Ukrainian antimonopoly authority resumes reviews of merger clearances and concerted actions

June 16, 2022

From the beginning of the war in Ukraine, the Antimonopoly Committee of Ukraine (AMCU) suspended its review of all applications. This meant that no applications have been considered since February 25, 2022, and the suspension was planned until the termination or expiry of martial law.

On March 30, 2022, the AMCU published Guidance No. 1-рр, which sets out the procedure for submitting applications during martial law (for more on this, see our Alert discussing the main points here). According to Guidance No. 1-рр, parties to a transaction were still required to apply for merger clearances or concerted practices, and those applications would be considered only after the termination or expiry of martial law. If the concentration or concerted actions took place before the AMCU approved it, the applicants would be fined for violating the law on protection of economic competition. However, if an application for merger clearance was submitted at least 15 calendar days before the closing of the transaction (concentration or concerted actions), the fine would be reduced. In addition, Guidance No. 1-рр provided for the submission of a simplified list of documents to accompany the application (for example, due to the impossibility to obtain various documents in Ukraine).

On June 9, 2022, the AMCU published a revision of its application process for mergers and concerted actions, with significant changes:

1. From June 9, 2022, it would resume its consideration of applications that are pending as from February 25, 2022.
2. It has changed the procedure for considering applications received as of June 20, 2022. This means that from this date applications may not be submitted under the simplified procedure allowing for an abbreviated list of documents. The AMCU will no longer suspend its consideration of such applications until the termination or expiry of martial law, and the special approaches applied previously for determining fines will not also no longer be used.
3. The procedure for considering applications received between March 30 and June 17, 2022, based on Guidance No. 1-рр, has been changed. Those applications are considered as submitted during martial law (see above for the link to our Alert on Guidance No. 1-рр), so their consideration may be resumed ahead of time, at the applicant’s request. In addition, applicants can choose the procedure allowed under martial law or the usual procedure, and if they wish, obtain clearance earlier (before the termination or abolition of martial law). In order to have the AMCU resume consideration of an application, it is necessary to submit a notice to the AMCU requesting it to resume consideration of the application along with all missing documents (if not all the required documents have been submitted). The AMCU will resume consideration of the application within seven days from the date of receipt of the applicant’s notice.

Therefore, starting from June 20, 2022, the AMCU will begin considering all submitted applications in accordance with current laws and without taking into account any martial law exceptions.

From the practical point of view, there may be problems connected with sending original documents for transactions.
involving nonresidents to Ukraine.

Should you have any questions or concerns regarding the new procedures, our team is ready to assist you.

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