

V. P. Kozyreva
Candidate of juridical sciences, Associate Professor
(National Aviation University, Ukraine)

Legal Regulation of mergers and acquisitions of aviation industry

The study reveals some aspects of the legal regulation of mergers and acquisitions of aviation industry entities. It is mentioned about alternatives to mergers and acquisitions of state-owned entities and strategies for the development of domestic aviation industry for the period up to 2020.

The aerospace industry plays a system-forming role in the country's economy, because it is one of the most knowledgeable and innovative branches of management [1]

At the legislative level, aircraft engineering has been recognized as a priority area of the economy, and research and development work on the creation of new aviation technology are classified as critical technology [2]. These are due to the specifics of the legal form of enterprises in the aviation industry (public joint-stock companies) and a significant participation of the state in their authorized capital.

The composition of the participants, as well as the strategic importance of the results of their activities for the economic and political stability of the state determine certain features of the realization of the processes of mergers and acquisitions of the subjects of the aviation industry.

For example, in accordance with the provisions of the Statute of the State Aircraft Concern "Antonov", approved by the Resolution of the Cabinet of Ministers of Ukraine dated October 30, 2008, No. 1014, the Concern has the right to be a participant of economic partnerships under a separate decision of the Cabinet of Ministers of Ukraine (subject to the approval of the constituent documents of the mentioned societies, including changes to them by the Ministry of Industrial Policy and the State Fund of Property) [3].

The reorganization in the form of a merger or accession of aviation industry business entities takes place "in accordance with" the order of the relevant central executive authority: in 2009, this was terminated by joining (and actually absorbed by the state enterprise "Aviation Scientific and Technical Complex named after O. K. Antonov ") state enterprise" Kyiv Aviation Plant "Aviant" [4].

The strategy of development of domestic aviation industry for the period up to 2020, approved by the resolution of the Cabinet of Ministers of Ukraine of December 27, 2008, No. 1656-p stipulates that structural transformations should be carried out by privatizing aviation industry enterprises taking into account the specifics of the industry and preserving the state influence on the adoption of strategic decisions [5]. Thus, the majority shareholder of all enterprises in the domestic aviation industry is the state, which allows it to initiate mergers or acquisitions.

According to the aviation industry agreement of Ukraine for 2011, which operates before the conclusion of a new agreement and is mandatory for employers in the conclusion of contracts including economic contracts [6], strategically important for the economy and security of the state, efficiently operating state enterprises are not included in the list of objects to privatization without investment plans, the indispensable conditions of which are further improving the efficiency of production and solving social and labor issues of labor collectives (paragraph 3.3.2).

An alternative to mergers and acquisitions of state-owned entities is the creation of state-owned holding companies or concerns arising from absorption. This allows us to preserve the international image of the supplier of certain products by the state and leave strategic enterprises in state ownership. An example of such an approach is the creation of the state aircraft construction concern Antonov - in order to provide favorable conditions for the effective use of the industrial, scientific and technical potential of aviation enterprises [3]

Interestingly, the first domestic business entity that systematically makes orders for the Military Department for the manufacture of aircraft - a private firm "Anatra" - was created by merging workshops of the Odessa Air Club in 1913 [7].

Participation of the state in strategic economic entities, which is aviation, may contribute to the creation of special (favorable) conditions for the development of the industry, but somewhat hinders the processes of gaining competitive advantages, since the first place is not economic, but more often political and social factors. Consider, for example, the attempt to merge the Franco-German Aerospace Concern EADS (the parent company of the Airbus manufacturer) and the British defense company BAE Systems into the European Defense Aircraft Company (hereinafter - EDAC).

Due to the global post-crisis tendency to reduce military aircraft spending, the European aviation industry faced a challenge to the proper competition with the American side. The combination of the assets of the European Aerospace Corporation (which combines Airbus, Astrium, Cassidian and Eurocopter with 133,000 jobs worldwide and markets in Europe, the Middle East, Asia and Oceania) with the British defense corporation, a leader in military aviation, information security, systems of weapons (including air and sea), promised to create a proper rival as American Boeing and to some extent turn the United States from a competitor to a partner (attractive to Europeans was the status of BAE Systems as the main contractor of the Pentagon, that have markets in the USA and in Saudi Arabia).

The crossing of the bridge to realize the obvious economic benefits of the merger was the distribution of positions and participation in the authorized capital of the newly formed company. The Governments of Germany and France relied on a controlling stake in EDAC in exchange for their packages of 22.5%. The presence of BAE Systems shareholders of the UK government ("golden share") and Ivesco (USA) as the largest shareholder (13%) allowed the other party to insist on hosting a headquarters in the UK and appointing a new company chairman a citizen of this country. Since the four governments failed to reach agreement on the issues raised, the merger was not implemented [8]

In July 2013, the acquisition of Airbus by the company EADS, which it was part of, began. The newly created European Aerospace Corporation Airbus Group has united two divisions EADS - Defense and Space [9].

Conclusions. Different branches of the company during mergers and acquisitions become large holdings, acquire ownership of new assets, undergo reorganization and increase their own company. In order to prevent monopolization of commodity markets, abuse of a monopoly (dominant position), restriction of competition, the bodies of the Antimonopoly Committee of Ukraine carry out state control over the concentration of economic entities. Concentration can be made only on condition of prior obtaining of the permission of the Antimonopoly Committee of Ukraine or the administrative board of the Antimonopoly Committee of Ukraine in cases provided by Part 2 of Art. 22 of the Law of Ukraine "On Protection of Economic Concentration" and other normative-legal acts, if: the aggregate value of assets or the total volume of sales of goods of the participants of concentration, taking into account the control relationships, for the last fiscal year, including abroad, exceeds an amount equivalent to 30 millions of Euros, determined at the official exchange rate established by the National Bank of Ukraine, acting on the last day of the fiscal year, with the value (aggregate value) of the assets or volume (aggregate amount) of the sale in Ukraine, at least two participants in the concentration, taking into account the control relationship, exceeds the equivalent of 4 million euro, determined at the official exchange rate established by the National Bank of Ukraine, acting on the last day of the fiscal year, for everyone; or the aggregate value of assets or the aggregate volume of sales of goods in Ukraine of the controlled entity or entity, assets, shares (stocks, shares) which are acquired or held in management and use, or at least one of the founders of the entity created, taking into account the control ratios, exceeds the amount equivalent to 8 million euro for the last fiscal year, determined at the official exchange rate established by the National Bank of Ukraine, acting in the last day of the fiscal year, and at the same time the volume of sales of at least one other participant in the concentration, taking into account the control relationships, for the last fiscal year, including abroad, exceeds the equivalent of 150 million euro, determined at the official exchange rate established by the National Bank of Ukraine, acting on the last day of the fiscal year.

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