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National Security Considerations in Competition Enforcement – Note by Ukraine

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Despina PACHNOU
Email : Despina.Pachnou@oecd.org

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Ukraine

1. Introduction

1. The Ukrainian experience demonstrates that competition policy and national security considerations should not be viewed as mutually exclusive objectives. Since the beginning of Russia's full-scale military invasion, the country has faced the challenge of simultaneously ensuring the effective enforcement of competition law, maintaining its defence capabilities, safeguarding economic stability, and preserving the functioning of key markets.
2. In response to these exceptional circumstances, Ukraine introduced a range of targeted measures aimed at addressing urgent defence and security needs, particularly in relation to strategically important sectors of the economy, public procurement, and merger control.
3. At the same time, the Antimonopoly Committee of Ukraine (hereinafter – the AMCU) continued to enforce competition law, based on the premise that competitive markets remain essential for innovation, the efficient allocation of resources, transparency, and long-term economic recovery.
4. Wartime developments in Ukraine highlight the importance of maintaining an appropriate balance between the flexibility required to address national security concerns and the preservation of competitive market conditions. This contribution examines the legal framework, institutional approaches, and practical experience regarding the interaction between competition policy and national security considerations under martial law.

2. Legal and Institutional Framework

2.1. Legal Framework for National Security and Martial Law

5. Ukraine's legal framework for national security is primarily based on the Constitution of Ukraine, the Law of Ukraine "On National Security of Ukraine", the Law of Ukraine "On the Defence of Ukraine", and the Law of Ukraine "On the Legal Regime of Martial Law".
6. Russia's full-scale military invasion of Ukraine necessitated the rapid adoption of a range of governmental measures aimed at safeguarding the country's defence capabilities, maintaining the functioning of critical infrastructure, and preserving economic stability.
7. Given these conditions, public authorities were required to take decisions that balanced economic and competition-related considerations with broader national security objectives, defence requirements, and the need to strengthen economic resilience.
8. Nevertheless, even under martial law, the fundamental principles of the market economy and competition law have remained applicable. Any departures from ordinary competition-related procedures have generally been designed as temporary, targeted, and proportionate measures to address exceptional circumstances.

2.2. The Competition Law Framework in Ukraine

9. The Ukrainian competition law framework is primarily governed by the Law of Ukraine “On the Protection of Economic Competition”, which establishes the core principles of competition policy, merger control, regulation of concerted actions, and enforcement against anti-competitive conduct.

10. The Antimonopoly Committee of Ukraine is the central authority responsible for enforcing competition law. Its powers include reviewing mergers and concerted actions, investigating infringements of competition law, monitoring compliance with competition rules, and promoting competition advocacy.

11. The broader legal framework relevant to the AMCU’s activities also includes:

- the Law of Ukraine “On the Antimonopoly Committee of Ukraine”;
- the Law of Ukraine “On State Aid to Undertakings”;
- the Law of Ukraine “On Public Procurement”;
- secondary legislation and regulatory acts, as well as non-binding guidance and recommendations issued by the AMCU.

12. Under wartime conditions, the competition law framework remained operational. At the same time, certain procedures were temporarily adapted to accommodate defence and security considerations and to ensure the uninterrupted functioning of strategically important sectors of the economy. These adaptations were particularly relevant in the area of merger control.

3. Merger Control and National Security Considerations

3.1. General Principles of Merger Control in Ukraine

13. Ukraine’s merger control regime is intended to prevent significant restrictions of competition and preserve the effective functioning of markets. The legal framework is primarily set out in the Law of Ukraine “On the Protection of Economic Competition”.

14. Transactions meeting the applicable jurisdictional thresholds are subject to prior review by the Antimonopoly Committee of Ukraine.

15. In assessing mergers, the AMCU examines whether a transaction is likely to result in:

- the creation or strengthening of a monopoly (dominant) position; or
- a significant restriction of competition.

3.2. Public Interest Considerations under the Ukrainian Merger Control Regime

16. While merger control in Ukraine is primarily competition-based, the legal framework also provides a mechanism for taking into account broader public-interest considerations in exceptional circumstances.

17. Under the Law of Ukraine “On the Protection of Economic Competition”, the AMCU may authorise a merger where it does not result in monopolisation or a substantial restriction of competition. Where the AMCU prohibits a transaction on competition

grounds, the Cabinet of Ministers of Ukraine may nevertheless authorise the merger if the benefits to the public interest outweigh the adverse effects on competition.

18. The application of this mechanism is subject to important safeguards. In particular, such authorisation may not be granted where the restriction of competition:

- is not necessary to achieve the objectives of the transaction; or
- poses a threat to the market economy.

19. This framework reflects an attempt to balance competition concerns with broader public policy objectives in exceptional circumstances, while preserving safeguards against disproportionate restrictions on competition.

20. Such considerations may become particularly relevant during periods of crisis, including martial law, where the continuity of strategically important sectors and broader economic resilience may require the consideration of factors beyond competition alone.

21. Although the mechanism has not, in fact, been widely applied in practice, it provides a legal basis for taking strategic national interests into account in exceptional circumstances, including periods of severe economic or security-related disruption.

3.3. The Impact of Martial Law on Merger Control

22. In the context of the Russia's war of aggression against Ukraine, ensuring the uninterrupted functioning of the economy, supporting strategically important undertakings, and responding rapidly to the needs of the security and defence sector became key policy priorities.

23. Against this background, certain elements of the merger control framework were temporarily adapted to accommodate defence and national security considerations. These adjustments were designed to facilitate the functioning of strategic sectors while preserving the overall integrity of the competition law regime.

24. In particular, several temporary exemptions and procedural simplifications were introduced to address wartime needs, support critical infrastructure, and strengthen the defence-industrial base. As a result, specific categories of transactions were exempted from the requirement to obtain prior merger clearance.

25. These exemptions included:

- transactions implemented as part of the reform of the state defence-industrial sector, including the reorganisation of enterprises formerly incorporated within the State Concern "Ukroboronprom", the establishment of a joint-stock company on its basis, and related transfers of shareholdings. These measures were intended to facilitate the restructuring and modernisation of Ukraine's defence industry;
- acquisitions of control by state-owned or state-controlled entities in the energy and utility sectors where such measures were necessary to prevent or mitigate emergencies and to ensure the uninterrupted provision of essential services, including electricity, heat, water and gas supply, particularly in the context of attacks on critical infrastructure;
- transactions related to the compulsory seizure of assets belonging to the Russian Federation or persons associated with it pursuant to special legislation. Such measures were excluded from the scope of merger control in light of their distinct public policy objectives and their role in protecting Ukraine's economic security.

26. In addition, during martial law and for 90 days following its termination, Ukraine introduced a special regime for certain foreign-to-foreign transactions involving the development of technologies or the production of military and dual-use goods intended for Ukraine's defence needs.

Such transactions may benefit from exemptions from prior merger clearance where, among other conditions:

- the relevant products are intended exclusively for the Armed Forces of Ukraine or other entities within the security and defence sector;
- the technologies or products are unavailable in Ukraine, or domestic production is insufficient to meet defence requirements; and
- the acquiring undertaking is already active in the development or production of military or dual-use goods.

27. These temporary measures were intended to accelerate access to critical defence technologies, support international defence cooperation, and strengthen domestic defence production capabilities while responding to the exceptional circumstances created by the war.

3.4. Sanctions and Merger Control

28. Following Russia's full-scale military invasion of Ukraine, the application of sanctions has gained particular importance in the context of national security, economic resilience, and the functioning of strategically important sectors of the economy.

29. In this context, the assessment of certain mergers may require consideration of ownership structures, ultimate control, links to sanctioned persons or entities, and the potential implications of transactions for Ukraine's national security and economic interests.

30. The legal framework governing sanctions in Ukraine includes, in particular:

- the Law of Ukraine "On Sanctions";
- the Law of Ukraine "On the Protection of Economic Competition";
- the Law of Ukraine "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine";
- acts of the President of Ukraine and decisions of the National Security and Defence Council of Ukraine concerning the application of sanctions;
- resolutions of the Cabinet of Ministers of Ukraine concerning restrictions on the economic activities of persons and entities linked to the Russian Federation.

31. In addition, Ukraine has strengthened measures aimed at limiting the economic presence of persons associated with the Russian Federation, preventing the acquisition of control over strategic assets, freezing assets of sanctioned persons, and reducing the risks of indirect control through complex corporate structures.

32. At the same time, the AMCU continues to assess mergers in accordance with competition law. However, issues related to sanctions imposed on the parties to a transaction or their ultimate beneficial owners, the origin of capital, and ownership and control structures have become increasingly relevant in the review of individual cases.

33. In practice, this requires additional analysis of information concerning ultimate beneficial owners, corporate affiliations, sanctioned persons, and restrictions arising from decisions of the National Security and Defence Council of Ukraine.

34. To strengthen the interaction between competition law and sanctions legislation, amendments were introduced to the Law of Ukraine “On the Protection of Economic Competition” and the Law of Ukraine “On Sanctions”. These amendments established a framework under which sanctions-related restrictions may directly affect the possibility of obtaining merger clearance.

35. Pursuant to Article 24 of the Law of Ukraine “On the Protection of Economic Competition”, merger clearance may not be granted where a transaction is prohibited under the Law of Ukraine “On Sanctions”.

36. In the AMCU’s practice, particular importance has been attached to the sanction of asset freezing provided for in Article 4 of the Law of Ukraine “On Sanctions”. The AMCU interprets this measure broadly as a restriction on the use and disposal of property, including:

- corporate rights;
- shares and equity interests;
- assets;
- integrated property complexes;
- structural units of undertakings.

This approach is of practical importance when assessing acquisitions of control and other transactions that may qualify as mergers.

37. The AMCU takes sanctions-related restrictions into account throughout the merger review process. In particular, sanctions may affect the admissibility of an application, the substantive assessment of a transaction, and the final decision on whether clearance can be granted.

38. This approach has been reflected in a number of AMCU cases, including transactions involving JSC “NIPGazpererabotka”, LLC “LNZh NOVA INZHINIRING”.

39. These examples demonstrate that sanctions legislation may directly influence merger control enforcement in circumstances involving national security considerations. At the same time, the AMCU does not conduct an independent assessment of national security risks, but applies restrictions established by law and takes into account decisions adopted by the competent authorities.

40. As a result, sanctions legislation has become an important component of Ukraine’s merger control framework, particularly in the context of protecting strategically important sectors of the economy from direct or indirect influence by sanctioned persons or entities.

41. Although Ukraine does not have a separate foreign direct investment screening mechanism based on national security considerations, certain elements of such scrutiny are effectively reflected in sanctions-related assessments and ownership structure reviews conducted as part of merger control.

42. At the same time, a practical challenge remains that the AMCU does not maintain dedicated registries or information systems containing comprehensive information on the implementation of sanctions, particularly asset-freezing measures. Consequently, interagency cooperation and information exchange remain important elements of the effective application of this framework.

3.5. Cooperation with Other Government Authorities

43. To verify whether the ownership or control structure of the parties to a merger involves persons subject to sanctions, the AMCU cooperates with several government authorities, including the Security Service of Ukraine, the Foreign Intelligence Service of Ukraine, the National Security and Defence Council of Ukraine, the Ministry of Economy of Ukraine, and other competent bodies.

44. As part of this cooperation, the AMCU may receive information concerning the ownership and control structure of the parties to a transaction, the involvement of sanctioned persons in control relationships, as well as certain financial aspects of the transaction, including sources of funds and financing arrangements.

45. This practice of interagency cooperation may be viewed as a useful example of coordination among authorities responsible for competition, sanctions, and national security matters. In the context of martial law and heightened risks to economic security, such cooperation facilitates the effective application of sanctions-related restrictions and helps reduce the risk of strategic assets coming under the direct or indirect control of sanctioned persons, entities, including those linked to the Russian Federation.

4. Public Procurement, Defence Needs and Competition

46. Ukraine's public procurement system plays a critical role in meeting the needs of the security and defence sector, maintaining critical infrastructure, and supporting economic resilience. Under martial law, the government has faced the need to rapidly procure weapons, dual-use goods, energy equipment, communications systems, medical supplies, and other goods and services essential to national defence and public welfare.

47. To address these challenges, Ukraine introduced several simplified and special procurement procedures for defence and security purposes. These mechanisms were designed to facilitate timely decision-making, ensure continuity of supply, and reduce the risks associated with disruptions to critical procurement during wartime.

48. At the same time, maintaining competition in public procurement remains an important element of ensuring the efficient use of public resources, supporting economic resilience, and preserving the effective functioning of strategically important markets.

49. In this context, the role of the AMCU as the authority responsible for the protection of economic competition, including in public procurement, has become particularly significant.

50. The AMCU investigates and prohibits anticompetitive concerted actions aimed at distorting tender outcomes, commonly referred to as bid rigging. Such conduct may involve the coordination of bidding behaviour, price fixing, exchanges of commercially sensitive information, the creation of an artificial appearance of competition, or the allocation of roles among tender participants.

51. Given the increase in public expenditure during wartime, the risks associated with bid rigging are particularly significant in sectors related to defence, critical infrastructure, energy, logistics, construction, and post-damage recovery.

52. Detecting bid rigging in defence and security-related procurement is important not only from a competition perspective but also from a broader public interest and national security perspective. Such conduct may result in higher prices for critical goods and

services, lower quality outcomes, and the inefficient use of public funds intended to support the security and defence sector.

53. In the current environment, the AMCU’s enforcement activities in public procurement contribute not only to competition protection but also to transparency, accountability, and public confidence in the use of public resources. Even where simplified procurement procedures apply, preserving competitive conditions remains an important safeguard against inefficiency and misuse of public funds.

Examples of Enforcement Practice

54. In line with its enforcement priorities for 2025, the AMCU adopted several decisions concerning bid rigging in defence-related procurement, imposing fines totalling approximately UAH 100 million.

55. Notable examples include:

- a procurement procedure for anti-tank concrete barriers (“dragon’s teeth”) intended for a military unit, where the AMCU established coordination between bidders aimed at eliminating competition;
- a procurement procedure for combat training simulators, where the AMCU found that participating undertakings had coordinated their conduct during the tender process;
- a procurement procedure involving military equipment, including body armour covers and winter protective clothing for military personnel.

56. These cases demonstrate that the risk of anti-competitive conduct may arise even in sectors directly linked to national defence and security. They also illustrate the ability of the competition authority to adapt its enforcement priorities to wartime conditions and focus resources on strategically important sectors.

57. The AMCU’s enforcement practice further demonstrates the importance of cooperation with law enforcement authorities, financial oversight bodies, and other public institutions when investigating anti-competitive conduct in public procurement.

58. More broadly, the Ukrainian experience illustrates that, under martial law, competition enforcement in public procurement can contribute not only to competitive markets but also to broader objectives such as economic resilience, transparency in public spending, and the protection of strategically important national interests.

5. Conclusions

59. The Ukrainian experience demonstrates that national security considerations and the protection of economic competition are not mutually exclusive, even under martial law and in the face of significant security challenges.

60. Following Russia’s full-scale military invasion of Ukraine, certain regulatory mechanisms, including those relating to merger control, sanctions policy, and public procurement, were adapted to support the country’s defence capabilities, economic resilience, and the functioning of critical infrastructure.

61. At the same time, the fundamental principles of competition law and the market economy remained applicable. The measures introduced in response to wartime conditions have generally been temporary, targeted, and proportionate in nature.

62. The role of the Antimonopoly Committee of Ukraine has also become increasingly important in safeguarding competition in public procurement, particularly through the detection and enforcement against bid rigging in sectors related to defence, logistics, energy, and critical infrastructure.

63. Recent developments in Ukraine also highlight the growing interaction between competition policy, sanctions legislation, and broader economic security considerations. This is particularly evident in merger control, where ownership structures, ultimate beneficial ownership, and links to sanctioned persons have become increasingly relevant factors in transaction review.

64. Overall, the Ukrainian approach underscores the importance of maintaining an appropriate balance between the flexibility required to address exceptional security challenges and the preservation of competitive markets, transparency, and regulatory predictability. These elements remain important not only for economic resilience during wartime, but also for long-term recovery and reconstruction.