

BOSNA I HERCEGOVINA
Konkurencijsko vijeće



БОСНА И ХЕРЦЕГОВИНА
Конкуренијски савјет

DECISION
on non-existence of abuse of dominant position
of the undertaking BH Telecom d.d. Sarajevo

Sarajevo
November, 2010. godine



Number: 01-05-26-028-63-II/09
Sarajevo, 4 November 2010

Pursuant to Article 42 , paragraph (2) and Article 11, paragraph (3), in accordance with Article 11, paragraph (2), of the Competition Act («Official Gazette of BiH», No. 48/05, 76/07 and 80/09) and upon the special Request for the issuance of Decision No. 01-05-26-028-62-II/09 of 18 October 2010, filed by the undertaking BH Telecom d.d. Sarajevo, Obala Kulina bana 8, 71000 Sarajevo, through its attorney Džemil Sabrihafizović, Koste Hermana 11, 71000 Sarajevo, the Council of Competition at its 4th (fourth) session, held on 27 October 2010, adopted

DECISION

1. It is considered that the undertaking BH Telecom d.d. Sarajevo, Obala Kulina bana 8, 71000 Sarajevo, due to the expiration of the period for adoption of the Decision on abuse of dominant position under the Article 41, paragraph (1), item c) of the Competition Act, does not abuse dominant position in terms of Article 10, paragraph (2) of the Competition Act.
2. This Decision is final and shall be published in «Official Gazette of BiH», and official gazettes of Entities and Brcko District of Bosnia and Herzegovina.

Exposition

Council of Competition received the Request for initiation of proceeding No. 01-05-26-028-II/09 of 4 September 2009, filed by the undertaking Akt.online d.o.o. Sarajevo, Fra Anđela Zvizdovića 1, A/21, 71000 Sarajevo (hereinafter: Akt.online), through its attorney Zajednička advokatska kancelarija Marić, Mehmeda Spahe 22, Sarajevo, against the undertakings BH Telecom d.d. Sarajevo, Obala Kulina bana 8, 71000 Sarajevo (hereinafter BH Telecom) and Telekomunikacije Republike Srpske a.d. Banja Luka, Kralja Petra I Karađorđevića 93, 78 000 Banja Luka, for the determination of abuse of dominant position, in terms of Article 10, paragraph (2) items a) ,b), c) and d) of the Competition Act (hereinafter: Act).

Council of Competition decided that it was not possible to determine the violation of the Act stated in the Request without the prior proceeding, and pursuant to the Article 32, paragraph (2) of the Act, issued a Conclusion on initiation of proceedings No. 01-05-26-028-11-II/09 on 16 February 2010, due to the existence of doubt on the abuse of dominant position in terms of Article 10, paragraph (2) items a), b), c), and d) of the Act.

Article 41, paragraph (1) item c) of the Act prescribes that after the Conclusion on initiation of proceedings, Council of Competition is obliged to issue a final decision on determination of

abuse of dominant position within the period of 4 months. In accordance with Article 41, paragraph (2) of the Act, Council of Competition can prolong this time period for additional three months, which was done by the Decision on extension of the deadline for issuing Decision No. 01-05-26-028-48-II/09 of 14 June 2010.

Article 11 paragraph (2) of the Act prescribes that if Council of Competition does not issue a Decision within the time period from the Article 41, paragraph (1) item c) of the Act, it is considered that the signed agreement, i.e. action of the undertaking does not abuse dominant position. Upon the special request of the undertaking, Council of Competition shall, according to the Article 11, paragraph (3) of the Act, issue a decision stating that the signed agreement, i.e. action of the undertaking does not abuse dominant position.

Council of Competition has not issued a final decision in legal time period referred to in the Article 41, paragraph (1) item c) and paragraph (2) of the Act.

Undertaking BH Telecom submitted a Request for issuing Decision on 18 October 2010, to the Council of Competition, in terms of Article 11, paragraph (3) of the Act, received under the number: 01-05-26-028-62-II/09.

Acting upon the Request for issuing Decision filed by undertaking BH Telecom, and bearing in mind the foresaid, Council of Competition concluded that the time period for issuing a final decision in terms of Article 41, paragraph (1) item c) of the Act, has expired and according to the Article 11, paragraph (3) of the Act, decided as stated in the disposition of the Decision.

Legal remedy

Appeal is not allowed against this Decision.

Unsatisfied party is entitled to bring an administrative dispute before the Court of Bosnia and Herzegovina within thirty days from the date of receipt of this Decision, i.e. from the date of its publication.

President

Stjepo Pranjić, Phd