

BOSNA I HERCEGOVINA
Konkurencijsko vijeće



БОСНА И ХЕРЦЕГОВИНА
Конкуренијски савјет

DECISION

**Adopted upon Notification of intended concentration between „Konzum“ Ltd., Sarajevo and
Dujmović-Commerce“ Ltd., Mostar**

**Sarajevo,
July 2009**



Number: 01-01-26-022-5-II/09
Sarajevo, 21 July 2009

Pursuant to Article 25, paragraph(1) item e) ,Article 42,paragraph(1),item d), in connection with Article 12,14,16, 17 and 18 of the Act on Competition («Official Gazette of BH», No. 48/05 and 76/07), and upon the Notification of intended concentration, number: 01-01-26-022-II/09,of economic entity Konzum trgovina na veliko i malo (retail and wholesale) Ltd., Sarajevo, Rajlovačka , Sarajevo, Bosnia and Herzegovina, represented by a director Ismir Brkić, and economic entity „Dujmović Commerce“ Ltd, Mostar, Blajbuških žrtava , Mostar, received on 10June 2009, the Council of Competition at its 91st (ninety-first) session, held on 21 July 2009, has adopted

DECISION

1. A concentration in the market for retail mixed goods, food, drinks and products for domestic use in Bosnia and Herzegovina, which will be created through long-term lease of business space of economic entity "Dujmović Commerce“ Ltd. Mostar, Blajbuških žrtava, Mostar, by the company, "Konzum" trgovina na veliko i malo(wholesale and retail)Ltd. Rajlovačka, Sarajevo, is assesses compatible.
2. This Decision shall be recorded in the Register on concentrations.
3. This Decision is final and it shall be published in “Official Gazette of BH” and official gazettes of Entities and Brčko District.

Exposition

Council of Competition received on 10 June 2009 a Notification of intended concentration (hereinafter: the Notification) through acquisition of control in a company "Dujmović Commerce“ Ltd. Mostar, Blajbuških žrtava, 88000 Mostar, Bosnia and Herzegovina (hereinafter: "Dujmović Commerce") by the company, "Konzum" trgovina na veliko i malo (wholesale and retail) Ltd. Rajlovačka , 71000 Sarajevo, Bosnia and Herzegovina (hereinafter: Konzum Sarajevo or Applicant), represented by Director Ismir Brkic.

Having an insight into the Notification, the Council of Competition established that it was not complete pursuant to Article 30,paragraph(1) of the Act (hereinafter: the Act) and Article 8,9 and 10 of the Regulation on notification and criteria for assessment a concentration of undertakings("Official Gazette BiH, number 95/06), and therefore, in

accordance with Article 31 of the Act the Competition Council requested, by means of the official letter number 01-01-26-022-1-II/09 on 22 June 2009, supplements to the Notification .

The Applicant submitted to the Council of Competition the supplements to the Notification, in compliance with the request, recorded under the number 01-01-26-022-2-II/08, on 26 June 2009.

Upon receipt of all required documents, the Council of Competition issued on 30 June 2009 an Acknowledgement of receipt of complete and adequate Notification, number: 01-01-26-022-3-II/09, pursuant to Article 30 paragraph (3) of the Act.

In accordance with Article 30, paragraph(2) of the Act, the Applicant states that it does not intend to fill the request for assessment of the concentration to any other responsible body outside the territory of Bosnia and Herzegovina ,due to the fact that the parties to the concentration operate exclusively in the territory of Bosnia and Herzegovina.

Competition Council found that the application was filed within the prescribed period, in terms of Article 16 paragraph (1) of the Act.

1. Participants to the concentration

Participants to the concentration are economic entities Konzum trgovina na veliko i malo (wholesale and retail) Ltd., Rajlovačka, Sarajevo, BH and „Dujmovic Commerce „Ltd. Mostar, Blajbuških žrtava, 88000 Mostar, BH.

1.1. Konzum Sarajevo

Economic entity Konzum trgovina na veliko i malo (wholesale and retail) Ltd. Sarajevo entered the court registry, by Decision of the Sarajevo Cantonal Court No. UF/I-340/04 on 08 March 2004, under the name "«Veleprodajni centar» trgovina na veliko i malo » („Wholesale Center „wholesale and retail) Ltd. Sarajevo, and then, by Decision of the Municipal Court in Sarajevo No. 065-0-Reg-07-003892 from the date 22 January 2008, changed the name in „ Konzum " trgovina na veliko i malo (wholesale and retail) Ltd. Sarajevo, under the registration number 1-24542.

The main activity of business entity Konzum Sarajevo is wholesale and retail food products, beverages, tobacco products and consumer goods for domestic use. Founder and 100% owner of the Konzum Sarajevo is economic entity "Konzum" trgovina na veliko i malo(wholesale and retail)Ltd. Zagreb, Marijana Čavića 1 / a, Zagreb, Croatia (hereinafter "Konzum" Ltd. Zagreb).

According to data from the Notification the majority owner of the economic entity "Konzum" JSC. Zagreb is economic entity "Agrokor" JSC. Zagreb, Croatia, with (...) **% of shares owned, then follows the economic entity "Jamnica" JSC. Zagreb, Croatia, with (...) **% shares, and the economic entity "Investco Vrijednosnice Ltd Zagreb, Croatia with (...) **% shares, while other shareholders in the Republic of Croatia have (...) **% shares.

Majority owner of the subject "Agrokor" JSC. Zagreb is a natural person Todorčić Ivica Zagreb with (...) **% ownership.

1.1.2. The companies that are related to Agrokor JSC. Zagreb

The economic entity "Agrokor" JSC. Zagreb, as the majority owner of the subject "Konzum" JSC. Zagreb, is the majority owner of the following business entities in Bosnia and Herzegovina: "INIT" JSC. Sarajevo (main activity: IT services) with (...) **% ownership share, TP Distribution Center JSC. Sarajevo (main activity: wholesale trade) with (...) **% ownership share and Agrokor-Zagreb Ltd. Grude (main activity: import and distribution) with (...) **% ownership share.

The economic entity "Konzum" Ltd. Zagreb, as the majority owner of the Konzum Sarajevo, also has no subsidiary companies in the territory of Bosnia and Herzegovina.

The economic entity Konzum Sarajevo has no shares, stocks or any voting rights in any economic entity in Bosnia and Herzegovina.

The economic entity "Agrokor" JSC. Zagreb, through its subsidiary companies registered in Croatia, indirectly controls the following business entities in Bosnia and Herzegovina: "Sarajevski kiseljak" JSC. Sarajevo (main activity: manufacturing of mineral water and refreshing drinks) through the economic entity Jamnica JSC. Zagreb, with (...) **% share, "Ledo" Ltd. Citluk (main activity: production of ice cream and frozen fruits and vegetables) through the economic entity "Ledo" JSC. Zagreb with (...) **% shares, then the "Zvijezda" Ltd. Sarajevo (main activity: the production of edible oils and margarine) through the economic entity „Zvijezda“ Ltd. Zagreb with (...) **% shares and "PIK" Vrbovec BH Ltd. Sarajevo (main activity: trade in meat products) through the business entity "PIK" Vrbovec, Vrbovec with (...) **% shares

1.2. «Dujmović-Commerce»

The economic entity "Dujmovic-Commerce" headquartered in Mostar, Blajbuških žrtava, is registered on 21 June 2000 and entered in court register under the number U/I-979/2000 in the Municipal Court in Mostar, with the registration number 1-3584, for performing internal and external trade.

The only founder and 100% owner of the business entity is Dujmovic Zoran residing in (...) **, IDN ((...) **).

According to data from the Notification, the economic entity "Dujmovic-Commerce" does not have 10% or more shares in the share capital in any other economic entity in Bosnia and Herzegovina.

2. The obligation to report the intended concentration

The obligation to report the intended concentration of economic entities, pursuant to Article 14 paragraph (1) of the Act, exists if a total annual income of each of at least two parties to the concentration achieved in sales of goods and / or services on

the market of Bosnia and Herzegovina amounts at least 5,000,000.00 KM, according to the final account in the year preceding the concentration of the subject.

Total income of the participants to the concentration, on 31 December 2008, after deduction for the value added and other taxes, which are directly related to turnover and rebate, in the sense of Article 14 of the Act:

Table 1.

Number	Economic entity	Income in BiH (KM)
01.	Konzum Sarajevo	(..)**
02.	Dujmović-Commerce	(..)**

Source: Data from Notification

Total income of the participants to the concentration achieved by selling goods on the market of Bosnia and Herzegovina was over 5,000,000.00 KM, according to final account in the year preceding the concentration, i.e., total annual income of the economic entity Konzum in 2008, at the level of Bosnia and Herzegovina, was (..)** KM, while the economic entity Dujmovic-Commerce in the same period achieved total income in the amount of (...) ** KM.

Filing the notification of intended concentration results from the above data, in terms of Article 16, in connection with Article 14 paragraph (1) item a) of the Act.

3. Legal framework of assessment of the concentration

Competition Council in the implementation of the assessment procedure of the concentration applied provisions of the Act and the Regulation on definition of a relevant market („Official Gazette BiH“ number 18/06) and Regulation on Notification and criteria for assessment a concentration of undertakings.

4. Legal basis and form of concentration

The legal basis of this concentration is Agreement on business cooperation, lease and sublease of business premises (hereinafter: the Agreement), signed on 03June2009, between Zoran Dujmovic from (...) **, (ID number (...) **), residing in the street (...) **, as lessor and economic entity Konzum Sarajevo, represented by Director Ismir Brkic.

According to the Agreement, Konzum Sarajevo leases from Dujmovic Zoran 8 business premises, located in the area of the city of Mostar, for the period of 10 years, and also, takes, for the use, the commercial equipment, machines and devices , that are located in premises that are taken in the lease.

The economic entity Konzum Sarajevo shall take, from the economic entity Dujmovic-Commerce (whose sole founder and owner is the lessor), stock of merchandise, which is overtaken in the premises on the day of handover, except the damaged goods and goods with the expired time for use, as well as the employees that work in the leased business premises of the Dujmovic-Commerce.

In accordance with the above , pursuant to Article 12 paragraph (1) item b) 3 of the Act, the legal form of this concentration is the acquisition of control of a business entity over another in accordance with the provisions of law regulating the establishment of business entities and their management.

5. Relevant market

Relevant market, in terms of Article 3 of the Act and art. 4, 5 and 6 of the Regulation on definition of a relevant market, is the market of certain products / services that are the subject of performing activities in a particular geographic market.

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

Furthermore, under Article 5 of the Regulation on definition of a 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 are significantly different from the conditions of market competition in the neighboring geographic markets.

In the analysis of the relevant market of participants to the concentration, the Council of Competition found that the relevant market of this concentration is the market of retail mixed goods, food, drinks and products for domestic use.

In determining the relevant market ,the Council of Competition took into account the fact that economic entity Konzum Sarajevo operates throughout Bosnia and Herzegovina.

Therefore, the relevant market of this concentration is a trade market for retail mixed goods, food, drinks and products for domestic use in the whole territory of Bosnia and Herzegovina.

6. Analysis of the relevant market

Market shares of the business entity Konzum Sarajevo and its main market competitors in 2008 are:

Table 2.

Number	Economic entity	Market share (%)
01.	Konzum Ltd. Sarajevo	10,00
02.	Interex Ltd. Sarajevo	6,00
03.	Bingo Ltd.Tuzla	6,00
04.	Merkator Ltd. Sarajevo	5,00
05.	Mims Ltd.Sarajevo	4,00
06.	Delta Maxi Banjaluka	4,00

07.	Drvopromet Sarajevo	3,00
08.	Robot Sarajevo	2,00
09.	TUŠ Ltd.Bihać	2,00
10.	Other trade chains	10,00
11.	Small traders	48,00
	TOTAL:	100,00

Source: Data from Applications

The Applicant in the Notification estimates that the market share of the economic entity Dujmovic Commerce in the relevant market in Bosnia and Herzegovina is less than 1%, taking into account the realized annual income and number of retail outlets (seven business premises in the area of the city of Mostar).

The data from Table 2 shows that the largest market share (10.0%) in the relevant market has Konzum Sarajevo, then follows the Interex - Sarajevo (6.0%), Bingo Tuzla (6.0%) and Mercator (5, 00%).

These data shows that the relevant market is poorly concentrated, because there are many economic entities with relatively small individual market shares, which prevent the creation of a dominant position.

By taking over the business premises through long- lasting lease , Konzum Sarajevo takes market share (less than 1.0%) that belongs to the Dujmovic Commerce in the relevant market, and, therefore, the Council of Competition finds that the joint market share of participants to the concentration is below of 40.0%(bellow the market share which predicts that the business entity may have a dominant position in terms of Article 9 of the Act).

7. Assessment of the concentration

Council of Competition, after assessment and analysis of data and facts in terms of Article 17 of the Act, in the process of making the Decision, finds that the concentration of economic entities does not prevent, restrict or distort the market competition in the market of retail mixed goods, food, drinks and products for domestic use in Bosnia and Herzegovina.

In making this Decision, the Council of Competition had in mind that this concentration did not significantly increase the market shares of the participants to the concentration in the relevant market.

This concentration will ensure the promotion of the distribution of goods, i.e., reducing flows of distribution of goods, and improve the supply market and expand the range of goods, which may affect the lowering of prices the same, and all of that , as the final result , may be of the benefit to the consumers.

Considering all these facts and data that preceded the decision, the Council of Competition has assessed this concentration compatible, in terms of Article 18, paragraph (2), item a) of the Act, as it is stated in the operative part of this Decision.

1. Administrative tariffs

On this Decision the Applicant, pursuant to the Article 2, tariff number 107, paragraph (1), item d) 1) of the Regulation on administrative taxes relating to the practices before the Council of Competition (“Official Gazette of BIH”, No. 30/06), is obliged to pay administrative tariff of 2.500,00 KM for the benefit of the Budget of Institutions of Bosnia and Herzegovina.

9. LEGAL REMEDY

This Decision is final and no appeal is allowed against it. 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 receipt of this Decision, i.e. from the date of its publication.

President

Dr Stjepo Pranjić