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The application of the law on the control of concentrations between undertakings to acquisitions of non-performing loans

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The recent financial crisis has significantly affected the purchasing power of households and businesses in Cyprus. As a result, the amount of non-performing loans ("NPLs") has surged to an astronomical level by the end of 2016.

In an effort to reduce the risks associated with NPLs on their balance sheets, the banks in Cyprus proceeded with the sale of large packages of NPLs to credit acquisition companies. Furthermore, they assigned the management of a large amount of their NPLs, as well as of the related real estate, to companies specialising in the provision of NPLs management.

The above transactions may cause a lasting change in the control of the ownership and/or the management of NPLs, thus triggering a concentration according to the Law on the Control of Concentrations between Undertakings 83(I)/2014 (Law 83(I)/2014). Additionally, those transactions gave rise to concentrations of major importance, which have been notified to the Commission for the Protection of Competition (CPC) due to the high val-

ue of the NPLs involved.

Recent decisions of the CPC reveal certain challenges in relation to NPLs, mainly:

- Whether there is a lasting change in the control of NPLs through the assignment of their management to third parties, thus causing a concentration.
- How the turnover generated from NPLs is calculated, in order to determine whether the concentration is of major importance and therefore should be notified to the CPC.
- How the relevant markets are defined, and on the basis of which data are the market shares estimated, in order to analyse the effects of the notified concentration on competition.

Notion of concentration

According to Law 83(I)/2014 (article 6) a concentration takes place when a transaction and/or interrelated transactions cause a change in the control of an undertaking,



part of an undertaking or an asset of an undertaking on a lasting basis. In this regard, a concentration may arise from transactions of acquisition, the purchase of securities or assets, by contract or by any other means. Furthermore, a concentration arises in cases where a joint venture is created, which performs all functions of an autonomous economic entity on a lasting basis.

Concentration of major importance

According to Law 83(I)/2014, all concentrations of major importance should be notified to the CPC, in order for the latter to assess their compatibility with competition in the market. A concentration is of major importance when the following three conditions are cumulatively satisfied:

1. The aggregate turnover achieved by each of at least two of the undertakings participating in the concentration is above €3.5 million.
2. At least two of the participating undertakings achieve turnover within the Republic of Cyprus.
3. At least €3.5 million out of the aggregate turnover of all the participating undertakings is achieved within Cyprus.

In this respect, an acquisition of NPLs and/or the assignment of their management to a third party which can exercise decisive influence on them can give rise to a concentration of major importance provided that the turnover achieved from the relevant NPLs exceeds €3.5 million.

According to recent decisions of the CPC, the turnover achieved through the NPLs involved in the transaction under examination is calculated on the basis of the interest income of banks derived from the borrowers of the relevant NPLs.

Definition of relevant markets

According to the recent decisional practice of the CPC, the following relevant markets have been defined:

- a. Market of the possession of NPLs (e.g., Decisions No. 54/2020, [60/2018](#)).
- b. Market of the management and recovery of NPLs (e.g., Decisions No. [19/2017](#), [8/2018](#), [33/2018](#)).
- c. Market of real estate management resulting from the management of NPLs (also known as "REO") (e.g., Decisions No. [19/2017](#), [8/2018](#), [33/2018](#), [60/2018](#), [12/2020](#), 54/2020).

The above definition of the relevant markets is, to a large extent, consistent with the European Commission's case [COMP/M.8888 Apollo Management / Cyprus Corporative Bank / Altamira Cyprus](#). However, it should be noted that in contrast to the CPC, the European Commission distinguished the NPLs which are managed internally by banks from those managed by credit management companies.

Estimation of market shares

The estimation of market shares is based on the turnover achieved by the competitors in the relevant market. As mentioned above, the turnover for NPLs is calculated on the basis of the interest income derived from the NPLs concerned. However, considering the non-existence of publicly available data in relation to the amount of interest income derived from NPLs by banks and credit management companies, the estimation of market shares typically relies on the nominal value of the NPLs involved in the transaction. This information is usually publicly available through announcements, press releases, as well as audited financial statements of the banks and/or the credit management companies.

The approach mentioned above may produce a reliable estimation of the competitive position of the undertakings operating in the relevant market of NPLs (possession or management) due to the high degree of correlation between the nominal value of NPLs and the interest income derived from the NPLs.

It is noteworthy that the above approach has been adopted by the CPC in a sequence of recent decisions involving NPLs (e.g., see CPC Decisions No. [19/2017](#), [33/2018](#), [12/2020](#), 54/2020).

Similar challenges emerge from the lack of publicly available data with respect to the market related to the management of real estate resulting from debt exchange procedures. The practice of the CPC in relation to this matter is based on the estimations of the total value of real estate in Cyprus (based on the estimations of the Department of Lands and Surveys) and/or the total value of real estates which have been the object of transactions in the previous financial year. It should be noted that the relatively low value of real estate resulting from debt exchange procedures have rendered pointless the complete analysis of the market shares in the relevant market of real estate management resulting from debt exchange procedures.

Conclusion

Considering the above, it is crucial to observe that, under certain conditions, the merger control law applies to cases of acquisition of NPLs, as well as to cases relating to the assignment of the management of NPLs to a third party. The critical elements that need to be examined for this purpose are whether there is a lasting change in the control of the NPLs, either through the change in the possession or the management, as well as the interest income derived from the NPLs involved in the transaction concerned.

The decisional practice of the CPC with regard to the definition of the relevant markets and the estimation of mar-

ket shares seems to ensure the valid assessment of competitive effects as a result of the acquisition and/or the assumption of the management of NPLs by third parties.

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Trojan Economics

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