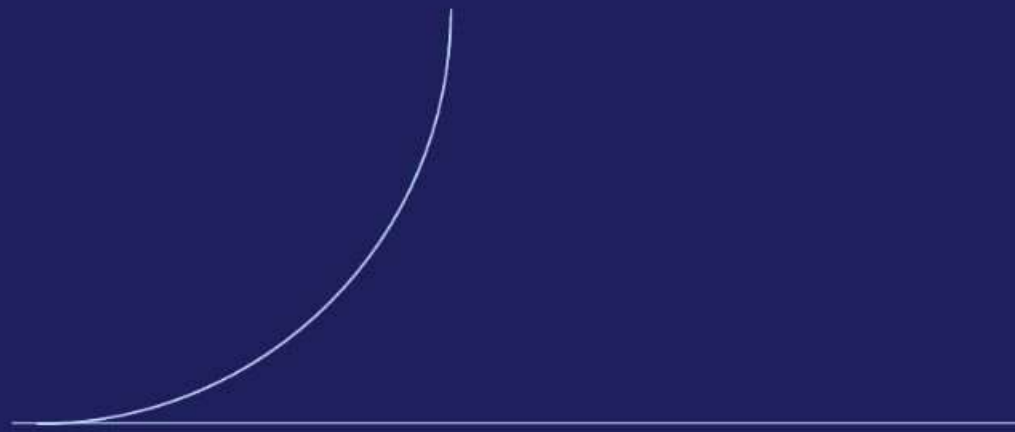




Merger control, FDI and foreign subsidies filings: business as usual or complications ahead for M&A activity?

Webinar

29 March 10 am



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10:00 Opening words

Kaupo Lepasepp, country managing partner at Sorainen Estonia

10:05 In-house perspective on FDI and merger control filings

Discussion with **Tatjana Čaika**, head of legal at Bitē Latvia

10:20 Key features of FDI regimes and lessons learned in Estonia, Latvia and Lithuania

Matas Mačiulaitis, Nauris Grigals and Lauri Liivat, Sorainen Corporate and M&A practice experts

10:45 Impact of FDI filing requirements on M&A activity

Lauri Liivat, Corporate and M&A expert of Sorainen Estonia

10:55 Key developments and lessons learned in merger control in Estonia, Latvia and Lithuania

Piibe Lehtsaar, Marika Grunte and Monika Mališauskaitė-Vaupšienė, Sorainen Competition & Regulatory practice experts

11:30 Impact of recent merger control developments on M&A activity


Monika Mališauskaitė-Vaupšienė, head of the Sorainen Competition & Regulatory team in Lithuania

11:40 Expected impact of the foreign subsidies regime on M&A activity

Piibe Lehtsaar, competition law expert at Sorainen Estonia

11:50 Summary and closing words

Kaupo Lepasepp, country managing partner at Sorainen Estonia



Key features of FDI regimes and lessons learned in Estonia, Latvia and Lithuania

Matas Mačiulaitis

Nauris Grigals

Lauri Liivat

29 March 2023

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Key features of FDI

Lithuania 

Investors

The regulation applies to **all investors acquiring 25%** or more shares/votes in the company

- No political/geographical qualifier
- No monetary threshold
- *No escape from the regulation*





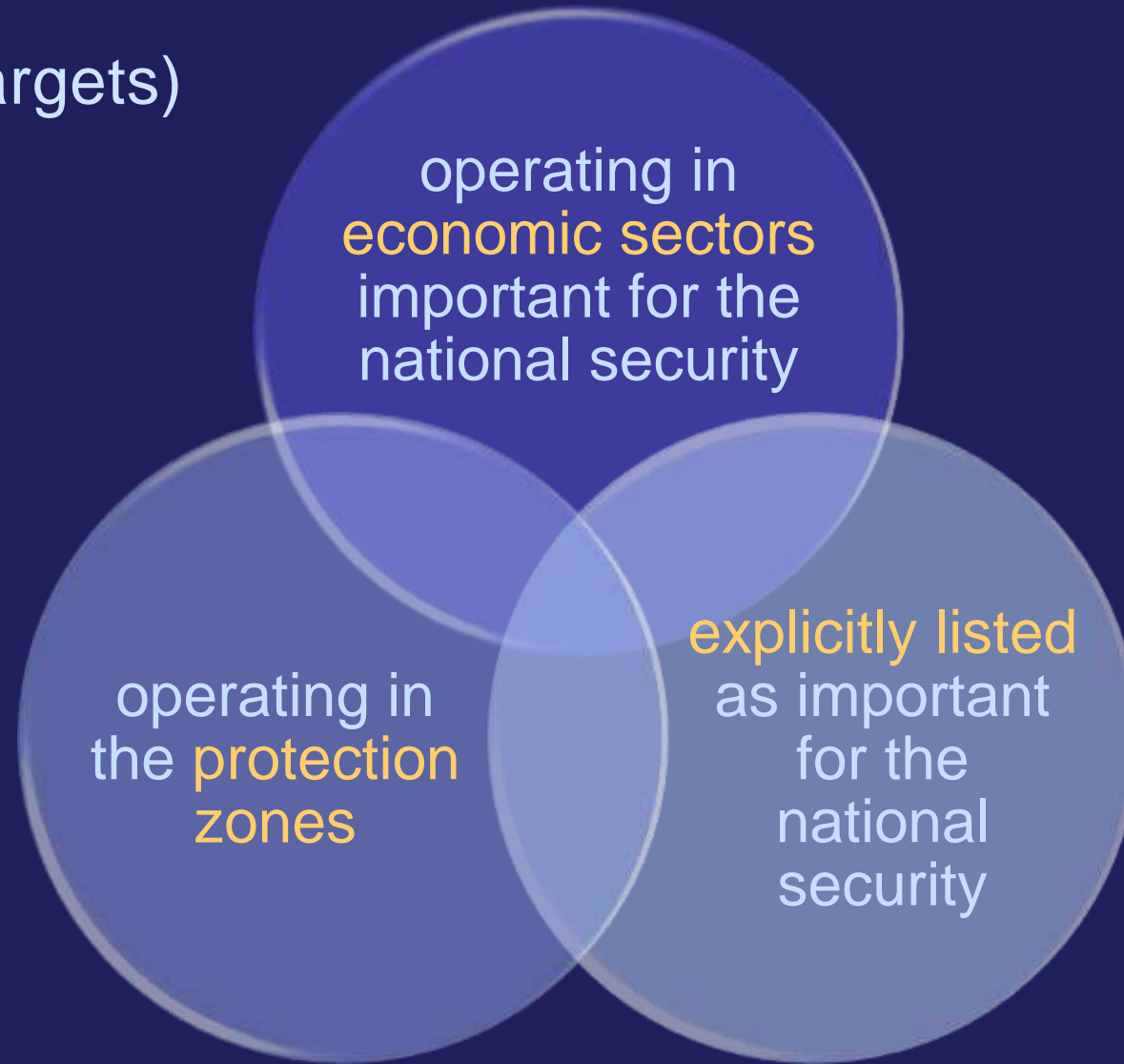
Investors (exceptions)

The Investor is:

- a Member State of the EU, a jurisdiction belonging to NATO, the OECD, or the EFTA, or a company that is at least 1/2 owned by it
- an International financial organizations of which Lithuania is a member
- an investor operating on a long-term basis in a Member State of the EU, NATO, the OECD or the EFTA and having experience in the relevant field*

**exceptions to the exception apply*

Companies (targets)



Sectors important for national security



Energy

transmission of the electricity, operation of oil product terminals, etc.



Transport

construction of bridges and tunnels, air transport services, etc.



Information technology and telecommunications, other high-tech

*manufacture of computers, communications equipment, **other software publishing**, etc.*



Finance and credit

payment services, insurance and reinsurance activities, etc.



Defence

manufacture, sale, maintenance and repair of military equipment

Companies operating in or nearby protection zones



Companies **explicitly listed** as important for national security

Category I

all voting shares are held by the state, a municipality or a state-owned company



Category II

at least 2/3 of the voting shares are owned by the state, a municipality or a state-owned company



Category III

the state, a municipality, or a state-owned company owns less than 2/3 of the voting shares or does not own any shares



**Other thresholds than 25% of acquired shares/votes apply in most of these cases*

Key aspects

- FDI screening is mandatory
- A filing obligation lies with the Investor
- Approval must be obtained prior to closing
- The main task during the clearance – providing a group chart with evidence until the UBO(s) of the Investor
- The clearance is normally completed within 1-2 months
- The procedure is confidential upon request
- Failure to clear the Investor can result in the transaction being declared null and void
- There is no filing fee

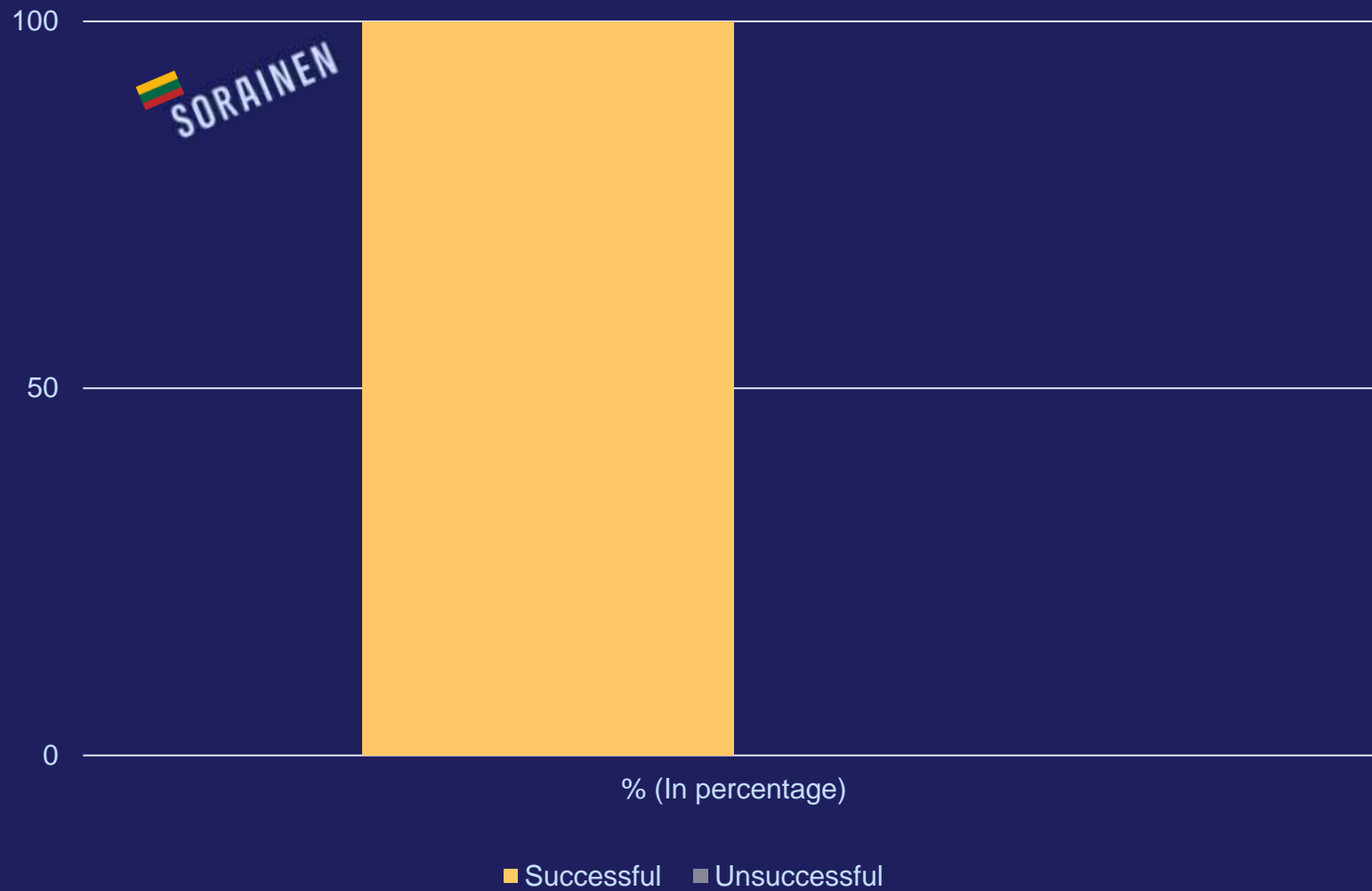




Possible outcomes

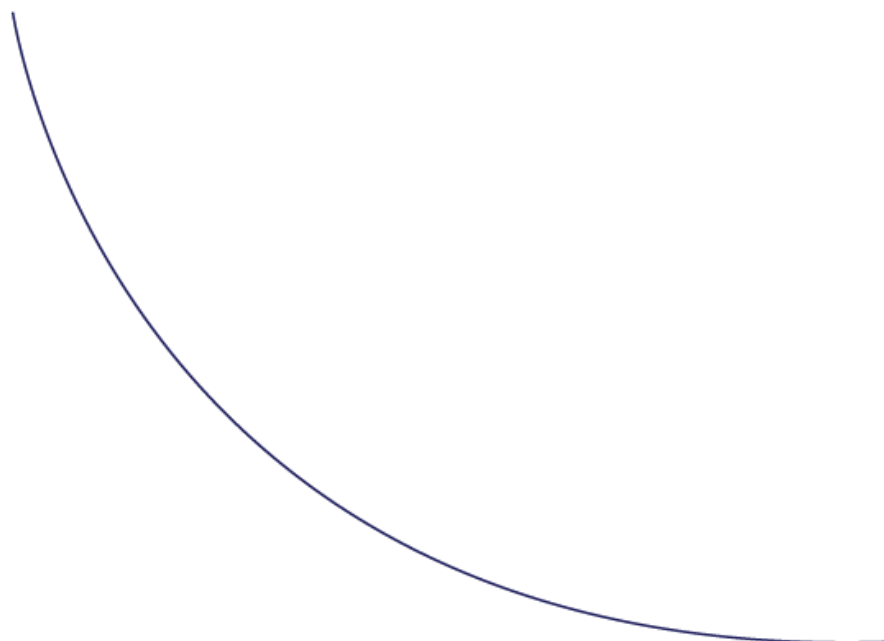
- The Investor meets the interests of national security
- The Investor poses a risk to the interests of national security – **recommendations** will be established according to which the transactions or actions intended to be concluded would not pose a risk to national security
- The Investor does not meet the interests of national security

FDI filing success rate*



**By Sorainen Vilnius CMA group; full-scale office survey has not been concluded*

Coming up next



Latvia 

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Foreign Direct
Investment and
National Security
regime in

Latvia



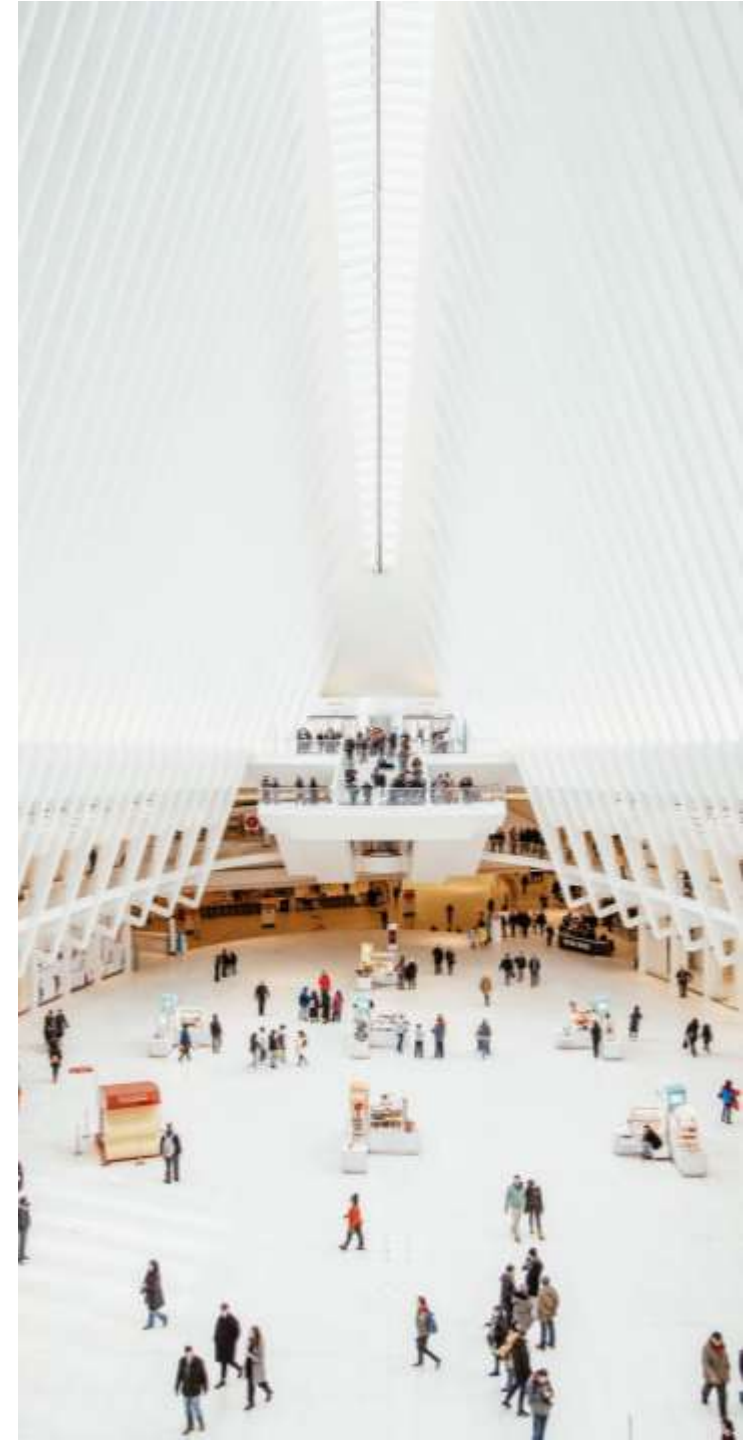
Companies significant to national security, covered by the FDI and national security regime (1/3)

List of companies subject to the regime, **provided by the National Security Law.**

Applicable to all investors and all transactions involving companies significant to national security, irrespective of geographical presence, monetary thresholds, etc.

List of companies:

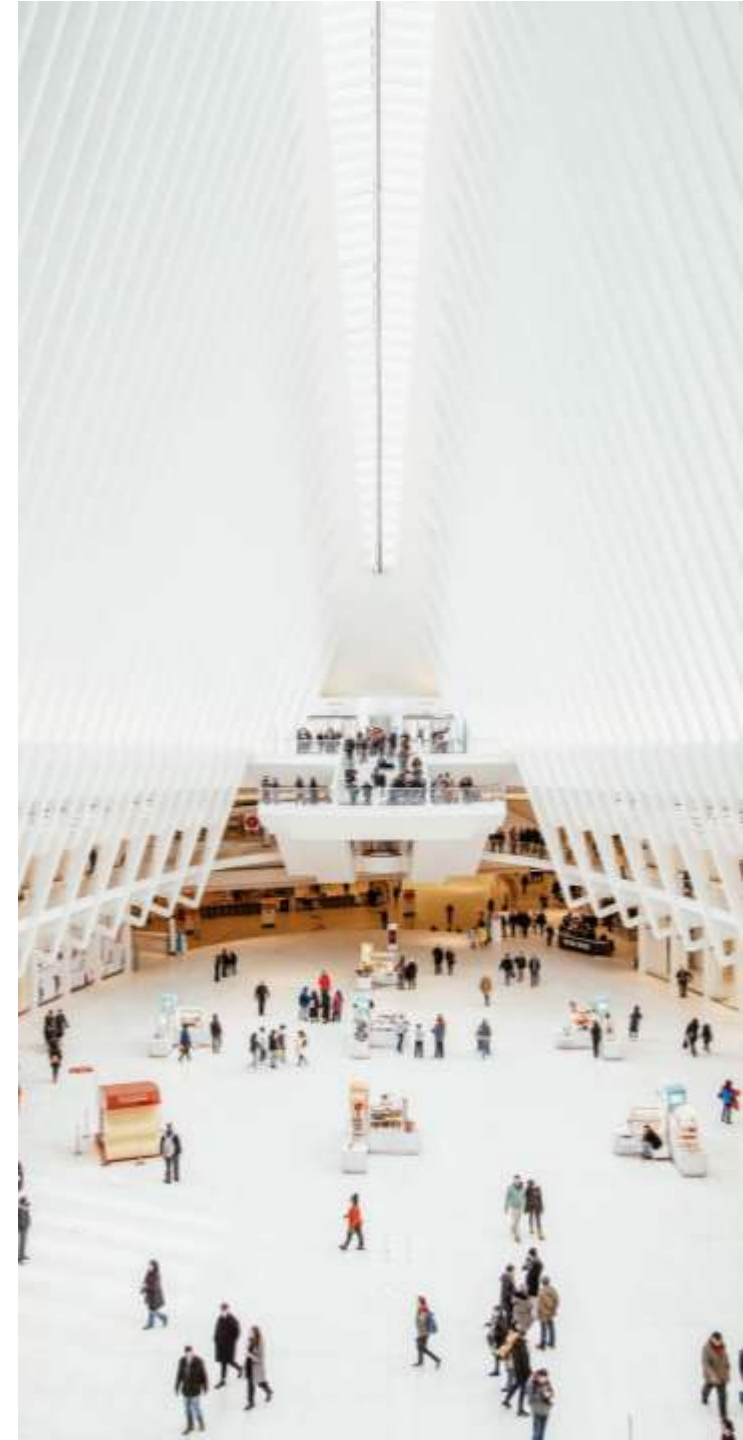
- **owners of critical infrastructure** (critical infrastructure determined by the Cabinet of Ministers)
- **electronic communications merchant** with a significant market power and subject to tariff regulation and cost accounting in accordance with the Electronic Communications Law
- **audible electronic mass media**, which uses technical means for terrestrial broadcasting with coverage zone of the programme, according to the broadcasting permit issued by the National Electronic Mass Media Council is Latvia or at least 60 per cent of its territory
- **audio-visual electronic mass media**, which uses technical means for terrestrial broadcasting with coverage zone of the programme, according to the broadcasting permit issued by the National Electronic Mass Media Council is Latvia or at least 95 per cent of its territory
- **has received a licence** in the Republic of Latvia **for transmission, distribution, storage of natural gas**
- **owns a liquefied natural gas facility** connected to a transmission system
- **electricity or thermal energy producer** with installed actual capacity exceeding 50 MW
- **thermal energy transmission and distribution operator** owning heat supply networks in in length of at least 100 kilometres
- has received a **licence for electricity transmission** in the Republic of Latvia



Companies significant to national security, covered by the FDI and national security regime (2/3)

- **owner of a forest land** in the Republic of Latvia in the area of **at least 10,000 hectares**
- **owner of an agricultural land** in the Republic of Latvia in the area of **at least 4,000 hectares**
- has received the special permit (licence) for **commercial activities with goods of strategic significance or a military manufacturer certificate issued by the Ministry of Defence**, and it **has a valid strategic partnership contract with the Ministry of Defence**
- during the last two years period **has been manufacturer or developer of dual-use goods (Annex I of Regulation (EU) 2021/821)**, exporting such goods abroad, except for the member states of the European Union, the United States of America, Canada, Australia, New Zealand, Norway, Switzerland, Japan, the United Kingdom, Iceland and Liechtenstein
- **has access to personal data of voters and deputy candidates**, which cannot be published according to the law
- **processes the data sets included in the state's critical infrastructure systems**, except when it is done by financial market participants;
- **manufactures or develops dual-use goods (Annex I of Regulation (EU) 2021/821) or manufactures or develops technologies**, for example, in the field of artificial intelligence, robotics, smart and autonomous mobility, cyber security, energy storage, quantum technology, nuclear technology, nanotechnology, biotechnology, and **which the Cabinet of Ministers, based on the opinion of the national security authority, has determined as a commercial company important for national security**

In total there are (as of 28 March 2023) **55 companies** registered in the Latvian Company Register as company significant to national security.





Transactions subject to FDI / National Security Clearance

- Acquisition of **qualifying holding** (10% or more direct or indirect shareholding)
- Acquisition of **decisive influence (control)** (direct or indirect majority (50%+1) shareholding or rights to appoint majority of members of management bodies of the company)
- Transfer of **undertaking (business as a going concern)**
- **Retaining shareholding status in case of change of ultimate beneficial owner** of shareholder or in case ultimate beneficial owner cannot be identified
- **Receiving loan**

Russian Federation, Republic of Belarus, citizens of and legal entities incorporated in the Russian Federation or Republic of Belarus are specifically prohibited to acquire qualifying holding or decisive influence (control) in companies significant to national security, or become ultimate beneficial owners of such company.

Exceptions: acquisition of own shares, shares are acquired, loan received by public company (all shares owned by one or more public persons (i.e., state, municipality)), shares / assets are transferred as a result of procedures, applied within the criminal proceedings (return of assets, confiscation).

Receiving permit from the Cabinet of Ministers

- Person or group of persons, acting in concert, submits application for permit and shall receive permit **before acquisition of:**
 - **qualifying holding**
 - **decisive influence (control)**
- Shareholder or person, which exercises indirect influence, submits application for permit **to retain status of shareholder within 5 (five) business days after:**
 - **change of ultimate beneficial owner** of such shareholder or person which exercises indirect influence
- Company significant to national security submits an application for and shall receive permit **before:**
 - **transfer of undertaking (business as a going concern)**, as a result of which another person acquires assets which are used for activities, qualifying company as company significant to national security
- Company significant to national security submits an application for and shall receive **before:**
 - **receiving loan**, in case total amount of loan exceeds 10% of assets of the company, the loan is received from foreign national or legal entity, whose ultimate beneficial owner is foreign national, except member states of EU, EFTA, NATO, OECD.





Procedure for obtaining permit

Application and all required documents are submitted to the **Ministry of Economics** of the Republic of Latvia

Application shall be supported by the following information and documents:

- Detailed information on transaction, reasons for transaction (transaction related documents may be requested for submission)
- Ownership chain of relevant parties, including documents from respective foreign registers
- Information on ultimate beneficial owners post-transaction
- For FDI applications in addition – information on business activities, annual turnovers and financial results, source of financing for transaction
- Additional information may be requested at any time

Decision by the Cabinet of Ministers is adopted within **1 month**, however, this term **can be extended for up to 4 months**. Decision to (1) permit transaction, (2) permit transaction with certain restrictions, (3) prohibit transaction. In case no decision is adopted within this term, it is considered that the permit is granted (silent consent).

Decision is based on evaluation of potential restriction of person's rights, proportionality with national security interests, as well as **report from the national security authorities**

Negative decision can be **appealed** to the Administrative Regional Court

Consequences of non-compliance

Acquisition of qualifying holding or decisive influence, maintaining shareholding status (due to change of ultimate beneficial owner) without receiving permit:

- **Transaction is considered null and void** in the Republic of Latvia
- Company is **prohibited to make relevant entries in the shareholders' register**
- **Decisions** (adopted with votes of non-complying shareholders) **of shareholders' meetings are null and void**
- Decision of the Cabinet of Ministers imposing **obligation to sell the shares and prohibiting exercising of voting rights**

Transfer of undertaking (business as a going concern) without receiving permit

- **Transfer is null and void**

Receiving loan without receiving permit:

- **Transaction is considered null and void**
- Decision of the Cabinet of Ministers **imposing obligation to the company to terminate the loan contract**



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Foreign Direct
Investment and
National Security
regime in
Estonia



General

The Foreign Investment Reliability Assessment Act:

- **Adopted:** 25 January 2023
- **Enters into force:** 01 September 2023
- **The primary objective:** to screen both direct and indirect investments made by non-EU investors in strategically important and sensitive areas in Estonia
- **Implements:** Regulation (EU) 2019/452 on the screening of foreign direct investments (FDI)



Investors covered by the Estonian FDI regime

The Estonian FDI regime applies to direct or indirect investments made by non-EU investors who meet at least one of the following criteria:

(i) a natural person who holds:

- a citizenship of a non-EU state
- several citizenships, at least one of which is of a non-EU state
- no citizenship

regardless of the residency of the natural person

(i) an undertaking established under the law of a non-EU state

(ii) an undertaking controlled either by:

- a natural person specified in clause (i)
- an undertaking specified in clause (ii)

regardless of the place of establishment of the controlled undertaking





Targets covered by the Estonian FDI regime

11 groups of target undertakings:

- providers of vital services
- undertakings holding a geological exploration or extraction licence (oil shale, or raw material found in Estonia)
- undertakings in which the state of Estonia has a qualifying holding
- undertakings with whom the state's operation stockpile contract or delegated stockpile contract has been concluded
- undertakings which produce or supply military goods and/or dual-use items, or provide technical assistance related to such goods and/or items to state authorities (NB! exceptions)
- undertakings that own a permanent national defence object
- providers of national television or radio broadcasting services and providers of on-demand audiovisual media services; publishers of news, newspapers and magazines (turnover in Estonia at least 3 MEUR)
- undertakings that own a piece of mast infrastructure with a height of at least 200 metres necessary for the functioning of national communications or the transmission of broadcasting programmes
- public railway infrastructure managers
- certified aerodrome or heliport operators, (open to international scheduled air traffic) and the air navigation service provider (air traffic services in the Tallinn Flight Information Region)
- operators of Estonian seaports (trans-European transport network)

Statistics

AFFECTED	
• providers of vital services	170
• undertakings holding a geological exploration or extraction licence	< 5
• undertakings in which the state of Estonia has a qualifying holding	< 50
• undertakings with whom the state's operation stockpile contract or delegated stockpile contract has been concluded	< 40
• undertakings which produce or supply military goods and/or dual-use items, or provide technical assistance related to such goods and/or items to state authorities	< 30
• undertakings that own a permanent national defence object	< 20
• providers of national television or radio broadcasting services and providers of on-demand audiovisual media services; publishers of news, newspapers and magazines	< 20
• undertakings that provide connection	< 3
• public railway infrastructure managers	2
• certified aerodrome or heliport operators, and the air navigation service provider	2
• operators of Estonian seaports	< 5

Transactions covered by the Estonian FDI regime

If a non-EU investor (alternatives):

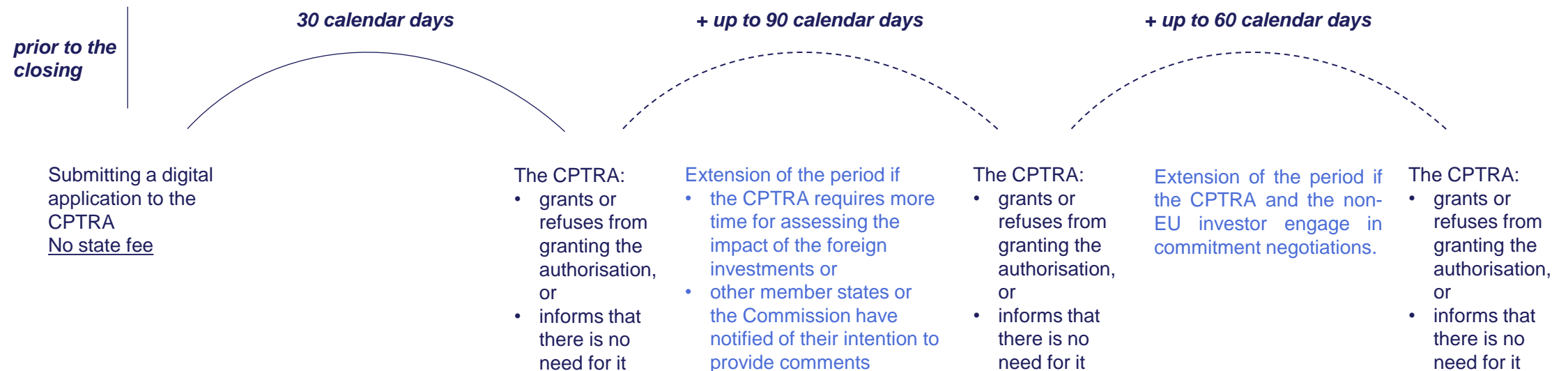
- (i) direct or indirect **qualifying holding*** in the target undertaking,
 - **A qualifying holding** - direct or indirect holding in the share capital of an undertaking which represents $\geq 10\%$ of the share capital of the undertaking, or which enables to exercise a significant influence over the management of the undertaking in which that holding subsists
- (ii) direct or indirect control over the target undertaking,
- (iii) a **part of the target undertaking***
 - **A part of the target undertaking** - an asset of the target undertaking, or an organisationally autonomous part of the relevant undertaking, which forms the basis of the relevant economic activity and is necessary for the operation of the target undertaking

A transition from a qualifying holding to control is deemed to be a separate transaction requiring a new prior authorisation.



Authorisation Process

Concluding (NB! but not closing yet) a contract or other transaction concerning the foreign investment



The authorisation may be granted with an ancillary condition:

- obligation to transfer shares in the target undertaking,
- continue performance of pre-existing agreements,
- a prohibition on certain persons serving on the target undertaking's management bodies or
- a restriction of access to certain information.

Main evaluation criteria

The focus of authorisation process is on the assessment of foreign investment. Namely, whether it endangers the security and/or public order of Estonia or any other member state of the EU.

Main criteria:

- **the circumstances relating to the foreign investor** (e.g. countries and sectors of the economy the investor operates in, and whether the investor is controlled by or connected to a non-EU state)
- **the economic activities of the target company** (e.g. the economic sector in which the undertaking operates and its importance in the relevant sector, intellectual property owned by the target, the extension of financing the target company from European Union funds or other public funds).
 - **additionally circumstances regarding specific sector** (e.g. The impact of foreign investment on economic activity; possibility for alternative services and goods; the competition situation)



Consequences of non-compliance

Completing the notifiable foreign investment without a prior authorisation

The CPTRA may issue a precept and order the notifying party to:

- transfer the relevant shares or part of the target undertaking,
- reverse the transaction or
- carry out other operations to restore the pre-investment situation

Non-compliance with the precept issued by CPTRA

- the CPTRA may impose a non-compliance levy (up to EUR 100,000)
- a non-compliance levy can be imposed repeatedly until the order is complied with.

Transaction closed without a prior FDI authorisation

- may be void (?)





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Impact of FDI filing requirements on M&A activity

Lauri Liivat

29 March 2023



M&A as a form of FDI

M&A from an FDI perspective:

- Investment through a financial transaction involving the purchase or absorbance of another company, creation of a new company by consolidation, or company essential assets consolidation, etc.

General

- The notifying party is the investor or buyer (acquirer)
- FDI regimes differ depending on the country – decide on jurisdiction and place
- A transaction cannot be completed before the transaction is cleared by the relevant decision-making organisation
- An authorisation must be obtained prior to the closing of the foreign investment transaction

FDI impact on M&A

Initial considerations in any M&A transaction involve establishing:

- **the identity of the buyer** - being transparent and initiating engagement with regulators as to the party's identity, source of funds and links with third parties
- **the identity of the target** and the nature of its business as well as its importance in the realm (additionally targets intent to make any corporate changes)
- **the level of stake or control to be acquired** - setting an acceptable level of control or influence
- **the agreement**: how the risks are distributed, how much each party shall contribute to the process, when the requirements must be fulfilled

Timelines

Where a transaction falls under one or more FDI regimes, there will be implications for the deal timetable

- Standstill obligation applies until clearance (avoid the exchange of competitively sensitive information)
- More discretion for the decision-making body = less legal certainty as to the outcome

Uncertainty in timelines and the outcome may affect closing conditions – **conduct FDI risk analysis prior to negotiating conditions!**





FDI impact on M&A (Parties Perspective)

Buyer shall consider:

- Review: target's activities, the countries in which it operates, its contractual relationships, etc.
- Assessment: the targets, or any member of its group's historic transaction (whether they were subject to FDI and were the relevant approvals obtained).
- Provisions regulating full cooperation of the Seller: for the seller to provide its full cooperation, including by undertaking to provide information and access to management.

Seller shall consider:

- "Conditional authorization" provisions: the buyer undertakes to comply with whatever obligations the relevant regulator may impose (e.g. conditional authorisation).
- Break fees and other undertakings from the buyer in case approval is withheld and closing is extended.
- Agree on a timeline for acquiring the FDI authorization (longstop date). Extending timelines in case extension of review period.

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Key developments
and lessons learned
in merger control in
Estonia, Latvia and
Lithuania

Marika Grunte

Monika Mališauskaitė-Vaupšienė

Piibe Lehtsaar

29 March 2023

Important developments at the EU level: merger control

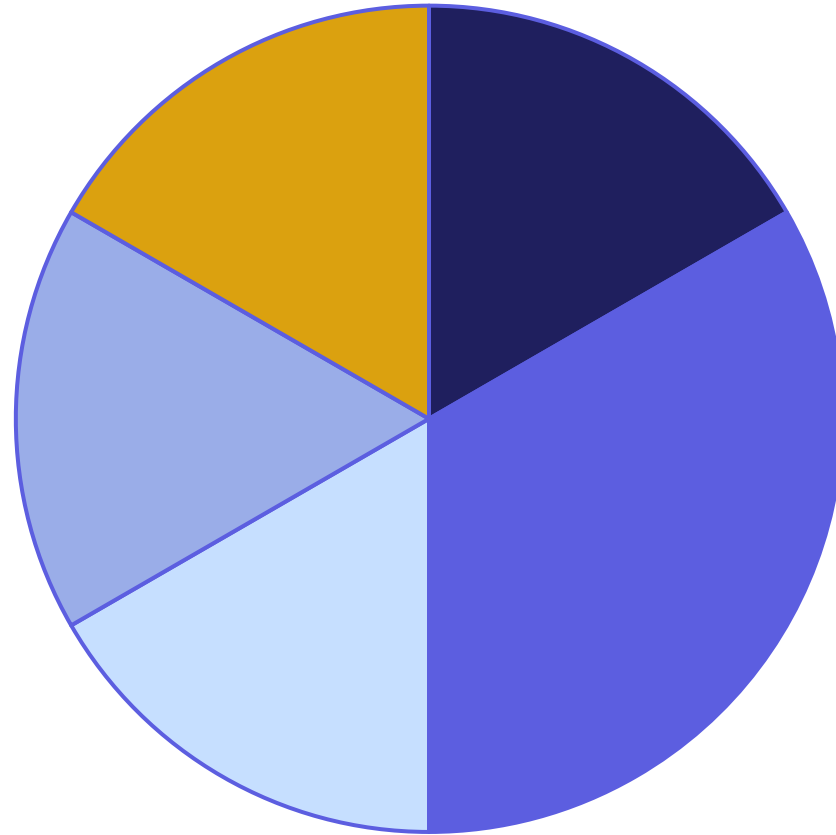
- Eroding legal certainty
- Fighting killer acquisitions that eliminate nascent competitors
 - Member States can refer transactions below EU and national merger control thresholds to the European Commission for merger control – this interpretation is currently under review by the Court of Justice of the EU in case C-611/22 P (Illumina, Inc. versus European Commission)
- Investigating M&A transactions under abuse of dominance rules
 - [Towercast judgment of 16 March 2023](#) – CJEU confirmed that M&A transactions that have not been subject to prior merger control may be investigated as potential abuses of a dominant position

Estonia



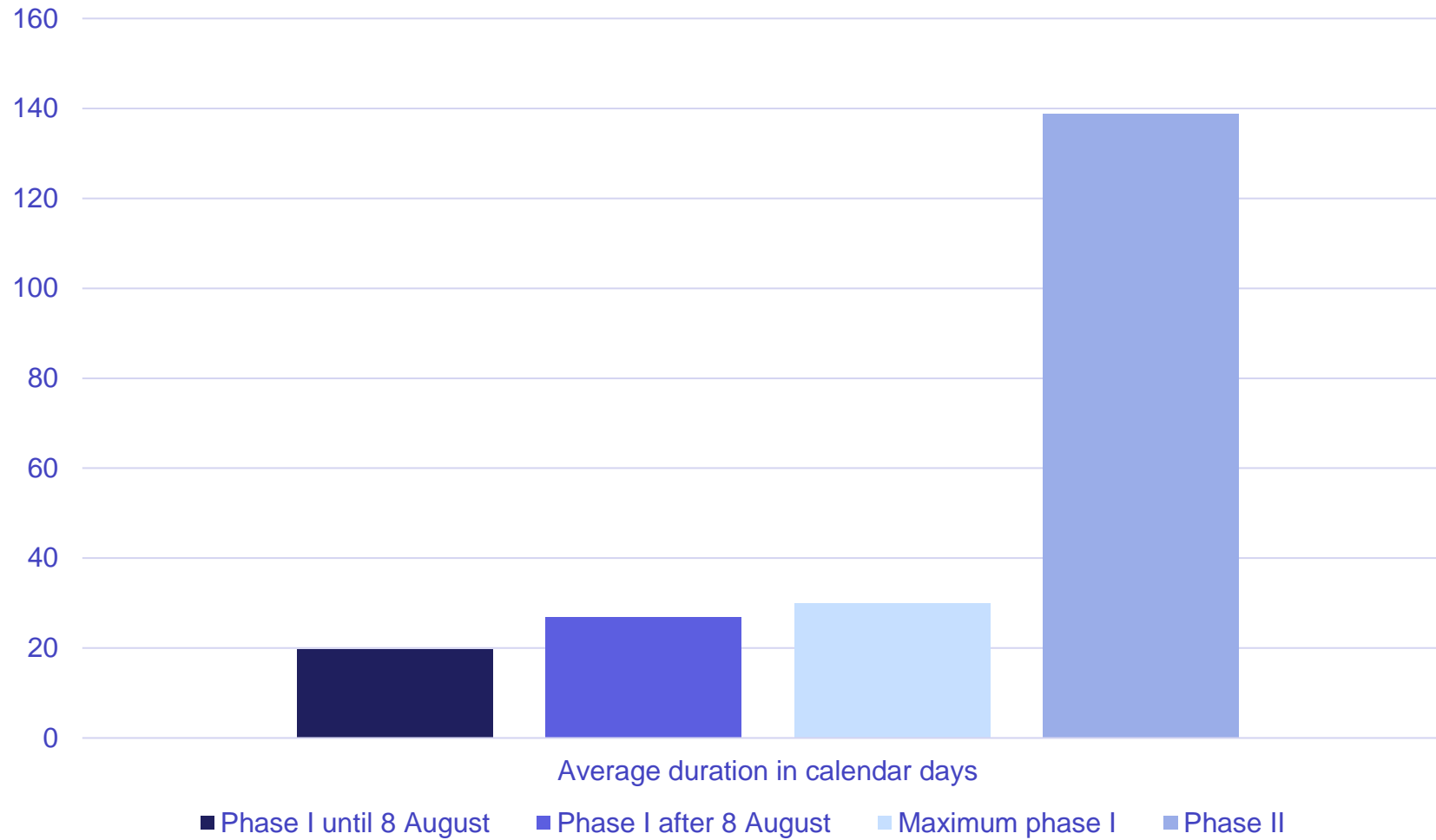
- New Director General as of August 2022 – more involved in merger control than the last Director General → longer proceedings
- High profile below notification threshold transactions → plans to change legislation, potential for abuse of dominance investigations
- Higher number of phase II proceedings → longer proceedings, more complex and resource-consuming, risk of prohibition or commitments

Phase II decisions in Estonia (for notifications submitted in 2022)

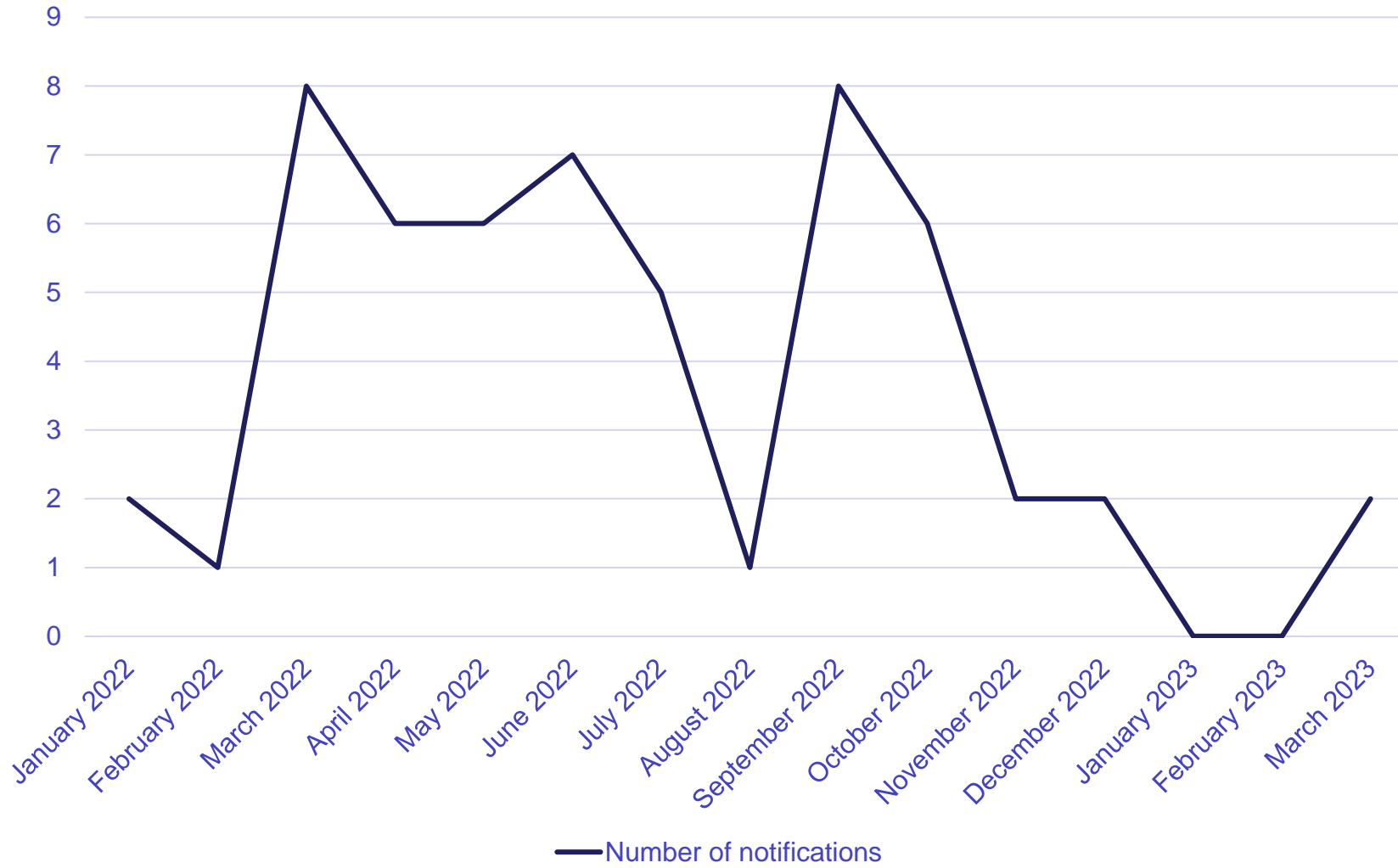


- Prohibition (1)
- Withdrawn (2)
- Cleared with commitments (1)
- Cleared without commitments (1)
- On-going (1)

Average duration of merger control proceedings in Estonia in 2022



Number of merger notifications submitted in Estonia

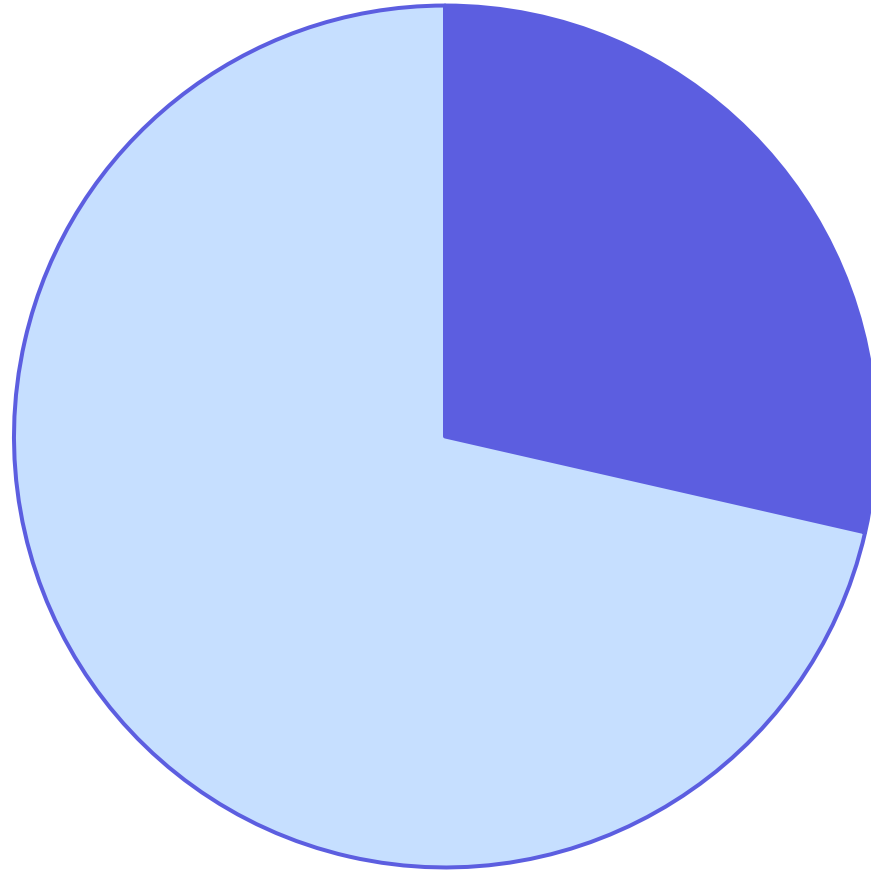


Latvia



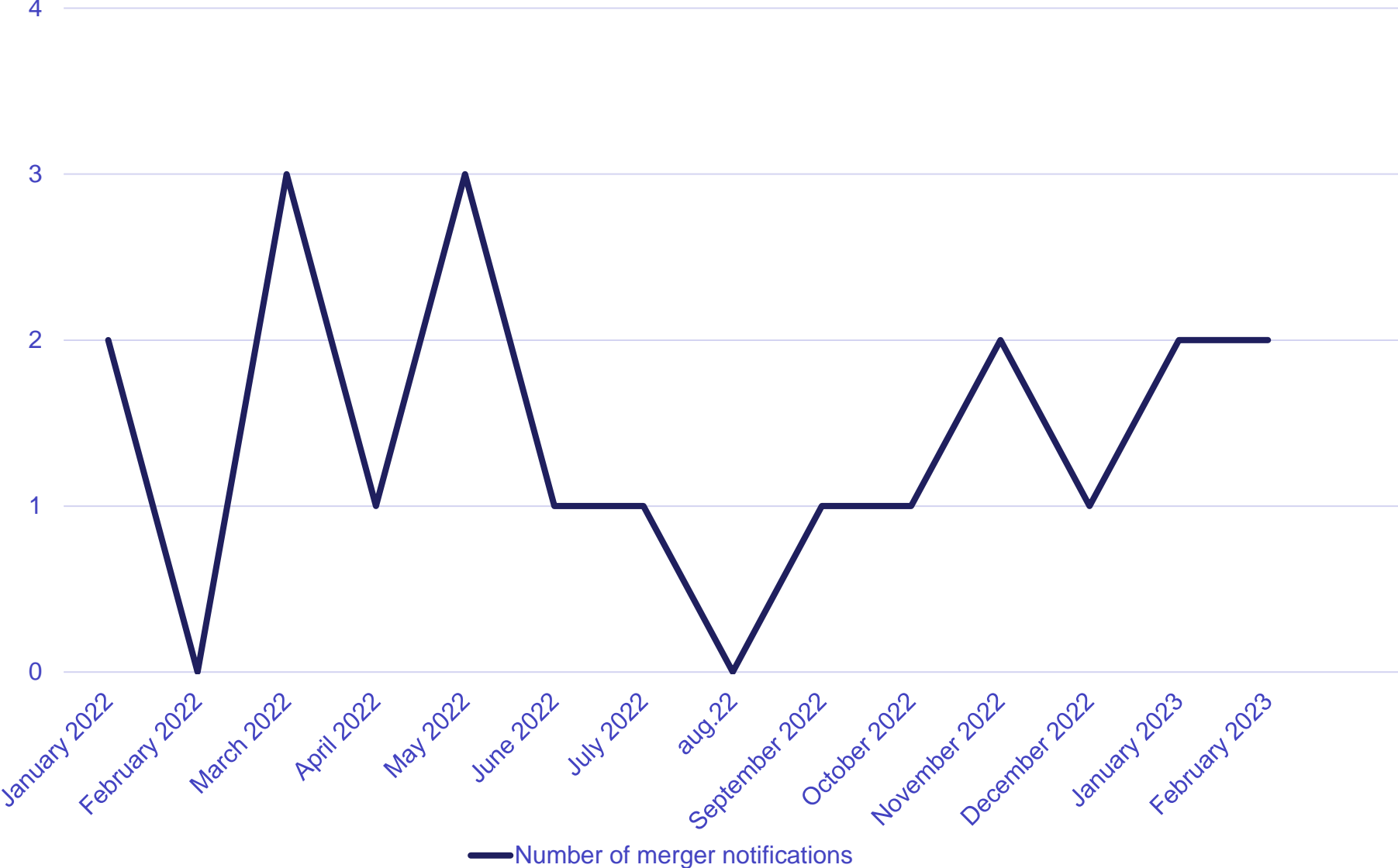
- No material changes in merger control regulation since 2016
- According to the Competition Council's priorities set for 2023, it will continue the work started on the development of a tool for submitting a digital merger notification

Phase II decisions (for notifications submitted in 2022)



■ Prohibition (0) ■ Cleared with commitments (2) ■ Cleared without commitments (5) ■

Number of merger notifications submitted in Latvia (20 in total)





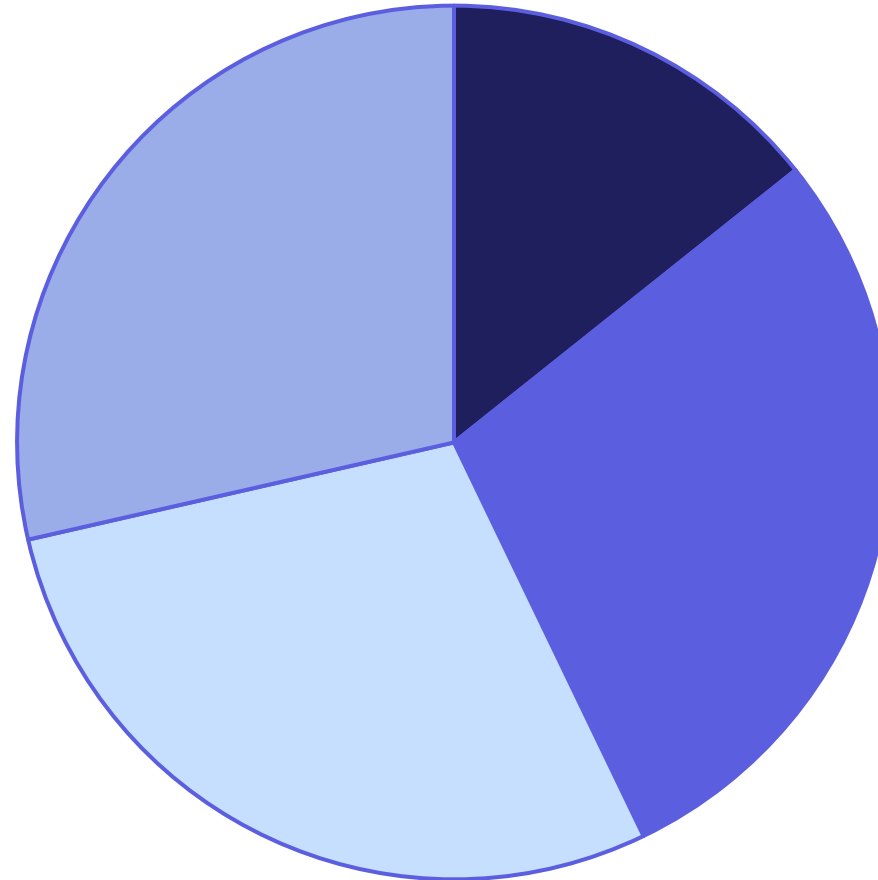
Lithuania

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Number of merger clearance decisions and prohibitions made in Lithuania in 2022



Phase II decisions in Lithuania
(for notifications submitted in 2022)



■ Prohibition (2) ■ Cleared with commitments (1) ■ Cleared without commitments (2) ■ On-going (2)

Developments in Lithuania: requested information and fee for merger examination

- The authority is requesting to submit substantial amounts of information, including internal documents (in all formats), which in practice can cause difficulties.
- Non provision of all requested information may result in penalties and dawn raids.
- Authority has issued recommendations (based on “best practices”) how to submit certain information in the merger notifications.
- The authority pays attention to relevant markets irrespective of their size (markets can be very small and still cause competition law concerns).
- The merger notification in Lithuania costs 22,700 EUR (as of 1 March 2023).



Developments in Lithuania: longer proceedings (I)

- Starting from the day that the notification is considered as full and accepted, the average terms for clearance in 2022 were:
 - 19 working days for “straight forward” mergers;
 - 120 working days (6 months!) for complex transactions.
- “Complex” means a transaction with possible competition concerns or cases where there is lack of reliable data.



Developments in Lithuania: longer proceedings (II)

- The 19 and 120 working days terms do not take into account the “stop the clock” and pre-notifications.
- The authority has the right to “stop the clock” if it does not receive the information it asked for within a set deadline.
- In practice, replying on time can be difficult (1 business day is the minimum term for response!).



Developments in Lithuania: longer proceedings (III)

- Examples (with “stop the clock” accounted for):
 - *Forum Cinemas* acquisition = 7 months after the notification (no clearance)
 - *Dobeles dzirnavnieks* acquisition = 8 months after the notification (no clearance)
 - *InMedica* acquisition = 9 months after the notification (clearance with commitments).
- “Stopping the clock” may impact the timeline of the whole transaction, even if there are no competition concerns!



Developments in Lithuania: review of completed transactions

- In Lithuania, the authority has the right to review transactions even if the turnover thresholds are not met.
- The authority can review transactions that raise competition concerns.
- Recent examples:
 - Acquisition of *Tiketa* – clearance was denied.
 - Acquisition of *Baltijos liftai/Šiaulių liftas* – currently under review.
- The right can be used for up to 12 months after closing.
- Denial can mean the transaction has to be reversed.



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Impact of recent
merger control
developments on
M&A activity

Monika Mališauskaitė-Vaupšienė

29 March 2023

What is the possible impact of merger control?

- Merger control issues can have an impact on the deal's feasibility, structure, length, risk division and price.
- Businesses are already adapting to recent trends, such as longer proceedings and amounts of requested information, especially more experienced players (eg investment funds).
- This has an effect on transaction (i) planning, (ii) negotiations and (iii) costs.



General tips (even for “straight forward” deals)

- Involve a competition lawyer early.
- Think about the agreements (eg SPAs) you sign.
 - Eg, are the long stop dates realistic?
- Prepare a high quality notification.
 - Low quality notifications are not accepted by the authority and may delay the transaction.



More tips for complex deals

- Prepare your “homework” properly (consider performing a competitive assessment, initiate information gathering, consider pre-notification discussions etc).
- Consider involving a competition economist and doing so early.
- Consider about divestment possibilities and candidates for a trustee.
- Think about the possible outcomes (delay, a merger cleared with commitments or denial of merger clearance). Negotiate your agreements (eg, SPAs and financing agreements) accordingly.
 - Eg, how the parties divide the risk of a “bad” ending?
 - What are the alternatives? Eg, what if the deal can only be cleared conditionally?
 - What interest will be paid until the merger is cleared?



What are the current timelines like?

- Remember that the notification has to be (i) drafted, (ii) accepted and (iii) reviewed by the authority.
- This process *usually* takes (**each case is different!**):
 - In Lithuania:
 - at least 3 months for simple deals;
 - at least 7 months for complex deals (in practice, total duration may be 12-18 months).
 - In Latvia:
 - up to 2.5 months for simple deals;
 - up to 7-8 months for complex deals.
 - In Estonia:
 - approximately 1.5-2 months for simple deals;
 - approximately 4-8 months for complex deals.





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Expected impact of
foreign subsidies
regime on M&A
activity

Piibe Lehtsaar

29 March 2023

New rules on distortive foreign subsidies

- [The Foreign Subsidies Regulation \(FSR\) 2022/2560](#)
- Important dates: 12 July 2023 and 12 October 2023
- Aim: addressing distortions caused by foreign subsidies
- Enforcing authority: the European Commission
- Enforcement tools:

Concentration

Public procurement

Own initiative investigation

- If above the thresholds (see next slide for thresholds):
 - a) Prior notification requirement +
 - b) Standstill obligation
- If below the thresholds, EC may request notification → then standstill obligation

THRESHOLDS

	Acquisition	JV	Merger	Public procurement
Concentration / public tender threshold	Target	JV	At least one merging company	Estimated contract value
	Established in the EU and \geq MEUR 500 turnover in the EU			\geq MEUR 250 (\geq MEUR 125, if divided into lots)
Foreign financial contribution threshold	Acquirer + target	Parents + JV	Merging companies	Participant
	Combined foreign financial contributions $>$ MEUR 50 in the 3 years prior to signing			\geq MEUR 4 per non-EU country in the 3 years prior to notification

control with the relevant party (group level)

FOREIGN FINANCIAL CONTRIBUTION

○ Financial contribution means

	transfer of funds or liabilities	foregoing of revenue that is otherwise due	provision and purchase of goods/services
Examples	capital injections, grants, loans, loan guarantees, fiscal incentives, the setting off of operating losses, state-funded R&D	tax exemptions	any goods or services <u>even if on market terms</u>
Examples	compensation for financial burdens imposed by public authorities, debt forgiveness, debt to equity swaps or rescheduling	granting of special or exclusive rights without adequate remuneration	

○ Foreign means granted by

	public authorities of non-EU countries	public and private entities whose action is attributable to a non-EU country
Examples	the central government, local authorities	public banks, state-owned enterprises

IMPACT (1)

- Due to the turnover threshold (\geq **MEUR 500** turnover in the EU), most Baltic companies are likely to be unaffected
 - Example of a Baltic company who would be above the turnover threshold: Eesti Energia, turnover in the EU in 2021 approximately 1.3 billion euros
- Due to the foreign financial contribution threshold ($>$ **MEUR 50** in the 3 years prior to signing), most Baltic companies are likely to be unaffected, unless acquired by, establishing a JV with or merging with a company group that has extensive activities, sales or purchases outside the EU
 - For example, selling energy for more than 50 million euros to public authorities outside the EU or receiving renewable energy subsidies in non-EU countries in excess of 50 million euros over the span of any three years would mean that the financial contribution threshold is exceeded
- European Commission estimated in 2021 that approximately 26 to 38 transactions per year across the EU would need to be notified under the foreign subsidies regime

IMPACT (2)

- Companies should have a system in place for tracking all foreign financial contributions received by the entire group anywhere in the world
 - the registry should cover the five years before 12 July 2023, be constantly updated and retained for ten years
- FSR risks should be considered already before accepting financial contributions from non-EU countries, eg research grants
- Due diligence - needed to conclude whether an FSR filing is needed
- Regulatory conditions precedent – if an FSR filing is needed
- Deal timing, risk division and break fees – address also the risk that the Commission may call in transactions that are below the notification thresholds or order reversing the transaction after it is completed
- Representations and warranties, disclosure schedules



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