

The Anti-Monopoly Committee of Ukraine (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 first vice chairmen and three vice chairmen. One of the state commissioners is also the head of Kiev regional department. There are 27 regional departments.

The chairman of the AMC is appointed and dismissed by the president of Ukraine with the consent of the parliament. State commissioners are appointed and dismissed by the president of Ukraine on the basis of a submission by the Cabinet of Ministers of Ukraine. The chairman's term of service is seven years. The same person 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 anti-competitive actions, and the regulation of the prices (tariffs) of goods or services provided by natural monopolies;
- the promotion of fair competition;
- the methodical application of legislation on the protection of economic competition.

Mergers and concerted practices control

Under the Competition Act 2001 concentrations of undertakings need prior AMC approval 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; for instance, filing is not mandatory for any voluntary concerted practices of small or medium-sized businesses (whose turnover or total asset value does not exceed €500,000) regarding the joint purchase of goods that does not cause a substantial limitation of competition on the market.

The participants to the concentration and concerted practices are responsible for filing.

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

Fees upon notification to the AMC are as follows:

- for approval of concentration: 5,100 Ukrainian hryvnas (about €750);
- for approval of concerted practices: 2,550 Ukrainian hryvnas (about €375).

Parties may also request a preliminary opinion from the AMC on whether its approval is required for a particular anti-competitive act or concentration. The fee for this is 1,360 Ukrainian hryvnas (about €200).

The timetable for an AMC assessment of notification and request is as follows:

- Approval of concerted practices: three months plus 15 days. In very difficult cases the AMC may decide to 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.
- Preliminary opinion: one month plus 15 days.

Violations and responsibility

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

- misuse of another business's trademark, markings, advertising material, packaging or product;
- copying the appearance of another business's product;
- comparative advertisement (unless it contains truthful information about the other business's goods and services which could be useful to consumers);
- placing obstacles in the way of other businesses engaged in competition or establishing an unfair competitive advantage, eg through damaging another business's reputation, boycott, bribery of employees, etc;
- illegal acquisition, disclosure or use of commercial secrets;
- anti-competitive acts; some may be allowed if the prior consent of the AMC is given;
- abuse of a monopolistic (dominant) market position;
- anti-competitive acts by state bodies; and
- restrictive and discriminatory acts by businesses.

A person cannot be prosecuted for a violation of the competition rules once five years has elapsed since the alleged violation.

The AMC can impose fines for violations of the competition rules. The amount of the fine 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 turnover for the previous year, or, if such turnover cannot be calculated, up to 340,000 Ukrainian hryvnas (about €50,000). The creation of a 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 turnover for the previous year, or, if such turnover cannot be calculated, up to 170,000 Ukrainian hryvnas (about €25,000).

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Konnov & Sozanovsky has wide experience in competition law practice, including legal support of mergers and acquisitions, preparing documents and applications on anti-competitive actions and agreements, concentrations, and also regarding the regulation of dominant market positions by the Anti-Monopoly Committee of Ukraine, as well as protection from unfair competition.

Lawyers from the competition team of Konnov & Sozanovsky have worked for the Anti-Monopoly Committee and also raised the level of their skills in the field of EU competition law with special legal training.

Konnov & Sozanovsky regularly represents clients before the Ukrainian competition authorities. Konnov & Sozanovsky also cooperates with foreign and international law firms in foreign-to-foreign mergers clearance in Ukraine.

The authority

How long is the head of agency's term of office?

The chairman of the Anti-Monopoly Committee of Ukraine is appointed and dismissed by the president of Ukraine by consent of the Supreme Rada (Parliament) of Ukraine. The term of office for the present chairman is seven years.

When is he/she next due for reappointment?

June 2008.

Which posts within the organisation are political appointments?

The chairman.

Resources

What is the agency's annual budget?

N/A.

How many staff are employed by the agency?

There are 787 persons (including territorial offices).

Political structure

To whom does the head of the agency report?

Verhovna Rada (Parliament) of Ukraine.

Do any industry-specific regulators have competition powers?

No.

Review process

Which body hears appeals against the agency's decisions?

In accordance with Articles 58 and 60 of the law of Ukraine On the Protection of Economic Competition: "The applicant, the defendant and a third party shall have the right to file an appeal to a court of justice against complete decisions of bodies of the Anti-Monopoly Committee of Ukraine or against parts of those type of decisions within a period of two months from the date when the decision was received. The period may not be renewed."

Appeals against the decisions of the Anti-Monopoly Committee, an administrative board of the Anti-Monopoly Committee or a state commissioner of the Anti-Monopoly Committee shall be taken to the Higher Court of Arbitration. Appeals against the decisions of an administrative board of a territorial office of the Anti-Monopoly Committee may be taken to the Court of Arbitration of the Autonomous Republic of the Crimea, to regional courts of arbitration, and to the Kyiv and Sevastopol City Courts of Arbitration.

Bodies of the Anti-Monopoly Committee, on their own initiative or on the basis of applications submitted by persons, may review decisions taken by them on cases regarding violations of the laws on the protection of economic competition and on applications and cases regarding concerted actions and concentrations.

Is there any form of judicial review beyond that mentioned above? If so, which body conducts this?

The Cabinet of Ministers of Ukraine performs controlling functions in the sphere of the implementation of competition policy and is the higher body in the system of bodies of executive power. In exclusive cases, the Cabinet of Ministers may authorise concerted actions and concentrations to which the Anti-Monopoly Committee did not consent, if their positive effect for public interests outweighs the negative consequences resulting from the restriction of competition.

Reform

Are there any plans to reform the competition law?

Yes. It is supposed that the changes will be in the form of improving the procedural part of competition laws, in particular by defining the powers of the Anti-Monopoly Committee for gathering evidence during the consideration of cases regarding violations of competition laws—especially violations in relation to cartels.

When did the last review of the law occur?

The new competition law On the Protection of Economic Competition came into force on 2 March 2001.