

Recommendations on calculation of fines by the AMCU

On 15 September 2015, the Antimonopoly Committee of Ukraine (AMCU) announced the first official version of Recommendations on approaches for calculation of fines for competition law infringements (Recommendations). The provisions of these Recommendations will be later taken as a basis for significant legislative changes aimed at regulation of calculation of fines.

Thus, the AMCU laid grounds for a reform of its activities in relation to adoption of decision on liability for breach of competition law, which will result in, inter alia:

- AMCU's decisions will become more predictable for business;
- any possibility of abuse of power while making such decisions is significantly decreased;
- creation of a precedent to the state authorities exercising disciplinary powers on how to regulate their activities in order to reform Ukrainian legislation for bringing it to the EU standards.

The Recommendations lay down the core principles of adoption of the AMCU's decision, i.e. the principles of proportionality, reasonableness and non-discrimination towards commercial entities. Thus, despite being broadly interpreted, such definition obliges the AMCU not to apply the formalistic approach in its decision-making process, as it often used to be done.

There is separation of all infringements into several groups depending on the level of their seriousness with fixed limits of liability. Thus, as each group has its own 'percentage limits', it is possible to see the upper limit of a fine in each case. For the most serious infringements, such as abuse of a monopoly position, the base amount of fine is 45% from the proceeds acquired in the result of infringement.

The list of mitigating and aggravating circumstances, which will respectively lower or increase liability during decision-making of the AMCU, was specified. The mentioned novelties, though not new for the law generally, for the first time allow commercial entities to refer to certain materials of the case and will encourage them to cooperate with the AMCU.

Our law firm is especially pleased to note that elaboration of our lawyers was directly incorporated into the concept of development of this document, which will help business in its cooperation with the competition law authority of Ukraine, and also will send a solid signal to the Western investors on gradual reform of the functioning of the Ukrainian authorities in line with the best practices of the European state authorities.