

Unclassified

DAF/COMP/WP3/WD(2016)15

Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

20-May-2016

English - Or. English

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

Working Party No. 3 on Co-operation and Enforcement

JURISDICTIONAL NEXUS IN MERGER CONTROL REGIMES

-- Note by Estonia --

14-15 June 2016

This document reproduces a written contribution from Estonia submitted for Item 5 of the 123rd meeting of the OECD Working Party No. 3 on Co-operation and Enforcement on 14-15 June 2016.

*More documents related to this discussion can be found at
www.oecd.org/daf/competition/jurisdictional-nexus-in-merger-control-regimes.htm*

JT03396362

Complete document available on OLIS in its original format

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

DAF/COMP/WP3/WD(2016)15
Unclassified

English - Or. English

ESTONIA¹

1. In Estonia turnover thresholds are used to determine whether a concentration has to be notified.
2. A concentration shall be subject to control by the Competition Authority if, during the previous financial year, the aggregate turnover in Estonia of the parties to the concentration exceeded 6,000,000 euros and the aggregate turnover in Estonia of each of at least two parties to the concentration exceeded 2,000,000 euros.
3. The current thresholds are in force since 01.01.2015. Before the amendment the relevant turnover thresholds were 6,391,200 euros and 1,917,350 euros. The aim of the amendment was to make the thresholds clearer and less complicated, as the numbers had been calculated according to the exchange rate when Euro became the official currency in Estonia (the thresholds used to be 100 million EEK and 30 million EEK respectively).
4. In addition to the general turnover criteria, there is an additional criterion (the so-called two-year rule, Article 24(7) of the Competition Act), according to which, if, within the preceding two years one and the same undertaking or an undertaking belonging to the same group has acquired control of undertakings or parts of undertakings which operate within one and the same sector of economy in Estonia, the turnover of the undertaking over which control is acquired shall include the turnover of the undertakings over which control has been acquired within the two years preceding concentration.
5. The aim of Article 24(7) is to control concentrations in such economic sectors, where the aggregate turnover of undertakings is relatively small or where there a large number of undertakings with a small turnover. By acquiring control of two or more undertakings it is possible to achieve a dominant position, which significantly restricts competition in an economic sector or a narrower product market.
6. Until 1 July 2006 there were worldwide turnover thresholds applied as notification criteria in Estonia. The concentration was subject to control if:
 - The aggregate worldwide turnover of the parties in the previous financial year exceeded 500 million EEK (approximately 31,9 million euros); and
 - the worldwide turnover of each of at least two parties exceeded 100 million EEK (approximately 6,4 million euros); and
 - the business activities of at least one of the merging undertakings or of the whole or part of the undertaking of which control was acquired were carried out in Estonia.
7. The result of the worldwide turnover criteria was that many concentrations that did not have any impact on the Estonian market were notified (unnecessary burden) and at the same time some important transactions were not caught by the Competition Act.

¹ By Külliki Lugenberg, May 17, 2016.

8. To our opinion the application of the turnover thresholds based on the turnover in Estonia has been justified. In order to set the suitable thresholds, the turnover figures of many Estonian companies were analyzed and based on that analysis, the thresholds were determined.

9. The Estonian Competition Authority does not have a possibility to review mergers that are below notification thresholds (except for the two-year rule described above). There is also no possibility to challenge a concentration that was below notification thresholds.

10. In practice, there have been a few occasions when we have found out about concentration that would potentially restrict competition, but we did not have the competence to review, as the turnover thresholds were not met. Therefore in 2015 a proposal was made to the Ministry of Economic Affairs and Communications to supplement the Competition Act and give the Competition Authority the possibility to request a notification of the concentrations that would potentially significantly restrict competition, even if the turnover thresholds are not met. Until now the proposed amendment of the legislation has not taken place. It should be mentioned that such a possibility to request notification would probably be used on rare occasions only, as the valid turnover thresholds are appropriate to capture the potentially problematic transactions.