



## Serbia raids food delivery app

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Serbia's competition authority has opened an investigation into Glovo, alleging the food delivery application abused its dominance by imposing exclusivity clauses on its restaurant partners, as the enforcer's dawn raid procedures face separate constitutional challenges.

The Commission for Protection of Competition said in a statement on 3 November that it has opened an investigation into Glovo, after receiving a complaint from a competitor during a market study that the popular delivery app was offering reduced commissions to certain restaurant partners in return for exclusivity.

As a result, the agency raided the offices of Glovo on 2 November. The authority's market study into online food delivery platforms is still ongoing.

Founded in Spain in 2015, Glovo operates in 25 countries, offering multiple services through its app, although food delivery is the most popular.

The authority said that Glovo offers restaurants large sums of marketing money, which must be returned if they enter into a supply agreement with a competitor. The exclusivity clauses also included long expiration deadlines, as well as termination penalties, the agency said.

The alleged agreements "excluded competitors from the market" and reduced their ability to compete, potentially leading to "higher prices, less choice and lower quality offers", the agency added.

In May 2021, Glovo bought food delivery app Donesi, which handed it a dominant position by "drastically" increasing its market share, the authority said. The agency did not need to approve the deal as it fell below the country's turnover thresholds.

A spokesperson for Glovo said the company is "confident" it meets "all competition regulations and compliance requirements" and will continue to work closely with the authority during its investigation.

Raško Radovanović, a partner at Radovanović Stojanović & Partners in Belgrade, said the Glovo investigation may indicate a "shift" in the authority's priorities, as it takes a closer look at e-commerce and digital markets.

The probe follows a recent case where the authority raided an Apple distributor in September on suspicion of resale price maintenance, he added.

### Competition law reforms

The recent raids come as Serbia's competition rules are being challenged before the courts.

The law gives the enforcer broad powers to conduct unannounced inspections as it is not required to obtain a court warrant, nor does it provide a company with judicial recourse after a raid. Companies are also unable to appeal against a decision to conduct inspections until the authority has issued its actual infringement decision, which can take several years.

Local lawyers complained to *GCR* that the competition authority often doesn't provide the required evidence demonstrating there is a reasonable suspicion that a company would destroy documents to justify a dawn raid.

However, attempts are underway to amend the country's Competition Act to bring it in line with Serbia's constitution, which is based on the European Convention on Human Rights.

Some have complained that competition law proceedings do not afford the same procedural guarantees as other areas of law, including criminal cases.

In 2017, the authority announced changes to the legislation, which would significantly amend the country's antitrust law, including granting companies appeal rights against raids and mandating the agency to obtain a search warrant from a court before conducting searches.

That same year, multiple complaints were filed to Serbia's Constitutional Court seeking a review of the Competition Act, including its leniency policy, dawn raid procedures, market definition assessment and fine calculations.

Both the proposed legislative changes and the complaints to the constitutional court are still pending.

Bogdan Gecić, a partner at Gecić Law in Belgrade, who is lead counsel on these challenges, said he suspects the Constitutional Court is waiting for parliament to rectify the statute without having to quash the legislation itself.

The authority could be "abusing its awareness of this comity" and increasing the number of dawn raids it is conducting, he said.

Gecić claimed the authority's unannounced dawn raids are a clear breach of established case law under the European Convention on Human Rights, which guarantees a company's rights of defence and the right to a fair trial in antitrust cases.

Under the explicit wording of the Serbian constitution, ECHR case law applies directly, has a binding effect and supersedes any statutes or other national legislation, he added.

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