

Ways to enhance the operations of interregional territorial departments of the Antimonopoly Committee of Ukraine: Ensuring unity in safeguarding economic competition

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Abstract. The article provides a thorough analysis of the structure and functions of the territorial branches of the Antimonopoly Committee of Ukraine, focusing on their decisive impact on regional control over compliance with legislation on economic competition protection. The key role of the Committee's Chairman is highlighted, emphasizing the importance of the branches' functionality in shaping and implementing competitive policies.

The article proposes specific recommendations to enhance the effectiveness and compliance with legislation of interregional territorial branches. The authors identify shortcomings and propose solutions to issues related to the application of legislation on economic competition protection. The article emphasizes the crucial importance of adhering to the Methodology and calls for the use of a unified practice among interregional territorial branches.

Specific proposals for decisions by the administrative boards of territorial branches are discussed, addressing the correction of discrepancies in the Methodology, strengthening control, and improving case review procedures. The significance of regular updates and improvements to the methodology of territorial branches' work is emphasized to prevent unjust decisions and deficiencies in conducting investigations.

In the context of anticompetitive cases, the article highlights the necessity of considering specific circumstances and ensuring proper control over the review, evidence collection, and justification of decisions to improve the quality and objectivity of antimonopoly control in Ukraine.

In the analysis of cases related to violations of anticompetitive concerted actions affecting auction outcomes, the Antimonopoly Committee can identify the absence of necessary documents, such as bank guarantees, provided by auction participants. The primary goal is to identify facts of competition violations. However, it is crucial to avoid general conclusions regarding the submission of all necessary documents, as this area falls under legislation on public procurement and is not within the scope of the Antimonopoly Committee's investigation or authority.

Keywords: Antimonopoly Committee of Ukraine, territorial branches, methodology for determining the monopoly (dominant) position of economic entities in the market, consideration of complaints about violations of legislation on economic competition protection, control over deadlines for compliance by economic entities with requirements (requests) for information provision.

Introduction. Effective implementation of responsibilities by the territorial departments of the Antimonopoly Committee of Ukraine is a crucial component in ensuring a fair and competitive economic atmosphere in the country. This process must be grounded not only in the adherence to material norms but also procedural norms of legislation aimed at regulating and protecting economic competition. An analysis of the work of the territorial departments of the Antimonopoly Committee of Ukraine has revealed certain inconsistencies, indicating the need for improvement in their activities.

In this context, it is important to implement strategic initiatives aimed at optimizing

internal processes. Simultaneously, urgent steps to improve the material-technical base and infrastructure become critically important, ensuring the highest standard of the body's work.

Thus, further improvement of the activities of the territorial departments of the Antimonopoly Committee of Ukraine becomes a strategic necessity for creating a healthy and competitive economic environment in Ukraine.

State of Processing. Issues related to the powers of the Antimonopoly Committee of Ukraine's system of bodies in relations with business entities were studied by such scholars and lawyers as B. Averyanova, O. Vinnik, O. V. Bezug, O. Bakalinska, V. Dakhno, V. Nagrebelny, N. Saniakhmetova, V. Shcherbina, V. Bordeniuk, V. Belyanovich.

Materials and Methods. The purpose of the article is to identify shortcomings and analyze problems that arise in the work of interregional territorial departments of the Antimonopoly Committee of Ukraine, as well as to provide specific recommendations for improving their efficiency and eliminating possible violations. The article chooses a systemic approach to the analysis of legal norms regulating the activities of interregional territorial departments of the Antimonopoly Committee of Ukraine. The systematic analysis allows for a deep study of the relationships between various aspects of legal regulation and determines the effectiveness or shortcomings of the existing system.

The methodological basis of the research is based on the use of analysis and synthesis, induction, and deduction. The analysis method is applied to reveal specific problems and shortcomings in legal regulation, while the synthesis method allows generalizing the found results and proposing a holistic approach to their solution. The use of induction and deduction is important for a comprehensive and in-depth study of problems. The inductive approach studies specific cases and situations that may arise in the work of interregional departments. The deductive method allows deriving general principles and provisions on which the regulation system is based.

The use of the analysis and synthesis method also helps identify key aspects of regulation and highlight those parts that may require further improvement or modernization. This approach is necessary for understanding the internal mechanisms and relationships that affect the functioning of the interregional territorial departments of the Antimonopoly Committee of Ukraine.

This comprehensive approach to research allows not only to identify problems in legal regulation but also to develop specific and optimal recommendations for further improvement of the work of interregional territorial departments of the Antimonopoly Committee of Ukraine.

Results and Discussion. The Antimonopoly Committee of Ukraine (hereinafter referred to as the Committee, AMCU), in accordance with its status and objectives, establishes a system of territorial departments, the implementation of which is aimed at ensuring effective control and regulation in the field of economic competition at the regional level. In case of necessity, the Committee may take measures to reorganize or liquidate territorial departments according to established procedures.

Territorial departments formed by the Antimonopoly Committee operate within their powers and aim to ensure the effective functioning of the control system for compliance with legislation on economic competition at the regional level. Their activities are directed towards preventing violations and detecting anticompetitive behavior of economic entities.

The Committee's system of bodies, including its territorial departments, is subordinated to the Committee's Chair. The Chair serves as the highest manager of the system and is responsible for coordinating and managing all aspects of the committee's activities nationwide. This includes strategy development, decision-making, and ensuring interaction and coordination of the territorial departments to jointly achieve set tasks and goals.

In accordance with Paragraph 1 of the Regulation on the Territorial Department of the Antimonopoly Committee of Ukraine, approved by the order of the Antimonopoly Committee of Ukraine dated February 23, 2001, No. 32-r, registered with the Ministry of Justice of Ukraine on March 30, 2001, under No. 291/5482 (with amendments) (hereinafter referred to as the Regulation on the Territorial Department), the territorial department of the Committee is a body within the Committee's system, formed to implement tasks assigned to the Committee by the Law of Ukraine «On the Antimonopoly Committee of Ukraine» and other legislation on the protection of economic competition.

According to Paragraph 2 of the Regulation on the Territorial Department of the Committee, the main task of the department is to participate in the formation and implementation of competitive policy, including conducting state control over compliance with legislation on the protection of economic competition based on the

equality of economic entities before the law and the priority of consumer rights. In addition, the department carries out its tasks in the respective region(s) and, in cases provided by law or by the Chair's assignment, beyond the region(s).

Currently, there are six interregional territorial departments of the Committee:

1. Northern Interregional Territorial Department: Kyiv, Zhytomyr, Chernihiv, and Cherkasy regions.
2. Western Interregional Territorial Department: Lviv, Rivne, Volyn, Ivano-Frankivsk, and Zakarpattia regions.
3. Southern Interregional Territorial Department: Odesa, Kherson, and Mykolaiv regions.
4. South-Western Interregional Territorial Department: Khmelnytsky, Vinnytsia, Ternopil, and Chernivtsi regions.
5. South-Eastern Interregional Territorial Department: Dnipropetrovsk, Zaporizhia, and Kirovohrad regions.
6. Eastern Interregional Territorial Department: Kharkiv, Sumy, Poltava, Donetsk, and Luhansk regions.

The departments operate under the Constitution of Ukraine, laws of Ukraine «On the Antimonopoly Committee of Ukraine,» «On Protection of Economic Competition,» «On Protection Against Unfair Competition,» other regulatory acts of Ukraine, the Regulation on the Territorial Department of the Committee, decisions of the Committee, and orders of the Committee's Chair.

Paragraph 11 of the Regulation on the Territorial Department stipulates that the department's activities regarding the identification, prevention, and cessation of violations of legislation on the protection of economic competition are carried out with adherence to procedural principles defined by legislative acts of Ukraine and the Procedure for considering statements and cases on violations of legislation on the protection of economic competition, approved by the order of the Antimonopoly Committee of Ukraine dated April 19, 1994, No. 5, registered with the Ministry of Justice of Ukraine on May 6, 1994, under No. 90/299 (with amendments introduced by the order of the Antimonopoly Committee No. 16-rp dated November 23, 2023) (hereinafter referred to as the Procedure for Considering Statements and Cases).

Consideration of cases on violations of legislation on the protection of economic competition (hereinafter referred to as Cases) is carried out by the administrative boards of the territorial departments of the Committee in accordance with the law and the Regulation on the Administrative Boards of the Territorial Department of the Committee.

After analyzing the activities of the interregional territorial departments of the Committee with the aim of preventing material and procedural violations and ensuring a unified methodology for the application of legislation on the protection of economic competition, it is proposed that each interregional territorial department of the Committee (hereinafter referred to as the Department, territorial department) should take into account the following.

In the specified section of the Procedure for considering applications and cases, an exhaustive list of grounds for which, and the period during which, the consideration of applications for violations of competition law may be suspended by the Committee's authorities is determined.

Therefore, when issuing an order to suspend the consideration of the Application in accordance with paragraph 3 of Section VI of the Procedure for considering applications and cases, it is mandatory to specify the grounds defined in paragraph 3 of Section VI of the Procedure for considering applications and cases for suspending the consideration of the Application and the event/incident or action after which the consideration of the Application will be resumed.

5. According to Article 1 of the Law of Ukraine «On Citizens' Appeals» citizens of Ukraine have the right to appeal to state authorities, local self-government bodies, associations of citizens, enterprises, institutions, organizations, regardless of ownership form, media, and officials in accordance with their functional duties with comments, complaints, and suggestions regarding their statutory activities, statements or petitions regarding the implementation of their socio-economic, political, and personal rights and legitimate interests, and a complaint about their violation.

At the same time, Article 12 of the Law of Ukraine «On Citizens' Appeals» specifies that the provisions of this Law do not apply to the procedure for considering citizens' applications and complaints established, in particular, by the legislation on the protection of economic competition.

Therefore, the territorial department should distinguish between citizens' appeals submitted in accordance with the Law of Ukraine «On Citizens' Appeals» and citizens'

applications submitted in accordance with the requirements of legislation on the protection of economic competition, as these are different types of documents regulated by different regulatory acts.

Dealing with citizens' appeals as applications for violations of competition law and their consideration in accordance with the Procedure for considering applications and cases is unacceptable.

4. Violation of the legislation during the preparation of procedural documents.

As a result of the analysis of the decisions of the administrative boards of the Departments on violations of competition law provided for in paragraphs 13, 14, and 15 of Article 50 of the Law of Ukraine «On Protection of Economic Competition» (so-called 'information violations'), the following shortcomings were identified:

1) The motivational part of the decision lacks references to the norms regulating the powers of the administrative board to make decisions, consider cases, etc.

2) In the motivational part of the decision, in addition to referring to paragraph 5 of the first part of Article 17 of the Law of Ukraine «On the Antimonopoly Committee of Ukraine,» there is a reference to paragraph 12 of the first part of Article 17, which defines the powers of the head of the territorial department to conduct market research, determine the boundaries of the commodity market, as well as the position, including monopolistic (dominant), of economic entities on this market and make relevant decisions (orders), i.e., powers that are not related to the process of requesting information and do not concern the circumstances for which information was requested (participation in public procurement).

3) The resolute part of the decision does not contain references to Articles 56 and 60 of the Law of Ukraine «On Protection of Economic Competition», which determine:

- the necessity to pay a fine within two months from the date of receiving the decision (third part of Article 56 of the Law of Ukraine «On Protection of Economic Competition»);

- the obligation of the business entity to send documents confirming the payment of the fine to the Department within five days from the date of payment of the fine (thirteenth part of Article 56 of the Law);

- the right to appeal the decision to the economic court within a two-month period from the date of receiving the decision (first part of Article 60 of the Law) and the impossibility of extending this period.»

Among other shortcomings in decisions in cases of violations provided for in paragraphs 13-15 of Article 50 of the Law of Ukraine «On Protection of Economic Competition», inaccurate or incomplete presentation of the circumstances that served as the basis for recognizing the violation can be highlighted, including:

- lack of information in the decisions regarding the submission and/or posting on the Department's website of submissions with preliminary findings in the case (hereinafter - PPV);

- posting information on the Department's website about PPV, the date, and time of the hearing without confirming the impossibility of delivering PPV;

- absence in the text of the decision of information regarding the objections and explanations of the respondent to PPV and their refutation. For example, the Department stated in the decision that the respondent provided objections to PPV, which generally amounted to denying the commission of a violation. However, according to the Department, these objections do not refute the conclusions set out in PPV. At the same time, the decisions lack justification for the reasons for not taking into account the explanations and objections of the respondent to PPV.

4. Failure to exercise proper control over the fulfillment of requirements, the initiation of proceedings in cases, and decision-making. Identifying violations of actions specified in paragraphs 13 and 14 of Article 50 of the Law of Ukraine «On Protection of Economic Competition» is aimed at ensuring the Committee's functions and the effective application of competition law. Competition law does not establish deadlines for initiating proceedings in cases of violations of competition law from the moment of detecting signs of such violations and deadlines for conducting investigations, making decisions in the specified cases.

However, when deciding on the initiation of the case, making a decision, and determining the amount of the fine, all circumstances of the committed violation should be taken into account, including:

- The grounds for which the relevant Requirement was sent;
- The procedural status of the addressee of the Requirement (respondent);
- Whether the territorial department ultimately received the necessary

information in full;

- The consequences of the lack of information (impossibility of conducting a full investigation, investigation, including within a reasonable time, etc.).

Taking this into account, the territorial department should:

- Strengthen control over the deadlines for the fulfillment of requirements (requests) by business entities for information and not allow unjustified delays in the consideration of cases;
- Adhere to methodological recommendations for the preparation of procedural documents approved by the Committee (Committee meeting protocol dated September 27, 2018, No. 65, item 24 «On approval of model forms of draft decisions and orders adopted in territorial departments of the Committee in accordance with competition legislation»), and the requirements of competition legislation when preparing procedural documents (orders, submissions, decisions) in cases.

Conclusions. The Antimonopoly Committee of Ukraine has an important mission to ensure effective control and regulation in the field of economic competition at the regional level through the system of territorial departments. The work of territorial departments is determined by the tasks assigned to the Committee by legislation.

The structure and organization of territorial departments must comply with the requirements of the law and established procedures. It is important for territorial departments to adhere to established procedures, including the Methodology, and make informed decisions based on a comprehensive analysis of circumstances.

The territorial department is recommended to: strengthen control over the deadlines for the fulfillment of requirements by business entities for information; adhere to the rules for suspending the consideration of applications (the decision to suspend the consideration of the application must be based on an exhaustive list of grounds specified in the Rules for considering cases); adhere to methodological recommendations for the preparation of procedural documents in cases and legal requirements; support unity of approaches; consider all circumstances of violation of competition law (including grounds for sending requirements and the procedural status of the addressee of the requirement); distinguish between appeals and applications.

Thus, the need to improve organizational processes, comply with established norms, and ensure unity of approaches to ensure the effective and lawful functioning of the Antimonopoly Committee of Ukraine in the context of protecting economic competition is emphasized.

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