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CYPRUS

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Combating cartels - the leniency program in Cyprus

The determination of the Cyprus Commission for the Protection of Competition (the CPC) in combating cartels is reflected in the fines the CPC has been imposing in cartel cases.

In a recent case, the CPC was investigating two colluding pay-tv service providers. It was later established that these providers had entered into an anticompetitive agreement for the licensing of movies and local sports broadcast channels. After finding that the parties involved had engaged in anticompetitive practices: being culpable of exchanging strategic information which enabled them to fix future prices, limit the market and share sources of supply, the CPC imposed the highest fine justified in the circumstances.

Another notable example of this aggressive approach of the CPC is the heavy fine imposed by the CPC on several oil trading companies. This was the biggest fine in the history of the CPC after it found that the companies had been fixing fuel prices and were concluding agreements with their resellers on that basis.

The heavier fines the CPC has been imposing aim not only to deter cartel formation, but also serve as the starting point to disband existing cartels. There is empirical data suggesting that the increased focus on combating cartels and the heavy fines in cartel cases will, in combination with the leniency program, incentivise entities participating in cartels to come clean and become informants,

safe in the knowledge that they will be allowed to take advantage of the leniency program.

The leniency program in Cyprus mirrors that of most other EU competition authorities by empowering the CPC to offer reduced fines or even grant immunity to cartel participants who provide information.

To date there have been no leniency program applications made to the CPC and there is, therefore, no precedent on how the CPC intends to administer its leniency policy.

Nevertheless, given the emphasis on combating cartels, the Cyprus leniency program is expected to start playing a much greater role in the coming months.



GREECE

M&P BERNITSAS
LAW OFFICES

Procedural modernization of Greek competition law - new settlement procedure for cartel investigations

In line with the relevant EU law, the Hellenic Competition Commission (HCC) adopted a settlement procedure exclusively for horizontal infringements of art 1 of the Greek Competition Act (Law 3959/2011) and/or art 101 of the Treaty on the Functioning of the EU (TFEU). This was initiated for the first time in the construction companies' cartel case (ongoing at the time of writing of this article). In particular, by way of its decision 628/2016, the HCC has set out the terms and conditions of the settlement procedure in cartel cases, the cornerstones of which are as follows:

- it aims to speed up the handling of pending cases through a streamlined administrative process;

- the HCC enjoys full discretion in determining whether a case is suitable for settlement;
- settlement discussions may commence on the undertakings' initiative at any stage of the investigation or within a specific time-frame after a statement of objections has been served to the undertakings concerned;
- bilateral meetings between the HCC and each interested undertaking take place, during which necessary information regarding the case is disclosed;
- an explicit and unequivocal acknowledgment of participation in the cartel and of the resulting liability is a prerequisite for undertakings that wish to settle the case with the HCC, as well as a waiver of their right to challenge the

HCC's competence and the validity of the procedure followed;

- as part of a successful settlement, interested parties must also waive their right to further or full access to the case file as well as their right to an oral hearing before the HCC;
- undertakings may obtain a reduction of 15% on the fine imposed under the HCC's current guidelines on fines, but must accept the maximum amount of the fine that may be imposed as part of the settlement process;
- confidentiality covers the cartel settlement discussions and information exchanged; and
- the new settlement procedure may be combined with the leniency program.

BYRNE
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IRELAND

Competition enforcement trends - the consumer focus

Merger control continues to be a key feature of competition enforcement in Ireland since the amalgamation of the competition and consumer regulatory bodies in late 2014. A total of 67 mergers were notified to Ireland's new Competition and Consumer Protection Commission (CCPC) during 2016. While 78 notifications were submitted in 2015, the year 2016 saw a significant increase in the number of notifications from previous years. A lowering of the notification thresholds in late 2014 has increased the number of smaller transactions being caught by the regime, in particular, in notifiable property transactions that don't raise *prima facie* competition concerns.¹ The addi-

¹ <https://byrnewallace.com/assets/components/uploads/Merger%20Control%20Update%20December%202016.pdf>

tion of the consumer arm to Ireland's National Competition Authority has also seen an increase in its focus on consumer issues.

As in previous years, the vast majority of transactions were cleared within the 30 working day Phase 1 time-line. Two mergers were approved subject to conditions, with one of these going to a full Phase 2 investigation. The year 2016 saw a continuing trend in the CCPC analysing localised geographic markets, focusing on consumer-facing industries such as hospitality, retail, motor fuel and waste services sectors.

In one transaction, the purchaser committed to divest itself of some of the target's customers, where the parties to the transaction overlapped in the provision of domestic waste services. The long review period for this merger

was due, in part, to a focus on the consumer-facing aspects of both the transactions and the remedies proposed by the parties.

Separate rules apply to media mergers in Ireland which require separate, consecutive filings to the CCPC and then to the Minister for Communications. Five such mergers were notified in 2016.

An increased consumer focus can also be seen in other recent enforcement activities of the CCPC, such as in its investigation into the sale of tickets for live events and into the motor insurance industry.

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NORWAY

Merger below thresholds blocked

The Norwegian Competition Authority (NCA) recently blocked a concentration which did not fulfil the turnover thresholds that trigger mandatory merger control filing in a case where the target had a turnover of no more than € 10m.

In Norway, merger notifications are only mandatory if the parties to the concentration have a combined turnover of more than NOK 1bn (€ 110m) and both parties achieve a turnover of more than NOK 100m (€ 11m) in Norway. The higher thresholds introduced in 2014 have led to a significant decrease in merger notifications.

The NCA is, however, also competent to order the parties to notify mergers below the thresholds. In ad-

dition, it may order the parties to file a notification in cases where control is not acquired (minority shareholdings). Such orders may be issued :

- if the NCA has reasons to believe that competition will be impeded, or
- if 'particular reasons' require further investigations.

Such orders have to be issued no later than three months after the conclusion of the agreement or transfer of holdings.

In a recent decision the NCA barred the takeover of a forestry company by a competitor after ordering notification by the acquirer – AT Skog. The target was NEG Skog, a smaller local competitor. AT Skog's turnover

was NOK 536m (€ 59,5m) and the target's turnover was NOK 95m (€ 10,5m) – well below the thresholds. The NCA defined the relevant geographic market narrowly due to high transportation costs and concluded that the transaction would lead to the impediment of competition in the relevant product market for timber. The case is yet another example of the NCA's enforcement practice in what it considers regional markets.

In another decision involving the same acquirer, the NCA ordered AT Skog to notify the acquisition of a 34 per cent shareholding in SB Skog. The transaction was eventually cleared, but shows that the NCA also scrutinises minority shareholdings.



PORTUGAL

PLMJ SOCIEDADE DE ADVOGADOS, RL

The Portuguese Competition Authority - recent updates

The Competition, Regulation and Supervision Court (Competition Court) has recently confirmed the full amount of a fine of € 150,000 that had been applied by the Portuguese Competition Authority (PCA) to Peugeot Portugal, for alleged provision of false, inaccurate or incomplete information in reply to a request for information by the PCA in using its sanctioning powers.

The Competition Court has also confirmed the prohibition on the concentration that involved the acquisition of joint control of the company Arriva Transportes da Margem Sul by the Arriva and Barraqueiro groups. The PCA blocked the concentration because it reduced from two to one the number of actual competitors in the market of public transport by road

and rail on the Lisbon/Setúbal route.

The Lisbon Court of Appeal ordered the lifting of the suspension of a banking case as it ruled that appeals against interlocutory decisions of the PCA do not have suspending effects. The PCA has the green light to go ahead with the investigation into an alleged concerted practice in the offer of credit products in retail banking by 15 banking institutions.

The PCA recently published a guide to promote competition for associations of undertakings. These guidelines do not have the force of law, but only establish the PCA's interpretation of competition law when applied to associations of undertakings.

The PCA applied a fine of € 160,000 to Firmo Papéis e Papelarias for alleged concerted practices in the office sup-

plies sector. The PCA's investigation found that five companies acted in a concerted manner in the market, sharing clients, fixing prices and manipulating tenders to supply envelopes.

The PCA decided to move on to a Phase II investigation into the concentration which consists of the acquisition by SIBS from Unicre of the assets that form part of the service to support acceptance, by third parties, of card payments at points of sale (merchant acquiring), which operates under the Redunicre brand.

Finally, the economist Margarida Matos Rosa took up her position as president of the PCA at the end of November 2016.



UKRAINE

Asters

Ukrainian Competition Authority clarifies approach to assessment of horizontal mergers

On 27 December 2016 the Ukrainian Antimonopoly Committee (the AMC) clarified its approach to the assessment of concentrations between actual or potential competitors by issuing recommendatory guidelines on the issue (the Horizontal Merger Guidelines).

The document streamlines the framework of the authority's analysis in merger cases: it explains step-by-step what factors are taken into account during the review and what type of provisional considerations lead to the ultimate decision. Adoption of these guidelines is another element of Ukrainian merger control reform (following the revision of notifiability thresholds and merger review procedure) aimed to simplify the whole process and make it more predictable for the filers.

When assessing the concentration, the AMC will start with the analysis of the parties' market shares and concentration levels (using the Herfindahl-Hirschman Index as a proxy), adjusting it by taking into account special circumstances, such as the mergers with potential or recent entrants, important innovators, cross-price elasticity of the products involved, diversion ratios, etc. Then, the authority will estimate whether the merger leads to unilateral or coordinated anticompetitive effects and analyze countervailing factors (such as buyer power, market entry circumstances and whether the target qualifies for a failing firm).

While the Horizontal Merger Guidelines generally replicate the EU Guidelines on the assessment of hor-

izontal mergers, in practice the AMC approach may differ. In particular, unfavourable interpretation of the rules defining the market(s) that are under analysis theoretically allows the authority to request market share data with respect to non-relevant markets. Also, the document does not specifically discuss efficiencies among countervailing factors; so, while these arguments may still be considered by the authority, they will unlikely play a decisive role in the assessment.

The AMC intends to continue work on the guidelines further adjusting its techniques in assessing the effects of a merger with the EU approach on the issue.



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