ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN UKRAINE
-- 2013 --

17-18 December 2014

This report is submitted by Ukraine to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 17-18 December 2014.
EXECUTIVE SUMMARY

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

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

1. In 2012, the Antimonopoly Committee of Ukraine acted on the grounds of:

- The Law of Ukraine “On the Anti-Monopoly Committee of Ukraine” that specifies the status, tasks, powers, formation procedure of the competition authority and the key principles of its interaction with other Ukrainian government authorities;

- The Law of Ukraine “On the Protection of Economic Competition” that contains the main substantive and procedural provisions in relation to government protection of economic competition in business, in particular, in relation to responsibility for anti-competitive concerted action business entities, abuse of monopoly, anti-competitive behaviour of the government authorities, restrictive activities, and principles of monitoring of concerted action and concentration of business entities;

- The Law of Ukraine “On the Protection from Unfair Competition” that contains the key substantive provisions on counteraction to unfair competition;

- The Law of Ukraine “On the Public Procurement” that specifies the principles of proceedings of the Anti-Monopoly Committee of Ukraine as the authority of appeal in the area of public procurement.

2. The focus of legislative changes to the competition law of Ukraine is determined by the advanced principles and approaches developed by international institutions in this area.

1.2 **Legislative and normative work**

3. In 2013 the Antimonopoly Committee of Ukraine filed 5 law-in-drafts to the Cabinet of Ministers of Ukraine and developed 11 regulatory and legal acts.

4. In accordance with the provisions of Article 18 of the Code of Economic Procedure providing for the implementation by the state of antimonopoly and competition policy and the promotion of competition in the field of economic activities based on nationwide programs approved by the Verkhovna Rada of Ukraine, the Antimonopoly Committee developed the draft of the law of Ukraine on the approval of the Nationwide Program of Promotion of Competition in Ukraine for 2014-2024.

5. In March, 2013, the Committee filed the draft of the Law of Ukraine “On state aid to economic entities” along with the draft of the Law of Ukraine “On the amendment to Article 35 of the Budget Code of Ukraine (with regard to the state aid to economic entities) for consideration of the Cabinet of Ministers of Ukraine.
6. On April 3, 2013 the drafts of the Laws of Ukraine “On state aid to economic entities” and “On the amendment to Article 35 of the Budget Code of Ukraine” were approved by the Cabinet of Ministers of Ukraine and filed to the Verkhovna Rada of Ukraine. The Verkhovna Rada of Ukraine took the said law-in-drafts for a basis at the first reading at the meeting held on October 8, 2013. In whole this law was adopted on August 2, 2014.

7. In 2013 the Antimonopoly Committee of Ukraine filed the draft amendments of the Law of Ukraine “On the protection of economic competition” with regard to the provision of proofs in the cases considered by the bodies of the Antimonopoly Committee of Ukraine. The adoption of this law would promote the setting of distinct list of possible instruments of proof and creation of conditions for the provision of proper evidential base in respect of cases with regard to infringements of the legislation on the protection of economic competition.

8. In 2013 the Antimonopoly Committee of Ukraine developed and filed the draft of the Law of Ukraine “On the amendments to Article 6 of the Law of Ukraine “On the protection of economic competition” with regard to leniency” to the Cabinet of Ministers of Ukraine.

9. The law-in-draft namely provided for the application of leniency for taking anticompetitive concerted actions stipulated by Article 52 of the Law of Ukraine “On the protection of economic competition” to a person who took anticompetitive concerted actions but was not the first out of the rest of the participants of such actions to voluntarily inform the Antimonopoly Committee of Ukraine or its territorial office of that and to provide information being of a great significance with regard to the adoption of a case decision.

10. The adoption of the law would create conditions for the increase in the level of detection by the bodies of the Committee of anticompetitive concerted actions, the creation of proper evidential base in respect of cases with regard to infringements of the legislation on the protection of economic competition, which would produce a general positive impact upon the promotion of competition in Ukraine.

11. The Antimonopoly Committee of Ukraine approved the Procedure of the provision of conduct of the expertise in the conduct of supervision over the compliance with the legislation on the protection of economic competition (hereinafter – Procedure) by one’s resolution No. 21-p as of January 16, 2013.

12. The Procedure established the mechanism of the conduct of expertise in the performance by the Antimonopoly Committee of Ukraine of supervision over the compliance with the legislation on the protection of economic competition.

13. The said Resolution of the Antimonopoly Committee of Ukraine was registered with the Ministry of Justice of Ukraine under the No. 22/22754 on February 6, 2013.

14. The Antimonopoly Committee of Ukraine conducted the examination of the laws-in-draft filed by people’s deputies of Ukraine registered with the Verkhovna Rada of Ukraine on a monthly basis. Following the results of examinations conducted the Antimonopoly Committee of Ukraine provided the Cabinet of Ministers of Ukraine with findings and suggestions with regard to relevant laws-in-draft relating with the issues falling within one’s competence.

15. The Committee processed over 100 drafts of laws the provisions of which produced or might have produced an impact upon the state of competition and forwarded commentaries and suggestions aimed at the improvement of the provisions of 56 laws-in-draft to the Cabinet of Ministers of Ukraine.
16. Based on Article 20\(^1\) of the Law of Ukraine “On the Antimonopoly Committee of Ukraine” the Committee filed propositions with regard to 40 laws-in-draft to the relevant committees of the Verkhovna Rada. The representatives of the Committee systematically took part in the meetings of committees of the Verkhovna Rada for the support for the Committee’s propositions with regard to relevant laws-in-draft.

17. Furthermore, the drafts of regulatory and legal acts filed by central executive authorities for the consideration of the Cabinet of Ministers of Ukraine were continuously processed. Thus in 2013 the Antimonopoly Committee of Ukraine processed 2059 of such drafts.

2. Enforcement of competition laws and policies

2.1. Action against anticompetitive practices

18. In 2013 the Antimonopoly Committee of Ukraine received 7,902 applications and appeals in respect of infringements of the legislation on the protection of economic competition, which exceeded the similar number in 2012 by 23.6 percent.

![Table 1: Quantity of applications and appeals received by the Antimonopoly Committee of Ukraine and conducted inspections](#)

<table>
<thead>
<tr>
<th>Units</th>
<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>General quantity of applications, complaints, other appeals in respect of infringements of the legislation on the protection of economic competition considered</td>
<td>6,391</td>
<td>7,902</td>
</tr>
<tr>
<td>General quantity of conducted inspections</td>
<td>1,035</td>
<td>893</td>
</tr>
</tbody>
</table>

19. During 2013 the bodies of the Committee conducted 893 field inspections of compliance with the requirements of the legislation on the protection of economic competition which is below the indicator of the previous year (1,035 in 2012) by 14 percent. The decrease in the quantity of the conducted inspections was due to the considerations of reduction of administrative pressure upon business.

20. Out of the total quantity of inspections, in 669 cases economic entities were inspected and in 224 the inspections of governmental bodies were conducted. Following the results of the conducted inspections the examination of 598 cases with regard to the infringements of the legislation on the protection of economic competition was initiated and 364 recommendations on cessation of actions (inactions) bearing the attributes of such offenses were provided. During the accounting year the indicator of the efficiency of inspections increased by 14 percent compared with the similar one in 2012.

21. Following the results of actions taken by the Committee the total of 7,704 infringements of the legislation on the protection of economic competition were stopped, which exceeded the similar indicator of 2012 by nearly 32 percent. Out of those mentioned, 3,228 infringements had the form of the abuse of monopoly (dominant) position, 684 had the form of anticompetitive concerted actions of economic entities, 1,940 had to do with anticompetitive actions of governmental bodies, 1,259 constituted the cases of unfair competition.
22. Out of the total quantity of the infringements stopped:
   - 4 142 (53.8 percent) items were stopped by adoption of decisions on the application of liability provided for by the law;
   - 3 562 (46.2 percent) – by means of the bodies of the Antimonopoly Committee providing recommendations.

23. The largest quantity of infringements of the legislation on the protection of economic competition was detected in the markets of housing and municipal sector (15.25 percent of all the infringements), the agribusiness (13.11 percent), administrative services (10.77), collection, disposal, reprocessing and dumping of household waste (8.58 percent), fuel and energy industry (7.61 percent), healthcare (6.63 percent), funeral services (5.13 percent), transportation (4.0 percent), construction and construction materials (2.46 percent), connection of urban development objects, including the objects of residential development, to municipal networks of power, gas, heating, water supply and sewerage system (2.05 percent) and others.

24. To ensure the protection of economic competition on Ukrainian markets, the Antimonopoly Committee of Ukraine is focusing first and foremost on the markets which have the biggest influence on the welfare of Ukrainian citizens.

25. In 2013 the priority markets for the Antimonopoly Committee of Ukraine were socially significant markets of sales of pharmaceutical products; connection of urban development objects, including residential development objects to municipal networks of power, gas, heating and water supply and sewerage system; collection, disposal, reprocessing and dumping of household waste; allied services in rendering administrative services; funeral services. The Committee conducted a number of comprehensive inspections and advanced researches that stipulated taking relevant actions with the purpose of stopping of detected attributes of infringements of the legislation on the protection of economic competition and their prevention.
26. During the 2013 the violators of the legislation on the protection of economic competition were fined for the total amount of nearly 744 million hryvnias, which exceeds the relevant indicator of the 2012 by over 1.8 times.

Figure 2: The fines imposed by the bodies of the Committee upon the violators in 2012-2013, million UAH.

27. Out of the total amount of penalties applied in 2013, nearly 382.5 million hryvnias were imposed due to the infringements in the form of anticompetitive concerted actions of economic entities, over 291 million hryvnias were imposed for the infringements in the form of the abuse of monopoly (dominant) position, nearly 56 million hryvnias for the infringements in the form of unfair competition and nearly 14.7 million hryvnias for the infringements of other types.

Figure 3: The structures of penalties imposed by the bodies of the Committee upon the violators in 2013
28. The violators of the legislation on the protection of economic competition paid the penalties and fines in the amount of about 47.4 million hryvnias into the national budget.

29. With the purpose to ensure the timely payments of fines imposed upon the violators of the legislation on the protection of economic competition and with regard to other issues provided for by the law, in 2013 the bodies of the Committee went to court with the claims in 554 cases in accordance with Article 25 of the Law of Ukraine “On the Antimonopoly Committee of Ukraine”. Throughout the year the courts granted 461 claims of the bodies of the Antimonopoly Committee of Ukraine (83.2 percent of the filed ones), finally rejected the granting of only 16 (2.9 percent) of such claims. The share of claims granted increased by 9 percent compared with 2012.

2.1.1 Summary of activities of competition authorities

2.1.1.1 Anticompetitive concerted actions of economic entities

30. The total quantity of infringements in the form of anticompetitive concerted actions of economic entities stopped by the bodies of the Antimonopoly Committee of Ukraine in 2013 constituted 684 items. 575 infringements out of them were stopped within the examination of cases, 109 more actions having the attributes of relevant infringements were stopped as a result of followed recommendations.

31. In 2013 the bodies of the Committee imposed fines for the infringements of the legislation on the protection of economic competition in the form of anticompetitive concerted actions of economic entities in the amount of 382.5 million hryvnias.

32. The biggest share of anticompetitive concerted actions is made up of infringements in the form of bid rigging at tenders and auctions. The share of these infringements in the total quantity of anticompetitive concerted actions constitutes 88.7 percent.

2.1.1.2 Abuse of a monopoly (dominant) position

33. The vastest category of infringements of the legislation on the protection of economic competition detected and stopped by the Antimonopoly Committee of Ukraine in the accounting year remained the abuse of monopoly (dominant) position. During the accounting year 1184 cases with regard to the abuse of monopoly (dominant) position on the market were considered with holding the violators liable, which exceeds the indicator of the previous period by nearly 8.6 percent. Following the results of the examination of cases 1408 infringements were stopped, which exceeds the indicators of the past year by 3.4 percent.

34. According to the recommendations of the Committee 1820 more events of actions (inaction) having the attributes of this type of infringements were stopped, and 123 recommendations were provided following the results of the examination of cases (1182 and 122 respectively in 2012).

35. During 2013 the bodies of the Antimonopoly Committee of Ukraine imposed fines in the total amount of 291 million hryvnias upon economic entities misusing monopoly (dominant) position.

36. The vastest types in the structure of the infringements in the form of the abuse of monopoly(dominant) position stopped by the bodies of the Committee during the accounting period were actions or inaction of monopoly formations that resulted or might have resulted in non-admission, elimination or restriction of competition or the infringement of the interests of other economic entities or consumers and would have been otherwise impossible under the conditions of existence of significant competition in the market, as well as the pricing abuse (62.8 and 30.5 percent of the total quantity of the infringements of this type stopped respectively).
2.1.1.3 Anticompetitive actions by public authorities and bodies of local authorities

38. The infringements of the legislation on the protection of economic competition provided for by Articles 15, 16 and 17 of the Law of Ukraine “On the protection of economic competition” have remained one of the vastest categories of offense the bodies of the Committee detected and stopped in 2013.

39. In 2013 the bodies of the Antimonopoly Committee of Ukraine stopped 1940 infringements in the form of anticompetitive actions of regulatory bodies, local governmental authorities, bodies of administrative and service management and control which exceeds the similar indicator of 2012 (1192) by nearly 63 percent. 1170 out of them constituted the infringements in respect of which the Committee adopted decisions. Due to the provision of recommendations 770 actions having the attributes of such infringements were stopped.

40. Out of the total quantity of the infringements of the legislation on the protection of economic competition on behalf of governmental authorities the biggest number was detected in the markets of administrative and allied services (40.93 percent), collection, disposal and dumping of household waste (19.76 percent), housing and municipal sector (11.4 percent), funeral services (10.04 percent), services of land development and services of real estate lease (2.3 percent).

41. The most numerous group of the infringements committed by governmental authorities, whether actions or inactions of regulatory bodies, local governmental authorities, bodies of administrative and service management and control (a joint body or an official) that resulted or might have resulted in the prevention, elimination, restriction or distortion of competition (Part one of Article 15) and events of the creation of conditions for economic entity committing infringements of the legislation on the protection of
economic competition or the legitimation thereof due to the actions or inaction of regulatory bodies and local governmental authorities (Article 17).

42. A significant part (47 percent of the total quantity) of the infringements stopped constituted the events of price nature, setting (co-ordination, approval) of economically unsubstantiated rates.

2.1.1.4 Unfair competition

43. In 2013 the bodies of the Antimonopoly Committee of Ukraine stopped 1,259 infringements of the Law of Ukraine “On the protection against unfair competition”. The Committee adopted decisions on holding violators liable with regard to 403 infringements out of their number in the form of unfair competition, and 856 actions having the attributes of such infringements were stopped due to the recommendations the bodies of the Committee provided economic entities with.

44. As of today one of the vastest categories of unfair actions taken with the purpose of gaining of unlawful advantages in competition, is the spreading of misleading information. The infringements of this type constituted 85 percent of the total quantity of the infringements in the form of unfair competition of economic entities.

45. The spreading of misleading information, including the field of advertising, directly produces a negative impact upon a consumer, one’s choice of goods and results in a violator’s gaining of unlawful advantages in competition and a consumer’s unjustified expenses through the procurement of goods actually deprived of the characteristics the information was disseminated on. Thus, in 2013 the bodies of the Committee paid special attention to the detection and stopping of misleading advertising in socially important markets.

46. The bodies of the Committee detected and stopped a significant quantity of the events of spreading of misleading information in the advertising of food products and consumer goods.

2.1.1.5 Summary of activities of courts

47. With the purpose to ensure the timely payments of fines imposed upon the violators of the legislation on the protection of economic competition and with regard to other issues provided for by the law, in 2013 the bodies of the Committee went to court with the claims in 554 cases in accordance with Article 25 of the Law of Ukraine “On the Antimonopoly Committee of Ukraine”. Throughout the year the courts granted 461 claims of the bodies of the Antimonopoly Committee of Ukraine (83.2 percent of the filed ones), finally rejected the granting of only 16 (2.9 percent) of such claims. The share of claims granted increased by 9 percent compared with 2012.

2.1.2 Description of significant cases, including those with international implications

2.1.2.1 Anticompetitive concerted actions of economic entities

48. The Temporary Administrative Board of the Antimonopoly Committee of Ukraine imposed the fine in the total amount of 210 million hryvnias upon “KLO-Karta” LLC and PE “Avtorukh” for the infringements of the legislation on the protection of economic competition in the form of anticompetitive concerted actions for bid rigging.

49. Following the results of the investigation conducted by Kyiv City territorial office of the Antimonopoly Committee of Ukraine, it was found that the said enterprises concerted their behaviour
during the participation in the procurement of liquid refined products by the public municipal on the maintenance of green plantings in Dniprovskyi District in Kyiv City in 2010 and 2012.

50. Having considered the case information the Temporary Administrative Board found, that it was the not the first time that while taking part in competitive bidding for the procurement of liquid refined products together “KLO-Karta” LLC and PE “Avtorukh” did not act independently and compete in the process of preparation and participation in the procedure of bidding but concerted their actions. Due to such concerted actions of the respondents the competition between them was eliminated and “KLO-Karta” LLC gained the right to enter into the agreement.

51. Such actions taken by “KLO-Karta” LLC and PE “Avtorukh” were recognised as the infringements of the legislation on the protection of economic competition in the form of taking anticompetitive concerted actions for bid rigging.

2.1.2.2 Abuse of a monopoly (dominant) position

52. In the market of services of river harbour in Kyiv City the abuse of monopoly (dominant) position which created barriers to access to the market for other economic entities was detected and stopped.

53. The Public Joint-Stock Company “Kyivskyi Richkovyi Port” was recognised as such occupying the monopoly (dominant) position on the market of specialised harbour services within terminals No. 7-14 of the berth located in Naberezhno-Khreshchatytska St. in Kyiv City.

54. Legal entities and natural persons (consumers) that carry passengers operating in Dnieper River are not able to decline specialised harbour services allowing the inland transport to perform berthing (unberthing). The PJSC “Kyivskyi Richkovyi Port” rented the accommodation hulks (100% owner of which being the harbour) out to “Richkove Pasazhyrske Ekskursiine Ahentstvo” LLC. These accommodations hulks were moored to the berth located in Naberezhno-Khreshchatytska St. in Kyiv City (hereinafter – berth). This berth is the most popular place where the residents and the guests of the city are able to make a sightseeing tour down Dnieper River.

55. Thus, no entities other than “Richkove Pasazhyrske Ekskursiine Ahentstvo” had an actual possibility to let passengers on an off board from the berth as the accommodation hulks installed did not allow that. Those were the actions of the harbour consisting of the location of the accommodation hulks near the said berth and renting them out to “Richkove Pasazhyrske Ekskursiine Ahentstvo” LLC resulting in the creation of conditions preventing “Stolychna Sudnoplavna Kompaniia” LLC from entering the market of carrying passengers by means of inland transport that the Committee recognised as the infringements of the legislation on the protection of economic competition in the form of the abuse of monopoly(dominant) position.

56. The violator was fined in the amount of 2.2 million hryvnias.

57. The Temporary Administrative Board of the Antimonopoly Committee of Ukraine imposed a fine for the infringements of the legislation on the protection of economic competition in the amount of 300 thousand hryvnias upon the PJSC “Chernihivoblenerho”.

58. Misusing one’s monopoly (dominant) position on the market of the transmission of electric power by regional (local) power networks in Chernihiv Region within the territory where regional (local) power networks owned by the Company were located, the PJSC “Chernihivoblenerho” unreasonably delayed entering into a Supplementary Agreement on making amendments to the Agreement on the
transmission of electric power by the Company’s networks entered into with the supplier of electric power at unregulated rate. As the Board found, such actions might have resulted in the impossibility of the supply of electric power at unregulated rate by this supplier to one’s own consumers and, consequently, in the infringement of one’s interests. Furthermore, such actions of the PJSC “Chernihivoblenerho” might have also resulted in negative consequences with regard to the competition in the market of electric power supply to economic entities in Chernihiv Region operating within the territory where the power networks owned by the PJSC “Chernihivoblenerho” were located.

59. The Temporary Administrative Board of the Antimonopoly Committee of Ukraine adopted the decision with regard to the infringements of the competitive legislation committed by “Sumyteploenerho” LLC in the form of the abuse of monopoly position and applied pecuniary sanctions in the amount of 500 thousand hryvni against the violator.

60. Following the results of the investigation conducted it was found that misusing one’s monopoly (dominant) position on the market of services of central heating in Sumy City, in the calculation of binomial rate for the population “Sumyteploenerho” LLC violated the procedure of the calculation of rates which resulted in charging consumers an inflated annual fee and in the infringement of their interests.

61. The enterprise can render services of centralised heating at one-part rates as well as binomial rates. The implementation of a binomial rate should not result in the increase in the annual fee for the services but only redistribute it throughout the year in accordance with the actual costs incurred by the enterprise. The application of a binomial rate calculated in infringements of the established procedure resulted in the increase in the annual fee in apartment buildings equipped with heating energy supply meters.

62. The Temporary Administrative Board of the Committee obliged “Sumyteploenerho” to bring the calculations of the rate for the services of centralised heating in line with the provisions of the applicable legislation and file them for approval to the relevant authority.

2.1.2.3 Anticompetitive actions by public authorities and bodies of local authorities

63. Cherkasy regional territorial office of the Antimonopoly Committee of Ukraine obliged the Executive Committee of Cherkasy Municipal Council to cease anticompetitive actions. As the territorial office found, the Executive Committee of Cherkasy Municipal Council determined the Public Municipal Enterprise “Cherkaska Sluzhba Chystoty” the provider of services of the disposal of solid household waste in Cherkasy City with no conduct of the competitive tendering. This resulted in provision of the individual economic entity with advantages that put one into a favourable position compared with one’s competitors.

64. The Executive Committee of Cherkasy Municipal Council disagreed with the findings of the Administrative Board; however the division obliged one to conduct competitive tendering with regard to the determination of the provider of services of the disposal of solid household waste in Cherkasy City.

65. Ternopil regional territorial office of the Committee stopped the infringements contained in the actions of 13 District State Administrations. The said infringements consisted of setting of different percent rates of rental payments out of the normative and monetary valuation of a land plot with the same designated purpose set for economic entities operating in the same market.

66. Sumy division of the Committee recognised the actions of Trostianets District State Administration consisting of setting of different percent rates of rental payments out of the normative and monetary valuation of land for economic entities using a land plot according to the same designated purpose as the infringements of the legislation on the protection of economic competition in the form of
taking actions resulting in the creation for some economic entities of discriminative conditions of activity compared with ones’ competitors. The division obliged Trostianets District State Administration to cease the infringements of the legislation on the protection of economic competition within one-month term as of the moment of receipt of the decision.

2.1.2.4 Unfair competition

67. Following the results of the examination the actions of “Nestle Ukraine” LLC consisting of the placement of the information on the offer “OFFER! GET ALONG with THE WORLD” upon promotional packages of one’s products (coffee mixtures in sticks) with no indication of the competition period were recognised as unfair competition in the form of dissemination of the incomplete information on the offer.

68. The Temporary Administrative Board of the Committee adopted a decision on levying a fine in the amount of 500 thousand hryvnias upon “Nestle Ukraine” LLC (Kyiv City), the respondent was obliged to cease the infringements by removing the rest of promotional products (coffee mixtures in sticks) produced under the “Nescafe” trademark from sale.

69. The Temporary Administrative Board of the Antimonopoly Committee of Ukraine recognised the actions of the Limited Liability Company “Bobrynetskyi Zavod Prodtovariv” consisting of the use of the designation of “TUNA FISH”, located on the front and rear surface of the package of the said product (while the product did not contain tuna fish) as the infringements provided for by Article 15¹ of the Law of Ukraine “On the protection against unfair competition” in the form of the spreading of misleading information by means of furnishing to an indefinite range of persons of false information due to the chosen method of its delivery that might have produced an impact upon the intentions of these persons to procurement goods of this economic entity.

70. With regard to unfair competition “Bobrynetskyi Zavod Prodtovariv” was fined in the amount of 200 thousand hryvnias.

71. The Antimonopoly Committee of Ukraine imposed a fine in the amount for unfair competition in the amount of 140 thousand hryvnias upon “Ukrainskyi Prohresvnyi Alians” LLC (Kharkiv City).

72. As the Committee found, the actions of “Ukrainskyi Prohresvnyi Alians” LLC with regard to the use in one’s economic activity of the verbal designation of “ERSTE” combined with the “B.A.N.K.” abbreviation similar to the designation of “Erste Bank” with no approval (consent) of the PJSC “Erste Bank” that was the first to bring this designation to use, might have resulted in the confusion with the activity of the PJSC “Erste Bank”. Such actions of “Ukrainskyi Prohresvnyi Alians” LLC constitute the infringements of Article 4 of the Law of Ukraine “On the protection against unfair competition” in the form of the unlawful use of designations. The Committee obliged “Ukrainskyi Prohresvnyi Alians” LLC to cease the infringements of the legislation on the protection against unfair competition in the form of the use of the “B.A.N.K. ERSTE” designation eliciting consumers’ associations with the financial institution of the PJSC “Erste Bank”.

73. The Antimonopoly Committee of Ukraine imposed a fine for unfair competition in the amount of 50 thousand hryvnias upon “SANOMARK” LLC. As the Committee found, the actions of “SANOMARK” LLC with regard to the use on the labels of “Sanodez”, “Sanodez AF”, “Sanodez Endo”, “Sanodez Forte” and “Sanodez Kombi” disinfectants of the designation of “Sanodez” with no approval (consent) of “MADAR” LLC that was the first to bring a similar designation of “Sanidez” to use on the labels of “Sanidez” disinfectant might have resulted in the confusion with the activity of “MADAR” LLC.
Such actions of “SANOMARK” LLC constituted the infringements provided for by Article 4 of the Law of Ukraine “On the protection against unfair competition”. The Committee obliged “SANOMARK” LLC to cease the infringements of the legislation on the protection against unfair competition in the form of the use on the labels of “Sanodez”, “SANODEZ AF”, “SANODEZ ENDO”, “SANODEZ Forte” and “Sanodez Kombi” disinfectants of the designation of “Sanodez” eliciting consumers’ associations with the “Sanidez” disinfectant produced by “MADAR” LLC.

2.2. **Mergers and acquisitions**

2.2.1 **Statistical data**

In 2013 the Antimonopoly Committee of Ukraine considered 962 applications for issuance of the authorisation for concentration of economic entities which exceeds the quantity of applications in the past year (944 applications) by nearly 2 percent and the one in 2011 by nearly 27.2 percent.

At this, over 71 percent of the applications (685 applications) were filed by foreign investors or businesses with foreign ownership (which exceeds the similar indicator of 2012 by 48.9 percent).

In total, the Committee granted authorisations with regard to 779 events of concentration of economic entities.

In 183 the applications were returned to the applicants with no consideration or the participants of concentration declined the implementation thereof prior to the adoption of the Committee’s decision.

The vastest types of concentration of economic entities authorised by the Committee in 2013, similarly to past years were the procurement of shares (stock, equity interests) – 76.8 percent of the total quantity, the acquisition of control in other forms – 14.1 percent and joint incorporation of an economic entity– 4.3 percent.

Out of the total quantity of events of granting of authorisation for economic concentration considered in 2013, with regard to 756 events (78.4 percent of the total quantity) its conditions and the composition of participants held no threat of monopolisations of markets and required no advanced examination. Following the results of consideration of these applications the Committee granted authorisations for economic concentration without the examination of cases.

Due to the existence of grounds for the conduct of complex advanced examination or potential prohibition of concentration during the accounting period the bodies of the Committee considered 23 cases with regard to concentration following the results of which authorisations were granted. Special attention was paid to the events of economic concentration involving monopolistic formations.

2.2.2 **Summary on significant cases**

The Antimonopoly Committee of Ukraine considered the case with regard to concentration in the form of the procurement by the company of “Jura-Cement-Fabriken AG” (Aarau, Switzerland) of the shares in the company of “Lafarge Ukraine Holding”(Paris, France), resulting in the excess of 50 percent of votes in the supreme executive body of the company.

In the course of the case consideration it was found that the aggregate share of the participants of concentration in the market of cement as of year-ends 2011 and 2012 did not exceed 35 percent; no administrative hindrances to launch to the market existed; the potential possibility of significant expansion of cement import existed; the level of reserve manufacturing capacities of Ukrainian cement manufacturers
was quite high; a sufficient number of competitors experiencing significant competition operated in the market; with the purpose of preservation of ones’ competitive positions Ukrainian manufacturers decreased the nominal cost and increased the cost of final products through significant capital investments, continuously expanding the range of products; with the purpose of marketing promotion they continuously improved marketing manoeuvres and techniques; the responses of the participants of the market of cement did not contain negative reservations with regard to the consequences of the formation of the said concentration.

84. However, considering a significant share of the participants of concentration in the market of cement the said concentration might have produced a certain negative impact upon competition in the market of cement. The Committee conditioned granting of the authorisation for the procurement by the company of “Jura-Cement-Fabriken AG” of the shares in the company of “Lafarge Ukraine Holding” by the performance of relevant obligations namely relating with the prices, conditions of products supplies, etc. Also with the purpose of conduct of supervision over the compliance with the legislation on the protection of economic competition, prevention, detection and stopping of infringements of this legislation in the market of cement, the Committee obliged the company of “Jura-Cement-Fabriken AG” once per six month during three years starting with the year following the formation of concentration to provide the Antimonopoly Committee of Ukraine with the information with regard to the relevant participants of concentration, i.e. the PJSC “Podilskyi Tsement”, the PJSC “Mykolaivtsement” and “Tsement” LLC, namely the information with regard to the volumes of production and procurement of cement manufactured by the participants of concentration to the market in physical and monetary terms with the indication of key consumers; the information on the average nominal cost of production and weighted average wholesale and release prices of cement manufactured by the participants of concentration.

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

85. The unified competition policy of all the regulatory bodies and local governmental authorities is prerequisite for the functioning and development of efficient competitive environment in Ukraine. The mechanism of prevention of the adoption by regulatory bodies of decision that might produce a negative impact upon competition is the co-ordination of the drafts of such decisions with bodies of the Antimonopoly Committee of Ukraine in accordance with Part Four of Article 20 of the Law of Ukraine “On the Antimonopoly Committee of Ukraine”.

86. During 2013 the Antimonopoly Committee of Ukraine processed 1927 regulatory and legal acts, other decisions and drafts of decisions of regulatory bodies. Out of them the co-ordination of 369 documents was rejected.

87. The commentaries and propositions were provided in respect of 511 acts with regard to bringing them into compliance with the provisions of the legislation on the protection of economic competition. In 155 cases the propositions of the bodies of the Antimonopoly Committee of Ukraine were considered.

88. The Ministry of Infrastructure considered the propositions of the Antimonopoly Committee of Ukraine in respect of the draft of the Law of Ukraine “On the railway transport of Ukraine”, namely, with regard to a more distinct separation of the powers of the central executive authority ensuring the formation and implementing the state policy in the field of transportation, the National Committee conducting the state regulation in the field of transportation, and the central executive authority ensuring the implementation of the state policy with regard to the safety issues of overland transport, namely considering the peculiarities determined by the Law of Ukraine “On natural monopolies”. The law-in-draft also considered the procedure of the determination of relevant types of service, train categories, wagons to conduct the carriage of passengers in commercial segment. Upon the consideration of commentaries the law-in-draft was concerted.
89. The Antimonopoly Committee rejected the co-ordination of the draft of the Law of Ukraine “On the state regulation of activities of natural monopoly entities in the field of transportation” developed by the Ministry of Infrastructure of Ukraine. The law-in-draft did not stipulate unified approaches to the state regulation of natural monopoly entities and economic entities operating in allied markets namely determined by the Law of Ukraine “On natural monopolies”.

90. The Committee provided commentaries and suggestions to the draft of the Law of Ukraine “On the amendment of certain legal acts of Ukraine with regard to the regulation of internal trade” with the purpose of implementation of competitive relations in the field of trade activities and prevention of infringements of the legislation on the protection of economic competition in this field.

91. Upon the processing of the draft of the Law of Ukraine “On the market of housing and utilities services” the Committee noted that the adoption of the law-in-draft might have resulted in the collapse of the system of state management, control and regulation of housing and municipal sector previously rearranged with regard to certain lines of this field. Due to this the Committee noted of the necessity to perform additional works on the draft of the Law of Ukraine “On the market of housing and utilities services” as well as of the reasonability of primary building up and approval of the Concept of development of the market of housing and utilities services indicating the stages of relevant reform.

92. Having considered the draft of the Law of Ukraine “On motor vehicle transportation” the Committee noted that the draft did not give coverage to the grounds of the necessity to obtain paid authorisation documents introducing additional administrative barriers to the access to markets of motor vehicles carriages. Such introduction of additional and substantiated administrative restrictions might have resulted in the restriction and/or distortion of competition.

93. Upon the performance by the Ministry of Infrastructure of Ukraine of additional works upon the law-in-draft, it was concerted by the Committee.

94. The Committee rejected the co-ordination of the draft of the resolution of the Cabinet of Ministers of Ukraine “On the amendment of the Regulations of receiving and rendering of telecommunications services” as the adoption of the aforementioned Regulations might have resulted in the non-admission, elimination or restriction of the interests of consumers.

95. Furthermore, the Committee considered a number of drafts of orders of ministries having provided commentaries and suggestions relating with markets of the carriage of passengers by railway transport, services of payments of salaries, markets of wood substances.

96. With the purpose to ensure the functioning of the market of payment of salaries to employees of budget-funded institutions on a competitive basis, the Committee filed a proposition to the Ministry of Finance of Ukraine with regard to the performance of additional works on the draft of the order “On the approval of amendments to the Procedure of conduct of an open competitive tendering for the determination of the authorised Ukrainian banks through which the payment of salaries to employees of budget-funded institutions is to be effected” published on the official website of the Ministry of Finance of Ukraine. The procedure of selection of authorised banks laid out in the draft of the proposed Order contained the requirements to the amount of the authorised capital and the mandatory significant participation of the state in the authorised capital of a bank. The adoption of the draft of the Order and the implementation of the said amendments might have resulted in the situation where the position of four banks operating in the segment of banking services of payment of salaries to employees of budget-funded institutions would have the attributes of monopoly (dominant) position (as of today 4 out of 175 simultaneously meet the requirements to the amount of the authorised capital and the share of state participation in the authorised capital).
The draft of the Order was not concerted as worded by the Ministry of Finance of Ukraine.

The Committee processed the draft of the joint order of the Ministry of Infrastructure and the Ministry of Agrarian Policy and Food of Ukraine “On the approval of the specialised form of the waybill in the carriage of wood substances by means motor vehicle transportation (TTN-lis)”. 

Considering the fact that in accordance with the applicable legislation the activities of economic entities other than state forestry enterprises were not prohibited, the determination by cargo shippers of solely state forestry enterprises or their authorised structural units under the Specialized Waybill in the carriage of wood substances by means of motor vehicle transportation (TTN-lis) restricted the independence of economic activities of economic entities not being state forestry enterprises and might have produced a negative impact upon competition in markets of wood substances.

The Committee provided commentaries that were considered by the developer and upon the performance of additional works on the draft it was concerted.

The Antimonopoly Committee of Ukraine considered the drafts of the orders of the Ministry of Infrastructure of Ukraine “On the approval of the Procedure of calculation of rates for the cargo carriage by means of railway transportation”, “on the approval of the Procedure of calculation of rates for the carriage of passengers by means of railway transportation”, “On the approval of the Procedure of calculation of rates for the carriage of passengers by diurnal high-speed Intercity+ trains”.

The majority of commentaries provided with the purpose of prevention of infringements of the legislation on the protection of economic competition were typical for all the three Procedures. The Committee suggested that the drafts of the said Procedures should have stipulated the non-consideration of the expenses provided for by Part Three of Article 9 of the Law of Ukraine “On natural monopolies” in the calculation of rates for the carriage of passengers and cargos by means of railway transportation.

The Ministry of Infrastructure of Ukraine considered the commentaries of the Committee.

One of the forms of interaction with regulatory bodies and local governmental authorities has become collective meetings conducted in the premises of the Committee as well as the ones of other authorities. Namely such meetings took place with the participation of the representatives of the Ministry of Infrastructure of Ukraine, the National Committee conducting regulation in the field of communications and computerisation, the Ministry of Regional Development, Construction and Housing and Municipal Sector of Ukraine, Kyiv City State Administration, Ukrainian State Post Enterprise “Ukrposhta”, etc.

For the most part meetings were held with the purpose of discussion of the drafts of regulatory and legal acts that the Committee concerted or forwarded to the said regulatory bodies. The problematic issues detected in the examination of markets of the connection of construction objects, including residential construction objects, to municipal networks of gas, heating and water supply and sewerage systems, the issues in the field of handling waste and the problems co-owners of apartment buildings encountered in the process of formation of Associations of Co-owners of Apartment Buildings were also discussed in the meetings.

4. Resources of Competition authority

4.1.1 The annual budget of the Antimonopoly Committee of Ukraine according to the Law of Ukraine “On the State budget of Ukraine for 2013” amount:

– 73 190,5 thousand (or USD 9156,8 thousand at USD 1 = UAH 7,993 exchange rate). 

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4.1.2 Number of employees in the offices of the Committee: - 773 (currently operating):

- economists – 425;
- lawyers– 208;
- other specialties – 125;
- other personnel;

107. The above information is valid for 2013.