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OECD Global Forum on Competition

**THE OBJECTIVES OF COMPETITION LAW AND POLICY
AND THE OPTIMAL DESIGN OF A COMPETITION AGENCY**

-- UKRAINE --

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UKRAINE

INSTITUTIONAL DESIGN OF THE ANTIMONOPOLY COMMITTEE

1. Legal and Normative Basis for the Regulation of Activities of the Antimonopoly Committee of Ukraine

The Law of Ukraine "On the Limitation of Monopolism and the Prevention of Unfair Competition in Entrepreneurial Activities," which was adopted in 1992, is the first law among Ukrainian laws on the protection of economic competition. At present the integral system of the state policy in the sphere of the limitation of monopolism and the protection of competition has been formed. The system is based, first, on Article 42 of the Constitution of Ukraine which declares principles of the state protection of competition in entrepreneurial activities, the prevention of abuses of a monopoly position on the market, unlawful restrictions of competition and unfair competition and, second, on the following three special Laws of Ukraine:

- "On the Antimonopoly Committee of Ukraine" which was adopted in 1993 and which defines the structure, competence, the organisation of activities and the accountability of the Antimonopoly Committee of Ukraine as the body which ensures institution support to the implementation of competition policy in Ukraine;
- "On the Protection Against Unfair Competition" which was adopted in 1996 and which defines the legal basis for struggling against unfair competition;
- "On the Protection of Economic Competition" which came into force in 2002 and which is the core act of the modern system of national competition laws. This Law took into account both the experience gained by the Antimonopoly Committee of Ukraine from its work and the development of world competition laws, activities of competition authorities of other countries.

The mechanism of implementing both norms of this Law and the basic orientation of the state competition policy is specified in a number of normative and legal acts which have been adopted by the Cabinet of Ministers of Ukraine and the Antimonopoly Committee of Ukraine. Those are, first and foremost, the Resolution of the Cabinet of Ministers of Ukraine "On the Approval of the Procedure of Giving Permission to Concerted Actions of and the Concentration of Economic Entities," "Statute of Concerted Actions" and "Statute of Concentration" which were worked out by the Antimonopoly Committee.

The specific orientation of the development of competition policy in Ukraine at the present stage is defined by the Decree of the President of Ukraine "On the Basic Orientation of Competition Policy for 2001-2004," which provides for a set of measures directed towards the further development of normative and institution support to the protection of economic competition, to the uplifting of the information and scientific level of implementing competition policy.

Legal grounds for the state regulation in the sphere of competition are also fixed in laws on entrepreneurship, the enterprise, economic partnerships, securities and the stock exchange, external

economic activities, the protection of rights of consumers, privatisation, in the code of civil practice, the criminal code, the arbitration code, etc.

2. Functional and Organisation Structure of the Antimonopoly Committee of Ukraine

Activities of the Antimonopoly Committee of Ukraine are regulated by the special Law of Ukraine, i.e. the Law of Ukraine "On the Antimonopoly Committee of Ukraine." The Law defines:

- the structure, conception and organisation of activities of the Antimonopoly Committee of Ukraine;
- the status of the state commissioner and the status of the head of a territorial office;
- the legal basis for the implementation of powers of the Antimonopoly Committee of Ukraine;
- scientific and methodological support, personnel arrangements, conditions of the remuneration of labour, the financing of and the material and technical support to activities of the Antimonopoly Committee of Ukraine, the protection of rights of its officials;
- the use of financial resources credited as a result of paying both charges for the submission of applications and penalties.

At present the Antimonopoly Committee of Ukraine is the central body of executive power which has special status and the goal of activities of which is to ensure the state protection of competition in entrepreneurial activities.

The Antimonopoly Committee of Ukraine is subordinate to the President of Ukraine and accountable to the Supreme Rada (Parliament) of Ukraine.

The basic tasks of the Antimonopoly Committee of Ukraine are as follows:

- exercising state control over the observance of antimonopoly laws;
- preventing, detecting and terminating violations of antimonopoly laws;
- exercising control over economic concentration;
- facilitating the development of fair competition.

The Antimonopoly Committee of Ukraine builds its activities in accordance with the following principles:

- legitimacy;
- publicity;
- the protection of rights of economic entities on the basis of both the equality of economic entities in terms of law and the priority of rights of consumers.

The Antimonopoly Committee of Ukraine exercises its activities in accordance with the Constitution of Ukraine and laws of Ukraine independently from bodies of power, bodies of administrative-and-economic government and control, bodies of local self-government, their officials and economic entities and associations of private citizens or their bodies.

The interference of central and local bodies of state executive power, bodies of local self-government, their officials, associations of private citizens and their representatives in activities of the Antimonopoly Committee of Ukraine and its territorial offices is forbidden.

These and other norms as a whole make it possible to release the collegiate body, i.e. the Committee, from political influence, the influence of high bodies of power and make it impossible to lobby their corporate interests or interests of other persons.

The system of bodies of the Antimonopoly Committee of Ukraine includes:

- the Committee which consists of the Chairman of the Committee — a State Commissioner, the first deputy of the chairman of the Committee — a state commissioner, three deputies of the chairman of the Committee — state commissioners, six state commissioners;
- the central office which ensures activities of the Committee;
- territorial offices.

The term of office of state commissioners of the Antimonopoly Committee of Ukraine is seven years. In order to ensure succession, it is provided for that the partial rotation of state commissioners should take place in 2 or 3 years.

Sittings are a form of the work of the Antimonopoly Committee of Ukraine which is the high collegiate body. Heads of the territorial offices may take part, having an advisory vote, in sittings.

In order to consider particular cases, standing and temporary administrative boards are established from among state commissioners and heads of territorial offices of the Antimonopoly Committee of Ukraine to comprise at least three persons each. The administrative boards are formed according to branch, regional or other principles.

3. Chairman of the Antimonopoly Committee of Ukraine

The Chairman of the Antimonopoly Committee of Ukraine is appointed and dismissed by the President of Ukraine by consent of the Supreme Rada (Parliament) of Ukraine. The term of office of the Chairman of the Antimonopoly Committee of Ukraine is seven years. The Chairman of the Antimonopoly Committee of Ukraine heads the Antimonopoly Committee of Ukraine and directs its activities, submits proposals concerning the appointment and dismissal of deputy chairmen and state commissioners of the Antimonopoly Committee of Ukraine to the Prime Minister of Ukraine, defines duties of deputy chairmen and state commissioners, is the manager of budget allocations, establishes territorial offices and provisional administrative boards of the Antimonopoly Committee of Ukraine, pursues personnel policy, represents the Antimonopoly Committee of Ukraine in its relations with bodies of state power, bodies of local self-government, bodies of administrative-and-economic government and control, economic entities, private citizens and associations of entrepreneurs or private citizens, has the status of a state commissioner.

4. Deputies of the Chairman — State Commissioners of the Antimonopoly Committee of Ukraine

Deputies of the Chairman of the Antimonopoly Committee of Ukraine are appointed from among commissioners and dismissed by the President of Ukraine at the recommendation of the Prime Minister of Ukraine which is submitted on the basis of proposals to be made by the Chairman of the Antimonopoly Committee of Ukraine.

Deputies of the Chairman of the Antimonopoly Committee of Ukraine fulfil certain functions of the Chairman according to his instructions and deputise for the Chairman of the Committee in the case of his absence or if it is impossible for him to exercise his powers.

5. State Commissioners

State commissioners are appointed and dismissed by the President of Ukraine at the recommendation of the Prime Minister of Ukraine which is submitted on the basis of proposals to be made by the Chairman of the Antimonopoly Committee of Ukraine. A state commissioner must be a citizen of Ukraine who reached the age of thirty, who has higher — as a rule legal or economic — education, whose length of service according to his speciality is not less than five years within the last ten years. State commissioners are members of the Antimonopoly Committee of Ukraine which is the high collegiate body. They are heads or members of administrative boards, fulfil other duties according to instructions of the Chairman of the Antimonopoly Committee of Ukraine. A state commissioner has the right:

- to conduct an investigation;
- to consider cases concerning violations;
- to represent the Committee and its territorial offices before a court of justice or a court of arbitration.

A state commissioner is independent during his exercising powers to control the observance of competition laws and during his considering cases concerning violations of such laws.

6. Machinery of the Antimonopoly Committee of Ukraine

Department of Organisation-and-analytical Support to be Rendered to Activities of Members of the Antimonopoly Committee of Ukraine — the organisation, analytical, information, reference and other work to support activities of members of the Antimonopoly Committee of Ukraine.

Central Law Department — the development and application of competition laws, the expert examination of acts, the systematisation of laws, accompaniment to be ensured to cases at courts.

Central Department of Competition Policy — the methodological, information and analytical support to control over the observance of competition laws, support to the arrangement of complex matters to facilitate the development of competition.

First Department of Research and Investigation — the consideration of the applications and cases which concern authorising concerted actions and concentration, the preparation of materials for the

consideration of cases concerning violations of competition laws in the sphere of electric power, housing-and-communal services and fuel resources (natural monopolies).

Second Department of Research and Investigation — the consideration of the applications and cases which concern authorising concerted actions and concentration, the preparation of materials for the consideration of cases concerning violations of competition laws in the sphere of the metallurgical, chemical, machine-building and construction complexes.

Third Department of Research and Investigation — the consideration of the applications and cases which concern authorising concerted actions and concentration, the preparation of materials for the consideration of cases concerning violations of competition laws in the sphere of the light and medical industries, the agro-industrial complex and on the consumers' market.

Fourth Department of Research and Investigation — the consideration of the applications and cases which concern authorising concerted actions and concentration, the preparation of materials for the consideration of cases concerning violations of competition laws in the banking and insurance spheres and on the securities market.

Fifth Department of Research and Investigation — the preparation of materials for the consideration of cases concerning violations of competition laws (unfair competition, advertising and services to be rendered in the non-production sphere).

Sixth Department of Research and Investigation — the consideration of the applications and cases which concern authorising concerted actions and concentration, the preparation of materials for the consideration of cases concerning violations of competition laws in the sphere of communications and transport (natural monopolies).

Department of Planning, Accounting, and Financing — the financial support to be rendered to activities of the Committee's bodies.

Personnel Department — the personnel support to be rendered to activities of the Committee's bodies, the improvement of professional skills of personnel.

Department of Interaction with State Bodies and of the Co-ordination of Activities of Territorial Offices — co-operation with bodies of state executive power and the co-ordination of activities of territorial offices in the implementation of competition policy.

Division for International Relations and European Integration — ensuring the Committee's participation in activities of international organisations and institutions, bi- and multilateral co-operation in the sphere of competition policy.

Informatisation Division — providing the central office and territorial offices of the Committee with computer hardware and other technical equipment and servicing them.

Press Service — the elucidation of the Committee's activities in the media, public relations.

Editorial-and-publishing Division — the preparation of materials and the publication of the magazine *Competition: Newsletter of the Antimonopoly Committee of Ukraine*.

Managing Department — office and the economic support to be rendered to activities of the Antimonopoly Committee of Ukraine.

7. Territorial Offices

Territorial offices of the Antimonopoly Committee of Ukraine are established in the Autonomous Republic of the Crimea, in the regions, in the cities of Kyiv and Sevastopol and in other administrative-and-territorial units in order to implement the tasks with which the Antimonopoly Committee of Ukraine is entrusted. The territorial offices are subordinate and accountable to the Committee. The powers of the territorial offices are defined by the Committee within its competence. There are 27 established territorial offices of the Committee in all. The orientation, co-ordination of and the control over activities of the appropriate offices of the Committee are exercised by the Chairman of the Committee, his deputies, state commissioners of the Committee according to their functional duties. The basic tasks of a territorial office are as follows:

- to exercise control over the observance of laws on the protection of economic competition by economic entities, associations, bodies of power, bodies of local self-government, bodies of administrative-and-economic government and control;
- to consider applications and cases which concern violations of laws on the protection of economic competition, authorising concerted actions within the relevant jurisdiction and, proceeding from the results of consideration, to take the appropriate decisions, including those on the imposition of penalties and the termination of violations of laws on the protection of economic competition;
- to interact with bodies of power, bodies of local self-government, bodies of administrative-and-economic government and control for the purpose of developing competition, demonopolising the economy, preventing, detecting and terminating violations of laws on the protection of economic competition;
- to interact with the media and public organisations for the purpose of preventing violations of laws on the protection of economic competition, to inform population systematically about its activities.

In order to consider certain cases concerning violations of competition laws and other matters falling under the Committee's jurisdiction, standing and provisional administrative boards are formed from among state commissioners and heads of territorial offices of the Antimonopoly Committee of Ukraine to comprise at least three persons.

Examples of the most important cases and data having relation to the activities of the Antimonopoly Committee of Ukraine and its territorial offices in 2000, 2001 and 2002 which concern, first, the termination of violations of laws on the protection of economic competition and, second, the consideration of applications for authorising the concentration of economic entities in 2000, 2001 and as of 1 December 2002 are stated in Annex A.

8. Personnel

Laws of Ukraine define requirements for the level of education, the profession, the length of service of state commissioners of the Antimonopoly Committee of Ukraine. They must have higher education and, as a rule, legal or economic speciality, the length of service which is not less than 5 years within the last 10 years. An analysis is indicative of the fact that the share of those who have legal and economic education is nearly 50% of those working at the central office and 65% of those working at territorial offices. The Decree of the President of Ukraine "On the Basic Orientation of Competition Policy

in 1999-2000 and on Measures to Implement It" introduced annual state order for the training and additional training of specialists in the sphere of competition policy. A joint order of the Antimonopoly Committee of Ukraine and the Ministry of Education of Ukraine established a system for the training and additional training of specialists in the sphere of competition policy and for improving their skills. Kyiv State Trade-and-economic University was defined to be the basic higher educational institution, it is provided for that the course "The Competition Policy of the State" should be included in training programmes and curricula of all the specialities of economic and law departments of defined educational institutions.

9. Organisation of Research

In order to insure the preparation and implementation of the State Programme of Demonopolising the Economy and Developing Competition, a Centre of Complex Research in the Sphere of Antimonopoly Policy was established by a resolution of the Cabinet of Ministers of Ukraine. The basic tasks of the Centre are as follows: to conduct complex research in the sphere of competition policy, to study social-and-economic effects of the implementation of competition policy in Ukraine and abroad, to inform the general public about the course of fulfilling tasks of competition policy.

10. Conclusions

Ukraine has the specific, differentiated system of both the implementation of competition policy and the application of competition laws in which:

- the President of Ukraine orients the state policy in the sphere of competition by adopting the relevant decrees and forms the staff of the Antimonopoly Committee;
- the Supreme Rada (Parliament) of Ukraine adopts legislative acts concerning the development of competition;
- the Cabinet of Ministers of Ukraine performs controlling functions in the sphere of the implementation of competition policy and is the higher body in the system of bodies of executive power. In exclusive cases the Cabinet of Ministers of Ukraine may authorise the concerted actions and concentration with respect to which the Antimonopoly Committee of Ukraine did not give its consent if their positive effect for public interests outweighs negative consequences resulting from the restriction of competition;
- the Antimonopoly Committee of Ukraine, irrespective of political and other impacts, develops and implements measures concerning the state policy in the development of competition, creates norms and applies laws. The Antimonopoly Committee of Ukraine is subordinate to the President of Ukraine and accountable to the Supreme Rada (Parliament) of Ukraine.

In 2001 a new stage of activities of the Antimonopoly Committee of Ukraine began:

- the conceptually new law, i.e. the Law of Ukraine "On the Protection of Economic Competition" came into force. The Law shifts the accent from the overcoming and limitation of monopolism to the protection of fair competition. Activities of the Committee is directed towards, first of all, preventing possible violations of competition laws, giving recommendations concerning the termination of actions which have signs of violations of

laws, removing both causes which produce such violations and conditions which facilitate them;

- the change of the staff of the Committee took place, i. e. the new Chairman of the Committee, his three deputies and four state commissioners were appointed.

The structure of the Antimonopoly Committee of Ukraine is always improved because in order to fulfil the tasks of the Committee it is necessary to find its optimum structure which would be able, within the limits the present financing, to ensure its effective activities to the full extent. A rise in the effectiveness of the functioning of the institutional basis for the protection of competition by introducing an information system of bodies of the Antimonopoly Committee of Ukraine is planned to be achieved during the implementation of the TACIS project " Legal and Institutional Basis for Protection of Competition (Antimonopoly Committee)" which will start in the current year.

In order to introduce the maximally effective model of a competition authority in Ukraine, the Antimonopoly Committee of Ukraine studies and analysis the experience of many competition authorities which is indicative of the fact that activities of some of them comprise the functions which are not peculiar to them, e. g. the protection of consumers, the support to be rendered to entrepreneurship, the regulation of state aid, struggle against swindle, etc. Accordingly such competition authorities have different structures and status. Interesting and useful analytical materials having relation to existing institutional models of competition were prepared by the International Competition Network for its inaugural conference.

At the same time, proceeding from the fact that at present a possibility that the Antimonopoly Committee of Ukraine will regulate rendering state aid is under consideration in Ukraine, we can state that we strongly need to familiarise ourselves with the experience of other countries which concerns the optimum structure of an authority having similar functions and with its functioning in the respective sphere. During the whole period of its existence the Antimonopoly Committee of Ukraine regularly use practical recommendations and rich experience of the Organisation for Economic Co-operation and Development (OECD) in the sphere of developing and implementing competition policy, i.e. the organisation which in the course of more than 30 years of its activities achieved fame according to its deserts as a powerful intellectual centre which draws practically all the countries of the world which develop in conformity with principles of market economy.

The recommendations relating to the development of the most effective models (those able to function) of the institutional support to competition policy which were developed as a result of the Third Session of the Global Competition Forum held under the aegis of OECD will be especially useful for developing countries because they need improvements in the structure of their competition authorities.

ANNEX

**ANTICOMPETITIVE CONCERTED ACTIONS
COMMITTED BY A GROUP OF MILK-PROCESSING ENTERPRISES
OF VINNYTSIA REGION**

The need to get services in the sphere of purveying and processing milk is caused by a number of factors. It is caused predominantly by the fact that it is not advisable and practically is not possible for small producers of milk, first of all for population, to create their own production capacities for the initial processing of milk and, second, by the nature of the product itself which cannot be stored in unprocessed state in great volumes for a long period. In previous years, in order to facilitate the quick processing of milk to be purchased from collective farms, it was provided for that milk-processing enterprises should be built according to the region principle, in particular they should be built in each district. At present in Ukraine, including Vinnytsia region, milk is purveyed outside the district in which a milk-processing enterprise is situated. In other words, at present the zone of purveying milk for one milk-processing enterprise overlaps with the zone of purveying milk for another milk-processing enterprise. This means that the territorial boundaries of the market of services to be rendered in the sphere of purveying milk in general coincide with the administrative boundaries of Vinnytsia region.

The group of milk-processing enterprises, viz. the Public Company "Vinnytskyi Miskyi Molochnyi Zavod," the Public Company "Vinnytsiamoloko," the Public Company "Barskyi Zavod Sukhogo Znezhnyrenogo Moloka," the Public Company "Zhmerynskyi Maslosyrzavod," the Public Company "Tulchynskyi Maslosyrzavod," the Public Company "Mohyliv-Podilskyi Molokozavod," the Public Company "Yampilskyi Maslosyrzavod," the Public Company "Khmelnyskyi Zavod Sukhogo Znezhnyrenogo Moloka," has the share in the mentioned market which is equal to 48.3%.

At the beginning of 2002 on the world market there was a sharp decrease in prices of casein and dried milk at the production of which the milk industry of Vinnytsia region is also oriented, which had a negative impact on the situation in the milk-processing industry. At the end of February 2002, in order to avoid the negative effects, owners of the controlling block of shares in the Public Company "Vinnytskyi Miskyi Molokozavod," i. e. the Enterprise "Kontinium-Lion-Kontract," held a meeting of representatives of milk-processing enterprises of Vinnytsia region. One of the issues which were discussed at the meeting was price of milk raw materials in the region. In March 2002, a group of milk-processing enterprises, fulfilling the decision of the meeting, set the uniform low purchasing price for milk that was higher than in the February of the same year in average by 17%.

The analysis of purchasing prices of milk was indicative of the fact that on 1 March 2002 a sharp decrease in prices of milk raw materials to the same level started and took place simultaneously nearly at all milk-processing enterprises of Vinnytsia region. This resulted in the elimination of competition between them and thus the concerted actions at that period turned to be anticompetitive. According to the results of a research conducted by Vinnytsia Territorial Office of the Committee, it is established that the level of purchasing prices of milk raw products was co-ordinated with other milk-processing enterprises of Vinnytsia region by holding consultations, talks, telephone conversations, meetings at which issues relating to the level of purchasing price of milk raw materials were discussed, falls or rises of the level of purchasing price were agreed between enterprises. Issues concerning the delimitation of zones of purveying milk between milk plants of the region were also discussed. It means that the enterprises eliminated competition among them by fixing zones of raw materials and establishing a uniform price there where their common business interests cross. As a result of this producers were deprived of the opportunity to sell their product to other milk-processing enterprises at a higher price. At the same time

milk-processing enterprises did not respectively decrease their selling prices despite the decrease in their expenses for milk raw materials.

Vinnitsia Territorial Office of the Committee qualified the actions of the mentioned group of milk-processing enterprises in accordance with point 1 of Article 50 of the Law of Ukraine "On the Protection of Economic Competition" to be the violation of laws on the protection of economic competition in the form of anticompetitive concerted actions which is provided for by part one, points 1 and 3 of part 2 of Article 6 of this Law and which was committed by establishing prices or other conditions of purchasing or selling products and by allotting markets or sources of supply in accordance with the territory principle.

The violators were punished by a fine.

ABUSES OF A MONOPOLY (DOMINANT) POSITION BY THE ASSOCIATION OF INTERNATIONAL ROAD CARRIERS OF UKRAINE

The Association of International Road Carriers of Ukraine (hereinafter referred to as "the Association") occupies a monopoly position on the national market of services to be rendered in the sphere of registering and servicing TIR Carnets.

The Association established additional conditions in respect to contracts for rendering services in the sphere of registering and servicing TIR Carnets within the right of the Association to suspend the use of TIR Carnets until debts relating to rendered services in the sphere of using the credit system TIR SERVICE / DKV Card according to contracts with *DKV* are paid.

Kyiv Regional Territorial Office of the Committee qualified these actions according to paragraph two of Article 4 of the Law of Ukraine "On the Limitation of Monopolism and the Prevention of Unfair Competition in Entrepreneurial Activities" to be abuses of a monopoly position in the form of imposing the additional conditions which have nothing in common with the subject of a contract.

Apart from this, the Association in respect to its members having an advisory voice in matters of registering and servicing established a higher price in comparison with the price of the same service which was established in respect to its members having a decisive voice despite equal expenses.

Kyiv Regional Territorial Office of the Committee qualified these actions according to paragraphs six and seven of Article 4 of the Law of Ukraine "On the Limitation of Monopolism and the Prevention of Unfair Competition in Entrepreneurial Activities" to be abuses of a monopoly position in the form of establishing the discriminatory tariffs for one's services which restrict rights of certain consumers (the Association members of different categories) and in the form of establishing monopoly high tariffs for one's services as a result of which rights of consumers (the Association members having an advisory voice) were infringed.

During the case consideration the Association returned 6,969,800 unlawfully got hryvnias from its profits to transport operators of Ukraine.

For the committed violations the Association was punished by a fine.

**COMMITTEE'S REFUSAL TO GIVE ITS CONSENT TO ECONOMIC CONCENTRATION
IN THE FORM OF TRANSFERRING THE PROPERTY OF THE INTEGRATED
PROPERTY COMPLEX OF THE STATE COMMUNAL ENTERPRISE
"KYIVGAZ" TO THE STOCK POWER-SUPPLIER COMPANY "KYIVENERGO"
FOR MANAGEMENT**

The Committee considered the applications of the Kyiv City State Administration and the Stock Power Company "Kyivenergo" for giving its consent to the economic concentration in the form of getting the property of the integrated property complex being the State Communal Enterprise "Kyivgaz" by the Stock Power Company "Kyivenergo" for management and the application of the State Communal Enterprise "Kyivgaz" for giving its consent to the reorganisation of the enterprise.

The Stock Power Company "Kyivenergo" in the capacity of a subject of natural monopolies occupies a monopoly position in the city of Kyiv on the markets of supplying electric power at a regulated tariff, of transmitting electric power through local electric networks, of supplying thermal energy in a centralised way.

The State Communal Enterprise "Kyivgaz" in the capacity of a subject of natural monopoly occupies a monopoly position on the market of transporting natural gas through distribution gas pipelines of the city of Kyiv.

According to the applicants, the implementation of the mentioned concentration will facilitate:

- the raising of the reliability of supplying customers with natural gas, electric power, and thermal energy on the basis of the reduction of operating expenses;
- the renewal and reconstruction of communal property;
- the improvement of the convenience of mutual relations between, on the one hand, producers and suppliers of fuel and energy resources and, on the other hand, thanks to the simplification of the procedure of settling accounts with respect to energy carriers;
- the more effective use and regulation of the structure of existing urban systems of energy supply which appertain to the life-supporting system of the city;
- the creation of new capacities.

The alleged advantages which would result from transferring the property of the integrated property complex being the State Communal Enterprise "Kyivgaz" to the Stock Power Company "Kyivenergo" for management and the conclusions concerning financial and economic consequences of the concentration, however, were not confirmed by the relevant economic calculations.

The development of competition on the market of thermal energy takes place in the form of broadening the practice of installing — by consumers who live in the city of Kyiv and who decided to refuse from centralised heat supply — autonomous gas heating systems (individual gas boilers, including small ones, and other types of equipment for heating production premises, houses, hostels) the number of which has been increasing for the recent years thanks to the high quality of heat and the lower cost in comparison with centralised heat supply. The Stock Power Company "Kyivenergo" objectively is not interested in broadening autonomous systems of heating instead of the centralised heat supply and, if the State Communal Enterprise "Kyivgaz" were got for management, it would strive to restrict the chances that

consumers would use gas for operating autonomous systems of heating, which would result in complicating the procedure of getting technical conditions, the development and implementation of projects for the construction of the new units to supply thermal energy which would be an alternative to centralised heat supply.

Electric energy and gas are alternative types of energy with respect to each other, and the Stock Power Company "Kyivenergo" and the State Communal Enterprise "Kyivgaz" are potential competitors with respect to each other on the market of energy carriers. This is connected with the fact that some enterprises thanks to certain technological peculiarities of production can use, in the course of their activities, both electric energy and other sources of energy, in particular gas. In case of including the State Communal Enterprise "Kyivgaz" in the Stock Power Company "Kyivenergo" in the capacity of its structural subdivision, consumers would be deprived of the right to choose between, on the one hand, the services to be rendered by the Stock Power Company "Kyivenergo" in the sphere of the supply of electric energy and heat and, on the other hand, alternative sources of energy which are cheaper than the services rendered by the Stock Power Company "Kyivenergo."

The unification of the Stock Power Company "Kyivenergo" and the State Communal Enterprise "Kyivgaz" in the capacity of subjects of natural monopolies would result in the worsening the transparency of the conditions under which they supply electric energy, gas and heat, would complicate exercising control over the objectivity of the declared level of expenses of the Stock Power Company "Kyivenergo," would complicate exercising control over and calculating real expenses of the mentioned subject of natural monopoly which simultaneously operates on several markets.

The efficiency of the regulation would significantly decrease, which could result in the creation of more favourable conditions for abuses, and, because of the opacity of activities of these economic entities, the detection of violations. The mentioned problem becomes more pressing because the regulation is carried out by different state bodies (in this case the regulation of activities of the economic entities which operate on the markets of electric energy and gas supply is carried out by the National Commission on the Regulation of the Electric Energy Branch of Ukraine, whereas activities of the economic entities which operate on the market of heat supply are regulated by local bodies of state power (Kyiv City State Administration)).

Thus, if the Stock Power Company "Kyivenergo" got the property of the State Communal Enterprise "Kyivgaz" for management, conditions for violating laws on the protection of economic competition would be created. In addition, in case of the implementation of the mentioned concentration consumers, in fact, would be deprived the possibility of their choosing acceptable schemes of the supply of thermal energy. This would hinder the development and liberalisation of the centralised heat supply and would remove any possibility of taking this market or its part out of the state of natural monopoly.

Transferring the Integrated Property Complex Being the State Communal Enterprise "Kyivgaz" to the Stock Power Company "Kyivenergo" for Management would result in the strengthening of the monopoly position of the Stock Power Company "Kyivenergo" which, if there was no competition, would be interested neither in taking measures to reduce its expenses having relation to the production of thermal energy nor in the improvement of the quality of services to be rendered.

Kyiv City Territorial Office of the Committee, taking into account the above information, took a decision to prohibit Kyiv City State Administration, the Stock Power Company "Kyivenergo," the State Communal Enterprise "Kyivgaz" from implementing the concentration in the form of getting the property of the integrated property complex which is the communal property of the territorial community of the city of Kyiv is allotted to the State Communal Enterprise "Kyivgaz" for full jurisdiction and economic management.

Table 1: Number of terminated violations of laws on the protection of economic competition and the number of considered applications for giving the Committee's consent to the concentration of economic entities in 2000, 2001 and as of 1 December 2002

Index number	Year	The total number of terminated violations	The total number of the violations which were terminated by the Committee's territorial offices	The total number of considered applications	The total number of the applications which were considered by the Committee's territorial offices
1	2000	1,573	1,243	697	160
2	2001	1,649	1,337	808	224
3	2002	1,569	1,435	593	81

Note: Since March 2002 applications for giving the Committee's consent to the concentration of economic entities have been considered by its Central Office.

Table 2: Basic indexes of activities of the Antimonopoly Committee of Ukraine for 1998-2001

The orientation of activities of the Antimonopoly Committee of Ukraine	The number of taken decisions
1. Preventing and terminating of violations of competition laws:	
1.1 Abuses of a monopoly position	2,922
1.2 Anticompetitive concerted actions	156
1.3 Discrimination practised by bodies of state power, bodies of local self-government, bodies of administrative-and-economic government and control against economic entities	1,817
1.4 Unfair competition	327
1.5 Other violations	1,327
2. Exercising control over the observance of antimonopoly requirements in the course of:	
2.1 The transformation of state property	2,391
2.2 Economic concentration	3,380
2.3 The state regulation of prices	2,763
2.4 Taking decisions by bodies of state power, bodies local self-government, bodies of administrative-and-economic government and control against economic entities	4,838
3. Facilitating the development of competition:	
3.1 Norm-creating process	1,159
4. Processes of demonopolisation:	
4.1 Taking measures in the sphere of demonopolisation	663