

CORPORATE RAIDING IN UKRAINE: CAUSES, METHODS AND CONSEQUENCES

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Abstract: Corporate raiding in Ukraine is a widely discussed and reported problem that severely damages investment and economic development, prospects for European integration, and the welfare of ordinary people. Yet the phenomenon of raiding itself is only poorly understood, often either dismissed as inseparable from the country's broader problem of endemic corruption, or imputed to powerful and shadowy raiders thought to be immune from defensive measures by private businesses. The author's field research in Ukraine sheds light on the history, causes and methodologies of raiding, as well as on the costs and consequences of raiding for Ukraine's further development.

Former U.S. Ambassador to Ukraine John Tefft is fond of emphasizing Ukraine's great potential: its large size, location at a strategic crossroads, diverse resource base, and its large, well-educated, entrepreneurial population, to name just a few of Ukraine's advantages.¹ Yet the Ambassador is also quick to point out that this potential has remained

¹ I am grateful to the International Research and Exchange Council (IREX), which placed me as an Embassy Policy Specialist (EPS) fellow with the economic section of the U.S. Embassy in Kyiv. I am also grateful to Ambassador John Tefft, Deputy Chief of Mission Eric Schultz, and the entire embassy staff, especially Elizabeth Horst of the economic section, who served as my primary point of contact with the embassy. Without their help and support in Ukraine, this research project would not have been possible. Finally, I want to thank Evhenia Viatchaninova and Vitaliy Shpak for their outstanding research assistance throughout this project.

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largely unfulfilled for more than twenty years, as Ukraine has suffered from deeply entrenched problems of corruption, poor governance, and underdeveloped institutions.²

On the heels of the Euromaidan, Ukraine's second major popular revolution in the post-Soviet era, the country now faces an opportunity to advance towards fulfilling its vast potential, or to succumb once again to the very same systemic weaknesses that have hampered it in the past. Whether post-Euromaidan Ukraine succeeds will depend to a large degree on whether it emerges quickly enough from recent economic contraction to complement the new government's political goals of national reconciliation, reform, and European integration with the tangible benefits of more jobs, investment and rising living standards.

Endowed with vast natural agricultural resources, energy and mineral resources, advanced industrial capacity, and excellent human capital, all within easy access to major global markets, Ukraine should be an investment success story. Yet FDI in Ukraine has declined while the world economy grew, from \$4.13 billion in 2012 to \$2.86 billion in 2013,³ and domestic investment is still well below rates in most fast growing developing and developed economies.⁴ Clearly, restoring robust FDI will be a priority for Ukraine's post-Euromaidan government.

An effort to improve the climate for business and investment in Ukraine must begin by recognizing the roots of the economy's dysfunction, including the perennial weakness of property rights. Without strong property rights, market actors are likely to be denied the main benefits of economic activity, thereby reducing incentives for such activity and hampering growth. Even when businesses are functioning, insecure property rights give rise to fear and uncertainty for potential foreign and domestic investors, raising the costs of borrowing and investment for the economy as a whole. For example, in May 2014 commercial borrowing cost 15.6 percent in Ukraine compared to 4.7 percent in Poland when dealing in domestic currency.⁵ It was even more expensive for private citizens to borrow money in Ukraine, with interest rates averaging a

² Ambassador John Tefft. "The Importance of Economic Reform to Ukraine," Speech at Kyiv National Economics University, April 23, 2013. Kyiv, Ukraine.

³ "Foreign direct investment in Ukraine in 2013 shrinks to \$2.8 billion." *Kyiv Post*. February 17, 2014. <http://www.kyivpost.com/content/business/foreign-direct-investment-in-ukraine-in-2013-shrinks-to-28-billion-336936.html>, accessed May 26, 2014.

⁴ Total Ukrainian investment is 16.772 percent of GDP in 2013. This is considerably below the global average of 22 percent of GDP. Ukraine Investment (percent of GDP) Statistics. *Economy Watch*. http://www.economywatch.com/economic-statistics/Ukraine/Investment_Percentage_of_GDP/. accessed May 26, 2014.

⁵ The Central Banks of Ukraine and Poland, respectively, report 15 percent interest and 2.5 percent interest on domestic currency loans. Statistics of the central Banks of Ukraine, Poland. Available at http://bank.gov.ua/files/Procentlastb_KR_e.xls and http://www.nbp.pl/en/statystyka/oproc/mir_new/sw_oprocentowanie_n_en.xls. accessed May 26, 2014.

staggering 24.2 percent.⁶ Though part of this high cost is to account for the weakness of the Ukrainian hryvnia, even U.S. Dollar-denominated loans in Ukraine carried interest rates of 8 percent or higher.⁷

Gloomy as they are, statistics do not tell the whole story. Even though a relatively small proportion of Ukrainian businesses have changed hands through corporate raids, and although the problem has not resulted in a mass exodus of investors from Ukraine, raiding has played a significant role in deterring new foreign investment from entering the market. Raider attacks have been so egregious and highly visible over the past decade that many potential investors have simply concluded that entering the Ukrainian market is not worth the risk.

Accordingly, corporate raiding is one aspect of Ukraine's weak property rights regime that has received significant attention from policy-makers, the media and the general public. Yet despite this attention, and despite wide recognition of the problem by Ukrainians and outsiders as an obstacle to investment and economic growth, the phenomenon itself is not well understood. In public discourse, the term is seldom explained beyond generally vague implications that raiders are connected to oligarchic interests, powerful politicians, and the pervasive culture of corruption in business. While considerable expert attention has been devoted to the problem of corporate raiding in Russia, and to the broader problems of corruption in Ukraine and other post-Soviet economies, this article will be among the first to offer an in-depth examination of corporate raiding in Ukraine specifically.

The article will first seek to provide a concise overview of recent scholarship on corporate raiding, and in so doing give some greater depth and context to the definition of raiding that framed the author's field research in Ukraine. It will then provide a brief summary of the history and evolution of raiding in Ukraine from the late Soviet era to the present. Turning to the main findings of the fieldwork, it will describe some of the methods by which raiders seek to achieve their objectives, including which vulnerabilities of firms raiders typically seek to exploit. Finally, the article will describe the negative impacts of corporate raiding and weak property rights on Ukrainian democratic reform, economic development and aspirations for European integration, emphasizing the need for greater attention to this problem from Western policymakers.

In support of this analysis, and in addition to a review of published sources, the author conducted interviews in Ukraine, primarily over a two-month period in the spring and summer of 2013. Interview subjects were individuals familiar with the problem from a wide range of perspectives, including Western diplomats, current and former Ukrainian officials,

⁶ Ibid.

⁷ Ibid.

Ukrainian and international bankers, representatives of International Financial Institutions (IFIs), Ukrainian businesspeople, foreign investors, representatives of business associations, lawyers, NGO experts, and journalists, among others. While citations to these interviews are included in this article, in many cases the author was bound by agreement with interviewees to protect their anonymity, or to refrain from direct quotation. The sensitivity around corporate raiding generally, and around many of the individual cases discussed, mandated this unconventional approach, but also made it possible to develop a more complete and balanced picture of the problem than by relying only on interview subjects who were prepared to discuss the issues publicly.

Defining Corporate Raiding

A handful of Western scholarly and business publications in recent years have attempted to describe and analyze corporate raiding in Ukraine, however most international scholarship to date has focused on raiding in Russia. This is understandable given the Russian economy's larger size (roughly tenfold that of Ukraine) and the extent of the corporate raiding problem from Russia's "wild 1990s" through the early 2000s. However, comparatively little attention has been paid to Ukraine, where the problem became acute in the latter part of the last decade and during the four years of Viktor Yanukovich's presidency (2010-2014).

Over the past decade, the Russian political system has moved towards greater centralization—which Vladimir Putin has dubbed the "vertical of power"—at the same time bringing oligarchs and major business interests under direct or indirect Kremlin control. By some measures, raiding has declined as the Kremlin has asserted greater control over dispute-resolution mechanisms, including the courts, law enforcement agencies, and local administrative organs, while the state's direct interest in many big businesses makes "freelance" raiding by or against such enterprises ultimately pointless. Although Yanukovich appeared also to be concentrating political and economic power in the hands of those closest to the central government, to some extent following the Russian model, the process was far slower, constrained by a robust history of "oligarchic pluralism."⁸

The situation in Ukraine differs in fundamental ways from that in Russia. The prospect of Ukraine's political and economic integration with the European Union offers major incentives for smaller and middle-sized European businesses to invest in Ukraine, which is seen as a more

⁸ Olga Shumylo-Tapiola. "Viktor Yanukovich: A Man of the Oligarchs." The Carnegie Endowment for International Peace. March 10, 2011. <http://carnegieeurope.eu/2011/03/10/viktor-yanukovich-man-of-oligarchs/br9n>, accessed May 26, 2014; This and all subsequent interviews were conducted by Matthew A. Rojansky unless otherwise noted. Interview with EBRD official, Kyiv, Ukraine, May 31, 2013.

accessible market than Russia, even though these very businesses may be among the most vulnerable to raider attacks. Meanwhile, the absence of Russia's vast natural resource wealth forces Ukrainian officials to seek other avenues for corrupt enrichment, including facilitation of corporate raiding. Finally, since Ukraine's legal reforms and privatization processes are arguably less advanced than those in Russia, opportunities abound for raiders to exploit corrupt courts and administrative officials, especially in the regions, where central authorities may lack adequate knowledge or control.

Despite these important differences between the circumstances in Russia and Ukraine, some foundational concepts apply in both countries, and so it is useful to draw upon analyses of corporate raiding in Russia and even in other economies that have undergone the transition from totalitarian communism to private enterprise over the past two and a half decades.

The term "raiding" has been used not only in Russia and Ukraine, but in Western contexts as well—think of the hostile takeovers, asset stripping, and associated egregious business practices on which fortunes were made throughout the last century. In a fundamental sense, raiding may be understood as, "seizing a property object," whether through a Western-style hostile takeover or by even more unconventional means.⁹ According to one experienced Western investor in Ukraine, raiding is the simple act of "stealing somebody's business."¹⁰ Indeed, "*reiderstvo*" is understood in both the Russian and Ukrainian languages to signify essentially the same type of rapacious greed seen on Wall Street and elsewhere in the West, though in a very different legal and political context. As Jordan Gans-Morse writes, "While the term ['raiding'] is taken from the American usage, it involves far more than buying up a company's shares in order to change management."¹¹

In his seminal article on raiding in Russia, Tom Firestone explains that, "*reiderstvo* is not just simple thuggery.... Russian 'reideri' rely on court orders, resolutions of shareholders and boards of directors, lawsuits, bankruptcy proceedings, and other ostensibly 'legal' means as a cover for their criminal activity."¹² Though it is often accomplished by superficial operation of elements of the legal system, raiding is inherently opposed to

⁹ Jan Neutze and Adrian Karatnycky. "Corruption, Democracy, and Investment in Ukraine." Atlantic Council Policy Paper. October 2007, p. 13. Available at http://www.atlantic-council.org/images/files/publication_pdfs/1/071016_Corruption_percent20Democracy_percent20and_percent20Investment_percent20in_percent20Ukraine.pdf, accessed May 26, 2014.

¹⁰ Interview with Natalie Jaresko, Kyiv, Ukraine, May 17, 2013.

¹¹ Jordan Gans-Morse. "Threats to Property Rights in Russia: From Private Coercion to State Aggression." *Post-Soviet Affairs* 28:3 16 May 2013, p. 30. Available at <http://www.tandfonline.com/doi/pdf/10.2747/1060-586X.28.3.263>, accessed May 26, 2014.

¹² Thomas Firestone. "Criminal Corporate Raiding in Russia," *The International Lawyer* 42:4 (Winter 2008). 1207-1229, p. 1207.

the rule of law. It should be no surprise, therefore, that as post-Communist states such as Ukraine have adopted layer upon layer of new laws and regulations with the ostensible purpose of better protecting property rights, raiders have adopted these same laws and regulations as new weapons to use against their targets. Seeking to capture this dichotomy, Firestone describes corporate raiding as, “acts designed to give a legitimate appearance to the illegal (accomplished through illegal means) transfer to the actor or a third party, of property rights, rights to the results of intellectual activity and equal rights to individualization (of intellectual rights) as well as, the illegal acquisition of the right to carry out managerial functions in a commercial or other organization.”¹³

Writing for a primarily Western business readership, Graham Stack described corporate raiding as both integral to, and a consequence of, Ukraine’s failed legal institutions. In a 2010 article, he concluded that,

Corporate raiding in Ukraine is a euphemism for the illegal and corrupt manipulation of Ukraine’s patchy legislation and ramshackle institutions to seize control of unsuspecting companies. Measures typically employed range from excluding shareholders from meetings by holding them at short notice in a distant location to alteration of company registers, to purchasing or faking court decisions. It is the most blatant symptom of Ukraine’s terrible investment climate that groups this EU hopeful with far poorer developing countries in ratings of corruption, economic freedom and ease of doing business.¹⁴

Ukrainian officials frequently discuss “raiding” when attacking their political rivals, assigning blame for poor economic performance, or attempting to reassure domestic and international investors about the state’s protection of property rights. However, thus far the government has offered only a limited formal definition of the problem, exclusively addressing threats to state property. In 2008, the Cabinet of Ministers passed a resolution, in which a “raider attack” was defined as, “disposal of state-owned property and corporate rights other than following privatization proceedings, or [by] illegal seizure of a company.”¹⁵ Proposed

¹³ Ibid. (Firestone cites: “Predlozheniya po Povyshenyu Effektivnosti Borby s Reiderstvom: Nezakonym Zakhvatom Sobstvennosti” August 15, 2008. Unpublished manuscript, on file with author).

¹⁴ Graham Stack. “Ukraine’s corporate raiders take time out - but for how long?” February 10, 2010. <http://www.bne.eu/story1954>, accessed May 26, 2014.

¹⁵ Resolution of the Cabinet of Ministers of Ukraine, “On Approval of the Declaration of

legislation on criminal liability for raider attacks has taken a broader approach, referring to raiding as, “an organized attack on a company, organization or an institution with the purpose of its seizure that resulted in disruption of its ordinary course of business.”¹⁶

In his 2013 chapter in *The Political Economy of Russia*, Richard Sakwa describes raiding as a function of the Russian “dual state” that is subject to domination by both “legal-rational” and “patrimonial” means, as defined by Max Weber. In this system, “formal and informal rules operate at the same time, reproducing dualism at all levels and allowing actors to operate elements of either, but undermining the inherent internal logic of both,” and thus provoking a “systemic stalemate” that inhibits development.¹⁷ For Sakwa, the dual state concept is of particular value to understand the apparent contradiction inherent in well-known cases when the state itself deems raider attacks to be violations of the law. After the 2005 raider attack on investment firm Hermitage Capital, for example, investigation of abuses which led to the death of lawyer Sergei Magnitsky revealed that the raiders had in fact violated Russian law, and were thus subject to legal penalties. Yet the stolen assets themselves have not been restored, nor has the state acknowledged the theft as a corporate raid.¹⁸

Sakwa adopts the definition of raiding offered by a Russian think tank, the Center for Political Technologies, in a 2008 report: “The illegal ... seizure of property ... The winning of control in the widest sense of one company by another using both illegal and legal methods; the seizure of shares by provoking business conflicts; ... a way of redistributing property which in essence is banditry, but which formally conforms to some sort of judicial procedure.”¹⁹ In fact, this broad definition could also encompass corporate raiding in Ukraine. However, while both rational-legal and patrimonial methods of domination are applied in the Ukrainian case, the vertical of state power has traditionally been much weaker than in Russia, and so it would be inaccurate to describe Ukraine as a dual state

Objects and Missions of the Budget for 2008.” Detailed in Gábor Zimmerer & Oleksii Khmara, “Raider Attacks In Ukraine.” Transparency International Ukraine monograph, 2012. Available at http://ti-ukraine.org/en/system/files/research/raider_attacks_-_ti_ukraine_eng.pdf, accessed May 26, 2014.

¹⁶ From the draft law “On Entering Amendments and Additions into Some Legislation Acts Related to Initiation of the Criminal Prosecution for Seizure of Companies and Enterprises.” See Yulia Shmagina and Vitaliy Patsyuk, United Legal Group Association statement. Available at http://ulga.com.ua/en/cms/raiders_attack, accessed May 26, 2014.

¹⁷ Richard Sakwa. 2013. “Systemic Stalemate, Reiderstvo, and the Dual State,” in Neil Robinson (ed.), *The Political Economy of Russia*. Lanham, MD, Rowman & Littlefield, pp. 69-96.

¹⁸ Richard Sakwa. “Raidering in Russia,” in *Russian Analytical Digest: State-Business Relations and Modernization*. No. 105, 5 December 2011, pp. 10-12.

¹⁹ Centre of Political Technologies. 2008. *Reiderstvo kak sotsial'no-ekonomicheskii i politicheskii fenomenon sovremennoi Ros-sii: Otchet o kachestvennom sotsiologicheskome issledovanii*. Moscow, Tsentr politicheskikh tekhnologii, May.

in the same sense. Certainly, raider attacks sponsored by state actors in Ukraine have seldom advanced what Sakwa calls “de-privatization,” that is the Kremlin’s efforts to bring key Russian industries under de facto state control (even if via nominal private ownership) in order to serve national policy goals.²⁰

In Philip Hanson’s recent Chatham House paper, *reiderstvo* in Russia is described as, “the illicit acquisition of a business or part of a business [with] the complicity of any or all of the tax, security, law enforcement, and judicial authorities.”²¹ Although the administrative and law enforcement tools applied by raiders to seize target assets could nominally apply to anyone in the economy, Hanson points to an overwhelming correlation between the rise of prosecution for “economic crimes” in Russia in recent years, and the ability of local and national authorities to extract payments or seize assets. In Hanson’s view, raiding is enabled by direct engagement of informal or personal power relationships with formal legal rules, in contrast to Sakwa’s portrayal of the dual state in which formal and informal power relationships exist in parallel.

In another recent treatment, Yakovlev, Sobolev and Kazun present raiding in Russia in terms of the challenge for the state and economic actors in controlling and resisting the state’s own violent agents.²² Although police, prosecutors, security officials and other agents are essential for state administrative and law enforcement functions, as well as to advance leaders’ political and policy goals, their agglomeration of coercive power also risks severe degradation of property rights and inhibition of economic growth. The problem is that, “state agents of violence are especially well placed to use their power for personal enrichment rather than the public good.”²³ Economic actors in both Russia and Ukraine are vulnerable to raiding precisely because of relatively underdeveloped top-down and bottom-up tools for constraining the power of such agents.

Raiding receives attention in Ukrainian academic literature as well, particularly in the context of analysis of corporate law reform. According to Andriy Smityukh, “Corporate raiding is a conflict of interests in enterprise administration [caused by] the availability of opposing, competing and even hostile interests of the raider, enterprise management, and controlling

²⁰ Sakwa. “Systemic Stalemate...”

²¹ Philip Hanson. “Reiderstvo: Asset-Grabbing in Russia.” Russia and Eurasia PP 2014/03. Chatham House, March 2014. http://www.chathamhouse.org/sites/default/files/home/chatham/public_html/sites/default/files/20140300AssetGrabbingRussiaHanson1.pdf, accessed May 26, 2014.

²² Andrei Yakovlev, Anton Sobolev & Anton Kazun. 2013. “Means of production versus means of coercion: can Russian business limit the violence of a predatory state?” *Post-Soviet Affairs* 30: 2-3, pp. 171-94.

²³ Ibid.

shareholders.”²⁴ Igor Shvaika defines corporate raiding as a “third stage” of property redistribution in Ukraine’s post-Soviet transition, the first two stages being privatization and the development of basic legal instruments such as bankruptcy.²⁵ A. Koval concurs, noting that whereas assets were acquired in the 1990s through state privatization, since the 2000s property has more often changed hands by takeovers, which were either voluntary or hostile, in which case they qualify as raids.²⁶

Corporate raiding is also a common theme in the popular press in and about Ukraine. In mainstream media sources, raiding has been described as, “modern-day feudalism,” in which “a would-be raider finds an influential cover, either a bureaucrat or someone in State Security...After a fee has been agreed, the bureaucrat goes to the owner of the business you want to steal and says: sell your business for five rubles or you go to jail.”²⁷ Yet even journalists who have covered raiding for the media admit that it is poorly understood: “Few people who know the term *reiderstvo* actually understand what it is...For example many people simply call conflicts between owners raiding (especially since each side in a dispute names the other as a raider), others simply call all corrupt activity raiding or banditism.”²⁸

It should be no surprise that the general public lacks a compelling consensus definition of corporate raiding. After all, disinformation is routinely spread by both the raiders themselves and by state officials who are failing in their nominal responsibility to combat raiding. One Ukrainian official who was involved in the government’s official anti-raider commission even denied that raiding per se was the issue, explaining that, “raiding is not a problem but a course of events when capital is leaking out of all sides.”²⁹ Even an EU diplomat suggested raiding gets relatively more attention than it should: “Some foreign businesspeople call disputes over tax payments or regulatory compliance ‘raiding’ but this is a misunderstanding of the law,” cautioning, “you should really get into the details before stating

²⁴ Smityukh, Andriy. “Corporate raiding in light of corporate conflictology.” *Yurydychnyi Radnyk* (Ukrainian language journal), 2:22, April 5, 2008. Available at <http://www.yurradnik.com.ua/stride/ur/index.php?m=archive&y=2008&mag=29&art=592>, accessed May 26, 2014.

²⁵ Igor Shvaika. 2006. “Some questions pertaining to upholding a claim.” *Yurydychnyi Radnyk* (Ukrainian language journal), 6:14, Pp. 20-22. Available at <http://www.yurradnik.com.ua/stride/ur/index.php?m=archive&y=2006&mag=20&art=398&dl=1> Accessed May 26, 2014.

²⁶ A. Koval. “Methods of Hostile Takeovers.” *Yuridicheskaya Praktika*. № 29 (343). 2004, Pp. 1, 7.

²⁷ Owen Matthews and Anna Nemtsova. “The New Feudalism: Shell’s real crime... was not to let Gazprom muscle in...” *Newsweek*. October 15, 2006. Available at <http://royaldutchshellplc.com/2006/10/15/newsweek-the-new-feudalism-shells-real-crime-was-not-to-let-gazprom-muscle-in/>, accessed May 26, 2014.

²⁸ Interview with Oleg Sychev, Anti-Raider TV journalist, Kyiv, Ukraine, May 8, 2013.

²⁹ Interview with Ukrainian Cabinet of Ministers official, Kyiv, Ukraine, May 16, 2013.

that this case is a raider attack.”³⁰

Certainly, the ambiguity and uncertainty surrounding the problem of corporate raiding in Ukraine is not helped by the reluctance of some victims of raiding to discuss raider attacks. According to one financial journalist, “it’s not possible to know about all the problems of raiding because people hide it.”³¹ Yet others may blow their individual problems out of proportion, as the EU diplomat explained: “When [many hundreds of] companies are doing well they are not interested in talking about it, but when you read negative stories about raids they are usually the same few cases.”³²

Each of the definitions of raiding offered by scholars, members of the business community, the media, and the general public, is surely accurate in some respects, yet still not entirely adequate. For the purposes of this analysis, a relatively broad yet simple definition of corporate raiding in Ukraine can be adopted: Raiding is the illegal or improper transfer of valuable assets, or value generated from those assets, generally by means of improper coercive action, or failure to act, on the part of corrupt state authorities.

Even this definition may not capture all cases that could fairly be labeled raids, yet it is sufficiently flexible to embrace most methods and types of raiding encountered in the course of research for this article, while nonetheless excluding corrupt or problematic practices that do not rise to the level of raiding. As interviewees on all sides of the issue insisted, it is important to distinguish mere business disputes, official corruption, improper privatization, and other bad practices from full-blown raiding. In light of this persistent ambiguity and complexity, further careful consideration of the recent history and current practice of raiding in Ukraine is needed.

History and Evolution of Raiding

Ukrainian experts have described at least three main phases in the evolution of corporate raiding, commonly applying the color-coding of “black,” “gray” and “white”³³ to different periods and types of raider attack.³⁴

³⁰ Interview with trade representative of an EU country, Kyiv, Ukraine, May 24, 2013.

³¹ Interview with Sevghil Musaeva, Forbes, Kyiv, Ukraine, May 30, 2013.

³² Interview with trade representative of an EU country, Kyiv, Ukraine, May 24, 2013.

³³ Sakwa, again citing the Center for Political Technologies, adopts the same terminology in discussing raider attacks in Russia, however suggests that the three typologies may exist concurrently: “In contemporary Russia raiding is categorised by various colours: ‘black raiding’ relies primarily on illegal methods; ‘grey raiding’ uses a combination of semi-legal and illegal means; while ‘white raiding’ relies on semi-legal actions.” Sakwa. “Systemic Stalemate.”

³⁴ Andriy Smityukh. “Corporate raiding in light of corporate conflictology.” *Yurydychnyi Radnyk*, 2:22, April 5, 2008. Available at <http://www.yurradnik.com.ua/stride/ur/index.php?m=archive&y=2008&mag=29&art=592>, accessed May 26, 2014.

Interview subjects and observers disagree about the precise definitions of each type and period, but there is a broad consensus that “white” raiding involves disputes managed largely within the jurisdiction of courts and the law, whereas “black” or “gray” attacks are those in which raiders apply at least some kinds of pressure outside the law, or engage in explicitly illegal behavior.

“Black raider attacks,” explain lawyers Yulia Shmagina and Vitaly Patsiuk, “assume achieving of the set objectives using completely illegal methods, including falsification of documents, fake signatures, threatening, forcing, violence and physical seizure of the company.”³⁵ “Gray raiders” have been described as wolves in sheep’s clothing—bandit raiders who construct false legal claims in order to impersonate “white” corporate raiders.³⁶ In very broad terms, raiding has evolved away from “black” and toward “white” methods over the past two decades, but with plenty of cases that fall into the “gray” area in between.

Raiding in Ukraine can trace its origins to the late Soviet-era “bazaar” system of privately-owned market stalls. Raiding on a relatively small scale flourished in this context, in which practically every small trader was forced to buy protection (the widely used Russian term is “*krysha*,” literally meaning “a roof”) from organized crime groups, who in turn bribed or threatened officials to ensure their own immunity from prosecution. Raids took place not only when gangsters decided to seize traders’ assets, but when traders invoked the assistance of a criminal *krysha* or corrupt officials to take over or destroy a flourishing rival’s business.

With the collapse of the Soviet system and the first wave of post-1991 privatization, came a period dominated by the so-called “black” or “bandit” raids. These were straightforwardly criminal acts, made possible by the breakdown of social order, desperate economic conditions, and general lawlessness of the time. In the simplest form, criminal groups would send armed men to seize the premises of a business, typically a former state enterprise, and physically remove all valuable assets and materials from it, ranging from cash, to computers and machinery—even antiquated Soviet industrial equipment was seized and sold for scrap.³⁷

By the late 1990s and early 2000s, raiding entered what my interviewees labeled the “gray” phase, in which elements of “black” and “white” raiding activity could be observed.³⁸ The parties at interest may

³⁵ Yulia Shmagina and Vitaliy Patsyuk, United Legal Group Association statement at http://ulga.com.ua/en/cms/raiders_attack, accessed May 26, 2014.

³⁶ Smityukh, Andriy. “Corporate raiding in light of corporate conflictology.” *Yurydychnyi Radnyk*, 2:22, April 5, 2008. Available at <http://www.yurradnik.com.ua/stride/ur/index.php?m=archive&y=2008&mag=29&art=592>, accessed May 26, 2013.

³⁷ Interview with Oleg Sychev, Anti-Raider TV journalist, Kyiv, Ukraine, May 8, 2013.

³⁸ Ibid.

have been officials, wealthy businessmen, or Soviet-era “red directors” seeking to gain ownership over industries they already managed. In many cases the real parties at interest in a raid were unknown. Methods, too, became far more complex, with the involvement of a wide range of state ministries and private middlemen, including foreigners, and usually invoking decisions of a purported shareholders meeting or court orders to transfer assets for the raider’s benefit.

In some famous cases, the original raider was deceived by middlemen who offered assistance in acquiring the target asset, but ended up walking away with it themselves. It was by means of such raids that many of today’s oligarchs in Ukraine began to assemble their vast vertical monopolies in sectors such as energy, mining, telecommunications, or food and agriculture. Not surprisingly, the two heavily industrialized and politically powerful regions of Donetsk and Dnipropetrovsk became the scenes of many “gray” raids during the Kuchma years (1994-2004), as local magnates leveraged political connections to create a safe space for raiding activity that benefitted their interests.³⁹

The 2004-05 Orange Revolution brought a temporary halt to raiding since the new government was formally committed to fighting corruption and protecting property rights. However, the dysfunction and eventual collapse of the Orange coalition quickly resulted in a huge upsurge in raids by the second half of the last decade. A former senior state official explained that the existence of competing political power centers in the Presidency, the Government and the Verkhovna Rada—plus local and regional governments—allowed business owners to secure at least some kind of political krysha, which was at best temporary protection in the tumultuous political environment.⁴⁰ However, endless battles over privatization and re-privatization had the effect of increasing uncertainty and encouraging raiders to ply their trade.⁴¹

After the arrival of the Yanukovich Administration in 2010, raiding evolved yet again, but it did not necessarily decline. One journalist called this the period of “white raiding,” meaning that raiders achieved the same ends as before but often did not appear to be engaged in obviously criminal activity.⁴² A government official suggested that since 2010, “raiding has not disappeared, but has taken on quieter forms.”⁴³ Another journalist who has reported on raiding countered, “What’s happening today [2013] in Ukraine is like in markets in the 1990s—it’s mafia extortion, but by

³⁹ Interview with EBRD official, Kyiv, Ukraine, May 31, 2013.

⁴⁰ Interview with O. Chaliy, Kyiv, Ukraine, May 2, 2013.

⁴¹ Interview with Y. Yekhanurov, Kyiv, Ukraine, June 10, 2013.

⁴² Interview with Oleg Sychev, Anti-Raider TV journalist, Kyiv, Ukraine, May 8, 2013.

⁴³ Interview with 3 officials, Presidential Administration, Kyiv, Ukraine, May 7, 2013.

the state, and you cannot win or protect yourself.”⁴⁴ One reason for the continuation of raiding may have been the increasing concentration of the financial benefits of political power around the so-called “Family” of President Yanukovich (Ukrainians say the “Family” includes both actual relatives, like the President’s son Oleksandr, and close associates), leaving even many loyal Regions Party officials out in the cold.⁴⁵ These officials, accustomed to living well off of corrupt payments, had to raid successful businesses to acquire wealth, or solicit payments from others in exchange for facilitating raids.⁴⁶

Another theory is simply that there was a new large-scale realignment of business ownership underway, in which those closest to Yanukovich were systematically stripping lucrative assets away from their previous owners, and they were doing so by means of corporate raids. This perspective was supported by sources who suggested that raider attacks over the previous several years had been especially large scale, and aimed at seizing successful monopolistic businesses and maintaining control, rather than simply stripping and selling assets.⁴⁷ If the “Family” was indeed responsible for the latest wave of corporate raids, then it was likely to the detriment of Ukrainian oligarchs, many of whom supported stabilizing property rights and rule of law to protect the business empires they had assembled over the past decade.⁴⁸ In any case, the consolidation of political power around the Presidential Administration in 2010-2014 meant that there were few, if any, reliable “kryshy” to be had, and so businesses had to think differently about how to defend themselves.

Because so much reticence and uncertainty surrounds raider attacks in Ukraine, and because experts still disagree about the definition of raiding, the precise scale of the problem is difficult to establish. Officials in 2006 claimed that up to two-thirds of the 110 mergers and acquisitions that took place in Ukraine that year could be considered hostile takeovers or raids.⁴⁹ At the same time, an anti-raiding NGO reported that more than

⁴⁴ Interview with Ukrainian financial journalist, Kyiv, Ukraine, May 2013.

⁴⁵ Wojciech Konończuk and Arkadiusz Sarna. “The presidential ‘family’ in Ukraine is developing its business base.” Center for Eastern Studies. June 26, 2013. Available at <http://www.osw.waw.pl/en/publikacje/eastweek/2013-06-26/presidential-family-ukraine-developing-its-business-base>, accessed May 26, 2014. See also Sergii Leshchenko. “Ukraine: Yanukovich’s ‘Family’ spreads its tentacles.” Open Democracy-Russia. January 29, 2013. Available at <http://www.opendemocracy.net/od-russia/sergii-leshchenko/ukraine-yanukovichs-family-spreads-its-tentacles>, accessed May 26, 2014; and Alexander J. Motyl. “Ukraine: The Yanukovich Family Business.” *World Affairs*. March 23, 2012. Available at <http://www.worldaffairsjournal.org/blog/alexander-j-motyl/ukraine-yanukovich-family-business>, accessed May 26, 2014.

⁴⁶ Interview with O. Chaliy, Kyiv, Ukraine, May 2, 2013.

⁴⁷ Interview with EBRD official, Kyiv, Ukraine, May 31, 2013.

⁴⁸ Interview with senior Western diplomat, Kyiv, Ukraine, May 6, 2013.

⁴⁹ Volodimir Shelomentsev and Mikola Pohoretskyi. “Raiding in Ukraine: Criminal Liability

2,500 raider attacks had taken place since 2002, with an average of one attack per week.⁵⁰ Zakhariy Varnaliy and Iryna Mazur claim there are 35-50 raiding groups in Ukraine, who have been responsible for approximately 3,000 raiding attacks each year with a “success rate of over 90 percent.”⁵¹ Although most observers reported a decline in attacks in the aftermath of the 2008-09 financial crisis, others insist the problem was on the rise again quickly afterward and throughout the Yanukovych years.

Who Are the Raiders?

In some raids, the ultimate party at interest can remain hidden behind layers of intermediaries and shell companies. Yet it should be no surprise that among the most effective raiders are usually major oligarchs, powerful politicians, including local and national-level officials, and service providers who specialize in conducting raids for a fee. At the same time, many successful raids depend on some degree of cooperation—whether voluntary or coerced—from somebody on the inside of the target company, even including senior management hired directly by the owners. In rare cases, the raiders are even revealed to be the “legitimate” owners themselves, who are seeking to extract capital from the company that shareholders, partners, creditors, or regulators would not otherwise allow.⁵²

It is no secret that some of the wealthiest businessmen in Ukraine today, including the country’s prominent oligarchs, have benefitted from corporate raiding over the past two decades. Ihor Kolomoisky, co-owner with Henadiy Boholyubov of Dnipropetrovsk-based Privat Group and in March 2014 appointed governor of Dnipropetrovsk Oblast, is probably the most famous oligarch-raider, accused of having conducted a massive raiding campaign over the roughly ten years up to 2010,⁵³ when he ran

Matters.” *Yurydychnyi Radnyk*, №2, April 5, 2008. Available at <http://www.stride.com.ua/stride/ur/?m=rubricator&rub=68&art=590>, accessed May 26, 2014.

⁵⁰ Ibid.

⁵¹ Zakhariy Varnaliy, Iryna Mazur. Raiding in Ukraine: preconditions and ways to address the problem. *Strategic Priorities*. #2(3), 2007. Pp.129-136.

⁵² For example, the Quinn family of Ireland has been accused of raiding their own business, the Ukraina Shopping Mall, possibly in collusion with local partners, as part of a scheme to extract cash from the company that would otherwise be blocked by its creditors, including a state-owned Irish bank. Interview with Mark Rachkevych, *Kyiv Post*, Kyiv, Ukraine, May 9, 2013. See also Mark Rachkevych. “Appellate court turns tide further in Irish bank’s favor to gain control over Ukraina mall.” *Kyiv Post*. June 15, 2013. <http://www.kyivpost.com/content/business/appellate-court-turns-tide-further-in-favor-of-state-owned-irish-bank-to-gain-control-over-ukraina-shopping-mall-in-kyiv-325683.html>, accessed May 26, 2014. See also Graham Stack. “Yanukovych family muscles in on Quinn’s Ukraine shopping mall.” *Business New Europe*. November 23, 2012. <http://www.bne.eu/story4287>, accessed May 26, 2014.

⁵³ According to Forbes: “Bogolyubov and Kolomoisky fostered strong reputations as corporate raiders in the mid-2000s, becoming notorious for a series of hostile takeovers... These schemes included, among others, a literal raid on the Kremenchuk steel plant in 2006, in

afoul of the new authorities and was forced to curtail some of his activity.⁵⁴ At its height, Privat Group controlled significant stakes in nearly every industry in Ukraine, including metals, chemicals, energy, banking, and media.⁵⁵ Even today, the group's banking arm controls roughly 20 percent of Ukrainian deposits.⁵⁶

Raiding has apparently been an intimate part of Privat Group's growth strategy. Kolomoisky himself is credited with the memorable quotation, "give me a 1 percent stake and I will take over the entire company."⁵⁷ One of Kolomoisky and Boholyubov's close associates, the Dnipropetrovsk businessman and deputy governor Hennadiy Korban, was thought to be the orchestrator of many raids on behalf of his business partners.⁵⁸ In 2006, Korban described his fee structure for hostile takeover and anti-takeover services: "[My fee] depends on what I'm doing. When I am protecting someone's possession, this is one thing. If your work aims at merger or acquisition, i.e., the client gets a new asset, the fee is absolutely different."⁵⁹ Korban declared in a 2012 interview that raiding activity in Ukraine had "exhausted itself," above all because the value of Ukrainian

which hundreds of hired rowdies armed with baseball bats, iron bars, gas and rubber bullet pistols and chainsaws forcibly took over the plant." Melik Kaylan. "An Injection of Rule of Law for Ukrainian Business? Oligarch's Lawsuit Could Help Improve the Culture of Business Dealings in the Post-Soviet Space." *Forbes*. July 15, 2013. <http://www.forbes.com/sites/melikkaylan/2013/07/15/an-injection-of-rule-of-law-for-ukrainian-business-oligarchs-lawsuit-could-help-improve-the-culture-of-business-dealings-in-the-post-soviet-space/>, accessed May 26, 2014.

⁵⁴ Kolomoisky was especially vulnerable because he publicly backed former Prime Minister Tymoshenko against Yanukovich. *Entrepreneur Journal of Business* interview with Kolomoisky. December 23, 2010. <http://predprinimatel.co.ua/en/interview/persons/kolomoyskiy-yanukovich>, accessed May 26, 2014. The website of the Ukrainian Anti-Raider Movement maintains an archive of reports relating to Privat Group's alleged raiding activities available at <http://zahvat.net/4/509/>, accessed October 29, 2013.

⁵⁵ A list of Privat Group holdings is available at <http://baza.comments.ua/g/10>, accessed October 29, 2013.

⁵⁶ Analytical Review of Ukrainian Banks. Deposits. March 2014. Available at http://bankografo.com/wp-content/uploads/2014/03/2013-4Q_UBQR.pdf, accessed May 26, 2014.

⁵⁷ Interview with *Forbes* journalist, Kyiv, Ukraine, May 30, 2013.

⁵⁸ An example from one respected Ukrainian publication, *Investgazeta*: "Hennadiy Korban has been made famous by the biggest corporate conflicts...including the reprivatization of Nikopol Ferroalloy Plant, Dnipropetrovsk market "Oziorka," Kremenchug Steel Plant, and several regional power companies." Tatyana Shahmatova. "A Veteran of Corporate Wars." *Investgazeta*. February 26, 2007. <http://www.investgazeta.net/blogi/veteran-korporativnyh-vojn-154549/>, accessed July 9, 2014. Korban managed Slavutych Capital, a Privat holding, which was a recurring actor in raids during the 2000s. See "Slavutych Capital buying stocks of Dnipropetrovsk Oil Extracting Factory." *UKRINFORM*. November 8, 2006. Available at http://www.kmu.gov.ua/control/en/publish/article?art_id=44315239&cat_id=32598, accessed May 26, 2014.

⁵⁹ "Hennadiy Korban: Raidership is a Certain Art of Bluffing." *Vlast' Deneg*. November 10-16, 2006. Available at <http://www.ukrudprom.com/digest/ghjdfdf131106.html>, accessed July 9, 2014.

assets had, “fallen so low that it makes no sense to spend money on the redistribution of those assets.”⁶⁰ While there was some truth to the assertion that the 2009 financial crisis reduced raider attacks because there was simply less liquidity sloshing around to be stolen, re-alignment of political power and oligarch interests may better explain the end of Privat Group’s dominant role⁶¹ among Ukrainian raiders.⁶²

During the height of Ukraine’s post-Soviet economic boom in the mid-2000s, one of the country’s apparently most successful investors was former Russian citizen and former Yeltsin advisor Vadim Grib, head of the TEKT investment group. In addition to his Russian connections, Grib served as Vice Prime Minister and acting Minister of Finance of the Crimean Autonomous Republic, and as a senior advisor to Valeriy Khoroshkovsky, head of the Ukrainian state security agency (SBU). Grib has acknowledged his involvement in raider attacks, including in print and live television interviews.⁶³ There is evidence that Grib and TEKT were responsible for raids on Ukraine’s largest tire producer Rossava, soft-drink producer Rosinka, and the Kirovohrad Central Shopping Mall, among others.⁶⁴

⁶⁰ “Gennady Korban: I would be able to select the Poltava Mining [sic.]” *Entrepreneur Journal of Business* interview with Kolomoisky. July 19, 2012. <http://predprinimatel.co.ua/en/interview/persons/gennadij-korban-ya-by-smog-otobrat-poltavskij-gok>, accessed May 26, 2014.

⁶¹ According to the Corporate Relations Research Center in a 2006 survey, the top raiders in Ukraine were: Privat (mentioned by 100% of experts surveyed); “Finansy i Kredyt” (54.6%); Alpha Group (45.5%); System Capital Management (36.4%). Aleksey Sahno. “A Nation Should Know its Heroes: Ukraine’s Biggest Raiders.” *Podrobnosti*. March 29, 2007. <http://podrobnosti.ua/economy/other/2007/03/29/410668.html>, accessed July 9, 2014.

⁶² Interview with IFC official, Kyiv, Ukraine, May 17, 2013. It is notable that Kolomoisky and Boholiubov have been sued by fellow oligarch Viktor Pinchuk in a UK court for breach of contract, stemming from a \$143 million deal in 2005. Pinchuk alleges that the Privat Group duo has stolen valuable assets out from under a holding company they sold him, in effect selling the same assets twice. See also Melik Kaylan. “An Injection of Rule of Law for Ukrainian Business? Oligarch’s Lawsuit Could Help Improve the Culture of Business Dealings in the Post-Soviet Space.” *Forbes*. July 15, 2013. <http://www.forbes.com/sites/melikaylan/2013/07/15/an-injection-of-rule-of-law-for-ukrainian-business-oligarchs-lawsuit-could-help-improve-the-culture-of-business-dealings-in-the-post-soviet-space/>, accessed May 26, 2014.

⁶³ In a 2013 interview, for example, Gryb stated, “If I have an opportunity to buy a company, I make it unstable and buy.” “Vadym Gryb: What has Yanukovich done? He ‘nailed’ the principal, Akhmetov.” *Ekonomichna Pravda*. December 31, 2013. <http://www.epravda.com.ua/publications/2013/12/31/412106/>, accessed July 9, 2014. See also “It is fashionable to be a raider,” *Focus.ua*, October 21, 2006. Available at <http://focus.ua/economy/649/>. Accessed May 26, 2014.

⁶⁴ “Vadym Gryb kicked out of Stock Market Strategic Committee for repeated raidership.” *Obkom*. December 17, 2009. <http://obkom.net.ua/news/2009-12-17/1745.shtml>, accessed July 9, 2014; See also Biography of Vadim Valentinovich Grib,” *Zahvat.net*. December 5, 2009. Available at <http://www.zahvat.net/4/876/877/>. Accessed December 30, 2013. See also “Raider intern is giving advice to the SBU,” *Finansovaya Pravda Ukrainy*. May 28,

Ukraine's wealthiest oligarch, Rinat Akhmetov, has also been accused of acquiring valuable assets at discount prices by playing the role of "white knight" in association with raiders.⁶⁵ In one case, Akhmetov's firm, Metinvest, acquired a controlling stake in steel producer Ilyich Iron and Steel Works of Mariupol, in Donetsk Oblast, after Ilyich's management claimed to have suffered a raider attack by alleged Russian raiders.⁶⁶ News reports have suggested that this was simply a case of oligarchic consolidation, in which Akhmetov's Metinvest achieved a more dominant market position by taking advantage of an attempted raid to put pressure on a rival company that was already in a weakened position.⁶⁷ This method of raiding has been dubbed "black knight/white knight" since the ultimate beneficiary of the raid or attempted raid actually appears to be a kind of savior, buying out the beleaguered owners when they have run out of resources or will to fight, and usually at a healthy discount.⁶⁸

The potential interest of government officials in raiding is obvious. At middle and higher levels, officials can acquire control of lucrative businesses for their own benefit, or secure large payouts for helping other raiders achieve their objectives. Sufficiently senior officials also have the ability to leverage their "administrative resources" against target companies. According to one local tax official, "ministries have become weapons of the Presidential Administration against any business."⁶⁹ Allegations of raiding by the Donetsk-based "Family" around President Yanukovich were

2010. Available at <http://finpravda.com.ua/newsblog/news/88-rejder-so-stazhem-dast-sovet-sbu-088.html?tmpl=component&print=1&layout=default&page=>. Accessed May 26, 2014.

⁶⁵ In the 2006 survey referenced above, SCM was rated as the fourth biggest raider in Ukraine, with 36.4% of experts identifying it as the top raiding group. Aleksey Sahno. "A Nation Should Know its Heroes: Ukraine's Biggest Raiders." *Podrobnosti*. March 29, 2007. <http://podrobnosti.ua/economy/other/2007/03/29/410668.html>, accessed July 9, 2014; See also Vitaliy Krimov. "Take What Cannot Be Bought. Country Fraught with Raiding." April 13, 2012. *OstroV* news site. <http://www.ostro.org/general/economics/articles/373711/>, accessed May 26, 2014. Interview with *Forbes* journalist, Kyiv, Ukraine, May 30, 2013.

⁶⁶ "Akhmetov takes control of top steel mill Ilyich." *Kyiv Post*. July 2, 2010. <http://www.kyivpost.com/content/business/akhmetov-takes-control-of-top-steel-mill-ilyich-71715.html>, accessed May 26, 2014.

⁶⁷ "Ilyich has in recent weeks come under what [its Director General] Boyko called a 'raider attack,' after two businessmen claiming to represent a Russian group of investors said they had taken over the company." "Akhmetov takes control of top steel mill Ilyich." *Kyiv Post*. July 2, 2010. <http://www.kyivpost.com/content/business/akhmetov-takes-control-of-top-steel-mill-ilyich-71715.html>, accessed July 9, 2014; See also "Azarov calls the situation around Mariupol Metallurgical Kombinat 'typical raiding.'" *Kyiv Post*. June 16, 2010. <http://www.kyivpost.ua/ukraine/news/azarov-nazyivaet-tipichnyim-rejderstvom-situatsiyu-vokrug-mariupolskogo-metallurgicheskogo-kombinata-im-ilicha-9847.html>, accessed May 26, 2014.

⁶⁸ "Metinvest' controls 96 percent of Mariupol Shares." Ukraine Anti-Raider Movement site. February 21, 2013. Available at <http://zahvat.net/2/1525/1599/2635/>, accessed October 30, 2013.

⁶⁹ Evhenia Viatchaninova. Interview with former oblast level tax official, Ternopil, Ukraine, May 2013.

no surprise, but critics had also cast a spotlight on former Tymoshenko supporter, and member of parliament Andriy Portnov.⁷⁰ Portnov was dubbed “the chief raider of Ukraine,” and “Reidyusha” (a play on his nickname “Andryusha”), and is accused of raider attacks stretching back to the early 2000’s when he was a rising star in Tymoshenko’s *Batkvivshchyna* party.⁷¹

In many cases, lower level officials may not even recognize their complicity in raider attacks as such. According to one source inside a government ministry, lower officials, “are simply told, ‘this is a task from higher up that must be fulfilled.’”⁷² Poor training, nepotism, and the difficulty of reporting violations from within state structures, allows this problem to persist with new generations of officials. Moreover, ordinary citizens in many cases may not expect anything different from their government officials. According to the Atlantic Council,

a post-Soviet ‘get it while you can mentality’ seems to dominate the thinking of many who hold positions of power and influence. This attitude, coupled with the Soviet-era presumption that ‘this is the only way to get things done,’ allows many Ukrainians to justify corrupt interactions with officials.⁷³

Though nowhere near every raid involving government ministries could be controlled or initiated by the Presidential Administration, the top authorities’ behavior sets the tone. As Gans-Morse wrote of Russia after the massive state-sponsored raid that stripped Mikhail Khodorkovsky of his company, “every official after 2003 was looking for his ‘own little Yukos.’”⁷⁴ Officials of the Port Authority of the Odessa Oblast city of

⁷⁰ “‘Privat’ Instrument of the Ukrainian Authorities. Andriy Portnov.” *Zahvat.net*, October 25, 2010. Available at <http://zahvat.net/4/578/1984/>. Accessed December 30, 2013.

⁷¹ “The executive director of the Anti-Raider Union of Ukrainian Entrepreneurs, Andriy Semydidko, in his interview to the ‘Vlast i Pravo’ newspaper called Portnov Ukraine’s second-in-command raider, after [Hennady] Korban.” Oksana Geydor. “Andrey Portnov. Odd man out.” *Glavkom*. September 5, 2011. <http://glavkom.ua/articles/4649.html>, accessed July 9, 2014; See also “Andriy Portnov—Chief Raider of Ukraine.” *Zahvat.net*, March 9, 2009. Available at <http://zahvat.net/4/578/979/>, accessed December 30, 2013.

⁷² Evhenia Viatchaninova. Interview with current oblast level tax official, Ternopil, Ukraine, May 21, 2013.

⁷³ Jan Neutze and Adrian Karatnycky. “Corruption, Democracy, and Investment in Ukraine.” Atlantic Council Policy Paper, October 2007. Available at http://www.atlanticcouncil.org/images/files/publication_pdfs/1/071016_Corruption_percent20Democracy_percent20and_percent20Investment_percent20in_percent20Ukraine.pdf, accessed May 26, 2014.

⁷⁴ Jordan Gans-Morse. “Threats to Property Rights in Russia: From Private Coercion to State Aggression.” *Post-Soviet Affairs* 28:3 16 May 2013. Available at <http://www.tandfonline.com/doi/pdf/10.2747/1060-586X.28.3.263>, accessed May 26, 2014.

Illichivsk, for example, in 2010 seized the assets of the private firm Ukrtranscontainer, in what has been described as a raid, enabled by the port's decision to cancel a contract on which the private firm depended, allegedly in collusion with investigations of the company by the local prosecutor.⁷⁵ In another 2010 Odessa Oblast case, the head of the local State Securities & Stock Market Commission together with the head of the local branch of the Commercial Court, colluded to seize majority control of the sweets factory Odesakonditer, which had already been under attack by Kyiv-based raiders.⁷⁶

Though raiders may be named and colloquially discussed in terms of the ultimate parties at interest—whether they are oligarchs, state officials, or even the business owners themselves—they almost always act through intermediaries. In many cases, those intermediaries are professional service providers, such as lawyers or bankers, which charge a fee or take a percentage of the ultimate gain in exchange for facilitating a raid. Indeed, this indirect method of attack is not only safer from a legal and public relations perspective, but professional raiders may actually be far more effective, and they can leverage well-established and well-lubricated relationships with key officials.

Ukraine's biggest raiders generally maintain representatives, known as "*smotryashchie*," (literally, "those who watch," a term borrowed from Soviet prison slang) across various regions and industries in which they have an interest. These agents are likely to be the first to approach a putative target company and demand payment or partnership, or propose some other dubious scheme that would lead to eventual transfer of ownership rights.⁷⁷ The exact profession of the agent is not important, and indeed some may even be government officials in posts entirely unrelated to the sector for which they are responsible. The aforementioned Dnipropetrovsk businessman Korban was one such agent who became very well known, but others include the Donetsk-based lawyers Dmytro Zaitsev and Volodymyr Hurtovy, who are believed to have orchestrated raids on the Siaivo bookstore in Kyiv, a goldmine in Zakarpatska Oblast and many other targets.⁷⁸

⁷⁵ Sec. 14. on Property rights in "Human rights in Ukraine 2009 – 2010." Human Rights in Ukraine: Information Website of the Kharkiv Human Rights Protection Group. Available at <http://khpg.org/en/index.php?id=1298445137#sdfnote10anc>, accessed May 26, 2014.

⁷⁶ "Gromadska Varta" Anti-Raiding TV spot №54. April 30, 2010. Available at <http://www.youtube.com/watch?v=sxM2IUtno6k>, accessed May 26, 2014.

⁷⁷ Interview with Dan Bilak, CMSCM, Kyiv, Ukraine, May 8, 2013.

⁷⁸ Interview with Mark Rachkevych, *Kyiv Post*, Kyiv, Ukraine, May 9, 2013. According to well-known journalist Tetyana Chornovol (appointed head of Ukraine's anti-corruption committee after the Euromaidan Revolution), "[b]ankruptcy proceedings for 'Zakarpapolimetal' took place under the watchful eye of Hurtovyj, appointed the arbitration administrator, and his partner Zaytsev, the chairman of the committee of creditors. They openly acted in the interests of a foreign company from the Virgin Islands, which surprisingly turned out to be the largest creditor of the gold mines."

Some law firms have also become famous as raiders or raid facilitators, and Moscow-based Alfa Bank has in recent years been the target of numerous accusations of corporate raiding in Ukraine.⁷⁹

Raiding Methodology

Raiders' methods vary widely, not only from "black" to "white" as described above, but across a diverse set of legal, economic and political instruments and contexts. While a case can be found in Ukraine to illustrate nearly every possible variation, the majority of raids fall into a handful of typologies, described in detail below. In most actual raids, elements of more than one methodology come into play, and raiders may also switch tactics during the course of an attack.

Forced Bankruptcies or Business Crises

Raids involving forced bankruptcies or manufactured business crises may appear on the surface to be little more than standard business transactions in which outside investors take advantage of a target company's financial problems to scoop up potentially valuable assets on the cheap. In fact, in a Western context, such transactions might even be seen as beneficial value-creating opportunities for turnaround experts to work their magic on failing companies. In Ukraine, unfortunately, more sinister forces often stand behind a bankruptcy or a business crisis leading to a change in ownership.

One archetypal case of this type provides a useful illustration of how a business crisis can be manufactured and exploited by corporate raiders. Chernivtsi-based Argo was a major producer of steel containers for canned food, with sales throughout Europe and the former Soviet states. Over a two-year period beginning in 2006, Argo received financing from Ukrainian Financial Group (UFG), a Kyiv-based bank with holdings ranging from real estate, construction and agriculture to IT, insurance and media.⁸⁰ In 2008, UFG demanded immediate repayment of close to \$7

Tetyana Chornovol. "The Destitute: Scary Bedtime Stories for Foreign Investors." *LB.ua*. http://lb.ua/news/2012/01/19/132700_obezdoleni_strashni_istorii_na_nich.html, accessed July 9, 2014.

⁷⁹ "A textbook example of Alfa's raider techniques [was] a conflict with Norwegian telecommunications company Telenor over the ownership rights for Ukrainian mobile operator Kyivstar" Aleksey Sahno. "A Nation Should Know its Heroes: Ukraine's Biggest Raiders." *Podrobnosti*. March 29, 2007. <http://podrobnosti.ua/economy/other/2007/03/29/410668.html>, accessed July 9, 2014; Interview with Y. Yakhnurov, Kyiv, Ukraine, June 10, 2013. See also "Emerging Markets: Russia's Alfa-Bank accused of 'corporate raiding' plot in Ukraine." *Kyiv Post*. April 29, 2013. Available at <http://www.kyivpost.com/content/ukraine-abroad/emerging-markets-russias-alfa-bank-accused-of-corporate-raiding-plot-in-ukraine-323873.html>, accessed May 26, 2014.

⁸⁰ Ukrainian Financial Group Splash Page. Available at <http://www.ufg.com.ua/modules>.

million it had loaned Argo. Argo sales were already weakened by the financial crisis and the firm was unable to make the payment, so management agreed to restructure the outstanding loan, using shares of the company as collateral. In 2009, during peak production season, the Argo factory was visited by black-clad private security purporting to represent new ownership, and production was blocked. Management, under continuing physical, legal and PR pressure, was then forced to sign over two-thirds of the company's shares to UFG, which transferred ownership to a Cyprus-based company. Argo was then found liable for a \$200 million debt by a Dnipropetrovsk court, which confirmed the new ownership's authority to liquidate the company's assets to pay the debt.⁸¹

Of course, debt is not the only leverage point for raiders seeking to manufacture a business crisis, as the case of Ukrtranscontainer illustrates. In 2009, port authorities of the Illichivsk port abruptly cancelled a 30-year agreement with the company that had been in force since 2005, and was the foundation of the company's business. When Ukrtranscontainer challenged the cancellation, both the local prosecutor's office and the commercial court sided with the port authorities. After two appeals, Ukrtranscontainer was forced to give up control of the port facility to the port authority officials, who appropriated and began using the company's sophisticated container-transfer machinery and mooring equipment to conduct cargo operations themselves.⁸²

Raiders have also forced their targets into crisis situations using so-called "black PR." This method was apparently used to raid Kyiv-based PromInvestBank in 2008, when newspapers falsely reported that the bank was insolvent and thereby caused a run on the bank, forcing its sale.⁸³ Markus describes the well-known case of Privat Group's attack on the Dnipropetrovsk-based company, Oleyna, a producer of refined food oils. In addition to orchestrating large numbers of illicit transfers of shares

php?op=modload&name=AStatic&file=index&sid=87&newlang=eng, accessed May 26, 2014.

⁸¹ "Gromadska Varta" Anti-Raiding TV spot №49. Feb 11, 2010. Available at <http://www.youtube.com/watch?v=mNz-cssrrSU>, continued at <http://www.youtube.com/watch?v=MwmhqmYa9bM>, accessed May 26, 2014.

⁸² "Illichivsk port...acquired the management over container ... [and is] earning money with it." Sec.14. on Property rights in "Human rights in Ukraine 2009 – 2010" reference text. Human Rights in Ukraine: Information Website of the Kharkiv Human Rights Protection Group. Available at <http://khpg.org/en/index.php?id=1298445137#sdfootnote10anc>, accessed May 26, 2014.

⁸³ Interview with Oleg Sychev, Anti-Raider TV journalist, Kyiv, Ukraine, May 8, 2013. See also "Yulia Tymoshenko: Government to submit to NSDC recommendations of the European leaders on preventing impact of the world financial crisis, made public at EPP Summit." Office of mass media relations of the Cabinet of Ministers of Ukraine Secretariat. November 16, 2008. http://www.kmu.gov.ua/control/en/publish/article?art_id=164351410&cat_id=244315174, accessed May 26, 2014.

from employee-shareholders, Privat Group launched a black PR campaign to sully the company's reputation for quality: "Some local newspapers embarked on a shrill campaign against Oleyna, charging that the firm is 'helping . . . to plunder the state budget of Ukraine' and speculating that Oleyna's oil, a winner of numerous quality contests, might contain heavy metals and arsenic."⁸⁴ Although Oleyna's employees, management and rightful owners ultimately mounted a successful defense of the company, the black PR campaign provided Privat Group and their allies in local government with sufficient cover to launch a host of lawsuits and administrative actions to try to take over the company.

Corporate or Minority Shareholder Attacks

Likely the most widely used method of raider attack in Ukraine over the past decade is the corporate or minority shareholder approach, which can be broadly understood to include any raider attack that takes advantage of shareholder rights and privileges inherent in the corporate form of ownership to bring about an illegitimate transfer of assets. According to one journalist, "measures typically employed [by raiders] range from excluding shareholders from meetings by holding them at short notice in a distant location to alteration of company registers, to purchasing or faking court decisions."⁸⁵ The Atlantic Council's 2007 report offered a useful overview of this type of scheme:

Raiders infiltrate the company of interest with agents who collect information. A small share of stock is purchased. Then, a usually frivolous lawsuit is filed with a lower-level court in a remote town. Armed with an often anomalous court injunction, raiders resort to force, sending a pseudo-"security firm" to take possession of the property (through forcible entry). Further, by bribing law enforcement agencies, they keep the object under their control – even in the face of a corrected court decision. Then, they try to re-sell property to themselves or to those who ordered the raid, to change the composition of charter capital.⁸⁶

⁸⁴ Stanislav Markus. "Secure Property as a Bottom-Up Process," *World Politics* 64:2 (April 2012). pp. 242-277, 251. Available at <http://dx.doi.org/10.1017/S0043887112000044> Accessed on May 26, 2014; Interview with Sergei Koziakov, Kyiv, Ukraine, May 8, 2013.

⁸⁵ Graham Stack. "Ukraine's corporate raiders take time out - but for how long?" February 10, 2010. *Business New Europe*. <http://www.bne.eu/story1954>, accessed May 26, 2014.

⁸⁶ Jan Neutze and Adrian Karatnycky. "Corruption, Democracy, and Investment in Ukraine." Atlantic Council Policy Paper, October 2007. Available at: http://www.atlanticcouncil.org/images/files/publication_pdfs/1/071016_Corruption_percent20Democracy_percent20and_percent20Investment_percent20in_percent20Ukraine.pdf, accessed May 26, 2014.

According to Ukrainian and international businesspeople interviewed for this article, a so-called minority shareholder attack usually begins with information gathering. In rare cases, ownership information is publicly available, however usually raiders acquire full details about the company's ownership structure by bribing the registrar or another official with access to the corporate registry. The raiders then buy out a relatively small minority stake, resorting to threats or bribery if necessary, such as in the case of a unionized employee-shareholder structure. Share ownership then gives the raiders the right to examine company records, and provides direct access to the company's board and management. The raiders may then discover some weakness in the company's legal status (such as an imperfect privatization in the past or a technically deficient license or registration document), while bribing or threatening key individuals within the company to cooperate. With the collusion of these insiders, the raiders may convene an illegal shareholders' meeting, excluding the rightful owners, and use that meeting to remove directors, approve an outright sale, or transfer ownership of valuable company property. Finally, to enforce the outcome, the raiders usually employ a combination of private security and corrupt courts or other state officials.⁸⁷

Either instead of or in tandem with more elaborate methods, raiders often resort to forgery of key corporate documents. In a Western business environment, of course, forged documents would be relatively easy to detect. In Ukraine, it can be more difficult both because notaries are routinely paid off to certify falsified transactions, and because physical raids of corporate offices often result in the theft of original corporate seals that allow the creation or modification of "genuine" corporate documents.

There have been countless raids facilitated by such forgeries. In 2010, for example, raiders used a fake power of attorney document to sign sales contracts on behalf of the successful drug maker Synbias Pharma and Onko Generics, ultimately forcing sale of the company, with the complicity of insiders in company management.⁸⁸ In the high-profile case of TVi, an American citizen showed up with a power of attorney document purporting to change the channel's management, which was revealed as a fake when the company officer who supposedly had signed the document proved she was not even in Ukraine when the document was signed.⁸⁹

In other cases, raiders attempted to take over a building materials

⁸⁷ Interview with EBRD official, Kyiv, Ukraine, May 31, 2013.

⁸⁸ "Non-government Secrets National Security Council." *Obozrevatel*. June 4, 2010. Available at <http://obozrevatel.com/news/2010/6/4/370474.htm>, accessed May 26, 2014.

⁸⁹ Interview with Sergei Koziakov, Kyiv, Ukraine, May 8, 2013. See also Olzhas Auyezov. "Selective justice keeps foreign investment out of Ukraine." *Reuters*. June 10, 2013. Available at <http://uk.reuters.com/article/2013/06/10/uk-ukraine-investment-idUKBRE95904L20130610?feedType=RSS&feedName=worldNews>, accessed May 26, 2014.

factory in Kherson Oblast by falsifying changes to the company charter,⁹⁰ and to seize farms in Zaporizhia and Dnipropetrovsk Oblasts by means of documents forged by the same notary in both cases.⁹¹ The phenomenon is not just a problem for comparatively large enterprises. Small enterprises have also been targets for raiders, with “Hair salons, small shops, grocery stores, dressmakers, studios,” all victimized in situations where alleged owners asserted their rights using false documents.⁹²

Another prominent recent example of the minority shareholder approach is the case of Kvazar-Micro, a leading Ukrainian technology company. In this case, a previously unknown minority shareholder sought to acquire almost half the company’s shares by colluding with the company’s registrar to arrange an illicit shareholders’ meeting.⁹³ The victims later discovered that papers purporting to be from Kvazar’s largest single investor, the Canadian firm KM Secure, were forged, and successfully blocked the takeover attempt.⁹⁴ A similar maneuver succeeded in 2007 against the Ukrainian subsidiary of Russian oil company Tatneft, UkrTatNafta, when Privat Group convened an illegal shareholders’ meeting and used corrupt government connections to enforce the resulting dilution of Tatneft ownership.⁹⁵ This method of attack is still favored. In 2013, international cargo firm Swissport’s Ukrainian subsidiary came under attack from a minority shareholder which claimed its rights had been violated, and secured two court decisions awarding it majority control of the company in lieu of damages worth just \$433,000.⁹⁶

⁹⁰ “In Kherson raiders attempted to seize a building materials factory.” *Prestupnosti.net*. March 11, 2013. Available at <http://news.pn/ru/incidents/76885>, accessed May 26, 2014.

⁹¹ Interview with Mark Rachkevych, *Kyiv Post*, Kyiv, Ukraine, May 9, 2013.

⁹² Oksana Faryna. “Raiders run roughshod over property owners.” *Kyiv Post*. October 8, 2009. Available at <http://www.kyivpost.com/content/ukraine/raiders-run-roughshod-over-property-owners-50336.html?flavour=mobile>, accessed May 26, 2014.

⁹³ “The Raiders try to capture ‘Quasar’ Open joint-stock company.” *KO.com.ua*. January 15, 2009. http://ko.com.ua/rejdery_pytayutsya_zahvatit_oao_kvazar_40428, accessed May 26, 2014.

⁹⁴ Andrey Olkhovsky. “Robbery, erected in the business.” *24.ua* news site. January 23, 2009. Available at <http://24.ua/news/show/id/79228.htm>, accessed October 30, 2013. See also “Raiding Quasar—Another Version.” *Antiraid* January 15, 2009. Available at <http://antiraid.com.ua/news/2345-20090115738.html>, accessed May 26, 2014.

⁹⁵ “Raider seizure of closed joint stock company Ukrtatnafta was organized by the Ukrainian business group Privat.” November 2, 2007. Available at <http://www.ibk.ru/34384.html>, accessed May 26, 2014. See also “Ukrainian Court Liquidates Ukrtatnafta.” *Lenta.ru*. September 11, 2008. Available at <http://lenta.ru/news/2008/09/11/ukrtatnafta/>, accessed May 26, 2014. See also ““Ukrtatnafta” may change legal form.” *Interfax & Kommersant*, №25 (4323), February 12, 2010. Available at <http://www.kommersant.ru/doc-rss/1320649>, accessed May 26, 2014.

⁹⁶ “Swissport Ukraine Loses Legal Battle With Shareholder.” *AviationPros.com*. April 2, 2013. Available at http://www.aviationpros.com/press_release/10911696/swissport-ukraine-loses-legal-battle-with-shareholder, accessed May 26, 2014.

Corrupt Court Decisions

Corrupt court decisions are clearly an integral part of many raider schemes. In 2013, then First Deputy Prime Minister Serhiy Arbutov admitted that, “the vast majority of hostile takeovers are done with the assistance of judicial and law enforcement authorities.”⁹⁷ According to Oleksiy Pashin, Director of the Business Security Agency, a corrupt court decision can cost a raider anywhere from \$2,000 to \$25,000.⁹⁸ Given the multi-million dollar stakes involved in some raids, it is small wonder that attackers are prepared to pay such paltry sums to gain judicial decisions as leverage.

In 2010, the same judge in the Kherson branch of the Commercial Court issued decisions approving raider takeovers of two different hotels, the Astoria and Europeysky, both being prepared to host Euro-2012 fans in Dnipropetrovsk. The judge even approved the use of private security by the raiders to enforce the decisions.⁹⁹ More commonly, courts simply issue papers freezing company accounts and property so that it becomes impossible for the company to operate, and owners and management are forced to negotiate with the raiders. According to Olga Vorozhbyt, a lawyer at Chadbourne & Parke LLP in Kyiv, “If the ultimate goal is forcing the opponent into some kind of deal, usually on unfavorable terms, such strong measures (freezing assets) are one of the ways to achieve it.”¹⁰⁰

In the heavily publicized 2010 case of Zhytomyrski Lasoschi, the factory’s chief executive, put in place by U.S.-based owners, facilitated a raid against his employer in collusion with outside parties that was blessed by local courts, despite a major international PR effort by the U.S. owner and public comments on the case from President Yanukovich.¹⁰¹ In January 2012, Stalkanat-Silur, an Odessa-based steel rope and wire producer, was also raided with assistance from local police units on the pretext of a 2002 dispute that the company later proved had been settled. Even after proving its position to the local court, Stalkanat-Silur was raided again, and only avoided being physically seized because the plant’s workers resisted.¹⁰²

⁹⁷ Serhiy Arbutov. “Ukraine will fight illegal takeovers.” *Kyiv Post*. June 13, 2013. <http://www.kyivpost.com/opinion/op-ed/ukraine-will-fight-illegal-takeovers-325613.html>, accessed October 30, 2013.

⁹⁸ “Gromadska Varta” Anti-Raiding TV spot №51. April 30, 2010. Available in two parts at <http://www.youtube.com/watch?v=bsea4saUqy0> and <http://www.youtube.com/watch?v=91PzoLqpqxY>, accessed May 26, 2014.

⁹⁹ *Ibid.*

¹⁰⁰ “Selective justice keeps foreign investment out of Ukraine.” *Reuters*. June 10, 2013. Available at <http://uk.reuters.com/article/2013/06/10/uk-ukraine-investment-idUKBRE95904L20130610?feedType=RSS&feedName=worldNews>, accessed May 26, 2014.

¹⁰¹ Maria Danilova. “Ukraine Corporate Raids Stifle Foreign Investment.” *The Associated Press Big Story News Page*. May 27, 2012. <http://bigstory.ap.org/content/ukraine-corporate-raids-stifle-foreign-investment>, accessed May 26, 2014.

¹⁰² Jakob Parusinski. “Corporate Raiding Hurts Investment.” *Kyiv Post*. February 3,

The case was seen as a clear instance of raiding following politics because Stalkanat-Silur's owner, Volodymyr Nemyrovsky, a political ally of Batkivshchyna leader Arseniy Yatseniuk, named as his attackers: Regions Party members Ivan Avramov and Yuri Ivanyushchenko. On March 2, 2014, following Batkivshchyna's takeover of most positions in the acting government, Nemyrovsky was named governor of Odessa Oblast.¹⁰³

When properly held to account, Ukrainian courts have sometimes overruled lower or previous corrupt decisions in order to block raider attacks. From 2008-2010, the Jehovah's Witness Religious Center fought raiders attempting to seize control of valuable buildings and land on its campus in Lviv Oblast. The raiders had quietly obtained decisions of faraway lower courts recognizing their ownership more than a year before they even made an overt move to take possession. Yet once the religious group found out about the attack, it pursued two appellate processes that ended up in Ukraine's Supreme Court, and ultimately succeeded in protecting its property.¹⁰⁴

Extortion

The most straightforward method of raider attack, and often the underlying principle of more complex schemes, is extortion. According to one Ukrainian investor, the basic scheme is as follows: First, a target business is visited by a representative of the raider (the *smotryashchiy*), who suggests the need for a new business partner (the raider). If the business owner refuses, he or she begins to experience obstructions to doing business from all sides, such as visits from health or tax inspectors, frozen bank accounts, canceled leases and contracts, and, of course, court cases against the company. At the next phase, a higher-level representative of the raider visits and suggests that a solution to the business's problems would be to sign some documents transferring all or part of the ownership to some other company. If the victim is lucky, he or she will receive some compensation in this proposed arrangement. This process may be repeated through several rounds of escalation. By the end, the victim has a stark choice: either lose more money in defending what is now likely to be a much less profitable business, or accept the buyout and simply walk away.¹⁰⁵

State inspections and licensing procedures, which in a healthy marketplace might be seen as a bothersome but necessary part of doing

2012. Available at <http://www.kyivpost.com/content/business/corporate-raiding-hurts-investment-121756.html>, accessed May 26, 2014.

¹⁰³ Vitaliy Atanasov. Odessa Governor Nemyrovsky: I'm not very happy with MIA. *Focus*. Available at <http://focus.ua/politics/304597/>, accessed May 26, 2014.

¹⁰⁴ Interview with Konstantin Chernyshenko, lawyer for Jehovah's Witnesses in Lviv, Ukraine, June 6, 2013.

¹⁰⁵ Interview with Dan Bilak, CMSCM, Kyiv, Ukraine, May 8, 2013.

business, in Ukraine are the bread and butter of corporate raiders. Their modus operandi, according to one local investor, is “creating unsolvable barriers (typically regulatory, tax, customs or inspections) for business, then offering a low bid to buy the company and thereby remove the problem.”¹⁰⁶ According to a journalist who has extensively covered raids, “Some businesses have reported there is an inspection every day from day 1 of the month to day 30, and at some point someone approaches the owner to demand either a payment or transfer of the company.”¹⁰⁷ An official inside one regional tax administration explained that, “state agencies serve as a club for a person who can bury any business activity.”¹⁰⁸ In many cases, the ultimate beneficiary of this harassment may be unknown to the officials carrying it out.

Two recent raider attacks illustrate the power of administrative pressure against target businesses. In the case of Lviv-based IDS, producer of Morshynska and Myrgorodska mineral water brands, tax inspectors accused the company in November 2012 of failing to pay almost 3 million UAH in taxes, which the company denied, claiming the accusation was part of a raider attack on the firm. The Lviv Oblast council supported the company’s position, and called on President Yanukovich to intervene.¹⁰⁹ According to IDS, it had paid hundreds of millions in taxes, and appealed to its numerous U.S. and EU investors to support continued litigation to defend the company.¹¹⁰ In another highly publicized case in 2013, farming businesses belonging to politically active independent politician Arkady Kornatsky of Mykolaiv Oblast, came under attack.¹¹¹ Kornatsky was the target of incessant harassment by oblast authorities, and claimed the raid was orchestrated by the Chairman of the Oblast Administration, Mykola Kruglov, a political adversary.¹¹²

The sheer number and wide range of official permits that may, in theory, be required to operate any type of business significantly facilitates raider attacks, especially with the involvement of officials who can deny or threaten to deny needed permits or licenses. In Kyiv, simply opening and

¹⁰⁶ Interview with Dan Pasko, Kyiv, Ukraine, Horizon Capital, May 17, 2013.

¹⁰⁷ Interview with Sevgil Musaeva, *Forbes*, Kyiv, Ukraine, May 30, 2013.

¹⁰⁸ Evhenia Viatchaninova. Interview with Ternopil Oblast tax official, May 21, 2013.

¹⁰⁹ “Yanukovich told to stop raiding Morshinskaya.” *Ukrainskaya Pravda*. November 23, 2012. Available at <http://www.pravda.com.ua/rus/news/2012/11/23/6978040/>, accessed May 26, 2014.

¹¹⁰ “IDS Group Ukraine Charged By Tax Authorities In Raids.” Ukrainian Anti-Raider Movement. November 13, 2012. Available at <http://www.zahvat.net/2/7075/7076/7085/>, accessed October 30, 2013.

¹¹¹ Interview with Dan Bilak, CMSCM, Kyiv, Ukraine, May 8, 2013.

¹¹² “Ukraine Opposition Candidate Alleges Government Threats.” *Business New Europe*. June 21, 2013. Available at <http://www.bne.eu/blob.php?id=376738&m=827de07516eede76c-3b64ab4cf2e4d1f>, accessed May 26, 2014.

operating a restaurant required separate permits from city health, sanitation, transportation, public property, electricity, water, gas, and potentially other authorities, depending on the products being used and sold.¹¹³ All of this is on top of the dozens of permits already required to register a business in the first place, and the potential difficulty of establishing a proper tax payment record. Addressing these massive disincentives for business and investment were among top priorities for the new authorities in 2014, and in April the Ukrainian government passed a law canceling 83 permits previously required for businesses to open and operate.¹¹⁴ It remains to be seen whether this streamlined regulatory framework results in a dramatic decline in raider attacks.

Like other kinds of criminal extortion schemes, corporate raids do not shy away from the threat or use of outright physical force. Threats may be chillingly direct. In the case of one mid-sized family business, the owner told me that raiders demanded he accept a new business partner, and when he did not, security officials interrogated his mother and brother for 5 hours, and told them, “we know where your son goes to school and that he gets out of class at 1:30 in the afternoon.”¹¹⁵ Force is especially common in cases where the target of the raid is the physical location of the business itself, such as the cases of the small publishing companies *Ab-ba-ba-ga-la-ma-ga*,¹¹⁶ *Tribuna*, and *Nauka-Kultura*,¹¹⁷ and the Yalta Writers’ Union.¹¹⁸ In these cases, raiders used private security to physically throw their victims out of buildings the raiders wanted to use for lucrative real estate development projects. In one case, the owner of a small publishing house on Kyiv’s left bank, called *Skarby*, endured such physical and psychological duress from raider attacks that he ended up hospitalized and was unable to defend his business.¹¹⁹

Of course, physical force often plays a role alongside other methods in more complex corporate raids, complementing corrupt court decisions and other kinds of pressure. In fact the term corporate raiding for many

¹¹³ Interview with Roman Rubchenko, Kyiv, Ukraine, June 15, 2013.

¹¹⁴ “Acting President signed a law reducing the number of permits.” April 25, 2014. Available at http://www.kmu.gov.ua/control/uk/publish/article?art_id=247246366&cat_id=244277212, accessed May 26, 2014.

¹¹⁵ Interview with Oleksandr Zadorozhnyi, Kyiv, Ukraine, May 16, 2013.

¹¹⁶ “Raiders seized publishing “A-Ba-Ba-Ha-La-Ma-Ha”” *Lb.ua*. November 8, 2011. Available at http://lb.ua/news/2011/11/08/122966_reyderi_zahvatili_izdatelstvo_.html, accessed May 26, 2014.

¹¹⁷ Irina Kirichenko. “Raiding: A Knife in the Heart of the Capial.” *ZN,UA*. January 28, 2011. http://gazeta.zn.ua/CULTURE/reyderstvo_nozh_v_serdtse_stolitsy.html, accessed May 26, 2014.

¹¹⁸ “Mayor of Yalta Supports Writers’ Union in a Dispute with Raiders after the museum House of named after. Chekhov” *New Russia L.P. News Agency*. February 21, 2013. Available at <http://nr2.ru/crimea/425600.html>, accessed October 30, 2013.

¹¹⁹ Interview with Natalia Moussienko, Kyiv, Ukraine, June 10, 2013.

Ukrainians conjures up the image of dozens of black or camouflage-clad thugs physically surrounding a factory, or storming the facility against the opposition of management and company security guards, as actually happened in the case of Chernivtsi Argo in 2010.¹²⁰ The target need not be especially large, as the case of a café in Zaporizhia Oblast demonstrated: Through a fraudulent shareholders' meeting, raiders diluted the original owner's share of her own café, then used physical force to remove her from the shop.¹²¹ Even in the very center of Kyiv, raiders, in collusion with local authorities, have attempted to take ownership of the historic 18th Century Kyiv Fortress by force in order to demolish parts of the historic building to improve access to the neighboring property.¹²²

The collusion of raiders with local or national law enforcement has also led to the use of “*zakaznye dela*,” or criminal charges made-to-order against the targets of corporate raids.¹²³ Ukraine's judiciary is especially susceptible to corruption and exploitive behavior, and is consistently rated as one of the most corrupt in the world.¹²⁴ The World Justice Project has repeatedly ranked Ukraine poorly, even when considered in its regional context.¹²⁵ Firestone defines “*zakaznye dela*” as “cases commissioned by third parties as a way of sabotaging business competitors ... and criminal cases initiated by law enforcement for extortionate or other improper purposes...”¹²⁶ Such cases are common in both the criminal and civil justice systems in Ukraine, and have long been a favored tactic for corporate

¹²⁰ “Gromadska Varta” Anti-Raiding TV spot №49. February 11, 2010. Available at <http://www.youtube.com/watch?v=MwmhqmYa9bM>, accessed May 26, 2014.

¹²¹ “Ukraina—Strana Protsvetaiushchego raiderstva.” *Job-sbu.org Anti-Corruption Portal*. April 13, 2012. Available at: <http://job-sbu.org/ukraina-strana-protsvetayushchego-reyderstva.html>, accessed May 26, 2014.

¹²² “Bryhynets Declares Raider Seizure Of The Kiev Fortress Museum.” *Korrespondent.net*. March 6, 2013. Available at <http://korrespondent.net/kyiv/1517263-briginec-zayavlyayet-o-rejderskom-zahvate-muzeya-kievskaya-krepost>, accessed May 26, 2014. See also “Raiders took ‘Kiev fortress’ – Bryhynets.” *Delo.ua*. Available at <http://delo.ua/ukraine/rejdry-zahvatili-kievskuju-krepost-briginec-198973/>, accessed May 26, 2014.

¹²³ Vitaliy Krimov. “Take What Cannot Be Bought. Country Fraught with Raiding.” April 13, 2012. *OstroV* news site. <http://www.ostro.org/general/economics/articles/373711/>, accessed May 26, 2014. See also Z.N. “The Mayor of Uzhgorod Ratushniak arrested crossing border by the Security Service of Ukraine with \$ 2.5 million -- the Party of Regions.” *Censor.net.ua*. Available at http://censor.net.ua/news/139378/mer_ujgoroda_ratushnyak_arestovan_sbu_pri_perehode_granitsy_s_25_milliona_dollarov_partiya_regionov, accessed May 26, 2014.

¹²⁴ Corruption Perception Index 2013 by Transparency International. Available at http://files.transparency.org/content/download/700/3007/file/2013_CPIBrochure_EN.pdf, accessed May 26, 2014.

¹²⁵ The World Justice Project Annual Report, 2012-2013. The World Justice Project, p. 153. Available at http://worldjusticeproject.org/sites/default/files/WJP_Index_Report_2012.pdf, accessed May 26, 2014.

¹²⁶ Thomas Firestone. “Armed Injustice: Abuse of the Law and Complex Crime in Post-Soviet Russia.” *Denver International Law & Policy Review*. Pp. 555-580. 38:4 July 2010, p. 556.

raiders.¹²⁷ In 2011-2012, twenty-five Ukrainian judges were dismissed from their posts for involvement in illegal schemes, while four hundred law-enforcement officials were investigated.¹²⁸

Why Raiding Matters to Ukraine and the West

In the aftermath of Ukraine's Euromaidan revolution, the ability of the new leadership to promote national reconciliation and recovery on a political level will depend in equal measure on economic recovery and a return to growth. This will in turn demand considerable new investment, both domestic and international, and there can be no doubt that corporate raiding and Ukraine's history of weak property rights protections have deterred investment in the past. Ukrainian brokerage firm Concorde Capital notes that, "due to poor property right protections, selective law enforcement and a weak judicial system, investors do not consider Ukraine very attractive, especially in view of many alternatives—like Turkey—in the region."¹²⁹ Consequently, Ukraine's FDI is lower than in fast-developing economies, at around \$2.8 billion, or no more than 2-3 percent of GDP.¹³⁰

Representatives of major international investors with whom I spoke claimed that although they had made successful investments and saw future opportunities in Ukraine, they could not imagine Ukrainian holdings being more than a few percent of their overall portfolio, in light of the high level of risk.¹³¹ One European diplomat even explained that his country's companies found it easier and safer to do business in Russia than in Ukraine, and had accordingly closed a chain of retail stores in Ukraine while opening more outlets across Russia's regions.¹³²

In addition to scaring off investors and blocking reform and economic development, corporate raiding does damage to ordinary Ukrainians by destroying enterprises that provide badly needed jobs and increasing

¹²⁷ Joe Ribakoff. "Ukraine: The Best Justice That Money Can Buy." *Examiner.com*. August 27, 2010. Available at <http://www.examiner.com/article/ukraine-the-best-justice-that-money-can-buy>, accessed May 26, 2014.

¹²⁸ "In Ukraine, scales of justice often imbalanced." *Reuters*. April 9, 2012. Available at <http://www.kyivpost.com/content/ukraine/in-ukraine-scales-of-justice-often-imbalanced-125714.html>, accessed May 26, 2014.

¹²⁹ "Selective justice keeps foreign investment out of Ukraine." *Reuters*. June 10, 2013. Available at <http://uk.reuters.com/article/2013/06/10/uk-ukraine-investment-idUKBRE95904L20130610?feedType=RSS&feedName=worldNews>, accessed May 26, 2014.

¹³⁰ "Foreign direct investment in Ukraine in 2013 shrinks to \$2.8 billion." *Kyiv Post*. February 17, 2014. <http://www.kyivpost.com/content/business/foreign-direct-investment-in-ukraine-in-2013-shrinks-to-28-billion-336936.html>, accessed May 26, 2014. See also "Selective justice keeps foreign investment out of Ukraine." *Reuters*. June 10, 2013. Available at <http://uk.reuters.com/article/2013/06/10/uk-ukraine-investment-idUKBRE95904L20130610?feedType=RSS&feedName=worldNews>, accessed May 26, 2014.

¹³¹ Interview with Steven Fisher, Country Head, Citibank, Kyiv, Ukraine, May 6, 2013.

¹³² Interview with EU diplomat, Kyiv, Ukraine, May 17, 2013.

instability and uncertainty for the still anemic middle class. When businesses suffer from raider attacks, it is not only the ownership that is less well off. Ordinary workers can lose their jobs or suffer declines in wages and working conditions, and in the worst cases, whole towns may be blighted by an attack against the community's main employer.

Raiding is hardly just a crime of the wealthy against the wealthy—relatively poor people have had their apartments or land stolen, and small entrepreneurs have been divested of their businesses and simultaneously lost all of their savings. With interest rates for business and personal loans as high as 30 percent, ordinary people simply do not have the option of borrowing to get back on their feet, which in turn makes businesses more vulnerable, a destructive cycle. Thus, raiding plays an important role in hampering small and medium enterprise growth in Ukraine, which in turn limits the growth of Ukraine's middle class, a building block of healthy economic growth and democracy.¹³³

Weak property rights represent both a political and economic development trap for Ukraine: because corrupt business practices and corporate raiding call into question the legitimacy of practically any business that appears to be successful, ordinary people and their political leaders maintain rather casual attitudes towards protecting property rights. The general feeling is simply that anyone who has something has probably stolen it or cut corners to get it, so they don't really deserve to keep it anyway.

Raiders take advantage of such broad ambivalence towards property rights to ply their trade, while politicians view redistribution of business assets as a benefit to be handed out to their supporters. Any political change in Ukraine thus carries with it the risk of wholesale economic re-alignment, such as when the government threatened to "re-privatize" thousands of former state companies in 2005, or the more recent case of the Yanukovych "Family's" consolidation of market power between 2010 and 2014.

The Euromaidan protest movement and ongoing high levels of social protest clearly demonstrate ordinary Ukrainians' growing frustration with the political and economic elite and the system of government they control. Although the departure from the scene of Yanukovych and many of his closest allies, the subsequent reconfiguration of the acting government, and the election in May 2014 of President Petro Poroshenko all appear to be steps forward for Ukraine's path to reform, any political transition carries with it considerable risk. It is possible that the realignment of forces in Ukrainian politics could unleash yet another devastating tidal wave of raider attacks under the guise of restitution of assets stolen by the previous government. It is worth recalling that the oligarchs have hardly disappeared from Ukraine, and some are in positions of much enhanced

¹³³ Interview with Steven Fisher, Country Head, Citibank, Kyiv, Ukraine, May 6, 2013.

political power, including the country's newly elected president.

Although the problems of weak property rights and corporate raiding are first and foremost obstacles to Ukraine's own economic and political development, they also represent urgent challenges for Ukraine's effort to integrate more closely with the EU and for the U.S.-Ukraine strategic partnership. With the June 2014 signing of the EU-Ukraine Association Agreement, including a Deep and Comprehensive Free Trade Agreement and visa liberalization, Ukraine has the opportunity to benefit from enhanced access to the EU's half-a-billion consumers. Yet Ukraine can hardly accept, much less fully implement, stabilizing European business practices required under the terms of these agreements, as long as corporate raiders still maintain outsized power and influence over the marketplace. Supporting Ukraine's European aspirations is a stated goal of U.S. foreign policy, thus corporate raiding undermines U.S. policy objectives in addition to deterring potentially profitable U.S. investments in Ukraine.

Conclusion

Despite its huge potential, Ukraine continues to disappoint its own citizens and outside observers, thanks in part to inadequate political and legal institutions, widespread corruption, and the pervasive cynicism of long-suffering ordinary Ukrainians towards most efforts to bring about positive change. Yet at the dawn of what should be a new era of closer trade, travel and investment ties with the European Union, corporate raiding may still pose a significant risk to Ukraine's progress.

Close attention to this problem from Western officials, businesses and experts engaged in Ukraine and the region is necessary but not alone sufficient to solve the problem. It is long past time for Ukrainians and international stakeholders to adopt a more comprehensive definition of raiding, in law and practice. Recognizing the most common methods of raider attack will help Ukrainian and international officials design more effective legal and institutional safeguards, and can help private investors to adopt preventive and reactive defenses to raider attacks.

Reforms to Ukraine's corporate law, judiciary, and criminal justice system that have been promulgated during the process of negotiating the EU Association Agreement, and that have been promised by the new president and acting authorities, offer new tools for combatting corporate raiding and strengthening property rights. Likewise, anti-corruption administrative reforms can help expunge some of the worst offenders from the low and middle levels of the state bureaucracy. Yet without a more fundamental change in attitude, even these robust new measures will be too easily compromised by those at the very top who bend the system to serve their interests, and will be simply dismissed by those at the bottom

who have already succumbed to overwhelming cynicism.

Western stakeholders can provide valuable assistance, but Ukrainians themselves must ultimately hold every participant in the market, their own political leaders, and one another equally accountable. There is reason to hope that Ukraine's path to enhanced economic and political integration with the EU will help ordinary citizens begin to see their own future prospects differently. This is fundamentally about turning the corner from post-Soviet "get it while you can" cynicism to a mentality of building value for long term growth. The more that people believe they can build prosperity for themselves and their families in a future Ukraine, the more they will direct their energies toward demanding and sustaining the conditions that make such a future possible.

