Acquisition of shares in a company – in what cases should a notice be submitted to the Competition Council when acquiring shares in the company?3/8/25


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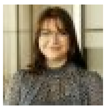
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When planning to acquire shares or interests in a company, you can determine not only the legal, financial and tax risks but also the competition law obligations that may arise when carrying out the planned transaction.

In order to make a decision about acquiring or investing in a company, buyers/investors usually want to recognise the above-mentioned risks in good time by carrying out a due diligence review of the company. The resulting due diligence report gives the buyer/investor a detailed insight into the legal, financial or tax risks of the company so that both parties can recognise the risks and agree on the changes that need to be made prior to the transaction in order to mitigate the risks and make a purchase decision.

In what cases might a merger report have to be submitted to the Competition Council?

The scope of the due diligence review is determined depending on the business activity and risks in the industry as well as the risk appetite of the buyer/investor in question. When determining the scope of the due diligence, it is increasingly common for buyers/investors to focus on the competition law perspective to reach clear conclusions after the due diligence regarding the impact on the market and the measures to be taken to ensure compliance with competition law and regulations when carrying out the transaction.

When assessing an option in which the conclusions of the due diligence indicate the formation of a market concentration or the acquisition/strengthening of a dominant position, measures may need to be taken to ensure compliance with the requirements of the competition law. In this case, it is necessary to actively communicate with the Competition Council and/or prepare a timely report on the contemplated transaction.

The report must be submitted in cases where the contemplated transaction is likely to result in one of the following situations:

- mergers of two or more independent undertakings;
- merging of an undertaking with another;
- one or more persons/market participants who already exercise decisive influence over one or more market participants acquire or exercise decisive influence over the assets or rights of other market participants;
- several natural persons jointly or by one natural person acquire, at the same time, some or all of the assets or rights of their use of two or more market participants or a decisive influence over two or more market participants.

To determine whether a merger report is necessary, it is necessary to assess whether the following turnover criteria are met:

- the total turnover of the merging parties in the previous financial year in the territory of Latvia is at least EUR 30 million; and
- the turnover of at least two merger participants in the previous financial year in the territory of Latvia is at least EUR 1.5 million each.

Why are these circumstances relevant before the transaction is concluded?

1. The Competition Council may require, within 12 months from the date of implementation of the merger, the merging parties to submit a merger report, even if the above criteria are not met, but any of the following factors have been identified:
    a. the merger takes place on the relevant market in which the merging parties are active and their combined market share on that particular market exceeds 40%;
    b. there are reasonable grounds for suspecting that a merger may lead to or strengthen a dominant position or significantly reduce competition in the relevant market.
2. The Competition Council may prohibit the transaction or lay down additional rules to mitigate the effects of the transaction on competition. The obligations arising from the conditions imposed must be taken into account before the transaction is concluded.
3. Important! In the case of an unlawful merger, for example, without the submission of a report and the receipt of an acceptance, if any, the Competition Council may take a decision imposing a fine on the new operator or the acquirer of decisive influence up to 3% of its net turnover.

Communication with the Competition Council before the transaction is finalised is essential, as it enables an assessment of the current situation and the situation after the transaction, what potential problems may arise during the implementation of the transaction and, last but not least, enables long-term savings of time and resources for all parties involved in the transaction.

Communication with the Competition Council before the transaction

Persons willing to carry out the transaction may, at their discretion, submit a report to the Competition Council, even if they have not met the above mandatory criteria, to ensure that no unforeseen burdens arise within one year of the transaction.

The report and the accompanying documents required by the Competition Council for its assessment must contain at least the following information:

- Information about the submitter and other parties to the transaction, such as name, registration number, contact details, the articles of association of each party to the transaction, and the details and powers of the representative authorising him to represent the company;
- The following information must be provided for each party to the transaction: Information on the net turnover of the last financial year, the total turnover of the market participant in the territory of Latvia, copies of the report on the last financial year of each market participant and a certificate that all information submitted to the Competition Council is true;
- Information on the legal, financial and economic aspects of the merger, such as the nature of

the transaction, the economic and financial purpose and justification, the characterisation, the main stages of the transaction, including the time periods, as well as the structure of the participants after completion of the transaction, the restrictions of competition established;
- Information on the relevant markets, such as the markets affected by the merger, including an assessment of the last three financial years in each affected market, the size of each affected market and the market shares of each participant, including competitors active in the market if their market shares exceed 10%, the supply and demand structure, the five largest customers of each participant in the transaction;
- Information on the purpose and likely effects of the merger: possible positive and negative effects, in particular with regard to competition, effects on the production or distribution of goods, technical or economic development, compatibility of the merger with the interests of customers, consumers and the public.
- If the transaction results in a market participant with joint decisive influence, the report must include the following: whether the market participants will continue to operate on the same or related markets, the turnover of each market participant acquiring joint decisive influence in the previous financial year, the economic significance of the market participant subject to joint decisive influence compared to the turnover of the other participants, the market share of each market participant and the justification if the market participants do not continue to operate on the same or related markets.

If you do not hear from the Competition Council within one month of submitting the report, the transaction is deemed to have been approved. One month is the shortest period of time to be considered when acquiring/merging a company in order to avoid hasty actions regarding the transactions before the set deadline. Overall, the procedure before the Competition Council can take up to four months, depending on the type of report to be submitted.

Based on the findings of the due diligence, identifying risks at an early stage of the contemplated transaction can mitigate the risks and implement the measures recommended in the research report in time to achieve timely completion of the transaction.