

BOSNA I HERCEGOVINA
Konkurencijsko vijeće



БОСНА И ХЕРЦЕГОВИНА
Конкуренијски савјет

Decision
adopted upon Request for initiation of proceedings filed by Private health institution
„Halilić“ Žepče against Health insurance Institute of Zeničko-dobojski Canton and
Government of Zeničko-dobojski Canton

Sarajevo
February, 2012



Number: 02-26-2-06-56-II/11
Sarajevo, 28th February 2012

Pursuant to Article 25 paragraph (1) item e), Article 42 paragraph (2) and Article 48 paragraph (1), in accordance with Article 4 paragraph (1) of the Competition Act («Official gazette of BiH», No. 48/05, 76/07 and 80/09), and Article 105 of the Law on administrative procedure («Official gazette of BiH», No. 29/02, 12/04, 88/07 and 93/09), in the proceedings based on Request for initiation of proceedings filed by undertaking Private health institution “HALILIĆ” Žepče, Prva b.b., 72230 Žepče, filed by attorney Edin H. Hrnjia, Prva b.b., 72230 Žepče, against Health insurance institute of Zeničko-dobojski Canton, dr. A.A. Borića 28B, 72000 Zenica, and Government of Zeničko-dobojski Canton, Kučukovići br. 2, 72000 Zenica, for the determination of forbidden agreement, Council of Competition at its 30th session held on 28th February 2012, has issued

DECISION

1. It is established that the Government of Zenicko-Dobojski Canton in Article 17 paragraph (3) item 6 of the Decision on the basics, criteria and standards for the conclusion of the contract between the Health Insurance Institute of Zenicko-Dobojski Canton ("Official Gazette of the Zenicko-Dobojski Canton" No. 5/06, 3/08, 2/09 and 19/09) prevents, restricts and distorts market competition in the relevant market, and the same represents an agreement, prohibited by Article 4 paragraph (1) item e) of the Competition Act.
2. It is established that the Health Insurance Institute of Zenicko-Dobojski Canton, through Article 3 of the Agreement on mutual relations, rights and obligations of Pharmacy, Health Insurance Institute of Zenica-Doboj Canton and health centers in supplying drugs to the list of drugs that are prescribed and issued at the expense of the compulsory health insurance No. 12/11 of 03/03/2011 signed between the Health Insurance Institute of Zenicko-Dobojski Canton, the Health Centre Zepce with dispensary and private health institutions "Halilić" Zepce, the Agreement on mutual relations, rights and obligations of Pharmacy, Health Insurance Institute of Zenicko-Dobojski Canton and health centers in supplying drugs to the list of drugs that may be prescribed and issued at the expense of the compulsory health insurance No. 10/11 of 03/03/2011, Agreement between the Health Insurance Institute of Zenicko-Dobojski Canton, the Health Centre Maglaj and private health institutions "Halilić" Zepce and the Agreement on mutual relations, rights and obligations of Pharmacy, Health Insurance Institute of Zenica-Doboj Canton and health centers in the supply of drugs from the list of medicines that may be prescribed and issued at the expense of the compulsory health insurance No. 10/11 of 03/03/2011, the Agreement between the Health Insurance Institute of Zenicko-Dobojski Canton, the Health Centre Zenica and Private Health Institutions "Halilić" Zepce, prevent, restrict and distort market competition in the relevant market, and constitute agreements prohibited by Article 4 paragraph (1) item e) of the Competition Act.
3. Government of Zenicko-Dobojski Canton is ordered to amend Article 17 paragraph (3) item 6 of the Decision on the basics, criteria and standards for concluding a contract between the Health Insurance Institute of Zenica-Doboj Canton ("Official Gazette of the Zenica-Doboj

Canton" no. 5/06, 3/08, 2/09 and 19/09) within 60 days of receipt of this Decision, and submit the evidence on the execution of obligation in the set time limit to the Council of Competition.

4. Health Insurance Institute of Zenicko-Dobojski Canton is requested to amend Article 3 of the Agreement on mutual relations, rights and obligations of Pharmacy, Health Insurance Institute of Zenicko-Dobojski Canton and health centers in supplying drugs to the list of drugs that are prescribed and issued at the expense of the compulsory health insurance, under item 3 of this Decision, as well as all contracts concluded with private pharmacies in the area of Zenicko-Dobojski Canton within 90 days of receipt of this Decision, and submit the evidence on the execution of obligation in the set time limit to the Council of Competition.
5. Fine is imposed to the Government of Zenicko-Dobojski Canton in the amount of 20.000,00 KM (BAM twentythousand), in terms of Article 48 paragraph (1) item a) of the Competition Act for the conclusion of prohibited agreements that distort, restrict or prevent competition, in terms of Article 4 paragraph (1) item e) of the Competition Act, which is required to be paid within 8 (eight) days of receipt of this Decision.
6. Fine is imposed to Institute of health insurance of Zenicko-Dobojski Canton in the amount of 10.000,00 KM (BAM ten thousand), in the sense of Article 48 paragraph (1) item a) of the Competition Act for the conclusion of prohibited agreements that distort, restrict or prevent competition, in terms of Article 4 paragraph (1) item e) of the Competition Act, which is to be paid within 8 (eight) days of receipt of this Decision.
7. In case the fines imposed under items 5 and 6 of this Decision are not paid within the specified time they will be charged in forced procedure, with calculation of penalty interest for exceeding the time limit, under the applicable laws of Bosnia and Herzegovina.
8. The request to institute proceedings filed by Private health institution "Halilić" Zepce against the Government of Zenicko-Dobojski Canton and against the Health Insurance Institute of Zenicko-Dobojski Canton in order to establish the existence of a prohibited agreement, under Article 4 paragraph (1) items a) b) c) d) of Competition Act, is rejected as unfounded.

Government of Zenicko-Dobojski Canton and Health Insurance Institute of Zenicko-Dobojski Canton are obliged to cover the costs of equal amounts of KM 904.00, or a total of 1808.00 KM to undertaking private medical institutions "Halilić" Zepce, within 8 (eight) days of receipt of this Decision.

9. Government of Zenicko-Dobojski Canton and Health Insurance Institute of Zenicko-Dobojski Canton are required to cover the costs of equal amounts of KM 904.00, or a total of 1808.00 KM to undertaking private medical institutions "Halilić" Zepce within 8 (eight) days of receipt of this Decision.
10. This decision is final and will be published in the "Official Gazette of BiH", official gazettes of Entities and Breko District of Bosnia and Herzegovina.

Exposition

Council of Competition has received, on 03/07/2011, Request to initiate proceedings (hereinafter: Request) number : 02-26-2-06-II/11 of the undertaking private hospital "Halilić" Zepce, Prva bb, 72230 Žepče (hereinafter Applicant), filed by attorney H. Hrnjić Edin, against the Health Insurance Institute of Zenicko-Dobojski Canton, Dr. AA Boric 28 B, 72000 Zenica (hereinafter: Institute) to establish prohibited competition activities, pursuant to Article 4 of the Competition Act («Official Gazette», no. 48/05, 76/07 and 80/09) (hereinafter the Act).

Having reviewed the Request, Council of Competition found that it is not clear and complete, within the meaning of Article 28 (1) of the Act, and the Applicant was requested on 16/03/2011 and 04/04/2011, documents number 02-26-2-06-1-II/11 and No. 02-26-2-06-2-II/11, its amendment and payment of administrative fees, in the sense of Article 2 tariff number 106 paragraph (1) item f) of the Decision on the amount of administrative fees in connection with the practices before the Council of Competition ("Official Gazette of BiH", no. 30/06 and 18/11).

The Request was amended on 18th April 2011 in submission No: 02-26-2-06-3-II/11 and proof of payment of administrative fees on 05/27/2011, submission number: 02-26-2-06-4-II/11.

Completing the Request concerned, the Council of Competition, pursuant to Article 28 paragraph (3) of the Act, issued a certificate of receipt of full and complete Request, on 03/06/2011, document No. 02-26-2-06-5-II /11.

1. Legal framework of the proceedings

Council of Competition in the proceedings applied the provisions of the Decision on determining the relevant market («Official Gazette», no. 18/06 and 34/10) and Law on Administrative Procedure ("Official Gazette of BiH", no. 29/02, 12/04, 88/07 and 93/09).

Council of Competition also took into account the provisions of the Law on Health Insurance FBiH ("Official Gazette of Federation BiH", no. 30/97, 7/02 and 70/08), the provisions of the Law on Medicines of F BiH ("Official Gazette of the Federation" no. 51/01 and 29/05), the provisions of the Decision on the basics, criteria and standards for the conclusion of the contract between the Health Insurance Institute of Zenicko-Dobojski Canton and health institutions ("Official Gazette of the Zenicko-Dobojski Canton, "no. 5/06 , 3/08, 2/09 and 19/09), Ordinance fixing the amount of wholesale and retail margins of the drugs ("Official Gazette of Federation BiH", no. 40/02 and 50/02), the Order on standards and norms in health care compulsory health insurance in terms of pharmacy operations ("Official Gazette of Federation BiH", No. 36/05), the collective agreement on the rights and obligations of employers and employees in the health sector on the territory of the FBiH ("Official Gazette of Federation BiH", No. 61/07) and Decision of the Constitutional Court of Bosnia and Herzegovina, No. 4010-08, dated 12th October 2011 in connection with the appeal of the Public Institution Pharmacy "Zdravlje" Zenica.

2. Relevant market

In accordance with Article 3 of the Act and Articles 4 and 5 of the Decision on determining the relevant market, relevant market is defined as the market of certain products that are the subject of a particular geographic market.

According to the provisions of Article 4 of the Decision on determining the relevant market, relevant product market comprises all products and / or services that consumers consider mutually substitutable with respect to their essential characteristics, quality, purpose, price or method of use.

Relevant geographic market comprises the whole or a substantial part of the territory of Bosnia and Herzegovina in which the undertakings operate in the sale and / or purchasing of the relevant product under equal or sufficiently homogeneous conditions and which are significantly different from the conditions of competition in neighboring geographic markets.

Council of Competition established that the relevant market in this case is the market of supply of medicines insured at the expense of the Institute in Zenicko-Dobojski Canton.

3. Proceedings before the Council of Competition

The Applicant stated the following facts as a reason for the request:

- it is registered with the Municipal Court in Zenica, No. MBS: 43-05-0007-09, and that, among other things, deals with the supply of drugs from the List of medications that are prescribed and issued at the expense of the compulsory health insurance, which is a prerequisite for the supply of drugs from the List and contracting with the Institute, and that all elements of the contract are determined by the Institute without the possibility that counterparties affects the content of the contract, working on a principle, accept or cancel;

- the Institute in the Call for contracting the supply of drugs from the list of drugs that are prescribed and issued at the expense of the compulsory health insurance No. 03-565/11 of 27th January 2011, among others, item 4 commits the Applicant to pay real wages to employees that represent the amount of average gross wages in state pharmacies in 2010 and that the Institute is to be submitted a specification of wages paid to employees monthly;

-the Institute on 10th February 2011 adopted Decision No. 01-100-17-22/11 whereby the Applicant, or any contracting pharmacies are prescribed margin in the amount of 16%, and Decision No. 01-100-17-28/10 prescribing contractual obligation for pharmacies to pay gross wages of employees, at least at the level of average gross wages in state-owned pharmacies, and therefore Institute, in an unacceptable way conditioned private health institutions, including the Applicant, at the conclusion of contracts on supply of medication from list of medications, causing a loss in business to the Applicant, especially if one takes into account the fact that the Institute pays the private health institutions with a delay of 240 days.

In accordance with laid down, the Applicant considers that certain conditions (determining the amount of wages to employees in the private pharmacies, high margins for medicines and terms of payment) for the conclusion of the contract are not in accordance with the law, and thus leads private health institutions, including applicant at a disadvantage in relation to the pharmacies - public institutions (state owned).

According to the above exposed, Applicant proposes that the Council of Competition, after the procedure, determines the existence of a prohibited agreement, pursuant to Article 4 of the Act and prohibits any further actions of the Institute which distort competition to the detriment of the Applicant.

By analyzing the Request and documentation that the applicant has submitted, the Council of Competition found that it is not possible without the procedure to determine infringements which Applicant indicates, and on the 15th session held on 6th August 2011, in accordance with Article

32 paragraph (2) of the Act, adopted Conclusion number 02-26-2-06-7-II/11 (hereafter: Conclusion).

In accordance with Article 33 of Act, the Council of Competition has submitted the Request and Conclusion to the Institute for its response, on 06/09/2011, document number: 02-26-2-06-11-II/11.

Institute filed a response to the Request and the Conclusion to the Council of Competition on 22nd June 2011, the submission number 02-26-2-06-13-II/11, which completely disputes the Request, and in essence states the following:

- Institute enters into contracts with pharmacies on the basis of the Law on Health Insurance of Federation BiH, the Order on standards and norms of compulsory health insurance in terms of pharmacy activities, Article 17 of the Decision on the basics, criteria and standards for the conclusion of the contract between the Health Insurance Institute of Zenicko-Dobojski Canton and health institutions (hereinafter: Decision), and that the said Decision identified elements and provides a basis for concluding a contract between the Department and private health facilities;
- that the private institutions – Pharmacies are prescribed to pay that real wages to employees, which is the least amount of average salary for all institutions in the state owned pharmacies in the year preceding the year for which the contract is concluded. If this or some other way does not determine the lowest amount of average wages in the contracted private pharmacies, they would be in a position to present the legal minimum wage paid to their employees, which would constitute a violation of competition for all market participants, public and private pharmacies;
- that one of the primary obligations of the Institute is monitoring of the payment of contributions, and that if the taxpayer shows less pay less the sum of contributions is collected, which directly threatens charging pension funds and health insurance, that creates the environment for tax offenses and illegally acquiring extra profits;
- the Public Health Care Pharmacies are signatories of the Collective Agreement on the rights and obligations of employers and employees in the health sector on the territory of the Federation and the provisions of this Agreement relate to minimum wages, while private health institutions are not obliged to apply the collective agreement, as a rule it does not apply, and have no legal impediments to pay lower wages compared to public institutions;
- the income of private health institutions on the basis of issue of drugs from the list of essential medicines amount to 1/3 of total revenue, and that the terms of payment for drugs issued are uniform for all institutions, both public and private.
- Based on the aforementioned Institute believes that in the latter case there is no violation of the Act and recommends Council of Competition to reject the Request as ungrounded.

In the further course of the proceedings, since this is the case with the parties with opposing interests, the Council of Competition held a hearing in accordance with Article 39 of the Act. An oral hearing was held on 13th October 2011 in the premises of the Council of Competition, and on

behalf of the Applicant it was attended by attorney Edin H. Hrnjić and expert facilitator Irina Hrnjić, and on behalf of the Institute by Counsel Begic Haša. During the oral hearing, the parties have opted to remain in full at the previously given statements (Minutes of oral proceedings No. 02-26-2-06-38-II/11).

After the oral hearing, on 14th November 2011 the Applicant submitted supplement to the Request to the Council of Competition, submission number 02-26-2-06-39-II/11, stating that the requirement is extended to the Government of Zenicko-Dobojski Canton (hereinafter: the Government of Zenicko-Dobojski Canton).

In its amendment to the request Applicant claims that the Government of Zenicko-Dobojski Canton in Article 17 of the Decision prevents, restrict and distorts market competition in the market of dispensing medicines to insured persons at the expense of funds of the Institute, pursuant to Article 4 paragraph (1) item e) of the Act.

Bearing in mind the fact that in this case there is a sensitive market, and that due to the expansion of the Request, it was necessary to conduct additional analyzes to determine the facts and review evidence, the Council of Competition adopted on 22nd session held on 29th November 2011, Conclusion on the amendment to the initiation of proceedings and the extension of the deadline for issuing a decision, No 02-26-2-06-7-II/11, whereby Request extends to the Government of Zenicko-Dobojski Canton and extends the deadline for the final decision for additional 3 (three) months.

In accordance with Article 33 of the Act, on 29.11.2011 the Council of Competition, in the act number: 02-26-2-06-43-II/11, submitted the Conclusion and Request to the Government of Zenicko-Dobojski Canton for its answer.

Government of Zenicko-Dobojski, in its reply, addressed to the Council of Competition on 19.12.2011., submission: 02-26-2-06-46-II/11, states the following:

- that Article 38 paragraph (1) of the Law on Health Insurance of FBiH, provided that the contracts between the Cantonal Health insurance and health care institutions, and private health workers include: the type, extent and quality of health services provided by medical institutions to insured persons, fees Cantonal Health Insurance pays to provide contractual services, the method of calculation and payment services and other mutual rights and obligations of the contractor, in paragraph (2) of the same Article stipulates that the basis, criteria and benchmarks for the conclusion of these agreements are to be determined by the cantonal regulations;
- that under the Law on Health Insurance of FBiH, Government Ze-Do Canton issued a Decision, and that the same is proper and based on law and that absolutely does not distort competition in the drug market.

In the further course of proceedings, bearing in mind that the Council of Competition adopted Conclusions on amendments of the previously adopted Conclusion on institution of proceedings in which the procedure is extended to the Government of Zenicko-Dobojski Canton, the Council of Competition decided to hold a second hearing.

An oral hearing was held on 17th January 2012 in the premises of the Council of Competition where on behalf of the Applicant attorney Edin H. Hrnjić was present, on behalf of the Institute attorneys Haša Begic and Omer Avdaković, on behalf of the Government of Zenicko-Dobojski Canton attorney Hajrudin Hedžić. During the oral hearing, Applicant pleaded that in its entirety

remains with the Request, subsequently received documents and statements on the record of the oral hearing held on 13th October 2011.

Representatives of the Institute also stated in their response to allegations made in the Conclusion that they remain at the allegations made on the previous oral hearing held on 13th October 2011.

Authorized agent of the Government of Zenicko-Dobojski Canton pleaded it fully retained by the allegations made in response to a Conclusion, and fully supports evidence the Institute provided at the first oral hearing and attached a document to the file - Decision of the Constitutional Court, number AP-4010/08 of 12.10.2011, which relates to the appeal of public institutions Pharmacy "Health" Zenica against the judgment of the Supreme Court No. 070-0-Rev-07-001100 of 14.10.2008. , the judgment of the Cantonal Court in Zenica, No. 004-0-Pz-06-000 of 2.4.2007., the judgment of the Municipal Court in Zenica, no Ps-1777/04 of 18th October 2005.

4. Review of evidence

Council of Competition is in the process of establishing an agreement prohibited by Article 4 (1) of the Act determined the following undisputed facts:

- That the Institute enters into contracts with private pharmacies on the basis of the Law on Health Insurance of FBiH, the Order on standards and norms of compulsory health insurance in terms of pharmacy activities, as well as Article 17 of the Decision;

- That Article 38 of the Law on Health Insurance of FBiH provides that the cantonal contracts between health insurance funds and private health institutions include: the type, extent and quality of health services provided by medical institutions to insured persons, fees Cantonal Health Insurance pays for the provision of contractual services, the method of calculation and payment services and other mutual rights and obligations of the insured, while the second paragraph of the same Article stipulates that the basis, criteria and benchmarks for the conclusion of these agreements are to be determined by the cantonal regulations;

- That pursuant to Article 38 of the Law on Health Insurance of FBiH Government of Zenicko-Dobojski Canton adopted a Decision on 24th February 2006, and that Article 17 of the same Decision, among other things, prescribes the conditions which the institution pharmacies must meet in order for the Institute to conclude supply contracts for insured drugs, and that one of the conditions is paragraph (3) item 6 of the Decision that in the continuity starting from the moment of signing the contract with the health department pharmacy business, real wages are to be paid to employees representing the least amount of average salary for all pharmacies of state ownership in the year preceding the year for which the contract is concluded;

- The Institute in the Call for contracting the supply of drugs from the lists of drugs that are prescribed and issued at the expense of the compulsory health insurance No. 03-565/11 of 27th January 2011, among others, item 4 commits the applicant to pay real wages to employees which represents the amount of average gross wages in state pharmacies in 2010 and submit a specification for the wage paid to employees to the Institute monthly;
- that the Steering Committee of the Institute on the basis of Article 20 of Statute issued Decision No. 01-100-17-28/10 of 10th February 2010, which in Article 1 determines that

the average gross wage of institution pharmacy business owned by the state in 2010 amounted to 1483.10 KM, Article 2 of same decision stipulates that the contracting private pharmacies are obliged in 2011 to pay gross wages to employees at least equal to the average salaries of Article 1 of the Decision;

- The Institute made the following agreements with the Applicant: the Agreement on mutual relations, rights and obligations in the supply of drugs from the list of drugs that are prescribed and issued at the expense of the compulsory health insurance No. 12/11 of 03/03/2011, the Agreement between the Institute, Health Centre Zepce with dispensary and private health facilities Pharmacy "Halilić"; Agreement on mutual relations, rights and obligations in the supply of drugs from the list of drugs that are prescribed and issued at the expense of the compulsory health insurance No. 10/11 of 3rd March 2011, concluded between the Institute, the Health Centre Maglaj and private health facilities Pharmacy "Halilić" and Agreement on mutual relations, rights and obligations in the supply of drugs from the list of drugs that are prescribed and issued at the expense of mandatory health insurance, No. 12/11 of 03/03/2011; the Agreement between the Department, the Health Centre Zenica and private health facilities Pharmacy "Halilić" which in item 3 contains provisions which determines the amount of real wages of employees in private pharmacies services;

- That the collective agreement on the rights and obligations of employers and employees in the health sector on the territory of the Federation, which, among other things, regulates the issues of wages and benefits, applies to public health facilities Pharmacies, and may not apply to private pharmacies.

Council of Competition in the process obtained data from all the institutes of health insurance from the Federation of Bosnia and Herzegovina on the way of concluding contracts with pharmacies that can issue prescription drugs at the expense of health insurance funds to the insured persons (submissions No. 02-26-2-06-17 -II/11, No. 02-26-2-06-18-II/11; No. 02-26-2-06-32-II/11, No. 02-26-2-06 - 33-II/11; submission No: 02-26-2-06-34-II/11, No. 02-26-2-06-35-II/11; No. 02-26-2-06 -36-II/11; No. 02-26-2-06-38-II/11; No. 02-26-2-06-40-II/11).

Article 4 paragraph (1) item e) of the Act provides that the prohibited agreements are , contracts, agreements or certain provisions of the contract, joint action, explicit and tacit agreements between the undertakings and decisions and other acts of economic entities (hereinafter: Agreements) whose goal and effect is the prevention, restriction or distortion of competition in the relevant market, which relate to the conclusion of such agreements whereby other party is conditioned to accept supplementary obligations which by their nature or according to commercial usage have no connection with the subject of the agreement.

Government of Zenicko-Dobojski Canton and the Institute, within the meaning of Article 2 of the Act, by their actions and decisions and contracts arising from Article 17 of the Decision, indirectly influenced the market in a way that Pharmacies have been conditioned ,when entering into contracts with the Institute, to accept additional obligations which by their nature or according to commercial usage have no connection with the agreement because Article 17 of the Decision and Article 3 of the Agreement on mutual relations, rights and obligations of Pharmacy, Health Insurance Institute of Zenicko - Dobojski Canton and health centers in the supply of drugs from the list of drugs that are prescribed and issued at the expense of mandatory health insurance obligations prescribed pharmacy business establishments to pay real wages to employees, representing the least amount of average salary for all institutions in the pharmacy business owned in the year preceding the year for which the contract is concluded, which is a threat of causing direct adverse impact on the business of the undertaking, or chemists, because the amount

of wages, as the financial category primarily depends on the financial operations of the undertaking, and as such can not constitute an additional obligation that pharmacies must accept when signing a contract with the Institute.

Considering all the evidence presented and in particular the provisions of Article 17 of the Decision, the Council of Competition established that the Government of Zenicko-Dobojski Canton and the Institute prevent, restrict and distort market competition in the relevant market, pursuant to Article 4 paragraph (1) item e) of the Competition Act.

Based on analysis of data submitted and the contracts, Council of Competition has determined that all the cantons of FBiH apply provisions of the Law on health insurance, and that their contracts with the contracting pharmacies do not contain provisions which determine the amount of wages private pharmacies are required to pay to their employees.

Council of Competition from the above establishes that Decision and the mentioned Agreements limit, prevent an distort competition in the relevant market and the implementation thereof as prohibited competitive actions, pursuant to Article 4 paragraph (1) item e) of the Act, because the other party is subjected to accept supplementary obligations which by their nature or according to commercial usage have no connection with the agreement. Specifically, it is indisputable that the amount of wages is a business decision of the undertaking, and that cannot be determined by the decision or the agreements Institute signs with the contracting pharmacies.

Council of Competition has not assessed as relevant to this case the decision of the Constitutional Court of Bosnia and Herzegovina, No. AP-4010/08 of 12th October 2011, because the mentioned nor verdicts against which an appeal is lodged in any way relate to the Decision on the basics, criteria and standards for the conclusion of the contract between the Institute and health care institutions or the agreements resulting from the Decision.

Considering the above the Council of Competition has decided as in items 1 and 2 of the operative part of this Decision.

For the established undisputed infringement of Article 4 paragraph (1) item e) of the Act, Council of Competition has ordered the Government of Zenicko-Dobojski Canton to, amend Article 17 paragraph (3) item 6 of the Decision, within 60 days of receipt of this Decision and to the Institute within 90 days to change Article 3 of the Agreement concluded between the Applicant and the Institute, and that in the given time frame submits the evidence on the execution of obligations to the Council of Competition.

Also, the Institute is required to modify the contracts concluded with all contractual private pharmacies operating in the Zenicko-Dobojski Canton in the given period.

Considering the above the Council of Competition has decided as in items 3 and 4 of the operative part of this Decision.

Council of Competition in the process of establishing an agreement prohibited by Article 4 paragraph (1) of the Act regarding the allegations of the applicant relating to amount of margin for drugs and deadline for the payment determined the following:

- That Article 84 of Law on Medicines of FBiH stipulates that in order to provide better access to medicines in the Federation, Federal Minister of Health has the right to exercise control of drug prices, namely: the determination of wholesale and retail margins drugs, importing drugs granting intervention in case of exceeding the price in the domestic market, or in the event that the amount of cost hinders the normal supply of drugs, identifying reference price, and the Federal Minister of Health pursuant to this Article 84 passed Ordinance fixing the amount of wholesale and retail margins medication, which is determined by the retail margin drugs in pharmacies in the Federation of Bosnia and Herzegovina is a maximum of up to 30% of the purchase price of the drug;

- That Article 38 of the Law on Health Insurance of FBiH stipulates that contracts between cantonal health insurance funds and private health institutions include: the type, extent and quality of health services provided by medical institutions to insured persons, fees Cantonal Health Insurance pays for the provision of contractual services, the method of calculation and payment services and other mutual rights and obligations, and paragraph 2 of same Article provides that the basis, criteria and standards for the conclusion of these agreements are to be determined by the cantonal regulations;

- That the Government of Zenicko-Dobojski Canton's Decision, which in Article 3 provides that the scope and structure of health services in primary, consultive - specialist, secondary and tertiary health care are determined by applying the Decision on establishing standards and norms for health care from the compulsory health insurance and are expressed in points, while paragraph 2 of the said article provides that funds available for financing health care, identified in the financial plan for the current year, shall be made in relation to the specified number of points for the volume and structure of primary, consultive - specialist, secondary and tertiary health care;

- That on the basis of Article 3 of the Decision, Steering Board of the Institute on 10th February 2011 adopted Decision No. 01-100-17-22/11 by which the Applicant, or any contracting pharmacies are prescribed margin to compensate for the issue of drugs in the amount of 16%;

- That the Steering Committee of the Institute issued a Decision on the amount of margin on the basis of the provisions of the Law on Health Protection and the Law on Drugs, which is determined by the same amount for all contracting pharmacies in the Federation and the same is in accordance with the Rules on the Amount of wholesale and retail margins of medications;

- That Article 8 of the Agreement on mutual relations, rights and obligations of Pharmacies, Health Insurance Institute of Zenicko-Dobojski Canton and health centers in the supply of drugs from the List of medications that are prescribed and issued at the expense of mandatory health insurance provided that the deadline for payment of medications issued is 240 days from the date of invoice;

- That the Institute conducts a procurement procedure and chooses the best suppliers / wholesales pharmacy to purchase drugs from the list of drugs that are prescribed and issued at the expense of mandatory health insurance and signs a trilateral agreement between the Institute, the Health Centers and wholesalers, which specifies payment terms *to suppliers and pharmacies, and in accordance with these agreements are not required to pay pharmacies drug suppliers until the Institute switches pharmacies funds earmarked for this purpose, which was confirmed by the applicant 's attorney at the second hearing, held on 17.1.2012;*

- That in the contractual agreement on supply of Pharmacies to Health Insurance Institute of Zenicko - Dobojski Canton drugs from the list of drugs that can be prescribed and issued at the expense of the compulsory health insurance, number 01-37-6152/09, dated 15th March 2010 , it was found that the same conditions relating to the payment terms of this agreement shall apply to public and private pharmacies;

Council of Competition on the basis of the above and related high margin prescribed by Institute to the pharmacies, as well as deadlines for paying medications issued, concluded that in these cases there is no prevention, restriction and distortion of competition law under Article 4 paragraph (1) item:

- a) directly or indirectly fixes purchase or selling prices or any other trading conditions;
- b) limit or control production, markets, technical development or investment;
- c) share of markets or sources of supply;
- d) apply different conditions to equivalent transactions with other undertakings, thereby placing the same at a disadvantage compared to competitors.

Considering the above the Council of Competition has decided as in item 8 of the operative part of this Decision.

5. Fine

In terms of Article 48 paragraph (1) item b) of the Act, a fine of up to 10% (ten) of total annual turnover of the undertaking, from the year preceding the year in which a breach of law happened, shall be imposed on the undertaking, if it concludes a prohibited agreement in the manner prescribed by the provisions of Article 4 of the Act.

Starting from the undisputed facts that the Government of Zenicko-Dobojski Canton and the Institute infringed the provisions of Article 4 paragraph (1) item e) of the Act, the Council of Competition has imposed, pursuant to Article 48 paragraph (1) item a) of the Act, a fine in the amount of 20,000.00 KM (twentythousand) to the Government of Zenicko-Dobojski Canton and a fine of 10.000,00 KM (tenthousand) to the Institute.

Council of Competition in imposing amount of fines takes into account the intention and the duration of the violation, and the consequences that would have on competition, in terms of Article 52 of the Act.

Given the amount of imposed fines, the Council of Competition had not primarily aimed at punishment for infringement of the law, but to warn the Government of Zenica-Doboj and the Institute of the obligation to respect the rules of competition established by the Act.

In determining the amount of fine imposed on the Institute, the Council of Competition took into account the fact that the Institute when concluding contracts operated under the provisions of the Law on Health Care and the Decision, and applied the regulations / decisions of the higher institutions of government (Government of Zenicko-Dobojski Canton).

In case that the imposed fine is not paid in due time it will be charge if forced procedure, in terms of Article 47 of the Act, with the calculation of penalty interest for the time period exceeded, according to the regulations of Bosnia and Herzegovina.

After consideration of all relevant facts and evidence Council of Competition has decided as in points 5, 6 and 7 of the operative part of this Decision.

6. Costs of proceedings

Council of Competition established the amount of the costs of the proceedings pursuant to the provisions of Section 105 paragraph 2 and 3 of the Law on Administrative Procedure, in accordance with the provisions of the Law on Advocacy of Federation of Bosnia and Herzegovina ("Official Gazette of Federation BiH", no. 40/02 and 18/05) and Tariff for fees and reimbursement of costs for an attorney ("Official Gazette of the Federation Bosnia and Herzegovina ", no. 22/04 and 24/04) (hereinafter Tariff).

The Applicant has submitted a request for a reimbursement of costs in the amount of 3818.00 KM, namely: the amount of KM 805.00 for making the request to institute proceedings, the amount of 805.00 KM for the presence at oral hearing on 13.10.2011., an amount of 208.00 KM to use their own vehicles from Zepce-Sarajevo-Zepce, the amount of 1.000,00 KM for administrative fees to the request to institute proceedings and the amount of 1.000,00 KM for administrative fees to the decision on the request to institute proceedings.

Council of Competition has decided to admit only the costs of representation that were necessary and justified in this procedure, the same calculation is made in accordance with Article 18 paragraph (2) and Article 22 of the Tariff, bearing in mind the provisions of Article 31 paragraph (5) of the Law on Advocacy of FBiH.

Accordingly, the Council of Competition recognized the following costs to the Applicant: the amount of KM 240.00 for making the request, the amount of 360.00 KM for presence at the oral hearing on 13th October 2011, an amount of 208.00 KM to use their own vehicles from Zepce-Sarajevo-Zepce, the amount of 1.000,00 KM for administrative fees to the request to institute proceedings, all of which totals 1808.00 KM.

Considering the above the Council of Competition has decided as in item 8 of the operative part of this Decision.

7. Legal remedies

Appeal against this Decision is not allowed.

Unsatisfied party can institute administrative dispute before the Court of Bosnia and Herzegovina within 30 days from the receipt or publication of the Decision.

President

Ibrica Lakišić

