

Pursuant to the Article IV (4) a) of the Constitution of Bosnia and Herzegovina, the Parliamentary Assembly of Bosnia and Herzegovina at the session of the House of Peoples held on 29 June 2005 and at the session of the House of Representatives held on 29 June 2005, adopted the

LAW ON COMPETITION

(“Official Gazette of BiH”, No. 48/05, 76/07 and 80/09)

UNOFFICIAL CONSOLIDATED TEXT

I GENERAL PROVISIONS

Article 1

(Subject-matter)

This Law regulates the rules, measures and procedures for the protection of competition, powers and functioning of the Competition Council in the protection and promotion of competition in Bosnia and Herzegovina.

Article 2

(Application)

- (1) This Law shall apply to all legal and natural persons (hereinafter: undertakings) that are directly or indirectly engaged in the production, sale of goods and provision of services and whose actions can prevent, restrict or distort market competition on the whole territory of Bosnia and Herzegovina or its significant part and particularly to:
 - a) companies, enterprises and entrepreneurs and their associations, regardless of their form of ownership, seat or place of residence;
 - b) state and local self-government bodies when directly or indirectly participate in or affect the market;
 - c) other natural or legal persons such as associations, sports organizations, institutions, cooperatives, intellectual property right holders that participate indirectly or directly, on a continuous, temporary or single basis on the market, notwithstanding their legal status, form of ownership, seat or place of residence.
- (2) This Law shall also apply to any undertaking controlling another undertaking, as well as undertakings under their control. A controlled undertaking is considered to be an undertaking in which other undertaking, directly or indirectly:
 - a) holds more than half of the share or stocks, or
 - b) may exercise more than half of the voting rights, or
 - c) has the right to appoint more than half of the members of management, supervisory board or an appropriate body for managing and controlling the operations, or
 - d) in other way has the right to manage the operations of the undertaking.
- (3) This Law shall also apply to undertaking with their seat or place of residence abroad, if their activities have significant effect on the market of Bosnia and Herzegovina or its substantial part.

Article 3

(Relevant Market)

- (1) For the purpose of this Law relevant market is defined as a market of certain products and/or services, which are the subject of the business activities of the undertakings in a specific geographic territory.
- (2) A relevant product market comprises all the products and/or services which consumers and/or users regard as substitutable under acceptable conditions, particularly having in mind the products' characteristics, their quality, intended use, way of usage, sale conditions and prices.

- (3) A relevant geographic market comprises the whole territory of Bosnia and Herzegovina or its significant part, where undertakings sell and/or purchase a relevant product under equal or sufficiently homogeneous conditions and which are significantly distinguishing that market from the conditions of competition on the neighbouring geographic markets.
- (4) In certain cases, relevant geographic market may be established at international level.
- (5) Under special regulation the Competition Council shall stipulate detailed criteria and procedures for definition of the relevant market.

II PROHIBITED COMPETITION PRACTICES

Article 4 (Agreements)

- (1) All agreements, contracts, single provision of agreements or contracts, concerted practices, explicit and tacit agreements between the undertakings shall be prohibited, as well as decisions and other acts of undertakings (hereinafter: agreements) the object or effect of which is to prevent, restrict or distort competition on the relevant market and in particular those related to:
 - a) direct or indirect fixing of purchase and selling prices or any other trading conditions;
 - b) limit and control of production, market, technical development or investment;
 - c) distribution of markets or sources of supply;
 - d) application of different conditions to equivalent transactions with other undertakings, thereby placing them at a competitive disadvantage;
 - e) conclusion of agreements that force the other party to accept additional obligations which by their nature or according to commercial practice have no connection with the subject matter of such agreements.
- (2) Agreements prohibited pursuant to paragraph (1) of this Article shall be void.
- (3) Agreements referred to in paragraph (1) of this Article shall not be prohibited if they contribute to improvement of the production or distribution of goods and/or services within Bosnia and Herzegovina or promotion of technical and economic progress, while allowing consumers a fair share of the resulting benefit and which:
 - a) impose only those restrictions necessary to achieve these objectives and
 - b) shall not enable the exclusion of competition in the substantial part of the products or services.

Article 5 (Individual Exemptions)

- (1) The Competition Council may, at the request of one or more parties to an agreement issue a decision on an individual exemption from the prohibition of agreements referred to in Article 4 paragraph (1) of this Law, if the agreement meets the conditions stipulated by Article 4 paragraph (3) of this Law.
- (2) If the Competition Council does not issue a decision within the period referred to in Article 41, paragraph (1), item b) of this Law, the agreement shall be exempted from the prohibition stipulated in Article 4 paragraph (1) of this Law.
- (3) The Competition Council may, *ex officio* or at a party's request, reassess the already exempted agreement referred to in paragraph (1) of this Article, if it finds that:
 - a) a decision is based on incomplete and incorrect data and information;
 - b) material conditions and facts on the relevant market have been changed substantially;
 - c) one of the parties to the agreement acts contrary to obligations stipulated by the Competition Council.
- (4) If the Competition Council establishes an infringement under paragraph (3) of this Article, it may suspend, annul or amend its decision.

Article 6 (Content and Duration of an Individual Exemption)

- (1) An individual exemption may contain conditions and prohibitions.
- (2) An individual exemption has a limited period of validity, which may not exceed 5 (five) years.

- (3) The deadline referred to in 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 is proved that the agreement continues to be in compliance with the conditions stipulated by Article 4 paragraph (3) of this Law.
- (4) Parties to the agreement shall provide the Competition Council with a request for an extension of the period of validity of individual exemption no later than four months prior to the expiration of the period of validity.
- (5) An individual exemption shall be valid from the day of the conclusion of the agreement, and when it contains conditions and prohibitions from the day of issuance of the decision or no later than the day on which the conditions are fulfilled.

Article 7 (Block Exemptions)

- (1) The Competition Council shall adopt regulations on the following block exemptions for implementation of the Article 4 paragraph (3) of this Law, particularly:
 - a) horizontal agreements, in particular the agreements on research, 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, licenses and know how;
 - d) agreements on distribution and servicing of motor vehicles;
 - e) insurance agreements.
- (2) The Competition Council shall define in more details the block exemptions referred to in paragraph (1) of this Article in its regulations, and particularly:
 - a) restrictions or contractual provisions that such agreement may contain;
 - b) contractual provisions that such agreement must contain;
 - c) their duration and other conditions which must be fulfilled.
- (3) Agreements which meet the conditions referred to in Article 4 paragraph (3) of this Law shall not be submitted to the Competition Council for assessment of the individual exemption referred to in Article 5 of this Law.
- (4) The Competition Council may, *ex officio* or at the request of the party, initiate the proceedings to assess a particular agreement referred to in paragraph (3) of this Article, if its effects do not meet the conditions referred to in Article 4 paragraph (3) of this Law.

Article 8 (Agreements of Minor Importance)

- (1) The provisions of Article 4 paragraph (1) of this Law shall not apply to agreements of minor importance.
- (2) An agreement is regarded as an agreement of minor importance if the joint market share of the parties to the agreement and their controlled undertakings on the relevant market is not appreciable, except for the hard core restrictions.
- (3) For the purpose of this Law agreements of minor importance shall be:
 - a) the agreements where the total market share of the parties to the agreement on the relevant market does not exceed 10 % if 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) the agreements where the market share each of the parties on the relevant market does not exceed 15 % if the agreement is concluded between the undertakings which are not actual or potential 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 an agreement between non-competitors and where the 10 % share threshold on the relevant market shall be applicable.
- (4) Under a special regulation the Competition Council shall define in more details conditions and criteria which the agreements of minor importance must meet, as well as hard core restrictions.

Article 9
(Dominant Position)

- (1) An undertaking is in a dominant position on the relevant market of goods or services when due to its market power its behaviour is significantly independent of its actual or potential competitors, buyers, consumers or suppliers, taking into account the market share of that undertaking on the relevant market, market shares of its competitors, as well as legal and other barriers to the entry of other undertakings to the market.
- (2) It shall be deemed that an undertaking is in a dominant position on the market of goods or services, if its market share on the relevant market exceeds 40 %.
- (3) It shall be deemed that more undertakings are in a dominant position on the market of goods or services, if the joint market share of two or three undertakings in the relevant market exceeds 60%.
- (4) It shall be deemed that more undertakings are in a dominant position on the market of goods or services, if the joint market share of four or five undertakings in the relevant market exceeds 80%.
- (5) The Competition Council shall define the category of a dominant position in more details under special regulation.

Article 10
(Abuse of a Dominant Position)

- (1) Any abuse of a dominant position by one or more undertakings on the relevant market shall be prohibited.
- (2) The abuse of a dominant position in particular consist in:
 - a) directly or indirectly imposing unfair purchase or selling prices or other trading conditions which restrict competition;
 - b) limiting production, markets or technical development to the prejudice of consumers;
 - c) applying dissimilar conditions to equivalent or similar transactions with other parties, thereby placing them at a competitive disadvantage;
 - d) making 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 contract.

Article 11
(Procedural Decision on Abuse of a Dominant Position)

- (1) Pursuant to Articles 9 and 10 of this Law, the Competition Council shall issue a procedural decision:
 - a) establishing a dominant position and actions by the undertakings which abuse such dominant position and prevent, restrict or distort competition, and duration of such behaviour;
 - b) forbidding any further abusive actions of the undertaking;
 - c) determining terms and measures to remedy any adverse effects of such actions;
 - d) determining obligation for the undertaking to apply other appropriate measures that insure competition among the undertakings on the relevant market and deadlines for their implementation.
- (2) If the Competition Council does not issue the decision within the deadline referred to Article 41 paragraph (1) of this Law, it shall be deemed that the concluded agreement or the conduct of the undertaking does not abuse a dominant position.
- (3) If the decision from paragraph (2) of this Article hasn't been issued, upon a special request of an undertaking the Competition Council shall issue a decision under the procedure set forth in this Law that the concluded agreement or the conduct of the undertaking does not abuse a dominant position.

Article 12
(Concentration)

- (1) For the purpose of this Law a concentration shall be considered as:
 - a) joining or merger of or independent undertakings or parts of undertakings;
 - b) the acquisition of control or decisive influence of one or more undertakings on another undertaking, or more undertakings or a part of another undertaking, or the parts of another undertakings, in particular by:
 - 1) acquisition of the majority of stocks or share of the nominal capital by means of purchase; or

- 2) acquisition of the majority of voting rights; or
 - 3) any other way, pursuant to the provisions of the laws which regulate the establishment of companies and their management;
 - c) a long-term joint venture by two or more independent undertakings, acting as an independent undertaking.
- (2) Acquisition of control within the meaning of paragraph (1) of this Article shall be constituted by rights, contracts or any other means by which one or more undertakings, either solely or jointly, taking into consideration all legal and factual circumstances are enabled to exercise decisive influence over one or more undertakings.
- (3) A concentration within the meaning paragraph (1) of this Article, shall not be deemed to arise when:
- a) banks or other financial institutions or insurance companies, the normal activities of which include temporary acquisitions of stocks or shares with a view to reselling them within 12 months, provided that ownership of the shares was not exercised in the manner that affects competitive behaviour of the undertaking, i.e. it does not undertake the measures which distort, restrict or prohibit competition. The Competition Council may on the party's request, extend the deadline if the undertaking can show that the transaction was not reasonably possible within the deadline set;
 - b) the control over an undertaking is acquired by an office-holder performing liquidation or insolvency procedure in accordance with laws on bankruptcy and liquidation;
 - c) a joint venture is aimed to coordinate market activities between two or more undertakings which remain independent, whereby this joint venture shall be appraised pursuant to the Article 4 of this Law.

Article 13 (Prohibited Concentrations)

There shall be prohibited the concentrations of undertakings that significantly impede effective competition in the whole territory of Bosnia and Herzegovina or its substantial part, and particularly such creating a new dominant position or strengthening an existing one.

Article 14 (Total Turnover for the Control of Concentration)

- (1) Parties are obliged to notify the intended concentration referred to in Article 12 paragraph (1) of this Law, if the following conditions are met:
- a) the aggregate turnover of all parties to the concentration derived by the sale of goods and/or provision of services on the global market amounts to BAM 100.000.000, according to the financial statements in the year preceding the concentration; and
 - b) the aggregate turnover of each of at least two parties to the concentration derived by the sale of goods and/or provision of services on the market of Bosnia and Herzegovina amounts to at least BAM 8.000.000, according to financial statements for the year preceding the concentration, or if their common share on the relevant market exceeds 40 (forty) %.
- (2) The aggregate turnover referred to in paragraph (1) of this Article shall not include the turnover derived by transaction among the parties.
- (3) Where the concentration referred to in Article 12 paragraph (1) of this Law consists of merger or acquisition of a part or parts, whether or not constituted as legal entities, of one or more undertakings, when calculating the turnover referred to in paragraph (1) of this Article, only the turnover relating to the parts of the undertaking which are the subject of the concentration shall be taken into account.
- (4) Two or more concentrations referred to in paragraph (3) of this Article, which take place within a two-year-period shall be treated as one (more subsequent acquisitions of parts of the undertaking) arising on the date of the last concentration.

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 undertaking, instead of the total turnover, the following shall be used:

- a) for legal persons providing financial services, the sum of the following income items after deduction of indirect taxes related to them:

- 1) interest income and similar income;
 - 2) income from securities:
 - 2.1. income from stocks and other variable yield securities,
 - 2.2. income from the shares in undertakings;
 - 2.3. income from stocks in affiliated undertakings;
 - 3) commissions receivable;
 - 4) net profit on financial operations; and
 - 5) other operating income.
- b) for the insurance and reinsurance undertakings, 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 undertaking, including also re-insurance premiums, and after deduction of taxes and parafiscal contributions charged by reference to the amount of individual premiums or the total volume of premiums.

Article 16
(Notification of Intended Concentration)

- (1) Undertakings, parties to the concentration are obliged to notify any intended concentration within the meaning Articles 12 and 14 of this Law, within 15 days following the conclusion of the agreement, the announcement of the public bid for stocks or the acquisition of a control, depending on which action takes place the first.
- (2) Notification of concentration may be filed when the parties to the concentration demonstrate their intention to merge by means of concluded framework agreement, memorandum of understanding, letter of intent signed by all parties to the concentration or publication of intent to purchase.
- (3) When control over the whole or parts of one or more undertakings is acquired by another undertaking, the concentration shall be notified by the undertaking acquiring control and in all the other cases the concentration shall be notified jointly.
- (4) The Competition Council shall publish the data contained in the notification of concentration in daily newspapers, and particularly :
 - a) names of the undertakings, parties to the concentration;
 - b) nature of the concentration; and
 - c) the economic sector related to the concentration.

Article 17
(Appraisal of Intended Concentrations)

When appraising an intended concentration the Competition Council shall analyse effects that result in a significant distortion of competition' i.e. whether the concentration creates or strengthens a dominant position, in particular:

- a) the structure of the relevant market;
- b) the effects of the concentration 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) any economic, legal and other barriers to entry to the market;
- f) level of internal and international competitiveness of the parties to the concentration;
- g) supply and demand trends for the relevant goods and/or services;
- h) trends of technical and economic progress;
- i) consumers' interests.

Article 18
(Decision on Concentration)

- (1) Where the Competition Council finds that the implementation of the concentration referred to in Articles 12 and 14 of this Law may result in negative effects which may significantly distort competition on the relevant market, it shall issue a decision on the initiation of the proceedings.
- (2) Following the completion of the proceedings the Competition Council shall, within the deadlines laid down in Article 41 of this Law, issue a decision whereby:
 - a) the concentration is declared approved;

- b) the concentration is declared non- approved;
 - c) the concentration is declared conditionally approved.
- (3) The Competition Council shall in the decision referred to in paragraph (2) point c) of this Article declaring concentration conditionally approved, determine the measures and conditions and the deadlines for their implementation.
- (4) As a rule, the parties to the concentration referred to in paragraph (2) point c) of this Article may continue the implementation of the concentration , provided the measures, conditions and deadlines referred to in paragraph (3) of this Article have been met, except as otherwise specified by the Competition Council for particularly legitimate reasons.
- (5) On the basis of information and documentation submitted with the notification of concentration and the level of probability for infringement of competition rules through such concentration and the assessment that the concentration concerned does not result negative effects, the Competition Council may declare a decision within 30 days.
- (6) When the Competition Council, within 30 days, in accordance with paragraph (5) of this Article, starting from the date of issuance of the confirmation on complete and accurate notification referred to in Article 30 of this Law, does not adopt a conclusion on initiation of the process of assessment of concentration, the concentration shall be deemed approved.
- (7) If the Competition Council does not declare such a decision within the deadlines laid down in Article 41 of this Law, the concentration shall be deemed approved.
- (8) The Competition Council may, *ex officio* or on the request of a party, amend the decision referred to in paragraph (2) of this Article when the parties cannot fulfil certain conditions or if they fail to implement any of the measures set forth in the decision taken by the Competition Council due to the circumstances which could not have been predicted or avoided and which do not depend on the will of the parties.
- (9) The concentration shall not be implemented before the decision is issued declaring the approval of the concentration referred to in Articles 12 and 14 of this Law.
- (10)The provision of paragraph (9) of this Article shall not prevent the implementation of the public bid for stock 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 governed by other regulations.

Article 19
(Measures Following the Implementation of Non-approved Concentration)

- (1) The Competition Council shall *ex officio* or on the request of the party by a separate decision propose all necessary measures intended to ensure free competition on the relevant market and set the deadlines for their implementation when:
- a) the concentration concerned has been implemented in contravention of the decision of the Competition Council declaring the concentration non – approved within the meaning of Article 18 paragraph (2) point b) of this Law;
 - b) the concentration concerned has been implemented without a prior notification of intended concentration, and has resulted in the significant impediment of competition, within the meaning of Article 13 of this Law;
- (2) By decision referred to in paragraph (1) of this Article, the Competition Council may, in particular:
- a) order the sale or transfer of stocks or share capital acquired ;
 - b) prohibit or restrict the voting rights related to the stocks or the share capital in the undertakings, parties to the to the concentration and termination of control of the joint venture or any other form referred to in Article 12 of this Law which led to non – approved concentration.

III ENFORCEMENT AUTHORITY

Article 20
(The Competition Council)

- (1) For the purpose of this Law, the authority for the enforcement of the protection of competition shall be the Competition Council.

- (2) The Competition Offices in the Federation of Bosnia and Herzegovina and Republic of Srpska shall operate within the Competition Council, as the organisational units outside the seat of the Competition Council.

Article 21
(Status of the Competition Council)

- (1) The Competition Council is an independent authority which shall ensure consistent application of this Law on the whole territory of Bosnia and Herzegovina and it has the exclusive power in deciding on the presence of prohibited competition activities on the market.
- (2) The Competition Council has a status of legal person with its seat in Sarajevo.
- (3) The funds for the enforcement of powers and implementation of activities of the Competition Council shall be provided from the Budget of Institutions of Bosnia and Herzegovina.

Article 22
(The Composition of the Competition Council)

- (1) The Competition Council consists of six members, appointed for a six-year term of office with the possibility of one reappointment. Term of office of the Competition Council members cannot end before the deadline determined, except advertise specified by Article 23 of this Law.
- (2) Members of the Competition Council shall be selected among recognized experts in the relevant field of expertise and their status shall be equal to such of administrative judges and incompatible with any direct or indirect, permanent or periodical function, with the exception of academic activities and the work in professional and scientific bodies.
- (3) The appointment of the members of the Competition Council shall be as follows:
- a) three members of the Competition Council shall be appointed by the Council of Ministers of Bosnia and Herzegovina, one per each of the three constituent nations;
 - b) two members of Competition Council shall be appointed by the Government of the Federation of Bosnia and Herzegovina;
 - c) one member of the Competition Council shall be appointed by the Government of the Republic of Srpska.
- (4) At the proposal of the Competition Council, the Council of Ministers of Bosnia and Herzegovina shall appoint one member as a president of the Competition Council for one-year term without the right to reappointment during the term of office of the member of the Competition Council.

Article 23
(Early Termination of the Term of Office)

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

Article 24
(Functioning and Decision-making of the Competition Council)

- (1) The Competition Council make take legally effective decisions only if minimum five members of the Competition Council are present at the session.

- (2) Decisions of the Competition Council shall be taken with majority vote of the present members, provided that at least one representative of each constituent peoples must vote for each decision. A member of the Competition Council may not abstain from voting.
- (3) The President of the Competition Council shall be authorized to:
 - a) manage the activities of the Competition Council;
 - b) represent the Competition Council;
 - c) convene and preside the sessions of the Competition Council which take place at least once a month;
 - d) draw up an agenda for every session which may be amended at a session on the request of two members;
 - e) sign all decisions and other acts of the Competition Council.
- (4) The Competition Council shall issue the Rule-book to define functioning, decision making as well as other issues related to the work of the Competition Council.

Article 25
(Powers of the Competition Council)

- (1) In the performance of its activities in accordance with this Law and other regulations governing the competition policy in Bosnia and Herzegovina, the Competition Council shall have the powers to:
 - a) issue regulations pursuant to the provisions of this Law and other regulations for its enforcement;
 - b) prescribe definitions and calculation methods for specific activities i.e. banking, insurance, etc.;
 - c) prescribe and provide interpretation of general and specific definitions of the competition terms, as well as calculation methods for the key competition terms;
 - d) decide on claims for the initiation of proceedings and conduct the proceedings;
 - e) issue administrative acts to finalize a proceeding before the Competition Council;
 - 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) issue internal acts on the internal organization of the Competition Council, except for the Rule -book on the internal organization and systematization which shall be issued with the approval of the Council of Ministers of Bosnia and Herzegovina;
 - h) initiate amendments to the Law on Competition;
 - i) propose to the Council of Ministers of Bosnia and Herzegovina the Decision on the amount of administrative taxes relating to the procedural actions before the Competition Council.
- (2) In relation to the draft versions and the proposals of the laws and other regulations in the areas which affect competition and which shall be submitted by the proponents, the Competition Council shall provide opinion on their compliance with this Law.
- (3) For enforcement of this Law and other regulations on competition, the Competition Council may establish expert and advisory bodies to assist in the decision making process.
- (4) The Competition Council shall cooperate with international and national organizations and institutions in the area of competition, based on which it may provide and request all the data and information related to factual and legal issues including confidential data. In relation to the exchange of confidential data, legitimate business interests of the undertakings concerned must be protected in accordance with the regulations.
- (5) The Competition Council shall submit to the Council of Ministers of Bosnia and Herzegovina the annual report of performance for its approval. The Competition Council shall publish the annual report in public.

IV DECISION-MAKING PROCEDURE

Article 26
(Rules of the Proceedings)

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

Article 27
(Initiation of the Proceedings)

- (1) The Competition Council shall initiate a proceeding within the meaning of this Law *ex officio* or on a party's claim.

- (2) The Competition Council shall initiate a proceeding *ex officio* if it finds that there is a reasonable doubt that competition was significantly prevented, restricted or distorted. A claim for initiation of the proceedings before the Competition Council in accordance with the provisions of this Law may be submitted by:
- a) any legal or natural person having a legal or economic interest;
 - b) chambers of commerce, associations of employers and entrepreneurs;
 - c) consumer associations;
 - d) executive authorities in Bosnia and Herzegovina.

Article 28
(Claim for the Initiation of the Proceedings)

- (1) A claim for initiation of the proceedings before the Competition Council must contain:
- a) the name and the seat of the legal person concerned or the name and surname and address of the authorized natural person-the claimant;
 - b) data concerning the party against whom the claim was lodged;
 - c) description of the facts, practice and circumstances which led to the claim.
- (2) Together with the claim for initiation of the proceedings the claimant may enclose, in particular:
- a) documents and other available evidence which prove the allegations laid down in paragraph (1) point c) of this Article;
 - b) assessment of the relevant market;
 - c) assessment of the market share of the claimant and market shares of the competitors on the market;
 - d) extract from the court registry, work permit or other relevant documents on the claimant's registration ;
 - e) the annual report, financial statements and other accounting documents of the claimant for the financial year preceding the claim.
- (3) The day of the receipt of the claim shall be the day on which the Competition Council receives complete and accurate data referred to in paragraph (1) of this Article. The Competition Council shall inform the claimant in written delivering the confirmation on complete and accurate claim.

Article 29
(Application for Individual Exemption of the Agreement)

- (1) Together with the application for individual exemption of the agreement, the following documents shall 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) extract from the court registry, work permit and other relevant documents on the applicant's registration;
 - c) the annual report, financial statements and other accounting documents for the financial year preceding the conclusion of the agreement concerned (all the parties to the agreement);
 - d) other data which the Competition Council shall find necessary.
- (2) The following documents may be enclosed to the application for individual exemption of the agreement:
- a) assessment of the relevant market;
 - b) assessment of the market share of the parties to the agreement and market share of their competitors on the market.
- (3) The Competition Council shall inform the applicant in written delivering the confirmation on complete and accurate application.

Article 30
(Documentation with the Notification of Concentration)

- (1) Along with the notification of concentration, the following shall be enclosed:
- a) the original document or certified document of the legal basis of the concentration, and certified translation if the official text of the legal basis of the concentration is not in the official languages in Bosnia and Herzegovina,
 - b) the annual financial statements of the parties to the concentration for the financial year preceding the concentration;
 - c) the other data stipulated by the regulations with this Law.

- (2) The notifying party is obliged to state in the application whether they plan to submit the request for appraisal of concentration to some other body authorised to assess the concentration outside the territory of Bosnia and Herzegovina or whether they already submitted such request, and deliver the decision of this body if the decision has already been issued.
- (3) The Competition Council shall inform the notifying party in written delivering the confirmation on complete and accurate notification.

Article 31
(Supplement to the Claim and Waiver the Request)

- (1) If the claimant requesting the initiation of the proceedings before the Competition Council does not provide the data within the meaning of this Law when logging the claim, the Competition Council shall ask the claimant for the data supplement.
- (2) If the claimant fails to act in accordance with the request of the Competition Council referred to in paragraph (1) of this Article within eight days, it shall be deemed that the claimant has waived the claim. In specific circumstances, when the justified reasons exist the Competition Council may extend the deadline for additional 15 days.

Article 32
(Conclusion on the Initiation of the Proceedings)

- (1) The Competition Council shall issue a conclusion on the initiation of the proceedings *ex officio* or upon the receipt of claim within the meaning of the provisions of this Law. The conclusion on the initiation of the proceedings shall contain in particular:
 - a) reference to the case concerned;
 - b) provisions of this Law pursuant to which the proceedings have been initiated;
 - c) the request for the relevant documentation.
- (2) The Competition Council is obliged to issue a conclusion on the initiation of the proceedings within 30 days upon the receipt of complete and accurate claim.
- (3) The appeal against the conclusion on the initiation of the proceeding shall not be allowed.

Article 33
(Response to a Claim)

- (1) Except for the data deemed as business secret pursuant to Article 38 of this Law, the Competition Council shall deliver a copy of the conclusion on the initiation of proceedings and the claim for the initiation of proceedings referred to in Articles 27 and 28 of this Law to the party against which the proceedings have been initiated and persons acting in the capacity of the party.
- (2) The response shall be provided within a deadline set by the Competition Council in each individual case, which shall not be shorter than 8 days or exceed 30 days.
- (3) Within the set deadline, a party shall provide the Competition Council with a requested response and other information, as well as other addendums and documents relating to the claim.
- (4) Without prejudice to paragraphs (2) and (3) of this Article, if there are justifiable reasons, a party may require an extension of deadline for submission of the response. The Competition Council may approve the extension of the deadline not exceeding 30 days.
- (5) If a party fails to act upon the request and the deadlines set by the Competition Council, or if it declares its inability to act upon the request, the Competition Council shall undertake all the necessary actions pursuant to Chapter V of this Law, and facts and circumstances relevant to the proceedings shall be determined *ex officio* on the basis of the findings, available data and documents.

Article 34
(Conduction of Proceedings)

- (1) After the Competition Council has issued a conclusion on initiation of proceedings, it shall appoint a responsible member of the Competition Council to manage the proceedings and a responsible officer to conduct the proceedings (hereinafter: an officer).
- (2) During the proceedings, the officer shall follow the instructions of the responsible member of the Competition Council pursuant to paragraph (1) of this Article and submit regularly the information and the documents collected during the proceedings.
- (3) The responsible member of the Competition Council, the officer and other persons providing professional assistance during the proceedings, shall perform official activities on the basis of written authorization or ordinance issued by the Competition Council. The ordinance shall contain, in particular, the subject and the purpose of the proceedings as well as the fines defined for obstructions or delivery of false, incorrect and misleading information.
- (4) Before conducting official activities, the responsible member of the Competition Council, the officer and other persons are obliged to present written authorization or ordinance, issued by the Competition Council.

Article 35
(Collection of Data)

- (1) During the proceedings, on the request of the Competition Council or the officer, parties and other legal and natural persons are obliged to:
 - a) provide all the required information in the form of written motions or oral statements and submit necessary data and documents for inspection, regardless of the type of the media;
 - b) enable direct access to all business premises, movable and immovable property, business books, databases and other documents, and in doing so they shall not be prevented by any business, state or technical secrets;
 - c) submit all the necessary data and information to other persons that may contribute to solving and explaining certain issues on prevention, limitation or distortion of competition;
 - d) enable other necessary actions with the aim of establishing all the relevant facts in the proceedings.
- (2) Where there is a reasonable doubt that any of the parties to the proceeding or other persons hold in their possession documents or other instruments relevant for establishing substantive facts in the proceedings, the competent court shall be requested to issue a written warrant for the search of an apartment or premises and other persons as well as the seizure of items and documents in possession of the parties or other persons.
- (3) The request referred to in paragraph (1) of this Article must contain the legal basis, subject matter and purpose of the request, deadline for its implementation and the penalties for failure to act upon the request stipulated by this Law.

Article 36
(Burden of Proof)

- (1) In any claim related to the application of the provisions on competition led down in this Law, the burden of proof rests with the party submitting the claim for initiation of the proceedings.
- (2) An undertaking or association of undertakings having the operating profit or which is exempted in accordance with Article 4 paragraph (3) or Articles 5 and 7 of this Law, shall bear the burden of proof.

Article 37
(Right of Access to File)

- (1) Parties to the proceedings before the Competition Council have the right of access to case files.
- (2) On a party's request, the Competition Council shall make a copy of the file or single documents delivered by other parties.
- (3) Request for access to the file referred to in paragraph (1) of this Article shall be submitted in written to the Competition Council. The Competition Council shall set the date for access to the file within eight days from the date of the request.
- (4) Without prejudice to paragraphs (1) and (2) of this Article, draft acts of the Competition Council and minutes from the sessions of the Competition Council, internal instructions and notes on the case, as well as other

documents considered to be an official secret within the meaning of Article 38 of this Law may not be inspected, rewritten or photocopied.

Article 38 **(Business Secrecy)**

- (1) The members of the Competition Council, officials and other staff are obliged to keep business secrets, irrespective of the way they learn about it, and the obligation of keeping the business secret shall continue after the expiry of their engagement in this authority.
- (2) A business secret referred to in paragraph (1) of this Article shall be deemed as:
 - a) any information defined to be a business secret by a law or other regulations;
 - b) any information defined to be a business secret under a general or any other act of the parties to the proceedings or other persons;
 - c) any information particularly defined as a business secret by the parties to the proceedings or other persons;
- (3) Without prejudice to paragraphs (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 deemed as a business secret.

Article 39 **(Oral Hearing)**

- (1) It is obligatory to hold an oral hearing in all cases where parties have opposing interests. The oral hearing is, as a rule, public.
- (2) Without prejudice to paragraph (1) of this Article, where the Competition Council, after receiving the written statement of the party against which the proceedings were initiated, finds that the facts of the case between the parties are beyond dispute and that there are no other impediments to issue a decision, it may issue the decision without the oral hearing.
- (3) An oral hearing shall be held in each case when it is deemed useful.
- (4) If any of the summoned parties or the person empowered 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 convened.
- (5) If any of the summoned parties or the person empowered by the parties fails to appear at the following oral hearing convened in accordance with paragraph (4) of this Article, as a rule, another oral hearing shall not be convened and the decision shall be taken on the basis of findings, available data and documents.

Article 40 **(Interim Measures)**

- (1) The Competition Council may issue a decision on interim measures on the basis of preliminary identified infringements where it deems that particular activities restrict, prevent or distort competition, within the meaning of this Law, threatening to create a direct restraining influence on particular undertakings, or sectors of the economy or consumers' interests.
- (2) In its decision on interim measures referred to in paragraph (1) of this Article, the Competition Council may impose suspension of activities, fulfilment of particular conditions or other measures necessary to eliminate prevention, restriction or distortion of market competition. The duration of the interim measures may not exceed the period of three months, but may be prolonged if it proves to be necessary and justified.

Article 41 **(Duration of the Proceedings)**

- (1) Upon adoption of conclusion on initiation of proceedings, the Competition Council shall make a final decision within:
 - a) six months for determination of the prohibited agreements referred to in Article 4 of this Law;
 - b) three months for determination of the individual exemption referred to in Article 5 of this Law;
 - c) four months for determination of abuse of dominant position referred to in Article 11 of this Law;
 - d) three months for determination of the appraisal of concentration referred to in Article 18 of this Law.

- (2) The Competition Council may extend the deadline for issuing the final decision referred to in the paragraph (1) of this Article up to three months when it finds it necessary to perform additional expertise and analyses in order to define the factual state and assess the evidence, or where delicate economic fields or markets are concerned, on which the Competition Council is obliged to inform the parties to the proceedings in written.

Article 42
(Administrative Acts of the Competition Council)

- (1) Within the meaning of Article 25 of this Law the Competition Council shall in particular issue decisions which:
- a) assess the compliance of the agreement with the provisions of this Law;
 - b) determine the exemption of the agreement pursuant to Article 5 of this Law;
 - c) determine the abuse of a dominant position pursuant to Articles 10 and 11 of this Law;
 - d) declare permissibility of the concentration pursuant to Article 18 of this Law;
 - e) impose interim measures pursuant to Article 40 of this Law;
 - f) determine particular measures to restore efficient competition in cases of prohibited concentrations pursuant to Article 18 of this Law.
- (2) In addition to the decisions referred to in paragraph (1) of this Article, the Competition Council issues other decisions, conclusions and other acts pursuant to the provisions of this Law.

Article 43
(Final Decisions of the Competition Council)

- (1) Upon the completion of the proceeding a responsible member of the Competition Council shall submit to the Competition Council a report on conducted proceedings with a proposal of the decision.
- (2) At a session, the Competition Council shall issue a final decision on whether there is an infringement of this Law.
- (3) The decision referred to in paragraph (2) of this Article may include recommendations and/or sanctions and other measures for the parties to the proceedings.
- (4) Before the final decision the Competition Council may inform the parties in written on the content of the decision it intends to issue.
- (5) On a parties request or *ex officio*, the Competition Council may re-examine its decision in the following cases:
- a) when there has been an actual change of facts based on which a decision was issued and which have a significant impact on the competition;;
 - b) when the parties to the proceedings act contrary to the obligations determined by the Competition Council;
 - c) when the decision is based on incomplete, incorrect and misleading information provided by the parties to the proceedings.
- (6) The decision issued by the Competition Council shall have no impact on potential criminal and/or civic responsibility, decided by the courts of jurisdiction.
- (7) With the view of assessing the case concerned the Competition Council may apply the practice of the European Court of Justice and the decisions of the European Commission.

Article 44
(Publication of Decisions)

- (1) Decisions of the Competition Council shall be delivered to the parties to the proceedings and shall be published in the "Official Gazettes of Bosnia and Herzegovina", in the official gazettes of the Entities and Brčko District of Bosnia and Herzegovina.
- (2) The decisions referred to in paragraph (1) of this Article shall contain the names of the parties to the proceedings and the main content of the decision, including the penalties imposed. The Competition Council shall take into account legitimate interests of undertakings regarding protection of their business secrets.

Article 45

(Implementation of Decisions)

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

Article 46

(Judicial Protection)

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

Article 47

(Enforcement of the Decisions of the Competition Council)

- (1) The Competition Council may request legal assistance from the competent bodies for the enforcement of the decision concerned if the parties to the proceedings failed to implement or execute the decision.
- (2) When requesting legal assistance, the Competition Council shall specify the type of the measures required for the enforcement.
- (3) When implementing the enforced measures, the competent bodies are obliged to act under the request of the Competition Council and adhere to the measures indicated in the request.

V PENALTY PROVISIONS

Article 48

(Fines for Severe Infringements of the Law)

- (1) An undertakings or a natural person, shall be fined up to 10 % of value of its total annual turnover earned in the financial year preceding the year when the infringement was committed, if it:
 - a) concludes a prohibited agreement or participates in any other way in an agreement that prevents, restricts or distorts the competition within the meaning of Article 4 of this Law;
 - b) abuses a dominant position as regulated in the provisions referred to in Article 10 of this Law;
 - c) participates in the prohibited concentration of undertakings, pursuant to the provisions of Article 13 of this Law;
 - d) fails to comply with the decisions of the Competition Council referred to Article 42 of this Law;
 - e) implements a concentration without prior decision on concentration within the meaning of Article 18 paragraph (9) of this Law.
- (2) The Competition Council may impose fines on the responsible persons of the undertaking referred to in paragraph 1 of this Article in the amount of BAM 15.000 to BAM 50.000.

Article 49

(Fines for Other Infringements of this Law)

- (1) The Competition Council may impose fines on the undertakings not exceeding 1% of total turnover in the preceding business year, if it:
 - a) fails to act under the request within the meaning of Articles 33 and 35 of this Law delivering incorrect or misleading information or not providing necessary information within the deadline set;
 - b) fails to notify the intended concentration within the meaning of Article 16 of this Law;
 - c) submits incorrect or misleading information in the process of concentration appraisal, pursuant to Articles 16, 17 and 18 of this Law;
 - d) fails to act in accordance with the decision or conclusion of the Competition Council within the Article 42 paragraph (1) point g) of this Law or in accordance with order of the competent court.

- (2) The Competition Council may impose fines on the responsible persons of the undertaking referred to in paragraph 1 of this Article in the amount from BAM 5.000 to BAM 15.000.

Article 50
(Periodic Penalty Payment)

- (1) The Competition Council may impose the periodic penalty payments on the parties, not exceeding 5 % of the average daily turnover in the preceding year.
- (2) The Competition Council shall define in details the mode of periodic penalty payment in a special regulation.

Article 51
(Fines for Persons that are not Parties to the Proceedings)

The Competition Council may impose fines on legal and /or natural persons that are not parties to the proceedings when they fail to act upon the request or order of the Competition Council within the meaning of Articles 33 and 35 of this Law, and in particular:

- a) on legal persons, in the amount ranging from BAM 5.000 to BAM 15.000;
- b) on responsible persons of a legal entity in the amount ranging from BAM 1.500 to BAM 3.000;
- c) on natural persons, in the amount ranging from BAM 1.500 to BAM 3.000.

Article 52
(Determining the Amount of Fines)

When determining the amount of the fine, the Competition Council shall take into consideration intention and duration of the infringement of this Law.

Article 53
(Payment of Fines)

- (1) Fines referred to in Articles 48 and 49 of this Law shall also relate to the associations of undertakings.
- (2) When a fine is imposed on an association of undertakings that is not solvent taking into account the turnover of its members, the association is obliged to request contributions from its members to cover the amount of the fine.
- (3) If the contributions concerned are not paid to the association within a time-limit defined by the Competition Council, any of the undertakings-members of the association may be required to pay the fine.

Article 54
(Leniency Policy)

- (1) The Competition Council may reduce a fine or grant immunity from fines to an undertaking for the infringement of the provisions of Article 4 of this Law, if an undertaking willingly provides the decisive evidence significant for establishing an infringement and ends its involvement in the prohibited activities at the moment when the evidence was submitted.
- (2) When an undertaking voluntarily cooperates pursuant to paragraph (1) of this Article, the Competition Council may grant an undertaking full or partial immunity from a fine.
- (3) The Competition Council shall grant reduction of fines or immunity from fines within the meaning of paragraphs (1) and (2) of this Article when:
- a) the evidence was submitted at the time when the Competition Council does not hold information necessary to initiate the proceedings *ex officio*;
 - b) an undertaking efficiently cooperates with the Competition Council throughout the proceedings;
 - c) at the time when the evidence was submitted the undertaking ended its participation in written or oral agreement or concerted practice and does not coerce other undertakings to participate in such agreements.
- (4) The Competition Council shall define in details the procedure for granting reduction or immunity from fines in a special regulation.

Article 55

(Prescription Periods for Imposition of Fines)

- (1) The prescription period for imposition of fines referred to in Article 48 of this Law shall begin following the expiry of a five year period, while the prescription period for imposition of fines referred to in Articles 49 and 50 of this Law shall begin following the expiry of a three year period.
- (2) The prescription period shall also begin as of the day when the infringement was committed. In case the infringement is continued or repeated the prescription period shall start as of the day when the infringement ceased.
- (3) Any action taken by the Competition Council with a view of conducting a proceeding or proceedings for an infringement of the Law shall cease the prescription period for imposition of fines or periodic penalty payments. The prescription period shall cease on the day when a particular action was announced to at least one undertaking or association of undertakings which participated in the infringement of the Law. Actions ceasing the prescription period shall refer to:
 - a) written requests for information from the Competition Council;
 - b) written authorizations to conduct proceedings issued to its official by the Competition Council;
 - c) the initiation of proceedings by the Competition Council;
 - d) the notice on conclusion on the initiation of proceedings issued by the Competition Council.
- (4) Ceasing of the prescription period shall refer to all undertakings which participated in the infringement.
- (5) The prescription period shall start again following each ceasing of the period concerned. The prescription period shall expire no later than the day when the time of the period concerned expired twice without any imposition of the fine or periodic penalty being set by the Competition Council.

Article 56

(Prescription Period for the Enforcement of Fines)

- (1) The prescription period for the enforcement of fines referred to in Articles 48, 49 and 50 of this Law shall begin following the expiry of a five year period.
- (2) The prescription period shall begin as of the day when the decision becomes final.
- (3) The prescription period shall cease when:
 - a) publishing the decision modifying the original amount of the fine or periodic penalty payment or rejecting lawsuit for modifications;
 - b) any action is taken by the Competition Council with the view of enforcing the payment of fines or periodic penalty payment.
- (4) The prescription period shall start again following ceasing of the period concerned.
- (5) The prescription period for the enforcement of fines shall cease for the period:
 - a) during the approved payment period,
 - b) during the suspended enforcement of the payment according to the decision of the competent court.

VI TRANSITIONAL AND FINAL PROVISIONS

Article 57

(Transitional Period)

- (1) Offices for Competition and Consumer Protection (hereinafter: CCPO) established pursuant to the Law on Competition (Official Gazette of BiH, No 30/01) shall perform the tasks of the Offices for Competition established by this Law, until 31 December 2005.
- (2) As of 1 January 2006, the tasks of the CCPO within the scope of competition shall be performed within the Competition Council pursuant to Article 20 of this Law.
- (3) As of 1 January 2006, the competencies of the CCPO within the scope of consumer's protection shall be performed by the authorities established by the regulations on consumer's protection.
- (4) As of 1 January 2006, the Competition Council shall take over the employees of the CCPO who perform tasks within the scope of competition, pursuant to the Law on Civil Service in the Institutions of Bosnia and Herzegovina (Official

Gazette of BiH, No 19/02, 35/03, 4/04, 17/04, 26/04 and 37/04), as well as the equipment and other assets pertaining to them.

- (5) The status of the employees of the CCPO performing the tasks within the scope of consumer protection shall be defined by the consumer protection regulations.
- (6) The number of employees in the CCPO performing the tasks within the scope of competition shall not be increased without the approval of the Competition Council until 31 December 2005.

Article 58
(Regulations)

The Competition Council shall adopt the regulations and other acts related to the implementation of the provisions of this Law within six months from the entry into force of this Law.

Article 59
(Previously Initiated Proceedings)

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

Article 60
(Income from Taxes and Fines)

Taxes and fines imposed by decisions of the Competition Council shall be the income of the Budget of Bosnia and Herzegovina Institutions.

Article 61
(Publication)

As of the entry into force of this Law the Law on Competition ("Official Gazette of BiH", No 30/01) shall cease to be in effect except for the provisions related to the competencies of the CCPO applicable until 31 December 2005.

Article 62
(Entry into Force)

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

Speaker of the House of Representatives of BIH Parliamentary Assembly Šefik Džaferović
Speaker of the House of Peoples of BIH Parliamentary Assembly Goran Milojević