

Merger Control Risks and Pitfalls in Selected Balkan Countries



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In the past decade, merger control rules and enforcement in Bosnia and Herzegovina, Macedonia, Montenegro, and Serbia have undergone significant development, from being non-existent to becoming by far the most prominently enforced segment of competition law, with significant implications for the parties to a merger.

Notification requirements

Notification requirements in Bosnia and Herzegovina, Macedonia, Montenegro, and Serbia are relatively low and can easily be triggered by multinational companies having any activities in these jurisdictions. In particular, in comparison to other countries of the CEE region and EU member states, it is sufficient that only one party to a merger have local activities for merger control to kick in. Thus even minor transactions are subject to review by competition authorities, irrespective of a *prima facie* lack any effects of competition in these jurisdictions. By way of example, even local turnover of EUR 1 mln or local presence via a branch/subsidiary of an international company can be enough for merger control to be triggered.

Timing issues

Once a relevant transaction document is signed, a merger control filing needs to be made within a 15 days.¹ At the same time, the competent competition authorities have significant time to review filings and various powers to acquire additional time when needed. In particular, the competition authorities may require that the parties provide certain documents, market data, and other information they deem necessary to scrutinise a merger.

Simultaneously, a trend in both legislation and enforcement is that the authorities require increasingly more large amounts of documents and information, while also giving much more prominence to formal requirements, such as proper legalisation. For instance, unusually significant amounts of duly legalised documentation must be provided to the Montenegrin competition authority about the ownership structure of the parties and their financial results.

Thus, in some cases already extensive deadlines for an authority to review a merger filing can be made even longer by the authorities, as these deadlines do not start running until all required documents and information have been provided by the parties to a merger.

So a merger timetable must give due attention to the time required to receive merger clearance, including possible extensive requests for documents and information that might not be easy to gather, depending on the circumstances and the competition authority.

Possible sanctions

Sanctions for violations of merger control rules include *inter alia* those for notifying after the filing deadline, implementing a transaction without prior approval, and not responding to a request for information. Fines for implementing a transaction without prior approval can be up to 10% of the total annual turnover of the parties to a merger, while fines for breaching deadlines for filing and responding to requests for information can reach several thousand euros per day of breach. In addition, responsible persons within the parties to merger may also receive monetary sanctions.

Recent developments in the enforcement of merger control rules show an increased willingness by competition authorities to sanction violations, with fines reaching record highs. The most prominent examples are fines imposed by the competition authorities in Bosnia and Herzegovina and Serbia. In Bosnia, the competition authority fined three parties to a joint venture more than EUR 300,000 for closing the transaction without notifying and receiving clearance to implement the merger. In Serbia, the competition authority fined a competitor of the parties to the merger more than EUR 25,000 for failing to provide an answer to the authority's request for information.

In addition to fines, mergers implemented without prior approval—which also raise competition concerns—can be subject to various structural and behavioural measures so as to remedy such concerns. These can include divestments of shares or assets, and in the extreme a complete unwinding of the merger.

Conclusions and recommendations

Due to low merger control filing thresholds, even minor transactions or those with no local effects can trigger merger control filing obligations in many Balkan jurisdictions. Once triggered, filings must follow quickly after the signing of the transaction documents. And the filing may require that large amounts of documents and information be gathered and provided to the competition authorities.

Due attention must be given to timing issues when planning a transaction. The filing process also requires adequate preparation and handling so as to limit and pre-empt requests for information that can significantly delay the review process. Finally, failing to observe merger control rules can result in high fines, currently reaching several hundreds of thousands of euros.

Professional legal counselling when devising and structuring transactions that concern the Balkans is therefore more important than ever before.

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¹ With an exception of Macedonia, where no deadline applies, but a concentration has to be notified (and cleared) before it is implemented.