

16 November 2015

On 12 November 2015 the Ukrainian Parliament supported the antitrust reform package. The proposed laws aim to make the activities of the Antimonopoly Committee of Ukraine (the "AMC") more transparent, increase and restructure the financial thresholds applicable to merger control and introduce a binding methodology on calculating the amounts of fines imposed by the AMC.

1. The AMC will make its decisions public

Currently the AMC is making its decisions public on its official website while not being under a statutory obligation to do so. Such practice is a demonstration of a willingness to comply with the EU-Ukraine Association Agreement commitments.

Under the law passed by the Parliament, the AMC will be obliged to make its decisions public on its website within 10 business days after a decision is taken. The parties may petition the AMC for non-disclosure of certain information which includes a commercial secret or may be treated as confidential. At the same time, the AMC will have discretion in deciding whether the parties provided sufficient evidence to substantiate the non-disclosure.

The relevant law now has to be signed by the President. The law will come into force three months after its publication in the official press.

2. The merger review will become more efficient

The financial thresholds are planned to be increased and restructured as follows:

KEY ISSUES

- The AMC decisions will be public;
- Merger review efficiency will be improved;
- The AMC will calculate fines according to the binding methodology

- the total annual turnover or total assets in Ukraine of at least two concentration participants exceeds EUR 4 million while the combined parties' worldwide assets or turnover exceeds EUR 30 million; OR
- the total annual turnover in Ukraine of at least one concentration participant exceeds EUR 8 million while the worldwide turnover of at least one other concentration participant exceeds EUR 100 million.

The review period is fixed at 25 calendar days for the transactions where:

- only one party is active in Ukraine, or
- the parties' combined market shares do not exceed 15% on the overlapping markets or 20% on the vertical markets.

It will also be possible to consult with the AMC regarding the scope of information to be submitted and defects to be eliminated.

3. The Guidelines on Calculating the Amounts of Fines by the AMC will be binding

The AMC will determine the amounts of fines according to a binding procedure that will be set out in a separate "methodology on calculating the amounts of fines" yet to be adopted by the AMC. We believe that this methodology will not substantially differ from the Guidelines on Calculating the Amounts of Fines of 15 September 2015 which are currently of a recommendatory nature.

The amendments in items 2 and 3 above are set out in draft laws as passed by the Parliament in its first reading. The draft laws will be subject to another round of readings by the Parliament of Ukraine and may be further amended. We expect that these draft laws will be adopted by the end of 2015 or early in 2016.

For more details in Ukrainian please visit:

http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=53988

http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=55736

http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=54479

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