



5th COMPETITION FORUM OF UKRAINE

16 – 18 MARCH 2016

POST-EVENT INFORMATIONAL DIGEST

**«INFORMATION DIGEST ON THE
RESULTS OF THE 5TH COMPETITION
FORUM OF UKRAINE»**

Dear readers,

This information digest is a summary of materials on the results of the 5th Competition Forum of Ukraine, which was held on 16 - 18 March 2016 in Kiev. The event was organized by Competition Development Foundation and Antimonopoly Committee of Ukraine and supported by the EU-funded Project "Harmonisation of Public Procurement System in Ukraine with EU Standards" and USAID.

Among key speakers: management of Antimonopoly Committee of Ukraine; Members of Parliaments of Ukraine; heads and senior management of state authorities, competition agencies and international organisations from EU, USA, other countries; Competition Development Foundation experts; business representatives.

On the Forum was conducted review of implementation of the Association Agreement between Ukraine and the European Union in terms of regulations on competition; OECD Recommendations for improving competition policy and law in Ukraine; UNCTAD Recommendations for improving competition policy and law in Ukraine.

The 5th Competition Forum of Ukraine focused on a number of important issues including the following:

- competition policy in Ukraine and internationally;
- effective competition agency – design, capacity, enforcement;
- effects of competition law and policy reforms on markets and consumers;
- implementation of regulation of state aid to economic entities in Ukraine;
- economic analysis in competition enforcement;
- alignment of AMCU enforcement with best international practices;
- reforming Ukrainian Energy Sector: implementation of

European standards.

This information digest includes an overview of the sessions of the Forum, views of business on competition issues and documents of international organizations related to the topics of the event.

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ANTITRUST COMPLIANCE

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A rapid development of the law enforcement practices in the sphere of protection of economic competition, an increase of fines for the anticompetitive conduct and the number of ongoing investigations in this field are the evidence of consistent implementation by the Antimonopoly Committee of Ukraine (the «**AMC**») of the policy encouraging the undertakings' competitive conduct. This distinct trend motivates the market players to take actions aimed at mitigating risks of violation of antitrust laws.

Antitrust Compliance as an Effective Risk Prevention Mechanism

Antitrust compliance, i.e. compliance with the requirements of antitrust laws, is a system of organizational and management measures and procedures enabling the undertaking to detect, minimize, and prevent potential antitrust violations, which may have not only financial, but also reputational consequences.

Long ago, international corporations, attracting particular attention of antitrust authorities worldwide, have realized the importance of effective risk management, including the management of risks related to violation of antitrust laws. As a result, they implement corporate antitrust compliance programs that provide, inter alia, for the following:

- general internal policy on compliance with the requirements of antitrust laws setting forth basic antitrust principles (for example, prohibition of agreements among competitors to fix prices or establish other conditions for sale of goods,

markets allocation, discrimination of counterparties and other anticompetitive conduct, etc.), regulating employees' behavior in «high risk» activity (for example, procedure of participation in professional associations meetings and other meetings with counterparties) or in case of detection of violation (effective procedures for reporting, prohibition of destruction of evidences, etc.), and defining consequences of violation;

- sales and distribution (marketing) policy of the company providing for non-discrimination treatment and transparent procedures or criteria for selection of counterparties;
- antitrust training programs and schedules delivery (including certification of key officers, occupying «high risk» positions);
- internal procedures to monitor and control compliance with established policies, internal rules and procedures;
- complex due diligence of the company business activity (including executed contracts, correspondence with suppliers, consumers and counterparties) by independent advisors;
- disciplinary and other sanctions for violations of internal antitrust rules and procedures by the company's employees (for conduct resulting into antitrust exposure or actual antitrust violations);
- appointment of designated antitrust compliance officer (i.e. antitrust manager);
- cooperation with state bodies monitoring the compliance of the law on protection of economic competition.

The above list, certainly, is not prescriptive, and the company developing its own compliance program can tailor it to its own aims and purposes, business practice and individual risks.

Business associations attribute considerable attention to antitrust compliance. For example, *International Chamber of Commerce* (ICC) has developed methodological recommendations for the antitrust compliance – The ICC Antitrust Compliance Toolkit, providing perfect example of

basic antitrust compliance principles enabling companies of different sizes and with various needs to develop «custom-tailored» compliance program.

In general, the goal of basic antitrust compliance program is not only to educate and thereby reduce the number of antitrust violations, but also to ensure the most rapid procedure for reporting violations in order to minimize their consequences. It relates to rapidly expanding practice of many countries to adopt leniency programs whereby undertakings that provide information about a cartel in which they participated might receive full or partial immunity from fines as they contribute to the violation discovery and prosecution of other cartel participants.

All competitive authorities encourage companies to develop and implement antitrust compliance programs. Some jurisdictions even consider effective antitrust compliance programs as one of the factors affecting the reduction of fines.

Antitrust in Ukraine

Antitrust laws of Ukraine generally correspond to internationally recognized principles of protection of economic competition. However, post-Soviet practice of building relations between government and business in Ukraine adversely affected the law enforcement practices in the sphere of protection of economic competition. Over the past 25 years of Ukraine being an independent state, the business had to learn to protect itself from the pressure of the law enforcement authorities and excessive interest of the antitrust authority. Given complete absence of precedents of granting immunity from fines under the leniency program for participation in a cartel and thousands of other violations prosecuted by the AMC each year, antitrust compliance priorities in Ukraine, obviously, may differ from the priorities of competition authorities worldwide.

The law of Ukraine on protection of economic competition

distinguishes the following types of antitrust violations, some of which may be prevented in full or in part by implementation of the compliance program:



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