

GREENLAND INTENSIFIES RULES ON MERGER CONTROL

Thursday 15 May 2014, the Parliament of Greenland passed an amended Competition Act. The Act is the result of a desire for increased monitoring of mergers on the Greenlandic market. The new regulations will come into force 1 July 2014 and will introduce the first merger control related to competition law in Greenland.

Notification Thresholds

Until now, mergers in Greenland did not require prior approval from the authorities, but merely a subsequent notification of the authorities.

After 1 July 2014, any merger must be notified to the Greenlandic competition authorities (the Consumer and Competition Authority) after a merger agreement has been entered into, a takeover bid has been announced or a controlling stake has been acquired.

Mergers affecting the Greenlandic market must be notified to the Consumer and Competition Authority in Greenland when:

- i. The involved companies' combined annual turnover in Greenland amounts to no less than DKK 100m; and
- ii. At least two of the involved companies each have an annual turnover in Greenland of no less than DKK 50m.

New Merger Concept

The new Competition Act puts an end to the existing Greenlandic merger concept which until now has been identical with the concept used in corporate law. After the Act's entry into force, the merger definition will be changed into what is sometimes called the competition merger concept which corresponds to what is applicable in the Danish Competition Act. Hereafter, the merger concept must be understood as one of the following transactions types:

- i. The amalgamation of companies (real and figurative merger)
- ii. Acquisition of control, including changes in existing control
- iii. Establishment of an independent joint venture

In the new Competition Act, a fee may be imposed in connection with the merger notification. The Greenlandic government, Naalakkersuisut, may decide the size of the fee. It is expected that the fees will be determined as a basic fee plus a rate of the merging companies' turnover.

Introduction of Implementation Ban

Going forward, any merger must be notified to the Consumer and Competition Authority before the completion of the transaction. With this, an implementation ban is introduced in accordance with what applies in for example Denmark and the EU.

The Consumer and Competition Authority must approve the merger in phase I or decide to initiate a separate investigation in the merger (phase II) within 40 working days of receiving a complete merger notification.

In the event that the Consumer and Competition Authority initiates a separate investigation, the deadline for authority approval will be extended by up to 90 working days from the expiry of the deadline for approval in phase I.

Regulations regarding the specific form of the merger notification have not yet been established, including the possibility of introducing simplified and regular notification as it is known from the Danish and European systems.

Under the new Competition Act, phase I notifications have a maximum procedure time of 40 days, after which a decision must be made as to whether a merger can be approved. This means that the procedure time is significantly longer when compared to for example Denmark where the corresponding procedure time is 25 days.

Our View

By introducing the implementation ban, the Greenlandic competition authorities will achieve an effective option to ensure healthy competition on the Greenlandic market by being able to establish terms and conditions for the completion of mergers that impact competition.

With the increased level of involvement of the authorities, it is expected that transactions that are required to be notified will have a longer temporal extent than previously.

The Greenlandic turnover thresholds are relatively low. The previous thresholds in the period from 2008 to 2014 resulted in 11 merger reviews in Greenland. It is our view that the amount of transactions that are subject to the new thresholds will remain limited.

If you have any questions or would like additional information regarding the consequences of the new Competition Act, competition law in general or questions regarding business in Greenland, please contact partner Pernille Nørkær (pno@mwblaw.dk) or junior associate Peter Smed (psm@mwblaw.dk).

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