POLICY BRIEF

Utilising competition and information technology law to regulate digital platform companies in Serbia

the case of food delivery services

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Impresum

TITLE

Utilising competition and information technology law to regulate digital platform companies in Serbia: the case of food delivery services

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Contents

Introduction

Serbia's first local food delivery platform, Donesi, opened in 2006, followed by other similar firms such as Alideda and Wolt (2018), Glovo (2019), CarGo Butler (2020), and Mister D (2021).

Food delivery platforms saw significant growth during the Covid-19 pandemic, with the upward trend continuing to this day. This fast-paced expansion was accompanied by the consolidation of global players, which also had a knock-on impact on the Serbian market, where the latest data suggest two firms, Glovo and Wolt, account for four-fifths of the market[1] in this sector.[2]

As these major shifts in the Serbian market were taking place, the legislative framework remained largely unchanged. Platforms operating in Serbia are commonly registered with the Serbian Business Registers Agency (SBRA) as information technology consultancies or advertising agencies.[3] The resulting inability to tell platforms apart from other businesses in these industries has made it difficult for policymakers to identify trends in the sector, a factor recognised only recently.[4]

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1 In its Sectoral Assessment of the State of Competition in the Market for Digital Platforms for Intermediation in the Sale and Delivery of Primarily Restaurant Food and Other Products, the Serbian Competition Commission found that in June 2021, after having taken over Donesi, Glovo commanded a market share of between 60 and 70 percent, whilst Wolt came second with a share of 30 to 40 percent. *Komisija za zaštitu konkurencije Republike Srbije, Izveštaj o sektorskoj analizi stanja konkurencije na tržištu digitalnih platformi za posredovanje u prodaji i isporuci pretežno restoranske hrane i ostalih proizvoda 2020-2021. godina, 2022*. Available at https://www.kzk.gov.rs/kzk/wp-content/uploads/2023/02/Sektorska-analiza_digitalnih-platformi_dostava-hrane.pdf.

2 For a detailed discussion of the Glovo and Wolt takeover, see B. Andjelkovic, T. Jakobi, M. Kovac, Lj. Radonjic, A. Badger, M. Graham. *Fairwork Serbia Ratings 2023: Delivering Discontent: Dynamic Pricing and Worker Unres*t, 2023. Available at https://fair.work/wp-content/uploads/sites/17/2023/09/Fairwork-Serbia-Ratings-2023-EN-FNAL.pdf.

3 B. Anđelković, T. Jakobi, Lj. Radonjić, Lj. *Uspon mobilnih aplikacija za dostavu hrane i prevoz putnika: Slučaj Srbije*, 2020. Available at https://publicpolicy.rs/publikacije/cb4b25aab98a94517d8d4a3e70e7cb6cc9b50867.pdf.

4 Komisija za zaštitu konkurencije Republike Srbije, *Izveštaj o sektorskoj analizi stanja konkurencije na tržištu digitalnih platformi za posredovanje u prodaji i isporuci pretežno restoranske hrane i ostalih proizvoda 2020-2021. godina*, 2022.

Little systematic collection of data about these firms, whose growth has been spurred by the dramatic rise of digitalisation, has also complicated assessing the size of platforms' markets and their mutual relationships. It has also hindered the examination of conditions these companies impose on other actors operating within their networks, including small and medium-sized enterprises that co-operate with them, consumers, delivery workers performing tasks for platforms but formally employed elsewhere, and other intermediaries that allow these complex systems to operate. In addition, until recently there was limited information about any barriers to entry into this highly concentrated market.[5]

The Public Policy Research Centre (CENTAR) was the first to raise these issues in its investigations, done from perspectives of both economics[6] and employment law.[7][8][9][10]The Serbian Commission for Protection of Competition (CPC) followed suit, releasing a sectoral assessment[11] that drew attention

5 Ibid.

6 B. Anđelković, T. Jakobi, Lj. Radonjić. *Uspon mobilnih aplikacija za dostavu hrane i prevoz putnika: Slučaj Srbije*, 2020. Available at https://publicpolicy.rs/publikacije/155048b3b69aba23a99d05100b5990b864ac346a.pdfhttps://publicpolicy.rs/publikacije/cb4b25aab98a94517d8d4a3e70e7cb6cc9b50867.pdf.

7 B. Anđelković, T. Jakobi, M. Kovač, S. Golušin. *Pakleni vozači: Ima li dostojanstvenog rada na digitalnim platformama za dostavu i prevoz putnika u Srbiji*, 2020. Available at https://publicpolicy.rs/publikacije/7541feaa6a2ab37f0f57ea39f035f9cc247d6a75.pdf.

8 B. Anđelković, T. Jakobi, M. Kovač, S. Golušin, F.U. Spilda, M. Graham. *Fairwork Serbia Ratings 2021: Labour Standards in the Platform Economy*, 2022. Available at https://fair.work/wp-content/uploads/sites/17/2022/05/Fairwork_Report_Serbia-2021.pdf.

9 B. Anđelković, T. Jakobi, M. Kovač, S. Golušin, F.U. Spilda, A. Badger, M. Graham. *Fairwork Serbia, Ratings 2022: Labour Standards in the Platform Economy*, 2022. Available at https://fair.work/wp-content/uploads/sites/17/2022/12/221219_fairwork_serbia-report-2022_RZ_red.pdf.

10 B. Anđelković, T. Jakobi, M. Kovač, Lj. Radonjić, A. Badger, M. Graham. *Fairwork Serbia Ratings 2023: Delivering Discontent: Dynamic Pricing and Worker Unrest*, 2023. Available at https://fair.work/wp-content/uploads/sites/17/2023/09/Fairwork-Serbia-Ratings-2023-EN-FNAL.pdf.

11 Komisija za zaštitu konkurencije Republike Srbije, *Izveštaj o sektorskoj analizi stanja konkurencije na tržištu digitalnih platformi za posredovanje u prodaji i isporuci pretežno restoranske hrane i ostalih proizvoda 2020-2021. godina*, 2022.

to the need to align Serbian law with European rules and recommending that the Ministry of Trade begin drafting regulations to govern digital platforms.[12]

Taking the findings of its own research and the CPC's recommendations, CENTAR has begun developing a comprehensive proposal to regulate digital food delivery platforms as both businesses and employers.

The analyses and recommendations set out in this policy brief were developed in collaboration with Zunic Law and are aimed at harmonising Serbian legislation with European regulations governing digital platforms, in particular digital food delivery platforms, as businesses.

1. THE PLATFORM ECONOMY

1.1. NOTION AND TYPES OF ELECTRONIC PLATFORMS

Rapid digitalisation has been reshaping the way we live and work, altering service provision arrangements, impacting the labour market and job allocation patterns, and influencing livelihoods. The emergence of digital platforms has been at the heart of this transformative process, with their dramatic growth compelling policymakers to seek a balance between permitting these firms to operate unhindered, on the one hand, and setting limits to their accumulation of power and influence in commercial and labour markets, on the other.

Platforms that offer delivery of food and other products are part of a wider family of digital platforms, which are defined as two-sided or multi-sided online markets due to their ability to facilitate transactions or interactions between two or more independent constituencies. These transactions are beneficial for at least one party, and often for all, as a result of there being more users on the

12 For other recommendations, see section 5.2, Key findings of the Serbian Commission for Protection of Competition.

other side(s).[1314] Platform companies focus primarily on controlling platforms that permit them to extract 'digital rent',[15] or intermediating this process by digital means.[16]

1.1.1. DIGITAL PLATFORMS FOR THE DELIVERY OF FOOD AND OTHER PRODUCTS

Digital platforms for the delivery of food and other products are online entities that offer food/product delivery services and facilitate interactions between restaurants, delivery workers, and food buyers, who all come into contact via the platforms. Digital platforms that intermediate in the sale and delivery of primarily restaurant food and other products employ three business models:

i) platform-based ordering only;

ii) platform-based ordering and delivery;

iii) full-stack model comprising both platform-based ordering and delivery.[17]

13 A. Hagiu, J. Wright, J. *Multi-sided platforms, International Journal of Industrial Organization 43, 162-174*, 2015. Available at https://doi.org/10.1016/j.ijindorg.2015.03.003.

14 B. Martens. *An economic policy perspective on online platforms. Institute for Prospective Technological Studies Digital Economy Working Paper 5*, 2016. Available at: https://joint-research-centre.ec.europa.eu/system/files/2016-05/JRC101501.pdf.

15 N. Srnicek. *Platform capitalism*, John Wiley & Sons, 2017.

16 A. Furlan. *Food delivery: An analysis of existing and future business models based on digital platforms*, 2021. Available at http://dspace.unive.it/handle/10579/19498.

17 Komisija za zaštitu konkurencije Republike Srbije, *Izveštaj o sektorskoj analizi stanja konkurencije na tržištu digitalnih platformi za posredovanje u prodaji i isporuci pretežno restoranske hrane i ostalih proizvoda 2020-2021. godina*, 2022, p. 6.

The International Labour Organisation (ILO) recognises two main types of digital labour platforms depending on whether their workers perform their tasks online and remotely (online web-based platforms) or at a physical location (location-based platforms).[18] This assessment will focus on the latter, where tasks are performed at a specified physical location by individuals such as taxi drivers or delivery workers, home services (such as plumbers or electricians), and domestic workers performing tasks such as cleaning or ironing.[19]

This hybrid nature complicates efforts to appropriately regulate platforms, as they operate at the intersection of multiple types of regulation and, commonly, multiple regulatory authorities. This state of affairs encourages actors to exploit legal gaps and sidestep regulations, which may have an adverse impact on market competition and a whole range of market players.

With network effects, new technologies, growth economy, and big data all allowing platforms to acquire substantial financial power,[20] a need has emerged to comprehensively regulate digital platforms in general, including those that offer food delivery. The legal regulation of the tripartite relationship between clients (restaurants), digital platforms, and platform workers entails:

a. Trade regulations, in particular rules governing electronic commerce and digital business in general;

b. Competition regulations;

18 International Labour Organisation, *World Employment and Social Outlook: The role of digital labour platforms in transforming the world of work*, 2021, p. 33.

19 Ibid., p.18.

20 Komisija za zaštitu konkurencije Republike Srbije, *Izveštaj o sektorskoj analizi stanja konkurencije na tržištu digitalnih platformi za posredovanje u prodaji i isporuci pretežno restoranske hrane i ostalih proizvoda 2020-2021. godina*, 2022, p. 5.

c. Employment regulations, which are crucial for the position of platform workers;

d. Tax regulations, where compliance by platform companies and delivery services with tax rules should be assessed (for instance, whether sole traders working for platforms pass the 'independence test' envisaged by the Personal Income Tax Law);

e. Regulations that distinguish between postal services and restaurant food delivery; and

f. Restaurant food safety regulations.

This policy brief will be restricted solely to reviewing the regulations under a) (trade, electronic commerce, and digital business) and b) (competition law) above, whilst employment regulations dealing with the position of platform workers are dealt with in other CENTAR papers.[21][22][23] To facilitate alignment of Serbian regulations with the EU framework, CENTAR will present a proposal for transposing the EU's proposed platform work directive into local law.

2. EU DIGITAL SINGLE MARKET REGULATIONS

2.1. BACKGROUND

21 S. Jašarević, B. Urdarević, M. Petrović, D. Božičić. *Normativno regulisanje platformskog rada u Srbiji,* 2024 (forthcoming).

22 B. Anđelković, T. Jakobi, M. Kovač, S. Golušin. *Pakleni vozači: Ima li dostojanstvenog rada na digitalnim platformama za dostavu i prevoz putnika u Srbiji,* 2020. Available at https://publicpolicy.rs/publikacije/7541feaa6a2ab37f0f57ea39f035f9cc247d6a75.pdf.

23 Božičić, D. *Modaliteti angažovanja radnika na platformama za dostavu: može li predložena direktiva Evropske unije da promeni stvari*, 2022. Available at https://publicpolicy.rs/publikacije/eff1e6ffde774857ebeccfa4459eba7d213e0cbc.pdf.

The EU Digital Strategy is an EU-wide programme, lasting from 2021 to 2027, to regulate the digital environment and online relationships, both commercial and other. **As part of this initiative, the EU has recognised the need for better and more comprehensive governance of electronic platforms as key players in the digital age.** In its effort to enhance regulation of online platforms, Serbia may find the following EU instruments useful:

- **Regulation on platform-to-business relations (P2B Regulation);**
- **Digital Services Act (DSA);**
- **Digital Markets Act (DMA); and**
- **Artificial Intelligence Act.**

The P2B Regulation entered into force in mid-2020. The purpose of this instrument is to establish a fair, transparent, and predictable business environment for small businesses and traders whose business models rely on service providers including online platforms.

The DSA and the DMA entered into force in November 2022. These key regulations make up the Digital Services Act Package, which seeks to:[24]

a) Create a safer digital space in which the fundamental rights of all users of digital services are protected; and

24 European Commission, *The Digital Services Act package*. Available at https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package, accessed on 16 January 2024.

b) Establish a level playing field to foster innovation, growth, and competitiveness, both in the European Single Market and globally.

The following sections examine the instruments which constitute the Digital Services Act Package.

2.2. REGULATION ON PLATFORM-TO-BUSINESS RELATIONS (P2B REGULATION)

The P2B Regulation is an EU instrument that entered into force on 12 July 2020.[25] Its objective is to establish a fair and transparent business environment for companies and traders whose business models rely on online channels and opportunities such as online stores, app stores, social media, price comparison tools, and the like.[26]

The impetus for the P2B Regulation was provided by the growing awareness that the gateway position of online platforms enables them to organise millions of users but also entails the risk of harmful trading practices, against which businesses have no effective redress. In other words, the EU has acknowledged the manifest power imbalance between platforms, on the one hand, and small-scale traders and businesses, on the other. The P2B Regulation thus seeks to protect smaller platform-dependent firms from harmful trading practices, regardless of EU-wide competition law. The P2B Regulation is the EU's first step towards better monitoring of the online platform economy, as some practices have proven worrisome for market competition and standard ex-post regulatory mechanisms to address them have been insufficiently efficient and effective.[27]

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25 Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services, PE/56/2019/REV/1 of 20 June 2019.

26 European Commission, *Platform-to-business trading practices*. Available at https://digital-strategy.ec.europa.eu/en/policies/platform-business-trading-practices, accessed on 16 January 2024.

27 This regulatory interference with B2B contractual relationships is not an isolated case in the EU. Some member states have broadened the scope of the Unfair Commercial Practices Directive to cover B2B relationships in addition to B2C arrangements.

The P2B Regulation applies to companies that provide services through online platforms to customers in the EU and the United Kingdom, irrespective of where those online platforms are located, and seeks to bring about a fair, transparent, and predictable business environment and prevent unfair commercial practices on online platforms.[28] Some of the key rules introduced by the P2B Regulation pertain to terms and conditions of contractual relationships between platforms and their users. Detailed regulation of which terms of conditions must and must not be present is a major step forward in enhancing the legal framework for cloud contracts[29] that had previously been regulated in less detail.

The P2B Regulation also provides a number of rules for the termination and suspension of contracts and restrictions on businesses using platforms. It also requires platforms to exhaustively list the grounds for any termination, restriction, or suspension of a user. Platforms are also banned from instituting conditions for termination that are disproportionate or cannot be exercised by a business without 'undue difficulty'. Lastly, platforms must transparently disclose its user ranking criteria.

The adoption of the P2B Regulation was accompanied by the creation of the EU Observatory on the Online Platform Economy, made up of European Commission (EC) officials and a dedicated group of independent experts, which monitors the field and seeks to support the EC in its policymaking efforts. The Observatory allows business or professional platform users to contribute their experiences of any issues they have had with platforms.

2.3. DIGITAL SERVICES ACT (DSA)

28 The P2B Regulation also requires platforms to ensure their terms and conditions are 'drafted in plain and intelligible language' and are easily available to users at all stages of their commercial relationship with the platform. The next step is therefore for entities subject to the P2B Regulation to align their terms and conditions with these new rules.

29 A cloud contract is considered to be entered into where the user unilaterally accepts its terms and conditions, rather than after being conventionally signed by both parties.

The DSA[30] seeks to ensure transparency, user safety, and accountability of digital platforms.

The DSA applies to all market players that offer digital services. This primarily includes online platforms and intermediaries such as social media, content-sharing platforms, online marketplaces, app stores, and online travel and accommodation platforms. The DSA introduces new rules on the platforms' accountability for the content they make available.

The actual requirements depend on how each platform is categorised, with this classification based on criteria such as the number of a platform's active users ('recipients').[31] Platforms with more than 45 million active users (amounting to 10 percent of the EU's population) are designated 'very large online platforms' (VLOPs) and 'very large online search engines' (VLOSEs) and are as such subject to additional requirements and shorter time limits for DSA compliance. A key obligation for these entities is the requirement to undertake annual risk assessments, which the VLOPs and VLOSEs are required to comply with no later than four months after the DSA becomes effective. Finally, before the DSA takes effect, each EU Member State is also required to appoint a Digital Services Coordinator to monitor and enforce the DSA at the national level.

The DSA entered into force in November 2022 and became effective 15 months later, in February 2024.[32]

2.4. DIGITAL MARKETS ACT (DMA)

30 Proposal for a Regulation of the European Parliament and of the Council on a single market for digital services (Digital Services Act) and amending Directive 2000/31/EC COM/2020/825 final of 15 December 2020.

31 In preparation for this categorisation, the DSA required all platforms registered in any EU Member State to publish the numbers of their active users by 17 February 2023, based on which the platforms were then grouped into four categories.

32 In an exception to this deadline, VLOPs and VLOSEs were given an additional four months to comply with the new regulations and publish their risk assessments. Other online platforms were required to become compliant by 17 February 2024, which was also the final date for EU Member States to designate Digital Services Coordinators, independent authorities tasked with overseeing compliance with the new rules at the national level and coordination with international bodies.

The DMA[33] regulates competition and sets out clear business rules for large digital platforms. Its objective is to operate ex ante, so that the very fact of complying with it prevents large digital platforms from infringing on traditional competition rules and abusing their considerable market power. This piece of legislation is intended to be the EC's supplementary safeguard from abuse that complements standard competition rules which come into play ex ante to assess infringements of competition law only once these have already occurred and have potentially significantly impeded effective competition.

In contrast to the DSA, the DMA applies to a narrower range of entities, termed gatekeepers. These are digital platforms whose large user bases have given them a crucial role in the digital services market and that often serve as a funnel of sorts between (digital) service providers and users. The DMA thus primarily affects the largest platforms, whose economic position and market impact are so large that they pose a risk of impeding competition. Several criteria are used to identify these platforms, with their economic position and market dominance assessed primarily by number of users and annual revenue.

More specifically, the DMA was enacted to remedy shortcomings in competition rules, mainly to address the slowness of infringement procedures and the inability to act appropriately in cases involving large digital players.[34] The DMA seeks to impose initial restrictions and obligations on this special category of entities that will ensure a level playing field from the start and limit the need

33 Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act), PE/17/2022/REV/1 of 14 September 2022.

34 In addition, the DMA also seeks to:

- prevent discrimination of small companies relative to large ones, and
- ensure better protection and portability of users' personal data by enhancing transparency, restricting data processing for advertising purposes, and the like.

for detailed investigation and evidence collection in any future infringement proceeding, as these actions have usually been found to cause delays.[35]

The DMA also entered into force in November 2022, only days apart from the DSA, but the time limits envisaged by this regulation are somewhat different: the DMA requires EU companies to notify the number of their users to the EC by 3 July 2023 to allow the Commission to designate gatekeepers. After this was done, the newly identified gatekeepers undertook to comply with the DMA within six months, in other words by March 2024.

Six gatekeepers are currently designated, namely Alphabet, Amazon, Apple, ByteDance, Meta, and Microsoft.

2.5. ARTIFICIAL INTELLIGENCE ACT

The first proposal of an Artificial Intelligence Act[36] was published in 2021, and EU bodies reached political consensus around this piece of legislation in December 2023. The European Parliament adopted the Artificial Intelligence Act in March 2024, with an expected entry into force of May or June 2024 once the Act has been published in the Official Journal. The Act will become effective within 24 months of its entry into force, but some of its provisions will take effect before or after this general date.[37]

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35 M. Dietrich, N. Jung, A. van Rooijen, Digital Regulation in Europe, 25 November 2022. Available at https://globalcompetitionreview.com/guide/digital-markets-guide/second-edition/article/digital-regulation-in-europe.

36 Proposal for a regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain Union legislative acts COM/2021/206 final of 21 April 2021

37 European Parliament, available at https://www.europarl.europa.eu/news/en/press-room/20240308IPR19015/artificial-intelligence-act-meps-adopt-landmark-law, accessed on 11 April 2024.

The Artificial Intelligence Act aims to introduce requirements for artificial intelligence (AI) systems based on the risk they pose to society. An AI system assessed as posing high risk will face stricter requirements and controls, including a ban on use in extreme cases. Conversely, lower-risk systems will be confronted with less stringent transparency rules.[38]

The proposed provisions primarily focus on AI developers based in the EU but also affect entities introducing AI systems into the EU market or using them in the EU. To prevent attempts to circumvent the Act's AI rules, the regulation will also apply to providers and users of AI systems located in third countries if the products of those AI systems are used in the EU.[39]

The Artificial Intelligence Act also envisages measures to ensure oversight of AI systems, including an EU-level Committee on Artificial Intelligence, mandatory designation by EU Member States of authorities to enforce the regulations, corrective measures in case of non-compliance (such as prohibiting, disabling, withdrawing, or recalling AI systems), and administrative fines.

Although EU Member States were initially unable to agree on the extent of how binding the Artificial Intelligence Act would be, a solution acceptable to all sides seems to have been achieved.

The following chapter will look at changes to regulations of individual EU member states that govern food delivery platforms, either as market players in particular sectors (transport, catering, and postal services) or as novel types of employers.

38 European Parliamentary Research Service, T. Madiega, S. Chahri, *Artificial intelligence act*, 2023. Available https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698792/EPRS_BRI(2021)698792_EN.pdf.

39 T. Žunić Marić, D. Spasojević, *Uređivanje propisa o upotrebi veštačke inteligencije – Razmatranje Zakona EU o veštačkoj inteligenciji*, 30 November 2023. Available at https://zuniclaw.com/eu-zakon-vestacka-inteligencija.

3. LEGAL FRAMEWORKS FOR PLATFORM WORK IN EU MEMBER STATES

Governments have adopted varying practices when regulating intermediation in the sale and delivery of primarily restaurant food. Countries that have enacted specific platform work regulations have opted for several distinct approaches:

a. Specific regulations governing digital platforms, such as in Spain[40] and Portugal.[41]

b. Sectoral regulations (in areas such as transport, catering, postal services, and the like) governing digital platforms, as has been the case in Latvia[42] and Austria.[43]

c. General employment legislation governing the position of platform workers and digital platforms as employers, such as for instance in Belgium.[44]

A global study was performed to assess and analyse legal regulation of platform work.[45] The research comprised more than 30 countries, most of which were EU Member States. The overall

40 Real Decreto-ley 9/2021.

41 Law no. 45/2018 (Uber Law).

42 Grozījumi Autopārvadājumu likumā (Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs, 1995, 20. nr.; 1997, 8. nr.; 1998, 24. nr.; 1999, 21. nr.; 2001, 1., 12. nr.; 2002, 12. nr.; 2003, 23. nr.; 2004, 10. nr.; 2005, 2., 12. nr.; 2006, 1., 15. nr.; 2007, 10., 15. nr.; 2008, 3., 24. nr.; Latvijas Vēstnesis, 2010, 174., 206. nr.; 2011, 80. nr.; 2013, 40. nr.; 2015, 91. nr.).

43 Kollektivvertrag für Fahrradboten, 22 January 2021.

44 Loi portant des dispositions diverses relatives au travail, 03 October 2022.

45 Friedrich-Ebert-Stiftung Future of Work (FES), *Mapping Platform Economy*, 2022. Available at https://futureofwork.fes.de/our-projects/mapping-platform-economy, accessed on 16 January 2024.

finding of the study was that some progress had been made in Europe with how platform work was legally regulated.

The research also identified some national differences:

- **Of the 31 countries investigated, seven had laws containing official definitions of platforms.**

- **Platform company registers were maintained in Portugal, Turkey, France, and Belgium.**

- **Spain, Italy, and Belgium acknowledge platform workers as employees. In addition, as many as 15 countries have enacted regulations that may be used to recognise platform workers as employees or that guarantee them employment protections (such as Norway, Sweden, and Germany), whilst 14 states do not regulate their status.**

- **Most countries (22) lack specific platform work regulations, whilst nine have such rules in place, including Italy, France, and Austria.**

Some countries have also opted to create national registers of platform companies and delivery workers.[46] These databases have already been partially introduced in Portugal, France, Belgium, and Turkey, but are fragmented and mandated by multiple sectoral regulations (such as those governing e-commerce, tax, transport, and the like). An integrated national register could help provide a comprehensive, thorough picture of how digital platforms operate, what risks they pose, and which features affect their operation, and this would be a key precondition for developing

46 Komisija za zaštitu konkurencije Republike Srbije, *Izveštaj o sektorskoj analizi stanja konkurencije na tržištu digitalnih platformi za posredovanje u prodaji i isporuci pretežno restoranske hrane i ostalih proizvoda 2020-2021. godina*, 2022.

effective framework rules for the industry. In the current Serbian framework, a revision of the Electronic Commerce Law[47] could offer the basis for setting up such a register, where the power to establish it and responsibility for ensuring compliance could be vested market inspectors or information society services inspectors, who are already tasked with enforcing the Electronic Commerce Law. This option will be elaborated in greater detail in the Recommendations section.

4. SERBIAN REGULATIONS

4.1. BACKGROUND

Serbia has taken steps to align its legislation with emerging trends, in particular the accelerating shift to doing business online.

The two key obligations undertaken by Serbia in the **Stabilisation and Association Agreement (SAA)**[48] are to develop a free trade area and **approximate its legislation with that of the EU**.[49]

The primary Serbian piece of legislation governing competition rules is the **Law on the Protection of Competition (LPC),**[50] **initially enacted in 2009 and amended in 2013**, with additional statutory instruments used to elaborate on some of its provisions. This legal framework is only partially aligned

47 A similar approach was taken by Turkey, where the Electronic Commerce Law provided the statutory basis for the platform register.

48 The Stabilisation and Association Agreement between the European Communities and their Member States of the one part, and the Republic of Serbia, of the other part, is an international treaty that took effect on 1 September 2013 and made Serbia an EU associate country. The agreement is available at https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22013A1018(01).

49 Ministarstvo Republike Srbije za evropske integracije, *Sporazum o stabilizaciji i pridruživanju*. Available at https://www.mei.gov.rs/srl/srbija-i-eu/sporazum-o-stabilizaciji-i-pridruzivanju/

50 Serbian Law on the Protection of Competition (*Official Gazette of the Republic of Serbia* Nos. 51/2009 and 95/2013).

with EU law, given the absence of major revisions to Serbian regulations over the past decade, in stark contrast to developments in the EU.

In 20193, Serbia approximated its legislation with the EU Directive on Electronic Commerce,[51] whilst a series of laws were amended or introduced in 2018 and 2019 to ensure local legislation could keep abreast of the rapidly advancing digital age, including:

- **Personal Data Protection Law (PDPL)**,[52] which largely aligned Serbian personal data protection and privacy rules with EU regulations, a move necessitated by the increasing importance of personal data and volume of information exchanged between clients and digital service providers.

- **Law on Trade,**[53] the first piece of legislation to define and distinguish between electronic platforms, online stores, and dropshipping.

- Amended **Electronic Commerce Law (ECL)**,[54] which imposed additional obligations on information society services providers.

4.2. LAW ON THE PROTECTION OF COMPETITION (LPC)

51 Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market **('Directive on electronic commerce')**.

52 Serbian Personal Data Protection Law (*Official Gazette of the Republic of Serbia* No. 87/2018).

53 Serbian Law on Trade (*Official Gazette of the Republic of Serbi*a No. 52/2019).

54 Serbian Electronic Commerce Law (*Official Gazette of the Republic of Serbia* Nos. 41/2009, 95/2013 and 52/2019).

The LPC[55] applies to all market players and thus plays a key role in the operation of digital food delivery platforms.

Under the LPC, any action or conduct by a market player that have as their object or effect the prevention, restriction, or distortion of competition, in particular:

- **Entering into restrictive agreements**, which may be formal or informal agreements or contractual provisions between undertakings, explicit or tacit agreements, concerted practices, or decisions by associations of undertakings that have as their object or effect the prevention, restriction, or distortion of competition in the market. Such agreements include, without limitation, those which fix purchase or selling prices, share markets or sources of supply, or apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage. Restrictive agreements are prohibited and automatically null and void, except where exempt from this prohibition pursuant to the LPC and the relevant statutory instruments.

- **Abuse of a dominant position**, which occurs where the market power of an undertaking allows that undertaking to operate in a relevant market largely independently of competitors, buyers, suppliers, or consumers and so threaten free competition.

- **Prohibited concentrations of undertakings**, which are defined as concentrations that would significantly prevent, restrict, or distort competition in the market, in particular through the creation or strengthening of a dominant position. The following are deemed to be concentrations: (i) merger or other

55 Serbian Law on the Protection of Competition (*Official Gazette of the Republic of Serbia* Nos. 51/2009 and 95/2013).

corporate transaction that result in the consolidation of undertakings; (ii) acquisition of control over an undertaking or multiple undertakings, or over one or multiple parts of undertakings; (iii) creation of a joint venture by two or more undertakings for the purpose of creating a new undertaking or acquiring joint control over an existing undertaking that performs on a lasting basis all the functions of an autonomous economic entity.

Serbia's competition regulator is the Commission for Protection of Competition (CPC), which is required by the SAA[56] to appropriately apply criteria stemming from EU competition rules.

Competition policy is also governed by secondary legislation adopted by the Government of Serbia. [57]

4.2.1. ANNUAL EC PROGRESS REPORTS RELEVANT FOR COMPETITION POLICY

In addition to enhancing the LPC, Articles 72 and 73 of the SSP and **Chapter 8 of the Union *acquis*[58]** require Serbia to further align its legislation with EU competition law. Chapter 8 consists of three parts:

- **Competition policy in a narrow sense (anti-trust arrangements);**

56 Stabilisation and Association Agreement, Article 73.

57 This body of legislation includes the Government Order on criteria for the definition of the relevant market (*Official Gazette of the Republic of Serbia* No. 89/2009), Government Order on agreements between undertakings operating at different levels of the production or distribution chain exempt from prohibition (*Official Gazette of the Republic of Serbia* No. 11/2010), and other regulations.

58 The Competition Policy chapter of the Union *acquis* is one of the most demanding and most complex parts of the accession negotiations process. It is also one of the chapters for which transitional periods are often requested, mainly to address state aid policy.

- **State aid control; and**
- **Liberalisation of state-owned enterprises (SOEs).**

These areas entail rules and procedures to address anti-competitive actions by businesses (such as restrictive agreements and abuse of dominance), investigate mergers and acquisitions, and prevent approval of state aid that hinders or may hinder competition in the internal market.[59]

Since 2005, the EC has been publishing annual reports that detail Serbia's progress with implementing the SAA. In its 2022 and 2023 reports,[60] the EC noted that Serbia was continuing to implement this agreement, and, specifically in relation to Chapter 8 of the Union acquis, that the Serbian legislative framework was 'broadly in line' with Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) and related provisions of the SAA. The EC recognised the lack of complete alignment, noting that the **legislative framework** was yet to be fully brought in line with EU guidelines and communications in this area.[61]

The current LPC provides ex ante control of mergers, suggesting the presence of appropriate instruments for control of competition. The EC underscored the need for adopting three block exemption regulations to ensure local rules are fully aligned with those of the EU and continuing approximation of Serbian legislation with EU regulations, indicating that efforts were being made to achieve complete alignment.[62]

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59 Ministarstvo Republike Srbije za evropske integracije, *Poglavlje 8 – Konkurencija*. Available at https://www.mei.gov.rs/srl/obuka/e-obuke/vodic-kroz-pregovore-srbije-i-evropske-unije/klasteri/klaster-2/poglavlje-8-konkurencija.

60 European Commission, Serbia Report 2022, 2022, pp. 96-97, available at https://neighbourhood-enlargement.ec.europa.eu/serbia-report-2022_en, and European Commission, Serbia Report 2023, 2023, p. 105-106, available at https://neighbourhood-enlargement.ec.europa.eu/serbia-report-2023_en.

61 Ibid.

62 Ibid.

Regarding the institutional framework, the EC assessed the CPC was the independent authority responsible for implementing the legal framework, adding that, over the past years, the CPC had built a reputation as an operationally independent institution. However, the EC called for strengthening the transparency of the institution's work and systematically publishing its decisions.

In the EC Serbia Report 2023,[63] the country was assessed as being 'moderately prepared' in the area of competition policy.

4.3. ELECTRONIC COMMERCE LAW (ECL)

There is no legislation specifically regulating intermediation in the sale and delivery of primarily restaurant food and other products through digital platforms, and as such delivery platforms are largely subject to general e-commerce arrangements set out in the Electronic Commerce Law,[64] as well as to the umbrella Law on Trade.[65]

The ECL governs the operation of information society services providers, which includes all online platforms, including those providing food delivery. The ECL defines an 'information society service' as 'a service provided at distance, generally for remuneration, during the connection of electronic equipment for data processing and storage, at the request of the recipient of the information society service.'[66]

The ECL does not mandate any specific permits or approvals from government bodies for the provision of information society services, but it does envisage requirements that information society

63 European Commission, Serbia Report 2023, 2023, p. 105. Available at https://neighbourhood-enlargement.ec.europa.eu/serbia-report-2023_en.

64 Serbian Electronic Commerce Law (*Official Gazette of the Republic of Serbia* Nos. 41/2009, 95/2013, and 52/2019).

65 Serbian Law on Trade (*Official Gazette of the Republic of Serbia* No. 52/2019).

66 Serbian Electronic Commerce Law, Art. 3(1)1.

service providers must comply with. Here, digital platform owners have to provide some information to their users and government authorities, such as the name of the natural or legal person providing the services, their registered office, contact information, registration number, tax identification number, and the like. Moreover, the ECL also regulates service providers' obligations in connection with storing user data, acting in response to user abuses, and entry into contractual agreements electronically via the digital platform.

Even though it was patterned after the EU Directive on Electronic Commerce, the ECL regulates digital platforms only partially and in general terms. In other words, the ECL provides only a general framework of requirements that digital platforms must meet to be able to engage in electronic commerce, as well as mandatory user information standards and conditions for entering into agreements by electronic means. That being said, the requirements imposed by the ECL are disproportionately lax given the actual power wielded by digital platforms due to their economies of scale and network effects.

In addition, the ECL does not regulate business-to-business (B2B) relationships (in this case, those between digital platforms and restaurants) or business-to-consumer (B2C) ones (between digital platforms and consumers) entered into by digital platforms when providing services. The Consumer Protection Law (CPL) does envisage some corrective measures for B2C relationships, but B2B rules in the digital domain are completely absent.

Further, the ECL requires service providers registered in Serbia to comply with Serbian law,[67] but stops short of mandating application of local law to undertakings not domiciled in Serbia.

67 Serbian Electronic Commerce Law, Art. 4.

Until Serbia has joined the EU, Serbian inspections bodies will not have either the powers or the mechanisms to restrict the provision of information society services by undertakings based in the EU.[68]

4.4. LAW ON TRADE

The Law on Trade[69] sets out rules that must be complied with in the single market of Serbia and applies to all persons engaging in trade in Serbia. Importantly for digital delivery platforms, this piece of legislation is the first national regulation governing electronic platforms, online stores, and dropshipping.

1) 'Electronic platform' (e-commerce) is defined as 'a means by which a person designated as an information society service provider within the meaning of the Electronic Commerce Law, provides connection services to persons trading by electronic means';

2) 'Online store' is defined as 'a store on the internet through which a trader offers goods/services'; and

3) 'Dropshipping' is defined as 'the sale of goods through an online store or an electronic platform whereby the goods are delivered to the customer directly from the manufacturer/wholesaler'.

68 Article 5a of the ECL allows Serbian inspections to act against EU-based service providers if doing so is necessary to safeguard specific interests, but the relevant stand-alone amendment to the Law Amending the ECL (*Official Gazette of the Republic of Serbia* No. 52/2019) defers this provision until such time as Serbia has acceded to the EU.

69 Serbian Law on Trade (*Official Gazette of the Republic of Serbia* No. 52/2019).

These three concepts are all subsumed under the broader notion of 'distance selling' or, more precisely, 'online sales', which is one approach to retail sales and service provision. This means that trading through an electronic platform or online store is subject to general trading rules, which may be adapted in some cases to suit the inherent nature of distance selling. The requirements for traders and service providers in the Serbian market apply both to restaurants and stores offering their products on digital delivery platforms and the digital platforms themselves, since they too offer online services for remuneration.

The business model employed by digital platforms for the delivery of restaurant food and other products is consistent with the legal definition of electronic or e-commerce platform, as in this case a digital platform operates as an intermediary between a restaurant and a consumer.

These platforms are distinct in that they allow sales only by registered traders (rather than physical persons), so consumers can benefit from an additional layer of protection since there is no risk of fraud: consumers buy from registered sellers or the e-commerce platform itself. Moreover, consumers who shop on one of these platforms initiate and complete the entire purchase transaction on the platform.[70]

Nevertheless, just like the ECL, the Law on Trade does not deal with the relationships between platforms and restaurants/stores, platforms and delivery workers, and platforms and consumers.

Even though it may be significant for the digital platform industry, the Law on Trade does not help regulate the relationships between the various platform stakeholders, necessitating the adoption of new rules modelled after EU regulations.

4.5. PERSONAL DATA PROTECTION LAW (PDPL)I

70 Stručni komentar - Pravnik u privredi: ULOGA I POLOŽAJ PLATFORMI U PRODAJI PREKO INTERNETA, Pravnik u privredi 2023/285, published on 8 June 2023, available at *Paragraf Lex*.

The PDPL[71] regulates the protection of natural persons with regard to the processing of personal data and rules relating to the free movement of personal data. Since digital food delivery platforms process the personal data of their delivery workers and other natural persons, they are required to comply with the PDPL, and in particular to ensure that the data are processed in accordance with the principles relating to processing of personal data, that persons whose data are processed ('data subjects') are able to understand the scope and effects of such processing, and that persona data of data subjects is subject to the appropriate safeguards.

The PDPL is patterned after the EU General Data Protection Regulation (GDPR)[72] and provides significant safeguards for personal data. That being said, comprehensive controls ought to be put in place to ensure it is implemented consistently and considering the unique ways in which digital platforms process data.

Big data, the processing of large quantities of data from a variety of sources and in a variety of formats (ranging from structured to semi-structured to unstructured data), including personal data, lies at the heart of what digital platforms do. Big data allows platforms to engage in competitive analytics, which gives them an edge in the market.

Specifically, food delivery platforms have access to large quantities of user data through order histories, first and last names, physical and e-mail addresses, delivery locations, contents of customers' virtual shopping carts, road traffic conditions, user ratings and comments, and the like. All this information allows food delivery platforms to improve their performance, segment their

71 Serbian Personal Data Protection Law (*Official Gazette of the Republic of Serbia* No. 87/2018).

72 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119), 4 May 2016.

user base in greater detail, enhance their advertising, and, ultimately, create their own services to compete with those offered by restaurants and traders.

But it is not just user data that give platforms their great power. Digital food delivery platforms use algorithmic management, a novel technique for selecting staff, assigning tasks, and monitoring staff performance by tracking their physical location.[73]

All these ways in which personal data are processed require a prior data protection impact assessment.[74]

A data protection impact assessment is mandatory in cases where employers process their employees' personal data by using applications or systems to track their performance, movement, communication, and the like, as well as where new technologies or solutions are used to process personal data or that allow the processing of personal data for analysis or forecasting the economic situation, health, preferences or interests, reliability, behaviour, or movement, of natural persons.[75]

In addition, where decisions that have legal consequences to delivery workers engaged by a platform or that have significant impacts on the position of those workers are made solely based

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73 Komisija za zaštitu konkurencije Republike Srbije, *Izveštaj o sektorskoj analizi stanja konkurencije na tržištu digitalnih platformi za posredovanje u prodaji i isporuci pretežno restoranske hrane i ostalih proizvoda 2020-2021. godina*, 2022, pp. 21-22.

74 This impact assessment has to be completed before any data are processed, and in some cases the data controller must also consult the Office of the Commissioner for Freedom of Information and Personal Data Protection. Where data processing was initiated before the PDPL took effect, no impact assessment is needed but appropriate safeguards must be employed. See PDPL, Articles 54 and 55, and Opinion of the Commissioner for Freedom of Information and Personal Data Protection No. 073-14-1011/2020-02 of 23 March 2020, available in *Publikacija 6 – zaštita podataka o ličnosti*, https://www.poverenik.rs/images/stories/dokumentacija-nova/Publikacije/6PublikacijaZZPL/6PublikacijaZZPL.pdf.

75 Office of the Commissioner for Freedom of Information and Personal Data Protection, Decision on the list of types of data processing operations which require a data protection impact assessment and consultation with the Office of the Commissioner for Freedom of Information and Personal Data Protection (*Official Gazette of the Republic of Serbia* No. 45/2019), available at https://bit.ly/2sNUARh.

on automated processing by algorithmic means, the workers in question are entitled to opt out of such decisions, excepting in specific circumstances which must comply with the requirements of the PDPL.

Serbia is not alone in facing calls to assess the legality of how digital food delivery platforms process the personal data of their delivery staff or platform workers. In the EU, two digital food delivery platforms were handed down fines running into the millions of euros for GDPR infringements, including the opaque use of algorithmic means.[76]

5. FOOD DELIVERY PLATFORMS AND THEIR CHALLENGES FOR SERBIAN TRADERS AND RESTAURANTS

A complete understanding of the competition and information technology law recommendations made in this policy brief requires an assessment of the structure of the Serbian food delivery platform market.

There are no legal (administrative) barriers that hinder entry into the Serbian electronic food delivery market, as opening an electronic delivery platform requires to permits or approvals from public authorities. However, the financial barriers are quite significant and include substantial investment into developing software for the platform, advertising and sales, procurement of IT equipment, integration with global internet services, and partnerships with restaurants. In other words, even though there are no major legal hindrances to entering the market, the large-scale investment of

76 Decisions of the Italian personal data supervisory authority, Garante per la protezione dei dati personali, available at https://gdprhub.eu/index.php?title=Garante_per_la_protezione_dei_dati_personali_(Italy)_-_9675440 and https://gdprhub.eu/index.php?title=Garante_per_la_protezione_dei_dati_personali_(Italy)_-_9685994.

money this requires mean that the market is highly concentrated in the hands of only a few large players.[77]

5.1. STRUCTURE OF THE FOOD DELIVERY PLATFORM MARKET IN THE EU AND SERBIA

In its Sectoral Assessment of the State of Competition in the Market for Digital Platforms for Intermediation in the Sale and Delivery of Primarily Restaurant Food and Other Products,[78] the CPC found that, after its June 2021 takeover of rival platform Donesi, the delivery service Glovo commanded a market share of between 60 and 70 percent, with Wolt coming second at between 30 and 40 percent.[79] The CPC also detected a number of smaller platforms it felt could constitute potential market competitors.[80]

In November 2022, the CPC launched an antitrust investigation against the company GlovoApp, which owns the Glovo platform, suspecting it of abusing its dominant position in the market; the case is still ongoing.[81] Similarly, due to an alleged agreement to share national markets, generally considered a serious infringement of competition law, in July 2022 the EC, with the assistance of national competition authorities, carried out unannounced inspections of two online food ordering

77 Komisija za zaštitu konkurencije Republike. Srbije, *Izveštaj o sektorskoj analizi stanja konkurencije na tržištu digitalnih platformi za posredovanje u prodaji i isporuci pretežno restoranske hrane i ostalih proizvoda 2020-2021. godina*, 2022, p. 35. Research carried out by CENTAR as part of this project also corroborated the CPC's finding of a highly concentrated market.

78 Komisija za zaštitu konkurencije Republike Srbije, *Izveštaj o sektorskoj analizi stanja konkurencije na tržištu digitalnih platformi za posredovanje u prodaji i isporuci pretežno restoranske hrane i ostalih proizvoda 2020-2021. godina*, 2022.

79 Ibid., p. 9.

80 Ibid., p. 12.

81 Komisija za zaštitu konkurencije Republike Srbije, Zaključak br. 5/0-01-758/2022-01, 2 November 2022. Available at https://kzk.gov.rs/kzk/wp-content/uploads/2022/11/Zaklju%C4%8Dak-o-pokretanju-postupka-GLOVO.pdf.

and delivery companies in two countries.[82] Insider sources and media reports claimed the two firms were Glovo and Delivery Hero, which later confirmed the allegations.[83] In November 2023, the EC again performed unannounced inspections of two companies active in online food delivery as part of an investigation into suspected restrictive business practices.[84] The EC subsequently announced it had broadened the scope of the investigation into the two firms to also include (i) alleged no-poach agreements between the companies[85] and (ii) alleged exchanges of commercially sensitive data, which are strictly prohibited between competitors.[86] Both Glovo and Delivery Hero confirmed the reports that they were the subjects of the new inspections and broadened investigative efforts.[87]

At the time of writing, the outcome of investigations by both the EC and the Serbian CPC remains uncertain. The following section discusses issues raised in these cases primarily from the perspective of what needs to be done to improve competition.

5.2. KEY FINDINGS OF THE SERBIAN COMMISSION FOR PROTECTION OF COMPETITION

82 EC press release, available at https://ec.europa.eu/commission/presscorner/detail/en/ip_22_4345, and Techcrunch article, available at https://techcrunch.com/2022/07/06/delivery-hero-glovo-eu-antitrust-raid.

83 See https://www.reuters.com/business/retail-consumer/eu-antitrust-watchdog-raids-online-food-groceries-delivery-companies-2022-07-06, 6 July 2022.

84 EC Press Release, *Antitrust: Commission carries out unannounced inspections in the online food delivery sector*, 21 November 2023. Available at https://ec.europa.eu/commission/presscorner/detail/en/ip_23_5944.

85 In competition law, no-poach agreements refer to understandings between market players to not hire each other's employees. In essence, these are prohibited restrictive agreements (cartels) in that they divide the market. Until the investigation against the two firms was expanded, restrictive agreements of this type were examined more commonly by national competition bodies than by the EC.

86 EC Press Release, *Antitrust: Commission carries out unannounced inspections in the online food delivery sector*, 21 November 2023. Available at https://ec.europa.eu/commission/presscorner/detail/en/ip_23_5944.

87 See https://www.reuters.com/technology/eu-antitrust-regulators-raid-online-food-delivery-companies-probe-no-poach-deals-2023-11-21/, 21 November 2023.

Where price trends or other circumstances suggest competition may be prevented, restricted, or distorted, the CPC may undertake sectoral assessments to determine the state of competition in an industry or investigate particular categories of sectoral agreements.[88]

In its Sectoral Assessment of the online food delivery industry,[89] the CPC expressed concern that some contractual agreements and terms and conditions in this sector could be aimed at excluding other platforms, whilst the application of unequal business terms could discriminate against some restaurants; lastly, individual contractual provisions could also be considered as limiting technical development.[90]

Behaviours with significant detrimental effects on businesses using food delivery platforms include:

- **Insistence on exclusive and discriminatory provisions of contractual agreements and terms and conditions.** These provisions include those that seek to exclude other digital platforms, discriminate against restaurants through the application of unequal business terms, and limit technical development.

- **Impact on connected markets.** Digital platforms affect competition between restaurants, focusing on ranking on the platform instead of the quality of the offering. They also impact relationships with delivery workers by controlling the cost of delivery and the selection and performance assessment of delivery workers.

88 Serbian LPC (*Official Gazette of the Republic of Serbia* Nos. 51/2009 and 95/2013), Article 47.

89 Komisija za zaštitu konkurencije Republike Srbije, Izveštaj o sektorskoj analizi stanja konkurencije na tržištu digitalnih platformi za posredovanje u prodaji i isporuci pretežno restoranske hrane i ostalih proizvoda 2020-2021. godina, 2022.

90 Ibid., p. 34.

- **Restricting choice of their partners (restaurants) by making them dependent on technology and algorithmic means.** This state of dependence is achieved by a platform recommending and supplying specific order processing equipment, thus lessening the interest of a restaurant to work simultaneously with multiple digital platforms.

- **Insistence of most-favoured-nation clauses.** These arrangements require restaurants to always offer one platform the best terms, reducing price competitiveness in the digital platform market as the players are denied the motivation to compete with one another on commission fees.[91]

- **Lack of transparency on the part of platforms.** Responses by restaurants using food delivery platforms suggest a lack of transparency and predictability over visibility on the platform and ranking relative to other restaurants.

The CPC called on all Serbian authorities to review current legislation governing digital platforms and align them with EU rules.[92] Specific recommendations[93] relevant for this policy brief were made to the Ministry of Trade, which was invited to begin drafting regulations to govern digital platforms and to create a register of digital platforms and a register of food delivery workers. The CPC also believed it was necessary to distinguish between the provision of postal services and food delivery,

91 Ibid., pp. 36-37.

92 The CPC particularly emphasised the need for alignment with Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (**Digital Markets Act**) and Proposal for a Regulation of the European Parliament and of the Council on a single market for digital services (**Digital Services Act)** and amending Directive 2000/31/EC.

93 Komisija za zaštitu konkurencije Republike Srbije, I*zveštaj o sektorskoj analizi stanja konkurencije na tržištu digitalnih platformi za posredovanje u prodaji i isporuci pretežno restoranske hrane i ostalih proizvoda 2020-2021. godina*, 2022, p. 38.

since digital platforms are not subject to legislation and statutory instruments governing postal service provision.[94]

The CPC also recommended that the Ministry of Labour, Employment, Veterans' and Social Issues investigate whether the treatment of employees of digital platforms and workers engaged by businesses and/or sole traders engaged in food delivery complied with the Labour Law and related regulations.

The Ministry of Health and its inspection services was invited to examine whether businesses and/or sole traders engaged in food delivery complied with the Food Safety Law and related regulations.[95]

The findings of the Sectoral Assessment led the CPC to conclude there was a need for close monitoring and regulation of the sector to safeguard a contestable market.

6. DISCUSSION

In recent years, Serbia has made great strides in aligning its regulations with European rules. However, in spite of the dramatically accelerated development of the digital economy, the country has not sought to significantly amend local legislation to adapt to the emerging changes or reflect innovations in EU law. The sole exception is the domain of artificial intelligence (AI), where the Government of Serbia has adopted a formal Conclusion adopting the Ethical Guidelines for the Development, Application, and Use of Reliable and Accountable Artificial Intelligence.[96] In addition,

94 Komisija za zaštitu konkurencije Republike Srbije, *Izveštaj o sektorskoj analizi stanja konkurencije na tržištu digitalnih platformi za posredovanje u prodaji i isporuci pretežno restoranske hrane i ostalih proizvoda 2020-2021. godina,* 2022, p.38

95 Ibid., p. 38.

96 Conclusion adopting the Ethical Guidelines for the Development, Application, and Use of Reliable and Accountable Artificial Intelligence (*Official Gazette of the Republic of Serbia* No. 23/2023).

to ensure alignment with the EU, the Government has also enacted the Serbia Artificial Intelligence Development Strategy, 2020-2025,[97] which sets out the objectives and actions to promote AI development and facilitate the safe and ethical use of AI.

The EU has recognised that the conspicuous increase in the power of digital platforms requires protecting both customers and other firms doing business with these online actors, resulting in regulation of digital platforms generally and in particular their B2B relationships.[98] These developments suggest Serbia ought to follow suit and enact rules governing how digital platforms operate, especially in the intermediation in the sale and delivery of primarily restaurant food.[99] For instance, if Serbia had previously regulated B2B relationships,[100] the CPC would have been able to identify the behaviour of platforms as potentially problematic. This means that fair contractual provisions could have been ensured ex ante (in advance), rather than requiring actors to wait years for the CPC to complete its entire competition infringement case.

The Sectoral Assessment clearly shows the CPC has recognised the majority of issues inherent to digital platforms, primarily those in its remit, and has made relevant recommendations for aligning regulations with the European framework.

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97 Serbia Artificial Intelligence Development Strategy, 2020-2025 (*Official Gazette of the Republic of Serbia* No. 96/2019).

98 Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) and Proposal for a Regulation of the European Parliament and of the Council on a single market for digital services (Digital Services Act) and amending Directive 2000/31/EC COM/2020/825 final.

99 Komisija za zaštitu konkurencije R. Srbije, *Izveštaj o sektorskoj analizi stanja konkurencije na tržištu digitalnih platformi za posredovanje u prodaji i isporuci pretežno restoranske hrane i ostalih proizvoda 2020-2021. godina*, 2022, p. 35.

100 Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) and Proposal for a Regulation of the European Parliament and of the Council on a single market for digital services (Digital Services Act) and amending Directive 2000/31/EC COM/2020/825.

However, the Sectoral Assessment does not consider some issues of competition policy. Here, given the extreme complexity of the business environment for digital platforms, current competition rules may not be sufficient to address all issues affecting this industry, in particular some potentially harmful practices identified by the CPC during its assessment exercise.

For instance, the Sectoral Assessment implies that the CPC decided to define the relevant product market as the 'market in digital platforms for intermediation in the sale and delivery of primarily restaurant food and other products', with the territory of Serbia viewed as the relevant geographic market. The market was analysed on the basis of revenue earned by the participants in Serbia.

The definition of the relevant market is the starting point for the CPC to make decisions related to control of concentrations, infringements of competition, and, in particular, in cases involving suspected abuses of dominant position.[101] Without an appropriate market definition there can be no assessment of its structure or trends, the actual or potential competitors of the undertaking being investigated, or the market shares or general market power of any undertaking.

The Government Order on criteria for the definition of the relevant market[102] defines 'relevant product market' as 'the set of goods or services that consumers regard as substitutable, based on their characteristics, intended use, and prices'. Substitutability of goods and services is assessed with reference to demand substitution, which is the ability of consumers to purchase other goods or services as replacements for the goods or services concerned. The relevant product market can also be defined with reference to supply substitution[103] or as the goods or services themselves if those

101 As a rule, the CPC does not define relevant markets only in investigations of restrictive agreements that aim at the prevention, restriction, or distortion of competition in the market. These serious infringements of competition include price and terms fixing, market division, and the like.

102 Government Order on criteria for the definition of the relevant market (*Official Gazette of the Republic of Serbia* No. 89/2009 of 2 November 2009).

103 Supply substitution is the ability of other undertakings in the market to supply the goods or services concerned as quickly as possible and without major cost. Ibid., Art. 2(4).

goods or services are not substitutable;[104] this, however, is permitted only in exceptional cases. The 'relevant geographic market' is defined as 'the area in which the undertakings concerned operate, in which the conditions of competition are identical or similar and which can be distinguished from neighbouring areas', and is identified with reference to demand and supply substitution and against other possible relevant geographic markets.[105]

However, the tripartite or multi-sided nature of digital platform markets means that, in them, demand substitution can be viewed from the perspectives of various platform users, in other words from the perspectives of both restaurants and service users. Here, if an assessment finds demand substitutability to be significantly different for users, on the one hand, and for partners, on the other, this should in principle lead to the definition of two relevant product markets rather than only one.

It is also important to consider whether the criteria for assessing demand substitution explicitly envisaged in the Government Order (characteristics and intended use of goods or services, switching costs, market research, etc.) are sufficient for digital platforms, on which groups of users may often face no usage costs (zero price) whatsoever. For instance, the revised Commission Notice on the definition of the relevant market for the purposes of Union competition law[106] confirms that market substitution remains a key criterion for defining the relevant product markets in the presence of multi-sided platforms, but also emphasises the differences inherent in these platforms and the need for deploying additional criteria to assess demand substitution, such as product functionalities, intended use, and even the assessing the switching behaviour of customers of the zero-price product.[107] The EC had previously been employing all of these criteria, but resolved to aggregate

104 Government Order on criteria for the definition of the relevant market (*Official Gazette of the Republic of Serbia* No. 89/2009 of 2 November 2009), Art. 2(2).

105 Ibid., Art. 5.

106 Commission Notice on the definition of the relevant market for the purposes of Union competition law, C/2024/1645, 22 February 2022.

107 Ibid., paras. 94-98.

and publish the methodology with the aim of increasing the transparency of its policy and decision-making when applying Union competition law, in particular given the significant developments of the past twenty years, as well as of making competition assessments more efficient.[108] The Serbian Government Order on criteria for the definition of the relevant market does not list these criteria explicitly, but in principle allows them to be used in assessments.[109]

Moreover, it is questionable whether the revenue criterion used in the Sectoral Assessment was suitable for determining market shares of digital platforms for intermediation in the sale and delivery of primarily restaurant goods and other products, or whether it was more appropriate to assess market shares using other parameters, such as, for instance, the number of orders placed on a platform or the number of its partners or users. This dilemma stems primarily from the fact that final customers are zero-price users, which may mean that a platform will actually enjoy a strong position in the market even though its revenue may be low since its earnings come only from one side. Conversely, this method could result in market shares assessed on the basis of revenue being at odds with those determined using, say, order volume, and as such it may not be clear whether the market power of the undertakings concerned has been appropriately represented. All of the above considerations are important for the CPC's ongoing investigations involving digital platforms, and particularly so for any future cases in this sector.

Past findings of both CENTAR and the CPC, as well as the arguments set out in this policy brief, reveal the urgency of regulating the field.

The following section presents recommendations for enacting or revising regulations and improving compliance with existing rules. In view of CENTAR's focus on legally regulating employment with

108 Ibid., para. 4.

109 Government Order on criteria for the definition of the relevant market (*Official Gazette of the Republic of Serbia* No. 89/2009 of 2 November 2009), Article 3.

online food delivery platforms, the recommendations include the likely impact of regulation on digital platforms as businesses on the employment status of delivery workers.

7. RECOMMENDATIONS FOR REGULATING DIGITAL PLATFORMS IN ACCORDANCE WITH EUROPEAN STANDARDS

7.1. RECOMMENDATIONS RELATED TO COMPETITION LAW

7.1.1. IMPROVE COMPLIANCE WITH CURRENT REGULATIONS

Instrument	**Law on the Protection of Competition (LPC)**
Scope	General law governing freedom of competition in Serbia
Rationale	1. Enhance efforts by the Commission for Protection of Competition (CPC) to scrutinise the application of current freedom of competition safeguards by investigating concentrations, abuses of dominance, and restrictive agreements. 2. Ensure the CPC takes action on its own initiative pursuant to legal rules. 3. Increase transparency of the CPC by ensuring its rulings are made public more quickly and any applications to investigate alleged infringements of competition law are publicised.

Discussion

Concentrations are allowed except where they would significantly impede effective competition in the market of the Republic of Serbia or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position. The CPC is responsible for approving or denying concentrations notified to it by parties that meet the revenue thresholds set out in the LPC. It may also act on its own initiative to investigate concentrations where it finds that the combined market share of the parties to a concentration in the Serbian market exceeds 40%, as well as where it has grounds to suspect that the concentration would not meet the approval requirements of the LPC or would otherwise be barred under that law.

The Sectoral Assessment conducted by the CPC found the two digital (restaurant) food delivery platforms investigated had market shares of between 30 and 40 percent and between 60 and 70 percent, respectively, whilst publicly available information suggests the two entities had previously not reached the revenue threshold required to notify concentrations. As such, the CPC should investigate these concentrations on its own initiative, as it is indeed permitted to do under the LPC. Where the CPC finds a concentration would significantly impede effective competition, it is able to order any appropriate measures to render the concentration compatible with the market (including imposing fines or ordering the concentration be dissolved). Exercising this power is all the more important as the infringement of competition law procedure over the Glovo-Donesi concentration has found that revenue is not always the most appropriate measure for determining whether or not a concentration must be notified.

Until a new Government Order on criteria for the definition of the relevant market is enacted, the CPC should adopt a broad interpretation of the current Government Order on criteria for the definition of the relevant market. When considering digital platform cases, the CPC should also use additional demand substitution assessment criteria set out in the latest (February 2024) European Commission (EC) Notice on the definition of the relevant market for the purposes of Union competition law. This would help appropriately define the relevant product market in these cases.

Additionally, greater CPC responsiveness and more efficient case processing would ensure timely application of regulations and compliance by parties with competition rules.

Lastly, as also noted by the EC, the CPC ought to operate more transparently, including by ensuring its decisions are published promptly, instead of the current practice where publication ensues months after adoption. Transparent communication of the overall state and conditions of competition would also be advanced if the CPC published the content of all applications to investigate alleged infringements of competition law and the reasons why it did or did not choose to launch formal proceedings, since such applications are often made by competitors, clients, or suppliers of companies facing infringement allegations.

7.1.2. ENACT NEW REGULATIONS

Instrument	**Government Order on criteria for the definition of the relevant market**
Scope	This new instrument, patterned after the February 2024 EC Notice on the definition of the relevant market for the purposes of Union competition law, should consider changes to the business environment over the past decade due primarily to rapid evolution of technology and the emergence of many new digital markets. This proposed new Government Order ought to explicitly include market substitution criteria that reflect these developments, such as indirect network effects, functionalities, changes to consumption patterns over time, non-price switching costs such as not being able to migrate data to a different platform, and the like.
Rationale	The new instrument would make the CPC more transparent by facilitating access by businesses to criteria used by the CPC in defining the relevant market and assessing the conditions of competition in it. The underdeveloped nature of the local market relative to the EU obviously means this instrument is unlikely to be enacted soon, but its adoption is also desirable to promote alignment between local regulations and EU law, a commitment undertaken by Serbia as part of its accession negotiations.

An appropriately defined relevant market is critical for assessing the state of competition in it and the positions and power of market players. This is, in turn, crucial for understanding those players' obligations towards their suppliers and clients, including platform workers. The market must be defined appropriately using carefully selected and, ideally, transparent and readily publicly available criteria that correspond to the complexity of the market (a particularly significant consideration for digital platforms), primarily where concentrations under examination may impede competition, as well as in investigations of abuse of dominance.

A properly defined relevant market, together with an appropriate assessment of the conditions of competition and the market power of digital platforms operating in it, would also benefit platform workers, since platforms with greater power would be subject to more stringent requirements for complying with competition law, and this would in turn have a bearing on the status of platform workers.

Example

The CPC's Sectoral Assessment defines the relevant product market as the 'market in digital platforms for intermediation in the sale and delivery of primarily restaurant food and other products.' Mainly due to the outcome of the current case against Glovo, this market may not be the sole possible relevant product market; moreover, the criteria applied by the CPC when assessing demand substation in these markets are also not entirely clear.

7.2. RECOMMENDATIONS PERTAINING TO DIGITAL BUSINESS

7.2.1. ENACT NEW REGULATIONS

Instrument	**Digital Markets Act (DMA) and Digital Services Act (DSA)**
Scope	The DMA would mainly be intended to regulate the operation of large-scale online platforms acting as gatekeepers for digital markets. Its goal would be to ensure a level playing field and address practices that may be deemed anti-competitive. The DSA would spell our rules for digital services, including online platforms and intermediaries, with special emphasis on user safety, content moderation, and liability of digital service providers.
Rationale	These two instruments are aimed primarily at ensuring the creation of a fair, transparent, and predictable business environment that safeguards the rights of all digital service users and creates a level playing field and fosters innovation, growth, and competitiveness in a common market. The regulations would constitute the first steps towards general governance of digital platforms across markets and set the rules of conduct for digital platforms with significant market power. 1. **Fair and contestable markets**. The DMA seeks to prevent anti-competitive practices by large online platforms that act as gatekeepers. This can promote balance, allowing smaller digital businesses and start-ups to compete on a level playing field.

	Greater competition can lead to more opportunities for digital workers as more players enter the market. 2. **Clear rules and responsibilities.** The DSA sets out clear rules and responsibilities for digital service providers. The increased transparency resulting from this can benefit digital workers by providing them with a framework to exercise their own rights and responsibilities on the platforms they work for. It can also help improve working conditions, lead to clear contractual arrangements, and ensure fair treatment. 3. **Data protection and privacy.** Both acts deal with data protection and privacy issues. Strengthened data safeguards can promote the privacy of digital workers, ensuring digital platforms handle workers' personal and professional information accountably and employ algorithmic management lawfully. 4. **Innovation and entrepreneurship.** By fostering fair competition and addressing market imbalances, the two acts can promote digital innovation and entrepreneurship.
Instrument	**Artificial Intelligence Act**
Scope	Regulate the development and use of artificial intelligence (AI) systems, including those embedded into digital food delivery platforms.

Rationale

An Artificial Intelligence Act is necessary to:

1. **Create a national register of AI systems.** This register would inform the application and enforcement of all rules set out in the AI law. As such, notification of all AI systems developed or used in Serbia to the authorities ought to be made mandatory.

2. **Introduce requirements for using AI.** This regulation ought to envisage the requirements for using AI in Serbia so as to minimise risk of infringing on civil rights, avoid market fragmentation, create a level playing field, and foster AI development. The rules should also mandate that AI systems meet appropriate cybersecurity, data protection, and risk management criteria.

3. **Categorise AI systems.** Categorising AI systems by the risk they pose to the public would ensure any restrictions on these systems correspond to the likely risks of their use. The restrictions could range from a blanket ban for some systems, to mandatory registration and compliance checks for others, to simple and transparent communication of features to public authorities and users for less risky AI tools.

4. **Create an oversight body to implement the law.** This oversight body would assess whether AI owners and users comply with the requirements of the law. It would also be empowered to ban or restrict the use of a system if it is found to be non-compliant, and impose fines for breaches of statute.

	1. AI regulations would **greatly benefit platform workers.** Firstly, these rules would ensure high transparency in how platform workers' daily wages and salaries are calculated, as well as how these workers are rated by the algorithm embedded in their digital platform, thereby providing greater security and more robust safeguards against the abuse of personal and activity data. By introducing equal and equitable conditions for all digital workers, these regulations would further strengthen market competition and so indirectly enhancing general working conditions faced by platform workers.
Instrument	**Law or statutory instrument (Government Order) regulating the relationship between platform companies and their clients**
Scope	Set out the mandatory content of terms of service for online platforms to prevent them from imposing unfair commercial provisions on customers.
Rationale	The LPC regulates contractual relationships between platform-based sellers and service providers and their customers in general terms only, but secondary legislation is missing to restrict platforms from imposing unfair contractual agreements on their clients. This results in the absence of detailed guidelines for platform companies as to what their terms of service must and must not contain, apart from a general stipulation that these terms of service be present and a partial requirement for terms of service applicable to customers that are natural persons. Regulations to

mandate the content of terms of service for online platforms would promote awareness amongst platform companies that they need to apply appropriate terms of service and incentivise them to give timely consideration to the legal aspects of doing business online. Additionally, regulating conditions under which platform companies can operate would strengthen competition and pave the way for new market entrants.

Example

Articles 9 to 15 of the Electronic Commerce Law (ECL) do regulate contractual agreements entered into online, but nevertheless fail to take full account of the distinct nature of online platforms. As such, these rules stop short of prescribing the elements of an agreement between a platform company and its customers and confine themselves to mandating the general obligation for a service provider to allow a potential customer access to the agreement beforehand. A separate statutory instrument, referenced in the ECL, mandating the content of the terms of service would promote transparency, which would benefit both platform customers and businesses that use platforms to provide their services (such as restaurants relying on online delivery services).

In addition, the Serbian rules ought to be patterned after the EU's Platform to Business (P2B) Regulation, which stipulates the nullity of unfair commercial terms in agreements between merchants and platforms. Lastly, platforms must be formally required to be transparent when ranking businesses and apply their rules equally to all firms using the platform.

7.2.2. AMEND CURRENT REGULATIONS

Instrument	**Electronic Commerce Law (ECL)**
Scope	• Amend Article 4 of the ECL to mandate the extraterritorial application of this law. • Introduce national registers of platforms and delivery workers.
Rationale	Mandating the extraterritorial application of the ECL would have the following benefits: 1. Serbian oversight bodies would be able to scrutinise the operation of digital platforms operating in Serbia but registered abroad. This would ensure these companies are subject to Serbian e-commerce rules regardless of their corporate domiciles. 2. Local regulations would be applied more uniformly and consistently, which would help level the playing field irrespective of where market players are registered. 3. Subjecting digital platforms to local rules would promote responsible business and disincentivise unethical behaviour.

National registers of platforms and delivery workers would:

1. **Facilitate the collection of data to inform appropriate regulations.** Accurate and up-to-date figures for the number, profitability, categories, structures, and headcounts of platform companies would allow policymakers to develop effective, evidence-based regulations. These policies would entail not only setting general principles and fundamental rules, but also ensuring appropriate labour rights standards, including for earnings and working hours.

2. **Enhance oversight and foster compliance.** Closer oversight by the authorities (labour inspection, tax administration, and social security institutions) is expected to improve compliance with local law and help identify any regulatory omissions that can then be addressed.

3. **Promote fair competition.** The registers would level the playing field for all platforms, ensuring all companies operate under the same regulatory regime. This would promote fair competition and prevent non-compliant companies from deriving any unfair advantage from such illicit practices.

4. **Help assess the performance of policies.** Data collected in the registers will in time allow the performance of any policies, which will permit policymakers to understand the impact of regulations on the platform economy and make the requisite adjustments, leading ultimately to continuing enhancements of the system.

National registers of platform companies and workers ought to promote transparency, accountability, and policymaking, which will

at the end of the day benefit platform workers, companies, and the economy overall.

7.3 IMPROVE COMPLIANCE WITH CURRENT REGULATIONS

Instrument	**Personal Data Protection Law (PDPL)**
Scope	Regulate the processing of the personal data of customers and platform workers by digital platforms.
Rationale	Assess whether platforms are compliant with data protection rules, given the power accruing to these firms from their ability to process large quantities of data (including personal data).
Recommendations	Propose that the Office of the Commissioner for Freedom of Information and Personal Data Protection launch a scheduled inspection of food delivery platforms, particularly focusing on their use of algorithmic management. This oversight exercise would focus on: 1. **Compliance with the principles of lawfulness, fairness, and transparency.** The inspection would investigate whether all personal data are processed lawfully, fairly and in a transparent manner in relation to the data subject.

2. **Compliance with the principle of purpose limitation.** The inspection would investigate whether only personal data required for a specified purpose are collected and whether those data are used only for that specified purpose.

3. **Respect for personal rights.** The inspection would investigate whether data subjects are allowed the exercise of all rights envisaged under the PDPL, including the right of access, right to erasure, and right not to be subject to a decision based solely on automated processing which produces legal effects concerning the data subject or similarly significantly affects the data subject, with statutory exemptions.

4. **Compliance with the impact assessment requirement.** The inspection would investigate whether platforms have conducted a data protection impact assessment to appropriately understand the risks to the rights and freedoms of platform workers and customers, as well as whether they have sought the opinion of the Office of the Commissioner with regard to any residual high risk that may have been assessed.

5. **Production of manuals, publications, and/or guides for personal data processing by platform companies** to improve compliance and raise awareness amongst data subjects.


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