



BOSNIA AND HERZEGOVINA
Council of Competition

Number: 01-03-26-012-22-II/06
Sarajevo, 15 February 2007

Pursuant to Article 25, paragraph (1), item e), article 42, paragraph (1), item d) and pursuant to Articles 12,14,16 and 18 and Article 24, paragraph (2), of the Act on Competition («Official Gazette of BiH», No. 48/05) and upon a Notification on intended concentration between undertaking «Fomento de Construcciones y Contrata, S.A.» Federico Salmon 13, Madrid, Republic of Spain and undertaking «Alpine Mayreder Bau GmbH», Alte Bundesstrasse 10, Salzburg-Wals, Republic of Austria, entered under the registration No. 01-03-26-012-II/06 on 02 August 2006, the Council of Competition in its 41st (forty-first) session, held on 15 February 2007 has adopted

DECISION

1. The concentration in the market of civil engineering and production of construction materials in Bosnia and Herzegovina created by acquisition of majority of shares of «Alpine Mayreder Bau GmbH», Alte Bundesstrasse 10, Salzburg-Wals, Republic of Austria by «Fomento de Construcciones y Contrata, S.A.» Federico Salmon 13, Madrid, Republic of Spain is assessed compatible.
2. This Decision on concentration shall be recorded at the Registry on concentrations
3. This Decision is final and it shall be published in the «Official Gazette of BiH» and in official gazettes of Entities and Brcko District.

Exposition

Undertaking «Fomento de Construcciones y Contrata, Republic of Spain (hereinafter: the Applicant or FCC) as an Applicant has submitted a Notification on intended concentration to the Council of Competition on 2 August 2006, entered under the registration No. 01-03-26-012-II/06, by means of which it intends to buy majority of shares of undertaking Alpine Mayreder Bau GmbH», Alte Bundesstrasse 10, Salzburg-Wals, Republic of Austria (hereinafter: Alpine) and to become its majority owner.

The Notification on intended concentration is based on stipulations of Article 14, paragraph (1), item a) of the Act on Competition (hereinafter: the Act), because the total annual income of the parties to the concentration in the worldwide market amounted 100.000.000,00 KM according to the final account in the year which preceded the concentration, and on the fact that Alpine, as one of the participants to the concentration, is present in the market of Bosnia and Herzegovina through its subsidiary associations.

Total annual income of the parties to the concentration concerned realized in 2005 in the worldwide market amounted:

No.	Name of the party to the concentration	Total income - 2005
01.	FCC	(..)** ¹ KM
02.	Alpine	(..)**KM

As the Notification on intended concentration, submitted to the Council of Competition (hereinafter: the Application) on 2 August 2006, was not complete, pursuant to Article 31 of the Act, the Council of Competition asked the Applicant by means of an official letter No. 01-01-26-012-1-II/06, on 1 September 2006, pursuant to Article 31 of the Act, to submit the supplements to the data.

The Applicant submitted the supplements to documentation as follows: No.: 01-03-26-012-2-II/06 on 15 September 2006, No.: 01-03-26-012-3-II/06 on 25 September 2006, No.: 01-03-26-012-4-II/06 on 29 September 2006 and No.: 01-03-26-012-5-II/06 on 18 October 2006.

The Applicant submitted together with the supplements a Decision declaring the concentration concerned compatible issued by the European commission and Decision declaring the concentration compatible issued by the Government of Republic of Montenegro.

When the Applicant completed the Notification, the Council of Competition issued in writing an Acknowledgement of receipt of complete and adequate Application, No.: 01-03-26-012-6-II/06, on 10 November 2006

On the basis of the data in the Notification and other data relevant for the concentration concerned, the Council of Competition did a preliminary analysis and appraisal of the concentration concerned and it asserted that it was not possible to determine a structure of the relevant market and effects of the concentration concerned on the relevant markets, i.e. on other actual or potential competitors.

Subsequently, the Council of Competition in its 36th (thirty -sixth) session, held on 22 November 2006, No. 01-03-026-012-9-II/06 has adopted a Resolution authorizing the initiation of the proceedings on assessment of the concentration upon the Notification in question, pursuant to Article 32, paragraph (2) of the Act.

The Council of Competition, in the course of the assessment procedure of the intended concentration, sent on 1 December 2006 to Applicant a request No. 01-03-26-012-14-II/06 to submit supplements to the data. The Applicant submitted on 22 December 2006 an official letter No. 01-03-26-012-15-II/06 with required data: a harmonized list of subsidiary associations - the parties to the concentration in Bosnia and Herzegovina, an appraisal of market shares of the parties to the concentration in Bosnia and Herzegovina, and list and appraisal of market shares of the main market competitors, the parties to the concentration in the relevant markets in Bosnia and Herzegovina.

At same time, the Council of Competition asked supplements to the data from the competent institutions of Bosnia and Herzegovina, pursuant to Article 35 of the Act for the purpose of establishing the material truth.

Legal basis and the form of the concentration

Legal basis for the concentration is an Agreement on purchasing of stocks concluded between FCC and a group of the majority shareholders of Alpine, on 26 July 2006.

¹ The data in whole text of the Decision marked as (...)** denote a business secret

It is mentioned in the aforesaid Agreement that the private foundation Pappas Privatstiftung, Salzburg, Republic of Austria has, through undertaking Alpine Holding GmbH, a majority shares in economic association Alpine Mayreder Bau GmbH, Republic of Austria. By this Agreement the private foundation Pappas Privatstiftung, Salzburg, Republic of Austria sells, assigns and transfers the total ownership of shares which it owns in economic association Alpine Holding to economic association FCC, so that FCC becomes a majority shareholder of economic association Alpine Holding with (...)**% of the capital shares and voting rights.

It is mentioned in the Notification that undertaking Alpine Holding has majority shares in the capital shares of undertaking Alpine Marauder, so that by conclusion of the Agreement in question the undertaking FCC becomes a majority owner of the undertaking Alpine Mayreder.

The legal form of the concentration is acquisition of control over undertaking Alpine Mayreder Bau GmbH, Salzburg-Wals, and Republic of Austria by undertaking «Fomento de Construcciones y Contrata, S.A. », acquiring the majority of shares in shares capital, pursuant to Article 12 of the Act.

Subsequently, pursuant to Article 16 of the Act, the undertakings, the parties to the concentration are obliged to submit a Notification, pursuant to Article 12 and 14 of the Act within eight days, starting from the day of the agreement conclusion.

The parties to the concentration

The parties to the concentration are undertaking «Fomento de Construcciones y Contrata, S.A. » Federico Salmon 13, Madrid, Republic of Spain and undertaking Alpine Mayreder Bau GmbH, Alte Bundesstrasse 10, Salzburg-Wals, Republic of Austria.

Fomento de Construcciones y Contrata, S.A

Fomento de Construcciones y Contrata, S.A, Federico Salmon 13, Madrid, Republic of Spain is registered at Trade registry for the town and province of Barcelona. Capital shares of undertaking FCC, amounts (...)** million KM is recorded and paid completely in a form of registered stocks.

The main business activity of the undertaking is providing civil engineering services which it performs by itself and together with undertakings registered for the similar business activities. The undertaking FCC is not present in the market of Bosnia and Herzegovina and it does not provide sales activities or any other services in that market.

Alpine Mayreder Bau GmbH

Undertaking Alpine Mayreder Bau GmbH, Alte Bundesstrasse 10, Salzburg-Wals, Republic of Austria, as a leading company of a group Alpine Holding GmbH, is a limited liability association, founded on the basis of the legislation of Republic of Austria. Majority of ownerships shares, 94,0% in the undertaking is owned by undertaking Alpine Holding GmbH, and rest 6,0% of the ownerships shares is owned by Erste Bank AG, Republic of Austria. The main business activity of this undertaking is providing of the various kinds of services in the civil engineering sector.

In 2005, the undertaking Alpine Mayreder Bau GmbH owns registered subsidiary economic associations in Bosnia and Herzegovina with ownership shares as follows:

- Alpine Investment društvo za građenje d.o.o. Sarajevo (Building construction associations)(Skenderija 5a, Sarajevo) (...)**%

- Alpine Rudnik krečnjaka Lapišnica d.o.o. (Limestone mine) (Čeljigovići bb, Istočno Sarajevo) (...)**%
- Alpine BH društvo za izgradnju vodovoda d.o.o. Travnik (Pipelines construction association) (Zenjak bb, Travnik) 70,0%

And also subsidiary associations in the neighboring countries of Bosnia and Herzegovina:

- Alpine Bau Zagreb d.o.o. Zagreb, Republic of Croatia (...)**%
- Garazna Hisa d.o.o. Ljubljana, Republic of Slovenia (...)**%
- Alpine Consulting d.o.o. Celje, Republic of Slovenia (...)**%
- Alpine Inženjering d.o.o. Celje, Republic of Slovenia (...)**%
- Alpine Mayreder Bau d.o.o. Maribor, Republic of Slovenia (...)**%
- Alpine Bau d.o.o. Beograd, Republic of Serbia (...)**%
- Alpine Aleksandar d.o.o. Skopje, Republic of Macedonia (...)**%

Analysis of the relevant market:

Relevant market, pursuant to the Act and Regulation on the definition of a relevant market («Official gazette of BiH», No. 18/06) is a market of certain products or services which are the subject to business activities of the parties to the concentration in the certain geographic market.

In the analysis of the relevant market, the Council of Competition appraises the concentration in question through establishment of the relevant market structure and market shares of the parties to the concentration in the relevant market.

In the Notification in question, a relevant market comprises of:

- (1) provision of civil engineering services, which in the case concerned implies the building construction, heavy/highway construction and structural engineering
- (2) production of construction materials-limestone

As the parties to the concentration concerned act in the whole territory of Bosnia and Herzegovina through subsidiary associations the relevant market in geographic sense is deemed a whole territory of Bosnia and Herzegovina.

Subsequently, the relevant market of the concentration concerned is providing services in the segment of civil engineering and production of construction materials-limestone in whole territory of Bosnia and Herzegovina.

In the analysis of the relevant market the data to the Notification are used as well as some other required and adequate data from competent institutions of Bosnia and Herzegovina (Foreign-trade Chamber of Bosnia and Herzegovina, etc.). On the basis of all submitted data, the Council of Competition has established that the parties to the concentration, i.e. the subsidiary associations in Bosnia and Herzegovina in the segment of civil engineering hold 1,0% of market shares, and that subsidiary associations in the relevant market of production of limestone hold 3,0% of market shares.

The main market competitors of Alpine Mayredera in the relevant services market of civil engineering in Bosnia and Herzegovina are: GP Put - Sarajevo, Hidrogradnja d.d. - Sarajevo, ŽGP- Sarajevo, GP Bosna putevi - Sarajevo, GP Vranica - Sarajevo, Krajina d.d. - Banja Luka, Integral inženjering – Laktaši, etc.

The main market competitors of Alpine Mayredera in the relevant production market of construction materials-limestone in Bosnia and Herzegovina are: Rudnik krečnjaka i tvornicu

kreča d.d. (Limestone mine and factory) Doboj, krečnjak (limestone) - Stara Dubrava - Čelinac, import competitors, etc.

Appraisal of the concentration

After the analysis and estimation of data and facts in the decision making procedure, the Council of Competition has established that implementation of the intended concentration of undertakings will not create prevention, restriction or distortion of the market competition in the relevant market and that it will ensure improvement of the market competition in the field of civil engineering services and production of construction materials in Bosnia and Herzegovina.

The Council of Competition has established the presence of numerous of undertakings in the relevant market in Bosnia and Herzegovina which shows the presence of substantial competition and tendency for further development and growth of the relevant markets. Also, the Council of Competition has established that there are no legal or economic barriers to relevant markets entry for potential undertakings.

The Council of Competition, during the decision making procedure, has taken into account that the intended concentration is not going to increase significantly the actual market shares of the parties to the concentration in the relevant market, and that no dominant position is going to be created which will results in significant distortion of the market competition in Bosnia and Herzegovina, pursuant to regulations of the Act.

Therefore, the Council of Competition declared the concentration concerned compatible pursuant to Article 18, paragraph (2) of the Act and decided as it is stated in enacting terms of this Decision.

Administration tariffs

On this Decision the Applicant, pursuant to the Article 2, paragraph (1), tariff number 107, item d) 2) 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 25.000,00 KM for the benefit of the budget of Institutions of Bosnia and Herzegovina

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 in «Official Gazette of BIH».

President

Gordan Raspudić