



FRISHBERG
& PARTNERS
ATTORNEYS AT LAW

MERGERS AND ACQUISITIONS IN UKRAINE





Table of Contents

2 ▶ Acquisitions and Due Diligence

Post-Privatization Investment
Due Diligence

6 ▶ Privatization

Tender for Acquiring State-Owned Joint Stock Companies
Terms and Conditions of the Tender
Participating in the Tender
The Tender Procedure
Open Auctions
Formalizing Ownership Rights

11 ▶ Antimonopoly Legislation

AMC's Consent
Jurisdictional Thresholds
Monopoly Status
Application Review Process
Conclusion

ACQUISITIONS AND DUE DILIGENCE

Post-Privatization Investment

Foreign investment often takes place following privatization, even in cases when foreign investors have acquired initial shares by officially participating in the privatization process. In many cases, initial investment only serves as a prelude to a drastic increase in capitalization following privatization (often causing dilution of the Ukrainian shareholders' ownership in the company).

With reference to effectuating the direct acquisition of shares in any privately-owned stock company, a foreign investor has two viable options: (1) to purchase stock from its owners (including oligarchs, employees, financial intermediaries and/or common Ukrainian citizens); and/or (2) to purchase

additionally issued stock from the company with approval of the company's general assembly of shareholders.

In most cases, factory management insists on issuing and selling additional stock because they need an immediate infusion of capital, in-kind contributions/upgrades and know-how. Interested strategic investors usually agree to increase the company's capitalization, but only after performing the necessary due diligence (see discussion below and attached table of contents). The percentage of stock ownership determines the degree of control the investor can legally exercise over his company (10+1%, 25+1%, 50+1%, etc.).

In a nutshell, the procedure for issuing additional stock begins with a general meeting of the shareholders. At the general meeting, the



shareholders officially resolve in a protocol form to issue additional stock and approve the information and conditions of the public subscription. The information is then registered with the State Commission for Securities and Stock Markets (the "SCSSM") and, thereafter, it is published in one of the official governmental newspapers.

After such publication, an open subscription period allows foreign investors to purchase the additionally issued stock of the joint stock company after existing shareholders have exercised their rights of first refusal. Finally, the issuance results are published with the SCSSM and the general meeting of shareholders must formally approve the results of the subscription. Note that in consideration for the issued shares, the foreign investor can contribute virtually anything of value, including foreign currency, equipment and intellectual property.

Prior to acquiring any stock, it is also important to have a reliable overview of the existing shareholders. In addition to the various oligarchs, the most common groups of stockholders include: (1) employees; (2) third-party investors (e.g., via trust companies); (3) Ukrainian citizens who used cash and/or registered privatization certificates; and sometimes, (4) the State Property Fund (the "SPF"). Each group has different interests, and therefore consideration of their respective voting powers becomes important.

The proportionate share of ownership among the stockholders differs greatly from one enterprise to the next, depending on the balance value of each factory and the sector involved (e.g., agro-industrial complex and military-conversion enterprises are governed by a special legal regime). In small to mid-size enterprises, relatively few shareholders will have the "controlling block" of shares necessary to resolve certain fundamental decisions, such as calling for an increase in capitalization by

issuing additional stock or a decrease in capitalization by contributing (alienating) real property to a newly formed joint venture (subject to the consent of the enterprise's creditors).

We stress that in all cases careful, detailed due diligence (both legal and financial) is absolutely indispensable, especially in Ukraine.

Due Diligence

Before undertaking any financial commitment, an interested investor performs due diligence. It is a long and often tedious process of research and analysis, which takes place in advance of any meaningful strategic investment or long-term business partnership. By reviewing all necessary documents, the investor has an honest and accurate legal and business overview of the target company's status, ownership and debts/obligations. In fact, failure to make this effort can be considered negligence.

Typically, a team of consultants visits the factory to research the various business and legal documentation. The resulting analysis is documented in a corporate profile and includes details concerning the company's structure, its assets, financial records, conflicting commitments, debts and liabilities.

Based on the information contained in the due diligence report, as well as preliminary interviews with the Ukrainian partners, the principals can agree on the fundamental business conditions suited to their transaction (e.g., business form, share distribution, percentages of ownership, valuation of respective contributions, access to local and/or foreign markets, etc.).

In order to cover all of the aspects listed above and compile a legal due diligence of a company or factory, the targeted entity is asked to provide the following:

- The charter (by-laws) of the entity (all existing and formerly existing versions from the date of the entity's creation, including all amendments and additions);
- The founding agreement of the entity (all existing and formerly existing versions from the date of the entity's creation, including all amendments and additions);
- The resolutions of the meetings and decisions of the highest authoritative body of the entity (i.e. the general meeting of the shareholders or participants);
- The resolutions of the meetings and decisions of the management body of the entity;
- The composition of the supervisory council (if applicable), the executive body (management) and the controlling body of the entity;
- The register of shareholders (if the entity is a stock company), evidencing the size and amount of each block of shares;
- Documents which confirm the ownership rights to the buildings and structures of the entity;
- Documents which confirm the rights to use land;
- Liabilities and obligations, including existing employment contractual relations, long-term loans, employee benefits, etc.;
- Long-term agreements (contracts) with suppliers and consumers, as well as any other material agreements (contracts);
- All documents related to corporatization and privatization (if applicable), including SPF decisions or resolutions, the



privatization plan, the share acquisition plan, draft share sale-purchase agreements, etc;

- All available registration certificates of the entity regarding the issuance of shares and obligations, all state registration certificates, etc.;
- Resolutions (charters, regulations, etc.) on the basis of which structural subdivisions of the entity were created (representative offices, subsidiaries), as well as the by-laws pursuant to which such subdivisions operate.

The above list of documents is far from exhaustive. Depending on the specific target company's profile, a review of additional documents will be necessary (including accounting, financial, environmental records, plans for capital investment, etc.).

In all cases we place great emphasis on the detection of liabilities, both real and contingent. In particular, our investigation team looks for questionable contracts and financial transactions involving off-shore company structures, unusual rules governing the rights of shareholders, and any environmental liabilities such as aging fuel tanks and waste ponds.

Over the years, we have performed extensive due diligence exercises regarding some of the leading Ukrainian enterprises, including but not limited to:

- Gostomel Glass Factory
- Credit Lyonnais Ukraine
- KyivOblEnergo OJSC
- RivneAzot OJSC
- "SLAVUTICH" Beer and Soft Drink Enterprise

- Sumy Electron Microscope Factory, "SELMI"
- Zhidachiv Cellulose-Paper Mill
- Vinnytsa Vegetable Oil and Fat Plant OJSC
- Khartsisk Pipe Plant OJSC
- Lutsk Cardboard and Ruberoid Factory OJSC
- U-Pharma
- Prista Oil-Ukraine
- Zeus Keramik
- The Ukrainian Academy of Science's Grain Farming Institute

Fields represented include: breweries, soda manufacturing, cement production, cardboard production & wood processing, electricity, production of refrigerators, furniture-making, defense conversion, pharmaceuticals, steel and glass manufacture, among others.

We are pleased to enclose, as an attachment, the table of contents of our standard due diligence. If you have questions about any of its components, please contact us anytime.



PRIVATIZATION

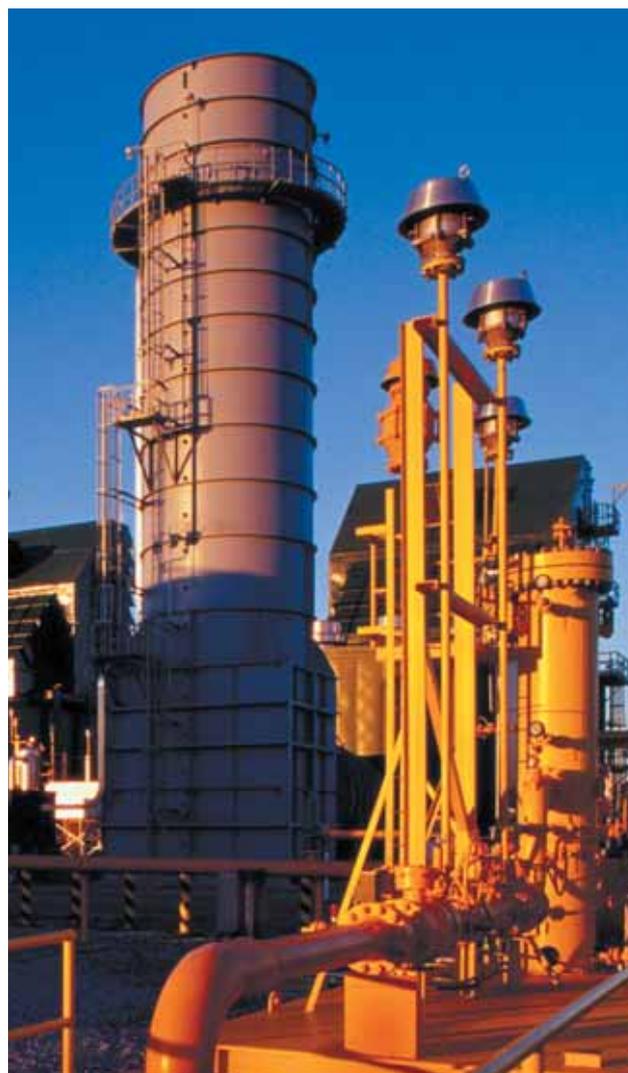
Back in September of 2000, the announcements regarding the sale of blocks of shares in large Ukrainian enterprises kept rolling off the State Property Fund's ("SPF") bulletins: Zaporizhia Aluminum Plant, Pivnichny Ore Enrichment Plant, Kramatorsk Steel Plant, Nikopol Ferroalloy Plant, KhersonNaftoPererobka Oil Refinery, Khartron and TurboAtom Plants, to name a few.

Even one of Ukraine's crown jewels, Ukrtelecom, was up for sale in 2000, in accordance with Law No. 1869 "On Particularities of privatization of the Open Joint Stock company Ukrtelecom," dated July 13, 2000, which offered investors up to 43% stock. This privatization never materialized, however, and the law was terminated on July 5, 2005. Just three weeks later, on July 25, 2005, Ukrtelecom once again appeared on the priority list of enterprises slated for privatization.

In August 2005, then acting Prime Minister Yulia Tymoshenko prepared an amazingly comprehensive list of enterprises that were subject to privatization (and re-privatization). Eventually, some were re-privatized (Krivozhstal) while others went into hiding on a list of "objects not subject to privatization" (Nikopol Ferroalloy Plant). About one third of the original list still remains intact, and in certain cases percentages of stock were increased.

In early 2006, the SPF decided to overhaul the process of selling stock in its joint stock companies. Along with the new Civil and Economic Codes, there is a new procedure for conducting tenders, with a focus on transparency. Below we describe the tender procedure for acquiring state-owned blocks of shares in Ukrainian joint stock companies.

On January 26, 2007, President Yushchenko signed the Law "On the introduction of amendments to certain legislative acts of Ukraine" approved by the Parliament on January 11, 2007, making privatization in 2007 a reality. Pursuant to the approved Law, the following enterprises are subject to privatization in 2007: Ukrtelecom, Odessa Port Plant, Electrotyazhmash Plant, the Feodosiya Industrial Union "Morye", the hotels "Dnepro" and "Sport" (Kiev), and Azmol (Berdyansk). Needless to say, most investors, especially Russian investors, will be attracted to Ukrtelecom and the Odessa Port Plant.



Tender for Acquiring State — Owned Joint Stock Companies

The tender procedure for the sale of blocks of shares of stock in joint stock companies is regulated by Order No. 1800 (hereinafter the "Order"). The Order sets forth the procedure for the preparation, organization and conducting of tenders involving the sale of state-owned blocks of shares in open joint stock companies. Importantly, however, the Order does not apply to energy companies or to companies listed as "not subject to privatization", including the notorious Nikopol Ferroalloy Plant (re-privatization victim).

The Order defines "tender" as the method of selling shares in open joint stock companies to a tender winner, who is defined as the candidate who offers the highest price for such shares and undertakes to fulfill all of the terms and conditions of the tender. The Order further provides that advisors may be brought in to facilitate the effective sale of stock during these tenders.

The discussion below describes the procedure for holding tenders for the sale of shares in the context of privatization. Importantly, the tender procedure for each open stock company may vary, depending on which privatization list it was included into and its strategic importance to the Ukrainian economy. Therefore, interested investors should consult an experienced legal advisor concerning a specific investment opportunity.

Terms and Conditions of the Tender

First and foremost, one single block of shares will be offered at a tender in accordance with the SPF's allocation plan. In other words, the participants must bid for an entire packet of an offered factory's stock, not separate shares or a certain percentage thereof.

Payment for acquired shares is carried out in two installments in Ukrainian Hryvnias or freely convertible foreign currency. Specifically, at least 50% of the stock price must be paid within thirty (30) calendar days from the date the sale-purchase agreement for the stock is signed, while the remaining 50% can be paid within sixty (60) calendar days following the signature date of the sale-purchase agreement.

Tenders are organized by a commission, which is created by the privatization body in charge of privatizing the specific joint stock company. The tender commission has several functions, including: (i) reviewing the SPF's recommendations regarding the terms and conditions of the tender; (ii) submitting the initial price for the SPF's approval; (iii) drafting the information announcement about the tender for the SPF's approval; (iv) reviewing the offers of all participants; and (v) selecting the winner.

Among others, the terms and conditions of a tender may include the following obligations: partial payment or restructuring of the company's outstanding debt with respect to loans granted by commercial banks; technical reconstruction of the company's production facilities; preserving the existing workplaces or creating new jobs; preserving the company's production profile; and compliance with the requirements of antimonopoly legislation. Certain requirements must be fulfilled within five (5) years after the date of the sale-purchase agreement.

The tender conditions may require the participants to provide a business plan or "technical-economic substantiation" for post-privatization development, including an employment plan and investment offer, depending on the specific activities of the company offered for sale. If the tender involves the sale of more than 50% of shares of stock, the privatization plan must also contain a so-called Development Concept, aiming to

improve the target company's long-term economic, social, financial, technological and ecological conditions.

Participating in a Tender

In order to participate in a tender, potential investors must submit their tender offer along with the so-called "confirming documents," which evidence that the prospective investor falls within the criteria listed in the terms and conditions of the tender.

The aforementioned documents must be in the Ukrainian language and must be submitted personally by the potential buyer, or its authorized representative, to the SPF's privatization body. Upon submission, the privatization body will register such documents and mark them with a registration number, including the date and time of registration. The investors will receive an official receipt, which will specify their number, date and time of registration and the surname, first name and patronymic (if applicable) of the person in charge of the registration.

The investor must simultaneously submit to the privatization body the tender offer and the confirming documents, which must be filed in separate envelopes and marked accordingly. The face of the envelopes may only contain the SPF's address and the name of the tender; candidates may not write anything that would aid in disclosing its identity. If the above protocol is breached, the tender offer and the confirming documents will not be accepted.

The SPF will commence accepting tender proposals and confirming documents on the day of the publication of the tender announcement and cease accepting proposals and documentation seven (7) calendar days before the tender. The day after the acceptance period for tender offers has expired, the SPF will open all envelopes and begin to ascertain

whether or not any required documents are missing. Within five (5) days after the acceptance period expires, the SPF will review the confirming documents to determine which potential buyers qualify to participate in the tender.



Once the privatization body has reviewed all tender proposals and verified all required information, including any additional information requested from potential investors, it will submit a list of qualified candidates and their proposals to the tender commission.

The Tender Procedure

The investor selection begins when the tender commission gathers to open the tender offers containing the proposed price for the shares of stock and enters the respective offers into its official minutes. The tender commission determines the winner based on the offered price, and sends the minutes of their meeting to the SPF within two (2) working days. Thereafter, the SPF must approve the minutes and declare the winner within three (3) working days.

As a rule, the winner of a tender is the candidate who offered the highest price for the packet of shares, unless other conditions are provided in the tender rules. If two or more candidates submit offers with equally advantageous terms and conditions, the winner will be the candidate who submitted its offer first. Within ten (10) days from the date of the approval of the winner, the SPF verifies the presence of the Antimonopoly Committee's consent, signs the sale-purchase agreement and, finally, publishes the results.

If the winner of the tender did not yet receive the permission of the Antimonopoly Committee to acquire the block of shares, the SPF will conclude the sale-purchase agreement with the winner, noting that the Antimonopoly Committee is reviewing the winner's application for permission to acquire the block of shares or stating that the Antimonopoly Committee's permission is not required by law.

In certain cases, the SPF has the latitude to enter into sale-purchase agreements with the

condition precedent that the winner must receive the Antimonopoly Committee's consent within fifty (50) days from the date of the sale-purchase agreement. In such cases, the term for fulfillment of obligations, except the obligation to pay for the block of shares, will be extended for the said term.

The SPF must prepare and publish an announcement concerning the results of the tender in the newspaper "Privatization News" within ten (10) calendar days from signing a sale-purchase agreement with the winner. It is also responsible for informing the State Commission on Securities and the Stock Market and the Antimonopoly Committee about the results of the tender. Finally, the SPF must inform all tender participants about the results and refund their deposits. Of course, the deposit is not returned to the winner.

Open Auctions

Since July 11, 2005, in certain cases a tender may be conducted as an auction, with open proposals by tender participants. Investors must simply submit an application to participate, along with confirming documents, within the deadline to the SPF. After potential investors receive the tender documents, each buyer drafts and submits its proposed amendments to the sale-purchase agreement with clearly indicated changes and additions.

The SPF accepts and registers all proposed amendments and additions to the sale-purchase agreement and analyzes all proposals. Thereafter, the SPF will conduct negotiations with all potential buyers and discuss the proposed amendments and additions. On the basis of its negotiations, the SPF will produce a final draft sale-purchase agreement and send it to the investors no later than five (5) working days before the day of the tender. At least three (3) days before the tender, each buyer must return the draft sale-purchase agreement with an official signature on each page. Such action confirms that each buyer will sign the sale-

purchase agreement if it is declared as the winner of the auction.

Next, the SPF will approve a list of qualified participants and send it to the tender commission for commencement of the auction procedure. The registration of the tender proposals will occur ten (10) minutes before commencement of the auction. On the date of the tender (auction) commission will hold an open hearing, where qualified potential buyers and mass media representatives may participate.

The head of the auction commission will open the offers and announce their contents, in the presence of the auction commission, in the order of their registration numbers. An auction is held by an auctioneer and commences from the moment the auctioneer announces the highest price proposed by the participants (initial trade price). If no participant bids a higher price than the initial trade price after three announcements of such price, the auctioneer, with the bang of his hammer, will declare the winner.

During the auction, participants may bid by holding up their auction cards with the number facing the auctioneer and naming their price. An increase of the price by participants may not be less than 1% of the initial trade price. Once the auctioneer announces the winner, the results of the auction are set forth in the relevant protocol, signed by the tender commission and the buyer, and approved by the SPF.

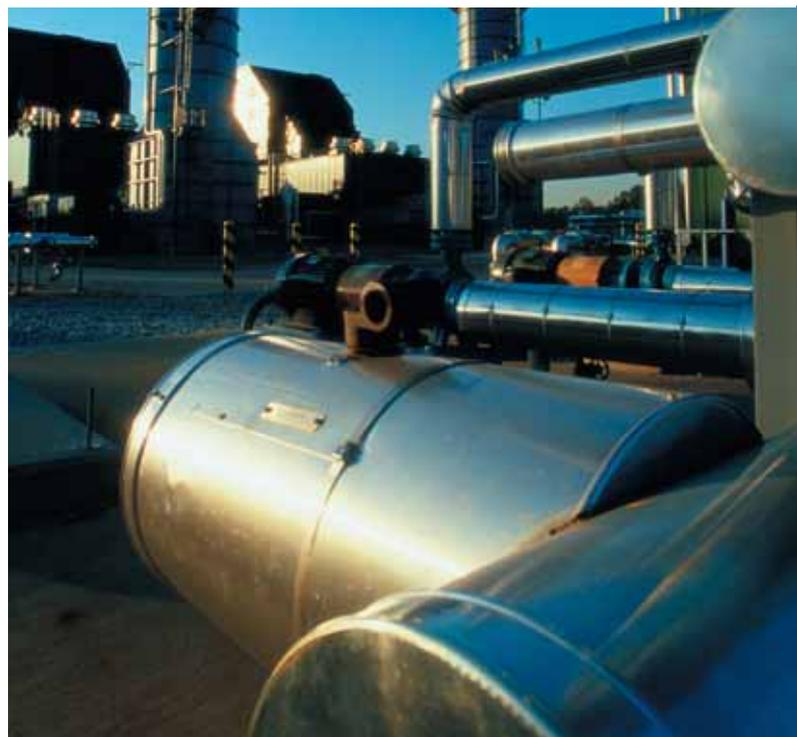
Formalizing Ownership Rights

The tender winner becomes a stock owner from the moment of the payment of the full value of the block of shares acquired at the tender. The sale-purchase agreement for the shares will include information such as the name and address of the OJSC; information about the parties; the price and payment period; the parties' obligations; the parties'

locations and banking requisites; liability of the parties for non-fulfillment of the obligations; legal consequences resulting from the non-fulfillment of the obligations; dispute resolution procedure and force-majeure circumstances.

The investor's right to participate in the management and to receive income may be exercised from the moment changes to the register are introduced regarding the new owners of named shares. If the acquired shares of stock were issued in electronic form (i.e., non-documentary), then the ownership rights will transfer from the date such shares are credited to the owner's account with a share custodian.

The sale-purchase agreement will also contain the buyer's obligation to refrain from selling a certain portion of its shares before fulfilling the terms and conditions of the sale-purchase agreement. The buyer also may not subsequently sell the privatized object without assigning to the new buyer the obligations indicated in the terms and conditions of the tender.



ANTIMONOPOLY LEGISLATION

In the past, Frishberg & Partners worked on behalf of Baltic Beverages Holding AB as well as KPN Royal Dutch Telecom and KPN Mobile, to enter and to exit Ukraine's competitive market. As a result, antitrust-related work became a core part of our practice. In fact, the internationally-recognized, antitrust-oriented practice of Howrey Simon Arnold & White LLP have asked us to advise on the Ukrainian component of a multi-jurisdictional acquisition involving a travel-service giant.

More recently we assisted a Swiss company with the acquisition of a 75% equity stake in a respected Ukrainian glass-manufacturing facility. In addition to due diligence and preparation

of the share-purchase agreement, we cleared this transaction with the Antimonopoly Committee.

As part of the executive branch of government with a special status, the role of the Antimonopoly Committee of Ukraine (the "AMC") is to protect Ukrainian business from unfair competition and trade practices. As a result, the AMC's consent is required if a merger or acquisition could lead to an "economic concentration" on a specific segment of the Ukrainian market.

Below we describe the thresholds for receiving the AMC's consent, as well as a summary of the practices, which the AMC considers to be unfair to competition.



AMC Consent

Generally, the AMC consent to a transaction is required only upon the occurrence of certain triggering events, including mergers, the direct or indirect acquisition of shares of stock or assets, the acquisition of control in any manner, the expansion of an association of businesses and the creation of a business entity. For each category, Law No. 2210 and Order No. 33-r set forth the thresholds which require companies to receive the AMC's preliminary consent.

In practice, the parties to a potentially "monopolistic" transaction usually include a provision in the relevant agreement to the effect that the closing of the transaction (i.e., the date when the agreement comes into force) is contingent upon procurement of AMC consent if applicable. Since the procedure for receiving the AMC's consent is complicated and lengthy, the parties should begin procurement in the early stages of the transaction. Accordingly, the closing of a transaction will be suspended until the AMC clears the transaction and puts forth its consent in writing.

In order to receive the AMC's consent, the relevant party must submit an application in accordance with Order No. 33-r with a vast amount of information about itself in the application, including the applicant's founding documents; the relevant agreement that could possibly result in a concentration on a market; registration, statistic, economic and financial information about the parties to the transaction; a description of the transactions and its targeted results; the principal activities of the parties; the applicant's balance sheet; information on the entities controlled by the applicant.

On the whole, the process of gathering the above information and properly filling out the

application itself is daunting, cumbersome, and time-consuming.

Jurisdictional Thresholds

The need for preliminary AMC consent for a specific transaction arises when a concentration may be reached on a particular market. By law, an applicant may attain a specific market concentration with preliminary AMC consent if the aggregate value of assets or aggregate volume of sales of the participants to a possible concentration, taking into consideration relations of control, over the past fiscal year (which also includes operations abroad) exceeds an amount equivalent to EUR 12 million, and if:

- the value (aggregate value) of the assets or the volume (aggregate volume) of sales, including operations abroad, for at least two participants to the concentration, including the relationship of control, exceeds an amount equivalent to EUR 1 million, and if
- the value (aggregate value) of the assets or the volume (aggregate volume) of sales in Ukraine for at least one participant to the concentration, including the relationship of control, exceeds an amount equivalent to EUR 1 million.

Moreover, a business may attain a specific market concentration with AMC's preliminary consent, regardless of the aggregate value of assets or aggregate volume of sales of the participants to a possible concentration if the share of any participant to the said concentration on a certain market of goods, taking into account relations of control, exceeds 35% and the concentration will occur on that particular market or a related market of goods.

The relevant Ukrainian legislation defines a "concentration," conveniently delineates which types of transactions do not constitute a

"concentration," and provides a list of entities that are considered to be "participants in a concentration." The AMC uses other criteria for determining whether a certain transaction will lead to a monopoly on a particular market. For example, "control" is defined as a deciding influence of one or several affiliated legal and/or physical entities on the economic activity of a business entity or a part thereof, which influence is exercised directly or indirectly.



Further, the Economic Code of Ukraine adds that a company, which possesses a controlling block of shares in a daughter company or enterprise, will be deemed a "holding company," with corresponding legal responsibilities. For instance, if a daughter company enters into disadvantageous transactions or operations at the fault of its controlling enterprise, then the controlling enterprise must compensate the losses caused to the daughter company. Moreover, if a daughter company becomes insolvent and will be adjudicated as bankrupt at the fault of its controlling enterprise, then the controlling enterprise will bear secondary (vicarious) liability before the daughter company's creditors.

This is a far cry from the pre-January 1, 2004 days when the controlling enterprise would simply be liable to the extent of its contributions into the authorized capital of a daughter company.

Monopoly Status

Applicable legislation provides that a business entity occupies a monopoly (dominant) position if it has no competitors on a particular market, or at least no significant competitors, as a result of limited access by other business entities, the existence of privileges or other undue obstacles. A business entity is deemed to have a monopolistic (dominant) position if its share on a specific product market exceeds 35% and such business entity does not prove that it has significant competitors.

If an applicant cannot demonstrate the existence of significant competition on its particular market, the AMC may, at its own discretion, determine that the applicant has a monopolistic advantage even if that applicant's share is less than 35%. This encourages foreign investors and Ukrainian businessmen to run their transactions by the AMC, even if there is only a remote possibility that the transaction will lead to a 35% concentration

within a particular market or economic sector.

Interestingly, two or more business entities may be considered to have a monopolistic (dominant) position on a product market if they do not have any competitors with respect to a specific good, or their competition is insignificant. In such situations, the two businesses' activities may be measured collectively, and if, when calculated together, they meet the criteria for monopolistic advantage, then the AMC may determine that market concentration has been achieved.

Furthermore, several business entities may be deemed to have a monopolistic position if (i) the joint share of no more than three business subjects, which have the largest share on a particular market, exceeds 50%; or (ii) the joint share of no more than five business subjects, which have the largest share on a particular market, exceeds 70%; and they cannot prove the existence of other competitors or significant competition.

Anyone interested in learning more about the existing competition on a specific Ukrainian market should consult the AMC's list of enterprises, which have a monopoly status on a specific market. It is published in the official Ukrainian newspapers, "Uryadovy Kurier," "Golos Ukrainy," "The State Privatization Informational Bulletin."

Taking into account the above-described definitions and thresholds, as well as the application and the accompanying documents, the AMC will render its consent or non-consent to a particular transaction.

Application Review Process

After the applicant submits the necessary paperwork (see enclosed list of necessary documents), the AMC compares the information in the submitted documents with the above-listed thresholds to determine the

market share and monopoly position of a business entity. The AMC's formulae are economic in nature and, therefore, beyond the scope of this legal analysis.

In determining the monopoly status of an applicant, the AMC takes into consideration such criteria as: (i) the list of products and consumers of such products; (ii) the time period during which the applicant carries out its activity on a specific product market; (iii) the territorial and consumer limits of the relevant product market; (iv) the list of competitors on a specific product market; (v) market barriers and market status; and (vi) the list of other business entities with a monopoly or dominant position on the market. Of course, this list is not exhaustive.

Once the AMC has accepted an application, its final consent to a transaction is due within 3 months, provided that no grounds exist to prohibit an intended transaction (i.e., the applicant has provided all required documents and information, and the AMC has determined that there will be no market concentration). If the AMC fails to adopt a decision regarding a proposed concentration within 3 months, then the AMC is deemed to have approved the transaction.

Conclusion

Acquiring factory stock through privatization, as well as on the secondary market, requires careful due diligence. As the leading Ukrainian experts in the field, the Frishberg & Partners M&A team has the necessary resources and experience to bring legal transparency to any contemplated transaction. More, we typically structure the deals to minimize taxation, procure the necessary permissions from the Antimonopoly Committee, and in the end, register the company stock in the name of the new owner. After 15 years of hands-on experience, we can handle the Ukrainian legal component of any joint venture or acquisition. Just ask some of our clients (see enclosed list).

TABLE OF CONTENTS

OF OUR STANDARD DUE DILIGENCE

- 1.0 Ownership Rights
 - 1.1 Historic Overview
 - 1.2 Title Verification: Chronological Overview of the Transformation of the State Owned Enterprise "Company X" into an Open Joint Stock Company
 - 1.3 Chronological Overview of Privatization
 - 1.4 Changes to the Share Allocation Plan
 - 1.5 The Land Plots Used by the Company X
 - 1.6 Real Property Title Registration
 - 1.7 Fixed Assets: Plant, Equipment and Machinery
 - 1.8 Company X's Capital Investments in Other Companies
 - 1.9 Leasing Relations
 - 1.10 Intellectual Property: Trademarks and Certificates

- 2.0 Obligations
 - 2.1 Employee Benefits
 - 2.2 Expenses for Maintaining Objects of Social Infrastructure and Housing
 - 2.3 Environmental Liabilities
 - 2.3.1 Laboratory Control
 - 2.3.2 Water Supplies and Discharge of Industrial Water Waste
 - 2.3.3 Industrial Waste and Compliance with Permits
 - 2.3.4 Payments for Waste Disposal
 - 2.4 Capital Construction and Reconstruction Plans
 - 2.5 Long-Term Loans
 - 2.6 Material Agreements
 - 2.7 Ongoing Litigation
 - 2.7.1 Bankruptcy (subsidiary)
 - 2.7.2 Trademark Infringement
 - 2.7.3 Work-related Injuries
 - 2.7.4 Customs Duty Violations

3.0 Corporate Document Analysis: Charter (By-Laws) and Governing Bodies

- 3.1 Authority of the General Assembly
- 3.2 The Supervisory Council's Authority
- 3.3 Management Board and its Authority
- 3.4 Audit Committee and its Authority
- 3.5 The Charter and its Compliance with Effective Legislation
- 3.6 The Rights of Shareholders Owning More than 10% of the Votes
- 3.7 Principal Resolutions of the General Assembly in 2004-2006

4.0 Major Markets of the Company X's Products

- 4.1 Sales and Markets
- 4.2 Raw Materials and Other Resources

5.0 Accounting and Financial Records

6.0 Conclusions and Recommendations

Annexes



AMCU FILING REQUIREMENTS CHART

Summary of Notification Threshold	Filing Deadline/Filing Fees/ Waiting Period	Comments
<p>Mandatory notification system, with two alternative thresholds.</p> <p>A filing is required for a “concentration”¹/² if:</p> <p>I. A. The aggregate worldwide asset value or sales turnover of the parties to the transaction in the previous fiscal year exceeded 212 million (approximately \$14.9 million);</p> <p style="text-align: center;"><i>AND</i></p> <p>B. Each of at least two participants have a worldwide asset value or sales turnover of more than €1 million (approximately \$1.2 million);</p> <p style="text-align: center;"><i>AND</i></p> <p>C. The asset value or sales turnover in Ukraine of at least one participant exceeds €1 million (approximately \$1.2 million).</p>	<p>Filing Deadline</p> <p>None, but approval is required prior to closing.</p> <p>Filing Fees</p> <p>The basic filing fee is 300 times the untaxed minimum wage (approximately \$).³ [<i>An additional fee of 1220 times the untaxed minimum wage (approximately \$[720]) is due if the Committee provided a preliminary informal assessment of the transaction. (See “Informal Guidance.”)</i>]</p>	<p>Penalties</p> <p>The Committee may impose a penalty of one to 10 percent of the income (revenue)⁴ of the economic entities concerned, depending on the type of violation of the Ukrainian competition statute. Specifically, a penalty of up to five percent of the income of the companies concerned may be imposed for implementation of a concentration without prior approval.</p>
<p>II. In addition, an entity that holds or will hold as a result of the concentration a dominant position in the market (generally considered to be a market share of 35 percent or more), must obtain prior approval for concentrations that further restrict competition in the market.</p> <p>A business entity is considered to be a monopoly when its share of the relevant market in Ukraine exceeds 35 percent. Below 35 percent, however, the Antimonopoly Committee may still decide that a company is a monopolist if its competitors possess comparatively small market shares.</p> <p>Informal Guidance</p> <p>Parties to a potential transaction may apply to the Antimonopoly Committee for an informal preliminary assessment. Obtaining such an opinion, however, does not relieve the parties of the obligation to make a formal filing.</p>	<p>The filing fee for an informal assessment only is 80 times the untaxed minimum wage (approximately \$).</p> <p>Waiting Period</p> <p>Phase I</p> <p>The Committee has 15 days from the date on which the application was filed to determine whether the filing is complete.</p> <p>Once the filing is deemed complete, the Committee has an additional 30 days either to finish its review or decide that a more detailed assessment is necessary.</p> <p>Phase II</p> <p>If the Committee decides that further complex research or an expert’s examination is necessary,</p>	<p>Substantive Standard</p> <p>The substantive standard is whether the transaction will create or strengthen a monopoly position or significantly limit competition in the Ukrainian market or a substantial part thereof.</p> <p>New Statute</p> <p>The new “Regulation on the Procedure for Filing Applications with the Anti-monopoly Committee of Ukraine for Obtaining its Prior Consent to Concentrations of Business Entities” was issued on February 19, 2002 and came into force on March 21, 2002. It supersedes the “Regulation on Control of Economic Concentrations” (1998).</p>

<p>Even where a transaction falls below the thresholds, the parties may apply to the Antimonopoly Committee for an assessment of the transaction.</p> <p>Foreign-to-Foreign Transactions</p> <p>A filing is required for foreign-to-foreign transactions that meet the filing threshold and have an impact upon a domestic product market. There are no special rules or exemptions with respect to the thresholds for foreign economic entities.</p>	<p>the waiting period is extended.</p> <p>Phase II cannot exceed three months. The three months run from the date when the applicant has submitted all requested information in full and the expert's examination is available.</p> <p>Approval may be granted subject to certain remedies designed to address competition concerns raised by the concentration.</p> <p>A concentration must be completed within one year after approval is given, unless the Committee stipulates a longer period in its decision.</p>
--	---

¹ A filing to the Antimonopoly Committee of Ukraine is required for the following types of concentration: (1) merger of economic entities or the addition of an economic entity to another entity; (2) acquisition of direct or indirect control over one or more economic entities or over parts of economic entities by one or more entities (including the establishment of a joint venture that will independently perform economic activities for a long period without resulting in the coordination of competitive behavior either between the joint venture partners or between the partners and the joint venture); (3) direct or indirect purchase or acquisition of control over participation interests that reach or exceed 25 or 50 percent of the votes at the highest governing body of the relevant economic entity; (4) direct or indirect purchase or acquisition of assets, or the right to use assets via management, rent, leasing, concession or other arrangements; and (5) the appointment or election of a person to the board of directors or other supervisory or executive bodies of the economic entity who already occupies one or more of the aforementioned positions in other economic entities, or the creation of a situation where more than half of the members of the supervisory council or executive body of two or more economic entities are occupied by the same persons.

² The Ukrainian law defines "control" as a deciding influence of one or several affiliated legal and/or physical entities over the economic activity of a business entity or a part thereof. Such influence may be exerted directly or indirectly through the following: (1) the right to possess or use all assets or a significant part thereof; (2) the right which will ensure a deciding influence on the formation of the composition, voting results and resolutions of a business entity's governing bodies; (3) the conclusion of agreements (contracts) which make it possible (i) to determine the terms and conditions of economic activities; (ii) to give mandatory instructions; or (iii) to fulfil the functions of a business entity's governing bodies; (4) occupation of the position of chairman or deputy chairman of the supervisory council or management board, or any other supervisory or executive body of a business entity by a person who already occupies one or more of the above positions in other business entities; and (5) the occupation of more than half of the positions of the supervisory council, management board or other supervisory or executive bodies of a business entity by persons who already occupy one or more of the above positions in a another business entity.

³ [As of March 13, 2006, the untaxed minimum wage was 17 Ukrainian hryvnias (approximately \$[3.36]).]

⁴ The income of a company is the revenue derived from the sale of goods, the performance of work, or rendering of services.

DOCUMENTS AND INFORMATION REQUIRED FOR FILING AN APPLICATION WITH THE ANTIMONOPOLY COMMITTEE OF UKRAINE

I. The Purchaser must submit the following documents:

1. Copies of its constituent documents.
2. Copy of the certificate of state registration or an extract from the commercial (banking) register of the Purchaser's country of registration evidencing its registration.
3. An original power of attorney authorizing the Purchaser's representative to act on its behalf before the AMCU to obtain permission for a concentration by acquiring shares;
 - 3.1. A copy of its balance sheet (consolidated balance sheet of the group to which the Purchaser is a party) as of the end of the most recent reporting period;
 - 3.2. A copy of its financial results (profit and loss statement) (consolidated statement of the group to which Purchaser is a party).
4. Draft (purchase) agreements related to the intended acquisition of corporate rights (shares of stock) by the Purchaser.
5. Information regarding the financial aspects of the concentration, i.e., whether the acquisition of corporate rights is intended to be carried out at the expense of the Purchaser's own funds or at the expense of borrowed funds. If the acquisition is intended to be carried out at the expense of borrowed funds, information describing the sources of such borrowed funds must be provided, including the amount of such borrowed funds, the terms of such borrowing and the repayment schedule. In case of a loan (credit), the corresponding (draft) loan (credit) agreement must also be provided.
6. The Purchaser must also provide the following information about itself:
 - 6.1. Information describing its principal business activities, the name of its products (service), volumes of production and/or sales of the entity in units and value, volume of production and/or sales on the territory of Ukraine.
 - 6.2. List of business entities in which the Purchaser owns or manages shares of stock (shares, participation interests) which ensures or exceeds 10% of the votes in the highest governing bodies of such entities (name of the business entity, location, address, size of the block of shares held and the number of the votes in the highest governing body in percentages);
 - 6.3. List of legal entities and natural persons, which own or manage (use) shares in the authorized capital of the Purchaser, which ensures or exceeds 10% of the votes in the highest govern-

ing body of the purchaser (the name of such legal entities or natural persons, location, address, size of the block of shares held and the number of the votes in the highest governing body of the Purchaser in percentages);

- 6.4. List of persons, which are members of the Purchaser's supervisory council, executive body, controlling body, or perform functions of CEO, deputy CEO, CFO (names, addresses, and positions held).
7. With respect to each Ukrainian resident business entity directly or indirectly related to the Purchaser by relations of control, the following must be provided:
 - 7.1. Information regarding the concentration participant's principal business activities and share of the relevant market in the prior years;
 - 7.2. Information on business entities in which a concentration participant holds or manages shares of stock which ensures or exceeds 10% of the votes in the highest governing bodies;
 - 7.3. Information on persons, which hold or manage (use) shares in the authorized capital of a participant of concentration, which ensures or exceeds 10% of the votes in the highest governing body of the participant of concentration;
 - 7.4. Lists of persons which are members of a concentration participant's supervisory council, executive body, controlling body, perform functions of CEO, deputy CEO, CFO, Chief Accountant;
 - 7.5. Information on business entities in which the persons, which perform the functions of chairperson, deputy chairperson of the supervisory council, or executive or controlling body of a participant or of concentration, hold or manage shares, which ensures or exceeds 25% of the votes in the highest governing bodies of such business entities;
 - 7.6. Information on the value of assets and sales proceeds of a participant of concentration for prior years.
 - 7.7. Information of a concentration participant's separate structural sub-units.
8. Information to non-resident business entities directly or indirectly related to the Purchaser by relations of control.
9. Disclosure whether the Purchaser and business entities related to the Purchaser by relations of control bought from (supplied to) the acquisition target goods (services) over the past year. If so, describe the goods (services) purchased (supplied), including volumes, and names of entities which carried out purchases (supplies).
10. Document confirming payment of the fees for filing the application with the AMCU with respect to obtaining permission for a concentration (to be paid in Ukraine by the representative of the applicant).

II. The target company (the "Issuer") must submit the following documents:

1. Copies of decisions by the AMCU regarding the Issuer or business entities related thereto by relations of control (if such decisions exist).
2. Properly certified copies of the following:
 - 2.1. Constituent documents of the Issuer;
 - 2.2. Certificate of state registration of the Issuer.
3. With respect to the Issuer and each Ukrainian resident business entity related thereto by relations of control, the following must be provided:
 - 3.1. Information regarding the concentration participant's principal business activities and share of the market in the prior years;
 - 3.2. Information on business entities in which a concentration participant holds or manages shares of stock, which ensures or exceeds 10% of the votes in the highest governing bodies;
 - 3.3. Information on persons, which hold or manage (use) shares in the authorized capital of a concentration participant, which ensures or exceeds 10% of the votes in the highest governing body of the concentration participant;
 - 3.4. Lists of persons which are members of a concentration participant's supervisory council, executive body, controlling body, perform functions of CEO, deputy CEO, CFO, Chief Accountant;
 - 3.5. Information on business entities in which the persons, which perform the functions of chairperson or deputy chairperson of supervisory council, or executive or controlling body of a participant of concentration, hold or manage shares, which ensures or exceeds 25% of the votes in the highest governing bodies of such business entities;
 - 3.6. Information on the value of assets and sales proceeds of the participant of concentration;
 - 3.7. Information of the concentration participant's separate structural sub-units.
4. Information regarding non-resident business entities directly or indirectly related to the Issuer by relations of control.
5. The above-mentioned list of documents and information represents the minimum requirements of the AMCU and, therefore, is not exhaustive. Please note that the AMCU reserves the right to demand any other additional information during its review of the concentration.

THE FIRM'S CLIENTS INCLUDE:

- Advanced Logic Solutions, Inc.
- AMADEUS GLOBAL TRAVEL DISTRIBUTION, S.A.
- Baltic Beverages Holding;
- Bank Austria Creditanstalt
- British Energy
- Bruhn Internationale Transporte GmbH
- BT Global Services
- Chumak
- Commerzbank Aktiengesellschaft
- Credit Commercial de France
- CTB, Inc.
- Deloitte
- Direct EDI Inc
- DUROPACK
- Emilceramica SpA
- Fiat Auto
- FL Smidth & Co.
- Freshfields Bruckhaus Deringer
- Hewlett-Packard Company
- Imanto AG
- INDEVCO
- Jahn General Products Ukraine
- Jabil Circuit, Inc.
- Quality Schools International
- KLM Royal Dutch Airlines
- KPN Royal Dutch Telecom
- Linklaters
- Notaro & Michalos
- Philips Electronics
- Robert Fleming & Company, Ltd.
- SCL Corporate Finance SA
- Sealed Air Limited
- Skanska East Europe OY
- Stragen Chemical SA
- Sun Microsystems
- Theeuwes de Jong B.V.
- The Danish Investment Fund for Central and Eastern Europe
- Thornkild Kristensen Properties AS
- Tyco Electronics AMP GmbH
- Van Oostveen Medical B.V.
- Vetropack Holding Ltd.
- The Embassy of Austria
- The Embassy of Sweden
- The US Embassy
- Vimpel Communications, among others.



REFERENCES

"Since 1992 we have the pleasure of being the client of Frishberg & Partners, and recent results just confirm that this was and still is a very right choice for KLM Royal Dutch Airlines."

Sergey Fomenko, KLM Royal Dutch Airlines

"We are very satisfied with the services of your law firm and especially appreciate the quick, accurate and business-minded responses and analysis."

Dr. Brigitte Carbonare-Hartsleben, BT Global Services

"I really appreciate the capability and professionalism of your lawyers and the efforts your company successfully put in the defense of ours. We thank you for your assistance and cooperation."

Flavia Smiraglio, Fiat Auto S.p.A.

"We at Sun and I am personally as legal counsel for Sun operation in CIS region, are very pleased with a level of expertise and service which were and are provided to our company in Ukraine by Frishberg & Partners. I would like to particularly mention also a constant effort of F&P lawyers to keep its clients updated on the most recent developments of Ukrainian legal environment and their responsiveness to our needs in that country."

Dr. Andrei Zalivako, Sun Microsystems

"Frishberg & Partners' advice and services are of excellent quality, very timely, reliable and to the point, and with a good understanding of our business interests."

Christoph Zeyen, Tyco Electronics

"As always, thank you for your immediate attention to our needs. Your assistance will help

enable us to successfully complete a very large contract and to keep a very good customer."

Lori K. Rose, CTB, Inc.

"Emilceramica appreciates Frishberg & Partners' professional collaboration in supporting the project "Joint Venture Zeus Keramik" with Ukrainian participation. In this regard, Emilceramica hopes to have Frishberg & Partners' assistance in future."

Dr. Efrem Montepietra, Emilceramica SpA

"Thank you and the colleagues at Frishberg & Partners for your assistance and the very valuable input you provided. We are all happy with the outcome of the matter that was handled well, based on a good sense of judgment, lots of wisdom, good decision making and good use of past learnings from previous experiences in this country."

Elias N. Ashkar, INDEVCO Group

"You did an excellent job for Joss Chemicals BV, and you prepared an excellent report on our behalf. This was very positive for us, and it allowed us to set up our business in Ukraine. Now we are actively pursuing this business thanks to your excellent lawyers."

Jan Huijbregts, Joss Chemicals BV

"We hired Frishberg & Partners to analyze certain issues in the Ukrainian legislation in the process of acquiring a company in Ukraine and were very happy with the services we received. All your lawyers we worked with are extremely professional, competent and helpful. Thank you for a job well done."

Dmitriy Kasyanenko, Vimpel Communications



Over the last 15 years, **Frishberg & Partners** has served as corporate counsel to multinational companies and banks (see our list of clients). We have registered a multitude of joint ventures, subsidiaries and representative offices in Ukraine. By now, the registration process is well-established, as is liquidation.

Acquisition of controlling blocks of shares in Ukrainian companies, however, is an entirely different game, requiring knowledge and experience of local corporate legal specialists. Because each target company is unique, there is no standard approach. That is why our lawyers provide a comprehensive analysis of alternative corporate and tax-efficient acquisition structures in light of the client's specific goals.

Strategic investment is often structured around real property, and sometimes land plots. Together with our real estate specialists, we can set up turn-key operations on industrial greenfield sites, from land right allocations and construction permits to the finished enterprise, fully commissioned and ready for use. Just turn the key.

After the acquisition has taken place, we continue to work closely with our clients to resolve the day-to-day issues, including employment law, capital increases or decreases, tax and customs matters.

At the corporate law firm of **Frishberg & Partners**, our clients truly benefit from getting the most complete package of corporate legal services available on the Ukrainian legal market.

If you have additional questions, please contact us at:

10 Gorky Street, Suite 8
01004 Kiev, Ukraine
tel.: +38 (044) 585-8464; 585-8465
fax: +38 (044) 235-6342; 289-1406
office@frishberg.com.ua

