

BOSNA I HERCEGOVINA
Konkurencijsko vijeće



БОСНА И ХЕРЦЕГОВИНА
Конкуренијски савјет

BOSNIA AND HERZEGOVINA
Council of Competition

DECISION

on concentration created between Mješoviti Holding “Elektroprivreda” Republike Srpske, Trebinje-Matično preduzeće a.d. (Mixed Holding -Parent company, Stock company) Trebinje, Javno preduzeće Rudnik and Termo-Elektrana-Gacko akcionarsko društvo (Coal mine and Thermal Power Plant Gacko), Gacko and “ČEZ” a.s., Prague, Czech Republic

Sarajevo
September, 2007



BOSNIA AND HERZEGOVINA
Council of Competition

Number: 01-05-26-017-9-II/07
Sarajevo, 28 September 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, paragraph(1), item c), 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 created between «ČEZ a.s., Prague, Praha 4, Duhova 2/1444, Czech Republic and Mješoviti Holding «Elektroprivreda» Republike Srpske, Trebinje-Matično preduzeće a.d. (Mixed Holding -Parent company, Stock company) Trebinje, Stepe Stepanovića, Trebinje and Javno preduzeće Rudnik and Termo-Elektrana Gacko-akcionarsko društvo (Coal mine and Thermal Power Plant Gacko), Gračanica, Gacko, entered under the registration number : 01-05-26-017-II/2007, on 24.05.2007., the Council of Competition in its 51st (fifty-first) session, held on 28 September 2007 has adopted

D E C I S I O N

1. A concentration which will be created in the market for production and distribution of electricity power in Bosnia and Herzegovina is declared compatible. The concentration shall be implemented on the basis of long term joint investments between independent undertakings Mješoviti Holding «Elektroprivreda» Republike Srpske, Trebinje-Matično preduzeće a.d. (Mixed Holding -Parent company, Stock company) Trebinje and «ČEZ» a.s. Praha, Czech Republic, on the basis of an „Agreement on carrying out“ according to which Mješoviti Holding «Elektroprivreda» Republike Srpske, Trebinje-Matično preduzeće a.d. (Mixed Holding -Parent company, Stock company) Trebinje invests capital in the form of rights and assets comprised of power plant «Gacko I» and connected coal mines, and subject «ČEZ» a.s., Prague, Praha 4, Czech Republic invests capital in the form of money.
2. This Decision on concentration is final and it enters in the Register of concentrations.
3. This Decision shall be published in the «Official Gazette of BH», in official Gazettes of Entities and Brcko District of Bosnia and Herzegovina.

E x p o s i t i o n

The Council of Competition received on 24 May 2007 a joint Notification of intended concentration , No.: 01-05-26-017-II/07 (hereinafter: the Notification), pursuant to Article 16, paragraph (1) of the Act on Competition, submitted by ČEZ a.s., Prague, Praha 4, Duhova 2/1444), Czech Republic (hereinafter: ČEZ), Mješoviti Holding «Elektroprivreda» Republike Srpske, Trebinje-Matično preduzeće a.d. (Mixed Holding-Parent company, Stock company) Trebinje, Stepe Stepanovića, Trebinje, Bosnia and Herzegovina (hereinafter: ERS) and Javno preduzeće Rudnik and Termo-Elektrana Gacko-akcionarsko društvo, Gračanica, Gacko (hereinafter: RiTE Gacko), through authorized attorney, a lawyer Sead Miljković, Fra Anđela

Zvzdovića 1, 71000 Sarajevo, by means of which they intend to invest capital in the form of rights, assets and money in newly founded undertaking «Nove elektrane Republike Srpske», društvo sa neograničenom odgovornošću za proizvodnju električne energije («New power plants of Republic of Srpska», an association with unlimited responsibility for electricity production), Gacko.

After examining the Notification, the Council of Competition established that it was not complete, pursuant to Article 31 of the Act on Competition (hereinafter: the Act). Therefore the Council requested the supplements to the Notification by official letter No.: 01-05-26-017-5-II/2007 on 11.07.2007, which was done by the Applicant, on 20.07.2007, No.: 01-05-26-017-6-II/2007.

Pursuant to Article 30 of the Act, the Council of Competition issued to the Applicant an Acknowledgement of receipt of the complete and adequate Notification, No.: 01-05-26-017-7-II/07, on 07 August 2007.

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

During the assessment procedure, the Council of Competition established the following facts:

1. Parties to the concentration

Parties to the concentration are ČEZ a.s., Prague, Praha 4, Duhova 2/1444, Czech Republic, Mješoviti Holding «Elektroprivreda» Republike Srpske, Trebinje-Matično preduzeće a.d. (Mixed Holding -Parent company, Stock company) Trebinje, Stepe Stepanovića, Trebinje and Javno preduzeće Rudnik and Termo-Elektrana, akcionarsko društvo, Gračanica, Gacko.

ČEZ a.s. Prague, Czech Republic

ČEZ a.s., Prague, Praha 4, Duhova 2/1444, Czech Republic is one of the biggest electricity companies in the Central and South-East Europe registered in the Register of business entities at Municipal court in Prague, on 06 May 1992, under identification number 45274649, section B, file 1581.

The main activity of ČEZ is production and distribution of electricity and thermal energy, trade of electricity power, electricity equipment development and revision of electricity power facilities.

ČEZ has its subsidiary associations abroad in Federal Republic of Germany, Republic of Poland, Republic of Hungary, Republic of Slovakia, Republic of Romania and Republic of Bulgaria. In Bosnia and Herzegovina it acts through newly established «Nove elektrane Republike Srpske» društvo sa ograničenom odgovornošću, Gacko (hereinafter: NERS) with 51,0% of share in shares capital.

NERS entered in the court register of the Municipal Court in Trebinje under registration number RU-1-1864-00, on 18 October 2006.

Mješoviti Holding «Elektroprivreda» Republike Srpske, Trebinje-Matično preduzeće a.d. (Mixed Holding -Parent company, Stock company) Trebinje

Mješoviti Holding «Elektroprivreda» Republike Srpske, Trebinje-Matično preduzeće a.d. (Mixed Holding -Parent company, Stock company) Trebinje, Stepe Stepanovića, Trebinje

entered into the court register of Municipal court in Trebinje under the registration number: RU-1-1312-00, on 18 October 2006.

The main business activity of ERS is electricity and thermal power production and distribution.

ERS is constituted of five connected enterprises for electricity and thermal power production, five enterprises for electricity distribution and development research centre, with majority ownership rights:

- Undertaking Rudnik i Termoelektrana (Mine and thermal power plant) a.d. Gacko, with 65,0000247% of share in the shares capital;
- Undertaking HE na Trebišnjici a.d.Trebinje (Hydroenergetic power plant on Trebišnjica river), with 64,998217% of share in the shares capital;
- Undertaking HE na Drini (Hydroenergetic power plant on Drina river)a.d.Višegrad, with 65,000396% of share in the shares capital;
- Undertaking HE na Vrbasu (Hydroenergetic power plant on Vrbas river) a.d. Mrkonjić Grad, with 64,999415% of share in the shares capital;
- Undertaking Elektrokrajina Banja Luka, with 65,005590% of share in the shares capital;
- Undertaking Elektro Doboј a.d. Doboј, with 65,002816% of share in the shares capital;
- Undertaking Elektro Bijeljina a.d. Bijeljina, with 65,002600% of share in the shares capital;
- Undertaking Elektrodistribucija Pale a.d. Pale, with 65,998217% of share in the shares capital;
- Undertaking Elektrohercegovina a.d. Trebinje, with 64,998217% of share in the shares capital;
- Centre for Energy Development and Research a.d.Istočno Sarajevo, with 51, 000000% of share in the shares capital.

ERS has no subsidiary association outside of the territory of Bosnia and Herzegovina.

Javno preduzeće Rudnik i Termo-Elektrana Gacko Akcionarsko društvo (Coal mine and Thermal Power Plant Gacko)

Javno preduzeće Rudnik i Termo-Elektrana Gacko Akcionarsko društvo Gacko, Gračanica, Gacko, Bosnia and Herzegovina entered into court register of the Municipal court in Trebinje under the common registration number RU-1-559-00, on 6 February 1996.

RiTe Gacko is located in energy basin in Gacko, in the South-East part of Republic of Srpska and it is comprised of two departments: thermal power plants and coal mines.

RiTe Gacko acts as dependent enterprise of undertaking ERS.

The main business activity of RiTe Gacko is thermal electric power production and mining and manufacture of lignite briquette.

RiTe Gacko has no subsidiary associations.

2. Legal basis and form for the concentration

Legal basis for the Notification is an “Agreement on carrying out” (hereinafter: the Agreement), concluded on 16 May 2007 between ČEZ and RiTE Gacko and ERS. The Agreement proposes that RiTE Gacko as an dependent enterprise of ERS shall invest capital in the form of assets and rights (which is 49,0% in the shares capital), mainly comprises of power plant «Gacko I» and connected coal mines, and ČEZ is obliged to invest 51,0%in the form of money (which corresponds to previous share of ČEZ in shares capital of NERS).

The Agreement is continuance of the first phase of joint investments (ČEZ invests 408.000,00 KM, that is 51, 0% and ERS invests 392.000,00 KM o, that is 49, 0% in shares capital) which is terminated by foundation of common undertaking for energy production and distribution-NERS. Afore said joint investment is approved by the Council of Competition (Decision No.: 01-02-26-021-9-II/06 on 22 March 2007).

The Agreement proposes that RiTE Gacko invests into NERS a capital in the form of assets and rights (that is described in details in Draft Report on estimations of the value of each investments made by independent company Deloitte, d.o.o. Belgrade, Republic of Serbia) in amount of 339.436.252,33 KM (173.551.000,00 EUR), estimated on 31 December 2006, while the final investment shall be made on 31 December 2007, based on assessment of authorized assessor, and that ČEZ invests in the form of money to the amount corresponding to its previous share in NERS (51,0% in shares capital). The above said money assets, invested by ČEZ shall enable a reconstruction of existing thermal power plants (Gacko I), partially invest in construction of new energy facilities of a 660 Mwh of power (construction of a new thermal power plant «Gacko II») and the opening of new coal deposit in Gacko opencast mines of „C“ basin .

Upon completion of the said process, NERS shall continue the production of electricity, primarily exploiting a coal in Gacko. It is also planned that the common undertaking shall trade electricity on long term basis.

The investment in NERS (in the form of assets and rights by RiTE Gacko and in the form of money by ČEZ) is planned to be completed within three months, starting from 31 December 2007, as defined in the Agreement.

Upon completion of its investment in the NERS, RiTE will continue its existence as stock association and renew the registration into holding company pursuant to stipulations of the Law on enterprises of Republic of Srpska.

The legal form of the concentration concerned is joint investment of the parties to the concentration on a long term basis pursuant to article 12, paragraph (1), item c) of the Act.

3. Total income of the parties to the concentration

The Council of Competition analyzed submitted documents and established, according to the final balance sheet in 2006 (the year preceding the concentration) that ČEZ, ERS and RiTE Gacko realized the following income:

Table 1.

Total income in KM	ČEZ	ERS	RiTe Gacko
World income	(..)** ¹	(..)**	-
Bosnia and Herzegovina	-	(..)**	(..)**

The Council of Competition has established that this concentration falls under notification obligation because the conditions of realized total income of the parties to the concentration in the products and/or services market in Bosnia and Herzegovina in the year preceding the concentration are satisfied, pursuant to Article 14, paragraph (1) of the Act.

¹ The data is deemed to be a business secret

4. Analysis of the relevant market

Pursuant to Article 3 of the Act on Competition and Article 4, 5 and 6 of the Regulation on Definition of the relevant market („Official Gazette of BiH“, No. 18/06), a relevant market is a market for particular products or services that are subject to business activities of undertakings in the particular geographic market.

The Council of Competition has established that relevant products and services market for concentration in question is a market for electricity production and distribution.

As production and distribution of electricity is performed in the territory of Bosnia and Herzegovina, the relevant geographic market for this concentration is a territory of Bosnia and Herzegovina.

Therefore, the Council of Competition has established that relevant market for the concentration concerned is a market for production and distribution of electricity in the territory of Bosnia and Herzegovina.

Three vertically integrated undertakings act in the market for electricity production and distribution in Bosnia and Herzegovina: Elektroprivreda Republike Srpske (Power Utility of the Republic of Srpska) (hereinafter: EP RS), Elektroprivreda Bosne i Hercegovine (Power Utility of Bosnia and Herzegovina) d.d. Sarajevo (hereinafter: EP BiH) and Elektroprivreda Hrvatske zajednice Herceg-Bosne (Power Utility of the Croatian Community Herceg-Bosnia) d.d. Mostar (hereinafter: EP HZHB).

EP RS with capacity of 1.348.MW of installed power is the second biggest electric energy company in Bosnia and Herzegovina.

The following regulatory institutions act in Bosnia and Herzegovina: Državna regulatorna komisija za električnu energiju (State Electricity Regulatory Commission) of Bosnia and Herzegovina (hereinafter: DERK), Regulatorna komisija za električnu energiju Republike Srpske (Regulatory Commission for Electricity in Republic of Srpska) and Regulatorna komisija za električnu energiju Federacije Bosne i Hercegovine (Regulatory Commission for Electricity in Bosnia and Herzegovina), Nezavisni operator sistema prenosa (Independent System Operator) of Bosnia and Herzegovina (hereinafter: NOS) and Elektroprenos (Transmission company) in Bosnia and Herzegovina (Elektroprenos BiH) which starts its activity in 2006 as the owner of transmission system and the only association responsible for electric power transmission in Bosnia and Herzegovina.

In regards to deregularization and liberalization of the market on 26 June 2006, DERK issued a Decision on a volume, conditions and time schedule of the electricity market opening („Official Gazette of BiH“, No.: 48/06) (the Council of Competition expressed its opinion about that Decision). This Decision defines a volume, conditions and dynamics of electricity market opening with the aim of establishing, maintaining and developing competition between electricity market participants. The opening of electricity market will be implemented gradually, granting the eligible customer status to:

- any buyer that annually uses more electric power than 10 GWh from 1 January 2007;
- any buyer that annually uses more electric power than 1 GWh from 1 January 2008;
- any buyer, except the category of households consumers, from 1 January 2009;
- any buyer of electricity power from 1 January 2015.

Total installed generating capacity in Bosnia and Herzegovina is 4.052 MW, with 48,0% (1.957 MW) generated in thermal power plants and with 52,0% (2.095 MW) generated in hydroelectric plants.

Table 2.

Hydroelectric power plants		Thermal power plants	
Name of hydroelectric power plant	Installed capacity (MW)	Name of thermal power plant	Installed capacity (MW)
Trebinje I	180	Tuzla	779
Trebinje I	8	- G1	32
Dubrovnik (BiH+Hr)	210	- G2	32
Čapljina	420	- G3	100
Rama	160	- G4	200
Jablanica	170	- G5	200
Grabovica	117	- G6	215
salakovac	210	Kakanj	578
Mostar	75	- (G1, G2, G3, G4) 4x32	128
Jajce I	60	- G5	110
Jajce II	30	- G6	110
Bočac	110	- G7	230
Višegrad	315	Gacko	300
Peć-Mlini	30	Ugljevik	300
TOTAL	2.095	TOTAL	1.957

Source: State Regulatory Agency for Electric Power of Bosnia and Herzegovina

The DERK estimated that ,in 2006, Bosnia and Herzegovina generated 13.749 GWh of electric power , where 56,0% was generated in thermal power plants, 43,0% in hydroelectric power plants and about 1% in small power plants.

Market share of the main market competitors (the parties to the concentration) in the relevant market amounts:

Table 3.

Estimations for 2006 (GWh)	EP BiH	EP RS	EP HZHB	Brčko District	BiH
Production	6.460,00	5.405,00	1.884,00		13749,00
Production in hydroelectric power plants	1.505,00	2470,00	1884,00		5859,00
Production in thermal power plants	4.870,00	2860,00			7.730,00
Production in small power plants	85,00	75,00			160,00
Consumption	4.250,00	3.324,00	3.287,00	270,00	1.1521,00
Distribution consumption	3.830,00	3.054,00	1.065,00	270,00	8.219,00
Transmission losses					390,00
Large consumers	420,00	220,00	2.200,00		2.840,00
Consumption of mines and pumping		50,00	22,00		72,00

Source: State Regulatory Agency for Electric Power of Bosnia and Herzegovina

Table 3 shows that total annual production of electric power in the relevant market of Bosnia and Herzegovina in 2006 was 13.749 GWh and that annual consumption was 11.521 GWh. The biggest market share in the relevant market for production of electric power in Bosnia and Herzegovina in 2006 (shown in %) had EPBiH with 47,0% of share, ERS with 39,3%, and EP HZHB with 13,7% of share.

According to the data given by NOS, the excess energy generated daily in EP BiH and EP RS is directed towards each other or towards EP HZHB, depending on consumption needs.

The fourth independent undertaking will be established in Republic of Srpska pursuant to an Agreement on establishment of undertaking NERS, to deal in relevant market for production and distribution of electric power in Bosnia and Herzegovina.

ČEZ with 51% of share in NERS, had no activity in the electric power market of Bosnia and Herzegovina and had no realized incomes or production before the concentration, as same as NERS.

Before the implementation of concentration, the market share of the parties to the concentration in the relevant market for production of electricity power in Bosnia and Herzegovina amounted as follows: ČEZ - % and ERS - 39,3% (including its dependent undertaking RiTE Gacko).

After the RiTE Gacko's joins to NERS, the market share of ERS in the relevant market in Bosnia and Herzegovina will be reduced by 1.500 GWh which will be produced by NERS. Accordingly, the market share of ERS in the relevant market will be reduced to about 28, 5%, and NERS will have 10, 8% of market share.

After 2013(the year when the construction of a new thermal power plant in Gacko is planned), the production value of NERS will be increased by additional 600-700 MWh (it will be increased to about 4.500GWh) and ,considering the existing situation, the production value of electric power in Bosnia and Herzegovina will be increased to about 16.500 GWh. Therefore, the share of NERS in the relevant market of Bosnia and Herzegovina will rise to about 27,0%, ČEZ will have 13,8% of market share and market share of ERS will rise by about 13,2%.

5. Appraisal of the concentration concerned

Considering all given data, the Council of Competition decides that this concentration shall not make or strengthen a dominant position of the parties to the concentration because they can not behave significantly independent of existing competitors in the relevant market .Obviously, according to the market shares of competitors, there is strong competition in the relevant market for production and distribution of electric power in Bosnia and Herzegovina.

Analysis of all data submitted with the Notification and data collected by the Council of Competition, show that market shares of the parties to the concentration in the relevant market are bellow 40,0 % (the adopted parameter for gaining a dominant position) pursuant to Article 9 of the Act.

Installation of new equipment by using the new ecological standards, already applied in European Union, shall reduce ecological problems in Gacko region and provide development of environment and natural resources .Know-how, invested by the foreign investors in the common undertaking, shall rise productivity of the electric power sector of Republic of Srpska, its export capacities and its position in the regional market.

The concentration shall provide improved service quality in the market for electric power, low costs of electricity production, many different services for consumers of electric power and increase sustainable power supply by providing a necessary quantity for all consumers in Bosnia and Herzegovina.

Full market liberalization is expected in 2013 in the market for electricity power in Bosnia and Herzegovina and that shall lead to opening up of the market for other competitors and increased competition in the relevant market for electric power.

Considering all facts evaluated during the decision making procedure, the Council of Competition assessed the concentration in question compatible, pursuant to Article 18, paragraph(2) of the Act, as it is stated in enacted terms of this Decision.

6. Administration tariffs

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