

10 January 2023

Merger Control in Italy

Adoption of the Sub-Threshold Merger Notice

On January 2, 2023, the Italian Competition Authority (“ICA” or the “**Authority**”), after a public consultation started on October 27, 2022, issued the notice (“**Notice**”) concerning the application of the amendments to Article 16 of Law No 287 of 10 October 1990 (in particular, para.1-bis), introduced by Law No. 118/2022 (the “**Annual Competition Bill**”, which entered in force last August 28, 2022), and concerning the notification of mergers and acquisitions of undertakings which do not meet the turnover thresholds set out in Italy for the mandatory *ex ante* filing procedure.

Pursuant to the new provision, the undertakings concerned by the relevant transaction might be required by the ICA to notify a concentration (within 30 days from the request), when:

- **only one of the two Turnover Thresholds is exceeded, or**
- **the total worldwide turnover achieved by all the undertakings concerned exceeds EUR 5 billion, and**
- **the ICA is concerned that concrete risks for competition in the national market, or in a relevant part of it, may arise from the transaction**, also taking into account the detrimental effects on the development and diffusion of small undertakings characterised by innovative strategies.

The ICA is entitled to request the notification within six months from completion of the concentration.

The new powers attributed to the ICA are aimed at recovering the possibility to extend the ICA’s scrutiny to potentially problematic transactions that, under the current system, would not undergo the ICA’s control. In this context, the Notice aims at providing stakeholders with greater legal certainty as to how the ICA’s intends to implement its new powers, as well as to limit the burden on companies

facing the self-assessment of potentially reportable concentrations.

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The Notice: main contents

The Notice offers useful guidelines for undertakings and practitioners assessing (i) the prerequisites for the application of the new Article 16, para. 1-bis, of Law No. 287/90, (ii) its temporal scope of application, (iii) the notion of the “*existence of concrete competitive risks*” and (iv) procedural aspects.

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