

BOSNA I HERCEGOVINA
Konkurencijsko vijeće



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Konkurencijski savjet

Conclusion

**on dismissal of Notification on concentration
of the undertaking Nestlé S.A., 55 avenue Nestlé, 1800 Vevey, Switzerland**

**Sarajevo,
September 2011**



Number: 05-26-1-013-11-II /11
Sarajevo, 29th September

Pursuant to Article 25. paragraph (1) Item e), Article 42. paragraph (2), in accordance with Article 14 and 16 of the Competition Act («Official Gazette BiH», No. 48/05, 76/07 and 80/09), upon the Notification on concentration of the undertaking Nestlé S.A., 55 avenue Nestlé, 1800 Vevey, Switzerland, represented by lawyer Branko Marić, Mehmeda Spahe 26, Sarajevo, submitted on 1st July 2011, No 05-26-1-013-II /11, Council of Competition, at its 17th (seventeenth) session held on 29th September, issued the following

CONCLUSION

1. Notification on concentration of the undertaking Nestlé S.A., 55 avenue Nestlé, 1800 Vevey, Switzerland is dismissed due to nonexistence of obligation to notify the concentration in terms of Article 14 paragraph (1) of the Competition Act.
2. This Conclusion shall be published in «Official Gazette BiH», official gazettes of Entities and Brcko District.

Exposition

Council of Competition received the Notification on intended concentration (hereinafter: Notification) on 1st July 2011, filed by the undertaking Nestlé S.A., 55 avenue Nestlé, 1800 Vevey, Switzerland (hereinafter: Nestle or Applicant) represented by lawyer Branko Marić, Mehmeda Spahe 26, Sarajevo, whereby it intends to purchase the undertaking Centro-Spice d.o.o. Belgrade, Surčin, Dobanovački put bb, Republic of Serbia (hereinafter: Centro-Spice or Targeted company) from the undertaking Centroproizvod a.d. Beograd, Dobanovački put bb Belgrade, Republic of Serbia (hereinafter: Centroproizvod or Seller).

The Applicant supplemented Notification with the following documents No. 05-26-1-013-1-II/11 of 7th July 2011, 05-26-1-013-2-II/11 of 28th July 2011 and 05-26-1-013-3-II/11 of 4th August 2011. Council of Competition found the Notification incomplete in terms of Article 30 paragraph (1) of the Competition Act (hereinafter: Act) and Articles 9 and 11 of the Regulation on Notification and criteria for assessment of concentrations of undertakings («Official Gazette BiH», No 34/10) and requested supplements in document 05-26-1-013-4-II/11 of 16th August 2011. The Applicant supplemented Notification with documents No. 05-26-1-013-5-II/11 of 24th August 2011 and No. 05-26-1-013-6-II/11 of 2nd September 2011.

After completion of Notification, Council of Competition issued the Confirmation on complete and adequate Notification in terms of Article 30 paragraph (3) of the Act, No. 05-26-1-013--II/11 of 22nd September 2011.

Notification on concentration has been filed in legally prescribed deadline, in terms of Article 16 paragraph (1) of the Competition Act.

Applicant stated in Notification, in terms of Article 30 paragraph (2) of the Act, that he submitted request for assessment of concentration to the authorized authorities for concentrations of Monte Negro and Republic of Serbia.

1. Participants to the concentration

Participants to the concentrations are undertakings Nestlé S.A., 55 avenue Nestlé, 1800 Vevey, Switzerland and Centroproizvod a.d. Beograd, Dobanovački put bb Belgrade, Republic of Serbia and Centro-Spice d.o.o. Belgrade, Dobanovački put bb Surčin, Belgrade, Republic of Serbia.

1.1. Nestle

Undertaking Nestle is stockholder company registered on 19th July 1905 in accordance with legislation of Switzerland with the headquarters in 55 avenue Nestlé, 1800 Vevey, Switzerland. The company is entered into Swiss Trade Register under number CH-550-0067293-5.

The owners of undertaking Nestle are stockholders, whose number according to Applicant's estimates is app. 250.000, and none of them owns directly or indirectly more than 5% of stockholder capital.

Main registered activities of the undertaking Nestle are shares in industrial companies, service providing companies, commercial and financial companies in Switzerland and abroad, especially in the area of food, healthy food, health, welfare and related industries.

1.1.1. Subsidiaries of the undertaking Nestle on the market of Bosnia and Herzegovina

Undertaking Nestle is present on the market of Bosnia and Herzegovina through related undertakings Nestle Adriatic B&H d.o.o. Sarajevo, Fra Anđela Zvizdovića 1/13 B, Sarajevo and Nestle Ice Cream B&H d.o.o. Bijeljina, Agrotični centar lamela 1,2, Bijeljina.

Undertaking Nestle Adriatic B&H, registered at Municipality Court in Sarajevo under number 65-01-0625-10, is owned by the undertaking Nestle.

Main registered activities of the undertaking Nestle are production of food products and other trade of food, drinks and tobacco products in specialized stores.

According to information from the Notification, undertaking Nestle Ice Cream B&H d.o.o. Bijeljina is no longer active and will be eliminated from the register.

1.2. Undertaking Centroproizvod and Centro-Spice

Undertaking Centroproizvod a.d. Beograd, Dobanovački put bb Belgrade, Republic of Serbia is registered as stockholder company under number 07040580 at Trade Court in Belgrade on 9th April 1976 at the address Dobanovački put bb Surčin-Beograd, Republic of Serbia.

Majority owner of the undertaking Centroproizvod is undertaking Centro Hrana d.o.o. , registered under number 17535838 at Trade Court in Belgrade on 1st December 2003 at the address Dobanovački put bb Surčin-Beograd, Republic of Serbia. The owner of 73% shares in the capital of the undertaking Centro Hrana d.o.o. is undertaking Property Plus Establishment, P.O. Box 129 Vaduc, Lichtenstein, registered at the Office for land administration and public registers of the Principality of Lichtenstein under number FL-0002.284.133-0 on 7th October 2008.

Undertaking Centro-Spice d.o.o. Beograd, Surčin, Dobanovački put bb, Republic of Serbia is registered as limited liability company under number 20736704 at Trade Court in Belgrade on 11th May 2011 at the address Dobanovački put bb Surčin-Beograd, Republika Srbija. Founder and owner of the 100% share in this undertaking is the undertaking Centroproizvod a.d. Belgrade.

Undertaking Centro-Spice is founded for the special purpose in order to implement the concentration in question and thus it does not have realized turnover in 2010, nor was it present on the relevant

market with its products. Submitted data of the undertaking Centroproizvod a.d. Belgrade, as Seller and founder of the targeted company, are taken as relevant in all further analysis.

Main registered activity of the undertakings Centroproizvod and Centro-Spice is the production of other food products.

According to the data from Notification, none of the mentioned undertakings individually or jointly does not own more than 10% of the share in founding capital, i.e. 10% of voting rights in another undertaking in Bosnia and Herzegovina.

2. Legal framework of the assessment of the concentration in question

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

According to the Article 43 paragraph (7) of the Act, during the estimates of total annual turnover, Council of Competition has used criteria and standards of the Notice of European Commission on calculation of total turnover in accordance with Council Regulation (EEZ) No: 4064/89 on control of concentrations of undertakings.

3. The legal basis of the concentration

The legal basis of the concentration is the Agreement on purchase of shares, concluded on 16th June 2011 between the undertaking Nestle as Buyer and undertaking Centroproizvod as Seller, and the undertaking Centro Hrana as guarantor.

By this purchase Agreement the buyer acquires (..) %* equity in the capital of undertaking Centro-Spice, which was founded by the Seller for the special purpose of realization of the transaction in which the Seller will enter the production line for the following product categories: universal and mono-component spices, mixtures for preparation of meals, dehydrated soups, cold sauces, cooking cubes, chocolate drinks, chocolate cream, chocolate, tea, canned vegetables and basic foods.

4. Relevant market of the participants to the concentration

Relevant market, pursuant to Article 3 of the Act and Articles 4 and 5 of the Regulation on relevant market, is the market of certain products (services) that are the subject of economic operation in a particular geographic market.

According to Article 4 of the Regulation on relevant market, relevant product market comprises all products and / or services that consumers consider mutually substitutable due to their essential features, quality, purpose, price and intended use.

According to Article 5 of the Regulation on relevant market, the relevant geographic market comprises the whole or part of the territory of Bosnia and Herzegovina, where competitors are active in sales and / or purchasing of the relevant product under equal or sufficiently homogeneous conditions that are significantly different from the conditions of competition on neighboring geographic markets.

Based on the above, taking into account the Notification data on the business activity of the parties, especially regarding group of products that overlap in the market of Bosnia and Herzegovina, the relevant product market can be considered as market of: spices, mixtures for preparation of meals, dehydrated soup, cold sauces, soups for cooking, chocolate spreads, chocolate and chocolate drinks.

Relevant geographic market is considered to be the market of Bosnia and Herzegovina with regard to the relevant products available in the entire territory of Bosnia and Herzegovina.

Consequently, the relevant markets of the concentration are markets of the sale of spices, mixtures for preparation of meals, dehydrated soups, cold sauces, cooking soups, chocolate spreads, chocolate and chocolate drinks in Bosnia and Herzegovina.

5. Analysis of the relevant market

Market shares of the undertakings, participants to the concentration on relevant markets as of 31st December 2010 are shown in the following table:

Table 1.

No.	Relevant market	Market share (%)		
		Nestle	Centroproizvod	Jointly
1.	Spices	-	6	6
2.	Mixtures for preparation of meals	2	2	4
3.	Dehydrated soups	10	4	14
4.	Cold sauces	26	2	28
5.	Cooking soups	11	1	12
6.	Chocolate spreads	-	*	*
7.	Chocolate	3	3,8	6,8
8.	Chocolate drinks	34	1	35

Source: data from Notification; *Sale of chocolate spreads in 2010 is only (..) * ((..) EUR)* which is insignificant quantity in comparison to the competitors

Having analyzed the mentioned data, Council of Competition determined that joint market share of the participants to the concentration on relevant markets is not higher than 40%.

6. Obligation to notify intended concentration

The obligation to notify the concentration of undertakings, in terms of Article 14 paragraph (1) items a) and b) of the Act exists, if there is a total annual turnover of the parties realized from the sale of goods and / or services on the global level of KM 100,000,000.00, according to final account in the year preceding the respective concentration, and total turnover of each of at least two undertakings, participants to the concentration, arising from the sale of goods and / or services on the market of Bosnia and Herzegovina is at least 8,000,000.00 KM, or if their joint market share on the relevant market is greater than 40.0%.

Total annual turnover of the undertakings, participants to the concentration, (and their related business entities), as of 31st December 2010:

Table 2.

Name of undertaking	Total turnover (KM)	
	World	BiH
Nestle Grupa	(..)* ¹	(..)*
Centroproizvod	(..)*	(..)*
Centroproizvod Grupa	(..)*	(..)*

¹ Dana represent business secret, in terms of Article 38 of the Competition Act

Source: data from Notification

Annual turnover of the parties to the concentration represents the total turnover (excluding value added tax and other taxes directly related to the participants to the concentration in Bosnia and Herzegovina), pursuant to Article 8 item h) of the Regulation on notification and assessment of the concentrations of undertakings.

The analysis of these data revealed that participants to the concentration do not meet the requirements of Article 14 Paragraph (1) item b) of the Act because the total turnover of the economic entity Centropoizvod achieved through the sale of goods and / or services on the market of Bosnia and Herzegovina is less than 8,000,000.00 KM (Table 2), and joint market share of the participants to the concentration on the relevant markets does not exceed 40.0%, and accordingly, these were not required to submit Notification.

7. Administrative taxes

The Applicant is obliged to pay the administrative tax for this Conclusion, in accordance with Article 2 tariff number 108 item c) of the Regulation on administrative fees regarding the procedural actions before the Council of Competition («Official Gazzete BiH», No. 30/06 i 18/11), in amount of KM 1.000,00 for the benefit of Budget of Institutions of Bosnia and Herzegovina.

8. Legal remedy

Appeal against this Conclusion 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 Conclusion.

President

Stjepo Pranjić PhD