



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

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

No.: 6/0-03-329/2020-1

Reference No.: 6/0-02-960/2019

Date: March 9, 2020

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), in proceedings initiated on receipt of the Merger notification No. 6/0-02-960/2019-1 of company Privredno društvo za proizvodnju, promet i usluge Agromarket doo Kragujevac, with registered office at 235/2 Kraljevačkog bataljona St., Kragujevac, Republic of Serbia, submitted via legal representative Dušan Mojsilović, CEO, on March 9, 2020, the President of the Commission for Protection of Competition enacts the following

### **CONCLUSION**

**I PROCEEDINGS SHALL BE CONTINUED *EX OFFICIO***, initiated on receipt of a merger notification relating to the concentration created by acquisition of direct individual control on the part of company Privredno društvo za proizvodnju, promet i usluge Agromarket doo Kragujevac, with registered office at 235/2 Kraljevačkog bataljona St., Kragujevac, Republic of Serbia, company number 07593252, over Joint stock company Galenika-Fitofarmacija za proizvodnju hemikalija za poljoprivredu, Beograd (Zemun), with registered office at bb Batajnički drum St., Zemun, Republic of Serbia, company number 07725531, and its subsidiary companies, 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, to investigate whether the implementation of the concentration would significantly restrict, distort, or prevent competition in the market of the Republic of Serbia or its part, and especially if such restriction, distortion, or prevention would be the result of creating or strengthening of dominance.

**II ALL PERSONS ARE INVITED** to forthwith submit 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, 25 Savska St., 4th Floor, Belgrade.

**III COMMITMENT SHALL BE ESTABLISHED** against the Party, company Privredno društvo za proizvodnju, promet i usluge Agromarket doo Kragujevac, to execute payment of the fee for issuing decisions on approval of concentration in investigation procedure in the amount of XXX euro in a dinar-currency equivalent value calculated at the middle exchange rate of the National Bank of Serbia on the day of payment, and **IT SHALL**

**BE ORDERED** to the Party, company Privredno društvo za proizvodnju, promet i usluge Agromarket doo Kragujevac, to execute the payment in the amount of XXX euro in a dinar-currency 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, No. 840-880668-16, Reference No. 6/0-03-329/2020, no later than 15 (in words: fifteen) days from the day of receipt of the Conclusion.

**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, promet i usluge Agromarket doo Kragujevac, with registered office at 235/2 Kraljevačkog bataljona St., Kragujevac, Republic of Serbia, company number 07593252 (hereinafter, the Party or Agromarket) has submitted a merger notification before the Commission for Protection of Competition (hereinafter, the Commission), No. 6/0-02-960/2019-1 of November 28, 2019 (hereinafter, the Notification), relating to the concentration created by acquisition of direct individual control on the part of the Party over Joint stock company Galenika-Fitofarmacija za proizvodnju hemikalija za poljoprivredu, Beograd (Zemun), with registered office at bb Batajnički drum St., Zemun, Republic of Serbia, company number 07725531 (hereinafter, the Target company or Galenika-Fitofarmacija), and its subsidiary companies, by purchasing shares. The Notification was submitted via legal representative Dušan Mojsilović, CEO. Also, the Party submitted addenda to the Notification up to the Addendum filed under No. 6/0-02-35/2020-6 of February 19, 2020.

Company Agromarket is owned by natural person Dušan Mojsilović, holding 100% of shares in the company's capital. Agromarket is a manufacturer, dealer and distributor of a wide product portfolio in the Western Balkans market. From the initial company's activity, wholesale and retail of basic inputs for primary agricultural production in the Central Serbia region, company Agromarket grew into a recognized supplier in the pesticides, seed products and garden equipment market in the entire region. The fastest-growing company's portfolio in recent years is the segment of specialized water-soluble and liquid fertilizers produced under the company's own brand FITOFERT. Agromarket is also one of the largest importers and venders of brands owned by the leading global pesticide producers (Syngenta, Du Pont, Dow AgroSciences, Bayer Cropscience, BASF, United Phosphorus, Arysta LifeSciences, Sinochem Ningbo, Agriphar, Spiess Urania, Cheminova, Nissan Chemical Industries, Mio, Zapi, Goemar, Lida, Cinkarna), domestic and foreign seed selection houses (ZP, KWS, Franchi sementi, Caussade), manufacturers of garden program equipment (Villager, Oregon, Fiskars, ECHO, Lawor-wash, A1-Ko, Alpina, Telwin, G.F., Di Martino, Elpumps), irrigation equipment (Sunstream, AgroDrip), greenhouse covers (IIIeri Plastic), and substrates (Kekkili). The sale and distribution of goods take place through eight distribution centers in Serbia, namely: Kragujevac, Belgrade, Valjevo, Niš, Subotica, Sombor, Sremska Mitrovica and Zrenjanin, and Indija. The distribution and delivery of goods are done on a daily basis in more than 20,000 retail and wholesale outlets: agricultural pharmacies, farms, agricultural cooperatives, hypermarkets and stores for trade and sale of gardening tools and machines. Outside Serbia, company Agromarket is a registered entity and trades via partners and subsidiaries in Bosnia and Herzegovina, Montenegro, and Slovenia. The following undertakings operate within the Agromarket group in the market of the Republic of Serbia:

- PIK Južni Banat d.o.o. Bela Crkva, with registered office at bb Ekstravilan St., Bela Crkva, company number 08154848, industry code 0124 - Growing of pome fruits and stone fruits;
- Ikarsim d.o.o. Kragujevac, with registered office at 235/2 Kraljevačkog bataljona St., Kragujevac, company number 20235900, industry code 4110 - Development of building projects;
- Preduzeće za proizvodnju, promet i usluge Grinhem Agromarket d.o.o. Kragujevac, with registered office at 235/2 Kraljevačkog bataljona St., Kragujevac, company number 17550071, industry code 0124 - Growing of pome fruits and stone fruits;
- PD Zaječar AD Zaječar, with registered office at bb Negotinski put St., Zaječar, company number 07183402, industry code 0111 – Growing of cereals (except rice), leguminous crops and oil seeds;
- Natalex d.o.o. Kragujevac – in bankruptcy, with registered office at 235/2 Kraljevačkog bataljona St., Kragujevac, company number 20446544, industry code 6810 - Buying and selling of own real estate;
- D.O.O. Vojvodina Starčevo, with registered office at 10 Pančevački put St., Pančevo, company number 08047740, industry code 0119 - Growing of other non-perennial crops;
- Fabrika za proizvodnju vodotopivih i tečnih đubriva Fertico d.o.o. Niš, with registered office at bb Dvanaesti Februar Blvd., Niš, company number 17617478, industry code 2015 - Manufacture of fertilizers and nitrogen compounds;
- Preduzeće za doradu semena Agroseme d.o.o. Kikinda, with registered office at 5-7 Oslobođenja St., Kikinda, company number 08021759, industry code 0111 - Growing of cereals (except rice), leguminous crops and oil seeds.

The Target company, Galenika-Fitofarmacija, is a domestic manufacturer, that is, formulator of plant production products based on high-quality generic active substances for the purpose of agricultural production. The company is present in the Serbian and neighboring countries' markets since 1955. In its Notification, the Party stated that the primary goal of company Galenika-Fitofarmacija is to supply Serbian agriculture with quality and safe plant protection products, as well as to improve its business in accordance with the highest standards of technical and technological operations and requirements of modern production. The long-term strategic objective of the company is regional expansion into the markets of surrounding EU member states. The following subsidiaries operate within the Target company group and are also subject to the transaction:

1. Društvo sa ograničenom odgovornošću ENVIPACK Beograd (Zemun), with registered office at bb Batajnički drum St., Belgrade (Zemun), company number 20801115, industry code 7022 - Business and other management consultancy activities;
2. Holding Galenika društvo sa ograničenom odgovornošću Beograd-Zemun, with registered office at 8a Masarikov trg Sq., Belgrade-Zemun, company number 07092920, industry code 6820 - Renting and operating of own or leased real estate;
3. Galenika-Fitofarmacija, zastopstvo in trgovina, d.o.o., with registered office at 515 Tržaška cesta St., 1351 Brezovica pri Ljubljani, Republic of Slovenia, company number 6813313000.

Until 1997, the Target company operated within the Galenika Holding when a split-off occurred, making the Target company a socially-owned independent legal entity. Since 1999, the company was privately owned by a dispersed number of small shareholders. During 2019, in several separate transactions, the Party, company Agromarket, launched a buyout bid, registered and transferred the majority stake in the Target company.

The transaction concerns the acquisition of direct individual control on the part of company Agromarket over company Galenika Fitofarmacija and its subsidiaries. The Commission established that the notified transaction represents a merger within the meaning of Article 17(1/2) of the Law.

Based on the information provided, pursuant to Article 61(3) of the Law on Protection of Competition (Official Gazette of the RS 51/09 and 95/13 – hereinafter, the Law), the Commission established that the merger notification was mandatory.

The Commission has received the Letter of Intent of November 12, 2019, which was accepted by the Commission as a valid legal basis of the merger concerned. The Notification was filed in a timely manner, in accordance with Article 63(1/2) of the Law.

The merger parties are primarily active in the manufacture and wholesale market for plant protection preparations and herbal supplements (pesticides) in the territory of the Republic of Serbia. Namely, the plant protection preparations and herbal supplements market in the territory of the Republic of Serbia is characterized by a limited number of manufacturers and a large number of importers, i.e. distributors. According to the Party, the relevant market for plant protection preparations and herbal supplements in the Republic of Serbia is completely open and extremely competitive. The Party stated that there are no significant barriers to entry, while the imports, registration and trade can be undertaken and organized within a short period of time in conformity with national legislation governing trade. The Party stated that the estimate of the total value of the aggregate market for manufacture and wholesale of all pesticides in 2018 amounted to about 140 million euros or 16.5 billion dinars. In the Addendum to the Notification of February 19, 2019, the Party stated that the estimated value of the pesticide distribution market is 18.5 billion dinars.

In geographic terms, all relevant markets are defined as the market of the Republic of Serbia.

Based on the data and information from the Notification and addenda therein that relate to the merger parties and other undertakings in the relevant markets, it can be reasonably assumed that the implementation of the merger will create a significant change in the structure of the proposed relevant markets and cause a corresponding increase in the market share of the Party. Aside from the effects on the pesticide manufacture market, the merger concerned following its implementation will cause even more significant effects on the pesticide wholesale market given the fact that the merger parties are two significant manufacturers and distributors in the territory of the Republic of Serbia (accounting for a combined market share of about 46% on the pesticide wholesale – distribution market in 2018). According to the claims from the Addendum to the Notification, the Party and the Target company's share on the pesticide wholesale – distribution market in the Republic of Serbia is 30% and 16%, respectively. Based on this information, the implementation of the merger will increase the market share of the Party by 16 percentage points. The Party failed to provide relevant information on the market share held by its competitors on the wholesale – distribution market in the Republic of Serbia in 2018. This is due to the fact that the Party, aside from the sales of own product portfolio, is also present on this market as the importer and wholesaler of the established brand names owned by renowned global manufacturers of the products mentioned above, thus, its market share as a wholesaler even prior to the implementation of this merger is greater than the share from the sale of products manufactured using own production facilities.

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 the merger parties 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 in accordance with the Law, it is necessary to establish further facts in respect of which the Commission will define the relevant markets and evaluate the effects of the implementation of the merger concerned on each of the markets. It is found that the data and information submitted by the Party are insufficient to establish the permissibility of concentration 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: definition of the relevant markets, their aggregate values and essential characteristics and tendencies (growth, stagnation, decline), analysis of the structure and the degree of concentration on the relevant markets, identification of real and potential competitors, market position of the merger parties and their competitors, in particular, but not limited to, data against which will establish the possibility of substitution between individual product categories, i.e. types of pesticides, both on the supply and demand side, the existence of any legal and/or other barriers to entry into the relevant markets, 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 implementation of the merger concerned, obtained from the most important competitors of the merger parties, active on each of the markets to be defined as relevant for the proceedings concerned, as well as from the product consumers. 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 Notification and addenda therein, 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**

Nebojša Perić