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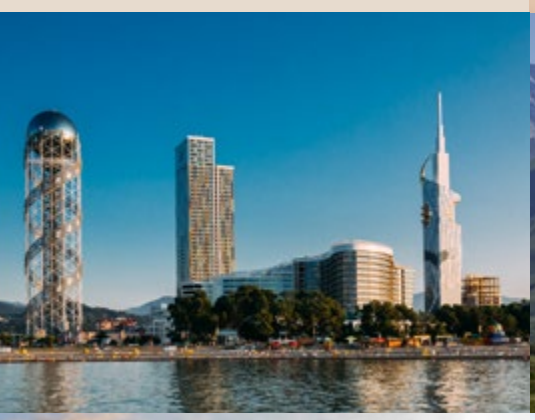



MERGER CONTROL

in the CIS and neighboring countries: overview of the developments and trends

Dear Readers!

We would like to present you with the first edition of the new brochure "Overview of the developments and legal trends in the Commonwealth of Independent States ("CIS") and neighboring countries". By this and future editions, we intend to update you on the most recent news and developments in legislation and law enforcement practice in different areas of law in these countries.

Over the past years, ALRUD has gained a global reputation as a focal point of contact for international law firms and clients with interests in Russia, other members of the CIS and neighboring countries. We have established strong business relationships with the leading national law firms and high profile experts in Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kirgizstan, Moldova, Tajikistan, Turkmenistan, Ukraine, Uzbekistan. Trusted ALRUD lawyers have a deep understanding of the local business environment and regulatory framework in these countries. Thus, we are able to provide you with practical and efficient advice on all aspects of law in the CIS and neighboring countries.

We hope that the information provided herein will be useful for you and will strengthen our further cooperation.

Please do not hesitate to forward this brochure to any of your contacts who might be interested in this materials as well.

Today, global transactions become subject to the merger control, not only in European countries and the USA, but also in the CIS and neighboring countries, due to the establishment and development of powerful competition authorities there. Involvement of these new regulators in the global merger control process makes that process more complicated. The main reason for that is that merger control regimes in the CIS and neighboring countries jurisdictions are quite specific and have their own procedural and substantial peculiarities. These need to be taken into account while structuring M&A transactions and thinking about the general timing for closing the deal. Moreover, enhancing regional cooperation and information exchange between the competition authorities on merger control matters facilitate discovering competition concerns by relevant regulators. Due to these factors, obtaining merger clearance in the CIS and neighboring countries becomes a more challenging task than it was before. At the same time, even one pending merger clearance in a small country is enough to delay closing of the whole global deal and put it even at risk, causing damages and unexpected disbursements and extra costs for the parties.

To structure global M&A transactions more effectively, it is essential for the practitioners to learn more about the historical overview and main issues of merger control in the CIS and neighboring countries and to understand approaches to remedies and considering large trans-border transactions in the relevant jurisdictions.

Based on our relevant experience, we have prepared this brochure, describing the most recent developments of competition legislation and law enforcement practice in Belarus, Georgia, Kazakhstan, Kyrgyzstan, Russia, Ukraine and Uzbekistan. The brochure also describes the latest regulatory practice, essential approaches to remedies, peculiarities of merger control regulation in specific industries, international cooperation issues and summarizes the hottest topics of the potential amendments to the competition legislation in the CIS and neighboring countries.

The brochure was prepared by ALRUD Law Firm (Russia) in cooperation with 6 law firms from the region: Attorneys at Law "Stepanovski, Papakul& Partners"(Belarus), Sayat Zholshy & Partners (Kazakhstan), Kalikova & Associates (Kyrgyzstan), Centil Law Firm (Uzbekistan), Sayenko Kharenko (Ukraine), Mgaloblishvili Kipiani Dzidziguri (MKD) (Georgia).

With thanks to the following firms partnering with ALRUD Law Firm:

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Belarus

Regulatory practice

Today, there is a global trend towards digitalization of the economy that also affects competition law enforcement. Belarus is one of the countries that is also developing in this direction.

The Ministry of Antimonopoly Regulation and Trade of the Republic of Belarus ("**MART**") is a young authority, which was established in 2016. Unfortunately, the MART does not publish information on cleared transactions. However, there is at least one notable foreign-to-foreign transaction cleared recently – *the Yandex/Uber* transaction.

The *Yandex/Uber* case was one of the first cases when the MART faced the need to analyze digital markets and assess impact of digital effects on competition.The parties combined their online taxi aggregation platforms in Azerbaijan, Armenia, Belarus, Georgia, Kazakhstan and Russia. Therefore, the MART had to take into account also the impact of digitalization upon the closing of the transaction.

Consequently, the MART cleared conditionally the transaction in 2017, imposing the following remedies on the parties: (i) not to prohibit partners, drivers and passengers working with other taxi aggregators, and (ii) to provide the most complete and transparent information to customers about the company rendering transport services, with safeguarding the history of trips by customers.

Remedies

The MART has powers to impose remedies on the parties to the transaction while issuing clearance decisions. In particular, under the Law of Belarus No. 94-3 "On Counteracting Monopolistic Activity and Development of Competition" dated December 12, 2013 ("**Competition Law of Belarus**") consent to mergers shall contain requirements aimed at eliminating, or mitigating, possible negative impacts of the transaction on competition in Belarus. Such requirements may relate to restrictions in management (*behavioural remedies*) or use/ disposal of property/assets of the parties (*structural remedies*). Law enforcement practice shows the tendency that the MART more often issues behavioral remedies (e.g., the *Yandex/ Uber* case), rather than structural.

Nevertheless, the MART rarely uses specific remedies to mitigate potential restrictions of competition, as a result of the transaction. The most popular requirement that the MART stipulates, in its decision, is only the requirement to comply with the legislation, which is rather broad and not so effective, since the parties, in any case, are obliged to act within the existing legal framework.

Merger control regulation in specific industries

Merger control provisions of the Competition Law of Belarus are applied to all economic sectors. However, there are several sectors (i.e. banks, insurance, mass media) where the foreign investments cannot exceed the established quota for the respective business sector, or share in share capital of a company. More information on these peculiarities is provided below:

- Banks: acquisition of shares of banks by the foreign investors from a resident require a prior consent of the National Bank of Belarus. If the established quota (50% of the foreign capital in the bank sector) is exceeded, the National Bank of Belarus might prohibit such a transaction, and/or cease registration of incorporation of new banks with the foreign capital.
- Insurance: a prior consent of the Ministry of Finance of Belarus is required for acquisition of shares of insurance companies by the foreign investors. The quota for foreign investments in the insurance sector is 30%. Once exceeded, the Ministry of Finance of Belarus prohibits transactions, ceases registrations of incorporation of any new insurance company with the foreign capital. The Ministry of Finance of Belarus may, inter alia, refuse to grant consent to such acquisitions for reasons of national security, economic reasons and by measures aimed at protection of interests of national insurance companies.
- Mass media: foreign capital in a mass media company shall be less than 20%.

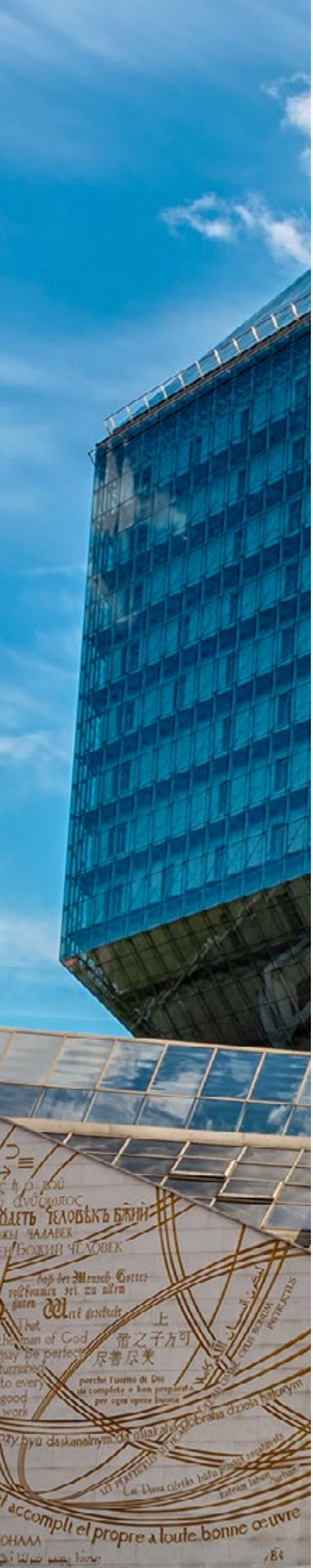
Moreover, please note that there is also a list of activities that shall be carried out only by state-controlled companies, while private companies with foreign and local capital are not allowed to enter into such markets (e.g. special services in healthcare).

Restrictions on investments can also be established based on legislative acts of Belarus in the interests of national security and defense (including environmental protection, historical and cultural values), public orders, protection of morality, public health, rights and freedoms of others.

International cooperation

Chapter V of Annex 19 to the Treaty on the Eurasian Economic Union ("**EAEU**") establishes the order of interactions between the EAEU competition authorities. Authorities of the Member States shall cooperate within the law enforcement activities by sending notifications, requests for information, inquiries and orders to conduct certain procedural activities, ensure exchange of information, coordination of law enforcement activities of the Member States, as well as implementation of law enforcement activities, upon request of any Member State. The authorities of a Member State shall notify the authorized body of another Member State, if it becomes aware that its law enforcement activities may affect the interests of another Member State in the sphere of protection of competition. The law enforcement activities mean activities relating to, among others, transactions (other actions), when one of the parties, or a person controlling parties to the transaction, or otherwise determining the terms of their business activities, is a person registered, or incorporated, under the legislation of another Member State.

Thus, the MART cooperates extensively with other competition authorities and has a Memorandum of Understanding with the Russian, Moldavian, Kyrgyz, Serbian, Armenian, Georgian and Ukrainian authorities. It should be noted that, due to the general close economic and political cooperation between Russia and Belarus, the MART has very close communication with the Federal Antimonopoly Service on methodological and informative issues. Additional cooperation is being built up with competition authorities of Poland, Egypt and Qatar.



The list described above illustrates the general trend for globalization that leads to closer cooperation among the competition authorities, especially, on the regional level of the EAEU. The above instruments for international cooperation within the EAEU are available for all of its Member States, thus, their description is also relevant for Kazakhstan, Kyrgyzstan and Russia as well.

Forthcoming amendments to the legislation

The new edition of the Competition Law of Belarus came into force on August 03, 2018. Amendments relate to, inter alia, merger control regulation. In particular, the list of cases in which post notification applies has been expanded; economic thresholds triggering merger control filing obligations were also increased. Given the recent amendments, no further substantial changes in the legislation are expected soon.

Summary

Antitrust regulation in Belarus is quite young. However, it has developed in accordance with the global trends, including digitalization and enhancing international cooperation with other competition authorities. The existing legislation has also been developed by the regulators, to make it more harmonized with the most progressive practices.

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Georgia

Regulatory practice

The Competition Agency of Georgia ("**CAG**") is a young competition authority with quite limited regulatory powers in merger control and limited jurisdiction (a number of sectors of the Georgian economy are supervised by the relevant authorities, instead of the CAG). However, the CAG has been actively developing its enforcement practice, cooperation with other Georgian regulatory authorities and international cooperation on competition law matters. Below you can find some recent examples of law enforcement practice that might help in understanding the functions of the regulator in more detail.

Georgian healthcare group/ GPC (2016)

In April 2016, the Competition Agency of Georgia ("**CAG**") approved the merger between Georgian Healthcare Group, a major healthcare service provider, and GPC, a leading pharmaceutical company in Georgia. The merger affected the ambulatory care, stationary care, sale of pharmacy products and provision of medical insurance service markets. Insurance Company Imedi L, subsidiary of Georgian Healthcare Group, had a dominant position in the medical insurance market.

However, the CAG established that the market was mildly concentrated; therefore, the authority concluded that the transaction could not result in a substantial increase of the market shares of the parties to the transaction. Moreover, the CAG stressed that concentration would not negatively affect the service prices, but result in increase in the number of distribution points selling pharmacy products across the country, improvement of the quality of service and impact positively the market environment.

Consequently, the CAG cleared conditionally the transaction and imposed certain behavioral remedies, establishing obligations related to periodic reporting on transactions entered into by Insurance Company Imedi L, that could potentially result in significant restriction of competition in the relevant market.

Thus, this precedent characterizes the CAG as quite a flexible authority, not aiming to interfere excessively in the companies' business activities, but instead paying much attention to analysis of the markets and effects of the transactions' implementation.

Alta/ Eurotechnics (2016)

Another notable concentration approved by the CAG is the formation of the joint venture ("**JV**") by Alta and Eurotechnics Georgia. The CAG identified three relevant markets affected by the transaction: import of computers and electronics, import of home appliances and installation of electronics. The market for installation of electronics was highly concentrated, and here the parties' market shares were relatively high.

In the specified case, despite the parties' high market share and incompleteness of data for the analysis, the CAG cleared the transaction due to its benefits and pro-competitive effects (increase in number of distribution outlets, expansion of variety of electronic appliances, improvement of business of both enterprises, etc.). Similar to the Georgian Healthcare Group/ GPC case, the CAG conditionally approved the deal and imposed obligations to provide periodic reports on any new transaction that could significantly restrict competition in the relevant markets on the JV parties.

The current example shows an individual approach of the authority to analyzing each transaction and its economic impact on the state of competition in the relevant markets.

Remedies

The CAG has quite limited regulatory functions related to merger control. The only remedy that the CAG may impose is a reporting obligation. In particular, the Law of Georgia on Competition No. 2159 dated March 21, 2014 ("**Competition Law of Georgia**") says that if a company acquires dominant position as a result of merger the CAG may require from such a company "to periodically submit information about implemented transactions that may significantly restrict competition in the relevant market".

Taking into account that competition regulation in Georgia is quite young, further broadening regulatory powers of the CAG, including vesting the CAG with the rights to issue various behavioral/ structural remedies to prevent negative circumstances in the markets might be expected.

Merger control regulation in specific industries

As a general rule, clearance from CAG is necessary when the merging parties meet the turnover and assets thresholds. It should be noted that the Competition Law of Georgia does not establish the necessity of separate strategic investment clearance of the transactions with the regulatory authorities. However, mergers and other transactions between the members of the Regulated Economic Sectors are out of the scope of the Competition Law of Georgia and the CAG itself.

The Regulated Economic Sectors include those sectors, which are regulated by the Organic Law of Georgia on the National Bank of Georgia, Law of Georgia on the Activities of the Commercial Banks, Law of Georgia On Investment Funds, Law of Georgia On Electronic Communications, Law of Georgia on Broadcasting and Law of Georgia on Electricity and Natural Gas, also, a number of municipal services (where there are certain pricing practices and risks for competition restriction).

The relevant regulatory authorities supervise all of the Regulated Economic Sectors. The CAG cooperates closely in merger control matters with such regulatory authorities to ensure a high level of expertise and analysis of the markets, influenced by the transactions. If requested by the regulatory authority, the CAG is entitled to issue an expert opinion on the matter. Moreover, a joint working group authorized to consider a particular merger might be composed from the representatives of the relevant regulatory authority and the CAG.

Summing up the above, there is a special regulatory procedure for considering mergers and other transactions conducted in particular sectors of economy of specific attention of the Georgian Government, including banking, investments, mass media, electronic communications, broadcasting, energy sector.

International cooperation

Creation of the Competition Law of Georgia was heavily influenced by the European legislation. In its decisions, the CAG frequently refers to the case law of the courts of the European Union and invokes the legislation of the EU Member States.

The CAG established formal relationships with a number of competition regulators in EU and CIS member countries. Therefore, exchange of information and interaction with the competition authorities is widely used in Georgia.

The above illustrates that globalization is one of the major trends determining the development of the competition regulation in Georgia, as well as in other countries, enabling to build proper dialogues between the regulators.

Forthcoming amendments to the competition legislation

Since the formation of the CAG in 2014, there have been many debates about reforming the regulatory framework for merger control and enhancing the capabilities of the CAG, including in relation to expansion of its powers to companies in the Regulated Economic Sectors mentioned above.

Specific legislative initiatives are anticipated and being widely discussed within the business community and government authorities. The proposed amendments to the Competition Law of Georgia might include the following:

- introduction of a governing board in the CAG as a collective body for appeal;
- reconsideration of a definition of "concentration" and thresholds triggering merger control obligation;
- expansion of functions and powers of the CAG enabling it to request any and all relevant information from the companies to make a grounded decision upon the results of its analysis;
- vesting the CAG with the powers to impose structural/behavioural remedies;
- introduction of a fine, in case of failure of the companies to comply with the imposed structural/behavioural remedies.

The proposed changes have not been officially presented to the Parliament of Georgia for approval yet. Currently, the final version of the amendments is still under debate. However, the tendency for further developments of the legislation is already known.

Summary

The CAG is quite a young competition authority, formed only in 2014, with quite limited functions in merger control. At the same time, it is expected that its influence and role would be expanded imminently, due to certain amendments to the Competition Law of Georgia, currently actively being debated within the business community and the government authorities.

At the same time, it is worth mentioning that the Georgian competition legislation is strongly affected by the EU case law and approaches, which leads to harmonization of the Georgian antimonopoly regulation with the regulation of the EU. This means that general trend for globalization affects substantially the development of competition regulation in Georgia as well.

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Kazakhstan

Regulatory practice

The Committee on Regulation of Natural Monopolies and Protection of Competition of the Ministry of National Economy of Kazakhstan ("**KREMZK**"), the creation of which goes back to 1991, is the state body of the Republic of Kazakhstan in the field of protection of competition and restriction of monopolistic activities in the relevant product markets, control and regulation of activities related to the field of state monopoly. Also, within the limits provided by the legislation, KREMZK is engaged in cross-sector coordination, regulation and control in the field of natural monopolies and regulated markets. Below, you can find recent example of a remarkable case considered by the KREMZK in 2018.

Acquisition of 75% of ordinary shares in mobile operator Kcell by Kazakhtelecom (the biggest telecommunications operator in Kazakhstan controlled by the Kazakhstan government) has become the most resonant merger in Kazakhstan. The KREMZK has conducted a thorough high-level competitive analysis of the cellular services market, analyzed positions of the market players and the impact of the proposed transaction on the competition in the relevant market. Moreover, in consultation with telecommunications authority - the Ministry of Information and Communications of Kazakhstan - it had assessed the foreseeable implications and effects of the transaction on consumers, participants and the telecommunication industry in general. The transaction was complicated by the fact that Kazakhtelecom, as the largest fixed telephone network operator in Kazakhstan, holds a dominant position in a number of related markets. Furthermore, Kazakhtelecom indirectly holds approximately 49% interest in another mobile operator - Mobile Telecom-Service.

The case was notable since the KREMZK cleared the transaction with a number of innovative remedies including obligations requiring creation of new service lines, broadening areas with 4G coverage, implementation of 5G services, etc. Furthermore, the KREMZK issued an order to the Ministry of Information and Communications of Kazakhstan, implementation of which shall ensure improvement of the cellular market regulatory mechanisms, through creation of favourable conditions for competition and future development of the industry.Thus, following the worldwide trend for digitalization, the KREMZK actively analyzes innovative markets and issues unprecedented remedies aimed at future development of the highly-innovative sectors of the economy.

Remedies

Antimonopoly consent to a merger may be conditional on the performance of a set of requirements and obligations aimed at elimination or mitigation of the negative impact of the merger on competition by the parties. Such requirements and obligations can pertain to structural or behavioural remedies, including, inter alia, limitations on management, use or disposal of assets etc. However, in nearly all cases where the KREMZK conditionally approves the transactions, the authority specifies only one requirement, namely, to refrain from any anti-competitive practices in the relevant product markets in Kazakhstan.

However, there is a general tendency to shift from usage of standard remedies to unique and innovative ones, so that they could serve the general needs of the digital economy in Kazakhstan in this field. Clearance granted with respect to the Kazakhtelecom/ Kcell merger could serve as one of the examples illustrating the general digitalization trend.

Thus, as the recent enforcement practice shows, the KREMZK takes the course for issuing more detailed and tailored remedies, customized for each particular case. As a result, the KREMZK may receive tools to develop competition in the markets more efficiently.

Merger control regulation in specific industries

Generally, the merger control provisions of the Entrepreneurial Code of Kazakhstan apply to all economic sectors. The current legislation provides that the only transactions that do not require merger control clearances are exemptions for which are explicitly provided for by the Entrepreneurial Code of Kazakhstan, laws, Presidential decrees and/ or Government resolutions. That novelty was introduced in 2015, mainly to facilitate the transactions conducted by companies partially-owned by the government.

In Kazakhstan, there is also a special regulation for companies active in financial sector. In particular, the Entrepreneurial Code of Kazakhstan sets out special thresholds for transactions involving financial institutions. A triggering event occurs when the value of assets, or equity, of a financial institution exceeds the thresholds determined by the KREMZK (in consultation with the National Bank of Kazakhstan). However, if companies involved into the transaction carry out functions of a financial institution and simultaneously, a market player holding dominant position in the relevant market, general thresholds are applied. Thus, Kazakhstan follows quite a common approach, when general merger control rules apply to all market players and economic sectors, if alternatives are not provided by the applicable legal acts (e.g., special thresholds for financial institutions).

International cooperation

The KREMZK is involved into international cooperation, exchange of information and consultations with competition authorities of the member states of the Commonwealth of Independent States ("**CIS**") and the EAEU. In particular, as Kazakhstan is a member of the EAEU, all the tools for international cooperation between the competition authorities under the Treaty of the EAEU described above, are available for the KREMZK as well.

Moreover, in accordance with the Agreement on the Coordinated Antimonopoly Policy Implementation, approved by the Kazakhstan Government Decree No. 1922 dated 28 December, 2000, the KREMZK cooperates with the authorities of the CIS countries in the framework of the Interstate Council for Antimonopoly Policy. Within such cooperation, common approaches are developed to harmonize competition legislation and law enforcement practice within the CIS countries.

Thus, the KREMZK carries out cooperation with other competition authorities on a regional level. However, there is no recent notable example of global cooperation of the KREMZK with the competition authorities worldwide.

Forthcoming amendments to the legislation

On October 05, 2018, the former President of Kazakhstan, Mr. Nursultan Nazarbayev, stressed in his address to the Nation the need to take determined steps to promote competition in Kazakhstan. In particular, the President instructed the Government to reform and review the powers and functions implemented by the KREMZK, so that they could be expanded to ensure competition in the markets.

The National Chamber of Kazakhstan Entrepreneurs, in its turn, is now considering the need to amend legislation from the following perspectives:

- improvement of legislation preventing actions of government authorities restricting competition ("**Yellow Pages Principal**");
- downsizing the quasi-government sector in the economy and creation of competitive niches for private businesses;
- encouragement of antimonopoly compliance;
- bringing to criminal liability only for cartels;
- revision of legislation for refinement of approaches to various competition law offences;
- amendments to the conciliatory committee provision (a conciliatory committee is set up when a competition law offence investigation is launched).

The respective draft law has not been developed yet. Therefore, it is not clear whether such draft law will 'take on board' proposals of the National Chamber of Kazakhstan Entrepreneurs. However, the plan and major directions for further development of legislation can be clearly traced.

Summary

The Kazakhstan Government sets promotion of competition as one of the national objectives for future development of the economy. Therefore, antimonopoly regulation is actively developing in Kazakhstan. Market analysis in merger control cases is carried out by the KREMZK more carefully and remedies become more detailed and specific. This demonstrates the rising level of expertise of the authority. In addition, the KREMZK faces the challenges of digitalization and improves its enforcement practice to address the new market trends.

Although the KREMZK now has quite limited cooperation with the foreign competition authorities, such practice of cooperation shall expand in future, following the general trend for globalization. Finally, it should be noted that the package of amendments to the competition legislation is currently being actively debated in Kazakhstan. However, merger control is not in the focus of the reform.

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Kyrgyzstan

Regulatory practice

There is no principle of extraterritoriality in the Law of Kyrgyzstan "On Competition" No. 116 dated July 22, 2011 ("**Competition Law of Kyrgyzstan**"). Consequently, huge trans-border transactions are out of the scope of analysis of the State Agency for Antimonopoly Regulation of Kyrgyzstan ("**SAAR**"), even in case they might influence competition in the markets of Kyrgyzstan.

Remedies

The SAAR mainly issues behavioral remedies in merger control cases. Here are some examples of remedies actively used by the SAAR:

- ceasing and desisting unauthorized use of trademarks;
- suspending production until obtaining respective certificate;
- eliminating antimonopoly violations by ensuring economic justification for setting prices (tariffs, rates, charges);
- consulting with the competition authority on standard form of contract with its consumers;
- revising pricing policies and reducing maximum price levels;
- suspending production and sale of products with external design similar to the design of another manufacturer;
- ceasing and enabling sale of products;
- revising terms and conditions of tender documentation that discriminates and restricts competition between tender participants;
- bringing terms and conditions of contracts into compliance with the existing legislation and necessity to amend contracts with certain customers;
- re-entering into contracts with suppliers;
- installing POS terminals, etc.

Implementation of these remedies may affect the terms of business activity of the parties to the transactions in the territory of Kyrgyzstan. Therefore, it is necessary to consider these remedies and analyze the risks of their imposing by the SAAR in advance.

Merger control regulation in specific industries

In Kyrgyzstan, there are no special rules for reviewing transactions, dependent on the specific industry where the parties to the transaction are active.

According to the Competition Law of Kyrgyzstan, a transaction might be rejected by the SAAR in case its implementation leads, or might lead, to creation, or strengthening, of a dominant position in the market, or to restriction of competition. The SAAR may also reject the notification if the parties provide misleading information within the consideration process and such information might influence the decision-making process. Any transaction committed in violation of the procedures established by the Competition Law of Kyrgyzstan, leading to creation, or strengthening, of a dominant position and as a result leading to the restriction of competition, shall be declared invalid.

International cooperation

The SAAR actively cooperates with international organizations and foreign agencies in the field of government regulation of natural monopolies, competition law and combating unfair competition practices. Since Kyrgyzstan is one of the Member States of the EAEU, its competition authority works closely with the competition authorities of the EAEU.

In addition, the SAAR and the Ministry of National Economy of Kazakhstan signed a Memorandum of Understanding on cooperation in the field of competition policy between the competition authorities of two states, specifying mechanisms for exchange of information on matters of competition policy, implementation of laws and conduction of joint investigations of competition law violations.

Thus, as could be seen from the above, Kyrgyzstan actively interacts with other authorities in the matters of competition policy and practice, but this cooperation mostly does not go far beyond the boundaries of the EAEU.

Forthcoming amendments to the legislation

Since enactment of the new Competition Law of Kyrgyzstan in July 22, 2011, only four amendments have been made to it. Basically, all the amendments are aimed at harmonization of the Competition Law of Kyrgyzstan with the civil legislation and are associated with the accession of Kyrgyzstan to the EAEU and the Customs Union.

Currently, there is another draft law being considered by the Parliament of Kyrgyzstan. It was introduced by the Government of Kyrgyzstan, and drafted by the SAAR, with the aim to ensure uniformity of the national competition law with the EAEU legislation (in particular with the Model Competition Act). The draft law has already passed the second hearing in the Parliament and stipulates the following changes to the Competition Law of Kyrgyzstan:

- strengthen control over the companies in case of potential monopolization of the markets;
- introducing the new term "economic and statistical observation" into the existing legislation;
- clarification of the term "dominant position", systematization and clarification of certain provisions on dominance in the markets;
- clarification of the eligibility criteria for entering into prohibited vertical agreements;
- prohibition to provide public or municipal preferences in violation of the requirements established by the Competition Law of Kyrgyzstan established for public authorities and local self-government bodies of Kyrgyzstan.

In addition, the Eurasian Economic Commission organized a research project, related to the analysis of legislation and law implementation practices of the EAEU Member States and the EAEU on matters of liability and release of liability for competition law violations, considering international experience. The results of the analysis will allow the development of scientifically-based approaches to legal regulation and relevant law implementation practice, in terms of imposing and releasing administrative and criminal liability for competition law violations. As a result, proposals will be developed to improve the legislations of the EAEU Member States. It is assumed that the analysis will be finished by the end of 2019.

Summary

The SAAR currently is not authorized to consider foreign-to-foreign transactions. Thus, the scope of its activities in merger control is rather limited. However, the law enforcement practice shows a vast list of quite detailed behavioral remedies frequently issued by the SAAR, which should be considered by the market players, while clearing transactions in Kyrgyzstan. There is also a trend for detailing merger control rules and strengthening merger control in Kyrgyzstan, so that the extraterritorial principle is also applied in Kyrgyzstan in future.

It should be also noted that the SAAR actively cooperates with other competition authorities within the EAEU, however, not on merger control cases.

The competition legislation is actively developing in Kyrgyzstan. A number of initiatives are currently being debated within the framework of the reform of the existing competition legislation. On the one hand, there is a trend for harmonization of competition legislation with Kyrgyz civil laws, and, on the other hand, the government is taking steps to bring the domestic competition legislation in compliance with the EAEU regulatory framework.

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Russia

Regulatory practice

The Russian competition legislation is based on the Federal Law No. 135-FZ dated July 26, 2006 "On Protection of Competition" ("**Competition Law of Russia**"). It is being actively amended to bring it in line with the best global practices. The Competition Law of Russia has extraterritorial application and might be applied to all trans-border transactions that might have any effect on the competition in Russia.

The authorized state body in the sphere of competition law regulation in Russia is the Federal Antimonopoly Service ("**FAS**") and its regional offices. The FAS usually shows its adherence to the global trends in competition legislation.

Bayer/Monsanto (2018)

The multijurisdictional transaction of the acquisition of Monsanto Company (American multinational agrochemical and agricultural biotechnology corporation) by Bayer AG (German multinational company active in pharmaceuticals, consumer health, crop science, and animal health), which closed on June 07, 2018, became a testing ground for the FAS for formulating new rules for merger control clearance.

The FAS applied a new concept of "network effects"[1] while working on the market assessment of Bayer/Monsanto transaction. It stressed several times that the transaction had actually nothing to do with the seeds, nor even crop protection products, where the parties did have overlaps in Russia (as in "traditional" approach) and even on a global scale. Actually, it was about knowledge, innovations, platforms, algorithms and technologies, possessed by both of the companies, enabling them to influence the market conditions, create entrance barriers to other participants and dictate terms for further development of the agro-industrial complex for future decades.

Though the parties were not even close to having a dominant position in the "traditional" relevant Russian markets, the FAS having analyzed the "digital" impact of the transaction, revealed the following concerns: (i) risk of creation of a closed digital platform, which could block launching new competitive digital solutions into the market, (ii) decrease of innovative activities of the other market players in the field of digital agriculture, (iii) new entry barriers and strengthening of the existing ones to the markets, (iv) increasing probability for the combined company to abuse its market powers and (v) reinforcement incentives for anticompetitive concerted actions and agreements, etc.

To mitigate the revealed concerns, the competition authority decided to use a set of entirely new legal mechanisms such as (i) transfer of technologies instead of traditional behavioral or structural remedies issued in most of the cases with the competition concerns, and (ii) involvement of independent trustees to monitor transfer of technologies and obligations imposed on the parties.

1) It is proposed to define network effects as "dependence of customer value of the product on (i) a number of network users (direct network effects), or (ii) increase of customer value for one network group, in the case of increase of a number of network users of another network group and vice-versa (indirect network effects/network externalities)."

Yandex/Uber (2017)

Another notable case is the *Yandex/Uber* case, where the FAS considered the transaction between two main taxi aggregators in the Russian market and issued a conditional decision. Although taxi aggregators do not render transport services as such, they organize trips by connecting drivers with passengers. They have serious market power, due to the number of drivers and users of their applications. Therefore, in that case the FAS estimated network effects as a factor of market power of the parties to the transaction.

The FAS issued behavioral remedies, according to which taxi aggregators were obliged to provide passengers with the complete information about the actual carriers and history of trips, and should not require exclusivity by limiting the ability of partners, drivers and passengers to work with other taxi aggregators. The transaction was also conditionally cleared in Belarus, as already described above.

Digitization of the Russian economy raised new challenges for the FAS and resulted in the need for elaboration of new approaches to merger control. The above notable cases show that the FAS used concepts entirely new to the Russian practice, such as technology transfer remedies and monitoring trustees. In addition, the FAS analyzed for the first time digital platforms, network effects, and their impact on the competition in the relevant markets. These developments in the law enforcement practice resulted in development of the set of amendments to the Russian competition law, in particular, merger control rules described below in more detail.

Remedies

In accordance with the Competition Law of Russia, the FAS is entitled to use both structural and behavioral remedies to mitigate potential restrictions of competition as a result of mergers in Russia. As the current law enforcement practice shows, the FAS uses behavioral remedies more often than structural. The most commonly issued remedies are listed below:

- to ensure implementation of contracts between the company and its customers;
- not to decrease/ terminate unreasonably production and/or supply of products;
- to adopt an internal policy regulating interactions with customers and other counterparties and publish it on the company's official website;
- to provide the FAS with regular updates on price increases, changes in supply chains, volumes of supply, or other market data for necessary analysis of competition environment, etc.

Moreover, the FAS may clear the transaction with preliminary conditions with which the parties to the transaction need to comply, before issuance of the final decision. This might happen in case the transaction leads, or may lead, to competition restriction. In such circumstances, the FAS may decide to prolong the review period up to 9 months. In the decision on such prolongation, the FAS shall specify conditions, precedent upon completion of which the clearance shall be granted, e.g. certain structural remedies. Upon submission to the FAS of the evidence on these conditions fulfilment, the FAS confirms the fact of such fulfilment and grants clearance to the transaction within 30 days.

It should be mentioned that the FAS actively develops its practice of issuance of remedies to address the new challenges of digital economy. For instance, the FAS successfully used the requirement to transfer certain technologies as a remedy in the Bayer/ Monsanto case. Some similar obligations were discussed within the strategic investments clearance of the Schlumberger/ EDC transaction and in some other cases. This means that the FAS intends to use the "technology transfer remedy" more often. In addition, the FAS tries to detail the remedies to the extent possible, in order to customize its approach to reviewing the most important trans-border transactions (e.g. the Yandex/ Uber case). In general, the FAS approach to remedies meets the standards of the leading competition authorities.

Merger control regulation

Foreign investments regime and strategic clearance

The principal laws regulating foreign investments in Russia are the Federal Law "On Foreign Investment in the Russian Federation" No. 160-FZ dated July 9, 1999 ("**Foreign Investments Law**") and the Federal Law "On the Procedure for Foreign Investments in Companies having Strategic Importance for the National Security and Defence" No. 57-FZ dated April 29, 2008 ("**Strategic Investments Law**"). The bodies authorized to exercise control over foreign investments in Russia are the FAS and the Government Commission for Control Over Foreign Investments ("**Government Commission**"), chaired by the Russian Prime Minister. The FAS acts as an intermediary between the applicant and the Government Commission.

Under the Foreign Investments Law, transaction conducted by foreign states, international organizations, or organizations under their control, are subject to pre-transaction clearance, if the transaction results in acquisition of the right to dispose directly, or indirectly, of more than 25% of the voting shares (participatory interest) of any Russian legal entity; OR other rights to block the decisions made by managerial bodies of the commercial organizations. In practice, however, the Government Commission does not review the notifications made under the Foreign Investments Law, unless the target is a strategic company (and, therefore, subject to separate clearance under the Strategic Investments Law).

The Strategic Investments Law determines the procedures for foreign investments in strategic sectors of the Russian economy. Strategic investments' clearance might be required if the target company is incorporated in Russia and performs one of 47 types of activities of strategic importance (such as activities in aviation and space, oil and gas, mass media sectors etc.) ("**Strategic Company**"). However, the Russian Prime Minister has a right to bring any significant transaction for the Government Commission's review, if the transaction is considered as important for the national defense and security.

The Government Commission considers the notification and decides whether there might be a threat to national defence and security, or not. It also has a right to clear the transaction conditionally, imposing on the acquirer (with its group) remedies mitigating negative effects of the transaction. Transactions entered into and closed in breach of the Strategic Investments Law are null and void.

Merger control regulation in specific industries

Moreover, in addition to strategic and foreign investments clearances, the current competition legislation provides the necessity of notifying certain transactions, depending on the activities of the merging parties and their involvement into some economic sectors:

- Banking: acquisition of 10%, or more, of shares of a Russian credit organization is subject to a prior approval by the Central Bank of Russia.
- Natural monopolies: acquisition of more than 10% of fixed production assets of a company operating in the sphere of natural monopolies, requires clearance by the FAS.
- Insurance: a Russian insurance company shall receive prior approval to increase its authorized capital by means of foreign funds and to assign its shares to a foreign investor. Its shareholders are obliged to receive prior approval for the assignment of their shares to foreign investors.
- Mass media: foreign investors cannot hold more than 20% of shares (participatory interest) in the Russian mass media companies.

Summarizing the above, Russia has separate foreign investments and strategic investments regimes. In addition, similar to Belarus, Russia has special rules for control over the transactions in banking, insurance and media sectors of the Russian economy. All these factors should be considered while structuring global deals with the Russian nexus.

International cooperation

Due to globalization, the FAS now uses more actively joint consultations and information exchange with the foreign competition authorities, in order to review complex multijurisdictional transactions in more detail. The FAS established the most intensive cooperation with BRICS countries. Moreover, as Russia is a member of the EAEU, the FAS works closely with the competition authorities of the EAEU Member States.

In order to build up the dialogue between the merging parties and competition authorities of different countries, the FAS actively uses waivers. The FAS firstly used waivers in the *Oracle/Sun Microsystems* case (2010). More recent examples are the *Bayer/Monsanto*, *Uber/Yandex* cases.

The FAS develops actively international cooperation with the foreign competition authorities in merger control cases, which ensures higher quality of analysis and efficiency in reviewing global transactions. The most popular forms of such cooperation are joint consultations and information exchange organized via waivers.

Forthcoming amendments to the legislation

Throughout the last year, the topics of globalization in the markets and digitalization of economy were extensively discussed within the governmental authorities and the business community in Russia. One of the major concerns of the authorities and business community was development of competition in the "digital era".

The FAS has found its pivotal role in the development of new regulations, geared towards the digital economy and jumped in with both feet into the examination and the elaboration of new mechanisms. The primary focus was on regulation of the inherent elements of modern digital markets, such as digital platforms, network effects and big data.

To address the challenges for competition regulation that arise in digital era, the FAS elaborated a set of amendments to the Competition law of Russia (so-called "**Fifth Antimonopoly Package**"). Provisions of the Fifth Antimonopoly Package covering merger control rules are listed below:

- transaction volume (RUB 7 billion (approx. USD 106 million, EUR 93 million) as a new additional threshold for merger control filing;
- option for the extension of the term for review of the complex transactions upon decision of the Russian Government;
- opportunity for the parties to propose remedies voluntarily to the FAS;
- introduction of an institution of an "authorized person" (analogue of the European "trustee") as a party monitoring and assisting in implementation of the FAS' preliminary conditions/remedies;
- introduction of an institute of "findings of fact" (document summarizing the main results of analysis conducted by the FAS) and case hearings for merger control cases;
- introduction of the FAS opportunity to issue remedies requiring transfer of technologies.

However, these proposals are still being actively debated among the government authorities and legal community, and thus, are subject to further amendments. The FAS expects the Fifth Antimonopoly Package to come into force at the beginning of 2020. Therefore, it is already recommended to consider these proposed amendments when structuring global transactions.

Summary

The FAS enforcement practice over the past two years shows that the Russian economy and competition policy has followed the global trend for digitization. In its recent practice, the FAS has applied new approaches to analysis and consideration of merger control transactions and issuance of remedies.

Another trend defining the Russian competition policy is globalization. The FAS actively cooperates with other competition authorities, especially within the EAEU and BRICS countries, facilitating the process of reviewing complex global transactions by using waivers to ensure proper dialogue between the parties to the transaction and competition authorities considering merger control cases. In general, merger control rules and practice in Russia are actively developing to address the new challenges and meet the highest standards of the leading competition authorities over the globe.

ALRUD

Ukraine

Regulatory practice

The Antimonopoly Committee of Ukraine ("**AMC**") is the government authority with special status, aimed at providing the state protection to competition in the field of entrepreneurial activity, founded on November 26, 1993. The Antimonopoly Committee of Ukraine carries out its activities on the basis of the legislative acts concerning economic competition protection. Among the most important of these is the Law of Ukraine "On the Protection of Economic Competition" dated January 11, 2001 ("**Competition Law of Ukraine**").

AB Inbev/Anadoluefes (2018)

A remarkable example of a horizontal concentration reviewed by the AMC was the merger of AB InBev and Anadolu Efes, two beer businesses. Although the market share increment was not huge, an insignificant increase of the share could result in creation of a market player with indisputably the highest share. That could, at certain point of time, reduce wholesale prices for its products, strengthening its market position up to, or even above, the monopoly threshold.

Therefore, the AMC had to review the transaction following an in-depth investigation procedure, similar to Phase II review process in the European Union. Its scrutiny and attention to the matter allowed the AMC to establish a number of factors which might result in possible negative effects from the merger. In particular, as a results of the analysis, the AMC concluded that there is high price competition between well-established market players on the beer market, strong buyer power, an increasing number of smaller craft breweries, high marketing costs and constant launches of new brands by all market players. Consequently, the AMC cleared the transaction unconditionally.

The case shows the AMC's comprehensive approach to the analysis and specific circumstances of the case that guarantees higher quality of review process and more protection of the business interests of the market players.

HP/Samsung Electronics' printer business (2017)

While reviewing HP's acquisition of Samsung's printer business, the AMC applied for the first time its newly-adopted Guidelines on Assessment of Horizontal Mergers, elaborated to assess effects of transactions in accordance with approaches similar to European Commission.

The transaction between serious competitors in the market for printers and multifunctional printing systems could result in a significant increase in the acquirer's market share after the closing. Even in absence of exclusivity arrangements with distributors, this could place the combined business in a dominant position. The review of the transaction required the AMC to initiate an in-depth investigation.

During its review, the AMC assessed the influence of technologies and innovations used by the merging parties that might give competitive advantages to the combined business post-merger. Finally, the AMC concluded that the transaction would not result in significant competition concerns in the Ukrainian markets for printers and multifunctional printing systems and cleared it unconditionally.

After the successful approbation of the Guidelines on Assessment of Horizontal Mergers on the *HP / Samsung* transaction, its application was expanded to the analysis of all future horizontal mergers under the AMC's review.

The case is notable, as it shows convergence of the Ukrainian competition law with the approaches of the European Commission to merger control. It also demonstrates that the AMC pays specific attention to the assessment of influence of technologies and innovations of the parties and possible pro-competitive effects in the relevant markets post-mergers.

Remedies

The AMC may impose remedies (both structural and behavioral) on the parties to the concentration to mitigate any potential adverse effect of the transaction on the market and ensure fair competition conditions upon closing. The AMC usually tends to impose behavioral remedies, while cases of structural remedies are quite rare in Ukraine.

The most widely used remedies imposed by the AMC include the following obligations:

- to refrain from establishing prices and other terms of sale/ purchase, that would be impossible to establish had there been effective competition on the market;
- to refrain from establishing entry barriers to the market for other undertakings;
- to refrain from establishing different prices or different conditions to equal agreements without proper justification for such actions;
- not to limit volumes of supply of products on the market;
- to ensure supply of certain percentage of total sales to a third party at fair market price, provided that there is a demand for such products on the market;
- to inform the AMC on production and sales of products, average prices, import volumes, discounts provided by the parties.

Merger control regulation in specific industries

The Competition Law of Ukraine does not provide for any special regulation for merger control cases in industries where the merging parties are active. Thus, general rules are applied to all cases. Moreover, there is no requirement to obtain any strategic investments clearance in Ukraine. However, certain specific industries have their own regimes, aimed at monitoring mergers. For example, acquisitions of 10%, or more, of shareholding in a Ukrainian bank requires clearance from the National Bank of Ukraine. The same applies to the securities sector, where acquisition of 10% or more of shareholding in a financial institution, or a securities broker, requires clearance from the Financial Services Commission, or the Securities Commission.

At the same time, it is worth mentioning that the AMC traditionally pays close attention to socially-important and highly-concentrated markets. Thus, transactions involving such industries as pharmaceutical, telecommunications, oil and gas, tobacco and energy are usually scrutinized by the AMC. Thus, despite the fact that there is no requirement for securing separate strategic investments clearance in Ukraine, banking and financial sectors are subject to special regulation (as in Belarus and Russia), which should be taken into account when structuring global M&A transactions.

International cooperation

In absence of an effective legal framework for cooperation between the AMC and the competition authorities of other countries, the AMC liaises with other regulators on a case-by-case basis. Among European authorities, the most frequent peers are German, Polish, Hungarian and Lithuanian agencies. There is also certain level of cooperation between the AMC and competition authorities of the CIS and neighboring countries.

Any cooperation in the context of merger review, i.e. when the merger is subject to clearance in Ukraine and, at the same time, falls under filing requirement in other countries, is being maintained through consultations between the authorities' officers, often involving high-ranked officials. Intense discussions, based on obtaining waivers of confidentiality from the merging parties that are quite common in other jurisdictions, are usually not employed by the AMC, mainly due to the absence of legal framework for such waivers.

Coordination and information exchange, in a more general sense, is proactively being performed by the AMC, while aiming to achieve proximity of the Ukrainian competition law enforcement to acquis commun autaire of the European Union. In particular, the AMC closely cooperates with the European Commission's Directorate General on Competition when developing its Guidelines on Assessment of Horizontal and Non Horizontal Mergers, Methodology of Fine Calculation, etc.

Thus, Ukraine (as Georgia) has close cooperation with the competition authorities of the European Union on merger control cases and methodology issues. Ukraine does not participate in the EAEU and the CIS. Therefore, the AMC is not engaged in competition law initiatives developed within these regional alliances.

Forthcoming amendments to the legislation

The recent competition legislation developments in Ukraine were aimed at improvement of its merger control regime and procedure for investigation of violations of the competition legislation, as well as overall harmonization of the Ukrainian legislation with acquis of the European Union. However, there are still certain areas that need further improvement, including the following:

- improvement of local nexus requirement and removal of a seller from the scope of filing thresholds analysis;
- improvement of the criteria of eligibility for simplified procedure of merger review;
- expenditure of clearance requirement to M&A transactions to non-compete arrangements that currently require obtaining separate approvals;
- ensuring a high level of procedural rights of the parties in case of investigation, including those, which are related to mergers;
- fine reduction for voluntary and timely payment of a fine.

Thus, as could be derived from the above, developments of the competition law in Ukraine is currently aimed at improvement of domestic legislation, as well as its harmonization with the regulation of the European Union.

Summary

Currently, the competition legislation and law enforcement practice are strongly developing in Ukraine. As recent cases show, the expertise of the AMC is increasing and there is a move from formal to a more flexible approach to consideration of transactions, taking into account the specific circumstances of the case. The AMC actively cooperates with the European Union, the CIS and neighboring countries competition authorities in its law enforcement practice. Moreover, Ukraine is actively improving its competition legislation and harmonizing it with the EU approaches, which affects substantially the merger control rules.

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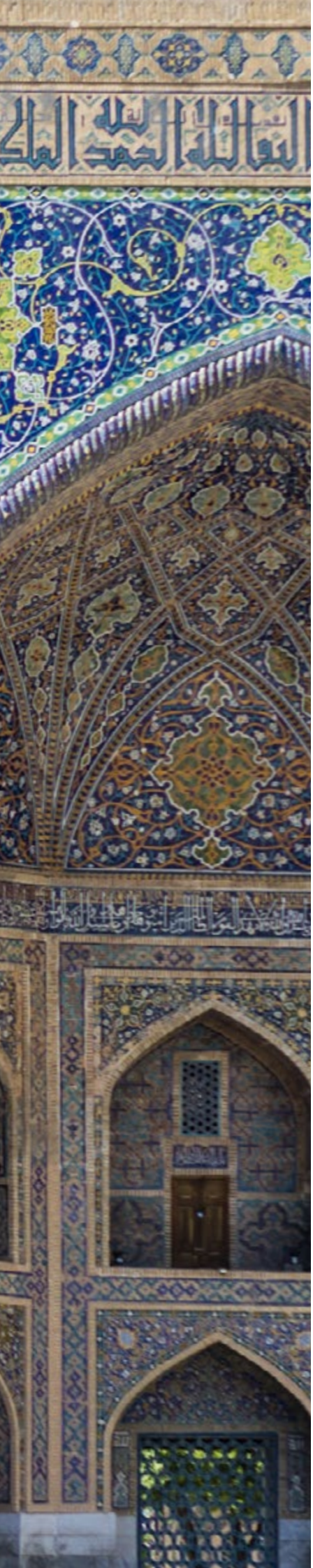
Uzbekistan



Regulatory practice

In 2018, the former State Committee of Uzbekistan for Assistance to Privatized Enterprises and Development of Competition (currently the Antimonopoly Committee of the Republic of Uzbekistan – "**ACU**") considered 168 merger control cases (136 applications on granting preliminary consents to acquisition of shares (participatory interests) and 32 applications on granting preliminary consents to creation of new legal entities).

The ACU does not publish the decisions with the results of analysis of merger control cases. Therefore, there is no publicly-available information about transactions cleared in Uzbekistan. Therefore, one may conclude that there is the same problem with transparency in competition law enforcement in Uzbekistan as in Belarus and some other CIS countries which decreases the level of legal certainty for the applicants in rendering merger control decisions.

Remedies

Upon the results of reviewing merger control notification, the ACU may apply the following remedies: (i) obligations to refrain from committing competition law violations and (ii) forced separation/ division of legal entities. Consequently, the ACU uses both behavioral and structural remedies in its practice, however, behavioral remedies are the majority.

Merger control regulation in specific industries

Mergers and acquisitions in specific industries fall under the general regulation of local competition laws, since the law does not provide for a special regulation for these industries. Local laws establish the principle of extraterritoriality and apply to all transactions (either domestic, or global), both in the product and in financial markets, that may have adverse impact on competition in Uzbekistan.

Mergers and acquisitions in local product or financial markets are subject to competition law clearances if the revenue/ assets thresholds are met, or if one of the parties to the transaction holds a dominant position in the market in Uzbekistan. In the absence of a clearance, the transaction may be challenged in court and declared invalid.

In addition, the Law of the Republic of Uzbekistan №609-1 "On Foreign Investments" dated April 30, 1998 establishes that certain restrictions, or prohibitions, on foreign investments in certain sectors of the economy in order to protect national defense and state security might be applied. Thus, Uzbekistan has followed the Russian approach and introduced separate foreign investments regime.

International cooperation

Based on publicly available information, the ACU cooperates with few foreign competition authorities. Predominantly, it collaborates with the authorities of the CIS countries.

The most notable example of such cooperation is a Treaty on Coherent Antimonopoly Policy of CIS countries signed on January 25, 2000 ("**Antimonopoly Treaty**"). The Antimonopoly Treaty aims at (i) coordinating joint activities on prevention of monopolistic activity and unfair competition, (ii) bringing local competition laws of the CIS countries to a consistent framework with each other AND (iii) creating conditions for development of competition and effective functioning of product markets and protection of consumers. To achieve these goals, the countries have agreed to exchange information about their product markets, monopolistic companies operating in their territories and court practice of hearing cases related to violation of competition legislation. Additionally, the countries have created the Interstate Antimonopoly Council. It is responsible for coordination of cooperation between the CIS countries and development of rules and guidelines in the field of competition regulation.

Uzbekistan also tries to strengthen bilateral cooperation with other countries. One recent example is the Memorandum of Understanding and Cooperation in the Antimonopoly Policy, signed between the ACU and the FAS on April 27, 2017. The memorandum provides for an exchange of experience when considering antimonopoly cases, exchange of non-confidential information on their product markets, advanced training for public officials and organization of periodic meetings and conferences.

Thus, Uzbekistan actively develops cooperation on competition law matters mainly with the competition authorities of the CIS countries, including exchange of information and sharing experience in their market analysis required for considering merger control cases.

Forthcoming amendments to the legislation

In the beginning of 2018, the Uzbekistan Government introduced certain amendments to the Law of Uzbekistan "On Competition" No. ZRU-319 ("**Competition Law of Uzbekistan**"). These amendments are aimed at unification of triggering events for merger control procedure in Uzbekistan.

Before adoption of the above amendments, different triggering events were applied by the ACU, depending on the type of a Target company. For example, three triggering events existed in relation to acquisition of shares in joint-stock companies (35%, 50% and 75%) and two triggering events for limited liability companies (50% and 66%). Currently, the ACU applies a single triggering event (50%) for transactions involving acquisitions of shares, in all types of companies.

However, contradiction between the Competition Law of Uzbekistan and by-laws still exists since the government has not amended the latter. Thus, the expected changes in Uzbekistan competition legislation include the introduction of amendments into several laws and legal acts regulating mergers and acquisitions of shares of companies.

Summary

The ACU considered 168 merger control cases in 2018. However, there is a problem with transparency in competition law enforcement in Uzbekistan, including its merger control regime, which is typical for the CIS countries. It is expected that the ACU shall increase the level of transparency by publishing its decisions in future to make the law enforcement practice of the ACU more predictable for the merging parties.

The ACU has close cooperation with the competition authorities of the CIS countries, including market analysis necessary for considering merger control cases.

Competition legislation, including merger control rules and law enforcement practice, is actively developing in Uzbekistan. One of the important aims of the regulators in Uzbekistan, at this stage, is harmonization of domestic competition legislation, including improvement of merger control rules.

Conclusion

The competition legislation in the CIS and neighboring countries emerged relatively recently and today is actively developing. It is possible to distinguish some common trends that characterize developments of merger control regimes in these jurisdictions:

- Digitalization of their economies creates new challenges for the competition authorities, including the need to elaborate the relevant theory and practical approaches to consider transactions in digital markets. Many of the competition authorities of the CIS and neighboring countries (Russia, Belarus, Kazakhstan, Ukraine) address these challenges properly by analyzing digital markets and considering "network effects", issuing innovative remedies to ensure competition and future development of economy in the relevant countries.
- The competition authorities are taking the path to issuance of more detailed and tailored remedies, based on deep analysis of circumstances of each particular case, to promote competition and future development of industries in the relevant countries. However, most of the countries use behavioral remedies more often than structural ones. However, this tendency may change soon.
- Globalization results in more close cooperation between the competition authorities on practical and methodological issues, including exchange of information and experience in reviewing merger control cases. However, there is a lack of regulatory framework for such cooperation. Thus, it is usually organized on a case-by-case basis. Competition authorities are working actively to strengthen such cooperation by concluding bilateral and multilateral cooperation agreements on competition law issues.
- Another consequence of globalization is harmonization of the competition legislation, including merger control rules, in different jurisdictions. Most of the CIS and neighboring countries harmonize their legislation within the EAEU and the EU, using the most progressive interpretations, practices and methodology.

At the same time, there are many peculiarities in the development of competition legislation and enforcement, in each of these countries. For example, some countries have special foreign investment and/or strategic investment regimes, while others do not. The same relates to special rules for reviewing transactions in the specific sectors of economy. In addition, timing for the review process may differ, especially when it comes to special clearance regimes (foreign investment, strategic investment), which is a critical factor for global deals. All these inconsistencies may substantially complicate the process of clearing global M&A transactions and should be analyzed carefully at the stage of structuring of the transactions.

Moreover, most of the CIS and neighboring countries have a common problem with a lack of transparency in competition law enforcement. The above problem also relates to merger control, as the decisions on merger control cases are not published (and if published, they do not have the reasoning of the authority). This decreases the level of legal certainty, as applicants are unable to analyze the practice of competition authorities on particular types of merger control cases. The experts raise the current problem increasingly more often. Thus, it is expected that the competition authorities would pay more attention to resolve it.

In addition, some competition authorities are lacking powers required to review merger control cases properly (no principle of extraterritoriality in Kyrgyzstan, lack of powers to issue remedies by the Georgian competition authority, etc.). However, the development of legislation continues. Thus, these problems might be also resolved in future to satisfy the needs of economies of the relevant countries.

Despite all the above problems, issues of competition law and enforcement are being actively debated among the representatives of government authorities, business community and experts in the CIS and neighboring countries. Modernization of competition legislation is one of the governments' priorities. The experience of law enforcement distinguishes the gaps in regulation, which also relates to merger control rules. These gaps are actively filled by the new legislative initiatives. Thus, further evolution of the competition legislation in the CIS and neighboring countries might also be expected.

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