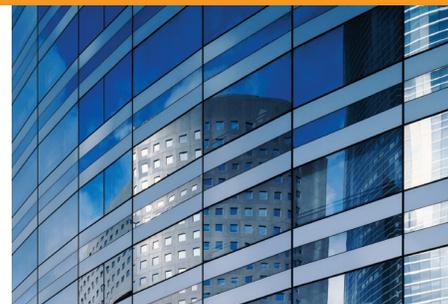


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Ukrainian Merger Control Update: Will the Recent Upheaval Cause Problems for Global Deals?



Parties required to file premerger notification in Ukraine should coordinate closely with authorities and plan additional time for the review process in light of recent political events. I anticipate that recent political upheaval coupled with preexisting vacancies on the Ukrainian Anti-Monopoly Committee (AMCU) review panel and the expected appointment of a new AMCU Chair by Parliament could limit the resources available to review a growing number of filings and potentially delay merger clearances.

George L. Paul
Partner, Washington, DC
+ 1 202 626 3656
gpaul@whitecase.com

Pre-merger rules

Transactions requiring the prior consent of the AMCU cannot be completed without receipt of such consent. Applicants must file applications with the central office of the AMCU (or a territorial division). The application is considered accepted for review if it has not been returned to the applicant within 15 calendar days after the filing. The AMCU must review the application and issue its decision within 30 calendar days from the date of its acceptance. Thus, the initial waiting period is typically 45 days from the submission of the merger questionnaire.

If specific concerns are identified that may prevent the transaction from being approved, the AMCU issues an order initiating a detailed examination of the transaction. The second phase of investigation or examination may not exceed three months.

Increased workload and political uncertainty

In 2012 the AMCU stepped up enforcement of its premerger notification regime and as a result of the number of filings has grown substantially. At the same time, there remain a number of vacancies on the merger review panel and the Ukrainian Parliament is in the process of appointing a new AMCU Chair. Given the scope of issues facing Parliament at this time, it is impossible to predict when these issues will be addressed.

Delays could arise in a number of ways. One area of immediate concern may be getting a filing accepted so that the initial waiting period begins. Under the Ukrainian merger review process, the AMCU has 15 calendar days to review every merger filing carefully and reject filings deemed incomplete. It is not uncommon for a filing to be rejected. The parties then must supply additional information and resubmit the application. Until the application is deemed complete, the initial 30-day waiting period does not start. It is possible that parties could see more filings rejected as incomplete, meaning the clock won't start.

White & Case LLP
701 Thirteenth Street, NW
Washington, DC
20005
United States
+ 1 202 626 3600

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Also, if the AMCU is unable to conduct complete reviews within the initial waiting period, parties may find that the merger reviews are extended into a second phase detailed examination simply because the authorities do not have adequate time to clear all questions and concerns about a particular transaction.

In short, in the coming weeks and months *parties will need to remain diligent and take into account the very real likelihood that merger clearances in the Ukraine may take longer than usual.*

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