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**CENTRE FOR CO-OPERATION WITH NON-MEMBERS  
DIRECTORATE FOR FINANCIAL, FISCAL AND ENTERPRISE AFFAIRS**

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## **OECD Global Forum on Competition**

### **CONTRIBUTION FROM UKRAINE**

*This note is submitted by Ukraine as a background material for the second meeting of the Global Forum on Competition, to be held on 14-15 February 2002.*

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## **I. IMPACT OF COMPETITION POLICY ON ECONOMIC GROWTH IN UKRAINE**

In 2001 competition in Ukraine developed under conditions of the increase in and the strengthening of positive tendencies existing in the national economy.

Economic processes which took place in the mentioned year displayed mutual relationships between and mutual impact of, on the one hand, the development of competitive relations and, on the other hand, economic revival.

The increase in the gross domestic product that for the first time during the independence was fixed in 2000 has been continuing. For the first seven months of 2001 the real gross domestic product increased by 10.5% as against 5% for the relevant period of 2000. The tendency towards broadening internal demand is strengthening. The increase in production is to be observed in terms of nearly all the basic types of economic activities.

The internal market is broadening thanks to the growth in real incomes of the population. The gross retail turnover of both retail trade enterprises and catering enterprises increased by 11.4% for the first seven months of 2001. Products of Ukrainian producers constitute nearly three fourths of the gross sales of consumer goods to be sold by officially-registered trade enterprises.

The revival of investment activities continues. For the first half of 2001 the volume of investments in fixed capital (capital investments) increased by 23.6% as against the volume in the relevant period of the previous year (in the previous year the corresponding volume increased by 21.1%).

The introduction of market reforms activating both the realisation of entrepreneurship potential and the development of private initiative continues. Prerequisites for the formation of competitive environment are created as a result of measures taken in the course of the demonopolisation of the economy. For the last five years the number of monopolised national product markets decreased by approximately 26%. Demonopolisation by means of the liquidation, split-up or reorganisation of both state organisation structures of a monopoly type and economic entities is completed in the main.

Industrial production continues to increase rapidly. For the first seven months of 2001 its volume increased by 17.9% as against the volume in the relevant period of the previous year (in the previous year the corresponding volume increased by 11.9%).

From January through July the highest rate of increase in products was to be observed in those branches where competitive environment had formed. While the gross increase in industrial products was equal to 17.9% the rate of increase in products was equal to 22.2% in both the food industry and the sphere of processing agricultural products, 20.7% in the light industry, 24.3% in the pulp and paper industry, 30.4% in the woodworking industry. In the sphere of services the physical volume of bulk turnover increased by 16% and the physical volume of retail turnover increased by 11.4% in comparison with the relevant volumes in the previous year. The high rate of increase took place in such export-oriented branches of the economy (mechanical engineering, metallurgy and metal-working industry) that operate under conditions of significant competition with foreign producers of goods on external markets.

According to the preliminary estimate of the situation, the share of the most monopolised branches and spheres of the economy in the gross domestic product has decreased predominantly thanks to higher rates of growth in the competitive sector of the economy.

There were measures taken with a view to improving tariff policy in the sphere of natural monopolies, in particular measures of that sort were taken in the electric-power supply industry, in the sphere of water supply and on the railway.

Some measures were taken for the purpose of removing groundless barriers to entering specific product markets. In particular, certain work was done in order to revise some normative and legal acts on the use of broadcasting channels, in particular channels of broadcasting and cable television, with a view to removing restrictions of the consumer right to choose means for receiving television programmes.

The separation of airports from enterprises which carry out transportation by air is completed in the main, in particular in 2001 there were seven separated airports.

In 2001, however, the need for the practical introduction of a modern non-departmental system of the state regulation of subjects of natural monopolies, in particular those in the spheres of transport and communication, became more acute. The necessity for the radical improvement of the system of state regulation in the sphere of electric communication is getting more urgent in connection with the forthcoming privatisation of the Public Company *Ukrtelecom*, the largest enterprise in the branch.

The problem of ensuring equal conditions of entrepreneurial activities to all economic entities irrespective of their forms of ownership is not tackled completely. The non-regulation of the system of state aid rendered to certain economic entities and branches of the economy has a negative impact on conditions of competition. The artificial monopolisation of certain product markets is facilitated by the non-adherence of bodies of executive power to competition principles in the course of their defining such economic entities that are empowered to be engaged in specific types of economic activities when the number of economic entities of that sort is limited.

The basic purposes, tasks and mechanisms of the implementation of competition policy at the present stage are defined by the Decree of the President of Ukraine of 19 November 2001 No 1097/2001 "On the Basic Directions of Competition Policy for 2002-2004."

The implementation of a complex of measures to form effective competitive environment as a mechanism which in the nearest future should facilitate fixing and strengthening such economic growth that is combined with the fulfilment of the basic tasks of social development and which in the remote future should become one of the major factors determining the creation and functioning of effective and socially-oriented market economy in Ukraine is provided for. The decrease in the share of the monopoly sector in the economy of Ukraine, in particular down to 10-12% of the gross domestic product, is considered to be the long-term goal. As far as the competitive sector of the national economy is concerned, the Decree defines the improvement of competition rules, the protection and maintenance of competition and the development of institution support to be its goal. Finally, as far as the sphere of natural monopolies is concerned, the goal of state policy in the nearest years is the introduction of modern methods to regulate activities of subjects of natural monopolies as the first preparatory stage necessary for the liberalisation of entrepreneurial activities in this sphere.

It is defined that one of the basic directions of competition policy for the nearest years should be the co-ordination of other elements of economic policy of the state, namely industrial, foreign economic, regulatory and privatisation policies, with competition policy.

This co-ordination should ensue from the necessity to ensure the effective development of competitive relations, the further decrease in the monopolisation of the economy. The increase in the competitiveness of national enterprises is an important aspect of the development of effective competitive

environment. For this purpose it is provided for that necessary measures to improve the structure of enterprises during their preparation for privatisation by separating non-profile production subdivisions and objects of social infrastructure, by creating the proper conditions of foreign economic activities for domestic economic entities, in particular in connection with violations of antidumping procedures outside and inside Ukraine, should be taken.

The optimisation of activities of bodies of executive power and bodies of local self-government as subjects of economic relations which is considered to be an element of competition policy includes the following: ensuring the observance of competition principles in cases where bodies of that sort perform regulatory functions in terms of economic entities' entering product markets; improving the mechanism of performing functions associated with managing state property by bodies of executive power; optimising the volume of economic activities to be performed by bodies of executive power; introducing a mechanism to regulate both prices and tariffs of services rendered by bodies of executive power.

The primary measures to improve the regulation of activities of subjects of natural monopolies in Ukraine in the nearest years are as follows: the improvement of rules of rendering services by subjects of natural monopolies, the creation of such mechanisms of their forming prices (tariffs) that could stimulate the decrease in both costs and losses; the improvement of both the procedure of licensing activities in spheres of natural monopolies and mechanisms of exercising control over the observance of licence conditions by subjects of natural monopolies; the revision of rules of joining networks which belong to subjects of natural monopolies in order to exclude any possibility of imposing groundless requirements.

It is provided for that measures to improve organisation, material, technical and scientific support to the implementation of competition policy should be taken.

Proceeding from the fact that the implementation of the basic directions of competition policy requires concerted actions of both state bodies and the whole society, it is provided for that representatives of economic entities, their associations and public organisations should be involved in the development of drafts for normative and legal acts on the protection of economic competition.

## II. EXPERIENCE IN INTERNATIONAL CO-OPERATION IN CARTEL AND MERGER INVESTIGATIONS\*

1. The most specific norms of co-operation in the investigation and consideration of cases concerning competition are contained by the following two official intergovernmental agreements, to which Ukraine is a party:

- Treaty of Conducting Concerted Antimonopoly Policy by Countries of the Commonwealth of Independent States (of 25 January 2000).
- Treaty Between the Cabinet of Ministers of Ukraine and the Government of the Russian Federation Signed to Co-operate in the Development of Competition (of 13 July 2000).

Unfortunately, at present there are no official translations of the mentioned documents into English, thus in case of need the documents can be submitted only in the original.

We should like to inform that, as it is provided for by these international treaties, the Antimonopoly Committee of Ukraine may exchange information and co-operate with foreign competition authorities. These documents contain a modern procedure of specific interaction between competition authorities in the application of national antimonopoly laws, of the co-ordination of joint measures taken with a view to preventing, limiting and terminating anticompetitive activities of economic entities, overcoming negative consequences resulting from that sort of activities or interference of state bodies in economic activities of member countries if the consequences infringe on important interests of the relevant parties and negatively impact on their trade relations. In the course of the development of the above agreements international experience in this sphere was used, in particular recommendations of the European Commission, the UNCTAD and the OECD and effective agreements in this sphere were taken into account, including the Agreement Between the European Communities and the Government of the United States of America Regarding the Application of Their Competition Laws.

The above matters are regulated by norms of the Treaty Between the Cabinet of Ministers of Ukraine and the Government of the Russian Federation Signed to Co-operate in the Development of Competition, in particular:

- Article 4 establishes that co-operation of that sort should be carried out in such forms that make it possible to take into account interests of the parties to the treaty in competition timely and maximally, including such forms as sending notifications, making requests for information or consultations, exchanging information, exchanging experience, pursuing joint studies.
- Article 5 establishes that if one of the parties to the treaty finds out that actions of economic entities or bodies of state power to be carried out in the territory of its state can negatively impact on competition on product markets of another party, the former should notify the latter of the fact. The latter should consider an opportunity for taking the relevant measures in accordance with requirements of national laws and should inform the former of the results.
- Article 6 establishes that in the course of the consideration of actions which negatively impact on competition a party to the treaty has the right to send another party a request for sharing

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\* The present document contains answers to the QUESTIONNAIRE TO INVITEES ON INTERNATIONAL CO-OPERATION IN CARTEL AND MERGER INVESTIGATIONS. The numbering of the points of the present document is conformed to the numbering of the relevant questions.

such information that concerns entrepreneurial activities of economic entities. The latter has the right to refuse the requested information if that sort of information has already been submitted or can be submitted by the relevant economic entity in accordance with national laws or is considered to be confidential.

- Article 7 establishes that parties to the treaty for the purpose of approving agreed decisions should hold consultations on matters concerning the application of the treaty.
- Article 8 establishes that parties to the treaty should assist each other to receive such information that is of mutual interest, that could facilitate the increase in the effectiveness of the application of competition laws of Ukraine and (or) the Russian Federation and that could include data having relation to the application of competition laws.
- Article 10 provides for an opportunity for pursuing joint studies in the relevant branch of the economy if there are signs of such actions that negatively impact on competition.

The Treaty of Conducting Concerted Antimonopoly Policy by Countries of the Commonwealth of Independent States contains provisions on the exchange of information about the state of product markets, practical results of demonopolisation, methods for and experience in work having relation to preventing, limiting and terminating monopoly activities and the development of competition. On the basis of this treaty its parties may exchange data contained by national registers of enterprises being monopolists which supply products to their product markets and may exchange experience in the consideration of cases concerning violations of antimonopoly laws.

Ukraine within the framework of its participation in the work of the Interstate Council on Antimonopoly Policy, which has been established in accordance with the mentioned treaty, has developed such model methodological recommendations on exercising state control over economic concentration that are based on the application of antimonopoly laws by the relevant bodies of member countries of the Commonwealth of Independent States.

The methodological recommendations are designed for using them in the course of exercising state control over such actions performed by bodies of power of all levels and by economic entities that can result in the establishment of monopoly formations, in the monopolisation of product markets, in the attaining or substantial strengthening of a monopoly position by certain companies, in significant restrictions of competition.

2. In addition to the above mentioned treaties, Ukraine has signed a number of such interstate normative and legal acts concerning economic co-operation that, in particular, contain provisions in regard to the establishment of co-operation in the sphere of competition policy. Norms which concern economic co-operation and which are considered to be the general basis for interstate co-operation in the implementation of competition policy, including control over economic concentration, are contained by agreements on free trade which have been signed between the Government of Ukraine and the Governments of the Republic of Azerbaijan, the Republic of Armenia, the Republic of Byelorussia, the Republic of Georgia, the Republic of Kirghizstan, the Latvian Republic, the Lithuanian Republic, the Republic of Estonia, Macedonia, the Republic of Moldova, the Russian Federation, the Republic of Turkmenistan and the Republic of Uzbekistan.

The interdepartmental co-operation in the improvement of both conceptual and legal principles of competition policy, the exchange of experience in conducting investigations are also provided for by agreements which the Antimonopoly Committee of Ukraine has signed with the relevant authorities of the Republic of Byelorussia, the Republic of Bulgaria, the Lithuanian Republic, the Republic of Poland, the Slovak Republic and the Czech Republic. The major goals of these agreements were the establishment of professional contacts and the exchange of general information rather than professional co-operation in the consideration of cases concerning violations of competition laws because the agreements had been

concluded at the time when the relevant competition authorities and competition laws were in the making. At the present stage the Committee has assigned itself the task to renew the mentioned agreements qualitatively with a view to creating the appropriate prerequisites for their practical application in the consideration of violations having international character.

## Cartels

3. As far as formal requests to foreign competition authorities for information which were issued by the Committee during its considering cases, the following data are available:

- a. One request.
- b. Germany (Federal Cartel Office — *Bundeskartellamt*).
- c. In the request, it was suggested that pieces of information about facts established during the investigation of cartel agreements between producers with the participation of a group of companies comprising *Dyckerhoff Rhein Main GmbH* (Germany), *Lafarge* (France), *Heidelberger* (Germany) and *Holderbank* (Switzerland), that information of any companies being purchasers of cement about cartel agreements between producers of cement and other information about such international cartels on markets of cement that could impact on markets of both cement and cement products of Ukraine should be submitted.
- d. There was one granted request.
- e. The information received in response to the request was rather useful because it, first, elucidated the circumstances under which the above group of companies took part in cement cartels in member countries of the European Union, second, contained additional data on the investigation of regional aspects of concentration on Ukrainian markets and, third, was taken into account in the course of the Committee's making decisions to give its consent to economic concentration. At the same time, for lack of direct links with competition authorities of other countries in which the cement-producing companies were established it was not possible for the Committee to send the relevant formal requests, which necessitated the collection of additional information and caused the period of the case consideration to be extended.

4. The Committee has received no formal requests from foreign competition authorities for information or assistance in the course of the investigation or consideration of a case concerning hard core cartels.

## Mergers

7. The Antimonopoly Committee of Ukraine has no information about cases where a merger that the Committee had reviewed was also reviewed by the competition authority of another country. At the same time, we inform that the Committee gave its consent to such mergers of economic entities that took place in other countries.

The Committee considered an application of the authorised representative of both *Case Corporation* (USA) and *New Holland N. V.* (the Netherlands) for giving the Committee's consent to the purchase of a controlling block of shares of *Case Corporation* by *New Holland N. V.* The mentioned economic concentration took place outside Ukraine; nevertheless, economic entities having relations of control with both the former and the latter performed economic activities in Ukraine. The submitted information was sufficient for the Committee's taking a positive decision and therefore the Committee did not request foreign competition authorities to submit information.

Similarly, the Committee considered an application for giving its consent to the purchase of shares in authorised capital of *Ameli GmbH* by *Braureret Beck GmbH Co KG*. Although the purchase took place in Germany, the purchaser is comprised by the group of companies *Interbrew S. A.* which operates in Ukraine on the national market of beer. The company whose shares were being purchased also operates in Ukraine on the same market. That is why the mentioned concentration could impact on the national market. Having analysed the market shares of the participants in the concentration, the Committee concluded that the concentration would result neither in the limitation of nor in the removal of competition on markets of beer and non-alcoholic drinks in Ukraine.

The Committee considered the relevant application and gave its consent to the purchase of shares of *Henkel-Ecolab GmbH & Co OHG* (Germany) and shares of *Henkel-Ecolab Inc* (USA) by *Ecolab Inc* (USA). Although the concentration proper has taken place outside Ukraine, *Henkel-Ecolab GmbH & Co*, a participant in the concentration, exercises control over economic entities operating in Ukraine.

8. As far as co-operation with foreign competition authorities is concerned, the following information is provided.

- I. Co-operation with the Federal Cartel Office of Germany.
  - a. The Public Company *Volyn* (the town of Zdolbuniv, Rivnenska region) is the emitter; the Group of Companies *Dickerhof AG* (Germany) — is the purchaser.
  - b. The Federal Cartel Office of Germany.
  - c. Requests for information were sent by ordinary post and transmitted by telefax to Mr Ulf Böge, the President of the Federal Cartel Office of Germany, in connection with a complaint lodged by *Volyn* against the participation of *Dickerhof AG* in cement cartels. Four plants of the mentioned group which are situated close to the western boarder of Ukraine operated on Polish markets, which was indicative of the probability of the group's monopolising regional markets of cement in Western Ukraine. In addition, there was an exchange of materials concerning activities of the competition authorities as a result of which the Antimonopoly Committee of Ukraine has received a report of the Federal Cartel Office of Germany on the study of cartel agreements having relation to markets of concrete mortar and mixtures in Germany.
  - d. The parties to the merger did not object to enabling the Antimonopoly Committee of Ukraine to exchange information directly with the Federal Cartel Office of Germany.
  - e. The information given by the Federal Cartel Office of Germany had a substantive impact on the proceedings concerning the concentration because the given information confirmed honest intentions of the purchaser with respect to Ukrainian markets of cement.
  
- I. Co-operation with the Ministry of the Russian Federation for Antimonopoly Policy and Support Given to Entrepreneurship.
  - a. The Public Company *Rivneazot* (Rivnenska region) is the emitter; the Closed Company *Ukragrokhimpromholding* (the city of Kyiv) and the Public Company *Gazprom* (Russian Federation) and the Limited-Liability Company *Mezhregiongaz* (the two companies have relations of control with *Ukragrokhimpromholding*) constitute the purchaser of a controlling block of shares.
  - b. The Ministry of the Russian Federation for Antimonopoly Policy and Support Given to Entrepreneurship.
  - c. Requests for information were sent by ordinary post and transmitted by telefax to Mr Iliya A. Yuzhanov, the Minister of the Russian Federation for Antimonopoly Policy and Support Given to Entrepreneurship. In addition, there was an exchange of materials concerning activities of the competition authorities. Relations of control existing between the purchaser

and economic entities registered in the Russian Federation constituted the subject matter of the relevant request for information.

- d. The parties to the merger did not object to enabling the Antimonopoly Committee of Ukraine to exchange information directly with the Ministry of the Russian Federation for Antimonopoly Policy and Support Given to Entrepreneurship.
- e. With the assistance rendered by the Ministry of the Russian Federation for Antimonopoly Policy and Support Given to Entrepreneurship the necessary information was provided directly by the relevant economic entities without delay. The furnished information confirmed the honest intentions of the purchaser and had a substantive impact on the proceedings concerning the concentration.

III. In addition to cases of co-operation in the form of such exchanges of information that were initiated by the Antimonopoly Committee of Ukraine, the Committee, in its turn, furnished information about market situation which was necessary for conducting studies, namely:

- to the Ministry of the Russian Federation for Antimonopoly Policy and Support Given to Entrepreneurship — information about existing relations of control and about the volume of products supplied by the Closed Companies *ARS* and *Danko* and the Corporation *Industrialnyi Soyuz Donbasu (The Industrial Union of the Donbas)*. The information was necessary for considering a merger case. The Committee did not furnish the total volume of information because information about existing relations of control, as it is provided for by effective laws of Ukraine, is confidential. With the assistance rendered by the Antimonopoly Committee of Ukraine the necessary information was provided directly by the relevant economic entities without delay.
- to the State Committee of the Republic of Uzbekistan for Demonopolisation and the Development of Competition — information about characteristics of the Ukrainian energy market and about conditions of operation on the market.
- to the State Antimonopoly Service Under the Ministry for Economy, Industry and Trade of Georgia — information about activities of the Company *AES* in the territory of Ukraine. The request concerned information about the company's fulfilling its obligations to consumers.

10. The Committee, when studying cases of concentration where Ukrainian enterprises being monopolists were objects of purchases and where transnational corporations operating on the markets of the same products were purchasers, thanks to its co-operation with foreign companies evaluated the impact of concentration on the mentioned markets. This took place, in particular, during the Committee's giving its consent to the purchase of blocks of shares of the Company *Malynska Paperova Fabryka (Malyn Paper Mill)* (Zhytomyr region) by the Company *WICOR Holding AG* (Switzerland). In order to conduct detailed research, requests were made with a view to ascertaining the situation on such market of insulating cardboard that has signs of a world market. It was established that there were more than 10 large companies operating on the mentioned market, which resulted in the application of a rather complicated procedure of obtaining information. The Committee is convinced that co-operation with foreign competition authorities, the absence of which was tangible during the consideration of the above case, is especially useful and necessary in cases of that sort.

The Committee, when considering the application of *Vychodoslovenske energeticke zavody*, a state enterprise in Koshice, for giving the Committee's consent to its purchase of a block of shares of Ukrainian energy-supplying companies, needed information about the financial support of *Vychodoslovenske energeticke zavody*. The Committee was informed that *Vychodoslovenske energeticke zavody*, having involved credit resources given by *Ukrainian Energy Partners*, a limited-liability company which is registered in the USA, had purchased three companies. The Committee managed to receive information about relations of control over economic activities from *Ukrainian Energy Partners* with great efforts. The Committee considered the received information to be sufficient for taking a decision, but

because of the short period within which it was necessary to consider the application the Committee had no opportunity to apply to the competition authority of the USA for its checking the information about relations of control received from *Ukrainian Energy Partners*.

### **Commentary on the above answers**

In Ukraine, intensive processes of economic concentration take place. At the same time, each year more than 100 applications out of the total number of those submitted to the Antimonopoly Committee of Ukraine for giving its consent to economic concentration are filed by foreign investors or enterprises having foreign investments. For example, in 2000 and 2001 the Committee considered 169 and 143 applications (respectively) for giving its consent to concentrations in which foreign capital took part. The acquired experience in considering such applications made it possible to discover a number of problems whose solution needs co-operation on the international level. At present the major problems are as follows: the complete and right definition of relations of control between participants in a concentration, in particular relations concerning economic entities being non-residents of Ukraine; the appreciation of such potential competition that could be provided by economic entities operating outside Ukraine; the appreciation of an impact which concentration has on transnational markets.

It is considered that the basic forms of international co-operation, in which the above problems could be settled, are as follows:

- the creation of international legal basis which could lay down the foundations of that sort of co-operation;
- the exchange of information about forms of and methods for exercising control over economic concentration; the mutual development of a methodological basis for exercising that sort of control;
- co-operation in considering specific cases of economic concentration.

As the above data indicate, after 1 January 2000 the number of cases in which the Antimonopoly Committee of Ukraine co-operated in investigating activities of international cartels was insignificant. It should be pointed out, however, that the general tendency of the development of foreign economic relations of Ukraine, which is defined by a course held by our state for both its gradual integration into the world economy and the involvement of foreign capital with a view to developing national production, gives rise to interests of the Antimonopoly Committee of Ukraine in, first, acquiring professional experience to investigate activities of cartels and, second, developing co-operation with foreign competition authorities in this sphere. The Committee, proceeding from its practice, comprehends that the effectiveness of detecting and terminating activities of cartels, especially activities of transnational cartels, depends to a great extent on the proper exchange of both information and experience between competition authorities of different countries. National legal and procedural norms having relation to the detection and termination of activities of cartels are significantly improved thanks to the adoption of the Law of Ukraine "On the Protection of Economic Competition." The Antimonopoly Committee of Ukraine considers its joining the 1998 OECD Council Recommendation Concerning Effective Action Against Hard Core Cartels to be the next necessary step in this sphere. At present, this matter is developed by interested bodies of state power of Ukraine which are responsible for the implementation of competition policy of our state.

The Antimonopoly Committee of Ukraine hopes to co-operate with foreign competition authorities, first, in developing and applying rules of competitive behaviour with respect to activities of economic entities in different branches, in particular on the markets of building materials, building work, pulp and paper products, services rendered in the sphere of polygraphy, etc., and, second, in familiarising itself with such methods and instruments for investigating anticompetitive cartel agreements and mergers

that are applied by the competition authorities of Germany, France and Italy. The mentioned information is necessary, first, to develop the theory and practice of analysing both product markets and relations of control, second, to substantiate factors which make it possible to forecast effects of mergers with sufficient accuracy and, third, to develop methods for investigating cases concerning violations of competition laws of Ukraine.

**III. NEEDS  
HAVING RELATION TO BOTH CAPACITY BUILDING  
AND RENDERING TECHNICAL ASSISTANCE\***

In 2000-2001 the Antimonopoly Committee of Ukraine received the following technical assistance (see also the annex).

1. A regional conference on competition policy was held in Kyiv on 13-14 July 2000 for Member Countries of the Commonwealth of Independent States and Countries of Central and Eastern Europe within the framework of the preparation for the Fourth Review UNCTAD Conference on Restrictive Business Practices.

Representatives of 22 countries and experts from international organisations took part in the regional conference thanks to the organisation and financial support provided by the UNCTAD, the European Commission, the OECD, the WTO and the Federal Trade Commission of the USA. The goal of holding an event of such a scale (in the region comprising countries of the Commonwealth of Independent States, Baltic countries, and those of Central and Eastern Europe conference of that sort was held for the first time) was to support activities of transitory economy countries and international organisations in the development of bilateral and regional co-operation, first, in competition sphere with a view to preventing and terminating anticompetitive practices which transcend territories of the relevant countries and, second, in the course of exercising control over international mergers.

The conference was a significant event of the historic and economic life of Ukraine. Proceeding from the results of the conference, its participants adopted the Kyiv Declaration and addressed it to the Fourth Review UNCTAD Conference on Restrictive Business Practices.

2. An international seminar on the application of competition laws, which had been organised jointly by the Antimonopoly Committee of Ukraine, the OECD and the Federal Trade Commission, was held in September 2000. Representatives of the central office of the Antimonopoly Committee of Ukraine and those of its territorial offices from among officials working at legal subdivisions and foreign experts took part in the seminar. Both pressing matters having relation to the application of competition laws by the Antimonopoly Committee of Ukraine and judicial practices in this sphere were considered with giving examples of specific cases concerning violations of competition laws.

Holding that sort of seminars in Kyiv turned to be an annual good tradition which is of great importance in terms of, first, their specific trend towards such analysis of the application of Ukrainian laws that is made, in particular, by foreign specialists of standing reputation and, second, the opportunity to broaden and strengthen professional knowledge accumulated by Ukrainian specialists and to associate informally with foreign colleagues. It should be pointed out that such association is mutually useful because in Ukraine there are peculiarities of the application of competition laws.

3. The implementation of the TACIS Project EDUC 9802 "Support to the Reforms of the Government and Central Organs of the Executive Power" started in February 2001. The basic goal of the project is to improve the capacity of the Government of Ukraine to implement a consistent strategy of reforming the government of the state. The task of a group of officials of the Antimonopoly Committee of Ukraine was to conduct research, within the mentioned project, into the subject: "Optimising the Organisation Structure of bodies of the Antimonopoly Committee of Ukraine" by making a study and

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\* The present document contains answers to the QUESTIONNAIRE ON TECHNICAL ASSISTANCE EXPERIENCE AND NEEDS.

comparative analysis of activities of competition authorities. The training was organised in accordance with the following scheme:

- a course of studies to be held for the purpose of familiarising participants with the key topics of the administrative reform;
- seminars, workshops and conferences to be held for the purpose of discussing the key aspects of a topic, reviewing the relevant European experience and developing a plan of actions and recommendations;
- training trips to Belgium, the Netherlands, Great Britain and Finland with a view to familiarising participants with alternative approaches to a topic;
- a two-week training of highly-qualified officials in Germany and Great Britain;
- making out the final report containing conclusions concerning the present situation in Ukraine, European experience, recommendations with respect to the reform and implementing plans.

It should be pointed out that, in general, the Committee has been getting technical assistance since 1993, in other words from the beginning of both the making of the competition authority and the enforcement of competition laws. The technical assistance has been rendered in the following forms: consultative assistance, training, seminars, international conferences, providing the Committee with legislative, normative and methodological literature concerning problems of competition laws of the EU member countries. All the forms of the assistance turned to be useful and important to us and, as it is obvious from practice, the greatest effect is produced when different forms of assistance are combined within the framework of a long-term project. For example, the Committee hopes that the TACIS Project "Legal and Institutional Basis for the Protection of Competition" will be approved and implemented. The project will consist of the following five components:

- Component 1: Executive guidelines, methodological framework and organisational structure to implement competition policy in Ukraine;
- Component 2: Informational and analytical support to the activities of the Antimonopoly Committee of Ukraine;
- Component 3: Development of legislation, in particular regarding state aid;
- Component 4: Communications (PR) policy, strategy and technology;
- Component 5: Development of the skills of the personnel of the relevant public bodies responsible for competition policy.

An international seminar on competition policy, on the initiative of the Antimonopoly Committee of Ukraine and with the organisational and financial support received from the UNCTAD, is planned to be held for member countries of the Organisation of the Black Sea Economic Co-operation in April 2002. The seminar should be an important step in acquiring experience necessary to develop international rules of competition. It is provided for, in particular, that a draft agreement on co-operation between member countries of the Organisation of the Black Sea Economic Co-operation in the sphere of competition policy should be developed on the basis of proposals made by the Antimonopoly Committee of Ukraine. The conclusion of that sort of agreement will facilitate, on the one hand, bringing about a rapprochement between Ukraine and member countries of the Organisation of the Black Sea Economic Co-operation and, on the other hand, involving Ukraine more closely in processes of the European economic development.

As far as consultative assistance to be rendered by advisors is concerned, the following comments can be made. In order to avoid circumstances in which a highly-qualified foreign advisor turns to be ignorant of the realities of the local competitive environment, the profound knowledge of effective legal, institutional and economic systems of the country which receives technical assistance is an important condition. In addition, it would be useful to reach such a level of interaction that would make it possible to

receive an expert advice in a highly specialised problem without unnecessary formalities and, in case of need, on the spot.

When characterising the Committee's needs in the sphere of competition law and competition policy, one can distinguish the following directions.

*1. In the sphere of lawmaking*

The new Law of Ukraine "On the Protection of Economic Competition," which comes into force in March 2002, contains a number of new provisions which are directed towards the enforcement of such material and procedural norms that are in agreement with laws of the EU and the EU member countries, which should ensure a significant rise in the standard of the legal protection of economic competition in Ukraine. This necessitates the development of by-laws, explanatory documents and methodological materials for the purpose of ensuring the transition, without conflicts, from the present regulatory system to a qualitatively new one and in order to insure the prevention of possible negative effects to be produced by that sort of transition on economic processes in the country, including its investment climate.

The next task is, first, to develop the text of a Draft Competition Code of Practice whose purpose is to define a procedure of considering cases examined on the basis of laws on the protection of economic competition and, second, to create a Code of Laws on Competition (Competition Code) which would contain material and procedural norms of competition laws and norms of international law. When this work is completed, one will be able to state that competition policy of Ukraine is implemented in agreement with a number of fundamental principles which have been applied in international trade, namely: non-discriminatory approach, national regime, transparency, interaction, special differentiated approach to countries having transitory economy.

The development of a draft law on rendering government aid is a condition necessary to approximate laws of Ukraine to those of the EU laws and the WTO requirements. This ensues from the absence of control over rendering and using government aid and results in numerous cases of its ineffective use (privileges, subsidies etc.). The adoption of that sort of law will make it possible to significantly increase opportunities of the state for arranging matters which are really necessary to create effective socially-oriented market economy.

*2. In forming the culture of competitive relations*

In recent years measures to ensure (in terms of the state) the development of competitive environment in Ukraine have been taken and prerequisites necessary for one's being engaged in entrepreneurial activities on the principles of fair competition have been created.

Nevertheless, Ukraine is characterised by a low level of culture in the sphere of competition, which becomes apparent in connection with:

- lack of necessary experience in being engaged in entrepreneurial activities in conformity with market principles;
- a low level of legal and economic knowledge accumulated by the society and a low level of legal culture developed by entrepreneurs;
- the insufficient understanding of both functional market mechanisms and rules of economic activities, in particular rules of competition;

- lack of both norms of professional ethics and traditions to be held in resolving conflicts having relation to competitive struggle, with a procedure of bringing about a reconciliation between the relevant parties being applied.

In many cases it is the insufficient level of culture in the sphere of competition that turns to be the cause of violations of competition laws committed by entrepreneurs.

### *3. In the sphere of natural monopolies*

The Committee is in anxiety because of problems having relation to such economic concentrations that result in mergers of a number of natural monopolies. At the present stage of the making of market relation it is very difficult (sometimes it is even impossible) to arrive at economically-grounded conclusions concerning long-term effects of that sort of concentrations, in particular concerning the effectiveness of functioning of merged subjects of natural monopolies, concerning their impact on competition on other product markets and concerning the possible restriction of consumer rights.

The Committee is also in anxiety because it is on markets of natural monopolies that the Committee has detected many violations of competition laws. In these circumstances the implementation of economic concentrations in which a number of subjects of natural monopoly take part can result in the creation of more favourable conditions for committing violations by economic entities of that sort and at the same time can result in making control over the prevention of that sort of violations more difficult.

Taking into account the above information, the Antimonopoly Committee of Ukraine would be grateful for assistance to be rendered in the form of providing information about the world practice (experience of different countries) in the sphere of arranging matters which have relation to the implementation of economic concentrations in which subjects of natural monopolies take part, in particular in cases where a number of natural monopolies merge.

In addition, it would be very useful to receive (in the capacity of assistance) recommendations with respect to developing approaches to and analysing possible effects of a merger of several natural monopolies, to receive information about examples of considering, by competition authorities of other countries, matters concerning activities of subjects of natural monopolies, in particular examples of economic concentrations with the participation of natural monopolies.