

Updated recommendations on calculation of fines for violation of competition law

On 16 February 2016 the Antimonopoly Committee of Ukraine (the AMCU) published the restated official version of the Recommendations on approaches for calculation of fines for competition law infringements, provisions of which will be later taken as a basis for significant legislative changes aimed at detailed regulation of calculation of fines.

The updated version of the Recommendations includes proposals made by lawyers and economic experts during last six months following adoption of the initial version of the Recommendations.

New provisions include, inter alia, the following:

New mechanism on determining fines for violations of fair competition and concerted actions;

Establishment of the upper-limit amount of fines, which might be imposed by the territorial departments of the AMCU;

Clarification of the mechanism of calculation of fines for economic concentration (M&A transactions) without obtaining the AMCU's approval. Thus, the amount of respective fines for repeated infringement of competition law was doubled;

The basic principles of decision-making procedure by the AMCU under the Recommendations (i.e., the principles of proportionality, reasonableness and non-discrimination towards commercial entities) remained in place. 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;

Separation of all infringements into several groups depending on the level of their seriousness with fixed limits of liability was broadened. 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 as 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 in more detail. 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.

In light of the above, the next awaited step would be parliamentary adoption of the draft law, prepared by the AMCU, which regulates such mechanism of calculation of fines for breach of competition law.