

THE LAW ON COMPETITION IN BOSNIA AND HERZEGOVINA



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THE LAW ON COMPETITION IN BOSNIA AND HERZEGOVINA

Competition in Bosnia and Herzegovina has been regulated by the Law on Competition of Bosnia and Herzegovina, while specific entity legislation in this legal area has not been established yet. Certain forms of prohibited competition activities are closely specified in particular sections of the Trade Law of the Republic of Srpska, then the Trade Law of the Federation of Bosnia and Herzegovina and the Trade Law of Brcko District under the section "Distortion of competition".

The Law on Competition represents the basic anti-monopoly law in our country, which should regulate the work of monopoly i.e. prevent misuse of monopoly position in the market.

The first Law on Competition of Bosnia and Herzegovina was adopted in 2001 and the same contained the basic rules of competition grounded on the provisions of the Treaty establishing the European Community. However, the same was not in accordance with the practice and solutions of the modern European legislation i.e. the Community *acquis* in this area. It was a reason to adopt a new Law on Competition ("Official Gazette of BiH", No. 48/05), which entered into force on 27 July 2005, but in meantime has been changed and amended twice.

The entry into force of the Stabilization and Association Agreement with the European Union and its Member States in June 2008 identified Bosnia and Herzegovina as a "potential candidate" for membership in the European Union. By signing and entry into force of the Stabilization and Association Agreement, institutions of Bosnia and Herzegovina committed to properly implement and apply the current and future legislation in accordance with the rules of harmonization and unification with the European Union law, including the legislation in the area of competition.

The most important provisions of the Stabilization and Association Agreement with the European Union relating to competition are contained in the Chapter VI of the said agreement, entitled "ADJUSTMENT

OF THE LAW, LAW ENFORCEMENT AND COMPETITION RULES". The main provision of the Chapter VI of the Agreement related to the application of the rules of competition law, is contained under Article 71, paragraph 2, which provides that any practices contrary to this provision shall be evaluated on the basis of criteria arising from the application of the competition rules applicable in the European Union and interpretative instruments adopted by the EU institutions, the European Commission and the European Court of Justice. This provision of the Stabilization and Association Agreement was implemented under Article 43, paragraph 7 of the Law on Competition which leaves the possibility for the Competition Council to use the jurisprudence of the European Court and decisions of the European Commission in order to evaluate a given case.

The essence of this legislation is that the Competition Council of Bosnia and Herzegovina, when applying the rules of the Law on Competition in the course of assessment of a particular case, and after the administrative procedure, shall apply the provisions of the current legislation in Bosnia and Herzegovina, or in order to assess a case shall apply the jurisprudence of the European Court of Justice and the European Commission's decision.

The Law on Competition regulates some issues and concepts only generally, while precise definition of the same is in the jurisdiction of the Competition Council. In that sense, the Council brought a total of 11 (eleven) bylaws, as follows: Decision on determining the relevant market; Decision on defining categories of dominant position; Decision on agreements of minor value; Decision on notification and criteria for assessment of concentrations of business entities; Decision on the procedure for release or mitigation of the sentence; Decision on a closer definition of periodic penalty payment; Decision on block exempted agreements among business entities operating at the same level of production or distribution and which are particularly relevant to the research, development and specialization; Decision on block exempted agreements between business entities operating at different levels of production or distribution (vertical agreements); Decision on block exemption granted to insurance agreements; Decision on block exempted agreements on distribution and servicing of motor vehicles; Decision on

block exemption of technology transfer agreements, licenses and know-how.

The Law on Competition includes rules governing the protection of competition among business entities from the restrictive practices of private and public business entities in order to protect the interests of consumers and to avoid the negative impacts of monopoly. Activities of business entities on the market include trade of goods and provision of services, which is regulated by the Trade Law (RS, FBiH and BD BiH). Both, the Law on Competition and the Trade Law protect the interests of consumers and ensure equal competition of legal entities and enhance competitiveness of business entities in order to gain confidence among customers and a greater influence in the market. Precisely, because of these objectives and protection of the basic principles of the Trade Law (principle of prohibition of restrictions on freedom of trade, the principle of unity of the market, the principle of stability and supply of the market, the principle of proportionality, the principle of equality of all traders and non-discrimination, and the principles of fairness and mutual cooperation), the same expressly prohibits a number of specific actions of retailers which might distort competition in the relevant market, namely the acts and actions of monopolistic activity, unfair competition, speculation and limitations imposed to a single market.

OBJECTIVES OF THE LAW ON COMPETITION AND APPLICABLE (RELEVANT) MARKET

The main objective of the Law on Competition is to establish the rules, measures and procedures for protection of market competition, competence and operation of the Competition Council in the protection and promotion of market competition in Bosnia and Herzegovina. The Law on Competition clearly recognizes the protection of market competition i.e. the same protects equality of all participants of trade in goods and provision of services in the relevant market, and at the same time does not put the interests of the monopolist in front of the interests of consumers.

The Law on Competition applies to all individuals and legal entities that are directly or indirectly involved in the production, sale and provision of goods and services in the relevant market, and whose action could prevent, restrict or distort market competition in the whole territory of Bosnia and Herzegovina or significant part of that market. The same lists all business entities and individuals who may threaten equal competition in the market, as well as all business entities controlling another business entity, as well as business entities under their control, then business entities with headquarters and residence abroad if their activities have an influence on the market of Bosnia and Herzegovina or its significant part.

For the application of an anti-monopoly law it is important to determine the relevant market i.e. to define the market in which the monopolist will sell, i.e. provide services. Our law regulates the issue of the competent (relevant) market but it also provides the possibility that the Competition Council with its by-law may prescribe more detailed criteria and the manner of determining the relevant market. (Decision on the definition of the relevant market -"Official Gazette of Bosnia and Herzegovina" No 18/06 i 34/10).

The relevant market is defined as a market for certain products and services used as a subject of activities of business entities in a particular geographic area. The relevant market includes all products and/or services that consumers and/or users consider mutually substitutable, under acceptable conditions, having in mind their essential characteristics, quality, common purpose, usage, sale conditions and price.

The relevant geographic market comprises the whole or a substantial part of the territory of Bosnia and Herzegovina, where business entities operate in sale or purchase of relevant product and /or service under the same or sufficiently homogeneous conditions which makes that market significantly different from the competitive conditions in neighbouring geographic markets.

According to the logical interpretation of these legal provisions it may be concluded that the legislator, by prescribing the same, tried to preserve the uniqueness of the market of Bosnia and Herzegovina which

includes the territory of Bosnia and Herzegovina or a substantial part of that territory determined by the particular characteristics and standards, i.e. that general market conditions cannot be disturbed at any point on the market of Bosnia and Herzegovina.

PROHIBITED COMPETITION PRACTICES

The Law on Competition of Bosnia and Herzegovina frames a common legislative practice by regulating the following areas:

- 1) Anti-competitive agreements,
- 2) Anti-competitive unilateral behaviour of dominant economic entities,
- 3) Rating concentration of business entities.

1) Anti-competitive agreements

The Law prohibits agreements, contracts, certain provisions of agreements and contracts, joint venture, explicit or implicit contracts of companies, as well as decisions and other regulation of companies, which as an aim and consequence have the prevention, restriction or distortion of the market competition in the relevant market, and which are related to:

- a) direct or indirect determination of purchase or selling prices or any other trading conditions,
- b) restriction and control of production, markets, technical development or investment,
- c) division of markets or sources of supply,
- d) application of different conditions to equivalent transactions with other business entities, thereby putting them at a disadvantage position compared with its competitors,
- e) conclusion of such agreements by which the other party is conditioned to accept supplementary obligations which, by their nature or usage, have no connection with the subject of the agreement.

Agreements concluded under these conditions shall be considered null and void and as such shall not have any legal effect.

However, the law still in certain cases, leaves a possibility that even these contracts can be convalidated, i.e. the same shall not be contrary to the general interests but only under the conditions that they contribute to improvement of production or distribution of goods and/or services within the territory of Bosnia and Herzegovina, or promotion of technical and economic development, whereby consumers are allowed a fair share of the benefits that come with it and to impose restrictions that are just necessary to achieve the objectives and prevent the elimination of competition in a substantial part of the subject products or services.

If the above conditions are met the Competition Council may, on a proposal of one or more parties to the agreement, bring a decision on individual exemption or a group exemption. The Competition Council must decide about the submitted application within three (3) months from the date of submission of the same, while in the opposite the agreement shall be considered exempted from the prohibition.

Individual exemptions are made with a specific validity period and the same may contain specific conditions and prohibitions. The validity of a given individual exemption may not exceed 5 (five) years but, under certain conditions, the same may be extended for another 5 (five) years.

Once the Competition Council makes a decision on individual exemption, the same produces legal effect from the date of conclusion of the agreement, but if the same contains certain conditions and prohibitions it will be valid from the date of adoption i.e. at least from the date of fulfilment of the same.

The Competition Council shall adopt the following block exemptions:

- a) Horizontal agreements, in particular those related to research, development and specialization,
- b) Vertical agreements, in particular those related to exclusive distribution, selective distribution, exclusive purchase and franchising,

- c) Agreements on transfer of technology, licenses and know-how,
- d) Agreements on distribution and servicing of motor vehicles,
- e) Insurance agreements.

Such exemptions are not a subject to assessment i.e. the same do not have to be submitted to the Competition Council for approval in respect of individual exemption, unless the same do not meet the requirements related to the exemptions to the application of rules on prohibition of the agreement.

The Competition Council's by-laws, define block agreements (Decision on Block Exemption agreements) concluded between business entities operating at the same level of production or distribution and which are particularly relevant to the research, development and specialization ("Official Gazette of BIH", No. 15/06); Decision on Block Exemption agreements concluded between business entities operating at different levels of production or distribution (vertical agreements) ("Official Gazette of BIH", No. 18/06); Decision on Block Exemption Granted to Insurance Agreements ("Official Gazette of BIH", No. 15/06); Decision on Block Exemption agreements on distribution and motor vehicle servicing ("Official Gazette of BIH", No. 16/06); Decision on Block Exemption agreements on transfer of technology, licenses and know-how ("Official Gazette of BIH", No. 15/06).

Provisions on prohibition of agreements do not apply to agreements of minor importance (value). Agreements of minor importance are those agreements whose joint market participation of contracting parties and business entities under their control is insignificant. Therefore, in terms of the Law on Competition agreements of minor importance understands the following agreements:

- a) If the total market participation of parties to the agreement on the relevant market does not exceed 10% when the agreement is concluded between business entities which are actual or potential competitors i.e. when they operate at the same level of production or trade,
- b) If the market participation of each of the parties in the relevant market does not exceed 15% when the agreement is concluded between business entities which are not actual or potential

competitors, or when operating at different levels of production or trade,

- c) Agreements for which it is difficult to determine whether the same is concluded between competitors or business entities which are not competitors, whereby the threshold of 10% of participation in the relevant market shall be applied.

Decision on agreements of minor importance ("Official Gazette of BiH" No. 86/05 and 34/10) the Competition Council defined more closely the terms and criteria that the minor importance agreements must meet.

2) Ruling (dominant) position

The law defines a dominant position as a situation where a business entity in the relevant market of goods and services, due to its market power may act quite independently in relation to its actual or potential competitors, customers, consumers or suppliers, also taking into account the share of that business entity in the relevant market, share market of its competitors, as well as legal and other barriers for the entry of other entities to the market.

The following are situations stipulated by the law when it is deemed that a certain business entity has a dominant position:

- a) it is assumed that a business entity has a dominant position in the market of goods or services if the same participates in the relevant market with more than 40%,
- b) it is assumed that more business entities have a dominant position in the market of goods and/or services if in the relevant market two or three business entities together have a market co-ownership of more than 60%,
- c) it is assumed that more business entities have a dominant position in the market of goods and/or services if in the relevant market four or five business entities have a combined market co-ownership of more than 80%.

Only the acquisition of such a position by the law itself is not prohibited, but abuse of that position is prohibited. The abuse of dominant position in particular relates to the following situations:

- a) Direct or indirect imposing of unfair purchase or selling prices or other trading conditions which restrict competition,
- b) Limiting production, markets or technical development to the detriment of consumers,
- c) Application of different conditions for the same or similar transactions with other parties, thereby placing them at a disadvantageous and unfavourable competitive position,
- d) Conclusion of agreements that condition the other party to accept supplementary obligations which, by its nature or according to commercial usage have no connection with the subject of such an agreement.

If the Competition Council determines that a participant has a dominant market position and as such misuses the position, then the Council shall make a decision which determines the measures that the participant should take. The aim of the imposition of the measures is to establish a disturbed competition or elimination of harmful effects. The Council has to make the said decision within four (4) months, or otherwise it will be considered that the concluded agreement or conduct of the business entity does not represent abuse of dominant position.

3) Concentration

The Law has left an important function for the Competition Council, which is the approval of the concentration of market participants. In this connection, the same defines what is meant by the concentration, which concentration is prohibited, reasons for considering suggested concentration (the total revenue for the control of concentration), registration and assessment of the intended concentration as well as procedure of adopting the decision on the concentration.

As with a dominant position, the Law does not prohibit concentrations except those aimed at distortion of competition in the relevant market.

Concentration of business entities which as a result have a significant distortion of an effective competition in the entire market of Bosnia and Herzegovina, or on its significant part, is prohibited, especially if the same create new or strengthen existing dominant position. The intended concentration of business entities has to be registered in the following cases:

- a) if the total annual turnover of all parties to the concentration achieved, on the basis of selling goods and/or services in the global market, amount of 100.000.000 BAM in the final account in the year preceding the concentration, and
- b) if the total annual turnover of each of at least two parties to the concentration realized by the sale of goods and/or services on the market of Bosnia and Herzegovina is at least 8.000.000 BAM in the final account in the year preceding the concentration, or if their joint participation on relevant market exceeds 40%.

In order to control the concentration of banks, insurance companies and other financial institutions, the Law on Competition prescribes special rules, so that the income is not to be considered on an annual basis, but according to the following parameters:

- a) Interest income and similar income,
- b) Income from securities,
 - Income from shares and other securities, whose profit is changeable,
 - Income from participating interests in business entities,
 - Income from shares in connected business entities,
- c) commissions receivable,
- d) net profit from financial operations and other operating income,
- e) for insurance companies and companies engaged in re-insurance, the value of gross premiums that includes amounts paid and outstanding amounts related to insurance contracts concluded by or on behalf of insurance companies, including also re-insurance premiums, after deduction of taxes and para-fiscal taxes charged on the amount of individual premiums or in relation to the total amount of premiums

The notification of concentration shall be submitted within 15 days of the conclusion of the agreement, of the announcement of the public offer of shares or acquisition of control, and shall be submitted jointly by business entities except in situation when control of the whole or part of one or more business entities is acquired by another business entity, or when the application is submitted by the legal entity that acquires control. Obligation to register the concentration exists in cases where the concentration participants prove their intention to concentrate according to the agreement, memorandum of understanding, and letter of intention signed by all parties to the concentration or the public announcement of the purchase intention.

In the course of the assessment of the concentration the Competition Council will particularly analyse the effects which can result in distortion of competition, or will determine whether that concentration creates or strengthens a dominant market position, in particular:

- a) Structure of the relevant market,
- b) Effects of the concentration on the other parties and potential competitors,
- c) Position of parties in competition, their market participation, economic and financial power,
- d) Alternatives and selection of suppliers and users,
- e) Economic, legal and other obstructions to market entry,
- f) Level of internal and international competitiveness of business entities concerned,
- g) Supply and demand trends of the relevant goods and/or services,
- h) Trends, technical and economic development,
- i) Consumer interests.

If the Competition Council determines that the proposed concentration could result in a distortion of competition, creation or strengthening of a dominant position, then they will bring a conclusion to initiate the process. After the procedure they can make a decision to evaluate the intended concentration as permitted, unpermitted or conditionally compatible but in that case have to determine measures, terms and conditions to be fulfilled.

The deadline for issuing a decision declaring the concentration as permitted is 30 days, if the Council finds on the basis of submitted applications and accompanying documentation, as well as the assessment of the surrounding circumstances, that there are conditions for the same. In other cases, i.e. if the Council does not decide on the basis of the submitted application within three (3) months, it shall be deemed that the concentration is permitted.

The law permits the Competition Council that in cases where the concentration has been implemented contrary to the decision of the Council and the same is being assessed as unpermitted, or the same is conducted without notification of concentration, and led to a significant distortion of competition, then *ex officio* or upon request with special decision the Council determines the necessary measures to ensure free market competition. In this regard, the Council may order that the acquired shares or interests may be alienated, as well as prohibit or limit the exercise of voting rights that are related to the shares or interests in business entities to the concentration and cessation of control of joint venture or other forms of concentration that led to improper concentration.

PROHIBITED COMPETITION PRACTICES UNDER THE TRADE LAW

The most important parts of the Trade Law (Republic of Srpska, Federation of Bosnia and Herzegovina and the Brcko District) are dedicated to the protection of the market and protection from unfair competition. The basic principle of the Trade Law is the principle of free trade that is to be performed under the same conditions for all traders in accordance with the law, good business practices, and principles of fair competition and trade rules or usages in a way that is not harmful to another trader, customer or consumer. The Law unequivocally prohibits any restriction of the actions at the market, distortion of competition, or placing some traders or consumers in a disadvantageous position in the market. However, to prevent a market distortion or eliminate harmful effects of the same caused by natural disasters, scarcity of resources for the economy and supplying the population the Government of the Republic of Srpska or the Government of the Federation of Bosnia and

Herzegovina (if the need for the same appears in at least two cantons) as well as the Government of Brcko District, can impose provisional measures.

Actions of distortion of competition in terms of the Trade Law are considered:

- a) Regulations and activities of monopolistic activity
- b) Unfair competition
- c) Speculation, and
- d) Limitation of the single market.

1) Monopolistic behaviour

Monopolistic activity involves a monopolistic agreements and monopolistic behaviour.

Monopolistic agreements understand the relationship between two or more traders on business conditions, aimed at the destruction or prevention of free competition, and by which one or more retailers may be placed to a privileged position compared to other retailers or consumers.

Monopolistic agreements in particular include:

- a) A division of the market in terms of buying and selling goods,
- b) Obligation of the seller not to sell specific goods to another buyer or obligation of the buyer to sell the purchased goods only in a particular market or to a particular customer,
- c) Fixing of prices and conditions of sale of goods of the same type,
- d) Limiting the volume of production,
- e) Closure of market in order to exclude other traders from the market,
- f) Denial of the sale or the sale of goods and purchase of goods contrary to good business practices,
- g) Other forms of monopolistic activity.

Agreements concluded under the conditions set out above are null and void and do not produce legal effect.

On the other hand, the monopolistic agreements shall not include situations where two or more traders exchange experiences, explore the market, prepare and implement research and development projects, use equipment for the production, transport and storage, service, advertising, propaganda, etc.

Monopolistic behaviour includes abuse of dominant market position and actions aiming at the creation and use of a monopolistic position.

Actions directed to the creation and uses of monopolistic position include:

- a) The use of special privileges for import of goods (release or reduction of import duties) along with the increase of trade costs over the real costs, in order to acquire illegal profit,
- b) The purchase of imported goods at the price higher than the market price.

The abuse of monopolistic position arises with:

- a) Deliberate, direct or indirect determination of very high prices or temporarily low prices below cost price with an aim of taking or maintaining dominant or monopolistic position,
- b) Division of the market by areas or kinds of goods or groups of customers,
- c) Applying different conditions to equivalent or appropriate type of work to various retailers, which brings them into less favourable position in the market,
- d) Imposing unusual conditions of compensation and payment of goods and services by which they gain the benefits and preferential treatment for selected trader,
- e) Termination or reduction of the volume of production of buying and selling at the expense of consumers,
- f) Refraining from selling goods or services and the creation of provisions to increase prices,
- g) Limitation of technological development and investment,

- h) Concluding contracts under the condition that another participant accepts supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contract,
- i) Any other action which impairs or prevents free competition in the market by using its dominant position.

2) Unfair competition

Unfair competition is another form of violation of free market competition defined by the Trade Law.

Unfair competition represents an action of the trader which is contrary to good business practice, and which causes or may cause damage to another trader, the company or the consumer.

The same particularly includes:

- 1) The promotion, advertising or offering goods by specifying data and using expressions that creates or may create confusion in the market and in that way put a certain trader in a favourable position or a customer may be misled,
- 2) Information on any other trader, which may be damaging to the reputation or business of the trader,
- 3) Sale of goods with the tag or data that create or may create confusion about the origin, production method, quantity, quality and other characteristics of the goods,
- 4) Concealing defects of goods by emphasizing non-existent quality, providing false information, or otherwise misleading customers,
- 5) Taking actions aimed at termination of the business relationship with other traders or to prevent i.e. obstruct establishing such a business relationship,
- 6) Unjustifiable failure to perform or unilateral termination of the contract on purchase and sale of goods or any other trade agreement due to the conclusion of the same or similar agreements with others, which causes or may cause damage to contractors,

- 7) Advertising apparent bargains or apparent reduction of prices of goods or performing other similar actions that lead or may mislead the consumer in terms of price,
- 8) Unauthorized use of another's name, company, trade mark, label or other external characteristics if it creates or may create confusion in the market,
- 9) Authorizing another trader that can use its external characteristics if it creates or may create confusion in the market,
- 10) Unauthorized use of the services of a trader, marketing representative or agent of another company.

3) Speculations

A speculation understands actions taken in order to cause considerable market disruption or which prevents or hinders the execution of the prescribed provisional measures, such as:

- a) The concealment of goods, restriction or suspension of sales of goods and other actions which cause market disruption,
- b) Conditioning the purchase of some goods with purchase of other goods or otherwise conditioning the purchase and sale of goods,
- c) Sale of goods in the manner and under conditions which make it difficult for customers or even prevent the purchase of goods,
- d) Concluding fictitious contracts of purchase and sale of goods and other trade activities
- e) Non-contracting time of delivery or delivery of goods after the agreed period at a price higher than the price which was valid on the date of delivery of the goods under the contract,
- f) Conditioning the inclusion of products in the product portfolio, such as: the payment of special compensation approach to the sales network, payment for inclusion of the offer, the payment of "listing of" purchase products without paying the purpose of the initial charge, and other forms of conditioning with the same effect.

4) Limiting the single market

Restricting the single market implies the limitation of the market by adoption of general and individual regulations and actions taken by the competent authorities, traders and other legal entities which are contrary to the Constitution and the law are being limited the free exchange of goods and free access to the market or otherwise distort the competition. The said regulations and actions put a trader at a disadvantage position in a way that the same prevents expansion of the sales network, the sale of goods or the forced sale which was not in accordance with its business policy.

THE COUNCIL OF COMPETITION OF BOSNIA AND HERZEGOVINA

The Competition Council was established in accordance with the Law on Competition. It is an independent body, with the status of legal entity. It is located in Sarajevo and has exclusive competences to decide on the presence of prohibited competition activities in the market of Bosnia and Herzegovina and in this sense the performance of administrative and professional activities (conduct of the proceedings, preparation of draft decisions, resolutions, by-laws, etc.).

The Competition Council is financed from the budget of BIH institutions. It is consisted of six (6) members and they are appointed for a six-year term with the possibility of reappointment. Three members of the Competition Council shall be appointed by the Council of Ministers of Bosnia and Herzegovina, two members by the Government of Federation of Bosnia and Herzegovina and one member by the Government of the Republic of Srpska. The Council of Ministers of Bosnia and Herzegovina shall appoint a president of the Competition Council (one of the members of the Council) for one-year term without the possibility of reappointment. Members of the Competition Council shall be selected among recognized experts in the certain professional fields and their status is equal to the status of administrative judges. This status is incompatible with the performance of any direct or indirect, permanent or periodical jobs with the exception of academic activities.

The Competition Council of Bosnia and Herzegovina shall cooperate with international and national organizations and institutions in the field of competition, on the basis of which it may provide and request data and information related to factual and legal opinions, including confidential data. In this sense, it is authorized, if necessary, to establish some expert and advisory bodies which shall provide help in the course of decision-making.

Operations and decision-making, as well as other issues of importance for the performance of their tasks, the Competition Council shall be governed in accordance with the Rules of Procedure.

The Competition Council shall bring decisions in the course of its sessions (held at least once a month), and it shall be deemed that a quorum is constituted of at least five (5) members. Decisions are made by majority vote, provided that the decision must be voted for by, at least, one member from each of the constituent peoples. Sessions of the Council shall be chaired by the President of the Council of Competition, which among other things is authorized to represent the Council, convene and preside the sessions of the Council, draw up an agenda for each session (it can be amended in a session at the request of at least two (2) present members) sign all decisions and other acts of the Council of Competition.

DECISION MAKING PROCESS

The Law on Administrative Procedure of Bosnia and Herzegovina shall govern proceedings before the Council of Competition.

According to the Law on Competition, the proceedings may be initiated *ex officio* (if there is reasonable suspicion that it significantly prevents, restricts or distorts competition), or at the request of a party which may be any natural or legal entity, who has a legal or economic interest, then at the request of the Chamber of Commerce, Association of Employers and Entrepreneurs, the Consumer Association and the executive authorities of Bosnia and Herzegovina. A request for proceedings shall include:

- a) Seat of the legal entity or name, surname and residence of the authorized legal representative of the requestor;
- b) Data indicating the subject of the request;
- c) Description of facts, practices or circumstances which led to the submission of the request.

In addition to the initial request may be submitted the following documentation:

- a) Documents and other evidences supporting the allegations relating to the description of facts, practices or circumstances as a reason for the request;
- b) Assessment of the relevant market;
- c) Assessment of the market share of the requestor as well as the market share of competitors;
- d) Excerpt from the court register, work permit or other relevant documents on the registration of the requestor;
- e) Annual report, financial statements or other accounting documents of the requestor for the financial year preceding the filing of the request.

The law specifically prescribes documents that must be filed (as well as documents that can be filed) along with the request to institute proceedings in case of the request for individual exemption and request for registration of the concentration and that include the following documents:

- 1) Along with the request for individual exemption of the agreement, shall be enclosed:
 - a) Original or certified copy or certified translation of the agreement, if the official text of the agreement is not written in one of the official languages in use in Bosnia and Herzegovina;
 - b) Excerpt from the court register, work permit and other relevant documents related to the registration of the requestor;

- c) Annual report, financial reports and other accounting documents for the financial year preceding the conclusion of the agreement (all signatories of the agreement);
 - d) Other information which the Competition Council determines as necessary.
- 2) Along with the notification of intended concentration, shall be enclosed:
- a) Original document confirming the legal basis of concentration or a certified copy of the same or a certified translation, if the text of the original is not written in one of the official languages in use in Bosnia and Herzegovina;
 - c) Annual financial statements for the parties to the concentration for the financial year preceding the concentration;
 - d) Other information in accordance with by-laws of this Law.

In the application of concentration the applicant has to state whether has an intention to apply for the assessment of the concentration to any other body authorized to assess concentration outside the territory of Bosnia and Herzegovina or such request has already been submitted, and if there is already decision issued the same has to be submitted as well.

Upon receipt of any application for the initiation of proceedings the Competition Council shall issue a certificate of receipt of complete and correct application. If the application does not contain all the required elements, or the same does not contain all documents or proper documents, the Council shall seek completion of the data by the applicant. If the applicant does not comply with the order within eight (8) days then it shall be deemed to have abandoned the application. If there is a justified reason, at the request of the applicant, the Council can extend the deadline of eight (8) days for additional fifteen (15) days.

Upon initiation of the proceedings, either *ex officio* or at the request of the parties, the Competition Council shall issue a decision on initiating proceedings. It has to be issued within a period of thirty (30) days

of receipt of the proper and complete application. The said decision cannot be appealed.

After issuing the said decision on instituting the proceedings, the Competition Council shall submit the same, along with the request for proceedings, to the opposite party for a response, as well as to all persons for whom it is established that are involved in the process. The opposing party shall, within a period, which cannot be shorter than 8 (eight) days, nor longer than thirty (30) days, file a response to the request along with the necessary attachments and documents. Exceptionally, at the request of the parties, the Competition Council may extend this period for additional 30 (thirty) days. If the party does not submit a response in that period the Competition Council shall impose to the party (business entity) a fine which shall not exceed 1% of total revenue in the preceding business year.

Proceedings before the Competition Council shall be managed by a member of the Council (appointed by the Council) while the process shall be managed by an official who has to act in accordance with the orders issued by the Competition Council.

In the proceedings before the Competition Council the burden of providing evidences is on the party who filed the initial request, except in cases where the business entity or association of business entities gain the profit or are exempted in accordance with by Article 4, Paragraph 3, Item 5 and 7 of the Law on Competition, in which case they will have to provide evidences.

During the proceedings individuals or legal entities are obliged at the request of the Council or officials:

- a) to submit necessary notifications in the form of written submissions or oral statements and to submit necessary information and documents, regardless of the method of storing the same;
- b) allow direct access to all business premises, movable and immovable property, business books, databases, and other

documents, where it cannot be prevented even if treated as business, state or technical secret;

- c) submit necessary information and data to other persons which can contribute to solving and explaining certain issues on prevention, restriction or distortion of competition;
- d) enable other necessary actions in order to establish all relevant facts in the proceedings.

The Competition Council, if it determines that there is a reasonable doubt that a party or other persons possess some documents or other instruments relevant to the determination of the substantive facts in the proceedings, may request from the court to issue a search warrant of apartments or premises and the other persons and then seizure objects and documents.

In cases where the parties have conflicting interests in the procedure, the Competition Council shall implement mandatory public hearing. A public hearing is not required, if the Council based on the written declaration of parties determines that there are no disputed facts and that on the basis of the same a decision can be brought.

If the Council schedules a public hearing, and the hearing is not attended by one of the parties or attorney of the same, it will be postponed. If the second public hearing is not attended by one of the parties, or attorney of the same, the Council will make a decision on the basis of its findings and available data and documents.

The Competition Council has the right (if it determines that certain actions prevent, restrict or distort competition i.e. can lead to damage of individual business entities or sectors of the economy and the interest of consumers) to issue a decision on interim measures which may not exceed three (3) months, with the possibility of extension, and the same shall order suspension of procedure, the fulfilment of certain conditions or other measures to remedy the harmful effects.

After completing the procedure, the Council (responsible member of the Council after the procedure will submit a report on the procedure

along with the proposal of the decision), shall at its session issue a decision for each individual with the purpose of:

- a) Assessment the compatibility of the agreement with the provisions of the Law on Competition;
- b) Determination of exemptions to the agreement,
- c) Determination of abuse of dominant market position,
- d) Assessment the compatibility of concentration,
- e) Determination of interim measures,
- f) Specific measures for re-establishing of effective competition in cases of prohibited concentrations.

The law obliges the Competition Council to adopt decision to terminate the procedure within prescribed period, counting from the date of resolution on institution of proceedings, as follows:

- a) Within six months to determine prohibited agreements,
- b) Within three months to determine individual exemption,
- c) Within four months to determine abuse of dominant position,
- d) Within three months to determine the concentration assessment.

Decisions of the Competition Council are final and binding on the entire territory of Bosnia and Herzegovina, and the same are to be published in the "BIH Official Gazette", Official Gazettes of both entities and Brcko District. The same is to be applied from the date of its publication. Those decisions cannot be appealed, but it is possible to initiate an administrative dispute before the BIH Court within thirty (30) days from the day of receipt or publication of the decision.

CONCLUSION

The Law on Competition, for the first time, regulated the competition policy, as one of the important instruments and pillars for creation and strengthening a single economic space i.e. the market of Bosnia and Herzegovina. The same applies to all forms of prevention, restriction or distortion of competition within the territory of Bosnia and Herzegovina or out of the territory if it influences the territory of Bosnia and Herzegovina.

However, the Law on Competition in BiH is a transitional law and in the future it will be the subject to modification and compliance with the legislation of the European Union. If Bosnia and Herzegovina wants to become a member of the European Union then shall firstly have to organize an effective and functional economy that will be able to follow the standards required by the European Union, particularly those related to the internal (common) market of the European Union. Principles set in this way require developed and expertized knowledge in the area of competition law and competition policy.

In this regard, the determination of the structure and content of the legislative and institutional framework of the Law on Competition of Bosnia and Herzegovina, the efficiency of its application to the competitiveness of BIH business entities, and further testing of harmonization and unification of domestic legislation with EU standards, is one of the conditions and commitments of Bosnia and Herzegovina in this area towards the European Union.



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The Law Firm SAJIC is the partnership Banja Luka founded in 2003 with headquarters in Banja Luka.

We mainly deal with civil and commercial law. We provide legal advice in all areas of law, represent clients before all courts and government institutions in the Republic of Srpska and Bosnia and Herzegovina, participate in negotiations with domestic and foreign legal and physical entities, give opinions and recommendations regarding the application of regulations, etc.

Our team consists of 18 employees, and eight of them are lawyers. Each of us specializes in just a few narrow fields of law, which allows us to provide our clients with high quality, professional service.

Banja Luka, February 2016

