

**BOSNA I HERCEGOVINA**  
*Konkurencijsko vijeće*



**БОСНА И ХЕРЦЕГОВИНА**  
*Конкуренијски савјет*

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

**DECISION**

**on Notification of intended concentration between undertaking «Veleprodajni centar»  
trgovina na veliko i malo (Wholesale and Retail trade Center) d.o.o. Sarajevo and  
undertaking Mališić MT d.o.o. Čitluk**

**Sarajevo**  
**26 July, 2007**



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

Number: 01-06-26-018-12-II/07  
Sarajevo, 26 July, 2007

Pursuant to Article 25, paragraph(1)item e), Article 42, paragraph (1), item d), in connection with Article 12,14,16,17 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 undertaking «Veleprodajni centar» trgovina na veliko i malo (Wholesale and Retail trade Center) d.o.o., Rajlovačka, 71 000 Sarajevo and undertaking Mališić, MT d.o.o., Tromeda, 88245 Čitluk, submitted by the authorized representative Ismir Brkić (Blatuša 34a, 71000 Zenica), a director of «Veleprodajni centar» trgovina na veliko i malo (Wholesale and Retail trade Center) d.o.o., entered under the registration number 01-06-26-018-II/07, on 29 May 2007, the Council of Competition in its 49<sup>th</sup> (forty ninth) session, held on 26 July 2007 has adopted

**DECISION**

1. The concentration, created in the market for retail trade in groceries, nutrition, drinks and household consumer goods in Bosnia and Herzegovina and implemented through the sublease business premises from undertaking Mališić MT d.o.o., by undertaking «Veleprodajni centar» trgovina na veliko i malo (Wholesale and Retail trade Center), is assessed compatible.
2. Due to the fact that the Notification is not submitted within the legally regulated time period , the undertaking «Veleprodajni centar» trgovina na veliko i malo (Wholesale and Retail trade Center) d.o.o. is fined in amount of 80.000,00 KM (eighty thousands) and it is obliged to pay it in eight days of 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**

Pursuant to Article 16, paragraph (1) of the Act on Competition, the Council of Competition received on 29 May2007 a Notification of intended concentration, No. 01-06-26-018-II/07 (hereinafter: the Notification) between undertaking «Veleprodajni centar» trgovina na veliko i malo(Wholesale and Retail trade Center) d.o.o., Rajlovačka, 71000 Sarajevo (hereinafter: Velpro) and undertaking Mališić, MT d.o.o., Tromeda, 88245 Čitluk (hereinafter: Mališić), submitted by the authorized representative Brkić Ismir(Blatuša 34a, 71000 Zenica), a director of «Veleprodajni centar» trgovina na veliko i malo(Wholesale and Retail trade Center) d.o.o. (hereinafter: the Applicant or Velpro) .

When checked submitted Notification, the Council of Competition established that it was not complete, pursuant to Article 30 of the Act on Concentration (hereinafter: the Act) and therefore, pursuant to Article 31 of the Act, the Council of Competition asked supplements to Notification (on 05 June 2007, No.: 01-06-26-018-1-II/07, on 12 June 2007, No.: 01-06-26-018-2-II/07, on 14 June 2007, No.: 01-06-26-018-3-II/07, on 06 July 2007, No.: 01-06-26-018-6-II/07 and on 13 July 2007, No.: 01-06-26-018-8-II/07).

The Applicant submitted asked documents pursuant to the request of the Council of Competition (on 01 June 2007, No.: 01-06-26-018-2-II/07, on 05 July 2007, No.: 01-06-26-018-5-II/07, on 13 July 2007, No.: 01-06-26-018-7-II/07, on 23 July 2007, No.: 01-06-26-018-9-II/07).

The Council of Competition issued on 23 July 2007 to the Applicant an Acknowledgement of receipt complete and adequate Notification, No.: 01-06-26-018-10-II/07, pursuant to Article 30, paragraph (3) of the Act.

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

During the assessment of the concentration concerned, the Council of Competition ascertained the following facts:

#### 1. Parties to the concentration

The parties to the concentration are Veleprodajni centar» trgovina na veliko i malo d.o.o. (Wholesale and Retail trade Center) (Velpro), Rajlovačka, 71000 Sarajevo, and undertaking Mališić, MT d.o.o. (Mališić), Tromeda, 88245 Čitluk.

##### 1.1. Veleprodajni centar» trgovina na veliko i malo d.o.o. (Wholesale and Retail trade Center)

Undertaking «Veleprodajni centar» trgovina na veliko i malo«(Wholesale and Retail trade Center) d.o.o., Rajlovačka, 71000 Sarajevo is entered in the Register of Municipal Court in Sarajevo under No.: UF/I 340/04, on 08 March 2004. The main capital of «Veleprodajni centar» trgovina na veliko i malo«(Wholesale and Retail trade Center) amounts to 9.968.195, 00 KM. The undertaking Konzum trgovina na veliko i malo (Wholesale and Retail trade Center) d.d. (hereinafter: Konzum), Marijana Čavića 1a, 10000 Zagreb, Republic of Croatia is its founder and 100% owner.

According to the information given by the Applicant, the majority owner of Konzum is undertaking Agrokor d.d. Zagreb, Republic of Croatia (hereinafter: Agrokor) with (.)\*\*<sup>1</sup> of total stocks, while Jamnica d.d. Zagreb, Republic of Croatia has (.)\*\*, Investco vrijednosnice d.o.o. Zagreb, Republic of Croatia has (.)\*\* and other shareholders from Republic of Croatia have (.)\*\*.

Velpro is active in the market for wholesale and retail trade in food, drinks and other, mainly, nutritional wares. Velpro has 32 shops in Bosnia and Herzegovina in Sarajevo, Prijedor, Tešanj, Bihać, Zenica, Travnik and Sanski most.

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

## Connected undertakings

Undertaking Agrokor in Bosnia and Herzegovina is (.)\*\* owner of INIT d.d. Sarajevo (main business activity is telecommunications services) and (.)\*\* owner of undertaking Agrokor Zagreb d.o.o. Grude (main business activity is export /import).

Agrokor, through the undertakings under its majority ownership, controls in Bosnia and Herzegovina the following:

- undertaking Velpro (main business activity is wholesale and retail trade) through undertaking Konzum d.d. Zagreb ((.)\*\*owner);
- undertaking Sarajevski Kiseljak (main business activity is drinking water production) through undertaking Jamnica d.d. Zagreb ((.)\*\*owner);
- undertaking Zvijezda d.o.o. Sarajevo (main business activity is production of edible oil and margarine) through undertaking Zvijezda d.d. Zagreb ((.)\*\*owner);
- undertaking Ledo Čitluk d.o.o. (main business activity is production of ice cream and frozen vegetables and fruit) through undertaking Ledo d.d. Zagreb ((.)\*\*owner);

According to information stated in the Notification the undertaking Velpro is not close shareholder in other undertakings in Bosnia and Herzegovina.

### 1.1. Undertaking Mališić

Undertaking Mališić, MT d.o.o., Tromeđa , 88245 Čitluk, entered into the court register of the Cantonal Court in Mostar under the No.: Tt-874/02, on 27 December 2002, ID N 1-10862, is founded by Mr. Jure (Ante) Miličević, D.Ogradenik , 88245 Čitluk who is 100,0% its owner (main capital amounts (.)\*\*KM).It is active in the market for retail and wholesale trade in food, drinks, nutritional goods, cosmetics and other goods.

## 2. Total annual income of the parties to the concentration

Pursuant to Article 14, paragraph (1), item b) of the Act, the notification obligation is applicable if the parties to the concentration acquired a total annual income stipulated in the Act, realized in sales of goods and/or services in the market in Bosnia and Herzegovina in the year preceding the concentration.

Acquired income of the parties to the concentration on 31 December 2006 amounts (Table1.):

Table 1.

	<b>Velpro</b>	<b>Mališić</b>
Bosnia and Herzegovina	(between 40-71 mils. KM) **	(between 10-35 mils. KM)**

The Table 1. shows that total income of the parties to the concentration amounts 5.000.000, 00 KM (Velpro realized between 40-71 mil. KM \*\*, and Mališić realized between 10-35 mil. KM\*\*) according to the final account in the year preceding the concentration. Therefore the condition relating to the notification obligation is fulfilled, pursuant to Article 14, paragraph (1), item b) of the Act.

Total annual income of the undertaking Mališić , a party to the concentration, is the income earned in 8 (eight) shops which are the subject to the Agreement in question, pursuant to Article 14, paragraph (2) and (3) of the Act.

The business premises are deemed a property in the concentration concerned, (a part of the undertaking, including also fixed assets such as equipment and real estates) which is used by lesser in business activities in order to achieve the income in the relevant market and adequate market shares in the same market.

### **3. Legal frame of appraisal of the concentration**

During the procedure for appraisal of the concentration concerned , the Council of Competition applied stipulations of the Act and 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) relating to the part which is not regulated by the Act.

The Council of Competition , pursuant to Article 43, paragraph(7) of the Act, applied European Court's experience and decisions of the European Commission, and criteria and standards from EC Act No.: 139/2004 relating to control of concentration created between undertakings , EC Information on concepts of concentration of undertakings and Directives on assessment of the vertical concentration.

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

Legal basis of the concentration concerned is an Agreement on business cooperation and sublease business premises (hereinafter. The Agreement) No.: 3118-01/07, concluded between undertakings Velpro and Mališić, on 23March 2007.

The Council of Competition has defined in detail, in Article 8, item f) 8 of the Regulation on Notification and Criteria for Assessment a Concentration of Undertakings, the stipulations of Article 30, paragraph (1), item a) of the Act, relating to the legal basis of the concentration so that the legal basis of this concentration is the Agreement/ arrangement for subleasing a property which provides dominant position to one of the parties to the concentration.

By the above mentioned Agreement Velpro subleases (8 shops and store rooms in Čitluk municipality) business premises of (..)\*\* m<sup>2</sup> and employees employed in the leased premises from undertaking Mališić for the period of 15 (fifteen) years.

Also, the Agreement on the equipment sale and payment arrangement which is a subcontract of the main Agreement (Article 5. of the Agreement) defines a way and total sum which has to be paid by Velpro to Mališić for equipment in the leased business premises and for investments in reconstruction of leased business premises-shops at (..)\*\*KM ((..)\*\*EUR).

In the determination of legal form of the concentration concerned, the Council of Competition takes into account Article 12, paragraph(1), item b) 3 and paragraph (2) of the same Article , as well as Article 2, paragraph (2), item d) of the Act.

Article 12,paragraph(2) of the Act stipulates that concentration is the acquisition of control or dominant influence of one or more undertakings over another or more another undertakings, or over the part of another undertakings or parts of another undertakings in the way which is pursuant to the stipulations of the law regulating foundation and management of undertakings.

Article 12,paragraph(2) of the Act stipulates that acquisition of control is realized through the right, conclusion of agreement or other ways by means of which one or more undertakings,

separately or together, considering all legal and factual conditions , benefits the possibility to acquire dominant influence over one or more undertakings.

Pursuant to Article 2, paragraph(2), item d) of the Act the controlled undertaking is deemed an undertaking in which another undertaking , directly or indirectly, legally or factually, decisively governs the handling and, especially in the case of acquired right , manages the business activity of the controlled undertaking.

Defining the concentration, the Council of Competition considered also the Acts of the Council on control of the concentration between undertakings(EC)No.: 139/2004, particularly the definition of concentration given in Article 3, paragraph(a):“ the control is acquired, beside other, through the right to use all or part of whole property of an undertaking“.

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

Relevant products market is a market for retail sale of groceries, food products, drinks and wide range of household consumer products. Relevant market in geographic sense for the concentration concerned is the territory of Bosnia and Herzegovina.

The Council of Competition established that the territory of Bosnia and Herzegovina is a relevant market because the undertaking Velpro is active in the whole territory of Bosnia and Herzegovina.

The structure of the relevant market on 31 December 2006 (Table 2.):

Table 2.

No.	Name	Market share
1.	Interex - Sarajevo	5,8%
2.	VF Komerc - Sarajevo	3,7%
3.	Tropic centar - Banja Luka	2,6%
4.	Bingo - Tuzla	2,4%
5.	Mercator - Sarajevo	1,8%
6.	Omega - Živinice	1,7%
8.	Merkur - Sarajevo	1,0%
7.	Others	81,0%
8.	Total	100,0%

Source: GfK group –Market Research Centre –Skenderija 44, 71000 Sarajevo

Table 2 shows that the biggest market share of 5,8% in the relevant market has Interex d.d. – Sarajevo, VF Komerc d.d. Sarajevo has 3,7% of market shares and Tropic centar d.d. - Banja Luka has 2,6% of market shares. As there are many undertakings with individual shares, the acquisition of dominant position is considered as impossible.

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

The Council of Competition considered the notified concentrations of similar legal basis – Agreement on business cooperation and sublease business premises- by means of which Velpro subleased (bought) whole or parts of the following undertakings : VF Komerc, trgovina na veliko i malo (wholesale and retail trade centre)d.o.o. Kurta Schorka 7, 71000 Sarajevo (on 20.04.2007, No.: 01-04-26-13-II/07) and undertaking Džananović d.o.o., ZAVNOBIH-a 88, 71000 Zenica (on 15 June 2006, No.: 01-01-26-21-II/07).

The Council of Competition took into account information about market shares of undertaking Trgocop d.d. Ljubuški (subleased by Velpro) and other undertakings (ex. undertaking Feroelektro d.d. Sarajevo, Xerma d.o.o. Sarajevo, Aleta d.o.o Sarajevo, etc).

Taking over the business premises (subleased on a long term basis) in the concentration concerned, the Applicant takes the market shares of undertaking Mališić in the relevant market. By the assignment of its business premises (by assignment of its market shares) undertaking Mališić ceases to carry on business activity in the relevant market and therefore it ceases to compete with undertaking Velpro in the relevant market.

## **6. Assessment of the concentration**

The Council of Competition established, based on the analysis of a structure of a relevant market and market shares of the parties to the concentration, pursuant to Article 17 of the Act, that implementation of the concentration concerned is compatible, pursuant to Article 18, paragraph (2), item a) of the Act, as it is stated in the enacted terms of the Decision.

The Council of Competition ascertained especially that the concentration does not significantly increase market shares of the parties to the concentration in the relevant market.

This concentration will enable development, shorten the distribution chain, improve supply chain of the market and increase assortment of goods which can result in price decrease.

## **7. Fine**

The Council of Competition established that the concentration concerned is a concentration pursuant to Article 12, paragraph (1), item b) 3 and paragraph (2) and Article 14, paragraph (1), item b) of the Act, so the Applicant was obliged to submit notification within eight days starting from the date of its publication or conclusion of the agreement, pursuant to Article 16, paragraph (1) of the Act.

As the Notification was submitted 56 days late, the Council of Competition assessed that Article 16, paragraph (1) of the Act is violated by the Applicant.

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 80.000,00KM to Velpro, that is 0,142% of the total annual income realized in 2006.

The Council of Competition has considered a fact that Konzum d.d. Zagreb, the owner of undertaking Velpro, acts in a country of developed competition practice where the same sanctions are applied for the same violation of the competition

Implementing the concentration before the appraisal by the Council of Competition, the Applicant also violates Article 18, paragraph (8) of the Act

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 the duration of the violation, pursuant to Article 52 of the Act.

A full cooperation of Velpro in the proceedings was taken into account in determination of the fine level.

#### **8. 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.

#### **9. 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**