

BOSNA I HERCEGOVINA

Konkurencijsko vijeće



БОСНА И ХЕРЦЕГОВИНА

Конкyренцијски савјет

**Conclusion adopted upon Notification of undertakings „OPTIMA Grupa“
d.o.o for trade of oil and oil derivates Banja Luka, Bosnia and Herzegovina
and “KEPOL TERMINAL” d.o.o., Zadar, Republic of Croatia**

**Sarajevo
January, 2011**



Number: 01-26-1-025- 9- II/10
Sarajevo, 18.01.2011

Pursuant to Article 25 paragraph (1) Item e), Article 42 paragraph (2), and in accordance with Articles 12, 14 and 16 of the Competition Act («Official Gazette of BiH», br. 48/05, 76/07 i 80/09), and solving upon joint Notification of undertaking „OPTIMA Grupa” d.o.o. for trade of oil and oil derivatives Banja Luka, Kralja Alfonsa XIII No 37A, 78000 Banja Luka, Bosnia and Herzegovina and undertaking KEPOL TERMINAL d.o.o. for storage and trade, Gaženička bb, 23000 Zadar, Republic of Croatia, filed by Dijana Savić, Main specialist in Department for corporate management in Direction for corporate management of OPTIMA Grupa, received on 01.11.2010 under No. 01-26-1-025-II/10, Competition Council at its 7th session held on 18.01.2011, issued the following

CONCLUSION

1. Joint Notification of the undertaking „OPTIMA Grupa“ d.o.o. for trade of oil and oil derivatives Banja Luka, Kralja Alfonsa XIII No. 37A, 78000 Banja Luka, Bosnia and Herzegovina and undertaking „KEPOL TERMINAL” d.o.o., Gaženička bb, 23000 Zadar, Republic of Croatia, is dismissed due to non-existence of obligation to notify in terms of provisions of Competition Act.
2. This Conclusion shall be published in «Official Gazette of BiH», official gazettes of Entities and Brcko District of Bosnia and Herzegovina.

Exposition

Competition Council received on 01.11.2010., a joint Notification on intended concentration No. 01-26-1-025-II/10, (hereinafter: Notification), whereby the undertaking „OPTIMA Grupa“ d.o.o. for trade of oil and oil derivatives Banja Luka, Kralja Alfonsa XIII No. 37A, 78000 Banja Luka, Bosnia and Herzegovina and undertaking KEPOL TERMINAL d.o.o. for storage and trade, Gaženička bb, 23000 Zadar, Republic of Croatia (hereinafter: „OPTIMA Grupa” and „KEPOL TERMINAL” or Applicants) intend to undertake joint investment on long-term basis, by establishing undertaking in Republic of Croatia “Nestro Adria Slavonski Brod” d.o.o. for trade and storage of oil, Gaženička bb, 23000 Zadar, Republic of Croatia (hereinafter Nestro Adria Slavonski Brod) and undertaking Nestro Adria Zadar d.o.o. for trade of oil and oil derivatives, Gaženička bb, 23000 Zadar, Republic of Croatia (hereinafter: Nestro Adria Zadar).

Notification was filed by Dijana Savić, Main specialist in Department for corporate management in Direction for corporate management of OPTIMA Grupa, based on power of attorney No. 3998-10/10 of 28.10.2010.

Having an insight into filed Notification, Competition Council established that it was not complete, 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 («Official Gazette of BiH», No. 34/10), and requested supplements to the Notification in document No. 01-26-1-25-1-II/10 of 18.11.2010.

The Applicants asked for prolongation of deadline for submitting requested documentation, in terms of Article 31, paragraph (2) of the Act in document No. 01-26-1-25-2-II/10 on 22.11.2010. After reviewing

the request, Competition Council approved the deadline for submitting supplements to Notification, in document No. 01-26-1-25-3-II/10 on 24.11.2010.

The Applicants submitted a part of the documentation by document No. 01-26-1-25-4-II/10 of 01.12.2010. Since the submitted documentation was not complete, Competition Council asked for supplements to Notification in document No. 01-26-1-25-5-II/10 of 16.12.2010. Consequently, the Applicants supplemented the Notification by document No. 01-26-1-25-6-II/10 of 22.12.2010.

After the requested supplements were submitted, Competition Council issued a Confirmation on complete and adequate Notification No. 01-26-1-25-7-II/1., in terms of Article 30, paragraph (3) of the Act on 31.12.2010.

The Applicants stated that the request for assessment of concentration in question was filed to Competition Agency of Republic of Croatia.

Competition Council established the following facts from the Notification:

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

1. Participants to concentration

Participants to concentration are undertaking „OPTIMA Grupa“ d.o.o. for trade of oil and oil derivatives Banja Luka, Kralja Alfonsa XIII No. 37A, 78000 Banja Luka, Bosnia and Herzegovina and undertaking „KEPOL TERMINAL” d.o.o. for storage and trade, Gaženička bb, 23000 Zadar, Republic of Croatia.

1.1. „OPTIMA Grupa“

Undertaking „OPTIMA Grupa“ d.o.o. for trade of oil and oil derivatives Banja Luka, Kralja Alfonsa XIII broj 37A, 78000 Banja Luka, Bosnia and Herzegovina is registered at Municipal Court in Banja Luka under the number 1-16709-00. on 11.02.2008.

Main registered activity of the undertaking „OPTIMA Grupa“ are trade of oil and oil derivatives.

Undertaking „OPTIMA Grupa“ is 100,0% owned by undertaking Otvoreno akcionarsko društvo „NeftegazInKor“ Ul. Kalančevskaja 11. Korpus 2. Moskva, Russian Federation.

Undertaking „NeftegazInKor“ in Bosnia and Herzegovina has ownership shares in following undertakings:

- Nestro Petrol a.d. Banja Luka, 80,000031% of ownership share in founding capital (main activity trade of oil and oil derivatives and natural gas),
- „Rafinerija nafte“ a.d. Brod, 79,998602% of ownership share in founding capital (main activity production, processing and trade of oil derivatives),
- „Rafinerija ulja Modriča“ a.d. Modriča, 75,651467% of ownership share in founding capital (main activity production, processing and trade of oil derivatives).

Undertaking „OPTIMA Grupa“ is the founder and the sole owner of the undertaking Nestro Dunav d.o.o. Beograd, Republic of Serbia, whose main registered activity is whole sale of solid, liquid and gas fuels and similar products.

1.2. KEPOL TERMINAL

Undertaking „KEPOL TERMINAL“ d.o.o. for storage and trade, Gaženička bb, 23000 Zadar, Republic of Croatia is registered on 16.03.2001. at Trade Court in Zadar under the number 46875965831.

The founder and sole owner of the undertaking „KEPOL TERMINAL“ is undertaking „BASIC INVEST-CONSULT GmbH, dr. –F. – Palla Gasse 21/II, Karnten, Klagenfurt, Austria.

Main registered activities of the undertaking „KEPOL TERMINAL“ are storage and trade of chemical products and oil derivatives, transport services, storage and handling of oil derivatives, using their own production facilities and transport infrastructure.

Undertaking „KEPOL TERMINAL“ operates on markets of Republic of Croatia and Republic of Austria, and has no subsidiaries nor business operation on the market of Bosnia and Herzegovina.

2. Legal basis for concentration

Undertaking „OPTIMA Grupa“, represented by director Yury Belov (passport number: (..)*¹, issued by Russian Federation) and undertaking „KEPOL TERMINAL“, represented by director Božo Krce (ID No. (..)*- Republic of Croatia), signed Social Agreements in Zagreb on 13.10.2010, confirmed by notary on 14.10.2010.

The subject of Social Agreements is joint long term investment in Republic of Croatia in order to establish undertakings Nestro Adria Slavonski Brod (activities – trade and storage of oil and oil derivatives) and Nestro Adria Zadar (activities – trade and storage of oil and oil derivatives).

According to the Agreements, the share of the undertaking „OPTIMA Grupa“ in the undertaking Nestro Adria Slavonski Brod is (..)*% (total founding capital is (..)*Kn ((..)*KM)), and the undertaking „KEPOL TERMINAL“ shall have (..)*% in the founding capital, while in Nestro Adria Zadar, the share of undertaking „OPTIMA Grupa“ is (..)*%, and the share of undertaking „KEPOL TERMINAL“ is (..)*% of the founding capital (total founding capital is (..)*Kn ((..)*KM)).

Undertakings Nestro Adria Zadar and Nestro Adria Slavonski Brod are being established to perform activities of trade of oil and oil derivative, their transport and storage, exclusively on the market of Republic of Croatia.

3. Obligation to notify the concentration

Total annual incomes of the undertakings, participants to the concentration (and their subsidiaries) on 31 December 2009 were:

Table 1.

	OPTIMA Grupa		KEPOL TERMINAL	
	KM	KN	KN	KM
World	(..)*	(..)*	(..)*	(..)*
Bosnia and Herzegovina	(..)*	(..)*	(..)*	(..)*

Source: Data from the Notification

4. Review of the Notification

¹ Data represent business secret

According to data from the Notification, the undertaking „OPTIMA Grupa“ in 2009, had a market share less than 40%, while the undertaking „KEPOL TERMINAL“ did not have business operation on the market of trade of oil and oil derivatives in Bosnia and Herzegovina.

Joint investment on long term basis is establishing undertakings Nestro Adria Slavonski Brod and Nestro Adria Zadar on the territory of Republic of Croatia, and therefore the transaction in question is only a market expansion of the undertaking „OPTIMA Grupa“ onto the market of Republic of Croatia. Considering the above mentioned, and in accordance with Article 2 of the Act, Act provisions can not be applied to the concentration in question.

Following the above mentioned, Competition Council has determined that the Notification in question does not meet the requirements for obligatory notification of concentration in accordance with the Act, and decided as in disposition of this Conclusion.

5. Administrative taxes

Pursuant to Article 2, tariff number 108, item c) of the Regulation on administrative taxes related to procedural actions before Council of Competition (Official Gazette of BiH, No. 30/06) the Applicants are obliged to pay administrative taxes for this Conclusion, amounting to 1.000,00 KM, for the benefit of the Budget of Bosnia and Herzegovina Institutions.

6. 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 Conclusion, i.e. from the date of its publication.

President

Mr. Stjepo Pranjić, Phd