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The International Comparative Legal Guide to: Merger Control 2012

A practical cross-border insight
into merger control issues

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General Chapters:

1	A Tale of Three Mergers: The Use of Quantitative Techniques in UK and EU Merger Control – Mat Hughes & David Wirth, Ashurst LLP	1
2	The Alphabet Soup: Efficiently Managing Multi-Jurisdictional Filings – Emmanuelle van den Broucke & Ian Rose, Salans LLP	9
3	EU Merger Control – Challenges for 2012 (and beyond) – Frederic Depoortere & Giorgio Motta, Skadden, Arps, Slate, Meagher & Flom LLP	15
4	The Marchfeld Competition Forum – Dr. Anastasios Xeniadis & Christoph Haid, Schoenherr	19

Country Question and Answer Chapters:

5	Australia	Mallesons Stephen Jaques: Sharon Henrick & Wayne Leach	21
6	Austria	Schoenherr: Stefanie Stegbauer & Franz Urlesberger	28
7	Belgium	Linklaters LLP: Thomas Franchoo & Niels Baeten	35
8	Bosnia & Herzegovina	Moravčević Vojnović & Partneri oad in cooperation with Schoenherr: Srđana Petronijević & Christoph Haid	42
9	Brazil	Brasil, Pereira Neto, Galdino, Macedo Advogados – BPGM: Caio Mário da Silva Pereira Neto & Paulo Leonardo Casagrande	50
10	Bulgaria	Advokatsko druzhestvo Andreev, Stoyanov & Tsekova in cooperation with Schoenherr: Franz Urlesberger & Ilko Stoyanov	56
11	Canada	Gowling Lafleur Henderson LLP: Mark Nicholson & Ian Macdonald	62
12	China	King & Wood: Susan Ning & Huang Jing	68
13	Croatia	Schoenherr: Christoph Haid & Vanesa Knežević	73
14	Cyprus	Christodoulos G. Vassiliades & Co. LLC: Maria Kyriacou	78
15	Czech Republic	Schoenherr: Martin Nedelka & Radovan Kubáč	84
16	Denmark	Accura Advokatpartnerselskab: Jesper Fabricius & Christina Heiberg-Grevy	90
17	Estonia	TRINITI: Ergo Blumfeldt & Tõnis Tamme	98
18	European Union	Hunton & Williams LLP: Michael Rosenthal & Paul McGeown	105
19	France	Allen & Overy LLP: Florence Ninane & Camille Paulhac	116
20	Germany	Hunton & Williams LLP: Michael Rosenthal	123
21	Greece	Ashurst LLP: Efthymios Bourtzalas	131
22	Hungary	Schoenherr: Christoph Haid & Anna Turi	138
23	Iceland	LOGOS Legal Services: Helga Melkorka Ottarsdottir & Halldor Brynjar Halldorsson	144
24	India	PRA Law Offices: P. Srinivasan & Premnath Rai	152
25	Indonesia	Rizkiyana & Iswanto: HMBC Rikrik Rizkiyana & Albert Boy Situmorang	161
26	Ireland	Matheson Ormsby Prentice: Helen Kelly	168
27	Israel	AYR – Amar Reiter Jeanne Sage Cohen & Co.: Eyal Roy Sage & Daniella Carasso	178
28	Italy	Agnoli e Giuggioli: Luciano Vasques	184
29	Japan	Nagashima Ohno & Tsunematsu: Eriko Watanabe	190
30	Korea	Lee & Ko: Yong Seok Ahn & Yu Jin Kim	196
31	Kosovo	Moravčević Vojnović Zdravković in cooperation with Schoenherr: Srđana Petronijević & Christoph Haid	202
32	Luxembourg	NautaDutilh: Vincent Wellens	208
33	Macedonia	Moravčević Vojnović & Partneri oad in cooperation with Schoenherr: Srđana Petronijević & Christoph Haid	213
34	Mexico	Olivares & Cía., S.C.: Gustavo A. Alcocer & Carlos Woodworth M.	220
35	Montenegro	Moravčević Vojnović & Partneri oad in cooperation with Schoenherr: Srđana Petronijević & Christoph Haid	225
36	Namibia	Koep & Partners: Peter Frank Koep & Hugo Meyer van den Berg	231
37	Netherlands	Van Doorne N.V.: Sarah Beeston & Jitske Weber	237

Continued Overleaf ➔

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Country Question and Answer Chapters:

38	New Zealand	Chapman Tripp: Grant David & Neil Anderson	243
39	Nigeria	PUNUKA Attorneys & Solicitors: Anthony Idigbe & Dr. Nnamdi Dimgba	249
40	Norway	Wiersholm, Mellbye & Bech advokatfirma AS: Anders Ryssdal & Anette Halvorsen Aarset	256
41	Poland	Gide Loyrette Nouel: Dariusz Tokarczuk & Szymon Chwalinski	264
42	Romania	Schoenherr si Asociatii SCA: Mihai Radulescu & Franz Urlesberger	269
43	Russia	ART DE LEX Law Firm: Dmitry Magonya & Yaroslav Kulick	275
44	Serbia	Moravčević Vojnović & Partneri oad in cooperation with Schoenherr: Srdana Petronijević & Christoph Haid	281
45	Singapore	Drew & Napier LLC: Lim Chong Kin & Ng Ee-Kia	290
46	Slovakia	Schoenherr: Martin Nedelka & Mario Vogl	299
47	Slovenia	Schoenherr d.o.o.: Jani Soršak & Christoph Haid	304
48	South Africa	Webber Wentzel: Janine Simpson & Daryl Dingley	313
49	Spain	SJ Berwin LLP: Ramón García-Gallardo & Manuel Bermúdez Caballero	324
50	Sweden	Setterwalls: Ulf Djurberg & Maria Lehmann-Horn	333
51	Switzerland	Schellenberg Wittmer: David Mamane & Dr. Jürg Borer	338
52	Taiwan	Lee and Li, Attorneys-at-Law: Stephen Wu & Yvonne Hsieh	344
53	Tunisia	Kallel & Associates: Sami Kallel	350
54	Turkey	ELIG, Attorneys-at-Law: Gönenç Gürkaynak	355
55	Ukraine	Vasil Kisil & Partners: Denis Y. Lysenko & Mariya V. Nizhnik	361
56	United Kingdom	Ashurst LLP: Nigel Parr & Duncan Liddell	367
57	USA	Hunton & Williams LLP: D. Bruce Hoffman	380
58	Uruguay	Estudio Bergstein: Jonás Bergstein & Leonardo Melos	390

EDITORIAL

Welcome to the eighth edition of The International Comparative Legal Guide to: Merger Control.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of merger control.

It is divided into two main sections:

Four general chapters. These are designed to provide readers with a comprehensive overview of key issues affecting merger control, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in merger control in 54 jurisdictions.

All chapters are written by leading merger control lawyers and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Nigel Parr and Catherine Hammon of Ashurst LLP, for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The International Comparative Legal Guide series is also available online at www.iclg.co.uk.

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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 (“ECB”) is charged with the responsibility of applying merger control regulation in Estonia. Further information can be found on the website of the ECB 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 effective from October 1, 2001.

The last significant amendments to the Competition Act concerning merger control rules entered into force as of January 1, 2008. In 2011 Estonia entered into the eurozone and the Competition Act was amended, 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 in cases where assets are being acquired, e.g. trademarks or 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 whose sole business is acquisition and owning of participation in other undertakings for the 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 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 EUR 6,391,200; and (b) turnover in Estonia of each of at least two parties to the concentration exceeded EUR 1,917,350. 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 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 ECB.

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 ECB 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 the 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 ECB 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 another 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 with regards to which transactions are not regarded as a concentration under 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 EUR 32,000, 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 ECB.

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 EUR 16 million.

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 ECB 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 ECB practice, the merger control procedure shall be carried out also in the absence of the signed transaction, including the ECB shall prepare a draft competition clearance, however this is signed and the clearance is officially issued only when the parties have delivered to the ECB a 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 ECB 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 ECB 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 ECB 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 ECB 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 Director General of the ECB or his or her deputy, a concentration can be carried out before the consent for the concentration. The law also foresees a specific exception that

provides a possibility in the case of public offer of securities to acquire control before the consent for the concentration, on the condition that ECB 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 ECB 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 ECB. 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 cases where 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 ECB may process the documentation quicker than the statutory 30-day period. In fact, when reviewing the current practice of the ECB, 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 EUR 1,917.34. 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?

The Estonian substantive test in evaluating the merger is similar to the EC Merger regulation “substantial impediment to the effective competition test”.

The Director General of the ECB 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 cases where its position in the market allows it to act in the market independently of competitors, suppliers and purchasers. In cases where at least 40 per cent of the turnover at the market is attributable to the respective undertaking or undertakings, it is assumed that this undertaking or undertakings have a dominant position. This does not necessarily mean that the merger clearance is refused and ECB practice indicates a number of cases where a merger was cleared when the market share of merging entities exceeded 40 per cent.

In SIA Contact Holding and Ekspress Hotline AS merger (decision 28.09.2009.a nr 5.1-5/09-0040), the ECB deliberated a case where the merger would have resulted in the significant market share for the merging entities (66 per cent). Also, in one of the concerned markets (publication of printed information catalogues), the merger participants were the only two companies participating in the relevant market. The substantive test assessed *inter alia* the development of the markets in general, taking into consideration that the significant recent development of such services is more and more internet-based. Therefore for example the growing importance of different internet search engines (both international like Google, Yahoo, Bing etc. and domestic like neti.ee) was taken into consideration.

In Terve Pere Apteek OÜ and OÜ Saku Apteek merger (decision 08.05.2008.a nr 3.1-8/08-020KO), the merger concerned the company that was the market leader in wholesale market of pharmaceutical products (with more than 40 per cent market share) and had a significant presence in the retail sale market of pharmaceutical products acquiring another major market participant on the retail market level. ECB ruled that due to *inter alia* strengthening of the position of the acquirer on the vertical market, significant market share compared with the competitors, strong sales network and trademark, significant level of barriers to enter into the goods market, need to maintain the structure of the vertical market etc., the merger would have resulted in significantly damaging competition and the merger clearance was refused. This was the first merger where the merger clearance was refused by the ECB and since then only one other merger has been refused.

Non-competition issues may be taken into account. For example, the participants in the merger may include in the merger notice information research and development activities in the affected markets and the effect of the research and development activities of the merger participants, which may then 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 ECB, ECB 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 ECB 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 ECB with extensive investigative powers. With respect to merger control, the law for example

foresees a possibility to have oral hearings in case the ECB 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 ECB.

In addition, general investigatory powers vested with the ECB could be used in connection with merger control. Article 57 Section 1 Item 6 of the Competition Act sets forth that the ECB 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 ECB 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 ECB or on site.

Failure to perform the above obligations may result in a fine of EUR 3200 for a natural person and EUR 6,400 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 ECB 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 ECB is entitled to demand explanations as to why certain information is deemed confidential.

As the fact of the concentration is not regarded as confidential, the ECB 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 ECB 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 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 ECB, 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 ECB 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 ECB 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 ECB is 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 ECB 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 ECB. 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 ECB 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 ECB 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 ECB 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 ECB.

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 ECB 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 and has previously been punished for administrative offences for the similar offence, 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 EUR 16 million.

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 ECB would confirm such a covenant to be consistent with the law in the merger clearance. Last year the ECB 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 the 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 ECB. As there is no established court practice on this matter, it can even be argued that the right of the ECB 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 ECB 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 ECB 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.

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

These answers are up to date as of October 2011.



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Ergo Blumfeldt is an advocate who mostly practises law on corporate and financial matters, especially mergers and acquisitions, project finance, securities and competition law - merger control issues in particular.

Mr Blumfeldt joined the team of the Estonian member of TRINITI alliance - Tamme Otsmann Ruus Vabamets from its foundation in 2004. Prior to joining the firm, he practised law for more than six years in an Estonian firm Lepik & Luhaäär. Mr Blumfeldt has also worked as a trainee with Hannes Snellman Attorneys at Law in Helsinki, Finland. Ergo received his law degree from the University of Tartu in the year 2000 and is a member of the Estonian Bar Association.

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Tõnis Tamme is a partner of the firm and is in charge of major transactional matters. He specialises in joint ventures, mergers and acquisitions, project finance and commercial negotiations, alongside related corporate work.

Tõnis has practised commercial law since 1994, advising domestic and international clients in contract negotiations and dispute resolution, incl. in the privatisation, takeover and turn-around of Estonian Air, Estonian Shipping Company and Estonian Railways, restructuring of Estonian Telecom, etc.

In 2004 Tõnis was one of the founding partners of Law Firm Tamme & Otsmann, which in 2010 merged to become Tamme Otsmann Ruus Vabamets, now an Estonian member of the pan-Baltic alliance of commercial law firms TRINITI.

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TRINITI is a pan-Baltic alliance of commercial law firms formed by three well-established Baltic law firms: Šarka Sabaliauskas & Jankauskas from Lithuania, Treilons & Petrovičs from Latvia and Tamme Otsmann Ruus Vabamets from Estonia.

All three firms have an excellent reputation regarding transactional and dispute resolution work, but each of them will also contribute its own strong specialisation to the new alliance: the Estonian firm being well known for its work in infrastructure and transport related projects, Treilons & Petrovics boasting a remarkable telecom and pharmaceuticals practice, and SSJ handling a respectable portfolio of private equity and investment fund clients.

TRINITI competition team has recently provided assistance in a number of merger control procedures in the Baltics including assistance to Bauhof Group AS in its acquisition of AS Devest creating the largest Estonian wholeseller of building materials and in cooperation with White & Case Moscow office advising Bombardier Inc in connection with acquisition of joint control with Russian Railways over OAO Eleteza, a Russian railways signaling company; merger control proceedings of Adcom/Mediapool merger creating one of the largest Lithuanian media planning and advertising companies, etc.

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