New rules on merger control in Italy

Competition and Market Regulation Update

31 AUG 2017
By: Alessandro Boso Caretta | Massimo D'Andrea

The annual competition act for 2017 (Law n. 124 of 4 August 2017, published in the Official Journal on 14 August 2017; hereinafter “2017 Competition Act”) has amended – with effect from 29 August 2017 – the requirements that trigger the duty to give notification of a concentration between undertakings (mergers, acquisitions, transfers of assets, and any other transaction which implies a change of control in a business entity) before the Italian Competition Authority (hereinafter “ICA”) under the Italian antitrust law (Law n. 287/1990; hereinafter “Antitrust Law”).

The previous rules

Prior to the amendment, under Article 16 of the Antitrust Law, the duty to give notification of a transaction was triggered by the following cumulative conditions:

- That combined turnover in Italy of all undertakings involved in the transaction was above €499 million
- That individual turnover in Italy of the target was above €50 million

The new rules

Under the new Article 16 of the Antitrust Law, as amended by Article 1, para. 177 of the 2017 Competition Act, the duty to give notification of a transaction will arise when the following cumulative conditions are met:

- That combined turnover in Italy of all undertakings involved in the transaction is above €492 million
- That individual turnover in Italy of at least two of the undertakings involved in the operation is above €30 million

The turnover threshold set forth by the law will be revised annually by the ICA. There are basically two changes introduced by the 2017 Competition Act:

- The relevant turnover thresholds have been decreased (the first threshold from €499 million to €492 million; the second threshold from €50 million to €30 million)
- The second threshold – and this is the most relevant change – no longer refers to the turnover of the target only (i.e. the undertaking over which control is acquired), but to the turnover of “at least two of the undertakings involved.”

That implies that the duty to give notification could now be triggered even if the turnover in Italy of the target is below €30 million in cases where the transaction involves two other undertakings with individual turnover in Italy of above €30 million.

This is the case, for example, for joint ventures or mergers and acquisitions by which the control over the target is
jointly acquired by two or more undertakings with individual turnovers in Italy above €30 million.

In this case, according to the new rules, the duty to notify will arise, even if the Italian turnover achieved by the target is below €30 million, where the combined turnover of all undertakings concerned (the acquirer undertakings and the target company) is above €492 million.

Entry into force

The new rules entered into force on 29 August 2017. They therefore apply to all concentrations implemented after that date.

AUTHORS

Alessandro Boso Caretta
Partner
Rome | T: +39 06 68 88 01
alessandro.bosocaretta@dlapiper.com

Massimo D'Andrea
Lawyer
Milan | T: +39 02 806181
Massimo.D'Andrea@dlapiper.com