

On the basis of Article IV (4) a) of the Constitution of Bosnia and Herzegovina, the Parliamentary Assembly of the Bosnia and Herzegovina, at the session of the House of Peoples, held in June 29, 2005 and at the session of the House of Representatives, held in June 29, 2005 has adopted

## **C O M P E T I T I O N   A C T** **(Official Gazette of BIH, no. 48/05, 76/07 and 80/09)**

### **UNOFFICIAL CONSOLIDATED TEXT**

#### **I GENERAL PROVISIONS**

##### **Article 1** **(Subject-matter)**

This Act regulates the rules, measures and methods of protection of market competition, the jurisdiction and the way of operation of the Council of Competition on protection and promotion of market competition in Bosnia and Herzegovina.

##### **Article 2** **(Application)**

**(1)** This Act applies to all natural and legal persons who are directly or indirectly engaged in the production, sale of goods and services, involved in trade of goods and services and who with their actions can prevent, restrict or distort competition in the entire territory of Bosnia and Herzegovina or significant part of market (hereinafter: the economic entities), as are:

- a) companies, enterprises and entrepreneurs and their associations, regardless of form of ownership, the seat or residence;
- b) bodies of state administration and local self-government, when directly or indirectly participate in or influence the market;
- c) other natural and legal persons who directly or indirectly, continuously, periodically or one-time participate in the market, regardless of legal status, the form of ownership, headquarters or residence, such as associations, sports organizations, institutions, cooperatives, holders of intellectual property.

**(2)** This Act also applies to the economic entities that have control over other economic entity, and the economic entities under their control. Economic entity under the control of

another economic entity is considered to be an economic entity in which other economic entity, directly or indirectly:

- a) owns more than half of the share or shares, or
- b) may exercise more than half of voting rights, or
- c) has a right to appoint more than half of the members of management, supervisory board or appropriate body for managing and controlling the operations, or
- d) in other way has a right to manage the operations of the economic entity.

(3) This Act applies to economic entities with headquarters and residence abroad, if their activity has a significant effect on the market of Bosnia and Herzegovina or on significant part of the market.

### **Article 3 (Relevant market)**

(1) Relevant market in terms of this Act is determined as a market of certain products and / or services that are the subject of performing activities of economic entities in a particular geographic area.

(2) Relevant product market and / or services includes all products and / or services which consumers and / or users consider substitute , under acceptable conditions, particularly having in mind their essential characteristics, quality, the usual purpose, way of usage, conditions of sale and prices.

(3) Relevant geographic market comprises the whole territory or a significant part of the territory of Bosnia and Herzegovina, where the economic entities operate in sale and /or purchase of a relevant products and /or services under equal or sufficiently equal conditions that are significantly distinguished from the conditions of competition in neighboring geographic markets.

(4) In certain cases, the relevant geographic market may be determined at the international level.

(5) The Council of Competition shall in by-laws prescribe the closer criteria and procedures in defining the relevant market.

## **II PROHIBITED COMPETITIVE ACTIVITIES**

### **Article 4 (Agreements)**

(1) Prohibited are agreements, contracts, certain provisions of the agreement or contract, joint actions, explicit and tacit agreements of economic entities, as well as decisions and other acts of economic entities (hereinafter: agreements) that have aimed at and resulted in prevention, restriction or distortion of market competition in the relevant market, which relate to:

- a) direct or indirect fixing of selling and purchase prices or any other trade conditions;
- b) limit or control on production, markets, technical development or investment;
- c) share of markets or sources of supply;
- d) application of dissimilar conditions to equivalent transactions with other economic entities, thereby placing them at a competitive disadvantage;
- e) conclusion of contracts subject to acceptance by the other parties of additional obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

(2) Agreements which are prohibited pursuant to paragraph (1) of this Article are void.

(3) Agreements in terms of paragraph (1) of this Article are not prohibited if they contribute to improving the production or distribution of goods and/or services within Bosnia and Herzegovina or if they contribute the promotion of technical or economic progress, allowing consumers a fair share of the resulting benefit which:

- a) impose only restrictions necessary to the achievement of these objectives;
- b) do not allow the exclusion of competition in an essential part of the subject products or services.

### **Article 5 (Individual Exemptions)**

(1) Council of Competition, at the request of one or more parties to the agreement may issue a decision on individual exemption from the prohibition of agreements under Article 4, paragraph (1) of this Act, if the agreement meets the requirements of Article 4, paragraph (3) of this Act.

(2) If the Council of Competition within the period under Article 41 paragraph (1) point b) of this Act does not issue a decision, it is considered that subject agreement is exempted from the prohibition laid down in Article 4 paragraph (1) of this Act.

(3) Council of Competition may, *ex officio* or at the request of a party, already exempted agreement under paragraph (1) of this Article re-examine, if finds:

- a) decision has been made 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 in question acts contrary to obligations which are determined by the Council of Competition.

(4) The Council of Competition may, if finds a violation in sense of paragraph (3) of this Article, cancel, revoke or amend its decision.

### **Article 6** **(Content and duration of individual exemption)**

(1) Individual exemption may contain conditions and prohibitions.

(2) Duration of individual exemption is effected for limited period, which as a rule may not exceed 5 (five) years.

(3) The deadline referred to in paragraph (2) of this Article, at the request of the parties, may be further extended for up to five years if it is proved that the agreement continues to satisfy the requirements of Article 4 paragraph (3) of this Act.

(4) Request for extension of validity of an individual exemption the parties shall submit to the Council of Competition no later than four months before the expiry of deadline.

(5) Individual exemption is valid from the date of signing the agreement, and when contains conditions and prohibitions it is valid from the date of enactment, or the latest from the day of fulfillment of conditions.

### **Article 7** **(Group Exemptions)**

(1) Council of Competition shall adopt the following group exemptions for implementation of the provisions referred to in Article 4 paragraph (3) of this Act, as are:

- 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, license and *know how* agreements;
- d) agreements on distribution and servicing of motor vehicles;
- e) agreements on insurance.

(2) The Council of Competition shall in by-laws more closely define the group exemptions referred to in paragraph (1) of this Article , and in particular:

- a) the restrictions or contractual provisions that such agreement may contain;
- b) the contractual provisions that must be contained in the agreement
- c) their duration and other conditions that must be fulfilled.

(3) Agreements that meet the conditions referred to in Article 4 paragraph (3) of this Act need not be submitted for assessment to the Council of Competition for granting individual exemption under Article 5 of this Act.

(4) Council of Competition, *ex officio* or at the request of a party, may initiate proceeding to assess each of the agreements referred to in paragraph (3) of this Article if effects of such agreement do not meet the conditions under Article 4 paragraph (3) of this Act.

### **Article 8 (Agreements of Minor Importance)**

(1) The provisions referred to in Article 4 paragraph (1) of this Act shall not be applied to agreements of minor importance.

(2) An agreement is agreement of minor importance when the joint market share of the parties to the agreement and economic entities under their control in the relevant market is insignificant, except the severe constraints.

(3) Agreements of minor importance in sense of this Act include the agreements:

- a) where the total market share of participants to the agreement in the relevant market does not exceed 10%, in a case when the agreement is concluded between economic entities that are actual or potential competitors, that is, they operate on the same level of production or trade;
- b) where the market share of each party in the relevant market does not exceed 15% , in a case when the economic agreement is concluded between economic entities which are not actual or potential competitors, that is, they operate at different levels of production or trade;
- c) where it is difficult to determine whether they are concluded between competitors or economic entities that are not competitors, where the threshold to 10% shall be applied.

(4) Council of Competition shall more closely define in by-laws the conditions and criteria which the agreements of minor importance must fulfill, as well as severe constraints.

### **Article 9**

### **(Dominant Position)**

(1) Economic entity has a dominant position in the relevant market of goods or services, when owing to its market power it can behave in the relevant market considerably independently of its actual or potential competitors, buyers, consumers or suppliers, taking into account the market share of that economic entity in the relevant market, market shares of its competitors in that market, as well as the legal and other barriers to the entry of other economic entities in the market.

(2) It is assumed that economic entity has a dominant position in the market of goods or services when it holds more than 40 (forty) % of the market share in the relevant market.

(3) It is assumed that more economic entities have a dominant position in the market of goods or services, when two or three economic entities in the relevant market have together market share which exceeds 60 (sixty) %.

(4) It is assumed that more economic entities have a dominant position in the market of goods or services, when four or five economic entities in the relevant market have the joint market share which exceeds 80 (eighty) %.

(5) Council of Competition shall define more closely a category of dominant position in by-laws.

### **Article 10 (Abuse of Dominant Position)**

(1) Any abuse of dominant position by one or more economic entities in the relevant market shall be prohibited.

(2) Abuse of dominant position, in particular relates to the following:

- a) directly or indirectly imposing unfair purchase and 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 unequal and unfavorable competitive position;
- d) conclusion of the contracts subject to acceptance by the other party of additional obligations which, by their nature or according to commercial practice, have no connection with a subject of such contract.

### **Article 11 (Decision on Abuse of a Dominant Position)**

(1) Pursuant to Articles 9 and 10 of this Act, the Council of Competition issues corresponding decision which:

- a) determines a dominant position and activities of economic entities which abuse that position and prevent, restrict or distort market competition, and the duration of such activities;
- b) prohibits any further acting of economic entity;
- c) determines the terms and measures for elimination of harmful effects of such practice;
- d) determines to economic entity to carry out appropriate measures which contribute in ensuring of competition between the economic entities in the relevant market, and deadlines for their implementation.

(2) If the Council of Competition does not issue a decision referred to in Article 41 paragraph (1) point c) of this Act, it shall be deemed that concluded agreement or practice of the economic entity is not abuse of dominant position.

(3) If decision is not adopted under paragraph (2) of this Article, at the specific request of the economic entity, the Council of Competition shall issue a decision, in accordance with the procedure of this Act, stating that concluded agreement or the practice of the economic entity is not abuse a dominant position.

## **Article 12 (Concentration)**

(1) Concentration, pursuant to this Act, is deemed to be:

- a) joining or merger of independent economic entities or parts of economic entities;
- b) the acquisition of control or prevailing influence of one or more economic entities over other economic entity, or over more other economic entities or a part of other economic entity, or the parts of other economic entities, as it is :
  - 1) acquisition by purchasing the majority of shares or share capital, or
  - 2) acquisition of majority of voting rights, or
- 3) otherwise, in accordance with the provisions of the laws governing the establishment of economic entities and their management;
- c) joint venture on a long lasting basis, of two or more independent economic entities, acting as an independent economic entity.

(2) Acquisition of control in terms of paragraph (1) of this Article can be achieved through exercise of a right, by concluding agreements or by other means by which one or more economic entities, whether separately, either jointly, taking into account all legal and factual circumstances, acquire the possibility of exercising a dominant influence over one or more economic entities.

(1)The following in terms of paragraph (1) of this Article shall not be considered as concentration:

- a) when banking and other financial institutions or insurance companies, in their regular operations, temporarily acquire shares or shares with the intention of reselling them and put them on sale within the 12 months, and if, within a specified period, ownership of the

shares is not used in a way to affect the competitive behavior of the legal entity, or do not take measures which distort, restrict or prevent market competition. Council of Competition may extend the deadline at the request of a party if economic entity proves that transaction can not be implemented within the determined period.

b) when it comes to acquiring control over the economic entity by the person who performs the function of bankruptcy or liquidation manager in terms of the law on bankruptcy and liquidation;

c) when the joint venture is aimed at coordination of market activities between two or more economic entities which retain their independence, in which case the joint venture will be assessed in accordance with Article (4) of this Act.

### **Article 13 (Prohibited Concentrations)**

Prohibited are the concentrations of economic entities, which as a result have a significant distortion of the efficient market competition, in the entire market of Bosnia and Herzegovina or its significant part, especially those which create new or strengthen an existing dominant position.

### **Article 14 (Total Income for the control of concentration)**

(1) The intended concentration of economic entities, referred to in Article 12 paragraph (1) of this Act, is required to be notified by parties to the concentration, if the following conditions are met:

a) total annual income of all participants to the concentration achieved by selling goods and / or services on the world market is 100,000,000 KM according to the final account in the year preceding the concentration, and

b) total annual income of each of at least two economic entities - participants to the concentration realized by selling goods and / or services on the market of Bosnia and Herzegovina is at least 8,000,000 KM according to the final account in the year preceding the concentration, or if their joint share in the relevant market exceeds 40%.

(2) The total annual income under paragraph (1) of this Article shall not include income that these economic entities achieve in mutual exchange.

(3) In the case when the concentration referred to in Article 12 paragraph (1) of this Act relates to the merger or acquisition of part or parts of one or more economic entities, irrespective of whether these parts have the status of legal entity, in calculating the income under paragraph (1) of this Article shall be calculated only the income of those parts of economic entity which are subject to the control of the concentration.

(4) Two or more concentrations referred to in paragraph (3) of this Article conducting within the period less than two-year shall be considered to constitute one

concentration(more successive acquiring of parts of an economic entity)implemented on the date of the last transaction.

### **Article 15**

#### **(Total income in Banks, Other Financial Institutions and Insurance Companies)**

For the purpose of control of concentration in banks, other financial institutions and the insurance companies, instead of the total annual income, the following shall be taken into consideration:

a) for legal entities which are engaged in providing financial services, after rejection of indirect taxes related to them, the sum of the following incomes is taken:

1) interest income and similar incomes;

2) income from securities:

2.1. income from shares and other securities which are of the changeable profit,

2.2. income from the share in economic entity;

2.3. income from shares in related economic entities;

3) receivable the fee

4) net profit of financial operations; and

5) other operating income.

b) for insurance companies and companies engaged in reinsurance, the gross value of premiums which includes a paid to and demanding amounts relating to contracts on insurance concluded by or on behalf of insurance companies, also including reinsurance premiums, after the rejection of taxes and parafiscal taxes that are charged based on the amount of individual premiums or in relation to the total amount of the premium.

### **Article 16**

#### **(Notification of Concentration)**

(1) Economic entities, participants to the concentration are required to submit a notification of concentration in terms of Article 12 and 14 of this Act, within 15 days of signing the agreement, the publication of public offering or acquisition of control, depending on what happens the first.

(2) Notification of concentration may be filed when the participants to the concentration demonstrate their intention to concentrate by means of concluded agreement in principle, memorandum of understanding, letter of intent signed by all parties to the concentration or publication of intent to purchase.

(3) In the case when control over the whole or parts of one or more economic entities is acquired by other economic entity, the notification is to be submitted by economic entity acquiring control ; in all other cases economic entities shall submit a joint application.

(4) Council of Competition is obliged to publish the data from the notification of concentration in daily newspapers, in particular:

- a) the names of economic entities the participants to the concentration;
- b) a form of concentration, and
- c) the economic sector within which the concentration takes place.

**Article 17**  
**(Assessment of intended concentration)**

Council of Competition during the assessment of intended concentration analyzes the effects which have resulted in significant distortion of market competition, or whether such concentration creates or strengthens a dominant position, and in particular:

- a) the structure of the relevant market;
- b) the effects of concentration on the other actual and potential competitors;
- c) the position of the participants in the competition, their market shares, economic and financial power;
- d) the ability and choice of suppliers and customers;
- e) economic, legal and other barriers to market entry;
- f) levels of internal and international competitiveness of the participants to the concentration;
- g) trends of supply and demand of relevant goods and / or services;
- h) trends of technical and economic development;
- i) the interests of consumers.

**Article 18**  
**(Decision on Concentration)**

**(1)** When the Council of Competition establishes that the implementation of the concentration falling within the scope of Articles 12 and 14 of this Act, can have as serious consequence the negative effects which can seriously distort a competition in the relevant market, it shall adopt a decision on the initiation of the proceedings.

**(2)** Council of Competition, following the completion of the proceedings, within the period laid down in Article 41. of this Act, shall adopt one of the following decisions:

- a) the concentration is compatible;
- b) the concentration is incompatible;
- c) the concentration is conditionally compatible.

**(3)** Council of Competition, in the decision, referred to in paragraph (2) point c) of this Article, when assesses that concentration is conditionally compatible, shall determine the extent, conditions and terms of their fulfillment.

**(4)** The participants to the concentration referred to in paragraph (2) point c) of this Article, as a rule, may continue the implementation of the concentration after filling out the measures and terms and conditions referred to in paragraph (3) of this Article, unless the Council of Competition ,due to particular justified request, determines different .

(5) Council of Competition, on the basis of information and documentation that are submitted with the notification of concentration, the degree of probability of violation of competition rules through such concentration, and estimation that the intended concentration does not result in negative effects, may adopt a decision within 30 days.

(6) In case that the Council of Competition, within 30 days, in accordance with paragraph (5) of this Article, starting from the date of issuance of the acknowledgment of receipt of complete and adequate notification referred to in Article 30 of this Act, does not adopt a conclusion on initiation of the process of assessment of concentration, the concentration shall be deemed declared compatible.

(7) If the Council of Competition does not declare such a decision within the time limits laid down in Article 41 of this Act, concentration shall be deemed to be compatible.

(8) Council of Competition may, *ex officio* or upon request of a party, amend the decision taken under paragraph (2) of this Article when the parties cannot fulfill certain conditions or when infringe some of the measures set forth in the decision of the Council of Competition, owing to particular circumstances that could not be predicted or avoided and which do not depend on volition of the parties.

(9) Concentrations shall not be implemented prior to the issuance of decision which confirms the compliance of the concentration concerned referred to in Article 12 and 14 of this Act.

(10) The provision of paragraph (9) of this Article shall not prevent the implementation of the public offering, which is reported to the competent authorities in accordance with the valid legislation, as well as activities which relate to acquisition of control over economic entities regulated by other regulations.

## **Article 19**

### **(Measures Following the Implementation of Incompatible Concentration)**

(1) The Council of Competition shall determine, *ex officio* or upon request of the party, in separate decision indispensable measures aimed to assure free market competition in the relevant market and set the deadlines for their implementation, in cases when:

a) when the concentration was conducted contrary to the decision of Council of Competition, which assessed the concentration to be incompatible in terms of Article 18 paragraph (2), item b) of this Act;

b) when the concentration was carried out without the filing of notification of concentration, which led to a significant distortion of market competition in terms of Article 13 of this Act.

(2) By a decision from paragraph (1) of this Article, the Council of Competition may, particularly:

- a) require that the acquired shares or business shares are to be alienated (transferred);
- b) prohibit or restrict the exercise of voting rights relating to the shares or shares in economic entities participants to concentration and cessation of controlling the joint investment or other forms in relation to Article 12 of this Act which led to the concentration to be incompatible .

### **III IMPLEMENTATION BODY**

#### **Article 20 (The Council of Competition)**

(1) Body for implementation of protection of market competition in terms of this Act is Council of Competition.

(2) The composition of the Council of Competition includes the offices for competition in the Federation of Bosnia and Herzegovina and in Republic of Srpska, as organizational units outside the seat of the Council of Competition.

#### **Article 21 (Status of the Council of Competition)**

(1) The Council of Competition is an independent body which shall ensure consistent implementation of this Act on the whole territory of Bosnia and Herzegovina and has the exclusive competence in making decisions on the presence of prohibited competition practices in the market.

(2) The Council of Competition has a legal person status and its seat is in Sarajevo.

(3) Funds for the implementation of the competencies and conducting the activities of the Council of Competition shall be provided from the Budget of the Institutions of Bosnia and Herzegovina.

#### **Article 22 (The composition of the Council of Competition)**

(1) Council of Competition consists of six members who are appointed for a term of six years with the possibility of another re-election. The mandate of the members of the Council of Competition can not be terminated before the expiry of the prescribed period, except in cases specified in Article 23 of this Act.

(2) Members of the Council of Competition shall be elected from among recognized experts in the relevant field, with administrative status equal to that of the judges which is incompatible with the performance of any direct or indirect, permanent or temporary functions, with the exception of academic activities and work in professional and scientific bodies.

(3) Appointment of the Council of Competition is carried out in the following way:

- a) three members of the Council of Competition shall be appointed by Council of Ministers of Bosnia and Herzegovina, with one member per each of the three constituent nations;
- b) two members shall be appointed by the Government of the Federation of Bosnia and Herzegovina;
- c) one member shall be appointed by the Government of the Republic of Srpska.

(4) The Council of Ministers of Bosnia and Herzegovina, at the proposal of the Council of Competition, each year, shall appoint the President from among the members of the Council of Competition for a period of one year, without the right to be re-elected during the mandate of the members of the Council of Competition .

### **Article 23 (Early termination)**

(1) The mandate of the members of the Council of Competition can be terminated prematurely only in the following cases:

- a) death,
- b) resignation,
- c) revocation of the mandate, at the proposal of the Council of Competition, for the following reasons:
  - 1) performance of an incompatible duty as stipulated in Article 22 (2) of this Act;
  - 2) unexcused absence from three successive sessions of the Council of Competition;
  - 3) irresponsible, negligent or poor job performance.

(2) In the case of revocation of the mandate by the Council of Competition referred to in paragraph (1) point c) of this Article, the Council of Competition shall decide without voting a member of the Council of Competition whose revocation is being decided.

(3) In the event of early termination of the mandate of a member of the Council of Competition, the organs listed in Article 22 paragraph (3) of this Act shall appoint a new member of the Council of Competition for the remainder of the mandate.

### **Article 24**

### **(Way of functioning and decision-making of the Council of Competition)**

**(1)** Council of Competition may make valid decisions if the session is attended by at least five members of the Council of Competition.

**(2)** Decisions of the Council of Competition shall be made by majority vote of members present, provided that at least one member from among the constituent peoples must vote for each decision. A member of the Council of Competition can not be restrained from voting.

**(3)** The President of the Council of Competition is authorized to:

- a) manage the activities of the Council of Competition;
- b) support and represent the Council of Competition;
- c) convene and preside over the sessions of the Council of Competition, that take place at least once a month;
- d) draw up an agenda for every session which may be amended at a session at the request of at least two present members of the Council of Competition;
- e) sign all decisions and other acts of the Council of Competition.

**(4)** The Council of Competition enacts the Rules of procedure which shall define the way of working, decision making process, as well as the other issues related to the work of the Council of Competition.

### **Article 25**

#### **(Competences of the Council of Competition)**

**(1)** Council of Competition in carrying out its duties, in accordance with this Act and other regulations governing the competition policy in Bosnia and Herzegovina, is competent to:

- a) make by-laws according to the provisions of this Act, and other by-laws necessary for its implementation;
- b) regulate the definitions and calculating methods for particular activities, such as banking, insurance, etc;
- c) regulate and provide interpretation of general and specific definitions of competition terms, as well as the calculating methods for the key terms of competition;
- d) decide on requests for the initiation of proceedings and conduct the proceedings;

- e) issue administrative acts for completing the proceeding before the Council of Competition;
- f) provide opinions and recommendations on any aspect of competition, either *ex officio* or at the request of the state authorities, economic entity or company;
- g) adopt internal documents about the internal organization of the Council of Competition, except the Rules on internal organization and systematization, which is adopted with the consent of the Council of Ministers of Bosnia and Herzegovina;
- h) give the initiative to amend the Act on Competition;
- i) propose to the Council of Ministers of Bosnia and Herzegovina a decision on the amount of administrative fees in connection with the procedural actions before the Council of Competition.

(2) Council of Competition gives its opinion on drafts and proposals of laws and other regulations in the field that have an impact on market competition, which are obliged to be provided by the proposer, and whether they are in consent with this Act.

(3) Council of Competition in the implementation of this Act and other regulations in the field of competition may establish expert and advisory bodies, which help him in decision making.

(4) The Council of Competition cooperates with international and national organizations and institutions in the field of competition, on which basis, it may give and require all the data and information related to factual and legal issues, also including confidential data. In the exchange of confidential data, legitimate business interests of the economic entities in question must be protected in accordance with the regulations.

(5) Council of Competition submits for adoption to the Council of Ministers of Bosnia and Herzegovina a report on the performance and annual report. Adopted annual report on the performance the Council of Competition publishes in the public.

#### **IV DECISION-MAKING PROCEDURE**

##### **Article 26 (Rules of procedure)**

In the proceedings before the Council of Competition, the Law on Administrative Procedure of Bosnia and Herzegovina (“Official Gazette BiH”, No. 29/02) shall be applied, unless regulated differently by this Act.

##### **Article 27 (Initiation of the Proceedings)**

(1) Council of Competition initiates proceedings in a sense of this Act, *ex officio* or at a party's request.

(2) Council of Competition shall initiate the proceedings *ex officio* if there is reasonable suspicion that market competition is significantly prevented, restricted and distorted.

(3) Request for initiation of the proceedings before the Council of Competition, in accordance with the provisions of this Act, may be submitted by:

- a) any legal and natural person having a legal or economic interest;
- b) chambers of commerce, associations of employers and entrepreneurs;
- c) consumer associations;
- d) executive power bodies in Bosnia and Herzegovina.

### **Article 28** **(Request for the Initiation of Proceedings)**

(1) A request for initiation of the proceedings before the Council of Competition must contain:

- a) the name of the seat of the legal person concerned, or the name and surname and address of the authorized natural person-the applicant;
- b) the data indicating against who the request is submitted;
- c) description of facts, practice or circumstances that are the reason for submitting the request.

(2) Together with the request for initiation of the proceedings, the applicant may enclose, in particular:

- a) relevant documents and other available evidences by which prove the allegations from paragraph (1) c) of this Article;
- b) estimation of the relevant market;
- c) evaluation of the market share of the applicant and the market share of the competitors in the relevant market;
- d) court record excerpt, work permit or the other relevant documents on registration of the applicant;
- e) the annual report, financial reports and the other accounting documents of the applicant for financial year preceding the submittal of the request.

(3) Day of receipt of the request is deemed a day when the Council of Competition received a complete and adequate data referred to in paragraph (1) of this Article. Council of Competition shall notify in writing the applicant by delivering the confirmation of receipt of complete and proper request.

### **Article 29** **(The request for individual exemption of agreement)**

(1) Together with the request for the individual exemption of agreement, the following is to be enclosed:

- a) original or certified copy, or certified translation of an agreement, if the official text of the agreement is not in the official languages that are in use in Bosnia and Herzegovina;
- b) court record excerpt, work permit or other relevant documents which prove the registration of the applicant;
- c) the annual report, financial reports and the other accounting documents for the financial year which preceding the conclusion of the agreement (all of the parties to the agreement);
- d) other relevant data determined as necessary by the Council of Competition.

(2) Together with the request for individual exemption of agreement, the following may be enclosed:

- a) evaluation of the relevant market;
- b) evaluation of the market share of parties to the agreement and their competitors in the market.

(3) The Council of Competition shall, in written form, inform the applicant issuing an acknowledgment of receipt of the complete and adequate request.

### **Article 30** **(Documentation with the Notification of concentration)**

(1) The notification of concentration shall be accompanied by:

- a) original legal basis of the concentration or a certified transcript or certified translation , if the official text of the original legal basis of the concentration is not in official languages that are in use in Bosnia and Herzegovina;
- b) annual financial report for the participants to the concentration of the financial year preceding the concentration;
- c) other facts regulated in by-laws within this Act.

(2) The applicant must specify in the application whether he intends to submit an application for assessment of the concentration to other body authorized to assess the concentration outside the territory of Bosnia and Herzegovina or, if he has already filed such application, to enclose a decision which is adopted by the authority if the same has already been made.

(3) The Council of Competition shall, in written form, inform the applicant by submitting an acknowledgment of receipt of the complete and adequate notification.

**Article 31**  
**(Supplement to the Request and Waive the Request)**

(1) If the applicant to initiation of proceedings before the Council of Competition does not submit information within the meaning of this Act, Council of Competition will require supplement to data from the applicant.

(2) If the applicant within eight days does not act by seeking the Council of Competition referred to in paragraph (1) of this Article, it shall be deemed that he waives the request. In special cases, the Council of Competition on the request of the parties may extend the deadline for an additional 15 days if there are valid reasons for it.

**Article 32**  
**(Conclusion on initiation of proceedings)**

(1) Council of Competition shall adopt a conclusion on initiation of proceedings *ex officio* or upon receipt of the request in terms of the provisions of this Act. Conclusion of initiation of proceedings in particular includes:

- a) mark of the case on which the conclusion relates;
- b) provisions of this Act on the basis of which the process starts;
- c) request for delivering the relevant documentation.

(2) Council of Competition is obliged to adopt a conclusion of initiation of proceedings within 30 days of receipt of complete and adequate request.

(3) Against the conclusion of initiation of proceedings no appeal is allowed.

**Article 33**  
**(Response to Request)**

(1) Council of Competition shall deliver one copy of the conclusion of initiation of proceedings and request for initiation of the proceedings, from Article 27 and 28 of this Act, on response to the party against whom the process is running, and to persons for which it is established that are the parties, except the data that are considered a business secret in the sense of Article 38 of this Act.

(2) Response shall be given within a period specified by the Council of Competition in each case separately, which can not be shorter than eight days nor longer than 30 days.

(3) Within a given period, a party is obliged to submit to the Council of Competition the requested response and all other information, and attachments and documentation relating to the request.

(4) Exceptionally of paragraphs (2) and (3) of this Article, the party may, due to justifiable reason, request an extension of the deadline for submission of responses. Council of Competition may grant an extension of time for not longer than 30 days.

(5) If a party fails to act upon the request and within the deadlines determined by the Council of Competition or if states that is unable to act in accordance with the request, the Council of Competition shall take the necessary actions prescribed in Chapter V of this Act; the facts and circumstances relevant to the proceedings will be established *ex officio* based on their its own knowledge, available data and documentation.

### **Article 34 (Enforcement of the proceedings)**

(1) Council of Competition, after the passed conclusion on initiation of the proceedings , appoints a responsible member of the Council of Competition who manages the procedure and determines official person in charge of enforcement of the proceedings(hereinafter: the official person).

(2) Official person shall, during the implementation of the proceedings, follow instructions given by the responsible member of the Council of Competition referred to in paragraph (1) of this Article, and regularly enclose information and documents collected during the implementation of the proceedings.

(3) Responsible member of the Council of Competition, an official person or other persons who provide expert assistance in the conduct of the proceedings perform official activities on the basis of the authority in writing or warrant that is issued by the Council of Competition. In the warrant shall be particularly specified the subject and purpose of proceedings, and penalties provided for in the event of obstruction or submitting incomplete, inaccurate or misleading information.

(4) Responsible member of the Council of Competition, an official person or other persons, before the start of carrying out of official action, are obliged to show the authorization or warrant that is issued by the Council of Competition.

### **Article 35 (Data collection)**

(1) In conducting the proceedings, parties and other legal and natural persons are obliged upon the request of the Council of Competition or official person:

- a) to provide all necessary information in the form of written submissions or oral statements and provide access to the required information and documents regardless of the type of media;
- b) to provide direct insight into all business premises, all immovable and movable property, business records, databases and other documentation, and can not be prevented due to the business, state or technical secret;
- c) to submit the necessary data and information to other persons who can contribute to solving and clarification of certain issues on the prevention, restriction or distortion of market competition;
- d) will enable the performance of other necessary actions in order to establish all relevant facts in the proceedings.

(2) If there is reasonable suspicion that the parties or other persons are in possession of documents or other resources significant for establishing the material truth in the proceedings, the court of competent jurisdiction shall be requested to issue a warrant in writing for search of apartments or premises and other persons and seizure of items and documentation of the parties or other persons.

(3) Request under paragraph (1) of this Article shall contain a legal basis, subject and purpose of the request, the deadline for its implementation and penalties for non acting according to the request stipulated by this Act.

### **Article 36 (Burden of Proof)**

(1) In any request for the application of valid provisions about competition referred to in this Act, the burden of proof is on the party who has submitted a request for initiation of the proceedings.

(2) Economic entity or an association of economic entities which makes a profit or which is exempt according to Article 4 paragraph (3) or Article 5 and 7 of this Act bear the burden of proof.

### **Article 37 (Right to Access to Case files)**

(1) Parties in proceedings before the Council of Competition have right to access the case file.

(2) Council of Competition at the request of the party will make a copy of case files or certain documents submitted by other parties.

(3) Request for access to case file under paragraph (1) of this Article shall be submitted in writing to the Council of Competition. Council of Competition will determine a date for access to case file, within eight days of receipt of the request.

(4) Exceptionally to provisions of paragraphs (1) and (2) of this article, there can not be seen, rewritten or copied draft of the acts of the Council of Competition, the official reports, minutes of meeting of the Council of Competition, internal instructions and notes on the case and other documents and materials that are considered a business secret in the sense of Article 38 this Act.

### **Article 38 (Business Secrecy)**

(1) Members of the Council of Competition, officials and other staff are required to maintain business secret, regardless of the way of finding it out, and the obligation to keep business secrets lasts after termination of duty in this body.

(2) The business secret referred to in paragraph (1) of this Article in particular implies:

- a) all which is as a business secret provided by law or other regulation;
- b) all that is, as a business secret, regulated by the general or some other act of the parties to the proceedings or other persons;
- c) all that is, by the parties to the proceeding or other persons, specifically marked as business secret.

(3) Exceptionally to the provisions of paragraphs (1) and (2) of this Article it shall not be considered a business secret information and documents that are in any way, publicly available, or to the public published on the basis of special regulations.

### **Article 39 (Oral Hearing)**

(1) Maintaining an oral hearing is mandatory in all cases when it comes to parties with opposing interests. Oral hearing is, in general, public.

(2) Exceptionally to the provisions of paragraph (1) of this Article, when it is established , after receiving statement in writing of the party against whom the proceedings is initiated, that there is no disputable facts and no other obstacles to the adoption of decision , a decision can be adopted without scheduling an oral hearing .

(3) Oral hearings will take place in any case when it is considered helpful.

(4) If any of the invited parties or their representative does not come at the first hearing, as a rule, the hearing will be postponed and the new one will be scheduled.

(5) If any of the invited parties or their representative, do not come to the next hearing scheduled according to paragraph (4) of this Article, as a rule, a new hearing will not be scheduled, and the decision in the proceedings will be adopted on the basis of own knowledge, the available data and documentation.

#### **Article 40 (Interim Measures)**

(1) Council of Competition may issue a decision on interim measure, based on preliminarily determined violation, when considers that particular activities prevent, restrict or distort market competition in terms of this Act, and threaten to cause a direct adverse impact on individual economic subjects or individual sectors of the economy or the interests of consumers.

(2) In decision on interim measures under paragraph 1 this Article, the Council of Competition may order the suspension of the procedure, the fulfillment of special conditions or other measures necessary to eliminate harmful prevention, restriction or distortion of market competition. Duration of interim measures, in general, may not exceed three months, but it can be extended if it is necessary and justified.

#### **Article 41 (Duration of proceedings)**

(1) Upon adoption of conclusion on initiation of the proceedings, the Council of Competition shall make a final decision within:

- a) six months for determination of the prohibited agreements prescribed in Article 4 of this Act;
- b) three months for determination of the individual exemption prescribed in Article 5 of this Act;
- c) four months for determination of abuse of dominant position prescribed in Article 11 of this Act;
- d) three months for determination of the assessment of concentration prescribed in Article 18 of this Act.

(2) If within a period referred to in paragraph (1) of this Article, the Council of Competition fails to adopt the final decision, in a cases when it estimates that for

determination of the facts and assessment of the evidences is necessary to make additional expert opinion or analysis, or when it comes to sensitive economic sectors or markets, the Council of Competition may extend the deadline for making the final decision up to three months, about which is required to inform in writing the parties to the proceedings.

**Article 42**  
**(Administrative Acts)**

(1) In terms of Article 25 this Act, the Council of Competition especially adopts the decisions where:

- a) assesses the compliance of the Agreement with the provisions of this Act;
- b) establishes an exemption of agreement on the basis of Article 5 of this Act;
- c) finds abuse of dominant position on the basis of Article 10 and 11 of this Act;
- d) evaluates the compatibility of the concentration on the basis of Article 18 of this Act;
- e) establishes an interim measure on the basis of article 40 of this Act;
- f) determines the specific measures to re-establish effective competition in the market in a case of prohibited concentration on the basis of Article 18 of this Act.

(2) Except the decision referred to in paragraph (1) of this Article, the Council of Competition adopts other decisions, conclusions and other acts on the basis of the provisions of this Act.

**Article 43**  
**(Final Decisions of the Council of Competition)**

(1) Upon completion of the proceedings a responsible member of the Council of Competition shall submit a report on conducted proceedings together with proposed decision.

(2) Council of Competition at the meeting adopts a final decision of whether there is a violation of this Act.

(3) The decision referred to in paragraph (2) of this article may contain recommendations and / or sanctions and other measures to the parties to the proceedings.

(4) Council of Competition may, before making a final decision inform in writing the parties about the content of a decision that intends to bring.

(5) Council of Competition, at request of a party or *ex officio*, may re-examine the decision in the following cases:

- a) when was a real change in the facts on which the decision was based, which were of significant impact on market competition;
- b) when the parties to the proceedings operate contrary to the obligations set by the Council of Competition;
- c) when the decision was adopted on the basis of incomplete, inaccurate or false information that were provided by the parties to the proceeding.

(6) A decision issued by the Council of Competition has no influence on the possible criminal and / or civil liability about which the competent courts decide.

(7) Council of Competition, for the purpose of assessment of a given case, can use the case law of the European Court of Justice and the decisions of the European Commission.

#### **Article 44 (Publication of Decision)**

(1) Decisions of the Council of Competition shall be submitted to the parties to proceedings and published in the "Official Gazette of BiH ", official gazettes of Entities and Brcko District of Bosnia and Herzegovina.

(2) Published decisions referred to in paragraph (1) of this Article will provide the names of the parties to the proceedings, the main content of decision, including the pronounced sentences. Council of Competition shall take into account the legitimate interests of economic entities in terms of protecting their business secrets.

#### **Article 45 (Application of decisions and other acts of the Competition Council)**

Decisions of the Council of Competition are binding on the entire territory of Bosnia and Herzegovina and enforceable on the day of publication.

#### **Article 46 (Judicial Protection)**

(1) The decision of the Council of Competition is final.

(2) Unsatisfied party to the proceedings may start administrative proceedings before the Court of Bosnia and Herzegovina within 30 days of receipt of the decision, or from the date of publication of the decision.

**Article 47**  
**(Execution of the decision of Competition Council)**

(1) If the parties to the proceeding do not implement or execute the decision, Council of Competition may seek legal assistance from the competent authorities for its execution.

(2) In the request for legal assistance the Council of Competition must cite precisely the type of required measure for execution.

(3) In the application of the forcible measures, the competent authorities are obliged to act according to the request of the Council of Competition, abiding by the measures specified in the request.

**V PENALTY PROVISIONS**

**Article 48**  
**(Fines for serious violation of the Act)**

(1) A fine in the amount up to 10% of the total annual income of the economic entity, for the year preceding the year in which the violation of the Act happened, shall be imposed on economic entity or natural person, if:

- a) concludes prohibited agreement or otherwise participate in the agreement which violates, restricts or prevents market competition in terms of Article 4 of this Act;
- b) abuses a dominant position in a way prescribed by the provisions of Article 10 of this Act;
- c) participates in the implementation of prohibited concentration of economic entities in accordance with the provisions of Article 13 of this Act;
- d) does not act according to the decisions of the Council of Competition referred to in Article 42 of this Act;
- e) conducts a concentration without previously adopted a decision on the concentration in terms of Article 18 Paragraph (9) of this Act.

(2) Council of Competition may impose a fine on responsible persons of economic entity, referred to in paragraph (1) of this Article, in the amount of 15.000 KM to 50.000 KM.

**Article 49**  
**(Fines for other Infringements of this Act)**

(1) The Council of Competition may impose on economic subjects fines not exceeding 1% of the total income in the previous year of business, if:

- a) do not act according to the request within the meaning of Article 33 and 35 of this Act by providing false or misleading information or do not provide necessary information within a given period;
- b) do not submit the notification of intent concentration in terms of Article 16 of this Act;
- c) submit false or misleading information in the process of assessment of concentration in terms of Article 16, 17 and 18 of this Act;

d) do not act according to decision or conclusion of the Council of Competition pursuant to Article 42 paragraph (1) item g) of this Act, or a warrant of competent court.

(2) Council of Competition may impose a fine on the responsible persons of the economic entities referred to in paragraph (1) of this Article, in the amount of 5,000 KM to 15,000 KM.

**Article 50**  
**(Periodic penalty payment)**

(1) Council of Competition may impose on the parties in the process periodic penalty payments not exceeding 5% of the average daily income in the previous year.

(2) Council of Competition will in by-laws closely define a way of the periodic penalty payments.

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

Council of Competition may impose fines on legal and / or natural persons who are not parties to the proceeding for non acting according to the request or warrant of the Council of Competition in terms of Article 33 and 35 of this Act, as follows:

- a) legal entities in the amount of 5,000 KM to 15,000 KM;
- b) the responsible person in legal entities in the amount of 1,500 KM to 3,000 KM;
- c) natural persons in the amount of 1,500 KM to 3,000 KM.

**Article 52**  
**(Fixing the amount of fines)**

Council of Competition when determining the amount of the fines shall take into account the purpose and duration of the violation which impinge on the provisions of this Act.

**Article 53**  
**(Collecting of Fines)**

(1) Fines referred to in Article 48 and 49 of this Act are also applied to associations of business entities.

(2) If a fine is imposed on association of economic entities, having in mind the income of members of association, and if association is declared insolvent, the association is obliged to require of its members to contribute in covering the amount of fines.

(3) In a case that contributions are not paid to association within a period given by the Council of Competition, any economic entity that is a member of the association may be required to pay a fine.

**Article 54**  
**(Leniency Policy)**

(1) Council of Competition may, in percentage terms, reduce or revoke a fine imposed on economic entity for violation of the provisions of Article 4 of this Act, if an economic entity has voluntarily provided important evidence for determining a violation and if , at the time of submission of evidence, has stopped the prohibited activity.

(2) If an economic entity accomplishes voluntary cooperation referred to in paragraph (1) of this Article, the Council of Competition may wholly or partially relieve the economic subject of fines.

(3) Council of Competition shall apply a mitigation or exemption from punishment, in terms of paragraphs (1) and (2) of this Article, in the following cases:

- a) when the evidence is submitted at the time when the Council of Competition does not have the necessary information to initiate proceedings *ex officio*;
- b) when the economic entity effectively cooperates with the Council of Competition throughout the process;
- c) if, at the time of giving evidences, an economic entity breaks off its participation in the agreement, arrangement or joint practice and does not oblige the other economic entities to participate in the agreement.

(4) Council of Competition shall in by-laws specify the detailed procedure of mitigation or exemption from punishment.

**Article 55**  
**(Limitation period for imposing penalties)**

(1) The statute of limitations for imposing a fine by the Article 48 of this Act runs after the expiry of five years, while the statute of limitations for imposing fines of Article 49 and 50 of this Act runs after the expiry of three years.

(2) The statute of limitations will be counted from the day when violation is made. In the case of continuing or re violations of this Act, the deadline will be counted from the date of termination of the violation.

(3) Any action taken by the Council of Competition with the purpose of conducting proceedings or proceedings for violation of this Act will discontinue the statute of limitations for the imposition of fines or periodic fines. Limitation period will be discontinued on the day when a certain action is announced at least to one economic entity or association of economic entities that have participated in the violation of this Act. Following activities will discontinue duration of limitation period:

- a) requests in writing for information from the Council of Competition;

- b) consent in writing for conducting the proceedings, which is issued to official person by the Council of Competition;
- c) start of proceedings by the Council of Competition;
- d) announcement of the conclusion of the initiation of proceedings, issued by the Council of Competition.

(4) Discontinuance of the statute of limitations period will be applied to all economic entities that have participated in the violation.

(5) Each discontinuance of the limitation period will run again. Limitation period will expire no later than the day when the time of foreseen period expired up to two times , and that the Council of Competition has not imposed a fine or periodic financial penalty.

### **Article 56**

#### **(The statute of limitations for enforcement of fines)**

(1) Statute of limitations for enforcement of fines from the Articles 48, 49 and 50 of this Act runs after the expiry of five years.

(2) The statute of limitations runs from the day the decision becomes final.

(3) Discontinuance of a statute of limitations shall happen in the following cases:

- a) by publication of a decision which amends the original amount of fines or periodic penalty payments or rejection of the complaint to change;
- b) by any proceedings before the Council of Competition, aimed in enforcing the payment of fines or periodic penalty payments.

(4) After the discontinuance of the statute of limitations, the time period starts to be counted again.

(5) The statute of limitations for execution of a fine shall be discontinued for a period:

- a) when the time for payment is approved;
- b) when the execution of payment is suspended according to the decision of the competent court.

## **VI TRANSITIONAL AND FINAL PROVISIONS**

### **Article 57 (Transitional Period)**

(1) The activities of the offices for competition, that are established by this Act to 31st December 2005, shall be conducted by the Offices for Competition and Consumer Protection (hereinafter: UKZP), established under the Act on Competition (Official Gazette BIH, number 30/01).

(2) From 1st January 2006, a part of the UKZP that performs activities in the field of competition shall continue performing the activities inside the Council of Competition in accordance with Article 20 of this Act.

(3) From 1st January 2006, the UKZP competences in the field of consumer protection will be conducted by bodies established by the regulations in the field of consumer protection.

(4) From 1st January 2006, Council of Competition will take over the UKZP employees who perform duties in the field of competition, in accordance with 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 equipment and assets that belong to them.

(5) Status of employees in the UKZP who perform activities of consumer protection shall be stipulated by regulations in the field of consumer protection.

(6) Number of employees in the UKZP performing tasks in the field of competition to 31st December 2005, can not be increased without the approval of the Council of Competition.

### **Article 58 (Enactment of by-laws)**

Council of Competition within six months from the date of entry into force of the Act shall adopt by-laws and other documents relating to the implementation of the provisions of this Act.

### **Article 59 (Proceedings initiated previously)**



## **Article 22**

Council of Competition shall, within six months from the date of the entry into force of this Act, harmonize bylaws and other documents relating to the implementation of the provisions of this Act.

## **Article 23**

Proceedings initiated before the Council of Competition, that are not ended until the date of the entry into force of this Act, shall be continued under the provisions of the Act on Competition (Official Gazette of BIH , no. 48/05 and 76/07).