

BOSNA I HERCEGOVINA
Konkurencijsko vijeće



БОСНА И ХЕРЦЕГОВИНА
Конкуренијски савјет

CONCLUSION

on dismissal of Notification on concentration filed by undertaking Nestro Petrol a.d.
Banja Luka, Bosnia and Herzegovina

Sarajevo
January, 2012



Number: 01-03-26-1-025-5-II/11
Sarajevo, 19th January 2012

Pursuant to Article 25 paragraph (1) item e), in accordance with Article 42 paragraph (2), in connection to Article 12 of the Competition Act («Official Gazette of Bosnia and Herzegovina», No. 48/05, 76/07 and 80/09), following the Notification on concentration of the undertaking Dioničko društvo za promet nafte, naftnih derivata i prirodnog gasa Nestro Petrol Banja Luka, Kralja Alfonsa XIII No. 9, Banja Luka, Bosnia and Herzegovina, filed by Diakonov Aleksandar, director, received on 14th November 2011 under No. 01-03-26-1-025-II/11, Council of Competition at its 26th (twenty sixth) session held on 19th January 2012, has issued

CONCLUSION

1. Notification on concentration of the undertaking Dioničko društvo za promet nafte, naftnih derivata i prirodnog gasa Nestro Petrol Banja Luka, Kralja Alfonsa XIII No. 9, Banja Luka, Bosnia and Herzegovina, is dismissed due to the non-existence of concentration, in terms of Article 12 of the Competition Act.
2. This Conclusion shall be published in « Official Gazette of BiH», official gazette of Entities and Brcko District of Bosnia and Herzegovina.

Exposition

Council of Competition received the Notification on concentration (hereinafter: Notification) of the undertaking „Nestro Petrol“ a.d. Banja Luka, Kralja Alfonsa XIII No. 9., 78000 Banja Luka, (hereinafter: NESTRO PETROL or Applicant), on 14th December 2011, No. 01-03-26-1-025-II/11.

In the Notification, undertaking NESTRO PETROL states its intention to sign sale-purchase agreement on the right of use for the construction with natural person Bećir Bašović, (..)*¹, which according to the land register has the right of construction of petrol station, which will be built after the realization of the agreement conditions by the Applicant.

Having analyzed the filed Notification, it was found that it was not complete, in terms of Article 30 paragraph (1) of the Competition Act (hereinafter: Act) and Article 9 and 11 of the Regulation on Notification and criteria for the assessment of concentrations of undertakings (« Official Gazette of BiH», No 34/10), and therefore Council of

¹ (..)**- data represent business secret in terms of Article 38 of the Competition Act

Competition, in accordance with Article 31 of the Act, asked for the supplements on 29th November 2011, document No. 01-03-26-1-025-1-II/11.

In accordance with the request of the Council of Competition, Applicant submitted the missing documentation on 7th December 2011, No. 01-04-26-011-2-II/11.

Council of Competition issued the Applicant Confirmation on receipt of complete and adequate Notification, in terms of Article 30 paragraph (3) on 10th January 2012 No. 01-04-26-011-3-II/11.

Council of Competition confirmed the following facts from the Notification:

1. Parties in procedure

Parties to the procedure are undertaking „Nestro Petrol“ a.d. Banja Luka, Kralja Alfonsa XIII No. 9., 78000 Banja Luka and natural person Bećir Bašović, (..)*.

1.1. Nestro Petrol a.d. Banja Luka

According to the court record of the District Economic Court in Banja Luka number: 057-0-Reg-10-001273 of 21st September 2010, the undertaking Joint stock company for the transport of petroleum, petroleum products and natural gas Nestro Petrol Banja Luka, Kralja Alfonsa XIII no. 9, Banja Luka, was registered in the Court Register under the number MBS: 1-10073-00.

The main registered business activities of the undertaking NESTRO PETROL are retail sale of automotive fuel and distribution and sale of gaseous fuels through distributive networks.

The majority owner of the undertaking NESTRO PETROL is undertaking Open Joint Stock Company NeftegazInKor, Kalanchovskaž a 11, Build 2, Moscow, Russian Federation with (..)* share.

In Bosnia and Herzegovina NESTRO PETROL has total of 88 gas stations, of which 78 in Republic of Srpska, 8 in Federation of Bosnia and Herzegovina, and 2 in Brcko District. According to estimates of the Applicant, undertaking NESTRO PETROL has a share of 7.94% in the total number of petrol stations on the market of Bosnia and Herzegovina.

1.2. Bećir Bašović

Natural person Bećir Bašović, (..)*, is the second party to the Notification. According to the data from the Notification, natural person Bećir Bašović is not involved in the activity of transport of petroleum, petroleum products and natural gas.

2. Assessment of the Notification

On the 26th October 2011, in the office of notary Miroslav Gladanica in East Sarajevo, the sale agreement was concluded between the parties Becir Bašović as the seller, (..)* and NESTRO PETROL as the buyer. The Agreement deals with the purchase of the right to use primarily for construction of the gas station with associated facilities with a 1 / 1 on the property registered in land register No. 10 262 KO SP Donji Butmir in the Land Registry office of the Municipal Court in Sarajevo, the total area of 2357 m² (the right to use for building registered on the basis of the decision of the Municipality of Ilidža of 19th October 2011), and the total purchase price of (..) *.

Article 12 of the Competition Act prescribes what counts as a concentration, while Article 14 prescribes the conditions under which the parties to the concentration are required to submit notification on the concentration to the Council of Competition.

After the above contract of sale is realized, it will not lead to a concentration, in terms of Competition Act, because the underlying purchase and sale does not constitute any form of concentration prescribed in Article 12 of the Act.

Consequently, the Council of Competition decided as stated in the operative part of this Conclusion.

3. Administrative tax

In accordance with Article 2, tariff number 108 item d) of the Regulation on administrative taxes regarding the procedural actions before the Council of Competition («Official gazette of BiH», No. 30/06 and 18/11) Applicant is obliged to pay administrative tax in the amount of 1.000,00 KM, for the benefit of the Budget of institutions of Bosnia and Herzegovina.

4. Legal remedies

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
Ibrica Lakišić**