

Kluwer Competition Law Blog

Bulgarian watchdog introduces simplified and more extensive merger filing in new merger filing guidelines

Galina Petkova (Schoenherr) · Thursday, February 6th, 2020

From 1 January 2020, the Bulgarian Commission for the Protection of Competition (the “CPC”) has been applying new merger filing guidelines (the “Guidelines”). The former guidelines, applied for more than ten years, did not differentiate between transactions (simpler or more complex) irrespectively of their potential competition concerns. This unified approach was unnecessarily bureaucratic with regard to concentrations with insignificant market effect (i.e. insignificant combined shares of the parties), which required a detailed merger filing only because the parties’ turnover reached the statutory thresholds. At the same time, the former guidelines did not seem extensive enough for more complicated transactions (with substantial market shares of the parties), and it was not unusual for the CPC to send to the parties several requests for additional information to assess and clear a concentration. Naturally, this approach led to delays both in simpler and more complex transactions.

The Guidelines address this practical problem and now provide for two types of filings: a simplified merger filing for mergers that are unlikely to raise competition concerns and a more extensive merger filing for concentrations which are expected to significantly affect the relevant markets.

Another substantial change introduced in the Guidelines is the possibility for the notifying party to request remedies with the merger filing notification itself. Previously, remedies could be proposed during phase 2 proceedings only (in-depth investigation).

The CPC also for the first time officially provides that the notifying party can request a pre-notification meeting to discuss the information and documents that would be required for the merger filing (a practice established unofficially by the CPC in the last two years).

Requests for waivers in individual cases are also provided. The Guidelines specify that companies can request waivers from the CPC to give certain information. The waivers can be done in the merger filing notification itself and should provide justification for why certain categories of information are not applicable. Since the Guidelines do not provide for a separate form of such requests or the obligation of the CPC to issue an explicit decision on them, it is recommendable to discuss such potential waivers within pre-notification contacts.

The Guidelines also explicitly provide that only full translation of the documents enclosed as evidence will be accepted. This means that all documents supporting the concentration (e.g. SPAs,

Memorandums, etc.) would need to be translated in full and waiver of this rule cannot apply (a practice followed by the CPC in the last year).

Simplified merger filing

The Commission set thresholds under which concentration cases are eligible for a simplified merger filing:

(i) for markets in which two merging companies compete (“horizontal overlap markets”), the threshold is set to up to 15 %;

(ii) for markets where one of the merging companies sells an input to a market where the other company is active (“vertically related markets”, for instance where an automaker acquires a manufacturer of car parts), the threshold is set to up to 25 %.

In the simplified merger control filing the notifying party should provide information about the purchaser(s) and the seller(s), describe the transaction, their business activities and provide the turnover figures that the Commission needs to establish jurisdiction. The relevant markets and market shares of the undertakings concerned should also be specified. However, unlike before, there is no need to provide very detailed information about the entire relevant market(s) (barriers to entry, structure of supply and demand, effects of the concentration on the market, biggest competitors and their market shares, membership in industry-wide associations, etc.). Thus, it seems that for simpler transactions the collection of information and documents would be significantly relieved.

Standard merger filing: significantly more extensive than before

On the other hand, the standard merger filing that would apply for markets where the horizontal overlap is equal to or exceeds 15 % – or where the vertical related market shares of the parties reach or exceed 25 % – would be much lengthier. For these transactions, the Guidelines provide for more than 60 questions. In addition, the information in response to such questions should concern the last two or three years and the next two years (under the former guidelines the requested information concerned only the last financial year). Some of the questions are known from the former guidelines but the CPC has significantly elaborated the matters that need to be covered in a merger filing.

Short-form and full decision?

The Guidelines do not provide for short-form and standard notification form. They instead specify that certain sections are not applicable where the simplified merger control filing thresholds are met.

In addition, the CPC has not explicitly provided that a concentration that fulfils the criteria for a simplified merger control review would be decided with a short-form decision, while for the other

transaction a full decision would be issued.

Likewise, there are no differences in the deadline to review a simplified and standard transaction (i.e. the statutory term of 25 working days would apply in both ways).

Thus, it is yet to be seen in practice whether fast-track proceedings and short-form decisions would be applied to simpler transactions or whether the only relevant change would be to the volume of information and documents required from the notifying parties.

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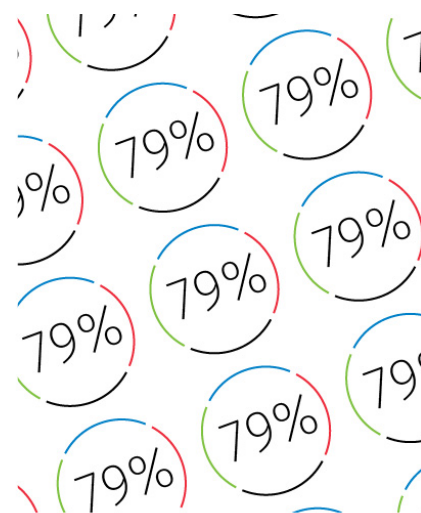
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