

BOSNA I HERCEGOVINA
Konkurencijsko vijeće



БОСНА И ХЕРЦЕГОВИНА
Конкуренцијски савјет

Conclusion

Notification on intended concentration of undertaking Wietersdorfer Baustoffe Beteiligungs GmbH, Klagenfurt, Republic of Austria

January 2011



No: 06-1-26-027-9-II/10
Sarajevo, 18 January 2011

Pursuant to Article 25, paragraph (1) item e), Article 42, paragraph (2), and in accordance with Articles 2, 12, 14 and 16 of Competition Act ("Official Gazette of BiH", No. 48/05, 76/07 and 80/09), acting upon Notification of intended concentration of the undertaking "Wietersdorfer Baustoffe Beteiligungs GmbH", Ferdinand Jergitsch - Strasse 15, 9020 Klagenfurt, Republic of Austria, No: 06-1-26-027-II/10, received on 19 November 2010 Competition Council, at its 7th session, held on 18 January 2011 issued the following

CONCLUSION

1. Notification of intended concentration of the undertaking "Wietersdorfer Baustoffe Beteiligungs GmbH", Ferdinand Jergitsch - Strasse 15, 9020 Klagenfurt, Republic of Austria, is dismissed due to non-existence of obligation to notify, in terms of provisions of Competition Act.
2. This Conclusion shall be published in "Official Gazette of BiH", official gazettes of Entities and Brcko District of Bosnia and Herzegovina.

Exposition

Competition Council of Bosnia and Herzegovina (hereinafter Competition Council) received the Notification on intended concentration No. 06-26-1-027-II/10 on 19 November 2010 (hereinafter Notification) of the undertaking "Wietersdorfer Baustoffe Beteiligungs GmbH", Ferdinand Jergitsch - Strasse 15, 9020 Klagenfurt, Republic of Austria (hereinafter: "WBB" or Applicant), through Law firm Bojana Tkalčić-Đulić, Olodar Prebanić, Adela Rizvić and Arela Jusufbašić - Goloman, Alipašina 51,71000 Sarajevo (power of attorney of 29 October 2010), whereby it intends to purchase from the undertaking Društvo za građevinarstvo unutrašnju i spoljnu trgovinu d.o.o. "House-Milos" Ilidža, Rudnik 115, Ilidža, 71000 Sarajevo (hereinafter: "House Milos"), 25,1% share of the founding capital of its subsidiary company "RR - Company", društvo sa ograničenom odgovornošću za proizvodnju i usluge Kiseljak, Plješevac bb, Kiseljak (hereinafter: "RR -Company").

Having an insight into the Notification, Competition Council established that it was not complete in terms of Article 30 of the Competition Act (Official Gazette of BiH, No 48/05, 76/07 and 80/09) (hereinafter: Act) and Articles 9 and 11 of the Regulation on notification and criteria for assessment of notification (Official Gazette BiH, No. 30/10) and requested supplements to the Notification, in accordance with Article 31 of the Act, through document No. 06-26-1-027-1-II/10 of 1 December 2010.

The Applicant filed a Request for prolongation of deadline for completion of Notification through document No. 06-26-1-027-1-II/10 of 7 December 2010, in terms of Article 31, paragraph (2) of the Act. Competition Council reviewed the Request and approved additional fifteen days by

document No. 06-26-1-027-2-II/10 of 7 December 2010, in terms of Article 31, paragraph (2) of the Act.

The Applicant submitted a part of requested documentation by document No. 06-26-1-027-3-II/10 of 22 December 2010, and filed additional Request for prolongation of deadline for completion of Notification.

Competition Council reviewed the Request and approved additional fifteen days for completion of Notification, in terms of Article 31, paragraph (2) of the Act, by document No. 06-26-1-027-5-II/10 of 23 December 2010.

The Applicant submitted all the requested documentation by document No. 06-26-1-027-6-II/10 of 7 January 2011. Competition Council found the Notification complete and issued the Acknowledgment of receipt of complete and adequate Notification, in accordance with Article 30 of the Act, by document No. 06-26-1-027-7-II/10 of 11 January 2011.

Notification stated that the Applicant does not have obligation to submit the request for the assessment of concentration to another competition authority outside Bosnia and Herzegovina, in terms of Article 30, paragraph (2) of the Act.

During the Notification assessment process, Competition Council established the following facts.

The Notification was filed on time, in accordance with Article 16, paragraph (1) of the Act.

1. Participants to the concentration

Participants to the concentration are undertaking “Wietersdorfer Baustoffe Beteiligungs GmbH“, Ferdinand Jergitsch - Strasse 15, 9020 Klagenfurt, Republic of Austria and undertaking Društvo za građevinarstvo unutrašnju i vanjsku trgovinu d.o.o. “House Milos” Ilidža, Rudnik 115, Ilidža, 71000 Sarajevo.

1.1. “WBB“

Undertaking “Wietersdorfer Baustoffe Beteiligungs GmbH“, Ferdinand Jergitsch - Strasse 15, 9020 Klagenfurt, Republic of Austria is registered in Company register in Klagenfurt under No. FN 288433 t, in 2007, with the total founding capital of (..)*¹ KM (EUR (..)*), with (..)*% of ownership shares (total value (..)* KM - EUR (..)*) of the undertaking Wietersdorfer Industrie - Beteiligungs GmbH“, Ferdinand Jergitsch - Strasse 15, 9020 Klagenfurt, Republic of Austria (hereinafter: WIB) (Register No.: FN 1117222 y) and (..)*% of ownership shares (total value (..)* KM - EUR (..)*) of the undertaking Intercement d.o.o. Ljubljana, Dunajska 63, SVN-1000 Ljubljana, Republic of Slovenia (registered in District Court in Ljubljana under number: 1554760).

Main registered activities of the undertaking “WBB” are takeover and management of other undertakings from construction sector.

Undertaking “WBB“ in Bosnia and Herzegovina has (..)*% of ownership shares in the founding capital of the undertaking BAUMIT d.o.o., Osik 2, 71000 Sarajevo, and (..)*% of ownership shares in the founding capital of the undertaking W&P Milos, Rudnik 121, Ilidža, 71000 Sarajevo

¹ (..)* Data represent business secret in terms of Article 38 of the Competition Act

(undertaking “House Milos” owns the remaining (..)*% of the ownership shares), and (..)*% of ownership shares in the founding capital of the undertaking Kema BH d.o.o. Sarajevo, Lužansko polje 40, 71000 Sarajevo (undertaking Kema Puconci d.o.o. Puconci, Republic of Slovenia owns the remaining (..)*% of ownership shares).

1.2. “House Milos“

Undertaking Društvo za građevinarstvo unutrašnju i spoljnu trgovinu d.o.o. “House Milos” Ilidža, Rudnik 115, Ilidža, 71000 Sarajevo, is registred in Municipality Court Sarajevo under number: 1-5723. (JIB 4200614210005), with total founding capital of (..)* KM, with (..)*% of ownership shares of natural entity Milos Franjo (Trg nezavisnosti 11, 71000 Sarajevo), (..)*% of natural entity Milos Danijela (Rakovička cesta 389, Ilidža, 71000 Sarajevo) and (..)*% of ownership shares in the founding capital owned by Milos Davor (Rakovička cesta 389, Ilidža, 71000 Sarajevo).

Main registered activities of the undertaking “House Milos“ are production of bricks, tiles, cement, lime, concrete products for construction, production of artificial stone and other products for construction.

1.2.1. “RR - Company”

Undertaking “RR - Company”, društvo sa ograničenom odgovornošću za proizvodnju i usluge Kiseljak, Plješevac bb, Kiseljak, is registered at Municipality Court in Travnik under number: 51-01-1703-09 (old number 1-62) (JIB 4236102130004), on 14 June 1994 (Decision of Higher Court in Travnik No.: U/I-37/94), with registered founding capital of (..)* KM, with (..)*% of ownership shares of the undertaking “House Milos“.

Main registered activities of the undertaking “RR - Company” are excavation of ornament stones and construction stones, excavation of limestone, chalk, gravel, other mines and stones, high-rise construction etc.

2. Obligation to notify

Total annual incomes of the undertakings, participants to the concentration (and their subsidiary companies) on 31 December 2009 are:

Table 1.

No.	Undertaking	World		Bosnia and Herzegovina	
		EUR	KM	EUR	KM
1.	WIB	(..)*	(..)*	(..)*	(..)*
2.	WBB	(..)*	(..)*	(..)*	(..)*
3.	House Milos	-	-	-	(..)*
4.	RR - Company	-	-	-	(..)*

Source: Data from Notification

Annual incomes of participants to the concentration (Table 1.) represents total incomes, achieved by selling goods and/or services (without value added tax and other direct taxes), according to Article 9 item h) of the Regulation on Notification and criteria for the assessment of concentration of undertakings.

3. Legal framework and form of Notification

According to its business plans and strategic directions, Stockowners Assembly of the undertaking "House Milos", based on the proposal of Steering Board, at the session held on 3 November 2010, issued a Decision on transfer of part of the share of its subsidiary company "RR – Company" on to the undertaking "WBB".

Undertaking "House Milos"(Seller) and undertaking "WBB" (Buyer), represented by the attorney Rizvić Adela (from the Law firm Sarajevo) , signed the Framework Agreement on sale-purchase of 25,1% of the shares in founding capital (hereinafter Framework Agreement) of the undertaking "RR - Company" (subsidiary company of the undertaking "House Milos") on 4 November 2010 in Sarajevo.

4. Review of the Notification

Using the data from Notification and submitted documentation (Framework Agreement) Competition Council established that the transaction in question is not considered a concentration, in terms of Article 12, paragraphs (1) and 2) of the Act, since the undertaking "WBB, through the purchase of 25,1% of the share in the founding capital and takeover of certain rights in management structure of the "RR -Company", does not acquire control or dominant influence in its management, in terms of Article 2 paragraph (2) of the Act.

Taking into the consideration the above mentioned, Competition Council has decided as in disposition of this Conclusion.

5. Administrative taxes

Pursuant to Article 2, paragraph (1), tariff number 108, item c), of the Regulation on administrative taxes related to procedural actions before Competition Council (Official Gazette of BiH, No. 30/06) the Applicant is obliged to pay administrative taxes in amount of 1.000,00 KM, for the benefit of the Budget of Bosnia and Herzegovina Institutions.

6. Legal remedy

The Appeal is not allowed against this Decision.

Unsatisfied party is entitled to bring an administrative dispute before the Court of Bosnia and Herzegovina within thirty days from the date of receipt of this Decision, i.e. from the date of its publication.

President

Mr. Stjepo Pranjić, Phd.

