

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

**Cancels & replaces the same document of 22 November 2017**

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

**-- 2016 --**

**5-6 December 2017**

This report is submitted by Ukraine to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 5-6 December 2017.

**JT03423575**

**Note by Turkey**

The information in this document with reference to “Cyprus” relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the “Cyprus issue”.

**Note by all the European Union Member States of the OECD and the European Union**

The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

## *Table of contents*

<b>Ukraine</b> .....	<b>4</b>
<b>1. Changes to competition laws and policies, proposed or adopted</b> .....	<b>4</b>
<b>2. Enforcement of competition laws and policies</b> .....	<b>5</b>
2.1. Actions against anticompetitive practices, including agreements, abuse of monopoly (dominant) position and unfair competition .....	5
2.1.1. Abuse of monopoly (dominant) position.....	8
2.1.2. Anticompetitive actions of bodies of state power, bodies of local self-government, bodies of administrative and economic management and control. ....	9
2.1.3. Anticompetitive concerted practices .....	10
2.1.4. Unfair competition .....	13
2.2. Mergers and acquisitions .....	14
2.2.1. Case example #1.....	15
<b>3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies</b> .....	<b>16</b>
3.1. Competition advocacy .....	16
3.1.1. Markets of wholesale trade of medicinal products.....	16
3.1.2. Markets of communication and informatization .....	17
3.1.3. Financial markets .....	17
3.1.4. Markets of electrical energy, heat supply and housing and utilities.....	18
3.1.5. Natural gas market .....	20
3.2. Activity of the Committee as an appellate body in the sphere of public and state procurements	21
<b>4. Resources of competition authorities</b> .....	<b>22</b>
<b>5. References to new reports and studies on competition policy issues</b> .....	<b>22</b>

### **Figures**

Figure 1. Structure of ceased violations in 2016 by sector and type, % .....	6
Figure 2. Imposed fines, mln UAH .....	7
Figure 3. Fines Imposed on Offenders by the Bodies of the Committee in 2015-2016, UAH million... 7	7
Figure 4.....	8
Figure 5.....	9
Figure 6.....	10
Figure 7.....	13
Figure 8. The Number of Applications for Authorizing the Concentration of Economic Entities Considered by the Committee in 2011 – 2016 .....	14
Figure 9. Dynamics of the Number of Applications Considered by the Bodies of the Committee in the Course of Exercising Control Over Concerted Actions of Economic Entities and Granted Authorizations for Performing Such Practices Proceeding from the Result of Consideration.....	14
Figure 10.....	21
Figure 11.....	22

## *Ukraine*

### **1. Changes to competition laws and policies, proposed or adopted**

1. In the reporting period legislative and regulatory activities of the Committee were focused at further update of legal framework of the state protection of economic competition of Ukraine in line with the tasks of reforming the national economy, fulfillment of the provisions of the Association Agreement between Ukraine and the EU.
2. In the reporting year a deep reform of legal regulation, control over business entities concentration took place. The system of thresholds, upon exceeding of which the participants of the concentration are obliged to obtain the permission of the Antimonopoly Committee, has been changed.
3. Due to this, concentrations, which do not significantly affect commodity markets in Ukraine, are withdrawn from the scope of control. A simplified procedure for consideration of applications for receipt of concentration permit was introduced; preliminary consultations with applicants are envisaged.
4. The mentioned changes are enshrined in Article 24 of the Law of Ukraine "On Protection of Economic Competition" and in updated provisions of the Concentration Regulation, approved on May 18, 2016.
5. Recommendations defining the Committee's approach to assessment of horizontal concentrations (Horizontal merger guideline) of business entities were adopted. In 2016 the system of regulatory acts, which regulate the procedural principles of control over the provision of state aid to economic entities was basically created. Three orders of the Committee were adopted, 8 drafts of governmental resolutions were developed. This will ensure the application of the provisions of the Law of Ukraine "On State Aid to Business Entities", which is coming into force on August 2, 2017. More detailed information is provided in section "Activities on Implementation of the System of State Aid Monitoring and Control".
6. Improvement of the normative regulation of the practice of applying sanctions for violating the legislation on protection of economic competition continued. Taking into account the experience gained, a new version of the recommendations on calculating fines for violations was adopted.
7. The Committee carried out work on development of amendments to certain Laws of Ukraine, which concerned the issues of economic competition protection, restriction of monopolism.
  - The draft Law of Ukraine "On Amendments to Article 9 of the Law of Ukraine" On Antimonopoly Committee of Ukraine" concerning bringing it in line with the Constitution of Ukraine" (regarding the appointment and dismissal of the Chairman of the Antimonopoly Committee of Ukraine) was submitted for consideration by the Cabinet of Ministers of Ukraine.
  - The draft Law of Ukraine "On Amendments to Article 19 of the Code of Administrative Legal Proceedings of Ukraine" was developed by the Antimonopoly Committee of Ukraine on its own initiative in connection with the need to determine the jurisdiction of administrative cases related to protection of economic competition.

- The draft Law of Ukraine "On Amendments to the Law of Ukraine" On Protection of Economic Competition "and Article 9 of the Law of Ukraine" On Access to Public Information "on the consideration of cases by the bodies of the Antimonopoly Committee of Ukraine" was elaborated.

8. During 2016 the Committee adopted 10 orders for the update and development of the legal framework of its activity, namely :

- «On Approval of Amendments to Some Regulations of the Antimonopoly Committee of Ukraine to Bring Them in Line with the Legislation" dated 26.04.2016 № 12-rp registered with the Ministry of Justice on May 17, 2016.
- «On Approval of Amendments to the Regulations on Concerted Actions and the Regulation on Concentration" dated 21.06.2016 № 14-rp registered with the Ministry of Justice on 1 August 2016.
- «On Approval of the Procedure for State Aid to Business Entities " dated 12.04.2016 № 8-rp registered with the Ministry of Justice on May 6, 2016.
- «On Approval of the Procedure for Submission and Processing Reports on New State Aid and Amending the Terms of Current State Aid» dated 04.03.2016 N 2-rp registered in the Ministry of Justice on April 4, 2016.
- «On Approval of Amendments to the Regulation on Tenders for the Sale of Shares of Joint Stock Companies" dated 15.03.2016 N 4-rp registered with the Ministry of Justice on April 5, 2016.
- «On Amending Annex 1 to the Regulation on the Sale of Single Property Complexes of State Enterprises, which are assigned to groups C, D in privatization objects classification "dated 04.10.2016 № 22-rp registered with the Ministry of Justice on November 2, 2016.
- «On Approval of Amendments to the Regulation on Tenders for the Sale of Shares of Joint Stock Companies" dated 15.09.2016 № 1720, registered with the Ministry of Justice on September 29, 2016.
- «On Approval of Amendments to the Regulation on Tenders for the Sale of Shares of Joint Stock Companies" dated 15.03.2016 N 4-rp registered with the Ministry of Justice on April 5, 2016.
- «On Approval of Amendments to the Regulation on Tenders for the Sale of Shares of Joint Stock Companies" dated 15.09.2016 № 20-рп, registered with the Ministry of Justice on September 29, 2016.
- «On Amending the Instruction on the Organization of Security, Access Control and Ensuring Storage of Material Valuables of the Antimonopoly Committee of Ukraine" dated 10.05.2016 № 13-rp registered with the Ministry of Justice on June 2, 2016.

## 2. Enforcement of competition laws and policies

### 2.1. Actions against anticompetitive practices, including agreements, abuse of monopoly (dominant) position and unfair competition

9. The Committee considered 4 775 applications and appeals in respect of violations of the legislation on protection of economic competition in 2016 that is 22 percent less than in 2015.

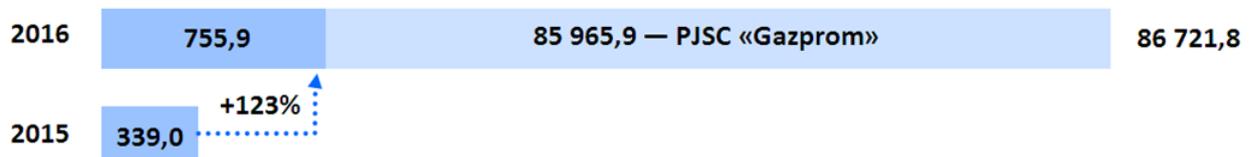
10. Following the results of measures taken by the Committee, 3 072 violations of the legislation on protection of economic competition have been terminated. Out of those mentioned, 1322 (43%) infringements were related to the abuse of a monopoly (dominant) position, 283 (9%) – to anticompetitive concerted practices of economic entities, 782 (26%) – to anticompetitive actions of public authorities (bodies of state power, bodies of local self-government, bodies of administrative and economic management and control), 276 (9%) – to unfair competition.

11. Of the total ceased violations: 1 338 (44%) were discontinued by taking decisions on the application of the statutory responsibility; 1 734 (56%) – through providing recommendations by the Antimonopoly Committee bodies.

**Figure 1. Structure of ceased violations in 2016 by sector and type, %**

Market	Anticompetitive concerted actions of economic entities	Abuse of monopoly position	Anticompetitive actions of authorities	Unfair competition	Total with other
Housing and utilities	1,4	38,6	15	0	22,2
Fuel and energy complex	18,7	24,7	0,25	1,4	13,5
Transport	14,1	13,8	7,8	2,9	9,8
Agro-industrial complex	16,25	2,6	0,25	28,25	7,8
Administrative services	0	0	25,7	0	6,6
Healthcare, pharmaceuticals and medical products	8,5	7,9	3,6	9,8	6,5
Services of land management and leasing real estate services	1,4	2,4	14,45	0,35	5,1
Collection, removal, recycling and disposal of household waste	0,35	2,5	7,5	0,7	3,2
Construction and construction materials	10,6	0,15	0,4	3,6	2,5
Funeral services	0	0,6	4,3	0,4	1,5
Connection of city buildings	0	1,7	0,4	0	0,9
Communication and telecommunications	0,4	0,2	0,25	2,2	0,5
Maintenance and repair of motor vehicles	1,1	0,15	0	0,4	0,2
Related services in the provision of administrative services	0	0	0,4	0	0,1
Other markets	27,2	4,7	19,7	50	19,6
Total	100	100	100	100	100

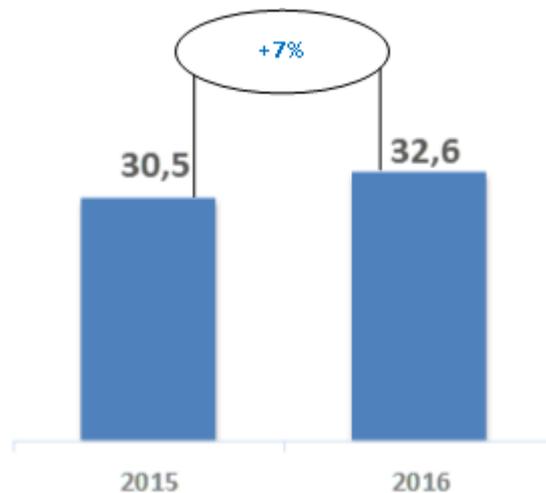
Figure 2. Imposed fines, mln UAH



12. In order to ensure timely payment of fines imposed on violators of legislation on economic competition protection, and on other issues envisaged by the law, the Committee's bodies during 2016 appealed to the court for its action in 462 cases according to Article 25 of the Law of Ukraine "On the Antimonopoly Committee of Ukraine". During the year the courts satisfied 297 appeals of the Antimonopoly Committee bodies (64.3% of submitted ones); only satisfaction of 4 of such appeals was finally refused (0.9% of the total number).

13. During the reporting year 178 decisions of the Antimonopoly Committee of Ukraine related to the violation of the legislation on economic competition protection were appealed in the court, which is 15.9% of the decisions taken during the year. 26 decisions we recognized invalid fully or partially, which is 2.3% of the total number of the decisions of the Committee's bodies on violations of the legislation on economic competition protection.

Figure 3. Fines Imposed on Offenders by the Bodies of the Committee in 2015-2016, UAH million



### 2.1.1. Abuse of monopoly (dominant) position.

Figure 4.

872	383	25 42* Other violations
Actions or inaction 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 (p. 1. Art. 13)	Setting conditions for purchase or sale, which could not be established under the conditions of the existence of significant competition (i. 1 p. 2, Art. 13)	Application of different conditions to equivalent transactions without objectively justified reasons (i. 2 p. 2, Art. 13)

#### Case example #1

14. Decision of the Antimonopoly Committee of Ukraine dated 16.12.2016 № 551-p
15. To recognize that from 2013 to September 2015 (inclusive) **LLC "TEDIS UKRAINE"** occupied a monopoly (dominant) position in the national market of cigarette distribution in accordance with part two of Article 12 of the Law of Ukraine "On Protection of Economic Competition".
16. To acknowledge that LLC "TEDIS UKRAINE" violated the legislation on protection of economic competition, stipulated by items 1 and 5 of part two of Article 13 of the Law of Ukraine "On Protection of Economic Competition".
17. To oblige LLC "TEDIS UKRAINE" to eliminate the reasons for the occurrence and to cease the violation of the legislation on protection of economic competition in the form of establishing such prices that it would not have been possible to establish under conditions of the existence of significant competition in the market (including the development and application of transparent and economically justified mechanism of pricing for distribution and sales of cigarettes, which should be based on the analysis of the ratio of profitability and costs for each area of activity, focusing, in particular, on the sales to the final consumers and sales on conditions of self-delivery).
18. To oblige LLC "TEDIS UKRAINE" to send to the Antimonopoly Committee of Ukraine, within a period of three years from the date of receipt of the decision, information on 10 (ten) largest items in terms of sales volumes, prices of purchase and sale of cigarettes, established: in its own retail chain, for business entities licensed for wholesale tobacco products trade, for economic entities licensed for the retail sale of tobacco products.
19. To oblige LLC "TEDIS UKRAINE" to eliminate the reasons of the occurrence and to cease the violation of the legislation on protection of economic competition in the form of imposing restrictions on the volume of cigarettes ordered by the customers and the conditions that promote them.
20. To report to the Committee on the execution of the decision providing the supporting documents.
21. Fine—431 million UAH

*Case example #2*

22. Decision of the Antimonopoly Committee of Ukraine of 22.01.2016 № 18-p

23. **PJSC GAZPROM** (Moscow, Russian Federation) enjoys the monopolistic (dominating) position in the all-national market of natural gas transmission by the mains pipelines throughout the territory of Ukraine, as the buyer.

24. Gazprom's inactivity in the period between 2009 and 2014 and 11 months of 2015 in the form of failure to take steps to ensure receipt of services of natural gas transit by main pipelines along the territory of Ukraine on justified terms, would have been impossible had there existed strong competition in the market, and such inactivity led to infringement of interests of Naftogaz of Ukraine (Kyiv, Ukraine). Failure to take steps by Gazprom included complete disregard of all requests by Naftogaz of Ukraine to make changes to the respective contract related to the price and terms of the services of natural gas transit by main pipelines along the territory of Ukraine, considering year on year reduction of natural gas supplies for further transit through the territory of Ukraine, and bringing the price to the justifiable level. The said disregard led to considerable economic losses for Naftogaz of Ukraine. This inactivity constitutes a violation stipulated by part 1 of article 13 and para.2 of article 50 of the Law of Ukraine "On protection of economic competition", in the form of abuse of one's monopolistic (dominating) position in the market of service on natural gas transit by main pipelines through the territory of Ukraine.

25. The said decision mandated that Gazprom should terminate this violation by ensuring receipt from Naftogaz of Ukraine, of services of natural gas transit by main pipelines along the territory of Ukraine on justified terms.

*The penalty is UAH 85.9 Bn*

26. As of 31.12.2016 the Economic Court of the City of Kyiv by its decision of December 5, 2016 granted a judgement in favour of the Antimonopoly Committee of Ukraine ruling to collect from Gazprom a fine for UAH 85.9 Billion, and UAH 85.9 billion of penalty for untimely payment of the fine, and mandating to immediately terminate the violation.

27. 22.02.2017 Kyiv Economic Court of Appeal upheld the decision of the Economic Court of 05.12.2016, which effective as of 22.02.2017 became final and enforceable. Thus, JSC "Gazprom" is obliged to pay to the state budget of Ukraine UAH 171.9 billion (85.9 billion UAH fines and UAH 85.9 billion of penalties) and stop the violation.

**2.1.2. Anticompetitive actions of bodies of state power, bodies of local self-government, bodies of administrative and economic management and control.**

**Figure 5.**

257	301	102	81	41*Other violations
Actions or inaction consisting of inducement or creating conditions for violations of legislation on economic competition protection (Art. 17)	Actions or inaction that caused or may cause prevention, elimination, restriction or distortion of competition (p. 1, Art. 15)	Providing advantages to economic entities that put them in a privileged position in relation to competitors (para 7, p. 2, Art. 15)		Creating unfavourable or discriminatory conditions (para 8, p. 2, Art. 15)

### 2.1.3. Anticompetitive concerted practices

Figure 6.

225		42	16 *Other violations
The distortion of the results of bids, auctions, contests, tenders (para 4 p. 2, Art. 6)	Making similar actions on the commodity market which led or may lead to preventing, restricting or eliminating competition (p. 3, Art.6)		

#### Case example #1.

28. Decision of AMCU on case № 480-p of October 28, 2016

29. In the period between January 2013 and January 2016 (inclusive) LLC "Zoloty Ekvator", LLC "WOG Retail", "Okko Naftoproduct", Alliance Holding LLC, "AMIK Ukraine" (formerly, till 05.08.2015 "LUKOIL Ukraine"), SOKAR PETROLEUM Ltd. and Parallel-M LTD, simultaneously or almost simultaneously (at intervals of several days), changed (raised or lowered) retail prices for gasoline A-95 and diesel fuel by indicating the same level prices on their gas stations' information boards.

30. The analysis of the market situation undertaken by the Committee found out that there were no objective reasons for these actions.

31. In particular, the values of the correlation coefficients calculated for the series of the specified retail gasoline A-95 and diesel fuel prices displayed by business entities on their information boards indicate the interdependence of all price trajectories and are a sign of their full similarity.

32. Meanwhile, from 20 to 80% of the total volume of petroleum products is sold by business entities at prices lower than the prices displayed on the information boards, due to their on-going loyalty programs, promotion campaigns, etc. However, the final retail price of gasoline A-95 and diesel (with discounts) is not publicly available, open or predictable for consumers.

33. While selling retail light petroleum products through a network of stationary gas stations, the defendants were running loyalty programs and organizing various promotion campaigns, whereby consumers were buying light oil products, including gasoline A-95 and diesel at prices lower than the retail prices displayed on the information boards. The terms and rules of consumers' participation in loyalty programs and promotions are put into effect by internal administrative documents (orders, etc.). A prerequisite for consumer's participation in loyalty programs and promotions is the availability of special loyalty cards.

34. In the event that a consumer accepts a public offer at a gas station's information board and becomes a client of the company, in the future s/he will be given a discount for light petroleum products, which represents the final retail fuel price for the consumer. Whether a Defendant would award a consumer with a discount to retail prices, displayed on the information boards, was conditioned by the Consumer's agreement to purchase a certain volume of fuel or spend a certain amount of money for it.

35. Retail prices for sales of gasoline A-95 and diesel fuel with discounts vary for different loyalty programs and promotions run by the Defendants.

36. Thus, a consumer makes the decision to fill the motor vehicle at a market player's gas station while s/he is approaching the gas station, based on the retail fuel prices displayed on the information board and his /her own awareness of the possibility to purchase fuel at a discount.

37. Meanwhile, the final retail prices of gasoline A-95 and diesel fuel (taking into account discounts) are not publicly available, open and predictable for consumers due to the use by the Defendants of complicated and opaque loyalty programs. Thus, to assess his/her personal economic benefits from buying fuel at each of the Defendants' gas stations; the consumers need to do mathematical calculation of final retail price of gasoline A-95.

38. Therefore, the retail markets for light petroleum products are noted for significant informational asymmetry, adversely influencing the consumers' ability to assess the competitive advantages offered by market players through prices and make a reasoned decision when selecting a particular seller and brands of petroleum products at gas stations.

39. Even though they Defendants set and maintain similar retail prices for gasoline A-95 and diesel fuel on the information boards, they still sell a portion of the fuel at prices lower than those displayed on the information boards, thereby avoiding open price competition among themselves.

40. Commitment by the Defendants of similar actions, in particular, the establishment and maintenance of very similar retail prices of gasoline A-95 and diesel fuel on the information boards of stationary filling stations for no objective reason to do so, led to distortion of price competition between them, and encouraged other market players to set their retail prices at an unreasonable level, which restricted competition in the market as a whole. Such actions limit the consumers' ability to fairly choose a particular market player based on the price criterion and, as a consequence, infringe on their interests.

41. The Antimonopoly Committee made a decision on the case No. 480-r dated October 28, 2016, recognizing the activities of the LLC "Zoloty Ekvator", LLC "WOG Retail", PE "Okko naftoprodukt", "Alliance Holding LLC", "SOCAR PETROLEUM" LLC, Parallel-M LTD ", "AMIK Ukraine "(formerly, until 05.08.2015 - LUKOIL-Ukraine ")), which consisted of:

42. Setting and maintenance of similar retail prices for A-95 gasoline and diesel fuel on the information boards of stationary filling stations;

43. organizing conditions of retail sale of A-95 gasoline and diesel fuel, which limited the consumer's access to information on the final retail prices due to the use of sophisticated and opaque loyalty programs, terms of running promotions and eligibility for discounts,

44. to be in violation of the legislation on the protection of economic competition stipulated in Article 50, paragraph 1, and in part 3 of Article 6 of the Law of Ukraine "On the Protection of Economic Competition", in the form of anticompetitive concerted actions by committing similar actions in the retail markets of light oil products, which led to the restriction of price competition.

45. By its Decision the Committee obliged business entities to terminate the violations, in particular, by means of introduction:

46. Clear, open and transparent criteria for the provision to consumers of discounts to prices for retail light petroleum products, displayed on the information boards;

47. A mechanism of fairly informing consumers about actual retail prices of each brand of gasoline and diesel fuel sold at stationary gas stations, including taking into consideration any loyalty programs, promotions and discounts granted.

48. Total penalty of UAH 204.3 million

#### *Case example #2*

- LLC “System Group Ukraine”,
- LLC “UBS LTD”

#### Violation

49. The violation was committed, which is envisaged by item 4 of part two of Article 6, item 1 of Article 50 of the Law of Ukraine "On Protection of Economic Competition" in the form of anticompetitive concerted actions related to the distortion of tender results for purchase by Ukrainian State Enterprise of Posts “Ukrposhta” of: electronic cash registers [announcement about procurement procedure № 165040, published at the web-portal of the Authorized body, bulletin dated 12.09.2014 № 84 (12.09.2014)]; electronic fiscal data recorders [announcement about procurement procedure № 171523, published at the web-portal of the Authorized body, bulletin dated 01.10.2014 № 97 (01.10.2014)].

#### Status of case consideration

50. The decision was appealed by LLC “System Group Ukraine” to the Commercial Court of the city of Kyiv. The Kyiv Commercial Court of Appeals left Company’s claims unsatisfied. The Committee’s decision entered into force. The Committee prepares a statement of case to the Commercial Court for collection of fine and delay interest. LLC “UBS LTD” appealed the Committee’s decision to the Commercial Court of the city of Kyiv. Currently the Committee’s decision regarding the appeal of LLC “UBS LTD” is being appealed in the Kyiv Commercial Court of Appeals.

51. Fine: 40 592 thousand UAH

#### *Case example #3*

- LLC “Inter-GTV”, LLC “Euro Metal Invest”

#### Violation

52. The violation was committed, which is envisaged by item 4 of part two of Article 6, item 1 of Article 50 of the Law of Ukraine "On Protection of Economic Competition" in the form of anticompetitive concerted actions related to the distortion of tender results for the purchase of: parts of railway locomotives, tram car wagons and rolling stock; fasteners and fittings and parts thereof; mechanical devices for traffic management (moulded rubber-technical products for rolling stock) (code ДК 30.20.4) [announcement № 125327 about procurement procedure published in the newsletter "Public Procurement Bulletin" № 9(27.05.2014) dated 27.05.2014], conducted by the state enterprise of logistic support of railway transport of Ukraine "Ukrzaliznychpostach".

### Status of case consideration

53. The Committee's decision was appealed to the Commercial Court of the city of Kyiv by LLC "Inter-GTV". Currently the case is being considered.

54. Fine: 5 571 thousand UAH

### 2.1.4. Unfair competition

Figure 7.

246	13	8	6	3 *Other violations
Dissemination of misleading information (Art. 15 <sup>a</sup> )	Unauthorized use of others' trademarks, promotional materials, packaging (Art. 4)	Achieving unlawful advantages in competition (Art. 15)	Unfair competition (Art. 1)	

### Case example #1

- SE «Starokostyantynivsky dairy factory»,

55. By initiation of the Antimonopoly Committee

### Content of the case

56. The violation of the SC «Starokostyantynivsky dairy factory» lied in production and sale of cream butter, on the packaging of which, in particular, information on the name of the product is given - cream butter (sweet cream butter) and information on the manufacturing of the product in accordance with the State Standard 4399:2005 «Cream butter. Specifications» (hereinafter – DSTU 4399:2005), while the product contained non-dairy fats.

### Reasons for conclusion

57. Item 5.3.3 of DSTU 4399:2005 prohibits application of any fats and cream for manufacturing butter, except those received from cow's milk. Thus, spreading on the packaging of cream butter information about the name and characteristics, in particular, that the mentioned product is manufactured according to DSTU 4399:2005, while it contains non-dairy fats, which is not envisaged by requirements of DSTU 4399:2005, is misleading as regards the actual composition of the mentioned product and may influence the intentions of those persons to buy cream butter manufactured by those business entities, which is the violation of legislation on protection from unfair competition.

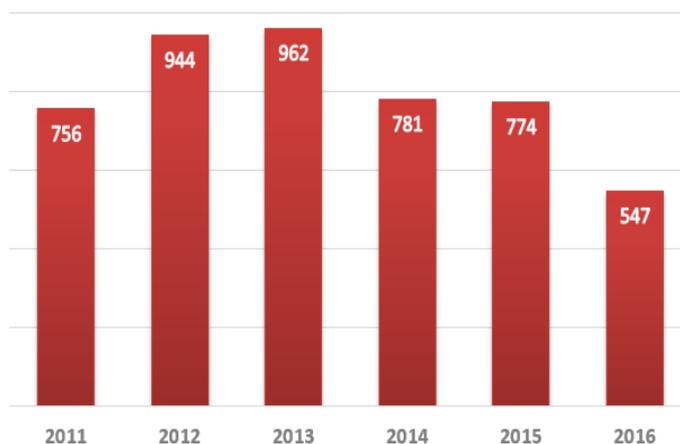
### Conclusion

58. It was recognized that the subsidiary company «Starokostyantynivsky dairy factory» committed the violation, envisaged by Article 151 of the Law of Ukraine «On Protection from Unfair Competition», in the form of spreading misleading information through presenting to undefined circles of persons false information on the packaging of the product «sweet cream butter selyans'ke» manufactured by it, regarding its name and characteristics, which may influence the intentions of undefined circles of persons to buy

this product. The fine in the amount of 790 thousand UAH was imposed on the enterprise for the mentioned violation.

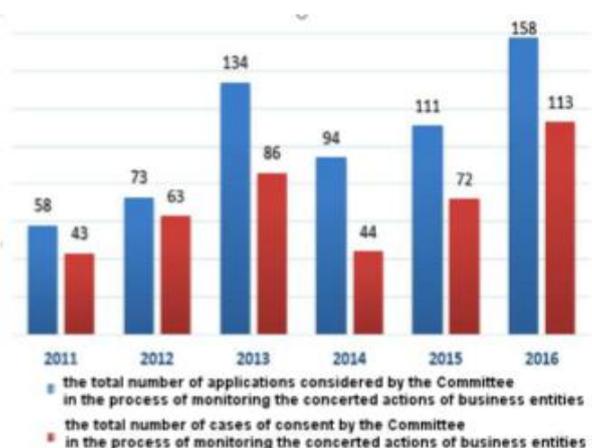
## 2.2. Mergers and acquisitions

**Figure 8. The Number of Applications for Authorizing the Concentration of Economic**



**Entities Considered by the Committee in 2011 – 2016**

**Figure 9. Dynamics of the Number of Applications Considered by the Bodies of the Committee in the Course of Exercising Control Over Concerted Actions of Economic Entities and Granted Authorizations for Performing Such Practices Proceeding from the Result of Consideration**



### 2.2.1. Case example #1

#### *Merger Participants:*

- Business entity within the company “Brocity Investments Limited” (the city of Limassol , Cyprus), Limited Liability Company “Infox” (the city of Kyiv, Ukraine) and a physical person – citizen of Ukraine;
- LLC “CUB-GAZ” (the city of Kharkiv, Ukraine)

#### *Content of declared merger*

59. Acquisition by the business entity within the company “Brocity Investments Limited”, Limited Liability Company “Infox” and a physical person – citizen of Ukraine of control over the Limited Liability Company “CUB-GAZ”, in particular by assigning the citizen of Ukraine, who already is in the position of the director of the Limited Liability Company “Infox”, for the position of the chairman of the supervisory board of the Limited Liability Company “CUB-GAZ”.

#### *Market*

60. Natural gas and as condensate.

#### *Reasons for conclusion*

- a physical person – citizen of Ukraine was assigned for the position of the chairman of the supervisory board of the Limited Liability Company “CUB-GAZ” on 11.02.2016, and, at that, he already was in the position of the director of LLC “Infox”;
- assigning or election to the position of the chairman, deputy chairman of the supervisory board, board, other supervisory or executive body of the business entity of a person, who is already in one or several mentioned positions in other business entities, according to item 2 of part two of Article 22 of the Law of Ukraine “On Protection of Economic Competition” is recognized as merger of business entities;
- since respective values of merger participants, with account of control relationship, following the results of the year preceding the date of merger, exceed the thresholds established by part one of Article 24 of the Law of Ukraine “On Protection of Economic Competition”, there is a condition of the necessary prior receipt of the permit of the Antimonopoly Committee of Ukraine bodies for merger of business entities;
- merger, which require permit according to part one of Article 24 of the Law of Ukraine “On Protection of Economic Competition”, is prohibited before granting permit for its implementation.

#### *Conclusion*

61. Business entity within the company “Brocity Investments Limited”, Limited Liability Company “Infox” and a physical person – citizen of Ukraine committed a violation, envisaged by item 12 of Article 50 of the Law of Ukraine “On Protection of Economic Competition” in the form of implementation merger by gaining control over the Limited Liability Company “CUB-GAZ”, in particular, by assigning the citizen of Ukraine, who already is in the position of the director of the Limited Liability Company

“Infox”, for the position of the chairman of the supervisory board of the Limited Liability Company “CUB-GAZ” without receipt of the respective permit of the Committee bodies, availability of which is mandatory.

62. Total fine — 3 015 thousand UAH

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

#### 3.1. Competition advocacy

63. The Antimonopoly Committee promotes competition in many different ways. We cover areas of the economy where competition is limited, we publish reports on how we can improve competition in certain sectors, we advise government departments on their work, including public and public procurement, as well as in particular, we comment on the proposed legislation, and respond to the requests of citizens. We promote the idea of a competitive culture for the general public by publishing guidelines, organizing and participating in conferences and seminars, and interacting with business organizations.

64. During 2016 the Antimonopoly Committee of Ukraine worked out in terms of assessment of impact on competition 1331 draft regulatory acts, decisions of other bodies of executive power, local self-government, administrative and economic management and control. Of these, approval of 289 documents was refused. Comments and proposal were provided to 177 draft acts as regards bringing them in line with the requirements of the legislation on the protection of economic competition.

65. In 24 cases, the proposals of the Antimonopoly Committee have been taken into account.

66. On the basis of Article 20-1 of the Law of Ukraine "On the Antimonopoly Committee of Ukraine", the Committee constantly examines draft laws registered at the Verkhovna Rada of Ukraine, submitted by people's deputies of Ukraine.

67. According to the results of the expert examination, the Committee made proposals to the relevant committees **The Verkhovna Rada of Ukraine on 137 such bills.**

68. The Antimonopoly Committee of Ukraine has paid special attention to the analysis of the impact on the competition of sectoral regulation of such markets:

##### *3.1.1. Markets of wholesale trade of medicinal products*

69. The Committee agreed with the draft Resolution of the Cabinet of Ministers of Ukraine «On Approval of License Conditions for Conducting Business Activity of Medicinal Products Production, Wholesale and Retail Trade, Import (except active pharmaceutical ingredients)», developed by the State Service of Ukraine on Medicines and Drugs Control.

70. The Committee provided comments to the draft resolution on expediency of prevision of certain transition period so that all wholesale licensees have possibility to obtain good distribution practice (GDP) certificates, which would enable them to provide services of medicines and related products storage to other business entities.

71. Because according to the text of the draft the same requirements would apply to the medicines importers as to the wholesale licensees, in particular, regarding pharmaceutical warehouses, the Committee proposed to establish clear and transparent requirements to the importer's material and technical base; describe the term «warehouse area» in such wording, which would comply with the doing business requirements of both production and import of medicinal products.

72. At the same time with the purpose of competition development and also accessibility of pharmacies to disabled people the Committee suggested to envisage possibility of location pharmacies in the premises of sanatorium and spa establishments, hotels, airports, stations, in an isolated room on any floor and without arranging a separate independent exit outside, provided that these facilities are equipped with passenger lifts and/or lifts in a technically good condition.

73. In the CMU Resolution adopted on 30.11.2016 № 929 «On Approval of License Conditions for Conducting Business Activity of Medicinal Products Production, Wholesale and Retail Trade, Import (except active pharmaceutical ingredients)», which took effect on 20.12.2016, substantive remarks of the Committee were taken into account.

### *3.1.2. Markets of communication and informatization*

74. The Committee reviewed the draft decision of the National Commission for State Regulation of Communications and Informatization «On Approval for the Procedure for Determination of Markets of Certain Telecommunication Services, Their Analysis and Determination of Telecommunications Operators, Providers with Significant Advantage in the Markets of Such Services and Recognition Void the NCCIR Decision dated 25.08.2011 № 444».

75. Having reviewed the draft decision the Committee remarked that provisions of the mentioned draft do not fully comply with the norms of the Law of Ukraine «On Economic Competition Protection», in particular:

- Draft procedure does not fully disclose the procedure for analysing telecommunication services markets by indicators, set out in the European Commission's Guidelines for Market Analysis and Assessment of Significant Market Opportunities within the Regulatory Framework of the European Community on Electronic Communications Networks and Services;
- Draft procedure does not contain procedures for analysing telecommunications services markets under the condition of joint (collective) domination;
- The draft procedure does not cover the mechanism of public discussion of the draft event that can significantly affect a certain market of telecommunication services.

76. Taking into account the above the Committee refused to agree on the mentioned draft decision.

### *3.1.3. Financial markets*

77. The Committee reviewed the draft resolution of the Ministry of Finance of Ukraine «Some Issues of Payment Pensions, Cash Aid and Salaries to the Public Sector Employees».

78. Having reviewed the draft resolution the Committee remarked that provisions of the mentioned draft do not fully comply with the norms of the Law of Ukraine «On Economic Competition Protection», in particular:

- PJSC «Oschadbank» is determined as the only bank authorized to service payment of pensions and state aid to internally displaced persons.
- Establishment of criteria for selection of banks that may lead to the prevention, elimination, restriction or distortion of competition.

79. Taking into account the above the Committee refused to agree on the mentioned draft resolution.

#### *3.1.4. Markets of electrical energy, heat supply and housing and utilities*

80. The Committee within its competence provided comments and proposals for improvement, in particular, such regulations and their harmonization with the legislation on economic competition protection:

- Draft Law of Ukraine "On Electricity Market of Ukraine", developed by the Ministry of Energy and Coal Mining of Ukraine;
- Draft Resolution of the CMU:

*“On Approval of the License Conditions for the Centralized Water Supply and Sewage Business”, developed by the NKREKP;*

- Draft orders of Ministry of Energy and Coal Mining of Ukraine:

*«On Approval of the Code on Electrical Networks»;*

- 7 draft resolutions of the NKREKP ;
  - «On Amending the Procedure for Auctions of Bandwidth Allocation in the Interstate Power Networks»;
  - «On approval the Procedure for the Estimated Wholesale Market Pricing of Electricity»;
  - «On Approval of Amendments to the Methodology of Calculating Payment for Connection of Electrical Installations to Electric Networks»;
  - «On approval of the Procedure for Ensuring Electricity Service Quality Standards»;
  - «On Approval of Amendments to the Procedure for Determination of Required Income from Electricity Transmission by (local) Electric Networks in Case of Application of Incentive Regulation»;
  - «On Approval of the Procedure for Design of Tariffs for Centralized Supply of Cold Water, Sewerage (Using Internal Building Systems)»;
  - «On Approval of the Procedure of Establishment of Tariffs for Centralized Supply of Cold Water, Sewerage» .

81. However, the Committee elaborated and approved without comment, the following:

- Draft Law of Ukraine "On Amending Some Legislative Acts of Ukraine Concerning Drinking Water and Drinking Water Supply", developed by the Ministry of Regional Development, Construction and Housing and Communal Services of Ukraine;
- Draft CMU resolutions:

- «On Separation of Natural Gas Transportation Activity", developed by the Ministry of Economic Development and Trade of Ukraine;
  - Draft Resolution of the Ministry of Regional Development, Construction and Housing and Communal Services of Ukraine "On Amending the Procedure for Design of Tariffs for Services of Maintenance of Houses and Facilities and Adjacent Territories»;
  - Draft Order of the Ministry of Regional Development, Construction and Housing and Communal Services of Ukraine "On Approval of Amendments to the Procedure for Communication to Consumers the Information about the List of Utility Services, the Structure of Prices/Tariffs, Changes in Prices/Tariffs Justifying Their Necessity and on Taking into Account the Respective Positions of Local Communities»;
  - Draft NKREKP resolutions:
    - «On Amending the Procedures for Setting Tariffs for Licensees of Electricity Supply at Regulated Rates and/or Electricity Transmission by (Local) Networks in Case of Application of Incentive Regulation»;
    - «On Approval of the Procedure for Design of Tariffs for Heat Energy, Its Production, Transportation and Supply, Services of Central Heating and Hot Water Supply»;
    - «On Approval of the Procedure of Establishment Tariffs for Central Heating and Central Hot Water Supply»;
    - «On Approval the Procedures for Setting Tariffs for Heat Energy, Its Production, Transportation, Supply»;
82. After considering a number of draft legal documents the Committee found that the provisions of these drafts do not fully comply with provisions of the Law of Ukraine "On Protection of Economic Competition".
83. Given the above, the Committee refused to approve these drafts, including:
- Draft Law of Ukraine "On Commercial Accounting of Utility Services", developed by the State Agency for Energy Efficiency and Energy Preservation of Ukraine;
  - Drafts of CMU resolutions
    - «On Amending the Procedure of Setting Tariffs for Heat Energy, Its Production, Transportation and Supply, Services of Central Heating and Hot Water Supply", developed by the Ministry of Regional Development, Construction and Housing Utilities of Ukraine;
    - «On Approval of Licensing Conditions in the Sphere of Heat Supply ", developed by the NKREKP ;
  - Draft Resolution of the Ministry of Regional Development, Construction and Housing Utilities of Ukraine "On Amending to the Rules for Supply of Central Heating, Hot and Cold water and Sewerage»;
  - Draft of NKREKP resolutions:
    - «On Amendments to the Procedure of Approval and Adjustment of Investment Component in the Tariff for Electricity»;
    - «On Approval of the Procedure for Accounting Heat Losses in Heat Networks in Tariffs for Heat Energy, Its Production, Transportation, Supply»;
    - «On approval of the Procedure for Design of Tariffs for Centralized Cold Water Supply, Sewerage».

### 3.1.5. Natural gas market

84. Comments and proposals on ways of improvement of such regulations and their harmonization with legislation on economic competition protection, in particular, to:

#### *NKREKP draft resolutions*

- «On Approval of the Methodology of Determination and Calculation of the Tariff for Distribution of Natural Gas»;
- «On Approval of License Conditions for Business Activity in the Natural Gas Market»;

85. The Committee reviewed and approved without comments a number of draft regulations, including:

#### *Drafts of CMU resolutions :*

- «On Amending Paragraph 20 of the Model Contract for the Sale of Natural Gas by Natural Gas Suppliers with Special Responsibilities Regarding the Household Consumers and Religious Organizations Needs», developed by the Ministry of Economic Development and Trade of Ukraine;
- «On Amending the Plan of Restructuring of the Public Joint Stock Company "National Joint Stock Company "Naftogaz of Ukraine" with the Purpose of Separation of Transportation and Storage Activities (Pumping, Extraction) of Natural Gas", developed by the Ministry of Energy and Coal Industry of Ukraine;
- «On Approval of Natural Gas Reserve Stock" developed by the Ministry of Energy and Coal Industry ;
- «On Separation of Natural Gas Transportation», developed by the Ministry of Economic Development and Trade of Ukraine;

#### *NKREKP draft resolutions:*

- «On Approval Changes to the Code of the Gas Distribution Systems»;
- «On Approval of the Methodology of Determination and Calculation of the Tariff for the Services of Storage (Pumping, Extraction) of Natural Gas as Regards Gas Storages with Regulated Access». After considering a number of draft regulations the Committee found that the provisions of these drafts do not fully comply with the Law of Ukraine "On Protection of Economic Competition".

86. Given the above, the Committee rejected to agree the mentioned drafts, in particular:

- «On Amending Paragraph 20 of the Model Contract for the Sale of Natural Gas by Natural Gas Suppliers to the Household Consumers and Religious Organizations», developed by the NKREKP ;
  - Some aspects of the use of state property objects to ensure the distribution of natural gas", developed by the NKREKP;
  - «Some aspects of the use of state property objects to ensure the distribution of natural gas", developed by the Ministry of Economic Development and Trade of Ukraine;
  - «On Amending Paragraph 20 of the Model Contract for the Sale of Natural Gas by Natural Gas Suppliers with Special Responsibilities Regarding the

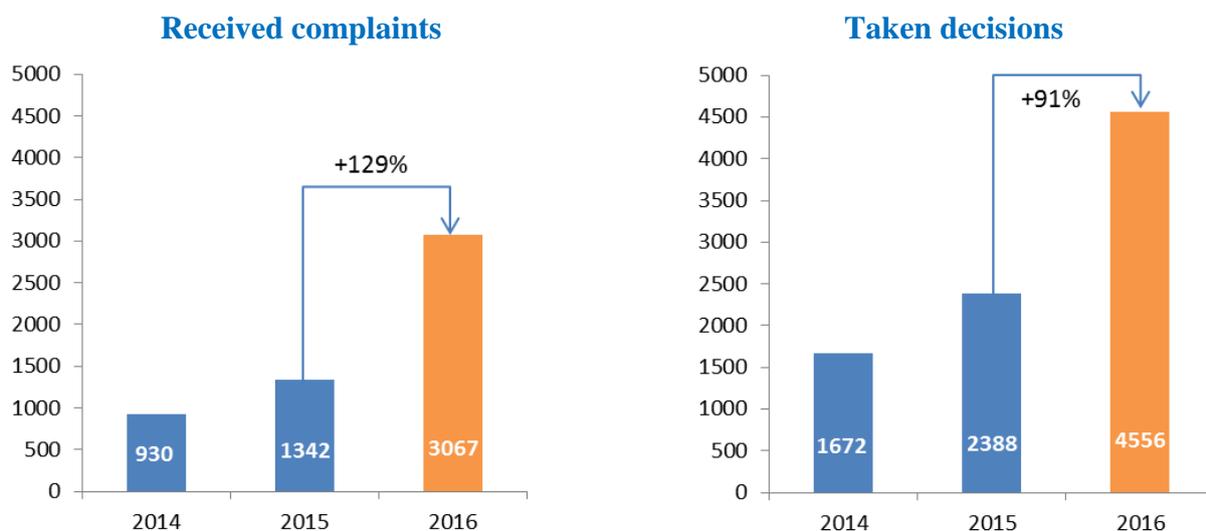
Household Consumers and Religious Organizations Needs", developed by the NKREKP;

*NKREKP draft resolutions:*

- «On Approval of Amendments to the Code of Gas Transportation System and Amending NKREKP Resolution dated September 30 , 2015 № 2494»;
- «On Amending the Model of Natural Gas Transportation Contract »;
- «On Approval of Amendments to the Code of Gas Transportation System and Amending NKREKP Resolution dated September 30, 2015 № 2494»;
- «On Approval of Amendments to the Model Natural Gas Transportation Contract».

### 3.2. Activity of the Committee as an appellate body in the sphere of public and state procurements

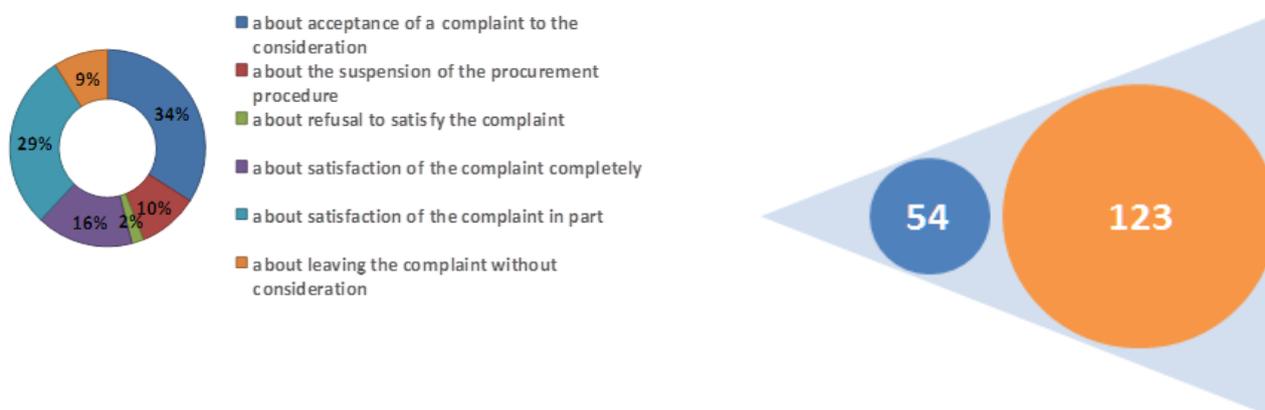
Figure 10.



87. In 2016 412 meetings of the Board were held, which is by 26% more than in 2015. At that, in connection with the significant increase in the number of complaints, on average 7.4 complaints per one Board meeting are received for consideration (not taking into account examining the merits of the case), while in the previous year there were 4,1 complaints for consideration on average.

88. With the same number of staff of the Department for appealing decisions in the sphere of state procurement - 25 staff members - as of 31.12.2015 and 31.12.2016, the number of received complaints per one staff member increased 2,3 times from 54 to 123 complaints.

Figure 11.



89. Despite a significant increase in the workload, a quality of work is the indicator of the number of Board's decisions challenged by the court — 126 or 2.8% from the total number of decisions taken in the reporting year (correspondingly 3.4% in the last year). At that, in 2016 5 Board decisions were cancelled by the court and are reviewed by the cassation court (no decision was cancelled finally), which constitutes 0.1% of the total number of taken decisions (in 2015 – 0.1% correspondingly).

#### 4. Resources of competition authorities

90. In 2016 the amount of budget allocations for the exercise of the powers of the Antimonopoly Committee of Ukraine in accordance with the Law of Ukraine «On the State Budget of Ukraine for 2016» dated 28.12.2015, No. 928-VIII with changes was: UAH 68,7 million or thousand USD 2 683 279 (official average exchange rate of National Bank of Ukraine in 2016 constituted UAH 25.6030 per one US dollar) or USD 2 926 978 (the exchange rate as of the date of the budget law approval which is December, 2015) or EUR 2 426 575 (official average exchange rate of National Bank of Ukraine in 2016 constituted UAH 28.3115 per one Euro)

91. As of December 31, 2016: the number of employees in the central office of the Committee was 231. Of these with higher education — 229 persons (including economic — 75 (33%), legal — 87 (38%), with academic degree — 10). The total number of employees in the system of bodies of the Antimonopoly Committee is 649 people.

92. Staff turnover: in the central office — 19%, in the territorial offices — 19%. Total in the system— 19%.

#### 5. References to new reports and studies on competition policy issues

93. AMCU investigated the functioning of markets with competition policy issues and published in 2016 such reports that are available only in Ukrainian:

- Report on the results of the market research on the implementation of the arrested property by conducting electronic auctions;

- Report on the results of the market research services for accepting cash payments from individuals for housing and communal services;
- Report on the results of the market research services for maintaining parking areas and ensuring the storage of vehicles on them;
- Report on the results of a comprehensive study of electricity and energy coal markets (is a winner of ICN advocacy contest as announced in May 2017) ;
- Report on the results of the impact study of the Decree of the Cabinet of Ministers of Ukraine dated 11.11.2015 № 937 "Issues of protection of objects of state and other forms of ownership" for economic competition in the security services market.