

# Kluwer Competition Law Blog

## The Antimonopoly Committee of Ukraine Adopted the Methodology for the Fines Calculation

Timur Bondaryev (Arzinger) · Tuesday, September 22nd, 2015

On 15 September 2015, the Ukrainian competition authority, the Antimonopoly Committee of Ukraine (the AMCU), adopted *Recommendations on approaches for calculation of fines for competition law infringements* (the Recommendations). This long-awaited step is the result of active public discussions initiated by the AMCU and by the Ukrainian legal professionals' community.

This event is of great importance to both business, legal practitioners and for the entire society. The Recommendations are expected to develop Ukrainian law enforcement and judicial practices. Firstly, the official explanations will significantly reduce corruption factors and eliminate lack of transparency allowing the watchdog to put pressure upon business. Secondly, the document should significantly increase protection of the companies' rights effectiveness not only in antitrust investigations but also in courts. The Recommendations shall become a good start of EU standards' introduction into antimonopoly regulation in Ukraine. Now the ball is in the Parliament's court: it is expected to adopt the respective law which, among other things, grants the powers to courts to review (as well as to change) the amount of the fines imposed by the competition authority.

The core idea of Recommendations developers was to unite both the methodology laid down in the European Commission Guidelines and the national peculiarities of antitrust regulation.

The newly-adopted document provides for two-step methodology: (i) definition of the basic fine amount and (ii) its further adjustment subject to availability of mitigating and/or aggravating circumstances. The second major achievement introduced by the document shall be direct reference in the Recommendations to infringement-related revenue. Now the latest shall serve the basis for the fine amount calculation within step (i) which has never been practiced before. For the sake of clarity, infringement-related revenue shall mean the revenue received or which could have been received resulting from the infringement. This innovation should significantly reduce the range of fines imposed by the AMCU and raise the standard of proof.

The Recommendations divide all the competition law infringements into the following groups:

- the most serious infringements (traditionally, price fixing and abuse of dominance) with the basic fine amount of 45% of infringement-relevant revenue;
- serious infringements (e.g., failure to obtain the merger clearance of the AMCU for the merger which led to market monopolization) – 30% respectively;
- medium-gravity infringements (e.g., failure to obtain the merger clearance of the AMCU for the merger which did not lead to market monopolization) – 5% respectively;
- infringements of minor gravity (e.g., failure to provide information at the request of the AMCU) – the fine amount is fixed in flat fee.

Further, the fine may be increased or reduced by 50% maximum, in case all aggravating or all mitigating circumstances were in place respectively. The document also provides for the possibility, in exceptional cases, to impose larger amount of the fine in order to ensure the deterrent effect as well as to impose a symbolic fine.

### **Amnesty for Mergers Closed Without AMCU Approval in the Past**

Apart from the methodology for the fines amount calculation the Recommendations bring along very important developments in merger control sector – the amnesty for those mergers which have been closed without AMCU approval in the past. The document sets the fixed fine amount, – approximately Euro 835 for mergers self-reported within the first half-a-year starting from the day of Recommendations adoption, i.e. from September 15, 2015 till March 15, 2016. Should the merging parties self-report within half-a-year after March 15 (till September 15, 2016) the fixed fine will amount to approximately Euro 4175 (the figures converted from Ukrainian local currency in which the fine amount is fixed at the current exchange rate).

At the same time it is worth mentioning that procedurally the parties will have to collect the similar amount of documents and information required for review of the application for the merger clearance just as within usual merger control procedure. However, due to our knowledge of authority's position some information about the merging parties can be shortened and will be considered by the AMCU in reduced form.

*Timur Bondaryev (Timur.Bondaryev@arzinger.ua), Managing partner, Co-Head of Antitrust & Competition practice*

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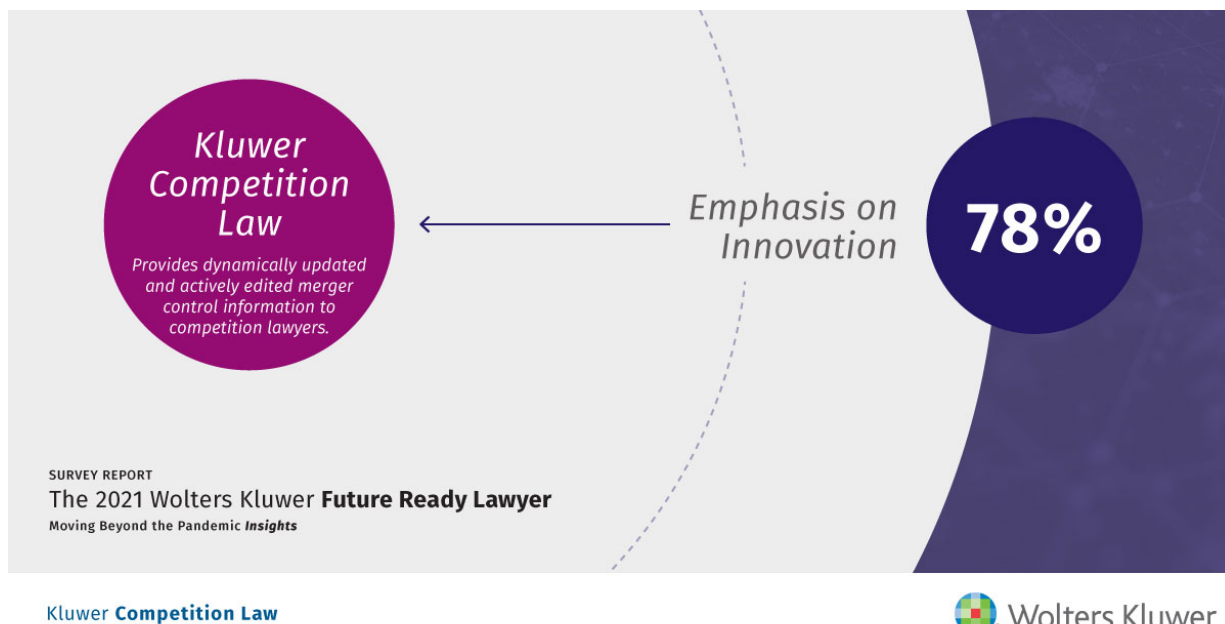
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