

**BOSNA I HERCEGOVINA**  
*Konkurencijsko vijeće*



**БОСНА И ХЕРЦЕГОВИНА**  
*Конкуренијски савјет*

**D E C I S I O N**

**on Notification of intended concentration between B.S.A. International, Bruxelles,  
Kingdom of Belgium and Dukat mliječna industrija (the dairy industry) d.d., Zagreb,  
Republic of Croatia**

**Sarajevo  
September 2007**



Number: 01-01-26-021-11-II/07  
Sarajevo, 21 September 2007

Pursuant to Article 25, paragraph (1) item e), Article 42, paragraph (1), item d) and Article 43, paragraph (2), in connection with Article 12, 14, 16, and 18 of the Act on Competition («Official Gazette of BH», No. 48/05) and Article 193, paragraph (2) of the Law on Administrative procedure («Official Gazette of BH», No. 29/02) upon the Notification of intended concentration created between B.S.A. International, Boulevard Emile Jacqmain 20, 1000, Bruxelles, the Kingdom of Belgium and Dukat mliječna industrija (Milk industry) d.d., Marijana Čavića 9, 10000 Zagreb, Republic of Croatia submitted by the authorized attorney Prebanić Olodara from Joint Lawyer's Office Bojana Tkalčić-Đulić, Olodar Prebanić and Adela Draganović, Alipašina 51, 71000 Sarajevo, entered under the registration number: 01-06-26-010-II/07, on 29.03.2007., the Council of Competition in its 50th (fiftieth) session, held on 21 September 2007 has adopted

## **DECISION**

1. The concentration, created in the market for production and distribution of milk and dairy products in Bosnia and Herzegovina, where B.S.A. International, Boulevard Emile Jacqmain 20, 1000 Bruxelles, Kingdom of Belgium will acquire majority of shares by purchasing the stocks and become majority owner of Dukat mliječna industrija (diary industry) d.d., Marijana Čavića 9, 10000 Zagreb, Republic of Croatia, is assessed compatible.
2. This Decision on concentration is entered in the Register of concentrations.
3. This Decision is final and it shall be published in the «Official Gazette of BH», in official Gazettes of Entities and Brcko District of Bosnia and Herzegovina.

## **Exposition**

B.S.A. International, Boulevard Emile Jacqmain 20, 1000 Bruxelles, Kingdom of Belgium (hereinafter: the Applicant or B.S.A. International) submitted by its authorized representative, a lawyer Prebanić Olodara from Joint Lawyer's Office Bojana Tkalčić-Đulić, Olodar Prebanić and Adela Draganović, Alipašina 51, 71000 Sarajevo, to the Council of Competition a Notification of intended concentration (hereinafter: the Application) by which the Applicant intends to acquire through purchase of stocks majority ownership over Dukat mliječna industrija d.d., Marijana Čavića 9, 10000 Zagreb, Republic of Croatia (hereinafter: Dukat d.d. Zagreb).

The Council of Competition established that the Notification was not complete pursuant to Article 30 of the Act and Regulation on notification and criteria for assessment a concentration of undertakings („Official Gazette of BiH“, No.:95/06) so it asked pursuant to Article 31 of the Act a supplements to the Notification on 14.05.2007, No.: 01-06-26-010-2-II/07 and on 18.06.2007., No.:01-06-26-010-8-II/07.

The Applicant submitted required documents on 08.06.2007., No.: 01-06-26-010-7-II/07 and on 11.07.2007., No: 01-06-26-010-11-II/07 and, as regulated conditions were met, the Council of Competition issued to the Applicant an Acknowledgement of receipt of complete and adequate Notification, No.: 01-06-26-010-12-II/07 on 07.08.2007.

The Applicant intends also to submit a notification of intended concentration to the Commission on Consumer Protection of Republic of Serbia.

The Council of Competition established the following facts in the proceedings:

## **1. The Parties to the concentration**

The parties to the concentration are "B.S.A. International, Boulevard Emile Jacqmain 20, 1000 Bruxelles, Kingdom of Belgium and Dukat mliječna industrija (the dairy industry) d.d., Marijana Čavića 9, 10000 Zagreb, Republic of Croatia.

### **1.1. B.S.A. International Bruxelles**

B.S.A. International Bruxelles is a shareholder association from Kingdom of Belgium and its seat is registered in Boulevard Emile Jacqmain 20, 1000 Bruxelles. Its main business activity is market research and financial holding.

B.S.A. International Bruxelles is registered in Belgium in the Federal public Service for economy, small and midium enterprizes, entrepreneurs and energy under the number 0443.205.173.

Majority owner of undertaking B.S.A. International Bruxelles is a French undertaking B.S.A. with 99, 99% of ownership shares. The majority owners of the undertaking B.S.A. are members of the Besnier family.

B.S.A. International and its subsidiary associations have not been present in the market for production and distribution of milk and dairy products in Bosnia and Herzegovina.

### **1.2. Dukat mliječna industrija (the dairy industry)d.d. Zagreb**

Dukat mliječna industrija (the dairy industry) d.d. Zagreb is a stock association from Republic of Croatia and its seat is registered in Zagreb, Marijana Čavića 9, 10000 Zagreb. Its main business activity is milk a processing and production of dairy products.

According to the excerpt from the Court Register of the Commercial Court in Zagreb, Dukat d.d. Zagreb is entered into register under the number 06/13931-2, on 04.01.2007. with the identity number 080307619.

With the registration in the court register of the Commerce court in Zagreb,

Lura d.d. Zagreb changed its name to Dukat d.d. Zagreb.

Mr. Luka Rajić, citizen of Croatia IDN (...) \*\*, residing in (...)\*\* Switzerland, is majority owner of undertaking Dukat d.d. Zagreb with 91, 49% of total stocks. Other shareholders (549 of them) are smaller and they possess not more than 0,501% of individual shares.

The list of subsidiary associations and amount of shares owned by undertaking Dukat d.d. Zagreb:

- 1) DUKAT d.o.o. Ljubljana, Slovenia, (..)\*\*% owner;
- 2) RALU LOGISTIKA d.o.o. Sesvete, Croatia, (..)\*\*% owner;
- 3) DUKAT Mljekara d.o.o. Sarajevo, Bosnia and Herzegovina, (...)\*\*% owner;
- 4) SOMBOLED a.d. Sombor, Serbia, (..)\*\*% owner;
- 5) LURA d.o.o. Beograd, Serbia, (..)\*\*% owner;
- 6) "LURA Hungary Asset Menagement Kft.", Hungary, (..)\*\*% owner;
- 7) DUKAT doel Skopje, Macedonia, (..)\*\*% owner;
- 8) INMER d.o.o. Gradačac, Bosnia and Herzegovina, (..)\*\*% owner.

Dukat d.d. Zagreb acts in the market of Bosnia and Herzegovina through its subsidiary associations Dukat Mljekara d.o.o. Sarajevo and Inner d.o.o. Gradačac.

Dukat Mljekara d.o.o. Sarajevo, Rajlovačka cesta, 71000 Sarajevo entered into the register of the Municipal court in Sarajevo under the identity number 1-22029 on 29.03.2007. Its former name was LURA d.o.o. Ilidža, according to the decision of the Cantonal court in Sarajevo No.: UF/I-3899/00 from 29.01.2001. The main business activity of Dukat Mljekara d.o.o. Sarajevo is production and trade of milk, fermented products, cream, cheese and other products.

Inmer d.o.o. za proizvodnju, trgovinu i promet export-import (for production and trade) Gradačac, Željeznička, entered into register of the Municipal court in Tuzla under the number 1-5884 by decision No.: 032-0-Reg-06-001934 from 13.12.2006. Dukat d.d. Zagreb became a majority owner of Inner d.o.o. Gradačac with 75, 53779% of share by an Agreement on assignment and takeover of shares No.1 and Agreement on assignment and takeover of shares No.2 concluded on 01.06.2007. in Zagreb. The Council of

Competition approved, by Decision No.: 01-02-26-020-5-II/07, on 26.07.2007, concentration created between Dukat d.d. Zagreb and Inner d.o.o. Gradačac.

Dukat d.o.o. Banja Luka is not connected association with Dukat d.d. Zagreb and Dukat Mljekara d.o.o. Sarajevo. There is no ownership connection between Dukat d.o.o. Banja Luka and Dukat d.d. Zagreb.

## 2. Legal basis and form of the concentration

Legal basis of the concentration in question is the Agreement on assignment of stocks, concluded in Zagreb between Mr. Luka Rajić, citizen of Republic of Croatia as assignor of stock and undertaking B.S.A. International as assignee of stocks. Therefore, Luka Rajić as majority owner of Dukat d.d. Zagreb sold (assigned) the ownership of 2.744.769.000 common stocks to undertaking B.S.A. International (91,49% of total number of stocks of undertaking Dukat d.d. Zagreb are assigned ).

On the basis of data said above, B.S.A. International is obliged to notify the concentration, pursuant to Article 12, 14 and 16 of the Act.

Legal form of the concentration is acquisition of control of undertaking B.S.A. International over the undertaking Dukat d.d. Zagreb through takeover of majority shares in common capital, pursuant to Article 12, paragraph (1), item b)1) of the Act.

## 3. Total income of the parties to the concentration

On 31.12.2006., the year that preceding the concentration in question, the parties to the concentration earned the following income (shown in Table 1.):

Table 1.

	<b>LURA d.d. Zagreb</b>	<b>B.S.A. International</b>
World	(..)** <sup>1</sup> KM	(..)**KM
Bosnia and Herzegovina	(..)**KM*	---

\*Total incomes of subsidiary associations, owned by Dukat d.d. Zagreb, that are active in the market of Bosnia and Herzegovina are counted in the stated income

The Council of Competition has established on the basis of data shown in Table 1. that concentration must be obligatory notified, pursuant to Article 14, paragraph (1), item a) of the Act on competition, because the condition relating to total annual income of the parties to the concentration realized by sale of goods and /or services in the world market amounts over 100.000.000, 00 KM according to the final account in the year that preceding the implementation of the concentration.

## 4. Analysis of the relevant market

Pursuant to Article 3 of the Act on Competition and Article 4, 5 and 6 of the Regulation on Definition of the relevant market („Official Gazette of BIH“, No. 18/06), a relevant market is a market for particular products or services that are subject to business activities of undertakings in the particular geographic market.

The Council of Competition has established that relevant market for concentration in question is a market for production and distribution of milk and dairy products.

The relevant geographic market for this concentration is a territory of Bosnia and Herzegovina as the production and distribution of milk and dairy products is performed in the territory of Bosnia and Herzegovina.

After taking into account all above said, the Council of Competition has established that a relevant market for the concentration concerned is a market for production and distribution of milk and dairy products in the territory of Bosnia and Herzegovina.

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(..)\*\*confidential business information

The estimated market shares of the parties to the concentration and their main market competitors in the relevant market in Bosnia and Herzegovina on 31.12.2006., according to the data of Notification and data in possession of the Council of Competition, are shown in the Table 2.:

Table 2.

No.	Undertaking	Annual turnover (million liters)	Market share (%)
1.	Mlijekoprodukt Kozarska Dubica and Banjalučka mljekara-Salford	(..)**	23,10 3,60
2.	"Meggle" Bihać	(..)**	18,80
<b>3.</b>	<b>Dukat mljekara d.o.o. Sarajevo</b>	(..)**	<b>14,00</b>
4.	Tuzlanska mljekara Tuzla	(..)**	9,10
<b>5.</b>	<b>Inmer d.o.o. Gradačac</b>	(..)**	<b>8,50</b>
6.	Milkos Sarajevo	(..)**	6,40
7.	Livanjska mljekara	(..)**	3,80
8.	Others ("Sappit", Vindija, Šabac,...)	(..)**	12,60
TOTAL		(..)**	100,00
<b>TOTAL (3+5)</b>		(..)**	<b>22,50</b>

The biggest market shares, according to the data shown in the Table 2., in the relevant market in Bosnia and Herzegovina have Mlijekoprodukt Kozarska Dubica and Banjalučka mljekara with 26,70% of the market share, and Dukat Mljekara d.o.o. Sarajevo and Inmer d.o.o. Gradačac have together 22,50% of market share.

The Council of Competition approved by the Decision No.: 01-05-26-013-30-II/06 on 20.07.2007. a concentration between Mlijekoprodukt d.o.o Kozarska Dubica and Banjalučka mljekara a.d. Banja Luka.

The analysis of the concentration shows that the market share of the parties to the concentration are significantly below 40% which is the established parameter value for dominant position of undertaking, pursuant to Article 9 of the Act.

Dukat d.d. Zagreb and Somboled a.d. Sombor are active in the market of Bosnia and Herzegovina through Dukat Mljekara d.o.o. Sarajevo. Dukat d.d. Zagreb and Somboled a.d. Sombor distributes their products to relevant market of Bosnia and Herzegovina exclusively through their subsidiary association Dukat Mljekara d.o.o. Sarajevo. Aggregate sale of products produced by Dukat d.d. Zagreb, Somboled a.d. Sombor and Dukat mljekara d.o.o Sarajevo is 14% in the relevant market in Bosnia and Herzegovina.

Dukat Mljekara d.o.o. Sarajevo supplies a part of goods distributed and sold in Bosnia and Herzegovina (ex."UHT" milk) by making a contract for service production under the Dukat trade mark with BIH producers "Tippas" d.o.o. Posušje and Inmer d.o.o. Gradačac.

Dukat Mljekara d.o.o. Sarajevo distributes the goods through its three distributional centers: Sarajevo (Sarajevo, the middle of Bosnia), Tuzla (Tuzla and a part of Posavina) and Bihać (Unsko-Sanski Canton). Also, the supply is provided through approved distributors: MCI d.o.o. Široki Brijeg (Herzegovina) and Dukat d.o.o. Banja Luka (Republic of Srpska and a part of Posavina).

## 5. Appraisal of the concentration concerned

After the analysis and evaluation of data and facts in the decision making procedure, the Council of Competition ascertains that the concentration concerned does not prevent, restrict and distort market competition for production and distribution of milk and dairy products in Bosnia and Herzegovina.

This is a concentration of two undertakings where one of them B.S.A. International has not been active in the relevant market for production of milk and dairy products in Bosnia and Herzegovina and the other Dukat d.d. Zagreb, through its subsidiary association, acquires 22,50% of market share in the relevant market.

The Applicant expects that this concentration will be of more benefits to customers. First of all that is good opportunity for advancement of technology of the parties to the concentration and also, to existing subsidiary association in the relevant market.

The Council of Competition declared the concentration compatible pursuant to Article 18, paragraph (2), item a) of the Act, as it is stated in enacted terms of this Decision.

#### **6. 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.

#### **7. 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**