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New Merger Control Thresholds In Ukraine And Other News From The AMC

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On 21 October 2020, during the kick-off event of the EU-funded Twinning Project, the Antimonopoly Committee of Ukraine (the “AMC”) announced that it is preparing the draft law that will introduce amendments to the Ukrainian merger filing thresholds. The AMC will submit the draft law to the Ukrainian Parliament early this November and expects it to be adopted later this year.

According to the AMC, the proposed merger control reform will provide that:

- The turnover/assets value of a controlling seller would be excluded when calculating the target’s notification thresholds (currently, the turnover/assets of the seller controlling the target are taken into account when calculating the merger thresholds of the target, and the filing may be technically triggered based on a seller only); and
- The local (Ukrainian) threshold for a target would be decreased from EUR 4 million to EUR 2 million.

Among other things, it is envisaged that the draft law will:

- Set up an effective settlement procedure;
- Introduce a partial immunity within the leniency procedure (i.e. those companies which are not the first to inform the AMC of an undetected cartel or other anti-competitive concerted practices should be able to benefit from a reduction of fine if they provide significant evidence to the AMC). This change should encourage companies to apply for leniency, which has been underused in Ukraine as, so far, only the first applicant may benefit from it; and
- Broaden the AMC’s powers in collecting evidence in cases of competition law violations (primarily cartels and abuses of dominance), in particular, the AMC will be able to cooperate closely with the national police.

We will follow up with more details once the abovementioned draft law has been published by the AMC.

The regulator also intends to improve the legal framework for private claims for damages arising from competition law violations. Private claims have been quite rare, so far, in Ukraine, due to significant gaps in the regulation of this issue.

As regards the markets that are currently in focus, according to the AMC these are the markets for

oil and gas, pharmaceuticals, consumer goods (especially sunflower oil and chicken), rail freight and seaport operations. The regulator will now be paying much more attention to digital markets in the near future.

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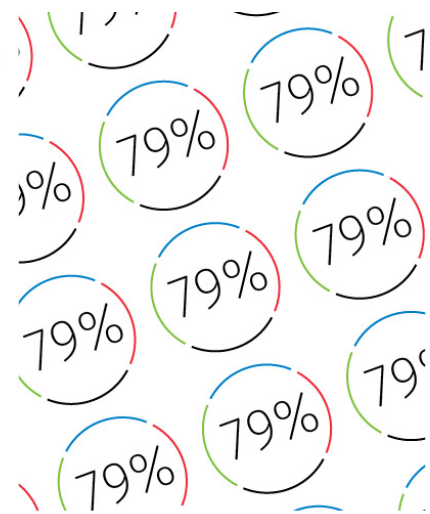
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