

**BOSNA I HERCEGOVINA**  
*Konkurencijsko vijeće*



**БОСНА И ХЕРЦЕГОВИНА**  
*Конкуренијски савјет*

**DECISION**

**on Notification of concentration of undertakings „Amko Komerc“ d.o.o. Sarajevo“ and  
„Mercur“ d.d. Sarajevo**

**Sarajevo,  
December 2011**



**Number: 01-26-1-020-6-II/11**  
**Sarajevo, 8th December 2011**

Pursuant to Article 25 paragraph (1) item e) and 42 paragraph (1) item d), in accordance with 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 filed by undertaking „Amko Komerc“ d.o.o. Sarajevo, Društvo za vanjsku i unutrašnju trgovinu, proizvodnju i usluge, Kolodvorska 12, 71000 Sarajevo, received on 27th September 2011, under number :01-26-1-020-II/11, Council of Competition at its 23<sup>rd</sup> (twentythird) session held on 8<sup>th</sup> December 2011, has issued

### **DECISION**

1. Concentration that will arise through long term lease of business facilities of the undertaking MERKUR d.d. Sarajevo, Dioničko društvo za unutrašnji i vanjskotrgovinski promet, Semizovac bb, 71320 Vogošća by the undertaking Amko Komerc d.o.o. Sarajevo, Društvo za vanjsku i unutrašnju trgovinu, proizvodnju i usluge, Kolodvorska 12, 71000 Sarajevo, on the market of retail sale of food and non-food products on the territory of Federation of Bosnia and Herzegovina is assessed as compatible.
2. This Decision on concentration is entered into Register of concentrations.
3. This Decision is final and shall be published in Official gazette of Bosnia and Herzegovina and official gazettes of Entities and Brcko District of Bosnia and Herzegovina.

### **Exposition**

Council of Competition received the Notification on concentration (hereinafter: Notification) on 27<sup>th</sup> September 2011, filed by the undertaking „Amko Komerc“ d.o.o. Sarajevo, Društvo za vanjsku i unutrašnju trgovinu, proizvodnju i usluge, Kolodvorska 12, 71000 Sarajevo (hereinafter: AMKO KOMERC or Applicant), that would arise by signing long term lease contract of retail facilities of the undertaking „MERKUR“ d.d. Sarajevo, Dioničko društvo za unutrašnji i vanjskotrgovinski promet, Semizovac bb, 71320 Vogošća ( hereinafter: MERKUR), in terms of Article 12 paragraph (1) item b) 3) of the Act.

Applicant supplemented Notification on 13<sup>th</sup> October 2011, submission No. 01-26-1-020-1-II/11.

Council of Competition issued Confirmation on receipt of complete and adequate Notification to the Applicant No. 01-26-1-020-2-II/11 of 15<sup>th</sup> November 2011, in terms of Article 30 paragraph (3) of the Act.

In accordance with Article 30 paragraph (2) of the Act, the Applicant stated that it has not filed nor has an intention to file a request for concentration assessment to authorized authorities outside Bosnia and Herzegovina.

According to Article 16 paragraph (4) of the Act, Council of Competition published a Notice on submitted Notification No.: 01-26-1-020-4-II/11 of 28<sup>th</sup> November 2011, in daily press on 29<sup>th</sup> November 2011, inviting all interested parties to submit written comments regarding the intended concentration. There were no comments on the Notice submitted by interested parties.

The Notification was filed in statutory deadline, in accordance with Article 16 paragraph (2) of the Act.

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

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

Participants to the concentration are undertakings: AMKO KOMERC d.o.o. Sarajevo, Društvo za vanjsku i unutrašnju trgovinu, proizvodnju i usluge, Kolodvorska 12, 71000 Sarajevo and „MERKUR“ d.d. Sarajevo, Dioničko društvo za unutrašnji i vanjskotrgovinski promet, Semizovac bb, 71320 Vogošća.

### **1.1. AMKO KOMERC d.o.o. Sarajevo**

Undertaking AMKO KOMERC is entered in Cantonal Court Register in Sarajevo under No UF/I-2505/99 of 26<sup>th</sup> July 2000 with founding capital of 155.000,00 KM, owned by natural person Aleta Muamera, <sup>1</sup>(..)\*\*.

Main registered activities of the undertaking AMKO KOMERC are internal and external sale, wholesale and retail and production.

Undertaking AMKO KOMERC owns 87,8% equity in founding capital of the undertaking Trgovačko društvo za promet roba na malo, veliko i vanjsku trgovinu MARKETI d.d. Sarajevo (hereinafter: MARKETI).

Main registered activities of the undertaking MARKETI are internal and external sale, wholesale and retail.

Undertaking AMKO KOMERC, as a member of Partnership group, formed by undertakings Amko Komerc d.o.o. Sarajevo and VINO ŽUPA a.d. Aleksandrovac, Republic of Serbia, pursuant to Partnership Agreement No. OPU 3054/08 of 5<sup>th</sup> September 2008, owns 69,25% shares in the undertaking „HEPOK“ d.d. Mostar.

Main registered activities of the undertaking HEPOK are production and processing of fruits and wine production.

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<sup>1</sup>(..)\*\* data represent business secret

## 1.2. „MERKUR“ d.d. Sarajevo

Undertaking MERKUR is entered in Cantonal Court Register in Sarajevo under No UF/I-1453/02 of 26<sup>th</sup> February 2003, with basic capital of 8.914.280,00 KM.

Ownership structure of the undertaking MERKUR as of 12<sup>th</sup> October 2011 is following: Društvo za unutrašnju i vanjsku trgovinu i usluge „MIMS“ d.o.o. Sarajevo, Semizovac bb, 71321 Semizovac, as majority owner has 75,574%, Zatvoreni investicijski fond „NAPRIJED“ d.d. Sarajevo, Zmaja od Bosne 50, 71000 Sarajevo, owns 11,306%, while remaining part is shared by small shareholders.

Main registered activities of the undertaking MERKUR are retail sale of food and non-food products.

## 2. Obligation to notify concentration

The obligation to notify concentration of undertakings exists, in terms of provisions of Article 14 paragraph (1) of the Act, if total annual turnover of at least two undertakings, parties to the concentration earned 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 the undertakings parties to the concentration as of 31<sup>st</sup> December 2010:

Table 1

Total turnover (KM)	AMKO KOMERC	MERKUR *	MERKUR
Bosnia and Herzegovina	<sup>2</sup> (..)**	(..)**	(..)**

Source: data from Notification; \*turnover earned in retail facilities that are the subject of concentration.

According to data from the Table 1, total turnover of each participant to the concentration earned through sale of goods on the market of BiH is over 8.000.000,00 KM in the final account in the year preceding the concentration, i.e. AMKO KOMERC in 2010 on the level of Bosnia and Herzegovina earned (..)\*\*KM, while undertaking MERKUR in the same period in retail facilities earned (..)\*\*KM, which represents (..)\*\*% of its total turnover of (..)\*\*KM.

In the case when the concentration from Article 12 paragraph (1) of the Act applies to a merger or acquisition of part or parts of one or more business entities, regardless of whether these parts have a status of legal entity, when calculating income under paragraph (1) of Article 14 of the Act, only the income of those parts of the undertaking that are the subject of the concentration control shall be calculated.

Annual turnovers of the parties to the concentration are total revenues (excluding value added tax and other taxes), within the meaning of Article 9 item h) of the Decision on notification and assessment of concentration of the undertakings (Official Gazette of BiH No. 34/10).

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<sup>2</sup>(..)\*\* data represent business secret

### 3. Legal basis and framework of the concentration

As the legal basis for the concentration Applicant submitted Pre-agreement on entering into Framework Agreement on lease of business facilities (19 retail facilities on the area of Sarajevo and Mostar with total of <sup>3</sup>(..)\*\*m2 leased space) and takeover of other rights and obligations signed on 20<sup>th</sup> September 2011 in Sarajevo between AMKO KOMERC and MERKUR and Pre-agreement on entering into Framework Agreement on lease of business facilities in Konjic and Vrapčići (2 retail facilities with total of (..)\*\*m2 leased space and takeover of other rights and obligations signed on 22<sup>nd</sup> September 2011.

Following retail facilities of the undertaking MERKUR are subject of the concentration:

Table 2

No.	Business facility/address	Place	Total area m2
01.	Hipermarket Otoka, Gradačanka 1	Sarajevo	(..)**
02.	Supermarket Vogošća, Omladinska 3	Vogošća	(..)**
03.	Prodavnica 19, Alekse Šantića 4	Mostar	(..)**
04.	Prodavnica 6, Blagaj	Blagaj	(..)**
05.	Prodavnica 706, Bolnička 34	Sarajevo	(..)**
06.	Prodavnica 1, Braće Fejić 76	Mostar	(..)**
07.	Prodavnica 8, Put za Opine 12	Mostar	(..)**
08.	Prodavnica 22, Braće Fejić 51	Mostar	(..)**
09.	Prodavnica 7, Domanovići bb	Domanovići	(..)**
10.	Prodavnica 700, Grbavička 44	Sarajevo	(..)**
11.	Prodavnica 23, Potoci bb	Potoci	(..)**
12.	Prodavnica 715, Teheranski trg 9	Sarajevo	(..)**
13.	Prodavnica 708, Jahijela Fincija 48	Sarajevo	(..)**
14.	Prodavnica 17, Maršala Tita	Mostar	(..)**
15.	Prodavnica 4, G.Vukovića 10	Mostar	(..)**
16.	Prodavnica 709, Grbavička 44	Sarajevo	(..)**
17.	Prodavnica 10, Braće Lakišić 10	Mostar	(..)**
18.	Prodavnica 711, Muhameda Hadžijahića 39	Sarajevo	(..)**
19.	Prodavnica 16, Braće Fejića 8	Mostar	(..)**
20.	Hipermarket Konjic, Sarajevska 43	Konjic	(..)**
21.	Hipermarket Vrapčići, Vrapčići bb	Mostar	(..)**
	<b>TOTAL:</b>		(..)**

Source: data from Notification

Signing these Pre-agreements parties are liable to sign Main Agreement, which would regulate relations on long term lease of retail facilities for the period of 10 years, sale-purchase of stocks in the facilities, takeover of leaser's employees and commercial cooperation, if Council of Competition issues a decision that assesses concentration compatible.

In leased retail facilities AMKO KOMERC will perform activity of retail sale of food and non-food products.

According to the above mentioned and pursuant to Article 12 paragraph (1) item b) 3) of the Act, legal framework of the concentration is the acquisition of the dominant influence of one

<sup>3</sup>(..)\*\* data represent business secret

undertaking over parts of other undertaking by entering into Agreement of long term lease of the retail facilities in accordance with the provisions of the Act.

## **5. Relevant market**

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 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.

Analyzing relevant market of the participants to the concentration, Council of Competition determined that relevant market of the concentration is the market of retail sale of food and non-food products.

When determining relevant market in geographic sense, Council of Competition took into account the fact that undertaking MERKUR operates only on the territory of Federation of BiH.

Consequently, relevant market of the subject concentration is considered to be retail sale market of food and non-food products on the territory of Federation of BiH.

## **6. Analysis of the relevant market**

According to the data from Notification, there is a big number of undertakings operating on the relevant market of retail sale of food and non-food products with relatively low individual market shares.

Mentioned data show that relevant market is weakly concentrated with a big number of undertakings with relatively low individual market shares which disable creation of dominant position.

According to the data from Notification disposed by Council of Competition, total turnover of the legal entities in Federation of BiH in the activity of retail sale of food and non-food products in 2010 amounts to 3.422.075.235,00 KM.

Assessment of market shares of the participants to concentration on the relevant market for 2010:

Table 3

No.	Undertaking	Turnover from retail sale	Market share (%)
01.	AMKO KOMERC	<sup>4</sup> (..)**	(..)**
02.	MERKUR*	(..)**	(..)**
03.	Total participants to the concentration	(..)**	(..)**
04.	<b>Total in FBiH</b>	<b>3.422.075.235,00</b>	<b>100,00</b>

Source: AFIP, data from Notification; \*turnover earned in retail facilities that are the subject of the concentration

Applicant mentions in the Notification that it operates in 48 retail outlets on the relevant market in Federation of BiH, namely in the following cities:

- Sarajevo - 41 (fourtyone) retail outlets;
- Konjic - 4 (four) retail outlets ;
- Jablanica - 1 (one) retail outlet and
- Mostar - 2 (two) retail outlets.

And undertaking MERKUR o the relevant market operates in 32 retail outlets in the area of:

- Sarajevo – 14 (fourteen) retail outlets;
- Konjic – 2 (two) retail outlets;
- Mostar - 9 (nine) retail outlets;
- Blagaj - 1 (one) retail outlet;
- Domanovići – 1 (one) retail outlet;
- Potoci - 1 (one) retail outlet;
- Pritoka - 1 (one) retail outlet;
- Zenica - 1 (one) retail outlet;
- Fojnica - 1 (one) retail outlet and
- Cazin - 1 (one) retail outlet;

and is building three (3) more business facilities one in Sarajevo, Tuzla and Bosanska Krupa.

Analysis of mentioned data on number and geographic location of retail outlets of both participants to the concentration indicate that trough this concentration undertaking AMKO KOMERC primarily expands its retail network on the relevant market.

## 7. Assessment of the concentration

After assessment and analysis of the data and facts in terms of Article 17 of the Act, in the process of issuing this Decision, Council of Competition established that concentration of the undertakings does not prevent, limit or distort market competition on the market of retail sale of food and non-food products in Federation of Bosnia and Herzegovina.

When making the decision, Council of Competition took into account that this concentration does not significantly increase market shares of the participants to the concentration on the relevant market and at the same time its implementation will enable benefits for the consumers in terms of:

- Increase of the quality of products;
- Increase and expansion of product choice and
- More affordable prices of the products.

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<sup>4</sup>(..)\*\* data represent business secret

By taking over business facilities through long term lease, undertaking AMKO KOMERC takes over only a part of market share of the undertaking MERKUR, which after the implementation of the concentration continues to operate on the relevant market with 11 (eleven) retail outlets, independently performing activity of retail sale of food and non-food products

Therefore, Council of Competition established that market shares of participants on the relevant market are significantly less than 40%, which is an assumption that an undertaking can have a dominant position in terms of Article 9 of the Act.

Furthermore, Council of Competition found that on the relevant market, there are no legal / administrative barriers to entry, nor there are any required significant financial investment to start in retailing of food, and non-food consumer products, so that the participants to the concentration even after the implementation of the concentration could not to a large extent act independently of the actual or potential competitors.

Considering all the mentioned facts and information, preceding the issuance of the decision, Council of Competition assessed the concentration compatible, in terms of Article 18 paragraph (2) a) of the Act, as decided in the operative part of this Decision.

#### **8. Administrative tax**

In accordance with Article 2 tariff number 107 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 and 18/11) the Applicant is obliged to pay administrative tax for this Conclusion 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**