



Number: 01-01-76-31/05  
Sarajevo, 19 April 2006

Pursuant to Article 25, paragraph (1), item e) and Article 43, paragraph (2), in connection with Article 4, paragraph (1), item d) of the Act on Competition («Official Gazette of BH», No. 48/05), in the proceedings taken before the Council of Competition on the basis of the Resolution on initiation of the investigation, number 01-01-76/05, from 20 July 2005, and upon request of the International Advertising Association (IAA) Trampina 4. Sarajevo, from 15 March 2005, submitted against TV OBN, the Council of Competition, on its 27th session, held on 19 April 2006, adopted the following

### **DECISION**

The Request, submitted by International Advertising Association-Chapter for Bosnia and Herzegovina for initiation of the proceeding against TV OBN, indicating the infringement of the free market competition by means of the conclusion of agreement where dissimilar conditions for equal transactions with other undertakings are applied and where those undertakings are placed at a competitive disadvantage, is rejected as groundless the Request against TV OBN.

### **EXPOSITION**

On 15 March 2005 International Advertising Association-Chapter for Bosnia and Herzegovina (hereinafter: IAA), Trampina 4, Sarajevo, represented by Samra Lučkin, a president, has submitted a request for initiation of the proceedings against TV OBN indicating the infringement of the free market competition by breaching Article 4, paragraph (1), item d) of the Act on Competition by means of the conclusion of agreement which places the other undertakings at disadvantaged and discriminatory position in price and advertising policy in the TV market of Bosnia and Herzegovina.

In its request IAA indicates that TV OBN breaches the regulations by its price policy included in agreements made with some undertakings, placing the other TV houses and advertisers in the discriminatory and disadvantage position in Bosnia and Herzegovina, which is manifested in:

- agreements on selling the television advertising place, made with particular undertakings, by which the other undertakings are placed in disadvantaged position in the TV advertising market in Bosnia and Herzegovina;
- preventing all undertakings to participate in purchase the television advertising place in media under the equal conditions and prices.

Besides, IAA cited other irregularities connected to tax payment, requests for modification of regulations in order to maintain the high standards of licensing the media, protection of the rights of all employees in media, protection of the domestic market, etc.

The Council of Competition, in accordance with the defined procedure of at that time valid Act on Competition («Official Gazette of BiH», No. 30/01) by a memo No. 01-05-85/05 from 21 March 2005. and a memo No. 01-05-137/05 from 09 May 2005 asked the IAA to provide additional information and facts which would prove the statements of the request concerning

the application of disadvantaged and discriminatory attitude of TV OBN towards some clients in making agreement and preventing all clients to use the TV advertising place according the equal terms and prices.

On the basis of the asked documentation submitted by IAA, the Council of Competition finds out the presence of the ground suspects about the discriminatory attitude of TV OBN, and it will determine the presence of infringement of the Act on Competition by carrying on the proceedings and by checking the documentation of the TV OBN which is not available to IAA.

Considering all cited above, the Council of Competition in its session held on 20 July 2005 adopted a Decision on initiation of the proceedings upon the IAA request against TV OBN for infringement of Article 4, paragraph (1), item d) of the Act on Competition (Decision No. 01-01-76/05) and delivered it to both parties.

On 28 October 2005, by its act No. 01-01-434/05, the TV OBN replied to the Decision on initiation of the proceedings denying all statements made in the IAA request.

On 28 July 2005 a new Act on Competition («Official Gazette of BiH», No. 48/05) has come into the force, so the proceedings is continued according the regulations and Article 59 of the new Act.

During the proceedings and in order to estimate and determine correctly the relevant facts and conditions important for the proceedings, the Council of Competition in accordance with Article 3 of the Act on Competition and the Regulation on Definition of the Relevant Market («Official Gazette, BiH», No. 01/05) analyses and determines the relevant market.

Estimating the relevant market, the Council of Competition defines the following:

- the relevant market of services is the advertising of products and services of undertakings broadcasts exclusively on TV. Considering the specific characteristics, as those are live images and sound, frequency of broadcasting and price, there is no confusion between the advertising services made by other media (by radio or press, etc).
- the relevant geographic market is deemed a whole territory of Bosnia and Herzegovina, according to information provided by the Communication Regulatory Agency in Bosnia and Herzegovina and TV OBN, considering the specific characteristics of TV media regarding the spread of the TV signal by the network of the ground transmitters and increased presence of the cable-TV especially in the area which is not covered by the signal of TV antenna transmitter.

Considering the stated estimations, the Council of Competition defines that the relevant market in this case is a services market of advertising the products and services of undertakings on TV media which are subject of their business in the territory of Bosnia and Herzegovina.

In order to collect additional information and data, the Council of Competition visited the IAA on 29 November 2005 and made an official note about the visit.

The representatives of IAA repeated again the statements given in their request and submitted a monitoring report on the advertising services with a time and prices for the period from 01 January to 20 November 2005, made by Index Bosnia for Joint Industry Community (JIC).

In the course of the proceedings, in order to carry out the evidences and determine the facts, the Council of Competition has visited the TV OBN and checked a business documentation; the official note is made and the copies of the following documents are submitted:

- license for work, issued by CRA (Regulatory Agency for Communications of BiH);

- copy of an agreement on advertising, made by TV OBN with BEIERSDORF d.o.o. from Zagreba; MCCANN-Sarajevo 2X;
- price list of services and conditions of advertising activity from 01 March 2005;
- price list of the VIP packet;
- a price list- a special offer-mini packets -off time broadcasting in a time period from 07:00 to 17:00 hours.

At that time the authorities of TV OBN explained the business policy of the TV OBN, pointing out especially a «profit share deal» programme, which means that TV OBN offers services free of charge for some clients who advertise for the first time and who suffer a financial difficulties; in a case that after the ending of that period the advertisement has as result an increased sale, the clients pay the service according the price list and in many cases they continue the advertising on TV OBN. TV OBN also stresses that the mentioned monitoring report of the Index Bosnia is not valid because it does not include all packets of the price list for VIP clients which is available in public and in web-page of TV OBN and provides under the equal conditions its application to all clients who fullfil the required criteria.

The Council of Competition checked on 08 December 2005 a financial part of the business activities of TV OBN with the following clients:

- Beiersdorf for advertising services from 07 October to 20 October 2005;
- Lura for advertising services from 05 September to 30 September 2005;
- Orion (a Hospital Sveti vid) for advertising services from 11 May to 29 May 2005;

According to Article 39 of the Act on Competition which stipulates the obligatory oral proceedings for the cases where parties declare the oposite intersts, the Council of Competition decides that an oral proceedings is to be a further action. The Council of Competition has determined a place and the time before the oral hearing when the IAA may have insight in act of the case concerned.

The parties through their legal representatives, authorised persons were present at the oral preceedings held on 22 December 2005. They were shown all relevant evidences which were provided by the Council of Competition during the proceedings. The parties did not have any objection to the shown evidences. During the oral proceedings the IAA sugessted especially the carrying out of new evidences by revising the agreements made by TV OBN with a Hospital Sveti vid, Luksor, Ilirija, Johnson-Johnson, Reckit benkiser and Beirsdorf AG Hamburg.

The Council of Competition accepted the suggestion given by IAA at the oral proceedings regarding the collection and amend the stated evidences and it adressed the request in writing to the TV OBN asking for the said agreements. TV OBN submitted them on 09 January 2005. According to the suggestions given by IAA and after the insight into the said agreements , the Council of Competition ascertained that additional checking and analysis were necessary for complete determination of the facts important for adoption the proper decision. Therefore, in order to carry out all those activities, the Council of Competition decided at the session held on 19 January 2005 to exceed the time for three months for making the final decision.

Upon additional running of the evidences and insight into the business-technical documentation of the TV OBN on 03 February 2006 and 15 February 2006 (the official note is made about that as same as it was done about the formerly provided evidences) the Council of Competition ascertained the following facts important for making a final decision:

1. TV OBN addopted a «Price-list of services» which came to the force on 01 March 2005 and which is transparent and available to all users (hereinafter: clients)of advertising services of TV OBN. This price-list determines:

- a price of broadcasting;
- special terms and additional benefits of the broadcasting;
- a commission charged by the agency;
- a quantity discounts for clients;
- welcome bonus;
- budget split bonus; and
- payment conditions.

The following is also determined in the price-list:

- in concluding the agreement the advertising agency is obliged to show the list of clients with budgets on the basis of which the level of the quantity discounts will be allowed and the client's certified statement on representation. The clients not recorded in the list shall not stand to benefit from the quantity discounts;
  - for clients with annual budget exceeding 200.000,00 KM the agreement will be concluded according to the special add-on to the price-list (the price-list for VIP clients). This price-list is divided up into three packets:
    - I Packet for the budget of at least 500.000,00KM with the average price of 9,77KM per a second;
    - II Packet for the budget of 400.000,00 KM to 500.000,00 KM with the average price of 10,39 KM per a second;
    - III Packet for the budget of 300.000,00 KM to 400.000,00 KM with the average price of 11,01 KM per a second and other packets for the budget of 200.000,00 KM to 300.000,00 KM with the average price of 11,62 KM per a second.
2. TV OBN, by the internal act of the Administration «Special Conditions on the business activity of TV OBN - Share profit deal» from 01 March 2005 has improved its business activities by means of taking the joint risk / profit with clients where the collection for the additional advertising services, if the clients realise increased sale of their products, shall be made according to the agreed percentage of the sale. It is clearly defined that an agreement will be made for the period of minimum 12 months and that it may be concluded only with producers or agents who have made agreement for advertising according to the VIP PACKAGE.
  3. In the agreement made between TV OBN and agency Prvi medijski prostor (The first media space) from Sarajevo on 11 January 2005 for broadcasting the advertising activity of clients of the agency: Johnson Wax, Reckit Benckiser, Karlovačka Pivovara (Karlovac Beware), Heineken, Pago and Lga for a period from 01 January to 31 December 2005 the conditions and prices from the Price-list and regulations on Special conditions on business activities of TV OBN are fully met. The same is related to the tripartite agreement made between TV OBN, BEIERSDORF and S:V:RSA d.o.o. (the agency) representing the BEIERSDORF.
  4. In the agreement made with Media Group from Sarajevo (the agency) and directly with Reckit Benckiser, BEIERSDORF and Eronet some irregularities are found out concerning the non-application of the conditions mentioned in the Special conditions on the business activities and Price-list of the TV OBN. This specially relates to the contracting the lower prices than those stated in «Share profit deal».

Considering that some new evidences and facts are found out during the hearing proceedings, the Council of Competition concludes that another hearing proceedings is to be carried out to allow the parties to declare about them. The second hearing proceedings was on 06 March 2006 and the parties have no complain.

By the further analysis of the defined relevant market of advertising the products and services of undertakings on TV media, which is the subject of their business activities in the territory of Bosnia and Herzegovina, the Council of Competition ascertained the following:

- the total market value of the relevant service ( profit made by advertising the products and services on TV media) in the territory of Bosnia and Herzegovina in 2004 and 2005 is calculated as a sum of the isolate profits realised by advertising the products and services on TV media of all TV stations,
- there are 42 registered TV stations in Bosnia and Herzegovina practicing the said activity,
- the market share of the TV OBN in that relevant market is about 8,90 % in 2004 and 7,65 % in 2005,
- the market shares of other TV stations in Bosnia and Herzegovina including the TV OBN are:

No.	TV house	Market share	
		2004	2005
1.	RTV FBiH	29,62 %	25,72 %
2.	PINK BiH	12,46 %	15,05 %
3.	NTV Hayat	11,10 %	13,73 %
4.	RT RS	9,12 %	7,89 %
5.	TV OBN	8,90%	7,65%
6.	RTV BiH	5,35 %	6,59 %
7.	Alt. TV Banja Luka	4,11 %	3,90 %
8.	RTV BN	3,85 %	5,71 %
9.	JP RTV TK	3,26 %	2,48 %
10.	P RTV USK	1,43 %	1,15 %
11.	Other TV	less than 1 %	less than 1 %

- According to the information provided by the Regulatory Agency for Communication of BH the broadcasting of the TV OBN programe by its ground network of 37 transmitters comparing to the population number in Bosnia and Herzegovina covers 59% of population according the population census in 1991. Taking into account some demographic consequences happened after 1991, exceeding presence of the cable TV transmitter in the arrea not covered by the signal of the ground network of TV transmitters and the fact that some other local TV stations (as it is TV KISS) undertake the TV OBN programme, that percentage is higher.
- Average weekly percentage of audience of the TV OBN programme on the BIH level and according the researches done by Mareco Index Bosnia, BiH Galup International is between 4 and 5 %.

On a basis of evidences and factual situation the Council of Competition determines that TV OBN in making agreement on providing the advertising services with undertakings (agencies and undertakings directly) has applied the different conditions for equal transactions with other undertakings in relation to the existing Price-list and other mentined rugulations of its busines activities.

But, taking into account all said evidences individually and their mutual relationship, after the expert economic analysis made on the basisof the factual sistuation, the Council of Competition estimates that TV OBN by its operations and by making such agreements where provided the different conditions for the equal transactions to other undertakings does not prevent, restrict or distort the market competition.

The Council of Competition has adopted the said estimation on the basis of the following:

The Act on Competition regulates the category of the dominant position in the maket and abuses of dominant position as forbidden copetition behavior. Pursuant to Article 9 of the Act

on Competition it shall be presumed that an undertaking has a dominant position in the market of goods or services if it holds more than 40%, and if two or more undertakings hold more than 60% of the market share in the relevant market of Bosnia and Herzegovina. Article 10 of the Act defines that any abuses of dominant position shall be deemed as prohibited competing activity, where the dominant position in particular relates to application of dissimilar conditions to equivalent or similar transactions with other parties, thereby placing them at a competitive disadvantage. Taking into account the low market share of the TV OBN in the relevant market of Bosnia and Herzegovina it can be concluded that TV OBN shall not be presumed to be in dominant position. At same time, any agreement in question concluded by TV OBN should be (or should be nearly) defined as agreements of minor importance and on the basis of that it should be exempted according to the Act.

- The said agreements on providing the advertising services concluded directly between TV OBN and undertakings, without an advertising agency engagement, do not figure as the equivalent transactions within the meaning of the Act on Competition. Conclusion of a such agreements directly with the undertakings without an advertising agency engagement may have just a positive effects to the competition in the market because it reduces expenses of TV stations and undertakings using the advertising services of their products /services.
- Great number of TV stations in the relevant market of BIH (42) is guarantee of right to choose to undertaking or guarantee to the agency in a case that it is not satisfy with the TV OBN offers, that means that it can use offers provided by other TV stations, which at the end can result in low price of advertising services.

On the basis of all stated, the Council of Competition determines that TV OBN does not abuse the market competition in a sense of Article 4, paragraph (1), item d) of the Act on Competition and it decides as it is stated in the enacted terms of this Decision.

The irregularities regarding the tax payment, request for correction of the regulatory rules in order to keep higher standards of media licencing, protection of the rights of media employees, protection of the domestic market, etc, stated by IAA are not considered by the Council of Competition due to its incompetence. The Applicant has a possibility to address himself to the responsible bodies to solve the said irregularities.

This Decision shall be published in the «Official Gazette of BH» and in official gazettes of the Entities and Brdcko District of Bosnia and Herzegovina.

#### **Instructions of the legal remedy**

This Decision is final and no appeal is allowed. Unsatisfied party shall be entitled to bring an administrative dispute before the Court of Bosnia and Herzegovina within thirty days (30 days) from the date of acceptance of this Decision, i.e. from the date of its publication in the Official Gazette of BIH.

**President**

**Sena Hatibović**