

Republic of Serbia
Commission for Protection of Competition
No.6/0-02-209/2011-6
Date: April 13, 2011
Beograd

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) and decision issued by the Council of the Commission for Protection of Competition dated April 7, 2011, President of the Commission for Protection of Competition made a following Resolution on April 13, 2011

RESOLUTION

I PROCEDURE INITIATED EX OFFICIO on the grounds of notification of concentration by the company Delhaize "The Lion" Nederland B.V. with head-office in Rotterdam, located at Martinius Nijhofflaan 2, 2624 ES Delft, Kingdom of Netherlands, represented by proxy Milana Jević, lawyer from law office CMS reich-Rohrwig Hasche Sigle d.o.o. Beograd, created by acquisition on the part of applicant of 100% of share of company "Delta Maxi" d.o.o. Beograd, with head-office at Takovska 49, Beograd, Republic of Serbia, in order for investigation to be conducted whether intended concentration meets the conditions permitted in terms of Article 19 of the Law on Protection of Competition, that is, whether its implementation would restrict, distort or prevent competition in the market of the Republic of Serbia or its part, particularly if such restriction, distortion or prevention would be a result of creation or strengthening of dominant position, is to be continued.

II ALL PERSONS having at their disposal data, documents or any other relevant information which can contribute to establishment of relevant factual state in this procedure, ARE INVITED TO submit the said material to Commission for Protection of Competition at Kneginje Zorke 7, Beograd.

III AN OBLIGATION IS DETERMINED for applicant of concentration – company Delhaize "The Lion" Nederland B.V., with head-office in Rotterdam, located at Martinius Nijhofflaan 2, 2624 ES Delft, Kingdom of Netherlands to pay compensation provided for in Article 2, item 9 of the Tariff in the amount of 4.000.000,00 (in words: four million dinars) whereas the said amount includes

already paid amount upon submittance of application and applicant IS ORDERED to pay the remaining amount related to obligation in the amount of 2.000.000,00 (in words: twomillion dinars) to the account of Commission for Protection of Competition maintained with Treasury, number 840-880668-16 reference no. 6/0-02-209/2011 or its corresponding countervalue in foreign currency to the foreign currency account of the Commission for Protection of Competition maintained with National Bank of Serbia no. 500100-100128977, EBAN no. RS35908500100012897798 at the medium rate of exchange applied by National Bank of Serbia at the date of payment, within the period of 3 (in words: three) days from the date of receipt of resolution. Immediately after the payment of remaining amount of compensation, applicant is obliged to present the Commission for Protection of Competition with evidence on effected payment.

IV This resolution will be published in "Official Journal of the RS" and Internet page of Commission for Protection of Competition.

Reasoning

Company Delhaize "The Lion" Nederland B.V., private company with limited liability founded pursuant to the laws of the Kingdom of Netherlands, with its head-office in Rotterdam (hereinafter: applicant) submitted to Commission for Protection of Competition, within the period defined in Article 63, of the Law on Protection of Competition (hereinafter: the Law), application for concentration to be created by acquisition on the part of applicant of 100% of share of company "Delta Maxi" d.o.o. Beograd (hereinafter: application) through proxy, lawyer Milana Jevic from the law office CMS Reich-Rohrwig Hasche Sigle d.o.o. Beograd. Applicant is a holding company not directly engaged in the mentioned retail business activities hereinafter listed and is 100% subsidiary company of Belgium company Delhaize Brothers and Co. "The Lion" (Delhaize Group), of the private company with limited liability incorporated pursuant to the laws of the Kingdom of Belgium, with head-office in Brussels, representing parent company of entire Delhaize Group (hereinafter: Delhaize Group). Main activity of Delhaize Group is retail trade in non-specialized, prevailingly food stores. Delhaize Group has been engaged in this activity for over 140 years and possesses numerous sale stores in Europe, U.S.A. and Asia.

Mentioned application no. 6/0-02-209/2011-1 was submitted to Commission on March 9, 2011, supplemented with submissions nos. 6/0-02-209/2011-3 and 6/0-02-209/2011-4 submitted on March 15, 2011, and 6/0-02-209/2011-5 on April 1, 2011 which still do not make the application complete and in compliance with

Articles 2, 3 and 4 of the Regulation on Content and Manner of Submission of Application for Concentration ("Official Journal of the RS", no. 89/2009).

Above stated concentration is based on Transaction Agreement concluded on March 2, 2011 and its aim is acquisition of direct control by applicant over company "Delta Maxi" d.o.o. Beograd, acquiring, at the same time, also indirect control in the Republic of Serbia over the following companies: C Market a.d. Beograd, Pekabeta a.d. Beograd, Primer C a.d. Beograd, TP Srbija a.d. Kragujevac, Zvezdara a.d. Beograd, Bel Investment property d.o.o. Beograd, TP Stadel d.o.o. Kragujevac (hereinafter: all companies over which a direct or indirect control is acquired: "Target group of companies"). Applicant and "target group of companies" are considered as participants involved in relevant concentration.

In defining relevant product market for this concentration, applicant, founding its definition on reality that neither it, nor Delhaize Group to which it belongs, were not present up to now in any form (both direct or indirect) on the market of the Republic of Serbia, has not been engaged in any activity, nor has any earnings from conducting any activities in the Republic of Serbia, considered prevailing activity of Delhaize Group (retail trade in non-specialized, prevailingly food stores) as well as prevailing activity under ref. no.: 4711 – retail trade in non-specialized stores, prevailingly with food, beverage and tobacco, in which the following companies from target group of companies are engaged: "Delta Maxi", "C Market", "Pekabeta" and "TP Stadel". With regard to above stated, applicant defined relevant market as retail trade of food products and consumer goods (prevailingly food, beverages and tobacco) intended for daily and occasional household supply, in non-specialized sale stores such as self-service stores, supermarkets, hypermarkets and discount stores in the territory of city of Beograd. As a wider relevant geographic market, it stated territory of the Republic of Serbia.

By using official information from the letter of the Republic Institute for Statistics of the Republic of Serbia dated October 14, 2010 sent to "Delta Maxi" containing data on retail trade for the second quarter of 2010 (data are given separately: 1. turnover of Delta Group, 2. overall turnover of companies in retail trade, 3. share of 1. in 2.), applicant determined market share prior to implementation of concentration of "target group of companies" on the territory of city of Beograd in the second quarter of 2010 as 37,20%, whereas on the territory of the Republic of Serbia in the same period, that share amounted to 22,40%. Market share of applicant amounted to 0%.

For the period after the implementation of concentration, application contained the statement that the market share of applicant on defined relevant market shall be identical to market share of "target group of companies" and shall amount, on the territory of the city of Beograd, 37,20%, and on the territory of the Republic of Serbia 22,40%.

Applicant submitted a list of major competitors of "target group of companies" and assessment of their market shares, without mentioning of applied methodology for calculation of the same, sources of data which were used, as well as any other type of information: 1. Mercator – S. d.o.o. Novi Sad around 22%, 2. Idea d.o.o. Beograd around 15%, 3. Višnjica Ducani a.d. Beograd without stating % of share; 4. Metro Cash and Carry d.o.o. Beograd around 11%, CDE d.o.o. (Interex) around 4%. All together mentioned competitors hold 52% of share relating to wider relevant geographic market – territory of the Republic of Serbia. For specific relevant geographic market – city of Beograd, adequate data were not given.

Other parties involved in concentration – "target group of companies" also defined their competitors: 1. Idea d.o.o. Beograd, 2. Mercator – S. d.o.o. Novi Sad, 3. Tus trade d.o.o., 4. DIS, 5. Univerexport d.o.o., 6. Familija market d.o.o., 7. "tradicional" retail stores, without stating their market share on relevant market, under argument that it is not known to them, nor are to "target group of companies" available data on operations of listed competitors.

Defects of mentioned application, pointed to in this and previous paragraph, have to be eliminated by applicant, in order to create a presumption for correct market positioning of both parties involved in concentration and their main competitors.

Strategic and economic reasons of applicant for implementation of relevant concentration are contained in the fact that Delhaize Group is still not present on the markets of Balkan countries. Balkan region is assessed as a region with high potential for development of business activities of Delhaize Group. Commission established that applicant did not present relevant data for Delhaize Group, on the basis of which a reliable identification of realistic buyer's power – applicant can be made, which, by implementation of this concentration enters, for the first time, market of the Republic of Serbia and in order to be able, on the grounds of such information, to recognize and objectively assess real effects of mentioned concentration, that is, qualify its short-term, as well as long-term results.

It derives from presented evidence that application does not contain sufficient relevant data on the basis of which it would be possible to adequately assess real

power of parties involved in concentration, their competitors and the share of the same on relevant market, as well as potential structural changes on that market, particularly in the light of first entry to relevant market of such participant of high profile, such as is Delhaize Group.

Article 14 of the Law prescribes that concentrations of market participants are allowed, except if they significantly restrict, distort or prevent competition on the market of the Republic of Serbia, particularly if such restriction, distortion or prevention is a consequence of creation or strengthening of dominant position. Among other, Article 62, paragraph 13 of the Law provides that Commission may conduct investigation of concentration if it validly assumes that the said concentration does not meet the conditions for permissibility referred to in Article 19 of the Law. Article 62, paragraph 2 of the Law stipulates that if in the course of investigation of concentration it is established that conditions for ex officio procedure from paragraph 1 of this Article are met, procedure shall be continued ex officio on the grounds of resolution issued by the President of the Commission.

Pursuant to provisions of Article 62 of the Law, a decision was made as in paragraph I of enacting terms.

Pursuant to provisions of Article 35, paragraph 2 of the Law, a decision was made as in paragraph II of enacting terms.

Pursuant to provisions of Article 65, paragraph 5 of the Law, a decision was made as in paragraph III of enacting terms.

Pursuant to provisions of Article 40 of the Law, a decision was made as in paragraph IV of enacting terms.

On the grounds of above mentioned reasons, a decision was made as in enacting terms.

PRESIDENT OF THE COMMISSION
Vesna Jankovic

Remedial act:

Separate appeal is not allowed against this resolution.