



ΚΥΠΡΙΑΚΗ
ΔΗΜΟΚΡΑΤΙΑ



ΕΠΙΤΡΟΠΗ ΠΡΟΣΤΑΣΙΑΣ
ΤΟΥ ΑΝΤΑΓΩΝΙΣΜΟΥ

Decision CPC: 18/2020

Case Number 8.13.020.08

**THE CONTROL OF CONCENTRATIONS BETWEEN ENTERPRISES LAW
No. 83(I)/2014**

**Notification of a concentration regarding the acquisition of the share capital of
Wild River Corporation S.a.r.l. by European Medco Development 4 S.a.r.l.**

Commission for the Protection of Competition:

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

Date of decision: 9/4/2020

SUMMARY OF THE DECISION

On 12/3/2020, the Commission for the Protection of Competition (hereinafter the “Commission”) received on behalf of European Medco Development 4 S.a.r.l., (hereinafter the “European Medco” or “Acquirer”), a notification of a proposed concentration. The notification was filed according to Section 10 of the Control of Concentrations between Enterprises Law 83(I)/14 (hereinafter the “Law”) and it concerns the acquisition of 100% of the share capital of Wild River Corporation S.à r.l. (hereinafter the “Wild River” or “Target Entity”).

Wild River Corporation S.a.r.l. is a limited liability company duly registered in accordance with Luxembourg laws. This company is the parent of PharmaZell group of companies, manufacturer of specialized active pharmaceutical components and natural substances.

European Medco Development 4 S.a.r.l. is a special purpose vehicle, established for the purposes of the proposed transaction. This company is controlled by the Bridgepoint Europe VI Fund, a European fund consisting of a series of limited partnerships, on behalf of which Bridgepoint Advisors Limited, an English limited liability company, which acts as an Administrator. Bridgepoint Group Limited, an English limited liability company, is the ultimate parent company of Bridgepoint Advisors Limited. Bridgepoint holding companies operate in various industries and business sectors including Business Services, Financial Services, Media Information & Technology, Consumer, Healthcare and Manufacturing & Industry.

The transaction is based on an Share Purchase and sale Agreement (hereinafter the "Agreement") dated 13/2/2020 between Wild River Bridge S.à r.l., Maxburg Beteiligungen GmbH & Co. KG, DPE Deutschland II A GmbH & Co. KG, DPE Deutschland II B GmbH & Co. KG, Wild River Co-Invest SCSp and Zebra Management I GmbH & Co. KG (hereinafter the "Sellers"), the Target Entity and the Acquirer.

Based on the provisions of the Agreement, the Acquirer will acquire all the share capital of the Target Entity from the Sellers, along with certain shareholder loans.

Taking into account the above mentioned facts, the Commission concluded that the transaction in question constitutes a concentration within the meaning of Article 6(1) (a)(ii) of the Law because it will result in a change of control of the Target Entity on a permanent basis.

The Commission, having evaluated all the information of the administrative file of the case, concluded that:

- (a) The total turnover of Bridgepoint was approximately €[...] for the year 2019, while the total turnover of Wild River was approximately € [...] for the year 2019,
- b) Bridgepoint and Wild River operate within the Republic of Cyprus,
- (c) The turnover in Cyprus for the 2019 of Wild River amounted to around €[.....]. Bridgepoint had an annual turnover in Cyprus amounting to €[...] in 2019 derived from its portfolio enterprises. The Commission found that Peyman, as described in the

notification, generated a turnover within the Republic of Cyprus of €[.....], producing packaged nuts and fruits in Turkey. The undertakings concerned confirmed that this turnover occurs in the regions not controlled by the Republic of Cyprus. T

he Commission notes that a critical element for the application of the Law is its geographical scope. As is clear from the combined application of the term "Republic" of article 2 and of the cumulative conditions of article 3 (2) of the Law, the geographical scope is the whole territory of the Republic of Cyprus.

The Commission notes that the responsibility of the Republic of Cyprus to legislate for the whole territory is not affected by the consequences of the Turkish invasion, the presence of Turkish troops and the inability of the Government of the Republic of Cyprus to exercise effective control over the areas occupied by these troops. The first conclusion which emerges from this is that the Republic of Cyprus, as a sovereign State, has the legislative responsibility for the whole territory and that the Cypriot legislation applies throughout the territory, unless the law provides otherwise.

The issue of the validity of a law is a separate issue from the question of applicability of its provisions. Regarding the implementation of legislation of the European Union (hereinafter EU), it must be pointed out that in accordance with the Protocol No. 10 to the Act of accession of the Republic of Cyprus in the EU, the application of the *acquis* is suspended in those areas where the Government of the Republic of Cyprus does not exercise effective control. Regarding to purely national legislation (i.e. not based on EU legislation), it is valid and should be implemented as a whole. On this point, it should be noted that the book "Studies in European Public Law: thematic, national post-and national perspectives", pp. 110, Constantinos Lycourgos states:

*"[...] while the *acquis* is suspended in the areas where the Government does not exercise effective control, the laws of the Republic are not. These laws are applicable in the whole territory of the Republic, even though the authorities of the Republic are, in most cases, unable to apply them in the part of that territory where the Republic of Turkey exercises effective overall control."*

The aspect of inability of the application of the national legislation was examined by the Supreme Court of Cyprus. In its decision in case *Birinci v. Republic*, Case. No. 911/2004, dated 14/2/2006, the Court, considering the applicability of a purely national legislation, concluded that:

"The conditions posed by the term ' student ' and ' resident ' is impossible to be verified by the defendants due to the actual inability to conduct inspections in the occupied part of the Republic of Cyprus, which is occupied by Turkish troops. Whether the applicant 2 fulfilled or not the requirements of the above conditions was not under the circumstances possible to be verified so as to enable the application of the law. The same can be said that it could not be determined whether the family of the applicants had their permanent residence in Cyprus at the time. As it also emerges from the interpretation of the law, the applicant 2 has not graduated from a secondary school registered in the Republic of Cyprus with curriculum of the level required by the relevant legislation governing these matters. Viewed in that regard, "the certificate" attached to the request for specific grant is not a leaving certificate given by a registered secondary school in the Republic of Cyprus."

In the case of *George Matthew v. CAPO* (Case. 845/2006, DOB, 14.7.2008), where the issue involved the application of EU law, the Supreme Court reaffirmed the *Birinci* case.

Applying the above, the Commission concludes unanimously that the Law applies to the entire territory of the Republic of Cyprus. However, there is an objective obstacle for its application in areas and/or in connection with areas that are not under the effective control of the Government of the Republic. This disability to apply the Law, renders the evaluation of the notified transaction to the Commission impossible.

On the basis of the information and data in the administrative file, the notified transaction falls within the scope of the Law, but the Law cannot be applied.

The Commission underlines that it has general and inherent authority in its capacity as an administrative body, to express its judgment by issuing an administrative act, as provided for in article 3 of the General principles of the Administrative Law, No.158(I)/1999.

At this point, the Commission in addition to the above, makes reference to the following quote from the website of the Ministry of Foreign Affairs which is related to non-compliance with the procedures and conditions laid down by the legislation of the Republic of Cyprus:

“The relevant restrictions have been imposed by an Order of the Council of Ministers of the Republic of Cyprus issued on 3.10.1974 (P.I. 265/74) which declares the ports of Famagusta, Karavostasi and Kyrenia as closed for all vessels.

The relevant Order P.I. 265/74 has been adopted on the basis of section 25 of the Port Regulation Law, Cap. 294 as amended (now section 15(1) of the Cyprus Ports Authority Law 38 of 1973, as amended by Law 28 of 1979).

Section 15(2) of Law 38/73 provides for the relevant sanctions as follows: “The master and / or the owner of a ship which arrives and departs from a port closed for such ship or enters or stays therein in contravention of an Order under subsection (1) shall be guilty of an offence and be liable to imprisonment not exceeding two years or to a fine not exceeding seventeen thousand eighty six euro (€ 17.086) or to both such imprisonment and fine, and in the case of a ship registered in the Register of Cyprus Ships, the Court dealing with the case has the power to order her deletion from the Register of Cyprus Ships”.

The above restrictions were taken in order to uphold and maintain the sovereignty of the Republic of Cyprus over its ports and harbors and due to the fact that the safety of navigation could no longer be guaranteed in the areas illegally occupied by the Turkish Army since 1974.”

In a similar merger, namely in the case concerning the acquisition of OMV Petrol Ofisi Holding A.S. by VIP Turkey Enerji A.S., the Commission, in its decision concluded that the Law applies to the entire territory of the Republic of Cyprus. However, there was an objective inability to implement it in the regions and/or in relation to areas not under the effective control of the Government of the Republic of Cyprus. The failure to implement that Law made it impossible to verify the act notified to the Commission. The Commission followed the same practice in its decision no. 32/2019.

Therefore, the Commission unanimously concludes that it is not possible to assess the notified transaction.

Loukia Christodoulou
Chairperson of the Commission
for the Protection of Competition