Merger Control 2022

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LEXOLOGY
Getting The Deal Through

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Published by
Law Business Research Ltd
Meridian House, 34-35 Farringdon Street
London, EC4A 4HL, UK

First published 1996
Twenty-sixth edition
ISBN 978-1-83862-689-1

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112

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Lexology Getting The Deal Through is delighted to publish the twenty-sixth edition of *Merger Control*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Peru, South Korea, Taiwan, Uzbekistan and Zambia.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Thomas Janssens of Freshfields Bruckhaus Deringer, for his continued assistance with this volume.

LEXOLOGY
Getting The Deal Through

London
August 2021

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This article was first published in August 2021
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Bulgaria

Peter Petrov
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LEGISLATION AND JURISDICTION

Relevant legislation and regulators

1 | 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), has been entrusted with enforcing merger control rules under national law. It has issued a standard notification form (updated as of 10 June 2021 by a Decision No. 603, dated 10 June 2021), and guidance on its completion, which are available on the Commission's website.

Scope of legislation

2 | What kinds of mergers are caught?

The PCA defines a merger (concentration) among undertakings as a lasting change of control, which results from the legal merger or amalgamation of two or more previously independent undertakings, or the case where one or more persons, already controlling 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. 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, as well as situations such as a short-term lease of a business. Conditional transactions (such as those related to put and call options) are also generally not considered to occasion concentrations upon their entry, but rather upon the fulfilment of the relevant conditions.

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 back 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 in respect of the concept of undertaking in this context.

Similarly to other jurisdictions, transactions where credit and other financial institutions or insurance undertakings, which deal in securities on 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 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 a concentration.

3 | 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. As above, 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.

4 | 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 or use of all or part of its assets or acquiring rights, including on the basis of an agreement, which 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 joint control is not present otherwise.

Joint control results from the ability of several independent parents, jointly to 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.

Thresholds, triggers and approvals

5 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 threshold detailed below is met, provided, however, such concentration is not subject to notification and clearance by the European Commission under the EU Merger Regulation. The threshold is 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 exceeding 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 exceeding 3 million levs; or
- the aggregate annual turnover in the territory of Bulgaria during the preceding financial year of the undertakings, subject to acquisition, exceeding 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, if in doubt, to notify such transactions on a voluntary basis. 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.

6 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 which 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 the Bulgarian notification threshold (see above) has been exceeded.

No exceptions to the mandatory filing obligation are currently available.

7 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.

8 Are there also rules on foreign investment, special sectors or other relevant approvals?

There are generally no rules specific to foreign investments (ie, general prudential supervision of shareholding rules as regards certain regulated entities apply equally to local and foreign investors). Exceptions to this are certain restrictions on foreign investments in the real estate sector and investments and activities by offshore companies and their affiliates. However, these do not factor in the Bulgarian merger control process.

NOTIFICATION AND CLEARANCE TIMETABLE

Filing formalities

9 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 of factual and legal actions to implement the transaction, the parties would be well advised to submit their filing sufficient time 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. As regards closing the transaction without having submitted a notification or prior to clearance, see below.

10 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 latest preceding financial year would apply where a clearance decision is issued. This fee is capped at 60,000 levs.

11 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 trade in regulated markets of financial instruments, by which control is acquired from different sellers, provided the Commission is notified without delay, and also provided 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 as to whether it is complete. If the Commission considers the filing complete, the chairperson 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 an 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 proposed proposals for changes to the concentration.

Where, during the Phase I proceedings, the Commission has come to the conclusion that the concentration raises serious doubts 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 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.

Pre-clearance closing

12 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 in an amount of up to 10 per cent of the infringing parties' annual turnover.

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

Sanctions are applied in such cases.

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

The Commission has not objected to carveout 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 in 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 as regards 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.

Public takeovers

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

In the case of public takeover bids in respect 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 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.

Documentation

16 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, as well as their groups, the nature of the concentration as well as 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, their main competitors, suppliers and customers, as well as the parties' view as to why the transaction will not lead to the 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 details 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 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'.

Investigation phases and timetable

17 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 chairperson 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 website of the Commission (draft of which is provided by the parties to the merger control proceedings).

During the proceedings, the Commission often sends questionnaires to the parties and to their major competitors, suppliers and customers, who in addition to providing information, are invited to express their views concerning the merger.

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 (4) above 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 Phase II investigation follow a similar pattern to those under a Phase I proceeding. 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 authority, 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.

18 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 law for a Phase I (accelerated) proceeding. The Commission rarely shortens its review below this period and also rarely extends it beyond it by any significant amount of time. 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, respectively.

In Phase II proceedings, in most cases the Commission has issued its decision sooner than the expiry of the 90 working days period prescribed by the Protection of Competition Act.

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 within the assessment of the specific transaction.

SUBSTANTIVE ASSESSMENT

Substantive test

19 What is the substantive test for clearance?

A transaction will be cleared where it does not lead to significant impediment to effective competition, 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 may lead to the creation or strengthening of dominance, where it aims to modernise the relevant economic activity, improvement of the structures of the market, better meeting interests of consumers and overall the positive effects would outweigh any negative effects on competition in the relevant markets.

Following the conversion to the 'significant impediment to effective competition' (SIEC) test in February 2021, the primary focus of the Commission's analysis would have to be 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 has added a specific list of factors that the Commission may take into account in its assessment. These include market structure, 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 these additional factors appear to imply assessment criteria external to a strictly competitive analysis, they must be read in conjunction with the merger test itself.

20 Is there a special substantive test for joint ventures?

No, the SIEC test applies also to joint ventures.

Theories of harm

21 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 will 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 new SIEC test, dominance should remain the primary focus of the Commission's analysis. This is the primary theory of harm under the SIEC test as well. However, the new test should allow intervention in the rare cases where effective competition is significantly impeded, even where dominance is not created or strengthened. It is yet to be seen how the Commission will interpret the test, and to what extent it will have appetite for intervention in borderline cases. In each case, merger control enforcement under the new substantive test should remain subordinated to competition considerations, rather than external factors. These should remain the subject of any investment screening regime, that may be introduced in the future, within the framework of the EU's foreign direct investment screening Regulation 2019/452.

Non-competition issues

22 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 as regards mergers, except where such noncompetition issues constitute positive effects of the transaction, which have to be considered in the balance with any factors impeding competition as a result of the transaction.

Economic efficiencies

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

Economic efficiencies are considered to only 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.

REMEDIES AND ANCILLARY RESTRAINTS

Regulatory powers

24 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. However, 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. The decision of the Commission may also be revoked by the court.

Remedies and conditions

25 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.

In general, the preference so far in the Commission's case law has been towards behavioural remedies.

26 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 expected to be provided in rules for imposing measures to safeguard competition in case of concentrations between undertakings, which are to be adopted considering the implications from the introduction of the new SIEC (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 with supervision of the remedies imposed. Where the parties have failed to comply, the Commission may impose sanctions upon them and in addition may reopen the case and withdraw the clearance decision.

27 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, and in others these have been remedies specific to Bulgaria.

Ancillary restrictions

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

The Commission generally follows closely the European Commission's practice as regards 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 they are deemed directly related and necessary to the implementation of the concentration. Where the Commission is seized with the matter of such ancillary agreements, it would normally discuss them in the reasoning of its decision.

INVOLVEMENT OF OTHER PARTIES OR AUTHORITIES

Third-party involvement and rights

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

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

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

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

Publicity and confidentiality

30 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 accordingly noted (by placing a stamp or written note that the document is confidential on each page) at the time of their submission to the authority. 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 the 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 they are not confidential, or where this is necessary to prove an infringement or for 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 judicial review.

Cross-border regulatory cooperation

31 Do the authorities cooperate with antitrust authorities in other jurisdictions?

The Bulgarian competition authority is a member of the European Competition Network – the information sharing network of all competition authorities in the European Union. In this network it actively cooperates with other authorities, particularly in the case of multi-jurisdictional merger filings. Cooperation may be limited to exchanging information, or may extend to sharing views on the scope of relevant markets, the effect that the particular concentration may have upon 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 information exchange within the European Competition Network.

The Commission has also entered into bilateral memorandums on cooperation with competition authorities of Azerbaijan, Albania, Bosnia and Herzegovina, Croatia, Cyprus, Kosovo, Moldova, Macedonia, Montenegro, 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 UNCTAD, and certain other international initiatives.

JUDICIAL REVIEW

Available avenues

32 What are the opportunities for appeal or judicial review?

All decisions of the Commission on Protection of Competition (the Commission) ending the 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 judicial review.

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Time frame

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

The deadline for submitting an appeal is 14 days, which for the parties to the proceedings starts as of the moment they are notified of the decision, and for third parties, from the moment the decision is published on the website of the Commission.

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. While the review periods vary depending on the complexity of the case and the workload of the court at the relevant time, normally the proceedings on the case should be complete 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 law or the Commission's ruling, unless the court explicitly orders the suspension of its implementation.

ENFORCEMENT PRACTICE AND FUTURE DEVELOPMENTS

Enforcement record

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

The Commission on Protection of Competition (the Commission) 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 the cases of foreign-to-foreign mergers.

The Commission's focus has been on strengthening the pre-notification process. Recently, it adopted special guidelines on pre-notification contacts.

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

Reform proposals

35 | Are there current proposals to change the legislation?

The Commission recently published draft guidelines on merger remedies for public consultation. These guidelines are yet to be adopted, and follow the recent reform of the substantive merger test.

UPDATE AND TRENDS

Key developments of the past year

36 | 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 of the last 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 less enforcement resources, while potentially problematic cases are reviewed in much greater detail. This, while short of introducing distinct simplified and full merger procedures, has brought Bulgarian merger control closer in line with the process at the EU level.

Quick reference tables

These tables are for quick reference only. They are not intended to provide exhaustive procedural guidelines, nor to be treated as a substitute for specific advice. The information in each table has been supplied by the authors of the chapter.

Bulgaria	
Voluntary or mandatory system	Mandatory and voluntary.
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 (Stage 1/Stage 2)	Phase I: three + 25 working days (possibility to extend by up to 20 working days). Phase II: four months (possibility to extend by up to 40 working days). Information requests stop the clock. The deadlines are instructive.
Substantive test for clearance	The creation or strengthening of a dominant position as a result of which effective competition would be significantly impeded. A clearance is possible despite the creation or strengthening of dominance, 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.

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Business & Human Rights
Cartel Regulation
Class Actions
Cloud Computing
Commercial Contracts
Competition Compliance
Complex Commercial Litigation
Construction
Copyright
Corporate Governance
Corporate Immigration
Corporate Reorganisations
Cybersecurity
Data Protection & Privacy
Debt Capital Markets
Defence & Security Procurement
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Distribution & Agency
Domains & Domain Names
Dominance
Drone Regulation
Electricity Regulation
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Financial Services Litigation
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Pensions & Retirement Plans
Pharma & Medical Device Regulation
Pharmaceutical Antitrust
Ports & Terminals
Private Antitrust Litigation
Private Banking & Wealth Management
Private Client
Private Equity
Private M&A
Product Liability
Product Recall
Project Finance
Public M&A
Public Procurement
Public-Private Partnerships
Rail Transport
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Real Estate M&A
Renewable Energy
Restructuring & Insolvency
Right of Publicity
Risk & Compliance Management
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ISBN 978-1-83862-689-1