

**BOSNA I HERCEGOVINA**  
*Konkurencijsko vijeće*



**БОСНА И ХЕРЦЕГОВИНА**  
*Конкуренијси савјет*

**RESOLUTION**

**Upon Notification of an intended concentration between undertaking OAO NeftegazInKor,  
Moscow, Russian Federation and undertaking Rafinerija nafte Bosanski Brod, Bosnia and  
Herzegovina**

**Sarajevo  
May 2007**



Number: 01-01-26-007-26-II/07  
Sarajevo, 23 May 2007

Pursuant to Article 42, paragraph (1), item g), in connection with Article 12 and 14 of the Act on Competition («Official Gazette of BH», No. 48/05) and Article 116, paragraph (2) of the Administrative procedure Law («Official Gazette of BH», No. 29/02) and upon the Notification of an intended concentration of undertaking OAO NeftegazInKor, Kalančevskaja ulica 11/2, 107078 Moscow, Russian Federation submitted by the authorized representative Slavka Šćepanovića, b. 1, 4/17 Pokrovsky b-r, Office 2, 107078 Moscow, Russian Federation, on 12 February 2007 under the No.: 01-01-26-007-II/07, the Council of Competition in its 46th (forty-sixth) session, held on 23 May 2007 has adopted

### **RESOLUTION**

A Notification of intended concentration of undertaking OAO NeftegazInKor, Kalančevskaja ulica 11/2, 107078 Moscow, Russian Federation is dismissed due to the non existence of notification obligation, pursuant to the Act on Competition.

### **Exposition**

The Council of Competition received a Notification of intended concentration (hereinafter: the Notification) which will be implemented through acquiring of control over the undertaking Rafinerija nafte d.d. Bosanski Brod, Svetog Save bb, 74450 Bosanski Brod, Bosnia and Herzegovina (hereinafter: Petrol) by OAO NeftegazInKor, Kalančevskaja ulica 11/2, 107078 Moscow, Russian Federation (hereinafter: the Applicant or NeftegazInKor), submitted by the authorized representative Slavka Šćepanovića, b. 1, 4/17 Pokrovsky b-r, Office 2, 101000 Moscow, Russian Federation, on 12 February 2007 under the No.: 01-01-26-007-II/07.

Having examined the Notification, pursuant to Article 30 of the Act on Competition (hereinafter: the Act) and Regulation on Notification and Criteria for Assessment a Concentration of undertakings («Official Gazette of BH», No. 95/06), the Council of Competition established that the Notification was not complete (financial reports of the parties to the concentration for 2006, ownership structure, connected economic association were not submitted).

The Council of Competition asked for completion of the Notification, pursuant to Article 31, paragraph(1) and (2) of the Act, (on 16 February 2007, 23 February 2007, 02 March 2007, 14 March 2007, 20 March 2007, 21 March 2007, 02 April 2007, 11 April 2007, 17 April 2007, 20 April 2007) which was made by the Applicant in accordance with the request (on 22 February 2007, 27 February 2007, 13 March 2007, 15 March 2007, 23 March 2007, 29 March 2007, 10 April 2007, 19 April 2007).

When the Council of Competition received the required documents and when it established that the Notification was complete, it issued an Acknowledgement of receipt of the complete and adequate Notification, pursuant to Article 30, paragraph (3) of the Act, No. 01-01-26-007-24-II/07, on 24 April 2007.

The Council of Competition established the following facts on the basis of the submitted Notification and documents:

The Applicant submitted the Notification within the legally determined time period, pursuant to Article 16, paragraph (1) of the act.

The Applicant stated that the Notification of the concentration in question was not submitted for assessment to any other competent body outside of the BH territory, pursuant to Article 30, paragraph (2) of the Act.

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

Legal basis of the concentration in question is an Agreement of sales of stocks in undertaking Rafinerija nafte d.d. Bosanski Brod, undertaking Petrol d.d. Banja Luka and undertaking Rafinerija ulja Modriča (Oil Refinery) d.d. Modriča (hereinafter: the Agreement of sales) concluded, on 2 February 2007, between undertakings OAO NeftegazInKor ( a buyer) and the Government of Republic of Srpska ( a seller).

Legal form of the concentration in question is an acquisition of control over the undertaking Rafinerija nafte d.d. Bosanski Brod (hereinafter: Rafinerija Brod) by undertaking NeftegazInKor, pursuant to Article 12, paragraph (1), item b) of the Act. The control will be carried out by means of purchase of (..)\*\*<sup>1</sup> of ordinary stocks with the voting right, each at (..)\*\* per value, which corresponds to ownership share of 64,998602% of the total number of stocks in undertaking Rafinerija Brod which are in possession of the Government of Republic of Srpska and (..)\*\* of ordinary stocks with a voting right, each at (..)\*\* per value, which amounts 5,0% of the total number of stocks in undertaking Rafinerija Brod which are in possession of the Restitution Fund of Republic of Srpska.

After the implementation of the concentration the undertaking NeftegazInKor will be the owner of (..)\*\* of common stocks with voting right in undertaking Rafinerija Brod each (..)\*\* per value, which corresponds to the majority ownership shares of 69,998602% of the total number of stocks.

### **The parties to the concentration**

The parties to the concentration are undertaking Otvoreno dioničko društvo (Open stock association) Naftegazovaja Inovacionaja Korporacija - OAO NeftegazInKor, 107078 Moskva, Kalančevskaja 11/2, Moscow, Russian Federation and undertaking Rafinerija nafte d.d. Bosanski Brod, Svetog Save bb, 74450 Bosanski Brod, Bosnia and Herzegovina.

### ***NeftegazInKor***

NeftegazInKor is registered at the state register of legal entities under the No.: 1027708003256, on 23 August 2002 (the tax and welfare inspection of the Russian Federation Ministry no.8 for the central administration county of the City of Moscow). NeftegazInKor keeps its own register on

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<sup>1</sup> (..)\*\* These data are a business secret.

value of stocks (the state registration number showing the securities issue: 1-01-07474-A) on the basis of the regulations of the Federal Committee for market and securities No.:27 , from 2 October 1997, and it has a total of (..)\*\* of common stocks, each (..)\*\* per value.

The ownership structure in capital shares of NeftegazInKor (stated by the Applicant) on 2 February 2007 (the date of conclusion of the Agreement between the parties to the concentration):

- undertaking Otvoreno dioničarsko društvo (OAO) Zarubezneft, Armjanskij pereulok 9 -1, 101990 Moscow, Russian Federation, owns (..)\*\* of common stocks valued at (..)\*\* , which is 40,0% in total capital shares.

Undertaking OAO Zarubezneft is 100,0% owned by the Russian Federation, that is the Federal Agency for managing federal property.

- Undertaking Invest-technologies, an association with limited responsibility, Radiščevskaja verh 4, 109240 Moscow, Russian Federation, with the main state registration number 5067746347389, owns (..)\*\* common stocks of (..)\*\* , that is 20,0% in total capital shares.

Natural entity, (..)\*\* , Russian Federation, is the only founder of undertaking Invest Technology, entered into registry of the Interregional inspection of the Federal taxation office on 29.08.2006. under the No. 46 for the city of Moscow.

- undertaking Nepata, an association with a limited responsibility, Energetičkij proezd 3, 127015 Moscow, Russian Federation, with the main state registration number 1047796915341, owns (..)\*\* of the common stocks, value of (..)\*\* and that is 20,0% in total capital shares.

Natural entity, (..)\*\* is the only founder of undertaking Nepata, entered into registry of the Interregional inspection of the Federal taxation office on 30.11.2004. under the No. 46 for the city of Moscow.

- Undertaking Junik Development, an association with a limited responsibility, Ljusinovskaja ulica 36/50, 113093 Moscow, Russian Federation, with the main state registration number 1037700120292 owns (..)\*\* of the common stocks, valued at (..)\*\* and that is 20,0% of total capital shares.

Natural entity, (..)\*\* , Russian Federation is the only founder of undertaking Junik Development, registered at the registry of the Interregional inspection of the Federal taxation office on 28.11.2001. under the No. 5 for the city of Moscow.

The main activity of undertaking NeftegazInKor is exploration, construction and exploitation of oil and gas, development and distribution of oil and its derivatives and gas, the storage for oil and its derivatives, gas and oil equipment assemblage and incorporation, etc.

The Applicant stated that it has no connected /subsidiary undertakings registered in Bosnia and Herezgovina and that it performs no activity in the market of production /sale of goods and /or services in Bosnia and Herezgovina.

### **Undertaking Rafinerija Brod**

Undertaking Rafinerija Brod is registered in the Municipal Court of Doboj under the number 1-4616-00. The ownership structure of the capital stocks of the undertaking Rafinerija Brod is the following: the Government of Republic of Srpska 65,0%, small shareholders 20,0%, Pension Fund of Republic of Srpska 10,0%, the Restitution Fund of Republic of Srpska 5,0%.

The main activity of the undertaking Rafinerija Brod is drilling of rude oil and natural gas, production of oil derivates, the storage and wholesale distribution of oil derivatives .

The Applicant stated that undertaking Rafinerija Brod has no connected undertakings in Bosnia and Herzegovina.

### **Assessment of the Notification on intended concentration**

Relevant market pursuant to Article 3 of the Act and Articles 4,5 and 6 of the Regulation on the definition of a relevant market («Official Gazette of BH», No.18/06) is a market of particular products/services which are the subject of business activities in the particular geographic market.

The relevant market of the concentration concerned is production and distribution of the oil derivates in the entire territory of Bosnia and Herzegovina.

According to the data stated in the Notification, in the NeftegazInKor ownership structure the undertaking Zarubezneft has the biggest shares of 40% and other three undertakings have 20% of the shares; that means that no undertaking in the ownership structure of the NeftegazInKor has dominant position- that no of them has in its possession more than 50% of stocks or voting rights, pursuant to Article 2, paragraph (2) of the Act.

According to the above mentioned and pursuant to Article 14 of the Act, the undertaking Zarubezneft has no control over the undertaking NeftegazInKor and because of that a total income achieved exclusively by the undertaking NeftegazInKor is considered in calculating a total income on a worldwide level.

Total income of the undertakings, the Parties to the concentration on 31 December 2006 (in the year which preceding the concentration concerned), pursuant to Article 14 of the Act (Table 1.):

**Table 1.**

<b>(KM)</b>	<b>NeftegazInKor</b>	<b>Rafinerija Brod</b>
World	(..)**	-
Bosnia and Herzegovina	-	(..)**
Total-parties to the concentration	(..)**	

Total common income of the Parties to the concentration (Table 1.) in 2006, was (..)\*\*, and therefore the conditions stipulated in the Article 14, paragraph (1), item a) of the Act are not fulfilled, that is the Parties to the concentration did not realize a total annual income (in the year preceding the concentration) on the basis of which they would be obliged to submit a Notification.

Also, the common market shares of the parties to the concentration in the relevant market of Bosnia and Herzegovina in 2006 was below 1,0%; the undertaking Rafinerija Brod has 0,1% of

the market shares, and NeftegazInKor has no market shares in the relevant market of Bosnia and Herzegovina.

As the market shares of the parties to the concentration in the relevant market does not exceed 40,0%, the conditions for obligatory submitting of the Notification is not fulfilled, pursuant to Article 14, paragraph(1) item b) of the Act.

On the basis of all presented information, the Council of Competition has decided as it is stated in enacted terms of this Resolution.

#### ***Administration tariffs***

On this Resolution the Applicant, pursuant to the Article 2, paragraph (1), tariff number 108, item c) 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 1.000,00 KM for the benefit of the budget of Institutions of Bosnia and Herzegovina

#### **LEGAL REMEDY**

No appeal is allowed against this Resolution. 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 Resolution, i.e. from the date of its publication in the Official Gazette of BIH.

The Resolution will be published in the “Official Gazette of BIH” and in Official Gazettes of Entities and Brčko District of Bosnia and Herzegovina.

**President**

**Sanja Božić**