

(UNOFFICIAL TRANSLATION BY EKOPAK)

OFFICIAL GAZETTE OF THE FEDERATION OF BiH, No. 41/16

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 125th session held on 30 March 2016, hereby 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 shall be 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", the official gazettes of the Entities, and 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, Marka Marulića 2, 71000 Sarajevo (hereinafter: the "Ministry"), for alleged violation of Article 4, paragraph (1), item b) of the Law on Competition (hereinafter: the "Law").

Within the Request to Initiate Proceedings, 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) provides that producers are obliged to design products and packaging, use technologies, and develop production processes that make the most efficient use of materials and energy, encourage reuse and recycling, and ensure environmentally sound treatment, use, and disposal at the end of the product life cycle. Producers must use raw and basic materials, semi-products, and packaging that reduce energy and material consumption, minimize waste generation, and use durable packaging that does not harm the environment when it becomes waste. Residues reintroduced into the technological process and products reusable for their original purpose become waste only once they leave this production cycle;
- Article 58 of the Waste Management Law prescribes that implementing regulations under Article 16 shall be enacted by the Federal Minister responsible for the environment for

specific types of waste, including packaging and packaging waste, within one year from the date of entry into force of the Waste Management Law;

- The Federal Ministry of Environment adopted the Rulebook on Packaging and Packaging Waste Management (“Official Gazette of the Federation of BiH”, 88/11 and 28/13), which sets out rules for managing packaging in production, trade, and use, and rules and other conditions for collection, reuse, recovery, and disposal, in accordance with the priorities and basic principles of the Waste Management Law;
- The said Rulebook stipulates that packaging and packaging waste management may be carried out by business entities licensed by the Ministry and the Public Institution Environmental Protection Fund;
- After meeting the prescribed requirements, the business entity Ekopak was granted, on 9 May 2012, a Permit by the Ministry for the operation of the packaging waste management system for a period of six (6) years;
- In order to obtain the permit, Ekopak was required, under the Rulebook on Packaging and Packaging Waste Management, to have concluded 30 contracts with client entities (Polluters) and pre-contracts with Collectors for each canton;
- Following the issuance of the permit, Ekopak concluded contracts with (..) ¹ client entities for the provision of packaging and packaging waste management services and (..) contracts with waste-collecting entities, all of which remain valid;
- Ekopak generated revenues which were entirely used in accordance with Article 15 of the Rulebook on Packaging and Packaging Waste Management, which prescribes the obligation to invest profits exclusively in the development of the packaging and packaging waste management system;
- Ekopak duly fulfilled all obligations towards the Ministry, including submission of reports and achievement of targets, and held a valid permit at the time of adoption of the disputed Rulebook;
- In February 2016, the Ministry adopted the Rulebook 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 provides that system operators are required to transfer all acquired obligations, all purposefully unspent funds, and all remaining unspent financial resources to the Public Institution Environmental Protection Fund of FBiH by 31 March 2016;
- At the time of adoption of the said Rulebook, in addition to Ekopak and the Public Institution Environmental Protection Fund of FBiH, the business entity Ekoživot was also operating in the territory of FBiH;
- Preliminary analyses indicate that, in 2014, Ekopak held (..) ²% of the packaging waste market, Ekoživot held (..)%, and the Public Institution Environmental Protection Fund of FBiH held (..) %.

Article 40 of the Law on Competition provides that the Competition Council may adopt a decision on a temporary measure, based on a preliminary finding of a violation, when it considers that certain actions prevent, restrict, or distort competition in the sense of the Law, and threaten to cause direct harmful effects for certain business entities, branches of industry, or consumer interests.

Article 4 of the Law on Competition provides that agreements, contracts, certain provisions of agreements or contracts, joint actions, explicit and tacit agreements of business entities, as well as decisions and other acts of business entities (hereinafter: “agreements”) which have as

their object or effect the prevention, restriction, or distortion of competition in the relevant market are prohibited, including: (a) directly or indirectly fixing purchase or selling prices or other trading conditions; (b) limiting or controlling production, markets, technical development, or investment; (c) market or supply source sharing; (d) applying dissimilar conditions to equivalent transactions with other business entities, thereby placing them at a competitive disadvantage; and (e) making the conclusion of agreements subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the agreement.

Considering the above, the Competition Council preliminarily found a violation of Article 4, paragraph (1) of the Law on Competition, as the adoption of the Rulebook restricts the relevant market by imposing an obligation on system operators to transfer all obligations, including contracts concluded with other business entities (Polluters and Collectors), as well as remaining unspent financial resources, to the Public Institution Environmental Protection Fund of FBiH, thereby effectively closing the market, eliminating competition, and preventing business entities holding a permit for the operation of a packaging waste management system from carrying out their activities.

Furthermore, the Competition Council took into account the direct harmful effects that the implementation of the said Rulebook could have on the Applicant, as well as on another business entity holding a system operator permit.

In view of the above, the Competition Council decided as stated in the operative part of this Decision.

LEGAL REMEDY

No appeal is allowed against this Decision.

An administrative dispute may be initiated before the Court of Bosnia and Herzegovina within 30 days from the date 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