

BOSNA I HERCEGOVINA
Konkurencijsko vijeće



БОСНА И ХЕРЦЕГОВИНА
Конкуренијски савјет

DECISION

**Declaring a concentration compatible (the concentration between undertakings
Imperial Tobacco Group, United Kingdom and Altadis, S.A, Spain)**

**Sarajevo
January, 2008**



Number: 01-04-26-040-5-II/07
Sarajevo, 15 January 2008

Pursuant to Article 25, paragraph (1), item e), Article 42, item d), in connection with Articles 12,14,6 and 18 and pursuant to Article 24, paragraph (2) of the Act on Competition («Official Gazette of BH», No.48/05), upon Notification of intended concentration between Imperial Tobacco Group, Upton Road, Southville, Bristol BS99 7UJ, United Kingdom, represented by an Attorney Sead Miljković, Fra Andela Zvizdovića 1, 71000 Sarajevo and Altadis, S.A, C/Eloy Gonzalo 10, 28010 Madrid, Spain, recorded under number: 01-04-26-040-II/07 on 12 November 2007, the Council of Competition on its 58th session held on 15 January 2008 has adopted

DECISION

1. A concentration created in the market for industrial cigarettes in Bosnia and Herzegovina by acquisition of majority ownership shares in Altadis, S.A, C/Eloy Gonzalo 10, 28010 Madrid, Spain by Imperial Tobacco Group, Upton Road, Southville, Bristol BS99 7UJ, United Kingdom is declared compatible.
2. This Decision shall be recorded in the Register on concentrations.
3. This Decision shall be published in Official Gazette of BH and in official gazettes of Entities and Brčko District.

Exposition

Imperial Tobacco Group, Upton Road, Southville, Bristol BS99 7UJ, United Kingdom (hereinafter: „Imperial Tobacco Group“) submitted on 12 November 2007 by an Attorney Sead Miljković to the Council of Competition a Notification of intended concentration stating that it intended to buy majority stocks in undertaking Altadis, S.A, C/Eloy Gonzalo 10, 28010 Madrid, Spain (hereinafter: «Altadis»).

The supplements to the Notification were submitted on 30 November 2007.

On 13 December 2007, pursuant to Article 30, paragraph (3) of the Act, the Council of Competition issued to the Applicant an Acknowledgement of receipt of adequate and complete notification No. 01-04-26-040-3-II/07.

The decisive factors for the Notification obligation, pursuant to Article 14, paragraph (1), item b) of the Act are total annual income of the parties to the concentration in the world market (the parties realized more than 100.000.000, 00 KM in 2006) and subsidiary of Tobacco Group registered in BiH.

Total annual income of the parties to the concentration realized on 31 December 2006 was:

Table 1.

Total income (KM)	Imperial	Altadis	Tobačna
World	(..)** ¹	(..)**	(..)**
Bosnia and Herzegovina	(..)**	(..)**	(..)**

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

The concentration is approved by the European Commission and responsible bodies for competition of Macedonia, Morocco, Russia, Serbia, Turkey, Ukraine and USA.

Having analyzed all data from the Notification and other submitted documents and applying the stipulations of Regulation on Notification and Criteria for Assessment a Concentration („Official Gazette of BiH“, No. 95/06) and Regulation on Definition of the Relevant Market („Official Gazette of BiH“, No. 18/06), the Council of Competition evaluated the positive and negative effects of the concentration in question, pursuant to Article 17 of the Act and ascertained the following facts:

1. Legal basis and form for the concentration

Legal basis for this concentration is a Public Tender Offer announced on 9 November 2007 in a newspapers Expansion by Imperial Tobacco Group, through Imperial Tobacco Overseas Holdings (3) Limited (based on the previous approval given by the Securities Regulatory Authority in Spain-Comisión Nacional del Mercado de Valores given on 7 November 2007).

Imperial Tobacco Overseas Holdings (3) Limited is constituted just for the purpose of formatting the Tender offer pertaining to all stockholders of Altadis, for (..)** of common stocks with a minimum value of 0, 10, that is 100% of capital and voting rights in Atadis. As there is only one bidder –the Imperial Tobacco Overseas Holdings (3) Limited, all stocks and related votes, belonging to those that are ready to accept the Offer, are directly taken over by this undertaking. The Offer to Purchase is expected to be realized in the beginning of 2008. After the implementation of the concentration in question the Imperial Tobacco Group will have a total control over the Altadis.

The legal basis of the concentration in question , pursuant to Article 12,paragraph(1) d), item 1) of the Act is acquisition of control over Altadis by Imperial Tobacco Group through purchase of majority stocks.

2. The parties to the concentration

Imperial Tobacco Group

Imperial Tobacco Group headquartered in Upton Road, Southville, Bristol BS99 7UJ, United Kingdom is recorded in the Register of undertakings of England and Wales under the registration number 03236483.

The main business activity of Imperial is production, advertizing and sale of factory made cigarettes (hereinafter: „FMC“), roll-your-own cigarettes (hereinafter: “RYO“), other tobacco products (pipe tobacco, tobacco powder and lower quality cigarettes) and tobacco wrapping paper in more than 130 countries of the world. The FMC and RYO cigarettes have the same main function and role of substitution, considering the demand. Considering the supply, there is great level of substitute between FMC and RYO (as many of tobacco manufacturers are supplied by the FMC and RYO), the same placement and distribution system is used for RYO and FMC, a technical expertise and know-how used for production of RYO is almost the same (as one used in production of FMC -changed slightly) and the same machines can be used for the primary tobacco processing for RYO and FMC.

Imperial branding is divided into following categories:

- International brands-these brands are controlled by the main marketing sector of Imperial Tobacco Group. Davidoff and West are its international cigarettes brands (FMC) which account for around 20% of its group cigarettes volumes; within cut tobacco (FRY), its key international brand is Drum. World rolling papers brand is Rizla.
- Regional brands-theses brands are controlled on regional and local level by the Imperial Tobacco Group .The key regional brands are Golden Virginia, JPS and Van Nelle in Western

Europe, Boss, Cabinet and Maxim in Central and East Europe, Excellence in Africa and others in Australia and Asia.

- Local brands-these brands, controlled on local level by the Imperial Tobacco Group, are Lambert & Butler and Richmond in United Kingdom, Horizon in Australia and JP Blue in Ireland.

The shares of Imperial Tobacco Group became listed on the London Stock Exchange in 1996 and on the New York Stock Exchange in 1998.

Subsidiaries of Imperial Tobacco Group u BiH

Imperial Tobacco Group is represented in Bosnia and Herzegovina by the subsidiary company Tobačna Grosist Boss d.o.o. Sarajevo (hereinafter: “Tobačna”), which sells the following FMC brands : Davidoff (Black, White, Classic, Lights, Lights Slims), West (Full Flavor, Lights, Ultra), Boss (Classic, Lights, Super Lights, Ultra Lights, Soft, Blue Slims Style), Paramount (Full Flavor, Lights) and Polo (Full Flavor, Lights).

In BiH Tobačna acts as an exclusive importer and wholesale distributor of Imperial Tobacco Group .In 2006 it owned 9, 1% of shares and the sale was organized through two retail distributors - Ataco d.o.o. Mostar and Marinković Komerc d.o.o. Banja Luka. Distribution activities are carried out by these two companies on the basis of an agreement on distribution concluded for the period of two years with the possibility of automatic extension. Tobačna cooperates with Ataco d.o.o. Mostar since 2002 and with Marinković Komerc d.o.o. Banja Luka since 2003. Imperial Tobacco Group has no production capacities in BiH.

Altadis, S.A.

Altadis, S.A. (hereinafter: “Altadis”), headquartered in C/Eloy Gonzalo 10, 28010 Madrid, Spain, is a share company recorded in the register of undertakings in Madrid under the registration number M-13631. Altadis is public company with shares listed on stock Exchanges of Paris,,Madrid, Barcelona,, Bilbao and Valencia. French-Spanish Group Altadis is engaged in worldwide production of cigarettes and cigars and provides logistics services in Spain, France, Portugal, Italy and Morocco.

Basically, Altadis` business active is divided in three main areas:

- Production and marketing of cigarettes (FMC and RYO)-The main cigarettes brands of the Atadis are Gauloises Blondes, Fortuna, Ducados and Gitanes. In 2006, this sector generated 43% of total sale of this group.
- Production and marketing of cigars-The main European markets for cigar sector of Atadis are Spain and France and the main brands are Farias, Vegafina, Niñas and Fleur de Savane. The global cigar market of Altadis is highly concentrated in geographic sense with derived more than 60% of income from the sale of cigars in USA. In 2006 this sector generated 30% of total sale of the Altadis.
- Logistics services provision-this sector provides logistics and distribution services for tobacco products and other related products. In 2006 this sector generated 30% of total sale of the Altadis.

Altadis owns 50% of stocks in Aldeasa which mainly possesses a retail shops at airports and ports in Spain and other countries. Adeasa owns a certain number of shops in tourist locations (museums, palaces and castles, etc.).

Altadis is not present directly, indirectly or through any undertaking in BiH; it carries out a tax-free small volume sales in international groceries in Sarajevo through undertaking Gebr Heinemann.

3. Analysis of relevant market

Relevant market ,pursuant to Article 3 of the Act, and Articles 4, 5 and 6 of the Regulation on definition of the relevant market, is a market for particular products/services that are the subject to business activities in the particular geographic market.

The subject to the business activities of the parties to the concentration in the world market comprises a market for industrially manufactured tobacco products and related products.

Relevant products market for the concentration in question in Bosnia and Herzegovina is a market for industrially manufactured cigarettes.

The Council of Competition has established that the relevant market of the concentration in question is a territory of BiH owing to the fact that the parties to the concentration supply the whole market of Bosnia and Herzegovina with their products.

Therefore, a relevant market of the concentration concerned is a market for industrially manufactured cigarettes in Bosnia and Herzegovina.

A shareholder structure in the relevant market on 31.12.2006. is shown in the Table 1.:

Table 2.

No.	Name	Market share %
1.	Fabrika duhana Sarajevo	38,4
2.	Tvornica duhana Rovinj	28,8
3.	Tobačna, BiH	9,1
3.	Fabrika duhana Banja Luka	8,3
4.	Philip Morris	5,4
5.	Gallahers	3,9
6.	Fabrika duhana Mostar	2,7
7.	British American Tobacco	2,2
	Others	1,2
	TOTAL	100,00

In 2006 Tobačna held approximately 9, 1% and Atadis held 0, 01% of shares in the BH market.

4. Appraisal of the concentration

The appraisal and analysis of the data and facts, shows this concentration will not distort existing market competition, as Altadis has significantly small market share in the market in BiH, that the share of Imperial Tobacco Group will remain unchanged and that implementation of this concentration will not change market positions in the relevant market.

The Council of Competition established that implementation of this concentration would not create or strengthen a dominant position in the relevant market and therefore decided as 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