

**BOSNA I HERCEGOVINA**  
*Konkurencijsko vijeće*



**БОСНА И ХЕРЦЕГОВИНА**  
*Конкуренијски савјет*

**BOSNIA AND HERZEGOVINA**  
*Council of Competition*

**DECISION**

**upon Notification of intended concentration between undertakings Dr.Ing.h.c.F. Porsche  
AG, Stuttgart, Germany and Volkswagen AG, Wolfsburg, Germany**

**Sarajevo,  
26 July 2007**



**BOSNIA AND HERZEGOVINA**  
*Council of Competition*

**Number: 01-03-26-015-14-II /07**  
**Sarajevo, 26 July 2007**

Pursuant to Article 25, paragraph (1) item e), Article 42, paragraph (1), item d), Article 43, paragraph (2) in connection with Article 12, 14, 16, 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 undertakings Dr.Ing.h.c.F. Porsche AG, Porscheplatz 1, 70435, Stuttgart, Germany and Volkswagen AG , Berliner Ring 2 38436 ,Voflsburg, Germany entered under the registration number 01-03-26-015-II/07, on 09 May 2007, the Council of Competition in its 49<sup>th</sup> (forty ninth) session, held on 26 July 2007 has adopted

**DECISION**

1. The concentration, created in the market for production and sale of cars in Bosnia and Herzegovina through acquisition of control over the undertaking "Volkswagen AG" by undertaking "Dr.Ing .h.c.F Porsche AG", is assessed compatible. The control is acquired by purchase of stocks based on announced Obligatory public tender offer, where Dr.Ing .h.c.F Porsche AG, Porscheplatz 1, 70435, Stuttgart, Germany becomes a majority owner of Volkswagen AG , Berliner Ring 2 38436 Voflsburg, Germany.
2. This Decision on concentration is entered in the Register of concentrations.
3. 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.

**E x p o s i t i o n**

"Dr.Ing .h.c.F Porsche AG" (hereinafter: Porsche AG), Porscheplatz 1, 70435 Stuttgart, Germany submitted, by authorized attorney Rastko Petaković, Lepenička 7, Belgrade (hereinafter: the Applicant), a Notification of intended concentration to the Council of Competition by means of which, based on obligatory Public tender offer for stocks, intends to acquire majority ownership over Volkswagen AG, Berliner Ring 2 38436 Voflsburg, Germany (hereinafter: Volkswagen).

The Notification of intended concentration was submitted to the Council of Competition on 09May2007 under the registration number: 01-03-26-015-II /07, pursuant to Article 16, paragraph (1) of the Act on Competition (hereinafter: the Act).

The Notification was not complete pursuant to Article 31 of the Act and therefore the Applicant , upon the request of the Council of Competition No.: 01-03-26-015-2-II/07 (sent on 04 June2007)and No.: 01-03-26-015-5-II/07 (sent on 28June), submitted supplements to the Notification No.: 01-03-26-015-4-II/07 and No.: 01-03-26-015-9-II/07, on 11 June 2007 and 09 July 2007.

The Council of Competition issued on 18 July 2008 an Acknowledgement of receipt of complete and adequate Notification, No.: 01-03-26-015-11-II/07, pursuant to Article 30, paragraph (3) of the Act.

The Applicant states that Notification of intended concentration will be or has already been submitted for assessment to another responsible bodies for competition in the following states: EU Commission, Argentina, Brazil Canada, China, Croatia, Macedonia, Mexico, Russia, Serbia, South Africa , Switzerland, Turkey and Ukraine.

Total annual income of the parties to the concentration (Table 1) earned in the world and BiH market in 2006 (the year that preceding the concentration concerned) amounted:

(Table 1)

Total income (KM)	Porsche	Porsche Holding	Volkswagen
<b>Worldwide</b>	(..)** <sup>1</sup>	(..)**	(..)**
<b>BiH</b>	(..)**	-	(..)**

The Council of Competition established on the basis of the above stated information (Table 1.) that the parties to the concentration are obliged to notify the concentration concerned as the criteria, regarding the total annual income of the parties to the concentration earned in the year that preceding the concentration concerned, was fulfilled , pursuant to Article 14 of the Act.

The following facts were established during the procedure for appraisal of intended concentration:

### 1. Legal basis and frame of the concentration

Legal basis for Notification of intended concentration is an Obligatory Public Tender offer for purchase of majority stocks of "Volkswagen" by "Dr.Ing .h.c.F Porsche AG".

Porsche AG acquired additional 3,6% of stocks of Volkswagen on 28 March 2007 and became an owner of 30,93% of stocks in Volkswagen. As its participation in Volkswagen goes beyond the limits of 30%, Porsche AG was obliged to announce a tender for takeover of the rest shares in Volkswagen, pursuant to the German law on securities and public takeover. On 30 April 2007 Porsche AG announced a tender for purchase the rest of stocks in undertaking Volkswagen except those in possession of shareholders from Japan (who possess approximately 0,1 % of stocks in Volkswagen) .

The legal frame of the concentration is an acquisition of control or dominant influence of one or more undertakings over other undertaking or more other undertakings or over the part of other undertaking or parts of other undertakings realized by purchase of majority stocks or shares in legal capital, pursuant to Article 12, paragraph (1), item b) 1) of the Act.

### 2. The parties to the concentration

The parties to the concentration in question are Dr.Ing.h.c.F. Porsche AG, Porscheplatz 1, 70435, Stuttgart, Germany and Volkswagen AG, Berliner Ring 2 38436, Wolfsburg, Germany.

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<sup>1</sup> confidential business information

## **2.1. Dr.Ing .h.c.F Porsche AG,**

Dr.Ing .h.c.F Porsche AG, Porscheplatz 1, 70435, Stuttgart, Germany is a stock association, registered at the Commercial register of the Court of First instance in Stuttgart under the number: HRB5211. Its main business activity is production of motor vehicles and spare parts (the sports cars, including the sports car services), distribution of motor vehicles, provision financial services, and others.

Porsche AG is an international car concern with 70 daughter companies in Europe, North America, Australia and South Asia. It is controlled by Porsche and Piech families.

Porsche AG is a part of Porsche Holding Gesellschaft mbH headquartered in Vogelwalderstrasse 75, Salzburg, Austria. Its main business activity is distribution of vehicles produced by Porsche AG, Volkswagen and other producers (third entities) on the retail and wholesale trade level in EU countries, Easter-European countries and China.

## **2.2. Volkswagen AG**

Volkswagen AG is a stock association, registered at the Commercial register of the Court of First instance in Braunschweig under the number: HRB 100484 in accordance with the German law; it is headquartered in Berliner Ring 2, 38436 Wolfsburg, Germany. Its main business activity is production of motor vehicles and spare parts, distribution of motor vehicles and spare parts, provision of financial services, and others.

Volkswagen is a part of Volkswagen Group (hereinafter: the Group) and it deals in production and distribution of motor vehicles. The following brands of commercial vehicles: Volkswagen, Audi, Bentley, Bugatti, Lamborghini, SEAT, Škoda and Volkswagen are the part of business activities of Volkswagen Group.

Total annual turnover of Volkswagen in the Group made by production and distribution of motor vehicles goes beyond 90%.

Volkswagen provides a financial service, generating 8% of total annual turnover of the Group.

Volkswagen is open stock association which sells its stocks at the Frankfurt stock exchange. The owners of Volkswagen stocks with voting rights are the following entities:

- Porsche AG and Porsche Holding, own 30,91%of stocks;
- the state of Lower Saxony (including the Hannoversche Beteiligungsgesellschaft mbH Association) owns 20,35% of stocks;
- UBS AG owns 3,72% of stocks;
- Other stockholders own 45,02% of stocks.

Volkswagen connected associations in BIH:

- Volkswagen Sarajevo d.o.o., Vogošća, Igmanska 36, 71320 Vogošća, main activity is production of components and assembling cars, owns 58% of share in Volkswagen;
- Free zone Vogošća d.o.o., Igmanska 36, 71320 Vogošća, owned (..)\*\*% by Volkswagen Sarajevo;

- TAS Tvornica vozila Sarajevo GmbH, Vogošća (not active), where (..)\*\*% of share is owned by Volkswagen;
- Škoda auto BiH d.o.o. Sarajevo (in liquidation), where (..)\*\*% of share is owned by Volkswagen.

### 3. Appraisal of relevant market

Article 3 of the Act and Article 4, 5 and 6 of the Regulation on Definition of relevant market («Official Gazette of BH», No. 18/06) stipulate the relevant market of particular products or services that are the subject to business activities of the undertakings in the relevant geographic market.

The Council of Competition establishes that relevant market of products and services of the parties to the concentration in the concentration concerned is a market for production and sale of cars.

The relevant geographic market for this concentration is territory of Bosnia and Herzegovina because the cars production and sale is performed in the whole territory of Bosnia and Herzegovina.

Therefore, the Council of Competition establishes that relevant market for the concentration concerned is a market for production and sale of cars in the whole territory of Bosnia and Herzegovina.

Volkswagen, through its connected undertaking Volkswagen Sarajevo d.o.o. Vogošća, is the only producer of vehicles in the relevant market in Bosnia and Herzegovina relating to the car production. The cars of Volkswagen Group producing program are assembled in the plant in Vogošća.

Therefore, Volkswagen has 100% of share in the above said relevant market but Porsche has no market share (0%).

Considering all the above said the only change in this relevant market is a change of control over the existing parties to the concentration, so there is no creation or strengthening of a dominant position.

Regarding the relevant market for sale of cars we point out that Porsche considered the data of new car registrations recorded in BIH in 2006.

<b>Participation</b>	<b>Number of sold cars</b>	<b>Shares (%)</b>
Volkswagen group		
Volkswagen	(..)**	13,02
Škoda	(..)**	21,18
Audi	(..)**	4,11
SEAT	(..)**	1,58
<b>Total Volkswagen</b>	<b>(..)**</b>	<b>39,89</b>
<b>Porsche</b>	<b>(..)**</b>	<b>0,54</b>
Whole market 2006	(..)**	100

According to mentioned data, the parties to the concentration have the following market shares: Volkswagen 39,89% (at the whole group level comprised of Volkswagen, *Audi*, *SEAT* and *Škoda*) and Porsche 0,54%.

Market shares of the biggest competitors of the parties to the concentration in the cars sale relevant market in BIH look as follows: Renault group 14,57%, Ford Motors Group 7,68%, General Motors 6,89%, Hyundai & KIA 6,70%, AvtoVaz 6,22%, Toyota 4,63%, PSA Group 4,57.

This shows that producers which provide a wide assortment of products, mainly cars of the lower and middle class have bigger market share in the market.

Volkswagen (Volkswagen, Škoda, Audi, SEAT and Volkswagen commercial cars) and Porsche AG sell their vehicles through independent dealer ASA Auto d.o.o., Sarajevo.

#### **4. Appraisal of the concentration**

Considering all the facts stated above, the Council of Competition assessed that concentration concerned will not create or strengthen a dominant position of the parties to the concentration because they can not behave independently of real competitors.

The implementation of concentration concerned will bring benefits from lower prices of products and/or services, advanced quality of products and/or services, introduction of innovations and widen the range of products and /or services for consumers.

Therefore, the implementation of concentration concerned will not cause negative effects (activities) which lead to prevention, restriction and distortion of the competition in the relevant market owing to the strong competition in the relevant market.

Having in mind all the facts stated above, the Council of Competition declared the concentration concerned compatible pursuant to Article 18, paragraph (2) of the Act, as it is stated in enacted terms of this Decision.

#### **5. 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.

#### **6. 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**