

BOSNA I HERCEGOVINA
Konkurencijsko vijeće



БОСНА И ХЕРЦЕГОВИНА
Конкуренијски савјет

DECISION

**Adopted upon Notification of intended concentration between Atlas Copco International
B.V., Holland and AC Oprema d.o.o., Sarajevo**

**Sarajevo
December 2007**



Number: 01-05-26-030-9-II/07
Sarajevo, 14 December 2007

Pursuant to Article 25, paragraph (1) item e), Article 42, paragraph (1), item d) and Article 43, paragraph (2), and in connection with Article 12, 14, 16 and 18 of the Act on Competition («Official Gazette of BH», No. 48/05 and 76/07) and upon the Notification of intended concentration of undertaking Atlas Copco International B.V. Merwedeweg 7, 3336LG Zwijndrecht, Holland and AC Oprema (AC Equipment) d.o.o., Safeta Zajke 266, 71000 Sarajevo, recorded under the number: 01-06-26-025-II/07 on 02 August 2007, the Council of Competition at its 56th (fifty-sixth) session, held on 14 December 2007 has adopted

DECISION

1. A concentration that shall be created in the sales market for equipment used in the mining industry in Bosnia and Herzegovina through acquisition of control by purchase of majority stocks in shares capital in AC Oprema (AC Equipment) d.o.o., Safeta Zajke 266, 71000 Sarajevo, by Atlas Copco International B.V., Merwedeweg 7, 3336LG Zwijndrecht, Holland, is declared compatible.
2. This Decision shall be recorded in the Register on concentrations.
3. This Decision is final and it shall be published in Official Gazette of BH and in official gazettes of Entities and Brčko District.

Exposition

Atlas Copco International B.V. Merwedeweg 7, 3336LG Zwijndrecht, Holland (hereinafter: Atlas or Applicant), through its authorized attorney , a lawyer Marić Branko, Mehmeda Spahe 24, 71000 Sarajevo, submitted to the Council of Competition a Notification of intended concentration (hereinafter: the Notification) by means of which the Applicant wished to acquire ,through purchase of majority share in shares capital , 100% ownership over AC Oprema (AC Equipment) d.o.o., Safeta Zajke 266, 71000 Sarajevo (hereinafter: AC Oprema).

The Notification of intended concentration was submitted on 21 September 2007 and recorded under the number 01-05-26-030-II/07, pursuant to Article 16, paragraph (1) of the Act on competition (hereinafter: the Act).

As the Notification was not complete pursuant to Article 30 and 31 of the Act on competition, the Council of Competition requested additional documents in support of the Notification, a request number: 01-05-26-030-1-II/07, on 04.10.2007.

The Applicant provided the following supporting documents: on 11 October 2007 a document NO: 01-05-26-030-2-II/07, on 30 October 2007 a document NO: 01-05-26-030-3-II/07 and on 04 November 2007 a document NO: 01-05-26-030-5-II/07. When all required documents were collected the Council of Competition issued an Acknowledgement of receipt of the

complete and adequate Notification, No.: 01-05-26-030-6-II/07, pursuant to Article 30, paragraph (3) of the Act, on 04 December 2007.

The Applicant stated that Notification was not submitted for assessment to any other competition authority outside of Bosnia and Herzegovina.

The following facts were established in the assessment procedure of the Notification:

The Applicant has submitted the Notification within eight days following the conclusion of the agreement between the parties to the concentration, pursuant to Article 16, paragraph (1) of the Act, and therefore it is deemed to be submitted within the legally determined time period.

Aggregate annual income of the parties to the concentration in question, considering the final account for the year preceding the implementation of the concentration, on 31 December 2006, was:

Table 1.

Aggregate income (KM)	Atlas Copco Group	Atlas	AC Oprema
Worldwide income	(..)** ¹	(..)**	-
Bosnia and Herzegovina	(..)**	-	(..)**

On the basis of the data about aggregate income realized by the parties to the concentration on the goods/services market at worldwide level in the year preceding the implementation of concentration, it is established that notification obligation rests with the parties to the concentration, pursuant to Article 14, paragraph (1) item a) and b) of the Act.

1. Legal basis and the form of the concentration

Legal basis of the concentration in question is an Agreement for sale of share in shares capital (hereinafter: the Agreement) signed on 18 September 2007 between Atlas (as a buyer) and natural person, Anton Doko (as seller) who is the founder and 100% owner of share in shares capital in AC Oprema. By means of the above mentioned Agreement, Atlas intends to acquire 100% of share in shares capital in AC Oprema.

The legal form of the concentration is acquisition of control or dominant influence of one undertaking over another undertaking through purchase of majority stocks or share in shares capital, pursuant to Article 12, paragraph (1), item b) 1) of the Act.

2. Parties to the concentration

The parties to the concentration are Atlas Copco International B.V. Merwedeweg 7, 3336LG Zwijndrecht Holland and AC Oprema d.o.o., Safeta Zajke 266, 71000 Sarajevo, Bosnia and Herzegovina.

Atlas Copco International B.V

Atlas Copco International B.V Merwedeweg 7, 3336LG Zwijndrecht, Holland is a stock company and it is recorded in the trade register of the Chamber of Economy in Rotterdam under the number 23032900, on 29 June 1949. Its main activity is acquisition and finance for the companies.

Atlas belongs to Atlas Copco Group which operates mining equipment, compressors and industrial tools distribution and sale in many countries.

¹ (..)** - The data is deemed to be a business secret

Atlas Copco Group operates in the market of Bosnia and Herzegovina through Atlas Copco a.d., Republic of Serbia, Atlas Copco d.d Republic of Slovenia and Atlas Copco s.r.o., Czech Republic (all of them are owned 100,0% by Atlas Copco) and through distributor of AC Oprema.

Atlas Copco Group has no registered legal entities in Bosnia and Herzegovina or ownership share in any other undertaking in Bosnia and Herzegovina.

AC Oprema

AC Oprema d.o.o., Safeta Zajke 266, 71000 Sarajevo Bosnia and Herzegovina, is recorded in the court register of Municipal court in Sarajevo under the number 1-25660, on 16May2006.

The founder and owner of 100, 0% shares in shares capital in AC Oprema is natural person Anton Doko, (..)**, Zagreb, Republic of Croatia.

The main activity of AC Oprema is sale of constructing material and equipment used in the mining industry, and provision of related services.

AC Oprema distributes and sells range products of Atlas Copco Group in the territory of Bosnia and Herzegovina. The most important supplier of AC Oprema (in 2006) was Scandkop d.o.o., Republic of Croatia (a distributor of products of Atlas Copco Group in Republic of Croatia).

AC Oprema has no ownership share in any other undertaking in Bosnia and Herzegovina.

3. Analysis of relevant market

Article 3 of the Act, and Articles 4, 5 and 6 of the Regulation on definition of the relevant market («Official Gazette of BiH», No.18/06) stipulate that relevant market is a market for particular products/services that are the subject to business activities in the particular geographic market.

Based on the data provided in the Notification the Council of Competition established that relevant products market of the parties to the concentration was sale of equipment used in the mining industry.

Relevant geographic market of this concentration is territory of Bosnia and Herzegovina owing to the fact that sale of equipment used in the mining industry is performed in the whole territory of Bosnia and Herzegovina.

Therefore, the Council of Competition established that relevant products market of the concentration concerned was a market for sale of equipment used in the mining industry in the whole territory of Bosnia and Herzegovina.

When defining the relevant market in Bosnia and Herzegovina the Council of Competition took into consideration that activities of Atlas Copco and AC Oprema overlapped in the market for sale of equipment used in the mining industry.

According to the data from the Notification, market shares of the parties to the concentration and competitors in the relevant products market for sale of equipment used in the mining in Bosnia and Herzegovina in 2006 was:

Table 2.

NO	Company	Value/Market share	
1.	Atlas Copco Group (Holland)	1.641.999,60	45,00%
2.	Sandvik Tamrock (Finland)	1.094.666,40	30,00%
3.	Furukawa (Japan)	364.888,80	10,00%
4.	Montabert (France)	182.444,40	5,00%
5.	Soosan (Korea)	182.444,40	5,00%
6.	AC Oprema (Bosnia and Herzegovina)	3.912,00	0,107%
7.	Others	178.430,62	4,89%
Total (parties to the concentration 1+ 6)		1.645.911,60	45,107%
Total		3.648.888,00	100,00%

Table 2 shows that Atlas Copco Group achieves the biggest market share (45,00%) through direct sale of equipment used in the mining industry in the relevant market in Bosnia and Herzegovina and 0,107% by its distributor -AC Oprema, and that Sandvik Tamrock (Finland) achieves 30,00% of market share in the relevant market.

The market share of the parties to the concentration show that relevant market is fragmented, that it faces adequate competition and belongs to medium-concentrated markets.

After the implementation of the concentration in the above said relevant market, Atlas Copco Group shall achieve 45,107% of market share which suggests a presumption of dominant position (has more than 40,00% of share) , pursuant to Article 9 of the Act .

Therefore, as AC Oprema operates in the relevant market for sale of products of Atlas Copco Group (as its distributor) this concentration shall not cause significant strengthening of dominant position of Atlas Copco Group in the relevant market of Bosnia and Herzegovina (Atlas Copco Group is purchasing its distributor in Bosnia and Herzegovina).

Besides the relevant products, Atlas Copco Group sells the following products in Bosnia and Herzegovina:

Table 3.

Products	Total sales in BIH	Atlas Copco	
		Sales	Market share
Compressor	2.000.000,00 KM	400.000,00 KM	20,00%
Industrial tools	133.333,00 KM	40.000,00 KM	30,00%

Besides Atlas Copco Group which has 20, 00% of market share, the following undertakings operate in the market for sale of compressors and industrial tools in Bosnia and Herzegovina: Compare – Great Britain (25, 00% of market share), Kaeser – Canada (25, 00% of market share) and numerous undertakings with 30, 00% of market share.

4. Appraisal of the concentration

The Council of Competition assessed that implementation of the concentration concerned would not change significantly the market share in the relevant market in Bosnia and Herzegovina.

In the analysis of data, the Council of Competition established the presence of competitors in the relevant market which suggested presumption of free competition and presence of no legal and administrative barriers to entry for potential competitors.

The concentration concerned should cause positive effects on the market in Bosnia and Herzegovina in the form of lower prices for relevant product (eliminate the payment of distribution expenses, improve quality of product through direct supply of product and services, innovation, expand and increase quantity of products and services for clients) and enhance distribution and services to end-users.

Taking into account all information and data, pursuant to Article 17 of the Act, the Council of Competition established that concentration concerned would not prevent, protect or distort a market competition in Bosnia and Herzegovina and declared this concentration compatible, pursuant to Article 18, paragraph (2), item a) of the Act - as it was stated in enacted terms of this Decision.

5. Administration tariffs

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.

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