

## UKRAINE OVERHAULS MERGER CONTROL REGIME

On 26 January 2016, the Ukrainian Parliament took a long-awaited and significant step to improve the merger control rules in Ukraine. The president is expected to sign the new competition act, which will enter into force at the end of April. The change will considerably decrease the regulatory burden on undertakings and shorten the merger control review process. In particular, foreign-to-foreign transactions are expected to benefit from the overhaul. Some significant (and unnecessary) hurdles remain, however.

### NOTIFICATION THRESHOLDS RAISED, BUT...

The law introduces a two-tier jurisdictional test and raises the turnover / assets thresholds. The tests are as follows:

- a. aggregate worldwide assets or turnover of the undertakings concerned exceed EUR 30 million, and
- b. aggregate Ukrainian assets or Ukrainian turnover of each of at least two undertakings concerned exceed EUR 4 million.

or

- a. aggregate Ukrainian assets or Ukrainian turnover of (as a group) the target or one of the founders of a new entity exceed EUR 8 million (previously EUR 1 million), and
- b. worldwide turnover of at least one other undertaking concerned exceeds EUR 150 million.

The new jurisdictional test significantly increases the turnover and asset (in particular domestic) thresholds and is expected to reduce the number of concentrations that require a filing in Ukraine. Whilst this is generally positive, Ukrainian merger control law continues to lack a second domestic turnover threshold (second test) and still includes the seller's assets and turnover in the test (on the side of the target). As a result, the Ukrainian merger control regime will continue to catch a range of transactions that have a limited nexus to the Ukrainian market.

### SHORTER AND SIMPLIFIED REVIEW PERIOD

A simplified and shortened (25 days) review process will be available in the following cases: (i) only one undertaking concerned is active in Ukraine, or (ii) the market shares of the undertaking concerned are insignificant (i.e. their combined share does not exceed 15% on markets where there are horizontal overlaps between the parties or 20% on vertically related markets). The simplified and short review process is expected to mainly benefit foreign transactions. Details and guidelines on the simplified procedure will be set

out in a separate regulation to be adopted by the competition authority.

#### OTHER CHANGES

Under the new regime, the notifying party will be entitled to request pre-notification meetings with the authority.

Regrettably, the new law does not introduce the concept of ancillarity, and "concerted actions" (in particular ancillary non-compete clauses) are expected to require separate anti-trust notifications also in the future. The law remains unclear in this regard.

Finally, filing fees for merger control notifications will increase, but will remain at a low level by international standards, amounting to around EUR 750 for concentrations and to around EUR 550 for "concerted actions".

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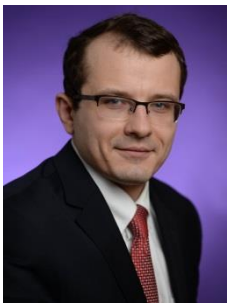
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