

BOSNA I HERCEGOVINA
Konkurencijsko vijeće



БОСНА И ХЕРЦЕГОВИНА
Конкуренијски савјет

BOSNIA AND HERZEGOVINA
Council of Competition

DECISION

upon Notification of intended concentration between undertaking Dukat mliječna industrija (the dairy industry) d.d., Zagreb and undertaking Inmer d.o.o. za proizvodnju, trgovinu i promet export-import (for production, trading and export-import turnover), Gradačac

Sarajevo
26 July 2007



BOSNIA AND HERZEGOVINA
Council of Competition

Number: 01-02-26-020-5-II/07
Sarajevo, 26.07.2007.

Pursuant to Article 25, paragraph (1) item e), Article 42, paragraph (1), item d) and Article 43, paragraph (2), in connection with Article 12, 14, 16, and 18 of the Act on Competition («Official Gazette of BH», No. 48/05) and Article 193, paragraph (2) of the Law on Administrative procedure («Official Gazette of BH», No. 29/02) upon the Notification of intended concentration between undertakings Dukat mliječna industrija (Milk industry) d.d., Marijana Čavića 9, 10000 Zagreb, Republic of Croatia and Inmer d.o.o. za proizvodnju, trgovinu i promet export-import (for production, trading and export-import turnover), Željeznička bb, Gradačac, Bosnia and Herzegovina, which entered under the registration number: 01-02-26-020-II/07, on 11.06.2007., the Council of Competition in its 49th (forty-ninth) session, held on 26 July 2007 has adopted

DECISION

1. The concentration, created in the market for production and distribution of milk and dairy products in Bosnia and Herzegovina where a control is acquired by purchase of share in the capital shares, by means of which the undertaking Dukat mliječna industrija (dairy industry) d.d., Marijana Čavića 9, 10000 Zagreb, Republic of Croatia shall become 100% owner of undertaking Inmer d.o.o. for production, trading and export – import turnover, Željeznička, Gradačac, Bosnia and Herzegovina, is assessed compatible.
2. This Decision on concentration is entered in the Register of concentrations.
3. This Decision is final and it shall be published in the «Official Gazette of BH», in official Gazettes of Entities and Brcko District of Bosnia and Herzegovina.

Exposition

Dukat mliječna industrija (dairy industry) d.d., Marijana Čavića 9, 10000 Zagreb, Republic of Croatia (hereinafter: Dukat or the Applicant) submitted to the Council of Competition by the authorized attorney Marić Branko, Mehmeda Spahe 24, Sarajevo, a Notification of intended concentration (hereinafter: the Notification) by means of which the Applicant intends to acquire 100% ownership, by purchase of stocks, over undertaking Inmer d.o.o. for production, trading and export – import turnover, Željeznička, Gradačac, Bosnia and Herzegovina (hereinafter: Inmer).

The Notification of intended concentration, submitted to the Council of Competition on 11.06.2007., is entered under the No.: 01-02-26-020-II/07, pursuant to Article 16, paragraph (1) of the Act on Competition (hereinafter: the Act).

Submitted Notification was complete so that the Council of Competition issued on 25.07.2007., an Acknowledgement of receipt of the complete and adequate notification (number: 01-02-26-020-3-II/07) pursuant to Article 30. of the Act.

The Applicant submitted the Notification for appraisal to the Competition Commission of Republic of Serbia (the procedure was completed by adoption of decision declaring the concentration compatible), but it was not obliged to notify intended concentration to the Agency for protection of market competition of Republic of Croatia, according to the Law on protection of market competition of Republic of Croatia,

The Council of Competition established the following facts during the appraisal procedure of the Notification of intended concentration:

1. The Parties to the concentration

The parties to the concentration are Dukat mliječna industrija (diary industry) d.d., Marijana Čavića 9, 10000 Zagreb, Republic of Croatia and undertaking Inmer d.o.o. za proizvodnju, trgovinu i promet export-import (for production, trading and export –import turnover), Željeznička, Gradačac, Bosnia and Herzegovina.

1.1. Dukat mliječna industrija (the dairy industry) d.d. Zagreb

Dukat mliječna industrija (the dairy industry) d.d., Marijana Čavića 9, Zagreb is entered into register of the Commercial Court in Zagreb under the number: 06/13931-2, on 02.01.2007., with ID N 080307619, Republic of Croatia. Its former name Lura d.d. Zagreb is changed to Dukat mliječna industrija d.d. Zagreb.

Dukat belongs to the Dukat Group (the previous name Lura Group) which comprises the following undertakings:

- undertaking Ralu Logistika d.o.o. Sesvete, Klekova 2a, founded in 1990, specialized in load road transport inside and outside of the country;
- undertaking Dukat S d.o.o. Ljubljana, Šmartinska cesta 102., founded in 1998 in Slovenia, its business activity is marketing of Dukat's products in that market ;
- undertaking Dukat d.o.o. Sarajevo, Rajlovačka cesta, (former name Lura d.o.o. Sarajevo), founded in 1999 to sell Dukat's products in the market of BIH;
- undertaking Lura d.o.o. Beograd (in liquidation) Beograd-Leštane, Save Kovačevića, founded in 2003 to sell Dukat's products in the market of Serbia and Montenegro, ceased its business activity when acquired majority share in undertaking Somboled a.d., Sombor so the liquidation is going on;
- undertaking Somboled a.d., Sombor, Gakovački put, specialized in production of milk products, where Lura d.d. acquired (at that time) majority stocks of Somboled a.d., Sombor at the end of 2003;
- undertaking Dukat doel Skoplje, Bulevar partizanskih odredi 18, founded on 22.11. 2006. to sell Dukat's products in the market of Macedonia;

Lura Holding d.o.o. Ljubljana, Slovenia and Lura Magyarorszag Vagyonkez kft, Budapest, Hungary is founded in 2003 and they have performed no business since then. The Lura Holding d.o.o. has gone recently into liquidation and liquidation of Lura Magyarorszag Vagyonkez kft is intended to be commenced soon.

All undertakings listed above, belonging to Dukat Group are owned (..)**¹% by undertaking Dukat, except undertaking Somboled a.d. Sombor where Dukat has (..)**% of shares (31.01.2007.).

On 21.03.2007, Mr. Luka Rajić, the owner of Dukat made an Agreement of transfer of stocks of undertaking B.S.A. International, Place du Champ de Mars 5, Brussels, Belgium, by means of which the takeover process of Dukat has started and still continues.

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

The undertaking Dukat d.o.o. Banja Luka is not connected association of undertakings Dukat d.d. Zagreb and Dukat mljekare d.o.o. Sarajevo. There is no ownership connection between undertakings Dukat d.o.o. Banja Luka and Dukat Group and therefore the undertaking Dukat d.o.o. Banja Luka is not a party to the concentration.

1. 2. Inmer d.o.o. Gradačac

The undertaking Inmer d.o.o. za proizvodnju, trgovinu i promet export-import (for production, trade and export-import turnover) Gradačac, Željeznička, entered into Municipality Court register under the No.: 1-5884 in Tuzla, by the Court Decision No.: 032-0-Reg-06-001934 from 13.12.2006.

According to the Notification data, the undertaking Inmer has no ownership shares in other undertakings in Bosnia and Herzegovina.

The capital shares of undertaking Inmer amounts (..) **KM, whereof (..) **KM is cash paid and (..) **KM is brought in a form of assets value.

The ownership structure of the undertaking Inmer, before the implementation of the concentration, comprises:

- (A.A.) **²; has ownership of 99, 47213 %;
- (B.B) **³; has ownership of 0, 30164%;
- (C.C.) **⁴; has ownership of 0, 11311%;
- (D.D.) **⁵; has ownership of 0, 11311%.

The ownership structure of the undertaking Inmer, after the implementation of the concentration concerned, will comprise:

- (A.A.) **, a founder of the association; has ownership of 24, 4622%;
- undertaking Dukat d.d. mlječna industrija, Marijana Čavića 9, Zagreb, Republic of Croatia; has ownership of 75, 53779%.

2. Legal basis and form of the concentration

Legal basis for the Notification of intended concentration is an Agreement for assignment and takeover of shares No.: 1 and Agreement for assignment and takeover of shares No.:2, concluded on 01.06.2007. in Zagreb, by means of which the undertaking Dukat shall acquire 100% ownership over the undertaking Inmer,

On 01.06.2007. in Zagreb, Dukat made the Agreement for assignment and takeover of shares No.: 1 with (A.A.) ** from Gradačac, BiH, a member and founder of undertaking Inmer. According to the above mentioned Agreement, (A.A.) ** sold to Dukat (..) **KM of input in money, that is 9, 99985% capital shares. Therefore Dukat acquired minor share in the undertaking Inmer.

The same day, on 01.06.2007. in Zagreb, the Agreement for assignment and takeover of shares No.: 2 was made between undertakings Dukat and undertakings (A.A.) **, a founder and member of undertaking Inmer, (B.B) **, (C.C.) ** and (D.D.) ** from Gradačac, members of undertaking Inmer. According to the above mentioned Agreement, (A.A.) ** sold and assigned to Dukat a part of its input in Inmer of (..) **KM (that is 65, 01% capital shares). Also, the mentioned members of undertaking Inmer sold their shares in Inmer to undertaking Dukat as it follows:

- (B.B) ** sold to Dukat its share in undertaking Inmer, which corresponds to a deposit of (..) **KM (0, 30164% capital shares);

² (A.A.) ** data is deemed to be a business secret

³ (B.B) ** data is deemed to be a business secret

⁴ (C.C.) ** data is deemed to be a business secret

⁵ (D.D.) ** data is deemed to be a business secret

- (C.C.) **, as a member of undertaking Inner, sold to Dukat its share, which corresponds to a deposit of (..)**KM (0, 11311% capital shares);
- (D.D.) ** as a member of undertaking Inner, sold to Dukat its share, which corresponds to a deposit of (..)**KM (0, 11311% capital shares);

According to the above said Agreements, the undertaking Dukat takeover undertaking Inner with the shares corresponding to deposit of (..)**KM, that is 75, 53779% capital share of undertaking Inner; (A.A.) **, as a member of Inner, keeps its share corresponding to deposit of (..)**KM, that is 24, 46221% capital share of undertaking Inner.

Also, (A.A.) ** is obliged by the Agreement for assignment and takeover of shares No.: 2, to assign its share of (..)**KM (24, 46221% capital share in undertaking Inner), that are in its possession during the implementation of this Agreement, upon conclusion of adequate agreements, to undertaking Dukat at least before the end of the first year when the Agreement for assignment and takeover of shares No.: 2 becomes effective, and to assign the other part of its share to Dukat before the second year expires when the Agreement for assignment and takeover of shares No.: 2 becomes effective.

Therefore, the undertaking Dukat will become 100% owner of undertaking Inner.

The legal form of the concentration is acquisition of control or dominant influence of one or more undertakings over another or more another undertakings or over the part of another or parts of another undertakings, acquired by purchase of majority stocks or shares in capital shares, pursuant to Article 12, paragraph(1), item b)1 of the Act.

3. Total annual income of the parties to the concentration concerned

The Table 1. shows total annual income realized by the parties to the concentration on 31.12.2007., in the year preceding the implementation of the concentration:

Total income denoted KM	LURA d.d.	LURA GROUP	INMER
Worldwide	(..)**	(..)**	-
Bosnia and Herzegovina	(..)**	(..)**	(..)**

The undertaking Lura d.d. Zagreb changed its name to Dukat d.d. Zagreb, which is recorded in the registry records maintained by the Commercial Court Zagreb, under the ID N 080307619 on 02.01,2007.

The Council of Competition established that this concentration is a subject to obligatory notification due to the reason that condition refers to the total annual income realized by the parties to the concentration in the market of goods/services in Bosnia and Herzegovina in the year preceding the concentration is met, pursuant to Article 14, paragraph (1) of the Act, and due to the data refers to realized incomes in the worldwide market and market of Bosnia and Herzegovina.

4. Analysis of the relevant market

Relevant market, pursuant to Article 3 of the Act and Article 4, 5 and 6 of the Regulation on the Definition of a Relevant Market(«Official Gazette of BH», No. 18/06), is a market for particular products/services which are the subject to the business activities in the particular geographic area.

The Council of Competition established that the relevant market of goods/services of the parties to the concentration concerned is a production and distribution of milk and dairy products.

As production and distribution of milk and dairy products is maintained in Bosnia and Herzegovina, the relevant geographic market for the concentration concerned is the territory of Bosnia and Herzegovina.

Therefore, the Council of Competition established that the territory of Bosnia and Herzegovina is a relevant market for production and distribution of milk and dairy products.

The list and appraisal of market shares of the main competitors, the parties to the concentration in the relevant market, is shown in the Table 2.:

Table 2.

No	Competitors	Market shares (%)	Annual turnover (million liters)
1.	Mlijeko-produkt Kozarska Dubica	23,1%	(..)**
2.	Meggle, Bihać	18,8%	(..)**
3.	Dukat mljekara d.o.o. Sarajevo	14,0%	(..)**
4.	Tuzlanska mljekara Tuzla	9,1%	(..)**
5.	Inner, Gradačac	8,5%	(..)**
6.	Milkos, Sarajevo	6,4%	(..)**
7.	Livanjska mljekara, Livno	3,8%	(..)**
8.	Banjalučka mljekara-Salford	3,6%	(..)**
9.	Ostali (Sappit, Vindija, Šabac)	12,6%	(..)**
	TOTAL:	100,0%	164,50
	Total (3+5)	22,5%	(..)**

The data given in the Notification and information possessed by the Council of Competition are used in the analysis of the relevant market.

Table 2. shows that Mlijeko-produkt d.o.o. Kozarska Dubica has the biggest market share (23, 1%, that is (..)** million liters of milk) in the relevant market of the concentration concerned, and that joined market shares of the parties to the concentration is 22,5%, that is (..)** million liters of milk.

The Council of Competition ascertained that joined market shares of the parties to the concentration in the relevant market is significantly below 40,0% (that is established parameter for determining the dominant position of the undertaking, pursuant to Article 9 of the Act).

Dukat mljekara d.o.o. Sarajevo provides supply through its own distribution chain comprised of three distribution centers: in Sarajevo (supplies Sarajevo region), Tuzla (supplies Tuzla region and part of Posavina region) and Bihać (supplies the region of Unsko-Sanski Canton). Also, it uses supply services of two distributors: MCI d.o.o. Široki Brijeg, which covers the Hercegovina region and undertaking Dukat d.o.o. Banja Luka, which covers Republic of Srpska and a part of Posavina region.

Inner supplies all regions in Federation (except Sarajevo) from its seat in Gradačac. The big customers in Sarajevo are supplied by Inner's branch but small customers are supplied by distributor "Euroming" d.o.o. Sarajevo.

5. Appraisal of the concentration concerned

Considering all above –mentioned data, shown in Table 2., and information given in the case file, the Council of Competition has assessed that this concentration will not create or strengthen a dominant position of the parties to the concentration as they can not behave significantly independent of existing competitors in the relevant market ; the market shares of the competitors shows the presence of strong competition in that relevant market for production and distribution of milk and diary products in the market of Bosnia and Herzegovina.

The concentration will increase productivity and quality of products in the relevant market for production and distribution of milk and diary products in the market of Bosnia and Herzegovina.

Establishment of new lines will increase the production program using innovative products and that will offer the additional quality to the customers. Investments in the controlling system will provide more hygienic-health care condition for the products.

Considering all facts and information the Council of Competition has assessed the concentration concerned compatible, pursuant to Article 18, paragraph (2), item a) of the Act, as it is stated in the enacted terms of the Decision.

6. Administration tariffs

On this Decision the Applicant, pursuant to the Article 2, paragraph (1), tariff number 107, 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.

7. 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