil also showed the maximum value (Picture 2.1.) but in this analysis the index is 4,273. Although average HH index value is in both cases still in the zone of very high concentration, the difference is still significant. The most extensive difference is recorded for fuel derivative products (subsector 010500), for which graph HH index value was approximately 2,000, while the average value obtained here was 8,757.

Table 2.4. Basic indicator for the energy sector

Subsector	Product number	HH index			
		Average	Standard deviation	Maximum value	Minimum value
Production of hydro electrical energy	2	6,288	0.5	10,000	2,576
Production of thermal-electrical energy	9	4,480	0.3	10,000	406
Production of stone coal	6	5,865	0.1	6,955	4,014
Production of dark coal	7	5,613	0.3	10,000	3,067
Production and hydrating of lignite	15	8,548	0.2	10,000	4,376
Production of sirove nafte	2	4,273	0.2	5,719	2,827
Production of raw oil	6	7,080	0.3	10,000	3,140
Production of oil derivatives	31	8,756	0.2	10,000	4,954

The metallurgy sector (industries 0107, 0108, 0109 and 0110) is represented by 17 subsectors, two more than in the analysis based on income statement. “New” subsectors are 010711, the production of raw iron,

010830, bauxite production and 010941, production of hydrated alumna, while 010720 production of ferroalloy "dropped out". All in all, a high level of concentration within this complex is confirmed. For even eight subsectors maximum HH index value is obtained, while for the following seven subsectors that value is above 8,000. Relatively low HH index values were recorded only in the case of lead concentrates and zinc production (subsector 010820), with sum of 5,000 (which is considerably lower than the value displayed at the picture 2.2.) and also in mining and production of copper concentrates (subsector 010810) with sum of 6,627, which is still not much different from picture 2.2. related value. The remaining sub-sectors from picture 2.2 had slightly lower HH index values, the values obtained here were, however, considerably higher. This means that at the level of sub-sectors, the estimate HH index value underestimates the real level of supply concentration.

Table 2.5. Basic indictor for metallurgy sector

Subsector	Product number	HH index			
		Average	Standard deviation	Maximal value	Minimal value
Production of raw iron	3	10,000	0.0	10,000	10,000
Production of raw steel	7	8,097	0.3	10,000	2,163
Production of rolled and forged steel	23	9,873	0.1	10,000	7,105
Production of mine and copper concentrates	3	6,627	0.1	7,551	5,024
Production of mine and zinc and lead concentrates	7	4,999	0.1	6,536	3,611
Production of bauxite	2	10,000	0.0	10,000	10,000
Production of mine and remaining non-ferrous metal concentrates	1	10,000	–	10,000	10,000
Production of copper	6	8,552	0.3	10,000	3,856
Production of lead	1	10,000	–	10,000	10,000
Production of zinc	4	10,000	0.0	10,000	10,000
Production of hydrated alumni	1	10,000	–	10,000	10,000
Production of aluminium	3	8,740	0.2	10,000	6,221
Production of non-ferrous metals	7	9,296	0.1	10,000	7,535
Aluminium processing	15	9,533	0.1	10,000	5,318
Copper and copper alloy processing	15	8,525	0.2	10,000	4,729
Lead processing	1	10,000	–	10,000	10,000
Processing or remaining non-ferrous metals	1	10,000	–	10,000	10,000

The results for metal processing and construction material are displayed in Table 2.6. A total of 23 subsectors are represented, as in Picture 2.3. In general, significantly higher (average) HH index values were obtained here, which indicates realistically higher levels of supply (production) concentration than was indicated by income statements data. This especially relates to production and processing of non-ferrous metals (industries 0111 and 01112). Within production of construction material (industries 0120 and 0121), however, somewhat lower HH index values were obtained every now and then, (subsectors 012143 production of bitumen products, for which a maximum HH index value was obtained in picture 2.3., here has a value of 7,480). Still it is significant, that the (average) HH index value is closer to the limit of 1,800 in only one sub-sector (012002 production of gravel and sand where average HH index value was 1,897, therefore still in the zone of high concentration), while for four subsectors of this industry low production concentration was indicated in picture 2.3. In these industries, the level of concentration obtained through analysis of companies' income statements is therefore significantly underestimated.

Metal processing industries (excluding transportation equipment industry), which is represented in Table 2.7., includes all three industries (0113, 0114 and 0117), with 32 subsectors in total. This industry complex, i.e. the subsectors it is comprised of, according to data from picture 2.4, can be classified as relatively competitive. According to those results, 16 subsectors were even classified as low, and the following six as medium according to the level of supply concentration and there is no subsector that recorded a maximum HH index value. However, the results from the Table 2.7. demonstrate that no subsector of that industry can be classified as in the low or medium supply concentration brackets. Furthermore, for only one subsector (011798 Installation of electrical machines and appliances, with factually only one product, that is service) the HH index value was close to the top limit of 2,600 (more precisely 2,882), but still in the zone of high concentration. In this and remaining sub-sectors the average HH index value was (considerably) higher, and in one subsector (011742 production of cooling appliances and equipment, with the four products sub-sector is comprised of) it was maximum 10,000. In this way, considering that each subsector in this industry contains a large number of products (in some subsectors up to 10 and more products), it is confirmed once again that results obtained through analysis of company income statements significantly underestimates the real level of supply concentration.

Ten sub-sectors are represented in the transportation equipment industry (0115 and 0116 industries), three less than in the analysis based on company income statement data. In general, quite a high concentration degree for all examined subsectors is obtained here, even for those that were, according to results from Picture 2.5. in a zone of low or medium concentration (001527 production of vehicle components and 011602 river shipbuilding, which, in this analysis, had an average HH index value of 6,338 and 5,270, respectively). On the other hand, two sub-sectors with the maximal HH index value were obtained here as well, but those are now subsectors 011526 bicycle production and 011601 sea shipbuilding.

Table 2.6. Production of non-ferrous metal and construction material

Subsector	Product number	HH index			
		Average	Standard deviation	Maximal value	Minimal value
Production of asbestos	5	10,000	0.0	10,000	10,000
Production of magnesia and clay	5	7,008	0.3	10,000	3,411
Production of quartz sand	4	6,159	0.3	10,000	3,363
Production of remaining non-metal minerals	13	9,520	0.2	10,000	3,770
Production of sea salt	1	7,899	–	7,899	7,899
Production of remaining salts	3	10,000	0.0	10,000	10,000
Production of plane glass	5	8,780	0.3	10,000	3,902
Production of glass containers	1	9,940	–	9,940	9,940
Production of remaining glass	12	9,236	0.2	10,000	4,919
Production of fireproof material	11	8,466	0.2	10,000	3,637
Production of ceramics and porcelain or domestic use	2	8,875	0.2	10,000	7,750
Production of construction-technical ceramics and porcelain	1	28,510	0.3	10,000	3,517
Production of asbestos products	9	9,109	0.2	10,000	5,277
Production of, coal-graphite products	1	10,000	–	10,000	10,000
Remaining processing of non-metal minerals	4	8,780	0.2	10,000	5,122
Production of and processing of stone	27	5,702	0.3	10,000	1,409
Production of gravel and sand	2	1,897	0.0	2,165	1,629
Production of raw gypsum	1	10,000	–	10,000	10,000
Production of lime	3	2,688	0.1	3,279	2,153
Production of cement	3	4,371	0.1	5,913	3,580
Production of brick and tile	13	3,904	0.3	10,000	735
Production of, prefabricated building elements	19	7,243	0.4	10,000	1,135
Production of bitumen material for roads and roofs	11	7,480	0.3	10,000	2,359

Table 2.7. Metal processing industry (excluding transport equipment industry)

Subsector	Product number	HH index			
		Average	Standard deviation	Maximal value	Minimal value
Production of cast, forged and pressed products	17	5,776	0.3	10,000	1,294
Production of metal installation material	18	6,649	0.2	10,000	2,887
Production of tools	22	6,756	0.3	10,000	1,674
Production of metal containers	6	7,102	0.2	10,000	5,088
Production of nails. rivets. screws and other wire	25	7,973	0.3	10,000	2,968
Production of olling beds	2	4,322	0.0	4,480	4,164
Production of remaining metal reproduction material	6	6,710	0.2	10,000	5,395
Production of metal and other construction material	24	5,551	0.3	10,000	1,835
Production of consumer goods and the rest	34	8,582	0.2	10,000	3,376
Production of fuel machines and equipment	7	8,291	0.2	10,000	4,146
Production of construction and mining machines	12	7,422	0.3	10,000	3,594
Production of machines for wood and metal processing	20	8,719	0.2	10,000	2,692
Production of remaining machines and equipment	51	7,914	0.2	10,000	2,503
Production of agricultural machines	41	7,808	0.3	10,000	1,630
Production of equipment for professional and scientific purposes	21	9,140	0.2	10,000	3,461
Installation of mashie--engineering products	1	5,488	–	5,488	5,488
Production ofelectrical machines and equipment	29	8,344	0.3	10,000	3,039
Production of installation elements for electrical apparatus	18	8,900	0.2	10,000	5,124
Production of radio and TV receivers	6	9,277	0.2	10,000	5,667
Production of communication apparatus and equipment	9	8,268	0.3	10,000	3,378

Subsector	Product number	HH index			
		Average	Standard deviation	Maximal value	Minimal value
Production of measuring and regulating equipment	16	8,340	0.2	10,000	5,547
Production of other electrical apparatus	11	8,800	0.2	10,000	5,246
Production of cables and transformations	30	7,840	0.2	10,000	2,939
Production of thermal apparatus	11	6,386	0.2	10,000	2,715
Production of cooling appliances and equipment	41	0,000	0.0	10,000	10,000
Production of apparatus and equipment for cleaning and showering	4	7,861	0.3	10,000	4,063
Production of remaining household appliances	8	8,844	0.2	10,000	5,200
Production of electro installation material	7	6,276	0.3	10,000	3,329
Production of electric bulbs and luminescent rods	5	9,968	0.0	10,000	9,84 4
Production of battery chargers	2	9,328	0.1	10,000	8,657
Installation of electrical machines and appliances	1	2,882	–	2,882	2,882
Production of unmentioned electro--technical products	5	6,389	0.3	10,000	2,730

Table 2.8. Transportation equipment industry

Subsector	Product number	HH index			
		Average	Standard deviation	Maximal value	Minimal value
Production of rail vehicles	4	8,445	0.3	10,000	3,.780
Mending of rail vehicles	1	3,107	–	3,107	3,.107
Production of motors	6	8,418	0.3	10,000	1,769
Production of trucks and special vehicles	2	07,903	0.3	10,000	2,419
Production of passengers cars	3	9,564	0.1	10,000	8,692
Production of tractors	3	8,473	0.2	10,000	6,603
Production of bicycles	2	10,000	0.0	10,000	10,000
Production of elements and tools for motor vehicles	4	6,338	0.4	10,000	892
Sea shipbuilding	3	10,000	0.0	10,000	10,000
River shipbuilding	10	5,270	0.4	10,000	1,496

The chemical industry sector encompasses two industries: 0118 and 0019 with 10 subsectors in total. The results displayed in Table 2.9. indicate a significantly high degree of supply concentration in all ten subsectors, which is considerably different to results displayed in Picture 2.6., which, on the contrary, suggested the existence of very competitive structures in the chemical industry. If a larger number of products for each subsector is taken into account, as well as the fact that in each out of ten subsectors the maximum HH index value was 10,000 (therefore, theoretically maximum value), the picture obtained on the basis of income statements data substantially underestimated the real level of supply concentration in this sector.

Table 2.9. Chemical industry

Subsector	Product number	HH index			
		Average	Standard deviation	Maximal value	Minimal value
Production of chemicals (except for agriculture)	44	8,348	0.2	10,000	2,399
Production of chemicals for agriculture	26	7,249	0.3	10,000	2,355
Production of artificial and synthetic fibre	6	9,175	0.2	10,000	5,052
Production of plastic mass	34	9,104	0.2	10,000	3,812
Production of medicines and pharmaceutical chemicals	36	7,187	0.3	10,000	2,903
Production of equipment for cleaning and cosmetic preparation	37	4,909	0.3	10,000	1,702
Production of coating equipment	24	6,390	0.2	10,000	2,492
Production of plastic material wrapping	9	5,985	0.4	10,000	2,216
Remaining plastic mass processing	19	6,453	0.3	10,000	1,817
Production of remaining chemical products	28	8,015	0.3	10,000	1,793

In the wood and paper industry (industries 012, 0123 and 0124) eleven subsectors are represented. For this industry the results obtained on the firms' income statements data (see picture 2.7.) suggested the existence of considerably competitive structures, with extremely high levels of supply concentration in only subsector 012203, wood impregnation, and with only two more subsectors with HH index value between 2,000 and 3,000 (012201 panel production and 012429 remaining paper processing). Contrary to

this, the results displayed in Table 2.10 indicate very high concentration in all subsectors of the wood and paper industry, whereas the lowest HH index value is obtained in subsector 012421 production of wrapping paper (3,161), and the sub-sector 012324 production of cane products the maximum HH index value is obtained (10,000). Along with this, only in two out of eleven examined subsectors was the maximum HH index value within the subsector not 10,000, but at a level slightly above 5,000 (already indicated subsector 012203 wood impregnation, with only one product and with an HH index value of 5,155, and also the already mentioned production of paper wrappings, with six products in the subsector).

Table 2.10 Wood and paper industry

Subsector	Product number	HH index			
		Average	Standard deviation	Maximal value	Minimal value
Production of cut construction material	22	5,361	0.3	10,000	603
Production of veneer and plates	15	7,269	0.2	10,000	2,593
Wood impregnation	1	5,155	–	5,155	5,155
Production of wooden furniture	43	6,593	0.3	10,000	1,104
Production of wooden wrappings	9	6,523	0.3	10,000	1,273
Production of wooden construction materials	31	6,245	0.3	10,000	1,197
Production of wood and cork accessories	6	8,067	0.2	10,000	4,785
Production of rod objects	4	10,000	0.0	10,000	10,000
Production of cellulose and paper	26	8,958	0.2	10,000	2,763
Production of paper wrapping	6	3,161	0.1	5,256	2,064
Remaining paper processing	12	7,297	0.3	10,000	3,016

The textile industry is represented by two industries (0125 and 0126) with a total of 20 subsectors. According to results based on the firms' income statements (Picture 2.8.), a high level of supply concentration was recorded in subsectors from the industry 0125 (production of textile yarn and textiles), and considerably more competitive structures in industry 0126 (production of final textile products), whereas in a few subsectors (five) from this industry a low level of production concentration was recorded. The relative proportion between subsectors from these two industries remained the same and on the basis of concentration analysis made at the product level (Table 2.11), but on the whole, the recorded level of concentration is considerably higher. According to data from this Table, the average HH index value in all subsectors is in the high concentration bracket, where the lowest (average) HH index value is achieved in subsector 012623 production of domestic linen (3,776).

Table 2.11. Textile industry

Subsector	Product number	HH index			
		Average	Standard deviation	Maximal value	Minimal value
Production of hemp and linen fibre	3	10,000	0.0	10,000	10,000
Production of yarn and cotton type thread	8	6,422	0.3	10,000	2,272
Proizvodwa prediva woollen yarn type	11	5,943	0.4	10,000	1,441
Production of yarn andcords made of hard yarn	7	7,755	0.3	10,000	2,896
Production of synthetic yarn and thread	6	9,065	0.1	10,000	6,789
Proizvodwa pamučnih tkanina	9	6,900	0.3	10,000	2,788
Production of woollen textile	8	6,348	0.3	10,000	2,237
Production of textile from hard yarn	4	8,481	0.3	10,000	3,925
Production of silk textile	4	7,166	0.3	10,000	4,543
Production of knitted textiles	4	6,815	0.2	10,000	5,432
Production of knitted underwear	2	5,272	0.2	6,632	3,911
Production of knitted clothing	3	4,827	0.4	9,541	1,216
Production of socks	9	5,291	0.2	10,000	2,489
Miscellaneous production	8	6,874	0.3	10,000	2,685
Production of underwear	6	5,025	0.3	10,000	2,487
Production of cloths	24	4,969	0.3	10,000	1,585
Production of domestic linen	5	3,775	0.1	5,248	2,502
Production of heavy ready made cloths	1	5,034	–	5,034	5,034
Production of floor covers	4	7,083	0.2	8,302	5,026
Production of the other textile products	13	9,017	0.2	10,000	5,039

In leather and rubber industry (industries 0127, 0128 and 0129), eight subsectors are represented, that is one more in comparison to the analysis based on company income statements data (Picture 2.9.); “the new” subsector is 012702 production of pig skin. As opposed to the results represented in Picture 2.9., according to results represented on the Table 2.12., all the subsectors from this sector had very high levels of concentration (based on results from the income statements analysis it appeared that in four subsectors from this sector the level of concentration was even in the low concentration bracket, whereas the maximum HH index value was

just above 3,500, in subsectors 012901 production of tyres). The results from the Table 2.12, indicate considerably higher HH index values in all subsectors. The, minimum average value of this index is achieved in subsector 012820 production of leather accessories (4,718-an extremely high level of supply concentration).

Table 2.12. Leather and rubber industry

Subsector	Product number	HH index			
		Average	Standard deviation	Maximal value	Minimal value
Production of bulk leather	6	7,665	0.4	10,000	2,928
Production of pig skin	4	9,186	0.2	10,000	6,745
Production of petty skin and fur	9	7,225	0.3	10,000	1,968
Production of leather footwear	23	6,483	0.3	10,000	1,367
Production of leather accessories	6	4,718	0.3	9,814	2,114
Production of leather and fur ready made cloths	8	5,869	0.4	10,000	1,356
Production of tires	18	7,779	0.3	10,000	2,912
Other latex products	30	7,353	0.3	10,000	2,097

The food processing industry (0130 industry, production of food products, 0131 drink production, 0132 cattle food production and 0133 tobacco production and processing) is represented in this analysis with 27 subsectors. A large number of subsectors, as well as a large number of individual products within almost every subsector suggested at the very beginning, that in this case as well, the results will be (significantly) different from the results based on company income statements. Some differences in relation to data displayed in Picture 2.10 are evident. Still, relatively lower HH index values are recorded in relation to the other industries. Regardless of this, it is interesting that even in this industry that has a rather competitive market structure for the domestic manufacturing (and even the economy), only two subsectors have a medium level of concentration (013060 production of sugar and 013073 production of biscuits and related products), whereas another one is rather close to that zone (013041 slaughtering of cattle). In all other subsectors (excluding subsectors 013121 production of refreshments), the HH index value is even above the previously defined limit of 2,600 (the limit of high and extremely high product concentration). Accordingly, even in this industry there is a substantial supply concentration, regardless of the fact that it is one of the few industries in which no subsector has the maximum average HH index value. Even in subsector/sector 013200 production of fodder, which is the one of the most competitive ones, the average HH index value is above the limit of 2,600 (3,292).

Table 2.13. Food processing industry

Subsector	Product number	HH index			
		Average	Standard deviation	Maximal value	Minimal value
Grinding and peeling of grains	12	4,081	0.3	10,000	256
Production of bread and baked goods	10	3,090	0.3	8,594	322
Production of pastries	3	4,809	0.1	5,348	3,900
Processing and conservation of fruit and vegetables	56	4,974	0.3	10,000	1,265
Cattle slaughtering	13	1,963	0.1	5,267	579
Processing and conservation of meet	19	4,133	0.3	10,000	720
Processing and conservation of fish	1	9,427	–	9,427	9,427
Processing and conservation of milk	20	4,654	0.3	10,000	1,108
Production of sugar	3	1,508	0.0	1,624	1,377
Production of cacao products	6	5,362	0.4	10,000	2,136
Production of candies and sweets	3	5,372	0.4	10,000	2,815
Production of biscuits and related products	2	1,329	0.0	1,465	1,194
Production of industrial cakes	3	5,714	0.4	10,000	3,544
Production of vegetable oil and fats	11	5,173	0.3	10,000	1,747
Production of starch and processed starch products	8	7,199	0.2	10,000	4,272
Production of spices and the rest	11	4,793	0.2	6,782	2,022
Production of plant originated alcohol	3	4,738	0.3	8,324	2,424
Production of beer	3	2,900	0.1	3,821	1,591
Production of wine	3	4,677	0.5	10,000	1,678
Production of wine distillates. and brandies	2	3,559	0.1	4,591	2,527
Production of fruit brandy	2	3,716	0.1	4,135	3,297
Production of remaining alcohol drinks	3	3,988	0.1	5,591	2,624
Production of refreshments	1	2,184	–	2,184	2,184
Production of mineral water	1	3,613	–	3,613	3,613
Production of fodder	13	3,291	0.2	6,941	492
Production of fermented tobacco	2	5,640	0.6	10,000	1,281
Tobacco processing	4	8,842	0.2	10,000	5,370

Finally, the last manufacturing sector considered relates to industries 0134, 0135 and 0139, with a total of five subsectors, which is two subsectors less than with analysis based on company income statement data. In this analysis, subsectors 013902 production of musical instruments and 013903 production of matches are missing. The lowest concentration degree is recorded in the graphical industry (industry 0134), although average HH index value is above the limit of 2,600. In recycling of raw materials (industry 0135) and subsector 013909 other industry, the level of supply concentration interpreted in HH index value is somewhat below 6,000; while in the remaining two sub-sectors it is extremely high (in subsector 013904 production of jewellery 9,277, and in subsector 013901 production of teaching appliances and sports equipment up to the maximum 10,000).

Table 2.14 Graphic and remaining industry

Subsector	Product number	HH index			
		Average	Standard deviation	Maximal value	Minimal value
Graphic activity	11	2,896	0.3	10,000	724
Recycling of raw materials	14	5,536	0.3	10,000	1,146
Production of learning appliances and physical culture equipment	51	0,000	0.0	10,000	10,000
Production of jewelry	6	9,276	0.1	10,000	7,764
Remaining unmentioned industry	4	5,851	0.0	6,250	5,461

2.3. General evaluation of the existing supply concentration

All indicated results speak in favour of the statement that an extremely high level of supply concentration exists on domestic markets, i.e. noncompetitive market structures often occur (if the market structure is considered only by supply concentration). The High HH index values obtained are not surprising, considering that there is a small domestic market in Serbia/FR Yugoslavia. In order to get more a reliable picture of the character of the market structures in the country, it is necessary to examine the dynamic of supply concentration and the character of barriers to entry on all the markets examined in our country.

3. THE DYNAMIC OF SUPPLY CONCENTRATION

Examination of supply concentration dynamics is of great importance – whether the character of market structures is improving or getting worse. On the basis of available data, the results of supply concentration for some recent years are compared (only for the manufacturing industries) in the

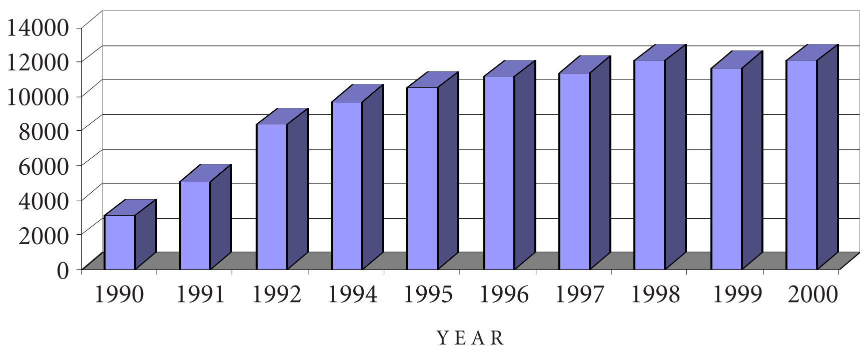
following Table 2.15. The first one is the year 1992, as it is the first year of the new state, established on the territory considerably smaller than the previous one. The results of this concentration degree analysis interpreted through HH index, are displayed on the basis of standard classification in accordance with the level of supply concentration.

Table 2.15.
Supply concentration degree in Serbian industrial activities (HH index value)

HHI value	1992		1996		2000	
	Subsector number	%	Subsector number	%	Subsector number	%
Below 1,000 (non-concentrated markets)	31	17.9	40	23.0	48	27.9
From 1,000 to 1,800 (medium concentrated)	28	16.2	29	16.7	23	13.4
Above 1,800 (highly concentrated)	114	65.9	105	60.3	101	58.7

Even this superficial display of HH index values for Serbia/FR Yugoslavia manufacturing industries, given on the basis of turnover data indicates that the level of concentration has declined considerably. Along with this, one should bear in mind the fact, that in data for the year 2000 Kosovo companies are not included, which causes problems in real comparison of the supply concentration change over time. Still, regardless of the indicated imperfection, it is certain that the trend towards supply concentration decrease exists. The main reason for supply concentration decline is new entries, i.e. entry of new companies, illustrated in Picture 2.15. (the number of active companies, i.e. the number of companies which submitted income statements and balance sheets). It should be

Picture 2.15 Number of companies in Serbian industry



noted that the data for the year 1999 and 2000 does not include firms from Kosovo, so there is a slight increase in the number for these two years.[8]

Even with evident growth in the number of companies and the increase in the degree of market structures competitiveness, the fact is that the supply concentration degree in Serbia/FR Yugoslavia on average is still such that almost 60% of industrial sub-sectors are at the highly concentrated market level. However, this analysis indicated the significance of free entry and exit from the industry, since that is the main precondition for the change of supply concentration alterations, i.e. the change towards more competitive market structures.

4. BARRIERS TO ENTRY AND EXIT AS MARKET STRUCTURE FACTORS

4.1. Barriers to entry and exit and potential competitiveness

At the beginning of this chapter it was pointed out that two key elements of market structures were concentration supply and conditions of (barriers to) exit and entry from the industry. The introductory chapter examines the mechanism by which free entry and exit from the industry enables the establishment of competitive market equilibrium and the maximisation of the social welfare.

The empirical analysis of supply concentration changes in Serbian/Yugoslav manufacturing industries has demonstrated that, although supply concentration depends on a large number of factors, the most significant amongst them is free/easy entry and exit from the industry. If there are no barriers to entry and exit, i.e. that entry/exit costs are low, it is more likely that a more competitive market structure will emerge – the competition will prevail. Simply stated, the easier the entry to the industry and exit from it, the larger the number of companies there will be in the industry.[9]

Generally speaking, a large number of active producers does not have to be the only way to establish competitive market structures. Even with a smaller number of active rivals (competitors) in the industry, it is possible to have competition, in this case potential competition, providing that there is a credible threat of the new entry to the market. This is the case of the contestable market, i.e. a market with completely free entry and exit. Namely, provided that in a market there is a monopoly/oligopoly structure or any other form of high supply concentration, i.e. one or several producers have market power, and therefore the firm(s) manage to increase the prices above the level of marginal costs and therefore increase profit (appropriate economic profit). If that is the case, it is in the best interest of the firms (investors) of this particular industry to enter it, so that they are in a position to earn economic profit. The arrival of these new entries certainly increases competition and inevitably introduces

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8 Decline in number of (active) companies in the year 1999 is also due to the war in FR Yugoslavia.

9 It has been already explained that barriers to exit from the industry represent only a special barriers to entry.

performance alteration of the incumbent firms on the market, form monopoly/oligopoly towards competitive, to the advantage of consumers and their welfare. Moreover, in order for this mechanism to work, it is not even necessary to have a real entry of new producers to the industry, it is usually sufficient that a credible threat to incumbent producers exists for their performance to become more competitive.[10]

In order for potential competition is to be effective (i.e. that the threat is credible), the entry (and exit) costs of a new entry company should not be high. That especially relates to the sunk costs, i.e. investment of real assets that are exclusively related to specific production and that cannot be recovered if the firm exits a given type of production/industry) should not be significant. In other words, the higher the sunk costs, the more costly exit from production is; the interest of potential producers for entry into the industry decreases and the threat of entry is diminished, which weakens potential competition. Conditions of entry to an industry depend on larger number of factors – political, economic, regulatory/institutional and others. They will be discussed in this section.

Free entry to the industry is important for its competitive market structure, but free exit from the industry is equally important, that is leaving the production when it is opportunistic for the producer, for two reasons. First, liquidation of a company releases (unlocks) resources that could be used by some other company, which increases competition on the given or some other market. When a bad firm exits production, whether because it was liquidated, or because it decided to change the industry, its market niche and assets can be taken over by another, better firm, which will use them in a more efficient way and therefore increase market competitiveness, For example, if Zastava was liquidated, someone would, perhaps, take over the assets and begin more efficient production. Second, if the exit from the production is related to serious difficulties, firms would more reluctantly decide to enter them, since they are aware in the case of business failure, it would be vary costly to restructure the firm and reallocate it to the another industry.

4.2. Political risks as barriers to entry

Political risks are a significant barrier to entry of capital into production, since capital is an “anxious animal” and it is not prepared to be engaged unless there is a real possibility that political changes and upheavals could endanger normal business and profit making operations. Political uncertainty therefore presents an effective method for deterring new entries of foreign as well as domestic potential investors.

The level of political risk in Serbia was considerably reduced with the change of the regime during the year 2000, but it is still quite high. Problem of uncertainties regarding the status of the state still exists, since constitutional crisis is still on, i.e. the relationship between Serbia and Montenegro is still in political and constitutional trouble. Moreover, the new Constitutional Charter will define the union as provisional, as a set-up for

10 This is a basic of theory of contestable market, developed at the beginning of 1980s.

a specific period (three years), after which the final decision will be made as to the existence (and form) of the joint state or its definite abolition. The possible dismantlement of the federation/union of Serbia & Montenegro would itself create problems of dividing the assets and international financial liabilities, and therefore to difficulties related to consolidation with new independent states. The same applies to Kosovo, whose future status is uncertain and where the existing problem "who is to pay Kosovo's international financial obligations?" will be sharpened while defining the status of this province.

Furthermore, there is a higher political temperature within Serbian internal political relations that adds its contribution to the political risks in the country. Conflicts between most power political players and constant political crisis regarding the Hague Criminal Tribunal (ICTY) create problems regarding international economic relations and relations with the International Financial Institutions (the International Monetary Fund, World Bank etc.). Furthermore, the international (ICTY) component of the internal political crisis creates problems and risks regarding the process of writing off the country's international dept (Paris Club agreement and London Club negotiations) and the country's credit rating on the international capital market. Finally, taking into account that the Hague tribunal (ICTY) is involved, some forms of economic and financial sanctions against Serbia should also been taken into account.

The ongoing political crisis in Serbia does not only produce negative effects on international economic relations, but results in inevitable neglect of domestic affairs, particularly economic and institutional reform, rehabilitation of the judicial system, reorganisation of public administration and similar. Delayed reform inevitably preserves the existing, unfavourable economic/business environment and adverse market structures related to it.

4.3. Economic barriers to entry

Economy of scale. Within certain industries, production technology is such that it leads to scale economy. In such industries economy of scale is a barrier to entry for new producers, since it is not very likely that a large number of producers can reach minimal efficient size of production, to be profitable on the given market.

Economy of scale is usually strong in infrastructure and public utilities, particularly in network industries. Nonetheless, in a small country, such as Serbia/Yugoslavia, it can also be a barrier to entry for other industries too. When the market is small, measured by population and/or purchasing power, and when production supplies primarily the domestic market, it is not possible or profitable to have a larger number of producers in some industries, such as, for example, the automotive and many of the chemical and electronic industries. Many modern technologies assume capacities whose size exceeds the markets of small countries, so that unless the orientation is explicitly towards export the production will have no chance of profitability.

The only way to overcome domestic market limits is a comprehensive liberalisation of international trade and integration of the country's econ-

omy into the World market. Serbia/FR Yugoslavia accepted this solution, but gradually, through a process of integration into the World Trade Organisation (WTO), as it strives to moderate the possible shock that could happen with a rapid opening of the country's economy. The other way is the creation of free trade zones with neighbouring and other countries, so that through this form of partial international integration, the domestic market expands for domestic producers. to date, agreements with Russia, Macedonia and Bosnia and Herzegovina are signed and ratified (this matter will be discussed to a greater extend in the next chapter). The effects of the free trade zones are not yet significant, but it can be expected that in due time it will have better effects, i.e. that they will in the long-term manifest virtues of a free trade zone.

Product differentiation becomes a barrier to entry when existing firms enjoy popularity of their trademark (brands) among consumers, which represents a barrier for potential rivals to compete in equal terms considering that it requires huge marketing costs or considerable price reduction. Still, in Serbia/FR Yugoslavia only a small number of domestic trademarks enjoy an exceptional reputation so that differentiation in production does not represent a significant barrier to entry, contrary to numerous foreign trademarks whose reputation is often indisputable.

Successful innovative activity by incumbent firms could, generally speaking, represent a considerable barrier to entry for new producers. But, unfortunately, innovations are a “forgotten term” in Serbia, therefore any new entry, i.e. new potential rival, weather domestic or foreign, almost automatically enjoys the advantage regarding innovations over incumbent firms, which make entry to new producers easier and provides comparative advantage over the incumbent producers.

Availability of natural resources can be a barrier to entry in industries such as mining, energy and the construction material industry. The incumbent firms, which already use natural resources in Serbia have a strategic advantage over potential new producers. This barrier can be moderated by newly discovered reserves and by the buying out of the incumbent firms or by the right of “new” producers to exploit the existing natural resources.

The availability of capital represents a very serious barrier to entry for new producers. Namely, if capital scarcity is significant, it is not possible to use even best business opportunities, except through own savings, which are usually insufficient. The availability of capital for investment in Serbia is extremely low. The reasons for this are economic, institutional and political: low domestic savings due to the low level of economic development, devastation of banking sector during the previous regime and general distrust of banks, including international ones, the unreformed judicial system which does not protect investors and creditors and increases the risks in that way; high political risk, which prevents the influx of international credit capital.

Due to the low availability of capital, the uncertain business environment and rather slow pace of reform, investment activity in Serbia is very low, which means that the number of new entries is rather modest. Particularly affected by this is the grass-roots private sector, which for the

time being has developed its businesses through investments of their own savings, personal owners assets, which is a serious limitation to development. In order to speed up development of this sector and its elevation to a higher level, external financing is necessary, either from domestic or foreign sources. At this moment domestic banks are mostly orientated towards providing loans for durable consumer goods, and they refrain from providing loans to firms due to the risks regarding company debt servicing and untrained personnel for modern banking business (risk estimation and similar). Some foreign banks in Serbia have provided loans to the firms, but it is usually a matter of dealing on behalf of international financial institution capital and the loans are small.

Due to the undeveloped capital market, exit from business is more difficult as well, since it is difficult to sell the securities of a loss-making company, as well as its real assets. This presents a barrier to entry, since during examination of a potential venture, investors take into account, as it was indicated earlier, conditions of exit as a factor while deciding to enter the business.

Prolongation of economic crisis, and especially continuous fall of industrial production and very bad state of infrastructure in the country also prevents potential investors from investing. When, for example, in a country, such as Serbia, there is a real and long-term danger from electricity cuts, (foreign) investors refrain from investing.

The Grey economy is widespread in Serbia and it is not limited to individuals or small groups only, dealing in retail businesses and crafts, but encompasses grey business of formally registered firms as well. Economic agents that operate in the grey economy have significantly lower costs than firms that operate in the formal economy, due to unpaid taxes and other charges and avoidance of regulatory expenses. Such unfair competition presents a barrier to entry and repudiates reputable investors from investments to the formal sector.

4.4. Institutional barriers to entry

Since political risks and economical barriers are at least partially out of government's control and because institutional barriers to entry are easier to solve (dismantle) than other forms of barriers (at least in principle), more attention should be focused to them. It should also be taken into account that institutional changes present a real area of economic reforms.

New company registration is unnecessary complex and lasts approximately 50 days, according to G17 institute & CIPE research.[11] The reason for such complicated procedure is the legislator belief that, even during registration, eventual future fraud should be precluded and that high business standards should be maintained. This is a wrong approach, since numerous laws penalise fraud, so that this kind of prevention is not necessary, considering that it delays and constrains entry and increases unnecessary costs. The complexity of registration and the excessive requirements on financing, accounting, construction, sanitation, consumer and

11 How much does it cost to have a business in Serbia, Institute G17 and CIPE, 2002

environmental protection especially effect individuals which intend to open small firms and deal with small business, and forces them to turn to the grey economy business.

Urban Land. Urban land is owned by the state in Serbia, which seriously complicates and distresses the starting up of business in cases when an investor intends to build new business facilities. State property rights over urban land mean that the building site beneficiary has only partial property rights, that is he obtains the right to use the plot for an unspecified period, but no other property rights. The Urban Land Law even gives the municipality, that is to the city local authorities, the right to take away the land from the beneficiary through readjustment of urban planning or by land rearrangement, which means that even the right to usage is not permanent.

The first uncertainty is weather the investor will manage to lease the land, weather because the decision of the municipality/city is of discretionary nature, or because municipality/city temporarily do not offer a suitable plot of land for lease, or weather because the price (fee) of the lease is too high due to the municipality/city decision. The root of this problem is the fact that private property for urban land does not exist, and therefore neither do normal relations between supply and demand, along with market price. Instead of that, the state bureaucrats attempt to stimulate market results.

The second uncertainty relates to the shift in rent paid to the municipality/city in time. The developer is charged two fees, one of which is a lump sum, and the other a monthly fee, payable for all the time of usage. While the first fee is payable at the moment when the contract is singed, the real amount of the other one is variable in time, depending on the policies if the municipally/city. Therefore the predicament of possible future lease costs is difficult to the point of impossibility.

The third uncertainty is due to business risk; if the investor (developer) decides not to develop the land, he cannot sell it or sublease it to someone else. This means that he is facing huge sunk costs.

The fourth uncertainty relates to possible urban land privatisation in the future. The user of the urban land may, in that case find himself in the adverse position of having to pay again for something he has already paid for, whether to the “old” landowner, if privatisation is accomplished through denationalisation, or to the state if the privatisation is accomplished by selling the land to the incumbent users. The problem of possible denationalisation can occur with other real-estate, for example factory and business premises.

The procedure for urban land development and building business, and other facilities in Serbia is very complex and takes a lot of time. There are three permits. The first one is the urban planning permit, which takes 16 agreements, conditions, analysis etc. The second one is the construction permit, which takes 18 agreements, projects, assessments, analysis and similar. For industrial facilities in larger cities it is necessary to obtain additional agreements from the local public utility companies. The third is the users permit that is hopefully granted once the facility is completed. According to G17 Institute and CIPE research, obtaining necessary permits takes approximately 326 days.

There are two reasons for such long and exhausting procedure. The first one is an over-regulated procedure, based on the traditional socialist idea that everything has to be regulated and controlled in detail. In this area, that means, on one hand, precise urban planning, that is, determining the use of the land, that is the activity to be developed in the structures, dimensions of the structures that can be built, and, on the other hand, precise determination of building demands, technical standards and similar. The detailed urban planning and technical requests inevitably lead to a cumbersome and slow procedure. The second reason is the traditional slowness of the public administration, which is can be somewhat speeded up with a bribe. It remains to be seen what the impact of the new legalisation that is currently in preparation will be.

Business premises lease, especially retail premises, also presents quite a special undertaking in Serbia. The largest part of business premises in prime locations are still owned by the state, and are on lease to incumbent users mainly for an unspecified period, at a rather low price. In this way the current users are encouraged to retain the premises and utilise them in an inefficient manner. This significantly constrains on the real-estate market and makes it difficult for new firms to acquire the premises. One possibility for solving this problem is the sublease – but this transaction is legally forbidden. Although it is illegal, it is very frequent in Serbia these days. Still, this very restriction presents a substantial barrier for serious investors, since it creates an additional risk.

I*ndustrial relations*, in spite of the reform of the Labour Law passed into law at the end of year 2001, this legislation still represents a barrier to business activities. Employment of labour has been liberalised and simplified, but a few difficulties remain. Firstly, until the contraction of new collective agreements, the old ones, which are very favourable to employees, are still valid. (it is questionable how much and how effectively they are enforced in the real life, but for a major investor this is still a problem). Secondly, according to the Law, trade unions have an extensive role in determining working conditions, which is not favourable for investors. The trade unions will use this position to negotiate new collective contracts, and wages etc. And third, the dismissal of employees, although liberalised, suggest procedural difficulties for employers and the costs in the form of severance pay.

Generally speaking, labour market is not flexible and it makes business adjustments to new circumstances intricate, which presents a barrier to normal businesses and investments. An additional difficulty is the ambiguity of some legal provisions, for example about whether obligatory collective bargaining is obligatory. The minister of Labour has a discretionary power in that case, which reduces the certainty of the rules of the game.

The difficult social situation in Serbia, followed by low wages in many social and state companies or the threat of labour shedding in many companies have induced trade unions, which still, to some extent, retain the attitudes of self-management, from time to time mange to organise strikes and demand wage increases and other benefits. The Serbian Government has displayed some backbone regarding these appeals, but the widespread atmosphere of discontent and the trade union ambition

to gain influence amongst employed represent an unfavourable business and investment environment.[12]

Efficient contract enforcement is not a common practice in Serbia, especially in the case of bigger companies. This increases business uncertainty and suppresses investments from investors and new entries. Contracts that are not enforced are frequent in all areas, but it presents a special problem for company payments to suppliers for goods delivered and banks for delivered loans. During previous decades a debt model (debt paradise) was established, according to which the state through formal and informal methods protects weak debtors from bankruptcy, of course, at the expense of the creditor. Such a benevolent approach to debtors and non-enforcement of contracts encouraged further development and growth of the debt syndrome (moral hazard).

For many companies, especially for the bigger ones from the social and state sector, soft budget constrain was applicable. They failed to pay, not only other companies and banks, but also taxes the state, health and social security contributions and various fees. Favoured companies from the private sector conducted business in a similar manner. After the political changes of 2000, financial discipline improved, but it is far from perfect. The Bankruptcy Law (legislation) is still not enforced in the case of bigger firms, which means that the judicial branch of the government is still very tolerant toward debtors.

The existence of soft budget constraints, or non-existence of hard budget constrain for everyone proved to be a barrier to entry for new private companies. The companies to which soft budget constraints are available have an advantage on the market, and all other companies are in an unequal competitive position.

Resolving legal disputes is long and uncertain process, therefore private property rights and their protection are uncertain. Even when a plaintiff gets favourable verdict, it is not certain that he will mange to materialise all the receivables. Therefore many business people prefer to solve disputes in the informal way (one-to-one) instead of going to court. These difficulties with resolving commercial disputes increase costs of businesses, and therefore present a barrier to entry for new companies.

Corruption is very widespread in Serbia. It is the result of excessive and wrong state regulation, excessive taxes and weakness of state (government). It has infected numerous areas – from the custom administration to local administration authorised for urban planning and development permits. Corruption sometimes helps to speed up an otherwise long-winded procedure, but it presents a serious barrier for normal and sound business.

Numerous regulatory and institutional weaknesses, inherited from the previous system and still unchanged, present a barrier to entry of new firms into business. Only a few of them will be mentioned as a kind of illustration.

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12 Well known is the case of one factory Electric Industry from Niš: as soon as new owner arrived, a Serb from Diaspora, the trade union organized the strike, whose main request was payback of suspended wages from the previous period!

According to the current Law on the system of social control of prices it is possible for the government to control the price of any product if it is judged necessary. Currently, the government controls the prices of basic foodstuffs and some public utilities, but it is still not impossible for the scope of price control to be extended on the basis of the current legislation. Investors are therefore faced with the possibility that the results of their business activity depends on government bequest. For example, drug prices are under government control and production profitability of a single medicine depends on the discretionary decision of state officials.

The Government of Serbia is inclined to effectively change Laws by decree, which introduces uncertainty for all business. First, decrees are brought in relatively quickly, without public discussion, which increases insecurity for investors, since there are no signals of alterations in the institutional framework and regulations. Second, the decrees made to date have proved to be arbitrary Government decisions, constituting arbitrary involvement in businesses, and therefore restrictions of economic freedoms, which also does not favour investors.

The property register is incomplete, untidy and it does not represent the real situation.[13] For instance, in the existing cadastre records some real estate is still often registered in the name of the owner before nationalisation, half a century ago. Especially confusing is the situation with real-estate within social companies, which is a result of the dominant social concept of "usage", rather than property. Serbia has yet to reorganise the property registry, i.e. unify the three existing independent systems: cadastre, land books and the traditional tapial system in south Serbia.

Problems with property registration practically make usage of the mortgage a means of security impossible, which means exclusion of potentially substantial capital for commercial purposes.

The accounting system is partially obsolete and insufficiently corresponds to International accounting standards (IAS). Therefore in day-to-day operations, the emphasis is on obeying the law, while information content of accounting statements is usually insufficient.

Bankruptcy legislation is not good, and it is not applied even when companies are obviously insolvent. The problem is not simply that this gives wrong incentives to economic actors and wastes resources, but it also significantly effects the restructuring of markets through repression of exit of inefficient firms from the business. Those firms with little or no business prospects maintain themselves in an artificial, parasitic way, through implicit and explicit, hidden or open subsidies, and represent a barrier to the structuring of a normal competitive and efficient market.

Leasing is not defined well by existing legislation. Among other things, tax is charged twice times (with every instalment and with the sale of the asset), and an efficient system of security for the leasing company does not exist.

The work of inspections – financial police, tax administration, market, sanitary, ecological, foreign currency, safety at work, and other inspections and police – should provide compliance with the regulations and, generally

13 Removal of barriers for foreign investments, Ministry for international economic relations, Republic of Serbia, January 2002.

speaking, regular dealing in the economy. However, problems with work of inspection and related officials are numerous: the approach is usually selective, i.e. far more attention is paid to one group of companies (grass roots private sector) than other (state run and bigger socially owned companies); some of them are considerably corrupted, so they do not provide regulations enforcement by the business community, but just generate income for themselves. Their assignments are partly intertwined, and decisions on the same issues are sometimes different, inspectors are sometimes ignorant of regulations in their authority, which causes damage to the companies they are auditing etc.

4.5. Conclusion – barriers to entry and exit and market structures

Barriers to entry in business are considerable in Serbia. They are political, economic and institutional. The reason for institutional barriers is usually insufficiently advanced transition, considering that Serbia is at the beginning of deep economic reforms. Administrative reform has not reached very far either, so that difficulties occur in enforcing the existing laws. The barriers, considered all together, discourage investors from investments and contribute to the maintenance of the old, socialist inherited market structure. Barriers to entry, along with barriers to exit, make the competitive degree of the markets in numerous industries lower than they could otherwise have been.

The strategy for increasing the competitiveness of the existing market structures in Serbia has to encompass, along with international trade liberalisation and good competition policy, all other areas where barriers to entry into businesses occurs – from reduction of political risk, across the judicial reform, to general economic reforms, since the total political, juridical and economic ambience determine the competitiveness of an economy.

Serbia possesses certain comparative advantages, which could lead to an inflow of foreign investments, and removal of existing barriers would certainly present good encouragement for investment. The goal of all encompassing changes, and particularly institutional reforms, should not only be improvement in relation to the existing situation, but of achievement of World standards. In a time of global economic integration, the position of a country is assessed by its position in relation to other countries, in our case mainly the counties in transition and development, which have, over the last few years, accomplished considerable progress.

If Serbia does not manage to reduce radically the barriers to entry and exit to and from production, then huge foreign investments will not materialise and the country will remain locked in the existing ineffective market structures.

5. CONSEQUENCES OF EXISTING MARKET STRUCTURES

The existing, market structures, identified and analysed in this chapter, represent a sufficiently accurate picture of the Serbian/Yugoslav economy. High supply concentration, a small number of companies, insufficient

competition, all these are characteristics of our economy, established ten years ago. The introduction of imports as a source of competition will certainly improve the picture of domestic market structures so far examined, but it will certainly not lead to spectacular results, that is to very competitive market structures. That is why the effect generated by such, non-competitive market structures must be properly understood.

First effect is certainly the existence of market power, which inevitably leads to reduction of supply and price increases. In other words, allocative loss (dead-weight loss) of social welfare occurs. Measurement of the deviation of prices with the existence of market power from the ones in conditions of perfect competition is a complex methodological problem for which no solution could be found, taking into account the data that was available. It is most likely that subsequent research, especially that which links market structure changes and price variation, could reveal the effect which recorded market power has on allocative loss of welfare, that is to reduction of social welfare.

The discussion within the framework of the introductory chapter demonstrated that competitive and non-competitive market structure could have opposite effects on production effectiveness. On one hand, the existence of monopoly as extremely non-competitive market structure can cause loss of incentives for both shot-term and long-term production efficiency. On the other hand, the possibility for monopoly to be established through defeating the competitors represents a motive for many producers to invest in research and development and, in that way, improve production efficiency. Although discussion on this subject, in principle, indicates that the pros and cons are closely balanced, it seems that it is not the case in the particular case of Serbia/FR Yugoslavia. Considering that, on our market, it relatively easy to gain and sustain a monopoly, there are no reasons to invest in research and development, i.e. for development of productive effectiveness. Extremely low investments in research and development in our country confirm this. Therefore, it can be concluded that the existing non-competitive domestic structures remove incentives for establishing, and increasing production efficiency, while establishing monopoly does not present a motive for development of long-term production efficiency. It is obvious that in Serbia/FR Yugoslavia there are far more efficient ways to defeat the competition.

It is very likely that the most powerful monopoly and other non-competitive market structures effects in our country are detected in the rent seeking area, that is in the allocation of resources to those activities which create administrative/legal monopolies, that is administrative barriers, weather barriers to entry or barriers to exit of new competitors. This conclusion is supported by the extensive state interventions that continued until the end of the year 2000, in which government (first of all executive authority) by its discretionary decisions gave some companies a privileged position. These firms are prepared to invest real resources in order to achieve such a privileged position, that is, to make sure that it will be them that are treated as privileged by the government. The way in which "businesses were handled" until recently in Serbia, the extent and character of the "network" which was necessary for successful business results and the degree of state intervention point to the fact that the waste of recourses

due to rent seeking was most likely the most significant negative effect of non-competitive market structures in Serbia/FR of Yugoslavia. That was distinctively perceivable in relation to the character and extensiveness of administrative barriers to import in order to preserve domestic non-competitive market structures and the immense monopoly profit which was open to the chosen few, those who were ready to share only with those who, by the adoption of a specific policy made such profits possible.

Non-competitive market structures were very often artificially established in industries dominated by inefficient socially owned companies that recorded huge financial losses. In that way those companies were kept alive artificially, and workers still had protected jobs accompanied with minimal, but more or less regular wages. The privatisation of companies which has begun creates the possibility for the inherited market structure to recur in combination with new, private owners of similar companies, which increases the probability of monopoly behaviour.

6. CONCLUSION

Analysis has demonstrated that domestic market structures are very non-competitive, when analysed from the aspect of supply concentration, and barriers to entry and exit. Unfortunately, such a result was to be expected. There are a few basic reasons for the result. The first reason for non-competitive domestic market structures lies in the modest size of the domestic market – it is less than ten million people with relatively low purchasing power. In those conditions it is inevitable that taking into account of only domestic supply leads to high concentration supply. In reference to this, it is necessary to introduce international trade, particularly imports into the analysis, that is examine imports as a source of competition on the domestic market. In the following chapter the effects of the introduction of new relevant variables in the empirical analysis will be examined.

The next element of non-competitive market structures is the legacy of the socialist economy. Although many authors have defined the socialist system in the former Yugoslavia as market socialism (which, by the way, is a contradiction in terms), it is obvious that it was a market only up to a point, in which the product market was not sufficiently developed and which was dominated by non-competitive market structures. The fact that they were less non-competitive in relation to the markets in some countries of so-called "real socialism" (completely planned economies) is not very comforting. The big companies, conglomerates and the similar firms, achieved huge market power under conditions of "market socialism". The market power of a large number of firms in Serbia/FR Yugoslavia increased with the fall of the former Yugoslavia, and with the introduction of the sanctions of the international community, followed by a drastic reduction in international trade.

The retention of collective ownership of company capital (socially and state owned) and insufficient bankruptcy preceding have enabled inefficient companies to continue trading, rather than exiting the industry, while the shortage of private capital reduces the possibility of entry for

new companies, particularly in some industries. This is another of the features of the current non-competitive market structures.

The efficiency of the new competition policy will be measured precisely by its ability to produce changes in the factors that lead to the existing non-competitive market structures.

III Market Structures and Foreign Trade

1. INTRODUCTION

In a small open economy the concept of the domestic market can be seriously misleading in characterising the market structures. The key question here is how to define a relevant market, that includes all relevant competitors to domestic supply. From the standpoint of an individual domestic producer it is irrelevant whether competition comes from abroad or not; any competition forces him to improve his efficiency. It is therefore necessary to extend the market structure analysis by including foreign trade flows, i.e. to analyse the effects of imports on competitiveness of domestic market structures.

Extending the analysis to include imports is not only of analytical significance (which enables us to reach a balanced analysis of domestic market structures) but it is also of great importance for creating an appropriate competition policy for a small open economy in transition. Modern competition policy stresses the removal of import barriers and barriers to new entries. It is considered that these simple and easy-to-implement policies have far greater chances of success as opposed to complicated competition policies and institutions, the eventual benefits of which can be determined only in the long term. However, this general statement, which cannot be rejected at this level of analysis, should be considered according to the extent by which imports significantly increase competition in the domestic market. In other words, removing barriers to imports is not necessarily an appropriate policy; as it is not certain as to what extent the character of market structures will change after its implementation. Furthermore, this influence significantly varies from one product to another and from one market to another. Hence the accurate determination of the effects of imports on market structures appears to be of key importance, not only on analytical grounds but also on practical grounds, which are aimed at formulating an appropriate competition policy and import liberalization policy as its inclusive element. This would help to dispel illusions that import liberalization can act as a panacea against all non-competitive market structures in a small open economy.

2. BARRIERS TO IMPORT

Import barriers were always present in the foreign trade policy of the FR of Yugoslavia (i.e. Serbia). Those barriers comprised various instruments,

such as high tariff rates, licences, quotas, contingents, the obligation for trading companies to report and pay a tax over import/export transactions, etc. However, these measures did not work, partly on account of corruption in various inspection, public administration and customs services, and partly due to multiple exchange rates, with the official exchange rate being continually heavily appreciated.

The fundamental characteristics of the foreign trade policy of the FRY, i.e. Serbia, during the 1990s were:

1. An extensive use of import and export licences, contingents, import value and quantity quotas. Licences were used for directly limiting imports to an approved level, whereas import quota regimes ensured that all imports above quota (or imports above an individual quota, which was 10% of general quota) accounted for a 2.5 times greater tariff rate than certified.

- A large and widening gap between the official and black-market exchange rates. Tariffs, – and tariff bases, were calculated using the official exchange rate, which heavily underestimated foreign currencies. Thus an effective tariff rate was much lower than the nominal rate.
- Relatively high and very varied nominal tariff rates. While the average nominal tariff rate ranged from 14% to 20% during the second half of the 1990s, the average effective tariff rate repeatedly remained below 5% due to an overestimated official Dinar value, which was applied in calculations.
- Extremely restrictive requirements for the registration and operation of foreign trade companies.
- Obligatory registration of each foreign trade transaction with the National Bank of Yugoslavia, and later with the Federal Ministry.
- Obligatory 5% to 10% sale of foreign currency earnings to the National Bank of Yugoslavia using the official exchange rate, which resulted in substantial losses for companies, and therefore discouraged exports.1

By the autumn of 2001, all obligatory registration forms were abandoned and the official exchange rate was harmonized with its black market value. New laws regulating foreign trade are based on following principles:

- Liberalisation of foreign trade activities aimed at strengthening competition in the domestic market, which would also discourage monopolies on the domestic market.
- Termination of import quotas and licensing (except for licences required by international conventions) aimed at speeding up and simplifying foreign trade transactions and reduction of non-tariff barriers to imports.
- Tariff rates becoming the only instrument for protecting domestic production. The customs tariff now consists of only 6 rates (1%, 5%, 10%, 15%, 20% and 30%) instead of the previous 36 rates. This should also significantly simplify and shorten the entire customs

1 The analysis shows that limiting exports can present a significant import barrier, especially if there is no other way to acquire export earnings.

procedure and reduce import expenditure. Tariff basis is calculated using the official exchange rate.[2]

2.1. Tariff barriers to imports

Tariff rates are applied to all goods imported into Yugoslavia, i.e. Serbia.[3] An average tariff rate was considerably higher during 1990s, occasionally reaching up to 20%. The average tariff rate was especially high for consumer goods, agricultural and food products, and sometimes amounted to 25%.

A maximum tariff rate (40%) was usually applied in the case of agricultural products. It is clear that tariff barriers to imports, at least the nominal ones, were considerably high, especially when taking into account nominal tariff rates and the Serbian industrial structure. However, tariff protection was not that effective since the Dinar was heavily appreciated. During the Q_3 of 2000, when the official exchange rate was six Dinars to one Deutsche Mark, the market exchange rate was 30 Dinars. Since the tariff basis was calculated using the official exchange rate, effective customs protection was five times lower. Bearing in mind the substantial disparity between the official and market exchange rates, the government at the time, in the first half of the year 2000, introduced an exceptional tax which was charged on imported goods (including imperishable consumer goods) and which corrected the effective official exchange rate of the Dinar to 20 Dinars for one German mark.

Tariff rates ranged from 0% to 40% and were extremely disparate, which significantly complicated non-transparent tariff and customs accounting. The customs tariff dynamic within the FR of Yugoslavia is detailed in the following Table.

It is evident that the most protected industries were, and still are: agriculture, food, weapons, textile, clothing, footwear and various ready-made products, especially imperishable consumer goods, such as cars. Equipment, chemical products and medicines were also highly protected.

A more detailed analysis reveals that the tariff rate structure has been greatly altered. Specifically, the structure had been completely random, other than that there were 36 diverse tariff rate protection levels, ranging from 0% to 40%. The new system consists of only 6 tariff rates: 1%, 5%, 10%, 15%, 20% and 30%. For the first time an attempt has been made to follow criteria, as detailed below. The first criterion is the product's position within the production process. Thus, an import lower in the processing cycle attracts a lower tariff rate. As for repro-material and equipment, tariff rates range from 1-15%, and rates for finished goods are set up to 30%. From the welfare aspect, there is a very high level of protection. The

2 The following are the main laws that regulate foreign trade: The Foreign Trade Law, The Customs Law, The Customs Tariff Law, and the Decision on tariff lines classification for imports and exports.

3 The foreign trade policy is under the authority of the Federal administration. However, the Republic of Montenegro has its own foreign trading policy as well as its own customs administration. Accordingly, federal policy is implemented in the Republic of Serbia only. Thus all data on imports and exports refers to the Republic of Serbia.

Table 3.1.
Dynamics of the average tariff rate

No.	Segment of customs tariff	Average tariff rate				
		Until Aug.'97	**Until Mar.'98**	**Until Sep.'99**	**Until Jun'01**	**Now**
1	Live animals, products of animal origin	16.57	18.06	17.83	25.74	19.71
2	Plant products	14.74	15.64	15.56	24.07	15.82
3	Fats and oil of animal origin and plant origin and products of their dissemination	15.77	11.83	10.91	4.00	8.65
4	Food industry products; drinks. alcohol and vinegar; tobacco and replacing tobacco products	21.08	21.59	18.62	8.24	22.85
5	Mineral products	11.35	6.30	6.01	5.89	2.99
6	Chemical industry products and similar industries	13.33	8.49	7.61	7.27	3.43
7	Plastic and plastic products; latex and latex rubber products	19.98	14.80	13.70	12.63	7.86
8	Raw bulk and scrap leather; tended leather. fur and fur products	17.45	12.49	11.07	11.07	9.11
9	Wood and wood products; wooden coal; cork and cork products;	15.41	11.33	11.14	11.08	5.67
10	Cellulose. paper and cardboard	18.70	15.27	13.91	13.60	8.56
11	Textile and textile products	24.05	20.42	20.14	18.72	14.63
12	Footwear; hats. caps and other head-covers	26.42	25.31	23.25	23.25	19.55
13	Stone products. plaster. cement. concrete; ceramic products; glass and glass products	21.85	18.44	18.15	17.70	10.79
14	Pearls; precious and semiprecious stone; precious metals and precious metal products	19.22	22.21	22.21	20.41	15.91
15	Plain metals and plain metal products	17.99	14.19	13.07	12.64	5.67
16	Machines. appliances and equipment; electro technical equipment	22.54	18.47	11.59	11.60	7.09
17	Vehicles. aircraft and supporting transport equipment	21.67	18.57	11.78	12.16	6.15
18	Optical. photography. cinematography. measuring. controlling. precise. medical. surgical equipment and apparatus	18.88	16.13	10.71	10.61	4.28
19	Weapons and munitions; their elements and kit	30.70	30.74	30.74	30.74	30.00
20	Various products	24.02	24.54	24.44	24.52	17.61
21	Art objects. collections and antique	14.42	10.00	10.00	10.00	5.00
	Average rate	19.18	16.19	13.45	14.50	9.37

second criterion is the ability to produce the imported goods within the FR of Yugoslavia. Hence, it is not important whether the product is produced in the FR of Yugoslavia or not, but whether it could be produced on a competitive basis.

Within the tariff rate structure, the following import charges are implemented:

- Raw material and components which are not produced in the country have a 1% tariff rate
- Raw material and components which are produced in the country in sufficient amounts have a 5% tariff rate
- Reserve components which are not produced in the country have a 1% tariff rate
- Reserve components which are produced in the country in sufficient amounts have a 5% tariff rate
- Equipment which is not produced in the country has a 1% tariff rate
- Equipment which is produced in the country in sufficient amounts has a 10% tariff rate
- Ready made agricultural products and industrial products which are produced in the country in sufficient amounts have a 20% tariff rate
- Consumer goods which could also be repro-material and which are not produced in the country have a 10% tariff rate
- Foreign consumer goods which effect social standard have a 15% tariff rate
- Consumer goods produced in the country have a 20% tariff rate
- Luxury consumer goods have a 30% tariff rate
- Products that had high production protection through the restrictive import regime, by quantity constraints and licences, have the highest tariff rate and attract up to a 30% tariff rate.

Analysis of the existing customs tariff reveals that the protection practice of major companies, such as Zastava, IMT, Sartid etc. has continued to a great extent. Aside from the promised cessation of all quantity (non-tariff) barriers, licences for some 20 iron products imported from Russia were sojourned. The government claimed that imports from Russia could not be reduced by tariffs (since there had been a free trade agreement signed with them) and as a result the domestic market would be thoroughly destroyed (for example, the steel mill Sartid in Smederevo). Strong political pressure was imposed, based on the fear that full liberalisation would close down a large number of unprofitable domestic companies. During the process of creating new customs tariffs, informal pressures aimed at maintaining high tariff rates continued.[4]

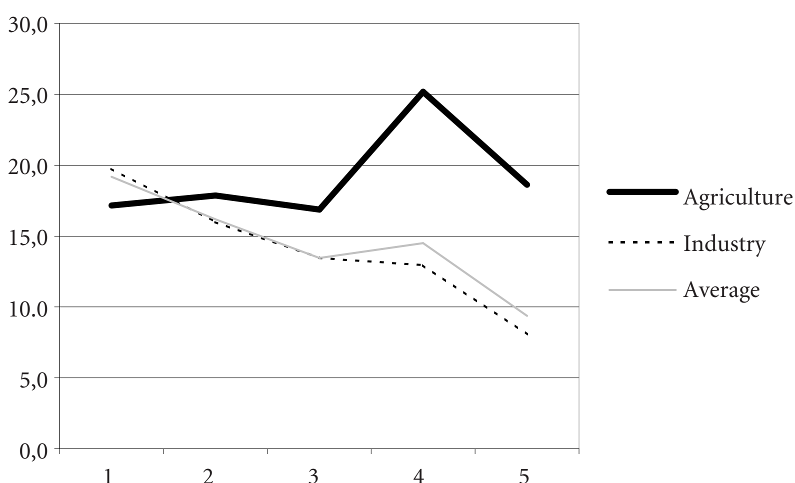
4 This outcome is logical when taking into account that some members of the Parliament are both ministers and directors of important firms, thereby creating a serious conflict of interest. For example, the Foreign Trade Chamber of the Federal Parliament rejected the Government proposal on liberalization. On closer inspection, it became apparent that almost all members of the Chamber were either directors or were closely related to the management of large state companies (IMT, Zastava, Obod, Stankom, FAP, etc.). This clearly illustrates the fact that Serbia still did not divide politics and business and that strong lobbies fought heavily for increasing their interests.

The dynamics of average tariff rates (non-weighted averages) are presented in the following table and picture (agricultural products comprise subsectors 1-4, and the rest are industrial products).

Table 3.2. Average tariff rates by product groups

	1	2	3	4	5
Agriculture	17.2	17.9	16.9	25.2	18.6
Industry	19.7	16.0	13.5	13.0	8.1
Average19.2	16.2	13.5	14.5	9.4	

Graph 3.1. Average tariff rates by product groups



Compared to 1997, the current average tariff rate (the second quarter of 2002) is twice as low. This reduction is very clear in the case of industrial products, while the tariff rate for agricultural products has remained similar.

Aside from the basic tariff rates, there were, and still are, seasonal tariff rates for some agricultural products. That rate of 20% is added to basic tariff rate. It is significant that the rate is applicable only for certain periods of the year (or season). Seasonal custom is applied when regular customs protection affects the stability of domestic production.[5]

5 Following the suggestion of the Federal Ministry, the Federal government can introduce seasonal tariffs not higher than 20%, the duration of which must be limited. The Government passes a decree. This procedure has been followed since 1992. Seasonal tariffs are implemented on flowers, tomatoes, onions, garlic, cabbages, salad, cucumbers, bananas, oranges, grapes, grapefruit, melons, apples, pears, apricots, peaches, plums and strawberries. This tariff is primarily used as means of increasing fiscal returns, rather than for domestic market protection. Besides, it remains unclear how additional tariff barriers improve the stability of the domestic market, as official documents frequently state.

There is a specific charge for agricultural and food product imports (prelevman), which is also enforced by the Federal government and is also aimed at the protection of the domestic market. – Unlike the tariff rate, which is an *ad valorem* tax, prelvman is accounted for on the basis of the quantity of goods, rather than their value.[6] Taking into consideration those extra taxes, it can be concluded that domestic agriculture is heavily protected. In this way, accounted protection can amount to 60%, which is very high.

Finally, there is a statistical fee of up to 0.5% (during the 1990s it was 1%) of the CIF value of imported goods. It is charged on all products, whether any tariff rate is implemented on imports or not.

Additionally, it should be noted that all domestic prices have to be increased by an extra 20% sales tax, which considerably increases total costs.

The conclusion can be drawn that, although the first steps in the right direction have been made, the state is still maintaining a foreign trade policy of protectionism. Businesses conducting foreign trade are deregulated and quantity (non-tariff) barriers are discontinued but tariff rates remain high, specifically for food and agricultural products. The high rate for car imports also amounts to 20%, which deviates considerably from approved methodology. This demonstrates that the Government, especially the Federal Parliament, is not quite ready to give up its interventions and continues to use high tariff barriers in order to solve microeconomic problems, such as the non-competitiveness of domestic producers, their low economic effectiveness, insufficient supply, high production and labour costs, etc.[7]

2.2. Non-tariff barriers

An import licensing regime was extensively used until changes in the Federal Foreign Trade Law (in the first half of 2001). This regime comprised 482 products of the SITC (Standard International Trade Classification). These products made 4.5% of total product numbers, and had considerable representation in imports.

Approximately a quarter, i.e. 100 products, were subject to licensing due to international conventions – products, such as explosives and poisons, which are on licensing regimes even in the countries with the most liberal foreign trade policies. Two hundred and three products were iron and steel products, and another 90 products were listed for the alleged protection of domestic producers (e.g. trucks and tractors). Forty-seven products of them were agricultural and food products. The remaining 40 products could not be grouped and were listed on the license for unknown

6 Following the Decree of the Federal government, importers are liable for a special charge (prelevman) for the import of agricultural products and food (livestock, pigs and chickens, animal fat, milk, yogurt, cheese and other milk products, eggs, honey, most fruits and vegetables, wheat, sunflowers, fruit juices, and spices. On average, prelevman is 10% of the product value. This measure existed both in former Yugoslavia and in the FR of Yugoslavia since it was founded.

7 In several cases the Federal Parliament introduced higher tariff rates than the Government suggested. It is evident that strong lobbies use their connections to protect producers from international competition.

reasons, such as second-hand cloths, medical equipment, etc. They also contained some products (chewing gums, bananas, chocolates etc.) whose import was very profitable.

Table 3.3. Non-tariff barriers

Import regime	
Licence	Wheat, barley, corn, Flour, sugar, chewing gum, white chocolate, chocolate and other cacao products, infant food, ice cream, certain products of wrought iron, non-oxidant iron products, iron leaguer products, steel products, steel and iron products, radio-transmitters, radar, antennae, wagons, tractors, vehicles for transport of passengers, heavy weight transport vehicles, helicopters, parachutes
Quantity quota	Live pigs, pork, milk products, leguminous vegetable, lemon, oranges, grapefruit, tangerines, continental fruit, pepper, Soya grain, different kinds of seed, hops, chicken fat, non-refined Soya oil, sunflower oil, corn oil, margarine, sausages, liver pate, candies, pastries, vegetable products, fruit juices, yeast, sauces, beer, wine, brandy, raw tobacco, cement, dark coal, acetic acid, mineral fertiliser, outer tyres (new and revitalised), leather cloths, cut wooden structure, cellulose, paper and cardboard, paper bags, fireproof bricks, wire, forged and pressed iron elements, copper products (rods, wire, pipes and profiles), TV appliances
Value quota	Vegetable seeds, leather gloves, fur clothes, fake fur products, woollen material, textile material, cotton material, carpets, towelling material, textile material prepared for treatment, textile linen, second hand cloths and carpets, footwear, raw wool, ceramic tiles, table and kitchen porcelain, cutlery, glass and glass products, cast iron products, different kinds of tools, knives and steel cutlery, electrodes, stoves, different kinds of pumps for fuel, air compressors, torches, refrigerators and freezers, dish washing machines, irrigation equipment, elevators, bulldozers, excavator, combines, washing machines, dry cleaning machines, machines for metal treatment, electro-motors, transformers, electric battery chargers, spark plugs, vacuum cleaners, electric boilers, light bulbs, measuring instruments, chandeliers, glowing objects

The greatest problem with licensing was non-transparency in decision-making. State administration employees (Federal Ministry for Economic International Relations and the Yugoslav Chamber of Commerce) were granting licences and contingents after receiving application forms. Thus licences were granted for particular products and for limited periods of time. Aside from this, the Commission had the discretionary right to grant or to refuse a licence requirement on the basis of subjective evaluations: whether the import threatened general interests, domestic producers' interests or whether the current account balance was in an unsustainable position. Due to such an extensive set of criteria, the commission was frequently corrupt and extremely liable to diverse political pressures.

The largest number of licences which related to food products (chewing gums, sugar-free chewing gums, sugar, bananas, chocolate etc.), as well as products whose import could earn good profits, were reserved for large importers, which were often had close connections to the government.

The quantity quota regime was applied to 307 products, and an extra 611 products were under a value quota regime. The table above clearly indicates that most products listed in those 1400 tariff lines (licences and quotas) are products not produced in Yugoslavia.

As previously mentioned, tariff and non-tariff protection was applied in a very non-transparent manner, along with the arbitrary process of decision-making and with the excessive discretionary rights of people who passed them on.

Listings related to goods which were protected by the highest tariff rate (40%) and by permit or a quota are especially intriguing. There were 134 products protected by quota and custom of 40%. Agricultural and food products, such as live pigs, pork meat, margarine, cheese, fruits, vegetables, delicatessen products, candies, pastries, fruit juices, beer, wine and brandies, were predominant. While there is a certain logic regarding the quota products (conforming to the predominant foreign trade policy of the high protection of food and agricultural products), the products listed on the licence regime clearly demonstrate that they were part of a policy confining anyone who was not directly associated with the government in conducting these profitable businesses.[8]

In any case, although there is no material evidence of corruption, or at least, they are not obtainable by the public, profits were was so high that all subjects involved in this process, starting with importers and ending with the Commission which granted import licences, had clear motives for corruption. In addition, the import lobby pressured legislators to expand non-custom protection considering that those measures, by limiting import supply, generate greater income.

Non-custom barriers, namely quantity restriction, acted as very powerful barriers to import. Foreign trade reforms in the first half of 2001 had put an end to them, except for goods on international protection list and the specific case of the ferrous metal industry.[9]

The long-standing practice of non-custom barriers to imports in Serbia, i.e. the FR of Yugoslavia, deserves a comment on governmental motivation to implement those barriers. Firstly, most administrative barriers to imports were established only after the imposition of trade embargoes on the FR of Yugoslavia. Instead of liberalising foreign trade in order to maximise it, additional barriers to importation were introduced. Secondly, non-custom barriers to imports were applied

8 That list contained products such as sugar-free chewing gums, sweet chewing gums, white and dark chocolate, flour, oil, used tyres and used trucks, the imports of which have always been very profitable.

9 In spite of the fact that Yugoslavia has a free-trade arrangement with Russia, there was a legal possibility to levy tariffs on iron imports from Russia. Still, the Russians were not willing to accept such changes to the FTA. It is very likely that non-tariff barriers would not have been introduced if the Russians agreed to change the FTA.

simultaneously with the overestimated official exchange rate of the dinar, which considerably reduced the effectiveness of customs protection, as well as reducing tariff revenues. This practically excluded motives for the protection of domestic producers and only had motives for increasing fiscal income. There were no motives to protect domestic producers, which can be seen from the product listing which referred to non-custom barriers – the point being, they were mainly in regard to products which were not produced domestically, or were produced in insufficient amounts. Thus the fact remains that non-custom barriers mainly referred to products with highly profitable imports, leading to the conclusion that it is was a question of highly profitable import businesses, which were designated for the chosen few. Motives for the introduction of such barriers to import should be explored pertaining to rent-seeking mechanisms.

2.3. The Accession to the World Trade Organisation (WTO)

At the beginning of 2001, the FR of Yugoslavia submitted an application to join the World Trade Organisation (WTO). In response, in February 2001, the WTO General Assembly formed a working group to assess the application. During this process, Yugoslavia would have the status of a bystander. The former SFRY was among the first GATT (General Agreement on Tariffs and Trade) signatories in 1947 and had remained a member until 1993 when the GATT General Assembly decided that the FR of Yugoslavia could not automatically inherit then membership assigned by the SFRY. Considering that the SR of Yugoslavia was not a participant at the Uruguay round of negotiations, it could not become one of the WTO founders.

After the political changes in the country that took place in 2001, political tactics for the beginning of the process of joining the WTO were conceived. The Federal Government sees these negotiations as a vital constituent of the reintegration process into international institutions. Also, in the process of globalisation, its participation in world industry and trade is essential and the WTO is its most significant representative. Aside from this, the accession process is an excellent incentive for all governments to carry out necessary reforms in line with and according to timings required by WTO terms.

The process of joining the WTO is very complex. It necessitates very detailed and transparent laws referring to product trading, services, copyright protection, investment protection, etc. Apart from the fact that Yugoslavia will have to comply to these rules and that it will have to coordinate its legislature regarding foreign trade fields, the process of joining requires negotiations with all interested members of the WTO regarding its tariff rates. This refers to factual tariff rates, but it also means that tariff rates cannot be raised above set levels. Matters of subventions and trade in services also have to be successfully negotiated.

It should be emphasised that all WTO members enjoy a reduction in tariff rates which is agreed during any bilateral negotiations. This means that a considerable decrease in customs barriers to import should be expected, along with a ban on any new non-tariff barrier. Aside from this,

this would considerably improve the position of the FR of Yugoslavia exporters in the world market.[10]

2.4. Free trade zones agreements

At present (second quarter 2002), Yugoslavia has ratified agreements on foreign trade with Macedonia and Russia. The agreement with Macedonia was signed in September 1996. Both sides agreed to completely remove all tariffs, as well as prelevmans and seasonal customs. Moreover, they are obliged not to introduce new quantity limitations on imports and exports. There is an obligation not to introduce subventions that do not comply with WTO standards.

Principally, the free trade policy is applicable to all products, except for some that are not listed. There are four lists; two on imports and exports from FR Yugoslavia and two more for Macedonia. According to the lists for the year 2000, 97.5% of tariff numbers are on a free trade regime for Yugoslav imports. Also, approximately 98.8% of tariff lines is on a free trade regime for Macedonian imports to FR Yugoslavia. This percentage is lower if, instead of tariff line numbers, import range is used. Approximately 90% of import and export was on a free trade regime. Products that are listed are in fact on quantity quotas. This means that when the quota is achieved, standard tariff rates are applied. Quota extents, as well as products that are listed, are negotiated annually.

This FTA is not particularly significant, especially since the UN embargo was lifted which lead to a significant rise in market competitiveness in Serbia and changes in market structure. Generally speaking, the scope of foreign trade with Macedonia is relatively small. Yugoslavia makes a trade surplus and Macedonian supply is insufficient to affect overall supply in the domestic market, although some agricultural products could be possible exceptions. Also, the Macedonian market (current and potential) has a very limited import potential.[11] However, the application of this agreement is liable to the influences of daily politics. Macedonia has recently one-sidedly removed numerous Serbian products from its free trade regime as a response to the refusal of the Serbian Government to issue licences for the transit across Serbian territory of petroleum and petroleum derivatives for delivery to Macedonia.

The second free trade agreement was signed with the Russian Federation. This agreement refers to all products, except for some listed separately. There are 499 products listed, which cannot be imported to Russia without tariff, and 195 products that are similar to the Yugoslav list. This means that 94% of tariff lines apply a free trade regime when the goods are imported to Russia, while the equivalent percentage with the SR

10 Political problems concerning the present organisation of the state might seriously slow down the path of accession. There are three different customs regimes in the FR of Yugoslavia, since Kosovo and Montenegro use their own, rather than the Federal foreign trade legislation.

11 According to the data for 2000, foreign trade with Macedonia amounted to $330 million, of which Yugoslav exports made $200 million, and exports from Macedonia amounted to $130 million.

of Yugoslavia imports is 97.7%. However, these numbers are quite variable when import weights are taken into account, as oppose to tariff lines. According to the data from the first half of – 2001, only 76% of Yugoslav imports was on a free trade regime, while the corresponding figure for the goods imported from Russia to Yugoslavia is approximately 98.2%. However, it should be emphasised that 86% of Russian imports are natural gas and petroleum.

In response to the data about the listed number of products for which a free trade regime is not applicable, it could be said that this agreement is relatively unfavourable for the FR of Yugoslavia regarding the position of Yugoslav exporters in the Russian market. This could be affirmed by analysis of the listed products: the Russian list is dominated by products which are the most important Yugoslav export articles, such as agricultural and food products, wine, cigarettes, medicines, textile, furniture, etc.

On the whole, this agreement does not represent any special new privilege for Yugoslav producers considering existing exporters from Yugoslavia. However, the existing FTA presents a substantial encouragement to foreign investors, who could start production in Yugoslavia and access the Russian market on very favourable terms. [12]

From the standpoint of increasing competitiveness through imports, the agreement with Russia is insignificant, since the competitiveness of Russian industry in finished products is rather poor.

As for future free trade agreements, within the second round of the Stability Pact for South-Eastern Europe there is an initiative for free trade liberalisation within the region. Under this initiative, a protocol is signed for the introduction of a free trade zone in Balkan countries: the FR of Yugoslavia, Croatia, Bosnia and Herzegovina, Albania, Romania, Bulgaria and Macedonia. According to this protocol, by the end of the year 2002, it is necessary for bilateral agreements to be signed that would clearly define products that are to be excluded from this agreement. The protocol envisages that at least 90% of trade value must be freed, and also no quantitative restrictions will be allowed. For the time being, it seems that the products that will be excepted will be mainly agricultural and some food products.

At present, there are assigned, but not yet ratified, Free Trade Agreements with Bosnia and Herzegovina and Hungary, which expressed a wish to sign this Agreement although it is not among protocol-assigned countries regarding the establishment of a free trade zone. Negotiations are currently (second quarter of 2002) being conducted with Croatia, Slovenia, Bulgaria and Romania. Negotiations are also being conducted about the redefinition of the agreement with Macedonia. Slovenia and Hungary agreed to grant privileges (asymmetrical treatment) to Yugoslavia, by lifting tariffs from all Yugoslav imports, and that

12 Rules of origin defined in the FTA must be met prior to granting free tariff export to Russia. The export goods either have to be completely produced in one of the signatory countries, or have to be processed within a country a sufficient amount. The "sufficiency condition" is met if less than 50% of the product value is imported from a third country. Similar (but far more detailed) conditions are listed in the FTA signed with Macedonia. Annex 2 of this agreement lists minimal processing requirements for 483 tariff lines which have to be met for defining a "domestic" product. These are the most detailed rules of origin in Yugoslavia nowadays.

Yugoslavia can for the time being apply half of the valid tariff rates to its products. Likewise, Yugoslavia applied an asymmetrical approach to Bosnia and Herzegovina. Negotiations with the remaining countries are conducted respecting symmetrical tariff lifting.

These free trade agreements will have two advantages. Directly, they will increase import competitiveness, since producers from these countries will become more competitive in the – domestic market due to tariff lifting. This advantage is slightly reduced by contracting asymmetrical agreements with Slovenia and Hungary so that, after ratification of those agreements, tariff barriers will still exist for some time. The second advantage would act indirectly by increasing hard currency incomes within a country, thus enabling further increases in imports. From the viewpoint of market structure competitiveness in the FR of Yugoslavia, a prospective increase in imports has another significant effect: foreign investors are interested in accommodating as large a market as possible, so that by constituting a free trade zone, their interest to invest in Serbia, that is the FR of Yugoslavia, increases. An increased number of agreements, that is an increased number of countries with which a free trade regime is applicable, increases the market where foreign investors, i.e. their companies, can export their products without custom charge. Therefore the contracting process of new agreements related to free trade zone reduces barriers to entry for new (foreign) producers, which thereby increases the competitiveness of the domestic market.

From the standpoint of foreign trade exchange, the European Union is especially significant for Serbia/FR of Yugoslavia. That is why the decision of European Union, made in March 2000, to allow one-way (asymmetrical) facilities for the so-called West Balkan countries is very important, i.e. that there will be no custom charges for the goods from this region, except for an insignificant number of exceptions. Those trading advantages are crucial for Serbia/FR of Yugoslavia, since the trade with European Union countries encompasses almost 50% of total trade. Enforcement of this decision, which allows an easy approach to the EU market for more then 95% of products, was postponed for a short period hence the disagreement within Yugoslav framework, due to the problematic origin of goods from Montenegro.

Altogether, foreign trade policy reforms, related to international institutions and bilateral agreements, could be highly assessed. However, it seems that previous practice has continued: free trade agreements are assigned under *de facto* political pressure. Formerly, the pressure was internal, intended to provide illusion of the co-operation with the world (such as the case of agreements with Russia). The pressure is now external, the international community wishes to reconnect disconnected connections and introduce permanent, sustainable stability to the region via the introduction of a Balkan free trade zone.

Such orientation has a few critical points. First, and crucially, is that sufficient trade range simply does not exist among Balkan countries at present. Although they are geographically very connected, these countries simply have no interest in trading amongst themselves. The countries in question have similar industrial structures, similar inefficiencies and generally similar problems. However, it is reasonable to assume that foreign

investors would rather invest in industry and in infrastructure of a relatively big market (approximately 60 million people) then in a few small ones. If this happens, Serbia/FR Yugoslavia might become, as the geographical centre of the region, one of the attractive places to invest in, at least in this part of the world. Certainly, in order to facilitate this, much more work needs to be done aside from the simple signing of free trade agreements with neighbours.

The biggest interest is to acquire benefits improving trade structures via creating a free trade zone. The weakening of many domestic monopolies would occur while competitiveness should increase considerably. This is especially so because other countries have already achieved relatively higher standards since considerable numbers of foreign companies penetrated the market in previous years. New foreign investments, i.e. new entries to the domestic economy, inevitably reduce the concentration of supply, i.e. to increase the degree of competitiveness of the market structure.

2.5. Protective measures and antidumping

Existing rules offer the basis for protective measures against disloyal foreign competition. The following table offers possible measures and a legal basis for their activation, as well as whether and when those measures were practically applied.

Table 3.4. Protective measures

No.	Type of protective measure	Legal basis	Whether it is applied
1	Increased tariff rate up to 70% for import from the states where FR of Yugoslavia is not MFN	Paragraph 3. Custom tariff law	Not applied
2	Additional custom charges	Paragraph 44. Paragraph	Not regulated
3	Seasonal custom up to 20%	Paragraph 45. Paragraph	Regulated and applied
4	Measures for disturbance and damage elimination which is caused by considerable import increase of certain products or when import of a certain product is executed by means which could lead to disturbances of the domestic market and which could cause considerable damage to domestic production	Paragraph 59. Foreign trade law	Not applied
5	Antidumping	Paragraph 60. Foreign trade law	Not applied
6	Compensating tariff rate	Paragraph 60. Foreign trade law	Not applied
7	Exceptional custom protection measures by which the standard tariff rate can be increased, reduced or terminated	Paragraph 49. Custom law	Not applied
8	Exceptional charges (prelevman) for agricultural and food products import proizvoda	Paragraph 1. Exceptional import charge for agricultural and food products law	Applied

The table shows that from eight potential protective measures which could be regulated in accordance with Yugoslav legal system, only two are applicable and they are both connected to protection of agricultural and food products.

As previously mentioned, the legal basis for the introduction of protective measures exists in cases when a particular product causes, or can cause, damage to domestic production. However, these protective measures have not been applied so far, except in seasonal custom cases and prelevmans.

During the ten years of existence of the FR of Yugoslavia, special protective measures were not applied even in cases when conditions were met, due to the fact that, for a long period of time, the FR of Yugoslavia was under economic sanctions.

Our foreign trade system envisages conditions and procedures for antidumping measure application. However, regulated antidumping procedures have not been applied in the FR of Yugoslavia so far.

Decrees of paragraph 60 of the Foreign Trade Law is entirely related to procedures relevant to antidumping. Regulated procedure is entirely based on decrees related to Agreements of Applicability in paragraph 6: General Conditions for Custom Charges and Trade pertaining to the year 1994, which were ratified by FR of Yugoslavia in December 1998.

It is assumed that dumping exists when a certain product is imported at the price lower than its normal value and in thus causes or threatens to cause serious damage to domestic production. Companies, enterprises or legal officials can submit a proposal for the commencement of antidumping procedures to the Yugoslav Chamber of Commerce.

The Yugoslav Chamber of Commerce decides whether dumping existed and whether it caused any damage. Following the examination of evidence, the Chamber of Commerce has 30 days, starting from the day of submission, to foreword the case, with its comments, to the Federal Ministry for Economic International Relations. Still, the very introduction of a Chamber of Commerce as an association of domestic producers to the process, with interests to reduce the competitiveness of foreign producers, can lead to biased decisions by which completely loyal and legal foreign competition could be judged as dumping. Therefore, this can present hidden barriers to import.

The Federal Ministry for International Economic Relations examines proposals for commencement of antidumping procedures; executes the procedures and implements measures in accordance with the Law on Implementation, paragraph 6, GATT 1994. Decisions about commencing and completing the procedures, as well as on executed measures, are announced in an official FRY paper. No claims can be raised against this decision but there is a possibility to bring the case before the Supreme court.

If it is legally concluded that the import causes damage, or if there is a danger to domestic production, the Federal Ministry for International Economic Relations assigns an antidumping charge.

2.6. Technical regulations, standards and procedures of certifying compatibility

Standards and technical regulations are defined as rules established by the Government and have to be accomplished so that a certain product can be sold at a certain market. They are considered as technical barriers to import, since they increase production and transport costs, which reduces competitiveness of imported goods, so that the significance of imports as source of competitiveness is reduced. Furthermore, extra costs arise since working capital has to be increased.

Imports are subject to obligatory examination, aiming to establish whether they meet trade conditions for the Yugoslav market. Depending on the type of product, conditions are set, which have to be met for trade in the Yugoslav market. Special conditions are set for following products:

- food products and products for common use
- technological products, semi-finished products, raw material and waste made from endangered flora and fauna species
- animal products, raw material and waste of animal origin, seeds for artificial insemination and fertilised animal ovaries
- particular agricultural and food products
- plants, pesticides and fertilisers
- measuring instruments
- specific technical products
- motor vehicles

Conditions for entry into the Yugoslav market, fundamentally speaking, are equal for importers and domestic producers. As a result, obligatory attests, certificates and other documents that have to follow imports, should not present barriers to foreign companies. This attitude should be not be taken for granted, considering that indicated rules are bilaterally executed, so that rigorous application of these regulations is unequal amongst domestic and foreign producers.

For imports of a technical product, prior to customs, it is obligatory to provide an attest. The attest confirms that the product meets technical conditions for sale on the domestic market. The importer submits a claim for attest issued to the Federal Bureau for Standardisation, which makes a decision whether the product has to be attested. If it is not necessary, the Bureau issues a certificate that is used in the custom process. If the product has to be attested, the Bureau notifies the applicant which laboratory is appropriate for testing. Following the testing, if the product meets regulations for the Yugoslav market, attest is issued as a basis for custom procedure – and the product enters the Yugoslav market.

For certain products for measuring: length, level surface, mass, pressure, density, concentration, temperature, time and frequency, as well as electromagnetic field measuring, it is necessary to provide a certificate issued by Federal Bureau for Measures and Precious Metals, which confirms that the product satisfies conditions regulated by law, in order for this product to be imported into the – FR of Yugoslavia. The certificate is issued on the basis of a written request. If the product passes the procedure, a certificate is issued and the product can be subjected to custom

charges. Certificates can be obtained either from the previously mentioned Bureau or from an authorised laboratory.

For the importation of some products it is necessary to provide a statement from the Federal Bureau for Standardisation showing that those products comply with the rules of homologisation (homologisation statement). This obligation exists for vehicles, equipment and components which are to be build into vehicles and which can endanger traffic safety, the environment or the conservation of energy. A homologisation statement confirms that vehicles, equipment and components comply to harmonised technical conditions. Importers or consignation retailers foreword homologisation enquiries for cars, equipment and components to the Federal Bureau for Standardisation. The testing of vehicles, equipment and components for homologisation can be entrusted to an authorised laboratory by the Bureau. On the basis of the test results, that are registered in a report for that type of vehicle, component or equipment, a homologisation decision is issued when the Federal Bureau assigns the number of homologisation. The Federal Bureau for Standardisation accepts international homologisation document for vehicles, equipment and components according to rules which are in addition to the agreement on issuing unique technical regulations for vehicles with wheels, equipment and components that could be built into those vehicles and about the mutual acceptance of homologisation standards in line with regulations signed in Geneva in 1995. Homologisation has to be approved before the product is released for sale in the FR of Yugoslavia, i.e. before import. Therefore the following could be concluded:

- from an economical and technical point of view, all inquires related to technical regulations and standards are comprehensive and equal for domestic and imported products
- imported products which comply with technical conditions could be subject to customs duty collection without any specific difficulties.

Imports to the FR of Yugoslavia have to satisfy conditions which refer to quality and which are regulated for sale in the Yugoslav market. These are sanitary, veterinarian and phyto-sanitary conditions as well as conditions related to environment protection. Special regulations concern the quantity and quality control of agricultural and food products. Technical products, measuring instruments and motor vehicles are regulated separately. As for imports, quality control is obligatory for 53 groups of agricultural and food products.

The laboratory testing of products encompasses the analysis, or superanalysis, which determines whether the product complies with regulated quality conditions that refer to chemical ingredients and the content of certain products. Sampling is carried out by standard methods and equipment for sampling of a specified product. The quality control of imports defines whether the product complies with the designated quality for sale in the Yugoslav market. The quality control of imported products without quality regulation accounts for content quality, as well as the content of the product, and compares them to similar products. Such quality control is carried out at the border crossing shortly before collecting custom duties. After completing the quality control process, a quality certificate is issued which confirms that the product complies with quality conditions

for sale in the Yugoslav market. A claim for issuing the certificate is submitted by the importer. Products for which quality control is inquired cannot be imported into the FR of Yugoslavia without a certificate.

A claim for issuing the certificate includes the description of the type and name of the product, the exporter, the country of origin and the means of transportation: type and number, loading point, stop points, product value, identification of the person which will pay reimbursement, number of units, gross and net, mass and main data of product quality. Supporting evidence along with a claim should confirm the claimed data. For products that have no regulated quality, the importer has to additionally submit a complete product specification.

An import certificate includes: the name of the person which granted the certificate, the number of the certificate, the name and residence of the importer, type and number of the transport means, the country of the origin, the name of foreign supplier, loading point, stop points, the type and name of the product, goods units number, date and number of lab analysis, gross and net mass of the product, a statement confirming that the product complies with designated conditions, the date and place of certificate issue and the signature of an authorised person.

The time required for testing the technical characteristics of certain products depends on the type of product and type of testing. If the test is done with the aim to issue an RSO attest, testing lasts between two and seven days, but in the case of protection attests, tests can last up to three weeks. According to the rule, only one product unit is submitted for technical testing.[13]

A particular problem is that imports are often tested in authorised laboratories owned by domestic producers that are their direct competitors. In those conditions, it is in the interest of the domestic producers to at least postpone, if they are not able to eliminate, attest issuing. Therefore an absurd situation is created in which products of the companies with world reputation, which already have all necessary attests in European Union, are waiting for domestic attest issuing.

2.7. Sanitary and phyto-sanitary measures

Sanitary and phyto-sanitary measures are applied to human and animal health as well as environment protection. These measures can considerably limit trade and for this reason they are subject to many international standards, conventions and recommendations.

Quality control and sanitary, phyto-sanitary and veterinary protection measures, as well as the control of using of these measures in Yugoslavia are in line with control measures in the European Union. Bearing this in mind, it could be concluded that measures in this field, generally speaking, do not present significant barriers to imports. However, the practice of applying these measures is frequently rather biased, which eventually creates barriers to imports.

13 The costs of technical testing are not high. Testing for obtaining an RSO attest costs $165, of which $15 is an administrative tax, and the rest are the costs of the laboratory that does the testing. Protection attests cost $600.

Food products and consumer goods have to comply with certain conditions that refer to health standards. Food products must be considered edible or drinkable both in processed or raw form.

For imports of technology products, unfinished goods, raw materials, waste, endangered species and genetic samples of wild flora and fauna, biotechnology and genetically modified organisms inspection is performed at the border crossing which refers to environment protection.

The federal inspector for environmental protection has the right to:

- prohibit the import of engendered flora and fauna species whose trade is prohibited by international agreements and to order return to the sender
- prohibit the import of genetically modified organisms which do not meet international agreements and to order return to the sender
- prohibit the import of technology and biotechnology which can endanger the environment
- prohibit the import of products, unfinished goods and raw materials which can endanger the environment and to order return to the sender
- prohibit the import and transit of waste if it is performed contrary to assigned conditions and to order return to the sender
- order other measures for the elimination of risk from endangering the environment in the border zone

Specified measures are introduced in the form of a written decision which is final and against which no charges can be raised to the Supreme Court.

The import, export and transit of wild flora and fauna, genetic resources, biotechnology and genetically modified organisms are authorised by the relevant Federal Ministry.

The importation of animal products, raw materials and waste of animal origin, seeds for artificial fertilisation, fertilised ovum for animal reproduction and other items which could transmit disease is restricted to a few border crossings, designated by the of Federal Ministry for Agriculture. Parcels of specified products are liable to obligatory veterinary-sanitary examination by the federal veterinarian at the border at the customs veterinary station. These parcels must be supported by state of health certificates, if international agreements do not require otherwise. The inspection is performed during loading and reloading.

In import decisions, the federal ministry assigns veterinary-sanitary conditions for imports of – animals, products, raw materials and waste of animal origin, seeds for artificial fertilisation and other items that could transmit disease. Import is prohibited for specified products if the exporting country or transit countries are contaminated with contagious disease, or if there is a reasonable fear that contagious diseases could enter the country. The federal ministry can decide to postpone inspection or order quarantine for parcels containing products that could contain contagious elements.

Plants could be imported only at border crossings which have stations of the Federal Ministry of Inspection for Plant Protection.

2.8. Other barriers to import

Aside from specified barriers, there are other less apparent, indirect barriers to import to Yugoslavia.

The poor transportation infrastructure presents an important barrier to imports. The basic infrastructure in Serbia is quite advanced, if nominal capacity is taken into account. However, years of neglect, insufficient investment and poor maintenance, as well as war damage (the result of bombing in 1999), have lead to an inadequate and ineffective road and rail network. The condition of the infrastructure, together with inefficient transport companies, has led to a considerable increase in transportation costs, thereby leading to more expensive imports.

Roads in Serbia are generally in a very poor condition. Although the road network is relatively developed, with more than 400 km of highways, inadequate maintenance has caused deterioration and as a result increased the costs of vehicle maintenance. According to preliminary EIB estimates, only 30% of roads are in good condition. Although the structure of transport companies is relatively good (with strong competition and private companies), new vehicles are missing. Presently, the majority of vehicles are not allowed to travel to the EU countries.

The railways are in an even worse condition. The basic railway infrastructure is outdated: train speeds are limited in many segments of the network, which leads to poor competitiveness of the railways when compared to roads. However, some products have to be transported by rail, therefore high costs cannot be avoided. There is a state monopoly in railways. Railway companies are extremely ineffective and it cannot provide a modern and fast service. Their capacity is considerably reduced (according to some estimations, up to 80% of wagons are unusable).

The closest sea port for importers to Serbia is the Port of Bar. The port itself is in a poor condition with no modern receiving and loading equipment and an insufficient service supply. The main connection to Serbia is the Belgrade – Bar railway, which is also in a bad condition. There is little competition from road transportation in this section of the network due to the high associated costs in that part of the country (a result of the current bad condition of the road infrastructure between Belgrade-Podgorica-Bar).

Danube ports are poorly equipped for goods loading so that the potential of river traffic cannot be utilised, except in the fragmented case of cargo and petroleum. Additionally, the Danube is not easily navigable due to the remains of bridges that were destroyed during the bombing in 1999. At the beginning of 2002, removal of these remains from the Danube commenced, which will probably lead to reconstruction of destroyed bridges and the replacement of pontoon bridges that present serious navigating obstacles.

Another barrier to foreign trade, and therefore to import as well, is the very strict regime of visas for Serbian citizens, including businessmen, for travelling to the EU and other countries where the most important importers to Serbia are based. It is extremely difficult and expensive for businessmen to obtain visas to visit fundamental trade partners.

One of the most important barriers to increasing imports is an insufficient export capacity of its industry. The low level of exports cannot gen-

erate an abundant inflow of foreign currency and so lower import demand. In the long run, a balance of payments deficit arises which further pressures the country to introduce import barriers and thus reduce imports in order to tackle the large foreign trade deficit.

A fundamental barrier to Yugoslav exports is the poor competitiveness of domestic industry, concerning the price, quality, marketing, and available credit arrangements. That problem existed before the introduction of UN sanctions from 1992. Until 1992, a large proportion of exports went to the Soviet Union as well as to the markets of the other CIS (being, at the time, closed for Western goods), and also to "non-aligned" countries. Nowadays, the situation is very different. During the sanctions the situation was dramatically worsened.

The reason for this is insufficiency is a lack of new investment, in equipment as well as in human capital. Aside from this, the existing equipment is practically obsolete, reducing competitiveness to a very low level. Possible export bases can be created in small and medium-sized companies which specialise in certain areas and which acquired some experience during last 10 years. However, characteristically they are more directed toward the domestic market (although some exceptions can be found). At present, competitive sectors are agriculture, raw materials, textiles, and some services. Eventual further development of software production could make this sector competitive, but that is not the case for the time being.

One of the main problems is a decline in relevant information flows. First of all, there is no regular information exchange with the international business community. The telecommunication network is underdeveloped, which means that access to the Internet is considerably troublesome, especially with *dial-up* access in small towns and villages. It can be noted here that the competence of domestic managers concerning modern management methods, marketing, financial management, etc is very poor. This makes the situation even more difficult. Therefore, preconditions for progress in Serbia are, first of all, development of the communication infrastructure, staff development and the training of new professions.

The structure of the current account balance of the FR of Y is quite specific. Namely, aside from import and export flows, important lines are remittances, pension receipts, and incomes from the sale of ex-Yugoslav Republic property. Also, due to the UN sanctions, interest payments, as well as profit transfer, is practically insignificant.

According to official data, in the period 1995-99 a deficit of $5.5 million was created, that is approximately 12% GDP. However, allegations that this deficit is overestimated are just. There are a few reasons for this. Primarily, large segment remittances were not recorded and thus the current account deficit is also overestimated.

In conclusion, Yugoslavia is in a difficult position as far as the current account balance is concerned. In the future, considering that a foreign trade surplus cannot be relied on, the situation can hardly improve. If there is no inflow in the process of privatisation or through direct foreign investments, it seems as though Yugoslavia will continue its debt accumulation. A positive aspect is the considerable inflow of foreign currencies from Yugoslav citizens living abroad. It seems noteworthy that in a year when imports are twice as large as exports (2001), with practically no

Table 3.5. Current balance of payment

Year	Current Account, mil. USD				
	1997	1998	1999	2000	2001
Balance of Goods	**-2,070**	**-1,816**	**-1,619**	**-1,788**	**-2,834**
Export	2,756	3,033	1,676	1,923	2,003
Import	4,826	4,849	3,295	3,711	4,837
Balance of Services	**456**	**493**	**228**	**331**	**436**
Export	818	914	471	624	759
Import	362	421	243	293	323
Net factor income	**25**	**8**	**-41**	**41**	**-26**
Inflows	59	57	43	53	48
Payments	34	49	84	12	74
Withdrawn currency from private international accounts	**310**	**655**	**668**	**848**	**1,237**
Inflows	662	1,033	948	1,132	1,698
Payments	352	378	280	284	461
Current Account Balance, excluding Grants	**1,279**	**-660**	**-764**	**-568**	**-1187**

foreign investment, foreign currency reserves grew quite high. This is happening primarily because the population has started to sell their reserves to the banks, rather then to street dealers, and because of the inflow from international community donations. In accordance with this, non-competitive exports will most likely create a rise in the foreign trade deficit, thus creating an important barrier to our imports.

2.9. Conclusion

A large move from high to moderate protectionism has been already achieved. Reforms in the foreign trade policy have removed many barriers to imports. However, analysis indicates that there are still considerable barriers to imports. Some of them are not easy to remove, especially in the short term. In other words, even in the longer term, particular barriers to imports will remain. That should be taken into account when examining the influence of imports on the market structure.

3. IMPORTS AND THE MARKET STRUCTURES

3.1. Introduction with methodological remarks

In order to create a comprehensive analysis of a domestic market structure, Serbia was treated as a small open economy. Thus foreign trading had to be included in the analysis. Considering the differences in nomen-

clature used by the Federal Bureau for Statistics (whose data is used for domestic production: supply analysis) and the Federal Customs Administration (whose data is used for import and export analysis), the direct integration of the data was not possible. An exceptional problem, which turned out to be irresolvable, is that in certain number of cases different measuring units were applied, making comparison impossible (for example, clothing production is reported in square meters, and foreign trade flows are registered in tons).

Out of 1,882 products surveyed by the Federal Bureau for Statistics, 520 are clearly identified within the custom tariff, either in one or in several tariff lines. One hundred and nine products were identified by name but, for various reasons, there was no way to compare production and import levels. In the case of 97 products, one tariff line corresponded to several products from the nomenclature of the Federal Bureau for Statistics, making it impossible to compare domestic and foreign trade flows. The remaining 1,156 products could not be equally identified within the custom tariff. The reasons for such numerous unidentified products vary. Firstly, certain products are *non-tradables* by nature (for instance, warm water production). Secondly, there are differences in the classification methods of the same products (for example, in one nomenclature, internal-combustion engines are classified in two groups, up to 50 kW and above 50 kW, whereas in the second one up to 30 kW, between 30 and 70 kW and above 70 kW). Such technical problems eliminated large number of products from further analysis.[14]

In the case of the 520 products, net imports are calculated by subtracting exports from imports. The total domestic supply was then obtained by adding net imports to the production. Out of this group only net importing products were included, whereas net export products were excluded from further analysis because of illogical results – obtained supply share was above 1 (considering that total supply was lower than domestic production). In the case of certain products, even total supply obtained in this manner was negative (larger net exports than the production) which could be explained through re-exporting, through stock sale from previous years, as well as through poor evidence of domestic production. Fifteen products, with no domestic production were excluded as well. In this manner a list of 289 products with positive net imports was created and further analysis was directed towards those products.

The final list of 289 products can be regarded as a sample for the analysis of the total effects of introducing imports to the market structure analysis. – As a sample, 289 is 15% the of the population, which makes it a valid statistical base for significant estimation. The outlined – methodology demonstrates that the sample was chosen, to a great extent, in an unbiased manner. There are two elements of possible bias. One can be found in the fact that the chosen goods are only the products with net imports.

14 There is an obvious need for harmonization of the classification between the Federal Bureau for Statistics and the Federal Customs Administration. Considering that the Federal Custom Administration uses a revised international standard trade classification, that classification should be the base for the adjustment. The proposed adjustment would expand the opportunity for the broadening of not only this market structure analysis but many other analyses.

Nevertheless, considering that there should not be a significant connection between the fact that the particular industry is import or export orientated and the fact that the market has a high or low concentration, it may be concluded that this does not lead to biased results. The second element regards the practical omission of clothing from the analysis, since clothing production is reported in square meters and importation in tons. This fact does not significantly distort the general conclusions but it should be borne in mind.

3.2. The effects of net import on competition

The introduction of net imports dramatically changed the previously obtained statistics on market structures. The average HH index dropped by approximately 63%, which can be assessed as very significant. However, this information can be very misleading. Generally, even with the introduction of net imports, and with a considerable decline of the HH index, obtained HH values remained extremely high in comparison with international measures, especially American standards.

The main conclusion is that net imports greatly reduce supply concentration. First of all, prior to the inclusion of net imports, the average HH index was 7,025, which can be assessed as extremely high. After including net imports, the average HH index was reduced to 2,248 (a reduction of approximately 68%). This data demonstrates the effect of net imports on market structures in a small open economy. Large economies (the USA or EU, for example) would certainly not experience such an effect of net imports on domestic flows. It should also be noted that the drastic reduction in the HH index occurred in spite of an extremely protective foreign trade policy.[15] Therefore, even in conditions of strong protectionism, net imports considerably lower the supply concentration level. In other words, dramatic change in domestic market structure occur. (see Chart 3.2. and Table 3.6.)

The product result classification, that is their market classification according to the market structure character, before and after the inclusion and exclusion of foreign trade are given in the following table, using the HH index classification which was used in previous chapters.

HH indices are shown before and after the introduction of net imports into the market structure analysis.

The graphs reveal that the distribution is very asymmetrical. There is approximately a third of products, i.e. markets which are above the average HH index, whose market structure competitiveness is under average. Approximately two-thirds are under the HHI index average, which indicates that the degree of competitiveness for those markets is above average. However, there are approximately 50 products (out of 289 analysed) with an HH index above 5,000. These are very high values which indicate extremely non-competitive market structures, which persist even after introduction of foreign trade.

15 Import and export production data relates to the year 2000, i.e. the period prior to the induction of foreign trade deregulation and foreign trade regime liberalisation, based on banning non-tariff barriers to imports and significant reduction of tariff rates.

Chart 3.2. The average HH index excluding net import and including import

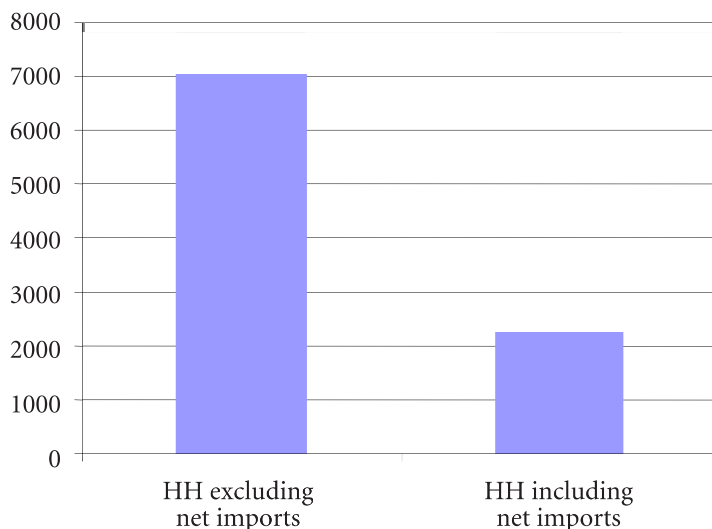


Table 3.6. Basic statistics of the HH index including and excluding imports

	Number of observation	Minimum	Maximum	Mean	Standard Deviation
HH excluding net imports	289	322	10000	7420.81	2986.34
HH including net imports	289	0	9980	2379.90	2730.77

Table 3.7. Product summary by market character

HH	Market character	Frequency excluding import	Share	Frequency including import	Share
0-1000	Low concentration	4	1.38%	139	48.10%
1000-1800	Medium concentration	10	3.46%	20	6.92%
1800-2600	High concentration	11	3.80%	28	9.69%
2600 and more	Extremely high concentration	264	91.34%	102	35.29%

Chart 3.3. HH index excluding net imports

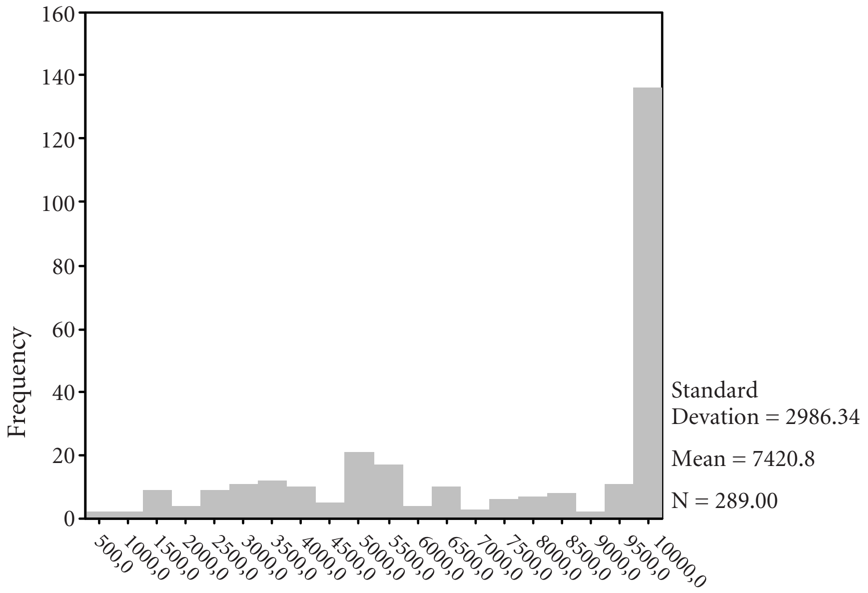
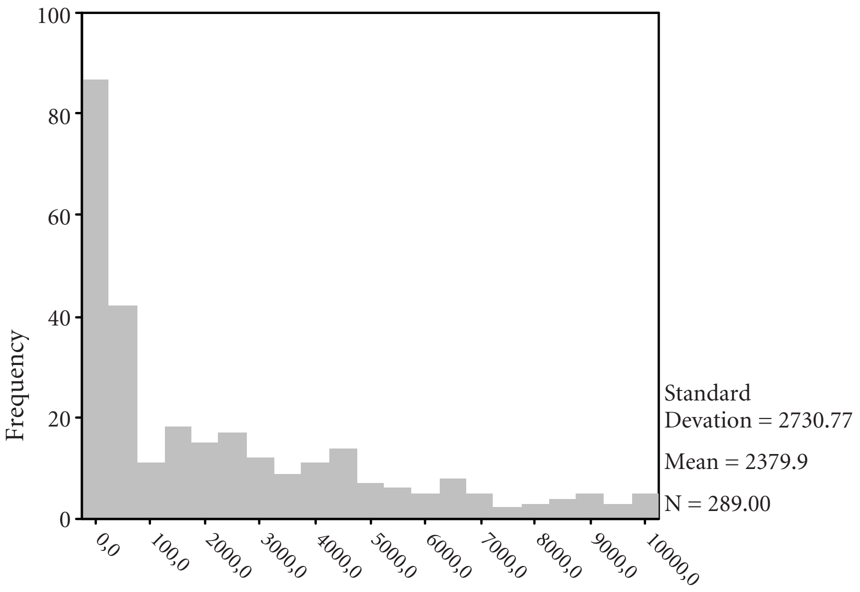


Chart 3.4. HH index including net imports



Still, the average HH index continues to be high despite its reduction following the inclusion of net imports. According to international standards (originally American) any industry with an HH index above 1,800 is considered to be as an industry with substantially concentrated supply. That means that the average Serbian HH index is situated deep in a zone of highly concentrated supply.

Further detail in following table, shows that the high HH index remains mostly in primary production. The table presents a classification of products into six basic categories: energy and fuel, raw materials, unfinished goods, capital goods, consumer goods and consumers durables.

Table 3.8. Summary of the basic results of the HHI by product type

				Average for the type of product				
Product type	**Number of products**	**Share**	**Import share**	**HHI excluding import**	**HHI including import**	**Decrease of HH**	**Concentration**	**Protection**
Raw materials	40	13.84%	39.75%	7798	3578	51.5%	2,830	8.69
Unfinished goods	62	21.45%	50.98%	7908	2711	62.6%	2,370	17.48
Capital goods	55	19.03%	54.90%	8072	2301	68.1%	2,420	17.57
Consumer goods	83	28.71%	43.70%	5718	1946	56.7%	2,280	30.03
Consumers durables	36	12.45%	69.17%	9169	1828	80.7%	1,750	25.02
Energy and fuels	13	4.49%	57.13%	7428	1746	68.9%	2,000	6.10
Total	289	100.00%	50.62%	7025	2248	63.1%	2,248	19.92

Before a detailed analysis, it is necessary to explain values defined as concentration and protection. Supply concentration at product market can have following values: 1 for HH index from 1,000, 2 for HH index value ranging from 1,001 to 1,800, 3 for HH index value ranging from 1,801 to 2,600 and 4 for HH index value above 2,600. Protection accounts for the tariff rate and import regime. It presents a tariff rate product and number which signifies the import regime (1 for free import, 2 for quality or quantity quota, and 3 for permit).[16]

Regarding protection, a reasonable average is obtained: protection is lower for energy (fuels) than for raw materials, and then it increases towards higher processing levels. Foreign trade policy in Serbia, that is the FR of Yugoslavia, has always taken into account, more or less, the degree of processing, so that tariff rates were usually lower for raw materials, components and unfinished goods, than for equipment and consumer goods. With respect to energy and fuels, they are not relevant for further analysis, since the market structures in these businesses are crucially

16 Protection regards tariff rates and import regime that existed during the year 2000.

dependent on technology (and consequently on the cost function), as much as they are dependent on domestic natural resources.

Table 3.9. Results for highly concentrated markets by product type

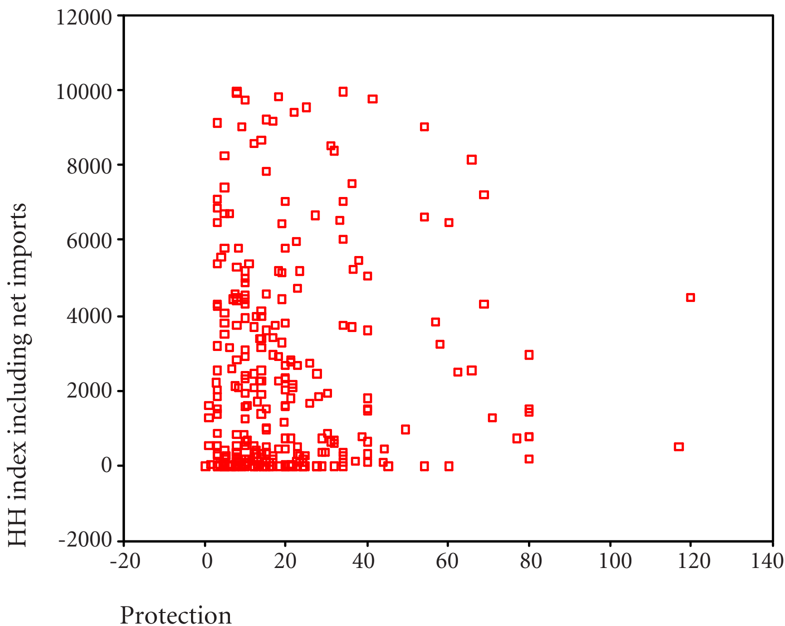
Type	Number	Share	HHI excluding net import	HHI	Decline HH	Protection	Transport costs
Energy and fuel	2	2.0%	7,434	6,556	8.8%	7.50	4.00
Raw materials	22	21.6%	8,004	5,956	23.0%	8.23	4.14
Unfinished goods	25	24.5%	7,887	5,977	23.8%	23.28	2.64
Capital products dobra	20	19.6%	8,300	5,139	35.1%	18.72	2.45
Consumer nondurablesds	25	24.5%	6,666	4,438	28.5%	29.77	1.72
Consumer durables	8	7.8%	9,708	6,926	28.2%	32.03	1.75
Total/average	102	100.0%	7,828	5,517	27.0%	21.11	2.66

The product structure in the high supply concentration category (HHI above 2,600) is especially interesting.

A very high share of unfinished goods and consumer goods is displayed, and raw materials are slightly lagging. However, the average HH index (after including net imports) in the case of raw materials and unfinished goods is far above average HH index for consumer goods.

The following graph displays the dependence of protection levels and the HH index value after including net imports.

Chart 3.5. Scatter diagram of protection and the HH index including net imports



The correlation estimates between protection and market structure character after including net imports indicate no statistically significant relations between those two values. (Table 3.10)

Table 3.10. Correlation between protection and HH index including import

		HHI including import	Protection
HHI including import	Pearson coefficient of correlation	1	0.046
	Significance		0.451
Protection	Pearson coefficient of correlation	0.046	1
	Significance	0.451	

It can be observed from the table that the Pearson coefficient of correlation is also not statistically significant. Such a result was theoretically expected since market structure character depends on a large number of elements whereas imports, i.e. barriers to import, present only one of the factors. Obviously the effect of some other factors, for example, initial market character that has an HH index before import introduction, is far more significant.

However, it is theoretically justified to expect a statistically significant correlation between the HH index reduction after including net imports and the degree of protection. Below is a graph displaying the interdependence between the HH index reduction after the inclusion of net imports and protection.

Chart 3.6. Scatter diagram of protection and HH index reduction

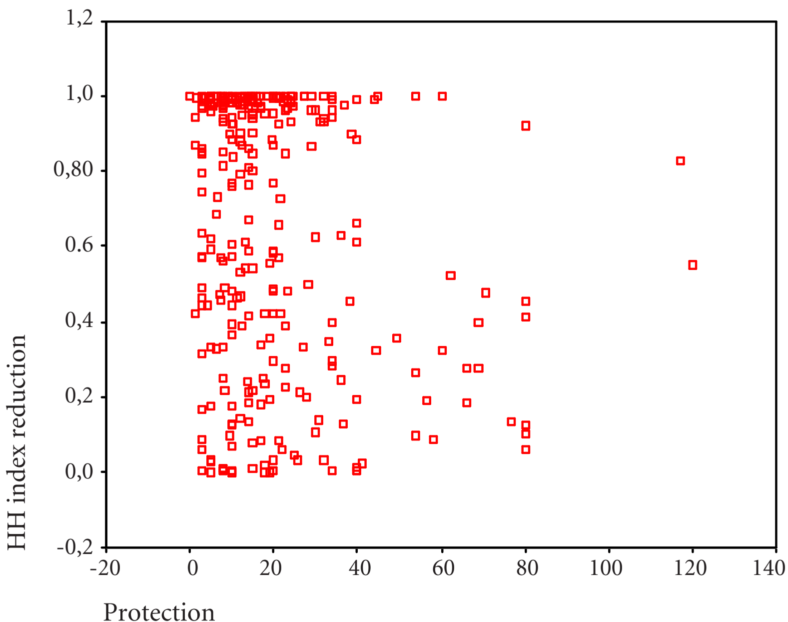


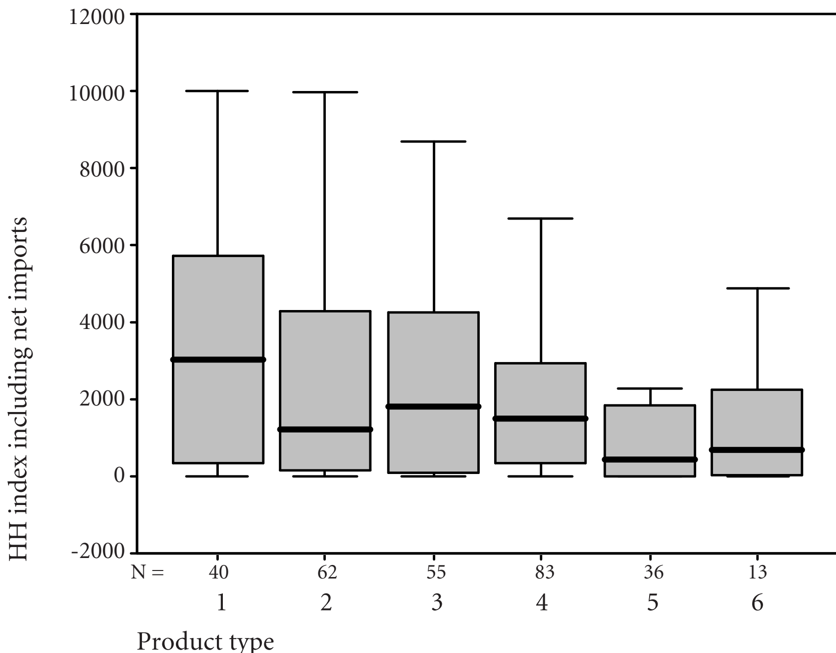
Table 3.11. Correlation between protection and HH index decline

		HHI reduction	Protection
HHI reduction	Pearson coefficient of correlation	1	-0.193
	Significance		0.001
Zaštita	Pearson coefficient of correlation	-0.193	1
	Significance t	0.001	

The table shows that the correlation coefficient of –0.193 between protection degree and HH index decline is statistically significant. The conclusion is that a lower protection level is associated with more competitive market structures, i.e. the supply concentration degree is lower. This was theoretically expected and is henceforth an empirically (statistically) confirmed conclusion.

The following chart displays the HH index classification according to product type: 1 raw material; 2 semi-product; 3 capital goods; 4 consumer's non-durables; 5 durables; 6 energy and fuel. The upper and lower horizontal lines display the maximum and minimum values within a group. The grey triangle displays the inter-quartile difference: the 25% observation ranges which are situated above and below the median line (which is presented by black line within the grey triangle). The medial line is one of the central tendency measures, which displays a value in the centre of the sample.

Chart 3.7. HH index including net imports by product type



The chart indicates that the average HH index is significantly higher for raw materials than for consumer non-durables and durables. Equipment and unfinished goods are situated in the middle, but the HH index in the product instance is higher than average. The results are supported in several ways. Generally, the import procedure of raw materials is far more complex then for imports of consumer goods. First of all, the market for raw materials is very specific in terms of big orders, usually done by companies with large working capital or which have been dealing with the same suppler for a long period of time. Secondly, transport costs often present very significant costs due to the low product unit value. Thirdly, dealing with large foreign trade businesses was very complex because Yugoslavia did not participate in the international payment system so that domestic companies had to buy raw materials in the domestic market at a higher price. Fourthly, the insurance of foreign trade businesses was not possible, and foreign companies did not want to credit domestic producers either. Fifth, considering the size of the Yugoslav market, there are only a few domestic producers of equipment and repro-materials so it is not reasonable to expect more than one producer of tractors, cars etc. in Yugoslavia. Sixth, repro-material and equipment import is often limited by political pressures; a preference for domestic components to contribute as much as possible to the final product, aiming to employ domestic capacities, even to the extent that a domestic component was purchased even if it was more expensive and it caused a reduction in quality.

Final consumers, however, respond in a exceedingly rational way; without political motives and definitely without taking national interest into account. Smaller foreign trade businesses are also possible, so that often is it is not necessary to make large orders for it. Generally, the imports of consumer goods could be the speciality of small companies: import costs are low, and dealing with these businesses does not require expertise in sophisticated financial operations. The fact that the HH index after including net imports is most likely overestimated in the case of consumer goods, since large amounts of goods entered the country illegally, i.e. the import is not reported and so the Yugoslav market supply is probably underestimated. Consequently, the degree of competition in market structures is overestimated as well. This possibly accounts for the energy and fuels that are intended for retail trade. Conversely, it can be supposed that imports are not underestimated in the case of raw materials, equipment and unfinished goods, since companies do not have a clear motivation for it and, at the same time, illegal imports of these goods are extremely difficult to perform, even if motives for it existed.

The general finding of the significant correlation between changes in competitive market structure (the HHI index reduction after including net imports) and the degree of protection was tested on the product level, that is, on relevant product markets. The results of this analysis are displayed in following table.

Bold font in the table signifies coefficients which are statistically significant at 0.05 level.

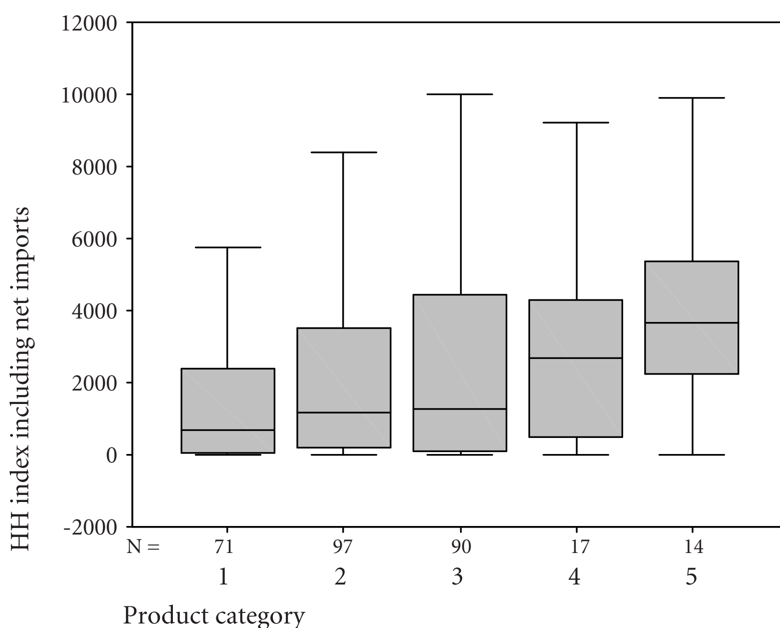
Table 3.12. Correlation of protection and the HH index decline by product type

Correlation	Energy and fules	Raw materials	Unfinished products	Capital goods	Consumer goods	Durable consumer goods
HHI reduction and protection	-0.027	-0.13	**-0.314**	-0.161	**-0.245**	**-0.359**

It has been demonstrated that there is a statistically significant correlation with predictable theoretical findings in the cases of unfinished goods, consumer goods and permanent consumer goods. However, statistically significant correlation regarding energy and fuel, raw materials and capital goods were not found. One of the reasons for such a result could be transport costs. This is why the effect of transport costs on market structure has been tested, i.e. the effects on this market structure after including net imports into the – analysis. Following these requirements, products were classified into 5 groups according to the share of transport costs in total costs. The first group encompasses products with low transport costs, and the higher group numbers signify higher transport costs as a share in total costs.[17]

The following graph displays the HH index classification by transport costs of imports. The graph indicates that with an increase in the share of transport costs, supply concentration increases, and so too does the HH index.

Chart 3.8. Distribution of the HH index including net imports by product category



17 Classification it is performed on the basis of expert estimation.

Table 3.13. Display of basic results according to product type

Product category	Product number	Average for product type			
		HHI excluding net imports	HHI including net imports	Reduction HH	Protection
1	71	6,993	1,837	68.0%	24.06
2	97	7,304	2,243	65.0%	25.09
3	90	8,006	2,631	63.0%	15.33
4	17	7,467	2,821	56.0%	15.56
5	14	6,578	3,935	31.0%	5.98

Table 3.14. Correlation between transport costs and HH index decline after the inclusion of net imports

		HHI reduction	Protection
HHI reduction	Pearson correlation coefficient	1	-0.174
	Significance		0.004
Transport costs	Pearson correlation coefficient	0.174	1
	Significance	0.004	

Testing of the correlation between the reduction in supply concentration and share of transport costs, indicates the presence of a statistically significant correlation between those two variables which is in accordance with theoretical findings: the higher the share of transport costs, the lower is the reduction of supply concentration after including net imports into analysis.

The next analysis is an investigation of the mutual effect of factors which were so far defined as significant: transport costs, initial market structure (prior to including foreign trade), and protection (protection degree) on market structure character alteration. Regression analysis with an independent variable, the HH index after including net imports, revealed the following results: R^2 (determination coefficient) equals 0.48, which can be assessed as acceptable. Also, all parameters, as the ones with variable protection, are statistically significant and in line with theoretical findings. This can be explained simply: the introduction of transport expenses, which greatly reflect the product type, as well as the introduction of previous market structures (excluding imports), has removed many obstacles, which were obstructing protection correlation and the HH index.

The following regression model has been assessed:

$$Y= B_1X_1 + B_2X_2 + B_3X_3,$$

Where X_1 stands for the variable 'HHI excluding import', X_2 is the variable 'protection', X_3 is the variable 'transport costs', and Y stands for the dependent variable 'HHI including imports'. The – results are below (Table 3.15):

Table 3.15. Regression results

Regressors	Non-standardised Coefficient		Standardised coefficient - beta	t-value	Significance
	B	Stand. error			
HHI excluding import	0.149	0.040	0.326	3.744	0
Protection	16.419	7.327	0.127	2.241	0.026
Transport costs	438.670	125.975	0.301	3.482	0.001

Thereby, the following model is obtained, with a determination coefficient of 0.48 along with all statistically significant parameters:

$$Y = (0.149)X_1 + (16.419)X_2 + (438.670)X_3,$$

Therefore protection increase, using this study's definition, for 1, leads to an HHI increase of 16, and a shift from category 1 to category 2 leads to an HHI increase of 438. However, it is not possible to see which influence is more significant on the basis of parameter price value, considering that those two variables are characterised by two different value grades. The standardised coefficient (Beta) reveals which influence is more significant. It can be seen that the influence of previous market structure is the highest, followed by influence of transport costs (which contain information about the product type), and protection influence is the lowest, but it is still statistically significant.

Below are the regression results of independent variable HH index decline for the equal regressors. Once again, the following regression model has been used:

$$Y = B_0 + B_1X_1 + B_2X_2 + B_3X_3,$$

Where B_0 stands for the 'constant', X_1 stands for the variable 'HHI excluding net imports', X_2 is the variable 'protection', X_3 is the variable 'transport costs', and Y is the variable 'HHI reduction'. The results obtained are displayed in Table 3.16:

Table 3.16 Regression results

Regressors	Non-standardised coefficients		Standardised coefficients-beta	t-value	Significance
	B	Stand. error			
Constant	60.798	8.046		7.557	0
HHI Excluding import	0.004	0.001	0.309	5.563	0
Protection	-0.330	0.111	-0.171	-2.985	0.003
Transportation costs	-8.132	1.893	-0.238	-4.295	0

The following model is obtained:

$$Y = (60.798) + (0.004)X_1 - (0.33)X_2 - (8.132)X_3,$$

Although estimates of those parameters are statistically significant, R^2, i.e. the determination coefficient, equals only 0.181, which can be regarded as relatively low.

The most powerful influence is domestic market structure (HH index excluding import), so that the largest reduction in supply concentration is observed in cases with a high initial supply concentration (that is with a high concentration of domestic supply) which is almost a trivial result. However, the high statistical significance of transport costs is very noteworthy, whereas the statistical significance of protection is slightly lower. Such findings clearly indicate that, in the cases of products with high shares of transport costs, the reduction of custom and non-custom protection (the reduction of barriers to imports) do not lead to a reduction in supply concentration, i.e. to increased levels of competitive market structures.

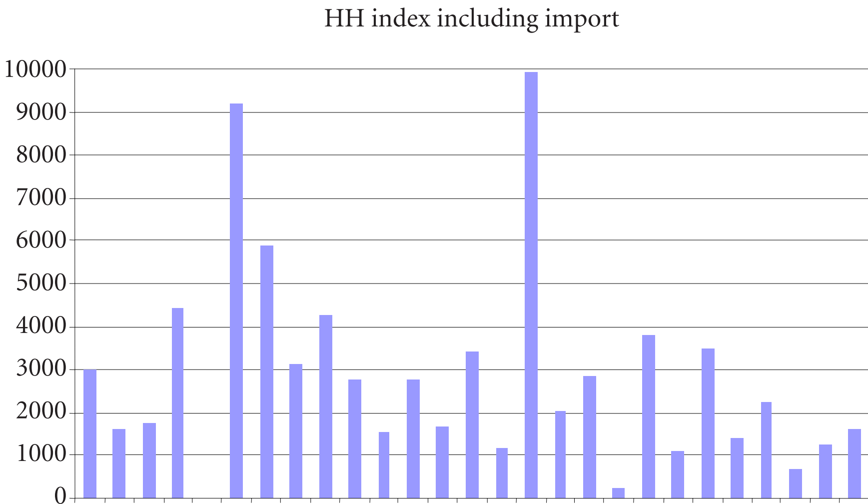
In conclusion, an analysis of market structures in relation to industries was conducted.

Table 3.17 Basic results in relation to industries

Code of industry	Industry	Product number	HHI excluding import	HHI including import	HHI reduction	Protection	Significance of transport costs
102	Coal production	3	3,984	3,017	26.95%	7.56	5.00
104	Raw petroleum	1	2,827	1,639	42.04%	1	3.00
105	Petroleum treatment	10	8,884	1,729	79.77%	6.37	3.10
107	Production of iron products	3	9,035	4,441	49.76%	43.20	3.67
108	Iron ore	1	10,000	1	99.99%	0	5.00
109	Zinc	1	10,000	9,207	7.93%	15	4.00
110	Production of aluminium products	3	9,228	5,896	36.74%	10.00	3.00
111	Minerals	9	7,953	3,120	50.03%	5.89	4.44
112	Glass production, ceramics	15	8,668	4,249	47.15%	24.48	2.53
113	Metal products	32	7,645	2,772	59.34%	19.16	2.56
114	Production of machines and equipment	27	8,415	1,564	78.75%	14.81	2.30
115	Car production	8	7,643	2,779	67.98%	26.24	2.00
117	Production of electrical appliances	39	8,391	1,676	78.10%	22.93	1.62
118	Basic products of chemical industry	33	8,155	3,399	58.12%	9.99	2.94

Code of in-dustry	Industry	Product number	HHI excluding import	HHI including import	HHI reduction	Protec-tion	Signifi-cance of transport costs
119	Final products of chemical industry	35	6,587	1,184	76.75%	16.05	1.26
120	Raw gypsum	1	10,000	9,909	0.91%	8	5.00
121	Lime production, cement	6	4,845	2,045	42.67%	17.81	4.17
122	Wood	1	2,850	2,826	0.84%	8	5.00
123	Cork	1	10,000	261	97.39%	5.2	4.00
124	Production of paper products cardboard and cellulose	8	7,712	3,819	43.08%	25.42	2.75
125	Yarn	5	7,912	1,113	73.62%	5.73	2.80
126	Textile products (excluding cloths)	5	9,008	3,497	56.33%	17.97	1.00
129	Production of rubber products	8	8,052	1,407	79.99%	29.69	2.38
130	Food industry	26	4,310	2,226	37.34%	48.18	1.69
131	Drink production	5	3,538	699	83.43%	35.20	1.40
132	Production of food for animals	2	5,316	1,242	76.07%	21.50	1.00
134	Remaining products	1	1,685	1,627	3.41%	20	1.00

Chart 3.9. Display of HH index including net imports by industries



The classification of industries in relation to the HH index, the basic characteristics of a competitive market, is displayed in the following table.

Table 3.18. Average HH index by sectors

Average HH index by sectors			
0-1000	**1001-1800**	**1801-2600**	**Above 2600**
Iron ore extraction	Production of oil and gas	Production of construction materials	Coal production
Production of final finished wood products	Production of fuel derivatives	Production of food products	Iron and steel
Drink production	Machine engineering		Production of non-ferrous metals
	Production of machines and electrical appliances		Processing of non-ferrous extraction
	Processing of chemical products		Production of non-metal minerals
	Production of textile yarn and textiles		Processing of non-metal minerals
	Latex processing		Metal processing activity
	Production of cattle food		Vehicles production
	Graphic industry		Production of basic chemical products
			Production of stone, gravel and sand
			Production of cut construction material and panels
			Paper production and processing
			Production of ready made textiles

The following conclusions arise from the previous tables:

- the highest HH index values remained in aluminium, steel, ceramics, glass, paper and basic chemical industry
- the lowest HH index values are recorded in beverages, fibres, chemical processing machines (cosmetics, detergents, etc.) and electrical machines
- the greatest decline in the HH index was found in beverages, gum, oil processing, machines, electrical machines and chemical processing
- the smallest decline in the HH index was found in coal, aluminium, cement and food.

Such results can be explained to a great extent by factors which have already been analysed. There is no singular answer to the question as to why market structure remains so highly concentrated. As for raw materials and unfinished goods, the main reasons are restrictive import regimes, high transport costs, political reasons, strong lobbies, as well as the insignificant scope of the market. As for food, the main reasons can be

found in truly high protection, both tariff and non-tariff, and in a relatively complex procedure of meeting all the demands relating to sanitary and phyto-sanitary requirements (specific barriers to import). In the case of clothing and footwear, there is high protection as well but, everything considered, the real supply concentration is, in fact, lower than the displayed one, as a consequence of unrecorded (illegal) imports. In the case of machine production, appliances and other equipment, the HH index reaches approximately 1,600, which is remarkably high.

4. IMPORT AS A SOURCE OF COMPETITION

The results of the empirical analysis have confirmed theoretical expectations. In small markets (such as either Serbia or the FR of Yugoslavia), import present, generally speaking, a very significant, if not a decisive, source of competition. It has been demonstrated that the introduction of net imports considerably reduced the supply concentration. Still, not even the introduction of net imports into supply analysis leads to the identification of a competitive market structure. However, this approach appears to be crucial in identifying the significant differences which occur amongst some markets, both individual products and groups of products. While imports raised competitiveness in consumer goods and the durables markets, market structures for raw materials and repro-materials remained non-competitive to a great extent.

It is very unlikely that import liberalisation, that is removal of remaining barriers to import, will lead to changes in domestic market structures for raw materials and repro-materials. Considering that barriers to imports were much lower than in the case of consumer goods and durables, the share of transport costs is an obvious factor that results in the inability of the imports of these products to raise the competitiveness of the domestic market structures.

This situation can be extremely dangerous. Non-competitive market structures for raw and repro-materials is manifested in price rises for these products and that inevitably raises the costs of domestic producers who use those products. The increased costs are passed on to consumer goods, that is to CPI, regardless of their market structure character. A hidden danger lies here in that increases in input prices would occur at perfectly competitive markets. Hence, raw and repro-material markets should be under a much higher degree of competition policy control than the consumer and permanent consumer goods market.

5. CONCLUSION

Even with high import barriers, like the ones from the year 2000, imports were an extremely significant factor in the domestic market structure. This resulted in a contrived increase in the degree of competitiveness. Therefore, it is certain that the liberalisation of foreign trade (a reduction of import barriers) should be supported by a competition policy. For empirical verification of this recommendation, it is necessary to wait for

the year 2001 data analysis, when (commencing from the first of June) the elimination of non-tariff barriers and the reduction of tariffs for imported goods occurred. It is reasonable to expect a further increase in the competitiveness of the domestic market structures. However, detailed analysis will show which markets are resistant to change, regardless of import liberalisation. This can arise for various reasons but most significant is a high share of transport costs. More detailed research into the reasons for this resistance is necessary. However, these are precisely the markets that should be subject to a domestic competition policy.

Further, it is necessary to investigate the possibilities (the areas for further liberalisation of foreign trade policy) that will reduce import barriers. Some of these barriers, especially administrative ones, are technically relatively easy to remove. However, it is usually very difficult to proceed with such reform. In the case of the FR of Yugoslavia, some limitations exist: the process of joining the WTO; the process of Stabilisation and Association with the EU; the political and logistic power of existing domestic, but also future, domestic producers. In reference to this, it is very difficult sometimes to perform routine technical tasks, like the termination of non-tariff barriers to import. This is even more so, since there is the impression that the current (republic) government does not have a clear concept whether liberalisation of foreign trade regimes is a priority and whether such liberalisation is conducted because it is considered to be good for the country.

Criticism of the current foreign trade liberalisation course which is "leaving domestic producers without protection" is often heard and also that the protection is necessary in order to "attract quality strategic investors". Without the government's clear policy on foreign trade liberalisation, it is considered a favour to the international community for membership of international organisations (e.g. WTO) rather than political or logistic pressures aimed at maintaining effective protection. This is even more pertinent as a result of political adjustments (the "yet undefined relations between Serbia and Montenegro", "independence carried out through new a Constitution" etc.) – used as excuses for postponing further foreign trade regime liberalisation.

Contrary to this class of import barriers, some other barriers are more structural and their causes more long lasting so they cannot be dealt with in the short term. A typical example is the – low hard currency inflow due to low export earnings. Insufficient importation is a consequence of the low competitiveness of the domestic economy, which cannot be changed overnight. Further, the removal of some barriers is related to significant interventions. A typical example is the state of the domestic transportation network. It has been demonstrated that transport costs are a significant factor in determining domestic market structures and that a poor infrastructure increases non-competitive imports in some industries. Rehabilitation of the existing infrastructure, which would lead to drop in transport costs, especially in road and railway transport, requires heavy investment and it is not certain to what extent funds for financing those investments would be secured. That is to for a greater extent related to the construction of new facilities within a transport infrastructure which would further reduce transport costs. However, even overcoming the

problem of scarce capital for transport infrastructure improvement, the reduction of transport costs has its limits. Transport costs always exist and domestic producers will always have a certain advantage over foreign producers, i.e. domestic products will always have a competitive advantage over imported ones.

One of key factors in incorporating foreign trade policy into competition policy is based precisely on an unbiased survey of the possibilities for further foreign trade liberalisation, i.e. markets with concentrated supply where the expected liberalisation of foreign trade policy cannot significantly alter its non-competitive structure, that is it cannot lead to competitive market structure. Precisely those markets, i.e. incumbent companies, should be subject to classic competitive policy measures. Analysis based on data from the year 2000 indicates that those are, above all, raw and repro-material markets and their unfinished goods. This outcome should be re-examined for the year 2001, as soon as the data becomes available, and once the liberalisation of the foreign trade policy has occurred. The year 2002, will demonstrate the results of a response to foreign trade competitiveness in a significantly liberalised foreign trade policy.

IV Analysis of Existing Legislation

1. SOURCES

The basic rules of monopoly prohibition and fair market competition are included in the existing Federal and federal units Constitutions. The FR of Yugoslavia Constitution (article 74) proclaims the equality of all economic entities and equal working conditions for everyone, and proclaims every, "act and measure which creates or instigates a monopoly position, that in any way constrains the market" to be ***unconstitutional***.

The Constitution of the Republic of Serbia (article 64), apart from stipulating equality of economic entities in greater detail, contains practically the same legal arrangement. The formulation of the Constitution of Montenegro (article 47.) is somewhat different. , In addition to the proclaimed guarantee of entrepreneurship and economic freedom, it prohibits "every measure or act which creates or instigates a monopoly position and prevents the market economy".

In order to understand the constitutional framework of competition policy rules in Yugoslav law the following points should be noted:

- The emphasis the constitution places on equality of economic entities (there is a parallel emphasis on the independence and freedom of association), and on conditions which are applicable for all, is not inspired, at least not primarily, by the idea of free and fair competition. The Constitution wishes to emphasise, under conditions of dominant social and state property, the independence of entities in public ownership, and their equality, i.e. equal conditions for all, regardless of the form of ownership. Therefore these constitutional regulations should be viewed in the context of all the regulations on equality of all forms of ownership
- A central constitutional regulation in this sphere is therefore the one about the prevention of monopoly. Along with this, the constitution sanctions: (a) every measure or act that is aimed at gaining a monopoly. The difference between measure andact, is more stylistic then practical, meaning that sanctioning of all ***legal acts,*** general (statute, bylaws of executive power – article 71, article 2 RS Constitution), but also singular (agreements, acts by which the horizontal and vertical merging of entities is achieved), but also all other actions which lead to monopoly, regardless of what could be understood by that. (b) Measures or acts that create and/or instigate a monopoly position are sanctioned, and here the meaning of the terms in use is questionable. In the obviously insufficiently precise constitutional text instigation probably indicates indirect achievement of monopoly, indirect pro-

vision of monopoly activity, for example through regulations or policy of concession generating. Nonetheless, these could also be acts by which prevention of monopoly is omitted, for example the way in which the notion of a dominant position on the market is interpreted. (c) According to the constitutions, measures and acts which create a monopoly are ***unconstitutional*** (according to the Montenegrin constitution it is prohibited, which is the same, because that prohibited by the constitution is unconstitutional). Emphasising the unconstitutional character opens up, on the one side (c1), the possible direct applicability of a constitutional provision, even without further legal regulation, makes possible the repeal or non-enforcement of a law or other general act which creates a monopoly, until the final evaluation of its non-compliance with the Constitution,[1] that is it enables the annulling of a contract[2], *ex offo* or on request of an interested party. On the other side (c2), there is an issue of constitutionally legal protection against acts by which monopoly is created or instigated, through the control of the constitution compliance of any general act, but also with constitutional appeal against a single act, supported by conditions under which constitutional appeal can otherwise be submitted.

- Direct implementation of the Constitution in the prevention of monopoly does not exclude further legal regulation on this matter. Since it is a question of regulating competition through, at least in theory, the still valid Federal Constitution, for a single Yugoslav market, it relates primarily to Federal laws.
- Finally, the impact of constitutional prohibition against making and instigating a monopoly should be considered rather limited. Constitutional texts alone contain elements that inaugurate the opposite philosophy, opening the possibility for the existence of monopoly position. Those are, first of all, elements by which particular goods and resources are reserved as social and/or state property.

3. Competition policy regulation is codified by the **Antimonopoly Law** ("Official Gazette FRY", no. 29/1996). Competition rules and other rules by which fair competition is regulated, that is by which unfair competition is sanctioned are contained in a series of other laws, of which the most important are:

- The Law on international trade ("Official Gazette FRY", no. 46/92, 49/92, 16/93, 24/94, 28/96, 29/97, 59/98, 16/99, 17/99, 36/99, 44/99, 53/99, 55/99, 73/00, 23/01)

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1 The Government of Republic of Serbia passed the Decrees of oil and oil derivatives transactions in April 2001, which limited the right of oil import, by which only NIS, public company in area of oil production and transactions, is authorized to import. Constitution compliance of this Decree was denied by authorized plaintiff, but constitutional courts did not pass the verdict for the time being, hence the Decree is still in use.

2 See article 14. Law on obligations. According to general rules obligation rights abolishment of prohibited agreement is established on request of any interested person and then it is the courts official duty to look after it. Still, competition policy law established, who can claim examination of monopoly contract, which can but doesn't have to result in annul sanction, depending on consequences caused by it and to which he was directed at.

- The Law on obligatory relations (“Official Gazette FRY”, no. 29/79, 39/85, 45/89, 57/89, “Official Gazette FRY”, no. 31/93, 22/99, 44/99)
- The Law on stockpiles (“Official Gazette FRY”, no. 58/98, “Official Gazette FRY”, no. 16/93, 24/94, 32/94, 28/96, 29/97, 16/93, 24/94, 32/94, 28/96, 29/97, “Official Voice RS”, no. 18/92, “Official Gazette RCG”, no. 556/92)
- The Law on statistical research system (“Official Gazette FRY”, no. 80/94, 28/96)
- The Law on public price control system (“Official Gazette SFRY”, no. no. 84/99, “Official Gazette FRY”,», no. 32/93, 24/94, 28/96)
- The Law on federal market inspection (“Official Gazette SFRY”, no. 24/74,22/78,23/80, 22/87,71/88, 35/91, Official Gazette FRY”, no. 24/94, 28/96, 59/98, 44/99, 74/99, 73/2000)
- The Law on trade (“Official Gazette FRY”, no. 32/93, 50/93,41/94, 29/96)
- The Law on companies (“Official Gazette FRY”, no. 29/96, 33/96, 29/97, 59/98, 74/99, 9/01)
- The Law on the basis of social control of prices (Official Gazette SFRY”, no. 84/89)
- The Law on foreign investments (“Official Gazette RCG”, no. 52/00, “Official Gazette FRY”, no. 3/02)

Indirectly, for antitrust regulations, that is for competition policy, procedural laws are significant as well, The Law on general administrative procedure (“Official Gazette FRY” no. 33/97, 31/01), The Law on administrative disputes ((“Official Gazette FRY”, no. 46/96), etc.

From the opposite angle, regulations by which monopoly is constituted could be quoted, that is the ones which create a foundation for their establishment, for example:

- The Law on telecommunications (“Official Gazette SFRY”, no. 41/88, 80/89, 29/90, 34/92, 24/94, 28/96, Official Gazette RS”, no 38/91, 41/91, 53/93, 67/93, 48/94, 20/97, Official Gazette RCG”, no. 59/00)
- The Law on the railway
- The Law on public companies

Further on the text of the Antimonopoly Law (Competition Act) will be specially analysed, followed by remaining rules related to competition policy and rules of unfair competition and other regulations.

2. ANTIMONOPOLY LAW

It can be assumed that this law is an elaboration of the constitutional principle preventing the initiation or instigation of a monopoly position. On the one hand, in the first article, which lays out the purpose of the legislation, the law appears less ambitious than its constitutional source. It does not set out to, regulate against the creation of a monopoly position, (it is called antimonopoly) but exclusively the ***abuse*** of this position, which as a consequence causes the ***violation of competition and creation of disturbances on a single market***. On the other hand however, the scope of the legislation is slightly extended, since it envisages taking measures,

i.e. penalising, not only abuse of monopoly position, but of ***dominant position on the market*** and of ***monopolistic agreements***.

From an economic point of view, the Law is concerned only with the consequences of monopolistic, i.e. non-competitive market structures, and those consequences are denoted as violation of competition and creating disturbances on a single market. In other words, the Law is not concerned with factors that create such structures and the process of their initiation. Accordingly, none of the acts that lead to non-competitive market structures (monopolistic or/and dominant position) is sanctioned, that is acts that lead to market power. That relates, most of all, to the control of mergers, bearing in mind that mergers are one of basic factors that create non-competitive market structures and market power. It is clear that a merger of a few companies into one leads to a reduction in, or to the disappearance of competition on a given market. This mechanism relates to horizontal mergers, i.e. mergers of companies in the same industry, i.e. companies that are competing with each other on the market. Economic theory and empirical research of market structures indicates that precisely those horizontal mergers are the most significant source of non-competitive market structures and market power.

Besides horizontal mergers, non-competitive market structures can be created by vertical mergers as well, i.e. mergers of companies that are not in the same industry; instead, one of them is a supplier, and the other one a buyer of some article (raw materials, inputs, etc.). In other words, vertical mergers are mergers in which the companies involved are those which have different positions in a chain of production and supply. Both types of mergers (horizontal and vertical) are the basic element of non-competitive market structure initiation and market power, but the mechanisms through which this occurs are substantially different. While horizontal mergers cause this directly, through reduction of competition on the market, vertical mergers can cause it indirectly, first of all, through establishment of barriers to entry to new competitors, that is through control of market entry process (disclosures).

Considering that the Law does not mention mergers whatsoever, it is clear that there is no difference in the legal treatment (sanctions) of horizontal and vertical mergers. Such a difference is certainly necessary, considering that, as was already implied, mechanisms through which various kinds of mergers lead to non-competitive market structures significantly differ. Taking that into account, the identical treatment of horizontal and vertical mergers is counterproductive for an active and efficient competition policy. Namely, in this way, only more stringent criteria (suitable only to horizontal mergers) are applied to all mergers, or only mild criteria (suitable only to vertical mergers) are also applied to all mergers.

The next element in the creation and maintenance of non-competitive market structures are barriers to entry for new producers. According to the earliest definition of barriers to entry, it should be mentioned that everything that enables economic profit to be made on the market, in a long-term belongs to the category of barriers.[3] If in some industry eco-

3 In this, alike examining in introductory chapter, so called Harvard definition of barrier to entry is accepted. It is more suitable for requirements of this study then alternative and more restrictive Chicago definition.

nomic profit occurs (the profit which is above normal profit, which corresponds to the cost of the capital, i.e. the cost of purchasing the capital on the market), it attracts the entry of new producers, which in the long-term leads to dissipation of economic profit and the establishment a market equilibrium with a normal profit (profit which corresponds to the cost of capital). If the source of economic profit is a non-competitive market structure, the economic profit attracts new competitors, but if barriers to entry do not exist, entry of new competitors introduces competitive market structures. Precisely for this reason incumbent producers strive to disable the entry of new competitors by creating entry barriers.

The Law does not stipulate categories of barriers to entry and exit from the industry. Since it does not recognise such categories, the Law does not make a difference between real and potential competition. It is precisely the entry of new competitors that presents one of the most crucial sources of market competition. According to some theories, the possibility of the entry of new competitors alone, i.e. the existence of potential competition, leads to competitive performance from monopolists. If some conditions are fulfilled, monopolists will perform just as companies on a perfectly competitive market.[4] Using terminology of the Law, regardless of the existing market structure, that is supply concentration on that market, the existence of free entry will disable the abuse of the monopoly position. However, the Law is not concerned with the preconditions for the appearance of monopoly behaviour, and therefore does not deal with barriers to entry. Thus, there are no sanctions against the measures and acts of economic entities that create new barriers to entry for new competitors.

Finally, predatory pricing is another way of non-competitive market structures creation. Predatory pricing takes place if a company, by reducing product prices below the marginal costs and/or average costs of production, eliminates its competitors, and eliminates competition on the market. The basic idea is that competitors too will have to reduce their prices below the marginal/average costs, which will lead them to financial losses. The losses will, in the long term, inevitably lead to their bankruptcy and liquidation, and in that way competitors will case to exist and the firm that enforced predatory pricing becomes a monopolist, which opens the possibility for monopolistic behaviour and the appropriation of economic profit.[5] The Law does not mention predatory pricing, hence there are no sanctions against it.

The Law, therefore, only penalises monopolistic behaviour, but not the creation of a monopoly as such, or the intention to create any non-competitive market structure. Consequently, if a domestic company does all it can to eliminate its competitors, and attains a monopoly (using the terminology of the Law secures a monopoly position for itself) it cannot be penalised on the basis of the Law, regardless of the means used for gaining

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4 It is the matter of contestable market theory, already mentioned in introductory chapter.

5 It remains an open question, how a company which executes predatory pricing will survive the period in which its revenues are lower than total costs, that is in which it records losses. It is assumed, implicitly, that such company estimates that, as to this point, it will be in favored position in relation to its competitors.

the monopoly position. According to the Law, such a hypothetical company would be punished only if it started with monopolistic behaviour.

Accordingly, the legislator is not interested in the market structure of a specific industry, nor how it came about, but only in the performance of the firm(s) within the existing (given) market structure. The Law is only concerned with prevention of effects, notwithstanding the cause (market structure): factors that caused the effect and performance of the firms. It is precisely in this that the Law differs from modern competition legislation. Even the oldest law of that kind, the Sherman Act, of 1890, explicitly prohibits monopolising, that is attempts at monopoly creation, which gives the legislation an active role regarding monopoly creation, i.e. active role in the protection of competitive market structures.

From an economic point of view, competition legislation should deal with development and protection of market competition. On the basis of article 1. of the Law, it could be concluded that in this case it is not at all a matter of competition policy and legislation, but only about economic monopoly regulation and/or other non-competitive market structures, along with the effort to prevent monopolistic behaviour of already existing monopolies. In that sense, the legislator reduced competition policy to only one segment of itself (very specific, basically minor), and gave a completely defensive role to the Law.[6]

The Law sanctions only abuse of monopoly position, and such performance would be described as monopolistic behaviour by contemporary economic theory: decreasing the output (supply), increase of prices above marginal costs, which, according to microeconomic theory, leads to allocative inefficiency (measured by Haberger's triangle). It reduces social welfare, and redistributes the remaining welfare to the monopolist. By the way, the legal formulation that abuse of monopoly position violates competition makes no sense, since monopoly position itself is a violation, i.e. elimination of competition.

By concentrating only on monopoly behaviour that implies only allocative inefficiency (dead-weight welfare loss), the legislator completely neglects other adverse monopoly effects on welfare, such as static and dynamic production inefficiencies, as well as open space for rent seeking behaviour. Therefore, all these phenomena and their adverse effects on social welfare, which could be more devastating than allocative inefficiency are completely neglected by the Law

Strict implementation of the Law would not redress any of the above mentioned adverse effects of monopoly. If a company has monopoly position, but it does not abuse it in the sense of Law, there is no possibility of sanctioning the above-mentioned adverse effects, since monopoly position is not the stipulated by the Law. Furthermore, above-mentioned effects/behaviour cannot be classified as monopoly position abuse. Thus, once again, in this way, the weaknesses of the Law that is concerned with effects (and only some effects), but not with their causes, is revealed.

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6 The root of this concept should be explored in long standing non-market tradition of our state, in which an institution, such as the Price Office, legally establishes prices for a large number of products, whereas the state media pursued those who "raised prices unjustifiably". It seems that this law presents an endeavor to maintain the tradition of arbitrary state interference.

While abuse of monopoly position was relatively easy to decode (at least for an experienced economist), greater problems occur with the attempt to theoretically explain abuse of dominant position. While the microeconomic theory of monopoly is clear and undisputable, the theory of the dominant firm does not offer simple conclusions and it still includes certain controversies. It is very unlikely that any economist (regardless of experience) will be able to simply theoretically explain the concept of the abuse of the dominant market position, that is effects which that abuse has on social welfare.

It is apparent that this was an attempt to sanction the behaviour and performance of the firms the enjoy market power on markets which are not monopolistic. So, it was decided that those structures were to be labelled as dominant position on the market, which is quite an unfortunate solution; this becomes obvious when one must decide whether a particular firm enjoys a dominant position on the market.[7]

Monopolistic agreement presents what economic theory calls cartel, i.e. open collusion.[8] the penalisation of such behaviour of economic subjects is absolutely justifiable, since a perfect cartel has the same effects on allocative efficiency and social welfare as monopoly and monopolistic behaviour. Therefore, although the Constitution does not directly provide grounds for such a provision of the Law, this very provision is, from an economic point of view, absolutely justifiable.

In order for the Antimonopoly Law to come into effect it is necessary to fulfil the following necessary conditions:

- That an economic entity (company or other legal entity – through this the law excludes or does not conceive a non-incorporated entrepreneur as a monopolist) within the market has: (a) monopolistic position, or (b) dominant position, or (c) that two or more economic entities make a monopoly agreement (***existence of monopolist, dominant position on the market or monopolistic agreement***);
- That they committed acts or introduced measures which abuse monopoly and/or dominant position (***abuse of monopoly***). The abusive measure or action is not specifically required in the monopolistic agreement. It would be too early, however, to conclude that cartel is prohibited *per se*. Abusive aims, that is “ acts and measures” are included in the term monopoly agreement alone;
- That the abuse, or action caused an effect which consists of: (a) violation of competition, and (b) causes irregularities on the market. All that was indicated in the previous three points should be achieved cumulatively.

Each of these conditions will be examined closely.

2.1. Monopoly and dominant position

Monopoly position assumes non-existence of any competition, in production of goods, in trade of goods, or in provision of a specific service.

7 In the case of symmetrical duopoly, not a single competitor has a dominant position, and both enjoy considerable market power.

8 It is the term cooperative oligopoly sometimes used in the economic literature.

According to the Law “ Monopoly position on the market is enjoyed by an economic entity which… on a single market does not have competition.” (Article 2, Paragraph 1).

According to economic theory, when theoretically defining monopoly a few questions should be answered, that is, it is necessary to fulfil several necessary conditions. The first necessary condition is that, on the supply side, only one economic entity exists, which, strictly speaking, is not identical to the ambiguous legal formulation “*entity which… on a unified market does not have competition*”. The second condition relates to market definition, i.e. answering the question to which market does previous statute relate. Namely, competition among numerous producers has taken place on something which is for those producers, a competitive relevant market, hence, the market on which the effect of competition and the actions of competitors are felt by each competitor.

Relevant market can be defined with two aspects:

- geographical (space) relevant market;
- relevant market from the point of the substitutes.

As far as geographical relevant market is concerned, it is necessary to include transport costs into the analysis. Namely, in case of products with high transport costs, i.e. high participation of transportation costs in total supply costs, the geographical market is inevitably limited. In that sense, particular products are not transportable, that is they are not subject to international trade (non-tradable), since high participation of transport costs eliminates international competition. An additional increase of transport costs, that is their participation, leads to similar appearance on the domestic market, so that the domestic market is geographically segmented, so that instead of a single market, a large number of local markets, which are not connected amongst them, simultaneously exist. In relation to this, the legal formulation “single market” in terms of products with high transport costs directly leads to an incorrect conclusion. Whereas a single producer “has competition on a single market”, burdened with high transport costs, he cannot set a competitive price at any other local market. Therefore, local monopoly can exist, although by implementing legal provision of the Law, monopoly position and monopolistic behaviour on the local market are not penalised at all. In reference to this, it is necessary to establish legal provision, even the obligation that the geographically relevant market should be specified for each product individually.

After defining the geographically relevant market, the question of weather there are close substitutes for monopolist products, i.e. whether price cross-elasticity of demand between two products is significant. If there are close substitutes for the product (which leads to significant price cross-elasticity of demand), markets of all these products constitute the relevant market from the point of substitutes. Regardless of the fact that, for example, only one producer for the product exists, existence of close substitutes which are produced by competitors make impossible the creation of market power, that is monopoly behaviour.[9]

9 For example, cellophane and wrapping paper are indeed different products (from theological and their physical characteristics point of view), but they are at the same time close substitutes.

Finally, the Law formulation that implicitly indicates a single market as a relevant one, does not enable consideration of the firms that have diversified production (multi-product firms), i.e. firms that simultaneously operate on many markets. Namely, such firms, which, on various markets enjoy different degrees of market power, can be very dangerous from the point of competition violation, that is construction of non-competitive market structures with markets they are dealing with.[10] Taking all this into account the legal formulation (expression) "single market" does not make sense.

Dominant position is declared negative, without quantification, and is defined as the non-existence of ***significant*** competition in production or trade in goods and services.

"*An economic entity which… on a unified market does not have significant competition has a dominant position on the market* " (Article 2, Paragraph 2.)

The existence of a dominant position of a firm on the market is established by the ***Antimonopoly commission***, a body that acts within the Federal Ministry of the economy and domestic trade. Not only does the Law not contain criteria by which dominant position is to be established, nor define the procedure ***Decree on forming the antimonopoly commission*** ("Official Gazette FRY", no 24/1997), it also fails to oblige the Commission to establish and publish those criteria. The Internal documents of the Commission are internal instructions only, they are not obligatory, and as criteria they can be analysed only on the basis of scarce Commission practice.

In 1999, the Antimonopoly Commission accepted an internal act called "Criteria for identifying monopoly and/or dominant position of economic entities on the market". The Act attempts to define a number of significant questions for forming of these criteria. First of all, the term market is defined along with differentiation of geographical and real market. Then, the issue of market position is addressed. Following contemporary examples, the act regulates market share that is greater than 25% or 1/3 of the total market as a basic yardstick for the establishment of dominant position. This proposal should be reviewed through the act, implying additional criteria: (a) economic power of the economic entity (measured by the usual economic parameters such as revenues, profit, turnover in previous calendar year – the author of the act thinks that there is a difference between those two categories (revenues and turnover), availability of credit lines and approach to domestic and foreign capital markets, (b) the power of potential competition which at the moment when market positions are established are not present on the relevant market but can come to existence rapidly and effectively, (c) consumer market power, (d) monopolistic behaviour and results, for example agreement on prices or sharing the market. Apart from fourth additional criterion that comes into the second sphere of competition rules, specially sanctioned by the Antimonopoly Act – monopoly agreement, from legal point of view criteria is principally acceptable.

These criteria do not even formally resemble a legal act and are presented as a professional (expert) report on possible criteria. Except for the first

10 That is specifically related to possibility of effective predatory pricing.

parameter, quantifying the market share, the rest are presented in an entirely descriptive manner. The Antimonopoly Commission would therefore have to define each additional criterion, in every concrete case, thus rendering relative the initial parameter. Even if this act on the criteria was published, and did not remain an internal instruction, the criteria for establishing dominant position which the commission applies could not be established with certainty from this text. Practice on the other hand, contains (in the minutes of the Antimonopoly Commission session) only appeals to these criteria, but not to their explicit elaboration. The conclusion remains that these non-transparent criteria, prepared as they are in the manner of a professional report, cannot be considered proper guidelines for economic entities. Generally, it is on the level of widely known fact that greater economic power strengthens dominant position, that the ability of potential consumers reduces it, and that presence of potential competitors leads to constrained behaviour.

Economically speaking, it is very unlikely that anyone will, on the basis of previously quoted legal definition and these criteria, be able to determine with certainty weather the firm examined a has dominant position on the market. Even more since it remains unclear why the legislator used the comparative term (more significant), instead of positive (significant) competition. Even if it was not the case, the formula "significant competition" is so vague that without vast additional directions it is not possible to reach any conclusion. Such a legal definition of dominant position on the market opens up immense space for discretionary decision/making by the body that executes this Law, that is the Antitrust Commission. What's more, since the Law does not stipulate the obligation to establish guidelines for precise definition of dominate position, nor the procedure for making that decision. The Legal provision alone, according to which dominant position exists when "there is no considerable competition" can be reinterpreted very elastically. In this way, when investigating the dominant position of one of the two mobile telephony operators in Serbia recently, the commission mentioned the technical – technological superiority of that operator.

Such a vague definition of dominant position on the market endangers successful companies, which, due to the superiority of its business in relation to competitors, increase their market share. Increasing market share alone, by which those companies call attention to themselves, is enough for a company to be proclaimed a company with dominant position on the market, which opens up possibility for taking legal actions which effect their business, i.e. financial results of that business. Even more, since the Law, form the point of its penal provisions, treats monopolists and companies with dominant position on the market equally. In this way, incentives for companies to invest in increases of efficiency in relation to its competitors are wasted. Incentives than lead to increases of economic efficiency, and therefore to increase of social welfare are rendered ineffective.

It is very likely that the legal category of companies with dominant position on the market came about from the need to legally control those non-competitive structures which are not monopolies (in situations where a monopoly does not exist, but where some participants in the market competition wield considerable market power). Accepting this

need, it is evident, however, that the existing legal decisions are not at all satisfactory.

An interesting and important question is *when* does the Commission identify the existence of monopolistic and/or dominant position of an economic entity; what initiates its proceedings? Conforming to the text of the Law: ***when abuse of this position exists.***

The Law therefore empowers the Commission to "follow and analyse the measures and acts " of an economic entity which has dominant position on the market and takes measures against abuse of this position. Analysis and measures against abuse are on an equal level, simultaneous procedures. One provision of the Law (article 8.) has the same implication that authorises every party concerned to initiate procedure through application to the Antimonopoly Commission: application relates to abuse of monopolistic and/or dominant position.

The provision which establishes dominant position on the market and connects this to the fact (or assumption) of its abuse is logical considering the repressive character of the Law. The Commission is not authorised, nor is any other body which is not governmental to react to the fact that a monopolist or dominant entity exists, setting up special rules of the game in this situation, rules which would have preventive effects, prevent their abuse. Even measures that are not penalties, such as ordering an economic entity to "take appropriate measures and actions in order to eliminate the identified incorrectness or omissions" proceed once abuse of monopolistic or dominant position has been confirmed.

2.2. Monopolistic agreement

A Monopolistic agreement is defined as every agreement concluded by economic entities between themselves, or agreement within the framework of an association of economic entities (therefore the constitutive act of an association of economic entities), "which is aimed at, that is which leads to violation or prevention of competition and causes disturbance on the market, that is which can damage the consumer" (article 4, paragraph 1 of the Law).

The Law does not recognise any difference between horizontal and vertical agreements. All agreements are treated equally by the Law, which cannot be assessed as a favourable solution. In principle, horizontal agreements pose a far greater danger for competition, that is a danger for competitive market structures, than vertical agreements. Monopolistic agreements (cartels) are sometimes identical to horizontal agreements in the economic literature. Most economists consider vertical agreements in principle, and especially agreements between two companies which have no significant market power, insignificant in their adverse effects to competition, believing that they can sometimes have some positive effects in strengthening competition, increasing economic efficiency and bringing gains to the consumer.

Considering that the Law does not differentiate between horizontal and vertical agreements, it pays equal attention to both of them, which practically means that economic entities which enter one or the another kind of agreement are equally likely to be punished because, and to have their

agreement proclaimed invalid. The problem is that while horizontal agreements present a clear and direct danger to market competition and/or competitive market structures, vertical agreements can sometimes improve market competition, and the Law treats them in the same manner. The same attention is paid to them and those agreements are treated the same.

Considering that in the case of a small open economy such as Serbia/FR Yugoslavia, with a small domestic market, imports present a very significant source of competition, special attention should be paid to enabling all those association arrangements which enable improvement of imports, and in that way, generate domestic market competition. In a large number of cases, vertical agreements are of the import associational pattern (exclusive importers/distributors, sale through certain, previously agreed channels, development of a sales network etc.) for certain products. For a host of economic reasons, big international producers insist on exclusive distributorships for their products in our country and/or the Region. Such agreements are not only treated the same by the Law, they are in fact deemed to be monopolistic.[11] Surely, a vertical agreement of exclusive distribution represents an opportunity for enhancing competition on the domestic market, whale also forcing big international producers – competitors, to compete through their exclusive distributors on the domestic market. Here too, the consistent implementation of the Law would cause a reduction in the competition on the domestic market caused by to competition from imports.

In modern market economies vertical agreements between companies with small market power (such as indicated examples of exclusive distribution) are commonly not treated as violations of competition. These agreements are not considered dangerous for competitive market structures. Considering that the Law does not differentiate between horizontal and vertical agreements, there is no basis for vertical agreements to be reviewed in the light of the market power of the actors involved in them. In such manner, it is possible, through consistent implementation of the Law, degrade rather than improve the competitiveness of the market structures.

Accordingly, it appears that, according to the Law, concluding a monopolistic agreement as such (per se) is an incriminating act. However, article 4. paragraph 4. of the Law specifies that certain agreements are not considered monopolistic, i.e. that any monopolistic agreement as such (per se) does not have to be an illegal act.12 According to this provision of the Law, each agreement and/or monopolistic agreement can be subject to re-examination in view of its consequences, which opens up the possibility

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11 Article 4, paragraph 2 quotes agreement of "import, that is export of goods exclusively or predominantly through certain economical subject" as example of monopolistic agreement.

12 "It is not considered that monopolistic agreement is agreement of business if it contributes to improvement of production or goods transactions, instigates technically-technological development and if it is useful for consumers, under condition that no additional limitation are imposed to economical subjects in businesses which are not necessary for achieving those gains.

for implementation of the rule of reason. In other words, monopolistic agreement is not per se a punishable action and/or measure.

On the one hand, such a solution, at least in the given framework, is desirable. Since no distinction is made between horizontal and vertical agreements, for practical purposes vertical agreements between companies with considerable and small market power, it is necessary to create some leeway in implementation of the Law, otherwise its consistent implementation would render void a large number of agreements which increase economic effectiveness and improve competition on the domestic market. In other words, in conditions of non-differential monopolistic agreements, implementation of the rule of reason is the only acceptable solution.

In other respects however the legislation is not advantageous. It opens up space for long-term re-examination of obvious competition violating cases, such as horizontal agreements, i.e. agreements that directly reduce or even eliminate competition on the market, instead of pronouncing those agreements as such (*per se)* against the Law, and punishable. Similarly, it creates an opening for the companies that concluded the agreement to influence the Commission and thus gain considerable market power. Such companies would, surely, be considerably engaged in convincing decision makers that precisely their agreements belong to article 4., statute 4. of the Law, that is that they have a positively effect on social welfare.

A far better solution is to make a distinction between horizontal and vertical agreements within the Law itself, so that horizontal monopolistic agreements are penalised *per se*, and that exclusively in the case of vertical agreements the rule of reason is applied, so that from one case to another, depending on the effects, vertical agreements can be annulled and penalised. This would open up the possibility for enforcing an aggressive competition policy in the case of horizontal monopolistic agreements and a careful, defensive and balanced competition policy in the case of vertical agreements.

Providing that, in reference to this article, paragraph 2. of this article of the Law (in which the legislator quotes examples of those agreements) is examined into more detail, it becomes evident that the article is dealing with the prohibition of cartels, i.e. prohibition of explicit collusion amongst competitors. One of the results of contemporary economic theory, that is one of results of the theory of industrial association, shows that the biggest danger to the survival of a cartel is cheating by the cartel members themselves; the ones who made the agreement. If cartel members themselves cheat each other regarding the agreement, the cartel falls apart, regardless whether it is legal or not. Analysis within the framework of this theory of co-operative oligopoly has shown which factors encourage disintegration of cartels, and therefore which institutions and mechanisms make their creation and successful implementation easier. The legal prohibition of those institutions and mechanisms, and the punishment of their use, would ease implementation of the Law and of competitive policy.

Finally, it should be noted that strict legal control of monopolistic agreements in these conditions leads to the generation of pervasive incentives. It has already been pointed out that the legal ground for control of mergers does not exist. It is worthwhile for two companies that operate

within the same industry, to merge immediately, since this is quite legal, instead of to conclude monopolistic (horizontal) agreements, which are prohibited by the Law. In other words, the Law generates incentives for the creation of non-competitive market structures, since it is far easier to break up a monopolistic agreement, than a non-competitive market structure created through mergers.

The Entities entering into monopolistic agreement can be any type of economic legal entities. It is not necessary that any of the participants in an agreement be a monopolist or have dominant position on the market. Monopoly or dominant position is the result of the agreement, one of the consequences that must occur in order for the penal mechanism to be initiated. The Law defines the concept of monopolistic agreement as the violation or prevention of competition.

Regulating **associations** of economic entities (which should be understood as including the establishment of associations in the terms of article 419. of the Law on Companies; legal entities that is created by two or more firms, for the purpose of profit, which makes transactions in its own name, but to the benefit of the founders), or forming of industrial and other forms of associations, the achievement of monopoly or dominant position is presumed, and its abuse is sanctioned.[13] In principle, monitoring of the operations of business associations is reasonable, considering that the work of such associations provides favourable conditions for collusion and effective implementation of monopolistic (cartel) agreements. It is very unlikely that by controlling the foundation of such associations alone, and not their implementation over time, one can hope to sufficiently reduce the possible conclusion and implementation of monopolistic agreements.

Incidentally, the Law on companies regulates cartels (approves of them), indicating that they should be prohibited, only if they contravene the competition regulations. The Antimonopoly Law orders the Antimonopoly Commission to react if there are elements of monopoly and/or dominant market position abuse in the agreement.

Violation and/or prevention of competition, i.e. accomplishment of monopoly or dominant position should be the aim of a monopoly agreement, that is participants involved in the agreement should have the ***intention*** to exclude or violate the competition. But monopoly agreements will be deemed to exist even when there is no such aim (intention), if violation of the competition can be objectively demonstrated, even without participants' intention, that is, if disturbance of competition happens.

Exclusion or disturbance of the competition is not, however, sufficient for an agreement concluded by economic entities (of any kind) to be qualified as monopolistic. It is also essential that (a) there is intention, to objectively produce or at least that there is a possibility to produce ***disturbance on a single market***, that is (b) possibility to ***cause damage to consumers*** (it is not essential for the damage actually to occur). Therefore the abuse or possibility of monopolistic agreement abuse should exist, making this a central concept.

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13 Here the term joining doesn't imply mergers, i.e. situations in which one or all legal entities which are concluding the agreement disappear.

2.3. Abuse of monopoly and/or dominant position and abusive substance of monopolistic agreement

Monopoly and/or dominant position is a fact that exists or does not exist. A firm which (as a result of the circumstances) already has a monopoly and/or dominant position cannot be sanctioned, nor can the state be expected to create such competition. The abuse of monopoly and/or dominant position is therefore an justifiable target for legal action (when recognised by the law) or repression by the government.

"*Acts which are intended to violate competition and instigate market disturbance and which enable material benefit and other advantages based on unequal relations in businesses, but which also cause damage to another economic entity and/or the consumer are considered to be abuses of monopoly or dominant market position.*" (Article 3., paragraph 1.).

It has been previously demonstrated that abuse stands for: (a) violation of competition and causing market disturbances, (b) which enable the gaining of material benefit or other advantages, and (c) which cause damage or can cause damage to another entity or the consumer.

Such a definition of monopolistic behaviour makes it possible for perfectly legitimate and socially desirable behaviour on a competitive market, to be proclaimed monopolistic behaviour. For example, behaviour of companies that invest in research and development and therefore gain technological advantage over their competitors, expressed in lower average costs, which can lead to the of the price decrease and an increase of consumers surplus, i.e. social welfare, is undoubtedly socially desirable. Such a company, in the terminology of the Law, gains "*material benefit*" (increased profit due to low costs), "*based on unequal relations in business*" (due to application of superior technology which is a consequence of its own investments in research and development), " *and which causes damage to another economic entity*" (i.e. its competitors, by reducing their profit or causing them financial losses). Therefore, the Law punishes the competitive firm whose behaviour is socially desirable and leads to an increase in economic efficiency and social welfare.

The Antimonopoly Law, for example, enumerates what kinds of abuse can exist, stating that:

- ***Increased prices*** of goods and services (including three parameters: increase which is above average prices on the domestic market, which is above world prices, and increases prices with simultaneous reduction of production);
- ***Omission of price reduction***, by increase of a mark-up or in a similar way, when reduction of price should have occurred as a consequence of custom tariffs reduction or other import levies, tax reduction, etc.
- ***Cessation or decreasing of*** *production,* commodities exchange or technological development;
- ***Unequal treatment of other participants on the market*** (the demand is not that the persons are connected)
- ***Imposing*** additional restrictions on transactions (in addition to "tied" trade, it was, for some time, common to make the purchase of shares a condition).

In paragraph 2. the Legislator describes in detail the actions from the previous paragraph of article 3. of the Law. "1) *price increases for goods and services and increases in trade costs (price increases above average growth of prices on the domestic market, price increases in comparison to comparable world prices, price increases along with simultaneous reduction of production),* (article 3, point 2., paragraph 1) which are phenomena recorded only on perfectly competitive markets, most often they represent the reactions of competitive companies to cost changes due to changes of input prices. By themselves, these phenomena have nothing in common with monopolistic behaviour. Until costs/costs' changes are identified, it is not possible to make a conclusion about the market character, or the nature of a company's behaviour. Thus, the definition of monopolistic, or some other non-competitive behaviour, in contemporary research is connected to the detection of long-term economic profit (Harvard approach), differences between prices and marginal costs (Chicago approach), and identification between market (DCF) and replacement value of the capital of the company (Tobin's q). Aside from the fact that, with any given average price growth, with assumption about equal share of all companies with total income, 50% of companies would inevitably record price growth above average, so that, implementing this provision of the Law, they would all be accused for monopolistic behaviour.

"2) *increase of mark-up and trade costs for import of goods with lower customs tariffs, other import levies and sales tax and abuse of tax reductions for domestically produced goods which are exempted from sales taxes or for which the sale tax is reduced,*" (article 3., paragraph 2., point 2.) is a point which has nothing to do with competition policy, so it remains a mystery why it appears in the Law.

"3*) termination and reduction of production, exchange and technological development*;" (article 3, paragraph 2, point 3) are types of behaviour exhibited by perfectly competitive companies which in that way react to (exogenous) market changes and do not have to have anything to do with monopolistic behaviour.

A detrimental connection of economic entities which (a) has business conditions as its object, (b) which aims or leads to or can lead to disturbance of competition and causes market disturbance, (c) that is by which damage can be caused to the consumers are monopolistic agreements. (Legally and technically the generally poorly edited Law is at its vaguest on this point, the conjunctions "and" and "that is (i.e.)" are used in a confusing way).

Once again, in the Antimonopoly Law examples of this abusive substrate are given. Closely quoted in a way that is slightly more logical than the one in the Law, they declare:

- ***Market partitioning or closing,*** including ***sale of goods on only specified markets***, as well as ***giving up, preventing or limiting the rights to sell and buy, the rights to import and export***.
- ***Indirect or direct price fixing***
- ***Exclusive sale/dominant sale to only one entity or through exclusively one entity, import and export exclusively through one entity***
- ***Termination or limitation of production, sale or technically-technological development***

“*4) implementing unequal conditions while concluding the same business with different economic entities,***”** (article 3., point 2., statute 4.) can be interpreted, in the vocabulary of modern economic analysis, as price discrimination. The contemporary theory of price discrimination has not yielded unambiguous conclusions about its effect on welfare. Therefore, implementation of the Law, that is abolition of price discrimination, could lead to a decline in welfare. What is more, persistent implementation of this provision would proclaim (make) null and void a large number of existing tariff structures in our economy, with tremendous consequences to welfare distribution. That would, for example, mean abolishing different rates of telecommunication services for households and business subscribers, by which domestic cross-subsidisation would no longer be possible, that would further increase profit and decrease consumers' surplus.

“5) *conditioning acceptance of additional obligations in an agreement which is concluded with another economic entity in relation to the subject of the agreement.*” (article 3., paragraph 2., point 5.), presents prohibition of so called tied trade, for which, as for price discrimination, the contemporary theory of industrial association does not give unambiguous answers on the issue of welfare.

The Antimonopoly Law, however, excuses individual agreements, which – at least in terms of syntax and spirit satisfy all the conditions, and/or are included in the enumerated “types/examples”. This will be the case when the agreement “contributes to the improvement of production or exchange of goods, instigates technological development and/or economic development”. The mentioned violations of competition are then allowed, except if they are not necessary for achieving the privileged goals. In fact this is a “leeway”regulation, whose extent and significance depend on the policy of the Law implementation in general. According to this regulation, a monopolistic agreement ceases to be punishable, *per se,* and its legality is judged on the grounds of the rule of reason.

2.4. Bodies and procedure

The central **body** that deals with confirming and penalising monopolistic and/or dominant position and monopolistic agreement abuse is the Antimonopoly Commission.[14]

The Antimonopoly Commission triggers the process of confirming and preventing and/or sanctioning of monopolistic and/or dominant position and monopolistic agreement: (a) upon a report, (b) at its own initiative (*ex offo*).

A report has to be presented to the Antimonopoly Commission **(al)** by The ***Federal Market Inspector*** who by performing an inspection identifies the existence of monopolistic abuse, and monopolistic position and

14 Analysis of legal position, authorization and procedure regulations, including decisions and remedium bodies which can come into a situation to imply rules of the Antimonopoly Law and related laws are given in a great detail in section 4 of this chapter and in the succeeding chapter. At this place indicated are principle rules about bodies and procedures which are significant for identifying of non-competitive market structures concept alone, and punishable mechanisms which are predicted by competition policy.

monopolistic agreement. The expression "identifies" in article 10 of the Competition law is not appropriate., According to this Law, The Antimonopoly Commission is authorised to identify the existence of monopoly abuse or dominant position and monopolistic agreement abuse, so the entire concept of the Law, along with further authorities of the Commission over procedure would make no sense if the Commission was bound by the fact that The Market Inspector has or has not identified prohibited monopolistic behaviour. The Federal market inspector only hands over a report to the Commission for further procedure when it encounters the existence of a prohibited monopoly.

The Report can also be presented to the Antimonopoly Commission ***(a2) by any interested party.*** Behind this generalised formulation three entities can exist: (1) participants on the market, which regard that by abuse of monopolistic and/or dominant position and monopolistic agreement, the principle of free competition is undermined, (2) consumers, who believe that they have been damaged, that is that they can be damaged by the conclusion of a monopolistic agreement (article 4, statute 1. Of the Law), and (3) everyone who is obliged to report a criminal act, according to the general rules of criminal legislature that is criminal procedure, considering that "officials" by monopoly abuse perform a criminal act (article 12 The Antimonopoly Law). What will happen if a report is handed over by a person who does not have a legal interest? Considering that the Commission also performs ***ex offo***, such a report will be taken into account by the rule. The point in defining the person submitting the report is, first of all, to establish the obligation of reporting (the legal basis for constitutional liability for omission as well), and secondly, the establishment of a participant position within the legal procedure, for an official who submits a report.

The specific form of the report for initiating proceedings before the Antimonopoly Commission is ***(a3)*** an obligation to ***present to the Commission the agreement of association*** or formation of an industrial or other form of association. The parties are obliged to present the agreement within a period of 15 days from the day of concluding the agreement. The point of this provision is that the Commission determines weather the agreement has elements of monopoly or dominant position abuse, so consequently it is a matter of a particular report which initiates proceedings by the Commission.

The Commission is obliged to perform ***(b)*** in accordance with official duty. That is anticipated by the Antimonopoly Law, in such a manner that the Commission has a duty to "observe and analyse acts and measures" of entities which have monopolistic and/or dominant market position. (In Article 5, paragraph 1 of the Law, in poorly handled legal language, this duty of the Commission is envisaged, then its duty to *determine* the existence of monopolistic or dominant position that is monopolistic agreement, with understanding that appropriate act has been previously established). Proceedings are *ex offo* based on processing the decree of the Law (article 9.) which points to the authorisations that is acts of the federal market inspector, and the Law of federal market inspection authorises and obliges the market inspector to supervise independently implementing federal regulations by which, amongst other

things “the exchange of goods and services, import and export, etc” is regulated. (article 3 of the Law).

Once the report is presented or once the process is started on the initiative of the Commission, the Commission can require that the economic entity, under investigation, ***present the agreement***, contract or other act which is related to the suspected monopoly. Not acting in accordance with such a ruling is a special violation, for which there is a warrantee fine for the legal and authorised person involved. (The person that fails to submit the agreement about joining or forming of industrial or any other forms of association will be treated in the same manner). Along with the fine, a so called preventative measure can be determined: publication of the verdict. The law mentions other inappropriate protection measures too: seizure of objects and prohibition of performing business; these measures are passed once the effect is instigated, and they are not in accord with the rules on common administrative oversight.

If the commission determines that abuse of monopolistic or dominant position exists, that a monopolistic agreement has been concluded, that is that abuse can be achieved through the conclusion of association agreement, it can – if there are conditions for it – ***order removal of irregularities.*** If the addressee acts in accordance with the order, logically, although the Law does not emphasise it, further actions cease, but a fine can be imposed since the abuse already existed. If addressee (economic entity, association) does not act in accordance to the order a ***temporary prohibition*** follows, halting transactions involving certain goods, that is temporary prohibition for business association operations. The duration and manner of ending the prohibition are not defined, so the conclusion can be drawn that the temporary measure will last as long as it takes to remove the irregularities, or prolongation and termination of procedure by declaring a permanent measure. Finally, independently from the order for removal, the Commission can pass a fine for economic violation.

After an unsuccessful attempt to remove the irregularities, or without it, if there are no conditions for it, the Antimonopoly Commission can impose a fine, for an **economic violation**. The Antimonopoly Law legislates (as well as the Law of trade for unfair competition), a ***criminal act,*** punishable with from 6 months to 5 years imprisonment, for the authorised person, if by abuse of monopolistic agreement or dominant position or by concluding a monopolistic agreement which instigated ***market disturbance***, which as a result has an ***advantageous position***, on the basis of which economic benefit is achieved or could be achieved, or if it caused ***damage*** to another economic entity.

Along with the fine protective measures can be passed for an economic violation: (a) to the company (a1) public announcement of the sentence, (a2) seizure of objects (goods to which monopoly abuse referred to), and (a3) prohibition for performing certain businesses, and (b) to authorised person (b1) declare the verdict, and (b2) prohibition for performing duties which they performed at the time of violation. Prohibition for performing businesses and prohibition from the performance of duty can be passed for from 6 months up to 10 years.

3. COMPETITION AND RELATED RULES IN OTHER REGULATIONS

The rules which prevent monopoly and other forms of unfair competition are contained in range of other regulations. Some of them (older than the Antimonopoly Law) are in competition with this Law, and with the same goal permit existence of other bodies. The remaining regulations are supplementary in nature, or attempt to regulate unfair market competition in specific areas.

The law of obligatory relations, a codification of rules on obligations, in article 14., prohibits determination of "rights and obligations by which monopolistic market position is used or created for anyone". A monopolistic agreement of any kind, considering the nature of the contract, in relation to this, is worthless and is not legally binding. Not only is it impossible for associates to force one another to meet the commitments made in such an agreement, but any interested party can call upon its worthlessness.

The Law on trade contains numerous rules by which fair competition is protected (this law, until the introduction of the Antimonopoly law, regulated prohibition of monopoly too). Basic decrees, aside from the proclaimed fair competition, obligatory obedience to good business customs and protection of consumers, explicitly prohibits state bodies from limiting free trade and acting within the market, to ***disturb competition*** and place individual traders or buyers in an unequal position by their actions, support, "or in any other way". Typical of the time when it was passed, this decree is the basis for an entire chapter of laws which is entitled: ***Temporary measures for prevention and removal of irregularities on a unified market,*** which, admittedly under certain conditions, includes not only prohibition of trade for singular products completely, but also prohibition for singular producers to participate in trade of certain products, prohibition for producers to use certain raw materials etc.

As far as violation of competition rules is concerned, the Law prohibits unfair competition, speculations and limitation of the unified market.

Unfair competition is, according to the Law on trade, is an act of a trader which is against good business customs and which ***causes damage or can cause damage*** to other traders or buyers. Although for example, the law relatively exactly enumerates such actions, mentioning mostly "classic" forms of unfair competition: false claims in advertisements, negative advertisements, false data about the origins of the product, but also exaggerated bonuses as a part of advertising campaign.

Speculation is, according to the same law, instigation of disturbance on the market and unjustifiable price increase with aim to achieve unfounded material benefits, for example by hiding goods, through tied trade, and similar.

In this case there is a problem of defining "unfounded material benefits". In a legal sense, it can be understood as a quest for legal basis to adopting material benefit, that is weather adopting of such benefit is based on positive legal regulations. Economically speaking, it is impossible to define unfounded ownership benefits. If legal basis exists, that is, if the law is not violated, every ownership benefit is well founded, considering that it is achieved on the market, that is through trade transactions. The basis of

ownership benefit is entrepreneurship, and an entrepreneur should face the consequences (good and or bad) of his entrepreneurial activities.

In uncertain conditions, and business decisions are always made in uncertain conditions, speculation, in an economic sense, represents perfectly legitimate market activity. Entrepreneurs estimate (speculate) future market parameters and on the basis of theses estimations (speculation) make their business decisions. In other words, entrepreneurial activities, by their nature, inevitably involve speculation.

The Law specifies hiding of stock as a typical speculative activity. It is evident that a trader hides his stock in conditions in which he thinks that the sale of that stock will not be profitable, or will be less profitable than at some future date. Both forms of behaviour are, economically speaking, perfectly legitimate. As for the first type of behaviour, it cannot be expected that the trader will act against his own interest and sell the goods at a price which brings financial loss. As for the second case, if the seller expects a higher profit in the future, he simultaneously losses real, present profit, so that he alone faces the risk, considering that there is no certainty of future profit.

It is very probable that the activity of hiding stock as it appears in the Law on trade is taken over from the earlier legislation, i.e. from the post-war period, when state intervention on the market was extensive and was based on legal control of prices. In those conditions, in which quoted product prices were below the costs of their supply, no economic reason existed for sellers to sell their goods. Therefore, in order to secure supply, it was necessary to provide other, non-economic instigation to sellers to offer the goods for sale. In other words, by this, sellers are forced to sell goods, i.e. forced to behave contrary to their economic interest.

Limitations of a single market can originate from economic entities – traders, but state bodies as well, which limit free appearance on the market, specially by enabling widening of sale network, by forcing the sale of goods and similar.

According to the Law of trade, unfair competition, speculation and limitation of unified market are punishable acts, violations, economic disturbances, and even criminal acts.

The law of international trade also sanctions unfair competition. For quoted examples as forms of unfair competition in this law it is characteristic, that is for some of them, that they are most of all causing damage to a ***competitor,*** but not to the ***competitive principle***, sometimes even not so clearly. For example, contracting export at the lower price than the price the company agreed for, and through this causing the damage to that company. The price does not have to be established against the principles of fair business, that can be usual exporter price that is qualified as an unfair competitor. As if prohibition is the case, and not protection of fair and free competition, in the name of state protectionism. Even more since through this, domestic companies are unable to compete with other, foreign companies at world market. If one domestic company reduced its prices in order to be competitive to supply some other company from a third country, it would, in accordance with the legal decree, be proclaimed as guilty of causing damage to adomestic competitor, Other forms of competitor violation in this Law are somewhat more logical.

The Law of public price control system (»Official Gazette SFRY«, no. 84/99, »Official Gazette FRY«, no. 32/93 and no. 28/96), in regard to the manner in which the concept of *public price control* is determined, it inevitably encompasses competition regulations, that is regulations which are implemented against monopoly. Public price control, according to this law, implies activities of social-political community bodies (original meaning of this forgotten concept that could mean federation, republic as federal unit, autonomous province, commune) who follow price movements and *take measures to prevent and remove the market disturbance.*

This law first of all explicitly forbids one kind of agreement which has monopolistic characteristics: *companies and their forms of association, while establishing product and service prices, are not allowed to agree among themselves, that is establish prices for same type of products and services.*

Subsequent to endeavour of rules codification about monopoly, and the introduction of the Antimonopoly Law this decree seems superfluous, such a monopolistic agreement is an example of monopolistic agreement according to article 4, statute 2, point 2 of the Antimonopoly Law.

However, the Law of public price control excludes from the prohibition, agreements establishing the criteria for pricing, concluded by power company, railways and PTT traffic, companies, within the framework of their communities.

At first sight, this solution is contrary to the prohibition of *indirect* agreements on prices from the Antimonopoly Law, and it could be concluded that by codification of monopoly rules in the later Antimonopoly Law, according to the principle *Lex posteriori derogat lex priori* this regulation was in fact abrogated, rendered invalid.

Deeper analysis leads to a different conclusion. At the time when the Law on public price control went into effect this behaviour took place in the context of a regime of social companies factual regional monopolies in accordance with the territorial principal to the level of federal units, and then encompassed into communities, regulated by law. Those companies had (and still have) the exclusive right (and obligation!) to operate in these industries and provide the services. Agreeing on criteria was aimed at indispensable unification of tariff politics – in order for the system to function – and rules of the Law of public price control had a role to put under control existing, recognised and legally established (of telecommunications, of railway) monopoly.

Companies, or communities in these activities were obliged to present pricing criteria to the Federal Government for their opinion, which adopts a position on criteria and forwards it to communities and companies.

A legal sanction for disrespecting the Government's opinion is made indirectly. Companies or communities are obliged to present prices formed according to these criteria to the federal legal body in charge of pricing (Federal Ministry of economy and domestic trade, today), within five days before the intended implementation,. The Ministry warns when the prices do not conform to criteria adopted in accordance to the law, and if the warning is not taken, suggests the introduction of public price control measures to the Government.

A Special regime is anticipated for prices in some other industries as well (production and trade in oil and oil derivatives, natural gas, coke,

iron and steel and non ferrous metals, alkaline chemicals, medicines, etc.). Companies form prices corresponding to "market criteria", whose parameters are determined by the Law, and they are also obliged to present the criteria and prices to the Government, that is the Ministry, which implements the same mechanism of control.

It is clear that this is a price control system, that is an economic regulation, and not real competitive legislation, that is competition policy for improving and developing competition.

This is confirmed by the legislator himself, when ordering, in article 16. of the Law, that the administrative bodies in charge of price perform a series of analytical actions and measures, clearly associated to a state-controlled, and not market economy.

4. PROCESS PATTERN OF COMPETITION LEGISLATION

4.1. First-degree procedure

4.1.1. Authorisation

The legal source authorisation process and its system of standardisation greatly affects the nature and content of the procedure itself, as well as the directives by which specific bodies utilise it. Competition commission authorisation does not prevent the abuse of monopolistic powers and the conclusion of monopolistic agreements. The interventions in the single market are determined twofold:

- Primary (original) authorisation is assigned by Anti-monopoly Law decrees (Official Gazette FRY, no. 29/96)
- Secondary (deducted) authority assigned by the Law of Federal Market Inspection decree ("Official Gazette of the SFRY" nos. 24/74, 22/78, 23/80, 22/87, 71/88, 35/91, " Official Gazette of the FRY", nos. 24/94, 28/96, 59/98, 44/99, 74/99, 73/2000, 70/2001)

a) Primary

The Anti-monopoly Commission's exclusive authorisation for acting in this area is found in article 5 of the decree. Anti-monopoly Law states that the Commission is responsible for performing various activities (" it is liable for taking measures...., supervising and analysing actions..., establishing existence...") which prevent and terminate the damaging consequences of monopoly positions and agreement collusion abuse. The Commission's liability, according to this law, encompasses:

- taking measures;
- monitoring and analysing actions;
- verifying a monopoly's existence (or the existence of a dominant position).

Although seemingly clear and precise, this decree presents only a partial solution. In practice, weaknesses are evident. The weaknesses are the consequences of the existing competition legislation concept alone. Consequently, it is a matter for the legislator who introduced

Anti-monopoly Law that stopped "half way". He anticipated the decree (article 9) of the law that the Commission which, according to its position and authorisation, is confined to federal market inspection. In other words, the Commission will, providing that it wishes to regularly and legally perform its actions, have to implement "according to the requests of the decrees forming the Law of Federal Market Inspection".[15]

b) Secondary

As noted above, the authority of the Commission can be reduced in response to its insufficiencies and inaccuracies, already mentioned in article 9 of the Anti-monopoly Law from the article of the Law of Federal Market Inspection. However, that produces difficulties which are common in situations when *lex specialis* (in this case insufficient) and *lex genenrali* exist simultaneously. In reality, difficulties exist in precisely defining the authority of the Commission, since the terms used in different legal texts vary, which result in further discrepancies in the legal regulations in this area. The authority of Commission includes:

- supervision of the implementation of federal laws and other federal regulations;
- supervision of the implementation of general acts from the transactional area, the price and quality of the goods and services;
- leading the procedure;
- making decisions and deciding on appeals;
- taking measures within the rights and obligations defined by federal law.

4.1.2. The concept of the party

Obligations, which the authority for performing the procedure will have in relation to that individual, depend on what is considered to be a party and its legal position. Special competition legislation contains a gap even here since it does not include explicit guidelines on what can be considered to be a party in a Commission's investigation. Consequently, the assistance of additional legislation (the Law of General Legal Procedure) is needed, which is indicated by the decision of the Competitive Act and Law of Federal Market Inspection alone. According to the Law of General Legal Procedure, a party is considered to be individual upon whose request the procedure has been initiated, or against which the procedure is carried out, or which, with an aim to protect his own rights or legal interest, has the right to take part in a procedure. An application for a procedure which is to be carried out before the Commission would mean that each initiator of an act is considered to be a party within that procedure. Problems occur when a presenter appears to be "every interested individual" or when "the procedure is initiated by official duty". It remains undefined who will, in

15 Article 9. The Law of Federal Market Inspection: "Within the procedure of exercising control, making decisions, deciding on complaints and taking other actions, the Competition Commission appropriately applies decrees of federal law through which the authorisations of market inspection are regulated."

this case, be considered to be the second party. The Commission cannot simultaneously be a collective legal body, which decides according to the law, and a party within the procedure. Granting party position to any member of the Commission, or professional services of the Commission, is against unbiased and objective principles and also leads to the application of omission.

4.1.3 Initiation of procedure (initial act)

Significantly, initiation of a procedure has multiple meanings, which are not adequately defined in special competitive legislature. Consequently, a full answer to this question requires analysis encompassing the decisions in the Law of General Legal Procedure, indicated by article 23 of The Law of Federal Market Inspection. The importance of the resolution of the question as to who is the authorised entity for initiating a procedure derives from the fact that answers to the following questions are dependant on it: (1) what is the form of the initiation; (2) what is the content of initiation; (3) is there a deadline and how long is the initiation period of the procedure; (4) when is the procedure initiated; (5) what is the obligation of the Commission towards the initiator and, more precisely, who is considered to be a party in this procedure? Thereby, according to valid legal regulations, initiation is possible:

- *ex offo* (on official duty)[16]
- by officials (federal market inspector);[17]
- by any interested individual.[18]

Initiation of a procedure before the Commission makes it possible, through interpretation and analogy, to get an answer to the question of what is considered to be initial act and what is its content. However, an *ex offo* initiation raises the problem of defining the moment when the procedure is considered to be initiated and, in relation to this, what is the deadline for the Commission to deliver its first-degree decision. In the first instance the maximum period, assigned by the Law of General Legal Procedure, is 2 months while in other cases there is no precise answer.

4.1.4 Presentation of evidence

The key question concerning the presentation of evidence is the definition of the factual basis on which the Commission forms its decision. A general decree on this is contained in the Competitive Act assigned by the Commission (meaning their professional services) "…analyses and supervises…", while precise decrees about this contain additional laws for this area. So the Law of Federal Market Inspection contains a ruling which presents an elaboration of the general norm from the Law of General Legal Procedure, and which states that, in order to determine factual standing, an inspector has the right to examine the goods, business area and equipment,

16 Article 5. Antimonopoly Law; article 113. Law of General Legal Procedure related to article 23. The Law of Federal Market Inspection
17 Article 10. Antimonopoly Law.
18 Article 8. Antimonopoly Law.

business accounts, agreements and other legal documentation which provide insights into the business with a view to implementing the regulations from the domain his is supervising. These activities could be attributed to, what Antimonopoly Law calls supervision and analysis of the work. However, the question is when did the procedure begin before Commission started. The Law of General Legal Procedure provides that this is taking "any action". However, a problem appears when, as a consequence of such a decree application, the procedure before the Commission leads to unequal performance of the Commission and imposing of unequal positions on the parties. This happens in the case that when the presenter is official, the first performance could be considered as questioning its exactness and sufficiency (whether by direct investigation into books and other documents relating to the economic entity, or its request to declare report quotation), whereas it is unclear how to define, and on what basis criteria, a certain act is a "first act" in situations when the procedure is initiated *ex offo.*

4.1.5. First-degree decision

Once the procedure is over, the Commission is authorised to pass a first-degree decision. Since the procedure before the Commission represents a legal process, the ruling by which the decision about the main (*in meritum*) subject is made, is a decision. Considering that the Commission is collegial legal body, for fully valid decision-making, a qualified majority (quorum) of Commission members is necessary and for a majority decision by present members is required for passing the decision.

Implementation of the Law of General Legal Procedure decisions states that the Commission is able to make a ruling about two kinds of legal acts whose differentiation is based on differences of their sentences. So, the Commission is able to pass a sentence at the conclusion of a procedure which represents a constitutive legal act. With such an act, the Commission forms a new legal relationship and alters or ceases any existing legal relationship. Contrary to this, by declaring a legal act, the Commission would have more authorisation to determine what is formally declare that the legal relation (it could be certain fact as a part of that legal relation) is conceived or in opposite case that it does not exist. Due to the specific nature of a competitive act, the Commission does not make clearly constitutive or clearly declarative legal acts. On the contrary, in most of the cases it makes the law more precise by making decisions within a sentence. Firstly, it verifies that a monopoly, a dominant position, exists (a legal relation) and that its abuse exists, or that a monopolistic agreement decision exists (as a fact), whereas, in its second part, it contains obligations for certain parties of the legal procedure which is characterised that act as a partially dependent act. So, for example, determination that one economic entity has a dominant (monopolistic) market position which is something to be "determined" by the Commission, will find its counterpart in the declarative sentence. Contrary to this, the second position of the same sentence, in most cases, regulates, for example, a "going back to retail prices for period", which presents an obligation for parties to perform in a certain way.

The problem of mixed legal acts appears in domain of its manifestation. While constitutive legal acts render for future (*pro future, ex nuns*) performance of legal declarative act on the other side expands to backwards (*ex tunc).* If, for example, a sentence concludes the existence of a monopolistic position, abuse is accepted. That means that there is a legal basis to determine raised achieved equity benefit in that period. Acceptance of the constitutive character of these legal acts means that the period when the abuse occurred is "legally irrelevant" and that the primary aim is its prevention in future, disregarding the previous performance of the economic entity. A special problem exists in those cases where Antimonopoly Law assigns that the Competition commission, once it determines that an economic entity abused its dominant market position, or exclusively monopolistic agreement, will pass a sentence which will order that economic entity to take certain measures and acts in order to remove determined irregularities and omissions. That happens because, in such situations, as past Commission performance proves, decisions whose sentencing contains orders to parties to cancel certain articles of the agreement, does not present an agreement of joining. Neither could it be treated as a measure or act (although it is necessary to take some actions), although it represents an agreement.

Undoubtedly, the final result which Antimonopoly Law aims to prevent is profit: benefit equity achievement. It is usual practise of criminal legislation that for criminal acts which are motivated by greed, the most effective deterrent is a fine, as the primary punishment, and as a secondary, deduction of acquired illegal assets or funds. However, the Commission does not have a mandate to impose fines, nor to deduct benefit obtained through criminal acts, which abuse of a monopoly position is. First of all, because Antimonopoly Law, as *lex specialis,* does not anticipate such a possibility. Instead there is the possibility to declare fine in assessor procedures: a criminal procedure for criminal acts, such as the abuse of a dominant position, which can be taken against managers in economic entities, and procedures against the economic entity, in accordance with its economic violations.

However, the principles of efficiency, speed and care dictates that it is completely rational and desirable to determine the increase of the owners assets by the Commission and to include it in its sentence decision, if there has been abuse. Firstly, because its determination is made easy and it presents a constituent part of the analysis and control procedures of business books and the other documents of the economic entity which are performed by the Commission's professional services as the most competent for this area. Secondly, costs resulting in the determination of this benefit will be much lower if they present part of the procedure before the Commission, instead of duplicating these activities in eventual judicial proceedings.

Aside from this, existing competition legislation does not have a policy on appeals to decisions. The Commission does not have powers of suspension, i.e. its declaration does not delay the execution of the sentence. However, it remains unclear who is the entity liable for execution of the sentence and in which period of time its execution is to be made, for example, when a damaged economic entity does not wish to execute it.

It has already been mentioned that the procedure before the Commission represents a general legal procedure, which means that for the execution of a legal act, it is the authorised person who passed it on, i.e. the Commission. However, existing legislation did not grant the Commission such authorisations. Additionally, its personnel is not technically capable of fulfilling this task. The question of executing the passed sentences is also complicated by the nature of the area in which the act is brought: a sentence which orders the elimination of certain articles or entire agreements or contracts, the re-establishment of price levels to some previous date, etc. Those are the measures which cannot be executed by enforcement. Such legal gaps cannot be fulfilled by warrantee or passing fines for criminal acts to officials and economic violation to legal official. That is because a warrantee of the declaration of criminal acts and economic violations already exists, so their preventive effect is negligible. In other words, their duplication does not make the decision-making any easier.

Sentences contained by Antimonopoly Law that, through the sentence, provide the economic entity a certain period of time, does not take measures and acts aimed at removing established irregularities and omissions. The Competition Commission can temporarily prohibit transactions of certain goods, which only delays and deepens the problem of execution, but it does not solve it since, in this case, the question is who, how, and to what deadline is reasonable to execute such a sentence and what are the consequences for the market, etc.

As executive body, only the communal official market court can appear as the registrar which will, within executive procedure, eliminate prohibited behaviour from the list of registered businesses. If that it is the only or dominant business of an economic entity, the question of temporary liquidation could be considered. Conversely, according to general trade rules, an economic entity could carry on with its business occasionally or to a lesser extent (especially if it was not the primary producer). If an economic entity continued to perform, regardless of the temporary invalidation of the registered business since prohibition is enforced only for a limited time, initiation of a new procedure would have to follow and result in new sanctions. Along with all this, registration regulations do not recognise the temporary elimination of a business so it would most likely have to appear as a special annotation and note in the registry supplementation. Specific procedures would have to be effected in statistic registry. However, this is not the end of the legal problems and dilemmas.

4.1.6. Appeals declared against first-degree decisions (the appeal procedure)

The question of who is regarded to be a party within the procedure has its counterpart in a phase of appeal procedure in the form of the question concerning who has the right to appeal, which is likewise connected with the content of the first-degree decision and its sentence. The Law of General Legal Procedure states that against any decision passed on in first-degree, any party has the right to appeal. That means that the presenter of initial act has the right to declare appeal. However, full analysis demands

that the review of the right to appeal is connected with the decision of first-degree sentence. If the decision is made against the economic entity, it is just that he has the right to appeal. Difficulties arise in other situations, as when a presenter is not satisfied with a sentence as it is of less advantage to him (e.g. disagreements over the exact date to which prices are returned). It is not clear if there should be a right of appeal in that case.

Aside from this, although they do not represent parties within the procedure, the state (that is the public prosecutor, public defender and other state bodies), when authorised by law, can declare appeal against the decision by which the law is violated in benefit of physical or legal officials, and to the disadvantage of public interest.

Further, there are problems of deadlines for appeal, which are shorter then in general legal procedures and problems which are presented by incorrect lessons about legal remedy. Therefore, the significance of legal matter alone leads to the fact that, in this legal area, appeals against the first-degree decision are allowed and the simultaneous possibility of carrying out the legal dispute.

It is interesting to note that the legislator indicated through only a few decrees of competitive legislation that the procedure before the Commission is considered to be urgent. It is the matter of decisions which assign the deadline for appeal against the first-degree decision but which are shorter than the deadlines that are valid in general legal procedures. So, as opposed to general deadlines for declarations of appeal, which is, according to the Law of General Legal Procedure, 15 days, Antimonopoly Law, whose decrees, such as *lex specialise* are primary in implementation, anticipates appeal deadlines within eight days.

A problem of a more technical legal nature which articulates (non)competent legal and regulative performance of the Commission assembled in accordance to existing regulations, relates to lessons about legal remedy against first-degree decisions. Incorrect legal lessons, which are numerous in Commission practice, damage the positive view of the Commission's work and the existence of competition legislature. The problem of incorrect legal lessons about legal remedy is easy to solve in theory by utilising decrees of the Law of General Legal Procedure which greatly elaborate in that area, but the question is whether they will still produce particular problems in practice.

Firstly, due to the fact that procedure itself is hybrid, inaccurate and insufficient before the Commission.

a) Finality and execution

Execution of the legal act, in this case of the Commission, is the genuine aim of its implementation. Otherwise it will remain notional. Existing competitive legislature does everything to present a decision of the Commission as a frivolous warrantee. The main point of execution is satisfying and protecting the interest which defends norms of competitive legislature. The legal act can be carried out when it becomes executive, more precisely when all conditions are achieved, or when there is the possibility for its individual legal norm to become reality. First of all, this possibility is granted to the act addressee: the one whom the act effect is

addressed to and the one to whose disadvantage the act is made. The time the addressee has for the execution of obligation is called action, or proceeding the deadline in which he is authorised to willingly and, by his own means, execute individual legal norm. The rule of administrative law is that, if the addressee does not proceed in accordance with the act, the mechanism of forced execution of the additional act goes into effect.

Considering that Antimonopoly Law does not anticipate the suspense effect of a declared appeal against a first-degree decision, that means the execution of first-degree sentence comes into force from the moment it is presented to the party. Presentation to the party is also the criteria from which execution of second-degree decision begins, i.e. decisions made on the declaration of appeal.

b) Appeal procedure before a first-degree legal body (commission)

The first-degree body (Commission) handles control authorisations, in relation to declared appeals, as well as in relation to appeal decisions. That means that the Commission deals with instruments and authorisations which support regularities and accuracy of the proceeding:

– possibility to complete first-degree procedures if needed which, as a consequence, makes determining of factual conditions more complete;– execution of new reviewing processes with the primary goal of enabling the party to declare itself about facts and circumstances which are important for making the decision;
– withdrawal of appeal decisions, i.e. its replacement with a new decision (presumably with a different sentence);
– cancellation of the first-degree decision and reversion to a new process of first-degree body;
– alteration of first-degree decision;
– rejection of the declared appeal and confirmation of the first-degree decision;

c) Appeal procedure before a second-degree legal body (federal ministry)

Authorisations of a second-degree body are also twofold: in relation to legal matters alone and in relation to first-degree decisions which are conditioned by appeal. The second-degree body, in this case, when Federal Ministry for Economy and Internal Trade has following authorisations at its disposal:

• to refuse the appeal and therefore indirectly confirm regularities and legitimacy of first-degree decision;
• to annul the decision entirely or partially depending on the complexity of the matter, efficacy and speed principles of procedure and factual proposals of appeal decision;
• make a decision about the matter by himself (there is no data related to the Commission's decision within the practise of Federal Ministry so far);
• present the subject to a body authorised for first-degree decision-making (according to the practise of Federal Ministry, the only way of deciding against the Commission decision);

- alter the decision (there is no data according to presented documentation);
- declare that decision is proclaimed null and void.

4.2. Administrative matters

4.2.1. Complaints for bringing legal actions

A party which is not satisfied with a legal act has the right to ask for court control, i.e. has the right to bring legal actions. Administrative matters are a specific court dispute whose subject is the examination and assessment of the legal work legality in a specific case. In our legal system, legal disputes are accepted in accordance with a system of general stipulation, it is expressed in the constitution and legal decrees. Article 120, statute 1 of the Constitution of the FR of Y assigns that the legality of final legal acts determines the authorised court in a legal dispute if the law does not anticipate other judicial protection. However, in Article 2 it anticipates that in special cases, bringing legal actions can be excluded by the law. In accordance with the decrees legislator in article 9, the Law of Legal Disputes anticipates that bringing legal actions is possible but through negative enumeration: presenting cases in which bringing legal actions is not possible. Therefore, constitution-creator and legislator are coming from the point that bringing legal actions is a rule, and the legal exclusion of that possibility is the exception.

Antimonopoly Law continuing with its concept of insufficiency and inaccuracy does not contain a single decree dedicated to this question – it does not explicitly assign the possibility of bringing legal actions but is does not exclude that possibility either. Therefore, it is concluded that bringing legal actions in this domain is not possible. The Law of legal dispute conditions the possibility of legal actions by enforcement of final legal act. Legal theory and practise are unique in assumption that final legal act is considered to be legal act which is implemented in second-degree i.e. by second-degree body. Therefore, complaint for bringing legal actions is possible only in those cases when previous second legal method is used, which is assigned by the Law of legal procedure – appeal against first-degree decision. Considering the Antimonopoly Law regulates that against the decision of the Commission, appeal is permitted that means the legal dispute is possible only against the decision of Federal Ministry for economy and internal trade as second-degree body, only if prior to that it was appealed against the Commission decision as a first-degree body. In case that dissatisfied party within legal procedure does not appeal against the decision of the Commission, it unable judicial protection of his own interests, freedoms and rights.

Initial act by which bringing legal actions is initiated is called complaint. Complaint content should be such that it contains a request for a definite judicial decision of the party which is not satisfied by the outcome of the final legal act. When it is a question of who can institute legal actions the situation is clear – the defendant as one side in a dispute is always the state that is its administration. More precisely appeal for instituting legal actions is allows legal request directed against the State, in this case against

Federal Ministry for economy and internal trade as presenter of second-degree decision.

Especially interesting question is if the complaint submitted against decision of the Federal Ministry could be apt for initiation of dispute with full jurisdiction. Dispute of full jurisdiction authorises the court before which it is instituted, aside from deciding about subject of complaint appeal – regularity of legal act, that it can decide about legal situation itself as well as reimbursement of the damage that is recovery of the things which were deducted. Therefore in this case, court would, aside from authorisation to discuss and make decisions about regularities and legality of decisions made by Federal Ministry for Economy and internal trade, have possibility to, through its own decision, solve the question whether there was abuse of dominant position, or monopoly position, that is whether monopoly agreement was concluded and what are the consequences caused by it. The law in regard to legal dispute assigns that initiation of full jurisdiction dispute is a possibility of a court and not obligation and regulates confining to following cumulative conditions: that the nature of legal situation is such that court through its decision cannot solve it, and estimation of that aptness is left to court.

Considering that further reports contain analysis of (im)possibility to institute legal actions before Federal Constitutional court by constitutional complaint submission, it seems that protection of freedom and rights, or prevention of monopoly position abuse would present legal matter in which instituting legal actions should be allowed. If opposite stand is accepted court control of legal acts, that is juridical protection of freedoms and rights would be unsaid and practically ineffective. Without full jurisdiction dispute interested party that is party which considers that legal act is instituted to its inconvenience enters a veritable labyrinth of new procedures since in the case of annulled legal act new legal act supervenes before Commission, Federal Ministry for economy and internal trade which is in sharp contrast with thrift, efficacy and principle of fast work.

Prosecutor in legal dispute is most frequently the dissatisfied party coming out of legal process. Theoretically speaking that means that potential presenter of the complaint (prosecutor) can be: legal official – economic entity which considers decision of the Federal Ministry which affirms first-degree decision to his inconvenience to be illegal, state body – Federal market administrative inspection that is before him Federal market inspector on the basis of legally assigned authority and individual, individual. And while party legitimisation of individual which is the presenter of the appeal by which process is instigated before Commission (according to Antimonopoly Law – every other interested person) is indisputable, the dilemma, whether as a party in legal dispute individual which so far did not participate in legal procedure but which considers that by legal act his right and freedoms are disturbed, remains unsolved. Taking into account that legal dispute presents, what seems like last possibility for protection of freedoms and rights of troubled ones, by a single legal act such a person should be granted party legitimisation. However, the problem appears when his interest for that should be explained since the appeal for instigation of legal dispute is not a complaint *actio populis*. According to the existing legislation explicit possibility for something like that does

not exist. Existence of complaint legitimisation assumes the existence of legally-relevant relation of a person to the subject matter of legal process. Nevertheless, certain space for legal construction exists since decrees of competitive legislation assign that for initiation of procedure before Commission, it is necessary to comply with cumulatively set conditions out of which, for this question interested ones are "that certain performance instigated disturbance… and caused changes at the market…". Such consequences can damage any person, even the one which was not the party in legal process.

Participation of an individual is possible only in form of institution behind the interested person regulated by article 16. the Law of legal dispute. However, possibility of its appliance are very limited. Limitation is due to decrees since interested person is considered to be every third person which would be directly damaged by annulled denied legal act. That means that as interested person in legal dispute any individual can appear but only if following postulates are content: that the previous one was the party in multiple-party procedure which is satisfied by its outcome so that as a consequence it did not file the complaint, that legal dispute is instigated, that the subject matter of the dispute is slow estimation of legal act regularities and legalities by which it has been affirmed that dominant position that is monopolistic agreement exists and that it has been abused and that its termination would be to its detriment. To its damage in this case should be interpreted as possibility of instituting the new legal act with different content by which his freedoms and rights could be disturbed, inasmuch as the sentence went into effect.

4.2.2. Complaint

Legal dispute is, principally speaking single degree. It is a fact that possibility to use the complaint against first-degree court decision made in legal dispute is exception. Therefore making second-degree court decision is uncertain. Aside from this, dissatisfied party in legal dispute had exceptional legal means at disposal, their possibility to be submitted are limited by their nature that is conditions which are necessary for their performance as well as the extent and direction of their performance.

4.3. Criminal procedure

Criminal responsibility can exist on the side of:

- the responsible person in an economic entity which abused its position;
- the federal market inspector if he did not report abuse as a criminal act of which he became aware while performing his official duty;
- a member of commission or professional service in the case of official duty abuse.

The criminal responsibility of these entities requires initiation of criminal procedure, which is exclusive authority of public prosecutor. From this pont of view following solutions are possible: that prosecutor alone institutes legal actions upon conclusion of initial investigating acts or that it proceeds on the basis of submitted criminal record.

4.4. Violation procedure

Presents some kind of sanction for non-co-operative individuals in legal procedure. So violation procedure is initiated and a company or other legal official can be punished with fine ranging from 30,000 to 150,000 new dinars if on the request of the Antimonopoly Commission they do not present agreements, contracts, deals and other acts which are related to production, trade or technically-technological development as well as responsible person in association if he does not present agreements about associating or funding industrial and other forms of joining.

The problem of preventive measures – public announcement of judgement, confiscation of property and prohibition to perform certain business, and responsible person – prohibition to perform the duties which they performed at the time of the violation act.

4.5. Procedure according to legal complaint

The question of permission to institute legal actions before the Federal constitutional court by submitting a constitutional complaint is part of more extensive question about list of individual freedoms and rights through which constitutional judgement protection is granted. More to the point, which are the freedoms and rights whose protection is authority of Federal constitutional court. Procedure in accordance with constitutional complaint presents singular constitutionally legal dispute with aim to protect the most important freedoms and rights proclaimed by constitution. The question whether there is a place for initiation of procedure by constitutional complaint becomes more significant by the nature of rights which are to be protected and by doubtfulness in legal theories about whether the possibility of legal dispute excludes possibility of instituting legal actions related to constitutional complaints and the other way around? On federal level, possibility of submitting constitutional complaint is standardised by FRY Constitution and federal regulations. The Constitution of the FRY in article 124 anticipates that Federal constitutional court decides about constitutional complaints because of offended man and citizen freedoms and rights proclaimed by Constitution through single measures and acts.

First part of this formulation does not induce doubts since it is clear enough. As acts sufficient to disregard their regularity and legality in procedure before Federal constitutional court, singular measures and acts are quoted. When it is the matter of violating right and freedoms by legal acts, singular legal acts are considered to be amongst others, singular legal acts of judicial and singular legal acts of constitutional bodyes of FRY. What's more, " constitutional acts of silence" can be the complaint in this procedure. However, problems appear when the question of constitutional complaint subsidising should be answered. Constitutional complaint subsidising means that submitting constitutional complaint is permitted and possible when no other legal protection is provided. Article 128. FRY Constitution determines that it makes a decision about a constitutional complaint, when no other protection is provided. In principle, court control of constitution (possibility of instituting a constitutional dispute) is

excluded when there is a possibility of protection by some other legal regime. In this way the assigned constitutional formulation gives huge leeway for interpretation, which makes the situation even more complex in otherwise intensely imprecise and insufficiently clear and firm conception of competition legislature. The term "provided" can be interpreted in two ways: as generally permitted possibility (regularity) of second legal protection or as non-exhausted existing legal means. Theory and practise of FRY are separated when the questions should be answered. Federal constitutional court alone accepted restrictive comprehension which, if possibility of initiating procedure before the Federal Constitutional Court (SUS) is accepted in case of freedoms and right violation brought upon by judicial act in constitutional dispute instituted against decision of Commission or Federal ministry for economic and internal trade, does not exist. This means that this institution considers that for freedoms and rights form this domain other legal protection is provided, precisely in possibility to initiate constitutional dispute, which in accordance with restrictive comprehension does not have to be used at all. More to the point, SUS conceives that legal protection isn't provided when it is not anticipated. Its comprehension SUS grounds in a fact that for this domain (protection of rights and freedoms) possibility of instituting constitutional dispute is permitted. This is just one of possible solutions although Constitutional act does not contain decrees about it.

In SUS practise only one instance of submitting the complaint is recorded, violation of rights to equality and equality in earnings. Unfortunately, even SUS overlooked that unique opportunity for forming constitutional judicial practise in this domain. Namely, it is the case 17/94 where economic entity submitted constitutional appeal against the decisions of constitutional bodies and courts because he considered that the right to equal earning with other entities in economy guaranteed by constitution is violated. The right, that is principle about equal earnings is the right assigned by article 74. Pg. 2 Constitution of FRY and as such it presents subject of institutional judicial protection as well as other freedoms and rights which can be deduced from decrees of FRY Constitution. Constitutional formulation of those rights which says: "…economic entities are independent and equal and conditions of earnings are equal for all…" presents constitutional decree about competitive position and performance. From contributions which were presented with complaint it is evident that its presenter already instituted constitutional dispute about legality and regularity of constitutional act. Instead of resolving numerous dilemmas and disputes and taking a clear stand by its decision, SUS resorted to, in its terms an elegant solution, leaving the situation open and moreover opening new questions. Namely, SUS refused the submitted constitutional complaint by its decision with explanation that its submission is not permitted since it is submitted by an official registered for performance of trade business and not for protection of personal and citizen freedoms. The impression which imposes itself is that by this decision SUS deliberately, indirectly, thwarted the freedoms and rights protection in the last instance.

Also, opening the problem of legitimisation which is in constitutional judicial procedure equal to parties capabilities SUS narrowed down the

possibility of freedom and rights protection even more. In other words, a presented decision indicates that the only liable entities for submitting a constitutional claim are those entities which are registered for protection of rights and freedoms. The short-sightedness and weakness of such a decision will become clear as soon as an individual appears as the presenter of the constitutional claim, . However, so far SUS practise has not recorded such cases.

5. CRIMINAL MEASURES AND CRIMINAL PROCEDURE

5.1. Criminal measures in broader sense

In a broader sense all measures taken by the Antimonopoly Commission are repressive. Some of them, however, have a goal to unable realisation of monopoly abuse, in any form, and to remove the condition caused by competition disturbance or condition in which disturbance can be caused.

Such measures are: (1) decision which regulates taking measures or actions which are necessary to remove perceived irregularities or failures, (2) decision which orders alteration of certain decrees related to agreement of joining, that is complying to certain rules so that agreement does not have the monopolistic character.

This group consist of (3) decision which temporarily prohibit transaction performance of certain goods, if economic entity does not act according to decision cited above under (1),

As well as (4) temporary prohibition to association to perform business, if it does not act in accordance with decision cited above under (2).

Although they prohibit business, these measures by its nature and goal are not punishments, even temporary prohibition had a goal to remove the condition of competition disturbed by monopoly, and not to punish the individual who abused monopoly.

These measures are in the power of the Competition commission. Appeal against the Commission decision is authority of federal body in charge of trade business (now Ministry of economy and internal trade). It is possible to institute constitutional dispute against second-degree decision before Federal court.

Criminal measures in broader sense can be classified as measures of indirect price control anticipated by the Law of public price control. They can be introduced in accordance with article 12 of this Law (a) in order to prevent monopolistic price forming, (b) if the companies dealing with businesses quoted in the Law do not form the prices based on mutual that is market criteria, and (c) if big disturbances in movement of prices occur or can occur.

The first case, as a competitive measure, is contradictory, on first sight, to decisions of Antimonopoly Law. That law tends to prevent monopolistic agreements about price, regulating such agreement as invalid. Still, within the system as it is, this measure makes sense: not only that monopolies can come to exist, but they exist, in singular businesses, on the basis of the Law. Price policy is chosen as a way of controlling such monopolies.

The second is specific application of economically – political and competitive logic adopted within the system, and is described further on. Third is a wide gap for controlled price policy, and it is connected to monopolistic agreements because market disturbance appears as consequence of prohibited agreements anticipated by Antimonopoly Law.

Indirect price control measures, according to the Law are: the highest prices, that is highest price level, restitution of certain price level, previous notice about price alteration regulating the manner in which prices are formed. The Law does not speak about these measures any more. It is up to Government, that is Ministry to apply them in accordance to estimated kind of alteration.

5.2. Criminal measures in confined sense

The Law, however, institutes criminal measures in a confined sense, for all three forms of criminal act in our legal system, and therefore punishes violation, economic disturbance and criminal acts.

Violation according to Antimonopoly Law presents withholding of acts (agreements, contracts, arrangement etc) requested by the Competition commission, which are related to production, trade or technically – technological development, that is withholding of agreements on joining or formation of industrial or other forms of associations.

The act of execution is achieved by (1a) omission to act in accordance with an Antimonopoly Commission order to present required documents, which was issued when Commission finished, in accordance with report of market inspector, interested person or acting *ex offo,* if doubt that the entity has monopolistic or dominant position and that it was abused is grounded, that is that it can be abused (from the Commission point of view, it is the matter of collecting the evidence in previous procedure), or (1b) omission of legal obligation to present agreement of joining or funding industrial or other forms of association within 15 days.

In the first case, the responsible legal official or official is liable for violation in that legal official. In second, responsible person within the association (legal official does not have to exist) is warned with infringement fine. Warrantee fine are paid in cash and they are not very high. Along with fines preventive measures can be enunciated: public declaration of judgement, deduction of objects and prohibition to perform certain business, that is prohibited performance of duties for responsible person. Only first measure is logical. There is no place for the second measure here, there is no violation subject (except if legislator does not think that documents by which agreements were formed should be deducted and burnt…), violation procedure does not confirm whether monopoly is abused, or that some benefit has been attained (violation subject). Even business prohibition didn't sound right, except if refusal to present documents continues. Prohibition to perform duty for an official seems to be more of a omission, and not protective measure. That is possibly, the reason why they are practically not pronounced.

When there is omission which makes the core of violation, Competitive commission submits report to the body liable for violation procedure.

If documents are provided, on time or posterior, and if it is established that elements of monopoly abuse exist, which are removable, measures and acts for banishment will be ordered, described under A. Regardless of this or if banishment does not succeeds, second from of violation responsibility may succeed.

Economic violation exists when an economic entity in ***its business*** abuses monopolistic and/or dominant position, that is concludes a monopolistic agreement. (Surely, the difference in act of execution is only formal and apparent, as it was indicated, abuse is covered by the term monopolistic agreement). Every abuse of monopoly presents an economic violation, and examples of monopolistic abuse, that is dominant position are given in clumsy definition from article 3. of the Antimonopoly Law are only an indication for a court which makes a decision; the same implies for examples from monopolistic agreement the article 4. as well. This is important to emphasise because in terms and examples consequences are variously and alternatively regulated ("leads or can lead…"), that is as a consequence, on the same level, abstract and concrete danger and realised consequence appear, which is not common for violation law.

Both the responsible person and legal official can be accused and punished for an economic violation. Therefore, contrary to violation, responsibility of legal official for conclusion of monopolistic agreement is possible: if it is hard to decode which participant from the agreement is liable for presentation of agreement, everyone is responsible for conclusion that is abuse. (Of course, it is possible to open up the question of essential accomplice in execution, but that is beyond the needs of the practise.)

Aside from fines, here as well, protection measures for legal and liable official, carefully defined by the law are possible. For legal, those are declaration of the verdict, deduction of objects (which were obtained through abuse), and prohibition to perform the business, from six months up to ten years.

For responsible person, aside from declaration of the verdict, prohibition to perform the performed duty as well, in time span from six moths to ten years. The law does not speak of culprit, but it looks like the term abuse requires pensiveness.

Penalty measures in confined sense are regulated in some other laws which indirectly or directly contain competition rules. Example for that is the Law of public price control. This law also predicts all three forms of responsibility: violation, economic disturbance and criminal act.

Violation is not presenting, by agreement confirmed, (monopolistic) businesses price forming criteria determined by law, as well accounting prices above designated. In a second case, violation fine is placed in proportion to profit gained through sale, so that fine amounts for five to twenty times value in price difference.

Economic violation aside from the rest, exists when companies or associations agree about establishing prices. This decree can mean three things: (a) that agreement which does not have monopolistic character is sanctioned, which is considering criteria for term of monopolistic agreement practically impossible, and (b) that this economic violation will exist regardless of sanction for monopolistic agreement, or (c) that one or the other sanctioning mechanism will be applied. Regulations about concurrence indicate that third possibility is an option.

Criminal act will exist for responsible individual, if the consequence of monopolistic abuse is heavy enough. Competitive act defines it in complex way, not so clearly (which is, after all characteristic for so called special criminal legislature, principally undesirable).By act of abuse it is necessary: (a) to instigate market disturbance (b) establish dominant position for one or more economic entities through it, in relation to other or others – particle is not quite exemplary, because if market disturbance always means privileged position, further part of criminal act entity is not necessary, and (c) so that equity profit or the damage caused to other companies or consumers can be achieved or is achieved.

Conclusion that, act of execution is finalised by monopoly abuse, which caused market disturbance "through" privileged position, can be conceived by linguistic interpretation (no practice so far). Profit, or damage are just part of pensiveness – otherwise the possibility of attaining profit would not be at the same level. Warrantee fines are high, form six moths to five years in jail.

6. CONCLUSION

(A) Basic characteristics of domestic monopolistic legislation can be summed up in few following marks:

1. Inconsistent codification. Antimonopoly Law – by its name already – should codify, and at the same time reform regulations which are related to use of monopoly or dominant position, or prohibition of monopolistic agreement, and therefore normatively elaborate constitutional principle about monopoly prohibition too. Purpose of codifying is not applied consistently and that is why (aside from other, not less important reasons) it did not succeed. Not only that competition regulations remained dispersed over other regulations as well (even the Law itself indicates to some of them), but the system of extremely complex relations between legal institutions and bodyes liable for competitive measures is formed. Position of central competitive body and Competitive commission is not harmonised, along with their authorisations and tasks, legal conditions for recognisable competitive practice are not formed.

2. Non-finalised system. Indirect and insufficient codification generated by the nature of the matter, non-finalised system. If an event appears simultaneously as object of legal regulation contained in few laws, unequally regulated (for example, agreement about prices is as monopolistic agreement in accordance to the Law of obligatory relations invalid and it does not produce any legal actions, in accordance to Competitive act it can be annulled, and in accordance with the Law of public price control participant which achieved preferred prices will be punished in proportion with achieved profit), that can be faulty legal technique in actualising the endeavour to comprehend that event depends on faze in which legal reaction came to effect. But if simultaneously certain forms of cartel which are equally considered to be monopoly are not explicitly mentioned, regardless of legislators intention, or border made through expressions "for example", "such as", comprehensible interpretation of the law, as the practise indicates, is that they are considered to be prohibited. From

that point of view, system is full of "gaps": vertical linking is not sanctioned, monopolistic agreement is not sanctioned *per se*, for example.

3. Repressive, and not regulative system. The accent in anticipating measures which could be taken in cases of monopolising in Competitive act and other regulations is repressive, prevailing are fines and other penalties. If it is not so visible from the point of enumerating possible measures, it becomes clear when anticipated measures are related to conditions for its implementing, specially in terms of monopoly or dominant position abuse: it is required that certain consequences appeared, or at least threat that they might appear, and punishment measure is related to them precisely. Deeper legal analysis therefor allows following question: is protective object of valid competitive legislationequal market match, free competition, or nevertheless some other values, related to obliteration of competition in this instance, such as regular supply or "justifiable" or "unjustifiable" profit.

Warrantee sanctions are therefore, if we are talking about fines, insufficient to achieve preventive function (that is proverbial problem in Yugoslavian violation legislature), or it is still the question of high punishments for criminal act (as if they derive from the time when term *economic sabotage* existed). Competitive commission is, along with this in a position to instigate procedure for declaration of these sanction, submitted to bodies in charge, and the rest is up to them. That's why it is not surprising that those reports are not submitted anymore, and for criminal act they do not exist at all. If authority of other bodies is taken into account, then Competition commission, to whom submitted reports are forwarded by market inspection, in order to filtrate them and forward them further to other bodies, does not have significant role at all.

4. *Legal standards and discretionary decisions.* Establishing terms of monopoly and monopolistic abuse, even with examples which were given *exempli causam,* within them and in spite of them, Antimonopoly Law, and other regulations which regulate monopoly, contrary to our legal tradition, impermissibly often direct central elements to legal standards. The fact that term dominant position is not determined by any numerable entry **contained in declared norm, of any power,** is the best illustration for this statement.

That by itself is potential failure, since it does not present reliable instruction to economic entity for making economic decisions. Commission practise, relatively meagre, does not give additional information. Internal instructions (guidelines) or Commission decisions, unpublished, indicate yet to one more, crucial danger: exaggerated level of discretionary decision making possibilities: **if certain internal criteria have been already accepted, why are they not morally empowered by publishing**. In such manner protection of free match is potentially turned into centre for market orchestration, which will on the basis of discretionary decisions in some cases react in others not.

5. *Competition regulative as element of economic policy.* Previous characteristic of positive competitive legislation allows conclusion that it is, in functional sense, first of all means for conducting certain state economic policy, and it applies sanction against those who do not comply to that

policy, unlike normative system which protects free market. Competition regulations are *means,* not final goal of this legal regulative.

(B) Causes concerning these attributes or systematic defects of valid competitive legislation do not recline, at least not in a first place, in legal sphere. It seems that absence of market economy as dominant one, relative, or at last instance illusive independence of economic entities in state or public property, does not make systematic need for real competition regulations.

Therefore parallel with (insufficient and ineffective) competitive regulations legal norms which create monopoly subsist (for example JP PTT monopoly over telecommunication services, which is transferred by agreement to Telecom Serbia), as well as "rules of the game" which are valid for such monopolies (for example, the one from the Law of public price control).

Further on, conducting "active" economic policy, the state retains the right to get involved with market policy, especially price policy.

Therefore, Antimonopoly Law is in some way implanted to the system, and unclearness and vagueness of some decisions is in the first place result of impermissibly weak legal technique, but weak legal technique is a consequence of legislators attempts to move at the limit of desirable and impermissible agreeing and joining of subjects, monopoly prohibitions in economy whose main industries are monopolised by law.

By introducing the free market, the need for appropriate competitive legislation is clearly established.

V Analyses of the Existing Institutions

1. ANTIMONOPOLY COMMISSION

The legal basis for the existence and work of the Antimonopoly commission comprises two groups of regulations:

- Legal regulations of an organizational character;
- Legal regulations of a procedural character (on the basis of which are founded the jurisdiction of the Commission and type of proceedings being standardized).

1.1. Legal regulations of an organizational character

These regulations are contained in a series of laws and acts:

- The Antimonopoly Law ("Official Gazette FRY", No. 29/96);[1]
- He Law on the basis of the state administration system and Federal Executive Council and federal administrative authorities of employment in state authorities ("Official Gazette SFRY" No 23/78, "Official Gazette SFRY" No. 58/79, "Official; Gazette SFRY" No. 21/82. "Official Gazette SFRY" No. 18/85, "Official Gazette SFRY", No. 37/88, "Official Gazette SFRY" No. 18/89, "Official Gazette SFRY", No. 40/89, "Official Gazette SFRY", No. 72/89, "Official Gazette SFRY", No. 42/90, "Official Gazette SFRY", No. 74/90, "Official Gazette SFRY", No. 35/91, "Official Gazette FRY", No. 31/93, "Official Gazette FRY", No. 50/93);
- Laws on the basis of employment ("Official Gazette FRY", No. 29/96, "Official Gazette FRY", No. 20/99, "Official Gazette FRY, No. 51/99);
- General administrative procedural law ("Official Gazette FRY", No. 33/97, "Official Gazette FRY", No. 31/01);
- Enactment on the foundation of federal ministries, other federal authorities and organizations and offices of Federal Government ("Official Gazette FRY", No. 41/01, "Official Gazette FRY", No. 42/01, "Official Gazette FRY No. 43/01, "Official Gazette FRY", No.66/01, "Official Gazette FRY", No. 67/01);
- Enactment on the foundation of the Antimonopoly Commission ("Official Gazette FRY, No. 44/97, "Official Gazette FRY, No. 67/00).

The Antimonopoly law makes the Antimonopoly Commission responsible for most of the duties connected to of the application of competition policy legislation and the provision of the unrestrained activity of market

1 Antimonopoly Law is a translation of Serbian "Antimonopolski zakon", rather than Competition Policy Law.

competition and fair market contest.[2] However, neither the Law itself, nor the decrees on its foundation, comprise all the regulations of an organizational character required for the legally effectual establishment of an administration authority. Such legal gaps in the law could be filled by analysis and application of the legal regulations implied in the above stated legal texts which, in the narrowest sense, do not fall into the category of special antimonopoly legislation.

To understand what weaknesses are created by this conception it is necessary to point out the following facts. The Legal regulations governing various types of abuse of monopolistic position and unfair behaviour on the market are contained in the constitutional and legal texts. In contrast the Antimonopoly Commission was founded by an act – a Decree of the Federal Government.[3] This raises numerous quandaries and questions. First of all, it is not clear why the foundation of the Commission and its operation was legislated for separately from the legal standardization of monopolistic position and unfair competition. It could be expected that, together with codification of material and legal regulation of competition policy which was carried out with the introduction of the Antimonopoly law as *lex specialis*[4] the codification of regulations of an organizational and procedural character would also be addressed. Concerning regulations of an organizational character, this is indeed what happened. The Antimonopoly Commission is a special administrative body within the Federal ministry for agriculture and domestic trade with special authorization, but it is debatable how effectively this was achieved Firstly, it is still not clear why with the Commission was established by means of an act of subordinate legal validity compared to the Antimonopoly legislation itself. These dilemmas could be summarized in one question. What is the legal nature (character) of the Commission and what is its place in the system of administrative bodies? An answer to this could more precisely establish its powers and authorization.

In addition, it remains unclear, why a relatively long period elapsed between the adoption of the Antimonopoly legislation and the issuing of the Decree. All the more so, since it is generally known that the procedure of issuing the laws, being a complex one, requires more time than the procedure of issuing decrees by executive bodies.

The Antimonopoly Commission is a special administrative body at the federal level, but its peculiarity is not particularly positive in nature. It can be concluded on the basis of its founding decree that the employment relations within the Commission and the proceedings carried out before it, deviate radically from the acknowledged principles and solutions of administrative and employment legislation in the country.

It has already been stated that the Antimonopoly law does not state anything in regard to legal aspects of foundation of the Commission.[5]

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2 See Article 5 of Antimonopoly law

3 „Official Gazette SAY, No. 24/1997“

4 Antimonopoly law, „Official Gazette SAY, No.29/1996

5 Such opinion does not deny Article 9. of the stated Law which assigns to the Commission authorities which has federal market inspection. Having compared in that way authority of federal market inspection with authorities of the Commission, this Law, practically, states that in its operation applies accordingly regulations in regard to federal market inspection. Irrespective of that, these regulations, falls strictly into the group of regulations of proceeding character.

However, from the above-mentioned regulations it is clear that that the Commission, in the language of administrative law, represents a separate administrative body, collective in type, which, by formation falls within the structure of the Federal ministry for the economy and domestic trade. Such a position opens new questions in many areas:

- Is it necessary for the efficient, impartial and objective carrying out of Antimonopoly legislation, that the Commission be an integral part of the Ministry?
- Is such an organizational resolution a hindrance to efficient, impartial and objective carrying out of Antimonopoly policy i.e. legislation?
- Is it, for the purpose of the same aim, necessary that the Commission be a collective body? How does the existing solution on the appointment and dismissal of members of the Commission, i.e. the solution on supervision and responsibilities affect the ability of the Commission to impose competition policy?
- How does the existing resolution on financing the Commission affect its unbiased enforcement of competition policy?

(1) The first weakness of the existing method of organization of the Commission is the fact that commissions usually represent working bodies within permanent administrative bodies, founded on an *ad hoc* basis (irrespective of the possible duration of their task and work), whose members can be drawn from a government body be outstanding people from outside. The system of federal bodies of the state administration permits the foundation of collective bodies and deviates from traditional assumptions in only two cases – with the foundation of the Antimonopoly Commission and the Federal Commission on securities and financial markets.[6] The reasons for the decision introduce (specific) collective bodies in these two instances in particular could be numerous. It is probably the case that the decision to accept such a solution, in agreement with the current direction of public administration reform, was influenced by the fact that both bodies could have an economic-regulative function. It may also have been the need to establish them on an ad hoc basis that was influential.

(2) This conception should be harmonised with regulations regarding the status of those carrying out administrative activity. The current legislation recognises, only two categories of persons working in federal administration bodies: employed (civil servants) and appointed persons, officials (persons whose selection, nomination or appointment is the consequence of political will and decision and which represent the administration "administration in the narrower sense" of that body. When analysing the provisions of the Decree it can be seen that the Commission shall comprise "outstanding experts, scholars and businessmen". It is difficult to fit these into either of the accepted categories, so again, the question arises, does the Commission resemble a working body of some administration body more closely, than it does a body in its own

6 See Articles 2,12,26 and 30 of Regulation regarding foundation of federal ministries, other federal bodies and organizations and offices of Federal Government, „Official Gazette FRY" No. 41/2001, 41/2001 and 43/2001.

right?[7]. Moreover, the text of the Decree describes them as “members”, and not administrative officials.

(3) In terms of this, point 2. Article 3. of the Regulation deserves particular attention. The method of its legal-technical revision discloses two serious, conceptual problems.

(a) The first is that members of the Commission, i.e. those responsible for making major decisions in the field of antimonopoly policy, according to the Decree itself, may be “outstanding businessmen”. In other words, the behaviour of an economic entity (company) is to be supervised by those who are either owners or managers of other companies. Outstanding businessmen, either the owners or the managers of companies, are being given the right to supervise the operation of their, (albeit potential) competitors, and to issue decisions which could have an effect on the operation of those competitors, and, thus, to the operation of their own companies as well. The consequence is to amplify, the already pronounced hybrid character of the Commission by introducing persons who are not employed in state administration bodies.[8] In addition, the decisions of the Commission could have direct impact on the short or long term interests, goals and positions of members of the Commission who could, on their own assessment of “danger on the market from competitors” issue decisions that are not unbiased. The stated resolution, thus, inevitably amplifies the conflict of interests of Commission members, instead of prohibiting and penalising it. The goal of members of the Commission should have been the protection and improvement of competition on the market and maximization of social welfare on that basis. But instead a seat on the Commission may enable a businessman to destroy competitors in the field where he operates, establishing a monopoly and the maximization of economic (monopoly) profit.

Within such a framework, the structure of incentives is such, that it is a great possibility that the stated “outstanding businessmen” will use their membership of the Commission for the benefit of their company, i.e. to acquired profit. In other words, the consequences resulting from this regulation are that members of the Commission who are “outstanding businessmen” could be in a position to function, by breach of duty, contrary to the social interest and contrary to the principle of equality of economic agents and in that way, bring about inefficient competition policy, i.e. non-competitive market structure and their negative welfare consequences. In short, in this way there is an open possibility to completely abuse the purpose of the competition policy.

(b) The other conceptual weakness is manifested in the fact that the election/appointment criteria are not clear enough, and they do not guarantee the efficiency of the Commission’s work, i.e. efficient formulation and enforcement of competition policy.

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7 This represents only one more confirmation of the above stated point that by founding commissions, being the federal administration body, deviates from traditional solutions.

8 It is understood its direct dependence from the Federal Government which, not only provides material-technical conditions for its operation but also appoint members of the Commission.

(4) It remains unclear what kind of administrative body is it, be it special or not, when it is not made up of persons with the right to fill such positions on the basis of their work (in bodies of the state administration). The Decree does not address the question of equal status of Commission members, i.e. it does not explain how members of the Commission are to be appointed. Considering that they have been qualified as "outstanding experts, scientists and businessmen", we suppose that, as such, they must already have employment in some other place. If this is the case, the question is how to treat their work on the Commission: Will they work as volunteers, or will they be expected to take leave from their jobs while serving as members of the Commission? The last option would, be the most appropriate, from the aspect of administrative and working law, considering that they belong to the group of nominated persons.

Irrespective of which option they commit themselves to, there is still a dilemma about what kind of administration body this is, be it special or not, when the persons employed in it, during the work in the Commission, do not have their years of service in effect. It should not be forgotten that the Commission concept in this way, represents an exception in one more sense: in contrast to all known federal administrative bodies to date, where administration comprises only several nominated persons (a manager of that body whose title depends on the type of body, assistants, deputies and secretary), the Commission is a administrative body comprising exclusively nominated persons! In several places in this study it is noted that one of the connections from which direct dependence of the government body originates is that the Federal Government, nominates the members of the Commission.

(5) Closely connected to the working status of Commission members, is the issue of the financial resources set aside for their work. First, are the members to be salaried (in which case, they acquire rights relating to their work on the Commission) or, alternatively a fee. Second, what kind of independence and autonomy can be guaranteed when salaries and other costs are to be met from the Federal budget?

The matter of compensation for participation in the work of the Commission (instead for the work of Commission members), who are not fully employed in federal ministries, other federal bodies and federal organizations, has been resolved by Decree of the Commission for administrative matters of the Federal government, issued on the basis of a decision regarding setting of compensation for persons participating in the work of federal government, federal ministries, other federal bodies, federal organizations, and offices of Federal government.

The Federal ministry of justice issued, according to the Law on the basis of the system for state administration and Federal executive council and federal bodies, an Opinion, which prescribes that a person nominated by a competent body, i.e. appointed to a certain function, tasks or undertaking, in an administration body, takes up employment in that administration body, on the day of nomination, i.e. appointment, if by the act on nomination, i.e. appointment it has not been decided otherwise. Thus, all the rights and obligations of an ordinary employee accrue to the official according to the resolution on appointment by which the employment is taken up. However, considering that almost all the members of the

Commission are already employed, and do not have any intention of leaving their current employment, the matter of their compensation remains open.

(6) At the end of consideration regarding organizational regulations, the following question arises: although in the regulation itself, it is stated that the Commission is a collective body with a President and 6 members, is it really so? The operating regulations of the Antimonopoly Commission prescribe that "… professional services prepare for sessions of the Commission, carry out all operations in accordance with decisions of the Commission and execute tasks entrusted by the Commission".[9] Confirmation that the professional part of the work (processing of submitted applications, establishing of files and setting elements for issuing major decisions) is done for the Commission, by its expert officers, which are, by their nature characteristic either to legislation authorities (expert offices of the Parliament) or executive authority (except offices of the government) as can be seen in the available documents of the Commission itself. The first question being asked is who is employed in the expert offices, i.e. which body do they belong to? Firstly, it could be those employed in the Federal ministry of the economy and domestic trade. However in the Regulation on systematisation and internal organization of working places in this Ministry, the existence of such an office has not been catered for, although, it has to be.[10] Theoretically speaking, these could be persons exclusively responsible for providing expert assistance to the Commission, but their working places have to be also systematized in the stated regulation. This is a departure from the usual rule, so the president of the Commission, being the immediate manager, issued the Regulation on internal organization and systematisation of working places in the Antimonopoly Commission. That solution, per se, is contrary to the status of the Commission, considering that it is a body within the Ministry. Of course, such behaviour could not be criticized if the Commission had been established as a separate administration body outside the Ministry, such as, for instance, the Public Legal Office.

Commission's expert offices employ eight individuals on expert operations. All are highly educated staff, mostly economists and law graduates (the exceptions being one employee with a degree in agricultural science and another in organizational science). The staff have between have between four and thirty-five years of service, and they have come to the Commission either from the state administration (mostly the Ministry of Finance) or from business. They all speak English to some degree and other foreign languages. The staff of the Commission have shown efforts to acquire advanced training, and actively participate in international seminars on Antimonopoly policy. Still, it seems that the number of expert staff is not sufficient to prepare the decisions of the Commission itself, as well as to carry out competition policy effectively.

9 See Article 8. of Operating regulations of Antimonopoly Commission.

10 Contrary to that, in the stated regulation working places are being systemized in the Sector for prevention of competitor's violation on the unified market, which competence is set so, that in a good deal enters into the scope of Commission's work

(7) The Commission will fulfil the purpose of its existence only if it is independent in its work. The method by which members of the commission are appointed best indicates how independent it is. Members of the Commission, irrespective of the fact that the Employer calls them members, are officials nominated and dismissed. The legislation in force constitutes the Commission as a government body, more correctly, a body of the Federal Government. Upon the proposal of the competent ministry, the Federal Government nominates the members. In that way space is being established to directly influence the work of the Commission through the makeup of its staff. In addition there is no special procedure for dismissal nor is there a limit to their terms of office. As a result, the future make up of the Commission remains dependent upon daily economic – political developments.

The Decree on the operation of the Commission, in Article 20, prescribes that the Commission f is responsible for its actions to the Federal Minister, i.e. the Federal Government. Although such a regulation could indicate that the responsibility of the Commission for its operation, i.e. rendering account, has been well defined, this is not the case. In fact the exact opposite is true. On the basis of this, it can be stated that the Commission enjoys no independence at all. In addition to that, the problem is that the Commission is not obliged to submit to the public, i.e. publish information on its operation, so in a concrete case, its operation cannot be said to be transparent.

1.2. Legal regulations of a procedural character

Such regulations should answer the following questions: what is the legal basis for the establishment of the jurisdiction of the Commission, what is the extent of its authority, what type of proceedings will be conducted before the Commission and what powers does it possess. Unfortunately, there are no answers to these questions in any text (either legal or sub-legal), and an additional problem is the fact that answers can only be found by the simultaneous application of regulations of general and regulations of separate (Antimonopoly) character. Although that is contrary to their legal weight and their place in the hierarchy of the legal sources, analysis shall start from the sub-legal text.

(a) The jurisdiction of the Commission is given in the decree establishing the Antimonopoly Commission.[11] The advantage of such a solution is obvious to the legal theoretician as well as to the practitioner and should not be additionally explained. The weakness of the concrete formulation of Article 2 of the Decree on establishing the Antimonopoly Commission is the fact that no single basis for the operation of the Commission in the case of appearance of new aspects of abuse, for example "… as well as all other aspects…" has been given. As a result it has not enough space has been left for the Commission to respond to possible new appearances of monopolistic behaviour and unfair competition, i.e. aspects and consequences of non-competitive market structures and behaviours. A general,

11 See Article 2. of the quoted regulation.

elastic clause the inclusion of which is almost a rule with such precise itemizing has been omitted.[12] Although the regulations have their bad sides, the benefits it brings far outweigh its weaknesses. Thus, the jurisdiction of the Commission comprises:

- monitoring, establishing and analysing of economic entities that have monopolistic, i.e. dominant position on the market;
- establishing the existence of monopolistic, i.e. dominant position;[13]
- establishing the existence of monopolistic agreement.

This formulation of "… monitoring, establishing and analysing of economic entities that have monopolistic and/or dominant position in the market" deserves more detailed comment. Grammatically speaking, the verb used shows that the starting point of the entire conception is the continuous work of the Commission, which implies constant activity of Commission members. as was said before, such state does not respond to the reality, considering that it is the expert offices that conduct everyday activities, and the Commission itself meets at certain time intervals[14]. By prescribing that sessions of the Commission be held as required and at least once a month, , the provisions of the Decree as an act of sub legal character, are in direct contrast with the provisions of the general Administrative procedure Act[15]. Such a situation is legally unsustainable and is not only in contrast to the purpose and spirit of the administrative procedure that is to be carried out in before the Commission but is in contrast to the very purpose of competition policy legislation.

Also, it is not clear what "monitoring, establishing and analysing of operation" means considering it these are activities of different character, scope and difficulty. When the Commission establishes something, that is *par excellence* a question of assessment, in contrast to the question of what the basis of its actions are which is a question of a material-legal nature. The question of when the Commission establishes is equally interesting and important, since essentially it marks when proceedings before the Commission are initiated, what stages it runs through, the term for its execution and the act, which has to represent materialization of that procedure.

The current Antimonopoly regulation does not sanction the establishment of non-competitive market structures, i.e. monopolistic position, but, exclusively its abuse, which causes the removal of the competition and provokes a breakdown in the unified market. Observed in that way, the monitoring and analysing of the operation of an economic entity, are logically connected with concepts of non-competitive market structures, monopolistic position and its abuse (monopolistic behaviour), since with their operation the process of their inception and establishment could be monitored and analysed. Undertaking such activities, per se, does not have to mean executing the prerogatives of executive authority, i.e. it is

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12 That is not a case when authority has been given to the Commission is in question.

13 Of course, from the legal-technical side the solution is not logical; the Commission hardly could establish the existence of dominant position without following up and insight into documents, and as per text, it analyses those who has established dominant position.

14 See Article 3. of the Regulation on operation of the Antimonopoly Commission.

15 See Article 113. of the General Administrative Procedure Act regarding initiation of administrative procedure.

not imminent to the activities of state administration bodies. It eventually could represent preparation for operation of activities of "establishing". Hence, it is not clear what is meant by and what the purpose is of "establishing operations" of some economic entity and what are the possible operations of establishing. Establishing has the aim, preparation of the base of legal fact for issuing the appropriate decision and by its nature, has a central place in all legal procedures – it represents the essence of probative procedure. If such a standpoint has been accepted by interpretation of the provisions of the general Administrative Procedure Act and the Antimonopoly Law, what is the difference between these activities and the activities of the expert offices of the Commission? It is possible that such differences exist, but at this moment it is not possible to recognize them.

Further, by what means (instruments) would this be established, i.e. what means are available to the Commission to "establish operation"? For instance, what business information must the company submit to the Commission, in order for it to "establish its operation" and how is non-compliance with the obligation of submitting such information to be treated? The question of who shall carry out the evaluation of this information, becomes very complex, taking into consideration what operation of economic entities follow, analyse and control several inspection bodies, out of which, some are, the same as a Commission, the integral part of the Federal Ministry of Economy and Domestic Trade, for instance, Federal Market Inspection, which, from its side has the obligation to initiate the institution of the procedure in front of the Commission.

(b) When jurisdiction of the Commission is the issue, it has been determined with two wide enough, general clauses: the first one is "taking measures to prevent abuse of monopolistic, i.e. dominant position and concluding of (although it would be more appropriate to say prevention of concluding) the monopolistic agreement". It is a wide enough net, *per se*, but without qualitative essence. The hybrid character of the Commission established the foundation, which has its reflection in its hybrid competence. Although the Antimonopoly law and the Decree were the right place make clear what these measures are, this was not done. That is why it remains unclear what measures the Commission could take, and is there any kind of difference in regard to the measures to which Commission is empowered to take by another clause. Namely, the second clause says "taking other measures established by federal law". It is difficult to see the intention of the legislator and understand what was the aim of such a prescription of competence. The impression imposes itself that certain results could be achieved with the Antimonopoly legislation in force, despite all mentioned defects and weakness, but its inefficiency and lack of authority are the immediate consequence of such outlined competence. In Legal science, measures are understood to be certain directives for taking action, either directly or indirectly, by force or voluntarily, such as, for instance, an arraignment by force in the case of a refusal to appear after a summons, removal from premises of the state body or court, demolishing of illegally built building and many others.

A problem with this formulation comprises the following: traditionally, legal measures consider the subject in which favour or disadvantage they are being taken and in dependence from their type, could be executed by

administrative or legal bodies. It is obvious that in this case, we are not dealing with this type of measure. Antimonopoly law itself does not say anything in this respect.[16] Moreover, they do not point out what federal law is the issue in this concrete case. In that way, the Antimonopoly Commission, which is left without instruments for work, cannot possibly act efficiently. Protective measures connect their existence, exclusively, for sanctioning of abuse of monopolistic and/or dominant position. That is a natural consequence that abuse of monopolistic and/or dominant position, has been sanctioned through economic offences and criminal offences. Considering these matters is the exclusive competence of the third, separate and independent authority – judicial. All the above quoted weaknesses, unclear statements and contradictory states have their reflection also, in the proceedings treatment by the Commission. Out of that key questions have been separated:

- When does the Commission follow, analyse and establish matters in its jurisdiction?
- In which way does it do so?
- What do their decisions look like and what do they say?
- Who is supervises compliance with the law?

As distinguished from the Decree, which does not comprise any provision in that respect, The Antimonopoly law contains several articles dedicated to that matter. Unfortunately, these articles are abundant in imperfections and omissions, which is the consequence of their insubstantiality. The Law itself, although it claims to represent a codification of Antimonopoly regulations, does not give a precise answer to the question, who can initiate proceedings before the Commission.

(b1) The Law firstly prescribes "… that every interested party can submit charges on all operations and acts of an economic entity he considers to represent abuse…" which, due to its generality and unfinished quality does not mean, practically, anything. The interested party could be a individual, for instance a consumer, an association of consumers, a responsible person in competitive company and the like. Available material, based on which the practice has been analysed in the Commission work, confirms this position. So, there are cases (indeed, rare) in which proceedings before the Commission has been started, and in paper files, submitted charges do not exist. The problem is not to be solved by the application of provisions of the General Administrative Proceedings Act, which enables starting of administrative proceeding ex officio. We mentioned this due to particularity of the proceeding itself being carried out before the Commission owing to it is difficult to find out when the proceeding ex officio is considered started. Traditionally, the starting point is taken to be the first operation of the administrative body. Can the first operation of the Commission be considered the analysis of the operation of certain economic entity by means of public information since, as a last resort that also could be forced into the category of "monitoring". If we accept such

16 Measures in regard to other measures anticipated by federal law cannot be considered as protective measures, which are prescribed by Antimonopoly law in Article 14. since its pronouncing has been anticipated in the procedure upon economic offenses and the title itself is „protective measures“.

an interpretation, there is space for numerous abuse, and arbitrariness, which could result in unequal position (treatment) of economic agents in the eyes of the Commission.[17]

(b2) Additional confusion provokes provision of Antimonopoly Law that the charges are to be submitted “to the competent federal authority”, although in the entire text, except in introductory provisions, that authority is named as the Commission. It remains unclear if this represents an omission in legal-technical editing of the text, or that, on the contrary, there is still is some other authority competent for the same field.

(b3) In additional to that, the quoted provisions contained in Article 8 are, without justified reason, separated from provisions of Article 10, which prescribe the same obligation for federal market inspectors. That is why there is new lack of clarity: did they wish to specially stress the importance of the Federal market inspection’s operation in this field, or is it again about unfortunate legal-technical editing of the text. In case the first is in issue, this provision is completely unnecessary: it represents only a narrow legal regulation, contrary to the one which obliges “every interested person”, what a federal market inspector should certainly be due to the description of his working obligation and task. In that way, Antimonopoly Law the role of federal market is reducing inspection, instead to amplify the role, which has been assigned to them by *lex specialis*. Further, this provision is unnecessary since the failure to report an abuse of monopolistic and/or dominant position is a criminal offence, and considering that the offence of not reporting is treated as a criminal offence if it is discovered while the perpetrator is in office. If the wish was to stress the importance of market inspection in repression of monopolistic behaviour and unfair competition, it should prescribe a term when the inspector is obliged to submit charges, and sanctions for violation of that term, as well as to state as precisely, as possible, its context, because, at least, in that part it should not be levelled with other interested parties, although this last (the context) in practice, does not provoke excessive problems, considering that the inspectors together with the charges submit a copy of the inspection made.

(b4) The practice of acting upon charges submitted to the Commission differs depending on who appears as its submitter. If it is the federal market inspector, expert offices seldom process it by completing and checking with other data. Such behaviour (trust) has for the base a supposition in regard to professional and personnel qualification of their submitter. However, in that way the purpose of existence of one separate authority for repression of non-competitive market structures loses its sense and their function becomes almost a protocol. Contrary to that, if the charges originate from individuals or legal entities, expert offices go to the locality and by insight into the documents and from discussions with responsible persons compile “Findings” in the form of a note or minutes of the meeting which serve as a factual basis for further action by the Commission. In addition to that, expert offices *ex officio* check the correctness of quote from the charge according to other available data.

17 See Article 8. of Antimonopoly Law.

At this stage of the proceedings, in practice, certain problems appear, for instance non-signing of the minutes of the meeting by responsible persons representing the economic entity, so the Commission itself considered necessary to react in the form of internal, verbal direction and at one of its sessions has decided that minutes of meeting have to be signed by all persons present.

The quoted behaviour of the economic entities investigated (non-signing) points to:

- lack of knowledge of importance of existence and operation of Antimonopoly bodies;
- discredit into the work (or even impartial work) of the Commission;
- their disregard of the Commission and its work;
- their essential or formal indifference to participate in the Commission's work

All this together shows the weakness of the existing legislation, which did not succeed to provide by their solution, the authority and credibility of the Commission and thus, enable its efficient work. The act of non-signing the minutes of meeting is the result of traditional understanding that with that act the exactness of the factual quotations contained in the minutes of meeting is being denied. Of course, this denial should be much more efficient, if carried out by explicit note, i.e. statement to the minutes of meeting as prescribed by the General Administrative Procedure Act. From the other side, facts could be denied in further proceeding irrespective of un-signed minutes of meeting. Finally, per se, non-signing does not make the minutes of meeting legally invalid. This act of non-cooperation of the controlled entity remains only the expression of mistrust in the person who has carried out the investigation, i.e. absence of authority. By inflexible interpretation of regulations of administrative procedure, non-signing could be treated as refusing to carry out investigation, which shall have the consequence of special sanctions. The Commission violates the rules of general administrative procedure also by the common principle of verbally, permitting parties to plead in written form. It could be that it suits the contest and characteristic of the Commission, but, certainly, represents important digression from the principle of legality.

(c) The following question is, how the Commission operates, i.e. what kind of procedure is being carried out and how, in front of the Commission. The Commission, according to the Antimonopoly Law and Decree on its foundation, has been established as a collective administration body. However, in its work, the Commission deviates from currently accepted practice for an administration body's work. Namely, the rule is that administration bodies decide upon the requirements of parties. However, the Decree of operation of the Commission anticipates that sessions of the Commission are to be held as required (which is adequate to the work upon requirements of the parties) but, and ",, at least once a month…" and in that way once more stresses its nature as a working bogy of the Ministry. That "Commission characteristic" is additionally amplified by the provisions of the Regulation on operation, which prescribe that sessions are to be held according to an Agenda, instead of the procedure being carried out as a classical administrative procedure. Finally, deviation from regular administrative procedure prescribed by the Law is reflected

also in prescribing that "…Submitter of the request only exceptionally could be present at sessions of the Commission… upon invitation of the President of the Commission,. or the member replacing him", although rules of publicity and directness of work of the administration body are the basic rules of their operation. It remains unclear what request is at issue: is it a charge which in this part is being treated as a request or, a separate request to be present which could be submitted by any interested person including the parties themselves.

(d) The Law prescribes different procedures before the Commission for the abuse of monopolist and or dominant position and the conclusion of monopolistic agreements.

(d1) In regard to the abuse of position, the Law differs between monitoring, analysing and establishing, which, is perhaps justified from the point of view of operations to be taken in order to carry out activity, but does not suit either logically or chronologically to the course of events. In such a way, the Law in paragraph 1. Article 5. says that the Commission follows up and analyse the entity's operations which have monopolistic, i.e. dominant position in the market, and in paragraph 2. the Law standardizes supposition for carrying out activities quoted in paragraph 1. – that the Commission, previously, had to establish the existence of such position (which, after all, refers also to the agreement, and represents a previous question). But, activities of the commission should have to be much more complex. The most important reason is the fact that standardized as such, they do not accomplish their real purpose, i.e. cover the entire field in which the disturbance of competitors' market structures could happen.

In order to qualify the certain operation of economic entity as an abuse of monopolistic, i.e. dominant position, it is required to accomplish more cumulative conditions:

- that there is such position of economic entity,
- that economic entity from these positions takes certain operations or issue acts and
- that due to above and in cause-and-effect connection, with them creates harmful consequences.

In case activities of the Commission have been carried out only and strictly according to Antimonopoly Law, repression and sanctioning of abuse of monopolistic and/or dominant position or concluding of monopolistic agreement would not be possible. This for the reason that the Law does not have mechanism for something like that. More correctly, there is lack of cause-and-effect connection between activities of the Commission referring to their position, acts and operations, from one side and consequences on competitor's market structures, from the other side. The effect of operation of the Commission is missing. It could be best seen in the enclosed document, where expert offices process charges and propose establishing the monopolistic, i.e. dominant position and operations and acts of economic entities. This stage of the procedure, the Commission itself in their documents calls "a proposal of elements for establishing monopolistic position". Establishing of quoted elements is carried out on sessions of the Commission, and after that propose issuing a resolution. However, such dealing of the Commission, as quoted before,

deviates from up till now known elements of administrative procedure, but in negative sense. Namely, according to the stated above it could be seen that there is certain void between proposition of issuing resolution and its written execution, at least, such connection was not possible to establish according to documents available. We say this because, after making the minutes of the meeting from Commission's sessions held, in which there is no formulating of pronouncements (purview), written resolutions follow, so there is question who formulated them and when? Of course such dealing of the Commission would not be possible if principle of publicity had been applied strictly and parties in proceedings be enabled to be present their case at Commission's sessions. Attention shall be paid, for the moment, to "establishing elements for issuing a resolution". From the available documents, it can be seen that activities of expert offices and Commission itself are brought down to establishing position according to criteria that are very open to criticism.

Not only does the Law not contain standards to establish monopoly, or dominant position, neither does it dictate a procedure for the Commission's work in that area, nor does the Decree. Moreover, the Decree on the foundation of the Antimonopoly Commission does not oblige the Commission to establish these criteria and publish them. The commission, on its session dated 11th October 1999 established Criteria to identify the existence of monopolistic, i.e. dominant position of the economic entity on the market.[18] The document represents internal document of the Commission unavailable to the public.

The quoted document take the form of a 14 page document with a lot of footnotes explaining some criteria and measures to be taken in order to use these criteria for evaluation of the observed market structure. By these criteria some points are explained which were not clear in the Law, and sub-legal acts of the Government, such as the Decree establishing the Antimonopoly Commission. However, two basic problems remain. The criteria are not public documents, so they are not available to the public. In addition to that, Criteria have not been worked out enough, which made them less applicable, but a good deal of the text itself is of the research character. Without denying the requirement to properly explain some criteria this document, still, do not posses great operational characteristics.

Pursuant to that we conclude that there is not any public document, which defines (in a substantial and procedural sense) the method of ascertaining monopolistic, i.e. dominant position. Taking into consideration that the Law itself does not define operationally neither monopolistic, nor dominant position, such state of affairs is more than disturbing and creates space for completely arbitrary decisions by the Commission. In such a way the space is opened for political abuse of the Commission itself, and it is practically invited to carry out arbitration in disputed situations in economy, having a political background. With this, uncertainty is still greater, and economic entities are faced with increased regulatory risks on the market.

18 The Institute for comparative law made proposal of stated criteria.

Of course, such state of affairs born uneven situation in practice of the Commission. So, by the insight into available documents it could be concluded that activities which the regulations call “consolidation” find its procedural expression in the term with which the decisions are enacted. Only in two resolutions issued by the Commission, contain this as opposed to the 12 cases, which do not.

More precisely, the enacting term of these resolutions is only “It is ordered…” In such a situation all its weakness is shown in provision of the Law which does not give an answer to question in which period, i.e. term, the Commission is obliged to announce their decision in regard to weather they have established something or not. Also, it is not prescribed in which period the Commission is obliged to submit their decision. The past practice of the Commission’s work shows that it has established, in most cases the following:

- price increase by firms having monopolistic and/or dominant position;[19]
- concluding of agreements and contracts.

(d2) As distinguished from abuse of monopolistic position, where activity of the Commission has been prescribed as an activity, in case of concluding monopolistic agreement, we face one more inconsistency. The Law prescribes the obligation to all to submit charges to the Commission in case they know of the existence of a monopolistic agreement. Or the legislator himself considers certain agreements *per se* (due to their nature), dangerous to competitor’s market structures? In case such understanding is accepted, what is the purpose of specially standardize obligation of the Antimonopoly Law, that all agreements and other means of associations, have to be submitted to the Commission within the period of 15 days from the date of concluding? This could be understood either as legal-technical omission in editing of the Law itself, or the expression of political and economic understanding, what is considered a monopoly. This is due to the fact that the expression “agreement” implies also monopolistic agreements, which are forbidden (except from Article 4., paragraph 4.) and agreements regarding establishing business associations, which, as such, have not been forbidden, but it is forbidden to use such associations in order to conclude monopolistic agreements.

When agreements on association are an issue, i.e. agreements in regard to establishing business associations, the provisions of the Law in regard to starting of proceedings before the Commission are explicit. The Commission starts its work only after such an agreement was submitted to

19 Herewith, however, there is a question: is at about an average or some other price increase? Average price increase does not say anything regarding conditions of operations of the concrete economic entity, i.e. about conditions of production and sale of the concrete product. For instance, in conditions of stable prices, it could come to the price increase of the key production input (for instance, input from import) which considerably increase total, i.e. average expenses of production. That is, after all, one of the main argument stating by the economic entity in their defense in front of the Commission. In case in such conditions should not come to the price increase of that product, the producer would, inevitably, suffer a loss and abound production, which is unfavorable from the point of view of social prosperity. I is obvious that the use of average price increase is contra-productive from the point of view of conducting a good Antimonopoly policy“

them. However, precise provisions are missing in regard to who is the entity obliged to submit the agreement, considering that the expression “agreement” considers two or more persons who reached it?[20]

Out of available documents of the Commission itself, it could be seen that their members and expert offices, their competence in this part, understand as a possibility to also investigate contracts concluded between economic entities and authorization to take measures which will change or delete some of their provisions. Such handling of the Commission should be treated very cautiously, taking into consideration that it enters, in great deal, into the freedom of contracting of economic entities. For that purpose, it is very illustrative to quote the case of “NIS Naftagas” and their business partner in which case between this economic entity and the Company which produces chemical compounds required for the production process of “NIS”, the Contract was concluded in regard to delivery of the compound over a period of 20 years. The stated Contract was termed a Contract on business-technical cooperation, although, it could have been described as a traditional contract, nominated by Law. The Commission, firstly, established that the provision of the Contract, anticipating the priority of “NIS” in reception of the quoted compound and the obligation of the economic entity to provide the same, as null, and afterwards, ordered its simple elimination. The stated deletion should be, as per enacting terms, executed by simple deletion from the Contract text, irrespective of the provisions of the Contract, which are contrary to the imperative legal regulations pronounced absolutely null, do not produce legal effect. Of course, in such a situation the question was avoided, weather parties concluded the Contract wishing to establish that type of obligation, consider it the essential element of the Contract. Such a destiny provokes the question why the order for such deletion of certain disputed article, only one party of the Contract (NIS) is obliged to do so, considering that enacting term of solution issued says so.[21]

2. MINISTRY FOR ECONOMY AND DOMESTIC TRADE

The Ministry for economy and domestic trade represents the government’s authority on the federal level, which together with other ministries, prescribed by the Regulation regarding basis of systems of federal administration bodies, Federal executive council and other administration bodies, comprises an instrument of the Federal Government. Already from

20 Moreover, in one of its decisions (solutions) the Commission orders only one contracted party, deleting of certain Article of the Contract regarding business-technical cooperation?

21 That is not the only objection, which could be put to the Commission’s work, from the proceeding side. In the available documents there are cases which files start with first degree resolution which could point out that procedure has not been carried out at all; from some cases it could not be seen what is further destiny of the procedure after issuing the first degree resolution since data are missing, weather it has been dealt with or against it the complaint was filed to the second degree body; in some cases it is missing the connection between first degree and second degree resolution – complaint of the economic entity, so it could not be seen, on which base the starting of complaint procedure was effected.

this sentence it could be seen that as such, the Ministry cannot be independent in its work, independent from the Federal Government of which it is a part.

Problems caused by its connection for the Government, happen when this Ministry is given the role of second degree authority in the administrative procedure of control and prevention of abuse of monopolistic and/or dominant position, and concluding of monopolistic agreement. Extremely necessary fairness, autonomy and independence in the control of stated types of disturbances of competitor's structures on the market, is in logical contrast to the present position of this ministry. All the more so, the essence of the role of each second-degree authority is the control of legislative and regularity of work and acts of the first-degree authority! The Antimonopoly Law prescribes that possible complaint procedure, upon the complaint filed against decision of Antimonopoly Commission, is to be carried out before the Federal Ministry for the Economy and Domestic Trade.[22] However, to achieve such a responsible and complex task, there are some of the following barriers.

(a) Undeniable is the fact that the position of the Commission being the first degree authority, being the integral part of the Ministry as a second degree authority, effects to the control and direction which the practice of the complained body, should have to issue. According to the legally prescribed structure, the Commission is pronounced expert body and as per definition it should be more expert than the Ministry, being the administration body. From the other side, Ministry comprising the Commission controls and directs its practice, settling as per complains.

In that way the institutional supposition have been made that practice of the Commission should be directed towards their regulation instead of classical Antimonopoly function. Then, it is unreal to assume that the Federal Ministry for domestic trade would have to carry out quickly and in good quality the monitoring of the first-degree procedure and act. The first because the nature and scope of work comprising establishing, following up and analysing of abuse of monopolistic, i.e. dominant position, is such, that their carrying out has been assigned for the jurisdiction to the separate administration body. It was not assigned to an ordinary body, but the body that should be very narrowly specialized for that work, considering that in its scope of work it does not the right to perform other works and tasks. It is evident that the range of works of the stated Ministry could have been wider as well as the internal structure differently composed. Secondly, could the stated Ministry, in addition to numerous other tasks, in a acceptably short period of time, carry out work for which a specialized authority needed a certain period of time? Investigation of regularity and legality of the first-degree procedure and issued decision, require, first of all, a good knowledge of administrative procedure as a necessary assumption. In addition to that, process of investigating is in fact the checking, ex officio, of existence and carrying out of necessary breach of procedure, and then, carries on to investigation of quote of possible complaint, which, in most cases, comprises the checking of the set factual state. Are

22 According to provisions of the General Administrative Procedure Act, being the additional source.

cabinets and department heads capable to carry out such work? Or will they carry out such work ad hoc, i.e. when the need arises and upon the order of the competent leaders, employed in the Ministry? We mention this because the answer to the posed question could not be obtained by insight into submitted documents in which, after the filed complaint and possible written letter to the parties that they could plead in regard to the factual state, follows the resolution of the Ministry being signed by the minister. It is obvious, that in this way, the conditions for the satisfactory completion of this job were not established.

(b) Besides that, it is not a minor effect a special kind of "conflict of interest" which is direct consequence of introducing the Commission into the structure of the Ministry. Namely, in the structure of the Federal Ministry for economy and domestic trade, there is a separate organizational unit – a sector. Its full title is the Sector for preventing violation of competition on the single market, and its jurisdiction is to provide conditions for unconstrained development of market competition. Within the frame of this sector, operates the Department for protection of competition on the integral market and the Group for monitoring of state and taking up measurements for protection of consumer's rights. Out of titles itself of these organizational units it is obvious that they have the scope of work similar to the jurisdiction of the Commission.

It remains an open question if these organizational units act together with the Commission on the control of monopolistic behaviour and unfair competition, and what is to be considered mutual activity. In other words, what relations there are between the Commission, on one side, and the mentioned departments and groups on the other? The Rule book on systematisation and internal organization of working places in the Federal Ministry for economy and domestic trade, prescribes as a description of employee's works in these organizational units, operations referring to preparation and working out of provisions and supporting acts referring to control and prevention of violation of competition, i.e. unfair competition; proposal of measures for advancing of instruments of free competition and prevention of operations referring to unfair competition on the market and participation in work of inter-resources working groups and commissions. The quoted formulations are widely set and could represent basis for participation of these organizational types in the work of the Commission. However, it is unclear in what relation in such situation, they would find themselves towards the expert office of the Commission. However, although formulation…" preparation of supporting acts…", "… preventing other speculation operations…" and "… could be considered as participation in the Commission's work, there are certain differences due to which that operation could not be equal to extending expert and technical assistance to the Commission. This due to the fact that Rule book on Commission's operation is explicit when anticipated that documents for work and decision of the Commission, are being collected by expert offices of the Commission, and not the Ministry alone. The question, is it like that also in practice, it is not possible to give a precise answer.

3. JUDICIAL BODIES

(a) Considering the nature of the body which issues administrative acts (represents the integral part of executive authority), in all countries of developed legal tradition, it is permitted to control their legislation and regularity by the third branch of government the judicial. The judicial procedure in which such control is carried out has a title: procedure in contentious administrative matters.

According to the Law on courts which legal validity has ceased with the issuing of a packet of laws on jurisdiction, the jurisdiction for carrying out of administrative procedure, has been assigned to district courts. The procedure was carried out in front of "administrative councils" which, from the functional point of view, were integral part of civil and legal departments. Such solution enabled, in most cases in "smaller" courts, that cases of administrative proceeding are being solved also by judges who were not closely oriented to documents of administrative proceeding, but were "rented" from other councils for that concrete purpose.

After issuing the Law on organization of courts,[23] the situation is as follows: discussing of documents, which are the subject of administrative proceeding, has been assigned to the jurisdiction of a separate court – Administrative Court.[24]

Jurisdiction of the Administrative Court ranges over the entire territory of Republic of Serbia, and, being directly higher court, responsible for control of its decisions in cases where in administrative proceeding it is permitted the appearance of Supreme Court of Serbia. This solution has several good features. Firstly, by founding a separate administrative court it was clearly stated that in that matter there will be advanced training of personnel from that field which is a great advancement in regard to the present state. Secondly, not less important, is that such a solution enables the levelling of court practice to the level of the entire country.

Finally, it should not be forgotten that this solution has been anticipated for administrative – judicial matters in the Republic of Serbia, and that for the time being, for the lawsuit in the administrative proceeding against an administrative act of the federal authority, and there falls second instance decision in Antimonopoly matters, the Federal Court is the competent one.

(b) Jurisdictional bodies appear in the capacity of competent bodies even in penal files in which the penal responsibility has been anticipated by Antimonopoly Law, violations, economic offences and criminal offences.

Although the number of repressive provisions in Antimonopoly Law is proportionally great, although they exist in other regulations, which arrange matters connected to the monopoly and monopolistic behaviour, the role of Antimonopoly Commission comprises submitting of charges to the competent offence, i.e. judicial bodies.

23 Official Gazette RS", No. 63/2001

24 Herewith says specially, contrary to the courts of general jurisdiction, and as such it is to be understood.

Upon the submission of charges, the plaintiff is the one who decides in regard to beginning the suit for economic offence, i.e. criminal offence. For the requirements of this study, it was not specially analysed practice in these penal proceedings; penal statistics with us do not give precise and reliable data, and out of practice of Antimonopoly Commission the following is clear: The Commission, obviously, concluded that the most severe penal measures anticipated by Antimonopoly Law are unexemplary, or are not in accord with the entire Antimonopoly legislation, material and proceeding as well, so they do not file criminal charges.

(c) Judicial bodies are indirectly in a position that by their decisions prevent creation and abuse of monopoly. As described above, contracts by which it is creating or/and abusing monopolistic position, according to the Law on obligations, are not permitted. The similar prevention is contained even on other regulations, for instance in the Law on system of social price control.

According to the rules of civil, i.e. trade law, each interested party can, by lawsuit, request from the court to establish worthless of such agreement. If in front of the court it appears a case from the contract which has elements of creating, i.e. using of monopolistic agreement, irrespective weather one of parties request so, the court shall pronounce such contract null and void. If there is indication that it is about void contract of this kind, the court can carry on with probative proceeding, irrespective of the factual assertion and proofs offered by parties.

Herewith also it was not possible to carry out relevant empiric investigation, but with the insight into publication in which court practice is regularly published, it could be concluded (except rarely in the function of protection of consumers) that courts have not been faced with this problem. The reason does not have to be the absence of sensibility for necessity of freedom protection and equal competition, although the absence of tradition indicates that this reason also exists. The concept of abuse of monopolistic, i.e. dominant position and monopolistic agreement in our law, especially including consequences in that concept, have made that at the same time it was potentially acquired others, less subtle and demonstrable reasons of irrelevant legal operation.

(d) Finally, courts appear in the capacity of executive bodies in relation to some decisions of the Antimonopoly Commission. It is especially interesting the position of the court in carrying out decision regarding prevention of publishing activities. The Law on procedure of entry into the court registry and regulation on entry into court registry was not specially regulated the jurisdiction of registration court to enter such a prevention, although for such entry there are many reasons, including also prevention of third conscientious persons. As per analogy, temporary prevention could be entered by note.

(e) At the end, if it has to evaluate the role, which judicial bodies really have in acquiring Antimonopoly principle in our positive law, it has not been specially pronounced. It would be difficult to expect important administrative-judicial, thus, control role in proportionally small number of cases in which there were reactions on appearance of creation and abuse of monopoly, practice in which, otherwise, meagre, contradictory and unclear provisions of the Law, have been given a life.

The economic environment of simulated market in “socialist commodity production” and regulated market (with emphasized role of the state) in the analysed period, are not suppositions in which regulation could develop, and with that institution to carry it on accordingly. It would be justified that parallel with reforms of normative model, the new competition policy institutions should be created, including also appropriate preparation and training of judicial bodies.

ANEX
Basic Data of Supply Concentration

Table A1
Supply concentration estimated on the firms' turnover

No.	Sub-sector Code	Sub-sector	Number of Companies	HH Index	Quotient K4
1	10101	Production of hydroelectric energy	3	5,341	100.0
2	10102	Production of thermoelectric energy	5	4,596	98.1
3	10104	Transfer of electric energy	1	10,000	100.0
4	10105	Distribution of electric energy	10	1,972	80.0
5	10202	Production of brown coal	2	9,995	100.0
6	10203	Production and dehydrating of lignite	4	7,639	100.0
7	10410	Production of crude oil	1	10,000	100.0
8	10500	Production of oil derivatives	13	2,102	83.7
9	10712	Production of raw steel	5	8,408	99.3
10	10713	Production of milled. pulled and hammered steel	29	2,183	79.8
11	10720	Production of ferroalloy	1	10,000	100.0
12	10810	Production of mineral and copper concentrates	2	6,037	100.0
13	10820	Production of minerals and lead and zinc concentrates	3	8,903	100.0
14	10890	Production of bauxite	1	10,000	100.0
15	10910	Production of copper	1	10,000	100.0
16	10920	Production of lead	1	10,000	100.0
17	10930	Production of zinc	1	10,000	100.0
18	10942	Production of aluminium	1	10,000	100.0
19	10999	Production of unmentioned non-ferrous metals	4	5,055	100.0
20	11010	Processing of aluminium	21	3,584	94.1
21	11091	Processing of copper and copper alloy	12	4,206	99.5
22	11092	Processing of lead	2	6,094	100.0
23	11099	Processing of remaining ferrous metals	15	4,052	94.8
24	11111	Production of asbestos	1	10,000	100.0
25	11112	Production of magnesia and clay	5	4,578	99.9
26	11113	Production of quartz sand	8	2,945	97.5
27	11119	Production of remaining non-metal minerals	14	8,964	99.3

No,	Sub-sector Code	Sub-sector	Number of Com-panies	HH Index	Quoti-ent K4
28	11129	Production of remaining salt	5	5,962	99.9
29	11211	Production of plain glass	15	6,182	92.1
30	11212	Production of wrapping glass	2	10,000	100.0
31	11219	Production of remaining glass	29	1,348	67.5
32	11220	Production of fireproof materials	14	6,253	97.9
33	11231	Production of porcelain and ceramic for household	16	6,725	96.0
34	11232	Production of construction - technical ceramic and porcelain	22	2,415	95.4
35	11291	Production of asbestos products	10	4,524	98.8
36	11292	Production of coal-graphite products	7	3,346	93.4
37	11299	Remaining processing of non-metal	19	2,127	72.6
38	11311	Production of cast, hammered and pressed products	297	358	29.0
39	11312	Production of metal installation material	140	663	45.6
40	11313	Production of tools	186	1,100	53.4
41	11314	Production of metal wrapping	79	1,355	64.7
42	11315	Production of nails. rollers. rivets and remaining wire goods	231	490	36.1
43	11316	Production of rolling beds	23	2,969	87.9
44	11319	Production of remaining metal reproduction material	166	660	40.1
45	11320	Production of metal construction nd other construction material	290	256	25.1
46	11390	Production of consumer goods and remaining metal products	320	616	44.7
47	11411	Production of energy machines and equipment	41	1,501	64.6
48	11412	Production of construction and coal mining machines and equipment	18	4,713	87.7
49	11413	Production of machines for metal and wood processing	48	820	46.2
50	11419	Production of remaining machines and equipment (excluding electric and agriculture equipment)	191	494	33.5
51	11420	Production of agriculture machines	44	783	46.6
52	11430	Production of equipment for professional and scientific purpose. measuring and control instruments and equipment for automatic control (except for industry)	130	772	48.7
53	11511	Production of railway vehicle	9	2,545	96.1
54	11512	Mending of railway vehicle	5	4,694	97.4
55	11521	Production of motors	6	2,351	96.1
56	11522	Production of trucks and special vehicle	17	2,469	86.7
57	11523	Production of passenger cars	7	6,595	100.0
58	11524	Production of tractors			
59	11525	Production of motorcycles and mopeds	1	10,000	100.0

No,	Sub-sector Code	Sub-sector	Number of Com-panies	HH Index	Quoti-ent K4
60	11526	Production of bicycle	19	3,099	89.4
61	11527	Production of elements and equipment or motor vehicle	139	466	32.3
62	11530	Production of aviation means	7	7,987	99.4
63	11590	Production of remaining transport means	2	5,505	100.0
64	11601	Sea shipbuilding	4	9,064	100.0
65	11602	River shipbuilding	22	1,263	61.8
66	11710	Production of electric machines and equipment	140	542	38.3
67	11721	Production of component parts for electric apparatus and equipment	130	281	22.4
68	11722	Production of radio and television receivers and electric-acoustic apparatus and equipment	46	1,020	56.0
69	11723	Production of communication apparatus and equipment	109	689	42.1
70	11724	Production of measuring and regulating equipment. means for control and-automatic in industry and transportation	202	477	35.6
71	11729	Production of not mentioned electric apparatus and equipment	509	285	26.4
72	11730	Production of cables and conductors	16	2,267	86.3
73	11741	Production of thermal apparatus	37	2,787	79.0
74	11742	Production of cooling apparatus and equipment	46	685	42.4
75	11743	Production of apparatus and equipment for washing and drying	2	9,688	100.0
76	11749	Production of remaining household appliances	20	1,534	70.6
77	11791	Production of electric installation material	46	1,899	68.7
78	11792	Production of light bulbs and luminescent rods	17	4,115	91.9
79	11793	Production of electric battery and galvanise elements	27	5,411	85.5
80	11799	Production of not mentioned electric-technique products	66	1,139	59.1
81	11810	Production of chemicals (except for agriculture)	69	1,987	69.3
82	11820	Production of chemicals for agriculture	28	1,171	58.2
83	11831	Production of artificial and synthetic fibre	6	5,534	100.0
84	11832	Production of plastic mass	64	3,995	83.7
85	11910	Production of medicines and pharmaceutical raw materials	49	1,512	67.8
86	11920	Production of washing equipment and cosmetic preparation	200	1,371	58.4
87	11930	Production of paint and varnish	109	866	52.7
88	11941	Production of plastic mass wrapping	227	328	25.4
89	11949	Remaining processing of plastic mass	336	436	30.7

No,	Sub-sector Code	Sub-sector	Number of Com-panies	HH Index	Quoti-ent K4
90	11990	Production of remaining chemical products	154	422	31.9
91	12001	Stone production and processing	86	862	52.2
92	12002	Production of gravel and sand	47	877	51.6
93	12003	Production of raw gypsum (sadder)	2	5,003	100.0
94	12111	Production of lime	19	2,782	93.7
95	12112	Production of gypsum	1	10,000	100.0
96	12120	Production of cement	9	3,304	99.7
97	12130	Production of brick and tile	96	724	45.7
98	12142	Production of prefabricated construction elements	162	475	34.9
99	12143	Production of bitumen material for roads and roofs	1	10,000	100.0
100	12201	Production of cut construction material	475	208	20.5
101	12202	Production of furniture and plates	14	2,714	92.1
102	12203	Impregnation of wood	3	9,833	100.0
103	12310	Production of wooden furniture	281	225	19.4
104	12321	Production of wooden wrapping material	89	534	36.6
105	12322	Production of construction wood elements	230	362	29.7
106	12323	Production of wood and cork haberdasher	84	925	52.5
107	12324	Production of rod objects	20	1,435	65.7
108	12410	Production of cellulose and paper	46	1,626	68.3
109	12421	Production of paper wrapping material	275	622	41.2
110	12429	Remaining processing paper material	138	2,170	71.9
111	12511	Production of hemp and linen fibre	2	10,000	100.0
112	12512	Production of yarn and cotton thread	12	8,534	99.4
113	12513	Production of woollen yarn	10	2,029	86.3
114	12514	Production of yarn and hard and bast fibber rods	12	3,463	91.9
115	12515	Production of yarn and natural and artificial silk thread	2	9,989	100.0
116	12516	Production of synthetic crepe yarn and thread	4	8,132	100.0
117	12521	Production of cotton textile (cotton type)	26	3,175	85.5
118	12522	Production of woollen textile (woollen type)	18	1,309	64.6
119	12523	Production of hard and likastih yarn fibber textile	8	5,934	98.1
120	12524	Production of silk textile (silk type)	10	2,213	84.5
121	12611	Production of knitted textile	42	946	55.1
122	12612	Production of knitted underwear	27	2,009	72.3
123	12613	Production of knitted garments	120	396	29.7
124	12614	Production of socks	57	1,711	70.9
125	12615	Production of linen	26	2,259	79.1

No,	Sub-sector Code	Sub-sector	Number of Com-panies	HH Index	Quoti-ent K4
126	12621	Production of underwear (except knitted)	72	1,934	63.0
127	12622	Production of garments	507	274	24.1
128	12623	Production of household linen	82	765	48.7
129	12624	Production of hard garments	19	2,357	82.1
130	12691	Production of floor covers	19	4,859	98.6
131	12699	Production of not mentioned textile products	123	680	44.2
132	12701	Production of bulk leather	20	2,305	83.1
133	12703	Production of petty leather and fur	17	2,857	78.0
134	12810	Production of leather footwear	137	546	40.0
135	12820	Production of leather assessors	61	860	47.4
136	12830	Production of leather and fur haberdashery	48	937	53.6
137	12901	Production of tires	25	3,745	97.8
138	12909	Remaining caoutchouc	76	642	39.5
139	13010	Grinding and peeling of grain	146	303	24.7
140	13021	Production of bread and baked goods	183	748	45.1
141	13022	Production of pastries	37	2,322	69.8
142	13030	Processing and conservation of fruit and vegetables	233	242	21.0
143	13041	Cattle slaughtering	67	980	54.6
144	13042	Processing and conservation of meet	122	1,317	61.8
145	13043	Processing and conservation of fish	10	2,422	83.2
146	13050	Processing and conservation of milk	96	1,676	61.7
147	13060	Production of sugar	19	1,717	76.4
148	13071	Production of cacao products	21	2,052	80.5
149	13072	Production of candies and sweets	23	2,491	88.7
150	13073	Production of biscuits and related products	13	3,527	96.9
151	13074	Production of industrial cakes	21	3,419	96.7
152	13080	Production of vegetable oil and lard	14	2,152	83.8
153	13091	Production of starch and processed starch	3	5,320	100.0
154	13099	Production of spices, coffee and remaining food	370	659	40.6
155	13111	Production of herbal origin alcohol	7	4,975	100.0
156	13112	Production of beer	19	1,766	71.6
157	13113	Production of vine	44	1,488	66.0
158	13114	Production of vine distillates, whiskey and grape and vine brandy	16	5,820	97.0
159	13115	Production of fruit brandy	28	5,047	93.2
160	13119	Production of remaining alcoholic beverage	14	2,374	85.6
161	13121	Production of refreshments	134	2,051	69.2
162	13122	Production of mineral water	16	4,768	95.0
163	13200	Production of cattle food	210	620	43.1

No,	Sub-sector Code	Sub-sector	Number of Companies	HH Index	Quotient K4
164	13310	Production of fermented tobacco	12	1,615	72.2
165	13320	Processing of tobacco	4	6,673	100.0
166	13400	Graphic activity	769	180	20.8
167	13500	Recycling of raw materials	212	338	30.3
168	13901	Production of teaching and physic education equipment	16	1,724	62.4
169	13902	Production of records and musical instruments	11	2,948	90.5
170	13903	Production of matches	4	4,807	100.0
171	13904	Production of jewellery	32	8,569	97.9
172	13909	Remaining not mentioned industry	86	1,048	55.0
173	20110	Farming	1573	77	11.7
174	20121	Production of fruit	166	809	47.8
175	20129	Production of fruit and related material	32	1,025	54.1
176	20131	Production of grapes	31	1,124	58.0
177	20139	Production of vine and related material	9	5,095	95.8
178	20140	Cattle breeding	775	289	27.9
179	20201	Cervices for vegetable production	238	349	29.8
180	20202	Services for cattle breeding	164	209	20.9
181	20301	Fishing at see	2	8,867	100.0
182	20302	Fishing at river	42	1,799	73.1
183	30001	Forestry	5	9,970	100.0
184	30002	Forest use	1	10,000	100.0
185	30003	Hunting and prey breeding	146	413	32.9
186	30004	Forest protection	5	6,748	100.0
187	40001	Use of water	14	7,658	95.3
188	40002	Protection from harmful water effect	36	470	29.5
189	40003	Protection of water from pollution	1	10,000	100.0
190	50100	Architecture	1153	100	12.1
191	50201	Construction of transport objects	121	420	32.2
192	50202	Hydro construction	81	790	49.3
193	50203	Construction of mining objects	23	1,007	54.1
194	50209	Construction of remaining objects	217	275	25.5
195	50301	Construction installation	610	151	18.2
196	50302	Final and craft work	1015	63	9.6
197	60101	Transportation in railway transport	1	10,000	100.0
198	60102	Train pulling	1	10,000	100.0
199	60103	Maintenance and care of cars	2	9,938	100.0
200	60105	Maintenance of equipment	3	8,165	100.0
201	60201	Transportation in sailing transport	2	10,000	100.0
202	60202	Services in sailing transport	1	10,000	100.0
203	60301	Transportation in river transport	18	2,063	83.7

No,	Sub-sector Code	Sub-sector	Number of Com-panies	HH Index	Quoti-ent K4
204	60302	Services in river transport	6	2,434	91.1
205	60401	Transportation in aviation transport	10	9,967	100.0
206	60402	Airport services	5	9,389	100.0
207	60403	Services of aviation economy	4	4,752	100.0
208	60501	Transportation of passengers in road transport	287	446	32.5
209	60502	Transportation of goods in road transport	1120	290	25.7
210	60503	Services of road transport	197	821	51.0
211	60601	Transportation of passengers public transport	49	1,206	62.1
212	60602	Taxi car transportation	30	1,017	53.0
213	60609	Remaining transport of passengers	3	7,908	100.0
214	60700	Tube transport	2	9,881	100.0
215	60801	Reloading in harbours	1	10,000	100.0
216	60802	Reloading in ports	6	2,640	94.3
217	60803	Reloading in railway stations	28	1,454	63.7
218	60900	Telecom services	39	3,912	99.5
219	70111	Retail of bread	144	391	31.3
220	70112	Retail of fruit and vegetables	71	2,640	69.5
221	70113	Retail of meet and fish	70	2,003	69.7
222	70114	Retail of groceries	931	1,165	59.0
223	70121	Retail of textile	345	528	36.8
224	70122	Retail of leather and rubber	133	1,223	59.1
225	70123	Retail of metal goods	394	823	48.0
226	70124	Retail of combustible material	227	315	24.3
227	70125	Retail of furniture	96	1,828	75.6
228	70126	Retail of glass	21	4,007	76.9
229	70127	Retail of paint and chemicals	124	970	53.9
230	70128	Retail of books	136	4,295	82.9
231	70129	Retail of remaining goods	282	579	38.7
232	70131	Department stores	24	3,466	79.1
233	70132	Retail of remaining mixed goods	1365	175	19.1
234	70140	Retail of cars	336	422	34.6
235	70150	Retail of oil derivatives	151	3,163	71.8
236	70210		1	10,000	100.0
237	70211	Wholesale of granaries	605	169	18.3
238	70212	Wholesale of fruit and vegetables	324	308	27.5
239	70213	Wholesale of alcohol beverages	187	396	31.9
240	70214	Wholesale of cattle	128	364	28.9
241	70219	Wholesale of groceries	1828	239	24.6
242	70221	Wholesale of textile	921	308	26.0
243	70222	Wholesale of raw leather	114	405	30.6
244	70223	Wholesale of metal goods	1827	111	13.0

No,	Sub-sector Code	Sub-sector	Number of Companies	HH Index	Quotient K4
245	70224	Wholesale of construction material goods	1202	267	25.0
246	70225	Wholesale of chemical products	567	169	17.4
247	70226	Wholesale of paper	542	569	31.6
248	70227	Wholesale of medicines	243	347	28.5
249	70229	Wholesale of remaining non-food goods	524	554	33.5
250	70230	Wholesale of cars and spare parts	1032	119	15.5
251	70240	Wholesale of oil derivatives	146	352	27.8
252	70250	Wholesale of mixed goods	11490	3	5.1
253	70260	Wholesale of waste	104	2,639	63.6
254	70310	International food trade	161	1,096	60.9
255	70320	International non-food trade	790	807	43.6
256	80111	Hotels motels – seasonal	28	1,274	63.4
257	80112	Hotels motels – remaining	137	266	24.6
258	80113	Retreats	14	1,585	75.5
259	80114	Camps	3	5,104	100.0
260	80119	Remaining accommodation services	8	3,527	98.9
261	80121	Restaurants with attendants	189	319	27.0
262	80122	Self service restaurants	7	7,012	99.9
263	80123	Public food restaurants	38	1,279	58.3
264	80129	Remaining food services	33	2,762	83.9
265	80190	Remaining hotel services	277	552	35.2
266	80201	Tourist agencies	392	445	36.6
267	80202	Tourist bureau	96	952	50.6
268	90110	Production of non-metal objects	32	5,046	89.9
269	90121	Repair of road vehicles	348	707	42.9
270	90122	Repair of precise mechanic products	113	364	28.4
271	90123	Production of metal products	184	314	25.4
272	90124	Services of metalworking craftsmen	24	6,775	94.5
273	90129	Services metalworking craftsmen	166	507	36.9
274	90131	Repair of electric apparatus for household	126	808	46.3
275	90132	Repair of radio and TV apparatus	109	1,149	53.5
276	90133	roduction of electric-technical products	65	919	54.1
277	90139	Repair of remaining electrical apparatus	174	281	25.0
278	90140	Production of wooden objects	93	902	48.7
279	90150	Production of textile objects	116	696	46.5
280	90160	Production of leather objects	39	877	49.8
281	90171	Production of bread and baked goods	28	2,122	77.1
282	90172	Slaughtering cattle and delicatessen	31	2,396	74.8
283	90179	Production of remaining food products	34	1,202	62.1
284	90181	Production of plastic mass products	67	739	45.4
285	90182	Production of orthopaedic appliances	35	1,844	66.9
286	90183	Production of paper objects	23	2,378	73.8

No,	Sub-sector Code	Sub-sector	Number of Com-panies	HH Index	Quoti-ent K4
287	90189	Production of not mentioned various objects	85	567	38.8
288	90201	Hairdressers and cosmetic services	78	1,746	57.9
289	90202	Linen washing and garments cleaning	7	3,074	90.1
290	90209	Remaining personal services	321	159	16.0
291	100101	Arranging construction cites	78	1,161	45.2
292	100102	Arranging and maintenance of the streets	18	2,895	86.7
293	100103	Arranging green exterior	22	2,233	78.2
294	100200	Residential activity	6	3,451	97.4
295	100310	Production of and distribution of water	141	452	30.9
296	100320	Drainage of waste water	3	3,662	100.0
297	100330	Production of and distribution of gas	23	1,365	58.2
298	100340	Production of and distribution of heat	43	1,430	65.7
299	100351	Cleaning of public spaces	25	1,340	56.7
300	100352	Taking waste out	29	1,308	55.1
301	100391	Chimney sweeper activity	16	1,581	72.2
302	100392	Funeral services	11	5,195	95.0
303	100399	Not mentioned communal activities	64	1,690	61.6
304	110109	Other financial organisations	2	10,000	100.0
305	110201	Insurance	23	3,462	84.3
306	110202	Lottery and betting	57	1,448	69.3
307	110301	Public storage places	38	860	50.8
308	110302	Advertising services	420	397	33.4
309	110303	Commercial businesses	1508	306	27.5
310	110304	Market services	17	3,727	92.8
311	110309	Not mentioned transport services	1360	194	21.2
312	110401	Space planing	79	588	40.5
313	110402	Planing of construction objects	393	400	33.1
314	110403	Remaining planing	185	429	31.7
315	110404	Engineering	1391	94	14.3
316	110405	Re-measuring of plains	17	9,630	99.6
317	110406	Examination of materials	34	2,792	76.0
318	110500	Geological examinations	34	673	41.4
319	110611	Examination in economy	182	517	37.4
320	110612	Examinations in public activities	10	5,982	97.0
321	110620	Economic services	492	1,186	58.3
322	110901	Services of quality control	58	1,892	72.5
323	110902	Organising of fairs	16	4,176	96.8
324	110903	Book keeping services	822	1,195	57.6
325	110904	Legal and lawyer services	9	4,405	99.3
326	110905	Services for data processing	292	510	37.4
327	110909	Remaining not mentioned services	860	100	3.3

Table A2.
Supply concentration (domestic production and import)

Product Code	Product	Product Type	Pro--duction (t)	Net import (t)	Ponuda (t)	Import share	HHI excluding import	HHI including import	Decrease HH	Protection	Significance of transport costs
118100242	Ammonium-nitrate, for artificial fertiliser	2	87,642	88	87,730	0.10%	10,000	9,979	0.2%	8.00	3
124100232	Paper for illustration and magazines	3	1,309	4	1,313	0.30%	10,000	9,940	0.6%	34.00	3
120030012	Raw gypsum	2	46,651	213	46,864	0.45%	10,000	9,909	0.9%	8.00	5
112110022	Plain ornament-glass	3	5,792	59	5,851	1.01%	10,000	9,799	2.0%	18.00	3
117490043	Vacuum cleaners	6	894	10	904	1.09%	10,000	9,782	2.2%	41.25	1
118101122	Propylene	2	43,424	0	43,424	0.00%	9,717	9,717	0.0%	10.00	3
112110032	Plane reinforced glass	3	2,486	60	2,546	2.35%	10,000	9,536	4.6%	25.00	3
117210282	Microphones and loud speakers to build into	3	135	4	139	3.05%	10,000	9,399	6.0%	22.00	1
109300082	Zinc powder	2	602	25	627	4.05%	10,000	9,207	7.9%	15.00	4
110100162	Seam rods from aluminium alloy	3	11	1	12	4.35%	10,000	9,149	8.5%	17.00	3
118100502	Potassium-silicate (K-water glass)	2	161	7	168	4.35%	10,000	9,148	8.5%	3.00	3
118310112	Cord	3	1,325	68	1,393	4.87%	10,000	9,049	9.5%	9.33	2
107131032	Plastified metal	3	1,864	98	1,962	5.02%	10,000	9,021	9.8%	54.00	3
114200131	Plant nursing. seeding, transplant and other sowing machines	4	4	0	4	6.91%	10,000	8,665	13.3%	14.00	2
118100562	Sodium–sulphate	2	24	2	26	7.55%	10,000	8,547	14.5%	12.00	3
112120012	Wrapping glass (baloons, bottles, glass and similar)	3	53,609	4,217	57,826	7.29%	9,940	8,543	14.1%	30.90	2
117930012	Lead electric battery for motor cars	6	9,412	143	9,555	1.49%	8,657	8,401	3.0%	32.00	2
105000602	Butane, liquid	1	1,771	180	1,951	9.21%	10,000	8,243	17.6%	5.00	3
115260042	Elements for bicycle and threecycle	1	5	2	17	9.62%	10,000	8,169	18.3%	66.00	2

Product Code	Product	Product Type	Pro--duction (t)	Net import (t)	Ponuda (t)	Import share	HHI excluding import	HHI including import	Decrease HH	Protection	Significance of transport costs
126990163	Sanitary bandages	5	56	7	63	11.57%	10,000	7,820	21.8%	15.00	1
113150372	Metal electrode for welding	4	493	75	568	13.24%	9,959	7,496	24.7%	36.00	2
113120112	Equipment for use of sun energy	4	51	1	52	1.48%	7,631	7,407	2.9%	5.00	3
130500063	Food for infants and small children	5	62	11	73	15.13%	10,000	7,203	28.0%	69.00	1
119100463	Filters for chemodialysis	5	214	20	234	8.70%	8,509	7,092	16.7%	3.00	1
113130021	Files	4	16	3	19	15.99%	10,000	7,0572	9.4%	20.00	3
113900101	Dentist chairs	6	12	2	14	16.21%	10,000	7,0202	9.8%	34.00	1
111190072	Raw kaolin	2	39,475	8,262	47,737	17.31%	10,000	6,838	31.6%	3.00	5
118320182	Polypropylene	2	21,265	4,658	25,923	17.97%	10,000	6,729	32.7%	6.20	3
130990063	Roast coffee	5	1,397	1	1,398	0.04%	6,707	6,701	0.1%	5.00	2
113900253	Gas stove and heaters	6	71	16	87	18.27%	10,000	6,6793	3.2%	27.00	2
117410073	Electric boilers	6	5,886	970	6,856	14.15%	9,007	6,639	26.3%	54.00	2
112320092	Sanitary ceramic	6	3,242	771	4,013	19.20%	10,000	6,527	34.7%	33.00	2
130710023	Cacao in powder	3	460	99	559	17.71%	9,574	6,483	32.3%	60.00	2
111120052	Raw fireproof clay	2	26,851	57	26,908	0.21%	6,495	6,468	0.4%	3.00	5
115220331	Fire fighting vehicles (produced from domestic elements)	4	14	3	17	19.72%	10,000	6,444	35.6%	19.00	2
124100212	Recycled writing paper	5	3,128	903	4,031	22.40%	10,000	6,021	39.8%	34.00	3
112310013	Products from porcelain and ceramic za pripremu. služewe i čuvawe hrane i pića	5	1,200	165	1,365	12.09%	7,750	5,9892	2.7%	22.67	2
118100102	Phosphor acid. 100%	2	18,987	2,463	21,450	11.48%	7,403	5,800	21.6%	8.33	4
119100153	Serums and vaccines	5	118	2	120	1.50%	5,947	5,770	3.0%	5.00	1
112910052	Asbestos ready-made clothes	6	1	0	1	24.07%	10,000	5,7654	2.3%	20.00	2

Product Code	Product	Product Type	Pro--duction (t)	Net import (t)	Ponuda (t)	Import share	HHI excluding import	HHI including import	Decrease HH	Protection	Significance of transport costs
118320332	Synthetic caoutchouc	2	15,193	5,161	20,354	25.36%	10,000	5,571	44.3%	4.05	3
129010072	External tires for trucks and buses. radial	4	5,392	1,902	7,294	26.08%	10,000	5,464	45.4%	38.00	3
112200022	Sinter-magnesite	2	20,124	7,368	27,492	26.80%	10,000	5,357	46.4%	3.00	5
118310102	Rayon	3	568	209	777	26.86%	10,000	5,349	46.5%	11.00	3
105000532	Bitumen	2	12,843	1,989	14,832	13.41%	7,051	5,286	25.0%	8.00	4
113130061	Spiral drills	4	33	2	35	6.70%	6,033	5,251	13.0%	36.67	2
126990093	Medical cotton-wool	5	389	150	539	27.83%	10,000	5,208	47.9%	10.00	1
117300292	Optical cables	4	43	17	60	27.87%	10,000	5,202	48.0%	23.25	2
113130051	Navojne nareznice	4	10	1	11	12.69%	6,800	5,183	23.8%	18.00	3
113130191	Tools for forgery	4	101	11	112	10.18%	6,376	5,144	19.3%	19.00	3
130300413	Pasteurised pepper	5	730	1	731	0.19%	5,054	5,035	0.4%	40.00	1
113120282	Fittings	3	414	15	429	3.45%	5,352	4,990	6.8%	10.00	3
102030022	Lignite, total	1	33,735,232	39	33,735,271	0.00%	4,868	4,868	0.0%	10.00	5
118320632	Polyethylene wrapping	3	1,726	02	2,028	14.89%	6,514	4,719	27.6%	23.00	3
114190011	Machines and equipment for milling in powder	4	981	350	1,331	26.30%	8,478	4,605	45.7%	7.50	2
124290043	Paper wallpaper	6	189	90	279	32.22%	10,000	4,594	54.1%	15.00	2
114200351	Ručne prskalice	4	34	10	44	22.07%	7,491	4,549	39.3%	10.00	3
130720033	Chewing gums	5	660	326	986	33.05%	10,000	4,482	55.2%	120.00	1
113900391	Fire extinguish apparatus and tools	4	155	35	190	18.44%	6,723	4,472	33.5%	7.75	2
115220022	Body-work for trucks	3	174	65	239	27.20%	8,424	4,464	47.0%	7.00	2
113150162	Barbed wire	4	320	160	480	33.40%	10,000	4,436	55.6%	19.00	3
126990042	Felt	3	1,202	81	1,283	6.34%	5,039	4,420	12.3%	10.00	1

Product Code	Product	Product Type	Pro--duction (t)	Net import (t)	Ponuda (t)	Import share	HHI excluding import	HHI including import	Decrease HH	Protection	Significance of transport costs
118100032	Ammoniac 100%	2	70,517	36,076	106,593	33.84%	10,000	4,376	56.2%	8.00	4
107130532	Cold formed profiles	3	2,151	617	2,768	22.28%	7,105	4,291	39.6%	69.00	4
118320702	Polypropylene films and wrapping	3	1,197	632	1,829	34.56%	10,000	4,281	57.2%	3.00	2
110100022	Rolled metal plate from aluminium, 4 mm and lesser thickness	3	943	320	1,263	25.36%	7,684	4,281	44.3%	10.00	3
110990012	Rolled. pulled and pressed products from thin	3	23	12	36	34.74%	10,000	4,258	57.4%	3.00	3
114200311	Hay overturns	4	280	157	437	36.00%	10,000	4,096	59.0%	14.00	2
111190082	Raw dolomite	2	14,100	7,993	22,093	36.18%	10,000	4,073	59.3%	5.00	5
118100082	Sulphur acid	2	97,808	27,457	125,265	21.92%	6,553	3,995	39.0%	12.50	4
114120141	Concrete mixers	4	475	60	535	11.24%	5,038	3,969	21.2%	14.00	3
118100012	Chlorine	2	2,881	1,708	4,589	37.22%	10,000	3,941	60.6%	10.00	4
117990013	Light for light bulbs with red-hot thread	5	176	20	196	10.07%	4,744	3,837	19.1%	56.67	2
117910052	Plugs	5	75	47	122	38.31%	10,000	3,805	61.9%	5.00	1
118320652	Polyethylene rods	3	2,876	5	2,881	0.18%	3,812	3,799	0.4%	20.00	3
124100222	Recycled paper	5	3,210	575	3,785	15.20%	5,244	3,771	28.1%	34.00	3
111190102	Laporac	2	1,652,096	2,335	1,654,431	0.14%	3,770	3,759	0.3%	8.00	5
117910062	Gullet for lights	5	152	23	175	13.33%	5,000	3,7562	4.9%	17.50	1
113150382	Metal electrodes for welding, coated	4	1,173	757	930	39.22%	10,000	3,694	63.1%	36.00	2
111210013	See salt for human food	5	32,246	14,987	47,233	31.73%	7,899	3,681	53.4%	12.00	3
130300643	Products from potatoes (crisps, french fries) and similar)	5	859	519	1,378	37.67%	9,258	3,596	61.2%	40.00	1
121200012	Marbles	2	1,686,065	7,877	1,693,942	0.47%	3,620	3,587	0.9%	15.00	5
112910032	Brakes and fastener panelling	3	1,007	226	1,233	18.33%	5,276	3,519	33.3%	5.00	2

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118200272	Fungicide	5	1,414	322	1,736	18.55%	5,127	3,401	33.7%	16.86	2
113140062	Barrels made of black tin	4	1,993	1,211	3,204	37.80%	8,7	713,394	61.3%	13.25	2
113200201	Containers for storing and transport of goods	5	403	43	446	9.59%	4,127	3,374	18.3%	14.00	3
130420182	Meet flour	3	3,855	2	3,857	0.06%	3,294	3,290	0.1%	19.00	3
112320042	Floor ceramic tiles	5	51,729	2,373	54,102	4.39%	3,534	3,231	8.6%	58.00	2
111120012	Magnesium ore, trenched	2	31,477	960	32,437	2.96%	3,411	3,212	5.8%	3.00	5
119900152	Remaining help equipment for leather	5	765	596	1,361	43.81%	10,000	3,157	68.4%	6.29	1
114200071	Levelling machines	4	451	338	789	42.86%	9,566	3,122	67.4%	14.00	2
113130131	Tightening tools	4	55	0	55	0.28%	3,137	3,119	0.6%	10.00	3
130500143	Melted cheese	5	1,626	114	1,740	6.55%	3,408	2,976	12.7%	80.00	1
121200022	Portland cement	3	2,117,450	217,831	2,335,281	9.33%	3,580	2,943	17.8%	16.89	4
113150232	Welded armature nets	3	6,798	2,125	8,923	23.81%	5,000	2,902	42.0%	18.00	3
119100483	Solution for infusion	5	1,483	150	1,633	9.18%	3,512	2,897	17.5%	10.00	2
122010302	Kindling	2	5,686	24	5,710	0.42%	2,849	2,825	0.8%	8.00	5
129090022	Whole rubber rods	3	32	17	49	34.56%	6,582	2,818	57.2%	21.00	3
124290092	Products from carton	5	938	42	980	4.33%	3,016	2,761	8.5%	21.33	3
124290082	Products from paper	5	300	38	338	11.18%	3,434	2,708	21.1%	26.00	2
121430012	Bitumen hydro-isolation material with carboard	2	7,278	2,839	10,117	28.06%	5,219	2,701	48.2%	20.00	4
130500043	Milk in powder, fool fat for human use	5	1,851	512	2,363	21.67%	4,366	2,679	38.6%	23.00	2
118320072	Phenol resin	2	1,063	995	2,058	48.34%	9,648	2,575	73.3%	6.50	3
112320032	Wall ceramic tiles, glazed	5	37,430	6,574	44,004	14.94%	3,517	2,544	27.6%	66.00	3
105000012	Raw petrol for motor petrol	1	134,11	131,873	265,990	49.58%	10,000	2,542	74.6%	3.00	3

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114200251	Mowing machines. self-propelled	4	54	17	71	23.74%	4,341	2,524	41.8%	14.00	2
115220311	Auto-cistern (products from domestic elements)	4	209	93	302	30.79%	5,224	2,502	52.1%	62.40	2
131140023	Natural strong alcohol beverages from grape and vine	5	720	266	986	26.98%	4,591	2,447	46.7%	12.00	1
117100681	Transfer case. cupboard and remaining transfer equipment	4	437	51	488	10.36%	3,039	2,442	19.6%	27.67	2
119490222	Elements for footwear from plastic mass	3	66	69	135	50.99%	10,000	2,402	76.0%	10.00	1
119200013	Washing soap	5	566	313	879	35.63%	5,714	2,367	58.6%	20.00	1
112190112	Safety laminated glass	6	330	358	688	52.04%	10,000	2,300	77.0%	20.00	3
114200371	Tractor sprinkles, winged	4	50	54	104	52.13%	10,000	2,2917	7.1%	10.00	2
119490202	Syringe for one use	5	165	174	339	51.39%	9,642	2,278	76.4%	14.00	1
119200173	Creme for shaving	5	142	0	142	0.00%	2,276	2,276	0.0%	18.00	1
118200292	Herbicides	5	2,208	327	2,535	12.89%	2,976	2,258	24.1%	13.57	2
102010012	Stone coal, total	1	87,888	29,950	117,838	25.42%	4,014	2,233	44.4%	2.67	5
119200203	Gear for teeth care	5	675	211	885	23.78%	3,753	2,180	41.9%	21.60	1
114190861	Transports, lane	4	169	89	258	34.50%	4,962	2,1285	7.1%	7.50	2
119200223	Sredstva za kupawe	5	396	361	757	47.73%	7,662	2,0937	2.7%	21.50	1
118200252	Rodentycides	5	54	64	118	54.30%	10,000	2,088	79.1%	12.00	2
117430072	Elements for apparatus and equipment for washing dying and ironing	3	102	41	143	28.68%	4,063	2,067	49.1%	8.33	1
129090202	Rubber block (whole rubber and fortified)	5	94	53	147	35.93%	4,923	2,020	58.9%	20.00	1
125160022	Polyamide 66, textured yarn	3	735	902	1,637	55.10%	10,000	2,016	79.8%	3.00	3
102020012	Dark coal, total	1	398,468	101,509	499,977	20.30%	3,067	1,948	36.5%	10.00	5

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121110032	Hydrated lime	2	168,424	9,529	177,953	5.35%	2,153	1,929	10.4%	30.00	4
114200271	Mow machines, tractors	4	250	326	576	56.57%	10,000	1,886	81.1%	14.00	2
114200151	Dispenser mineral fertilisers	4	157	65	222	29.19%	3,718	1,864	49.9%	28.00	2
132000192	Food for fish	5	678	445	1,123	39.65%	5,076	1,849	63.6%	3.00	1
113900011	Safe-deposit door and safe-deposits	4	16	11	27	41.54%	5,312	1,815	65.8%	21.00	2
130410053	Sveže živinsko meso	5	7,840	5,650	13,490	41.88%	5,267	1,779	66.2%	40.00	2
113130031	Machine knifes for metal. wood and remaining material	4	121	58	179	32.37%	3,776	1,727	54.3%	13.10	3
119200213	Gear for hair washing	5	5,015	77	5,092	1.52%	1,730	1,67	83.0%	25.75	1
104100012	Raw petroleum	1	804,768	252,294	1,057,062	23.87%	2,827	1,638	42.0%	1.00	3
134000073	School and similar notebooks	5	1,067	19	1,086	1.72%	1,684	1,627	3.4%	20.00	1
117210092	Potentiometers	3	1	2	3	59.93%	10,000	1,605	83.9%	10.25	1
113150012	Construction nails	5	2,191	866	3,057	28.32%	3,065	1,575	48.6%	20.00	2
118100042	Chloric acid, technical	2	15,438	8,185	23,623	34.65%	3,661	1,563	57.3%	10.00	4
130300093	Fruit juices from continental fruit, clear and turbid	5	11,987	379	12,366	3.06%	1,643	1,544	6.0%	80.00	2
118101092	Coal-disulphide	2	1,610	2,503	4,113	60.85%	10,000	1,532	84.7%	3.00	3
118100312	Sodium-sulphate, crystal (glauber salt)	2	742	1,154	1,896	60.87%	10,000	1,530	84.7%	15.00	3
130300193	Fruit preserve	5	479	55	534	10.29%	1,864	1,500	19.5%	40.00	1
130500183	Milk and yoghurt	5	86,912	689	87,601	0.79%	1,481	1,458	1.5%	40.00	2
130500113	Soft cheese	5	3,345	181	3,526	5.14%	1,568	1,411	10.0%	80.00	1
114190871	Transports, rolled	4	26	44	70	62.95%	10,000	1,372	86.3%	14.00	2
117430043	Ironing machines	6	23	39	62	63.07%	10,000	1,364	86.4%	3.00	1

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125140042	Sisal-yarn	3	5	9	14	64.31%	10,000	1,274	87.3%	1.00	3
130300113	Fruit juices from tropical fruit	5	4,396	1,694	6,090	27.81%	2,436	1,269	47.9%	70.80	2
125130032	Wooden pulled yarn	3	591	43	634	6.79%	1,441	1,252	13.1%	10.00	3
117990092	Elements and tools for lanterns	3	186	360	546	65.93%	10,000	1,160	88.4%	19.43	2
119900663	Antifreeze	5	1,845	2,293	4,138	55.41%	4,987	991	80.1%	15.00	3
130600013	Sugar	5	117,559	29,207	46,766	19.90%	1,522	976	35.8%	49.50	2
119900272	Polyvinyl - chloride (pvc) glue	3	216	475	691	68.76%	9,726	949	90.2%	15.002	
130410112	Technical oil animal origin	3	1,708	688	2,396	28.70%	1,756	892	49.2%	3.00	2
119490293	Products from plastic masses for domestic consumer goods	5	996	635	1,631	38.94%	2,337	871	62.7%	30.00	1
121430082	Bitumen emulsion	2	1,359	1,784	3,143	56.76%	4,499	841	81.3%	8.00	4
125160062	Synthetic thread	3	114	245	359	68.28%	8,116	816	89.9%	9.67	2
130500133	Hard cheese	5	3,447	1,050	4,497	23.34%	1,323	777	41.2%	80.00	1
130500073	Butter	5	1,694	599	2,293	26.11%	1,406	768	45.4%	80.001	
117430013	Washing linen machines for domestic use	6	787	1,667	2,454	67.93%	7,380	758	89.7%	38.72	2
117410043	Closed hot plate for two and more plates	6	15	26	41	63.55%	5,555	738	86.7%	29.00	2
130410033	Deep freezing apparatus for domestic use	5	49,706	3,692	53,398	6.91%	848	734	13.4%	76.73	2
117420023	Sanitary equipment from plastic mass	6	486	1,312	1,798	72.97%	10,000	730	92.7%	21.00	2
119490173	Sanitarna oprema od plastičnih masa	6	148	264	412	64.12%	5,556	715	87.1%	20.00	2
119300162	Graphic paint	3	487	1,320	1,807	73.05%	9,564	694	92.7%	10.50	1
117240301	Equipment for filling	4	3	7	10	73.84%	10,000	684	93.2%	32.00	2
105000312	Motor oil	1	6,907	13,368	20,275	65.93%	5,724	664	88.4%	10.00	3

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130430073	Sterilised fish cans	5	407	1,151	1,558	73.88%	9,427	643	93.2%	31.25	1
132000182	Food for pets	5	111	217	328	66.18%	5,555	635	88.6%	40.00	1
117420013	Refrigerators for households	6	717	2,190	2,907	75.33%	10,000	608	93.9%	32.10	2
119300132	Coating equipment based on polyvinyl	3	1,110	3,091	4,201	73.58%	8,057	562	93.0%	8.00	2
118100812	Zinc-oxide	2	287	934	1,221	76.49%	10,000	552	94.5%	10.00	3
119100203	Penicillin, imported	5	21	68	89	76.56%	10,000	549	94.5%	1.00	1
131190013	Liqueur (sweet, bitter and other)	5	162	355	517	68.70%	5,591	547	90.2%	12.00	1
119100133	Vitamins and vitamin preparations	5	165	261	426	61.28%	3,571	535	85.0%	3.00	1
129010262	Protected truck and bus tires	5	243	348	591	58.86%	2,912	492	83.1%	117.00	3
130500052	Powder milk, skimmed	5	789	1,236	2,025	61.03%	3,235	491	84.8%	23.00	2
113900571	Hand iron carriage	6	133	460	593	77.58%	9,703	487	95.0%	15.00	4
113130221	Pressed shovels, spades and hoes	6	12	43	55	78.32%	10,000	470	95.3%	20.00	3
130410083	Intestines (liver, tongue. stomach. brain and other)	3	4,571	995	5,566	17.87%	669	451	32.6%	44.44	2
113150332	Chains for car wheels	6	16	60	76	78.98%	10,000	442	95.6%	18.00	2
117410023	Electric stoves and radiators	6	2	42	54	77.96%	8,472	411	95.1%	12.55	2
124100502	Cellulose cotton-wool	5	116	460	576	79.86%	10,000	405	95.9%	5.00	3
112310023	Art and decorative ceramics	6	28	118	146	80.83%	10,000	367	96.3%	29.80	1
105000172	Diesel-fuel D-2	1	300,209	927,258	1,227,467	75.54%	6,065	362	94.0%	8.00	3
119900592	Adhesive tape	5	120	372	492	75.62%	6,088	361	94.1%	15.00	1
118101102	Acetylene	2	750	1,204	1,954	61.62%	2,399	353	85.3%	8.00	3
117490113	Apparatus for hair drying	6	5	22	27	81.23%	10,000	352	96.5%	29.00	1
118200382	Charbamid (urea 46%N)	5	21,622	80,171	101,793	78.76%	7,819	352	95.5%	15.00	3

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124100202	Recycled printing paper	5	2,887	12,664	15,551	81.43%	10,000	344	96.6%	34.00	3
115240031	Tractor wheelers. from 91 to 150 KW	4	54	245	299	81.95%	10,000	325	96.7%	3.00	2
130210013	Wheat bread	5	202,423	0	202,423	0.00%	322	321	0.4%	40.00	3
119300242	Solvents	3	1,203	2,155	3,358	64.17%	2,492	319	87.2%	12.50	2
130300062	Concentrated fruit juices. from 45% dry substance	3	315	1,447	1,762	82.13%	10,000	319	96.8%	8.00	2
114200421	Machines for cutting cattle food (cutters and other)	4	2	9	11	82.33%	10,000	312	96.9%	14.00	3
131190033	Remaining artificial strong alcohol beverages	5	580	1,111	1,691	65.69%	2,624	308	88.2%	12.00	1
117240201	Signal-safety equipment and system	4	4	16	20	81.45%	8,580	295	96.6%	23.00	1
118100702	Iron sulphate	2	56	274	330	83.03%	10,000	288	97.1%	3.00	3
117300282	Coaxial cables with metal wound	3	62	206	268	76.82%	5,083	273	94.6%	34.00	2
121430022	Bitumen hydroisolation materials with insole made of metal wrapping	2	153	785	938	83.70%	10,000	265	97.3%	17.00	4
123230172	Remaining cork products	5	8	42	50	83.85%	10,000	260	97.4%	5.20	4
117490083	Kitchen aspirators	6	35	186	221	84.16%	10,000	251	97.5%	24.40	1
117300042	Plain steel cords	3	606	2,909	3,515	82.76%	8,403	249	97.0%	23.33	3
112190052	Remaining hollow lighting glass	3	178	978	1,156	84.60%	10,000	237	97.6%	5.00	2
114190581	Drying devices	4	36	201	237	84.81%	10,000	230	97.7%	13.00	2
129090142	Rubber thread	3	11	62	73	84.99%	10,000	225	97.7%	12.00	3
118100302	Sodium-sulphate waterless	2	1,521	8,442	9,963	84.73%	9,254	215	97.7%	8.00	3
125140032	Jute yarn	3	146	875	1,021	85.70%	10,000	204	98.0%	5.00	3
113150112	Screw-nuts	5	28	125	153	81.70%	5,739	192	96.7%	17.00	2
131130023	Bottled natural wines, after final processing	5	2,975	7,592	10,567	71.85%	2,354	186	92.1%	80.00	2

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117100251	Stationary aggregate, facilities powered by internal combustion engines	4	11	70	81	86.44%	10,000	183	98.2%	11.00	2
119900322	Photo-chemicals	3	74	494	568	86.97%	10,000	169	98.3%	5.00	2
115230023	Passenger cars from 1000 cm^3	4	140	953	1,093	87.20%	10,000	163	98.4%	9.83	2
119200303	Hair sprays	5	102	290	392	74.02%	2,386	161	93.2%	24.00	1
113130181	Mould for injection and casting	4	48	130	178	73.11%	2,213	160	92.8%	10.00	3
118101002	Hydrogen	2	109	531	640	82.97%	5,353	155	97.1%	8.00	3
115240021	Tractors wheelers. od 51 do 90 kw	4	309	1,771	2,080	85.14%	6,603	145	97.8%	37.00	2
114200331	Combines for silage	4	17	124	141	87.98%	10,000	144	98.6%	15.00	2
118320302	Silicones	2	45	333	378	88.08%	10,000	142	98.6%	8.00	3
129090382	Rubber linen	3	4	30	34	88.10%	10,000	141	98.6%	13.00	2
119490152	Doors and windows made of plastic mass	6	28	222	250	88.80%	10,000	125	98.7%	22.50	2
114120071	Badger	4	136	783	919	85.20%	5,350	117	97.8%	12.32	3
113900233	Cutlery, made of stainless steel	6	2	18	20	89.91%	10,000	101	99.0%	44.00	2
117210132	Diodes for power current	3	0	1	2	86.42%	5,404	99	98.2%	5.00	1
105000072	Airline petrol	1	72	651	723	90.05%	10,000	99	99.0%	5.00	3
130990042	Cattle yeast	3	731	4,943	5,674	87.12%	5,618	93	98.3%	10.00	2
114120021	Machines for coal crushing	4	31	304	335	90.73%	10,000	85	99.1%	10.67	3
118100162	Sodium-hydroxide, electolitictic. 100%	2	7,415	51,624	59,039	87.44%	5,076	80	98.4%	8.20	3
117930072	Electric battery charger plates	3	99	1,011	1,110	91.08%	10,000	79	99.2%	10.00	3
117420031	Coolers (vitrines, cupboards and other)	6	20	206	226	91.17%	10,000	78	99.2%	40.00	2
119200313	Colour shampoos and hair dyes	5	46	337	383	87.99%	5,137	74	98.6%	24.00	1

Product Code	Product	Product Type	Pro--duction (t)	Net import (t)	Ponuda (t)	Import share	HHI excluding import	HHI including import	Decrease HH	Protection	Significance of transport costs
119200343	Colognes	5	7	41	47	86.27%	3,922	73	98.1%	24.00	1
129090263	Sporting requisites	5	51	543	594	91.42%	10,000	73	99.3%	15.00	1
119200043	Liquid soaps	5	110	1,182	1,292	91.49%	9,819	71	99.3%	8.00	1
114120031	Deep drilling machines	4	2	22	24	91.65%	10,000	69	99.3%	5.00	3
114191001	Forklift on battery and diesel power	4	196	1,894	2,090	90.62%	7,850	69	99.1%	23.33	2
114130011	Lathes numerically operated	4	3	34	37	91.97%	10,000	64	99.4%	34.00	2
118100442	Aluminium-sulphate	2	577	3,874	4,451	87.04%	3,793	63	98.3%	16.00	3
117290091	Analogue accounting systems	4	1	13	14	93.05%	10,000	48	99.5%	5.00	1
111290023	Stone salt for cattle food	5	4,580	62,879	67,459	93.21%	10,000	46	99.5%	5.00	4
105000122	Jet fuel (kerosene type GM1. GM4)	1	3,104	44,028	47,132	93.41%	10,000	43	99.6%	3.67	3
113900463	Weights for scales. made of cast iron	4	1	15	16	93.63%	10,000	40	99.6%	10.00	3
105000052	Unleaded petrol of premium type – BMB	9	5118,254	295,276	313,530	94.18%	10,000	33	99.7%	8.00	3
114110101	Heat transformers	6	4	69	73	94.48%	10,000	30	99.7%	13.00	3
126150013	Laces	5	1	17	18	94.58%	10,000	29	99.7%	21.00	1
113150272	Technical springs	3	15	267	282	94.67%	10,000	28	99.7%	13.50	2
117210152	Transistors	3	0	3	3	94.44%	8,106	25	99.7%	4.33	1
129010082	Tires for trucks and buses. diagonal	4	200	4,068	4,268	95.31%	10,000	21	99.8%	1.50	3
117490033	Mixers	6	4	85	89	95.52%	10,000	20	99.8%	20.00	1
119200353	Deodorants and antiperspirants	5	44	590	634	93.04%	3,786	18	99.5%	21.50	1
115270042	Remaining parts and kit for motor vehicles	3	11,110	67,631	78,741	85.89%	892	17	98.0%	5.67	2
114190311	Machines and devices for production of leather footwear and haberdachery	4	13	231	244	94.68%	5,266	14	99.7%	3.00	2

Product Code	Product	Product Type	Pro-- duction (t)	Net import (t)	Ponuda (t)	Import share	HHI excluding import	HHI including import	Decrease HH	Protection	Significance of transport costs
113200261	Metal kiosks	4	59	1,187	1,246	95.27%	6,552	14	99.8%	12.00	3
105000102	Remaining special petrol	1	112	2,808	2,920	96.16%	10,000	14	99.9%	5.00	3
113200061	Metal blinds	6	5	142	147	96.60%	10,000	11	99.9%	18.50	3
113130311	Metal hand tools	6	12	349	361	96.68%	10,000	11	99.9%	20.82	2
119200293	Nail polish	5	3	65	67	96.05%	6,612	10	99.8%	27.50	1
107130982	Zinc thin metal plates	3	212	6,311	6,523	96.75%	10,000	10	99.9%	6.60	4
114190951	Personal and load elevators (lifts)	4	11	335	346	96.82%	10,000	10	99.9%	14.25	3
118101432	Organic surface active materials	5	203	6,828	7,031	97.11%	10,000	8	99.9%	7.25	1
112910072	Asbestos linen and tapes	3	11	376	387	97.16%	10,000	8	99.9%	15.00	3
114190111	Machines and equipment for packaging of food products	4	12	283	295	95.93%	5,138	8	99.8%	5.00	2
126150043	Shoe laces	5	2	76	78	97.44%	10,000	6	99.9%	33.84	1
117490013	Electrical apparatus for grinding. mixing and cutting of food	6	6	218	224	97.32%	5,555	4	99.9%	10.00	1
113150172	Steel wire nets. tapes and yarn	3	100	4,688	4,788	97.91%	8,362	3	100.0%	16.54	3
111110032	Asbestos fibre, III and IV class	3	3	163	166	98.19%	10,000	3	100.0%	9.00	3
119200033	Shaving soaps	5	20	1,327	1,347	98.52%	10,000	2	100.0%	20.00	1
114200181	Combines for grain	4	9	622	631	98.57%	10,000	2	100.0%	45.00	2
117490053	Ventilators	6	5	258	263	98.10%	5,200	1	100.0%	12.06	1
117290101	Complete digital accounting systems	6	2	156	158	98.73%	10,000	1	100.0%	5.00	1
108900182	Concentrate pyrite	2	1,115	99,489	100,604	98.89%	10,000	1	100.0%	0.00	5
131140012	Wine distillates	3	47	1,985	2,032	97.70%	2,527	1	99.9%	60.00	2
112190172	Glass textile	3	20	1,925	1,945	98.97%	10,000	1	100.0%	15.83	3

Product Code	Product	Product Type	Pro-- duction (t)	Net import (t)	Ponuda (t)	Import share	HHI excluding import	HHI including import	Decrease HH	Protection	Significance of transport costs
105000282	Stoking oil for householdsproduct codeproduct	1	3,004	292,061	295,065	98.98%	10,000	1	100.0%	8.00	3
117430053	Dish washing and drying machines for households	6	2	341	343	99.42%	10,000	0	100.0%	28.89	2
117220272	Antennas	6	2	421	423	99.53%	10,000	0	100.0%	54.13	1
113120082	Aluminium radiators	6	4	895	899	99.55%	10,000	0	100.0%	20.00	3
117410143	Air-conditioners	6	4	1,358	1,362	99.71%	5,000	0	100.0%	22.78	2
111190152	Bentonites	2	56	5,654	5,710	99.02%	10,000	0	100.0%	5.00	5
119200383	Glycerine. natural	2	0	179	179	99.95%	10,000	0	100.0%	3.00	1
11920028	Lipsticks	3	50	32	32	98.63%	2,839	0	100.0%	27.50	1
119200263	Powders	5	4	734	738	99.50%	4,908	0	100.0%	24.00	1
119200333	Perfumes	5	0	28	28	99.80%	10,000	0	100.0%	24.00	1
119100443	Dietetic	5	0	233	233	99.94%	10,000	0	100.0%	21.50	1
118320032	Celluloid	3	2	425	427	99.53%	10,000	0	100.0%	13.00	3
117300032	Pulled wire made from aluminium and aluminium alloys	3	8	1,721	1,729	99.54%	10,000	0	100.0%	14.50	3
117210262	Voltage stabilisation	3	0	26	27	99.63%	10,000	0	100.0%	32.00	2
114130271	Hydraulic press	4	11	1,670	1,681	99.35%	10,000	0	100.0%	24.55	2
114190981	Ship cranes winch	4	1	971	972	99.90%	10,000	0	100.0%	6.67	2

CENTER FOR LIBERAL-DEMOCRATIC STUDIES
BELGRADE, SERBIA, FR YUGOSLAVIA

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- individual liberty
- free market economy and economic development
- the rule of law
- responsible and limited government
- democracy

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- building civil society
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- protection of human and minority rights
- education of citizens
- research and publishing of the liberal thought

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- research
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- education

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Consensuses building in Serbia: Communicating the reform
Transportation economic policies for Serbia

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New Model of Privatization in Serbia
Establishing Labor Market
Corruption in Serbia
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