

# Competition Council of Bosnia and Herzegovina

Turkish Competition Authority's 20th Anniversary Conference,  
COMPETITION SUMMIT

## **Competition Law Enforcement in the Eurasian Countries: Challenges and Opportunities**

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# Introduction

- Bosnia and Herzegovina is a young country (citizens of BiH have voted its independence on 1 March 1992) in which the Competition Council began its work in 2004. The basic task of competition law is to protect the freedom of competition among the undertakings.
- From that period to date, significant developments are evident in the market in terms of the application of the Law on Competition.
- Namely, undertakings have realized what the CC's competences are, that the Law on Competition and CC can prevent prohibited competitive activities and concentrations that may have a negative impact on competition.

# Legislative and Institutional Framework of the CC

- CC represents an independent authority mandated to ensure consistent implementation of the Law Competition;
- First Law on Competition was adopted in 2001;
- Second Law on Competition was adopted in July 2005; The Law is largely aligned with the EU acquis and Stabilization and Association Agreement;
- The Law on Amendments to the Law on Competition was adopted in 2007 and 2009.
- Pursuant to the relevant provisions of the Law on Competition, the CC has adopted 11 secondary legislation acts that are mostly in compliance with the relevant acquis;

# Legislative and Institutional Framework of the CC

- As already mentioned, the Law on Competition is largely aligned with the Articles 101 and 102 of the Agreement on functioning of the EU,
- However, given that Bosnia and Herzegovina has made considerable progress on the European path over the past 12 years, and that it faces new challenges every day in the sphere of market economy, there is an inevitable need for the legislation of competition law in Bosnia and Herzegovina to be amended and updated, which is definitely in the plan and program of the Competition Council's work in the recent period.

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# Legislative and Institutional Framework of the CC

- Law on competition regulates the rules, measures and methods of protection of market competition, the jurisdiction and the way of operation of the Competition Council on protection and promotion of market competition in B&H.
- It applies to all natural and legal persons that are directly or indirectly engaged in the production, sale of goods and provision of services and whose actions can prevent, restrict or distort market competition on the whole territory of Bosnia and Herzegovina or its significant part.

# Legislative and institutional framework of the CC

- Organizational structure of the CC:

Headquarter of the CC is in Sarajevo and there are two regional offices in Mostar and Banja Luka.

- Six members of the Council; they are appointed for a six-year term of office with the possibility of one more reappointment; 3 members are appointed by the Council of Ministers of BiH, 2 are appointed by the Government of the Federation of BiH and 1 is appointed by the Government of the Republic of Srpska;

# Law Enforcement

- The direct effects of the competition law enforced by BiH rely on the application of instruments for prevention of prohibited agreements and determination of the abuse of a dominant position.
- In Bosnia and Herzegovina in 2016, GDP growth fell from 3.0 to 2.8 percent, and the World Bank expects the growth for the year 2017 to be 3.2 percent, and law of market competition has its share in boosting GDP growth.
- In that sense, the CC of BiH issued 20 decisions in 2016 concerning prohibited competition activities and 14 decisions pertaining to concentration review procedures (in 2015, the number of final decisions was 44, out of which 16 concerning prohibited competitive actions and 28 procedures related to the review of concentrations).

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The efficiency of the Law on Competition is measured by the extent in which the decisions and conclusions of the CC of BiH have been complied with, i.e. whether the same undertakings infringe the law on other or the same grounds.

# Law Enforcement

- Since its establishment the CC has been imposing high fines on the companies which engage in activities contrary to the Competition Law;
- On one hand, the legal provision of fines is exactly one of the most important instruments of the efficient enforcement of the Law on Competition; on the other hand, I have to point out that the main purpose of the fine is not to punish but to prevent other market actors from such activities and to signal that Competition Law has to be considered;



# Penalty provisions

- The Law on Competition prescribes the imposition of fines for serious infringements of the Law in the amount up to 10% of the value of the total annual turnover from the year preceding the year of the infringement of the Law.
- At the same time, there is a possibility of imposing fines on responsible persons of the undertaking in the amount of 15.000 KM to 50.000 KM (7.500 EUR – 25.000 EUR).

# Penalty provisions

- CC can impose fines that do not exceed 1% of the turnover on the undertakings that do not act in accordance with the request of the CC, by submitting inaccurate data or information or not filing the notification on concentration in due time.
- Also, in this case there is a possibility of imposing fines on responsible persons of the undertaking in a smaller amount of 5.000 KM to 15. 000 KM (2.500 EUR do 7.500 EUR).

# Fines imposed in 2015 – 2016

- In the period 2013-2015 there have been 16 decisions on infringement of the Law on Competition with imposed fines amounting to: 650. 000 EUR (Source: BiH Report for 2016)
- Fines imposed in 2016:  
62.500 KM (approximately 31.250 EUR)

# LEGAL REMEDIES

- Appealing a decision of the Council is not allowed and the party can only initiate a legal dispute before the Court of Bosnia and Herzegovina.
- Even if proceedings before the Court of B&H are initiated, companies are in principle (with some extraordinary situations in which the Council could accept to make an exception and postpone the enforcement of its decision) obliged to pay the fine within eight days from the date the decision was made public.

# COMPETITION ADVOCACY

- Web page of the CC [www.bihkonk.gov.ba](http://www.bihkonk.gov.ba) contains the Law on Competition and regulations in all three official languages in BiH as well as in English.
- For the purpose of efficient enforcement of the competition law and policy the CC regularly publishes all its decisions and opinions on the CC webpage as well as official gazettes (which is also a legal obligation).
- CC regularly publishes its press releases from the sessions through media and web site.

# Competition advocacy

- CC regularly responds to all the enquires by undertakings or natural persons on all aspects of competition law and policy, as well as specific cases before the CC, considering competition advocacy activities to be of great importance as the instrument to raise awareness on existence and enforcement of the Law on Competition in BiH as a developing country.
- CC continuously works on the activities to promote cooperation with institutions in the country with special attention to improvement of cooperation with competition authorities in the region and worldwide.
- In this sense, we are proud to say that we have signed Memorandum of cooperation and understanding with the respected host of this Summit, Turkish Competition Authority.

# Experience/Lessons learned

- We point out the importance of cooperation with:
  - National sector regulators;
  - Economy chambers;
  - Bar chambers;
  - Associations of entrepreneurs;
  - Schools and Universities.

# Experience/Lessons learned

- CC seeks to raise awareness and knowledge of competition law and the enforcement of the Law on Competition (but also avoidance of punishment that is not the purpose of the work of the Council), and recommends companies and businesses consultations on all aspects of the application of the Law on Competition before undertaking activities that could lead to infringement of the provisions of the Law on Competition.
- We believe that is the most efficient way to avoid penalties especially in the cases of concentrations of undertakings.



# The end

In the end let me commend once again on the excellent organization and hospitality of the colleagues from the Turkish authority, especially knowing how much effort and time it takes to organize such an event.

I especially point out this having in mind that the Competition Council hosted the OECD-GVH RCC Seminar on the topic "Competition Assessment of Laws and Regulations" in Sarajevo two months ago.

*Thank you*

[www.bihkonk.gov.ba](http://www.bihkonk.gov.ba)

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