

BOSNA I HERCEGOVINA
Konkurencijsko vijeće



БОСНА И ХЕРЦЕГОВИНА
Конкуренијски савјет

DECISION

Adopted upon Notification of intended concentration of economic entity ČEZ a.s., Prague, Republic of Czech and Operatori i Sistemit te Shperndarjes Sh.A, Tirana, Albania

Sarajevo
June 2009



Number: 01-01-26-010-8-II/09
Sarajevo, 16th June 2009

Pursuant to Article 25, paragraph (1), item e), article 42, paragraph(1) item d), 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) and upon a Notification of intended concentration between economic entities ČEZ a.s., Prague 4, Duhová 2/1444, 140 53, Republic of Czech and economic entity *Operatori i Sistemit te Shperndarjes Sh.a*, Blloku Vasil Shanto, Tirana, Republic of Albania, submitted by a lawyer Sead Miljković, Fra Anđela Zvizdovića 1, 71000 Sarajevo, which entered into register under the number 01-01-26-010-II/09, on 19th March 2009, the Council of Competition at its 90th (ninetieth) session, held on 16th June 2009 has adopted

DECISION

1. Concentration that has an impact on the distribution of electric energy market in Bosnia and Herzegovina, which shall be created through acquisition of control purchasing the majority shares in the economic entity *Operators i Sistemit te Shperndarjes Sh.a*, Vasil Blloku Shanti, Tirana, Republic of Albania, by the economic entity ČEZ a.s., Prague 4, Duhová 2/1444, 140 53 Czech Republic, is assessed compatible.
2. This Decision on concentration shall be recorded in the Register of concentrations.
3. This Decision is final and it will be published in Official Gazette of BH and in official gazettes of Entities and Brcko District of Bosnia and Herzegovina.

Exposition

The Council of Competition has received on 19th March 2009, a Notification of intended concentration (hereinafter: the Notification), number 01-01-26-010-II/09, of economic entity ČEZ a.s., Prague 4, Duhová 2/1444, 140 53 Republic of Czech (hereinafter: the Applicant or ČEZ), submitted by the attorney Sead Miljković from Sarajevo (authorization issued in Prague, Republic of Czech, on 12th March 2009), by means of which it intends to acquire control over economic entity *Operatori i Sistemit te Shperndarjes Sh.a*, Blloku Vasil Shanto, Tirana, Republic of Albania (hereinafter: OSSH).

The Notification was found incomplete, pursuant to Article 30, paragraph(1) of the Act on competition (hereinafter: the Act) and Article 8,9 and 10 of the Regulation on notification and criteria for assessment a concentration of economic entities (“Official Gazette of BH”, number 96/06) , and, therefore pursuant to Article 31 of the Act , the Council requested the supplements to the Notification (official letter number: 01-01-26-010-1-II/09 on 27th March 2009.

The Applicant requested (official letter number 01-01-26-010-2-II/09 on 08th April 2009) additional time for submission of supplements to the Notification, which was allowed by the Council of Competition (official letter number 01-01-26-010-3-II/09 on 09th April 2009).

The Applicant submitted supplements to the Notification on 24 April 2009, official letter: 01-01-26-010-4-II/09 and on 30 April 2009, official letter: 01-01-26-010-5-II/09.

Council of Competition issued (on 03 June 2009, official letter: 01-01-26-010-5-II/09) an Acknowledgement on receipt of complete and accurate Notification, in accordance with Article 30, paragraph (3) of the Act.

The Applicant stated that he was going to submit the request for evaluation of the concentration to the responsible bodies of Republic of Albania, Republic of Serbia and Republic of Ukraine, in the sense of Article 30, paragraph (2) of the Act.

Council of Competition during the assessment procedure of this concentration has determined the following facts:

The subject Notification is filed within the determined time, in the sense of Article 16, paragraph (1) of the Act.

1. Parties to the concentration

The participants to this concentration are economic entity ČEZ a.s., Prague 4, Duhová 2/1444, 140 53, Czech Republic and economic entity Operatori i Sistemit te Shperndarjes Sh.a, Vasil Blloku Shanti, Tirana, Republic of Albania.

1.1. ČEZ

Economic entity ČEZ a.s., Prag 4, Duhová 2/1444, 140 53, Czech Republic is registered in the Commercial register of the Municipal Court in Prague, section B under the number 1581 (ID: 452 74 649) on 06 May 1992.

Main business activities of ČEZ are development of electrical equipment, revision of electrical plants, production and distribution of electricity, production and distribution of heat energy and trade of electricity.

Economic entity ČEZ is a parent company of ČEZ Group, which is one of the largest electrical -conglomerate in Central and Southeastern Europe. ČEZ Group includes many smaller companies which contribute to the development of basic business of the Group, such as telecommunications, information technology, design, engineering, construction and maintenance equipment, excavation and production of crude ore and accompanying products for the production of electricity.

ČEZ Group also has economic entities in Germany, Poland, Hungary, Slovakia, Romania and Bulgaria, where the Čez Group owns, among other things, two Romanian and three Bulgarian regional companies for distribution of electric power.

1.1.1. Companies related to ČEZ in Bosnia and Herzegovina

In Bosnia and Herzegovina ČEZ has a majority ownership stake in the economic entity Nove elektrane Republike Srpske društvo sa ograničenom odgovornošću za proizvodnju i prodaju električne energije, Gacko (“Nove elektrane Republike Srpske”, limited liability company for production and sale of electricity)(hereinafter: NERS Gacko) and economic entity ČEZ Bosnia and Herzegovina Ltd. Sarajevo (hereinafter: ČEZ BiH).

Nove elektrane Republike Srpske društvo sa ograničenom odgovornošću za proizvodnju i prodaju električne energije, Gacko (“Nove elektrane Republike Srpske”, limited liability company for production and sale of electricity) , Gacko, Bosnia and Herzegovina, is registered in the court register of the Municipal Court in Trebinje on 22nd December 2006, under registration number: RU-1-1864-00.

The main registered economic activity of NERS Gacko is production and sale of electric energy.

Economic entity NERS Gacko is founded through a joint venture of ČEZ with 51% ownership share and Mješoviti holding „Elektroprivreda Republike Srpske Trebinje – Matično preduzeće“, Trebinje (mixed holding-parent companyJSC)with 49% ownership share in shares capital ,and it plans to start its activities in 2013.

ČEZ Bosnia and Herzegovina Ltd. Sarajevo, Fra Andjela Zvizdovića 1, Sarajevo, Bosnia and Herzegovina, entered into the court register of the Municipal Court in Sarajevo under registration number: 65-01-0142-08 on 21st March 2008, is 100% owned by economic entity ČEZ.

The main registered economic activity of ČEZ is production and sale of electric energy.

Economic entities NERS Gacko and ČEZ BiH have not yet started their business activities in the market of Bosnia and Herzegovina.

1.2. OSSH

Operatori i Sistemit te Shperndarjes Sh. is founded on 08 June 2007 and registered in the State Registration Center of the Ministry of Economy of the Republic of Albania on 10th December 2007 under number K72410014H.

The main business activity of the OSSH is distribution of electric energy.

Ministry of Economy, Trade and Energy of the Republic of Albania is 100.0% owner of the economic entity OSSH.

Economic entity OSSH individually or together has no more than 10.0% shares in the shares capital, or 10.0% voting rights in any of the economic entities in Bosnia and Herzegovina.

2. The obligation of filing a notification of concentration

In terms of the provisions of Article 14, paragraph (1) item a) of the Act, the notification of the concentration of economic entities shall be filled obligatory in a case when a total annual income of the concentration participants, earned in the selling of goods and / or services on the world market, amounts 100,000,000.00 KM in the final account in the year that precedes the concentration.

Total annual income of the concentration participants (and their related business entities), on 31st December 2008, is shown in Table 1.

Table 1.

Consolidated income (KM)	OSSH		ČEZ	
	KM	ALL	KM	CZK
World	(..)* ¹	(..)*	(..)*	(..)*
Bosnia and Herzegovina	-	-	(..)**	-

* Incomes made by ČEZ -connected companies in Bosnia and Herzegovina (BiH NERS and ČEZ)

Since the participants to the concentration met the conditions in respect of a joint annual income and that at least one of them was registered in the territory of Bosnia and Herzegovina, in the sense of Article 14 (1) of the Act, they were obliged to submit a Notification.

Annual income of the participants to the concentration represents the total income (without value added tax and other taxes that are directly related to the participants to the concentration in the world and in the market of Bosnia and Herzegovina), in the sense of Article 8, item h) of the Regulation on notification and criteria for assessment a concentration of undertakings („Official Gazette of BiH_ ", number 95/06).

3. Legal frame of the concentration assessment

In the process of making a concentration assessment , the Competition Council has applied the provisions of the Act, Regulation on the definition of a relevant market ("Official Gazette of BiH", number 18/06), and Regulation on notification and criteria for assessment a concentration of undertakings ("Official Gazette of BiH", number 95/06).

4. Legal basis and a form of the concentration

Legal basis of the concentration is prescribed by Article 16, paragraph (1) of the Act, in connection with Article 30, paragraph (1), item a) of the Act and Article 8, item f) 3 of the Regulation on notification and criteria for assessment a concentration of undertakings.

Legal basis of this concentration is an Agreement on the sale and purchase of shares, concluded on 11th March 2009, between the economic entity ČEZ , as a buyer, and the Ministry of Economy, Trade and Energy of the Republic of Albania, in his capacity as owner and seller, according to which the economic entity ČEZ buys 76.0% of ownership shares in the economic entity OSSH.

¹ (..)* The data is deemed to be business secret in sense of Article 38. of the Act on competition

Therefore, legal form of the concentration is acquisition of control of one business entity (ČEZ) over other economic entity (OSSH), in accordance with Article 12, paragraph (1), item b) 1 of the Act.

5. Relevant market of the concentration

Relevant market, in the sense of Article 3 of the Act and art. 4, 5 and 6 of the Regulation on definition of a relevant market is the market of certain products (services) that are subject of business activities in a particular geographic market.

According to the provisions of Article 4. of the Regulation on definition of a relevant market, relevant product market includes all products and / or services that consumers consider mutually substitute because of their specific characteristics, quality, purpose, price or way of use.

According to Article 5 of the Regulation on definition of a relevant market, the relevant market in the relevant geographic market includes whole or a part of the territory of Bosnia and Herzegovina, where the market competitors are active in sales and / or purchase of relevant products under equal or sufficiently equal conditions which significantly different from the conditions of market competition in the neighboring geographic markets.

Given the above and based on the analysis of the relevant market of the participants to the concentration, the Council of Competition found that the relevant product market of this concentration is distribution of electricity.

Relevant market, in geographical terms, is considered to be the market of Bosnia and Herzegovina.

Therefore, relevant market of this concentration is considered a market for distribution of electric energy in Bosnia and Herzegovina.

6. Assessment of the concentration

After evaluation and analysis of data and the established fact in the sense of Article 17 of the Act, in the procedure of adoption of this Decision, the Council Competition has assessed that implementation of the concentration in the relevant market will not have a direct impact on the distribution of electric power nor change the market shares in the relevant market.

During the assessment of the concentration, the Council of Competition has had in mind the fact that in this case the concentration is ex-territorial because the participants to the concentration are active in the world level, and that this concentration can have an impact on the market of Bosnia and Herzegovina through the activities of related entities in the ownership of economic entity ČEZ.

For the above reasons, the Council of Competition considers that this concentration of economic entities does not create and does not strengthen a dominant position in the relevant market, and has decided as in the operative part of this Decision.

Taking into account all the facts and data that preceded issuance of the Decision, the Council of Competition has assessed the concentration permitted in the terms of Article 18, paragraph (2), item a) of the Act, as decided in the operative part of this Decision.

7. Administrative tax

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.

8. 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