

Decision
on assessment of concentration of undertakings
Tesla d.d. Brčko and iQ Power AG

Sarajevo
November 2011

Number: 05-26-1-019-7-II/11
Sarajevo, 29th November 2011

Pursuant to Article 25 paragraph (1) item e) and Article 42 paragraph (1) item d), in accordance with Articles 12, 14, 16, 17 and 18 of the Competition Act («Official Gazette of BiH», No. 48/05, 76/07 and 80/09), solving upon joint Notification on concentration of undertakings „Tesla” d.d. Brčko, Braće Ćuskića No. 13 Brčko distrikt, Bosnia and Herzegovina and iQ Power AG, Metallstrasse 9, 6304 Zug, Switzerland, represented by attorney Nihad Sijerčić, Trg Djece Sarajeva 1/V, Sarajevo, Bosnia and Herzegovina, filed on 20th September 2011 under No. 05-26-1-019-II/11, Council of Competition, at its 22nd (twentysecond) session held on 29th November 2011, has issued

DECISION

1. Concentration that would arise through setting up of a new undertaking in Bosnia and Herzegovina on the market of production and sale of new and recycled batteries, by undertakings Tesla d.d. Brčko and iQ Power AG, through long-term joint investment, is assessed as compatible.
2. This Decision on concentration is entered into Registry of concentrations.
3. This Decision is final and shall be published in «Official Gazette of BiH», official gazettes of Entities and Brcko District of Bosnia and Herzegovina.

Exposition

Council of Competiton received a joint Notification on concentration (hereinafter: Notification) No. 05-26-1-019-II/11 of 20th September, filed by the undertakings „Tesla” d.d. Brčko, Braće Ćuskića No. 13 Brčko district, Bosnia and Herzegovina and iQ Power AG, Metallstrasse 9, 6304 Zug, Switzerland (hereinafter: Applicants or Tesla and/or iQ Power) through the attorney Nihad Sijerčić, Trg Djece Sarajeva 1/V, Sarajevo, Bosnia and Herzegovina, whereby thy intend to set up a new undertaking through long-term joint investment, that would be under their joint control.

Council of Competiton found that the Notification is not complete and adequate in terms of Article 30 paragraph (1) of the Competition Act (hereinafter: Act) and Article 9 and 11 of the Decision on notification and criteria for assessmnet of concentration of undertakings («Official Gazette of BiH», No. 34/10), and asked for the supplements on 26th September 2011 in document No. 05-26-1-019-1-II/11, after which the Applicants supplemented Notification on 4th October 2011, submission No. 05-26-1-019-2-II/11.

Council of Competition issued the Applicants Confirmation of complete and adequate Notification on 9th November 2011, No. 05-26-1-019-3-II/11, in accordance with Article 30 paragraph (3) of the Act.

In terms of Article 30 paragraph (2) of the Act the Applicants stated that they do not have obligation to file request for assessment of concentration to competition authorities outside Bosnia and Herzegovina.

Applicants filed the Notification within the deadline prescribed by Article 16 paragraph (1) of the Act.

In accordance with Article 16 paragraph (4) of the Act, Council of Competition published the Notice on filed Notification on 9th November 2011 (No: 05-26-1-019-5-II/11 of 9th November 2011) in daily papers of Bosnia and Herzegovina and web page of Council of Competition www.bihkonk.gov.ba, containing information on intended concentration and invited all interested parties to submit written comments regarding its implementation. There were no written comments submitted regarding the Notice in question.

During the concentration assessment procedure, Council of Competition established the following facts:

1. Participants to the concentration

Participants to the concentration are undertakings Tesla d.d. Brčko, Braće Ćuskića No. 13 Brčko District, Bosnia and Herzegovina and iQ Power AG, Metallstrasse 9, 6304 Zug, Switzerland.

1.1. Tesla

Undertaking Tesla is a joint stock company incorporated under the laws of the Brcko District of Bosnia and Herzegovina in the Basic Court of Brcko District under the registration number 1-1657, based in Braće Ćuskića no. 13 Brcko District, Bosnia and Herzegovina.

Undertaking Tesla is listed on the Banja Luka Stock Exchange, a majority shareholder of equity is natural person Miodrag Bukvić, , [(.) (ID ...)]* .¹

Predominant activity of the undertaking Tesla is production of batteries and recycling of used waste batteries. Undertaking Tesla has production capacity of 350,000 batteries per year and recycling capacity of 30,000 mt of used, waste batteries, and all of its products are sold in the whole territory of Bosnia and Herzegovina.

1.1.1. Affiliates of undertaking Tesla on the market of Bosnia and Herzegovina

Undertaking Tesla is also present in the market of Bosnia and Herzegovina through other business entities: FIB TESLA d.o.o. Brcko District, KLAS d.o.o. Brcko District and PEKARA KLAS Brcko District.

Undertaking FIB TESLA d.o.o. Brcko District, Braće Ćuskića 13, Brcko is a limited liability company for the production, trade and services, registered at the Municipal Court of Brcko District of Bosnia and Herzegovina under the registration number: 96-01-0068-11, based in Braće Ćuskića no. 13 Brcko District. The undertaking was registered in 2011 and according to the Notification data is not active yet.

Undertaking KLAS d.o.o. Brcko District, Sandići No.124, Sandići, Brcko District, is entered in the register of the Basic Court of Brcko District of Bosnia and Herzegovina under the registration number: 1-346, based in Sandići No.124, Sandići, Brcko District. Predominant registered business activities of undertaking KLAS d.o.o. is the mill and bread-making activity.

¹ [(.)]* Data represent business secret, in terms of Article 38 of the Competition Act

Undertaking PEKARA KLAS Brcko district, Edhema Mulabdica No.2, Brcko, is entered in the register of the Basic Court of Brcko District of Bosnia and Herzegovina under registration number: 3-457, based in Edhema Mulabdica no. 2, Brcko District. Predominant registered business activity of undertaking PEKARA KLAS is a craft- bread-making activity.

All affiliates of the undertaking Tesla are 100% owned by natural person Miodrag Bukvic, [(..)(ID ...)]*.

1.2. iQ Power

Undertaking iQ Power is a joint stock company registered in the Commercial Register of the Canton Zug in Switzerland under number CH-170.3.027.783-9, based in Metallstrasse 9 6304 Zug, Switzerland.

Main registered business activities of undertaking iQ Power are trade of products, components and systems for energy supply, energy storage, energy production and energy management, direct or indirect acquisition, sale and management of shares in companies in the country and abroad, and conduct of financial transactions.

According to the Notification, undertaking iQ Power has no subsidiaries in Bosnia and Herzegovina nor a minimum turnover in the market of Bosnia and Herzegovina, while the majority of its products are sold in Europe and Asia.

2. Legal framework of the concentration assessment

During the procedure of the assessment of the concentration, Council of Competition applied the provisions of the Act, Decision on determining the relevant market ("Official Gazette of BiH" 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).

Council of Competition, in accordance with Article 43 paragraph (7) of the Act, calculating the total annual turnover of the participants to concentration, used the criteria and standards of the European Commission Information about the calculation of total turnover in accordance with Council Regulation (EEC) No. 4064/89 on the control of concentrations of undertakings.

3. Legal basis and form of the concentration

Legal framework of the concentration is Agreement on joint investment, signed on 5th September 2011 between undertakings Tesla and Iq Power, whereby mentioned undertakings intend to establish new undertaking that would be under joint control in the way that undertaking iQ Power owns (..) %* of the equity, and undertaking Tesla own remaining (..) %*.

Legal basis of the concentration is a long-term joint investment of undertaking Tesla and undertaking iQ Power, in accordance with Article 12 paragraph (1), item c) of the Act.

4. Relevant market of the concentration

The relevant market of the concentration, 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 product 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.

According to the subject of operation of the participants to the concentration, relevant market is the market of production and sale of new and recycled batteries, while relevant market according to the territory of operation of the participants to the concentration is the territory of Bosnia and Herzegovina.

Consequently, relevant market of the concentration is the market of production and sale of new and recycled batteries in Bosnia and Herzegovina.

5. 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 parties to the concentration as of 31st December 2010:

Table 1

(KM)	Tesla	iQ Power	FIB Tesla d.o.o.*	Klas d.o.o. *	Pekara Klas*
World	(..)*	(..)*	-	(..)*	-
BiH	(..)*	(..)*	-	(..)*	(..)*

Source: Data from Notification; *Affiliates of undertaking Tesla

Market shares of the participants to concentration on the relevant market of new batteries are:

Table 2

No	Name of the product /brand	Market share (%)
1.	Tesla	(20-30)*
2.	iQ Power	(0-10)*
3.	Varta	(20-30)*

4.	Black Horse	(30-40)*
5.	Others	(20-30)*
6.	Total	100,00

Source: Notification

Market shares of the participants to concentration on the relevant market of recycled batteries are:

Table 3

No.	Name of the undertaking	Market share (%)
1.	Tesla	(80-90)*
2.	Others**	(10-20)*
3.	Total	100,00

Source: Notification; *Grios Grude, BC Metal Banja Luka, Farmakom MB

Analyzing data from Tables 1, 2 and 3 Council of Competition found that the undertakings, participants to the concentration, regarding their total annual turnovers in 2010, were not obliged to notify the concentration in accordance with Article 14 paragraph (1) items a) and b). However, since the market share of the undertaking Tesla on the market of recycling of batteries is (80-90)*, Council of Competition established that there is the obligation for Applicants to notify concentration in accordance with Article 14 paragraph (1) item b) of the Act, since their joint market share on the relevant market is higher than 40%.

6. Analysis of the relevant market

Data on market shares of the participants on the relevant market show that there are no dominant participants on the market of production and sale of new batteries (Table 2), i.e. that market shares of the most dominant undertakings are quite equal and move in the scale 20-30%. Market shares of the participants to the concentration on this market are (20-30%)* for undertaking Tesla and (0-10%)* for undertaking iQ Power.

Data on market shares of the participants on the relevant market show that undertaking Tesla has extremely dominate position on the market of production and sale of recycled batteries (Table 3) and that its market share is (80-90%)*, while the remaining (10-20%)* of market share is divided between several undertakings iQ Power as the second participant to the concentration, according to the data from Notification, is not present on this market.

7. Assessment of the concentration

Analyzing relevant data, Council of Competition assessed that, in terms of Article 17 of the Act, implementation of the intended concentration will not lead to significant distortion of the market competition, i.e. creation or strengthening of dominant position in terms of Article 13 of the Act, from the following reasons:

Participants to the concentration do not have dominant position on the market of production and sale of new batteries (Tesla 20-30%, iQ Power 0-10%)*, and the concentration will not lead to significant increase of the market share in general, considering relatively small share of the undertaking iQ Power.

Regarding the market of production and sale of recycled batteries, when making final decision Council of Competition took into account that regardless of extremely high market share of the undertaking Tesla, (80-90%)* the concentration will not lead to creation or strengthening of dominant position, since the undertaking iQ Power has not participated on the mentioned relevant market so far.

During the assessment of the concentration, Council of Competition took into account plans of the Applicants regarding the introduction of new knowledge in the area of engineering, marketing and international sale, which in long-term could have positive effects on development of market, as well as for end consumers.

Taking into account afore mentioned facts and data that preceded the issuance of the Decision, Council of Competition assessed the concentration compatible, in terms of Article 18 paragraph (2) item a) of the Act.

8. Administrative tax

In accordance with Article 2 paragraph (1) tariff number 107 item d) point 1) of the Regulation on administrative taxes related to procedural actions before the Council of Competition («Official Gazette of BiH», No. 30/06 and 18/11) the Applicants are obliged to pay administrative tax for this Decision in amount of 2.500,00 KM for the benefit of the Budget of institutions of Bosnia and Herzegovina.

9. 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

