MAY THE PURCHASE OF ASSETS AMOUNT TO ECONOMIC CONCENTRATION?

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Abstract

This article critically examines the legal implications of the asset purchase agreement concluded between YandexEats and Express24 in Uzbekistan. Although the transaction was formally structured as an acquisition of assets, including domain names, trademarks, software, mobile applications, operational systems and user database, its economic and functional consequences raise important questions under merger control rules. The Competition Promotion and Consumer Protection Committee of the Republic of Uzbekistan concluded that the transaction did not require prior approval, since no transfer of shares or formal merger had occurred. However, the subsequent operational integration of the services into a unified technological platform suggests that the transaction may have resulted in a de facto consolidation of market power. The article argues that Uzbekistan's existing merger control regime is overly formalistic and insufficiently equipped to assess asset-based transactions that may substantially lessen competition. Drawing on the UK SeaFrance case, the article demonstrates that merger control should not be limited to formal share acquisitions or corporate restructuring, but should also cover transactions involving the transfer of the economic substance of a business. The article concludes that Uzbekistan should introduce a substance-over-form approach, clarify the treatment of asset acquisitions, and incorporate a substantial lessening of competition test into its merger control framework.

Keywords: merger control, economic concentration, asset purchase agreement, digital platforms, competition law, YandexEats, Express24, SeaFrance, substantial lessening of competition, Uzbekistan.

Introduction

On 25 October 2024, the national news outlet Gazeta.uz reported that Yandex Uzbekistan had acquired part of the assets of the local delivery company Express24. According to publicly available information, YandexEats acquired Express24's website, domain names, trademarks, mobile applications for users and couriers, other software supporting operational processes, and the user database. The parties also announced their intention to create a shared technological platform for food delivery services in Uzbekistan.

Soon after the announcement, the transaction attracted attention from legal and economic experts due to its possible implications for competition in the food delivery market. In response, the Competition Promotion and Consumer Protection Committee of the Republic of Uzbekistan issued an official statement on 26 October 2024. The Committee confirmed that YandexEats and Express24 had entered into an asset purchase agreement. After reviewing the transaction, the Committee concluded that it did not fall within the scope of economic concentration control and did not require prior approval. It classified the transaction as a regular commercial agreement that would not restrict competition or harm consumer rights.

At first glance, the transaction may appear to be a standard transfer of assets. However, its broader legal and regulatory implications make the case particularly significant. Although formally structured as an asset deal, the transaction raises the question of whether it should nevertheless be treated as an economic concentration under Uzbekistan competition law. The key issue is whether merger control should be limited only to the acquisition of shares or participatory interests, or whether it should also apply to the acquisition of assets that transfer the economic substance of a business and result in operational integration.

The YandexEats–Express24 transaction also raises questions regarding consumer welfare and the potential distortion of competition. Following the transaction, the services of the parties were integrated into a unified digital platform. Consumers attempting to access Express24's services through search engines or the company's application were redirected to the YandexEats ordering platform. This functional integration suggests that the transaction was not merely a transfer of isolated assets, but may have resulted in a consolidation of business operations.

This article argues that Uzbekistan's current merger control regime contains a regulatory gap with respect to asset-based acquisitions. In particular, Article 26 of the Law of the Republic of Uzbekistan "On Competition" focuses primarily on the acquisition of shares or participatory interests. As a result, transactions structured as asset purchases may escape regulatory scrutiny even where they produce effects comparable to a merger. This creates a risk that undertakings may strategically design transactions to avoid merger control, while effectively cTonsolidating market power.

he article proceeds as follows. First, it explains the research methodology. Second, it outlines the legal framework governing economic concentration in Uzbekistan. Third, it analyzes the legal issues raised by the YandexEats–Express24 transaction from both business law and competition law perspectives. Fourth, it examines the UK SeaFrance case as a comparative legal benchmark. Finally, it proposes reforms to strengthen Uzbekistan's merger control regime.

A. Legal Framework of Economic Concentration in Uzbekistan

The Law of the Republic of Uzbekistan "On Competition" establishes the legal basis for state control over economic concentration. Under Article 26 of the Law, merger control primarily applies to transactions involving the acquisition of shares or participatory interests, as well as other forms of corporate control. The purpose of such control is to prevent transactions that may lead to excessive concentration of market power, restriction of competition or harm to consumers.

However, the current framework appears to focus predominantly on formal corporate transactions. This creates difficulties in cases where undertakings do not merge through share acquisition but instead transfer essential assets, intellectual property, software, business infrastructure or customer databases. In digital markets, such assets may represent the real economic core of a business. Therefore, a transaction may produce the same competitive effects as a merger even without a formal change in shareholding.

The YandexEats–Express24 case illustrates this problem. The transaction did not involve a formal acquisition of shares. Nevertheless, the assets acquired by YandexEats appear to include key components necessary for the continuation of Express24's business activities, including technological infrastructure, digital interfaces, trademarks and user data. If such assets enable the acquiring party to absorb the competitive capacity of the target undertaking, the transaction may have effects similar to a merger.

A narrow interpretation of merger control may therefore create a regulatory loophole. Companies may avoid prior clearance by structuring economically significant transactions as asset purchases. This is particularly problematic in digital markets, where economic power often lies not in traditional physical assets but in data, software, algorithms, brand recognition, network effects and access to users.

B. Legal Issues Raised by the YandexEats–Express24 Transaction

Asset Purchase or De Facto Merger?

The first legal issue is whether the YandexEats–Express24 transaction should be regarded merely as an asset purchase or as a de facto merger. Formally, the transaction was described as an acquisition of assets. However, the subsequent integration of the services into a unified technological platform suggests a deeper level of operational consolidation.

When consumers attempt to access Express24's services, they are redirected to the YandexEats platform. This indicates that Express24's independent market presence may have been substantially reduced or eliminated. Even though the companies may remain separate legal entities in corporate registries, their business operations appear to have been integrated in practice.

This legal and operational dichotomy creates a serious regulatory concern. If two companies remain formally separate but operate as a single economic unit, the formal corporate structure may no longer reflect market reality. Competition law should be concerned not only with legal form but also with economic substance. If a transaction eliminates an independent competitor or transfers its competitive capacity to another undertaking, it should be subject to merger control scrutiny.

Potential Impact on Consumer Welfare

The second issue concerns the possible impact of the transaction on consumer welfare. According to expert commentary, YandexEats and Express24 together may command a very significant share of Uzbekistan's food delivery market. If the parties control a substantial portion of the market, consumers may face reduced choice, higher delivery fees, increased service charges or weaker incentives for innovation.

In digital delivery markets, competition is not limited to price. It also includes service quality, delivery speed, restaurant variety, platform reliability, user experience and treatment of couriers and restaurants. A transaction that reduces competitive pressure may negatively affect any of these parameters. For example, once users are redirected to a unified platform, they may lose the ability to compare competing services. Over time, the platform may increase delivery fees, impose higher commissions on restaurants or reduce promotional offers.

There is also a risk that restaurants and couriers may become more dependent on the unified platform. If alternative delivery channels are weak, restaurants may be forced to accept less favorable commission rates or contractual terms. Such costs may eventually be passed on to consumers through higher menu prices or reduced service quality.

Anti-Competitive Agreement or Efficiency-Enhancing Cooperation?

The third issue concerns whether the cooperation between the parties may be considered an anti-competitive agreement. Article 19 of the Law "On

Competition" prohibits anti-competitive agreements and concerted practices. At the same time, it allows certain agreements to be exempted if they contribute to production efficiency, technological development, innovation, economic growth or competitiveness.

The parties publicly argued that the integration would improve the technological platform, increase order density, allow couriers to complete more deliveries, improve delivery speed and provide users with a broader selection of restaurants. These claims may amount to an efficiency justification. However, the existing law does not provide clear criteria for assessing whether such claimed efficiencies are sufficient to justify cooperation between undertakings.

Modern competition regimes usually require that efficiencies be verifiable, merger-specific, beneficial to consumers and not achievable through less restrictive alternatives. Uzbekistan's legislation does not yet contain a sufficiently developed test of this kind. As a result, there is a risk that undertakings may justify anti-competitive cooperation by invoking general claims of technological improvement or market efficiency, without demonstrating measurable consumer benefits.

Comparative Insight: The UK SeaFrance Case

A useful comparative perspective can be drawn from UK competition law. Under the Enterprise Act 2002, merger control applies where two or more enterprises cease to be distinct and the turnover test or share of supply test is met. The concept of an "enterprise" is central to this analysis. It includes the activities, assets and resources that together constitute a business capable of generating market activity.

The SeaFrance case is particularly relevant. SeaFrance operated ferry services between Dover and Calais until its liquidation. Groupe Eurotunnel later acquired most of SeaFrance's assets and cooperated with a workers' cooperative to resume ferry operations using the same vessels and largely the same workforce. The question was whether Eurotunnel had acquired only "bare assets" or an "enterprise" for the purposes of merger control.

The UK Competition and Markets Authority concluded that Eurotunnel had acquired the economic substance of SeaFrance's business. The transaction was therefore treated as a merger and was subject to review. Although the business had temporarily ceased operations, the assets, personnel and operational structure enabled the same economic activity to resume. The UK Supreme Court ultimately upheld this substance-based approach.

The key lesson from SeaFrance is that merger control should not be limited to the acquisition of shares or a business as a going concern. A transaction may fall within merger control where the assets acquired amount to more than isolated assets and represent the functional capacity of a business. The test is therefore one of economic substance rather than legal form.

This approach is directly relevant to the YandexEats–Express24 transaction. If YandexEats acquired not merely isolated digital assets but the functional capacity of Express24's delivery business, including its applications, user database, software, trademarks and operational infrastructure, the transaction may be comparable to the acquisition of an enterprise. Under a substance-over-form approach, such a transaction would warrant merger control review.

Critical Assessment of Uzbekistan's Merger Control Regime

The YandexEats–Express24 case reveals several weaknesses in Uzbekistan's current merger control regime.

First, the law appears to focus too heavily on formal share acquisition. This may allow undertakings to avoid review by structuring transactions as asset purchases.

Second, the legislation does not clearly define when the acquisition of assets may amount to economic concentration. In digital markets, this is a significant problem because assets such as user databases, software, trademarks and platform infrastructure may determine competitive power.

Third, Uzbekistan does not appear to apply a clearly formulated substantial lessening of competition test. Such a test is essential for assessing whether a transaction may reduce competition, harm consumers or create market power.

Fourth, the current legal framework lacks detailed criteria for assessing efficiency claims. Without clear standards, parties may rely on broad arguments about technological integration or convenience without proving that consumers will receive a fair share of the benefits.

Fifth, there is insufficient clarity regarding the relationship between merger control and anti-competitive agreements. Where two undertakings integrate their commercial behavior but remain legally separate, the authority should be able to assess whether the arrangement constitutes a merger, an anti-competitive agreement or both.

Recommendations

To address these issues, Uzbekistan should consider the following reforms.

First, the Law "On Competition" should expressly provide that economic concentration may arise not only from the acquisition of shares or participatory interests but also from the acquisition of assets where such assets constitute the whole or a substantial part of an undertaking's business activity.

Second, the law should introduce a substance-over-form test. The Competition Committee should assess whether the transaction results in the transfer of the economic substance of a business, regardless of its formal legal structure.

Third, Uzbekistan should introduce a substantial lessening of competition test into merger control. This would allow the authority to assess whether a transaction may significantly reduce competition, increase market power, harm consumers or restrict market entry.

Fourth, the law should establish clear criteria for evaluating consumer welfare. Claimed efficiencies should be accepted only where they are verifiable, transaction-specific, likely to benefit consumers and not achievable through less restrictive means.

Fifth, the Competition Committee should adopt guidelines for asset acquisitions in digital markets. These guidelines should explain how the authority will assess the transfer of data, software, user base, intellectual property, platform infrastructure and network effects.

Sixth, the authority should be empowered to impose structural remedies where asset acquisitions result in excessive concentration. Such remedies may include divestiture, separation of platforms, data-access obligations or restrictions on exclusivity.

Conclusion

The YandexEats–Express24 transaction presents an important test for Uzbekistan's competition law. Although formally structured as an asset purchase, the transaction appears to have resulted in significant operational integration between two major food delivery services. The case therefore raises a fundamental legal question: should merger control apply only to formal corporate acquisitions, or should it also cover asset transactions that transfer the economic substance of a business?

This article argues that a purely formal approach is insufficient, especially in digital markets. The acquisition of applications, trademarks, software, operational infrastructure and user databases may have the same competitive consequences as the acquisition of shares. If such assets enable the acquiring undertaking to absorb the competitive capacity of another market player, the transaction should be reviewed as a potential economic concentration.

The UK SeaFrance case demonstrates that merger control can and should apply where the economic substance of a business is transferred, even if the transaction is formally structured as an asset purchase and even if the target business was temporarily inactive. Uzbekistan should draw from this approach and develop a more substantive merger control framework.

Reforming the law in this direction would strengthen legal certainty, prevent circumvention of merger control, protect consumer welfare and improve the effectiveness of competition enforcement in digital markets. Without such reforms, asset-based consolidations may continue to escape scrutiny, allowing market power to concentrate under the formal appearance of ordinary commercial transactions