

BOSNA I HERCEGOVINA
Konkurencijsko vijeće



БОСНА И ХЕРЦЕГОВИНА
Конкуренијски савјет

DECISION
On concentration between Ljubljanska banka d.d. Ljubljana and Razvojna banka a.d.
Banja Luka

Sarajevo
December 2006



Number: 01-02-26-17-9-II/06
Sarajevo, 15 December 2006

Pursuant to Article 25, paragraph (1), item e), Article 42, paragraph (1), item d) and Article 43, paragraph (2), in connection with Articles 12, 14, 15, 16 and 18 of the Act on Competition («Official Gazette of BIH», No.48/05) and Article 193, paragraph (2) of the Law on Administrative procedure («Official Gazette of BIH», No.29/02) and upon Resolution No. 01-02-26-017-II/06 from 26 October 2006 authorizing *ex-officio* an initiation of the proceeding on assessment of the concentration between Nova Ljubljanska Banka d.d. Trg Republike 2, Ljubljana, Republic of Slovenia and Razvojna banka Jugoistočne Evrope (South-Eastern Europe) a.d. Banja Luka, Kralja Petra I Karađorđevića 85a, Banja Luka, Bosnia and Herzegovina, the Council of Competition on its 37th session held on 15 December 2006 has adopted

D E C I S I O N

1. The concentration achieved in the market of banking and financial services in Bosnia and Herzegovina by acquisition of majority of shares of Razvojna banka Jugoistočne Evrope a.d. Banja Luka, Banja Luka by Nova Ljubljanska banka d.d. Ljubljana, Republic of Slovenia is assessed compatible.
2. Owing to fails to submit a prior Notification of intended concentration within the stipulated time period, Nova Ljubljanska banka d.d. Ljubljana is fined 400.000,00 KM and it is obliged to pay the fine within 8 (eight) days running from the date of receipt of this Decision.
3. This Decision on concentration shall be recorded at the Registry on concentrations.
4. This Decision is final and it shall be published in Official Gazette of BIH and in official gazettes of Entities and Brčko District.

E x p o s i t i o n

The Council of Competition received on 3 April 2006 a Notification on intended concentration No. 01-02-26-003-II/06 submitted by NLB Razvojna banka d.d. Banja Luka declaring that Razvojna banka a.d. Banja Luka-NLB Group intends to take over (merge) the LHB Banka a.d. Banja Luka.

The Council of Competition, when delivered to the Applicant a Receipt on received complete and adequate documentation, adopted a Resolution authorizing the initiation of the proceedings (No: 01-02-26-003-4-II/06 on 21 June 2006) in a sense of regulations of the Act on Competition.

In the course of the assessment procedure of the concentration concerned, the Council of Competition ascertained that transaction was made before implementation of the concentration in question by means of which the undertaking Nova Ljubljanska banka d.d. Ljubljana acquired a majority ownership of Razvojna banka Jugoistočne Evrope a.d. Banja

Luka and that it was not notified to the Council of Competition despite the obligation stipulated in the Act on Competition (hereinafter: the Act).

The legal basis for the implemented concentration is an Agreement on the purchase of share of stocks, signed on 27 July 2005 by Nova Ljubljanska banka d.d. Ljubljana (hereinafter: Nova Ljubljanska banka) and Razvojna banka Jugoistočne Evrope a.d. Banja Luka (hereinafter: Razvojna banka).

On the basis of the said document and completed analysis, the Council of Competition has passed on 26 October 2006 a Resolution No. 01-02-26-017-II/06, authorizing an ex-officio initiation of the proceedings (hereinafter: a Resolution) in order to assess the compatibility of the concentration, in a sense of Article 16 and in connection with Article 18 of the Act.

The Council of Competition, in sense of Article 33, paragraph (2) of the Act, requested the data and relevant documentations from Nova Ljubljanska banka, a party under obligation to notify the concentration in, in order to appraise a positive and negative results of the concentration in question in the market of banking and financial services in Bosnia and Herzegovina. On the basis of the submitted data and within the meaning of Article 17 of the Act, the Council of Competition had to appraise the effects of the implemented concentration in the relevant market structure with the aim of determining whether the concentration concerned created or strengthened a dominant position which could result in prevention, restriction and distortion of the market competition within the meaning of Article 13 of the Act.

Within the determined time limit Nova Ljubljanska banka submitted the asked documentation and made a response to Resolution in question. In its Response, Nova Ljubljanska banka stated that it was not obliged to notify the concentration in the time period when the activities on the concentration were carrying on, pursuant to the Law on Competition («Official Gazette of BiH», No. 30/01). It is also stated that in time when the Agreement was concluded between the parties to the concentration the Act, besides being published in the Official Gazette of Bosnia and Herzegovina, was not published in the Official Gazette of Republic of Srpska so the parties to the concentration had no information on adoption of the new Act on Competition. Nova Ljubljanska banka in its response stressed that the concentration in question regarding its market share, could not have negative effects and could not significantly distort the market competition in the relevant market of the banking services. On the basis of this and together with other reasons stated in the Response, Nova Ljubljanska banka suggested that, in a case of its approved responsibility for failure to notify the concentration, the cited circumstances had to be considered for release from fine, pursuant to Article 3, paragraph (2) of the Regulation on the procedure for granting immunity from fines («Official Gazette of BiH», No. 15/06).

In the procedure of assessment of the concentration, the Council of Competition ascertained the following:

The legal frame for assessment of the concentration

Legal frame

in the course of the assessment procedure of the concentration concerned the Council of Competition applied stipulations of the Act on Competition, Regulation on the Definition of a relevant market («Official Gazette of BiH», No. 18/06) and stipulations of the Law on administrative procedure («Official Gazette of BiH», No. 29/02) in the part which is not covered by the regulations of the Act on Competition.

As the concentration concerned takes place in the banking sector the stipulations of the Law on banks of Federation of Bosnia and Herzegovina («Official Gazette of F BiH», No. 39/98 and 32/00) and the Law on banks of Republic of Srpska («Official Gazette of Republic of Srpska», No. 44/03) have been considered.

The Council of Competition, in sense of Article 43, paragraph (7) of the Act, used a European Court case law, EC decisions, the criteria and standards of the EC Council from the Act on control of the concentration between undertakings, No. 139/2004, Information of the European Commission on the concept of concentration of the undertakings and Instructions for assessment of the horizontal concentration.

The legal basis and form of the concentration

The legal basis for the concentration concerned is an Agreement on purchase the share of stocks , concluded on 27 July 2005 by means of which 16.319 of ordinary stocks and 4.926 of the preference stocks of Razvojna banka a.d. Banja Luka or 92,421% of the total share of stocks are taken over by Nova Ljubljanska banka. The Agreement is concluded between Miroslav Michael Đorđević, a citizen of United States of America, 8 Loch Haven Court, CA 94401 SAD, Milan Mandarić, a citizen of United States of America, Fratton Park Frogmore Road, Portsmouth, Harts, PO 48 RA Great Britain, Biljana Čamilović, a citizen of Serbia and Montenegro, Takovska 6, 11000 Belgrade, Serbia and Montenegro (hereinafter: Dealers) and Nova Ljubljanska banka. Accordingly, Nova Ljubljanska banka takes over 92,421% of the issued, paid in and registered capital from the Dealers.

Taking a control over Razvojna banka by Nova Ljubljanska banka through acquisition of the majority of shares in share capital is a legal form of the concentration, in a sense of Article 12 of the Act.

The parties to the concentration

Nova Ljubljanska banka is founded as a stock company according to regulations of Republic of Slovenia and it operates in the market of universal banking. The largest shareholders are Republic of Slovenia with a 35,41% and KBC Bank NV Brussels with 34,0% of share of stocks. Nova Ljubljanska banka acts indirectly in Republic of Serbia, Republic of Montenegro, Bosnia and Herzegovina and other European countries.

In financial year 2005, preceding the concentration concerned, Nova Ljubljanska banka achieved total income of 852.349.077,00 KM and therefore it met conditions stipulated in Article 14 of the Act to Notify the intended concentration to the Council of Competition in a sense of Article 16 of the Act .

Razvojna banka, a stock company, is a commercial bank which is founded and which operates according to the regulations of Bosnia and Herzegovina, i.e. of Republic of Srpska and it has 22.987.000, 00 KM of registered stocks capital divided in 17.934 of ordinary stocks and 5.053 preference stocks to the nominal value of 1.000,00 KM. Razvojna banka provides services in banking sector of Bosnia and Herzegovina.

Analysis of the relevant market

In the analysis of the relevant market by identification of the relevant market structure and market shares of the parties to the concentration in the relevant market the Council of Competition assesses that the concentration concerned is compatible.

The relevant market pursuant to Article 3 of the Act and Articles 4, 5, and 6 of the Regulation on Definition of the Relevant Market is composed of the particular products/services market

which are the subject of business activities in the particular geographic market. The relevant services market in the case concerned is the market of the universal banking which includes the banking services, retail and corporate banking in the whole territory of Bosnia and Herzegovina.

As the parties to the concentration operate directly or indirectly in the whole territory of Bosnia and Herzegovina, the relevant market in a geographic sense is deemed the whole territory of Bosnia and Herzegovina.

According to all above mentioned, the relevant market of the concentration concerned is providing services in the universal banking sector in the whole territory of Bosnia and Herzegovina

All data used in the analysis and in estimation of the relevant market and market shares of the parties to the concentration concerned are provided by the Agency for Banking of F BiH and Republic of Srpska, the data of the Council of Competition and data submitted by the parties to the concentration.

Market shares of the leading banks in the aggregate assets in Bosnia and Herzegovina, on 31 December 2004, (Table 1):

Table 1.

No.	Name of the bank	Total in assets (%)
1.	Raiffeisen banka	22,40%
2.	Hypo Alpe Adria Banka	11,70%
3.	UniCredit Zagrebačka banka	14,40%
4.	HVB Central Profit Banka	8,10%
5.	UPI banka	4,20%
6.	Volksbank BiH	3,50%
7.	Razvojna banka Jugoistočne Evrope	3,20%
8.	Tuzlanska banka	3,10%
9.	Nova Banjalučka banka	2,20%
10.	Nova banka	2,00%
11.	CBS bank	1,80%
12.	LHB Banka	1,45%
	Other banks	22,15%
	TOTAL	100,00%
	Total-parties to the concentration (7+11+12)	6,45%

Market shares of the leading banks in the total assets in Federation of Bosnia and Herzegovina, on 31 December 2004, (Table 2):

Table 2.

No.	Name of the bank	Total assets value (%)
1.	Raiffeisen banka	27,60%
2.	Hypo Alpe Adria Banka	14,40%
3.	UniCredit Zagrebačka banka	17,80%
4.	HVB Central Profit Banka	10,00%
5.	UPI banka	5,20%
6.	Volksbank BiH	4,30%
7.	Tuzlanska banka	3,80%
8.	CBS bank	2,30%
	Other banks	14,60%
	TOTAL	100,00%

Market shares of the leading banks in the aggregate assets in Republic of Srpska, on 31 December 2004, (Table 3):

Table 3.

No.	Name of the bank	Total in assets	
		Amounts at KM (000)	(%)
1.	Hypo Alpe Adria Banka	564.943,00	34,21%
2.	Razvojna banka Jugoistočne Evrope	290.050,00	17,56%
3.	Nova Banjalučka banka	193.249,00	11,70%
4.	Zepter banka	169.343,00	10,25%
5.	Nova banka	159.416,00	9,65%
6.	LHB Banka	132.046,00	8,00%
7.	Pavlovic International Bank	59.642,00	3,61%
8.	Other banks	259.602,00	15,72%
	TOTAL	1.651.412,00	100,00%
	Total-parties to the concentration (2+6)	422.096,00	25,56%

According to the tables 1-3 the aggregate market share of the parties to the concentration in assets in Bosnia and Herzegovina is 6,45%, but in Republic of Srpska it is 25,56%. These details shows that the largest market share in assets in Bosnia and Herzegovina is achieved by Raiffeisen bank with 22,40% and in Republic of Srpska by Hypo Alpe Adria Banka with 34,21%.

Retail banking

Banking services for civilians (retail banking) includes products such as deposits and accounts (current accounts, saving accounts, deposits and checks, etc.), money transaction services, issuing of the payment cards, credit transfer, direct debentures, credits (for natural entities, consumer-credits, mortgage-credits, and the same) joint funds, funds for retired persons , etc.

The structure of the bank shares in the retail banking market (private deposits and credits) in Republic of Srpska on 31 December 2005, (Table 4):

Table 4.

000 KM		Republic of Srpska					
No.	Name of the bank	Private deposits		Private credits		Total/average	
		Amounts at KM	%	Amounts at KM	%	Amounts at KM	%
1.	Hypo Alpe Adria Bank	79.361,00	21,22%	235.677,00	53,67%	315.038,00	38,75%
2.	Razvojna banka Jugoistočne Evrope	91.607,00	24,50%	59.429,00	13,53%	151.036,00	18,58%
3.	Zepter banka	68.717,00	18,37%	23.145,00	5,27%	91.862,00	11,30%
4.	Nova Banjalučka banka	46.094,00	12,32%	33.839,00	7,71%	79.933,00	9,83%
5.	Nova banka	30.779,00	8,23%	40.707,00	0,93%	71.486,00	8,79%
6.	LHB banka	27.181,00	7,27%	29.806,00	6,79%	56.987,00	7,00%
7.	Pavlovic International Bank	18.440,00	4,93%	8.832,00	2,01%	27.272,00	3,35%
8.	Bobar banka	8.020,00	2,14%	5.878,00	1,34%	13.898,00	1,71%
9.	Balkan Investment Bank	3.793,00	1,01%	1.777,00	0,40%	5.570,00	0,68%
	Total	373.992,00	100,0%	439.090,00	100,0%	813.082,00	100,0%
	Total-parties to the concentration (2+6)	118.788,00	31,77%	89.235,00	20,32%	208.023,00	25,58%

According to the Table 4 the largest market share achieved in retail banking (averagely) in Republic of Srpska had Hypo Alpe Adria Bank - Banja Luka with 38,75 %, and the market share of the parties to the concentration in retail banking was averagely 25,58% (31,77% in the field of private deposits and 20,32% in the field of private credits) of the total retail banking market in Republic of Srpska.

Corporate banking

Corporate banking includes a wide range of banking services offered to corporate clients. This service includes deposits, credits, money transactions, credit letters, international payments, etc.

The structure of the market shares of the parties to the concentration and the main competitors in the market of the corporate banking in Republic of Srpska (deposits and credits) on 31 December 2004 (Table 5.):

Table 5.

000 KM		Republic of Srpska					
No.	Name of the bank	Corporate deposits		Corporate credits		Total/average	
		Ammounts at KM	%	Ammounts at KM	%	Ammounts at KM	%
1.	Hypo Alpe Adria Bank	57.257,00	10,97%	200.275,00	34,0%	257.532,00	23,17%
2.	Razvojna banka Jugoistočne Evrope	145.198,00	27,80%	83.113,00	14,11%	228.311,00	20,55%
3.	Nova Banjalučka banka	89.452,00	17,12%	81.841,00	13,90%	171.293,00	15,14%
4.	Nova banka	84.462,00	16,17%	69.421,00	11,79%	153.883,00	13,85%
5.	Zepster banka	52.915,00	10,13%	59.940,00	10,18%	112.855,00	10,16%
6.	LHB banka	50.857,00	9,74%	41.356,00	7,02%	92.213,00	8,30%
7.	Pavlovic International Bank	19.937,00	3,82%	22.152,00	3,76%	42.089,00	3,79%
8.	Balkan Investment Bank	11.541,00	2,21%	23.077,00	3,92%	34.618,00	3,12%
9.	Bobar banka	10.763,00	2,06%	7.712,00	1,31%	18.475,00	1,66%
	Total	522.382,00	100,0%	588.887,00	100,0%	1.111.269,00	100,0%
	Total (2+6) of the joint market shares of the participating parties	196.055,00	37,54%	124.469,00	21,13%	320.524,00	28,85%

The joint market shares of the parties to the concentration in the corporate banking in Republic of Srpska on 31 December 2004 averagely amounts 28,85% (in corporate deposits 37,54% and in corporate credits 21,13%) of the total corporate banking market in Republic of Srpska.

Branches network

The structure of the branches network of the parties to the concentration includes 64 of organizational units in Bosnia and Herzegovina on 31 December 2004, where 63,29% of the total number, (agencies, sub-branches, branch offices) operate in Republic of Srpska.

The market share of NLB Group in Bosnia and Herzegovina

For complete analysis of the relevant market in the time period until 31 December 2006, besides the parties to the concentration, the market shares in total assets and market shares in the universal banking relevant market of Bosnia and Herzegovina of all economic associations connected to the parties to the concentration in Bosnia and Herzegovina are calculated. This refers to the Tuzlanska banka d.d. and CSB Bank d.d. Sarajevo which belongs to NLB Group-Ljubljana, Republic of Slovenia (Table 6.)

Table 6.

31.12.2005. Name of the bank		Bosnia and Herzegovina		
		Total in assets	Retail banking	Corporate banking
Federation of BiH	Tuzlanska banka d.d. i	4,60%	3,80%	6,10%
	CBS Bank d.d. Sarajevo			
Republic of Srpska	LHB Banka a.d. Banja Luka	4,40%	2,10%	2,00%
	Razvojna banka a.d. Banja Luka			
TOTAL NLB Group Ljubljana		9,00%	5,90%	8,10%

Appraisal of the concentration

After the assessment has been completed and when all data and facts, separately and correlatively, in the decision making procedure have been analyzed, the Council of Competition determines that the concentration of the parties concerned does not prevent, restrict and distort the market competition in the relevant market and that it enables the strengthened market competition in banking services in Bosnia and Herzegovina.

During the decision making procedure, the Council of Competition considers that this concentration does not increase significantly the market shares of the parties to the concentration in the relevant market of the banking services (Table 1-6), i.e. that the joint market share of the Nova Ljubljanska banka in banking assets in Bosnia and Herzegovina amounts 9, 0%, 5, 9% in retail banking and 8,1% in corporate banking.

Considering all the above, the Council of Competition assesses that the concentration concerned is compatible in a sense of Article 18, paragraph (2) of the Act and decides as it is in enacted form of this Decision.

Fine

The parties are obliged to submit a Notification on intended concentration when, on the basis of Article 14, paragraph (1), item a) of the Act, their total annual income achieved through banking services in the world market amounts 100.000.000,00 KM.

When the stipulated conditions of Article 14 of the Act are fulfilled, a Notification on intended concentration is to be submitted to the Council of Competition for assessment within eight days starting from the date of its publication or conclusion of the agreement which achieved the control or dominant position over the undertaking, depending what comes first, pursuant to Article 16, paragraph (1) of the Act.

Considering all above mentioned regulations of the Act and with an insight into the submitted documentation, the Council of Competition has established that Nova Ljubljanska banka has not notified the concentration concerned despite it fulfills the conditions from Article 12 of the Act («acquisition of more than 50,0% shares in the share capital of Razvojna banka») and Article 14, paragraph (1), item a) of the Act («total income realized on 31 December 2004.»). Nova Ljubljanska banka was obliged to notify the concentration to the Council of Competition pursuant to Article 16, paragraph (1) of the Act.

Considering all relevant circumstances and facts, the Council of Competition established existence of the infringement, in sense of Article 16 of the Act and therefore it imposed a fine

up to 1,0% of the total income in the preceding business year, pursuant to stipulations of Article 49, paragraph (1), item b) of the Act.

The Council of Competition imposed a fine of 400.000,00 KM to Nova Ljubljanska banka, which is 0,05% of the total annual income in 2004.

Imposing the fine, the Council of Competition took into account that a Resolution authorizing the initiation of the proceedings was passed ex-officio by the Council of Competition on 26 October 2006, fifteen months after the conclusion of Agreement on purchase of the issued share capital (concluded on 27 July 2005), concluded between the parties to the concentration concerned, and that Nova Ljubljanska banka did not submit afterwards, within that time period, a Notification on intended concentration.

The Council of Competition has imposed a fine having in mind that the punishment is not the primary aim but that the imposed fine is to warn of obligatory application of the Act on Competition.

Besides, the Council of Competition has considered a fact that Nova Ljubljanska banka acts in a country of developed competition practice where the same sanctions are applied for the same violation of the competition and therefore that Intesa Holding has to be informed about the legislation in the country where the concentration is carrying out.

A full cooperation of Intesa Holding in the proceedings is taken into account in imposing a fine level.

The reasons given in the respond to the Resolution on authorizing the initiation of the proceedings regarding the granting the immunity from fine, in a sense of Article 3, paragraph(2) of the Regulation on the Procedure for Granting Immunity from Fines, do not affect the imposition of the fine level because the above mentioned Regulation refers to the cartels not to concentrations.

Legal remedy

This Decision is final and no appeal is allowed against it. Unsatisfied party shall be entitled to bring an administrative dispute before the Court of Bosnia and Herzegovina within thirty days (30 days) from the date of acceptance of this Decision, i.e. from the date of its publication.

Gordan Raspudic

President