

BOSNA I HERCEGOVINA
Konkurencijsko vijeće



БОСНА И ХЕРЦЕГОВИНА
Конкуренцијски савјет

CONCLUSION
on dismissal of
Notification on concentration of the undertaking Carmeuse Eastern Europe B.V., Kingdom
of Netherlands

Sarajevo
May 2012



Number: 06-26-1-02-11-II/12
Sarajevo, 25th May 2012

Pursuant to Article 25 paragraph (1) item e), Article 42 paragraph (2), in accordance with Articles 12 and 14 of the Competition Act («Official gazette of BiH», No. 48/05, 76/07 i 80/09), following the Notification on concentration of the undertaking Carmeuse Eastern Europe B.V., Nijverheidsstraat 32, 2802 AL, Gouda, Kingdom of Netherlands, filed on 19th April 2012 No. 06-26-1-02-II/12, Council of Competition of Bosnia and Herzegovina at 36th (thirtysix) session held on 25th May 2012, has adopted

CONCLUSION

1. Notification on concentration of the undertaking Carmeuse Eastern Europe BV, Nijverheidsstraat 32, 2802 AL Gouda, Kingdom of Netherlands, undertaking Fabrika kreča (Factory of lime) Carmeuse Integral joint stock company for production and sale of lime Doboј Ševarlije bb, 74000 Doboј, and the undertaking Rudnik krečnjaka (Lime Mine) Integral Carmeuse joint stock company Doboј, for excavation, breaking, crushing, and transport of limestone, Ševarlije bb, 74000 Doboј, is dismissed for lack of notification obligation pursuant to the provisions of the Competition Act.
2. This conclusion will be published in the «Official Gazette of BiH», official gazettes of Entities and Brcko District of Bosnia and Herzegovina.

Exposition

Council of Competition of Bosnia and Herzegovina (hereinafter: Council of Competition) has received the Notification on concentration (hereinafter: Notification), No. 06-26-1-02-II/12 of 19th April 2012, filed by the undertaking Carmeuse Eastern Europe B.V., Nijverheidsstraat 32, 2802 AL, Gouda, Kingdom of Netherlands (hereinafter: Applicant or Carmeuse Eastern Europe), through its representative undertaking „Monet broker” a.d. Banja Luka, Kralja Petra I Karadorđevića 139, 78000 Banja Luka (according to the power of attorney issued on 12th April 2012.), whereby it states that undertaking Carmeuse Eastern Europe (together with its affiliate company –undertaking Bohemian Lime B.V Nijverheidsstraat 32, 2802 AL, Gouda, Kingdom of Netherlands - hereinafter: Bohemian Lime) is acquiring majority share in the founding capital of the undertaking Fabrika kreča Carmeuse Integral akcionarsko društvo za proizvodnju i promet kreča Doboј, Ševarlije bb, 74000 Doboј (hereinafter: Fabrika kreča Doboј), and undertaking Rudnik krečnjaka Integral Carmeuse akcionarsko društvo Doboј, za vađenje, drobljenje, lomljenje i promet krečnjaka, Ševarlije bb, 74000 Doboј (hereinafter: Rudnik krečnjaka Doboј).

Having reviewed the submitted Notification, Council of Competition found that it was not complete in the sense of Article 30 of the Competition Act (hereinafter: Act) and Articles 9 and 11 of the Decision on Notification and assessment of the concentration of undertakings («Official Gazette» No. 30/10) and has requested amendment thereof, in accordance with Article 31 of the Act, document No. 06-26-1-02-1-II/12 of 20th April 2012.

The Applicant has submitted part of the required documentation, submission number: 06-26-1-02-2-II/12 on 27th April 2012, and filed a request for an extension of the deadline for completing Notification, in terms of Article 31 paragraph (2) of the Act, which the Council of Competition considered and approved an additional fifteen days in document No: 06-26-1-02-3-II/12 of 27th April 2012 , in the sense of Article 31 paragraph (2) of the Act.

Within the approved time the Applicant submitted a required part of the documentation, submission number: 06-26-1-02-4-II/12 on 11th May 2012 and submitted a new request for an extension of the deadline for completing Notification, which Council of Competition considered and approved an additional eight days in document No. 06-26-1-02-5-II/12 on 11th May 2012.

Within the approved time the Applicant submitted all requested documentation, submission number: 06-26-1-02-6-II/12 on 16th May 2012, submission No. 06-26-1-02-7-II/12 on 21st May 2012, and submission No. 06-26-1-02-8-II/12 on 21st May 2012t, and the Council of Competition found the Notification complete and issued a Certificate of receipt of complete and adequate Notification, pursuant to Article 30 paragraph (3) of the Act, document No. 06-26-1-02-9-II/12 of 22nd May 2012.

In the process of assessing the compatibility of the concentration Council of Competition found the following facts:

The Notification was timely submitted, pursuant to Article 16 paragraph (1) of the Act.

1. Participants to the concentration

According to the data from the Notification, participants to the concentration are undertaking Carmeuse Eastern Europe B.V., Nijverheidsstraat 32, 2802 AL, Gouda, Kingdom of Netherlands, undertaking Bohemian Lime B.V., Nijverheidsstraat 32, 2802 AL, Gouda, Kingdom of Netherlands, undertaking Fabrika kreča Carmeuse Integral akcionarsko društvo za proizvodnju i promet kreča Dobož, Ševarlije bb, 74000 Dobož, and undertaking Rudnik krečnjaka Integral Carmeuse akcionarsko društvo Dobož, za vađenje, drobljenje, lomljenje i promet krečnjaka, Ševarlije bb, 74000 Dobož.

Notification states that it considers two concentrations:

- undertaking Carmeuse Eastern Europe (and its affiliated company Bohemian Lime) and undertaking Rudnik krečnjaka Dobož;
- undertaking Carmeuse Eastern Europe (and its affiliated company Bohemian Lime) and undertaking Fabrika kreča Dobož.

1.1. Carmeuse Eastern Europe

Undertaking Carmeuse Eastern Europe B.V., Nijverheidsstraat 32, 2802 AL, Gouda, Kingdom of Netherlands is registered at the Economy chamber Register of Rotterdam under number 18075311 on 25th August 2004 (MB 000014796368, JIB 813818886), with 75,0% of equity of the undertaking Carmeuse S.A., Rue de Chateau 13 A, Seilles 5300, Kingdom of Belgium and 25,0% of equity of the undertaking Carmeuse Holding S.A., Avenue Guillaume 9., L-1651 Luxembourg (hereinafter: Carmeuse Holding), with paid capital of 46.939,92 KM (EUR 24.000,04).

Undertaking Carmeuse Holding is registered in the Registry of companies and economic entities of Luxemburg – register No. B 114218 of 21st February 2006.

Main registered activity of the undertaking Carmeuse Eastern Europe is financial holding.

1.2. Bohemian Lime

Undertaking Bohemian Lime B.V. Nijverheidsstraat 32, 2802 AL, Gouda, Kingdom of Netherlands, is registered at the Economy chamber Register of Rotterdam under number: 17139956 on 2nd November 2011(MB 000020019866, JIB 810020237) and owned by the undertaking Carmeuse S.A. (parent company - Carmeuse group), Rue de Chateau 13 A, Seilles 5300, Kingdom of Belgium (JIB 431473519), with paid capital of 12.161.350,94 KM (EUR 6.218.000,00).

Main registered activity of the undertaking Bohemian Lime is financial holding.

Undertaking Bohemian Lime in Bosnia and Herzegovina is the majority owner of the undertaking Fabrika kreča Doboј with 74,9999954% equity, while in undertaking Rudnik krečnjaka Doboј it has 25,0% equity.

1.3. Fabrika kreča Doboј

Undertaking Fabrika kreča Carmeuse Integral akcionarsko društvo za proizvodnju i promet kreča Doboј, Ševalrije bb, 74000 Doboј (short title of the company: Fabrika kreča Carmeuse Integral a.d. Doboј), is registered at the Municipality Court in Doboј under number MBS: 85-01-0214-09 (old number: 1-5478-00) (JIB: 440274774009) with founding capital of 10.847.958,00 KM.

Main registered activity of the undertaking Fabrika kreča Doboј are excavation, processing and sale of lime.

Ownership structure of the undertaking Fabrika kreča Doboј before the transaction as of 29th March 2012:

Table 1

No.	Name of the shareholder	Equity %
1.	Bohemian Lime	74,9999954
2.	Bojić Dragan, Banja Luka	6,3341691
3.	Dubravac Nikola, Banja luka	6,3341598
4.	Stanković Slobodan, Banja Luka	6,3341598
5.	Integra inženjering d.o.o. Banja Luka	1,2881503
6.	Others	4,7093656

Source: data from Notification

Ownership structure of the undertaking Fabrika kreča Doboј after the transaction as of 5th April 2012:

Table 2

No.	Name of the shareholder	Equity %
1.	Bohemian Lime	74,9999954
2.	Carmeuse Eastern Europe	20,2590847
3.	Pref a.d. Banja Luka	1,1883158
4.	Others	3,5526041
	Total affiliated companies (1+2)	95,250801

Source: data from Notification

1.4. Rudnik krečnjaka Doboј

Undertaking Rudnik krečnjaka Integral Carmeuse akcionarsko društvo Doboј, za vađenje, drobljenje, lomljenje i promet krečnjaka, Ševarlije bb, 74000 Doboј (short name of the company - Rudnik krečnjaka Integral Carmeuse a.d. Doboј), is registred at the Municipality Court in Doboј under number MBS: 85-02-0015-09 (old number: 1-5477-00) (JIB: 4402748120004) with founding capital of 5.762.536,00 KM.

Main registered activity of the undertaking Rudnik krečnjaka Doboј are excavation (production), processing and sale of lime.

Ownership structure of the undertaking Rudnik krečnjaka Doboј before the transaction as of 29th March 2012:

Table 3

No.	Name of the shareholder	Equity %
1.	Bohemian Lime	25,000000
2.	Dubravac Nikola, Banja Luka	21,1744794
3.	Bojić Dragan, Banja Luka	21,1744794
4.	Stanković Slobodan, Banja Luka	21,1744794
5.	Integra Inženjering d.o.o. Banja Luka	2,4960018
6.	Pref a.d. Banja Luka	2,3028403
7.	Others	6,6777197

Source: data from Notification

Ownership structure of the undertaking Rudnik krečnjaka Doboј after the transaction as of 5th April 2012:

Table 4

No.	Name of the shareholder	Equity %
1.	Carmeuse Eastern Europe	65,9593103
2.	Bohemian Lime	25,000000
3.	Pref a.d. Banja Luka	2,3028403
4.	Integral Inženjering a.d. Banja Luka	1,8384093
5.	Fond za restituciju RS a.d. Banja Luka	1,1514201
6.	Others	3,7480200
	Total participants to the concentration (1+2)	90,9593103

Source: data from Notification

2. Obligation to notify the concentration

The obligation to notify the concentration occurs in terms of Article 14 paragraph (1) of the Act, when the participants to the concentration earn 100 million KM in the world market through sale of goods and/or services as per the final account in the year preceding the concentration, and when the total annual income of at least two economic entities parties to the concentration earned through sale of goods and / or services on the market of Bosnia and Herzegovina amounts to 8 million KM 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 turnovers of the participants to the concentration (with their affiliated companies):

Table 5

No.	Undertaking	World		Bosnia and Herzegovina
		EUR	KM	KM
1.	Fabrika kreča Doboј	-	13.782.175,27	22.863.069,84

2.	Rudnik krečnjaka Doboј	-	-	4.372.505,23
3.	Carmeuse Group /Carmeuse Holding	1.208.400.000,00	2.363.424.972,00	23.956.196,09

Source: Data from Notification

Total turnover of the undertaking Carmeuse Group /Carmeuse Holding (includes turnovers of the affiliated companies of the participant to the concentration - undertaking Carmeuse Eastern Europe and the undertaking Bohemian Lime) in the world market in 2011 amounts to KM 2,363,424,972.00, while total turnover in the market of Bosnia and Herzegovina is KM 23,956,196.09 (includes total turnover of the subsidiary – undertaking Fabrika kreča Doboј KM 22,863,069.84 and turnover of 1,093,126.25 KM of the undertaking Rudnik krečnjaka Doboј based on the equity of 25.0%).

Since undertaking Rudnik krečnjaka Doboј has a total turnover of less than 8 million KM (turnover totaled 4,372,505.23 KM), the participants of the concentration (undertaking Carmeuse Eastern Europe, undertaking Bohemian Lime and undertaking Rudnik krečnjaka Doboј) do not meet condition (earned total turnover) for obligatory notification of the concentration, under Article 14 paragraph (1) item b) of the Act.

Annual turnover is total turnover (excluding value added tax and other taxes), within the meaning of Article 9 item h) of the Decision on notification and criteria for assessment of concentrations of undertakings.

3. Legal framework of the concentration assessment

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

Council of Competition took into account the provisions of the Law on takeover of joint stock / stock companies («Official Gazette of RS», No. 65/08 and 92/09).

Council of Competition, under Article 43 paragraph (7) of the Act, used the European Court practice and European Commission decisions and applied the criteria and standards of the Commission notice on calculation of total turnover in accordance with Council Regulation (EEC) No. 4064/89 on the control of concentration of economic operators.

4. Analysis of the relevant market

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

According to the provision of Article 4 of the Decision on 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 features, quality, intended use, method of use, conditions of sale and prices.

The provision of Article 5 of the Decision on relevant market stipulates that the relevant geographic market comprises the whole or part of the territory of Bosnia and Herzegovina, where an economic entity operates 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 the adjacent geographic markets.

Council of Competition in the proposed concentration of the undertaking Carmeuse Eastern Europe (and subsidiary Bohemian Lime) and the undertaking Rudnik krečnjaka Doboј determined the relevant product market, taking into account exclusively the prevailing registered economic activity of the undertaking Rudnik krečnjaka Doboј, as production, processing and sale of limestone.

Since undertaking Rudnik krečnjaka Doboј distributes (sells) its products in the entire territory of Bosnia and Herzegovina, Council of Competition established Bosnia and Herzegovina as the relevant geographic market of the intended concentration.

According to the data from Notification, undertaking Rudnik krečnjaka Doboј has a stake of 5.78% in the relevant market, and the same will not be changed after the acquisition of control in the capital of the undertaking Carmeuse Eastern Europe (and the economic entity Bohemian Lime) over the undertaking Rudnik krečnjaka Doboј, as these have no associated undertakings in the relevant market in Bosnia and Herzegovina.

Council of Competition in the transaction of the undertaking Carmeuse Eastern Europe (and subsidiary Bohemian Lime) and the undertaking Fabrika kreča Doboј did not determine the relevant market (product and geographic market) because it is not a concentration within the meaning of Article 12 paragraph (1) of the Act.

5. Assessment of the Notification

According to the data from the Notification, the transaction/concentration was made on 4th and 5th April 2012 at Banja Luka stock market through the purchase/sale of voting right shares, pursuant to the provisions of the Law on takeover of stock companies and other relevant regulations.

Council of Competition has established that transaction of the Carmeuse Eastern Europe, undertaking Bohemian Lime (both undertakings are affiliated companies within Carmeuse Group) and undertaking Fabrika kreča Doboј is not considered a concentration, in terms of Article 12 paragraphs (1) and (2) of the Act, since the undertaking Bohemian Lime already has control (as of 28th March 2008) over the undertaking Fabrika kreča Doboј by owning majority share of 74.999954% (Table) in the equity, and this transaction only increases ownership share of the affiliated companies/participants to the concentration, within the undertaking Carmeuse Group, in the undertaking Fabrika kreča Doboј (Table 2).

Council of Competition has also established that concentration of the undertaking Carmeuse Eastern Europe, undertaking Bohemian Lime (both undertakings are affiliated companies within Carmeuse Group) and undertaking Rudnik krečnjaka Doboј, does not meet requirements, in terms of Article 14 paragraph (1) item b) of the Act, i.e. requirement of total annual turnover in Bosnia and Herzegovina earned through sale of goods/services of at least 8 million KM in the year preceding the concentration, has not been met – in 2011 (annual turnover of 4.372.505,23 KM) (Table 5.), nor have they achieved the share on relevant market higher than 40,0%, since undertaking Rudnik krečnjaka Doboј has share on relevant market of 5,78% (in the year preceding the concentration – in 2011).

Considering the above, Council of Competition has decided as in the operative part of this Conclusion.

6. Administrative taxes

According to the Article 2 paragraph (1) tariff number 108 item c) of the Regulation on administrative taxes regarding the procedural actions before the Council of Competition («Official gazette of BiH», No. 30/06), the Applicant is required to pay administrative tax amounting to 1.000,00 KM for the benefit of the Budget of the institutions of Bosnia and Herzegovina.

7. Legal remedies

Appeal is not allowed against this Decision.

Unsatisfied parties can initiate administrative dispute before the Court of Bosnia and Herzegovina within 30 days from the receipt or publication of this Conclusion.

President

Ibrica Lakišić