



CYPRUS

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1. Relevant legislation

The control of Concentrations between Undertakings Law of 2014 (83(I) Of 2014).

2. Authority

Commission for the Protection of Competition (“CPC”), 53, Strovolos Avenue, Victory Tower, 2018 Strovolos, Nicosia P.O. Box 23467, 1683 Nicosia Tel.: +357 22606600 Fax: +357 22304944 E-mail: chairman@competition.gov.cy (<http://www.competition.gov.cy>).

The CPC is open for the public from 8:00 am to 3:00 pm.

3. Types of transactions caught

Merger control clearance must be obtained where a change of control on a lasting basis results from the transaction in concern. A change of control exists where:

- (i) There is a 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.

The creation of a full-functional joint venture performing on a lasting basis all the functions of an autonomous economic entity is considered under Cyprus Merger Control Law to be considered as a notifiable acquisition under paragraph (ii) above.

The concept of ‘control’ is the same under the EUMR, and the CPC considers the CJN as a highly persuasive text. As such, control can be (i) de jure or legal control and (ii) de facto control (control or materially influence the commercial behaviour).

4. Thresholds

There are is only a **turnover test**:

- (i) two of the undertakings concerned should have a global turnover of EUR 3.5 million each, and
- (ii) at least two of the undertakings concerned generate turnover in the Republic of Cyprus, and; *[there is no de minimis threshold]*
- (iii) the total turnover of (all) the undertakings concerned generated in the Republic of Cyprus is above EUR 3.5 million.

5. Exceptions

The regime in Cyprus is mandatory and there are no exceptions when the turnover test is satisfied.

6. Notifying party(-ies)

The acquirer is the notifying party in cases of acquisition of control. In cases of mergers and the creation of full-functional joint ventures then both merging parties and joint parents respectively need to notify the transaction. The notification however may be common for both parties. There is no requirement to make a separate notification unless the parties wish to do so.

7. Submission deadline

Notification must be made before the transaction is implemented. Parties can make a notification before a formal binding agreement is concluded if they can demonstrate a good faith intention to conclude a binding agreement which will bring a change of control.

8. Filing fee

There is a filing fee of EUR 1000.

9. Proceedings timetable

Cyprus merger control procedure comprises of two main Phases:

1) Phase I: Initial investigation – one calendar month:

At the end of Phase I the CPC will either clear the merger or refer it for an in-depth Phase II investigation. The CPC may not clear the transaction subject to commitments from the parties in lieu of opening a Phase II investigation but the parties may amend their transaction during Phase I to alleviate concerns.

When the CPC sends a request for Information (RFI) for lack of completeness the one month clock is reset. In effect, the one month review period only restarts from the date that all the requested information is provided. Having said that the CPC will send an RFI when information is missing in order to protect itself in case the parties do not provide the requested information within the original one-month period. In practice the CPC doesn't use all the time it gains from the clock being reset but the original one month period is extended by a couple of days. Normally the Service of the CPC rules on completeness of the notification between Day 5 to Day 10 from the date of filing.

2) Phase II: full investigation by the CPC – three calendar months

The Service of the CPC has a statutory period of further two months to conduct its full Phase II investigation and submit a report to the CPC.

The CPC will have an extra calendar month to adopt its decision. At the conclusion of Phase II, the CPC will decide whether to (i) clear the transaction unconditionally, (ii) clear with conditions or (iii) prohibit the transaction outright. During this period the CPC may receive or conduct accordingly:

- Written submissions from the parties to the transaction and interested third parties;
- Oral hearings with the parties to the transaction and interested third parties.

Commitments may be offered from an early stage of Phase II and in that case the CPC may clear the transaction before the expiry of the Phase II deadline.

3) Appeal proceedings

The participating undertakings or any third parties with a legitimate interest (after participating in the merger control clearance process) have the right to appeal a prohibition decision within 75 calendar days after becoming aware of the final decision of the CPC. A decision from the Administrative Court is expected within 3 years from the time of appeal.

10. Availability of pre-notification/informal consultation

Pre-notification consultations are possible but they are informal.

11. Test for clearance/prohibition

The CPC must refer a transaction for a Phase II investigation if it considers that it may lead to the creation or strengthening of a dominant position and result in a significant impediment of effective competition ("SIEC") on the market or markets concerned.

12. Conditional clearance - remedies

The CPC can impose divestment or behavioural conditions on clearance at the conclusion of Phase II following proposed commitments of the parties.

13. Stand-still obligation

There is an obligation on the parties to suspend a transaction and an outright prohibition on completing a transaction without clearance from the CPC.

14. Failure to notify/obtain clearance

Notification is mandatory and there is a penalty for completing a transaction without clearance and/or without notifying the transaction. Fines that may be imposed are up to 10% of the worldwide group turnover of the notifying parties in concern.

The CPC can impose further fines for procedural infringements such as providing misleading information or omitting to provide necessary information, or altering or destroying any information that the CPC has required to be produced under an RFI.

The CPC may also revoke a clearance decision in case of non-observance of clearance conditions or that false or misleading information has been supplied or that necessary information relating to this concentration has been withheld by the notifying party or by any other participant in the concentration or by any interested party.