

DECISION
On assessment of concentration between undertakings
MG Mind d.o.o. Mrkonjić Grad and Tržnica a.d. Banja Luka

Sarajevo
December, 2011

Number: 01-26-1-014-12-II/11
Sarajevo, 8th December 2011

Pursuant to Article 25 paragraph (1) item e), Article 42 paragraph (1) item d), in accordance with Articles 12, 14, 16 and 18 of the Competition Act. ("Official Gazette of BiH", No. 48/05, 76/07 and 80/09), solving upon Conclusion for initiation of ex officio proceedings for assessment of concentration No. 01-26-1-014-1-II/11 of 29th September 2011 between MG Mind d.o.o. Mrkonjić Grad, Podbrdo bb, Mrkonjić Grad, Bosnia and Herzegovina and Tržnica a.d. Banja Luka, Ive Lole Ribara 4, Banja Luka, Bosnia and Herzegovina, Council of Competition at its 23rd (twentythird) session held on 8th December 2011, has issued

DECISION

1. Concentration created in the market of markets and market wholesale and retail trade in the Republic of Srpska, through the purchase of majority shares of the undertaking MG Mind Ltd. Mrkonjic Grad, Podbrdo bb, 70260 Mrkonjic Grad in undertaking Trznica a.d. Banja Luka, Ive Lole Ribara 4, 78000 Banja Luka, is assessed compatible.
2. It is determined that undertaking MG Mind.o.o. Mrkonjić Grad, Podbrdo bb, 70260 Mrkonjić Grad did not file Notification on concentration in statutory deadline, in terms of Article 16 paragraph (1) of the Competition Act, and implemented the concentration without the prior decision of the Council of Competition, in terms of Article 18 paragraph (9) of the Act.
3. For the infringements of the Competition Act stated in the paragraph 2 of this Decision, a fine is imposed on the undertaking MG Mind d.o.o. Mrkonjić Grad, Podbrdo bb, 70260 Mrkonjić Grad in the amount of 40.000,00 KM, which it is obliged to pay within the 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

Following the information published in daily papers "Nezavisne novine" on 11th March 2011, Council of Competition carried out preliminary activities to gather the data regarding the possible concentration between undertaking MG Mind d.o.o. Mrkonjić Grad, Podbrdo bb, Mrkonjić Grad, Bosnia and Herzegovina (hereinafter: „MG Mind“) and undertaking Tržnica a.d. Banja Luka, Ive Lole Ribara 4, Banja Luka, Bosnia and Herzegovina (hereinafter: „Tržnica“).

According to the information published, undertaking MG Mind purchased more than 50% of the shares of the undertaking Tržnica on Banjaluka Stock Exchange on 9th March 2011, thus becoming the majority owner of the mentioned undertaking with 75,345 % of the shares since up until then undertaking MG Mind already owned 24,919 % shares of the undertaking Tržnica.

Remaining 24,655% shares was owned mainly by Retirement reserve fund a.d. Banja Luka, Restitution fund of RS a.d. Banja Luka and certain natural persons.

In order to establish the obligation to notify the concentration, in accordance with Article 14 of the Competition Act (hereinafter: Act) Council of Competition requested from Agency for financial, informatics and mediation services Banja Luka, annual financial statements for 2010 of the undertaking MG Mind, document No. 01-26-10-93-I/11 of 17th March 2011 as well as financial statements for the undertaking Trznica, document No. 01-26-10-127-1-I/11 of 26th April 2011.

Analyzing gathered information, Council of Competition estimated that there is a reasonable doubt that concentration between undertakings MG Mind and Trznica has not been notified, i.e. implemented in accordance with the Act, and therefore issued a Conclusion on initiation of ex officio proceedings on assessment of the concentration No. 01-26-1-014-1-II/11 of 29th September 2011 (hereinafter: Conclusion).

Council of Competition sent the Conclusion to the undertaking MG Mind for its answer, document No. 01-26-1-014-5-II/11 of 29th September 2011, in accordance with the Article 33 of the Act and in terms of Article 30 of the Act and Articles 9, 10 and 11 of the Decision on notification and criteria for assessment of concentration of undertakings („Official Gazette of BiH“, No. 34/10) and requested submission of relevant documentation and information.

Council of Competition received the submission of undertaking MG Mind No. 01-26-1-014-6-II/11 of 20th October 2011, whereby it asked for the extension of deadline for submission of the answer and the documentation, in terms of Article 33 paragraph (3) of the Act, after which Council of Competition approved the extension of deadline for submission of the answer and the documentation for additional 10 days, document No. 01-26-1-014-7-II/11 of 26th October 2011.

Undertaking MG Mind submitted its answer and partially requested information and data in prescribed deadline, document No. 01-26-1-014-8-II/11 of 2nd November 2011 and submission No. 01-26-1-014-9-II/11 of 10th November 2011, after which Council of Competition again requested documentation and data, document No. 01-26-1-014-10-II/11 of 11th November 2011. Undertaking MG Mind sent requested documentation, submission No. 01-26-1-014-11-II/11 of 17th November 2011.

In the answer to the Conclusion, it is stated inter alia, that undertaking MG Mind considers that participants to the concentration had relatively small shares of the turnover earned through sale of assortment of goods for households and white technique, in the total earned annual turnover, indirectly mentioning this as the reason for not filing the notification to the Council of Competition.

Having analyzed all the gathered information in the process of concentration assessment, Council of Competition established the following facts:

1. Participants to the concentration

Participants to the concentration are undertakings MG Mind d.o.o. Mrkonjić Grad, Podbrdo bb, Mrkonjić Grad, Bosnia and Herzegovina and Trznica a.d. Banja Luka, Ive Lole Ribara 4, Banja Luka, Bosnia and Herzegovina

1.1. MG Mind

Undertaking MG Mind d.o.o. Mrkonjić Grad, Podbrdo bb, Mrkonjić Grad is entered into court register of the Regional court in Banja Luka under No.: 1-11812-00, with written and paid capital of 687.736,00 KM.

Founder and owner of the undertaking MG Mind is natural person Mladen Milanović, Jovana Cvijića bb, Mrkonjić Grad who is also owner of 64,88% shares of the undertaking Mrkonjić putevi a.d. Mrkonjić Grad and 100% shares of the undertaking Merkur a.d. Banja Luka.

Seat of the undertaking MG Mind is in Mrkonjic Grad, and it has its retail facilities in Banja Luka, Ribnik, Bijeljina, Brčko Distrikt, Prnjavor and Doboje. Currently it employs app. 170 employees.

Main registered activities of the undertaking MG Mind are retail of electrical devices and white technique, maintain ace and protection of roads. In sale assortment of white technique and electric devices it offers products of producers: Alfa Plam Vranje, Gorenje, Končar, Samsung etc. Business branch Putevi Prnjavor, which deals with maintenance and construction of roads is also a part of the company.

1.1.1. Affiliates of the undertaking MG Mind

Undertaking MG Mind is the owner of 29,75% shares of the undertaking Bosna trgovina a.d. Banja Luka, 68,39% shares of the undertaking Šumaprodukt a.d. Trebinje and 100% shares of the undertaking Atom mind d.o.o. Beograd (which owns 70% shares of the undertaking Želnid a.d. Beograd).

Undertaking Bosna trgovina a.d. Banja Luka, Kralja Petra I Karađorđevića 97, 78000 Banja Luka operates in the field of wholesale and retail sale.

Undertaking Šumaprodukt a.d. Trebinje, Trg Petral 1, 89000 Trbinje, is entered in Court Register of the Main Court in Trebinje under No.: Fi-56/05 of 4th April 2005, No. of registry: Ru-1-1735-00.

Main activity of the undertaking Šumaprodukt a.d. Trebinje is processing industry.

Undertaking Atom Mind d.o.o., Grahovska 27, 11000 Beograd, Republic of Serbia is founded by undertaking MG Mind, entered in Agency for economic register in Belgrade under No. 20472286, pursuant to Decision No. 136424/2008.

Main registered activity of the undertaking Atom Mind d.o.o. is lease of its own or leased real estates and their management.

Undertaking Želnid a.d. Beograd, Nemanjina 6, 11000 Beograd is entered in Agency for economic register in Belgrade under No 07006829, pursuant to Decision No. 12397/200.

Main activity of the undertaking Želnid a.d. Beograd is publishing of books, brochures and other publications.

1.2. Tržnica

Undertaking for trade services and trade Tržnica a.d. Banja Luka, Ive Lole Ribara 4, Banja Luka is entered in Court Register of the Main Court in Trebinje under No.: 1-42-00 on 5th September 2001.

Founders of the undertaking Tržnica are shareholders according to the list of Central Registry of Securities a.d. Banja Luka with founding capital of KM 26.227.899,00.

In the shareholder structure of the undertaking Trznica, before the implementation of the concentration, undertaking MG Mind owned 24,919% shares, undertaking Damjan d.o.o. Banja Luka 17,378% shares, while other shares were owned by Penzioni rezervni fond a.d. Banja Luka, Fond za restituciju RS a.d. Banja Luka and some natural persons.

Main registered activities of the undertaking Trznica are services of markets, wholesale and retail sale of consumer goods, catering services and transport for its own needs and needs of other legal and natural persons. Market services include lease of stands and business facilities for sale of agricultural products, lease of space for cattle market, second hand market, car market and wholesale market.

Wholesale and retail market services are offered inside Market Centre „Gradska tržnica“, „Nova pijaca“, Tržnica and stočna pijaca Kotor Varoš, stočna pijaca Bronzani Mejdan and Tržni centar Istočno Novo Sarajevo.

1.2.1. Affiliates of the undertaking Tržnica

Undertaking Tržnica is the owner of the undertaking PSC TAM a.d. Banja Luka with 83,33% shares.

Undertaking PSC TAM a.d. Banja Luka, Ulica Branka Popovića br. 312, 78000 Banja Luka is entered in Court Register of Main Court Banja Luka under number: 1-278-00, pursuant to Decision No.: U/I1568/2002 of 4th September 2001.

Main activity of the undertaking PSC TAM a.d. Banja Luka is maintenance and service of motor vehicles.

2. Obligation to notify the 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 as of 31st December 2010:

Table 1

	MG Mind	Tržnica
	KM	KM
World	(..)* ¹	-
BiH	(..)*	(..)*

Source: data from Notification and relevant documentation

Annual turnovers of the participants to the concentration 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 (Official Gazette of BiH, No. 34/10).

Council of Competition has determined that undertakings, parties to the concentration in 2010, earned total turnover which makes the notification of the concentration obligatory, in accordance with Article 14 paragraph (1) item b) of the Act.

3. Legal framework of the concentration assessment

In the process of the concentration assessment, Council of Competition has applied provisions of the Act, Decision on the notification and criteria for the assessment of concentrations of undertakings, Decision on determining relevant market ("Official Gazette of BiH", No. 18/06 and 34/10) and Law on administrative procedure ("Official Gazette of BiH", No. 29/02, 12/04, 88/07 and 93/09).

4. Legal basis and form of concentration

¹(..)* - Data represent business secret

Undertaking MG Mind published the Notice on acquiring shares of the undertaking Tržnica on 15th March 2011, which derives the obligation to publish takeover offer for takeover of all shares with voting rights, after which it published Public offer for takeover of all shares with voting rights of the undertaking Trznica on 13th April 2011. Public offer expired on 13th May 2011, without any changes to the initial takeover offer.

On this occasion undertaking MG Mind took over 3.493.973 shares. After the offer expired, undertaking MG Mind owned 23.255.508 voting right shares of the undertaking Tržnica, i.e. with 88,6671% of total number of issued shares with voting rights.

Legal form of the concentration, in accordance with Article 12 paragraph (1) item b) 1) of the Act is acquisition of control of one undertaking over other undertaking, i.e. part of other undertaking and purchase of majority shares.

5. 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.

Relevant market according to the subject of operation of participants to the concentration is the market of services of wholesale and retail market, while relevant market according to the territory is territory of Republic of Srpska.

Pursuant to the above mentioned, relevant market of the concentration is determined to be market of services of wholesale and retail market on territory of Republic of Srpska.

6. Assessment of the concentration

Having analyzed relevant data, Council of Competition estimated that, in terms of Article 17 of the Act, the concentration will have certain long term positive economic effects on services of wholesale and retail market on territory of Republic of Srpska, by improvement of quality of the existing and gaining of new and increase of usability of existing resources.

Council of Competition assessed the concentration compatible, and in terms of Article 18 paragraph (2) item a) of the Act, made a decision as mentioned in the operative part of this Decision.

7. Fine

Having analyzed gathered data, Council of Competition established that concentration was implemented without the prior decision of the Council of Competition, in terms of Article 18 paragraph (9) of the Act, determining the compatibility of the concentration from Article 12 and 14 of the Act.

Furthermore, Council of Competition estimated that the concentration represents concentration in terms of Article 12 paragraph (1) item b) 1) of the Act, and that obligation to notify concentration existed in terms of Article 14 paragraph (1) item b) of the Act for undertaking MG Mind.

Undertaking MG Mind was obliged to notify the concentration in terms of Article 16 of the Act within 15 days from the day of public offer for takeover of shares, i.e. from the publication of intention for purchase offer of shares.

Council of Competition, in accordance with Article paragraph (1) e) of the Act, shall fine an economic subject or physical person with a fine not higher than 10% of total annual turnover from the year preceding the law infringement, if they implement concentration without the prior decision on concentration in terms of Article 18 paragraph (9) of the Act.

According to Article 49 paragraph (1) item b) of the Act, Council of Competition can impose a fine up to 1% of the total annual turnover from the previous year to the undertaking that does not notify the concentration in terms of Article 16 of the Act.

In addition, in terms of Article 52 of the Act, when making the amount of fine, Council of Competition took into account intention of law infringement. Council of Competition established that there was no intention, since the concentration in question does not belong to forbidden concentrations, and thus determined the amount of fine.

Council of Competition imposed the total fine for the infringement of Article 16 paragraph (1) of the Act and Article 18 paragraph (9) of the Act on the undertaking MG Mind amounting to 40.000,00 KM, which represent app. (...) % of total turnover from 2010.

In case the Applicants fail 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.

Consequently, Council of Competition has decided as in item (2) of the operative part of this Decision.

8. Legal remedies

Appeal against this Decision is not allowed.

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