# The Merger Control Review

Third Edition

Editor
Ilene Knable Gotts

Law Business Research

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THIRD EDITION

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# EDITOR'S PREFACE

Perhaps one of the most successful exports from the United States has been the adoption of mandatory pre-merger competition notification regimes in jurisdictions throughout the world. Although adoption of pre-merger notification requirements was initially slow – with a 13-year gap between the enactment of the United States' Hart-Scott-Rodino Act in 1976 and the adoption of the European Community's merger regulation in 1989 – such laws were implemented at a rapid pace in the 1990s, and many more were adopted and amended during the past decade. China and India have just implemented comprehensive pre-merger review laws, and although their entry into this forum is recent, it is likely that they will become significant constituencies for transaction parties to deal with when trying to close their transactions. Indonesia also finally issued the government regulation that was needed to implement the merger control provisions of its Antimonopoly Law. Many of the jurisdictions that were 'early adopters' have either refined their processes and procedures in substantial ways or have proposals pending to do so, typically to conform their regime with the pre-merger regimes of other jurisdictions (e.g., Brazil, Canada and the UK). This book provides an overview of the process in each of the jurisdictions as well as a discussion of recent decisions, strategic considerations and likely upcoming developments in each of these. The intended readership of this book comprises both in-house and outside counsel who may be involved in the competition review of cross-border transactions.

As shown in further detail in the chapters, some common threads in institutional design underlie most of the merger review mandates, although there are some outliers as well as nuances that necessitate careful consideration when advising clients on a particular transaction. Almost all jurisdictions either already vest exclusive authority to transactions in one agency or are moving in that direction (e.g., Brazil, France and the UK). The US and China may end up being the outliers in this regard. Most jurisdictions provide for objective monetary size thresholds (e.g., the turnover of the parties, the size of the transaction) to determine whether a filing is required. Germany provides for a *de minimis* exception for transactions occurring in markets with sales of less than €15 million. There are a few jurisdictions, however, that still use 'market share' indicia (e.g., Bosnia and Herzegovina, Colombia, Lithuania, Portugal, Spain, Ukraine and the UK). Most jurisdictions require that both parties have some turnover or nexus to their jurisdiction. But, there are some jurisdictions that take a more expansive view. For instance, Turkey recently issued a decision finding that a joint venture ('JV') that produced no effect on Turkish markets was reportable because the JV's products 'could be' imported into Turkey. Germany also takes an expansive view, by adopting as one of its thresholds a transaction of 'competitively significant influence'. Although a few merger notification jurisdictions remain 'voluntary' (e.g., Australia, Singapore, the UK and Venezuela), the vast majority impose mandatory notification requirements.

Almost all jurisdictions require that the notification process be concluded prior to completion (e.g., pre-merger, suspensory regimes), rather than permitting the transaction to close as long as notification is made prior to closing. Many jurisdictions can impose a significant fine for failure to notify before closing even where the transaction raises no competition concerns (e.g., Austria, the Netherlands, Romania, Spain and Turkey). Some jurisdictions impose strict time frames by which the parties must file their notification. For instance, Cyprus requires filing within one week of signing of the relevant documents and agreements; Brazil requires that the notification be made within 15 business days of execution of the agreements; and Hungary and Romania have a 30-calendar-day time limit from entering into the agreement for filing the notification. Some jurisdictions that mandate filings within specified periods after execution of the agreement also have the authority to impose fines for 'late' notifications (e.g., Bosnia and Herzegovina and Serbia) for mandatory pre-merger review by federal antitrust authorities.

Most jurisdictions more closely resemble the European Union model than the US model. In these jurisdictions, pre-filing consultations are more common (and even encouraged), parties can offer undertakings during the initial stage to resolve competitive concerns, and there is a set period during the second phase for providing additional information and for the agency to reach a decision. In Japan, however, the Japanese Federal Trade Commission ('JFTC') announced in June 2011 that it would abolish the prior consultation procedure option. When combined with the inability to 'stop the clock' on the review periods, counsel may find it more challenging in transactions involving multiple filings to avoid the potential for the entry of conflicting remedies or even a prohibition decision at the end of a JFTC review. Some jurisdictions, such as Croatia, are still aligning their threshold criteria and process with the EU model. There remain some jurisdictions even within the EU that differ procedurally from the EU model. For instance, in Austria the obligation to file can be triggered if only one of the involved undertakings has sales in Austria as long as both parties satisfy a minimum global turnover and have a sizeable combined turnover in Austria.

The role of third parties also varies across jurisdictions. In some jurisdictions (e.g., Japan) there is no explicit right of intervention by third parties, but the authorities can choose to allow it on a case-by-case basis. In contrast, in South Africa, registered trade unions or representatives of employees are even to be provided with a redacted copy of the merger notification and have the right to participate in Tribunal merger hearings and the Tribunal will typically permit other third parties to participate. Bulgaria has announced a process by which transaction parties even consent to disclosure of their confidential information to third parties. In some jurisdictions (e.g., Australia, the EU and Germany), third parties may file an objection against a clearance.

In almost all jurisdictions, once the authority approves the transaction, it cannot later challenge the transaction's legality. The US is one significant outlier with no bar for subsequent challenge, even decades following the closing, if the transaction is later believed to have substantially lessened competition. Canada, in contrast, provides a more limited time period for challenging a notified transaction.

As discussed below, it is becoming the norm in large cross-border transactions raising competition concerns for the US, EU and Canadian authorities to work closely with one another during the investigative stages, and even in determining remedies, minimising the potential of arriving at diverging outcomes. Regional cooperation among some of the newer agencies has also become more common; for example, the Argentinian authority has worked with that in Brazil, and Brazil's CADE has worked with Chile and with Portugal. Competition authorities in Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, Serbia, Montenegro and Slovenia similarly maintain close ties and cooperate on transactions. In transactions not requiring filings in multiple EU jurisdictions, Member States often keep each other informed during the course of an investigation. In addition, transactions not meeting the EU threshold can nevertheless be referred to the Commission in appropriate circumstances. In 2009, the US signed a memorandum of understanding with the Russian Competition Authority to facilitate cooperation; China has 'consulted' with the US and EU on some mergers and entered into a cooperation agreement with the US authorities in 2011, and the US has also announced plans to enter into a cooperation agreement with India.

Minority holdings and concern over 'creeping acquisitions', in which an industry may consolidate before the agencies become fully aware, seem to be gaining increased attention in many jurisdictions, such as Australia. Some jurisdictions will consider as reviewable acquisitions in which only 10 per cent interest or less is being acquired (e.g., Serbia for certain financial and insurance mergers), although most jurisdictions have somewhat higher thresholds (e.g., Korea sets the threshold at 15 per cent of a public company and otherwise 20 per cent of a target; and Japan and Russia, at any amount exceeding 20 per cent of the target). Jurisdictions will often require some measure of negative (e.g., veto) control rights, to the extent that it may give rise to *de jure* or *de facto* control (e.g., Turkey).

Given the ability of most competition agencies with pre-merger notification laws to delay, and even block, a transaction, it is imperative to take each jurisdiction – small or large, new or mature – seriously. China, for instance, in 2009 blocked the Coca-Cola Company's proposed acquisition of China Huiyuan Juice Group Limited and imposed conditions on four mergers involving non-Chinese domiciled firms. In *Phonak/ReSound* (a merger between a Swiss undertaking and a Danish undertaking, each with a German subsidiary), the German Federal Cartel Office blocked the merger worldwide even though less than 10 per cent of each of the undertakings was attributable to Germany. Thus, it is critical from the outset for counsel to develop a comprehensive plan to determine how to navigate the jurisdictions requiring notification, even if the companies operate primarily outside some of the jurisdictions.

For transactions that raise competition issues, the need to plan and to coordinate among counsel has become particularly acute. As discussed in the last chapter, it is no longer prudent to focus merely on the larger mature authorities, with the expectation that other jurisdictions will follow their lead or defer to their review. In the current environment, obtaining the approval of jurisdictions such as China and Brazil can be as important as the approval of the US or EU. This book should provide a useful starting point in this important aspect of any cross-border transaction being contemplated in the current enforcement environment.

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Wachtell, Lipton, Rosen & Katz
New York
July 2012

# Chapter 14

# ECUADOR

*Diego Pérez-Ordóñez and José Urízar*[1]

## I INTRODUCTION

Pursuant to a neo-liberal economic policy adopted in Ecuador, several attempts to enact a law on competition were made beginning in the 1990s, all of which failed due to lack of congressional support and due to pressure from important economic interests. Finally, the Organic Law on Market Regulation and Control was enacted in 2011, notwithstanding the existence of a competition policy and regime that had been in place since March of 2009 based on an Andean Community decision.

Compared with our neighbours, Ecuador is considerably lagging in developing and applying a competition regime. In relation to Colombia and Peru, Ecuador is almost two decades behind with respect to the development and application of a competition policy. Although it was not very efficient and seldom used to preserve competition – and was used rather as a means for price control – Colombia enacted its first competition law in 1959; this changed in the early 1990s pursuant to an economic liberalisation policy adopted and the new Constitution enacted in that country. A similar situation occurred in Peru where competition policy and legislation were adopted in 1991 simultaneously with a structural change in economic policies.

Notwithstanding the delay in developing a competition policy and regime in Ecuador, their legal bases can be found in the now repealed 1998 Constitution. Article 244 of the 1998 Constitution contemplated the state's right and obligation to promote the development of competitive markets, to boost competition and to penalise monopolistic and other practices preventing or distorting competition. It is clear therefore that, at the latest beginning in 1998, there was a legal framework in place compatible with a competition regime in Ecuador.

A new Constitution was enacted in Ecuador in 2008. The new Constitution, like the previous one, comprises provisions that guarantee competition. Article 304

1 Diego Pérez-Ordóñez is a partner and José Urízar is an associate at Pérez Bustamante & Ponce.

mandates that the objective of the state's commercial policy will be the prevention of monopolistic and oligopolistic practices. Article 334 provides that the state must promote equitable access to elements for production, preventing concentrations or the hoarding of elements and resources for production. Article 335 sets forth an obligation for the state to establish mechanisms to prevent any monopolistic practices, abuse of market dominance, and unfair competition. Finally, Article 336 provides that the state must promote the reduction of market distortions, ensuring market transparency and efficiency by encouraging competition in equal circumstances. It is clear therefore that, pursuant to the 2008 Constitution, Ecuador was both able as well as obliged to enact competition legislation punishing the abuse of market dominance, anti-competitive agreements and unfair competition, and to set forth a control of concentrations.

On the other hand, the Andean Community, of which Ecuador has been a member since its creation, has had a competition policy in place since its very beginning according to Decision 45, which was replaced in 1987 by Decision 230, replaced by Decision 285 in 1991 and, finally, replaced by Decision 608 in 2005. Those decisions were and are meant to be applied in relation to commerce among Andean Community member countries and not internally by the member countries. However, pursuant to Andean Community Decision 616, Ecuador was able to apply Andean Community Decision 608 in internal matters due to lack of internal legislation in that respect and was obliged to designate a national authority in charge of applying Decision 608 in domestic matters until an internal competition legislation was enacted and an authority in charge of its application was created.

Pursuant to Andean Community Decision 616, in March 2009 Executive Decree No. 1614 made possible the application of Andean Community decisions to domestic matters in Ecuador. Executive Decree 1614 set forth certain procedural rules and created and designated the Office of the Under Secretary of Competition as part of the Ministry of Industries and Productivity for purposes of applying the rules comprised in Andean Community Decision 608. Andean Community Decision 608 includes rules relating to abuse of market dominance and anti-competitive agreements, but it lacks rules relating to unfair competition and control of concentration. Thus, until the Organic Law on Market Regulation and Control was enacted, no legislation existed making control of concentrations possible. Pursuant to the Organic Law on Market Regulation and Control, the Under Secretary of Competition was designated as the authority in charge of application of the Law until the Superintendency of Market Power Control was created (but which has not yet been designated). However, Executive Decree No. 1614, which created and granted jurisdiction to the Office of the Under Secretary, did not enable it to deal with unfair competition matters or concentrations of control; thus, notwithstanding the enactment of the Law, no actual concentration control regime is yet in place.

In view of the foregoing, since there is no effective concentration control regime in place at present in Ecuador, it must be noted that there exists a commercial regime that regulates mergers which is applied by the Superintendency of Companies. There are, however, many forms of concentration other than mergers that are not even controlled by the Superintendency of Companies. Therefore, there is no effective control of concentrations with respect to competition-related issues so far.

## II THE NEW ECUADORIAN LEGISLATION

An Organic Law on Market Regulation and Control ('the Law') was enacted on 13 October 2011. On 23 April 2012, the President of Ecuador signed Executive Decree No. 1152 published in the Official Register of 7 May 2012, comprising Regulations ('the Regulations') to that Law. This is the first time, from the domestic standpoint, that legislation on competition has ever existed in Ecuador and this is also the first time that prior control of mergers and acquisitions has been implemented in Ecuador. At the time of writing, however, the Deputy Superintendent for Market Control – who is the future authority in charge of regulating and authorising mergers and acquisitions – has not taken office.

### i Prior control

The Law includes several provisions relating to prior control of mergers and acquisitions. Their major characteristics are:

*a* economic concentration is defined as a change or takeover of one or several enterprises or economic operators;

*b* the prior authorisation from the Superintendency of Market Control must be requested. The Superintendency is the authority over this matter (but has not taken office at the time of writing);

*c* actions on economic concentration are broad and provide examples of: (1) mergers; (2) transfers of all the assets of a businessman; (3) direct or indirect acquisition of shares or share participations or debt certificates giving rise to the right to control; (4) links through common administration, openly and as an example; 5) any act or agreement transferring the assets of an economic operator or granting control or determinant influence on an economic operator's adoption of regular or extraordinary administration decisions; and

*d* the Regulations state that 'control' is to be understood as control over any contract, act or otherwise that, bearing in mind *de facto* and *de jure* circumstances, confer the possibility of exercising substantial or determinant influence over an enterprise or an economic operator. Control may be joint or exclusive.

### ii The conditions

Bearing the foregoing in mind, two conditions exist to request authorisation:

*a* The total volume of the business in Ecuador of all participants in the transaction should exceed – during the fiscal year prior to the operation – the amount of unified basic remunerations in force established by the Regulation Board. The Board, which according to the Law depends on the Superintendency of Market Control, has not yet determined the amount. Unified basic remunerations are a measure of value linked to the regime of salaries in Ecuador and are expressed in US dollars – the legal tender in Ecuador.

*b* Concentrations involving economic operators undertaking the same economic activity and that, as a consequence of the concentration, a quota equal to or greater than 30 per cent of the relevant market of the goods or services in Ecuador or in a specific geographic market is acquired or increased.

### iii Timing, terms and requirements – notice as of completion of the agreement

Concentration operations that require prior authorisation must be notified for prior examination within eight days of the completion date of the agreement (draft act or contract). The Regulations to the Law provide that 'completion of agreement' is defined as follows:

*a* in the case of mergers: from the moment when at least one of the participants at the shareholders meeting has agreed to the merger;

*b* in a transfer of a businessman's assets: from the moment the entities agree to the operation and determine the form, term and conditions thereof. In the case of companies, as of the moment the transfer is approved by the shareholders meeting;

*c* in the case of purchase of ownership of or rights over shares or share participations or debt instruments: from the time the participants consent to the operation giving rise to the concentration and they determine the form, term and conditions for its performance;

*d* in the event of a link through common administration: from the time the administrators have been designated by the shareholders meeting; and

*e* any other agreement that factually or legally transfers the assets of an entity or that grants the entity a determinant influence or control on decision making: from the time the parties consent to the operation giving rise to the concentration and determine the form, term and conditions for its performance.

Officially or upon petition of the economic entities involved in a concentration operation, the Superintendency of Market Control may request notification even if the aforementioned conditions have not been met. The entities will be allowed 30 days to justify their failure to notify. Afterwards, a 60-day investigation will commence (extendable for 60 additional days).

### iv Requirements for notification

Notice must be given by the operator who makes the acquisition or acquires control, except when several operators acquire joint control. In that case, notice must be given jointly through a common attorney in fact.

The Regulations to the Law provide for 11 information points and five specific documentary requirements for each such notice.

### v Terms and charges

The authority is allowed 60 business days to approve, deny or condition the transaction. That period is extendable for a further 60 days. The Regulations have granted the Superintendency the right to determine charges as established in the Law and in the Organic Code on Planning and Public Finances providing that an analysis of concentrations is the event that gives rise to the charge.

### vi Concentrations that have taken place since 13 October 2011 until the Superintendency is created

Since the enactment of the Law it has been mandatory to give notice of any concentration operations. There is, however, a vacuum in the Law because it fails to determine the entity in charge of taking cognisance of such notices until Regulations are issued and a Superintendency of Market Control is created.

To fill that vacuum, the first transitory provision of the Regulations states that any operations performed since that date ought to be notified *ex post* to the Superintendency following the regular procedure for investigation pursuant to Articles 26 and 27 of the Regulations when notices are not given. This fact could lead to imposing fines based on failure to notify, although in practice it is impossible to notify operations if there is no competent entity empowered to receive such notices. However, a regulatory obligation imposed in order to obtain authorisation from an authority that, on the date this paper is published, still does not exist is doubtful and questionable.

## III THE MERGER CONTROL REGIME

Mergers of commercial companies are ruled by the Law on Companies. According to corporate legislation, a merger of companies may take place in two ways:

*a* when two or more companies join to form a new company that succeeds them regarding their rights and obligations (merger by union); or

*b* when one or more companies are taken over by another that continues its existence (merger by takeover).

### i Procedures for a merger

For a merger of any company into a new company to take place, first of all it is necessary to agree about its dissolution and afterwards to transfer all the corporate assets in bulk to the new company. If the merger results from a takeover of one or more companies by another existing company, the latter (that is, the existing company) must likewise acquire the assets of the company or companies taken over by means of capital increase, in an amount that may be applicable.

In the event of a merger by takeover, the company taking over must approve the basis for the operation and the amended incorporation charter during a special shareholders' meeting specifically called for that purpose. The companies that will be taken over or that merge in order to create a third company must likewise approve the merger in the same manner (that is, by calling a shareholders' meeting).

Without prejudice to the control of mergers specified herein, the Superintendency of Companies must approve the public deed comprising the merger of commercial companies and, for the merger to take effect, an excerpt of the deed must be published and subsequently the deed must be registered with the Mercantile Registry.

### ii Effects of a merger

The effects of a merger of two or more companies, as the case may be, are the following:

*a* In the case of a merger by union, that is, when two or more companies join to create a new company, the major effect is the appearance of a new juridical person that is the successor of the rights and obligations of the merged companies.

*b* In the case of a merger by takeover, the company that takes over will be in charge of paying the liabilities of the company taken over and must assume the responsibilities inherent to a liquidator with respect to the creditors of the company that was taken over.

From a taxation standpoint, the Tax Code provides that those who acquire businesses or enterprises and who are responsible in the capacity of acquirers or successors of assets will be liable for all taxes owed by the transferor and for the taxes generated from the business or enterprise being transferred during the year the transfer takes place and for the two preceding years. Liability is limited to the value of the assets. On the other hand, the Code also provides that companies substituting other companies will be liable as acquirers or successors of properties and must be in charge of the assets and liabilities, in whole or in part, by reason of merger, transformation, takeover or otherwise. Liability includes the taxes owed up to the date of the corporate action concerned.

Transfers of assets and liabilities in mergers are not subject to income tax, and the greater or lesser value reflected in the value of the shares of merged companies is not taxable or deductible. Transfers of assets (tangible or intangible) may take place at present value or at market value.

### iii Acquisition by assignment of business

Another form of acquisition – different from the already-mentioned merger varieties – is the sale of all the merchandise or assets of a businessman, which is governed by the Commercial Code. In practice, this system has been legally used to purchase and sell all assets and liabilities of a businessman, that is, of an individual capable to enter into contracts and who usually performs commercial activities, of a commercial corporation (i.e., a company controlled by the Superintendency of Companies), or of the branch of a foreign company.

It should be taken into account that this system does not result in the union of two or more juridical persons or the takeover of one or more of them by a third party such as in the case of mergers ruled by the Law on Companies but, rather, it is a commercial purchase and sale contract provided that it involves all the merchandise or assets of a businessman. According to Ecuadorean professional practice, this system has been used mainly to sell the assets and liabilities of the branch of a foreign company to a third party such as, for example, a stock corporation or a limited liability company. The use of such contracts, in this example, is due to the impossibility of using the classical merger because branches of foreign companies do not have a capital stock divided into shares or share participations. Besides, it is considered that branches of foreign companies are under the same legal capacity as their parent companies.

The only formality to perfect those contracts is that, under penalty of nullity, they must be executed through a public deed. It is not necessary to register them with the Mercantile Registry.

From a taxation standpoint, the sale of a business transferring assets and liabilities is not subject to the value added tax – the same as in mergers of companies.

**iv Acquisition by assignment of shares and/or share participations**

Another way to acquire an Ecuadorean commercial company is through a transfer of shares or share participations. The capital of corporations, which are capital stock companies, is divided into shares. On the other hand, the capital of limited liability companies or partnerships is divided into share participations.

Non-financial stock corporations are subject to the Law on Companies and are controlled by the Superintendency of Companies. Their capital is divided into common, registered and indivisible shares. They may issue preferred shares for up to 50 per cent of the subscribed capital. Preferred shares may grant special rights upon liquidation of the company or for profit sharing, but they cannot grant fixed dividends or interest.

Shares – whether common or preferred – are freely transferable. This is a general principle established by Ecuador's corporate legislation by reason of the very nature of a stock corporation. Ownership of shares in a stock corporation is transferred by means of an assignment letter signed by the transferor or by a person or securities trading company that represents the transferor. The assignment must be written on the corresponding share certificate or on a sheet attached thereto. In the case of share certificates delivered for custody at a centralised securities clearing and liquidation deposit, the assignment may take place pursuant to mechanisms established for such centralised deposits. An assignment of shares or a transfer of ownership takes effect *versus* the company and third parties only as of the date it is registered in the book of shares and shareholders of the company. Registration is made with the signature of the company's legal representative upon delivery of a joint (or individual) communication from the assignor and the assignee.

If the shares are immobilised in a centralised securities clearing and liquidation deposit, they will be registered in the book of shares and shareholders by the centralised deposit upon submission of an assignment form signed by the securities trading company acting as an agent. The centralised deposit must keep files and records of transfers and must give notice thereof to the company on a quarterly basis.

Stock corporations may have an authorised capital that cannot be greater than twice the amount of the subscribed capital. It is necessary to mention that stock corporations that belong to the non-financial sector must be incorporated with at least two shareholders but may validly continue with just one shareholder after being duly registered with the Mercantile Registry. The company's legal existence begins upon such registration.

If the shares of a stock corporation are not listed in a stock exchange, their transfer requires no formality other than what is described above, that is, by means of an assignment document and registration of the assignment in the book of shares and shareholders. On the other hand, if the shares are listed in a stock exchange, several Stock Market Law rules must be observed.

### v Limited liability companies

Given their different juridical nature – that is, they are partnerships involving persons and not capital – limited liability companies are governed by different rules with respect to an assignment of share participations. The capital of those companies is divided into share participations that are not moveable properties or assets and cannot be freely assigned or transferred, unlike the shares of stock corporations. Share participations are quotas (contributions) in the company's capital. Since share participations are not documents of title, they lack the characteristics inherent to shares: their free circulation and valuation in the market, for example.

Since limited liability companies comprise persons (and not capital), the circulation of share participations would result in the company not considering its members (i.e., it would no longer be an *intuito personae* company). According to the definition of the Law on Companies (Article 102), share participations are the partners' contributions to the limited liability company.

### vi Transfer of share participations

Share participations held by a partner in a limited liability company are transferable by an act *inter vivos* for the benefit of another partner or partners of the company or of third parties if the unanimous consent of the capital is obtained according to Article 113 of the Law on Companies. This is the first legal limitation: the necessary unanimity for a transfer.

An assignment of share participations must be carried out by means of a public deed. The notary will include in his protocol or in the public deed a certificate from the company's legal representative evidencing that the requirement mentioned in the preceding Paragraph has been met. The assignment will be recorded in the books of the company. This is the second legal limitation: the formality of executing the assignment by means of a public deed.

Thus, mergers and acquisitions are governed in Ecuador by the Law on Companies and the Commercial Code with respect to their formalisation, but they are limited and controlled by the Organic Law on Market Regulation and Control with respect to their prior authorisation.

## IV OUTLOOK AND CONCLUSIONS

To conclude, the law is still pending practical application. Ecuador has had no traditions or habits regarding antimonopoly legislation, and any policies to be implemented by the authorities in the future will be essential for the prosperity of local entrepreneurs and for attracting foreign investment. Control of mergers and acquisitions in the local market will be especially important because mergers carried out in the past were under minimal regulatory supervision, and acquisitions were not the subject matter of state intervention.

## Appendix 1

# ABOUT THE AUTHORS


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