

UKRAINIAN COMPETITION AUTHORITY INSPECTION: HOW IT WORKS

State control over protection of economic competition in Ukraine is vested in the Antimonopoly Committee of Ukraine ("AMCU"). The AMCU ensures enforcement of the competition rules in the field of merger control, concerted practices, anticompetitive behaviour, abuses of dominance, unfair competition (which, in fact, is not typical for European system of competition rules), tenders, state aid and state procurement. The AMCU is eligible to consider any business activities which impact or may impact economic competition in Ukraine irrespective of local nexus of undertakings concerned.

An inspection is a principal remedy applicable by the AMCU in its fight against breaches of competition law. The AMCU is one of the agencies that has immunity from the inspections' moratorium. Thus the AMCU has a right to carry out planned and out-of-schedule (unannounced) inspections (dawn raids) of undertakings, private entrepreneurs, local government authorities and bodies of the state government.

The planned inspection may be conducted only once per year. The inspected person must be notified by the AMCU at least 10 days in advance before the inspection. By contrast out-of-schedule inspection is non-announced visit of inspectors and may be conducted at one site for indefinite number of times. The AMCU may initiate and conduct the out-of-schedule inspection based on either of the following reasons:

- on the basis of instruction from either of the President of Ukraine, the Cabinet of Ministers of Ukraine, special agencies on fight against organized crime in Ukraine (currently there are only special units for combating corruption and organized crime of the Security Service of Ukraine), An employer may consider:
- upon complaints from business entities, individuals, associations about the infringement of their rights by the actions (inactivity) prohibited by the competition law,
- based on the information regarding violation of competition rules furnished to the AMCU by the local government authorities or state government bodies,
- on the initiative of the AMCU's bodies in case of detection of signs of the competition

law violation by the inspected person or in order to protect the applicant's interests,

- with view to secure evidences in the case on violation of the competition law,
- based on the documented data that a certain market is being monopolised or concerted actions are taking place thereon,
- in case a person provides inaccurate/false information upon the AMCU's request,
- in case the inspected person files a complaint with the AMCU against actions of a certain inspector in course of the planned inspection,
- to check the information furnished by a person that had legal relations with a person subject to inspection, if the latter refuses to submit information at the AMCU's information request,
- on the base of an application from an inspected person.

Above reasons are rather common and not well defined. Besides and what is more important, we anticipate that the inspection activity of the AMCU will considerably increase over the time. It is therefore important that a company's staff understands the extent of their obligation to cooperate when the AMCU inspection arrives.

Any inspection is triggered not before three main documents are signed, they are: (i) inspection's decision; (ii) inspection's plan; and (iii) authorisation for the inspection. Persons/bodies authorised to sign such documents are: an AMCU's chairman, a state commissioner of the AMCU, head of the AMCU's territorial office or the administrative panel of the AMCU/territorial office members.

The inspection is carried under the inspection plan by at least two inspectors (comprising an inspection commission) from the AMCU. Every inspector has right: (i) to have unhindered access to buildings used/occupied by the inspected person (except personal domicile), required documents and materials; (ii) to demand written or verbal explanations from managers, documents and information (including information containing commercial, official, other legally protected

Contact us:



Volodymyr Yakubovskyy
Partner

T +380 44 495 30 93
v.yakubovskyy@nobles-law.com



Tatiana Iurkovska
Partner

T +380 44 495 30 94
t.iurkovska@nobles-law.com



Liudmyla Gorodnychka
Senior Associate

T +380 44 495 30 82
l.gorodnychka@nobles-law.com

The information provided in this Legal Overview does not substitute legal advice in particular cases.

secrets); (iii) to seize and/or arrest written and material evidence (including documents, things, information media; (iv) to involve experts, deputies of local councils. There is no obligation on the inspected person to submit personal documents or documents and information outside the scope of the inspection. Oral explanations have to be registered in the minutes kept by the inspectors.

There are no legal restrictions regarding the terms of inspections. The term of each inspection is determined in the inspection plan based on the expected scope of work. During the inspection the inspection plan including the term may be changed at any time.

Upon arrival to the inspected undertaking the inspectors must at first provide their staff passes, the decision for conducting inspection, inspection plan and authorisation for the inspection. Absence of the director of the inspected person may not serve as ground for delay or cancellation of the inspection.

Whenever inspectors reveal signs of infringement of the competition law, the latter may, upon personal authorisation by the order of the state commissioner of the AMCU or head of its territorial office, seize/arrest written and material evidence, in particular, documents, objects, other information media which can be evidence or sources of evidence in the case, provided **that:**

- the evidence was not provided by the inspected person and there are sufficient grounds to assume that documents, objects, other information media which can be evidence or the source of evidence in the case are kept at a certain place;
- there is a threat that the relevant documents, objects or other information media can be destroyed.

The seizure or arrest of property, objects, documents, and other information media may only be performed during working hours, irrespective of their location, including in business premises and vehicles owned by the inspected person, working places of its employees on the basis of the order of the AMCU's state commissioner or head of the AMCU's territorial office; in places of residence and other possessions of persons - on the basis of the commercial

court decisions.

Any attempts to block access, to impede the process of inspection or impede seizure/arrest of evidence by the inspectors qualify as violation and the inspected person is subject to fine amounting up to 1 percent of turnover earned in the previous year.

At the same time, the AMCU's existing powers to seize/arrest evidence do not enable it to search business premises and vehicles of the inspected persons.

After the assessment of the documents, materials and information obtained during the inspection the head of the inspection commission must draw up a report summarising the results in a document called an inspection act. It is made in two copies and signed by the inspectors and also the chairman/director of the inspected person. If the inspection process reveals any signs of infringement of the competition law, the chairman of the AMCU or its territorial office or their deputies may take a decision on:

- adoption of recommendations and proposals regarding (i) termination of actions which have signs of the competition law infringements, (ii) elimination of the reasons which trigger these infringements and contributing conditions of these infringements, and (iii) elimination of the infringements' consequences if a violation has been stopped;
- drafting legal acts which in more details regulate the development of competition, anti-monopoly policy and economy demopolization;
- transfer of evidence of violations which have signs of crime to the law-enforcement agencies;

The inspected person is entitled to complain against inspectors' actions to the AMCU. The chairman of the AMCU or its territorial office should make a decision as regards the complaint within a month period. If the inspected person disagrees with such decision it may also refer the case to the court.

For any further information or clarification, please feel free to contact Alexander Weigelt, Tatiana Iurkovska, Roman Shulyar or Volodymyr Yakubovskyy.

About Nobles

Nobles is a full-service corporate law firm that advises public and private companies, banks, financial institutions, private equity firms, funds, investment banks, government entities and private high-net individuals in multiple industrial sectors and practice areas of Ukrainian and international business law. In particular, the firm has market leading know-how and an extensive track record in areas such as: antitrust/merger control, insolvency and restructuring, corporate, mergers and acquisitions, real estate and land law, commercial and competition, employment, litigation and international arbitration, intellectual property, regulatory and governmental affairs.

LLC Nobles
7/11 Khreschatyk St.,
01001 Kyiv, Ukraine
T +380 44 495 30 80
F +380 44 495 30 90
mailto:Info@nobles-law.com
www.nobles-law.com

