PANORAMIC

MERGER CONTROL

Bulgaria

LEXOLOGY

Merger Control

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UPDATE AND TRENDS

Key developments of the past year

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QUICK REFERENCE TABLE

The table below is for quick reference only.

Voluntary or mandatory system?	Mandatory.
Notification trigger/filing deadline	The entry into an agreement, the publication of a bid or the announcement of acquisition of control as a result of trading in exchange-traded securities, but before the undertaking of actual actions to accomplish the concentration. No filing deadline.
Clearance deadlines (Phase I/Phase II)	Phase I: five working days for preliminary control plus 25 working days, which starts counting on the day following the initiation of the case (with the possibility to extend by up to 20 working days). Phase II: 90 working days (with the possibility to extend by up to 40 working days). Information requests stop the clock. The deadlines are instructive.
Substantive test for clearance	Significant impediment to effective competition (SIEC) test, in particular as a result of the creation or strengthening of a single or collective dominant position. Clearance is possible despite a SIEC, in particular as a result of the creation or strengthening of a single or collective dominant position, where significant efficiencies resulting from the transaction outweigh any potential negative effects.
Penalties	Up to 10 per cent of the annual turnover of the infringer.
Remarks	Not applicable.

Law stated - 19 April 2024

LEGISLATION AND JURISDICTION

Relevant legislation and regulators

What is the relevant legislation and who enforces it?

The principal piece of legislation regulating merger control in Bulgaria is the Protection of Competition Act (PCA). The Bulgarian national competition authority, the Commission on Protection of Competition (the Commission), is entrusted with enforcing merger control rules under national law. It has issued a standard notification form (adopted by Decision No. 384 dated 19 December 2019, updated by Decision No. 603 dated 10 June 2021) and guidance on its completion, which are available on the Commission's website.

Law stated - 19 April 2024

Scope of legislation

What kinds of mergers are caught?

Under the PCA, a merger (concentration) among undertakings is:

- a lasting change of control that results from the legal merger or amalgamation of two or more previously independent undertakings; or
- where one or more persons who originally control at least one undertaking acquire control, directly or indirectly, in respect of other undertakings or parts of them by way of acquisition of shares or property, by contract or by any other means.

Changes of control on a temporary basis are generally not caught by local merger control provisions. Examples of situations where control is acquired on a temporary basis include the acquisition by an intermediate buyer in preparation for the transfer of the business to a final controlling shareholder during a short period of time or a short-term lease of a business. Conditional transactions (such as those related to put and call options) are also generally not considered to cause concentrations upon their entry, but rather upon the fulfilment of the relevant conditions. A different conclusion may be drawn where there is no uncertainty on the completion of the relevant condition and the consummation of the transaction is, in fact, just a matter of time.

While a concentration can arise both where control of an entire undertaking is being transferred and where control is transferred in respect of only part of that undertaking, transactions where control is transferred in respect of certain assets solely for the purpose of a particular service being provided to the transferor or its group by an outside supplier (outsourcing) are generally not considered to result in a concentration, unless the transferred part of the business will have access to the market outside the outsourcing relationship.

Changes between sole and joint control and vice versa, as well as changes in the jointly controlling parents, are usually considered to represent a concentration. The conversion between positive and negative sole control is normally not considered to constitute a merger for the purposes of merger control.

Acquisitions of control by individuals or entities, which do not themselves constitute an undertaking and do not control previously one or more undertakings, have also been considered not to represent a concentration; however, the Commission has used a very broad interpretation of 'undertaking' in this context.

Similarly to other jurisdictions, transactions where credit and other financial institutions or insurance undertakings, which deal in securities on their own account or on account

of others, hold temporarily securities of an undertaking for the purpose of resale are not considered to represent a concentration, provided that they do not exercise the voting rights attached to these securities for the purpose of influencing the competitive conduct of the undertaking or exercise such voting rights only to the extent necessary to prepare the transfer of the securities that should be fulfilled within one year of their acquisition.

The acquisition of control by a person entrusted with functions in the context of liquidation or insolvency of the undertaking is also not considered a concentration for the purposes of Bulgarian merger control. The acquisition by financial holding companies of control where such control is exercised solely to maintain the value of the investment, but not to determine the competitive behaviour of the undertakings in which the holding participates either directly or indirectly, is also not caught by local merger control rules.

Finally, intra-group reorganisations, where ultimately control remains the same, are also not considered to represent concentrations.

Law stated - 19 April 2024

Scope of legislation
What types of joint ventures are caught?

The creation of a joint venture performing on a lasting basis all the functions of an economically autonomous entity is considered a concentration. Short-term alliances (eg, consortia established solely for the purpose of bidding for and performing a particular public contract) generally do not constitute a concentration; however, the continuation of their activity on a lasting basis upon change of the original intent may be caught by merger control rules.

The acquisition of joint control of a pre-existing undertaking can also trigger the application of these rules.

Law stated - 19 April 2024

Scope of legislation
Is there a definition of 'control' and are minority and other interests less than control caught?

The PCA defines 'control' as the acquisition of rights, the entry into agreements or other means that, as a matter of law or fact, together or individually would allow the exercise of decisive influence on an undertaking by acquiring ownership, use of all or part of its assets, or rights – including on the basis of an agreement – that afford the ability to exercise decisive influence on the composition, voting or decisions of the bodies of the undertaking.

Acquisitions of minority shareholdings do not trigger Bulgarian merger control rules unless they result in the acquisition of control within the sense explained above.

In this context, the Commission has taken into account the ability of a minority shareholding to exercise de facto control, considering factors such as the fact that the remaining shareholdings are widely dispersed and therefore a sufficiently large minority interest

is capable of achieving a decision-making majority in the bodies of the undertaking, in particular considering the history of majorities in such bodies. A minority shareholding can also afford negative sole control where a single shareholder alone is capable of blocking strategic decisions, despite the fact that neither it nor any other shareholder is capable of adopting them by itself and provided that joint control is not present otherwise.

Joint control results from the ability of several independent parents to jointly exercise decisive influence on the undertaking, as a result of factors such as their agreement to vote together on particular strategic issues, or their ability to adopt or veto strategic decisions, considering the applicable majorities, the existing shareholdings and other arrangements.

Law stated - 19 April 2024

Thresholds, triggers and approvals

What are the jurisdictional thresholds for notification and are there circumstances in which transactions falling below these thresholds may be investigated?

A transaction that represents a concentration would need to be notified to and cleared by the Commission where the jurisdictional thresholds are met, provided, however, that the concentration is not subject to notification and clearance by the European Commission under the EU Merger Regulation. The thresholds are as follows:

- the combined aggregate annual turnover of all the undertakings participating in the concentration in the territory of Bulgaria during the preceding financial year exceeded 25 million levs; and
- either:
    - the aggregate annual turnover of each of at least two of the participating undertakings in the concentration in the territory of Bulgaria during the preceding financial year exceeded 3 million levs; or
    - the aggregate annual turnover in the territory of Bulgaria during the preceding financial year of the undertakings subject to acquisition exceeded 3 million levs.

As a consequence of the second alternative component in the jurisdictional threshold (turnover of the target), situations may arise where the threshold is passed and the notification obligation is triggered by reason of the target's turnover alone, even though the acquirer may have had no or very little turnover in Bulgaria during the preceding financial year.

Transactions that are below the thresholds cannot be investigated on their merits under Bulgarian merger control. The parties are, however, free to notify such transactions on a voluntary basis if in doubt. In such cases, the Commission, without reviewing the case on the merits, has to issue a decision that the transaction does not fall within the scope of the prior notification obligation.

Law stated - 19 April 2024

Thresholds, triggers and approvals
Is the filing mandatory or voluntary? If mandatory, do any exceptions exist?

Where the local notification thresholds are exceeded, the filing is mandatory unless the transaction also triggers the thresholds for notification to and clearance by the European Commission under the EU Merger Regulation. In this case, the European Commission would have jurisdiction. Nevertheless, where the European Commission, despite having jurisdiction, has referred the case to the Bulgarian competition authority under the conditions laid down in the EU Merger Regulation, the Commission would have jurisdiction to review the case, provided that the Bulgarian notification threshold has been exceeded.

No exceptions to the mandatory filing obligation are currently available.

Law stated - 19 April 2024

Thresholds, triggers and approvals
Do foreign-to-foreign mergers have to be notified and is there a local effects or nexus test?

Foreign-to-foreign mergers have to be notified where the thresholds for notification are met. In this respect, there is no distinction between foreign-to-foreign and purely local mergers. The fact that the Bulgarian jurisdictional thresholds are met has been considered sufficient by the Commission to assert jurisdiction irrespective of any local effects or nexus considerations. Such considerations, the Commission has held, are relevant to the assessment of the concentration as part of the merger control proceedings, but not to the obligation to notify.

Law stated - 19 April 2024

Thresholds, triggers and approvals
Are there also rules on foreign investment, special sectors or other relevant approvals?

At the beginning of March 2024, a general foreign direct investment screening regime was introduced in Bulgaria in accordance with the EU FDI Screening Regulation 2019/452. The local screening regime requires prior notification and approval of foreign investments that trigger certain minimum thresholds (€2,000,000 or 10 per cent of the capital of the target) and are made in designated sectors of national security interest. Specific rules apply to government investors, whose investments may need to be notified in advance, even when below the thresholds (except for some low-risk countries enjoying preferential treatment). Certain foreign investments may also be reviewed ex officio, irrespective of whether the statutory thresholds are met. There are also possibilities for ex post screening of already completed investments. The regime is expected to fully come into effect within the six months following the enactment of the primary legislation, when the secondary regulation is expected to be issued.

In addition, there are parallel sector-specific restrictions on foreign investments in the real estate sector, and investments and activities by offshore companies and their affiliates. However, neither the general foreign investment screening regime, nor the sector-specific restrictions factor into the Bulgarian merger control process.

Law stated - 19 April 2024

NOTIFICATION AND CLEARANCE TIMETABLE

Filing formalities
What are the deadlines for filing? Are there sanctions for not filing and are they applied in practice?

There is no specific filing deadline; however, given that notification and clearance should precede the acquisition of control and should be submitted prior to undertaking factual and legal actions to implement the transaction, the parties would be well advised to submit their filing sufficiently in advance to allow the decision of the Commission on Protection of Competition (the Commission) to be issued in time.

As there is no filing deadline, there are no sanctions related to late filing.

Law stated - 19 April 2024

Filing formalities
Which parties are responsible for filing and are filing fees required?

The persons acquiring control (directly or indirectly) are the parties responsible for filing. These, depending on the circumstances of the case, may be the direct parties to the transactions, their parents, or the specific entities established to take control or otherwise participate in the concentration.

In the case of a legal merger, the merging parties would be under an obligation to file.

A filing fee of 2,000 levs applies. In addition, a clearance fee of 0.1 per cent of the combined aggregate Bulgarian turnover of the participating undertakings for the preceding financial year would apply where a clearance decision is issued. This fee is capped at 60,000 levs.

Law stated - 19 April 2024

Filing formalities
What are the waiting periods and does implementation of the transaction have to be suspended prior to clearance?

Where notification is mandatory, implementation of the transaction must be suspended prior to clearance. The suspension does not apply in the case of a tender offer or a series of transactions in securities admitted to trading in regulated markets of financial instruments, by which control is acquired from different sellers, provided that the Commission is notified

without delay and the acquirer does not exercise the rights attached to the securities, except to the extent necessary to protect the value of the investment made.

After submission of the notification, the Commission has five working days to review the filing to assess whether it is complete. If the Commission considers the filing complete, the chair will initiate proceedings. If the filing is incomplete, the Commission will inform the parties and initiate proceedings only after the deficiencies in the information or documents have been rectified.

As of the day following the day of initiation of proceedings, the Commission, in accelerated (Phase I) proceedings, has to review the notification within a period of 25 working days. The review period is instructive and its expiry without a decision does not lead to a presumptive clearance. Requests for additional information during the proceedings stop the clock and the review timeline is correspondingly extended.

The Phase I review period can be extended by up to 10 working days at the parties' request to allow them to prepare proposals for changes to the concentration. If proposals for changes to the concentration are submitted, the review period is automatically extended by a further 10 working days to allow the Commission to review and analyse the proposals for changes to the concentration.

Where, during the Phase I proceedings, the Commission has come to the conclusion that the concentration raises serious concerns that, as a result of its implementation, effective competition in the relevant market will be significantly impeded (in particular as a result of the creation or strengthening of dominant position), it may initiate an in-depth (Phase II) investigation into the case.

The Phase II investigation must be completed within 90 business days of the publication in the Commission's online electronic register of the decision to open the Phase II investigation. In complex cases, this period can be extended by up to an additional 25 working days. In the case of a remedies offer, the timeline for review is automatically extended by 15 working days. The review periods in Phase II are also instructive and no implied clearance is available should they not be met.

Law stated - 19 April 2024

Pre-clearance closing

What are the possible sanctions involved in closing or integrating the activities of the merging businesses before clearance and are they applied in practice?

Closing or integrating the activities of the merging businesses in violation of the suspension obligation or without having submitted a notification and obtained clearance where this is mandatory can result in the imposition of sanctions of up to 10 per cent of the infringing parties' annual turnover.

Law stated - 19 April 2024

Pre-clearance closing

Are sanctions applied in cases involving closing before clearance in foreign-to-foreign mergers?

Sanctions are applied in such cases.

Law stated - 19 April 2024

Pre-clearance closing

What solutions might be acceptable to permit closing before clearance in a foreign-to-foreign merger?

The Commission has not objected to carving out closing where the transaction may be implemented in other jurisdictions but is not implemented in Bulgaria pending clearance from the Commission. The way in which this is achieved would depend on each particular case considering the parties' activities in Bulgaria, but, in general, would involve the undertaking of legal obligations that the concentration will not be accomplished in respect of Bulgaria until the Commission has issued its decision.

The Commission does not have the authority to waive the standstill obligation neither of its own initiative nor at the request of the parties.

Law stated - 19 April 2024

Public takeovers

Are there any special merger control rules applicable to public takeover bids?

In the case of public takeover bids of publicly listed companies whose shares are traded in regulated markets of financial instruments, the suspension obligation does not apply subject to notification without delay and provided that the acquirer of control does not exercise the voting rights attached to the securities, except where necessary to protect the value of the investment. In this context, notification without delay would normally mean that the notification should be submitted as soon as possible and, in any case, before the actual acquisition of control has taken place.

Planned concentrations should normally be notified after the publication of the bid, but may occasionally be notified before that if the parties can demonstrate a good faith intention to make such a bid. It must be underlined, however, that no exception to the notice publication requirement has been provided for such cases.

Law stated - 19 April 2024

Documentation

What is the level of detail required in the preparation of a filing, and are there sanctions for supplying wrong or missing information?

The notification must contain information on:

- the undertakings concerned and their groups;
- the nature of the concentration;
- the mechanism and time frame in which control will be acquired;
- the economic rationale of the transaction;
- description of the relevant markets in which the parties operate, including their market shares, annual turnovers, and main competitors, suppliers and customers; and
- the parties' views on why the transaction will not lead to a significant impediment to effective competition, in particular as a result of the creation or strengthening of a dominant position in any relevant market.

Usually, documents evidencing the corporate existence of the parties are attached to the notification, the transaction documents giving rise to the change of control on a lasting basis, the annual reports of the undertakings concerned, a power of attorney, organisational charts of the parties' groups, a draft public notice on the transaction and various other documents that reflect the parties' positions in the relevant markets before the concentration.

A significantly higher level of detail is required in respect of significantly affected markets, which arise if there is:

- a horizontal overlap leading to a combined market share of 15 per cent or more; or
- a vertical overlap or conglomerate effects raising an individual or combined share of 25 per cent or more in any affected product markets.

Less detailed information is required for markets that are not considered significantly affected.

Law stated - 19 April 2024

Investigation phases and timetable

What are the typical steps and different phases of the investigation?

After submission of the filing, the Commission's administration will review the notification and attachments and, where they are complete, the chair of the Commission will initiate proceedings on the case (a case number is assigned).

Once proceedings are initiated, a brief notice concerning the case is published on the Commission's website (a draft of which is provided by the parties to the merger control proceedings).

During the proceedings, the Commission often sends questionnaires to the parties as well as to their major competitors, suppliers and customers who, in addition to providing information, are invited to express their views concerning the merger. This specifically refers to cases where significantly affected markets arise.

At this stage or with the notification, the parties can offer remedies to address specific competition concerns that arise out of the transaction.

After the Phase I review, the Commission will issue a decision by which it:

1. declares that the transaction does not constitute a concentration or does not fall within the scope of the mandatory notification obligation;
2. clears the transaction unconditionally;
3. clears the transaction subject to conditions and obligations; or
4. initiates in-depth (Phase II) proceedings on the case.

The decision under point (4) cannot be appealed. The decision at the end of Phase I is issued without a hearing of the parties. Access to the file can be provided only after the Phase I decision is issued.

The actions following the initiation of a Phase II investigation follow a similar pattern to those under Phase I proceedings. Interested third parties can submit observations within 30 days of publication of the decision opening the Phase II investigation on the Commission's website.

At the end of the review, the Commission will either issue an unconditional clearance or adopt a statement of objections addressed to the notifying party or parties.

The parties will have 14 days or more to respond to the statement of objections and access the file. After they submit their response, they also have the right to be heard in an open sitting of the Commission, which can take place no sooner than two weeks after the expiry of the deadline for the submission of the response.

At the end of the Phase II investigation, the Commission will issue a decision by which it:

- approves the transaction unconditionally;
- approves the transaction subject to conditions and obligations; or
- prohibits the transaction.

Where the transaction is approved subject to conditions and obligations, the Commission may appoint a monitoring trustee to oversee their implementation.

Law stated - 19 April 2024

Investigation phases and timetable

What is the statutory timetable for clearance? Can it be speeded up?

In practice, most mergers are reviewed within the 25-working-day review period prescribed by the Protection of Competition Act (PCA) for Phase I (accelerated) proceedings. The Commission rarely shortens its review and also rarely extends it beyond it by any significant amount of time. It may shorten it in some straightforward cases raising no competition concerns (eg, given the parties' negligible market shares, lack of or very minor horizontal and/or vertical overlaps). However, it takes additional time, after the adoption of the Commission's decision, for the parties to be notified.

In almost all cases, the Commission makes use of its ability to request additional information during the preliminary review process (after submission of notification), which extends the period for initiation of the case itself and the deadlines for the decision.

In Phase II proceedings, in most cases, the Commission has issued its decision sooner than the expiry of the 90-working-day period prescribed by the PCA.

The review periods vary depending on the nature and complexity of the case. In principle, the Commission follows the statutory periods for examination and its internal guidelines in the assessment of the specific transaction.

Law stated - 19 April 2024

SUBSTANTIVE ASSESSMENT

Substantive test
What is the substantive test for clearance?

A transaction will be cleared where it does not lead to a significant impediment to effective competition (SIEC), in particular as a result of the creation or strengthening of a single or collective dominant position.

The Commission on Protection of Competition (the Commission) may clear a concentration that may impede effective competition, including one that may lead to the creation or strengthening of dominance, where it aims to modernise the relevant economic activity, improve the structures of the market and better meet the interests of consumers and where overall the positive effects would outweigh any negative effects on competition in the relevant markets.

Following the conversion to the SIEC test in February 2021, the primary focus of the Commission's analysis is the loss of competition that is expected to result from the transaction and to what extent it can affect the proper functioning of the competitive process in the relevant markets. The Protection of Competition Act contains a specific list of factors that the Commission may take into account in its assessment. These include:

- market structure;
- the economic and financial strength of the undertakings concerned;
- buyer power;
- available alternative sources of supply and demand;
- technical and economic progress providing benefits to consumers;
- trends in supply and demand;
- consumer interests;
- barriers to market entry; and
- any other relevant circumstances.

Although some of those additional factors appear to imply assessment criteria that are external to a strictly competitive analysis, they must be read in conjunction with the merger test itself.

Law stated - 19 April 2024

Substantive test

Is there a special substantive test for joint ventures?

No, the SIEC test also applies to joint ventures.

Law stated - 19 April 2024

Theories of harm

What are the 'theories of harm' that the authorities will investigate?

Previously the Commission's analysis was essentially focused on dominance and, by extension, any horizontal or vertical non-coordinated effects that would arise as a result of the transaction to the extent that these are a direct result of the creation or strengthening of a dominant position. Conglomerate issues and coordinated effects have rarely, if at all, featured in the reasoning of the Commission's decisions.

Following the introduction of the SIEC test, dominance remains the primary focus of the Commission's analysis. This is also the primary theory of harm under the SIEC test; however, this test allows intervention in the rare cases where effective competition is significantly impeded, even where dominance is not created or strengthened.

This has been confirmed by recent judgments, which underlined the fact that, in certain cases, the Commission should explore SIECs other than as a result of the creation or strengthening of dominance. While the courts provided fairly broad guidance on this topic, they noted that the Commission should take into account all circumstances of each case and explore the impact on competition of the overall change in market structure resulting from the concentration. It is yet to be seen what theories of harm, if any, the Commission will explore in this context.

Law stated - 19 April 2024

Non-competition issues

To what extent are non-competition issues relevant in the review process?

Non-competition issues would not normally be considered in the Commission's analysis of mergers except where such non-competition issues constitute positive effects of the transaction, which have to be considered on balance with any factors impeding competition as a result of the transaction.

Law stated - 19 April 2024

Economic efficiencies

To what extent does the authority take into account economic efficiencies in the review process?

Economic efficiencies are considered only to a limited extent; normally, the analysis is focused on the possible harm to competition as a result of the transaction and ways to address this. Only once they have been addressed or mitigated to a significant extent can any efficiencies come into play to finalise the Commission's overall assessment. Where serious competition issues arise, efficiencies alone have never been sufficient to tip the balance between prohibiting and clearing the transaction.

Law stated - 19 April 2024

REMEDIES AND ANCILLARY RESTRAINTS

Regulatory powers

What powers do the authorities have to prohibit or otherwise interfere with a transaction?

The Commission on Protection of Competition (the Commission) has the power to prohibit a concentration. It also has the power to clear the transaction subject to conditions and obligations. The conditions and obligations should correspond to the proposals for changes to the concentration offered by the parties. The Commission can offer guidance to the parties in this respect by pointing out the issues they need to address in their remedies offer.

Where a notifiable concentration was completed in contravention of a prohibition decision or without clearance, where it finds that the transaction should have been prohibited or cleared subject to conditions and obligations, in addition to imposing any sanctions, the Commission can impose any measures it deems necessary to restore effective competition in the relevant markets, including separation of capital, shares or assets and termination of joint control.

The Commission may withdraw its clearance decision where it is based on incomplete, incorrect, untrue or misleading information, or where the parties have failed to comply with the conditions and obligations attached to the clearance decision aimed at preserving effective competition and limiting its negative impact on the market concerned.

Commission decisions may also be revoked by the courts. The first instance court for judicial review of Commission decisions is the Administrative Court of Sofia District. Its decisions are subject to cassation review by the Supreme Administrative Court.

Law stated - 19 April 2024

Remedies and conditions

Is it possible to remedy competition issues, for example by giving divestment undertakings or behavioural remedies?

The parties are free to offer any remedies, behavioural or structural, that they consider capable of addressing any competition issues that may arise as a result of the merger.

Taking into account the specific details of each case, the Commission only approves proposals (structural or behavioural, or both) made by the parties that it deems the most efficient for preserving the competition environment in the markets concerned.

Law stated - 19 April 2024

Remedies and conditions

What are the basic conditions and timing issues applicable to a divestment or other remedy?

The parties can offer remedies at any time during the proceedings before the Commission, including with the notification itself. Guidance on the preparation and submission of such an offer is provided in the rules for approving measures to safeguard competition in the case of concentrations between undertakings, which are adopted by the Commission considering the implications from the introduction of the significant impediment of effective competition test.

Where accepted, the remedies become binding on the notifying party as conditions and obligations attached to the clearance decision. The obligations usually have a specific deadline by which they need to be fulfilled, but there are also cases where open-ended obligations have been adopted.

The Commission has the power to control the fulfilment of the conditions and obligations, with a corresponding obligation of the parties to inform the Commission about the performance of its decision. It may appoint a monitoring trustee to help supervise the remedies imposed. Where the parties have failed to comply, the Commission may impose sanctions on them and, in addition, may reopen the case and withdraw the clearance decision.

Law stated - 19 April 2024

Remedies and conditions

What is the track record of the authority in requiring remedies in foreign-to-foreign mergers?

The Commission has adopted remedies as conditions and obligations attached to its clearance decision on several occasions in foreign-to-foreign mergers. In some cases, these have been remedies offered on a global basis across a number of jurisdictions, which were then also transposed in the Bulgarian merger control proceedings; in others, these have been remedies specific to Bulgaria.

Law stated - 19 April 2024

Ancillary restrictions

In what circumstances will the clearance decision cover related arrangements (ancillary restrictions)?

The Commission generally follows the European Commission's practice closely with regard to ancillary restraints. On a number of occasions, the Commission has held that such restrictions should be considered cleared with the decision clearing the concentration, provided that they are deemed directly related and necessary to the implementation of the concentration. Where the Commission is seised of such ancillary agreements, it would normally discuss them in the reasoning of its decision.

Law stated - 19 April 2024

INVOLVEMENT OF OTHER PARTIES OR AUTHORITIES

Third-party involvement and rights

Are customers and competitors involved in the review process and what rights do complainants have?

Main customers and main competitors are involved in the review process by being invited to provide their position on the transaction, along with any specific information and documents that the case handlers deem necessary, where the transaction gives rise to significantly affected markets.

Unless they are constituted as parties or interested third parties in the proceedings, such customers and competitors would not normally have access to the file.

However, where they have a legal interest, they can appeal the final decision of the Commission on Protection of Competition (the Commission) in the framework of a judicial review.

Law stated - 19 April 2024

Publicity and confidentiality

What publicity is given to the process and how do you protect commercial information, including business secrets, from disclosure?

Shortly following the opening of the proceedings on the case, a brief notice of the notified transaction is published on the Commission's website. This notice is drafted by the parties and attached to the notification, but may be amended by the Commission before it is published; therefore, the parties must expect that the transaction will become public shortly after they have submitted the merger notification to the Commission.

Documents containing commercial and other secrets must be noted accordingly (by placing a stamp or written note that the document is confidential on each page) at the time of their submission to the Commission. At that time or shortly thereafter, the parties must also provide a non-confidential version of the confidential documents, along with a list of all confidential and non-confidential documents and reasoning for the requests for confidentiality. The confidential document is then excluded from access to the file and its content will not be replicated in the public version of the Commission's decision.

The Commission may, on a request of a party or of its own initiative, waive the confidentiality of particular information or documents where it considers them not to be confidential if

necessary to prove an infringement or for the effective exercise of the rights of defence of the parties. The party (including a non-participating third party) whose information is disclosed has the right to appeal against the disclosure in the framework of a judicial review.

Law stated - 19 April 2024

Cross-border regulatory cooperation

Do the authorities cooperate with antitrust authorities in other jurisdictions?

The Commission is a member of the European Competition Network (ECN) – the information-sharing network of all competition authorities in the European Union. In the ECN, the Commission actively cooperates with other authorities, particularly on multi-jurisdictional merger filings. Cooperation may be limited to exchanging information or extend to sharing views on the scope of relevant markets, the effect that the particular concentration may have on them and how any competition issues may be remedied. A waiver of confidentiality is often requested from the notifying party for the purposes of such an information exchange within the ECN.

The Commission has also entered into bilateral memorandums on cooperation with the competition authorities of Azerbaijan, Albania, Bosnia and Herzegovina, Croatia, Cyprus, Kosovo, Moldova, Montenegro, North Macedonia, Russia, Serbia, Turkey, Ukraine and others.

In addition, the Commission actively participates in cooperation on competition issues within the International Competition Network, the Organisation for Economic Co-operation and Development, the competition forum of the United Nations Conference on Trade and Development, and certain other international initiatives.

Law stated - 19 April 2024

JUDICIAL REVIEW

Available avenues

What are the opportunities for appeal or judicial review?

All decisions of the Commission on Protection of Competition (the Commission) that end proceedings (with the exception of a decision opening a Phase II investigation) are subject to judicial review. The parties to the proceedings, as well as all interested third parties, can bring an appeal against the decision in the framework of a judicial review.

Law stated - 19 April 2024

Time frame

What is the usual time frame for appeal or judicial review?

The time frame for submitting an appeal is 14 days, which, for the parties to the proceedings, starts at the moment they are notified of the decision and, for third parties, at the moment the decision is published on the Commission's website.

The judicial review process can go through two instances: a first instance consisting of review by one judge at the Administrative Court of Sofia District and a cassation instance consisting of review by a panel of three judges at the Supreme Administrative Court. Although the review periods vary depending on the complexity of the case and the workload of the relevant court at the time, normally proceedings on a case are completed within a period of one to two years.

An appeal does not suspend the effect of a clearance decision, in respect of which immediate execution derives from the Protection of Competition Act or the Commission's ruling, unless the relevant court explicitly orders the suspension of its implementation.

Law stated - 19 April 2024

ENFORCEMENT PRACTICE AND FUTURE DEVELOPMENTS

Enforcement record
What is the recent enforcement record and what are the current enforcement concerns of the authorities?

The Commission on Protection of Competition routinely reviews and decides on foreign-to-foreign, foreign-to-local and local-to-local mergers, without distinction. It also imposes sanctions for failing to notify a merger where notification was necessary, including in foreign-to-foreign mergers.

Another notable recent development has been the imposition of fines for failure to supply complete and non-misleading information during the merger review process. This development follows similar cases at the EU level.

Law stated - 19 April 2024

Reform proposals
Are there current proposals to change the legislation?

Currently, there are no proposals to amend the merger control legislation in Bulgaria.

Law stated - 19 April 2024

UPDATE AND TRENDS

Key developments of the past year
What were the key cases, decisions, judgments and policy and legislative developments of the past year?

The change of the merger test has been the most fundamental reform of Bulgarian merger control in the past few years. The Commission on Protection of Competition has recently been moving towards a mature and economics-based approach to merger control, where clearly non-problematic mergers are allocated fewer enforcement resources, and potentially problematic cases are reviewed in much greater detail.

There has been increasing appetite for challenges to merger decisions by competitors under judicial review. The courts have seized the opportunity to comment on the application of the new merger test in these cases. Case law is bound to develop further over the next few years.

Law stated - 19 April 2024