

The Handbook of Competition Enforcement Agencies

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Overview

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The Anti-Monopoly Committee of Ukraine (the AMC) is a state body with special status. Its role is the state protection of competition in business activity. The AMC is controlled by the president of Ukraine and reports on its activity to the parliament of Ukraine.

The AMC consists of a chairman and 10 state commissioners, of whom two are the first vice chairmen and three are the vice chairmen. One of the state commissioners is also the head of the Kiev regional department. There are 27 regional departments.

The chairman of the AMC is appointed by the parliament of Ukraine on the basis of a submission by the prime minister, and is dismissed solely by the parliament. State commissioners are appointed and dismissed by the president of Ukraine on the basis of a submission by the prime minister. The chairman's and other commissioners' term of service is seven years. The same chairman can be appointed for a maximum of two consecutive terms.

The main tasks of the AMC are:

- the control of compliance with legislation on the protection of economic competition on the basis of the parity of all business entities and the priority of customers' rights, and the prevention and termination of violations in this field;
- the control of concentrations and concerted practices, and the regulation of the prices (tariffs) of goods or services provided by natural monopolies; and
- the promotion of fair competition.

Mergers and concerted practices control

Under the Competition Act 2001, concentrations of undertakings require prior approval of the AMC if the stipulated thresholds are exceeded. If the AMC refuses a permit for a concentration, the parties may appeal to the Cabinet of Ministers of Ukraine, which is entitled to grant the permit in exceptional cases.

Filing is also mandatory for concerted practices, with some exceptions; eg, filing is not mandatory for any voluntary concerted practices of small or medium-sized businesses (whose sales turnover

or total assets value does not exceed €500,000) regarding the joint purchase of goods that does not cause a substantial limitation of competition on the market.

All participants to concentration and concerted practices are responsible for filing.

Ukrainian competition legislation is applicable for any mergers, which affect or could affect economic competition in Ukraine. Therefore foreign-to-foreign mergers are caught if they meet the stipulated thresholds.

Notification fees are as follows:

- for review of applications for concentration: 5,100 Ukrainian hryvnias; and
- for review of applications for concerted practices: 2,550 Ukrainian hryvnias.

Parties may also request a preliminary opinion from the AMC on whether its approval is required for particular concerted practices or concentration. The fee for this is 1,360 Ukrainian hryvnias.

Review periods are as follows:

- approval of concerted practices: three months plus 15 days. In difficult cases the AMC may extend this term by a further three months;
- approval of concentration: one month plus 15 days. This term may also be extended by the AMC by a further three months; and
- preliminary opinion: one month.

Violations and responsibility

Under Ukrainian legislation, the following acts are prohibited as violations of the competition rules:

- anti-competitive concerted practices; some may be allowed if the prior consent of the AMC is granted;
- concentration without prior consent of the AMC (provided that the stipulated thresholds are exceeded);
- abuse of a dominant position;
- anti-competitive acts by state bodies;
- misuse of another business's trademark, markings, advertising material, packaging or product;
- copying the appearance of another business's product;

- comparative advertisements (unless they contain truthful information about the other business's goods and services that could be useful to consumers);
- placing obstacles in the way of other businesses engaged in competition or establishing an unfair competitive advantage, for example, through damaging another business's reputation, boycott, bribery of employees, etc; and
- illegal acquisition, disclosure or use of commercial secrets.

The AMC can impose fines for violations of the competition rules. The amount varies depending on the nature of the violation, its effect on the market and certain other factors (such as repeated violations, refusal to cooperate with the AMC, market position, benefit derived from breaching the law, etc).

Performance of the anti-competitive acts, abuse of a dominant position and failure to observe a decision of the AMC can result in fines of up to 10 per cent of global turnover for the previous year, or, if such turnover cannot be calculated, up to 340,000 Ukrainian hryvnias. Concentration without the prior approval of the AMC where such prior approval is mandatory can result in fines of up to 5 per cent of global turnover for the previous year, or, if such turnover cannot be calculated, up to 170,000 Ukrainian hryvnias. The less damaging violations result in fines of up to 1 per cent of global turnover for the previous year, or, if such turnover cannot be calculated, up to 34,000 Ukrainian hryvnias.

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- corporate law
- intellectual property
- litigation
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