BEFORE THE
COMPETITION COMMISSION OF PAKISTAN

IN THE MATTER OF

FIRST PHASE REVIEW

JOINT VENTURE ARRANGEMENT OF FORMING A JOINT VENTURE COMPANY BETWEEN ENGRO POWERGEN LIMITED, PAKARAB FERTILIZER LIMITED AND SHELL GAS B.V.

CASE: 867/Merger-CCP/17

Commission	Ms. Vadiyya Khalil **Chairperson**
	Mr. Ikram Ul Haque Qureshi **Member**

ORDER

I Background

1 On 23 January 2017, Engro Powergen Limited (**"EPL"**), Pakarab Fertilizers Limited (**"PFL"**), and Shell Gas B.V. (**"SGBV"**) (collectively, the **"Applicants"** or **"JV Parties"**) jointly submitted a pre-merger application (the **"Application"**) to the Commission, notifying the intended joint venture arrangement between and among the Applicants, to form a Joint Venture Company (the **"JVCO"**) to construct, own and operate Pakistan's first private LNG (liquefied natural gas) Terminal (**"LNG Terminal"**), along with the necessary information pursuant to Section 11 of the Competition Act 2010 (the **"Act"**) and Regulation 5(6) of the Competition (Merger Control) Regulations 2017 (the **"Merger Regulations"**).

The case is examined as under:

II JV Parties

JV Party 1

2 EPL is a public (unlisted) company incorporated in Pakistan and is a wholly owned subsidiary of Engro Corporation Limited (**"ECL"**), which, in turn, is wholly owned subsidiary of Dawood Hercules Corporation. EPL was established for investment and operations in Pakistan's energy sector. Through its subsidiaries and associate company, EPL owns and operates power generation facilities within and outside Pakistan.

3 EPL's total assets as on 31 December 2015 were PKR while its turnover for the same period remained at PKR

JV Party 2

4 PFL is a public unlisted incorporated in Pakistan. The company is principally a fertilizer company engaged in the manufacturing and marketing compound fertilizers (Calcium Ammonium Nitrate), Nitro Phosphate) and Urea fertilizer and sale of Certified Emissions Reductions (CER). Fatima Group and Arif Habib Group each holds shares in PFL.

5 PFL's total assets as on 31st December 2015 were PKR . while the Consolidated Turnover remained at PKR

JV Party 3

6 SGBV is a private company incorporated in the Netherlands and is a wholly owned subsidiary of Royal Dutch Shell Plc. SGBV is a holding company, which owns, directly or indirectly, investments in numerous companies in the Shell Group engaged in all principal aspects of the oil and natural gas industry. Shell Group is one the world's leading LNG players with a presence in all elements of the supply chain of natural gas. In Pakistan Shell Group operates through Shell Pakistan Limited (**"SPL"**)

7 SGBV's total assets as on 31 December 2015 were USD [PKR (@1USD= 104.80 PKR)] while its turnover remained at USD [PKR (@1USD= 104.80PKR)].

JVCO

8 The JV Parties intend to set up a JVCO to own and operate LNG Terminal pursuant to the Joint Venture Co-operation Agreement dated 01 July 2 undertaken by Shell Exploration Company B.V. (SEBV) on behalf of SGBV, PFL and Engro Elengy Terminal Pakistan Limited ('EETPL' a company incorporated, owned and operated as first LNG Terminal in Pakistan with installed capacity of) on behalf of EPL (**"JC Agreement"**).

9 The intended JVCO will construct, own and operate an offshore LNG Terminal and gas marketing company in Karachi, Pakistan, as a private sector project underpinned by one or more gas off-take agreements. The LNG Terminal will be established on an integrated basis. The JV Parties will import and re-gasify LNG, and supply it to private customers, primarily, *via* the existing national gas transmission pipeline network.

10 The JVCO envisages the development of a Floating Storage and Regasification Unit (FSRU) with ancillary facilities, or a Floating Storage Unit (FSU) with onshore regasification facilities along with mooring, offloading, pipelines and related infrastructure for facilitating import, regasification and send-out of LNG at Port Qasim, Karachi, Pakistan. The expected capacity of the LNG Terminal shall be approximately ( ), subject to the available gas, demand, and supply from the LNG Terminal and commercial arrangement(s) between and among the JV Parties.

11 The JV Parties will undertake their final investment decision subject to meeting all key requirements and completion of the development work and regulatory approvals. Once formed, the intended JVCO will be registered with the SECP (Securities and Exchange Commission of Pakistan).

III Transaction

12 The proposed transaction is in the form of a joint venture in which the JV Parties intend to form a JVCO, which will be incorporated with an authorized capital of PKR divided into ordinary shares of nominal value of PKR

13 The initial issued capital will be PKR 3~~00,000~~ and will be subscribed in cash by each of the following parties to the extent of the shareholding set out against their name:

- Engro Powergen ( )- PKR
- Pakarab Fertilizers ( )- PKR
- Shell Gas ( )- PKR

14 The transaction meets the notification thresholds prescribed in the Regulation 4(2)(a), (b), (c) & (d) with the combined assets of the JV Parties valuing more than PKR 1 Billion and the combined turnover of JV Parties exceeds PKR 1 Billion. While the transaction value in terms of the authorized capital of the JVCO exceeds PKR 100 Million and voting shares to be subscribed/acquired by each party to JVCO also exceeds 10%.

IV Relevant Market

15 The natural gas value chain consists of exploration, production and transporation (upstream), regasification and injection into pipleline/grids (midstream) and wholesale and/or retail supply to end customers (downstream) in the market.

16 According to the Applicants, the relevant product market is natural gas, which is supplied in two ways: (i) natural gas supplied by pipelines (PNG) and, (ii) natural gas transported and supplied as LNG (LNG), supplied by means of LNG tankers. The Applicants consider that PNG and LNG form part of the same product market because of significant demand-side and supply-side substitutability between the two.

17 According to the Applicant, after re-gasification, natural gas imported in the form of LNG can be inserted into the natural gas pipeline grids, thereby becoming substitutable with any other natural gas. Furthermore, it is not possible to distinguish between the natural gas molecules in the pipeline grids that have been produced domestically and those which have been imported (either through cross-border pipelines or on a delivered ex-ship basis, among others). In other words, after re-gasification of LNG (also known as "RLNG"), there is complete demand-side substitutability between LNG and PNG. LNG, therefore, is essentially a method of natural gas transportation and is not a distinct product.

18 In regard to the relevant product market, the Commission notes that the product market definition can be further segmented into High Calorific Value Gas ("HCV gas") and Low Calorific Value Gas ("LCV gas") viz., downstream market and end-customers as the two are not always substitutable. Also, PNG and LNG can be differentiated on the basis of the respective import/export specific infrastructures which are not present in all gas exporters/importers countries. Based on the pipeline distances and other feasible alternatives of export/import LNG is not competitive with PNG, but only under certain circumstances. However, for the purposes of this order, the Commission finds that the relevant product market is Re-gasified LNG (RLNG).

19 With respect to the relevant geographic market, as far as the geographic market from demand-side is concerned, it consists of the whole of Pakistan.

V Findings of the First Phase Competition Assessment

20 The competition assessment in the first phase is as under:

21 In Pakistan, Oil and Gas Sector is regulated by the Ministry of Petroleum and Natural Resource. The Oil and Gas Regulatory Authority (OGRA), being the technical/sector regulator of oil and gas industry regulates the mid-stream and downstream of LNG sector through licensing system.

22 The LNG market is relatively new in Pakistan. In LNG segment, natural gas is generally supplied RLNG through the EETPL's LNG Terminal.

23 SNGPL (Sui Northern Gas Pipelines Limited, operating in Punjab and Khyber Pakhtunkhwa), and SSGCL (Sui Southern Pipeline Gas Company Limited, operating in Sindh and Baluchistan) acquire PNG at the well-head and transmit and distribute it to end consumers through the pipeline system after the impurities are removed.

24 M/s Pakistan State Oil Company Limited ("**PSO**") holds LNG import contracts with the neighboring countries. The LNG imported by PSO is then re-gasified at the EETPL's LNG Terminal and sold to SSGC and, by a swap arrangement, on-sold to SNGPL as well. At present, the EETPL's LNG Terminal is the only

terminal to process LNG into RLNG in Pakistan. RLNG price is determined by OGRA.

25 To construct, own and operate an LNG Terminal, private entities have to fulfill a number of requirements of OGRA's LNG Rules and LNH Policy of the Federal government. EETPL is an affiliate of EPL, which currently owns 100% equity stakes in EETPL, which operates as LNG Terminal at Port Qasim, Karachi. However, it is not engaged gas marketing and provides only LNG storage and regasification services via its terminal. The existing supply chain for EETPL terminal has the participation of PSO, as LNG Importer, EETPL, as LNG Terminal Operator, SSGCL, as gas transporter, and SNGPL, as gas transporter and seller.

26 The intended JVCO will be the second LNG Terminal in the relevant market. The JV Parties intend to import and re-gasify LNG and distribute RLNG through the new LNG Terminal owned and operated by JVCO. The LNG Terminal will be established on an integrated basis i.e. the JV Parties will import LNG, re-gasify and sell it to consumers such as privately-owned power, industrial, commercial and aggregator companies in Pakistan.

27 The intended JV Company will mark the entry of private sector in the import, marketing and distribution segments of the supply chain of natural gas. One of the JV Party i.e. SGBV, although is not operating in Pakistan, is a member of the Shell Group, which is one the world's leading LNG players with expertise in all the supply chain stages of LNG. It is, therefore, the JV Parties have argued that JCVO would bring efficiencies and knowledge sharing to the domestic market.

28 None of the JV Parties are currently active in the wholesale or retail of the natural gas marketing business in Pakistan. There are no horizontal overlaps in the upstream market; however, the JV Parties and their affiliates conduct activities in vertically related markets.

29 As noted above, EPL currently operates EETPL in the midstream market of natural gas. While SGBV is active in upstream in the global market for exploration and production of natural gas/LNG and the wholesale supply of natural gas/LNG, however, currently these activities occur outside of Pakistan. EPL's affiliates (Engro Fertilizers Limited, Engro Polymer & Chemicals Limited and Engro Powergen Qadirpur Limited), Pakarab Fertilizers Limited and its affiliated companies, and SPL are customers of natural gas.

30 The entry of the JV Company is likely to accelerate economic growth in the natural gas industry and will fill the demand and supply gap to some extent in the domestic market. There is no evidence to suggest a substantial lessening of competition by creating or strengthening of a dominant position in the relevant market as is prescribed in Section 2(1)(d) read Section 3 of the Act.

VI Conditions

31 Since the intended JVCO is in its nascent stages, there are a number of arrangements and agreements that are yet to be entered into by the JV Parties. The Commission hereby directs the JV Parties to submit all such agreements and arrangements which are mentioned in the JC Agreement or any other agreement(s) which are directly or indirectly related to the activities of JVCO. Such arrangements or agreements shall be submitted to the Exemption Department of the Commission for competition assessment.

VII Conclusion

32 In view of the foregoing, and subject to full compliance with the conditions imposed in paragraph 31 of the Order, the proposed transaction is hereby authorized under Section 31(1) (d) (i) of the Act.

33 It is so ordered.

(Vadiyya Khalil)
Chairperson

(Ikram Ul Haque Qureshi)
Member

SEAL OF THE COMPETITION COMMISSION OF PAKISTAN * ISLAMABAD *

Islamabad 20th March, 2017.