INFO-LETAK br. 09/2019

USTAVNI SUD SRBIJE ODBACIO PREDLOG ZA OCENU ODREDBI O ZAŠTITI PODATAKA U ZAKONU O ZAŠTITI KONKURENCIJE

U aprilu ove godine, Ustavni sud Republike Srbije je odbacio predlog za ocenu ustavnosti člana Zakona o zaštiti konkurencije („***Zakon***“), kojim se uređuje zaštita podataka pred nadležnim državnim organom - Komisijom za zaštitu konkurencije („***Komisija***“).

Prema navedenom članu Komisija može da odobri mere zaštite podataka, ukoliko oceni da je interes podnosioca zahteva opravdan i jači od javnog interesa u odnosu na slobodan pristup informacijama.

Podnosilac zahteva može biti (i) stranka, (ii) podnosilac inicijative, ili (iii) treće lice koje je dostavilo/stavilo na uvid podatke ili dokumenta. Podnosilac zahteva dužan je da u zahtevu učini verovatnim mogućnost nastanka znatne štete usled otkrivanja podataka.

Ustavnost predmetnog člana je osporio Poverenik za informacije od javnog značaja i zaštitu podataka o ličnosti („***Poverenik***“). Posebno, Poverenik tvrdi da predmetni član Zakona nije u skladu sa članom 2. Zakona o slobodnom pristupu informacijama od javnog značaja, koji propisuje da su zaštićeni podaci od javnog značaja.

Budući da je Ustavni sud odbio zahtev za ocenu ustavnosti, zaštićeni podaci i dalje imaju različit status prema Zakonu o slobodnom pristupu informacijama od javnog značaja, kao i Zakonu.

Komisija je javno podržala ovaj zaključak Ustavnog suda, ističući da isti doprinosi pravnoj sigurnosti tržišnih učesnika, kao i ujednačenoj pravnoj praksi.

Zanimljivo je da je sudija Ustavnog suda dao samostalno mišljenje o ovom pitanju. Prema njegovom mišljenju, Ustavni sud je propustio da odgovori na pitanje da li je navedeni član Zakona u suprotnosti sa Zakonom o slobodnom pristupu informacijama od javnog značaja. Takođe, sudijsko tumačenje je da su zaštićeni podaci javni, budući da su nastali u postupku i u radu organa javne vlasti, te

NEWSLETTER no. 09/2019

SERBIA: CONSTITUTIONAL COURT REJECTS APPLICATION FOR REVIEW OF PROTECTION OF INFORMATION PROVISIONS IN COMPETITION ACT

In April this year, the Serbian Constitutional Court rejected the application for constitutional review of an article in the Competition Act (the “***Act***”), which regulates protection of information before the country’s competition authority – the Commission for Protection of Competition (the *“**Commission***”).

According to the examined article, the Commission may grant protection of information, if it finds that the interest of the party is justified and stronger than the public interest with respect to freedom of information.

The applicant may be (i) the party (ii) a person that filed a complaint, or (iii) another person which submits/provides the information or document. The applicant must show the possibility of substantial damage due to the unveiling of the data in the application.

The article’s constitutionality was challenged by the Commissioner for information of public importance and personal data protection (the “***Commissioner***”). Specifically, the Commissioner argued that the challenged article of the Act was not in accordance with Article 2 of the Freedom of Information Act, which prescribes that protected information is of public interest.

Since the Constitutional Court has rejected the application for constitutional review, protected information continues to have a different status under the Freedom of Information Act and Competition Act, respectively.

The Commission has publicly supported the ruling of the Constitutional Court, noting that this contributes to legal certainty for undertakings, as well as to a uniform legal practice.

It is interesting that a judge of the Constitutional Court gave a dissenting opinion in this case. In his view, the Constitutional Court failed to resolve the issue whether the challenged provision of the Competition Act was contrary to the Freedom of Information Act. Also, he argued that judicial interpretation was that protected information was public, as they were produced in proceedings by

se nalaze u dokumentima takvog organa. Posledično, sudija koji je izrazio samostalno mišljenje smatra da je ovakav zaključak Ustavnog suda suprotan načelu jedinstvenosti pravnog poretka.

public bodies, and are found in the files of such bodies. Consequently, the dissenting judge considered that the ruling of the Constitutional Court was contrary to the principle of the unity of the legal order.

Za više informacija o ovome kontaktirati / For more information about this please contact:

Nina Strahinović
Associate – Doklestic Repic & Gajin
nina.strahinovic@doklestic.law
T. +381.11.414.33.60

Slobodan Doklestić
Partner – Doklestic Repic & Gajin
slobodan.doklestic@doklestic.law
T. +381.11.414.33.60