



Republic of Serbia  
**COMMISSION FOR PROTECTION OF  
COMPETITION**

25 Savska St., 4<sup>th</sup> Floor, Belgrade

Number: 4/0-02-557/2020-8

Date: September 21, 2020

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The Council of the Commission for Protection, pursuant to Article 22(2) of the Law on Protection of Competition (“Official Gazette of the RS”, Nos. 51/2009 and 95/2013), Article 2(1/2) of the Tariff on the level of compensations for activities within the competence of the Commission for Protection of Competition (“Official Gazette of the RS”, No. 49/2011), in proceedings instituted on receipt of a request of companies: DOO za proizvodnju, promet i usluge Elixir Group Šabac, having its registered office address at 1 Hajduk Veljkova St., Šabac, company number 07627645, being legally represented by its Director, Zorica Popović, and procuration holder Srđana Petronijević and other attorneys at law from the Law Office “Moravčević, Vojnović i partneri” from Belgrade, 15 Dobračina St., and Serbia Zijin Bor Copper d.o.o. Bor, having its registered office address at 29 Đorđa Vajferta St., Bor, company number 07130562, being legally represented by its Director, Jian Ximing, for individual exemption of restrictive agreement from prohibition – Agreement of Purchase and Sale of Technical-Grade Sulfuric Acid, at the 25<sup>th</sup> session held on September 21, 2020, enacts the following

## DECISION

**I Restrictive agreement - Agreement of Purchase and Sale of Technical-Grade Sulfuric Acid SHALL BE EXEMPT FROM PROHIBITION**, whose contractual parties are companies: DOO za proizvodnju, promet i usluge Elixir Group Šabac, having its registered office address at 1 Hajduk Veljkova St., Šabac, and Serbia Zijin Bor Copper d.o.o. Bor, having its registered office address at 29 Đorđa Vajferta St., Bor,

**II TIME PERIOD SHALL BE SET**, pertaining to the individual exemption from prohibition of the restrictive agreement referred to in Paragraph I of the enacting terms herein, in the duration of eight (8) years from the date of adoption of this decision, until 21 September 2028.

**III IT SHALL BE ESTABLISHED** that companies DOO za proizvodnju, promet i usluge Elixir Group Šabac, having its registered office address at 1 Hajduk Veljkova St., Šabac, and Serbia Zijin Bor Copper d.o.o. Bor, having its registered office address at 29 Đorđa Vajferta St., Bor, have complied fully with their obligation to pay a stipulated fee amount for the issuance of

this decision by paying the amount of 141,111.72 dinars, which equals 1,200.00 euros in the dinar-currency equivalent value calculated at the middle exchange rate of the National Bank of Serbia valid on the day of payment, into the account of the Commission for Protection of Competition.

### *Exposition*

The Commission for Protection of Competition (hereinafter, the 'Commission') has received the Request for individual exemption from prohibition (hereinafter, the 'Request') on 20 August 2020, of the Agreement of Purchase and Sale of Technical-Grade Sulfuric Acid of 20 December 2019, whose Filing parties are the contractual parties, companies: DOO za proizvodnju, promet i usluge Elixir Group Šabac, having its registered office address at 1 Hajduk Veljkova St., Šabac, company number 07627645, being legally represented by its Director, Zorica Popović, and procuration holder Srđana Petronijević and other attorneys at law from the Law Office "Moravčević, Vojnović i partneri" from Belgrade, 15 Dobračina St. (hereinafter, 'Elixir Group'), and Serbia Zijin Bor Copper d.o.o. Bor, having its registered office address at 29 Đorđa Vajferta St., Bor, company number 07130562, being legally represented by its Director, Jian Ximing (hereinafter, 'Zijin Bor'), registered at DOO za proizvodnju, promet i usluge Elixir Group under file No. 334/1 of 20 December 2019, and Serbia Zijin Bor Copper d.o.o. Bor under file No. 10327 of 20 December 2019 (hereinafter, the 'Agreement of Purchase and Sale of Technical-Grade Sulfuric Acid').

### **Subject matter of the Request for individual exemption**

The Request seeks the individual exemption from prohibition of the Agreement of Purchase and Sale of Technical-Grade Sulfuric Acid, which is created from Zijin Bor's operations, that is, in the process of copper production and processing in a copper smelter in Bor, procured by Elixir Group for further use in the production of mineral fertilizers and phosphoric acid in a production facility located in Prahovo. ... Namely, Zijin Bor is active in the production and processing of copper in a copper smelter in Bor. In the course of the production, technical-grade sulfuric acid is created as a byproduct, which is used as a raw material in the production of phosphoric acid and synthetic fertilizers.

The Agreement of Purchase and Sale of Technical-Grade Sulfuric Acid is concluded with the term of validity of ... and the Request seeks the individual exemption from prohibition in the duration of 8 years.

The Filing parties believe the Agreement of Purchase and Sale of Technical-Grade Sulfuric Acid does not represent a restrictive agreement within the meaning of Article 10 of the Law on Protection of Competition ("Official Gazette of the RS", Nos. 51/2009 and 95/2013 – hereinafter, the 'Law'), thus have filed an alternative request asking the Commission to reject the Request on account of the fact that the agreement concerned is not restrictive under Article 10 of the Law. Otherwise, should the Commission establish that the agreement concerned is restrictive,

the Filing parties have proposed the Commission to exempt it from the prohibition for a period of 8 years.

The Commission establishes that the Request submitted under Article 12, read in conjunction with Article 11 of the Law, is in full accordance with the Regulation on the content of requests for individual exemption of restrictive agreements from prohibition ("Official Gazette of the RS", No. 107/2009).

## **Filing Parties**

1. Elixir Group company belongs to the Elixir group. It is incorporated as a limited liability company on 16 May 1990, registered with the Business Registers Agency under company number 07627645, ISIC Code 4690 - Non-specialized wholesale trade, with registered office address in Šabac, at 1 Hajduk Veljkova St., and is legally represented by its Director, Zorica Popović, and other representatives: Stanko Popović, Samir Krak, Vladimir Todorović, Nebojša Nikšić, Slavica Brkić, Darko Vuković, Nebojša Mičić, and Vladimir Cvejić. Stanko Popović is the only shareholder holding 100% of the company's capital.

The following companies affiliated to Elixir Group also operate on the market of the Republic of Serbia, namely:

1. Elixir Zorka-mineralna đubriva d.o.o. Šabac, with registered business activity - Manufacture of synthetic fertilizers and nitrogen compounds;
2. Prahovo Komerc d.o.o. Negotin, with registered business activity - Manufacture of synthetic fertilizers and nitrogen compounds;
3. Elixir Agrar d.o.o. Šabac, with registered business activity - Wholesale of grain, unmanufactured tobacco, seeds and animal feeds;
4. Elixir fruit d.o.o. Šabac, with registered business activity - Other processing and preserving of fruit and vegetables;
5. Elixir Feed additives d.o.o. Šabac, with registered business activity - Wholesale of grain, unmanufactured tobacco, seeds and animal feeds;
6. Elixir energy d.o.o. Prahovo, with registered business activity - Recovery of sorted materials;
7. Elixir Prahovo d.o.o. Prahovo, with registered business activity - Manufacture of synthetic fertilizers and nitrogen compounds;
8. Grit commerce d.o.o. Beograd, with registered business activity - Non-specialized wholesale trade;
9. Elixir Craft d.o.o. Šabac, with registered business activity - Other specialized construction activities n.e.c.;
10. Elixir fondacija Šabac, with registered business activity - Activities of other membership organizations n.e.c.;
11. Metal Recovery d.o.o. Beograd, with registered business activity - Non-specialized wholesale trade;
12. Industrial Chempark d.o.o. Prahovo, with registered business activity - Activities of head offices.

Elixir Group is a strategic and largest buyer of technical-grade sulfuric acid from the copper mining and smelting complex Bor, operated by Zijin Bor since 2018.

2. Zijin Bor is a limited liability company incorporated on 10 December 1999, registered with the Business Registers Agency under company number 07130562, ISIC Code 0729 - Mining of other non-ferrous metal ores, with registered office address in Bor, at 29 Đorđa Vajferta St., and is legally represented by its Director Jian Ximing. The Republic of Serbia and Zijin (Europe) International Mining Company Limited are shareholders with a 36.99% and 63.0% interest, respectively.

The following companies affiliated to Zijin Bor operate in the Republic of Serbia, namely:

1. Pometon TIR d.o.o. Beograd, with registered business activity - Manufacture of copper;
2. Novosadska fabrika kabela d.o.o. Novi Sad, with registered business activity - Manufacture of other electronic and electric wires and cables;
3. Zaštita – in bankruptcy Bor, with registered business activity - Security systems services;
4. Minel Koncern a.d. Beograd, with registered business activity - Business and other management consultancy activities;
5. JP Bogovina Bor, with registered business activity - Business and other management consultancy activities;
6. Samački smeštaj d.o.o. Bor, with registered business activity - Real estate activities on a fee or contract basis;
7. Fabrika lak žice d.o.o. – in bankruptcy, with registered business activity - Manufacture of wire products, chain and springs;
8. RTB Basen Bor grupa fabrike opreme i delova – in bankruptcy, with registered business activity – Manufacture of other general-purpose machinery;
9. Industrija za preradu Majdanpek d.o.o. – in bankruptcy, with registered business activity - Manufacture of imitation jewelry and related articles;
10. Ishrana a.d. – in bankruptcy, with registered business activity – Other food service activities;
11. SRC 6. avgust Majdanpek, with registered business activity – Operation of sports facilities.

## **Nature, subject matter and purpose of the agreement**

...

Based on the information presented in the Request, the Commission has established that ... planned annual output of technical-grade sulfuric acid in the production facilities of Zijin Bor. According to the Request, ... The assessment is reasoned by the fact, according to the Filing parties, that the demand from the third parties was historically insignificant, while the entry of new players requiring the acid concerned in volumes that would exceed the reserved quantities is not expected in the future.

According to the information given in the Request, the sulfuric acid market and demand for sulfuric acid in Serbia can be illustrated by the tables provided below.

Table 1. Sulfuric acid output and import, Serbia

	<b>Sulfuric acid, in tons</b>		
	<b>2019</b>	<b>2018</b>	<b>2017</b>
Zijin Bor (output)	...	...	...
Import (by Elixir)	...	...	...

Table 2. Sulfuric acid export, Serbia

	<b>Export, in tons</b>		
	<b>2019</b>	<b>2018</b>	<b>2017</b>
Zijin Bor	19,781.240	18,840.920	8,344.070

Table 3. Sulfuric acid sale by Zijin Bor, 2019

<b>Buyers</b>	<b>Volumes sold, in tons</b>
Elixir	351,767.868
Buyer from Romania	3,349.00
Other buyers from Serbia	4,247.92

The Filing parties note that Zijin Bor plans to ...

On the other hand, Elixir Group and its affiliated companies have the need and capacity to take over large volumes of technical-grade sulfuric acid, and the agreement concerned also enables Elixir Group to plan the production and procurement of this raw material.

Therefore, the main purpose of the Agreement of Purchase and Sale of Technical-Grade Sulfuric Acid is to secure the continuous and balanced delivery of sulfuric acid from the copper smelter in Bor, operated by Zijin Bor. In that manner, the Agreement allows for the future undisturbed and efficient production by both contractual parties, ensures appropriate environmental protection and creates conditions for further development of copper mining in Bor, i.e., resolves the issues that concern copper mining, storage, sale and transport of technical-grade sulfuric acid, including the procurement of raw materials by Elixir Group.

## **Relevant market**

Article 6 of the Law stipulates that the relevant market within the meaning of this law is a market that includes the relevant product market on the relevant geographic market. The Regulation on criteria in defining the relevant market (Official Gazette of the RS 89/2009) in more detail regulates the criteria in defining the relevant product market and relevant geographic market.

The Filing parties suggested the Commission to consider the subject matter of the Agreement when deciding on the relevant market, and define the market for production and sale of technical-grade sulfuric acid as the relevant market.

The acid concerned, according to the Request, is a key raw material in the production of phosphoric acid, whose only manufacturer in Serbia is Elixir Prahovo. It is assessed that there are no expectations of a new factory opening in the territory of the Republic of Serbia that would require technical-grade sulfuric acid from the Bor factory in its production, or at least in significant volumes. It is further added that in the immediate and wider surroundings of Serbia, there are no remaining facilities for the production of this acid. Mineral fertilizer manufacturers are the largest users of this acid (around 80%). The product is used in the production of phosphates and, to an extent, in the steel, petrochemical and oil processing industries, while other industries such as textile, paper, car, pharmaceutical, etc., use it in very limited quantities. The Filing parties believe that the relevant geographic market can be wider than the national and that it certainly includes the neighboring and EU markets given that under the Customs Tariff there are no customs duties on sulfuric acid imports to Serbia from the EU Member countries, CEFTA and EEA countries, including the Eurasian Economic Union and Turkey, and that manufacturers from other countries are, or may be present on the market.

For the purpose of deciding on the Request, the Commission has defined the market for production and sale of technical-grade sulfuric acid as the relevant product market, while the territory of the Republic of Serbia is set as the relevant geographic market.

Company Zijin Bor is the only manufacturer on the market defined in this manner, however, considering that there are no significant barriers to entry on the relevant market and in particular the fact that the import of this product is free, the imported volumes of technical-grade sulfuric acid can also be found on the market. On the demand side, Elixir Group is by far the largest buyer of this product on the relevant geographic market.

The markets for products, in the manufacture of which technical-grade sulfuric acid is used in the production, are the markets affected by the agreement concerned. The largest share of technical-grade sulfuric acid is used in the production of mineral fertilizers, where Elixir Group is the only manufacturer of mineral fertilizers in Serbia while other undertakings are the importers that rely on other supply sources. The Filing parties believe that the Agreement of Purchase and Sale of Technical-Grade Sulfuric Acid will not have effects on this market as competitive conditions would remain identical taking into account the multi-year previous cooperation between companies that here act as the contractual parties. Furthermore, according to the Filing parties, the Agreement of Purchase and Sale of Technical-Grade Sulfuric Acid may also affect the phosphoric acid market, which the Commission in its practice thus far had analyzed and is familiar with competitive conditions on this market, thus the agreement concerned does not presume the creation of adverse effects on this market.

### **Application of the provisions on individual exemption from prohibition**

Given that Zijin Bor is the only manufacturer and Elixir Group the largest buyer of sulfuric acid, including the provisions of the Agreement of Purchase and Sale of Technical-Grade Sulfuric Acid, the Commission has assessed that the Agreement does not represent an agreement of minor importance within the meaning of Article 14 of the Law, and although it has characteristics of an agreement on exclusive sale and falls within the category covered by the Regulation on agreements between undertakings operating at the different level of production or distribution chain exempted from prohibition (Official Gazette of the RS 11/2010, hereinafter, the 'Vertical Block Exemption Regulation'), it falls outside the scope of this Regulation based on non-compliance with the conditions in terms of market share referred to in Article 4 of the Regulation.

Based on the analysis of the Agreement of Purchase and Sale of Technical-Grade Sulfuric Acid, it is established that the agreement concerned does not contain the restrictions listed in Article 10(2) of the Law, i.e., it is not established that the purpose of this vertical agreement is price fixing or market sharing.

The Agreement of Purchase and Sale of Technical-Grade Sulfuric Acid is viewed as a restrictive agreement on account of the fact that it establishes, on the market of the Republic of Serbia, a *de facto* exclusive sale of technical-grade sulfuric acid to one buyer, given that the remaining volumes available for sale to other buyers do not exceed 5% of the total annual output of the product concerned.

Specifically, in the preamble to Agreement of Purchase and Sale of Technical-Grade Sulfuric Acid ...

For this reason, the Agreement of Purchase and Sale of Technical-Grade Sulfuric Acid is restrictive agreement, leading the Commission to conclude that the Request for individual exemption from prohibition is not possible to reject, as alternatively requested in the Request concerned.

The Commission further assessed the possibility of individual exemption of the Agreement concerned from prohibition, and to this effect has performed the assessment of compliance with requirements set out in Article 11 of the Law.

### **Compliance with requirements set out in Article 11 of the Law**

The Commission was assessing whether the Agreement concerned contributes to the improvement of output and trade, incite technical or economic progress while providing consumers with a fair share of benefits, provided that it does not impose restrictions on undertakings that are not necessary for the purpose of attaining the objectives of the Agreement or exclude competition on the relevant market or in its substantial part.

The Commission has particularly valued the claims included in the Request, stating that the Agreement of Purchase and Sale of Technical-Grade Sulfuric Acid establishes long-term cooperation between the contractual parties and contributes to the improvement of copper production in a copper smelter in Bor, including the production of phosphatic acid and mineral synthetic fertilizers. The Filing parties expect the agreement to enable its recipients to increase the level, quality and capacity utilization rate of their production capacities, which will help to reduce the costs of manufacture, and ultimately possibly reflect favorably on the product price.

According to the information presented in the Request, if the cooperation envisaged by the agreement would not materialize, bottlenecks in the copper production would be created and significant resources into the building of storage for technical-grade sulfuric acid would need to be invested, jeopardizing the efficiency of operations and, by extension, the realization of investments by Zijin Bor in increasing the copper output capacities. On the other hand, the implementation of the agreement concerned would provide sufficient volumes and regular supply of the key raw material to Elixir Group for the production of phosphoric acid and mineral synthetic fertilizers, thus the possibility of long-term planning and increasing the production line output of its facilities.

Also, the fact that production facilities of Zijin Bor and Elixir Group or their affiliated companies are at close range, enables for the transport of technical-grade sulfuric acid, classified as hazardous, to be performed with minimum risks of potential accidents, spills, etc., i.e., reduces the number of potential incidents and problems caused by inadequate delivery of the product concerned.

The Filing parties believe that the volumes reserved for the third parties allow for the possibility of a sufficient and sustainable supply of other buyers with technical-grade sulfuric acid. In their assessment, they believe that no market entry of manufacturers would occur in the future, which would require substantial volumes of technical-grade sulfuric acid in their production or in volumes that would exceed the reserved volumes, particularly on the market for the production of phosphoric acid given that it concerns a chemical industry that requires substantial investments, longer time period of layout decisions and construction, and preparation of all necessary documentation. It is also added that the limited location options affect the decision of companies regarding sites of their future facilities.

The Request also mentions that the Agreement of Purchase and Sale of Technical-Grade Sulfuric Acid will not adversely affect consumers or buyers of end-products manufactured by the contractual parties on account of the fact that the sale or procurement of raw material is in this manner arranged, whose recipients are undertakings and not directly end-users. The Filing parties believe that the Agreement of Purchase and Sale of Technical-Grade Sulfuric Acid will not lead to an increase in prices of products that require technical-grade sulfuric acid in their manufacture as the price of technical-grade sulfuric acid will mirror the international trends. It is stated that positive effects are expected, deriving from the application of the agreement concerned on the output product markets – synthetic fertilizers, given the increased supply of synthetic fertilizers from indigenous production sources and increased export of these fertilizers on other markets. The Request also mentions that significant volumes of technical-grade sulfuric acid will be delivered at a close distance, mainly via rail tank cars and purpose-built railway



lines, constructed at the time when the contractual parties were a part of a single industrial system, which can have a positive environmental impact, and also on overall production and distribution costs.

## **Final assessment**

Following a comprehensive analysis of the Request concerned and contractual documents, including the information obtained, the Commission has assessed that the Agreement concerned imposes no restrictions on undertakings that are not indispensable to the attainment of the objective pursued, meaning that the conclusion and implementation of the Agreement concerned do not result in a substantial lessening of competition on the relevant market or its substantial part.

The Commission has assessed that the Agreement of Purchase and Sale of Technical-Grade Sulfuric Acid does not substantially restrict the access to this raw material, that it contributes to increasing the output of the contractual parties and facilitates the storage and dispatch of the product concerned.

The Commission has also assessed that the compliance with requirements set out in the Law for individual exemption of the restrictive Agreement concerned from prohibition is sufficiently reasoned and proven, and under this assessment, it is decided as in Paragraph I of the enacting terms herein.

In determining the time period of individual exemption from prohibition of the Agreement of Purchase and Sale of Technical-Grade Sulfuric Acid, the Commission has considered the fact that the relation between the contractual parties also existed before but was agreed on annually and renewed, without causing market disturbances as such, thus it is assessed that the market share of the contractual parties will not change substantially with the continued application of the agreement concerned. Also, the Commission considered the fact that the agreement concerned is concluded to ensure undisturbed ... Having regard to the foregoing, the Commission has set the period pertaining to the individual exemption from prohibition of the Agreement of Purchase and Sale of Technical-Grade Sulfuric Acid in the duration of eight years from the date of adoption of this decision, until 21 September 2028, under Article 12(3) of the Law, which specifies that the period to which the individual exemption of restrictive agreement from prohibition is granted cannot be longer than eight years.

Accordingly, under the provision of Article 60(2) of the Law, the Commission has decided as in Paragraph II of the enacting terms herein.

The Commission bases its decision solely on the information, data and documentation available to it at the time of the adoption of the decision. The Commission may, under the provision of Article 60(5) of the Law, in a repeated proceedings ex officio within the meaning of Article 46 of the Law, annul the decision in case of substantial change in circumstances under which the exemption is granted or set aside the decision within one year of its adoption if the exemption is based on inaccurate or misleading statements or if the exemption is misused.

The decision concerned refers exclusively to the Agreement of Purchase and Sale of Technical-Grade Sulfuric Acid and attachments submitted with reference to the Agreement concerned, and not to any possible future annexes that would, during the period of individual exemption, amend the exempt Agreement.

Under Article 60(6) of the Law and Article 2(1/2) of the Tariff on the level of compensations for activities within the competence of the Commission for Protection of Competition (Official Gazette of the RS 49/2011), it is decided as in Paragraph III of the enacting terms herein.

### **Instruction of legal remedy**

This administrative decision is final and is susceptible to administrative appeal filed with the Administrative Court in Belgrade, 9 Nemanjina St., no later than 30 days from the date of communication of this decision.

A court fee of 390 dinars is to be paid for bringing an action, set out in the Law on Court Fees (Official Gazette of the RS 28/1994, 53/1995, 16/1997, 34/2001 – as amended, 9/2002, 29/2004, 61/2005, 116/2008 – as amended, 31/2009, 101/2011, 93/2012, 93/2014, 106/2015, and 95/2018).

**PRESIDENT OF THE COMMISSION**

*(Signed)*

**Nebojša PERIĆ**