

Pursuant to Article 39 paragraph 2 under i) of the Croatian National Bank Act (official gazette *Narodne novine*, No. 36/2001) and in connection with Article 40 of the Banking Act (official gazette *Narodne novine* No. 84/2002) and paragraph 2 of the Decision regulating market competition within the banking sector (official gazette *Narodne Novine*, No. 48/2003), in the administrative procedure of assessing the Services Agreement entered into by and between the Financial agency (hereinafter: FINA) and Splitska banka d.d. on 31 July 2003, the Governor of the Croatian National Bank hereby adopts the following

## DECISION

1. Provisions of Article 7 paragraph 2 of Annex 8a to the Services Agreement entered into on 31 July 2003 by and between FINA, Koturaška 43, Zagreb and Splitska banka d.d., Ruđera Boškovića 16, Split, as follows below, shall be considered invalid:

*"7.2. In the event that FINA intends to let, sublet or in any other way make available the Offices, as well as any other office at any of FINA business premises or parts of its premises; or intends to provide at these premises or Offices services similar to Services to a third person other than a member of HVB Group ("Right of disposal"), FINA shall notify Splitska banka thereof, specifying the agreed provisions of the Right of disposal. Splitska banka shall have the right of priority as against such Right of disposal as follows:*

*7.2.1. Splitska banka may within the period of 4 weeks after receiving the said notification state that it will, on its own or together with one or more companies from HVB Group, take over the Right of disposal under the same terms and conditions as offered by the third party.*

*7.2.2. FINA and Splitska banka (or, depending on the case, a company from HVB Group) shall take all the necessary steps and enter into necessary agreements to regulate the Right of disposal.*

*7.2.3. In the event that Splitska banka has not delivered a statement in line with item 7.2.1, FINA may award the Right of disposal to a third party as planned under the terms and conditions disclosed to Splitska banka."*

2. Splitska banka d.d. shall remove from the Services Agreement the provisions deemed invalid in paragraph 1 of this Decision and within a period of 30 days following the issuance of this Decision deliver to the Croatian National Bank proof thereof.

3. Splitska banka d.d. shall notify the Croatian National Bank on its choice of additional outlets and request a prior approval for the expansion to additional outlets of the Financial agency.

4. Splitska banka d.d. shall deliver to the Croatian National Bank all subsequent changes and amendments to the Agreement in paragraph 1 of this Decision and its Annexes, expanding the

rights of Splitska banka and increasing the number of FINA outlets through which it offers its services.

5. This decision shall be published in the official gazette *Narodne Novine*.

## EXPLANATION

On 1 August 2003 Splitska banka , Ruđera Boškovića 16, Split (hereinafter: the Bank) delivered to the Croatian National Bank the Services Agreement (hereinafter: the Agreement) entered into on 31 July 2003 between the Bank and the Financial agency, Koturaška 43, Zagreb(hereinafter: FINA) for the purpose of assessment whether the said Agreement or any of its parts were aimed at or would result in preventing, limiting or disturbing market competition within the banking sector of the Republic of Croatia within the meaning of the paragraph 2 of the Decision regulating market competition within the banking sector (official gazette *Narodne Novine*, No. 48/2003).

The Agreement regulates business co-operation between the Bank and FINA; under the Agreement FINA undertook to provide banking and other financial services in the name and for the account of the Bank, at determined outlets, while the Bank undertook to pay a service charge for provided services and cover the costs of gross salaries of FINA's employees performing tasks for the Bank. The Agreement explicitly stipulates that FINA shall retain the right to provide the same or similar services to third persons at the same outlets where it provides services to the Bank. FINA undertook to provide services in line with the instructions given by the Bank, in the same way as provided by the Bank at its outlets and at the highest possible quality level. FINA agreed to provide counters and the specified number of employees at its outlets, while the Bank agreed to provide instructions and documents, including also the organisation of employee training. The initial 33 outlets were set in the Agreement, while the additional 30 locations were to be determined at a later date, provided that the Bank retained the right to subsequently expand to further 20 locations. The Agreement was entered into for a fixed term, starting at the date it was entered into until 31 November 2018. Prior to the expiry of this term the Agreement may be terminated only in case reasons stipulated in paragraph 3 of the Agreement should arise.

Within the process of Agreement assessment from the aspect of protection of free market competition it was deemed that the provisions in items 2.1.1 and 3.4.1 of the Agreement and item 7.2.2 of Annex 8a may hinder free market competition so the Bank was requested for additional explanation of the said provisions.

Item 2.1.1 of the Agreement stipulated that after choosing additional 30 outlets the Bank would consider further steps for expansion of its service network to the "remaining 20 FINA's locations". When asked whether this meant that the Bank may expand its service network to all FINA's organisational units or locations, the Bank replied that under item 2.1.1 of the Agreement it may make use of FINA's services only at determined locations and that after the choice of these additional locations FINA would provide services to the BANK only through one part of its outlet network. Since the Agreement gives the Bank access only to one part of FINA's network, it was assessed that provisions of item 2.1.1 of the Agreement, enabling the increase in number of outlets offering its services, cannot by themselves hinder, limit or disturb free market competition within the banking sector of the Republic of Croatia.

Provisions of item 3.4.1 stipulate the Bank's right to terminate the Agreement if FINA provides services or allows companies or institutions disposal of premises (regardless of the name) at its outlets without terminating or recalling such obligations upon receiving a written notification of the Bank or after the expiry of a 30 day grace period and in such a way significantly harms the Bank's operations. In an additional explanation, the Bank explained that the reason for terminating the Agreement would not include mere provision of services to another bank but causing material damage to the Bank's operations, which the Bank would have to prove. This explanation was accepted and it was assessed that the provision of item 3.4.1 by itself does not threaten free market competition.

Annex 8a to the Agreement regulates the terms and conditions for using the premises, with Article 7 paragraph 2 thereof stipulating that the Bank has the right of priority in case FINA intends to provide services to any third person (not a member of HVB group) similar to services provided to the Bank under the Agreement or if it intends to let, sublet or in any other way make available the premises used by the Bank or real estate owned or in possession of FINA, that is used or may be used for providing services to retail clients. Item 7.2.1 gives right of priority to members of the HVB Group, with the Bank and members of HVB Group having the right to rent, sublet or enter some other contractual relationship with FINA under the same terms and conditions as offered by the third party. Only if upon the expiry of a 4 week period the Bank does not state that it wants to make use of its right of priority, may FINA enter an agreement with the third party under the same terms and conditions as offered to the Bank.

To the question which information in particular concerning the lease of its business premises does the Bank require from FINA, the Bank answered that it wants to be informed in advance on the commencement and the duration of the lease agreement, name of the lessee, the size and location of the premises as well as data on the parts of a building and equipment to be jointly used. The Bank holds the opinion that the FINA should not lease its business premises to third persons under more favourable terms and conditions than those currently contracted with the Bank.

The aforementioned provisions of the Agreement give the Bank the right of priority in renting or subrenting any real estate owned or in possession of FINA, as well as a certain degree of control over service agreements contracted between FINA and other banks. Considering that FINA has a widely developed network of 180 business units, covering all parts of Croatia, privileged access to that network places the Bank in a more favourable position over other banks. The right of priority in contracting services agreement on services similar to the services regulated by the Agreement gives the Bank the possibility of insight into certain segments of its competitors' business policies (expansion of their business network, market approach etc.) as well as the possibility of control or even limitation of the volume of services provided by other banks, because by using its right of priority the Bank is able to prevent its competitors from providing their services at some of FINA's outlets. When viewing the right of priority contracted in paragraph 7.2 of Annex 8a to the Agreement together with the provisions of items 2.1.1 and 3.4.1 of the Agreement it is visible that together they additionally strengthen the privileged position of the Bank and its influence on free market competition in the banking sector of the Republic of Croatia.

It arises from the aforementioned that provisions in paragraph 7.2 of Annex 8a to the Agreement enable the Bank to limit or control the volume of provided services, the market,

technological development or investments as compared to other banks and are therefore considered to be prohibited within the meaning of the paragraph 2.2 of the Decision regulating market competition within the banking sector because they can result in the hindrance, limitation or disruption of market competition within the banking sector of the Republic of Croatia. In accordance with the provisions of paragraph 2.3 of the Decision regulating market competition within the banking sector, agreements deemed prohibited under the provisions of paragraph 2.1 and 2.2 thereof shall be considered invalid. Considering that provisions of paragraph 7.2 of Annex 8a to the Agreement are considered prohibited because they hinder, limit or disrupt market competition within the banking sector of the Republic of Croatia, the said provisions had to be deemed invalid.

Since the chosen additional outlets are yet unknown, the influence of the Bank's expansion to local markets could not be assessed, so the Bank was ordered in paragraph 3 of this Decision to notify the Croatian National Bank of its choice of additional outlets and obtain prior consent for expansion of its network to chosen FINA outlets.

Based on the above explanation it was decided as said earlier in the text.

Available legal remedy:

This Decision is final within the scope of administrative procedure and may not be appealed against. Administrative proceedings may be initiated by filing a suit at the Administrative Court of the Republic of Croatia within the period of 30 following the delivery of this Decision.