

BOSNA I HERCEGOVINA
Konkurencijsko vijeće



БОСНА И ХЕРЦЕГОВИНА
Конкуренијски савјет

BOSNIA AND HERZEGOVINA
Council of Competition

Act on Competition

March 2005

On the bases of the Article IV (4) a) of the Constitution of Bosnia and Herzegovina, the Parliamentary Assembly of the Bosnia and Herzegovina, at the session of the House of Peoples, held in June 29, 2005 and at the session of the House of Representatives, held in June 29, 2005 has adopted

THE ACT ON COMPETITION

I GENERAL PROVISIONS

Article 1 Subject-matter and Scope

This Act regulates the rules, measures and procedures for the protection of market competition, and regulates the power and duties of the Council of Competition entrusted with the protection and promotion of market competition in Bosnia and Herzegovina.

Article 2 Application

- (1) This Act shall apply to all legal and natural persons (hereinafter: undertakings) that, directly or indirectly, participate in the trade of goods or services and that, through their actions, prevent, restrict or distort market competition on the whole territory of Bosnia and Herzegovina or its relevant part and, particularly to:
 - a) economic associations, enterprises, entrepreneurs, disregarding their form of property, seat or place of residence;
 - b) state and local self-government units directly or indirectly participating in or have influence on the market;
 - c) other natural or legal persons such as associations, sports organizations, institutions, cooperatives, intellectual property right holders etc. that participate, indirectly or directly, permanently, temporary or single in the market, disregarding their legal status, form of property, seat or place of residence.
- (2) This Act shall also apply to any undertaking controlling another undertaking. A controlled undertaking shall be deemed to be controlled if its management is directly or indirectly, legally or factually, decisively impacted by another undertaking, and especially if that controlling undertaking:
 - a) holds more than half of the shares capital or half of the shares;
 - b) may exercise more than half of the voting rights;
 - c) has the right to appoint more than half of the members of management board or supervisory committee;
 - d) in any other way has the right to manage business operations of the controlled undertaking.
- (3) This Act shall also apply to all economic activities of the undertakings that have their seat or place of residence abroad, if their activities have substantial effect on the market of Bosnia and Herzegovina or in its significant part.

Article 3 Relevant Market

- (1) Within the meaning of this Act, the relevant market is defined as a market of certain products, which are the subject of the business operations preformed by the undertakings in the specific geographic territory.
- (2) A relevant product market comprises all products which consumers and/or users consider mutually substitutable, under acceptable conditions, having in mind the products' characteristics, their quality, intended use, way of usage and the price and sale conditions.
- (3) Relevant geographic market comprises the whole territory or a significant part of the territory of Bosnia and Herzegovina, where the undertakings operate in selling and /or purchasing of a relevant product under equal or sufficiently homogeneous conditions and which are significantly distinguished from the conditions of competition in neighbouring geographic markets.
- (4) As an exception to paragraph (3) of this Article, in specific cases, a relevant geographic market may be defined on the international level.

- (5) The Council of Competition shall prescribe by a by-law act detailed criteria and procedures in defining the relevant market.

II PROHIBITED COMPETITION PRACTICES

Article 4 Agreements

- (1) There shall be prohibited all agreements, contracts, single provision of agreements or contracts, concerted practices, explicit and tacit agreements between the undertakings, as well as decisions by associations of undertakings (hereinafter: agreements) the object or effect of which is to prevent, restrict or distort market competition in the relevant market, and in particular those which:
- a) directly or indirectly fix purchase and selling prices or any other trading conditions;
 - b) limit or control the production, markets, technical development or investment;
 - c) share markets or sources of supply;
 - d) apply dissimilar conditions to equivalent transactions with other undertakings, thereby placing them at a competitive disadvantage;
 - e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
- (2) Any agreements prohibited pursuant to paragraph (1) of this Article shall be null and void.
- (3) Agreements in terms of paragraph (1) of this Article shall not be prohibited if they contribute to improving the production or distribution of goods and/or services within Bosnia and Herzegovina or if they contribute the promotion of technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which:
- a) impose only restrictions necessary to the achievement of these objectives;
 - b) shall not enable the elimination of competition in the substantial part of products or services in question.

Article 5 Individual Exemptions

- (1) The Council of Competition may, at the request of one or more of the parties to an agreement take a decision granting an individual exemption from the application of the agreement prohibition referred to in Article 4 (1) of this Act, if that particular agreement fulfils the conditions from Article 4 (3) of this Act.
- (2) The Council of Competition shall decide upon the exemption from the application of the agreement prohibition referred to in Article 4 (1) of this Act within a four (4) months period.
- (3) If the Council of Competition does not make such a decision within the stated time period, the agreement in question is deemed to be exempted from the prohibition referred to in Article 4 (1) of this Act.
- (4) The Council of Competition may, *ex officio* or at a party's request, re-examine the already exempted agreement from paragraph (1) of this Article, when:
- a) the decision is based on incomplete and incorrect data and information;
 - b) the material conditions and facts on the relevant market have been changed substantially;
 - c) one of the parties in question acts contrary to its obligations defined by the decision of the Council of Competition.
- (5) If the Council of Competition finds out a violation pursuant to paragraph (4) of this Article, it may cancel, annul or amend its decision.

Article 6
Content and Duration of an Individual Exemption

- (1) An individual exemption by means of a decision may contain conditions and prohibitions.
- (2) An individual exemption has a limited period of time, which as a rule may not exceed 5 (five) years.
- (3) The time limit from paragraph (2) of this Article may, at a request of the parties to the agreement, be additionally extended for no longer than 5 (five) years, if it can be proved that the agreement continues to comply with the conditions set out in Article 4 (3) of this Act.
- (4) The request for the extension of time limit of individual exemption must be submitted by the parties to the agreement to the Council of Competition at least in 4 (four) months before the expiry of the validity of the exemption.
- (5) An individual exemption shall take effect from the day of the conclusion of the agreement, or if it contains conditions and prohibitions, the exemption shall take effect from the day on which the agreement is enacted or at least from the day on which the conditions are fulfilled.

Article 7
Block Exemptions

- (1) The Council of Competition shall adopt by-law acts for the following block exemptions for implementation of Article 4 (3) of this Act, in particular:
 - a) horizontal agreements, in particular the agreements on research and development and specialization;
 - b) vertical agreements, in particular the agreements on exclusive distribution, selective distribution, exclusive purchase and franchising;
 - c) agreements on transfer of technology, license and know how agreements;
 - d) agreements on distribution and servicing of motor vehicles;
 - e) insurance agreements.
- (2) The Council of Competition shall more closely define the block exemptions from paragraph (1) of this Article in by-laws, and in particular:
 - a) the restrictions or contractual provisions that such agreement may contain;
 - b) the contractual provisions that such agreement must contain;
 - c) their limit period and other conditions which must be fulfilled.
- (3) Agreements fulfilling the conditions laid down in Article 4 (3) of this Act do not need to be submitted to the Council of Competition for assessment in respect of individual exemption pursuant to Article 5 of this Act.
- (4) The Council of Competition may, *ex officio* or at the request of the third party, initiate the proceedings to assess a particular agreement from paragraph (3) of this Article, if it finds that the effects of such an agreement do not fulfill the conditions laid down in Article 4 (3) of this Act.

Article 8
Minor Importance Agreements

- (1) The provisions of Article 4 (1) of this Act shall not apply to minor importance agreements.
- (2) Agreements of minor importance are defined as agreements in which the parties to the agreements and the controlled undertakings have an insignificant common market share in the relevant market, under the condition that they do not contain provisions that, in spite of the insignificant market share, lead to prevention, restriction or distortion of competition.
- (3) Minor importance agreements pursuant to this Act include the following:

- a) if the total market share of the parties to an agreement in the relevant market does not exceed 10 (ten) % in cases when the agreement is made between the undertakings which are actual or potential competitors i.e. when they operate on the same level of production or trade;
 - b) if the market share of the parties to an agreement in the relevant market does not exceed 15 (fifteen) % in cases when the agreement is concluded between the undertakings which are not competitors i.e. when they operate on different levels of production or trade;
 - c) the agreements, where it is difficult to classify the agreement as either an agreement between competitors or agreement between non-competitors undertakings and where the threshold of 10 (ten) % share in the relevant market shall apply.
- (4) The Council of Competition shall, in by-law act define more closely the conditions and criteria which that minor importance agreements must comply with.

Article 9 Dominant Position

- (1) An undertaking has a dominant position in the relevant market of goods or services, when due to its market power it can act in the relevant market considerably independently of its actual or potential competitors, buyers, consumers or suppliers, taking into account the market share of that undertaking in the relevant market, market shares of its competitors in that market, as well as the legal and other barriers to the entry of other undertakings in the market.
- (2) An undertaking shall be presumed to be in a dominant position in the market of goods or services, if it holds more than 40 (forty) % of the market share in the relevant market of Bosnia and Herzegovina.
- (3) More undertakings shall be presumed to be in a dominant position in the market of goods or services, if the joint market share of two or more undertakings in the relevant market of Bosnia and Herzegovina exceeds 60 (sixty) %.
- (4) The Council of Competition shall, in a by-law act, define more closely a dominant position category.

Article 10 Abuse of Dominant Position

- (1) Any abuse of dominant position by one or more undertakings in the relevant market shall be prohibited.
- (2) The abuse of dominant position, in particular, relates to the following:
 - a) direct or indirect imposition of unfair purchase or selling prices or other trading conditions which restrict competition;
 - b) limitation of production, markets or technical development to the prejudice of consumers;
 - c) application of dissimilar conditions to equivalent or similar transactions with other parties, thereby placing them at a competitive disadvantage;
 - d) making the conclusion of the contracts subject to acceptance by the other party of supplementary obligations which, by their nature or according to commercial usage, have not connection with subject of such contract.

Article 11 Decision on Abuse of a Dominant Position

- (1) Pursuant to Articles 9 and 10 of this Act, the Council of Competition shall make a decision which:
 - a) determines a dominant position and practices of the undertakings abusing this dominant position and prevent, restrict or distort market competition, as well as the duration of the abusive practices concerned;
 - b) forbids such abusive practices of the undertaking;
 - c) determines the terms and measures for the removal of adverse effects of such practices;
 - d) determines that the undertaking is to apply other appropriate measures and the terms ensuring competition among the undertakings in the relevant market and deadlines for their implementation.

- (2) The Council of Competition issues a decision from paragraph (1) of this Article within a 4 (four) months period.
- (3) If the Council of Competition does not issue such the decision within the time limit stated in paragraph (2) of this Article and Article 41 of this Act, it shall be deemed that there is no abuse of dominant position in the agreement in question.
- (4) If the decision from paragraph (3) of this Article is not issued, upon a special request of the undertakings, the Council of Competition shall, in accordance with the procedure set by this Act, issue a decision stating that the agreement in question does not abuse the dominant position

Article 12 Concentration

- (1) Pursuant to this Act, a concentration shall be defined as:
 - a) joining or merger of two or more previously independent undertakings or parts of undertakings;
 - b) the acquisition of control or prevailing influence of one or more undertakings over another undertaking, or over more undertakings or a part of another undertaking, or the parts of another undertakings, in particular by:
 - 1) acquisition the majority of shares or share capital by means of purchase; or
 - 2) acquisition of the majority of voting rights; or
 - 3) some other way, pursuant to the provisions of this Act which regulate the establishment of economic subjects and their management.
 - c) the creation of a joint venture, by two or more independent undertakings, on a lasting base .
- (2) Acquiring control pursuant to paragraph (1) of this Article may be achieved by holding rights, contracts or any other means by which one or more undertakings, either solely or jointly, within the specific legal and factual circumstances, is enabled the possibility to exercise predominant influence over one or more undertakings.
- (3) A concentration, pursuant to paragraph (1) of this Article, shall not be deemed to arise when:
 - a) banks or other financial institutions or insurance companies, which, in their ordinary activities of business, acquire shares on a temporary basis with a view to resell them within 12 (twelve) months the latest, provided that they within the above-mentioned time frame do not use shares for the purpose of determining the competitive behaviour of that legal subject, i.e. do not undertake the measures which distort, restrict or prohibit market competition. The Council of Competition may, on party's request, extend the time limit if the aforesaid undertaking can prove that the transaction concerned has not been reasonably possible within the period set;
 - b) the control over an undertaking is acquired by an office-holder relating to liquidation and insolvency practitioner, according to the laws on bankruptcy and liquidation;
 - c) a joint venture is aimed to coordinate market activities between two or more undertakings which remain independent, and therefore this joint venture shall be assessed within the meaning of Article 4. of this Act.

Article 13 Prohibited Concentrations

There shall be prohibited the concentrations of undertakings that significantly impede effective market competition, in the whole territory of Bosnia and Herzegovina or in a relevant part of it, and particularly, that create a new or strengthen an existing dominant position.

Article 14 Total Turnover for the Control of Concentration

- (1) Pursuant to Article 12 (1) of this Act, the intended concentration is obliged to be notified by parties to the concentration if the following conditions are met:
 - a) the total income of all the undertakings-parties to the concentration, is realized by the sale of goods and/or services in the global market amounts to 100 (one hundred) million KM, according the balance sheet of the financial year preceding the concentration, and when at least one undertaking, a party to the

- concentration, is registered in the territory of Bosnia and Herzegovina (it acts in the domestic market of goods and/or services); or
- b) the total income of each of at least 2 (two) parties to the concentration, is realized by the sale of goods and/or services in the market of Bosnia and Herzegovina amounts to at least 5 (five) million KM, according to balance sheet for the financial year preceding the concentration, or if their common share in the relevant market exceeds 40 (forty) %.
- (2) The total income referred to in paragraph (1) of this Article shall not be calculated taking into account the incomes of all the parties to the concentration realised in their transactions.
 - (3) In case defined in Article 12 (1) of this Act, when the concentration consists in association or merger of a part or parts of one or more undertakings, irrespective whether or not those parts are constituted as legal entities, the calculation of the income within the meaning of paragraph (1) of this Article, shall include only the income deriving from the parts being the subject of the concentration control.
 - (4) Two or more concentrations within the meaning of paragraph (3) of this Article, conducted within two-year-period shall be considered to constitute one concentration (more parts of an undertaking acquired successively) arising on the date of the last transaction.

Article 15

Total Turnover of Banks, Other Financial Institutions and the Insurance Companies

For the purpose of control of concentration in banks, other financial institutions and the insurance companies, instead of the total turnover, the following shall be considered:

- a) for legal persons which provide financial services, after deduction of the value added and other taxes directly related to them, the sum of the following income terms shall be used:
 - 1) interest income and similar incomes;
 - 2) income from securities:
 - 2.1. income from shares and other securities whose profit is changeable,
 - 2.2. income from participating interests to undertakings;
 - 2.3. income from shares in affiliated undertakings;
 - 3) commissions receivable;
 - 4) net profit on financial operations; and
 - 5) other operating income.
- b) for the insurance companies and the companies which perform re-insurance activities, the value of gross premiums which shall comprise all amounts received and receivable in respect of insurance contracts issued by or on behalf of the insurance company, including also re-insurance premiums, and after deduction of taxes and parafiscal contribution charged by reference to the amount of individual premiums or the total volume of premiums.

Article 16

Notification of Concentration

- (1) Any intended concentration, pursuant to Articles 12 and 14 of this Act, is obliged to be notified by undertakings-parties to the concentration to the Council of Competition within 8 (eight) days of the conclusion of the agreement, the announcement of the public bid for shares or acquisition of controlling interest, depending on what action takes place the first.
- (2) A concentration in acquisition of control on the whole or parts of one or more undertakings by another undertaking, shall be notified by the undertaking acquiring control, and in all the other cases, the concentration shall be notified jointly.
- (3) The Council of Competition may publish the data contained in the notification on concentration in a daily newspaper and "Official Gazette BIH", containing particularly the following:
 - a) names of the undertakings-parties to the concentration;
 - b) nature of the concentration; and
 - c) the economic sector within to which the concentration applies.

Article 17

Appraisal of Concentrations

In making the assessment of intended concentration, the Council of Competition shall analyze the positive and negative effects, or whether that concentration creates or strengthens dominant position which will result in the significant distortion of market competition, in particular:

- a) the structure of the relevant market;
- b) the effects of the concentration concerned on other actual and potential competitors;
- c) the market position of parties in competition, their market shares, economic and financial power;
- d) alternatives available to suppliers and users;
- e) economic, legal and other barriers to entry to the market;
- f) level of internal and international competitiveness of the parties to concentration;
- g) supply and demand trends for the relevant goods and/or services;
- h) the trends of technical and economic progress;
- i) consumers' interests.

Article 18

Decision on Concentration

- (1) When the Council of Competition finds that the implementation of the concentration falls within the scope of Articles 12 and 14 of this Act, and raises serious consequence in distortion of competition in the relevant market, it shall make a decision on the initiation of the proceedings.
- (2) Following the completed proceedings, within the time limits laid down in Article 41. of this Act, the Council of Competition shall make one of the following decisions:
 - a) the concentration concerned is compatible;
 - b) the concentration concerned is incompatible;
 - c) the concentration concerned is conditionally compatible.
- (3) By the decision from paragraph (2) c) of this Article declaring a concentration conditionally compatible, the Council of Competition shall impose the measures and conditions and the time limits for the purpose of ensuring their implementation.
- (4) As a rule, the parties to the concentration of paragraph (2) c) of this Article may pursue the activities relating to the implementation of the concentration concerned, as soon as the imposed measures, conditions and the time limits referred to in paragraph (3) of this Article have been fulfilled, unless the Council of Competition for a particularly legitimate reason decides otherwise.
- (5) On the basis of information and documentation submitted with the notification on intended concentration and the degree of probable infringement of competition rules by such a concentration and the estimation that such a concentration does not have negative effects, the Council of Competition may declare a decision within a 60 (sixty) days period.
- (6) If the Council of Competition does not declare such a decision within the time limits laid down in Article 41. of this Act, the concentration shall be deemed compatible.
- (7) Council of Competition may, *ex officio* or upon the request of a party, amend the decision taken under paragraph (2) of this Article when the parties cannot fulfil certain conditions imposed on them or if they infringe certain measures set forth in the decision taken by the Council of Competition, owing to particular circumstances which are not predicted or avoided and which are beyond their control.
- (8) The implementation of concentration is not possible before the issuance of a decision confirming the compatibility of the concentration concerned with rules laid down in Articles 12 and 14 of this Act.
- (9) The provision of paragraph (8) of this Article shall not prevent the implementation of public bid for shares which has been notified to the competent bodies, in accordance with the legislation in force, as well as the activities related to the acquisition of control over the undertakings which is regulated by other regulations.

Article 19
Measures Following the Implementation of Prohibited Concentration

- (1) The Council of Competition shall, *ex officio* or upon the request of the party by means of a separate decision, propose all indispensable measures aimed to restore free market competition in the relevant market and set the deadlines for their implementation, in cases when:
 - a) the concentration concerned has been implemented contrary to the decision of Council of Competition by which the concentration has been assessed as incompatible with the means of Article 18 (2) b) of this Act;
 - b) the concentration concerned has been implemented without submittal of a prior notification of concentration, and has as its effect the significant impediment of market competition, pursuant to Article 13 of this Act.
- (2) By a decision from paragraph (1) of this Article, the Council of Competition may, in particular:
 - a) order for the shares or share capital acquired to be divested(transferred);
 - b) prohibit or restrict the realization of voting rights achieved by the shares or share capital of the undertakings to the concentration, and end the joint venture or any other form of control pursuant to Article 14. of this Act by which a prohibited concentration has been put into effect.

III COMPETITION AUTHORITY

Article 20
The Council of Competition

- (1) The Council of Competition, as regards to this Act is an entity with a power to implement the market competition protection.
- (2) As a part of the Council of Competition, the Offices for Competition in Federation of Bosnia and Herzegovina and ? Republic of Srpska act as the organizing units outside the seat of the Council of Competition.

Article 21
Status of the Council of Competition

- (1) The Council of Competition is an independent entity obliged to ensure consistent implementation of this Act on the whole territory of Bosni and Herzegovina and it has the exclusive competence in making decisions on the presence of prohibited competition activities in the market.
- (2) The Council of Competition is a legal person and its seat is in Sarajevo.
- (3) The funds for the duties and activities of competencies pursued by the Council of Competition are provided from the Budget of institutions of Bosnia and Herzegovina.

Article 22
The Structure of the Council of Competition

- (1) The Council of Competition consists of six members, and they are appointed for a six-year term of office with the possibility of one more reappointment. The members of the Council of Competition may not be relieved from the duty before the term of office expired, except in cases set forth in Article 23 of this Act.
- (2) Members of the Council of Competition shall be selected among recognized experts in the certain professional fields and their status shall be equal to such of administrative judges and incompatible with any direct or indirect, permanent or periodical duty, with the exception of academic activities and the work in professional and scientific bodies.
- (3) The appointment of the members of the Council of Competition shall be as follows:
 - a) three members of the Council of Competition shall be appointed by Council of Ministers of Bosnia and Herzegovina, with one member per each of the three constituent nations;

- b) two members shall be appointed by the Government of the Federation of Bosnia and Herzegovina;
 - c) one member shall be appointed by the Government of the Republic of Srpska.
- (4) At the proposal of the Council of Competition, the Council of Ministers of Bosnia and Herzegovina shall nominate one member for a presidency of the Council of Competition for a one-year term without the possibility of reappointment during the term of office of the member of the Council of Competition.

Article 23.

Early Termination of the Term of Office

- (1) The term of office of a member of the Council of Competition may terminate before the end of the term only in the cases of:
- a) death,
 - b) resignation,
 - c) revocation of the term at the proposal of the Council of Competition, for the following reasons:
 - 1) performance of an incompatible duty as set forth in Article 22 (2) of this Act;
 - 2) unexcused absence from three successive sessions of the Council of Competition;
 - 3) irresponsible, negligent or poor performance.
- (2) In case of revocation of a member of the Council of Competition term of office pursuant to the provisions of paragraph (1) c) of this Article, the Council of Competition shall make a decision without the vote of the member in question.
- (3) In case of an early termination of the member of the Council of Competition term of office, the bodies referred to in Article 22 (3) of this Act shall appoint another member of the Council of Competition for the remaining term of office period.

Article 24

Functioning and Decision-making Methods of the Council of Competition

- (1) Valid decisions of the Council of Competition shall be made only if minimum five (5) members of the Council of Competition are present at the session.
- (2) The Council of Competition takes decision with the consent of a majority of the present members' votes, whereby every decision must be voted upon by at least one representative of each constituent nation. A member of the Council of Competition may not abstain from voting.
- (3) The President of the Council of Competition shall be authorized to:
- a) manage the activities of the Council of Competition;
 - b) represent the Council of Competition;
 - c) convene and preside over the sessions of the Council of Competition, that is to take place at least once a month;
 - d) draw up an agenda for every session which may be amended in a session at the request of two members;
 - e) sign all decisions and other acts of the Council of Competition.
- (4) The Council of Competition shall enact the Rule-book to define the working methods, decision making process as well as the other issues related to the work of the Council of Competition.

Article 25.

Competences of the Council of Competition

- (1) In the performance of its activities in accordance with this Act and the other regulations which regulate the competition policy in Bosnia and Herzegovina, the Council of Competition shall have the competence to:
- a) make by-law acts based on the provisions of this Act and the other by-laws necessary for its implementation;
 - b) regulate the definitions and calculation methods for specific activity areas, such as banking, insurance, etc.;

- c) regulate and provides interpretation of general and specific definitions of the competition terms, as well as the calculation methods for the key competition terms;
 - d) decide on requests for the initiation and conduct of proceedings;
 - e) make administrative acts to finalize a proceeding before the Council of Competition;
 - f) provide opinions and recommendations on any aspect of competition, either *ex officio* or at the request of the state authorities, undertakings or associations;
 - g) make internal acts on the internal organization of the Council of Competition, except for the Rule Book on the internal organization and systematization which is being made with the consent of the Council of Ministers of Bosnia and Herzegovina;
 - h) initiate the change and amendments to the Act on Competition;
 - i) propose to the Council of Ministers of Bosnia and Herzegovina the decision on the amount of administrative taxes relating to the practices before the Council of Competition.
- (2) In relation to the draft versions and the proposals of the act and the other regulations in the areas which influence market competition and which are to be submitted by the proposal makers, the Council of Competition shall provide opinion on their consent to this Act.
- (3) In the implementation of this Act and the other regulations in the field of competition, the Council of Competition may establish the expert and advisory bodies that may assist in the decision making process.
- (4) The Council of Competition shall cooperate with international and national organizations and institutions in the area of competition, and, on this basis, it may provide and request all the data and information related to factual and legal issues, also including confidential data. In relation to the exchange of confidential data, legitimate business interests of the undertakings in question must be protected in accordance with the regulations.
- (5) The Council of Competition shall prepare the report on performance and the annual report which is to be submitted to the Council of Ministers of Bosnia and Herzegovina for approval. The Council of Competition shall publish the annual report in public.

IV DECISION-MAKING PROCEDURE

Article 26 Application of Rules Regulating Proceedings

In the proceedings before the Council of Competition, unless regulated differently by this Act, the Act on Administrative Procedure of Bosnia and Herzegovina ("Official Gazette BiH", No. 29/02) shall be applied.

Article 27 Initiation of the Proceedings

- (1) The Council of Competition initiates proceedings pursuant to this Act, *ex officio* or at a party's request.
- (2) The Council of Competition shall initiate proceedings, *ex officio* if it finds that the practice concerned is likely to cause considerable prevention, restriction or distortion of competition.
- (3) The request for initiation of the proceedings before the Council of Competition may, in accordance with the provisions of this Act, be submitted by:
- a) any legal and natural person having a legal or economic interest;
 - b) a chambers of commerce, associations of employers and entrepreneurs;
 - c) a consumer associations;
 - d) a executive power bodies in Bosnia and Herzegovina.

Article 28 Request for the Initiation of the Proceedings

- (1) A request for initiation of the proceedings before the Council of Competition must contain:

- a) the name of the seat of the legal person concerned, or the name and surname and address of the authorized natural person-the applicant;
 - b) relevant data by means of which it may be established against whom the request is being made;
 - c) description of facts of the case, practice and circumstances which led to the applicant's request.
- (2) Together with the request for initiation of the proceedings, the applicant may enclose, in particular:
- a) Relevant documents and other available evidence which prove the allegations laid down in paragraph (1) c) of this Article;
 - b) evaluation of the relevant market;
 - c) evaluation of the market share of the applicant and the market share of the competitors in the relevant market;
 - d) court record certificate, work permit or the other relevant documents proving the applicant's registration ;
 - e) the annual report, financial reports and the other accounting documents of the applicant for financial year the proceeding the submittal of the request.
- (3) The day of the receipt of the request is the day on which the Council of Competition receives the complete and adequate data referred to in paragraph (1) of this Article. The Council of Competition shall, by delivering the confirmation in written form, inform the claimant about the receipt of the complete and adequate request.

Article 29

Application for Individual Exemption of the Agreement

- (1) Together with the application for individual exemption of the agreement, the following documents are to be enclosed:
- a) original or certified copy of the agreement,i.e. the certified translation of an agreement, if the official text of the agreement is not written in the official languages in use in Bosnia and Herzegovina;
 - b) court record certificate, work permit and the other relevant documents proving the applicant's registration;
 - c) the annual report, financial reports and the other accounting documents for the financial year which proceeds the conclusion of the agreement concerned(all of the parties to the agreement);
 - d) other relevant data which the Council of Competition shall deem necessary.
- (2) The following documents may be enclosed to the application for individual exemption of the agreement:
- a) evaluation of the relevant market;
 - b) evaluation of the market share of parties to the agreement and the market share of their competitors in the market.
- (3) The Council of Competition shall, by delivering the receipt in written form, inform the applicant about the receipt of the complete and adequate request.

Article 30

Notification of Intended Concentration

- (1) Together with the notification on intended concentration, the documents to be enclosed are:
- a) the original or certified copy of the documents, proving the legal grounds for the concentration; or certified translation, if the official text of the agreement is not in the official languages in use in Bosnia and Herzegovina,
 - b) annual financial reports for the parties to the concentration for the financial year proceeding the concentration;
 - c) the other data regulated by the regulation on concentration.
- (2) The notifying party shall obligatory state in the application whether she/he plans to submit request for appraisal of concentration to some other body authorised to assess concentration outside the territory of Bosnia and Herzegovina or whether the notifying party has already submitted such a request, and deliver the decision of this body if the decision thereof has already been rendered.

- (3) The Council of Competition shall, by delivering the receipt in written form, inform the applicant about the receipt of the complete and adequate request.

Article 31
Amendment to the Request and Waiving the Request

- (1) When the applicant requesting the institution of the proceedings before the Council of Competition does not enclose and submit all data pursuant to this Act, the Council of Competition shall ask for additional relevant information from the applicant
- (2) If the applicant fails to act in accordance with request of the Council of Competition stated in the paragraph (1) of this Article, within eight (8) days, it shall be deemed that the applicant has waived the request. In specific circumstances, in the case of specific reasons, at the party's request, the Council of Competition may extend the time limit for additional 15 (fifteen) days.

Article 32
Initiation of the Proceedings

- (1) The Council of Competition shall make the resolution authorizing the institution of the proceedings *ex officio* or upon the receipt of request pursuant to the provisions of this Act. The resolution authorizing the institution of the proceedings shall contains in particular:
 - a) reference to the related case;
 - b) provisions of this Act pursuant to which the proceedings have been instituted;
 - c) the request for submittal of the relevant documentation.
- (2) The Council of Competition is obliged to made a resolution authorizing the institution of the proceedings within 15 (fifteen) days upon the receipt of complete and adequate request.
- (3) The appeal against the resolution authorizing the institution of the proceedings is not allowed.

Article 33
Response to a Request

- (1) With the exception of the data which is considered to be a business secret pursuant to Article 38. of this Act., the Council of Competition shall deliver copies of the resolution authorizing the institution of the proceedings and the request for the institution of the proceedings referred to in Articles 27 and 28 of this Act, to the party against which the procedure has been made and to the persons established to have the status of a party in the proceedings.
- (2) The response shall be provided within a time limit set by the Council of Competition in each individual case, which may neither be shorter than 8 (eight) days nor exceed 30 (thirty) days.
- (3) Within the determined time limit, a party is obliged to supply the Council of Competition with the required response and the other information and documents relating to the request.
- (4) Without prejudice to paragraphs (2) and (3) of this Article, in the case of justifiable reasons, a party may make a request for the time limit to be extended for submitting its response. The Council of Competition may approve the extension of the time limit which may not exceed 30 (thirty) days.
- (5) If a party does not act according to the request and the time limit set by the Council of Competition, or if it declares that it is not able to act according to the request, the Council of Competition shall take all necessary measures pursuant to Chapter V of this Act whereas the facts and circumstances relevant to the proceedings shall be established *ex officio* on the ground of the Council of Competition own findings, data and documents available.

Article 34
Carry out a Proceedings

- (1) After the resolution authorizing the institution of the proceedings is made, the Council of Competition shall appoint a responsible member of the Council of Competition for managing the proceedings and a responsible official for carrying out the proceedings (hereinafter: an official).
- (2) An official shall be obliged to follow the instructions of a responsible member of the Council of Competition pursuant to paragraph (1) of this Article and to submit regularly the information and the documents collected in the course of the proceedings.
- (3) Responsible member of the Council of Competition, an *official person* and the other staff who provide professional support in the course of the proceedings, perform official duties on the basis of written authorization or ordinance of the Council of Competition. The ordinance shall contain, in particular, the subject and the purpose of the proceedings and the fines provided for in case of the obstruction or in case of intentional delivery of false, incorrect and misleading information.
- (4) Responsible member of the Council of Competition, an official and the other staffs are obliged to show written authorization or ordinance, issued by the Council of Competition, before they start with the carrying out of their official activities.

Article 35
Collection of Data

- (1) In the course of the proceedings, at the request of the Council of Competition, the official, parties and other legal and natural persons are obliged to:
 - a) submit all the required data such as written statements and documents, disregarding the media they are announced in;
 - b) ensure direct access to all business premises, movable and immovable property, business books, databases and other documents, without being obstructed by business, state or technical secret;
 - c) submit all the necessary data from the other persons which could contribute to solving and explaining certain issues on prevention, limitation or distortion of market competition;
 - d) ensure the carrying out of all other duties considered necessary for the purpose of stating all the relevant facts to the procedure.
- (2) If there is a reasonable doubt that any of the parties to the proceeding or other persons hold in possession documents or other instruments relevant to the establishing of the substantive facts in the proceedings, and they do not want to produce these documents for inspection, the competent court shall be requested to issue a written warrant ordering the search of an apartment or premises and the other persons as well as the seizure of items and documents in possession of the parties or other persons.
- (3) The request from paragraph (1) of this Article must contain the legal basis, subject matter and purpose of the request, limitation period for implementation of the request and the penalties for refusal to act according to this request which are regulated by this Act.

Article 36
Burden of Proof

- (1) In any request related to the application of the provisions on competition stated in this Act, the burden of proof rests with the party which submits the request for initiation of the proceedings.
- (2) An undertaking or association of undertakings having the operating profit or exempted by Article 4 (3) or Articles 5 and 7 of this Act, shall bear the burden of proving.

Article 37
Rights of Access to Document

- (1) Parties to the proceedings carrying out before the Council of Competition have the right of access to case files.

- (2) At a party's request, the Council of Competition shall make a copy of record or single documents delivered by the other parties.
- (3) Request for access to the documents stated in paragraph (1) of this Article shall be submitted in written form to the Council of Competition. The Council of Competition shall set the date for access to documents within eight (8) days period from the day when the request was received.
- (4) Without prejudice to paragraph (1) or (2) of this Article, the documents or draft of the decisions of the Council of Competition, reports and minutes of the sessions of the Council of Competition, internal instructions and notes on the case, as well as the other documents considered an official secret pursuant to Article 38. of this Act may neither be inspected nor photocopied..

Article 38 Business Secrecy

- (1) The members of the Council of Competition, the official persons and the other staff are obliged to keep business secret, irrespective of the way they come to know it, and the obligation of the business secret shall also continue to be in effect after expiry of their engagement with the Council of Competition.
- (2) Pursuant to paragraph (1) of this Article, business secret is particularly considered to be:
 - a) all which is defined to be a business secret by the Act or other regulations;
 - b) all which is defined, on the basis of the law and other documents to be a business secret or business secret of parties in the procedure or other persons;
 - c) all which is particularly defined by the parties in the procedure or other persons as business secret;
- (3) Without prejudice to paragraph (1) and (2) of this Article, data and documents which have been made accessible to the general public in any way, or published pursuant to specific regulations, shall not be considered a business secret.

Article 39 Oral Hearing

- (1) It is obligatory to hold an oral hearing in all cases with parties of contrary interest. The oral hearing is, as a rule, public.
- (2) Without prejudice to the paragraph (1) of this Article, if the Council of Competition, after it has received the written statement of the party against which it has started the proceedings, decides that the facts of the case between the parties are beyond dispute and that there are no other hindrances preventing the decision to be made, the Council of Competition may make a decision without calling for the oral hearing.
- (3) An oral hearing is to be conducted in each case when it is deemed useful.
- (4) If any of the summoned parties, or the person authorized by the parties, fails to appear at the first oral hearing in the proceedings, as a rule, the oral hearing shall be postponed and a new one shall be called.
- (5) If any of the summoned parties in the proceedings, or the person authorized by the parties, fails to appear at the following oral hearing convened in accordance with the provisions of paragraph (4) of this Article, as a rule, the Council of Competition does not convene another oral hearing and it makes a decision on the basis of its findings, available data and documents.

Article 40 Interim Measures

- (1) The Council of Competition may decide on interim measures on the basis of the preliminary determined infringements where it deems that particular activities of restriction, prevention or distortion of competition, with the meaning of this Act, represent a risk by creating a direct restraining influence on individual undertakings, or on particular sectors of the economy or consumers' interests.

- (2) In its decision on interim measures referred to in paragraph (1) of this Article, the Council of Competition shall suspend all activities, insist on meeting of particular conditions or impose other measures reasonably necessary to eliminate prevention, restriction or distortion of market competition. As a rule, the duration of the interim measures may not exceed the period of 3 (three) months, but may be prolonged if this proves to be necessary and reasonable.

Article 41
Time Limits Period

- (1) The Council of Competition is obliged to issue a final decision within the time limit of a 6 (six) months following the day when the resolution authorizing the institution of the proceedings is adopted.
- (2) The Council of Competition may extend the time limit for making the final decision referred to in the paragraph (1) of this Article and Articles 5 and 11, for a subsequent period of three (3) months in cases where it is necessary to carry out additional expertise or analyses defining the state of facts and examination of evidences, or where delicate economic branches or markets are concerned, about which the Council of Competition is obliged to inform in written form the parties to the proceedings.

Article 42
Administrative Acts

Within the meaning of Article 25 of this Act, the Council of Competition shall, in particular, make decisions in which it:

- a) assesses the compliance of the agreement with the provisions of this Act;
- b) authorizes the exemption from the agreement pursuant to Article 5 of this Act;
- c) determines the existence of abuse of a dominant position pursuant to Articles 10 and 11 of this Act;
- d) estimates the compatibility of concentration pursuant to Article 18 of this Act;
- e) orders interim measures pursuant to Article 40 of this Act;
- f) determines particular measures to be taken in order to restore efficient competition in cases of prohibited concentrations, pursuant to Article 18 of this Act;
- g) makes other decisions and resolutions pursuant to the provisions of this Act.

Article 43
Final Decisions of the Council of Competition

- (1) Upon the completion of the proceeding, a responsible member of the Council of Competition shall submit to the Council of Competition a report on the implemented proceedings and proposals to the decision.
- (2) At a session, the Council of Competition makes the final decision on whether an infringement of this Act has been committed.
- (3) The final decision referred to in paragraph (2) of this Article includes recommendations and/or sanctions and other measures to the parties in proceedings.
- (4) Before the final decision making, the Council of Competition may inform the parties in written form on the content of the decision which shall be made.
- (5) At the request of a party or *ex officio*, the Council of Competition may re-examine its final decision in the following cases:
- a) when the facts, used as a basis for the decision, are changed and when those changes are of significant influence on the market competition;
 - b) when the parties concerned act contrary to the obligations determined by the Council of Competition;
 - c) when the decision is based on incomplete, incorrect and misleading information provided by the parties.
- (6) The final decision of the Council of Competition shall be issued without prejudice to potential criminal and/or civic responsibility as to which a decision is taken by the competent courts.

- (7) In favour of the assessment of the case in question, the Council of Competition may apply the practice of the European Court of Justice and the decisions of the European Commission.

Article 44
Publication of Decision

- (1) Decision of the Council of Competition shall be delivered to the parties to the proceedings and it shall be published in the Official Gazettes of Bosnia and Herzegovina, in the official gazettes of the entities and Brčko District Bosnia and Herzegovina.
- (2) The decisions laid down in paragraph (1) of this Article shall contain the names of the parties to the proceedings and the main decision content, including the set penalties. The Council of Competition shall take account of the legitimate interests of undertakings in relation to the protection of their business secrets.

Article 45
Implementation of Decisions

Decisions made by the Council of Competition are legally binding throughout the territory of Bosnia and Herzegovina and effective following the day of their publication.

Article 46
Judicial Protection

- (1) The decision of the Council of Competition is final.
- (2) The injured party to the proceedings may file an administrative dispute before the Court of Bosnia and Herzegovina, within 30 (thirty) days from the date of receipt or the publication of such decision.

Article 47
Enforced Execution of Decisions??

- (1) The Council of Competition may request the legal assistance from the competent bodies as to the enforced execution of such decision if the parties to a proceeding fail to implement or execute a decision.
- (2) When requesting the assistance, the Council of Competition has to specify the type of the measures required for such enforced execution.
- (3) When implementing the enforced measures, the competent bodies are obliged to act in conformity with the request of the Council of Competition and adhere to the measures indicated in the request.

V PENALTY PROVISIONS

Article 48
Fines for Severe Infringements of this Act

- (1) The undertakings or natural person, shall be fined at most 10 (ten)% of value of its total annual income earned in the financial year preceding the year when the infringement is committed, if it:
- a) concludes a prohibited agreement or participate in any other way in an agreement that caused prevention, restriction or distortion of the competition in the sense of Article 4 of this Act;
 - b) abuses a dominant position as regulated in the provisions laid down in Article 10 of this Act;
 - c) participates in the prohibited concentration of undertakings, pursuant to the provisions of Article 13 of this Act;
 - d) fails to comply with the decisions made by the Council of Competition pursuant to Article 42 of this Act.
- (2) The responsible persons of the undertakings shall be fined pursuant to paragraph (1) of this Article, an amount ranging from 15.000 KM to 50.000 KM.

Article 49
Fines for Other Infringements of this Act

- (1) An undertaking shall be fined at most 1(one)% of the value of its total annual income earned in the preceding business year, if it:
 - a) acts contrary to the request, in sense of Article 33 and 35 of this Act, by delivering incorrect and misleading information or not providing the necessary information within the set time limit ;
 - b) fails to notify the intended concentration pursuant to Article 16 of this Act;
 - c) submits incorrect and misleading information in the process of concentration appraisal, pursuant to Article 16, 17 and 18 of this Act;
 - d) fails to comply with the decision or resolution of the Council of Competition pursuant to Article 42 (1) g) of this Act or fails to act according to the written order of the competent court.
- (2) The responsible parties of the undertakings concerned shall be fined pursuant to paragraph (1) of this Article, an amount ranging from 5.000 KM to 15.000 KM.

Article 50
Periodic Penalty Payment

- (1) The Council of Competition may impose on the parties the periodic penalty payments not exceeding 5 (five) % of the average daily income in the preceding year.
- (2) The forms of periodic penalty payment shall be more closely define in by-law act of the Council of Competition.

Article 51
Fines for Persons not Parties to the Proceedings

The Council of Competition may impose fines on legal and /or natural persons that are not parties to the proceedings, in case they fail to act upon the request or order of the Council of Competition pursuant to Article 33 and 35 of this Act, and in particular:

- a) on legal persons, an amount ranging from 5.000 KM and 15.000 KM;
- b) on responsible persons of the legal persons, an amount ranging from 1.500 KM to 3.000 KM;
- c) on natural persons, an amount ranging from 1.500 KM and 3.000 KM.

Article 52
Fixing the Amount of the Fine

In fixing the amount of the fine, the Council of Competition shall take into consideration both the gravity and the duration of the infringement of this Act.

Article 53
Payment of Fines

- (1) Fines pursuant to Articles 48 and 49 of this Act relate to the associations of undertakings.
- (2) When a fine is imposed on an association of undertakings, taking account of the income of its members, and the association is not solvent, the association is obliged to call for contributions from its members to cover the amount of the fine.
- (3) When such contributions have not been made to the association within a time-limit defined by the Council of Competition, any of the undertaking-member of the association may be required to pay the fine.

Article 54
Leniency Policy

- (1) The Council of Competition may grant immunity from fine or reduce of fine to an undertaking for the violation of the provisions of Article 4 of this Act, if, in the course of proceedings, an undertaking willingly provides the decisive evidence important for finding an infringement, or if it ends its involvement in the prohibited activities at the time of submitting of evidences.
- (2) If an undertaking realizes voluntary cooperation pursuant to paragraph (1) of this Article, the Council of Competition may, fully or partially, grant the undertaking immunity from a fine.
- (3) Immunity from fine or reduce of a fine pursuant to paragraphs (1) and (2) of this Article shall be granted by the Council of Competitions on the condition when:
 - a) submitting of evidence happens at the time when the Council of Competition has no information required for the institution of proceedings *ex officio*;
 - b) an undertaking effectively cooperates to the Council of Competition during the whole time of the proceedings;
 - c) at the time of submitting of evidence, an economic subject ends its participation in an agreement, decision or concerted practice and does not compel other economic subjects to participate therein.
- (4) Further procedure of granting immunity from fine or reduce of a fine shall be more closely defined in the by-law act issued by the Council of Competition.

Article 55
Limitation Periods for the Imposition of Penalties

- (1) The limitation period for the imposition of fines pursuant to Article 48. of this Act shall begin to run after the expiry of a 5 (five) year period, while the limitation period for the imposition of fines pursuant to Articles 49 and 50 of this Act shall begin to run after the expiry of a 3 (three) year period.
- (2) The limitation period shall also begin to run on the day on which the infringement is committed. In the case of continuing or repeated infringements of the Act, limitation time shall begin to run on the day on which the infringement ceases.
- (3) Any action taken by the Council of Competition for the purpose of carrying out investigation or proceedings in respect of an infringement shall interrupt the limitation period for the imposition of fines or periodic penalty payments. The limitation period shall be interrupted with effect from the date when at least one undertaking or association of undertakings –parties to the infringement is notified on the action. Actions which interrupt the running of the limitation period shall include in particular the following:
 - a) written requests for information from the Council of Competition;
 - b) written authorizations to conduct proceedings issued to its official by the Council of Competition;
 - c) the initiation of proceedings by the Council of Competition;
 - d) notification on resolution of the Council of Competition authorizing the initiation of the proceedings.
- (4) The interruption of the limitation period shall relate to all the undertakings which have participated in the infringement.
- (5) The limitation period concerned shall be restarted after any interruption. The limitation period shall expire at the latest on the day when the determined time double time expired without a fine or a periodic penalty payment imposed by the Council of Competition.

Article 56
Limitation Period for the Enforcement of Penalties

- (1) The limitation period for the enforcement of fines pursuant to Articles 48, 49 and 50 of this Act shall begin to run after the expiry of a 5 (five) year period.
- (2) The limitation period shall begin to run on the day on which the decision becomes final.

- (3) The limitation period for the enforcement of penalties shall be interrupted:
- a) by notification of a decision on adjustment of the original amount of the fine or periodic penalty payment or rejection of the request for adjustment;
 - b) by any action of the Council of Competition designed to enforce payment of the fine or periodic penalty payment.
- (4) After any interruption of the limitation period, the time shall be restarted.
- (5) The limitation period for the enforcement of penalties shall be suspended for as long as:
- a) the time to pay is allowed;
 - b) the enforcement of payment is suspended pursuant to a decision of the competent court.

VI TRANSITIONAL AND FINAL PROVISIONS

Article 57 Transitional Period

- (1) Offices for Competition and Consumer Protection (CCPO) established on the basis of the Act on Competition (Official Gazette BIH, No 30/01) shall perform the tasks of the Office for Competition established by this Act, until 31st December 2005.
- (2) On 1st January 2006, the competencies of the Offices for Competition and Consumer Protection (CCPO) within the scope of competition shall start to be exercised within the Council of Competition, pursuant to Article 20. of this Act.
- (3) On 1st January 2006, the competencies of the Offices for Competition and Consumer Protection (CCPO) within the scope of consumers protection shall start to be exercised by the respective bodies established by the regulations on consumers protection.
- (4) On 1st January 2006, the Council of Competition shall take over the employees of the Offices for Competition and Consumer Protection (CCPO) who are carrying out duties within the scope of competition, pursuant to the Law on Civil Service in the institutions of Bosnia and Herzegovina (Official Gazette BIH, No 19/02, 35/03, 4/04, 17/04, 26/04 and 37/04), as well as the equipment and the other means pertaining to them.
- (5) The status of the employees of the Offices for Competition and Consumer Protection (CCPO) who are carrying out the duties within the scope of consumer protection shall be defined by the regulations regulating the duties within the scope of the consumer protection.
- (6) The number of employees in the Offices for Competition and Consumer Protection (CCPO) who are carrying out the duties within the scope of competition until 31st December 2005, may not be increased without the consent of the Council of Competition.

Article 58 Enactment of By-Laws

The Council of Competition shall adopt the regulations and other by-law acts related to the implementation of the provisions of this Act within six (6) months starting from the entry into force of this Act.

Article 59 Previously Initiated Proceedings

The proceedings initiated before the Council of Competition pursuant to the provisions of the Act on Competition ("Official Gazette BIH", No 30/01) and not completed until the day of entry into force of this Act, shall be continued pursuant to the provisions of this Act.

Article 60
Income from Taxes and Fines

Taxes and fines imposed in decisions of the Council of Competition represent the income of the Budget of Bosnia and Herzegovina institutions.

Article 61
Announcement

The Act on Competition (“Official Gazette BIH”, No 30/01) shall cease to be in effect on the first day of application of this Act, except the provisions related to the competencies of the Offices for Competition and Consumer Protection which are to be applied until 31st December 2005.

Article 62
Entry Into Force

This Act shall enter into force on the eighth day after the publication in the “Official Gazette Bosnia and Herzegovina” and shall also be published in the official gazettes of the Entities and Brčko District of Bosnia and Herzegovina.

Chairman
of the House of Representatives
of BIH Parliamentary Assembly
Šefik Džaferović

Chairman
of the House of Peoples
of BIH Parliamentary Assembly
Goran Milojević