

BOSNA I HERCEGOVINA
Konkurencijsko vijeće



BOSNIA AND HERZEGOVINA
Council of Competition

DECISION
upon Request to postpone execution of the final Decision of the Council of Competition
No: 02-26-2-028-145-II/11 dated 04.09.2012

Sarajevo,
September 2012



No: 02-26-2-028-160-II/11
Sarajevo, 20.09.2012

Under Article 25 paragraph (1) item e), Article 42 item 2) of the Law on Competition („Official Gazette of BiH, No. 48/05, 76/07 and 80/09), Article 18 paragraph 2 of the Law on Administrative Disputes of Bosnia and Herzegovina («Official Gazette of BiH», No. 19/02, 88/07, 83/08 and 74/10), and acting upon the Request to postpone execution of the final Decision No. 02-26-2-028-145-II/11 dated 04 September 2012, submitted by undertaking Apatinska pivara Apatin d.o.o, Trg oslobođenja 5., 25260 Apatin, the Republic of Serbia, received on 18.09.2012, the Council of Competition of Bosnia and Herzegovina, at 42nd session held on 20 September 2012 issued the following:

DECISION

1. The Request to postpone execution of the refuted final Decision of the Council of Competition No 02-26-2-028-145-II/11 dated 04.09.2012 until final judgment, submitted by the undertaking Apatinska pivara Apatin d.o.o. Trg oslobođenja 5, 25260 Apatin, The Republic of Serbia.
2. This Decision is final and shall be published in the „Official Gazette of BiH“, entity official gazettes as well as of the Brcko District of Bosnia and Herzegovina.

Exposition

The Council of Competition gas received on 18.09.2012 under the no: 02-26-2-028-155-II/11, the Request to postpone execution of the Decision of the Council of Competition No. 02-26-2-028-145-II/11 dated 04.09.2012 (hereinafter: Request) submitted by the undertaking Apatinska pivara Apatin d.o.o Trg oslobođenja 5, 25260 Apatin, the Republic of Serbia (hereinafter: The Applicant or Apatinska pivara).

Within the stated Request, in accordance to Article 18 of the Law on Administrative Disputes of Bosnia and Herzegovina, the Applicant emphasized the proposal to postpone execution Decision of the Council of Competition No. 02-26-2-028-145-II/11 dated 4th September 2012, until final judicial decision.

The Applicant requests to postpone execution of the final Decision of the Council of Competition No 02-26-2-028-145-II/11 dated September 2012 and he stated the following:

- Apatinska pivara received on 10.09.2012 the Decision of the Council of Competition No 02-26-2-028-145-II/11 dated 04.09.2012 against which it had initiated an administrative dispute through submitting a complaint to the Court of Bosnia and Herzegovina.
- the undertaking of Apatinska pivara, which was fined in the amount of 265,000.00 KM on 04.09.2012 under final solution of the Competition Council No: 02-26-2-028-145-II/1, is a legal entity registered in the Republic of Serbia, so the pending question is: in case of success in the administrative dispute, how the damage occurred while paying the punishment could be compensated;
- in case of money return, a number of operations should be executed relating to money transfers between the Republic of Serbia and Bosnia and Herzegovina. It is because of unpredictable manner of enforcement that every possible money return would be in connection to huge losses and costs.

- the Decision of the Council of Competition No: 02-26-2-028-145-II/11 dated 04.09.2012 defined that in case the Apatinska pivara for the reason whatsoever did not pay the identified fine, the enforcement would be carried out over the property of Starbev d.o.o. Banja Luka, while that company does not have any production, big income, and has a significant number of employees where the enforcement of the penalty would bring big difficulties in the business operations because, according to data from the balance sheet total income of the company in 2011 was (..)*¹KM;
- on the page 27 of the Decision of the Council of Competition No: 02-26-2-028-145-II/11 dated 04.09.2012 it is stated that primary goal of the penalty was not punishment itself but the warning to obligation to respect rules of the market competition;
- the Request to postpone was not contrary to public interest;
- other party shall not be exposed to any damages since the penalty itself does not create any benefit to the other party.

The Council of Competition, while assessing the concerned Request took into consideration provisions of Article 18 of the Law on Administrative Dispute as follows:

- paragraph 2 stated: «Upon Request of the plaintiff, the institution competent for enforcement of execution of the revoked final administrative act shall postpone the execution of the final judicial decision if the execution could cause damage to the plaintiff unlikely to be repaired, and the postponement is not contrary to the public interest or it is not causing significant damage that cannot be compensated to the contrary party...»;

The Council of Competition, while deciding on the stated request, approved the fact that the undertaking Apatinska pivara is registered at the territory of the Republic of Serbia and eventual return of money could be associated with huge costs.

Also, it assessed that in case of postponement of the enforcement would not cause any damage to the other party and that Request is not contrary to the public interest thereby fulfilling conditions from Article 18 paragraph 2 of the Law on Administrative procedure.

Taking into consideration all the stated facts, the Council of Competition decided as in Dispositive part.

Remedies

No complaints are allowed against this Decision. The unsatisfied party may initiate an administrative dispute against the Court of Bosnia and Herzegovina at latest within 30 days upon receipt, namely publication of this Decision.

President

Ibrica Lakišić

To be submitted:

- **Apatinska pivara**
- **Record**
- **Archive of- the Council of Competition**

¹ (..)* the data represent a business secret