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Cyprus

Merger Control

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This country-specific Q&A provides an overview of merger control laws and regulations applicable in Cyprus.

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Cyprus: Merger Control

1. Overview

Legislation

The Control of Concentrations Between Undertakings Law (L. 83(I)/2014) (the Law) regulates the control of concentrations between undertakings in Cyprus.

Authority

Enforcement of the Law rests with the Commission for the Protection of Competition (CPC), to which transactions that meet the jurisdictional thresholds are notified. The CPC can declare a concentration as compatible or incompatible with the functioning of competition in the market. The investigation and procedural aspects relating to notifications of concentrations are carried out by the civil service of the CPC (the Service).

Concentrations

The Law applies to concentrations between undertakings resulting in a change of control on a lasting basis. A concentration of undertakings shall be deemed to arise where a change of control on a lasting basis results from:

- (i) the merger of two or more previously independent undertakings or parts of undertakings, or
- (ii) the acquisition, by one or more persons already controlling at least one undertaking, or by one or more undertakings, whether by purchase of securities or assets, by contract or by any other means, of direct or indirect control of the whole or parts of one or more other undertakings.

Joint ventures performing all functions of an autonomous economic entity on a lasting basis are also caught under the Law.

Thresholds

The Law only requires notifications of concentrations of major importance. A concentration is deemed to be of major importance if it meets the jurisdictional thresholds, as follows:

- the aggregate turnover achieved by at least two of the undertakings concerned exceeds, in relation to each one of them, €3.5 million;

- at least two of the undertakings concerned achieve a turnover in Cyprus; and
- at least €3.5 million of the aggregate turnover of all undertakings concerned (taken together) is achieved in Cyprus.

The test as to whether a 'foreign-to-foreign' merger constitutes a notifiable concentration under the Law is satisfied where the jurisdictional thresholds are met, without any additional local effects requirements.

2. Is notification compulsory or voluntary?

The notification of concentrations of major importance to the CPC is mandatory.

However, notification is not required in the following cases, where a concentration between undertakings is not deemed to arise:

- a credit or financial institution or an insurance company, the normal activities of which include transactions and dealing in securities held, on its own account or for the account of third parties and on a temporary basis, securities in an undertaking with a view to reselling these; provided that the institution does not exercise voting rights in respect of those securities with a view to determining the competitive behaviour of that undertaking or provided that it exercises such voting rights only with a view to facilitating the disposal of all or part of that undertaking or of its assets or the disposal of those securities (and that any such disposal takes place within one year of the date of acquisition, which period can be extended under certain circumstances);
- control is exercised by a person authorised under law to carry out a liquidation, bankruptcy or any similar procedure with respect to the undertaking;
- the concentration is carried out by investment companies, the sole objective of which is to acquire and manage holdings in other undertakings to turn such holdings profitable, without involving themselves (directly or indirectly) in the management of those undertakings so as to determine the competitive behaviour of those undertakings;
- property is transferred due to death by a will or by

intestate devolution;

- the concentration is between two or more undertakings, each of which is a subsidiary of the same entity.

3. Is there a prohibition on completion or closing prior to clearance by the relevant authority? Are there possibilities for derogation or carve out?

Yes, it is prohibited to implement (in part or whole) a concentration caught under the Law prior to this being cleared by the CPC. Implementing the concentration prior to clearance (gun-jumping), would amount to an infringement of the Law that may give rise to sanctions.

Specifically, gun-jumping may result in the CPC imposing a fine of up to ten per cent (10%) of the aggregate turnover achieved by the notifying undertaking(s) during the preceding financial year, and an additional fine of €8,000 for each day the infringement persists. The CPC may also order the partial or complete dissolution of the concentration.

A temporary approval of a concentration may be possible in the course of a full investigation (Phase II), if the undertakings concerned are able to establish to the CPC that they will suffer substantial damage as a result of delays in the implementation of the concentration. A temporary approval does not prejudice the final decision of the CPC, and may be accompanied by conditions.

4. What types of transaction are notifiable or reviewable and what is the test for control?

The Law is applicable to concentrations between undertakings resulting in a change of control on a lasting basis. Such concentrations are:

- (i) mergers of two previously independent undertakings or parts of undertakings; and
- (ii) acquisitions by one or more persons already controlling at least one undertaking, or by one or more undertakings, directly or indirectly, whether by purchase of securities or assets, by agreement or otherwise, of control of one or more other undertakings.

Joint ventures performing all functions of an autonomous economic entity on a lasting basis are caught under the Law.

'Control' is defined as control stemming from any rights, agreements or other means which, either severally or jointly, confer the possibility of exercising decisive

influence over an undertaking through:

- ownership or enjoyment rights over the whole or part of the assets of the undertaking; or
- rights or contracts that confer the possibility of decisive influence on the composition, meetings or decisions of the bodies of an undertaking.

De facto control could satisfy the control test, while the ability to veto certain types of decisions could also be deemed to constitute rights conferring the possibility of exercising decisive influence over an undertaking.

5. In which circumstances is an acquisition of a minority interest notifiable or reviewable?

The acquisition of a minority interest may amount to a concentration when it confers, either severally or jointly with other rights, the possibility of exercising decisive influence over an undertaking.

6. What are the jurisdictional thresholds (turnover, assets, market share and/or local presence)? Are there different thresholds that apply to particular sectors?

The jurisdictional thresholds are entirely turnover-based. The following must be cumulatively met for a concentration to be subject to notification to the CPC under the Law:

- the aggregate turnover achieved by at least two of the undertakings concerned exceeds, in relation to each one of them, €3.5 million;
- at least two of the undertakings concerned achieve a turnover in Cyprus; and
- at least €3.5 million of the aggregate turnover of all undertakings concerned is achieved in Cyprus.

In cases of acquisition of sole control, the turnovers of the acquiring undertaking and the target are respectively taken into account in determining whether the jurisdictional thresholds are met. The turnovers of undertakings acquiring joint control over a target undertaking (together with the target) are taken into account in cases of acquisition of joint control.

One party could satisfy the thresholds by itself, provided that at least two of the undertakings concerned achieve a turnover in Cyprus.

Other than the special turnover calculation rules for credit institutions and insurance undertakings, discussed under question 7 below, there are no sector-specific rules.

7. How are turnover, assets and/or market shares valued or determined for the purposes of jurisdictional thresholds?

Turnovers comprise the amounts derived from the sale of products and the provision of services by the undertakings concerned in their ordinary course of business during the preceding financial year, after deducting sales rebates, value added tax and other taxes directly related to turnover.

The audited financial statements of each undertaking concerned (or consolidated financial statements at a group level) are used to determine their turnover and the value of their assets.

In calculating turnover in relation to banks and insurance companies, the following calculation methodology applies:

- For a bank or other credit institution, one tenth of the balance sheet of the last financial year.
- For an insurance company the value of gross premiums during the last financial year, which shall comprise all amounts received or receivable in respect of insurance contracts concluded by it or on its behalf, including outgoing reinsurance premiums and after deduction of taxes and parafiscal contributions or levies charged by reference to the amounts of individual premiums or the total volume of premiums.

Typically, market shares for each undertaking concerned are calculated on the basis of their respective sales of the relevant products in Cyprus as against the total market value.

8. Is there a particular exchange rate required to be used to convert turnover and asset values?

All turnovers and asset valuations represented in the context of a notification of a concentration under Cyprus law must be in euro. The applicable exchange rate for turnovers and asset valuations in currencies other than the euro is the average conversion rate of the financial reporting period concerned.

9. In which circumstances are joint ventures

notifiable or reviewable (both new joint ventures and acquisitions of joint control over an existing business)?

Fully functional joint ventures are notifiable to the CPC. When there is a change from sole to joint control over an existing undertaking, the criterion of a concentration is only fulfilled when the arising joint venture performs on a lasting basis all the functions of an autonomous economic entity.

10. Are there any circumstances in which different stages of the same, overall transaction are separately notifiable or reviewable?

A concentration carried out in stages over the course of four years, takes effect on completion of the last stage resulting in a change in control on a lasting basis. A concentration carried out in stages is notifiable as a single concentration.

11. How do the thresholds apply to "foreign-to-foreign" mergers and transactions involving a target /joint venture with no nexus to the jurisdiction?

The jurisdictional thresholds do not change in relation to 'foreign-to-foreign' mergers. From a local nexus perspective, it suffices that the undertakings concerned achieve a turnover in Cyprus (provided the turnover thresholds are met).

Implementing a 'foreign-to-foreign' merger that meets the jurisdictional thresholds prior to clearance would amount to an infringement of the Law (gun-jumping) that may give rise to sanctions. The CPC can impose a fine for gun-jumping of up to ten per cent (10%) of the aggregate turnover achieved by the notifying

undertaking(s) during the preceding financial year, and an additional fine of €8,000 for each day the infringement persists. The CPC may also order the partial or complete dissolution of the concentration.

12. For voluntary filing regimes (only), are there any factors not related to competition that might influence the decision as to whether or not notify?

N/A

13. What is the substantive test applied by the relevant authority to assess whether or not to clear the merger, or to clear it subject to remedies? Are there different tests that apply to particular sectors?

The substantive test for compatibility of a concentration with the functioning of competition in the market is whether such concentration significantly impedes effective competition in Cyprus or a substantial part of it, in particular as a result of the creation or strengthening of a dominant position.

In assessing the compatibility of a concentration, the CPC considers the following:

- the need to maintain and develop conditions of effective competition in the relevant markets, taking into account, inter alia, the structure of the affected markets, other markets upon which the concentration may have significant effects and the potential competition on behalf of undertakings within or outside Cyprus;
- the position in the market of the undertakings concerned and undertakings connected to them;
- the financial power of such undertakings;
- the alternative sources of supply of products or services in the affected markets and/or other markets upon which the concentration may have significant effects;
- any barriers of entry to the affected markets and/or other markets upon which the concentration may have significant effects;
- the interests of the intermediate and end consumers of the relevant products and services;
- the contribution to technical and economic progress and the possibility of such contribution being in the interests of consumers and not obstructing competition; and
- the supply and demand trends in the relevant markets.

The CPC's approach and analysis of harm are substantially aligned with the practice of the European Commission. Besides high market shares, the assessment usually takes into account the anti-competitive effects that could potentially arise out of a concentration, such as coordinated effects as well as unilateral effects.

There are no sector-specific tests.

14. Are factors unrelated to competition relevant?

The CPC only takes competition issues into account when assessing the compatibility of a concentration with the functioning of competition in the market and issuing its decision. The Minister of Energy, Commerce and Industry can declare a concentration as being of major public interest with regard to the effects it might have on public security, media pluralism or the principles of sound administration.

15. Are ancillary restraints covered by the authority's clearance decision?

The Law is silent on ancillary restraints.

16. For mandatory filing regimes, is there a statutory deadline for notification of the transaction?

A concentration that meets the jurisdictional thresholds must be notified to and cleared by the CPC prior to its implementation, but there is no explicit deadline for notification of the concentration.

17. What is the earliest time or stage in the transaction at which a notification can be made?

Notifications can take place following the conclusion of the relevant agreement. The earliest time at which a notification can take place is when the undertakings concerned are able to evidence to the CPC their bona fide intention to conclude an agreement.

In the case of a public bid, the parties must have announced an intention or final decision to make such a bid, provided that the intended agreement or bid would result in a concentration of a major importance.

18. Is it usual practice to engage in pre-notification discussions with the authority? If so, how long do these typically take?

The Law does not provide for any pre-notification discussions, nor are any such discussions binding on the CPC. It is generally not typical to engage in such discussions with the CPC.

19. What is the basic timetable for the authority's review?

Phase I

Within one calendar month from:

- (a) the date on which the filing fee is paid; and
- (b) the date of submission of the notification to the CPC, or from the date on which additional information required under the Law or requested by the CPC is submitted,

the Service is required to inform the notifying undertaking whether the concentration has been cleared by the CPC or whether the CPC will proceed to a full investigation (phase II).

If owing to the volume of work or the complexity of the information contained in the notification, the Service is unable to comply with the one-month timeframe, it shall, within seven calendar days before the lapse of the one-month period, inform the notifying undertaking of an extension of fourteen calendar days.

Phase II

In a full investigation (phase II), the Service is required to prepare a report of findings to the CPC within three months from:

- (a) the date on which the filing fee is paid; and
- (b) the date of submission of the notification to the CPC, or from the date on which additional information required under the Law or requested by the CPC is submitted.

In the case of a full investigation (phase II), the notifying party or parties must be informed of the CPC's decision no later than four months from the date of submission or from the date on which additional information required under the Law or requested by the CPC is submitted.

Phase II typically lasts longer than the statutory timeframes discussed above, as the CPC has wide powers to extend the assessment timeframe in phase II.

20. Under what circumstances may the basic timetable be extended, reset or frozen?

The Service can give 7 days' prior notice to the notifying undertaking to extend the one-month assessment period by another 14 days. The CPC may at its discretion extend the timetable in the context of a phase II investigation, where any omission on behalf of one or more of the

undertakings concerned causes any delay in the discharge by the Service or the CPC of their respective obligations under the Law.

A request for additional information necessary for the notification to be considered complete, whether in the context of a phase I or phase II assessment, has the effect of stopping the clock. The assessment timetable restarts on the date on which a response to the request for additional information is submitted to the CPC.

21. Are there any circumstances in which the review timetable can be shortened?

There are no statutory provisions to enable the shortening of the assessment period.

22. Which party is responsible for submitting the filing?

In acquisitions of sole control, the acquiring undertaking is responsible for submitting the filing.

In the case of a merger or the acquisition of joint control the undertakings merging or acquiring joint control, as applicable, are responsible for submitting the filing.

23. What information is required in the filing form?

The notification of a concentration should include the information prescribed in Schedule III of the Law. The notification must be made in Greek and must be accompanied by various supporting documents.

There is no "short form" filing under the Law. The Service is entitled to request additional information where it deems that the notification does not satisfy the statutory requirements.

24. Which supporting documents, if any, must be filed with the authority?

The notification must be accompanied by various supporting documents and other information which may be in Greek or English, including but not limited to the following:

- a copy of all final or most recent documents that brought about the concentration either by agreement or following a public bid;

- in the case of a public bid, a copy of the public bid document;
- copies of the most recent annual reports and audited financial statements of all the undertakings concerned;
- copies of reports or analyses prepared for the purposes of the concentration;
- a description of the contents of all analyses, reports, studies and surveys that were prepared by or for any of the persons responsible for the notification to evaluate or analyse the proposed concentration concerning the market and competition conditions;
- details of the concentration (including the nature and scope of the concentration, the financial and structural details of the concentration, and details regarding the turnover in Cyprus and worldwide of each undertaking);
- details of ownership and control relationships between each undertaking concerned and the undertakings connected with it;
- personal and economic ties between each group of undertakings and any other undertaking operating within the affected market in which such group holds at least ten per cent (10%) of the voting rights or shares;
- a description and analysis of the relevant markets; and
- a description and analysis of the affected relevant markets.

25. Is there a filing fee?

The filing fee is fixed at €1,000. An additional filing fee of €6,000 is payable for a phase II assessment.

26. Is there a public announcement that a notification has been filed?

The CPC publishes a description of the notification in the Official Gazette of the Republic and on its website, indicating the names of the undertakings concerned, the nature of the concentration and the economic sectors involved. In making such announcement, the CPC takes into account the legitimate interests of the undertakings concerned to have their business secrets and confidential information protected.

27. Does the authority seek or invite the views of

third parties?

The CPC may hold negotiations, discussions or hearings with any party it considers will be able to assist in its assessment of a concentration, in the context of a phase II investigation.

Parties that may be affected by the CPC's decision in the course of a phase II investigation may request the right of audience and appear before the CPC to develop any arguments they may have.

28. What information may be published by the authority or made available to third parties?

The notifying party should identify documents, statements and any material that contain confidential information or business secrets, on a justified basis.

A notice that the CPC has received a notification is published soon after filing, which sets out the date of the filing, the names of the undertakings concerned, the nature of the act of concentration and the relevant economic sectors.

The CPC publishes non-confidential versions of its decisions in the Official Gazette of the Republic and on its website. The undertakings concerned may apply to the CPC for parts of the decision remain confidential and be redacted from the final version of the decision published by the CPC.

The CPC and the Service are under a statutory duty of confidentiality, infringement of which is a criminal offence punishable, on conviction, with imprisonment of up to six months and/or a fine of up to €1,500.

29. Does the authority cooperate with antitrust authorities in other jurisdictions?

The CPC cooperates with the European Commission and national competition authorities in other EU Member States on the basis of the system of parallel competences and the exchange of views and information between them.

30. What kind of remedies are acceptable to the authority?

Both structural and behavioural remedies aimed at addressing the competition concerns arising from the concentration may be accepted upon assessing their adequacy on a case by case scenario.

31. What procedure applies in the event that remedies are required in order to secure clearance?

Before reaching its final decision and subject to the time limits provided by the Law, the CPC may carry out negotiations, hearings or discussions with any of the undertakings concerned.

In declaring a concentration compatible with the operation of competition in the market, the CPC may impose conditions or remedies concerning the implementation of the transaction, thus having the ability to interfere with the essence of the transaction.

The CPC is required to provide a written notification to the undertakings concerned of any remedies as part of its decision. Should the merger be cross-border, the CPC may liaise with the relevant foreign authorities concerning applicable remedies. Furthermore, any remedies have to be limited to those that are reasonably necessary for the protection of the competitive market.

The Law prescribes the form that undertakings concerned should submit in relation to remedies. The CPC accepts both structural and behavioural remedies. Where the CPC's doubts as to the compatibility of the concentration with the competitive market are not lifted by the remedies offered, the Service will commence negotiations with the undertakings concerned with a view to modify the remedies concerned.

32. What are the penalties for failure to notify, late notification and breaches of a prohibition on closing?

Implementing the transaction in part or whole prior to clearance from the CPC (gun-jumping), would amount to an infringement that may give rise to sanctions, including:

- a fine of up to ten per cent (10%) of the aggregate turnover achieved by the notifying undertaking(s) during

the preceding financial year

- an additional fine of €8,000 for each day the infringement persists
- the partial or complete dissolution of the concentration.

33. What are the penalties for incomplete or misleading information in the notification or in response to the authority's questions?

A fine of up to €50,000 may be imposed for a failure to provide requested information or for providing misleading or inaccurate information.

34. Can the authority's decision be appealed to a court?

The decisions of the CPC are administrative executive acts issued by a public authority. An aggrieved party having legitimate interest and seeking to annul a CPC decision has the right to pursue an administrative recourse.

35. What are the recent trends in the approach of the relevant authority to enforcement, procedure and substantive assessment

Information exchange has been a recent trend. The CPC has demonstrated an increased awareness regarding the ability of undertakings controlling a joint venture to acquire business secrets through the joint venture, in a manner which could distort competition in the markets in which the controlling undertakings operate.

36. Are there any future developments or planned reforms of the merger control regime in your jurisdiction?

No planned reforms are on the horizon.

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