

BOSNA I HERCEGOVINA
Konkurencijsko vijeće



БОСНА И ХЕРЦЕГОВИНА
Конкуренијски савјет

BOSNIA AND HERZEGOVINA
Council of Competition

DECISION

**on Notification of intended concentration between undertaking “Veleprodajni centar”
trgovina na veliko i malo (Wholesale and Retail trade Center) d.o.o. Sarajevo and
undertaking Džananović d.o.o. Zenica**

Sarajevo
September 2007



BOSNIA AND HERZEGOVINA
Council of Competition

Number: 01-01-26-021-11-II/07
Sarajevo, 21 September, 2007

Pursuant to Article 25, paragraph (1) item e), Article 42, paragraph (1), item d) and Article 43, paragraph (2), in connection with Article 12,14,16,17 and 18 of the Act on Competition («Official Gazette of BH», No. 48/05) and Article 193, paragraph (2) of the Law on Administrative procedure («Official Gazette of BH», No. 29/02) upon the Notification of intended concentration between undertaking «Veleprodajni centar» trgovina na veliko i malo (Wholesale and Retail trade Center) d.o.o., Rajlovačka, 71 000 Sarajevo and undertaking Džananović d.o.o. Zenica, ZAVNOBIH-a 88, Zenica, submitted by the authorized representative Ismir Brkić (Blatuša 34a, 71000 Zenica), a director of «Veleprodajni centar» trgovina na veliko i malo (Wholesale and Retail trade Center) d.o.o., entered under the registration number 01-01-26-021-II/07, on 15.06.2007., the Council of Competition in its 50th (fiftieth) session, held on 21 September 2007 has adopted

DECISION

1. The concentration, created in the market for retail trade in groceries, nutrition, drinks and household consumer goods in Bosnia and Herzegovina and implemented on the basis of the Agreement on business cooperation between undertaking Džananović d.o.o. Zenica, ZAVNOBIH-a 88, Zenica and undertaking «Veleprodajni centar» trgovina na veliko i malo (Wholesale and Retail trade Center) d.o.o. Rajlovačka bb, 71000 Sarajevo, is assessed compatible.
2. Due to the fact that the Notification is not submitted within the legally regulated time period, the undertaking «Veleprodajni centar» trgovina na veliko i malo (Wholesale and Retail trade Center) d.o.o. is fined in amount of 80.000,00 KM (eighty thousands) and it is obliged to pay it in eight days starting of receiving this Decision.
3. This Decision on concentration is entered in the Register of concentrations.
4. This Decision is final and it shall be published in the «Official Gazette» of BH, in official Gazettes of Entities and Brcko District of Bosnia and Herzegovina.

Exposition

Pursuant to Article 16, paragraph (1) of the Act on Competition, the Council of Competition received on 15 June 2007 a Notification of intended concentration, No. 01-01-26-021-II/07 (hereinafter: the Notification), created between undertaking «Veleprodajni centar» trgovina na

veliko i malo (Wholesale and Retail trade Center) d.o.o., Rajlovačka, 71000 Sarajevo (hereinafter: the Applicant or Velpro) and undertaking Džananović d.o.o., ZAVNOBiH-a 88, Zenica (hereinafter: Džananović), submitted by the authorized representative Brkić Ismir, a director of “Veleprodajni centar” trgovina na veliko i malo (Wholesale and Retail trade Center) d.o.o.

When checked submitted Notification, the Council of Competition established that it was not complete, pursuant to Article 30 of the Act on Concentration (hereinafter: the Act) and Regulation on Notification and Criteria for Assessment a Concentration of undertakings („Official Gazette of BiH“, No. 95/06). Therefore, pursuant to Article 31 of the Act the Council of Competition asked on 22 June 2007 the Applicant to submit supplements to the Notification. On 05 July 2007 the Applicant submitted asked documents by an official letter No.: 01-01-26-021-5-II/07, fulfilling conditions the subject to the issuing an Acknowledgement of receipt of complete and adequate Notification, pursuant to Article 30, paragraph (3) of the Act.

On 30 July 2007, the Council of Competition issued to the Applicant an Acknowledgement of receipt complete and adequate Notification, No.: 01-01-26-021-9-II/07.

The Applicant stated that the notification is not intend to be submitted for assessment to any responsible body outside of Bosnia and Herzegovina, pursuant to Article 30, paragraph (2) of the Act.

During the assessment of the concentration concerned, the Council of Competition ascertained the following facts:

1. The parties to the concentration

The parties to the concentration are “Veleprodajni centar” trgovina na veliko i malo d.o.o. (Wholesale and Retail trade Center) (Velpro), Rajlovačka, 71000 Sarajevo, and undertaking Džananović d.o.o. Zenica, ZAVNOBiH-a 88, Zenica.

1.1. Undertaking «Veleprodajni centar» trgovina na veliko i malo“ (Wholesale and Retail trade Center)

Undertaking “Veleprodajni centar” trgovina na veliko i malo (Wholesale and Retail trade Center) d.o.o., Rajlovačka, 71000 Sarajevo is entered in the Register of undertakings of the Municipal Court in Sarajevo on 08 March 2004 under the No.: 1-24542. Its founder and 100,0% owner is undertaking Konzum trgovina na veliko i malo (Wholesale and Retail trade Center) d.d. (hereinafter: Konzum), Marijana Čavića 1a, 10000 Zagreb, Republic of Croatia.

According to the information given by the Applicant, the majority owner of Konzum is undertaking Agrokor d.d. Zabreb, Republic of Croatia (hereinafter: Agrokor) with (..)**¹ % of aggregate stocks, while Jamnica d.d. Zagreb, Republic of Croatia has (..)**%, Investco vrijednosnice d.o.o. Zagreb, Republic of Croatia has (..)**% and other shareholders from Republic of Croatia have (..)**% .

Velpro is active in the market for wholesale and retail trade in food, drinks and other, mainly, nutritional wares. Velpro has 32 shops in Bosnia and Herzegovina in Sarajevo, Prijedor, Tešanj, Bihać, Zenica, Travnik and Sanski most.

¹ (..)** the data is deemed to be abusiness secret

1.1.1. Connected undertakings

Undertaking Agrokor in Bosnia and Herzegovina is (...)**% owner of INIT d.d. Sarajevo (main business activity is telecommunications services) and (...)**% owner of undertaking Agrokor Zagreb d.o.o. Grude (main business activity is export/import).

Agrokor, through the undertakings under its majority ownership, controls in Bosnia and Herzegovina the following:

- undertaking Velpro (main business activity is wholesale and retail trade) through undertaking Konzum d.d. Zagreb ((..)**% owner);
- undertaking Sarajevski Kiseljak (main business activity is drinking water production) through undertaking Jamnica d.d. Zagreb ((..)**% owner);
- undertaking Zvijezda d.o.o. Sarajevo (main business activity is production of edible oil and margarine) through undertaking Zvijezda d.d. Zagreb ((..)**% owner);
- undertaking Ledo Čitluk d.o.o. (main business activity is production of ice cream and frozen vegetables and fruit) through undertaking Ledo d.d. Zagreb ((..)**% owner);

According to information stated in the Notification the undertaking Velpro is not close shareholder in other undertakings in Bosnia and Herzegovina.

1.2. Undertaking Džananović

Undertaking Džananović d.o.o. Zenica is entered in the Register of undertakings in Cantonal Court in Zenica under the registration number: 1-2452. Džananović Salko and Džananović Jasenko are founders and owners of the company where each holds a (...)**% share. Undertaking Džananović d.o.o. Zenica is registered as an association for production, trade and services. It holds no majority of the shares in other undertakings.

2. Total annual income of the parties to the concentration

Pursuant to Article 14, paragraph (1), item b) of the Act, the notification obligation is applicable if the parties to the notification acquired total annual income, stipulated in the Act, realized in sales of goods and/or services in the market in Bosnia and Herzegovina in the year preceding the concentration.

Acquired income of the parties to the concentration on 31 December 2006 is shown in the Table1.

Table 1.

	Velpro	Džananović
Bosnia and Herzegovina	(..)** KM	(..)** KM

The Table 1. shows that total income of the parties to the concentration is over 5.000.000,00 KM in the market of Bosnia and Herzegovina according to the final account in the year preceding the concentration. Therefore the condition relating to the notification obligation is fulfilled, pursuant to Article 14, paragraph (1), item b) of the Act.

3. Legal frame of appraisal of the concentration

During the procedure for appraisal of the concentration concerned, the Council of Competition applied stipulations of the Act and 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) relating to the part which is not regulated by the Act.

The Council of Competition, pursuant to Article 43, paragraph (7) of the Act, applied European Court's experience and decisions of the European Commission, and criteria and standards from EC Act No.: 139/2004 relating to control of concentration created between undertakings, EC Information on concepts of concentration of undertakings and Directives on assessment of the vertical concentration.

4. Legal basis and form of the concentration

Legal basis of the concentration concerned is an Agreement on business cooperation, No.: 3456-01/07 (hereinafter: the Agreement) made between Velpro and Džananović on 11.04.2007.

According to the Agreement in question, Velpro leases 7 business premises of (.)** m² located in Zenica, Maglaj and Bugojno from undertaking Džananović for the period of 15(fifteen)years. By means of this Agreement Velpro is obliged to accept equipment, machines and devices in the leased business premises and to take over supplies of goods in the premises available on takeover day. The Velpro shall make a contract with employees of undertaking Džananović employed in leased premises. That means that Velpro takeover business activity and market shares of undertaking Džananovic

In Article 8, item f) of the Regulation on Notification and Criteria for Assessment a Concentration of Undertakings the Council of Competition defines the stipulations of Article 30, paragraph (1), item a) of the Act (stipulating that the legal basis of the concentration is property lease agreement/contract which acquires the dominant position to one of the parties to the concentration).

To define the legal form of the concentration concerned, the Council of Competition applied Article 12, paragraph (1), item b)3 and paragraph (2) of the same Article, and Article 2, paragraph (2), item d) of the same Act.

Article 12, paragraph (1), item b)3 of the Act stipulates that concentration is deemed acquisition of control or dominant position of one or more undertakings over another or more other undertakings, or a part of another undertaking or parts of another undertakings pursuant to the provisions of the law regulating the foundation and management of undertakings.

Article 12, paragraph (2) of the Act stipulates that acquisition of control is realized through the right, conclusion of agreement or other ways by means of which one or more undertakings, separately or together, considering all legal and factual conditions, benefits the possibility to acquire dominant influence over one or more undertakings.

Pursuant to Article 2, paragraph (2), item d) of the Act the controlled undertaking is deemed an undertaking in which another undertaking, directly or indirectly, legally or factually, decisively governs the handling and, especially in the acquired right, manages the business activity of the controlled undertaking.

In defining the concentration, the Council of Competition considered also the Acts of the Council (EC) on control of the concentration between undertakings No.: 139/2004, particularly the definition of concentration given in Article 3, paragraph (a): "the control is acquired, beside other, through the right to use all or part of whole property of an undertaking".

5. Analysis of the relevant market

Relevant market, pursuant to Article 3 of the Act and Article 4, 5 and 6 of the Regulation on the Definition of a Relevant Market, is a market of particular products/services which are the subject of the business activities in the particular geographic area.

Relevant products market is a market for retail sale of groceries, food products, drinks and wide range of household consumer products. Relevant market in geographic sense for the concentration concerned is the territory of Bosnia and Herzegovina.

The Council of Competition established that the territory of Bosnia and Herzegovina is a relevant market because the undertaking Velpro is active in the whole territory of Bosnia and Herzegovina.

On the basis of data given by GfK group - Market Research Center, Skenderija 44, Sarajevo, the list and assessment of the market shares of main market competitors that are parties to the concentration on 31 December 2006 is shown in the Table 2.

Table 2.

No	Undertaking	Market share
1.	Interex - Sarajevo	5,8%
2.	VF Komerc - Sarajevo	3,7%
3.	Tropic centar - Banja Luka	2,6%
4.	Bingo - Tuzla	2,4%
5.	Mercator - Sarajevo	1,8%
6.	Omega - Živinice	1,7%
8.	Merkur - Sarajevo	1,0%
7.	Other	81,0%
8.	Total	100,0%

Table 2 shows that the biggest market share of 5,8% in the relevant market has Interex d.d. – Sarajevo, 3,7% of market shares has undertaking VF Komerc d.d. Sarajevo and 2,6% of market shares has Tropic centar d.d. - Banja Luka. As there are many undertakings with individual shares the acquisition of dominant position is considered as impossible.

The market shares of the parties to the concentration concerned in the relevant market is less than 4,7% where Velpro has 3,7% of market shares and Džananović has less than 1%. The Council of Competition ascertained that joined market shares of the parties to the concentration in the relevant market is significantly below 40,0% which is established parameter to determine the dominant position of the undertaking, pursuant to Article 9 of the Act.

The Council of Competition considered the notified concentrations with similar legal basis – Agreement on business cooperation and lease of business premises- by means of which Velpro leases (buys) whole or parts of the following undertakings : VF Komerc, trgovina na veliko i malo (wholesale and retail trade centre) d.o.o. Kurta Schorka 7, 71000 Sarajevo (on 20.04.2007, No.: 01-04-26-13-II/07) and undertaking Mališić MT d.o.o. Čitluk, Tromeđa 88245 Čitluk, (on 29.05.2007. ,No.: 01-06-26-018-II/07).

The Council of Competition analyzed the market shares of undertaking Trgocop d.d. Ljubuški (leased by Velpro) and other undertakings (exe. Feroelektro d.d. Sarajevo, Xerma d.o.o. Sarajevo, Aleta d.o.o Sarajevo, etc).

Lease of business premises on a long term basis and take over of employees and supplies of goods available in the leased premises means that Velpro in the concentration concerned take over the market shares of undertaking Džananović in the relevant market (as it performs no activity in the relevant market).

6. Assessment of the concentration

The Council of Competition ascertained in the decision making procedure that the concentration of the parties in question neither prevents, restricts or distorts market competition in the market for wholesale and retail trade of groceries, food, drinks and household consumer goods in Bosnia and Herzegovina.

The Council of Competition concerned especially that the concentration does not significantly increased market shares of the parties to the concentration in the relevant market.

The concentration will enable development and shorten the distribution chain, improve supply chain of the market and wide assortment of goods which can result in prices decrease.

Considering all facts and information the Council of Competition assessed the concentration concerned compatible, pursuant to Article 18, paragraph (2), item a) of the Act, as it is stated in the enacted terms of the Decision.

7. Fine

The Council of Competition established that the concentration concerned is a concentration pursuant to Article 12, paragraph (1), item b)3 and paragraph (2) and Article 14, paragraph (1), item b) of the Act, so the Applicant was obliged to submit notification within eight days starting from the date of its publication or conclusion of the agreement, pursuant to Article 16, paragraph (1) of the Act.

As the Notification was submitted 56 days of late, the Council of Competition assessed that Article 16; paragraph (1) of the Act is violated by the Applicant.

The Council of Competition, pursuant to stipulations of Article 49, paragraph (1), item b) of the Act, considering all legal and actual circumstances, i.e. after determination of all failures, in sense of Article 16 of this Act, may impose a fine up to 1% of the total income realized in the previous year of business transactions.

The Council of Competition imposed a fine of 80.000, 00KM to Velpro, that is (..)**% of the total annual income realized in 2006.

The Council of Competition has considered a fact that Konzum d.d. Zagreb, the owner of undertaking Velpro, acts in a country of developed competition practice where the same sanctions are applied for the same violation of the competition.

Implementing the concentration before it was appraised by the Council of Competition, the Applicant also violate Article 18, paragraph (8) of the Act The Council of Competition has imposed a fine having in mind that the punishment is not the primary aim but that the imposed fine serves as a warning of obligatory application of the Act on Competition. At same time, the Council of Competition has considered the duration of the violation, pursuant to Article 52 of the Act.

A full cooperation of Velpro in the proceedings was taken into account in determination of the fine level.

8. Administration tariffs

On this Decision the Applicant, pursuant to the Article 2, paragraph (1), tariff number 107, item d) 1) of the Regulation on administration taxes relating to the practices before the Council of Competition ("Official Gazette of BIH", No. 30/06), is obliged to pay administration tariff of 2.500,00 KM for the benefit of the budget of Institutions of Bosnia and Herzegovina.

9. 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.

President

Sanja Božić