

Republic of Serbia
Commission for Protection of Competition
No. 6/0-02-18/2012-3
Ref. no. 6/0-02-626/2011
Date: January 19, 2012
Beograd

Council of the Commission for Protection of Competition, at its 64th session held on January 19, 2012, and pursuant to Article 22, paragraphs 2, 62 and 65 of the Law on Protection of Competition ("Official Journal of the RS", no. 51/09) and Article 2, item 5, of 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) deciding under notification of concentration submitted by company Sunoko d.o.o., with registered head-office in Novi Sad at Trg Marije Trandafil 7, continued in ex officio procedure, represented by proxies-lawyers Bojan Vuckovic, Rastko Petakovic and others, all from partners law office Karanovic & Nikoloic from Beograd, located at Resavska 23, issued a following

DECISION

I Concentration between company Sunoko d.o.o with registered head-office in Novi Sad, at Trg Marije Trandafil 7, entered into Agency for Companies Registry of the Republic of Serbia, registration no. BD 76474, reference number 20051183 and company Hellenic Sugar Industry SA, with registered head-office at Mitropoleos 34 str. 541 10 Thessaloniki, Greece, entered into Ministry of Development of Greece under registry number M.A.E. 8246/62/B/86/61 is prohibited.

II Proposal of remedies contained in applicant's argumentation dated January 4, 2012 to the Statement of objections in relevant procedure of December 21, 2011 reading as follows, is rejected:

1. Application of structural measure

Sunoko is obliged, at its discretion, to transfer one of sugar production capacities located at Vrbas, Pecanci, Kovacica, Bac (currently owned by Sunoko), Zabalj or Crvenka (currently owned by Hellenic);

Sunoko is obliged to transfer one of above mentioned 6 (six) sugar production capacities to market participant not affiliated with Sunoko and which is not sugar factory in Senta nor related with owner of sugar factory in Senta, whereby purchaser of one of sugar refineries does not have to be registered for production of sugar;

Sunoko is obliged to transfer one of its six sugar production capacities above stated within the period of 3 (three) years from the date of Sunoko being entered, as a majority owner of Hellanic, into Companies Registry of Greece;

In case Sunoko does not manage, against all reasonable efforts, to transfer one of the above stated six sugar production capacities within the period of 3 years from the date of its being entered, as a majority owner of Hellanic, into Companies Registry of Greece – transfer period is extended for one more year

2. Application of behavioral remedy

Sunoko proposes that a behavioral remedy in order for this concentration to be approved, be determined, along with application of one of two criteria for balance of prices in Serbia with spot sugar prices in European Union, in such a way that Sunoko is at any moment entitled to choose one of the two following criteria under a) and b) below:

Price at which Sunoko sells sugar to buyers in Serbia (in tons) should be balanced with average export price realized at parity Fco sugar factory Sunoko, increased by transportation expenses to buyers in European Union in cities where the sugar is mostly sold (Milano, Athens, Koln) as well as all supporting expenses (certificates, shipping agent's expenses, insurance, storing etc.). Having in mind differences between EU and Serbian market, price in Serbia, in relevant period, may be higher at the most by 10%.

Wholesale price at which Sunoko sells sugar to buyers in Serbia (in tons) is higher by so many times from the price of sugar beet in the Republic of Serbia as is the higher wholesale price of sugar compared to average price of sugar beet in countries in region (Germany, Greece, Austria) in tons. Possibility in deviation from wholesale price on the market of the Republic of Serbia from such established benchmark price, is allowed at the most of up to 10%.

III Proposal of remedy contained in additional applicant's argumentation dated January 17, 2012 to Commission's Statement of Objections established in relevant procedure of December 21, 2011 reading as follows, is rejected:

Legal nature

This proposal refers to particular conditions which Sunoko is ready to accept in concentration assessment procedure under notification (Sunoko/Hellanic), in term of Article 66 of the Law, with the aim for decision on approval of concentration to be issued.

Sunoko accepts that this document (Annex 1 – proposal for remedies) is to be considered as binding proposal of particular conditions, that is, time limits for their implementation, as well as manner of control of their implementation.

Structural remedy – transfer of part of market participant

Sunoko agreed to transfer, that is, make all reasonable efforts aimed at transfer of part of market participant of the Republic of Serbia created by concentration between Sunoko and Hellanic, the part of market participant representing technical-technological entity capable of performing activities related to purchase of sugar beet, production and placement of sugar ("Part of business") under conditions provided for in this item 2.

Reasonable efforts, in term of Article 2.1. shall be deemed active acting, aimed at transfer of Part of business, assignment of property, employees and other activities related to legal organization of Part of business, invitation to international public tender for sale of shares, i.e. share in such organized Part of business, engagement of adequate councillors for sale and active participation in rendering necessary information to potential buyers.

Part of business which is to be transferred is linked to technical-technological entity, to that of one (1) of three (3) existing sugar factories under the control of Sunoko, located at Vrbas, Pecinci and Kovacica, or one (1) of two (2) sugar factories under control of Hellanic located at Zablje and Crvenka (individually, any of such defined technical-technological entities shall be indicated as "Factory").

Part of business to be transferred shall consist, in principle, from the following: organized legal entity possessing a factory for sugar beet processing, that is, sugar production with appropriate plants for processing, employees (meaning permanently employed persons and out-of house employees), for relevant factory with adequate knowledge in field of technology and other know-how and property of legal entity, including immovable and movable property, contracts, intellectual property rights, licenses, permits and approvals of competent government authorities necessary to Part of business for production of sugar.

Part of business which is to be transferred, Sunoko shall transferred to particular buyer ("Relevant buyer") which, cumulatively, satisfies the following conditions:

is not affiliated, as defined in the Law on Protection of Competition, with market participant Sunoko, that is, Mr. Miodrag Kostic,
is not affiliated, as defined in the Law on Protection of Competition, with market participant Fabrika secera TE-TO a.d. Senta, that is, Finanziaria S.I.I.S.p.A;
possesses adequate financial means on the strength of which it is expected to maintain and develop Part of business as competitive market participant to Sunoko and other competitors;
obtained approval for concentration from Commission and other authorities in charge of competition protection, if such approval is necessary.

Sunoko agreed to undertake all measures available to it from the date of passing of Decision of Commission, aimed at maintenance of current activities of Part of business, until the transfer of business, that is, until the Commission issues relevant decision establishing that Sunoko undertook all reasonable measures for transfer of Part of business, pursuant to item 2.10 hereof.

Time limit for performance of obligations referred to in item 2, shall be calculated from the date of acquisition of actual control over sugar refineries in Zablje and Crvenka ("Initial date"). First work day, which de facto or de jure is the first to come, shall be considered as Initial date, when Sunoko is able to actually appoint representatives and conduct control over Factories under control of Hellanic, that is, upon completion of mandatory acts of entering of new owner into registries of the Republic of Serbia (Registry of Companies within Agency for Companies Registry, i.e. Central Registry, Depository and Clearing of Securities), and acts of taking over of shareholding company provided by the Law on takeover of shareholding companies ("Official Journal of the RS", no. 46/2006), i.e. closing of procedure under takeover bid.

Sunoko agrees to inform Commission in writing which of five (5) factories mentioned under item 2.3 shall be determined as Part of business to be transferred. Such information shall be submitted to Commission on the part of Sunoko at the latest within the period of six (6) months from the Initial date. Date of submission of information shall be considered as "Date of providing information". Information shall, among other, contain: (i) data on Factory determined as Part of business to be transferred, (ii) measures planned to be taken relating to transfer, (iii) data on person in charge of implementation of measures for transfer of Part of business ("Sale Trustee"), (iv) data on person in charge of temporary management of daily business of Part of business ("Management Trustee"), as well as (v) data on person to be in charge to monitor sale procedure and provide reports to Commission ("Monitoring Trustee"). Sunoko may appoint, against previous written approval granted by Commission, for any of above stated Trustees, legal entity not affiliated with market participant Sunoko, i.e. natural person who has not been a

director, member of management or supervisory board of any company within the group under control of Mr. Miodrag Kostic in the period of two years prior to issuance of decision of Commission under relevant notification.

Sunoko shall undertake all reasonable steps to transfer Part of business to Suitable purchaser under conditions mentioned above within the period of one (1) year from the Date of providing information ("First time limit"). If, in that period Sunoko does not carry out transfer of Part of business, Monitoring Trustee shall, at the latest 30 (thirty) days prior to expiry of First time limit, provide the Commission with information explaining unsuccessful transfer and all reasonable steps taken aimed at transfer, and Commission shall establish whether all reasonable measures were taken and in that case, allow extension of time limit for one (1) additional year ("Additional time limit"). Simultaneously, Commission may order Sunoko to appoint new Sale Trustee i.e., undertake additional measures, under condition that Sunoko took all reasonable measures to transfer part of business, which is established by the separate decision of Commission.

If, in Additional time limit, that is, in overall period of two (2) years from the Date of providing information, Sunoko does not manage to sell Part of business to Suitable purchaser, Monitoring Trustee shall, at the latest 30 (thirty) days prior to expiry of two (2) years from the Date of providing information, submit to Commission information explaining unsuccessful transfer and all reasonable measures taken aimed at transfer. In such case Commission shall, on the grounds of analysis of all reasonable measures taken by Sunoko, issue adequate decision establishing whether Sunoko undertook reasonable measures and if it did, which is to be established on the part of Commission by its decision, Commission may modify the decision and set the new date, order additional measures to be carried out by Sunoko aimed at transfer of Part of business, or relieve Sunoko from fulfilment of conditions referred to in item 2 of this Annex.

If Sunoko specifies one of factories under control of Hellenic as Part of business to be transferred, i.e. one of two factories in Zablje and Crvenka, Sunoko shall not be obliged to sell in First time limit Part of business at price which is pro rata lower than the price at which Sunoko acquired Part of business in procedure of acquiring control over Hellenic, i.e. price which is pro rata lower than price at which Sunoko acquired Part of business in procedure of take-over of shares of Crvenka Sugar Factory a.d. Crvenka and Sugar Factory Sajkaska a.d. Zabalj.

If Sunoko specifies one of factories under control of Hellenic as Part of business to be transferred, i.e. one of two factories in Zablje and Crvenka, Sunoko shall not be obliged to sell in Additional time limit Part of business at price which is pro rata lower than 70% of the amount of price at which Sunoko acquired Part of business in procedure of acquiring control over Hellenic, i.e. at price which is pro rata lower than 70% of price at which Sunoko acquired Part of business in procedure of take-

over of shares of companies Crvenka Sugar Factory a.d. Crvenka and Sugar Factory Sajkaska a.d. Zabalj.

Sunoko shall transfer control over Part of business which is to be transferred within the period of one (1) month from the Date of providing information, to Sale Trustee. If Sale Trustee is legal entity, Sunoko shall, immediately upon appointment of Sale Trustee, require from it to appoint natural person, i.e. natural persons as representatives of Part of business organized as legal entity.

Behavioral remedies

Sunoko agrees to take steps aimed at balancing of wholesale price at which it sells sugar to domestic and foreign buyers whereby price of sugar by ton is considered, in EUR countervalue at the date of conclusion of contract, i.e. other document contracting sale of sugar. In order to avoid any doubt, relevant price is considered to be price at parity franco buyer (DDP according to Incoterms 2010). In case that particular contract, i.e. other document contracting sale of sugar stipulates purchase at parity franco seller (EXW according to Incoterms 2010), then for the purpose of evaluation of balancing, such agreed price increased by cost of transport, export and other instruments, shipping services, banking guarantees i.e. letter of credits and other costs of sale, shall be calculated.

Sunoko agrees that the price by ton at which it sells sugar to wholesale buyers in Serbia and abroad shall not vary more than 10% from average weighted price in period under review of one (1) month, whereas as comparable prices are considered such prices implying identical payment conditions (e.g. advance price is compared to advance price) that is, according to price from a so called "spot" contract on sale of sugar.

As a corrective factor, and an exemption from item 3.2., a deviation of price of sugar in the amount of more than 10% is allowed, if there is such disparity between price of sugar beet in Serbia and EU so that the price of sugar beet in Serbia is higher by 15% than the price of sugar beet in EU, in which case average monthly price of sugar for which Sunoko negotiated sale in Serbia ('CSS') can be higher so many times, from average price by one ton of sugar beet which Sunoko purchased in the last agricultural season in Serbia ('CRS') for how much is higher average monthly price of sugar produced from sugar beet on the territory of European Union contracted on conclusion of contract with wholesale buyers – so called "spot" contracts in relation to last established average price of sugar beet for "A quota" for production of sugar at which sugar producers in European Union purchased sugar beet from individual producers, according to data of organizations of European Union for Statistics Eurostat ('CREU'), and vice versa – average monthly

price of sugar for which Sunoko contracts sale in EU, can be higher so many times from CREU for how many times is CSS higher compared to CRS.

On existence of essential disparity referred to in item 3.3. (more than 15%) between price of sugar beet in Serbia and price of sugar beet in EU, Commission shall be informed in good time by institution engaged in economic sciences, acceptable for Commission, based on relevant information, including also data disclosed by organization of European Union for Statistics Eurostat.

Behavioral remedy referred to in this item 3 shall commence to be applied from Initial date in terms of item 2.7. of Proposal, and shall cease to be applied upon expiry of two (2) years from its initial application.

Sunoko agreed to provide Commission in written manner with reports every three months within the period of ten (10) days from the end of each calendar three-months- period (January-March, April-June, July-September, October-December). Written reports shall consist of monthly review, based on Table consisting of Annex 2, enclosed to Decision of Commission concerning this case.

IV It is established that the applicant of concentration is obliged to pay, for issuance of decision on prohibition of concentration, compensation in the amount of 1.200,00 EUR in dinar countervalue at medium foreign currency rate of National Bank of Serbia valid at the date of payment.

V It is established that applicant of concentration effected, in good time and in full, payment of compensation referred to in Article 2, Item 7 of the Tariff on the level of compensation for activities within the competency of Commission for Protection of Competition, in total amount of 5.049.067,50 dinars, by making payment on August 25, 2011 of 2.555.622,50 dinars, in dinar countervalue of prescribed level of compensation for issuance of decision on approval of concentration in summary procedure referred to in Article 2, Item 6 of the Tariff, and on October 24, 2011 payment in the amount of 2.493.445,00 dinars, jointly representing dinar countervalue of total compensation defined by Article 2, Item 7 of the Tariff, relating to issuance of decision on approval of concentration in inquiry procedure.

VI It is established that Commission is obliged to pay back to applicant the amount it paid of 50.000,00 EUR in Dinar countervalue at the medium exchange rate of National Bank of Serbia prevailing at the date of return of funds, paid to Commission on account of compensation for issuance of decision on approval of concentration in procedure conducted ex officio, to be effected within the period of three days from the date of coming into force of this decision.