



ΚΥΠΡΙΑΚΗ ΔΗΜΟΚΡΑΤΙΑ



ΕΠΙΤΡΟΠΗ ΠΡΟΣΤΑΣΙΑΣ  
ΤΟΥ ΑΝΤΑΓΩΝΙΣΜΟΥ

Decision CPC: 83/2021

Case Number: 08.05.001.021.044

## THE CONTROL OF CONCENTRATIONS BETWEEN ENTERPRISES LAW

No. 83(I)/2014

**Notification of concentration concerning the acquisition of the share capital of VLPG PLANT Ltd by YUGEN LIMITED and the merge of its activities, related to storage and handling of liquefied petroleum gas, with the respective business divisions of the companies, Petrolina (Holdings) Public Ltd, Synergas Ltd and Intergaz Ltd which have already been merged through VLPG PLANT Ltd**

Commission for the Protection of Competition:

Mrs. Loukia Christodoulou	Chairperson
Mr. Andreas Karidis,	Member
Mr. Panayiotis Oustas,	Member
Mr. Aristos Aristidou Palouzas,	Member
Mr. Polinikis Panayiotis Charalambides	Member

Date of decision: 15 December 2021

### DECISION

The subject of the present case is the concentration notified to the Commission on 9/7/2021, by the companies YUGEN LIMITED (hereinafter "YUGEN") and VLPG PLANT Ltd (hereinafter "VLPG"), in accordance with the provisions of Article 10 of the Control of Concentrations between Enterprises Law 83(I)/14 (hereinafter the "Law"). It is noted that on 25/10/2021 the legal representatives of the involved parties informed the Commission Service (hereinafter the "Service") that from 14/10/2021, YUGEN was renamed EKO LOGISTICS Ltd (hereinafter "EKO LOGISTICS").

This notification concerns the acquisition of 32% of the share capital of VLPG and the merging of the activities of the Hellenic Petroleum SA Group (hereinafter the "ELPE

Group"), via EKO LOGISTICS, regarding the storage and handling services of liquefied petroleum gas "LPG".

Companies participating at this merger are the following:

**VLPG PLANT Ltd** is a company duly registered in accordance with the laws of the Republic of Cyprus. In 2018 the respective divisions of the companies; Petrolina (Holdings) Public Ltd (hereinafter "PHL") Synergas Ltd (hereinafter "SYN") and Intergaz Ltd (hereinafter "INT") regarding the storage and handling services of LPG have been merged. The Commission's decision [49/2018](#) is relevant. VLPG has not started operations yet. An LPG terminal at Vasilikos Energy Center is under construction to house VLPG's activities. Upon completion of the first face of the construction works (expected by the end of 2021), VLPG will be active in the storage and handling services of LPG such as bottling and maintenance of LPG cylinders, and their loading into trucks as well as loading bulk LPG on tanker trucks. PHL, SYN and INT are collectively referred to as the "VLPG Founding Companies" and together with EKO LOGISTICS will be referred to as the "Companies".

Petrolina (Holdings) Public Ltd is a public company duly registered under the laws of the Republic of Cyprus, listed on the Cyprus Stock Exchange and is active in the importation and trade of light and heavy petroleum products, LPG, engine oil and lubricants, refueling of aircrafts and storage, management, transportation and sale of petroleum products, LPG and lubricants.

Synergas Ltd is a cooperative company duly registered under the laws of the Republic of Cyprus and is active in the storage, management and distribution of bottled and bulk LPG, throughout the Republic of Cyprus.

Intergaz Ltd is a private company duly registered under the laws of the Republic of Cyprus and is active in the retail and wholesale trade of LPG and specifically deals with the importation, storage, bottling and distribution of bottled and bulk LPG.

**EKO LOGISTICS** is a company duly registered in accordance with the laws of the Republic of Cyprus and is active in the management and operation of a fuel terminal at Vasilikos Energy Center. EKO LOGISTICS is a subsidiary of the ELPE Group. ELPE Group is active in Greece and in southeastern Europe.

ELPE Group is active in Cyprus via:

Hellenic Petroleum Cyprus Holding (HPCH) LTD, a portfolio company responsible for the investments of the Group in Cyprus.

Hellenic Petroleum Cyprus Ltd, active in the supply, transport and trade of liquid fuel, lubricants and LPG to commercial and industrial clients.

Blue Circle, active in the retail/bulk sale of LPG. Also, is active the installation of LPG systems as an energy source (including upgrades and maintenance of existing installations), as well as with the distribution and trading of bulk LPG throughout the territory of the Republic of Cyprus.

It is stated at the notification that EKO LOGISTICS's terminal at Vasilikos Energy Center does not have LPG storage facilities and also declared that there is no provision or any intention to construct such facilities.

The concentration is based on the Shares Purchase Agreement dated 2/06/2021 (hereinafter "the Agreement") among PHL, SYN, INT as the Sellers and EKO LOGISTICS as the Buyer.

According to the term of the Agreement EKO LOGISTICS will acquire 32% of the share capital of VLPG. Also, EKO LOGISTICS's operations regarding the storage and handling services of LPG will merge VLPG's respective activities upon the completion of the first face construction works to the above-mentioned LPG terminal at Vasilikos Energy Center.

The Commission, taking into account the facts of the concentration, has concluded that this transaction constitutes a concentration within the meaning of section 6(1)(a)(i) of the Law, since the concentration has as a result the merge of the activities of the ELPE Group, via EKO LOGISTICS, concerning the storage and management of LPG with the future activities of VLPG.

Furthermore, based on the information contained in the notification, the Commission found that the criteria set by section 3 (2) (a) of the Law were satisfied and therefore the notified concentration was of major importance falling within the scope of the Law.

The relevant product/services markets in this case were defined as the:

- (1)** Import of LPG,
- (2)** Storage and management of LPG for heating and other uses except Autogas as well as Autogas, including the bottling of LPG in cylinders, loading of bulk LPG into trucks and maintenance of cylinders,
- (3)** Wholesale of LPG in bulk and in cylinders (a) for heating and other uses except Autogas and (b) Autogas,
- (4)** Retail sale of LPG in bulk and in cylinders (a) for heating and other uses except Autogas and (b) Autogas,
- (5)** Installation of LPG equipment and the provision of maintenance services.

For the purposes of the present case, the geographic market for all the relevant product/services markets was defined as that of the territory of the Republic of Cyprus.

According to the notification, there is a horizontal overlap in the activities of the participating parties in the concentration in the Republic of Cyprus in the relevant product/services market for the storage and management of LPG for heating and other uses except Autogas as well as Autogas, including the bottling of LPG in cylinders, loading of bulk LPG into trucks and maintenance of cylinders, **(2)** with a combined market of 100%. Therefore, there is an affected market in a horizontal level, according to Schedule I of the Law.

The Commission concluded that there are two vertical relationships between the activities of the participating parties in the concentration in the Republic of Cyprus.

The Commission identified the first vertical activity between the markets of the import of LPG **(1)** and the storage and management of LPG for heating and other uses except Autogas, as well as Autogas, including the bottling of LPG in cylinders, loading of bulk LPG into trucks and maintenance of cylinders markets **(2)**. The combined market share of the parties in the import market of LPG is estimated 100%, therefore, there are affected markets in the vertical the vertical relationship, according to Schedule I of the Law.

The Commission identified the second vertical relationship between the markets of the storage and management of LPG for heating and other uses except Autogas, as well as Autogas **(2)** and the wholesale, and retail sale of LPG in bulk and in cylinders for: (a) heating and other uses except Autogas and (b) Autogas **(3) & (4)**. V LPG will have the monopoly in the storage and management of LPG for heating and other uses except Autogas, as well as Autogas. The combined market share of the Companies in the wholesale, and retail sale of LPG in bulk and in cylinders for: (a) heating and other uses except Autogas and (b) Autogas is 100%. Since the criterion of 25% set by the Law regarding the above-mentioned vertical relationship is met, consequently leads to a vertical affected market.

The Commission concluded that there is also neighboring relationship in the activities of the participating parties in the concentration in the Republic of Cyprus in the market of storage and management of LPG for heating and other uses except Autogas, as well as Autogas **(2)** and the market of the installation of LPG equipment and the provision of maintenance services **(5)** with an individual or a combined market share of the participating parties that exceeds 25%. Therefore, there is an affected market in a neighboring relationship, according to Schedule I of the Law.

The Commission, on [16/09/2021](#), after taking into account the Written Report of the Service, as well as other data that are in the administrative file of the case, unanimously decided that the concentration raises doubts as to its compatibility with the functioning of competition in the relevant product/services market for the storage and handling of LPG for heating and other use except Autogas and Autogas including loading into trucks bulk gas, bottling in cylinders, as well as cylinders service and maintenance **(2)**, which will be the economic

activities of VLPG after the completion of the first face of the construction of the VLPG terminal facilities.

Also, serious doubts as a result of the proposed concentration are raised as to its compatibility with the functioning of competition in the markets of the: import of LPG **(1)**, wholesale of LPG in bulk and in cylinders for heating and other use except Autogas, and (b) Autogas **(3)**, retail sale of LPG (a) in bulk and in cylinders for heating and other use except Autogas and (b) Autogas **(4)** as well as in the installation of LPG equipment and the provision of maintenance services **(5)** that the Companies are active in.

Therefore, the Commission decided to initiate a full investigation procedure, based on article 22 (1) (c) of the Law. More precisely, during the evaluation of the concentration, the Commission took into account the provisions of Section 19 (a) of the Law, which stipulates «the need to maintain and develop conditions of effective competition within the relevant markets in view of, among other things [...] », and:

- I. The notified concentration might significantly impede competition in relation to the horizontally affected market for storage and handling of LPG for heating and other use except Autogas, and Autogas by eliminating significant competitive pressures through VLPG, as the Companies are the only ones to be active in this market, and which are moreover all vertically active in the LPG sector. VLPG will hold a dominant position in the market for storage and management of LPG for heating and other use except Autogas as well as Autogas, which it can exploit, by e.g., rising charges, both for the storage space and for the access to the anchorage and the unloading pipes, applying different terms of transaction between the Companies and other parties besides prices, not-allocating storage space to third parties, imposing exclusivity clauses, etc. Therefore, VLPG may have the ability and incentive to take advantage of its dominant position and make it difficult for other companies and potential competitors to enter or expand in the markets, and there may be a significant impediment to competition as a result of the creation of a dominant position, in a market with high barriers to entry due to the high investment costs and the specific legal and technical constraints imposed in operating in that market.
- II. The proposed concentration, through the joint storage and management of LPG for heating and other use except Autogas, and Autogas may facilitate the companies to agree on their coordination terms either in the affected market of the previous stage, i.e. in the LPG import market and/or the affected markets of the next stage i.e. the wholesale of LPG (a) in bulk and in cylinders for heating and other use except than Autogas and (b) Autogas, as well as in the retail of LPG market (a) in bulk and in

cylinders for heating and other use except Autogas, (b) Autogas and / or to exclude their potential competitors, as the Board of Directors of VLPG may be composed of the same Directors as the Directors of the Companies that are essentially competitors with each other.

- III. Through vertical integration, VLPG and its shareholders may gain access to commercially sensitive information regarding the Companies' potential competitors' activities in the downstream or upstream relevant markets. When a potential competitor in the LPG import market and / or wholesale and / or retail (a) in bulk and in cylinders for heating and other use except Autogas and (b) Autogas, requests from VLPG storage and management services of LPG for heating and other use except Autogas as well as Autogas, VLPG Directors, who may be the same as the Directors of the Companies, may obtain sensitive information thus placing their potential competitors at a competitive disadvantage, and thus discouraging entry or expansion into the LPG market.
- IV. The close relation of the relevant market for the installation of LPG equipment for heating and other use except Autogas and the market for the provision of maintenance services, may facilitate the Companies to agree on the terms of their coordination and/or to exclude their potential competitors, since the Directors of the Companies that are essentially competitors with each other may be appointed on the Board of Directors of VLPG.

In the context of a full investigation of the concentration, questionnaires were sent for the purpose of receiving additional information to other companies which are active in this market and the Ministry of Energy, Commerce, Industry and Tourism. Additionally, negotiations were carried out in relation to any variations in the circumstances that created the concentration and that could result in the removal of doubts which had been identified at a first stage.

In the context of full investigation, a relevant [Press Release](#) was posted on the official website of Commission and an announcement was published in the Official Gazette of the Republic, summarizing the doubts identified by the Commission.

In the context of full investigation, the Service provided additional information by the participating undertakings in the concentration as well as by the relevant bodies and businesses and submitted a report of findings to the Commission on 19/11/2021, on the basis of article 27 of the Law.

The Commission at its meeting held on 26/11/2021 assessed the Report of Findings and decided that there were still doubts as to the compatibility of the concentration with the

functioning of competition in the market. The Commission, acting on the basis of Section 28(2) of the Law, compiled a report with the objections ascertained in relation to the incompatibility of the concentration with the functioning of competition in the market and informed the participating undertakings that they could submit any amendments to the concentration in writing as well as any other commitments so as to remove the doubts raised in the Report with the Objections. Prior its decision and on the basis of article 33(1) of the Law, the Commission held a hearing with the participating undertakings. Therefore, the Companies submitted a number of commitments with their final commitments being submitted on 14/12/2021.

The Commission, after studying and evaluating the final proposed commitments made by the Companies and VLPG, the Amended Shareholders Agreement of VLPG as well as the results of the full investigation of the concentration, the Commission considered that the commitments undertaken by them were sufficient to remove the doubts raised.

Therefore, the Commission, acting on the basis of article 28(1)(a) of the Law, unanimously decided that this concentration is compatible with the functioning of the competition in the market, on the basis of the commitments made by the participating undertakings. Specifically, the participating undertakings undertook the commitments that are valid based on the [decision 49/2018](#) that had been undertaken by the Founding Companies, which are as follows:

*"(i) modification of the Shareholders' Agreement, in order to ensure that there will not be different pricing policies or terms and conditions between the companies involved and customers. The New Company will enter into transactions with all its customers under the same terms (at arm's length),*

*(ii) modification of the Shareholders' Agreement, in order to ensure the cost-oriented pricing policy of the New Company regarding the provision of storage space, access to anchorage and transport pipelines,*

*(iii) ensure the possibility of renting storage space to at least two companies with a decrease in the minimum level of space necessary for accepting a company, and a commitment by VLPG that in the case where 10% of the total storage space is not used by a third party, then 100MT will be provided to the next applicant, even if the total storage space to third parties exceeds 10%,*

*(iv) ensure the provision of 10% of total storage space to third parties, in the case of extending the storage space,*

*(v) The provision a manual for protecting competition to all the members of staff of VLPG, in which all the policies of the Companies will be documented as well as the procedures*

*that will have to be followed by all the members of staff who may have access to sensitive and/or confidential information.*

*(vi) appoint an independent third party who will be responsible for verifying compliance with all commitments and to submit an annual report to the Commission within the first quarter of each year confirming the implementation or non-implementation of the commitments by the VLPG with respect to the previous year,*

*(vii) a commitment not to prevent VLPG customers from using and renting facilities of a potential competitor, thus limiting any activity in the upstream or downstream market,*

*(viii) During the period of construction of the necessary facilities of the storage space and the twelve (12) month period from the start of the operation, the companies are obliged to hold any Board of Directors' meetings of VLPG in the presence of an independent third party, who will ensure that no illegal coordination exists in the affected markets and that no sensitive information regarding VLPG is exchanged,*

*(ix) The members of the Board of Directors and the chief executive officers of the Companies will not hold any position in the Board of Directors of the New Company, twelve (12) months after the start of VLPGS' operation,*

*(x) The commitments must be met for the entire period of VLPG's operation.. "*

In addition to the above, Hellenic Petroleum S.A Group undertook the following additional commitments:

- any use of the two of the plots owned by the Hellenic Petroleum S.A Group in the space designated by the Ministry of Energy, Trade and Industry for use in relation to LPG, will not concern and/or related to the storage and/or handling of LPG and in any case will not to compete with any activity of VLPG, provided that EKO Logistics Ltd and/or any other company of the Hellenic Petroleum S.A Group is a shareholder of VLPG.
- after the lapse of five (5) years from the date of the approval of the concentration by the Commission and in case the two aforementioned plots would not have been used for the declared reasons, nor the licensing process for alternative plans would have been started, or would not have been released in favor of the state by then, the plots in question would be released in favor of the state, and
- a representative of the Hellenic Petroleum S.A Group will provide full information to the Commission, within the first quarter of each year until the end of the five-year period, on all relevant developments.



The Commission notes that under Section 40 (1) (d) of the Law, if the concentration implemented without the fulfilment of a condition imposed by the Commission in accordance with Section 28 (1) (a) of the Law, may impose a fine of up to ten percent (10%) of the total turnover of the undertaking which has the obligation for notification, as defined in Schedule II and in addition an administrative fine not exceeding eight thousand (8.000) euros for every day during which the infringement continues.

Finally, the Commission notes that under Section 45 of the Law, the Commission may revoke any decision taken in relation to the compatibility of any concentration with the functioning of competition in the market or may amend the terms of the decision if it ascertains–

(a) that false or misleading information has been supplied or that necessary information relating to this concentration has been withheld by the notifying party or by any other participant in the concentration or by any interested person, or

(b) that any term imposed on the participants in the concentration by the said decision has not been satisfied or has ceased to be satisfied.

The Commission will publish a full text of the decision in Greek upon its publication in the Gazette.

Loukia Christodoulou

Chairperson of the Commission for the Protection of Competition