



THE PLENUM OF THE COMPETITION COUNCIL
DECISION

No. APD-12
As of 26.09.2013

mun. Chișinău

The Plenum of the Competition Council as constituted:

Viorica CĂRARE – Chairperson

Mihail CIBOTARU – Vice Chairperson

Ion MAXIM – Member

Victoria BUZULEAC – Secretary,

Acting on the grounds of art. 41 para. (1) let. h) and art. 93 ale The Law on Competition no.183 as of 11 July 2012, Parliament Decision no. 179 as of 12.07.2013 on appointing members of Plenum of the Competition Council,

Having analyzed the investigation report on the case initiated by the Disposition Administrative Council of National Agency for Protection of Competition¹ no.13 as of 17 February 2011 and the attached materials,

HAS FOUND:

On 17 November 2010 the National Agency for Protection of Competition (NAPC), currently Competition Council, received the application of the Sanitary Veterinary Agency for Safety of Animal Products (Agency), claiming the signs of infringing art.9 of the Law no.1103-XIV as of 30 June 2000 on competition protection by the City Council Chișinău requesting its examination through the Law no.1103-XIV as of 30 June 2000 on competition protection.

¹Successor of rights is Competition Council from the Republic of Moldova

The action claimed by the Agency constituted the adoption by the City Council Chişinău of the Decision no.5/29-20 as of 18 May 2010 on the lease of premises on the lease of premises on 48 Vasile Lupu str, let. A,B,D,G,V (separate buildings) to the Sanitary Veterinary Department for Safety of Animal Products of mun. Chişinău (hereinafter Department) namely p.2 and p.3 from the Decision, pursuant to which:

- p. 2 – the City Council Chişinău allows the Department to lease to the LLC „Vig-Vet” the premises with the surface of 99,0 m² on 48 Vasile Lupu str, let. D (separate building) for carrying out medical veterinary activity;
- p.3 – the Department should draft the leasing contract with the LLC „Vig-Vet”, pursuant p.2.

The Agency deemed that ”the p.2 of the Decision mentioned was contrary to the rules of law creating a privileged situation for the LLC ”Vig-Vet” as compared to other economic operators acting on the same market”.

In this respect, the Agency requested the implication of NAPC insofar, through the competition legislation, to verify the legitimacy of p.2 and p.3 from the Decision no.5/29-20 as of 18 May 2010, and the wording „ Limited liability company „Vig-Vet”, from p.2 and p.3, to be substituted with „economic agents operating free sanitary veterinary practice”

As a result of examining the application of the Agency and the materials related to it, the Administrative Council of NAPC, within its meeting from 17 February 2011, issued the Disposition no.13 on the initiation of ex officio action on signs of infringing art.9 of the Law no.1103-XIV as of 30.06.2000 on competition protection by the City Council Chişinău, referring to p.2 from the Decision no.5/29-20 as of 18.05.2010 on the lease of premises on 48 Vasile Lupu, let. A,B,D,G,V (separate buildings) to the Department.

Parties concerned

Sanitary Veterinary Agency for Safety of Animal Products is the central public authority for veterinary supervision subordinated to the Ministry of Agriculture and Food, liable for the enforcement of the policy and the strategies in the sanitary veterinary domain and safety of animal products, empowered to organize, supervise and control the observance of this law and other normative documents from the domain and the provisions stipulated in the international sanitary veterinary treaties to which the Republic of Moldova is part of.

By Government Decision no. 51 as of 16.01.2013 on the establishment and functioning of the National Agency for the Safety of Food, the Sanitary Veterinary Agency for Safety of Animal Products merged with the General Inspectorate for Phytosanitary Supervision and Seed Control thus being established the National Agency for the Safety of Food.

The Sanitary Veterinary Department for Safety of Animal Products of mun. Chişinău was established and has been operated as a public institution with legal status as a structural subdivision of the Sanitary Veterinary Agency for Safety of Animal Products. The way of organization and functioning of the Department was set up by the provisions of the Law no.221-XVI as of 19.10.2007 on sanitary veterinary activity, the Regulation of the Department and other current normative documents of the Republic of Moldova.

The **City Council Chişinău** is a deliberate and representative authority of the population from Chişinău municipality. The local public administration of Chişinău municipality is being carried out by the City Council Chişinău as deliberate authority and by general mayor of Chişinău municipality as executive authority. The council has the right to initiative and decides, under the conditions of the Law, upon all problems of local interest, except for those in the competence of other public authorities.

Relevant market: the relevant product and geographic market

I. Relevant product market

Pursuant to the Decision of the City Council Chişinău no.5/29-20 as of 18.05.2010, the City Council of Chişinău municipality and the Department concluded the leasing contract no.2/10/059 as of 10.11.2010, whose object was leasing the premises no.1-15, 8a, 10a – basement; no.1-5, 5a, 6-7, 8-27 – floor 1; no.1, 1a, 2-29, 5a- floor 2 let.A; no.1-11, 4a, 4b, 6a, 6b, 6c, 7a- floor 1; no.1-12- floor 1 let.V; no.1, 2 – floor 1 let. G; no.1-8, 2a, 3a- floor 1 let.D, situated on 48 Vasile Lupu str, block let. A,B,D,G,V for carrying out medical veterinary activity and the location of the Department.

Pursuant to p.2 of the Decision of mun.Chişinău City Council no.5/29-20 as of 18.05.2010 the City Council Chişinău allowed the Department to lease to the LLC „Vig-Vet” the premises with the surface of 99,0 m² on Vasile Lupu str., 48 let. D (separate building) for carrying out medical veterinary activity.

Pursuant to the information submitted by the **Sanitary Veterinary Agency for Safety of Animal Products** in letter no.07 as of 05.01.2011, in 2010 within Chişinău municipality there were operating 10 economic agents carrying out free practice sanitary veterinary activities being empowered by contract for executing state strategic sanitary measures.

Pursuant to the provisions of the Law no.221-XVI as of 19.10.2007 on sanitary veterinary activity, a free practice veterinary doctor authorized should be deemed the veterinary doctor empowered by the competent sanitary veterinary authority to carry out state sanitary veterinary activities, on a contract basis, under the conditions of the Law.

State sanitary veterinary activity should be deemed the activities carried out by the state sanitary veterinary services in view of enforcing the government strategies and policies on the protection of animal health and animal germinal material, the protection and welfare of animals, prevention of transmission of diseases from animals to humans, safety of products of animal origin intended for human consumption at all stages of production, acquisition, gathering, processing, storage, transport, distribution and marketing, protection of national territory against infectious diseases and environmental protection in relation to livestock and food.

In this vein, on 01.02.2010, 10 service supply contracts were concluded between the Sanitary Veterinary Department for Safety of Animal Products of mun. Chişinău and LLC "Vig-Vet", I.C. "Sîrbu Dumitru", I.C. "Caraman Victor", I.C. "Moisei Vera", I.C. "Butnari Fedora", I.C. "Postolachi Vitalii", LLC "Vetinterfarm", I.C. "Pătraş Ivan", LLC "Servicii Veterinare Urgente" and I.C. "Tiurin Iurii". On 16.07.2010 the service supply contract was concluded with a LLC "Vig-Vet", and on 03.08.2010 more service supply contracts were concluded with LLC "Vig-Vet" and I.C. "Darii Gheorghe".

Therefore, in 2010 11 economic agents were carrying free practice sanitary veterinary activities on a contract basis for executing state strategic sanitary measures. Considering the fact that in 2010 LLC „Vig-Vet” was one of the economic agents carrying out free practice sanitary veterinary activities, authorized by contract for executing state strategic sanitary measures, the Decision of mun.Chişinău Council no.5/29-20 as of 18.05.2010 produced effects on the market of free practice sanitary veterinary activities provided by authorized free practice veterinarians.

Therefore, *the product market within this investigation shall be the market on putting into service the premises for the purpose of supplying sanitary veterinary services of free practice by authorized free practice veterinarians.*

I. Relevant geographic market

Pursuant to art.3 and 4 of the Law no.431 as of 19.04.1995 on the status of Chişinău municipality, „ Chişinău municipality is an administrative territorial unit divided into five sectors: Botanica, Buiucani, Centru, Ciocana and Rîşcani.

The sectors are made up of a core territory of the municipality, as well as autonomous administrative territorial units (ATU): towns, villages. Chişinău municipality comprised 18 ATU of I level: 6 towns, 8 villages and communes and 4 villages, comprising 33 localities.

Botanica district comprises Sîngera town and the villages Dobrogea and Revaca, commune Băcioi (villages Băcioi, Brăila, Frumuşica, Străisteni); Buiucani district - Durleşti and Vatra towns, villages Condrîţa, Dumbrava, Ghidighici, Truşeni; Centru district – Codru town; Ciocana district - Vadul lui Vodă town, communes Bubuieci (villages Bubuieci, Bîc), Budeşti (villages Budeşti, Văduleni), Cruzeşti (villages Cruzeşti, Ceroborta), Tohatin (villages Tohatin, Buneţi, Cheltuitori), village

Colonița; Rîșcani – Cricova town and the communes Ciorescu (villages Ciorescu, Făurești, Goian), Grătiești (villages Grătiești, Hulboaca), Stăuceni (villages Stăuceni, Goianul Nou).”

Pursuant to art.10 of the Law no.431 as of 19.04.1995 on the status of Chișinău municipality: “The relationships between public administration authorities of municipality, towns and villages (communes) from its structure are grounded on principles of autonomy, legacy and collaboration for solving common problems.”

The notion of autonomy, in the meaning of art.9 of the Law no.431 as of 19.04.1995 on the status of Chișinău municipality, is defined as follows: „the autonomy provides for both organization and functioning of public administration authorities of the municipality, towns, villages (communes) from its structure, and the administration, under their liability, of the interests of the communities they represent.”

Pursuant to art.6 para.(2) of the Law no.436 as of 28.12.2006 on local public administration: “except for the cases provided for by the law, there are no subordinating relationships between the central and local authorities, between public authorities of first level and those of second level.”

Pursuant to art.1 of the Law no.436 as of 28.12.2006 on local public administration, the notions of local public authorities of first level and those of second level are defined as follows:

- local public authorities of first level – public authorities, taken together, which are constituted and operate on the territory of the village (commune), town (municipality) for the promotion of the interests and the solving of problems of local communities;
- local public authorities of second level - public authorities, taken together, which are constituted and operate on the territory of the district, Chișinău municipality, Bălți municipality, autonomous territorial unit with special legal status for the promotion of the interests and the solving of problems of the population of the territorial administrative unity at issue

For Chișinău municipality, autonomous the territorial administrative unities: towns, villages (communes) local public authorities of first level, and the City Council Chișinău local public authorities of second level.

Considering the provisions of art.3, 4 and 10 of the Law no.431 as of 19.04.1995 on the status of Chișinău municipality and art.6 para.(2) of the Law no.436 as of 28.12.2006 on local public administration, the City Council Chișinău, on the one hand and the territorial administrative unities as part of the districts of Chișinău municipality, on the other hand, are autonomous public administration authorities, having no subordinating relationships.

Therefore, the City Council Chişinău, according to the Decision no.5/29-20 as of 18.05.2010, decided to lease to the Department the premises on 48 Vasile Lupu str., let.A,B,D,G,V and allowed the Department the subleasing to LLC „Vig-Vet” of the building on 48 Vasile Lupu str., let.D, for carrying out medical veterinary activity.

The Mayoralty of Băcioi commune, according to the leasing contract no.75 as of 29.10.2009 decided to lease a building from Băcioi to I.C. “Darii Gheorghe”.

It has to be noted that each of the 11 economic agents, according to p. 2.2.3. from the services supply contracts concluded with the Department, provide sanitary veterinary services in certain sanitary veterinary districts of Chişinău municipality, as follows:

1. LLC „Vig-Vet” in:
 - a. mun. Chişinău, districts Botanica and Centru (contract no.42 as of 16.07.2010; contract no.47 as of 03.08.2010);
 - b. mun. Chişinău, districts Ciocana, Rîşcani and Buiucani (contract no.18 as of 01.02.2010).
2. I.C. „Sîrbu Dumitru” in Cricova town and Ciorescu commune(villages Ciorescu, Făureşti, Goian) (contract no.16 as of 01.02.2010);
3. „Moisei Vera” in Sîngera town with the villages Dobrogea, Revaca, Sîngera (contract no.15 as of 01.02.2010);
4. I.C. „Darii Gheorghe” in Băcioi commune with the villages Băcioi, Brăila, Frumuşica and Străistenii (contract no.88 as of 03.08.2010);
5. I.C. „Tiurin Iurii” in Ciorescu commune with the villages Stăuceni and Goianul Nou (contract no.14 as of 01.02.2010);
6. LLC „Servicii Veterinare Urgente” in:
 - a. mun. Chişinău, districts Botanica and Centru (contract no.9 as of 01.02.2010);
 - b. towns Durleşti and Vatra, village Truşeni (contract no.11 as of 01.02.2010).
7. I.C. „Caraman Victor” in village Ghidighici and Grătieşti commune with the villages Grătieşti and Hulboaca (contract no.13 as of 01.02.2010);
8. I.C. „Patraş Ivan” in Tohatin commune with the villages Tohatin, Buneţi, Cheluitori, village Coloniţa, Cruzeşti commune with the vilages Cruzeşti and Ceroborta, Bubuieci commune with the villages Bubuieci and Bîc (contract no.12 as of 01.02.2010);
9. LLC ”Vetinterfarm” in town Durleşti, Vatra and Truşeni (contract no.11 as of 01.02.2010);
- 10.I.C. „Butnari Fedora” in Budeşti commune with the vilages Budeşti and Văduleni, town Vadul lui Vodă (contract no.10 as of 01.02.2010);
11. I.C. „Postolachi Vitalii” in Băcioi commune with the vilages Băcioi, Brăila, Frumuşica and Străistenii (contract no.17 as of 01.02.2010).

Considering the fact that the Decision no.5/29-20 as of 18.05.2010 was adopted by the City Council Chişinău, and also proceeding from the fact that the City Council Chişinău and the territorial administrative authorities, as part of districts of Chişinău municipality are autonomous authorities, without subordinating relationships (each authority administrates its goods in the local public and *private areas*), *the geographic market shall be deemed the territory of Chişinău municipality except for the autonomous territorial administrative units* .

Found acts and facts

On 18.05.2010 the City Council Chişinău adopted the Decision no.5/29-20 on the lease of premises on 48 Vasile Lupu str., let. A,B,D,G,V (separate buildings) to the Department. In compliance with p.2 of this Decision, the Department is allowed to sublease to the LLC „Vig-Vet”, for a three years period, the premises with the surface of 99,0 m² on 48 Vasile Lupu str., let. D (separate building) for carrying out medical veterinary activity.

The City Council Chişinău made the Decision no.5/29-20 considering the request of the Department no.221 as of 18.05.2009, the request of LLC „Vig-Vet” no.4 as of 17.11.2009, the informative notice of the General economy, reforms and economic relations department no.02-08/0621 as of 09.12.2009 and the Regulation on management of buildings, constructions and premises with the purpose other than housing - municipal property .

The Department, by its request, demanded Chişinău City Council the transmission of leased buildings with the right of subleasing to authorized free practice veterinarians, referring to art.40 p.1) of the Law no.221 – XVI as of 19.10.2007 on sanitary veterinary activity.

LLC „Vig-Vet”, by the address no.4 as of 17.11.2009 to Chişinău municipality mayoralty and the Department, requesting putting into the service of the building with the cadastral number 0100515176 let.D on 48 Vasile Lupu str., within the Department for carrying out free practice veterinary activity.

As to the transmission into subleasing of the building let.D on 48 Vasile Lupu str., to LLC „Vig-Vet”, Chişinău municipality mayoralty notified to the NAPC that the local public authority does not participate at the selection of the sub-tenant, the right belonging to the tenant. Art.894 of the Civil Code allows the tenant to transmit the leased good into subleasing only with the consent of the leaser, for this the tenant should notify the leaser about its intention and to specify the name and the address of the person to which it intends to sublease the good.

In compliance with p. 3.1. of the Instruction of subleasing the constructions and premises with the purpose other than housing - municipal property , approved by the Decision of Municipality Council Chişinău no.6/26 as of 18.02.2004, the tenant is

entitled, based on a demarche to sublease part of the leased goods only with the written consent of the leaser.

NAPC found that LLC „Vig-Vet” requested the releasing into usage of the building on 48 Vasile Lupu str., let.D within the Department, by the letter no.4 as of 17.11.2009 addressed to Chişinău municipality Mayoralty and the Department, obtaining the approval of the Department (agreement expressed by resolution filed for the application no.4 as of 17.11.2009 - ”Approve: head of DSVSPSOA mun. Chişinău E.Straişă 18.11.2009”)

The City Council Chişinău, by p.2 from the Decision no.5/29-20 as of 18.05.2010, gave the consent to the Department on the subleasing of the premise on 48 Vasile Lupu str., let. D to LLC „Vig-Vet”.

City Council Chişinău allowed the Department to sublease to the economic agent LLC „Vig-Vet” the premise on 48 Vasile Lupu str., let.D pursuant to the provisions of art.894 of the Civil Code and the provisions of p.3.1. Instruction of subleasing the constructions and premises with the purpose other than housing - municipal property .

On 10.11.2010 the subleasing agreement no.1 was concluded between the Department and the LLC ”Vig-Vet”, whose object was subleasing of the building with the surface of 99 m², let.D, situated on 48 ”a” Vasile Lupu str. – separate building for carrying out medical veterinary activity.

By letter no.4 as of 01.02.2011, LLC „Vig-Vet” filed an address to the City Council Chişinău requesting to substitute the subleasing contract with a direct leasing contract of the premise on 48 Vasile Lupu str., , let.D, obtaining in this respect the approval of the Department by letter no.5 as of 01.02.2011 (agreement expressed by resolution filed for the application no.5 as of 01.02.2011 - ” Approve: head of DSVSPOA mun. Chişinău *signature* 02.02.2011”)

On 25.10.2012, by Decision no.6/48 on the lease of premises on 48 Vasile Lupu str., let.D (separate building) to the LLC „Vig-Vet”, City Council Chişinău decided to put into lease, without the right of privatization, for a three years period, to the LLC „Vig-Vet” the premises within the Department with the surface of 99,0 m² on 48 Vasile Lupu str., let.D, for carrying out medical veterinary activity.

On 03.12.2012 the City Council Chişinău concluded with LLC „Vig-Vet” the leasing contract no.2/12/030 for a three years period.

Upon the request of NAPC to confirm or deny the fact that within 01.11.2009 – 01.05.2010 applications on behalf of economic agents carrying out free practice sanitary veterinary activities were submitted, on their insurance with premises for carrying out the activity, the City Council Chişinău confirmed that on behalf of other economic agent a request was submitting demanding the transmission into the leasing of the premise let.D on 48 Vasile Lupu str., namely on behalf of JSC „Nicoleta-Lux”. JSC „Nicoleta-Lux”, by the request no.173 as of 23.11.2009, demanded the

transmission into the leasing of the premises on 48 Vasile Lupu str., let.D for placing the veterinary pharmacy and veterinary deposit, referring to art.77 para.(5) of the Law no.436-XVI as of 28.12.2006.

JSC „Nicoleta-Lux” requested the transmission into lease of the premises on 48 Vasile Lupu str., let.D for other activity than free practice sanitary veterinary activity.

General economy, reforms and economic relations department within Chişinău municipality Mayoralty notified JSC „Nicoleta-Lux” as to the impossibility of leasing the premises on 48 Vasile Lupu str., let.D, out of the reason that at that time the draft decision on lease of premises 48 Vasile Lupu str., was being elaborated, mentioning that the Department coordinated the request with the LLC „Vig-Vet” to sublease the premises on 48 Vasile Lupu str., let.D.

It was found that the Department put forward the request on transmission into lease of the buildings situated on 48 Vasile Lupu str., let.A,B,D,G,V on 18.05.2009, and the JSC „Nicoleta-Lux” put forward the request on transmission into lease of the building situated on 48 Vasile Lupu str., let. D on 23.11.2009.

The information submitted by the Agency showed that in 2010, besides LLC „Vig-Vet”, other 10 economic agents were operating on the market carrying out free practice sanitary veterinary activities, namely: I.C. ”Sîrbu Dumitru”, I.C. ”Caraman Victor”, I.C. ”Moisei Vera”, I.C. ”Butnari Fedora”, I.C. ”Postolachi Vitalii”, LLC ”Vetinterfarm”, I.C. ”Pătraş Ivan”, LLC ”Servicii Veterinare Urgente”, I.C. ”Tiurin Iurii” and I.C. ”Darii Gheorghe”.

Upon the request of NAPC, to confirm or deny whether during 01.11.2009 – 01.05.2010 the above mentioned economic agents requested Chişinău municipality Council the insurance with duty premises for carrying out sanitary veterinary activity, 8 out of 10 economic agents denied the fact of putting forward such a request to City Council Chişinău. In the same time, LLC „Vetinterfarm” notified the NAPC that on 27.10.2009 submitted an application to the Department for providing premises for carrying out sanitary veterinary activity.

Therefore, the NAPC, requested the Department to confirm or deny whether a contest for subleasing the premise on 48 Vasile Lupu str., let. D was organized. In this respect, the Department could not confirm or deny the organization of such contest motivating that it did not possess such information.

On the other hand, the Department confirmed that fact of organizing on 27.10.2009, of a contest for subleasing the duty premise with the surface of 83,1 m² on 48,,a” Vasile Lupu str., let. A, for the purpose of providing sanitary veterinary services (other premise than that given into sublease by LLC ”Vig-Vet” by the contract no.1 as of 10.11.2010).

Pursuant to the minutes no.13 as of 27.10.2009 of the meeting of the Department working group, the 10 economic agents were invited to the contest, out of which: LLC ”Vetinterfarm”, I.C. ”Pătraş Ivan” and „Vig-Vet”, LLC accepted the

invitation, the latter being selected as winner as a result of the refusal of LLC "Vetinterfarm" and I.C. "Pătraș Ivan" to participate, these being determined by the apparent impossibility to lease concomitantly both the premises in Durlești town, 56 Cartușa str., and from Colonița village, 6 Hipocrat str., (duty premises hold at that time) and into subleasing the premise on 48 „a” Vasile Lupu str. A representative of the Department notified the economic agents: „it would be great if the economic agents make the Decision, if requesting the subleasing of premise, offered in the contest, it would be right to refuse the premises they rent at the moment”.

As a result of organizing the contest, the Department decided to sublease the duty premise of 83, 1 m² on 48„a” Vasile Lupu str., mun.Chișinău for providing sanitary veterinary services, to LLC „Vig-Vet” as of 01.01.2010, on a period of one year and to extend the subleasing contracts for the following year for the premises occupied at that time, with I.C. "Pătraș Ivan" and LLC "Vetinterfarm".

From the information provided by LLC „Vig-Vet” it was found that on 27.10.2009, the time that contest was organized, LLC „Vig-Vet” had a sublease contract no.3 as of 09.03.2009 with the Department, granted free of charge until 31.12.2009, for the same premise on 48 „a” Vasile Lupu str., let. A of 83,1 m².

Upon the request of NAPC to submit the copy of the sublease contract for the duty premise of 83, 1 m² as of 48 „a” Vasile Lupu str., let.A concluded between the Department and LLC „Vig-Vet” to be concluded for 2010, the Department did not submit such information motivating the documents presented previously reflected all the situation related to the relation of the Department with LLC „Vig-Vet” on the subject addressed.

In this context, the following could be deduced:

- Given the fact that the Department did not conclude with the “Vig-Vet” the contract of subleasing the premises of 83,1 m² as of 48 „a” Vasile Lupu str., let.A for 2010, it was found that the decision of the working group made as result of the contest organized on 27.10.2009, was not applied;
- The Department concluded with LLC „Vig-Vet” the sublease contract no.3 as of 09.03.2009, giving into the sublease the premise on 48„a” Vasile Lupu str., let.A free of charge, and for the sublease contract no.1 as of 10.11.2010 concluded with LLC „Vig-Vet” the Department charged MDL 128 972,25.

As to the facts referred to by the Agency in the application that the disposition p.2 of the Decision no.5/29-20 as of 18.05.2010 created a privileged situation for LLC "Vig-Vet" as compared to other economic operators operating on the market, the following shall be withhold.

Legal qualification

The objective aspect of the infringement described in art. 9 para. (1) let.c) of the Law no.1103-XIV as of 30 June 2000 on competition protection was the creation of a privileged situation as compared to other economic agents operating on the same market of goods. Considering that no other applications were submitted to the Chişinău municipality Council on ensuring the economic agents practicing free sanitary veterinary activities with premises for carrying out the activity, no privileged situation was created for LLC "Vig-Vet" as compared to other economic agents operating on the given market.

In the lack of the objective aspect, it was found that the actions claimed did not meet constitutive elements of the infringement provided for in art.9, para. (1) let.c) of the Law no. 1103-XIV as of 30.06.2000 on competition protection.

As to the procedure of leasing the premises on 48 Vasile Lupu str., let. A,B,D,G,V to the Department, the following should be withheld.

Art.77 para.(5) of the Law no.436-XVI as of 28.12.2006 on the local public administration provided that the alienation, concession, lease or rental of immovable property in the territorial administrative unit should be made by public tender, organized under the conditions of the Law unless expressly established by law.

Chişinău municipality Mayoralty notified the NAPC that the Department is a public institution and it does not fall under the provisions of art.77 para.(5) of the Law no.436-XVI as of 28.12.2006, providing for the transmission into the lease of the uninhabited premises by means of public tender (letter of Chişinău municipality Mayoralty no.06-120/5571 as of 20.09.2011).

In this vein, in compliance with art.40 para.(1) of Law no.221–XVI as of 19.10.2007 on the sanitary veterinary activity, the local public administration authorities were obliged to ensure the transmission into the free of charge usage of duty premises to the competent sanitary veterinary authorities and authorized free practice veterinarians, ensuring conditions for the proper functioning thereof, including communication means.

In compliance with art.2 of the Law on sanitary veterinary activity no.221–XVI as of 19.10.2007, *competent sanitary veterinary authority* represents the Sanitary Veterinary Agency for Safety of Animal products, rayon/municipal sanitary veterinary and for safety of animal products.

Art.40 para. (1) of the Law no.221–XVI as of 19.10.2007 on the sanitary veterinary activity is an exception provided for in art.77 para.(5) of the Law no.436-XVI as of 28.12.2006. The City Council Chişinău, under the provisions of art.40 para.(1) of the Law no.221 – XVI as of 19.10.2007, was obliged to transmit to the Department duty premises for carrying out the activity, free of charge, not into lease.

Art.6 para.(7) of the Law no.780 as of 27.12.2001 on the legislative enactments provides for the fact that in case a conflict of norms appears between two legislative

enactments having the same legal power promoting different solutions on the same regulation object the provisions of the last enactment should apply.

Considering the fact that the Law no.221–XVI on sanitary veterinary activity was as of 19.10.2007, and the Law no.436-XVI on local public administration was as of 28.12.2006, and the provisions of art.6 para.(7) of the Law no.780 as of 27.12.2001 on legislative enactments, the provisions of the Law no.221–XVI as of 19.10.2007 on sanitary veterinary activity shall apply.

As to the procedure of putting into service of the premises on 48 Vasile Lupu str., let. A,B,D,G,V to the Department, art.40 para.(1) of the law no.221–XVI as of 19.10.2007 on sanitary veterinary activity provides that the local public administration authorities are obliged to ensure the transmission into free usage to the competent sanitary veterinary authorities and free practices authorized veterinarians, ensuring conditions for proper functioning, including communication means.

For this reason, the City Council Chişinău had to offer free of charge the premises on 48 Vasile Lupu str., let. A,B,D,G,V concluding, under the art.859 of the Civil Code, a commodate contract with the Department, not a lease contract as provided for in the Decision of Chişinău municipality council no.5/29-20.

It was found that the Department, pursuant to the lease contract no.2/10/059 as of 10.11.2010, signed between the City Council Chişinău and the Department, pay annually the sum of MDL 128 972,25 lei to the Chişinău municipality council for the rental of the premises on 48 Vasile Lupu str., let.A,B,D,G,V. On the other hand, LLC „Vig-Vet” pay the same sum of MDL 128 972,25 annually for the sublease of the premise on 48 Vasile Lupu str., let.D, in compliance with the sublease contract no.1 as of 10.11.2010, signed between the Department and the LLC „Vig-Vet”.

Therefore, it was found that the Department covered the expenditures related to the lease of the premises on 48 Vasile Lupu str., let.A,B,D,G,V, the annual rent payment, through the receipts from the lease of the premise let.D on 48Vasile Lupu str., to the economic agent LLC „Vig-Vet”. Although, pursuant to art.40 para. (1) of the Law no.221–XVI as of 19.10.2007, the City Council Chişinău was obliged to ensure the putting into free usage duty premises including authorizing free practice veterinarians.

During the investigation, there were found deviations at observing the terms in the process of adopting the Decision of the Chişinău municipality Council no.5/29-20 as of 18.05.2010.

Pursuant to p.3.2. of the Regulation on management of buildings, constructions and premises with the purpose other than housing - municipal property : „to the request submitted should be attached the necessary documents on the grounds of which the General economy, reforms and economic relations department should draft during one month the draft decision to submit during the meeting of Chişinău municipality Council”. The Department submitted the request on 18.05.2009, and the

Decision of Chişinău municipality Council a year later on 18.05.2010, exceeding the period of one month.

General economy, reforms and economic relations department notified the Department on the adoption of the Decision of Chişinău municipality Council on 03.06.2010 and requested the presence within one month for signing the lease contract, in case of absence the Decision was to be submitted to Chişinău municipality Council for repealing. Pursuant to p.3.4. of the Regulation: „In case of Decision adoption, it should be executed in a period of 5 days from the date of adoption”. Decision no.5/29-20 was adopted on 18.05.2010, and the General economy, reforms and economic relations department notified the Department on 03.06.2010, failing to respect the deadline of five days.

Pursuant to p. 3.7. of the Regulation: „the conclusion of lease contract should be done not later than one month from the date of written notification of the applicant about the adoption of the Decision”, and pursuant p. 3.9. „the Decision shall lose its legal validity and shall be annulled if the applicant did not show within one month from the date of the written notification about the adoption of the Decision, for the conclusion of the lease contract”.

The lease contract no.2/10/059 between the City Council Chişinău and the Department was concluded on 10 November 2010, after five months after the notification infringing the provisions of p.3.7. and p. 3.9. of the Regulation on management of buildings, constructions and premises with the purpose other than housing - municipal property.

The mayoralty of Chişinău motivated the late signing of the lease contract by the fact that the Department disagreed with the coefficient set by the local public authority for the payment of sublease (K – 2,5) submitting the application no.325 as of 14.06.2010 to revise the coefficient. By the Decision of Chişinău municipality Council the application was rejected.

It was found a lack of transparency in the provisions of the Regulation on management of buildings, constructions and premises with the purpose other than housing - municipal property, approved by the Decision of Chişinău municipality Council no.4/11 as of 26.09.2003.

Therefore pursuant to p. 3.1.1. of the Regulation „ during the tender, other premises are offered which are requested concomitantly by two or more persons”. However, the Regulation did not specify the evaluation criteria for ”concomitant request”. Therefore, the wording is unclear and having ambiguous interpretation and admits that the City Council Chişinău to abuse its powers, restricting, preventing or distorting thus the competition. According to explanatory dictionary "dexonline.ro" definition of "concomitantly" means the action "that occurs at the same time, coinciding in time, simultaneously".

Therefore, It may be difficult to assume that more people would submit applications simultaneously on the rental of the same premises, thus, the advantage would get the person who first submitted the application, other applications having to be rejected. The current wording of this provision, allows Chişinău municipality council to lease immovable goods in the lack of organizing public tender, privilege being the first person submitting the application, the other requests on leasing being rejected, on the grounds that the requests were not submitted concomitantly.

In this vein, it was concluded that the provision of p. 3.1.1. of the Regulation on management of buildings, constructions and premises with the purpose other than housing - municipal property, approved by the Decision of Chişinău municipality Council no.4/11 as of 26.09.2003, determined the behavior of Chişinău municipal council, which could lead to the infringement of the provisions of art. 12 let.b) of the Law on competition no.183 as of 11 July 2012, prohibiting the establishing of discriminatory conditions or granting privileges for the activity of undertakings, in case these were not provided for by the law.

In view of ensuring a competitive procedure, it was deemed appropriate to amend the text of the Regulation on management of buildings, constructions and premises with the purpose other than housing - municipal property, by omitting imprecise notions, such as „concomitantly” and introducing instead achievable provisions which could regulate obviously, leaving no room for interpretation, the conditions necessary to be fulfilled insofar a tender on leasing premises be organized (for e. g. issuing of a public announcement; offering a term of submitting applications, etc.)

In this respect, the Court of Accounts of the Republic of Moldova in the Decision no.37 as of 31 July 2012 on the Report of audit of budgets of administrative-territorial units and managing the public patrimony in mun. Chişinău during 2010-2011 has found that AAPL did not consider the previous recommendations of the Court of Accounts², did not organize public tenders for leasing and/or extension of the lease contracts of immovable goods, therefore, the procedures at issue were not transparent and did not ensure possible maximum income depending upon the market conditions, important sources being failed, estimated by the audit at about MDL 26 mln.

The Report of audit of budgets of administrative-territorial units and managing the public patrimony in mun. Chişinău during 2010-2011 revealed the fact that AAPL did not ensure inline management of the lease relationships, this domain requiring essential improvements. In this respect, the Court of Accounts has found the

² Decision of the Court of Accounts no. 52 as of 05.07.2010 on the report of the audit of executing Chişinău municipal buget for 2009; Decision of the Court of Accounts no.33 as of 02.07.2009 on the report of the audit of executing Chişinău municipal buget for 2008.

following: „Contrary to the provisions of art.77 para. (5) of the Law no.436-XVI as of 28.12.2006, AAPL does not organize public tenders on leasing and extension of lease contracts for immovable goods. The transmission into lease of uninhabited premises is made “on the grounds of general principles” (direct negotiations), pursuant to the provisions of the regulation approved by the Decision of CMC no.4/11 as of 26.09.2003. It was revealed that the provisions of the Regulation were not complied to the legal framework, coming into contradiction with the provisions of the Law no.436-XVI as of 28.12.2006 and the Law no.121-XVI as of 04.05.2007 on administration and denationalization of public property. AAPL did not consider previous recommendations of the Court of Accounts on adjusting that Regulation and as a result, outdated and inefficient provisions were used during the lease process, such as : the provisions of p.7.5, which does not extend to goods of institutions financed from the budget, but most real estate is at the balance of budgetary institutions; the value of a point of appreciation of uninhabited premises equals to 30 per cent from the minimum salary (18 MDL), or 5,4 MDL, which leads to the establishment of lower prices than those existent on the market; the methodology of calculation of rental amount is not clearly established etc.

The mentioned facts determine the non-transparency of the leasing process, restricting the rights of natural and legal persons by failing to ensure free access to public information. In the same time, the failure to use the tender procedure serves as impediment for ensuring the charging of the maximum possible price correlated to the supply and demand on the real estate market, thus decreasing significant budgetary sources related to necessary transactions.

DGERRP do not have an exhaustive register of uninhabited premises to be leased, and the Register made public on the electronic page of Mayoralty contains only data on the premises available in the basements and technical floors of housing blocks (which, in fact, are common property of the owners of privatized apartments and not of the CMC). The lack of an exhaustive register restricts the access of potential inhabitants to information at issue, thus existing the risk of missing some income.”

Having analyzed the above described actions, the Competition Council withheld the following:

1. The City Council Chişinău was obliged to transmit premises into free usage both to the Department and to authorized free practice veterinarians by concluding a commodate contract;
2. Pursuant to the provisions of art.40 para.(1) of the Law no.221–XVI as of 19.10.2007 on sanitary veterinary activity, the obligation to transmit into usage duty premises on a free of charge basis lied on local public administration authorities. Both the Department and authorized free practice veterinarians

would have to address to the local public administration authorities in view of obtaining duty premises;

3. The Department covers its expenditures related to leasing the premises on 48 Vasile Lupu str., let.A,B,D,G,V, namely the annual rent, from the receipts of subleasing the premise let.D on 48 Vasile Lupu str.;
4. City Council Chişinău infringed the deadlines provided for by the legislation in the procedure of putting into service of the buildings, constructions and premises with the purpose other than housing - municipal property;
5. The conditions related to the organization of a public tender only in case of concomitant submission of two or more application, makes nontransparent the procedure of leasing the premises through tender pursuant to the provisions of the Regulation on management of buildings, constructions and premises with the purpose other than housing - municipal property.

Pursuant to p.7 let.p) of the Regulation on the organization and functioning of the structure and limit staff of the State Chancellery, approved by the Government decision no.657 as of 06.11.2009, the State Chancellery ensures the exert by the Government of the legal prerogatives in its relationship with the local public administration authorities, including the administrative control of the activities of referred authorities, exerted directly or through territorial offices.

Observations to the investigation report

In compliance with the provisions of art. 59 of the Law on competition no.183 as of 11.07.2012, by letters no.APD-13/104-302 and no.APD-13/103-301 as of 30 April 2013, the Competition Council sent the investigation report, offering in this way the possibility to Chişinău municipality Council and National Agency for the Safety of Food to submit observations on it within 30 working days.

Neither City Council Chişinău nor the National Agency for the Safety of Food did not submit observations within the period provided for in para. (3) art.59 of the Law on competition no.183 as of 11.07.2012, nor these requested the extension of the period (para.(4) art.59 of the Law on competition no.183 din 11.07.2012).

Proceeding from the findings, considering the provisions of the legislation of the Republic of Moldova, pursuant to art. 41 of the Law on Competition no.183 as of 11.07.2012, the Plenum of the Competition Council,

DECIDES:

1. To cease the examination of the case initiated by the Disposition no.13 as of 17 February 2011 as to the lack of infringing of art.9 para.(1) let.c) of the Law no.1103-XIV as of 30.06.2000 by the City Council Chişinău;
2. To find the fact that the provision p. 3.1.1. of the Regulation on management of buildings, constructions and premises with the purpose

other than housing - municipal property , approved by the Decision Chişinău municipality Council no.4/11 as of 26.09.2003 created premises for the infringement of the provisions of art. 12 let.b) of the Law on Competition no.183 as of 11 July 2012;

3. To notify Chişinău Territorial Office of State Chancery as to the fact that the City Council Chişinău concluded with the Sanitary Veterinary Department for Safety of Animal Products of mun.Chişinău the lease contract no.2/10/059 as of 10.11.2010 despite the fact that under art.40 para.(1) of the Law no.221–XVI as of 19.10.2007 on the sanitary veterinary activity, local public administration authorities are obliged to ensure the transmission into free usage duty premises to the competent sanitary veterinary authorities and authorized free practice veterinarians;
4. To notify the City Council Chişinău about the noncompliance with the Law on competition no.183 as of 11 July 2012 of the provisions of p. 3.1.1. from the Regulation on management of buildings, constructions and premises with the purpose other than housing - municipal property , for the purpose of undertaking measures for modification insofar to ensure the free access on the market of putting into service of premises and the free competition.

Chairperson of the Plenum

Competition Council

Viorica CĂRARE