

BOSNA I HERCEGOVINA
Konkurencijsko vijeće



БОСНА И ХЕРЦЕГОВИНА
Конкуренијски савјет

BOSNIA AND HERZEGOVINA
Council of Competition

REGULATION
ON DEFINITION OF A DOMINANT POSITION

Sarajevo, February 2006

Pursuant to Article 25, paragraph (1), item i) and Article 9 of the Act on Competition («Official Gazettes of BH», No. 48/05), the Council of Competition in its 23rd session, held in February, 14th 2006, has adopted the following:

REGULATION ON DEFINITION OF A DOMINANT POSITION

I GENERAL PROVISIONS

Article 1 (Subject-matter)

This Regulation defines the categories, conditions and principles of determination of a dominant position of undertakings, and criteria on abuse of a dominant position in the relevant market of products and services of Bosnia and Herzegovina, within the meaning of Articles 9 and 10 of the Act on Competition.

Article 2 (Dominant position of undertakings)

- (1) An undertaking is in dominant position where it is, due to its market power, able to behave and operate in the relevant market of products and services sufficiently independently of actual or potential competitors, buyers, consumers or suppliers, whereby efficient competition in the market is restricted and impeded.
- (2) An undertaking is in dominant position in the relevant market of products and services where it faces no competition or insignificant existing competition.

II ASSESSMENT OF THE MARKET POWER AND DOMINANT POSITION

Article 3 (Assessment of the market power)

- (1) An undertaking is not dominant in the relevant market of products and services if its market power is not significant.
- (2) Significant market power of an undertaking in the relevant market shall be determined relating to the existing or potential competitors, and particularly considering the following criteria:
 - a) the market share (sale and purchase volume in the relevant market of products and services; financial standing or production capacities);
 - b) structure of the relevant market and economic relation with competitors;
 - c) ability to keep prices above the competitive level (to limit production and quality);
 - d) access to supply resources(assets) and distribution channels;
 - e) levels of vertical integration in the relevant market;
 - f) economic regulators, investment barriers for potential undertakings to enter/ exit the relevant market;
 - g) technological advantages, patents, intellectual and industrial property rights and other similar rights.

Article 4
(Abuses of dominant position)

- (1) As a rule a dominant position of an undertaking in the relevant market is not prohibited.
- (2) Any abuse of dominant position in the relevant market shall be prohibited in terms of undertakings` operations having as their object and result the exclusion of competitors from the market or «closing» the market to potential competitors, and restriction and distortion of the effective market competition.
- (3) Abuse of a dominant position in the relevant market within the meaning of paragraphs (1) and (2) of this Article exists solely in a case where an undertaking initiates unilateral decisive operations.
- (4) Two and more undertakings may be dominant (collective dominance) in the relevant market (ex. structural connections, joint policy).

III ASSESSMENT OF A DOMINANT POSITION AND MARKET SHARE

Article 5
(Assessment of a dominant position)

- (1) Dominant position of an undertaking, on a case-by –case basis, may be determined on the whole market of Bosnia and Herzegovina or on its significant part.
- (2) The determination of a dominant position referred to in paragraph (1) of this Article, shall include also the following :
 - a) definition of the relevant market (and supply and demand terms of products and services, and substitutes in that market);
 - b) the market share of undertakings operating in the relevant market (considering all changes within the particular period of time)

Article 6
(Market share of an undertaking)

- (1) It assumes that an undertaking is dominant in the relevant market of products and services where it holds a market share exceeding forty per cent (40%).
- (2) An undertaking may be dominant if it holds a market share less than forty per cent (40%) if other indicators (ex. bad position and small market share of the existing competitors, serious barriers to enter the relevant market to other undertakings) prove its dominant position

Article 7
(Market share of two or more undertakings)

It assumes that two (2) or more undertakings may be dominant in the relevant market of products and services if their market share jointly accounts more than sixty per cent (60%).

Article 8
(Market share of four or more undertakings)

It assumes that four (4) or more undertakings may be dominant in the relevant market of products and services if their market share jointly accounts more than eighty per cent (80%).

IV ABUSE OF DOMINANT POSITION

Article 9 (Abuse of dominant position)

For the purpose of determination of abuse of a dominant position by one or more undertakings (collective dominance) besides the criteria set out in Article 10. of the Act on Competition, the following shall be also taken into consideration:

- a) price discrimination (different prices) of the certain product or service in the different relative geographic markets;
- b) permanent supply and sale of products and services to buyers at law prices which diverting the buyers to purchase similar products or services from competing supplier («loyal»-targeted sale discounts or secret discounts);
- c) fixing a price of the product or service below the production costs with the view to eliminate the competitors;
- d) unjustifiable cancellation or reducing of the production or sale of products or services having negative consequences for consumers;
- e) the limitation of production and market as result of exclusively made contracts (special rebates, discounts, financial accounts);
- f) forcing the consumers to purchase additional product or service together with the marketed product or service;
- g) the undertakings ability to determine operating terms of supply and demand in the relevant market, providing to it unjustifiable increase of profit;
- h) refuse the access of other undertakings, by providing them a reasonable financial fee charging, to facilities, equipment, relocated network or other infrastructure facilitates, possessed or used by the dominant undertaking in a case when other undertakings are not able, due to legal or other reasons, to operate in the same market (where the dominant undertaking operates) without possibility to use the same capacities/equipment and in a case when the dominant undertaking does not prove that the common use is not practicable due to operative, technical or other reasons or that such a use may not be asked from them.

V FINAL PROVISIONS

Article 10 (Application of European regulations and practice)

The Council of Competition may use EC decisions, EU legislation and European Court case law for the purpose of determination of a dominant position in specific cases.

Article 11 (Notification)

This Regulation shall enter into force on the eighth day following its publication in the Official Gazette of Bosnia and Herzegovina and shall be published in official gazettes of Entities and Brčko District of Bosnia and Herzegovina.

C.C. No. 01-01-26-102-I/06

21 February 2006

President

**Council of Competition
Sena Hatibović**