

## Competition - Ukraine

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### Crackdown ahead? Greater scrutiny could catch foreign-to-foreign transactions

Contributed by **Astapov Lawyers International Law Group**

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The Anti-monopoly Committee has introduced a new system of scrutiny and close monitoring in order to identify and prosecute concerted actions and mergers implemented without proper clearance.

During the past few months the committee has kept an increasingly close watch on information from various Ukrainian and foreign sources, including internet and other mass media news, as well as company announcements and press releases. The committee specifically monitors information on cartels identified by the US, European and other foreign antitrust authorities; if participants have subsidiaries and offices in Ukraine, they may also be investigated by the committee.

Information on mergers in the Ukrainian and international markets is also within the committee's field of review. If a merger is announced in the foreign press, the committee may, on its own initiative, send an information request to the parties asking for confirmation that the merger does not require clearance in Ukraine.

The filing thresholds in Ukraine are relatively low and apply even to foreign-to-foreign transactions if there are sales in Ukraine.

In the case of an acquisition of a 25%, 50% or larger shareholding, anti-monopoly clearance is mandatory for a proposed acquisition or creation of a joint venture if at least one party had assets or a turnover of €1 million in Ukraine in the year before the acquisition - the threshold for all parties' turnover or assets is €12 million.

The definition of the term 'parties' includes not only the merging, consolidating, establishing or acquiring entity, but also all of its affiliated business entities (ie, entities associated with it by a relation of control).

This new approach is also envisaged in a draft law that has recently been published for public consultation. The draft law aims to harmonise Ukrainian competition regulations with EU standards and to implement worldwide practice on antitrust investigations. It empowers the committee to initiate investigations on the basis of mass media information without an application from a third party, such as a state authority, legal entity or private individual. The draft focuses particularly on the process of evidence gathering and sets out the committee's right to request information - including data covered by bank secrecy - from legal entities or private individuals. A party choosing to ignore the committee's request for information may be liable for such denial.

Combined with the new policy being pursued by the committee, the draft law signals a likely increase in scrutiny of, and control over, competition matters.

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