

BOSNA I HERCEGOVINA

Konkurencijsko vijeće



БОСНА И ХЕРЦЕГОВИНА

Конкуренијски савјет

Decision

**Adopted upon Notification of intended concentration between undertakings
Atlantic Naložbe Ltd. Ljubljana and DROGA KOLINSKA d.d. Ljubljana**

**Sarajevo
October, 2010. godine**



Number: 01-01-26-019- 20-II/10
Sarajevo, 27 October 2010.

Pursuant to Article 25, paragraph (1) item e), Article 42, paragraph (1) item d), in connection with the Article 12, 14, 16, 17 and 18 of the Competition Act («Official Gazette of BiH», No. 48/05, 76/07 and 80/09), and upon the Notification of intended concentration of the undertaking Atlantic Naložbe Ltd. Ljubljana, Kopraska ulica 98, 1000 Ljubljana, Republic of Slovenia, number 01-01-26-019-II/10, filed by the attorney Enis Jusufović, Hamdije Kreševljakovića 40, 71000 Sarajevo, received on 13 June 2010, the Council of Competition at its 3rd (third) session, held on 27 October 2010, adopted

DECISION

1. A concentration in the market of non-alcoholic beverages in Bosnia and Herzegovina, which will arise by acquisition of control of the undertaking Atlantic Naložbe Ltd. Ljubljana, Kopraska ulica 98, 1000 Ljubljana, Republic of Slovenia, over the undertaking DROGA KOLINSKA Živilska industrija d.d., Kolinska 1, 1000 Ljubljana, Republic of Slovenia, through the purchase of (..)*¹% of shares, is assessed compatible.
2. This Decision shall be recorded in the Register on Concentrations.
3. This Decision is final and shall be published in «Official Gazette of BH», and official gazettes of Entities and Brcko District of Bosnia and Herzegovina.

Exposition

Council of Competition received on 13 June, Notification of intended concentration (hereinafter Notification) No. 01-01-26-019-II/10 of the undertaking Atlantic Naložbe d.o.o. Ljubljana, Kopraska ulica 98, 1000 Ljubljana, Republic of Slovenia (hereinafter Applicant or Atlantic Naložbe), submitted through the attorney Enis Jusufovic Hamdije Kreševljakovića 40, 71000 Sarajevo (based on the power of attorney No OV-3181/10 of 9 June 2010) by means of which the undertaking Atlantic Naložbe intends to acquire control over the undertaking DROGA KOLINSKA Živilska industrija d.d., Kolinska, 1000 Ljubljana, Republic of Slovenia (hereinafter DROGA KOLINSKA) through the purchase of (..)*²% of shares.

¹ (..)*Information is business secret

² (..)*Information is business secret,

The Applicant submitted the supplements to the Notification, by means of official letters No: 01-01-26-019-1-II/10 of 15 June 2010, and No: 01-01-26-019-2-II/10 of 4 August 2010.

Having an insight into the Notification, the Council of Competition established that it was not complete in terms of Article 30 of the Competition Act, paragraph 1 (hereinafter Act) and Articles 9 and 11 of the Regulation on notification and criteria for assessment of notification (Official Gazette BH, No. 34/10) and requested supplements to the Notification, document No. 01-01-26-019-3-II/10 of August 13 2010, document No. 01-01-26-019-6-II/10 of 31 August and document No. 01-01-26-019-12-II/10 of 28 September 2010.

The Applicant supplemented the subject Notification with official letters No. 01-01-26-019-4-II/10 of 24 August 2010, No. 01-01-26-019-5-II/10 of 27 August 2010, No. 01-01-26-019-7-II/10 of 31 August 2010, No. 01-01-26-019-8-II/10 of 1 September 2010, No. 01-01-26-019-9-II/10 of 2 September, No. 01-01-26-019-10-II/10 of 3 September, No. 01-01-26-019-11-II/10 of 7 September 2010, No. 01-01-26-019-13-II/10 of 28 September 2010 and No. 01-01-26-019-14-II/10 of 29 September 2010.

In accordance with the Article 16, paragraph (4) of the Act, the Council of Competition published the Information on filed Notification (document No. 01-01-26-019-16-II/10 of 30 September 2010) in BH daily papers, inviting all interested undertakings to submit written comments and opinions in relation to the execution of subject concentration. There were no submitted comments to the mentioned Information.

Upon the completion of the Notification, the Council of Competition issued the Acknowledgment of receipt of complete and adequate Notification, No. 01-01-26-019-18-II/10 of 6 October 2010, pursuant to the Article 30, paragraph (3) of the Act.

In accordance with the Article 30, paragraph (2) of the Act, the Applicant stated that the request for assessment of the subject concentration has been submitted to responsible competition authorities of Republic of Croatia, Republic of Slovenia, Republic of Serbia, Republic of Macedonia, Republic of Montenegro and Russia. Information on compatibility of the concentration No. 580-02-2010-75-9 and Decisions allowing the concentration No. 01-155/5 and No. 6/0-02-326/2010 have been issued by relevant competition authorities of Republic of Croatia, Republic of Montenegro and Republic of Serbia.

After the analysis of gathered information from the Notification, in the concentration assessment procedure, the Council of Competition has established the following facts:

Notification of the concentration was filed within the period prescribed in terms of Article 16, paragraph (1) of the Act.

1. Participants to the concentration

Participants to the concentration are undertakings Atlantic Naložbe Ltd. Ljubljana, Koprška ulica 98, 1000 Ljubljana, Republic of Slovenia and DROGA KOLINSKA Živilska industrija d.d., Kolinska 1, 1000 Ljubljana, Republic of Slovenia.

1.1. Atlantic Naložbe

Undertaking Atlantic Naložbe Ltd. Ljubljana, Koprška ulica 98, 1000 Ljubljana, Republic of Slovenia is a company with special purpose, recorded in Court Register in Ljubljana on 14 June 2010 under the registration number 3748529000.

Founder and the owner of the undertaking Atlantic Naložbe is undertaking Atlantic Grupa ulaganja Ltd. Zagreb, Miramarska 23., 10000 Zagreb, Republic of Croatia (hereinafter: Atlantic Grupa ulaganja), whose founder and owner is the undertaking Atlantic Grupa d.d. Zagreb, Miramarska 23., 10000 Zagreb, Republic of Croatia (hereinafter: Atlantic Grupa).

Undertaking Atlantic Grupa ulaganja was registered at Trade Court in Zagreb on 19 January 2010 under the registration number 0001-Tt-09/14632-2.

Undertaking Atlantic was registered at Trade Court in Zagreb on 17 November 1998 under the registration number 0001-Tt-95/13821-3. Majority owner and majority shareholder of the undertaking Atlantic Grupa is a natural person Emil Tedeschi ((..)* with (..) *% shares.

Undertaking Atlantik Grupa is a multinational company, combining development, sale and distribution of the consumer goods, operating directly in 10 and indirectly in 30 countries. Undertaking Atlantik Grupa is a leading regional producer of instant vitamin packages of sport food, also operating in pharmaceutical sector through its subsidiary undertaking Atlantic Farmacia Ltd. Zagreb, Miramarska 23.

Undertaking Atlantik Grupa has four business divisions/units in its organizational structure: healthy food (vitamin beverages and teas, cosmetics and personal hygiene), sports and active diet, distribution (own or other brands Wrigley, Durex, Duracell, Ferrero, Dyvis, Lorenz, Manner, Vivera, Johnson & Johnson, Scholl, Schwartau, Emco, Karolina, Scholl and One2play), pharma (vitamins, minerals and food supplements) and OTC (over the counter medicines).

1.2. Atlantic Naložbe in Bosnia and Herzegovina

Undertaking Atlantic Naložbe, i.e. undertaking Atlantik Grupa is present on Bosnia and Herzegovina market through its authorized distributor business entity ATACO Ltd. Mostar (hereinafter ATACO).

Ownership structure of the business entity ATACO consists of a natural person Emil Tedeschi with (..) *% of total founding capital, who is also a member of Supervisory Board, and three other natural persons with the remaining (..) *% of ownership share.

2. DROGA KOLINSKA

Undertaking DROGA KOLINSKA, Živilska industrija d.d., Kolinska 1., 1000 Ljubljana, Republic of Slovenia was recorded in Court Register in Ljubljana on 3 May 2010 under the registration number 2114011000.

Majority owner of the undertaking DROGA KOLINSKA is undertaking Istrabenz, holdinška družba d.d., Cesta Zore Perello-Godina 2., 6000 Koper, Republic of Slovenia with (..) *% of shares, while undertakings NCA Investment Group, Surčinska 6a, Novi Beograd, and Republic of Serbia have (..) *%, undertaking Probanka, Trg Leona Štuklja 12, 2000 Maribor, Republic of

Slovenia has (...)%, and undertaking Faktor Banka, Tivolska cesta 48, 1000 Ljubljana, Republic of Slovenia has (...)% of shares.

Main registered activities of undertaking DROGA KOLINSKA are tea and coffee processing, production of mineral water and non-alcoholic beverages, fruit and vegetable juices, meat products, homogenized products, diet food, chocolates and sweets, processing and canning of fruits and vegetables, processing and packaging of cereals and spices, processing of sea salt, medical herbs and teas.

2.1. Subsidiary companies of DROGA KOLINSKA in Bosnia and Herzegovina

Undertaking DROGA KOLINSKA directly owns following undertakings in Bosnia and Herzegovina: DROGA Ltd. Sarajevo and ARGETA Ltd. Sarajevo, and indirectly owns subsidiary companies: DK FAKTOR Ltd. Sarajevo, DK TRADE Ltd. Sarajevo, KOFIKOM PRODUKT Ltd. Glavičice, KOFIKOM Ltd Sarajevo and KOLEKS Ltd. Sarajevo.

2.1.1. DROGA Ltd.. Sarajevo

Undertaking DROGA Ltd Sarajevo, Donji Hadžići 138., 71000 Sarajevo, Bosnia and Herzegovina, registered on 21 January 1999 at Municipality Court in Sarajevo under registration number 65-01-0580-09 (former number : 1-21501) is 100% owned by undertaking DROGA KOLINSKA.

Main registered activity of the undertaking DROGA Ltd. Sarajevo is unspecialized wholesale of food, beverages and tobacco.

2.1.2. ARGETA Ltd. Sarajevo

Undertaking ARGETA Ltd. Sarajevo, Donji Hadžići 138. 71000 Sarajevo, Bosnia and Herzegovina, registered on 11 July 2005 at the Cantonal Court in Sarajevo under registration number: 1-25270, is 100% owned by undertaking DROGA KOLINSKA.

Main registered activity of the undertaking ARGETA Ltd. Sarajevo is production and canning of poultry and rabbit meat.

2.1.3. DK FAKTOR Ltd. Sarajevo

Undertaking DK FAKTOR Ltd. Sarajevo, Donji Hadžići 138., 71000 Sarajevo, Bosnia and Herzegovina, registered on 18 May 2010 at the Municipality Court in Sarajevo under registration number 1-1660, is 100% owned by undertaking DROGA Ltd. Sarajevo.

Main registered activity of the undertaking DK FAKTOR Ltd. Sarajevo is retail of food products, beverages and tobacco products.

2.1.4. DK TRADE Ltd. Sarajevo

Undertaking DK TRADE Ltd. Sarajevo, Donji Hadžići 138., 71000 Sarajevo, Bosnia and Herzegovina, registered on 2 February 2006 at the Municipality Court in Sarajevo under registration number 65-01-0342-09 (former number: 1-25475), is 100% owned by undertaking GRAND PROM a.d. Beograd, 11000 Belgrade, Republic of Serbia, which is owned by undertaking DROGA KOLINSKA.

Main registered activity of the undertaking DK TRADE Ltd. Sarajevo is wholesale and retail of consumer goods.

2.1.5. KOFIKOM PRODUKT Ltd. Glavičice

Undertaking KOFIKOM PRODUKT Ltd Glavičice, Glavičice bb, 76300 Bijeljina, Bosnia and Herzegovina, registered on 22 January 2004 at the Main Court in Bijeljina under registration number 1-5680, is 100% owned by undertaking GRAND PROM a.d. Belgrade, Republic of Serbia, which is owned by undertaking DROGA KOLINSKA. d.d. Ljubljana

Main registered activity of the undertaking KOFIKOM PRODUKT Ltd Glavičice is wholesale of coffee, teas and spices.

2.1.6. KOFIKOM Ltd. Sarajevo

Undertaking KOFIKOM Ltd Sarajevo, Donji Hadžići 138, 71000 Sarajevo, Bosnia and Herzegovina, registered on 16 September 2003 at the Municipality Court in Sarajevo under registration number 1-24323, is 100% owned by undertaking DK TRADE Ltd. Sarajevo.

Main registered activity of the undertaking KOFIKOM Ltd. Sarajevo is wholesale of coffee, teas and spices.

2.1.7. KOLEKS Ltd. Sarajevo

Undertaking KOLEKS Ltd. Sarajevo, Marka Marulića bb, 71000 Sarajevo, Bosnia and Herzegovina, registered on 19 June 1991 at the Municipality Court in Sarajevo under registration number 1-6542, is 100% owned by undertaking KOLINSKA Prehrambena industrija p.o. Ljubljana.

Legal successor of the merger of undertakings KOLINSKA Prehrambena industrija p.o. Ljubljana and Droga Portorož Izola is undertaking DROGA KOLINSKA d.d. Ljubljana.

Undertaking KOLEKS Ltd. Sarajevo is in liquidation procedure.

3. Legal framework and assessment of the concentration

During the assessment procedure the Competition Council has applied provisions of the Act, Regulation on Notification and criteria for the assessment of concentration of undertakings, and Regulation on definition of relevant market. ("Official Gazette" No. 18/06 and 34/10).

4. Legal basis and form of concentration

According to the Notification, legal basis for the concentration is Agreement on sale of shares (hereinafter: Agreement), signed between undertaking ISTRABENZ holdinška družba d.d., as Seller and undertaking Atlantic Naložbe as Buyer and undertaking ATLANTIC GRUPA d.d., as Guarantee on 30 June 2010 in Ljubljana.

According to the Agreement, undertaking Atlantic Naložbe is buying (..)*% of the basic capital, which is (..)* of the regular shares of undertaking DROGA KOLINSKA.

According to the Agreement, Seller i.e. undertaking ISTRABENZ holdinška družba, originally owned (..)* regular shares, by which they formed (..)*% of issued shares of undertaking DROGA KOLINSKA. On the day of Agreement signing, Seller has signed conditional agreements on sale of shares of undertaking DROGA KOLINSKA, whereby it shall, up to transaction day, acquire

(..)* of regular shares of undertaking NCA Investment Group Ltd. , by which they form (..)*% of issued shares of undertaking DROGA KOLINSKA, undertaking Probanka d.d. (..)* of regular shares by which they form (..)*% and undertaking Faktor banka d.d. (..)* of regular shares by which they form (..)*% of issued shares of undertaking DROGA KOLINSKA.

Agreement on sale of shares of the undertaking DROGA KOLINSKA represents framework agreement defining basic guidelines regarding transfer of shares, while the real transfer of shares from Seller to Acquirer shall happen upon the fulfillment or renouncement of the foresaid preconditions on/after the finalization of transaction.

Competition Council has accepted the Agreement as legal basis for the concentration in terms of Article 16, paragraph (1) of the Act, and in accordance with Article 30, paragraph (1), item a) of the Act and Article 9 item f) line 3 of the Regulation on Notification and criteria for the assessment of concentration of undertakings.

Legal form of the concentration is acquisition of control or dominant influence of one or more undertakings over the other undertaking by purchase of majority shares, in terms of Article 12. paragraph (1) item b) line 1 of the Act, in the undertaking DROGA KOLINSKA by undertaking Atlantic Naložbe.

5. Obligation to notify on intended concentration

Obligation to notify on intended concentration of undertaking, pursuant to Article 14 paragraph (1) of the Act, exists if total annual income of all parties to the concentration achieved in sales of goods and/or services on the world market amounts to over 100.000.000,00 KM, according to final account in the year proceeding the concentration and if total annual income of at least two parties to the concentration achieved in sales of goods and/or services on the market of Bosnia and Herzegovina amounts to at least 8.000.000,00 KM according to final account in the year proceeding the concentration or if their joint participation on relevant market is higher than 40%.

Total annual income of the undertakings, participants to the concentration (and their subsidiary companies) on 31 December 2009:

Table 1.

	Atlantic Grupa d.d.		DROGA KOLINSKA Group		DROGA KOLINSKA d.d.	
	EUR	KM	EUR	KM	EUR	KM
World	(..)*	(..)*	(..)*	(..)*	(..)*	(..)*
BiH	(..)*	(..)*	(..)*	(..)*	(..)*	(..)*

Source: Data from Notification

Competition Council has established that the undertakings, participants to the concentration, have achieved total income in 2009 in terms of Article 14, paragraph (1) of the Act and thus have the obligation to notify on the indented concentration.

Annual income of participants to the concentration (Table 1.) represents total income (without value added tax and other taxes, directly related to participants to the concentration on the market of Bosnia and Herzegovina), according to Article 9 item h) of the Regulation on Notification and criteria for the assessment of concentration of undertakings.

6. Relevant market

Relevant market, in terms of Article 3 of the Act and Articles 4, 5 and 6 of the Regulation on definition of relevant market, is the market of certain products (services) that are subject of operation on particular geographic market

According to the provisions of Article 4 of the Regulation on definition of relevant market, relevant product market includes all products and / or services that consumers consider inter-replaceable due to their essential characteristics, quality, purpose, price or method of use.

Furthermore, under Article 5 of the Regulation on definition of relevant market, relevant market in geographical sense includes the whole or part of the territory of Bosnia and Herzegovina, where the market competitors operate in sales and / or purchase of relevant products under equal or sufficiently balanced conditions that significantly differ from the conditions of market competition in neighboring geographic markets.

Based on their registered activities, undertakings DROGA KOLINSKA and Atlantic Grupa operate on the non-alcoholic beverages market in Bosnia and Herzegovina through their products/brands – sparkling drink Cockta, mineral water Donat and vitamin drink Cedevita.

Therefore, relevant product market of the intended concentration is the market of sale of non-alcoholic beverages.

In geographic sense, relevant market of sale of non-alcoholic beverages is the market of Bosnia and Herzegovina since the undertaking ATACO Ltd Mostar distributes the products of the undertaking Atlantic Grupa on the market of Bosnia and Herzegovina through distribution network with five centers in: Sarajevo, Mostar, Siroki Brijeg, Tuzla, Banja Luka and Laktasi.

According to the foresaid, relevant market of the concentration is market of sale of non-alcoholic beverages on the territory of Bosnia and Herzegovina.

7. Analysis of the non-alcoholic beverages market

In the analysis of relevant market of the participants to the concentration and their main competitors and assessment of market participation, information submitted by the Applicant have been used as relevant.

Overview of market participation of the participants to the concentration, i.e. their subsidiary companies and main competitors on the non-alcoholic beverages market on the territory of Bosnia and Herzegovina in 2009:

Table 2.

No	Undertaking	Market participation (%)
1.	Agrokor, Zagreb	21,7
2.	Coca-Cola, Sarajevo	21,4
3.	Vitinka, Kozluk	7,2
4.	Pivovarna Laško, Laško	6,4
5.	Sarajevska Pivara, Sarajevo	2,9
6.	Atlantic Grupa, Zagreb	2,8
7.	Vino Župa, Aleksandrovac	2,6
8.	Nectar, Bačka Palanka	2,4

9.	Kreis Industriehandel, Basel	2,4
10.	Bony, Tuzla	2,2
11.	DROGA KOLINSKA, Ljubljana	1,5
12.	Others	26,4
	TOTAL	100,0
	TOTAL (6+11)	4,3

Source: Data from Notification

The data (Table 2.) shows that total market participation of the participants to the concentration on the non-alcoholic beverages market in Bosnia and Herzegovina in 2009 was 4,3%, i.e. undertaking Atlantic Grupa has 2,8% participation (vitamin drink), and undertaking DROGA KOLINSKA has 1,5% market participation (of which sparkling drink Cockta has 1,3%, and mineral water Donat 0,2%).

8. Assessment of the concentration

After assessment and analysis of relevant data in terms of Article 17 of the Act, Council of Competition has found that the intended concentration shall not increase market participation (according to data analysis of the relevant market, see Table 2), i.e. or create or strengthen dominant position of the parties to the concentration.

In making the final decision, Council of Competition took into consideration the fact that undertakings DROGA KOLINSKA and Atlantic Grupa do not have significant operation overlapping but possess significant possibilities of mutual supplementation – in production and sale of food and drinks and participation on particular markets. This will certainly lead to a number of conveniences for consumers in Bosnia and Herzegovina, primarily regarding expansion of assortment of products, increase of quality and price reduction.

In accordance with Article 18, paragraph (2) items a) of the Act, Council of Competition has made decision as stated in the disposition of the Decision.

9. Administrative taxes

Pursuant to Article 2, tariff number 107, paragraph (1), item d) line 1, of the Regulation on administrative taxes related to procedural actions before Council of Competition (Official Gazette of BiH, No. 30/06) the Applicant is obliged to pay administrative taxes of 2.500,00 KM, for the benefit of the Budget of Bosnia and Herzegovina Institutions.

10. Legal remedy

The Appeal is not allowed against this Decision.

Unsatisfied party is entitled to bring an administrative dispute before the Court of Bosnia and Herzegovina within thirty days from the date of receipt of this Decision, i.e. from the date of its publication.

President

Dr. Stjepo Pranjić