

BOSNA I HERCEGOVINA
Konkurencijsko vijeće



БОСНА И ХЕРЦЕГОВИНА
Конкуренијски савјет

BOSNIA AND HERZEGOVINA
Council of Competition

DECISION

**on Notification of intended concentration between Sarajevska pivara d.d. Sarajevo
and Oslobođenje d.d. Sarajevo**

Sarajevo
November, 2007



BOSNIA AND HERZEGOVINA
Council of Competition

Number: 01-01-26-016-29-II/07
Sarajevo, 22.11.2007

Pursuant to Article 25, paragraph (1), item e), Article 42, paragraph (1) item d), in connection with Articles 12, 14, 16 and 18 of the Act on Competition («Official Gazette of BH», No. 48/05 and 76/07) and Article 193, paragraph (2) of the Law on Administration procedure («Official Gazette of BH», No.29/02), upon Resolution authorizing the initiation of proceedings ex-officio, No.: 01-01-26-016-II/07, dated on 23.05.2007. for assessment of the compatibility of a concentration between Sarajevska pivara d.d. Sarajevo, Franjevačka 15, 71000 Sarajevo and Oslobođenje d.d. Sarajevo, Džemala Bijedića 185, 71000 Sarajevo, the Council of Competition on its 54 the session held on 22.11.2007 has adopted

D E C I S I O N

1. A concentration, created in the market for publishing and distribution of daily newspapers and periodic magazines/ journals in Bosnia and Herzegovina through the purchase of majority stocks in undertaking Oslobođenje d.d. Sarajevo, Džemala Bijedića 185, 71000 Sarajevo, by Sarajevska pivara d.d. Sarajevo, Franjevačka 15, 71000 Sarajevo is declared compatible.
2. Due to the fact that the concentration was not notified within a legally defined time period, Sarajevska pivara d.d. Sarajevo is fined in amount of 250.000,00 KM (two hundred thousands) which must be paid within 8 days from the date of receipt of this Decision.
3. This Decision is final and it shall be recorded in the Register on concentrations.
4. This Decision shall be published in Official Gazette of BH and in official gazettes of Entities and Brčko District.

E x p o s i t i o n

The Council of Competition ascertains, on the basis of publicly available information, the reasonable grounds for believing that concentration is implemented between Sarajevska pivara d.d. Sarajevo, Franjevačka 15, 71000 Sarajevo (hereinafter: Sarajevska pivara) and Oslobođenje d.d. Sarajevo, Džemala Bijedića 185, 71000 Sarajevo (hereinafter: Oslobođenje).

In order to verify the data, the Council of Competition obtained information, from Federal Ministry of Finance - Tax Administration of Federation of BIH- The Main Office Sarajevo, Husrefa Redžića 4, 71000 Sarajevo (hereinafter: Tax Administration of Federation of BIH), Register of Securities of Federation of Bosnia and Herzegovina, Maršala Tita 62/II, 71000 Sarajevo (hereinafter: Register of Securities of Federation of BIH), relating to financial indicators of business activities and ownership structure of Oslobođenje.

According to the data submitted by the Register of Securities of Federation of Bosnia and Herzegovina Sarajevska pivara bought (...)***¹ stocks through few transactions and acquired a total of 56,8871% of ownership share in Oslobođenje and therefore it achieved a control over Oslobođenje, pursuant to Article 12, paragraph (1), item b) of the Act on Competition (hereinafter: the Act).

According to the data submitted by the Tax Administration of Federation of Bosnia and Herzegovina, the earned annual income amount of the parties to the concentration in question, in 2005 (a year preceding the implementation of the concentration), was above 5.000.000,00 KM.

Having analyzed all the above said information, the Council of Competition established that concentration concerned failed to be notified, pursuant to Article 16, paragraph (1) of the Act and applied pursuant to the stipulations of the Act, and therefore the Council of Competition adopted a Resolution authorizing the initiation of the proceedings ex-officio, No.: 01-01-26-016-II/07, on 23.05.2007, pursuant to Article 32 of the Act.

The Council of Competition submitted to the parties to the concentration a Resolution authorizing the initiation of the proceedings ex-officio, pursuant to Article 33, paragraph (1) of the Act and designated time period of up to 20 days for submission of required data and documents, pursuant to Article 33, paragraph (1) of the Act.

Sarajevska pivara submitted the required information and documents to the Council of Competition in the form of official letters as follows: No.: 01-01-26-016-9-II/07 on 06.06.2007, No.: 01-01-26-016-11-II/07 on 21.06.2007., No.: 01-01-26-016-13-II/07 on 27.06.2007, No.: 01-01-26-016-16-II/07 on 04.07.2007., No.: 01-01-26-016-22-II/07 on 24.07.2007., No.: 01-01-26-016-25-II/07 on 22.10.2007., No.: 01-01-26-016-27-II/07 on 25.10.2007. and No.: 01-01-26-016-28-II/07 on 31.10.2007.

Pursuant to Article 16, paragraph (3) of the Act, the Council of Competition published on 28.05.2007. in daily newspapers a Notice of initiation of the proceedings ex-officio for evaluating the compatibility of the concentration. The Council of Competition did not receive within 15 days, any written comment regarding the concentration in question.

During the decision making procedure the following facts are established:

1. The parties to the concentration

The parties to the concentration are Sarajevska pivara d.d. Sarajevo, Franjevačka 15, Sarajevo, and Oslobođenje d.d. Sarajevo, Džemala Bijedića 185, Sarajevo.

1.1. Sarajevska pivara

Sarajevska pivara d.d. Sarajevo, Franjevačka 15, Sarajevo, entered into the court register under Decision No.: UF/I-508/2001, on 10.04.2001 at the Cantonal Court Sarajevo, with registered identification number 1-1737. The main business activity of Sarajevska pivara is production of and trade in beer and non-alcoholic drinks.

According to the data received from Register of Securities of Federation of Bosnia and Herzegovina on 22.06.2007 the majority owner of Sarajevska pivara is natural entity Mr. Hilmo Selimović, IDN (...)**, (...)**, 71000 Sarajevo, with 69,1140% of total share; other shareholders are shown in the Table 1.:

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

Table 1.

No.	Shareholders	Ownership share
1.	Pivovarna Union d.d. Ljubljana	12,0000%
2.	MIMS d.o.o Sarajevo	5,0102%
3.	Euro Treuhand AG, Liechestein	1,7884%
4.	Raiffeisen Bank d.d Sarajevo	1,1909%
5.	Others (small shareholders)	10,8965%

According to the data received from Register of Securities of Federation of Bosnia and Herzegovina Sarajevska pivara had on 28.06.2007 over 10,0% of ownership share in the shares capital in the following undertakings (Table 2.):

Table 2.

No.	Name of undertaking	Share in shares capital
1.	BNT Holding d.d. Novi Travnik	16,0116%
2.	Klas d.d. Sarajevo	43,8840%
3.	IF Naprijed d.d. Sarajevo	14,4885%
4.	Oslobodenje d.d. Sarajevo	56,8871%
5.	Pivara Tuzla d.d. Tuzla	18,8752%
6.	Sprind d.d. Rajlovac	68,1543%

Also, according to the data submitted by the parties to the concentration Sarajevska pivara has 40,00% of ownership share in Max Music Company d.o.o. Sarajevo (a publisher of daily newspapers SAN-Sarajevo), where Mr. Ganić Miralem, a natural person holds 60,0% of ownership share.

Oslobodenje

Oslobodenje d.d. Sarajevo, Džemala Bijedića 185, 71000 Sarajevo, entered into the court register of the Cantonal Court Sarajevo under the Decision No.: UF/I-4599/00, on 13.09.2001. with registered identification number 1-6546. The main business activity of Oslobodenje is publishing and distribution of daily newspapers, periodic journals and magazines.

According to the data received from Register of Securities of Federation of Bosnia and Herzegovina, the ownership structure of Oslobodenje comprises of (Table 3):

Table 3.

No.	Name of undertaking	Ownership share
1.	Sarajevska pivara d.d. Sarajevo	56,8871%
2.	Fabrika duhana Sarajevo d.d. Sarajevo	40,7569%
3.	Klas d.d. Sarajevo	1,5388%
4.	Other shareholders	0,8172%

Oslobodenje has no majority ownership share in any undertakings in Bosnia and Herzegovina.

2. Legal basis and form for the concentration

Legal basis for the concentration in question is purchase of stock of undertaking Oslobodenje made by Sarajevska pivara announced at Sarajevo stock exchange.

Considering the data provided by the Sarajevska pivara and Register of Securities of Federation of Bosnia and Herzegovina, stock purchase was carried out successively as follows (Table 4):

Table 4.

No.	Purchase date	Number of purchased shares	Purchased shares	Type of purchase
1.	Up to 24.08.2006.	(..)**	4,5847%	Sarajevo Stock Exchange
2.	24.08.2006.	(..)**	1,6662%	Stock Exchange Aw Broker, Sarajevo
3.	31.08.2006.	(..)**	0,0435%	Stock Exchange Aw Broker, Sarajevo
4.	05.09.2006.	(..)**	1,3690%	Stock Exchange Aw Broker, Sarajevo
5.	05.09.2006.	(..)**	1,2979%	Stock Exchange Palisaen, Sarajevo
6.	06.09.2006.	(..)**	24,4304%	Stock Exchange Aw Broker, Sarajevo
7.	07.09.2006.	(..)**	0,6484%	Stock Exchange Aw Broker, Sarajevo
8.	11.09.2006.	(..)**	14,5786%	Stock Exchange Aw Broker, Sarajevo
9.	11.09.2006.	(..)**	0,8405%	Stock Exchange Palisaen, Sarajevo
10.	12.09.2006.	(..)**	3,2560%	Stock Exchange Aw Broker, Sarajevo
	TOTAL	(..)**	52,7152%	
11.	13.09.2006.	(..)**	3,5436%	Stock Exchange Aw Broker, Sarajevo
12.	14.09.2006.	(..)**	0,1125%	Stock Exchange Aw Broker, Sarajevo
13.	24.10.2006.	(..)**	0,5158%	Tender a bid
	TOTAL	(..)**	56,8871%	

Table 4. shows that Sarajevska pivara became a majority owner of Oslobodenje on 12.09.2006. through the purchase of stocks in Oslobodenje and acquired (..)** of stocks (52,7152% ownership share), and then, through the purchase of additional stocks it became an owner of (..)** of stocks (56, 8871% ownership share).

The legal form of the concentration concerned is acquisition of control over one undertaking by another undertaking through purchase of stocks, pursuant to Article 12, paragraph (1), item b) of the Act.

3. Total income of the parties to the concentration

Total income of the parties to the concentration on 31.12.2005. amounted (Table 5.):

Table 5.

	Sarajevska pivara	Oslobodenje
World	---	---
Bosnia and Herzegovina	Between 51 and 92 million KM	Between 5,5 and 7 million KM

The Table 4. shows that earned annual income of the parties to the concentration amounted 5.000.000,00 KM according to the final account in the year preceding the concentration and therefore, pursuant to Article 14, paragraph (1), item b) of the Act, as the criterion of total annual income was satisfied, the parties were obliged to notify the concentration.

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 determined as a market for particular products or services that are subject to business activities of undertakings in the particular geographic market.

Relevant products market is a market for publishing and distribution of daily newspapers and periodic magazines/journals. Relevant geographic market for this concentration is the territory of Bosnia and Herzegovina because the publishing and distribution of daily newspapers and periodic magazines/journals is carried out in the whole territory of Bosnia and Herzegovina.

Taking into account the said information, the Council of Competition establishes that relevant market for the concentration in question is a market for publishing and distribution of daily newspapers and periodic magazines/journals in the territory of Bosnia and Herzegovina.

All data submitted by Sarajevska pivara and Oslobođenje and by Agency «Mareco Index Bosnia Gallup International», Trampina 12, Sarajevo are used in the analysis of the relevant market.

The market share of the parties to the concentration and their main competitors in the relevant market for publishing and sales of daily newspapers in 2005 amounted (Table 6.):

Table 6.

No.	Daily newspapers	Market share
1.	Dnevni Avaz, Bosnia and Herzegovina	40,00%
2.	Oslobođenje , Bosnia and Herzegovina	16,00%
3.	Glas Srpske, Bosnia and Herzegovina	8,00%
4.	Nezavisne novine, Bosnia and Herzegovina	4,00%
5.	Blic, Republic of Serbia	4,00%
6.	Dnevni list, Bosnia and Herzegovina	3,00%
7.	Večernje novosti, Republic of Serbia	3,00%
8.	Others	22,00%
	TOTAL	100,00%

The market share of the parties to the concentration and their main competitors in the relevant market for publishing and sales of periodic magazines/journals in 2005 amounted (Table 7.):

Table 7.

No.	Magazines /journals/country of origin	Market share
1.	Azra, Bosnia and Herzegovina	14,00%
2.	Glorija, Republic of Croatia	12,00%
3.	Dani, Bosnia and Herzegovina	9,00%
4.	Slobodna Bosna, Bosnia and Herzegovina	7,00%
5.	Express, Bosnia and Herzegovina	5,00%
6.	Auto časopisi	4,00%
7.	Svet, Republic of Serbia	4,00%
8.	Novi Reporter, Bosnia and Herzegovina	3,00%
9.	Cosmopolitan	3,00%
10.	Sport, Bosnia and Herzegovina	3,00%
11.	Mila, Republic of Croatia	2,00%
12.	Ljepota i zdravlje, Bosnia and Herzegovina	2,00%
13.	Max magazin , Bosnia and Herzegovina	1,00%
15.	Others (Plus max, etc.)	31,00%
	TOTAL	100,00%

Table 7. shows that Oslobođenje was present in the relevant market for the sale of periodic magazines/journals reaching 1,00% of the market share through sale of Max magazine and below 1,00% through sale of Plus max journal.

Oslobođenje distributes its products in Bosnia and Herzegovina through its own or contracted distributors. Its own distributors deliver the products in the wide territory of Sarajevo Canton

and territory alongside Sarajevo-Doboj-Banja Luka while the other distribution is carried out by agents (12 agents distribute products in Federation of Bosnia and Herzegovina and 6 distribute in Republic of Srpska).

The data from Table 6. and Table 7. show that market share of the parties to the concentration is significantly below 40, 0%, which is one of indicators of dominant position, pursuant to Article 9 of the Act.

4. Appraisal of the concentration concerned

Pursuant to Article 17 of the Act, the Council of Competition analyzed the positive and negative effects of intended concentration and all relevant facts submitted by the parties to the concentration and received from responsible institutions and established that this concentration does not create or strengthen a dominant position in the relevant market for publishing and distribution of daily newspapers, periodic magazines/journals in the territory of Bosnia and Herzegovina.

The value of market shares given in Table 6. and 7. show that strong competition exists in the relevant market and that this concentration has no effects on market share growth due to the fact that Sarajevska pivara performs no business activity in the relevant market.

5. Fine

The Council of Competition established that this concentration is a concentration pursuant to Article 12, paragraph (1), item b) 3 and Article 14, paragraph (1), item b), and therefore Sarajevska pivara was obliged to submit notification within the determined time, pursuant to Article 16, paragraph (1) of the Act.

Sarajevska pivara and Oslobodenje did not submit a notification of intended concentration to the Council of Competition despite the fact that all conditions stipulated in the Act were met.

The Council of Competition, pursuant to stipulations of Article 49, paragraph (1), item b) of the Act, may impose a fine up to 1% of the total income realized in the previous year of business activity for violation of stipulations in Article 16, paragraph (1) of the Act.

The Council of Competition imposed a fine having in mind that notification obligation started on 12.09.2006. , that the last day for submitting of notification was 20.09.2006. and that the Resolution authorizing the initiation of the proceedings ex-officio was adopted on 23.05.2007. by the Council of Competition (eight months and three days after the expiry of the last date for submitting of the notification). Sarajevska pivara did not express readiness to obey the stipulations of the Act even within the period from the beginning of notification obligation till issuance of Resolution authorizing the initiation of the proceedings ex-officio by the Council of Competition.

It was also taken into account that the Act was effective since 27.07.2005. and applied for fourteen months in the period of implementation of the concentration by Sarajevska pivara. The Council of Competition thinks that Sarajevska pivara had enough time to learn about regulations and to fulfill notification obligation pursuant to the Act.

Further, the Council of Competition considered a fact that Sarajevska pivara intends to recover and consolidate the undertaking Oslobodenje (which is for many years in financial crisis leading into unavoidable bankruptcy) and improve the quality of products within the registered activity which will result in better quality of relevant products and benefits for end-consumers.

Subsequently, the Council of Competition imposed a fine to Sarajevska pivara in amount of 250.000,00 KM, that is (..)** of total annual income.

6. 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