

PANORAMIC

MERGER CONTROL

Bosnia and Herzegovina



LEXOLOGY

Merger Control

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QUICK REFERENCE TABLE

The table below is for quick reference only.

Voluntary or mandatory system?	Mandatory.
Notification trigger/filing deadline	Signing of the applicable agreement, the announcement of a public offer of shares or an acquisition of control: 15 days.
Clearance deadlines (Phase I/Phase II)	Phase I: 30 days from the issuance of the certificate of completeness for the approval of the concentration or initiation of Phase II. Phase II: three months from the initiation of Phase II, possible extension by an additional three months.
Substantive test for clearance	Concentration resulting in the creation or strengthening of a dominant position that may restrict competition in the market.
Penalties	Failure to notify within due time: <ul style="list-style-type: none"> • a fine of up to 1 per cent of the total turnover of the undertakings concerned, realised in the business year preceding the concentration; and • a fine of between 5,000 and 15,000 convertible marks for the responsible individuals. Closing a concentration without obtaining prior clearance: <ul style="list-style-type: none"> • a fine of up to 10 per cent of the parties' total turnover in the year preceding the closing; and • a fine of between 15,000 and 50,000 convertible marks for the responsible individuals.
Remarks	Not applicable.

Law stated - 10 May 2024

LEGISLATION AND JURISDICTION

Relevant legislation and regulators

| What is the relevant legislation and who enforces it?

In Bosnia and Herzegovina, merger control, as well as other aspects of competition law, is substantially governed by the [Competition Act](#) (the Act). The Act became effective on 27 July 2005. It was enacted at the state level and applies throughout the entire territory of Bosnia and Herzegovina, that is, in both entities (the Federation of Bosnia and Herzegovina, and Republika Srpska) and in the Brčko District. The Act was amended in 2007 and 2009.

In addition to the Act, numerous regulations have been adopted by the [Competition Council](#) (the Council), which is the authority responsible for enforcing the Act and monitoring competition in the market. These regulations set out the procedural framework and define the standards for application of the Act. The most relevant regulations for merger control are the [Regulation on the Notification of Concentrations and the Criteria for the Assessment of Concentrations](#) (the Notification Regulation), and the [Regulation on the Definition of Relevant Markets](#).

Competition legislation of Bosnia and Herzegovina is generally in line with the rules and principles of the EU competition law regime. Moreover, in practice, the Council often uses the EU competition law standards as a guide to deciding on the cases brought before it.

The Council is an independent authority established by the Act. It has exclusive competence to decide on the existence of activities prohibited by competition law in the market of Bosnia and Herzegovina. The Council has six members. Three members are appointed by the Council of Ministers of Bosnia and Herzegovina, with one representative from each of the constituent nations, two members are appointed by the government of Bosnia and Herzegovina, and one member is appointed by the government of Republika Srpska.

The mandate of all members of the Council lasts for six years with an option to be extended for an additional six years. A new president of the Council is appointed every year. The Council submits its annual reports to the Council of Ministers of Bosnia and Herzegovina.

Law stated - 10 May 2024

| Scope of legislation

| What kinds of mergers are caught?

The Act defines a 'concentration' as:

- a merger by absorption or a merger by the formation of a new entity;
- the acquisition of control or a controlling interest by:
 - one or more undertakings over another undertaking or a part thereof;
 - a group of undertakings or a part thereof through the acquisition of a majority shareholding;
 - the acquisition of a majority of voting rights; or
 - any other way under the company laws of Bosnia and Herzegovina; or
- the creation of a full-function joint venture.

Intra-group acquisitions and restructurings are not caught by the merger control rules.

Law stated - 10 May 2024

Scope of legislation

What types of joint ventures are caught?

Joint ventures performing on a lasting basis all the functions of an autonomous economic entity (full-function joint ventures) are caught by the Act.

Joint ventures that aim to coordinate the market behaviour of two or more undertakings, whereby each of them maintains its legal and economic autonomy, are not subject to the merger control regime but may be covered by the provisions on restrictive agreements.

Law stated - 10 May 2024

Scope of legislation

Is there a definition of 'control' and are minority and other interests less than control caught?

The Act provides a rather general and broad definition of 'control' without specifying any details that may lead to the existence of control within the meaning of the Act.

Following the wording of the Act, control exists when one or more undertakings jointly have a dominant influence over another undertaking or group of undertakings based on the Act, an agreement or any other source, and considering all legal circumstances and facts. Control is deemed to exist when one or more undertakings jointly have:

- a majority shareholding in an undertaking;
- a majority of the voting rights; or
- the right to appoint more than half of the management board members, the supervisory board members or the appropriate body that manages or controls operations, or otherwise has the right to manage the operations of the undertaking.

Given this broad definition, the acquisition of a minority interest that enables the holder to exercise a dominant influence over an undertaking or a group of undertakings is subject to the merger control regime.

Law stated - 10 May 2024

Thresholds, triggers and approvals

What are the jurisdictional thresholds for notification and are there circumstances in which transactions falling below these thresholds may be investigated?

According to the Act, the Council has to be notified of an intended concentration if, in the preceding business year:

1. the combined worldwide turnover of the undertakings concerned exceeds 100 million convertible marks; and
2. either:
 - the individual turnover of each of at least two undertakings concerned in Bosnia and Herzegovina amounts to at least 8 million convertible marks; or
 - the undertakings concerned together have a market share of more than 40 per cent on the relevant market in Bosnia and Herzegovina (according to the interpretation applied by the Council, this threshold can be met by one undertaking alone).

The Notification Regulation adopted by the Council, effective as of 5 May 2010, stipulates that if the undertakings concerned have registered corporate seats in Bosnia and Herzegovina, the concentration shall be notified to the Council if the local threshold in point (2) is satisfied, regardless of whether the worldwide threshold in point (1) is also met.

The Council intended to clarify the wording of the Act with this provision; however, its interpretation has led to confusion. In particular, it was unclear whether the Council is at all competent to interpret the Act in such way in a legally binding manner and whether this provision would also have an impact on foreign-to-foreign mergers; therefore, we filed a request for clarification to the Council.

In its rather broad reply, the Council stated that if some of the undertakings concerned have their registered corporate seat outside Bosnia and Herzegovina, or some undertakings concerned have their registered corporate seat abroad but have subsidiaries in Bosnia and Herzegovina, both the local threshold in point (2) and the worldwide threshold in point (1) must be met to trigger a filing obligation. One may conclude that the 'clarification' provided by the Council in the Notification Regulation (ie, notification is required if only the local threshold in point (2) is satisfied) applies only to cases where all undertakings concerned are purely domestic undertakings (ie, undertakings that have local shareholders and are not subsidiaries of foreign legal entities).

The aggregate turnover of the undertakings concerned is to be calculated on a worldwide consolidated basis. Turnover generated by sales between the undertakings concerned is not taken into account.

In the case of an acquisition of one or more parts of an undertaking or of a group of undertakings, irrespective of whether the parts constitute independent legal entities, only the turnover pertaining to the parts subject to the concentration is taken into account. Should there be more than one concentration of the undertakings concerned within a two-year period, they will be considered as a single transaction, and it shall be deemed that the transaction occurred on the date of the occurrence of the last transaction.

If the undertaking concerned is a bank or a financial institution, the turnover comprises income from interest and similar income sources, income from securities, commissions, net profit from financial operations and other operating income.

For insurance and reinsurance companies, the turnover comprises gross premiums, which include all received and expected premiums, as well as reinsurance premiums, but after the

deduction of taxes and fees charged by reference to the amounts of the individual premiums or the aggregate amount of premiums.

Law stated - 10 May 2024

Thresholds, triggers and approvals

Is the filing mandatory or voluntary? If mandatory, do any exceptions exist?

As a general rule, the Council shall be notified of all concentrations that exceed the thresholds set forth in the Act.

An exemption from the filing obligation exists in cases in which banks, financial institutions or insurance companies acquire shares in the ordinary course of business with the intention of reselling them within the following 12 months, provided that in the meantime the shares are not used to influence the market behaviour of the undertaking concerned. Furthermore, the acquisition of control by a bankruptcy administrator or liquidation administrator in the course of bankruptcy or liquidation proceedings does not require that the Council be notified.

Law stated - 10 May 2024

Thresholds, triggers and approvals

Do foreign-to-foreign mergers have to be notified and is there a local effects or nexus test?

Foreign-to-foreign concentrations are covered by the Act if the turnover thresholds are exceeded.

We are not aware of any cases or discussions in which the Council would have indicated that an effects-based exemption from the filing obligation (where the turnover thresholds were met) would be accepted. To date, the Council has appeared to be unwilling to consider arguments in this respect.

Law stated - 10 May 2024

Thresholds, triggers and approvals

Are there also rules on foreign investment, special sectors or other relevant approvals?

There are no special rules related to foreign investments, special sectors or other relevant approvals in the competition law of Bosnia and Herzegovina; however, in certain business sectors – such as banking, telecommunications, energy and pharmaceuticals – additional regulatory provisions exist that need to be observed.

For example, certain changes in the shareholding structure of a telecommunications provider require notification to or approval by the competent telecommunications agency.

This notification or approval from the telecommunications agency is required in addition to the merger approval by the Council, if any.

Law stated - 10 May 2024

NOTIFICATION AND CLEARANCE TIMETABLE

Filing formalities

What are the deadlines for filing? Are there sanctions for not filing and are they applied in practice?

According to the Competition Act (the Act), the Competition Council (the Council) has to be notified of an intended concentration within 15 days of the signing of the applicable agreement, the announcement of a public offer of shares or an acquisition of control, whichever of the three occurs first.

The undertakings have the option to notify the concentration once they can demonstrate their intention to undertake the concentration based on, for example, the conclusion of an agreement in principle, a memorandum of understanding, a letter of intent signed by all parties to the concentration or a public announcement of the intention to submit a purchase offer.

Failure to notify the Council of the concentration within due time may result in a fine of up to 1 per cent of the total turnover of the undertakings that was realised in the business year preceding the concentration. In addition, a fine of between 5,000 and 15,000 convertible marks may be imposed on the responsible persons within the undertakings concerned.

The fines may be imposed regardless of whether the concentration was implemented at the moment the Council learned of the concentration; therefore, fines for failure to notify the Council of a concentration in due time may be substantial, depending on the undertaking's turnover.

In this respect, the Council has imposed fines for late filing in several cases ranging between 10,000 and 310,000 convertible marks. The Council may also impose fines for the implementation of a concentration before or without clearance.

Law stated - 10 May 2024

Filing formalities

Which parties are responsible for filing and are filing fees required?

Responsibility for notifying the Council of the acquisition of a majority shareholding or a majority of voting rights or other controlling interests rests with the acquirer. In the case of an acquisition of control based on a public offering of shares, the offeror has the filing responsibility. In the case of joint ventures and in all other cases, the responsibility to notify the Council of the transaction lies with all undertakings concerned.

An initial filing fee of 2,000 convertible marks is payable prior to the submission of the notification, and proof of payment must be submitted to the Council with the notification.

In addition, a fee of 5,000 convertible marks is payable after the Council issues a Phase I clearance decision without performing an in-depth investigation.

A fee of 0.03 per cent of the total annual turnover of each of at least two undertakings concerned, generated through the sale of goods or services in the market of Bosnia and Herzegovina (up to 50,000 convertible marks) is payable if the Council adopts its decision after an in-depth (Phase II) investigation. If the Council dismisses the notification because of the requirements for filing not being met, a fee of 1,000 convertible marks is payable. In practice, the Council will not issue its decision unless the fees are paid.

Law stated - 10 May 2024

Filing formalities

What are the waiting periods and does implementation of the transaction have to be suspended prior to clearance?

The Act provides that the intended concentration must not be implemented until the Council passes a decision authorising the transaction or until the waiting period expires (suspension obligation).

Following the submission of the notification, the Council first assesses the completeness of the filing. The Act does not provide a specific time frame for this stage. In practice, it is recommended to be in contact with the Council during this stage to ensure that this period is short. Once the filing is accepted as complete, the Council issues a certificate of completeness.

If the Council, upon review of the submitted notification, takes the view that the notified concentration does not raise any competition law concerns in Bosnia and Herzegovina, a clearance decision for the concentration is issued within 30 days of the date of issuance of the certificate. If the Council does not take any decision within the 30-day period, the concentration is deemed to have been approved.

If the Council takes the view that the intended concentration is likely to have a negative effect on competition in the market, it can initiate an in-depth (Phase II) investigation. Phase II investigations may take up to three months, meaning that the Council must issue a final decision within three months of the day of the adoption of a decision on initiating proceedings.

An extension of an additional three months is possible if the intended concentration involves a sensitive business sector and in cases in which it is necessary to carry out additional analysis defining the state of facts or an examination of evidence. If the Council initiates a Phase II investigation but fails to issue a decision before the above-mentioned deadline, the concentration is deemed to have been approved.

The suspension obligation does not prevent the implementation of a takeover bid of which the competent authority has been notified in accordance with the applicable public takeover bids regulations, as provided in article 18, paragraph 10 of the Act.

Law stated - 10 May 2024

Pre-clearance closing

What are the possible sanctions involved in closing or integrating the activities of the merging businesses before clearance and are they applied in practice?

Closing a concentration without obtaining prior clearance by the Council may result in a fine of up to 10 per cent of the parties' total turnover in the year preceding the closing of the concentration. Individuals responsible within the undertakings may in that case be subject to fines ranging from 15,000 to 50,000 convertible marks.

These fines were introduced with the amendments to the Act adopted in October 2009. Previously, there were no sanctions prescribed by the Act in the event that the parties implemented the transaction before obtaining clearance, although the suspension obligation did exist.

The statute of limitations for infringing the suspension obligation is five years from the date of the infringement (ie, the day of closing the transaction without clearance).

In addition, if the Council was not notified of a concentration and it later finds that the concentration had negative effects on competition in the market of Bosnia and Herzegovina, the Council may order that the acquired shares and assets be sold. The Council may also restrict the voting rights of the acquiring undertaking, or order the cessation of the joint venture or any other form of acquired control that the Council believes restricts competition in the market of Bosnia and Herzegovina.

In March 2010, for the first time after the 2009 amendments to the Act, the Council imposed a fine on an undertaking for closing a concentration before obtaining prior clearance from the Council. The fine amounted to 200,000 convertible marks and was imposed on a local company engaged in the trade of petroleum and petroleum products for failure to notify the Council of the acquisition of 10 petrol stations from another local company, as well as for closing the concentration before obtaining prior clearance from the Council. For procedural reasons, this fine was reimposed by the Council in 2011.

Apart from that, in three more cases, the Council imposed fines for failure to notify a concentration and breach of the suspension obligation in 2011, although at lower amounts (40,000, 50,000 and 70,000 convertible marks, respectively). In 2012, the Council did not impose any sanctions for closing before clearance.

In 2013, in one case, a fine of 656,667 convertible marks was imposed on the undertakings for late filing and closing before clearance. In this case, however, the decision of the Council was challenged by one of the undertakings concerned, and the fine was consequently substantially lowered.

In 2014, in one case, the Council imposed a fine of 26,500 convertible marks for failure to notify the concentration and closing before clearance.

In 2015, 2017, 2018 and 2019, the Council did not impose any sanctions for closing before clearance or failure to notify a concentration. In 2016, fines were imposed in two cases for failure to notify the concentrations and for implementation of the concentrations without the decision of the Council. In one case, two undertakings were sanctioned with fines of 30,000 and 7,500 convertible marks, respectively, for failure to notify the concentration, and

with fines of 60,000 and 15,000 convertible marks, respectively, for implementation of the concentration without the decision of the Council.

In the second case, a fine of 10,000 convertible marks was imposed on the undertaking for failure to notify the concentration within the statutory deadline.

In 2020, the Council imposed fines in two instances:

- in the first case, four undertakings were fined for implementing the concentration without the decision of the Council in the payment platforms and other electronic services market in Bosnia and Herzegovina (the amounts of the fines are not publicly available); and
- in the second case, one undertaking was fined 20,000 convertible marks for failing to notify the concentration before the statutory deadline in the bus transportation of passengers services market in Bosnia and Herzegovina.

In 2021 and 2022, the Council did not publish any decisions on concentrations through which fines were imposed on undertakings.

Law stated - 10 May 2024

Pre-clearance closing

Are sanctions applied in cases involving closing before clearance in foreign-to-foreign mergers?

The sanctions for closing before clearance are also applicable in cases involving foreign-to-foreign mergers.

Law stated - 10 May 2024

Pre-clearance closing

What solutions might be acceptable to permit closing before clearance in a foreign-to-foreign merger?

Foreign-to-foreign mergers are assessed in the same way as local concentrations. The Act and the applicable regulations do not provide for hold-separate (carve-out) solutions. Although discussed in practice, such solutions have not yet been tested with the authorities in Bosnia and Herzegovina.

Law stated - 10 May 2024

Public takeovers

Are there any special merger control rules applicable to public takeover bids?

The suspension obligation does not prevent the implementation of a takeover bid of which the competent authority has been notified in accordance with the applicable public takeover bid regulations, as provided in article 18, paragraph 10 of the Act.

Law stated - 10 May 2024

Documentation

What is the level of detail required in the preparation of a filing, and are there sanctions for supplying wrong or missing information?

The information and documentation required for the notification of an intended concentration is set out in the Regulation on the Notification of Concentrations and the Criteria for the Assessment of Concentrations. The following information, among other things, must be provided to the Council when filing a notification:

- names, seats and business activities of the undertakings concerned;
- names and contact details of persons authorised to represent the undertakings concerned before the Council;
- description of the intended concentration;
- legal basis of the concentration;
- information regarding the financial status and total turnover of the undertakings concerned (on both a worldwide and national level) for the business year preceding the concentration;
- information about the relevant market and the market shares of the undertakings concerned;
- list of the main competitors and estimates of their market shares;
- information on the ownership structure of the undertakings concerned;
- information about related parties;
- description of distribution and retail networks used by the undertakings concerned;
- description of planned research projects and investments regarding the undertakings concerned; and
- reasons for the intended concentration and a detailed description of the expected benefits for customers.

The documents that must be enclosed in a notification are, among other things:

- excerpts from the commercial registry or other equivalent documents showing the relevant details regarding the undertakings concerned;
- powers of attorney for the persons authorised to represent the undertakings concerned before the Council;
- an original or a certified copy of the legal basis of the intended concentration;
- financial statements of the undertakings concerned for the business year preceding the concentration; and

- organisational charts of the undertakings concerned.

The Council may request additional information and documentation that it deems necessary or useful when considering a concentration. If the notifying party cannot submit certain information or a requested document despite all reasonable efforts, it may provide the Council with a brief reasonable explanation of why that information or a particular document is not available.

The notification and all enclosures thereto have to be provided in one of the official languages of Bosnia and Herzegovina. Furthermore, all documents submitted to the Council have to be in the form of an original or a certified copy and apostilled (depending on the jurisdiction of origin of a particular document).

Provision of incorrect or incomplete information to the Council or refusal of a party to comply with an information request may result in a fine of up to 1 per cent of the total turnover of the undertakings realised in the business year preceding the concentration. In addition, a fine of between 5,000 and 15,000 convertible marks may be imposed on the responsible persons within the undertakings concerned.

Law stated - 10 May 2024

Investigation phases and timetable

What are the typical steps and different phases of the investigation?

The Act provides that the intended concentration must not be implemented until the Council passes a decision authorising the transaction or until the waiting period expires (suspension obligation).

Following the submission of the notification, the Council first assesses the completeness of the filing. The Act does not provide a specific time frame for this stage. In practice, it is recommended to be in contact with the Council during this stage to ensure that this period is short. Once the filing is accepted as complete, the Council issues a certificate of completeness.

If the Council, upon review of the submitted notification, takes the view that the notified concentration does not raise any competition law concerns in Bosnia and Herzegovina, a clearance decision for the concentration is issued within 30 days of the date of issuance of the certificate. If the Council does not take any decision within the 30-day period, the concentration is deemed to have been approved.

If the Council takes the view that the intended concentration is likely to have a negative effect on competition in the market, it can initiate an in-depth (Phase II) investigation. The investigation may take up to three months, meaning that the Council must issue a final decision within three months of the day of the adoption of a decision on initiating proceedings.

An extension of an additional three months is possible if the intended concentration involves a sensitive business sector and in cases in which it is necessary to carry out additional analysis defining the state of facts or an examination of evidence. If the Council initiates a

Phase II investigation but fails to issue a decision before the above-mentioned deadline, the concentration shall be deemed to have been approved.

The suspension obligation does not prevent the implementation of a takeover bid of which the competent authority has been notified in accordance with the applicable public takeover bids regulations, as provided in article 18, paragraph 10 of the Act.

Law stated - 10 May 2024

Investigation phases and timetable

What is the statutory timetable for clearance? Can it be speeded up?

Once the Council issues a certificate of completeness, it has 30 days to decide whether the proposed concentration raises competition law concerns in Bosnia and Herzegovina. If the Council believes that the proposed concentration will not have any negative effect on competition, it will issue a (Phase I) clearance decision. If the Council does not issue a decision within the 30-day period, the concentration is deemed to have been approved.

If the Council takes the view that the intended concentration could have a negative effect on competition, it may initiate a Phase II investigation. A Phase II investigation may take up to three months, meaning that the Council must issue a final decision within three months of the date on which the resolution authorising the Council to conduct Phase II proceedings is adopted.

The Phase II investigation may be extended for an additional three months if the intended concentration involves a sensitive business sector and in cases in which it is necessary to carry out additional analysis defining the state of facts or an examination of evidence. If the Council initiates a Phase II investigation but does not issue a decision before the defined deadline, the concentration shall be deemed to have been approved.

In practice, after submission of the filing, it usually takes a rather long time until the Council considers the filing complete and issues the certificate of completeness; therefore, the start of the review period is usually delayed. Against that background and according to our experience, it takes about three to five months from the initial submission of the filing until clearance in cases in which the Council does not initiate a Phase II investigation. If a Phase II investigation is launched, the overall proceedings until clearance may take up to eight months (or even longer).

The Act does not provide for a formal way of speeding up the procedure.

Law stated - 10 May 2024

SUBSTANTIVE ASSESSMENT

Substantive test

What is the substantive test for clearance?

The Competition Council (the Council) will assess the effects that the intended concentration is likely to have (ie, whether the intended concentration results in the creation or

strengthening of a dominant position of one or more undertakings that may restrict competition in the market).

The Competition Act (the Act) provides the following general criteria for assessment of whether the concentration prevents, restricts or distorts competition:

- the structure of the relevant market;
- concentration effects on other actual and potential competitors;
- the market position of the undertakings concerned and their market shares, and their economic and financial power and strength;
- economic, legal and other entry obstacles to the market;
- supply and demand trends for the relevant goods or services;
- technical and economic developments trends; and
- consumers' interests.

Despite the difference in the wording of article 2, paragraph 2 of the EU Merger Regulation from that of the Act, the criteria applied by the Council in making its assessment are usually similar to those applied by the European Commission.

Law stated - 10 May 2024

Substantive test

Is there a special substantive test for joint ventures?

No. The same substantive test is applied to joint ventures.

Law stated - 10 May 2024

Theories of harm

What are the 'theories of harm' that the authorities will investigate?

The Council investigates whether the intended concentration leads to the creation or strengthening of single or collective market dominance and will typically also look into vertical foreclosure aspects, while other criteria are typically of a lesser concern.

Law stated - 10 May 2024

Non-competition issues

To what extent are non-competition issues relevant in the review process?

Non-competition issues are generally not supposed to be relevant in the review process.

Law stated - 10 May 2024

Economic efficiencies

To what extent does the authority take into account economic efficiencies in the review process?

The Council takes economic efficiencies into consideration to the extent that the parties can establish that such economic efficiencies benefit customers.

Law stated - 10 May 2024

REMEDIES AND ANCILLARY RESTRAINTS

Regulatory powers

What powers do the authorities have to prohibit or otherwise interfere with a transaction?

The Competition Council (the Council) may, in addition to monetary penalties, order the parties to sell the acquired shares or restrict the voting rights of the undertakings concerned, or order the cessation of the joint venture or any other form of acquired control that restricts competition in the market.

Law stated - 10 May 2024

Remedies and conditions

Is it possible to remedy competition issues, for example by giving divestment undertakings or behavioural remedies?

The Competition Act (the Act) recognises structural and behavioural remedies as ways to remedy competition concerns.

Law stated - 10 May 2024

Remedies and conditions

What are the basic conditions and timing issues applicable to a divestment or other remedy?

The Act does not regulate the basic conditions and timing issues applicable to a divestment or other remedies.

Law stated - 10 May 2024

Remedies and conditions

What is the track record of the authority in requiring remedies in foreign-to-foreign mergers?

To date, the Council has not required any remedies to be offered.

Law stated - 10 May 2024

Ancillary restrictions

In what circumstances will the clearance decision cover related arrangements (ancillary restrictions)?

The Act does not regulate that aspect, and the Council has not yet developed a practice in this respect; however, as the Council often refers to the European Commission's practice for guidance, it is not unlikely that the principles with regard to ancillary restraints adopted by the European Commission would be taken into account by the Council when dealing with such matters.

Law stated - 10 May 2024

INVOLVEMENT OF OTHER PARTIES OR AUTHORITIES

Third-party involvement and rights

Are customers and competitors involved in the review process and what rights do complainants have?

The Competition Council (the Council) is competent to gather information ex officio and require from the parties, as well as from third parties, additional information and documentation that the Council considers necessary or useful for an assessment of the concentration. Moreover, third parties that have a legal or economic interest in the concentration (eg, competitors) are invited to submit their observations and concerns regarding the intended concentration. This invitation is published on the Council's website and in daily newspapers.

Access to the Council's file is only granted to the parties to the proceedings. The Competition Act is not clear in respect of whether and under what circumstances third parties can be admitted as parties to merger control proceedings. According to the [general administrative rules of Bosnia and Herzegovina](#), a party can be, among others, a person that has a right to be such a party to protect its legal interests.

In general, only the undertakings concerned are admitted and regarded as parties in the proceedings before the Council.

Law stated - 10 May 2024

Publicity and confidentiality

What publicity is given to the process and how do you protect commercial information, including business secrets, from disclosure?

Final decisions of the Council are published in the Official Gazettes (state, entity and Brčko District level) and on the Council's website.

The Council also publishes information regarding submitted notifications (ie, general information such as the names of the parties, the form of concentration and the business sector in which the concentration is taking place) with an invitation to all interested parties to submit their comments on its website and in daily newspapers.

All other communication between the Council and the parties in the course of the concentration assessment procedure is not publicly available. All information that is deemed to contain business secrets is to be kept confidential by the Council. Such information is not disclosed and is removed from any decision published by the Council.

Law stated - 10 May 2024

Cross-border regulatory cooperation

Do the authorities cooperate with antitrust authorities in other jurisdictions?

As of 2005, the Council is a member of the International Competition Network, which enables cooperation with other antitrust authorities from member countries.

The Council also actively promotes cooperation with antitrust authorities from the surrounding region. To this end, the Council has concluded memorandums of understanding with the Croatian Agency for the Protection of Competition, the Serbian Commission for the Protection of Competition, and the competition authorities of Turkey, Bulgaria and North Macedonia.

In the upcoming years, cooperation is expected to be established with the competition authorities in Montenegro, Slovenia, Estonia and Austria.

Law stated - 10 May 2024

JUDICIAL REVIEW

Available avenues

What are the opportunities for appeal or judicial review?

A Competition Council decision can be challenged in an administrative court procedure before the Court of Bosnia and Herzegovina. The claim must be brought within 30 days of publication of the decision.

Law stated - 10 May 2024

Time frame

What is the usual time frame for appeal or judicial review?

Administrative court proceedings before the Court of Bosnia and Herzegovina usually last for up to one year, but can take longer depending on the complexity of the case.

Law stated - 10 May 2024

ENFORCEMENT PRACTICE AND FUTURE DEVELOPMENTS

Enforcement record

What is the recent enforcement record and what are the current enforcement concerns of the authorities?

According to the activities report of the Competition Council (the Council) published on its website, in 2023, the Council received 16 cases relating to merger control, out of which:

- four concentrations were approved in Phase I;
- five cases were dismissed because they were deemed not to qualify as notifiable concentrations under the relevant regulations; and
- one concentration was deemed approved owing to the Council's failure to decide upon the notification before the statutory deadline.

The remaining cases have been transferred to 2024.

Law stated - 10 May 2024

Reform proposals

Are there current proposals to change the legislation?

There are currently no proposed amendments to the Competition Act or the pertinent by-laws.

Law stated - 10 May 2024

UPDATE AND TRENDS

Key developments of the past year

What were the key cases, decisions, judgments and policy and legislative developments of the past year?

According to the activities report of the Competition Council (the Council) published on its website, in 2023, the Council was predominantly focused on cases relating to restricted competition activities, in particular abuse of dominant position and forbidden agreements. The Council received only 16 cases relating to merger control, out of which:

- four concentrations were approved in Phase I;
- five cases were dismissed because they were deemed not to qualify as notifiable concentrations under the relevant regulations; and
- one concentration was deemed approved owing to the Council's failure to decide upon the notification before the statutory deadline.

The remaining cases have been transferred to 2024.

In all proceedings, the Council mostly relied upon the market data submitted by the notifying parties in their merger notifications.

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Law stated - 10 May 2024