

**THE CONTROL OF CONCENTRATIONS  
BETWEEN ENTERPRISES LAWS 1999 TO 2000**

Notification of a concentration between the companies Swissport Cyprus Ltd and LGS Handling Ltd for the creation of the joint venture S&L Airport Services Ltd

Commission for the Protection of Competition:

Mrs. Loukia Christodoulou,	Presiding Member
Mr. Leontios Vryonides,	Member
Mrs. Eleni Karaoli,	Member
Mr. Demetris Pitsillides,	Member

Date of decision: 03 August 2011

**SUMMARY OF THE DECISION**

The proposed concentration concerned the creation of the joint venture S & L Airport Services Ltd ("S & L") by Swissport Cyprus Ltd ("Swissport") and LGS Handling Ltd ("LGS"), which operate in the provision of ground handling services in Larnaca and Paphos airport. Each of the mother companies holds a 50% share of the joint venture.

The notification of the concentration was submitted to the Service of the Commission for the Protection of Competition on June 1, 2010, as a response to a letter of the Service dated May 12, 2010, to S & L, informing the company for its obligations under the Control of Concentrations between Enterprises Law ("Law").

The Commission on May 4, 2011, after thorough examination, concluded that the notified operation raised serious doubts as to its compatibility with the competitive market and decided to initiate a full investigation under the provisions of Section 18 (1) (c) of the Law.

On July 11, 2011, the Commission, following the judgment of the Plenary of the Supreme Court in the case ExxonMobil Cyprus Ltd and others v. Commission for the Protection of Competition Ad. Rec. No. 1544/09, 1545/09, 1596/09, 1601/09, decided to revoke its decision dated May 4, 2011, to conduct a full investigation of the notified concentration, since the decision was taken in the presence of former Chairman Mr. K. Christoforou. The Commission, following its decision and considering the material that was gathered at the time of the above withdrawn decision dated 4 May 2011,

and in particular the Written Report of the Service dated May 2, 2011, decided that the notified concentration falls within the scope of the Law, causing serious doubts as to its compatibility with the competitive market. Therefore, the Commission under Section 18 (1) (c) of the Law, decided to initiate a full investigation.

Swissport is a limited liability company registered in Cyprus, engaged in providing ground handling services at Larnaca and Paphos airports, providing the following services: (a) Administrative services and ground handling supervision, (b) Passenger service, (c) Baggage Handling, (d) Handling of cargo, (e) Ramp handling services, (f) Cleaning and tidying up of aircrafts, (g) Transports on the ground and (h) Fuel and oil handling.

LGS is a limited liability company and is engaged in providing ground handling services at Larnaca and Paphos airports. LGS is licensed to provide the following services: (a) Administrative services and ground handling supervision, (b) Passenger service, (c) Baggage Handling, (d) Handling of cargo, (e) Ramp handling services, (f) Cleaning and tidying up of aircrafts and (g) Transports on the ground.

S & L was established, inter alia, to provide ground handling services and / or to provide assistance of any nature and / or assistance to individuals with disabilities or reduced mobility when traveling by air and / or in transit and / or removed from airports and / or provide the services defined in Regulation (EC) no.1107/06 of the European Parliament and the Council of 5.7.2006 and / or on any other relevant law or regulation applicable to such services.

Specifically, S & L provides the following services at Larnaca and Paphos: (1) providing escort / assistance to people with mobility difficulties or visual or hearing or to the elderly, (2) providing escort by wheelchairs to people who are either walking slowly or not at all, and (3) providing escorts to wheelchair paraplegics.

Swissport and LGS, on October 14, 2008 and October 6, 2008 respectively, decided their joint participation and joint bidding in the tender announced by Hermes Airports Limited ("Hermes") on September 30, 2008, to provide services to persons with disabilities or mobility difficulties at Paphos airport. The two companies submitted a bid as "Consortium Swissport and LGS» and were the only bidders.

On February 15, 2009, the tender was awarded to Swissport and LGS.

On February 16, 2009, the Joint Venture and Shareholders Agreement (the "Agreement") was signed between Swissport and LGS, whereby both companies

were committed, as soon as possible after the signing of the said Agreement, to create a new company, to be governed by the terms of the Agreement.

On February 19, 2009, S & L was duly registered at the Department of Registrar of Companies and Official Receiver.

On April 14, 2009, S & L signed an agreement with Hermes to provide services to persons with disabilities or mobility difficulties at Paphos International airport.

Subsequently, S & L participated in the competition launched by Hermes for providing services to persons with disabilities or mobility difficulties at Larnaca International Airport. On October 27, 2009, the tender was awarded to S & L.

On January 5, 2011, S & L signed an agreement with Hermes for providing services to persons with disabilities or mobility difficulties at Larnaca International airport.

Therefore, S & L, is the sole provider of services to persons with disabilities or mobility difficulties at the airports of Larnaca and Paphos.

The Commission after thorough examination unanimously decided that the mother companies Swissport and LGS exercise joint control over S & L.

The Commission after examining different aspects of S & L, and specifically, (a) whether S & L has sufficient resources to operate independently in the market, (b) whether S & L has undertaken just a special function of the parent companies' business without any real market presence, (c) the relations of purchase and sale between the parent companies and S & L and (d) the function of the business on a permanent basis, determined that S & L is a joint venture which permanently meets all the features of an autonomous economic entity and therefore falls under Section 4 (1) (c) of the Law.

Furthermore, based on the information contained in the notification, the Commission found that the criteria set by section 3(2) (α) of the Law were satisfied and therefore the notified transaction was of major importance under the Law. According to the notification, the aggregate turnover achieved by both parent companies exceeded, in relation to each one of them 3.417.203 euro. Furthermore they engaged in commercial activities within the Republic of Cyprus and its total turnover which relates to the supply of goods and services within the Republic exceeded 3.417.203 euro.

The relevant product market was defined as the relevant market of ground handling services and / or assistance of any nature and / or assistance to individuals with disabilities or reduced mobility when traveling by air and / or in transit and / or in movement in the premises of the airports. The relevant geographic market was defined as two separate geographic markets, namely that of the airport of Larnaca and the airport of Paphos.

The Commission noted that the creation of the joint venture S & L by Swissport and LGS, which hold 50% each of S & L, leads to a combined share of 100% of the relevant service market, both in the geographic market of Paphos airport and of Larnaca airport and thus the formation of two affected geographic markets, based on the definition of Annex I of the Law.

In relation to the doubts raised by the notified merger, the Commission first noted that S & L is the sole provider of services in the relevant service market.

The Commission also in its assessment of the affected market refers to Regulation (EC) no.1107/06, which states that the management of airports must provide at airports ground handling services to individuals with disabilities or reduced mobility, which in turn may purchase these services in subcontracting arrangements.

Regarding the trend of supply and demand for the services under review, the Commission noted that accordingly to the parent companies, the demand is not high, while the supply of services is not easy, since the purchase of lifts and / or busses for this market is not profitable.

The Commission after examining several other factors and having in mind also, the structure of the affected market, its requirements and the large investments required came to the conclusion that, the creation of the joint venture does not create anti-competitive effects on the affected market.

Furthermore, the Commission investigate whether the concentration may raise spill – over effects, accordingly to Section 4(2) of the Law, as a result of the creation of S&L by two competitive companies, namely Swissport and LGS, having as a result the coordination or/and the exchange of information between them in any adjacent / neighboring market in which both parent companies are active.

The Commission after taking into consideration all of the services provided by the two parent companies in different markets, concluded that the only one that can be considered as neighboring market

was that of the provision of passenger services at Larnaca and Paphos airports and therefore further examined the possibility of spill - over effects in this market.

In examining the potential for spill - over effects, the Commission took into account factors such as: (a) the degree of competitiveness of the parent companies of the joint venture, (b) the relevant market characteristics and the nature of competition in the market that may affect the decision of the parent companies to coordinate their behavior, (c) the market structure, since some markets because of their structure are considered more likely to create spill - over effects than others, and (d) the revenue / sales of the joint venture in relation to the total revenue / sales of the parent companies of the joint venture.

Also the Commission took into consideration the reasons the mother companies decided to create a joint venture and not to compete as to which one would provide the services. Specifically, the mother companies stated that they avoided equipment and personnel issues that would otherwise arise because (a) the two companies had compulsorily purchased all the equipment owned by Hermes to provide that service and (b) in case they did not create a joint venture together, it should be agreed and transferred to the successful bidder, the staff who had transferred to the two companies at the time of the liberalization of ground handling services. So the creation of a joint venture ensured the reduction in costs by maximizing the exploitation of the equipment and the staff of the two companies.

The Commission taking into account all of the above, concluded that there is no evidence to show that the purpose or object of creating the joint venture was the coordination between the two parent companies.

The Commission then considered the possibility of coordination of the mother companies as a result of the creation of the joint venture.

After thorough examination of the data in hand, the Commission came to the conclusion that members of the Board of S & L are persons who have managerial positions in LGS and Swissport, who may establish or participate in determining the policy of each company in relation to the relevant market of the provision of passenger services. Therefore, the risk of exchange of information and the effect on competition in the neighboring market of the provision of passenger services is likely to happen.

Based on all of the above, the Commission concluded that the creation of the joint venture S & L Airport Services Ltd has the potential effect of the exchange of confidential and / or sensitive information between the mother companies in relation to the neighboring market of the provision of passenger service and therefore, the possibility of coordination between the parent companies exist.

The aforementioned conclusion is based mainly on the following reasons: (a) S & L is the sole provider of services in the relevant market under examination and therefore has the 100% market share both in Larnaca and Paphos airports, (b) the mother companies Swissport and LGS, have a strong presence as providers of ground handling services at Larnaca and Paphos airports, (c) only the market of provision of passenger service at airports of Larnaca and Paphos, is a neighboring market of the relevant market in which S & L is active and (d) members of the Board of S & L have managerial positions in LGS and Swissport.

Therefore, the Commission declared the concentration compatible with the requirements of a competitive market subject to the following conditions that were submitted by the parent companies through their lawyer: (1) Replacement of members of the Board of S & L with members not participating in the Board of Directors of Swissport and LGS, (2) Replacement of General Manager and CFO of S & L with persons not employed at Swissport or LGS, and (3) The people who will be appointed as members of the Board, as well as the General Manager and Chief Financial Officer will sign a confidentiality agreement.

Also the Commission decided that the implementation of the above commitments will be notified to the Commission within three months of notification of this decision and that these commitments will be applied at all times for the members of the Board of S & L and the General and the CFOs. Therefore, in the event of a change of one of them, the agreement should be signed by the persons who will replace them.

As a result of the above, the Commission decided that the commitments of the parties are sufficient enough to remove the doubts created by the merger, always taking into account the specific characteristics of the merger under examination, and therefore decided accordingly to Section 26 of the Law to declare the notified concentration compatible with the requirements of a competitive market, subject to the above mentioned commitments.

Loukia Christodoulou

Presiding Member of the Commission for the Protection of Competition