

Competition & Antitrust - Cyprus

Cyprus enacts new Concentration Control Law on June 20 2014

Contributed by **L Papaphilippou & Co LLC**

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From September 9 2013 to September 23 2013 the Commission for the Protection of Competition conducted a public consultation on two important draft pieces of legislation: the draft Concentration Control between Undertakings Law 2013 and the draft Protection of Competition (Amending) Law 2013 (for further details please see "[Public consultation on concentration control concludes](#)").

On March 28 2014 the Protection of Competition (Amending) Law 41(I)/2014, which amends the Protection of Competition Law 2008, was published in the *Official Gazette*. The new consolidated legislation is referred to as the Protection of Competition Laws 2008 and 2014 (for further details please see "[Cyprus amends Protection of Competition Law](#)").

The legislative saga concluded on June 20 2014 with the publication in the *Official Gazette* of the Concentration Control between Undertakings Law of 2014 (Law 83(I)/2014), which repealed and replaced the former Concentration Control between Undertakings Law (22(I)/1999).

The new law brings the legislation on concentration control into line with EU law, as shaped by EU Regulation 139/2004. It also satisfies the condition in the updated memorandum of understanding between Cyprus and the 'troika' (the International Monetary Fund, the European Central Bank and the European Commission) that the proposed legislation be put into effect by June 2014.

The main amendments incorporated in the 2014 law are as follows:

- As a cumulative condition for a proposed concentration to be considered a concentration of major importance and for a duty to notify to arise accordingly, at least two of the participating undertakings must generate turnover within Cyprus.
- The updated jurisdictional thresholds giving rise to a concentration of major importance, and hence to the duty to notify, are as follows:
 - The individual aggregate turnover of at least two of the participating undertakings exceeds €3.5 million;
 - At least two of the participating undertakings generate turnover in Cyprus; and
 - At least €3.5 million of the aggregate turnover of all the participating undertakings is generated in Cyprus.
- Even if the above criteria are not met, the minister of energy, commerce, industry and tourism can declare, by means of a reasoned order, that the notified concentration is a concentration of significant public interest due to its potential impact on public safety, plurality of the media or the rules of sound management.
- The obligation to file a notification of concentration within seven calendar days has been abolished. Undertakings with a duty to notify must now file the written notification with the commission before putting the concentration into effect and after signing the relevant agreement or publishing the relevant public offer. It is also possible to file the notification before signing the relevant agreement or publishing the relevant public offer where the criteria set out by the law are satisfied.
- An administrative filing fee of €1,000 must be paid when the notification of concentration is filed.
- An additional administrative fee of €6,000 must be paid before the initiation of a full investigation (ie, a phase two investigation).
- Participating undertakings may withdraw the notification of concentration by filing a withdrawal application with the commission.
- One of the criteria relating to compatibility with the competitive market has been modified. The new criterion provides that a concentration that is likely to hinder significantly competition within Cyprus or a substantial part thereof – particularly as a result of the creation or strengthening of a dominant position – will be declared incompatible with the competitive market.
- When a full investigation is required, participating undertakings will be given the opportunity to make changes to the proposed concentration or commitments to alleviate doubts regarding the compatibility of the proposed concentration with the demands of the competitive market.

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- Hearings may be conducted before the issue of a commission decision regarding the compatibility of the proposed concentration with the demands of the competitive market.
- The commission will cooperate with the European Commission and the national competition authorities of member states, as these are defined in Article 35 of EU Regulation 1/2003, in relation to issues which concern the control of concentrations between undertakings.
- In cases where the particular concentration is also being examined by the competition authority of another member state, the participating undertakings can submit, along with the notification, a voluntary waiver of confidentiality concerning the provision of confidential information or business secrets. This waiver form has been attached as Annex V to the 2014 law.
- In addition to the information required under the former law (22(I)/1999), the notifying parties must provide, within the ambit of the notification, information including:
 - whether the concentration has been notified to other national competition authorities of the member states, if the notifying parties have received approval from such authorities;
 - on the basis of the undertakings' market shares, the HHI index before and after the concentration and the difference between the two deltas and the market share used as the basis for the HHI calculation; and
 - additional information regarding the concentration.
- Further, the undertakings can submit either the original or complete copies of relevant documents as supporting documentation attached to the notification of concentration. The notification and all supporting documents must be submitted in both printed form in duplicate and electronic form.
- The copies of the relevant agreements which are attached as supporting documentation must be duly stamped, unless they have been executed in a country where this is not required by law.
- A standard form of authorisation regarding submission of the notification of concentration before the commission has been included in Annex III to the 2014 law.

On July 7 2014, the commission held a conference dedicated to the revised provisions of the competition laws.

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