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

25/IV Savska St., Belgrade

Number: 6/0-03-483/2019-1

Reference number: 6/0-02-399/2019

Date: May 21, 2019

Pursuant to Article 35(2) and Article 62(2) of the Law on Protection of Competition (Official Gazette of the RS 51/09 and 95/13), and Article 2(1/7) 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 49/11), on receipt of the merger notification No. 6/0-02-399/2019-1 filed by company Privredno društvo za proizvodnju hleba i peciva Don Don d.o.o. Beograd, with registered seat at the address 144b Zorana Đinđića Blvd., Belgrade-New Belgrade, Republic of Serbia, via procuration holder, attorney at law Bojana Lukić from Belgrade, 144b Zorana Đinđića Blvd., on May 21, 2019, the President of the Commission for Protection of Competition enacts the following

CONCLUSION

I Proceedings shall be **RESUMED EX OFFICIO** in the matter of a merger which, according to the notification, is created by acquisition of direct individual control on the part of company Privredno društvo za proizvodnju hleba i peciva Don Don d.o.o. Beograd, with registered seat at the address 144b Zorana Đinđića Blvd., Belgrade-New Belgrade, Republic of Serbia, company number 20383399, over a part of joint stock company Akcionarsko društvo za preradu žitarica Žitopromet, Zaječar, with registered seat at the address 2 Kraljevića Marka St., Zaječar, Republic of Serbia, company number 07201788, which may represent an independent business entity and which includes: bakery manufacturing plant, flour mill and flour silo located in Zaječar, 2 Kraljevića Marka St., with accompanying equipment and inventory, by purchasing the immovable and movable property in the enforcement proceedings, in order to investigate whether the notified merger fulfills the conditions of permissibility referred to in Article 19 of the Law on Protection of Competition, that is, whether the implementation of such merger would significantly restrict, distort, or prevent competition in the market of the Republic of Serbia or its part, and especially if that restriction, distortion, or prevention would be the result of creating or strengthening of dominance.

II ALL PERSONS ARE INVITED to forthwith submit all data, documents or other relevant information in their possession that could contribute to the accurate fact-finding in this proceeding to the Commission for Protection of Competition, to the address 25/IV Savska St., Belgrade.

III COMMITMENT SHALL BE ESTABLISHED with respect of the Party, company Privredno društvo za proizvodnju hleba i peciva Don Don d.o.o. Beograd, to make the payment of compensation for the issuance of a decision approving the merger concerned in the

investigation procedure, in the total amount of XXX euro in the dinar equivalent value calculated at the middle-exchange rate of the National Bank of Serbia on the day of payment, whereas the dinar equivalent value of XXX euro paid upon submission of the merger notification on April 23, 2019, shall count towards the total amount mentioned, and **IT SHALL BE ORDERED** to the Party, company Privredno društvo za proizvodnju hleba i peciva Don Don d.o.o. Beograd, to make payment of the remaining amount of compensation of XXX euro, in the dinar equivalent value calculated at the middle-exchange rate of the National Bank of Serbia on the day of payment, into the account of the Commission for Protection of Competition maintained with the Treasury Administration of the Ministry of Finance of the Republic of Serbia, number 840-880668-16, reference number 6/0-03-483/2019, no later than 15 (fifteen) days from the date of receipt of this conclusion. Immediately after the execution of the payment transaction, the Party is obligated to submit proof of payment thereof to the Commission for Protection of Competition.

IV This conclusion shall be published in the Official Gazette of the Republic of Serbia and on the website of the Commission for Protection of Competition.

Rationale

Company Privredno društvo za proizvodnju hleba i peciva Don Don d.o.o. Beograd, with registered seat at the address 144b Zorana Đinđića Blvd., Belgrade-New Belgrade, Republic of Serbia, company number 20383399 (hereinafter, Don Don or the Party) has filed a merger notification No. 6/0-02-399/2019-1 on April 12, 2019 (hereinafter, Merger notification) before the Commission for Protection of Competition (hereinafter, the Commission), created by acquisition of direct individual control on the part of the Party over a part of joint stock company Akcionarsko društvo za preradu žitarica Žitopromet, Zaječar, with registered seat at the address 2 Kraljevića Marka St., Zaječar, Republic of Serbia, company number 07201788 (hereinafter, Žitopromet), which may represent an independent business entity and which includes: bakery manufacturing plant, flour mill and flour silo located in Zaječar, 2 Kraljevića Marka St., with accompanying equipment and inventory (hereinafter, manufacturing plant Zaječar, mill and silo, or collectively referred to as Target assets), by purchasing the immovable and movable property in the enforcement proceedings. The merger notification was filed via procurator holder, attorney at law Bojana Lukić from Belgrade, 144b Zorana Đinđića Blvd. Also, the Party has submitted addenda to the Merger notification, registered in the Commission as file No. 6/0-02-399/2019-3 of April 24, 2019, and file No. 6/0-02-399/2019-4 of May 16, 2019.

Company Don Don was established on February 13, 2008, while the business activities pursued in the national market are the manufacture of bread, fresh pastry goods and cakes, sales of bakery goods, and manufacture of grain mill products, for own needs, predominantly. Its production units are located in Pudarci, Kragujevac, Niš, Jakovo, Kraljevo, Leskovac, Subotica, Zrenjanin, Velika Plana, and Paraćin, while the flour as the basic raw material for bakery goods production is manufactured in mills located in Zrenjanin and Feketić. In 2019, based on the Decision no. 6/0-02-151/2019-21 of March 25, 2019, the Commission has cleared a merger that allowed company Don Don to acquire direct control over company AD Hleb, Novi Sad – in bankruptcy. Company Don Don is 100% owned by company DON DON d.o.o. Grosuplje, Slovenia, EU, and under its direct control. Slovenian company AMAL NALOŽBE and Luxembourgish KJK Group exercise joint control over Slovenian company Don Don, and thus, indirect control over the Party.

The predominant activity of company Žitopromet, established in 1947, is the manufacture of grain mill products – industry classification code 1061. Also, Žitopromet’s business activity that constitutes the main source of its revenue is the manufacture and sales of fresh pastry goods in the local market. The manufacture of fresh pastry goods is conducted in the manufacturing plant located in Zaječar, while grain silos are used for the provision of grain storage services and for the storage of own grain supplies.

Based on its Decision No. 3. ИИВ.327/2018 of August 14, 2018, the Commercial Court in Zaječar has ordered execution against the immovable and movable property of company Žitopromet based on the collection of claims of the enforcement creditor, company VICTORIA LOGISTIC DOO NOVI SAD. In order to implement the enforcement established by the said decision of the Commercial Court in Zaječar, Dragan Leković, public enforcement officer from Zaječar, held the second round of sale of the immovable and movable property of the enforcement debtor/Žitopromet in a public oral-bid auction held on March 27, 2019.

The subject of estate sales were the following immovables registered in the Real estate folio in the land register LN 18588 maintained by the Cadastral Municipality of Zaječar:

- other industrial facilities - Bakery on the cadastral parcel 9012, building no. 1, in Kraljevića Marka St., and accompanying land occupied by the building and a parcel of land adjacent to the building, in regular use;
- other industrial facilities – Mill on the cadastral parcel 9012, building no. 2, in Kraljevića Marka St., and accompanying land occupied by the building and a parcel of land adjacent to the building, in regular use;
- land occupied by the building, cadastral parcel 9012, building no. 17, Kraljevića Marka area, 2a87m² surface area of urban construction land;
- land adjacent to the building, cadastral parcel 9012, building no. 17, Kraljevića Marka area, 78a86m² surface area of urban construction land;
- other industrial facilities – Flour silo on the cadastral parcel 9012, building no. 17, number of floors 1, ground floor, Kraljevića Marka area;

The subject of the sale also related to the following movables and equipment defined by the following groups: “Bakery plant”, “Frozen bakery goods plant”, “Pasta plant”, “Laboratory”, “Mill”, etc.

As a merger act, the Party provided the Minutes of the public sale of movables made by the public enforcement officer No. ИИВ-136/2018 of March 27, 2019, and the Minutes of the public sale of immovables made by the public enforcement officer No. ИИВ-136/2018 of March 27, 2019, as well as other acts enacted by the public enforcement officer in the enforcement proceedings concerned, including the Minutes of the public enforcement officer on the vesting in the buyer Don Don No. ИИВ-136/2018 of April 23, 2019, and the Minutes of the public enforcement officer on the sale of movables into ownership and possession of the buyer Don Don no. ИИВ-136/2018 of April 23, 2019. From the statements presented in the Merger notification derives that the case refers to a merger within the meaning of Article 17(1/2) of the Law.

Based on the information provided on the combined aggregate annual worldwide and national turnover of all participating undertakings generated in 2018, the Commission has established that there existed an obligation of the Party to notify the Commission on the merger since the aggregate turnover of the merger parties exceeded the amount referred to in Article 61 of the Law on Protection of Competition (Official Gazette of the RS, 51/09 and 95/13, hereinafter, the Law), as a condition for the merger notification.

Proceeding from the main business activities pursued in the Target assets and those that Don Don will conduct following the merger implementation in such assets, the Party has suggested to the Commission to adopt the following definition of the relevant product market: *manufacture and wholesale of fresh bakery goods*. The wholesale includes both direct and tender sales.

The Party has suggested to the Commission to consider the *territories of the following municipalities* as the relevant geographic market: *Bor, Kladovo, Majdanpek, Negotin, Zaječar, Boljevac, and Knjaževac*, as well as the local market where Žitopromet distributed and sold products manufactured at the manufacturing plant in Zaječar, particularly keeping in mind the fact that the products concerned are fresh bakery goods and perishables, only possible to have it distributed covering shorter geographical distances from the production facilities/manufacturing plant located in Zeječar. Company Don Don is also present in those territories, supplied from the manufacturing plant in Niš. Following the merger finalization, Don Don will continue to supply these territories but from the manufacturing plant in Zaječar.

The data on the turnover in production/sales of fresh bread on the relevant market in 2016, 2017, and 2018 are established based on data/estimate from the Party on the daily turnover volumes of undertakings operating in the same market. The competitors on the relevant market are industrial bread manufacturers, meaning that they have tunnel ovens or other professional industrial baking equipment for the production of large quantities of fresh bakery goods. Also, in the “other competitors” category, the Party has presented the aggregate share of competitors with tunnel ovens or other professional industrial equipment and/or more relevant daily production volumes, and active in the wholesale trade, even though some of them are registered as entrepreneurs.

On the basis of data and information submitted in the Merger notification and addenda to the Merger notification relating to the merger participants and other undertakings operating in the relevant market, comes that the merger could cause a significant degree of horizontal overlap between the activities of merger participants in the relevant market, with significant market share, as indicated below.

According to the figures presented, in 2018, an undertaking operating in the relevant market with the highest market share was Žitopromet with /20-30/% and [...] kg per annum of the production/sales of fresh bread, followed by Don Don with /20-30/% and [...] kg, while the third-largest undertaking had a market share of /5-10/% and [...] kg, and an undertaking with the lowest market share reached /0-5/% and [...] kg.

According to the figures presented, in 2017, an undertaking operating in the relevant market with the highest market share was Žitopromet with /20-30/% and [...] kg per annum of the production/sales of fresh bread, followed by Don Don with /10-20/% and [...] kg, while the third-largest undertaking had a market share of /10-20/% and [...] kg, and an undertaking with the lowest market share reached /0-5/% and [...] kg.

According to the figures presented, in 2016, an undertaking operating in the relevant market with the highest market share was Žitopromet with /20-30/% and [...] kg per annum of the production/sale of fresh bread, followed by Don Don with /10-20/% and [...] kg, while the third-largest undertaking had a market share of /5-10/% and [...] kg, and an undertaking with the lowest market share reached /0-5/% and [...] kg.

The above indicates that company Don Don has increased its market share in the relevant market in 2018 relative to 2016 and 2017. The reasons which lead to the increase, according to the self-assessment, are created partly owing to winning new customers, an increase in sales to existing customers, and a decline in sales of individual competitors.

Following the merger closure, Don Don will have a market share, based on the 2018 data, close to /40-50/% (/40-50/%), while the next largest undertaking – competitor, will have a market share of /5-10/%. The Commission also established that there is, to a large extent, an absence of reliable information on the proposed relevant market, and in particular whether or not all undertakings are included, real competitors, equipped with professional industrial equipment (tunnel ovens) for the manufacture of larger quantities of fresh bakery goods.

Following the merger closure, Don Don plans to supply the proposed relative geographic market from the manufacturing plant in Zaječar, while possible smaller volumes, depending on

the market needs and demand, could be produced at its manufacturing plant in Niš. Specifically, Don Don plans to produce in Zaječar around [...] units/loaves of fresh bakery goods per day (approximately the combined Žitopromet and Don Don volumes produced in Niš during 2018), and in such manner to supply the relevant geographic market proposed, thus achieving significant savings in the cost of distribution of fresh bakery goods from the Niš business unit, while increasing the company's presence in the local market. Following the merger closure, volumes currently produced and distributed in the market by the Don Don Niš unit will be supplemented partly by [...].

The Commission also valued the expiry of the Regulation on necessary production and distribution of bread type "T-500" (Official Gazette of the RS 59/2018), which stipulated the maximum price of a bread loaf of 46 dinars.

On the basis of data and information submitted in the Merger notification and addenda to the Merger notification, in particular, but not limited to, the mentioned above relating to the merger parties and other undertakings operating in the relevant market, there are reasonable grounds to believe that the implementation of this merger will cause a significant increase of the market share of the Party. Thus, the merger concerned does not represent a case when it is considered that there is no risk to the competition and when the case does not merit an in-depth analysis of the merger effects.

Pursuant to Article 62 of the Law, the Commission may resume merger control proceedings *ex officio* if it finds that the aggregate market share of merger participants in the market of the Republic of Serbia is at least 40%, i.e., reasonably assumes that the concentration fails to fulfill the conditions of permissibility referred to in Article 19 of the Law, pursuant to a conclusion enacted by the Commission President. In order to enact a decision pursuant to the Law, it is necessary to establish further facts in relation to which the Commission will define the relevant market(s) and evaluate the effects of the merger concerned. It is found that the data and information submitted by the Party are insufficient to establish the permissibility of said merger in summary procedure and it is, therefore, necessary to conduct an investigation procedure. In the investigation procedure, the Commission will conduct all necessary actions and establish all facts and present evidence necessary for the definition of the relevant market, in particular, but not limited to, data against which will establish the possibility of substitution on the supply and demand side, analysis of the structure of the relevant market, the degree of concentration of the relevant market, identification of real and potential competitors, market position of merger participants and its competitors, legal and other barriers to entry into the relevant market, level of competitive intensity of merger participants, consumer interests, etc.

A particular aspect of the analysis in this proceeding will be based on data and assessments of direct or delayed effects of the merger concerned, obtained from the most important competitors of the merger participants, active in each of the markets to be defined as relevant for the proceedings concerned. In order to obtain data, information and opinions, the Commission will contact individual public authorities, business entities and trade associations of undertakings.

Taking into account all the facts that derive from the content of the Merger notification and addenda to the Merger notification, as well as for the reasons individually elaborated and substantiated, it is therefore determined that the conditions for instituting investigation procedure *ex officio* are fulfilled with regard to the merger concerned, within the meaning of Article 62(2) read in conjunction with Article 19 of the Law.

The decision set out in Paragraph I of enacting terms herein is adopted under Article 62 of the Law.

The decision set out in Paragraph II of enacting terms herein is adopted under Article 35(2) of the Law.

The decision set out in Paragraph III of enacting terms herein is adopted under Article 65(5) of the Law and Article 2(7) of the Tariff on the level of compensations for activities within the competence of the Commission for Protection of Competition.

The decision set out in Paragraph IV of enacting terms herein is adopted under Article 40 of the Law.

Instruction on legal remedy:

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

PRESIDENT OF THE COMMISSION

Dr Miloje Obradović, m.p.