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The International Comparative Legal Guide to: **Merger Control 2011**

A practical cross-border insight
into merger control

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1 Relevant Authorities and Legislation

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

The Competition Board (“*Konkurentsiamet*”) of the Republic of Estonia is charged with the responsibility to apply merger control regulation in Estonia. Further information can be found at the website of the Competition Board at <http://www.konkurentsiamet.ee/> where much of the information is also available in English.

1.2 What is the merger legislation?

Estonian merger regulation is set forth in the Competition Act (“*Konkurentsiseadus*”) adopted by the Estonian parliament on June 5, 2001 and is effective as of October 1, 2001.

The last significant amendments of the Competition Act concerning merger control rules entered into force as of January 1, 2008. As of January 1, 2011, Estonia enters into Eurozone and the Competition Act shall be amended respectively substituting the Estonian kroon figures with corresponding euro amounts.

1.3 Is there any other relevant legislation for foreign mergers?

There are no other specific foreign investment control regulations.

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

The general requirements on merger control set forth in the Competition Act are applicable for mergers in every field. Specific additional requirements have been foreseen in some other sectors, e.g. with respect to credit institutions when certain thresholds are exceeded under the Credit Institutions Act, similar requirements are applicable in case these thresholds are exceeded when participation is acquired in an Estonian investment firm under the Securities Market Act or such thresholds are exceeded with respect to insurance undertakings.

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 Competition Act sets forth that for the purposes of the Act, a

concentration is deemed to arise where:

- previously independent undertakings merge within the meaning of the Commercial Code or parts of undertakings are amalgamated;
- an undertaking acquires control of the whole or part of one or several undertakings;
- undertakings jointly acquire control of the whole or part of one or several undertakings;
- a natural person already controlling at least one undertaking acquires control of the whole or part of another undertaking or several undertakings or their parts; or
- several natural persons already controlling at least one undertaking jointly acquire control of the whole or part of another undertaking or several undertakings or their parts.

A part of an undertaking is the assets of the undertaking or an organisationally independent part of the undertaking, including an enterprise which constitutes a basis for business activities and to which market turnover can be clearly attributed. Therefore also in case assets are being acquired, e.g. trademarks, other intellectual property rights, and market turnover can be attributed to such assets, merger control rules shall be applicable.

The following transactions are not regarded as concentrations under Estonian law:

- transactions carried out as an internal restructuring of a group of undertakings;
- temporary acquisition of shares by a credit, finance or insurance institution with a purpose of reselling these shares provided that these shares are sold within a year from acquisition;
- in case control is acquired by a respectively authorised person in accordance with the laws on compulsory dissolution, liquidation, insolvency or similar proceedings; or
- acquisitions by persons which sole business is acquisition and owning of participation in other undertakings for a purpose of maintaining the full value of investments, whereas the voting rights in respect of the holding are exercised primarily in relation to the appointment of members of the management and supervisory bodies and not for direct or indirect influencing of the competitive conduct of those undertakings, are not regarded as a concentration.

Acquisition of control

The Competition Act defines control as the opportunity for one undertaking, several undertakings jointly, or for a natural person, by purchasing shares and on the basis of a contract, transaction or articles of association or by any other means, to exercise direct or indirect influence on another undertaking, which may consist of the right to:

- exercise significant influence on the composition, work or

decision-making of the management bodies of the other undertaking; or

- use or dispose of all or a significant proportion of the assets of the other undertaking.

Therefore acquisition of control may take place by the simple acquisition of a majority of shares or stocks in the company, whereas acquisition of more than 50% of shares would be sufficient to ensure control under the Commercial Code or by way of another transaction (e.g. shareholders agreement, blocking rights in the articles of association, etc.) which would satisfy the requirements set forth above.

With respect to the entitlements to acquire equity in the future under certain conditions, (e.g. stock options or convertible warrants) the law has not *expressis verbis* set forth specific provisions with respect to the treatment of such instruments under the merger control rules. It could be argued that in case of conditional acquisitions, where the performance of the condition is unclear, the acquisition of control shall be subject to merger control rules only when the condition has been satisfied.

2.2 Can the acquisition of a minority shareholding amount to a “merger”?

Acquisition of a minority shareholding may amount to a merger in case that acquisition shall enable the shareholder to exercise significant influence on the composition, work or decision-making of the management bodies of the other undertaking; or use or dispose of all or a significant proportion of the assets of the other undertaking.

2.3 Are joint ventures subject to merger control?

Article 19 Section 2 of the Estonian Competition Act sets forth that acquisition of a control over an undertaking within the meaning of items 3 and 5 of Section 1 of the same paragraph (these items govern acquisition of joint control) is regarded as creation of a new undertaking which business activities are devised to be long-term and independent. Therefore Estonian law has similar full functionality “lasting basis” and “autonomous economic entity” pre-conditions as set forth in Article 3 (4) of the ECMR.

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

A concentration shall be subject to control if: (a) during the previous financial year, the aggregate turnover in Estonia of the parties to the concentration exceeded 100,000,000 EEK (as of January 1, 2011 this amount shall be substituted with 6,391,200 EUR); and (b) turnover in Estonia of each of at least two parties to the concentration exceeded 30,000,000 EEK (as of January 1, 2011 this amount shall be substituted with 1,917,350 EUR). All the elements of the thresholds are cumulative, i.e. all must be satisfied.

The turnover of a party to a concentration shall be calculated by adding the turnovers of the following undertakings to the turnover of the party:

- participant in the merger;
- undertaking or undertakings controlled by the party to the concentration;
- undertaking or undertakings controlling the party to the concentration;
- undertaking or undertakings controlled by an undertaking specified in above clause; and

- undertaking or undertakings jointly controlled by undertakings specified in above.

The turnover of a party to a concentration is comprised of the returns (net turnover) on the goods sold or services provided by the party to a concentration during the financial year preceding the concentration, excluding e.g. intra-group turnover. The turnover of the party to the concentration is calculated on the basis of the net sales to the buyer located in the territory of Estonia.

Specific provisions exist for the calculation of turnover with respect to the credit institutions, insurance companies and finance institutions.

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

No substantive overlap is required for the merger control rules to apply. In case a transaction can be considered as a concentration and turnover thresholds set forth in the law are exceeded, merger control procedures shall be required to be carried out (subject to exceptions regarding acquisitions by credit institutions, financial institutions, insurers or securities brokers – see response to question 3.2). However in case of the absence of a substantive overlap, certain information pertaining to the description of relevant markets can be omitted from the notification to the Competition Board.

2.6 In what circumstances is it likely that transactions between parties outside Estonia (“foreign to foreign” transactions) would be caught by your merger control legislation?

The merger control legislation shall be required when at least two parties to the concentration have either directly or indirectly a turnover in Estonia which exceeds the thresholds set forth in the Competition Act. For example in case two entities who both have subsidiaries in Estonia whose turnover exceeds Estonian thresholds, form a joint venture in a foreign jurisdiction, the formation of this joint venture is subject to merger control rules in Estonia, even in case the activities of the joint venture are carried out outside the Estonian commodities market.

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

EC Merger Regulation takes precedence with respect to certain types of concentrations. Article 21 Section 4 of the Competition Act establishes *expressis verbis* that the Competition Board shall not review a concentration in case such concentration is reviewed by the European Commission.

2.8 Where a merger takes place in stages, what principles are applied in order to identify whether the various stages constitute a single transaction or a series of transactions?

In accordance with the Competition Act, in case control is acquired over one or more parts of a commercial undertaking by the same persons through two or more transactions during a period of two years, these transactions will be treated as one and same concentration, the date of concentration being the date of the last transaction.

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?

The concentration which is subject to the notification under the merger control rules shall be notified to the Competition Board before the concentration can be enforced and after:

- entry into the merger agreement or transaction for the merger of parts of undertakings;
- conclusion of a transaction or performing other action for the acquisition of control;
- conclusion of a transaction or performing other action for the acquisition of joint control; or
- announcement of the public bid for securities.

Credit institutions, securities brokers and insurers shall give notification of a concentration after obtaining permission from the state supervisory authority in the corresponding field of activity.

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

Please see question 2.1 as regards which transactions are not regarded as a concentration within the meaning of the Competition Act.

3.3 Where a merger technically requires notification and clearance, what are the risks of not filing? Are there any formal sanctions?

The conditions of the liability have been established in the Competition Act and in the Penal Code.

In accordance with the Competition Act, administrative liability can be imposed in case a concentration is not notified or provisions of the conditions have been violated. A legal person can be fined up to 500,000 EEK (32,000 EUR or 39,800 USD); the management board or supervisory board members of the obliged undertaking can also be subjected to a fine or detention. Administrative liability shall be imposed by the Competition Board.

The Penal Code establishes that a member of the management board, of a body substituting for the management board or of a supervisory board of a legal person, who fails to give notice of concentration prejudicing free competition within the specified term or violates the prohibition on concentration or the conditions of a permission authorising a concentration and provided that administrative liability for the same offence has been imposed on the same person, shall be punished by a pecuniary punishment or up to 3 years' imprisonment. In case the same act is committed by a legal person, the legal person may be punished with a fine of up to 250 M EEK (16 M EUR or 20 M USD).

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

There have been cases where Stage II proceedings have been necessary and also where ancillary restrictions have been imposed, but normally merger clearance can be obtained within 2-3 weeks from the submission of all documentation.

This efficient and reasonable approach by the Competition Board has created a situation where we have not come across a scenario

where consideration of carve-out possibilities would be necessary. However in case Estonian merger control rules shall be applicable, then these requirements must be complied with respect to any concentration in Estonia.

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

Concentration notice can be submitted also before signing of transaction documentation, provided that the parties to the concentration prove their intention to carry out the transaction or perform an action resulting in concentration.

In such case, according to the Competition Board practice, the merger control procedure shall be carried out also in the absence of the signed transaction, including the Competition Board shall prepare a draft competition clearance, however this is signed and the clearance is officially issued only when the parties have delivered to the Competition Board copy of the signed final transaction.

3.6 What is the timeframe for scrutiny of the merger by the merger authority? What are the main stages in the regulatory process? Can the timeframe be suspended by the authority?

The first stage decision shall be obtained within **30 calendar days** from the submission of notice of a concentration. Within that period the Director General of the Competition Board or his or her deputy shall:

- make a decision to grant permission to concentrate if the concentration subject to control does not significantly damage competition;
- make a decision to initiate supplementary proceedings in order to ascertain whether the concentration subject to control does or does not significantly damage competition;
- make a decision that the concentration does not fall within the scope of merger control rules; or
- terminate the merger control procedures should the parties to the concentration terminate or waive the concentration.

In case supplementary proceedings are required in order to ascertain whether the concentration subject to control does or does not significantly damage competition, the law imposes a term of **four months** for such proceedings from the start of the supplementary proceedings. Within that term the Director General of the Competition Board or his or her deputy shall make one of the following decisions:

- to grant permission to concentrate;
- to prohibit the concentration; or
- to terminate the proceedings if the parties to the concentration decide not to concentrate.

The general principle set forth in the Competition Act is that in case the Competition Board does not adopt any resolutions set forth above within the respective terms, the concentration can be completed.

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

The general rule set forth in the Competition Act is that the concentration cannot be concluded and control transferred before the Competition Board has given its approval or the statutory period for the Board to adopt respective decision has expired.

However the law also sets forth a general exception that with the consent of the General of the Competition Board or his or her deputy, a concentration can be carried out before the consent for the concentration. Also the law foresees a specific exception that provides a possibility in case of public offer of securities to acquire control before the consent for the concentration on the condition that Competition Board is notified immediately and the acquirer of the securities shall not use the voting rights attached to such securities or does so only with the purpose of maintaining the value of the securities.

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

Requirements for the information to be included in the notice and documents that should be appended to the notice are set forth in the Competition Act and in the Decree of the Minister of Economy and Communications. There are no onerous requirements regarding compilation of the required documentation, e.g. notarisation, apostille.

A notice of a concentration shall set out *inter alia*:

- information concerning the parties to the concentration, including business names, registry codes, contact details and areas of activity;
- a description of the concentration;
- data concerning the turnovers of the parties to the concentration during the preceding financial year;
- information concerning the goods markets, including information concerning the market shares, main competitors, clients and the market shares of the competitors and clients of the parties to the concentration, and concerning barriers to entry into or exit from the goods market;
- a description of the effect of the concentration on the goods market, prepared by the person submitting the notice; and
- restrictions on competition, if any, which are directly related to and necessary for giving effect to the concentration, and the reasons for applying such restrictions.

The Competition Act requires that the documents on the basis of which the concentration is put into effect shall be appended to the notice.

Normally it is required that all items listed in the Competition Act and in the Decree of the Minister of Economy and Communications are set forth in the concentration notice. However the law also foresees a possibility that the Director General of the Competition Board or his or her deputy may release a party to a concentration from the obligation to submit some of the documents or information specified in the law if such documents or information are not necessary for the proceedings concerning the concentration.

There is no established practice with respect to pre-notification negotiations with the Competition Board. However in practice such negotiations have sometimes been useful depending on the complexity and time pressure of a specific concentration.

3.9 Is there a short form or accelerated procedure for any types of mergers?

There is short form for certain notifications. A notice is submitted in an abbreviated form to notify of concentrations which comply with at least one of the below conditions:

- there is no horizontal overlap of the goods markets or there is no vertical relationship between the goods markets;
- there is horizontal overlap, but their joint market share of the merger participants will not exceed 15 per cent after

concentration, or in case one or several parties to the concentration operate in the previous or following affected market, in which another party to the concentration operates, unless the individual market share of a party to the concentration of the joint market share of the parties to the concentration does not exceed 25 per cent;

- the parties to the concentration jointly establish a joint venture and the new undertaking does not operate and has no intention to operate in Estonia; and
- a party to the concentration acquires control over an undertaking over which the party, together with another undertaking, is already exercising joint control.

The Competition Act also foresees that in exceptional circumstances, even in case grounds for abbreviated notice are existent, a full notice shall be submitted.

There is no possibility to use accelerated procedures set forth in the law. Practice has indicated that in certain cases which are not overly complicated, the Competition Board may process the documentation quicker than the statutory 30-day period. In fact when reviewing the current practice of the Competition Board, the permission of the concentration shall normally be issued within 2-3 weeks from the submission of the notice.

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

The answer depends on which type of concentration shall be subject to merger control. In case:

- previously independent undertakings merge within the meaning of the Commercial Code – a joint notice shall be required;
- an undertaking or natural person acquires control of the whole or part of another undertaking – notice shall be made by an undertaking or natural person acquiring control; or
- undertakings or natural persons jointly acquire control of the whole or part of a third undertaking – undertakings or natural persons acquiring control shall submit joint notice.

The concentration notice shall require payment of state duty in the amount of 30,000 EEK (as of January 1, 2011 this shall be changed to 1917.34 EUR). State duty shall be paid before a concentration notice can be submitted; evidence of payment of the state duty shall be appended to the notice.

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? Are non-competition issues taken into account?

As of July 1, 2006 the Competition Act foresees that the Director General of the Competition Board or his or her deputy shall refuse to give clearance for the concentration, in case the concentration **significantly damages competition in particular through the creating or strengthening of a dominant position**. Appraisal of a concentration shall be based on the need to maintain and develop competition, taking into account the structure of goods markets and the actual and potential competition in the goods market, including:

- the market position of the parties to the concentration and their economic and financial power and opportunities for competitors to access the goods market;
- legal or other barriers to entry into the goods market;
- supply and demand trends for the relevant goods; and

- the interests of the buyers, sellers and consumers.

The above-mentioned substantive test is applied to all types of mergers under Estonian law, including vertical, horizontal and conglomerate mergers.

Under the Competition Act an undertaking is regarded to be in the dominant position in case its position in the market allows it to act in the market independently of competitors, suppliers and purchasers. In case at least 40% of the turnover at the market is attributable to the respective undertaking or undertakings, it is assumed that this undertaking or undertakings have dominant position.

As regards the practice of the Competition Board with respect to the substantive test then for example in 2003 however there was one interesting case involving a vertical merger of high market share undertakings (AS Magnum Medical/OÜ Parimex Invest, 05.06.2003 no. 16-KO).

In the referred case, an Estonian wholesaler of pharmaceutical products with a market share of over 50% acquired control over a retailer of pharmaceutical products with a substantial market share. With the concentration the purchaser acquired 40-55% market share in the geographical markets where the retailer was competing (this case is also a good example of an effect of EC case law on Estonian merger control practice, as Ahold/Superdiplo case (Case No COMP/M.2161) was referred in the merger clearance when determining the relevant markets).

The Competition Board based its deliberation on the following issues:

- integration at vertical and horizontal levels was a common feature in the development of competition in the retail sector of pharmaceutical products;
- as a result there were a number of competitors which had sufficient economic and financial power to ensure that the concentration would not significantly restrict competition in the goods market; and
- in addition the prices in the pharmaceutical wholesale and retail sale market are effected by state regulated limits on gross margins.

As a result the Competition Board came to the conclusion that, taking into account the number of competitors and their financial and economical powers, but also considering the structure of the goods markets and absence of legal barriers for entry into the goods market, the concentration did not strengthen the dominant position of the acquirer to the extent where competition would be significantly restricted in the goods market.

Non-competition issues may be taken into account. For example the participants in the merger may include in the merger notice information on the research and development activities in the affected markets and the effect of the research and development activities of the merger participants may be taken into account when testing the merger.

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

The Competition Act establishes that when a notice of concentration is submitted to the Competition Board, the Competition Board shall publish a notice of receipt of the concentration notice in the official publication *Ametlikud Teadaanded*. Interested parties have the right to submit opinions and objections to the Competition Board within seven calendar days as of publication of a notice concerning receipt of a notice of concentration.

In practice third parties have no other rights; they cannot claim access to key submissions or documents and they don't have any rights to attend meetings or hearings.

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

The Competition Act provides the Competition Board with extensive investigative powers. With respect to merger control, the law for example foresees a possibility to have oral hearings in case the Competition Board finds that a concentration subject to proceedings involves the creating or strengthening of a dominant position, a result of which competition would be significantly restricted in the goods market. Oral hearings of the parties to the concentration may be heard at the request of the parties to a concentration or on the initiative of the Competition Board.

In addition, general investigatory powers vested with the Competition Board could be used in connection with merger control. Article 57 Section 1 Item 6 of the Competition Act sets forth that the Competition Board has the right to request all natural and legal persons and the representatives thereof and all state agencies and local governments and the officials thereof to submit information necessary for monitoring a concentration. The information provided for above shall be requested in writing wherein the purpose of and the legal basis for the request for information shall be specified and the possibility of issue of a precept upon failure to provide information or provision of incomplete, incorrect or misleading information shall be referred to. The term for submission of the information shall be not less than ten calendar days. In addition the Competition Board has the right to request natural persons, including representatives or employees of legal persons or associations which are not legal persons and officials or representatives of state agencies or local governments, to provide explanations at the Competition Board or on site.

Failure to perform the above obligations may result in a fine of 50,000 EEK for a natural person and 100,000 EEK for legal persons.

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

It is not possible to withhold confidential information from the regulator altogether. The Competition Act foresees a possibility that the person submitting a notice of concentration shall indicate information contained in the notice which the person deems to be a business secret. The fact of a concentration and the information provided with respect to the undertakings participating in the concentration (incl. information on their group of companies) shall not be deemed to be a business secret.

The officials of the Competition Board are prohibited from disclosing confidential information to third persons and disclosing business secrets of the undertakings, which they have come to know in the course of performance of their duties. An undertaking shall decide what it shall regard as confidential information, although the Competition Board is entitled to demand explanations as to why certain information is deemed confidential.

As the fact of the concentration is not regarded confidential, the Competition Board shall upon receipt of the concentration notice publish a short notice in the official publication *Ametlikud Teadaanded*, which normally involves only a reference to the parties to the concentration and information of the right of third parties to submit their opinions and objections within seven days from the publication. The concentration notice submitted to the Competition Board itself shall not be published.

The decision shall be published in full, however any confidential information or business secrets (e.g. market shares, any conditions of the transfer, etc.) shall not be made available to the public.

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

5.1 How does the regulatory process end?

The regulatory process may end with an adoption of a decision (both in Phase I and Phase II) or by simply with a lapse of time (30 days in case of Phase I and four months in case of Phase II). The decision is published on the website of the Competition Board, but only after the notifying party has been afforded an opportunity to outline the information in the decision which it regards as confidential.

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

Article 27 Section 3 constitutes that in order to avoid damaging competition, the Director General of the Competition Board or his or her deputy may decide to grant permission to concentrate provided that the parties to the concentration fulfill the obligations assumed by them.

Considering the generality of the foregoing language, the concentrating parties and the Estonian Competition Board is not limited in their negotiation of the remedies and as a result different types of possibilities have been used in part including divestment remedies and behavioural remedies.

The settlement between the parties to the concentration and the Competition Board are settled in the resolution to approve the concentration which shall include conditions and obligations directly related to the concentration.

5.3 At what stage in the process can the negotiation of remedies be commenced? Please describe any relevant procedural steps and deadlines.

In case the Competition Board foresees that the concentration may lead to damaging of competition, it shall inform the parties to the concentration immediately and at least one month before the expiry of the term for the Stage II proceedings. The notice shall include an invitation for the participants to assume obligations in connection with the concentration ensuring that the competition shall not be damaged.

5.4 If a divestment remedy is required, does the merger authority have a standard approach to the terms and conditions to be applied to the divestment?

In total there have been several cases where ancillary restrictions have been applied by the Competition Board. These have for example concerned an obligation to conclude a long-term supply agreement, restriction on volume of producing certain type of alcoholic beverages etc. In recent cases the Competition Board has moved from non-structural remedies to structural remedies, the last two cases requiring divestment of certain trademarks and certain part of the business of the target. As regards the future approach to terms and conditions applied to divestment, it can be expected that the approach of the Competition Board shall follow to great extent the practice and model formats applied by the European Commission.

5.5 Can the parties complete the merger before the remedies have been complied with?

Mergers can be completed before the remedies have been complied

with. For example when Elion Ettevõtte AS acquired control over Microlink AS (Director General of the Competition Board resolution dated 21.10.2005 no. 47-KO), the parties to the concentration were required to divest a section of telecommunications business of Microlink AS within a deadline negotiated between the parties and the Competition Board.

5.6 How are any negotiated remedies enforced?

The Competition Act foresees a possibility that in case negotiated remedies are not enforced, the Director General of the Competition Board or his or her deputy has the right to cancel the permission for the concentration.

In addition the Penal Code foresees that the management board or a supervisory board of a legal person, who violates the conditions of a permission authorising concentration shall be punished by a pecuniary punishment or up to three years' imprisonment. In case the same act is committed by a legal person, the legal person may be punished with a fine of up to 250 M EEK (16 M EUR or 20 M USD).

5.7 Will a clearance decision cover ancillary restrictions?

There are no guidelines for how to treat ancillary restrictions in the course of merger control proceedings, previously you could for example include in the merger notice reference to the non-compete covenant and the Competition Board would confirm the such covenant to be consistent with the law in the merger clearance. Last year the Competition Board changed its practice and it no longer provides its opinion with respect to the ancillary restrictions.

5.8 Can a decision on merger clearance be appealed?

There is no specific right to appeal against the decision constituted in the Competition Act. General principles of appealing against administrative decisions apply, i.e. any person whose rights are infringed by the decision can apply to court within 30 days when he or she becomes aware of the decision.

In case a matter is brought up in the administrative court, this can be a full appeal on the merits, on the judicial review process etc.

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

The Competition Act does not specify a limitation period during which a concentration that has been put into effect can be ordered to be dissolved by the Competition Board. There being no established court practice on this matter, it can even be argued that the right of a Competition Board to demand dissolution of the concentration is not subject to any limitation periods.

With respect to criminal and administrative liability the statutory limitation periods apply, i.e. five years in case of a criminal offence and two years in case of an administrative offence. Claims for civil damages (e.g. by a third party which regards that the concentration has created such competition situation which has caused to that third party damage) expires after three years from the moment the damaged party became aware of the breach and in any event after ten years from the action that created the damage.

6 Miscellaneous

6.1 To what extent does the merger authority in Estonia liaise with those in other jurisdictions?

The Competition Board is a member of both the International Competition Network and the European Competition Network.

With respect to the sharing of information, the Competition Act establishes that the Competition Board has the right in performance of Articles 81 and Article 82 to exchange information including business secrets and other confidential information of undertakings with the European Commission and authorities dealing with the competition issues in other Member States and use information received from the European Commission and authorities dealing with the competition issues in other Member States.



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

These answers will be up to date at the time of going to press.



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Tamme Otsmann Ruus Vabamets

Tamme Otsmann Ruus Vabamets is a full service commercial law firm focused on mergers & acquisitions and litigation. The firm has a dedicated team of legal professionals with recognised experience and resources to complete any assignment in Estonia.

Recently the members of our M&A and competition law team has assisted clients in a number of merger control cases before the Competition Board, incl. VR-Yhtymä Oy and JSC "Freight One", leading Finnish and Russian railway operators, in connection with the Estonian merger control proceedings relating to the joint venture in Finland, merger control proceedings in connection with AS Pristis acquisition of Skorpion Julgestusteenistuse AS, creating second largest Estonian security company, acquisition of a control over major shoe retailer creating leading shoe retail company, etc. In addition our competition law team has provided assistance to several foreign law firms in connection with merger control issues of "foreign-to-foreign" acquisitions.

Our clients are diverse across many industries and geographic regions. Lawyers of our firm have been involved in representing clients from early foreign investments into Estonia to the recent increasingly complex transactions in financial services, telecommunications, mergers and acquisitions, real estate, project finance, aviation and shipping, railway transport and infrastructure.

Having a strong international basis in its legal practice, Tamme Otsmann Ruus Vabamets provides legal assistance in the Estonian, English, German, Finnish, and Russian languages.

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