BOSNA I HERCEGOVINA
Konkurencijsko vijeće

БОСНА И ХЕРЦЕГОВИНА
Конкуренцијски савјет

DECISION

in the proceedings initiated against the undertaking KJKP Toplane Sarajevo, for the abuse of dominant position

Short version

Sarajevo

July, 2025

BOSNA I HERCEGOVINA
Konkurencijsko vijeće

БОСНА И ХЕРЦЕГОВИНА
Конкуренцијски савјет

Broj: UP–06-26-2-027-44/24
Sarajevo, 9 July 2025

The Competition Council of Bosnia and Herzegovina, pursuant to Article 25, paragraph (2), item e), Article 42, paragraph (1), item c), and in accordance with Article 10, paragraph (2), items a) and c) of the Law on Competition ("Official Gazette of BiH", No. 48/05, 76/07 and 80/09) in the proceedings pursuant to the Claim for Initiation of Proceedings by the natural persons Dedović Alija, Dedović Nezire and Malić Nihad, residing at Gradačačka Street 70, Sarajevo, against the undertaking KJKP Toplane Sarajevo d.o.o. Sarajevo, Semira Frašte Street 22 (represented by Sanela Gorčić, lawyer from Sarajevo) in order to determine the existence of the abuse of dominant position, within the meaning of Article 10, paragraph (2), items a) and c) of the Law on Competition, at its 29th session held on 9 July 2025, adopted

DECISION

1. IT HAS BEEN ESTABLISHED that KJKP Toplane Sarajevo d.o.o. street Semira Frašte No. 22 Sarajevo, did not abuse its dominant position under Article 10, paragraph (2), items a) and c) of the Law on Competition in the relevant market for the supply of heat energy in the territory of the Sarajevo Canton.

2. The Claimants, individuals Dedović Alija, Dedović Nezira and Malić Nihad, are obliged to pay an administrative fee in the total amount of 1,500.00 KM to the Budget of the Institutions of Bosnia and Herzegovina, within 8 days from the date of receipt of this decision.

3. The Claimants, individuals Dedović Alija, Dedović Nezira and Malić Nihad, are ordered to reimburse the costs of the proceedings of the undertaking KJKP Toplane Sarajevo d.o.o. in the amount of 1,401.00 KM, plus VAT to the authorized representative, within 8 days from the date of receipt of this decision.

4. This decision is final and will be published in the "Official Gazette of Bosnia and Herzegovina", the official gazettes of the Entities and the Brčko District of Bosnia and Herzegovina.

Exposition

On 17 September 2024 the Competition Council of Bosnia and Herzegovina received a Request for initiation of proceedings by individuals Dedović Alija, Dedović Nezira and Malić Nihad, residing in Sarajevo at Gradačačka Street 70, (hereinafter referred to as: the Claimants) (represented by Sanela Gorčić, a lawyer from Sarajevo) against KJKP Toplane Sarajevo d.o.o.

Sarajevo, street Semira Frašte No. 22, (hereinafter referred to as: Toplane Sarajevo) due to the impossibility of cancelling the heating service, or disconnection from the heating system of Toplane Sarajevo, which constitutes an abuse of a dominant position within the meaning of Article 10 paragraph (2) items a) and c) of the Law on Competition ("Official Gazette of BiH", No. 48/05, 76/07 and 80/09).

Given that in the above case, a fee of 1500.00 KM was incorrectly paid to KTO 722 584 - Tariff number 107 - fee for the decision, the Competition Council, by Decision No. UP-06-26-2-027-2/24 of 24 September 2024, decided to return the incorrectly paid funds to the Claimants, as well as to send them a new request for payment of the administrative fee with payment instructions.

On 14 November 2024, the Claimant supplemented the Claim in question by paying the fee, after which the Competition Council determined that it was complete and correct in terms of Article 28, paragraph (1) of the Law.

After completing the Request, the Competition Council issued the Claimant a Confirmation of receipt of a complete and correct Claim, in terms of Article 28, paragraph (3) of the Law, on 19 December 2024, by document number UP-06-26-2-027-7/24.

The Competition Council assessed that it was not possible to determine the existence of an abuse of a dominant position under Article 10 of the Competition Law without conducting the procedure, and in terms of Article 32, paragraph (2) of the Law on 23 December 2024 adopted the Conclusion on the initiation of proceedings No. UP-06-26-2-027-9/24 against the undertaking Toplane Sarajevo, in order to determine the existence of an abuse of dominant position.

On 1 April 2025 the Competition Council extended the deadline for the adoption of the final decision for an additional three months by Conclusion No. UP-06-26-2-027-28/24.

In the further course of the proceedings, given that this is a case with parties with opposing interests, the Competition Council held an oral hearing in accordance with Article 39 of the Law. The oral hearing was held on 5 March 2025 (minutes number: 06-26-2-027-21/24) in the premises of the Competition Council, at which the representatives of the parties declared themselves on the facts and circumstances on which the Claim is based. Both parties declared themselves to remain with the previously given allegations, and they were allowed to declare themselves on the facts and circumstances on which they had not declared themselves so far, and to ask each other questions if they so wished. At the oral hearing, the legal representative of the Claimant was handed the expert opinion of the Faculty of Mechanical Engineering, as well as the case law presented by the representatives of Toplane Sarajevo at the oral hearing.

During the procedure to determine all relevant facts, within the meaning of Article 35, paragraph (1), items a) and c) of the Law, the Competition Council also collected data and documentation from other bodies/institutions that are not parties to the proceedings.

Thus, on 24 April 2025 the Competition Council sent a letter to the Ministry of Communal Economy, Infrastructure, Spatial Planning, Construction and Environmental Protection of the Sarajevo Canton requesting information on the relevant market, to which the Ministry submitted a response on 16 May 2025 under the number UP-06-26-2-027-40/24.

Also, on 14 May 2025 corresponding requests for data were sent to the following undertakings, which according to the available data are engaged in the production and distribution of thermal energy: Grijanje Miljacka d.o.o. Sarajevo, Unis Energetika d.o.o. Sarajevo, Geoterm Ilidža d.o.o. Sarajevo-Ilidža and Euro Term d.o.o. Kiseljak P.J. No. 1.

On 19 May 2025 undertaking Grijanje Mljacka and Unis Energetika submitted responses to the request under numbers UP-06-26-2-027-41/24 and UP-06-26-2-027-42/24.

Also, on 26 May 2025, undertaking Euro Term d.o.o. Kiseljak submitted a response to the request under number: UP-06-26-2-027-43/24.

After reviewing all relevant facts, evidence and documentation submitted by the parties to the proceedings, as well as the data available to the Competition Council and collected during the proceedings, the following has been determined:

Regulations that regulate the activity of production and distribution of heat energy, i.e. positive regulations that regulate the rights and obligations of service users and KJKP Toplane Sarajevo d.o.o. as a service provider are: Law on Public Enterprises in the Federation of Bosnia and Herzegovina ("Official Gazette of the Federation of Bosnia and Herzegovina" No. 8/05, 81/08, 22/09 and 109/12), Law on Communal Activities, ("Official Gazette of the Sarajevo Canton" No. 14/2016, 43/2016, 10/2017, 19/2017, 20/2018 and 22/2019) - ZOKDKS and Regulation on general conditions for production, delivery and use of heat energy ("Official Gazette of the Sarajevo Canton", No. 22/2016 and 4/2023) - Regulation.

According to Article 2 of the Law on Public Enterprises, "A public enterprise is a legal entity registered in the court register as a business company and performing activities of public social interest (energy, communications, utility services, management of public assets and other activities of public social interest) or a legal entity defined as a public enterprise by a special regulation. Activities of public social interest are determined by the municipality, canton and the Federation of Bosnia and Herzegovina, each within its own jurisdiction.

Public enterprises referred to in paragraph 1 of this Article are obliged to make information about their organizational structure, financial operations and performance of administrative tasks within the jurisdiction of administrative bodies performed within the framework of prescribed public authorities available to the public via the public enterprise's website. "

The ZOKDKS determines utility activities, principles, methods of performance and financing, and other issues of importance for the successful performance of utility activities in the territory of the Sarajevo Canton.

Article 2 of the ZOKDKS defines utility activities as the provision of utility services of interest to natural and legal persons, and financing the construction and maintenance of facilities and devices of utility infrastructure as an integrated system in the territory of the Canton.

Article 5, paragraph (1) of the ZOKDKS stipulates that utility activities are of public interest and are performed as public services.

Article 5, paragraph (2) of the ZOKDKS, under the concept of public interest in communal services, implies meeting those needs of urban civilized society that are an indispensable condition for the life and work of citizens, state bodies and other entities in the Canton, while paragraph (3) of the same article, under the concept of public service in communal services, implies communal services from Article 3 of the ZOKDKS, which, as generally beneficial activities, represent a systemic whole of organization and performance through state services, local self-government units, and specially organized independent organizations that are accepted, supported and controlled by the state community.

Article 3, paragraph (1), item c) of the ZOKDKS determines that the supply of thermal energy is included in the services of communal consumption, which implies the production and distribution of steam and hot water through the network to the user's substation, including the substation, i.e. the main shut-off valve located in front of or in the facility, i.e. the central heat energy consumption meter.

Toplane Sarajevo is engaged in the production and distribution of heat energy in the territory of the Sarajevo Canton. Their heating network also includes apartments owned by the Applicants, individuals Dedović Alija, Dedović Nezira and Malić Nihad, residing in Sarajevo at Gradačačka Street 70.

The Applicants have requested from Toplane Sarajevo several times to be disconnected from the district heating system, due to the fact that they do not live in the apartments in question for most of the year, which Toplane did not comply with, explaining in the responses provided that their request for disconnection could not be met, because separating the premises in question from the central heating system would endanger the quality of heat energy, the standard and safety of other users in the facility in accordance with Article 16 of the ZOKDKS and Article 22 of the Regulation on General Conditions for the Production, Delivery and Use of Heat Energy.

Article 17 of the Regulation stipulates that the user may submit a request for termination of the contract for the use of thermal energy and request separation from the central heating system in accordance with this Regulation.

Article 16, paragraph (3) of the ZOKDKS stipulates that the user may not cancel the use of the utility service if technical capabilities do not allow it, or if this would jeopardize the quality of use and the standard of other users, and if this would negatively affect the environment.

On 28 January 2025, the Faculty of Mechanical Engineering of the University of Sarajevo issued a document entitled "Expert Opinion on the Possibility of Individual Disconnection of Users from the Unified District Heating System in the KJKP "Toplane - Sarajevo" System", No.: 06-VL-277/25 of 28.01.2025, which explains various aspects and effects that would arise after the disconnection of individual users from the central heating system.

Among other negative effects that individual disconnection could have on the entire system, which are mentioned in the expert opinion of the Faculty of Mechanical Engineering, we consider it important to highlight the following: increased prices for other users, lower system efficiency, environmental aspects, ethical and financial aspects towards other apartment owners and citizens of the Sarajevo Canton, and especially the possibility of disconnection from a technical and thermal aspect.

The analysis of the possibility of disconnection from a technical and thermal aspect states the following:

"Disconnecting individual users from the district heating system can also be a problem from a technical aspect, because these systems are designed to operate in a single network that includes all users. Some of the problems that may arise in implementation:

"Excluding individual users from the district heating system can also be a problem from a technical aspect, because these systems are designed to operate in a single network that includes all users. Some of the problems that may arise in the implementation:

• Common verticals (risers): Considering the period of development of the district heating system in the Sarajevo Canton, the method of hot water distribution in collective housing facilities was based on a two-pipe heating system with common risers (verticals), mainly with a lower distribution. This type of pipe distribution does not allow for the installation of heat energy meters or the exclusion of individual users, since the same verticals supply the upper floors.
• Heat losses: The standardized method for calculating heat losses according to BAS EN 12831 involves calculating heat losses through all structural parts of the building where there is a temperature difference between the spaces that the structure separates. Considering that collective housing facilities are considered as a single unit when designing the heating system, all spaces with the same purpose have the same internal design temperature. This means that losses through the structures of two neighbouring apartments (e.g. floor, ceiling, internal partition walls) are not taken into account in the standardized calculation. Accordingly, their composition is thermally adapted for internal spaces. Considering the situation when an apartment is disconnected from the district heating system, this space is no longer treated as an internal space, but as an unheated space bordering the environment, which significantly changes the method of calculating heat losses of bordering rooms in neighbouring apartments. In this way, we create conditions of thermal discomfort for "neighbours, since their heating bodies are not dimensioned according to the newly created situation, and thus a potential dissatisfied user of the services of KJKP "Toplane Sarajevo".

The Council of Competition, appreciating the legal regulations and available documentation, emphasizes that Toplane Sarajevo performs its main activity in accordance with the Law on Public Enterprises and the Law on Communal Services of the Canton Sarajevo, and that they are public utility companies, companies that perform communal services of general interest, and their primary goal is not to make a profit, but to provide basic services to the population.

The general characteristics of public utility companies are the method of establishment "local community - municipality, city, canton, activity - provision of communal services (water, garbage collection, heating, public transport, cemeteries, markets..), financing - from the budget of the local community (municipality, city, canton) but also from the collection of services from end users".

When it comes to heating via a district heating system, it is defined as a communal service of general interest, these services are not classic market services, but are regulated by public rules in order to ensure a stable and sustainable supply to all users. As such, the central heating service is not exclusively a matter of free choice of consumers, but is part of a collective system that must function as a whole.

Given that heating in collective housing is not an individual service, but a service that depends on a shared infrastructure, the individual's right to disconnect cannot be absolute, i.e. the general interest of all users outweighs the right of an individual to unilaterally terminate the service. The general interest encompasses the collective well-being of society and is based on the principle that certain services must be available to everyone under equal conditions. Some users of the services may consider that it would be cheaper for them to disconnect from the district heating system, but this would lead to increased costs for the remaining users, technical problems in the operation of the system, as well as the possible collapse of the system due to the smaller number of users.

In accordance with Article 10, paragraph (1) of the Law on Competition, any abuse of a dominant position of one or more undertakings in the relevant market is prohibited. However, in this specific case, the undertaking is not a classic market entity, but a regulated public enterprise that provides a service of public interest and operates as a classic state, or natural monopoly, all due to the technical characteristics of the heating system itself, the protection of the public interest, as well as the special economic relations under which companies entrusted with the provision of public utility services operate.

A natural monopoly exists when a single company can provide a service at a lower price and more efficiently than multiple competitors could, due to economies of scale and infrastructure limitations. The initial investments in natural monopolies are very high (pipes, heating plants, pumps, insulation, network maintenance, etc.) and for these reasons it is economically unjustified to introduce new competitors to the market, which would be unprofitable and economically unsustainable.

However, in order to ensure that natural monopolies do not abuse their position, the state supervises the operations of these companies by adopting regulations that regulate the way they do business, controlling prices and the quality of services.

Given that Toplane Sarajevo has a market share of over 90% on the relevant market for heat supply in the Sarajevo Canton, it is undoubtedly a state, or natural monopoly, and that they do not have adequate competitors on the market, or that they operate under state regulation and are not subject to full market competition. State monopoly ensures the sole or exclusive role of the state in performing certain activities (heating, gas, post, water supply and sewage, etc.) because it is the only way in which the state, in this case the Canton Sarajevo, can ensure the safe and unhindered performance of these activities, which is primarily in the interest of all citizens and all other undertakings that use these services.

EU law also recognizes the concept of services of public interest - services that states can regulate and restrict competition for the sake of the public interest, which is specifically regulated by Article 106(2) of the Treaty on the Functioning of the EU, according to which monopolies are permitted to a certain extent when they serve the provision of services of public interest, and when competition rules should be applied to such undertakings only if this does not jeopardise the smooth performance of the task for which these undertakings were established, i.e. the task of providing services of public interest.

It is evident that in most cities there is no market competition because it is technically impossible for multiple undertakings to use the same heating network, users are allowed to disconnect from the network, but with decisions that limit the right to disconnect, there are

technical and financial conditions that are difficult to meet, the consent of all tenants is required, and such conditions can be interpreted as an obstacle to free choice and a potential abuse of market power.

In accordance with the above, the Competition Council points out that Toplane Sarajevo, in relation to the Claimant's request for disconnection from the central heating system, acted in accordance with the legal authorities prescribed for them by the Law on Communal Activities of the Sarajevo Canton, as well as by the Regulation on General Conditions for the Production, Delivery and Use of Thermal Energy, and concluded that the conditions set out in Article 16 of the ZOKKS and Article 22 of the Regulation were not met.

Disconnecting an individual apartment from the central heating system is a complex, contentious and often difficult procedure, which includes legal, technical and administrative obstacles.

The Competition Council has indisputably established that there is a possibility of disconnection from the central heating system, which is regulated by the above-mentioned legal legislation, however, the Competition Council is not able to assess the fulfilment of the technical conditions prescribed by law regarding the disconnection of the heating service, and for all assessments of such technical and other conditions for disconnection and termination of the contract with Toplane, users should contact other competent institutions/courts.

According to all the above mentioned, the right of the user to disconnect from the heating system is not explicitly prohibited, but is limited by regulations, provided that it does not disrupt the operation of the system, does not negatively affect the heating of other users and bear the costs if they continue to use the infrastructure.

If the heating system is vertical, disconnecting one apartment may cause technical problems. The heating system is not designed to function if the apartment is disconnected (vertical installations that pass through the apartments, common for apartments of earlier construction). Pipes pass through several apartments vertically, it is difficult to isolate one apartment without affecting the others, disconnection may cause uneven heating of neighbouring apartments, especially if pipes pass through the apartment that continue to transfer heat to other users. In vertical systems, there is a well-founded technical obstacle to disconnection without changing the installations for the entire building.

If the user were to be disconnected, in many cases, they would still use the infrastructure and have an indirect benefit, and even in the case of disconnection, the user pays a fixed part of the costs, but does not pay for variable consumption. Fixed costs borne by all connections even if the apartment is disconnected, common costs for heating common parts, e.g. heating verticals, common rooms, are charged.

Therefore, given that the case in question is a regulated market in which the Canton Sarajevo entrusted the heating supply service, as a service of public interest, to Toplane Sarajevo, as a public service under the supervision of the authorities, and taking into account the above-mentioned argumentation explaining all the negative effects of individual disconnection from the heating system, the Competition Council has determined that the case in question does not involve an abuse of dominant position under any point of Article 10, paragraph (1) of the Law on Competition by Toplane Sarajevo.

Accordingly, it was decided as in point 1 of the operative part of this Decision.

Given that the case in question concerns the relevant market for services of general public interest, the performance of which has been entrusted by the state/canton to the Public Enterprise Toplane Sarajevo, and the absence of active competition in the relevant market, the application of competition protection rules and the jurisdiction of the Competition Council is limited to the same, but which, on the other hand, should not be understood as the right of the state/canton to be passive in relation to these entrepreneurs, but measures should be taken to ensure that they are subject to the application of competition law to the greatest extent possible and as soon as possible.

In this regard, special efforts should be made to harmonize the regulations with the regulatory framework of the European Union in the field of energy efficiency, especially Directive (EU) 2018/2002 of the European Parliament and the Council of 11 December 2018 on the amendment of Directive 2012/27/EU on energy efficiency (hereinafter: Directive 2018/2002). Directive 2018/2002 particularly emphasizes the importance of the issue of individual measurement and calculation of heat energy consumption. In order to achieve transparency of accounting for individual heat energy consumption and thereby facilitate the implementation of separate measurement, member states must ensure transparent and publicly available national rules on the distribution of heating, cooling and hot water consumption costs in households, in multi-apartment buildings and multi-purpose buildings. In addition to transparency in the metering and billing of heat consumption, Member States, in the context of implementing provisions on the costs of access to information on metering, billing and consumption for heating, cooling and domestic hot water, may consider taking measures to strengthen market competition in the provision of sub-metering services and thereby help ensure that all costs borne by final consumers are reasonable.

Also, the actions of Toplane Sarajevo regarding 11,427 users of residential heating services (with 3 or more unpaid bills) which make up 23% of the total number of residential users, who are not excluded from the heating system due to debts, are highlighted precisely because the exclusion of an individual user in collective housing buildings has negative effects on other users of the service in that facility (who regularly pay their obligations for utility services), in order to ensure the function of general interest (so that the possible exclusion of premises would not disrupt the district heating system, i.e. so that other residential spaces in collective housing facilities would not be cooled).

The Competition Council also considers it important to note the comparative practice in the countries of the region (Slovenia and Croatia) in which individual disconnection from the heating system in collective residential buildings is also not allowed, except in the case when the entire building is disconnected, but also in some other countries of the European Union (Germany, Sweden, Denmark, etc.) in which the district heating system also operates under state regulation and where the rules of market competition are partially limited.

Regarding the allegations from the request in which the Applicants note that the Competition Council has already decided in a similar case (the Ema Hodžić case), the Competition Council emphasizes that the case in question has been resolved through court proceedings and that it was not a case before this Council.

When determining the costs of the procedure, the Competition Council took into account the provisions of the Law on Administrative Procedure, namely Article 105, paragraph (2) of the Law on Administrative Procedure, when two or more parties with opposing interests participate in the procedure, the party that initiated the procedure, and to whose detriment the procedure was ended, is obliged to compensate the opposing party for justified expenses incurred by that party by participating in the procedure. If one of the parties is partially successful in its claim, it is obliged to compensate the other party for the costs in proportion to the part of its claim in which it was unsuccessful.
According to Article 105, paragraph (3) of the Law on Administrative Procedure, costs for legal representation are reimbursed only in cases where such representation was necessary and justified.

Article 108, paragraph 1) of the same Law stipulates that in the decision ending the procedure, the authority that issues the decision determines who bears the costs of the procedure, their amount, and to whom and within what time frame they are to be paid.

When calculating the total costs of the procedure, the Competition Council took into account the provisions of the Law on Administrative Procedure, the Law on Lawyers ("Official Gazette of the Federation of BiH" No. 40/02, 29/03, 18/05 and 68/05) and the Tariff on Awards and Reimbursement of Expenses for the Work of Lawyers ("Official Gazette of the Federation of BiH" No. 22/04 and 24/04) (hereinafter: Tariff).

The power of attorney of the Claimant, dated 17 September 2024, along with the submitted Claim, also submitted a request for reimbursement of the costs of the procedure in the total amount of 1,367.00 KM plus VAT, plus 40% on behalf of the representation of several persons, plus an administrative fee in the amount of 1,000 KM.

The representative of the undertaking Toplane Sarajevo at the oral hearing held on 5 March 2025, requested to adopt the costs of representation at the hearing and the costs of the composition of the response to the Claim in the amount of 2802.00 KM plus VAT.

As stated above, Article 105, paragraph 2 of the Law on Administrative Procedure, stipulates that when two or more parties with opposing interests participate in the procedure, the party that initiated the procedure, and to whose detriment the procedure was ended, is obliged to compensate the opposing party for justified expenses incurred in the procedure, and the attorney of the Opposite Party is recognized for the necessary and justified costs of representation in this procedure.

The Competition Council has determined that the amount of costs calculated in the Cost Sheet of the opposing party's Attorney was not calculated in accordance with the Tariff on Fees and Compensation for Lawyers' Work ("Official Gazette of the Federation of Bosnia and Herzegovina" No. 22/04 and 24/04) and that the costs stated therein are lump sum and excessive, and are therefore recognized in the amount of 50% of the stated amount, i.e. 1,401.00 KM, plus VAT.

Based on the above, the Competition Council has decided as in point 3 of the operative part of this decision.

In accordance with Article 2, tariff number 107, paragraph (1), item f) of the Decision on the amount of administrative fees in connection with procedural actions before the Competition Council («Official Gazette of BiH», number 30/06, 18/11 and 75/18), the Claimant is obliged

to pay an administrative fee in the total amount of 1,500.00 KM to the benefit of the Budget of the institutions of Bosnia and Herzegovina.

In accordance with the provision of Article 3, paragraph (2), item b) of the Decision on the amount of administrative fees in connection with procedural actions before the Competition Council, the Claimant is obliged, after making the payment, to submit the payment slip as evidence of the payment of the administrative fee to the Competition Council, before submitting the Decision.

If the Claimant fails to pay the administrative fee, the Competition Council will initiate the procedure for forced collection according to the procedure prescribed in Article 18 of the Law on Administrative Fees of Bosnia and Herzegovina ("Official Gazette of BiH" No.: 16/02, 19/02, 43/04, 8/06, 76/06, 76/07 and 3/10).

Accordingly, the Council of Competition has decided as in point 2 of the operative part of this Decision.

Legal remedy

No appeal is allowed against this Decision.

The dissatisfied party may initiate an administrative dispute before the Court of Bosnia and Herzegovina within 30 days from the date of receipt or publication of this Decision.

President

Ivo Jerkić

Delivered to:

- Claimants (Lawyer- Sanela Gorčić street Đoke Mazalića 1/1, Sarajevo)
- KJKP Toplane Sarajevo - street Sermira Frašte No. 22, Sarajevo
- File