

The largest fines imposed by the Antimonopoly Committee of Ukraine (the "AMC") in 2018, by type of violation¹

Anti-competitive concerted practices



Total fine:
€1,293,000
including
€466,500
on WOG Group and
€202,300
on OKKO Group

Liquefied petroleum gas

Merger control violations



€473,000
on an individual-
resident of Ukraine

Banking & Finance

Unauthorised use of designations



€303,000
on the Simferopol
Wine and Brandy
Factory and
STRONGDRINK LLC

Alcoholic beverages

Unauthorised use of trade secret



€11,400
on ERGON-ELECTRIC
LLC
(the first fine ever
imposed by the AMC
for this type of violation)

Supply of electrical goods

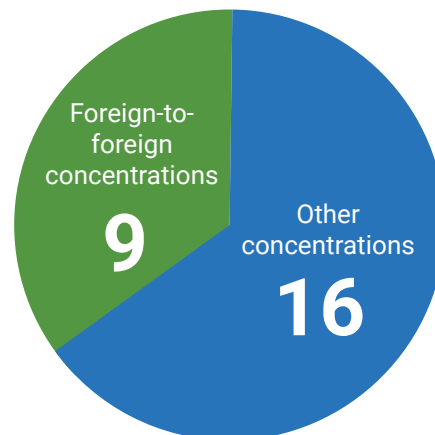
Sectors on the radar of the AMC

- electricity generation and supply
- natural gas
- supply of thermal energy
- pharmaceuticals
- nitrogen-based fertilizers
- unfair competition in retail
- airport and seaport services
- banking services
- travel services

Key figures on merger control violations in 2018

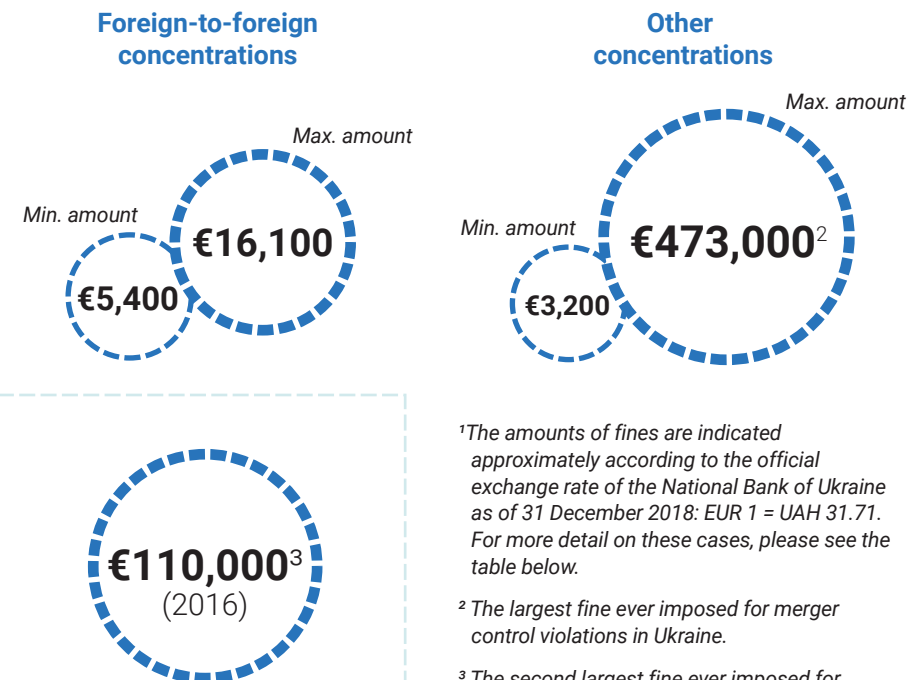
In 2018, the AMC issued 25 decisions imposing fines for failures to notify concentrations, including 9 decisions in relation to foreign-to-foreign concentrations⁴.

25 decisions in total, including:



⁴ According to calculations based on the decisions published on the official web-site of the AMC.

The range of fines imposed in 2018:



¹The amounts of fines are indicated approximately according to the official exchange rate of the National Bank of Ukraine as of 31 December 2018: EUR 1 = UAH 31.71. For more detail on these cases, please see the table below.

² The largest fine ever imposed for merger control violations in Ukraine.

³ The second largest fine ever imposed for merger control violations in Ukraine.

Review of the largest fines imposed by the Antimonopoly Committee of Ukraine (the "AMC")¹

January – December 2018

Type of violation	Total amount of fine(s), EUR ²	Who was fined and amount of individual fine, EUR	Relevant sector(s)	Description of violation	Decision date
Foreign-to-foreign concentrations without the prior approval of the AMC	16,100	Mabon investiční fond s proměnným základním kapitálem a.s. (" Mabon "), Czech Republic	Agriculture	Acquisition by the investment fund Mabon of control ³ over Agromino A/S (Denmark), the holding company of the agricultural group Agromino, without the prior approval of the AMC. A retrospective application for the approval of the concentration was filed before the AMC opened a case on violation, which served as a mitigating circumstance in this case.	13 November 2018
	14,500	HISENSE GROUP CO. LTD, China	Home appliances (fridges & air conditioners)	Indirect acquisition by HISENSE GROUP CO. LTD of more than 50% of the shares of GORENJE gospodinjski aparati, d. d. (Slovenia), a home appliances producer, without the prior approval of the AMC. A retrospective application for the approval of the concentration was filed six days after the title to the target's shares was transferred. The fact that a retrospective filing was made before the AMC opened a case on violation served as a mitigating circumstance.	18 October 2018
	10,700	KIRKBI Invest A/S (" KIRKBI "), Denmark	Fixed fire-attack systems	Acquisition in 2014 by KIRKBI of joint control ⁴ over MV Holding GmbH (Germany), a producer and supplier of components for fixed fire-attack systems, without the prior approval of the AMC. The AMC opened a case on violation after it granted clearance for the acquisition by the new buyer of the controlling stake owned by KIRKBI. The fact that a retrospective application for the approval of the concentration was filed by KIRKBI before the AMC formally opened a case on violation served as a mitigating circumstance.	20 December 2018

¹ This overview is prepared by Redcliffe Partners based on decisions issued by the AMC between January and December 2018.

² Approximate equivalent in EUR, according to the National Bank of Ukraine exchange rate as of 31 December 2018: EUR 1 = UAH 31.71.

³ Through the acquisition of shares which resulted in obtaining a decisive influence over issues relating to formation, voting results and decisions of the highest governing body of Agromino A/S.

⁴ Through the subscription to new shares of MV Holding GmbH, which resulted in KIRKBI obtaining the shareholders' rights to appoint the Advisory Board members, jointly vote on certain matters, jointly initiate squeeze-out procedures, etc.

Type of violation	Total amount of fine(s), EUR ²	Who was fined and amount of individual fine, EUR	Relevant sector(s)	Description of violation	Decision date
	473,100 ⁵	<ul style="list-style-type: none"> ▪ Mr Kurchenko, individual resident of Ukraine – 473,036 ▪ Ukrainian legal entities related to Mr Kurchenko – Higan LLC, Alkonost LLC, Amadina LLC, Aminami LLC, Ankona-Torg LLC, Muyne LLC, Ultrastarinvest LLC, East European Fuel-Energy Company LLC, Ainam LLC – each was fined approx. EUR 3 	Banking & Finance	Indirect acquisition by a sanctioned individual – Mr Kurchenko, an associate of former President of Ukraine Mr Viktor Yanukovich – in 2013 of approx. 80% of the shares of BROKBUSINESSBANK PJSC, one of the largest Ukrainian banks. For the definition of the amount of the fine, the AMC took into account the fact that the parties were active on the overlapping markets, as well as aggravating circumstances such as the creation of obstacles to the investigation. This is the largest fine ever imposed for merger control violations by the AMC.	20 November 2018
Other concentrations without the prior approval of the AMC	31,500	<ul style="list-style-type: none"> ▪ VS Energy International N.V., the Netherlands ▪ VS Energy International Ukraine LLC, Ukraine <p>(VS Energy International N.V., together with the undertakings related to it by control, being the "VS ENERGY Group")</p>	Energy	<p>Acquisition by the VS ENERGY Group of control over Chernivsyoblenergo JSC⁶ (the "Target"), a Ukrainian energy distribution company, by creating a situation where more than half of the members of the Target's Supervisory Board simultaneously held equivalent positions in the supervisory bodies of certain companies of the VS ENERGY Group without the prior approval of the AMC.</p> <p>In 2012, the AMC cleared the acquisition by VS Energy International Ukraine LLC of more than 25% of the shares in the Target, and in 2017, of more than 50% of the shares, respectively. However, between these two notifications, in 2014 there was a failure to notify the above-mentioned appointment of the management which resulted in the acquisition of control over the Target without the prior approval of the AMC.</p> <p>The fact that a retrospective application for the approval of the concentration was filed by the parties before the AMC opened a case on violation served as a mitigating circumstance.</p>	6 December 2018

⁵ To date, the biggest fine for failure to notify.

⁶ Formerly known as Energy Supply Company "Chernivtsyoblenergo" JSC.

Type of violation	Total amount of fine(s), EUR ²	Who was fined and amount of individual fine, EUR	Relevant sector(s)	Description of violation	Decision date
	9,700	RV-Kapital LLC, Ukraine	Agriculture	Acquisition by RV-Kapital LLC of more than 50% of the shares of Grebinki-Hliboproduct PJSC (Ukraine), active in the leasing of real estate (warehouses) in the Mykolaivskyi region (Ukraine), without the prior approval of the AMC ⁷ .	25 January 2018
Anti-competitive concerted practices	1,292,800	<ul style="list-style-type: none"> ▪ Nadezhda Group (7 companies), Ukraine – 377,500 ▪ WOG Group (3 companies), Ukraine – 466,500 ▪ OKKO Group (4 companies), Ukraine – 202,300 ▪ Avantazh 7 LLC, Ukraine – 103,100 ▪ Factoring Group LLC, Ukraine – 143,400 	Liquefied petroleum gas used as motor fuel ("LPG")	<p>The main retailers of LPG were fined for parallel pricing in retail. According to the AMC's decision, in August 2017 the retailers "almost simultaneously" (within a one-day period) increased their retail prices for LPG without objective reasons for their similar behaviour. In particular, according to the AMC:</p> <ul style="list-style-type: none"> ▪ there was no correlation in the growth of the retail prices and purchase prices for LPG as well as other incurred costs. (However, the decision does not contain analysis of all the relevant costs.) ▪ the growth of the average weighted resale prices of the retailers outpaced the growth of their purchase prices and was not justified by a shortage of LPG or other objective reasons. ▪ all the respondents are the main importers of LPG in Ukraine and act both on wholesale and retail markets for LPG, and according to the AMC: <ul style="list-style-type: none"> (i) the respondents also unreasonably increased their wholesale prices for LPG, thereby putting at a competitive disadvantage other retailers which did not import LPG and purchased it from the respondents for further resale in retail; (ii) parallel price increases in retail allowed the respondents to benefit from increased retail margins not due to their own achievements⁸. 	21 June 2018
	569,900	<ul style="list-style-type: none"> ▪ Roche Ukraine LLC ("Roche Ukraine"), Ukraine – 287,500 	Pharmaceuticals	The AMC fined Roche Ukraine and its three largest distributors (the "Distributors"), for anti-competitive concerted practices which allegedly led to the overpricing of pharmaceuticals sold in public procurement tenders (the "Tenders") in 2012-2016. Under the law, the	2 August 2018

⁷ RV-KAPITAL LLC challenged the AMC decision in court. The court rejected the claims of RV-CAPITAL LLC.

⁸ As of 22 March 2019, the AMC decision is being challenged in court by all companies of the Nadezhda, WOG and OKKO groups, as well as Avantazh 7 LLC.

Type of violation	Total amount of fine(s), EUR ²	Who was fined and amount of individual fine, EUR	Relevant sector(s)	Description of violation	Decision date
		<ul style="list-style-type: none"> ▪ BaDM LLC, Ukraine – 170,500 ▪ Business Center Pharmacy LLC, Ukraine – 101,100 ▪ Alba Ukraine PrJSC, Ukraine – 10,800 		<p>wholesale mark-up of medicines sold in Tenders should not exceed 10% of the purchase price.</p> <p>According to the AMC:</p> <ul style="list-style-type: none"> ▪ Roche Ukraine introduced a bonus system for the fulfilment of certain conditions by its Distributors, e.g., sales of particular medicines in the Tenders, reporting on volumes of sales and stock balance, as well as compliance with export ban restrictions. The bonuses were granted ex post in the form of non-repayable financial aid; ▪ the bonuses for sales in Tenders were granted after the winning of the relevant bid, and were calculated as a percentage of the respective Tender sales. Thus, the bonuses were not reflected in the purchase price which was subject to statutory maximum wholesale mark-ups. As a result, the Tender prices were higher than the retail prices for the same medicines sold in pharmacies. <p>According to the AMC, since the bonuses were not passed on to end-consumers, the bonus only served as a source of additional profit for the Distributors, and led to the unjustified overpricing of Roche Ukraine's pharmaceuticals sold in Tenders⁹.</p>	
	80,500	<ul style="list-style-type: none"> ▪ Research and Development Enterprise "Gammagrafik" LLC, Ukraine – 55,300 ▪ State Enterprise "Ukrelekon" ("Ukrelekon"), Ukraine – 25,200 	Special seals for registration of cash registers and settlement operations books (the "Seals")	<p>The companies were fined for anti-competitive concerted practices based on the following findings of the AMC:</p> <ul style="list-style-type: none"> ▪ Ukrelekon, which is controlled and governed by the State Fiscal Service of Ukraine, was authorised by the latter to organise the manufacturing and distribution of the Seals; ▪ Ukrelekon, in turn, concluded a long-term agreement with Gammagrafik on the manufacture and sale of the Seals; ▪ since Ukrelekon concluded the agreement only with Gammagrafik, the latter obtained a pre-emptive right to prolong the term of the agreement until 31 December 2026; ▪ Ukrelekon and Gammagrafik agreed prices for the Seals. In particular, in March 2013, they increased prices for the Seals by 100% due to unreasonable increase of Ukrelekon's costs of works by 553.33%, while the scope of works remained the same 	11 December 2018

⁹ As of 22 March 2019, Roche Ukraine LLC, BaDM LLC and Business Centre Pharmacy LLC are challenging the AMC decision in court.

Type of violation	Total amount of fine(s), EUR ²	Who was fined and amount of individual fine, EUR	Relevant sector(s)	Description of violation	Decision date
				<p>until August 2013. Ukrelekon failed to prove that such an increase was caused by objective economic factors.</p> <p>The AMC concluded that such practices resulted in (i) foreclosure of the market to potential competitors of Gammagrafik, and (ii) the setting of economically unjustified prices for the Seals¹⁰.</p>	
Bid rigging	437,900	<ul style="list-style-type: none"> ▪ Ekspozytsiia LLC, Ukraine – 407,100 ▪ Yevroosnova-SM PE, Ukraine – 30,800 	Transportation equipment and devices	<p>The companies were fined for bid rigging by way of "cover pricing". In particular, based on the following findings of the AMC:</p> <ul style="list-style-type: none"> ▪ the participants exchanged information on their proposals as evidenced by: (i) regular telephone calls between the companies' officials; (ii) joint preparation of the documents which were submitted as part of their bid proposals; (iii) both companies used the same IP address; (iv) overpricing of their bid proposals as compared with the average market prices for the same goods; ▪ the participants had a common supplier of the tender goods, which provided financial aid to them to secure the bid proposals; and ▪ Yevroosnova-SM PE ensured that the bids of Ekspozytsiia LLC were successful by overpricing its own proposal. 	22 December 2018
	156,700	<ul style="list-style-type: none"> ▪ Ukrpostach-Naftotrade LLC, Ukraine – 10,400 ▪ Volens Trade LLC (formerly known as WOG Aero Jet LLC), Ukraine – 146,300 	Petroleum products	<p>The companies were fined for bid rigging by way of "cover pricing". In particular, based on the following findings of the AMC:</p> <ul style="list-style-type: none"> ▪ the participants exchanged information on their proposals as evidenced by: (i) certain employees of Ukrpostach-Naftotrade LLC being simultaneously employed by a legal entity related to Volens Trade LLC; (ii) both companies offered the same goods and overpriced their bid proposals; (iii) the provision of similar documents as part of their bid proposals; (iv) the provision of the bank guarantees issued by the same bank and almost simultaneously; and 	25 October 2018

¹⁰ Ukrelekon challenged the AMC decision in court. The court refused to commence a court proceeding and returned the claim of Ukrelekon.

Type of violation	Total amount of fine(s), EUR ²	Who was fined and amount of individual fine, EUR	Relevant sector(s)	Description of violation	Decision date
				<ul style="list-style-type: none"> the participants (at their corporate group level) had common financial interests as evidenced by the provision of financial aid to each other¹¹. 	
				<p>The companies were fined for bid rigging by way of "cover pricing". In particular, based on the following findings of the AMC:</p> <ul style="list-style-type: none"> the participants were related legal entities with certain common founders, UBOs and employees. Notwithstanding, these companies participated in the same tenders without disclosing their related status thereby violating the tender rules; the companies exchanged information on their proposals as evidenced by: (i) the use of the same office premises; (ii) bank account statements and excerpts from the Unified State Register were ordered by them at almost the same time; (iii) both companies engaged the same individuals in obtaining the documents mentioned in item (ii) above, as well as in participating in the tenders; (iv) certain documents in the bid proposals of the participants had similar mistakes and wording; and the companies had common commercial interests as evidenced by the regular provision of financial aid to each other¹². 	
	51,800	<ul style="list-style-type: none"> Ukrteplo-Kyiv Ukraine – 25,900 Kyivtsentrteplo Ukraine – 25,900 	<ul style="list-style-type: none"> LLC, LLC, Steam and hot water supply services		22 December 2018
Abuse of a dominant position	1,040,700	Ukrspyr SE (" Ukrspyr "), Ukraine	Spirits and alcoholic beverage industry	<p>Ukrspyr was fined for abuse of a dominant position on the wholesale market for rectified ethyl alcohol ("spirit"), in which Ukrspyr had a 100% market share in 2017 and the first half of 2018 due to its exclusive licence for the wholesale of spirit.</p> <p>According to the AMC, Ukrspyr abused its dominant position by:</p> <ul style="list-style-type: none"> setting the same prices and discounts in its agreements with all purchasers although the latter had different yearly purchase volume plans, in certain cases by several hundred per cent; setting different discounted prices for spirit in the supplementary agreements without correlating those with purchase volumes (e.g., purchasers with larger planned purchase volumes had higher purchase prices; or the same price applied to purchasers 	20 December 2018

¹¹ As of 22 March 2019, the AMC decision is being challenged in court by Ukrpostach-Naftotrade LLC and Volens Trade LLC.

¹² As of 22 March 2019, the AMC decision is being challenged in court by Ukrteplo-Kyiv LLC.

Type of violation	Total amount of fine(s), EUR ²	Who was fined and amount of individual fine, EUR	Relevant sector(s)	Description of violation	Decision date
				<p>with different purchase volumes, while other terms and conditions of the agreements remained the same).</p> <p>The AMC concluded that such discriminatory pricing without any objectively justifiable reasons could put some of the purchasers at a competitive disadvantage¹³.</p>	
	949,200	Poltavaoblenergo PJSC ("Poltavaoblenergo"), Ukraine	Electricity	<p>Poltavaoblenergo enjoys a natural monopoly on the electricity distribution market in certain Central and Eastern regions of Ukraine, and supplies electricity under state-regulated tariffs.</p> <p>Other suppliers may also supply electricity (under unregulated tariffs) to non-domestic customers. To do so, they must enter into an electricity distribution agreement with Poltavaoblenergo. Thereafter, such suppliers become potential competitors of Poltavaoblenergo in the electricity supply market.</p> <p>According to the AMC, Poltavaoblenergo delayed consideration of the applications for conclusion of electricity distribution agreements from potential electricity suppliers. In particular, it rejected the applications as it stated that certain documents were missing (while, in fact, such documents were not required by law); and claimed that it did not receive certain applications, while the postal documents and receipts evidenced the contrary.</p> <p>The AMC concluded that Poltavaoblenergo abused its dominant position in the electricity distribution market by creating barriers for entry to the electricity supply market for potential suppliers¹⁴.</p>	21 November 2018
	421,700	Artyomsol SE ("Artyomsol"), Ukraine	Salt for industrial processing, and cooking salt	<p>Artyomsol was fined for abuse of its dominant position in the markets for the supply of salt for industrial processing, and of cooking salt (with market shares of 83.5% and 79%, respectively).</p> <p>According to the AMC, Artyomsol:</p> <ul style="list-style-type: none"> created barriers for market entry by unjustified refusal to enter into: 	13 November 2018

¹³ As of 22 March 2019, the AMC decision is being challenged in court by Ukrspyr SE.

¹⁴ As of 22 March 2019, the AMC decision is being challenged in court by Poltavaoblenergo.

Type of violation	Total amount of fine(s), EUR ²	Who was fined and amount of individual fine, EUR	Relevant sector(s)	Description of violation	Decision date
				<ul style="list-style-type: none"> (i) dealer contracts with certain companies which met all the dealer requirements (instead, Artyomsol concluded supply agreements with them); and (ii) direct supply agreements upon request from potential customers (Artyomsol referred such potential customers to its dealers, although it supplied other customers directly); <ul style="list-style-type: none"> ▪ charged different prices for (i) customers acting under the supply agreements and (ii) dealers acting under the dealer contracts, which contained certain additional obligations, the fulfilment of which provided for a 5% discount. Some dealers repeatedly failed to fulfil their dealer obligations such as (i) reaching minimum purchase and sales volumes, and (ii) advertising requirements. The AMC concluded that the contractual obligations of such dealers were equivalent to those of the customers set out in the supply agreements, therefore a 5% discount was granted to dealers without any objectively justified reasons¹⁵. 	
Unfair competition (Unauthorised use of designations)	303,000	<ul style="list-style-type: none"> ▪ Simferopol Wine-Cognac Factory LLC, Ukraine – 171,500 ▪ Strongdrink LLC, Ukraine – 131,500 	Alcoholic beverages	<p>The companies were fined for the unauthorised use of designations for the labelling of certain whiskey and whiskey products "Black Jack", "Scotch WHISKEY", "Silver WHISKEY", "BLACK JACK" "Silver" – that could be confused with JACK DANIEL'S whiskey brand of Jack Daniels Properties, Inc.</p> <p>The AMC stated that the similar design of the whiskey labels, in particular: (i) the background; (ii) the general composition of the labels; (iii) the arrangement of the key designations and individual elements; (iv) fonts; and (v) colour range, could mislead consumers¹⁶.</p>	11 October 2018
Unfair competition (Misleading information)	105,700	Kotnar-M LLC ("Kotnar-M"), Ukraine	Alcoholic beverages	<p>Kotnar-M was fined for spreading misleading information, in particular, by:</p> <ul style="list-style-type: none"> ▪ stating on its website that O'DAILYS Original is an Irish liqueur, while the liqueur was produced in Ukraine and had no links with Ireland; ▪ mentioning "Irish" flavouring amongst the ingredients, while in fact the flavouring was produced by an Austrian company; 	13 December 2018

¹⁵ As of 22 March 2019, the AMC decision is being challenged in court by Artyomsol.

¹⁶ As of 22 March 2019, the AMC decision is being challenged in court by Strongdrink LLC.

Type of violation	Total amount of fine(s), EUR ²	Who was fined and amount of individual fine, EUR	Relevant sector(s)	Description of violation	Decision date
<p>Unfair competition (Unauthorised use of trade secret)</p>	11,400	Ergon-Electric LLC (" Ergon-Electric "), Ukraine	Electrical goods	<ul style="list-style-type: none"> ▪ stating that the liqueurs O'DAILYS Chocolate, O'DAILYS Hazelnut and O'DAILYS Coffee contained chocolate, hazelnut and coffee, respectively, when in fact they contained only flavourings. <p>According to the AMC, such misleading information might have influenced consumers' intention to buy liqueurs from Kotnar-M¹⁷.</p> <p>Ergon-Electric was fined for the unauthorised use in its business activities of trade secrets of its competitor – TVK Vector-VS LLC ("Vector-VS"), the supplier of various electrical goods – based on the following findings of the AMC:</p> <ul style="list-style-type: none"> ▪ two former employees (the "Employees") of Vector-VS within a month after termination of their employment founded a competing company – Ergon-Electric LLC – the principal activities of which were identical to those of Vector-VS; ▪ under the confidentiality agreement, the Employees committed not to use any trade secrets of Vector-VS in carrying out any competing business activities within the three years following their resignation; ▪ two days before resigning, the Employees copied information containing commercial secrets of Vector-VS, in particular, a full list and contact details of customers and suppliers, as well as the agreements concluded with them; sale and purchase volumes of electrical goods; and purchase and selling prices, trade mark-ups and discounts for electrical goods; ▪ some key business partners terminated their work with Vector-VS and switched to Ergon-Electric, as the latter, with its knowledge of the commercial conditions offered by Vector-VS, offered better conditions and lower prices; ▪ as a result of Ergon-Electric's actions, Vector-VS lost some of its key business partners, was unable to sell stock in hand, and therefore incurred financial damage (including loss of expected profit). 	13 December 2018

¹⁷ As of 22 March 2019, the AMC decision is being challenged in court by Kotnar-M LLC.

Type of violation	Total amount of fine(s), EUR ²	Who was fined and amount of individual fine, EUR	Relevant sector(s)	Description of violation	Decision date
				The AMC concluded that Ergon-Electric LLC obtained an improper advantage in competition by its unauthorised use of trade secrets of Vector-VS ¹⁸ .	
Failure to provide information to the AMC or submission of inaccurate or incomplete information	26,000	Ukrtransgaz PJSC, Ukraine	Natural gas	Ukrtransgaz PJSC did not provide certain information requested by the AMC since such information was confidential and contained commercial secrets. Such information was provided only after the AMC launched an investigation of the violation. According to the AMC, such actions of Ukrtransgaz PJSC amounted to failure to meet a deadline for provision of information to the AMC and significantly impeded an investigation of the Ukrainian natural gas markets carried out by the AMC ¹⁹ .	24 May 2018
	21,400	Kotnar-M LLC, Ukraine	Alcoholic beverages	Provision to the AMC of false information and a false copy of the regional court decision which allegedly concerned the case ²⁰ .	20 June 2018
	20,400	<ul style="list-style-type: none"> ▪ Novo Nordisk A/S, Denmark – 10,200 ▪ Novo Nordisk Health Care AG, Switzerland – 10,200 	Pharmaceuticals	The companies were fined for the provision of incomplete information to the AMC despite the repeated extensions of the deadlines by the AMC upon the requests of the companies. The explanation that provision of certain information should have been approved by other companies of the Novo Nordisk Group did not exclude the obligation to provide it under the law.	20 June 2018

¹⁸ As of 22 March 2019, the AMC decision is being challenged in court by Ergon-Electric.

¹⁹ Ukrtransgaz PJSC challenged the AMC decision in court. The court rejected the claims of Ukrtransgaz PJSC.

²⁰ As of 22 March 2019, the AMC decision is being challenged in court by Kotnar-M LLC.