

BOSNA I HERCEGOVINA
Konkurencijsko vijeće



БОСНА И ХЕРЦЕГОВИНА
Конкуренијски савјет

DECISION
**on Notification of intended concentration between IEIL Japan and Arysta Lifescience
Corporaciona, Japan**

Sarajevo
December 2007



Number: 01-06-26-037-9-II/07
Sarajevo, 27 December 2007

Pursuant to Article 25, paragraph (1), item e), Article 42, paragraph (1), item d), and Article 43, paragraph (2), in connection with Articles 12, 14, 16, 17 and 18 of the Act on Competition («Official Gazette of BH», No.48/05 and 76/07), IEIL (Industrial Equity Investment) Japan Co., LTD, TY Building, 22-18 Minami-Aoyama, 7th Floor Minato-ku, Tokyo, Japan (hereinafter: the Applicant or IEIL Japan), and Arysta LifeScience Corporation, 38/39th Floor, St. Luke's Tower, 8-1 Akashi-Cho, Chuo-Ku, Tokyo 104-6591, Japan, submitted by an Attorney Sead Miljković, Fra Anđela Zvizdovića 1, 71000 Sarajevo on 29 October 2007, recorded under number: 01-06-26-037-II/07, the Council of Competition on its 57th session held on 27 December 2007 has adopted

DECISION

1. A concentration created in the market for sale of herbicides in Bosnia and Herzegovina by acquisition of control over Arysta LifeScience Corporation, 38/39th Floor, St. Luke's Tower, 8-1 Akashi-Cho, Chuo-Ku, Tokyo 104-6591, Japan by Industrial Equity Investment Limited Co., LTD, TY Building, 22-18 Minami-Aoyama, 7th Floor Minato-ku, Tokyo, Japan is declared compatible.
2. This Decision shall be recorded in the Register on concentrations.
3. This Decision is final and it shall be published in Official Gazette of BH and in official gazettes of Entities and Brčko District.

Exposition

The Council of Competition received a Notification of intended concentration (hereinafter: the Notification)- acquisition of control by Industrial Equity Investment Limited Co., LTD, TY Building, 22-18 Minami-Aoyama, 7th Floor Minato-ku, Tokyo, Japan (hereinafter: the Applicant or IEIL Japan) through purchase of all stocks of Arysta LifeScience Corporation, 38/39th Floor, St. Luke's Tower, 8-1 Akashi-Cho, Chuo-Ku, Tokyo 104-6591, Japan (hereinafter: Arysta LifeScience), No.: 01-06-26-037-II/07, submitted by an Attorney Sead Miljković (special authorization given on 07 November 2007), Fra Anđela Zvizdovića 1, 71000 Sarajevo, on 29 October 2007.

As the Notification was not complete pursuant to Article 30, paragraph (1) of the Act on Competition («Official Gazette of BiH», No.: 48/05 and 76/07) (hereinafter: the Act) and Article 8, 9 and 10 of the Regulation on notification and criteria for assessment a concentration of undertakings («Official Gazette of BiH», No.: 95/06) and according to Article 31 of the Act, the Council of Competition requested supplements to the Notification (a request number: 01-06-26-037-1-II/07 on 15 November 2007, a request number: 01-06-26-037-3-II/07 on 28 November 2007 and request number: 01-06-26-037-5-II/07 on 03 December 2007).

The Applicant submitted required supplements to the Notification (a supplement number: 01-06-26-037-2-II/07 on 27 November 2007; a supplement number: 01-06-26-037-4-II/07 on 28 November 2007 and supplement number: 01-06-26-037-6-II/07 on 12 December 2007).

When all required documents were collected the Council of Competition issued an Acknowledgement of receipt of the complete and adequate Notification, No.: 01-01-26-037-7-II/07, pursuant to Article 30, paragraph (3) of the Act, on 14 December 2007.

In the decision making procedure, the Council of Competition established the following facts:

The Applicant states that concentration shall be notified to General Competition Authority of European Commission or to national competition bodies in certain EU country members and to competition bodies of USA, South Korea, Mexico, Russia, South Africa and Ukraine. The USA competition authority has adopted a positive decision on the concentration in question.

The Council of Competition established that Notification was submitted within the time period stipulated in the Act (within eight days following the conclusion of the Agreement on purchase/sale of undertaking Arysta LifeScience by IEIL Japan, pursuant to Article 16, paragraph (1) of the Act).

1. Notification obligations

Considering the data from the Notification, the parties to the concentration achieved on 31 December 2006 the following income:

Table 1.

	Permira Holdings Limited		Arysta LifeScience	
	KM	EUR	KM	EUR
World	(..)** ¹	(..)**	(..)**	(..)**
Bosnia and Herzegovina	17.779.252,00	9.090.387,20	170.700,93	87.278,00

Pursuant to Article 14, paragraph (1), item a) of the Act, the parties to the concentration (shown in the Table 1. are obliged to notify the concentration as they meet the condition of achieved annual income (over 100.000.000, 00 KM) according to the final account in the year preceding the implementation of the concentration in question and as at least one of the parties is registered in the territory of Bosnia and Herzegovina.

Total annual income of Permira Holdings Limited in 2006 in Bosnia and Herzegovina amounted 17.779.252, 00 KM. It was realized through the subsidiary Agrokomplex Nutrition d.o.o., Gračanica in amount of (...)** KM ; the rest of (...)** KM was realized by three subsidiaries owned by Permira Holdings Limited (Provimi achieved an income of (...)** KM, Cognis (...)** KM and BorshodChem (...)** KM) through the sale of their range of products.

2. Legal basis and the form of the concentration

Legal basis of the concentration is an Agreement on purchase/sale of undertaking Arysta LifeScience Corporation, concluded between Seller (undertakings: Olympus ALC Holding (DBJ) L.P.; Olympus ALC Co-Borrower No. 1, L.P.; Olympus ALC Co-Borrower No. 2, L.P.; Olympus ALC Co-Borrower No. 3, L.P.; ALC Investment Co-Borrower, L.P, LB Star Investment; Olympus ALC Holding L.P.; Olympus ALC Holding (USD), L.P.; Olympus ALC Holding (OCA 2), L.P)

¹(..)**- the data is deemed to be a business secret , pursuant to Article 38. of the Act on Competition

represented by undertaking Olympus Alc Holdings (USD), L.P. c/o M&C Corporate Services Limited, Uglund House, postal code 309, Grand Cayman, Cayman Islands (represents a Seller) and undertaking IEIL Japan Co., Ltd (a Buyer), on 21 October 2007.

The intended transaction shall be commenced by IEIL Japan, which is a subsidiary 100,0% owned by Industrial Equity Investments Limited, Republic of Ireland which is under the (indirect) control of Limited Partnership Permira IV LP2 controlled by Permira Holdings Limited). The agreed price for this transaction is 3, 8 billion of KM (about 2, 2 billion of USD or 250 billion of Japanese yen) and the date of the transaction (until the February 2008) is stipulated in item 5 of the Agreement in question.

Pursuant to Article 12, paragraph (1), item b) of the Act, a legal basis of the concentration is acquisition of control or dominant position of one or more undertakings over another undertaking or more undertakings, or over a part or parts of another undertakings through acquisition of majority stocks or share in the shares capital

3. Parties to the concentration

Parties to the concentration are Industrial Equity Investment Limited Co., LTD, TY Building, 22-18 Minami-Aoyama, 7th Floor Minato-ku, Tokyo, Japan, and Arysta LifeScience Corporation, 38/39th Floor, St. Luke's Tower, 8-1 Akashi-Cho, Chuo-Ku, Tokyo 104-6591, Japan.

IEIL Japan

Industrial Equity Investment Limited Co., LTD, TY Building, 22-18 Minami-Aoyama, 7th Floor Minato-ku, Tokyo, Japan, a holding company, registered under the number 0104-01-072116, on 02 October 2007, is established just to commence implementation of the concentration. IEIL Japan is owned by Industrial Equity Investments Limited, Georges Court, 54-62 Townsend Street, Dublin 2, Republic of Ireland (hereinafter: IEIL Ireland).

IEIL Ireland is private investment company registered under the number 410477 in 2005 and it is controlled directly by the Limited Partnership Permira IV LP2, Trafalgar Court, Les Banques, St Peter Port, Guernsey, GY 6DJ (hereinafter: Permira IV LP2) which together with Limited Partnership Permira IV LP1 Trafalgar Court, Les Banques, St Peter Port, Guernsey, GY 6DJ (hereinafter: Permira IV LP1) comprises a Found Permira IV (Trafalgar Court, Les Banques, St Peter Port, Guernsey, GY 6DJ (hereinafter: Permira IV Fond) controlled by Permira Holdings Limited, Trafalgar Court, Les Banques, St. Peter Port, Guernsey (is a part of Great Britain realm in Normandy side of the Chanell La Manche), GY1 3QL (hereinafter: PHL).

PHL, and subsidiaries owned by it, acts in many great different areas: production of specialized chemicals, chemicals used for production of plastic semi products, ready made PVC products , food and medicines for animals, personal protective equipment, frozen food, clothing and footwear, cosmetic accessories and perfumes, financial and insurance services, TV media, mobile telecommunication services, passenger air traffic, hotels and restaurants, wholesale and retail trade in different luxury goods, etc.

PHL has subsidiaries in many countries as are: Australia, United States of America, Mexico, Brazil, Europe countries (France, Bulgaria, Spain, Great Britain, Holland, Russia, Poland, Hungary, Ukraine, Switzerland, Italy, Portugal, Czech Republic, Germany, Ireland, Slovakia Republic, Denmark, Macedonia, Greece, Norway, Romania,etc), Asia (China, Vietnam, India,etc), Africa (South Africa, Jordan) and South America (Brazil, Argentina ,etc).

Undertakings in Bosnia and Herzegovina

Agrokomplex Nutrition d.o.o., 75320 Gračanica, Brčanska Malta , Bosnia and Herzegovina (hereinafter: Agrokomplex Nutrition Gračanica) is recorded in the court register of the Municipal court in Tuzla under the number 1-11946, on 15 March 2000 and established by Agrokomplex C.S. Feed Producer and Distributor Closed Corporation, 8112 Zichyujfalu, Kastelykert 2, Republic of Hungary, with foundation capital in the amount of (..)** KM.

PHL is, through its subsidiary Provimi S.A, 9-11, avenue Arago, 78190 Trappes, Republic of France (hereinafter: Provimi), 100% the owner of Agrokomplex Nutrition Gračanica.

The main business activity of Agrokomplex Nutrition Gračanica is breeding of beef, sheep, goat, pigs, poultry farming, bee keeping, production of groceries, grains, live stock, meat and chemical products trade, transport of goods, etc. Also, Agrokomplex Nutrition Gračanica distributes and sells the range of products of Provimi (herbal ingredients for food-soya, maize, different food mixtures, ready made food products and products for livestock and other animals).

PHL, besides Agrokomplex Nutrition Gračanica, has no ownership (individually or jointly) over 10,0% or more share in shares capital, or 10,0% or more voting rights in any other undertaking in Bosnia and Herzegovina.

Cognis Deutschland GmbH & Co. KG, Rheinpromenade 1, 40789 Mannheim am Rheine, Federal Republic of Germany and BorsodChem Nyrt, 3702 Kazincbarcika, Bolyai ter 1, Republic of Hungary (both are the subsidiary companies of PHL)

Cognis realizes its income in the market of Bosnia and Herzegovina through the sale of products of “food-ingredients” line and raw material for personal hygiene products and household sanitary facilities; BorsodChem realizes its income through the sale of TDI products (Toluol DiIzocijanat), natrium hydroxide (caustic soda), melt-defrost of hydrochloric acid and natrium-hypoclorite, PVC granule, etc. The sale is carried out directly by agents or distribution network.

BorsodChem in Bosnia and Herzegovina sells its products through Organika BH d.o.o., Mehmed Paše Sokolovića, 71000 Sarajevo, Cetag (CE OIL Trading GmbH, 1010 Vienna, Tegethoffstrasse 7) Plama Pur BH d.o.o., Bjelavići, Kakanj, Poly d.o.o. Hajdarovac, Gračanica, Hemija Patenting d.o.o. Lukavac Kemokop d.o.o. Tuzla and directly to Fabrika(Aluminum-oxide Factory) glinice Birač, d.d. Zvornik.

Arysta LifeScience

Arysta LifeScience Corporation, 38/39th Floor, St. Luke’s Tower, 8-1 Akashi-Cho, Chuo-Ku, Tokyo 104-6591, Japan, recorded in the Registry of companies under the number 0199-01-074305, is established by division and joining of Tomen Corporation (Tomen), Tokio, Japan and Nichimen Corporation (Nichimen), Tokio, Japan, in February 2001. In November 2002, Olympus Capital Holdings Asia made an investment when Olympus Group (that is to say, the individual undertakings: Olympus ALC Holding (DBJ) L.P.; Olympus ALC Co-Borrower No. 1, L.P.; Olympus ALC Co-Borrower No. 2, L.P.; Olympus ALC Co-Borrower No. 3, L.P.; ALC Investment Co-Borrower, L.P, LB Star Investment; Olympus ALC Holding L.P.; Olympus ALC Holding (USD), L.P.; Olympus ALC Holding (OCA 2), L.P.; and Olympus ALC Holding (DBJ), L.P.) became 100,0% owner of Arysta LifeScience.

The main business activity of Arysta LifeScience is directed towards:

- distribution, sale development of crop protection products (herbicides, insecticides, fungicides and plant growth control substances) –that is 92,0% of activities; and
- Development and marketing of products for animal health protection (medicines and edible additives) and functional chemicals-chemical ingredients for pharmaceutical products, cosmetics and nutritive products.

ArystaLifeScience has subsidiaries in the countries of South America (Chile, Columbia, Bolivia, Peru, Paraguay, Venezuela, Brazil, Bolivia, Argentina, etc), Africa (Mozambique, Kenya, Tanzania, Mali, Egypt, Ghana, South Africa), Europe (Belgium, France, Check Republic, Portugal, Greece, Russia, etc), Asia (Indonesia, Filipinos, China, Japan, Vietnam, Pakistan etc) and United States of America, Canada ,etc.

The products of Arysta LifeScien in Europe are distributed through Arysta LifeScience Europe, Africa & Middle East, and, in Bosnia and Herzegovina, are distributed through Arysta LifeScience France (Route d'Artix - BP 80, 64150 Nogueres, Republic of France, ID number: R.C.S. PAU 330 129 842 – Directorate No. 92 B 419 from 10September 1992) by Sjemenarna d.o.o. Konjuši, 88000 Mostar, which is a leading distributor of seed, plant protection products, food and equipment for pets.

According to the obtained information, the Arysta LifeScien has no (individually or jointly) ownership share (10, 0% or more of share) in shares capital in any undertaking in Bosnia and Herzegovina.

4. Relevant market

Relevant market ,pursuant to Article 3 of the Act, and Articles 4, 5 and 6 of the Regulation on definition of the relevant market («Official Gazette of BiH», No.18/06), is a market for particular products/services that are the subject to business activities in the particular geographic market.

Relevant products market for the concentration concerned is a market for sale of herbicides.

As the parties to the concentration act in Bosnia and Herzegovina, that territory is considered as the relevant geographic market for the concentration concerned.

Therefore, the relevant geographic market of the concentration concerned is a market for sale of herbicides in the whole territory of Bosnia and Herzegovina

Due to the fact that PHL does not realize income in the relevant market for sale of herbicides in Bosnia and Herzegovina and that Arysta LifeScience realizes income just in the market for sale of herbicides (glifosat /commercial name is Cosmic), the Council of Competition ascertains that there is no horizontal overlap between parties to the concentration in Bosnia and Herzegovina.

4.1. Analysis of the relevant market

Market shares value of the parties to the concentration and their competitors in the relevant market for sale of herbicides at the worldwide level and in Bosnia and Herzegovina on 31 December 2006 was:

Table 2.

NO	Producer	Bosnia and Herzegovina		World	
		Value KM	Market share	Value KM	Market share
1.	BASF - Germany	7.507.348,00	25,31%	218.4867.500,00	9,30%
2.	Syngenta - Switzerland	6.131.956,00	20,68%	3.800.953.100,00	16,18%

3.	Herbos -Croatia	5.931.378,00	20,00%	-	-
4.	Monsanto - USA	1.934.145,00	6,52%	4.421.312.200,00	18,82%
5.	Bayer CropScience - Germany	1.805.202,00	6,09%	3.160.536.200,00	13,45%
6.	Makhteshim-Agan - Israel	1.060.198,00	3,57%	1.196.304.500,00	5,09%
7.	Dow AgroSciences - USA	703.310,00	2,37%	2.757.947.500,00	11,74%
8.	Chromos Agro -Croatia	429.810,00	1,45%	-	-
9.	Stockton Chemicals -Sweden	315.194,00	1,06%	-	-
10.	Willowood - USA.	243.559,00	0,82%	-	-
11.	DuPont- USA	200.578,00	0,68%	2.020.107.000,00	8,60%
12.	Pliva – Republic of Croatia	171.924,00	0,58%	-	-
13.	Arysta LifeScience -Japan	170.700,93	0,58%	647.580.400,00	2,76%
14.	Nufarm - Australia	28.654,00	0,10%	1.525.825.500,00	6,49%
15.	Pinus TKI - Slovenia	14.327,00	0,05%	-	-
16.	Sumitomo - Japan	-	-	531.531.700,00	2,26%
16.	FMC-USA	-	-	373.934.700,00	1,59%
18.	Cheminova - Denmark	-	-	355.309.600,00	1,51%
19.	Chemtura - USA	-	-	100.289.000,00	0,43%
20.	Sipcam -Italy	-	-	193.414.500,00	0,82%
	Others	3.008.670,00	10,14%	225.578.041,92	0,96%
	TOTAL	29.656.953,00	100,0%	23.497.712.700,00	100,0%

Market share of Arysta LifeScience in the market of Bosnia and Herzegovina is about 0,58%.The most important competitors in the market of Bosnia and Herzegovina are BASF with 25,32% of market share, Syngenta with 20,68%, Herbos with 20,0% of market share and six(6) competitors with 1,0% to 10,0% of market share .

The market share of undertakings (Table 2) shows that the relevant market in Bosnia Herzegovina is fragmented significantly competitive and that it belongs to medium-level concerted markets.

The continuance of vertical integration/ joining of undertakings (the concentration concerned takes part in this process) are going on in the market for pesticides and agrochemical products at the worldwide level, in order to increase the quality of production, low the production and distribution costs ant to enhance the investments in development of environment and population protection.

5. Appraisal of the concentration

The concentration concerned is ex-territorial as PHL and Arysta LifeScience act at the worldwide level with effects on the market of Bosnia and Herzegovina (the direct effects occur through the business activities of registered subsidiary Agropkomplex Nutrition Gračanica and indirect effects occur through the sale of range of products of the parties to the concentration).

The Council of Competition analyzed the effects of the concentration on the structure of the relevant market, on the potential and actual competitors and on the offer and supply trends of relevant products, pursuant to Article 17 of the Act, and established that the concentration concerned would not prevent, protect or distort a market competition in the relevant market.

The Council of Competition assessed that implementation of the concentration concerned would not change the market share in the relevant market in Bosnia and Herzegovina.

Therefore, the Council of Competition decided as it is stated in enacted terms of this Decision.

5. 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.

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