

# Antitrust & Competition



## Newsletter

Kyiv, May 2017

For detailed information, please,  
contact authors:

**Timur Bondaryev**,  
Managing Partner, attorney-at-law,  
Head of Antitrust & Competition  
[Timur.Bondaryev@arzinger.ua](mailto:Timur.Bondaryev@arzinger.ua)

**Lana Sinichkina**,  
Partner,  
Co-Head of Antitrust & Competition  
[Lana.Sinichkina@arzinger.ua](mailto:Lana.Sinichkina@arzinger.ua)

## Disclaimer:

*This publication is not a legal advice and provides only general information about development trends in the regulation and practice of its application in Ukraine. In order to avoid any risks prior to making any decisions related to information contained in this publication, please, seek legal counsel.*

### **LAW ENFORCEMENT NEWS:**

#### **ANTICOMPETITIVE CONCERTED PRACTICES**

- The AMCU fined equipment and machines wholesale traders for bid rigging

#### **ABUSE OF DOMINANCE**

- International airport Boryspil was fined for EUR 430,5 thousand for abuse of dominance
- Scientific research Institute of applied information technologies abused its monopoly position

#### **UNFAIR COMPETITION**

- Specialized clinic of women's health was fined for almost EUR 2 000 for dissemination of misleading information

#### **COURT PRACTICE**

- The Higher Commercial Court of Ukraine upheld the AMCU decision in the case on dissemination of misleading information by a confectionery factory

#### **THE AMCU RECOMMENDATIONS**

- The AMCU provided a large producer of milk products with the recommendations for compliance of its actions with legislation on protection against unfair competition

### ANTICOMPETITIVE CONCERTED PRACTICES

#### The AMCU fined equipment and machines wholesale traders for bid rigging

The AMCU continues its investigations of bid rigging and applies the large amount of fines. A fine of EUR 34,5 thousand was imposed on “Kvazar Complex” LLC and “Transelektromash Plant” LLC for bid rigging during the procurement of components and parts for railway locomotives, trams and rolling stocks held by “Ukrzaliznychpostach” SOE. The Committee found that these companies, together with other business entities coordinated their actions during the tender, which was confirmed by the following: the submitted documents contained the same differences from the forms given in the tender documentation, the same equivalents of goods were offered for the same procurement items etc.

### ABUSE OF DOMINANCE

#### International airport Boryspil was fined for EUR 430,5 thousand for abuse of dominance

The AMCU imposed a fine in the amount of EUR 430,5 thousand on “International airport “Boryspil” SOE for abuse of dominance on the market of airport’s specialized services. The enterprise unreasonably refused to approve the application for compliance certificate for carrying out of airport activity. There was also a delay from the enterprise’s side during the process of approval of “Interavia” LLC documentation, which is necessary to obtain a compliance certificate for carrying out of airport activity. In addition, the company established different approaches to the determination of payment for the use of the Airport infrastructure for the various business entities.

#### Scientific research Institute of applied information technologies abused its monopoly position

The AMCU found “Scientific research Institute of applied information technologies” PJSC abused its monopoly position on the market of student tickets production by creating obstacles to market access to other business entities. The Institute is an information technology manager of information and production system Osvita and has the right of access of information-production units on the market of student tickets production. In addition, in 2015-2016 the Institute occupied a monopoly position on the mentioned market. Using its market power, the Institute created obstacles to market access to its competitors (information and production units of Osvita) by delaying the process of signing the necessary agreements. As a result, the Institute was fined for almost EUR 17 thousand.

## UNFAIR COMPETITION

### Specialized clinic of women's health was fined for almost EUR 2 000 for dissemination of misleading information

Kyiv territorial office of the AMCU found the clinic "Isida" disseminated on the web-site [www.isida.ua](http://www.isida.ua) inaccurate and false information about its business activity. The clinic indicated that it was the leader in the field of pediatrics, whilst it was not the market leader in the provision of pediatric services. In addition, the web-site contained the false information that the clinic "Isida" was the only clinic in the country that had an annual assessment on ISO certificate 9001.

The territorial office concluded that the consumer basing on the disseminated information about medical services could choose services of clinic "Isida". Consequently, other market participants could lose their consumers. It should be noted that the misleading information was disseminated by the company in 2012, but the decision on the case and the penalty were applied in 2017.

## COURT PRACTICE

### The Higher Commercial Court of Ukraine upheld the AMCU decision in the case on dissemination of misleading information by a confectionery factory

Vinnitsia territorial office of the AMCU recognized the actions of "Confectionery factory "Lagoda" PJSC as infringement of legislation on protection against unfair competition committed in the form of dissemination of misleading information and imposed on the factory a fine in the amount of EUR 8000.

The company produced cookies, which contained inscriptions that cookies are "useful carrot", "useful lemon", "useful honey". The next phrases were also placed on the packages of cookies: "We care about the health and proper child development" and "Every child loves delicious sweets, and every mother dreams that these sweets were useful..."

The territorial office established that during the production of "useful carrot cookies" carrot or carrot products (juice, etc.) were not used. The cookies composition includes beta-carotene, which is produced by microbiological method. In addition, the company on its own discretion added to the name of cookies, which was indicated in the authorization documents, the word "useful".

At the territorial office's request the factory did not provide the proofs of the cookies benefits for the children's category of consumers and for their mothers, as well as the cookies positive impact on the child health and proper development of the child.

Thus, the Higher Commercial Court of Ukraine concluded that the territorial office proved the fact, that confectionery factory infringed the legislation on protection against unfair competition.

## THE AMCU RECOMMENDATIONS

### The AMCU provided a large producer of milk products with the recommendations for compliance of its actions with legislation on protection against unfair competition

"Wimm-Bill-Dann Ukraine" PJSC plans to start production of fermented milk products for baby food called "Agusha" with fruity fillings, including children's yogurt 2.7% with filler "Apple-Lemon" and children's cheese 3.8% fat with fruit filler "Strawberry-Banana-Melissa". The product is suitable for use by children from the age of 8 months, about what the proper inscription will be placed on the packages. The company will present the products as being suitable for consumption, particularly in the evening, just before baby sleeping because products contain melissa extract.

The Committee concluded that the actions of the company will not contain indications of infringement of legislation on protection against unfair competition, upon condition the product consists sufficient amount of melissa extract necessary to achieve a calming effect for children from the age of 8 months.

Kind regards and best wishes,

**Timur Bondaryev,**

Managing Partner, attorney-at-law,  
Head of Antitrust & Competition

e-mail: [Timur.Bondaryev@arzinger.ua](mailto:Timur.Bondaryev@arzinger.ua)

**Lana Sinichkina,**

Partner, Co-Head of Antitrust & Competition  
e-mail: [Lana.Sinichkina@arzinger.ua](mailto:Lana.Sinichkina@arzinger.ua)