

BOSNA I HERCEGOVINA
Konkurencijsko vijeće



БОСНА И ХЕРЦЕГОВИНА
Конкуренијски савјет

DECISION

**Adopted upon Notification of intended concentration between PVC (Lux) company
Holding S.á.r.l. and HT Luxemburg S.á.r.l**

**Sarajevo
December 2007**



Number: 01-04-26-026-6-II / 07
Sarajevo, 14 December 2007

Pursuant to Article 25, paragraph(1) item e) ,Article 42,paragraph(1),item d) and Article 43,paragraph(2) , and in connection with Article 12, 14, 16 and 18 of the Act on Competition («Official Gazette of BH», No. 48/05 and 76/07) and upon the Notification of intended concentration of undertaking PVC (Lux) company Holding S.á.r.l. Parc d Activites Syrdall 6c, 5365 Munsbach Luxemburg and undertaking HT Luxemburg S.á.r.l 30, Boulevard Royal L.2449 Luxemburg, recorded under the number: 01-04-26-026-II/07 on 24 August 2007, the Council of Competition at its 56th (fifty-sixth) session, held on 14 December 2007 has adopted

DECISION

1. A concentration that shall be created in the sales market for PVC (polyvinyl) shutters and frames in Bosnia and Herzegovina by acquisition of control through the purchase of majority share in shares capital in HT Luxemburg S.á.r.l 30, Boulevard Royal L.2449 Luxemburg by PVC (Lux) Company Holding S.á.r.l. Parc d Activites Syrdall 6c, 5365 Munsbach Luxemburg is declared compatible (therefore PVC (Lux) Company Holding S.á.r.l. Parc d Activites Syrdall 6c, 5365 Munsbach Luxemburg shall become 100% owner of HT Luxemburg S.á.r.l 30, Boulevard Royal L.2449 Luxemburg).
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 official gazettes of Entities and Brčko District.

Exposition

PVC (Lux) Company Holding S.á.r.l. Parc d Activites Syrdall 6c, 5365 Munsbach, Luxemburg (hereinafter: LuxCo or the Applicant), submitted to the Council of Competition, through its attorney, a lawyer Marić Branko, Mehmeda Spahe 24, Sarajevo a Notification of intended concentration (hereinafter: the Notification) by means of which the Applicant intends to buy majority share in shares capital and acquire 100% ownership over HT Luxemburg S.á.r.l 30, Boulevard Royal L.2449 Luxemburg (hereinafter: HT Luxemburg).

The Notification was submitted to the Council of Competition on 24 August 2007 and recorded under the registration number 01-04-26-026-II/07, that is, within the period determined by the article 16, paragraph (1) of the Act on competition (hereinafter: the Act).

Having an insight into the Notification, the Council of Competition established that it was not complete pursuant to Article 30 of the Act, and requested supplements to the Notification (recorded under the number 01-04-26-026-2-II/07) on 26 September 2007, pursuant to Article 31 of the Act.

The Applicant submitted to the Council of Competition the supplements to the Notification recorded under the number 01-04-26-026-3-II/07 on 04 October 2007.

Upon receipt of all required documents, the Council of Competition issued an Acknowledgement of receipt of complete and adequate Notification NO: 01-04-26-026-4-II/07, on 19 November 2007, pursuant to Article 30, paragraph (3) of the Act.

The Applicant stated that it intended to submit a Notification for assessment to responsible body of the European Union.

The following facts are established during the assessment procedure of Notification:

The Council of Competition established, based upon the data analysis of annual balance sheet in 2006, the year preceding the implementation of the concentration in question, that parties to this concentration achieved the following incomes:

Table 1.

Total income(KM)	Acapita bank	Lux Co	Profine BH	HTT Group
World income	(..)** ¹	-		(..)**
Bosnia and Herzegovina		-	(..)**	

As the condition of annual income, achieved in the year preceding the implementation of the concentration by the parties to the concentration in the world products/services market, was fulfilled, the parties to the concentration were obliged to notify the concentration, pursuant to Article 14, paragraph (1) of the act.

1. Legal basis and frame of the concentration

The Share Purchase Agreement (hereinafter: the Agreement), concluded on 16 August 2007 between LuxCo (as a buyer) and shareholders in HT Luxemburg (as a seller) is taken as a legal basis of the concentration concerned. According to the Agreement the LuxCo becomes owner of 100% share in HT Luxemburg.

Shareholders in HT Luxemburg that are listed in the Agreement as the sellers are:

- CEP II Participations S.á.r.l. SICAR, 30, Boulevard Royal, L-2449, Luxemburg, registered in the commercial register in Luxemburg under the number B 96017, the owner of 67,5 paid shares in HT Luxemburg per share value of (..)** KM, which is total value of (..)** KM.
- Advent HT Troplast S. a.r.l. 76 Grand-Rue, L-1660, Luxemburg, registered in the commercial register in Luxemburg under the number B 105089, the owner of 55.003 paid shares in HT Luxemburg per share value of (..)** KM which is total value of (..)**KM.
- HT Management GmbH&cCo.KG, Promenadeplatz 8, 8033 Munich, registered in the commercial register in Munich under the number HRA 86846, the owner of 7.914 paid shares in HT Luxemburg per share value of (..)** KM which is total value of (..)** KM.
- HT Troplast Co-Invest 1 GmbH &Co.KG, Promenadeplatz 8, 8033 Munich registered in the commercial register in Munich under the number HRA 87316, the owner of 1.316 paid shares in HT Luxemburg per share value of (..)** KM which is total value of (..)** KM.
- HT Troplast Co-Invest 2 GmbH &Co.KG, Promenadeplatz 8, 8033 registered in the commercial register in Munich under the number HRA 87315, the owner of 49 paid shares in HT Luxemburg per share value of (..)** KM which is total value of (..)** KM.
- HT Troplast Co-Invest 3 GmbH &Co.KG, Promenadeplatz 8, 8033 Munich registered in the commercial register in Munich under the number HRA 87319, the owner of 493 paid shares in HT Luxemburg per share value of (..)** KM which is total value of (..)** KM.
- HT Troplast Co-Invest 4 GmbH &Co.KG, Promenadeplatz 8, 8033 Munich registered in the commercial register in Munich under the number HRA 88633, the owner of 998 paid shares in HT Luxemburg per share value of (..)** KM which is total value of (..)** KM.

¹ (..)** - The data is deemed a business secret

- HT Management II GmbH&Co. KG, Promenadeplatz 8, 8033 Munich, registered in the commercial register in Munich under the number HRA 86936, the owner of 669 paid shares in HT Luxemburg per share value of (..)** KM which is total value of (..)** KM.

The above listed shares constitute a total capital in undertaking HT Luxemburg per value of (..)** KM.

The legal frame of the concentration is acquisition of control or dominant position of one undertaking over another undertaking through share purchase or acquisition of share in shares capital, pursuant to Article 12, paragraph (1) item b)1) of the Act.

2. The Parties to the concentration

The Parties to the concentration are PVC (Lux) Company Holding S.á.r.l. Parc d Activites Syrdall 6c, 5365 Munsbach Luxemburg and HT Luxemburg S. á.r.l 30, Boulevard Royal L.2449 Luxemburg.

PVC (Lux) company Holding

PVC (Lux) company Holding S. á.r.l. Parc d Activites Syrdall 6c, 5365 Munsbach Grand Duchy of Luxembourg is a limited liability company and its registration in the Register of companies in Luxembourg is in progress since 10 August 2007. LuxCo is newly established company which purpose is to takeover other companies and it is under control of Acapita bank B.S.C. (hereinafter: Acapita bank).

Acapita bank is an investment bank headquartered in the Kingdom of Bahrain. It is registered under the number 36403 on 02 November 1996, business premises 801, road 285, Manama Center and it is active in four business lines: corporate investment, real estates, entrepreneur capital and assets investment. Through its sub-branches in Bahrain, London, Atlanta and Singapore, Acapita bank chooses economically attractive sectors as a target, possesses long-ranged sources and manages actively investment in undertakings, real estates, assets and entrepreneurs capital.

Acapita bank and LuxCo have no subsidiaries in the territory of Bosnia and Herzegovina.

HT Luxemburg S. á.r.l 30, Boulevard Royal L.2449 Luxemburg

HT Luxemburg S. á.r.l 30, Boulevard Royal L.2449 Luxemburg is a limited liability company, registered in the register of trade companies in Luxembourg under the registration number B 105045, on 29 December 2004.

HT Luxemburg is a parent company of HT Troplast group (hereinafter: HTT Group) consisted of parent company (HT Luxemburg), its subsidiaries: HT Beteiligungs GmbH&Co KG and HT Troplast GmbH and their subsidiaries consolidated at the level of HT Troplast GmbH.

HT Luxemburg holds in its possession all shares in undertaking HT Troplast GmbH: 94, 9% of shares are owned directly and 5, 1% of shares are owned through undertaking HT Beteiligungs GmbH&Co KG, which controls each of subsidiary companies within proportional representation group where HTT Group performed all main activities.

HTT Group primarily deals with the development, manufacturing and sales of polyvinyl window and door frames, shutters, boards (signs and displays) used mainly in graphic sector, mechanical engineering and construction industry .

At the moment HTT Group operates through the nine manufacturing sections in the world: three are located in Germany and one in Italy, Spain, France and Russia. It also possesses a

sections in USA (only for production of polyvinyl boards) and in China. The largest production of HTT Group is running in Germany and the significant sales are running in Eastern Europe. HTT Group operates in the market of Bosnia and Herzegovina through its subsidiary company Profine BH d.o.o. It is recorded in the register of the Cantonal Court in Tuzla under the number U/12941/97 on 05 January 1998 and it is headquartered in Živinice, Maline, Industrijska zona (Industrial zone) Bosnia and Herzegovina.

3. Analysis of the relevant market

Article 3 of the Act and Article 4,5 and 6 of the Regulation on the definition of relevant market („Official Gazette of BIH, NO 18/06) stipulate the relevant market of particular products or services that are the subject to business activities of undertakings in the geographic relevant market.

The Council of Competition established that a relevant product market of the parties to this concentration comprises the sales of PVC (polyvinyl) shutters and frames.

Bosnia and Herzegovina territory is considered to be a relevant geographic market for this concentration because the sale of PVC (polyvinyl) shutters and frames is performed in whole territory of Bosnia and Herzegovina.

Therefore, the Council of Competition defined a relevant market for this concentration as sales of PVC (polyvinyl) shutters and frames in the whole territory of Bosnia and Herzegovina.

Table 2 shows the market shares of HTT Group:

Table 2.

Products	Market (tons)	Annual turnover (KM)	Market share (per volume and value)
boards	0	0	0%
shutters	700 ton	3.911.660,00	30% per volume /30% per value
PVC (frames)	7000 ton	39.116.600,00	33% per volume /33% per value
Total	7,700 ton	43.028.260,00	

As it is newly established company for takeover of other undertakings and as it is under Acapita bank control (which has no share in the market of Bosnia and Herzegovina) LuxCo has no share in the relevant market of Bosnia and Herzegovina.

Table 3 shows the market shares of main competitors of the parties to the concentration in the relevant market for sale of PVC (polyvinyl) frames:

Table 3.

Competitors	Market share (%)	Annual turnover (KM)
Rehau (Germany)	10	(..)**
Deceuninck (G.Britain)	5	(..)**
Aluplast (G.Britain)	17	(..)**
Salamander/Bruegmann (Poland)	10	(..)**
Gealan (Germany)	10	(..)**
Profine group	33	(..)**
Others	15	(..)**
Total-PVC frames	100%	(..)**

Table 4 shows market shares of main competitors of the parties to the concentration in the relevant market for sale of PVC (polyvinyl) shutters:

Table 4.

Competitors	Market share (%)	Annual turnover (KM)
Profine Group	30	(..)**
Others(SKS, Alhacan(Germany) ,Exte(Germany), Thyssen (G.Britain)	70	(..)**
Total- PVC shutters:	100%	(..)**

4. Assessment of the concentration

On the basis of the conducted analysis of the relevant market the Council of Competition established that HTT Group, which acts in the BIH market through subsidiary company Profine BH d.o.o., Živinice, achieves 33% of market share in the market for sale of PVC (polyvinyl) frames and 30% of market shares in the relevant market for sale of PVC (polyvinyl) shutters.

Implementation of the concentration shall not change market share of the parties to the concentration in the relevant market for sale PVC (polyvinyl) shutters and frames in Bosnia and Herzegovina .The market shares do not exceed 40% of market share which suggests existence of dominant position of undertaking, pursuant to Article 9 of the Act.

The Council of Competition had in mind that implementation of the concentration shall not increase market shares of the parties to the concentration and shall not lead to creation and strengthening of dominant position of the parties to the concentration because LuxCo is not active and has no market share in the market of Bosnia and Herzegovina; this concentration shall just change a control over the existing party to the concentration.

Having in mind all data and information, the Council of Competition established that this concentration does not protect, restrict or distort market competition in the market for sale of PVC (polyvinyl) shutters and frames in Bosnia and Herzegovina and decided as it is in the statement of grounds of this Decision.

5. 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.

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 receipt of this Decision, i.e. from the date of its publication.

President

Sanja Božić