



M:tel fined for gun-jumping in Montenegro

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Delta House, 8a Vladimira Popovića street

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Authors: Nikola Poznanović, Partner, Luka Hajduković, Senior Associate, Jana Stanojević, Associate

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The Misdemeanor Court in Podgorica recently imposed a fine of EUR 806,953.09 on the telecommunications company M:tel doo Podgorica (“M:tel”) for the acquisition, by its related Serbian company, of 50% shares in the Slovenian company Arena Sport doo Ljubljana (“Arena Sport”).

The Montenegrin Agency for Protection of Competition (“Agency”) initially approved the concentration between Arena Channels Group doo Beograd (“Arena Channels Group”), a company within the Telekom Serbia group of companies, and Arena Sport on 20 May 2021, after reviewing their request for concentration approval.

However, it was soon revealed that the acquisition was conducted in 2020, before the submission of the concentration notification and the Agency’s approval.

Under the Montenegrin Law on Protection of Competition (“Law”), related companies like Arena Channels Group and M:tel, both of which are part of Telekom Serbia group of companies, are treated as a single entity.

Although M:tel was not a direct participant in the concentration, the Agency used the possibility to fine the related entity of the notifying party i.e. the Agency targeted the company within the group that operates in the Montenegrin market. In addition, this is significant as this was a foreign-to-foreign transaction without any impact on the market of Montenegro.

The outcome of the first-instance proceedings initially favored M:tel, but the Agency subsequently appealed the decision to the Higher Misdemeanors Court of Montenegro. On 24 March 2023, the High Court adopted the appeal, overturned the lower court’s ruling, and remanded the case back to the Misdemeanor Court in Podgorica for further evaluation.

Following this re-evaluation, the Misdemeanor Court in Podgorica found M:tel liable for breaching the Law. The court's reasoning highlighted that the Arena Channels Group executed the concentration without obtaining prior approval from the Agency. M:tel retains the right to appeal this latest decision to the Higher Misdemeanors Court.

This case shows the Agency's focus on ensuring that companies follow the established rules and procedures under the Law, regardless of the actual market impact and its ongoing enforcement efforts since 2021.

Market participants are advised to exercise notifiability assessment of transactions that may require prior approval from the Agency. We will continue to monitor this case and the Agency's future activities closely.

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Authors



Nikola Poznanović

Partner

E: nikola.poznanovic@jpm.law



Luka Hajduković

Senior Associate

E: luka.hajdukovic@jpm.law



Jana Stanojević

Associate

E: jana.stanojevic@jpm.law

JPM | PARTNERS

8a Vladimira Popovića,

DELTA HOUSE, V Floor

11070 Belgrade, Serbia

T: +381/11/207-6850

E: office@jpm.law

www.jpm.law