

**(UNOFFICIAL TRANSLATION BY EKOPAK)**

**OFFICIAL GAZETTE OF REPUBLIKA SRPSKA, No. 41, 25.05.2016.**

Pursuant to Article 42, paragraph (2), in conjunction with Article 40, paragraph (1) of the Law on Competition ("Official Gazette of BiH", 48/05, 76/07, and 80/09), the Competition Council, at its 125<sup>th</sup> session held on 30 March 2016, adopted:

**DECISION**

**ON TEMPORARY MEASURE**

1. The Request for the determination of a temporary measure submitted by the business entity Ekopak- Company for packaging and packaging waste management Ltd Sarajevo, Zmaja od Bosne 7-7a, 71000 Sarajevo, is hereby granted.
2. The Federal Ministry of Environment and Tourism, Marka Marulića 2, 71000 Sarajevo, is hereby ordered to temporarily suspend the enforcement and application of the Rulebook on the Termination of the Rulebook on Packaging and Packaging Waste Management, No. 04-23-1334/15 of 21 January 2016 ("Official Gazette of the Federation of BiH", No. 8/16).
3. This temporary measure is effective for a period of three (3) months and may be extended if deemed necessary and justified under Article 40, paragraph (2) of the Law.
4. This Decision is final and shall be published in the Official Gazette of BiH, in the official gazettes of the entities, and in the Brčko District of Bosnia and Herzegovina.

**STATEMENT OF REASONS**

On 19 February 2016, under No. 06-26-3-007-II/16, the Competition Council received a Request to Initiate Proceedings (hereinafter: the "Request") from the business entity Ekopak – Company for packaging and packaging waste management Ltd Sarajevo (hereinafter: "Ekopak" or the "Applicant"), represented by attorney Samir Čengić, Prušćakova 14, 71000 Sarajevo, against the Federal Ministry of Environment and Tourism (hereinafter: the "Ministry") for alleged violation of Article 4, paragraph (1), point b) of the Law on Competition (hereinafter: the "Law").

The Applicant requested the adoption of a temporary measure ordering the Ministry to suspend the application of the Rulebook on the termination of the Rulebook on Packaging and Packaging Waste Management.

Upon review of the Request, the Competition Council established the following facts:

- Article 16 of the Waste Management Law ("Official Gazette of the Federation of BiH", 33/03 and 72/09) requires producers to design products and packaging, use technologies, and develop production processes that maximize material and energy efficiency, encourage reuse and recycling, and ensure environmentally sustainable treatment, use, and disposal at the end of the product life cycle. Producers must utilize raw and basic materials, semi-finished products, and packaging that minimize energy and material consumption, reduce waste production, and use durable, environmentally safe packaging. Residues reintegrated into the technological process or products reusable for their original purpose become waste only when exiting this production cycle.
- Article 58 of the Waste Management Law mandates that implementing regulations under Article 16 be issued by the Federal Minister of Environment for specific types of waste, including packaging and packaging waste, within one year of the Law's entry into force.

- The Federal Ministry of Environment adopted the Ordinance on Packaging and Packaging Waste Management ("Official Gazette of the Federation of BiH", 88/11 and 28/13), establishing rules for the management of packaging in production, trade, and use, as well as for collection, reuse, recovery, and disposal, in line with the priorities and principles of the Waste Management Law.
- According to the Ordinance, only companies licensed by the Ministry or the Public Institution Fund for Environmental Protection of FBiH may manage packaging and packaging waste.
- Ekopak obtained, on 9 May 2012, a Permit for Operation of the Packaging Waste Management System for six years.
- To qualify for the permit, Ekopak had to conclude 30 contracts with client entities (Polluters) and pre-contracts with Collectors in each canton.
- Following the permit issuance, Ekopak concluded contracts with (...)1 entities for packaging and packaging waste management and (...) contracts with waste-collecting entities, all currently valid.
- Ekopak invested all revenues in compliance with Article 15 of the Rulebook, which requires profits to be used exclusively for building the packaging waste management system.
- Ekopak complied with all obligations to the Ministry and held a valid permit when the disputed Rulebook was issued.
- In February 2016, the Ministry issued the Ordinance on the Termination of the Rulebook on Packaging and Packaging Waste Management ("Official Gazette of the Federation of BiH", No. 8/16), Article 3 of which requires system operators to transfer all acquired obligations, purposefully unspent funds, and remaining unspent financial resources to the Public Institution Fund for Environmental Protection of FBiH by 31 March 2016.
- At that time, besides Ekopak and the Public Institution Fund, Ekoživot also operated in FBiH.
- Preliminary market analysis indicates that in 2014, Ekopak held (...)2% of the packaging waste market, Ekoživot (...)%, and the Public Institution Fund (...)%.

Article 40 of the Law on Competition allows the Competition Council to adopt a temporary measure when preliminary findings indicate a violation, and actions threaten to prevent, restrict, or distort competition, potentially causing direct harm to business entities, sectors, or consumer interests.

Article 4 of the Law on Competition prohibits agreements, contracts, certain provisions of contracts, joint actions, explicit or tacit agreements, decisions, or other acts of business entities that have the object or effect of restricting or distorting competition, including price fixing, production or market control, market division, discriminatory terms, or additional unrelated obligations.

The Council preliminarily found a violation of Article 4, paragraph (1) due to the Ordinance imposing on system operators the obligation to transfer all obligations, contracts, and unspent funds to the Public Institution Fund, thereby closing the market, eliminating competition, and preventing licensed operators from continuing business.

The Council also considered the direct harmful impact on the Applicant and other licensed system operators.

Accordingly, the Competition Council adopted the operative part of this Decision.

## LEGAL REMEDY

No appeal is allowed against this Decision.

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

No. 06-26-3-007-3-II/16

30 March 2016

Sarajevo

President

Mr. Arijana Regoda-Dražić, signed

\*1 – Data constitute business secrets

\*2 – Data constitute business secrets

UNOFFICIAL TRANSLATION BY EKOPAK