REVIEW ARTICLE
UDK: 346.545/.546(497.11)
339.137.2
Date of Receipt: January 17, 2016

Vladimir Vučković
Fiscal Council of the Republic of Serbia

Sanja Vučković
University John Naisbitt
Faculty of Business Studies, Belgrade

Milan Stefanović
USAID Business Enabling Project, Belgrade

LAWS AND INSTITUTIONS FOR FAIR COMPETITION AND FAIR BUSINESS PRACTICES

Zakoni i institucije za lojalnu konkurenciju i ravnopravne uslove privređivanja

Abstract

In addition to the preservation of macroeconomic stability in the short and long term, an equally important task – and the one that will gain importance in the future – is to build an appropriate business environment. One of the important elements in this process is the suppression of unfair competition. Unfair competition is perceived as one of the greatest market limitations in Serbia. In addition to grey economy, it includes false and offensive claims about the competition, sale of goods featuring elements that mislead the consumer, divulgement of business secrets, false advertising, boycott of the competition in the form of failure to enter into or execute contracts. We will point out the existing "hard" and "soft" regulatory framework in our practice in this field: "black" and "white" lists of the Tax Administration, different ministries and consumer associations, Code of Ethics of the Chamber of Commerce, provisions of the Law on Obligations, Law on Inspection Oversight, Law on Tax Proceedings and Tax Administration, Law on Trade, Law on Protection of Business Secrets, Law on Advertising, and Law on Protection of Intellectual Property Rights.

Keywords: *fair competition, fair business practice, white and black lists, code of ethics, inspection oversight*

Sažetak

Pored očuvanja makroekonomske stabilnosti na kratak i duži rok, jednako važan zadatak – i u budućnosti sve bitniji – jeste izgradnja odgovarajućeg privrednog ambijenta. Jedan od važnih elemenata u tom procesu jeste borba protiv nelojalne konkurencije. Nepoštena tržišna utakmica se u Srbiji percipira kao jedno od najvećih tržišnih ograničenja. Pored sive ekonomije, to su i iznošenja neistinitih i uvredljivih tvrdnji o konkurentu, prodaja robe s elementima kojima se stvara zabuna kod potrošača, odavanje poslovne tajne, nepošteno reklamiranje, bojkot konkurenta u vidu nezaključenja ili neizvršenja ugovora. Ukazujemo na "meke" i "tvrde" regulatorne okvire koji postoje u našoj praksi u ovoj oblasti: "bele" i "crne" liste Poreske uprave, različitih ministarstva i udruženja potrošača, etički kodeks Privredne komore, odredbe zakona o obligacionim odnosima, inspekcijskom nadzoru, poreskom postupku i poreskoj administraciji, trgovini, zaštiti poslovne tajne, oglašavanju, pravnoj zaštiti intelektualne svojine.

Ključne reči: *lojalna konkurencija, dobra poslovna praksa, bele i crne liste, etički kodeks, inspekcijski nadzor*

Introduction

Serbian economic policy, encompassed and controlled by the arrangement with the International Monetary Fund, covers four areas. These are: fiscal policy, monetary policy, financial sector and structural reforms. The focus is mostly on macro issues, especially the country's fiscal performances – which is understandable, having in mind the great risks to macroeconomic stability stemming from accumulated budget imbalance. Changes in the economic system which determines business practices take a back seat. There is frequent talk of "developing a healthy environment", but it remains limited to general statements and clichés. As a contribution to better understanding of this topic, this article will look at the less visible, but nevertheless important regulatory reform of competition and business environment. Specifically, we will investigate the changes undertaken, as well as those that still need to be implemented in the field of unfair competition and equal business conditions.

Unfair competition (distortion of competition)

The term "unfair competition" is frequently used in colloquial speech to denote different forms of unfair behavior on the market – from unfair competition in the sense in which the word is used in economic science (narrower sense), through abuse of a dominant market position, grey economy, business fraud, excessive import of certain goods, to default on commercial debt, which comprises unfair competition in a broader sense. However, it is also noticeable that the expression, when used in everyday speech, is now increasingly being used in the narrower sense.

Unfair competition – distortion of competition – pertains to deceiving and unfair business practice, which is contrary to good business practice, professional standards and rules of business ethics, and which causes, or could cause, damage to the competition, as well as to consumers and employees. By prescribing and identifying unfair competition activities, economic, business, trading and intellectual property rights and interests of businesses are safeguarded as well as the rights and interests of consumers – users of goods and services supplied by businesses, as well as employees in the economic sector.

Through their business operations, businesses – traders create the recognition of goods and services they sell or provide, making their quality, as well as their own business name and reputation (*goodwill*) recognizable. In other words, they create their business identity. By doing business, in addition to material assets, they also acquire industrial property rights (trademark, patent, business secret, licenses, etc.) as well as non-patented technical knowledge and experience – the know-how. By expanding their businesses, enterprises expand their network of clients – consumers and their employee base, creating and strengthening mutual trust. The way they compete among themselves on the market drives product quality improvements, as well as technological, organizational, process, financial and other types of innovation. Development and growth bring greater success to businesses. However, when the businesses – competitors on the market – use unfair practices when competing on the market, such behaviors are forbidden and sanctioned. Unfair competition disrupts good business practices, relationships between companies and interpersonal relationships, business reputation is injured, market relations and business plans distorted, trust of customers and employees breached, there is economic damage, disputes arise, costs increase, existing investments are destabilized and the future ones jeopardized and public income decreases.

Unfair competition actions comprise a wide set of deceitful and unfair business practices, including examples such as:

- Making untruthful and offensive claims about the competition and revealing information about the competition or their goods or services, other circumstances and elements pertaining thereto, which are aimed at disrupting the reputation and business operations, belittling and discrediting the said competitor (defamation);
- Sale of goods with the marks, information or form such that they create a justifiable confusion among consumers about the source, quality and other properties of goods – including concealing flaws,

trademark breach, patent protection breach, brand name breach, etc.

- Acquiring, using and revealing confidential business information without the consent of its holder in order to obstruct their market position;
- Promising or giving gifts of significant value, material or other benefits to other competitors, aimed at providing the giver with an advantage over the competition;
- Dishonest, untruthful and confusing advertising, which creates or can create confusion on the market, which leads or can lead a certain seller into a favorable position, as well as advertising fictitious sale or fictitious discount for goods, or similar activities, which mislead or can mislead the consumer with regards to prices;
- Boycott of a certain competitor, in the form of unjustified avoidance of entering into or executing a contract with said competitor, which can cause damage to the competitor, and especially in order to lead them into an inferior position on the market.

Unfair competition activities additionally comprise other forms of dishonest behavior on the market, such as coercion or unlawful encouragement of employees to end their employment with one and take employment with another, competitor employer; coercion or unlawful encouragement of businesses to end their business arrangements with their business partner and establish a business relationship with another competitor business partner; unfair import of goods and services; industrial espionage; business bribery; different forms of damage incurred in business operations.

What is key for the suppression of unfair competition, which has especially negative consequences for micro, small and medium enterprises that are the most numerous types of businesses, is an efficient and thorough law enforcement by public and private institutions – inspections, judiciary, business associations and companies.

Relevant research results

Research of the National Agency for Regional Development from 2013 [4] shows that 34% of the SMEs rank unfair competition quite high, as third on the list of market limitations. Similarly, in the research of the National Agency for Regional Development from 2011 [6], the surveyed SMEs ranked unfair competition as third on the list of limitations preventing a greater market reach.

Grey economy, as one of key elements of unfair market competition (unfair competition), still presents a threat to Serbian economy. As many as 59% of the respondents to the Survey of 1000 businesses (from 2015), conducted annually by the USAID's Business Enabling Project, state that the grey economy has an adverse effect on their business operations. The results of the research conducted by the National Alliance for Local Economic Development (NALED) within the USAID's Project for enhancement of competitiveness [5] show that 56% of the surveyed businesses rank their competitors' grey zone businesses very high, as second on the list of factors that burden their businesses the most.

A study of the Foundation for the Advancement of Economics (FREN) and USAID Business Enabling Project [1] show that grey economy in Serbia amounts to 30% of the GDP. For example, Bulgaria is at the same level as Serbia, Romania is better than Serbia by a few percentage points, while in Slovenia, the grey economy's share is 23.5% of the GDP, in Hungary, 22,5%; Czech Republic 16%, Slovakia 15.5%, Germany 12.3%, and Austria 7.6%.

However, research also shows an encouraging trend in terms of inspections, especially thanks to the Law on Inspection Oversight, the implementation of which started on July 30, 2015, with regards to the part pertaining to inspections of unregistered business entities. Thus, the research by NALED and USAID from December 2015 shows that, in comparison to the last year, there has been a significantly smaller number of businesses (less than a third) that have objections to the work of inspectors, while as many as 70% have no objections. The annual survey of the USAID Project for Business Enabling also shows an increase in trust in the work of inspections: compared to last year, in 2015, the number of businesses which believe that inspections efficiently protect them from unfair competition has increased by 6 percentage points (from 30% to 36%). From the moment the Law on Inspection Oversight came into effect, the number of newly registered businesses with the Serbian Business Registers

Agency (SBRA) has increased significantly, which shows a transition from the "invisible" to the "visible" business flows (see Figure 1).

Regulation of protection measures and unfair competition risk management

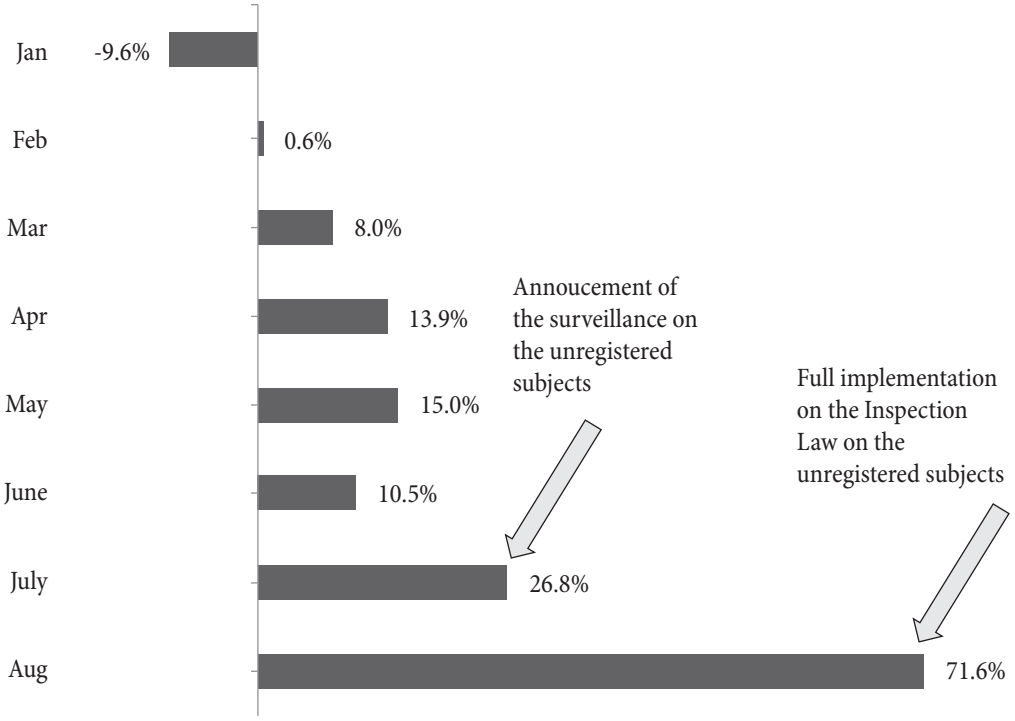
Regulation of unfair competition is autonomous and imperative (legislation) – the so-called soft and hard law. Protection measures and measures of unfair competition risk management differ, depending on its form, intensity and consequences. Depending on the criteria, they can be classified as internal and external, as well as voluntary, inspection (administrative) and judicial. Insight into the nature and effects of these measures shows that the lines of distinction between them are blurred, so it is difficult to strictly classify some of the measures into the first, second or third group.

There is a wide scope of such measures, including: "white" and "black" business lists; compliance programs; temporary measures prohibiting potentially damaging activities; out-of-court damage settlement; judicial compensation for damage; publishing the verdict at the expense of the defendant (financial consequences and consequences for the reputation); prohibition of further unfair competition activities; judicial penalties; temporary or permanent prohibition of operation, prohibition of trade in goods, prohibition of performance of certain services, confiscation of goods (withdrawal of goods from the market and product recall), destruction of confiscated goods, closing down, etc. related measures in the form of orders, prohibitions and seizures, protective measures and security measures (issued in both administrative and court proceedings); revoking of licences and other types of public consent, concessions, public incentives and other rights or benefits; measures issued by courts of honor in chambers of commerce and professional chambers; prescription and penalization of certain acts as offences – criminal, economic offences or misdemeanors.

"White" and "black" lists

One of the mechanisms of unfair competition regulation, protection and risk management comprises "white" and "black" lists of businesses, which attract considerable public attention. "White" business lists are lists of companies and other business entities which show the strongest

Figure 1: Growth of newly registered entrepreneurs in 2015 (in comparison with the same month in 2014, in %)



Source: SBRA

adherence to provisions of laws and bylaws, good business practices and professional and ethical standards. On the other end of the spectrum, those who adhere the least to these provisions and rules are "blacklisted". "White" and "black" business lists are compiled by business associations, international development and financial institutions and organizations, state bodies, companies, banks and non-governmental organizations, as well as media outlets. Their preparation stems from the laws or other legislation, or from the acts of autonomous and "soft" law, i.e. decisions of companies themselves and general acts of business associations.

The purpose of "white" lists is to provide incentives to companies doing business in line with regulatory and ethical rules and standards to continue to do so, as well as to continue improving their business practices in that respect. In that sense, laws and other legislation, or other general acts, can prescribe additional rights, benefits and advantages to a "whitelisted" business, such as advantage or certain additional ("extra") points upon the conclusion of new contracts, exemption from a part of certain obligations, etc. "Whitelists" have a positive effect on business reputation of a company and send a signal to the company's existing and potential business partners, financiers and investors that this is a company with a low business risk and that there are strong arguments supporting the expectation of its fair and honest behavior in future cooperation as well. Therefore, "whitelists" enhance business performances of a company and indirectly lead to an increase of its profits.

On the other hand, the purpose of "blacklists" is to identify those companies breaching such rules and standards, in which there is corporate liability for irregular and unfair practices and to deny them certain rights, advantages and benefits, as a preventive act, i.e. to prevent their continuation of malicious and damaging practices, or to decrease the probability of potential damage. This pertains primarily to the conclusion of future contracts, undertaking rights and liabilities and initiation of legal action. The reason for a company to be "blacklisted", depending on the type of the list and its direct purpose, the entity compiling it and the legal source it stems from, can be based in a final court decision or a legally binding administrative act or temporary prohibition of business activities, final/legally binding arbitration decision or court of honor decision, but also proven or evident breach of business, professional and moral standards and business ethics. The incentive to compile "blacklists" based on proven or evident breach of business, professional and moral standards is frequently inspired by the fact that court proceedings are, as a rule, long and there is a need to take certain measures to prevent probable or possible damages. Contrary to the "whitelists", "blacklists" have a negative effect on business reputation of a company and send a signal to the company's existing and potential business partners, financiers and investors that this is an "uncertain ground", a "slippery slope", finally leading to a decrease in business prospects and financial losses, and in some cases even into the company's bankruptcy.

"Blacklists" encourage companies to establish and improve their own internal monitoring and control systems as well as anti-corruption mechanisms, which are important to keep the company off the "blacklists" and thus prevent the related damaging consequences. In addition, existing and potential business partners, financiers and investors in "blacklisted" companies are encouraged to conduct thorough business, legal and technical assessments of these companies (i.e. due diligence), to develop a system of acquiring business information and to implement corporate security measures. In this sense, the Company Law prescribes that the activities of internal monitoring specifically encompass: control of compliance of the company's business practices with the law, other legislation and company acts, monitoring accounting policies and financial reporting, verification of risk management policy implementation, monitoring of compliance of the organization and activities of the company with the corporate management code and valuation of company policies and processes, as well as proposals for their improvement. Code of corporate management defines internal monitoring as a general term for inspection, examination and assessment of the compliance of operations, processes and procedures including all types and forms of control measures and activities established and implemented by the management, with the aim of achieving confidence in the business system, reliability of the bases for decision making, possibility

of early recognition of potential loss hazards and timely implementation of measures for their neutralization or mitigation. The most common forms of internal monitoring in application are: internal control, internal control system, risk management, controlling, compliance control, checks in line with the requirements of different management systems, inspections, liquidity and asset management, internal audit, special controls and others. In terms of corporative anti-corruption mechanisms, larger companies have a practice of preparing and implementing corporative integrity plans, among others.

International financial and development institutions have defined reasons for blacklisting companies in five categories, namely:

1) Corrupt practices
2) Fraudulent practices
3) Coercive practices
4) Collusive practices
5) Obstructive practices

Other reasons for "blacklisting" included in regulations and practice pertain to a lack of compliance with environmental, health and safety and consumer protection rules. International financial and development institutions have concluded an agreement on mutual recognition and enforcement of decisions on exclusion of companies from business cooperation, i.e. withholding the right to business cooperation (so-called cross-exclusion). European Union institutions also have a practice of blacklisting (see Table 1).

Numerous EU countries have developed their own blacklisting mechanisms, as well as mechanisms of exclusion of unconscious companies from the market (Austria, Cypress, Czech Republic, Denmark, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovenia, Spain, Sweden, United Kingdom, etc.). Such mechanisms are also in use outside of the EU (USA, Japan, Brazil and other countries).

Speaking of positive practices in surrounding countries, the example of Montenegrin Tax Administration should be pointed out. The Tax Administration of Montenegro publishes the "White list" – a list of tax payers in which the largest degree of fiscal discipline, compliance with tax legislation and meeting tax obligations has been observed. Criteria for the selection of taxpayers to be included in this list are that their tax calculations and tax returns are submitted regularly, that they meet their tax obligations regularly and that during inspections (tax control) no significant irregularities are found that would indicate any type of irregular business practice. Each taxpayer included in the white list can be considered a taxpayer who meets their tax obligations regularly.

In terms of national legislation, the Law on Tax Procedure and Tax Administration prescribes that the Tax Administration shall publish on their official webpage, every quarter, with the balance determined on the last day of each quarter, the name, TIN and amount of taxpayers' tax debt, namely, legal entities with the tax debt in the amount of or exceeding RSD 20,000,000 and enterpreneurs with the tax debt in the amount of or exceeding RSD 5,000,000, which does not constitute a breach of confidentiality obligations. The Tax Administration uses this authorization and fulfils this obligation in practice, publishing the lists of the largest tax debtors on their official webpage. The Law on Public Procurement prescribes negative references and the list of a bidder's negative references. The Ministry of Civil Engineering, Traffic and Infrastructure, in cooperation with the Ministry of Labour, Employment, Veteran and Social Issues – Inspectorate for Labour and other ministries, had compiled and published, at the end of 2014, black and white lists of businesses and other organisations operating

Table 1: The European Commission blacklistings in recent years

	Basis of exclusion, with reference to the EU financial regulation	Number
Art 106(1) a	Bankruptcy and analogous situations	348
Art 106(1) d	Non-payment of social security contributions or taxes	3
Art 106(1) e	Fraud, corruption, involvement in criminal organization, money laundering – definitive judgment	6
Art 106(1) c	Guilty of grave professional misconduct	1
Art 106(1) c	Guilty of grave professional misconduct	1
		359

Source: The European Commission's Directorate General for the Budget on 18 October 2013

in the field of design, construction and monitoring of traffic and other infrastrucure. The purpose of these lists is to bring order to the civil engineering market and assist the companies in complying with the rules, to protect employees and other workers and ensure the partnership of the state institutions with credible companies. Certain consumers' associations – organizations for the protection of consumer rights have compiled and published "white" and "black" lists of sellers, those who comply the most with the legislative requirements and other legislation regulating consumer protection, i.e. who accept the justified complaints of the consumers and the organizations that protect them ("white" lists) and those who do not engage in such practices ("black lists"). Breach of business ethics and unfair competition, which may represent reasons for autonomous "white" and "black" lists by business associations and companies are regulated by the Business Ethics Code and the Law on Commerce.

Legislation ("hard law")

The Law of Obligations sets the legal grounds for conscientious and fair market practices in its principles and other provisions. The Law on Inspection Oversight is the "umbrella" legal framework for the reduction of unfair competition, especially in its part pertaining to the prevention and suppression of activities of unregistered businesses and inspection measures issued against them. The Law on Tax Procedure and Tax Administration regulates the activities of the tax inspection in the field of tax control of persons engaging in unregistered or undeclared activities. Law on Commerce prescribes, in more detail, the prohibition of unfair competition, measures to be undertaken by market inspection and judicial protection from unfair competition. This Law also regulates prohibited speculation and prohibition of pyramid schemes, as well as inspection measures against a person without the legal status of a seller (unregistered business entity).

The Law on Business Secret Protection regulates legal protection of business secrets from all unfair competition activities. The Company Law prescribes that the name of a company cannot be identical to the name of another company and that it must be different from the name of another legal person so that it does not lead to any identity confusion with regards to the other company. The Law on Advertisement prescribes that an advertising message must be true, complete and specific, in line with the law, good business practices of fair competition and professional ethics. Fair competition is also protected by intellectual property laws. Thus, Law on Trademarks prescribes that a symbol cannot be protected as a trademark, among other things, regardless of the goods or services it pertains to, if it is a reproduction, imitation, translation or transliteration of a registered trademark of another entity or any part thereof, which is known, without a doubt, among market participants in the Republic of Serbia as a high reputation mark (renowned trademark), if by using such a mark there would be unfair gains from the reputation of the renowned trademark, or if its distinctive character, or reputation, would be damaged. The Law on Industrial Design Protection prescribes that the holder of industrial design rights cannot forbid a third person from, among other things, multiplication with the purpose of teaching or quoting, as long as such activities are in line with fair competition practices and do not represent an unjustified danger to the normal use of industrial design, as well as that it is clearly stated where the industrial design was taken from. The Foreign Trade Law contains certain measures of protection from unfair competition in a broader sense, envisaging that the Government can prescribe anti-dumping measures, compensatory measures and measures for the protection from excessive import.

The newly adopted Law on Central Record of Temporary Restrictions of Rights of Persons Registered at the Business Registers Agency defines the establishment, contents, grounds for entry and the method of keeping these records of persons for whom a temporary restriction of rights has come into force based on an act from a competent body. Temporary restriction of rights from this Law is a restriction that yields, as its legal consequence, a temporary inability for the person in question to acquire or enforce a right or register a function in a business entity or legal entity, to perform business activities or dispose of financial assets. The grounds for temporary restrictions comprise the following measures: prohibitions, restrictions or security measures for the performance of a

registered business activity or operations, prohibition of disposal of financial assets, prohibition of performance of duties or practice of a profession for the responsible person in the legal entity or entrepreneur, prohibitions or limitations of disposal of shares or other restrictions in line with the legislation regulating the legal position of companies, measures stipulated in legislation regulating the tax procedure and tax administration, measures issued in the procedures from the competence of inspections, measures of revoking authorizations, licenses, permits, approvals, concessions, subsidies, incentives or other rights prescribed by separate laws, as well as other measures in line with the law.

To resolve the issue of the "phoenix" companies – companies founded so that the assets of indebted companies could be transferred to them, while the debt remains in the "old", indebted company, leaving the indebted company as an "empty shell" with no assets to settle the creditors' claims, what is needed is a consistent and uniform application, by the courts, of legal institutes of refutation of the debtor's legal actions (both in case of a bankruptcy and outside of it) and piercing the corporate veil, as well as the provisions of the Law on Obligations, according to which a person to which certain property of a natural or legal person, or a part thereof, is transferred on the grounds of a contract is responsible for the debt pertaining to the said property, or part thereof, in addition to the previous holder and in solidarity with them, up to the amount equal to the value of its assets.

"Soft law"

Unfair competition is not only prohibited by law, or by imperative legislation, but also by "soft law". This primarily pertains to the Code of Ethics adopted by Chambers of Commerce and professional chambers, as well as other business associations. A code of business ethics, adopted by the Chamber of Commerce of Serbia, features a set of provisions advocating free and fair competition, being that the provision of a fair market competition is one of the key requirements of business ethics. Hence, the Code of Business Ethics prohibits unfair, dishonest and unethical forms of competition and market practices, including diverse forms of unfair competition.

Institutions of protection and unfair competition risk management

Inspections

The Law on Inspection Oversight prescribes that inspection oversight is a task of the state administration, the contents and definitions of which are determined by the Law regulating state administration operations, performed by state administration bodies, autonomous province bodies and local government bodies, with the objective to ensure legality and security of business operations, either though preventive action or through measures issued as well as to prevent or eliminate harmful consequences to the goods, rights and interests protected by Law and other legislations. This Law prescribes key points of contemporary inspection oversight affecting fair market competition – risk assessment, preventive action, inspection coordination and suppression of activities of unregistered businesses.

Risk assessment is the pivot point of planning and implementation of inspection oversight. Analysis and risk management have long been known and applied in the financial and commercial sector, and step by step, they are entering into public administration; first, by the nature of things and tasks being performed, in the field of oversight and control (internal and external audit, inspection, expert oversight, etc.). Inspection oversight is based on risk assessment and proportional to the estimated risk, so that the risk is adequately managed. Risk assessment is a part of risk analysis, also comprising risk management.

In order to achieve the objectives of inspection oversight, the inspection is obliged to act preventively. Preventive action is one of the means to achieve the goals of inspection oversight and it starts with the preventive action of the inspection. Just like there is prevention (prevention of development, acquisition and communication of illness) and cure (treatment of patients) in medicine, in inspection oversight as well there is prevention (prevention of breach of law and damages) and correction (elimination of the already established illegal activity and damage). There is a "classical" understanding of inspection oversight, which is performed primarily in a reactive manner – the inspection reacts once damage is incurred, i.e. regulations

breached, it finds the responsible parties and sanctions them. The inspection will always have, in its toolbox of tasks and authorizations, those that are corrective and coercive (repressive) in character, but it is more worthwhile if the inspection is proactive and shifts its focus to prevention, awareness raising, providing expert assistance, monitoring and analysis of the situation in the field, oversight planning, so that damage is prevented and market and citizens protected, and so that it encourages business and economic development.

Monitoring and analysis in the field of oversight and risk assessment directly related to preventive activities make for a preemptive control mechanism that can reduce the number of accidents and their severity (an incident is a circumstance or event pertaining to the determination of direct or indirect hazard presenting a direct risk for the protected good, e.g. human health. If an incident occurs in reality, it is called an accident). Regulators, businesses and inspection should particularly strive, through comprehensive and advanced preventive action, to reduce the scope and probability of possible harmful consequences and so efficiently manage public risks and protect, in practice, the goods, rights and services protected by law and other legislations. It is far more effective and less expensive to act preemptively and prevent the occurrence of illegal activities and their harmful consequences, which have not yet occurred but for which there is a probability, or a possibility that they might, than to react only once they do occur ("prevention is better than cure"). It is especially effective to implement preventive activities at the very beginning, when there are early signs and hints at a probability of harmful consequences, thus thwarting them. This also pertains to those subject to oversight, for whom investments into prevention are cheaper that paying high claims once damages are incurred and they have to repair the damage (e.g. machines in disrepair, business premises destroyed, etc.) and bearing other costs incurred by the harmful consequences.

This Law also prescribes the measures to be issued to an entity subject to oversight (inspection measures) which serve to manage public risks, and their proportionality. The principle of proportionality demands that the measure be simultaneously fitting and necessary, i.e. legal and purposeful (meaningful). Proper implementation of this principle allows for an adequate use of discretionary assessment authorization in inspection oversight and legal predictability. Proportionality means fairness with regards to public administration and the subject of regulation and, in inspection oversight, links directly to risk assessment and risk management. Measures that the inspection issues need have to be proportional to the objective they are aimed at, i.e. they need to be a proportional response to risk – harmful consequence and the probability of its occurrence – and to provide an adequate and necessary level of protection. At the same time, the request to have these measures corresponds to the economic strength of the business, or any other entity to which they are issued, so that it is not unduly burdened and its operation, business and conduct of activities thus unjustly jeopardized as well as its survival on the market in the long run, or even wider, having a significant impact on the lives of their families, employees and suppliers. The purpose is to achieve a balance between regulatory and inspection intervention, protection of public interest and the rights being limited.

Courts of honor

Courts of honor in chambers of commerce and professional chambers decide on the infringements of good business practices, unethical behavior on the market, breach of professional duty and reputation and breach of professional standards and norms, including unfair competition. These courts take "hard" law and "soft" law as legal bases for action and prescription of measures. A special place is held by the Court of Honor at the Serbian Chamber of Commerce, as an independent, autonomous body, ascertaining responsibility and prescribing measures for breach of business ethics and good business practices, in line with the Law on Chambers of Commerce. Court of honor decides in proceedings against companies, entrepreneurs and other members of the Chamber, on breaches of good business practices and business ethics committed in mutual business relations and in foreign trade, as well as breaches disrupting the market unity or accomplishing monopolistic activities in the said market.

The Court of Honor can issue the following measures for breach of business ethics and good business practices:

public reprimand with publication at the Chamber Steering Committee, public reprimand published in one daily journal, public reprimand published in several daily journals. In addition to these measures, the Court of Honor can also issue protective measures: prohibition of participation in the work of Chamber bodies, prohibition of participation at fairs and exhibitions, temporary prohibition of business operations in foreign trade, prohibition of independent performance of entrepreneurial activities for a certain time, as well as deletion of the timetable, i.e. the scheduled departures of a transporter, company or entrepreneur, performing the activity of public transportation. The Court of Honor informs the competent state bodies on the protective measure issued, to provide for its implementation. In addition to these measures, the Court of Honor will issue other measures, placed among its competence by the Law.

Criminal, commercial and misdemeanor courts

Unfair competition activities, in a broader sense, constitute parts of various criminal offences, prescribed in the Criminal Code, including the abuse of position of a responsible person, abuse of authorizations in business, defamation and damage to credit rating, divulgement of business secrets, misleading buyers and tax evasion, as well as other criminal tax offences prescribed in the Law on Tax Procedure and Tax Administration. Introduction of a separate criminal offence, business fraud, is proposed, as well as redefining of tax evasion, to include not only the hidden official income, but also the income from illicit flows.

Sanctions issued by courts for criminal and other penal offences in business should have a preventive effect on the decrease in number of abuse cases in business and so contribute to fair competition and improved liquidity of businesses. This is why there is a need for greater use of protective measures and security measures of prohibition of performing a function, profession, tasks, activities and duties in criminal, misdemeanor and economic offence cases for acts committed against the economy, as prescribed in the Criminal Code, Law on Bankruptcy, Company Law, Law on Capital Market and other laws in the field of business and finance.

Conclusion

Unfair competition or unfair market game is perceived as one of the greatest market limitations in Serbia. Unfair competition disrupts good business practices, relationships between companies and interpersonal relationships, business reputation is injured, market relations and business plans distorted, trust of customers and employees breached, there is economic damage, disputes arise, costs increase, existing investments are destabilized and the future ones jeopardized and public income decreases. Unfair competition can take many forms. In addition to grey economy, these include making false and offensive claims about the competition, sale of goods featuring elements that mislead the consumer, divulgement of business secrets, dishonest advertising, boycott of the competition in the form of failure to enter into or execute contracts.

One of the mechanisms of regulation, protection and risk management pertaining to unfair competition comprises "white" and "black" lists of businesses. International practice recognizes the reasons of categorizing businesses into two lists, and these are: corrupt practices, fraudulent practices, coercive practices, collusive practices and obstructive practices. In our practice, Tax Administration publishes data on the tax debt of the largest debtors quarterly, the Law on Public Procurement prescribes negative references for bidders, the Ministry of Civil Engineering has published black and white lists of businesses at the end of 2014 and some consumer associations have published lists of traders. A code of business ethics, adopted by the Chamber of Commerce of Serbia, features a set of provisions advocating free and fair competition, being that the provision of a fair market competition is one of the key requirements of business ethics. In terms of "hard" law, there are several Laws regulating the field of unfair competition. These are Laws on Obligations, on Inspection Oversight, on Tax Procedure and Tax Administration, on Trade, on the Protection of Business Secrets, on Advertising, on Trademarks, on Legal Protection of Industrial Design.

In the previous year, progress in inspection oversight has been visible. Trust in inspections is growing, as well as satisfaction among businesses with their work and the number of newly registered businesses. Regulators,

businesses and inspections should strive to decrease the scope and probability of damaging consequences through preventive actions. The Court of Honor at the Serbian Chamber of Commerce is a significant body, as an independent, autonomous body, determining responsibility and prescribing measures for breach of business ethics and good business practices. Activities representing unfair competition constitute parts of various criminal offences: abuse of position of a responsible person, abuse of authorizations in business, defamation and damage to credit rating, divulgement of business secrets, misleading the consumer and tax evasion. Introduction of a separate criminal offence, business fraud, is proposed, as well as redefining of tax evasion, to include not only the hidden official income, but also the income from illicit flows.

References

1. FREN. (2013). *Siva ekonomija u Srbiji – novi nalazi i preporuke za reforme*. Beograd: FREN.
2. Jovanić, T. (2014). *Proces regulacije.* Beograd: Pravni fakultet Univerziteta u Beogradu.
3. Milošević, G. (2005). *Porez i izbegavanje poreza.* Beograd: JP Službeni list SCG.
4. NALED. (2013). Istraživanje o stanju, potrebama i problemima malih i srednjih preduzeća i preduzetnika (MSPP) u Srbiji – kvantitativno terensko istraživanje. Beograd: NALED.
5. NALED. (2015). *Stavovi i iskustva privrede o regulatornom okruženju i sivoj ekonomiji.* Beograd: NALED.
6. NARR. (2011). *Stanje, potrebe i problemi preduzetnika u Srbiji.* Beograd: NARR.
7. Stefanović, M., Milovanović, D., Stefanović, J., & Dragošan, I. (2015). *Vodič za primenu Zakona o inspekcijskom nadzoru*. Beograd: Cardno Emerging Markets USA Ltd.
8. Taboroši, S., & Jovanić, T. (2010). *Ekonomsko pravo.* Beograd: Pravni fakultet Univerziteta u Beogradu.

Vladimir Vučković

graduated, received his master's and PhD degrees from the Faculty of Economics, University in Belgrade. He worked as a Teaching Assistant at the Faculty of Economy since 1998 and as an Assistant Professor since 2004. Since 2008, he has been teaching at the Faculty for International Economy of the University John Naisbitt, from 2012 as a Tenured Professor. His field of scientific research includes macroeconomic policies in open economy and finance. He is the co-author of two textbooks in international economy and finance. Vladimir Vučković is a member of the Fiscal Council of the Republic of Serbia since 2011 and a member of the Board of the Serbian Association of Economists.

Sanja Vučković

is an Associate Professor at the Faculty of Business Studies of the University John Naisbitt. She graduated and received her master's degree from the Faculty of Economics, University in Belgrade and defended her doctorate at the Faculty of Business Studies of the Megatrend University. Following her work in the business and financial sector, since 2008 she has been working at the Faculty of Business Studies and since 2014 as an Associate Professor. The subjects she lectures are in the field of finance, financial management and financial markets. She has published research papers in these domains in scientific journals and proceedings of national and international conferences. She is the author of the textbook "Foundations of Finance" and co-author of the textbook "Financial Management".

Milan Stefanović

is an expert in regulatory reform in economy, business regulations, inspection oversight and related fields. Milan is a lawyer, with the master's degree in Law and a bar exam passed. He worked in judiciary, as a barrister, in business, at the Ministry of Economy and Regional Development, in the Government Unit for Comprehensive Reform of Legislation, and as a consultant on several international projects. Since 2011, he has been working on a USAID Business Enabling Project, as a Senior Expert. He is the author of a number of professional articles and publications, including guidelines for the application of commercial, administrative and financial laws.