



Serbia & Montenegro*

– Dr. Slavica Penev†

Serbia & Montenegro¹ (earlier known as the Federal Republic of Yugoslavia), situated in the Southeastern part of Europe on the Balkan peninsula with access to the Adriatic Sea, was renamed Union of the State of Serbia and Montenegro in February 2002. In the same year, the Serbian and Montenegrin components of Yugoslavia began negotiations to forge a looser relationship, which became a reality in February 2003.

They suffered from several environmental problems as a result of the war particularly the NATO bombings.

Talks about the feasibility study on a Stabilisation and Association Agreement (SAA) with the EU) started in September 2003. In its Feasibility Report of 12 April 2005, EC concluded that Serbia and Montenegro is sufficiently prepared to negotiate an SAA with the EU. On April 25, 2005, the EU Council endorsed the Feasibility Report and invited the Commission to submit the negotiation directives for the SAA. On October 10, 2005, the EU began negotiations on an SAA with Serbia and Montenegro.

Economy

While the economy suffered from huge crisis, having been subjected to a decade of misrule, conflict and international isolation, the prospects for recovery seemed to be favourable. These problems positioned it among the countries that lagged behind most in the transition to a market economy and multiparty democracy. However, Serbia & Montenegro occupy a key strategic position in Southeastern Europe and has a potentially large market that is of interest to foreign investors. Furthermore, it also has a large and once vibrant SME sector.

After renewing its membership in the IMF in December 2000, Yugoslavia continued to integrate into the international community by rejoining the World Bank

PROFILE	
Population:	8.1 million***
GDP (Current US\$):	20.7 billion***
Per Capita Income: (Current US\$)	1,910 (Atlas)*** -- (PPP)
Surface Area:	102.2 thousand sq kms.
Life Expectancy:	73.1 years**
Literacy (%):	98.0** (of ages 15 and above)
HDI Rank:	--
Sources:	
- World Development Indicators Database, World Bank, 2005	
- Human Development Report Statistics, UNDP, 2004	
(**) For the year 2002	
(***) For the year 2003	

(IBRD) and the European Bank for Reconstruction and Development (EBRD). The new regime has increasingly addressed legislative and administrative barriers to economic development, restructuring the financial sector and signing free trade agreements with neighboring countries. A World Bank-European Commission sponsored Donors' Conference held in June 2001 raised US\$1.3bn for economic restructuring. However, severe unemployment remains a key political economic problem for this entire region.

Rich deposits of bauxite, coal, lead, copper and zinc in the mountains, together with tourism in the Adriatic coast of Montenegro are the major sources of income. (This is relevant only for Montenegro.) Major sources of income in Serbia are services (trade, financial sector services, transport services). Mining and quarrying do not have important role in GDP of Serbia. Industry and agriculture are permanently lagging behind services sector, due to high growth rates of services sector.

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1 Some of the information in this introduction has been compiled from the CIA World Factbook, <http://www.cia.gov/cia/publications/factbook/geos/yi.html>

Competition Evolution and Environment

The 1990s was a decade of economic devastation in Federal Republic of Yugoslavia (FRY). Sanctions, combined with the legacy of the socialist market economy and its financial mismanagement had left FRY in a poorer economic state than all other countries in the region. The complexity of Serbia & Montenegro political relationships, slow progress in privatisation, legal uncertainty over property rights, scarcity of foreign-investment and a substantial foreign trade deficit were holding back the economy.

Moreover, the utility sectors were being operated by inefficient vertically integrated, state-owned monopolies, which disrupted the domestic competitive environment. E.g. Energy sector, where the electricity was provided by a vertically integrated public electricity company which possess the exclusive right to import, generate, transmit and distribute electricity.

In order to overcome this situation and to strengthen the constitutional framework, competition was regulated at the Federal level by the *Federal Antimonopoly Law of 1996*. This was the first such attempt at codifying the competition law in FRY. However, it was a quasi market economy, with social ownership, as some elements of market economy were present. In FR Yugoslavia: Serbia & Montenegro the primary obstacle to opening markets to competition seemed to be the limited competition culture, particularly among business and policy-makers.

The *Anti-monopoly Law* did not completely regulate competition, because many other laws in the Serbian legislative system contained provisions regulating market competition.

Before its adoption, the Trade Law of 1993 regulated competition policy. Until recently, The Trade Law regulated some aspects of competition policy of Serbia.

Besides the Trade Law, there were other laws, which directly influenced or regulated market competition:

1. Foreign Trade Law (1992):
 - Article 84 of the law defines unfair competition and lays down number of acts that constitute unfair behaviour; and
 - Article 26 defines market limitation as an act of a state body, commercial concern that limits or prevents free access to the market or in other words disturbs market competition.
2. Law on Social Control of Prices (1987):

This law empowers the Serbian state and local state structures to regulate market competition and control prices.

In 2003, Yugoslavia was reorganised, which led to the constitution of the new state union of Serbia & Montenegro

and the Federal Anti-monopoly Law was taken over by Serbian authorities. However, the same was almost inoperative because of its general, unclear and incomplete provisions.

Competition Law and Policy

The development of competition policy and law in Serbia and Montenegro has been very slow even during the last few years, when transition progress in other areas has been intensified.

Numerous shortcomings/gaps have been found in the Anti-monopoly Law of 1996 and therefore the Federal government planned to amend/redraft the law for both the Republics. It was suggested that the procedures for the making of the new law should primarily cover the merger control provision, which was not existing in the Anti-monopoly Law.

Not only has competition regulation remained dispersed through other Laws, but an over complicated system of relations has grown up between legal institutions and the body responsible for implementing the Anti-monopoly legislation.

The idea was not only to adopt a new competition law but also to amend many other legislative texts as many of them contained provisions relevant to competition.

Under the SAA, Serbia and Montenegro would need to enforce competition rules in their respective jurisdiction so as to ensure free and fair competition domestically, between the two Republics and to protect fair bilateral trade with the Community. Therefore, priority was given to adoption of legal bases and establishment of functioning administrative structures.

After much discussion, both within and between Serbia & Montenegro, each Republic has prepared a draft Competition Law, based on a common model. The Law on Protection of Competition has been adopted by the Parliament of the Republic of Serbia in September 2005, while the Parliament of the Republic of Montenegro adopted the Law on Protection of Competition in November 2005.

According to these laws the institutional structures for their implementation have to be developed. In Montenegro, completely new institutions will have to be set up.

In Serbia, a new independent agency – Commission for the Protection of Competition will draw experience and staff from the AMC of Yugoslavia. According to this law, the Commission is an independent and autonomous organisation entrusted with public competencies within the scope defined by this Law. The Commission is responsible to the National Parliament of the Republic of Serbia for its work and shall submit to it its annual report of activities.

The Commission shall perform the following activities within its competency:

- 1) make decisions concerning rights and obligations of the undertakings, pursuant to this Law;
- 2) be involved in making the regulations regulating the issue of competition protection;
- 3) propose to Government the passing of regulations for implementation of this Law;
- 4) monitor and analyse conditions concerning competition on particular markets and in particular sectors;
- 5) issue its opinion to the competent authorities concerning draft regulations as well as existing regulations violating competition;
- 6) issue its opinion concerning the implementation of regulations in the field of protection of competition;
- 7) facilitate international cooperation referring to international commitments undertaken relating to protection of competition, and cooperate with international competition authorities in order to gather data;
- 8) cooperate with government bodies, institutions for regional autonomy and local self-governments in order to provide conditions for consistent implementation of this Law and other regulations referring to the matters of significance for the protection of competition;
- 9) take actions in order to develop awareness of the importance of the protection of competition;
- 10) keep record of notified agreements and undertakings having dominant position on market as well as concentration of undertakings, pursuant to this Law;
- 11) initiate, conduct and monitor realisation of measures providing protection of competition; and
- 12) perform other activities pursuant to this Law.

An effective, compatible and fully functioning competition policy is very essential in the context of the forthcoming SAA with the EU.

Institution and its Competencies

The *Anti-monopoly Commission (AMC)* was constituted in 1997 and became operational in 1998 at the Federal level under the aegis of the federal administration body within the Federal Ministry of Economy and Internal Trade. The law gave AMC the functions of enforcing the law against abuse of dominant positions, analysing the acts of dominant market players, examining the existence of dominance on particular markets and anticompetitive agreements and taking decisions about abusive practices and agreements.

After the establishment of the State Union of Serbia and Montenegro in 2003, the Anti-monopoly Commission has been shut down and is now just a department in the Serbian Ministry of Trade and Tourism, without much power to intervene.

Anticompetitive Practices

The Anti-monopoly law of the FRY, contrary to other laws dealing with competition issues defined only two issues:

- Ban on abuse of the monopolistic/dominant position of an enterprise on the market: Abusive conduct by monopolies or dominant firms is defined as actions causing disorder in markets, which allow undue profits, which actually damage other entities and consumers. Such actions included price increases above general market price growth etc.

The Acts that might cause such abuse were listed in the Article 3.2 of the law which are: Increasing prices;

Box 92.1: IPR-based Monopoly Warned

Janeks, manufacturer of lead devices for sealing put forward his notification to the Antimonopoly Department due to its inability to participate in an invitation for bidding for the procurement of plastic coded seals.

The *Bureau of Measures and Precious Metals* announced an invitation for participation in bidding for procurement of plastic coded seals while the Decree prescribing lead sealing mark was in force. The Director of the Bureau had the authorisation to issue 'Decree on kinds and shapes of mark' pursuant to the Law on Units of Measures and Measuring Instruments.

ELNOS, the manufacturer of plastic coded seals successfully got the procurement contract. Thereafter,

the Bureau issued the Decree and published it in the official gazette of FRY.

Although, Director of the Bureau admits the fact that the procedure preceding the procurement was not observed, its inherent behaviour paved way to creation of a monopolistic position in the market.

Over time, Janeks may be able to produce plastic seals but the ELNO's patent protection forbids it from manufacturing similar seals.

The Anti-monopoly Department cautioned the parties involved, that such acts distort competition and therefore they should stop getting into such activities.

Source: Office of the Anti-monopoly Department, Ministry of Trade, Tourism and Services of the Republic of Serbia

increasing distribution fees; applying discriminatory conditions to some commercial concerns; imposing additional conditions upon contracts with some commercial concerns

As per Article 3.3 of the law, the above-mentioned acts were considered null and void.

- Prohibition of monopolistic agreements: They are defined as contracts, agreements or arrangements between economic entities, which have as their object or prevention of competition or market disorder and harmful to the interests of consumers.

The law does not regulate concentrations, but deals solely with monopolistic agreements without differentiating between horizontal and vertical agreements. Article 4.2 of the law enumerates a list of agreements that might be considered monopolistic: Market division; direct or indirect establishment of prices; distribution and exclusivity clauses; exports and imports with exclusivity clauses.

However, Article 4.4 provided an exception, if the monopolistic agreement contributes to improvements in production or good transactions, improves technological progress or if it is useful to consumers, under the condition that no additional limits are imposed upon the economical concerns of other businesses. On the other hand, if the acts that do not fall under the purview of Article 4.4, was considered null and void.

Other Market Regulatory Laws

Ten years of economic crisis, international isolation and stagnation reversed the country's overall economic development and had a significant impact on the utilities sector. The drive to EU membership will continue to shape regulatory developments in Serbia & Montenegro.

On the whole, the sectors those are under the control of state-owned legal monopolies:

*Telecommunications Sector*²

Reforms in this field are underway in both the Republics. The new government has made a commitment to upgrade the telecom sector so that it can be used as a powerful leverage to catch up with the developed world. However, this will include vigorous efforts in terms of legislative reform, creating a competitive environment and by attracting direct investment.

The *Federal Ministry of Telecommunications* was established on March 21, 1997 and is responsible for policy-making, regulation of telecommunication in FRY, bringing domestic practices in line with standards and recommendations thereof, as well as coordinating the

Box 92.2: Alleged Agreement on Monopolistic Behaviour of Wine Producers

In a recent case, *Ministry of Agriculture and Waterpower Engineering* of Serbia submitted an application against wine producers on the grounds that five major wine producers have at its session of the Annual Assembly of the Business Association 'Srbijavino' entered into a purchase price agreement on grapes for production of low quality, quality and high quality wines.

Proceedings were commenced on the basis of Article 4 of the Antimonopoly Law which states that a monopoly agreement between economic entities creating/may create distortion of competition adversely affecting consumers.

The Antimonopoly Department conducted its inquiry by collecting data and checking facts in order to establish whether this was a case of alleged agreement on purchase prices and if so, whether it was put into practice.

After scrutinising all the data collected from the Chamber of Commerce, Institute of Statistics, wine producers and the Manager of 'Srbijavino', the Department came to a conclusion that the submission against the wine producers that they jointly agreed on a purchase price at the 'Srbijavino' was incorrect, as the amount of purchase price was never discussed at the session at all.

Source: Office of the Antimonopoly Department, Ministry of Trade,

relevant authorities of the two Republics. Before 1997, the telecom sector was under the purview of the Federal Ministry of Transport and Communications and Federal Radio-Communications Department.

In Serbia, the government is preparing amendments to the Telecommunications Law to further align Serbian legislation with EU directives and stress the importance of a liberalised and open market.

New framework envisions a division of powers between the Federal and the republican levels. The proposed regulatory framework is prepared with the following aims:

- It is fully EU compatible; and
- International provisions governing telecom activities.

The key novelty introduced by the new regulatory framework is the Telecommunications Agency, which is yet to be established.

2 Website of the Federal Ministry of Telecommunications (www.fmt.sv.gov.yu)

Box 92.3: Abuse of Monopolistic Position in IT Services

The Anti-monopoly Commission received a complaint filed by 'Visnet' against *Telekom Srbija*, for abusing its dominant position in the area of internet telephone services.

Visnet, a company which specialises in and uses modern technologies in the field of internet especially transfer of voice, picture etc. in the form of data over Internet Protocol Network moved an appeal against Telekom Srbija, a telecommunication company having an exclusive right to render services in fixed telephone lines and owns the public telephone network. It enjoys authorised monopolistic position until 2005.

Moreover, Visnet has signed an agreement with Telekom Srbija for leasing its E1 devices (it enable users to access internet).

Telekom Srbija, responding to the allegations stated the Visnet doesn't have users of E1 devices for access to internet and that it uses these devices exclusively for execution of incoming international fixed telephone services.

While examining the details of the case, AMC also called upon Federal Ministry of Transport and Telecommunications seeking its expert opinion.

AMC, based on the in-depth analysis and expert opinion decided that Telekom Srbija has not abused its monopolistic position. Instead, Visnet, by providing transfer of voice over internet protocol, has entered into the scope of fixed telephone system and the exclusive right of Telekom Srbija.

Source: Office of the Antimonopoly Commission

Montenegro is also developing its telecom strategy so as to align to EU rules and standards.

Energy Sector³

The stabilisation of energy and its long-term security are basic pre-requisites for the overall economic reconstruction process. The energy policies of SCG need to be further developed with a view to gradual integration with EC policies.

In Serbia, the reconstruction and further enhancement of the energy sector was delayed due to the limited capacity of the responsible ministry to set energy strategy and to enforce a comprehensive sector reform. However, the situation has improved a lot.

The Law on Energy was adopted in August 2004, which provides the outline for the restructuring of electricity sector, establishment of an independent authority. Although the implementation was delayed, the establishment of the Energy Regulatory Agency is underway. It is considered that the new law will stimulate investment of private capital into the energy sector, with the greatest benefit going to consumers.

However, substantial actions are still needed to reform the sector to improve energy efficiency and to reduce environmental pollution.

In Montenegro, the EU compatible new law on Energy was adopted in June 2003 requiring the establishment of a

market for energy and a competition rule within two years after the law comes into force. The law has also established an independent regulatory body responsible for the electricity market.

Consumer Protection⁴

On July 02, 2002, a comprehensive Federal Law on Consumer Protection was adopted by the Federal Parliament, which repealed the Federal Trade Law provisions governing the consumer protection in Yugoslavia. The enactment was with the objective of:

- creation of an integrated system of consumer protection;
- upgrading the system that existed under the old Federal Trade Law;
- introducing elements of EU consumer law;
- creation of an administrative body in-charge of consumer protection; and
- promoting consumer education.

However, it has remained unimplemented. The new constitutional arrangements transferred this sector under the control of Republics. Recently, Serbia adopted a new law on Consumer Protection, which aims at aligning rules to those of the EU and has established a programme for consumer protection and is in the process of setting up a Council for Consumer Protection. On the other hand, Montenegro is working on a similar law. The coordination between their efforts should continue to provide for overall consumer protection and to promote the alignment with relevant 'acquis' provisions.

3 FR Yugoslavia Economic Bulletin (http://www.eteba.co.yu/biweekly/e_e_b_2002-jun-17-21.pdf)

4 Compiled from the 'Advisory Report on the Development of Consumer Protection in Yugoslavia in the Context of the EU Stabilisation and Association Process' by SCEPP

Detailed analysis shows that the new Law offers a limited progress in regard to reform in favour of consumers. In other words, consumers are insufficiently prioritised in the overall economic reform process. This situation calls for a sustained and strategically driven effort for the effective development of this sector in Serbia & Montenegro.

Concluding Observations and Future Scenario

Enhanced efforts, both in the legislative and the executive realm is necessary for Serbia & Montenegro in order to take on and implement SAA obligations.

After studying the whole scenario, it may be said that the new competition laws in both Republics, along with all the other relevant laws and by-laws, will not bring the market environment of Serbia & Montenegro into modern

competitive market because of the fact that the economy is still engrossed by state control and only adapts to the free market in which all the social and economic structures necessary for competition exists.

The authorities concerned will need to be well equipped to ensure an efficient enforcement practice, giving priority to cases with serious effects on the market and ensuring deterrent sanctioning of infringements.

Additionally, both Republics are required to develop a competition advocacy and adopt a coherent horizontal approach to promote competition policy in fields of market liberalisation, privatisation, restructuring, the screening of draft legislation regarding competition aspects, and overall strengthening of the rule of law.

Suggested Readings

European Antitrust Review and 'Advisory Report on the Development of Competition law and Policy in Yugoslavia' by SCEPP and Report on the Preparedness of Serbia & Montenegro to negotiate SAA with the EU (www.gov.yu)

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