

BOSNA I HERCEGOVINA
Konkurencijsko vijeće



БОСНА И ХЕРЦЕГОВИНА
Конкуренијски савјет

DECISION

**made regarding the concentration between Agrokor d.d. Zagreb, Republic of Croatia and
VF Komerc d.o.o., društvo za trgovinu na veliko i malo i posredništvo
(Retail and wholesale trade and Brokerage Company)**

**Sarajevo
December, 2007**



Number: 01-04-26-031-11-II/07
Sarajevo, 14.12.2007.

Pursuant to Article 25, paragraph (1), item e), Article 42, paragraph (1), item d) and 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), upon the Resolution authorizing the initiation of proceedings ex-officio (NO:01-04-26-031-II/07 from 21.09.2007.) for assessment of the concentration between Agrokor d.d. Zagreb, Trg Dražena Petrovića 3, Republic of Croatia and VF Komerc d.o.o., društvo za trgovinu na veliko i malo i posredništvo (retail and wholesale trade and brokerage company), Kurta Schorka 7, 71 000 Sarajevo, Bosnia and Herzegovina,, the Council of Competition on its session held on 14 December 2007 has adopted

DECISION

1. A concentration, achieved in the market for wholesale and retail trade in groceries, food, drinks and wide range household products in Bosnia and Herzegovina through a take over of business activities by creation of long-term lease of principal business premises of VF Komerc d.o.o., društvo za trgovinu na veliko i malo i posredništvo (retail and wholesale trade and brokerage company) Kurta Schorka 7, 71 000 Sarajevo, Bosnia and Herzegovina, by Agrokor d.d. Zagreb, Trg Dražena Petrovića 3, Republic of Croatia, is declared compatible.
2. Due to the fact that Notification of intended concentration is not submitted pursuant to the Act on Competition, Agrokor d.d. Zagreb, Trg Dražena Petrovića 3, Republic of Croatia is fined in amount of 190.000,00 KM which has to be paid within 8 days start on the day of receipt of this Decision.
3. This Decision shall be recorded in the Register on concentrations.
4. This Decision shall be published in Official Gazette of BH and in official gazettes of Entities and Brčko District.

Exposition

On 20.04.2007. the Council of Competition received a Notification of intended concentration, NO.: 01-04-26-013-II/07 (hereinafter: the Notification) between Veleprodajni centar trgovina na veliko i malo d.o.o.(Wholesale centre), Rajlovačka, 71000 Sarajevo (hereinafter: Velpro or the Applicant) and VF Komerc d.o.o., društvo za trgovinu na veliko i malo i posredništvo(Retail and wholesale trade and brokerage company) Kurta Schorka 7, 71 000 Sarajevo, Bosnia and Herzegovina, (hereinafter: VF), submitted by the authorized representative Ervin Berbić, a director of Velpro.

A Lease Agreement concluded with VF on 12.04.2007. in Sarajevo under the NO.: 3473-01/07 was submitted as a legal basis of the concentration. By this Agreement Velpro leased a part of business premises for retail trade of food, drinks and other necessities, as was warehouses and offices of the

undertaking VF in Pofalici, Novo Sarajevo municipality, Put života 12, that was recorded as real estate under the number LIII/1194 k.o. Sarajevo.

Until 09.05.2007. Velpro concluded 11 lease agreements (of the similar content) with VF .Therefore the following premises of VF are leased: VF - Wisa, VF – Crkvica, Zenica, VF –Beograd Kom, Zenica, VF - Prehrana Ozrenka, Gračanica, VF - Beograd Kom, Bihać, VF – Travnik, VF – Tešanj, VF –Sloboda, Sanski Most, VF - Sanski Most, VF – Prijedor and VF – Teslić.

After the analysis of the Notification and all submitted documents, the Council of Competition ascertained that the Frame Agreement on takeover of business activities and on long-term lease (hereinafter: the Frame agreement) was concluded on 28.03.2007. between VF komerc d.o.o., Sarajevo, Kurta Schorka 7, and Agrokor d.d. Zagreb, Trg Dražena Petrovića 3, Republic of Croatia (hereinafter: Agrokor).

The Council of Competition ascertained that Velpro is a connected company to Agrokor because the Agrokor has a majority ownership over the Konzum, a company for wholesale and retail sale,d.d. Marijana Čavića 1a, 10000 Zagreb, Republic of Croatia (hereinafter: Konzum), with 71,62% of total stocks, and Konzum is a founder and 100,0% owner of Velpro.

The Council of Competition assessed that individual agreements submitted by Velpro as a legal basis for the concentration rendered a realization of the Frame agreement, that Agrokor and VF are real parties to the concentration and that the Frame agreement was a legal basis for the concentration. Therefore Agrokor was obliged to notify the concentration in question, not Veleprodajni centar.

In accordance with the above said information, the Council of Competition adopted on 21.09.2007 the following:

- Resolution of dismissal of the Notification of intended concentration due to the fact that Velpro was not obliged to notify it pursuant to the Act, and
- Resolution declaring the initiation of the proceedings ex-officio for assessment of the concentration created between Agrokor and VF.

Pursuant to Article 33, paragraph (2) of the Act, the Council of Competition asked Agrokor to submit the data and relating documents for assessment of the positive and negative effects of the concentration in question, pursuant to Article 17 of the Act.

During the assessment procedure, the Council of Competition asked all directly interested parties through the Notice announced in the public newspapers (Dnevni list, Nezavisne novine and Dnevne novine «SAN») on 23.10.2007. to submit written comments about the concentration within 15(fifteen) days. No written comments were received within the given period of time.

The analysis of the data and documents submitted by the Agrokor and considering the documents attached to the Notification of the concentration concerned, submitted previously by the Velpro, the Council of Competition established the following facts:

1. Total income achieved by the parties to the concentration

Total annual income achieved by the parties to the concentration on 31.12.2006. amounted:

Total income (KM)	Agrokor d.d. Zagreb	VF
World	¹ (..)**	-
Bosnia and Herzegovina	-	(..)**

Total annual income achieved by the parties to the concentration on 31.12.2006. in the world market amounted over 100.000.000,00 KM (Agrokor d.d. Zagreb achieved a total income of amount (..)** KM, and VF achieved (..)** KM in the market in Bosnia and Herzegovina). As the conditions (the achieved annual income and registration of at least one of the parties to the concentration in the territory of Bosnia and Herzegovina) were satisfied, Article 14, paragraph (1) a) of the Act envisages obligatory notification of the concentration.

2. The parties to the concentration

The parties to the concentration are Agrokor d.d. Zagreb, Trg Dražena Petrovića 3, Republic of Croatia and VF Komerc d.o.o., društvo za trgovinu na veliko i malo i posredništvo (a company for retail and wholesale trade and brokerage), Kurta Schorka 7, 71000 Sarajevo, Bosnia and Herzegovina.

Agrokor d.d. Zagreb

Agrokor d.d. Zagreb, Republic of Croatia is registered in the Trade court in Zagreb on 08.12.1995. under the number Tt-95/6748-2. The majority owner is Ivica Todorić with 91,66% of share. The main business activity of Agrokor d.o.o. is retail trade, production and sale of food products. Agrokor is a majority owner of undertaking Konzum with 71,62% of total stocks, Jamnica d.d. Zagreb, Republic of Croatia has (..)**, Investco securities d.o.o. Zagreb, Republic of Croatia has (..)** and other stockholders from Republic of Croatia have (..)**.

Konzum trgovina na veliko i malo d.d. (a retail and wholesale trade company) (hereinafter: Konzum), Marijana Čavića 1a, 10000 Zagreb, Republic of Croatia, a founder and 100,00% the owner of Velpro. Veleprodajni centar trgovina na veliko i malo d.o.o. (a company for retail and wholesale trade), Rajlovačka, 71000 Sarajevo, is recorded in the register of Municipal court in Sarajevo, under the number: UF/I 340/04, on 08 March 2004. It has no ownership share in any other undertaking in Bosnia and Herzegovina. Its business activity includes retail and wholesale trade of food products, drinks and other food products. It has 32 buildings for retail use in Bosnia and Herzegovina (Sarajevo, Prijedor, Tešanj, Bihać, Zenica, Travnik and Sanski Most).

In Bosnia and Herzegovina, Agrokor is (..)** owner of INIT d.d. Sarajevo (main activity is: informatics services) and (..)** owner of Agrokor Zagreb d.o.o. Grude (main activity: export/import).

Agrokor has control, through the companies where it achieved majority shareholding in Bosnia and Herzegovina, over the following undertakings:

- Velpro (main activity: wholesale and retail trade) through the Konzum d.d. Zagreb (100,0% owner);
- Sarajevski Kiseljak (main activity: production of drinking water) through the Jamnica d.d. Zagreb ((..)** owner);

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

- Zvijezda d.o.o. Sarajevo (main activity: production of edible oil and margarine) through the Zvijezda d.d. Zagreb ((..)** owner);
- Ledo Čitluk d.o.o. (main activity: production of ice-cream and frozen fruits and vegetables) through the Ledo d.d. Zagreb ((..)** owner).

VF Komerc

VF Komerc d.o.o., društvo za trgovinu na veliko i malo i posredništvo (a company for retail and wholesale trade and brokerage), Sarajevo, Kurta Schorka 7, Bosnia and Herzegovina recorded in the Municipal court in Sarajevo on 15.04.2000 under the registration number 1-16486. VF acts in the market for wholesale and retail trade of food, drinks and other food products, cosmetics and other goods.

It had 13 buildings for retail use in the whole territory of Bosnia and Herzegovina (Sarajevo, Zenica, Bihać, Teslić, Sanski Most, Travnik, Tešanj, Prijedor and Gračanica) at the moment of signing the agreement.

3. Legal frame for assessment of the concentration

During the assessment procedure for the concentration in question, the Council of Competition applied a stipulations of the Act and Regulation on determination of the relevant market („Official Gazette of BIH“, NO.: 18/06) and stipulations of the Law on administration procedures („Official Gazette of BIH“, NO.: 29/02) in the part which was not regulated by the Act.

Pursuant to Article 43, paragraph (7) of the Act, the Council of Competition applied a court practice of the European court and decisions made by the European Commission, as well as criteria and standards of the EC Council’s statute on control of the concentration between undertakings, NO.: 139/2004, EC Notice on the concept of concentration between undertakings and directives for assessment of vertical concentration.

4. Legal basis and form of the concentration

The legal basis of the concentration is a Frame agreement on takeover of business activity and long term lease, concluded on 28.03.2007. between VF komerc d.o.o., Sarajevo, Kurta Schorka 7, represented by the director of the company Jasmin Selmanagić (Lesser) and Agrokor d.d. Zagreb, Trg Dražena Petrovića 3, Republic of Croatia (Leaseholder). The parties to the contract determined in this agreement, beside other things, that the Lesser and its connected companies should conclude Agreements on lease of 14 business premises and warehouses with the Leaseholder or with the company by Leaseholder’s consent.

The Frame agreement stressed that business premises in Travnik and Zenica are not owned by Lesser and that sublease of the above said premises is granted to Leaseholder’s benefits .

Pursuant to Article 4 of the Frame agreement, Agrokor and its connected company by its consent would lease business premises of VF. The Lease agreements that followed since 12.04.2007. until 09.05.2007. represented a realization of the Frame agreement. By the above said Agreements, Agrokor leased just a part of business premises used for sale of food, drinks and other necessities, belonging warehouses and offices for the period of 10 (ten) years.

Pursuant to Article 12, paragraph (1) a), the legal basis for the concentration in question is joining of parts of the undertaking to another undertaking.

5. Analysis of the relevant market

Relevant market, pursuant to Article 3 of the Act and Articles 4,5, and 6 of the Regulation on determination of the relevant market («Official Gazette of BIH», NO.: 18/06) is a market for particular products/services that are the subject to business activity in the particular geographic market.

Relevant products market is a retail and wholesale trade market in groceries, food products, drinks and wide range of household products.

In geographic sense, the geographic market is a territory of Bosnia and Herzegovina as the parties to the concentration act in the whole territory of Bosnia and Herzegovina.

The Council of Competition has established that a relevant market for the concentration in question is a retail and wholesale trade market of groceries, food products, drinks and wide range of household products in BIH.

A structure of the relevant market on 31.12.2006. was

No.	Name	Market share
1.	Interex - Sarajevo	5,8%
2.	VF Komerc - Sarajevo	3,7%
3.	Tropic centar - Banja Luka	2,6%
4.	Bingo - Tuzla	2,4%
5.	Mercator - Sarajevo	1,8%
6	Omega - Živinice	1,7%
8.	Merkur - Sarajevo	1,0%
7.	Others	81,0%
8.	Total	100,0%

Source: GfK Group – Centre for market research –Skenderija 44, 71000 Sarajevo

The Table shows that Interex d.d. – Sarajevo had a biggest market share of 5,8%, VF Komerc d.d. Sarajevo had 3,7% and Tropic centar d.d. - Banja Luka had 2,6% share. The data shows that the relevant market is fragmented as there are many undertakings with relatively small individual share which prevents a creation of dominant position.

Takeover of business premises and business activities in the concentration in question enables Agrokor to takeover a market share of VF which is not active in the relevant market and competitor to Agrokor.

6. Assessment of the concentration

In the analysis of the relevant market the Council of Competition established that a joint market share of the parties to the concentration in the relevant market was significantly below 40, 0% (that is a parameter for establishing a dominant position of undertakings, pursuant to Article 9 of the Act).

Pursuant to Article 17 of the Act, the Council of Competition analyzed the structure of the relevant market and market shares of the parties to the concentration, as well as the positive and negative effects of the concentration in the relevant market, and declared the concentration compatible, pursuant to Article 18, paragraph (2), item a) of the Act, and decided as it was stated in enacted terms of the Decision.

During the assessment procedure the Council of Competition took into account that this concentration did not increase significantly the market shares of the parties to the concentration in the relevant market.

7. Fine

The Council of Competition decided that this concentration was a concentration, pursuant to Article 12, paragraph (1), item a) and that, pursuant to Article 14, paragraph (1), item a) of the same Act, Agrokor was obliged to submit a Notification within 8(eight) days from the date of the conclusion of the Frame agreement on takeover of business activity and long term lease.

Having in mind the above said stipulations of the Act and the data collected from the submitted documents the Council of Competition established that Agrokor violated Article 16, paragraph(1) of the Act as it failed to submit a Notification of intended concentration.

Pursuant to Article 49, paragraph (1), item b) of the Act the Council of Competition may impose a fine which is not more than 1 % of the total income achieved in the previous business year in a case that undertaking has failed to notify the concentration pursuant to Article 16 of the Act.

The Council of Competition has imposed a fine of 190.000,00 KM, to Agrokor d.d. Zagreb, which is 1% of the total annual income achieved by Agrokor in 2006.

The Council of Competition has considered a fact that Agrokor d.d. Zagreb acts in a country of developed competition practice where the same sanctions are applied for the same violation of the competition.

The Council of Competition established that Agrokor, creating a concentration before it was declared compatible by the Council of Competition, did not respect Article 18 of the Act.

The Council of Competition has imposed a fine having in mind that the punishment is not the primary aim but that the imposed fine serves as a warning of obligatory application of the Act on Competition.

A full cooperation of Agrokor in the proceedings was taken into account in determination of the fine level.

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