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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

<https://ukraineinvest.gov.ua/guide/>

Map of investment and business
opportunities of Ukraine

<https://investmentmap.com.ua/>

Why Invest in Ukraine?

Legal realities

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

Possibility of public-private partnerships (mostly in the form of concession):

- Kherson and Olvia 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 <https://youcontrol.com.ua/en/>);
- participating in various Diia projects

Why Invest in Ukraine?

Legal perspectives

WT  Insurance of war risks

WT  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

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Bulgaria

Croatia

Czech Republic

Hungary

Poland

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
02. 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



Example: if companies A, B and C have to be bought from one seller it may require three approvals



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 **anyway**

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

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