Global Forum on Competition

ROUNDTABLE ON CROSS-BORDER MERGER CONTROL:
CHALLENGES FOR DEVELOPING AND EMERGING ECONOMIES

Contribution from Uzbekistan

-- Session I --

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CROSS-BORDER MERGER CONTROL: CHALLENGES FOR DEVELOPING
AND EMERGING ECONOMIES

-- Uzbekistan 1 --

1. Introduction

1. The procedures of the implementation of the competition law, such as merger control are strictly implemented usually in large economies. Smaller economies, such as Uzbekistan do not engage in significant merger control, because there is an assumption that large firms are better able to compete in international markets. Nevertheless, structural concentration in the weak merger control policy eventually raises competition concerns, and the most recent proposals for changes and additions to the laws on competition (e.g. in Canada, the United Kingdom, France, Spain and other EU countries) have sought to focus more on merger control issues. Active merger control requires mandatory notice, because the costs of breaking the illegal transaction ex post facto usually make it more inefficient and costly.

2. Antimonopoly regulation in the Republic of Uzbekistan is aimed to protect competition in the commodity markets of Uzbekistan and requires business entities that want to merge or acquire significant part (share, etc.) of another competitor (entity):

- to obtain a preliminary consent of State Committee of the Republic of Uzbekistan on Demonopolization and Development of Competition (later in the text as AMC – Antimonopoly Committee) for accomplishing transactions on:
  - Reorganization or liquidation of commodity markets’ participants which lead to occurrence of commodity market’s participant holding dominant position.
  - Purchase of assets of a commodity market participant by another participant, including transactions on:
    - Acquisition by an individual (group of individuals) of voting shares (participatory shares) of the commodity market’s participant entitling the purchaser to dispose of more than thirty five (35) per cent of indicated shares (participatory shares);
    - Acquisition by an individual (group of individuals) of rights allowing to define terms of conduct of business by commodity market’s participant or to perform functions of its executive body.

3. The above mentioned transactions require a preliminary filing consent from the AMC. The waiting period for clearance shall not exceed thirty (30) days from the moment of submission of necessary documents from the applicant.

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4. There is also ten (10) days post factum notification of the AMC in the event of change of value of the charter capital of corporate entity if it results in the increase of shareholding of a shareholder already holding more than thirty five (35) per cent of total shares in the charter capital.

- To inform the antimonopoly body of the following facts:
  - Merger and association of business entities;
  - Participation of individuals in executive bodies or supervisory boards of two or more business entities which total book cost of assets exceeds two thousand times amount of minimum wage, or business entities entered the register on the same commodity group or entered the register on groups of commodities of different stages of the same production-distribution process.

5. The M&A transactions in Uzbekistan have deadlines for their filing. There is a 15-day term for notification of the AMC relating to mergers and accessions. The notification must be filed by either founders of the related companies or bodies or individuals making a decision on the merger or accession. The above mentioned notification is a post factum notification.

2. Main normative acts of the Republic of Uzbekistan regulating antimonopoly issues

  - covers relationships influencing competition in commodity markets of Uzbekistan;
  - also applies in cases when actions and agreements made outside the Republic of Uzbekistan lead or may lead to limitation of competition or entail other negative consequences in commodity markets of the Republic of Uzbekistan;
  - prohibits activity of entities occupying dominant position in commodity market of the Republic of Uzbekistan, i.e. holding a share of thirty five (35) and more per cent in definite market aimed at:
    - the abuse of competition conditions (including establishment of monopoly high or monopoly low prices, intrusion of unfair terms on concluding agreements to contractors, creation of obstacles to access to commodity market for other individuals);
    - making cartel agreements (including agreements aimed at establishment and maintenance of fixed prices or establishing price limitations for resale of goods or prohibiting sale of goods produced by competitors);
  - regulates issues of merger and takeover of business entities;
  - contains other regulations.

- Instruction “On order of control over acquisition of more than thirty five (35) per cent of business entity’s shares” (approved by the resolution of the State Committee on Demonopolization; registered by the Ministry of Justice of the Republic of Uzbekistan No.1896 of 05.02.2009), which establishes the order of AMC’s control over acquisition by investor of more than thirty five (35) per cent of business entity’s shares as well as of each next acquisition.
3. Recent analysis of current merger control practices in Uzbekistan has identified a number of problems that adversely affect the efficiency of regulation in this sphere. In this regard, the merger control is about to:

- Introduce specific criteria of the merger transaction under consideration and to include them within the scope of all mergers and acquisitions of business entities;
- Improve, supplement and unify all types of economic concentration (merger, takeover, acquisition) of the mandatory pre-notification, and the order of cases on them, dramatically changing the provisions of Articles 14, 15 of the Law on Competition;
- Lower the bar the acquisition of 35% to a blocking stake of 25% and significantly increasing the notification threshold;
- Provide a legislative mechanism in which AMC reserves the right to review mergers, which are below the threshold level, but raise serious concerns / suspicions of the possibility of providing a significant impact on the competition;
- Implement a flexible system of review of applications for merger, developing a mechanism for granting exceptions and conditional consent, as well as monitoring and taking actions on the deals that were given the conditional agreement;
- Change the mechanism for raising questions (issues) on the merger of economic entities, establishment of associations of various types (holding companies, associations, companies, etc.) on the initiative of the government of Uzbekistan;
- Implement the provisions on the deadline of the AMC’s decision regarding the merger control and time period for the AMC’s possible claims to the M&A parties.