

Unclassified

DAF/COMP/AR(2012)49

Organisation de Coopération et de Développement Économiques  
Organisation for Economic Co-operation and Development

09-Oct-2012

English - Or. English

Directorate for Financial and Enterprise Affairs  
COMPETITION COMMITTEE

DAF/COMP/AR(2012)49  
Unclassified

**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN UKRAINE**

-- 2011 --

*This report is submitted by Ukraine to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 24-25 October 2012.*

JT03328257

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## **1. Proposed and adopted amendments to competition laws and policies**

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

1. In 2011, the Anti-Monopoly 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,
- The regulatory and legal acts of the Governments, the Anti-Monopoly Committee of Ukraine, which detail the provisions of the said laws.

2. In 2011, the Laws of Ukraine “On the Protection of Economic Competition” and “On the Anti-Monopoly Committee of Ukraine” were amended so that business entities were granted the right to apply to the Anti-Monopoly Committee of Ukraine for conclusions in relation to compliance of their acts with the provisions of Article 15<sup>1</sup> of the Law of Ukraine “On the Protection from Unfair Competition” that restricted dissemination of misleading information. The fee for submission of applications for granting of permit for concerted actions, mergers and acquisitions of business entities may be paid not only in UAH, but also in EUR or USD. The highest amount of penalty for violation of the legislation on the protection of economic competition, which the territorial departments of the Committee are entitled to impose, was increased 4 times.

3. The amendments made to the Concentration Regulations set forth the specific features of submission of information on the parties to mergers and acquisitions registered in offshore or preferential taxation jurisdictions.

4. In 2011, the amendments were also to the Rules of Examination of Applications and Cases on Violations of the Legislation on the Protection of Economic Competition that detailed the procedure of review of decisions made by the Anti-Monopoly Committee and audit by the Committee of the decisions made by its territorial departments.

## **1.2 New Legislation proposed to the Government**

5. In 2011, the Anti-Monopoly Committee drafted the Law of Ukraine on delineation of powers of the Committee and the government authorities in the areas of natural monopolies and communication industry. The draft Law was enacted in 2012.

6. The Anti-Monopoly Committee of Ukraine also drafted and submitted to the Verkhovna Rada of Ukraine the Law of Ukraine “On making amendments to the Law of Ukraine “On the Protection of Economic Competition” in relation to provision of evidence in cases being examined by the agencies of the Anti-Monopoly Committee of Ukraine”, which, in particular, proposed the legislative regulation of procedure for obtaining explanations and other information, the conduct of audits and some other actions at the time of evidence gathering in cases being examined by the agencies of the Committee. That being said, the draft Law details the rights and duties of persons, who take part in such cases, other persons in relations with the agencies of the Anti-Monopoly Committee of Ukraine. The said draft Law was approved by the meeting of the Cabinet of Ministers of Ukraine and submitted to the Verkhovna Rada of Ukraine on 28 November 2011, Registration No. 9508.

7. In 2011, the Anti-Monopoly Committee of Ukraine submitted a proposal to the President of Ukraine in relation to expediency of the drafting the regulatory and legal act that would specify the key principles of the anti-monopoly and competition policy in Ukraine in long-term prospect. The President of Ukraine by his Decree No. 187 dd. 12 March 2012 “On the Approval of the Competition Development Program in Ukraine for 2013-2023” provided for the drafting of the National Competition Development Program in Ukraine for 2013-2023, the Conception of the National Competition Development Program in Ukraine for 2013 – 2023, the draft Law of Ukraine “On the State Aid to Business Entities”. The Cabinet of Ministers of Ukraine by its Executive Order No. 690-p dd. 19 September 2012 approved the Conception of the National Competition Development Program for 2013–2023.

8. The Law of Ukraine “On the State Aid to Business Entities” drafted by the Anti-Monopoly Committee of Ukraine was approved by the Cabinet of Ministers of Ukraine 22 August 2012 and submitted to the Verkhovna Rada of Ukraine on 30 August 2012.

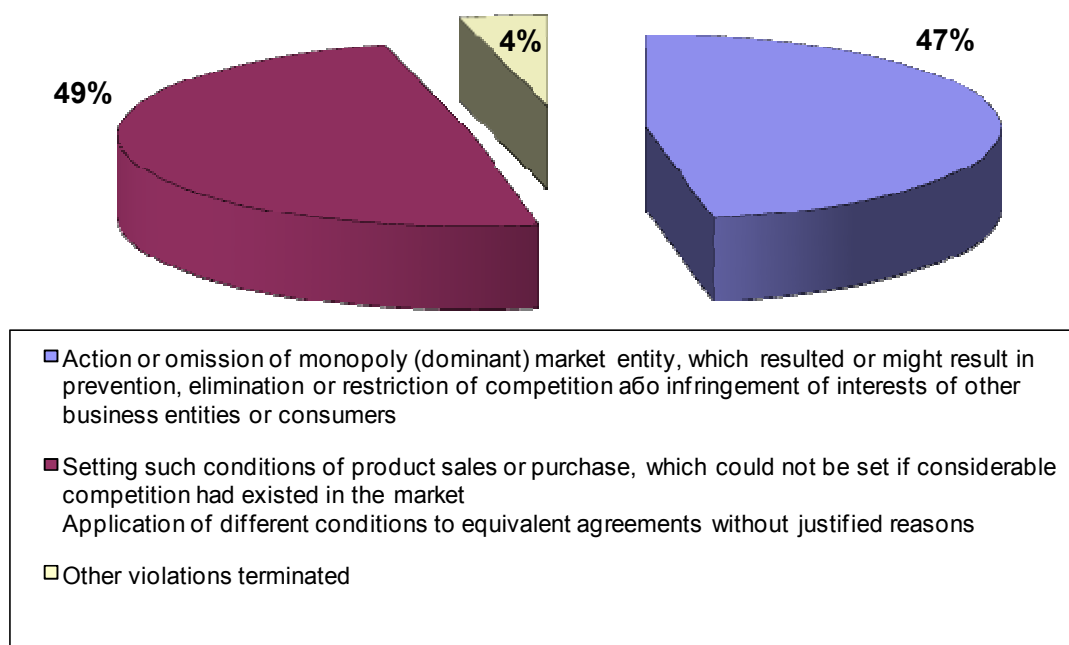
## **2. Law Enforcement Practices and Policy**

### **2.1 Abuse of Monopoly (Dominance)**

9. In 2011, abuse of monopoly (dominance) remained the largest category of violations that were found and terminated by the agencies of the Anti-Monopoly Committee of Ukraine. In the reported year, the Committee examined (and brought the offenders to responsibility) **991** cases of market monopoly (dominance) abuse that is 59.6 percent more than in the previous period. Based on the findings of their examination, the Committee terminated **1206** violations that is 65.2 percent higher than in 2010 (798). In compliance with the recommendations of the Committee, **730** more cases of action (omission) that showed signs of violation of the said type were terminated, including, without limitation, **104** cases based on the examination findings (265 and 39, accordingly, in 2010).

10. The agencies of the Anti-Monopoly Committee of Ukraine in 2011 imposed penalties for violations in the form of abuse of monopoly (dominance) totalling **UAH 11.8 million** that is 40.5 percent more compared to the previous period.

**Fig. 1. Types of Violations in the form of Abuse of Monopoly (Dominance) in 2011, %**



11. The most common types of violations in the form of abuse of monopoly (dominance) terminated by the agencies of the Committee in the reported period were abuse of pricing, and action or omission of monopolies, which resulted or might result in prevention, elimination or restriction of competition or infringement of interests of other business entities or consumers and would be impossible if considerable competition had existed in the market (49 and 47 percent of total terminated violations of that type, accordingly).

12. Most violations in the form of abuse of monopoly (dominance) in 2011 were found in such markets as housing and utilities infrastructure (32.5 percent of all violations of that type), fuel and energy complex (12.5 percent), health care, medicaments and medical products (7.7 percent).

13. Most abuses of monopoly (dominance) and actions that showed signs of violation, in housing and utilities infrastructure sector were found and terminated in such markets as water supply and removal services (more than 190); maintenance services of buildings and their adjoining areas (more than 120); heat supply (over 80); and waste removal and treatment services (more than 50).

14. In 2011, the agencies of the Committee traditionally monitored compliance with the legislation on the protection of economic competition in the fuel and energy complex, in particular, the natural gas market. In the last year, the Committee found and terminated more than 120 abuses of monopoly (dominance) and actions that showed their elements in the gas supply markets of virtually all regions of Ukraine.

#### 2.1.1 Information on Competition Authority Proceedings

15. In 2011, the Anti-Monopoly Committee of Ukraine received **5,051** applications and petitions on the violations of the legislation on the protection of economic competition; **614** cases on offence were commenced based on their examination findings that is 1.65 times more than in 2010.

**Table 1. Applications and Petitions Received by the Anti-Monopoly Committee of Ukraine and Audits Completed**

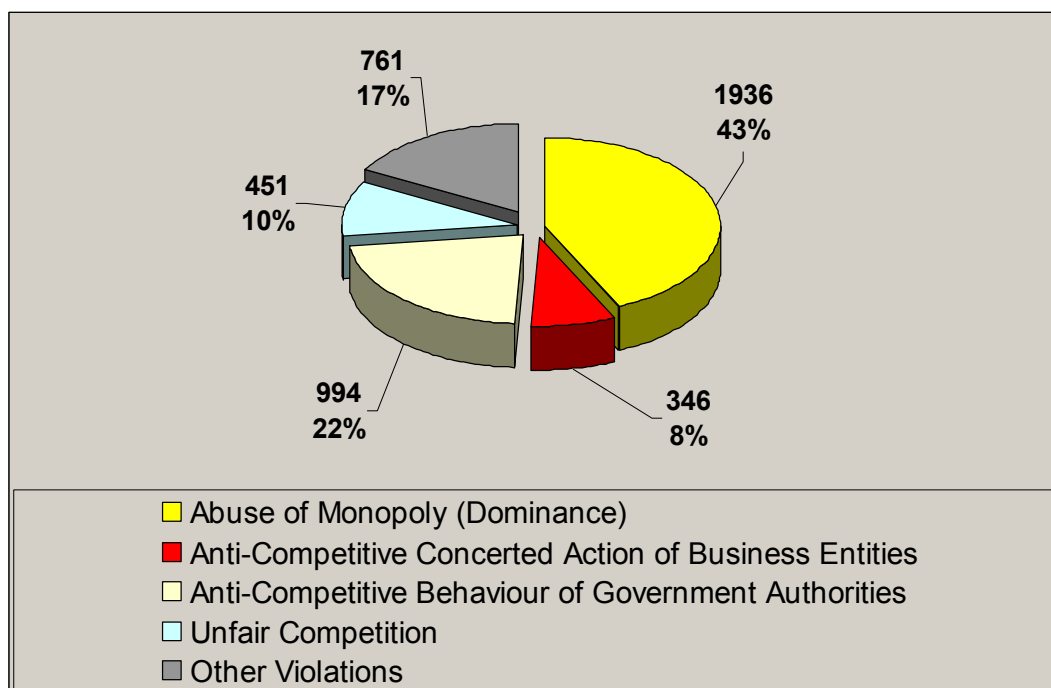
Count / Year	2010	2011
Total examined applications, complaints, and other petitions on violations of the legislation on the protection of economic competition	5,378	5,051
Total audits completed	940	1,210

16. In 2011, the agencies of the Committee completed **1,210** audits of compliance with the requirements of the legislation on the protection of economic competition, including **942** that covered business entities and **268** audits of government authorities. Based on the findings of the said audits, the Committee commenced examination of **734** cases on violations of the legislation on the protection of economic competition and provided **299** recommendations in relation to termination of action (omission), which showed elements of such violations that was 3.2 and 2.5 times, accordingly, higher than in 2010.

17. More audits were conducted in 2011 compared to 2010 in pursuance of the instruction given by the President of Ukraine in relation to the conduct of audits of compliance with the requirements of the legislation on the protection of economic competition by central and local the government authorities when providing administrative services. More than 240 of violations of the legislation on the protection of economic competition were terminated as a result of the completed audits.

18. In addition, by finding the direct signs of violation of the legislation on the protection of economic competition, the employees of the agencies of the Committee, based, among other things, on the analysis of market situation data commenced examination of **2,339 more** cases on offence that is 2.3 times more compared to the previous year.

**Fig. 2. Types of Violations of the Legislation on the Protection of Economic Competition terminated by the Committee in 2011**



19. Based on the findings of the acts taken, the Committee terminated a total of **4,488** violations of the legislation on the protection of economic competition that is nearly 1.4 times more than in 2010 including **1,936** violations in the form of abuse of monopoly (dominance), **346** anti-competitive concerted actions of business entities, **994** cases of anti-competitive behaviour of government authorities, and **451** cases of unfair competition.

20. The said violations included:

- **3,220** terminated by making decisions on application of responsibility provided for in the law; and
- **1,268** terminated by provision of recommendations in relation to termination of action (omission) that showed signs of violation.

21. The key markets, where the Committee found violations of the legislation on the protection of economic competition included housing and utilities infrastructure (22.78 percent of all violations), agroindustrial complex (11.09 percent), fuel and energy complex (8.51 percent), health care (6.53 percent), land control services and real estate lease services (4.31 percent).

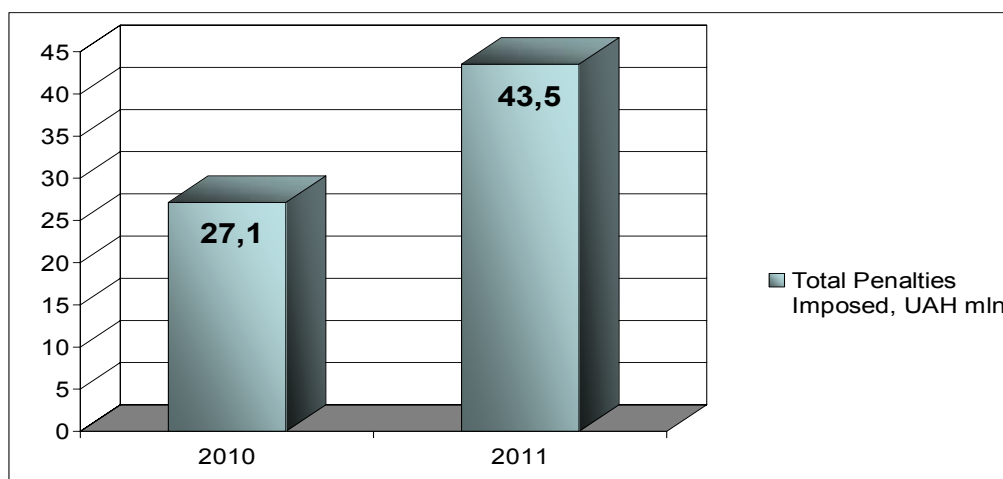
22. In the reported period, the Anti-Monopoly Committee of Ukraine took comprehensive actions in socially important markets by engaging the structural units of the central office and the territorial departments of the Committee. The said actions included audits in relation to compliance with the legislation on the protection of economic competition in individual markets, prompt detection of violations of the legislation and problems existing in such markets followed by the proposals made jointly with other central and local government authorities in relation to resolution of such problems.

23. In 2011, the Committee traditionally paid considerable attention to such socially important markets as housing and utilities infrastructure, electricity supply and supply of gas, compressed and liquefied gas used as motor fuel, food products (vegetables, chicken eggs, dairy products) and the like.

24. In 2011, the Committee imposed penalties on the parties that violated the legislation on the protection of economic competition in the total amount of **more than UAH 43.5 million** that is more than 1.5 times higher than in 2010 and more than 3.2 times higher than in 2008.

25. The total amount of penalties imposed in 2011 included **UAH 17.5 million** for anti-competitive concerted action business entities, **UAH 11.8 million** for abuse of monopoly (dominance), **UAH 4.1 million** for unfair competition and more than **UAH 10 million** for other violations.

**Fig. 3. Penalties Imposed by the Agencies of the Committee on Offenders in 2010–2011**



26. The parties that violated the legislation on the protection of economic competition paid to the state budget more than **UAH 22 million** in penalties and default interest that amounts to more than a half of the total penalties imposed in 2011.

27. In 2011, the agencies of the Committee submitted claims to courts in **388** cases in compliance with Article 25 of the Law of Ukraine “On the Anti-Monopoly Committee of Ukraine” in order to ensure timely payment of penalties imposed on the parties that violated the legislation on the protection of economic competition and on other matters specified by the legislation. In 2011, courts granted **317** claims of the Anti-Monopoly Committee of Ukraine agencies and altogether dismissed only **4** such claims. The percentage of granted claims grew by 14.5 percent compared to 2010.

28. The economic benefit achieved by the agencies of the Anti-Monopoly Committee of Ukraine that terminated violations of the legislation on the protection of economic competition was more than **UAH 489 million** in 2011 that is nearly 4.2 times higher than in 2010 (UAH 117.2 million).

### 2.1.2 *Information on Court Proceedings*

29. A decision made by the Anti-Monopoly Committee of Ukraine may be appealed to a court.

30. In 2011, 224 decisions made by the Anti-Monopoly Committee of Ukraine agencies in cases on violations of the legislation on the protection of economic competition (8.1 percent) were appealed to courts. 25 such appealed decisions were invalidated wholly or partially that amounts to 0.9 percent of all decisions made by the agencies of the Committee on the violations of the legislation on the protection of economic competition they found.

## 2.2 *Mergers & Acquisitions: Statistical Data*

31. In 2011, the Committee examined 756 applications for concentration permits to business entities, in particular:

No.	Item Description	Count
1	Total applications examined by the Committee in the process of monitoring the concerted action of business entities	37
2	Applications for granting of permit for concerted action of business entities that were abandoned and required no consent of the Committee	12
3	Total cases on granting of permit for concerted action of business entities, examined by the Committee	8
4	Total cases of granting of consent to concerted action of business entities, out of them:	25
4.1	Other types of concerted competitive behaviour of business entities	6
5	Total decisions made in the process of monitoring of concerted action of business entities that contain obligations	7
6	Preliminary conclusions granted in relation to concerted action of business entities	25
7	Total applications examined in the process of monitoring of the business entity concentrations	756
8	Applications for concentration permits to business entities that were abandoned or required no consent of the Committee	171
9	Total cases on grant of permit for concentration of business entities examined by the Committee	52
10	Total cases of granting of consent to concentration of business entities, out of them:	585
10.1	Merger of business entities or acquisition one business entity by another	13
10.2	Acquisition of control of one or more business entities or parts of business entities directly or through another party	136
10.3	Formation of a business entity by 2 or more business entities	18
10.4	Direct or indirect purchase or otherwise acquiring the title or receipt of shares (stock, interest) in trust	417
10.5	Other actions specified by the legislation	1
11	Total decisions made in the process of monitoring the business entity concentrations	10



### **3. Role of Competition Authority in Drafting and Implementation of Policy in other Areas**

32. The central and local government authorities take part in the drafting and implementation of the competition policy interact with the Anti-Monopoly Committee of Ukraine in development of competition. The functioning and development of efficient competitive environment in Ukraine are directly related to implementation of the consistent competition policy by all government departments.

33. One of the most important areas of competition support is evaluation of effect on competition by the regulatory and legal acts and other decisions made by the government authorities, as they directly affect the situation in commodity markets, may have a long term or extremely adversely affect the economic competition.

34. In 2011 the Anti-Monopoly Committee of Ukraine reviewed 2717 decisions and draft decisions that is 86.6 percent more than in the previous year, of which the Committee refused to approve 420 decisions and draft regulatory and legal acts (2.5 times more than in 2010). Most draft acts, which would result in adverse consequences for competition, concerned such markets as housing and utilities infrastructure, administrative services, medicinal products, fuel and energy complex, and regional problems.

35. The Committee issued comments and proposals on 146 regulatory and legal acts in relation to making their drafts compliant with the requirements of the legislation on the protection of economic competition (that is 73.8 percent more compared to the previous year).

36. By way of example, the Committee performed sophisticated work at the time of reviewing the draft Law of Ukraine “On the Domestic Trading”. The proposal of the Anti-Monopoly Committee, in particular, concerned the requirement to provide legislative regulation of individual mandatory conditions in agreements, setting the due dates of settlement between trading outlets and suppliers for the delivered goods, in particular, those with the shelf life of less than 30 days.

37. In addition, the Committee proposed that written agreements shall always be made between suppliers of food products and business entities, which are engaged in retail trade in food products. Such agreements shall govern the mutual relations between the parties in supply of products to the retail chains and specify their responsibility in the event of non-performance of their obligations, including, among other things, delayed settlement for the delivered goods.

38. In order to prevent violations of the competition legislation, the Committee proposed that the draft Law shall be supplemented with the provisions, which would put a limit to the lessees of sales outlets in the markets in setting uncontrollable high cost of sales outlet sublease.

39. The comments of the Committee on the draft Law of Ukraine “On the Domestic Trading” were taken into account.

40. In the last year, the Committee provided several comments on the draft Law of Ukraine, which provided for formation of the National Commission of Transport Regulation (“On the National Commission of Transport Regulation” and “On the Government Regulation of Transport Sector”), as the draft said laws considerably narrowed the scope of regulation, functions and powers of the transport regulatory authority compared to the provisions of the Law of Ukraine “On the Natural Monopolies”. This would result in inefficient government regulation in the said area and provide conditions for violations of the legislation on the protection of economic competition.

41. The Committee submitted comments on the draft law that provided for making of amendments to the Law of Ukraine “On the Motor Transport”.

42. To this end, the said draft Law provided for making of amendments, in accordance with which the central executive authority that ensures implementation of the government policy on the matters of land transport safety, shall keep the list of business entities, which install and maintain control devices (recording tachometers) in motor transport. That being said, the said draft Law specified no procedure for inclusion of business entities in the said list.

43. In addition, the said draft law gave no strict definition of the monitoring functions of international motor transportation of passengers and cargoes, notwithstanding that such functions are specified in more detail in the said Law that is in force.

44. The said amendments would result in formation of non-transparent business environment motor carriers and, accordingly, provided conditions for violations of the legislation on the protection of economic competition by the government authorities.

#### **4. Resources of Competition Authority**

##### ***4.1 Annual Budget***

45. The annual budget of the Anti-Monopoly Committee of Ukraine in compliance with the state budget laws for 2011-2012 amounts to:

- 2011: UAH 66,312.4 thousand (or USD 8,299.4 thousand at USD 1=UAH 7.99 exchange rate);
- 2012: UAH 64,481.0 thousand (or USD 8,070.2 thousand at USD 1=UAH 7.99 exchange rate).

##### ***4.2 Number of Employees in the Offices of the Committee:***

46. 251 (currently operating):

- 103 economists;
- 66 lawyers;
- 80 other specialities;
- 2 other personnel.

47. The above information is valid for 2011.

## ANNEX

**PRELIMINARY INFORMATION ON COMPLIANCE WITH THE RECOMMENDATIONS  
BASED ON THE OECD PEER REVIEW «COMPETITIVE LAW AND POLICY IN UKRAINE»**

1. In compliance with the Constitution of Ukraine, the President of Ukraine appoints and dismisses the Chairman of the Anti-Monopoly Committee of Ukraine with the approval of the Verkhovna Rada of Ukraine (Parliament of Ukraine).
2. The Law of Ukraine “On Making Amendments to the Law of Ukraine “On the Anti-Monopoly Committee of Ukraine” No. 4287-VI dd. 23 December 2011 made amendments to the Law of Ukraine “On the Anti-Monopoly Committee of Ukraine”, in compliance with which (Article 6 of the said Law) the Anti-Monopoly Committee of Ukraine is composed by the Chairman and 8 state commissioners.
3. In accordance with Article 11 of the said Law, the state commissioners of the Anti-Monopoly Committee of Ukraine are appointed based on the proposal of the Prime Minister of Ukraine that is made on the grounds of the proposal of the Chairman of the Anti-Monopoly Committee of Ukraine and are dismissed by the President of Ukraine.
4. The Chairman of the Anti-Monopoly Committee of Ukraine has the First Deputy and the Deputy Chairman of the Anti-Monopoly Committee of Ukraine, who are appointed from among the state commissioners. In the event of necessity in order to ensure that the Anti-Monopoly Committee of Ukraine accomplish individual tasks by decision of the President of Ukraine, the Anti-Monopoly Committee of Ukraine may have additional Deputy Chairman of the Anti-Monopoly Committee of Ukraine.
5. The Cabinet of Ministers of Ukraine Executive Order No. 81-p dd. 13 January 2010 (as amended) approved the Conception of Reform of the System of State Aid to Business Entities drafted by the Anti-Monopoly Committee of Ukraine.
6. In compliance with the Economic Reform Program for 2010–2014 *Wealthy Society, Competitive Economy, Efficient Nation* and in order to implement the said Conception, the Committee drafted the Law of Ukraine “On the State Aid to Business Entities”, which specified the legal and organizational principles of the system of state aid to business entities.
7. On 22 August 2012, the draft Law of Ukraine “On the State Aid to Business Entities” was approved by the Cabinet of Ministers of Ukraine and submitted to the Verkhovna Rada of Ukraine (registered on 30 August 2012 under No. 11118).
8. At the moment, the Verkhovna Rada of Ukraine prepared for the second reading the draft Law of Ukraine “On making amendments to the Law of Ukraine “On the Protection of Economic Competition” (Reg. No. 3436) (passed in the first reading on 14 April 2009).
9. With a view to moving the cases of concentration of business entities, which cannot considerably affect the competition in commodity markets, out of the scope of the preliminary government control, the

said draft Law proposes that the total yearly turnover or the value of assets of all concentration parties be made 2.5 times higher.

10. The said amendments to the legislation will provide conditions for efficient use of resources of the Committee that will be oriented towards specific examination of such concentrations, which may have the effect of commodity markets monopolisation.

11. The Cabinet of Ministers of Ukraine Executive Order No. 690-p dd. 19 September 2012 approved the Conception of the National Competition Development Program for 2013–2023. In compliance with section 2 of the said Executive Order, the Anti-Monopoly Committee of Ukraine jointly with other interested authorities is assigned to draft and submit to the Cabinet of Ministers of Ukraine the National Competition Development Program for 2013–2023.

12. The Action Plan for implementation of the National Competition Development Program in Ukraine for 2013–2023 that was drafted by the Committee making of amendments to the legislation in relation to introduction of criminal responsibility for anti-competitive concerted action.

13. In pursuance of the OECD recommendations, Ukraine took actions in relation to increasing the number of independent government regulators, which carry on their activities in the areas of natural monopolies and commodity markets related to such monopolies. To this end, at the moment Ukraine set up the following commissions that provide government regulation:

- The National Commission that provides government regulation in energy sector;
- The National Commission that provides government regulation in the area of communication and informatization;
- The National Commission that provides government regulation in the area of utility services;
- The National Commission that provides government regulation in the area of financial service markets.

14. In compliance with the Regulations of the National Commissions, their main tasks include, in particular, government regulation of operations made by natural monopolies and business entities, which are engaged into business in related markets, always providing protection of the rights of the customers of products (work, services).

15. All of the said National Commissions are independent government collegial bodies subordinated to the President of Ukraine and reporting to the Verkhovna Rada of Ukraine that ensures their independence in making the binding decisions within the scope of their competence in compliance with Ukrainian legislation in force.

16. The Law of Ukraine “On making amendments to the Law of Ukraine “On the Protection of Economic Competition” in relation to provision of evidence in cases that shall be examined by the agencies of the Anti-Monopoly Committee of Ukraine” was drafted by the Committee by own initiative.

17. The said draft law provides for regulation of the procedure based on which the authorities and officials of the Committee agencies system shall exercise the powers, stipulated by the Law of Ukraine “On the Anti-Monopoly Committee of Ukraine” with a view to forming the due procedural principles of providing evidence in cases on violations of the legislation on the protection of economic competition.

18. The said draft Law, in particular, provides for:

- the regulation procedure of obtaining explanations and other information required for the conduct of investigation in cases on violations of the competition legislation;
- the definition of written and material evidence in cases on violations and the detailed procedure of their seizure;
- the detailed rights and duties of individuals, who take part in cases on violations of the competition legislation;
- the detailed procedure of expert examination, rights and duties of experts, the procedure of reimbursement of costs and expenses related to their conduct;
- the procedure of engagement of attesting witnesses, specialists; and
- the legislative regulation and detailed procedure of the conduct of audits of business entities by the agencies of the Committee, which is currently specified by subordinate legislation.

19. The detailed rights and duties of individuals, who take part in cases, determination of the scope of legitimate action that may be taken by the agencies of the Committee at the time of evidence gathering, will facilitate strengthening of procedural guarantees of business entities, transparency and predictability of the actions taken by the agencies of the Committee.

20. Therefore, the amendments proposed by the draft law will provide proper procedural principles of provision of evidence in cases on violations of the legislation on the protection of economic competition and will facilitate higher efficiency of the competition legislation enforcement by the agencies of the Committee.

21. The draft Law was approved by the meeting of the Cabinet of Ministers of Ukraine and submitted to the Verkhovna Rada of Ukraine on 28 November 2011 under Registration No. 9508.

22. On 18 November 2008, the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On making amendments to the Law of Ukraine “On the Protection from Unfair Competition”.

23. The said Law removes controversies in the legal regulation of procedural aspects of law application by the anti-monopoly authorities. Those controversies are related to jurisdiction over examination of cases, the procedure of enforcement of decisions and the like. The provisions of the law specify in more detail the elements of individual manifests of unfair competition based on practices of the competition legislation enforcement by the Committee and courts.

24. Most importantly, the said Law specifies the instruments for the Committee to counter unfair advertising that misleads consumers and is disseminated by businesspersons in order to gain advantage over competitors. This provision of the law, which corresponds with the Paris Convention for the Protection of Industrial Property, is absolutely new to Ukraine.

25. At the moment, the Verkhovna Rada of Ukraine prepared for the second reading the draft Law of Ukraine “On making amendments to the Law of Ukraine “On the Protection of Economic Competition” (Reg. No. 3436) (passed in the first reading on 14 April 2009).

26. In order to move the cases of concentration of business entities, which cannot considerably affect the competition in commodity markets, out of the scope of the preliminary government control, the said draft Law proposes that the total yearly turnover or the value of assets of all concentration parties be increased 2.5 times.

27. The said legislative amendments will provide conditions for efficient use of resources of the Committee that will be oriented towards specific examination of such concentrations, which may have the effect of commodity markets monopolisation.

28. On 20 September 2012, the Anti-Monopoly Committee of Ukraine put into operation the new web portal of the agencies of the Committee that will publish the texts of the decisions and recommendations made by the Committee in *Decisions & Recommendations* section.

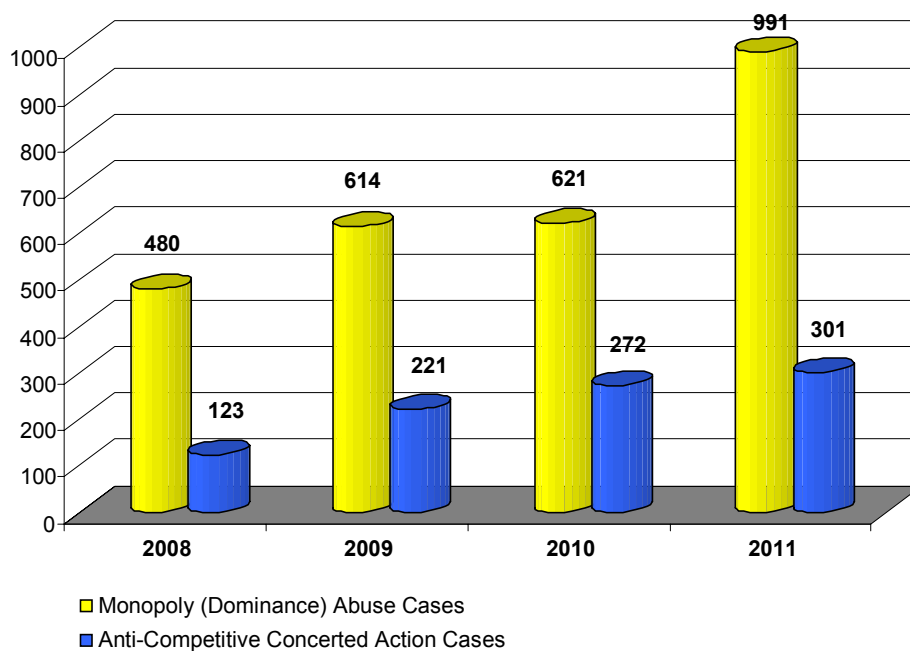
29. The contents of the website will be concentrated on providing the optimal system to search for decisions and receive the required information in relation to the agenda of the petitions to the Committee and making of the relevant decisions.

30. The work is underway at the moment on determination of the general approaches to be pursued by the Committee towards making public the decisions of the Committee in the full extent (in particular, taking into consideration the requirements laid down in legislation in relation to providing confidentiality of information), introduction of unified format and structure of messages in relation to the decisions made by the Committee.

31. The approaches towards determination of the amount of penalties for violations of the legislation on the protection of economic competition, in particular, circumstances, which may be taken into consideration at the time of determination of the amount of penalty, making decisions on grace period or instalments in relation to its payment are specified in the Committee's Information Letter No. 55/01 dd. 25 January 2010.

32. For 11 months of 2010, the agencies of the Committee found and terminated 907 violations of the legislation on the protection of economic competition in the form of abuse of monopoly (dominance) in the market and 321 violations of the legislation in the form of anti-competitive concerted action of business entities.

33. The graph of changes in the numbers of cases examined by the agencies of the Committee in relation to anti-competitive concerted action business entities and abuse of monopoly (dominance) in 2008–2011 is given below.



34. The current legislation on the protection of economic competition specifies the following:

- The Model Requirements applicable to concerted action of business entities to the extent of general exempt from preliminary issue of permit of the Anti-Monopoly Committee of Ukraine agencies for concerted action of business entities (approved by the Anti-Monopoly Committee of Ukraine Executive Order No. 27-p dd. 12 February 2002 registered by the Ministry of Justice of Ukraine 07 March 2002 under No. 239/6527);
- The Model Requirements applicable to Formation of Business Associations to the extent of general exempt from preliminary issue of permit of the Anti-Monopoly Committee of Ukraine agencies for its formation (approved by the Anti-Monopoly Committee of Ukraine Executive Order No. 511-p dd. 30 November 2006 registered by the Ministry of Justice of Ukraine on 26 January 2007 under No. 61/13328);
- The Model Requirements applicable to concerted action of business entities on specialization of production, compliance with which allows taking such concerted actions without the permit of the Anti-Monopoly Committee of Ukraine agencies (approved by the Anti-Monopoly Committee of Ukraine Executive Order No. 880-p dd. 11 December 2008 registered by the Ministry of Justice of Ukraine 24 January 2009 under No. 74/16090); and
- The amendments to the Model Requirements applicable to concerted action of business entities to the extent of general exempt from preliminary issue of permit of the Anti-Monopoly Committee of Ukraine agencies for concerted action of business entities (approved by the Anti-Monopoly Committee of Ukraine Executive Order No. 350-p dd. 28 August 2009 registered with the Ministry of Justice of Ukraine on 21 September 2009 under No. 886/16902).

35. The Committee by its Executive Order No. 557-p dd. 15 August 2012 approved the Model Requirements applicable to concerted action of business entities in relation to joint scientific research and/or research and design work, compliance with which allows taking such concerted action without the permit of the Anti-Monopoly Committee of Ukraine agencies. The said Executive Order was registered by the Ministry of Justice of Ukraine on 05 September 2012 under No. 1537/21849 and will take effect upon the day of its official publication.

36. In compliance with the Plan of the Anti-Monopoly Committee of Ukraine for implementation of the agenda of Ukraine-EU Association for 2012–2013, the Model Requirements applicable to concerted action of business entities in relation to supply and use of products, compliance with which allows taking such concerted action without the permit of the Anti-Monopoly Committee of Ukraine agencies will be drafted in 2013.

37. The Anti-Monopoly Committee of Ukraine by its Executive Order No. 399-p dd. 25 June 2012 (registered with the Ministry of Justice of Ukraine on 7 September 2012 under No. 1553/21865) approved the procedure of filing the applications to the Anti-Monopoly Committee of Ukraine on leniency for violations of the legislation on the protection of economic competition contemplated by sections 1 of Article 50 of the Law of Ukraine “On the Protection of Economic Competition” (the procedure of exempt from responsibility).

38. The procedure of leniency was drafted taking into consideration the regulatory acts and experience of introduction of the leniency program in the European Union.

39. The said procedure oriented towards implementation of the provisions laid down in the fifth part of Article 6 of the Law of Ukraine “On the Protection of Economic Competition”, in compliance with

which a party that took an anti-competitive concerted action, but voluntarily notified the Committee to that effect earlier than the other parties to such action and furnished information that is materially significant to making the decisions in the case shall be exempted from responsibility.

40. The Procedure stipulated the strict modalities for business entities to submit the relevant applications to the authorized representative of the Committee and the requirements applicable to the contents of such application.

41. In addition, in order to ensure priority in cartel notification in the event if the applicant as at the time of submission of the application for leniency furnishes insufficiently relevant information in order to gain the exempt, but the relevant information can be furnished by such party later, the procedure allows issuing a marker letter.

42. The provisions of the Procedure take into account the key principles of the leniency program that is commonly used in the EU.

43. With a view to strengthening the interaction in the area of protection of economic competition, the Committee and the Ministry of Interior of Ukraine signed Joint Resolution No. 44/125 dd. 08 April 2010. The Resolution provided, in particular, for coordination of activities and interaction at all levels by taking action in relation to prevention, detection, and termination of violations in the area of protection of economic competition, detection and removal the reasons for occurrence of offense in the area of protection of economic competition and conditions that facilitate them. That being the case, if an agency of the Committee when accomplishing the tasks specified by the legislation on the protection of economic competition finds information, which may suggest availability of the elements of crime, the said authorities shall ensure that the information so found shall be transferred to the relevant units of the Ministry of Interior.

44. In addition, with a view to improving the instruments of interaction between the agencies of the Committee and the law enforcement authorities, the Committee drafted Information Letter No. 56/01 "On the procedure of transfer of data, which may suggest availability of the elements of crime, to the law enforcement authorities", which specifies the grounds and the procedure of interaction the agencies of the Committee with the Ministry of Interior of Ukraine, the Security Service of Ukraine and the General Prosecutor's Office of Ukraine.

45. The Committee held Pertinent Matters of Development of Competition Policy and Enforcement of the Legislation on the Protection of Economic Competition workshop attended by the judges of the system of Ukrainian commercial courts and employees of the legal services in the system of the Anti-Monopoly Committee of Ukraine agencies.

46. In compliance with section 3.13 of the Regulations on the Procedure of Application Submission to the Anti-Monopoly Committee of Ukraine on preliminary issue of concentration permits to business entities approved by the Anti-Monopoly Committee of Ukraine Executive Order on 19 February 2002 under No. 33-p and registered by the Ministry of Justice of Ukraine on 21 March 2002 under No. 284/6572 as amended ("the Concentration Regulations"), if the decision can be made without obtaining of all documents and information specified in section 3.9 of the Concentration Regulations, then their list may be reduced subject to approval with the state commissioners.

47. As shown by the practice of the Anti-Monopoly Committee of Ukraine, business entities submit the relevant applications to the Committee for concentration permit and at the same time submit petitions for reduction of information providing the relevant rationale. As a rule, the state commissioners of the



Committee grant the applications so submitted based on the requirement that the files of the application shall contain the documents for analysis of the consequences of concentration for Ukrainian markets.

48. The exhaustive list of concentration parties, actual relations of control of business entities, their core business areas and shares in the affected commodity markets provides important information for the assessment of concentration. Such information is required to the full extent for the employees of the Committee to provide the economic analysis of the proposed concentration's effect on competition in order to prevent commodity markets monopolisation, abuse of monopoly (dominance), and restraint of competition.

49. UNCTAD: AMCU takes part in the proceedings Intergovernmental Group of Experts on Competition Policy and Legislation of UNCTAD on a regular basis. In 2013, UNCTAD will review the competition policy and legislation of Ukraine.

50. OECD: The Council of the Organisation of Economic Co-operation and Development ("OECD") by its Resolution dd. 22 November 2011 granted Ukraine the status of observer in the OECD's Competition Committee.

51. Since 2012, the AMCU has been taking part in the meetings of Working Group No. 2 (Competition & Regulation), Working Group No. 3 (Co-Operation and Legislation Enforcement) and the OECD Competition Committee on a regular basis.

52. ICAP: The Committee has always been an active contributing member of the Intergovernmental Council on Antimonopoly Policy of the CIS member countries set up on the grounds of the Agreement on the Pursuance of Consistent Antimonopoly Policy and is one of the most efficiently operating intergovernmental integration entities in the system of the CIS authorities.

53. The regular participation of the representatives of the Committee in the proceedings of international organizations is very important for Ukraine, as international cooperation in the area of competition policy provides actual harmonization and balance of interests of various countries in the process of liberalization of international trade, contributes to formation of attractive investment environment and strengthening of business contacts.

54. In 2008–2011, considerable attention was given continuous education in foreign (English) language. Within the framework of Strengthening the Enforcement of Competition Law and Policy in Ukraine Twinning Project, 5 representatives of the Committee took a general course of the English language at Interlingua in 2009.

55. In 2009, 31 employees of the Committee improved their qualification in the English language courses within the framework of EU project *Harmonisation of Competition and Public Procurement Systems in Ukraine with EU standards*.

56. In 2010, 16 employees of the Committee improved their qualification in the English language courses within the framework of EU project *Harmonisation of Competition and Public Procurement Systems in Ukraine with EU standards*.

57. In addition, 19 civil servants of the Committee improved their qualification by language training (in the English language) organized by the Central Department of the Government Service of Ukraine in 2010.

58. In 2011, eight employees of the Committee improved their qualification by taking the English language courses organized by the National Agency of Civil Service of Ukraine.