

**BOSNA I HERCEGOVINA**  
*Konkurencijsko vijeće*



**БОСНА И ХЕРЦЕГОВИНА**  
*Конкуренцијски савјет*

**Bosnia and Herzegovina**  
*Council of Competition*

**DECISION**

**on concentration of undertaking AS d.o.o. Company for production, trade and transport  
Jelah – Tešanj and undertaking Vispak Joint stock company for food industry Visoko**

**Sarajevo,  
December 2011**



**Bosnia and Herzegovina**  
*Council of Competition*

Number: 06-26-1-021-15-II/11  
Sarajevo, 8<sup>th</sup> December 2011

Pursuant to Article 42 paragraph (1) item d), in accordance with Articles 12, 14, 15, 16 and 18 of the Competition Act («Official Gazette of BiH», No. 48/05, 76/07 and 80/09), in proceedings instituted upon Conclusion for initiation of ex officio proceedings No.: 06-26-1-021-1-II/11 of 12<sup>th</sup> October 2011, for assessment of concentration of undertakings AS d.o.o. Jelah - Tešanj, Company for production, trade and transport, Industrijska zona Ekonomija bb, Jelah, 74260 Tešanj and Vispak Joint stock company for food industry Visoko, Ozrakovići bb, 71300 Visoko, Council of Competition at its 23<sup>rd</sup> (twentythird) session held on 8<sup>th</sup> December 2011, has issued:

**DECISION**

1. Concentration that would arise through acquisition of control of the undertaking AS d.o.o. Jelah - Tešanj, Company for production, trade and transport, Industrijska zona Ekonomija bb, Jelah, 74260 Tešanj, over the undertaking Vispak Joint stock company for food industry Visoko, Ozrakovići bb, 71300 Visoko, by purchasing majority share package, on the market of production of food products in Bosnia and Herzegovina, is assessed as compatible.
2. It has been confirmed that undertaking AS d.o.o. Jelah - Tešanj, Company for production, trade and transport, Industrijska zona Ekonomija bb, Jelah, 74260 Tešanj, has not filed the Notification on concentration within the statutory deadline, in terms of Article 16 paragraph (1) of the Competition, and that it implemented the concentration without the prior decision of the Competition Council, in terms of Article 18 paragraph (9) of the same Act.
3. For the infringement of Competition Act mentioned in paragraph 2 of this Decision, fine is imposed on undertaking AS d.o.o. Jelah - Tešanj, Company for production, trade and transport, Industrijska zona Ekonomija bb, Jelah, 74260 Tešanj, in amount of KM 50.000,00, which is due to be paid within 8 days from the day of receipt of this Decision.

In case the imposed fine is not paid in mentioned deadline, it will be charged in forced procedure with the accrued penalty interest for exceeded time limit, under the applicable regulations of Bosnia and Herzegovina.

4. This Decision on concentration is entered in Register of concentrations.
5. This Decision is final and shall be published in Official gazette of Bosnia and Herzegovina and official gazettes of Entities and Brcko District of Bosnia and Herzegovina.

**Exposition**

According to information published in written and electronic media („Dnevni avaz“ of 17<sup>th</sup> January 2011; on line magazine „Sutra“ of 16<sup>th</sup> January 2011), that the undertaking AS d.o.o.

Jelah - Tešanj, Company for production, trade and transport, Industrijska zona Ekonomija bb, Jelah, 74260 Tešanj (hereinafter: AS Jelah - Tešanj) became majority owner (with total of 83,93% shares) of the undertaking Vispak Joint stock company for food industry Visoko, Ozrakovići bb , 71300 Visoko (hereinafter: Vispak - Visoko), after conducted tender offer for the purchase of stocks owned by small shareholders and funds, Council of Competition of Bosnia and Herzegovina (hereinafter: Council of Competition) carried out previous activities to gather additional information.

Council of Competition requested, in document No.: 01-26-10-188-1-I/11 of 12<sup>th</sup> July 2011, the documentation from the Registry of securities of Federation of Bosnia and Herzegovina d.d. Sarajevo, Maršala Tita 62/II, 71000 Sarajevo (hereinafter: Registry of securities of FBiH), on ownership structure of undertaking Vispak - Visoko, which was submitted in submission No.: 01-26-10-188-2-I/11 of 15<sup>th</sup> July 2011.

Submitted documentation of Registry of securities of FBiH shows that undertaking AS Jelah - Tešanj had 1.288.920 shares on 14<sup>th</sup> July 2011, i.e. 84,6686% of total number of emitted shares of the undertaking Vispak - Visoko, and that on 31<sup>st</sup> January 2011 it acquired over 50,0% of shares in the mentioned undertaking.

In addition, Council of Competition requested, in document No.: 01-26-10-188-I/11 of 12<sup>th</sup> July 2011, from the Agency for financial, informatics and mediation d.d. Sarajevo, Ložionička 3, 71000 Sarajevo (hereinafter: AFIM) financial statements for 2009 and 2010 for undertaking AS Jelah – Tešanj, and undertaking Vispak - Visoko, which was submitted in submission No.: 01-26-10-188-3-I/11 of 20<sup>th</sup> July 2011.

Submitted data of AFIM show that the AS Jelah – Tešanj in 2009 had total turnover (..)\*\*<sup>1</sup> KM, and in 2010 (..)\*\*KM, while the undertaking Vispak - Visoko in 2009 had (..)\*\*KM, and in 2010 (..)\*\*KM of total turnover.

Based on these data on ownership structure and the total turnover, the Council of Competition assessed that there is reasonable suspicion that the undertaking AS Jelah - Tešanj , by purchasing majority shares of the undertaking Vispak – Visoko, acquired control over the same, in terms of Article 12 paragraph (1) item b) 1) of the Competition Act (hereinafter: Act), and that the condition has been met that at least two parties to the concentration in Bosnia and Herzegovina have a total income in 2010 (the year that preceded the concentration) over 8,000,000.00 KM in terms of Article 14 paragraph (1) item b) of the Act, and that participants were obliged to notify the concentration to Council the Competition in accordance with Article 16 of the Act, within 15 (fifteen) days of the conclusion of the agreement, public offering of shares or acquisition of control, whichever occurs first.

Therefore, the Council of Competition, in accordance with the provisions of the Act, adopted a Conclusion to initiate proceedings ex officio, No. 06-26-1-021-1-II/11 on 12<sup>th</sup> October 2011 (hereinafter: Conclusion).

In terms of Article 33 of the Act, the Council of Competition has sent the Conclusion to the undertaking AS Jelah – Tešanj, document No. 06-26-1-021-5-II/11 on 12<sup>th</sup> October 2011 , for its comments with the request for submission of documentation, in terms of Article 33 paragraph (2) of the Act.

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<sup>1</sup> (..)\*\*- data represent business secret, in terms of Article 38 of the Competition Act

Undertaking AS Jelah - Tešanj provided the requested documentation within the prescribed time, submission number: 06-26-1-021-6-II/11 of 2<sup>nd</sup> November 2011.

Council of Competition has requested additional information and documentation from the undertaking AS Jelah – Tešanj, document No. 06-26-1-021-8-II/11 of 14<sup>th</sup> November 2011, which it submitted in submission number 06-26-1-021-13-II/11 dated 23<sup>rd</sup> November 2011.

During the assessment process of the concentration, Council of Competition applied provisions of the Act, Decision on determining the relevant market («Official Gazette», No. 18/06 and 34/10) and Decision on notification and criteria for assessment of concentration of undertakings («Official Gazette of BiH», No. 34/10).

Based on the submitted documentation, the Council of Competition established the following:

## **1. Participants to the concentration**

Participants to the concentration are undertakings AS d.o.o. Jelah - Tešanj, Company for production, trade and transport, Industrijska zona Ekonomija bb, Jelah, 74260 Tešanj, and undertaking Vispak Joint stock company for food industry Visoko, Ozrakovići bb, 71300 Visoko.

### **1.1. Undertaking AS Jelah –Tešanj**

Undertaking AS d.o.o. Jelah - Tešanj, Company for production, trade and transport, Industrijska zona Ekonomija bb, Jelah, 74260 Tešanj, set up in 1995, was registered in Municipal Court Registry in Zenica under No.: 43-01-0343-09 (old number: 1-6614) (JIB: 4218052620007) with founding capital of (.)\*\*KM, with (.)\*\*% of equity of natural person Hrvić Sulejman (ID: (.)\*\*), Vukovo bb, 74260 Tešanj.

Main registered activities of the undertaking AS Jelah – Tešanj are wholesale and retail sale of food products and consumer goods.

Undertaking AS Jelah - Tešanj in Bosnia and Herzegovina has 7 branches /wholesale (Zavidovići, Maglaj, Cazin, Visoko, Mostar, Ilidža and Tuzla) and sixteen retail shops (7 discount stores and 9 supermarkets), in Bosnia and Herzegovina.

#### **1.1.1. Affiliates of the undertaking AS Jelah Tešanj**

Undertaking NAPREDAK, Factory for stationery, joint stock company Tešanj, Raduša bb, 74260 Tešanj (hereinafter: NAPREDAK Tešanj), is registered in Municipal Court Registry in Zenica under No.: 43-02-0006-09 (old number: 1-6526 (JIB: 4218011350003), with founding capital of (.)\*\*KM, with (.)\*\*% of equity of undertaking AS Jelah – Tešanj.

Main registered activities of the undertaking NAPREDAK Tešanj are production of textile products, clothes and underwear, wholesale and retail sale of textile and clothes.

Undertaking AS Jelah – Tešanj has (.)\*\*% of equity in the undertaking Vemal d.d. Nesuha Mešića 1, 74260 Tešanj.

## 1.2. Vispak – Visoko

Undertaking Vispak Joint stock company for food industry Visoko, Ozrakovići bb, 71300 Visoko, set up in 1972, is registered in Municipal Court Registry in Zenica under No.: 43-02-0003-09 (old number: 1-3621) (JIB 4218308950000) with founding capital of (..)\*\*KM and (..)\*\*% of equity (as of 14<sup>th</sup> January 2011) of the undertaking AS Jelah - Tešanj.

Main registered activities of the undertaking Vispak - Visoko is production, processing and trade of food products, frying and packaging of coffee.

## 2. Obligation to notify concentration

The obligation to notify concentration of undertakings exists if the cumulative requirements of Article 14 paragraph (1) items a) and b) of the Act are fulfilled, i.e. if total annual turnover of all parties to the concentration realized through the sale of goods and / or services on the world market is KM 100,000,000.00 according the balance of the year preceding the concentration, and if the total annual turnover of at least two parties to the concentration realized through the sale of goods and / or services on the market of Bosnia and Herzegovina is at least KM 8,000,000.00 in the final account in the year preceding the concentration, or if their combined share in the relevant market is greater than 40.0%.

Total annual turnover of the undertakings parties to the concentration (and their affiliates) as of 31<sup>st</sup> December 2010:

Table 1

| No.  | Undertaking       | World    | Bosnia and Herzegovina | Total     |
|------|-------------------|----------|------------------------|-----------|
| 1.   | AS Jelah - Tešanj | (..)**KM | (..)**KM               | (..)**KM  |
| 1.1. | NAPREDAK          | (..)**KM | -                      | (..)**KM  |
| 2.   | Vispak -Visoko    | (..)**KM | (..)**KM               | (..)** KM |

Source: Data of the undertaking AS Jelah Tešanj

Since the condition of total annual turnover has been met, in terms of Article 14 paragraph (1) item b) of the Act, i.e. that at least two undertakings, participants to the concentration in Bosnia and Herzegovina, had total annual turnover of at least KM 8.000.000,00 (in the year preceding the concentration), they were obliged to notify the concentration, in terms of Article 16 paragraph (1) of the Act.

Annual turnovers of the participants to the concentration (Table 1) represent total turnovers (without value added tax and other taxes directly related to the participants to the concentration on the market of Bosnia and Herzegovina), in terms of Article 9 item h) of the Decision on notification and criteria for assessment of concentration of undertakings.

## 3. Legal basis and form of concentration

On the basis of the tender offer with a deadline of 30 days (approved by the Securities Commission of the Federation of Bosnia and Herzegovina, No. 04/1-19-406/10 of 15<sup>th</sup> December 2010) published on 17<sup>th</sup> December 2010 in "Dnevni Avaz", undertaking AS Jelah Tešanj intended to purchase 942,081 or 61,8849% of ordinary shares at the bid price of 7,00 KM or 70.0% nominal value of shares of the undertaking Vispak – Visoko through the undertaking VGT Broker Inc. Visoko, Alaudin 3, 71300 Visoko (authorized to collect responses to a tender offer on the basis of the concluded agreement dated 1<sup>st</sup> December 2010).

Before the announcement of tender offer, undertaking AS Jelah - Tešanj had 580,230 or 38,1151% shares in undertaking Vispak-Visoko.

Tender offer was accepted by the 122 shareholders of the undertaking Vispak - Visoko, and thus the undertaking AS Jelah - Tešanj acquired a total of 697444, or 84,6686% shares of the mentioned undertaking.

Based on the data of FBiH Securities Register, undertaking AS Jelah - Tešanj gained control over the undertaking Vispak -Visoko on 31<sup>st</sup> January 2011 by taking over 50,0% of its shares.

Consequently, the legal form of concentration is the acquisition of control of undertaking AS Jelah - Tešanj over the undertaking Vispak - Visoko through the purchase of majority shares, pursuant to Article 12 paragraph (1) item b) 1) of the Act.

#### **4. Analysis of the relevant market**

The relevant market, in terms of Article 3 of the Act and Articles 4 and 5 of the Decision on determining the relevant market, is the market of certain products / services that are the subject of business operation in a particular geographic market.

According to Article 4 of the Decision on determining the relevant market, relevant market comprises all products and / or services that consumers and / or users consider mutually substitutable, under acceptable conditions, especially bearing in mind their essential characteristics, quality, common purpose, usage, sale conditions and prices.

Furthermore, according to Article 5 of the Decision on the determining the relevant market, the relevant market in the geographical sense includes the whole or a substantial part of the territory of Bosnia and Herzegovina in which the undertakings operate in the sale and / or purchase of the relevant product under equal or sufficiently homogeneous conditions and which are significantly different from the conditions of competition on neighboring geographic markets.

In this case, relevant market of the products is the market of sale and distribution of food products (including chocolate program, the cream program, snack program, teas, soups and spices, sweet and powdery program, coffee and other products - rice and sugar).

According to the registered activities and submitted data, undertaking AS Jelah - Tešanj does not have significant overlapping with the product portfolio of the undertaking Vispak - Visoko.

Since participants to the concentration operate on the whole territory of Bosnia and Herzegovina (through distributors) relevant market in geographic sense is considered to be the whole territory of Bosnia and Herzegovina.

Therefore, the relevant market of the concentration is considered to be production and distribution of food products throughout the territory of Bosnia and Herzegovina.

The analysis of the product range of undertaking Vispak - Visoko have shown that the refining and distribution of coffee has a share of approximately 6,0% on the market in Bosnia and Herzegovina in 2010 whereas other products in the product range have a lower market share.

## **5. Assessment of the concentration**

Following assessment and analysis of data and facts in the process of issuing this Decision, Council of Competition, pursuant to Article 17 of the Act, found that this is a concentration of business entities that generally do not operate on the same relevant market and that it will not lead to restriction or distortion of competition.

By this concentration, undertaking AS Jelah – Tešanj carries out its long-term standing strategy of expansion of its activities in the food industry, and in this case, through the acquisition of known manufacturing brands of the undertaking Vispak – Viskoko, it wants to expand its range of products on the market.

Therefore, the Council of Competition assessed the concentration compatible in terms of Article 18 (2) of the Act, and decided as in disposition of this Decision.

## **6. Fine**

Pursuant to Article 49 paragraph (1) item b) of the Act, Council of Competition can impose a fine upto 1,0% of the total turnover in the preceding operation year for the failure to notify the concentration in terms of Article 16 paragraph (1) of the Act.

In addition, in accordance with Article 48 paragraph (1) item e) of the Act, the Council of Competition shall impose fines amounting to up to 10,0% of the total annual turnover from the year preceding the concentration, for the undertaking which carries out a concentration without a prior decision on the concentration, pursuant to Article 18 paragraph (9) of the Act.

Council of Competition has found that the undertaking AS - Jelah Tešanj did not notify the concentration, pursuant to Article 16 paragraph (1) of the Act, as it acquired control over the undertaking Vispak - Visoko on 31<sup>st</sup> January 2011, and that the statutory deadline for notification of the concentration expired on 15<sup>th</sup> February 2011.

Council of Competition established that the undertaking AS Jelah - Tešanj carried out and registered the concentration, without a decision on the assessment of concentration, in terms of Article 18 paragraph (9) of the Act, which was confirmed by the excerpt of the Municipal Court in Zenica on the ownership structure of the undertaking Vispak - Visoko.

When determining the amount of fines, the Council of Competition took into account that this is a concentration that will not lead to changes in market share on the relevant market. Also, this concentration will provide funds for the undertaking Vispak - Visoko, which will allow for the improvement and growth of production and retention of staff.

Also, the Council of Competition took into consideration that the undertaking AS Jelah - Tešanj fully cooperated promptly providing requested documentation.

Based on the above, the Council of Competition imposed a fine on undertaking AS Jelah - Tešanj of KM 50,000.00, which amounts between 0,031 - 0,091% of the total turnover earned in 2010, as specified in item 3 of the operative part of this Decision.

In case the undertaking AS Jelah - Tešanj fails to pay the imposed fine by a specified time, the Council of Competition will ask the relevant authorities forceful execution thereof, and charge

penalty interest for the time exceeding the time of payment of fines, in accordance with the regulations of Bosnia and Herzegovina.

#### **7. Legal remedies**

This Decision is final and the appeal is not allowed thereof.

Unsatisfied party can initiate administrative procedure before the Court of Bosnia and Herzegovina within 30 days from the day of receipt or publication of this Decision.

**President**

**Ibrica Lakišić**