

Merger Control

The international regulation of mergers and joint ventures in 75 jurisdictions worldwide

2014

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Legislation and jurisdiction

1 What is the relevant legislation and who enforces it?

The statutory act setting out the legal framework for merger control is the Law on the Protection of Competition (LPC) (promulgated on 28 November 2008 and effective as of 2 December 2008). The LPC aims to harmonise the domestic regulatory framework with Council Regulation No. 1/2003 and Council Regulation No. 139/2004.

Primary responsibility for enforcement of the LPC rests with the Commission for Protection of Competition (the Commission) an independent state body consisting of seven members, elected by Parliament for a term of five years. The Commission has decision-making powers with regard to the investigation, grant of approval or blocking of concentrations. The LPC grants to the CPC broader investigative powers to impose structural and behavioural remedies required to restore effective competition or to impose commitments on undertakings or both.

Further information about the Commission and its activities can be found on its website, www.cpc.bg.

The regulatory framework is supplemented by secondary legislation issued by the Commission, including: the Methodology on Investigation and Assessment of the Market Position of Undertakings in the Relevant Markets (the Methodology); the Methodology for Setting of Fines under the LPC; the Merger Notification and Procedures Guidelines (Notification Guidelines) and the concentrations notification form; the Rules on Imposition of Remedies for Preservation of Effective Competition in Merger Cases and remedies proposing form, etc.

2 What kinds of mergers are caught?

The LPC applies to the following types of transactions:

- mergers of two or more independent companies;
- acquisitions of control over a company by persons who already control one or more other companies; and
- the creation of a full-function joint venture company.

The following are not considered notifiable concentrations:

- portfolio investments made by banks, non-banking financial institutions and insurance companies, provided that those institutions do not exercise their voting rights to influence the competitive behaviour of the company, and only if the investment has been made with a view of preparing the disposal of the equity interest within one year of the date of acquisition;
- exercise of control by a trustee or liquidator of a company; and
- exercise of control by a financial holding company with the sole purpose of maintaining the full value of the investment in the subsidiary.

3 What types of joint ventures are caught?

The LPC treats as a concentration the creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity. Accordingly, a concentration will be found if the establishment of a joint venture leads to long-lasting changes in the structure of the controlling undertakings – that is, the parent companies should transfer to the joint venture the whole activity related to, or respectively retain only a minimal presence on, the relevant market.

A joint venture is not full-function where it does not operate independently from its parent companies and/or it is established to carry out a particular function supporting the business of its parent companies without independent access to the market. Generally, the creation of such joint venture does not involve long-lasting changes in the structure of the parent companies or in their respective activities on the relevant market and therefore is not treated as a concentration.

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

Control, within the meaning of the LPC, may be acquired by way of obtaining legal rights, entering into contracts, or in any other way that, either separately or jointly, and having in mind considerations of fact or law, provides for the exercise of decisive influence over an undertaking, in particular by:

- the acquisition of the title of, or right to use, all or part of the assets of an undertaking; or
- the acquisition of the rights or the conclusion of contracts that confer a decisive influence with regard to the composition, exercise of voting rights and the decisions of the organs of an undertaking.

The Commission has further specified that a shareholder would exercise control where such shareholder:

- owns more than half of the share capital or assets of an undertaking;
- has the right to exercise more than half of the votes of an undertaking;
- has the power to appoint more than half of the members of the management bodies of an undertaking;
- has the power to appoint the legal representative of an undertaking; or
- has the right to otherwise manage an undertaking.

The Commission has explicitly stated that a minority shareholder can exercise control, provided that such shareholder's equity interest entitles it to exercise decisive influence over the competitive behaviour of an undertaking. To establish whether the decisive influence

test is met, the Commission would look at considerations of fact and law, such as rights provided by the charter or other corporate documents, shareholders' or other agreements. The Guidelines and the case law of the Commission have adopted the test provided by the EC Jurisdictional Notice to determine which veto rights of a minority shareholder should be considered to confer joint control over an undertaking and which are normally accorded to minority shareholders to protect their financial interests and do not relate to strategic decisions on the business policy of the joint venture.

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

Concentrations between undertakings are subject to mandatory pre-merger notification where:

- the joint turnover of all undertakings concerned in Bulgaria for the year preceding the year of the concentration exceeds 25 million levs; and
- the turnover of each one of at least two of the undertakings concerned in Bulgaria for the year preceding the year of the concentration exceeds 3 million levs or the turnover of the target in Bulgaria for the year preceding the year of the concentration exceeds 3 million levs.

Transactions falling below these thresholds are not subject to merger control assessment and do not need to be notified. The Commission may investigate such transactions only if it finds other legal grounds to do so (eg, prohibited agreements).

For the purpose of turnover calculation the Commission would take into account the entire turnover of the undertakings concerned in Bulgaria. When an undertaking belongs to a group of companies, the Bulgarian turnover of the group as a whole must be taken into account. In this respect, the Commission applies criteria analogous to the ones provided by article 5(4) of Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings (ECMR).

Turnover figures are calculated on the basis of revenues from sales of products and services derived during the financial year preceding the concentration. When the concentration involves acquisition of control over part of one or more undertakings, regardless of whether or not such part constitutes an independent legal entity, only the turnover of the respective part that is subject to acquisition shall be taken into account.

Similar to the rule of article 5(3) of the ECMR, in concentrations of banks and non-banking financial institutions, turnover figures shall be calculated on the basis of income according to the financial statements for the last financial year after deducting all taxes. The turnover of insurance companies is calculated on the basis of insurance premiums, less all taxes, statutory contributions and fees.

So far the Commission has not referred any case below the above thresholds to the European Commission.

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

Filing is mandatory, provided that the jurisdictional threshold has been met. There are neither exemptions from filing nor simplified notifications or fast-track proceedings.

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

The LPC applies to all undertakings engaging in business activities in Bulgaria, or outside its territory, if such undertakings explicitly or tacitly impede, restrain, limit or are in a position to impede, restrain, or limit competition within the territory of Bulgaria. Foreign-to-

foreign mergers are therefore caught, provided that they realise turnover in Bulgaria and meet the jurisdictional threshold discussed in question 5.

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

There are no special rules for merger control that apply to foreign investment. However, as noted above, the Commission may view the fact that a certain transaction attracts foreign investment as a positive result to be weighed against the potential negative impact associated with the establishment or strengthening of a dominant position.

In some sectors there are special regulations that would apply to mergers and acquisitions in addition to the merger control rules of the LPC. The Law on Credit Institutions and the Insurance Code, for example, require approval by the respective regulatory authority for acquisitions of stakes in banks and insurance companies exceeding certain statutory levels. The Law on Public Offering of Securities requires the disclosure of interests in listed companies. Further sector-specific regimes regulate telecommunications and energy, where operators act under licence. In the energy sector in particular the respective regulatory authority is vested with the power to authorise any transfer assets with which the licensed activity is being carried. Similarly, as a matter of practice, state and municipal authorities that privatise public assets impose an obligation on the buyer that the subsequent transfer of shares of privatised enterprises executed within a certain period of time may take place only with the prior approval of the respective privatisation authority.

Notification and clearance timetable

- 9 What are the deadlines for filing? Are there sanctions for not filing and are they applied in practice?

The LPC establishes a pre-merger notification system. Undertakings must notify following the execution of an agreement, public announcement of the tender offer or acquisition but prior to the implementation of the transaction. In certain cases, and upon the request of the notifying party, the Commission may initiate an investigation prior to the execution of an agreement or public announcement of the tender offer, provided that the notifying undertakings present sufficient evidence demonstrating their intent to execute the respective agreement or where they have made public their intent to accept a tender offer.

The Commission may impose on undertakings acquiring control fines of up to 10 per cent of their total turnover for failure to notify a notifiable concentration. Together with the decision imposing a fine for filing violations, the Commission may also order adequate measures to preserve effective competition. This may include an order for divestment of the combined capital, shares or assets, and an order for termination of joint control.

The Commission has a record of imposing pecuniary penalties for filing violations. The constant practice of the Commission is to impose sanctions on the undertakings concerned for failure to notify a notifiable concentration, even where the transaction is cleared in the same proceedings. The enforcement record of the Commission so far shows that sanctions are imposed in the context of both domestic and foreign-to-foreign concentrations.

- 10 Who is responsible for filing and are filing fees required?

In cases of acquisition of control, the obligation to notify rests with the entity acquiring control. In mergers and cases involving the establishment of joint ventures, the filing must be made by all the undertakings concerned – direct participants in the merger and shareholders in the joint venture.

A two-tier fee system in merger control proceedings, consisting of a flat filing fee of 2,000 levs, payable at the time of filing, and a

clearance fee, payable in the event that the concentration is approved. The clearance fee is equal to the amount equivalent to 0.1 per cent of the combined turnover of the undertakings concerned in Bulgaria, with a cap of 60,000 levs. No clearance fee is due where the Commission finds that the notified transaction does not constitute a concentration within the meaning of the LPC, or where the Commission blocks the concentration.

11 What are the waiting periods and does implementation of the transaction have to be suspended prior to clearance?

The undertakings concerned are under an obligation to suspend implementation until receipt of clearance by the Commission. The suspension obligation applies to both Phase I and Phase II investigations. Exceptions are provided for certain transactions that take place on a regulated stock exchange.

The LPC does not explicitly address the question of whether in the context of foreign-to-foreign concentrations, foreign closing prior to Bulgarian merger control clearance would constitute a breach of the LPC. To date, the Commission has not objected to undertakings by parties that early closing outside Bulgaria is made subject to local suspension until Bulgarian merger control approval has been obtained.

12 What are the possible sanctions involved in closing before clearance and are they applied in practice?

See question 9. Parties that implement a transaction prior to clearance run the risk of the Commission subsequently blocking the concentration, or attaching conditions or obligations to the approval. Failure of the parties to comply with such a decision of the Commission carries a penalty in the amount of up to 10 per cent of the total turnover of the undertakings acquiring control. Apart from monetary sanctions, closing prior to merger control clearance may result in an order by the Commission for the restitution of the pre-merger status, including restitution by way of divestment of the combined capital, shares and assets or termination of joint control.

We are not aware of any recent measures undertaken or sanctions imposed by the Commission to undertakings for violation of the suspension obligation.

13 Are sanctions applied in cases involving closing before clearance in foreign-to-foreign mergers?

As mentioned in the answer to question 9, the Commission does impose sanctions on the undertakings concerned for failure to notify a notifiable transaction both for domestic and foreign-to-foreign concentrations.

For example, the CPC has on one occasion imposed a penalty for failure to notify a foreign-to-foreign transaction (the penalty under the revoked LPC was in the amount of €36,000). However, there are no penalties imposed by the CPC on companies for failure to notify a notifiable transaction in cases where the target had no operations in Bulgaria.

In another foreign-to-foreign transaction the CPC demanded a notification from undertakings, which did not intend to notify the CPC with regard to their proposed concentration. Since the notification was filed by the parties before closing of the transaction the CPC gave an unconditional clearance to the transaction without imposition of penalties for filing violations.

14 What solutions might be acceptable to permit closing before clearance in a foreign-to-foreign merger?

So far the Commission has never blocked a foreign-to-foreign merger, however, it has ordered measures to remedy local issues in foreign-to-foreign mergers.

Divestiture or hold-separate undertakings could possibly be applied where the participants have a local corporate presence and the transaction entails a local transfer of shares or assets. In cases where the participants do not have a local corporate presence, the Commission may seek to remedy the negative effects associated with post-concentration integration of distribution or supply networks, or both, by requiring arm's-length dealing or the provision of access to competitors.

15 Are there any special merger control rules applicable to public takeover bids?

The LPC does not envisage any special merger control rules applicable to public takeover bids, save for the exception concerning suspension obligation. As discussed in question 11, the obligation to suspend the implementation of the transaction until a clearance is granted shall not apply in cases of acquisition of control by means of a public tender offer or series of transactions with securities admitted for trade on regulated markets in financial instruments, where the acquiring control person or entity acquires the securities from different sellers, provided that the Commission has been notified without delay for the transaction and the acquirer does not exercise its voting rights save for preserving the value of the initial investment.

16 What is the level of detail required in the preparation of a filing?

The LPC and the Notification Guidelines require that a pre-merger notification contains detailed information about the undertakings concerned; the legal and economic structure of the concentration; the relevant markets; the companies over which the undertakings concerned exercise control; the joint market share and joint turnover of the undertakings concerned; market entry barriers; the principal competitors, suppliers and customers of the undertakings concerned; and written explanations as to whether the proposed concentration raises serious concerns that it will create or strengthen a dominant position on the relevant markets.

In addition to the submission of a notification containing all the necessary information listed above, the Commission requires the submission of a number of supporting documents, including documents relating to the personal and corporate status of the undertakings concerned, financial statements from the year preceding the concentration, business plans and other documents pertaining to the contemplated transaction. Where the documents are in a language other than Bulgarian, such documents have to be supplied with a certified Bulgarian translation. Official documents issued by non-Bulgarian authorities need to be legalised in accordance with the applicable rules.

The Commission will not declare a notification complete and initiate review proceedings until it is satisfied that all relevant supporting documents have been submitted.

17 What is the timetable for clearance and can it be speeded up?

The Commission should register a notification within three days of submission, provided that the notification is complete. Upon registration of the notification, the Commission has 25 business days to complete an accelerated (Phase I) investigation. The review period will be suspended where additional information is needed until it is furnished. Notifying undertakings may request for an extension of up to 10 business days in order to contemplate proposals for change in the structure of the concentration, propose remedies, or both. Where the notifying undertakings have made such proposals, the deadline for review will automatically be extended by an additional 10 business days to allow assessment of the proposed changes by the Commission, regardless of whether the deadline has already been extended upon the request of the notifying undertakings.

Upon the completion of the investigation the Commission in a closed session may issue any of the following decisions:

- declare that the proposed concentration does not fall within the scope of the merger control rules of the LPC;
- approve the concentration;
- approve the concentration subject to structural changes offered by the notifying undertakings; or
- initiate a full scope (Phase II) investigation.

A Phase II investigation would be initiated where the proposed concentration raises serious concerns that it will create or strengthen a dominant position, and that the effective competition on the relevant markets will be impeded, restricted or otherwise limited. The Commission has a four-month period to complete the investigation and issue a decision. The term may be extended by 25 business days in cases of factual and legal complexity, and by an additional 15 business days where approval by the Commission is made subject to commitments and remedies.

Upon the collection of sufficient information for the assessment of the proposed concentration the Commission holds a closed session where it may either grant an approval to the concentration or adopt a statement of objections. If a statement of objections is adopted the notifying undertakings and third parties, which may be constituted as parties in a Phase II investigation, would be given not less than 14 days to review the collected materials and evidence by the Commission and to submit a written statement. The Commission would then hold a public hearing with the participation of the notifying undertakings and other parties to the proceedings. By such decision the Commission may:

- approve the concentration;
- approve the concentration subject to remedies and conditions; or
- block the concentration.

The Commission usually makes use of the whole review period to complete Phase I investigations.

18 What are the typical steps and different phases of the investigation?

Following the submission of the notification to the Commission, the chairperson appoints a member of the Commission as a supervising member, who is primarily responsible for the respective case. The supervising member is assisted by a case handler and a case team from the Commission administration. In conducting the investigation the primary sources of information used by the Commission are state agencies, such as the National Statistics Institute, customs and administrative authorities, public registries, and so on. The Commission would also contact and collect information from third parties such as customers, suppliers, competitors, distributors, and professional and trade associations.

The Commission has broad investigative powers to order the submission of documents, agreements and information. It may request written and oral explanations and documents from the participants on the market. Individuals and legal entities, including undertakings, associations of undertakings, governmental and local authorities are under obligation to cooperate with the Commission. In merger control investigations the Commission has the authority to conduct dawn raids pursuant to an authorisation from the Sofia Administrative Court. In the context of ECMR, the Commission may request information and cooperation from the European Commission and from the other national competition authorities.

Substantive assessment

19 What is the substantive test for clearance?

The substantive test for assessment under the LPC is whether the concentration will result in the establishment or strengthening of

dominant position, which would significantly impede competition on the relevant markets. The LPC does not provide for specific market share thresholds regarding the existence of dominant position.

Pursuant to the LPC an undertaking shall be considered dominant if such undertaking, in view of its market share, financial resources, access to the market, technological level and business relations with other undertakings, may hinder competition within the relevant market due to being independent of its competitors, suppliers or customers. However, the methodology seems to establish a presumption that combined market share of less than 15 per cent on the relevant market where the undertakings concerned are competitors and market share of less than 25 per cent on the respective relevant markets where the undertakings concerned are not competitors may not impede or restrict competition. The methodology further suggests that market share of less than 40 per cent is unlikely to impede or restrict competition.

The Commission, however, has the discretion to approve a concentration that leads to the establishment or strengthening of a dominant position, if it is expected to result in positive effects that would outweigh on balance the negative impact. Such positive effects should relate to the modernisation of a business, the structural improvement of the market and better satisfaction of the interests of consumers.

20 Is there a special substantive test for joint ventures?

No, the LPC has not established, and the Commission has not developed, a special test for joint ventures.

21 What are the 'theories of harm' that the authorities will investigate?

The LPC defines a dominant position as the position of an undertaking which, with view of its market share, financial resources, access to the market, technological level of development and business relations with other enterprises, can hinder the competition on the respective market, because such enterprise is independent from its competitors, suppliers or customers. Nevertheless, the Commission has authorised concentrations where one of the undertakings concerned has already enjoyed a dominant position in the relevant market prior to the transaction and the other undertaking has no, or an insignificant, market share, thus the concentration would not lead to a de facto change in the market structure.

The Commission would also investigate the possibility for coordinated or conglomerate effects, or both, even where the relevant market itself is not characterised by an oligopoly structure. Particular attention is paid to the number of competitors on the market and their market power, from which the Commission usually draws inferences as to potential disciplinary effects on the undertakings concerned.

22 To what extent are non-competition issues (such as industrial policy or public interest issues) relevant in the review process?

The LPC provides an opportunity, and the Commission does occasionally consider, broader policy considerations, in particular when it weighs the positive effects of a concentration against the negative impact associated with the establishment or strengthening of a dominant position (see question 19).

23 To what extent does the authority take into account economic efficiencies in the review process?

The Commission considers all possible effects (positive and negative) when assessing a concentration. It may approve a concentration if the benefits (as a whole) of such concentration on balance outweigh the negative impact associated with the establishment or strengthening of a dominant position. In a number of cases, the Commission has

taken into account the economic efficiencies of the proposed concentration and has based its decisions on such considerations, despite the relatively high market shares of the undertakings concerned.

Remedies and ancillary restraints

24 What powers do the authorities have to prohibit or otherwise interfere with a transaction?

The Commission may block the concentration, approve the concentration subject to remedies and conditions or impose pecuniary sanctions. The Commission may impose on undertakings acquiring control fines in the amount of up to 10 per cent of their total turnover for, inter alia, the following violations of the LPC:

- failure to notify a notifiable concentration, or non-compliance with remedies imposed with a decision of the Commission;
- implementation of a concentration that has been blocked by the Commission;
- early implementation of a concentration in violation of the suspension obligation; or
- non-compliance with a decision of the Commission.

Together with a decision imposing a fine for merger control violations, the Commission may also order adequate measures to preserve effective competition.

Periodic penalty payments

The Commission may impose on undertakings periodic penalty payments of up to 5 per cent of their average daily turnover for each day of delay to comply with or implement an order or decision of the Commission:

- for termination of an infringement, including where behavioural or structural remedies are imposed; or
- for approval of commitments and remedies.

The Commission may impose on undertakings periodic penalty payments of up to 1 per cent of their average daily turnover for each day of delay following the expiry of the deadline provided by the Commission, where undertakings fail to provide assistance to the Commission, or where undertakings fail to provide information or provide incomplete or misleading information to the Commission, or where undertakings obstruct a dawn raid.

Penalties for individuals

The Commission does not provide for criminal sanctions. However, individuals who assisted the commitment of a violation of the Commission's orders, where such behaviour does not qualify as a crime, may receive a penalty of up to 50,000 levs. Individuals who fail to assist an investigation of the Commission may receive a fine of up to 25,000 levs.

25 Is it possible to remedy competition issues, for example by giving divestment undertakings or behavioural remedies?

The Commission may attach conditions or obligations to its clearance decision, provided that such remedies are directly related to the implementation of the concentration, and that they are strictly aimed at guaranteeing the preservation of competition in the affected market. Unlike EU competition law, where only the participants in the concentration may offer undertakings, the LPC provides that the Commission may also unilaterally impose remedies for elimination of the competition concerns on the respective relevant markets. During a Phase I investigation the Commission may approve commitments offered by the notifying undertakings. During a Phase II investigation the Commission may approve proposed remedies and may devise and impose remedies on its own initiative.

The Commission has not yet accepted or devised remedies under the currently effective LPC. Examples of the imposition of structural

remedies before the end of 2008 under the abolished Law on Protection of Competition (abolished LPC) were rare.

The Commission has applied behavioural remedies, including, inter alia, conditions that the undertakings concerned would:

- preserve certain lines of supply over a specific period of time upon implementation of the concentration;
- discontinue manufacturing of certain products by the target;
- preserve certain assets for a specified period of time and ensure the arm's-length access of competitors or customers to an essential facility;
- ensure that clients will have continuing non-discriminatory access to services, which are not tied in service packages;
- make certain investments in the target; or
- not apply certain types of rebates in dealing with customers.

26 What are the basic conditions and timing issues applicable to a divestment or other remedy?

In contrast to the ECMR, the LPC does not envisage a final deadline for the parties to propose commitments modifying the concentration. However, having in mind the specified deadlines for Phase II investigation, as well as the time period required by the Commission to assess the proposed commitments it could be reasonably concluded that the parties shall submit such commitments before the public hearing with the participation of the notifying undertakings.

Whenever remedies are imposed, the Commission retains continuous jurisdiction, determines the deadlines for their implementation and monitors their implementation. The Commission decisions ordering discontinuation of an infringement, including through imposition of structural and behavioural remedies, are subject to prompt implementation.

27 What is the track record of the authority in requiring remedies in foreign-to-foreign mergers?

So far the Commission has required specific undertakings in only one foreign-to-foreign merger in 2005. As the concentration in that case was related to a possibility for market foreclosure due to control over a package of intellectual property rights, the Commission authorised the transaction on the condition that the undertakings concerned should transfer several of the intellectual property rights to third parties.

28 In what circumstances will the clearance decision cover related arrangements (ancillary restrictions)?

No specific rules are envisaged in the LPC or the Guidelines in this regard and the practice of the Commission is limited. Where ancillary restraints are present the Commission applies the rules of the European Commission Notice on restrictions directly related to and necessary for concentrations.

Involvement of other parties or authorities

29 Are customers and competitors involved in the review process and what rights do complainants have?

Customers and competitors may petition the Commission where a concentration has been implemented in breach of merger regulations; however, the Commission would open an investigation on its initiative. However, in the context of pending investigations, third parties may request to be constituted as parties to the proceedings at the Phase II investigation. In their capacity as parties they enjoy similar rights to those granted to the undertakings concerned – right of access to the materials of the investigation, submission of comments on a statement of objections and participation in public hearings held by the Commission during Phase II investigations.

Update and trends

Decrease in the number of notified and reviewed transactions

Both the number of notified concentrations and the number of reviewed concentrations in 2012 reached their lowest levels for the last eight years. As there have been no significant legislative changes in the merger control legislative framework since 2008 the reasons for the decrease in the number of notified and reviewed concentrations in 2012 should be sought elsewhere. One factor contributing to the decrease (among others) seems to be the continuing sense of market insecurity affecting the number of mergers and acquisitions on both international and local level.

Greater emphasis on pre-merger consultations

In its 2012 Annual Report the Commission specifically pointed out that it has been conducting pre-merger consultations initiated by the participants in contemplated concentrations. Pre-merger consultations

on the information that should be included in a merger notification are optional and have been available in previous years as well. However, it seems that the Commission aims at placing a greater emphasis on the availability of such procedure.

Acceptance of definition of geographic market wider than national

So far the Commission has been reluctant to accept geographic market definitions wider than national. In its Decision 1509 of 18 December 2012 the Commission adopted the widest possible definition accepting that the market of production and sale of lead and zinc concentrate (respectively the vertically connected market of lead and zinc) are worldwide as these commodities can be traded on the world market and their prices are based on international quotes. As a result the Commission cleared a concentration involving the main Bulgarian manufacturers of lead and zinc concentrate.

Even if they are not constituted as parties to the proceedings, third parties have the right to submit written comments with regard to the proposed concentration. In a Phase I investigation written comments are accepted within seven days of publication of a notice on the website of the Commission for opening of an investigation. In Phase II investigations the term for submission of written comments by third parties is 30 days upon the publication of a notice on the Commission's website. Also, as noted in question 18 as part of the review procedure the Commission will always approach competitors and customers to get their views, including with regard to the effects that the implementation of a concentration will have on competition in the relevant market.

The LPC provides a fairly broad definition of the term 'interested party', which includes any person, undertaking or association of undertakings whose interests may potentially be affected by a violation of the LPC. Furthermore, as noted in question 32, decisions of the Commission can be appealed to the Supreme Administrative Court (the SAC) by any 'interested party'. In its interpretation of the LPC, the SAC has also confirmed that a competitor in the relevant market as well as a customer or a consumer of the products or services affected by the concentration would have standing to appeal a decision of the Commission.

- 30** What publicity is given to the process and how do you protect commercial information, including business secrets, from disclosure?

The LPC explicitly provides that all merger control decisions that close an investigation and decisions for the initiation of Phase II investigation shall be published in the Public Registry of the Commission available on its official website. Moreover, the Commission shall announce in the Public Registry the notices for opening of investigations and for issuance of clearance decisions. However, upon the request of the notifying party and only in well-justified cases (eg, when publicly traded companies are merging), the Commission might refrain from publishing a notice for the opening of an investigation on its website.

Commercially sensitive information is subject to full disclosure to the Commission. Addressees of a request for information from the Commission cannot call upon protection of business secrets to refuse to provide to the Commission a particular piece of confidential information. The LPC requires competition officials to protect any information identified by the undertakings concerned as business secrets. Moreover, documents and information may only be used by the Commission for the purposes of the LPC. Any information identified as a business secret is erased from the official version of the decision that is published in the Public Registry of the Commission. The notifying parties shall comply with the special Rules on the Access, Use and Storage of Documents Constituting Production, Trade or Other Protected Secret adopted by the Commission.

- 31** Do the authorities cooperate with antitrust authorities in other jurisdictions?

The Commission is a member of the International Competition Network, the European Competition Network and the European Competition Authorities, and has access to information regarding multi-jurisdictional notifications. It has developed close working relations with the European Commission and a number of national competition authorities, including on the basis of cooperation agreements. In some cases involving foreign-to-foreign mergers, the Commission has requested information about the status of proceedings from other national competition authorities. In addition, in 2010 the Commission took measures for improving the exchange of information between competition authorities of the EU member states in cases of mergers notified in more than one member state by adopting a sample of a declaration of consent for disclosing other confidential information to competition authorities in EU member states. This information can be disclosed and used only if the affected undertakings have voluntarily expressed their explicit consent for disclosing and using their production, trade or other secret protected by law.

Judicial review

- 32** What are the opportunities for appeal or judicial review?

All merger control decisions of the Commission, except for decisions for opening of an investigation ex officio and opening of a Phase II investigation, are subject to judicial review. Jurisdiction is vested in the Bulgarian Supreme Administrative Court (SAC). Standing to appeal is granted to the parties to the proceedings and to any third party with legitimate interest (see question 29). Appeals must be lodged within 14 days, which for the parties to the proceeding begin as of the date of announcement of the clearance decision under the provisions of the Administrative Procedure Code, and for any interested third parties, as of the date of publication of the clearance decision on the electronic Public Registry of the Commission.

- 33** What is the usual time frame for appeal or judicial review?

The appeal process of decisions of the Commission follows the standard judicial review procedure for administrative acts. Bulgarian law does not provide for any specific time frame and timing largely depends on the workload of the SAC. The SAC hears competition cases as a first instance and at cassation. A three-member panel of supreme judges hears appeals against decisions and orders of the Commission. The panel acts as a first instance in actions against Commission decisions and as a first and final instance in actions against orders. The review concerns points of both fact and law. A panel of five supreme judges hears appeals against judgments of the three-member panel (first instance) of the SAC in actions against decisions of the Commission. The five-member panel reviews the

case on points of law only. Generally, a full-blown review process on two instances may take up to two years.

Enforcement practice and future developments

34 What is the recent enforcement record of the authorities, particularly for foreign-to-foreign mergers?

In 2012, there was a decrease in merger filings compared with 2011. As a result, the Commission initiated 24 proceedings of which 23 followed a submission of notifications for concentration; in only one case were proceedings started on the initiative of the authority. The Commission adopted a total of 28 merger control decisions of which 25 were clearance decisions. The Commission imposed sanctions in one case of a total amount of 45,679 levs relating to a local merger. In one case the Commission initiated a Phase II investigation and in one case the proceedings were suspended as the Commission established that the concentration had a Community dimension and is therefore within the competence of the European Commission. In 2012 the Commission did not block any concentrations nor did it impose any conditions or obligations related to the implementation of the concentrations.

35 What are the current enforcement concerns of the authorities?

The Commission's priorities for 2013 laid down in its 2012 Annual Report are to improve the efficiency of control over concentrations, where the Commission's efforts will be focused on:

- encouraging pre-merger contacts between notifying parties and the Commission with regard to concentrations with local dimension as well with regard to concentrations with multinational significance by way of consultations, opinions and giving broader publicity to the competition rules and its practice (including to the Rules on Imposition of Remedies for Preservation of Effective Competition in Merger Cases adopted by the Commission in December 2011);
- carrying out ex-post control over the fulfilment of the conditions under which the Commission has authorised a concentration; and
- improving the procedure applied by the Commission for assessment and referral of concentrations from or to the European Commission.

36 Are there current proposals to change the legislation?

Currently there are no proposals for changes in the merger control legislation.

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