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Ukrainian Merger Control: Notification Thresholds Increased

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On January 26, 2016 Ukrainian Parliament adopted the law amending Ukrainian merger control rules. The law **increased notification thresholds** which have been effective for over 14 years after they were introduced in 2002.

The current financial thresholds test is substituted by the two new alternative ones (either A or B):

Current financial thresholds
to be met cumulatively (1+2+3)

1. Euro 12 million worldwide **in either assets or in revenue** for all merging parties; and

2. Euro 1 million worldwide **in either assets or in revenue** for each of at least two merging parties; and

3. Euro 1 million in Ukraine **in either assets or in revenue** for at least one merging party.

Expected financial thresholds
to be met cumulatively (A (1+2) **or** B (1+2))

A

1. Euro 30 million worldwide **in either assets or in revenue** for all merging parties; and

2. Euro 4 million in Ukraine **in either assets or in revenue** for each of at least two merging parties.

B

1. Euro 8 million in Ukraine **in either assets or in revenue** for Target & Seller group or for at least one JV partner group; and

2. Euro 150 million worldwide **in revenue** for at least one other merging party.

In all the cases above the merging party shall mean either purchaser group of companies or target & seller group of companies (JV partner group of companies in case of the JV establishment).

Additionally the law **eliminated the market threshold** (35% for any merging party or merging parties aggregately on any market while the merger takes place on this respective market or on any related market) exceeding of which previously made filing in Ukraine obligatory regardless of whether financial thresholds were met or not.

Obviously the new thresholds are not that straight forward and their practical application by the AMCU remains to be seen.

Other important developments of the system are:

- **Preliminary consultations introduction**

Consultations will be provided both before filing and within the 15-day preview period.

- **Simplified procedure introduction**

Simplified procedure (merger review within 25 days instead of 45) possibility will be negotiated at pre-filing stage. The criteria to be met to enable simplified procedure application are:

1. only one merging party is operating in Ukraine, or
2. aggregate market share of the merging parties on the overlapping markets does not exceed 15%, or
3. market shares or aggregate market shares of the merging parties operating on vertically-related markets do not exceed 20%.

- **New reason for application rejection introduced**

The AMCU will reject applications where UBOs of the merging parties are not disclosed.

- **Phase II review launch reasons shortened**

As for now the only reason to launch Phase II is detection of reasons to block the notified merger by the AMCU.

- **Remedies negotiation procedure clarified**

30 days timing for remedies suggestion by the merging parties and their official negotiation possibility introduced.

- **State fee increased**

The state fee increased four times (from approximately Euro 190 applicable now to Euro 760 in accordance with the current official exchange rate).

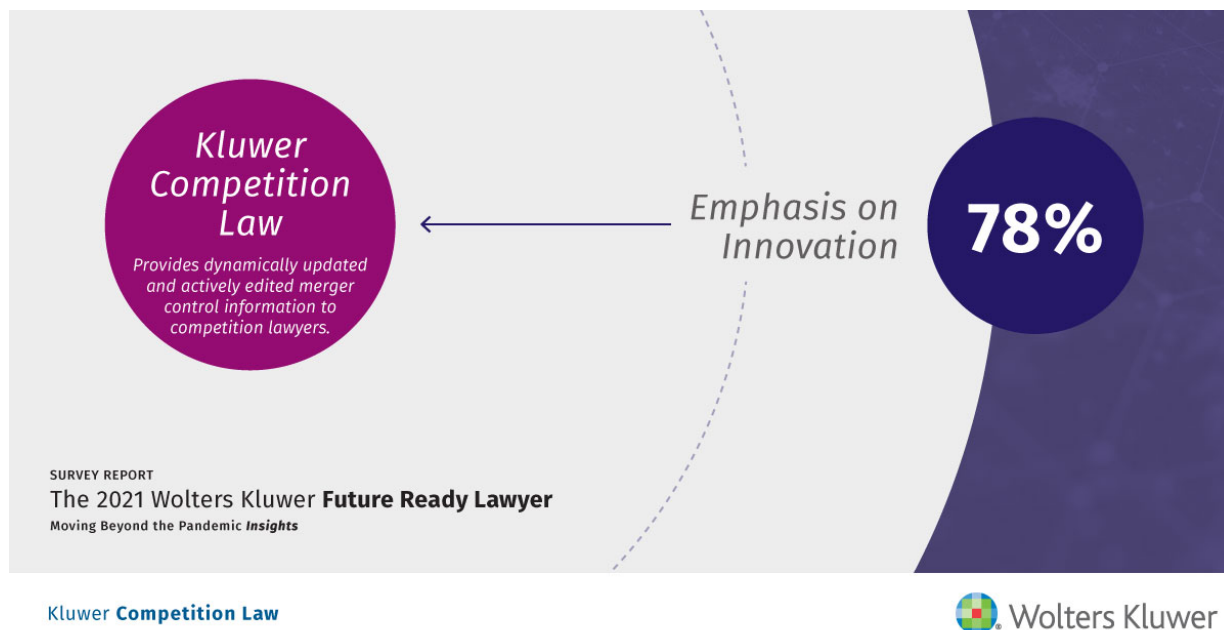
The law now has to be signed by the president and is expected to become effective in the beginning of April 2016.

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