The Regulation of Economic Concentration in the Republic of Uzbekistan: Major Characteristics and Procedural Aspects

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Abstract: The article analyzes the regulation of economic concentration under the laws of the Republic of Uzbekistan, its main aspects, the competent state body and its procedure. In addition, the article compares the current legislation regulating economic concentration with the legislation of foreign states.

Keywords: economic concentration, antitrust control, regulatory authorities, procedural aspects, prior consent.

Introduction. Merger and acquisition activities are regulated principally under the Law of the Republic of Uzbekistan on Competition, which was enacted in 2012 (hereinafter referred to as the Law)[1].The Law is primarily concerned with preventing, restricting and suppressing monopolistic conduct, and it aims to protect and foster the appropriate conditions for the formation and effective functioning of competition within the market structure. The Law regulates relations which give rise to competition issues, and it applies to actions and agreements which potentially or actually result in the restriction of competition (or other negative consequences).Administrative bodies and state authority bodies are prohibited from giving any sort of discriminative or privileged treatment to undertakings, and any agreements between administrative bodies or administrative bodies and undertakings that affect the legal interests of consumers, interfere with the normal functioning of the market and impede development of competition are also prohibited.

In outlining the main characteristics of Uzbekistan's merger and acquisition regulation, let us highlight the following aspects:

- Regulatory law;
- Regulatory authorities;
- Procedural aspects of merger regulation.

Theoretical overview. The notion of economic concentration was first established in the Law of the Republic of Uzbekistan "On Competition" dated January 6, 2012.Pursuant to Article 4 of the Law, economic concentration is the commission of transactions and (or) other actions resulting in dominance of a business entity or group of persons affecting the state of competition in a commodity or financial market.

The presence of economic concentration does not, in fact, constitute a violation of the competition laws. At the same time, state regulation of economic concentration is important for the healthy functioning of market relations, since the state of existence of economic concentration may create conditions for negative impact on the competitive environment. Competition legislation entrusts antimonopoly authorities with the implementation of state control over various economic concentrations in order to prevent the emergence of

monopolistic structures. The basics of state control over economic concentration are laid down in such constitutional principles as the integrity of economic space, free movement of goods, services and financial resources, promotion of competition, prevention of unfair competition and economic activities leading to monopolization[2]. So Uzbekistan's competetition legislation divided economic concentration in to types:

- Mergers;
- Acquisition of shares.

Pursuant to **Article 16** of the Law, the antimonopoly body's prior consent for mergers and acquisitions of business entities is necessary if the total balance value of the assets of persons participating in the relevant transaction or their total proceeds from the sale of goods for the last calendar year exceeds **one hundred times the minimum wage** or one of them is a business entity that occupies a dominant position in the goods or financial market. According to **Article 17** of the Law, The preliminary consent of the antimonopoly body to transactions on the acquisition by a person or a group of persons of shares (contributions) in the authorized capital (authorized fund) of an economic entity is necessary if:

- such a person or group of persons receives the right to dispose of more than fifty percent of the indicated shares (contributions);
- the total balance value of assets or the total proceeds from the sale of goods for the last calendar year of the parties to the transaction exceeds one hundred times the minimum wage or one of the participants in the transaction is an entity that dominates the goods or financial market.

Results and discussions. If we look at the definition of economic concentration in worldwide scale, in China, the definition of mergers and acquisitions is very broad, with an emphasis on effective control. Pursuant to Article 20 of the China Anti-Monopoly Law, this term includes business mergers, stock or asset acquisitions, and exerting decisive influence over other businesses through agreements or otherwise[3]. Moreover, concentrations covered by the European Commission's Mergers Regulation include any merger of two or more formerly independent undertakings, or the acquisition of direct or indirect control of another undertaking or part(s) thereof, resulting in a permanent change in the structure of the undertaking concerned[4]. The legislation of USA merger regulations cover purchases of assets or voting securities. Such transactions may include the acquisition of majority or minority interests, the creation of joint ventures, a merger of companies, or any other transaction involving the acquisition of assets or voting securities (the Hart-Scott-Rodino Antitrust Improvement Act of 1976)[5]. We can see that the definition of economic concentration in the Competition Law of the Republic of Uzbekistan is based directly on the generally accepted definition of economic concentration.

Regarding decision-making bodies and enforcement authorities, Article 9 of the Law defines the status of the antimonopoly body, according to which the Antimonopoly Committee of the Republic of Uzbekistan and its territorial bodies are authorized bodies in the sphere of competition on commodity and financial markets. This article also stipulates that the antimonopoly authority shall implement the state policy in the sphere of competition on commodity and financial markets aimed at restricting and preventing anti-competitive actions of economic entities, unfair competition, and preventing unfair actions of public administration bodies and local state authorities. The Committee is independent of other administrative bodies and has the task of realizing government policy on the formation of a fair competitive environment. Such an environment necessitates the creation of appropriate legal and economic conditions in order to foster development of a fair system of competition

in markets. The State Committee thus has the task of preventing competitors from creating monopolies and abusing dominant positions, improving and controlling compliance with the antimonopoly regulation system, and ensuring compliance with protection of consumer rights legislation[6]. We should point out that the procedures for issuing preliminary consent for the merger and acquisition of business entities and considering and obtaining preliminary consent for transactions on the acquisition of shares (contributions) in the authorized capital (authorized fund) of economic entities is determined by the Cabinet of Ministers of the Republic of Uzbekistan.

If we look at competition policy of Republic of Uzbekistan, we can see that the main reforms aimed at developing competition in the Republic of Uzbekistan was carried out in three stages[7]:

First stage (1991-1999). Creation of market mechanisms for the formation of a competitive environment: July 2, 1992 - the law "On Restriction of Monopolistic Activity" was adopted and the formation and implementation of competition policy in Uzbekistan began, 1992 - Main Department of Anti-Monopoly and Price Policy was established in the Ministry of Finance of the Republic of Uzbekistan, 1996- Committee on Demonopolization and Development of Competition under the Ministry of Finance of the Republic of Uzbekistan was established. In the same year, a new version of the law “on Restriction of Monopolistic Activities and Competition on Commodity Markets” was adopted.

Second stage (2000-2010). Demonopolization, dissolution and reorganization of monopolistic enterprises:2000-According to the Decree of the President of the Republic of Uzbekistan the antimonopoly body was removed from the Ministry of Finance, given the status of a state committee and empowered to implement the antimonopoly policy in the republic, 2005 - In order to develop and support competition, small and private entrepreneurship the antimonopoly body was reorganized and given new powers by the Decree of the President of the Republic of Uzbekistan. The Committee was given a new name - State Committee of the Republic of Uzbekistan on Demonopolization, Competition and Entrepreneurship Support.

Third stage (since 2010). Introduction of anti-monopoly regulation on financial markets.2010-In order to further strengthen anti-monopoly regulation and to create a healthy competitive environment in accordance with the Decree of the President of the Republic of Uzbekistan the anti-monopoly authority was reorganized and its function to support entrepreneurship was abolished.2012-another partial change took place by merging two state committees and the law on competition was adopted.

The state antimonopoly body in effect makes the final decision as to whether or not to approve any given transaction. It has a right to issue an instruction which can force an undertaking to cease infringing the antimonopoly legislation. Alternatively, it can eliminate any negative consequences, restore the status quo ante, repudiate contracts which are in direct conlict with the antimonopoly legislation or appropriate the assets (income, proit) received by the undertaking as a result of its illegal conduct. The state antimonopoly body also has a right to initiate court proceedings on the grounds that the antimonopoly legislation has been breached. Furthermore, its oficials have the power to enter the premises of an undertaking and use any documents or information as are necessary and justiied by aninquiry, and undertakings, state administrative bodies or state authority bodies are obliged to produce such documents or information if required to do so by the state antimonopoly body.

A certain amount of co-operation exists between Uzbekistan’s State Committee (the competition authority) and organisation, such as the World Bank, Asian Development Bank

and the Organisation for Economic Co-operation and Development (OECD). For example, with the OECD, there is co-operation in the form of seminars, which accelerate information exchange, present different aspects of competition analysis on real case studies and facilitate establishment of personal contacts. The State Committee is also a Member of the International Competition Network (ICN). The State Committee also co-operates with the European Commission, on the basis of a Partnership and Co-operation Agreement (PCA) established in 1997 between Uzbekistan and the European Union.40 The agreement aims to achieve a certain amount of approximation of the Uzbekistan's existing and future legislation to that of the European Union (EU) and to increase compatibility specifically with respect to competition and consumer rights protection legislation. The parties in particular agree to determine ways to apply their competition laws in a harmonised way where trade between them is affected.

Control of economic concentrations is carried out in the following three directions:

- Exercises control over market concentration by issuing prior consent according to relevant legislation on acquisition by a person or a group of persons of shares (stakes) in the authorized capital (authorized capital) of an economic entity, as well as the merger and takeover of economic entities;
- Assesses market concentration in commodity, financial and digital markets;
- Advises on issues related to obtaining prior consent for transactions on the acquisition of shares (stakes) in the authorized capital (authorized capital) of business entities, as well as on the merger and takeover of business entities.

If we look at statistical details of this process, as of January 1, 2020, the Antimonopoly Committee and its Territorial Departments has reviewed 204 requests for prior consent to acquire more than 50% of shares of business entities, as well as to merge and join business entities. According to the results of the review, in 140 cases, consent was given to transactions; in 64 cases the consent of the antimonopoly authority was not required.136 of applications were considered on the issuance of preliminary consent for the acquisition of more than 50% of the shares and shares of business entities. Based on the results of the review, in 87 cases, consent was given to transactions, in 49 cases the consent of the antimonopoly authority was not required, since the amount of assets on the balance of the parties involved in the transaction did not exceed to one hundred times the size of the basic settlement values, as well as the number of acquired shares or the share was lower than established by law the limit. On the issuance of prior consent to the merger and takeover of business entities for a given period, 68 applications were considered. In 53 cases, consent was given to take actions, in 15 cases, the consent of the antimonopoly authority was not required, since the amount of assets on the balance sheet or the proceeds from the sale of products of the parties involved in the transaction did not exceed one hundred thousand times the base calculation value. These were the peculiarities of the regulation of economic concentrations under the legislation of Uzbekistan, and now let's talk about the procedure of this process.

Economic concentration is carried out in the form of mergers and acquisitions and reorganizations of business entities, because in this case the influence of a particular business entity in the market increases. Article 16 and 17 of the Law "On Competition" contains a provision stipulating that the antimonopoly authority exercises control over the organization, merger and takeover of business entities.

In particular, the Antimonopoly Authority gives prior consent to:

- merger and acquisition of business entities;

- the acquisition of shares (contributions).

Merger and consolidation of business entities are forms of reorganization of a legal entity. Article 49 of the Civil Code of the Republic of Uzbekistan establishes the procedure for reorganization of a legal entity, according to which the reorganization of a legal entity (merger, accession, division, separation, change) may be carried out in accordance with the decision of its founders (participants) or the body of the legal entity authorized by the founding documents.

At the same time, this article of the Code stipulates that in cases stipulated by law, the reorganization of legal entities in the form of merger, acquisition or change may be carried out only with the consent of the authorized state bodies. Preliminary consent of the antimonopoly body for merger and takeover of business entities is required only under the conditions stipulated by second part of Article 16 of the Law "On competition". Pursuant to **Article 16** of the Law, the antimonopoly body's prior consent for mergers and acquisitions of business entities is necessary if the total balance value of the assets of persons participating in the relevant transaction or their total proceeds from the sale of goods for the last calendar year exceeds **one hundred times the minimum wage** or one of them is a business entity that occupies a dominant position in the goods or financial market. According to **Article 17** of the Law, The preliminary consent of the antimonopoly body to transactions on the acquisition by a person or a group of persons of shares (contributions) in the authorized capital (authorized fund) of an economic entity is necessary if:

- such a person or group of persons receives the right to dispose of more than fifty percent of the indicated shares (contributions);
- the total balance value of assets or the total proceeds from the sale of goods for the last calendar year of the parties to the transaction exceeds one hundred times the minimum wage or one of the participants in the transaction is an entity that dominates the goods or financial market.

If we look at other legislation systems of developed countries, we can see that in Sweden, for instance, a concentration notification must be submitted to the Swedish Competition Authority if the combined turnover of all merging undertakings combined in the preceding fiscal year exceeds SEK 1 billion and if the turnover of at least two of the merging undertakings in Sweden in the preceding fiscal year exceeds SEK 200 million each. It should be noted that the thresholds applied in Sweden for merger control only refer to the turnover of the respective companies within Sweden (i.e. there is an explicit link to the local market)[8]. In Canada, the Competition Act of 1985, last amended on December 12, 2017, established various thresholds:

(a) A transaction size threshold: the assets of the company being acquired in Canada or its income derived in or from Canada from assets located in Canada exceeds C$86 million;

(b) Participant size threshold: the combined assets of the parties to the transaction, including all affiliates, in Canada or their revenues derived from sales in, to or from Canada exceed C$400 million; (c) Threshold for the size of participants: the assets of the acquiree, including all affiliates, in Canada or their revenues derived from sales in, to or from Canada exceed C$400 million;

(c) Threshold level of capital size: the acquisition of more than 20% of the voting shares of a public company or more than 35% of the voting shares of a private company or an interest in an unincorporated entity exceeding 35%[9].

The statutory thresholds are based on the application of certain criteria: the turnover criterion

and/or the share in supply criterion, in UK. The turnover criterion is deemed to be met if the turnover of the acquired company exceeds £70 million (most significant acquisitions fall into this category). The supply share criterion is considered met when both merging parties operate within the same market segment and their combined market share in that segment exceeds 25%. If look at legislation of Israel, we can see that according to Section 17 of the Restrictive Trade Practices Law 5748-1988, a transaction that qualifies as a merger of companies is evaluated based on additional threshold criteria, if the market share of the merging companies exceeds 50%, the combined turnover of the merging companies in the fiscal year preceding the merger exceeds 150 million shekels or one of the merging companies is a monopoly (i.e. its market share is over 50%).

The procedure for obtaining the consent of the Antimonopoly Committee for actions of merger, acquisition of business entities and transactions to acquire shares (stakes) in the authorized fund (authorized capital) is defined in Article 18 of the Law. The provision of public services with the consent of the antimonopoly body is regulated by the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan **"On approval of certain administrative regulations for the provision of public services in the field of antitrust regulation in commodity and financial markets"**[10]. Pursuant to this article, when carrying out actions to merge, acquisition of business entities and when making transactions to acquire shares (contributions) in the authorized capital (authorized fund) of a person or group of persons, prior to these actions (transactions) are submitted to the Public Service Centers:

- application for prior consent to perform actions (transactions);
- applicant's passport data — for an individual (series and number of the document, date and place of issue, the authority that issued the document);
- information on the types of activities, names of types of goods and their volumes produced and sold by the applicant within two years preceding the day the application was submitted, or during the term of the activity if it is less than two years;
- financial and statistical reporting for the previous two calendar years;
- information on the composition of the group of persons, indicating the grounds on which such persons are included in this group of persons, and other information relating to the transactions under consideration for the acquisition of shares (contributions) in the authorized capital (authorized fund).

The antimonopoly body no later than **ten calendar days** from the receipt of the necessary documents and information informs the applicant in writing about the decision. If a person or group of persons simultaneously applies for prior consent to purchase the same package of shares (contributions), the decision of the antimonopoly body is communicated to the applicants on the same day. If necessary, if the antimonopoly body has reason to believe that an action (transaction) will or may lead to restriction of competition, including through the emergence or strengthening of a dominant position in the commodity or financial market, the period for consideration of the application may be extended for appropriate market research but not more than one month.

We should note that the antimonopoly body has the right to refuse to give the prior consent to the applicant if:

- the satisfaction of the application for prior consent to perform actions (transactions) may lead to the emergence or strengthening of the dominant position of the relevant business entity or group of persons in the goods or financial market and (or) restriction of

competition;

- when considering the submitted documents, it was found that the information contained in them is false or unreliable.

The antimonopoly body has the right to give preliminary consent to the commission of actions (transactions) and make it dependent on the fulfillment of requirements aimed at ensuring competition. At the same time, these requirements, as well as the deadlines for their fulfillment, must be contained in the decision of the antimonopoly body on prior consent to merge, acquisition of business entities and complete transactions for the acquisition of shares (contributions) in the authorized capital (authorized fund). If the performance of these actions (transactions) may lead to the emergence or strengthening of the dominant position of the relevant business entity or group of persons in the goods or financial market and (or) restriction of competition, legal and (or) individuals who have decided to take these actions (transactions), are required at the request of the antimonopoly body to take measures to restore the necessary conditions for competition.

The antimonopoly body has the right to satisfy the application for prior consent to perform actions (transactions) even if it is possible to gain or strengthen the dominant position of an economic entity or group of persons in the goods or financial market and (or) restrict competition, adverse consequences if legal entities and (or) individuals making a decision on the implementation of the merger, acquisition of business entities and the conclusion of transactions for the acquisition of shares (contributions) in the authorized capital (authorized fund), they prove that their actions (transactions) provide tangible benefits to consumers.

Actions (transactions) committed without the prior consent of the antimonopoly body, leading to the emergence or strengthening of the dominant position of an economic entity or group of persons in the goods or financial market and (or) restriction of competition, may be invalidated by the court.

In reviewing mergers and acquisitions, the State Committee is primarily concerned with the effect they could have on competition and whether or not they result in the creation or strengthening of a dominant position. The state committee conducts a market analysis to identify any undertakings that hold a dominant position within a given market. In terms of the restriction of competition test, the State Committee has the right to approve a case even where it is possible that it may give rise to adverse effects, so long as the parties can prove that their conduct will improve trading conditions in the market and benefit ‘buyers’ to an appreciable extent. There are no specific rules for regulated sectors. The state directly regulates natural monopolies, such as gas, electricity, water and transport applying the Law on monopolistic activity as long as its application does not limit the performance of activities within those sectors. Monopolistic activity and unfair competition in labor, securities and financial services, markets are regulated by other legislation unless the activity seriously affects competition, in which case the Law on monopolistic activity shall apply.

Conclusion. Anti-monopoly regulation measures are aimed at restoring competitive conditions in the market, preventing the growth of monopolization and strengthening the dominant position of companies, because in M&A transactions there is a threat of reduction of public welfare, which is opposed by the anti-monopoly authority. By restricting increased concentration in the industry, antitrust policy measures can have a negative impact on the innovative activity of companies. In case of a merger there is a transfer of technology, alignment of technological level of merging firms, there are more opportunities for innovation activities. To realize the positive effect of transactions in Japan and the United States have been taken to relax the antimonopoly legislation for mergers in high-tech

industries. There is, in Uzbekistan's M&A regulation system, still no such practice.

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