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## THE PLENUM OF THE COMPETITON COUNCIL

### DECISION

**No. ASER- 28**  
**As of 11.09.2014**

**mun. Chișinău**

The Plenum of the Competition Council acting on the grounds of art. 41 and art. 93 of the Law on Competition no. 183 as of 11 July 2012, Parliament Decision no. 179 as of 12.07.2013 on appointing the members of the Plenum of the Competition Council, Parliament Decision no. 220 as of 27.09.2013 on appointing one member of the Plenum of the Competition Council,

Having analyzed the investigation report on the case initiated by the Disposition of the Plenum of the Competition Council no. 8 as of **14.11.2013** on the initiation of the investigation related to signs of infringing the competition legislation by CS „Ducates Grup” LLC and the attached materials,

#### **HAS FOUND:**

After analyzing the information submitted by SE „Camera Înregistrării de Stat” and CS „Ducates Grup” LLC it was found that on (...) and (...), la SE „Camera Înregistrării de Stat” registered the procurement of (...) % from the social capital of “Farm Meat Sud” LLC, and Farm Meat Processing” LLC by CS „Ducates Grup” LLC.

In view of fulfilling its tasks provided for in art. 41 from the Law on Competition no. 183 as of 11.07.2012 and for verifying the observance of art. 20 para. (1) from the mentioned law, by the Disposition of the Plenum of the Competition Council no. 8 as of 14.11.2013 the investigation was launched regarding the signs of infringing the provisions of art. 20 para. (1) and art. 22 para. (1) from the Law on Competition no. 183 din 11.07.2012 by CS „Ducates Grup” LLC.

#### **1. Parties concerned**

#### **2. *The acquiring party and the group to which it is part to***

CS „Ducates Grup” LLC (IDNO ...) is a commercial entity with the main activities of wholesale. According to the information provided, in 2012 the main

products commercialized were labels and musly (for wine production), sugar and building materials.

The single associate of **CS „Ducates Grup” LLC** is ..., holding 100% of the social capital of the undertaking.

Until the economic concentration **CS „Ducates Grup” LLC** held control in the following undertakings:

- a) (...) (IDNO ...), carrying out the following activities: producing, storage and wholesale of wines, storage and wholesale of mash products; producing of distilled alcoholic beverages and producing of wine. Currently, according to the information submitted the undertaking does not carry out any activity.
- b) (...) (IDNO ...), carrying out the following activities: producing, storage and wholesale of wines, storage and wholesale of mash products; producing of distilled alcoholic beverages and producing of wine.
- c) (...) (IDNO ...), activities: production and commercializing of grapes used as row material in winemaking and grape culture.
- d) (...) (IDNO ...), activities: restaurants, bars and hotel services.
- e) (...) (IDNO ...), activities: retail of food products, tobacco products, nonfood products. The undertaking carries out secondary activities, as tenancy activities.

(...) held control in the following undertakings:

- (...) (IDNO ...) – activity: wholesale of building materials;
- (...) (IDNO ...) – activities: building and /or engineering, equipment and public utility networks, renovations, consolidation, restoration; design work for all construction categories, urbanism, installments and public utility networks, reconstructions and restorations;
- (...) (IDNO ...) – activity: wholesale of building materials.

**CS „Ducates Grup” LLC** held shares in the following undertakings:

- a) (...) - (...) %
- b) (...) - (...) %

### ***Acquired part***

**„Farm Meat Sud” LLC** (IDNO ...) commercial entity whose main activity is: pig breeding, meat production, meat trade, sale of meat products.

**„Farm Meat Processing” LLC** (IDNO ...) commercial entity whose main activity is: manufacture of meat products (sausages, salami, etc.) and their trade.

## **2.The relevant market in the economic concentration**

The relevant market is the market within which a certain competition issue shall be assessed and which is determined by reporting the relevant product market to the relevant geographic market.

### **2.1 Relevant product market**

In the meaning of this examination, the relevant product market was defined as:

1. market of production and wholesale of meat and meat products,
2. market of retail of meat and meat products.

## 2.2 Relevant geographic market

The relevant geographic market for the production and wholesale of meat and meat products is the market of the Republic of Moldova

The relevant geographic market for the production and wholesale of meat and meat products shall be defined as being mun. Chisinau, mun. Bălți, Telenești, Glodeni and Basarabasca.

Therefore, in the meaning of this investigation the relevant markets are as follows:

- production and wholesale of meat and meat products in the Republic of Moldova,
- production and wholesale of meat and meat products and other food products in mun. Chisinau;
- production and wholesale of meat and meat products and other food products in mun. Bălți;
- production and wholesale of meat and meat products and other food products in Telenești;
- production and wholesale of meat and meat products and other food products in Glodeni;
- production and wholesale of meat and meat products and other food products in Basarabasca.

## 3. Acts and deeds found

The initiation of an investigation having as its object the possible infringement of the rules provided for in the Law on Competition no. 183 din 11.07.2012 in the part related to economic concentrations, seeks the establishment by the competition authority of the infringement of the rules at issue as to the conduct of undertakings participating in an economic concentration until the date of its notification to the Competition Council and issuing a decision regarding the operation at issue, in compliance with art. 25 from the mentioned Law.

CS „Ducates Grup” LLC acquired the control over „Farm Meat Sud” LLC ((... % of the social capital) and „Farm Meat Processing” LLC ((...) % of the social capital

On (...), CS „Ducates Grup” LLC concluded contract of sale-purchase with (...) and (...), according to which it acquired control from:

(...) - (...) % of the social capital of „*Farm Meat Sud*” LLC, and

(...) - (...) % of the social capital of „*Farm Meat Sud*” LLC.

On (...), CS „Ducates Grup” LLC concluded contract of sale-purchase with (...) and (...), according to which it acquired control from:

(...) - (...) % of the social capital of „*Farm Meat Processing*” LLC, and

(...) - (...) % of the social capital of „*Farm Meat Processing*” LLC .

As a result of the economic concentration, the associates of „Farm Meat Sud” LLC are CS „*Ducates Grup*” LLC - (...) %, (...) - (...) % and (...) - (...) %.

The associates of „Farm Meat Processing” LLC after the operation became CS „*Ducates Grup*” LLC - (...) %, (...) - (...) % and (...) - (...) %.

On 14.09.2012 the Law on Competition no. 183 din 11.07.2012 entered into force.

In compliance with art. 22 para. (1) from the mentioned Law, economic concentrations operations are subject to assessment and have to be notified to the Competition Council until being applied, where the total turnover achieved cumulatively by the undertakings concerned, registered for the year previous to the operation, exceed 25 000 000 MDL and there are at least two undertakings involved in the operation which achieved on the territory of the Republic of Moldova, each separately, a total turnover higher than 10 000 000 MDL in the year previous to the operation.

The total turnover achieved cumulatively in 2012 (the year previous to the operation) by CS „*Ducates Grup*” LLC and the group to which it is part to, by „*Farm Meat Sud*” LLC and „*Farm Meat Processing*” LLC, in 2012 (the year prior to the operation), exceeded the threshold of 25 000 000 MDL and there are at least two undertakings involved in the operation which achieved on the territory of the Republic of Moldova, each separately, a total turnover higher than 10 000 000 MDL, which complies with the thresholds set up in art. 22 para. (1) from the Law on Competition no. 183 as of 11.07.2012.

The operation at issue is an economic concentration, in the meaning of art. 20 para. (1) let. b) from the Law on Competition no. 183 din 11.07.2012 and, since the conditions referring to the threshold of the turnover specified in art. 22 para. (1) from the mentioned law were fulfilled, CS „*Ducates Grup*” LLC had the obligation to notify the economic concentration to the Competition Council before applying it, for the purpose of analyzing it from the perspective of compatibility with a regular competition environment.

On 18.12.2013, CS „*Ducates Grup*” LLC notified the economic concentration to the Competition Council, this being effective on 10.02.2014.

On 17.03.2014, pursuant to art. 41 and art. 25 para. (1) let. b) from the Law on Competition no. 183 din 11.07.2012, the Plenum of the Competition Council issued the Decision no. ASER-7 of authorizing the economic concentration, of acquiring the control by CS „*Ducates Grup*” LLC over „*Farm Meat Sud*” LLC and „*Farm Meat Processing*” LLC as being compatible with the regular competition environment, stating that, although the notified operation is covered by the Law on Competition no. 183 din 11.07.2012, there are not serious doubts as to the compatibility with a regular competition environment.

On 10.09.2014, CS „*Ducates Grup*” LLC pursuant to art. 20 para. (6) from the Law on Competition no. 183 din 20.06.2012 requested the Competition Council to grant an exemption from the obligations imposed in art. 20 para. (1) from the mentioned law, regarding the economic concentration by acquiring the control over ÎM „*Farm Meat Sud*” SRL and „*Farm Meat Processing*” LLC.

For supporting the exemption requested, CS „*Ducates Grup*” LLC invoked the following arguments:

- The notification form, according to which the notification of economic concentrations is carried out, entered into force on 11 October 2013, while the economic concentration examined occurred on (...), i.e. prior to the publication of the notification form. Therefore, the undertaking was not able to submit the notification form for the economic notification according to the provisions of the law;
- the undertaking collaborated with the Competition Council openly, transparently, without distorting information, in short terms submitting the information requested by the Competition Council.

#### **4. Legal qualification of actions state in compliance with the provisions of the Law on Competition no. 183 din 11.07.2012**

According to art. 20 para. (2) let. b) from the Law on Competition no. 183 as of 11.07.2012, an economic concentration occurs where the long term modification of control happens after the acquisition, by one or more persons already controlling at least one undertaking, or by one or more undertakings, whether by purchase of securities (shares social) or assets, by contract or by any other means, of direct or indirect control of the whole or parts of one or more other undertakings, including the joint establishment of a commercial.

In p. 12 from the Regulation on economic concentrations (approved by the Decision of the Plenum of Competition Council no. 17 as of 30 August 2012) it is mentioned that the exercise of control (direct or indirect) shall manifest through either holding majority in the social capital of an undertaking allowing for exert of majority of voting rights or holding more than 50% from the total voting rights or holding the right to choose, appoint or dismiss the majority of members of the executive body or council of undertaking, or through holding the right to manage the business or decisively influence the activity of undertakings based on an agreement of other legal arrangement or by holding the right to decisively influence the activity of undertakings adopting decisions within other undertaking.

By acquiring by CS „Ducates Grup” LLC of (...) % from the social capital of „Farm Meat Sud” LLC and (...) % from the social capital of „Farm Meat Processing” LLC, it was stated the acquiring of more than 50% from the social capital of undertakings, fact which gives it the right to exert control over the acquired undertakings.

After acquiring per (...) % from the social capital of „Farm Meat Sud” LLC and „Farm Meat Processing” LLC by CS „Ducates Grup” LLC, an economic concentration occurred in the meaning of art. 20 para. (2) from the mentioned law.

In compliance with the Law on Competition no. 183 din 11.07.2012, economic concentration operations which exceed the thresholds set in art. 22 para. (1) from the mentioned law are subject to assessment and have to be notified to the Competition Council before being applied.

The art. 20 para. (1) from the Law on Competition specifies that until declaring the economic concentration as being compatible with the competition environment, on the grounds of a decision issued by the Plenum of the Competition Council according to art. 25 para. (1) let. b) ori para. (2) let. b) or c), or based on a

presumption in compliance with art. 25 para. (5), it is prohibited to apply an economic concentration which is covered by art. 22 para. (1).

This legal provision establishes a general prohibition, with an exception provided for in art. 20 para. (6) from the Law on Competition nr 183 din 11.07.2012. According to the provision a derogation from the rule established in art. 20 para. (1) shall be substantiated, upon request, and may be granted in any moment, prior to the, only by a decision of the Plenum of the Competition Council.

By the application no. 1772 din 10.09.2014, CS „Ducates Grup” LLC requested the Competition Council to grant a derogation from the obligations established in art. 20 para. (1) from the Law on Competition no. 183 din 20.06.2012, regarding the economic concentration carried out by acquiring control over „Farm Meat Sud” LLC and „Farm Meat Processing” LLC in compliance with art. 20 para. (6) from the mentioned law.

In compliance with art. 22 para. (4) from the Law on Competition no. 183 din 11.07.2012, the notifications shall be submitted pursuant to the Notification Form, which is part of the Regulation on economic concentrations, adopted by the Plenum of the Competition Council.

The Notification Form, which is part of the Regulation on economic concentrations was adopted by the decision of the Plenum of the Competition Council no. 17 as of 30 August 2013 and entered into force while published in the official gazette of the Republic of Moldova, 11 October 2013.

On 18.12.2013 the economic concentration was notified to the Competition Council becoming effective on 10.02.2014. By the decision no. ASER-7 din 17.03.2014, the economic concentration was declared compatible with the competition environment.

Pursuant to the provisions of art. 59 from the Law on Competition no. 183 din 11.07.2012, by letter no. ASER-06/67-794 din 12.06.2014, the Competition Council sent the copy of the investigation report, thus offering the possibility to CS „Ducates Grup” LLC , to submit observations on it within 30 working days. Iar, CS „Ducates Grup” LLC did not provide any observations in the period provided for in art. 59 para. (3) from the Law on Competition no. 183 din 11.07.2012.

Proceeding from the above mentioned facts, on the grounds of art. 20 para. (6), art. 41 and art. 71 lit. d) of the Law on Competition no. 183 din 11.07.2012,

#### **DECIDES:**

1. To grant derogation to CS „Ducates Grup” LLC from the obligations established in art. 20 para. (1) from the Law on Competition no. 183 din 11.07.2012 for the economic concentration carried out by acquiring control over ÎM „Farm Meat Sud” LLC and „Farm Meat Processing” LLC .
2. To cease the initial investigation by the Disposition of the Plenum of Competition Council no. 8 din 14.11.2013, as to the lack of the object of infringing the Law on Competition no. 183 din 11.07.2012.

3. This Decision enters into force on the date of its adoption and shall be notified to the parties..

**Chairperson of the Plenum of  
Competition Council**

**Viorica CĂRARE**