



ΕΠΙΤΡΟΠΗ ΠΡΟΣΤΑΣΙΑΣ  
ΤΟΥ ΑΝΤΑΓΩΝΙΣΜΟΥ

ΚΥΠΡΙΑΚΗ  
ΔΗΜΟΚΡΑΤΙΑ

Decision CPC: 34/2020

Case Number: 8.13.020.18

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

**Notification of a concentration regarding the acquisition by Koninklijke DSM**  
**NV of the share capital of Erber AG**

Commission for the Protection of Competition:

Mrs. Loukia Christodoulou	Chairperson
Mr. Andreas Karidis	Member
Mr. Panayiotis Oustas	Member
Mr. Aristos Aristidou Palousas	Member
Mr. Polynikis-Panayiotis Charalambides	Member

Date of Decision: 30 July 2020

**DECISION SUMMARY**

The Commission for the Protection of Competition (hereinafter the “Commission”) received notification, with regard to a proposed concentration, on behalf of Koninklijke DSM NV (hereinafter «DSM») and DSM International Participations B.V. (hereinafter «DSM International»). The notification was filed on 13/7/2020, in accordance with Section 10 of Law 83(I)/14 regarding the Control of Concentrations between Enterprises (hereinafter the “Law”).

The concentration is accomplished by way of purchase of shares. Specifically, DSM shall acquire the share capital of Erber directly as well as indirectly – through DSM International.

DSM is a company duly registered under the laws of the Netherlands, and its shares are listed in the Euronext Stock Exchange of Amsterdam. The company is active in the chemical products sector, focusing on life as well as material sciences. Its activities can be categorized in three corporate sections: (a) nutrition, (b) health and (c) sustainable living.

DSM International is a limited liability company duly registered under the laws of the Netherlands. The company is a wholly owned subsidiary of DSM and constitutes a holding company with investments in other companies of the DSM group.

The Target in this concentration is Erber, a company duly registered under the laws of Austria. The company is active in the food and feed safety industry, focusing on natural feed additives, feed and food analysis and plant protection. Erber currently operates under four strategic corporate units, namely, Biomin, Romer Labs, Sanphar and EFB, but at the time of closing of the transaction only the former two shall remain in the Erber group of companies. Biomin is active in the feed additives and nutrition industry while Romer Labs focusses on food and feed safety solutions.

The details of the concentration are set forth in the Share Purchase Agreement (hereinafter the “Agreement”), by way of which DSM shall eventually hold 100% of the share capital of Erber.

In view of the above, the Commission concludes that the transaction constitutes a concentration within the meaning of Section 6(1)(a)(ii) of the Law, since it leads to a change of control of Erber on a lasting basis.

The Commission additionally finds that the criteria set forth by Section 3(2)(a) of the Law are met, and thus the notified concentration is of major importance, falling within the scope of the Law.

For the purposes of assessing the merger, the Commission concluded that the relevant product / service markets are defined as (i) animal feed additives, that are subcategorized into (a) mycotoxin binders and (b) additives for bowel function and (ii)

premises. The Commission further concluded that the geographic market is defined as the Republic of Cyprus for all relevant product markets.

The Commission noted that there is a horizontal overlap in the relevant market of animal feed additives that improve bowel function, and a vertical one in the premises market.

Specifically, according to the participating entities, their combined market share in the relevant market of animal feed additives and in particular in the sub-market of animal feed additives for bowel function adds up to a percentage of [5-10]%, and thus below the statutory threshold of 15%.

The vertical overlap ensues from the fact that DSM, which purchases mycotoxin binders for use in premises at customer's request, purchases such binders from Erber.

According to the participating entities, the market share of Erber in Cyprus with respect to mycotoxin binders does not exceed [10-20]%.

At the parties maintain, upon conclusion of the transaction Erber shall not have the ability nor the motive to stop supplying its current customers, and also, DSM does not constitute an important client on which Erber's competitors would count on.

As a result, even though there is a vertical overlap between the parties' activities in Cyprus, since DSM purchases mycotoxin binders from Erber for use in premises, nevertheless, the relevant market shares are below the statutory threshold of 25%.

The Commission concluded that, on the basis of Annex I of the Law, the proposed merger will not give rise to any affected markets. Specifically: (a) on a horizontal level, there is no affected market in the relevant market of animal feed additives that improve bowel function, considering that the combined market share of the parties does not exceed the 15% threshold and (b) on a vertical level, the proposed merger shall not lead to any affected markets since the market shares of the parties in each relevant market do not exceed 25%.

On the basis of the factual and legal circumstances of the case before it, the Commission unanimously decided that the concentration under consideration neither creates nor strengthens a dominant position, as there is no affected market, and

therefore does not raise serious doubts as to its compatibility with the operation of competition in the market.

In conclusion, the Commission, acting in accordance with section 22 of the Law, unanimously decided not to oppose the notified concentration and declares it compatible with the operation of competition in the market.

Loukia Christodoulou

Chairperson of the Commission for the Protection of Competition