

# Kluwer Competition Law Blog

## Merger Control Regime During Martial Law in Ukraine: Current Status

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On 24 February 2022, the Parliament of Ukraine, in connection with the large-scale military aggression of the Russian Federation against Ukraine, approved a decree of the President of Ukraine on the imposition of martial law in the country. The military aggression has significantly affected the activities of most public authorities in Ukraine, including the Ukrainian competition agency – the Antimonopoly Committee of Ukraine (the "AMCU", "Agency").

Due to the military actions and, in turn, limited access to the Agency's workplace, case materials and state registers, the AMCU, by its order as of 07 March 2022, ruled to cease the review of filed notifications and opened Phase II reviews on granting merger clearances until termination of martial law in Ukraine.

It, however, does not mean that the merger control rules had been cancelled in Ukraine. On this fact, the AMCU stressed out in the [Guidance](#) on the application of the merger control regime during the period of martial law in Ukraine, which was published on 01 April 2022 (the "Guidance").

On other competition law developments in the context of the war in Ukraine, see [this](#) post.

### **There are no exemptions from merger clearance obligation**

According to the Guidance, the parties to respective transactions (both domestic and foreign-to-foreign) are not exempted from the obligation to apply for merger clearance in Ukraine if it is required by the Law of Ukraine "On protection of economic competition" (the "**Competition Law**") and the respective financial thresholds are met.

At the same time, consideration of the notifications and granting respective clearances will be carried out by the AMCU only after the martial law is terminated.

### **Fines for gun-jumping**

Bearing in mind the uncertainty during the application of martial law in Ukraine, the AMCU is very well aware that the parties to respective transactions will most probably have to close their transactions before obtaining the respective clearances from the Agency.

According to the Guidance, a fine for gun-jumping during the period of martial law in Ukraine will not exceed a cap of **UAH 51.000** (? **EUR 1,500** as of 01 May 2022), provided that:

- notification is filed by the parties and all statutory requirements and deadlines of the filing process set forth by the Guidance are met

and

- transaction does not lead to monopolization of the market or significant restriction of economic competition on the market

and

- transaction is not prohibited under the Law of Ukraine "On sanctions".

Ukrainian competition laws do not envisage full amnesty for gun-jumping, and the above-mentioned amount of potential fines is quite symbolic in the current circumstances.

### **The main requirements for the new notifications**

New applications for merger clearance must be filed to the AMCU no later than 15 days before closing the transaction.

Although a hard copy of the application and accompanying documents can be submitted directly to the Agency's office, the AMCU introduced a simplified filing procedure under which it is allowed to file the applications via e-mail. It is also allowed to file a shortened list of accompanying documents, which is set forth in the Guidance, to the application.

At the same time, within 3 months after martial law is terminated, the applicants are obliged to submit other documents and information, that were not filed along with the initial shortened application, however, they are required by Ukrainian competition laws.

### **Russia-related exemptions from the Guidance**

The Guidance does not apply, if:

- the ultimate beneficial owner of at least one of the transaction parties is the Russian federation or a Russian citizen (potentially, Russian legal entities too), that has supported military aggression against Ukraine

or

- the AMCU has reasonable doubts that the purpose of the transaction is to remove assets from the

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international sanctions.

In such cases, the maximum possible amount of fine provided by Competition law will be imposed (i.e., up to 5% of the group annual turnover of the party(-ies) involved).

It is worth remembering that following the Russian aggression against Ukraine in 2014, the Agency was vested with the powers to block the transactions with Russian elements within the perimeter of the deal, which were on the Ukrainian sanctions list. These days, the Ukrainian government keeps working on extended sanctions against Russia, Russian individuals, and legal entities.

## Conclusions

Martial law in Ukraine has been recently extended until 23 August 2022, and, thus, it is quite hard to predict when it will be terminated. For this reason, the Guidance provides clear clarifications for businesses on how to notify their transactions in Ukraine and, subsequently, to avoid significant fines for gun-jumping during martial law in the country.

In order to minimize the adverse financial outcomes, it is strongly recommended for businesses to adhere strictly to the Guidance.

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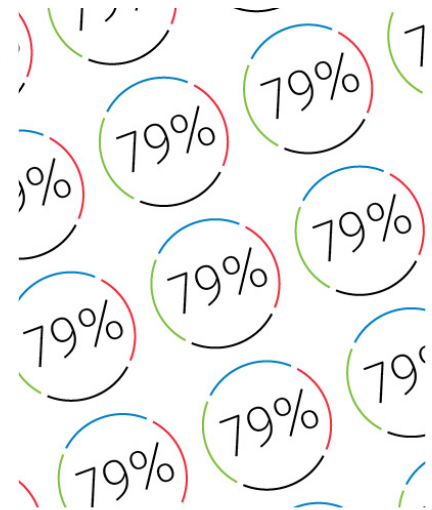
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