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A new binding fining methodology for
Ukrainian competition law violations

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A so-called New Procedure for Determining the Amount of a Fines Imposed for Violations of Laws on the Protection of Economic Competition (the "**Procedure**") issued by the Antimonopoly Committee of Ukraine ("**AMC**") has been in effect since 21 February 2024.

The main novelties of the Procedure are:

1

Its application is mandatory for the AMC when deciding on the amount of a levied fine

2

The AMC is obliged to justify the amount of the fine imposed in its respective decision

When levying a fine, the AMC should:

01

Determine the basic fine amount (the "**basic fine**") depending on the degree of negative impact on a case-by-case basis

02

Adjust the basic fine amount factoring-in any mitigating and aggravating circumstances

03

Determine the overall statutory cap for the given competition law violation (the "**maximum fine**").

I. Basic fine

The AMC determines the basic amount of a fine factoring-in the need to seize any proceeds from the given competition law violation (if applicable), and ensuring a deterrent effect (as detailed further below).



New percentage thresholds for calculating the basic amount of a fine are as follows

COMPETITION LAW VIOLATIONS	MINIMUM BASIC AMOUNT	MAXIMUM BASIC AMOUNT
<ul style="list-style-type: none"> • Anticompetitive concerted actions* • Abuse of dominance* 	<p>≤ 30% of the revenue on the relevant market for the entire duration of the violation in question</p>	<p>≈ 67% of the maximum fine (see step 3 below)</p>
<ul style="list-style-type: none"> • Bid-rigging* 	<p>≤ 30% of the procurement order / expected value of the procurement order</p>	
<ul style="list-style-type: none"> • Failure to comply with the remedies or other obligations under the AMC’s merger control or concerted actions approvals • Breach of terms and conditions for a reseller under the applicable exception • Gun-jumping infringements (closing without prior AMC merger control or concerted actions approval) 	<ul style="list-style-type: none"> ○ ≤30% of the revenue on the relevant market for the year preceding the fine, if the violation has led to dominance or the substantial impediment of competition or ○ ≤15% of the revenue on the relevant market for the year preceding the fine, if the violation has not led to dominance or a substantial impediment of competition 	
<ul style="list-style-type: none"> • Unfair competition 	<ul style="list-style-type: none"> • ≤15% of the revenue on the relevant market for the entire duration of the violation in question 	<p>≈ 67% of the maximum fine (see step 3 below)</p>
<ul style="list-style-type: none"> • Procedural infringements • all other violations, if impossible to determine the income derived from the violation in question 	<p>≈ 67% of the maximum fine (see step 3 below)</p>	

Note: * In order to achieve a deterrent effect, for certain violations (anticompetitive concerted actions, bid-rigging, and abuse of dominance), the basic fine amount may be increased by:

15% to 25%

or

a product of the basic fine amount and a coefficient calculated based on the discount rate of the National Bank of Ukraine

II. Mitigating and aggravating factors



The basic fine may be reduced or increased further by the AMC based on any mitigating or aggravating factors.

Mitigating factors

The AMC may reduce a basic fine where:

- voluntary termination of a violation occurs before the AMC issues its preliminary findings on the given case
- compensation for damage or another remediation of the consequences of the violation occurs before the AMC adopts a decision in the case
- non-compliance by the participant of the concerted actions with the applicable terms and the existence of evidence that the company competed in the market during the period when the violation continued
- cooperation with the AMC
- committing a violation under pressure from a public authority
- applying for a merger clearance before the AMC initiates proceedings
- taking actions aimed at mitigating the negative consequences of the given violation



Moreover, in certain exceptional circumstances, i.e. a force majeure event and/or the uncovering of evidence that imposition of the fine in the proposed amount will lead to bankruptcy, liquidation, cessation of the sale (purchase) of goods on the market, the authority may further reduce the basic fine.

II. Mitigating and aggravating factors (cont.)

Aggravating factors

FACTOR	IMPACT
<ul style="list-style-type: none">● initiating or coordinating actions (inactions) which constitute a violation	<ul style="list-style-type: none">● 1.5-fold increase
<ul style="list-style-type: none">● the violation covered more than two regions of Ukraine	
<ul style="list-style-type: none">● as a result of the violation, monopolization or a significant restriction of competition on commodity markets occurred on territory covering more than two regions of Ukraine	
<ul style="list-style-type: none">● repeated violations	<ul style="list-style-type: none">● 2-fold increase

Additionally, in order to achieve a maximum deterrent effect, the AMC may further increase the adjusted basic fine (within the limits of maximum fine as described below) if:

the illegally obtained revenue exceeds the amount of the adjusted basic fine

the violation resulted or could have resulted in a significant restriction of competition, or significant losses by other market players and/or consumers on certain strategic markets of Ukraine (e.g., national defence and security)

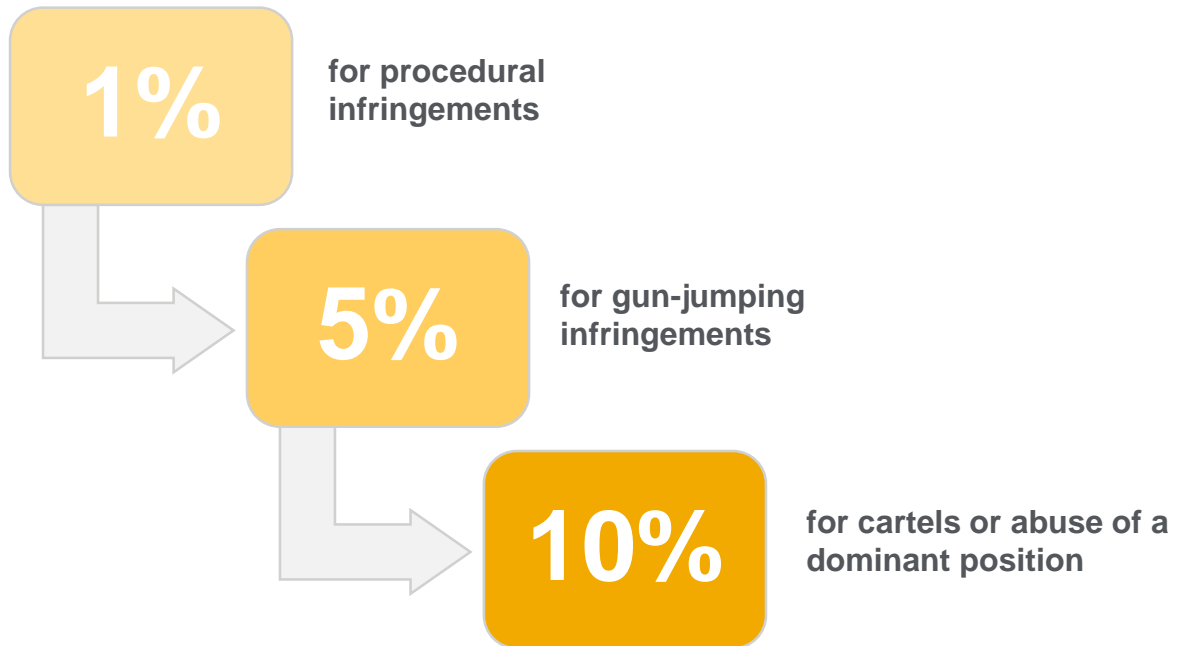
the proceeds from the violation do not exceed 1% the company's total revenues for the year preceding the year in which the fine is to be imposed

the amount of illegally obtained revenues exceed 10% of the company's worldwide turnover in the previous accounting year preceding the year in which the fine is to be imposed

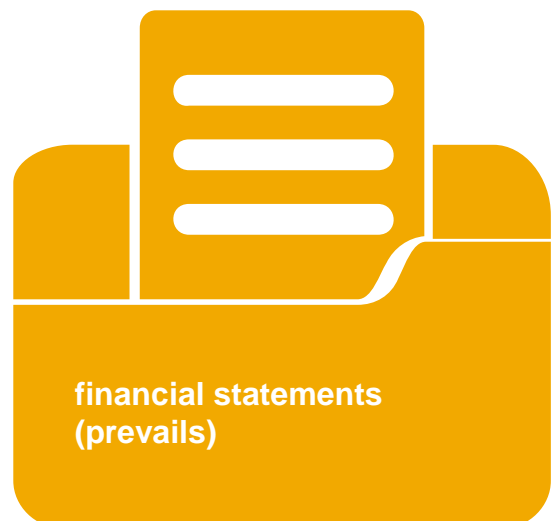
III. Maximum fine



The applicable levied fine may not exceed an overall statutory cap calculated as the percentage of annual aggregate worldwide turnover (including Ukraine) of the infringer's group of companies, e.g.:



In such cases, worldwide turnover is determined based on:





Those needing more detailed guidelines on new AMC's updated approach to setting fines or seeking consultation, please contact



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For those keen on staying informed about updates in Ukrainian competition law, please click [here](#)

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