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## **Annual Report on Competition Policy Developments in Ukraine**

**-- 2017 --**

**6-8 June 2018**

This report is submitted by Ukraine to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 6-8 June 2018.

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## 1. Executive Summary

1. In 2017, we continued our work on building up a new, modern, professional and transparent Antimonopoly Committee of Ukraine (hereinafter – the AMCU).
2. The economic impact of the AMCU's activities in 2017 is estimated as UAH 2.56 billion (over USD 96 million), which is 1.8 times more than in 2016. This indicator evaluates its effect on public welfare through renewal of competition conditions or prevention of anticompetitive effect.
3. In 2017, AMCU independently and in cooperation with the law enforcement authorities investigated and passed decisions in 317 cases involving anticompetitive concerted actions of business entities. Most notably, they include cases: on bid rigging in crude oil auctions (over UAH 1 million in fines imposed); anticompetitive actions in the pharmaceuticals market (a UAH 140 million/USD 5 million fine); bid rigging in public procurement tenders for dredging services for Azov and the Black Sea ports (over UAH 100 million/USD 3.9 million in fines imposed). A cartel detection rate has improved: a 4.5% increase as compared to 2016.
4. In 2017, 795 cases involving abuse of dominance and 610 cases of anticompetitive actions of the state authorities were ended.
5. A number of significant unfair competition cases were investigated. In particular, telecommunication operators were fined for dissemination of misleading information on tariffing services (about UAH 40 million/USD 1.5 million). Another notable unfair competition case example is imitation of foreign wines by a domestic company, fined for over UAH 7 million (over USD 0.3 million).
6. In the area of merger control, the number of applications received by AMCU grew by 666 in 2017 compared to 547 in 2016. Thereof, there was the increase of Ukrainian transactions share in the total number, which is a good indication of both the growing trust to the AMCU and the development of the legal basis of business culture in Ukraine.
7. The increased number of complaints was received by the AMCU as an appellate body in public procurement procedures (5706 complaints in 2017, as compared to 3067 in 2016) and constituted more than UAH 90 million (over USD 3.4 million).
8. In August 2017 the Law of Ukraine «On State Aid to Business Entities» came into force. New mechanisms that have a significant impact on competition began to work, a new type of relationships between the state and business entities was formed. At this stage, educating state aid providers and undertakings, as well as analysis of first notifications are our main tasks.
9. AMCU has been actively involved in legislative work, important legislative initiatives aimed at strengthening the Committees' mandate (in particular, according to OECD peer review recommendations), and at ensuring fairness and predictability of AMCU interactions with business. The AMCU has also worked on secondary legislation.
10. The 2017 AMCU activities in brief:
  - UAH 132.5 million (over USD 4.74 million) of budget financing;
  - UAH 1,803.2 million (over USD 67.79 million) of fines imposed;

- UAH 340.6 million (over USD 12.80 million) of fines paid (the highest fine collection rate ever);
- UAH 2.56 billion (over USD 96 billion) of economic impact;
- 2,435 competition infringements ended;
- 5,706 public procurement complaints filed for total amount of UAH 90 billion (over USD 3.4 billion);
- 133 state aid notifications filed;
- 22.7% AMCU's decisions challenged in courts;
- 1,456 draft regulations reviewed.

## 2. Amendments to competition legislation and policy, proposed or adopted

11. In 2017, AMCU worked on further improvement of the legislative framework for state protection of economic competition in Ukraine.
12. Amendments to the legislation introduced in 2017:
  - Amendments to the Law of Ukraine "On sanctions" and the Law of Ukraine "On Protection of Economic Competition" authorizing AMCU to refuse merger clearance to transactions which fall within the scope of personal sanctions introduced by the National Security and Defense Council of Ukraine – entered into force on December 17<sup>th</sup> 2017.
13. Amendments of competition legislation to be introduced:
  - Draft Law No. 6723 (14.07.2017): reinforcement of AMCU overall efficiency, compliance with the 2016 OECD recommendations (passed on the 1st hearing in Ukrainian Parliament):
    - *De minimis* rule: refusal to open and closing of opened cases having minor impact on competition;
    - Reviewing the fine collection mechanism: cancellation of 1.5% daily penalty (as excessive); a 50% discount for timely voluntary payment;
    - Direct enforcement of AMCU decision imposing fines (directly enforceable if no annulment claim was brought, or such a claim was dismissed)
  - Draft Law No. 6746 (17.07.2017): improvement of procedural fairness (passed on the 1st hearing in the Ukrainian Parliament):
    - Introduction of time limits for the AMCU's investigations in competition-related cases;
    - Improvement of respondents' procedural rights;
    - Improvement of leniency procedures;
    - Introduction of a procedure of settlement.
14. Secondary legislation introduced:

- Typical Requirements for Vertical Concerted Actions of Business Undertakings (implementation of EU acquis under the EU-Ukraine Association Agreement). As provided by the above-mentioned document: vertically concerted actions of business entities are allowed and do not require a separate approval of the AMCU, if the market shares of both the supplier and the buyer do not exceed 30%. At the same time, this permission does not apply to concerted actions containing tight vertical restrictions.
  - Methodological recommendations on assessment of competitive impact of draft regulatory acts (based on OECD Competition Assessment toolkit) – are mandatory as of November 2017 for assessment of draft laws and regulations to be approved by the AMCU. The document is aimed at reducing the number of violations in the form of authorities' anticompetitive actions during the regulatory acts development.
15. Secondary legislation drafted:
- Typical requirements for concerted actions in technology transfers (based on EU acquis). In the case of compliance of concerted actions of business entities with the provisions of the document, such actions are allowed and do not require the approval of the AMCU.
  - Market definition methodology.
  - Market power definition methodology. Both Methodologies, developed on the basis of the best international experience, should replace the existing one that was approved in 2002.
  - Notice (recommendatory clarifications) of non-horizontal mergers assessment.
  - Market Study methodology.
16. The AMCU's approval of regulatory acts in 2017:
- 1,456 draft regulations were reviewed;
  - 454 draft regulations were not approved due to their anticompetitive effect;
  - 190 draft regulations were approved with reservations and recommendations (130 drafts improved in conformity with AMCU's recommendations).

### 3. Enforcement of competition law and policy

#### 3.1. Actions against anticompetitive practices, including anticompetitive concerted actions, abuse of monopoly (dominance) and unfair competition

17. In 2017, the AMCU considered 4,767 applications and appeals in respect of competition infringements violations.
18. Due to AMCU engagement, 2,435 competition violations were ended, including:
- 795 (33%) abuse of dominance violations;
  - 317 (13%) anticompetitive concerted practices of business entities;

- 610 (25%) anticompetitive actions of public authorities (state and municipal authorities, bodies of administrative and economic management and control);
  - 256 (11%) unfair competition violations;
  - 457 (19%) other violations (mergers without permission, failure to provide information, etc.).
19. 47% of violations were ceased by AMCU decisions applying liability (fines); 53% - by providing AMCU recommendations.

**Table 1. Structure of ceased violations in 2017 by sector and type, %**

Market	Anticompetitive concerted actions of business entities	Abuse of monopoly position	Anticompetitive actions of authorities	Unfair competition	Total
Housing and utilities	0.32	36.23	7.38	0	14.58
<b>Agro-industrial complex</b>	10.09	4.28	5.25	29.3	10.64
<b>Fuel and energy complex</b>	11.36	24.28	0.66	0.39	10.6
<b>Transportation</b>	5.99	9.81	13.28	7.03	9.36
<b>Administrative services</b>	0	0	33.77	0	8.71
<b>Healthcare, pharmaceuticals and medical products</b>	6.62	9.43	6.39	15.23	7.39
<b>Construction and construction materials</b>	12.94	0.63	0.98	3.13	4.76
<b>Collection, removal, recycling and disposal of household waste</b>	0.95	2.77	10	0.39	3.86
<b>Services of land management and leasing real estate services</b>	0.63	2.52	4.92	1.56	2.71
<b>Connection of multistory buildings to communications and utilities</b>	0	3.27	0	0	1.15
<b>Communications and telecommunications</b>	0.63	1.01	0.33	3.13	1.03
<b>Funeral services</b>	0	0.5	2.46	0	0.9
<b>Maintenance and repair of motor vehicles</b>	0.63	0	0	1.17	0.25
<b>Related services in the provision of administrative services</b>	0	0	0.16	0	0.04
<b>Other markets</b>	49.84	5.27	14.42	38.67	24.02
<b>Total</b>	100	100	100	100	100

20. The number of AMCU enforcement claims (for recovery of fines imposed) upheld by the courts increased by 22.7% during 2017 in comparison with 2016 – improvement in overall quality of AMCU decisions.

21. In 2017, compared to 2016, the percentage of bid-rigging actions of enterprises detected by the AMCU increased to 4.5% out of all ceased violations.

22. Cartel detection rate improvement: 4.5% increase in comparison with 2016.

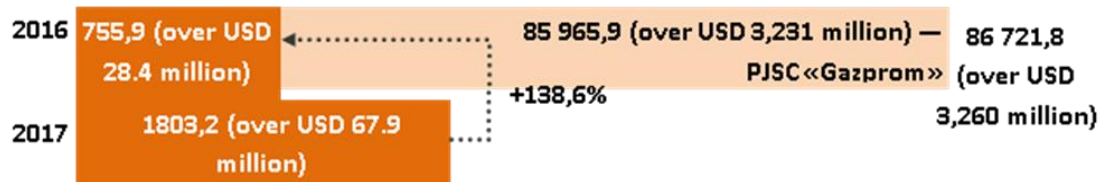
23. The highest fine collection rate ever: collection of fines and penalties in 2017 (UAH 340.6 mln) has increased more than tenfold as compared to 2016.

24. Magnitude of the economic impact in 2017 amounted to UAH 2,561 million (over USD 96 million), which is almost 1.8 times more than in 2016 (1,425.1 million UAH/over USD 53 million), as a result of the AMCU measures aimed at terminating competition infringements.

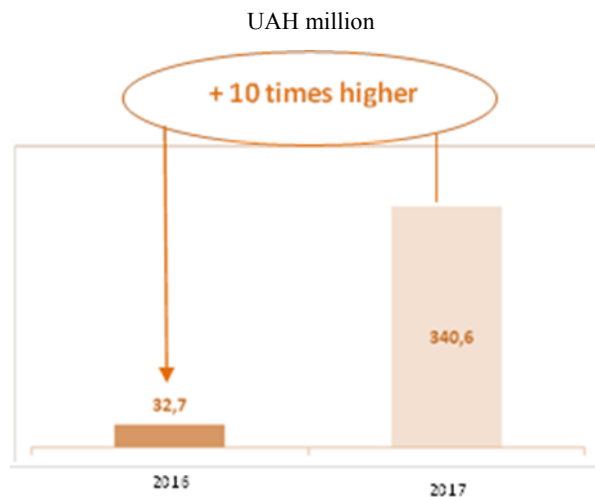
25. Out of the total amount of fines (UAH 1,803.2 million/over USD 67 million) imposed in 2017:

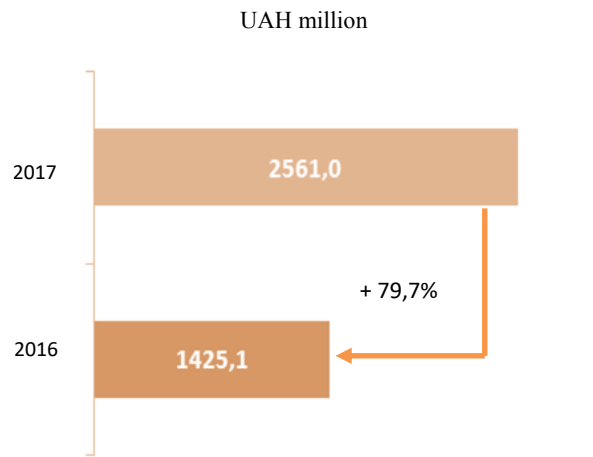
- almost 41 million UAH (over USD 1.5 million) - for abuse of a monopoly position;
- over UAH 1,684.6 million (over USD 63.3 million) for the anticompetitive concerted actions;
- almost UAH 50.5 million (over USD 1.9 million) - for unfair competition;
- almost UAH 27.1 million (over USD 1 million) - for other violations.

**Figure 1. Fines Imposed by the AMCU in 2016-2017, UAH million**

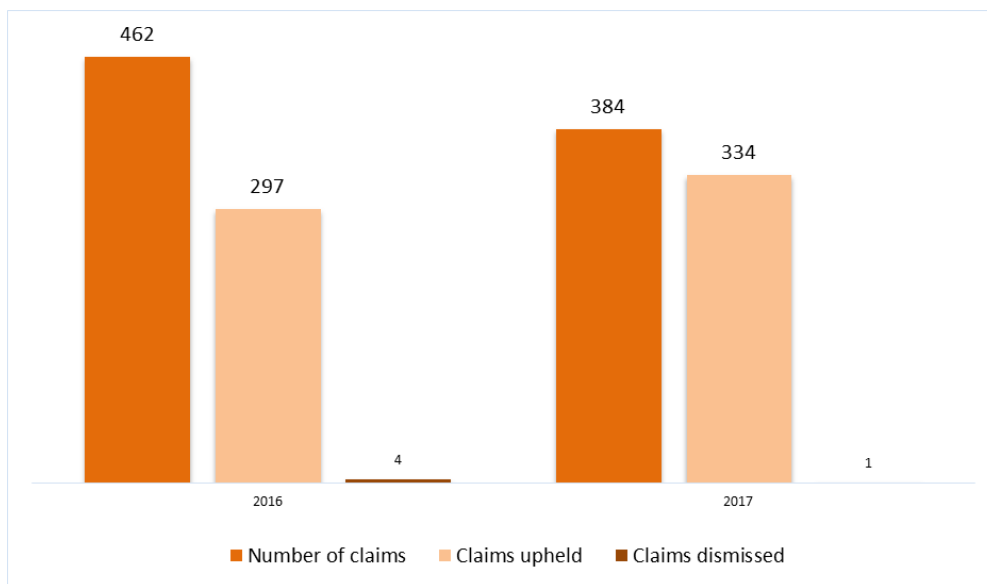


**Figure 2. Fines paid in 2016-2017**



**Figure 3. Economic Impact in 2016-2017**

In 2017, the AMCU initiated 384 court cases to enforce payment of fines imposed for competition related infringements. In 334 cases (87%), courts upheld AMCU claims; only in one case, an AMCU claim was dismissed (0.3% of the total number).

**Figure 4. Court claims by the AMCU in 2016-2017**

26. In 2017, 239 AMCU decisions (22.7%) in competition violation cases were challenged in courts. 33 decisions (3.1%) were annulled in whole or in part.

### ***3.1.1. Abuse of monopoly (dominant) position***

27. In 2017 most of the ceased violations (795) were abuse of dominance, thereof:

28.



Figure 5.

557	197	11	30* Other violations
Actions or omissions by the market participant having a dominant position in the market that led or may lead to prevention, elimination or restriction of competition or infringement of the interests of other entities or consumers (paragraph 1 of Article 13)	Setting conditions for purchase or sale, which could not be established under the conditions of significant		Application of different conditions to equivalent transactions without objectively justified reasons (paragraph 2

### Case example #1

29. Decision of the AMCU dated January 24<sup>th</sup> 2017 No. 13-P.<sup>1</sup>

- State Enterprise «Boryspil International Airport » was found to be in breach of Article 50(2) and Article 13(1) of the Law of Ukraine «On Protection of Economic Competition» by abusing its monopoly (dominant) position in the market of specialized services in the Boryspil airport through:
  - restriction of competition in the markets for ground handling services at the Boryspil airport, which resulted in an unjustified refusal to accept applications for a certificate of conformity for airport operations and a delay in the approval of the internal documentation of Interavia LLC, necessary for obtaining such a certificate;
  - setting the fee for using the airport infrastructure at an unreasonable level that harmed the interests of other business entities which would not be possible under conditions of significant competition on the market.
- SE «Boryspil International Airport» was obliged by May 1<sup>st</sup> 2017:
  - to terminate the violation by bringing to an economically justified level the fee for usage the airport infrastructure and equipment not included in the infrastructure, but used for the provision of ground handling services.
  - to differentiate its bank accounts for infrastructure management and regulatory activities as well as for ground handling services, in order not to allow, after such differentiation, the subsidization of ground handling activities from the proceeds of their activities in relation to infrastructure management and regulatory activity.
- Fine imposed – UAH 12.8 million (over USD 481,000).

### Case example #2

30. Decision of the AMCU dated December 21<sup>st</sup> 2017 no. 720-P.<sup>2</sup>

<sup>1</sup> <http://www.amc.gov.ua/amku/doccatalog/document?id=133025&schema=main>

<sup>2</sup> <http://www.amc.gov.ua/amku/doccatalog/document?id=138796&schema=main>

- Euroterminal LLC was found to have possessed during the period from March 2016 to November 2017 a monopoly (dominant) position (a 100% share) in the market of services related to servicing (processing) of lorries at the Odessa Commercial Sea Port. Euroterminal LLC was charging a fee for a full range of services related to the servicing of freight vehicles, without payment of which the entry into the Odessa Commercial Sea Port was impossible, and not for those services that were actually needed by carriers. As a result, fees were collected for services which were not actually provided.
- Euroterminal LLC was found to have breached Article 13 (1) Article 50 (2) of the Law of Ukraine «On Protection of Economic Competition», in the form of abuse of a monopoly (dominant) position.
- Euroterminal LLC was obliged to provide an option for carriers to enter the Odessa Commercial Sea Port without payment for services that carriers do not need or intend to consume, save for services needed to pass through the Euroterminal» LLC territory to enter the Odessa Sea Commercial Port.
- Fine imposed – UAH 5.37 million (over USD 202,000).

### 3.1.2. Anticompetitive actions of state authorities

31. In 2017 the AMCU ceased 610 above-mentioned violations, thereof:

Figure 6.

211	244	66	30	59* Other violations
Actions or omissions consisting of inducement or creating conditions for violations of legislation on protection of economic competition (Article 17)	Actions or omissions that caused or may cause prevention, elimination, restriction or distortion of competition (paragraph 1 of Article 15)	Providing advantages to business entities (paragraph 7 of Part 2	Creating unfavourable or discriminatory conditions (paragraph 8 of Part 2 of Article	

### 3.1.3. Anticompetitive concerted practices

32. In 2017 the AMCU ceased 317 above-mentioned violations, thereof:

Figure 7.

288	23	6 Other violations
Distortion of the results of bids, auctions, contests, tenders (paragraph 4 of Part 2 of Article 6)	Similar actions on the product market which led or may lead to preventing, restricting or eliminating competition (paragraph 3 of Article 6)	

*Case example #1.*

33. Decision of the AMCU dated March 23, 2017 № 126-P.<sup>3</sup>

- Defendants: «Transnational financial and industrial oil company «Ukratnafta» PJSC, «Galichina Oil Refinery» PJSC, «Trading House Prykarpattya Naftotreyd» LLC, «Kotlas» LLC, «Galnafta» LLC and «Garant-UTN» LLC.
- Committed violation: breach of Article 6(2)(4) of the Law of Ukraine «On Protection of Economic Competition» in the form of anticompetitive concerted actions which led to the distortion of the results of sale auctions for crude oil and gas condensate, conducted during March-July 2015 at «Ukrainian Interbank Currency Exchange» PJSC.
- Total fine imposed – UAH 1,371.3 million (over USD 51.55 million).

*Case example #2*

34. Decision of the AMCU dated November 14<sup>th</sup> 2017 № 628-P.<sup>4</sup>

- Defendants: «Sanofi-Aventis Ukraine» LLC, «BaDM» LLC, «Optima-Farm, Ltd» LLC.
- Conditions of purchase agreements concluded by «Sanofi-Aventis Ukraine» LLC with «Optima-Farm, Ltd» LLC and «BaDM» LLC included such pricing mechanisms that stimulated restriction of competition in the markets of Sanofi medicines by cheaper generics, related to the distribution of the market for the range of goods, and also provided the opportunity to raise prices for Sanofi medicines sold through public procurement procedures.
- «Sanofi-Aventis Ukraine» LLC, «Optima-Farm, Ltd» LLC, and «BaDM» LLC were found to be in breach of Article 6 (1) and Article 50 (1) of the Law of Ukraine «On Protection of Economic Competition» in the form of anticompetitive concerted actions that were capable of restricting competition.
- Total fine imposed – UAH 139.09 million (over USD 5 million).

*3.1.4. Unfair competition*

35. In 2017 AMCU ceased 256 abovementioned violations, thereof:

<sup>3</sup> <http://www.amc.gov.ua/amku/doccatalog/document?id=134327&schema=main>

<sup>4</sup> <http://www.amc.gov.ua/amku/doccatalog/document?id=138187&schema=main>

Figure 8.

208	26	15	3	4	*Other
Dissemination of misleading information (Article 15)	Unauthorized use of others' trademarks, promotional materials	Achieving unlawful advantages in competition			Discrediting of entity (Article 8)

### Case example #1

36. Decision of the AMCU dated September 18<sup>th</sup> 2017 № 546-P.<sup>5</sup>

- lifecell LLC was found to be in breach of Article 15-1 of the Law of Ukraine «On Protection against Unfair Competition» by providing false, incomplete and inaccurate information about the terms of tariffing of outgoing calls that was capable of affecting consumers (subscribers) decisions regarding acquisition of lifecell LLC services.
- lifecell LLC was obliged to inform consumers and subscribers regarding the tariffing of outgoing calls within the time period established by the Law in a clear form and manner that would not be misleading.
- Fine imposed – UAH 19.5 million (over USD 733,000).

### Case example #2

37. Decision of the AMCU dated December 14<sup>th</sup> 2017 no. 705-P.<sup>6</sup>

- Kyivstar PJSC was deemed to be in breach of Article 15-1 of the Law of Ukraine «On Protection against Unfair Competition» through disseminating misleading information by informing an unspecified number of persons of false, incomplete, inaccurate information about tariffing of outgoing calls that was capable of affecting the intentions of these persons regarding the purchase of Kyivstar PJSC services.
- Kyivstar PJSC was obliged to inform consumers and subscribers regarding the tariffing of outgoing calls within the time period established by the Law in a clear form and manner that does not mislead consumers and subscribers of telecommunication services.
- Fine imposed – UAH 21.3 million (over USD 801,000).

<sup>5</sup> <http://www.amc.gov.ua/amku/doccatalog/document?id=137370&schema=main>

<sup>6</sup> <http://www.amc.gov.ua/amku/doccatalog/document?id=138755&schema=main>

### 3.2. Mergers and acquisitions

38. Among the merger permits issued by the Committee, the share of permits on the agricultural market is the biggest, about 25.7% (155 permits) of the total permits amount granted, as well as machinery and instrumentation markets share about 14.6% (88 permits) and the market of construction, real estate and construction materials, which constituted about 13.3% (52 permits).

39. The types of mergers of business entities permitted by the AMCU in 2017 are:

- 81.4% the acquisition of stocks and shares;
- 3.3% the joint establishment of a business entity;
- 14% the acquisition of control in other forms.

40. In 2017:

- 57 applications for granting permission for concerted actions were considered (by 64% less than in 2016);
- 55 permits for concerted actions were granted (by 51% less than in 2016);
- 666 applications on the concentration of business entities were considered (by 22% more than in 2016);
- 439 (over 65.9%) applications came from foreign investors or enterprises with the participation of foreign investors;
- above 10% increase of applications for domestic companies mergers in comparison with 2016;
- 602 permits for concentration were granted (by 37% more than in 2016).

**Figure 9. The Number of Merger Applications Considered by the Committee in 2012 – 2017**

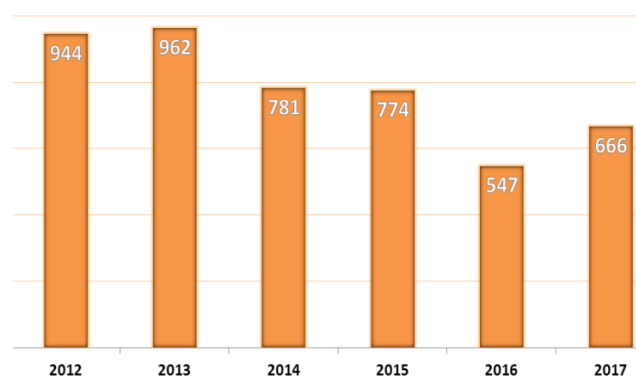
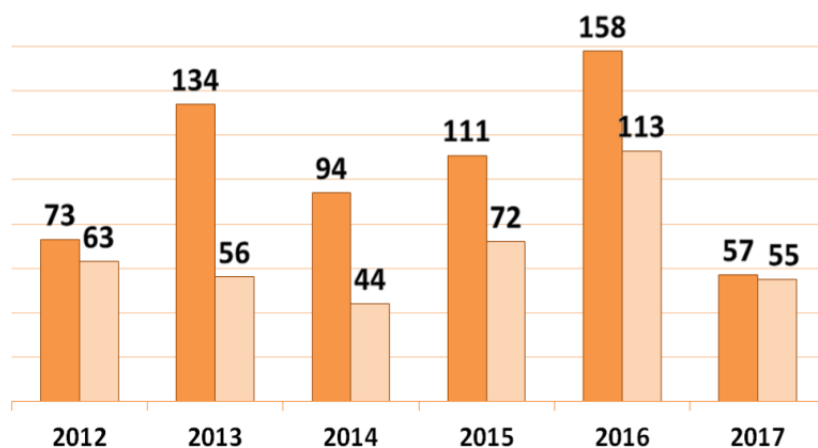


Figure 10. The Number of Applications and Permits for Concerted Actions in 2012 – 2017



### 3.2.1. Case example #1

#### 41. Merger Participants:

- business entity represented by «TECHNOLINE PROJECTS LLP» and «FLY ENGINEERING LLP» (both – London, United Kingdom);
- «PATON TURBINE TECHNOLOGIES» LLC (Kyiv, Ukraine).
  - Market: the market for rendering services on the processing and application of electron-beam technology of protective coatings on gas turbine blades, the manufacture of equipment for the application of above-mentioned coatings, and the provision of services for the repair and restoration of blades and other components of gas turbines.
  - Conclusion: It is recognized that the entity represented by «TECHNOLINE PROJECTS LLP» and «FLY ENGINEERING LLP» (both London, United Kingdom), committed a violation stipulated in paragraph 12 of Article 50 of the Law of Ukraine «On Protection of Economic Competition» in the form of a merger through the acquisition of a share in the authorized capital of the «PATON TURBINE TECHNOLOGIES» LLC (Kyiv, Ukraine) without obtaining the necessary permission of AMCU.
  - Permission for appropriate merger is given.
  - Total fine imposed – UAH 102,000 (over USD 3,800).

### 3.2.2. Case example #2

#### 42. Merger Participants:

- Bayer Aktiengesellschaft (Leverkusen, Germany);
- Monsanto Company (Wilmington, USA).
  - National markets: seeds of agricultural crops and vegetables, in particular cucumbers; chemical means of plant protection (pesticides) - herbicides (selective, nonselective).

- Obligations imposed:
  - not to create unlawful barriers for entry to the markets for the distribution of plant protection products and seeds of agricultural crops and vegetables or to exit from the markets of plant protection products and seeds of agricultural crops and vegetables of business entities of residents or non-residents of Ukraine that are sellers/producers of plant protection products and seeds of agricultural crops and vegetables.
  - Bayer Aktiengesellschaft to submit to the AMCU copies of the agreements with all relevant annexes, which are an integral part of the contracts made by the Bayer Group with distributors for the distribution of remedies plants and seeds of agricultural crops and vegetables during the period of three years starting from the year following the concentration.
- Conclusion:
- A merger permit was issued in the form of obtaining control by Bayer Aktiengesellschaft (Leverkusen, Germany) over Monsanto Company (Wilmington, USA).

## 4. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policy

### 4.1. Competition advocacy

43. On May 11<sup>th</sup> 2017 the AMCU won the [nomination](#) «**Engaging through results: Successful experience in planning, implementing and monitoring advocacy strategies**» for the best example of the competition authority's activity in the field of competition advocacy (Ukraine energy market study 2016). The contest was held by The International Competition Network (ICN) and the World Bank Group. The award ceremony was held in the course of the ICN Annual Conference in Porto (Portugal).

44. On the basis of Article 20<sup>1</sup> of the Law of Ukraine «On the Antimonopoly Committee of Ukraine», the Committee routinely examines draft laws submitted by MPs and registered at the Verkhovna Rada of Ukraine, for their conformity to competition laws and possible anticompetitive effect. As a result of such examination, **the AMCU developed proposals to the relevant committees of The Verkhovna Rada of Ukraine regarding 49 such draft laws.**

45. The AMCU has paid special attention to the analysis of the competition impact of sectoral regulation in such markets:

#### 4.1.1. Retail pharmacy markets

46. AMCU has supported the initiative to introduce a mechanism for reimbursement of the cost of essential medicines in Ukraine, which is widely used in many countries of the world.

47. The Government Program «Affordable Medicines» was introduced on April 1<sup>st</sup> 2017. It provides for the establishment by the Ministry of Health of Ukraine of the maximum wholesale selling prices for a certain list of medical products, which are formed using reference pricing (both internal and external) and are procured and/or cost

of which is reimbursed from the budgetary funds for the treatment of cardiovascular diseases, type II diabetes and bronchial asthma, stimulates the development of price competition in the markets for medical products. In fact, the introduction of reimbursement mechanism led to cost reduction and better affordability of medicines for the people. Thus, since April 1<sup>st</sup> 2017 patients at the prescription of a doctor within the framework of the Government's Program «Affordable medicines» can receive medicines for the treatment of these diseases free of charge or with insignificant surcharge in pharmacies.

48. In 2017 a number of laws were adopted that initiated medical reform in Ukraine, in particular: the Law of Ukraine dated April 6<sup>th</sup> 2017 No. 2002-VIII «On Amendments to Certain Legislative Acts of Ukraine on Improving Legislation on Activities of Health Care Institutions», the Law of Ukraine dated October 19<sup>th</sup> 2017 No. 2168-VIII «On State Financial Guarantees of Medical Care for the Population», the Law of Ukraine dated November 14<sup>th</sup> 2017 No. 2206-VIII «On Increasing Availability and Quality of Medical Services in Rural Areas».

49. In order to advocate competition and effective development of competition in the regional markets for retail medicines, to increase the affordability of medicines for the population, the AMCU provided the following [recommendations](#) on November 30<sup>th</sup>, 2017, № 28-PK to Regional Councils of Ukraine (23 in total) and the Kyiv City Council, that are mandatory for consideration:

- to take measures in order to establish equal conditions for all business entities acting in regional markets of retail sale of medical products, regardless of their type of ownership;
- to introduce a transparent and non-discriminatory approach to the establishment of rental rates for the use of real estate of joint ownership of the territorial communities of in the regions and the city of Kyiv.

#### *4.1.2. Hemodialysis service market*

50. In 2017 the AMCU on behalf of the Cabinet of Ministers of Ukraine conducted a study in order to develop competition in the markets for hemodialysis consumables and to create a competitive environment in the field of public procurement of appropriate consumables. In order to protect patients' health, effective measures should be taken to eliminate existing legislative gaps in the areas of technical regulation, standardization and unification of medical and technological compatibility and interchangeability of consumables and equipment for hemodialysis, as well as to determine procedures for their observance.

51. According to the results of the study, a market study [report](#) has been compiled, which analyses the actions of authorities, participants of the market of equipment and consumables for hemodialysis.

52. The AMCU provided the **Ministry of Health of Ukraine and the Ministry of Economic Development and Trade of Ukraine** with [recommendations](#) dated October 4<sup>th</sup> 2017 № 24-PK for the implementation of measures aimed at the development of competition, prevention of competition law infringements.



### 4.1.3. Electricity markets

53. The main focus of the AMCU on the electricity market is on its functioning in the future, namely the development of qualitative secondary legislation and its compliance with the rules of the European Union's Third Energy Package. On April 13<sup>th</sup> 2017 **the Law of Ukraine «On the Electricity Market»** was adopted, launching transformation of the domestic electricity market. The Law shall ensure competition in the electricity markets and in adjacent markets, as well as increase attractiveness of this sphere for investors.

54. In 2017, AMCU processed 55 draft regulatory acts concerning the electricity market, of which 15 were approved, namely:

- National Energy and Utilities Regulatory Commission of Ukraine (NEURC) draft resolution «On Approval of Changes to the Rules of Use of Electric Power»;
- NEURC draft resolution «On Approval of the Ordering of Electronic Auctions on the Allocation of Capacity of Interstate Electric Networks»;
- NEURC draft resolution «On Approval of the calculation of retail tariffs for Electric Power»;
- NEURC draft resolution «On the Implementation of Changes to the Order of the Calculation of the Average Purchase Price for Electric Energy Licensed to Deliver Electric Power by a Regulated Tariff»;
- Cabinet of Ministers of Ukraine's draft regulation «On Approval of the New Energy Strategy of Ukraine until Year 2035 «SECURITY, ENERGY EFFICIENCY, COMPETITIVENESS»;
- Cabinet of Ministers of Ukraine's draft resolutions «On Approval of Rules for Access to Infrastructure of Objects of Construction» and «On Approval of Rules for Access to Infrastructure of the Household Distribution Network».

55. According to the results of the comprehensive study, **the AMCU issued [recommendations](#) dated December 12<sup>th</sup> 2017 № 30-PK to the Ministry of Energy and Coal Industry of Ukraine and [recommendations](#) dated December 12<sup>th</sup> 2017 № 31-PK to the NEURC.**

### 4.1.4. Public transport services (bus lanes)

56. AMCU took measures to prevent competition infringements in public transportation services market. AMCU received numerous individual complaints regarding the increase of passenger tariffs at public bus routes. According to the results of the study, **the AMCU provided mandatory [recommendations](#) dated April 11<sup>th</sup> 2017 no. 10-PK to all Regional State Administrations, obliging them:**

- to ensure the validation of contracts concluded by the regional state administrations with road carriers for the affordability of such transportation conditions as tariffs and the procedure for changing tariffs, and in the absence of such conditions to initiate the introduction of appropriate changes to the concluded agreements with carriers;
- to ensure competitive process of selection of carriers taking into account the cost of their services. According to the results of the competitive selection, to conclude agreements on the organization of passenger transportation, which include the

tariffs, the conditions under which the tariffs of transport operators can be changed and the procedure for making such amendments to the contracts.

57. Taking into account social importance of the issues raised, the Committee proposed the Cabinet of Ministers of Ukraine to request the Ministry of Infrastructure of Ukraine to prepare and submit to Parliament amendments to the Law of Ukraine «On Road Transportation» for the purposes of liberalisation and deregulation of the market of passenger road transportation, simplification of entry to regular passenger car transportation market. The Ministry of Infrastructure of Ukraine should also change to the Procedure for holding a tender for the carriage of passengers on a public bus route, approved by the Resolution of the Cabinet of Ministers of Ukraine dated December 3<sup>rd</sup> 2008 № 1081, and the Methodology for calculating tariffs for passenger road transport services, approved by the order of the Ministry of Transport and Communications of Ukraine dated November 17<sup>th</sup> 2009 № 1175.

#### 4.2. AMCU activities as public procurements appeal body

58. 5706 appeals were received during the year 2017.

59. 23 appeals had been considered daily in average.

60. Total financial amount of the considered public procurement appeals is UAH 90.58 billion (over USD 3.4 billion).

61. Obligations of eliminating the violations were imposed on public procurements in the total financial amount of UAH 37.38 billion (over USD 1.4 billion).

62. Total financial amount of the withdrawn public procurement appeals is UAH 32.93 billion (over USD 1.2 billion).

63. 9283 decisions taken.

**Figure 11. Received appeals, 2013-2017**

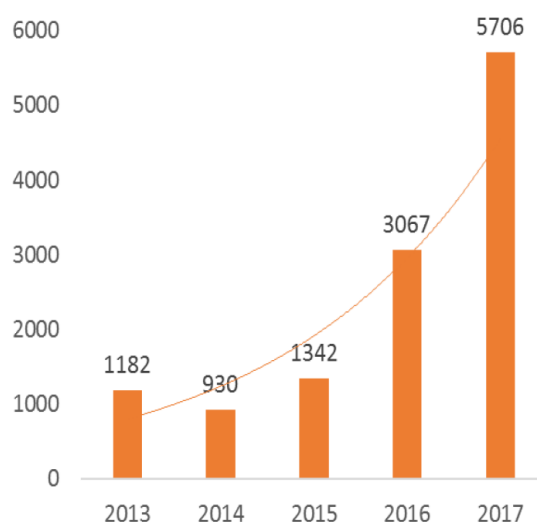
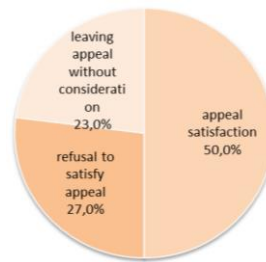


Figure 12. Structure of decisions taken, 2017



### 4.3. AMCU activities as an Authorized Body on State Aid

64. The Law of Ukraine «On State Aid to Business Entities» came into force on August 2<sup>nd</sup> 2017. The Law was adopted by the Parliament of Ukraine on January 7<sup>th</sup> 2014 as a part of Ukraine's international obligations under the EU-Ukraine Association Agreement, and as a result of Ukraine's accession to the Treaty establishing the Energy Community.

65. As an authorised body in charge of state aid to business entities AMCU implements its powers granted by the Law. In particular, from August 2<sup>nd</sup> till December 31<sup>st</sup> 2017:

- received 133 state aid notifications;
  - reviewed 863 draft legal acts for compliance with state aid laws;
  - gave over 2,600 telephone consultations to state aid providers;
  - held over 200 state aid related PR events with participation of state and municipal authorities, EU experts, public sector, etc.;
  - held over 80 consultations meetings with representatives of the state aid providers;
  - provided over 155 written clarifications on application of state aid laws.
66. Pursuant to the State Aid Law, the AMCU in 2017:
- introduced procedural legislation, regulating, in particular, the procedures for reviewing state aid notifications and conducting state aid cases;
  - developed six draft resolutions of the Cabinet of Ministers of Ukraine, which shall introduce the criteria for assessing admissibility of certain state aid categories for competition.

## 5. Resources of the competition authority

67. In 2017 the amount of budget allocations for the exercise of its powers by the AMCU in accordance with the Law of Ukraine «On the State Budget of Ukraine for 2017» dated December 26<sup>th</sup> 2016 No. 1081-VIII (as amended) constituted UAH 132.5 million (USD 4.74 million on the date of budget approval).

68. As of December 31, 2017: the number of employees in the AMCU headquarters was 269, thereof:

- economists — 83;
- lawyers — 78;
- other professionals – 108.

69. The total number of employees in AMCU bodies (central headquarters and 24 regional offices) was 635.

## 6. References to new reports and studies on competition policy

70. In 2017, AMCU investigated functioning of a number of markets with competition policy issues which resulted in publishing of such reports (available only in Ukrainian):

- Report on the results of the study of markets for equipment and consumables for hemodialysis (for the period 2013 - 9 months of 2015). Approved at the Committee's session on October 4<sup>th</sup> 2017.  
<http://www.amc.gov.ua/amku/doccatalog/document?id=137831&schema=main>
- Report on the results of research on the market for the sale of goods, the provision of services and the execution of work in small architecture forms. Approved at the Committee's session on August 31<sup>st</sup> 2017.  
<http://www.amc.gov.ua/amku/doccatalog/document?id=137105&schema=main>
- Report on research of services markets in the field of domestic waste management. Approved at the Committee's session on January 11<sup>th</sup> 2018.  
<http://www.amc.gov.ua/amku/doccatalog/document?id=139186&schema=main>
- Annual report of the Antimonopoly Committee of Ukraine for 2017. Approved at the Committee's session on January 31<sup>st</sup> 2018.  
<http://www.amc.gov.ua/amku/doccatalog/document?id=140483&schema=main>