

BOSNA I HERCEGOVINA
Konkurencijsko vijeće



БОСНА И ХЕРЦЕГОВИНА
Конкуренцијски савјет

BOSNIA AND HERZEGOVINA
Council of Competition

DECISION
on concentration between Intesa Holding and UPI Banka

Sarajevo
October 2006



BOSNIA AND HERZEGOVINA
Council of Competition

Number: 01-01-26-007-20-II /06
Sarajevo, 26 October 2006

Pursuant to Article 25, paragraph (1), item e), article 42, paragraph (1), item d) and Article 43, paragraph (2), and in connection with Articles 12, 14, 15, 16 and 18 of the Act on Competition («Official Gazette of BiH», No. 48/05) and Article 193, paragraph (2) of the Law on administrative procedure («Official Gazette of BiH», No. 29/02) and upon a Resolution authorizing an *ex-officio* initiation of the proceedings (No.: 01-01-26-007-1-II/06 from 21 June 2006) for assessment of concentration between undertakings Intesa Holding International S.A. 19-21 Boulevard du Prince Henri, L-1 724 Luxemburg, represented by a lawyer Nedzida Salihovic from Sarajevo, Fra Andela Zvizdica 1/X, 71 000 Sarajevo, and UPI Banka d.d. Sarajevo, Obala Kulina bana 9A, the Council of Competition in its 35th (thirty-fifth) session, held on 26 October 2006 has adopted

DECISION

1. The concentration achieved in the market of banking and financial services in Bosnia and Herzegovina by acquisition of majority of shares of UPI Banka d.d. Sarajevo, headquartered in Sarajevo by Intesa Holding International S.A., headquartered in Luxemburg is assessed compatible.
2. Owing to fails to submit a prior Notification of intended concentration within the stipulated time period, Intesa Holding International S.A., Luxemburg is fined 250.000,00 KM and it is obliged to pay the fine within 8 (eight) days running from the date of receipt of this Decision.
3. This Decision on concentration shall be recorded at the Registry on concentrations.
4. This Decision is final and it shall be published in Official Gazette of BiH and in official gazettes of Entities and Brcko District.

Exposition

On the basis of information and data published in daily newspapers of Bosnia and Herzegovina and documentation obtained from the competent institutions of Bosnia and Herzegovina relating to the concentration between undertakings Intesa Holding International S.A. 19-21 Boulevard du Prince Henri, L-1 724 Luxemburg (hereinafter: Intesa Holding) and UPI Banka d.d. Sarajevo, Obala Kulina bana 9A (hereinafter: UPI Banka) the Council of Competition carried out a preliminary review of the concentration in question.

Having examined the documentation submitted by the Agency for banking of Federation of Bosnia and Herzegovina and Commission for securities of Federation of Bosnia and Herzegovina, the Council of Competition established a reasonable suspicion that the concentration in question was not notified, i.e. implemented in accordance with the stipulations of the Act on Competition

(hereinafter: the Act) and therefore the Council of Competition adopted a Resolution authorizing an *ex-officio* initiation of proceedings (No.: 01-01-26-007-1-II/06 from 21 June 2006).

The Council of Competition, in sense of Article 33 paragraph (2) of the Act, requested the data and relevant documentations from the parties to concentration Intesa Holding and UPI Banka in order to appraise a positive and negative results of the concentration in question within the meaning of Article 17 of the Act, i.e. to appraise its results in a structure of the relevant market, whether the concentration concerned created or strengthened a dominant position which resulted in prevention, restriction and distortion of the market competition within the meaning of Article 13 of the Act.

In the course of assessment procedure, the Council of Competition has found out the following:

Legal frame of the assessment of concentration

Legal frame

In the course of the assessment procedure of the concentration concerned the Council of Competition applied stipulations of the Act on Competition, Regulation on the Definition of a relevant market («Official Gazette of BiH», No. 18/06) and stipulations of the Law on administrative procedure («Official Gazette of BiH», No. 29/02) in the part which is not covered by regulations of the Act on Competition.

As the concentration concerned takes place in the banking sector the stipulations of the Law on banks of Federation of Bosnia and Herzegovina («Official Gazette of FBiH», No. 39/98 and 32/00) and the Law on banks of Republic of Srpska («Official Gazette of RS», No. 44/03) are considered.

The Council of Competition, in sense of Article 43, paragraph (7) of the Act, used a European Court case law and EC decisions and criteria and standards from the Act of the EC Council, No. 139/2004 on control of the concentration between undertakings, Information of the European Commission on the concept of concentration of undertakings and Instructions for assessment of horizontal concentration.

Legal basis and form of the concentration

The legal basis for concentration concerned is an Agreement for the sale up to 55,01% of the issued shareholders capital of the UPI Banka to Intesa Holding concluded on 28 July 2005.

Achieved control over UPI Banka by Intesa Holding is the legal form of concentration; Intesa Holding acquired the majority of shares in share capital of UPI Banka in order to take a total control over it, in a sense of Article 12 of the Act.

The Intesa Holding acquired the majority of shares of 55,01% of UPI Banka by buying the stocks of the following sellers:

- The European Bank for Reconstruction and Development, One Exchange Square, London, EC2A 2JN, England;
- Sarajevska Pivara d.d., Franjevačka 15, Sarajevo, Bosnia and Herzegovina;
- Klas d.d., Paromlinska 43, Sarajevo, Bosnia and Herzegovina;

- Coning Inzinjering d.d., Augusta Senoe 4, Varaždin, Republic of Croatia;
- Bosna Reosiguranje d.d., Despiceva 4, Sarajevo, Bosnia and Herzegovina.

Upon the conclusion of the Agreement the Intesa Holding published on 5 January 2006 a bid on acquisition of all remained stocks of UPI Banka. The bid was completed successfully and Intesa Holding acquired a control on (...)***¹% of stocks of the UPI Banka (Registry of the securities of F BH-act No.: 02-02-1733/06, date 20 March 2006).

The parties to the concentration

Intesa Holding is a subsidiary association of Banca Intesa S.p.A. (hereinafter: Banka Intesa) which is the owner of its (...)***% of capital.

The shareholders of Banca Intesa S.p.A. is composed of a main group with share of (...)***% of the total share capital - Credit Agricole (...)***%, Fondazione Cariplo (...)***%, General Group (...)***%, Fondazione Cariparma (...)***% and Gruppo Lombardo (...)***%; the remained (...)***% of the share capital is owned by 194.000 shareholders, where no one has more than (...)***% of the registered share capital except the shareholders Mondrijan Investnebt Partners Ltd (...)***% and Capitalija S.p.A. (...)***%.

The Bank Intesa S.p.A. and its related companies (hereinafter: Intesa Group) is one of the largest group of banks in Italy with the total assets of (...)** KM or (...)** EUR on 31 December 2005. Intesa Group is in first place in Italy according to total deposits of (...)** KM or (...)** EUR and clients' credits of (...)** KM or (...)** EUR. In 2005 the Intesa Group reported the net profit of (...)** KM or (...)**EUR which means an increase of (...)***% comparing to the year 2004. The operative / branches structure was composed of 3.970 branches (3.106 in Italy and 864 abroad).

Previous to this concentration, Intesa Holding, i.e. Intesa Group did not take part in the market of Bosnia and Herzegovina in the universal banking (retail and corporate banking) and financial banking sectors.

UPI Banka is registered in the registry of the Main Court Employment Tribunal, No. U/I-3816/90 on 09 January 1991. According to the Law on banks of F BH the UPI Banka harmonized the registration at the Cantonal Court Sarajevo, No. UF/I-4091/00, on 20 October 2000.

The share capital of the UPI Banka amounts 22.900,00 KM and it is divided in 229.000 of the ordinary stocks of 100KM per value, which are issued and completely paid in. On 31 December 2004 the UPI Banka had 639 shareholders and 22.900.000 of securities with the voting right, and on 27 January 2006 it had 526 shareholders but the total number of securities with the voting right remained unchanged.

UPI Banka is registered to carry on the banking activities inside the country and abroad. It operates through its branches which are composed of: headquarter in Sarajevo, 7 branch-offices (Bijeljina, Brcko, Gracanica, Gradacac, Mostar, Tuzla, Zenica), 4 branch-offices (Odzak, Bugojno, Kakanj and Visoko), and 6 counters (5 in Sarajevo and 1 in Srebrenik). UPI Banka is a bank of universal type and it runs the operations with undertakings, civilians, state and local partners.

¹ (...)** - official / business secret

Economic Associations Connected to the Parties to Concentration

Intesa Holding is not direct owner of stocks or any undertaking in Bosnia and Herzegovina but it has a direct ownership in Centurion of financial services d.o.o. Sarajevo through an undertaking Privredna Banka d.d. Zagreb and its subsidiary association PBZ CARD d.o.o. Zagreb which is (..)**% in its property.

On 31 December 2005, in the worldwide level the Intesa Holding held shares of the following legal entities: Intesa Soditic Trade Fin Ltd, Great Britain (..)**%; Societe Européenne de Banque, Luxemburg (..)**%; Central European International Bank Ltdv, Hungary (..)**%; Sudamèris S.A., France (..)**%; China int Pack Lease, China (..)**%, Privredna banka Zagreb, Croatia (..)**%; Vseobecna Uverova Bank as, Slovakia (..)**%; Banca Intesa Belgrade (ex Delta Banka), Serbia (..)**%, K.M.B. Moscow, Russia (..)**% and Intesa Global Finance Company, Ireland (..)**%.

UPI Banka held (..)**% of shares in the capital of Bamcard d.o.o. Sarajevo on 31 December 2005.

Analysis of the Relevant Market

In the analysis of the relevant market by identification of the structure of the relevant market and market shares of the parties to the concentration in the relevant market the Council of Competition assesses that the concentration concerned is compatible.

The Relevant market, pursuant to Article 3 of the Act and Articles 4, 5, and 6 of the Regulation on Definition of the Relevant Market, is composed of the particular products/services market which are the subject of business activities in the particular geographic market. The relevant services market in the case concerned is the market of universal banking which includes the banking services, retail and corporate banking in the whole territory of Bosnia and Herzegovina.

As the parties to the concentration operate in the whole territory of Bosnia and Herzegovina, the relevant market in a geographic sense is deemed the whole territory of Bosnia and Herzegovina.

According to all above, the relevant market of the concentration concerned is provision of services in the universal banking sector in the whole territory of Bosnia and Herzegovina

All data used in the analysis and estimation of the relevant market and market shares of the parties to the concentration concerned are provided by the Agency for Banking of F BH and Republic of Srpska, Council of Competition and by the parties to the concentration.

Market shares of UPI Banka, the party to the concentration, in the aggregate assets and universal banking segment (retail banking and corporate banking) of Bosnia and Herzegovina, on 31 December 2004, amounts (Table 1):

Table 1.

Bank	Assets %	Retail banking %			Corporate banking %		
UPI Banka	4,1%	2,2%	1,9%	2,1%	8,0%	4,9%	6,45%

For complete analysis of the relevant market in the time period till 31 December 2006, besides UPI Banka, a party to the concentration, the market shares in total assets and market shares in the universal banking relevant market of Bosnia and Herzegovina of all economic associations connected to the parties to the concentration in Bosnia and Herzegovina are calculated. This

refers to the LTG Banka which belongs to Privredna Banka Zagreb where the Intesa Holding holds (...)***% of the shares capital. The Council of Competition has adopted, on the basis of the Notification on intended concentration, a Decision (No: 01-03-26-006-12-II/06 from 22 September 2006) declaring the concentration compatible according to which Privredna Banka d.d. Zagreb, headquartered in Zagreb, Rackog 6, Republic of Croatia acquires a majority shares in LTG Gospodarska bank d.d. Sarajevo, Ferhadija 11, Bosnia and Herzegovina (hereinafter: LTG Banka).

Total market share of UPI Banka and LTG Banka in the total banking assets of Bosnia and Herzegovina on 31 December 2005 amounts (Table 2):

Table 2.

Bank*		Bosnia and Herzegovina		Federation BiH	
		Sum KM	%	Sum KM	%
1.	UPI Banka	439.794,00	3,73%	439.794,00	4,69%
2.	LTG Banka	140.804,00	1,19%	140.804,00	1,50%
3.	Other banks	11.216.019,00	95,08%	8.925.124,00	93,81%
Total 1+2		580.598,00	4,92%	580.598,00	6,19%
Total - BiH - F BiH		11.796.617,00	100,0%	9.378.922,00	100,0%

*The financial data (incomes) for banks is determined, i.e. counted in Entity where the bank concerned is headquartered (registered) (that is relating to effects of the retail, corporate banking, etc.).

The joint market share of parties to the concentration based on the assets (Table 2.) amounts 4,92% of total assets in the banking sector of Bosnia and Herzegovina.

Banking services for civilians (retail banking) includes deposits and accounts (current accounts, saving accounts, deposits and checks, etc.), money transaction services, issuing of paying cards, credit transfer, direct debentures, credits (for natural entities, consumer-credits, mortgage-credits, and the same) joint funds, funds for retired, etc.

The structure of shares of UPI Banka and LTD Banka in the retail banking market in Bosnia and Herzegovina on 31 December 2005 amounts (Table 3.):

Table 3.

000 KM Bank		Bosnia and Herzegovina					
		Private deposits		Private credits		Total /average	
		Sum KM	%	Sum KM	%	Sum KM	%
1.	UPI Banka	75.599,00	2,32%	73.242,00	2,03%	148.841,00	2,18%
2.	LTG Banka	65.630,00	2,01%	47.768,00	1,32%	113.398,00	1,71%
3.	Other banks	3.121.178,00	95,67%	3.489.982,00	96,65%	6.611.160,00	96,11%
Total 1+2		141.229,00	4,33%	121.010,00	3,35%	262.239,00	3,89%
TOTAL BiH		3.262.407,0	100,0%	3.610.992,0	100,0%	6.873.399,0	100,0%

Joint market share of the parties to the concentration in the retail banking (Table 3) amounts averagely 3,89% of the total retail banking shares in Bosnia and Herzegovina.

Corporate banking includes a wide range of the banking services offered to our clients. This group of services includes deposits, credits, money transactions, credit letters, international payments, etc. The structure of the market share of UPI Banka in the corporate banking market in Bosnia and Herzegovina on 31 December 2005 amounts (Table 4):

Table 4.

000 KM		Bosnia and Herzegovina					
Bank		Corporate deposits		Corporate credits		Total /average	
		Sum	%	Sum	%	Sum	%
1.	UPI Banka	278.184,00	5,05%	155.412,00	4,29%	433.596,00	5,75%
2.	LTG Banka	42.548,00	0,77%	40.325,00	1,11%	82.873,00	0,91%
3.	Other banks	5.183.224,00	94,18%	3.422.755,00	94,6%	8.605.979,00	94,39%
TOTAL 1+2		320.732,00	5,82%	195.737,00	5,40%	516.469,00	5,61%

The joint market share of the parties to the concentration in total corporate banking (average-deposits, credits) amounts averagely 5, 61% in Bosnia and Herzegovina (Table 4).

The structure of branches of the parties to the concentration in Bosnia and Herzegovina on 31 December 2005 (Table 5.):

Table 5.

		Branches			%	
		BiH	FBiH	RS	BiH	FBiH
1.	UPI Banka	17	15	2	2,00%	3,06%
2.	LTG Banka	26	25	1	3,06%	5,10%
3.	Other banks	807	450	357	94,94%	91,84%
TOTAL (1+2)		43	40	3	5,06%	8,16%
TOTAL ALL BANKS		850	490	360	100,00	100,0%

Assessment of the concentration

After the assessment and analysis of data and facts in the decision making procedure, the Council of Competition determined separately and correlatively that the concentration of the parties concerned does not prevent, restrict and distort the market competition in the relevant market but it enables the strengthened market competition in banking services in Bosnia and Herzegovina.

During the decision making procedure, the Council of Competition considers that this concentration does not increase the market shares of the parties to the concentration in the Relevant market of the banking services (Table 1-4), i.e. that the joint market share of the Intesa Group in banking assets in Bosnia and Herzegovina amounts 4,92% (LTG Banka 1,19% and UPI Banka 3,73%), and in Federation of BiH 6,19% (LTG Banka 1,50% and UPI Banka 4,69%).

Considering all the above the Council of Competition assesses that the concentration concerned is compatible in a sense of Article 18, paragraph (2) of the Act and decides as it is in enacted form of this Decision.

Fine

The parties are obliged to submit a Notification on intended concentration when, on the basis of Article 14, paragraph (1), item a) of the Act, their total annual income achieved through banking services in the world market amounts 100.000.000,00 KM or when, on the basis of Article 14, paragraph (1), point a) of the Act, the undertakings in the domestic market, according to the final account in the year preceding the concentration, achieve 5.000.000,00 KM of total turnover.

When the stipulated conditions of Article 14 of the Act are fulfilled, a Notification on intended concentration is to be submitted to the Council of Competition for assessment within eight days starting from the date of its publication or conclusion of the agreement which achieved the control

or dominant position over the undertaking, depending what comes first, pursuant to Article 16, paragraph (1) of the Act.

With gained insight into the documentation submitted by the Agency for Banking of Federation of Bosnia and Herzegovina (Decision No. 04-3-928-3/05 from 18 November 2005) and Commission for securities of Federation of Bosnia and Herzegovina (Decision No. 04/02-19-767/05 from 28 December 2005), the Council of Competition established the infringement of Article 16 of the Act.

Considering all above mentioned regulations of the Act and with an insight into the submitted documentation, the Council of Competition has established that Intesa Holding has not notified the concentration concerned despite it fulfills the conditions from Article 12 of the Act («acquisition of more than 55% shares in the share capital of UPI Banka») and Article 14, paragraph (1), item a) of the Act («total income realized on 31 December 2004»). Intesa Holding was obliged to notify the concentration to the Council of Competition pursuant to Article 16, paragraph (1) of the Act.

The Council of Competition, pursuant to stipulations of Article 49, paragraph (1), item b) of the Act, considering all legal and actual circumstances, i.e. after determination of all failures, in sense of Article 16 of this Act, may impose a fine up to 1% of the total income realized in the previous year of business transactions.

The Council of Competition imposed a fine of 250.000,00 KM to Intesa Holding, which is 0,05% of the total annual income in 2004.

Imposing the fine, the Council of Competition took into account that a Resolution authorizing the initiation of the proceedings was passed ex-officio by the Council of Competition on 21 June 2006, eleven months after the conclusion of Agreement on sale of the issued share capital of UPI Banka to Intesa Holding (concluded on 28 July 2005) and that Intesa Holding was in position to submit afterwards within that time period a Notification on intended concentration.

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. At same time, the Council of Competition has considered regulations of the former Law on Competition («Official Gazette of BH», No.30/01) and established that according to it the concentration is to be notified to the Council of Competition. Besides, the Council of Competition has considered a fact that Intesa Holding acts in a country of developed competition practice where the same sanctions are applied for the same violation of the competition and therefore Intesa Holding has to be informed about the legislation of the country where the concentration is carrying out. A full cooperation of Intesa Holding 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

Gordan Raspudic