



Republic of Serbia
**COMMISSION FOR PROTECTION
OF COMPETITION**
25 Savska St., 4th Floor, Belgrade
No.: 6/0-03-611/2020-1
Date: September 17, 2020

Pursuant to Article 35(2) and Article 62(1) of the Law on Protection of Competition (Official Gazette of the RS 51/09 and 95/13), on September 17, 2020, the President of the Commission for Protection of Competition enacts the following

CONCLUSION

I PROCEEDINGS SHALL BE INSTITUTED *ex officio* against Zdravstvena ustanova “Apoteka Janković”, with registered office at 13 Miloša Bajića St., Novi Sad, Republic of Serbia, company number 08289948, to investigate a merger implemented before obtaining clearance under the Law on Protection of Competition, which, based on the reasonable grounds to believe, is created by the acquisition of control on the part of Zdravstvena ustanova “Apoteka Janković” over pharmaceutical operations of Zdravstvena ustanova “Apoteka Zrenjanin”, with registered office at 46/c Patrijarha Pavla St., Zrenjanin, Republic of Serbia, company number 08671621, pursuant to the Concession Agreement for Financing, Revitalization, Management, and Running of Pharmaceutical Operations in the City of Zrenjanin, concluded on March 4, 2019, between the City of Zrenjanin and Zdravstvena ustanova “Apoteka Janković”.

II ALL PERSONS ARE INVITED that are in possession of data, documents or other relevant information that could contribute to the accurate fact-finding in this proceedings to forthwith present said evidence to the Commission for Protection of Competition at 25 Savska St., 4th Floor, Belgrade.

III This conclusion shall be published in the Official Gazette of the RS and on the website of the Commission for Protection of Competition.

Exposition

Having examined publicly available information, the Commission for Protection of Competition (hereinafter, the Commission) has established that the Concession Agreement for Financing, Revitalization, Management, and Running of Pharmaceutical Operations in the City of Zrenjanin (hereinafter, the Agreement) is signed on March 4, 2019, between the City of Zrenjanin, with registered office at 10 Trg Slobode Sq., Zrenjanin, Republic of Serbia, registration number 08834954,

standard industrial classification code 8411 – General public administration activities (hereinafter, the Public Partner, City of Zrenjanin), represented by the Mayor of the City of Zrenjanin, of the one part, and Zdravstvena ustanova “Apoteka Janković”, with registered office at 13 Miloša Bajića St., Novi Sad, Republic of Serbia, company number 08289948 (hereinafter, Apoteka Janković, the Private Partner or Concessionaire), represented by co-owner Snežana Janković, of the other part. On June 26, 2018, the Commission for Public-Private Partnership has issued a favorable opinion on the draft Agreement/the concession act concerned, filed under No. 143/2018, also published on its website.

The Public Call for Granting of Concession for Financing, Revitalization, Management, and Running of Pharmaceutical Operations in the City of Zrenjanin (hereinafter, the Concession) was published on November 16, 2018, while the closing date for the submission of tenders was January 8, 2019. The subject matter of the Concession was financing, revitalization, management and running of pharmaceutical operations, and the provision of rights over stores owned by/property of the Public Partner in the City of Zrenjanin, with the Concession period of 15 years from the date of entry into force of the Agreement. In response to the Public Call, one tender was received, submitted by Apoteka Janković. Since it was assessed that the tender was submitted in a timely manner, as well as to be correct and complete, on a proposal of the Expert team, the Mayor of the City of Zrenjanin has enacted the Decision on the selection of the most advantageous tender No. 404-6-2-18/2018-II of January 14, 2019 (hereinafter, the Decision). The selected most advantageous bidder has committed in the bid to paying a concession fee, namely: the upfront concession fee in the amount of 840,700 euros and the annual concession fee in the amount of 120,100 euros. The enactment of the Decision is a part of a due process in the concession award procedure and precedes the conclusion of a concession agreement.

Pursuant to the Agreement, the Public Partner (City of Zrenjanin and Zdravstvena ustanova Apoteka Zrenjanin) awards the concession for running of pharmaceutical operations and the rights over stores owned by/property of the Public Partner in which the Private Partner must solely run pharmaceutical healthcare operations at 32 locations (6 in the City of Zrenjanin, 17 in villages and 9 in rented buildings) in the territory of the City of Zrenjanin with a population of approx. 127,000 inhabitants, in which Zdravstvena ustanova Apoteka Zrenjanin (hereinafter, ZUA Zrenjanin), as an independent pharmaceutical healthcare institution, performed pharmaceutical healthcare operations up to the date on which the Agreement was signed.

The Agreement enters into force subject to the following conditions precedent:

- I. The stores required for the concession activity are properly made available by the Public Partner, without any encumbrance and rights of a third party impairing the running of operations;
- II. The existing lease agreements are legally valid and binding;
- III. The Concessionaire had taken over the entire qualified personnel employed in ZUA Zrenjanin on the date of conclusion of this Agreement;
- IV. Merger clearance and/or any other competition-related approval, if needed pursuant to the Law (encompassing all current, general binding legal regulations that fall within the scope of Serbian regulation) is duly obtained;
- V. The Concessionaire has properly obtained all necessary insurance policies for the project in accordance with this Agreement;
- VI. The Concessionaire has paid the upfront concession fee;
- VII. The Concessionaire has provided a performance guarantee.

The grounds for launching the PPP project concerned with elements of concession is the insufficient level of services provided by the network of pharmacies in the territory of the City of Zrenjanin, managed by ZUA Zrenjanin pursuant to the law governing healthcare protection. The lack of competitiveness in relation to privately owned pharmacies, as well as certain level of debts that has increased over time and which jeopardizes the liquidity of ZUA Zrenjanin, causes a constant decrease in the annual turnover levels. The implementation of this public-private partnership ensures the continuous supply of medicaments, dietary supplements and medical device accessories to the public in a profitable manner.

Under the terms of the Agreement, the Concessionaire holds exclusive rights and commitments to:

- Secure funding;
- Revitalize stores under the concession;
- Manage pharmacies and run pharmaceutical operations;
- Pay the contractual concession fee to the Public Partner;
- Maintain the effects of lease agreements for stores with the third parties and make rent payments pursuant to said agreements;
- Transfer/return stores to the Public Partner upon expiration of the term of the Agreement.

Under the terms of the Agreement, the Public Partner is under the obligation to:

- Hand over the property to the Concessionaire, without any encumbrance and rights of a third party impairing the running of the concession operations concerned;
- Transfer the existing lease agreements for stores, concluded with the third parties;
- Secure the transfer of all employees of ZUA Zrenjanin to the Concessionaire;
- Monitor the performance of contractual obligations by the Concessionaire;
- Provide support to the Concessionaire during the entire process of putting into operation of stores for launching of the concession operations;
- Provide full administrative assistance and support to the Concessionaire within the scope of its competences throughout the period of validity of the Agreement.

Apoteka Janković was founded in 1996, with the basic activity: Retail sales of pharmaceutical goods in specialized stores – pharmacies (standard industrial classification code 4773). Its founding members are Janković Snežana with 50% of shares and Janković Vukić with 50% of shares, also acting as a legal representative of Apoteka Janković. As at December 31, 2019, the average number of employees was 500. At the time of signing the Agreement, Apoteka Janković held nine retail outlets – pharmacies in Zrenjanin.

The Assembly of the City of Zrenjanin has founded ZUA Zrenjanin on October 17, 2006, as a 100% state owned pharmaceutical healthcare institution. Its basic activity is Retail sales of pharmaceutical goods in specialized stores – pharmacies (standard industrial classification code 4773). Although the current statutory regulations require that at least one pharmacy remains as an entity within ZUA Zrenjanin pending the revision of the network of healthcare institutions of the Republic of Serbia, the ZUA Zrenjanin activities have fell considerably given both the personnel structure and inability of making a profit on the market in the context pharmaceutical activities, wherefore the basic activity in terms retail sale of

medicaments, dietary supplements and medical device accessories was hindered. Instead, the discharge of liabilities towards suppliers from the previous period is underway. The current registered office of ZUA Zrenjanin is 46/c Patrijarha Pavla St., Zrenjanin, Republic of Serbia, company number 08671621, where its pharmacy is also located.

In the light of the foregoing, it can be concluded that Apoteka Janković/Concessionaire had taken over the basic activity of ZUA Zrenjanin.

According to the Income statement of Apoteka Janković as at December 31, 2018, its total annual revenue is 4,319,574,000.00 dinars/36,546,288.91 euros.

The financial statements of ZUA Zrenjanin for 2018 are not publicly disclosed. However, from the financial plan of ZUA Zrenjanin for 2018, provided to the Health Insurance Fund of the Republic of Serbia - Subsidiary for the Mid Banat Administrative District Zrenjanin, whose draft baseline mirrors the implementation of the 2017 financial plan, derives that the planned total revenue is 681,430,000.00 dinars/5,765,322.61 euros.

On the basis of the above mentioned, the Commission found reasonable grounds to believe that by taking over of ZUA Zrenjanin operations on the part of the Concessionaire to perform pharmaceutical healthcare operations in the territory of the City of Zrenjanin and by acquiring control over said entity, a merger had arisen that concerns the acquisition of direct control on the part of an undertaking over the part of another undertaking, within the meaning of Article 17(1/2) of the Law on Protection of Competition (Official Gazette of the RS 51/09 and 95/13 - hereinafter, the Law).

Due to the lack of data on the generated total annual revenue of ZUA Zrenjanin in 2018 (where the structure of revenues in terms of the sum of operating, financial and other revenues is also unknown), it cannot be reasonably established if the terms referred to in Article 61 of the Law are met, that is, if the merger notification before the Commission was mandatory.

The Commission has found by examination that a merger notification, by the date when this conclusion was enacted, was not filed before the Commission for a review pursuant to the Law.

In the proceedings concerned, the Commission will take all necessary measures, establish facts and investigate whether the case concern an action in contravention to the provisions of Articles 61 and 63 of the Law, as well as the permissibility of this merger in accordance with Article 19 of the Law which stipulates that concentrations of undertakings are permitted, unless they significantly restrict, distort, or prevent competition on the market of the Republic of Serbia or its part, and especially if that restriction, distortion, or prevention is the result of creating or strengthening of a dominant position.

A specific aspect of the analysis in this proceedings will be based on information and assessments of direct or delayed effects of the implementation of the merger concerned, collected from the most relevant suppliers and competitors of the merger parties, active on each of the markets defined as relevant for the proceedings concerned. To obtain data, information and opinions, the Commission will contact individual government bodies, economic entities and business associations of undertakings.

Also, the Commission will investigate whether the conditions conducive to the implementation of a measure are met, necessary for establishing or preserving competition on the relevant market (measures of deconcentration) referred to in Article 67 of the Law, as well as antitrust measures referred to in Article 68(1/4) of the Law, set in the form of an obligation to pay a monetary sum in the amount up to 10% of the total annual revenue generated in the territory of the Republic of Serbia

and calculated under Article 7 of the Law, if related undertaking conducts a concentration contrary to the obligation of interruption within the meaning of Article 64 of the Law, or for which the approval for implementation of concentration is not issued within the meaning of Article 65 of the Law.

The provision of Article 35 of the Law stipulates that the Commission can institute proceedings *ex officio* to investigate antitrust cases when based on complaints, information, and other available data reasonably assumes the existence of anticompetitive behaviors, as well as in the case of merger controls within the meaning of Article 62 of the Law.

Article 62(1) of the Law stipulates that the Commission may, upon learning of implemented merger, investigate said transaction if it finds that the combined market share of the merger parties on the market of the Republic of Serbia is at least 40%, or reasonably assumes that the merger fails to meet the conditions of permissibility referred to in Article 19 of the Law, as well as in the case of other mergers not cleared under the Law.

Pursuant to Article 35(1) and Article 62(1) of the Law, it is decided as in Paragraph **I** of enacting terms herein.

Pursuant to Article 35(2) of the Law, it is decided as in Paragraph **II** of enacting terms herein.

Pursuant to Article 40(1) of the Law, it is decided as in Paragraph **III** of enacting terms herein.

Instruction on legal remedy:

This conclusion is not susceptible to special appeal, but is permitted to institute an administrative dispute against the final decision of the Commission in this matter.

PRESIDENT OF THE COMMISSION

Nebojša Perić