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RECENT AMENDMENTS TO ANTIRUST REGULATIONS

The Law of Ukraine "On Amendments to Certain Laws of Ukraine Concerning Improvement of the Legal Regulation of Economic Competition Protection" (the "**Amendments**") entered into force 27 July 2011. It clarified some issues of considering concerted actions, concentration applications and conclusions by the Antimonopoly Committee of Ukraine ("**AMC**").

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The most important news is that in view of the Amendments, according to Article 14 of the Law "On Protecting Economic Competition" ("**the Economic Competition Law**") and subsequent clarifications by the AMC leadership, made at various meetings with the business community and posted on their website http://amc.gov.ua/amc/control/uk/publish/article?art_id=201521&cat_id=59331, it would be possible for individual businesses to request preliminary opinion of the AMC on whether the content of their promotion materials (commercials, advertisements) is in line with the law on protection of economic competition. In light of this new approach the leadership of AMC reiterated their previous position asking businesses to refrain from using in advertising the characteristics not supported by documents, such as "the best", "the only", etc. It is not clear whether businesses will widely use this new procedure of requesting preliminary opinion of the AMC on content of their promotional materials, and we recommend carefully considering any such request in each particular case, especially taking into account that the term for the AMC's reply to such request is quite long – one month.

Another important development is that according to the Amendments the payment of fees for applications to AMC for consideration of concerted actions, concentration and other conclusions can now be made in foreign currency (EURO or US Dollars - at the official UAH exchange rate of the National Bank of Ukraine on the date of the payment) - in case an applicant is headquartered outside Ukraine.

The Amendments added to Article 32 of the Economic Competition Law two more reasons for which the consideration of the concerted actions and concentration applications may be closed by the AMC without taking any decision:

- availability of the AMC ruling that concerted actions or concentrations were undertaken in a manner contrary to the law in the sphere of economic competition protection; and

- liquidation of the legal entity - applicant.

Previously the only reasons were:

- receiving the applicant's request to withdraw the application or termination of the proceedings;

- failure by the applicant to provide the requested information to the AMC if the lack of the information impedes consideration of the case.

The Amendments introduced a number of other provisions and clarifications, including *inter alia* the increase of threshold for the cases eligible for review and decision by territorial (regional) divisions of the AMC, by increasing the amount of the penalty they can impose from 17,000 UAH to 68,000 UAH. This measure would strengthen the authority of territorial (regional) divisions of the AMC over local cases and would decrease the workload of the central AMC office.

Finally, as before we strongly recommend to send all applications and other documents to the AMC by the registered mail with a return receipts, and this our recommendation was confirmed by the clarifications in the Amendments.

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