

## BULGARIAN MERGER REGIME

### Relevant law and competent authority

The Competition Protection Act (CPA), (*promulgated on 28 November 2008 and in effect as of 2 December 2008*), sets out the legal framework for merger control in Bulgaria.

The authority competent for clearing or blocking concentrations in Bulgaria is the Commission on Protection of Competition.

The following secondary legislation is adopted by the Commission, which implements the provisions of the statutory act regulating the Merger control rules, as follows:

- Methodology On Investigation and Definition of the Market Position of Undertakings in the Relevant Market;
- Methodology for Setting Fines under the CPA;
- Instructions for Completing the Notification Form (NF);
- Rules on Imposition of Remedies for Preservation of Effective Competition in Merger Cases.

### Mergers caught

A concentration is any operation carried out between independent undertakings that results in a change of control over the participating undertakings on a lasting basis. The term covers cases where two separate undertakings merge into a single body, and also situations in which one or more persons already controlling one or more undertakings acquire direct or indirect control of the whole or part of another undertaking.

In order for a concentration to arise, two conditions need to be met:

- The execution of a deal where one company acquires ownership over the shares or the possessions of another one; and
- The presence of a change of control over the company, subject to the acquisition, performed on a lasting basis.

The creation of a joint venture, performing on a lasting basis all functions of an economically autonomous entity is also considered to fall within

the merger control rules. For assessing whether there is any need to review the joint venture under the merger regulation, three prerequisites must be in place:

1. joint control over the JV;
2. full-functionality; and
3. to meet the turnover thresholds referred to below.

Foreign-to-foreign mergers would also be caught if the undertakings concerned have turnover on the territory of Bulgaria for the previous financial year and the respective national thresholds are met. Certain transactions fall within an exceptions regime and would not be caught by the mergers rules.

### National thresholds

Concentrations are subject to mandatory prior notification to the national competition authority (NCA) where the aggregate combined turnover of all undertakings participating in the concentration in the territory of the Republic of Bulgaria in the preceding financial year exceeds **BGN 25 million (appr. EUR 12 782 300)**. In addition, the turnover of each of at least two of the undertakings concerned or the turnover of the undertaking subject to acquisition in the territory of the Republic of Bulgaria during the preceding fiscal year exceeds **BGN 3 million (appr. EUR 1 533 876)**.

### The concept of “control”:

Control may be acquired on a legal and factual basis, by obtaining rights, concluding contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by obtaining:

1. ownership or the right to use all or part of the assets of an undertaking (in case the acquired undertaking forms an individual turnover which represents it on the market);
2. rights, including on the base of a contracts, which confer decisive influence on the composition, voting or decisions of the management and supervision bodies of an undertaking.

### **Procedure and filing fees**

Notice of a concentration shall be submitted jointly by the undertakings, which participate in the consolidation or in the merger, or incorporate joint venture, respectively by the undertaking, acquiring the control. The preliminary investigation is to be completed within 25 working days. This period could be prolonged in case the notifying parties request so or in case new changes in the deal are introduced or in case additional information from the notifying parties is required. The NCA may also launch an in-depth investigation in case it is assessed that the concentration generates serious doubt that it may lead to the creation of a dominant position or the fostering of an existing one, and the effective competition on the relevant market will be significantly impeded. The notification shall be made following the conclusion of the agreement, but before any real operation executing the transaction is taken. Until the NCA renders its clearance, any factual and legal actions related to the planned concentration are forbidden. All merger control decisions of the NCA, except for decisions for opening of an investigation ex officio and opening of an in-depth investigation, are subject to judicial review.

The filing fee is BGN 2,000 (appr. EUR 1 026). A further fee is payable on clearance of the transaction; this amounts to 0.1% of the aggregate turnover of all participating undertakings in the preceding year, up to a maximum fee of BGN 60,000 (appr. EUR 30 678).

### **Substantive test**

The substantive test is whether the concentration would establish or strengthen a dominant position that would significantly impair effective competition in the relevant market(s).

The NCA is assessing whether the concentration would lead to the creation or strengthening of a dominant position that would significantly impede effective competition in the markets in which the transaction will have an impact. In order to reach a reasoned conclusion that the assessed transaction does not prevent competition on the relevant markets in the country and should be unconditionally permitted, NCA examines the market position of the participants in the operation before and after its implementation, the conditions under which markets function, their participants, as well as factors affecting competition.

As far as market share is only an initial indicator to establish the market position of the merging parties, the NCA is paying attention also on the market structure, barriers to entry and the possibility of the deal to have a negative impact on the competitive environment. However, the NCA considers that the combined market share of below 15% of the companies-participants of the market concerned (if the participants are competitors) or 25% of each of the markets in which the companies operate (if not competitors) shall not be worrying and it is presumed that in these cases the operation will not significantly impede potential competition.

### **Judicial review**

The judicial control is exercised by the Bulgarian Supreme Administrative Court (SAC). A three-member panel of supreme judges hears appeals against decisions and orders of the NCA. The panel acts as a first instance in actions against NCA's decisions and as a first and final instance in actions against its resolutions. A panel of five supreme judges hears appeals against judgments of the three-member panel of the SAC in actions against decisions of the NCA.

### **Remedies and penalties**

The NCA can impose any conditions of clearance that it finds necessary to preserve effective competition including structural and behavioural remedies. The parties can also propose remedies,

which are subject to the NCA's approval. Such remedies may be proposed either during the initial investigation or during an in-depth investigation.

If a concentration is notified incorrectly, and/or in an incomplete, incorrect, untrue and misleading way, the following penalties apply:

- Undertakings: a fine of up to 1% of the total turnover of the participating undertakings for the preceding financial year;
- Individuals: a fine of between BGN500 to BGN25,000.

If a concentration is not notified, the following penalties apply:

- Undertakings: a fine of up to 10% of the total turnover of the participating undertakings for the preceding financial year;
- Individuals: a fine of between BGN 500 to BGN 50,000.

*This guide presents an overview of the mergers regime in Bulgaria and does not constitute a complete statement of the applicable rules and regulations. For further details on any exceptions, turnover rules' calculation, and exhaustive advice on procedural practice and the substantive regime, please contact Katerina Gramatikova or Grozdan Dobrev. This guide reflects the law as of September 2015.*