

Kluwer Competition Law Blog

Bulgarian Competition watchdog opens rare proceedings for non-notification of a transaction

Eleonora Mateina (Tsvetkova, Bebov and Partners) · Monday, August 27th, 2018

At the beginning of August 2018, the Bulgarian Commission for Protection of Competition (“BCPC”) opened proceedings against a local company for non-notification of an acquisition of another undertaking. Such proceedings are very rare, and the last fine for a similar breach in Bulgaria was in 2012.

The undertaking acquiring control – Agria Group Holding AD is one of the major players on the local agricultural market – grain and oil crops trade, their storage, processing, transport and logistics. The company turnover for 2017 exceeded BGN 170 million (approximately EUR 85 million) and turnover for 2015 (the year preceding the transaction) exceeded BGN 114 million (approximately EUR 57 million).

The acquired company Kehlibar OOD, is also active on the Bulgarian agricultural market – the company produces sunflower crude oil and does agricultural commodity trading and processing since 1997. The turnover of the company for 2015 (the year preceding the transaction) exceeded BGN 39 million (approximately EUR 19.5 million).

In the decision for opening the proceedings against the acquirer for non-notification of the takeover, dated 8 August 2018, the BCPC reveals that they became aware of the deal from the ranking of the Bulgarian business newspaper Kapital of top deals for 2016. Kapital is a leading business media in Bulgaria and each year the media prepares a table of the top deals – Kapital Top 100 discussing the top 100 companies in Bulgaria as well as top deals, emerging markets and in general providing an outline of the business environment in Bulgaria.

In its decision, the BCPC, after discovering that the deal between Agria Holding Group and Kehlibar was implemented without being notified, made several document requests to both companies and based on the documents received, the published financial information, the documents in the Bulgarian Commercial Register and the public information, opened proceedings against the acquirer Agria Holding Group.

Under the Bulgarian Competition Protection Act (“CPA”), the acquirer is obliged to notify a transaction if it qualifies under the relevant notification thresholds.

Transactions in Bulgaria are subject to mandatory clearance, when the transaction leads to a change of control in the target and certain turnover thresholds are met. i.e. (1) sum of the total

turnovers of all undertakings participating in the concentration on the territory of the Republic of Bulgaria for the previous financial year exceeds BGN 25 million; **and (2)** the turnover of each of at least two of the undertakings participating in the concentration on the territory of the Republic of Bulgaria for the previous financial year exceeds BGN 3 million **or** the turnover of the undertaking which is the object of acquisition on the territory of the Republic of Bulgaria for the previous financial year exceeds BGN 3 million.

Apparently in the discussed transaction, the turnover thresholds are met. The deal comprised the 100% acquisition of Kehlibar's shares and, based on the decision of the BCPC, it appears that the share purchase agreement was concluded between two natural persons, i.e. Mr. Sv. Todorov on behalf of Agria Group Holding and Mr. Il. Todorov on behalf of Kehlibar. In the BCPC's decision there is no indication of whether the two natural persons are related parties or whether the two companies formed part of one and the same group of companies. Therefore, it is likely that the BCPC's analysis will focus on whether there is a change on control out of the transaction or not.

At first sight, a decision for opening a proceeding against a buyer for non-notification of a transactions is not very interesting. However, the last time when BCPC started such a proceeding, was in 2015 for one of the deals for the Bulgarian Telecommunication Company but back then the BCPC did not impose a fine. The last time a fine was imposed is 6 years ago, in 2012, when the commission fined a natural person for non-notification of a deal with BGN 45 679 (approximately EUR 22 893).

As is evident from this year's BCPC's decisions, the commission becomes more and more active when it comes to issuing clearances. In 2018, for the very first time, the BCPC refused to authorize two significant deals (Inercom/CEZ deal and Nova Broadcasting/PPF deal). These deals were subject to a previous [post](#) on this blog.

With this transaction, it appears that the BCPC is actively keeping an eye on business in Bulgaria and will not hesitate to pursue companies when it comes to gun-jumping as well as other types of antitrust infringement. Business needs to be attentive and to dedicate time and resources to ensuring that transactions abide by the relevant merger control rules and that commercial behaviour does not infringe competition law.

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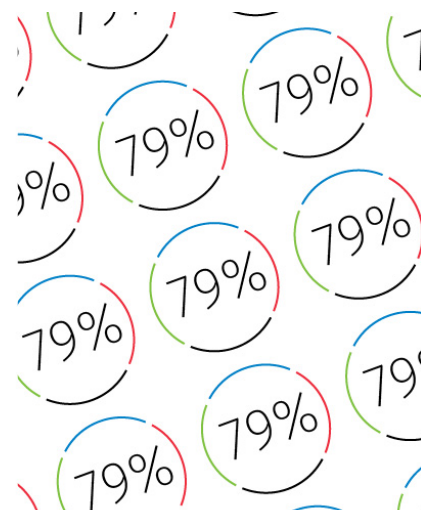
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