

BOSNA I HERCEGOVINA
Konkurencijsko vijeće



БОСНА И ХЕРЦЕГОВИНА
Конкуренцијски савјет

BOSNIA AND HERZEGOVINA
Council of Competition

RESOLUTION

upon the Notification of intended concentration of undertaking “Veleprodajni centar” trgovina na veliko i malo (Wholesale and Retail trade Centre) d.o.o., Sarajevo, Bosnia and Herzegovina

Sarajevo
September 2007



BOSNIA AND HERZEGOVINA
Council of Competition

Number : 01-04-26-013-15 -II /07
Sarajevo, 21 September 2007

Pursuant to Article 42 paragraph(1)item g), in connection with Article 12 and 14 of the Act on Competition («Official Gazette of BH», No. 48/05) and Article 116,paragraph (2) of the Law on Administrative procedure («Official Gazette of BH», No. 29/02) upon the Notification of intended concentration of undertaking «Veleprodajni centar» trgovina na veliko i malo (Wholesale and Retail trade Centre) d.o.o., Rajlovačka, 71 000 Sarajevo, Bosnia and Herzegovina, submitted by the authorized representative, a director Ervin Berbić, the Council of Competition in its 50th (fiftieth) session, held on 21 September 2007 has adopted

RESOLUTION
on rejection of the Notification of intended concentration

A Notification of intended concentration of undertaking Veleprodajni centar trgovina na veliko i malo d.o.o. (Wholesale and Retail trade Center), Rajlovačka bb, 71000 Sarajevo, Bosnia and Herzegovina is rejected because the Applicant was not under obligation to notify the concentration , pursuant to stipulations of the Act on competition.

Exposition

On 20.04.2007. the Council of Competition received a Notification of intended concentration (hereinafter: the Application) submitted by undertaking Veleprodajni centar trgovina na veliko i malo d.o.o. (Wholesale and Retail trade Center), Rajlovačka bb, 71000 Sarajevo (hereinafter: Veleprodajni centar). The Notification was supplemented by official letter on 30.04.2007.

Veleprodajni centar states in the Notification that concentration in the market for wholesale and retail trade in groceries, food, drinks and household consumer goods in Bosnia and Herzegovina will be implemented through lease of main business premises from undertaking VF Komerc d.o.o., društvo za trgovinu na veliko i malo i posredništvo (The Association for Wholesale and Retail trade and brokerage), Kurta Schorka 7, 71 000 Sarajevo, Bosnia and Herzegovina (hereinafter: VF).

By having an insight into the Notification the Council of Competition established that it was not complete pursuant to Article 30 of the Act on Competition (hereinafter: the Act) and therefore the Council required supplements to the Notification(No.: 01-04-26-013-2-II/07, on 08.05. 2007. and No.: 01-04-26-013-6-II/07., on 21.06. 2007) pursuant to Article 31 of the Act.

The Applicant submitted supplements to the Notification according to requirements of the Council of Competition (No.: 01-04-26-013-5-II/07, on 31.05.2007. and No.: 01-04-26-013-7-II/07, on 02.07.2007.).

When the required supplements were submitted, the Council of Competition issued an Acknowledgement of receipt of complete and adequate Notification, No.: 01-04-26-013-8-II/07, on data 26July 2007, pursuant to Article 30. paragraph (3) of the Act.

The legal basis for the concentration is an Agreement of lease, No.: 3473-01/07(supplied with the Notification) concluded between Veleprodajni centar and undertaking VF on 12 April 2007 in Sarajevo. According to this Agreement Veleprodajni centar leases a part of business premises relating to retail trade in food, drinks and other goods, related warehouses and offices from undertaking located in Pofalići, Put života 12, Municipality of Novo Sarajevo, registered as a property- land-registry certificate LIII/1194 k.o. Sarajevo.

As VF has many buildings for business activities (retail and wholesale trade), Veleprodajni centar concluded individual lease agreements for another 11 buildings and submitted all as supplement with the Notification on 02 July 2007.

By having an insight into the Notification, the Council of Competition ascertained the following facts:

1. The undertaking Velpro is not independent undertaking pursuant to Article 12 of the Act:
 - an undertaking Konzum trgovina na veliko i malo d.d. (hereinafter: Konzum), Marijana Čavića 1a, 10000 Zagreb, Republic of Croatia is a founder and 100,0% owner of undertaking Velpro,
 - an undertaking Agrokor d.d. Zagreb, Trg Dražena Petrovića 3 Republic of Croatia (hereinafter: Agrokor) is a majority owner of undertaking Konzum with 71,62% of total stocks.
2. The undertakings Agrokor and VF concluded, on 28 March 2007, a Frame Agreement on takeover of business activities and long-term lease (hereinafter: the Frame Agreement). The parties to the Agreement established models and conditions for lease of business and warehouse premises, assignment and sale of cars, equipment and brand, the lease expiration date and a price by m2. Article 4 of this Agreement stipulates that lesser will conclude with lessee or an association upon his order, individual agreements on lease of 14 business and warehouse premises from the list supplemented with the Agreement.

Considering all established facts, the Council of Competition assessed that conclusion of individual agreements (submitted as a legal basis of the concentration) is just a realization phase of the Frame agreement and therefore, as this is not concentration of two independent undertakings, the Applicant is not obliged to notify the concentration, pursuant to the Act. Agrokor as a party to the concentration was obliged to notify intended concentration, on the basis of the concluded Frame Agreement (a legal basis for the concentration).

Based on those facts the Council of Competition decides as it is in enacted terms of this Resolution.

LEGAL REMEDY

No appeal is allowed against this Resolution. 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 Resolution, i.e. from the date of its publication in "Official Gazette of BIH".

This Resolution shall be published in the «Official Gazette of BH», in official Gazettes of Entities and Brcko District of Bosnia and Herzegovina.

President

Sanja Božić