

Conclusion
on suspension of the part of proceedings

**Request for initiation of proceedings filed by undertaking „Centrotrans – Eurolines“
d.d. Sarajevo against Ministry of education and science of Sarajevo Canton,
Municipality Ilijaš and Municipality Vogošća**

Sarajevo
February, 2011

Number: 06-26-3-026-37-II/11
Sarajevo, 8th February 2012

Pursuant to Article 25 paragraph (1) item e), Article 42 paragraph (2) of the Competition Act («Official Gazette of BiH», No. 48/05, 76/07 and 80/09), Article 122 paragraph (2) and Article 123 paragraph (1) of the Law on administrative procedure («Official Gazette of BiH », No. 29/02, 12/04, 88/07 and 93/09), in the proceedings instigated upon Request for initiation of proceedings filed by the undertaking „Centrotrans – Eurolines“ d.d. Sarajevo, Kurta Schorka 14, 71000 Sarajevo, for determination of forbidden agreement of Ministry of education and science in the Government of Sarajevo Canton, Reisa Džemaludina Čauševića 1, 71000 Sarajevo, municipality Ilijaš, 126. Ilijaške brigade 6, 71380 Ilijaš, and municipality Vogošća, Jošanička 80, 71320 Vogošća, Council of Competition, at its 27th (twentyseventh) session held on 8th February 2012, has issued

CONCLUSION **on suspension of the part of proceedings**

- (1) Proceedings instituted upon Request for initiation of proceedings filed by the undertaking „Centrotrans – Eurolines“ d.d. Sarajevo, Kurta Schorka 14, 71000 Sarajevo, against municipality Ilijaš, 126 Ilijaške brigade 6, 71380 Ilijaš, and municipality Vogošća, Jošanička 80, 71320 Vogošća, are suspended due to the withdrawal of the Applicant.
- (2) This Conclusion shall be published in Official Gazette of BiH, official gazettes of Entities and Brcko District of Bosnia and Herzegovina.

Exposition

Council of Competition has received, on 17th November 2011 Request to institute proceedings number 06-26-3-026-II/11 (hereinafter: Request) filed by undertaking "Centrotrans - Eurolines" d.d. Sarajevo, Kurta Schorka 14, 71000 Sarajevo (hereinafter: Centrotrans - Eurolines or Applicant), submitted in accordance with Article 27 of the Competition Act (hereinafter: Act), against the Ministry of Education and Science of Sarajevo Canton Government, Reisa Džemaludina Čauševića 1, 71000 Sarajevo (hereinafter: Ministry), municipality Ilijaš, 126 Ilijaške Brigade 6, 71 380 Ilijaš and municipality Vogošća Josanička 80, 71 320 Vogošća to establish the existence of a prohibited agreement, under Article 4 paragraph (1) item d) of the Act.

Having reviewed the submitted Request, the Council of Competition found that it is not complete, in terms of Article 28 of the Act, and urged supplements, within the meaning of Article 31 paragraph (1) of the Act, document No 06-26-3-026-1-II/11 dated 22nd November 2011.

The Applicant has submitted a Request to extend the deadline for submitting the required documentation, submission No. 06-26-3-026-2-II/11 dated 1st December 2011, in the sense of Article 31 paragraph (2) of the Act, which Council of Competition assessed as justified and approved additional 15 days for delivery of documents, document No. 06-26-3-026-3-II/11 dated 1st December 2011.

The Applicant has submitted the required documentation, submission number: 06-26-3-026-4-II/11 on 13th December 2011 and submission No. 06-26-3-026-5-II/11 on 13th December

2011, and expanded Request to the determination of prohibited agreement under Article 4 paragraph (1) item b) and c) of the Act.

After completing the Request, Council of Competition issued a Certificate on receipt of complete and adequate request to the Applicant pursuant to Article 28 paragraph (3) of the Act, document No. 06-26-3-026-6-II/11 dated 20th December 2011.

The Applicant stated, in essence, reasons for the Request:

- That it is registered at the Municipal Court in Sarajevo under registration number: 65-01-0339 on 10/01/1991, including the activities of urban and suburban passenger transportation;
- That it has registered timetables for passenger transport in municipality Vogosca and municipality Ilijas in Sarajevo Canton;
- The Law on Primary Education ("Official Gazette of Sarajevo Canton" no. 10/04, 21/06 and 26/08) and Secondary Education Act ("Official Gazette of Sarajevo Canton", No. 23/10) committed The Ministry and the Government of Canton Sarajevo to provide funds for co-financing transportation costs of regular students of elementary and secondary schools;
- On 19th January 2011, agreement on transportation of students for the period from the date of 1st January 2011 to the day 31st December 2011 was concluded between the Ministry and Municipality Ilijas, whereby Ministry is committed to arrange free transportation of pupils in primary and secondary school students who live more than two kilometers from the school they attend in cooperation with undertaking Cantonal Public Utility Company "GRAS" d.o.o. Sarajevo (hereinafter: KJKP "GRAS") on the territory of Municipality Ilijas;
- On 19th January 2011, agreement on transportation of students for the period from the date of 1st January 2011 to the day 31st December 2011 was concluded between the Ministry and Municipality Vogosca, whereby Ministry is committed to arrange free transportation of pupils in primary and secondary school students who live more than two kilometers from the school they attend in cooperation with undertaking KJKP "GRAS" on the territory of Municipality Vogosca;
- That these agreements were concluded without the prior announced public bid for the selection of the best carriers, and thus prevented, restricted, and distorted market competition, disabling the Applicant or other carriers to participate equally in the selection of carriers for transportation of pupils in primary and secondary schools;
- That these agreements represent an extension of illegal favoritism of the Sarajevo Canton Government institutions to the undertaking KJKP "GRAS" to the detriment of other undertakings registered for performing the same activity, which leads to negative results of their operations;
- The undertaking KJKP "GRAS" continuously violates the Law on road transport in the Federation of BiH ("Official Gazette of BiH" no. 28/06 and 2/10) by illegally performing a public line passenger transport in 12 disputed lines in the Canton of Sarajevo, including the lines in the municipality Vogosca and the municipality of Ilijas, which is confirmed by the judgment of the Cantonal Court in Sarajevo, the decision of the Federal Ministry of Transport and Communications and the Cantonal Administration for Inspection.

Based on the above, Applicant believes that the Ministry, municipalities Ilijas and Vogosca concluded agreements prohibited by Article 4 paragraph (1) item b), c) and d) of the Act, and requested from Council of Competition issuance of a decision by which agreement will be declared null and sanction such action.

Council of Competition found that it not possible to determine violations of the Act specified in the Request, without the prior proceedings. Based on the above, the Council of Competition adopted, pursuant to Article 32 paragraph (2) of the Act, Conclusion on initiation of the proceedings against the Ministry, municipalities Ilijas and Vogosca, to establish whether the agreement is prohibited by Article 4 paragraph (1) item b), c) and d) of the Act, No. 06-26-3-026-8-II/11 of 22nd December 2011.

In accordance with Article 33 paragraph (1) of the Act, the Council of Competition has submitted the Request and Conclusion to the Ministry, document No. 06-26-3-026-15-II/11 dated 22nd December 2011, municipality Vogosca, document No. 06-26-3-026-12-II/11 dated 23rd December 2011, and the municipality Ilijas, document No. 06-26-3-026-13-II/11 dated 23rd December 2011, for their stands.

Municipality Ilijas has submitted observations, as well as the required documentation, in accordance with Article 33 paragraph (3) of the Act, submission number: 06-26-3-026-23-II/11 of 10th January 2012, which completely disputes the merits of the Request stating the following:

- It has concluded an agreement on transportation of students for the period from the date of 1st January 2011 to the day 31st December 2011 (as well as the agreement for 2009 and 2010) with the Ministry, as a guarantee for the provision of funds for reimbursement of transportation costs of students;
- It implemented an open tender procedure for the award of procurement of transportation of pupils of primary and secondary education in the municipality Ilijas, in accordance with the Law on Public Procurement ("Official Gazette" no. 49/04, 19/05, 52 / 05, 8/05, 8/06, 24/06, 70/06 and 60/10) for 2011 and 2012, and after the procedure procurement contract was awarded to the undertaking "Centrotrans - Eurolines" d.d.. Sarajevo;
- The municipality Ilijas was forced to violate Articles 2 and 3 of the Agreement on the transport of students and has never concluded a contract of carriage for students with undertaking KJKP "GRAS" since the area of municipality is not covered by network of urban and suburban transport.

Municipality Vogosca filed observations, as well as the required documentation, in accordance with Article 33 paragraph (3) of the Act, submissions received under the number 06-26-3-026-24-II/11 and the number 06-26-3-026-25-II/11 of 10th January 2012, which completely disputes the merits of the application, stating the following:

- That Articles 2 and 3 of the Agreement on transport of students (No. 11-14-474-4 dated 12th January 2011) regulates that Ministry in cooperation with undertaking KJKP "GRAS", organizes subsidized transport of students in primary and secondary schools in the municipality Vogosca, and that municipality Vogosca had not given authorization to the Ministry to choose undertaking KJKP "GRAS" for the authorized carrier, or the Ministry sought such approval;
- That in the moment the Agreement on the Carriage of pupils for 2011 was signed it could not know on the basis of which procedure Ministry has chosen undertaking KJKP "GRAS" for the transportation of pupils in primary and secondary schools;
- That after undertaken public procurement procedure in 2011, it concluded a contract of carriage of primary and secondary schools with the selected bidder, undertaking "Centrotrans - Eurolines";

- The municipality Vogosca has never concluded a contract with the undertaking KJKP "GRAS" on transport of primary and secondary schools on the basis of Article 2 of Agreement on the Carriage of students , signed with the Ministry.

Council of Competition has sent the stands for the response to the economic entity "Centrotrans - Eurolines." - of municipality Ilijaš No. 06-26-3-026-26-II/11 dated 11th January 2012, and municipality Vogosca, No. 06-26-3-026-27-II/11 dated 12th January 2011.

Undertaking "Centrotrans - Eurolines" in a submission No. 1/822/12 of 19th January 2012 (received under the number 06-26-3-026-29-II/11 on 23rd January 2012) and submission No. 1/839/12 of 20th January 2012 (received under No. 06-26-3-026-30-II/11 on 24th January 2012) informed the Council of Competition that it is withdrawing part of the Request for the initiation of proceedings relating to the municipality Ilijas and the municipality Vogosca, while the Request remains relating to the Ministry.

Council of Competition, in accordance with Article 105 paragraph (4) of the Law on Administrative Procedure informed municipality Ilijas (document No. 06-26-3-026-35-II/11 of 02/02/2012) and municipality Vogosca (document No. 06-26-3-026 -34-II/11 of 02/02/2012) on the costs of the procedure (created under the provisions of paragraphs (2) and (3) of the Article 105 of the same Act) before making a final decision to resolve an administrative dispute.

In accordance with Article 122 paragraph (1) of the Law on Administrative Procedure, a party may withdraw its Request (whole or part) throughout the procedure. Also, Article 123 paragraph (1) of the Law on Administrative Procedure provides that a party may withdraw its abandonment of the Request until the authority conducting the procedure passes a resolution to suspend the proceedings and does not deliver it to the party.

Based on the above, Council of Competition has decided as in the operative part of this Conclusion.

Council of Competition shall in the proceedings against the Ministry decide whether it is in the public interest to continue with the proceedings ex officio, within the meaning of Article 122 paragraph (3) of the Law on Administrative Procedure, in connection with Article 4 paragraph (1) of the Act, against municipality Ilijas and municipality Vogosca.

Administrative tax

In accordance with Article 2 tariff number 108 paragraph (1) item b) of the Decision on amount of administrative fees related to the procedural actions before the Council of Competition (Official Gazette of BiH, No. 30/06 and 18/11) the Applicant is obliged to pay administrative tax amounting to 500,00 KM for the benefit of the Budget of the institutions of Bosnia and Herzegovina.

Legal remedies

Appeal against this Conclusion is not allowed.

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

President

Ibrica Lakišić

