

**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

### **08 Competition policy**

**Minister: Branko Vujovic**

**Podgorica, December 2009**



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

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## **Chapter 8: Competition policy**

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## **I. ANTITRUST INCLUDING MERGERS**

### **A. Scope of application**

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

The territorial scope of application is defined by Article 3 of the Law on Protection of Competition (Official Gazette of the Republic of Montenegro 69/05 and 37/07):

**"This Law shall apply to acts and practices conducted in the territory of the Republic of Montenegro (hereinafter referred to as: Montenegro), that is acts or practices occurring as effect of acts or practices conducted out of the territory of Montenegro and which result in restriction of competition within the territory of Montenegro.**

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

##### **a) all sectors of the economy;**

Article 4 paragraph 1 of the Law on Protection of Competition comprises all sectors of economy in the scope of which subjects engaged in trade of goods and services may by their acts restrict or infringe competition.

The Law comprises all subjects engaged in economic activity including undertakings (which are separately defined by the Law on Business Organisations (Official Gazette of the Republic of Montenegro 06/02 and Official Gazette of Montenegro 17/07 and 80/08), as well as other subject engaged, directly or indirectly, in a permanent, temporary or single economic activity and trade of goods or services, regardless of their legal status, nationality, seat or permanent residence (trade unions, business associations, sports organizations, institutions, cooperatives, exponents of intellectual property rights etc).

Moreover, there are policies in legislation of Montenegro which separately define the topic of competition, such as: Law on Electronic Communications (Official Gazette of Montenegro 50/08 and 53/09) Chapter V, Law on Energy (Official Gazette of the Republic of Montenegro 39/03 and Official Gazette of Montenegro 53/09) in Chapter V – Competition and Separation, banking system, Law on Banks (Official Gazette of Montenegro 17/08) – prohibition of infringements of competition, Law on Broadcasting (Official Gazette of the Republic of Montenegro 51/02, 62/02, 46/04, 56/04, 77/06 and Official Gazette of Montenegro 50/08, 79/08 and 53/09), prevention of implementation of prohibited media merger etc.

##### **b) public and private enterprises?**

The Law on Protection of Competition applies to undertakings providing service of public interest (Article 4 paragraph 1 item 3) with restrictions set in Article 86 paragraph 2 of the EC Treaty (Article 4 paragraph 2 of the Law on Protection of Competition), as well as to private undertakings, which is regulated by Article 4 paragraph 1 items 1 and 2 of this Law.

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

The Law on Protection of Competition applies to goods and services. Provisions of Article 4 paragraph 1 of the Law on Protection of Competition regulate that the scope of application of this Law comprises trade of goods and services.

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

The principles of Article 86 paragraph 2 of EC Treaty are fully incorporated in provisions of Article 4 paragraph 2 of the Law on Protection of Competition, which defines that undertakings providing services of public interest based on the act of the authorized body and generate income shall be excepted from application of this Law only if the application of this Law would obstruct the performance of entrusted activities.

## **B. Restrictive agreements**

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

Pursuant to Article 81 of the EC Treaty, the Law on Protection of Competition in Article 7 paragraph 1 defines prohibited agreements, which within the meaning of this Law are agreements, decisions of the associations of undertakings and concerted practices.

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

The Law on Protection of Competition is fully harmonized with basic principles of Article 81 of the EC Treaty, which contains general prohibition and declares void all agreements which distort competition (Article 7 paragraph 2 of the Law on Protection of Competition), and in particular those that:

- 1) directly or indirectly fix purchase or selling prices or any other operating conditions;
- 2) limit or control production, market, technical development or investments;
- 3) share market or sources of supply;
- 4) apply dissimilar operating conditions to equivalent transactions with other undertakings, thereby placing them at a competitive disadvantage;
- 5) **make the conclusion of contracts subject to acceptance of supplementary obligations, which by their nature and commercial usage and practice have no connection with the subject of the contract.**

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

The Law on Protection of Competition contains the provision on nullity of prohibited agreements. Agreements which prevent restrict or distort competition within the meaning of the Article 7 paragraph 2 of the Law on Protection of Competition may not be exempted from prohibition and



shall be void. Specifically, the Administration for Protection of Competition (hereinafter referred to as: the Administration) has competences to nullify the prohibited agreement and such an agreement is unenforceable before courts, although that does not exclude the right of the undertaking which suffered loss due to application of the agreement that is null and void to enforce its right to damages in judicial procedure before court.

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

Article 8 of the Law on Protection of Competition defines basic principles for exemption from the prohibition of restrictive agreements (Article 81 paragraph 3 TEC) if they impose only such restrictions which are necessary for the attainment of certain objectives that contribute to improvement of the production or distribution or to promotion of technical or economic progress, while allowing consumers a fair share of resulting benefit and which do not afford the possibility of eliminating competition in respect to the substantial part of subject goods or services. Exemptions from prohibition of restrictive agreements are further elaborated in Article 11 of the Law on Protection of Competition which regulates individual exemptions of a certain agreement or part of that agreement from prohibition. Provisions of the Article 12 of the Law on Protection of Competition define content and validity of an individual exemption as well as time limit for which the exemption is approved.

Furthermore, Article 13 of the Law on Protection of Competition regulates cancellation, annulment or amendment of individual exemption.

Beside individual exemptions, Law on Protection of Competition also regulates exemptions by categories of agreements and determines types of agreements which may be exempted from prohibition (Article 14 of this Law).

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

Block exemptions are provided in Article 14 of the Law on Protection of Competition, and they are separately regulated by a sub legal act – Decree on Detailed Conditions for Exemptions of Agreements by Categories and Determination of Types of Agreements which can be exempted from Prohibition (Official Gazette of the Republic of Montenegro 10/07). This Decree shall regulate that certain agreements (vertical and horizontal) may be exempted from general prohibition set out in Article 7 of the Law on Protection of Competition, in case they contribute to improvement of the production or distribution or to promotion of technical or economic progress, while allowing consumers a fair share of resulting benefit and under condition that they do not afford the possibility of eliminating competition in respect of the substantial part of subject goods or services.

This Decree contains provisions which are applied under EC law and which are harmonized with following EC Regulations: No 2790/1999, No 1400/2002, No 772/2004 and No 2821/1971.

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

The conditions for individual and block exemptions from prohibition of restrictive agreements are enshrined in Article 8 of the Law on Protection of Competition and they are fully harmonized with Article 81 Paragraph 3 TEC.

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

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

General prohibition of abuse of dominant position is provided for in Article 20 of the Law on Protection of Competition.

This Article regulates acts which prevent, restrict or distort competition, and particularly those which:

- 1) directly or indirectly impose unfair purchase or selling price or other unfair trading conditions;
- 2) limit production, markets or technical development thus causing harm to consumers;
- 3) apply dissimilar conditions to identical transactions with different undertakings, thereby placing them at a competitive disadvantage on the market;
- 4) make conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial customs, have no connection with the subject of such contracts.

The provisions of the Article 20 of the Law on Protection of Competition are harmonized with provisions of the Article 82 TEC.

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

The Law on Protection of Competition does not provide for exemptions from prohibition of abuse of dominant position. However, pursuant to Article 22 of the Law on Protection of Competition, the Administration may, at the request of an undertaking in dominant position, issue a decision establishing that particular practice that undertaking intends to perform are not prohibited within the meaning of the Article 20, paragraph 2 of this Law.

Furthermore, pursuant to Article 22 of the Law on Protection of Competition, this Decision may be cancelled or annulled if the circumstances on the basis of which the decision was made have changed, or if it was granted on the basis of inaccurate and false information.

## **D. Mergers**

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

In accordance with Article 23 of the Law on Protection of Competition concentration of undertakings shall be deemed to arise in the following situations:

- 1) establishment of a new undertaking by merger of two or more previously independent undertakings or their parts (merger);
- 2) 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 parts of other undertaking;
- 3) 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 autonomous economic entity and has an access to market (joint venture).

The control referred to in Article 23 paragraph 1 items 2 and 3 of the Law on Protection of Competition is based on **granted rights, contracts or any other legal or actual facts and shall be deemed to constitute decisive influence on undertakings' business activities in particular the following:**

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

These forms of control shall be assessed separately or in combination, whereas relevant legal and actual facts shall be taken into account but not the intention of interested parties.

The issue of joint ventures shall be regulated in Article 23 paragraph 1 item 3 of the Law on Protection of Competition.

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

The concentration shall be notified by the Request for Approval of Concentration provided for in Article 25 of the Law on Protection of Competition, provided that conditions referred to in Article 23 of the Law on Protection of Competition are fulfilled. Request for approval of concentration shall be submitted to the Administration in accordance with the Article 27 of the Law on Protection of Competition within 7 days upon signing of the agreement, publishing of the public offer or acquiring control over the undertaking.

The request for approval of concentration may be submitted also in case when the undertakings involved in concentration show a serious intention to conclude the contract, by signing the letter of intent, or when the undertaking announces the intention to make an offer to purchase shares.

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

Conditions for submission of request for approval of concentration are laid down in Article 25 paragraph 2 of the Law on Protection of Competition. Undertakings which are subjects to concentration are obliged to submit the Request for Approval to Administration if the following conditions are met:

- 1) combined total annual income generated on the market of Montenegro of all undertakings involved in concentration exceeds the amount of 3 (three) million EUR according to the annual financial statements of the undertakings for the previous financial year; or
- 2) combined total annual income of undertakings involved in concentration generated on international market in the previous financial year exceeds the amount of 15 (fifteen) million EUR according to final reports of undertakings for the previous financial year, whereby at least one of undertakings involved in concentration is registered on the territory of Montenegro.

Article 26 of the Law on Protection of Competition contains special provisions on calculation of annual income for banks, other financial institutions and insurance companies.

Form and contents of the Request for issuing an approval for concentration are laid down in special secondary legislation act – Instruction on form and contents of the Request for approval of concentration (Official Gazette of the Republic of Montenegro 77/05).

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

As provided for in Article 30 paragraph 2 of the Law on Protection of Competition, the undertakings involved in concentration are obliged to discontinue realization of concentration until the Administration issues its decision authorizing the intended concentration or until the expiration of period within which the Administration is obliged to issue the decision.

The Administration for Protection of Competition shall issue its decision upon the request for approval of concentration within 25 business days when deciding upon the request referred to in Article 30 paragraph 1 items 1 and 2 of the Law on Protection of Competition, rejecting the request for concentration approval if the concentration does not fulfil requirements referred to in Articles 25 and 26 of this Law or terminating the procedure if the applicant withdraws the request. Furthermore, Administration shall be obligated to make a decision in the procedure of control of concentration within 115 business days when issuing a decision in accordance with Article 30, paragraph 1, item 3 of the Law, authorizing concentration when assessment of its effects based on criteria prescribed in Article 29 of this Law, determines that such concentration shall not create or strengthen the dominant position on the market the consequence of which would be prevention, restriction or distortion of competition to a significant extent. In accordance with the Article 30 paragraph 1 item 4 of the Law, the Administration is obliged to issue a decision in the procedure of control of concentration within 115 business days when authorizing a concentration prescribing, on its own initiative or at the proposal of the undertakings, that some supplementary conditions and obligations must be fulfilled by parties involved in concentration, within the fixed deadlines prior to or after the concentration has been carried out. The Administration shall cancel the decision conditionally authorizing concentration if undertakings involved in concentration have not met supplementary conditions or obligations pursuant to Article 30, paragraph 1, item 4 of the Law, or shall annul the decision authorizing, conditionally authorizing or prohibiting concentration if the decision has been granted on the grounds of inaccurate or false information. The Administration shall amend the decision conditionally authorizing certain concentration when parties involved in such concentration cannot fulfill some of the conditions imposed on them by decision, owing to circumstances that could not be foreseen, avoided or removed on their part. The Administration is, in accordance with the Article 30 paragraph 1 item 5 of the Law, obliged to refuse to grant authorization for concentration when assessment of its effects on the basis of criteria from Article 29 of the Law determines that such concentration creates or strengthens dominant position on relevant market thus preventing, restricting or distorting competition to a significant extent.

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

Article 29 of the Law provides that, when assessing effects of concentration, the Administration shall evaluate whether such concentration creates or strengthens dominant position on the market thus considerably preventing, restricting or distorting competition, taking into account in particular:

- 1) structure of relevant market;
- 2) existing and potential competitors;
- 3) market position of undertakings involved in concentration and their economic and financial power;
- 4) possibility to choose supplier and consumer;
- 5) legal and other barriers to entry on market;
- 6) domestic and international level of competitiveness of parties involved in concentration;
- 7) trends of supply and demand of relevant goods or services;
- 8) trends of technical and economic development and

9) consumers' interest.

In accordance with the Article 18 of the Law on Protection of Competition, an undertaking has a dominant position on a relevant market if it has the power to behave independently of other undertakings, thus being in a position to make business decisions without taking into account business decisions of its competitors, suppliers, buyers or end-users of its goods or services. An undertaking having a market share exceeding 50% in the relevant market shall be considered to have dominant position. In accordance with the Article 19 of the Law on Protection of Competition two or more independent undertakings united, on the basis of their economic links on the relevant market, in such a way that they act jointly as a single undertaking on that market (collective dominance) may have dominant position. Two or more undertakings having aggregate market share exceeding 60% in the relevant market shall be considered to have collectively dominant position.

The Law on Protection of Competition does not provide for exceptions on the grounds of public interest and for the purpose of protection of a particular national interest, but it proscribes that concentration shall not be prohibited if undertakings involved prove that concentration shall result in strengthening of competition on the market which will be more significant than negative effects caused by creation or strengthening of their dominant position without taking into account their market shares.

### **18. Are there provisions on divestitures or remedies?**

The Administration may issue a decision authorizing certain concentration, but prescribing within the same decision that some supplementary conditions and obligations must be fulfilled by parties involved in concentration within the fixed deadlines. The Law on Protection of Competition that is currently in force does not lay down precisely what are the supplementary conditions and obligations that must be fulfilled. However, at the moment Draft of the Law on Protection of Competition is being drawn up and within Part IV – Proceedings before the Agency of the new draft law the question of measures and conditions that may be imposed on undertakings involved in concentration shall be elaborated with particular regard. Within the part of that Law regulating measures applicable after the prohibited concentration has been realised, it is stated that competent body shall issue a decision laying down necessary measures and fixing deadlines for implementation of those measures in the case when a concentration has been realised prior or contrary to a decision of a competent body prohibiting that concentration, or in case the concentration has been realised without prior notification to a competent body. Decision of a competent body may:

- 1) order transfer of acquired shares or interests in shares;
- 2) prohibit or restrict parties involved in concentration from exercising their voting rights related to shares or interests in participation in undertakings, and order the cancellation of control over joint venture or other form of acquisition of control which led to prohibited concentration.

## **E. General procedures**

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

The authority competent for protection of competition is the Administration for Protection of Competition.

Through adoption of the Law on Amendments to the Law on Protection of Competition (Official Gazette of the Republic of Montenegro 37/07) a new legal framework has been created for establishment and functioning of the operatively independent body for protection of competition i.e. the Administration for Protection of Competition, and division of competences has been made between the Ministry for Economic Development and Administration for Protection of Competition.

The Ministry shall be responsible for supervising the enforcement of this Law and other regulations adopted pursuant to this Law.

The Decree on Amendments of the Decree on State Administration Organization and Operations (Official Gazette of the Republic of Montenegro 06/07), which entered into force on 24 November 2007, provided necessary conditions for establishing of the Administration for Protection of Competition which overtook tasks on protection of competition.

The Administration for Protection of Competition was registered in Statistical Office of Montenegro on 14 February 2008.

The Government of Montenegro adopted on its session on 31 July 2008 the Rulebook on internal organization and job description of the Administration for Protection of Competition, which provided for 13 posts for civil servants and employees, of which 8 is filled at the moment. In accordance with the Rulebook on internal organization and systematization of the Administration for Protection of Competition and within adopted competences of the Administration three internal organizational units were formed, as following:

Unit for monitoring of concentrations, prohibited agreements, abuse of the dominant position and international cooperation performs tasks related to monitoring of competition on the market in general and on markets within specific sectors of economy, control of concentrations, determination of abuse of the dominant position of certain undertakings and declaration of prohibited agreements; collecting data significant for fact finding in procedures of protection of competition; preparation of professional grounds for drafting of law and sub legal acts in the field of protection of competition; analysing of situation on the market from the point of view of free and effective competition and submitting reports on the findings to the Ministry; giving explanations and professional directions; publishing of data in the area of protection of competition, keeping a registry on authorized concentrations and notifications of agreements and other legally prescribed evidences, establishing cooperation with regulatory bodies and Central Bank of Montenegro; cooperation with international organizations, national competition authorities of other countries; implementation of European and other international standards and instruments in the area of protection of competition; preparation of seminars, workshops, round tables, bilateral and multilateral meetings, preparation of documentation for programmes of technical cooperation.

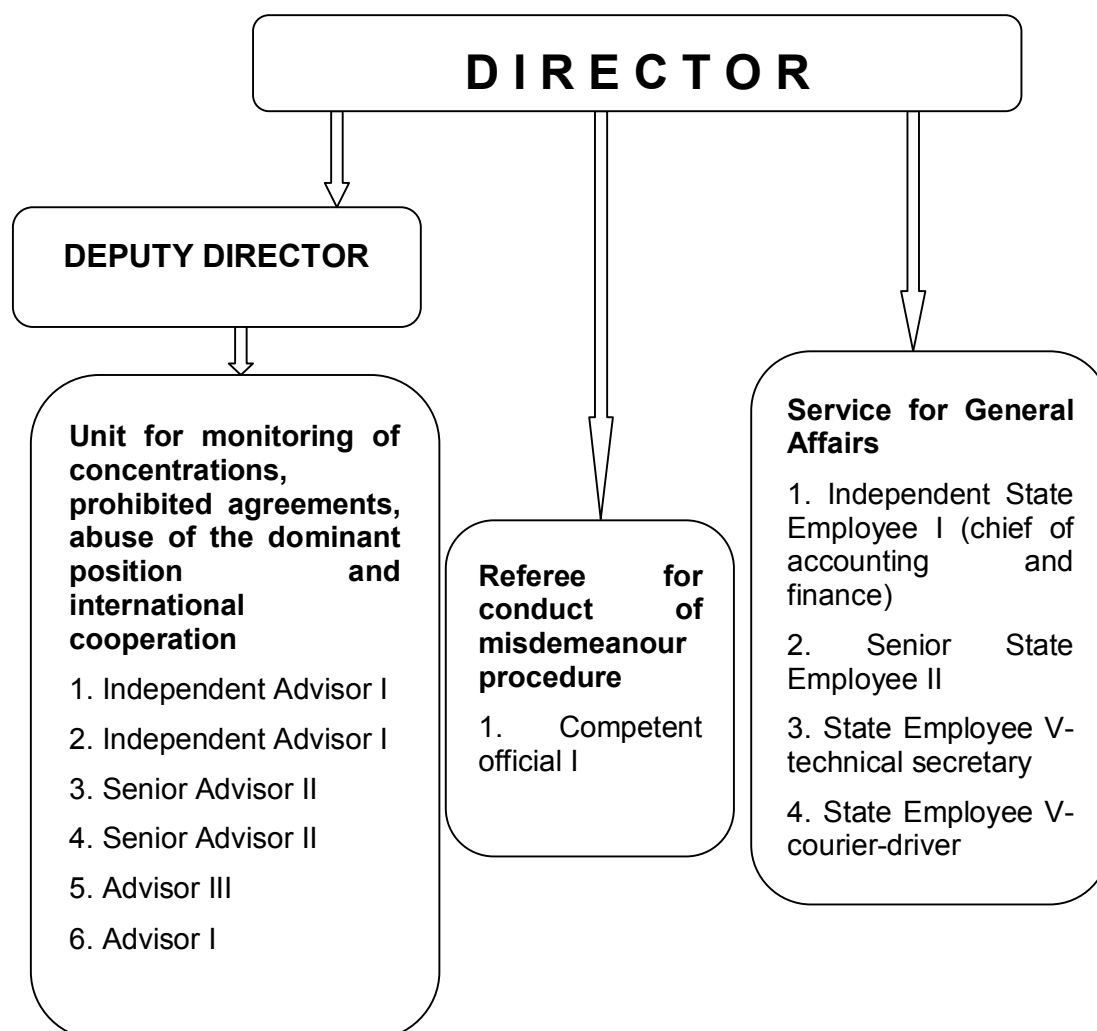
Referee for conduct of misdemeanour procedure within the scope of which are tasks concerning procedural actions in relation to misdemeanour procedure and

Service for General Affairs which performs tasks concerning rights and obligations of civil servants and employees working within the Administration; public procurements; admission, evidence, administrative and technical processing and dissemination of acts; preparation of budgetary needs for financial necessities of the body (financial plan); preparation and producing of financial statements (balance sheet and statement of assets and liabilities); keeping and archiving of book-keeping documentation.

New draft Law on Protection of Competition regulates establishment of Agency for Protection of Competition as a completely independent body.

Within the National Program for Integration of Montenegro into the European Union, it is planned to increase number of employees within Agency for Protection of Competition up to 20 until 2012 as a result of establishment of the Agency for Protection of Competition.

## ŠCHEMATIC REVIEW OF INTERNAL ORGANIZATION AND SYSTEMATIZATION OF ADMINISTRATION FOR PROTECTION OF COMPETITION



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

Investigative powers of the Administration are laid down in Articles 34 and 38 of the Law on Protection of Competition. While carrying out the proceeding in accordance with Article 38 of the Law on Protection of Competition, the Administration shall be authorized to request from undertakings concerned and other indirectly involved persons to submit in writing data significant to define state of facts for particular case within 15 days, unless the request allows a longer period of time.

In accordance with Article 34 of the Law on Protection of Competition, during the proceedings for protection of competition the Administration shall collect information and establish facts also through inspection supervision.

Draft law of the Law on Protection of Competition shall suggest regulation of the question of investigative powers within the scope of Part IV – Proceeding before Agency, by which this body would be provided with direct insight in all business premises, business books, databases or other documents, and it would also provide for introducing a release or milder fines for undertakings which cooperate in the proceeding or provide key information for the case.

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

When the Administration issues a decision confirming that there has been a breach of the Law on Protection of Competition, a Request for initiating a misdemeanour procedure against undertakings involved shall be submitted to authorized official for conducting a misdemeanour procedure within a special sector.

Pecuniary fines for misdemeanours in cases of breach of the Law are prescribed in Articles 44 and 45 of the Law.

As it is laid down in Article 44, a pecuniary fine in the amount from 200-fold to 300-fold of the minimum wage in Montenegro shall be imposed for misdemeanour on enterprises and other business, state administration body and local self-government body, which:

- 1) concludes or applies prohibited or void agreement thus causing prevention, restriction or distortion of competition (Article 7 paragraphs 1 and 2 of the Law);
- 2) within the prescribed period of time fails to meet requirements from the decision allowing conditional individual exemption (Article 12 paragraphs 1 and 4 of the Law);
- 3) does not sell the shares which it holds on a temporary basis with a view to reselling them within the set period of 12 months at the longest from the date of the acquisition of such shares, or within the extended period of time (Article 24 paragraph 1 item of the Law);
- 4) fails to submit to the competent body in prescribed form a required request for approving concentration, or performs concentration without granted approval (Article 25 paragraph 2 and Article 30 paragraph 1 items 1 and 5 of the Law);
- 5) within the determined deadline, before or after concentration was realized, fails to meet additional requirements and obligations conditional for approved concentration (Article 30 paragraph 1 Item 4 of the Law);
- 6) does not stop realization of concentration for the time the competent body issues the decision approving intended concentration or until expiration of deadlines within which competent body was obliged to issue a decision (Article 30 paragraph 2 of the Law);

A pecuniary fine in the amount from 10-fold to 20-fold of the minimum wage in Montenegro shall be imposed, as well on natural person or other responsible person of enterprises or other business, state administration body and local self-government body, for the misdemeanours referred to in Article 44 paragraph 1 of the Law.

As laid down in Article 45 of the Law, a pecuniary fine in the amount from 150-fold to 200-fold of the minimum wage in Montenegro shall be imposed on enterprises and other business, state administration body and local self-government body, which:

- 1) fails to notify an agreement within the 15 days of the day that it was concluded (Article 17 of the Law);
- 2) fails to act in accordance with the request made by the competent body to submit or inform it on the requested data (Article 38 of the Law);

The Law on Protection of Competition beside pecuniary fines provides that, if the undertaking or other business, state administration body and local self-government body, by the misdemeanours referred to in Article 44 paragraph 1 of the Law, has incurred damage or has failed to fulfil the obligation or acquired illegal gain, the amount of pecuniary fine shall be up to ten-fold of the amount of incurred damage, unfulfilled obligation or acquired illegal gain.

Also, if a natural person or responsible person in enterprises or other business, state administration body and local self-government body has acquired illegal gain greater than the



prescribed maximum pecuniary fine or prescribed fine referred to in Article 44 paragraph 2 of the Law, a pecuniary fine in the amount of up to two-fold of the acquired illegal gain shall be imposed.

In accordance with the Article 45 of the Law, if an undertaking or other business, state administration body and local self-government body has incurred damage or has failed to fulfil the obligation or acquired illegal gain, the amount of pecuniary fine shall be up to 5-fold of the amount of incurred damage, unfulfilled obligation or acquired illegal gain.

Also, if a natural person or responsible person in enterprises or other business, state administration body and local self-government body has acquired illegal gain greater than the prescribed maximum pecuniary fine or prescribed fine referred to in Article 45 paragraph 2 of the Law, a pecuniary fine in the amount of up to two-fold of the acquired illegal gain shall be imposed.

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

When the Administration determines that an agreement prevents, restricts or distorts competition, or that there has been an abuse of dominant position, it shall issue an order referred to in Article 42 of the Law, in accordance with Articles 10 and 21 of the Law, namely:

- 1) temporarily, for a period not longer than three months, prohibit performing trade of certain goods or services on relevant market;
- 2) temporarily, for a period not longer than four months, prohibit conducting businesses if undertaking continues with performing trade of goods or services on the relevant market contrary to the prohibition referred to in Article 42 item 1 of this Law.

Within the new draft Law on Protection of Competition behavioural and structural measures are foreseen.

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

Provisions from the Law on Misdemeanours (Official Gazette of the Republic of Montenegro 25/94, 29/94, 38/96, 48/99) shall be applied on misdemeanour procedure for breach of the Law on Protection of Competition. The Law on Misdemeanours regulates prescription periods in Article 55, which prescribes that a misdemeanour procedure can not be instituted after one year elapsed after the misdemeanour had been conducted, and the same Article regulates that prescription of misdemeanour procedure arises after period of two years in any case.

In accordance with the Article 56 of the Law on Misdemeanours, imposed fines can not be executed in case that one year elapsed since the day of validity of a Decision, that is prescription of fine execution arises after period of two years in any case.

New draft law within Part VII – Penalty provisions – separately regulates the question of prescription periods for conduct of misdemeanour procedure.

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

Pursuant to Article 38 paragraph 2 of the Law on the Protection of Competition:

“Person to whom such request has been made is not entitled to secrecy obligation in order to refuse disclosure of particular data, but is entitled to be indemnified for entire damage, including the lost profit, suffered due to disclosure of secret by the competent body to third unauthorized.”

**25. Does the law provide for sector inquiries?**

Pursuant to Article 33 of the Law on Protection of Competition, the Administration, within its competences, performs monitoring of competition activities on the general market and the markets of particular economic sectors, implying that the Administration's professional service carries out the collection of information that are relevant for market research and determining market condition. The Administration also collects information from market participants in individual sectors to establish the facts and conditions for potential initiation of proceedings.

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

The Law on Protection of Competition does not specifically regulate the right to be heard and the right to access documents, whereas Article 35 of the Law refers to application of the Law on General Administrative Procedure (Official Gazette of the Republic of Montenegro 60/03) on these issues.

The right to be heard is defined in Part II - Chapter XI of the Law on General Administrative Procedure –Procedure preceding the passage of a resolution, while the right to access the documents is defined in the Part I - Chapter IV of the Law on General Administrative Procedure – Communication between authorities and parties.

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

The Law on Protection of Competition does not specifically regulate the rights of third parties in the procedure, whereas Article 35 of the Law refers to the application of the Law on General Administrative Procedure (Official Gazette of the Republic of Montenegro 60/03).

The rights of third parties in the procedure are defined by Article 39 of the Law on General Administrative Procedure.

**28. Does the law provide for judicial review?**

The definition of the finality of a decision is stated in Article 3 of the Law on Amendments to the Law on Protection of Competition. Such a decision of the Administration may not be appealed against, however dissatisfied party may initiate an administrative dispute before the Administrative Court of Montenegro within 30 days of delivery of the Administration's Decision.

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

Article 28 of the Law on Protection of Competition that relates to the Request for Concentration lays down the obligation of the Administration to publish the following data from the Request in the Official Gazette of Montenegro:

- 1) names of undertakings involved in concentration;
- 2) nature of concentration, and
- 3) sector of economy within which the concentration shall be made.

New draft Law on Protection of Competition in Part IV - Procedure before the Agency, provided that a concise explanation of Decision on concentration, Decision in the event of prohibited

agreements and Decision on abuse of dominant position shall be published in the Official Gazette of Montenegro and on the website of the competent authority.

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

As of the day of entry into force of the Law on Protection of Competition on 1 January 2006, the authority competent for the protection of competition has decided on 42 cases upon Requests for issuing of approval for implementation of concentration, while one Request is in the procedure.

The Register of submitted requests for issuing of approval for implementation of concentration is attached – ([Annex 33](#)). Furthermore, a three decisions of the authority competent for enforcement of the Law on Protection of Competition are also attached – ([Annex 30](#), [Annex 31](#), [Annex 32](#)).

Until now, the two notifications on abuse of dominant position have been submitted to the Administration and neither of them was submitted in the prescribed manner, they will enter the procedure following necessary amendments to the Request.

The Administration has taken preventive measures *ex-officio* in one case of dominant position abuse as well as in one case of prohibited agreement, in which there were no adverse effects on the relevant market in Montenegro.

## II. STATE AID

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

Establishment of legislative framework of state aid control in Montenegro is based on four essential steps: (1) the adoption of the Law on Control of State Support and Aid as a basic act for establishing state aid system (Official Gazette of the Republic of Montenegro 26/07), (2) adoption of the Decree on the method and procedure for application and content of required documentation for preliminary and subsequent control of state support and aid (Official Gazette of Montenegro 13/08), (3) of the Decree on detailed criteria, purpose and conditions for granting state support and aid (Official Gazette of Montenegro 13/08), and (4) of the Rulebook on content of the annual report about state support and aid control (Official Gazette of Montenegro 7/08).

The Law on Control of State Support and Aid entered into force on 25 May 2007 and contains substantive provisions based on the provisions of Articles 86, 87 and 88 of the Treaty establishing the European Communities.

The Decree on detailed criteria, purpose and conditions for granting state aid entered into force on 9 March 2008 and contains secondary legislation of legal practice in the area of State aid. The provision of Article 3 paragraph 1 indent 2 of the Decree on specific criteria, intended purpose and requirements for granting state aid, and in conformity with Article 73(iii) of the Stabilisation and Association Agreement, allow direct application of legal practice in the area of state aid in the form of state aid assessment on the basis of criteria arising from the application of legal practice rules governing state aid.

In November 2007, the Government of Montenegro passed Decision appointing a Commission for Control of State Support and Aid (Official Gazette of Montenegro 08/07 and 16/08), which commenced with work on 14 March 2008. New internal organisation of the Ministry of Finance provided for job description of the State Aid Preparation Unit, which on behalf of the Ministry performs professional, technical and administrative tasks for the Commission, in accordance with the Law.

**NOTE:** At the session held on 2 April 2009, the Government of Montenegro established a Proposal of the Law on State Aid Control and presented it to the Parliament of Montenegro where the Law received support on all Committees. The Law on State Aid was adopted by the Parliament of Montenegro on 9 November 2009. A set of new bylaws to the Law on State Aid prepared with the assistance of the EU (TRIM MNE Project) which are aligned with the regulations required by the EC. Following adoption of the Decree on acceptable expenditures, maximum permissible intensity of state aid and other criteria relevant for allocation of state aid for particular state aid objectives, a whole set of legal practice regarding substantive regulations concerning state aid will be adopted.

A detailed analysis of the rules applied on state aid in the current legislation, as well as legislation which is in the adoption phase in the competent institutions and the Government, is provided hereinafter.

Decree on acceptable expenditures, maximum permissible intensity of state aid and other criteria competent for allocation of state aid for particular state aid objectives, Rulebook on content of the annual report about state support and aid control, Decree on methodology, manner and procedure for submission of application and control of state aid, encompass all new EC regulations that entered into force prior to the moment of their creation.

## **Procedural rules**

- Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty Official Journal L 140, 30.04.2004, p. 1-134 (State aid law +New state aid law)
- Council Regulation No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 (now Art.88) of the EC Treaty Official Journal L 83/1, 27.03.1999, p. 1-9

Law is harmonized with the European Council Regulation, No. 659/1999 which establishes clear rules of application of Article 93 of the Treaty establishing the European Community, and the Decree 794/2004, which specifies the implementation of Regulation 659/1999.

These rules have been incorporated in existing and the new legislation in Montenegro

Block exemption regulations

- Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Article 87 and 88 of the Treaty (General block exemption Regulation)

These rules have been incorporated in existing as well as the new legislation in Montenegro.

Training

- Communication from the Commission - Criteria for the compatibility analysis of training state aid cases subject to individual notification (other language versions will follow) Press release: Commission adopts guidance on training aid and aid to disadvantaged and disabled workers (IP/09/863, 3.6.2009) Frequently Asked Questions: Criteria for the compatibility analysis of training state aid cases subject to individual notification (MEMO/09/260, 3.6.2009)

This rule was subject to application within the old secondary legislation in Montenegro and shall cease to exist within the new secondary legislation.

## **SME aid**

- Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (notified under document number C(2003) 1422), Official Journal L 124, 20.05.2003, pages 36-41 Please note that this definition of SMEs applies from 01.01.2005.
- Commission communication - Model declaration on the information relating to the qualification of an enterprise as an SME Official Journal C 118, 20.05.2003, pages 5-15
- Corrigendum to the Commission Communication - Model Declaration on the information relating to the qualification of an enterprise as an SME, Official Journal C 156, 04.07.2003, page 14

This rule was subject to application within the old secondary legislation in Montenegro and shall cease to exist within the new secondary legislation.

### **Employment aid**

- Community guidelines on state aid for environmental protection, Official Journal C 82 of 01.04.2008, page 1

This rule was subject to application within the old secondary legislation in Montenegro and shall cease to exist within the new secondary legislation.

### **Regional Aid**

- Commission Regulation (EC) No 1628/2006 of 24 October 2006 on the application of Articles 87 and 88 of the Treaty to national regional investment aid (Block Exemption Regulation for regional aid), Official Journal L 302 of 01.11.2006, p. 29
- Guidelines on national regional aid for 2007-2013, Official Journal C 54, 04.03.2006, pages 13-45

These rules have been incorporated in the new legislation.

### **Horizontal**

#### **Research and Development and Innovation**

- Community Framework for State aid for Research and Development, OJ C 323, 30/12/2006 p. 1-26

This rule has been incorporated in the new legislation.

#### **Environmental aid**

- Community guidelines on state aid for environmental protection, Official Journal C 82 of 01.04.2008, page 1 (new regulations on criteria)

This rule was subject to application within the old secondary legislation in Montenegro and shall cease to exist within the new secondary legislation

- Community guidelines on state aid for environmental protection 2008/C 82/01, Official Journal 82 of 01.04.2008, page 1-33

These rules have been incorporated in the new legislation.

#### **Risk capital**

- Community guidelines on state aid to promote risk capital investments in small and medium-sized enterprises, Official Journal C 194, 18.08.2006, pages 2-22

This rule has been incorporated in the new legislation.

#### **Rescue and restructuring aid**

- Community guidelines on State aid for rescuing and restructuring firms in difficulty, Official Journal C 244, 01.10.2004, pages 2-17 (regulations on criteria + new regulations on criteria)

This rule has been incorporated in the new legislation.

### **Sector specific rules**

- Communication from the Commission on the application of State aid rules to public service broadcasting, 2001/C 320/04, Official Journal C 320, 15.11.2001, pages 5-11

This rule has been incorporated in the new legislation.

### **Cinematographic and other audiovisual works**

- Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on certain legal aspects relating to cinematographic and other audiovisual works of 26 September 2001/2009/C 31/01 Official Journal C 31, 07/02/2009 page 1

This rule has been incorporated in the new legislation.

### **Postal Services**

- Notice from the Commission on the application of the competition rules to the postal sector and on the assessment of certain State measures relating to postal services Official Journal C 39, 06.02.1998, pages 2-18

This rule has been incorporated in the new legislation.

### **Coal**

- Council Regulation (EC) No 1407/2002 of 23 July 2002 on State aid to the coal industry Official Journal L 205, 02.08.2002, pages 1-8

This rule has been incorporated in the new legislation.

### **Shipbuilding**

- Framework on State aid to shipbuilding Official Journal C 317, 30.12.2003, pages 11-14
- Commission communication concerning the prolongation of the Framework on State aid to shipbuilding OJ C 260, 28.10.2006. page 7

These rules have been incorporated in the new legislation.

### **Steel**

- Communication from the Commission: Rescue and restructuring aid and closure aid for the steel sector Official Journal C70, 19.3.2002, page 21
- Communication from the Commission: Multisectoral framework on regional aid for large investment projects Paragraph 27: An aid prohibition for investment projects in the steel industry
- Communication from the Commission: Rescue and restructuring aid and closure aid for the steel sector Official Journal C70, 19.3.2002, page 21
- Communication from the Commission: Multisectoral framework on regional aid for large investment projects Paragraph 27: An aid prohibition for investment projects in the steel industry
- Communication from the Commission concerning certain aspects of the treatment of competition cases resulting from the expiry of the ECSC Treaty Official Journal C 152, 26.06.2002, pages 5-12

These rules have been incorporated in the new legislation.

### **Reference rate**

- New Communication from the Commission on the revision of the method for setting the reference and discount rates - OJ C 14, 19.1.2008, p.6

### **State Guarantees**

- Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees Official Journal C 155, 20.06.2008 pages 10-22

This rule has been incorporated in the new legislation.

### **Public Land Sales**

- Commission communication concerning aid elements in land sales by public authorities Official Journal C 209 of 10.7.1997, pages 3-5

This rule has been incorporated in the new legislation.

### **Export Credit Insurance**

- Communication of the Commission to Member States amending the communication pursuant to Article 93(1) of the EC Treaty applying Articles 92 and 93 of the Treaty to short-term export-credit insurance, Official Journal C 325, 22.12.2005 - pages 22-23
- Commission communication concerning the prolongation of the Communication of the Commission to the Member States pursuant to Article 93(1) of the EC Treaty applying Articles 92 and 93 of the Treaty to short-term export-credit insurance, Text with EEA relevance Official Journal C 307 , 11/12/2004 P. 0012 – 0012
- Communication of the Commission to Member States amending the communication pursuant to Article 93(1) of the EC Treaty applying Articles 92 and 93 of the Treaty to short-term export-credit insurance Official Journal C 217, 02.08.2001, pages 2-3
- Communication of the Commission to the Member States pursuant to Article 93 (1) of the EC Treaty applying Articles 92 and 93 of the Treaty to short-term export-credit insurance Official Journal C 281, 17.09.1997, pages 4-10

These rules have been incorporated in the new legislation.

### **Transparency of public undertakings**

- Commission Directive 2006/111/EC of 16 November 2006 transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings (Codified version) Official Journal L 318, 17.11.2006, pages 17 - 25 CELEX no. 32006L0111

This rule has been incorporated in the new legislation.

### **Services of General Economic Interest**

- Commission Decision of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (notified under document number C(2005) 2673) Official Journal L 312, 29.11.2005, p. 67-73
- Community framework for State aid in the form of public service compensation Official Journal C 297, 29.11.2005, p. 4-7

### **For air transport, the following sector specific rules exist:**

- Application of Articles 92 and 93 [now 87 and 88] of the EC treaty and article 61 of the EEA agreement to State aids in the aviation sector
- Commission Communication C(2005) 312 - Community guidelines on financing of airports and start-up aid to airlines departing from regional airports Official Journal C 312, 09/12/2005, p. 0001

### **For maritime transport, the following sector specific rules exist:**

- Commission Communication C(2004) 43 - Community guidelines on State aid to maritime transport, Official Journal C 013, 17/01/2004 p. 0003 – 0012



**For the inland transport, the following sector specific rules exist:**

- Consolidated Regulation (EEC) No 1107/70 of the Council of 4 June 1970 on the granting of aids for transport by rail, road and inland waterway (this rule has been incorporated in the new legislation),
- Consolidated Regulation (EEC) No 1191/69 of the Council of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway
- Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23.10.2007 on public passenger transport services by rail, road and repealing Council Regulations (EEC) No 1191/69 and 1107/70 (OJ L 315, 3.12.2007, p.1

These rules have been incorporated in the new legislation

**Rail transport**

- Community guidelines on State aid for railway undertakings (OJ C 184, 22.07.2008, p.13)

This rule has been incorporated in the new legislation

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

The Law on Control of State Support and Aid (Official Gazette of the Republic of Montenegro 26/07) in Article 2 paragraph 1 provides the following definition:

"As State support and aid, in terms of this Law, shall be considered disbursements of the state and local self-government, respectively reduced revenues representing benefits or privileges for the beneficiary of state support and aid ensuring him competitive advantage, as well as the financing and co-financing of the beneficiary's programs, for market-oriented production of goods and provision of services."

The Decree on the method and procedure of submission and contents of documents essential for ex-ante and ex-post-control of state support and aid (Official Gazette of Montenegro 13/08), lays down the manner and procedure for submitting the Request for State aid. The Commission for the Control of State Support and Aid considers, evaluates and approves the proposals for State support and aid submitted by a provider, and within the period of 60 days from the day of submission of complete and accurate proposal, assesses its conformity with the Law.

Pursuant to Article 8 of the Law, the Ministry of Finance, in performing professional, administrative and technical tasks for the Commission, prepares proposal of opinion for ex-ante and ex-post control of State aid, which is done by the Commission.

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

State aid is an important development issue. In addition to the economy, state aid occurs through different forms in other areas of social life. As a rule, their source is the state budget, and to considerably lesser extent, the budgets of local self-government units.

A structure and volume of state aid are determined by significant changes that Montenegro faced in recent years. These are the transition processes (similar to other countries of Central and Eastern Europe), and after acquiring independence in 2006, legal and social development of the new state.

For this reason, there are needs and demands for accelerated investments in agriculture, parts of industry, small and medium enterprises, infrastructure and tourism. These areas are directions of long-term strategic development of Montenegro. One part of aid must be aimed at development and financial restructuring of parts of the economy, while other part for new growth and adaptation to new market demands, in accordance with the rules set by WTO as well as in accordance with the SAA.

The challenges regarding introduction and implementation of the state aid system in Montenegro emanates from complexity and newness of the state aid regulations in general, as well as from the fact that the regulation of state aid within the legislation of the European Union is likely to change constantly in the coming period, and consequently the national regulations on state aid in Montenegro, with the purpose of further harmonization.

The established system of state aid in Montenegro is undergoing harmonization with the system of the European Union and to the requirements of the European Union. These requirements include the following: full application of rules that apply for state aid, establishment of an independent body, approval or prohibition of state aid schemes and individual state aid grants, power to order recovery of state aid that has been unlawfully granted, power to exercise transparency in the area of state aid (by providing regular annual report), creation of comprehensive inventory of state aid schemes.

Given the above, the most significant state aid in 2008 was regional aid, followed by aid awarded to the steel sector, transport sector, financial sector and agriculture sector.

Due to the effects of global economic crisis it is realistic to expect a large number of applications for state aid in the coming period. The most common state aid in the future period might be state aid for rehabilitation and restructuring.

The first consequences of the global economic crisis can be noted in the report on awarded state aid in 2008 through the financial services sector aid.

Considerable efforts have been made in the last three years to set focuses on the legal and substantive aspects of state aid taking into account the requirements, methodology and conditions of the EU and WTO.

The main objective was to make state aid more transparent and to reduce (control) the total level of state aid in the economy.

To that effect, in 2007, the Ministry of Finance created a Monitoring Team for tracking and control of state aid. The main task of the Monitoring team was preparation of the Report on the inventory of state aid in Montenegro (for the 2005 and 2006) as well as preparation and processing of the Law on Control of State Support and Aid. In November 2007, the Government of Montenegro appointed the Commission for Control of State Support and Aid which commenced with its work in March 2008. In November 2008, a new systematisation of job posts of the Ministry of Finance was adopted stipulating job posts and tasks of the State Aid Preparation Unit that on behalf of the Ministry, in accordance with the Law, performs professional, administrative and technical tasks for the Commission.

A considerable progress has been achieved in that direction in 2007, 2008 and during the 2009, namely:

1. the Law on State Support and Aid Control entered into force (Official Gazette of the Republic of Montenegro 26/07), which is for the most part aligned with the EU system;
2. indirect subsidies have become transparent or prohibited;
3. a share of subsidies in 2007 and 2008 was linked to the funds (Development Fund and Employment Fund of Montenegro), particularly in the area of employment, while in 2008 the funds became integrated into the budget.
4. the following regulations were made: the Law on State Support and Aid Control, followed by secondary legislation: Decree on specific criteria, intended purpose and requirements for

award of state support and aid, Decree on method and procedure of submission and contents of documents essential for ex-ante and ex-post control of state support and aid, Rulebook on the contents of the annual report on control of state support and aid.

5. the Commission for State Support and Aid commenced work in March 2008.

**NOTE:** The set of new regulations have been prepared in 2009: the Law on Control of State Support and Aid, Decree on eligible costs, maximum allowable state aid intensities and other applicable criteria on award of state aid for specific state aid objectives, Rulebook on the contents of the annual report of granted state support and aid, Decree on the methodology and manner for submission of notification and control of state aid. The whole set of regulations has been drafted with the assistance of EU experts, and is harmonised to the highest possible extent with the primary and secondary legislation of the EU.

The final assessment of GDP and the level of participation of state aid within GDP have been changed.

Taking into consideration the current assessments of GDP, it ensues that the participation of different forms of state aid were as follows:

State aid as a percentage of GDP	2006.	2007.	2008.
	Realization	Realization	Realization
Total with the local self-government	3.05%	0,88%	1.37%

\* Data source: Annual Report on Control of State Support and Aid for 2008.

The unexpected decrease in the participation of state aid in GDP in 2007 in comparison to 2006 is consequence of the fact that the reports for 2007 and 2008 were prepared in accordance to the methodology prescribed by the European Union. Application of this methodology was made possible because of the existing legal framework. The increase of participation of state aid in 2008 in comparison to 2007 is result of higher transparency owing to the effects of the Law, and partly a result of global financial crisis, which disrupts the market. A decline in the participation of direct subventions in comparison to 2006 could be observed. The trends of subventions in the economy for 2007 show:

- increased transparency,
- reduction of participation in GDP, in comparison to 2006.

Following the adoption of the Report on awarded state aid in 2007 and 2008 by the Commission for State Aid Control, the reports were submitted to the Government and to the Parliament of Montenegro. Here we point out some more significant state aids (in million of EUR) in 2008.

Regional aid	22,243
Steel	10,792
Transport	3,271
Financial Services	2,775
Agriculture and Fisheries	2,616
Employment	1.135

\* Data source: Annual Report on Control of State Support and Aid for 2008

As in accordance with the SAA, the agriculture and fisheries sector is considered separately, since the area of primary agriculture and fisheries is defined in Chapter II of the SAA, and the provisions of this Law shall not apply for the incentives into agriculture and fishery development.

The share of state aid in the state budget increased in 2008 in the total and amounts EUR 45.896 million, in comparison to 2007 when it amounted to EUR 24.847 million. The share of state aid in gross domestic product increased from 0.88% in 2007 to 1.37% in 2008.

The Law on State Support and Aid has adopted the Community classification in groups A (A1+A2), B1, C1(C1+C) and D1.

The first inventory of state aid that was created in September 2008 has complied fully with this classification.

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

In accordance to Articles 6 and 7 of the Law on Control of State Support and Aid, the control of award and utilization, approval and order to return state support and aid is performed by the Commission for Control of State Support and Aid.

The Commission for Control of State Support and Aid is an independent body with public authority, appointed by the Government of Montenegro. Such organization, in legislative meaning, provides that the Commission for Control of State Support and Aid is to the utmost possible extent independent from the state aid granting authorities.

Pursuant to Article 8 of the Law on Control of State Support and Aid, the professional, administrative and technical tasks for the Commission shall be performed by the State Aid Preparation Unit, as an organizational unit of the Ministry of Finance. The Unit, on the basis of information submitted by the providers of state aid, prepares the inventory of state aid, based on the model of the Communities.

**35. What are the competences of the State aid authority which you have agreed to establish under the Stabilisation and Association Agreement? Please, make reference to the following points:**

The Articles 6 and 7, as well as Articles 10, 11, 12, 13, 14 and 15 of the Law on State Aid Control lays down competences of the Commission for Control of State Support and Aid, that is appointed by the Government.

**a) To what extent are its decisions on State aid binding on all parties?**

Prior to submission of legal and other proposals containing proposal for general state aid to the Government of Montenegro for the procedure, the Ministries and other state administration bodies involved in the process are under obligation to submit the proposal of the respective act to the Commission for Control of State Support and Aid for preliminary opinion. That opinion is communicated to the Government of Montenegro together with legal or other proposal which include proposal for general state aid. The proposals submitted to the Government of Montenegro for procedure without being approved by the Commission for Control of State Support and Aid, shall be returned to the proponent for revision.

Pursuant to the provisions of Article 10 of the Law on Control of State Support and Aid, the provider of state aid is, under obligation to deliver the information and documents required to the Commission for the approval of state aid. If provider fails to deliver the requested information and documents in specified time period, the Commission may decide to deny the approval or order the

return of the amount of awarded state support and aid.

The Commission shall, pursuant to the provisions of Article 11 of the Law on Control of State Support and Aid, approve the proposal for state support and aid, if it determines that the proposed state aid is in conformity with the Law. If Commission establishes that the proposed state aid is in contradiction to the Law, it shall pass an act determining a deadline, giving a provider time to eliminate the established irregularities. If state support and aid is awarded without the Commission's approval, the Commission shall submit to the Government, or competent local self-government authority a report on state support or aid awarded without approval, with a proposal of measures to be taken.

Furthermore, if irregularities are established during the control of utilization and achieved results of state support and aid, the Commission shall, pursuant to the provisions of Article 12 of the Law, determine a deadline for the provider of state aid to eliminate the established irregularities. Should the provider fail to eliminate the established irregularities in the given time period, the Commission shall submit a report to the Government or competent local self-government authority, along with a proposal of measures committing the provider to return the amount of awarded aid.

Pursuant to the provisions of Article 13 of the Law, the provider or the beneficiary of state support and aid is obliged to submit to the Commission, upon its request, any information relevant for the assessment of state support and aid control. The Commission shall, as specified in Article 14 of the Law, provide the opportunity for the provider to participate in the procedure of assessment, compliance and control of state support and aid as specified in Articles 11 and 12 of this Law, without right to vote. The Commission shall submit the annual report on control of state support and aid to the Government and the Parliament by 30 June of the current year, for the previous year, in accordance to the provisions of Article 15 of the Law. The content of annual report is defined by an act of the Ministry.

**Note:** The proposal of the Law on the Control of State Aid established by the Government of Montenegro at its session on 2 April 2009, lays down two types of decisions on the approval of state aid, which shall be passed by the Commission. These are solutions relating to specific state aid and opinions on general state aid. The decisions are binding on all the parties.

#### **b) Can it ask for the recovery of unlawfully paid state aid?**

The Law on Control of State Support and Aid (Article 10 paragraph 3, Article 11 paragraph 5, and Article 12 paragraph 2) stipulates the manner of conduct of the Commission for Control of State Support and Aid in the event of irregularity or unlawful practice during the allocation of state aid, i.e. it prescribes an obligation for the provider or the beneficiary to refund the awarded state aid if the same was awarded contrary to the provisions of this Law.

**Note:** If the Commission, on the basis of its own information or information obtained from other sources, as in accordance to the provisions of Article 20 of the Proposal of the Law on Control of State Aid, should come across an information indicating that state aid was awarded, is being utilized, or was utilized contrary to the provisions of this Law, it shall issue an request to the provider of state aid to deliver the requested information and documents and determine the deadline for their submission. If the provider of state aid fails to provide the information and documents requested in the given time period, the Commission shall decide on the basis of the information and documentation available on conformity of state aid with this Law. The Commission may order a provider of state aid a temporary suspension of state aid, if it assesses that further allocation would cause a significant violation of competition in the market.

If the Commission in the course of control procedure, as in conformity with the provisions of Article 21 of the Proposal of the Law on Control of State Aid, establishes irregularities in the allocation and use of State aid, it shall determine a time limit in which the provider of state aid is obliged to eliminate the irregularities identified, and to notify the Commission in writing on the elimination of irregularities. If the provider of state aid fails to eliminate identified irregularities in the given time limit, the Commission shall issue Decision on non-conformity of state aid with the Law. The

Commission may issue an order to the provider of state aid to, without delay, take measures to return the assigned amount of state aid, as well as to suspend further allocation of unused state aid. If a provider of state aid fails to take measures in given time limit, the Commission will notify the Government, respectively the competent local self-government authority, and propose measures to be undertaken. The return of state aid may not be claimed after expiration of 10 years from the date of state aid granting.

**c) Can it take ex officio actions?**

The Commission can take ex officio actions if determines that the proposal for state support and aid is contrary to the Law, or that state support and aid was awarded without approval of the Commission and, if in the course of the control of previously awarded state aid is confirmed that irregularities had occurred, in accordance to the provisions of Articles 11 and 12 of the Law and for the purpose of its implementation.

**d) Will the authority also be able to control existing State aid?**

Pursuant to the provisions of Article 7 paragraph 2 of the Law on Control of State Support and Aid, the Commission for Control of State Support and Aid is authorized to perform the control of utilization and achieved effects of approved state support and aid (so called ex-post control).

**Note:** Pursuant to Article 26 of the Proposal of the Law on Control of State Aid, the providers of state aid are obliged to submit to the Ministry of Finance a list of regulations and general acts that were in force until 1 January 2008, and which apply on the day of entry into force of this law, on the basis of which the awards were carried out, that is, on the basis of which state aids have been awarded, within 60 days from the entry into force of this Law. The Ministry is obliged to consolidate a list of stated acts and submit the same to the Commission within 90 days from the entry into force of this Law, for the assessment of harmonisation with this Law and proposal of measures and deadlines for their harmonization. The Commission is obliged to, within 30 days of receiving the consolidated list from the Ministry, prepare a report on conformity of the submitted regulations and general acts with the Law, and deliver the same to the Government with proposal of measures.

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

Pursuant to the provisions of Article 9 paragraph 2 of the Law on Control of State Support and Aid, the provider of state aid is obliged that, prior to making state award decision, submit the proposal and the necessary documentation to the Commission for approval.

**Note:** The provider of state aid, pursuant to the provisions of Article 16 paragraph 1 of the Proposal of the Law on State Aid Control is required to, prior to making an state aid award decision, submit State aid application to the Commission. Provisions of article 17 of the law on State Aid Control envisage that state aid should be reported as:

1. state aid schemes and
2. individual state aid

The proponent of the state aid scheme is obliged to submit the draft, that is, proposal of act, to the Commission for the assessment of conformity with the Law. In the event that subsequent to the submission of state aid an alteration of previously declared state aid took place, the provider of state aid, that is, proponent of state aid scheme or individual state aid is obliged to report the alteration of the proposal to the Commission. The proposed state aid may not be awarded before the Commission issues its Decision regarding the compliance of state aid with the Law.



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

Pursuant to the provisions of Article 14 of the Law on the Control of State Support and Aid, the Commission shall provide the opportunity for the provider to participate in the procedure of assessment of compliance and control of state support and aid with the Law, without right to vote.

**Note:** The provisions of Article 19 paragraph 7 of the Proposal of the Law on State Aid Control provide the possibility to initiate an administrative dispute against the decision of the Commission. Furthermore, the provisions of Article 22 of the Proposal of the Law on the Control of the State Aid give the right to the provider or beneficiary of state aid to participate in the work of the Commission in the process of evaluating compliance with state aid law, without right to vote.

Taking into account that the Commission issues the Decision (Decision represents an administrative act), therefore the rights and interests of third parties and stakeholders are regulated by the Law on Administrative Procedure (Official Gazette of the Republic of Montenegro 60/03). A dispute may be instituted by any person concerned who considers that the administrative or other act (by the Decision of the Commission) violated any of their rights or interest based on the Law.

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

The provisions of Article 14 of the Law on Budget (Official Gazette of Montenegro 53/09) provide that the tax relief and other measures of fiscal aid must be reported to the Commission for the compliance assessment.

Furthermore, the provisions of Article 73 paragraph 8 of the Stabilisation and Association Agreement between the EC and its Member States on one side, and the Republic of Montenegro on the other (Official Gazette of Montenegro 7 / 07), as well as Protocol 5 of the SAA, establish the rules that apply when aid is awarded to the steel industry for restructuring purposes.

Rules for award of state aid to specific sectors/industries (steel production, land transport sector, maritime transport sector, air transport sector and shipbuilding sector), are regulated in more details by Articles 42-57 of the Decree on specific criteria, intended purpose and requirements for award of state support and aid.



### **III. LIBERALISATION**

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

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

The Law on Protection of Competition applies to public enterprises (Article 4 paragraph 1 item 3 of the Law on Protection of Competition) with the restrictions set forth in Article 86 paragraph 2 of the EC Treaty (Article 4 paragraph 2 of the Law on Protection of Competition).

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

The legislation of Montenegro does not contain the legal institute of exclusive and special rights, although pursuant to Article 2 of the Law on Public Enterprises (Official Gazette of the Republic of Montenegro 6/91) “the economic activities that shall be considered as the activities of public interest in terms of this law are the activities in the field of infrastructure: electric energy industry, railway and postal communications, radio and television, daily newspaper Pobjeda, utilisation and management of goods of general interest - water management, maritime management, road network industry, forestry, and utility and other sectors”.

The undertakings that carry out activities of public interest are:

1. EPCG AD Nikšić (Montenegrin Electric Enterprise - EPCG)
2. Prenos AD Podgorica (Montenegrin Transmission System Operator)
3. Radio i Televizija Crne Gore – RTCG (Radio and Television of Montenegro - RTCG)
4. “Pošta Crne Gore” d.o.o. Podgorica (Post of Montenegro)
5. JP “Morsko dobro” (Coastal Zone Management Agency)
6. Crnogorski Telekom A.D. Podgorica (Montenegrin Telecom)
7. Željeznička infrastruktura Crne Gore AD Podgorica (Railway Infrastructure of Montenegro)
8. Utility enterprises established by local self-government
9. Javna zdravstvena ustanova “Montefarm” (Public Health Institution Montefarm)
10. Radio difuzni centar d.o.o. Podgorica (Broadcasting Centre)
11. JP “Regionalni vodovod crnogorsko primorje” (Regional Water Works for the Montenegrin Coast)
12. JP “Nacionalni parkovi Crne Gore”. (Public Enterprise National Parks of Montenegro)
13. JU „Institut za razvoj i istraživanja u oblasti zaštite na radu” Podgorica (Institute for Research and Development of Workplace Safety, Podgorica)
14. JU „Centar za ekotoksikološka ispitivanja Crne Gore” (CETI) (Centre for Ecotoxicological Research of Montenegro - CETI)

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

The subject-matter, scope and duration of exclusive or special rights are prescribed by specific laws and secondary legislation, since in our legislation there is no umbrella law that regulate the exclusive and special rights.

##### **Energy Sector**

The Montenegrin Electric Enterprise and the Montenegrin Transmission System Operator have been granted the rights of enterprises carrying out activities of public interest, in accordance with the provisions of Article 1 of the Law on Energy (Official Gazette of the Republic of Montenegro 39/03), whereas Montenegrin Electric Enterprise has been granted with the responsibility of public supplier (Article 24 of the Law on Energy).

The fact that the electric energy industry has the character of public interest indicates its importance for the country. The term public supplier means that the Electric Enterprise is obliged to supply a sufficient quantity of electric energy to all customers in Montenegro in line with the rules, tariffs and prices established by the Regulatory Agency for Energy, until the moment of complete market opening.

The duration of the rights given to the operators of electricity supply will continue until there is a legal basis, that is, until the competitive electricity market is fully open and active and tariff customers/non-qualified advance to qualified, in total or partially.

##### **Rail Transport Sector**

The subject-matter of the assigned rights is management, maintenance of infrastructure and regulation of transport; the scope is on the entire rail network of Montenegro; while the licence and certificate on safety for railway infrastructure management are issued to the management for a period of 5 years and can not be transferred to another manager.

##### **Telecommunications and Postal Services Sector**

In the Strategy of Development of Postal Services in Montenegro for the period 2008-2018, namely, in the Action Plan's section on the Strategy for the liberalization of postal services for adaptation of postal services for the integration into the EU, is defined that Montenegro have to implement gradual liberalization which would mean the retention of reserved services (100 grams) until 2010, and then reduction of reserved services to 50 grams until 31 December 2012. This implies that the restructuring of universal postal operator (UPO) will end by 2010, because it is practically a condition for complete liberalization of postal services market that should occur as of 1 January 2013.

Pursuant to Article 19 paragraph 2 of the Law on Public Broadcasting Services of Montenegro (Official Gazette of Montenegro 79/08), the Ministry of Culture, Media and Sports and the Broadcasting Centre, shall conclude a contract on the method and conditions for reimbursement of the costs of transmission and broadcasting of Radio and Television of Montenegro via terrestrial systems. The contract shall be concluded for a period of one year.

##### **Broadcasting Sector**

The undertakings with special or exclusive rights in the broadcasting sector are the Public Service Broadcasters. Their establishment, rights and obligations are regulated by the following laws:

- Law on Media (Official Gazette of the Republic of Montenegro 51/02 and 62/02);
- Law on Broadcasting (Official Gazette of the Republic of Montenegro 51/02, 62/02, 46/04, 56/04, 77/06, Official Gazette of Montenegro 50/08 and 79/08);
- Law on Electronic Communications (Official Gazette of Montenegro 50/08);
- Law on Public Broadcasting Services of Montenegro (Official Gazette of Montenegro 79/08).

The Law on Broadcasting of 2002 classified the electronic media on National Public Service Broadcasters, Local Public Service Broadcasters, and Commercial Broadcasters.

In compliance with the Law on Public Broadcasting Services of Montenegro, there are two national public service broadcasters: the Radio of Montenegro and the Television of Montenegro. Both services have two programmes broadcasted on the national level. Furthermore, this Law gives the right to these services to broadcast their own radio or television programme via satellite.

In compliance with the Law on Broadcasting of 2002, there were 17 local public broadcasting services established, of which 14 radio stations and 3 television stations. Their founders were the assembly units of the local governments on which territory they broadcast their programme. An overview of public broadcasters can be found at the web site of the Broadcasting Agency [www.ardcg.org](http://www.ardcg.org).

Chapter VIII on Public Broadcasting Services of the Law on Broadcasting prescribes general rights and obligations of public broadcasting services, whether national or local.

Article 93 of the Law on Broadcasting lays down that public broadcasting services create and broadcast programmes of informative, cultural, artistic, educational, scientific, children's, entertainment, sports and other contents, which ensure realisation of the rights and interests of citizens and other entities in the field of information and broadcasting.

Furthermore, Article 94 stipulates that the legal persons founded by the Government or local government unit, may perform activities of public broadcasting service in the territory of Montenegro, or local governments. Thereby, it is provided that they carry out activities of production, transmission and broadcasting of radio programmes and have particular responsibilities in the realization of general interest through the area of information, in accordance with this Law and the Law on Media. Furthermore, it is provided that they are established on the basis of the Law for the territory of Montenegro (national) and by the decision of the competent assembly for the territory of local government (local).

Article 104 laid down that the broadcaster of public service obtain the right to production, transmission and broadcast of programme directly on the basis of this Law, and is exempt from obligation to obtain licence for the transmission and broadcasting of radio broadcast signals. Thereby, it is prescribed that licences for radio stations and licences for transmission of public broadcasting services signals are provided by the Broadcasting Centre through the distribution systems. Taking into account the new legal solutions contained in the Law on Electronic Communications, these solutions will be reviewed and agreed when drafting the Law on Electronic Media.

Article 84 of the Law on Electronic Communications stipulates that broadcasters of public broadcasting services do not pay a regulatory fee for the use of broadcasting frequencies.

For the purpose of performing the basic activity, and pursuant to the Law on Broadcasting, as well as the Decision on the adoption of the plan on allocation of radio broadcasting frequencies in Montenegro, the Council of the Agency for Broadcasting issued:

- Decision on the Broadcasting frequencies for national public broadcasting service (Official Gazette of the Republic of Montenegro 80/04, 14/05, 06/06 and Official Gazette of Montenegro 06/08, 46/08),
- Decision on the broadcasting frequencies for local public broadcasting services (Official Gazette of the Republic of Montenegro 80/04, 32/06, 42/06 and Official Gazette of Montenegro 46/08).

The broadcasting frequencies that were awarded without public tender to national and local public broadcasting services, for the purpose of carrying out their basic activity, have been specified by the aforesaid decisions.

The Law on Broadcasting regulates the public broadcasting services' entitlement to funding from public revenues, that is, they are financed from the national or local budgets.

At the local level, one of the sources of local public broadcasters funding are the budgets of local government units that were their founders.

In accordance with Article 100 of the Law on Broadcasting, the local government budget provides part of funding intended for achieving the rights of citizens to information without discrimination, as guaranteed by the Constitution and by the Law, on the basis of programme content that are important for:

- development of science and education;
- cultural development;
- informing visually and hearing impaired citizens.

Similar to the national level, with the purpose of realisation of aforesaid rights, the local government unit provides a share of funding for the programme in native languages of national and ethnic groups.

The Law on Public Broadcasting Services of Montenegro in Article 2 defines the scope of activity of the Public service Radio and Television of Montenegro, as the production and broadcasting of programme which meets the democratic, social, educational, cultural and other public interest needs of all segments of the Montenegrin society; enables realisation of the rights and interests of citizens and other subjects in the area of information, regardless of their political, religious, cultural, racial, or gender background, and in timely and qualitative manner provides a variety of service information.

The manner of realization of basic activity, duties and responsibilities as well as the method of their financing have been prescribed in detail in Chapter II - the Scope of Activity of RTCG, and Chapter V - the funding of the RTCG on the basis of this Law, respectively.

In similar way, the establishment, rights and obligations of local broadcasting services have been regulated by the decisions of the municipal assemblies of local governments. The duration of awarded exclusive or special rights is for an indefinite period, i.e. they are not time limited.

### **Utilities Sector**

Pursuant to the Law on Utilities (Official Gazette of the Republic of Montenegro 12/95), utility services can be performed by a public undertaking, other undertaking or entrepreneur, depending on the nature of utility service and the conditions and needs of local government units. An exception represents the activity of management and control of the facilities for abstraction of drinking water together with their protective zones. The exclusive right to perform this activity is given to public undertakings. The competent body of a local government unit (municipality) decides on the manner of organizing the work of utility services in its territory. The largest number of municipalities has granted the right to perform these tasks to public undertakings that were founded by them, for an indefinite period of time. In a small number of cases, commercial business organizations (limited liability companies) that are in exclusive ownership of local communities have been established, as in accordance with the Law on Utilities and the Business Organization Law (Official Gazette of the Republic of Montenegro 06/02 and Official Gazette of Montenegro 17/07 and 80/08). The establishment of business organizations in this area represents a transitional stage for further transformation, that is, privatization of undertakings in this field.

### **Regional Water Supply System**

Pursuant to the Law on Regional Water Supply of the Montenegrin Coast (Official Gazette of Montenegro 13/07), the Public Enterprise Regional Water Works for the Montenegrin Coast was granted special rights to build, and thereafter manage regional water supply for Montenegrin coast. Within the scope of the obligations and authorities foreseen by the Law, this enterprise is granted to perform the following tasks: building a regional system of water supply facilities; water supply; constant and regular supplies of drinking water and other needs of the municipalities up to the point of measuring instrument at the site of connection with municipality's water supply system; provision, protection and management of regional water supply system; maintenance and reconstruction of constructions and facilities to facilitate functionality of a regional water supply system, ensuring the rational use of capacity, etc. The Law has foreseen the possibility that

subsequent to completion of the construction of a regional water supply system, the Government shall carry out the procedure for transformation of public enterprise into the limited liability company.

### **National parks**

The Public enterprise National Parks of Montenegro was established by the Parliament of Montenegro on the basis of the Law on National Parks (Official Gazette of the Republic of Montenegro 47/91, 17/92, 27/94 and Official Gazette of Montenegro 56/09) for an indefinite time, with a special right to: administer and manage with resources of national parks; take measures and activities to achieve established policy in the management, utilization, protection and development of national parks, create programmes for the protection and development of national parks and administer their implementation; protect and develop the natural wealth and resources of national parks; create favourable conditions for the maintenance and development of plant and animal species and their communities; preserve and develop specific natural values etc. The time limit of this particular right is not restricted, and is in effect until otherwise determined by amendments to the existing Law.

### **Coastal Zone Management Agency**

The Public enterprise for Coastal Zone Management Agency of Montenegro was established by the Parliament of Montenegro on the basis of the Law on Coastal Zone (Official Gazette of the Republic of Montenegro 14/92, 27/94 and Official Gazette of Montenegro 51/08 and 21/09). The undertaking was established for an indefinite time, and was given the right to manage coastal resource (sea coast, harbours, breakwaters, slipways, embankments, shoals, beaches, rocks, lymans, reefs, sources and springs on the coast, the mouth of the river where river flows into the sea, canals connected with the sea, seabed and subsoil as well as internal waters and territorial sea, living and non-living wealth, living and non-living wealth of epicontinental belt), in a manner which will protect, manage and improve the use of marine goods; enter into contracts on its use and to build and maintain infrastructure facilities for marine goods. The time limit of this particular right is not restricted, and is in effect until otherwise determined by amendments of the existing Law.

### **Workplace Safety**

The Public institution Institute for Research and Development in the Field of Occupational Safety from Podgorica was authorized for noise level measuring, issued by the decision of the Ministry of Health of the Republic of Montenegro. The time limit of this particular right is not restricted, and is in effect until otherwise determined by amendments to the existing Law.

### **The Center for Ecotoxicological Research of Montenegro (CETI)**

The Centre for Ecotoxicological Research of Montenegro was established by the Decision of the Government of the Republic of Montenegro on 20 December 1996 (Official Gazette of the Republic of Montenegro 40/96), and was registered at the Commercial Court, registration number 1-5635-00 Fi 479/97 to carry out activities of public interest, such as:

- ecotoxicological testing of all segments of the environment: air, water and sea water, land, flora and fauna,
- testing of ionising and non-ionising radiation and climate change,
- testing of noise and vibration in the living and working environment,
- creation of special expert and toxicological studies, analysis and programmes for government, research institutions and other organizations' needs,
- control and issuance of certificates for import, export and production of goods,
- measuring the emission at the sources of pollution,
- creation of the Study on Environmental Impact Assessment (EIA); consulting, design and planning in the area of ISO 14000 environmental standard, ISO 17025 and other tasks, in accordance with the activities of the Centre, if their implementation contribute to the development and advancement of its core activities.

- testing of working conditions environment, working tools and workplace safety,
- testing of hazardous materials, determination and categorization of hazardous waste.

The time limit of this particular right is not restricted, and is in effect until otherwise determined by amendments to the existing Law.

### **Health Sector**

Based on the Decision of the Parliament of the Republic of Montenegro (Official Gazette of the Republic of Montenegro 21/91 and 34/91), the Public Health Institution - Montefarm has been granted the authority to supply population with medicines and medical material through the system of pharmacies and public health institutions (Clinical Centre, hospitals, primary health centres), as well as with the authority to carry out timely procurement of safe, quality and effective medicines and medical devices provided by the Health Insurance Fund.

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

The exclusive and special rights are granted on the basis of existing laws promulgated by the Parliament of Montenegro, which regulate particular areas of public interest that, as a rule, require establishment of public companies with the right to engage in certain activity, upon the decision of local governments,.

### **Energy Sector**

The public interest and status of public supplier of the Montenegrin Electric Enterprise - EPCG has been established under the Law on Energy. These rights are assigned to the EPCG as the subject and holder of all electric energy licences, excluding licences for the transmission, transmission operator and market operator that were transferred on 01 April 2009 onto the newly established joint stock company Montenegrin Transmission System Operator.

The Montenegrin Transmission System Operator performs the tasks of transmission, transmission operator and market operator as of 01 April 2009, when the Energy Regulatory Agency transferred appropriate licences to this enterprise. All activities that the Montenegrin Transmission System Operator carries out belong to the energy sector, consequently, in the sense of Article 1 of the Law on Energy, to the public interest activities.

### **Rail Transport Sector**

The exclusive or special rights have been granted on the basis of the Rulebook on the issuance of certificates of safety for railway infrastructure management and the Rulebook on the issuance of licences for the management of railway infrastructure (Official Gazette of Montenegro, 56/08).

The Railway Infrastructure of Montenegro is still in the process of obtaining licences and certificates. Moreover, the licensing is open to other commercial undertakings, under the same procedure.

### **Telecommunications and Postal Services Sector**

Article 68 of the Law on Postal Services (Official Gazette of the Republic of Montenegro 46/05) lays down that the universal postal service can be performed by a legal person, on the basis of special licence. The universal postal operator is solely authorized to use the name *the Post*.

The Broadcasting Centre – Podgorica, established as competent body for the transmission and broadcasting of radio and other telecommunications signals (Official Gazette of Montenegro 21/09), based on the basis of the Law on Public Broadcasting Services of Montenegro (Official Gazette of Montenegro 79/08), as well as on the Decision on establishing limited liability company.

## **Broadcasting Sector**

As for the national public broadcasting services, the exclusive and special rights have been granted on the basis of:

- Law on Broadcasting (Official Gazette of the Republic of Montenegro 51/02, 62/02, 46/04, 56/04, 77/06 and Official Gazette of Montenegro 50/08, 79/08 and 53/09);
- Law on Public Broadcasting Services of Montenegro (Official Gazette of Montenegro 79/08);
- Decision on the adoption of the allocation plan of broadcasting frequencies in Montenegro (Official Gazette of the Republic of Montenegro 67/04, 33/05, 06/06, 32/06, 05/07 and Official Gazette of Montenegro, 06/08, 31/08, 46/08);
- Decision on the broadcasting frequencies for national public broadcasting service (Official Gazette of Montenegro 80/04, 14/05, 06/06 and Official Gazette of Montenegro 06/08, and 46/08)

As for the local public broadcasting services, the exclusive and special rights have been granted on the basis of:

- Law on Broadcasting;
- Individual decisions on the establishment of local services;
- Decisions on the broadcasting frequencies for local public broadcasting service (Official Gazette of the Republic of Montenegro 80/04, 32/04, 42/0 and Official Gazette of Montenegro 46/08);

## **Utilities Sector**

In accordance with the Law on Utilities (Official Gazette of the Republic of Montenegro 12/95) and the Law on Local Government (Official Gazette of the Republic of Montenegro 42/03, 28/04, 75/05, 13/06), the local government unit provides the conditions for performance and development of the utility activities. Commencing from the given responsibilities and the established public interest, the Assembly of the local government unit, upon the proposal of the executive body of local government, establishes a public enterprise and grants it with the right to engage in activities for which it was founded.

### **Regional water supply system**

Having confirmed by the Law that the water supply of Montenegrin coast represents an activity of public interest and essential prerequisite both for life and work of the population, economic and other subjects in that region, the Parliament of Montenegro granted the rights to build, and thereafter manages regional water supply system to the public enterprise Regional Water Works for the Montenegrin Coast, on the basis of the Decision establishing the Regional Water Works Public Enterprise for the Montenegrin Coast (Official Gazette of Montenegro 14/08). This option has also been provided by the Law on Waters (Official Gazette of the Republic of Montenegro 27/07).

### **National parks**

The Public Enterprise National Parks of Montenegro and the Public Enterprise Coastal Zone Management Agency have been granted with the rights to manage these resources of particular interest, on the basis of decisions of the Parliament of Montenegro – the Decision on organisation of Public Enterprise for National Parks (Official Gazette of the Republic of Montenegro 39/92), and the Decision on organisation of public enterprise for the management of Coastal Zone (Official Gazette of the Republic of Montenegro 25/92).

### **Workplace Safety**

On the basis of the Rulebook on methods and instruments of noise measurement and conditions that noise measuring organizations must meet (Official Gazette of the Republic of Montenegro 37/03), the authority has been granted to the public institution Institute for Research and Development in the Field of Occupational Safety from Podgorica.

The Centre for Ecotoxicological Research of Montenegro (CETI)

The Centre for Ecotoxicological Research of Montenegro has been established in accordance with the policy of the Government of Montenegro, to perform environment quality control for the state, as well as a referential institution for control of food and other products and diagnostics of toxicants.

CETI was established by the Decision of the Government of the Republic of Montenegro (Official Gazette of the Republic of Montenegro 40/96) and registered at the Commercial Court, Registration Number 1-5635-00 Fi 479/97, to perform activities of public interest.

### **Health Sector**

The Public Health Institution – Montefarm has been granted the exclusive and special rights to supply public health institutions with medicines and medical material, on the basis of the Decision of the Parliament of the Republic of Montenegro (Official Gazette of the Republic of Montenegro 21/91 and 34/91).

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

Granting of exclusive and special rights by the state or local self-government is defined by the separate Law, since these rights are not being regulated by a separate law..

### **Energy Sector**

The reason for granting public interest status to the activities in the area of electric energy industry, together with the public supplier status to the Montenegrin Electric Enterprise (EPCG) is the commitment to reliable performance of these activities on the entire territory of Montenegro, by providing regular supply of electric energy to all consumers, which is one of the basic living and working conditions of all citizens and business subjects.

In order to obtain licenses to perform these activities, the Montenegrin Electric Enterprise - EPCG and the Montenegrin Transmission System Operator, must objectively present to the Regulatory Agency for Energy the details of their material, technical, human and financial resources and experiences, as a guarantee for the performance of services that shall be provided in some future period.

### **Rail Transport Sector**

As a consequence of the transformation of public enterprises in the national societies, i.e. transforming public property into private, and application of the Law on Railways (Official Gazette of the Republic of Montenegro 21/04 and Official Gazette of Montenegro 54/09), the reform of railway system led to the fact that the Railway Infrastructure is the exclusive manager. The Railway Infrastructure was established as a separate entity in relation to transporters on the basis of the Law on Railways and the Strategy for Restructuring of Railways of Montenegro, through the adoption of the appropriate decisions on the takeover of the rights and obligations. on the occasion of appropriate divisions, Upon the occasion of relevant divisions, the Railway Infrastructure had inherited the right from the former public enterprises and joint stock companies of the Railways of Montenegro to manage the infrastructure.

### **Telecommunications and Postal Services Sector**

The universal postal service is a service of public interest for the state. Performance of universal postal services means the provision to all users, at least one receipt and one delivery of postal items every working day, not less than five days a week. The universal postal operator is obliged to provide the prescribed density of access points that respond to the needs of users, in accordance with economic and technological development. Furthermore, the universal postal operator is required to transfer a postal item even when the universal postal service is not paid or is paid insufficiently, provided that the sender's address is specified, under the conditions established in the Rulebook on general conditions for conducting the postal service (Official Gazette of the Republic of Montenegro 29/06 and 42/06).



## **Broadcasting Sector**

The granting of special and exclusive rights is based on the need for creating stable, sustainable and transparent conditions for the realization of the general public interest in informing the citizens, especially through the electronic media, that is, the public broadcasting service.

In this respect, a particular consideration has been given to the need of preserving the public broadcasting as a strong mechanism for meeting the needs of citizens and achieving policy objectives in the media sector, which otherwise could not be achieved.

Owing to the lack of other economic undertaking for the transmission and broadcasting of radio signals, that is, due to single state-owned enterprise from the previous period, the Broadcasting Centre was designated as operator with significant market power in the field of broadcasting. The introduction of competition through other network operators will create the conditions for the abolition of these exclusive rights

## **Utilities Sector**

In accordance with the Law on Utilities, the utility services are activities that constitute an irreplaceable condition for life and work of citizens, enterprises and other entities, whereas in accordance with the Law on Public Enterprises, the enterprises that carry out these activities are established and operate as public enterprises.

Utility services represent existential services since their non-operating threatens the existence of the population in a particular area. They are essential services as well, since their consumption can not be replaced by any other goods or services. These characteristics cause the need to ensure continuity and high reliability in the supply of utilities.

The granting of exclusive or special rights to public enterprises in communal activities is based on the existence of public interest and is justified by the requirement to ensure the health of citizens, continuous and safe delivery of these services, or to provide the identical quality and general availability of services to citizens, protect the public interest, and ensure adequate maintenance of activity and safety of certain system.

Since the utilities sector is an activity of public interest that come under the responsibility of the local self government units, the assignment of tasks to enterprises that they founded and that can directly influence regarding the fulfilment of obligations for which they are founded, can be considered justified.

The Law on Utilities provides the possibility that activities of public interest can be carried out by other enterprises or entrepreneurs. The drawing up of the new Law on Utilities, expected by the end of 2009, should be more specific on the granting of specific activities to other legal persons or entrepreneurs.

## **Regional water supply system**

The granting of exclusive or special rights to public enterprise the Regional Water Works for the Montenegrin Coast is based on the existence of public interest of continuous water supply of the coastal population of Montenegro, as well as facilitating economic development, especially tourism.

## **National parks and The Coastal Zone Management Agency**

The justification for granting the rights to manage the national parks and coastal zone to public enterprises that are established by the Parliament of Montenegro, is justified by special needs for unified and permanent management of the resources of particular interest that have special protection. The national parks and the coastal zone are natural resources which require special management conditions.

## **Workplace Safety and The Centre for Ecotoxicological Research of Montenegro (CETI)**

The justification for granting special rights to institutions is the need to ensure an integrated environment management system by sharing responsibilities between different subjects, particularly taking into account the fact that certain undertakings have been established to carry out specific activities, and are therefore subject to granting of special rights. Furthermore, the special rights can be granted by taking into account the fact that holders of these special rights do possess

the required capacity, that is, there is no other undertaking to perform such activity at the appropriate level.

### **Health Sector**

The right to supply medicines and medical assets is justified by the protection of public health, through timely procurement and greater ability to control the procurement and distribution of medicines and medical assets, as well as their rational consumption. Deliveries to the health institutions are conducted in a rational and economically justifiable manner.

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

### **Energy Sector**

The Montenegrin Electric Enterprise (EPCG), as a public provider and the undertaking that performs the activity of public interest, has an obligation to properly execute the provisions of the energy balance of Montenegro regarding electric energy and properly supply consumers. The Electric Enterprise can perform the collection of fees for supplied electricity only by tariffs and prices approved or adopted by the Regulatory Agency for Energy.

The Montenegrin Transmission System Operator as an undertaking that performs the tasks of transmission, transmission operator and market operator as the activity of public interest has an obligation, stipulated by the Law and by the licenses of the Energy Regulatory, to properly perform these services, and that the collection of charges for the rendered services carries out at prices determined by the Regulatory Agency.

### **Rail Transport Sector**

In accordance with the provisions of the Law on Railway (Official Gazette of the Republic of Montenegro 21/04 and Official Gazette of Montenegro 54/09), the infrastructure management is an activity of general interest performed by a business organisation (the manager). The Infrastructure Management includes the following: maintenance of infrastructure, organization and regulation of railway transport, infrastructure protection and performance of the function of investors on the construction and reconstruction of infrastructure.

### **Telecommunications and Postal Services Sector**

The universal postal operator is obliged to provide the prescribed density of access points which meets the needs of users, in accordance with economic and technological development. In addition to the universal postal services, the Post performs other activities that are of general economic interest, such as reserved postal services and commercial postal services.

The activity of the enterprise is to provide access to electronic communications networks, and providing of electronic communication services, which is carried out in accordance with the law, and in particular:

- transmission of broadcasting signals to the public and commercial broadcasting services
- broadcasting of radio signals for the public broadcasting service of Montenegro
- maintenance of sub-networks on the territory of Montenegro
- rental of infrastructure for other providers of electronic communications networks and services
- services of electronic communication systems
- design of electronic communications networks
- maintenance of technical facilities and equipment owned by commercial and public broadcast service
- other duties in accordance with the Law and the Statute of the enterprise.

## **Broadcasting Sector**

Article 93 of the Law on Broadcasting provides that public broadcasting services produce and broadcast programs of informative, cultural, artistic, educational, scientific, children's, entertainment, sports and other content, which ensure the realization of the rights and interests of citizens and other entities in the area of information and broadcasting.

Article 95 of the Law on Broadcasting lays down that in order to achieve a general interest in the field of information and broadcasting, the broadcasters of public broadcasting services:

- independently produce, edit and broadcast the programs that are not in the service of political, economic or other power centres;
- objectively and timely inform the public about political, economic, cultural, educational, scientific, sports and all other important events and developments in the country and abroad;
- produce and broadcast programs for all segments of society, without discrimination, especially taking into account the specific social groups such as children and young people, minority ethnic groups, disabled, socially at-risk, vulnerable, etc.;
- nurture the culture of public communication and language standards;
- produce and broadcast programs that reflect the cultural identity of peoples, national and ethnic groups;
- produce and broadcast programs in the mother tongue of national and ethnic groups in areas where they live;
- during the election campaign, according to special rules, ensure equal representation of political parties, coalitions and candidates who have accepted the candidacy and election lists;
- in accordance with the act of the Council of the Agency, implement quotas for broadcasting of independent productions;
- co-operate and exchange program contents that are of interest to the citizens of Montenegro.

## **Utilities Sector**

The undertakings with exclusive and special rights have an obligation to fulfil the tasks of general economic interest, that is, to organize their activities in a way which provides that the funds collected from the citizens of Montenegro (in the form of taxes and fees for municipal services) are managed in a rational way, and to deliver the quality of services that is defined by the Law, as well as to provide cost-effectiveness in their work.

The Law on Utilities (Official Gazette of the Republic of Montenegro 12/95) prescribes that the performance of utility services must enable a permanent functional ability of facilities, and the provision of municipal services, and delivery of municipal products can not deny the user, apart from in exceptional circumstances when the provider may temporarily deny the utility service or utility product to the user who uses the utility in a non-intended manner, over the extent permitted or other condition prescribed, or without the consent of the competent authority, and if do not pay for the utility services. Public enterprises which are entrusted to carry out specific utility service have to conduct their activities in accordance with the aforesaid.

## **Regional water supply system**

Pursuant to the Law on Regional Water Supply of the Montenegrin Coast (Official Gazette of Montenegro 13/07), the public enterprise The Regional Water Works for the Montenegrin Coast is obliged to ensure efficient construction and permanent functional capacity of the regional water supply system, which is provided by permanent maintenance of plants and equipment used for carrying out water supply activities. The regional water supply system connects to water supply

systems of the coastal municipalities, whereupon the rendering of services, that is, delivery of water can not be denied provided that the user meets the contract commitments. Notwithstanding, the provision of services may be denied to the user, if the water supply service is conducted without the approval of the competent authority.

### **Health Sector**

The obligation of the Institution of Public Health Montefarm is to perform the procurement of medicines and medical assets solely on the basis of the announced international tenders, in coordination of substantive balances of public health institutions, and with the consent of the Ministry of Health and the Republican Fund for Health Insurance.

International tenders are conducted on an annual basis. The selection of the most favourable tenderer is carried out by the Commission composed of professional representatives of the Ministry of Health, the Republican Fund of Health Insurance, the Institution of Public Health Montefarm, as well as the Medical Experts for particular areas. The Commission establishes the quality criteria that tenderers must meet on the basis of the Law on Medicines and the Law on Public Procurement.

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

The regulatory functions are entrusted to the regulatory agencies that are completely independent in their work.

Pursuant to Article 6 of the Law on Energy (Official Gazette of the Republic of Montenegro 39/03 and Official Gazette of Montenegro 53/09), the Energy Regulatory Agency was established in order to ensure the following objectives:

- 1) that the principles, policies and programs established and promulgated by the Government are implemented and enforced on the basis of the principles of objectivity, transparency and non-discrimination;
- 2) a reliable, safe and environmentally sound supply of energy to the tariff-customers of the Republic of Montenegro at fair prices;
- 3) that Energy Undertakings may cover their costs, including a reasonable rate of return on their investment;
- 4) the balancing of the interests of Tariff Customers and Energy Undertakings;
- 5) promotion of safety, competency and efficiency on the part of Energy Undertakings;
- 6) perform other tasks in accordance with this law.

The Government has provided the initial funding necessary for the establishment of the Agency, after which the Agency is being funded by the fees determined and collected in accordance with the Law and other general acts. The Agency publishes the determined amounts of fees for each year, paid by the energy undertakings, in accordance with rules that establishes. The fees are determined in order to cover the estimated costs of the agency during the year.

The regulatory functions are entrusted to the Directorate of Railways, which was established as a separate regulatory authority of the state administration. This administrative body is independent of the Railway Infrastructure and the Railway Transport.

The Directorate of Railways is responsible for tasks relating to: development, construction, reconstruction, maintenance and protection of the Railway of Montenegro; participation in development strategies, projects, medium-term programs and annual plans, the preparation of calls for tender, the implementation process of the transfer of work to create technical documentation, in construction, reconstruction, investment and regular maintenance, organization of professional control and quality of work performed; proceedings to resolve the legal issues of property, obtaining approval for the construction, acceptance of constructed railway, real estate

records belonging to the railways, the preparation of financial documentation and monitoring expenditure of funds; issuance of approval for connecting of the public roads and railway tracks crossings, installation of infrastructure facilities (pipelines, water mains, sewers, electrical, telephone and telegraph lines, etc.) on the rails and protective belt, development, modernization, reconstruction and protection of railroads; licensing business organizations for railway infrastructure management and certificate of security management infrastructure, licenses and certificates to the transporters for public transport and transport for their own purposes, the issuance of permits for the reconstruction of railway infrastructure and the construction and reconstruction of the overpass above the electrified railway; issuing approval for the construction, reconstruction, maintenance and protection of industrial railways; concluding contracts with transport operators engaged in the public interest, issuance of special permits for transportation of shipments, approval for the production of prototype rail car, authorizing the use of new materials, equipment, parts and vehicles , monitoring developments in the field of railway transport; determining the number of railway wagons, which must have security device or hand brakes; development of technical regulations, norms, standards and agreements in the field of railway infrastructure and transport and in the railway transport, tasks of notifying body; keeping prescribed records, as well as other tasks assigned under its competences.

The Agency for Electronic Communications and Postal Services was established on the basis of the Law on Electronic Communications (Official Gazette of Montenegro 50/08 and 53/09). Article 8 of this Law defines the Agency's scope of work.

The sources of funding of this Agency are:

- 1) fee for registration;
- 2) compensation for performing the tasks of regulation and supervision of markets;
- 3) charge on the basis of authority for the use of radio frequencies and numbering;
- 4) fees prescribed by laws governing areas that are under the competences of the Agency.

The regulatory and business functions related to the operation of public broadcasting services have been separated and assigned to two mutually autonomous bodies. The regulatory function performs the Broadcasting Agency as an independent regulatory authority for the area of broadcasting (Articles 7 and 21 of the Law on Broadcasting). The business function is carried out by the Councils of national and local public broadcasting services (Article 102 of the Law on Broadcasting and Article 22 of the Law on Public Broadcasting services of Montenegro).

The adoption of the Law on Medicines (Official Gazette of the Republic of Montenegro 80/04), the Law on Amendments to the Law on Medicines (Official Gazette of Montenegro 18/08), with the special reference to Article 7a and 7b, as well as the Regulation on the Establishment of the Agency for Medicines and Medical Products (Official Gazette of Montenegro 62/08), the regulatory functions in the field of medicine are entrusted to the Agency for Pharmaceuticals and Medical Products of Montenegro.

The Agency is competent to:

- 1) issue, amend, update and renew a permit for placing the medicine on the market;
- 2) issue permits for: the production of medicine, the wholesale and retail trade of veterinary medicine;
- 3) issue the approval for clinical trials of medicines that do not have permission to be released onto the market, record the clinical trials of medicines that have permission to be released into the market, and performs the control of implementation of clinical trials;
- 4) assess the relationship of risks and benefits of drugs on the basis of records on unwanted outcomes of the medicines and provides technical review of the quality, safety and efficiency of use of medicines;
- 5) issue certificate issued on the application: good manufacturing practices, good clinical practice and other certificates in accordance with this Law;

- 6) issue certificates for the export of medicines in accordance with the recommendations of the world health organization;
- 7) approves the purchase or importation of medicines that do not have permission to be put into circulation, medicines that are intended for scientific and medical research, for further processing or for treatment of a particular person or group of persons, as well as other medicines in accordance with this Law;
- 8) issue a permit to import, export and transit of medicines that contained or do contain narcotic and psychotropic substances, and for substances that are used for their production (precursors), in accordance with international conventions;
- 9) participate in international standardization in the field of medicine;
- 10) perform data collection and processing of data about consumption of drugs;
- 11) perform tasks of information and education about medicines and provide information relevant to the implementation of measures for rational use of medicines;
- 12) take measures to ensure the quality of medicines;
- 13) perform the classification of medicines for which the license to be released into circulation was issued, in order to establish the relevant rules regarding issuance of medication;
- 14) keep records of issued licenses, permits, certificates;
- 15) attain cooperation with international entities and national regulatory authorities in the field of medicine;
- 16) propose a harmonization of regulations in the field of medicine with EU legislation and regulations as well as with the guidelines of international institutions;
- 17) issue the expert opinion on the categorization of products into the medicine or group of medicines as well as other expert opinions deriving from the jurisdiction of the Agency;
- 18) control the quality of medicine and issue a certificate of quality;
- 19) perform duties in connection with the disposal of waste and destruction for its own needs;
- 20) issue permits for imports and exports of immunological medicines, medicines from blood plasma and radiopharmaceutical medicines;
- 21) perform other duties in accordance with Law."

The governing bodies of the Agency are: the Board of Directors, the Supervisory Board and the Director. The Agency is funded from its own sources of income. The Agency was established as an independent legal unit.

The regulatory bodies for the utilities sector have not been created, whereas the business function is carried out by established public undertakings i.e. their management bodies. In accordance with the planned Law on Water Supply Services and Waste Water Management, pursuant to the Plan of water supply sector reform and management of wastewater, shall provide for the establishment of a separate regulatory body for this area.

Regulatory bodies in the area environmental protection have not been created, whereas the business function is performed by established public undertakings i.e. their management bodies.

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

1. The Montenegrin Electric Enterprise - EPCG has a monopoly in the production and distribution of electricity and supply of electricity.
2. The Montenegrin Transmission System Operator has a monopoly in the transmission of electricity, power system management, maintenance and development of transmission network in the territory of Montenegro.

The Montenegrin Electric Enterprise - EPCG and the Montenegrin Transmission System Operator are not classic monopolists, since they do not establish a price for their services, which is done by the Regulatory Agency for Energy on the basis of objective criteria.

1. The universal postal service is performed by the universal postal operator (the Post of Montenegro) as a legal person which meets the conditions prescribed by the Law on Postal Services.
2. The broadcasting of signals for public broadcasting service Montenegro, as well as the transmission of broadcasting signals for public and commercial broadcasting service is performed by the Public Enterprise Broadcasting Centre.
3. The Railway Infrastructure is the majority state-owned, so that in a certain sense can be seen as a state monopoly, being a result of the ownership and organizational transformation of the railway system, while on the other side, the Law on Railways and the relevant by-laws have provided that any other legal undertaking that meets the requirements prescribed by these acts, can obtain a licence of infrastructure management. However, so far there were no such interest and no such request has been submitted to the competent authority.

The Public Health Institution "Montefarm" has a monopoly over the supply of public health institutions with the medicines, medical assets.

For some utility services is justified that certain territory is supplied by products (goods and services) of only one producer. In the utility activities, a natural monopoly is registered in so-called network utility operations, in the part of activity relating to water supply, that is, in the activities of capture, treatment and suppression of water from the source into the distribution network.

## **B. Sectoral aspects**

**Sector specific aspects are dealt with in the relevant chapters.**

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