

Decision CPC: 15/2016

Case Number 8.13.016.08

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

**Notification of concentration regarding the acquisition of the operation of the  
Container Terminal at the Limassol Port from EUROGATE International GmbH,  
Interorient Navigation Co. Ltd and East Med Holdings S.A, through Eurogate  
Container Terminal Limassol Ltd**

Commission for the Protection of Competition:

Mrs. Loukia Christodoulou	Chairperson
Mrs. Eleni Karaoli	Member
Mr. Charis Pastellis	Member
Mr. Theophanis Constandinides	Member

Date of decision: 16 June 2016

**SUMMARY OF THE DECISION**

On the 4<sup>th</sup> of May 2016, the Commission for the Protection of Competition (hereinafter the “Commission”) received a notification of the proposed concentration from EUROGATE International GmbH (hereinafter the “EUROGATE”), Interorient Navigation Co. Ltd (hereinafter the “INTERORIENT”) and East Med Holdings S.A (hereinafter the “EAST MED”) in accordance with section 10 of the Control of Concentrations between Enterprises Law (Number 83(I)/2014) (hereinafter the “Law”).

The concentration concerns the acquisition of the operation of the Container Terminal at the Limassol Port from EUROGATE, INTERORIENT and EAST MED, through Eurogate Container Terminal Limassol Ltd (hereinafter the «EUROGATE CONTAINER»). Specifically, the proposed concentration involves two transactions, (a) the creation of the joint venture EUROGATE CONTAINER by EUROGATE and Zirando Investments

Limited (hereinafter the “ZIRANDO”), which belongs to INTERORIENT and EAST MED and (b) the acquisition of the operation of the Container Terminal at the Limassol Port from EUROGATE CONTAINER.

EUROGATE CONTAINER is a company duly registered under the laws of the Republic of Cyprus, and was created by EUROGATE and ZIRANDO for the purpose of the acquisition of the operation of the Container Terminal at the Limassol Port.

EUROGATE is a company duly registered under the laws of Germany, which belongs to EUROGATE GmbH & Co. KGaA which is the holding company of EUROGATE Group of Companies. EUROGATE Group of Companies is active in the market of the provision of services related to container handling and stevedoring services to container shipping lines to German ports, and via the related company Contship Italia S.p.A., it provides stevedoring services in Italian ports. It also holds interests in container terminals in Russia and Lisbon and is responsible for the daily operations of the container terminal in the port of Tanger Med in Morocco. Furthermore, EUROGATE Group of Companies, through its affiliate companies offers a number of services related to containers, including container transport, container storage and container repair services.

ZIRANDO is a company duly registered under the laws of the Republic of Cyprus, which was created in order to enter into a contract with EUROGATE, for the creation of EUROGATE CONTAINER. The share capital of ZIRANDO is owned 50% by INTERORIENT and 50% by EAST MED.

INTERORIENT is a company duly registered under the laws of the Republic of Cyprus and is active worldwide in the provision of marine transportation services. The said company offers a wide range of maritime services including ship ownership, ship management, shipping investments and commercial activities.

EAST MED is a company duly registered under the laws of Luxembourg and its sole activity is the ownership of the 100% of the shares of four companies registered in Greece, that provide services which include shipping agency and logistics related to transport. EAST MED is jointly controlled by Gulf Agency Company Ltd and D.C. Mouskos (Holdings) Ltd, which in turn control number of Cypriot shipping companies.

The target of the proposed transaction is part of the current operations of Cyprus Ports Authority relating to the Container Terminal at the Limassol Port and in particular, the operation of the Container Terminal at the Limassol Port (hereinafter the "Target"). The Container Terminal at the Limassol Port handles almost the 100% of the container trade volume of the Republic of Cyprus. More specifically, according to official data of the Cyprus Ports Authority for 2014, the port of Limassol handled 99.93% of the total container volume of the Republic of Cyprus.

The transaction is based on two agreements:

- (A) The Investment and Shareholders Agreement dated 8/4/2016 between ZIRANDO and EUROGATE, for the creation of the joint venture EUROGATE CONTAINER. The Investment and Shareholders Agreement governs the relationship of the shareholders of the joint venture EUROGATE CONTAINER, which with the completion of the proposed transaction, will operate the Container Terminal at the Limassol Port. Additionally INTERORIENT and EAST MED signed a second shareholders agreement dated 4/4/2016, which was signed also by ZIRANDO, and which, among other determines how INTERORIENT and EAST MED will act and will comply with the terms of the Investment and Shareholders Agreement between ZIRANDO and EUROGATE dated 8/4/2016.
- (B) The Concession Agreement dated 25/4/2016 between EUROGATE CONTAINER and the Republic of Cyprus, for the acquisition of the operation of the Container Terminal at the Limassol Port from EUROGATE CONTAINER.

The Commission notes that the proposed transaction involves two interrelated transactions, i.e. (a) the creation of the joint venture EUROGATE CONTAINER and (b) the acquisition by EUROGATE CONTAINER of the operation of the Container Terminal at the Limassol Port, which constitute a single transaction pursuant to Section 7 of the Law, since the result of these transactions will be the acquisition of an operation of Cyprus Ports Authority, and in particular the operation of the Container Terminal at the Limassol Port. Therefore, these two transactions seem to be interrelated in such a way that one would not have taken place without the other, which leads to the conclusion that they constitute one concentration.

It is noted by the Commission that EUROGATE CONTAINER is a joint venture which satisfies on a permanent basis all the functions of an autonomous economic entity. Furthermore, the Commission notes that the proposed transaction concerns the acquisition of the operations of the Container Terminal at the Limassol Port, which is operated by the Cyprus Ports Authority.

Thus, the Commission, taking into account the facts of this concentration concluded that this transaction constitutes a concentration within the meaning of section 6(1)(a)(ii) of the Law, since it leads to a permanent change of the operation of the Target, the Container Terminal at the Limassol Port, from Cyprus Ports Authority to EUROGATE CONTAINER.

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 transaction was of major importance under the Law. According to the notification, the aggregate turnover achieved by EUROGATE, INTERORIENT and EAST MED exceeded, in relation to each one of them 3.500.000 euro. Furthermore, both, INTERORIENT and EAST MED, engaged in commercial activities within the Republic of Cyprus and the total turnover which relates to the supply of goods and services within the Republic exceeded 3.500.000 euro.

The relevant product markets in this case were defined as:

- (A) The provision of stevedoring services from a container terminal operator to shipping lines carrying containers, separately, for (a) containers transported directly onto/from a deep-sea container vessel to/from the hinterland (hinterland traffic) and (b) containers destined for onward transportation to other ports (transshipment traffic). The definition of the geographic market of the said relevant product markets was defined (a) the “catchment area” of the Port of Limassol for hinterland traffic and (b) the Republic of Cyprus for transshipment traffic.
- (B) The provision of shipping agency services. The definition of the geographic market of the said relevant product market was defined the Republic of Cyprus.

It is noted, that the Target of the proposed transaction operates in the market for the provision of stevedoring services from a container terminal operator. Also, according to the parties of the proposed transaction, the Target, approximately handles 100% of the container trade volume of the Republic of Cyprus. EAST MED, through its mother companies engages in the provision of shipping agency services. These two markets, as defined above, do not appear to be vertically or horizontally related.

The Commission, on the basis of the evidence before it, unanimously decided that this concentration does not create or strengthen a dominant position as there is no affected market on the basis of Annex I of the Law.

Furthermore, based on Annex I of the Law, the proposed transaction can have significant effects in other markets. Thus the Commission also examined whether there were connections between the services provided by the parties, which were neither vertical nor horizontal, but heterogeneous.

The Commission having taken into account the position of the parties, concluded that on the basis of Annex I of the Law and the Guidelines for the assessment of non-horizontal mergers: (a) the provision of stevedoring services from a container terminal operator to shipping lines carrying containers and, (b) the provision of shipping agency services, constitute heterogeneous activities and the said markets are closely related neighboring markets, since the provided services belong to a range of services, purchased usually by the same group of customers, in this case the shipping lines, the charterers or ship owners, to the same end use, which in this case is the transfer of containers.

Thus, the Commission examined the possibility of anti-competitive effects that may result from the concentration of companies of heterogeneous activities.

The Commission concluded that the conditions of the proposed transaction do not favor the existence of collective or related sales between the heterogeneous activities of EAST MED and the target, and, also that it does not seem to create incentives for exclusion nor to have any overall impact on choices or on prices. In addition, the Commission notes that as regards to the possibility of coordinated effects, the said transaction is not likely to increase the possibility that such coordinated effects will take place.

The Commission also noted that the Concession Agreement, includes a clause imposing a maximum limitation on the number of containers that may be handled by the Larnaca Port. The Commission in evaluating this clause, it firstly examined the number of containers Larnaca Port handled for the last nine years and concluded that the limit of 500 TEUs annually contained within the Concession Agreement is three times higher than the average of containers that were handled from 2006 to 2014, by the Port of Larnaca. Secondly, the Commission noted that according to Cyprus Ports Authority official website, the issue of further development of the Port of Larnaca was the subject of serious concern during the last years. In particular, as reported through studies carried out, the Government decided to convert the Larnaca Port as the main harbour for cruises and passenger traffic with some commercial operations to cover local loads and needs. This decision reflects the strategy of the Government regarding the management of port spaces available in the Republic.

Taking into account the number of containers handled by the port of Larnaca as recorded above, the limit of 500 TEUs, compared with the annual average of 150 TEUs that the port of Larnaca manages, allows fast growth and is consistent with the policy statement "*.... with some commercial activities for local coverage-passenger ...*".

The Commission, on the basis of the evidence before it, unanimously decided that this concentration does not raise serious doubts as to its compatibility with the operation of the competition in the market.

Therefore, the Commission, acting in accordance with section 22 of the Law, unanimously decided not to oppose the notified concentration and declare it as being compatible with the operation of the competition in the market.

Loukia Christodoulou

Chairperson of the Commission for the Protection of Competition