

Legal Alert



Competition and Antitrust

Антимонопольне
та конкурентне право

Arzinger

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*This publication is not a legal advice and
provides only general information about
the most important legislation changes
in Ukraine.*

*In order to avoid any risks prior to
making any decisions related to
information contained in this publication,
please, seek legal counsel.*

Topic of the issue:

THE AMCU IMPOSED A LARGE FINE FOR GUN JUMPING

In the very end of 2016 Ukrainian antitrust authority, the Antimonopoly Committee of Ukraine (the AMCU), imposed a large fine of approx. EUR 110,000 for gun jumping. The said fine is unprecedented from perspective of merger control-related penalties in Ukraine which previously ranged from approx. EUR 1,000 to EUR 10,000.

The merger in question was qualified by the AMCU as gaining of control over the target by means of appointing of one of acquiring party's managers to the position of the head of the supervisory board of the target.

The AMCU revealed the infringement while it was reviewing merging parties' application for the merger clearance. Namely, several months after the said appointment the merging parties applied to the AMCU for the merger clearance to gain indirect control over the target through the purchase of its parent company's controlling stake.

To recall, in September 2015 the AMCU adopted its Guidelines on competition-related fines calculation. The Guidelines contain formula-based approach including adjustment coefficients for the basic fine calculation and adjustment % for availability of aggravating

and mitigating circumstances. Based on the said approach the fines of the AMCU in merger control sector are expected to increase significantly which is clearly illustrated by this case.

At the same time it is worth noting that the AMCU **extended its amnesty program** launched in September 2015 for mergers closed in the past without its clearance **till March 15, 2017**. In accordance with the program terms the merging parties which self-report their mergers closed by September 15, 2015 can claim a fixed fine of approx. EUR 3,500 and a *postfactum* merger clearance. Based on our experience the AMCU has fully complied with its promises and granted numerous clearances within the program. Many of our clients benefitted from this opportunity and released themselves of antitrust-related risks in Ukraine.

On March 6 the Chairman of the AMCU, Mr. Yuriy Terentyev, reminded on his Facebook page that the amnesty term expires on March 15, 2017 which should mean that the AMCU is not planning to extend the amnesty program any more. Thus, business still has a few days to catch the last train and submit the self-report application to the AMCU.

For more details please do not hesitate to contact us.

Kind regards and best wishes,

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