

New Antitrust Regulation Adopted in Belarus

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A new antitrust authority has been in place since September 2016 in Belarus – The Ministry of antimonopoly regulation and trade (hereinafter – MART). A previous regulator – The Ministry of economy will be in charge of natural monopolies and the creation of holdings.

Antimonopoly and price regulation were transferred to one authority because of the requirement of the Eurasian Economic Union, of which Belarus is a member. Before the the Ministry of economy and the Ministry of trade divided these functions.

After the reform, the regional departments of MART came out from the subordination of local authorities to provide more independence in making their decisions.

The main competition law in Belarus – the Law of the Republic of Belarus dated December 12, 2013 № 94-Z «On counteraction to monopolistic activity and competition development» (hereinafter – the Law № 94-Z), was adopted on the basis of the Model law «On protection of competition», which was developed by the CIS (another integration formation of post-USSR countries, of which Belarus is a member). The Law № 94-Z has borrowed the main categories and principles of regulation from the Model law.

The Law № 94-Z among other forms of control sets up a control of the antitrust authority for economic concentration. The economic concentration concerns deals

and other actions, which can influence competition, including the creation of companies, holdings, and mergers and acquisitions. The Law № 94-Z establishes the principle of extraterritorial regulation: it governs the actions of Belarussian companies outside Belarus that lead to economical concentration, as well as actions of foreign companies in Belarus that may be referred to as economical concentration.

Types of activities liable to antimonopoly control	Legal regulation	The authorized body
The creation and reorganization of commercial organizations through mergers and acquisitions	<ul style="list-style-type: none"> • Art. 17 of The Law № 94-Z • Para 2.3. of Resolution of the Council of Ministers of the Republic of Belarus dated February 17, 2012 №156 (herein after – Resolution № 156); • The Resolution of the Ministry of Economy of the Republic of Belarus from 30.11.2015 № 64 	MART through the regional departments of MART
The creation and reorganization of holding companies	<ul style="list-style-type: none"> • Edict of the President of the Republic of Belarus № 660 dated December 28, 2009. • Art. 17 of the Law № 94-Z • Para 2.4. of Resolution № 156; 	MART through the regional departments of MART

<p>An acquisition of the rights to dispose the stocks (shares) of company by a business entity with a dominant position on the same market</p>	<ul style="list-style-type: none"> • Art. 17 of The Law № 94-Z • Para 2.6 of Resolution № 156; • The Resolution of the Ministry of Economy of the Republic of Belarus from 30.11.2009 № 188 	<p>MART through the regional departments of MART</p>
<p>An acquisition of the rights to dispose more than 25% or more than 50% of stocks (shares)</p>		

Antimonopoly control over an acquisition of stocks (shares) occurs only under the following conditions:

- The book value of the assets of company (regardless of the location of assets), which stocks (shares) are purchased exceeds established amount (on January 2017 about 1.2 million euro);
- The revenue from the sale of goods of such entity (regardless of the place of sale) for the reporting year preceding the year of acquisition, is more than established amount (on January 2017 about 2.4 million euro).

Antimonopoly control over mergers and acquisitions, creation and reorganization of holdings occurs only under the following conditions:

- The book value of the assets of company (regardless of the location of assets) that involved in mergers and acquisitions, or enters into holding, exceeds established amount (on January 2017 about 1.2 million euro);
- The revenue from the sale of goods of such entity (regardless of the place of sale) for the reporting year preceding the year of acquisition, is more than established amount (on January 2017 about 2.4 million euro).
- One of the entities is included in the State Register of economic entities with dominant position on commodity markets or the State register of natural monopolies

	<p>The book value of the assets of entity, whose stocks (shares) are purchased, or involved in the mergers and acquisitions, or enters into holding</p>	<p>The revenue from the sale of goods of entity, whose stocks (shares) are purchased, or involved in the mergers and acquisitions, or enters into holding</p>		
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Mergers and acquisitions			One of the entities is included in the State Register of economic entities with dominant position on commodity markets or the State register of natural monopolies	
The creation and reorganization of holding companies				
An acquisition of the rights to dispose the package of stocks (shares) of company by a business entity with a dominant position on the same market	More than 1 200 000 Euro in the equivalent	More than 2 400 000 Euro in the equivalent	-	Needs a consent of antimonopoly body
An acquisition of the rights to dispose the package of more than 25% or more than 50% stocks (shares)				

Under such conditions the consent of antimonopoly authority must precede an acquisition of stocks (shares), merger or acquisition or creating the holding.

MART gives consent (or motivated refusal) in the form of written conclusion during 30 days (it does not extend beyond the term).

A set of documents for obtaining the consent of the antitrust authority is defined in para 2.6. of Resolution № 156 and includes:

- a statement, according to the form of Annex 1 to the Instruction No 188, which is filed on behalf of person interested in the transaction.
- copies of documents confirming the state registration of person interested in the transaction and of which the transaction is carrying out.
- a copy of the regulation and the document confirming the state registration of a branch, representative office or subsidiary;
- copies of balance sheets of person interested in the transaction, with the explanatory notes thereto and the report on profits and losses (except for the organizations applying the simplified system of taxation);
- information about the main types of goods (works, services), the volume of production, delivery to the Republic of Belarus and exports in volume and value of person interested in the transaction and in respect of which the transaction is carrying out (according to the form of Annex 2 to the Instruction No 188);
- information on persons capable of directly or indirectly determine the decisions of other persons or to influence their adoption by possession by one person in the authorized capital of other legal entity more than 20 percent of shares, or shares of its authorized capital (according to the form of Annex 3 to the Instruction No 188);
- A draft contract of sale on the date prior to submitting an application, as agreed by the parties (with putting signatures and seals of the parties to the contract).

If necessary, the antitrust authority may ask for the other documents not included in this list.

All documents submitting by the applicant must be translated in Russian or Belarusian languages.

A non-receipt of consent of antitrust authority is the basis for the recognition of mergers and acquisitions or transactions with stocks (shares) void by the court at the request of the antitrust authority.

Failure to submit to the antitrust authority the information that is required to monitor the economic concentration is an administrative offense, which is

punishable under the law, in particular Edict of the President of the Republic of Belarus as of February 27, 2012 № 114 “On some measures to strengthen the state antimonopoly regulation and control”; and provides for a fine of 20 to 100 basic units (from 240 to 1200 Euro in equivalent).

The reform of antimonopoly legislation continues: the government introduced in Parliament a bill about amendments to the Law 94-Z in December of 2016.

The bill has not been considered yet, but has been announced by the minister of MART. It is proposed that the threshold for considering a dominant position be reduced further. Currently the threshold is 35 %+. That bill also contains a range of amendments clarifying the categories of unfair competition and introduces criteria for defining it. In our view, the Government has refocused its attention away from price regulation by redistributing powers in favor of the antimonopoly authority. The transfer of regulatory functions to a new body is just the beginning of active changes in the competition law regime.