

Republic of Serbia  
Commission for Protection of Competition  
No. 6/0-02-750/2012-4  
Date: November 16, 2012  
Beograd

Pursuant to Article 35, paragraph 2 and Article 62, paragraph 2 of the Law on Protection of Competition, ("Official Journal of the RS", no. 51/2009) and the decision made by the Council of the Commission for Protection of Competition of November 15, 2012, President of the Commission for Protection of Competition, on November 16, 2012 issued a following

### Resolution

I Procedure initiated under notification of concentration by company Sunoko d.o.o., with head-office in Novi Sad, located at Trg Marije Trandafil 7, Republic of Serbia, represented by legal representative, manager Ljubisa Radenkovic, created by acquisition of majority set of shares on the part of applicant, from company Hellenic Sugar Industry SA, with registered head-office at Mitropoleos 34, 541 10 Thessaloniki, Republic of Greece, is continued ex officio, in order to investigate whether intended concentration fulfils conditions of permissibility in terms of Article 19 of the Law on Protection of Competition, that is, whether its implementation would restrict, distort or prevent competition in the market of Republic of Serbia or the part thereof, particularly if such restriction, distortion or prevention would be the result of creation or strengthening of dominant position.

II All persons having at their disposal data, documents or any other relevant information which may contribute to establishment of factual position related to this procedure are invited, without delay, to provide Commission for Protection of Competition with the same, at Knehinje Zorke 7, Beograd.

III An obligation is established for applicant of concentration -company Sunoko, d.o.o. from Novi Sad, with head-office in Novi Sad, Republic of Serbia, to pay compensation provided for in Article 2, item 7 of the Tariff on the level of compensation for activities within the competency of Commission for Protection of Competition ("Official Journal of the RS", no.49/2011) for issuance of decision on approval of concentration in inquiry procedure in the amount of EUR 50.000,00 in dinar countervalue at the medium rate of exchange of National Bank of Serbia, valid at the date of payment, the said compensation also including amount already paid on submission of notification, being RSD 2.849.110,00, thus the applicant is ordered to pay the outstanding amount of financial obligation of EUR 25.000,00 to the foreign currency account of Commission for Protection of Competition maintained with the National Bank of Serbia no. 500100-100128977, eban no. RS35908500100012897798, reference no. 6/0-02-750/2012 or its corresponding dinar countervalue to the account of Commission for Protection of Competition maintained with the Treasury, no. 840-880668-16, with reference to the same number, at the medium rate of exchange of the National Bank of Serbia valid at the

date of payment, within the period of 3 (three) days from the date of receipt of this resolution. Immediately upon the payment of outstanding amount of compensation, applicant of concentration is obliged to provide Commission for Protection of Competition with the evidence on effected payment.

IV This resolution shall be published in "Official Journal of the RS" and on the Internet page of the Commission for Protection of Competition.

### Reasoning

On October 19, 2012 business enterprise Suniko d.o.o., with registered head-office in Novi Sad, Republic of Serbia (hereinafter: applicant), submitted to Commission for Protection of Competition (hereinafter: Commission), notification of concentration (hereinafter: notification) created by acquisition of majority set of shares on the part of applicant, from company Hellenic Sugar Industry SA, with head-office in Thessaloniki, Republic of Greece (hereinafter: target company) through legal representative, Mr. Ljubisa Radenkovic, Manager of business enterprise Sunoko d.o.o.

Applicant, business enterprise Sunoko d.o.o. was founded in 2005 and entered into Agency of Companies Registry under reference no. 20051183, with prevailing registered activity: production of sugar – code 1081. Its owner is company MK Group d.o.o. with head-office in Beograd (hereinafter: MK Group) whose majority founder is Swiss shareholding company Agri Holding with a share of 87,12%, whereas remaining members are natural persons Ms.Roksanda Kostic (holding 9% of share) and Mr. Miodrag Kostic (holding 3,88% of share).

MK Group d.o.o. is a parent company consisting of several companies making MK Group, engaged in holding operations, thus its prevailing registered activity, is the activity of holding companies – code: 6420. Business activity of MK Group, as a whole, is production and trade in agricultural products, i.e.: production of sugar beet, sugar, corn, wheat, barley, rape oil and other farming raisings, trade in agricultural products, artificial fertilizers, pesticides, mercantile and seed products (wheat, corn, soya). In addition, this Group is also engaged in transport (above all in transport of bulk freight), tourism, real estate management, information technologies, renewable energy sources as well as broker operations.

Hellenic Sugar Industry S.A. is Greek producer of white cristal sugar, molasses and sugar beet seed. Company was founded in 1960 and is the only sugar producer in the Republic of Greece. Its majority owner is Agricultural Bank of Greece S.A. – ATE Bank with 82,33% of share capital, whereas remaining 17,67% of shares are traded on open market and listed at Athens Stock Exchange. On the ground of decision issued by the Central Bank of Greece no. 46/27.7.2012, ATE Bank's work licence was cancelled and the said Bank was subjected to special liquidation, therefore, pursuant to Greek regulations, a special Liquidation Trustee was appointed authorised to effect the liquidation.

In its submission of October 2, 2012, applicant provided Commission with the copy of invitation for declaration of interest for purchase of 82,33% of shares in company Hellenic Sugar Industry S.A., announced by special Liquidation Trustee of ATE Bank. Invitation stated that the special Liquidation Trustee, appointed for the purpose of liquidation of ATE Bank (Agricultural Bank of Greece) decided to renew the sale process under a new tender of October 2, 2012. In regard to mentioned tender, applicant submitted its declaration of interest for acquisition of majority set of shares in company Hellenic Sugar Industry S.A.

In the Republic of Serbia, target company is a majority owner in two Serbian sugar plants: A.D. Sugar Plant Crvenka in Crvenka (80,82% of ownership) and A.D. Sugar Plant Sajkaska in Zablje (over 92%).

Intended relevant concentration consists of acquisition of control on the part of applicant over target company, created by purchase of 82,33% of share capital from ATE Bank (as the owner and seller of that part of share capital of company Hellenic Sugar Industry S.A.). Upon implementation of said transaction, applicant would become the owner of 82,33% of share capital of target company, by which it would establish direct control over target company in terms of provisions of Article 17, paragraph 1, item 2 of the Law on Protection of Competition (hereinafter: Law), with a possibility for percentage of ownership in target company to increase in future even up to 100%, depending on the success in purchasing the remaining shares of target company traded on open market.

Upon completion of privatization procedures in Vrbas, Pecinci, Kovacica and Bac, applicant of concentration became the largest producer and exporter of sugar in the Republic of Serbia.

Market of sugar production by processing of sugar beet in the territory of the Republic of Serbia, is currently defined as oligopolistic market. The only present at that market, are three individually powerful participants, that is, the applicant, two domestic sugar plants in majority ownership of target company, as well as Sugar Plant in Senta (owned by Italian SFIR).

With realization of notified concentration, integration of the first and second participant, as per its power, would be made on defined relevant market, and as a result of that, this market would change its structure and become typical duopoly.

Upon examination of submitted notification, it was established that it has certain deficiencies, i.e. that it is incomplete, above all, as concerns providing of prescribed data relating to target company, applying, primarily to those of its parts which are active and in operation in the Republic of Serbia. Also, it was established that due to the timing when the relevant concentration was notified, base year has changed (now 2011) in relation to which the Commission shall, in the forthcoming inquiry procedure, determine all relevant facts, in order to make a right decision. For those reasons, it was concluded that the presumptions for acting and decision making in summary procedure under this notification, were not met, while the conditions for investigation of relevant concentration ex officio are fulfilled, pursuant to provisions of Article 62, paragraph 2, relating to Article 19 of the Law, aimed at assessment of permissibility of implementation of relevant concentration.

In an ex officio procedure under which, upon issuance of resolution, the investigation of relevant concentration, initiated under notification of this concentration, shall continue, Commission shall obtain all necessary relevant data in order to make its decision and examine the following:

assessment of implementation of this concentration on the part of sugar plant in Senta (SFIR), as the sole competitor on relevant market;

from agricultural producers, as market participants in the market of growing, production and sale of sugar beet, as well as from sugar plants as their buyers, an explanation shall be requested on the manner of purchase and sale of this raw material, and also submission of agreements on purchase and sale of sugar beet, containing negotiating position held by each of the partners in concluding such agreements (existing experience and any future expectations upon implementation of concentration);

Commission shall request from competent institutions to provide data relating to distinctive characteristics of market for production of sugar beet, to be used for actual assessment of effects of this concentration. Furthermore, Commission shall request data regarding aggregate consumption of sugar (made of final and industrial consumption) on annual level in the Republic of Serbia for 2011, as well as additional information on imported and exported quantities both for sugar and sugar beet for the same time period (open access to the market of the Republic of Serbia in view of existence of allotments, quotas, level of custom rates, variable levies etc).

from parties involved in concentration and their only competitor, submission of data relating to the level of exploitation of installed capacities for each production plant shall be requested, also including assessment of changes to which implementation of concentration may eventually lead to, as concerns the percentage of exploitation of capacity in relation to existing state;

effects of relevant concentration in the market of sale/supply of sugar as a final product, that is, raw material for further processing, for which, at this stage of production and distribution chain, a survey shall be made among market participants;

future business, development and exploitation plans applying to the manner of use of existing property of applicant, relating to production of sugar, as well as the property of target company, which the applicant shall acquire upon realization of relevant concentration.

Pursuant to provisions of Article 62 of the Law it is decided as in paragraph I of enacting terms.

Pursuant to provisions of Article 35, paragraph 2 of the Law, it is decided as in paragraph II of enacting terms.

Pursuant to provisions of Article 65, paragraph 5 of the Law, it is decided as in paragraph III of enacting terms.

Pursuant to provisions of Article 40 of the Law, it is decided as in paragraph IV of enacting terms.

On the grounds of above stated facts, it is decided as in enacting terms.

Legal remedy:

Against this resolution, a separate appeal is not allowed.

President of the Commission  
Vesna Jankovic