

Government of Montenegro

Ministry of Economy

Questionnaire

Information requested by the European Commission to the Government of Montenegro for the preparation of the Opinion on the application of Montenegro for membership of the European Union

– ADDITIONAL QUESTIONS –

08 Competition policy

Minister:

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CHAPTERS OF THE ACQUIS – ABILITY TO ASSUME THE OBLIGATIONS OF MEMBERSHIP

8: Competition policy

I. ANTITRUST INCLUDING MERGERS

A. Scope of application

1. (Ref to Q. 2 a): MEME refers to a number of laws which contain sector-specific rules on competition. On each of these potentially conflicting laws, please describe the regulatory framework and indicate (i.) the responsible ministry and (ii.) the responsible sector-specific authority. Please also provide each sector-specific piece of legislation in English (except in those cases where MEME has already submitted the applicable laws to the Commission).

Laws enlisted in the answer to question No. 2 from the Questionnaire are not conflicting with the Law on Protection of Competition. Law on Protection of Competition (hereinafter: the Law) is fully applied to those areas.

Please find attached texts of the following laws translated into English language:

Law on Electronic Communications ("Official Gazette of Montenegro" No. 50/08, 53/09 and 70/09), responsible state authority is Ministry of Transport, Maritime Affairs and Telecommunications, regulatory body: Agency for Electronic Communications and Postal Services;

Law on Energy ("Official Gazette of the Republic of Montenegro, No. 39/03), responsible state authority is Ministry of Economy, regulatory body: Energy Regulatory Agency.

Law on Banks ("Official Gazette of Montenegro, No. 17/08), responsible state authority is Ministry of Finance, regulatory body: Central Bank of Montenegro;

Law on Broadcasting ("Official Gazette of Montenegro, No. 51/02, 62/02, 46/04, 56/04, 77/06, 50/08, 79/08 and 53/09), responsible state authority is Ministry of Culture, Sports and Media, regulatory body: Broadcasting Agency, which will be renamed within the scope of new draft Law on Electronic Media into: Agency for Electronic Media.

B. Restrictive agreements

2. (Ref to Q. 8): Please present in details the individual exceptions provided by the law.

Article 8 of the Law prescribes that agreements referred to in Article 7 of the Law may be exempted from prohibition if they contribute to improving of production or distribution or promote technical or economic progress, while allowing consumers fair share of the resulting benefit, and if they:

- impose only such restrictions which are necessary to the attainment of abovementioned objectives, and
- do not afford the possibility of eliminating competition in respect to a substantial part of subject goods or services.

Article 10 of the Law defines that if the competent body, through authorized official acting ex officio or at the request of an interested party, establishes that the agreement prevents, restricts or distorts competition, it will issue decision establishing infringement of competition, and it may impose on the party of the agreement to undertake measures enabling the establishment of competition on the relevant market and removal of harmful consequences of the prohibited

agreement, as well as deadlines for their enforcement. This provision applies to prohibited agreements in general.

However, competent body may, upon request of a contracting party to an agreement referred to in Article 8 of the Law approve an exemption of that agreement or its part from prohibition referred to in Article 7 Paragraph 2 of Law (hereinafter: individual exemption).

The burden of proof that the conditions for exemption referred to in Article 8 of this Law exist rests with applicant.

Concerning contents and validity of individual exemption, Article 12 of the Law defines that individual exemption referred to in Article 11 of the Law is approved by way of decision in scope of which time period for which that exemption is approved shall be determined, and certain conditions and prohibitions with time-limits for their enforcement may be determined as well.

This period of time cannot be longer than the time necessary for return of investment and realisation of reasonable profit, in accordance with the agreement referred to in Article 11 Paragraph 1 of this Law.

Individual exemption may be re-approved upon request of a contracting party to the agreement, provided that agreement meets conditions for exemption prescribed in the Article 8 of the Law.

Within the scope of the decision re-approving the individual exemption a new exemption period shall be determined, which cannot be longer than the time period determined pursuant to Article 12 of the Law, and certain conditions and restrictions which are obligatory to be implemented may be determined as well.

Contracting parties to an agreement shall submit request for renewal of an individual exemption to the competent body at latest six months before expiration of period for which the exemption was originally approved.

Also, Article 13 of the Law regulates annulment, cancellation and amendment of an individual exemption.

Decision on individual exemption competent body may:

- cancel or amend, if the circumstances on the basis of which the exemption was granted, have changed; or
- annul, if the exemption was granted on the basis of inaccurate or false information, conditions determined have not been fulfilled, or the exemption is misused.

Detailed criteria for contents of the request for individual exemption are defined by bylaw, which is Decree on Contents of Request for Individual Exemptions, which entered into force on 13 June 2006, ("Official Gazette of the Republic of Montenegro" No. 36/06), which you may find attached to these answers translated into English language.

3. (Ref to Q. 9): Please list all block exemptions currently in force and provide copies in English of any such block exemptions. Is ME in the process of adopting additional block exemptions in the near future? If so, please describe the draft block exemptions in detail.

Group exemptions are regulated by bylaw – Decree on Detailed Criteria for Exemption of Agreements by Categories and Determination of Categories of Agreements which May be Exempt from Prohibition, which entered into force on 24 February 2007, ("Official Gazette of the Republic of Montenegro" No. 10/07), which you may find attached to these answers translated into English language.

For the purpose of higher economic efficiency of the Law, in addition to individual exemptions, a Decree was also adopted specifying conditions under which certain agreements can be exempt from general prohibition.

The Decree precisely defines all conditions that must be fulfilled so that a certain agreement is not prohibited, and in that way competent body and undertakings are provided with greater transparency because it is clearly defined when and under which conditions shall certain agreements be allowed or prohibited.

This Decree is an important part of complex regulation of the area of competition in Montenegro, because with its adoption legislative framework was completed and effective application of competition rules is now possible.

The Decree determines and regulates general provisions for exemption of agreements by categories and determines types of agreements that may be exempted from prohibition, through elaborating subject matter within five parts.

Part I General Provisions – Defines subject matter of the Decree, detailed criteria for exemption of agreements by categories that is market shares and time period for which the exemption is approved, in the course of the procedure conducted pursuant to the Law.

Part II Exemption of Vertical Agreements – Conditions are defined in more details for exemption of vertical agreements between two or more undertakings, where each of undertakings is operating on different levels of production or distribution for the purpose of the agreement. Exemptions are equally applied also on vertical agreements between associations of undertakings and their members, or between those associations and their suppliers if the contracting parties are retailers. Article 5 of the Decree specifies restrictions which agreements must not contain and commitments from specific agreements to which exemption is not applied (Article 6 of the Decree), as well as inapplicability of exemptions of vertical agreements (Article 7 of the Decree).

Part III Exemption of agreements in the industry of motor vehicles – Defines level of exemption of agreements in the industry of motor vehicles, at the same time also emphasizing vertical agreements concluded between suppliers of motor vehicles and distributors or services centres, prescribing validity of agreement for a period not shorter than five years (Article 8 of the Decree). Article 9 of the Decree contains provisions regulating inapplicability of exemption to specific agreements, as well as commitments from specific agreements to which exemption is not applicable (Article 10 of the Decree).

Part IV Exemption of Horizontal Agreements – Contains provisions defining level of exemption of horizontal agreements in a way that horizontal agreements between two or more undertakings operating on the same level of production or distribution are exempted from application of the Article 7 Paragraph 1 of the Law. These exemptions are applied to a group of agreements on research and development and group of agreements on specialisation (Article 11 of the Decree). Conditions which must be included in agreements on research and development are prescribed in Article 12 of the Decree; inapplicability of exemption to specific agreements is regulated by Article 13 of the Decree and inapplicability of exemption to horizontal agreements by Article 14 of the Decree.

Part V Transitional and Final Provisions – It is determined in Article 15 of the Decree that existing agreements in the industry of motor vehicles must be harmonised with provisions of this Decree within three months upon its entering into force.

This Decree contains provisions which are applied in European legal framework and which are subject matter of the following regulations:

- Regulation 2790/1999 concerning block exemptions of vertical agreements,
- Regulation 1400/2002 concerning block exemptions in motor vehicle sector,
- Regulation 2821/1971 concerning block exemptions of horizontal agreements and
- Regulation 772/2004 concerning the category of technology transfer agreements.

* Please note that the misunderstanding was caused by wrong translation concerning time of adoption of a certain legal act, that is legal acts which had already been adopted were misrepresented as acts that are going to be adopted.

D. Mergers

4. (Ref to Q. 13): ME states that joint ventures ("JVs") shall be regulated in Article 23, para 1, item 3 of the Competition Law. Does this mean that the provisions concerning JVs are not yet in place or alternatively that the Competition Law will be amended in this regard? If the provisions in question are not yet there or will be subject to legal amendments, please describe the "state-of-play" as regards ME merger rules for JVs.

Pursuant to provisions of Article 23 of the Law concentration of undertakings are considered to be:

- establishment of a new undertaking by merger of two or more previously independent undertakings or their parts (merger);
- when one or more natural persons that already have the control over at least one undertaking, or when one or more undertakings acquire control over the entire or part of other undertaking;
- establishment and joint control by at least two independent undertakings over a new undertaking that performs on a lasting basis all the functions of an independent economic entity and has an access to market (joint venture).

Control referred to in Paragraph 1 Items 2 and 3 of the Article 23 of the Law is based on granted rights, contracts or any other legal or factual grounds with possibility of decisive influence on business operation of an undertaking, and in particular:

- ownership over or disposal with the whole or part of the property of undertaking;
- contractual authorization or any other grounds enabling decisive influence on composition, activities or decision making of another undertaking.

These forms of control are assessed separately or in combined with each other, whereas relevant legal and actual facts are taken into account but not the intention of interested parties.

Matter of joint venture is regulated by Paragraph 1 Item 3 of the Article 23 of the Law on Protection of Competition.

* Please note that the misunderstanding was caused by wrong translation concerning time of adoption of a certain legal act, that is legal acts which had already been adopted were misrepresented as acts that are going to be adopted.

5. (Ref to Q. 15): The two merger thresholds triggering a notification have been set at: (i.) EUR 3 million (combined turnover generated in ME) (ii.) and EUR 15 million (total worldwide turnover). Please describe how ME determined these threshold values. Such an exercise is rather complex with numerous factors to take into account, such as population, composition of ME companies (e.g. the proportion of SMEs and large firms, M & Activity in ME).

Threshold values for notification of concentration defined by the existing Law on Protection of Competition were determined on the basis of experience of neighbouring countries, as well as on the basis of our assessment of the current state in trade with certain goods and services in the territory of Montenegro.

For the purpose of explanation, there is a certain income rate for goods and services of undertakings in the territory of Montenegro on annual level, which do not exceed limits of annual turnovers defined by this Law. As an example we can use trade with medical gas in the territory of Montenegro, which amounted to cca 2 million EUR when this Law on Protection of Competition was adopted.

We emphasize again that this is a relatively small market and that more significant increase in threshold values of annual turnovers for notification of concentrations could contribute to creation of dominant positions in cases of certain goods and services.

a) Did ME perform any economic modelling aiming at predicting how many mergers would be "caught" by the current thresholds and by alternative thresholds (both lower and higher)? If yes, please describe the methodology used and the alternative thresholds considered.

Since January 2006 to March 2010, competition protection authority approved 49 concentrations, which is approximately 12 concentrations per year. This number of concentrations does not put a significant pressure on work of the Administration, so in our opinion this threshold was set realistically.

b) Does ME consider the current notification thresholds to be adequate (please expand) or would ME consider lowering or raising them?

Existing working version of a new draft Law on Protection of Competition provides for raising of turnover thresholds generated in Montenegro to 5 million EUR with explanation provided in first part of the answer to question 5. More significant raise of turnover thresholds for notification of concentration is not an option, considering proportion of small and medium enterprises compared to large companies, which is significantly in favour of the aforementioned.

6. (Ref to Q. 17): According to the ME merger rules, a notified merger may be prohibited if it "creates or strengthens a dominant position" ("the dominance test"). In article 18 of the Competition Law, a dominant position is defined as follows: "An undertaking having a market share exceeding 50% in the relevant market shall be considered to have a dominant position." In addition, the law stipulates that: "Two or more undertakings having an aggregate market share exceeding 60% in the relevant market shall be considered to have a collective dominant position."

Definition of dominant position on the relevant market was elaborated in Articles 18 and 19 of the Law on Protection of Competition, where percentage of market share is one of conditions for determining dominant position. In addition to this condition, Article 18 Paragraph 2 and Article 19 Paragraph 2 contain provisions defining share of competitive market, economic power of potential competitors, as well as barriers to entry in the relevant market as a basis for defining dominant market position.

a) ME still applies the "old" dominance test when investigating merger cases and not the more recent test "significant impediment to effective competition" ("the SIEC-test"). Please state the reasons why ME has chosen to apply the dominance test.

Existing Law on Protection of Competition was adopted in 2005, thus there are certain inconsistencies compared to EU legislation, one being the issue of analysis of dominance. New Law on Protection of Competition will be fully in compliance with EU legislation, including part which concerns concentrations, in terms of introducing of a newer analysis through SIEC test.

b) Explain the reasons why ME has included the two definitions of dominance (single and joint dominance) directly in the Competition Law. Does this limit the capability of the ME Administration for the Protection of Competition ("ME Competition Authority") and/or ME courts' capability to determine whether notified mergers will create or strengthen a dominant position?

Reason for introducing two definitions of dominance is a necessity of complete elaboration within the Law instead of by way of bylaws, which in our opinion provides competent body for protection of competition as well as courts with an opportunity to implement the Law in a more precise way.

General legal order does not allow for the rules which are enforced in practice to be defined by other legal acts beside law, therefore competition rules as well can only be defined by law, and not bylaws.

c) Prima facie, the ME definitions of dominance in Article 18 of the Competition Law do not appear to be in line with the acquis. Does the ME government have any plans to modify the paragraph in the Competition Law?

As we stated in the answer to part a) of this question, Montenegro will harmonize the new Law on Protection of Competition with existing EU legislation to a highest extent, therefore including harmonization of this Article as well.

7. (Ref to Q. 18): You state that the ME Competition Authority may authorise mergers provided that additional conditions and obligations are fulfilled. Moreover, you state that provisions in the draft competition law will elaborate on additional measures that may be imposed on merging firms as conditions and obligations. Please describe in detail these provisions in the draft law and explain which new measures that are envisaged (e.g. divestitures).

Administration may issue a decision approving certain concentration, but along with imposing additional conditions and commitments which parties involved in concentration must fulfil within determined time-limits. Existing Law on Protection of Competition does not specify those additional conditions and commitments which need to be fulfilled. However, at the moment a new Law on Protection of Competition is being drafted, and in scope of Part IV of that draft – Procedure before the Agency, the question of measures and conditions which may be imposed on an undertaking involved in concentration is particularly elaborated. In the part elaborating measures which follow the realisation of a prohibited concentration it is prescribed that competent body, by way of decision determine necessary measures and time-limits for their enforcement in cases when concentration had been carried out without the decision of a competent body or contrary to a decision of a competent body prohibiting that concentration, or when concentration had been carried out without a prior notification. By way of decision competent body may:

- order transfer of acquired shares or participating interests;
- prohibit or restrict the exercise of voting rights related to the shares or participating interests in business entities to parties involved in concentration, and order removal of control in joint venture or any other form of acquisition of control which led to prohibited concentration.

E. General procedures

8. (Ref to Q. 19):

i. The ME Administration for the Protection of Competition. ("ME Competition Authority") currently has 13 civil servant posts of which 8 posts have been filled.

a) Given the numerous tasks given to – in particular - the "Unit for Monitoring of Concentrations, Prohibited Agreements, Abuse of Dominant Positions and International Cooperation", the Commission would like to know whether ME considers the present staffing level to be adequate. Is it foreseen that the number of staff will increase in the next three years? Given the size of the country, should this not be enough?

Director of Administration for Protection of Competition was appointed on 3 September 2009.

New Rulebook on Internal Organisation and Job Descriptions of the Administration adopted by the Government of Montenegro on its session held on 29 October 2009, provided for 16 positions for civil servants and junior state employees.

Administration operates with insufficient number of employees in all organisational units. Namely, Administration took over five employees from Ministry of Economy when it was established, three of which work on tasks concerning protection of competition and two of on general affairs.

Possibilities for increasing the number of employees or for solving the status of persons who already filled vacancies were slowed down by measures of Government of Montenegro, adopted for the purpose of coping with financial crises. However, Government of Montenegro issued a conclusion on 29 October 2009, assigning to Administration to consider, in cooperation with Ministry of Finance, possibility of providing financial means necessary for employment of civil servants and junior state employees for job positions that were determined within the Rulebook. These activities are ongoing.

b) According to the organisation chart of the ME Competition Authority (p. 15), the Service for General Affairs will be headed by an "Independent State Employee" who will be will chief of accounting and finance. Why does ME consider it necessary to have a State official fulfilling this function? How does ME ensure that this function does not interfere with the operational independence of the ME Competition Authority?

According to Rulebook on Internal Organisation and Job Descriptions, a work position of Coordinator of Financial Affairs was determined without specificities in comparison to other employees of Administration for Protection of Competition.

* Please note that the misunderstanding was a consequence of an unclear translation.

ii. Please indicate the budget of the ME Competition Authority for 2010 and 2011.

Budget of Administration for Protection of Competition for year 2010 was planned in the amount of **304,367.00 EUR**, while budget for year 2011 was planned in the amount of **319,585.00 EUR**.

However, due to measures adopted by the Government of Montenegro with the aim of overcoming financial crisis, financial means for the Administration for the year 2010 were allocated in the amount of **155,303.00 EUR**.

iii. Please describe the division of competences between the Ministry for Economic Development and the Administration for Protection of Competition isensured.

Division of competences between Ministry of Economy and Administration for Protection of Competition is regulated within the Law on Protection of Competition ("Official Gazette of Montenegro", No. 37/07).

Ministry of Economy, as a competent body, performs tasks concerning recommendation of policies for protection and development of competition, follows implementation of policy for protection and development of competition, adopts legislative acts for implementation of law and determines methods for investigating competition.

Competences of Administration for Protection of Competition are the following:

- follows competition in the market in general and in markets of specific sectors;
- approves exemptions from prohibition for certain agreements and approves concentrations of undertakings under prescribed conditions and decides on other questions for which it is competent under law;
- decides in the procedure of determining infringements of competition prescribed by law;
- imposes measures on undertakings and associations of undertakings for infringing competition rules or for the purpose of preventing those infringements, terminating infringements that already happened and eliminating consequences which harm undertakings or consumers;
- analyzes state in the market from the standpoint of free and efficient competition, and submits report on determined market state to the Ministry;
- prepares expert base for drafting of bylaws, application of European and other international standards and instruments from the area of protection of competition;
- establishes international cooperation with competent bodies of other countries and international organisations;
- publishes statistical data from the area of protection of competition, etc.

iv. Please provide a brief description of the measures ME will introduce in the new Competition Law to ensure the functional and financial independence of the ME Competition Authority. The draft Competition Law will regulate the independence of the ME Competition Authority. When is it expected that the new Competition Law will be adopted by the Parliament and when is it likely to enter into force? Please provide an English translation of the draft law as it stands now and of the final text of the Law once it is adopted.

New draft Law on Protection of Competition provides for forming of an independent body – Agency for Protection of Competition, in accordance with the European practice. Proposed model of organisation/performing tasks of protection of competition includes functional and financial independency, because the body would be financed from compensations paid the Agency for performing functions from its scope of work, and which will be particularly defined by Tariff, and part would be financed from the state budget.

Independence of this body shall be confirmed also by the fact that appeal against Agency's decisions shall not be admissible, however dissatisfied party will be allowed to institute administrative dispute before the Administrative Court of Montenegro. This means that Agency's acts are final and parties can only initiate administrative dispute against them.

Furthermore, we emphasize that existing body – Administration for Protection of Competition also has this competence.

Administration has status of legal person and it is independent in its work.

Drafting of Law is scheduled for IV quarter of 2010 in Government's work programmes, and Administration for Protection of Competition will be abolished and Agency for Protection of Competition will be established.

Please find attached a working version of the new Law on Protection Competition translated into English.

In relation to your request from point iv of this question where you request translation of the draft Law on Protection of Competition, we wish to inform you that this is a working version of the text of the law, for which we are sure will be significantly amended, especially in the part we mentioned throughout previous answers.

There are certain areas within this text that have not been defined yet (investigation in ongoing), which we are still adjusting in cooperation with the Ministry of Justice, so that we could draft the final version of the Law on Protection of Competition of the best possible quality.

9. (Ref to Q. 20): Please describe in more detail the ME Competition Authority's investigative powers during inspections at companies' premises (so-called "dawn raids"). Do the remedies envisaged in the draft Law include powers to seize documents and other business records? Does the draft Law require companies to make available specified records and information? Will the ME Competition Authority be given the power to summon witnesses and require information from third parties? Please elaborate.

Investigative powers of the Administration for Protection of Competition are regulated by Articles 34 and 38 of the Law on Protection of Competition. In the course of the procedure pursuant to Article 38 of the Law, Administration is authorised to request in written from undertakings and other indirectly involved persons to submit information important for establishing facts in the proceeding, within the time-limit of 15 days, unless longer time-limit is allowed by Administration.

In addition to that, and pursuant to Article 34 of the Law, in the proceeding for protection of competition Administration may collect data and determine facts also by way of inspection supervision, where Law on Inspection Supervision is applied ("Official Gazette of Montenegro", No. 39/03, 76/09).

Collection of data and determination of facts through inspection supervision in the course of proceeding for protection of competition (Article 34 of the Law) is an option which Administration uses through competent inspectorates. Therefore, if Administration assesses that it is necessary that actions which are conducted in the proceeding are conducted in that way, it will request that from the inspectorate competent for supervision in the sector in which the proceeding for protection of competition is being conducted (e.g. from Market Inspectorate if the subject matter is market of goods, of from Inspectorate for Road Traffic if the subject matter is transportation in road traffic, etc). Moreover, there is a possibility of engaging other bodies competent for supervision beside inspectorates for different sectors (such as Tax Administration, Police Administration etc).

Competent inspectorate is obliged to organise inspection supervision upon request of a competent body, with the aim of collecting of requested data and determining relevant facts, and to submit report about conducted actions to the body which submitted the request. Procedures used by inspectorates are prescribed by Law on Inspection Supervision, and certain issues concerning inspection supervision are regulated by specific legislative acts. Provisions of Law on General Administrative Procedure are applied to issues which are not regulated by this law or special legislative act.

Beside abovementioned provision of Article 34, as well as Article 38 of the Law on Protection of Competition which prescribe concrete cooperation between state administration bodies, obligatory cooperation and mutual informing of ministries and other state administration bodies is also prescribed by Law on State Administration (Article 65), a obligation of mutual cooperation of inspectorates is prescribed by Law on Inspection Supervision (Article 65).

Pursuant to Article 14 of the Law on Inspection Supervision, in the course of performing inspection supervision inspector has authorisation to:

- inspect: buildings and premises, land, equipment and machines, work assets and other objects, products intended for distribution, goods in distribution, performing of distribution of goods and offering services, business books, evidence and registries, contracts, public documents and other business documentation;
- determine identity of subjects of supervision and other persons;
- collect statements from subjects of supervision and other persons;
- collect samples necessary for determination of facts;
- order implementation of adequate measures and actions for the purpose of securing the process of supervision;
- temporarily seize documentation, objects and others things necessary for determination of facts;
- prohibit certain actions;
- secure that measures that have been ordered are enforced;
- undertake other prescribed measures which serve for securing of actions of inspection supervision.

Within the new Draft Law on Protection of Competition, defining of question of investigative powers is proposed in Part IV – Procedure before the Agency for Protection of Competition, which would provide this body with the possibility to have direct insight in all business premises, business books, databases or other documentation, as well as to introduce immunity from fines or reduction of fines for undertakings which cooperate in the proceeding, that is, which submit crucial information.

10. (Ref to Q. 21): ME has chosen to set the administrative fines to be levied under the ME Competition Law as multipliers of the ME minimum wage.

a) What is the minimum wage currently applicable in ME? How is the minimum wage determined and how often is it adjusted? Is the minimum wage linked to inflation in ME?

At this moment, minimum wage in Montenegro (lowest wage) amounts to 55 EUR.

Minimum wage is determined in the course of negotiations between social partners, Trade Union Association of Montenegro, Government of Montenegro and Montenegrin Employers Federation.

Procedure, mode and basic elements for determining lowest price of work are regulated by Methodology for Determining Minimum Wage ("Official Gazette of the Republic of Montenegro" No.71/05).

Basic elements for determining minimum wage are: needs of employees and their families (consumers' basket with basic living supplies, as well as expenses for footwear, clothes, housing and similar costs.); average income of a family of four; level of productivity of work, level of gross domestic product; main economic indicators and decrease in percentage of fund of salaries in public sector in gross domestic product.

Minimum wage is determined at least once a year that is always when conditions are fulfilled which reflect positive and negative trends in basic elements for determining minimum wage.

Minimum wage is related to inflation through changes in price of consumers' basket, in a way that changes in fluctuation of prices of basic living supplies directly reflect on increase of expenditures for nutrition that is, price of the consumers' basket with basic living supplies.

b) By linking the administrative fines to the minimum wage instead of undertakings' turnover, the fines appear to have a regressive effect, i.e. fines seem likely to penalise SMEs and favour larger companies. Please outline the reasons why ME has chosen this approach.

According to EU regulations, fines for offenders of competition rules are determined on a basis of a model which is based on percentage of annual turnover generated by an undertaking which committed the infringement. This solution was considered as an option in the course of drafting a new Law on Protection of Competition, however, existing legislation in an imperative way imposes obligation to take over penalty clauses from Law on Misdemeanour, due to the fact that misdemeanour procedures are conducted solely on the basis of this Law when imposing fines.

Law on Misdemeanour ("Official Gazette" No. 25/94, 29/94 and 48/99) prescribes as sanctions for misdemeanour: fine, misdemeanour warning, security measures and corrective measures.

Article 26 of the abovementioned law prescribes that pecuniary fine may be imposed in range or fixed amount.

By way of Law pecuniary fine may be imposed:

- on natural person and responsible person in a state body or legal person in amount from ½ -fold to 20-fold of minimum wage in Montenegro, pursuant to Law and other regulations.
- on a state body, legal person and entrepreneur in amount from 10-fold to 300-fold of minimum wage in Montenegro.

Within misdemeanour regulations, pecuniary fine in a fixed amount may be determined for minor misdemeanours and an official can be authorised to charge it on the spot.

Pecuniary fine which is charged on the spot may be imposed on natural person and responsible person in the state body or legal person in amount up to 3-fold, and for undertakings in amount up to 5-fold of minimum wage in Montenegro.

If a natural person and responsible person in a state body or legal person by means of misdemeanour has acquired illegal gain greater than maximum pecuniary fine prescribed for the misdemeanour or prescribed fixed amount of fine, pecuniary fine shall be imposed in amount up to 2-fold of the acquired illegal gain.

Article 27 of the Law on Misdemeanour that is currently in force prescribes that if a body or an undertaking has incurred damage, failed to fulfil an obligation or has acquired illegal material gain by committing misdemeanour, pecuniary fine may be imposed in amount up to 10-fold of the incurred damage, unfulfilled obligation or acquired illegal gain.

Draft of the new Law on Misdemeanour provides for a different concept of imposing pecuniary fines. Having in mind the fact that pecuniary fines related to minimum wage would have a regressive effect in current situation, a new concept has been suggested in which pecuniary fine shall be imposed in a certain range or fixed amount, and therefore they will not be related to a minimum wage. It is also planned that for misdemeanours of legal person which failed to fulfil obligation or acquired illegal material gain pecuniary fine may be imposed up to 10-fold of the unfulfilled obligation or acquired material gain, but not in amount higher than 50.000 EUR, which is in legislators opinion justified considering that misdemeanours are acts of lower social danger and also taking into account realistic financial situation of business entities in Montenegro.

It should be stated that Draft Law on Misdemeanour, having in mind the gravity of misdemeanours from the area of protection of competition in the market, provides for a possibility that pecuniary fine for misdemeanour in the area of competition in the market may be imposed in amount of 10 %

of generated annual turnover of the legal person. For related undertakings, pecuniary fine may be imposed in amount of 10% of generated annual turnover for each undertaking separately for the preceding business year.

It should also be emphasized that criminal offence of abuse of monopoly is criminalised in the Article 270 of Criminal Code, and it is penalised with the sentence of imprisonment in duration between three months and five years for the responsible person in business organisation or other entity performing business operations, who through abuse of monopoly or dominant position in the market or through conclusion of monopoly agreement causes distortion on the market or secures a favourable position in the market for that undertaking in comparison to other undertakings, and thus acquires material gain for that or some other undertaking, or causes damage for other undertakings, consumers or clients.

c) Please specify in which cases a pecuniary fine in the amount from 10-fold to 20-fold of the minimum wage is envisaged by the law?

As we stated in the answer to the question No.21 from the Questionnaire, pecuniary fines for misdemeanours in cases of infringement of the Law on Protection of Competition are prescribed in Articles 44 and 45 of that Law. Fines are fortified in that way in accordance with the gravity of violation. Therefore, higher fines are prescribed in Article 44 Paragraph 1 of the Law on Protection of Competition for serious misdemeanours of legal persons, while lower fines are prescribed in Article 45 Paragraph 1 of the same Law for minor misdemeanours.

Pecuniary fines in amount from 10-fold to 20-fold of minimum wage are prescribed for misdemeanours committed by natural person as a responsible person in legal person. These fines are prescribed in Article 44 Paragraph 2 and Article 45 Paragraph 2 of the Law on Protection of Competition

11. (Ref to Q. 22): Are interim measures granted by courts? If so, in which cases?

It is prescribed in the Article 3 of the Law Amending Law on Protection of Competition ("Official Gazette of Montenegro" No. 37/07) that state administration body competent for protection of competition shall, among other competences, decide in the procedure for determining infringements regulated by this Law, as well as impose measures on undertakings and associations of undertakings for committed infringement of competition or with the aim of preventing those infringements, terminating already committed infringements and eliminating consequences harmful for undertakings and consumers.

It is prescribed within the same Article that competent body may temporarily prohibit trade with certain goods or services in the relevant market, which cannot be longer than three months, and that acts of the competent body are final and administrative dispute can be instituted against them.

It is prescribed in Article 12 of the Law on Administrative Dispute that, for the purpose of protection of public interest, Public Prosecutor may join the administrative dispute.

Within Article 13 of the same law it is prescribed that complaint, as a rule, shall not prevent enforcement of administrative or other act against which it was filed. The same article regulates that body whose act is to be enforced, that is body competent for enforcement if the act in question is adopted by organisation lacking authority for enforcement, shall postpone enforcement at the request of the plaintiff until the final court decision is rendered, if the enforcement would cause harm to the plaintiff that would be difficult to rectify, if the postponement is not against the public interest and postponement would not cause greater irreparable damage to the opposing party. Along with the request for postponement, evidence that the complaint was filed must also be submitted. Competent body must decide upon this request at latest within three days from the day

when request was submitted. The same Article provides a possibility for the body whose act is to be enforced to postpone enforcement of the challenged act for other important reasons, as long as that is not against public interest.

Article 14 of the Law on Administrative Disputes prescribes that plaintiff may request from the court to order a measure for interim regulation of legal state until the final court decision is rendered, if the measure from the abovementioned Article cannot prevent serious adverse consequences for the plaintiff or the act that is being challenged would cause irreparable damage. President of the chamber of judges shall decide upon request for interim measure within five days from day when the request is submitted. Against decision on interim measure appeal may be lodged to the appeal council of the Administrative Court within three days. Appeal shall not postpone enforcement of interim measure. Council of the Administrative Court shall decide upon appeal within seven days from the day it was lodged.

12. (Ref to Q. 26): Please provide an English translation of the Law on General Administrative Procedure.

Pursuant to your request please find attached English translation of the Law on General Administrative Procedure.

13. (Ref to Q. 27): Please describe the legislative provisions for rights of third parties.

Law on General Administrative Procedures prescribes that state authorities and local self-government authorities shall have the obligation to proceed in compliance with this Law, directly applying the legal regulations, when deciding on administrative matters on rights, obligations or legal interests of a natural person, legal person or other party, as well as when performing other actions determined by this Law.

Article 5 of the abovementioned Law prescribes that when conducting a procedure and deciding in administrative matters, the authorities shall enable parties to as easily as possible protect and realise their rights and legal interests, taking into account that the realisation of their rights and legal interests shall not be to the detriment of rights and legal interests of other persons, or opposite to the legally established public interests.

When an authorized official, with regard to the existing state of affairs, discovers or assesses that a party or other participant in the procedure has the grounds for realisation of some right or legal interest, they shall be warned about it by the official. If by virtue of the law obligations are imposed on the parties and other participants in a procedure, measures determined by legal regulations which are more favourable for them shall apply, provided that such measures are sufficient for the achievement of the objective of the law.

Any person who declares a legal interest shall have the right to participate in a procedure. A legal interest is considered declared when a person claims to be joining the procedure for the protection of his/her rights or legal interest (interested person).

The legal interest is an immediate personal interest based on law or other regulation. Any person who expresses legal interest shall have equal rights and obligations in the procedure as the involved parties, unless otherwise provided by the law. A person requesting to participate in the procedure shall precisely state the nature of his/her legal interest in the petition.

Article 130 of the Law on General Administrative Procedure prescribes that "where in the course of the procedure a person who has not previously taken part in the procedure as a party comes forward, the authorized official conducting the procedure may, at a special oral hearing, consider his/her right to be a party to the procedure and adopt the related decision by way of conclusion."

A special appeal may be filed against the decision whereby the abovementioned right is recognized or not recognized, and the proceeding shall be continued after the conclusion is final and enforceable.

Article 147 of the abovementioned Law prescribes that the authority conducting the procedure shall also publicly announce the holding of an oral hearing when suspected that individual summons may not be delivered on time, or that more persons who have not yet appeared as the parties to the procedure may possibly be interested to appear, or when so required by other comparable reasons.

Public announcement of oral hearing needs to contain all information that must be indicated in individual summons, and also an invitation for attending the oral hearing for everyone who believes that the related administrative matter concerns his/her personal legal interests.

Rights and duties of third persons in the course of taking evidence are regulated in Article 163.

Where an official document is in the possession of a third person who refuses to present it voluntarily, the authority conducting the procedure shall issue a decision ordering that person to present the concerned official document at the hearing, so that the parties may declare themselves on the document.

A third person may refuse to present an official documents for the same reasons for which a witness may refuse to testify. The third person who refuses to present an official document with no justifiable reason shall be subject to the same procedure as a witness who refuses to testify. The third person shall be entitled to file an appeal against a decision whereby it is ordered to present an official document, and also against a decision imposing fine for the failure to present the document, and the execution of the decision shall be deferred by the appeal.

The party quoting an official document in the possession of a third party shall compensate the person in question for the incurred costs relating to the presentation of the official document.

Rights and protection of third parties in the administrative procedure are also regulated within the Article 226, where as a major violation of rules of administrative procedure is, among others, the violation stipulated in Item 2, which is when person who was supposed to participate as a party or interested person was not given the opportunity to participate in the procedure, and in Item 3 the situation when a party or interested person was not given the opportunity to make a declaration on all facts and circumstances essential for issuing a decision.

14. (Ref to Q. 28): Please describe in more detail the powers of the Administrative Court in competition law cases. Please describe in detail the "administrative dispute" before the Court and in particular the possibilities for redress for the "dissatisfied party". Can the Court annul the decisions of the ME Competition Authority in its entirety or in part?

It is prescribed in the Article 3 of the Law on Administrative Disputes that any natural or legal person who deems that his or her rights or direct personal interests based on law have been violated by an administrative or other act shall have the right to institute administrative dispute. State administration bodies, organisations, settlements, groups of persons and others who don't have a status of legal person may also institute administrative dispute if they have the capacity to be holders of rights and obligations which were the subject of the administrative or other proceeding. If an administrative or other act violates the law for the benefit of a natural person, legal person or any other party, the administrative dispute may be instituted by the public prosecutor or other competent state authority. Administrative dispute may also be instituted by public prosecutor or other competent state body in case when administrative or other act violates the law to the detriment of the state, local self-government unit, institution or other legal person.

An administrative dispute may be instituted against an administrative or other act passed in the second instance. An administrative dispute may also be instituted against first instance administrative or other act against which an appeal in administrative or other proceeding is not

permitted. An administrative dispute may be instituted also when the competent body has failed to deliver an adequate administrative or other act regarding party's request or appeal, subject to the conditions prescribed by this Law.

Administrative disputes shall be decided by the Administrative Court of Montenegro (hereinafter: Administrative Court) and Supreme Court of Montenegro (hereinafter: Supreme Court).

Article 3 of the Law Amending the Law on Protection of Competition ("Official Gazette of Montenegro" No. 37/07) determines competences of the Administration for Protection of Competition by way of enumeration, and it is prescribed in the same Article that acts of the competent body are final and that an administrative dispute may be instituted against them, therefore in accordance with the Article 16 of the Law on Administrative Dispute dissatisfied party may lodge an appeal within 30 days from the day of delivery of the act, while the defendant in the administrative dispute is the body whose act is being challenged.

An administrative or other act may be challenged: for violation of the rules of procedure, for falsely and incompletely established facts, for wrong application of substantive law.

A third party who would directly suffer harm by the annulment of the challenged administrative act has also the position of a party to the dispute (interested person).

Administrative Court shall decide on complaint in a chamber consisted of three judges. Administrative Court shall dismiss the complaint in its decision if determined that:

- complaint was not filed on time or that it was filed prematurely;
- act that is being challenge in the complaint is not administrative or other act;
- it is obvious that the administrative or other act being challenged in the complaint does not affect rights of the plaintiff or his legal interest based on law;
- an appeal could have been filed against administrative or other act disputed in the complaint, and that appeal was not filed at all or filed on time;
- there already exists a legally enforceable decision rendered in an administrative or other dispute on the same matter.

In administrative disputes Administrative Court shall decide in oral hearing, that is, session closed for the public. Administrative Court is obliged to hold an oral hearing if party moves for an oral hearing to be held in the complaint or response to the complaint. Administrative Court may decide in closed session only if it determines in the preparatory proceeding that facts in the administrative or other procedure were correctly and completely established, that is, that fact are not disputable.

The failure to attend the oral hearing by a party shall not delay the work of the Administrative Court. It may not be assumed that the party has dropped the claim if he/she fails to appear at the hearing. If a party fails to attend the oral hearing his/her filings shall be read.

If the plaintiff and the defendant both fail to attend the hearing, and the hearing is not postponed, Administrative Court shall hear the arguments of the dispute without the presence of the parties.

At the hearing the floor is first of all given to the member of the chamber acting as rapporteur. The rapporteur presents the facts from the file and the essence of the dispute, without giving his/her opinion. After that, the floor is given to the plaintiff to explain the complaint, and then to the representative of the defendant and to the interested persons to explain their point of view.

If the Administrative Court shall decide on the basis of the oral hearing, it shall decide on the basis of facts determined in the oral hearing itself, as well as on the facts determined in the preliminary procedure, if those are not contradictory to facts from the oral hearing.

If the Administrative court during the oral hearing finds that facts established in the administrative dispute are different from facts established in the administrative or other proceeding, or if it finds that rules of procedure were violated in the administrative or other procedure which influenced the adoption of the decision, the court shall annul the challenged administrative act in a judgement. In this case the competent body whose act is annulled shall be obliged to act as determined in the

judgement of the Administrative Court and to issue a new administrative act, unless the Court decided directly on the matter.

If Administrative Court determines that serious violations of the rules of procedure occurred, it shall annul the challenged act even in case that those violations did not have decisive influence on correct decision-making on the matter.

Legality of the challenged administrative and other act shall be examined by Administrative Court within the limits of the claim; however it is not bound by the reasons from the complaint. Administrative Court shall examine if the challenged act is null and void *ex officio*.

If Administrative Court annuls the challenged act, and the nature of the matter allows so, it may decide on the substantive law in the subject matter, if:

- it established facts by itself during oral hearing;
- the annulment of the challenged act and reopening of the proceeding before the competent body would cause irreparable damage to the plaintiff, which would be difficult to rectify;
- it is obvious on the basis of public documents and other evidence in the file of the case that facts are different from those established in the administrative proceeding;
- an act was already annulled on the same subject matter, and the competent body did not act in accordance with the judgement or;
- an act was already annulled on the same subject matter, and the competent body failed to deliver a new act within 30 days from the day of annulment or within other time-limit determined by the Court;
- competent body in the second instance failed to deliver an act upon submitted appeal, that is, first instance body failed to do so when the appeal is not permitted in the administrative proceeding.

In case when an act was already annulled in the same dispute, and the competent body did not act completely in accordance with the judgement or an act was already annulled in the same dispute, and the competent body failed to deliver a new act within 30 days from the day of annulment or within other time-limit determined by the Court or competent body in the second instance failed to deliver an act upon submitted appeal, that is, first instance body failed to do so when the appeal is not permitted by Law.

Administrative Court may determine facts of the case by itself and render a decision based on the facts established in that way.

Decision of the Administrative Court shall completely replace the annulled act.

The judgement of the court shall grant the complaint or dismiss it as unfounded. If the complaint is granted, Administrative Court shall annul the challenged administrative act.

If the court finds that the challenged administrative act must be annulled, if the nature of the matter so allows and if the facts of the case give a reliable foundation for so doing, Administrative Court may decide the administrative matter by a judgement. This judgement shall completely replace the annulled act.

The Administrative Court shall also decide in the judgement by which the challenged act is annulled, on the plaintiff's claim for the return of things, or for the compensation of damages, if the facts of the proceedings give a reliable basis for that. Otherwise the court shall instruct the plaintiff to institute civil contentious proceedings.

When the complaint is filed for failure of the body in the second instance to deliver a decision upon party's appeal against first instance decision within 60 days or in a shorter time-limit determined by law, and the same body fails to deliver the decision in the new time-limit of 7 days upon the repeated request, party may institute an administrative dispute as if the appeal was rejected, and if afterwards Administrative Court declares the complaint as founded, it shall grant the complaint by judgement and order the competent body to issue a decision.

If an oral hearing is held, the President of the Chamber of judges shall pronounce the judgement or ruling immediately after the hearing, orally, together with the most important reasons.

In complex cases the Administrative court may postpone delivering an oral pronouncement of the ruling and render ruling within no more than eight days after the oral hearing. In that case, the decision of the Court shall not be announced, but an authenticated copy of the judgement shall be served on to parties.

If Administrative Court cannot pronounce judgement or ruling after the oral hearing, because prior to this it is necessary to establish a fact for which it is not necessary to hold another oral hearing, the Court shall render its judgement or ruling without a hearing, within no more than eight days from the day when that fact is established.

Against an enforceable decision of the Administrative Court legal remedies may be filed, particularly:

- request for extraordinary review of court's decision;
- request for reopening of the proceedings.

Supreme Court shall decide on request for extraordinary review of the court's decision, as a rule rule, in a closed session. Supreme Court shall examine the request only within the limits of the claim from the complaint, and shall look for serious violations of the rules of procedure *ex officio*.

Supreme Court shall render a judgement granting or dismissing the request.

If the Supreme Court renders a judgement granting the request, it may annul or amend court's decision against which the request was filed. If the Supreme Court annuls the decision of the Administrative Court, the case shall be returned to Administrative Court. In a repeated proceeding before the Administrative Court, the Court is obliged to conduct all actions in the procedure and to discuss all issues which the Supreme Court pointed out to it.

The decision cannot be amended to the detriment of the party, if the party was the only one filing the request.

The Law on Administrative Disputes prescribes in Article 57 that when the Court annuls the act against which the administrative dispute was instituted, the subject matter shall be subject to restitution of the previous position, as it was before the act was rendered. If, by nature of the matter being the subject matter of the dispute it is necessary to issue a new act to replace the annulled one, competent body is obliged to issue the new act without delay and at latest within 30 days from the day when the judgement was served. In doing so, the competent body is bound by the Court's legal opinion, as well as by court's remarks concerning the procedure.

It is prescribed in Article 58 of the abovementioned Law that in case when the competent body does not issue a new act in compliance with the Court's decision after the previous act had been annulled, and the plaintiff does not file a new complaint, the Court shall annul the challenged act and, as a rule, decide on the matter by judgement. Such judgement shall completely replace the act of the competent body. In that case the Court shall inform the body which is responsible for supervision of the body which did not comply with the Court's judgement, while the body performing supervision is obliged to inform the Court about the taken measures within 30 days.

If the competent body does not submit a new act immediately after the previous one had been annulled and at latest within 30 days, party may ask in the special request from the competent body to issue that act. If the competent body again fails to deliver the act within seven days upon the request, party may ask from the Court which rendered the judgement in the first instance to deliver the act. Upon the mentioned request, the Court shall ask the competent body to inform it about reasons for which it failed to deliver the act. Competent body is obliged to issue that decision immediately, and at latest within seven days. If it fails to comply or if the provided explanation in Court's opinion does not excuse the failure to enforce Court's judgement, the Court shall render a decision which shall completely replace the act of the competent body. The Court shall submit that decision to the body competent for enforcement and at the same time it shall inform the body

responsible for supervision. The body competent for enforcement is obliged to enforce this decision without delay.

From the abovementioned provisions it can be concluded that Administrative Court may annul the act of the body competent for protection of competition in the market completely or in its part, as well as that it can decide in the subject matter, in which case the rights of the dissatisfied party are fully protected as prescribed in the Law on Administrative Disputes.

15. (Ref to Q. 30): ME states that since 1 January 2006, the ME Competition Authority has taken 49 decisions concerning notified mergers. The annexed list indicates that all these mergers have been approved but does not indicate how many mergers have been conditionally approved because the merging parties have made commitments. Please indicate how many of the 49 approval decisions were subject to conditions and obligations.

49 approved decisions, issued by the Administration for Protection of Competition did not include those which conditionally approve concentrations.

II. STATE AID

16. (Ref to Q. 32):

i. The 2nd paragraph of the ME reply quotes the definition of state aid in the Law on Control of State Support and Aid ("ME State Aid Law"). This definition does not seem to be completely aligned with the EU definition in Article 107 TFEU. For example, the ME definition does not seem to include neither the concept of selectivity, nor does it express the private investor principle. Please indicate the reasons why ME has chosen this definition of State aid and not fully aligned its definition to the one in Article 107 TFEU.

Montenegrin Law on State Aid Control is harmonized with the Article 107 of the Treaty on Functioning of European Union. Pursuant to Article 2 of the Law on State Aid Control ("Official Gazette of Montenegro" No. 74/09) (which is in force at the moment), definition of state aid is given as follows: "State aid shall mean expenditures, reduced revenues or reducing assets of the State or municipality that distort or may distort free competition in the market and that may affect the trade between Montenegro and the European Community or a member state of the Central European Free Trade Agreement (CEFTA) by conferring a more favourable market position on certain economic entities, products or services."

Also, Montenegro respects certain principles when assessing scope and character of state aid. Selectivity shall mean aid to selected business organisations or on the basis of a scheme, and difference is made between state aid and "general measure". Temporality shall mean that duration of aid is limited. Transparency shall mean that the aid is granted on the basis of clearly visible and measurable rules. Adequacy shall mean that the selected form of aid is well chosen. Also, the principle of private investor is respected, because the state aid may be granted to companies regardless of their type of ownership.

ii. The new ME State Aid Law was adopted in November 2009. Do the legislative provisions summarised here and in the other questions concerning State aid control describe the situation under the old or the new State Aid Law? If they refer to the previous law, please rephrase your answers so that they only cover provisions under the new law. Will the definition of State aid in the new law be different from the definition in the old one? If yes, please describe these differences and provide an English translation of the new State Aid Law.

Law on Control of State Aid and Support ("Official Gazette of the Republic of Montenegro", No. 26/07) was in force until November 2009, when the new Law on State Aid Control was adopted ("Official Gazette of Montenegro" No. 74/09).

Please note that we answered the questions from the Questionnaire while the Law on Control of State Aid and Support was in force ("Official Gazette of the Republic of Montenegro", No. 26/07), and in notes we provided answers in accordance with the Law on State Aid Control ("Official Gazette of Montenegro" No. 74/09), so that both situations were included.

Both laws were drafted in cooperation with experts from the European Union, concretely: Law on Control of State Aid and Support through project Parim, and Law on State Aid Control through project TRIM MNE.

For the purpose of drafting the first law, that is, the Law on Control of State Aid and Support ("Official Gazette of the Republic of Montenegro", No. 26/07), European Union (Parim) provided expert assistance to Montenegro. Also, expert assistance of EU through project TRIM MNE was provided for the purpose of drafting the new Law on State Aid Control ("Official Gazette of

Montenegro” No. 74/09), which is fully harmonized with EU legislation in the area of state aid control.

The difference between definitions in Law on Control of State Aid and Support (“Official Gazette of the Republic of Montenegro”, No. 26/07) and the Law on State Aid Control (“Official Gazette of Montenegro” No. 74/09) is following: within the Law on Control of State Aid and Support (“Official Gazette of the Republic of Montenegro”, No. 26/07) state aid referred to expenditures or reduced revenues of the State or municipality which represented privileges and benefits for the beneficiary, and which conferred competitive advantage on the beneficiary, as well as financing and co financing of beneficiary’s programmes for market-oriented production of goods and provision of services; while in the new Law on State Aid Control (“Official Gazette of Montenegro” No. 74/09) state aid shall mean expenditures, reduced revenues or reducing assets of the State or municipality that distort or may distort free competition in the market and that may affect the trade between Montenegro and the European Community or a member state of the Central European Free Trade Agreement (CEFTA) by conferring a more favorable market position on certain economic entities, products or services, therefore it is wider and more comprehensive than the definition provided in the Law on Control of State Aid and Support (“Official Gazette of the Republic of Montenegro”, No. 26/07), as it contains all elements defining the term state aid: selective advantage for a certain beneficiary, expenditure or reduced revenue of the State, influence on competition and trade between countries in EU.

iii. Does the new State Aid Law include provisions for State support which should not be considered State aid? If so, please elaborate.

Aid not considered as state aid is determined within Article 5 of the Law on State Aid Control (“Official Gazette of Montenegro” No. 74/09). Those are the following:

- Investment and/or reduction of revenues of the state aid grantor on the basis of market principles that do not provide the beneficiary with economic advantage;
- Investment of the grantor in the infrastructure in general use, if the construction of such infrastructure is not in exclusive interest of the economic entity;
- Purchase and sale of immovable property by the state aid grantor, if a purchase/sales price is determined on the market principles, by auction and on the basis of an appraisal of independent appraiser;
- State guarantee for beneficiary’s loan, which did not show in financial reports increase in loss, reduction of revenues, increase of inventory, reduction of cash inflow, increase in indebtedness and reduction of asset value, during the period of two years preceding the provision of guarantee, provided that:
 - Loan beneficiary may obtain a loan under market conditions on the financial market;
 - State guarantee is provided for a defined amount of credit, for a defined period of time;
 - Amount of guarantee does not cover more than 80% of the credit liability;
 - Guarantee is based on the market price.

iv. Please specify to which types of subject the new State Aid Law applies (e.g. natural and legal persons that exercise economic activities)?

Law on State Aid Control (“Official Gazette of Montenegro” No. 74/09) shall regulate the conditions and the procedure for granting and controlling the use of state aid, by applying the principles of market economy, preservation of competition and ensuring transparency in fulfilling the obligations assumed under ratified international treaties, and the beneficiary shall mean a legal or natural

person, which in their business operations concerning production, trade in goods and/or provision of services on the market uses state aid.

v. Are the principles for the calculation of the reference rate incorporated in the legislation? If not, please describe how the reference rate is determined.

Definition and basis for calculating the reference interest rate are given in the Article 8 of the Law on State Aid Control ("Official Gazette of Montenegro" No. 74/09), in the following way:

"Reference rate shall be the interest rate used for calculating subsidy equivalent. Reference interest rate for state aid shall be calculated on the basis of the average interest rate for long-term euro credits, determined by credit institutions for economic entities in non-financial sector in the current year."

17. (Ref to Q. 33):

i. ME mentions the first State aid inventory was made in September 2008. Is this inventory available as a database? If yes, the Commission would like ME to provide it with a copy of the database.

First inventory of state aid was conducted in cooperation with experts from the European Union within the scope of the project TRIM MNE.

Inventory of the state aid is kept by Division for Preparation of State Aid within the Ministry of Finance, being updated regularly since 2008 in the form of excel table, and is available as a copy.

(ANNEX: State Aid Inventory for 2007 and 2008).

ii. Please describe the ongoing preparations for the regional aid map to be submitted by 2012 at the latest.

Article 27 of the Law on State Aid Control ("Official Gazette of Montenegro" No. 74/09) prescribes that the Ministry shall be obliged to submit to the European Commission the data on gross domestic product per capita at the latest by 1 January 2012, in accordance with the Nomenclature of Territorial Units for Statistics EU – NUTS II.

In accordance with that, the new project of the European Union which shall provide expert assistance to Montenegro in establishing comprehensive system of state aid harmonized with *acquis communautaire*, will be launched in April 2010, and within the scope of that project a preparation of regional maps of state aid that will need to be submitted at latest until 2012 will be organised, which is one of commitments that Montenegro assumed under the Stabilisation and Association Agreement between European Community and its member states on one side and Republic of Montenegro on the other.

18. (Ref to Q. 34):**i. Please describe in detail the functions, competences and obligations of the Commission for Control of State Support and Aid ("the ME State Aid Authority")**

State Aid Control Commission shall perform the following activities under this Law:

- control the compliance of the notified state aid with this Law (ex ante control);
- control the compliance of the granted state aid and earmarked use of granted state aid with this Law (ex post control);
- submit to the Government and the Parliament of Montenegro an annual report on granted state aids until 30 June of the current year for the previous year;
- establish cooperation, in accordance with the ratified international treaties, with international organizations in charge of state aid control;
- perform other activities in accordance with this Law.

ii. Please provide available statistics concerning the number of State aid cases submitted to the ME State Aid Authority. For each case, please state the outcome.

In 2008 State Aid Control Commission assessed 8 following cases:

- Directorate for Development of Small and Medium Sized Enterprises submitted the State Aid Programme for development of small and medium sized enterprises with the purpose of encouraging competitiveness of entrepreneurs and small and medium enterprises in terms of export.
State Aid Commission rendered a decision on compliance of this Programme with the Law on Control of State Aid and Support ("Official Gazette of the Republic of Montenegro", No. 26/07) - hereinafter: the Law. (Decision No. 01-4/2, from 21.03.2009)
- Ministry of Economy submitted the State Aid Programme for improvement of economic development of the Municipality of Cetinje.
State Aid Commission rendered a decision on compliance of this Programme with the Law. (Decision No. 01-9/2, from 27.03.2008)
- Ministry of Tourism and Environmental Protection submitted State Aid Programme for exemption from paying the ecologic fee for acquiring assent for the Project for construction of the regional water management system of Public Enterprise Regional Aqueduct – Montenegrin Coast.
State Aid Commission rendered a decision on compliance of this Programme with the Law. (Decision No. 01-8/2, from 27.03.2008)
- Development Fund of Montenegro submitted the Program of general conditions for financial aid for small and medium sized enterprises for 2008.
State Aid Commission rendered a decision on compliance of this Programme with the Law. (Decision No. 01-10/2 from 15.04.2008)
- Capital of Podgorica submitted the Programme of activities with the aim of stimulating entrepreneurship for entrepreneurs and small and medium sized enterprises.
State Aid Commission rendered a decision on compliance of this Programme with the Law. (Decision No. 01-21/2, from 11.07.2008)
- Employment Office of Montenegro submitted the Innovated programme for continuous stimulation of employment and entrepreneurship in Montenegro for unemployed persons, persons proclaimed redundant, entrepreneurs and small and medium enterprises.
State Aid Commission rendered a decision on compliance of this Programme with the Law. (Decision No. 01-23/2, from 11.07.2008)

- Directorate for Small and Medium Sized Enterprises submitted the Programme for stimulated employment in Montenegro with the emphasis on the Northern region and vulnerable categories of citizens.
State Aid Commission rendered a decision on compliance of this Programme with the Law. (Decision No. 01-24/2, from 11.07.2008)
- Ministry of Finance and Ministry of Economy submitted the Programme for realisation of investments and commitments of bidders to employees in the company AD "Polimka" in Berane.
State Aid Commission rendered a decision on compliance of this Programme with the Law. (Decision No. 01-27/2, from 23.07.2008). This Aid was not paid in 2008.

In 2009, State Aid Commission assessed 19 following cases:

- Ministry of Finance submitted the Programme for elimination of harmful effects of the world economic crisis and protection of banking sector as well as preservation of its security and stability.
State Aid Commission rendered a decision on compliance of this Programme with the Law. (Decision No. 01-3/1, from 09.02.2009)
- Municipality of Bar submitted the Programme of activities for stimulation of entrepreneurship in 2008 for entrepreneurs, small, medium sized and large enterprises.
State Aid Commission rendered a decision on compliance of this Programme with the Law. (Decision No. 01-8/1, from 13.02.2009)
- Directorate for Development of Small and Medium Enterprises submitted the State Aid Programme for small and medium sized enterprises for 2009.
State Aid Commission rendered a decision on compliance of this Programme with the Law. (Decision No. 01-10/1, from 13.02.2009)
- Ministry of Economy submitted the State Aid Programme for 8 employees of the company Montenegro Modern Shoes – in Cetinje.
State Aid Commission rendered a conclusion dismissing the Programme because the Commission was not competent for it. (Conclusion No. 01-9/10, from 13.02.2009)
- Development Fund of Montenegro submitted the Programme of general conditions for financing through Fund's support in 2009 for entrepreneurs, small and medium sized enterprises.
State Aid Commission rendered a decision on compliance of this Programme with the Law. (Decision No. 01-24/2, from 13.03.2009)
- Ministry of Transportation, Maritime Affairs and Telecommunications and Ministry of Finance submitted the State Aid Programme for consolidation of the Railroad system in Montenegro.
Commission rendered a decision rejecting the Programme because it does not constitute state aid. (Decision No. 01-13/1, from 23.03.2009)
- Ministry of Finance submitted the draft of the Credit Contract between KfW Bank from Germany and commercial banks in Montenegro.
Commission adopted opinion No. 01-17/1 from 23.03.2009, explaining that this case falls within the framework of the banking sector scheme assessed during Commission's session from 09.02.2009.
- Ministry of Agriculture, Forestry and Water Management submitted the State Aid Programme for "Nikšićki mlin AD" (mill) – from Nikšić.

State Aid Commission rendered a decision on compliance of this Programme with the Law. (Decision No. 01-17/1, from 28.04.2009)

- Ministry of Culture, Sports and Media submitted the Programme with the proposal of the model of financial restructuring of „Pobjeda“ AD Podgorica.

State Aid Commission rendered a decision on compliance of this Programme with the Law. (Decision No. 01-21/1, from 26.05.2009)

- Municipality of Bijelo Polje submitted the Programme of activities on stimulation of development of agricultural production, tourism development and employment 2008 for unemployed persons, agriculturists and small entrepreneurs in Municipality of Bijelo Polje.

Commission rendered a decision dismissing the Programme, because it considered it lacked the competence to assess compliance of this Programme with the Law. (Decision No. 01-23/1, from 19.06.2009)

- Ministry of Finance submitted the Scheme of the Decision Amending Decision on Conditions and Procedures for Redemption of Bonds of Citizens' Currency Savings and Bonds of Ex-owners on the Basis of Compensation for Loss of Rights.

State Aid Commission rendered a decision on compliance of this Programme with the Law. (Decision No. 01-25/1, from 22.06.2009)

- Ministry of Finance submitted the Programme for restructuring of the company „Primorka“ – Bar.

State Aid Commission rendered a decision on compliance of this Programme with the Law. (Decision No. 01-24/1, from 25.06.2009)

- Ministry of Economy submitted the Plan for Restructuring of the joint stock company „Radvent“ AD Nikšić.

State Aid Commission rendered a decision on compliance of this Programme with the Law. (Decision No. 01/28, from 03.07.2009)

- Ministry of Economy submitted Plan for Restructuring of the Company „Javorak“ DOO Nikšić.

State Aid Commission rendered a decision on compliance of this Programme with the Law. (Decision No. 01-29/1, from 03.07.2009)

- Ministry of Economy submitted the Programme with the model for financial restructuring of KAP – Podgorica.

State Aid Commission rendered a decision on compliance of this Programme with the Law. (Decision No. 01-35/1, from 24.11.2009)

- Ministry of Economy submitted the Programme for financial restructuring of RBN – Nikšić.

State Aid Commission rendered a decision on compliance of this Programme with the Law. (Decision No. 01-36/1, from 24.11.2009)

- Ministry of Transportation, Maritime Affairs and Telecommunications submitted the Programme of guarantees for loans of the company „Montenegro airlines“ – Podgorica from the Commercial Bank of Montenegro.

State Aid Commission rendered a decision rejecting this programme, because proposed programme was not considered to be state aid. (Decision No. 01-40/1, from 08.12.2009)

- Ministry of Transportation, Maritime Affairs and Telecommunications submitted the Programme: Providing guarantees for the purpose of loans for Public Enterprise AD Bijela.

State Aid Commission rendered a decision on compliance of this Programme with the Law. (Decision No. 01-44/1, from 23.12.2009)

- Ministry of Agriculture, Forestry and Water Management submitted the Programme of aid for joint stock company “Duvanski kombinat” AD Podgorica.

State Aid Commission rendered a decision on compliance of this Programme with the Law. (Decision No. 01-35/2, from 23.12.2009)

In 2010 State Aid Commission assessed 4 following cases:

- Ministry of Transportation, Maritime Affairs and Telecommunication submitted the Programme for providing state guarantees for commercial loans for financing of debts that needed to be paid to Customs Administration, maintenance and suppliers as well as Tax Administration by the joint stock company Railway Transport of Montenegro.

State Aid Commission rendered a decision rejecting this programme, because proposed programme was not considered to be state aid. (Decision No. 01-1/1, from 18.01.2010)

- Ministry of Economy submitted the Programme: Plan for restructuring of the joint stock company “Željezara” AD Nikšić.

State Aid Commission rendered a decision on compliance of this Programme with the Law. (Decision No. 01-5/1, from 03.02.2010)

- Ministry of Transportation, Maritime Affairs and Telecommunication submitted the Programme: provision of sovereign guarantee for purchasing of 3 electromotive ensembles and modern diagnostics equipment for their maintenance for the joint stock company Railway Transport of Montenegro.

State Aid Commission rendered a decision rejecting this programme, because proposed programme was not considered to be state aid. (Decision No. 01-17/1, from 12.03.2010)

- Ministry of Tourism submitted the Programme for salvaging the group of buildings on Ada Bojana from the damage caused by disastrous weather in January 2010, belonging to HTP “Ulcinjaska rivijera” from Ulcinj.

State Aid Commission rendered a decision on compliance of this Programme with the Law. (Decision No. 01-1/1, from 18.01.2010)

iii. Please outline the parameters of the ME State Aid Authority's independence in relation to the ME government and other State institutions (e.g. how is the Commission nominated, decision-making methodology).

Government of Montenegro adopted the decision on Appointing the Commission for State Aid and Support Control on the basis of the Article 6 of the Law on Control of State Aid and Support (“Official Gazette of the Republic of Montenegro”, No. 26/07) – hereinafter: the Commission.

After adoption of the new Law on State Aid Control („Official Gazette of Montenegro”, No. 74/09), the Commission was expanded with two more members on the basis of the Article 11, and the Government appointed those members by issuing decisions (“Official Gazette of Montenegro”, No. 13/10).

It is prescribed in Article 11 of the Law that the Commission shall consist of a chairman and eight members.

- The Ministry shall nominate a chairman of the Commission.
- The Ministry and state administration bodies in charge of economic development; European integrations; maritime affairs and transportation; agriculture, forestry and water resources management; tourism and environmental protection; and the Community of Municipalities shall each nominate one member of the Commission.

- One member of the Commission shall be nominated by associations of employers, in accordance with the procedure determined by the Ministry within 15 days from the effective day of this Law.
- A person having a university degree with economic or legal background may be appointed as a member of the Commission.
- The Commission shall adopt its rules of procedure.

It is regulated within Article 12 of the Law that Chairman and members of the Commission shall be appointed for the period of four years and may be reappointed. Term of office of chairman and members of the Commission shall terminate:

- after expiration of time that they are appointed for;
- if they act contrary to this Law;
- if they do not comply with the provisions of the rules of procedure in their work;
- if they are sentenced to at least six-month imprisonment, and/or convicted of a criminal offence making them unworthy to perform the function;
- on personal request.

Article 13 of the Law regulates that:

- the Commission shall decide by majority of votes of present members.
- in case of a tie vote, the chairman shall have the casting vote.
- a member of the Commission who is a representative of the submitter of the state aid notification may participate in the work of the Commission but without a voting right.
- the Commission shall decide in the form of a decision.
- decisions of the Commission shall be published on the website of the Commission.
- Commission shall be a separate unit in the expenditures of the Budget of Montenegro, and it shall also have its own premises for its operations.

On the basis of the Article 11 of the Law, the Commission adopted Rules of Procedure of the State Aid Commission on its session from 08 March 2010, which shall regulate in more detail model of work, decision-making and other issues important for the functioning of Commission.

It is prescribed in Article 23 of the Law that the Commission shall make the Report on its operations and it shall submit it to the Government and the Parliament of Montenegro until 30 June of the current year for the previous year, together with the annual report on state aid control.

19. (Ref to Q. 35):

i. Which types of decisions does the ME State Aid authority take? How binding are its decisions according to the new State Aid Law?

The Commission shall decide in the form of a decision or a conclusion.

When the Commission determines that the notified state aid does not constitute the state aid referred to in this Law, it shall adopt a *conclusion* dismissing the proposed programme for it does not constitute state aid.

When the Commission determines that the notified state aid is allowed in accordance with this Law, it shall adopt a *decision on compliance* with this Law.

If the Commission evaluates that the notified state aid is not allowed, it shall adopt a *decision on non-compliance* of the notified state aid with this Law.

If the Commission during the control procedure determines irregularities in granting and using of state aid, it shall determine a deadline within which a state aid grantor shall be obliged to remove the established irregularities and inform the Commission in writing about removing of irregularities.

If the state aid grantor fails to remove the established irregularities within the specified deadline, the Commission shall adopt the decision on incompliance of the state aid with this Law, in which the Commission may also order the state aid grantor to take measures, with no delay, to recover the granted amount of state aid and to suspend further granting of unused portion of state aid.

If the state aid grantor fails to take the measures specified in Commission's decision within the specified deadline, the Commission shall inform the Government or competent body of local self-government, and propose measures that should be taken.

ii. Is the ME State Aid Authority bound to secrecy and confidentiality?

Provisions of Article 24 of the Law regulate the obligation of keeping the data confidential in the following way:

“Members of the Commission and employees of the Ministry shall be obliged to keep confidential, in accordance with law, the data they obtain while performing their activities, and which are designated as business secret by the state aid grantor or beneficiary.

The data referred to in paragraph 1 of this Article must not be published or disclosed to third parties without a written consent of the state aid grantor or beneficiary, except in the cases determined by law.”

20. (Ref to Q. 36): Does the obligation to notify State aid cover all types of State aid support (e.g. aid given after natural disasters)? If not, please specify which types of State aid that are excluded from the State Aid Law.

Article 6 of the Law prescribes that the following state aid may be allowed that is aimed at the following purposes:

- to improve the economic development of Montenegro;
- to remedy serious disturbances in the economy of Montenegro;
- to improve the development of certain economic activities or certain areas in Montenegro, where such aid does not significantly affect market conditions and competition in the market;
- to conserve cultural and historical heritage;
- for purposes having a social character, granted to individual consumers, under equal conditions;
- to remedy damage caused by natural disasters or exceptional occurrences;
- to carry out activities of public interest in performing economic activities delegated to legal persons to an extent necessary for carrying out such activities, and grantors of state aid shall be obliged to inform Commission about granting all types of state aid.

21. (Ref to Q. 37): The ME reply does not seem to reply to the question posed by the Commission concerning the possibility for third parties (e.g. competitors of the state aid recipient) to file a complaint before the ME State Aid Authority. The ME reply concerns the possibilities for appeal and due process. Please describe the ME system for handling State aid complaints from 3rd parties.

It is prescribed within the Article 20 Paragraph 1 of the Law that If the Commission, on the basis of its own information or information obtained from other sources, gains knowledge indicating that the state aid was granted, used or was used contrary to this Law, it shall order the state aid grantor to submit necessary information, data and documentation, and it shall determine a deadline for their submission.

It is also prescribed in Paragraph 3 that the Commission shall order the state aid grantor to temporarily suspend the granting of state aid, if it evaluates that the further granting of the aid would cause significant distortion of competition in the market.

On the basis of the Article 3 Paragraph 4 of the Law, state aid grantor shall be a state administration body, local government bodies and legal person that manages and disposes with revenues introduced by law and on the basis of law.

Decisions of the State Aid Commission are final and appeal against them is not permitted in the administrative procedure, but an administrative dispute may be instituted before the Administrative Court by means of complaint.

22. (Ref to Q. 37): Please describe in detail the ME State Aid Authority's control over state support given to specific sectors/industries.

On the basis of the Article 10, Items 1 and 2 of this Law the Commission shall control the compliance of the notified state aid with this Law (ex ante control) and shall control the compliance of the granted state aid and earmarked use of granted state aid with this Law (ex post control).

Article 20 Paragraph 1 of the Law prescribes that if the Commission, on the basis of its own information or information obtained from other sources, gains knowledge indicating that the state aid is granted, used or was used contrary to this Law, it shall order the state aid grantor to submit necessary information, data and documentation, and it shall determine a deadline for their submission.

Within the Paragraph 3 of the same Law it is prescribed that the Commission shall order the state aid grantor to temporarily suspend the granting of state aid, if it evaluates that the further granting of the aid would cause significant distortion of competition in the market

It is prescribed in Article 21 of the Law that if the Commission during the control procedure determines irregularities in granting and using of state aid, it shall determine a deadline within which a state aid grantor shall be obliged to remove the established irregularities and inform the Commission in writing about removing of irregularities

If the state aid grantor fails to remove the established irregularities within the specified deadline, the Commission shall adopt the decision on incompliance of the state aid with this Law, within which it may order, the state aid grantor to take measures, with no delay, to recover the granted amount of state aid and to suspend further granting of unused portion of state aid.

If the state aid grantor fails to take the measures from the decision within the specified deadline, the Commission shall inform the Government or competent body of local self-government, and propose measures that should be taken.

On the basis of the Article 20 of the Law the Commission may request from competent bodies information, data and documentation and determine a deadline for their submission, with the aim of controlling of usage of granted state aid.

Within provisions of Articles 4 to 8 of the Law on State Audit Institution (“Official Gazette of the Republic of Montenegro”, No. 28/04, 27/06 and 78/06) models of work and activities of this institution are determined. Having in mind that state aid grantors are state administration bodies and local self-government bodies, and that those bodies operate with public funds for those purposes, control of usage of granted state aid falls within the scope of work of the State Audit Institution.

III. LIBERALISATION

A. General aspects

23. (Ref to Q. 41): ME mentions that the ME energy market will be subject to complete market opening. When will this market opening take place? Could ME provide a concise description of the conditions under which the market opening will take place?

At moment, the price of only one energy-generating product is within the scope of competences of the Energy Regulatory Agency, which is electric energy. By way of Decision on Opening of Electric Energy Market adopted by the Agency on 30 December 2008, market was opened for all consumers except for households. That means that all consumers except for households may choose supplier for electric energy on their own. In accordance with the Energy Community Treaty for Southeast Europe, which Montenegro signed and which was ratified by the Parliament of Montenegro in October 2006, electric energy market for all consumers (including households) must be opened by 1 January 2015.

Functions of transmission of electric energy, operator of transmission network and market operator were extracted from vertically integrated entity Montenegrin Electric Enterprise AD in late March 2009 and a completely independent enterprise AD Transmission was formed. In that way an important barrier to establishment of the market was removed. Meanwhile, the Agency adopted number of acts necessary for functioning of the market. In 2009, formal openness of electric energy market in Montenegro was 67.5%. Even so, none of consumers had changed supplier, due to the fact that there were no other suppliers except for the Public one (Montenegrin Electric Enterprise). In the second half of 2009 several legal persons expressed interest to obtain licence for distribution, and DOO EFT Herceg Novi submitted request and was issued licence on 15 December 2009.

Draft Law on Energy provides that Agency shall determine the price of coal for production of electric energy and shall be able to do so starting only within a year from entry into force of this Law. Prices of electric energy and gas shall be formed freely.

24. (Ref to Q. 41): ME states that the company Montefarm has been awarded the exclusive right to supply pharmaceuticals and medical supplies to pharmacies and public health institutions (such as clinical centres, hospitals and primary health centres). How are pharmacies regulated in ME? Are there private pharmacies in ME? Is Montefarm also involved in the production of pharmaceuticals? If yes, please describe these activities in detail. Are there any plans to open up the ME pharmaceutical market to competition? If so, when? Please provide the Commission with a translation into English of the Decision of the Parliament of the Republic of Montenegro (Official Gazette of the Republic of Montenegro 21/91 and 34/91).

Pharmacies, that is, retail of medicines is regulated by Law on Medicines and Law on Health Care, and it can be practiced only by persons fulfilling conditions regarding space, staff and equipment, and having the permission issued by the Ministry of Health (Article 68 of the Law on Medicines).

There are 148 pharmacies operating in Montenegro in private ownership, and 40 pharmacies owned by State within the scope of Public Pharmacy Institution "Montefarm", which was established by a Decision of the Parliament of Montenegro ("Official Gazette of the Republic of Montenegro" No. 21/91 and "Official Gazette of the Republic of Montenegro" No. 34/91), and which is a supplier for public health care institutions: Clinical Centre of Montenegro, hospitals and primary health care centres.

Public Institution Montefarm is purchasing and distribution medicines for public health care institutions which are financed by Health Insurance Fund, through international public procurement which is held once a year, in accordance with the Law on Public Procurement.

That tender is international in nature, and therefore bidders from outside of Montenegro can also compete, through the representative in the country.

Criteria on the tender are assessment of the quality and price, without favouring of domestic manufacturers pursuant to the Law on Public Procurement.

Having in mind that this purchase is conducted for satisfying annual needs, prices given by bidders competing for the contract are considerably lower than maximum, that is, referent prices.

Public Institution is not engaged in manufacture of pharmaceutical products, except for production of magistral medicines, made in a pharmacy on the basis of prescriptions (formulae) from a doctor for an individual patient.

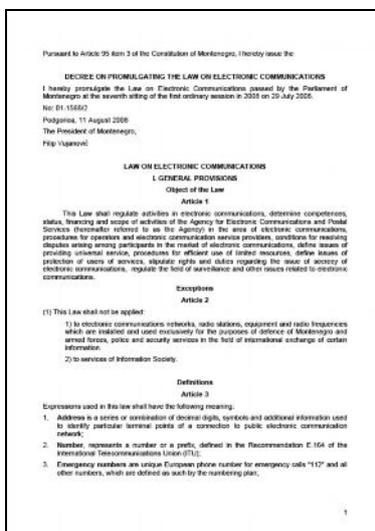
Pharmacies in private ownership are supplied by large private drugstores which import medicines from foreign manufacturers on the basis of a permission for import issued by the Agency.

Considering the abovementioned system of procurement, more than 95% of all pharmaceutical products which are supplied on the market come from import, meaning that market in Montenegro is highly opened to foreign manufacturers.

Please find attached the Decision on Organisation of Public Institutions in the Area of Health Care in Socialist Republic of Montenegro and the Decision on Amendments to the Decision on Organisation of Public Institutions in the Area of Health Care in Socialist Republic of Montenegro ("Official Gazette of the Republic of Montenegro" No. 21/91 and "Official Gazette of the Republic of Montenegro" No. 34/91), which you requested in English language.

Annex

1. The Law On Electronic Communications



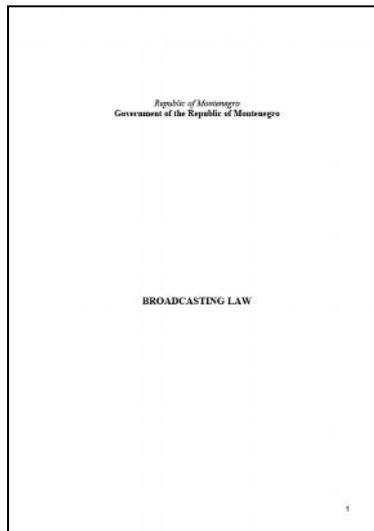
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2. The Banking Law



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3. Broadcasting Law



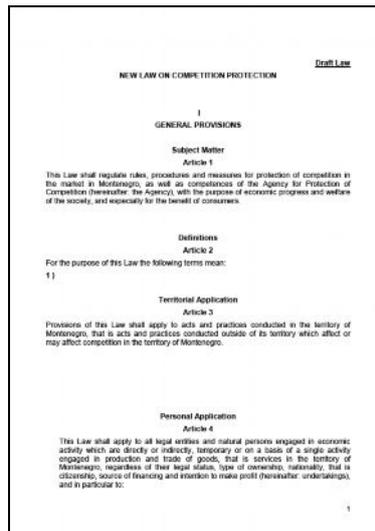
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4. The Energy Law



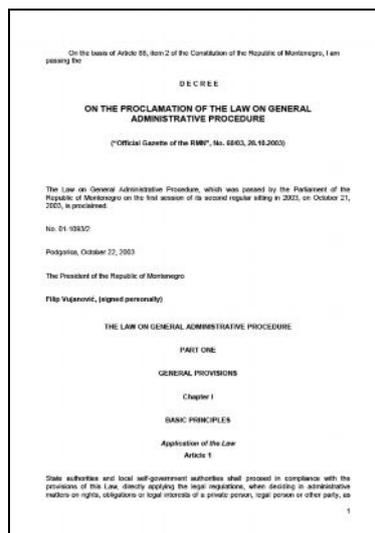
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5. . The New Draft Law On Competition Protection



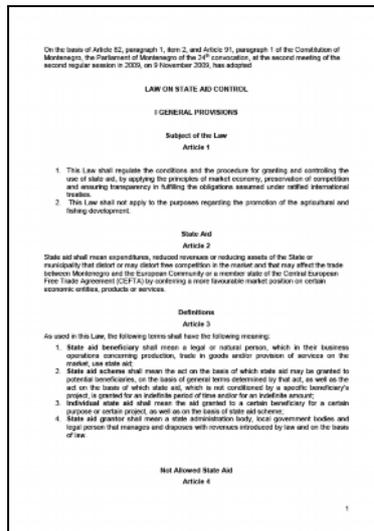
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6. The Law On General Administrative Procedure



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7. Law On State Aid Control



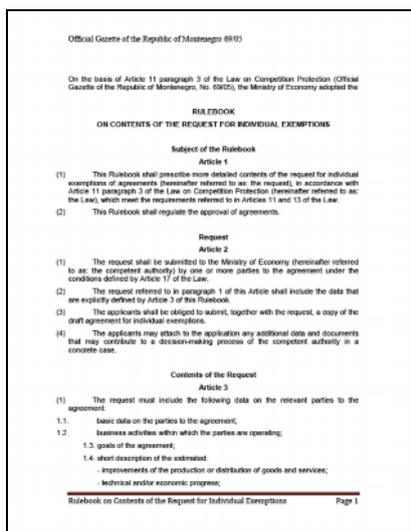
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8. Decision On The Organization Of Public Institutions In The Area Of Health Care In The Socialist Republic Of Montenegro



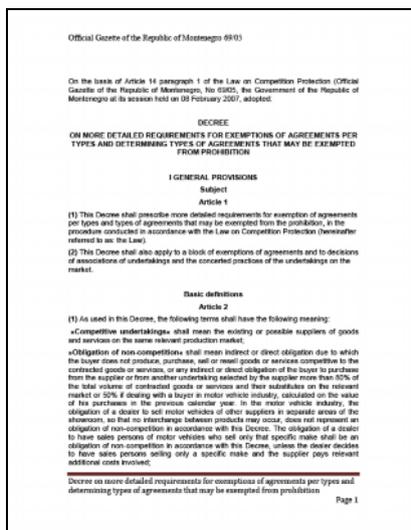
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9. Regulation On Content Of The Request For Individual Exemption



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10. Decree On Detailed Conditions For Exemptions Of Agreements As Per Types And Determination Of The Types Of Agreements Which Can Be Exempted From Prohibition



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11. Excel- State Aid 2007 I 2008



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