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AMC WARNS ON MAXIMUM FINES FOR COMPLETING ECONOMIC CONCENTRATIONS WITHOUT ITS PRIOR APPROVAL

According to the most recent news posted on the official website of the Antimonopoly Committee of Ukraine (the “**AMC**”), it warns the companies that economic concentrations, such as domestic and international mergers & acquisitions, cannot be implemented without its prior approval, and that violations of this requirement will be subject to maximum fines.

The AMC prior approval is required in case a transaction meets the thresholds established in the law. Because the thresholds in Ukraine are extremely low (many times lower than in the EU and in many neighboring countries of the CIS economic region), most of international, including foreign-to-foreign, transactions that otherwise have no or little impact on Ukrainian market, still require the AMC prior approval. Therefore, Ukrainian law does not allow for global closing before the AMC prior approval is obtained. It also does not allow to carve out local completion from the global completion.

Clause 12 of Article 50 of the Law of Ukraine “On Protection of Economic Competition” (the “**Competition Law**”) qualifies failure to obtain the AMC prior approval as a violation subject to substantial fines. In particular, under Article 52 of the Competition Law, the infringer (taking into account its control relations, i.e. its group) may be subject to fines imposed by the AMC in an amount of up to 5% of its annual revenue from the sales of products, works, and services over the financial year preceding the year in which the fine was imposed.

Because the amount of fines is “*up to*” 5%, the AMC has discretion to impose lower fines, and in the past the fines were usually far lower than the 5% maximum within the fining power available to the AMC. The largest known fines for completing transactions without the AMC prior approval, imposed on foreign companies, did not exceed EURO 20,000.

Effective 1 July 2012, the AMC warns that it will impose **the maximum fines** for the failure to abide by the provisions of the Competition Law. The statute of limitations for such violations is unusually long - 5 years - which increases the non-compliance risks.

The parties involved in domestic and international mergers & acquisitions should pay serious attention to these new developments and make timely filings with the AMC seeking its prior approval.

Disclaimer

The content of this Legal Alert is not legal advice, but a general informational summary of the law. Resource to qualified legal counsel is always required for legal advice. Failure to make timely inquiries of legal counsel may cause important legal deadlines to be missed.

Olimpiysky Center
72, Velyka Vasylkivska Street
Suite 14, Kiev 03150
Ukraine
Phone: [380] (44) 207-1060
Fax: [380](44) 207-1064

4056 Mansion Dr., N.W.
Washington, D.C. 20007
USA
Phone: [1] (202) 338-1182
Fax: [1] (202) 338-4237