

Year in review 2023

Antitrust & Competition

ARZINGER 20 YEARS

ACTIVITIES OF THE AMCU UNDER MARTIAL LAW



Due to the invasion of the Russian Federation, the Antimonopoly Committee of Ukraine (the «AMCU», the «Committee») initially suspended its activities. However, since the summer of 2022, the AMCU has adapted to the requirements of operating during the war and is currently **operating in regular mode**.



CHANGE OF MANAGEMENT: On September 6, 2023, **Pavlo Kyrylenko** was appointed as the new head of the AMCU.

However, the change of management did not affect the AMCU's active work. In a recent [interview](#), the new head spoke about the areas of focus of the Committee under his leadership:

- **control over the spheres in which large business owners** (so-called oligarchs) **are involved,**
- **privatization of state assets,** and
- **merger control.**

ANTITRUST REFORM

On July 9, 2023, the **Parliament of Ukraine adopted the bill No. 5431** (the «**Reform**») on the implementation of the long-awaited antitrust reform in Ukraine. On September 12, 2023, the bill was signed by the President of Ukraine.

The reform was developed under the requirements of Article 256 of the EU Ukraine Association Agreement and is aimed at bringing Ukrainian antitrust law in line with the EU *acquis communautaire*.

Among other things, the **key changes and innovations include the following:**

- changes to the merger control regime,
- improving the leniency and settlement procedure exemption from liability in cases of anticompetitive concerted actions and abuse of dominance,
- introduction of joint and several liability for violation of antitrust law,
- the procedure for conducting dawn raids (inspections) of companies by the AMCU,
- implementation of the approved procedure for calculating fines.

The Reform came into force on January 1, 2024.

For a more detailed analysis of the Reform, please follow the [link](#).

MERGER CONTROL

ACTIVE WORK OF THE AMCU.

Consideration of merger clearance notifications remains one of the main areas of the AMCU activity (**more than 500 notifications** were considered in 2023).

NOTIFICATION THRESHOLDS:

- The reform finally introduces the **possibility of excluding the seller's figures from the calculation of notification thresholds**, the exceeding of which requires obtaining the mandatory clearance of the AMCU for the transaction.
- Starting from January 1, 2024, the indicators of the controlling seller(-s) and other related entities are not included in the calculation of the thresholds, **provided that:**
 - (1) the target has no (directly/indirectly) assets in Ukraine, **and**
 - (2) the target has not been active (directly/indirectly) in Ukraine during the two preceding fiscal years and the current year of transaction implementation.

JOINT VENTURES:

- Although the AMCU has already started applying EU approaches to qualify the establishment of **full-function** and **non-full-function** joint ventures in its case law, this has not been enshrined clearly in the legislation.
- In its turn, the Reform eliminates this gap, and an establishment of full-function joint ventures from scratch is definitely qualified as a merger (**concentration**), and non-full-function ones – as **concerted actions**.
- Accordingly, depending on the qualifications, the criteria for assessing the necessity to obtain the clearance of the AMCU for the establishment of such joint ventures differ.

MONITORING OF GLOBAL TRANSACTIONS:

- The AMCU actively monitors the **decisions of the European Commission and public press releases** on foreign global transactions of companies to further review compliance with the Ukrainian merger control regime.
- The recent example, in October 2023, foreign companies BASF S.E. and LetterOne Holdings SA were **fined** a total of ≈ **EUR 1.2 million** for jointly establishing Wintershall DEA AG without obtaining prior clearance from the AMCU.
- The Committee learned about the transaction **from the respective decision of the European Commission** on merger clearance.



INVESTIGATIONS

BID RIGGING:



- During martial law, this category of investigations remains under the main focus of the AMCU.
- Under scrutiny are the **privatizations of state assets, public procurement of medicines, constructions, and energy services.**

CARTELS AND ABUSE OF DOMINANCE:



- The year 2023 was not marked by remarkable cases of anticompetitive concerted actions (cartels) and abuse of dominance.
- At the same time, after the change of management, the AMCU announced **the systematization and completion of investigations** into:
 - the largest chicken producer in Ukraine,
 - the largest distributor of tobacco products,
 - companies that supply gas and electricity, and
 - actions of the largest pharmaceutical manufacturers regarding restriction of distributors' access to the market.

In particular, in November 2023, the AMCU issued binding [recommendations](#) to pharmaceutical companies **Teva** (Israel), **Acino** (Switzerland), **Sanofi** (France), **Servier** (France), and **other 45 companies** preventing distributors' possibility of buying and selling products of the manufactures on the market.

Therefore, we expect decisions/new investigations to be made against the participants of the above markets.

REQUEST FOR INFORMATION:



- The number and amount of fines for failure to provide information and documents upon request of the AMCU continues to grow. We remind you that in case of failure to provide documents/incomplete provision/provision of false information in response to the AMCU's request, companies are subject to **finest of up to 1% of their annual turnover.**
- In particular, last year the AMCU imposed [a fine](#) of **≈ EUR 1 million** on a company for failing to provide an exhaustive list of its control-related entities.

AMCU PRIORITIES FOR 2024

The Committee has identified the following markets as priorities for 2024:



energy,



construction,



fuel and petroleum products,



railway transport,



socially significant food products,



medicines and their substitutes.