

DECISION

**Adopted upon Notification of intended concentration of economic entity TELEKOM
SLOVENIJE JSC. Ljubljana, Slovenia and economic entity COSMOFON MOBILE
TELECOMMUNICATIONS SERVICES JSC. Skopje**

**Sarajevo
June 2009**

Number: 01-06-26-013- 9 -II/09
Sarajevo, 16 June 2009

Pursuant to Article 25, paragraph(1) item e), Article 42, paragraph(1), item d), in connection with Article 12, 14, 16. and 17 of the Act on Competition («Official Gazette of BH», No. 48/05 and 76/07) and upon the Notification of intended concentration of economic entity Telekom Slovenije JSC. Ljubljana, Cigaletova 15, 1000 Ljubljana, Republic of Slovenia and economic entity Cosmofon Mobile Telecommunications Services JSC. Skopje, Kuzman Josifovski 15, 1000 Skopje, Republic of Macedonia, submitted by a lawyer Sead Miljković, Fra Andela Zvizdovića 1, 71000 Sarajevo, on 7 April 2009 and recorded under the number 01-06-26-013-II/09, the Council of Competition at its 90th (ninety) session, held on 16th June 2009, has adopted

DECISION

1. This concentration, which has an impact on the market for providing services in the telecommunications sector in Bosnia and Herzegovina, is assessed as permitted and it will be created through gaining control, by means of the purchase of 100.0% of the shares. in a company OTE MTS Holding BV društvo sa ograničenom odgovornošću(limited liability company), Lokatellikade 1, Parnassustrn 1076AZ Amsterdam, the Netherlands, and indirectly in a company Cosmofon Mobile Telecommunications Services ad Skopje, Kuzman Josifovski 15, 1000 Skopje, Macedonia, by the company Telekom Slovenije JSC Ljubljana, Cigaletova 15, 1000 Ljubljana, Republic of Slovenia.
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 official gazettes of Entities and Brčko District.

Exposition

Council of Competition has received, on 7th April 2009, Notification on intended concentration, number: 01-06-26-013-II/09 (hereinafter: Notification) of economic entity Telekom Slovenije JSC, Ljubljana, Cigaletova 15, 1000 Ljubljana, Republic of Slovenia (hereinafter: the Applicant or the Telekom Slovenia), submitted by representative Sead Miljkovic (power of attorney issued and certified by notary in Ljubljana on 6th April 2009.), through which it intends to acquire control over a company OTE MTS Holding BV limited liability company, Lokatellikade 1, Parnassustrn 1076AZ Amsterdam, the Netherlands (hereinafter : OTE MTS Holding) and indirectly in a company Cosmofon Mobile Telecommunications Services ad Skopje, Kuzman Josifovski 15, 1000 Skopje, Republic of Macedonia (hereinafter: Cosmofon), by purchasing 100.0% of shares.

The notification was checked and it was determined that it was not fully complete, pursuant to Article 30 paragraph (1) of the Act on Competition (hereinafter: the Act) and Art. 8, 9 and 10 of Regulation on notification and criteria for assessment of concentration of economic entities ("Official Gazette BiH, number 95/06), so the Council of Competition requested the supplements in accordance with Article 31 of the Act (number 01-06-26-013-1-II/09 on the April 9, 2008, number 01-06-26-013-5-II/09 on May 4, 2009).

The Applicant, in terms of Article 31 paragraph (2) of the Act, requested the extension of the deadline to complete Notification (submission number of 01-06-26-013-2-II/09 on April 20, 2009).The Council of Competition accepted the request and approved the extension of the deadline for submission of required documents (act number 01-06-26-013-3-II/09 on April 23,2009).

The Applicant , according to the request of the Council of Competition submitted required documents :submission number of 01-06-26-013-4-II/08 on April 20, 2009,and number 01-06-26 -023-6 -II/08 on May 15,2009.

Upon receipt of requested documentation Competition Council has found the Notification complete and issued an Acknowledgment of receipt of complete and accurate Notification, in accordance with Article 30, paragraph (3) of the Act, on June 2, 2009, number 01-06-26-013-7-II/09.

The Applicant stated, in terms of Article 30 paragraph (2) of the Act, that he was going to submit a request for review of the intended concentration to the competent body for competition in the Republic of Macedonia.

Council of Competition ,in the assessment of the concentration,finds the following facts:

The Notification was filed within the time period of 8 (eight) days, pursuant to Article 16 paragraph (1) of the Act.

1. Participants in the concentration

Participants in the concentration are economic entity Telekom Slovenije JSC Ljubljana, Cigaletova 15.1000 Ljubljana, Republic of Slovenia, the economic entity-COSMOTE Mobile Telecommunications SA, 44 Kifissias Avenue, Maroussi 15,125 Athene, the Republic of Greece, the economic entity OTE MTS Holding BV limited liability company, Lokatellikade 1, Parnassustrn 1076AZ Amsterdam, the Netherlands and the economic entity Cosmofon Mobile Telecommunications Services JSC, Skopje, Kuzman Josifovski 15, 1000 Skopje, Republic of Macedonia.

1.1. Telekom Slovenije JSC, Ljubljana

The economic entity Telekom Slovenije is entered in the register of the District Court in Ljubljana on 1st October 1993. The (insert registration number: 12462400; registration number: 5014018000), with share capital 533.395.256.92 KM (272.720.664.33 EUR).

Ownership structure of business entity Telekom Slovenije, on 31st December 2008:

Table 1.

No.	Stockholders	Number of stocks (%)
1.	Vlada Republike Slovenije(Government of the Republic of Slovenia)	52,54
2.	Slovenska odškodninska družba JSC, Republic of Slovenia	14,25
3.	Kapitalska družba JSC, Republic of Slovenia	5,59
4.	NFD 1 Delniški investicijski sklad JSC, Republic of Slovenia	2,39
5.	Other stockholders	25,23
	TOTAL	100,00

Source: Data from the web site of the economic entity Telekom Slovenije

Predominant registered activity of economic entity Telekom Slovenije is the provision of services in the field of telecommunications services that include fixed and mobile telephony, Internet services, the distribution of cable TV signals.

According to data from the Notification , a member of the Board of directors of economic entity Telekom Slovenije Mr. Zeljko Puljic is the chairman of the economic entity Annex, and no other member of management or supervisory board of the economic entity Telekom Slovenije is not a member of management or supervisory board of another economic entity in the relevant market of Bosnia and Herzegovina.

Economic entity Telekom Slovenia operates in Croatia, Republic of Serbia, the Republic of Macedonia, Bosnia and Herzegovina, the Republic of Albania, in Kosovo, etc.

1.1.1. Related economic entities to Telekom Slovenia JSC Ljubljana in Bosnia and Herzegovina

1.1.1.1. Aneks Ltd. Banja Luka

Telekom Slovenije in Bosnia and Herzegovina owns 70.0% of share in economic entity Aneks društvo za inženjering i konsalting (a company for engineering and consulting)export import Ltd, Banja Luka, Majke Jugovica 25, 78000 Banja Luka, Bosnia and Herzegovina, founded in 1993 and registered in the Municipal Court in Banja Luka, the number 1-3645-00 (hereinafter the Aneks).

The main registered economic activity of Aneks is wholesale computers, peripheral equipment and software, other computer related services, provision of IP telephony, Internet services, and services of cable distribution of radio and television programs.

Aneks is the holder of the General License for Internet Service Provider from 1st April 2002, issued by the Communications Regulatory Agency of Bosnia and Herzegovina (hereinafter: CRA), and permission for network operator from 12th April 2006 , and on 8th May 2006 it became the first licensed operator for the fixed telephony in the Republic of Srpska.

The economic entity Aneks is 100.0% owner of the economic entity Netkom društvo s ograničenom odgovornošću za inženjering, usluge, proizvodnju i trgovinu (limited liability company for engineering services, production and trade)Ltd, Banja Luka (hereinafter: Netkom), Ranka Šipke 78, 78000 Banja Luka (registration number: 1960695), registered in the Municipal Court in Banja Luka, under number: 1-12729-00, on 10th October 2002(Decision No. U/I2510/02).

Predominant registered business activity of Netkom is providing services from the telecommunications (cable distribution of radio and television programs).

At this moment, the procedure of deletion of Netkom registration in the Register of enterprises in the Municipal Court in Banja Luka is going on, on the basis of the statutory change of the merger with Annex. The merger is approved in the decision of Council of Competition No. 01-06-26-021-5-II/08 of 24th July 2008.

1.1.1.2. Profel – komunikacije (communications)Ltd. Prijedor

Aneks is the majority owner of the economic subject-Profel komunikacije(communications) Ltd, a company for production and maintenance of communication systems , located in the street Petar Petrovic Njegos 12 / A, 79000 Prijedor (hereinafter Profel komunikacije) registered in the Municipal Court in Banja Luka, under number: 1-15145-00, on 11th October 2005.

Predominant registered business activity of Profel – komunikacije is provision of services from the telecommunications, cable distribution of radio and television programs.

1.1.1.5. Ki – sistemi (systems)Ltd. Prijedor

Aneks is the majority owner of the economic entity Ki- sistemi-Kompjuterski inžinjeri(Computer Systems Engineering) Ltd, Prijedor, Kralja Petra I Oslobođioca 98, (hereinafter referred to as Ki-sistemi), registered on 1st August 2008, in the Municipal Court in Banja Luka, under the number 1-10448-00 (a Decision of the Council of Competition ,No. 01-05-26-044-12-II/08 of February 11, 2009).

Predominant registered business activities of Ki -sistemi Ltd, Prijedor are wholesale computers, peripheral equipment and software, software development and services in telecommunications (Internet Services).

The economic entity Ki -sistemi is the holder of General License for providing Internet services in the entire territory of BiH, No. DPIU - TS/037/03, issued by the CRA on 19th March 2003.

1.1.1.6. Koming – Pro Ltd. Gradiška

Economic entity Aneks is the majority owner of the Company for engineering and communications equipment trade and service Koming-Pro Ltd. Gradiska, Vidovdanska , Gradiska, founded in 7th May 2001, registered in the Municipal Court in Banja Luka, under the registration number 1-12082-00 (hereinafter Koming-Pro).

Predominant registered business activities of Koming - Pro are providing engineering services in telecommunications and related services, cable distribution of radio and television programs, Internet Service Provider and integration of information systems.

For services providing of cable distribution of radio and TV Broadcasting , Koming - Pro owns General Public License for the network operator NO. DMOL - TS/047/03, and for Internet Service Provider has a General License for Internet Service Provider NO. DPIU - TS/040/04 issued by the CRA.

1.2. COSMOTE–Mobile Telecommunications S.A

The economic entity-COSMOTE Mobile Telecommunications SA, 44 Kifissias Avenue, Maroussi 15,125 Athens, the Republic of Greece (hereinafter COSMOTE Mobile Telecommunications-Athens), registered in the Ministry of Development, General Secretariat of Commerce, Department of Sociétés Anonymes Athens, Griechenland önder dossiernummer No. 36581/06/B/96/102

Predominant registered business activity of COSMOTE Mobile Telecommunications-Athens is providing the mobile and fixed telephony services .

1.3. OTE MTS Holding B.V.

The economic entity OTE MTS Holding B.V. Besloten Vennotschap (private company with limited liability), Locatellikade 1 Parnassustrn, 1076AZ Amsterdam, the Netherlands, was founded on 31st December 2001 and registered with the Chamber of Commerce Amsterdam under number: 34,167,014th

The economic entity COSMOTE Mobile Telecommunications-Athens is 100% owner of the economic entity OTE MTS Holding.

The economic entity OTE MTS Holding does not perform economic activities and is not active in the market of Bosnia and Herzegovina, nor has 10.0% or more ownership stake in any economic entity in Bosnia and Herzegovina.

1.4. Cosmofon Mobile Telecommunications Services AD Skopje

The economic entity Cosmofon Mobile Telecommunications Services AD Skopje, Kuzman Josifovski 15, the Republic of Macedonia is a stock company registered in the Unique Trade Register under the number: 5563399

The economic entity OTE MTS Holding owns 100.0% of the shares in economic entity Cosmofon .

Predominant registered activity of Cosmofon in the Republic of Macedonia is providing services to mobile and fixed telephony.

Cosmofon does not act on the market of Bosnia and Herzegovina, nor has 10.0% or more ownership stake in a economic entity in Bosnia and Herzegovina.

The obligation of notification the intended concentration

The participants in the concentration are obliged to notify the intended concentration, pursuant to Article 14 paragraph (1) a) of the Act, if their total annual income achieved in sales of goods and / or services in the global market, amounts over 100,000,000.00 KM, according to the final account in the year preceding the concentration, with at least one participant in the concentration registered in the territory of Bosnia and Herzegovina. Total annual income of the participants to the concentration (and their related economic entities), on 31st December 2008 amounts:

Table 2.

	Grupa Telekom Slovenije	Telekom Slovenije	ANEKS	OTE MTS	Cosmofon
World	1.647.000.000,00	966.560.787,00	(..)** ¹	(..)**	(..)**
Bosnia and Herzegovina	-		(..)**	-	-

Source: Data from the Application

As the conditions are met, in terms of Article 14 paragraph (1) a) of the Act, regarding the joint total annual income and that at least one participant in the concentration is registered in the territory of Bosnia and Herzegovina, the participants in the concentration are required to submit a Notification .

Annual income of participants in the concentration is total revenue (excluding the value added taxes and other taxes directly related to the participants in concentration , in the world and the market of Bosnia and Herzegovina), pursuant to Article 8 h) of the Regulation on Decision on Notification and criteria for assessment of concentration of economic entities ("Official Gazette BiH, number 95/06).

4. Legal framework of assessment of the concentration

Council of Competition , in the implementation of the assessment procedure on admissibility of the concentration , applied the provisions of the Act and the 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.

5. Legal basis and form of the concentration

Legal basis of the concentration is stipulated in Article 16 paragraph (1) of the Act, in relation to Article 30, paragraph (1) item a) of the Act and Article 8 Item f) 3) of Regulation on Notification and criteria for assessment of concentration of economic entities.

According to the mentioned , the legal basis for the concentration is an Agreement of sale of shares (hereinafter: the Agreement) signed on 30th March 2009, in Athens between the economic entity COSMOTE - Mobile Telecommunications SA (signed by Mr. Michail Tsamaza) 44 Kifissias Avenue, Maroussi 15,125 Athene, the Republic of Greece, as a seller and economic entity Telekom Slovenije Ltd, Ljubljana (signed by Mr. Mg. Bojana Dremelj) Cigaletova 15.1000 Ljubljana, Republic of Slovenia, as a customer.

On the basis of the Agreement , economic entity Telekom Slovenije intends to acquire the entire issued shares capital of the economic entity OTE MTS Holding and indirectly, economic entity Cosmofon.

In accordance with Article 12 paragraph (1) point b) 1) of the Act, the legal form of concentration is the acquisition of control of economic entity Telekom Slovenije over economic entity OTE MTS Holding and indirectly over economic entity Cosmofon, by the purchase 100.0% of shares.

(..)** Data represent a business secret¹ (..)** podaci predstavljaju poslovnu tajnu

Legal grounds for the concentration, according to the Applicant, emanate from the conditions that were set in the Decision of the Competition Council of the Republic of Macedonia no. 07-342/21 of 16th October 2008, in relation to concentration between the economic entity Deutsche Telekom AG and Hellenic Telecommunications Organization SA.

Subject Decision ordered the economic entity Deutsche Telekom AG to get rid of the economic entity Cosmofon. In accordance with the conditions laid down in this Decision OTE MTS has decided to sell the economic entity Cosmofon. The economic entity Telekom Slovenia has participated in the public offer for the sale of economic entity Cosmofon and has been chosen as the winning offerer.

6. Relevant market

Relevant market of this concentration, in the sense of Article 3 of the Act and article 4 and 5 of the Regulation on definition of the relevant market is the market of particular products / services that are the subject of performing activities in a particular geographic market.

According to the provisions of Article 4 of the Regulation on definition of the relevant market, a relevant market, in the producing terms, includes all products and / or services that consumers and / or users consider each substitutable under acceptable conditions, especially bearing in mind their essential characteristics, quality, common purpose, way of use, conditions of sale and prices.

Furthermore, under Article 5 of the Regulation on definition of the relevant market, a relevant market, in geographic sense includes the whole or 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 that are significantly different from the conditions of market competition in the neighboring geographic markets.

Relevant services / products market of the concentration is a market for providing services in the telecommunications sector.

The relevant geographic market of this concentration is a market of Bosnia and Herzegovina. According to the above, the relevant market of this concentration is the market for providing services in the Telecommunications Sector in Bosnia and Herzegovina.

The economic entity Telekom Slovenia operates in the relevant market through connected economic entities: Aneks društvo za inženjering i konsalting(a company for engineering and consulting) export import Banja Luka, Netkom Ltd, Banja Luka, Profel – komunikacije Ltd, preduzeće za izradu i održavanje komunikacijskih sistema(-communications, a company for production and maintenance of communications systems) Prijedor, Društvo za inženjering i promet komunkacione opreme i usluga(a company for engineering and trade of communications equipment and services)Koming - Pro Ltd, Gradiška and Ki sistemi – Kompjuterski inženjering(Ki Systems - Computer Engineering) Ltd, Prijedor, in accordance with the conditions set forth in the licenses approved by the Communications Regulatory Agency of Bosnia and Herzegovina.

8. Assessment of the concentration

Council of Competition, in analysis of relevant data, in terms of Article 17 of the Act, has established that the implementation of intended concentration will not come to the creation of a dominant position of participants in the relevant market, and that it will not prevent, restrict or distort market competition in the relevant market.

During the assessment of concentration, the Council of Competition had in mind the fact that this is exterritorial concentration (the participants to the concentration , economic entity OTE MTS Holding and economic entity Cosmofon are not present in the market of Bosnia and Herzegovina), and that the concentration has influence on the market of Bosnia and Herzegovina through the activities of related entities owned by Telekom Slovenije.

In accordance with the above, the Council of Competition finds that this concentration does not create or strengthen a dominant position in the relevant market for providing services in the telecommunications sector in Bosnia and Herzegovina, and decides as stated in the operative part of the Decision, pursuant to Article 18, paragraph (2) item a) of the Act.

9. Administration tariffs

On this Decision the Applicant, pursuant to the Article 2, tariff number 107, paragraph (1), item d) 1) of the Regulation on administrative 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.

10. 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

Dr. Stjepo Pranjić

