

Bosnia and Herzegovina

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LEGISLATION AND JURISDICTION

Relevant legislation and regulators

1 | 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 of Bosnia and Herzegovina (the Act). The Act became effective as of 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 the Republic of Srpska) and in the Brčko District. The Act was amended twice so far, in 2007 and 2009.

In addition to the Act, numerous regulations were adopted by the Bosnia and Herzegovina Competition Council (the Council), the authority responsible for enforcement of the Act and for 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, and the Regulation on the Definition of Relevant Markets.

The 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 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 the Federation of Bosnia and Herzegovina, and one member is appointed by the government of the Republic of 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.

More information about the Council and its activities can be found at www.bihkonk.gov.ba.

Scope of legislation

2 | 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, or a group of undertakings or a part thereof through the acquisition of a majority shareholding, or the acquisition of a majority of voting

rights, or in 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.

3 | 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.

4 | 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 law, an agreement or any other means, 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;
- have a majority of the voting rights; or
- have 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 of 'control', the acquisition of a minority interest that enables the holder to exercise a dominant influence over an undertaking or group of undertakings is subject to the merger control regime.

Thresholds, triggers and approvals

5 | 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 Bosnia and Herzegovina convertible marks; and

- 2 (a) the individual turnover of each of at least two undertakings concerned in Bosnia and Herzegovina amounts to at least 8 million Bosnia and Herzegovina convertible marks; or (b) 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 Regulation on the Notification of Concentrations and the Criteria for the Assessment of Concentrations (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 (2)(a) or (b) is satisfied, regardless of whether the worldwide threshold (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 may 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 (2)(a) or (b) and the worldwide threshold (1) have to be met to trigger a filing obligation. Therefore, one may conclude that the 'clarification' provided by the Council in the Regulation (ie, notification required if only the local threshold (2)(a) or (b) 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 such 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 one 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 financial institution, the turnover shall consist of the following: 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 shall consist of 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.

6 | 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.

7 | 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 appeared to be unwilling to consider arguments in that respect.

8 | 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 telecommunication provider require a 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 competition authority, if any.

NOTIFICATION AND CLEARANCE TIMETABLE

Filing formalities

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

According to the Competition Act of Bosnia and Herzegovina (the Act), the Bosnia and Herzegovina Competition Council (the Council) has to be notified of an intended concentration within 15 days of the signing of the respective agreement, the announcement of a public offer of shares, or an acquisition of control, whichever (of the three) occurs first. However, the undertakings concerned have the option to notify the concentration already 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 concerned, realised in the business year preceding the concentration. In addition, a fine of between 5,000 and 15,000 Bosnia and Herzegovina convertible marks may be imposed on the responsible persons within the undertakings concerned. Such fines may be imposed regardless of whether the concentration was implemented or not at the moment when the Council learned of the concentration. Therefore, fines for a 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 imposed fines for late filing in several cases (2013) ranging between 19,000 and 310,000 Bosnia and Herzegovina convertible marks. The Council may also impose fines for the implementation of a concentration prior to or without clearance.

10 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 Bosnia and Herzegovina 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 Bosnia and Herzegovina 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 Bosnia and Herzegovina 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 Bosnia and Herzegovina convertible marks is payable. In practice, the Council will not issue its decision unless the fees are paid.

11 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 authority first assesses the completeness of the filing. The law does not provide a specific time frame for this stage. In practice, it is thus recommended to be in contact with the authority 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 such 30-day period, the concentration shall be deemed to be 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. Such investigation may take up to three months, meaning that the Competition Council is obligated to issue a final decision within three months of the day of adoption of a decision on initiation of 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 within the above-mentioned deadline, the concentration shall be deemed to be 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 respective public takeover bids regulations as provided in article 18, paragraph 10 of the Act.

Pre-clearance closing

12 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 Bosnia and Herzegovina convertible marks. These fines were introduced with the amendments to the Act adopted in October 2009. Previously, there were no sanctions prescribed by the law 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 such 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 the concentration before obtaining prior clearance from the Council. The fine amounted to 200,000 Bosnia and Herzegovina 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, the Council imposed in three more cases 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 Bosnia and Herzegovina convertible marks). In 2012, the Council did not impose any sanctions for closing before clearance. In 2013, in one case, a fine of 656,667 Bosnia and Herzegovina convertible marks was imposed on the undertakings concerned 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, consequently, the fine was substantially lowered. In 2014, the Council imposed in one case a fine of 26,500 Bosnia and Herzegovina 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 for failure to notify a concentration, while in 2016 fines were imposed in two cases for failure to notify the concentrations and for implementation of the concentrations without decision of the Council. In one case, two undertakings with fines of 30,000 and 7,500 Bosnia and Herzegovina convertible marks, respectively, for failure to notify the concentration, and with fines of 60,000 and 15,000 Bosnia and Herzegovina convertible marks, respectively, for implementation of the concentration without decision of the Council. In the second case, a fine in an amount of 10,000 Bosnia and Herzegovina convertible marks was imposed to the undertaking concerned for a failure to notify the concentration within the statutory deadline. In 2020, the Council imposed fines in two instances: in the first case, four undertakings have been fined for the implementation of the concentration without decision of the Council in the payment platforms and other electronic services market in Bosnia and Herzegovina (however, the amounts of the fines are not publicly available); and in the second case, one undertaking was fined in an amount of 20,000 Bosnia and Herzegovina convertible marks

for a failure to notify the concentration within the statutory deadline in the bus transportation of passengers services market in Bosnia and Herzegovina.

13 | 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.

14 | 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.

Public takeovers

15 | 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 respective public takeover bid regulations as provided in article 18, paragraph 10 of the Act.

Documentation

16 | 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, inter alia, is to 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 detailed description of the expected benefits for customers.

Documents that have to be enclosed in a notification are, inter alia:

- 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 the brief reasonable explanation as to 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 concerned, realised in the business year preceding the concentration. In addition, a fine of between 5,000 and 15,000 Bosnia and Herzegovina convertible marks may be imposed on the responsible persons within the undertakings concerned.

Investigation phases and timetable

17 | 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 authority first assesses the completeness of the filing. The law does not provide a specific time frame for this stage. In practice, it is thus recommended to be in contact with the authority 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 such 30-day period, the concentration shall be deemed to be 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. Such investigation may take up to three months, meaning that the Competition Council is obligated to issue a final decision within three months of the day of adoption of a decision on initiation of 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 within the above-mentioned deadline, the concentration shall be deemed to be 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 respective public takeover bids regulations as provided in article 18, paragraph 10 of the Act.

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

Once the Council issues a certificate of completeness, it has to decide within 30 days 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 shall be deemed to be 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 Competition Council is obligated to issue a final decision within three months following the date on which the resolution authorising the institution 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 and examination of evidence. If the Council initiates a Phase II investigation but does not issue a decision within the defined deadline, the concentration shall be deemed to be 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 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 (and even longer).

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

SUBSTANTIVE ASSESSMENT

Substantive test

19 | What is the substantive test for clearance?

The Bosnia and Herzegovina 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 of Bosnia and Herzegovina (the Act) provides the following general criteria for assessment as to whether the concentration prevents, restricts or distorts the competition:

- the structure of the relevant market;
- concentration effects to other actual and potential competitors;
- the market position of the undertakings concerned and their market shares, 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 Regulation (EC) No. 139/2004, the criteria applied by the Council in making its assessment are usually similar to those applied by the European Commission.

20 | Is there a special substantive test for joint ventures?

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

Theories of harm

21 | 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.

Non-competition issues

22 | 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.

Economic efficiencies

23 | 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 it can be established by the parties that such economic efficiencies benefit customers.

REMEDIES AND ANCILLARY RESTRAINTS

Regulatory powers

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

The Bosnia and Herzegovina 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.

Remedies and conditions

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

The Competition Act of Bosnia and Herzegovina (the Act) does recognise structural or behavioural remedies as a way to remedy competition concerns.

26 | 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.

27 | 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.

Ancillary restrictions

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

The competition law of Bosnia and Herzegovina does not regulate that aspect. Also, 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.

INVOLVEMENT OF OTHER PARTIES OR AUTHORITIES

Third-party involvement and rights

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

The Bosnia and Herzegovina 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 of Bosnia and Herzegovina is not clear as to 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, inter alia, be a person that has a right to be such party to protect its legal interests. In general, only undertakings concerned are admitted and regarded as parties in the proceedings before the Council.

Publicity and confidentiality

30 | 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.

Also, the Council 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 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.

Cross-border regulatory cooperation

31 | 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 countries that are members of the network. Also, the Council actively promotes cooperation with antitrust authorities from the 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, as well as

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with the competition authorities of Turkey, Bulgaria and Macedonia. In the following period, cooperation is expected to be established with the competition authorities in Montenegro, Slovenia, Estonia and Austria.

JUDICIAL REVIEW

Available avenues

32 | What are the opportunities for appeal or judicial review?

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

Time frame

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

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

ENFORCEMENT PRACTICE AND FUTURE DEVELOPMENTS

Enforcement record

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

According to the draft activities report of the Bosnia and Herzegovina Competition Council (the Council) published on its website, in 2019, the Council received 21 cases relating to merger control and nine final decisions in total were adopted by the end of 2019 (four concentrations were approved, four cases were dismissed because the notified behaviours were deemed not to qualify as notifiable concentrations under the relevant regulations and, in one case, the concentration was conditionally approved).

Reform proposals

35 | Are there current proposals to change the legislation?

There have been no amendments to the Competition Act of Bosnia and Herzegovina or pertaining by-laws.

UPDATE AND TRENDS**Key developments of the past year****36 | What were the key cases, decisions, judgments and policy and legislative developments of the past year?**

According to the activities report of the Bosnia and Herzegovina Competition Council (the Council) published on its website, in 2020, the Council received 17 cases relating to merger control, out of which, in 2020, four concentrations were approved in Phase I, six cases were dismissed because they were deemed not to qualify as notifiable concentrations under the relevant regulations and two concentrations are deemed to be approved owing to the Council's failure to decide upon the notification within the statutory deadline. The remaining cases have been transferred to 2021.

The concentrations that have been approved in 2020 are: an acquisition of the sole control of ASA FINANCE d.d. Sarajevo over Central Osiguranje d.d. Sarajevo, in the market of non-life insurance in Bosnia and Herzegovina; an acquisition of the sole control of Prointer ITSS d.o.o. Banja Luka over Kaldera company d.o.o. Laktaši in the market of the production of devices for distribution and control of electricity in Bosnia and Herzegovina; an establishment of a joint venture by BH Telecom d.d., Raiffeisen Bank d.d. Bosna i Hercegovina, Comtrade d.o.o. and QSS d.o.o. in the market of the provision of services of implementation of an IT platform for payment services and other technological solutions in Bosnia and Herzegovina; and an acquisition of the sole control of Sejari d.o.o. Sarajevo over Centrotrans-Eurolines d.d. Sarajevo in the market of services of bus transportation of passengers in Bosnia and Herzegovina. In all proceedings, the Council mostly relied upon the market data submitted by the notifying parties in their merger notifications.

Quick reference tables

These tables are for quick reference only. They are not intended to provide exhaustive procedural guidelines, nor to be treated as a substitute for specific advice. The information in each table has been supplied by the authors of the chapter.

Bosnia and Herzegovina	
Voluntary or mandatory system	Mandatory.
Notification trigger/filing deadline	Signing of the respective agreement, the announcement of a public offer of shares or an acquisition of control – 15 days.
Clearance deadlines (Stage 1/Stage 2)	Stage 1: 30 days from the issuance of the certificate of completeness for (1) the approval of the concentration or (2) initiation of Stage 2. Stage 2: 3 months from the initiation of Stage 2, possible extension by an additional 3 months.
Substantive test for clearance	Concentration resulting in the creation or strengthening of a dominant position that may restrict competition in the market.
Penalties	<p>Failure to notify within due time:</p> <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 Bosnia and Herzegovina convertible marks for the responsible individuals. <p>Closing a concentration without obtaining prior clearance:</p> <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 Bosnia and Herzegovina convertible marks for the responsible individuals.