

SIGNIFICANT IMPROVEMENTS IN THE UKRAINIAN MERGER FILING PROCESS

On 20 September 2016, the Ukrainian competition authority (the "**AMC**") announced the extension of its so-called amnesty program for merger control violations for another six months.

This means that if a company / an individual (an undertaking) failed to obtain the required merger clearance in Ukraine before 15 September 2016, it may still apply for such approval within the so-called amnesty program until 15 March 2017. In this case, a fixed fine of UAH 102 thousand (approximately EUR 3.5 thousand) will be imposed on the violator. By comparison, if the AMC discovers the said violation on its own, the maximum possible fine, as provided for by the law, may be up to 5% of the group worldwide turnover of the violator in the financial year prior to the year in which the fine is imposed. However, one should bear in mind that as a matter of practice the fines which were actually imposed by the AMC were relatively small and have never reached their statutory established maximum cap. In any case, paying a fixed amount of fine within the amnesty program for "clearing" a history of a group seems to be a reasonable path one may consider taking.

In addition, undertakings that decide to apply for the amnesty program will also benefit from other recent positive developments in the competition legal framework and proceedings in Ukraine. These include a rather significant simplification that regulates the procedure for filing to the AMC and is applicable to information that must be provided to the competition authority at the time of filing as well as the streamlining of applications, the elimination of electronic databases that formerly had to be submitted along with paper applications, allowing those submitting application to consult with the AMC within 15 days after the filing and simplification of the filing review process by the AMC. In this case, it is now possible to request that the AMC consider a merger clearance application under the special simplified proceeding, which takes up to 25 days, compared to the standard procedure of up to 45 days. All these developments result in significant simplification and shorten the merger filing process as well as make it more effective and cost-efficient for applicants.

In the practice of our firm, we have been already able to see these improvements working in practice. In a recent merger filing case for our client, the merger clearance was provided by the AMC within 21 days from the time we submitted the application and documents, and the consideration of our application by the AMC was indeed shifted to and conducted under the simplified proceeding.

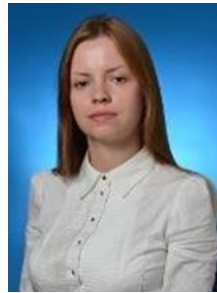
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