

UKRAINIAN COMPETITION AUTHORITY ACTS TO MAKE HORIZONTAL MERGERS' ASSESSMENTS MORE TRANSPARENT

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On 27 December 2016 the Antimonopoly Committee of Ukraine (the "AMC") has issued the recommendatory Guidelines on the assessment of horizontal mergers* (the "Guidelines").

The Guidelines were issued in furtherance of Ukraine's obligations under the EU-Ukraine Association Agreement's and were prepared along the lines of the EU guidelines for the assessment of horizontal mergers.

According to the Guidelines, the AMC will assess horizontal mergers through:

- (1) the determination of relevant product and geographical markets; and
- (2) the assessment of a merger's effects on competition.

To assess the merger's effects on competition, the AMC will consider the following key factors:

- (i) the participants' market shares and the market's concentration level (based on Herfindahl-Hirschman Index);
- (ii) the likely anti-competitive effects of the merger; and
- (iii) the likely countervailing factors (e.g., the buyer's power, new entries in the market and the risk of a participating undertaking's bankruptcy).

If the AMC decides that a merger at hand is a "simple case" because of a potential limited impact on competition (i.e., either only one participant is active in Ukraine or the participants' combined market share is below/equal to 15%), generally the AMC will not engage in further appraisal. The AMC will assess potential effects in more detail, including countervailing factors, if the AMC believes such analysis is necessary in a particular case or if there are motivated claims about likely anti-competitive effects from the public authorities, market participants or consumers, or if certain market share thresholds are met (the Guidelines set out those).

KEY POINTS

- The Guidelines set out the analytical framework the AMC will apply when assessing horizontal mergers.
- The Guidelines are expected to make the assessment of horizontal mergers by the AMC more transparent.

The AMC will also factor in efficiencies into its analysis if they are not possible but for the merger and are beneficial and timely for consumers. If, after its competitive analysis, the AMC concludes that a merger can lead to monopolisation or to a substantial reduction of competition in a market or its significant part, then the AMC will not allow the merger unless adverse competitive effects can be prevented by remedies to be taken by the participants to the merger.

The Guidelines set out analytical framework and approaches the AMC will use for assessment of horizontal mergers and are of recommendatory nature. The AMC emphasises that application of such analytical tools will be fact specific and each merger will be analysed on its specific facts and circumstances.

For more details in Ukrainian please visit:

<http://www.amc.gov.ua/amku/doccatalog/document?id=132319&schema=main>

* In this alert, the term "merger" includes different types of concentrations such as mergers, acquisitions, certain types of joint ventures, etc.

CONTACTS

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