

BOSNA I HERCEGOVINA

Konkurencijsko vijeće



БОСНА И ХЕРЦЕГОВИНА

Конкуренијски савјет

**Conclusion
Adopted upon Notification on intended concentration
Of undertaking
Slovenia Broadband S.à r.l. Luxembourg**

**Sarajevo
June, 2010.**



Number: 01-02-26-012-11-II/10

Sarajevo, 30 June 2010

Pursuant to Article 25, paragraph (1) item e), Article 42 paragraph (1) item g), in accordance with Articles 12, 14 and 16 of the Competition Act («Official Gazette of BiH», No. 48/05, 76/07 and 80/09), solving upon the Notification of intended concentration of the undertaking Slovenia Broadband S.à r.l. Rue Ermesinde No. 67, L-1469 Luxembourg, R.C.S. Luxembourg, filed by attorney Sead Miljković, Fra Anđela Zvizdovića 1,71 000 Sarajevo, received on 13 May 2010 under number: 01-02-26-012-II/10, Council of Competition, at its 108th (hundredandeight) session held on 30 June 2010, adopted

CONCLUSION

1. Notification on intended concentration between undertakings Slovenia Broadband S.à r.l. Rue Ermesinde No. 67, L-1469 Luxembourg, R.C.S. Luxembourg and ELOB CATV Društvo za usluge, proizvodnju i trgovinu d.o.o. Sarajevo, Bosnia and Herzegovina, is dismissed due to non-existence of obligation to notify in terms of Article 14 of the Competition Act.

2. This conclusion shall be published in «Official Gazette of BiH», official gazettes of the Entities and Brcko District of Bosnia and Herzegovina.

Exposition

On 13 May 2010, Council of Competition received Notification of intended concentration No. 01-02-26-012-II/10 (hereinafter: Notification) of the undertaking Slovenia Broadband S.à r.l. Rue Ermesinde No. 67, L-1469 Luxembourg, R.C.S. Luxembourg (hereinafter: Applicant), filed by attorney Sead Miljković, Fra Anđela Zvizdovića 1, 71 000 Sarajevo (power of attorney issued on 6 May 2010 in Luxemburg), whereby the undertaking Slovenia Broadband S.à r.l. Rue Ermesinde No. 67, L-1469 Luxembourg, R.C.S. Luxembourg intends to acquire (..)*¹% of ownership in the undertaking ELOB CATV Društvo za usluge, proizvodnju i trgovinu d.o.o. Sarajevo, Bosnia and Herzegovina (hereinafter: ELOB CATV).

Having an insight into the Notification, the Council of Competition established that it was not complete in terms of Article 30, paragraph (1) of the Competition Act (hereinafter: Act) and Articles 8 and 10 of the Regulation on notification and criteria for assessment of notification (Official Gazette BiH, No. 95/06) and requested supplements to the Notification on 1 June 2010 and 23 June 2010.

¹ Data is business secret

The Notification was supplemented on 11 June 2010, 15 June 2010, 25 June 2010 and 28 June 2010.

After the submitted supplements, the Council of Competition issued the Acknowledgment of receipt of complete and adequate Notification No. 01-02-26-012-9-II/10 of 30 June 2010, in accordance with Article 30, paragraph (3) of the Act.

Notification stated that the Applicant does not have obligation to submit the request for the assessment of concentration to another authority outside Bosnia and Herzegovina, in terms of Article 30, paragraph (2) of the Act.

Participants to concentration

Participants to concentration are undertakings Slovenia Broadband S.à r.l., Rue Ermesinde No. 67, L-1469 Luxembourg, R.C.S. Luxembourg and ELOB CATV Društvo za usluge, proizvodnju i trgovinu d.o.o. Sarajevo, Behdžeta Mutevelića No. 2b, Sarajevo, Bosnia and Herzegovina.

1. Slovenia Broadband

Undertaking Slovenia Broadband S.à r.l., Rue Ermesinde br. 67, L-1469 Luxembourg, R.C.S. Luxembourg is limited liability company, registered on 30 April 2009 in Trade Register and Company Register in Luxembourg, under No. B145882 with founding capital of (..)*KM ((..)*EUR).

Undertaking Slovenia Broadband is registered as special purpose company and operates as holding company.

Majority owner of the undertaking Slovenia Broadband is undertaking (..)* with (..)*% of ownership share and remaining (..)*% is owned by undertaking (..)*.

Undertaking (..)* is majority owned by (..)* (hereinafter: (..)*), which is governed by the undertaking (..)*.

Main registered activity of the undertaking Slovenia Broadband is direct or indirect shareholding of any kind in any economic entity, through performance of administrative affairs, management, control and development activities, using its funds for creation, management and acquisition of additional values, etc.

1.1. Slovenia Broadband in Bosnia and Herzegovina

Applicant filed Notification on intended concentration on 4 May 2010, arising from Agreement on sale-purchase of (..)*% share of the undertaking Slovenia Broadband in undertakings BH Cabel Net društvo za projektovanje i proizvodnju d.o.o Sarajevo, Teheranski trg No. 13A, Sarajevo (hereinafter: BH Cabel Net) and KT Global Net d.o.o., Josipa Vancaša No.10, Sarajevo (hereinafter: KT Global Net).

After the assessment and analysis of data and established facts, Council of Competition issued Conclusion on dismissal of Notification on intended concentration No. 01-04-26-011-8-II/10 of 30 June 2010 due to non-existence of obligation to notify in terms of the Act.

In accordance with Article 18, paragraph (9) of the Act, and considering the fact that undertaking Slovenia Broadband has not yet realized the Agreement on sale-purchase of (..)*% share in undertakings BH Cabel Net and KT Global Net, Council of Competition bases the Conclusion on dismissal of Notification, on the assumption that the Applicant shall notify on the realization of the Sale-Purchase Agreement upon the receipt of the Conclusion on dismissal of Notification No. 01-04-26-011-8-II/10.

In this view, Applicant of the notification on the market of Bosnia and Herzegovina shall own (..)*% of ownership share in undertakings BH Cabel Net and KT Global Net, and these facts have been considered during the issuance of this Conclusion.

1.1.1. BH Cabel Net

Undertaking BH Cabel Net is registered at Municipality Court in Sarajevo on 6 June 2001 under number 65-01-0620-08.

Main registered activity of BH Cabel Net is distribution of radio and television program through cable network.

According to data from the Notification, undertaking Slovenia Broadband, together with subsidiary company BH Cabel Net has general public network operator license (No. DMON-TS/188/08) issued by Communication Regulatory Agency (hereinafter: RAK)). Also, undertaking BH Cabel Net does not have license for radio and television program distribution on the whole territory of Bosnia and Herzegovina. It has built its own optical cable communication system in the area of following municipalities: Novi Grad, Novo Sarajevo, Centar, Stari Grad, Vogošća, Ilidža, Hadžići, Kiseljak, Trnovo, Breza and Konjic.

1.1.2. KT Global Net

Undertaking KT Global Net is registered at Municipality Court in Sarajevo on 15 November 2002 under No. 65-01-0721-09.

Main registered activity of KT Global Net is provision of Internet services through cable network.

According to data from Notification, undertaking Slovenia Broadband, together with its subsidiary company KT Global Net owns License for provision of internet services (No DPIU-TS/059/06) issued by RAK. Undertaking KT Global Net offers Internet services to those customers who are connected to TV cable system and on those areas where undertaking BH Cabel Net operates.

2. ELOB CATV

Undertaking ELOB CATV Društvo za usluge, proizvodnju i trgovinu d.o.o. Sarajevo, Behdžeta Mutevelića No 2b, Sarajevo, Bosnia and Herzegovina is registered at Municipality Court in Sarajevo on 5 June 2002 under registration number: 1-23693.

Founder of undertaking ELOB CATV is undertaking (..)* with registered capital of (..)*KM. Main registered activities of the undertaking ELOB CATV are distribution of cable and wireless radio and television program (hereinafter: RTV) and provision of Internet services.

Undertaking ELOB CATV owns following licenses issued by RAK: General license for public network operator (No. DMOR-TS/022/02) issued on 1 July 2002, RTV Program distribution

license (No. 321-DP) issued on 1 January 2010, License for frequency block usage for provision of one-way RTV program distribution within frequency scope 11,7 – 12,5 GHz for area of municipalities: Stari Grad, Centar, Novo Sarajevo, Novi Grad and Ilidža (No. 03-29-347-3/06), issued on 17 February 2006, License for frequency block usage for provision of one-way RTV program distribution within frequency scope 11,7 – 12,5 GHz for area of municipalities Istočno Novo Sarajevo, Istočna Ilidža, Pale, Vogošća and Hadžići (No. UP1: 02-07-143/07) issued on 15 February 2007, General license for provision of Internet services (No. DPIU-TS/063/06) issued on 30 October 2006, Licences for individual base stations in wireless distribution system: Grdonj (No. UP102-07-380/08, valid from 17. April 2008), Stanjevac (No. UP1 02-07-233-9/09, valid from 20 April 2009), Ormanj (No. UP1 02-07-233-5/09, valid from 20 April 2009); Kakrinje (No. UP1 02-07-233-6/09, valid from 20 April 2009), Brijesće Brdo (No. UP1 02-07-233-7/09, valid from 20 April 2009); Boljakov Potok (No. UP1 02-07-233-4/09, valid from 20 April 2009); Mojmiilo (No. UP1 02-07-233-8/09, valid from 20 April 2009), GS Šoping (No. UP1 02-07-233-2/09, valid from 20 April 2009); Zmajevac (No. UP1 02-07-233-10/09, valid from 20 April 2009); Faletići (No. UP1 02-07-233-3/09, valid from 20 April 2009), Breka (No. UP102-07-116-5/09, valid from 17 April 2009); Gazin Han (No. UP102-07-116-6/09, valid from 17 April 2009).

All the above mentioned licenses for base stations in wireless distribution system shall remain valid until 31 December 2016.

Based on these licenses, ELOB CATV acquired right to distribute radio and television program, i.e. establish and operate network on territory of municipalities Novi Grad, Novo Sarajevo, Centar, Stari Grad, Vogošća, Ilidža, Hadžići, Istočna Ilidža, Istočno Novo Sarajevo and Pale.

ELOB CATV acquired right to distribute radio and television program within frequency scope 11,7 – 12,5 GHz in municipalities Stari Grad, Centar, Novo Sarajevo, Novi Grad, Ilidža, Istočno Novo Sarajevo, Istočna Ilidža, Vogošća and Hadžići. Also, ELOB CATV acquired right to provide Internet services, using the existing cable infrastructure.

Legal basis for concentration

Legal basis for the concentration is Agreement on sale-purchase by means of which undertaking Slovenia Broadband is buying (..)*% of ownership share in the undertaking ELOB CATV, signed on 30 April 2010 between (..)* and (..)*.

Obligation to Notify on intended concentration

Obligation to notify on intended concentration of undertaking, pursuant to Article 14 paragraph (1) of the Act, exists if total annual income of all parties to the concentration achieved in sales of goods and/or services on the world market amounts to over 100.000.000,00 KM, according to final account in the year proceeding the concentration and if total annual income of at least two parties to the concentration achieved in sales of goods and/or services on the market of Bosnia and Herzegovina amounts to at least 8.000.000,00 KM according to final account in the year proceeding the concentration or if their joint participation on relevant market is higher than 40%.

Total annual incomes of the undertakings, participants to the concentration (and their subsidiary companies) on 31 December 2009 are shown in Table 1:

Table 1.

Total income	FundIII		Slovenia Broadband		ELOB CATV
	EUR	KM	EUR	KM	KM
World	(..)*	(..)*	(..)*	(..)*	-
BiH	-	-	-	-	(..)*

Considering the fact that Slovenia Broadband did not have any subsidiary companies in Bosnia and Herzegovina in 2009, total annual income of the undertaking BH Cabel Net in amount of ..)*KM and undertaking KT Global Net in amount of ...)*KM as of 31. December 2009 are not represented as total annual income of undertaking Slovenia Broadband, achieved on the market of Bosnia and Herzegovina.

Relevant market

Relevant market, in terms of Article 3 of the Act and Articles 4, 5 and 6 of the Regulation on definition of relevant market, is the market of certain products (services) that are subject of operation on particular geographic market.

According to the provisions of Article 4 of the Regulation on definition of relevant market, relevant product market includes all products and / or services that consumers consider inter-replaceable due to their essential characteristics, quality, purpose, price or method of use.

Furthermore, under Article 5 of the Regulation on definition of relevant market, relevant market in geographical sense includes the whole or part of the territory of Bosnia and Herzegovina, where the market competitors operate in sales and / or purchase of relevant products under equal or sufficiently balanced conditions that significantly differ from the conditions of market competition in neighboring geographic markets.

Based on data from the Notification, it is determined that there are two relevant product/service markets of the concentration: market of radio and television program cable distribution and Cable Internet service provision.

Relevant market for provision of radio and television program cable distribution and Internet services in geographic sense is Sarajevo Canton due to the fact that Slovenia Broadband through its subsidiary company BH Cabel provides services of radio and television program cable distribution in municipalities Stari grad, Centar, Novi grad, Ilidža, Hadžići, Ilijaš, Vogošća and Trnovo, and ELOB CATV ,through its own optical and coaxial infrastructure, in municipalities Stari grad, Centar, Novo Sarajevo, Novi grad, Ilidža, Hadžići and Vogošća.

Slovenia Broadband through its subsidiary company KT Global Net provides Internet services to those consumers who are connected to cable television system in the areas operated by BH Cabel Net, and ELOB CATV in municipalities Centar, Novi grad and Vogošća.

Analysis of relevant markets

During analysis of relevant market of the participants to concentration and their main competitors, and analysis of market share, data submitted by RAK and the Applicant was used as relevant.

1. Analysis of market of radio and television program cable distribution

Applicant of the Notification states that according to number of residents in Sarajevo Canton, there are (..)* households (officially published number of residents divided to average of 3 household members) of which (..)* households are users of radio and television program cable distribution services.

Slovenia Broadband through its subsidiary company BH Cabel in the area of Sarajevo Canton has total of (..)* subscribers of radio and television program services, which is (..)*% of market share in the market of radio and television program distribution in Sarajevo Canton.

Market share of participants to concentration, subsidiary companies and main competitors in the market of Sarajevo Canton is given in Table 2 .

Table 2.

Undertaking	No. of subscribers in Sarajevo Canton	Market share (%)
ELOB CATV	(..)*	(..)*
BH Cabel	(..)*	(..)*
Kablovska HS	(..)*	(..)*
HKB Net	(..)*	(..)*
Others	(..)*	(..)*
<i>TOTAL</i>	(..)*	<i>100</i>

Assessment of the Applicant

In the same area ELOB CATV has total of (..)* subscribers of radio and television program services, which is (..)*% of market share in the market of radio and television program distribution, in relation to total number of households using radio and television program distribution services in Sarajevo Canton.

Following the above mentioned, aggregated market share of the participants to concentration and their subsidiary companies in the market of Sarajevo Canton is (..)*%.

2. Analysis of Internet services market

Total number of users of Internet services in Sarajevo Canton is (..)* of which Slovenia Broadband through subsidiary company KT Global Net has (..)* users of Internet services, which is (..)*% of market share.

Market share of the participants to concentration, subsidiary companies and main competitors in the market of Sarajevo Canton is given in Table 3.

Table 3.

Undertaking	Type of Internet service	No. of subscribers in Sarajevo Canton	Market share (%)
BH TELEKOM	xDSL	(..)*	(..)*
Group HS/HKB	Cable network	(..)*	(..)*
KT Global Net	Cable network	(..)*	(..)*
ELOB CATV	Cable network	(..)*	(..)*
Other cable operators	Cable network	(..)*	(..)*
Other undertakings	Dial up, FTT	(..)*	(..)*
<i>TOTAL</i>		(..)*	<i>100</i>

Assessment of Applicant

Participant to concentration ELOB CATV has (..)* subscribers in Sarajevo Canton market, which is (..)*% of market share in relation to total number of Internet subscribers in Sarajevo Canton.

Following the above mentioned, aggregated market share of the participants to concentration and their subsidiary companies in the market of Sarajevo Canton is (..)*%.

Assessment of the Notification

According to data from Notification, participants to the concentration do not meet cumulative conditions stated in Article 14, paragraph (1) of the Act because:

- total income of each of at least two undertakings, gained by selling goods and/or services on the market of Bosnia and Herzegovina is less than 8.000.000,00 KM (Table 1.);
- aggregated market share of participants to the concentration on relevant market is not higher than 40,0%, since total market share of subsidiary companies of Slovenia Broadband - BH Kabel and KT Global and undertaking ELOB CATV on the market of radio and television program distribution is (..)*%, and (..)*% on the Internet service provision market.

Following the above mentioned, Council of Competition determined that the Notification does not meet the conditions from the Article 14 of the Act, and therefore decided as in disposition of this Conclusion.

Administrative taxes

Pursuant to Article 2, tariff number 108, item c) of the Regulation on administrative taxes related to procedural actions before Council of Competition (Official Gazette of BiH, No. 30/06) the Applicant is obliged to pay administrative taxes in amount of 1.000,00 KM, for the benefit of the Budget of Bosnia and Herzegovina Institutions.

Legal remedy

The Appeal is not allowed against this Decision.

President

Mr. Stjepo Pranjić, Phd