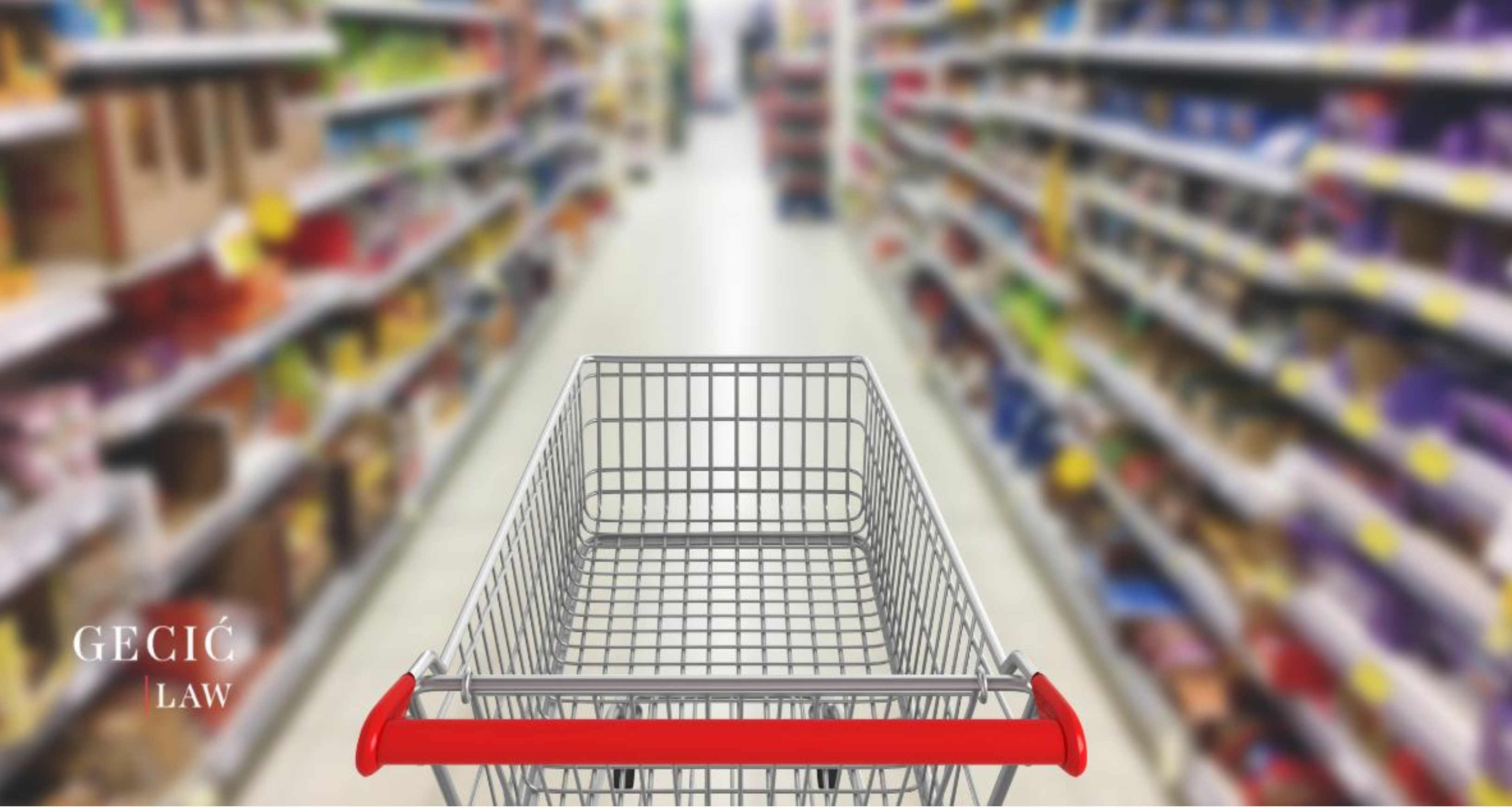

The New Enforcement Map: How Serbia's Competition Authority Will Assess Unfair Trading Practices

Serbia's new trading-practices regime changes more than contract drafting. It also changes how the regulator can reconstruct a commercial relationship, from bargaining power and the legal category of the conduct to the actual counter-performance, fee calculation, and evidence showing what really happened.

A new enforcement function for the SCA

The Trade Practices Act for Certain Types of Products gives Serbia's Competition Authority (SCA) a distinct enforcement mandate under the new regime. The SCA is not merely an interpretative authority: it can open and conduct investigative proceedings, impose administrative measures, carry out special sector inquiries, and publish acts and information relevant to the Act's application.

Proceedings are opened ex officio. The information that can lead to enforcement, however, may come from a very broad range of sources - suppliers and other market participants, associations, public authorities, and other persons with knowledge of the conduct. An anonymous submission is not a formal initiative, but the SCA may still use it as an information source for its own activities. The Act also creates a specific identity-protection and, subject to statutory conditions, reward mechanism for an individual who supplies decisive evidence.

For businesses, enforcement risk does not begin only when a formal request arrives. It can arise earlier when a supplier, employee, or other person documents a pattern and links it to contracts, invoices, approvals, or communications.

The procedure is a fact-finding exercise, not a clause review

The Act gives the SCA a substantial evidentiary toolkit. Investigative proceedings may involve requests for data, documents, and objects; interviews with the party, interested persons, and witnesses; expert evidence; inspections and unannounced inspections; and an oral hearing. During an unannounced inspection, authorized officials may, within the statutory scope of their powers, review business premises, documents, and communications related to the subject matter. The Act also requires respect for protected business information, trade secrets, and privileged communications.

That changes the logic of an internal compliance review. Contract wording remains important, but it is not enough. The regulator may compare the contract with the way a charge was invoiced, who approved an exception, what the commercial team wrote in an email, how a promotion was actually delivered, and whether the supplier received the service for which it paid.

The burden of proof also differs by category. For black-list practices and commercial retaliation, the SCA bears the burden. For grey-list practices, the party to the proceedings - in practice, the buyer - bears the burden of proving the facts showing why the particular arrangement is not unfair. That gives contemporaneous documentation for grey-list arrangements direct procedural value, not merely a governance function.

First filter: What type of practice is being assessed?

The SCA's Instruction on unfair trading practices, effective from July 4, 2026, distinguishes among three core categories: black-list practices under Article 6, grey-list practices under Article 7, and prohibited commercial retaliation under Article 8.

The black-list test is the strictest. Those practices are prohibited irrespective of the parties' agreement, the circumstances of the individual case, or a commercial justification. Formal supplier consent, therefore, cannot, by itself, cure conduct that the Act places on the black list.

The grey list operates differently. The Instruction proceeds from the rule that those practices are unfair unless the contrary is shown, while giving practice-specific detail on when certain arrangements may be permissible. The conditions are not identical across the list. Depending on the practice, the relevant points may include supplier initiative and advance consent, actual additional costs, objective and pre-set criteria, proportionality or genuine market value, or the existence of actual loss and a causal link.

Commercial retaliation is separately prohibited. The focus is on the buyer's response when a supplier exercises contractual or statutory rights or refuses certain terms. The Instruction points, among other examples, to delisting, reduced orders, delayed acceptance, or withdrawal of services. A commercial team's reaction to a supplier complaint can therefore become a distinct enforcement issue.

Second filter: Is there significant bargaining power?

An unfair trading practice under the Act is linked to a pronounced imbalance in bargaining power. Article 4 sets tiered revenue thresholds that create a rebuttable presumption that the buyer has significant bargaining power. But the analysis does not stop there. Where the thresholds are not met, a supplier may still prove significant bargaining power through other facts.

The SCA's separate Instruction on significant bargaining power, effective from July 18, 2026, is therefore central to the enforcement map. It identifies indicators such as geographic and timing constraints in a supply chain, buyer-specific production or packaging adaptations, inability to switch quickly to an alternative buyer, and unjustified delay of negotiations. The SCA may also consider negotiation history, contractual balance, dispute behavior, and patterns of conduct - who initiates amendments, whether terms are accepted without genuine negotiation, and the pattern of financial concessions or fees in the relevant and comparable supplier relationships.

For an internal applicability assessment, a revenue table is therefore necessary, but may not always be sufficient. The business should also be able to explain the factual story of the relationship, particularly if it relies on a conclusion that significant bargaining power is absent.

Evidence architecture: six questions the business should be able to reconstruct

The SCA's Instructions do not create one universal evidentiary test for every trading practice. Across the different examples, however, several recurring themes provide a useful framework for internal review. For each material fee, promotion, logistics service, return arrangement, amendment, or other sensitive practice, the business should be able to answer six questions:

- Which legal test applies - black list, grey list, or retaliation?
- Who initiated the arrangement, and were there genuine negotiations?
- What did the other party actually receive as counter-performance?
- How was the amount determined, and what costs, criteria, or market data support it where those elements are relevant?
- When and how was consent or written notice given, where the specific legal test requires it?
- Do invoicing, approvals, and the actual workflow match what the contract records?

The evidence pack will often extend beyond the signed agreement: amendments, purchase orders, invoices, calculation models, approvals, emails, performance reports, storage or sales data, and later changes. The unfair-practices Instruction expressly recognizes email and other reliable digital records in certain contexts. The objective is to preserve material that explains the legal and economic basis of the decision.

Internal investigations readiness before the first SCA request

Enforcement readiness is the operational ability to quickly locate and explain the relevant facts consistently, without creating additional risk. A response protocol should therefore identify in advance who leads regulatory engagement, who preserves documents, who coordinates with commercial and procurement teams, and who has authority to impose an immediate stop on potentially problematic conduct.

The first task is preservation: once a serious issue or a realistic prospect of proceedings is identified, relevant documents and electronic communications should be secured in a controlled way. The second is scope. If the same practice is embedded in standard terms or used with multiple suppliers, the review should not stop at a single agreement. The Act expressly provides that the same practice applied to different suppliers is assessed in a single proceeding against the buyer.

The third task is a fact matrix linking legal, commercial, and financial data: legal basis, process owner, contract, actual implementation, calculation, approvals, and outstanding questions. The fourth is the communications discipline. Teams managing supplier relationships need to understand that pressure, threats, or adverse treatment following a complaint can create a separate retaliation issue.

Finally, the business should know which document supports each important factual assertion. 'We have always done it this way' is not evidence. Nor is 'that is what the template says' enough if the operational workflow points in a different direction.

From contract review to regulatory reconstruction

The new enforcement framework shifts the focus from formal compliance to demonstrable compliance. The best internal questions are no longer only whether the agreement was amended and whether a fee appears in a clause. Better questions are whether the legal test is understood, whether the economic logic of the arrangement can be explained, whether actual conduct followed the agreement, and whether a reliable record proves it.

For legal and compliance teams, this is an opportunity to test the organization's enforcement story before the first case. Select several material practices, work backward as if the SCA had already asked for an explanation, and assess whether the entire commercial relationship could be reconstructed today without relying on individual memory.

Gecić Law can support a focused enforcement-readiness review covering selected practices, evidence trails, and the protocol for responding to the SCA, as well as a cross-functional workshop for legal, compliance, procurement, commercial, and finance teams.

Legal basis: Law on Trade Practices for Certain Types of Products (Official Gazette of the Republic of Serbia No. 35/2026), in particular Articles 4-9, 18-25, 31-38, and 41-44; Commission Instruction on unfair trading practices (effective July 4, 2026); Commission Instruction on significant bargaining power (effective July 18, 2026).