

**BOSNA I HERCEGOVINA**  
*Konkurencijsko vijeće*



**БОСНА И ХЕРЦЕГОВИНА**  
*Конкуренијски савјет*

**BOSNIA AND HERZEGOVINA**  
*Council of Competition*

**DECISION**

**on concentration between undertaking Mljekara a.d. Banjaluka, Bosnia and Herzegovina  
and undertaking Mlijekoprodukt d.o.o. Kozarska Dubica, Bosnia and Herzegovina**

**Sarajevo**  
**20 July 2007**



**BOSNIA AND HERZEGOVINA**  
*Council of Competition*

Number: 01-05-26-013-30-II/06  
Sarajevo, 20 July 2007

Pursuant to Article 25, paragraph(1) item e), Article 42, item d) in connection with Article 12, 14, 16, and 18, pursuant to Article 24, paragraph (2), of the Act on Competition («Official Gazette of BH», No. 48/05) upon the Notification of intended concentration between undertaking Mljekara a.d. Banja Luka, Mladena Stojanovića 28, Banja Luka, Bosnia and Herzegovina (represented by Branko Marić, a lawyer from Sarajevo, Mehmeda Spahe 24, 71000 Sarajevo) and undertaking Mlijekoprodukt d.o.o. Kozarska Dubica, Vrioci, Bosnia and Herzegovina, registered under the number: 01-05-26-013-20-II/06 on 03.04.2007., the Council of Competition in its 48th (forty-eighth) session, held on 20 July 2007 has adopted

**DECISION**

1. The concentration, created in the relevant market for milk processing and production of dairy products in Bosnia and Herzegovina, by acquisition of majority ownership shares in undertaking Mlijekoprodukt d.o.o. Kozarska Dubica, Vrioci, Bosnia and Herzegovina by Mljekara a.d. Banja Luka, Mladena Stojanovića 28, Banja Luka, Bosnia and Herzegovina, is assessed compatible.
2. As Notification was failed to be submitted within the stipulated time period Mljekara a.d. Banja Luka is fined in amount of 10.000,00 KM which is to be paid within 8 (eight) days after receiving this Decision.
3. This Decision on concentration is entered in the Register of concentrations.
4. 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**

The undertaking Mljekara a.d. Banja Luka, Mladena Stojanovića 28, Banja Luka, by its representative a lawyer Branko Marić from Sarajevo, Mehmeda Spahe 24, 71000 Sarajevo(hereinafter: the Applicant or Mljekara Banja Luka) submitted to the Council of Competition a Notification of intended concentration (hereinafter: the Notification) number : 01-05-26-013-20-II/06 on 03.04.2007, by means of which it intends to acquire majority ownership in undertaking Mlijekoprodukt d.o.o. Kozarska Dubica (hereinafter: Mlijekoprodukt Kozarska Dubica).

The Applicant submitted to the Council of Competition an incomplete Notification which was supplemented on 17.04.2007, number: 01-05-26-013-22-II/06.

The Council of Competition requested the Applicant to add necessary documentation, pursuant to Article 30 of the Act on Competition (hereinafter: the Act) and Regulation on

Regulation on notification and criteria for assessment a concentration of undertakings („Official Gazette of BiH“, No.:95/06).

The Applicant submitted requested documents on 24.04.2007., number: 01-05-26-013-24-II and on 30.04.2007., number: 01-05-26-013-25-II/06, so the Council of Competition issued an Acknowledgement of receipt of completed and adequate Notification, number: 01-05-026-013-26-II/06, pursuant to Article 30, paragraph (2) of the Act.

The Applicant stated that Notification was not submitted for assessment to any other responsible body outside of Bosnia and Herzegovina, pursuant to Article 30, paragraph (2) of the Act.

Total annual income acquired by Mljekara Banja Luka in the market of Bosnia and Herzegovina in 2006 amounted (...)\*\*<sup>1</sup>KM and by Mlijekoprodukt Kozarska Dubica amounted (...)\*\*KM, showed that a condition for obligatory notification of concentration was met, pursuant to Article 14, paragraph (1), item b) of the Act.

In the analysis of all data from the Notification and supplements and on the basis of assessment of positive and negative effects of the concentration, pursuant to Article 17 of the Act, the Council of Competition, applying the stipulations of the Act and Regulation on Regulation on notification and criteria for assessment a concentration of undertakings and Regulation on the Definition of Relevant Market („Official Gazette of BiH“, No.:18/06) established the following facts:

### **1. Legal basis and form of the concentration**

Legal basis of this concentration is an Agreement on assignment and takeover of shares concluded on 25.12.2006. between (assignor) Mr. Mile Arsenić from Kozarska Dubica, Vreoci, IDN (...)\*\*, Bosnia and Herzegovina, who is 100% owner of undertaking Mlijekoprodukt Kozarska Dubica, an economic association which entered into the court register of the Municipal Court in Banja Luka under number 1-9244-00, and (assignees) undertakings Danube Foods d.o.o. Sarajevo, Bosnia and Herzegovina, Mljekara a.d. Banja Luka and undertaking Imlek a.d. Belgrade, Republic of Serbia.

It is stated in the Agreement that it takes effect on the day of its verification by the responsible bodies. The Agreement is verified on 14.02.2007. under the number OV 2269, at the Second Municipal Court in Belgrade, Republic of Serbia, on 15.02.2007. at the Municipal Court in Banja Luka under the number OV 1795/7 and at the Municipal Court in Prijedor under the number 077-1-OV-07-000-099.

By means of the Agreement dated on 25.12.2006. the assignor transferred its total shares to the assignees, free from any burden and /or rights toward the third entity, which is 100, 0% of shares of the main capital in undertaking Mlijekoprodukt Kozarska Dubica and therefore the assignees acquired shares and rights belonging to the owner of Mlijekoprodukt Kozarska Dubica.

This Agreement was preceded by some agreements on transfer and takeover of shares (never been realized) concluded by consent of Mr. Mile Arsenić, 100,0% the owner of Mlijekoprodukt Kozarska Dubica as it follows:

-Agreement 1 and 2, dated on 04.09.2006., on transfer and takeover of shares by means of which Mr.Mile Arsenić transferred it's (...)\*\*% of shares in Mlijekoprodukt Kozarska Dubica to undertaking Somboled a.d. Sombor, Republic of Serbia;

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<sup>1</sup> (...)\*\* the data is deemed to be a business secret

-Assignment Agreement, dated on 11.10.2006., concluded between undertaking Somboled a.d. Sombor, Republic of Serbia and undertaking Danube Foods d.o.o. Belgrade, by means of which Somboled a.d. Sombor transfers, by consent of Mr. Mile Arsenić, the owner of Mlijekoprodukt Kozarska Dubica, (...) \*\*% of main capital of Mlijekoprodukt Kozarska Dubica to Danube Foods d.o.o. Belgrade;

-Assignment Agreement No. 12 dated on 27.10.2006., concluded between Danube Foods d.o.o. Belgrade, Republic of Serbia and undertaking Danube Foods d.o.o. Sarajevo, Bosnia and Herzegovina, by means of which Danube Foods d.o.o. Belgrade assigns /transfers (...) \*\*% of main capital in Mlijekoprodukt Kozarska Dubica, by consent of Mr. Mile Arsenić, the owner of Mlijekoprodukt Kozarska Dubica, to undertaking Danube Foods d.o.o. Sarajevo; and

-Assignment Agreement No. 2457 dated on 23.11.2006 by means of which Danube Foods d.o.o. Belgrade, Republic of Serbia transfers the rest (...) \*\*% of capital in undertaking Mlijekoprodukt Kozarska Dubica to undertaking Imlek a.d. Belgrade, Republic of Serbia, by consent of Mr. Mile Arsenić, the owner of Mlijekoprodukt Kozarska Dubica.

The above mentioned non-realized agreements, that were preceded to the Assignment Agreement on assignment of a portion of rights and obligations stipulated in the agreement dated on 25.12.2006., which is a legal basis for the concentration, by means of which the undertaking Danube Foods d.o.o. Sarajevo transfers 66,71% of shares in main capital in Mlijekoprodukt Kozarska Dubica to undertaking Mljekara Banja Luka, caused the ownership structure of Mlijekoprodukt Kozarska Dubica to look as follows:

- |  |        |
|--|--------|
| - undertaking Mljekara a.d. Banjaluka, Bosnia and Herzegovina      | 66,71% |
| - undertaking Danube Foods d.o.o. Sarajevo, Bosnia and Herzegovina | 20,00% |
| - undertaking Imlek a.d. Belgrade, Republic of Serbia              | 13,29% |

Considering all above mentioned, the undertaking Mljekara Banja Luka, by acquisition of majority ownership in undertaking Mlijekoprodukt Kozarska Dubica, becomes obliged to notify intended concentration, pursuant to Article 12, 14 and 16 of the Act.

The legal form of the concentration is acquisition of control of Mljekara Banja Luka, over Mlijekoprodukt Kozarska Dubica, through takeover of majority shares in the main capital, pursuant to Article 112, paragraph (1), item b) of the Act.

## **2. Parties to the concentration**

### **2.1. Mljekara a.d. Banja Luka**

Mljekara a.d. Banja Luka, Bosnia and Herzegovina entered in the court register in Banja Luka under number 1-71-00, on 24.10.2003. Its main business activity is production and processing of milk.

Majority owner of the capital in Mljekara Banja Luka (65, 75%) is Mlekara a.d. Subotica, Republic of Serbia whose majority owner (67, 20%) is Danube Foods BV Holland.

It is established, in the analysis of ownership structure of the parties to the concentration, that Mljekara a.d. Banja Luka is dependent association, whose majority owner is undertaking Danube Foods BV Holland which has direct and indirect shares in capital of the mentioned mutually connected associations, as it follows:

No.	Name of association	Shares in Mlijekoprodukt	Owner	Ownership shares in association
01.	Mljekara a.d. Banjaluka	66,71%	Mljekara a.d. Subotica	65,75%
02.	Mljekara a.d. Subotica	0%	Danube Foods BV Holland	67,20%
03.	Danube Foods d.o.o. Belgrade	0%	Danube Foods BV Holland	100,0%
04.	Danube Foods d.o.o. Sarajevo	20,0%	Danube Foods BV Holland	100,0%
05.	Imlek a.d. Belgrade	13,29%	Danube Foods Holland	80,0%
06.	East Milk d.o.o. Sarajevo	0%	Danube Foods d.o.o. Sarajevo	100,0%

Mljekara Banja Luka has no subsidiary associations in and outside of Bosnia and Herzegovina.

## 2.2. Mlijekoprodukt d.o.o. Kozarska Dubica

Mlijekoprodukt d.o.o. Kozarska Dubica entered in the court register in Banja Luka under the No.: 1-9244-00, on 16.03.2000. Its main business activity is production and processing of milk.

The founder and 100,0% owner of Mlijekoprodukt Kozarska Dubica is Mr. Mile Arsenić from Kozarska Dubica, Vreoci, IDN (.)\*\*\*%.

Mlijekoprodukt Kozarska Dubica has no subsidiary associations in or outside of Bosnia and Herzegovina.

## 3. Analysis of 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, is a market of particular products/services which are the subject of the business activities in the particular geographic area.

The Council of Competition established, in the analysis of the relevant market of the parties to the concentration, that the relevant service market is a market of milk processing and production of milk products. As the Applicant performs its business activity in whole territory of Bosnia and Herzegovina, the relevant geographic market is whole territory of Bosnia and Herzegovina.

Therefore the relevant market of the concentration concerned is processing of milk and production of milk products in whole territory of Bosnia and Herzegovina.

## 4. Appraisal of the concentration

Market share of the most important dairies in the relevant market in Bosnia and Herzegovina in 2006:

No.	Name of the undertaking/dairy	Market share
01.	Mlijekoprodukt Kozarska Dubica	22,0 %
02.	Meggle - Bihać	16,2 %
03.	PPM Tuzla	11,5 %
04.	Immer - Gradačac	8,5 %
05.	DTD Šnjegotina	4,7 %
06.	Mljekara – Livno	3,8 %
07.	Milkos Sarajevo	3,7 %
08.	Tippas – Posušje	3,5 %
09.	Natura Vita Teslić	3,4 %
10.	Mljekara a.d. Banja Luka	2,7 %
11.	Other	20,0 %
	Total	100,00
	Total (01+10)	24,7 %

The joint market share of Mljekara Banja Luka and Mlijekoprodukt Kozarska Dubica in the relevant market after the implementation of the concentration concerned is 24,70 %.

According to data from the Notification and from relevant ministries of entities for 2006, the dairies in Bosnia and Herzegovina provided fresh milk for processing from the following resources:

-dairies from Republic of Srpska provide 93,3% of milk from Republic of Srpska and 6,7% from Federation of Bosnia and Herzegovina

-dairies from Federation of Bosnia and Herzegovina provide 81,5% of milk from Federation of Bosnia and Herzegovina and 0,2% of milk imported from abroad.

It is also stated that 118,5 million liters was imported to Bosnia and Herzegovina in 2006, in terms of fresh milk, which is 15,0% less than in 2005. The most of products were imported from Republic of Croatia- 41,5%, from Republic of Germany - 21,9%, Republic of Slovenia - 16,0% and Republic of Serbia - 11,5% of the total imports of milk products in Bosnia and Herzegovina. 49,0% of milk products (especially cheese), in relation to total quantity of imported products, were imported.

The Council of Competition ascertained, after the appraisal and analysis of data and information in the decision making procedure that the concentration of the parties in question neither prevents, restricts or distorts market competition in the relevant market for processing milk and production of milk products in Bosnia and Herzegovina and decided as it is stated in enacted terms of this Decision.

## 5. Fine

On the basis of Article 16 of the Act, the parties to the concentration are obliged to submit notification of intended concentration, pursuant to Article 12 and 14 of the Act within eight days starting from the date of publication of tender or acquisition of control, depending on what comes first.

Assignment Agreement on assignment of a portion of rights and obligations dated on 25.12.2006. as a legal basis for the concentration concerned, is affected from the date of its signing before the responsible bodies, on 15.02.2007, but the Notification was submitted to the Council of Competition on 03.04.2007, which is 39 days late.

Considering the regulations of the Act and after the insight into submitted documents, Council of Competition established that Mljekara Banja Luka failed to notify the concentration concerned within the prescribed time period, 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 (all determined 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 10.000,00 KM to Mljekara a.d. Banjaluka, that is 0,105 % of the total annual income realized in 2006.

The Council of Competition imposed the fine due to the fact that the Applicant, immediately after the Assignment Agreement on assignment of a portion of rights and obligations dated on 25.12.2006. became effective (on 15.02.2007.), continued the implementation of the concentration the way that it started the registration of the said

Agreement on foreign investments at the Ministry of Foreign trade and Economic Relations of Bosnia and Herzegovina by submitting the Decision No.: 02-2-19-1330/07 issued on 27.03.2007. and then started a registration procedure at Municipal Court in Banja Luka which issued on 03.04.2007. a Decision, registration No.: 1-944-00 Banja Luka. That means that the court registration was completed on the same day when the Notification for approval of the concentration was submitted to the Council of Competition of Bosnia and Herzegovina.

The Council of Competition ascertained, pursuant to Article 52 of the Act that Applicant intended to violate Article 18, paragraph (8) of the Act which stipulates that the concentration may not be implemented before the assessment of the concentration, pursuant to Article 12 and 14 of the Act.

A full cooperation of Mljekara Banja Luka in the proceedings was taken into account in determination of the fine level.

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.

## **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**