

REPUBLIC OF SLOVENIA

MINISTRY OF THE ECONOMY

COMPETITION PROTECTION OFFICE

No. 306-178/2007-189

Ljubljana, 26/06/2009

The Competition Protection Office of the Republic of Slovenia, Kotnikova 28/I, Ljubljana (hereinafter: the Office), has, by the panel chaired by Jani Soršak, director of the Office, with Helena Belina Djalil and Damjan Matičič as panel members, at a non-public meeting held on 26/06/2009, pursuant to the third paragraph of Article 39 in conjunction with Article 9 of the Prevention of Restriction of Competition Act (Official Gazette of the RS, nos. 36/08 and 40/09; hereinafter: the Act) and Article 82 of the Treaty establishing the European Community (Official Gazette of the RS MP, no. 3/04; hereinafter: The EC Treaty) and by applying the General Administrative Procedure Act (Official Gazette of the RS, no. 24/2006 as subsequently amended), in the procedure of establishing violations of Article 9 of the Act and Article 82 of the EC Treaty initiated by the Office ex officio against the company Poslovni sistem Mercator d.d., Dunajska cesta 107, 1000 Ljubljana, decided to issue the following:

DECISION

1. **The Office accepts undertakings proposed to the Office by Poslovni sistem Mercator d.d., Dunajska cesta 107, 1000 Ljubljana (hereinafter: Mercator). The adoption of undertakings shall eliminate the situation resulting in the probability of violation of Article 9 of the Prevention of Restriction of Competition Act (Official Gazette of the RS, nos. 36/08 and 40/09; hereinafter: the Act) and Article 82 of the Treaty establishing the European Community (Official Gazette of the RS MP, no. 3/04), namely Mercator allegedly abusing its presumed dominant position on the market for purchasing household products for resale in the Republic of Slovenia by making conclusion of contracts with its suppliers of household products subject to the requirement for a number of unjustified contractual bonuses not included in calculation of retail prices and high rebates not justified with normal business conditions.**

2. Definitions of used terms:

the Company - includes Mercator and the present and future group members (subsidiaries: the meaning, *mutatis mutandis*, as specified for "group member" in Item 5 of Article 3 of the Act) with registered office in the Republic of Slovenia if such company started to sell household products on the market in the Republic of Slovenia, which perform or will perform the activity of selling household products. The Company shall also mean a subsidiary of the Company being a party to these proceedings with registered office outside the Republic of Slovenia if such a company started to sell household products on the market in the Republic of Slovenia at any time during the validity of these undertakings;

the Supplier - includes any entity supplying household products to the Company for resale on the market in the Republic of Slovenia. If a subsidiary of the Company of these undertakings becomes the Supplier of household products to the Company, it shall be deemed the Company in line with the definition of the Company under these undertakings and shall be subject to all obligations applying to the Company;

the Supplier Contracts - all existing contracts and future contracts with the Suppliers of household products concluded during the period of these undertakings between the Company and the Suppliers;

the Household Products - food, drinks, tobacco products and certain non-food products (washing, cleaning, hygiene and cosmetic products etc.) representing the basket of daily household purchase;

the Supplier Relations - any relation between the Company and the Supplier relating to supply of the Household Products to the Company and services rendered to the Supplier by the Company regardless of the form in which the relations are arranged (e.g. purchase order, agreement or contract).

I/1 The Company shall in any case regulate the Supplier Relations in writing. Any agreement not made in writing shall be non-binding.

I/2 The Company shall arrange with the Suppliers only the following types of rebates: (a) contractual rebate; and (b) logistical rebate. The contractual rebate may be partly disclosed on the invoice and partly outside the invoice and the Supplier shall have the right at any time and with a reasonable advance notice to request a different allocation of the contractual rebate to that charged on the invoice and that charged outside the invoice.

I/3 The Company shall not conclude with the Suppliers any agreement changing the rebate amounts for the past charging periods. Upon conclusion of annual contracts made by 31 March of the current year and applying as of 1 January of

the current year the Company and the Supplier will agree on different terms and conditions, which shall not, however, change the relations for the past charging periods. This undertaking shall not apply to changes required to fulfil these undertakings.

I/4 The Company shall arrange with the Suppliers only for use of the following types of services and the related charges: (a) cost of handling waste packaging; (b) cost of recycling or disposal of waste electrical and electronic equipment; (c) fee for marketing activities; (d) fee for placement of new products; (e) fee for marketing shelf space; and any other legal fees and expenses. The Company shall compile a list of possible service types and the related fees, not specifying the amount, and publish the list on the Company's website.

I/5 The Company undertakes not to make any service type obligatory for the Supplier and the Supplier shall have the option to choose whether and in what scope to use any service type. The exception shall be costs prescribed by primary or secondary legislation.

I/6 The Company undertakes to prepare a price list for all service types which shall be in the part relating to the Supplier a constituent part of the Supplier Relations and shall be submitted to the Supplier. The price list shall determine for each service type the price (fee) either in an absolute amount for the given scope of a service or the price (fee) will be determined in relative terms as a percentage of the purchase amount. The Company shall charge the same service type to all Suppliers at the same price in line with the price list. The Company shall submit the price list before adoption to the Office enclosed with the underlying calculations.

I/7 The Company shall not conclude with the Suppliers any agreement changing the fee amounts for the already rendered services.

I/8 The Company shall not include in the Supplier Relations any provisions concerning:

- services / fees regarding opening of stores or first filling of new and reconstructed stores;
- fees for covering the cost of handling waste packaging for products branded under the Company's trademark.

I/9 The Company shall not include in the Supplier Relations the following:

- provisions on rebates for volume growth;
- the Company's right to early payment with a discount (cassaconto) and

humanitarian contribution fee unless exceptionally and at the express wish of the Supplier stated in writing.

Any participation of the Supplier in humanitarian campaigns of the Company and their related humanitarian contribution shall be regulated by the Company with separate contracts or agreements and only at the express wish of the Supplier. Any contribution shall not depend on cooperation in purchase of merchandise.

I/10 The Company undertakes that the payment deadline for goods purchased from the Supplier shall not exceed 90 days from the acceptance/delivery of goods or from the last day of the charging period specified in the contract in the case of successive deliveries of goods. Exclusively applying to the existing contracts with the Suppliers valid in 2009, the payment deadline under this item of the undertakings shall not be extended during the term of the relevant contracts in case the currently valid payment deadline is less than 90 days.

I/11 The Company undertakes that the agreed payment deadline for payment of rebates disclosed off the invoice and debited to the Supplier as well as for fees charged by the Company to the Supplier shall not be less than 30 days.

I/12 The Company shall agree with the Supplier the rate of default interest equal for the Company and the Supplier.

I/13 The Company shall in arranging relations with the Suppliers delivering products branded under the Company's trademark conclude with each Supplier a separate contract governing the relations.

I/14 The Company undertakes to publish the text of these undertakings on its website and inform by a letter the Suppliers where on the website the undertakings are published.

II. Fulfilling the undertakings

II/1 The Company shall include undertakings under Items I/1, I/2, I/3, I/5, I/7, I/8, I/10, I/11, I/12 and I/13 in the existing contracts with the Suppliers in the form of an annex thereto and in the future contracts in the form of contractual provisions reflecting the contents of the undertakings under the listed Items and shall submit a template to the Office for review beforehand. The Company shall after signing the annexes submit the annex to the Office enclosed with a statement of the Company's Management Board that all Suppliers have signed the annex and in the case of refusal by the Supplier to sign the annex enclosed with a statement of the Supplier that they refuse to sign the annex or in the case of silence of the Supplier with a statement on

silence of the Supplier. The Company shall submit to the Office the above for relations with the Suppliers with the total purchase value of household products in 2008 equalling 20% of the total purchase value of household products of the Company within 90 days from adopting the undertakings, and for other Supplier Relations by 31/12/2009. In the case of new contracts concluded during the validity period of these undertakings the Company shall submit to the Office the list of newly signed contracts for the relevant year enclosed with a statement by the Company's Management Board that all new Suppliers have signed a contract including provisions in line with Items I/1, I/2, I/3, I/5, I/7, I/8, I/10, I/11, I/12 and I/13 of these undertakings. In case no contract is signed with the Supplier, the Company shall submit to the Office a statement of the Supplier containing the relevant provisions and the list of all statements for the year enclosed with a statement of the Company's Management Board that all Suppliers have signed the statement.

II/2 The Company shall fulfil the undertakings under Item I/9 by obtaining the Supplier's wishes expressed in writing for the existing and future contracts with the Suppliers.

II/3 The Company shall publish the list under Item I/4 of these undertakings on its website and submit it to the Office within 30 days from adopting these undertakings and any change thereof during the validity period of these undertakings within 30 days from the change.

II/4 The Company shall adopt the price list under Item I/6 herein within 30 days from adoption of these undertakings. The Company shall submit the price list and the underlying calculations to the Office at least 15 days before adoption.

II/5 The Company shall fulfil the undertaking under Item I/14 within 3 days from serving of the decision concerning the undertakings.

The notice on publication on the Company's website enclosed with the Company's statement that the Suppliers have been informed, in accordance with Item I/14, shall be submitted by the Company to the Office within 8 days from publication.

It shall be deemed that the Company failed to fulfil the undertakings if:

- the Company does not enter the undertakings under Items I/1, I/2, I/3, I/5, I/7, I/8, I/10, I/11, I/12 and I/13 in the existing contracts with the Suppliers or if the provisions are not appropriate; if the Company fails to submit to the Office any statements of the Suppliers that they refuse to sign the annex; if the Company fails to submit to the Office any

- statements of the Management Board on silence of the Suppliers;
- the Company does not enter the undertakings under Items I/1, I/2, I/3, I/5, I/7, I/8, I/10, I/11, I/12 and I/13 in the new contracts with the Suppliers concluded during the validity period of these undertakings or if the provisions are not appropriate; if the Company does not submit to the Office the statement of the Company's Management Board and the list of newly signed contracts for the year;
 - the Company does not obtain statements of the Suppliers in the case no contract is signed with the Supplier or if the provisions are not appropriate; and if the Company fails to submit to the Office the Suppliers' statements, the list of statements and the statement of the Company's Management Board that all Suppliers have signed the statement;
 - the Company fails to obtain for the undertakings under Item I/9 the Supplier's wish expressed in writing or if the expression is not appropriate; and if the Company fails to submit the expressed wishes to the Office;
 - the Company does not publish the list under Item I/4 of these undertakings or if it fails to submit to the Office the list under Item 4 herein within 30 days of adoption of these undertakings or after any change during the period of these undertakings;
 - the Company does not adopt the price list under Item I/6 herein within 30 days from adoption of these undertakings or if it fails to submit to the Office the price list and the underlying calculations at least 15 days before adoption;
 - the Company does not publish these undertakings in accordance with Item I/14 within 3 days from adoption of these undertakings or if it fails to submit to the Office the statement on submitting the letter to the Suppliers under Item 14 within 8 days from adoption hereof.

III.

The Company shall submit to the Office the Report on fulfilling of the undertakings in the preceding year by 1 June in the current year.

The report shall contain:

- a range of selected supplier contracts specified by the Office in the request for submitting data which the Office shall annually address to the Company in March;
- the list of contracts, annexes and statements of the Suppliers with whom no contract has been signed or statements on silence of the Suppliers as

well as all contracts made with new Suppliers in the preceding year or statements of the Suppliers with whom no contract has been signed received in the preceding year; the notice on the publication location on the website of the list of possible service types of the Company under Item I/4 of these undertakings with the statement that the list has been published on the Company's website and the report on any technical issues related to operation of the Company's website;

- the notice and statement that the Company has published on its website the text of these undertakings and the report on any technical issues related to operation of the Company's website;
- the price list, any changes thereto and copies of any calculations submitted to the Office in accordance with Item I/6 herein;
- the list of the Suppliers submitting in the current financial year the statements under Item I/9 of these undertakings with specified amounts of any humanitarian contribution, rebate for volume growth and/or early payment cash discount for each Supplier submitting the statement, and copies of the statements;
- statement of the Management Board on fulfilling of the undertakings.

The report and any supplement thereto shall be before being submitted to the Office and after discussion and adoption by the Management Board submitted for approval to the Company's Supervisory Board. The report shall also be reviewed beforehand by the external auditor appointed by the Annual General Meeting of the Company within the scope of the regular annual audit of the Company's business.

If the Office deems the report incomplete, the Company shall appropriately supplement the report upon the Office's request and within the set deadline.

3. The undertakings shall be adopted from the date the parties are served the decision until 01/07/2014.

4. The Office may upon request or ex officio annul this Decision and continue the proceedings in the case of a material change in actual circumstances underlying this Decision, if the parties fail to fulfil the undertakings or if the Decision has been based on incomplete, incorrect or misleading information submitted by the parties.

5. Operative provisions hereof shall be published on the Office's website.

6. Each party to the proceedings shall cover their own cost.

/Republic of Slovenia

*Ministry of the Economy
Competition Protection Office
Ljubljana
Jani Soršak
DIRECTOR
(signed and stamped)/*

To be served to:

- Poslovni sistem Mercator d.d., Dunajska cesta 107, 1000 Ljubljana, through the authorised person, the Attorneys at law Miro Senica in odvetniki, Barjanska cesta 3 Ljubljana
- Documentary material, here