

Merger Control in Cyprus: Overview

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A Q&A guide to merger control in Cyprus.

This Q&A is part of the global guide to merger control. Areas covered include the regulatory framework, regulatory authorities, relevant triggering events and thresholds. Also covered are notification requirements, procedures and timetables, publicity and confidentiality, third party rights, substantive tests, remedies, penalties, appeals, joint ventures, inter-agency co-operation, powers of intervention and proposals for reform.

Regulatory Framework

1. What (if any) merger control rules apply to mergers and acquisitions in your jurisdiction? What is the regulatory authority?

Regulatory Framework

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

Regulatory Authority

The Merger Control Law is enforced by the Competition Protection Commission (CPC). The CPC has overall responsibility for implementing the Merger Control Law and is the competent authority for the control of concentrations.

The Merger Control Law empowers the CPC to declare a concentration as compatible or incompatible with the functioning of competition in the market. The investigation and procedural aspects relating to notifications of concentrations are performed by the CPC's civil service (CPC Service).

Triggering Events/Thresholds

2. What are the relevant jurisdictional triggering events/thresholds?

Triggering Events

The Merger Control Law requires notification of transactions that are concentrations of major importance.

Concentrations between undertakings which result in a change of control on a lasting basis are defined under the Merger Control Law as comprising any of the following:

- A merger of two previously independent undertakings or parts of them.
- Acquisitions, by one or more persons that already controls 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.
- Joint ventures performing all functions of an autonomous economic entity on a lasting basis (*see Question 18*).

Where a concentration meets the jurisdictional thresholds, it is considered of major importance and must be notified to and cleared by the CPC prior to its implementation.

Control is defined 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 either:

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

Minority interests are caught by Cyprus merger control where they confer (either severally or jointly with other rights) the possibility of exercising decisive influence over an undertaking. The contractual arrangements arising from the transaction documents and constitutional documents of the target undertaking or joint venture are of tantamount importance in determining whether any rights resulting in a change of control are in place.

De facto control can also satisfy the control test, while the ability to veto certain types of decision could also be deemed to fall within the rights that confer the possibility of exercising decisive influence over an undertaking.

Thresholds

Where a concentration meets the jurisdictional thresholds, it is considered of major importance and must be notified to and cleared by the CPC prior to its implementation.

The jurisdictional thresholds are met where all of the following apply to the transaction:

- The worldwide aggregate turnover of at least two of the concerned undertakings each exceeds EUR3.5 million.
- At least two of the undertakings concerned generate a turnover in Cyprus.

- At least EUR3.5 million of the aggregate turnover of all the undertakings concerned (taken together) is generated in Cyprus.

In an acquisition of sole control, the turnovers of the acquiring undertaking and the target are taken into account in determining whether the jurisdictional thresholds are met. In an acquisition of joint control, the turnover of undertakings acquiring joint control and the target are taken into account.

One party can satisfy the thresholds by itself, provided at least two of the undertakings concerned achieve a turnover in Cyprus.

Turnover includes the amounts arising from the sale of goods and the provision of services during the last financial year, minus discounts, VAT, and other taxes directly applicable to the turnover and excluding internal transactions. Special turnover calculation rules apply in relation to credit institutions and insurance undertakings.

Notification

3. What are the notification requirements for mergers?

Mandatory or Voluntary

Notification is mandatory if the concentration is of major importance (see [Question 2](#)).

However, a concentration is not considered to arise and notification is not required in the following cases:

- Where a credit or financial institution or insurance company (the normal activities of which include transactions and dealing in securities on its own account or for third parties) holds, on a temporary basis, securities that it has acquired in an undertaking with a view to reselling them. This is provided both:
 - the credit or financial 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, its assets, or those securities; and
 - any such disposal takes place within one year of the date of acquisition. This period can be extended by the CPC on request, where it can be shown that the disposal was not reasonably possible within the period initially set.
- Where control is exercised by a person authorised under applicable law in relation to liquidation, bankruptcy, or any other similar procedure.
- Where the concentration is carried out by investment companies, provided that the voting rights in the undertakings concerned are exercised solely to maintain the full value of those investments and not to determine directly or indirectly the competitive conduct of the undertakings concerned.
- Where property is transferred due to death by a will or succession.

- Where the concentration is between two or more undertakings, each of which is a subsidiary of the same entity.

Timing

No specific timeframe is provided in the Merger Control Law for notifying concentrations of major importance. However, concentrations of major importance must be notified in writing to the CPC and cleared before they are implemented.

Notifications typically take place following the conclusion of the contractual documents of the transaction or at the time of the publication of the relevant takeover or acquisition of a controlling interest. The undertakings concerned can also notify a transaction where they can prove to the CPC Service their bona fide intention to enter the transaction.

Pre-Notification and Formal/Informal Guidance

The Merger Control Law does not provide for any pre-notification discussions, nor are any pre-notification discussions binding on the CPC. Generally, it is not typical to engage in pre-notification discussions with the CPC.

Responsibility for Notification

Concentrations of major importance must be notified to the CPC Service in writing, either jointly or separately by the undertakings participating in a merger, in the joint acquisition of control of another undertaking, or the establishment of a joint venture.

In all other cases, the party responsible for notification is the undertaking acquiring control.

Relevant Authority

The notification must be submitted to the CPC Service.

Form of Notification

Concentrations of major importance must be notified to the CPC Service in writing. The notification of a concentration should include the information prescribed in Appendix III to the Merger Control Law. The notification must be made in Greek. The notification must be accompanied by various supporting documents and other information which can be in Greek or English, including but not limited to the following:

- A copy of all final or most recent documents that brought about the concentration either by agreement or following a public bid.
- In the case of a public bid, a copy of the public bid document.
- Copies of the most recent annual reports and audited financial statements of all the undertakings participating in the concentration.
- Copies of reports or analyses prepared for the purposes of the concentration.
- A list and short description of the contents of all analyses, reports, studies, and surveys that were prepared by or for any of the persons responsible for notification for the purpose of evaluating or analysing the proposed concentration in relation to the market and competition conditions.

- Details of the concentration including the nature and scope of the concentration, financial and structural details of the concentration, and details regarding the turnover in Cyprus and the worldwide of each undertaking.
- Details of relationships of ownership and control as between each participant in the concentration and the undertakings connected with it.
- Personal and economic ties as between each group of undertakings and any other undertaking operating within the affected market in which that group holds, among others, at least 10% of the voting rights or shares.
- Description and analysis of the relevant markets.
- Description and analysis of the affected relevant markets.

Filing Fee

Filing fees are fixed by the Merger Control Law at EUR1,000. Where a concentration becomes subject to a full investigation (Phase II), the undertakings concerned are bound to pay a fee of EUR6,000 to the CPC.

Obligation to Suspend

The Merger Control Law expressly prohibits the partial or full implementation of the concentration prior to a clearance by the CPC. Infringement of that prohibition incurs administrative fines.

Where the CPC is carrying out a full investigation (Phase II), a temporary approval of a concentration might be possible if the undertakings concerned can establish to the CPC that they will suffer substantial damage as a result of any additional delay to the implementation of the concentration. However, any temporary approval does not affect the final decision of the CPC and may be accompanied by conditions decided at the discretion of the CPC.

Procedure and Timetable

4. What are the applicable procedures and timetable?

Preliminary Investigation

Within one calendar month of the date the undertaking submits its notification or any additional information necessary for the notification to be considered complete (and following payment of the filing fee), the CPC Service must inform the notifying undertaking whether the concentration is cleared or whether it will proceed to a full investigation.

If, due to the volume of work or complexity of the information contained in the notification, the CPC Service is unable to comply with the one month timeframe, it will, within seven calendar days prior to the lapse of the one-month period, inform the notifying undertaking of an extension of 14 calendar days.

Full Investigation

In a Phase II investigation, the CPC Service prepares a report of its findings to the CPC within three months of the date the undertaking submitted its notification or any additional information necessary for the notification to be considered complete, provided that the relevant filing fee is settled.

The notifying party or parties must be informed of the CPC's decision no later than four months from the date the undertaking submitted its notification or such additional information necessary for the notification to be considered complete.

The CPC Service may, by giving seven days' notice to the notifying undertaking, extend the one-month period within which the notifying undertaking must be informed of a decision of the CPC, by another 14 days. The CPC may, at its discretion, extend the timetable in the context of a Phase II investigation, where any omission on behalf of one or more of the undertakings concerned causes a delay to the discharge by the CPC Service or the CPC of their respective obligations under the Merger Control Law.

A request for additional information necessary for the notification to be considered complete, whether in the context of a Phase I assessment or a Phase II full investigation, has the effect of stopping the clock. When the CPC Service sends such a request, the date on which a response is provided is deemed to reset the timetable (to the extent the request concerned additional information necessary for the notification to be considered complete). The CPC can, if it considers it expedient to do so, carry out negotiations, hearings, or discussions with any of the interested parties or other persons, which would also have the effect of stopping the clock, depending on the circumstances.

For an overview of the notification process, see [Cyprus Merger Notifications Flowchart](#).

Publicity and Confidentiality

5. How much information is made publicly available concerning merger inquiries? Is any information made automatically confidential and is confidentiality available on request?

Publicity

A notice that the CPC has received a notification is published soon after filing, which sets out:

- The date of the filing.
- The names of the undertakings concerned.
- The nature of the act of concentration.
- The relevant economic sectors.

The CPC publishes non-confidential versions of its decisions in the *Official Gazette* and on its [website](#).

Automatic Confidentiality

The CPC and the CPC Service have a statutory duty of confidentiality, infringement of which is a criminal offence punishable with imprisonment up to six months, a fine of up to EUR1,500, or both.

Confidentiality on Request

The notifying party should identify documents, statements, and any material submitted to the CPC in the context of a filing, which the notifying party considers comprise confidential information or business secrets, justifying their view.

The notifying party can request that any part of the CPC's decision remains confidential and be redacted from the final version published by the CPC.

Rights of Third Parties

6. What rights (if any) do third parties have to make representations, access documents or be heard during the course of an investigation?

Representations

Third parties with a legitimate interest may be invited to comment, but only in the event of a full investigation. Parties with a legitimate interest can, on a voluntary basis submit views during any phase of the assessment or may be asked to provide that information by the CPC Service.

The undertakings concerned, or any third parties that may be affected directly by the decision of the CPC, can request to be heard before the CPC, in the context of a hearing.

Document Access

Third parties are entitled to access non-confidential documents (see *Question 5, Automatic Confidentiality and Confidentiality on Request*).

Be Heard

Parties with a legitimate interest in the concentration that may be directly affected by the concentration are granted an opportunity to be heard by the CPC regarding the concentration.

Substantive Test

7. What is the substantive test?

The substantive test is whether the concentration significantly impedes effective competition in the Cyprus market or a substantial part of it, particularly if it has the effect of creating or strengthening a dominant position. When assessing a concentration, the CPC will consider the following criteria:

- The need to maintain and develop conditions of effective competition in the relevant markets, taking into account, among other things:
 - the structure of the affected markets;
 - other markets on which the concentration may have significant effects; and
 - the potential competition on behalf of undertakings within or outside Cyprus.
- The position in the market of the undertakings concerned and undertakings connected to them.
- The financial power of those undertakings.
- The alternative sources of supply of products or services in the affected markets, other markets, or both on which the concentration may have significant effects.
- Any barriers of entry to the affected markets, other markets, or both on which the concentration may have significant effects.
- The interests of the intermediate and end consumers of the relevant products and services.
- The concentration's contribution to technical and economic progress and the possibility of that contribution being in the interest of consumers and not obstructing competition.
- The supply and demand trends for the relevant markets.

In addition, the CPC's assessment takes into account the anti-competitive effects that could potentially arise from the concentration, including any co-ordinated or unilateral effects on the market.

The test and factors to be considered by the competent authority when assessing whether a concentration should be cleared is consistent across all market sectors.

For details of how joint ventures are analysed by the CPC, see [Question 18](#).

8. What, if any, arguments can be used to counter competition issues (efficiencies, customer benefits)?

The undertakings concerned can rely on any arguments they choose to counter any potential competition issues that could be construed as arising as a result of a concentration of major importance. Specifically, the undertakings concerned can submit arguments to the CPC on any of the following, which form part of the criteria that the CPC will take into account when assessing the merger, acquisition, or joint venture:

- The position in the market of the undertakings concerned and undertakings connected to it in a manner prescribed under Appendix II to the Merger Control Law.
- The financial power of the undertakings concerned and those connected to them.
- The alternative sources of supply of products or services in the affected markets or other markets on which the concentration may have significant effects.
- Any barriers of entry to the affected markets or other markets on which the concentration may have significant effects.
- The interests of the intermediate and end consumers of the relevant products and services.
- The contribution to technical and economic progress and whether this contribution may be in the interest of consumers and does not obstruct competition.

9. Is it possible for the merging parties to raise a failing/exiting firm defence?

Although not expressly provided for under the Merger Control Law, the CPC can consider a failing firm defence within the scope of exercising its powers in assessing a concentration, in line with the decisional practice of the European Commission.

Remedies, Penalties, and Appeal

10. What remedies (commitments or undertakings) can be imposed as conditions of clearance to address competition concerns? At what stage of the procedure can they be offered and accepted?

When declaring a concentration compatible with the operation of competition in the market, the CPC can impose conditions or remedies in relation to the implementation of the transaction and therefore has the ability to interfere with the essence of the transaction.

The CPC is required to provide written notifications of any remedies that form part of its decision to the concerned undertakings. For cross-border mergers, the CPC can liaise with the relevant foreign authority in relation to applicable remedies. In addition, any remedies must be limited to those that are reasonably necessary for the protection of the competitive market.

Appendix IV of the Merger Control Law prescribes the form that undertakings concerned should submit in relation to remedies. The CPC accepts both structural and behavioural remedies. If, following its review of the additional information provided to it, the CPC's concerns as to compatibility have not been removed, the CPC Service will commence negotiations with the undertakings in relation to any modifications which may result in the removal of these concerns.

11. What are the penalties for failing to comply with the merger control rules?

In the following cases, the penalties are administrative in nature. However, procedurally they are collected by the CPC as fines imposed by a court in the exercise of its criminal jurisdiction.

Failure to Notify Correctly

While it is mandatory to notify concentrations of major importance under the Merger Control Law, there is no specific sanction for failure to notify. Sanctions relate to implementation of the concentration prior to approval (gun-jumping).

Implementation Before Approval or After Prohibition

Where a concentration is either partially or fully implemented prior to clearance by the CPC, administrative sanctions may be imposed by the CPC.

An administrative fine of up to 10% of the aggregate turnover achieved by the notifying undertaking during the immediately preceding financial year can be imposed on the notifying undertaking for this infringement, which may be followed by additional administrative fines of EUR8,000 for each day the infringement persists.

The CPC also has the power to order the partial or complete dissolution of a concentration that has been implemented before obtaining clearance by the CPC.

Failure to Observe

The CPC can impose fines for:

- Failure to provide information required by an obligation under the Merger Control Law: up to EUR50,000.
- Supplying false or misleading information in the course of complying with an obligation under the Merger Control Law: up to EUR50,000.
- Failure to comply with remedial measures ordered by the CPC: up to 10% of the total turnover of the participants in the financial year immediately preceding the concentration, plus up to EUR8,000 for each day the infringement continues.
- Failure to co-operate with the CPC in carrying out its search and investigative powers: up to EUR17,000 for each day the infringement continues.
- Failure to comply with an order to partially or fully unwind a concentration or take any related measures: up to 10% of the total turnover of the undertakings concerned, plus up to EUR8,000 for each day the infringement persists.

12. Is there a right of appeal against the regulator's decision and what is the applicable procedure? Are rights of appeal available to third parties or only the parties to the decision?

Rights of Appeal

The CPC's decisions are administrative executive acts issued by a public authority. An aggrieved party with a legitimate interest seeking to annul a CPC decision has the right to pursue an appeal as an administrative recourse.

Procedure

Appeals can be filed with the Supreme Court of Cyprus under its administrative review jurisdiction under the provisions of Article 146 of the Constitution. A person must file a recourse within 75 days of having been notified of the CPC's decision.

Third Party Rights of Appeal

Third parties that have a legitimate interest in a CPC's decision have rights of appeal.

Automatic Clearance of Restrictive/Ancillary Provisions

13. If a merger is cleared, are any restrictive or ancillary provisions in the agreements automatically cleared? If they are not automatically cleared, how are they regulated?

If a concentration of major importance is cleared, any agreement that relates to the merger that has fallen under the CPC's scrutiny during the proceedings, which may contain restrictive provisions, for example, non-compete covenants, are also automatically cleared.

Regulation of Specific Industries

14. What industries (if any) are specifically regulated?

Notification is not required where 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. This is subject to the institution:

- Not exercising voting rights for those securities with a view to determining the competitive behaviour of that undertaking.
- Exercising the voting rights only with a view to facilitating the disposal of all or part of that undertaking, its assets, or those securities, and that any such disposal takes place within one year of the date of acquisition. This period can be extended with permission of the CPC.

15. Has the regulatory authority in your jurisdiction issued guidelines or policy on its approach in analysing mergers in a specific industry?

There are no industry-specific guidelines.

Powers of Intervention and Foreign Investment Review

16. What powers does the national government have to intervene in mergers on the grounds of public interest, national security or media plurality?

The competent minister of energy, commerce, and industry (Minister) may declare a concentration notified to the CPC as one of major public interest, as to the effect it may have on the public security, the pluralism of the media, and the principles of sound administration. The Minister can refer to the Council of Ministers a decision issued by the CPC in a concentration which the minister declared as one of major public interest. On that referral from the Minister, the Council of Ministers can approve or disapprove the concentration on grounds of public interest.

17. Are there any post-closing or foreign investment review filing requirements?

A decision of the CPC following a Phase II investigation may be subject to remedies and post-closing filings may be required by the parties to demonstrate adherence to their commitments, in a manner and at the time specified in the CPC's decision. In the same context, post-closing filings may relate to requests to the CPC to grant an extension of deadlines or, in exceptional circumstances, to waive, modify, or substitute the commitments.

While Cyprus has yet to notify investment screening measures under the provisions of the FDI Screening Regulation ((EU) 2019/452) establishing a framework for the screening of foreign direct investments into the EU, it applies in Cyprus and entered into force on 11 October 2020.

In cases of transactions involving acquisitions of real estate by third country nationals (directly or indirectly), leave of the Council of Ministers of the Republic of Cyprus is required.

Supervisory authorities are required to assess and approve the acquisition of qualifying holdings in regulated entities in industries including banking, insurance, financial services, and electronic communications.

Joint Ventures

18. How are joint ventures analysed under competition law?

Fully functional joint ventures are subject to notification to the competent authority.

When assessing whether a joint venture constitutes a concentration that has, as its object or effect, the co-ordination of competitive conduct of undertakings that remain independent, the CPC Service will, in particular, take into account:

- Whether two or more parent companies retain, to a significant extent, activities in the same market as the joint venture or in a market which is downstream or upstream from that of the joint venture or in a neighbouring market closely related to this market.
- Whether the co-ordination that directly emanates from the creation of the joint venture provides the undertakings concerned with the ability to eliminate competition for a substantial part of the relevant products or services.

While the Merger Control Law is silent in this regard, the CPC's approach and analysis of harm is substantially aligned with the respective approach of the European Commission.

The decisional practice of the CPC has followed the Court of Justice of the European Union (*Austria Asphalt GmbH & Co OG v Bundeskartellamt*, (Case C-248/16) EU:C:2017:643). Therefore, where there is a change from sole to joint control over an existing undertaking, a concentration will only arise when the resulting joint venture performs, on a lasting basis, all the functions of an autonomous economic entity.

A joint venture that is genuinely fully functional must be able to operate independently of its parents on an identifiable market. To do so, the joint venture must have a management dedicated to its day-to-day operations and access to sufficient resources including finance, staff, and assets (tangible and intangible) to conduct its business activities on a lasting basis.

Inter-Agency Co-Operation

19. Does the regulatory authority in your jurisdiction co-operate with regulatory authorities in other jurisdictions in relation to merger investigations? If so, what is the legal basis for and extent of co-operation (in particular, in relation to the exchange of information, remedies/settlements)?

The CPC co-operates with the European Commission and the national competition authorities in other EU member states on the basis of the system of parallel competences and the exchange of views and information between them through the European Competition Network.

Recent Mergers, Cases, Trends, and Statistics

20. What notable recent developments, trends or notable recent mergers or proposed mergers have been reviewed by the regulatory authority in your jurisdiction and why is it notable? Are there any statistics published on annual merger reviews conducted in the jurisdiction?

Information exchange has been a recent focus of the CPC. The CPC has demonstrated a heightened awareness regarding the ability of undertakings controlling a joint venture to acquire business secrets through the joint venture in a manner which could distort competition in the markets in which the controlling undertakings operate.

Additional Information and Proposals for Reform

21. Are there any proposals for reform concerning merger control?

There are no plans to reform the merger control framework at present.

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