



Merger Control Survey **2017**

Featuring contributions from

Al Busaidy Mansoor Jamal & Co
Ali Budiardjo Nugroho Reksodiputro
Andreas Neocleous & Co
Asters
Atsumi & Sakai
Bundeskartellamt
Competition Commission of Singapore
Cuatrecasas Gonçalves Pereira
ELIG Attorneys-at-Law
Gulapa Law
Herbert Smith Freehills
JunHe
LCS & Partners
MR Legal Inn
Nokia
OECD/Korea Policy Centre
US Department of Justice Antitrust Division

Lead contributors



HERBERT
SMITH
FREEHILLS

IFLR
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Maria Kyriacou, Ramona Livera and Eveyenia Epaminondou, Andreas Neocleous & Co

REGULATORY FRAMEWORK

1.1 What is the applicable legislation and who enforces it?

Mergers are regulated by the Control of Concentrations between Undertakings Law of 2014 (Merger Law). The Commission for the Protection of Competition (CPC), an independent body, is responsible for implementing the Merger Law.

JURISDICTIONAL TEST

2.1 What types of mergers and joint ventures (JVs) are caught?



The Merger Law applies to all transactions that result in a permanent change of control and meet the applicable thresholds, including the formation of joint ventures that function as an autonomous economic entity on a permanent basis.

2.2 What are the thresholds for notification, how clear are they, and are there circumstances in which the authorities may investigate a merger falling outside such thresholds?



A concentration is notifiable if all the following conditions are met:

- at least two of the participating undertakings achieve an annual turnover in excess of €3.5 million each;
- at least two of the participating undertakings achieve a turnover in Cyprus; and
- at least €3.5 million of the aggregate turnover of all the participating undertakings is achieved in Cyprus.

The Minister of Energy, Commerce, Industry and Tourism has the power to declare a concentration as being of major importance and so notifiable despite the thresholds not being met.

2.3 Are there circumstances in which a foreign-to-foreign merger may require notification, and is a local effect required to give the authority jurisdiction?



Foreign-to-foreign mergers require notification if the conditions in 2.1 are met. A local effect is not required to give the CPC jurisdiction.

PRE-NOTIFICATION AND FILING

3.1 Is filing mandatory or voluntary and must closing be suspended pending clearance? Are there any sanctions for non-compliance, and are these applied in practice?



Filing is mandatory and implementation (whether partial or in full) before clearance is expressly prohibited. Failure to comply can result in administrative fines of up to 10% of the aggregate turnover achieved by the

notifying undertaking during the preceding financial year together with an additional fine of up to €8,000 for every day the infringement continues. In addition, the CPC has the power to partially or wholly dissolve a concentration that has been implemented without notification.

3.2 Who is responsible for filing and what, if any filing fee applies?



Concentrations must be notified either jointly or separately by the undertakings participating in a merger or in the acquisition of control of another undertaking. A filing fee of €1,000 is payable with the notification (the CPC will not commence the review until the fee has been paid). If the CPC determines that a full investigation is required there is a further fee of €6,000.

3.3 What are the filing requirements and how onerous are these?



The notification must be made in Greek and be accompanied by the supporting documents and other information (which can be in English) set out in Schedule III of the Merger Law.

3.4 Are pre-notification contacts available, encouraged or required? How long does this process take and what steps does it involve?



The Merger Law does not provide any procedure for seeking informal guidance before notification, and the CPC has absolute discretion to decide whether to accept any pre-notification contact from any party.

CLEARANCE

4.1 What is the standard timetable for clearance and is there a fast-track process? Can the authority extend or delay this process?



The CPC must notify the undertakings concerned of its initial decision, either to clear the concentration or to require a full investigation, no later than one month after receiving the notification and filing fees or any additional information required under the Merger Law. It may extend this period by up to 14 days under certain conditions. If a Phase II investigation takes place the CPC must issue its decision within four months after having received all the information required under Schedule III of the Merger Law. There is no fast-track process.

4.2 What is the substantive test for clearance, and to what extent does the authority consider efficiencies arguments or non-competition factors such as industrial policy or the public interest in reaching its decisions?



The substantive test is that the proposed concentration should not substantially impair competition in Cyprus or in a part of it. The CPC must take account of the interests of intermediate and end consumers of the relevant products and services and the contribution to technical and economic progress and the possible benefit to consumers.

4.3 Are remedies available to alleviate competition concerns? Please comment on the authority's approach to acceptance and implementation of remedies.



If the CPC's concerns are not resolved it is required to consider which of the circumstances causing its concerns may be removed and to make suggestions and negotiate with the parties in order to resolve the outstanding issues. It may require the transaction to be amended or the participants to provide commitments, for example to divest certain activities.

RIGHTS OF APPEAL

5.1 Please describe the parties' ability to appeal merger control decisions – how successful have such challenges been?



As administrative executive acts issued by a public authority, decisions of the CPC are subject to recourse to the Administrative Court under article 146 of the constitution. A party who is dissatisfied with the decision of the Administrative Court has the right to appeal to the Supreme Court. There have been very few successful challenges to decisions of the CPC.

YOUR JURISDICTION

6.1 Outline any merger control regulatory trends in your jurisdiction.

Following the introduction of the new law in 2014 the merger control regime is aligned with Jurisdictional Notice Regulation 139/2004 and is more balanced and clearer than before. The number of foreign-to-foreign transactions being notified decreased due to the raising of the threshold for aggregate turnover in Cyprus. The CPC has exercised its significant powers under the Merger Control Law in a balanced manner and with discretion. It maintains close links with its counterparts in the European Competition Network and takes guidance from their general approach.



Maria Kyriacou
Partner, Andreas Neocleous & Co
Nicosia, Cyprus
T: +357 22 110000
E: maria.kyriacou@neocleous.com
W: www.neocleous.com

About the author

Maria Kyriacou is a partner in Andreas Neocleous & Co and head of the firm's Nicosia office. She is a barrister-at-law of the Inns of Court (Middle Temple) London, 1971 and was admitted to the Cyprus Bar in 1974.

Kyriacou served as the Cyprus Registrar of Companies and Official Receiver, Registrar of Patents, Trademarks and Copyright between 1989 and 2001 and oversaw the successful harmonisation of Cyprus company and intellectual property law with the *acquis communautaire*.

She has written numerous articles and papers and lectured in Cyprus and abroad on a wide spectrum of legal, social and political matters, in particular topics relating to the economy, companies, insolvency, trademarks, patents and copyright.



Ramona Livera
Associate, Andreas Neocleous & Co
Nicosia, Cyprus
T: +357 22 110000
E: ramona.livera@neocleous.com
W: www.neocleous.com

About the author

Ramona Livera is an associate in the Nicosia office of Andreas Neocleous & Co, where she specialises in EU and competition law and intellectual property law. She graduated in law from the University of Kent in Canterbury in 1985 and was admitted to the Cyprus Bar in 1988. As well as her native Greek, Ramona is fluent in English, French and Spanish.



Evyenia Epaminondou
Associate, Andreas Neocleous & Co
Nicosia, Cyprus
T: +35 722 110000
E: evyenia.epaminondou@neocleous.com
W: www.neocleous.com

About the author

Evyenia Epaminondou is an associate in the Nicosia office of Andreas Neocleous & Co, where she specialises in EU and competition law and employment law. Epaminondou graduated in law from the University of East Anglia in 2008 and was awarded an LL.M by University College London (UCL) in 2009. She was admitted to the Cyprus Bar in 2011. Evyenia is fluent in English and Greek.