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Egyptian merger control regime shifts from post to pre-closing notification regime

Unlike the previous regime where transactions that met the notification thresholds were to be notified to the Egyptian Competition Authority (“**ECA**”) after closing, beginning on December 30, 2022 such transactions must be notified to the ECA in advance to obtain clearance to proceed to closing.

This new pre-closing notification merger control regime has been introduced by Egyptian law no. 175/2022, published in the Official Gazette on December 29, 2022 (the “**Amendments**”), which amended Egyptian law no. 3/2005 on the Protection of Competition and the Prohibition of Monopolistic Practices (“**Competition Law**”).

The main change is the shift from post to pre-closing notification regime, but the Amendments also impact on other aspects of the merger control regime.

First, the Amendments provide a new definition of “economic concentration”. Under the new regime, pre-closing notification is required for any transaction (exceeding certain turnover thresholds) that constitutes an economic concentration, which is any change of control or material influence over one or several entities as a result of any merger, acquisition or joint venture (with some exclusions, such as non-full-function joint ventures and temporary acquisitions of securities).

The Amendments also provide new turnover thresholds: under the new regime, a transaction must be notified if, in the last financial year:

- the combined turnover or consolidated assets of all parties in Egypt exceeds EGP 900 million (EUR 28 million approximately) and the turnover of each of at least 2 parties in Egypt exceeds EGP 200 million (EUR 6 million approximately); or
- the combined turnover or assets of all parties worldwide exceeds EGP 7.5 billion (EUR 233 million approximately) and the turnover in Egypt of at least one party exceeds EGP 200 million (EUR 6 million approximately).

With respect to process and timeline of the ECA review, under the Amendments the ECA’s assessment unfolds in 2 phases: (a) upon complete filing, an initial review shall be conducted within 30 business days, with possible extension of 15 business days; (b) if the transaction is found to raise anticompetitive concerns, a further review shall be conducted within 60 business days, again with possible extension of 15 business days. Once completed its assessment, the ECA can either approve the economic concentration, reject the transaction or require structural/behavioral remedies, and its decision can be appealed within 30 days. The Amendments also for the first time introduce a filing fee for merger control notifications capped at EGP 100,000 (EUR 3,100 approximately).

Lastly, under the new merger control regime failure to notify a relevant transaction or to comply with the ECA's remedies or disclosure of false information may lead to fines ranging from 1% to 10% of the parties' turnover or asset value (whichever is the highest), or, if the turnover or asset value cannot be calculated, a fixed amount between EGP 30 million and EGP 500 million (EUR 935,000 – 1.5 million approximately).

These changes bring Egypt's legal system closer to European Union standards on antitrust matters. We interpret this as a sign that Egypt will continue along the path of legal reforms, with the aim of facilitating trade and investment transactions.

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