

The International Comparative Legal Guide to: **Merger Control 2008**

A practical insight to cross-border merger control issues



Published by Global Legal Group with contributions from:

Ashurst
 Balcar Polanský Eversheds
 Boga & Associates
 Bonelli Erede Pappalardo
 Bredin Prat
 Castrén & Snellman Attorneys Ltd.
 Cederquist
 CHSH Cerha Hempel Spiegelfeld Hlawati
 CRA International
 Davis Polk & Wardwell
 De Brauw Blackstone Westbroek
 Elias Paraskevas Attorneys 1933
 ELIG, Attorneys-at-Law
 Estudio Bergstein
 Franceschini e Miranda Advogados
 Freshfields Bruckhaus Deringer
 Gencs Valters Law Firm
 Ghellal & Meckerba

Hengeler Mueller
 Homburger
 Juridicon Law Firm
 Kaye Scholer LLP
 Kim & Chang
 Linklaters LLP
 Liniya Prava
 LK Shields Solicitors
 LOGOS Legal Services
 Lovells LLP
 Michael Shine, Tamir & Co.
 Minter Ellison
 Minter Ellison Rudd Watts
 Morais Leitão, Galvão Teles, Soares da Silva & Associados
 Nagashima Ohno & Tsunematsu
 Nassar Abogados (Centro América) S.A.
 Nielsen Norager

Olaniwun Ajayi
 O'Melveny & Myers, LLP
 Pérez Alati, Grondona, Benites, Arntsen & Martínez de Hoz (h)
 Premnath Rai Associates
 Salans
 Santamarina y Steta, S.C.
 Schönherr
 Simpson Thacher & Bartlett LLP
 SJ Berwin LLP
 Slaughter and May
 Stamford Law Corporation
 Stikeman Elliott LLP
 Tamme & Otsmann
 Vasil Kisil & Partners
 Webber Wentzel Bowers
 Wiercinski Kwiecinski Baehr Sp. k.
 Wikborg, Rein & Co.
 Žurić i Partneri

Ukraine

Denis Y. Lysenko



Anna V. Babych



Vasil Kisil & Partners

1 Relevant Authorities and Legislation

1.1 Who is/are the relevant merger authority(ies)?

The authorities responsible for applying merger control legislation are:

- (i) the Antimonopoly Committee of Ukraine (the “AMC”); and
- (ii) the Cabinet of Ministers of Ukraine (the “CMU”) (to the extent provided under the Laws of Ukraine).

1.2 What is the merger legislation?

The fundamentals of merger control regulation in the Ukraine are established in Article 42 of the Constitution of Ukraine and in Chapter 3 of the Commercial Code of Ukraine of 1 January 2004.

Furthermore, there are two special legislative acts that govern the economic concentration policy: the Law of Ukraine No. 22-10 “On Protection of Economic Competition”, dated 11 January 2001; and the Law of Ukraine No. 3659 “On Antimonopoly Committee of Ukraine”, dated 26 November 1993.

In addition, merger clearance is covered by several regulations of the AMC, in particular:

- Regulation on the procedure for filing an application filing to the AMC to obtain a prior approval for concentration of business entities, as approved by the AMC as of 19 February 2002, No. 33-p (“Regulation No. 33”);
- Regulation on the procedure for filing an application to the AMC to obtain the prior approval for concerted practices of business entities, as approved by the AMC as of 12 February 2002, No.26-p;
- Procedure for granting a permit for concerted practices, a concentration of legal entities, by the Cabinet of Ministers of Ukraine as approved by Decree No.219 of the CMU as of 28 February 2002;
- Model requirements to establishment of business associations for general release from obtaining prior permit of the AMC to their establishment, as approved by the AMC as of 30 November 2006, No.511-p; and
- Methods of determination of a monopoly (dominant) position of legal entities on the market as approved by the AMC as of 5 March 2002 No.49-p.

1.3 Is there any other relevant legislation for foreign mergers?

The applicable legislation of Ukraine provides no specific requirements in the case of foreign-to-foreign mergers. In

particular, neither simplified procedure of notification nor the follow-up notification is available with the AMC.

1.4 Is there any other relevant legislation for mergers in particular sectors?

No specific requirements (thresholds, procedure etc.) for mergers in particular sectors are established under the laws of Ukraine.

2 Transactions Caught by Merger Control Legislation

2.1 Which types of transaction are caught - in particular, how is the concept of “control” defined?

The following transactions may be subject to prior merger clearance:

- (i) the merger or consolidation of a business entity;
- (ii) the acquisition of direct or indirect control over a business entity, by means of: (i) the acquisition of title to those assets comprising the integral property complex or its part (structural subdivision), as well as the rent, lease, concession or acquisition by other means of the right to use such assets, including the acquisition of such assets from the business entity being liquidated; (ii) the appointment/election to the top management position of an individual that already holds one of top management positions in another legal entity; and (iii) causing the cross-over of more than half of the members of the supervisory board, management, or another supervisory or executive body of two or more business entities;
- (iii) the establishment of a business entity, a joint venture (“JV”) by two or more business entities that are independently engaged in business activities for an extended period of time, provided that establishment of such JV is not aimed at, and shall not result in, the coordination of competitive behaviour (i) of its founders; or (ii) of the legal entity and its founders; and
- (iv) the direct or indirect acquisition, obtaining of ownership of, or management over, the shares (participation interest) of the business entity, if such acquisition results in the obtaining of over 25 or 50 percent of the voting rights of the target business entity.

The concept of “control” provided under the applicable legislation is based on the principle of the “possibility of exercising a decisive influence” and, thus, allows for quite a broad interpretation of the existence of relations of control. However, it is only used for the purpose of defining the companies’ groupings which are

constrained by relations of control; it is not applicable for defining the types of transactions which are subject to compulsory merger clearance.

2.2 Are joint ventures subject to merger control?

The JV may be subject to merger control in the following cases:

- (1) when the establishment of a JV by two or more parties is considered to be an *economic concentration* - if the newly-established JV carries out its business activities independently for an extended period of time, and the establishment/incorporation of such JV does not aim at, and shall not result in, the coordination of competitive behaviour (i) of its founders; or (ii) of legal entity and its founders; and
- (2) when the establishment of a JV by two or more parties is considered to be the *concerted practice* of its founders - if the establishment/incorporation of such JV aims at, and shall result in, the coordination of competitive behaviour (i) of its founders; or (ii) of the legal entity and its founders. Pursuant to the applicable legislation, “concerted practice” is: (i) the entry into any agreement; (ii) the adoption of any decisions by associations; (iii) any other agreed competitive activities of business entities; or (iv) the establishment of a JV which aims at, or results in, the coordination of the competitive activities of either the JV or its founders.

The qualification of a JV as either an economic concentration or a concerted action is subject to evaluation by its founders.

An economic concentration in the form of the establishment of a new JV shall require prior merger control clearance if its founders, taken together with their groupings, exceed the thresholds established by the Ukrainian merger control regulations. No specific thresholds as to a JV are applicable.

Concerted practices shall require prior merger control clearance provided that they contain certain “anti-competitive” elements, i.e. if they lead or may lead to the exclusion, elimination or restriction of competition on the market. The criteria applicable in this case are quite evaluative.

2.3 What are the jurisdictional thresholds for application of merger control?

According to the applicable Ukrainian legislation, the transactions referred to in question 1.2 above require merger clearance if the following thresholds are met:

- (1) Either the aggregate value of assets, or the aggregate volume of sales over the last financial year, by participants to the transaction, taking into account their control relations (groupings) and sales made abroad, exceed an amount equivalent to **EUR 12 million** at the exchange rate of the National Bank of Ukraine (“NBU”), effective on the last day of the financial year; and, simultaneously:
 - (i) the value (aggregate value) of assets or the volume (aggregate volume) of sales, including those abroad, by at least two participants to the transaction, taking into account their control relations (groupings), exceeds an amount equivalent to **EUR 1 million** at the exchange rate of the NBU effective on the last day of the financial year; and
 - (ii) the value (aggregate value) of assets, or the volume (aggregate volume) of sales, in Ukraine by at least one participant to the transaction, taking into account its control relations (groupings), exceeds an amount equivalent to **EUR 1 million** at the exchange rate of the NBU effective on the last day of the financial year.

Furthermore, merger clearance in Ukraine is mandatory where either participant (including its grouping) has a market share over

35%, or when the combined market share of the participants to the transaction exceeds 35%; and the transaction takes place in the same market or in adjacent markets, regardless of fixed thresholds.

Please note that specific rules for the calculation of the value of assets/volume of sales are applicable when the participant to a concentration is a bank or an insurance company (for banks - 1/10 of the bank’s assets for both the assets and sales amounts; for insurance companies - 1/10 of its assets for the assets amount, and all profit obtained from insurance activities for the sales amount).

The above thresholds are applicable to any transactions which affect or could affect economic competition in Ukraine. In fact, if the parties to any foreign-to-foreign transactions meet the fixed thresholds, merger clearance is required.

The applicable legislation does not contain any provisions limiting the calculation of the said thresholds only to the activities on the affected market (certain goods/services).

The geographical bounds of the affected market may be defined either (i) as one or several regions; or (ii) as the whole territory of Ukraine. As a matter of practice, for the purpose of notification, the bounds of the affected market may not be considered as wider than the territory of Ukraine.

2.4 Does merger control apply in the absence of a substantive overlap?

Yes, it does. The criteria of both (i) the absence/presence of a substantive overlap on the affected market; and (ii) the influence on competition in the affected market, are not applicable to the application of merger control but are regarded as a substantial test for merger assessment.

2.5 In what circumstances is it likely that transactions between parties outside your jurisdiction (“foreign to foreign” transactions) would be caught by your merger control legislation?

In the event that the parties to the foreign-to-foreign transaction have no commercial presence in Ukraine, but the fixed thresholds are met, it is difficult to convince AMC that merger may not influence the economic competition of Ukraine. The applicable legislation does not envisage any specific test to be used by AMC for the determination of actual or possible influence of a foreign-to-foreign transaction on economic competition in Ukraine.

Additionally, please see the comments in question 2.3 hereinabove.

2.6 Please describe any mechanisms whereby the operation of the jurisdictional thresholds may be overridden by other provisions.

No such mechanisms are provided under the applicable legislation of Ukraine.

2.7 Where a merger takes place in stages, what principles are applied in order to identify whether the various stages constitute a single transaction or a series of transactions?

No specific rules are established with respect to the transactions that take place in stages to identify such transaction either as a single transaction, or as series of subsequent actions each requiring the merger clearance.

In practice the key test to be applied is whether the actions performed in stages are indeed related, and their sequence in the end

would result in the same outcome - i.e. establishment of control over a particular target(s). Obviously, the criteria of the parties to the transaction are taken into account as well. Namely, if the parties to the said interim transactions are the same, then the merger would be considered as one transaction. However, if the control is supposed to be established over a group of related entities each being targeted, then, most probably, AMC would treat such actions as separate transactions requiring merger clearances (except for the merger with respect to several target companies being under direct vertical control).

According to the applicable law, no timeframe is taken into account during such consideration. However, any merger shall be completed within one year since the permit for it is granted by AMC, unless a longer term is prescribed in such permit.

3 Notification and its Impact on the Transaction Timetable

3.1 Where the jurisdictional thresholds are met, is notification compulsory and is there a deadline for notification?

If the fixed thresholds are met, notification with the AMC is compulsory. However, no deadline for application is provided. The main requirement is that the closing of the contemplated transaction is prohibited until the AMC permit is obtained. The parties shall refrain from any actions which are aimed at closing the transaction until they have obtained the permit.

3.2 Please describe any exceptions where, even though the jurisdictional thresholds are met, clearance is not required.

The following actions are specially exempted from the prior merger clearance with the AMC:

- (i) the acquisition of shares (participation interest) of a business entity by a person (entity) whose principal business is the performance of financial or securities operations, provided that such acquisition has been undertaken for the purpose of the subsequent resale of the shares and such person does not vote on any governing body of the business entity. Such transaction may be carried out without the prior approval of the AMC, subject to the resale of such shares (participation interest) within one year after their purchase;
- (ii) the transaction between business entities associated by relations of control are not subject to prior AMC approval, provided that the relations of control were initially established in accordance with the requirements of Ukrainian competition legislation; and
- (iii) the acquisition of control over a business entity or a division thereof, including the right to manage and to administer the property of such business entity, by an appointed receiver in bankruptcy proceedings or by a State official, does not require prior AMC approval.

No specific exceptions are provided for a foreign-to-foreign merger under the applicable legislation of Ukraine.

Additionally, please see the comments in question 2.2 hereinabove.

3.3 Where a merger technically requires notification and clearance, what are the risks of not filing?

Completing the transaction without having obtained the AMC permit (if it must be obtained) shall be considered as the violation of the legislation governing the protection of economic competition in Ukraine. The penalty for such violation shall be a fine of five (5)

percent, calculated on the basis of the grouping's worldwide turnover for the preceding fiscal year. At the same time, as a matter of practice, the AMC calculates the fine on the basis of the Ukrainian turnover of the relevant grouping (partly because enforcement against a foreign business entity is difficult). Besides, as a rule, such penalties could be moderated.

In addition, the AMC is authorised to oblige the parties to eliminate the negative consequences (losses) of the violation.

A transaction which is carried out (closed) without merger clearance is legally binding on, and fully enforceable against, the parties. We are unaware of any cases regarding the foreign-to-foreign transactions when the court, at the request of AMC, has ordered that the transaction that required the merger clearance be invalidated. On the contrary, there are some cases when AMC has issued a permit regarding a transaction that was already closed, but has imposed the fine as envisaged by law.

3.4 Is it possible to carve out local completion of a merger to avoid delaying global completion?

The compulsory requirement for a transaction that requires merger clearance is that the agreement on the merger (other respective document) should contain a provision stating that the closing occurs only upon obtaining the AMC permit.

3.5 At what stage in the transaction timetable can the notification be filed?

The only requirement is to obtain the AMC permit before closing the transaction. The notification can be filed at the stage when the substantial terms and conditions of the transaction become known (in particular, the transaction structure, participants and financial matters).

The applicable legislation allows a draft merger agreement to be filed to the AMC, which, as a rule, needs to be signed at least by one party. Based on the existing practice, it is also possible to provide a letter of intent or memorandum of understanding. However, it is very likely that the draft agreement will be requested. The applicable legislation does not establish any peculiarities of notification timeline with respect to the public offers/bids.

3.6 What is the timeframe for scrutiny of the merger by the merger authority? What are the main stages in the regulatory process? Can the timeframe be suspended by the authority?

The Ukrainian merger clearance procedure takes up to 45 calendar days and includes the following stages:

- (i) acceptance of the notification - the notification shall be considered as accepted if no refusal to accept it is issued by AMC within 15 calendar days - the date of filing + 15 calendar days; and
- (ii) receipt of the AMC approval - acceptance of the notification + 30 calendar days (in practice, the AMC would normally issue the signed permit within 35 calendar days from the date of notification).

The extension of the said period is not allowed (please, additionally see question 5.1). The accelerated procedure for simple cases is not provided. At the same time, the applicable law does not enable AMC to suspend the said time frame.

The applicable legislation provides a possibility of obtaining the preliminary conclusions from the AMC (in the form of a letter) on the necessity to receive the AMC permit for concentration. The

term of consideration in this case is one month. However, such requests are impractical since they require almost the same amount of information to be disclosed to the AMC.

3.7 Is there any prohibition on completing the transaction before clearance is received or any compulsory waiting period has ended? What are the risks in completing before clearance is received?

No completion of the transaction before the authorisation by the AMC (granting of the AMC permit) is allowed under the applicable legislation of Ukraine.

3.8 Where notification is required, is there a prescribed format?

The requirements of the notification form are stated in Regulation No. 33. Notification includes the application itself, and the annexes thereto containing a substantial amount of information / documents, which may be grouped as follows:

- (i) corporate documents of the participants (the general requirement for such documents issued outside Ukraine is that they should be notarised at the place of issuance and legalised/apostilled; all the documents filed with AMC should be translated into Ukrainian);
- (ii) documents confirming the financial potential of the parties (the same requirements as to the corporate documents);
- (iii) information related to the parties and their groupings (including registration data, amount of shareholdings) and their commercial activity (both worldwide and in Ukraine) that includes, without limitation, their turnover data, data on the main suppliers, customers and competitors of each company from the groupings active in Ukraine; information on affected markets (if any) and market share(s) for the two years preceding the year of notification; information on the officials of the companies making up the groupings, their affiliated individuals/legal entities; information related to the transaction structure, etc.; and
- (iv) the economic substantiation of the merger.

Please note that the AMC is authorised to request extra information, provided that the given information/documents do not suffice.

According to the existing practice, the AMC is very demanding with respect to the compilation of the stated notification forms. All parts of the notification forms must be filled in (except for those non applicable to the particular case). Each document on two and more sheets must be bound with a strip; all the documents constituting the notification must have continuous numbering and be filed in binder(s).

No consultations with the AMC before notification are available. However, it is common practice to have consultations with AMC experts during the assessment period.

3.9 Is there a short form or accelerated procedure for any types of mergers?

No short form or accelerated procedure is available for notification (neither depending on the type of merger, nor on the category of cases).

However, the applicant is allowed to request AMC for certain compromise with respect to the scope of information and/ or the documents to be provided in the notification. However, such option is rather an exception, and should be strongly reasoned by the applicant.

3.10 Who is responsible for making the notification and are there any filing fees?

The parties are legally responsible for filing the notification. The applicable legislation provides that the notification may be filed by either party. At the same time, according to the existing practice, the notification is to be filed either by the party that acquires the control or jointly by the parties.

The fee for notification amounts to 300 times the non-taxable minimum personal income, which is currently equivalent to approx. US\$ 1,000.00. No exceptions/reductions of this fee are provided.

The document confirming the payment shall be attached to the notification; otherwise, the consideration of the notification will be held up for a term stated by the AMC. In the event of non-payment within such an additional term, the notification shall be disregarded and the applicant shall be allowed to apply to the AMC with the restatement.

4 Substantive Assessment of the Merger and Outcome of the Process

4.1 What is the substantive test against which a merger will be assessed?

The AMC grants its permit to a transaction as long as such transaction will not result in the emergence of a monopoly in the affected market and will not materially restrict competition in the affected market or in its substantial part. In the case of overlapping market(s), the emergence of a monopoly is tested through the expected aggregated market share(s) (the entity holding 35% in the market may be considered as having a monopoly position on the market).

The public interest is of substantial concern when the merger is assessed by the CMU.

As of the current date, no guidelines on the approach to substantial merger assessment have been issued.

4.2 What is the scope for the involvement of third parties (or complainants) in the regulatory scrutiny process?

The applicable legislation provides a possibility of involving a third party at the stage of case consideration. The ground for such involvement is that the AMC's decision may substantially affect the rights and interests of such third party.

4.3 What information gathering powers does the regulator enjoy in relation to the scrutiny of a merger?

The following actions shall be considered as the violation of competition legislation involving information disclosure matters:

- (i) not furnishing of the information or furnishing incomplete information within the term provided by the AMC or its local bodies, as well as the term envisaged by the applicable legislation;
- (ii) furnishing inadequate information; and
- (iii) impeding the AMC employees from conducting the inspections, examinations, taking out and distraining the property, documents or devices carrying the information.

The penalty for the said violations is set as up to one (1) percent calculated on the basis of the grouping's worldwide turnover in the year preceding the year in which the penalty is to be imposed.

The AMC is authorised to obtain the required information through official inquiries to different State bodies, within the limits of their powers.

4.4 During the regulatory process, what provision is there for the protection of commercially sensitive information?

The information to be furnished by the parties to the AMC may be marked by the applicant as “*information with limited access*”, which means that the AMC is obliged to keep it strictly confidential (there is a specific internal procedure for its examination).

All the information filed with the AMC (even if not marked as “*information with limited access*”) is not subject to official disclosure; the AMC publishes only the general information on the adopted decision. However, please note that any designation of the furnished information as confidential should be strongly reasoned by the applicant. In practice, AMC may treat such designation as unjustified and, thus, consider the notification within the common procedure.

5 The End of the Process: Remedies, Appeals and Enforcement

5.1 How does the regulatory process end?

The AMC decides whether to grant the permits to/refuse the concentration at its regular meetings (twice a week), whereupon the AMC issues the respective decisions to be delivered to the applicants. If, within the maximum period provided to the AMC for notification, no AMC decision is issued, it is considered that a positive decision has been adopted.

The consideration of the case may be initiated by the AMC provided that the AMC reveals the grounds for the prohibition of the notified transaction, or if there is a need for comprehensive and in-depth research or expertise. The term of consideration may not exceed three (3) months. However, the date of commencement of the said three-month period is the date when “*all the additionally required documents/information are/is disclosed with the AMC and the opinion of the expert is obtained (if required)*”, which may lead to an ambiguous interpretation of the commencement date. If no AMC decision is issued within the three-month period, the permit is considered to be granted on the last day of the said period, provided that consideration of the case is not held up due to being challenged in court.

5.2 Where competition problems are identified, is it possible to negotiate “remedies” which are acceptable to the parties?

The “remedies” to be imposed in the case of competition are not provided under the relevant Ukrainian legislation

5.3 At what stage in the process can the negotiation of remedies be commenced?

This is not applicable in Ukraine.

5.4 If a divestment remedy is required, does the merger authority have a standard approach to the terms and conditions to be applied to the divestment?

There is no unified approach to the terms and conditions of divestment implementation. The law provides that any divestment

remedy should eliminate or mitigate the negative consequences of a merger for the competition. The remedies may provide for the limitation of rights to manage, use or dispose of any assets, as well as for the forced disposition of the assets concerned.

Whenever the participant holds the monopolistic (dominant) position on the market, the AMC is entitled to decide on a compulsory split of such monopolist. At the same time, the split is not applicable under the circumstances when (i) there is no possibility to separate the company, its organisational units due to certain organisational or territorial reasons; and (ii) a close technological connection within the company or between its organisational units exists (e.g. if the company utilises more than 30% of the products produced by itself or its organisational unit).

Furthermore, the company subject to split may, at its discretion, decide on its transformation, instead of a split, provided that its monopolistic (dominant) position would be eliminated.

5.5 Can the parties complete the merger before the remedies have been complied?

A general rule is that a merger may be conditional upon a divestment (or another remedy imposed by the AMC). At the same time, the applicable law provides no specific requirement to have the divestment remedy complied in full before the merger is completed. However, the AMC is entitled to reconsider its decision on granting the permit to concentration, whenever the divestment remedy is not complied with by the applicant / parties to the concentration.

5.6 How are any negotiated remedies enforced?

This is not applicable in Ukraine.

5.7 Will a clearance decision cover ancillary restrictions?

The AMC is entitled, simultaneously with the granting of its permit, to oblige the parties to the allowed transaction to take certain actions that eliminate or extenuate a negative impact of the transaction on competition in Ukraine. Such obligations may, in particular, provide for certain limitation of management, of administration or of disposal of assets; as well as, on the contrary, setting the obligation to dispose of the company’s assets. However, no guidelines in this respect are issued.

5.8 Can a decision on merger clearance be appealed?

Yes, it can. The negative decision of the AMC may be appealed to the Cabinet of Ministers of Ukraine (the “CMU”). In this case, the CMU may grant its approval of the performance of certain transactions under specific circumstances. Such circumstances are limited to those cases where the parties can prove that the positive effect of the transaction on the public interest is much greater than its negative consequences. However, even in this case, the CMU will refuse to grant the permit if such negative consequences would threaten the existence of the market economy in Ukraine.

5.9 Is there a time limit for enforcement of merger control legislation?

The limitation period shall be five (5) years as of the day of violation and in case of lasting violation - as of the day of its actual completion.

6 Miscellaneous

6.1 To what extent does the merger authority in your jurisdiction liaise with those in other jurisdictions?

As for now, the AMC performs international cooperation in three directions:

- cooperation on the basis of bilateral agreements signed with several European states (Central and Eastern Europe);
- cooperation on the basis of multilateral international treaties

**Denis Lysenko**

Vasil Kisil & Partners
17/52A Bogdana Khmelnytskogo St.
Kyiv 01030
Ukraine

Tel: +38 044 581 7777
Fax: +38 044 581 7770
Email: denis.lysenko@vkp.kiev.ua
URL: www.kisilandpartners.com

Denis Lysenko has been a partner at Vasil Kisil & Partners since 2006, and joined the firm in 1999. His practice focuses on mergers and acquisitions, banking and corporate law, antitrust law, investments, privatisation.

Mr. Lysenko has wide experience in representing interests of foreign investors (lenders) in cross-border transactions involving Ukrainian assets, as well as of Ukrainian companies - strategic investors in privatisation projects of Central and Eastern Europe, and experience of cooperation with the European Commission on competition matters. Mr. Lysenko successfully led the team of the firm's lawyers in multiple M&A and investment projects in the following industries: banking and insurance, real estate, steel, machine- and shipbuilding, telecommunications, pulp & paper, agricultural and consumer goods sectors etc.

between CIS member states (Multilateral Treaty on Performance of Agreed Antimonopoly Policy); and

- cooperation with specialised international organisations (CIS International Council for Antimonopoly Policy, International Competition Network).

6.2 Please identify the date as at which your answers are up to date.

02 August 2007.

**Anna Babych**

Vasil Kisil & Partners
17/52A Bogdana Khmelnytskogo St.
Kyiv 01030
Ukraine

Tel: +38 044 581 7777
Fax: +38 044 581 7770
Email: babych@vkp.kiev.ua
URL: www.kisilandpartners.com

Anna Babych is a senior associate at Vasil Kisil and Partners; she joined the firm in 2004. Ms Babych specialises in corporate law, mergers and acquisitions, antitrust law, securities regulations. She advises the firm's foreign and domestic clients on M&A structuring matters and documentation, as well as successfully provides continuous transaction and regulatory approval support, being part of the firm's corporate and M&A practice group.

VASIL KISIL & PARTNERS

ATTORNEYS & COUNSELLORS AT LAW

Established in 1992, Vasil Kisil & Partners is one of the leading Ukrainian law firms. 45 attorneys of the firm work across a range of specialised business law areas, including corporate and commercial, M&A, litigation and international arbitration, real estate, banking and finance, taxation and IP matters. The firm's clientele includes a mix of major international and domestic companies and financial institutions, as well as private individuals, representing both portfolio and strategic investors, lenders and borrowers. Vasil Kisil & Partners' team is dedicated to the professional legal advice and the highest standards of client service.