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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
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Start-ups, killer acquisitions and merger control – Note by Ukraine

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This document reproduces a written contribution from Ukraine submitted for Item 2 of the 133rd OECD Competition Committee meeting on 10-16 June 2020.
More documents related to this discussion can be found at
<http://www.oecd.org/daf/competition/start-ups-killer-acquisitions-and-merger-control.htm>

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Ukraine

1. The thresholds for notifying the Antimonopoly Committee of Ukraine (hereinafter – AMCU) on mergers are set forth by the Article 24 of the Law of Ukraine "On Protection of Economic Competition". In 2016 these thresholds were reviewed and increased.

2. Presented below is the text of Article 24 of the Law of Ukraine "On Protection of Economic Competition" before and after the changes took place¹:

Before 2016	Current status
The total value of assets or the total sales value of the parties of the merger, including control relations, for the last financial year, including foreign countries, exceeds the amount equivalent of € 12 million ,..., and at the same time:	The total value of assets, or the total sales value of the parties of the merger, including control relations, for the last financial year, including foreign countries, exceeds the amount equivalent of € 30 million ,..., and at the same time:
- the value (total value) of assets or the volume (total volume) of sales of goods, including foreign countries , for at least of two parties of the merger, taking into account the control relationship, exceeds the amount equivalent of € 1 million ,...,	- the value of assets or the volume of sales of goods in Ukraine , for at least of two parties of the merger, taking into account the relationship of control, exceeds the amount equivalent of € 4 million ,...,
- and the value (total value) of assets or the volume (total volume) of sales of goods in Ukraine for at least one party of the merger, taking into account the control relationship, exceeds the amount equivalent of € 1 million ,	- either the value of assets or sales of goods in Ukraine for at least one party of the merger, including control relations, for the last financial year exceeds the amount equivalent of € 8 million ,..., while the sales of goods of at least one other party of the merger, taking into account the control relationship, for the last financial year, including foreign countries, exceeds the amount equivalent of € 150 million ,....

3. These changes were made in order to reduce an administrative pressure on businesses, to avoid deterioration of AMCU resources on investigating transactions with minimal potential impact on competition and to create conditions for new investors to enter Ukrainian markets.

4. At the same time, it can be assumed that the increase in the thresholds for merger notifications may have a concomitant effect - potential acquisitions of nascent firms went unnoticed by the competition authority.

5. The AMCU is aware that some companies may purchase potential competitors before the acquisition reaches the threshold, seeing such businesses as a future threat. Which means, such acquisitions may have the ultimate goal of eliminating future competition. However, the thresholds that were in place until 2016 were too low and their increase was justified.

6. In general, according to the opinion of the AMCU, killer acquisitions have an impact on future developments and innovations, and there are two options for development after the acquisition:

7. The Acquirer may eliminate a nascent competitor by **gaining qualified personnel** for his company and benefits from future innovations.

¹ <https://zakon.rada.gov.ua/laws/main/2210-14?lang=en>

8. Recognizing the urgency of the problem of highly skilled workers acquisition ("acqui-hire"), the Antimonopoly Committee of Ukraine applies the requirements to such acquisitions, which are that when filing an application for a merger clearance, the business entities also apply for concerted actions clearance in terms of employee-related provisions of the non-compete agreement.

9. After the acquisition, the Acquirer may obtain the targeted company in **order to support and to further develop** it while using the innovations of the purchased firm.

1. Case example

10. As an example of such acquisition could serve the obtaining by Temania Enterprises Ltd. (Rozetka Group - online platform for retail trade of goods and services Rozetka.ua) of the EVO group, which owned the following online platforms:

- Prom.ua; Bigl.ua - online platforms for retail trade of consumer goods in Ukraine;
- Satu.kz - online platform for retail trade of consumer goods in Kazakhstan;
- Tiu.ru - online platform for retail trade of consumer goods in Russian Federation;
- Deal.by - online platform for retail trade of consumer goods in Belarus;
- Kabanchik.ua - online service for operators` searching for the ordering of household works and services, as well as small commercial tasks (for example, websites` or mobile applications` development)
- Crafta.ua - online platform for the sale of handmade products, as well as collectibles and rare products;
- Shafa.ua - online platform for the sale of women's and children's goods, which are usually used goods.

11. Apart from that, the EVO Group owned the following online resources:

- Zakupki.prom.ua - online platform for participation in public procurements, the participant of public e-procurement system Prozorro.sales and open commercial procurement system RIALTO;
- "Vchasno" - online service for exchanging, signing and storing for any types of documents. This online service works with all types of electronic digital signatures.

12. In the course of case consideration, the AMCU analyzed the presence of competition between online trading platforms and found that most online services (classifieds, global/international platforms, social networks, Google Shopping) can be considered as market competitors. However, most e-commerce market participants in recent years have combined several different formats and there are no clear and distinct boundaries that would allow to distinguish marketplace, online store, bulletin board and other similar services with high confidence.

13. Since there are no official statistical or economic data on market placements activities in Ukraine, market shares and the list of competitors of EVO Group and Rozetka Group were estimated by the volume of traffic as a basis for the maximum possible practical source for calculations.

14. In addition, it was found that:

- buying power: merger participants are constantly under pressure from consumers of their services; the end consumer/buyer has the opportunity to move to any alternative online platform in a few seconds;
- in fact, third-party sellers are in the same position as end consumers - they can change to another the online platform which does not suit them, easily and without any costs;
- the involved market is in a constant process of development, most of the participants of which in recent years combine several different formats, such as so-called aggregators and marketplaces, online stores and marketplaces;
- Administrative and organizational restrictions are not typical for the Market;
- the Applicants own the objects of intellectual property rights, in particular, trademarks, slogans, literary works, audiovisual works, which were created during the activity of the respective group in order to protect the legal rights of the merger parties. However, the creation and use of such intellectual property rights do not create any barriers for entry into the Market;
- the possibility for new competitors to enter the Market mainly depends on their financial capabilities and the success of the marketing strategy. Competitors do not have exclusive rights on innovations, intellectual property, logistical support, etc. In addition, there are no regulatory barriers for market entry; for example, new market participants do not need to obtain licenses, permits, etc.;
- the involved market corresponds to the current level of technology development and consumer demand. Market participants usually try to regularly implement innovative solutions to improve service, as the market is constantly evolving and the sophistication of existing and potential customers is growing;
- in addition, the total share of online trade compared to the market share of goods and services sold to consumers in traditional trade establishments (offline) remains quite small, therefore, there is a significant potential for further development of the Market.

15. Besides that, the Rozetka Group announced that it **does not plan to change business model of the EVO Group (objects of acquisition) in the next 3 years after the mergers**, i.e. objects of acquisition will continue to provide services to promote goods (works, services) on the Internet through online platforms.

16. Based on the results of the case investigation The AMCU found that the Rozetka Group's core business activity is focused on wholesale and retail trade via the Internet with a wide range of consumer goods and services, where significant competition is present. At the same time, the Rozetka Group's provision of services for the promotion of goods (works, services) on the Internet via Internet platforms is additional activity only. Thus, with the expansion of the commodity boundaries of the market, for example while including other activities in the market involved, the market shares of the merger parties become even smaller.

17. Considering the information mentioned above, the AMCU determined that this merger does not lead to monopolization or significant restriction of competition in the commodity markets of Ukraine, and by a decision of September 13, 2018, cleared the merger.