



BEFORE THE  
COMPETITION COMMISSION OF PAKISTAN

EX POST FACTO FIRST PHASE REVIEW

IN THE MATTER OF ACQUISITION OF 10% SHAREHOLDING OF M/S. PRIME  
INTERNATIONAL OIL & GAS COMPANY LIMITED BY M/S. HUB POWER  
HOLDINGS LIMITED FROM MR. KAMRAN AJMAL MIAN, MR. ASIF MANSOOR  
ALI MOOSA AND MR. MUHAMMAD ASIM SUBHANI.

CASE: 1198/Merger-CCP/21

Date of Hearing

June 15, 2021

Commission

Ms. Shaista Bano  
*Member*

*ML.*

Mr. Mujtaba Ahmad Lodhi  
*Member*

On behalf of  
M/s. Hub Power Holding Limited  
M/s. Prime International Oil and Gas Company Limited  
Mr. Kamran Ajmal Mian  
Mr. Asif Mansoor Ali Moosa  
Mr. M. Asim Subhani

Mr. Vaseeq Khalid  
(Mohsin Tayebaly & Co.)



## ORDER

1. On 2<sup>nd</sup> July 2021, the Competition Commission of Pakistan ("**Commission**") received a pre-merger application ("**Application**") of an acquisition of shares pursuant to Section 11 of the Competition Act, 2010 ("**Act**") read with Regulation 6 of the Competition (Merger Control) Regulations, 2016 ("**Merger Regulations**"). Whereby, M/s. Hub Power Holdings Limited ("**Hub Holding**" or "**Acquirer**") (A wholly owned subsidiary of M/s. The Hub Power Company Limited ("**Ultimate Acquirer**" or "**Hubco**")) has acquired : % shareholding in M/s. Prime International Oil & Gas Company Limited ("**Prime**" or "**Target**") from Mr. Kamran Ajmal Mian, Mr Muhammad Asim Subhani and Mr. Asif Mansoor Ali Moosa ("**Sellers**"), collectively as ("**Merger Parties**") in accordance with Share Transfer Deeds ("**Agreement**").
2. A transaction was detected during investigation of Case no. 1158/Merger-CCP/2021 through Memorandum and Articles of Association of Prime, where it was revealed that Prime was incorporated by 3 individuals Mr. Kamran Ajmal Mian, Mr. Asif Mansoor Ali Moosa, and Mr. Muhammad Asim Subhani having 1 %, 1 %, and 1 % shareholding respectively. However, the current shareholding pattern in the Application showed that Mr. Asif Mansoor Ali Moosa has been replaced by M/s. Hub Power Holdings Limited with 1 % of the shareholding whilst Mr. Kamran Ajmal Mian and Mr. Muhammad Asim Subhani each have 7 % shareholding in Prime ("**Detected Transaction**").
3. Furthermore, Merger Parties consummated the Detected Transaction on March 2, 2021 without seeking clearance from the Commission, whereby, action was taken against the Applicant under Section 11 (12) of the Act. Subsequently, a Hearing Notice was issued on June 08, 2021 having F. No: 1158/MERGER-CCP/2021 to the Applicant, for the, *prima facie*, violation of sub-section (1) to (4) of Section 11 of the Act read with Regulation 4 of the Merger Regulations. Two Member bench was formulated to conduct the hearing on June 15, 2021.
4. The Merger Parties submitted board resolution dated December 07, 2020 of Ultimate Acquirer and a written reply on June 18, 2021 which stated that, "Prime was set up as a holding company with no assets or operations of its own in order to acquire four ENI entities ("**Transaction 2**"). Hence, Prime doesn't fall under the definition of undertaking defined under sub-section 2 (1) (q) of the Act as it is not '*in any way engaged, directly or indirectly, in the production, supply, distribution of goods or provision or control of service*'"
5. However, the Bench is of the view that the provision of Section 11 of the Act apply to the intended transaction and intent was already established in Board Resolution dated December 07, 2020, of Ultimate Acquirer. The Target was duly incorporated as a private limited company and its memorandum and articles of association clearly indicates the purpose of the establishment of the company. Although the Target has not started its operations yet, however, it will be involved in provision and control of goods and services in future.
6. Furthermore, regardless of its status of activities, a company once incorporated gets control over provision of goods and services, it may exercise its control at any time after its incorporation. It has been observed that the Target's shares were acquired by the Acquirer for some consideration. This shows that, the Target exercised its control and was involved in some economic activity. Hence, the Target falls in the definition of undertaking as per Section 2 (1) (q) of the Act.



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7. The Commission has examined the Application as well as all the documents attached therewith, the market scenario, and made its observations on the basis of an independent research/investigation in the relevant markets. The Phase I competition assessment of the intended transaction has resulted in the following findings:

- i. The business activities of the undertakings concerned are:
    - a. For Acquirer: investment in new business opportunities
    - b. For Ultimate Acquirer: develop, own, operate and maintain power stations
    - c. For Target: oil and gas exploration (non-operational at present)
    - d. For Sellers: individuals
  - ii. Pursuant to the Agreement, the transaction was sale of \_\_\_\_\_ shares (: \_\_\_\_\_% shareholding) having face value of PKR \_\_\_\_\_/- each, of the Target by the Sellers to the Acquirer. The amount paid was PKR \_\_\_\_\_.
  - iii. The relevant product/service markets in this case have been identified as “**Upstream - Oil & Gas Exploration**” and “**Renewable Energy-Solar Power Generation**” and the relevant geographic market is “**Pakistan**”.
  - iv. As per the data submitted, the pre-merger estimated market share of the Target in Pakistan is nil. However, after acquisition of four ENI entities namely M/s. ENI New Energy Pakistan (Private) Limited, M/s. ENI Pakistan, M/s. ENI AEP Limited and M/s. ENI Pakistan (M) Limited (Transaction 2), its estimated market share will be \_\_\_\_\_% in Gas, \_\_\_\_\_% in Oil (condensate) whereas, for solar power generation it cannot be determined as there are no official/formal statistics available for this market. Hence, the market size cannot be estimated
  - v. There are no overlaps between the merging parties. Therefore, post-transaction, market share will remain unchanged.
8. This order is subject to the undertaking (reason for not seeking clearance at the time of intention, apology and future compliance) submitted to the Commission signed by the merger parties.
9. In conclusion, the proposed transaction does not meet the presumption of dominance as determined under Section (2) (1) (e) read with Section 3 of the Act. The proposed transaction is hereby authorized under Section 31 (1) (d) (i) of the Act, solely to the extent of competition concerns in the relevant market and subject to all statutory and regulatory approvals.
10. It is so ordered.

  
(Ms. Shaista Bano)  
**Member**

  
(Mr. Mujtaba Ahmad Lodhi)  
**Member**

Islamabad the 9<sup>th</sup> September, 2021.

