

**REGULATION ON DEFINITION OF CATEGORIES OF
DOMINANT POSITION**

-CONSOLIDATED TEXT-

“Official Gazette of BiH“, No. 18/06 and 34/10

Pursuant to Article 25, paragraph (1), item a) and Article 9 of the Act on Competition („Official Gazette of BiH”, No. 48/05, 76/07 and 80/09), the Council of Competition in its 23rd session, held on 14 February 2006, has adopted

REGULATION ON DEFINITION OF CATEGORIES OF DOMINANT POSITION

(CONSOLIDATED TEXT)

I GENERAL PROVISIONS

Article 1

(Subject matter)

This Regulation defines the categories, conditions and methods of determination of a dominant position of undertakings, and criteria on abuse of dominant position in the relevant market of products and services of Bosnia and Herzegovina, in terms of Articles 9 and 10 of the Competition Act.

Article 2

(Dominant position of an undertaking)

- (1) An undertaking has a dominant position on the relevant market of products or services, when due to its market power, it can behave and operate largely independent of actual or potential competitors, buyers, consumers or suppliers, and thus restricts or prevents efficient competition.
- (2) An undertaking has a dominant position on the relevant market of products or services, if there is no competition or if existing competition is insignificant.

II DETERMINATION OF MARKET POWER AND DOMINANT POSITION

Article 3

(Determination of market power)

- (1) An undertaking is not dominant on the relevant market of products and services if its market power is not significant.
- (2) An undertaking has significant market power on the relevant market in relation to actual or potential competitors, particularly regarding the following criteria:

- a) market share (scale of sale and purchase on the relevant market of products or services; financial power or production capacities);
- b) structure of the relevant market and economic relations with competitors;
- c) ability to maintain the prices above the competition level (restricts production and quality)
- d) access to supply sources (raw materials) or distribution channels;
- e) vertical integration levels of the relevant market;
- f) economic regulators, investment obstacles for potential undertakings to enter/exit the relevant market;
- g) technological advantages, patents, intellectual or industrial property rights and similar rights.

Article 4

(Abuse of dominant position)

- (1) As a rule a dominant position of an undertaking on the relevant market is not prohibited.
- (2) Any abuse of dominant position on the relevant market through the operation of undertakings , with the goal and consequence of exclusion or „closure“ of the market to potential competitors, i.e. restriction or distortion of efficient market competition, is prohibited.
- (3) Abuse of dominant position on the relevant market, in terms of paragraphs (1) and (2) of this Article solely exists in those cases when an undertaking conducted unilateral operation on its own initiative.
- (4) Two and more undertakings may be dominant (collective dominance) on the relevant market (ex. structural connections, joint policy).

III DETERMINATION OF MARKET POWER AND MARKET SHARE

Article 5

(Methods to determine dominant position)

- (1) Dominant position of an undertaking, depending on case in question, can be determined on the whole market of Bosnia and Herzegovina or on its significant part.
- (2) Methods to determine dominant position referred to in the paragraph (1) of this Article also include:
 - a) definition of relevant market (and product or service supply and demand conditions, as well as a substitute product on the market);

- b) ratio of market shares of the undertakings, present on the relevant market (taking into consideration changes within the certain time period).

Article 6

(Market share of undertakings)

- (1) It is assumed that an undertaking is dominant on the relevant market of products or services, if its market share exceeds forty per cent (40%).
- (2) An undertaking may be dominant if its market share is less than forty per cent (40%) providing other indicators (e.g. weak position and small market share of the existing competitors, serious barriers to enter the relevant market for other undertakings) prove its dominant position.

Article 7

(Market share of two and more undertakings)

It is assumed that more undertakings have dominant position on the market of goods and/or services, if two or three undertakings have a joint market share of 60% on the relevant market.

Article 8

(Market share of four and more undertakings)

It is assumed that more undertakings have dominant position on the market of goods and/or services, if four or five undertakings have a joint market share of 80% on the relevant market.

IV CRITERIA FOR THE ABUSE OF DOMINANCE

Article 9

(Forms of the abuse of dominance)

In addition to criteria referred to in Article 10 of the Competition Act, the following can be considered abuse of dominance of one or more undertakings (collective dominance):

- a) price discrimination (different prices) of the certain product or service on the different relevant geographic markets;
- b) permanent supply and sale of products and services to buyers at low prices, with the consequence to divert buyers to purchase similar products or services from competing suppliers («loyal»-targeted sale discounts or secret discounts);

- c) fixing a price of the product or service below the production costs with the view to eliminate the competitors;
- d) unjustified cancellation or reduction of the production or sale of products or services with negative consequences for consumers;
- e) production and market limitations as result of exclusive agreements (special rebates, discounts, financial benefits);
- f) putting conditions on buyers to buy additional product or service together with the wanted product or service;
- g) ability of an undertaking to determine conditions on the relevant market regarding its supply and demand, which enables unjustified profit increase;
- h) refuse the access for other undertakings, with a reasonable financial charge, to facilities, equipment, relocated network or other infrastructure facilities, owned or used by the dominant undertaking, if other undertakings are not able, due to legal or other reasons, to operate in the same market of the dominant undertaking, without possibility to use the same capacities/equipment and in if dominant undertaking does not prove that such collective use is not practicable due to operational, technical or other reasons or that such use may not be asked from them.

V FINAL PROVISIONS

Article 10

(Application of European regulations and practice)

The Council of Competition may use regulations and case law of European Court and decisions of European Commission for the purpose of determination of a dominant position for particular cases.

Article 11

(Publication)

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

President of

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The Council of Competition

Sarajevo, 21st February 2006

Sena Hatibovic