



The long-anticipated overhaul of the Egyptian merger control regime introduces a pre-closing notification regime

On 6 December the Egyptian House of Representatives approved an amendment to the Egyptian Competition Law. This marks a significant step in the long-awaited overhaul of the Egyptian antitrust and merger control regimes. Since 2017 the country has been debating several amendments to the antitrust and merger control regime, a process that has been interrupted by crises and has kept the antitrust community eyeing Egypt in anticipation. The process gained some movement again in late 2021 when the House passed the draft law in first reading. However, after the Economic Committee submitted its recommendation on the draft law back to the House in February of this year, the process appeared to lose momentum again. Now the new amendments to the Egyptian Competition Law were finally approved by the House and the amended law should be ratified by President Fattah El-Sisi and published shortly. While the final text is not available yet, the proposed text of the amendments already allows for some insight on the pending changes. Most notably the Egyptian merger control regime will shift from a post- to a pre-closing notification regime.

Current post-closing notification regime

Pursuant to Law 3/ 2005 on the Protection of Competition and Prohibition of Monopolistic Practices (**Competition Law**)

the Egyptian merger control regime only required notification post-closing. Under this notification regime transactions that met the notification threshold had to be notified to the Egyptian Competition Authority (**ECA**) within 30 days after closing. Except for a few cases in which ECA regarded the transaction to (potentially) have such substantial impact on competition that they called the transaction in for a pre-closing notification and review—as for example in the UBER/Careem merger—there was no pre-closing notification requirement.

The amendments to the Competition Law now introduce a pre-closing notification regime. Furthermore, there will be amendments and clarifications among other things on the definition of what constitutes an economic concentration, the notification thresholds, timeline of the merger control review process and fines. This client brief provides an overview of key features of the amendments. Please note that these are based on proposals for the amendments and not on the officially published law, which is still pending. Some changes may, therefore, still occur.

Economic concentration

The amendments require pre-closing notification of any transaction that constitutes an economic concentration within the amended law and meets the



statutory notification thresholds. Within the meaning of the amended law, an economic concentration is any change of control or material influence over one or several undertakings. Thus, the new definition of economic concentration explicitly introduces a change of control element for the first time to the Egyptian merger control regime. Joint control will suffice as change of control. Thus, any transaction that would result in the change of control or decisive influence or establishment of joint control over an undertaking requires pre-closing notification to the ECA (provided of course that the notification thresholds are met). This includes any change in the ability to influence the strategic decisions or business objectives of such undertakings.

What is clear from the text of the amendments is that a change of control does not necessarily require acquisition of a majority of the voting rights. Still, whether the type of minority (shareholder) rights would suffice to trigger a change of control under the amended law is still unclear. Since the old merger control regime did not require change of control, we cannot take guidance from past ECA practice. It remains to be seen what position the ECA will take in practice and if it will adapt practices of other authorities such as the European Commission.

Another new development is the exclusion of a notification obligation for non-full function joint ventures. Joint ventures that do not conduct their business independently from their parents and in a

permanent manner do not qualify as economic concentrations within the meaning of the amended law. As under the current law, the amended law also does not require notification of temporary acquisitions of securities—to be resold within one year—or internal restructuring within the same corporate group.

New turnover thresholds

Under the current post-closing notification regime, the notification threshold is EGP 100 million (approx. USD 4 million) combined revenue in Egypt of the parties to the transaction. With the amendments increased notification thresholds will be introduced for the pre-closing notification regimes. The amendments include two alternative notification thresholds. Economic concentrations will be notifiable if either of the two following thresholds is met:

Domestic leg threshold — under the domestic leg an economic concentration is notifiable if during the last fiscal year the combined Egyptian turnover or value of Egyptian assets of all parties to the transaction exceeded EGP 900 million (approx. USD 36 million), and the Egyptian turnover of at least two parties exceeds EGP 200 million (approx. USD 8 million) each.

International leg threshold — under the international leg an economic concentration is notifiable if during the last fiscal year the combined worldwide



turnover or value of assets held worldwide of all parties involved in the transaction exceeded EGP 7.5 billion (approx. USD 300 million), and the Egyptian turnover of at least one party exceeds EGP 200 million (approx. USD 8 million).

Hence, under the international leg notification may be required for a transaction where only one party has revenue in Egypt. Hence, transactions without local nexus in Egypt may require filing under the new pre-closing notification regime, where the international leg thresholds are met. This would not be entirely surprising, since the current post-closing notification regime also does not include a local effects test. Still, it remains to be seen whether the Egyptian legislator through executive regulations or ECA through guidelines or practice will introduce a local effects test.

Review process and timeline

With the amendments firm review periods will be introduced. The review will include two stages. Upon complete filing being submitted ECA will conduct an initial review. This initial review shall be concluded in 30 working days, with the option to extend the review period by an additional 15 working days.

In case ECA finds that the transaction raises competition concerns, a second phase will follow. The review period for this second phase is 60 working days and may

also be extended by an additional 15 working days.

Upon completion of the review ECA may approve the economic concentration, approve it with structural or behavioral remedies or reject it. The ECA's decision can be appealed within 30 days.

We are still waiting for clarification on several matters related to the review period. In particular, it is to date unclear when a filing will be deemed complete—thus, what documents will have to be submitted and which language{s} and form will be acceptable—whether a new filing form will be issued and whether ECA will have discretion to require additional documents and information.

Filing fee

The amendments for the first time introduce a filing fee for merger control filings under Egyptian law. The filing fee will be capped at EGP 100,000 (approx. USD 4,000). It is unclear whether payment of the filing fee is a condition for the clock on the review period to start.

Substantially higher penalties

Under the current law potential liability for failure to make a post-closing notification were very mild. The primary means to address violations were fines capped at EGP 500,000 (approx. USD 20,000). While some alternative sanctions such as blacklisting from public tender were



theoretically possible, the current regime was rather toothless. This will change under the amended law, which will significantly increase the potential liability for violations.

Failure to notify a notifiable transaction or failure to comply with remedies imposed by ECA may be subject to a fine between 1 and 10 percent of the violating party's turnover or value of its assets—whichever is highest (the proposed amendments do not specify whether this relates to Egyptian or worldwide turnover or assets). Alternatively, where a party's turnover or asset value cannot be ascertained a fine of between EGP 30 and 500 million (approx. between USD 1.2 million and USD 20 million) may be issued.

Way forward

The new amendments are not yet in force. The next step in the legislative process will be the ratification of the law by President Fattah El-Sisi following which the law will be published in the Official Gazette. In line with common practice of the Egyptian legislator we expect that there will be a grace period of 6 months until the amendments will enter into force. We expect that during this grace

period executive regulations providing some further details on the application of the law will be issued. In addition, ECA may issue guidelines on the interpretation and application of the new pre-closing notification regime.

We are still waiting for the new amendments to be published and it remains to be seen how ECA will apply the new pre-closing notification regime in practice. Still, we can safely say today that the amendments will have far reaching implications for companies and investors with engagements in Egypt or those transacting with them. In particular, if no local effects test will be implemented in addition to the notification thresholds and sell-side turnover and assets will be considered when assessing whether the thresholds are met. Also, it is still unclear whether the new regime will apply to transactions that are signed after the grace period ends or if it will be in effect for any transactions closed after the end of the grace period. In any case companies and investors doing business in Egypt or with businesses with engagement in Egypt will have to consider the Egyptian merger control regime going forward.



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