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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

The Control of Concentrations Between Undertakings, Law 83(I) of 2014 (the Law), is the statute regulating the control of concentrations between undertakings in Cyprus.

Enforcement of the Law rests with the Commission for the Protection of Competition (**CPC**). The CPC has overall responsibility for implementing the Law and is the competent authority for the control of concentrations. The CPC is empowered under the Law to 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 performed by the civil service of the CPC (the **Service**).

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 caught under the Law.

The Law only requires notifications of concentrations of major importance. A concentration of undertakings is deemed to be of major importance and therefore meets the jurisdictional thresholds if:

- 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 concentration of major importance 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;
- 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.

The exemption relating to investment companies refers to those 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.

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

Cyprus merger control has a suspensory effect and the Law expressly prohibits the partial or full implementation of the concentration prior to a clearance by the CPC. Implementing the transaction in part or whole prior to clearance from the CPC (gun-jumping), would amount to an infringement that could give rise to sanctions.

Gun-jumping may result in the CPC imposing a fine of an amount 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 where the CPC is carrying out a full investigation (Phase II), if the undertakings concerned are able to establish to the CPC that they will suffer substantial damage from any additional delays in the implementation of the concentration. Any such temporary approval does not affect the final decision of the CPC and may be accompanied by conditions imposed at the discretion of the CPC.

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 include mergers of two previously independent undertakings or parts of undertakings, and 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.

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

Minority interests are caught by the Law where they confer, either severally or jointly with other rights, the possibility of exercising decisive influence over an undertaking. The contractual arrangements arising from the transaction documents and constitutional documents of the target undertaking or joint venture are of tantamount importance in determining whether any rights resulting in a change of control are in place.

De facto control could satisfy the control test, while the ability to veto certain types of decisions could also be deemed to fall under such rights conferring 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 met where:

- 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 turnover of undertakings acquiring joint control over a target undertaking (together with the target) is 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 during the preceding financial year and corresponding to the ordinary activities of the undertakings, after deduction of sales rebates, of value added tax and other taxes directly related to turnover.

Turnovers are calculated for groups of undertakings and are derived from the last audited financial statements of each of the undertakings concerned (or consolidated financial statements at a group level).

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

- For a bank or other credit institution, the one tenth of the balance sheet of the last financial year.
- For an insurance company the value of the 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.

The value of assets is derived from the audited financial statements of each of the undertakings concerned (or consolidated financial statements at a group level) for the last financial year.

Market shares for each undertaking concerned can be calculated on the basis of their respective sales of the relevant products in Cyprus. In practice, the total market size is often available from market sources, such as the undertakings themselves, studies or information available publicly.

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. Figures are derived from the last audited financial statements. The applicable exchange rate for turnovers and asset valuations in currencies other than the euro is the average conversion rate of the financial year 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. In its decisional practice the CPC adheres to the European Court of Justice's judgment in *Austria Asphalt*^[1]. As such, 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.

A joint venture that is genuinely fully functional must be able to operate independently of its parents on an identifiable market. In order to do so, the joint venture must have management dedicated to its day-to-day operations and access to sufficient resources including finance, staff, and assets (tangible and intangible), in order to conduct its business activities on a lasting basis.

Reference

^[1] Case C-248/16, *Austria Asphalt GmbH & Co OG v. Bundeskartellanwalt*, Judgment of 7 September 2017, ECLI:EU:C:2017:643.

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

The Law provides that a concentration carried out in

stages within 4 years is effected on completion of the last stage resulting in a change in control on a lasting basis. That is also the date by which the concentration must be cleared. 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). It is thus often the case that transactions that are not directly related to the competitive market in Cyprus require notification and clearance by the CPC.

Implementing a ‘foreign-to-foreign’ merger prior to clearance from the CPC (gun-jumping), would amount to an infringement that could give rise to sanctions. Gun-jumping may result in the CPC imposing a fine of an amount 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?

Not applicable.

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.

To the extent a joint venture that constitutes a concentration has as its object or effect the coordination of competitive conduct of undertakings that remain independent, the Service shall particularly take into account:

- whether two or more parent companies retain, to a significant extent, activities in the same market as the joint venture or in a market which is downstream or upstream from that of the joint venture or in a neighbouring market closely related to this market; and
- whether the coordination that directly emanates from the creation of the joint venture provides the undertakings concerned the ability to eliminate competition for a substantial part of the relevant products or services.

The CPC’s approach and analysis of harm are substantially aligned with the respective approach 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.

The test and factors considered by the competent authority in the course of assessing whether a concentration should be cleared are consistent for all sectors.

14. Are factors unrelated to competition relevant?

The CPC only takes competition issues into account when considering the Service's report as to the compatibility of a concentration with the functioning of competition in the market and issuing its decision.

However, 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?

Although there is no express deadline within which a concentration should be filed, it must be notified to and cleared by the CPC prior to its implementation.

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

The Law provides that notifications take place following the conclusion of the relevant agreement. However, 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.

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?

Within one calendar month from the date of submission of the notification or such additional information necessary for the notification to be considered complete and payment of the filing fee, the Service is required to inform the notifying undertaking of whether the concentration is cleared or whether it will proceed to a full investigation of the concentration.

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.

In a full investigation (phase II), the Service is required to prepare a report of findings to the CPC within three months as of the date of submission of the notification or such additional information necessary for the notification to be considered complete, provided that the relevant filing fee is settled.

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 of the notification or such additional information necessary for the notification to be considered complete.

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. When the Service sends such a request, the date on which a response to the request for additional information is provided is deemed to reset the timetable. The CPC may carry out negotiations, hearings or discussions with any of the interested parties or other persons, which would also

have the effect of stopping the clock, depending on the circumstances.

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 to submit the filing.

23. What information is required in the filing form?

The notification of a concentration should include the information prescribed in Schedule III to 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 participating in the concentration;
- 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 relationships of ownership and control as between each participant in the concentration and the undertakings connected with it;
- personal and economic ties as 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?

Filing fees are fixed by the Law at €1,000. An additional filing fee of €6,000 applies 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?

Third parties having a legitimate interest in a concentration may be invited to comment, but only in the event of a full investigation (phase II). Parties having a legitimate interest may voluntarily submit views at any phase of the assessment of a concentration or they may be asked by the Service of the CPC to provide information.

The undertakings concerned or any third parties that

may be affected directly by the decision of the CPC may request to be heard before the CPC in the context of a hearing during which they can develop their arguments.

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 it considers contain confidential information or business secrets, justifying such view.

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 request that part of the decision remains 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 with imprisonment 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 via the European Competition Network.

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

There is no exhaustive list of remedies accepted by the CPC. 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, if it considers it expedient to do so, carry out negotiations, hearings or discussions with any of the interested parties or other persons.

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.

Schedule IV of the Law prescribes the form that undertakings concerned should submit in relation to remedies. The CPC accepts both structural and behavioural remedies. Where following its review of the additional information provided the CPC's doubts as to the compatibility of the concentration with the competitive market are not lifted, the Service will commence negotiations with the undertakings concerned in respect of any modifications which may result in the elimination of such doubts.

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 could give rise to sanctions. Gun-jumping may result in the CPC imposing a fine of an amount 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.

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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