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New Merger Regulation Adopted in Ukraine

Timur Bondaryev (Arzinger) · Friday, October 21st, 2016

On August 19, 2016 the new Merger Regulation was adopted in Ukraine. This step is the next improvement after increasing notification thresholds aimed at improving merger control regime effectiveness in Ukraine.

The key novelties of the new Merger Regulation include:

- introduction of requirements to applications within the simplified procedure adopted in May 2016;
- introduction of “concerned markets” concept;
- significant reduction of information to be provided for filing purposes in regular proceedings through establishing more nexus to Ukrainian markets in the requirements;
- introduction of new “technical” requirements, e.g. provision of schemes of merging parties control relations and schemes of control change resulting from the merger;
- elimination of information duplication by means of specific software of the Antimonopoly Committee of Ukraine (the AMCU) – the so called electronic database; and
- the new approach to economic substantiation in regular proceedings (i.e. for transactions which may have impact on Ukrainian markets, the new Merger Regulation suggests that the merging parties provide their own economic analysis to the AMCU).

From a practical perspective, **notification under the simplified procedure** now will require far fewer documents and information to be provided to the AMCU than under the regular one. In accordance with the latest amendments to Ukrainian antitrust laws such applications are to be reviewed within 25 days instead of usual 45.

The greatest part of work in such cases is expected to shift to analysis of the simplified procedure application possibility, i.e. whether the parties to transaction meet respective criteria or not (parties’ presence in Ukraine, their market shares on overlapping, downstream and upstream markets).

At the same time it is worth remembering that the AMCU is still entitled to refuse the merging parties in simplified procedure application at its own discretion. Should the AMCU officials decide that the transaction requires deeper analysis the parties will have to file again to go through the regular proceedings.

As regards **the requirements to regular proceedings application**, on the one hand, the AMCU did limit most of its requirements to reasonable ones in comparison to those applied before. On the other hand, the scope of work to be performed is expected to enlarge significantly. The parties to transaction will now have to prepare extensive economic substantiation to persuade the AMCU that the clearance should be granted. It is interesting that the new Merger Regulation does not provide for exact requirements to the document and only lists the issues which may be elaborated by the parties. However, given our knowledge of the authority's practice we assume that the applications without extensive data enabling market analysis will not be accepted for consideration and returned to the parties.

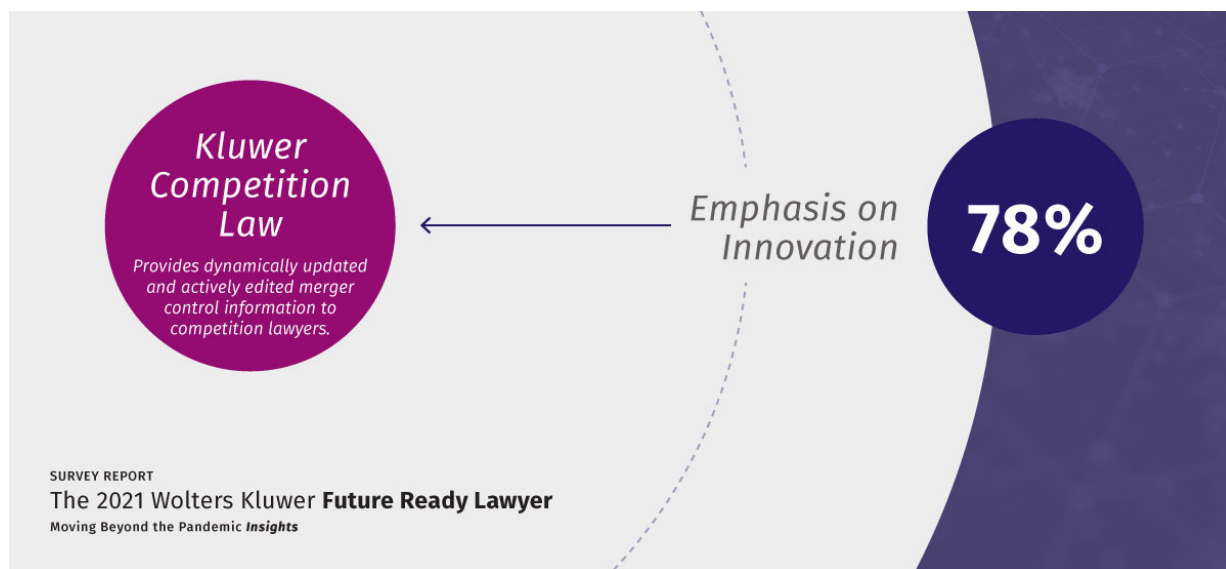
The new Merger Regulation adoption is a very positive development in Ukrainian antitrust regulation. At the same time some of its provisions still provide the AMCU with certain discretion in a number of issues such as simplified procedure approbation, consultations provision, establishment of minimum market information scope, etc.

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