

BOSNA I HERCEGOVINA
Konkurencijsko vijeće



БОСНА И ХЕРЦЕГОВИНА
Конкуренијски савјет

DECISION

Adopted upon Notification of intended concentration of economic entity ComTrade Group BV, Kingdom of Holland and economic entity Hermes Softlab Ltd., Republic of Slovenia

Sarajevo
May 2008



Number: 01-06-26-008-29-II/08
Sarajevo, 13th May 2008

Pursuant to Article 25, paragraph (1), item e), article 42, paragraph(1) item d), Article 43, paragraph(2), in connection with Articles 12,14,16, 17 and 18 of the Act on Competition («Official Gazette of BH», No. 48/05 and 76/07) and upon a Notification of intended concentration between economic entities ComTrade Group B.V., Fred. Roeskestraat 12, 1076 EE Amsterdam, Kingdom of Holland and Hermes Softlab Ltd., Litijska 51, 1000 Ljubljana, Republic of Slovenia, submitted by a lawyer Bojan Vučković (Grocka–Leštane, Zabranska 33, 11000 Belgrade, Republic of Serbia), Preduzeće za konsalting i usluge (a company for consulting and services)Karanović & Nikolić, Lepenička 7, 11000 Belgrade, Republic of Serbia, which entered into register under the number 01-06-26-008-II/08 on 21st February 2008, the Council of Competition at its 67th (sixty-seventh) session, held on 13th May 2008 has adopted

DECISION

1. Concentration, which shall be created in the services market for specialized software solutions in Bosnia and Herzegovina, through acquisition of control purchasing 100% of ordinary registered shares in economic entity Hermes Softlab Ltd., Litijska 51, 1000 Ljubljana, Republic of Slovenia, by economic entity ComTrade Group B.V., Fred. Roeskestraat 12, 1076 EE Amsterdam, Kingdom of Holland, is declared compatible.
2. This Decision on concentration shall be recorded at the Register on concentrations.
3. This Decision is final and it will be published in Official Gazette of BH and in official gazettes of Entities and Brcko District of Bosnia and Herzegovina.

Exposition

The Council of Competition received a Notification of intended concentration (hereinafter: the Notification), pursuant to Article 16, paragraph1) of the Act on competition (hereinafter: the Act), of economic entity ComTrade Group B.V., Fred. Roeskestraat 12, 1076 EE Amsterdam, Kingdom of Holland (hereinafter: ComTrade Group) and economic entity Hermes Softlab Ltd., Litijska 51, 1000 Ljubljana, Republic of Slovenia (hereinafter: Hermes Softlab) through a lawyer Bojan Vučković (Grocka-Leštane, Zabranska 33, 11000 Blgrade, Republic of Serbia),Preduzeće za konsalting i usluge(a company for consulting and services) Karanović & Nikolić, Lepenička 7, 11000 Belgrade, Republic of Serbia (hereinafter: the Applicant) , which entered into register under the number 01-06-26-008-II/08 , on 21st February 2008.

The Notification was found incomplete due to the fact that a Letter of intent (signed by the parties to concentration on 06th December 2007.) was submitted as a legal basis for this concentration. Council of Competition found that a Letter of intent could not be considered as a legal subject of concentration, stipulated in Article 30, paragraph (1), and ,also, that other prescribed documents were not submitted, in terms of art. 8, 9 and 10 of Regulation on notification and criteria for assessment a concentration of economic entities(“Official Gazette of BH”,number 96/06).Therefore, pursuant to Article 31 of the Act , the Council requested the supplements to the Notification (official letter number: 01-06-26-008-1-II/08 on 22nd February 2008; official letter number: 01-06-26-001-2-II/08 on 26th February 2008; official letter number: 01-06-26-001-4-II/08 on 27th February 2008; official letter number: 01-06-26-001-6-II/08 on 21st March 2008; official letter number: 01-06-26-001-7-II/08 on 21st March 2008; official letter number: 01-06-26-008-10-II/08 on 26th March 2008; official letter number: 01-06-26-008-22-II/08 on 03rd April 2008).

The Applicant ,in accordance with the requirements of the Council of Competition, submitted all required documentation(official letter number: 01-06-26-008-3-II/08 on 27th February 2008; official letter number: 01-06-26-008-5-II/08 on 20th February 2008; official letter number: 01-06-26-001-8-II/08 on 21st March ,2008; official letter number: 01-06-26-001-9-II/08 on 24th March ,2008; official letter number: 01-06-26-001-15-II/08 on 07th April 2008; official letter number: 01-06-26-001-23-II/08 on 10th April , 2008; official letter number: 01-06-26-001-25-II/08 on 14th April , 2008).

Upon receipt of required documents, the Council of Competition issued an Acknowledgment of receipt of adequate and complete Notification, number 01-06-26-001-28-II/08 on 12th May , 2008, pursuant to Article 30,paragraph(3) of the Act.

The Applicant stated, in the sense of Article 30, paragraph (2) of the Act, that he also submitted the Notification for assessment of the concentration to the Commission for protection of competition of Republic of Serbia and to competition body of Republic of Slovenia.

Council of Competition in the assessment process of this concentration has determined the following facts:

The subject Notification is filed within the defined time, in the sense of Article 16, paragraph (1) of the Act.

1. Parties to the concentration

Concentration participants are economic subject ComTrade Group BV, Fred. Roeskestraat 12, 1076 EE Amsterdam, Kingdom of the Netherlands and the economic entity Hermes Softlab JSC., Litijaska 51, 1000 Ljubljana, Slovenia.

1.1. ComTrade Group

Economic entity ComTrade Group B.V. (hereinafter: ComTrade Group), Fred. Roeskestraat 123, 1076 EE Amsterdam, Kingdom of the Netherlands, is registered in Trade chamber of Amsterdam, under number: 24383822, on 30th September 2005, (Tax ID number: 43630090), with shares capital of 176,024.70 KM (EUR 90,000.00).

Economic entity ComTrade Holding NV, Chuchubiweg 17, Curacao, Netherlands Antilles

(hereinafter: ComTrade Holding), (..)*owned by natural person Veselin Jevrosimović (..)*, is entered in the register of Trade chamber in Curacao, under the number 98481 on 19th July 2006, has a 100.0% share in the economic entity ComTrade Group.

Main registered business activity of ComTrade Group is production and distribution of information and telecommunications technology / equipment, the development of integrated software solutions.

Economic entity ComTrade Group operates in the countries of South Eastern Europe: Republic of Serbia, Republic of Montenegro, Republic of Croatia, Bosnia and Herzegovina, Republic of Bulgaria, Republic of Macedonia, Republic of Albania and Republic of Slovenia.

Economic entity ComTrade Group is 100.0% owner (and founder) of economic entity ComTrade Group, Software equipment Ltd. Ljubljana (hereinafter: ComTrade Group Ljubljana), Litijska cesta 51, 1000 Ljubljana, Slovenia. ComTrade Ljubljana Group is registered in the District Court in Ljubljana (decision number: 2008/11992) on 27th February 2008 (registration number 32818441000; tax code: 96513624), with shares capital of 14,668.73 KM (EUR 7500.00).

Main registered business activity of ComTrade Group Ljubljana is the computer programming.

1.1.1. Connected economic entities of ComTrade Holding /ComTrade Group in Bosnia and Herzegovina

ComTrade Holding in Bosnia and Herzegovina (..)* is the owner of the economic entity NT Computer Hardware Software Ltd. Sarajevo and economic entity CT Retail Ltd. Sarajevo , while ComTrade Group is founder of Branch office in Sarajevo.

1.1.1.1. NT Computer Hardware Software Ltd. Sarajevo

Economic entity CHS International limited liability company for the computer equipment Sarajevo, Ismet Mujezinovića 10, 71000 Sarajevo (short name: CHS International Ltd. Sarajevo), was registered in the Cantonal Court in Sarajevo (Decision number: UF/I294/99) under the number 1 -- 21573 on 15th February 1999. By the subsequent re-registration - Decision of the Cantonal Court in Sarajevo No.: UF/I1278/99 on the 22nd June 1999- the CHS International Ltd. Sarajevo has changed its name, address, and the founder in NT Computer Hardware Software limited liability company for computer equipment Sarajevo (short name: NT computer Hardware Software Ltd. Sarajevo), Džemala Bijedića , 71000 Sarajevo. Economic entity ComTrade Holding , by means of decision of Municipal Court in Sarajevo, on 02nd August 2006 becomes the founder and sole shareholder of NT Computer Hardware Software Ltd. Sarajevo (on the basis of the transfer of primary capital, rights and obligations signed with earlier founder) with capital of (..)* KM (100.0% in cash).

Main registered business activities of economic entity NT computer Hardware Software are production of computers and other equipment for data processing, wholesale computers and computer components.

1.1.1.2. CT Retail Ltd. Sarajevo

Economic entity NTCHS Retail limited liability company Sarajevo (short name: NTCHS Retail Ltd. Sarajevo), Velika drveta 1, 71000 Sarajevo is registered in the Municipal Court in Sarajevo under the number: 1-25960 (Decision number: 065-0-Reg-06 - 001741) on 10th November 2006. Economic entity ComTrade Holding is the founder of the economic entity CT Retail with the capital of (..)* KM (100.0% in cash). NTCHS Retail Ltd. Sarajevo is re-registered in Municipal Court in Sarajevo (Decision number: 065-0 - Reg-06-002866 on 30th March 2007) and changed the name in CT Retail company with limited liability for trade Sarajevo (CT Retail Ltd. Sarajevo), Džemala Bijedić, 71000 Sarajevo.

Main registered business activities of CT Retail are production of computers and other equipment for data processing, wholesale computers and components for computers.

Economic entity CT Retail Ltd. Sarajevo operates through network of six retail premises (two are located in Sarajevo, one in Mostar, Tuzla, Pale and Foca).

1.1.1.3. ComTrade Group – Branch office in Sarajevo

Economic entity ComTrade Group opened a branch office in Sarajevo, Velika Drveta 1, 71000 Sarajevo, which is registered by means of the Decision of Ministry of Foreign Trade and Economic Relations of Bosnia and Herzegovina, No. 354/06 on 19th September 2006.

Main registered business activities of ComTrade Group Branch office are market research, performance of advertising and information activities and the presentation of its founders.

1.2. Hermes SoftLab

Economic entity Hermes SoftLab, Programska oprema (Software equipment) JSC Ljubljana, Litijaska 51, 1000 Ljubljana, Republic of Slovenia, is entered in the court register of the District Court in Ljubljana under the number: 5406986 on 25th July 1990, with the capital of (..)* KM (..)* EUR - (..)* SIT, on the day of 07th October 2005.

According to data from the Notification, ten largest shareholders according to the number of shares in the ownership structure of the economic entity Hermes SoftLab, on 30th November 2007 are:

Table 1.

NO	Shareholders	Number of shares
1.	European Bank for Reconstruction and Development	(..)*
2.	Charlemagne CIS Fund Limited, Republic of Cyprus	(..)*
3.	Schara Tomaž, Ljubljna, Republic of Slovenia	(..)*
4.	Bric Rudi, Ljubljana, Republic of Slovenia	(..)*
5.	Weiland Karola, Federal Republic of Germany	(..)*
6.	Balkan Holding Limited, Cyprus	(..)*
7.	Hewlett-Packard Global Investments, Kingdom of Holland	(..)*
8.	Panhouse Investment Limited, Cyprus	(..)*
9.	NLB Ltd. Ljubljana, Republic of Slovenia	(..)*
10.	Kuščer Andrej, Ljubljana, Republic of Slovenia	(..)*

Main registered business activities of Hermes SoftLab are providing information-telecommunications (IT) services, design of specialized software solutions (and embedded systems), the software equipment engineering in telecommunications sector and financial services, etc.

Hermes SoftLab operates in the Republic of Slovenia, Bosnia and Herzegovina, the Republic of Serbia, the Republic of Montenegro, the Republic of Austria, the Federal Republic of Germany, the United States, the Republic of Ireland and the Republic of France.

1.2.1. Connected economic entities of Hermes SoftLab in Bosnia and Herzegovina

Economic entity Hermes SoftLab is the founder and sole owner of the economic entity Hermes SoftLab, Programska oprema(Software equipment) Ltd. Sarajevo, Trg solidarnosti 2, 71000 Sarajevo, and economic entity Hermes SoftLab, Programska oprema(Software equipment) Ltd. Banja Luka, Ivana Franje Jukića 9/III, 78000 Banja Luka.

1.2.1.1. Hermes SoftLab, Programska oprema (Software equipment)Ltd. Sarajevo

Economic entity Hermes SoftLab, software equipment Ltd. Sarajevo, Trg solidarnosti 2, 71000 Sarajevo (hereinafter: the Hermes SoftLab Sarajevo) is entered in the register of the High Court in Sarajevo under the number: 1-15992 (Decision number: UF / I 355/96 on March 22, 1996) and is founded by Hermes SoftLab with capital of (..)* KM.

Main registered business activity of Hermes SoftLab Sarajevo is the development of specialized software solutions.

1.2.1.2. Hermes SoftLab, Programska oprema (Software equipment) Ltd. Banja Luka

Economic entity Hermes SoftLab, software equipment Ltd, Banja Luka, Ivana Franje Jukića 9/III, 78000 Banja Luka (hereinafter: Hermes SoftLab Banja Luka), is entered in the register of the Municipal Court in Banja Luka under the number: 1-15732-00 (Decision number: 071-0-Reg-06-001933 on 03 November 2006)and is founded by the economic entity Hermes SoftLab with capital of (..)* KM.

Main registered business activities of Hermes SoftLab Banja Luka are production of computers and other equipment for data processing, software development solutions and other consulting services in the development of software.

Notification obligation of the intention of concentration

In terms of the provisions of Article 14 ,paragraph (1) item a) of the Act, the notification of the concentration of economic entities shall be filled obligatory in a case when a total annual income of the concentration participants ,earned in the selling of goods and / or services on the world market, amounts 100,000,000.00 KM in the final account in the year that precedes the concentration and if at least one of the concentration participants is registered in the territory of Bosnia and Herzegovina.

Total annual income of the participants to this concentration on 31 December 2007 amounts:

Table 1.

	ComTade Group		Hermes SoftLab	
	KM	EUR	KM	EUR
World 2006	(..)*	(..)*	(..)*	(..)*
Bosnia and Herzegovina 2007	(..)*		(..)*	

Source: Data from the Notification, the Federal Ministry of Finance- Agency for the financial, informatics and Intermediary Services Ltd. Sarajevo, Ložionička 3

Total annual income of the parties to this concentration (Table 1) amounts over 100,000,000.00 KM (economic entity ComTade Group earned (..)* KM while economic entity Hermes SoftLab earned (..)* KM), by the final account in the year preceding this concentration.

Total income of related economic entities of the parties to the concentration in Bosnia and Herzegovina, on 31 December 2007 amounts:

Table 2.

(KM)	ComTade Group		Hermes SoftLab	
	CT Retail	NT Computer Hardware Software	Hermes SoftLab Sarajevo	Hermes SoftLab Banja Luka
Bosnia and Herzegovina	(..)*	(..)*	(..)*	(..)*
Total ComTade Group	(..)*		(..)*	
Total ComTade Group + Hermes SoftLab	(..)*			

Source: Data from Federal Ministry of Finance-Agency for the financial, informatics and Intermediary Services Ltd. Sarajevo, Ložionička 3

Total income of the parties to the concentration in Bosnia and Herzegovina is (..)* KM (economic entity ComTade Group earned (..)* KM, while the economic entity Hermes SoftLab earned a total of (..)* KM).

The total annual income of the parties to the concentration and related business subjects (Table 1 and 2) represents the income (without the value added tax and other taxes) which directly relates to the parties to concentration, in the world market and in Bosnia and Herzegovina, in the sense of Article 8 h) of this Decision.

Since the all conditions are fulfilled, in the sense of Article 14, paragraph (1) point a) of the Act, regarding the joint total annual income (Table 1) and registration of , at least, one of the parties to the concentration in the territory of Bosnia and Herzegovina, the economic entities are required to submit a notification.

2. Legal frame of the concentration assessments

During the assessment procedure of this concentration, Council of Competition applied the provisions of the Act, Regulation on definition of the relevant market (Official Gazette BiH, number 18/06) and the Regulation on notification and criteria for assessment of concentration of economic entities.

3. Legal basis and form of this concentration

Legal basis of concentration, in the sense of Article 30, paragraph (1), point a) of the Act, is defined by Article 8 point f) item 3 of the Regulation on notification and criteria for assessment of concentration of economic entities.

According to the above mentioned, legal basis for this concentration is an Agreement on purchase of stock , from 17 March 2008, concluded between the economic entity ComTrade Group, Software equipment Ltd. Ljubljana (represents by the director Branislav Žurić) Litijaska 51, 1000 Ljubljana, Republic of Slovenia (hereinafter: ComTrade Group Ljubljana or buyer) and the economic entity Hermes Softlab, Software equipment Ljubljana (represents by Branko Jarše, a member of the Steering Committee and the financial director,

and Gregor Smrekar, a member of the Steering Committee and director of business), Litijska 51, 1000 Ljubljana, Republic of Slovenia (seller).

Economic entity Com Trade Group was founded by the economic entity ComTrade Group Ljubljana for the purpose of implementation of the Agreement and acquisition 100.0% of shares in economic entity Hermes Softlab. According to the Agreement the amount of transaction is (..)* KM ((..)* EUR) for the purchase of 370,000 ordinary registered shares in economic entity Hermes Softlab.

Agreement on the purchase of shares shall enter into force by being accepted by the sellers, who have more than 50.0% of shares in economic entity Hermes Softlab, and by signing the accession forms (Statement of accession) by the majority shareholders, and it shall have legal effect on the day of closing, when the economic entity ComTrade Group itself becomes obliged to buy the shares and thus gains control over the economic subject Hermes Softlab.

In the implementation of the procedure to buy shares in accordance with the Agreement on the purchase of shares, the economic entity ComTrade Group Ljubljana submitted a Binding offer for purchase to shareholders of economic entity Hermes Softlab and Statement on the accession, which should be signed and submitted to ComTrade Group Ljubljana.

Before concluding the Agreement on purchase of shares, the parties to the concentration, economic entity Hermes SoftLab (President of the Board of Directors Mr. Peter Tesren) and economic entity ComTrade Group (President of the Board of Directors, Mr. Veselin Jevresimović and Mr. Branislav Djuric) signed in Ljubljana (Republic of Slovenia) a Letter of intent, on the 06th December 2007, which initiated the process of buying the majority shares in the Hermes Softlab JSC, Litijska 51, 1000 Ljubljana, Republic of Slovenia, by the ComTrade Group BV, Westblaak 89, 3012 KG Rotterdam, Kingdom of the Netherlands.

The Council of Competition has found that legal form of this concentration is Article 12, paragraph (1) item b) 3) and paragraph (2) of the same Article of the Act.

Article 12, paragraph (1), item b) 3) of the Act provides that concentration is considered to be acquiring of the control or dominant influence of one economic entity (Com Trade Group) or more economic entities over another economic entity (Hermes SoftLab) or more economic entities or a part of another economic entity or parts of other entities in accordance with the provisions of the law.

Furthermore, Article 12, paragraph (2) of the Act provides that the control is realized through the law, the conclusion of contracts or other means where one or more economic entities, whether in particular or common, taking into account all the legal and factual circumstances, acquire the possibility of gaining the dominant influence over one or more economic entities.

4. Relevant market

Relevant market of the concentration, in the sense of Article 3 of the Act and art. 4, 5 and 6 of the Regulation on definition of the relevant market is the market of certain products / services that are subject to the performance of activities in a particular geographic market.

According to the provisions of Article 4 of the Regulation on definition of the relevant market, relevant market, in terms of production, includes all products and / or services that

consumers and / or users consider mutually substitutable , under acceptable conditions, having in mind particularly their essential characteristics, quality, ordinary purpose, use, prices and sales conditions.

Furthermore, according to Article 5 of Regulation on definition of the relevant market, relevant geographic market includes all or a part of the territory of Bosnia and Herzegovina in which the economic entity operates in the sale and / or purchase of relevant products under equal or sufficiently equal conditions which significantly differ that market from the conditions of market competition in the neighboring geographic markets.

Relevant service market of this concentration is a market for the manufacture of specialized software solutions.

Relevant market of this concentration, in geographic terms, is the area of Bosnia and Herzegovina.

Relevant market of this concentration is a services market for the manufacture of specialized software solutions in Bosnia and Herzegovina.

To determine a relevant market, the Council of Competition has analyzed the relevant criteria on which market participants predominantly operate in Bosnia and Herzegovina, and established that the Com Trade Group mainly operates in the sales market of computers and computer equipment (the wholesale and retail trade) and in the market for the manufacture of integrated system solutions, while Hermes Softlab predominantly operates in the market for the manufacture of specialized software solutions.

It is also found that the parties to the concentration carry out partially supplementary and overlapping activities in Bosnia and Herzegovina, but do not work as competitors, because each offers different products and services and has different relevant market.

According to the above , Council of Competition has found that relevant market of products / services , where the Hermes Softlab operates, is a market for the manufacture of specialized software solutions, including management systems and data storage, e-business, development of software solutions, modernization of IT systems and services management.

5. Analyze of the relevant market to this concentration

The market shares of the parties to the concentration and main competitors on the relevant market (manufacturing the specialized software solutions) on 31 December 2007:

Table 3.

NO	Economic entity	Market share
1.	Lanaco-Sarajevo	(..)*%
2.	Bosnian Business Systems-Sarajevo	(..)*%
3.	Hermes SoftLab-Sarajevo-Banja Luka	(..)*%
4.	Oracle BH-Sarajevo	(..)*%
5.	Pincom-Mostar	(..)*%
7.	Other	68,1%
	Total	100,0%

Source: Data from the Notification

The largest market share (Table 3) in the relevant market has the economic entity Lanaco-Sarajevo with (..)*% and economic entity Bosnian Business Systems -Sarajevo with (..)*%, while economic entity-Hermes SoftLab -Sarajevo -Banja Luka has (..)*% of market share.

A large number of competitors that have relatively small market share operate in the relevant market and, according to the index concentration (CR and the Herfindahl-Hirschman), the relevant market of this concentration is low concentrated, which confirms CR index (five biggest competitors) of total value 31.9%. However, there is a constant growth of competition in the relevant market, in relation to 2006.

According to the above, the existence of a large number of individual subjects with a relatively small market share is preventing the creation and strengthening of a dominant position of the parties to the concentration in the relevant market.

6. Assessment of the concentration

Analyzing the data, in terms of criteria referred to in Article 17 of the Act (especially the structure of the relevant market, market share of the participants to the concentration and competitors-Table 3), Council of Competition establishes that joint market share of the participants to the concentration is (..)*% in the relevant market in Bosnia and Herzegovina and that it is below of 40, 0%, in the sense of Article 9 of the Act, which supposes that an economic entity has a dominant position in the relevant market. Therefore, the implementation of this concentration does not create a dominant position and can not affect the prevention, restriction or distortion of market competition in the relevant market.

Also, the Council of Competition finds this concentration to be horizontal and, also, partially vertical, considering the connected markets of the parties to the concentration in Bosnia and Herzegovina.

In the decision making procedure the Council of Competition had in mind the benefits of intended concentration in expanding the assortment and quality in provision of information-telecommunications (IT) services to companies in the telecommunications, finance and public sector and in strengthening the competition in relevant market.

According to the above, the Council of Competition has assessed this concentration compatible, in the sense of Article 18, paragraph (2) item a) of the Act.

7. Administrative tax

On this Decision the Applicant, pursuant to the Article 2, tariff number 107, paragraph (1), 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.

8. 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 receipt of this Decision, i.e. from the date of its publication.

**President
Ibrica Lakišić**