



KINSTELLAR

Merger and concerted action controls in Ukraine during martial law

Due to the introduction of martial law in Ukraine on 24 February 2022, the operations of the Antimonopoly Committee of Ukraine (AMC) have been adjusted or suspended in a number of ways. As a result, on 30 March 2022 the AMC adopted Guidelines on the filing and consideration of applications for merger clearances and concerted actions during martial law (Guidelines).

To remind, Ukrainian competition legislation has extraterritorial effect, meaning that concentrations finalised outside Ukraine may require approval from the AMC, if the financial thresholds provided under Ukrainian law are exceeded.

Below we provide important highlights from the Guidelines with respect to merger and concerted action controls during martial law in Ukraine. Please note that martial law has been introduced in Ukraine until 25 April 2022 but may be further extended.

Guidelines on the filing and consideration of applications for merger clearances and concerted actions during martial law (1)

01



Parties to the concentration and/or the concerted action are **not exempt** from the obligation to obtain clearance from the AMC, if such is required under Ukrainian legislation.

02



Once filed, consideration of applications for merger clearances and concerted actions is suspended by the AMC **until martial law is cancelled**.

The suspension rule also applies to applications for merger clearances and concerted actions filed with the AMC before the introduction of martial law, but where the decision was not adopted as of 25 February 2022.

03



Applicants are allowed to submit an **abbreviated list of documents/information** (defined by the Guidelines) when filing applications for merger clearances or concerted actions. The submitted applications should be supplemented with the missing documents/information within three months after the cancellation of martial law.

04



Once martial law is cancelled, consideration of applications for merger clearances and concerted actions should be resumed by the AMC upon provision by the applicants of the missing documents/information **OR**, if not provided, within three months after the cancellation of martial law based on the available documents/information.

05



If applicants do not have capacity to submit hard copies of the application for a merger clearance or concerted action, such applications can be submitted electronically and signed with electronic digital signatures.

Guidelines on the filing and consideration of applications for merger clearances and concerted actions during martial law (2)

06



The Guidelines provide for decreased amounts of fines for the finalisation of a concentration or concerted action without obtaining AMC clearance:

- ❑ if the application **was filed** in accordance with the Guidelines* (but the clearance was not issued), the amount of fine shall not exceed **UAH 51,000 (approx. EUR 1,600)**;

** Please note that the application should be filed not less than 15 days prior to the finalisation of the concentration/concerted action for the application of the decreased amount of the fine.*

- ❑ if the application **was not filed** in accordance with the Guidelines, the amount of fine shall not exceed **UAH 340,000 (approx. EUR 10,500)**.

07



The decreased amounts of fines **do not apply** if:

- ❑ the concentration/concerted action leads to monopolisation, restriction of competition on Ukrainian markets; and/or
- ❑ the concentration is prohibited under the Law of Ukraine “On Sanctions”; and/or
- ❑ the parties have filed misleading information.

08



If the Russian Federation or its citizens who supported the military aggression against Ukraine are the UBO(s) of one of the participants to the concentration **OR** if the AMC has reasonable suspicions that the concentration's purpose is a withdrawal of assets/shares to circumvent sanctions, **the maximum amount of fine** prescribed by law (up to 5% of the group's turnover for the previous year) shall apply for the finalisation of a concentration **without** obtaining AMC clearance.

For more information, please contact:



Galyna Zagorodniuk

Partner, Head of Competition & State Aid, Co-head of Corporate and M&A
Kyiv, Ukraine

+380 67 466 3255

galyna.zagorodniuk@kinstellar.com



Yulia Eismont

Senior Associate
Kyiv, Ukraine

+380 50 339 5445

yulia.eismont@kinstellar.com



Anna Vizniak

Associate
Kyiv, Ukraine

+380 50 201 6838

anna.vizniak@kinstellar.com



Danylo Rudyk

Associate
Kyiv, Ukraine

+380 67 218 5745

danylo.rudyk@kinstellar.com

The information provided in this overview does not, and is not intended to, constitute legal advice; instead, all content is for general informational purposes only. Information in this overview is current as of the date of publishing and may not constitute the most up-to-date legal or other information. Should you wish to receive more detailed and up-to-date information, do not hesitate to contact us.