

**DECISION**  
**adopted upon Conclusion on initiation of ex officio proceedings against undertakings**  
**„BHB Cable TV“ d.o.o. Lukavac and „ELTA-MT“ d.o.o. Tuzla**

**Sarajevo**  
**July, 2012**

Number: 02-26-6-018-63-II/11  
Sarajevo, 31.07.2012.

Pursuant to Article 25 paragraph (1), item (e), Article 42 paragraph (1) item (a), and Article 54, in accordance with Article 4 paragraph (1) item c) of the Competition Act („Official gazette of BiH“, No. 48/05, 76/07 and 80/09) and Article 108 of the Law on administrative procedure („Official gazette of BiH“, No. 29/02, 12/04, 88/07 and 93/09), following the proceedings initiated upon Conclusion on initiation of ex officio proceedings, No. 02-26-6-018-9-II/11 of 8<sup>th</sup> ebruary 2012, against undertakings „BHB Cable TV“ d.o.o. Lukavac, Dom kulture Lukavac, 75300 Lukavac and „ELTA-MT“ d.o.o. Tuzla, Fočanska 1 N, 75000 Tuzla, acting upon Leniency application filed by undertaking „BHB Cable TV“ d.o.o., for determination of existence of prohibited agreement, Council of Competition at its 39<sup>th</sup> (thirty nine) session held on 31<sup>st</sup> July, has issued

### **DECISION**

1. It is established that the undertaking "BHB Cable TV" d.o.o. Lukavac, Dom kulture Lukavac, 75300 Lukavac and undertaking "ELTA-MT" d.o.o Tuzla, Fočanska 1 N, 75000 Tuzla, by signing agreement on joint management of cable television network in Lukavac (No. 003/05 dated 19.08.2005.) do not prevent, restrict and distort competition in sense of the division of markets or sources of supply in the area of provision of cable distribution of radio / television program in Lukavac, from the Article 4 paragraph (1) item c) of the Competition Act.
2. Decision on conditional fine release immunity by the Council of Competition, No. 02-26-6-18-03-II/11 of 29.09.201, shall be repealed.
3. Regarding the Request for reimbursement of the costs of the proceedings to represent the undertaking "ELTA-MT" d.o.o. Tuzla, Foca 1 N, 75000 Tuzla, Council of Competition shall issue a separate conclusion, in terms of Article 108 paragraph (4) of the Law on Administrative Procedure.
4. This Decision is final and shall be published „Official gazette of BiH“, official gazettes of Entities and Brcko District of Bosnia and Herzegovina.

### **Exposition**

Council of Competition of Bosnia and Herzegovina (hereinafter: Council of Competition ) in accordance with Article 2 of the Regulation on procedure for granting immunity from fines („Official gazette of BiH“ No.34/10) has received Leniency Application (hereinafter: Application) No. 02-26-6-018-II/11 of 25.08.2011. for participation in prohibited agreement, filed by „BHB Cable TV“ d.o.o. Lukavac, Dom kulture Lukavac, 75300 Lukavac (hereinafter: BHB Cable).

In the Application, undertaking BHB Cable stated that it participated in a prohibited agreement under Article 4 paragraph (1) item c) of the Competition Act (hereinafter the Act), as it has concluded an agreement on the management of cable television network with other cable operator, which stipulates that subscribers are divided by the principle that even number subscribers belong to one cable operator and odd number subscribers to the other.

After it was established that all the conditions prescribed by law are met, the Council of Competition, at the 17th session held on 29.09.2011. issued a Decision on conditional immunity from fine No. 02-26-6-018-3-II/11 (hereinafter the Decision), by which the undertaking BHB Cable, is conditionally granted immunity from fine for infringement of Article 4 paragraph (1) of the Act.

Council of Competition submitted the Decision to the undertaking BHB Cable, and in act No: 02-26-6-018-4-II/11 of 29.09.2011 requested the submission of complete documentation and data stated in the Application. Since the undertaking BHB Cable did not provide the requested documentation, the Council of Competition in the act No. 02-26-6-018-5-II/11 of 10.11.2011., reiterated the request for documentation.

Undertaking BHB Cable, in submission number: 02-26-6-018-6-II/11 of 14.12.2011. had submitted part of the required documentation, and the Council of Competition in the act: 02-26-6-018-7-II/11 of 14.11.2011. requested the submission of additional data. Undertaking BHB Cable has submitted the required documentation, submission No. 26-6-018-8-II/11 of 21.12.2011.

In the submitted documentation undertaking BHB Cable essentially stated:

- That it built a joint cable television network in Lukavac with the economic entity "ELTA-MT" d.o.o. Tuzla Fočanska 1N, 75000 Tuzla (hereinafter: ELTA-MT);
- That it concluded agreement on the joint management of a cable television network in Lukavac with a commercial entity ELTA-MT, No. 003/05 dated 19.08.2005, (hereinafter: the Agreement on joint management);
- That by the Agreement on the joint management they shared subscribers on the principle that even subscribers belong to one side and the odd subscribers to the other.

Having carried out activities on collecting information and data regarding the effects of these two undertakings in the market of cable distribution of television program in Lukavac, and analyzed the Agreement on joint management, Council of Competition noted that there is a reasonable suspicion that some of its provisions, prevent, restrict or distort competition within the meaning of Article 4 paragraph (1) item c) of the Act.

## **1. Parties to the proceedings**

Parties to the proceedings are undertaking „BHB Cable TV“ d.o.o. Lukavac, Dom kulture Lukavac, 75300 Lukavac, and undertaking „ELTA-MT“ d.o.o. Tuzla, Fočanska 1 N, 75000 Tuzla.

### **1.1. BHB Cable**

Undertaking „BHB Cable TV“ d.o.o. Lukavac, Dom kulture Lukavac, 75300 Lukavac, is entered in Court Register of Municipality Court in Tuzla under number 1-13276, with the capital of 389.529,00 KM, with 56,0% equity of natural person Jurić Drago, <sup>1</sup>(..)\*\*, with 32,0% equity of natural person Tomičević Branko, (..)\*\* and 12,0% equity of natural person Lučić Ilija, (..)\*\*.

Main registered activities of undertaking BHB Cable are broadcasting of television program and other activities within the registered business.

Undertaking BHB Cable earned annual turnover in 2010 amounting to <sup>2</sup>(..)\*\* KM, and in 2011 annual turnover amounting to (..)\*\*KM.

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<sup>1</sup>(..)\*\*data represent business secret

<sup>2</sup>(..)\*\* data represent business secret

Undertaking BHB Cable owns valid general permission for network operators, number DMOR-TS/076/04, issued by the Communications Regulatory Agency (hereinafter: CRA) on 28.12.2004.

In Bosnia and Herzegovina undertaking BHB Cable has neither associated companies, nor share in other undertakings.

## **1.2. ELTA-MT**

Undertaking „ELTA-MT“ d.o.o. Tuzla, Fočanska 1 N, 75000 Tuzla, is entered in Court Register of Municipality Court in Tuzla under number 1-12616, with registered capital of 2.000,00 KM, with 100,0% equity of natural person Tokača Muhamed, (..)\*\*.

Main registered activities of undertaking ELTA-MT are broadcasting of television program and other activities within the registered business.

Total turnover of the undertaking ELTA-MT in 2010 amounts to (..)\*\* KM, and in 2011 amounts to (..)\*\* KM.

Undertaking ELTA-MT owns valid permission for distribution of RTV program, No. 337-DP, issued by CRA on 17.01.2011.

In Bosnia and Herzegovina undertaking ELTA-MT has no associated companies, nor shares in other undertakings.

## **2. Legal framework of the proceedings**

During the proceedings, Council of Competition applied provisions of the Act, Regulation on relevant market („Official gazette of BiH“, No. 18/06 and 30/10), Regulation on procedure for granting immunity from fines („Official gazette of BiH“, No. 34/10), Regulation on categories of dominant position („Official gazette of BiH“, No.18/06 i 34/10), as well as provisions of the Law on administrative procedure („Official gazette of BiH“, No. 29/02, 12/04, 88/07 and 93/09), in terms of Article 26 of the Act.

Council of Competition has also applied provision of the Law on communications („Official gazette of BiH“ No. 31/03, 75/06 and 32/10).

## **3. Procedure upon Conclusion for initiation of ex officio proceedings**

Pursuant to Article 32 paragraph (1) of the Act, Council of Competition issued a Conclusion for initiation of ex officio proceedings, No. 02-26-6-018-9-II/11 (hereinafter: Conclusion) against undertaking ELTA-MT and undertaking BHB Cable, for determination of existence of prohibited agreement from the Article 4 paragraph (1) item c) of the Act.

In accordance with Article 33 paragraph (1) of the Act, Council of Competition submitted the Conclusion to all parties to the proceedings for their answer on 09.02.2011. and asked for relevant documentation in act No. 02-26-6-018-13-II/11 and No. 02-26-6-018-14-II/1.

Undertaking BHB Cable, through its representative, Attorney Office Spaho, Mehmeda Spaho 8, 71000 Sarajevo (hereinafter: BHB Cable attorney) submitted its declaration to the Conclusion No. 02-26-6-018-15-II/11 on 20.02.2012., where it states the following:

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- Along with a commercial entity ELTA-MT, it has general permission for network operator for the city of Lukavac, and that these two operators are the only providers of cable TV in the city Lukavac;
- That the economic entity BHB Cable and commercial entity ELTA-MT signed an Agreement to manage a network of cable TV in Lukavac by which they shared subscribers on the principle that a subscriber with even number of contract is to be a subscriber of undertaking ELTA-MT, and a subscriber with an odd subscriber number belongs to undertaking BHB Cable;
- That at the time of signing the Agreement on joint management it was not aware of the fact that it was in conflict with the provisions of the Act;
- That the undertaking ELTA-MT did not follow the development of cable television networks, and has undertaken acts against undertaking BHB Cable;
- That upon learning that the Agreement on the joint management is in conflict with the Act, it suspended all activities and initiated a case before the Council of Competition and will cooperate fully with the Council of Competition during this procedure.

Undertaking ELTA-MT through its attorney, lawyer Mirza Telalović, Marsala Tita 36, 75000 Tuzla (hereinafter referred to as: ELTA-MT attorney) has submitted the required declaration and documentation on 27.02.2012, submission No. 02-26-6-018-18-II/11, which fully disputes Conclusion, stating the following:

- That there is no grounds for initiation of proceedings to establish a prohibited agreement under Article 4 paragraph (1) item c) of the Act, because the provisions of the Agreement on joint management, do not contain any division of markets or sources of supply, as signatories to the Agreement have the same network, the same license and provide one service, or perform the same distribution within the joint system of cable television;
- That the Agreement on the joint management is a Partnership agreement, and that within their joint network there is no competition, because each subscriber receives a signal from one control unit and follows the same scheme of television programs from a single network, regardless of whether the subscriber belongs to undertaking ELTA-MT or undertaking BHB Cable;
- That the Law on Communications does not prohibit that, instead of a single carrier, there are two or more;
- The cable television network in Lukavac was built in 2002 with the joint investment of undertaking ELTA-MT and undertaking " Telefon komerc " d.o.o. Tuzla, with building permits and use permits issued for both investors;
- The undertaking " Telefon komerc " d.o.o. Tuzla transferred its 50.0% stake in a cable television network in Lukavac to the commercial entity BHB Cable (contract dated 15.12.2004.);
- That the cost of subscribing to cable television in Lukavac is lower than in other cities in Bosnia and Herzegovina, and that this reflected the advantage and benefit of the partnership agreement for end consumers;
- The issue of (non) existence of competition can only be addressed by a third cable operator;

- That three more networks operate in the city Lukavac: BH Telecom network, or "Moja TV", then wireless cable - Network MMDS (Multichannel Multipoint Distribution System) undertaking Elta kabel doo. Dobož and DTH (direct-to-home) satellite networks - Total TV, which represent real competition to the partnership network;
- That at the Municipal Court in Tuzla 42 commercial disputes against undertakings BHB Cable are pending, for debt to undertaking ELTA-MT incurred for failure to comply with the Agreement on joint management;
- The undertaking BHB Cable seeks to present Agreement on joint management as contrary to the law, in order to eliminate partner from the relevant market, and at the same time avoid paying the debt incurred;
- The undertaking BHB Cable launched a lawsuit against the undertaking ELTA-MT for the termination of the Agreement on joint management.

Undertaking ELTA-MT amended submitted responses to Conclusion, submission number: 02-26-6-018-19-II/11 of 27.02.2012, where it states the following:

- That it is exclusively a partnership agreement, where the workers are paid jointly for joint work, or that joint management agreement was solely due to the financial situation in order to build a cable network 40.0% cheaper than it would be without the partnership agreement;
- That there was no intention to share markets and that the end users got a fair share of benefits that they are entitled, achieved through a low subscription price (lowest in Bosnia and Herzegovina), which is fully in accordance with Article 4 paragraph (3) of the Act;
- That the present (partnership) agreement is signed and agreed only for analogue cable distribution program schedule and not agreed to the same network for internet and digital program scheme, which can be distributed by multiple operators in the same network;
- That, from a technical point of view it is impossible for the same network to include two analog program schemes, meaning that even without the contract concluded there was only one operator, instead of two, which could compete with each other;
- That Agreement on the joint management has changed nothing in terms of competition in the market, only brought economic savings to partners in building cable networks;
- The division of subscriber billing is established on the principle of odd-even in order to avoid double taxation on the sale of both signatories to the agreement.

Attorney of economic entity ELTA-MT in the submission number: 02-26-6-018-20-II/11 dated 08.03.2012., filed a request for access to the file, and requested a copy of the same document, what is in accordance with Article 37 paragraphs (2) and (3) of the Act, which was provided on 08.03.2012. in the premises of the Council of Competition, in the presence of the officer responsible for handling the case.

In the further course of the proceedings Council of Competition requested economic operator ELTA-MT and undertaking BHB Cable additional documents, act No. 02-26-6-018-27-II/11 and No. 02-26-6-018-28 -II/11 of 03.04.2012., which were provided within the deadline, the number of submissions: 02-26-6-018-37-II/11 and No. 02-26-6-018-38-II/11 of 16.04.2012.

Undertaking ELTA-MT, on 22.02.2012 in the submission number: 02-26-6-018-16-II/11, asked for exemption and review of responsibility of the President of the Council of Competition, Ibrica Lakišić for initiating the proceedings before the Council of Competition. The request, in accordance with the provisions of Article 38 paragraph (3) of the Law on Administrative Procedure, which provides that the request for exemption of head of the institution is decided by the Council of Ministers, was forwarded to the Council of Ministers. After that, the commercial entity ELTA-MT, withdrew its request for exemption of the President of the Council of Competition, and asked for exemption of the member of the Council of Competition, Stjepo Pranjić, by submission number: 02-26-6-018-46-II/11 on 24.05.2012. In accordance with prescribed procedure Council of Competition on the 38<sup>th</sup> meeting held on 14.06.2012. issued a Conclusion on refusal of exemption request, No. 02-26-6-018-53-II/11, which is delivered to the parties, the act No: 02-26-6-018-54-II/11.

Since this is the case with the parties with opposing interests, Council of Competition, in accordance with Article 39 of the Act, has scheduled a hearing that was held on 30.05.2012. at the seat of the Council of Competition, and the same was attended by legal representatives and attorneys of the parties to the proceedings.

During the oral hearing, all parties stated that they remain at its current statements (Minutes No. 02-26-6-018-48-II/11).

Representative of the undertaking ELTA-MT, lawyer Mirza Telalović submitted, in terms of Article 105 of the Law on Administrative Procedure, the cost of lawyers' services in the amount of 8586.50 KM, submission No. 02-26-6-018-50-II/11 on 05.06.2012.

#### **4. Collecting information from third parties**

In order to gather additional information about the procedure, Council of Competition sent request for the documents to the CRA (on number of cable distributors in the relevant market, the licenses issued for the distribution of cable television, number of subscribers, etc), which within the given time provided the requested information, submission No. 02-26-2-018-21-II/11 of 14.03.2012.

In addition, in order to determine the number of distributors of television programs operating in the relevant market Council of Competition has sent a request for information to 11 (out of 16) cable operators, licensed as the network operator by the CRA, and may provide services, among others, in the town of Lukavac.

In the document No. 02-26-6-018-30-II/11 of 03.04.2012., Council of Competition addressed: undertaking T3 d.o.o. Ilidža; undertaking Logosoft d.o.o. Sarajevo; undertaking M&H Company d.o.o. Sarajevo; undertaking Softnet d.o.o. Sarajevo; undertaking Elta Kabel d.o.o. Doboj; undertaking Artnet d.o.o. Kiseljak; undertaking Air Aba d.o.o. Sarajevo; undertaking Aneks d.o.o. Banja Luka; undertaking Telemach d.o.o. Sarajevo; undertaking subjektu Ak online d.o.o. Sarajevo; undertaking Dasto Semtel d.o.o. Bijeljina. All answers of the mentioned undertakings were submitted in approved deadline (No. 02-26-6-018-31-II/11 of 09.04.2012, No. 02-26-6-018-32-II/11 of 09.04.2012, No. 02-26-6-018-33-II/11 of 11.04.2012.; No. 02-26-6-018-35-II/11 of 12.04.2012., No. 02-26-6-018-36-II/11 of 16.04.2012. ; No. 02-26-6-018-39-II/11 of 16.04.2012.; No. 02-26-6-018-40-II/11 of 16.04.2012. ; No. 02-26-6-018-41-II/11 of 17.04.2012.; No.: 02-26-6-018-42-II/11 of 17.04.2012.; No. 02-26-6-018-43-II/11 of 20.04.2012., No. 02-26-6-018-55-II/11 of 21.06.2012. and No. 02-26-6-018-56-II/11 of 21.06.2012.).

## 5. Relevant market

In accordance with Article 3 paragraph (1) of the Act and Articles 4 and 5 of the Regulation on relevant market ("Official Gazette", No. 18/06 and 34/10) the relevant market is defined as the market of certain products and / or services that are the subject of business operation of undertakings in a particular geographical area.

A relevant product market comprises all products and / or services that consumers and / or users consider mutually substitutable, under acceptable conditions, with particular emphasis on their essential characteristics, quality, common purpose, method of use, conditions of sale and prices.

The relevant geographic market comprises the whole or a substantial part of the territory of Bosnia and Herzegovina, where the undertakings operate in the sale and / or purchase of the relevant product under the same or sufficiently homogeneous conditions and which are significantly different from the conditions of competition in neighboring geographic markets.

Relevant market for the services of the proceedings in question is the provision of services in the market of cable distribution of television program.

The relevant geographic market of the proceedings is the city Lukavac since undertaking "BHB Cable TV" and undertaking "ELTA-MT" have built a shared network in the city of Lukavac, which is the subject of the Agreement on joint management.

Subsequently, the relevant market of the proceedings is the market of providing cable distribution of television programs in the area of city Lukavac.

### 5.1. Analysis of relevant market

Undertakings BHB Cable and ELTA-MT have been jointly and simultaneously present on the relevant market of providing cable distribution of RTV programs in the area of city Lukavac since 2005, i.e. from the completion of their joint network or signing of the Agreement No. 003/05 on joint management of the network.

Number of subscribers of cable operators on the relevant market from 2005 to 2011:

Table 1

No.	Number of subscribers for the period 2005-2011	BHB Cable	ELTA-MT	TXTV d.o.o. Tuzla
1.	2005.	<sup>3</sup> (..)**	(..)**	(..)**
2.	2006.	(..)**	(..)**	(..)**
3.	2007.	(..)**	(..)**	(..)**
4.	2008.	(..)**	(..)**	(..)**
5.	2009.	(..)**	(..)**	(..)**
6.	2010.	(..)**	(..)**	(..)**
7.	2011.	<sup>4</sup> (..)**	(..)**	(..)**

Source: data of undertakings: BHB Cable, ELTA-MT and TXTV d.o.o. Tuzla

<sup>3</sup>(..)\*\* data represent business secret

<sup>4</sup>(..)\*\* data represent business secret



From data supplied by cable operators (eleven) Council of Competition has determined that the undertaking TXTV d.o.o. Tuzla provides services to the relevant market of city Lukavac through its own analog and digital signals transmitted over optical networks leased from the undertaking BH Telecom Sarajevo.

During the process Council of Competition analyzed and compared the cost of providing cable television service in some cities of Lukavac surrounding in relation to the cost of the parties to the proceedings, and whether the cost of a monthly subscription to the relevant market is less than the monthly subscription fee for the same service provided by other cable operators in Bosnia and Herzegovina, for example undertaking Anex d.o.o. Banja Luka - charges 12,00 KM (source: [www.aneks.com](http://www.aneks.com)), undertaking Telemach d.o.o. Sarajevo – charges 15,00 KM source [www.telemach.ba](http://www.telemach.ba)), undertaking Art.Net d.o.o. Sarajevo - charges 15,00 KM (source [www.art-net.ba](http://www.art-net.ba)), undertaking Elta-kabel d.o.o. Doboj - charges 12,90 KM (source [www.elta-kabel.com](http://www.elta-kabel.com)), undertaking M&H Company d.o.o Sarajevo - charges 11,50 KM (source [www.mh-company.ba](http://www.mh-company.ba));

In order to get deeper insight into the market in a broader context, Council of Competition took into account the data related to the number of subscribers to other networks, except cable, as follows: BH Telecom network, that is, "Moja TV", then wireless cable - MMDS networks (multichannel Multipoint Distribution System) undertaking Elta-cable d.o.o. Doboj and DTH (direct-to-home) satellite network - Total TV.

The number of subscribers to these networks for the period 2008 - 2011 (not including data for earlier years because they have not operated in the city Lukavac):

Table 2

No.	Number of subscribers for the period 2008-2011	BH Telecom network	MMDS network through Elta -kabel d.o.o.	Total TV
1.	2008.	(..)**	(..)**	(..)**
2.	2009.	(..)**	(..)**	(..)**
3.	2010.	(..)**	(..)**	(..)**
4.	2011.	(..)**	(..)**	(..)**

Source: data of undertakings: BH Telecom, Elta Kabel and Total TV

## 6. Established facts and review of evidence

Having reviewed all relevant facts and evidence of the parties to the proceedings and other relevant undertakings, Council of Competition established:

- that on 10.02.2003. between the undertaking "Telefonkomerc Tuzla" d.o.o. 15, Krečanska 75000 Tuzla (hereinafter Telefonkomerc) and ELTA-MT, an agreement on joint construction of the main station and television network Lukavac was signed (municipality Lukavac made the decision on urban planning consent number: 02/6-03/1-23-2 -986/03 on 14.07.2003. and made the decision on the building permit number: 02/6-03/2-23-1-922/03 of 24.10.2003., in which it approved undertaking Telefonkomerc and undertaking ELTA-MT to build as investors an underground cable television network in the area of Lukavac;

- That undertaking BHB Cable under agreement with undertaking Telefonkomerc of 15.12.2004., acquired the right of ownership to 50.0% of the cable television network in Lukavac, and that undertaking ELTA-MT remained owner of other 50.0%;

- That on 14.09.2005., the undertaking BHB Cable and undertaking ELTA-MT signed an Agreement on joint management (as well as annex to the agreement number: 01/07 of 08.06.2007. and No. 02/07 of 01.02.2007.);

- That on 24.02.2007., investor was changed in the building permit number: 02/6-03/1-23-2-3602/04, and undertaking BHB Cable became an investor instead of undertaking Telefonkomerc with the approval of the undertaking ELTA-MT;
- That the municipality Lukavac on 29.10.2007. adopted Resolution No. 05/1-23-3-1667/06 approving the use of cable television network in the city Lukavac and on set main station antenna system for undertaking BHB Cable and undertaking ELTA-MT;
- The undertaking BHB Cable and undertaking ELTA-MT, using a specified shared network provide built cable distribution of television programs in Lukavac through one common analog program schedule (impossible to include two analog schemes), can offer only one service, or the same package program as the parties to the proceedings confirmed at a hearing held on 30.05.2012.;
- That the end user gets the same program schedule, regardless of whether he/she is subscriber of undertaking BHB Cable or undertaking ELTA-MT and that for this reason above undertakings are not actual competitors because they offer a common infrastructure using one product on the market and for the consumer there is no advantage of one undertaking over another;
- That a total of 16 cable operators with general permission for network operators of CRA may provide services to cable distribution of radio / television programs in the area of Lukavac, but that only undertaking TXTV Ltd. Tuzla provides services to the relevant market (with its own analog and digital signal that is transmitted over an optical fiber network leased from the undertaking BH Telecom d.d. Sarajevo);
- That no commercial entity (of 11 who have submitted their answers) did not mention the existence of any legal and administrative barriers to the eventual entry into the relevant market of town Lukavac, but cited the business policy and the lack of the necessary infrastructure and the like;
- That the subject of the joint management agreement concluded between the undertaking BHB Cable and undertaking ELTA-MT is a partnership agreement governing the use of the network jointly owned;
- The Agreement on joint management, which is subject to review in the proceedings before the Council of Competition, regulated only cable programs distribution while the other two distribution services (telephony and internet) are not included, because for these two services the same network can be used for the distribution of two signals.

It follows that the conclusion of the Agreement on the joint management is common commercial policy. The Agreement is a type of partnership agreement governing the joint ownership and use of the network with the intention of equal network management and service delivery. With regard to the signatories thereof, they do not represent actual competitors in the relevant market, as they offer one service to consumers / subscribers.

Council of Competition found that the undertaking BHB Cable and undertaking ELTA-MT in the relevant market have a dominant position, but that the dominant position did not result in unrealistically high cost of services, because the analysis of the prices of other cable operators in the city environment have shown that the price of the relevant market town Lukavac is lower than in other parts of the country.

Also, the Council of Competition found that competition is not excluded on the relevant market, that there is no barrier to operation of other network operators that possess the appropriate license issued by the CRA.

Bearing in mind the above, Council of Competition found that the Agreement on the joint management is not considered a prohibited agreement, since it does not contain provisions on share of market or sources of supply between undertakings BHB Cable and undertaking ELTA-MT from Article 4 paragraph (1) item b) of the Act, whose object or effect is to prevent, restrict or distort competition.

Council of Competition revoked the Decision whereby undertaking BHB Cable, has been conditionally granted immunity from fine for a violation of Article 4 paragraph (1) of the Act, since Council of Competition in the proceedings did not establish the existence of a prohibited agreement.

Council of Competition shall issue a separate conclusion regarding request for reimbursement of the representation costs of undertaking ELTA-MT, in accordance with Article 108 paragraph (4) of the Law on Administrative Procedure.

Consequently, Council of Competition has decided as in the items 1, 2 and 3 of the operative part of this Decision.

## **7. Legal remedies**

Appeal against this Decision is not allowed.

Unsatisfied party can initiate an administrative dispute before the Court of Bosnia and Herzegovina within 30 days from the receipt or publication of this Decision.

**President**

**Ibrica Lakišić**