

In brief: the key features of merger control legislation in Cyprus

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Legislation and jurisdiction

Relevant legislation and regulators

What is the relevant legislation and who enforces it?

The Control of Concentrations Between Undertakings, Law 83(I) of 2014 (the Law), is the statute regulating the control of concentrations between undertakings in Cyprus.

Enforcement of the legislation rests with the Commission for the Protection of Competition (CPC). The CPC has overall responsibility for implementing the Law and is the competent independent authority for the control of concentrations.

The CPC declares that a concentration is compatible or incompatible with the functioning of competition in the market. The investigation and procedural aspects of the notification of concentrations are implemented by the CPC's civil service (the Service).

Scope of legislation

What kinds of mergers are caught?

The Law is applicable to transactions resulting in a permanent change of control. Such transactions are:

- mergers of two previously independent undertakings or parts thereof; and
- acquisitions by one or more persons already controlling at least one undertaking, or by one or more undertakings, directly or indirectly, whether by purchase of securities or assets, by agreement or otherwise, of control of one or more other undertakings.

What types of joint ventures are caught?

Joint ventures performing all functions of an autonomous economic entity in a permanent manner are caught under the Law.

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

'Control' is defined under the Law as control stemming from any rights, agreements or other means which, either severally or jointly, confer the possibility of exercising decisive influence over an undertaking through:

- ownership or enjoyment rights over the whole or part of the assets of the undertaking; or
- rights or contracts that confer the possibility of decisive influence on the composition, meetings or decisions of the bodies of an undertaking.

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

Transactions caught by merger control constitute concentrations for the purposes of the Law. Nevertheless, only concentrations of major importance must be notified to the CPC.

For the purposes of the Law, a concentration of undertakings is deemed to be of major importance and, therefore, meets the jurisdictional thresholds if:

- the worldwide aggregate turnover achieved by at least two of the undertakings concerned exceeds, in relation to each one of them, €3.5 million;
- at least two of the undertakings concerned achieve a turnover in Cyprus; and
- at least €3.5 million of the aggregate turnover of all undertakings concerned is achieved in Cyprus.

The Law vests the Minister of Energy, Commerce and Industry with the power to declare a concentration as being of major importance even where the thresholds are not met.

Is the filing mandatory or voluntary? If mandatory, do any exceptions exist?

The filing of concentrations of major importance is mandatory.

However, notification is not required in the following cases, where a concentration between undertakings is not deemed to arise:

- a credit or financial institution or an insurance company, the normal activities of which include transactions and dealing in securities on its own account or for the account of third parties, holds on a temporary basis, securities that it has acquired in an undertaking with a view to reselling them, provided that:
 - the institution does not exercise voting rights in respect of those securities with a view to determining the competitive behaviour of that undertaking, or it exercises those voting rights only with a view to facilitating the disposal of all or part of that undertaking or of its assets or the disposal of those securities; and
 - any such disposal takes place within one year of the date of acquisition – a period that can be extended by the CPC on request, where it can be shown that the disposal was not reasonably possible within the period set;
- control is exercised by a person authorised under the legislation relating to liquidation, bankruptcy or any other similar procedure;
- the concentration of undertakings between one or more persons already controlling at least one or more undertakings is carried out by investment companies;
- property is transferred under a will or by intestate devolution; or
- it is a concentration between two or more undertakings, each of which is a subsidiary undertaking of the same entity.

The exemption relating to investment companies, refers to those companies the sole objective of which is to acquire holdings in other undertakings, to manage such holdings and turn them into profit, without involving themselves directly or indirectly in the management of those undertakings.

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

Foreign-to-foreign mergers are caught under the Law. The test as to whether a foreign-to-foreign merger is caught as a concentration of major importance is satisfied where the jurisdictional thresholds are met, with the local effects dimension being the achievement of a turnover of at least two undertakings concerned in Cyprus and the combined Cyprus-achieved turnover of all undertakings concerned is at least €3.5 million.

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

Notwithstanding exceptions in relation to credit and financial institutions or insurance companies, there are no specific rules on foreign investments, special sectors or other approvals.

Law stated date

Correct on

Give the date on which the information above is accurate.

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