

BOSNA I HERCEGOVINA
Konkurencijsko vijeće



БОСНА И ХЕРЦЕГОВИНА
Конкуренијски савјет

BOSNIA AND HERZEGOVINA
Council of Competition

DECISION

**On rejection of the Request for delay the enforcement of disputed Decision of the
Council of Competition No.: 1-01-26-001-69-II/07 from 20 July 2007**

**Sarajevo,
November 2007**



BOSNIA AND HERZEGOVINA
Council of Competition

Number: 01-01-26-001-79-II/07
Sarajevo, 05 November 2007

Pursuant to Article 42, item g) of the Act on Competition («Official Gazette of BH», No. 48/05) and Article 18, paragraph (2) and (3) of the Law on Administrative disputes («Official Gazette of BH», No. 19/02) in connection with the disputed Decision of the Council of Competition No.: 1-01-26-001-69-II/07 from 20 July 2007 adopted at the proceedings initiated upon the Request of 15 private pharmacies located in the area of Sarajevo Canton : «Višnjik», «Eurofarm-Centar», «Revita», «Medikaliz», «Shopping», «Lupriv apoteke – branch No. 10», «Dijasan», «Leko-International», «Medisan», «Čobanija», «My medico», «Pharmamed», «Pharmamed Vitez – branch Sarajevo», «Park» and «Čelebić» against the Health Insurance Institute of Sarajevo Canton, Ložionička 2, 71 000 Sarajevo and the Assembly of Sarajevo Canton, , Reisa Džemaludina Čauševića 1, 71000 Sarajevo, the Council of Competition in its 53rd (fifty-third) session, held on 05 November 2007 has adopted

DECISION

1. Request for delay the enforcement of disputed final Decision issued by the Council of Competition, No.: 1-01-26-001-69-II/07 from 20 July 2007, submitted by the Assembly of Sarajevo Canton, represented by an Attorney of Sarajevo Canton is rejected as groundless.
2. This Decision is final and it shall be published in the «Official Gazette of BH», in official Gazettes of Entities and Brcko District of Bosnia and Herzegovina.

Exposition

The Council of Competition received a Request (No.: 01-01-26-001-78-II/07, dated on 1 November 2007 (hereinafter: the Request) for delay the enforcement of disputed final Decision issued by the Council of Competition No.: 01-01-26-001-69-II/07 on 20 July 2007 (made in the proceedings initiated on the basis of the Request of 15 privately owned pharmacies in Sarajevo Canton area : «Višnjik», «Eurofarm-Centar», «Revita», «Medikaliz», «Shopping», «Lupriv apoteke – branch No. 10», «Dijasan», «Leko-International», «Medisan», «Čobanija», «My medico», «Pharmamed», «Pharmamed Vitez – branch Sarajevo», «Park» and «Čelebić» against the Health Insurance Institute of Sarajevo Canton, Ložionička 2, 71 000 Sarajevo and the Assembly of Sarajevo Canton, , Reisa Džemaludina Čauševića 1, 71000 Sarajevo, (hereinafter: the Decision) submitted by the Assembly of Sarajevo Canton, represented by an Attorney of Sarajevo Canton (hereinafter: the Attorney), pursuant to Article 18, paragraph (2) and (3) of the Law on Administrative disputes («Official Gazette of BH», No. 19/02) (hereinafter: the Law on Administrative disputes).

By having an insight into the submitted Request, the Council of Competition established that all necessary documentation was submitted, pursuant to Article 18, paragraph (2) of the Law on administrative disputes.

The Plaintiff claims that final Decision is to be delayed until a final decision of the the Court of Bosnia and Herzegovina; the Plaintiff thinks that enforcement of the disputed Decision can make irreparable damage to the Plaintiff. The Plaintiff also thinks that delay would not cause any financial damage to the Applicant as no financial or accounts documentation was submitted as evidence.

For the sake of better understanding of the Request, the Council of Competition takes into account stipulations of Article 18 of the Law on Administrative disputes, as follows:

- paragraph (2), Upon the request of the Plaintiff the institution competent for enforcement of the disputed final administrative act shall delay enforcement until the final court decision if the enforcement would inflict to the plaintiff damage which could be difficult to mend and if a delay is not contrary to public interest nor it would cause an irreparable damage to the opposite party. .. ,, and
- paragraph (3) „The competent institution referred to in Paragraph 2 of this Article may also, for other reasons, delay the enforcement of the disputed final administrative act until the final court decision, if allowed so by public interest.“

Pursuant Article 18 of the Law on Administrative disputes the competent institution may delay enforcement of disputed final administrative act (final Decision) when establishes that cumulative conditions (stipulated in Article 18, paragraph (2) of the Law on Administrative Procedure) are satisfied, and pursuant to paragraph (3) of the same Law, the competent institution is not obliged to delay enforcement if considers that there are no other reasons for delay except those stipulated in paragraph (2) of the Law on Administrative disputes.

In decision making conducted upon the Request, the Council of Competition, among other things, takes into consideration the following:

- The final Decision is published in „Official Gazette of Bosnia and Herzegovina” on 11 September 2007, which is considered to be a start day of set deadline within which the Assembly of Sarajevo Canton can fulfill its obligation pursuant to Article 45 of the Act on Competition.
- The Plaintiff acting through its Attorney submitted on 20 August 2007a claim to the Court of Bosnia and Herzegovina against defendant Council of Competition for annulment of the Decision. The Council of Competition submitted an answer No.: 01-01-26-001-76-II/07 to the Court of Bosnia and Herzegovina within the set deadline on 11 September 2007.
- The Council of Competition received from the Attorney an official letter, No.: 01-01-26-001-77-II/07 on 11 September 2007, requesting confirmation that Request for delay the enforcement of disputed Decision had not been submitted to the Council of Competition. The Council of Competition answered positively to the official letter on 11 September 2007, No.: 01-01-26-001-77-II/07.
- Request for delay the enforcement of disputed Decision of the Council of Competition was submitted for the proceedings by the Attorney on 12 September 2007 to the Court of Bosnia and Herzegovina, and it was rejected on 23 October 2007 by the panel of the Court's Administrative Division of Bosnia and Herzegovina after finding that an administrative dispute of the Plaintiff-the Assembly of the Sarajevo Canton, represented by Attorney against Defendant – the Council of Competition provided no legal grounds for delaying the disputed Decision.

In the decision making process regarding the Request the following is found out:

- the Request contains no valid fact to prove that Plaintiff will suffer irreparable damage which would be a justification for issuing a decision on delay enforcement of disputed Decision, pursuant to Article 18, paragraph (2) of the Law on Administrative disputes;
- the Council of Competition considers groundless the Plaintiff's statement that existing Network of Pharmacies is established in the public interest, pursuant to Article 18, paragraph (3) of the Law on Administrative disputes because it significantly restricts and distorts a position of pharmacies outside of the Network of Pharmacies (comparing to the position of pharmacies inside the Network of Pharmacies) and prevents more convenient and easier access to prescription medicines for users- insured citizens of Sarajevo Canton.
- the Council of Competition considers groundless the Plaintiff's statement that Applicant (15 private pharmacies) would not suffer financial/money damages from delay the enforcement of disputed Decision as the pharmacies outside of the Network (about 50 private pharmacies) still occupy unequal position with regard to the prescription medicines to insured persons falling within the burden on funds of the Health Insurance Institute of Sarajevo Canton (still earn less daily) which would continue in a case of delay the enforcement of disputed Decision.
- the Council of Competition considers that determined time period in the disputed Decision is estimated objectively, that it is long enough (expires on 11 March 2008) to enable the Assembly of Sarajevo Canton to fulfill its obligations imposed upon it in disputed Decision with respect to adoption of new Decision on establishment of Network of Pharmaceutical activities-pharmacies in Sarajevo Canton.

With all the above said and considering a legal basis for the submitted Request and other relevant facts, the Council of Competition assesses that there is no real reason to issue a decision on delay the enforcement of disputed Decision, pursuant to Article 18, paragraph (2) and (3) of the Law on Administrative Disputes and therefore decides as it is stated in enacted terms of this Decision.

LEGAL REMEDY

This Decision is final and no appeal is allowed against it. 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.

President

Sanja Božić