Polish provisions on company mergers

BY DOMINIK GALKOWSKI

Polish regulation on the process of merging companies does not differ from solutions applied in other European states. Furthermore, these laws are influenced by changes to similar European regulation. However, in analysing the company merger control process in Poland, it is important to differentiate two significant issues: first, the control of the registry court, and second, competition law.

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The registry court will assess whether all the required merger documents were prepared and attached to the motion, and also examines their content. Further, the registry court will determine whether the companies have adhered to their statutory requirements. It also assesses the validity of the legal transaction covered by the document constituting the basis of the merger. The examination outlined above aims to ensure that the merger procedure is conducted in accordance with the relevant provisions of the Code of Commercial Companies. A well-prepared merger process reduces problems for the registry court to resolve.

Second, for larger transactions, an issue of key importance is ensuring that the merger satisfies the provisions which regulate business concentrations, under the Act on Competition and Consumer Protection (the Anti-Monopoly Act).

The merger will be submitted for review to the president of the Office of Competition and Consumer Protection in the event that: (i) the total global turnover of the companies participating in the concentration in the turnover year preceding the year of the submission exceeds the equivalent of €10m; or (ii) the total turnover in the territory of Poland of the companies participating in the concentration in the turnover year preceding the year of the submission exceeds the equivalent of €50m.

In turn, in accordance with the minimum regulation, the intent of concentration is not subject to submission if the turnover of the target company did not exceed €10m within the territory of Poland during either of the two turnover years preceding the submission. Transactions involving the temporary purchase of shares or stocks for the purposes of their further resale (with some exceptions) are also exempt from the obligations of submission. The purchase of an enterprise in the course of bankruptcy proceedings (unless it leads to the takeover of a competitor or the buyer belongs to a capital group to which the competitors of the acquired enterprise belong) is also not subject to submission. Of course, the merger of enterprises belonging to the same capital group is also exempt from the submission.

In determining whether there is a need to submit the merger for review, the provisions within two years from the date of the issuance of a decision (even though this deadline can be exceeded at the request of the merging companies, if they can prove that a change in circumstances has occurred which means that significantly limiting competition).

In conclusion, Polish provisions regarding company mergers and competition are well-constructed and effective in practice, and do not differ from other European regulations. That said, as is the case with any regulation, they are not free from uncertainty.

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