Chapter

Bulgaria

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1 Relevant Authorities and Legislation

1.1 Who is/are the relevant merger authority(ies)?

The primary responsibility for enforcement of the rules on competition in Bulgaria rests with the Commission on the Protection of Competition (the "Commission"), an independent state body consisting of seven members elected by parliament with a term of office of five years. The Commission has decision-making powers with regard to the investigation, grant of approval or blocking of concentrations. Further information about the Commission and its activities can be found on its website: www.cpc.bg.

1.2 What is the merger legislation?

The statutory act, which sets out the legal framework for merger control, is the Law on the Protection of Competition (Official Gazette No. 52 of 1998, as subsequently amended) (the "Law").

The regulatory framework is supplemented by relevant provisions of the Association Agreement between Bulgaria and the European Communities (the "Association Agreement"), the Rules for Implementation of the Competition Provisions of the Association Agreement and secondary legislation issued by the Commission.

1.3 Is there any other relevant legislation for foreign mergers?

There are no special rules regarding merger control, which apply to foreign mergers.

1.4 Is there any other relevant legislation for mergers in particular sectors?

In some sectors there are special regulations, which would apply to mergers and acquisitions in addition to the merger control rules of the Law. The Law on the Banks and the Insurance Law, for example, require approval by the respective regulatory authority for acquisitions of interests exceeding certain statutory levels in banks and insurance companies. The Law on Public Offering of Securities requires the disclosure of interests in publicly traded companies. In other sectors, such as telecommunications, where operators act under licence, the regulatory authority which issues the licence often reserves to itself the right to give prior approval to any transfer of shares of such licensed operators. Similarly, as a matter of practice, state and municipal authorities which privatise public assets impose an obligation that the subsequent transfer of shares of privatised enterprises executed within a certain period of time may take place only with the prior approval of the respective privatisation authority.

2 Transactions Caught by Merger Control Legislation

2.1 Which types of transaction are caught - in particular, how is the concept of "control" defined?

The Law applies to the following types of concentrations:

(i) the merger of two or more independent companies;

(ii) the acquisition of control over a company by person(s) who already control one or more other companies; and

(iii) the creation of a joint venture company.

The Law does not consider as 'concentration':

(i) portfolio investments made by banks, non-banking financial institutions and insurance companies, provided that those institutions do not exercise their voting rights in order to influence the competitive behaviour of the company and only with a view to preparing the disposal of their equity interest within one year of the date of acquisition;

(ii) the exercise of control by a trustee or a liquidator of a company; and

(iii) the exercise of control by a financial holding company with the sole purpose of maintaining the full value of the investment in the company.

Control, within the meaning of the Law, may be acquired by way of obtaining legal rights, entering into contracts, or in any other way which either separately or jointly, and having in mind considerations of fact or law, provides for the exercise of decisive influence over an undertaking, in particular by:

(i) acquisition of title of, or right to use, all or part of the assets of an undertaking;

(ii) acquisition of rights or contracts which confer a decisive influence with regard to the composition, exercise of voting rights and the decisions of the

organs of an undertaking.

The Commission has further specified that a shareholder would exercise control where such shareholder:

(i) owns more than one-half of the share capital or assets of an undertaking;

(ii) has the right to exercise more than one-half of the votes of an undertaking;

(iii) has the power to appoint more than one-half of the members of the management bodies of an undertaking;

(iv) has the power to appoint the legal representative of an undertaking; or

(v) has the right to otherwise manage an undertaking.

The Commission has explicitly stated that a minority shareholder can exercise control, provided that such a shareholder's equity interest entitles it to exercise decisive influence over the competitive behaviour of an undertaking. In order to establish whether the decisive influence test is met, the Commission would look at considerations of fact and law, such as rights provided by the charter or other corporate documents, shareholders' and/or other agreements. In a recent decision (Decision 141/19.05.2004) the Commission applied the test provided by the EC Commission Notice on the Concept of Concentration in order to determine which veto rights of a minority shareholder should be considered to confer joint control over an undertaking and which are normally accorded to minority shareholders in order to protect their financial interests and do not relate to strategic decisions on the business policy of the joint venture.

Transitions from joint to sole control or from sole to joint control are also subject to merger control. Any other circumstances which could potentially grant to an undertaking the possibility of exercising decisive influence over another undertaking and reflect the immediate intention of an undertaking to proceed with the realisation of such possibility (including decisions for the exercising of rights under instruments like convertible warrants or share options) would also be subject to merger control.

2.2 Are joint ventures subject to merger control?

The Law treats as a concentration the establishment of a joint venture which carries on commercial activity on a lasting basis and functions as an economically independent agent. The Law does not distinguish between concentrative and cooperative joint ventures.

2.3 What are the jurisdictional thresholds for application of merger control?

The Law sets out a single jurisdictional threshold. A concentration must be notified prior to its completion if the aggregate turnover of the participants in the concentration on the Bulgarian product or services market for the year preceding the concentration exceeds BGN 15,000,000 (about Euro 7,669,400).

In its most recent practice the Commission has taken the view that for the purpose of turnover calculation it would take into account the whole turnover of the undertakings concerned on the Bulgarian market. Under this approach the authority does not distinguish between turnover realised on the affected markets and turnover realised on other vertically situated or conglomerate markets.

When the undertaking concerned belongs to a group of companies, the Bulgarian turnover of the group as a whole must be taken into account. In this respect the Commission applies the criteria provided by Article 5 (4) of Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings.

Turnover figures are calculated on the basis of net sales of products and provision of services derived during the financial year preceding the concentration. When the concentration involves acquisition of control over part of one or more enterprises, regardless of whether or not such part constitutes an independent legal entity, only the turnover of the part which is subject to the transaction shall be taken into account.

In a concentration of banks and non-banking financial institutions, turnover figures shall be calculated on the basis of the incomes according to the financial statements for the last financial year after deducting all taxes. The turnover of insurance companies is calculated on the basis of the insurance premiums, less all taxes, statutory contributions and fees.

2.4 Does merger control apply in the absence of a substantive overlap?

Merger control rules apply to all transactions that meet the definition of a concentration (discussed in question 2.1 above) and the jurisdictional threshold (discussed in question 2.3 above). Therefore, vertical and conglomerate mergers, including transactions where there is no substantive overlap, would also be caught.

2.5 In what circumstances is it likely that transactions between parties outside your jurisdiction ("foreign to foreign" transactions) would be caught by your merger control legislation?

The Law applies to all enterprises engaging in business activities in Bulgaria, or outside its territory, if such enterprises explicitly or tacitly impede, restrain, limit or are in a position to impede, restrain, or limit competition within the territory of Bulgaria. Foreign-to-foreign mergers are therefore caught, provided that they fall within the definition of a concentration (discussed in question 2.1 above) and meet the jurisdictional threshold (discussed in question 2.3 above).

The Commission does not require local corporate presence in order to find a basis for its jurisdiction with regard to a foreign-to-foreign merger. It will suffice if the participants in the concentration exercise commercial activity in Bulgaria through direct sales, or through agents or independent distributors.

Although in its practice, so far, the Commission has never sought to penalize the participants in a foreign-to-foreign transaction, the probability of the imposition of a sanction where the parties omit to notify a transaction which is caught by the Law should not be excluded.

2.6 Please describe any mechanisms whereby the operation of the jurisdictional thresholds may be overridden by other provisions.

Under merger control regulations currently in effect there are no such mechanisms.

3 Notification and its Impact on the Transaction Timetable

3.1 Where the jurisdictional thresholds are met, is notification compulsory and is there a deadline for notification?

Notification is compulsory. The Law establishes a pre-merger notification system. It is accepted that a pre-merger notification must be filed prior to completion. Where the concentration takes place on the basis of a publicly announced tender or bid procedure, the notification must be filed within seven days upon publication of the results of such tender or bid.

3.2 Please describe any exceptions where, even though the jurisdictional thresholds are met, clearance is not required.

Where a particular transaction falls with in the definition of a concentration (discussed in question 2.1 above) and the jurisdictional threshold is met (discussed in question 2.3 above) there are no specific exceptions from filing.

3.3 Where a merger technically requires notification and clearance, what are the risks of not filing?

Failure to notify the Commission, when notification is required, may lead to the imposition of a pecuniary penalty. The penalties provided by the Law range from BGN 5,000 (about Euro 2,560) up to BGN 300,000 (about Euro 153,390). Repeated violations are subject to penalties ranging between BGN 100,000 (about Euro 51,130) and BGN 500,000 (about Euro 255,650). The sanctions which can be imposed under the Law have an administrative character only. There are no criminal sanctions for not filing. According to a Methodology on Determination of Pecuniary Sanctions under the Law on Protection of Competition, adopted by the Commission, whilst individualising the sanctions which have to be imposed with regard to breaches of the obligation for filing, the Commission has to take into account the following: (i) whether the concentration is in principle admissible; (ii) the incomes of the undertaking for the previous calendar year; (iii) the market shares and the combined market share of the undertakings concerned; (iv) the reasons for non-compliance with the obligation for preliminary notification; (v) the duration of the violation; and (vi) the effect on the relevant market (whilst the last two criteria would be taken into account only if the Commission decides that the concentration is not admissible). The particular penalty should not exceed 10% of the turnover of the undertaking concerned.

In addition to the imposition of a pecuniary sanction, the Commission has the power to order adequate measures for the restitution of the pre-concentration status. This may include an order for divestment of the combined capital, shares or assets, as well as an order for termination of joint control.

In 2004 the Commission imposed only one sanction for breach of notification obligations. The sanction amounted to BGN 5,000 (about Euro 2,560) for each of the participants in the concentration. In this instance the Commission cleared the concentration with the same decision which imposed penalties. In 2005 (as of July 20, 2005) the Commission has not imposed any sanctions yet.

The Commission does not have authority to declare invalid a transaction which has not been notified. The Commission is only entitled to impose the measures provided by the Law. However, Article 295 of the Law on Commerce provides that where the validity of a commercial transaction requires permission or approval by a state authority, the transaction enters into effect when such permission or approval is granted. Since the clearance of a notifiable transaction by the Commission (if required) would be considered as an element necessary for the entry into effect of the transaction, the lack of this element could be regarded not only as an administrative breach but also as a fact with civil law consequences. However, to the best of our knowledge, this issue has not been addressed in judicial practice so far.

3.4 Is it possible to carve out local completion of a merger to avoid delaying global completion?

The participants to a concentration are under an obligation to suspend implementation until receipt of clearance by the Commission. The Law does not explicitly address the question of whether in the context of a foreign-to-foreign concentration, foreign closing prior to Bulgarian merger control clearance would constitute a breach of the Law. In its practice so far the Commission seems to accept undertakings by parties that early closing outside Bulgaria is made subject to local suspension, until Bulgarian merger control approval. Although guidance from the Commission with regard to the application of the suspension obligation in a foreign-to-foreign setting is still scarce, it may be expected that the submission to the Commission of a formal hold separate agreement/letter of commitments would be sufficient to meet the suspension obligation requirement of the Law.

3.5 At what stage in the transaction timetable can the notification be filed?

The Law does not specify at what stage in the transaction a notification should be filed. Though there is no requirement to submit the notification only after the signing of a binding agreement, in certain cases the Commission may refuse to register a notification if there is no binding agreement. However, where the concentration takes place on the basis of a publicly announced tender or bid procedure, the notification must be filed within seven days upon publication of the results of such tender or bid.

There is no guidance regarding cases where a concentration is effected via a public takeover bid (tender offer) in the context of securities regulations. Pursuant to the Law on Public Offering of Securities, the acceptance of a public takeover bid becomes irrevocable when the term for acceptance has expired. Therefore, it may be assumed that such a transaction would reach a level of certainty which

would allow the Commission to assess it only after the acceptance of the public takeover bid and the expiration of the term for acceptance of that offer. However, it should also be noted that there is no restriction or prohibition with regard to earlier filing.

3.6 What is the timeframe for scrutiny of the merger by the regulatory body? What are the main stages in the regulatory process?

Upon registration of the notification, the Commission has a one-month period in which to undertake and complete an initial review of the proposed concentration. However, the Commission registers a notification only when it is satisfied that such notification contains all necessary information and supporting documents. Following the completion of the investigation and based on its findings the Commission may:

(i) block the concentration;

(ii) decide that the proposed concentration does not fall within the scope of the merger control rules;

(iii) approve the concentration; or

(iv) take a decision to initiate a full-blown (i.e. second-stage) investigation into the proposed concentration.

The Commission usually uses the whole period allowed by the Law in order to complete the initial review. As a practical matter, the Commission often hands down its decisions after the expiry of the one-month period. Pursuant to the Law for Limitation of the Administrative Regulation and the Administrative Control over Commercial Activities, where the permission of an administrative body is required for the completion of a single transaction and no decision has been issued in this respect within the time prescribed by law, it is presumed, unless otherwise provided by law, that such permission has been granted. However, it is not sufficiently clear whether this principle also applies to decisions of the Commission.

Where the proposed concentration raises serious concerns that it will create or strengthen a dominant position, and that the effective competition on the relevant market(s) will be impeded, restricted or otherwise limited, the Commission may decide to initiate a full (second-stage) investigation into the transaction. A decision to initiate a second-stage investigation must be published in the Official Gazette. The Commission will then have three months to complete the investigation and make a final decision.

Bulgarian law does not provide for an accelerated procedure for simple cases.

3.7 Is there any prohibition on completing the transaction before clearance is received or any compulsory waiting period has ended?

As indicated in question 3.4 above, the participants to a concentration are under an obligation to suspend implementation until receipt of clearance by the Commission.

Parties that implement prior to clearance run the risk that the Commission may subsequently block the concentration, or attach conditions or obligations to the approval. Failure of the parties to comply with such a decision of the Commission carries a penalty ranging between BGN 100,000 (about Euro 51,130) and BGN 500,000 (about Euro 255,650). Apart from any monetary sanctions, closing prior to merger control clearance may result in an order by the Commission for the restitution of the pre-merger status, including restitution by way of separation of the combined capital, shares or assets or termination of joint control.

3.8 Where notification is required, is there a prescribed format?

The Law requires that a pre-merger notification contain information about:

(i) the participants in the concentration;

(ii) the legal and economic structure of the concentration;

(iii) the relevant markets;

(iv) the companies over which the participants in the concentration exercise control;

(v) joint market share and joint turnover of the participants in the concentration; and

(vi) principal competitors, suppliers and customers.

The Commission has developed guidelines, which must be followed in the process of preparation of a notification. For a form containing the compulsory elements of notification under Bulgarian law (called "Form 2"), please visit the web-site of the Commission or use the following link: http://www.cpc.bg/public/index.php?id=47. In addition to the submission of a notification containing all the necessary information listed above, the Commission requires the submission of a number of supporting documents, including documents relating to the personal/corporate status of the entities concerned, balance sheets and financial reports from the last two years preceding the concentration, business plans and other documents pertaining to the contemplated transaction. Where the documents are in a language other than Bulgarian, such documents have to be supplied with a certified Bulgarian translation. Official documents issued by non-Bulgarian authorities need to be legalised and/or apostilled in accordance with the applicable rules. All copies of private documents need to be certified by the issuing undertaking via a stamp and a signature of an authorised representative.

Since the Commission will not register a notification until it is satisfied that all required information and relevant supporting documents have been submitted, it is advisable that before filing a merger notification the parties consult the Commission with regard to the volume of the information which it needs to contain. As the volume of information required with regard to different transactions may vary, a preliminary consultation would facilitate both the parties and the Commission.

3.9 Who is responsible for making the notification and are there any filing fees?

In instances of acquisition of control, the obligation to notify the Commission rests with the entity acquiring control. In mergers and in cases involving the establishment of joint ventures, the filing must be made by all the entities concerned.

The Tariff of the Fees Charged by the Commission on the Protection of Competition Under the Law on the Protection of Competition establishes a two-tier filing fee system. There is a flat filing fee of BGN 2,000 (about Euro 1,030),

payable at the time of filing. In the event that the concentration is approved, an additional fee is payable. Such fee is equal to the amount equivalent to 0.1% of the combined turnover of the undertakings concerned on the Bulgarian market but not to exceed BGN 60,000 (about Euro 30,770). No additional fee is due where the Commission finds that the notified transaction does not constitute a concentration within the meaning of the Law, or where the Commission blocks the concentration.

4 Substantive Assessment of the Merger and Outcome of the Process

4.1 What is the substantive test against which a merger will be assessed?

The Commission will approve a concentration if it does not lead to the establishment or strengthening of a dominant position, where such a dominant position would materially limit or impede competition in the relevant market. The Law establishes a rebuttable presumption of the existence of a dominant position where the market share in a relevant market exceeds 35 per cent.

Apart from high market shares, the Commission may have other concerns including vertical foreclosure, portfolio effects and elimination of close substitutes when assessing the impact of the concentration. In its practice, the Commission has also considered factors such as the lack of competitors on the relevant market, the existence of serious entry barriers, the market position of the parties upon the completion of the concentration and the potential for future changes of that position, the economic and financial strength of the parties, possibilities for cross-subsidy, etc. The Commission has further developed the test for assessment of the market position of the undertakings concerned in a Methodology for Carrying out Studies and Definition of the Market Position of the Undertakings on the Relevant Market.

The Commission has the discretion to approve a concentration which leads to the establishment or strengthening of a dominant position if it is expected to achieve positive results, such as: (i) modernisation of a business, a branch of the economy, or the national economy as a whole; (ii) structural improvement of the market; (iii) attraction of investment; (iv) new job openings; or (v) better satisfaction of the interests of consumers. The Commission considers all possible effects (either positive or negative) when assessing a concentration. It may approve a concentration if the benefits (as a whole) of such a concentration outweigh the negative impact associated with the establishment or strengthening of a dominant position. In a number of cases, the Commission has taken into account the economic efficiencies of the proposed concentration and has based its decisions on such considerations despite the relatively high market shares of the parties.

Although the Commission has not yet challenged a concentration on oligopoly grounds, it may do so where appropriate.

Although vertical and conglomerate mergers are generally considered to have a lower effect on competition, they are not exempted from the conditions for clearance described hereinabove.

The Law has not established and the Commission has not developed a special test for joint ventures.

4.2 What is the scope for the involvement of third parties (or complainants) in the regulatory scrutiny process?

Customers, competitors or any third parties whose interests could be potentially affected by the concentration may participate in review proceedings before the Commission. Parties to the merger control proceedings have the right to be notified of a planned hearing, to review the information and documents contained in the file before the hearing (unless such information or documents are marked as "protected secret"), to attend the hearing and to express its position of the case.

Even where competitors and/or customers are not parties to merger control proceedings, they may be approached by the Commission in order to get their views, including with regard to the effects which implementation of a concentration will have on competition. As a general matter the Law does not prevent or exclude customers and competitors from getting involved in the investigation and in the public hearings held by the Commission. The particular mode and procedural framework of their involvement, however, may vary and will be determined by the Commission.

The Law does not provide a procedure for publicising either the fact of a filing or the initiation of the review process by the Commission. However, upon registration of a notification, the Commission publishes a note on its website and invites interested third parties, if any, to submit their comments and views with respect to the proposed concentration.

4.3 What information gathering powers does the regulator enjoy in relation to the scrutiny of a merger?

The primary sources of information used by the Commission in establishing the parameters of the relevant markets are state agencies such as the National Statistics Institute, customs and administrative authorities, public registries, etc. The Commission would also contact and collect information from third parties such as customers, suppliers, competitors, distributors, and professional and trade associations.

The Commission has broad investigative powers to conduct site visits and to order the submission of documents, agreements and information, as well as to request oral explanations, where necessary.

Persons who fail to submit on time the evidence requested or accurate information, or fail to appear in person to give explanations before the Commission are subject to a pecuniary penalty. The range of such penalty is from BGN 500 (about Euro 260) to BGN 2,500 (about Euro 1,280). In the case of repeated infringements the penalty range is from BGN 2,000 (about Euro 1,030) to BGN 20,000 (about Euro 10,260).

4.4 During the regulatory process, what provision is there for the protection of commercially sensitive information?

The Law does not provide for a possibility for the parties to merger control proceedings to withhold from the Commission confidential commercial information.

The documentation and the information obtained by the Commission in the course of particular merger control proceedings may be used by the Commission only for the purposes of those respective proceedings. Where a participant to a concentration consider that its interests might be encroached if particular information or documents are published or disclosed, upon the explicit request of such participant, the Commission will treat such information/document as 'protected secret' and would not disclose it to third parties.

Where the notification is filed by more than one undertakings, the documents containing protected secrets for each one of them should be submitted in separate folders as attachments to the notification.

As already mentioned in question 4.2 above, upon registration of a notification, the Commission publishes a note on its web-site which announces the initiation of proceedings and invites interested third parties to submit their comments and views with respect to the proposed concentration. The note contains only a very brief presentation of the concentration and does not include any confidential information.

All decisions of the Commission become publicly available (in a non-confidential version) through electronic databases and compilations published by the Commission itself. The Commission also keeps a public register of the non-confidential versions of its decisions.

5 The End of the Process: Remedies, Appeals and Enforcement

5.1 How does the regulatory process end?

Upon completion of the review process the Commission holds a public hearing, where parties may once again submit evidence or other relevant information. The Commission will typically issue its decision a few days after the announcement of the decision.

The Law explicitly provides that: (i) decisions that a concentration does not fall within the scope of merger control rules; (ii) decisions approving the concentration without initiating second stage investigation; and (iii) decisions for initiation of a second stage investigation shall be published in the Official Gazette. Although not explicitly provided for by the Law, also subject to publication in the Official Gazette are decisions to block a concentration and decisions approving a concentration after the end of a second stage investigation.

The Decision of the Commission enters into force, if it has not been appealed before the Supreme Administrative Court, within fourteen days of its publication in the Official Gazette.

5.2 Where competition problems are identified, is it possible to negotiate "remedies" which are acceptable to the parties?

The Law provides that the Commission may attach to its clearance decision conditions or obligations, provided that such remedies are directly related to the implementation of the concentration, and that they are strictly aimed at guaranteeing the preservation of competition in the market. The Commission has discretion with regard to the negotiation and determination of the character and parameters of the remedies. Although examples of the imposition of structural remedies are rare, in its recent practice the Commission has approved transactions subject to divestment undertakings with respect to specific assets. There are already a number of examples of when the Commission has applied behavioural remedies, including inter alia undertakings that the parties concerned would: (i) preserve certain lines of supply over a specific period of time upon implementation of the concentration; (ii) ensure the arm's-length access of competitors or customers to an essential facility; (iii) ensure that clients will have continuing access to services which are not tied into service packages; or (iv) coordinate with the Commission future price increases undertaken by a dominant entity.

Particular remedies may be proposed by the undertakings concerned or by the Commission. The remedies are incorporated in the decision of the Commission as conditions to the clearance of the transaction. The Commission retains continuous jurisdiction to monitor their implementation.

So far the Commission has neither blocked nor ordered remedial action in foreign-to-foreign mergers. However, it may be expected that, where appropriate, the Commission may craft measures to remedy local issues in foreign-to-foreign mergers. Divestiture or keep-separate undertakings could possibly be applied where the participants have a local corporate presence and the transaction entails a local transfer of shares or assets. In cases where the participants do not have a local corporate presence, the Commission may seek to remedy the negative effects associated with post-concentration integration of distribution and/or supply networks.

It is within the discretion of the Commission to liaise with other competition authorities and to take into account the remedies which are imposed or being negotiated in other jurisdictions.

5.3 At what stage in the process can the negotiation of remedies be commenced?

The Commission has not developed special rules concerning the conditions and timing of the application of remedies.

5.4 How are any negotiated remedies enforced?

As mentioned in question 5.2 above, whenever remedies are imposed, the Commission retains continuous jurisdiction and monitors their implementation. The enforcement powers of the Commission are coupled with the authority to impose pecuniary penalties and fines for non-compliance with its decisions, which may range from BGN 100,000 (about Euro 51,130) to BGN 500,000 (about Euro 255,650). In addition, the Commission may nullify a previously

granted authorisation of a concentration if the parties breach the Commission's decision or the conditions contained therein.

5.5 Will a clearance decision cover ancillary restrictions?

We are not aware of cases in which the Commission has developed a test for assessment of ancillary restrictions. When the issue arises, it is most likely that the Commission would follow the criteria established in the EC Commission Notice on Restrictions Directly Related and Necessary to Concentrations.

5.6 Can a decision on merger clearance be appealed?

All merger control decisions of the Commission are subject to judicial review. The court of jurisdiction is the Supreme Administrative Court. The right to appeal expires 14 days upon the delivery of the decision of the Commission. However, (i) decisions that a concentration does not fall within the scope of merger control rules; and (ii) decisions approving the concentration without initiation of a second stage investigation may be appealed within 14 days as of their publication in the Official Gazette.

As a general matter, the right to lodge appeals against decisions of the Commission is restricted to persons who have taken part in the proceedings before the Commission. However, (i) decisions that a certain transaction does not constitute a concentration; and (ii) decisions approving a concentration without initiating a second stage investigation could also be appealed by any other interested party. The Law provides a broad definition of the term 'interested party', which includes any person, undertaking or association whose interests may potentially be affected by a violation of the Law.

The Supreme Administrative Court has the power to: (i) reject the appeal; or (ii) repeal partially or wholly the appealed decision and return the file back to the Commission with compulsory instructions regarding the application and the interpretation of the law.

5.7 Is there a time limit for enforcement of merger control legislation?

The Law provides that proceedings shall not be instituted, or that pending proceedings shall be terminated, provided that five years have elapsed since the particular breach at hand occurred.

6 Miscellaneous

6.1 To what extent do the regulatory authorities in your jurisdiction liaise with those in other jurisdictions?

The Commission is a member of the International Competition Network (ICN). It has developed close working relations with the European Commission and a number of national competition authorities. To the best of our knowledge, on a couple of occasions involving foreign-to-foreign mergers, the Commission has requested information about the status of proceedings from other national competition authorities.

6.2 Please identify the date as at which your answers are up to date.

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