

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE****Non-price Effects of Mergers - Note by Ukraine****6 June 2018**

This document reproduces a written contribution from Ukraine submitted for Item 4 of the 129th OECD Competition committee meeting on 6-8 June 2018.

More documents related to this discussion can be found at [www.oecd.org/daf/competition/non-price-effects-of-mergers.htm](http://www.oecd.org/daf/competition/non-price-effects-of-mergers.htm).

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## *Ukraine*

1. Hereunder, the Antimonopoly Committee of Ukraine (AMCU) provides answers to questions related to assessment of mergers in markets where price competition does not play a vital role as well as gives practical examples of mergers based on examination of non-price effects.
2. As regards the importance of non-price effects in merger reviews:
  - In most cases, mergers generally are aimed at maximizing the synergy effect (price, non-price, or aggregate of these effects).
  - The maximum price effect is mostly a goal of mergers in the markets involving a limited range of goods which are not significantly improvable as compared to competitors, unless significant investment is made (for example: the retail market for petroleum products or some natural monopolies markets). Although, the telecommunication services market may be an exception, where certain services, e.g. access to the Internet may be improved by offering extra services which would significantly raise the demand of consumers but would not require any considerable investment from market operators.
  - In all other cases, in markets with a significant range of goods, works, and services to achieve the greatest synergy effect, the merger parties aim at obtaining the greatest non-price effect by increasing the benefits of the merger party (buyer) in quality, service (including distribution and marketing), innovation, a range of products. Thus, in process of handling merger applications, such non-price effects are paid special attention by AMCU. On the other hand, it is difficult to single out certain non-price effects which are reviewed more frequently, as such effects are examined by AMCU if structural preconditions for oligopoly in the relevant market are identified, on a case-by case basis.
  - In practice, however, such non-price effects as quality and service are examined with regard to mergers in markets of trade and production of industrial and non-industrial goods/food products; by contrast, such non-price effects as range of products and innovation are considered mostly with regard to mergers in pharmaceutical markets.
3. As to the merger review stages when non-price effects are examined:
  - Under Ukrainian competition law, a merger may be approved if the merger in question does not lead to monopolization and/or significant restriction of competition in the market. Given that, non-price merger effects analysis begins at the I<sup>1</sup> stage of merger application consideration. At this stage, the following factors determine such analysis:
    - market type (conventional or innovative);
    - level of competition in this market;
    - efficiency of the given merger for the market.
  - II stage merger review procedure involves, from time to time, analysis of non-price effects as extra evidence if potential negative price effect on the market is detected (e.g., examination of merger effects on the geographical market with

only 2 participants: a buyer and a target company would involve analysis of non-price effects such as range of goods and their interchangeability).

- If the II stage merger review reveals negative effect of the merger on competition, the AMCU, approving the merger, imposes behavioral commitments on merger parties.

4. Examples of recent AMCU merger control cases are given below.

***EXAMPLE 1: The case of acquisition by company «K» of 50%+ majority votes in company «Z»***

5. This merger affected national markets of production of medium density fiberboard (MDF) / high density fiberboard (HDF) [including polished MDF, polished HDF, unpolished HDF], laminated MDF, laminate HDF, laminate flooring. At the same time, the merger parties carried out activities in vertical markets: national markets of resins and carbamide-formaldehyde concentrate, used in manufacturing of chipboards, MDF and HDF, decorative and impregnated paper.

6. Taking into account that:

- in 2011-2016, a significant number of resident and non-resident manufacturers acted in the Ukrainian market of MDF and HDF, laminated MDF, laminated HDF, laminate flooring;
- laminated MDF and laminated HDF are derivatives from MDF and HDF while the main consumers of laminated MDF and laminated HDF are furniture manufacturers, which may independently laminate or paint MDF/HDF for their own needs;
- MDF, HDF have a wide range of applications that ensure the existence of many potential competitors;
- all domestic producers of MDF and HDF, laminated MDF, laminated HDF, laminate flooring possess significant unloaded capacities, which under certain conditions would allow increase of production;
- the merger parties experience significant competition from foreign manufacturers, in particular, from Belarus, Russia, Poland, Germany, which have significant production capacities in close proximity to the borders of Ukraine;
- in 2014, company «Z» lost the main market for its goods (Russia), resulting in a significant reduction in production;
- the buyer as a powerful strategic investor, has a well-developed structure of internal and external sales, as well as plans to increase the exports of company «Z» goods to new foreign markets;
- markets are open to new entrants and there are no significant administrative barriers to imports;

7. Under such conditions, the AMCU deemed the merger in question as not leading to monopolization or significant restriction of competition in commodity markets of Ukraine. At the same time, taking into account the structural indicators of the merger parties in the markets of MDF/HDF, laminated MDF, laminated HDF, laminate flooring,

the merger was conditioned by requirements, which would remove anti-competitive effect of the merger.

8. According to the results of the case, the merger approval was granted and the following commitments were imposed on the buyer:

1. In order to eliminate the consequences of the negative impact of merger on competition, the merger parties shall not create unlawful barriers aimed at restriction of access to or removal from the market of business entities (residents or non-residents of Ukraine).
2. In order to monitor compliance with competition law, prevent, detect and end competition infringements in the involved markets, company «K» (the buyer) shall be obliged:
  - Annually, within three years as of the year following the merger, report to the AMCU:
    - volumes of production, domestic sales export of MDF/HDF, laminated MDF and laminate flooring manufactured by company «Z»;
    - volumes of supply (imports) by the buyer Group to the Ukrainian markets of MDF/HDF, laminated MDF, laminated HDF and laminate flooring as well as volumes of sales of those goods in Ukraine;
  - within two years as of the year following the merger, report to the AMCU the increase of company «Z» prices for MDF/HDF, laminated MDF by more than 10 per cent. Such increases shall be reported to AMCU no later than 30 days prior to the scheduled date of the price increases in question.

***EXAMPLE 2: Acquisition by company «B» of company «M»***

9. Ukrainian markets involved:

- seeds of agricultural crops and vegetables, in particular cucumbers;
- chemical substances of plant protection (pesticides) - herbicides (selective, nonselective).

10. In relation to the market for selective and nonselective herbicides - taking into account that:

- the level of competition in the market was assessed by the market participants as high;
- large competitors act in the market;
- buyers (distributors) have significant market power;
- no significant administrative barriers exist,

the merger was deemed not leading to monopolization or a significant restriction of competition.

11. As for the market of cucumber seeds - taking into account that:

- large number of resident and non-resident producers are present in the market;

- there is competition between different species of cucumber seeds, which leads to a significant fluctuation of the share in the medium-term period (from three to five years), depending on the preferences of consumers;
- the market is open to new entrants and there are no significant administrative barriers to importation;

the merger was found to be not leading to monopolization or a significant restriction of competition in commodity markets of Ukraine;

12. As to the vertical effects of merger – taking into account:

- Significant shares of merger parties in the markets of plant protection products and certain seeds of agricultural crops and vegetables;
- vertical alignment of markets, due to the processing of certain plant protection products (seed guards, inoculants) of such seeds before their sales;
- cooperation through distributors acting both in the market of sales of pesticides / herbicides and in the market for the sale of seeds of agricultural crops and vegetables,

such vertical combinations were found to be capable of resulting in distortion of competition by restricting access to the market for the distribution of plant protection products and seeds of agricultural crops of vegetables of other producers of such goods.

13. Consequently, taking into account potential anti-competitive effect with regard to distributors of plant protection products and seeds of agricultural crops and vegetables, due to the potential risk of displacing other manufacturers of seeds and plant protection substances from the existing distribution channels, the merger was conditioned by the requirements aimed at elimination of anticompetitive effect of the merger.

14. As a result, the merger approval was granted, with the following commitments imposed on the buyer: abstain from creating unlawful barriers to access to the markets for distribution of plant protection substances (herbicides, fungicides, insecticides, seeds and inoculants) and seeds of agricultural crops and vegetables (corn, wheat, oilseed rape, cabbage, carrots, cucumbers, eggplant, lettuce, onion, pepper, zucchini, tomatoes, watermelons, beans, broccoli, peas, cauliflower, melons, radishes, sweet corn) or displacing from the markets of plant protection products and seeds of agricultural crops and vegetables of resident or non-resident sellers/producers of plant protection products and seeds of agricultural crops and vegetables.

15. In order to monitor compliance with competition law, prevent, detect and end competition infringements in the markets of distribution of plant protection substances (herbicides, fungicides, insecticides, seeds and inoculants) and seeds of agricultural crops and vegetables (corn, wheat, oilseed rape, cabbage, carrots, cucumbers, eggplants, lettuce, onions, pepper, zucchini, tomatoes, watermelons, beans, broccoli, peas, cauliflower, melons, radishes, sweet corn), company «B» shall:

16. Annually, within three years from the year following the merger, but in any case not later than the 20th day of the second month of the calendar year, provide the AMCU with copies of the agreements (with annexes) concluded by the company «B» with distributors for the distribution of plant protection substances as well as crop and vegetable seeds.