

BOSNA I HERCEGOVINA
Konkurencijsko vijeće



БОСНА И ХЕРЦЕГОВИНА
Конкуренијски савјет

OPINION

**upon Request of the undertaking JT International a.d. Senta,
Regional office in Bosnia and Herzegovina**

**Sarajevo,
October 2012**



Number: 01-26-7-003-3-I/12
Sarajevo, 4th October 2012

Under Article 25 paragraph (1) item f) of the Act on Competition (Official Gazette of BiH, No. 48/05, 76/07 and 80/09), upon a Request for Opinion of the undertaking JT International a.d. Senta, Regional office in Bosnia and Herzegovina, Mehmeda Spahe 26, 71 000 Sarajevo, received by the Council of Competition on 6th April 2012 under No: 01-26-7-003-I/12, the Council of Competition, on 43rd session held on October 4th 2012, adopted

OPINION

The Council of Competition received on April 6th 2012 a Request for Opinion No: 01-26-7-003-I/12 submitted by the undertaking JT International a.d. Senta, Regional office in Bosnia and Herzegovina (hereinafter: the Applicant), thereby requesting for an opinion on permission to contract certain sale conditions imposed by the retailer while contracting sale of tobacco products to the wholesaler.

After the insight was made in the Request submitted, the Council of Competition defined it was supposed to be amended, and therefore it requested for supplements on April 12th 2011, through the Note No: 01-26-7-003-1-I/12, and after that the Applicant made supplements on August 1st 2012.

The Applicant requests for opinion if the tobacco wholesalers are allowed, in accordance to the Competition Act, to offer to tobacco retailers two different kinds of rebate of retail price of tobacco products as follows: additional rebate and basic rebate.

Additional (higher) rebate to retail price of tobacco products would be offered to retailers who accepted conditions from Addendum 2 of the Proposal of the Contract on sale of tobacco products, as follows:

- to expose always at least 5 (five) packages of all products from the actual assortment of the wholesaler,
- to expose always at least 1 (one) package of each out of 14 (fourteen) individual products of the wholesaler as well as 2 (two) optional products upon his choice,
- Exposition of products is arranged according to instructions of the representatives,
- newly launched products of the wholesaler are obligatory part of the assortment to be exposed in first three months upon the moment of exposing.

The basic rebate would be offered to other retailer who are not interested in this way of cooperation, namely, who do not accept conditions from the Addendum 2 of the Proposal of Contract on sale of tobacco products.

This cooperation proposal would be referred to all retailers cooperating with the Applicant, without any conditioning or possible disturbances in cooperation or supply if the retailer does not accept the offered type of cooperation.

Also, all retailers who decide to go for this type of cooperation should have identical rebate. The Applicant would not make any difference in regards of level of rebate within such group.

Agreed conditions of exposition as well as defining assortment of tobacco products with retailer to cooperate with, would have been agreed in such a manner that other wholesalers would have been unable to expose or contract assortments of tobacco products at the same selling spot at the retailer.

Article 4 paragraph (1) of the Competition Act („Official Gazette“, No. 48/05, 76/07 i 80/90) (hereinafter: the Act) forbids agreements, contracts, specific provisions of agreements or contracts, joint ventures, explicit or tacit agreement between undertakings, as well as decisions and other acts of undertakings aimed at and having as a consequence prevention, restriction or distortion of competition at relevant market.

The Applicant, under conducted analysis of the selling conditions from the concerned agreement, does not distort provisions of the Act because equal business conditions have been offered to all retailers to which it has business cooperation with in a very transparent manner and under equal conditions. Also, such cooperation does not prevent retailers to conclude contracts on sale of tobacco products with other tobacco wholesalers in the relevant market.

Under data specified in the Request, the Council of Competition considers that concerned agreement does not distort market competition and thereby its provisions are not contrary to the Act. If the data specified deviate from the real factual condition, this Opinion shall not be applied.

President

Gordana Živković

Submitted to:

- JT International a.d. Senta, Head office in Bosnia and Herzegovina
- Record
- A/a