

Republic of Serbia
Commission for Protection of Competition
No. 6/0-02-18/2012-11
Date: August 24, 2012
Beograd

On August 24, 2012, President of the Commission for Protection of Competition, 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), Article 69, paragraph 1 of the Administrative Dispute Law and the ruling of the Administrative Court III-2 Y no. 1861/12 dated August 3, 2012, issued a following

RESOLUTION

I Ex officio review procedure initiated under notification of concentration by company Sunoko d.o.o. with head-office in Novi Sad, Republic of Serbia, created by acquisition on the part of applicant, of majority set of shares of company Hellenic Sugar Industry SA, with head-office at Thessaloniki, Republic of Greece, is continued ex officio on the grounds of resolution issued by the President of the Commission no. 6/0-02-626/2011-11 dated October 20, 2011 in order to investigate whether intended concentration fulfills 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 on the market of the Republic of Serbia or its part, particularly if such restriction, distortion or prevention would be a result of creation of strengthening of dominant position, and in order to act under the ruling made by Administrative Court III-2 Y no. 1861/12 dated August 3, 2012.

II All persons disposing with data, documents or any other relevant information which could contribute to establishment of relevant factual position in this procedure, are invited to provide the same to Commission for Protection of Competition at Kneginje Zorke 7, Beograd.

III This resolution is published in "Official Journal of the RS" and on website of the Commission for Protection of Competition.

Reasoning

By the ruling of the Administrative Court III-2 Y no. 1861/12 dated August 3, 2012, decision of the Commission for Protection of Competition (hereinafter: Commission) no. 6/0-02.18/2012-3 dated January 19, 2012 was annuled and the case was referred back for review .

Pursuant to Article 69, paragraph 1 of the Administrative Dispute Law, it is stipulated that when the court annuls act against which administrative dispute has been initiated, the case is referred back for review on appeal, that is, for review of the case at the request of the party in the first instance procedure, if the appeal has been legally excluded (position before the annuled act was passed). Annuled decision was made, that is, the request (notification) submitted by the party was dealt with in procedure continued ex officio on the grounds of resolution issued by the President of the Commission no. 6/0-02-626/2011-11 dated October 20, 2011. By that resolution, Commission referred the case back for review of relevant concentration, thus acting under above stated ruling.

Decision concerning relevant concentration has to be implemented in line with the Law on Protection of Competition (hereinafter. The Law), which actually means pursuant to Article 62, paragraph 2 of the Law, providing that, if in the course of investigation under notification of concentration it has been established that the conditions for ex officio investigation, referred to in paragraph 1 of this Article, have been fulfilled, the procedure shall continue ex officio on the grounds of resolution issued by the President of the Commission. Relevant concentration shall be decided in procedure pursuant to Article 62, paragraph 2 of the Law, due to the following reasons.

In arguing relevant ruling, the court presented reasons for annulment, which were, to enable the party to give statement as the party involved in procedure to the record made, and for Commission to providing reasoning why the proposed remedies of the party which it is willing to accept with the aim of fulfilling the presumptions for approval of relevant concentration, are not suitable. In fact, the court did not contest factual position established in previous procedure, which was finalized by annulment of decision.

Commission is bound by legal comprehension of the court and its orders for acting, which is not possible to realize in summary procedure pursuant to Article

37 of the Law, particularly not as concerns remedies the party is willing to accept aimed at fulfilment of presumptions for approval of relevant concentration.

In deciding on the rights and obligations of the party in the procedure for investigation of concentration, Commission makes its decision *ex ante*, assessing the state to be created in the future by implementation of concentration, and not the state which occurred or has been occurring at certain moment or period in the past. It emerges therefrom that the concentration would possibly be approved by issuing decision for the period to come. For that essential reason, Commission shall, in reviewed procedure, update factual position and establish whether it has changed and in what way, compared to factual position established in procedure finalized by annulment of decision.

In addition, in passing this Resolution, Commission acknowledged fulfilment of requirements contained in Article 62 of the Law, relating to the level of market share of parties involved in concentration which they achieved in defined relevant market within the Republic of Serbia. With regard to the said, it is Commission's opinion that the relevant concentration can be decided only in investigating procedure.

Considering above stated, as well as factual position established in previous procedure to the extent to which it was not contested by court ruling, Commission assessed that the conditions for *ex officio* investigation of relevant concentration in review procedure are met, in terms of provisions of Article 62, paragraph 2 relating to Article 19 of the Law, thus it was decided as in the first paragraph of the enacting terms of this resolution.

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

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

On the grounds of above stated reasons, it was decided as in enacting terms.

Vesna Jankovic

President of the Commission

Remedial act:

Against this resolution, an appeal to the Council of the Commission is allowed within the period of 15 days from the date of its receipt