

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

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Working Party No. 3 on Co-operation and Enforcement

INVESTIGATIONS OF CONSUMMATED AND NON-NOTIFIABLE MERGERS

-- Bulgaria --

25 February 2014

This note is submitted by Bulgaria to the Working Party No. 3 of the Competition Committee FOR DISCUSSION under Item III at its forthcoming meeting to be held on 25 February 2014.

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– Bulgaria –

1. Pre-merger notification regime

1. Pursuant to Art.24, par.1 of the Law on Protection of Competition (LPC), concentrations are subject to mandatory prior notification to the Commission where the aggregate combined turnover of all undertakings participating in the concentration in the territory of Bulgaria in the preceding year exceeds BGN 25 million. Also, the LPC introduces an additional cumulative threshold – the turnover of at least two of the undertakings participating in the concentrations or the turnover of the target company in Bulgaria for the proceeding financial year exceeds BGN 3 million. The inclusion of a local nexus criterion aimed at identifying cases with actual effect within Bulgarian territory. Such an approach was based on ICN Recommended Practices for Merger control. The local nexus requirement for notification reduces unnecessary costs parties would incur while submitting notifications where no impact is expected.

2. Undertakings must notify the CPC following the execution of an agreement, public announcement of the tender offer or acquisition but prior to the implementation of the transaction. In certain cases, and upon the request of the notifying party, the Commission may initiate an investigation prior to the execution of an agreement or public announcement of the tender offer, provided that the notifying undertakings present sufficient evidence demonstrating their intent to execute the respective agreement or where they have made public their intent to accept a tender offer.

3. While the decision of the Commission is pending, the parties are prohibited from consummating the merger by actions in fact and in law related to the intended concentration shall be allowed.

4. The CPC imposes a pecuniary sanction in an amount not exceeding 10 per cent of the total turnover of the undertaking in the financial year before issue of the decision for failure to notify a notifiable concentration (Art.100, p.1, item 2 of the LPC, Methodology for setting fines under the LPC). Amount of the sanction depends on the gravity of the infringement, namely:

- For minor infringements - up to 5 % of the total turnover of the infringer, but not less than the fee which would have paid if the CPC was informed;
- For not very grave infringements - up to 7 % of the total turnover of the infringer, but not less than the fee which would have paid if the CPC was informed;
- For grave infringements - up to 10 % of the total turnover of the infringer, but not less than the fee which would have paid if the CPC was informed.

2. Review of mergers falling below notification thresholds

5. As noted above, the concentrations are subject to mandatory prior notification. If the thresholds are not met the CPC does not make a substantive assessment of the concentration and pronounces that the operation does not fall within the scope of Article 24 of the LPC.

6. When the parties fail to notify a concentration that was subject to mandatory notification, the Commission has the power to initiate *ex officio* proceedings for review the case. On the base of report with a sufficient evidence for an unnotified concentration, prepared from the director to Antitrust and Concentrations Directorate CPC initiate an *ex officio* procedure opened with a decision of the CPC according to art 38 (1) of the LPC. The decision of the CPC on initiation of proceeding shall not be subject to appeal.

7. During the procedure the CPC gathers all necessary information concerning the deal and assessment of the concentration on the relevant markets.

8. After the investigation the case team prepares a report. At a closed sitting the Commission adopts a ruling to submit the Statement of objections (SO) for an alleged infringement for non-compliance with the obligation to notify the concentration.

9. The defendant has the right (not shorter than thirty days) to submit its written objections on the SO. He has also the opportunity to be heard in an open sitting of the CPC before it takes a decision on the merits. After hearing the CPC at a closed sitting takes a decision which impose pecuniary sanction for non-compliance with the obligation under Art. 24 of the LPC.

10. The LPC does not envisage special provisions relating to the time limits for the ex officio investigations.

3. Review of mergers that should have been notified but were not

11. When a concentration has been implemented without authorization, the CPC may impose pecuniary sanction for non-compliance with the obligation under Art. 24 or impose relevant remedies under Art. 90 (measures to restore effective competition).

12. The CPC has not had experience with imposing remedies in such situation.

13. For the period 2009-2013 the CPC adopted a total of 10 decisions by which it established infringements of the obligation for prior notification of the concentration in accordance with Art.24 (1 of the LPC) and imposed sanctions to the total amount of 807 172 BGN.

14. In these merger cases the most of the transactions lead only to a change in the quality of control on a lasting basis. The CPC came to the conclusions that the acquiring parties do not operate on their own account or through controlling undertakings on the same markets in which the acquired entities operates. No vertical relations between participants were found nor the presence in closely related neighboring markets. Therefore the CPC did not conduct a detail assessment and imposed high sanctions, because the deals lead only to a change of the control but not to change in the structure of the market and in competition environment.

4. Subsequent Review of Previously Cleared and Consummated Mergers

15. The Commission has only the power to review the implementing of the imposed remedies and may revoke its decision when the parties fail to implement them. The Commission has not improved a merger with remedies after 2008 when the new LPC entered into force. LPC does not apply any rules concerning the post-merger review.