

**BOSNA I HERCEGOVINA**  
*Konkurencijsko vijeće*



**БОСНА И ХЕРЦЕГОВИНА**  
*Конкуренијски савјет*

## **DECISION**

on the Request for Initiation of Proceedings by the Undertaking "UNIFARM" d.o.o.  
Lukavac against the Government of the Herzegovina-Neretva Canton

"Abridged Version"

**Sarajevo,  
September 2025.**



Broj: UP-03-26-3-033-81/21  
Sarajevo, 30 September 2025

Pursuant to Article 25, paragraph (1), item e) and Article 42, paragraph (1), item a) of the Law on Competition ("Official Gazette of BiH", No. 48/05, 76/07 and 80/09), and Article 105 of the Law on Administrative Procedure ("Official Gazette of BiH", No. 29/02, 12/04, 88/07, 93/09, 41/13 and 53/16), in the proceedings initiated upon the Request for Initiation of Proceedings and Determination of Interim Measures of the Undertaking "UNIFARM" d.o.o. Lukavac, Bistarac, Novo naselje bb, 75300 Lukavac, represented by lawyer Zlatan Balta, Fra Anđela Zvizdovića 1, 71000 Sarajevo, against the Government of the Herzegovina-Neretva Canton, Stjepana Radića 3, 88000 Mostar, represented by lawyer Džemil Sabrihačizović, in order to establish the existence of a prohibited agreement from Article 4 paragraph (1) point b) of the Law on Competition, and acting according to Judgment of the Court of Bosnia and Herzegovina number: S1 3 U 043915 22 U dated 04.08.2024., the Competition Council of Bosnia and Herzegovina at the 34th (thirty-fourth) session held on September 30, 2025., adopted

### **DECISION<sup>\*1</sup>**

1. The request of the undertaking "UNIFARM" d.o.o. Lukavac, Bistarac, Novo naselje bb, 75300 Lukavac, filed against the Government of the Herzegovina-Neretva Canton, Stjepana Radić 3, 88000 Mostar, for the purpose of determining the existence of a prohibited agreement referred to in Article 4, paragraph (1), item b) of the Law on Competition, resulting from the adoption of the Decision on amending and supplementing the Decision on determining the list of medicines prescribed and dispensed at the expense of the funds of the Health Insurance Institute of the Herzegovina-Neretva Canton ("Official Gazette of the HNK", No. 04/21 of 08.06.2021), is rejected as unfounded.
2. The request for reimbursement of the costs of the proceedings of the undertaking "UNIFARM" Lukavac, Bistarac, Novo naselje bb, 75300 Lukavac d.o.o. is rejected as unfounded.
3. The undertaking "UNIFARM" d.o.o. Lukavac, Bistarac, Novo naselje bb, 75300 Lukavac is ordered to pay the amount of 631.80 KM to the authorized representative of the Government of the Herzegovina-Neretva Canton, Stjepana Radića 3, 88000 Mostar, as part of the costs of the procedure, within eight days from the date of receipt of this Decision.
4. This Decision is final and will be published in the "Official Gazette of BiH", the official gazettes of the entities and the Brčko District of Bosnia and Herzegovina.

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<sup>1</sup> \* - short version of the decision in accordance with Article 44, paragraph (2) of the Law on Competition

## **Exposition**

This Decision implements the Judgment of the Court of Bosnia and Herzegovina No.: S1 3 U 043915 22 U of 8 April 2024 (hereinafter: the Judgment), by which the Court of Bosnia and Herzegovina accepted the Complaint of the undertaking "UNIFARM" d.o.o. Lukavac, Bistarac, Novo naselje bb, 75300 Lukavac (hereinafter: "UNIFARM" or the Applicant), annulled the Decision of the Competition Council of Bosnia and Herzegovina No.: UP-03-26-3-033-42/21 of 5 August 2022 and returned the case for review.

The Competition Council of Bosnia and Herzegovina (hereinafter: the Competition Council), received the Judgment on 11 April 2024 under the number: UP-03-26-3-033-54/21.

According to Article 62 of the Law on Administrative Disputes ("Official Gazette of BiH", No. 19/02, 12/04, 88/07, 83/08 and 74/10), when the court annuls an act against which an administrative dispute was initiated, the case is returned to the state it was in before the annulled act was adopted.

### **1. Procedure according to the Request for the initiation of the procedure and the determination of temporary measure**

The Competition Council received on 2 August 2021, under number: UP-03-26-3-033-1/21 Claim for initiation of proceedings and determination of interim measures (hereinafter: Claim) by which the undertaking "UNIFARM" d.o.o. Lukavac, Bistarac, Novo naselje bb, 75300 Lukavac (hereinafter: "UNIFARM" or the Applicant), represented by attorney Zlatan Balta, Fra Anđela Zvizdovića 1, 71000 Sarajevo, requests the initiation of proceedings and determination of interim measures due to the infringement of the provisions of Article 4, paragraph (1), item b) of the Law on Competition by the Government of the Herzegovina-Neretva Canton, Stjepana Radića 3, 88000 Mostar (hereinafter: the Government of the HNK or the Opposing Party).

The Claim was accompanied by a power of attorney for representing the undertaking "UNIFARM" in the proceedings pursuant to the Claim in question, which was issued on 28 July 2021 to attorneys Nedžida Salihović – Whalen and Zlatan Balta, Fra Anđela Zvizdovića 1, 71000 Sarajevo.

Upon review of the submitted Claim, the Competition Council determined that it was not complete, within the meaning of Article 28 of the Law on Competition, and in accordance with Article 31, paragraph (1) of the Law, requested a supplement.

Supplementation of the Claim was requested by act number: UP-03-26-3-033-2/21 of 6 August 2021, by act number: UP-03-26-3-033-5/21 of 13 September 2021 and by act number: UP-03-26-3-033-7/21 of 29 September 2021.

The Applicant submitted the requested amendment to the Claim with submissions received on 18 August 2021 under the number: UP-03-26-3-033-3/21, on 20 August 2021 under the number UP-03-26-3-033-4/21, on 24 September 2021 under the number UP-03-26-3-033-6/21, on 8 October 2021 under the number: UP-03-26-3-033-8/21, on 20 October 2021 under number: UP-03-26-3-033-9/21 and on 10 November 2021 under number: UP-03-26-3-033-10/21.

After completing the Claim, the Competition Council issued a Confirmation of Receipt of a complete and correct Claim to the Applicant on 15 December 2021, under the number: UP-03-26-3-033-11/21, pursuant to Article 28, paragraph (3) of the Law on Competition.

## **2. Parties to the proceedings**

The parties to the proceedings are the undertaking "UNIFARM" d.o.o. Lukavac, Bistarac, Novo naselje bb, 75300 Lukavac, as the Applicant and the Government of the Herzegovina-Neretva Canton, Stjepana Radić 3, 88000 Mostar, as the Opposing Party.

....

## **4. Contents of the Claim for Initiation of Proceedings and Determination of Interim Measures and the Decision of the Competition Council on Initiation of Proceedings**

The Claim, as well as the amendments to the Claim submitted by the Applicant at the request of the Competition Council, essentially state the following:

- On 24 May 2021 the Government of the HNK adopted the Decision amending and supplementing the Decision on determining the list of medicines prescribed and dispensed at the expense of the funds of the Health Insurance Institute of the Herzegovina-Neretva Canton ("Official Gazette of the HNK", No. 04/21) (hereinafter: the Decision), which prescribes the new Positive A list of medicines of the Herzegovina-Neretva Canton (hereinafter: the new Positive List of Medicines of the HNK), which has been in effect since 23 August 2021. The aforementioned Decision repeals the Decision on amendments to the Decision on determining the list of medicines prescribed and dispensed at the expense of the funds of the Health Insurance Institute of the Herzegovina-Neretva Canton ("Official Gazette of the HNK", No. 04/19) (hereinafter: the previous Decision), which prescribed the previous Positive A list of medicines of the Herzegovina-Neretva Canton (hereinafter: the previous Positive List of Medicines of the HNK).

- When compiling the new Positive List of Medicinal Products of the HNK, the Government of the HNK omitted 34 medicines from the list of the manufacturers of medicines represented by the Applicant, and included in the list a limited number of medicines of the same type (category) from other (primarily domestic) manufacturers that have the same price as the medicines of the Applicant. By omitting the mentioned medicines, for which the Applicant requested inclusion in the list, the Government of the HNK denied the Applicant access to the relevant market. In this way, the Government of the HNK prevented, restricted and distorted market competition in the relevant market by restricting and controlling the market, which constitutes a collusive agreement within the meaning of Article 4, paragraph (1), item b) of the Law on Competition.

....

- The decision is not in accordance with the Law on Medicines and the Rulebook on detailed criteria for the selection of medicines, the procedure and manner of drawing up lists of medicines in the Federation of Bosnia and Herzegovina, the manner of adding and removing medicines from the list of medicines, the obligations of the ministry, the health insurance institute, and the manufacturers and distributors of medicines included in the lists of medicines, as well as the use of medicines (hereinafter: the Rulebook on detailed criteria for the selection of medicines, the procedure and manner of drawing up lists of medicines in the FBiH), as hierarchically higher regulations. Article 9 of the Law on Medicines and Articles 9 and 10 of the Rulebook on detailed criteria for the selection of medicines, the procedure and manner of drawing up lists of medicines in the FBiH, prescribe how lists are

adopted and the exact procedure for removing and adding medicines to the list. In addition, point IX of the Decision on the List of Compulsory Health Insurance Medicines of the FBiH stipulates that when developing positive lists of medicines in cantons, cantons are obliged to apply the criteria set out in Articles 9 and 11 of the Rulebook on detailed criteria for the selection of medicines, the procedure and manner of developing lists of medicines in the FBiH, as well as the procedure and manner of developing a positive list of medicines in cantons, which is set out in the provisions of the same Rulebook. However, the Government of the HNK did not adhere to the above-mentioned procedure when developing the new Positive List of Medicines of the HNK.

....

- The Applicant's position is that the Law on Competition applies to the Government of the HNK and that it is considered an undertaking within the meaning of Article 2, paragraph (1), item b) of the Law on Competition. In this regard, the Applicant states that the Competition Council has issued several decisions in cases concerning the omission of medicines from the essential lists of medicines in which it is unfoundedly stated that the governments of the Cantons, or the Federation of Bosnia and Herzegovina, are not considered undertakings within the meaning of Article 2 of the Law on Competition. The Applicant believes that this position of the Competition Council is inconsistent, unfounded and unlawful, emphasizing that the Competition Council has previously issued a large number of decisions in which the Law on Competition was applied to public administration and public authority bodies, finding that such bodies committed violations of the Law on Competition. An example of this is Decision No.: 02-26-3-014-22-II/15 of 8 March 2015 ("UNIFARM" against the Government of the Tuzla Canton), where it was found that the situation was essentially identical to that in the proceedings in question, that the Government of the Tuzla Canton had concluded a prohibited agreement under Article 4, paragraph (1), item b) of the Law on Competition, which was confirmed by the Court of BiH in Judgment No.: S1 3 U 021563 16 U of 9 June 2017.

- It is not disputable that the Law on Competition is based on the competition law of the European Union, nor is it in dispute that the law of the European Union can be directly applied to most substantive issues from the Law on Competition. Also, the practice of the European Commission that competition law does not apply to public bodies when performing public functions is not in dispute. However, the Competition Council cannot refer to the practice of the European Union in the proceedings in question, when the Law on Competition expressly gave the task and authority to the Competition Council to apply the Law on Competition to public bodies and authorities and administrations when exercising their public powers.

....

- Persons representing foreign drug manufacturers and generic drug manufacturers (such as the Applicant) are completely denied access to the aforementioned market, even though all of the subject medicines represented by the Applicant are validly registered with the Agency for Medicines and Medical Devices of Bosnia and Herzegovina (hereinafter: ALMBIH) for marketing in Bosnia and Herzegovina.

- The Government of HNK directly affects the market, because those medicines that are omitted from the list do not have access to the market at all, i.e. they are completely excluded from the market, whereby the Government of HNK directly limits the number of medicines and competitors on the market, i.e. prevents and limits competition, which in accordance with the Law on Competition is a prohibited agreement in the sense of Article 4, paragraph (1) point b).

- The Decision explicitly states that the reason for excluding foreign drug manufacturers from the list is to protect and favor domestic manufacturers. For these claims, the Applicant refers to the provisions of Section II, indent (2) of the Decision, which states that in order to support the domestic pharmaceutical industry, the Positive List of Medicines must include all protected names of drugs of the domestic pharmaceutical industry and originator drugs within the generic name of the drug, form and strength represented on the Positive List of the HNK. In addition, the provisions of Section II, indent (3) of the Decision are also cited, which states that the Positive List of Medicines, within the established generics, forms and strengths of drugs, may include, if necessary, protected names of foreign manufacturers if the Positive List of Medicines does not include domestic manufacturers, including the originator, and when only one domestic manufacturer, or originator, is represented on the list of medicines. In this way, access to the relevant market is limited to foreign drug manufacturers and generic drug manufacturers, given that they have not been placed on the new Positive List of Medicines of the HNK.

- The adoption of the Decision resulted in the restriction and distortion of competition in the relevant market, when certain medicines (of foreign manufacturers) are completely prevented from accessing the relevant market, and on the other hand, domestic manufacturers and originators are favored, which leads to a reduction in competition between medicines on the market and less choice for patients (users of medicines), but also for doctors who prescribe medicines, which may lead to a threat to the well-being of patients.

....

- All medicines that are registered on the market of Bosnia and Herzegovina, for which the holders of the market license request to be included in the list, would have to be included in the new Positive list of drugs of the HNK, in order to ensure equal competition on the market, equal treatment of all manufacturers, and more choice of medicines for medicine users. Limiting the number of bidders/producers who can offer their product on a certain market is a direct and indisputable restriction of competition, which can only be justified by exceptional circumstances, which do not exist here. The applicant points out that the federal and cantonal bodies can limit the positive/essential lists of medicines only in terms of which type of medicines (which generic name) will be included in the list and which will not, i.e. for which diseases the medicines will be included in the essential list.

....

- In view of all the above, the Applicant believes that the Decision and the omission of the 34 medicines represented by the Applicant from the new Positive List of the HNK constitute a prohibited agreement contrary to Article 4, paragraph (1), item b) of the Law on Competition and that for the above reasons the Decision must be declared null and void, put out of force and the HNK Government ordered to enable all participants to access the relevant market, as well as to include all medicines with the same generic names, under equal conditions, on the said positive list of medicines, including the 34 medicines of the Applicant.

- The applicant requests the Competition Council to adopt an interim measure in addition to initiating proceedings in the case in question, in accordance with Article 40 of the Law on Competition. Applicant believes that it is indisputable that the Government of the HNK committed a violation of the Law on Competition and that the same or similar types of procedures and actions have already been assessed on several occasions as a violation of Article 4, paragraph (1), item b) of the Law on Competition by both the Competition Council and the Court of BiH. Accordingly, it proposes that the Competition Council adopts an

interim measure that would put the Decision out of force for a period of three months, and that the previous Positive List of HNK medicines be applied for the mentioned period.

In accordance with the above, the Competition Council assessed that the violations of the Law on Competition, to which the Applicant points, cannot be established without conducting proceedings, and at its 97th session held on 16 December 2021, it adopted a Conclusion on the initiation of proceedings, number: UP-03-26-3-033-13/21 (hereinafter: the Conclusion), in order to determine the existence of a prohibited agreement referred to in Article 4, paragraph (1), item b) of the Law on Competition.

In addition to initiating proceedings, the Conclusion decided on the request for a decision on a temporary measure that the Applicant requested in the Claim.

The Competition Council rejected the request for a temporary measure by the Conclusion, stating that in accordance with the provisions of Article 40 of the Law on Competition, it oversees the adoption of a temporary measure ex officio and that it is independent in making a decision, i.e. the participants in the proceedings are not authorized to submit a request for a decision on a temporary measure.

## **5. Procedure pursuant to the Conclusion on Initiation of Proceedings**

The Competition Council by document number: UP-03-26-3-033-17/21 dated 16 December 2021, delivered the Conclusion to the Applicant.

....

The Opposing party, by submission received on 8 February 2022. under number: UP-03-26-3-033-22/21, within the approved deadline, submitted to the Competition Council a response to the Request, which essentially states the following:

- The Opposing party completely denies the factual allegations of the Applicant and disputes the merits of the proposal for the determination of prohibited competitive conduct, and proposes Request to be rejected as unfounded.

....

- The provisions of Article 5, paragraph (5) of the Law on Medicines stipulate that the procedure for the selection of medicines, the procedure and method of creating the list of medicines in the FBiH, the way of adding and removing medicines from the list, the obligations of the Ministry of Health and the Health Insurance Institute, and the manufacturers and distributors of medicines included in the list, as well as the use of medicines, are determined by the regulations of the Federal ministry. The provisions of Article 8 of the Law on Medicines authorize cantonal governments to adopt a list of medicines that can be prescribed and dispensed at the expense of the canton's compulsory health insurance funds, which must also include medicines included in the federal list. Also, according to the provisions of Article 9 of the Law on Medicines, it was determined that the positive list of medicines of the canton, as well as the list of medicines in hospital and health care in the area of the canton, may contain a limited number of protected names of medicines. In order to implement the Law on Medicines, the Government of the Croatian National Council adopted a new Positive List of Medicines, whose A list has 725 forms, strengths and packaging, which is 263 fewer than the previous list of medicines, whose A list had 988 forms, strengths and packaging of medicines.

....

- The Applicant interprets the provisions of Article 2 of the Law on Competition in an inconsistent and unacceptable manner when it states that the provisions of that article expressly stipulate that the Law on Competition is applicable to state administration bodies and local self-government bodies when they directly or indirectly participate in or influence the market. This provision is taken out of context, given that an essential condition for the application of the Law on Competition is that an undertaking is engaged in the production, sale and provision of services, or participation in the trade of goods and services, directly or indirectly.

....

- It is evident that the Competition Council and the Court of BiH, for a long period of time after the adoption of the Law on Competition, have extensively and indiscriminately applied Articles 2 and 4 of the Law on Competition to public authorities. Unlike other European countries, Bosnia and Herzegovina has applied competition rules to public authorities, regardless of whether they act in the exercise of public authority or appear in the capacity of an undertaking. The Judgment of the Court of BiH No. S1 3 U 024742 18 U 2 of 05.04.2018 clearly states the following position: "When a public institution or public authority appears on the market, in order to assess whether their actions may fall within the scope of Article 4 of the Law on Competition, it is necessary, first of all, to examine whether it is the exercise of public authority or an action that can only be taken by an undertaking".

- Having in mind the cited position of the Court of BiH, the Opposing Party points out that by adopting the Positive List of Medicines in question, it did not act as an undertaking and a market participant, but rather acted in the status of a state body, within its constitutional and legally established competences, including the express authority and obligation set out in Article 33 of the Law on Health Insurance and Article 8 of the Law on Medicines. The provisions of Article 9 of the Law on Medicines establish an explicit basis for cantonal governments to limit the number of protected names of medicines on the positive list of cantons. Accordingly, it is notorious that no undertaking can adopt a positive list of medicines, but that this is within the exclusive competence of the Government as a state body. Therefore, there is no argument that the Government of the HNK acted as a market entity in the process of establishing the list of medicines, nor that the purpose of the list of medicines is to restrict competition on the medicines market, or that the Decision can be considered a prohibited agreement within the meaning of Article 4, paragraph (1) of the Law on Competition. In this regard, the case law of the European Court of Justice has held that competition rules do not apply to activities related to the exercise of public office (Wouters case, C-309/99, paragraph 57).

- The Decision was adopted by the Government of the Croatian National Council as a segment of the executive branch and it represents a general act of public authority, it is part of national legislation and is not the product of an agreement between two or more subjects, precisely because it was adopted by the public authority. Accordingly, the adoption of the Decision does not constitute an economic activity, nor can it be considered a prohibited agreement. This position is confirmed by the judgments of the Court of BiH number S1 3 U 021277 16 U of 10 November 2017 and number S1 3 U 022692 16 U of 10 November 2017.

....

- The Applicant's allegations that the Government of the HNK, by adopting the Decision, prevented or restricted the Applicant from participating in the medicines market under equal conditions are incorrect. Given that the Government of the HNK decided only on the scope and manner of exercising citizens' rights under health insurance by the Decision. No



medicine, or no manufacturer, that is duly registered, is excluded or prevented from placing its products on the market, because this is not the subject of the Decision at all. Manufacturers, or sellers of all duly registered medicines have access to the market, regardless of whether they are on the positive list or not.

....

## **10. Relevant market**

The relevant market, within the meaning of Article 3 of the Law on Competition and Articles 4 and 5 of the Decision on the Determination of the Relevant Market, is the market for certain products/services that are the subject of the activity in a certain geographic market.

....

Following the above, the relevant market in the proceedings in question is the market for the supply of medicines that are prescribed and dispensed to insured persons at the expense of the Health Insurance Institute of the HNK in the Herzegovina-Neretva Canton.

## **11. Continuation of the proceedings according to the Judgment of the Court of Bosnia and Herzegovina**

On 11 April 2024, under number: UP-03-26-3-033-54/21, the Competition Council received the Judgment by which the Court of Bosnia and Herzegovina accepted the Complaint of the undertaking "UNIFARM", annulled the Decision of the Competition Council No.: UP-03-26-3-033-42/21 of 05.08.2022. and returned the case for review.

....

In accordance with the request of the Opposing Party, the Competition Council canceled the scheduled date of the oral hearing and set the new date for 30 May 2025, of which the Applicant was notified by act No.: UP-03-26-3-033-76/21 of 10 April 2025, and the Opposite Party by document number: UP-03-26-3-033-77/21 dated 4 October 2025.

....

### **11.1. Oral hearing according to the Judgment of the Court of Bosnia and Herzegovina**

By the judgment of the Court of Bosnia and Herzegovina, the Competition Council was ordered, among other things, to hold an oral hearing in the proceedings in question, which was held accordingly on 30 May 2025, of which the minutes were drawn up under the number: UP-03-26-3-033-78/21.

The oral hearing, as representatives of the parties in the proceedings, was attended by the representative of the Applicant, attorney Zlatan Balta from Sarajevo, and the representative of the Opposing Party, attorney Džemil Sabrihafizović from Sarajevo.

The applicant essentially stated the following:

- It fully maintains its previous allegations and submissions from the proceedings in question, including the allegations and submissions from the administrative dispute before the Court of BiH.
- The Competition Council is obliged to apply and respect the legal understandings of the Court of BiH. In this regard, it points out that the Court of BiH, on page 4 of the Judgment, indisputably established that the Government of the HNK is an undertaking within the meaning of Article 2, paragraph (1), item b) of the Law on Competition. It also points out that the Court of BiH, on page 5 of the Judgment, established that the limitation of the

number of medicines on the essential list has no basis in the Law on Medicines, and that it is indisputable that the Government of the HNK, as an undertaking, has adopted a regulation restricting market competition, all with the aim of protecting domestic production of medicines.

The opposing party essentially stated the following:

- It stands by the allegations and proposals that it emphasized in the previous procedure before the Competition Council, and especially in its Response to the request of 7 February 2022, as well as the allegations highlighted during the oral hearing held on 31 March 2022. The Government of HNK also stands by the allegations and proposals highlighted in the administrative dispute before the Court of Bosnia and Herzegovina in which it participated as an interested party.

....

### **13. Established facts and assessment of evidence**

After reviewing all relevant facts and evidence established during the proceedings, the Competition Council, by individually assessing each piece of evidence, determined the following:

....

Evaluating all the aforementioned evidence together, the Competition Council considers the following to be the most important for the proceedings in question:

- The case in question concerns a relevant market with limited competition, which was formed and regulated in accordance with the Law on Medicinal Products and the bylaws adopted on its basis.
- The Government of the HNK, in accordance with Article 2, paragraph (1) of the Law on Competition, cannot be considered an undertaking, because it is an executive body that adopted the Decision within its competence, while not carrying out economic activities on the relevant market, in terms of production, sale of goods and provision of services. Given that the Government of the HNK is not considered an undertaking in the present case, the provisions of the Law on Competition cannot be applied to it.
- The Competition Council, in accordance with the provisions of Article 43, paragraph (7) of the Law on Competition, may use the case law of the European Court of Justice to assess the case in question. According to the case law of the European Court of Justice, the competition rules of the Treaty establishing the European Community do not apply to activities which, by their nature, objectives and the rules by which they are implemented, do not fall within the scope of economic activities. The Decision is a bylaw act adopted by the Government of the HNK within its competence and does not fall within the scope of economic activities of the Government of the HNK. Using the case law of the European Court of Justice, the Competition Council considers that the competition rules cannot be applied to the Decision in question.
- The Decision as a bylaw is a unilateral act, which applies equally to all participants in the relevant market, and not an agreement between two or more participants in the relevant market that would give another participant a market advantage over other competitors and thus prevent, restrict or distort competition in the relevant market. Apart from the Government of the HNK, no other undertaking participated in the adoption of the Decision,

so in that sense there could be no agreement, and therefore no prohibited agreement prescribed by Article 4, paragraph (1), item b) of the Law on Competition.

*Based on all the above, the Competition Council has determined that the Decision does not constitute a prohibited agreement under Article 4, paragraph (1), item b) of the Law on Competition, and has made the decision as in item 1 of the enacting clause of this Decision.*

#### **14. Costs of the proceedings**

....

Article 105, paragraph 1 of the Law on Administrative Procedure stipulates that, as a rule, each party shall bear its own costs of the procedure (which include the costs of legal representation), and Article 105, paragraph 2 of the same Law 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 concluded, is obliged to compensate the opposing party for justified costs incurred in the procedure.

....

*Given that the Applicant initiated the proceedings and that the proceedings were concluded to its detriment, the Competition Council rejected the Applicant's request for reimbursement of the costs of the proceedings, as decided in point 2 of the operative part of this Decision.*

....

When calculating the total costs of the procedure, the Competition Council took into account the provisions of the Tariff on Fees and Compensation of Costs for the Work of Lawyers (Official Gazette of the Federation of BiH, No. 43/25) (new Tariff) and the Tariff on Fees and Compensation of Costs for the Work of Lawyers (Official Gazette of the Federation of BiH, No. 22/04 and 24/04) (hereinafter: the old Tariff).

....

The proxy of the Opposite Party, in accordance with Article 105, paragraph 2 of the Law on Administrative Procedure, has the right to compensation for the costs of the proceedings in question, provided that they are calculated in accordance with the old Tariff, given that the legal services for which reimbursement of costs is requested were performed before the entry into force of the new Tariff.

Based on the submitted bill of costs, and in accordance with Article 18 of the old Tariff, the Competition Council calculated the costs of the attorney of the Opposite Party, lawyer Džemil Sabrihafizović, consisting of the response to the Request in the amount of 240.00 KM and representation at the oral hearing in the amount of 300.00 KM, which is a total of 540.00 KM.

Given that the proxy of the Opposite Party is liable for value added tax (VAT), the calculated costs are included in the VAT amount of 91.80 KM, so they total 631.80 KM.

*In accordance with the above, the Applicant is obliged to pay the amount of 631.80 KM to the Attorney of the opposing party for the costs of the proceedings, as decided in point 3 of the enacting clause of this Decision.*

#### **15. Legal remedy**

No appeal is allowed against this Decision.

A 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**

**Ninela Salihbašić**