



Estonia

Global merger control handbook – update

APRIL 2020

Merger control legislation updates since 1 July 2018

No new merger control legislation updates have taken place since 1 July 2018.

Landmark merger control cases since 1 July 2018

2018 was a record year of phase II proceedings in Estonia. Out of the 45 notifications submitted, six were examined in phase II proceedings. Out of these six, one merger resulted in a prohibition decision, which was only the third prohibition in Estonia since 2001. Several notifications were also withdrawn due to the Competition Authority having indicated to the parties that the transaction could not be cleared.

One of the phase II proceedings concerned the acquisition of control over Nelja Energia AS by Enefit Green AS. Nelja Energia is a producer of renewable energy. Enefit Green AS is a subsidiary of the state owned Eesti Energia, which was the biggest energy

producer in Estonia already before the acquisition of control over Nelja Energia. The Competition Authority received eight objections from different market players, but still cleared the merger without commitments. The Authority found the geographic scope of the electricity wholesale market to be wider than Estonia, as electricity was sold through Nord Pool and there was direct competition from Finnish sellers (very similar prices and sufficient transmission capacity) and also competitive pressure from other sellers in the Baltics. Therefore, the Competition Authority concluded that there were no competition concerns and that the merger could be cleared.

A competitor challenged the Competition Authority's decision in court a day after the clearance decision and also applied for interim relief to prohibit the parties from closing the transaction. However, the parties had closed the transaction on the day of receiving the merger clearance. The court initially granted the interim relief, but cancelled the ruling later. The court also dismissed the complaint for annulment of the merger clearance

decision. The court reasoned that since the merger was already implemented and at the time of implementation there was a valid merger clearance decision in place, it was no longer possible to reverse the merger even if the merger clearance decision were annulled. It is a welcome guidance to merger participants that potential annulment of the merger clearance decision does not mean that the parties cannot rely on the clearance decision and close the transaction.

In comparison with the preceding year, 2019 was a calmer year for the Competition Authority in terms of phase II merger control proceedings. Only two notifications were examined in phase II. However, one of these two resulted in the fourth prohibition decision in Estonia since 2001. The prohibition

decision concerned a merger between two major travel agency services providers in Estonia: Estravel and Wris. Although the notifying party argued that the travel agencies' services compete with direct sales by travel services providers and tour operators, the Competition Authority examined traditional travel agency services separately and prohibited the parties from merging.

Web link to the national competition authority

Competition Authority: <https://www.konkurentsiamet.ee>

English language version: <https://www.konkurentsiamet.ee/en> (note that the English version contains substantially less information than the Estonian version).

Your merger control contact in Estonia

Sorainen

Pärnu mnt 15, 10141 Tallinn, Estonia

+372 640 0900

www.sorainen.com

Kaupo Lepasepp

+372 521 3086

kaupo.lepasepp@sorainen.com

Piibe Lehtsaar

+372 5303 5411

piibe.lehtsaar@sorainen.com