

the Control of Concentrations between Enterprises Law of 1999
Number 22(I) of 1999

The House of Representatives enacts as follows:

1. This Law may be cited as the Control of Concentrations between Enterprises Law of 1999.
2. In this Law, unless the context otherwise requires—
 - "affected markets" means the markets defined in Schedule I of this Law;
 - "authorised officer" means any officer of the Service who is authorised by the Minister to implement this Law;
 - "Commission" means the Commission for the Protection of Competition which exists and operates in accordance with the provisions of the Protection of Competition Law;.
 - "competitive market" means conditions of effective competition in the affected markets;
 - "control" in relation to an enterprise has the meanings specified in subsection (3) of section 4 of this Law;
 - "Court" means the competent district court;
 - "dominant position" in relation to an enterprise means the position of economic power enjoyed by an enterprise which renders it capable of substantially obstructing competition in the market of a specific product or service and of acting to a marked degree independently of its competitors and customers and effectively independently of consumers;
 - "enterprise" includes a group of enterprises or a section of an enterprise;
 - "group of enterprises" means two or more enterprises the commercial activities of which are under joint control;
 - "investment company" means a company which has as its exclusive object the acquisition of participation in other enterprises and the management and exploitation of this participation, without direct or indirect involvement in the management of these enterprises, but subject to the rights it has as a shareholder or partner and provided that the voting rights emanating from such participation are exercised only for the appointment of the members of the managerial and supervisory bodies of the enterprises in which it participates, for safeguarding the full value of these investments and not for the direct or indirect determination of the conduct of these enterprises in matters of competition;
 - "Law of 1989" means the Protection of Competition Law of 1989 as this is amended or replaced from time to time by any other law;
 - "Minister" means the Minister of Commerce, Industry and Tourism;
 - "person" means any natural or legal person;
 - "Republic" means the Republic of Cyprus;
 - "section", in relation to an enterprise, means any section of an enterprise the commercial activity of which may be carried out independently of the rest of

its sections;

"Service" means the Competition and Consumer Protection Service of the Ministry of Commerce, Industry and Tourism;

"subsidiary enterprise" means an enterprise the commercial activity of which is under the control of another enterprise.

Scope of application of this Law.

3.-(1) This Law shall apply to all concentrations of major importance, as these are defined in subsection (2) of this section.

(2) For the purposes of application of this Law, an act of concentration of enterprises shall be of major importance when-

(a) (i) The aggregate turnover achieved by at least two of the participating enterprises exceeds, in relation to each one of them, two million Cyprus pounds; and

(ii) at least one of the participating enterprises engages in commercial activities within the Republic of Cyprus; and

(iii) at least two million Cyprus pounds out of the aggregate turnover of all the participating enterprises relate to the disposal of goods or the supply of services within the Republic; or

(b) it is declared as such by an Order of the Minister under

(3) For the purposes of this section the turnover shall be calculated in accordance with the provisions of Schedule II.

4.-(1) Subject to the provisions of the other subsections of this section, a concentration of enterprises shall take place-

(a) if two or more previously independent enterprises merge;

or

(b) if-

(i) one or more persons already controlling at least one enterprise; or

(ii) one or more enterprises, acquire, directly or indirectly, whether by purchase of securities or assets, by agreement or otherwise, control of the whole or parts of one or more other enterprises; or

(c) if a joint venture is established which permanently carries out all the functions of an autonomous economic entity.

(2) To the extent to which the establishment of a third independent enterprise, which constitutes a concentration in accordance with subsection (1) (c), has as its object or effect the coordination of the competitive behaviour of enterprises which remain independent, this coordination shall be investigated in accordance with the criteria of sections 4 and 5 of the Law of 1989.

(3) "Control" for the purposes of this Law means control constituted by rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an enterprise, in particular

by-

(a) ownership or enjoyment rights over the whole or part of the assets of the enterprise; or

(b) rights or contracts which confer the possibility of decisive influence on the composition, meetings or decisions of the organs of an enterprise.

(4) Control is acquired by persons or enterprises which-

(a) are holders of the rights or entitled to rights under the contracts concerned; or

(b) while not being holders of such rights or entitled to rights under such contracts, have the power to exercise the rights deriving therefrom.

(5) A concentration shall not be deemed to arise where-

(a) credit institutions or other financial institutions or insurance companies, the normal activities of which include transactions and dealing in securities for their own account or for the account of third parties, hold on a temporary basis securities which they have acquired in an enterprise with a view to reselling them, provided that they do not exercise voting rights in respect of those securities with a view to determining the competitive behaviour of that enterprise or provided that they exercise such voting rights only with a view to preparing the disposal of all or part of that enterprise or of its assets or the disposal of those securities, and that any such disposal takes place within one year of the date of acquisition; or

(b) control is exercised by a person authorized under the legislation relating to liquidation, bankruptcy or any other similar procedure; or

(c) the operations referred to in paragraph (b) of subsection (1) of this section are carried out by investment companies; or

(d) property is transferred due to death under a will or by intestate devolution.

5. This Law shall not apply to a concentration of two or more enterprises, each of which is a subsidiary enterprise of the same enterprise.

6. A concentration of enterprises which took place by stages, within a period of time not exceeding four years, and which resulted in the acquisition of the control of an enterprise from another, shall be considered to fall within the scope of Concentration taking place by stages. application of this Law and deemed to have occurred on the occurrence of the final event as a result of which the said control was acquired.

7. The minimum turnovers prescribed by subsection (2) of section 3 may be amended from time to time by Order of the Council of Ministers published in the Official Gazette of the Republic. In such a case, subsection (2) of section 3 shall be deemed to include the amounts prescribed by the Order in force for the time being.

8. The Minister may, even if in relation to a specific concentration of enterprises the conditions of subsection (2) of section 3 are not satisfied, declare by an Order, on the basis of the reasons for which he may make an Order under section 36 that the said

concentration is of major importance and in such a case the provisions of this Law shall apply, in relation to this concentration, as if the amount of the turnover had reached the required minimum levels.

9. Subject to the provisions of section 33, a concentration to which this Law applies shall not be put into effect, until—

(a) the person who has, under subsection (2) of section 13, the obligation to communicate the concentration receives a notice of approval from the Service—

(i) under paragraph (a) of section 19; or

(ii) as a result of a decision of the Commission under paragraph (a) of section 26; or

(iii) as a result of an Order of the Council of Ministers made under section 39; or

(b) the application of the provisions of section 22 or section 32 concurs.

10. A concentration which creates or strengthens a dominant position in the affected markets within the Republic shall be declared incompatible with the requirements of the competitive market.

11. A concentration which does not create or strengthen a dominant position in the affected markets within the Republic shall be declared compatible with the requirements of the competitive market.

12. The Commission shall declare a concentration as compatible or incompatible with the requirements of the competitive market after taking into account—
Criteria of compatibility.

(a) the structure of the affected markets;

(b) the market position of the participating enterprises and the enterprises related thereto in one of the ways referred to in subparagraphs (b) to (e) of paragraph 4 of

(c) the economic power of all the enterprises referred to in paragraph (b) above;

(d) the alternative sources of supply of the products and services which are traded in the affected markets and of their substitutes;

(e) the supply and demand trends for all the products and services referred to in paragraph (d) above;

(f) any barriers to entry to the affected markets;

(g) the interests of the intermediate and final consumers of the products and services referred to in paragraph (d) above.

13.—(1) The acts of concentration of major importance to which this Law applies shall be notified to the Service in writing within one week at the latest—

(a) in relation to the concentrations referred to in section 3(2) (a), from the date of conclusion of the relevant agreement or the publication of the relevant offer of purchase or exchange or the acquisition of a controlling interest, whichever of the said events occurs first;

(b) in relation to the acts of concentration referred to in section 3(2) (b), from the date of notification of the relevant Order to those who have the obligation to notify in accordance with subsection (2) below.

(2) The acts of concentration which must be notified in accordance with subsection (1), and which constitute a merger within the meaning of paragraph (a) of subsection (1) of section 4 or acquisition of joint control within the meaning of paragraph (b) of subsection (1) of section 4, shall be notified jointly or separately by those who participate in these acts. In the remaining cases the obligation of communication in accordance with subsection (1) of this section shall be borne by the person or enterprise acquiring control.

(3) Where the Service ascertains that an act of concentration which has been notified falls within the scope of application of this Law, it shall publish a relevant notification in the Official Gazette of the Republic indicating the names of the participants, the nature of the concentration and the economic sectors involved. In so doing, the Service shall take into account, as far as possible, the legitimate interest of the affected enterprises in the protection of their business secrets.

14. Where a concentration which must be notified in accordance with section 13 is not notified but comes to the knowledge of the Service in another way, the Service shall—

Briefing of those who have the obligation to notify.

(a) immediately inform those who have the obligation under section 13 about their obligation to notify which is imposed by this Law; and

(b) on receipt of the notification, proceed as if the requirements of section 13 had from the start been met, provided that for the purposes of calculating further time limits the actual date of receipt of the notification is taken into account.

15. The notifications of concentrations shall contain the

16. The communications of concentrations shall be examined by the Service in order to ascertain whether they comply fully with the requirements of Schedule III and, if it is ascertained that a communication does not comply fully with the requirements of Additional

17. After ascertaining that the communication fully complies with the requirements of Schedule III, the Service shall carry out a preliminary evaluation of the specific concentration and shall prepare a written report to the Commission in which it shall include its reasoned opinion regarding whether or not this concentration may be declared as being compatible with the requirements of the competitive market, and shall then transmit the said report together with the communication to the

18.—(1) Bearing in mind the report referred to in section 17, the Commission shall examine the notification as soon as it receives it, and—

Decision of Commission after report of Service.

(a) where it concludes that the notified concentration does not fall within the scope of application of this Law, it shall make a decision to that effect;

(b) where it ascertains that the notified concentration, despite falling within the scope of application of this Law, does not raise serious doubts as to its compatibility with the competitive market, it shall decide not to oppose it and shall declare it as being compatible with the competitive market;

(c) where it ascertains that the notified concentration, falls within the scope of application of this Law and raises serious doubts as to its compatibility with the competitive market, it shall decide to set in motion a procedure of full investigation.

(2) The Commission shall inform without delay the participating enterprises and the Minister about its decision.

19. The Service shall inform in writing the sender of the notification—Notice to senders of notification.

(a) in the case of paragraph (a) or paragraph (b) of subsection (1) of section 18, that the concentration may be put into effect; or

(b) in the case of paragraph (c) of subsection (1) of section.



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