

competition - draft laws published in November and December 2016

The Competition Council has published the draft for Guidelines on the interpretation and application of the Competition Law on the public sanitation services markets

Given a series of competition concerns highlighted during the sector inquiry conducted at national level by the Competition Council (RCC) or respectively raised in other proceedings conducted on the public sanitation services markets, on November 7, 2016, the RCC launched for public debate the draft Guidelines on the interpretation and application of the Competition Law on public sanitation services markets, also drafting a series of recommendations.

With regards to public sanitation services, the RCC found that the exclusive rights granted to operators by local government authorities lead to the creation of a dominant position (monopoly) for operators on the relevant sanitation services of the city, delegated by the administrative territorial unit in the geographical area of jurisdiction of those authorities during the exclusive rights granted by the sanitation services contract. Thus, the measures taken by local government authorities should not limit the autonomy of undertakings (operators) - in this case, to be *objective, necessary* to achieve the objective and *proportionate* to the aim pursued - and not to set discriminatory conditions for enterprises.

To counteract the anticompetitive effects arising from the dominant position of sanitation operators, the Competition Council recommended, mainly:

- restricting areas of monopoly in the field of sanitation of cities, in particular by limiting the duration of the exclusive rights (e.g., optimizing interdependence between term - investment / cost - price, avoiding the unjustified extension of contracts for delegation of sanitation services management);
- effective intervention by regulatory authorities, including the regulation of tariffs, meaning the setting of rates at a level considered affordable for consumers in order for them to obtain similar results to those obtained in a competitive market, both in terms of tariffs level and quality of service;
- granting increased attention to the situation in which the contract for sanitation services was directly awarded by the administrative-territorial units to their own enterprises, suggesting in this case to separate the regulatory function from the operating function, namely to ensure the highest possible degree of competition in the tender for awarding the management of sanitation services

The draft Guidelines in its entirety can be accessed on the RCC website, at:

http://www.consiliulconcurrentei.ro/uploads/docs/items/id11903/2016-11-01_orientari_aplic_legii_concurrentei_recomandari_pe_pietele_sv_de_salubrizare_consultare_publ.pdf

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