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**HOW ENFORCEMENT AGAINST PRIVATE ANTICOMPETITIVE
CONDUCT HAS CONTRIBUTED TO ECONOMIC DEVELOPMENT**

Contribution from Ukraine

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HOW ENFORCEMENT AGAINST PRIVATE ANTICOMPETITIVE CONDUCT HAS CONTRIBUTED TO ECONOMIC DEVELOPMENT

*By Mr. Serguei CHERNENKO
Deputy Chairman, Antimonopoly Committee
(Ukraine)*

1. Economic development in Ukraine over the past ten years has been slow. We have survived the decline in long-term growth and a considerable drop in our leading economic indicators. Over the past three years, however, Ukraine has seen faster economic growth than the other countries in transition. In 2000-2002, GDP rose by 20.9%, industrial output by 38.4%, farm output by 23.3% and the flow of goods by 43%.

2. The development of a competitive climate in Ukraine stems from its recent competition legislation and the newly established Antimonopoly Committee of Ukraine. The principle of State protection for competition and entrepreneurship is now guaranteed under the country's Constitution. Practical measures to phase in competition in successive stages featured in the State Programme on the Demonopolisation of the Economy (1993) and the subsequent implementing Decrees of the President of Ukraine: "*On the Basic Orientation of Competition Policy for 1999-2000 and implementing measures*" (1999) and "*On the Basic Orientation of Competition Policy for 2002-2004*" (2001).

3. In the context of Ukraine's economy in transition, the Antimonopoly Committee has always played the same role as its counterparts in developed market economies, i.e. preventing breaches of competition law, and exercising control over concentrations and over concerted action by recently established economic players. But the Committee is also actively involved in establishing competitive market relations, either by initiating the principles of competition or by arbitrating in their application. At our instigation, the principles of competition have now been incorporated into over 2 000 legislative and regulatory instruments. In over 300 cases, the Committee has prevented the adoption of instruments that would have undermined competition. Over the past ten years, 13 000 breaches of the law have been identified and those responsible penalised, bringing in a total of around UAH196 million in fines. The Committee has also examined over 7 500 cases involving concentration.

4. The past four years have clearly confirmed a fact now acknowledged worldwide: competition is the most crucial factor for strong economic development. In branches where at least half of all business is subject to competition, such as food, timber or light industry, growth is 1.2 to 2 times higher than in industry as a whole. It is worthwhile comparing the development of output in two different markets in the same branch, one a monopoly and the other open to competition. Over the past three years, for example, our road passenger transport market, which is open to competition, has seen almost six times the growth of the rail transport market, run as a monopoly. And in our communications market (general services) which is monopoly-based, service output has remained virtually unchanged in recent times, unlike the competitive sector (mobile phone services) where it has increased by a factor of 1.3.

5. Admittedly there is some evidence of high output growth in certain sectors where few major enterprises are in competition. But this just goes to show that competition is a highly complex and deep-rooted phenomenon that cannot be put down solely to the presence of numerous economic players in the marketplace. Any measurement of the level of competition should take into account potential market access and the influence of potential competitors, including those abroad.

6. The Committee pays particular attention to basic utility companies. Over-priced, poor-quality services and market barriers curb the development of competition and the economy in general. It is up to the State regulator to reconcile the interests of the basic utilities, their customers and society at large. The legal foundations of the current regulatory system were laid with the Law of Ukraine “*On basic utilities*”, passed in 2000. Unfortunately the system has not been enforced.

7. The country’s regulatory agencies often take it upon themselves to manage the extra revenue captured by these monopolies. For instance, they have “authorised” electricity prices that pass on to customers the supplier’s inefficiency costs, including bad debt and some rather questionable financial claims. Six of the 27 *Oblenergo* energy suppliers have passed on to users a total of some UAH150 million in expenditure. It is up to the Antimonopoly Committee to remedy the shortcomings of the State utility regulating system. Basic utilities account for half of all the cases identified by the Committee as abuse of dominant position. Recently the Committee, in co-operation with other State agencies, has managed to review the energy and water bills sent out to customers and deduct quantities that were never actually received. A total of UAH 1.2 billion was recouped in this way over a period of two years.

8. Any assessment of competition or monopolies and their influence on development should allow for the fact that the transition of administration and government to a market economy is too complicated a process – at several levels – to be interpreted from the perspective of foreign experience, however excellent. This is particularly true of the type of monopolies found in Ukraine’s economy in transition. They differ considerably from those in developed market economies, where the predominant type of monopoly is a product of the economic environment, i.e. concentrated production and capital, differentiated output, and economies of scale. This is what we might call a “production monopoly”. It is found in Ukraine, but another type predominates. It is based on an uneven playing field, or unfair rules of the game. According to the theory developed by the renowned American economist and Nobel prize-winner D. North (who defines institutions as the rules of the game in a society), this type falls into the “institutional monopoly” category. These “institutional monopolies” have a variety of causes and come in a variety of forms, for instance when specific economic players enjoy exclusive rights to an activity, a different tax regime, or easier access to financial resources and raw materials. To demonstrate just how serious these “institutional” barriers to competition can be, over the past ten years the Committee has identified some 3 000 actions by the executive and autonomous local authorities as being in breach of the provisions of competition law. In most of those cases, the Committee either opposed their decisions on the grounds that they might undermine competition, or requested that the decisions be changed.

9. Sorting out government support schemes for enterprises is one of the most pressing items on the agenda to restrict and do away with “institutional monopolies”. The allocation mechanisms used for State support should be transparent and should not adversely affect competition. The Antimonopoly Committee of Ukraine has drawn up draft legislation to that end, currently being finalised.

10. Co-operation with our colleagues in the Commonwealth of Independent States and the European Union has shown that it is very much in our common interests to protect and develop competition. Given some of the complexities of enforcing competition law unilaterally, within the confines of our national jurisdiction, multilateral co-operation has a major role to play with regard to competition policy, for it is based on mutual trust, common interests and more specific principles of law.

11. The globalisation of world markets calls for co-ordination on the part of competition agencies around the world. The Antimonopoly Committee of Ukraine is a relative newcomer among the global institutions that protect free, transparent and legal competition and combat cross-border anticompetitive conduct. With the assistance of the OECD – one of the most renowned institutions in Europe – our Committee could join this group, richer for its experience and armed with its expertise.