

**BOSNA I HERCEGOVINA**  
*Konkurencijsko vijeće*



**БОСНА И ХЕРЦЕГОВИНА**  
*Конкуренијски савјет*

**Decision**

**Notification on concentration of undertakings**

**„Nectar“ d.o.o. Bačka Palanka, Republic of Serbia**

Sarajevo,  
October 2011



Number: 04-26-1-017-11 -II/11

Sarajevo, 12<sup>th</sup> October 2011

Pursuant to Article 25 paragraph (1) item e), in regard to 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 Notification on concentration of the undertaking Factory for processing of fruits and vegetables „Nectar“ d.o.o. Bačka Palanka, Novosadski put 9, 21 400 Bačka Palanka Republic of Serbia, represented by attorney from Sarajevo Nedžida Salihović, Fra Anđela Zvizdića 1, 71 000 Sarajevo, received on 9<sup>th</sup> August 2011 under number: 04-26-1-017-II/11, Council of Competition at its 19<sup>th</sup> (nineteenth) session held on 10<sup>th</sup> October 2011, issued the following

### **DECISION**

- (1) Concentration in the market of fruit and vegetables sale in Bosnia and Herzegovina, which will be created through acquisition of control of the undertaking of the Factory for processing of fruits and vegetables "Nectar" d.o.o. Backa Palanka, Novosadski put 9, 21400 Backa Palanka Republic of Serbia, over the undertaking "Fructal" Živilinska industrija d.d. Ajdovščina, Tovarniška cesta 7, 5270 Nova Gorica, Slovenia, by purchasing the majority shares is assessed as compatible.
- (2) This Decision on concentration is entered in Register of concentrations.
- (3) This Decision is final and shall be published in „Official Gazette of Bosnia and Herzegovina“, official gazettes of Entities and Brcko District of Bosnia and Herzegovina.

### **Exposition**

Council of Competition received Notification of concentration on 9<sup>th</sup> August 2011, No. 04-26-1-017-II/11 (hereinafter: the Notification), submitted by the undertaking the Factory for processing of fruits and vegetables, „Nectar "d.o.o. Backa Palanka, Novosadski put 9, 21 400 Backa Palanka Republic of Serbia, represented by Nedžida Salihović, Fra Angela Zvizdića 1, 71 000 Sarajevo (hereinafter: the Applicant, or "Nectar"), whereby the undertaking "Nectar" intends to acquire control of the undertaking "Fructal", Živilinska industrija d.d. Ajdovščina, Tovarniška cesta 7, 5270 Nova Gorica, Slovenia (hereinafter: "Fructal"), purchasing the majority shares.

Having reviewed the submitted Notification, the Council of Competition established that it is not complete in the sense of Article 30 paragraph (1) of the Competition Act (hereinafter: the Act) and Article 9 and 11 of the Decision on Notification and assessment of the concentration of undertakings ("Official Gazette of BiH", No. 34/10), and requested amendment thereof, in accordance with Article 31 of the Act

(Act No. 04-26-1-017-1-II/11 of 08/16/2011 and the act number: 04-26-1-017-5-II/11 of 09/19/2011).

In compliance with the requirements of the Council of Competition, the Applicant amended the Notification with required documentation (submission number 04-26-1-017-2 -II/11 of 23/08/2011, submission No. 04-26-1-017-4 - II/11 of 07/09/2011, submission No.: 04-26-1-017-8-II/11 of 27/09/2011).

Upon receipt of the required documentation, the Council of Competition found that the Notification is complete, and issued a Certificate of receipt of complete and adequate Notification No. 04-26-1-17-9-II/11, pursuant to Article 30 paragraph (3) of the Act on 28<sup>th</sup> September 2011.

The Applicant stated, in terms of Article 30 paragraph (2) of the Act that the request for evaluation of concentration has been submitted to the competent competition authorities of the Republic of Slovenia, the Republic of Serbia, Montenegro and FYR Macedonia.

The Commission for Protection of Competition of the Republic of Serbia approved the concentration, in summary proceedings, the Decision No. 6/0-02-627/2011-3 of 5<sup>th</sup> September 2011.

On 28<sup>th</sup> September 2011, Council of Competition, in accordance with Article 16 Paragraph (4) of the Act, issued a notice on submitted Notification (document number: 04-26-1-17-6-II/11 of 26<sup>th</sup> September 2011) in the daily press of Bosnia and Herzegovina, publishing data about the proposed concentration and called upon all directly interested parties to submit written comments regarding the implementation of the same. There were no comments of interested parties regarding the relevant notice.

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

The Notification was timely filed in accordance with Article 16 paragraph (1) of the Act.

## **1. Participants to the concentration**

Participants to the concentration are undertakings Factory for processing of fruits and vegetables, "Nectar" d.o.o. Backa Palanka, Novosadski put 9, 21 400 Backa Palanka, Serbia and "Fructal" ,Živilska Industrija d.d. Ajdovščina, Tovarniška cesta 7, 5270 Nova Gorica, Slovenia.

### **1.1. Nectar**

Factory for processing of fruits and vegetables "Nectar" d.o.o. Backa Palanka, Novosadski put 9, 21400 Backa Palanka, Republic of Serbia, was entered in the Register of Business Register Agency of the Republic of Serbia, under registration number 76995 and ID number 08666032 on 19<sup>th</sup> January 1998.

Main registered business activity of the undertaking "Nectar" is the production of fruit and vegetable juices.

Undertaking "Nectar" is owned by the undertaking Radun Inženjering d.o.o. Backa Palanka, identification number 08648581, Zeljeznicka 11, 21 400 Backa Palanka, Republic of Serbia, with a 81.11% ownership share and the natural person Smilja Radun from Novi Sad, JMB: (..)\*\*, Kisačka 37, Republic of Serbia with 18,89% of ownership share.

The Applicant does not have a registered company or branch office in Bosnia and Herzegovina, and sales and distribution of its products is done by an authorized seller, undertaking (..)\*\*, with which it concluded Purchase-sale contract in 2010 for a period of one year.

According to the Applicant, undertaking "Nectar" does not own 10% or more of the equity or 10% or more of the voting rights in other undertakings in Bosnia and Herzegovina.

## **1.2. Fructal**

Undertaking „Fructal“ Živilinska industrija d.d. Ajdovščina, Tovarniška cesta 7, 5 270 Ajdovščina, Republic of Slovenia, is entered in register of Agency for public legal register and services of Republic of Slovenia with registration number 5048664000, on 26<sup>th</sup> June 1989.

Main register activity of the undertaking „Fructal“ is production of fruit and vegetable juices.

The majority owner of the undertaking "Fructal" is the undertaking "Pivovarna Union" d.d. Ljubljana, Pivovarniška ulica 2, 1000 Ljubljana, Republic of Slovenia with the ownership share of 93.7% of the total number of issued shares, while the remaining shares in an amount of 6.3% are owned by small shareholders.

Undertaking "Pivovarna Union" d.d. Ljubljana, Pivovarniška ulica 2, Ljubljana, Republic of Slovenia, is entered in the register of the Agency for public legal register and services of the Republic of Slovenia under registration number 5048591000, on 23/9/1991.

In 2010 undertaking "Fructal" owned 100.0% ownership share in the economic entity "Eurofruit" d.o.o. Sarajevo, Hifzi Bjelavca 2, 71 000 Sarajevo, registration number 1-18974, of the Municipal Court in Sarajevo. The said undertaking, and its affiliate in Banja Luka, Put srpskih branilaca 25-27, 78 000 Banja Luka, registered in the register entry number 1-1897401 of District Court in Banja Luka, by the decision of the Municipal Court in Sarajevo No. 065-0 - Reg-10-003417 of 17<sup>th</sup> February 2011 was deleted from the register of economic entities having concluded the process of liquidation of the same.

Undertaking "Fructal" in Bosnia and Herzegovina has a 17.32% stake in the undertaking, "Laško Grupa" d.o.o. Sarajevo, Hifzi Bjelavca 1, 71 210 Ilidža, Bosnia and Herzegovina.

Undertaking "Fructal" performs transportation and sale of their products in Bosnia and Herzegovina through five distributors including: undertaking (..)\*\* Banja Luka, undertaking (..)\*\* Kakanj, undertaking (..)\* \* Grude undertaking (..)\*\* Živinice and undertaking (..)\*\* Široki, and sells its products throughout the territory of Bosnia and Herzegovina.

## 2. Obligation to notify concentration

The obligation to notify concentration of undertakings with headquarter or residence abroad 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 31<sup>st</sup> December 2009:

**Table 1.**

No.	Undertaking	Bosnia and Herzegovina	World
1.	„Nectar“	(..)** KM	(..)** KM
2.	„Fructal“	(..)** KM	(..)** KM

Source: Data from Notification

Annual turnovers of the parties to the concentration represent total turnovers (excluding value added tax and other taxes directly related to the participants to concentration in the market of Bosnia and Hercegevine), pursuant to Article 9 item h) of the Decision on notification and criteria for assessment of concentrations of undertakings.

Based on these data on the total annual turnover within the meaning of Article 14 paragraph (1) items a) and b) of the Act, it was found that the parties to the concentration were required to submit a notification.

Furthermore, Council of Competition established that it is an extritorial concentration since it has an impact on the market of Bosnia and Herzegovina, exclusively through the sale of goods of the participants to the concentration on the mentioned market and therefore participants to the concentration were obliged to notify the concentration in terms of Article 2 paragraph (3) of the Act.

### **3. Legal framework of the concentration assesment**

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), Decision on defining categories of dominant positions ("Official Gazette of BiH", no. 18/06 and 34/10) and Decision on notification and criteria for assessment of concentration of undertakings.

### **4. Legal basis and form of the concentration**

Undertaking „Nectar“ and undertaking „Pivovarna union“, d.d. Ljubljana, Pivovarniška ulica 2, 1000 Ljubljana, Republic of Slovenia signed Purchase-sale Agreement on 25<sup>th</sup> July 2011 (hereinafter: Agreement).

Subject of the Agreement is purchase - sale of (..)\*\*, out of total (..)\*\* freely transferable registered shares of the undertaking "Fructal", which makes 93.7% of the total number of issued shares.

The remaining 6.3% of the shares will remain in the ownership of individual shareholders after the enforced concentration. The Applicant, in accordance with relevant legislation of the Republic of Slovenia is obliged to submit a mandatory takeover offer for the remaining shares, and there is a possibility to acquire 100% of the shares of the undertaking "Fructal".

Council of Competition has accepted the Agreement as the legal basis of the concentration pursuant to Article 16 paragraph (1) of the Act, in accordance with Article 30 paragraph (1) item a) of the Act and Article 9 item f) line 6 of the Decision on Notification and criteria for assessment of concentration of undertakings.

In accordance with the foregoing, and pursuant to Article 12 paragraph (1) item b) 1) of the Act, the legal form of concentration is the acquisition of control of one undertaking over another undertaking by purchasing the majority shares.

### **5. Relevant market of the concentration**

The relevant market, 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.

Relevant product/service market in this case is the sale of fruit and vegetable juices as main activity of the participants to the concentration on the whole territory of Bosnia and Herzegovina.

Based on the foregoing, the relevant product market of the concentration is determined as the market of sale of fruit and vegetable juices on the territory of Bosnia and Herzegovina.

## 6. Analysis of the relevant market

Market shares of the participants to the concentration and their competitors on the relevant market in 2010:

**Table 2**

No	Undertaking	Market share (%)
1.	<b>„Fructal“ Živilinska industrija d.d. Ajdovščina, Republika Slovenija</b>	(..)**
2.	„Jamnica“ d.d. Zagreb, Republika Hrvatska	(..)**
3.	<b>„Nectar“ d.o. Bačka Palanka, Republika Srbija</b>	(..)**
4.	„Coca Cola Beverages BH“ d.o.o. Sarajevo, Bosna i Hercegovina	(..)**
5.	„Vino Župa“ d.d. Aleksandrovac, Republika Srbija	(..)**
6.	„Vitamina“ a.d. Banja Luka, Bosna i Hercegovina	(..)**
7.	„Vegafruit“ d.o.o. Doboj Istok, Bosna i Hercegovina	(..)**
8.	„Rauch Fruchtsäfte GmbH“ Rankweil, Austrija	(..)**
9.	„Vindija“ d.d. Varaždin, Republika Hrvatska	(..)**
10.	„Milkos“ d.d. Sarajevo, Bosna i Hercegovina	(..)**
11.	„Bony“ d.o.o. Tuzla, Bosna i Hercegovina	(..)**
12.	„Pivovarna union“ Ljubljana, Republika Slovenija	(..)**
13.	„Hercegovinavino“ d.o.o. Mostar, Bosna i Hercegovina	(..)**
14.	„Laberion“ Podujeva, Kosovo	(..)**
15.	„Vitinka“ a.d. Kozluk, Bosna i Hercegovina	(..)**
16.	„IB TEAM“ d.o.o. Krnješevci, Republika Srbija	(..)**
17.	„Pago“ d.o.o. Zagreb, Republika Hrvatska	(..)**
18.	„Sarajevska pivara“ d.d. Sarajevo	(..)**
19.	Others	(..)**
	Total	100
	<b>TOTAL OF PARTICIPANTS TO THE CONCENTRATION (1+3)</b>	(..)**

Source: Data from the Notification

According to the data (Table 2), total market share of the participants to the concentration on the relevant market of sale of fruit and vegetable juices in Bosnia and Herzegovina is (..)\*\*%.

In addition to the participants to concentration, there are other undertakings on the relevant market with bigger market shares such as „Jamnica“ d.d. Zagreb, Republic of Croatia with (..)\*\*%, „Coca Cola Beverages BH“ d.o.o. Sarajevo, Bosnia and

Herzegovina with (..)\*\*%, „Vino Župa“ d.d. Aleksandrovac, Republic of Serbia with (..)\*\*%, and „Vitaminska“ a.d. Banja Luka, Bosnia and Herzegovina with (..)\*\*% market share.

## **7. Assessment of the concentration**

Having analysed relevant data, in terms of Article 17 of the Act, Council of Competition assessed that the implementation of the concentration shall increase market share of the Applicant in the relevant market of sale of fruit and vegetables juices in Bosnia and Herzegovina (Table 2), but it will not lead to the creation and strengthening of a dominant position.

In the process of decision making Council of Competition found that a number of business entities engaged in the sale of fruit and vegetables juices operate on the relevant market.

Also, the Council of Competition took into account the plans of the Applicant, in terms of introducing innovation in the form of new products and technological processes, which in the long term could have positive effects for end consumers in the relevant market.

Consequently, the Council of Competition assessed the concentration permitted in terms of Article 18 paragraph (2) item a) of the Act, cited above in the exposition.

## **8. Administrative taxes**

In accordance with Article 2 tariff number 107 paragraph (1) 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 i 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**