



Ukraine

Global merger control handbook – update

APRIL 2020

Merger control legislation changes since 1 July 2018

New exemption from the merger control –acquisition by the banks of assets or shares within the financial restructuring procedure

- In September 2019 the amendments to the Law of Ukraine “On protection of economic competition” (“**Law**”), which regulates the merger control procedure in Ukraine, entered into force;
- Pursuant to these amendments the acquisition by the bank or by another financial institution of company’s assets or shares, which were used as collateral, by way of foreclosure of such assets or shares does not constitute merger (concentration) requiring merger clearance if (a) such acquisition is envisaged by the financial restructuring plan under the Law of Ukraine “On financial restructuring”, and (b) the bank or another financial institution sells such assets or shares within two years after acquisition;

- This exemption is temporary and ends in October 2022 upon expiry of the Law of Ukraine “On financial restructuring”.

Secondary merger control legislation brought into compliance with the Law

- In December 2019 the Antimonopoly Committee of Ukraine (“**AMCU**”) amended the Regulations on Concentrations (a) reflecting the recent amendments to the Law regarding financial restructuring exemption described above, and (b) clarifying certain terminology relevant for the merger control over transactions structured as asset deals (namely “sole property complex” and “integral property complex”).

Guidelines on merger control over joint ventures

- In September 2019 the AMCU adopted guidelines of recommendatory nature which help distinguish between mergers (concentrations) and concerted practices when analysing joint ventures.

Landmark merger control cases since 1 July 2018

Acquisition by Metinvest of PJSC “Dniprovskiy Coke Plant” (Ukraine)

- the AMCU issued a merger clearance to Metinvest, one of the largest mining and metallurgical companies of Ukraine owned by Ukrainian billionaire, to acquire shares of PJSC “Dniprovskiy Coke Plant” after five years of consideration.
- Commitments accepted: Metinvest is obliged, in case of request from other business entities, to sell them 50-70% of specified products from its total sales volume during the period of up to 7 years following receipt of a clearance from the AMCU. Metinvest must also annually report to the AMCU on performance of its obligations.
- At the meantime, the AMCU continues investigation regarding unauthorized concentrations completed by Metinvest group of companies which may result in imposition of fines.

One of the largest fines imposed for the absence of the merger clearance (acquisition by DCH group of companies of PJSC “Dniprovskiy Metallurgical Plant”)

- A fine of more than 2 mln USD was imposed on Senalior Investments Limited (Cyprus), a member of DCH group of companies, one of the largest Ukrainian financial and industrial centers, for acquiring control over Drampisco Limited (Cyprus). The transaction resulted in indirect acquisition by Senalior Investments Limited of PJSC “Dniprovskiy Metallurgical Plant” and a prior merger clearance of the AMCU was required.
- Despite both companies are based in Cyprus, the AMCU believed that an indirect acquisition of the target located in Ukraine could influence competition on Ukrainian market and thus required a merger clearance.
- The decision of the ACMU is currently being disputed in the Ukrainian courts.

Web link to the national competition authority

Competition Authority: <https://amcu.gov.ua/en>

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