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CONSUMER PROTECTION - ORIENTED MARKET SURVEILLANCE

Abstract

The strategic goal of the Republic of Serbia is full membership of the European Union (the EU). In addition to other reforms, this goal requires the development of competitive market economy, which would be conducive to the free flow of goods in the EU market, as regulated by the EU law.

The basic subject of this paper is the research into the strengthening potential of market surveillance in Serbia, which would entail various products offered in the market, with the aim of achieving the optimal safety in their usage. In this paper, I have analyzed market surveillance in Serbia with respect to consumer protection, as a specific prerequisite to ensuring full membership of the EU. This can be done by adopting and implementing the existing standards and recommendations of the European Commission, within the limits of acceptable financial cost.

The focus is on observing key elements of market surveillance with respect to technical products presupposing CE marking. The appropriate marketing surveillance system would enable satisfactory consumer protection aligned with the individual requirements in support of each market participant. The stress is on the improvement of domestic consumer protection and aligning the consumer protection system in Serbia to the standards of the European Union, whereby both the companies and the consumers would be treated equally.

Key words: market surveillance, market participants, competition, consumer protection.

JEL Classification: L22

ТРЖИШНИ НАДЗОР У ФУНКЦИЈИ ЗАШТИТЕ ПОТРОШАЧА

Апстракт

Стратешки циљ Србије је пуноправно чланство у Европској унији (ЕУ). Овај циљ поред осталих реформских обавеза, захтева развој конкурентне

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тржишне привреде, као и њено оспособљавање за успешно такмичење и побољшања у области слободног кретања добара на тржишту ЕУ, које је уређено одговарајућим позитивним прописима.

Основни предмет овог рада је истраживање могућности јачања система тржишног надзора у Србији за различите производе који се нуде потрошачима на тржишту, а све у циљу постизања њихове пуне безбедности за употребу и коришћење. У раду се анализира тржишни надзор у Србији у функцији заштите потрошача, као посебан услов који ваља испунити како би се осигурало пуноправно чланство Србије у ЕУ, усвајањем и применом важећих стандарда и препорука Европске комисије уз прихватљиве економске трошкове.

Фокус у раду је на опсервацији основних елемената тржишног надзора за техничке производе који претпостављају ЦЕ - навођење. Успостављање одговарајућег система надгледања тржишта треба да омогући висок степен заштите потрошача, повезаног са потребама подршке свим тржишним актерима. Унапређење заштите домаћих потрошача и усаглашавање националних прописа и стандарда са адекватним у ЕУ, под истим условима на тржишту како за компаније учеснике тако и за потрошаче, посебно је наглашен аспект.

Кључне речи: *тржишни надзор, тржишни актери, конкуренција, заштита потрошача, ЦЕ означавање.*

Introduction

In the era of global competitiveness and globalization, the contemporary market is overwhelmed with supply of various types of manufactured and non-manufactured goods. We are looking at manufacturers with diversified production, connected by various forms of industry concentration, all of which is integral to contemporary business practice. Numerous companies realize concentrations with the aim of market expansion, or maintaining current market position. In some cases, concentrations may result in significant limitation of market rivalry, as well as weakening the competition. The market rivalry practice acknowledges harmful effects of concentrations, in addition to certain disputed forms of concentration. All of this affects consumer/customer satisfaction.

Contemporary commercial practice dictates that companies enhance their overall business performance in order to survive in the market. Meanwhile, the traditional company rivalry model has been changing due to joint ventures and mergers and acquisitions that have introduced new forms of strengthening competitiveness. This goes hand in hand with technological innovations, which have reshaped rivalry as well. These processes lead to the inevitable conclusion that the essence of competition lie not exclusively in rivalry, especially not in its exhausting aspect, considering that intense rivalry limits company profitability, and, consequently, affects the consumer satisfaction. The above mentioned processes of strengthening the concentration and competition among companies in the market impose the need for strengthening the market surveillance system with respect to said processes, with the aim of consumer

protection. Companies direct their supply based on consumer demand which is directly linked with profitability in the long run, thereby making consumers direct participants in their market surroundings. Regardless of the fact that the high level of market saturation in various goods should ensure high product quality, consumer protection is regulated by positive legislation of the EU, the prospective membership of which the Republic of Serbia strives to. Therefore, in accordance with the EU directives, its consumers are formally provided with continual protection.

In such an environment, the Republic of Serbia is making preparations to join the EU and operate in the EU market, while taking measures to achieve a high level of economic integration into international markets. However, the fact remains that a national economy cannot be competitive without producing competitive products which are in accordance with technical and safety market standards, namely, those with CE marking. Organizing and strengthening the market surveillance system for all products that require CE marking is an obligation not only for Serbia as a prospective EU member state, but also the active member states.

This being said, the purpose of market surveillance in the EU is to ensure the safety of all products circulating in the EU market, in accordance with the law, and based on mutual recognition and cooperation between member states. The achievement of these goals in Serbia will depend on its ability to efficiently follow the commodity, financial, technological standards of market surveillance, as well as other open flows of changes.

The purpose of this paper is to point out the main problems of and limitations to implementing the market surveillance system in Serbia aligned with the EU laws, but beneficial for the economy.

The basis of market surveillance

The basic goal of a unified EU market is the free flow of goods [Velloso, 1991]. Serbia joining the EU will provide domestic consumers with a significantly higher supply, at the same time encouraging competitiveness. For this goal to be realized, the trading barrier between the member states and Serbia as a prospective member needs to be removed, mutual acknowledgement of test results and certificates received, and technical harmonization achieved.

Serbia, as well as the member states, takes on the responsibility of continually adopting measures and building national infrastructure, so as to ensure that, identically to the internal EU market, the products coming into the market are aligned with the EU directives, and if properly installed, maintained and used, do not endanger public health and safety or other public interests. The options for adequate market surveillance in the EU are provided by the member states, and they are the same both for products made in the EU countries, and those made in countries not belonging to the EU, including Serbian products. Clearly, all market participants outside the EU, including Serbia, have to know and abide by the regulation and directive requests of the new approach and regulated market surveillance.

Organizing successful market surveillance in Serbia should be based on premises similar to those of the EU member states, regarding food products and non-food products alike. This means that appropriate regulation is implemented for certain product groups,

whereby the government jurisdiction in market surveillance implemented by a designated authority depends on the type of product.

The strengthening of the market surveillance system in Serbia has been supported by the EU under the IPA program, for food and non-food products. This facilitation measure aims at helping domestic government institutions, (inspectorates, customs, etc.), to strengthen market surveillance capacities, in order to achieve the desired level of product safety and domestic consumer protection, with minimal economic cost. Setting up an adequate and continuous system of market surveillance is one of the prerequisites to the full EU membership of Serbia, which all of its citizens will benefit from.

The need for continuous market surveillance in the EU is dictated by the internal market regulations on product safety. The point to market surveillance in the EU is ensuring the alignment with the laws and legislation enforced in the entire Union, and based on the mutual acknowledgement and recognition of documentation of the member states, as well as their cooperation. Serbia should follow in their footsteps, keeping in mind that it is vital that consumers in Serbia enjoy the right to the same level of protection as their EU counterparts, regardless of product origin. Surveillance itself is important for the interests of business entities, because it contributes to eliminating unfair competition.

An established market surveillance system in Serbia, in accordance with EU standards, will enable successful control of products in the market. With this respect, it is important that manufacturers, official distributors, traders, and the authorities in charge acknowledge the stipulations of market surveillance relevant to specific product and types and activities.

Inefficient functioning of market surveillance is the key factor to product nonconformity in any national market, including Serbian. To improve the Internal Market for goods and ensure the success of market surveillance on the EU Market, the New Legislative Framework was adopted [NLF - *New Legislative Framework*], whose market surveillance essence is entailed in [3] Regulation EC no. 765/2008, and [4] Decision CE no. 768/2008/EC, accepted by Serbia.

Consequently, the key option to implement is the New Legislative Framework directive. [9] This option is widely used in member states regarding non-food products, with the goal of meeting the surveillance requirements set by the EU, whereby CE marking is mandatory. The CE mark is the proof that the product has been designed and manufactured in line with all applicable EU directives. This mark also means that the product meets important safety and healthcare, environmental and proprietary regulations, and serves public interests. [Kanjevac-Milovanović, 2014, p. 47-48] The product bearing the CE mark, with the appropriate declaration of conformity issued by the manufacturer, has a free access to and passage through the EU market.

The member states, including our country which has signed the Stabilization and Association Agreement, [Veljković, 2013] have the responsibility of enforcing the EU laws, as stated in the founding Treaty. As the means of implementation, NLF *Regulation* gains importance when measures are taken to determine whether products meet the consumer protection requirements, and whether actions are taken with respect to product conformity.

Entailed in the NLF, [7] accepted by Serbia, is the high level of consumer protection, while all the member states are required to take the appropriate measures to ascertain that the products, including those made in Serbia, are released on the market only if health

and safety of the public and other public interests protected by NLF directives are in no way threatened. In other words, products have to be safely manufactured, installed and serviced, and used for their particular purpose. This calls for the realization of an effective and all-encompassing market surveillance on the part of the prospective EU members as well, so as to detect product non-conformity, thereby protecting not only the interests of consumers, but those of other business entities.

All the EU member states appoint authorities whose jurisdiction is market surveillance. In addition to being fully authorized, these authorities are fully equipped to perform the market surveillance activities, thus ensuring technical capacity and professional integrity of their staff. It is imperative that the authorities act independently, without discrimination, applying the principles of proportionality. As per the NLF directives, our country, alongside the member states, is to allow the free flow of products that conform to technical common practice. However, this practice does not exclude the right of said countries to deny the free flow of products with significant non-conformity issues, under the “safeguard clause”.

Adequate market surveillance in Serbia entails following the EU trends, whereby the member states are under the obligation to notify the EU commission or other member states of the internal market condition. Disclosure of information gathered during the internal market surveillance activities has not been specified, due to directives which pertain to certain products regulated by confidentiality of information. [10] Confidentiality pertaining to specific business subjects is based on national legal systems, which are different in each member state, especially in ours. Health and safety of consumers is the exception to this rule.

Choosing the form and modality of implementing market surveillance directives

In the EU, the choice of form and method of directive implementation falls in the hands of members states, provided that unbiased market surveillance implementation is ensured. What this means is that each member state can decide on its own market surveillance infrastructure, for example, removing all limitation on assigning responsibility to relevant parties in on functional or geographical basis, [Kos, Uzunović R., 2004] as long as surveillance is successful nationwide.

In Serbia, market surveillance is carried out by the authorities, as regulated by legal and administrative procedures. The authorities responsible for market surveillance are allowed to enter manufacturing and storage facilities, obtain relevant information, choose a random sample and have it tested, in order to fully protect the existing and future consumers. In the EU, General Product Safety Directive, GPSD, contains precise description of the duties of the member states to organize market surveillance and provide adequate means of surveillance. In the case of non-food and food products under special directives and laws of the EU, founded on full harmonization and entailing regulation in all safety aspects aligned with the directives, the General Directives do not apply. Nevertheless, these general directives can be used as a model of market surveillance of different consumer goods.

Efficient market surveillance in Serbia is indispensable in protecting the health of its nationals. To fall in line with the internal EU market, the relevant authorities need

efficient administrative cooperation in market surveillance in Serbia. As each country has jurisdiction over implementing market surveillance, this process is feasible.

Serbian market surveillance authorities must have the necessary resources and authorization for their surveillance activity, thus operating at full capacity when it comes to monitoring the quality of all the goods in the market, and ensuring product conformity. In terms of human resources, authorities must have the appropriate number of adequately trained, professionally competent and experienced employees. The authorities in charge also have to be independent and unbiased. In other words, market surveillance should be carried out in accordance with the principle of proportionality, which means that the surveillance activity must be proportional to the risk. The point is that the influence of surveillance must not be stronger than that needed to fulfill its purpose. With respect to ensuring the quality of assessment data, the equipment and operation of the laboratory used for this purpose must conform to EN/ ISO 17025 standard.

An independent body can be commissioned by the authorities to assess or control surveillance activities and function as technical support, provided that the authority in charge reserves the responsibility for its decisions, and eliminates any conflict of interest in evaluating the conformity of the independent body and its activities regarding surveillance. The responsibility for any decision to be made based on authorized surveillance, must be made by the lawful authorities. In the event of the authorized body and market surveillance authority being under the patronage of the same supervising administration, the limits of responsibility should be set so as to avoid the conflict of interest between their respective activities, as is the practice in the EU.

Market surveillance realization

Effective consumer protection is necessary in order to ensure the efficient functioning of the market economy. This protection will depend on the development of administrative infrastructure in order to secure control of the d market and law enforcement in this area. [14]

The EU legislation imposes the obligation on the member states to secure the implementation of market surveillance in their respective countries. Each state is solely responsible for handling this issue within its own legal limits. The biggest portion of surveillance over the unified EU market is in hands of market inspectorates of member states, followed by labor inspectorates (the use of product in the workplace), energy inspectorate (during usage), health inspectorate (healthcare), mining inspectorate (in mines), human environment and transport inspectorate for marine traffic, etc...Such a surveillance process entails the exchange of information between the inspectorates.

It is, therefore, clear that key market surveillance presupposes activity on the part of national supervising authority, which must control the conformity of products circulating in the market with the directives of the national legislation, modified by the NLF directives. Following are the activities of done in realization of conformity with NLF approach, when and where necessary.

Product conformity check at the moment of its release on the market/ putting it to use, is the very purpose of surveillance. The NLF directives include documents that allow the market inspectorate to obtain product information:

- EC- declaration of conformity - provided to the market inspectorate on request and
- Technical documentation - the inspectorate usually uses the abridged version, and asks for detailed data only if there is a doubt in a product's conformity with the law, thus protecting public health and safety and public interests as per the directive.

Realization of market surveillance in Serbia, as in other member states, calls for the involvement of many different institutions (market inspectorate, customs, etc.), that would monitor a specific product group or a specific area. The main task of the market inspectorate is to check whether the products conform to legislation, once they have been released on the market, and during their usage. Market surveillance cannot be realized in planning and production phases, that is, prior to the manufacture assuming formal responsibility for product conformity by marking their product with a CE mark. These activities, not only in the EU, but also in our country, do not exclude cooperation between the market inspectorate, the manufacturer and the deliverer, before the product has come on the market.

Considering the impossibility of organizing market surveillance activities in the planning and production phases, the success of implementing the regulations in Serbia requires that the supervising authorities cooperate with manufacturers and deliverers, in order to eliminate products that do not conform to standards being sold on the market. The information relevant to the authority is the EC declaration of conformity and technical documentation.

The focus of surveillance must be on areas where the greater probability of danger exists, or where the non-conformity is more common, in other words, where there is a specific public interest. When a product has all the necessary documentation and marking, it thereby satisfies the formal criteria of functioning. In the interest of a more successful market surveillance, the authorities in charge (inspectorates) should:

- be familiar with the regulation of every surveillance directive (e.g. the availability of EC- declaration of conformity, handling manual with product specification and the proper choice of criteria for assessing conformity),
- Plan their activities in advance and adequately respond to information provided by or gathered from the public (consumer complaints and consumer organization information, etc.)[11],
- Continuously oversee industrial, commercial and storage facilities; constantly patrol workplaces and premises where products are used, or operate; announce regular and organize random controls, and take product samples for testing.

The customs administration has its rightful place in the market surveillance process, not only in the EU, but also in Serbia. Regulation EU EEC no. 339/93 on the assessment of conformity with product safety standards in third world countries demands that the customs administration be fully involved in market surveillance activities. Their task is to temporarily or permanently ban the import of goods that might pose, or poses imminent threat to health and safety, according to the established regulation and terms of use. Regulation EEC no. 339/93 applies to all products imported from the third countries, which comprises the ones entailed in the NLF directives. These products are thoroughly checked for CE marking by the customs, especially if their packaging, label and stickers indicate they were made for the EU market without additional processing. [10]

The Serbian customs office, identical to the procedure in the EU, duly informs the market inspectorate about their decision to impose a temporary import ban on a certain product, causing the inspectorate to take the necessary measures on their part. In addition, market inspectorate has a duty to inform the customs about their conclusions regarding products imported from third countries [Despotović, 2016]. The responsibility for such products in the EU is taken by the authorized distributor, or a dealer with a head office in the member states. In Serbia, such responsibility lies with the dealer/distributor.

When a decision is made on the part of Serbian supervising authority about limiting, banning product placement, or product recall, precise reasons must be provided.

As for the general product safety directive, it is a legal basis for functioning of a system for information exchange in emergency situations. This rapid alert system for dangerous non-food products posing a risk to health and safety of consumers (RAPEX) is a general and horizontal system of early warning and monitoring [5]. Its purpose is to obtain information which would allow the authorities to act accordingly when a product poses a serious threat. Serbia has a long way to go before it develops such a system.

The Internet market in the EU is regulated by E-commerce directive 2000/31/EC, whereby the party offering goods/services, situated in the EU, has to fulfill the criteria set in the directive. If a certain product offered on the market fails to meet the criteria, it has to be clearly marked. A product cannot be marketed on the Internet for the EU market, until it is actually available on the said market. In Serbia, regulations covering this market are insufficient.

In the end, these activities serve a purpose of ensuring health and safety protection for consumers, and proper functioning of the market system.

Conclusion

As a prospective EU member, Serbia has to develop and harmonize its market surveillance institutions according to standards and directives of the New Legislative Framework. Future development entails domains of infrastructure quality, standardization, accreditation, intellectual property and network of institutions in charge of product conformity and control. Serbia, having the biggest trading volume with the EU countries, in other words, exporting goods and services largely to the internal EU market, has to accommodate every request on the part of EU and conform to its legislation, and ensure appropriate and synchronized consumer-oriented market surveillance.

The improvement of market surveillance system comes at a price, which is why it is especially important for this process to take place with acceptable economic expenses. Before, strengthening the market surveillance system in Serbia for food and non-food products had been supported by the EU through the IPA project. The purpose of this project was to increase the market surveillance capacity in domestic institutions (inspectorates, customs, etc.), thus adopting and implementing relevant EU regulation, with the ultimate goal of ensuring complete product safety and protecting the consumers. Serbia faces a lot of things that need to be done in terms of conforming domestic regulation to the valid EU directives, before it gains the status of an EU member state.

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