



ΚΥΠΡΙΑΚΗ ΔΗΜΟΚΡΑΤΙΑ



ΕΠΙΤΡΟΠΗ ΠΡΟΣΤΑΣΙΑΣ  
ΤΟΥ ΑΝΤΑΓΩΝΙΣΜΟΥ

**Decision CPC: 49/2018**

Case Number 8.13.018.09

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

Notification of concentration regarding the creation of the venture VLPG PLANT LTD by Petrolina (Holdings) Public Ltd, Synergas Ltd και Intergaz Ltd.

Commission for the Protection of Competition:

Mrs. Loukia Christodoulou,	Chairperson
Mr. Aristos Aristidou Palouzas,	Member
Mr. Andreas Karidis,	Member
Mr. Panayiotis Oustas,	Member
Mr. Polynikis Panayiotis Charalambidis	Member

Date of decision: 27/09/2018

**SUMMARY OF THE DECISION**

On the 18<sup>th</sup> of May 2018, the Commission for the Protection of Competition (hereinafter the “Commission”) received on behalf of Petrolina (Holdings) Public Ltd, Synergas Ltd and Intergaz Ltd (hereinafter the «Companies») 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”).

This notification concerned the creation of a new company, VLPG PLANT Ltd (hereinafter “the New Company/VLPG”). The Companies will transfer part of their activities regarding the storage and handling of liquefied petroleum gas and relating activities such as the bottling and maintenance of liquefied petroleum gas bottles and its loading to tankers within the Republic of Cyprus, to the New Company.

VLPG PLANT LTD is a company duly registered under the laws of the Republic of Cyprus and with the completion of the proposed concentration, the said company will undertake the establishment of facilities for the receipt, storage and management of liquid petroleum gas (LPG).

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.

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.

The concentration is based on the Shareholders' Agreement dated 19/4/2018 (hereinafter "the Agreement") among Petrolina (Holdings) Public Ltd, Synergas Ltd and Intergaz Ltd. The Agreement concerns the foundation and operation of the New Company. Based on the Agreement, the Companies will transfer part of their activities regarding the storage and handling of liquefied petroleum gas and relating activities such as the bottling and maintenance of liquefied petroleum gas bottles and its loading to tankers within the Republic of Cyprus, to the New Company.

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 merger of the part of the activity of the companies involved in the storage and management of LPG under the New Company.

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 markets in this case were defined as the 1) importation of LPG, 2) storage and management of LPG that includes LPG bottling in cylinders, loading in bulk gas tankers and maintenance of rollers 3) wholesale trade of bottled and bulk LPG and 4) retail trade of bottled and bulk LPG. For the purposes of the present case, the geographic market was defined as that of the Republic of Cyprus for all the relevant product/services markets.

According to the notification, there is a horizontal overlap in the activities of the companies participating in the concentration in Cyprus in the market of storage and management of LPG that includes LPG bottling in cylinders, loading in bulk gas tankers and maintenance of rollers and the combined market share is above 15%. Therefore there is an affected market in a horizontal level, according to Schedule I of the Law.

In addition there is a vertical overlap between (a) the market of importation of LPG and the market of storage and management of LPG, (b) the market of wholesale and retail trade of bottled and bulk LPG and the market of storage and management of LPG which are above 25% and therefore there are affected markets in a vertical level as well, according to Schedule I of the Law.

On the 22<sup>nd</sup> of June 2018, the Commission examined the concentration and unanimously decided that the concentration fell within the scope of the Law and it decided that the concentration raised serious doubts as to its compatibility with the competitive market and thus decided to initiate a full investigation.

The Commission when assessing all the evidence before it, took into account the compatibility criteria specified in the Law, found that the concentration raises doubts as to its compatibility with the functioning of competition in the storage and handling of liquefied petroleum gas (in bulk and in bottles) market in which the New Company will operate, and the import, wholesale and retail sale of liquefied petroleum gas (in bulk and in bottles) markets in which the Companies operate.

Therefore, the Commission found that that the notified concentration requires further investigation as regards to the potential effects of competition in the market. 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:

- The notified concentration might significantly impede competition in relation to the horizontally affected market for storage and handling of liquefied petroleum gas, since the New Company will hold a dominant position in that market and may have the ability and motive to exploit this position for example by having high prices for the rent of storage facilities and for access to the anchorage and unloading pipes, dissimilar conditions for equivalent transactions between its shareholders and third parties - besides prices, exclusivity agreements etc. Therefore, the New Company will have the means and opportunity to hinder the expansion of the activities of other companies or potential competitors, resulting in the possible obstruction of competition as a result of the creation of its dominant position.
- The notified concentration might lead to the coordination of the companies active in the relevant market of storage and handling of liquefied petroleum gas due to the horizontal overlap of activities with Hellenic Petroleum Cyprus Ltd, a possible new entrant in the market. Therefore, the possibility of new companies entering the market should be examined.
- Through the joint storage and handling of liquefied petroleum gas of the Companies, the notified concentration may facilitate them to agree on the terms of their coordination either in

the upstream affected market, namely the import market for liquefied petroleum gas, and/or in the downstream affected market, namely the wholesale and retail sale of liquefied petroleum gas and/or to exclude potential competitors, since the Board of Directors of the New Company may consist of Directors who are also Directors of the Companies.

- The Companies may gain access to commercially sensitive information regarding the activities of potential competitors in the up-stream or down-stream market. When potential competitors in the import of liquefied petroleum gas and / or wholesale and / or retail sale applies to the New Company for storage and handling of liquefied petroleum gas, the New Company Directors, who may be the same as the Directors of the Companies, may obtain sensitive information about the activities of their competitors, thereby putting them at a competitive disadvantage, and making entry or expansion in the market for liquefied petroleum precarious.

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 a full investigation of this concentration, an informative press release was posted on the official website of the Commission, in which the doubts identified in the first stage were briefly presented and at the same time called the stakeholders and any natural or legal person having a legitimate interest, to submit its opinions on this concentration.

The Commission after having considered the information and evidence set before it, undertook all the appropriate negotiations, hearings and meetings with the parties of the concentration.

Accordingly, the Commission came to the unanimous decision to declare the concentration compatible with the competitive market subject to a number of conditions and commitments that the parties have brought forward.

The commitments submitted by the participating companies and the terms imposed are valid for the whole time period that the New Company will be active and concern the following:

- (i) Amendment of the Shareholders' Agreement of VLPG PLANT LTD 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) Amendment of the Shareholders' Agreement of VLPG PLANT LTD 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) Ensuring 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 New Company 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) Appointment of an independent third party responsible to check whether all the commitments have been met and to submit an annual report to Commission within the first semester of each year, which will confirm whether VLPG has met its commitments,
- (vii) Commitment not to prevent any client of VLPG to use or rent any facilities, 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 New Company's 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) month after the start of VLPGS' operation.
- (x) The commitments must be met for the entire period of VLPG's operation.

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