

**Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE**

Cancels & replaces the same document of 18 May 2020

Annual Report on Competition Policy Developments in Ukraine

-- 2019 --

10-12 June 2020

This report is submitted by Ukraine to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 10-12 June 2020.

JT03462197

Table of Contents

Ukraine	3
Executive Summary	3
1. Amendments to competition legislation and policy, proposed or adopted	4
2. Enforcement of competition law and policy	5
2.1. Actions against anticompetitive practices, including anticompetitive concerted actions, abuse of dominance and unfair competition	5
2.2. Mergers and acquisitions	12
3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policy	15
3.1. Competition Advocacy	15
3.2. 3.2. The AMCU’s activities as a Public Procurements Appeal Body.....	17
3.3. The AMCU’s activities as an Authorized Body on State Aid Monitoring and Control	19
4. Resources of the competition authority	20
5. References to new reports and studies on competition policy	20

Tables

Table 1. Structure of ceased violations in 2019 by sector and type, %	6
Table 2. Anticompetitive actions of public authorities in 2019.....	8
Table 3. Anticompetitive concerted practices in 2019	9
Table 4. Abuse of dominance in 2019.....	10
Table 5. Unfair competition in 2019	11

Figures

Figure 1. Fines Imposed by the AMCU in 2018-2019, USD million.....	7
Figure 2. Fines paid in 2014-2019 USD million	7
Figure 3. Economic Impact in 2018-2019, USD million	7
Figure 4. Court claims by the AMCU in 2019	8
Figure 5. The Number of Merger Applications Considered in 2014 – 2019.....	13
Figure 6. The Number of Applications and Permits for Concerted Actions in 2014 – 2019	13
Figure 7. Received appeals, 2015-2019	18
Figure 8. The structure of complaints considered, 2019	18

Ukraine

Executive Summary

In 2019 we continued our work on building up a new, modern, professional and transparent Antimonopoly Committee of Ukraine (hereinafter referred to as the AMCU, the Committee).

The economic impact of the AMCU's activities in 2019 is estimated as UAH 4,33 billion (over USD 167,53 million), which is more than 8% compared to 2018. This indicator evaluates its effect on public welfare through renewal of competition conditions or prevention of anticompetitive effects.

In 2019, the AMCU both independently and in cooperation with law enforcement authorities ceased 799 anticompetitive concerted actions-type violations. Most notably, they include case about anticompetitive actions at tobacco market (over UAH 6,5 billion/USD 251,49 million of aggregate fines imposed). Example of bid rigging case waws related to Ministry of Defense catering tender with total fine amounted to UAH 869,27 million (over USD 33,63 million).

In 2019, 268 violations involving abuse of dominance and 457 violations of anticompetitive actions of the public authorities were ceased. The monopolist on fertilizer market was obliged to split it's plants as a remedy for the abuse of dominance.

A number of significant unfair competition cases were investigated. In particular relating to case of spreading misleading information (a fine of UAH 3 million/USD 116,074 imposed). Another notable unfair competition case example is misuse of marks, which was fined for UAH 2 million (USD 77,383).

In the area of merger control, the number of applications received by the AMCU is 532 like in 2018.

Public Procurements: continued increase in the number of complaints (by over 43% compared to 2018); systematization of the AMCU Public Procurement Collegium decisions practice.

Since 02.08.2017 (the date of entry into full force of the Law of Ukraine "On State Aid to Economic Entities") the AMCU exercises powers conferred upon it by the national legislation in a field of state aid monitoring and control, in particular by taking decisions on compatability of state aid for competition; on the termination and refturn of non-compatible state aid.

The AMCU has been actively involved in legislative work, important legislative initiatives aimed at strengthening the Committees' mandate (in particular, according to the OECD Peer Review recommendations), and at ensuring fairness and predictability of the AMCU interactions with business. The AMCU has also worked on secondary legislation.

A new phase of regional offices reform has been launched by the AMCU and provided for by recommendations from a number of international organizations, including the OECD, and experts from EU competition authorities (respective AMCU decision in Dec, 2019).

The 2019 AMCU activities in brief:

- UAH 212 million (over USD 8,20 million) of budget financing;
- UAH 8,67 billion (over USD 335,53 million) of fines imposed;
- UAH 154,7 million (over USD 5,99 million) of fines paid;
- UAH 4,33 billion (over USD 167,53 million) of economic impact;
- 2,071 competition infringements ceased;
- 11,147 public procurement complaints filed for total amount of UAH 268,4 billion (over USD 10,38 billion);
- 605 state aid notifications filed;
- 1,547 draft regulations reviewed.

1. Amendments to competition legislation and policy, proposed or adopted

1. In 2019, the AMCU continued working on improvement of the legislative framework for the state protection of economic competition in Ukraine, in particular, in view of Ukraine's obligations under the EU-Ukraine Association Agreement.
2. Amendments to the competition laws developed in 2019:
 - Amendments to the Law of Ukraine "On State Aid to Economic Entities", to the Customs Code, Tax Code and other Ukrainian laws in order to bring them in conformity with EU acquis on state aid;
 - Draft Law of Ukraine "On Withdrawal from a Treaty on Pursuing an Agreed Antimonopoly Policy dated 25.01.2000";
 - Draft Law of Ukraine "On Amendments to the Law of Ukraine "On Public Procurement" and some other laws of Ukraine on improving the work of the Public Procurement Review Body", which envisages the new composition of the Review Body, the procedure for its formation and the basic requirements for its members, optimization of processes, related to the course of the review procedure;
 - Amendments to the Law of Ukraine "On Protection of Economic Competition" in order to increase an efficiency of the AMCU decisions implementation.
3. Draft acts of the Cabinet of Ministers of Ukraine, developed in 2019:
 - draft Resolution "On Approval of Criteria for Assessing the Compatibility of State Aid in Banking Sector";
 - draft Regulation "On Approval of Concept of State Policy of Development and Protection of Economic Competition in Ukraine";
 - Two draft Resolutions, amending acts of the Cabinet of Ministers of Ukraine.
4. Secondary legislation drafted in 2019:
 - Methodology for determining the monopoly (dominant) position of economic entities in the market ", which introduced a number of new terms, proposed the

principle of multiplicity of relevant market definition, and introduced a separate assessment of the substitutability of goods, etc.;

- Market Determination Methodology, which provides for fundamentally new provisions on the analysis of market stability, reserves for its increase, phases of market development, the nature of competition in the market.
5. Secondary legislation adopted in 2019:
- Amendments to the Typical Requirements for the Coordinated Actions of the Entities for General Exemption from the Prior Obtaining the Authorization of the Bodies of the Antimonopoly Committee of Ukraine for the Coordinated Actions of the Entities. These changes were adopted in order to harmonize the provisions of the Model Requirements with the EU approaches to the criteria for applying a group permit, the practice of dealing with cases of breach of legislation in the form of anticompetitive concerted actions of economic entities; the removal of provisions that do not have an independent scope;
 - Typical Requirements for concerted action of small and medium-sized enterprises to jointly purchase goods. The Typical Requirements reflect the rules of EU Regulations No 330/2010 and 316/2014;
 - Amendments to the Typical Requirements for Concentration.
6. The AMCU's approval of regulatory acts in 2019:
- 1,547 draft regulations were reviewed;
 - 363 draft regulations were not approved due to their anticompetitive effects;
 - 143 draft regulations were approved with reservations and recommendations (among which 69 drafts were brought in conformity with the AMCU's recommendations).

2. Enforcement of competition law and policy

2.1. Actions against anticompetitive practices, including anticompetitive concerted actions, abuse of dominance and unfair competition

7. In 2019, the AMCU considered 4,365 applications and appeals relating to violations of the legislation on protection of economic competition.

8. Due to the AMCU's engagement, 2,071 competition violations were ceased, including:

- 268 (13%) abuse of dominance-type violations;
- 799 (39%) anticompetitive concerted practices of economic entities;
- 457 (22%) anticompetitive actions of public authorities (state and municipal authorities, bodies of administrative and economic management and control);
- 168 (8%) unfair competition-related violations;
- 365 (18%) violations related to submission of information upon AMCU request;
- 8 mergers without permission

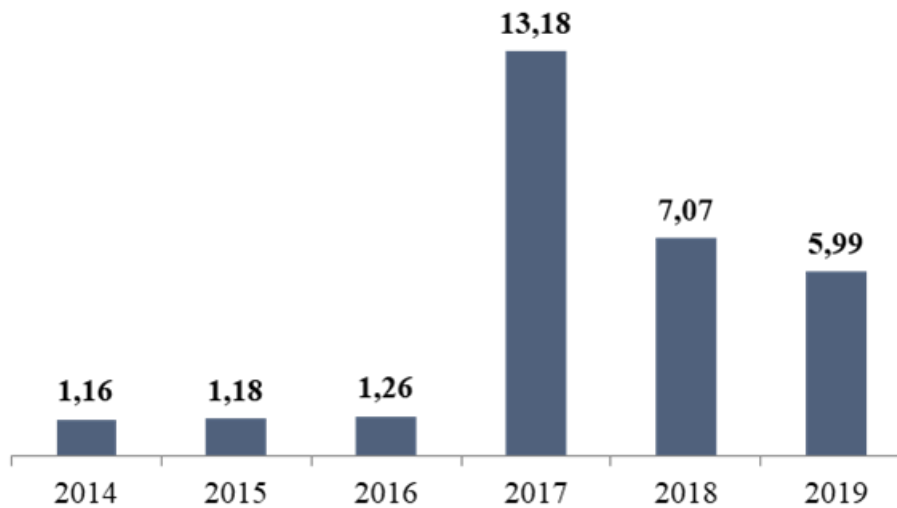
- 6 other violations (non-fulfillment of decisions, creation of obstacles etc.).

9. Sixty-nine percent of violations were ceased by the AMCU's decisions; 31% - by providing the AMCU's recommendations.

Table 1. Structure of ceased violations in 2019 by sector and type, %

Market	Anticompetitive actions of economic entities	Abuse of dominance	Anticompetitive actions of public authorities	Unfair competition	Total
Fuel and energy complex, housing and utilities	6,1 %	50,0 %	15,5 %	0,6 %	15,1 %
Construction and construction materials	25,0 %	0,4 %	3,3 %	1,2 %	14,4 %
Agro-industrial complex	17,0 %	0,4 %	2,0 %	35,1 %	11,7 %
Transportation	6,5 %	7,5 %	3,5 %	8,9 %	8,4 %
Healthcare, pharmaceuticals and medical products	3,4 %	22,4 %	1,5 %	28,6 %	7,3 %
Services of land management, real estate services	0,9 %	0,7 %	26,3 %	0,0 %	6,8 %
Industrial sphere	13,4 %	0,7 %	0,0 %	4,2 %	6,3 %
Waste removal and recycling	0,6 %	6,7 %	21,2 %	0,0 %	5,8 %
Administrative and general services	0,3 %	4,5 %	9,0 %	0,0 %	3,1 %
Communications and telecommunications	1,6 %	0,7 %	1,5 %	3,6 %	1,7 %
Finance and insurance	0,4 %	0,0 %	0,0 %	1,2 %	0,9 %
Other markets	24,8 %	6,0 %	16,2 %	16,7 %	18,4 %
Total	100 %	100 %	100 %	%	%

10. In 2019 more than 700 decision-making cases involving fines were completed. The total amount of the fine is UAH 8.67 billion (over USD 335.45 million).

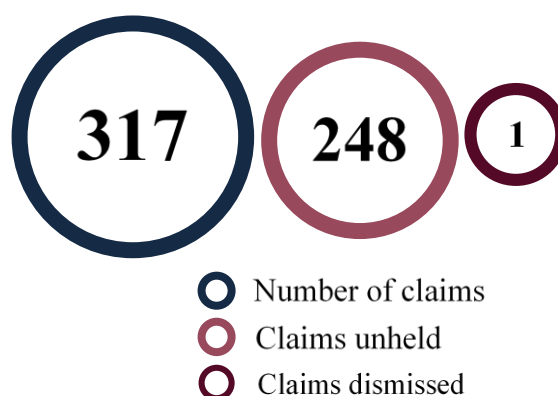
Figure 1. Fines Imposed by the AMCU in 2018-2019, USD million**Figure 2. Fines paid in 2014-2019 USD million**

11. Amount of the economic impact in 2019 is estimated as UAH 4,33 billion (over USD 167,53 million), which is more than 8% compared to 2018 (4,0 billion UAH/over USD 144,27 million), as a result of the AMCU's measures aimed at terminating competition-related violations.

Figure 3. Economic Impact in 2018-2019, USD million

12. In 2019, the AMCU initiated 317 court cases to enforce payment of fines imposed for competition-related infringements. In 248 cases, courts upheld the AMCU's claims; only in 1 case the AMCU's claims were dismissed.

Figure 4. Court claims by the AMCU in 2019



13. In 2019, 255 AMCU's decisions in competition violation cases were challenged in courts. 16 decisions were annulled in whole or in part.

2.1.1. Anticompetitive actions of public authorities

14. In 2019 many of ceased violations (457) were anticompetitive actions of public authorities, thereof:

Table 2. Anticompetitive actions of public authorities in 2019

235	68	67	44	43
Actions or inactivity which resulted or can result in distortion of competition (Part 1, Article 15 of the Law of Ukraine "On Protection of Economic Competition")	Granting advantages that put other market participants in a privileged position (paragraph 7, Part 2, Article 15 of the Law of Ukraine "On Protection of Economic Competition")	Creation of unfavorable or discriminatory conditions of activities (paragraph 8, Part 2, Article 15 of the Law of Ukraine "On Protection of Economic Competition")	Inducement / creation condition for violation (Article 17 of the Law of Ukraine "On Protection of Economic Competition")	Other violations

2.1.1.1 Case example #1

15. AMCU's Recommendations No. 68-pk dated 12.12.2019:

- The Committee, by its resolution No. 02/364-p dated 24.10.2019 started the consideration of the case on the grounds of committing by the Ministry of Infrastructure violation of Art. 15 of the Law of Ukraine "On Protection of Economic Competition", in the form of anticompetitive actions of the public authority. By order of the Ministry of Infrastructure, it has set a single rate of charge for air navigation services at the approach and in the airport area in the amount of EUR 210.0 for Boryspil International Airport and in the amount of EUR 411.0 for all other airports in the country.
- During the consideration of the case, AMCU issued binding recommendations that obliged the Ministry of Infrastructure to amend its Order, eliminating discriminatory conditions for granting certain entities privileges or other advantages that put them in a privileged position regarding competitors.

2.1.1.2 Case example #2

16. AMCU's Decision No. 113-p dated 06.02.2020:

- The Committee considered the case No. 130-26.13/126-17 on the grounds of violation by the Ministry of Infrastructure of the legislation on protection of economic competition in the form of anticompetitive actions of the authorities which can result in restriction or distortion of competition.
- The actions of the Ministry of Infrastructure, which show signs of violation of the legislation on protection of economic competition, consist in establishing by its order No. 316 dated 27.05.2013 "On Port Fees" the sizes of port fees rates and discounts to them without economic justification and in the absence of methodology for calculating such rates, and without examining the impact of these rates and fees on competition.
- During 2019, the Ministry of Infrastructure has not developed and approved the Methodology for calculating port rates. Moreover, according to the information provided to the Committee in 2019, the Ministry of Infrastructure does not plan to develop and approve this Methodology in the near future.
- The AMCU has adopted decision No. 113-p, which obliged the Ministry of Infrastructure to develop and approve in a transparent and non-discriminatory manner the Methodology for calculating port fees rates that can be charges at seaports within 4 months.

2.1.2. Anticompetitive concerted practices

17. In 2019 the AMCU ceased 799 above-mentioned violations, thereof:

Table 3. Anticompetitive concerted practices in 2019

775	13	11
Distortion of results of bids, auctions, tenders (Clause 4, Part 2, Article 6 of the Law of Ukraine "On Protection of Economic Competition")	Similar actions (omissions) which resulted or can result in distortion of competition (Part 3, Article 6 of the Law of Ukraine "On Protection of Economic Competition")	Other violations

2.1.2.1 Case example #1

18. AMCU's Decision No. 200-p dated 04.04.2019:

- Violation of provisions of paragraph 4 Part 2 Article 6 and Part 1 Article 50 of the Law of Ukraine "On Protection of Economic Competition" in the form of anticompetitive concerted actions concerning the distortion of the results of tenders for the procurement of catering services under contract in 22 regions, conducted by the Ministry of Defense of Ukraine.
- Total fine imposed – UAH 869,27 million (over USD 33,63 million).

2.1.2.2 Case example #2

19. AMCU's Decision No. 697-p dated 10.10.2019:

- PHILIP MORRIS SALES AND DISTRIBUTION LLC together with PHILIP MORRIS UKRAINE PrJSC, JT INTERNATIONAL UKRAINE PJSC together with JT INTERNATIONAL COMPANY UKRAINE PrJSC, IMPERIAL

TOBACCO PRODUCTION UKRAINE PJSC together with IMPERIAL TOBACCO UKRAINE (enterprise with foreign investments), BRITISH AMERICAN TOBACCO SALES AND MARKETING UKRAINE LLC together with A/T B.A.T.-PRILUCKY TOBACCO COMPANY PrJSC (hereinafter together – Manufacturers) and TEDIS UKRAINE LLC through their actions, which consisted in similar actions (omissions), namely, in: 1) maintaining the manufacturers of contractual relations for the supply (distribution) of cigarettes only with TEDIS UKRAINE LLC, as the sole (common) for all manufacturers distributor in the market for the initial sale by cigarette manufacturers; and 2) the creation and maintenance of artificial barriers to entry into the market for the initial sale by cigarette manufacturers to other economic entities by formulating inflated conditions for entering into contracts with potential distributors, which are also not met by TEDIS UKRAINE LLC, restricted access to the national market for the initial sale by cigarette manufacturers to other economic entities.

- Total fine imposed – UAH 6,5 billion (over USD 251,49 million).

2.1.3. 2.1.3 Abuse of dominance

20. In 2019 AMCU ceased 268 above-mentioned violations, thereof:

Table 4. Abuse of dominance in 2019

124	122	9	7	6
Setting prices / conditions for the purchase or the sale, which could not be established under conditions of significant competition in the market (clause 1, Part 2, Article 13 of the Law of Ukraine “On Protection of Economic Competition”)	Actions or inactions of market participants having a dominant position in the market that led or may lead to prevention, elimination or restriction of competition or impairment of interests of other entities or consumers (Part 1, Article 13 of the Law of Ukraine “On Protection of Economic Competition”)	Application of different conditions to equivalent transactions without objectively justified reasons (clause 2, Part 2, Article 13 of the Law of Ukraine “On Protection of Economic Competition”)	Refusal to purchase of sell goods (clause 5, Part 2, Article 13 of the Law of Ukraine “On Protection of Economic Competition”)	Other violations

2.1.3.1 Case example #1.

21. AMCU’s Decision No. 598-p dated 05.09.2019:

- The Committee has completed consideration of the case of violation of the legislation on protection of economic competition by economic entities on the national market of primary sale of nitrogen mineral fertilizers.
- Based on the results of the collection and analysis of the case file, it is established that the OSTCHEM Group held a dominant position in the specified market and committed the following violations.
- In 2014 - 2015, by manipulating the purchase prices of natural gas for fertilizer production by reselling natural gas at inflated prices within the OSTCHEM Group, thereby artificially raising the cost, it set such prices for the sale of nitrogenous mineral fertilizers on the market that would be impossible if there was significant competition in the market (Part 1, Article 13 of the Law of Ukraine “On Protection of Economic Competition”).

- In March 2017, with the prepayment for fertilizers obtained by the Group through NF Trading Ukraine LLC from 170 entities under the sales contracts concluded, all OSTCHEM Group factories almost simultaneously discontinued production of nitrogen fertilizers during the spring field work and did not take any measures to restore production for 4 months, thereby limited the production of fertilizers, which caused (or could cause) harm to other entities – buyers (clause 4, Part 2, Article 13 of the Law of Ukraine “On Protection of Economic Competition”).
- Total fine imposed – UAH 107 million (over USD 4,14 million).
- Obligatory split applied to plants of the OSTCHEM Group (SIEVIERODONETSKE OBIEDNANNIA AZOT PrJSC, AZOT PJSC, RIVNEAZOT PrJSC) as a remedy for the abuse of dominance.

2.1.3.2 Case example #2

22. AMCU’s Decisions No. 785-p - 800-p dated 19.07.2019:

- The Committee has adopted decisions in 16 cases on violation of the legislation on protection of economic competition in the form of abuse of dominance.
- The Committee found that 16 Groups (each of which include regional gas companies) and between December 2015 and August 2019 had dominant position in the markets for integrated gas distribution and supply services to domestic consumers within their respective territories.
- These companies, from October 2018 to August 2019, in the course of making commercial calculations, added to the volumes of used natural gas by consumers more than the amounts determined by meters, that is, they abused their dominance in the market of complex service for distribution and supply of natural gas to domestic consumers within the territory of the licensed activity of the joint stock company “Operator of the gas distribution system”, which led to the detriment of consumers' interests, which would be impossible if there was significant competition in the market (Part 1, Article 13 and Part 2, Article 50 of the Law of Ukraine “On Protection of Economic Competition”).
- Total fine imposed – UAH 278,28 million (over USD 10,77 million).

2.1.4. Unfair competition

23. In 2019 the AMCU ceased 168 above-mentioned violations, thereof:

Table 5. Unfair competition in 2019

141	12	11	4
Dissemination of misleading information (Article 15 ¹ of the Law of Ukraine “On Protection against Unfair Competition”)	Achievement of undue advantage in competition (Article 15 of the Law of Ukraine “On Protection against Unfair Competition”)	Unlawful use of trademarks (Article 4 of the Law of Ukraine “On Protection against Unfair Competition”)	Other violations

2.1.4.1 Case example #1

24. AMCU's Decision No. 31-p/TK dated 31.05.2019:

- Skypark Group LLC distributed advertising information in promotional booklets and withing the Internet about the location of a parking lot designed for a large number of cars, near the house No. 16 of the residential complex "Park Land" on a land plot not owned by Skypark Group LLC on the right private property or other property rights. Such actions are in violation of Article 15¹ of the Law of Ukraine "On Protection against Unfair Competition" in the form of dissemination of misleading information by informing an indefinite circle of persons of false information, in particular as a result of the chosen method of their presentation, which may affect the intentions of these persons to purchase goods, works, services of this economic entity.
- Skypark Group LLC is obliged to remove the parking lot information from the promotional booklets and to inform the AMCU.
- Fine imposed – UAH 3 million (over USD 116,074).

2.1.4.2 Case example #2

25. AMCU's Decision No. 39-p/TK dated 21.06.2019:

- "Join Up!" LLC disseminated to an unspecified circle of persons false (by misrepresentation) information, in particular, regarding the involvement of air carriers of "Rose Wind Company" LLC and "Ukraine International Airlines" PrJSC in the tourist product of "Join Up!" LLC in the part of air transportation in the directions of Egypt and Turkey for a certain period of time, which could influence the intentions of these persons to purchase (order) the tour operator services of "Join Up!" LLC.
- Such actions are in violation of Article 15¹ of the Law of Ukraine "On Protection against Unfair Competition" in the form of dissemination of misleading information.
- Fine imposed – UAH 1,5 million (over USD 58,037).

2.2. Mergers and acquisitions

26. Among mergers authorized by the AMCU, share of permits on the agricultural market is the biggest (about 21 % of total amount of permits granted) as well as industrial markets share (about 16,7 %) and markets of fuel and energy complex, housing and utilities (about 11,1 %).

27. Types of economic entities' mergers authorized by the AMCU in 2019 are:

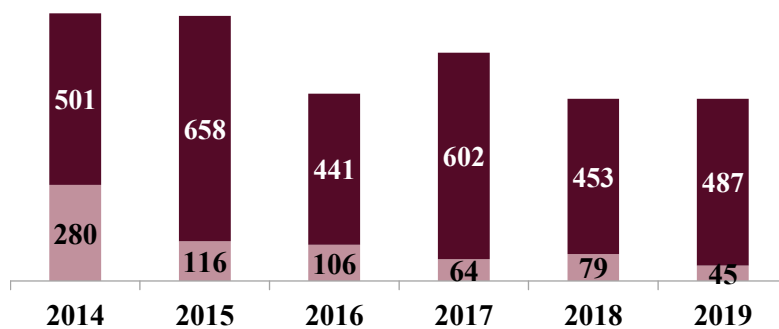
- 68,3 % acquisition of stocks and shares;
- 21,4 % acquisition of control in other forms;
- 3,4 % joint establishment of an economic entity.

28. In 2019:

- 68 applications for granting permission for concerted actions were considered;

- 62 permits for concerted actions were granted;
- 532 applications on mergers of economic entities were considered;
- 181 (over 34 %) applications were submitted by foreign investors or enterprises with the participation of foreign investors; The share of such applications has decreased by 25% compared to 2018;
- 439 permits for mergers were granted.

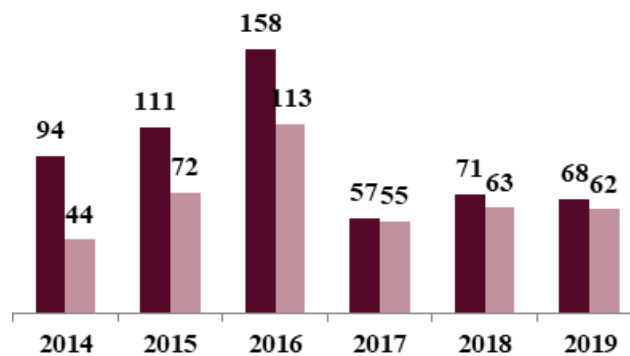
Figure 5. The Number of Merger Applications Considered in 2014 – 2019



Note:

- Total number of merger applications considered
- Number of applications that have been returned without consideration, because they do not meet requirements of the AMCU and/or recalled by the applicants

Figure 6. The Number of Applications and Permits for Concerted Actions in 2014 – 2019



Note:

- Total number of applications received by the Committee in a process of monitoring the concerted actions of economic entities
- Total number of permits for concerted actions provided

2.2.1. Case example #1

29. AMCU's Decision No. 286-p dated 25.04.2019:

- Merger Participants:
 - “SENALIOR INVESTMENTS LIMITED” (Nicosia, the Republic of Cyprus)
 - “DRAMPISCO LIMITED” (Nicosia, the Republic of Cyprus)
- Market: national markets for cast iron, coal coke, metallurgical products, namely: commodity cast iron, semi-finished products of carbon (non-alloy) steel (rolled rectangular, square section); corners and profiles of hot-rolled, large-grade profiles of carbon (non-alloy) steel (hot-rolled channels); steel rails (for railway and tram tracks); coke-chemical products;
- SENALIOR INVESTMENTS LIMITED violated provisions of paragraph 4 Article 50 of the Law of Ukraine “On Protection of Economic Competition” in the form of a concentration through the acquisition of shares of DRAMPISCO LIMITED, which provides for the excess of 50% of the votes in the highest governing body of the company, without obtaining the appropriate permission of the bodies of the Antimonopoly Committee of Ukraine required.
- Total fine imposed – UAH 58 million (over USD 2,24 million).

2.2.2. Case example #2

30. AMCU's Decision No. 263-p dated 18.04.2019:

- Merger Participants:
 - “PRIVATE LIMITED LIABILITY COMPANY METINVEST B.V.” (The Hague, The Kingdom of the Netherlands)
 - “DNIPROVSKYY KOKSOKHIMICHNYY ZAVOD” PrJSC (Kamyanske, Ukraine)
- Market: national markets of blast furnace coke, coke nuts, coke breeze and chemical products for coking and processing coal tar, namely: ammonium sulfate, coal tar, coal tar benzene, coal tar pitch, coal oils, coal oils coke-chemical raw materials for the production of carbon black; phenolates, polymers of the benzene compartment.
- “Metinvest B.V. Private Limited Liability Company” was obliged to sell at least 50% of the total pitch, coal absorption oil within seven years and to sell at least 50% of the total amount of coke nuts, coke breeze to companies not related to the control of “Private Limited Liability Company Metinvest B.V.” and “DNIPROVSKYY KOKSOKHIMICHNYY ZAVOD” PrJSC at market prices.
- The permission was granted to “Private Limited Liability Company Metinvest B.V.” for the acquisition of the shares of “DNIPROVSKYY KOKSOKHIMICHNYY ZAVOD” PrJSC, which provides for the excess of 50% of the votes in the supreme governing body of the company.

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

3.1. Competition Advocacy

31. The AMCU's competition advocacy methods:
- providing recommendations and proposals to regulators and public authorities;
 - promoting initiatives before the President and the Government of Ukraine on the necessity of amending the current regulatory framework;
 - introducing proposals to the Ukrainian Parliament relating to competition policy formation in various spheres of the national economy;
 - approval of drafts of normative legal acts and decisions of public authorities and local government that may affect competition;
 - providing recommendations to market participants, conducting communication campaigns.
32. The AMCU has paid special attention to the analysis of the competition impact of sectoral regulation in such markets:

3.1.1. Electricity Markets

33. Following the Law of Ukraine "On the Electricity Market", a new liberalized model of the wholesale electricity market was introduced in Ukraine from July 1, 2019.

34. The AMCU continuously monitors the compliance of the new energy market with the legislation on protection of economic competition. In Recommendation No. 59-рк dated 25.10.2019, the Committee noted the existing problems that were identified during the preliminary market analysis and the ways to solve them; the Recommendations were sent to market participants for their implementation

35. According to the timetable for implementation of the Law of Ukraine "On the Electricity Market" during the transition period, the Committee considered 55 regulatory acts, in particular six primary documents that regulate the entire electricity market: Market Rules, Rules for the Retail Electricity Market, Day-Ahead and Intraday Market Rules, Transmission System Code, Distribution System Code, Commercial Electricity Accounting Code.

3.1.2. Oil, Petroleum and Gas Markets

36. To resolve the problematic issues of the functioning of the markets for petroleum products, the AMCU proposed the Government to instruct the relevant authorities to accelerate the development of relevant draft regulatory acts. These acts include the procedure for maintaining a single register of licensees and places of circulation of licenses, production licenses, fuel trade, and areas of production, storage, wholesale and retail sale of fuel; amend the list of licensing bodies, approved by Resolution of the Cabinet of Ministers of Ukraine No. 609 dated 05.08.2015, regarding the definition of executive agencies authorized to issue licenses for production, storage, wholesale and retail trade of fuel.

37. The AMCU proposed the Government to entrust the Ministry of Energy and Coal Industry of Ukraine, the Ministry of Economic Development and Trade of Ukraine, the State Fiscal Service of Ukraine to develop and approve a plan of measures to create conditions for reducing dependence on imported oil products in favor of expansion own production and diversification of import of oil products.

3.1.3. Housing and Utility Markets

38. The AMCU has adopted binding Recommendation No. 66-rk dated 05.12.2019 to the Ministry of Development of Communities and Territories of Ukraine, the Committee to promote competition and remove barriers to access to the markets for the disposal of household waste. The Ministry of Development of Communities and Territories of Ukraine shall, in due course, implement measures to amend the procedure for conducting a competition for the provision of services for the removal of household waste, approved by the Cabinet of Ministers Resolution No. 1173 dated 16.11.2011.

39. In 2019, the Committee elaborated several draft by-laws designed to implement the Law of Ukraine “On Housing and Utility Services”.

40. Due to the efforts of the Committee, the Resolution of the Cabinet of Ministers of Ukraine “On Approval of the Rules for the Provision of Thermal Energy Supply Services and Model Contracts for the Provision of the Thermal Energy Supply Service” was adopted and includes the following AMCU’s recommendations:

- the payment receipt must be received no later than ten days before the final date of payment for the service;
- the contractor must carry out recalculations during the month independently;
- fine to the contractor for each day of failure to provide the service;
- a penalty for each day of delivering it not in full or of inadequate quality.

3.1.4. Outdoor Advertising Market

41. In May 2019, the Committee approved a report on the results of a study of the outdoor advertising market. The report contains an analysis of problematic issues that occur on the market and the solution of which requires, among other things, the introduction of amendments to regulatory legal acts, as well as recommended ways to solve them. The proposals presented in this report on the need to solve problems that exist on the market and adversely affect competition in the market are complex. They cannot be resolved exclusively within the Committee's powers. In this connection, the report was sent to the Government to provide relevant instructions to the interested and responsible authorities.

3.1.5. Pharmaceutical Markets

42. On February 21, 2019, the AMCU adopted the Advisory Explanations No. 5-pp on the application of the legislation on protection of economic competition by participants of the markets of medicines in vertical relations on deliveries and promotion of goods. This Explanations outlines, in particular, the possible risks for the competition from the use of discounts and marketing programs in vertical agreements of pharmaceutical market participants.

43. The Committee provided the Ministry of Health of Ukraine with the obligation to consider the Recommendation No. 44-pk dated 13.12.2018 on the adoption of measures

aimed at developing competition in regional retail markets of medicines by creating clear conditions for the admission of as many pharmacies as possible to the implementation of social programs of the Government Ukraine aimed at ensuring the availability of essential medicines for the population. According to the recommendations of the Committee, the Ministry of Health of Ukraine drafted relevant resolutions, which were adopted by the Cabinet of Ministers of Ukraine.

44. The introduction of a reference pricing for medicines included in the National List of Essential Medicines was the subject of binding recommendations of the Committee No. 43-рк dated 13.12.2018 to the Ministry of Health of Ukraine. Following the Committee's Recommendations, the Cabinet of Ministers of Ukraine adopted Resolution No. 426 dated 03.04.2019 "On reference pricing for certain medicines purchased for budgetary funds". It approved the Register of marginal wholesale and marketing prices for certain medicines purchased for budgetary funds, which is being updated. State regulation was established on July 1, 2019.

45. Due to the measures adopted by the Committee, the Ministry of Health of Ukraine in 2019 created a transparent and effective competition in the markets of medicines with the same active substance, which will be implemented on preferential terms or free of charge.

3.1.6. Consumer Goods Markets

46. On November 12, 2019, the Committee approved the Report on the results of the 2016-2018 national chicken meat market study. In the course of the study, investigations were started concerning infringements that contained signs of violations of the legislation on protection of economic competition in the form of abuse of a dominance.

3.2. 3.2. The AMCU's activities as a Public Procurements Appeal Body

47. 11,147 public procurement appeals were received during the year 2019.

48. Total financial amount of public procurement appeals considered is UAH 268,4 billion (over USD 10.38 billion).

49. Obligations to eliminate the violations during public procurement procedures were imposed in the total financial amount of UAH 112,9 billion (over USD 4,37 billion).

50. 19,595 decisions taken.

Figure 7. Received appeals, 2015-2019

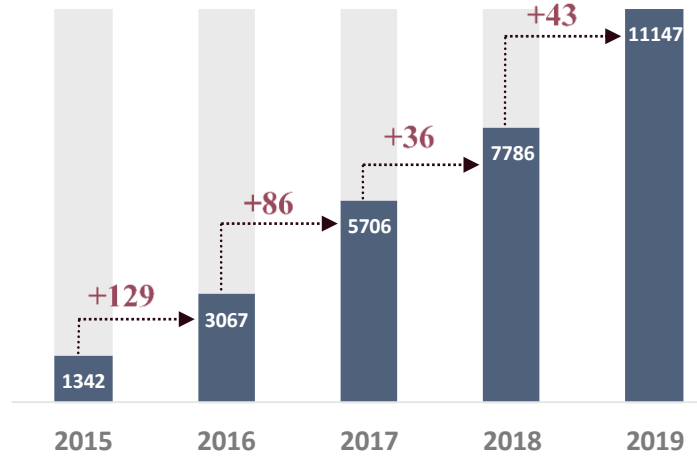
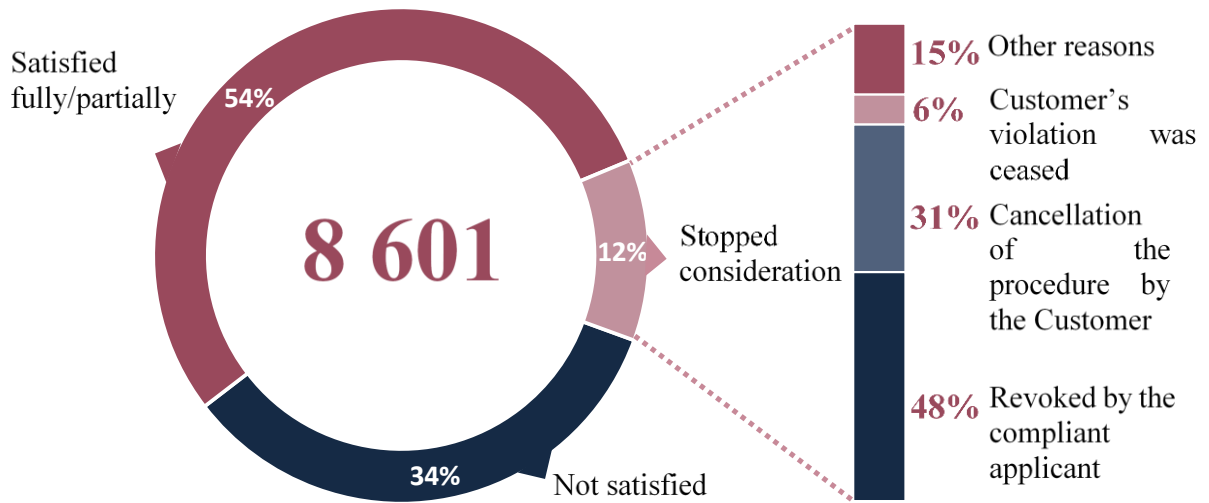


Figure 8. The structure of complaints considered, 2019



3.3. The AMCU's activities as an Authorized Body on State Aid Monitoring and Control

51. According to Ukrainian legislation, the Antimonopoly Committee of Ukraine is also the Authorized Body on State Aid Monitoring and Control.

52. The AMCU prepared a number of draft laws and secondary legislation aimed to resolve the state aid issues in Ukraine in accordance with requirements of the Association Agreement between the European Union and the European Atomic Energy Community and their member states, of the one part, and Ukraine, of the other part the current regulatory framework in this area is still being improved, where the AMCU plays a leading role in initiating development and adoption of the corresponding regulatory acts.

53. Legislative processes in the field of state aid:

- The Cabinet of Ministers of Ukraine adopted its Resolution, drafted by the AMCU, amending Rules of Procedure of the Government of Ukraine and providing procedure of prior notification to AMCU if the legal act drafted by Ukrainian authority could provide support to an economic entity. At the same time the Cabinet of Ministers of Ukraine adopted it's a new version of its Rule of Procedure and canceled the Resolution drafted by AMCU without the approval of AMCU.
- AMCU approved Map of Regional Aid by its Resolution No. 20-pp dated 24.10.2019.

54. Since 02.08.2017 (the date of entry into full force of the Law of Ukraine "On State Aid to Economic Entities") the AMCU exercises powers conferred upon it by the national legislation in a field of state aid monitoring and control, in particular by taking decisions on compatibility or incompatibility of state aid for competition; on the termination and refund of illegally received state aid.

55. During 2019, the AMCU adopted 324 decisions, namely:

- 269 – on recognizing state support as not being state aid;
- 75 – recognizing compatibility of state aid for competition;
- 12 – on recognition of new state aid as incompatible with competition.

56. Transparency of the AMCU activities in this area is ensured by open and accessible State Aid Portal, which is situated at the official website of the AMCU and contains information about state aid register, as well as state aid decisions and cases of the Committee.

57. As an authorized body in charge of state aid to economic entities monitoring and control, the AMCU exercises its powers granted by the Law of Ukraine "On State Aid to Economic Entities". During 2019 the AMCU:

- received 605 state aid notifications;
- reviewed 281 draft legal acts for their consideration on compliance with the state aid legislation;
- provided over 7,180 consultations to state aid providers.

4. Resources of the competition authority

58. In 2019 the amount of budget allocations to the AMCU for exercising its powers in accordance with the Law of Ukraine “On the State Budget of Ukraine for 2019” (as amended) constituted UAH 221,97 million (USD 8,59 million on the date of budget approval).

59. The actual number of employees in the AMCU bodies is 640, thereof:

- In regional offices – 353;
- In the central office – 287.

60. Reform of regional offices:

- On November 28, 2019, the AMCU began the next phase of reforming its territorial offices.
- The current phase will entail the reduction of territorial offices to 6 interregional: North, West, South, South-West, South-East and East. In other regional centers separate departments without status of legal entity will be organized.
- The reform of the regional offices brings the AMCU closer to a clearly defined goal - to build an open authority that systematically performs its direct functions of competition protection and is guided by state interests. Reducing the administrative costs of the Committee will create a flexible and effective system for the protection of competition and the elimination of violations. Enforcement in the regions will be finally unified. Reducing dependence from regional authorities will more effectively combat the anticompetitive actions of these authorities - creating barriers to entry, discriminatory conditions in land tenure, communal property, access to resources, etc.

5. References to new reports and studies on competition policy

61. In 2019, the AMCU studied functioning of markets with competition issues, which resulted in publishing of the corresponding reports (available only in Ukrainian):

- Report on the results of the rail freight market study in Ukraine for 2017 – 2018. Approved by the AMCU on January 17, 2019 [Звіт про результати дослідження ринку перевезення вантажів залізничним транспортом в Україні за 2017 – 2018 роки схвалено АМКУ 17 січня 2019 року].
<http://www.amc.gov.ua/amku/doccatalog/document?id=147166&schema=main>
- Report on the results of outdoor advertising market study. Approved by AMCU on May 23, 2019 [Звіт про результати дослідження ринку розміщення зовнішньої реклами схвалено АМКУ 23 травня 2019 року].
https://amcu.gov.ua/storage/app/sites/1/Docs/doslidzhennya_rynkiv/%D0%97%D0%B2%D1%96%D1%82%20%D0%97%D0%BE%D0%B2%D0%BD%D1%96%D1%88%D0%BD%D1%8F%20%D1%80%D0%B5%D0%BA%D0%BB%D0%B0%D0%BC%D0%B0.pdf

-
- Report on the results of the 2016-2018 national chicken meat market study. Approved by the AMCU on November 12, 2019 [*Звіт про результати дослідження загальнодержавного ринку м'яса курячого в часових межах 2016-2018 років схвалено АМКУ 12 листопада 2019 року*]
<https://amcu.gov.ua/storage/app/sites/1/%20%D0%BA%D1%83%D1%80%D1%8F%D1%82%D0%B8%D0%BD%D0%B0.pdf>
 - Annual report on granting of state aid to economic entities in Ukraine for 2018. Approved by the AMCU on August 29, 2019. [Річний звіт про надання державної допомоги суб'єктам господарювання в Україні за 2018 рік затверджено АМКУ 29 серпня 2019 року]
<http://pdd.amc.gov.ua/main/infographicsreport/reportdetails?reportId=125>