

# Wolf Theiss Kyiv / Warsaw

# Impact of Competition Regulations on Investing in Ukraine

Olga Ivlyeva | 26.07.2023

# Local focus on a global scale.



#### Where to Invest?

**Tips from the State Institution Investment Promotion Office (SI UkraineInvest)** 

UkraineInvest Guide
<a href="https://ukraineinvest.gov.ua/guide/">https://ukraineinvest.gov.ua/guide/</a>

Map of investment and business opportunities of Ukraine
<a href="https://investmentmap.com.ua/">https://investmentmap.com.ua/</a>

## Why Invest in Ukraine?

#### **Legal realities**

Establishment of a limited liability company – up to three business days

Possibility of publicprivate partnerships (mostly in the form of concession):

- Kherson and Olivia ports are in concession;
- a concession project related to three terminals in Chernomorsk port is under preparation

"Big" privatization is renewed. Some objects for privatization auctions in the third quarter of 2023:

- Odesa Port Plant,
- United Mining and Chemical Company and
- Centerenergo (production of electrical and thermal energy)

High level of digitalization:

- searching for information in electronic registries (try <a href="https://youcontrol.c">https://youcontrol.c</a> om.ua/en/);
- participating in various Diia projects



### Why Invest in Ukraine?

#### Legal perspectives

- WI 1 Insurance of war risks
- Reforms in order to become a member of the EU, NATO and receive international investments (including from the International Monetary Fund)

#### What is done?

Media Law

Intellectual Property Law

Anti-oligarchic Law

**National Minorities Law** 

Changes in competition regulations

#### What is expected to be done?

Court system reform - ongoing

Fighting corruption – ongoing

Development of the existing regulations and practices



# Why Mind Competition Matters at All?

#### **Pre-Investing**

Acquisition of shares of a publicly listed company via a public bid;

Establishment of a joint venture;

Acquisition of a special purpose vehicle

#### Post-Investing

Thresholds in Ukraine should always be considered, even in case of a sale of business





# **Highlights of the Details**

Certain actions (concentrations) + exceeding financial thresholds = necessity of the merger clearance

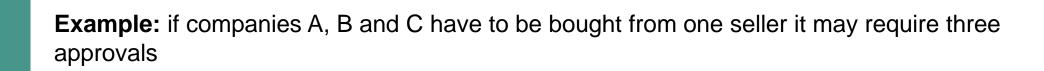
Unexpected examples of concentrations

- 01. Lease of a gas station
- Occupation of the Head of the Supervisory Board position in two different groups by the same person
- 03. Acquisition of an SPV
- 04. Enforcing pledge of the shares in a company
- 05. Joint Venture via a newly incorporated company



## **Transaction Structuring**

Depending on structuring a transaction, more than one clearance may be required for one business



**Solution:** if the seller transfers companies A, B and C to an SPV within the group and then sells the SPV to the acquirer only one AMC clearance is required



## **Practical Issues: Changes to Push**

Certain Ukrainian merger regulations still require an update

#### **Example:**

seller's turnover is included into the target's turnover

If you buy an SPV not active in Ukraine and its seller's turnover exceeds certain sum here, the merger filing notification requirement may be triggered

#### Solution:

antimonopoly reform is on the way – draft law No. 5431 is currently in the Parliament.





# Development of the Draft Law No. 5431

#### First reading

To exclude the seller's turnover from the target's turnover if due to concentration the control relations cease to exist <u>anyway</u>

#### **Second reading**

To exclude the seller's turnover from the target's turnover if due to concentration the control relations cease to exist **only if** the target:

- has no assets; and
- has not been active in Ukraine in the last two financial years and the current year.

# Thank you for your attention

This presentation does not constitute legal advice



→ www.wolftheiss.com