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Directorate for Financial and Enterprise Affairs COMPETITION COMMITTEE

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN UKRAINE

-- 2012 --

This report is submitted by Ukraine to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 30-31 October 2013.

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1. Proposed and adopted amendments to competition laws and policies

1.1. Brief information on the provisions of anti-trust legislation and related areas of law

- 1. In 2012, the Antimonopoly Committee of Ukraine acted on the grounds of:
 - The Law of Ukraine "On the Anti-Monopoly Committee of Ukraine" that specifies the status, tasks, powers, formation procedure of the competition authority and the key principles of its interaction with other Ukrainian government authorities;
 - The Law of Ukraine "On the Protection of Economic Competition" that contains the main substantive and procedural provisions in relation to government protection of economic competition in business, in particular, in relation to responsibility for anti-competitive concerted action business entities, abuse of monopoly, anti-competitive behaviour of the government authorities, restrictive activities, and principles of monitoring of concerted action and concentration of business entities;
 - The Law of Ukraine "On the Protection from Unfair Competition" that contains the key substantive provisions on counteraction to unfair competition;
 - The Law of Ukraine "On the Public Procurement" that specifies the principles of proceedings of the Anti-Monopoly Committee of Ukraine as the authority of appeal in the area of public procurement.
- 2. The focus of legislative changes to the competition law of Ukraine is determined by state of theart principles and approaches developed in the area by international institutions.

1.2. Other relevant measures, including new guidelines

- 3. In order to provide for Antimonopoly Committee of Ukraine's participation in activities of the OECD Competition Committee, the Committee has developed a draft Cabinet of Ministers of Ukraine Resolution to Make Changes to Clause 5 of the List of Central Bodies of the Executive, Other Government Authorities in Charge of Responsibilities Stemming from Ukraine's Membership in International Organisations. The suggested changes have complemented the mentioned List approved by Cabinet of Ministers of Ukraine Resolution No. 1371, of 13 September 2002, on the Procedure of Central Bodies of the Executive Participation in Activities of International Institutions that Ukraine Is a Member of the position that makes the Antimonopoly Committee of Ukraine and the Ministry of Economic Development and Trade responsible for the performance of obligations stemming from Ukraine's membership in OECD Competition Committee. This resolution adopted by Cabinet of Ministers of Ukraine No. 958 of 22 October 2012.
- 4. The Committee has adopted the order dated August 15, 2012 № 557-r "On approval of standard requirements to concerted actions of economic entities related to joint research and / or development work the compliance of which allows to perform such actions without the permission of the Antimonopoly Committee of Ukraine .
- 5. This regulation contains the rights and obligations the compliance of which by the participants of mentioned concerted actions allows such actions without the consent of the Committee and will not result in violations of the law on protection of economic competition.

- 6. In order to implement procedures established by competition laws on releasing entities from liability for participating in concerted actions, the Antimonopoly Committee of Ukraine has developed and adopted the order dated June 25, 2012 № 399 "On the establishment of the procedure for exemption from liability" which has approved the submission procedure of applications for exemption from liability for violation of legislation on economic competition protection to the Antimonopoly Committee Ukraine under paragraph 1 of Article 50 of the Law of Ukraine on competition protection" (order of exemption from liability).
- 7. The order regulates in detail the procedure for the submission and consideration of the application of the entity for exemption from liability, establishes requirements to its content. In the case of making decision by the body of the Committee on the conformity of the information provided in the application with the conditions of exemption from liability provided for by the Law of Ukraine "On Protection of Economic Competition", the entity Party of concerted actions are exempted from the liability for concerted actions.
- 8. The Order of the Antimonopoly Committee of Ukraine dated November 28, 2012 № 874-has approved "Procedure for Compiling and maintaining of the consolidated list of natural monopolies" developed by the Committee.
- 9. This procedure defines the procedure for compiling and maintaining of the consolidated list of natural monopolies by the Antimonopoly Committee of Ukraine in order to implement the provisions of the Law of Ukraine "On Natural Monopolies". The list includes the entities (legal persons) that produce (sell) products in markets that are natural monopolies and they are included in the register of natural monopolies in their respective areas of agencies responsible for state regulation of natural monopolies.
- 10. The Committee Resolution dated March 14, 2012 № 169-p has improved the procedure of resolutions verification in cases of violation of the legislation on protection of economic competition by approving amendments to the Rules of consideration of applications and cases of violation of the legislation on protection of economic competition. In particular, in accordance with the approved changes the application for resolutions verification in cases involving violations of the law on protection of economic competition can be stopped by the state commissioner who has accepted an application to verify on his own initiative or at the request of the person involved in the case till the completion of the verification by the Antimonopoly Committee of Ukraine, the court relating to this application or other proceedings before the resolution of the Antimonopoly Committee of Ukraine or other government agencies on other issues related with this application.

1.3. Government proposals for new legislation

- 11. In 2012, the Antimonopoly Committee of Ukraine finalised the development of the draft Law of Ukraine on State Aid to Economic entities. The law aims at laying the foundations for shaping a separate branch of competition law in Ukraine to regulate matters related to the establishing of a system for monitoring and supervising the state aid domain.
- 12. The purpose behind the adoption of the mentioned Law has been to minimise a negative impact of state aid on competition and to create equal terms and conditions for commodity market participants in Ukraine and attract investments into development of the economy of Ukraine.
- 13. The draft Law of Ukraine on State Aid to Economic entities was approved on 30 August 2012 by the Cabinet of Ministers of Ukraine and are considering by the Verkhovna Rada of Ukraine.

- 14. The draft Law of Ukraine to Change the Law of Ukraine on Protection of Economic Competition to secure evidence in cases reviewed by bodies of the Antimonopoly Committee of Ukraine developed earlier by the Committee was motioned for consideration of the Verkhovna Rada of Ukraine.
- 15. The bill has been devised to regulate the procedure of the exercise by bodies of the Committee of their authority to receive evidence during proceedings in cases of breach of the legislation for protection of economic competition. The suggested changes envisage, among others, regulation of the procedure of receiving explanations and other such information, carrying out checks and certain other actions during the collection of evidence in cases reviewed by the bodies of the Committee to be implemented at the legislative level. At the same time, the bill further specifies rights and responsibilities of those who participate in cases on infringements of the legislation for protection of economic competition and of other parties in their relations with bodies of the Antimonopoly Committee of Ukraine. The bill also provides a detailed regulation of the procedure of expert assessment necessary for clarification of issues that may arise during the proceedings in the case and require special knowledge into the rights and responsibilities of expert.
- 16. In June of the reporting year, the Verkhovna Rada of Ukraine adopted the draft Law of Ukraine to Change Certain Legislative Acts of Ukraine on Delimitation of Authority of Government Bodies in the Areas of Natural Monopolies and Telecommunications Sector developed by the Committee.
- 17. The Law provides for a clear delimitation of authority between the Antimonopoly Committee of Ukraine and bodies in charge of natural monopolies regulation. Government regulatory authorities obtained the authority to identify natural monopoly entities and to maintain the register of such entities for purposes of assuring their efficient government regulation. The Antimonopoly Committee compiles the aggregate list of natural monopoly entities based on registers by relevant regulatory bodies and controls the observance of the competition law by such entities. Also, duplication of functions of government authorities in the area of control over pricing and other legal collisions have been eliminated.

2. Enforcement of competition laws and policies

2.1. Action against anticompetitive practices

18. In 2012, the Antimonopoly Committee of Ukraine received 6 391 complaints regarding violations of the legislation for protection of economic competition. Based on their review, 701 cases were open, or 14% more than in 2011

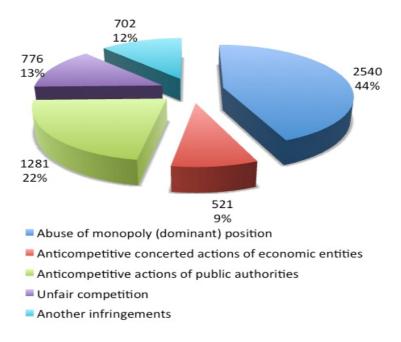
Table 1: Applications and petitions received by the Antimonopoly Committee of Ukraine and audits completed

Year Count Year	2011	2012
Total examined application, complaints and other petitions on violations of the legislation on the protection of economic competition	5 051	6 391
Total audits completed	1 210	1 035

19. In 2012, bodies of the Committee conducted 1 035 inspections of the observance of the legislation for protection of economic competition, or almost 15% less than in previous year (1 210 in 2011). The reduced number of inspections is in line with the state policy of reduction of the administrative pressure on business, in particular through a reduction in the number of inspections of economic entities.

20. In the total number of inspections, 796 inspections were conducted at economic entities and 239 at public authorities. Based on results of these inspections, 660 cases of violations of the legislation for protection of economic competition were opened and 313 recommendations were issued to stop activities (or inactivity) that contained signs of such infringements.

Figure 1. Structure of infringements of the legislation for protection of economic competition which were stopped by the Committee in 2012



- As a result of actions taken by the Committee, a total of 5 820 infringements of the legislation for protection of economic competition were stopped, or almost 30% more than in 2011. This includes 2 540 infringements having to do with abuse of a monopoly (dominant) position, 521 with anticompetitive concerted actions of economic entities, 1 281 with anticompetitive actions of public authorities, and 776 with unfair competition.
- 22. In the total amount of infringements which were stopped:
- 23. 3 711 were stopped by adopting decisions to take actions foreseen by law;
- 24. 2 109 were stopped by issuing recommendations to stops actions (omission) that contained signs of violations.
- 25. Most violations of the legislation for protection of economic competition were detected in the housing and municipal sector (15.33% of the total), agriculture (14.41%), administrative services (10.73%), fuel and energy complex (7.74%), health care (6.96%), construction and construction materials (4.21%), and transport (3.71%).
- 26. To ensure the protection of economic competition on Ukrainian markets, the Antimonopoly Committee of Ukraine is focusing first and foremost on the markets which have the biggest influence on the welfare of Ukrainian citizens.

- 27. In 2012, the Antimonopoly Committee of Ukraine prioritised its activity on such socially significant markets as drugs, housing and utility services, fuel, hotel services and food. In particular, the Committee conducted a number of comprehensive inspections on these markets and in-depth market research while taking necessary actions in order to prevent and stop detected signs of violations of the legislation for protection of economic competition.
- 28. The total amount of fines imposed on violators of the legislation for protection of economic competition in 2012 was in excess of UAH 814.7 million or more than 18 times as much as the 2011 result.
- 29. From the total amount of fines in 2012, more than UAH 441.3 million (USD 55,23 million) was imposed for infringements in the form of anticompetitive concerted actions of economic entities, more than UAH 339.3 million (USD 42,46 million) for infringements in the form of abuse of a monopoly (dominant) position, more than UAH 22 million (USD 2,75 million) for infringements in the form of unfair competition, and more than UAH 12.1 million (USD 1,51 million) for other types of infringements.
- 30. As a result of consideration of 18 cases in 2012, bodies of the Committee imposed fines in amounts starting from UAH 300.000 (USD 37 546,93).

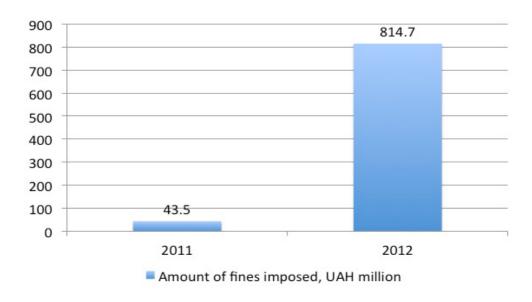


Figure 2: Fines imposed on violators by bodies on the Committee in 2011-2012, UAH million

- 31. Violators of the legislation for protection of economic competition paid about UAH 40 million in fines and late fees to the State Budget which is almost double the 2011 amount.
- 32. The economic effect achieved in 2012 as a result of stopping of infringements of the legislation for protection of economic competition by the Antimonopoly Committee of Ukraine was about UAH 1.3 billion or almost 3 times the 2011 amount (UAH 489 million).

- 2.1.1 Summary of activities of competition authorities
- 2.1.1.1 Anticompetitive concerted actions of economic entities
- 33. The total number of infringements in the form of anticompetitive concerted actions of economic entities which were stopped in 2012 was 521. Of them, 477 infringements were stopped at the case level, and the remaining 44 situations with signs of anticompetitive concerted actions were stopped as a result of followed recommendations.
- 34. In 2012, the total amount of fines imposed by bodies of the Committee for infringements of the legislation for protection of economic competition in the form of anticompetitive concerted actions of economic entities was UAH 441.3 million or 25 times the 2011 amount (UAH 17.5 million).
- 35. The biggest amount of infringements was stopped in sectors such as agricultural production (about 16.57% of infringements), fuel and energy complex (16.38% of infringements), and construction materials (about 10.6% of infringements).
- 2.1.1.2 Abuse of a monopoly (dominant) position
- 36. During the reporting year, 1.090 cases of abuse of a monopoly (dominant) position on a market, or almost 10% more than in the previous period, were considered and action was taken against the violators. As a result, 1 358 infringements were stopped, or 12.6% more than in the previous year (1 206).
- 37. According to the Committee recommendations, additionally 1 182 cases of acts (omission) with signs of infringements of this type were stopped, including 122 recommendations provided as a result of case consideration (in 2011 730 and 104, respectively).
- 38. In 2012, a total fine of UAH 339.3 million, or 29 times as much as in 2011, was imposed by bodies of the Antimonopoly Committee of Ukraine on economic entities which abused their monopoly (dominant) position.
- 39. As regards the structure of infringements in the form of abuse of a monopoly (dominant) position, which were stopped by bodies of the Committee, the most common types of infringements in the reporting period were pricing abuse, as well as acts or omission of monopolistic structures which led or could lead to prevention, elimination or restriction of competition, or encroachment upon interests of other economic entities or consumers, and which would have been impossible had there been substantial competition on the market (50 and 38% of the total number of stopped infringements of this type, respectively).

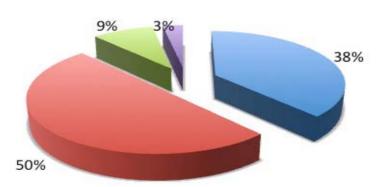


Figure: 3. Structure of infrigements in the form of abuse of a monopoly (dominant) position in 2012, %

- Actions or omission by an economic entities holding a monopoly (dominant) position on the market, which led or could lead to prevention, elimination or restriction of competition, or encroachmnet upon interests of other economic entities or consumers which would have been impossible had there been substantial competition on the market (Part 1 Article 13)
- Setting of such prices or other conditions of purchase or sale of products which would have been impossible had there been substantial competition on the market (Item 1, Part2, Article 13)
- Use of different prices or different other conditions in similar agreements with economic entities, sellers or byers without objective reasons (Item 2, Part 2, Article 13)
- Other stopped infringements (according to Items 3-7, Part 2, Article 13)
- 40. Most infringements in the form of abuse of a monopoly (dominant) position in 2012 were found on the housing and utilities markets (32.18 %); fuel and energy complex (11.67 %); health care, drugs and medical equipment (8.65 %); and agriculture (7.22 %).
- 2.1.1.3 Anticompetitive actions by public authorities and bodies of self-government
- 41. In 2012, bodies of the Committee considered 622 cases of infringements, as anticompetitive actions (inaction) by public authorities, pursuant to Articles 15, 16 and 17 of the Law of Ukraine "On Protection of Economic Competition", and stopped 756 infringements, or 12.5 % more than in previous year. As a result of issued recommendations, 525 with signs of such infringements were stopped additionally.
- 42. Most infringements were detected on markets for administrative services (37.27 %), housing and utility services (27.1 %), land allocation/registration and property lease services (3.34 %), transport (2.6 %), health care, pharmaceuticals and medical equipment (2.44 %).

2.1.1.4 Unfair competition

43. In 2012, the bodies of the Antimonopoly Committee of Ukraine stopped 776 infringements of the Law of Ukraine "On Protection from Unfair Competition". This number includes 418 infringements in the form of unfair competition, in respect to which the Committee took a decision on holding violators liable, and 358 actions with signs of such infringements were stopped according to recommendations issued by the Committee bodies, which are mandatory for consideration by economic entities.

44. During the reporting year, the bodies of the Committee imposed fines on violators for unfair competition amounting to UAH 22,000,000.

2.1.1.5 Summary of activities of courts

- 45. In 2012, with the purpose to ensure timely payment of fines imposed on violators of the legislation for protection of economic competition, as well as for other reasons foreseen by law, bodies of the Committee filed 480 lawsuits in courts pursuant to Article 25 of the Law of Ukraine "On the Antimonopoly Committee of Ukraine". Courts satisfied 423 (88 %) of lawsuits of bodies of the Antimonopoly Committee of Ukraine and rejected on a final basis only 6 (1.25 %) of such lawsuits. The share of satisfied lawsuits grew by 33 % compared with 2011.
- During the reporting year, 341 decisions of bodies of the Antimonopoly Committee of Ukraine in cases of infringement of the legislation for protection of economic competition, or about 12 % of all decisions issued during the year, were challenged in courts. Of these, 19 decisions, or only 0.7% of the total number of the Committee decisions on infringements of the legislation for protection of economic competition were cancelled in full or in part.
- 2.1.2 Description of significant cases, including those with international implications
- 2.1.2.1 Anticompetitive concerted actions of economic entities
- 47. The Committee's Regional Office in Dnipropetrovsk found that LLC "Ukrspetspromresurs" jointly with other bidders repeatedly committed anticompetitive concerted actions aimed at elimination of competition in a number of open tenders conducted by Rivne Nuclear Power Plant to procure pre-treated paper and cardboard, electrical batteries, abrasive products, wire and insulated cables.
- 48. Such actions led to elimination of competition between enterprises being a necessary precondition of competitive procurement. As a result, the contracts were awarded to one of the participants not on a competitive basis. These actions of the companies were recognised as infringement of the legislation for protection of economic competition in the form of anticompetitive concerted actions of economic entities (bid rigging). A total fine of UAH 100,000 was imposed on the violators for the infringement. The infringement was stopped.
- 49. The Antimonopoly Committee of Ukraine found that LLC "Avtalex", LLC "Shuravi" and LLC" «Lamond" had simultaneously established (increased and decreased) identical or almost identical prices for diesel fuel and low-octane petrol in the city of Marganets, Dnipropetrovsk Region. Hence, these economic entities were increasing their profits from retail sales of diesel fuel not through fair achievement of competitive advantages, but through elimination of price competition between them by was of increasing their fuel prices to the same or almost identical levels. These actions were qualified as anticompetitive concerted actions of economic entities in the form of similar actions on a commodity market which led to restriction of competition without any objective reasons demonstrated by market analysis. A fine of UAH 98,000 was imposed on the violators. The infringement was stopped.
- 50. In addition, bodies of the Committee stopped infringements of the legislation for protection of economic competition in the form of other anticompetitive concerted actions, in particular the setting of prices or other conditions of purchase or sale of goods, driving other economic entities from markets or restricting their access to markets, etc.

2.1.2.2 Abuse of a monopoly (dominant) position

- Vinnitsya Regional Office of the of the Committee considered a case of abuse of a monopoly 51. (dominant) position on the part of a gas supply and installation company PJSC "Vinnitsyagaz", which in 2011–2012 held a monopoly position on the market for the supply of natural gas at a regulated tariff. PJSC "Vinnitsyagaz" forced consumers to buy the services of the development of new technical conditions and designs for the replacement of household gas equipment instead of simple making changes in the already existing documentation, which led to encroachment upon consumer interests that would have been impossible had there been substantial competition on the market. It was found in the course of an investigation that the development and issue of new technical conditions in the case of replacement of an individual gas device with a device with similar technical characteristics is not required by current regulations, including technical ones. It was found that the infringement was of a systemic nature. The acts of PJSC "Vinnitsyagaz" related to the forcing of household natural gas consumers (PJSC "Vinnitsyagaz" clients) to order the development of new technical conditions and gas supply designs for the replacement of individual household gas devices in private houses, as well as apartments in multi-apartment blocks, instead of simply amending the already existing technical documentation, were found to be unlawful and groundless.
- 52. These actions of PJSC "Vinnitsyagaz" were recognised as an infringement, and a fine of UAH 136,000 was imposed on the defendant.
- 53. The Antimonopoly Committee of Ukraine took action for abuse of a monopoly (dominant) position against PJSC 'EK "Khersonoblenergo". The Committee found that PJSC "EK "Khersonoblenergo" included in the technical conditions for the connection to its electricity networks or for increasing the capacity of existing power installations a provision that such technical conditions can be obtained only from PJSC "EK "Khersonoblenergo" on a contractual basis.
- 54. It particular, it applied to works such as substation design, installation of additional equipment, reconstruction of overhead transmission lines, etc. However, it was possible to procure such works from other design and construction/installation companies which had necessary permits and licenses.
- 55. As a result, the company deprived consumers of the right to select a provider of the services on the most favourable conditions. In addition, even though the customers paid substantial amounts for the design and construction/installation works to PJSC "EK "Khersonoblenergo", it did not connect the newly built or reconstructed power supply facilities to its own networks for a long time.
- 56. Abuse of a monopoly (dominant) position on the market for the issue of technical conditions for the connection of client (both individuals' and legal persons') facilities to the company's own (local) electricity networks located in Kherson oblast, led to restriction of consumer interests which would have been impossible had there been substantial competition on the market.
- 57. A fine of UAH 500,000 was imposed on the violator.
- 58. The Committee found that PJSC "Sumyoblenergo" abused its monopoly position. During the period from 2010 to June 2012, PJSC "Sumyoblenergo" occupied a monopoly position on the market for services relating to the preparation and issue of technical conditions for engineering support of power supply to bridge construction sites in Sumy oblast through its own local electricity networks. It was found during the investigation that there was a clause in the technical conditions making their effectiveness subject to the signing of a contract for the connection to the power networks of PJSC "Sumyoblenergo" by the entities requesting such technical conditions. At the same time, only PJSC "Sumyoblenergo" was authorised to carry out all necessary works according to that contract. As a result, the company deprived

consumers of the possibility to select a service provider on the most favourable conditions, since it was possible to procure such works also from other power design and installation companies. In addition, the technical conditions envisaged works relating to the supply of power through the company's networks which were not necessary for the customers. Therefore, PJSC 'Sumyoblenergo" forced its customers to enter into contracts for paid works relating to grid connection on its own conditions. In the course of the case consideration, PJSC "Sumyoblenergo" recognised the fact of violation of the competition legislation and pledged to discontinue it. A temporary administrative board of the Committee imposed a fine of UAH 100,000 on the violator. The infringement was stopped.

- 59. A temporary Administrative Board of the Antimonopoly Committee of Ukraine established that PJSC "Chernigivoblenergo" groundlessly delayed making a proper contract with the consumer entity "KOLOS" while providing power supply services to PJSC "Pryluky Tobacco Plant", which was making it possible for PJSC 'Chernigivoblenergo" to groundlessly delay the approval of requests from "KOLOS" for the purchase of power from the Wholesale Electricity Market of Ukraine. Such non-activity on the part of PJSC "Chernigivoblenergo" was qualified as a violation in the form of abuse of a monopoly (dominant) position on the market for power transmission and distribution through local power networks by way of creating obstacles to the entry of an economic entity to the power supply market.
- 60. A fine of UAH 90,000 was imposed for the violation.
- 2.1.2.3 Unfair competition
- 61. The Antimonopoly Committee of Ukraine recommended "Berlin-Chemie AG (Menarini Group)" (Berlin, Germany) to avoid spreading of false information while advertising a drug called "Espumizan".
- 62. Ads for this drug contained the following statement: "Espumizan is a unique drug from Germany". Investigation showed that the main active substance of the drug was simethiconum which is also contained in 12 other drugs used for digestion and metabolism.
- 63. Therefore, the information contained in the ad was false since it overstated the drug's properties and characteristics. "Berlin-Chemie AG (Menarini Group)" discontinued using the statement.
- 64. A temporary Administrative Board of the Antimonopoly Committee of Ukraine imposed a fine of UAH 3,000,000 on LLC "Sandora" (Mykolayivske village, Mykolayiv Region).
- 65. The Committee found that the producer of juices and nectars was spreading false information about its products. In particular, the packaging of juices under the trade marks "Sandora", "Sandora Multiactive" and "Sandora Mix" had an inscription "Approved by the Ministry of Health Protection of Ukraine". An investigation showed that this inscription had no grounds and was not based on appropriate documents adopted by the Ministry of Health Protection. In addition, the Committee found that the company indicated false information on the packaging of the pomegranate and multivitamin nectars "Sandora", namely: "800 g of pomegranates 1 l of pomegranate nectar" and "1 kg of exotic fruits 1 l of multivitamin nectars", respectively. In reality, much smaller quantities of fresh fruit were used to produce 1 liter of pomegranate and multivitamin nectars.
- 66. A temporary Administrative Board obliged LLC "Sandora" to stop the infringements, to take an inventory of the remaining packaging being the subject of controversy, and to recycle them.
- 67. The Committee considered the issue of protection of business reputation of a well-known producer of vodka "Absolut Company Aktiebolag" (Stockholm, Sweden) and issued a decision to qualify the actions of PrJSC "Lviv Distillery" as unfair competition in the form of unlawful use of packaging (bottle) design and the mark "ABSOLUTE" for vodka products "ABSOLUTE LVOV", "ABSOLUTE

LVOV GOLD", "ABSOLUTE LVOV PLATINUM", leading to an appearance which was similar to the packaging (bottle) design and the mark "ABSOLUT" that the Complainant had started to use earlier, therefore creating a risk of confusion with the which could lead to confusion with the Complainant's activity.

- 68. In the course of an investigation, the Committee found that the Defendant was imitating the packaging of vodka produced by the Swedish company and well-known to Ukrainian consumers in the attempt to gain a position on the market and attract consumers using another company's image and without investing in own advertisement.
- 69. When the Committee was deciding on the penalty, it took into account the fact that PrJSC "Lviv Distillery" discontinued the production and sale of vodka in the similar packagingduring the proceedings. As the company was in a difficult financial situation, the fines were imposed considering the fact that the parties had reached an amicable settlement between themselves.
- 70. The Antimonopoly Committee of Ukraine imposed a fine of UAH 25,000 on LLC "Autocenter KIA" (Odessa) for unlawful usage of the brand name "Mitsubishi" and the trade mark in the form of a three-beam star in advertising leaflets.
- 71. Mitsubishi Corporation (Tokyo, Japan) and LLC "Trading House NIKO" (Kyiv), the company's official distributor in Ukraine, did not authorise such use by LLC "Autocenter KIA". The Defendant stopped the infringement in the course of the case proceedings and paid the penalty.

2.2. Mergers and acquisitions

2.2.1 Statistical data

- 72. In 2012, the upward trend in market concentration processes continued. During the year, the Antimonopoly Committee of Ukraine considered 944 applications for merger clearance, which is almost a quarter more than in the previous year (756 applications) and 35 % more than in 2010.
- 73. Almost 49% of applications (460 applications) were submitted by foreign investors and enterprises with foreign participation (29.6% more than in 2011).
- 74. In the total number of mergers cleared in 2012, 709 cases (95 %) did not have any threats of monopolization of commodity markets as regards their conditions and participants, and therefore did not require an in-depth review. Following the review these applications by the Committee, the mergers in question were cleared without case investigations. In 41 cases, the clearance was preceded by case investigations by bodies of the Committee as there were grounds for a complex in-depth study or a risk of not issuing the clearance. Particular attention was paid to mergers involving monopolistic structures.
- 75. The Committee has authorised a total of 750 mergers of economic entities in the reporting year (considering applications submitted in the previous period).
- 76. In 194 cases, applications were returned to the applicants without consideration, or participants of concentrations decided not to proceed with them before receiving a formal decision of the Committee.
- 77. The most common types of concentrations of economic entities which the Committee authorised in 2012, as in previous years, was purchase of shares (equity stakes) -76.8% of the total number, acquisition of control in other forms -14.1%, and joint establishment of economic entities -4.3%.

- 78. To prevent concerted practices that may lead to prevention, elimination or restriction of competition, the Antimonopoly Committee of Ukraine exercises control over concerted practices of economic entities.
- 79. In the reporting year, bodies of the Antimonopoly Committee considered 73 applications for authorisation of concerted practices of economic entities.
- 80. In 63 cases, concerted practices were authorised without additional obligations since they did not present any risk of monopolisation of commodity markets.
- 81. In the reporting year, the Antimonopoly Committee of Ukraine opened and considered 10 cases relating to concerted practices of economic entities as there were grounds for their potential prohibition or an in-depth investigation.
- 82. In 4 cases, the Committee attached specific requirements and obligations to its authorisation to proceed with concentrations or concerted practices since these concentrations or concerted practices could have a negative effect on competition.
- 83. In 2012, bodies of the Committee issued 99 preliminary conclusions regarding economic concentrations and concerted practices.
- 84. Such preliminary conclusions helped economic entities to avoid committing infringements of the legislation for protection of economic competition in the form of implementation of concentrations or concerted practices without Committee's authorisation when such authorisation was required. In addition, the issue of preliminary conclusions by bodies of the Committee prevents economic concentrations which may lead to restriction of competition on product markets.

2.2.2 Summary on significant cases

- 85. During the consideration of a case of concentration in the form of purchase of shares of "Trontville Limited" by "OISIW LIMITED", which would give the buyer more than 50% of votes in the highest management body of the target company, it was found that the concentration participants were operating within the limits of the cities of Zaporizhzhya, Lviv and Chernivtsi on the market for TV programming services provided through a multi-channel cable TV network. The concentration participants were operating within the areas where such networks (including their own networks and other networks to which they had access) were located. Therefore, the notified concentration would not lead to any change in the position of the concentration participants on the relevant markets.
- 86. The purchase of "Trontville Limited" shares by "OISIW LIMITED" would not lead to monopolisation or substantial restriction of competition on Ukrainian commodity markets.
- 87. However, since the aggregate shares of the concentration participants in the overall volume of all economic entities (by number of subscribers) that provide TV programming service through multichannel cable TV networks within the territorial limits of the cities Zaporizhzhya, Lviv and Chernivtsi exceed 35% according to the results in 2011 and the first half of 2012, the authorisation was issued with additional obligations for the concentration participants. In particular, these obligations concerned the tariffs for the TV program services, pricing methods, and conditions of access to this market for other economic entities.

3. Role of competition authority in drafting and implementation of policy in other areas

88. The functioning and development of efficient competitive environment in Ukraine are assured through the implementation of a uniform competition policy by all government authorities and bodies of

local self-government through their participation in the development and implementation of such policy, as well as interaction with the Antimonopoly Committee of Ukraine on matters of competition development.

- 89. The assessment of competitive impacts of regulations and other decisions adopted by government authorities is an important area of competition support and development. Regulations and decisions by government bodies directly affect the situation on commodity markets; they may have adverse effects on competition and be of long-term nature.
- 90. In 2012, the Antimonopoly Committee of Ukraine reviewed 2,005 regulations, other decisions and draft decisions of government authorities; of these, 451 were refused approval. The majority of draft regulations with potentially negative effects on competition concerned housing and municipal utility, administrative services, pharmaceutical and fuel and energy complex markets, including at the regional level.
- 91. 266 regulations received comments and proposals as to their bringing in compliance with requirements of the legislation for protection of economic competition (almost twice as many as in the previous year). The proposals made by Antimonopoly Committee bodies were taken into account in 55 cases (2.3 times more than in 2011).
- 92. As an example, 181 draft legislative acts and regulations in the transport, telecommunications and housing and utility economy sectors were reviewed by the Committee in 2012. Of these, 72 draft acts and regulations in the above sectors were approved without further comments, 27 drafts were rejected by the Committee; comments and proposals were issued to 82 acts.
- 93. Moreover, 206 draft legal regulations in this area motioned for consideration at government sessions were reviewed during the reporting year.
- 94. The Committee repeatedly reviewed the draft Law of Ukraine "On Amendments to the Law of Ukraine "On Natural Monopolies" (regarding the introduction of incentive based price regulation of subjects of natural monopoly). The draft was approved with due regard to observations made by the Committee. On Committee' initiative, the definition of incentive-based regulation was supplemented with the following wording: "...with gradual reduction of inefficient costs" so as to incentivise the natural monopoly entities for setting of economically justified tariffs for their services. Other changes to the draft law included the condition that the asset valuation (revaluation) should be carried out only once during the transition to incentive-based regulation to prevent unsubstantiated increase of the regulatory base of assets and corresponding increase in prices (tariffs) for goods (services) supplied by natural monopoly entities.
- 95. Therefore, the draft Law concurred by the Committee will provide for the establishing of favorable conditions for the transition from "cost +" tariff-setting model towards incentive based regulation of natural monopoly entities.
- 96. In order to prevent infringements of the legislation of economic protection and limit monopolism of the State Administration for Railroad Transport of Ukraine (Ukrzaliznytsia) in the part that concerns the implementation of new terms and conditions of cargo carriage in rail cars (containers) of Ukrzaliznytsia's freight car fleet, the Committee used the results of the research to issue its mandatory recommendations to the Ministry of Infrastructure of Ukraine that concerned providing economic entities (freight owners, shippers etc.) users of railroad cargo carriage services with a right to freely choose freight forwarding services providers or to refrain from such their services altogether.
- 97. Having reviewed the mentioned recommendations, the Ministry of Infrastructure of Ukraine notified Ukrzaliznytsia disposal that mandates the Ukrainian Transport and Logistics Centre, State Enterprise in charge of freight transportation to conclude direct contracts on freight carriage in cars owned

by national freight car companies without involvement of intermediary agents at will of freight owners. Moreover, a weekly reporting procedure on the conclusion of such direct contracts of freight carriage in cars owned by national freight car companies without involvement of intermediary agents has been established.

- 98. It was suggested during the course of the review of the draft Law of Ukraine to Change Certain Legislative Acts of Ukraine on Commodity Exchange Markets Regulation to exclude from the draft the provisions authorising a respective government authority: to issue licenses to professional operations on the commodity exchange market to legal entities; to bring to responsibility for operations on the commodity exchange market without proper license; to withhold and/or terminate professional activities on the commodity exchange market; and on activities of qualified visitors on the commodity exchange. The draft bill envisioned the implementation of strict regulation of the commodity exchange market, also through licensing operations on such market. Meanwhile, the Law of Ukraine on Licensing Certain Individual Kinds of Economic Activities does not provide for the licensing of professional activities on the commodity exchange market.
- 99. Based on the results of the review of the draft of Law of Ukraine to Change Certain Laws of Ukraine on Activities of the Ministry of Internal Affairs of Ukraine, the Committee suggested that the MIAU envisions in the Act competitive grounds for identification of service providers (among others, of banking institutions) as it has been stipulated in the Law of Ukraine on Administrative Services. The review of Committee's proposals resulted in the language on possibility of banking institutions placement at premises of MIAU bodies was scrapped from the draft. The improved draft was approved by the Committee.
- 100. The State Department for Citizenship, Immigration and Natural Persons Registration Issues with the Ministry of Internal Affairs of Ukraine was known to hard-sell the service of voluntary insurance of risks related to compensation of losses associated with execution of the decision on deportation from Ukraine (third-party liability insurance policy) to applicants of the administrative service of Ukraine entry visa application processing as well as to stateless individuals applying for prolongation of their stay in Ukraine. Herewith, according to the Letter of the State Department for Citizenship, Immigration and Natural Persons Registration Issues with the Ministry of Internal Affairs of Ukraine, this voluntary insurance was offered at MIAU body premises by a limited number of insurance companies. Based on the results of the carried research, the Committee recommended the Ministry of Internal Affairs of Ukraine to recall the Letter and to prevent conditions of hard-selling such insurance services until relevant changes to the insurance law and to the law regulating kinds and procedures of provision of administrative services regarding the entry of foreign national or stateless individuals in Ukraine or prolongation of their stay on the territory of Ukraine are adopted. The recommendations have been complied with.

4. Resources of Competition authority

The annual budget of the Antimonopoly Committee of Ukraine according to the Law of Ukraine "On the State budget of Ukraine for 2012" amount:

• 66 225,0 thousand (or USD 8 288,5 thousand at USD 1 = UAH 7,99 exchange rate).

Number of employees in the offices of the Committee: - 232 (currently operating):

- economists 108;
- lawyers–53;
- other specialties 67;
- other personnel;
- 101. The above information is valid for 2012.